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NIGERIAN BUSINESS REGULATORY REVIEW

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Dear esteemed readers,

It is with great pleasure and excitement that we present to you the maiden edition of the Nigerian Business Regulatory Review (NBRR). This publication marks a significant milestone in our commitment to providing insightful analysis and expert commentary on the regulatory landscape in Nigeria and its impact on various sectors.

The NBRR serves as a comprehensive platform for examining the governance of regulatory issues across multiple sectors in Nigeria. In this inaugural edition, we have focused on the financial sector, encompassing banking, insurance, pension, investment, and securities. As one of the most vital sectors in any economy, the financial industry plays a pivotal role in driving economic growth, facilitating investment, and ensuring stability.

This edition of the NBRR delves into the intricacies of the financial sector, providing a holistic view of the regulatory framework governing its operations. Our team of expert contributors has meticulously analyzed the legal and regulatory landscape, highlighting key developments, challenges, and opportunities within each subsector. Through their insightful articles, readers will gain a profound understanding of the evolving regulatory environment and its impact on the financial industry.

We are immensely grateful to the 25 leading law firms in Nigeria who have contributed their expertise to this edition. Their invaluable insights, extensive experience, and in-depth knowledge have enriched the discourse surrounding the financial sector's regulatory landscape. These esteemed law firms have provided us with comprehensive articles that cover a wide range of topics, including regulatory compliance, risk management, fintech innovation, consumer protection, and the future of financial regulation in Nigeria. Their contributions serve as a testament to their commitment to excellence and their dedication to fostering a robust regulatory environment.

On this note, we extend our heartfelt appreciation to the following law firms for their invaluable contributions to this publication:

1. *Advocaat Law Practice*
2. *Bola Ajibola & Co*
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24. *The Trusted Advisors*
25. *The New Practice*

We would also like to express our deepest gratitude to the staff of the Business Law Academy for their unwavering dedication and tireless efforts in making this publication a reality. Their commitment to promoting legal education, fostering industry-academia collaboration, and driving thought leadership within the legal and regulatory space is truly commendable.

In conclusion, we believe that the Nigerian Business Regulatory Review will serve as an invaluable resource for policymakers, regulators, industry professionals, legal Practitioners, academics, and all stakeholders interested in the governance of regulatory issues in Nigeria. We are confident that this publication will foster discourse, drive positive change, and contribute to the overall development of a robust regulatory framework that supports the growth and stability of the financial sector and the Nigerian economy as a whole.

Once again, we extend our heartfelt appreciation to all those who have contributed to the success of this maiden edition of the Nigerian Business Regulatory Review. We hope you find this publication insightful and informative, and we look forward to your continued support and engagement as we embark on this

our heartfelt appreciation to all those who have contributed to the success of this maiden edition of the Nigerian Business Regulatory Review. We would like to express our gratitude to the authors from the 25 leading law firms in Nigeria who have worked tirelessly to provide their expertise and insights on the regulatory landscape of the financial sector.

Your dedication and commitment to delivering exceptional articles have been instrumental in making this publication a valuable resource for our readers. The depth of knowledge and professionalism exhibited in your contributions is truly commendable, and we are immensely grateful for your time and effort.

We would also like to express our sincere thanks to the staff of the Business Law Academy for their unwavering support and hard work throughout the entire process. Your passion for promoting legal education and driving thought leadership in regulatory issues has been invaluable.

Furthermore, we extend our appreciation to our readers for their continued support and engagement. It is your enthusiasm and interest in staying informed about regulatory matters that motivates us to deliver high-quality publications like the Nigerian Business Regulatory Review.

As we celebrate the successful launch of this maiden edition, we remain committed to our mission of providing comprehensive and insightful analysis on regulatory issues across various sectors in Nigeria. We will continue to collaborate with esteemed experts, professionals, and organizations to deliver timely and relevant content that facilitates informed decision-making and contributes to the advancement of good governance and regulatory practices.

Once again, thank you to all who have played a part in making the Nigerian Business Regulatory Review a reality. Your contributions and support have been invaluable, and we look forward to your continued partnership as we strive for excellence in the field of regulatory analysis and reporting.

Sincerely,

Olukayode B.A Fabunmi
Publisher, Nigerian Business Regulatory Review

BRIEF OVERVIEW OF KEY REGULATORY BODIES IN THE FINANCIAL SERVICES SECTOR

BY: BUSINESS LAW ACADEMY

Within the intricate fabric of Nigeria's financial services sector, a web of regulatory authorities assumes the mantle of guardianship over critical aspects of financial stability, compliance, and governance. These regulatory bodies wield significant influence, shaping the contours of the financial landscape, and upholding the rights and interests of various stakeholders. This document serves as a concise exposition of four prominent regulatory institutions operating within this dynamic environment: the Central Bank of Nigeria (CBN), the National Pension Commission (PENCOM), the National Insurance Commission (NAICOM), and the Securities and Exchange Commission (SEC). Through a comprehensive overview, we embark on an exploration of their historical origins, mandates, and intricate organizational structures, unveiling the fundamental roles they play in sustaining the integrity and vitality of Nigeria's financial infrastructure.

THE CENTRAL BANK OF NIGERIA (CBN)

The Central Bank of Nigeria (CBN) serves as the apex financial institution with a mandate to regulate and oversee the monetary and financial systems within Nigeria. Its origins trace back to the year 1958, and it has since played a central role in the nation's economic development and stability. The formal establishment of the CBN occurred on July 1, 1959, following the enactment of the Central Bank of Nigeria Act of 1958. It is noteworthy that prior to its establishment, the governance of banking and monetary affairs in Nigeria was under the purview of the West African Currency Board.[1]

The CBN assumes a multifaceted array of responsibilities, which include:

1. Monetary Policy Formulation and Implementation: A cornerstone function is the formulation and execution of monetary policies aimed at achieving the dual objectives of maintaining price stability and fostering economic growth. This pivotal role encompasses the regulation of money supply, interest rates, and exchange rates in alignment with these overarching objectives.[2]
2. Regulation of Banking and Financial Institutions: The CBN wields regulatory and supervisory authority over commercial banks and other financial institutions, ensuring their operations adhere to sound and prudent practices. This regulatory vigilance is a critical component in protecting depositors and preserving overall financial stability.
3. Currency Issuance and Oversight: It is vested with the responsibility of issuing and regulating the Nigerian Naira, the official currency of the nation.
4. Management of Foreign Exchange Reserves: The CBN diligently manages foreign exchange reserves, a vital asset essential for facilitating international trade and sustaining exchange rate stability.
5. Oversight of the Payment System: The CBN oversees the payment system in Nigeria, ensuring its seamless and secure operation. The organizational structure of the CBN is led by a Governor, whose appointment is made by the President of Nigeria and subsequently confirmed by the Senate. The Governor is assisted by four Deputy Governors, each entrusted with specific portfolios, including Corporate Services, Financial System Stability, Operations, and Economic Policy.[3]

Complementing this administrative hierarchy, the CBN maintains a network of departments and branches strategically located across Nigeria. These encompass its central headquarters situated in Abuja and various regional branches.

1 Central Bank of Nigeria, 'History of Nigerian Currency',
https://www.cbn.gov.ng/currency/historycur.asp#:~:text=On%201st%20July%2C%201959%20the,reflect%20the%20country's%20republican%20status accessed on October, 13, 2023
2 See Section 2 of the CBN Act, 2011.
3 See Section 6 and 7 of the CBN Act, 2011.

In summation, the Central Bank of Nigeria (CBN) occupies a central and pivotal role within Nigeria/s economic framework. Its diverse functions encompass monetary policy, banking and financial institution regulation, currency management, foreign exchange reserves, and payment system oversight. These responsibilities collectively contribute to the preservation of financial stability and the support of the nation's economic growth and development.

THE NATIONAL PENSION COMMISSION (PENCOM)

The National Pension Commission, commonly known as PENCOM, was established in the year 2004 through the legislative enactment of the Pension Reform Act (PRA) of 2014, as subsequently amended.[4]

Its core objective is the meticulous administration and regulation of the Nigerian pension sector, a cornerstone institution that plays a pivotal role in ensuring financial security for retirees. PENCOM's portfolio of responsibilities and functions is comprehensive and includes[5] :

1. Regulatory Oversight: PENCOM is vested with the authority and responsibility to diligently regulate and oversee all facets of the pension industry operating within the territorial confines of Nigeria. This extensive supervisory ambit extends to encompass both public and private sector entities.

2. Administration of the Contributory Pension Scheme (CPS): At the heart of the pension landscape,

PENCOM is charged with the administration of the Contributory Pension Scheme (CPS), a mandatory pension scheme applicable to employees across the spectrum of Nigeria's public and private sectors.[6]

3. Management of Pension Funds: The commission assumes the onerous duty of meticulously supervising and managing the investment activities of pension funds, exercising rigorous scrutiny over the operations and conduct of Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs) to ensure unwavering compliance with established regulatory standards.

4. Protection of Pension Contributors: PENCOM plays an indispensable role in safeguarding the rights and interests of pension contributors by promulgating and rigorously enforcing a robust regulatory framework that serves as a bulwark against fraudulent practices, mismanagement, and any form of inequitable conduct within the pension sector.

5. Enhancement of Retirement Security: The commission is unerringly committed to enhancing retirement security for pensioners, a mission of paramount significance within the broader financial landscape of Nigeria.

6. Stimulation of Investment and Capital Market Growth: By exercising prudent oversight in the management of pension funds and facilitating their judicious investment, PENCOM contributes substantively to the growth and development of the investment and capital markets, thereby playing a pivotal role in fostering overall economic development.

4See Section 17 of PRA, 2014.
5 See Section 18, PRA, 2014.
6 See Section 3 of PRA, 2014.

7. Preservation of Industry Integrity: PENCOM is an unwavering custodian of the integrity of the pension industry, resolutely safeguarding the interests of pension contributors and proactively preventing any incursion of financial misconduct.

In summation, the National Pension Commission (PENCOM) stands as an indispensable linchpin within Nigeria's legal and financial framework, ensuring the vital provision of retirement security while concurrently acting as a catalyst for investment and capital market growth, promoting economic development, and preserving the sterling integrity of the pension sector. Its multifaceted functions and regulatory mandates are emblematic of its unwavering commitment to securing the interests of pension contributors and retirees, thereby upholding the sanctity of pension arrangements in Nigeria.

THE NATIONAL INSURANCE COMMISSION (NAICOM

The National Insurance Commission (NAICOM), established by the National Insurance Commission Act of 1997, assumes a pivotal role as the regulatory authority entrusted with the meticulous administration, oversight, regulation, and control of the insurance sector within the confines of the Federal Republic of Nigeria. Foremost among its mandates is the safeguarding of the rights and interests of insurance policyholders, beneficiaries, and third parties engaged in insurance contracts.[7] This institution's genesis can be traced to 1997, when it succeeded the Nigerian Insurance Supervisory Board, inheriting the solemn responsibility of supervising Nigeria's insurance industry.[8]

NAICOM diligently upholds a comprehensive framework predicated on adherence to statutory provisions, the maintenance of requisite capital adequacy, and the judicious stewardship of insurance affairs, all while maintaining an unwavering commitment to protecting the interests of policyholders and the general public. To amplify its impact and influence, the Board and Upper Management of NAICOM embarked upon a strategic trajectory spanning the quinquennial period from 2011 to 2015.

This strategic roadmap, consisting of five overarching objectives, engages in a thorough examination of NAICOM's current status, its operational milieu, stakeholder involvement, historical milestones, and critical determinants of success. The salient objectives of NAICOM, as enshrined in the NAICOM Act of 1997, encompass a manifold array of responsibilities, including but not limited to:[9]

1. Standardization: NAICOM is vested with the authority to promulgate and enforce standards governing the comportment of insurance business operations in Nigeria, thus ensuring the adherence to ethical and operational norms within the industry.

2. Premium Rate Authorization: It wields the prerogative to grant approval for premium rates across all strata of insurance, thereby contributing to the equitable and stable functioning of the insurance marketplace.

3. Preservation of Government Interests: NAICOM undertakes the onerous duty of safeguarding strategically significant government assets and other tangible holdings, thereby mitigating potential risks and preserving the broader public interest.

4. Regulation of Insurer-Reinsurer Transactions: The commission assumes a pivotal role in regulating transactions between insurers and reinsurers, both domestically and internationally, thus augmenting transparency and accountability within these financial dealings.

5. Advisory Function: NAICOM acts as a trusted advisory body to the Federal Government, proffering counsel on matters of significant import within the insurance realm, thereby providing invaluable insights to inform policy-making endeavors.

7 National Insurance Commission < https://www.naicom.gov.ng/about#:~:text=Welcome%20to%20the%20National%20Insurance,Nigeria%20and%20protection%20of%20insurance> accessed 13 October 2023
8 Section 1 of NAICOM Act 1997
9 Section 6 of NAICOM Act 1997

6. Stipulation of Standards, Conditions, and Warranties: It exercises jurisdiction over the approval of standards, conditions, and warranties governing the diverse classes of insurance, ensuring that contractual obligations remain equitable and just.

7. Consumer Protection: A cardinal mission is the protection of insurance policyholders, beneficiaries, and third parties, thereby instilling confidence and trust within the insurance sector.

8. Industry Reporting: NAICOM is charged with the solemn responsibility of annually disseminating reports and statistics concerning the insurance industry, thus promoting transparency and furnishing stakeholders with pertinent information.

9. Collaboration with Government Entities: The commission collaborates with and extends its advisory services to Federal Ministries and Government Agencies on issues of insurance import, including the negotiation and crafting of technical agreements, fostering cordial intergovernmental relations[10].

In summation, the National Insurance Commission (NAICOM) serves as the vanguard of probity and oversight within the precincts of Nigeria's insurance domain. Its multifarious responsibilities, anchored in the NAICOM Act of 1997, serve the dual purpose of engendering confidence, safeguarding interests, and fostering the ethical conduct of insurance undertakings, all while advancing the broader imperatives of economic stability and the public welfare.

4.0 THE SECURTIES AND EXCHANGE COMISSION (SEC)

The Securities and Exchange Commission (SEC) holds a paramount position as the foremost regulatory authority within the realm of investments in Nigeria.

Its governance structure is overseen by a nine-member board, and its operational presence extends across four Directorates and three Zonal Offices strategically located within Nigeria. To facilitate the accomplishment of its objectives, the SEC has established a multitude of specialized departments.

The historical genesis of the SEC can be retraced to its embryonic stage as an ad-hoc body known as the "Capital Issues Committee" originally instituted in 1962 under the aegis of the Central Bank of Nigeria.[11] Its evolutionary trajectory is intrinsically linked to a series of legislative decrees and enabling laws, encompassing the Capital Issues Commission Decree of March 1973, Securities and Exchange Commission Decree No. 71 of 1979, and Securities and Exchange Commission Decree No. 79 of 1988.[12]

Presently, the SEC is a statutory entity, having been constituted by the Investment and Securities Act of 2007.[13]

The primary and overarching function of the SEC, as delineated in the Investment and Securities Act, revolves around the comprehensive oversight and regulation of the Nigerian capital market.[14]

In tandem with this pivotal role, the SEC assumes a

10 Section 7 of NAICOM Act 1997
11 'About', (sec.gov.ng) <https://sec.gov.ng/about> accessed 10 October, 2023.
12 Ibid.

diverse array of ancillary functions and responsibilities,[15] which include:

1. Regulation of Investment and Securities Business: The SEC wields the authority to regulate and supervise investment and securities business conducted within the Nigerian domain, thereby fostering transparency and accountability.

2. Registration and Oversight of Securities Exchanges: It is charged with the registration and regulation of securities exchanges, capital trade points, futures, options, and derivatives exchanges, ensuring compliance with established regulatory standards.

3. Oversight of Public Offerings: SEC exercises vigilant oversight over all securities offerings initiated by public companies and entities, guaranteeing adherence to regulatory protocols.

4. Securities Registration: The commission is entrusted with the registration of securities issued by public companies, a pivotal function that underpins market transparency and investor protection.

5. Market Development: The SEC actively engages in disseminating information and initiatives aimed at the establishment of securities exchanges and capital trade points, thereby catalyzing market growth.

6. Regulation of Capital Market Operators: It assumes the responsibility of registering and regulating both corporate and individual capital market operators, ensuring their compliance with regulatory standards and best practices.

7. Market Infrastructure and Orderly Trading: The SEC is at the vanguard of efforts to establish a nationwide system for securities trading within the Nigerian capital market, a measure designed to safeguard the interests of investors and maintain market fairness and order.

8. Oversight of Mergers, Acquisitions, and Business Combinations: It conducts rigorous reviews, approvals, and regulatory oversight of mergers, acquisitions, takeovers, and an array of business combinations and transactions involving entities as defined within the Investment and Securities Act.

Numerous additional functions and responsibilities are meticulously detailed within the Investment and Securities Act. The SEC operates under the purview of a nine-member board[16] and is further structured into four Directorates and three Zonal Offices within Nigeria. These entities house various departments, encompassing specialized areas such as Securities and Investment Services, Registration, Exchanges, Market Infrastructure and Innovation, Investment Management, Zonal Offices Coordination, Information Technology, Enforcement, Monitoring, Legal, Procurement & ; Support Services,
and Financial Standards and Corporate Governance, each serving a crucial role in the fulfillment of the SEC's regulatory mandate.

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13 Investment and Securities Act 2007, Section 1.
14 Okubor Cecil, 'The Role of Securities and Exchange Commission in Public Issue of Securities and the Structure of the Nigerian Capital Market' Vol. 4, 91-107 (2013) Nnamdi Azikiwe University Journal of International Law and Jurisprudence.
15 Investment and Securities Act, 2007, Section 13.
16 Ibid, Section 3.

INSURANCE WEB AGGREGATORS' OPERATIONAL GUIDELINES
BY: ADVOCAAT LAW PRACTICE

The National Insurance Commission (NAICOM), being the regulatory authority for the insurance sector in Nigeria, is charged with ensuring that not only insurance products and services are approved before they are offered to the public, but also that consumers are protected from exploitation. Further to these objectives, NAICOM pursuant to its powers under Section 49(1)(b) of the National Insurance Commission Act, 1997, issued the Insurance Web Aggregators Operational Guidelines ("Guidelines"), which became effective on February 1, 2022. It is critical to note that prior to NAICOM issuing the Guidelines, the Insurance Web Aggregation Industry was unregulated, leaving potential policyholders vulnerable to unscrupulous and fraudulent intermediaries. This article seeks to highlight key provisions of the Guidelines and analyse its compatibility with global best practice.

WHO IS A WEB AGGREGATOR?

As defined in the Guidelines, an Insurance Web Aggregator is a company registered under the Companies and Allied Matters Act (CAMA) and approved by NAICOM, which maintains or owns a website and avails information pertaining to insurance products and price/features comparisons of products of different insurers as well as offer leads to an Insurer.[1] Also, Web Aggregators are insurance portals that allow consumers to compare products and create a direct link between the consumer and the insurer for purchase.

LICENSING REQUIREMENTS FOR WEB AGGREGATORS AND INSURERS UNDER THE GUIDELINES

Firstly, the Guidelines provide that Insurance Operators (Insurers/Brokers) who intend to carry on the business of web-based insurance are required to apply to NAICOM for the issuance of a No Objection Letter. Such applications by Insurers/Brokers are required to be accompanied by the following:
(a) Application letter with a Service Level Agreement (SLA) signed with a Web Aggregator which the Applicant intends to enter into partnership with; (b) A copy of the appointment letter issued by the Insurer(s)/Broker(s) to the Web Aggregator (the "Appointment Letter"); (c) Board approvals or resolutions in support of the partnership; and (d) a copy of the Risk Management Framework on Web Aggregator operations.[2]

Secondly, applicants who intend to carry on business as Web Aggregators are required to apply to NAICOM for a Web Aggregator's License.[3] Such registration is in three (3) stages:
Stage 1: The entity applying for a Web Aggregator's License ("Applicant") is required to submit: (i) a copy of No Objection/approval letter from the Nigerian Communications Commission (NCC); (ii) a copy of the letter of appointment issued by the Insurer(s)/Broker(s) appointing the Applicant as a Web Aggregators for its products; (iii) a copy of the SLAs executed between the Insurer(s)/ Broker(s) and the Applicant; (iv) the incorporation documents of the Applicant; (v) a copy of the Board resolution backing the partnership of the Applicant with the insurers/ brokers; and
(vi) evidence of payment of a non-refundable fee of N500,000 to NAICOM.[4]

1 Reg. 2.0 of the Insurance Web Aggregators Operational Guidelines.
2 Reg. 4.2
3 Reg. 4.3
4 Reg. 9.2
5 Section 12(1) of the Insurance Act, 2003.
6 Reg. 9.2
7 Reg. 9.3
8 Reg. 10.0

Stage 2: Upon submission of the documents listed in stage I above, and at the indication of NAICOM, the applicant will be required to submit further documents including: (i) the Curriculum Vitae (CV) and credentials of the principal officers and directors of the Applicant; (ii) snapshots of the content of the Applicant's proposed website along with evidence of domain name registration;

(iii) the business plan of the Applicant which shall include the five-year financial projection; (iv) sworn declaration of non-disqualification by the proposed directors of the Applicant in line with the Insurance Act[5]; (v) Evidence of procurement of a professional indemnity cover of not less than N20 Million; and (vi) other required documents.

Stage 3: This final stage is a stage where NAICOM physically verifies the Web Aggregator's offices and I.T infrastructure, and the payment of the License fee, culminating in NAICOM's issuance of license.

The Applicant Web Aggregator is expected to pay a Licensing Fee of N2,500,000.00 as well as a License Renewal Fee of N1,000,000.00.[6] Also, the Web Aggregator is further required to pay an insurance levy of 1% (one percent) of the gross commission income or a minimum of N200,000.00, (whichever is greater) throughout the validity period of the licence granted by NAICOM.[7] A Licence, once issued, is valid for two (2) calendar years unless cancelled or suspended by NAICOM. A renewal application must be submitted at least forty-five (45) days before the expiration of the Licence. A Licence issued to a Web Aggregator that is not renewed after thirty (30) days of grace is deemed lapsed, and re-registration may only be considered by NAICOM after three (3) years.[8]

ELIGIBILITY CRITERIA FOR GRANT OF LICENCE AS WEB AGGREGATOR

For the Grant/Renewal of the Web Aggregator's Licence, the Applicant must ensure the following conditions are met at a minimum[9]: (a) The Applicant must be registered with the Corporate Affairs Commission (CAC); (b) The Applicant is to have a minimum share capital of N5,000,000 with CAC and is required to maintain the share capital throughout the license period;(c) The Applicant must ensure that the web aggregation business is included as the primary aim in its memorandum of association. (d) The applicant is also not permitted to conduct any other business than web aggregation; (e) The Applicant is required to employ a principal officer (subject to the approval of NAICOM). The Guidelines require the principal officer to satisfy the fit and proper persons criteria laid down by NAICOM and to possess a relevant university first degree qualification and IT-related qualification and/or relevant training experience; and (f) The Applicant must have the necessary infrastructure, such as, adequate and conducive office, adequate customer base and necessary IT equipment to effectively discharge its duties.[10]

MODES OF OPERATION CODE OF CONDUCT, AND OBLIGATIONS

The Guidelines contain the code of conduct that every Web Aggregator must follow when dealing with clients and handling complaints. These include the requirement to ensure that the Website contains information about complaint handling procedures and allows complaints to be submitted online.[11] The Guidelines also prohibits Web Aggregators from placing any kind of advertisement on their websites, including advertisements for insurance products or services, other financial products or services, or any other product or service.[12]

Furthermore, Web Aggregators are required by the Guidelines to categorize products on their websites into predetermined categories. They must also integrate their website with NAICOM's portal.[13]

NAICOM also set outs the information technology (IT) infrastructure requirements for the operation of a Web Aggregator, such as standards for computer networks and the internet; protocols; backup, recovery, and business continuity; transacting insurance, IT security policy, and privacy; and identification standards.[14] The Guidelines state that outsourcing activities are at the discretion of the Insurer(s). However, it is emphasized that core activities must be carried out by Insurer(s) in accordance with the Prudential Guidelines for Insurers and Reinsurers in Nigeria[15]

RESTRICTIONS AND NON-PERMISSIBLE ACTIVITIES

The Guidelines, prohibits a person from acting as a

9 Reg. 6.1
10 Reg. 6.1
11 Reg. 7.2
12 Reg. 7.5 ii
13 Reg. 7.3.2 xiii
14 Reg. 8.1-8.6

Web Aggregator unless and until the person is licensed by NAICOM.[16] In furtherance, the Guidelines precludes Web Aggregators from exclusively promoting the products of only one Insurer.[17] Web Aggregator, its Employees, or Promoters are not allowed to accept any payment from Insurers/Brokers other than the remuneration specified in the Guidelines.[18] They are also prohibited from displaying ratings, rankings, endorsements, or bestsellers of insurance products on their website. The content of the Website shall, at all times, be unbiased and factual; they are not allowed to comment on insurers or their products in their editorial or at any location in their Website.[19]

In addition, Web Aggregator shall not carry any advertisement or sponsored content on their Website.[20] They are also precluded from displaying any information pertaining to products or services of other Financial/Fast Moving Goods Company (FMGC) or any other product or service in the Website;[21] or operate multiple websites or tie up with other approved/unapproved/unlicensed entities/websites for lead generation/comparison of product. [22]

In the event of the violation of the provisions of the NAICOM Act and the Insurance Act or any Rules, Regulations, Circulars/ Guidelines issued by NAICOM

15 Reg. 7.4
16 Reg. 14.2.2 i
17 Reg. 7.3.1. iv
18 Reg. 7.3.1 xi
19 Reg. 7.3.2 iii
20 Reg. 7.3.2 xi
21 Reg. 7.5 i
22 Reg. 7.5 iii

from time to time, NAICOM may impose appropriate penalties depending on the gravity of infraction or initiate criminal proceedings against any person, who acts as a Web Aggregator without holding a valid licence as issued by NAICOM.[23] NAICOM may in addition to prosecution impose on such person any penalty as prescribed under the InsuranceAct.[24]

DISPUTE RESOLUTION AND COMPLAINTS REDRESS MECHANISM

The Guidelines requires a Web Aggregator and its Partner Insurer to put in place an appropriate complaints redress mechanism to ensure that client's issues are appropriately addressed. [25] The true essence of this is to ensure that client complaints are addressed promptly and appropriately. However, In the event of a dispute between a web aggregator and a partner insurance company, the Guidelines simply provides that the provisions of the SLA pertaining to dispute resolution must be exhausted before such disputes are referred to NAICOM. A person who is involved in an insurance transaction dispute has the right to refer such dispute to NAICOM.[26]

INSURANCE WEB AGGREGATORS OPERATIONAL GUIDELINES: LESSONS FROM INDIA

The Insurance Regulatory and Development Authority of India (Insurance Web Aggregators) Rules, 2017, released by the Insurance Regulatory and Development Authority of India (IRDAI), replaced the 2013 regulations to supervise and monitor Web Aggregators. There is no denying that Nigeria's licensing requirements for web aggregators are identical to and similar to those applicable in India for the licensing of insurance web aggregators. However, there are three significant revisions to the India guidelines 2017 on Web Aggregators which are not contained in the Nigeria Guidelines 2022, and these are: Firstly, the India guidelines now permit the sale of any type of insurance product on the portals run by web aggregators. Unit Linked Insurance Plans (ULIPS) were previously prohibited. Secondly the threshold for the sale of bundled life insurance policies have increased from Rs50,000 to Rs1.5 lakh and lastly the regulations now permit compensation through rewards even on zero-commission policies, like the online term plans.

It important to note that the India Insurance Web aggregator has always been regulated, unlike in Nigeria, which only started doing so in 2022. It is hoped that NAICOM takes on board some of the developments in India for any subsequent amendments and or repeal of the Guidelines.

CONCLUSION

The introduction of the Insurance Web Aggregator Guidelines in Nigeria was timely, given that the business of Insurance Web Aggregation was unregulated, resulting in malpractices in the online sale of insurance products and services to the detriment of potential policyholders who have been bearing the brunt of unscrupulous and fraudulent intermediaries in the industry. It is our considered view that the wide range of regulations contained in the Guidelines will help to considerably reduce malpractice in the online sale of insurance products and services.

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23 Reg. 14.2.2 ii
24 Reg. 14.2.1 iii.
25 Reg. 12.2
26 Reg. 12.1

THE REGULATORY LANDSCAPE OF MOBILE PAYMENT SERVICES IN NIGERIA

BY: BOLA AJIBOLA & CO

In the era of digital transformation, mobile payment services have emerged as atransformative force, revolutionizing the way individuals conduct financial transactions. Within the vibrant economic landscape of Nigeria, a country characterized by rapid growth and a substantial unbanked population, mobile payment services has taken on a pivotal role in expanding financial access to previously marginalized communities. The regulatory framework governing these services in Nigeria has evolved significantly to promote innovation, while simultaneously upholding consumer protection, financial stability, and adherence to anti-money laundering (AML) and counter-terrorism financing (CTF) regulations.

Evolution of Mobile Payment Regulation in Nigeria

The journey of regulating mobile payment services in Nigeria began with the introduction of guidelines by the Central Bank of Nigeria (CBN) in 2009.[1] These guidelines laid the foundation for mobile money operations, aiming to foster both financial inclusion and innovation. The CBN's strategic vision aimed to ensure the resilience and security of the financial system while providing avenues for unbanked individuals to participate in the economy. This landmark step paved the way for collaboration between telecommunication companies, banks, and other financial institutions to provide mobile payment services across the nation. Examples of such key players in the mobile payment providers include Flutterwave, Interswitch, Paga, Paystack and many more.

Key Regulatory Authorities

The regulatory landscape governing mobile payment services in Nigeria is steered by several key authorities, each entrusted with specific roles and responsibilities:

Central Bank of Nigeria[2] (CBN):

The Central Bank of Nigeria (CBN) plays a pivotal role in the regulation and oversight of financial activities within Nigeria's economy. As the country's central monetary authority, the CBN holds the responsibility of formulating and implementing monetary policies that contribute to price stability, economic growth, and financial system stability.

One of the key roles of the CBN is to issue and manage the national currency, the Nigerian Naira (NGN). It has the authority to control the money supply through various tools such as open market operations, reserve requirements, and the setting of interest rates. These actions are aimed at maintaining a stable value of the currency, controlling inflation, and supporting sustainable economic growth. The CBN acts as a banker to the Nigerian government, managing the government's accounts, handling its transactions, and providing advisory services on fiscal matters. It also serves as the lender of last resort, providing emergency financial support to financial institutions facing liquidity challenges to maintain overall financial stability.

In the realm of regulation, the CBN supervises and licenses financial institutions, including commercial banks, microfinance banks, and payment service providers. It issues regulatory guidelines that govern various aspects of the financial sector, such as capital adequacy, risk management, and corporate governance. This oversight ensures the stability and integrity of the financial system and protects the interests of depositors and consumers.

Regarding mobile payment services, the CBN introduced guidelines in 2009 that established the framework for mobile money operations, encouraging financial inclusion and innovation while maintaining the stability of the financial system. The CBN's collaborative efforts with other regulatory bodies, such as the Nigerian Communications Commission (NCC) and the Nigerian Financial Intelligence Unit (NFIU), ensure a coordinated approach to regulating mobile payments and

1 "Nigeria: Will MTN Succeed Where Others Failed?" International Finance Magazine. Retrieved from https://internationalfinance.com/nigeria-will-mtn-succeed-where-others-failed/#:~:text=The%20launch%20of%20the%20first,have%20popped%20up%20in%20Nigeria

2 Central Bank of Nigeria (n.d.). Central Bank of Nigeria official website https://www.cbn.gov.ng/AboutCBN/

promoting consumer protection.

In essence, the Central Bank of Nigeria serves as the cornerstone of financial and monetary stability, contributing to sustainable economic growth, consumer protection, and the overall development of the financial sector in Nigeria. Its multifaceted roles encompass monetary policy formulation, currency management, financial regulation, and collaborative efforts to ensure the effective functioning of Nigeria's financial ecosystem.

Nigerian Communications Commission[3] (NCC):

While primarily focused on regulating the telecommunications industry, the NCC's collaboration with the CBN is instrumental in ensuring the seamless integration of telecommunications and financial services within the mobile payment ecosystem. The NCC's role extends to regulating mobile network operators that facilitate mobile payment services, contributing to a holistic regulatory environment.

Nigerian Financial Intelligence Unit[4] (NFIU)

The NFIU plays a pivotal role in coordinating the implementation of AML and CTF measures in Nigeria. By monitoring financial transactions, the NFIU identifies and reports suspicious activities related to money laundering and terrorism financing. Compliance with NFIU regulations is imperative for mobile payment service providers to thwart the misuse of their platforms for illicit financial activities.

Securities and Exchange Commission [5] (SEC):

The SEC's primary role is to regulate securities and investment activities to protect investors, ensure market integrity, and foster transparency. As mobile payment services continue to evolve, some providers offer investment options and products within their platforms, such as mobile-based investment apps or digital wallets integrated with investment functionalities.

In this context, the SECs involvement comes into play to ensure that any investment instruments or products offered within mobile payment services comply with relevant regulations. The commission may impose registration requirements, disclosure obligations, and investor protection measures for these digital investment offerings. This oversight safeguards the interests of consumers who might engage in investment activities through mobile payment platforms.

In summary, the Securities and Exchange Commission (SEC) of Nigeria intersects with the mobile payment service landscape by regulating investment instruments and products offered within these platforms. It aims to ensure investor protection, promote education, and maintain market integrity as digital financial services, including investment options, become increasingly integrated into mobile payment ecosystems.

Federal Competition and Consumer Protection Commission (FCCPC)[6]:

The FCCPC plays a significant role in regulating mobile payment services in Nigeria, primarily focusing on aspects related to consumer protection, fair competition, and market efficiency. The Commission enforces guidelines that ensure transparency, prevent deceptive practices, and address complaints related to mobile payment transactions. Additionally, the FCCPC promotes fair competition by monitoring mergers, investigating anti-competitive behavior, and contributing to market efficiency through interoperability initiatives.

The FCCPC also monitors and investigates cases of consumer complaints and disputes related to mobile payment services. By mediating between consumers and service providers, the Commission strives to resolve conflicts amicably and promptly. This proactive approach strengthens consumers' confidence in mobile payment services and upholds the industry's reputation. Additionally, the FCCPC's proactive strategy has resulted in fewer instances of harassment and defamation by lending apps, as remaining apps adhere to ethical standards. Babatunde Irukera, the Executive Vice Chairman/CEO, highlighted the Commission's commitment to safeguarding consumers and regulating the implementation of Artificial Intelligence (AI) in lending processes to prevent privacy violations. An avenue for reporting online bank misconduct was also emphasized.[7] implement state-of-the-art cybersecurity measures, safeguarding user data and financial assets from unauthorized access.

Furthermore, the FCCPC collaborates with other regulatory bodies, such as the Central Bank of Nigeria (CBN)

3 Nigerian Communications Commission. Official website. Retrieved from https://ncc.gov.ng
4 Nigerian Financial Intelligence Unit. Official website. Retrieved from https://www.nfiu.gov.ng
5 Securities and Exchange Commission Nigeria. (n.d.). Home - Securities and Exchange Commission Nigeria. Retrieved August 24, 2023 from https://sec.gov.ng
6 Federal Competition and Consumer Protection Commission (FCCPC) official website - https://www.fccpc.gov.ng/

and the Nigerian Communications Commission (NCC), to ensure a cohesive and synchronized regulatory environment. This collaboration prevents regulatory gaps, streamlines processes, and enhances the effectiveness of regulatory efforts in the mobile payment sector.

Key Regulatory Guidelines and Policies:

The regulatory framework governing mobile payment services in Nigeria comprises a series of guidelines and policies dispensed by various regulatory authorities:

1.CBN Guidelines for Mobile Money Services: The cornerstone of mobile payment operations in Nigeria is the CBN's "Guidelines for Mobile Money Services in Nigeria" introduced in 2009. These guidelines delineate the prerequisites for licensing mobile money operators, permissible activities, transaction value thresholds, and the roles of participating entities such as mobile network operators and banks. The guidelines underscore the CBN's commitment to financial inclusion, consumer protection, and technology-driven innovation.

2. CBN Guidelines on Agent Banking: Recognizing the pivotal role of agent banking in extending the reach of mobile payment services, the CBN introduced guidelines for agent banking operations in 2013. These guidelines elucidate the roles and responsibilities of agent banking providers, while articulating the regulatory requirements for offering financial services through agents. The synergy between traditional and digital financial intermediaries bolsters financial inclusion and convenience for all segments of society.

7 "Digital Lending: FCCPC Insists on Deleting Apps over Defamation, Harassment."; This Day Live, 12 July 2023, URL: https://www.thisdaylive.com/index.php/2023/07/12/digital-lending-fccpc-insists-on-deleting- apps-over-defamation-harassment.

3. CBN's Regulatory Framework for Payment Services Banks and Mobile Money Operators: In 2018, the CBN unveiled a regulatory framework that ushered in Payment Service Banks (PSBs) as a specialized category of financial institutions. PSBs are authorized to provide a limited array of financial services, including mobile payments. The framework also encompasses updated guidelines for mobile money operators, encompassing capital adequacy, corporate governance, risk management, and consumer safeguarding. The introduction of PSBs enriches the financial services landscape, particularly for underbanked communities.

4. NCC Regulations: Although primarily oriented toward consumer protection within the telecommunications sector, the NCC's regulations indirectly impact mobile payment services. By ensuring transparent pricing, data security, and equitable treatment of consumers, the NCC contributes to fostering an environment of trust and reliability within the mobile payment ecosystem.

5. AML and CTF Regulations: As the designated agency overseeing AML and CTF measures, the NFIU plays a vital role in preventing the misuse of mobile payment platforms for illicit financial activities. Mobile payment service providers are mandated to establish robust AML and CTF protocols, conduct rigorous customer due diligence, and promptly report suspicious transactions to the NFIU. These measures reinforce the integrity and security of the financial system.

6. LIMITED INTERIM REGULATORY/REGISTRATION FRAMEWORK AND GUIDELINES FOR DIGITAL LENDING BY THE FCCPC: The framework encompasses various key elements that aim to balance innovation and consumer protection. One of the notable aspects is the registration requirement for digital lending platforms operating in Nigeria1. This registration process ensures that platforms adhere to a set of regulatory standards and guidelines, promoting transparency and accountability in their operations.

Additionally, the guidelines put a strong emphasis on responsible lending practices. Digital lending platforms are required to provide clear and transparent information to borrowers regarding terms, interest rates, fees, and repayment schedules. This ensures that consumers are well-informed before entering into lending agreements, thereby preventing deceptive practices and enhancing consumer trust.

CHALLENGES AND PROSPECTS:

While Nigeria's regulatory framework for mobile payment services has undergone remarkable evolution, challenges persist:

Consumer Education:

With the continued proliferation of mobile payment services, ensuring comprehensive consumer education is paramount. Educating users about safe and secure utilization, protecting personal and financial information, and recognizing phishing attempts are imperative to sustain consumer trust.

Cybersecurity:

Mobile payment platforms are susceptible to cyber threats due to the nature of financial transactions involved. Regulatory authorities must collaborate with service providers to implement state-of-the-art cybersecurity measures, safeguarding user data and financial assets from unauthorized access.

Interoperability:

Enabling interoperability between diverse mobile payment platforms is essential for seamless transactions and the growth of the ecosystem. Standardizing protocols and enhancing compatibility will eliminate friction for users and further drive adoption.

Innovation and Competition:

Balancing innovation and competition remains a dynamic challenge for regulators. Striking a harmonious equilibrium between encouraging technological advancements and ensuring a level playing field for all participants is crucial to foster a robust ecosystem.

Regulatory Coordination:

Collaboration among regulatory bodies such as the CBN, NCC, NFIU, SEC, and FCCPC is vital to ensure a comprehensive and cohesive approach to regulating mobile payment services. A unified effort will effectively address emerging challenges and capitalize on opportunities.

Frequently Asked Questions

Q: Can foreign companies operate mobile payment services in Nigeria?

A: Yes, foreign companies can operate mobile payment services in Nigeria, provided they obtain the required licenses and adhere to the regulatory guidelines.

Q: Are mobile payment transactions taxable in Nigeria?

A: Yes, mobile payment transactions are subject to applicable taxes in line with Nigeria's tax regulations.

Q: How does the CBN ensure the protection of customer data?

A: The Central Bank of Nigeria mandates stringent data protection measures, including encryption and secure storage, to safeguard customer data from unauthorized access and breaches.

Q: What role do agent networks play in mobile payment services?

A: Agent networks serve as intermediaries, facilitating cash-in and cash-out transactions, especially in regions with limited access to traditional banking services.

Q: What does the future hold for mobile payment services in Nigeria?

A: The future outlook for mobile payment services in Nigeria is promising, with continued growth expected as more Nigerians embrace digital financial solutions.

Q: How does interoperability benefit the mobile payment ecosystem?

A: Interoperability enables seamless transactions between different mobile payment platforms, enhancing convenience for users and promoting market expansion.

Conclusion:

In the dynamic landscape of digital transformation, the story of Nigeria's regulatory journey for mobile payment services emerges as an inspiring narrative of progress, adaptability, and unwavering dedication. With resounding significance, these services have shattered traditional barriers, revolutionizing financial transactions for individuals across the nation. In a country marked by rapid Economic growth and a substantial unbanked population, mobile payments have played a pivotal role in driving financial access to the previously underserved.

The regulatory framework that governs this transformative domain stands as a testament to Nigeria's commitment to innovation, consumer protection, and economic stability. From the pioneering guidelines set forth by the Central Bank of Nigeria (CBN) in 2009 to the synergistic collaboration of regulatory bodies such as the Nigerian Communications Commission (NCC), Nigerian Financial Intelligence Unit (NFIU), Securities and Exchange Commission (SEC), and the Federal Competition and Consumer Protection Commission (FCCPC), every facet of the ecosystem has evolved in harmony.

As Nigeria treads further into the digital age, this regulatory framework must stand as a shining example of its adaptability and resilience. The path ahead, though promising, is not without its challenges. The symphony of technological innovation and regulatory prudence must continually navigate obstacles such as cybersecurity threats, fostering consumer education, and nurturing healthy competition. It's here that the regulatory bodies, with their unwavering dedication, will truly shine. The collaborative spirit that brought about the seamless integration of telecommunications and financial services, the rigorous commitment to anti-money laundering and counter-terrorism financing measures, and the persistent pursuit of interoperability—these are the cornerstones that must continue to be upheld. It's a clarion call to keep the momentum alive, to stay attuned to the ever-evolving landscape, and to foster an environment where innovation thrives hand-in-hand with consumer trust.

In the chapters yet unwritten, Nigeria's regulatory framework for mobile payment services has the potential to set a global standard—an embodiment of how regulatory synergy and technological innovation can pave the way for a more inclusive, secure, and prosperous society. The future beckons with boundless possibilities, and as regulatory authorities champion the cause, they not only shape the narrative of mobile payments but also play a transformative role in the lives of millions. Let this be a testament to their dedication, an encouragement to their commitment, and a resounding call to continue their remarkable journey of regulatory evolution.

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REGULATING CREDIT GUARANTEE COMPANIES IN NIGERIA
BY: DENTONS ACAS-LAW

Access to credit is a vital driver of economic growth and development, particularly for micro, small and medium enterprises ("MSMEs") that constitute the backbone of Nigeria's economy. However, MSMEs often face challenges in obtaining credit due to perceived higher risks and lack of collateral. Credit guarantee companies ("CGCs") have emerged as a crucial intermediary, bridging the gap between MSMEs and lenders by providing a safety net against default. The effective regulation of these CGCs is essential to ensure their stability, transparency, and contribution to fostering MSME growth and financial inclusion in Nigeria. Accordingly, the Central Bank of Nigeria ("CBN") introduced the Guidelines for Regulation of Credit Guarantee Companies in Nigeria, 2022 (the "Guidelines") which stipulates the minimum licensing governance, operational and prudential requirements for CGCs.

Regulatory Oversight of Credit Guarantee in Nigeria

Simply put, a credit guarantee is a financial arrangement where a third party, often referred to as a credit guarantee company or institution, provides a guarantee to repay part of a loan or credit facility in the event that the borrower (that is an MSME) is unable to meet its repayment obligations. It is a form of insurance for the lender against the risk of borrower default. CGCs are primarily regulated by the CBN in line with its powers under the CBN Act 2006, the Banks and Other Financial Institutions Act 2020 and the Guidelines. The Guidelines define a CGC as "an institution licensed by the CBN with the primary objective of providing guarantees to banks and other lending financial institutions licensed by the CBN … against the risk of default by obligors." [1]

The Guidelines adopted the World Bank's description of what credit guarantee schemes are and the roles of CGC. That is, CGCs are expected to provide third-party credit risk mitigation to lenders through the absorption of a portion of the lender's losses on the loans made to Nigeria-based MSMEs in case of default.

Pursuant to the Guidelines, CGCs will guarantee up to 75% (seventy-five percent) of MSME's risk of default arising from the credit finance obtained from banks and other licensing institutions which are licensed by the CBN ("PFI's").

Permissible and Non-Permissible Activities

The Guidelines provide an outline of the permissible and non-permissible activities of CGCs.

Some of the permissible activities of CGCs include

(i) providing guarantees for risk assets of PFI's,

(ii)advising in relation to financial and business development; (iii) investing excess funds in government-owned/backed securities; (iv) making other investments further to CBN approval;

(v) providing technical assistance to lenders and borrowers on credit and business development; (vi) maintaining and operating different types of accounts with banks in Nigeria (vii) undertaking other activities that may be prescribed by the CBN from time to time.

On the other hand, CGC's are not permitted to carry out the following activities: (i) provision of guarantees to entities outside Nigeria, (ii) provision of guarantees to entities within its holding company structure and to connected entities; (iii) guarantee of loans of any institution it is indebted to; (iv) accepting demand, savings and time deposits or any other deposits; (v) providing credit to customers; (vi) managing pension funds or schemes; (vii) trading in foreign exchange, commodities or equities; (viii) all forms of trading in derivatives and swaps; (ix) collecting third-party cheques and other instruments for clearing through correspondent banks; (x) purchasing, selling, disposing,

acquiring or leasing any real estate for any purpose without the prior written approval of the CBN; (xi) leasing, renting, selling or purchasing assets with related parties; and (xii) any other activity not expressly permitted by the CBN.

Licensing Procedure and Requirements

Operating as a CGC requires obtaining a license with the CBN which is processed in two stages namely: Approval-in Principle ("AIP) and final licence. The process commences with the submission of a formal application by the promoters of the CGC, addressed to the Governor of the CBN for AIP which is a prerequisite for the incorporation of the CGC with the Corporate Affairs Commission ("CAC"). In other words, a company cannot be incorporated with the CAC as a CGC unless an AIP from the CBN has been obtained.

1 Paragraph 1.1 of the Guidelines.

In order to be issued an AIP, the promoters of a CGC are required to meet certain compulsory financial conditions on behalf of the CGC, including: (a) a non-refundable application fee of N100,000 (one hundred thousand Naira) and (b) evidence of having deposited the minimum paid-up capital requirement of N10,000,000,000 (ten billion Naira) or any other amount that may be prescribed by the CBN into the Financial Policy and Regulation Department CGC Share Capital Account at the CBN.[2]

Following receipt of the application and required documents, the CBN will verify capital contributions of the promoters and where it is satisfied, it shall issue an AIP to the promoters of the proposed CGC.
The CBN is required to communicate its decision within 90 (ninety) days of receiving the application for an AIP.

Within 6 (six) months of obtaining the AIP, the promoters of the proposed CGC will be required to submit an application for grant of the final license to the CBN. The application for the final license must be accompanied by the following, among others: (a) a non-refundable licensing fee of N1,000,000 (one million Naira) only (or such amount that may be prescribed by the CBN); (b) corporate documents of the CGC (which is now expected to have been incorporated with the CAC); (c) evidence of the CGC's ability to meet the technical requirements and provision of modern infrastructural facilities to perform the necessary operations and meet CBN and other regulatory obligations; (d) completed Fitness and Proprietary Questionnaire and sworn declaration of net worth executed by senior management staff; and (e) comprehensive plan detailing commencement of operations with milestones and timelines.
In addition to the above, the CBN will conduct an inspection of the premises of the CGC prior to grant the license.

2 The Guidelines prescribe that the investment deposit amount shall be refunded by the CBN alongside any investment income once final approval has been granted and after administrative expenses and taxes have been deducted.

Commencement and Post-Commencement Requirements

Once the CGC is ready to commence operations, it shall inform the CBN of the same through a letter accompanied by the shareholders' register, copies of share certificates issued to investors, opening statement of affairs signed by at least two directors and auditors, internal control policy, Enterprise Risk Management Framework and minutes of the pre-commencement board meeting.

Notice of commencement of operations is also required to be made to the CBN upon commencement of operations. Following this, the CGC must ensure to comply with all CBN requirements, guidelines and regulations issued from time to time. It must also maintain a suitable accounting system and keep records which reflect the financial state of the CGC, whilst maintaining the minimum regulatory capital of N10,000,000,000 (ten billion Naira) at all times.

Other Regulatory Requirements Following Commencement of Operations.

The regulatory framework for CGCs in Nigeria is designed to ensure the stability, transparency, and responsible operation of the companies. The funds to be utilised by CGCs for their operations must be from approved sources which includes paid-up share capital, general reserves, long-term loans from international organizations and sponsors, government loans, preference shares, bonds, grants, and other permissible sources. To maintain transparency, CGCs are required to submit monthly returns to the CBN, encompassing various financial filings such as statements of financial position, schedules of assets and liabilities, and returns on guarantees.

The CBN mandates CGCs to maintain a minimum paid-up capital requirement of N10,000,000,000 (ten billion Naira) as well as a capital adequacy ratio of at least 10% (ten percent) or as otherwise prescribed by the CBN. These requirements are enforced to guarantee the financial strength of CGCs. Risk management policies are also crucial, and all CGCs must develop and maintain an Enterprise Risk Management Policy (ERMP) that addresses risks regarding guarantees, concentration, liquidity, operations, legal/regulatory and market factors.

Regular audits and assessments of risk profiles are also required to ensure compliance with regulatory requirements. CGCs must appoint auditors approved by the CBN to review financial statements and risk management practices. The auditors are required to provide reports on the CGC's financial performance, internal controls, and compliance with regulatory directives.

The CBN conducts yearly examinations and can impose sanctions ranging from monetary penalties to license revocation for non-compliance with the established regulations. This comprehensive regulatory framework underscores the CBN's commitment to maintaining the integrity and stability of CGCs within Nigeria's financial landscape.

Conclusion

The regulation of CGCs in Nigeria plays a critical role in driving economic growth, enhancing financial stability, and nurturing the growth of MSMEs. Through the Guidelines, CGCs are held accountable for transparency, capital adequacy, and robust risk management. This not only promotes responsible lending but also contributes to a stronger financial foundation, empowering MSMEs with increased access to financing and ultimately supporting Nigeria's ongoing economic advancement.

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REVIEW OF THE GUIDELINES FOR THE LICENSING AND REGULATION OF PAYMENT SERVICE BANKS IN NIGERIA

BY: DETAIL COMMERCIAL SOLICITORS

The Central Bank of Nigeria ("CBN"), via a circular dated 27th August 2020, issued the Guidelines for the Licensing and Regulation of Payment Service Banks ("PSBs") in Nigeria (the "Guidelines") which provide a regulatory basis for the licensing, operations and management of PSBs. This article assesses the provisions of the Guidelines on the permitted service offerings, licensing requirements, and general operational requirements of PSBs. It also delves into the impact of the licensing regime for PSBs and possible opportunities, in Nigeria.

Permissible and Non-Permissible Activities

The Guidelines stipulate permissible activities for PSBs which include acceptance of deposits from individuals and small businesses, provision of payment services and cross-border remittance services, sale of foreign currencies realized from in-bound remittance services, issuance of debit and prepaid cards, and operation of electronic wallets, among others. On the other hand, PSBs are limited from engaging in certain activities such as granting loans, advances and guarantees, engaging in unauthorized foreign exchange transactions, and insurance underwriting.[1]

Licensing Requirements

The Guidelines specify the eligibility criteria[2] and licensing requirements[3] for entities seeking to obtain a PSB license.

Under the Guidelines, banking agents, telecommunication companies (through subsidiaries), retail chain businesses, postal service and courier companies, mobile money operators, switching companies, fintech companies, financial holding companies and other entities as may be permitted by the CBN are the eligible promoters of a PSB.

To obtain a PSB licence, an eligible promoter has to undergo two (2) approval stages – the Approval in Principle ("AIP") stage[4] and the final license stage.[5]

The AIP stage commences with the payment of a non-refundable application fee of N500,000 (Five Hundred Thousand Naira) accompanied by the following information about the proposed PSB:

(i) evidence of the minimum (share) capital deposit of N5,000,000,000 (Five Billion Naira);

(ii) evidence of capital contribution by the shareholders;

(iii) a detailed business plan or feasibility report which contains the business case and management;

(iv) proposed constitutional information (name and shareholders) and draft constitutional documents;

(v) detailed manual and policies; and

(vi) other related documents and/or as requested by the CBN.

According to Section 6.1 (B) of the Guidelines, the AIP stage should be completed within ninety (90) days of the receipt of all relevant documentation by the CBN. It is important to note that the Guidelines direct that until an AIP is granted by the CBN, the proposed PSB entity must not be incorporated at the Corporate Affairs Commission.

Within six (6) months of being granted an AIP, the promoter(s) of the proposed PSB are mandated to apply for a final license. At this stage, the promoters are required to pay the licensing fee of N2,000,000

1 Sections 4.1 and 4.2 of the Guidelines
2 Section 5 of the Guidelines
3 Section 6 of the Guidelines
4 Guideline 6.1 of the Guidelines
5 Guideline 6.2 of the Guidelines

(Two Million Naira), submit the certified true copies of the constitutional documents of the proposed PSB, documents evidencing the qualification and appointment of top management staff and board members, and others. Upon submission of the requisite documents, the CBN will inspect the facilities of the proposed PSB. The final licence is issued by CBN after receipt of a letter from the proposed PSB indicating its readiness to commence operations and its review of the final licence stage application documents.

Operational Requirements

The operational requirements of PSBs are also outlined in the Guidelines and are stated in this article.

(i) Corporate Governance and Know-your-Customer (KYC) Requirements

By Section 7 of the Guidelines, PSBs are required to comply with the CBN Code of Corporate Governance for banks and the CBN Revised Assessment Criteria for Approved Persons' Regime for financial institutions. Also, each PSB is to comply with extant laws on anti-money laundering/combating the financing of terrorism (AML/CFT) and KYC-related regulations issued by the CBN.

However, the CBN Supervisory Framework for PSBs

6 Sections 9.1, 9.3 and 9.6 of the Guidelines
7 Section 13.3 of the Guidelines

2021 contains specific board and management team competency, KYC and AML/CFT requirements, and the CBN Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks 2023 (the "CG Guidelines") outlines the corporate governance requirements for PSBs. Given the specificity of the Supervisory Framework, PSBs are to primarily comply with its provisions in respect of competency requirements for boards and management teams.

(ii) Business Conduct with Related Entities

Although Section 8 of the Guidelines regulates business relations between PSBs and related entities, Section 22.6 of the CG Guidelines contains revised business conduct requirements for PSBs. Nonetheless, PSBs and related entities are generally to render their services at arms-length and in accordance with CBN-approved service level agreements. In addition, PSBs are prohibited from offering preferential treatment to related entities and those related entities are also prohibited from providing discriminatory services and/or differential pricing to other PSBs or CBN-licensed institutions.

(iii) Prudential Regulation

The Guidelines establish crucial requirements for the prudential management of PSBs. These include maintaining the applicable minimum share capital requirement, statutory reserves under the Bank and Other Financial Institutions Act (2020) ("BOFIA"), cash reserve requirements and capital adequacy ratio prescribed by the CBN.[6]

Regarding declaration or payment of dividends, a PSB must meet the conditions specified in Section 9.2 of the Guidelines such as meeting all matured obligations and obtaining CBN's approval.

Other prudential requirements under the Guidelines are limits on investments of deposit liabilities and fixed assets, participation in inter-bank payment and settlement system, and revaluation of fixed assets in accordance with the relevant CBN guidelines.

(iv) Risk Management

Pursuant to Section 13.1 of the Guidelines, a PSB does not need to comply with credit risk management provisions as it is not permitted to grant loans, advances or guarantees but a PSB has to manage market, operational, liquidity, strategic and other risks in accordance with regulations issued by CBN from time to time.[7] Also, PSBs are to comply with relevant CBN regulations in respect of internal controls, audit and compliance for information system-related matters, and capital measurement approach measures for credit risks.[8]

(v) Revocation of License

Section 15 of the Guidelines indicates that the failure of a PSB to comply with the PSB Guidelines, applicable CBN circulars and guidelines or the BOFIA is a ground for revocation of a PSB license by the CBN.

Commentary

The PSB model was introduced by the CBN to deepen financial inclusion by increasing access to deposit and payment/remittance services for small businesses, low-income households and other financially excluded entities, in rural areas and unbanked locations.

However, there is no obvious indication that there has been a significant improvement in financial inclusion in Nigeria by PSBs. Since its introduction in 2018, only five (5) PSB licenses have been granted. Although the process of obtaining a PSB licence under the Guidelines is not herculean, the problem may lie in the concept of the PSB model.

It is therefore important to evaluate the issues that may be hindering stakeholders from setting up PSBs in Nigeria. A major constraint is poor infrastructure. According to World Bank's Nigeria Public Finance Review Report issued in November 2022, "the level and quality of Nigeria's infrastructure is low".[9] Also, Nigeria reportedly ranked 114th out of 140 countries in the 2022 Global Competitiveness Index Rankings as a result of poor infrastructure.[10] Given the poor state of infrastructure in Nigeria, stakeholders are subtly deterred from utilizing the PSB model as it will be highly capital-intensive to set up a PSB and also, develop necessary infrastructure to reach the target market.

Another possible issue is the nature of the target market of PSBs. The success of the PSB model lies in easy access to individuals and communities everywhere in a geographical location/country. It may be deduced from the Guidelines that the PSB model

8 Sections 13. 2 &13.4 of the Guidelines
9 https://documents1.worldbank.org/curated/en/099615111172214261/pdf/P17509504ea7b902108a420d5a2e60b19b1.pdf
10 https://nairametrics.com/2023/03/30/poor-infrastructure-blamed-as-nigeria-ranks-14th-in-africa-competitive-index/

is optimized for entities and business structures that have large distribution channels and wide geographic spread given the calibre of eligible promoters recognized. It is noteworthy that most Nigerian PSBs (i.e. 4 out of 5) were promoted by telecommunications companies in Nigeria. Thus, persons/entities without large distribution channels and/or geographic spread or outside the eligible promoters are discouraged from applying for PSB licences.

Nonetheless, there are still opportunities yet to be unlocked in the Nigerian PSB space. Considering the identified challenges, partnerships amongst banks/other financial institutions and eligible promoters may be created to apply for a PSB license. Eligible promoters, particularly retail supermarkets, may be supported to set up a PSB such that their large customer base is utilized and the necessary capital (or expertise) may be provided by financiers.

Furthermore, in terms of operations, stakeholders like commercial banks, other financial institutions and international service/utility providers may partner with a PSB to utilize the sale of foreign currencies operations. With the ongoing scarcity of foreign currencies and volatility of foreign exchange rates in Nigeria, PSBs may sell foreign currencies gained through remittance to these stakeholders to assist with the availability of foreign currencies and payment for services/utilities denominated in foreign currencies.

In conclusion, the CBN's introduction of the PSB model under the Guidelines is laudable. Nevertheless, CBN and other stakeholders should create and/or facilitate the establishment of viable business structures for proper implementation of the Guidelines.

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CODE OF GOOD CORPORATE GOVERNANCE FOR THE INSURANCE INDUSTRY IN NIGERIA

BY: DUALE, OVIA & ALEX-ADEDIPE (DOA LAW)

Insurance practice assumes a distinct and crucial role within society and serves multiple functions that give credence to its significance. Asides from its pivotal role in providing a safety net for assets and finances belonging to individuals or organisations and enabling them to function effectively[1] , insurance also fulfills myriad secondary functions, benefiting both individual policyholders and the broader society. These include enhancing creditworthiness, facilitating trade and transactions, strategic allocation of financial resources, effective distribution of capital, and fostering social cohesion.[2] Given the insurance industry's complex web of risk assessment, financial operations and client obligations, the industry operates in a realm where trust, transparency, and accountability are paramount. As such, the insurance industry is heavily regulated with focus on the protection of policyholders; the promotion of a fair, safe, and stable insurance market; and the enhancement of financial stability.[3]

The sophisticated nature of the insurance industry, therefore, necessitates a robust framework of corporate governance which is crucial for the success and sustainability of any insurance company and the insurance industry at large. In Nigeria, corporate governance in the insurance sector is governed by the Corporate Governance Guidelines for Insurance and Reinsurance Companies 2021 (the "Guidelines") as issued by the National Insurance Commission ("NAICOM" or "Commission"). This article explores the provisions of the Guidelines, highlighting its importance and compliance requirements.

Regulatory Overview of the Insurance Industry in Nigeria

In Nigeria, insurance is governed generally by the Insurance Act[4] and NAICOM. Insurance businesses are also divided mainly into general insurance business and life insurance business.[5]

Other recognized insurance models in the Nigerian insurance industry are composite insurance (both life and general insurance), reinsurance, and Takaful. As a regulated space, stakeholders such as insurers, brokers, and agents are required to obtain relevant licenses from NAICOM.[6]

NAICOM exercises supervisory and regulatory power over stakeholders in the insurance industry including powers to investigate the affairs of an insurer[7]; thus, may revoke licenses and impose penalties on erring companies.

Corporate Governance for Insurance Companies in Nigeria

The history of corporate governance in the insurance sector began in 2009 when NAICOM enacted the first Code of Good Corporate Governance for the Insurance Industry in Nigeria to recommend various structures and control systems, designed to ensure efficiency and accountability by both the board and management of insurance companies. Subsequently, the Financial Reporting Council (FRCN) Act 2011 established the directorate of corporate governance in Nigeria generally.[8] Similarly, the Nigerian Code of Corporate Governance 2018 ("NCCG") was enacted to regulate all public and private companies in Nigeria and recognize corporate governance regulations that apply to specific sectors. The implementation of the NCCG is monitored by the FRCN through the sectoral regulators who are empowered to impose appropriate sanctions based on the specific deviation noted and the company in question.

NAICOM in exercise of its powers and in collaboration with FRCN thereby issued the Guidelines to assist the implementation of the NCCG. The Guidelines is thus to be read and interpreted in conjunction with the provision of NCCG and replaces the NAICOM Code of Good Corporate Governance for the Insurance Industry of 2009. All insurance and reinsurance companies are

1 Kuye, O & Sulaimon, A & Odiachi, Joyce, "Corporate Governance Code: The Application and Effect on Sustainability of Selected Insurance Companies in Nigeria" AJES Vol 6, No.1 (March 2020) 22-30.
2 Vladimir Njegomir, Rajko Tepavac, "Corporate Governance in Insurance Companies (Research gate, 2014) available at https://www.researchgate.net/publication/312214674_Corporate_Governance_in_Insurance_Companies accessed August 16, 2023.
3International Association of Insurance Supervisors, 'Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups (2019).
4 Cap. 117 LFN, 2004.
5 Section 2 of the Insurance Act Cap I17, Laws of the Federal Republic of Nigeria 2004.
6 Sections 5, 34 36 and 45 Insurance Act Cap I17, LFN 2004.

required to comply with the Guidelines and the NCCG[9]. The Guidelines, therefore, seek to provide clarity and fill gaps in the NCCG in relation to the specific nature and practice of the insurance industry in Nigeria and it covers important areas such as management and control, disclosures, reporting, risk management, and whistleblowing. The highlight of the Guidelines are set out below:

1. Management /Control

The board of an insurance/reinsurance company is required to have minimum of seven (7) members and maximum of fifteen (15) members. The board shall consist of Executive and Non-Executive Directors out of which not more than 40% of the members should be in the executive capacity[10] No two members of the same family (nuclear and extended) can occupy the position of the Chairman and Managing Director ("MD")/Chief Executive Officer ("CEO") of any insurance company[11]. Membership of the Board includes at least one Independent Director, who does not represent any shareholding interest nor hold any business interest.

Non-Executive Directors shall not be re-nominated and appointed for more than three (3) terms of three (3) years each[12] and the appointment of Non-Executive Directors is decided by the Board through a defined selection process. To represent minority interests, all public limited liability insurance/reinsurance companies are required to provide a seat for minority shareholder on the Board.[13]

The appointment of the CEO and each executive director of an insurance or reinsurance requires NAICOM's approved[14]. Also, nominated members of the board are required to complete and file a Personal History Statement (PHS) form with NAICOM at the point of application for approval [15]

Furthermore, the Guidelines require directors to have relevant insurance industry experience;

have minimal prior relationships with the company and other directors, as well as links with competitors; possess a record of integrity and have the time to serve diligently as a director.

A person aspiring to be the director of an insurance company in Nigeria is expected to have a track record of prior success in business.[16]

To ensure adequate representation, each member of the board shall attend not less than 75% of the Board meetings annually[17]. The board members are also required to continue their education in order to deepen their expertise as well as keep pace with current realities.

Consequently, an insurance/reinsurance company must train its board members at least and the evaluation of such training must be reported to NAICOM before the end of the first quarter of the succeeding year.[18]

2. Committees

In addition to the four (4) Committees (Nomination and Governance, Remuneration, Audit, and Risk Management) listed under Principle 11 of the NCCG, the Guidelines provide for two additional Committees namely Finance, Investment and General Purpose, and Compliance.[19]

3. Disclosures

Directors and employees of insurance companies are required to formally disclose to the Board of Directors or Shareholders their interest whatsoever in any other insurance business or business closely related to insurance business such as Loss Adjusting firms, Actuarial firms, Legal and Secretarial.[20] Additionally, any matter in which the CEO, director(s), or an employee has any interest whatsoever is required to be disclosed to the board and management, and such disclosure shall be documented.

4. Reporting

The Guidelines require every insurance/reinsurance company to file its internal audit reports with NAICOM every quarter. External audit reports are to be filed no later than the 2nd quarter of the succeeding year.[21] An annual board performance evaluation is also required to be carried out by an independent consultant to be appointed at the annual general meeting. The Evaluation Report is to be forwarded to NAICOM before end of first quarter of the succeeding year.[22]

With respect to its annual reports, an insurance company shall disclose in its annual report the level of its compliance with the NCCG, the Guidelines, and other applicable standards of corporate governance.[23]

The Guidelines make provisions for persons who have been subjected to detrimental or discriminatory treatment to lay their complaints with NAICOM.

5. Risk Management

The Guidelines place on the Board of Directors of an insurance company, the duty to review corporate strategy and risk policy, monitor implementation and corporate performance, and oversee major capital expenditures and acquisitions.

Issues of Bad Governance in the Nigerian Insurance Industry

It is important to establish proficient corporate governance within the insurance sector due to a range of significant challenges that commonly impact insurance operations. These challenges include:

7 Section NAICOM Act Cap N53 LFN 2004.
8 Section 49 of the FRCN Act.
9 Paragraph 1 (iv)- (v) of the Guidelines.
10 Paragraph 2.01(ii-iii) of the Guidelines.
11 Paragraph 2.01(vi) of the Guidelines.
12 Paragraph 2.01(viii) of the Guidelines.
13 Paragraph 2.01(xiii) of the Guidelines.
14 Paragraph 2.01(XI) of the Guidelines.
15 Paragraph 2.01(XIV) of the Guidelines.
16 Paragraph 2.02 of the Guidelines.

1. Non-adherence to regulations, laws, principles, and rules that govern the insurance sector which could result in the loss of license of the insurance company;
2. Discrepancies between the Board and Management which could lead to conflicts within the Board, and which could, in turn, affect the operations of the company;
3. Insufficient oversight functions carried out by the Board which could result in mismanagement of funds and eventual insolvency or winding up;
4. Deceptive and self-centered practices among Board members, management, and employees which could diminish public trust and confidence;
5. Domineering influence of chairpersons or MD/CEO, particularly in family-controlled businesses;
6. Inadequate internal controls and poor underwriting practices which could result in bankruptcy;
7. Inactive shareholders;
8. Dominant shareholders' authority over minority shareholders;
9. Ineffectual management information system;
10. Growing societal consciousness about the industry which necessitates the maintenance of transparency and public trust; and
11. Instances of conflicting interests.

Significance of the Corporate Governance Guidelines in the Insurance Industry in Nigeria

Recognizing the unique societal value inherent in the insurance industry—where it furnishes financial security, diminishes communal expenses during insured events, and contributes to the augmentation of capital that in turn drives economic progress—the fusion of good corporate governance within the operations of insurance companies becomes imperative. The following are the benefits of good corporate governance in the insurance industry:

1. Business Sustainability: Good corporate governance allows for business sustainability which is the

17 Paragraph 2.1(l) of the Guidelines.
18 Paragraph,3.0 of the Guidelines.
19 Paragraph 2.2 of the Guidelines.
20 Paragraph 7.0 of the Guidelines.
21 Paragraph 5.0 of the Guidelines.
22 Paragraph 5.0 of the Guidelines.
23 Paragraph 10.0 of the Guidelines.

ability of an organisation to manage its financial, social, and environmental obligations properly while harnessing inherent opportunities[24] It achieves this through the mitigation of losses and aiding the prevention of business deterioration. This can also impact the relevance of the insurance industry. NAICOM has confirmed that the reason behind the failure of most insurance companies is noncompliance with the Guidelines of corporate governance.[25]

2. Regulatory Adherence: Good corporate governance creates a foundation for insurance companies to adhere to industry laws and principles.

3. Ethics and Trust: The insurance space in Nigeria cuts a low-trust position among consumers. Therefore, adopting good corporate governance upholds business integrity and promotes public confidence and trust in insurance.

4. Financial Prudence: Implementing sound corporate governance extends to a company's accounting and reporting methods, and this helps to safeguard business funds and prevent mismanagement.

5. Effective Management and Oversight: With clear-cut roles and responsibilities and effective checks and balances, the Guidelines enhance the effective management of and control of the insurance company.

6. Risk Management: Practicing good corporate governance strengthens strategies against fraud and misconduct.

7. Balancing Stakeholder Interests: Adherence to the Guidelines balances the competing interest of stakeholders in the insurance industry.

8. Transparency and Accountability: It promotes openness in financial operations which in turn promotes public confidence and trust in insurance business.

9. Economic Resilience: Nurturing Industry Stability and Sustainable Growth for the Nigeria economy. The popular American case of AIG shows how an insurance firm can crumble a nation's economy as most of the major businesses and corporations in Nigeria have assets that are insured.

Sanction

Section 49(5) of the NAICOM Act clearly provides that any person or an insurance institution that fails to comply with the provision of any guideline issued by NAICOM is guilty of an offense under and liable on conviction to a fine not less than ₦250,000 (Two Hundred and Fifty Thousand Naira) or more than ₦500,000 (Five Hundred Thousand Naira) or imprisonment for a term not exceeding 3 years or to both such fine and imprisonment. This is in addition to other sanctions and penalties that may by imposed by NAICOM for actions that amount to market infractions.

Conclusion

The insurance business is based on good faith, thus the practice and enforcement of corporate governance principles, does not only build trust with the public, but creates a viable framework for transparent rules and controls; and aligns the interests of shareholders, directors, management, policyholders, and other stakeholders in the sector. The adoption and compliance with extant guides on corporate governance in the insurance industry is therefore important to maintain the integrity of the market and ensure efficient risk management and accountability.

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GUIDELINES FOR CONTACTLESS PAYMENTS IN NIGERIA

BY: FAMSVILLE SOLICITORS

The need to achieve faster and more convenient transactions and delivery of financial services through newer payment technologies has triggered the introduction of contactless payments. All over the world, contactless payment has evolved from its first use in South Korea, and the United Kingdom in the early 1990s to wholesale use by banks, merchant houses, and retailers in the late 2000s in countries such as the United States, Australia, and Canada. The adoption of contactless payments spiked during the 2020 Covid scourge, as governments and individuals systematically enforced bans on physical touch between humans, and of surfaces and objects alike. As regulators all over the world began to understand this unique model of payments, legal guidelines and sanctions were gradually developed and codified to mitigate the attendant risks. The global shift attention of regulators to contactless payments, and the absence of local laws regulating this payment model, spurred the Central Bank of Nigeria to pass the Guidelines for Contactless Payment and a further circular on the transactional limit on June 27, 2023.[1] This article examines the advantages and disadvantages of contactless payments, and key provisions of this guideline vis-a-vis the responsibilities of various stakeholders engaged in contactless payments.

What Is Contactless Payment?

Contactless payment involves the consummation of financial services without physical contact between the payer and the acquiring devices. Contactless payment has been identified as an effective and fast means of payment. Examples of contactless payment instruments include; prepaid, debit and credit cards, sticker fobs, wearable devices, mobile electronic devices such as smartphones etc which use Radiofrequency Identification(RFID) technology or near-field communication. The contactless payment-enabled devices interface with the contactless payment terminals to ensure secure payments.

Advantages of Contactless payment

Contactless Payment has been recognized as an innovative and efficient payment method for large and low-volume payment transactions. Some of the advantages of contactless payment are:

- Speed and Operational Efficiency; Contactless transactions do not require pin numbers as payments may be made by a tap on a reader. This way, transactions may be completed at a fast-paced rate and the queue at payment points is drastically reduced. Customer retention rates and a faster shopping experience are facilitated by this.
- Secure Payments; The risk of theft and fraudulent activities is reduced by employing contactless payments. This is because there are stronger and more efficient security measures such as encryption which guide against double payment for a transaction, hacking and other fraudulent activities Also, the provision of the circular setting the transaction limit at 15,000 per transaction and 50,000 per day, the risk of large and unauthorized payments may be prevented.
- Effortless and Convenient Payment Transactions; Contactless payment may be carried out through the interaction of connected mobile electronic devices such as mobile smartphones, and smart watches amongst others which use Near-Field Communication (NFC) technology with connected contactless payment terminals.
- Hygiene; Potential health hazards which accompany physical contact by numerous customers with payment terminals such as POS terminals and other unsterilised hardware may be avoided by contactless payments. This reduces the spread of contact-based diseases and infections.

Disadvantages of Contactless Payment

Contactless payment has been embraced by shoppers. Despite this, there exist a number of disadvantages of this payment option as follows;

- Lower Transaction Limit: By extant laws, contactless payment can only be deployed for transactions of not more than N15,000 and N50,000 per day. This means that larger transactions worth more than these amounts cannot be carried out using contactless payments.
- Potential Security Risks; Lost or stolen cards, and mobile electronic devices may be used to perpetrate fraudulent and unauthorized contactless payment.

Key Provisions of the CBN Guidelines for Contactless Payments in Nigeria Contactless payment in Nigeria

Contactless payment in Nigeria is regulated by the Guidelines for Contactless Payments in Nigeria issued by the Central Bank of Nigeria on the 27th of June, 2023.

1 Section 2(d) of the Central Bank Act, 2007 and Section 56 of the Banks and Other Financial Institutions Act(BOFIA) which empowers the Central Bank of Nigeria to make regulations for banks and other financial institutions.

The Guidelines cover the operations of contactless payments in Nigeria and sets the roles and responsibilities of stakeholders in contactless payments.

The Guidelines were issued to mitigate the risks associated with Contactless Payments and to set a legal framework upon which will govern all contactless payment transactions, and secure the information and associated interests of the customers and all other stakeholders.

The Guidelines sets out the stakeholders in contactless payments to include acquirers, issuers, payment schemes, card schemes, switching companies, Payment Terminals Service Providers(PTSPs), Payment Terminals Service Aggregators (PTSAs), Merchants, Terminal Owners and Customers and any other stakeholder as the CBN may determine. Only institutions licensed by the Central Bank of Nigeria may act as acquirers and issuers for contactless payments in Nigeria.[2] Some of the key provisions of the Guidelines which regulate contactless payments are enunciated below:

1. **Compliance with Minimum Standards**

It is required that all industries/sectors who store and process customers' information shall ensure that their terminals, applications and payment processing systems are in compliance with minimum standards such as the Payment Application Data Security Standard (PA DSS), Payment Card Industry Pin Entry Device (PCI PED), Advanced Encryption System (AES)[2], etc [3] and all required scheme certifications for contactless card and terminals and all other standards as may be determined by the CBN from time to time.

Also, issuers and Acquirers who engage in contactless payments are required to ensure that all their contactless-enabled applications, instruments, token and all devices meet current standards and specifications for contactless payments and have been duly certified to process contactless payments by the CBN or any authorized body.

2 Paragraph 4.0 of the CBN Guidelines for contactless payment in Nigeria passed on June 27,2023

3 Paragraph 5.0 of the CBN Guidelines for contactless payment in Nigeria passed on June 27,2023

4 Paragraph 5.5 of the CBN Guidelines for contactless payment in Nigeria passed on June 27,2023

2. Configuration of Contactless Payment Device

In order to manage the risk of data interception, the Guidelines require that the contactless devices are configured to work within a maximum of 2cm from the payment terminal.[4]

3. Execution of contactless payments agreements

Issuers and Acquirers are mandated by the Guidelines to execute contactless payment contracts with parties for utilizing contactless platforms for payments. All agreements shall clearly set out the terms and conditions including the roles, responsibilities and rights of all parties.

The Guidelines saddles issuers with the responsibility of giving reasonable notice of up to a minimum of seven (7) working days before changes are made to the terms and conditions of contactless payment contracts.

4. Training and Conduct of Proper KYC on Merchants

Acquirers who engage in contactless payments are obligated to ensure that merchants are trained and are made to put in place reasonable processes and systems for confirming consumer identity and detecting suspicious or unauthorized usage. Acquirers are to ensure that proper Know Your Client(KYC) is conducted on all merchants and outlets where contactless payments are carried out.

5. Money Laundering and Other Financial Crimes Prevention Measures

Issuers and Acquirers of contactless payments have the responsibility to undertake measures to prevent the use of their networks for purposes associated with money laundering and associated financial crimes as contained in the extant CBN Regulation on AML/CFT/CPF. Acquirers shall also ensure that all their contactless devices are connected to an account or wallet that has Bank Verification Number(BVN).

6. Periodic Risk Assessment

Issuers, acquirers and switching companies are required to carry out periodic Risk Assessments of their processes and have effective measures to mitigate MI/TL/PF risks associated with Contactless payment. Payment schemes and card schemes are also required to implement a documented risk management process to identify and treat risks associated with Contactless payment.

7. Customer's Consent

The issuer is required to ensure that activation of contactless payment is at the customer's instance and with the customer's full consent. Evidence of application consent shall be obtained/documented before activation. Issuers are also required to provide opt-out

options for customers who may no longer desire contactless payments.

8. Transaction Limit

In furtherance to the provision of the Guidelines which allows the CBN to set the contactless payment transaction limit from time to time, a circular was released by, the CBN to set the transaction limit for each contactless payment through accounts/wallets in Nigeria at N15,000 and a daily cumulative of N50,000). Stakeholders are also allowed to set limits in line with the CBN Guidelines.

For higher-value contactless payments that exceed these limits, customers will be required to provide appropriate verification and authorization. Existing Know Your Customer ("KYC") requirements and limits on the electronic payment channels would also apply.

Conclusion

The Guidelines represent the CBN's commitment to ensuring the safety and stability of the Nigerian financial system and promoting a resilient and stable payment system. However, as it to Merchant Service Agreements, and some other important contracts in contactless payments, clauses relating to settlement and payment, representations, chargebacks and warranties can become tricky and lead to huge liabilities where specialist legal counsel is not sought.

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SEC RULES ON ISSUANCE OF DIGITAL ASSETS AS SECURITIES

BY: FOLASHADE ALLI & ASSOCIATES

The accelerated and progressive adoption of digital assets across global markets and economies has been identified as one of the cornerstone phenomenon of international financial markets in today's economy. In the same vein, the steady rise of blockchain technology as a critical digital infrastructure for the facilitation of international trade and commerce remains a subject of intrigue and keen interest for governments, regulators and interest holders in the private sector as efforts at improving the overall efficiency and expanding legitimate channels of business remain priorities for all key stakeholders and parties. In offering clarity on the form and definition to the concept, a few definitions of the term are highlighted below for ease of reference:

"A digital asset is defined as anything that is stored digitally and is uniquely identifiable that organizations or individuals can use to realize value...These assets can also be broadly defined as any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology."[1]

Prior to the emergence and utilization of digital assets in the immediate financial markets, exchange, trade and commerce were hitherto predicated on physical assets which took the form of realty, equity and debt securities, and other tangible articles of value which were either utilized in order to facilitate trade or even traded in exchange for value. However, the rapid circulation and increased acceptability of digital assets as a medium of exchange and a store of value in the global financial markets has resulted in a fair share of activity and a sizable degree of usage and acquisition by individuals and private investors within Nigeria.

Despite the initial reservations from the principal regulator of financial institutions within Nigeria, the Central Bank of Nigeria (CBN), towards the adoption and usage of digital assets, particularly crypto assets, the Securities and Exchange Commission (SEC) issued the "New Rules on Issuance, Offering Platforms and Custody of Digital Assets" ("The Rules") in May 2022 which represents a formal attempt by the principal capital market regulator to recognize, legalize and regulate the issuance, usage and transactional exchange of digital assets within the Nigerian financial and capital markets.

This article highlights the salient provisions of the regulations and the potential impacts which the regulations are likely to herald for investors, corporates and the general financial ecosystem.

The rules which are divided into five (5) parts cover the following:

- **PART A – Rules on Issuance of Digital Assets as Securities.**
- **PART B – Rules on Registration Requirements for Digital Assets Offering Platforms (DAOPs).**
- **PART C – Rules on Registration Requirements for Digital Asset Custodians (DACs).**
- **PART D – Rules on Virtual Assets Service Providers (VASPs).**
- **PART E – Rules on Digital Assets Exchange (DAX).**

In Part A of the rules, SEC requires the submission of an assessment form and a draft white paper for

1 https://www.irs.gov/businesses/small-businesses-self-employed/digital-assets. Examples of digital assets include: convertible virtual currency, crypto currency, stablecoins, Non-Fungible Tokens, Security Tokens of either equity or bonds.
2 Rule 4.0
3 Rule 4.0(i)
4 Rule 5.03
5 Rule 7.0(a)

conducting an initial digital asset offering within Nigeria or with Nigerians as the target offerees.[2] The rules also require the inclusion of "relevant, complete, and current information" regarding the projects, business plan, and feasibility study for which the offering is proposed in the draft whitepaper[3], some of which are:

i. Comprehensive information on how the proposed initial digital asset offering project will benefit investors and deepen the market, sustainability and scalability.

ii. Timeline for the completion of the project to be financed with the proceeds of the offering.

iii. Discussion on the determination of the accounting and the valuation treatments for the digital token including all valuation methodology and reasonable presumptions adopted in such calculation.

iv. Target market.

v. Soft cap and hard cap for each kind of token.

vi. Risks in investing in the tokens.

The provision of such information ensures that promoters make disclosures which are utilized in the assessment of the viability of their projects and the acceptance of their digital tokens as securities for investment. This in turn provides investors with sufficient information such as the valuation of the digital tokens offered in exchange for the funds that will be committed to such offerings. The provision of this information also constitutes a safeguard against frivolous attempts to raise capital.

The rules further provide the grounds for rejection of an application for the registration of digital assets such as the infringement of public policy, injury to investors or violation of any of the laws, rules and regulations implemented by SEC.[4]

A limit has been imposed on the amount of funds that can be raised through an issue within any continuous 12-month period.[5] Also retail investors are curtailed from making investments in excess of N200,000 per issuer, and a total investment exceeding N2,000,000 within a 12-month period.[6]

While it is understandable that no investment limit was imposed on "high net worth investors"[7] who naturally possess a risk appetite for investments regardless of their volatility, a lack of restriction on the investment capacity of institutional investors[8] may portend danger to the numerous interests represented by such institutions.

Rule 9.01 exempts the registration of digital assets in certain instances,[9] the most notable of which is securities structured to be exclusively offered through crowdfunding[10] portals[11] or intermediaries.[12]

Part B of the rules stipulates the requirements for registering as a digital assets offering platform (DAOP).[13] An application to register as a DAOP shall also comply with requirements for the registration of sponsored individuals as contained in the SEC Rules and Regulations.[14] These requirements similarly apply to an application for registration of a digital asset exchange (DAX).[15] As part of governance requirements,[16] the DAOP shall have a charter for the Board and Management that clearly stipulates responsibilities.[17] These requirements, amongst others, are laudable as they provide some level of comfort with respect to the internal structure and good standing of a DAOP and DAX to offer services as a platform and exchange respectively, and carry out the obligations of assessment, verification, compliance, and risk management provided in Rules 16 & 17 in the case of a DAOP.

A DAOP is also required to establish and maintain one or more trust accounts with a registered Receiving Bank, designated for the monies received from investors.[18] The trust accounts are to be administered by a trustee or Central Securities Depository registered by the Commission.[19]

Conditions for the release of funds to the Issuer are also stipulated within the rules[20] which are that the targeted amount sought to be raised has been met, and there is no material change relating to the DAOP or the issuer during the offer period. Furthermore, Rule 20.2 provides for matters that would constitute a material change that would prevent the release of such funds. This proviso by SEC is laudable given its propensity to safeguard investments in digital assets and protect the overriding interests of investors.

Rule 23.1 provides that a DAOP shall maintain a register of initial token holders who subscribed for the virtual assets/digital tokens during the offer period. The particulars of token holders and the total amount of virtual assets/digital tokens subscribed for by each token holder must be registered. A digital asset custodian is also required in Part C to ensure the maintenance of up- to-date transactional records relating to the clients' virtual assets/digital tokens.[21]

6 Rule 8.0(b)
7 Rule 8.0(a)
8 Supra
9 Rule 9.0
10 The process of raising funds to finance a project or business from the public through an online platform.
11 Crowfunding Portal - A website, portal, intermediary portal, application, or other similar module that facilitates interaction between fundraisers and the investing public.
12 Crowdfunding Intermediary - An intermediary organized and registered as a corporation to facilitate transactions involving the offer or sale of securities or investments through an online electronic platform). See SEC rules on Crowdfunding.

The requirements for the cessation of operations by a DAOP,[22] DAC,[23] and DAX[24] are provided by the rules which stipulate that SEC must be notified, and issue a direction or impose conditions for the cessation of operations by these entities.

A key issue for consideration is the absence of any penalty or sanction on the promoters, entities or businesses registered under the rules other than the cancellation of their registration. The domino effect is a possible lack of incentive to abide by the rules by those offering or dealing in virtual assets/digital tokens offered as security for capital which would subject the securities to a certain degree of risk due to the likely occurrence of fraudulent offerings.

PROSPECTS AND IMPACTS.

Prior to the introduction of the regulation, the domestic market for exchange and sales of digital assets has always been subject to unregulated speculation and unbridled risk exposure for investors occasioned by the unsupervised entry or presence of unscrupulous trading platforms

and entities, however the issuance of these regulations offers the much needed regulatory presence and oversight which has become imperative in a global economy that is being redefined by financial technological solutions and innovations alike. We have therefore highlighted some of the potential impacts which the introduction of the rules could portend for investors and corporate entities alike.

13 Rule 11.4(a)&(b)
14 Rule 11.5
15 Part E, Rule 6.3
16 Rule 15.0
17 Rule 15.3
18 Rule 20.1(c)
19 Rule 20.1(d)

i. Introduction of structure and form to the issuance and trading of digital assets:
The issuance of the regulation represents a key step in the definition of the structure and ground rules for the launch of digital assets and serves as a critical step in creating a secure and reliable business environment for the issuance, exchange and administration of these assets. Amongst market observers and institutional bodies in the financial sector, there is a widespread acknowledgment that the rules are bound to offer the much needed clarity and also provides a degree of protection and risk minimization for prospective investors who are keen on hedging their investments or making forays into the investment market for digital assets. On the other hand, the creation of these rules would definitely provide distinct minimum standards and requirements which corporate entities and other counterparties are required to meet and comply with in order to conduct business or participate in this market.

ii. Viability and increased economic value: Over the years, the aversive posture and position of financial regulators in the Nigerian financial markets on the subject of digital assets has been a source of concern to many. Considering the volume and monetary value of digital assets transactions being conducted off-the-books prior to the release of these rules; there is a significant and viable revenue channel which is likely to be explored by the government and other institutional parties. The introduction of the rules grants the regulator the opportunities of not just oversight but creates an economic outlet for sustainable revenue inflow for the government and investing parties overtime with the corresponding growth and income projections of the digital assets.

iii. Reduction of fraud and other investment related risks: Similar to other jurisdictions, the presence of regulation or legislation on any subject or economic activity definitely offers a sizeable degree of protection and minimizes the exposure to fraudulent entities.
Despite the sanctions and penalties provisions which may require a review, SEC's issuance of these rules provides a measure of protection for investors, who are likely to base their investment decisions on the outcome of due diligence checks on the registration status of securities and the entities offering these securities. In light of the registration requirements and continuing obligations of entities who may be desirous of issuing digital assets under the rules, it is fair to state that all securities and issuing entities under these rules are likely to undergo institutional scrutiny and review before grant of operational approval.

These processes are likely to offer substantial investor coverage against fraudulent activities and provide a preliminary though indispensable compliance check on the legality or otherwise of the assets prior to their issuance and eventual procurement by the investing public.

CONCLUSION

Based on the provisions of the rules, it is safe to assume that the rules by SEC are geared toward providing a regulated environment for dealing in digital assets which protects the interests of investors. Requiring registration with SEC as a prerequisite for promoting and facilitating the utilization of digital assets is an essential step in bringing the activities around digital assets securitization within the purview of SEC.
However, limiting the consequences of non- compliance with the rules to the suspension, cancellation or withdrawal of registration with SEC, and requiring the inclusion of provisions for the suspension and expulsion of users in the operational rules of a prospective Virtual Assets Service Provider as a condition for registration[25], is hardly sufficient to curb the potential misconducts and losses that may arise within the digital assets market. Furthermore, the provision of evidence that a prospective Virtual Assets Service Provider will be able to take appropriate action against erring users is unlikely to have the same regulatory effect as an institutional authority exercising oversight functions.[26]
A further review of the rules is required, and the inclusion of additional penalties/sanctions such as the imposition of criminal liability, fines, and permanent revocation of securities license on errant dealers. Also, it is recommended that provisos for the consequences of cancellation or withdrawal of registration by SEC should be spelt out. This would dispel any propensity for infractions, and further protect the interests of investors in the digital assets market. SEC may also issue guidelines on scales and parameters for the valuation, devaluation and assessment of digital assets. This is likely to promote certainty and consistency in the value of such assets, and provides a platform for investors to ascertain the viability of and attendant risks in their investments.

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20 Rule 20.1(e)
21 Rule 37.1
22 Part B Rule 27
23 Part C Rule 40
24 Part E Rule 16

BY: G.ELIAS

Nigeria is dealing with an infrastructure deficit driven by population growth and economic expansion. The 2020 Reviewed National Integrated Infrastructure Master Plan (“NIMP”) calls for spending up to USD150 billion annually to bridge this gap by 2043[1]. The private sector, through Infrastructure Funds (“Fund(s)”), is crucial in achieving this goal since the public sector alone cannot provide the entire funding. Currently, there are fewer than ten such Funds, and more are needed. The largest source of funding for these Funds is Nigeria’s pension funds, which hold over USD20 billion in assets[2], a significant increase from a negative number less than two decades ago. This article will look at the organizational structure of Funds, the Securities and Exchange Commission’s (”SEC”) Rules on Funds in Nigeria, challenges facing Funds in Nigeria as well as viable solutions to maximize the potential of Funds in Nigeria. The regulatory framework is reasonably well-developed, but some further fine-tuning of the rules would be in order.

Structure Options

The cast for the creation of a Fund ordinarily includes the fund originator (typically called a sponsor), fiduciary providers of services to the Fund (such as fund managers, custodians and trustees), the Fund itself (whether it is incorporated or not), the investee entities and other vehicles that will get the Fund monies, and the investors who may include the investing public, high net worth individuals and institutional investors such as pension funds[3] (**“Related Parties”**).

A fund manager is distinct from the Fund itself. The SEC has established binding rules regulating fund managers[4]. The decision to organize a Fund, whether as a limited partnership (**“LP”**), collective investment scheme (**“CIS”**) or otherwise, is influenced by considerations including tax efficiency, investors’ liquidity, good governance and applicable pension and securities regulations on fund diversification, financial disclosure and reporting.

(A) CIS

CISs in Nigeria are established as trust; which could be either a Unit Trust Scheme (**“UTS”**)[5] or a Real Estate Investment Trust (**“REIT”**)[6], and constituted by a trust deed. When a trust with infrastructure goals offers units to the public, it must adhere to SEC Rules for CISs. Even if a trust doesn’t offer units to the public, it may choose to register with the SEC for credibility or to attract pension fund investments.

According to the SEC Rules, all CISs must be registered with the SEC before conducting business[7]. UTSs and REITs can either be open-ended or closed-ended, with open-ended schemes allowing investors to redeem their units at any time while closed-ended ones do not. Also, close-ended UTSs have more defined rules, although they are less popular due to limited unit redemption options.

(B) LPs

A Fund may be structured as an LP with participation open to only a restricted group of investors. An LP can be registered under the Companies and Allied Matters Act (CAMA)[8], under state law, or under the laws of a foreign jurisdiction[9]. Nigerian law permits foreign-LP Funds to invest in Nigeria, but trading in Nigeria requires local incorporation, and offering securities to Nigerians necessitates SEC approval. LPs are limited to twenty partners, with at least one acting as a general

1 Federal Ministry of Finance, Budget and National Planning, Reviewed National Integrated Infrastructure Master Plan (2020).
2 Vanguard, ‘Pension Fund Assets hit N16.76tn’ (August 2023).
3 See the Pension Reform Act 2014 and the Regulations on Investment of Pension Fund Assets 2019 (the “Pensions Regulations”).
4 See ss. 91-95, ss. 450-453, and ss. 494- 500 SEC Consolidated Rules and Regulations (2013); SEC Amendment to Rules on Collective Investment Schemes under the SEC New Rules and Sundry Amendments (December 23, 2019) (the “SEC Rules”).
5 Ss. 152 and 315 of ISA defines a Unit Trust as “any arrangement made for the purpose, or having the effect, of providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from acquisition, holding, management or disposal of securities or any other property”

partner[10] who is responsible for executive functions and full liability for partnership debts, while other partners are limited partners without executive functions and liability limited to their contributed capital.[11]

Tax Structure

For trusts and LPs without legal personality, the Fund pays no income or capital gains tax on money going into the Fund by way of income or capital gains. Income and capital gains tax arise only on distributions out of Funds to trust beneficiaries [12] and limited partners respectively. For Funds constituted as LPs that have juristic personality, the law is unclear and as yet untested. The better view is that income and capital gains tax arise both when money goes into the Fund and when money goes out of the Fund as distributions to the beneficiaries or LPs.

Liquidity

In strict law, both trusts and LPs can be structured to allow ready redemption by investors, with the fund manager to pay the investors either out of cash in hand, borrowing afresh, selling assets or by issuing further units to new investors. In practice, ready redemption is rarely an option. This is because the Fund will ordinarily have distributed most of its cash, and most of the underlying Fund assets will not be so liquid as to be readily sellable either in part or as a whole.

It is not surprising that by the terms of the constitutive documents, redemption is typically allowed at best only periodically, and then only subject to maximum limits and a need to give ample prior notice. Units in a trust or LP cannot readily be constituted as tradeable securities on a stock exchange This is because by trading, more than fifty unitholders may occur and the law is to the effect that, absent a clear statutory exemption, a Fund with more than fifty members must be otherwise organized.

Governance

By law, a SEC-registered Fund, organised as trust or not, must have a custodian, a manager, a registrar, trustees, annual audited accounts, investor meetings, quarterly reporting to the SEC, periodic valuation, and an investment committee.[13] For Funds that are not registered with SEC, these several features are optional in strict law but widely adopted in practice. In practice, regardless of the organisational structure, it is also usual to have an advisory committee comprised of independent, credible and knowledgeable experts.

Pension Fund Regulations

Pension funds are permitted to invest only in SEC-registered Funds[14] and are subject to additional requirements such as the Fund having a minimum value of ₦5 billion and at least 60% of the Fund invested in projects within Nigeria. A single pension fund cannot invest more than 10% (for Fund I investments) or 5% (for Fund II investments) of the assets of the pension fund in any one Fund.

SEC Rules on Infrastructure Funds

On May 12, 2014, SEC first issued its Rules on Infrastructure Funds (the "Rules").[15] By the Rules, a fund manager must have a minimum of two experts in infrastructure work and has been active in infrastructure financing work for not less than five years. A Fund may have a minimum tenor of seven years, or interval schemes (with a five-year lock-in and intervals not exceeding one month).[16]

After being fully paid for, Fund units can be listed on securities markets.[17] Even Funds organized as private equity LPs may, but need not, be listed on a securities exchange.[18] Furthermore, publicly-traded Funds must disclose an anticipated timing for the listing of units in them and may buy back up to 20% of the initial units sold.[19] Funds must also disclose to potential investors their indicative portfolio composition as well as the minimum amount of units that an investor can subscribe to.

The Rules specify limits on how Fund assets are to be allocated. A Fund must:

a. invest at least 90% of its assets in securities or debt instrument[20] of Eligible Entities.[21]
b. invest up to 70% of its net assets in the securities or assets of any single Eligible Entity.

6 A trust made for the sole purpose of acquiring intermediate or long-term interests in real estate or property development. See s. 193 of ISA.
7 S. 160 of ISA and Rule 459 SEC Rules.
8 Companies and Allied Matters Act, 2020 (as amended).
9 LPs are often registered in jurisdictions such as Mauritius, the British Virgin Islands, Jersey and the Cayman Islands.
10 The general partner will be the fund manager or a wholly owned subsidiary of the fund manager incorporated with no assets and carrying on no business other than acting as general partner of the limited partnership.
11 S. 795 CAMA and s. 44(2) of the Partnership Law of Lagos State. Limited partners are the investors in the Fund. For efficient management, they are often represented by the trustees who receive subscriptions from investors and in turn invest in the LPs.
12 S. 17(5) of CITA

c. invest not more than 30%[22] of its net assets in debt instruments in Eligible Entities that are unrated or graded below investment grade.

d. restrict its investments in any unlisted or listed security issued by way of private placement by the Fund's Related Parties. Where a listed security exceeds 25% of the Fund's net assets, it must be subject to the approval of the trustees and full disclosures to investors.[23]

Fund assets are to be valued by the fund manager in good faith, using valuation methods based on trustee-approved principles.[24] The valuation process and methodology[25] must be documented, with supporting data retained for at least seven years after the offer ends.

Management fees payable to a fund manager[26] for a year cannot exceed 2% of the assets under management in that year.

However, where the Fund meets whatever hurdle rate may be specified in its constitutional documents, performance fees, carried interest, or incentive fees may be eligible in an amount not exceeding 20% of the profits above the hurdle rate.[27]

Where a Fund has eligible Sovereign Wealth Fund and/or Multilateral Development Finance Organization Limited Partner investors, the fund manager must always own a minimum investment of 1% of the Fund. Where it lacks these, but the fund manager has a minimum 'BBB'; Investment Manager rating from at least two SEC-recognized rating agencies, the fund manager must always own a minimum of 3% of the Fund[28]. These requirements apply whatever the organizational structure of the investment vehicle may be.

13 See the Investment and Securities Act (ISA) and the SEC Rules

14 Reg 4.7 (iii) of the Pensions Regulations permits the investment of pension fund assets in infrastructure funds registered with SEC.

15 SEC, Rules on Infrastructure Funds, Collective Investment Schemes and Sundry Amendments, May 12, 2014. The Rules were further amended in 2017 by the SEC's New Rules and Amendments as at June 2017. The Rules define "Infrastructure Fund" as a specialized fund or scheme that invests primarily (at least 90% of net assets) in securities, loans or securitized debts instruments of infrastructure companies, infrastructure capital companies, infrastructure projects, special purpose vehicles which are created for the purpose of facilitating investment in infrastructure and other permissible assets ("Eligible Entities").

16 An Interval Scheme is a collective investment scheme that is close ended but is made open-ended for an interval period within which redemptions may be made and new subscriptions received. An Interval Period is the period/interval of one month within which a Fund is open for purposes of redemptions and new subscriptions. An interval period may occur more than once in the life of an interval scheme.

17 In Nigeria, the securities markets include, the Nigerian Exchange Limited and the FMDQ Securities Limited.

18 Rule 4(2), the Rules. See also Section 5.2.11 of the 2019 Pension Regulations on requirements of Private Equity Funds.

19 Rule 4(3), the Rules.

20 A Fund may invest in equities, convertible instruments, money market instruments, structured loans, and bank deposits for liquidity purposes.

The Fund offer document must set out the usual disclosure information contained in the prospectus for a UTS fund and project-specific disclosures. A minimum hurdle rate must also be disclosed alongside other SEC-specified portfolio disclosures and financial reports. Additionally, the exit strategy of the Fund must be disclosed.

Every trustee, its employees and directors, and the fund manager must disclose to SEC any transaction undertaken by it in an investee company within one month. Furthermore, the compliance officer is required to notify the trustees or the fund manager's board of any potential conflicts of interest.[29]

Furthermore, fund managers are to submit quarterly returns to the trustee and SEC, as well as audited annual reports within three months of the Fund's fiscal year-end. Annual reports must be delivered to investors electronically and the full annual reports displayed prominently on the Fund's website once the units have been listed.[30]

Challenges

Infrastructure funds have to contend with legal, bankability, exchange risks and tax risks. The law relating to the regulation of Funds is now fairly stable even if it is as yet largely untested. However, Nigerian law still does not clearly recognize a broad exemption from income and capital gains tax for the proceeds of disposals by Funds that have "full-pass through" characteristics such as mandatory distributions to investors of at least 90% of their receipts. Such recognition is needed.

Further, adverse changes in federal, state and local tax and other law that may affect the initiation, financing and operation of actual projects abound. So are administrative inertia and arbitrariness. The judicial system is not as well-resourced as it should be. This means that congestion, delays and inefficiency are common.

It is not unusual for infrastructure projects seeking funding to lack adequate feasibility studies, clear revenue streams, or to address sufficiently risk mitigation strategies to make them attractive to investors. This limits the pool of viable projects for Funds to invest in. Larger pools of skills and funding, and greater awareness and understanding by would-be sponsors, for preparing projects are needed if the pool of projects for Funds to invest in is to become deep.

Fluctuations in exchange rates, fears of a long-term devaluation and an inadequate supply of foreign currency with which to expatriate returns on investment are especially important concerns for foreign investors. These concerns can be met to some extent by resorting to legally permissible solutions such as investing in Naira rather than foreign currency and using hedging instruments, but these solutions can be inconvenient and expensive.

Conclusion

The indirect support provided by Funds is of many kinds. Among them are support in respect of doing early-stage feasibility studies, getting and/or retaining staff or consultants, and providing limited guarantees. As may be expected, a single Fund may seek more than one class of return and serve more than one kind of impact goal. For Nigeria to achieve the ambitious infrastructure development goals outlined in the NIMP, concerted efforts to foster partnerships, attract investments, and channel funds is required. The success of these initiatives will not only boost economic growth and competitiveness but also significantly improve the quality of life for Nigerian citizens.

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21 Eligible Entities include infrastructure companies, infrastructure capital companies, infrastructure projects, and special purpose vehicles.
22 Where there is good cause to do so, the 30% limit may be raised to 50% with the prior approval of the trustees, the Fund's investment committee and the board of the fund manager.
23 Rule 6(7), the Rules.
24 Rule 7, the Rules.
25 Valuation methods are to be regularly reviewed by the trustee, fund manager, and annually by the auditor of the Fund. Furthermore, the valuation policy and parameters (i.e., interest rates, inflation, GDP growth, and exchange rates) must be disclosed in the prospectus and to the Fund's investors on an annual basis. The net asset valuation of each fund must also be declared bi-annually. Additionally, a SEC-registered consultant is required to value the assets of the fund bi-annually, with the consultant replaced every three (3) years.
26 By Rule 10 of the Rules, fund managers must (i) establish internal controls; (ii) exercise due diligence in ensuring asset maintenance, and avoidance of deterioration in value; (iii) record decision-making processes; (iv) prevent investments contrary to the Infrastructure Funds Rules; and (v) obtain necessary approvals and maintain proper care for asset collection and supervision.
27 Rule 8 of the Rules.
28 Rule 4(5) of the Rules.
29 Rule 10(e) (3) of the Rules.
30 Rule 13 of the Rules.

SEC RULES ON WAREHOUSING AND COLLATERAL MANAGEMENT

BY: GREYCHAPEL LEGAL

Commodities are movable properties capable of depletion and the certainty, safety, preservation and credibility of their title are crucial in commodities trading. The foregoing signposts the significance of the Securities and Exchange Commission's ("SEC") Rules on Warehousing and Collateral Management ("the Rules")[1] issued in March, 2021.

According to the Rules, commodities mean:

a. raw materials or primary agricultural products that can be bought and sold such as grains, livestock and its derivative products, extractive minerals and all other goods and articles, except all services, rights and interests in which contracts for future delivery are presently or in the future dealt in; or

b. any product resulting from any of the above activities, including by-products of such products; and

c. any product intended to increase the production of anything referred to in the above sub-clauses or improve the quality thereof.

Commodities trading is essentially speculating on the future demand and supply of commodities on an organised trading platform such as a commodities exchange ("Exchange").

An Exchange is a market where various commodities are traded, and the SEC has licensed 5 Exchanges to operate in Nigeria which include the AFEX Commodities Exchange, Lagos Commodities and Futures Exchange, Nigeria Commodity Exchange, and Gezawa Commodity Exchange. The commodities traded on the aforementioned Exchanges include oil and gas, agricultural produce, solid minerals and foreign currencies.

I. The Rules

The Rules regulate collateral management companies ('Collateral Managers') warehouses that store commodities to be traded on Exchanges in Nigeria, the issuance of electronic warehouse receipts ("EWR"), and outline market participants' responsibilities in commodities trading, including Exchanges, brokers/dealers, clearing and settlement houses, warehouse operators and Collateral Managers.

I. Collateral Managers

A collateral manager acts as a third-party holder of commodities, deposited by a depositor who is financed by a lending institution or for commodities to be traded on an Exchange, in a warehouse owned or effectively controlled by the collateral manager.

According to the Rules, collateral management means the activity of managing commodities as collateral, including but not limited to the following:

a. providing enabling arrangements for collateral commodity financing;

b. issuance of credible warehouse receipts and other necessary arrangements for agricultural commodity financing;

c. provision of quality warehousing services involving storage and preservation of commodities; and

d. stock audit, evaluation and verification services.

The Rules require collateral managers to register with SEC in order to provide collateral management services.

A collateral manager's major duties and responsibilities include certifying warehouses; and establishing the procedure for creating a pledge in favour of a financial institution against the commodities in respect of which an EWR has been issued.

1 https://sec.gov.ng/circular-on-warehousing-and-collateral-management/

Accreditation of Collateral Managers, Warehouses and Assayers by Exchanges

In addition to registering with the SEC, collateral managers, warehouses and assayers[2] must be accredited with an Exchange in order to handle commodities linked to the Exchange. The Exchange is mandated to make an initial report of the accreditation and annual assessment and maintain copies of the reports for 7 (seven) years.

A collateral manager may be linked to more than one Exchange, as such, it must be accredited by each of them. Each Exchange muse also submit a periodic report of details of warehouses accredited by them and inspections made.

2. Warehouses

2.1. Registration of Warehouses with the SEC

Warehouses provide custodial services to depositors of commodities, owners or financial institutions in whose favour a depositor's commodities may have been pledged using EWR.

The Rules require every warehouse that stores commodities to be traded on a registered Exchange to register with the SEC.

2.2. Certification of Warehouses by a Collateral Manager

Every warehouse is also required to be certified by a collateral manager to which it is linked, subject to the warehouse meeting the prescribed conditions including the warehouse being electronically connected with the collateral manager which is linked to the Exchange(s), and maintaining an efficient electronic inventory management system.

2.3. Duties and Responsibilities of Warehouse Operators

Responsibilities of registered warehouse operators include:

a. being able to always identify depositors of commodities in their custody as possession of the commodities is often ambulatory. The depositor may not be the owner or beneficiary of the stored goods;

b. insuring the value of commodities stored at the warehouses; and

c. issuing a Goods Received Note against commodity deposited in the warehouse. A Goods Received Note is a temporary non-negotiable and non-transferable note issued by a warehouse operator to a depositor for the purpose of acknowledging the deposit of a commodity until the issuance of an EWR to the depositor by the collateral manager within 2 (two) days.

3. Electronic Warehouse Receipt

An electronic warehouse receipt is a negotiable and transferable receipt issued electronically by a collateral manager as proof that specified commodities of stated quantity and quality have been deposited in the warehouse by the holder of the receipt. The term of validity of an EWR is the maximum period of the shelf-life of the commodity as determined by the assayer. Noting the importance of an EWR in commodity financing, the Rules placed some obligations on collateral managers in respect of EWR including that:

a. they shall be the only entity authorised to issue EWR, and shall control and maintain records of EWRs issued;

b. EWR shall be assigned a serial number, and shall maintain the same serial number;

c. they shall ensure that the EWR system/collateral management system is electronically linked to their certified warehouses and the Exchange where the EWR is to be traded;

d. they shall maintain the following records of all EWRs issued; date of issuance, expiry dates, qualities and quantities of the commodities for which they were issued, cancelation, transaction that has been carried out on the EWR as provided by the Exchange; and

e. they shall submit to SEC monthly, a summary of all EWRs issued, along with the total value of the relevant Commodity.

3.1. Pledging of Electronic Warehouse Receipt

The Rules allow a holder of an EWR to create a pledge in favour of a financial institution against the commodity represented in such an EWR in the manner prescribed by the collateral manager. In this regard, the Rules obligate collateral managers to:

a. make necessary arrangements for provision of pledging against the EWR issued in respect of the commodity, including the matters concerning the collateral management of such financing and matters connected therewith;

2 An assayer is an entity (person/institution) recognised by the relevant professional body that certifies and grades commodities that are delivered in registered warehouses.

b. provide financial institutions necessary access to the data for verification of EWR;

and

c. give effect to the pledge transaction in favour of the financial institution upon the instructions of the depositor of the commodity or such other person in whose favour EWR has been issued.

According to the Rules, the security created by pledging of EWR is a lien on the commodity represented through the EWR. The collateral manager is empowered not to release the commodity from the warehouse if a pledge exists on the EWR issued against the commodity.

The financial institution may release the pledge upon satisfaction by complying with the prescription of the collateral manager, following which, the commodity shall be available to the depositor or holder of the EWR.

From the foregoing, a collateral manager serves as a registry for keeping records of EWRs issued by it by keeping records of transactions conducted on an EWR by an Exchange, as well as records of pledges of EWRs in favour of financial institutions.

To ensure the integrity of the system, the Rules prohibit warehouse operators from issuing a warehouse receipt without actually receiving the commodities; or more than one receipt for the same commodities deposited by a depositor; except, in case of a loss or destruction where a duplicate receipt may be issued in compliance with the specified process.

II. Impact of the Rules

The introduction of EWR has benefited the Nigerian commodity market as evidenced by AFEX's warehouse receipt-backed commercial paper issued in 2021 for the raising of over $50 million for agricultural SMEs. Furthermore, the Rules have set a framework for enhanced collateralisation of commodities for agripreneurs through warehouse receipt- based financing.

The registered warehousing system also affords farmers access to professional storage services thereby reducing post-harvest losses of farm produce.

III. Recommendations

It is our view that a national legislative backing for warehouse receipts as a negotiable instrument may be necessary to enhance its potential by increasing public trust and its acceptance in commodity trading. We note that the National Assembly has considered some bills on the subject since 2016. Furthermore, rather than the individual registries of warehouse receipts currently being maintained by collateral managers in Nigeria, it is advised that a central registry for warehouse receipts be established like the repositories established in India by the Warehousing Development and Regulatory Authority for the management of electronic negotiable warehouse receipts. This will aid removal of restrictions of EWR to specific Exchanges to which the issuing collateral manager is linked, and also reduce transaction costs for commodity financing and trading.

Similarly, the SEC should establish a minimum standard for creation and release of pledges as against the current individual prescriptions of collateral managers. This will make for a level of uniformity in this regard.

Lastly, the Rules attenuate the right of a pledgee to a lienee. A pledgee is entitled in law to the realisation of the commodity by sale,[3] whilst a lienee only has a mere right of retention.[4]

IV. Conclusion

The issuance of the Rules is a necessary step in the right direction for commodities trading in Nigeria as it would drive increased activity among stakeholders. This is especially true given the opportunity afforded commodity owners and holders of EWRs to collateralise their commodities in registered warehouses.

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3 Carter v. wake (1877) 4 Ch. D. p. 605
4 I. O. Smith: Nigerian Law of Secured Credit, 2006, Ecowatch Publications (Nigeria) Limited, page 10

HAS THE "CRYPTOCURRENCY BAN" IN NIGERIA BEEN LIFTED?
BY: INFUSION LAWYERS

On 28 May 2023, former President, Muhammadu Buhari, signed the Finance Act 2023 into law.[1] Amongst other changes, the Finance Act 2023 introduced capital gains tax on profits made from disposal of digital assets in Nigeria. Immediately after handover to President Bola Ahmed Tinubu on 29 May 2023, the news of a "cryptocurrency tax" in the country hit the public. This was not without its attendant breaking-news, eye- grabbing headlines. [2] Understandably, many Nigerians appear to believe, albeit wrongly, that the Tinubu administration had introduced a "cryptocurrency tax" in Nigeria. This, as long as many saw it, signaled the acceptance of cryptocurrency by the Federal Government in Nigeria. Across the blogosphere, social media, and some traditional news channels, the news of how the Federal Government has finally lifted the "cryptocurrency ban" spread fast.[3] The question is: Has the "cryptocurrency ban" in Nigeria been lifted?

No cryptocurrency ban in Nigeria

First, there was no cryptocurrency ban in Nigeria in the first place. What people commonly refer to as "cryptocurrency ban" in the country is the cryptocurrency circular of 5 February 2021 by the Central Bank of Nigeria (CBN). In that circular, the CBN directed deposit money banks (DMBs), non-bank financial institutions (NBFIs), and other financial institutions (OFIs) to close accounts of persons or entities involved in cryptocurrency transactions on their platforms.[4] This directive does not apply to the entire country. It is limited to cryptocurrency transactions in Nigeria's banking and financial sector.

Consequently, cryptocurrency transactions outside the banking and financial sector are not covered by the CBN cryptocurrency circular. Even the CBN clarified its position shortly after it issued the circular. In March 2021, Adamu Lamtek, Deputy Governor of the CBN, clarified that the CBN did not ban cryptocurrency activity in the country. According to Mr. Lamtek, "[t]he CBN did not place restrictions from [the] use of cryptocurrencies, and we are not discouraging people from trading in them. What we have done was to prohibit transactions on cryptocurrencies in the banking sector".[5]

Nigeria's entire banking and financial system has been enforcing an unlawful CBN circular.

Apart from the CBN cryptocurrency circular only applying to cryptocurrency or cryptocurrency-related transactions in Nigeria's banking and financial sector, the CBN cryptocurrency circular is itself invalid. Being invalid, the CBN cryptocurrency circular is unlawful—if not illegal by virtue of subsequent relevant laws of the National Assembly on digital assets or virtual assets in Nigeria. The Money Laundering (Prohibition, Prevention, etc.) Act 2022[6] and the Finance Act 2023[7], superior to circulars, both recognize "virtual assets" and "digital assets", which include cryptocurrency, respectively. While section 30 of the Money Laundering act defines "financial institutions" to include virtual assets service providers (VASPs), section 2 of the Finance Act 2023 amended section 3(a) of the Capital Gains Tax Act (the principal Act) to recognize "digital assets".

CBN's primary mandates are provided under the Central Bank of Nigeria Act 2007 (CBN Act 2007) and the Banks and Other Financial Institutions Act, 2020 (the BOFIA 2020).[8] While the provisions of the CBN Act 2007 primarily center on the central-banking role of the CBN, the provisions of the BOFIA 2020 center on the role of the CBN as a regulator. I acknowledge the CBN's two-pronged statutory roles.

That said, the statutory powers of the CBN must be exercised in a manner that is consistent with the provisions of the applicable statutes. This is why when exercising its regulatory and supervisory powers as bestowed on it by

1 Finance Act 2023, Budget Office of the Federation, Nigeria, https://www.budgetoffice.gov.ng/index.php/finance-act-2023, accessed 8 June 2023

2 'TIMELINE: From ban to taxation — FG's journey to cryptocurrency acceptance', The Cable, 7 June 2023, https://www.thecable.ng/timeline-from-ban-to-taxation-fgs-journey-to-cryptocurrency-acceptance/ &'After introducing a blockchain act, Nigeria's first move is to tax 10% of crypto profits', TechCabal, 11 June 2023, https://techcabal.com/2023/06/10/crypto-ban-nigeria-crypto tax/#:~:text=The%20crypto%20tax%20comes%20from,on%20profits%20on%20digital%20assets

the National Assembly by prohibiting, sanctioning, or penalizing a bank, specialized bank, or other financial institutions over an offense, CBN's action is required to be in compliance with the laws establishing and regulating it.

There is no offense, whether under the CBN Act 2007, the BOFIA 2020, or any other written law in Nigeria, relating to cryptocurrency whatsoever, including facilitating or involving in cryptocurrency-related transactions in the banking and financial system. As long as such offense does not exist under Nigerian law, it is unlawful for the CBN or any of its regulated institutions to prohibit, sanction, or penalize any individual or entity over the purported contravention of the nonexistent offense. This is constitutional law.

And this is why under the BOFIA 2020, there is a litany of written offenses and their penalties expressly stated. Some of these written offenses and their penalties are as follows:

1. Operating a banking business without license is written and stipulated under section 2(2) of the BOFIA 2020;
2. A foreign bank or other entity not having a physical presence in its country of incorporation, or not licensed in its country of incorporation and which is not affiliated to any financial services group that is not subject to effective supervision, are written and penalties stipulated under section 2 of the BOFIA 2020;
3. A licensed bank not complying with the conditions of its license is written and penalties stipulated under section 5 of the BOFIA 2020;
4. A bank opening or closing any branch office, cash center, or representative office anywhere within or outside Nigeria without the prior written approval of the CBN are written and penalties stipulated under section 6 of the BOFIA 2020;
5. Restructuring, reorganizing, merging, or disposing of a bank without the prior written approval of the Governor or the CBN is written and penalties stipulated under section 7 of the BOFIA 2020; and
6. Operating foreign banks in Nigeria and offshore without the prior written approval of the CBN is written and penalties stipulated under section 8 of the BOFIA 2020.

Similarly, from requirement on cash reserves to restrictions on dividends, disclosure of interest by directors to restrictions on certain banking activities, and many others, offenses and penalties are stipulated under the BOFIA 2020. None is arbitrary. This is the point.

The CBN cryptocurrency circular of 5 February 2021, being a mere circular unsupported by any written law, is invalid and unlawful because of the following four (4) grounds:

1. It declared that the act of regulated institutions "dealing in crypto currencies or facilitating payments for cryptocurrency exchanges is prohibited";
2. It directed all DMBs, NBFIs, and OFIs "to identify persons and/or entities transacting in or operating crypto currency exchanges within their systems and ensure that such accounts are closed immediately;
3. Relying on the declaration and directive in the circular, DMBs, NBFIs, and OFIs deny banking and financial services to persons and/or entities transacting in or operating crypto currency exchanges within their systems; and
4. Relying on the declaration and directive in the circular, CBN sanctions DMBs, NFIs, and OFIs—by way of fines, revocation of licenses, etc—over the purported contravention of the directive in the circular.

Dealing in cryptocurrencies or facilitating payments for cryptocurrency exchanges is not prohibited by any written law in Nigeria. None of the four (4) actions above are permitted by any written law in the country. The legal consequence is unavoidable: The CBN cryptocurrency circular is arbitrary. It is invalid and unlawful. Null and void.

Does this mean that the CBN should simply watch? No. The CBN had other lawful means available to it. For example, contrast the CBN's arbitrary approach of 5 February 2021 to its previous approaches, and the point may become even clearer. In its anti-money laundering-focused circular of 17 January 2017 to banks and other financial institutions,[9] CBN carried out its statutory duty by requiring DMBs, NBFIs, and OFIs to adopt adequate AML compliance with customers who deal in or involve in cryptocurrency. Similarly, the CBN stayed within its statutory bounds in its consumer protection-focused press release of 28 February 2018 to the members of the public.[10]

Rather than arbitrarily prohibiting the dealing in virtual assets or facilitation of virtual asset-related transactions, or ordering DMBs, NBFIs, and OFIs to immediately close customer accounts, or fining DMBs, NBFIs, and OFIs, the CBN warned the members of the public about the risks associated with virtual assets.

If the CBN must prohibit cryptocurrency in Nigeria's banking and financial sector, it will need more than a circular for this. The CBN must seek the legislative intervention of the National Assembly. If it fails to, the CBN will most likely have very difficult days in court, as it did in Governor CBN v Rise Vest Technologies Ltd & Others.[11]

The decision in Governor CBN v Rise Vest Technologies Ltd & Others brings the point home.

As stated above, the CBN cryptocurrency circular is a mere circular that is incapable of creating an offense in Nigeria. Thankfully, the Federal High Court's decision in Governor CBN v Rise Vest Technologies Ltd & Others emphasizes and illuminates this point.

3 'FG Lifts Ban On Cryptocurrency, Introduces Taxation Instead', Nairaland, 16 June 2023, https://www.nairaland.com/7719047/fg-lifts-ban-cryptocurrency-introduces, accessed 9 June 2023
4 'Letter to All Deposit Money Banks, Non-Bank Financial Institutions and Other Financial Institutions', CBN, 5 February 2021, https://www.cbn.gov.ng/out/2021/ccd/letter%2520on%2520crypto.pdf&ved=2ahUKEwiWu67Mz73_AhVN Q0EAHeKXD1UQFnoECAsQAQ&usg=AOvVaw0HIW_f2TFe07tIZ0Lo69vx, accessed 9 June 2023
5 'Nigeria's Central Bank: We Didn't Ban Crypto Trading's, CoinDesk, May 22 2021, https://www.coindesk.com/markets/2021/03/22/nigerias-central-bank-we-didnt-ban-crypto-trading/ accessed 9 June 2023

In that case, the validity and lawfulness of the CBN cryptocurrency circular was considered by the Federal High Court in October 2021. The relevant facts are that the CBN froze the bank accounts of Rise Vest Technologies (sued as 1st Defendant) maintained with Guaranty Trust Bank Plc and Zenith Bank Plc. This was by virtue of an interim freezing order obtained by the CBN from the Federal High Court on 17 August 2021. Dissatisfied with the interim freezing order which was granted ex parte, Rise Vest Technologies applied to the Court to set aside or discharge the interim freezing order.

The CBN argued that under section 97(1) of the BOFIA 2020, it has the power to apply for and obtain an ex parte order to freeze any account which the CBN has reasons to believe is involved in the commission of an offense under any law. The offense against Rise Vest Technologies, as alleged by the CBN, is that it transferred funds to Buycoins, a cryptocurrency exchange, to purchase cryptocurrency. According to the CBN, this act contravened the CBN cryptocurrency circular of 5 February 2021.

But Rise Vest Technologies disagreed. It maintained that the CBN has not placed any evidence before the Court to show that it engaged in any unlawful conduct. Consequently, Rise Vest Technologies urged the Court to set aside or discharge the interim freezing order.

The Court, per Honorable Justice Taiwo O. Taiwo, after acknowledging the powers of the CBN under sections 97(1) and 97(3) of the BOFIA 2020, did not agree with the CBN's argument that Rise Vest Technologies has contravened any law. The Court relied on three reasons.

6 Section 2 of the Finance Act 2023 amended section 3(a) of the Capital Gains Tax Act (the principal Act) by inserting after the word "debt", the words, "digital assets". The Finance Act 2023 was signed into law 28 May 2023 and retroactively took effect 1 May 2023.
7 Section 1(3) of the CBN Act, 2007
8 Section 2 of the CBN Act, 2007
9 'Circular to Banks and Other Financial Institutions on Virtual Currency Operations in Nigeria', CBN, 12 January 2017, https://www.cbn.gov.ng/out/2017/fprd/aml%20january%202017%20circular%20to%20fis%20on%20virtual%20currency.pdf, accessed 9 June 2023

First, on the requirement that an offense must be written, the Court emphasized that "[t]he law is trite that any conduct that must be sanctioned must be expressly stated in a written law". Therefore, the Court "will not back any alleged infraction of the law which is not written or passed into law". The Court per Honorable Justice Taiwo O. Taiwo, is quoted below:

I have stated earlier that the freezing of the account of the applicant is from the facts before the court based on the allegation that the applicant engages in cryptocurrency. The applicant has not denied but the respondent seems to base its reason for approaching the court for ex parte order on the circular issued to Banks and other financial institutions on cryptocurrency. With due respect to the learned counsel to the respondent, there is no reference by the learned counsel to any law on which the allegation is based or that it is illegal in Nigeria to deal in cryptocurrency as at now. The court cannot speculate. It deals with hard facts.

Second, the Court disagreed with the CBN that its circulars have a force of law. The Court stated that while administrative circulars or notices have their place in government, they cannot create an offense.[12] "Being unknown to law, circulars cannot create an offense because it was not shown to have been issued under an order, Act, Law or Statute", the Court stated.

Third, regarding CBN's submission that the interim freezing order should be maintained based on public policy, the Court also disagreed. According to the Court, and rightly so, the Court cannot base its decision solely on public policies. As reasoned by the Court, this is because public policies are ideals which prevail in any community for the time being as to the conditions necessary to ensure its welfare.

Conclusively, the Court, granting the applications of Rise Vest Technologies, discharged the interim freezing order of the Court. Also, the Court ordered both Guaranty Trust Bank Plc and Zenith Bank Plc to immediately unfreeze Rise Vest Technologies Ltd's bank accounts and "grant the applicant unfettered access to the bank accounts".

A customer's unfettered access to his, her, or its bank account, particularly considering its constitutional implications, is not a thing to leave to "contravention" of mere circulars.

Apparently, under the supervision of the Emefiele-led CBN, Nigeria's entire banking and financial sector has been enforcing an invalid and unlawful cryptocurrency circular.[13]

Till date, that unlawful cryptocurrency circular of 5 February 2021, unfortunately, remains in force. In fact, the CBN has been sanctioning banks and other financial institutions in Nigeria by virtue of the invalid and unlawful circular. Also, a number of individual and corporate bank accounts have also been closed since the circular was issued. Others, frozen. This is unlawful. It should not persist in a democratic society.

The issue with the CBN cryptocurrency circular is beyond cryptocurrency and financial institutions. It is beyond disruptive innovations and regulations. It is, beyond anything else, about the sacredness of the law-making process in a democratic society. Here, I speak of the constitutionality to make law and create offenses under Nigerian law. Prohibiting the act of "dealing in crypto currencies or facilitating payments for cryptocurrency exchanges is prohibited" by the instrument of a circular, directing DMBs, NBFIs, and OFIs in the country to deny banking and financial services to all entities and individuals who deal in cryptocurrency, and sanctioning or penalizing the purported contravention of such directive is the act of law-making.

This is ultra vires the CBN under the CBN Act 2007, the BOFIA 2020, and any other law. The CBN cannot legally be the lawmaker, the enforcer, and the adjudicator.
Graciously, the Federal High Court decision in Governor CBN v Rise Vest Technologies Ltd & Others, as shown above, has helped to draw the lines. These are the same lines by which executive lawlessness is checked and executive powers balanced in any democratic society.

Recommendations/ Conclusion

Without mincing words, the Federal Government must address the elephant in the room. That elephant is cryptocurrency or crypto assets in Nigeria. Like the CBN has continued to emphasize, we must ensure a safe and sound financial system. But a safe and financial system will not be so for long without inclusiveness. Excluding an entire sector from access to banking and financial services is not only discriminatory but also a denial of a citizen's constitutionally guaranteed right to property.
First, the Federal Government should leverage the recently approved National Blockchain Policy to get the CBN to immediately withdraw or review the unlawful cryptocurrency circular of 5 February 2021. Until that

10 'Virtual Currencies not Legal Tender in Nigeria - CBN', 28 February 2018, https://www.cbn.gov.ng/out/2018/ccd/press%20release%20on%20virtual%20currencies.pdf, accessed 9 June 2023
11 Suit No. FHC/ABJ/CS/822/2021. Delivered by the Federal High Court (Abuja Division) by Honorable Justice Taiwo O. Taiwo, 18 October 2021
12 The Court cited Omatseye v FRN (2017) LPELR-42719 (CA); Maideribe v FRN (2013) LPELR-31861 (SC) (where the Supreme Court cited Prof. W. Wade and C. Forsyth, Administrative Law Book, 8th Edition, 851)
13 "Blockchain is yet to be recognised by Nigerian government", says Nigeria's Corporate Affairs Commission (CAC); queries application for blockchain company registration& Crypto Asset Buyer (CAB), October 20 2021, https://cryptoassetbuyer.com/blockchain-is-yet-to-be-recognised-by-nigerian- government-says-nigerias-corporate-affairs-commission-cac/, accessed 11 June 2023

unlawful circular, with all its misleading consequences, is out of the picture, Nigeria's vision for blockchain-technology applications in the country will continue to face challenges. Obviously, CBN's stance on cryptocurrencies currently impairs the Security and Exchange Commission's (SEC) ability to effectively regulate the digital assets industry. It also impairs efficient and effective law enforcement in this area.[14]

Second, the Federal Government should help ensure that the Money Laundering Act 2022 is allowed to operate. It recognizes virtual assets and requires VASPs to embrace anti-money laundering (AML) compliance. Being an act of the National Assembly, the provisions of the Money Laundering Act 2022, I believe, effectively illegalizes the CBN cryptocurrency circular. (The Finance Act 2023 which also recognizes 'digital assets' under the amended Capital Gains Tax Act similarly illegalized the CBN cryptocurrency directive). The current illegal CBN cryptocurrency circular, in effect, encourages opacity in the crypto industry. The Nigerian Financial Intelligence Unit (NFIU), particularly, should be given all the support it needs to implement the Money Laundering Act 2022 on VASPs. Basically, this is asking the CBN to reconsider readopting its AML-focused circular of 12 January 2017 to DMBs, NBFIs, and OFIs.[15] This is consistent with global best practice, including the recommendations of the Financial Action Task Force (FATF).

Third, the National Blockchain Policy has a role to play. In the recently approved National Blockchain Policy by the Federal Government, the unlawful CBN cryptocurrency circular is neither recognized nor mentioned.[16] Absolutely. This is a welcome development. No unlawful circular should merit any air in a national policy document. Notably, amongst other policy directions, it is stated in the policy that "[t]he Nigerian Government recognises cryptocurrency as one of the components that will catalyse the adoption of Blockchain Technology". Hence, the Nigerian Government is to "[provide] a framework for the use of cryptocurrencies, among others, which can help to mitigate risks such as money laundering and fraud". Therefore, stakeholders appointed as members of the 29-member Implementation and Steering Committee of the National Blockchain Policy, including the CBN, are required to support the successful implementation of the policy in Nigeria.[17]

Fourth, there is a need for capacity building in digital assets in both the private and public sectors in the country.
On the one hand, in the private sector, DMBs, NBFIs, and OFIs should be particularly encouraged to invest in capacity building in digital assets, particularly compliance.

Lastly, open, collaborative, and continual multi-stakeholder engagements in the emerging digital assets industry in Nigeria is presently lacking. Regulators and innovators need to improve the level of engaging each other. This, amongst other things, will help boost transparency and trust in the space. It will create a healthier climate for the growth and development of Nigeria's fledging digital economy, under which the digital assets industry is emerging. The future belongs to those who create it.[18]

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14 Ihenyen, S. Analyzing the Use of Cryptocurrencies in Nigeria for Illegal Activities: Before We Kill the Goose that Might Lay the Golden Egg, March 21 2021, https://infusionlawyers.com/analyzing-the-use-of-cryptocurrencies-in-nigeria-for-illegal-activities-before-we-kill-the-goose-that-might-lay-the-golden-egg/,accessed 11J une 2023
15 Circular to Banks and Other Financial Institutions on Virtual Currency Operations in Nigeria, CBN, 12 January 2017, https://www.cbn.gov.ng/out/2017/fprd/aml%20january%202017%20circular%20to%20fis%20on%20virtual%20currency.pdf, accessed 9 June 2023
16 National Blockchain Policy for Nigeria, National Information Technology Development Agency (NITDA) https://nitda.gov.ng/wp-content/uploads/2023/05/National-Blockchain-Policy.pdf&ved=2ahUKEwiO3Y7d9br_AhURilwKHey5ANcQFnoECA8QAQ&usg=AOvVaw0729tf1vT7el2rn1pa4lqa accessed 8 June 2023
17 Nigeria Launches Blockchain Policy, Inaugurates National Implementation Committee, VON, May 17 2023, https://von.gov.ng/nigeria-launches-blockchain-policy-inaugurates-national-implementation-committee/, accessed 12 June 2023
18 Malcolm X, influential African American human rights activist (1925-1965)

IREGULATORY GUIDELINE ON THE eNAIRA

BY: J-K GADZAMA



The Central Bank of Nigeria, vide a circular dated October 25, 2021, addressed to all stakeholders and referenced as FPR/DIR/PUB/CIR/001/023, issued the Guidelines for the Operation of eNaira. This issuance is in accordance with the enabling powers granted under the CBN Act 2007, particularly section 19 and the Banks and Other Financial Institutions Act (BOFIA) 2020. The eNaira is a digital form of fiat currency. It is designed to complement cash as a less costly, more efficient, generally acceptable, safe, and trusted means of payment and store of value. Additionally, it aims to improve monetary policy effectiveness, enhance the government's capacity to deploy targeted social interventions, provide alternatives for the less costly collection of government revenue, and boost remittances through formal channels. The eNaira Regulatory Guideline provides a comprehensive framework for the operation of eNaira, hereunder are the key contents of the guideline:

Introduction:

The Guideline establishes the legal basis for the issuance of the eNaira, emphasizing that it is a digital form of the Naira, issued by the CBN. It highlights the benefits of eNaira as a more efficient, cost-effective, and trusted means of payment that complements the traditional Naira.[1]

Scope:

The Guideline outlines the scope of the guideline, indicating that it applies to all financial institutions and users of the eNaira[2] This ensures consistent implementation and compliance across the eNaira ecosystem.

The eNaira Platform:

The Guideline provides an overview of the key components of the eNaira platform: [3]

- The Digital Currency Management System (DCMS): The CBN administers the eNaira through the DCMS, responsible for minting and issuing eNaira. Financial institutions maintain treasury Naira wallets on the DCMS.
- The Financial Institution Suite: This is the primary application used by financial institutions to manage their digital currency holdings, requests, and redemption with the CBN.
- eNaira Wallets: The eNaira platform hosts various types of wallets, including eNaira stock wallets (solely for the CBN), treasury eNaira wallets for financial institutions, merchant eNaira wallets for businesses, and individual eNaira wallets for end-users.

Functions and Features of eNaira:

The Guideline highlights the functionalities and features of eNaira within the eNaira ecosystem thus:

- Send and Receive eNaira: Participants, including MDAs and Consumers, can seamlessly transfer eNaira between wallets.
- Payments and Transactions: eNaira can be used for online and offline payments, allowing users to conveniently pay for goods and services.
- Remittances: The eNaira platform facilitates cross-border remittances, making it easier and more cost-effective to send and receive payments internationally.
- Government Disbursements and Social Interventions: The eNaira platform enhances the government's ability to distribute funds for targeted social interventions and disbursements.

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1 See Section 1
2 See Section 2
3 See Section 3

Compliance and Security:

The Guideline[4] emphasize the importance of compliance with Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) regulations. Financial institutions and eNaira users must conduct due diligence, monitor transactions, and report suspicious activities. Strong cybersecurity measures and fraud prevention mechanisms are also required to protect eNaira transactions and user information.

Onboarding and Transactional Processes:

The guideline[5] outlines the onboarding process for different participants, such as financial institutions, merchants, MDAs, and consumers. It also describes the transaction types available, including person-to-person, person-to-business, person-to-government, and various others, depending on the participant.

Unique Identifier:

The Guideline[6] also provides that participants in the eNaira ecosystem are identified using unique identifiers such as TIN for corporate entities, NIN and/or BVN for individuals, and BVN for merchants that are not corporate entities.

Charges and Cost Structure:

The Guideline[7] stipulates that transaction charges originating from the eNaira platform are initially free for the first 90 days, commencing from the 25th October, 2021, after which applicable charges, as outlined in the Guide to Charges by Banks, Other Financial and Non-bank Financial Institutions, will be applied.

4 See particularly Sections 3.6 and 10
5 See Section 5
6 See Section 7
7 See Section 9

AML/CFT Compliance:

According to Section 10.1 of the Guideline, participants are subject to a tiered structure with transaction and balance limits, depending on the level of verification, to ensure compliance with AML/CFT regulations.

Risk Management:

The Guideline[8] mandates financial institutions to implement sound risk management practices, including enterprise risk management frameworks, governance structures, policies, and secure IT infrastructure. They must also comply with additional risk management measures prescribed by the CBN.

eNaira Speed Wallet Recovery Process:

The Guideline[9] outlines the roles and responsibilities of banks and eNaira speed wallet users in the event of loss/theft of a device or compromise of the wallet. It provides steps for recovering the eNaira speed wallet in such situations.

Financial and Regulatory Reporting:

The Guideline[10] states that Financial Institutions must submit returns to the CBN as required by the Banks and Other Financial Institutions Act (BOFIA) 2020 and any specified regulations.

Dispute Resolution:

The Guideline[11] defines the process for resolving consumer complaints and disputes, both within financial institutions and between financial institutions. Unresolved disputes may be referred to an arbitration panel.

Overall, the eNaira Regulatory Guideline provides a comprehensive framework for the operation, security, compliance, and effective management of eNaira within the Nigerian financial ecosystem. It ensures transparency, stability, and efficient adoption of digital currency in Nigeria, thereby promoting financial inclusion and economic development.

SOME SIGNIFICANT IMPACTS OF THE E-NAIRA GUIDELINES ON THE NIGERIAN FINANCIAL SYSTEM AND THE OVERALL ECONOMY

Digital Transformation of the Financial System:

The introduction of eNaira represents a major step towards digital transformation in the Nigerian financial system.

The guidelines provide a regulatory framework that facilitates the shift from traditional cash-based transactions to digital payments. This transformation brings efficiency, cost-effectiveness, and convenience to financial transactions, promoting financial inclusion and reducing reliance on physical cash.

Enhanced Efficiency and Cost Savings:

The use of eNaira as a digital currency streamlines financial transactions, reducing the need for physical cash handling and associated costs. Businesses and individuals can make payments and transfers instantly, eliminating delays and complexities associated with traditional banking processes. This efficiency leads to cost savings for individuals, businesses, and the overall economy.

Improved Monetary Policy Implementation:

The guidelines enable the Central Bank of Nigeria (CBN) to have better control and implementation of monetary policies. With eNaira, the CBN can monitor transactions in real-time, gather accurate data, and respond swiftly to economic developments. This enhances the effectiveness of monetary policy measures in managing inflation, exchange rates, and overall economic stability.

Increased Financial Inclusion:

The introduction of eNaira promotes financial inclusion by providing access to financial services for unbanked and underbanked individuals. With simplified onboarding processes and digital wallets, more people can participate in the formal financial system, receive government disbursements, and engage in electronic transactions. This inclusion contributes to economic empowerment and reduces the reliance on cash-based transactions.

Strengthened Security and Fraud Prevention:

The guidelines prioritize security measures to protect eNaira transactions and user information. Implementing strong cybersecurity protocols, two-factor authentication, and AML/CFT checks enhance the security and integrity of the digital currency ecosystem. This helps prevent fraud, money laundering, and other illicit activities, fostering trust in digital payments.

Facilitated Cross-Border Remittances:

The use of eNaira simplifies and lowers the cost of cross-border remittances. Nigerians in the diaspora can easily send money back home through formal channels, leveraging the eNaira platform. This promotes the flow of

8 See Section 11
9 See Section 12
10 See Section 14
11 See Section 15

remittances into the country's formal economy, boosting foreign exchange reserves and contributing to economic growth.

Increased Government Efficiency:

The guidelines enable the government to enhance efficiency in the delivery of social interventions and disbursements. By using eNaira, the government can directly transfer funds to beneficiaries, eliminating intermediaries and reducing leakages. This ensures that targeted interventions reach the intended recipients promptly, improving transparency and accountability in public finances.

Encouragement of Innovation and Fintech Development:

The introduction of eNaira and the guidelines create opportunities for innovation and fintech development. Financial institutions and technology companies can develop innovative products and services that leverage the eNaira ecosystem. This fosters entrepreneurship, job creation, and the growth of the local fintech industry.

In a nutshell, the guidelines for eNaira have a transformative impact on the Nigerian financial system, promoting digital transformation, financial inclusion, efficiency, security, and transparency. It positions Nigeria at the forefront of digital currency adoption in Africa, driving economic growth and development in the digital era.

ASSESSING THE E-NAIRA BILL OF HEALTH IN THE NIGERIAN BUSINESS SPACE SO FAR

The eNaira was launched to create a swifter and more efficient alternative to the physical naira. There is no doubt that if implemented properly, the currency will achieve the goals set by the CBN. However, it has encountered a few issues.

Firstly, from its inception in 2021, the eNaira has failed to become mainstream, It was reported that by the end of 2021, there were only about 860,000 downloads with only about 14,000 transactions per week![12] This indicates that the Nigerian populace is yet to accept the eNaira as an alternative currency. This may be attributed to the fact that a large portion of the population is still unbanked, especially in the informal business sector.

Another contributing factor is the fact that a large number of Nigerians do not use digital banking services and do not have internet-enabled smartphones. In this regard, the CBN has made steps towards expanding the eNaira network to include USSD transactions and expanding the tiers to accommodate users that do not meet the initial KYC requirements to cater to the aforementioned demographic.

Additionally, the eNaira wallet is yet to be integrated into other personal banking platforms, this means that users would need to operate two separate platforms to access their mainstream banks and the eNaira which is an inconvenience. Lastly, the eNaira platform lacks a payment gateway for online payments and is not widely accepted by merchants and establishments including those that are government owned.

In conclusion, for eNaira to have any impact on the Nigerian business environment and achieve its main aims, the CBN needs to address the aforementioned issues and update the platform to include functions that will be easier to access and a one-stop shop for all transactions. When this is executed, it will aid financial inclusion and ease doing business in both the formal and informal sectors.

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THE DYNAMICS OF SOCIAL BONDS IN FINANCIAL SERVICES: AN OVERVIEW OF THE NEW SOCIAL BONDS RULES 2021 IN NIGERIA.

BY: J.O. FABUNMI & CO (JOF SOLICITORS)

The world of finance is continually evolving, with innovative financial instruments being introduced in the market regularly. One of such instruments gaining significant traction is the Social Bond. This paper aims to dissect the concept of Social Bonds, their eligibility, approval conditions, and the management of proceeds as stipulated by the Social Bonds Rules ("The Rules") issued by the Securities and Exchange Commission ("The Commission") in 2021. Rule 1 of the new Rules on Social Bonds 2021 defines a Social Bond as follows:
"A type of debt instrument, where the proceeds would be exclusively applied to finance or refinance new and/or existing eligible projects with clear and identifiable social objective(s) and which are dedicated to a target population" It is therefore is a specialized debt instrument. The proceeds from this bond are exclusively applied to finance or refinance fresh and/or existing projects that have a well-defined social objective. These projects, termed Social Projects, are designed to address or mitigate a specific social issue or to achieve positive social outcomes. The Social Bond's distinctive feature is also its dedication to a target population, implying that it aims to serve specific groups within society.

ELIGIBLE PROJECTS

To qualify as a Social Bond, the SEC's new Rules on Social Bonds that the funds must be invested

1. In providing or promoting one or more of the projects which qualify as Social Projects in line with the Rules; and
2. The social project must be dedicated to one or more of the specific target populations stated in the rules.

Qualifying Social Projects

Social Projects restricted to specific projects provided for in the rules.
These projects are categorized as follows:

a. Affordable basic infrastructure:
This covers projects such as clean drinking water, sanitation, transport, and energy, and related projects.
b. Access To Basic Services This includes services like health, education, vocational training, and healthcare and related services.
c. Affordable housing,
d. Job creation,
e. Food security, and
f. Socioeconomic advancement and empowerment.
In addition to these, any other Social Project approved by the Commission can also be eligible for funding by the proceeds of the Social Bonds.

Approved Target Population

The projects financed by the Social Bond must be dedicated to one or more identified target populations. The Rules identify these populations as individuals living below the poverty line, excluded and/or marginalised populations and communities, vulnerable groups, people with disabilities, migrants and displaced persons, undereducated and underserved populations due to lack of access to essential goods and services, and unemployed persons.

The Rules also allow for the inclusion of other target populations as may be provided in the updated Social Bond Principles.

CONDITIONS FOR ISSUANCE OF SOCIAL BONDS

The issuance of a Social Bond is not without its set of conditions. Apart from the general registration requirements for debt issuances as provided in the Rules and Regulations of the Commission, an issuer of a Social Bond must fulfill additional prerequisites. These include

1. A commitment letter to invest the bond's net proceeds in qualifying Social Projects,

2. A Feasibility Report outlining the measurable benefits of the proposed Social Project, and

3. A prospectus disclosing the social objectives, project selection criteria, decision-making procedures, social and environmental benefits, risks associated with the projects, and use and management of the proceeds.

4. Furthermore, an independent assessment or certification by a professional certification authority approved or recognized by the Commission is also required, except for Gender Bonds.

Management of the Proceeds

To enable an effective management of the Proceeds, the Rules require that the net proceeds from the issuance of a Social Bond can only be utilized for the purpose(s) stated in the approved offer documents. These proceeds are to be tracked as stated in the approved internal policy of the issuer and are to be domiciled with a Custodian in an escrow account specifically opened for the net proceeds. The issuer and the Trustees are the signatories to the escrow account.

The Trustees play a crucial role in ensuring that the net proceeds are utilized or invested in Social Projects. The issuer, on the other hand, is responsible for deploying the proceeds in the Social Project within the given time frame specified in the prospectus.

The Rules are particular in setting out that any unallocated proceeds are to be invested by the Trustees in money market instruments with an investment-grade rating. These might include other projects that align with the goals of delivering positive social outcomes, particularly but not exclusively for a target population(s). This provision ensures that all funds raised through the bond are effectively utilized towards achieving social good.

The introduction of Social Bonds in the financial market marks a significant step towards blending financial services with social responsibility. By directing funds towards identified social projects and target populations, Social Bonds can play a vital role in addressing socio-economic issues in Nigeria.

However, the success of Social Bonds hinges on transparency and accountability in their issuance and utilization. The requirement for issuers to provide comprehensive details about the intended use of proceeds and the project selection criteria, coupled with the mandatory independent certification, underlines the emphasis on transparency.

Furthermore, the requirement for issuers to track the utilization of the proceeds as per their approved internal policy and the role of Trustees in ensuring the proper utilization of funds underscores the focus on accountability. The requirement to domicile the proceeds in an escrow account with the issuer and Trustees as signatories further reinforces this focus.

Reporting Obligations

Yearly Reporting One of the primary obligations for social bond issuers is to provide regular updates on the utilization of bond proceeds. In line with the Rules on Social Bonds, issuers are mandated to furnish the Securities and Exchange Commission and any exchange where the bond is listed with an annual Social Bond Report. This report should provide the list of projects and assets to which the proceeds have been allocated for the duration of the bond. The reporting process and authority must be documented and kept as part of the issuer's Social Bond Framework.

In addition to these obligatory reports, issuers are also required to make the Social Bond Report available for inspection by the Trustees.

Content of the Social Bond Report

The report should include concise project descriptions, allocation percentages, expected impacts, qualitative performance indicators, and, if possible, quantitative performance measures. The methodology behind performance metrics should be explained for transparency.

This level of disclosure is indispensable to provide investors and stakeholders with a good understanding of the bond's social impact.

Assessment Reports

To further reassure investors of the social bond's alignment with sustainable finance principles, issuers must publish an assessment report issued by an independent professional assessment or certification agency.

This report should be made accessible on the issuer's website or other media channels. Furthermore, issuers must conduct and report annual follow-up assessments of the social projects and associated environmental benefits throughout the bond's tenor. These follow-up assessments should be made public in the issuer's annual social bond report and on their website or other media. A copy of this report must also be submitted to the Securities and Exchange Commission.

Refinancing

When issuers propose to allocate a portion of the bond's proceeds for the refinancing of existing social assets, they are obligated to disclose details of the portfolio/assets/projects identified for such refinancing. If pertinent, the expected look-back period for refinanced projects should also be disclosed. This transparency is pivotal to preserve the integrity and sustainability of social bond investments.
The Rules provide for the concept of a "Look-Back period".

This provision grants an issuer the privilege to retrospectively identify assets or earlier disbursements to eligible Social Projects, which can then be included in the social bond reporting. This ensures the issuer's past efforts towards social responsibility can be accounted for in the present.

External Review

Selection of External Review Providers To validate the alignment of proposed social bonds with all components of the Social Bond Principles, issuers must designate external review providers. These providers serve as independent auditors of the issuer's adherence to sustainable finance principles.

Scope of the Review

External reviews can be partial, focusing on specific facets of the issuer's social bond or related social bond framework, or comprehensive, assessing alignment with all components of the Social Bond Principles. The choice of review scope is at the issuer's discretion, and they must clearly communicate the scope of the review conducted.

Transparency and Credentials

External review providers must reveal their qualifications and pertinent expertise to ensure the integrity of the review process. This transparency enhances the credibility of social bonds in the eyes of investors and stakeholders.

Eligibility for Climate/Sustainability Bonds

The Rules ends by emphasizing that an entity meeting the outlined requirements for the issuance of social bonds and green bonds is eligible to issue climate or sustainability bonds.

In conclusion, Rules for Social Bonds in Nigeria provide a basic framework for the issuance and utilization of these innovative financial instruments.

However, the effective implementation of these norms would require the collective efforts of issuers, Trustees, the Commission and other stakeholders. By doing so, Social Bonds can become a powerful tool for social change, contributing to the economic and social development of Nigeria. While these norms represent a significant step forward, continuous monitoring and periodic revisions may be necessary to ensure their effectiveness. As the use of Social Bonds continues to evolve globally, it is crucial that Nigerian Rules stay in sync with global best practices, ensuring that Nigeria's financial services sector remains competitive while also contributing to societal welfare.

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REGISTRATION REQUIREMENT FOR CORPORATE BONDS IN NIGERIA

BY: KENNA PARTNERS

Bonds are fixed-income securities representing loans from investors to borrowers (usually businesses or governments)[1]It is a certificate of debt that contains a promise from the issuer to pay the bondholder's principal amount on a specific date, typically three (3) years or more after the date of issuance. Over the years, Bonds have evolved from the corporate world and into the legal world. Order 6 Rule 4 of the Court of Appeal Rules 2021 provides that in appeals relating to monetary judgment, the appellant can deposit a bond, guarantee or other like instruments from an eligible institution in such a sum not exceeding the judgment sum as security for the judgment sum. It is noteworthy that due to their flexible terms and conditions and cheaper interest rates, bonds are preferred to loans. Nigeria's three main categories of bonds are Treasury, municipal, and corporate. Our focus is on corporate bonds.

WHAT IS A CORPORATE BOND?

A corporate bond is a kind of financial product provided to investors by a corporation. In essence, the investor receives a few interest payments at either a fixed or variable interest rate in exchange for the Company obtaining the cash. Then, when the bond "reaches maturity," or expires, the payments stop, and the initial investment is refunded.

For a company to issue bonds, it must have good credit quality so that potential investors will feel confident that it can honor its debts and other obligations. This connotes that the security of the bond's resides in the Company's capacity to pay back the loan balance, which is reliant on its expectations for future revenues and profitability. A business with a track record of producing profits and paying off its debts will appeal more to investors. This is a major reason investors feel more at ease lending money to large enterprises as they believe they will be able to repay their debts and commitments.

A company may issue bonds in either of the following ways i.e. through a private placement or a public offering. Bonds may be offered for sale in an initial public offering to investors.[2] Public offerings are when an issuer, such as a public company, provides securities to investors on the open market, such as bonds or equity shares.

As the name connotes, private placement involves offering securities to private individuals.

The following prerequisites must be satisfied before a Company can conduct a private placement of bonds:

a. The Company must describe the intended use of the capital or funds.

b. The securities must not be offered to more than 50 (fifty) people and every offeree must be a qualified investor.

c. The Company must provide the contact information of bondholders to the SEC.

d. The minimum application amount must not be less than NGN 20 million per bond.

e. The offer must not exceed 10 (ten) working days. Provided that the SEC may extend the period under special circumstances.

f. There must be no advertising or general solicitations of the private placement.

BENEFITS OF THE ISSUANCE OF BONDS

a. The interest rates of bonds are significantly lower than the interest rates that arise from bank loans.

b. It is a funding source of debt rather than equity.

c. Bonds are a form of long-term financing.

d. There is a tax waiver. Corporate bonds have equal tax status as government bonds.

e. Bonds can be Issued through shelf offering (Medium note program)

f. Greater exposure/public relations: The Company can be listed for trading or quoted on a securities exchange or trading platform[3]

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1 'Understanding Bond Investing: It a Matter of Balance' (Marketing Maring, February 16, 2023) <https://www.marketingmarine.com/understanding-bond-investing-it-a-matter-of-balance/> accessed August 16, 2023

2 Rule 307(A) of the SEC Rules

REGISTRATION REQUIREMENTS IN NIGERIA

The issuance of corporate bonds in Nigeria is overseen by the Securities and Exchange Commission (SEC) alongside other pertinent regulatory agencies in Nigeria such as the Corporate Affairs Commission. The following are the requirements for the registration of corporate bond in Nigeria:

i**. Approval by the Securities and Exchange Commission (SEC):** Public firms must receive approval from the Securities and Exchange Commission (SEC) before issuing bonds to the general public because the SEC has jurisdiction over bonds issued by these companies. The SEC will then examine the application and supporting, documentation submitted by the issuing Company to make sure it complies with all applicable rules and to guarantee the safety of any potential investors.

ii. **Offer Circular:** The Company issuing the bonds must create an offer circular, also known as a prospectus that includes information about the bonds being offered, the issuer's financials, risk factors, and other pertinent disclosures. The SEC must evaluate and approve the materials before they are submitted. The bond's description, principal amount, denomination, price/par value, maturity date, redemption provisions, and conversion clauses are only a few of its terms.

iii. **Due Diligence:** The word "due diligence" refers to different investigative and verification processes carried out by the issuing Company, the mandated underwriters, and legal counsel. The issuing Company

3 SEC Websitehttps://sec.gov.ng/faqs-for-bonds/ acceesed on August 16, 2023

is required to take reasonable steps to ensure that the data including the Verifying financial statements, corporate operations, contained in the offer circular is accurate and comprehensive. Due diligence may be conducted for a number of reasons, including:

a. To certify that information disclosed or incorporated by reference in the offering documents does not include a false statement of a material fact or fail to reveal a material truth. To ensure that general disclosure obligations are met.

b. To make the offering less risky for the parties taking part on a legal and reputational level.

c. To confirm that there are no impediments to an issuer completing a debt offering, such as restrictions on borrowing covenants or constraints on corporate authority or capacity.[4]

iv. Credit Rating: While not usually required, getting the bonds' marketability improved by acquiring a credit rating from a reputable credit rating organization. Investors can get an evaluation of the issuer's creditworthiness through a credit rating. In order to make up for more risk, a corporation must give a higher interest rate the lower the credit rating.

v. Other Regulatory Bodies' Approval: Additional permissions or notifications may be needed from applicable regulatory organizations, such as industry-specific regulators or government agencies, depending on the issuer's Company and the sector it operates in.

vi. Market Operators: Additional conditions can be necessary if the issuer intends to list the bonds on a stock exchange like the Nigerian Stock Exchange (NSE). These can include adhering to continuous reporting requirements and the exchange's listing standards.

vii. Compliance with SEC Regulations: Issuers are required to abide by the SEC's rules and guidelines, which may include disclosure, due diligence reporting, and investor protection requirements.

viii. Reporting Requirements: After the bonds are issued, the issuer usually has to send regular updates, such as financial statements, reports on significant events, and other pertinent disclosures, to the SEC and other regulatory agencies.

CONCLUSION

The process of registering corporate bonds in Nigeria is meticulous and controlled. It calls for careful preparation adherence to SEC rules, and openness in presenting information to investors. The complex procedures ensure that the issue of corporate bonds maintains investor confidence and helps to a healthy financial market environment, starting with the choice of bond type and continuing with hiring professionals, doing due diligence, and getting SEC approval.

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4 James Chen, 'Due dilligence' (Investopedia, April 29, 2023) <https://www.investopedia.com/terms/d/duediligence.asp> accessed on August 15, 2023

UNLOCKING DEAD CAPITAL THROUGH SECURITIZATION
BY: PERCHSTONE & GRAEYS

It is well known that Nigeria is grappling with a substantial debt burden. The Debt Management Office recently revealed that Nigeria's foreign debt reached N49.85 trillion ($108.30 billion) by March 31, 2023, up from N46.25 trillion as of December 21, 2022, as reported by the Punch newspaper. With the country also facing escalating inflation, it is crucial for the government to explore strategies to lower its debt load and address the mounting economic challenges. Reviving dead capital presents a viable approach to diminish Nigeria's debt load and bolster its income streams. As noted by Business Day, a substantial sum of around N180 trillion Nigerian Naira is currently tied up in idle assets, constituting dead capital. Releasing this capital holds transformative potential, especially for a financially strained government like Nigeria, where debt servicing is projected to consume roughly 100 percent of its revenues in 2023. This strategy possesses the capability to not only rejuvenate the economy but also significantly contribute to the Gross Domestic Product (GDP) of the country. However, the process involves recognizing these idle assets, conducting thorough due diligence to validate their status and conditions, and subsequently unlocking their latent value.

WHAT IS DEAD CAPITAL?

Dead capital, also referred to as "dead wealth" or "dead assets", encompasses properties or resources that possess value but are not being utilized to generate income or productivity.

These assets often remain underutilized due to legal, regulatory, or economic barriers that impede their effective use. Dead capital can encompass a range of asset types, including real estate, land, intellectual property, and even untapped human capital. A typical illustration of dead capital is vacant urban land or informal settlements, particularly prevalent in developing nations.

Additionally, it is worth noting that some of these dormant assets are in the possession of the Asset Management Company of Nigeria (AMCON). These assets, primarily landed properties, were pledged as collateral by borrowers who defaulted on loan repayments. There is a potential for AMCON to strategically repackage these assets, creating opportunities for investors to rejuvenate and activate their potential. By repackaging such assets, AMCON can establish investment vehicles like Special Purpose Vehicles (SPVs), enabling investors to channel resources into revitalizing these dormant properties. Investors have the prospect of participating by investing in securities, such as debt notes, issued by the AMCON-established SPV. This approach holds the potential to unlock value from dead assets and promote their revival through prudent investment and strategic utilization.

REVIVING DEAD ASSETS THROUGH SECURITIZATION

As previously mentioned, the process of revitalizing dead capital involves the government's initial step of identifying dormant assets through thorough due diligence to assess their viability. Once confirmed as viable, the government can utilize the technique of securitization to generate revenue from these assets. Securitization, in essence, is a method of raising capital by leveraging a specific pool of future income streams. This is carried out through an intermediary entity often known as a Special Purpose Vehicle (SPV). In the context of dormant assets, as described earlier, it is evident that these assets are not currently producing income. The objective here is to inject capital to transform these dormant assets into income-generating entities. Alternatively, the object could simply be to inject capital to transform the asset such that they are more attractive for sale.

While traditional securitization typically focuses on capturing existing income streams, the approach shifts with dead capital. Here, the goal is to stimulate a new income stream or capitalize on weak income and transform the same income to repay investors. Despite this shift in purpose, the fundamental concept of securitization remains consistent.

In summary, securitization offers a mechanism to convert dormant assets into revenue generators. By using this approach, the government can breathe new life into unproductive assets, thereby bolstering economic activity and financial returns.

THE OBJECTIVE OF SECURITIZATION

Typically, with securitization, capital is raised based on the balance sheet of a designated entity.

This balance sheet provides a summary of the entity's assets and liabilities. However, with dead capital, where there is no existing income stream, a different approach is required. This is discussed shortly.

The goal of securitization is twofold: firstly, to secure finances, and secondly, to enhance the marketability and accessibility of the underlying assets. To simplify securitization as solely a financial endeavour is an oversimplification.

This is because the generated income
(receivable) is sold to the Special Purpose Vehicle (SPV). The investor funds are not raised against this income stream in the usual way resulting in capital and interest repayment. The stream of income is not acting as collateral. Instead, the stream is conveyed outright to investors using an intermediary, the SPV. Once sold, the income stream is exclusively owned by investors. This arrangement shields investors from the original owners' potential bankruptcy. Additionally, this structure attracts diverse investors with varying risk appetite.

Accordingly, the investment notes can be trenched into categories. **Grade A** investors preferring a moderate risk will expect lesser return than say **Grade B or C**. However, GradeC which expects huge returns will be the first hit in the event that the program fails to perform as expected. With trenching, the program creates an opportunity for original owners to invest.

They usually will invest in **grade c** to further credit - enhance the program. This further infuses confidence in attracting sophisticated investors.

Utilizing various tools and specialized mechanisms, securitization can effectively unlock the value of underutilized assets, transforming them into attractive investment prospects. The following steps outline the process of transforming unproductive assets into income-generating ones. To illustrate, we will use the example of undeveloped real estate owned by AMCON. These steps are also adaptable for an underdeveloped or unused urban area.

1. Identification: Recognize the dormant asset, such as the undeveloped real estate owned by say AMCON.

2. Evaluation: Conduct a comprehensive assessment to determine the asset's potential value and possible income-generating avenues.

3. Ring-Fencing: Isolate the asset and its potential income streams from the entity's liabilities to prepare for securitization.

4. Creation of SPV: Establish a Special Purpose Vehicle (SPV) to hold the asset and manage the securitization process.

5. Asset Transfer: Transfer the asset's ownership to the SPV, separating it from the original owner's financial risks.

6. Income Stream Sale: Sell the projected income stream to the SPV. Investors buy into the future income potential rather than capital and interest repayments.

7. Investor Participation: Diverse investors can participate, attracted by varying risk appetites and the insulation from the original owner's financial status.

8. Government Intervention: Introduce credit enhancement mechanisms to boost investor confidence and attractiveness. By following these steps and utilizing securitization techniques, dormant assets can be transformed into income-generating resources, contributing to economic growth and financial stability.

ADVANTAGES OF SECURITIZATION TO INVESTORS

As demonstrated earlier, securitization offers a range of benefits, including rapid access to capital and a reduction in government officials' debt obligations. Employing securitization for assets, such as urban land, holds the potential to fuel economic growth, elevate living standards, and open fresh investment avenues.

For investors, securitization insulates them from unrelated risks that could affect the securitized assets and yields. This essentially means that if an asset is owned by the government, the absence of government funds will not hinder the project. In the private sector, it ensures that the bankruptcy of the original owner will not disrupt a securitized project. One other notable advantage of securitization, particularly relevant to Nigeria, is its immediate integration of the private sector into initiatives initiated by the public sector. This fusion introduces a level of transparency and accountability that is invigorating.

It is crucial to reiterate that for any successful securitization program, transparency and self-accountability within its structure are paramount. This intrinsic transparency reduces the potential for corruption that might otherwise accompany such endeavours. The appointment of an independent trustee safeguards the interests of investors.

Moreover, securitization can effectively combat the issue of abandoned projects often stemming from government budgetary constraints. Although the concern of project continuity and political cycles is not unique to Nigeria, it remains pertinent in the country. Abandoned projects significantly erode investor confidence. Investors seek assurance that future administrations will not disrupt their investments, and securitization offers a protective shield against political intervention. By transferring the project's income stream to an SPV and involving independent contractors, servicing agents, and trustees, an additional layer of security is established. This not only safeguards the project but also bolsters investors' confidence in the transaction's integrity.

SECURITIZATION AND AMCON ASSETS

An area where the government could apply innovative concepts for effective solutions lies in the assets managed by AMCON. The government invested substantial amounts in repurchasing non-performing assets, many of which were accompanied by underlying collateral. A comprehensive audit is required to ascertain how these assets were managed or mismanaged. AMCON, on its part, should harness the potential of securitization. This approach could optimize the value of assets it acquired from banks. Previously, such assets were often undervalued and treated as scraps. Yet, through securitization, seemingly undervalued assets can now yield substantial income.

CONCLUSION

Despite its potential advantages, securitization requires a conducive environment to thrive, particularly when it comes to reviving dead capital. Therefore, careful legal, regulatory, and financial considerations are essential to ensure transparency, fairness, and the successful transformation of dormant assets into viable investment opportunities.

However, it is important to note that reviving dead assets through securitization has its own inherent risks which if unchecked, may deride the success of its implementation. For instance, evaluating non-income generating assets is complex and wrong valuation can undermine pricing and the program's success. Also, economic shifts may impact future receivables and challenging market conditions may hinder investors' ability to sell their holdings. To mitigate these possible potential threats, stakeholders who seek to embark on securitization must pay keen attention to proper risk assessments, transparent reporting, and clear investor communication.

Additionally, establishing a supportive legal and regulatory framework is crucial for successful securitization initiatives for dead capital. The anticipation is that the new administration in Nigeria will address this apparent regulatory gap, recognizing the numerous advantages of a securitization law, especially in light of the pressing need for finance. By providing adequate regulations, the government can foster an environment conducive to unlocking the latent potential of underutilized assets and generating economic growth.

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DATA PRIVACY AND OPEN BANKING: NAVIGATING THE REGULATORY LANDSCAPE IN NIGERIA

BY: PAVESTONES LEGAL

In an era marked by rapid technological advancements in the finance sector, open banking has emerged as a pivotal force reshaping the delivery of financial services around the world, and Nigeria is no exception. With its promise of increased innovation and collaboration, open banking holds great potential for transforming how individuals and businesses interact with financial institutions. However, amidst this transformative wave, a critical and timely concern emerges — the safeguarding of data privacy. At the heart of open banking lies the exchange of financial data, a process that, if not carefully managed, can pose substantial risks to the privacy and security of sensitive customer information. In view of this concern, the Central Bank of Nigeria ("CBN"), on February 17, 2021, issued the Regulatory Framework for Open Banking in Nigeria (the "Framework") and subsequently in March 2023 the Operational Guidelines for Open Banking in Nigeria (the "Guidelines"). The core objective of the Framework and the Guidelines is to regulate open banking in Nigeria and lay the foundation for a more interconnected and customer-centric financial ecosystem. In this article, we delve into the dynamic intersection of open banking and data privacy within the Nigerian context, drawing attention to the regulatory landscape and the paramount role of safeguarding customer data. As a licensed Data Protection Compliance Organization (DPCO), our law firm is uniquely positioned to guide organizations through the intricate terrain of data protection regulations and open banking compliance.

OPEN BANKING IN NIGERIA

Open banking is a paradigm shift in the way financial institutions operate and interact with each other, fintech firms, and consumers. At its core, it is about facilitating the secure sharing of financial data and services through Application Programming Interfaces (APIs). This sharing of data enables third-party providers to develop innovative financial products and services, ultimately benefiting consumers.

The Guidelines were established to define the standards and protocols for the operation of open banking in Nigeria, with several key objectives[1] :

- To provide clear responsibilities and expectations for the various participant categories.
- Ensure consistency and security across the open banking system.
- Stipulate safeguards for financial system stability under an open banking regime.
- Promote competition and enhance access to banking and other financial services.
- Outline minimum requirements for participants.

In the context of these objectives, the Guidelines encompasses various provisions that applies to the participants of open banking in Nigeria.

Some of the notable provisions of the Guidelines include:

1. Scope and Participants[2]: The Guidelines pertain to banking and related financial services as categorized by the CBN in the Framework. Participants in the open banking system are categorized based on the services they provide, including API Providers, API Consumers, and Consumers. The Guidelines delineates the roles and responsibilities of the aforementioned participants within the open banking ecosystem, ensuring clarity and compliance.

2. Data Categories and Risk Ratings: The Guidelines meticulously define data categories eligible for sharing and assign corresponding risk ratings to each. These categories encompass

Product Information and Service Touchpoints (PIST) (rated as Low Risk), Market Insight Transactions (MIT) (rated as Moderate Risk), Personal Information and Financial Transaction (PIFT) (rated as High Risk), Profile, Analytics, and Scoring Transaction (PAST) (also rated as High Risk and Sensitive). These risk ratings serve as a crucial framework for assessing and managing data sharing within the open banking system, ensuring a well-defined risk approach.

3. Open Banking Registry[3]: The Guidelines introduce the Open Banking Registry (OBR), a publicly accessible repository containing records of all authorized open banking activities and APIs within Nigeria. The OBR plays a pivotal role in regulatory oversight, ensuring registered participants' inclusion in the open banking ecosystem and their compliance with established Guidelines.

4. Consent Management [4]**:** One of the central tenets of the Guidelines is the requirement for explicit customer consent before any financial data can be shared. This ensures that individuals have absolute control over their data and can choose with whom to share it. Furthermore, the Guidelines emphasize the principle that users maintain the prerogative to grant, rescind, or decline consent for data sharing. The Guidelines also extend to key requirements delineated for the consent process, as well as the standards set for authentication and authorization procedures throughout the open banking user journey.

5. Data Protection: In accordance with the Guidelines, the CBN assumes a pivotal role in overseeing and governing data protection matters within the open banking landscape. The Guidelines obligate all participants to uphold compliance with relevant data protection and consumer protection laws, including the Nigerian Data Protection Act or any specific data protection regulations issued by the CBN for financial institutions. In this context, importance is placed on implementing robust data security practices, as well as adhering to recommended technical data encryption standards, such as the transport layer security, and similar protocols, to safeguard the integrity and confidentiality of customer data throughout the open banking ecosystem.

DATA PRIVACY RISKS IN OPEN BANKING

As earlier noted, the convergence of data privacy and open banking presents a nuanced and multifaceted challenge. Some of the potential risks to data privacy within the open banking system includes:

- **Data Breaches:** With increased data sharing among multiple parties, the risk of data breaches rises significantly. Each connection point becomes a potential vulnerability, potentially exposing sensitive customer data to unauthorized access.
- **Data Misuse:** Inadequate controls may allow data to be used beyond consent, potentially for unauthorized advertising or more. This can harm customers financially and erode trust.
- **Complex Consent:** The multifaceted nature of open banking can overwhelm customers with complex data-sharing relationships. This complexity may lead to misunderstandings and unintentional consent, risking data misuse.
- These risks underscore the importance of robust data protection, cybersecurity measures, and transparent consent processes within open banking to safeguard privacy and trust.

COMPLIANCE AND BEST PRACTICES

Navigating the nexus of data privacy and open banking in Nigeria demands a steadfast commitment to compliance and the adoption of best practices. Some of the steps and strategies that participants in open banking must embrace include:

1. Regulatory Compliance as a Pillar

Compliance with the Framework and the Guidelines is the cornerstone of open banking's credibility. All participants in the open banking ecosystem must adhere to the Framework, Guidelines and other pertinent laws and regulations like the Nigerian Data Protection Act. This adherence is not merely a legal requirement but also a commitment to preserving customer trust. Organizations must continuously monitor regulatory updates and align their practices accordingly.

2. Robust Data Protection Measures

To safeguard customer data, financial institutions and third-party providers must implement robust data protection measures. These encompass encryption protocols, secure data storage, and stringent access controls. Encryption, in particular, plays a pivotal role in ensuring the confidentiality and integrity of data throughout its lifecycle. Additionally, comprehensive data encryption protocols, such as Transport Layer Security (TLS), should be employed to secure data transmissions. It would be helpful for financial institutions and third-party providers to adopt a holistic approach to API security that would not only safeguard sensitive customer data but also help preserve trust among customers, regulatory authorities, and the financial industry as a whole.

3. Transparent Consent Processes

Transparent and well-documented consent processes are essential in the open banking environment. Customers should be presented with clear and easily understandable consent forms that outline the purpose, scope, and duration of data sharing. It is crucial to ensure that customers have the opportunity to provide explicit consent and, if desired, withdraw it at any point.

4. Authentication and Authorization Protocols

Open banking's strength lies in secure and authorized access to financial data. Robust authentication and authorization protocols are fundamental. These measures not only confirm the identity of users seeking access but also ensure that only valid and authorized requests are processed. Multi-factor authentication (MFA) and strong identity verification are key components.

5. Regular Data Audits and Assessments

Organizations should conduct regular internal and external data audits and assessments of their data privacy and security measures as required by the Nigerian Data Protection Act. Having conducted various data audits of organizations as a licensed

DPCO, we note that these evaluations help identify vulnerabilities and areas for improvement. Audits should encompass data handling practices, consent management, security infrastructure, and compliance with regulatory requirements.

6. Data Incident Response Plans[5]

Preparation for data incidents is as vital as prevention. Organizations must develop and maintain comprehensive incident response plans as stipulated in the Guidelines. These plans should outline the steps to take in the event of a data breach or incident, including notification procedures, containment measures, and communication strategies.

7. Employee Training and Awareness

Data privacy compliance is a collective effort. Employee training and awareness programs should be in place to ensure that all staff members understand their roles and responsibilities in preserving data privacy. This includes awareness of the latest phishing and social engineering threats.

8. Ongoing Monitoring and Adaptation

The data privacy landscape is ever-evolving. Organizations must commit to ongoing monitoring, adaptation, and improvement of their data protection practices. This includes staying informed about emerging threats, updating policies and procedures, and embracing new technologies and methodologies. By embracing these compliance and best practices, financial institutions and third-party providers can build a foundation of trust, security, and compliance within the open banking ecosystem. Moreover, they can harness the full potential of open banking while safeguarding the privacy and interests of their customers.

CONCLUSION

In conclusion, the journey towards harmonizing data privacy and open banking in Nigeria is multifaceted.
It demands unwavering commitment to regulatory adherence, innovative data protection strategies, and transparent customer engagement. By embracing these principles, organizations not only thrive within the open banking system but also serve as custodians of trust, nurturing a secure and customer-centric financial regime for all.

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1 Paragraph 5.0 of the Guidelines
2 Paragraph 4 of the Guidelines
3 Paragraph 6.0 of the Guidelines
4 Paragraph 7.0 of the Guidelines
5 Paragraph 8.2.2.1 of the Guidelines.

SEC RULES ON CROWDFUNDING: A CURSORY REVIEW ON THE BENEFITS AND LIKELY CHALLENGES IN NIGERIA

BY: PINHEIRO LP

Crowdfunding has emerged as an innovative way for entrepreneurs and small businesses to raise capital from a large number of individuals. Simply defined Crowdfunding is when a "crowd" funds a project or business, rather than one or two major investors. There are four different forms of crowdfunding and they can be in the form of rewards, donation, debt or equity-based funding. With donation-based funding, contributors give money without receiving anything in return. In equity funding, contributors get shares of the business. For debt-based funding, donors are repaid with interest. With reward-based funding, contributors receive tokens, products or services in return for their donations

On the 21st of January, 2021, the Securities and Exchange Commission ("SEC or the Commission") published its approved Rules on Crowdfunding ("the Rules"), which were instituted to curb the rise of Ponzi schemes that operated using the crowdfunding model, open a wider pool of investment opportunities for legitimate companies particularly MSMEs in Nigeria, and create a genuine regulated investment option for retail investors. The Rules contains eleven (11) parts as follows: Part 1- General Provision; Part 2- Crowdfunding Portal Requirements; Part 3- Obligations of the Crowdfunding Intermediaries; Part 4- Participants for Crowdfunding; Part 5- Requirements with respect to Transactions; Part 6- Obligations of the Fundraiser; Part 7- Restrictions; Part 8- Additional Requirements for Commodities Investment Platforms; Part 9- Miscellaneous; Part 10- Penalty; Part 11- Transitional Provision..

Section 13a of the Investments and Securities Act 2007 ("ISA") empowers the Commission as the apex regulatory body for the Nigerian Capital Market to carry out the functions and exercise all the powers prescribed in the Act to regulate investments and securities business in Nigeria. Some fundraising platforms used in Nigeria include Kickstarter, Indiegogo, Patreon, Farmcrowdy, ThriveAgric, with GoFundMe being one of the most popular, among others. Crowdfunding can also be used to raise funds for different reasons such as, medical emergencies or even charitable purposes.[1] This is usually done via the internet and social media platforms as it has proven to be the quickest way to reach a larger number of people in the country and is a space with little to no regulation.

Nigerians are beginning to hop on the crowdfunding bandwagon howbeit slowly. Nollywood is not left out as Kickstarter reported that 28,583 film projects were successfully supported through crowdfunding while 47,337 were poorly supported as of December 2020. Other movies such as Nosa Igbinedion's Oya: Rise of the Orishas, Romi Studios Small Town Burnouts and Kike Moronkeji's Alaga, have also been successfully funded through crowdfunding.[2]

The Rules provides investor protection provisions, including investment limitations, fundraisers disclosure requirements, and a requirement to use regulated intermediaries.

The Rules seek to establish the requirements for fundraisers and intermediaries seeking to participate in an investment-based crowdfunding contribution. Section 2 of the Rules states that the Rules shall apply to only investment-based crowdfunding.

This article provides an overview of the benefits and challenges of the Rules as well as recommendations on areas for improvement.

Benefits of Crowdfunding under the SEC Rules

1. Protection of crowdfunding participants:

There are steep registration requirements for Crowdfunding Intermediaries under the Rules. A crowdfunding intermediary is a company which facilitates transactions involving the offer or sale of securities or investment instruments through a crowdfunding portal and

1 https://guardian.ng/news/does-crowdfunding-have-a-future-in-nigeria/

qualifying as one is no small feat. Section 6 of the Rules provide the requirements for crowdfunding intermediaries and requires crowdfunding intermediaries to have a minimum paid-up capital of Million Naira (N100,000,000); as well as maintain a current fidelity insurance bond valued at a minimum of 20% of the paid- up share capital of the company.

2. Due diligence requirements:

Section 12 of the Rules provide that due diligence be carried out on the fundraiser (the company raising the funds) to ensure its credibility and further protect participants/investors funds. It provides that a Crowdfunding Portal shall carry out a due diligence on prospective fundraisers intending to use its platform; which include taking reasonable steps to: (i) conduct background checks on the fundraiser to ensure fitness and properness of the fundraiser's board of directors, officers and controlling shareholder(s); (ii) verify the business proposition of the fundraiser; and (iii) comply with all relevant KYC, and AML/CFT regulations as stipulated by the Commission.

3. Monitoring and Reporting:

Section 13 of the Rules ensure that the conduct of fundraisers is monitored and action is taken against any misconduct by the fundraiser. Fundraisers are also monitored to ensure the following- that the fundraising limits imposed on the fundraiser are not breached; to ascertain the classification of prospective investors into relevant investor categories; that fundraisers comply with all reporting obligations as may be specified by these Rules and all rules and regulations relating to market operators; that fundraisers file the following reports with the Commission; (1) A monthly report specifying the following; (a) total number of fundraisers who raised funds through the portal during the reporting period; (b) total number of investors who invested through the platform during the reporting period; (c) number and types of securities or investment contracts issued during the reporting period; (d) total amount raised on the platform during the reporting period; (e) such other information as may be specified by these Rules and all rules and regulations relating to market operators; that fundraisers file the following reports with the Commission; (1) A monthly report specifying the following; (a) total number of fundraisers who raised funds through the portal during the reporting period; (b) total number of investors who invested through the platform during the reporting period; (c) number and types of securities or investment contracts issued during the reporting period; (d) total amount raised on the platform during the reporting period; (e) such other information as may be required by the Commission.

4. Data Protection and Privacy: In view of Data Protection laws, and international best practices, **Section 14 of the Rules** provide that a Crowdfunding Portal should:

(a) establish appropriate safeguards for ensuring the integrity of the information received and published;
(b) ensure security and confidentiality of information collected from investors; (c) maintain reliable and secure operating systems; (d) identify the sources of operational risks and adopt adequate procedures and controls to avoid operational disruptions; (e) develop and implement a written identity theft prevention program; (f) install and ensure the operation of suitable back-up facilities; (g) be adequately insured against portal failure or closure; (h) keep a copy of all relevant documents for a period of at least seven (7) years after the date on which the document comes into the possession of the portal; (i) within ten (10) working days of receipt of a request from an investor, provide a copy of, or an extract from, a document that is relevant to the investor.

Challenges under the Rules

Notwithstanding the above and while the intention behind these Rules is commendable, there are challenges which need to be addressed to ensure a vibrant and inclusive crowdfunding ecosystem in Nigeria. Some of the challenges include:

1. Low Investment Limits: The current investment limits for individuals might restrict potential investors from fully participating in crowdfunding campaigns and limit the growth of the crowdfunding ecosystem. Section 4.1(b) of the Rules provide that the maximum amount that can be raised by a medium enterprise shall not exceed N100Million; the maximum amount for a small enterprise shall not exceed N70Million; and the maximum amount by a micro enterprise shall not exceed N50Million. These limits were set based on the definitions of MSMEs by the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN).[3]

2. Limited Eligibility Criteria: The Rules do not consider the other types of crowdfunding i.e donations and reward-based funding as explained earlier and appears to focus more on equity and debt-based funding. **Section 3 of the Rules** (Eligibility), provides for only companies incorporated in Nigeria with a minimum of two years track record to be eligible to raise funds. It did not provide how individuals can raise funds through a crowdfunding portal registered by the Commission.

3. Insufficient Investor awareness campaigns: Lack of comprehensive investor education, awareness campaigns, inadequate disclosure requirements, inadequate crowdfunding platform oversight and regulations, and

2 https://thenollywoodreporter.com/business/exploring-the-feasibility-of-crowdfunding-for-nollywood-projects/

limited due diligence measures might expose investors to higher risks, including potentially fraudulent activities. This is particularly important considering the prevalence of internet fraud in Nigeria.

4. Lack of Integration with Traditional Finance: Insufficient collaboration with traditional financial institutions could hinder the integration of crowdfunding into the broader financial ecosystem. The lack of collaboration with the traditional financial institution's majority high-net-worth individuals and angel investors is prevalent with can deter such investors from participating in crowdfunding, thereby limiting the pool of potential investors.

5. Lack of Flexibility: The rules might not adapt quickly enough to changes in technology, market trends, or investor preferences, potentially stifling innovation in the crowdfunding space. For instance, there is no provision for tokenization, a technology that represents assets through blockchain-based tokens, which holds significant promise for crowdfunding campaigns. This inadvertently limits the potential of using blockchain technology to streamline crowdfunding operations. Embracing tokenization can enhance liquidity, reduce costs, and expand investment opportunities for both businesses and investors.

Recommendations

Below are a few recommendations which through careful review and potential regulatory updates could create a more balanced and effective crowdfunding framework in Nigeria.

1. Adoption of ideas from other jurisdictions such as the[4] EU: The EU has taken some innovative steps in improving its crowdfunding legislation which Nigeria could adopt. Some of them are:

a. Cross-Border Operations: The Commission could consider mechanisms for cross-border crowdfunding within the African continent, allowing businesses to access funding from a larger pool of potential investors.

b. Safeguarding Investor Funds: An examination on how the EU safeguards investor funds, such as requiring funds to be

3 https://www.legal500.com/developments/thought-leadership/crowdfunding-in-nigeria-a-review-of-the-securities-and-exchange-commission-proposed-rules/

held in separate accounts and implementing mechanisms for refunds in case of campaign failure could be implemented.

c. Risk Assessment: The Commission could implement a system for assessing and classifying the risk associated with different crowdfunding opportunities, helping investors make informed decisions.

d. Ongoing Monitoring: The Commission could develop mechanisms for ongoing monitoring and oversight of crowdfunding platforms to detect and prevent fraudulent or unethical practices. Monitoring and reporting should not be left in the hands of the Crowdfunding intermediaries only, the Commission should also have a mechanism to independently monitor crowdfunding.

2. Higher Investment Limits: Increasing the maximum investment limit for individuals could attract more investors and encourage larger funding rounds and widening the scope of eligible projects and businesses would attract a diverse range of startups, stimulating innovation and economic growth.

3. Streamlined Regulations and Enhanced Investor Protection: Simplifying and clarifying the regulatory process would reduce barriers for both startups and investors, fostering more participation. Whilst strengthening disclosure requirements and due diligence measures can safeguard investors from potential
risks and fraudulent activities.

4. Support for Crowdfunding Platforms: Providing guidance, resources, and oversight for crowdfunding platforms could ensure they operate transparently and effectively and educating potential investors about the risks and benefits of crowdfunding could lead to more informed investment decisions. Conducting periodic reviews and seeking feedback from stakeholders can help identify areas for further improvement and adaptation.

5. Collaboration with Financial Institutions and Incentives for Angel Investors: Partnering with traditional financial institutions could bring expertise and credibility to the crowdfunding ecosystem. This is in addition to the introduction of technology to fit into the current market trends as digitization becomes more prevalent. Introducing tax incentives or other benefits for angel investors could also encourage more high-net-worth individuals to participate in crowdfunding.

Conclusion

The introduction of the Rules on crowdfunding is laudable, and shows an active step towards the right direction as it poses benefits to crowdfunding participants (Fundraiser, Crowdfunding Portal and the Investors). However, it is pertinent that the Commission pays attention to the challenges identified and recommendations proffered to better safeguard investors' funds, and enable fundraisers get investments through crowdfunding. Also, the Commission should proactively pursue full implementation of the Rules, and enforce the penalties prescribed on crowdfunding intermediaries that fail to comply with the Rules (a fine of not less than One Hundred Thousand Naira and the sum of five thousand Naira for every day the violation continues) to deter those who may have ulterior motives using a crowdfunding platform.

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4 European Union Crowdfunding Regulations 2021- https://www.irishstatutebook.ie/eli/2021/si/702/made/en/pdf

PRUDENTIAL GUIDELINES FOR INSURANCE INSTITUTIONS IN NIGERIA

BY: PISTIS PARTNERS

Prudential guidelines in the Nigerian insurance sector are a set of regulatory directives and standards issued by the National Insurance Commission (NAICOM) to ensure the soundness, stability, and integrity of insurance institutions operating within the country. These guidelines lay out specific requirements, best practices, and procedures that insurance companies, reinsurers, and other related entities must adhere to in their operations. Prudential guidelines aim to safeguard the interests of policyholders, maintain the financial strength of insurance institutions, and promote the overall health of the insurance industry. NAICOM issues prudential guidelines periodically to keep pace with industry developments, changes in international best practices, and emerging risks. These guidelines provide a framework for insurance companies to assess their operations, manage risks effectively, and contribute to the stability of the financial system. In essence, prudential guidelines serve as a regulatory tool to enhance the overall performance and reliability of the insurance industry, safeguard policyholders' interests, and promote sustainable growth in the sector.

HISTORY OF THE INSURANCE ACT

The current well-organized and all-encompassing insurance landscape in Nigeria has a fascinating history. Going back to the pre-colonial era, there were rudimentary institutions designed to aid individuals within a community facing comparable economic uncertainties. These institutions functioned by distributing losses evenly among the members of the group. It's important to note that this practice predominantly operated within communities that faced similar economic challenges.

Nigeria witnessed in the colonial era particularly between the years 1920-1940 a significant measure of growth in the insurance sector. However, the sector did not fully take shape and develop until Nigeria gained independence from British rule. The earliest recorded insurance company fully established with Nigerian directors in Nigeria was the Royal Exchange Assurance born in 1921 and it maintained that status until 28 years later when 3 other companies emerged and were registered to also carry on the business of insurance.[1] These companies are the Norwich Union Fire Insurance Society, Tobacco Insurance Company Ltd, and the Legal and General Assurance Society Limited.[2]

By independence, Nigeria had about 25 insurance companies in existence.

Upon gaining independence, Nigeria assumed full control of its insurance sector, ushering in an era of regulatory development. The 1960s marked a pivotal period with the introduction of key legislation, notably the Insurance Companies Act No. 58 of 1961 following the report of the JC Obande Committee set up by the government to carry out survey of the insurance sector. The Insurance Companies Act initiated the regulation of insurance entities, agents, and the creation of a government insurance department thereby instituting a comprehensive framework for oversight led by the Registrar of Insurance.

In 1969, 63% of the insurance companies operating in the country were owned entirely by foreigners.[3] This together with allegations of fraud in the insurance of government business led to the establishment of The National Insurance

1 T.B Geoffrey, Historical Origins and Development Of Insurance Law, Insurers and Insurance middlemen: Interest in Nigeria (Port Harcourt Law Journal) Vol. 8 No.2, September 2019.
2Ibid.
3 S.E. Omoruyi and A.O. Demuren (1980), The Growth of Insurance Business in Nigeria 1969-1978. CBN Economic and Financial Review, 18(1), 21-40.

Corporation of Nigeria (NICON) to control corruption in the insurance of government properties and to stimulate growth in the Nigerian insurance business as foreign businesses were criticized for catering to foreign business interests alone.[4]

1976 saw the emergence of Insurance Decree No. 59, which laid the groundwork for the establishment of Nigeria Reinsurance Corporation (Nigeria Re). Nigeria Re was established in 1977 under the Nigeria Reinsurance Corporation Decree No. 49 to provide reinsurance services in furtherance of the government's objective to increase local ownership and control of insurance companies. The dominance of government owned insurance companies was however faulted and under the pressure of the World Bank, African and Nigerian economies drifted towards liberalization of the insurance market.[5] Insurance Decree No. 58 of 1991 which embraced liberalization by allowing private insurance companies and foreign involvement was promulgated.

Therefore, the ownership of insurance companies in Nigeria began to shift to private from public ownership.[6]

Further reform occurred with the 1997 Insurance Decree No. 1 which established the National Insurance Commission (NAICOM) as the regulatory authority responsible for the supervision and regulation of insurance business in Nigeria[7]. Eventually, the Insurance Act of 2003 supplanted prior decrees, creating a comprehensive regulatory framework. It addresses capital requirements, solvency margins, licensing, and consumer protection.

Despite attempts at comprehensive review, including the stalled Consolidated Insurance Bill during the administration of Former President Muhamadu Buhari, the Nigerian insurance sector remains poised for reform. The current administration, led by President Bola Ahmed Tinubu, holds the promise of renewed attention to enhance corporate governance standards, align with global practices, and tackle emerging industry challenges.

PRUDENTIAL GUIDELINES FOR INSURANCE INSTITUTIONS IN NIGERIA

In the intricate realm of the insurance sector, adherence to prudential guidelines serves as the compass guiding regulated entities toward the shores of compliance and resilience. As the steward of regulatory oversight, the National Insurance Commission (NAICOM) emerges as the vanguard in steering the industry's course. It is within the ambit of the NAICOM's authority, as conferred by the National Insurance Commission Act 1997 and the Insurance Act 2003, that the intricate tapestry of prudential guidelines unfolds.

These guidelines, akin to foundational pillars, delineate the path insurance institutions must tread, defining the standards by which they operate. With meticulous attention to detail, NAICOM weaves a comprehensive web of regulatory benchmarks that span underwriting, reinsurance, investments, reserving, outsourcing, intermediary services, and beyond. In doing so, it fosters an environment conducive to the reliable, sound, and sustainable evolution of the insurance industry, ensuring its growth remains firmly rooted in stability.

This elaborate framework finds its structure in three distinct sections:

1. Part A extends its embrace over Insurers and Reinsurers,
2. Part B extends its guardianship over Insurance Intermediaries, while
3. Part C's umbrella covers the entire landscape, applying universally.

In an industry characterized by dynamic shifts and evolving risks, the resonance of these guidelines rings clearer than ever. Among the crescendo of regulatory symphonies, the Prudential Guidelines for Insurance Institutions 2022, the latest opus from NAICOM's arsenal, holds a place of prominence.

Coming into effect on the 1st of October 2022, these guidelines reverberate with the collective aspirations of fortifying the sector's bedrock, propelling it toward a future marked by unwavering strength and enduring prosperity.

As Nigeria's insurance horizon continues to expand and adapt, the steadfast guidance of prudential guidelines remains a lighthouse, cutting through the fog of uncertainty and setting the course for a voyage defined by stability, growth, and sustainability.

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4 https://nigerianwiki.com/National-Insurance-Corporation-of-Nigeria
5 https://www.getinsurance.ng/history-of-insurance-in-nigeria/amp/#
6 Ibid
7 S.1 of the National Insurance Commission Decree No. 1 of 1997, Laws of the Federation of Nigeria 1990.

PART A: INSURERS AND REINSURERS.

This segment delves into the pivotal duties borne by insurance companies, establishing a roadmap to safeguard policyholder funds and maintain transparent financial operations.

Guidelines are set for the protection of policyholder funds, submission of duly audited financial statements, and annual returns of each financial year by the insurer to the commission on or before the 30th of June of the following year. Provisions[8] are also made for Investments to ensure that the asset of the insurers is at all times managed in a manner consistent with insurers' liability profiles and that investments are made in a sound and prudent manner taking into consideration the security, liquidity, diversification, and return on investments.[9]

Other guidelines include provisions for Reinsurance arrangements, Aviation insurance, the Risk management framework for insurers and reinsurers in Nigeria, Annuity business, Actuarial functions which are integral to key aspects of all insurers' operations, and also regulations on the outsourcing of some of the insurer's responsibilities to third parties by the insurer.[10]

Some of the notable provisions in the Prudential Guidelines for Insurance Institutions 2022 with respect to Part A include the following;

8 Guideline No. 3
9 Guideline No. 3.1.2
10 Guidelines 4,5,6,7,8 & 9
11 Guideline 2.3.0
12 Guideline 2.6.1

ANNUAL RETURNS AND ACCOUNTS:

1. Increase in the amount for filing fees to be paid by insurers at the time of submission of annual returns and audited financial statements by 100% for life insurers, general insurers, and composite insurers while that of reinsurers is increased by more than 30%. Takaful Insurers and Micro Insurers upon submission of annual returns and audited financial statements are also now obligated to pay filing fees to the sum of #500,000.00 and #300,000.00 respectively.[11]

2. Insurers are now compelled to obtain the prior approval of the National Insurance Commission via submission of a written application before paying out dividends.[12]

3. Failure to render quarterly financial reports shall attract a fine. However, unlike the old guideline which prescribes #5,000 as a penalty, the 2022 guidelines leave the penalty to the discretion of NAICOM. Penalties shall now be to the amount prescribed by the Commission.[13]

4. Insurers are mandated to carry out audits and the appointment of External Auditors must be with the approval of the commission. By the 2022 guidelines, the tenure of the appointed External Auditor shall be for a period of four (4) years in the first instance and may be re-appointed for another non-renewable period of four (4) years.[14]

INVESTMENTS:

1. The Board of Directors is responsible for the formulation and approval of the strategic investment policy of the insurer taking into account applicable regulations, analysis of the asset/liability relationship, the insurer's overall risk tolerance, long-term risk-return requirements, liquidity requirements, and its solvency position. By the 2022 guidelines, the Board of Directors is now mandated to review at least annually, the adequacy of the company's overall investment policy in light of the company's activities and its overall risk tolerance, long-term risk-return requirements, and solvency position.[15]

2. Insurers can invest a maximum of 10% of shareholder's funds in collective investment funds such as Unit trust, Open-ended investment companies, exchange-traded funds, and real estate investment trust scheme provided that the funds and trusts have been registered with the Securities and Exchange Commission (SEC).

3. Insurers must have mechanisms in place to ascertain that their assets and liabilities are properly monitored to ensure that their investment activities and asset positions are adequate to settle their liabilities as and when they become due.[16] They must also develop an asset-liability management policy appropriate to the nature, scale, and complexity of the insurer's operation.[17]

4. Insurers must also constitute a Management Investment Committee which shall ensure compliance with the Board approved investment policy amidst other functions. They must also establish and maintain an Investment Department/Unit to be headed by an experienced management staff who shall be a member of the Management Investment Committee.[18]

5. Insurers are to develop a framework for stress testing and routinely carry out stress testing to identify vulnerabilities and assess their impact to ensure that there are no vulnerabilities that could impact their investments and if there are any, to ensure early detection and quick remedying of the vulnerabilities.[19]

6. Before insurers can invest in certain funds, such funds must meet some conditions. The funds include; Exchange Traded Funds (ETF), Collective Investments Funds, and Real Estate Investment Trusts (REITs). The conditions for investing in ETFs include registration of the fund manager with the SEC, the listing of the fund on an exchange platform registered by the SEC, underlying securities or assets shall be held in a custody arrangement or Depository account approved by the SEC, etc.

13 Guideline 2.13.1
14 Guideline 2.15.0
15 Guideline 3.2.5
16 Guideline 3.4.1
17 Guideline 3.4.2
18 Guideline 3.5.0
19 Guideline 3.7.0

PART B: INSURANCE INTERMEDIARIES

This part comprises a comprehensive set of guidelines and regulations for insurance intermediaries such as Insurance Brokers and Loss Adjusters. There are provisions regulating their filing of annual returns as well as their audited statement of accounts comprising a statement of financial position, statement of profit or loss, and other financial records. This part also outlines procedures, formats, penalties for non-compliance, and the roles of different stakeholders involved in the process. It covers other aspects like the separation of clients' accounts, permissible outgoings from clients' bank accounts, bi-annual returns on clients' accounts, insurance levy returns, and audit processes.

PART C: GENERAL APPLICATION

This part contains guidelines regulating the change in ownership of an insurance institution and divestment of its interest in a related enterprise in which it has significant control. There are also guidelines for insurers who participate in centralized or shared service arrangements with related entities. Other guidelines include provisions for the harmonization of the International Financing Reporting Standards (IFRS) with the Nigerian Insurance Industry to enhance international acceptability of the Nigerian Insurance Industry's financial statements and increase its relative attractiveness to international investors.

CONCLUSION

As we conclude the exploration of prudential guidelines within the insurance realm, we unveil a profound truth: these directives stand as the cornerstone for aligning regulated entities with the height of international standards. An insurance sector that steadfastly adheres to these global best practices transcends mere operational efficacy – it transforms into a dynamic force that propels Nigeria onto the world stage, beckoning foreign investments and fostering a reputation of reliability.

While opportunities lie ahead, these guidelines forge a path to excellence. By synchronizing with international standards, they amplify the industry's impact, creating a symphony of progress resonating beyond borders. As each guideline leaves its imprint, our insurance sector evolves from a mere cog to a global beacon. In this transformative crescendo, our trajectory shifts for the better – the compass of progress is steadfast. Embracing multifaceted evolution, these guidelines showcase our dedication to crafting a globally resonant insurance landscape. Poised for challenges to come, they illuminate a narrative of growth, stability, and international recognition.

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GUIDELINES FOR WHISTLEBLOWING IN THE NIGERIAN BANKING INDUSTRY

BY: ROSEWOOD LEGAL

On 1st October 2014, The Guidelines for Whistleblowing for Banks, and Other Financial Institutions in Nigeria ("the Guidelines") were implemented. The Guidelines make it obligatory for all financial institutions under the supervision of the Central Bank of Nigeria (CBN) to comply with the whistleblowing requirements. It also sets a minimum standard to ensure whistleblowing practices' effectiveness in the Nigerian banking industry. The Guidelines were necessitated by the widespread occurrence of misconduct within organizations notably banks and other financial institutions. Whistleblowing is an act of exposing unethical or unlawful conduct of employees, management, directors, and other stakeholders of an institution by an employee or other person to the appropriate authorities. It is a crucial mechanism in the pursuit of integrity and public interest. This article aims to comprehensively analyze the Guidelines for whistleblowing in the Nigerian banking sector, outlining the legal framework, scope, objectives, process, protection, and challenges involved in whistleblowing policies.

Scope and Objective

Within the framework of the Nigerian banking sector, whistleblowing encompasses the reporting of illicit activities, such as financial malpractice or fraud, failure to comply with legal obligations or statutes, actions detrimental to health, criminal activities, insider abuses, non-disclosure of interest, failure to comply with regulatory directives and other related transactions.[2] These actions may involve employees, management, or the entire organization. Banks and other financial institutions are legally required to ensure:

1. their employees, management, directors, and other stakeholders such as contractors, shareholders, job applicants, and the public are aware of these protections;
2. they make quarterly returns to CBN and the Nigeria Deposit Insurance Corporation (NDIC) on all whistle-blowing reports and corporate governance-related breaches;
3. they include a whistle-blowing compliance status report in their audited financial statement; and
4. they review their whistle-blowing policies every three (3) years and notify the regulatory authorities of all such reviews.

The objective of the whistleblowing policy is to encourage stakeholders to bring unethical conduct and illegal violations to the attention of an internal or external authority in a confidential manner without any fear of harassment, intimidation, victimization, or reprisal of anyone for raising such concern(s) under this policy.[3]

Whistleblowing Procedures

The Guidelines stipulate that banks and other financial institutions are required to possess a whistleblowing policy, which must be effectively communicated to its employees, contractors, shareholders, job applicants, and the wider public. Additionally, it emphasizes the necessity of ensuring the policy is available on the organization's websites. As part of the outlined procedures, these institutions are expected to establish a dedicated hotline, email address(es), or secured online platform aimed at promoting the reporting of any instances of ethical violations directly to the respective bank, financial institution, or the CBN. The information provided by a whistleblower must encompass the following:

1. Confirmation of a committed infraction'
2. Identification of individuals who have breached banking laws, as well as internal policies and procedures; and
3. The attempted concealment of matters related to the aforementioned.

Such disclosure is said to be rightly made when it is true and reasonable.

Protection of Whistleblowers

The establishment of whistleblower protection mechanisms is crucial in both ensuring and incentivizing the reporting of instances involving corruption, fraud, and misconduct to promote transparency, accountability, and integrity in the banking sector. It is pertinent to note that upholding the

1 Section 2.0 Guidelines for Whistleblowing for Banks and Other Financial Institutions in Nigeria

confidentiality of whistleblowers is of utmost importance in cultivating an environment conducive to reporting. Therefore, it is incumbent upon banks to institute measures that guarantee the preservation of whistleblowers' identities throughout the investigative process. Furthermore, irrespective of any legal proceedings initiated against wrongdoers, the identity of the whistleblower should remain undisclosed. To ensure whistleblower protection, the disclosure must be undertaken with a reasonable belief that it aims to reveal malpractice or impropriety, and such must be made in good faith.

Additionally, such disclosure should be directed to the appropriate individual or authority. Stakeholders are also encouraged to include their identity while submitting reports, enhancing the credibility of their submissions. information can also be submitted anonymously on the Ministry of Finances' Whistleblowing Portal. Nonetheless, the consideration of anonymous disclosures is subject to discretion, taking into consideration the following elements:

1. The gravity of the matter at hand;
2. The importance and authenticity of the concern(s) raised; and
3. The possibility of confirming the allegations.

An individual should exercise due care in reporting his/her concerns as no action would be taken where malicious allegations are made. The reporting is required to be made to the Head of the audit of the bank or other financial institution, CBN, and or the appropriate agency.

Thereafter, the Head of Internal audit will investigate reported instances and recommend suitable

3 Guidelines for Whistleblowing for Banks and Other Financial Institutions in Nigeria

measures to the Managing Director or CEO of the relevant organization. If it involves the executive management of the organization, it will be escalated to the Board of Directors of the Bank and the Board or CEO will then address the matter promptly. To extend enhanced protection to whistleblowers, the Guidelines stipulate that no individual who discloses its provision should face any form of disadvantage. A disadvantage in this context includes dismissal, termination, redundancy, undue influence, duress, withholding of benefits and/or entitlements, and any other act that hurts the whistleblower. If a whistleblower does encounter adverse treatment, then they retain the right to make a complaint with the CBN. This action can be taken without affecting their right to pursue appropriate legal remedies.
Where the outcome of the whistleblowing report leads to unfair treatment of the employee, such person shall be entitled to compensation and or reinstatement.

Challenges in Whistleblowing

Despite the legal safeguards and directives, whistleblowers may still face challenges, such as:

1. Lack of Confidence: Whistleblowers might lack confidence in the reporting mechanism due to worries about breaches of confidentiality or insufficient reactions to their disclosures.
2. Fear of Retaliation: Whistleblowers could have concerns about facing retaliation from peers, managers, or the company which could affect their employment stability and future career opportunities.
3. Cultural Factors: Occasionally, cultural norms within institutions might discourage whistleblowing by placing more importance on loyalty and resolving internal conflicts, rather than reporting misconduct externally.
4. Lack of Continuity in Government Policy: The administration of President Muhammadu Buhari introduced the whistleblower policy as part of its efforts to address corruption within the Nigerian system. Changes in government have historically posed changes to the continuity of significant government policies in Nigeria.[4] Furthermore, one might argue that the existing legal safeguards and guidelines are ineffective and do not consistently provide adequate protection for whistleblowers, which could potentially deter individuals from stepping forward to report wrongdoing.

Penalties

Any bank or financial institution which goes against the provisions of the Guideline will be subject to sanctions as provided in Section 60 of the Banks and Other Financial Institutions Act 1991 (as amended). It provides that failure to comply with its provisions will attract a fine of N5,000 (Five Thousand Naira) (approx. €11) for each day during which the failure occurs. Persistent failure to comply with the Guidelines or other directives of a Bank or persistent refusal to provide returns in the prescribed form may be grounds for the revocation of its license.

Conclusion

The recurrent malpractices and corruption in the banking sector in Nigeria necessitate the implementation of a comprehensive whistleblower law, which should include punitive measures, clear penalties for false reporting, provisions for adequate whistleblower protection, easy access to legal proceedings, and guidelines for the burden of proof on whistleblowers. It should also include whistleblower remedies and well-defined regulations for addressing retaliation and enforcing sanctions. It is noteworthy to mention that whistle-blowing is very effective but still underutilized as a corporate governance tool in Nigeria. This is because it is vital for enhancing transparency and accountability in not just the Nigeria Banking Sector but all sectors of the Nigeria economy. However, for banks to achieve this, they need to introduce clear guidelines and create effective reporting channels as it would encourage employees to share crucial information without the fear of negative consequences which would in turn lean to a stronger, more effective , and trustworthy Nigeria banking industry.

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4 http://onlineresearchjournals.com/ijopagg/art/293.pd

BRIDGING FINANCIAL GAPS IN NIGERIA: NAVIGATING THE REGULATORY AND SUPERVISORY GUIDELINES FOR DEVELOPMENT FINANCE INSTITUTIONS IN NIGERIA)

BY: SIMMONSCOOPER PARTNERS

In Nigeria's dynamic financial services sector, Development Finance Institutions (DFIs) play a crucial role by channelling capital to strategic sectors that drive sustainable growth and development. In a bid to accelerate the pace of development of the Nigerian economy and realisation of the key roles of some critical sectors in the process, the Federal Government of Nigeria has over the years established DFIs to complement the efforts of banks and other financial institutions. To ensure their effectiveness and improve financial stability in the Nigerian economy, the Central Bank of Nigeria (CBN), who regulates financial institutions in the country, introduced the Regulatory and Supervisory Guidelines for Development Finance Institutions in Nigeria in 2015 ("Guidelines").[1] This article explores the evolution of Nigerian DFIs, examines key provisions of the Guidelines, and analyses their practical implementation through real-world case studies. It also discusses the impact of these regulations on DFIs, investors, and the financial market, as well as the role of technology and potential regulatory enhancements.

EVOLUTION OF DFIS IN NIGERIA

DFIs are specialized financial entities established with a distinct mission: to fuel critical sectors of the economy that are strategically important to the nation's socio-economic development goals.[2] These institutions are designed to fund Micro, Small, and Medium Enterprises (MSMEs) and Large Enterprises (LEs), thereby promoting sustainable business growth, generating employment opportunities, reducing poverty, and enhancing overall quality of life[3] throughout all levels of the Nigerian economy.

The history of Nigerian DFIs date as far back as 1964 with the establishment of the Nigerian Industrial Development Bank (NIDB), Nigerian Bank for Commerce and Industry (NBCI), Nigerian Agricultural and Cooperative Bank (NACB), and Federal Mortgage Bank of Nigeria (FMBN). Each of these institutions were set up to develop specific sectors of the economy.[4]

For instance, the NIDB provided loans for industrial enterprises, the NBIC focused on small and medium sized enterprises, the NACB supported micro businesses in the agricultural sector and the FMBN catered to the housing needs of individuals and corporations.

Although these DFIs made substantial contributions to their designated sectors, challenges such as reduced government funding, non-performing loans which had longed plagued the commercial banks, global financial crises, and external debt burdens emerged over time,[5] prompting the need for a restructuring of DFIs. As a result, the Federal Government through the CBN pioneered the restructuring of DFIs as vehicles for targeted financial interventions.

Presently, Nigeria houses five major national development banks including the Bank of Industry (BOI), Infrastructure Bank of Nigeria, Nigeria Export-Import Bank, the Bank of Agriculture (BOA) and Federal Mortgage Bank,[6] as well as an association of over 40 federal and state DFIs, which collectively shape the landscape of development finance in the country.

1 Central Bank of Nigeria (2015). Retrieved on 20th August 2023 from https://www.cbn.gov.ng/Out/2015/OFISD/Regulatory%20And%20Supervisory%20Guidelines%20For%20Development%20Finance%20Institutions%20In%20Nigeria%202015.pdf
2 Regulation 1.1 of the Regulatory and Supervisory Guidelines for Development Finance Institutions in Nigeria 2015.
3 Regulation 1.5 Ibid.
4 Adesoye A. and Atanda A. (2014) "Development Finance Institutions in Nigeria: Structure, Roles and Assessment" Research Journal of Finance and Accounting Vol. 5, No. 13. P. 29.
5 Adesoye A. and Atanda A. op. cit. p. 29.

Africa has about 67 DFIs in various states, playing strategic roles in contributing to the socio-economic development of the continent.

UNDERSTANDING THE REGULATORY FRAMEWORK OF DFIS UNDER THE GUIDELINES

As it does for every other financial institution in Nigeria, the Central Bank of Nigeria (CBN) plays a supervisory and regulatory role in the operations of DFIs including classifying various types of DFIs, granting and revoking licenses, approval, and removal of board executives, etc.[7]

The CBN, through the Guidelines established two distinct categories of DFIs, the Wholesale DFIs (WDFI) which indirectly fund business enterprises through Participating Financial Institutions (PFIs), and Retail DFIs (RDFI) which provide funds directly to business enterprises.[8]

The Guidelines comprehensively outline the framework for licensing, regulation and supervision of both WDFI and Retail DFI (RDFI). Part of the provisions include the powers and duties of the CBN regarding DFIs, permissible and non-permissible activities for DFIs, the licensing procedure and requirements for all categories of DFIs, financial and corporate governance requirements, board composition and activities, sources of funds, prudential requirements, capital adequacy requirements, foreign currency borrowing, etc.

The licensing procedure requirement process aligns with the regulations specified for banks under the Banks and Other Financial Institutions Act (BOFIA) and mandates that existing DFIs also obtain a license from the CBN.[9] Prospective promoters must apply in writing to the CBN Governor and provide detailed documents including application fees, feasibility reports, organizational Structure, financial projections, Memorandum and Articles of Association, promoter details, and various internal policies like Credit Policy and Anti-Money Laundering.[10] Once the application is accepted, the CBN issues an approval-in-principle (AIP), allowing for incorporation and pre-operational expenses. Final licensing requires further documents and compliance with specific conditions. Financial requirements vary for different classes of DFIs. For example, minimum capital of N100 Billion for WDFI and N10 Billion for RDFI.

DFIs operate within well-defined parameters, encompassing activities such as providing credit facilities, refinancing MSMEs loans, investing in government securities, issuing bonds to fund its operations, limited investments in start-up businesses, amongst few others.[11]

However, certain activities like accepting deposits, managing pension funds, establishing subsidiaries, engaging in forex trading, and participating in capital market operations are expressly prohibited by the CBN.[12]

The management of a DFI rests with its board of directors, consisting of a minimum of seven and a maximum of eleven members, predominantly non-executive directors.[13] DFIs are expected to maintain a prescribed minimum paid-up capital before commencing operations and satisfy the capital adequacy requirements during operations.[14] Additionally, mandated external audits by approved audit firms ensure transparency and accountability in the DFIs operations.[15]

The Guidelines mandate prior CBN approval for branch expansion, relocation, closure, and changes in ownership structure.[16] Non-compliance may lead to penalties, operational suspension, prohibition from declaring dividends, and other sanctions as determined by the CBN.[17] Overall, the Guidelines establish a robust framework that direct the course of DFIs, ensuring stability, accountability, and adherence to sound financial practices.

BRIDGING FINANCIAL GAPS BY EFFECTIVE IMPLEMENTATION OF THE GUIDELINES

The Guidelines lay the groundwork for responsible operations of DFIs in Nigeria, but the true realization of its intended impact hinges on its meticulous execution.

In Nigeria's financial landscape, DFIs encountered limitations in terms of access to long term and low-interest funds, leading to their restricted success. In response, the Federal Government collaborated with development partners in establishing WDFIs to bridge funding gaps and enhance the availability of finance for both Micro, Small, and Medium Enterprises (MSMEs) and Large Enterprises (LEs).[18] By bolstering private capital injection into identified sectors, the government, through the Guidelines, strives to level the playing field for development financing stakeholders.

6 Central Bank of Nigeria (2017) "The Nigerian Financial System at a Glance" p. 227. Retrieved on 20th August 2023 from https://www.cbn.gov.ng/Out/2017/CCD/THE%20NIGERIAN%20FINANCIAL%20SYSTEM.pdf
7 Regulation 2.0 Ibid.
8 Regulation 1.0 of the Regulatory and Supervisory Guidelines for Development Finance Institutions in Nigeria 2015.
9 Regulation 4.0 Ibid.
10 Regulation 4.1 Ibid.

Yet, beyond well-crafted regulations, there is a need to draw insights from successful models in other countries. For instance, Germany's KfW bank, with 75 years of experience, has transformed global economic, social, and environmental conditions using funds primarily sourced from international capital markets.[19] Likewise, the Brazilian Development Bank has driven socio-economic growth, bolstered industry, innovation, sustainable development, and public administration modernization.[20] In closer context, African Development Finance Institutions (ADFIs) have prominently functioned as reliable lenders in continental financial crises. For example, in 2015, Afreximbank provided US$3.5 billion funding through guarantees and letters-of-credit to counter economic uncertainties and commodity downturns in many African states.

In addition, ADFIs have created access points to international capital from both from commercial banks and non-African DFIs, and collaborated with commercial creditors to attract private sector investments that contribute to Africa's development.

These global lessons offer a strategic compass for Nigeria's DFIs, enabling them to refine their approach by adopting proven strategies from these models. Leveraging this knowledge, Nigeria can enhance the Guidelines' implementation, propelling its development finance landscape towards greater effectiveness and impact.

DFIs in Nigeria have faced its own set of challenges in bridging financial gaps, including political interference, weak corporate governance, inefficient risk management practices, under-capitalisation, restrictive mandates, and limited use of information technology.[21]

11 Regulation 3.1 Ibid.
12 Regulation 3.2 Ibid.
13 Regulation 5.1.2 Ibid.
14 Regulation 8.1 Ibid.
15 Regulation 9.1 Ibid
16 Regulation 9.2 Ibid.
17 Regulation 11.0 Ibid.
18 Central Bank of Nigeria (2015) op. cit. p. V.
19 KfW Bank (2023) "KfW – Responsible Banking." Accessed on 21st August 2023 from https://www.kfw.de/About-KfW/

Notwithstanding, DFIs have significantly contributed to bolstering Micro, Small, and Medium Enterprises (MSMEs) as well as Large Enterprises (LEs), driving consistent advancement in industrialization, employment opportunities, and poverty mitigation within the economy. For example, during the period spanning 2015 to 2022, the Bank of Industry facilitated financial support exceeding $3.1 billion (equivalent to N1.36 trillion) to more than 4.3 million enterprises in Nigeria through both direct and indirect initiatives.[22] This effort resulted in the generation of an estimated 9.6 million jobs,[23] underscoring the pivotal role of DFIs in fostering economic growth and development.

Improving on their contributions would therefore require a strategic alignment across all aspects of the financial landscape such as ensuring that DFI operational strategies, from lending practices to risk management, closely align with the principles outlined in the Guidelines. Furthermore, comprehensive reviews and potential revisions of internal policies and procedures are essential for compliance and navigating the complexities and intricacies of the Guidelines.

IMPLICATIONS AND FUTURE PROSPECTS OF THE GUIDELINES FOR DFIS

Implications of the Guidelines

The far-reaching implications of the Regulatory and Supervisory Guidelines for Development Finance Institutions extend across various facets of the financial landscape in Nigeria.

Accountability and Development Mandates: The Guidelines embed a robust sense of accountability, ensuring that DFIs fulfil their developmental mandates while adhering to the principles of financial stability and sustainable growth. This alignment sets a precedent for transparent and responsible operations.

investor Confidence and Effective Governance: Investors stand to benefit from the transparency, effective risk management, and stringent governance standards mandated by the Guidelines. This in turn contributes to a more secure and attractive investment environment within Nigeria.

Real-World Impact: A tangible example of these implications is the Norrenberger's acquisition of The Infrastructure Bank (TIB), marking the first Public-Private Partnership (PPP) in Nigeria's infrastructure finance arena.[24] The acquisition is poised to stimulate reforms and innovation across sectors including power, renewable energy, transportation, housing, and urban infrastructure.[25]

Prospects of the Guidelines

The forward-looking potential of the Guidelines carries significant implications for DFIs and the broader financial ecosystem in Nigeria.

Fintech Disruption and Adaptability: It is no debate the AI and other technology powered solutions are revolutionizing every area of everyday life, the financial landscape is no different. The questions to ask are how these changes and developments will benefit all relevant sectors, how to balance the pros and cons, and how to protect against the potential ills that lie in wait. The solution is regulation; however, flexibility, adaptability and innovative thinking are all necessary to ensure that regulation does not stifle but encourage and promote growth and development. As FinTech innovations disrupt traditional financial models, the Guidelines must remain adaptable. Regulatory frameworks should evolve to address emerging challenges and capitalize on new opportunities that fintech brings, while still ensuring stability and accountability

Agility Through Periodic Recalibrations: The Guidelines' strength lies in their ability to adapt and recalibrate. Given the transformational nature of economies and financial landscapes, periodic revisions of the Guidelines are essential. These revisions should accommodate emerging financial instruments and the evolving role of technology.

Embracing Technology for Inclusion: The core function of DFIs in extending financial support to individuals and businesses is undergoing a revolutionary shift thanks to fintech innovations like crowdfunding and peer-to-peer lending. For instance, consider

20 The Brazilian Development Bank (BNDES) (2023) "The BNDES" Accessed on 21st August 2023 on https://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/The_BNDES/
21 Anthony Otaru. "Politics, weak corporate governance undermining DFIs' Interventions", The Guardian, 13th May 2022. Accessed on 21st August 2023 on https://guardian.ng/business-services/politics-weak-corporate-governance-undermining-dfis-interventions/
22 Guardian Nigeria, "BoI wins four international banking, sustainability awards". 11th November 2022.
23 Ibid.

crowdfunding—an alternative to the often-labyrinthine process of bonds and notes. Here, a sprawling network of investors and entrepreneurs collaborates to fund new ventures or support existing MSMEs. Similarly, peer-to-peer lending empowers MSMEs to borrow and lend directly with individual investors, sidestepping the need for intermediary institutions like DFIs or PFIs.

The meteoric rise of financial technology (FinTech) has reshaped the financial services landscape. By aligning the Guidelines with this technological wave, DFIs can assume a transformative role in advancing financial inclusion. This encompasses streamlined processes for sourcing, managing, and disbursing funds, particularly in underserved regions and remote corners. As the digital age sweeps through, DFIs have the chance to ride this wave toward a more inclusive financial future.

CONCLUSION

The journey through Nigeria's financial landscape, guided by the Regulatory and Supervisory Guidelines for Development Finance Institutions, reflects a dynamic narrative of evolution, challenges, and potential. The Guidelines provide more than just rules; they pave the way for responsible growth and financial inclusivity. Implementing these guidelines is the linchpin, translating regulations into action. With historical insights, real-world cases, and global lessons, the Guidelines' implications are far-reaching—enhancing transparency for investors, stability for the market, and accountability for DFIs. Yet, in a rapidly evolving landscape, these guidelines are a dynamic compass that should adapt to emerging fintech trends and technological advancements, ensuring Nigeria's path to economic growth remains steadfast and forward-looking.

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GUIDANCE ON TARGETED FINANCIAL SANCTIONS RELATED TO TERRORISM AND TERRORISM FINANCING REGULATIONS

BY: SOLOLA & AKPANA BARRISTERS&SOLICITORS

The issue of terrorism and terror financing has been a source of worry in Nigeria as it constitutes serious security risks in the country. In recent times, Nigeria has been ensnared in various security challenges such as Boko Haram terrorism, Fulani-herdsmen militancy, and widespread banditry. Terrorism which is usually linked to money laundering is a premeditated, illicit, and indiscriminate use of violence by non-state actors against non-combatant and innocent civilians, public or private property to generate an atmosphere of terror, or achieve religious, ideological, or political objectives. Terrorism financing refers to the channels through which money is illegally donated to terrorist objectives. It encompasses fundraising, money laundering, and the illicit transfer of funds. This article seeks to provide insights and recommendations for improving the regulatory framework to counter terrorism financing. In this regard, the current anti-money laundering and counter terrorism legislations will be discussed and recommendations made to plug any loophole in these legislations.

2.0 OVERVIEW OF THE INTERNATIONAL AND DOMESTIC REGULATORY FRAMEWORK OF TERRORISM AND TERRORISM FINANCING IN NIGERIA.

2.1 International Regulatory Framework on Counter terrorism and terrorism financing.

Several international conventions have been passed to counter terrorism financing; notable among which are:

(a) United Nations (UN) Security Council Resolution Number 1373 which urges countries to implement measures to prevent terrorism financing and ease the exchange of relevant information. This resolution emphasizes the freezing of assets of individuals and entities involved in terrorism.

(b)United Nations Global Counter-Terrorism Strategy adopted in 2006, This Strategy offers a comprehensive framework for member states to combat terrorism in all forms. It includes measures to prevent and suppress terrorism financing, strengthen legal frameworks, enhance international cooperation, and foster public-private partnerships.

(c) International Convention for the Suppression of the Financing of Terrorism: This UN Treaty, adopted in 1999, provides a legal framework for states to criminalize and prosecute terrorism financing. It requires establishing criminal offences related to terrorism financing and cooperation in investigations, prosecutions, and extradition.

(d)United Nations Security Council Sanctions Regimes: The Security Council has established multiple sanctions regimes targeting individuals, entities, and groups involved in terrorism financing. These measures include asset freezes, travel bans, and arms embargoes to disrupt financial networks associated with designated terrorists and their supporters.

(e) Establishment of the Financial Action Task Force (FATF): The FATF is an intergovernmental organization with 39 member countries and regional organizations. It sets global standards and provides recommendations for combating money laundering, terrorist financing, and threats to the international financial system.

2.2 Domestic Framework on Counter Terrorism and Terrorism Financing.

In Nigeria, the Terrorism Prevention and Prohibition Act, 2022, criminalizes various terrorist activities, establishes legal procedures for investigation and prosecution, and provides the legal framework to combat terrorism and terrorism financing. To counter terrorism financing, agencies and establishments such as the Nigerian Financial Intelligence Unit (NFIU), Economic and Financial Crimes Commission (EFCC), Department of State Security (DSS), National Intelligence Agency (NIA), and the Nigerian Police Force play key roles collaboratively. These agencies collect, analyze, and disseminate financial intelligence related to money laundering, terrorism financing, and other financial crimes. The Nigerian Government maintains a watch list of individuals and entities associated with terrorism, and financial institutions, screen customers and transactions against this watch list to identify suspicious transactions and questionable persons.

Some key legislations on terrorism and terrorism financing in Nigeria are:

The Terrorism (Prevention and Prohibition) Act, (TPPA) 2022, the Money Laundering (Prohibition) Act of 2022, and the Economic and the Financial Crimes Establishment Act, 2004 (EFCC Act).

(a)The Terrorism (Prevention and Prohibition) Act, 2022.

The Terrorism (Prevention and Prohibition) Act, 2022 which repealed the Terrorism (Prevention) Act, 2011 goes on to provide measures for the detection, prevention, combating and prohibition of acts of terrorism. Section 2(1) of the TPPA 2022, prohibits all acts of terrorism and terrorism financing. Section 2(3) of the TPPA describes act of terrorism to mean an act willfully performed with the intention of furthering an ideology, whether political, religious, racial, or ethnic, and which may harm, damage, compel, intimidate, influence, destabilize or destroy (economic, political, or legal structures) of any country, its population, government, or international organizations.

Although the TPPA does not define the term terrorist funding, it can however be inferred to mean providing or collecting funds by any means, directly or indirectly, with the intention or knowledge that they will be used to carry out an act of terrorism.

Part V of the TPPA provides for offences relating to terrorism and terrorism financing. Additionally, Section 6 of the TPPA 2022 established the National Counter Terrorism Centre (NCTC). Under the TPPA, the NCTC is charged with the coordination of counter-terrorism policies, strategies, plans and support in the performance of the functions of the National Security Adviser. Among other purposes, the NCTC shall establish a Joint Terrorism and Analysis Branch which will serve as a fusion centre responsible for terrorism research, analysis and intelligence support to law enforcement and security agencies.

Another unique provision of the TPPA which should go a long way in achieving a major objective of the Act is the establishment of the Nigerian Sanctions Committee which is the national body responsible for the implementation of the United Nations Security Council Resolutions (UNSCRs) on Targeted Financial Sanctions.

(b)Money Laundering Act 2022

The MLA 2022 was introduced as part of the intensified efforts towards the adoption and implementation of the Financial Action Task Forces (FATF) recommendations on combating the financing of terrorism and anti-money laundering. The MLA 2022 repeals the Money Laundering (Prohibition) Act 2011. The MLA 2022 provides a legal and institutional framework for the prevention and prohibition of money laundering in Nigeria.

Section 18 of the MLA 2022 prohibits numerous offences, such as the concealing or disguising the illicit origin of resources or properties derived from illicit trafficking of narcotics, terrorism, terrorist financing, smuggling, tax evasion and illicit arms. Conviction for an offence committed under this Section attracts a fine not less than five times the value of the proceeds of the crime or imprisonment for a period between four and 14 years or both.

Section 13(1) of the MLA 2022 mandates Financial Institutions (FI), Designated Non-financial Institutions and related Professions (DNFBP) shall identify and assess the money laundering and terrorism financing risks that may arise in relation to the adoption and use of new products and new business practices. This duty should be shared between the stated persons and regulatory authorities to effectively combat money laundering and terrorist financing activities.

(c) Economic and Financial Crimes Commission Act (EFCC Act). The Economic and Financial Crimes Commission was created by virtue of the EFCC Act as a financial intelligence unit, charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and terrorist financing and other financial crimes in Nigeria. The EFCC Act by the provisions of Section 15 prohibits terrorism in terms of Sections 1(e) and 17 of the Money Laundering (Prohibition) Act 2022.

Section 15(1) of the EFCC Act states that anyone who provides and collects goods or money with the knowledge that the money is meant for the execution of an act of terrorism is liable for terrorism financing.

To be culpable, the prosecution is required to prove that the defendant had knowledge that the funds will be used for terrorist activities. The EFCC Act by Section 15 (2) gives the court the latitude to impose a life imprisonment sentence on offenders convicted for terrorism. Section 15 of the EFCC Act also provides some offences relating to terrorism, terrorist funding and attempting to commit a terrorist act, while Section 46 of the same Act defines terrorism. However, the definition of terrorism under Section 46 of the EFCC Act is vague. For instance, acts of terrorism refer to a violation of the Criminal Code or the Penal code which may endanger the life of any person.

Also, under Section 46(a)(i), (ii) and (iii) of the EFFC Act, all acts calculated or intended to intimidate, put fear, force or coerce any government body or institution to do any act, adopt or abandon a particular standpoint, or disrupt any public service or any essential service amounts to terrorism.

3.0 GUIDELINES ON TARGETED FINANCIAL SANCTIONS RELATED TO TERRORISM AND TERRORISM FINANCING.

Accounts domiciled with Financial Institutions (FIs) have been observed to be associated with the movement of funds and the financing of terrorism.

The Central Bank of Nigeria as the regulator of Financial Institutions in its determination to ensure the implementation of Terrorism Financing Sanctions (TFS) issued the Guidelines on Targeted Financial Sanctions related to Terrorism and Terrorism Financing (the "Guidelines").

3.1. Obligations of Financial Institutions under the Guidelines

FIs are required to implement terrorism financing sanctions on the funds/assets such as cash, cheques, deposits, other account receivables etc belonging to designated persons (that is persons found in the UN Security Council Consolidated and the Nigerian Sanctions List). Under the guidelines FIs are obligated to:

(a) Subscribe to the Alert System.
FIs are obligated to subscribe to an alert system for the purpose of receiving updates on the UN Security Council Consolidated and the Nigerian Sanctions List.

(b)Screen Customers, Third parties and Transactions.
FIs are obligated to carry out regular screening of customers and potential customers against the Sanctions list and the updates from the Sanctions List prior to conducting any transaction or undertaking any financial services on behalf of any person. Customers, potential customers, beneficial owners, and transactions must be constantly screened for the purpose of identifying possible matches to the Consolidated Sanctions List. Where the individual, entity or group matches all key identifiers published on the Sanctions list, the result is considered a confirmed match. Due to the prevalence of some names, FIs may find potential matches. A potential match occurs when there is a partial match between identifiers in the Sanctions Lists with any information in FIs databases, and the FIs are unable to conclude a confirmed match.

(c) Apply Targeted Financial Sanctions.
Upon identification of a match with a designated person on the Sanctions List, FIs are required to without notice within 24 hours freeze all funds and assets owned or controlled wholly or jointly, directly or indirectly, by such individual, entity or group designated in the Sanctions List. The FI is also mandated to freeze all funds of any individual or entity acting on behalf of or at the direction of any designated individual, entity or group in their possession owned or controlled by a designated person or entity. FIs are also required to prohibit the provision of funds or the rendering of financial services to designated persons. In the event that a frozen account is entitled to interest or payments under a contract concluded before the account became a frozen account, FIs are required to receive such funds and open a designated account for the receipt of such funds which shall constitute part of the frozen funds.

Any query or appeal for variation to the frozen accounts or delisting shall be submitted to the Nigerian Security Council (NSC). The NSC may where necessary approve the utilization of the frozen funds for the following purpose:
(i) To meet the basic needs and expenses such as food, medical needs and other general expenses of the designated person or entity

(ii) To settle professional fees and related expenses such as legal services and banks; and

(ii) Other exceptional expenses that the NSC is of the view are permitted expenses in accordance with the procedures under UNSCR 1373 and other successful resolutions Upon approval of the utilization of the frozen funds, FIs in custody of frozen funds are required to implement the approval upon receipt of a written directive by NSC.

(d) File suspicious transactions report with NFIU in respect of any suspicious transaction or payment flow.

(e) Render quarterly reports to CBN on the implementation of Terrorism Financing Sanctions.

4.0 PROPOSED RECOMMENDATIONS TO THE GUIDELINES

The Guidelines mandates the financial institution to freeze without delay (immediately or in any case within 24 hours) and without prior notice to the designated individual, entity, or group, all funds or other assets of such person. It doesn't state what happens after 24 hours. Would the financial institution further get a court order to proceed with their investigations? In the case of Polaris Bank Ltd. v. Yayamu Global Services (2022) LPELR- 57376(CA), it was held that for a bank to freeze its customers account, there must be a court order. Although there is an exception to this where same can be done for 72 hours without a court order, and after the expiration of such, a court order would be needed. The Guideline does not expressly provide for a court order in event of an account freeze exceeding 24 hours. This should be contained in the Guidelines.

4.2. There should also be a balance between profiling and counter-terrorism processes by Financial Institutions and the preservation of individual rights and liberties including a seamless forum for redress and emergency reliefs related to the implementation of the Guidelines. This will prevent financial institutions from abusing the implementation of the Guidelines to the detriment of customers and other persons who use their services.

4.3. Section 66 of the TPPA 2022 which provides for the detention of a suspect for a terrorism related offence for a period of 60 days appears to be in contravention of Section 35(4) and (5) of the 1999 Nigerian Constitution which provides that a person arrested and detained for a criminal offence be charged to court within a reasonable time (1 to 2 days). Thus, the TTPA 2022 needs to be amended to make it compliant with human rights standards as prescribed both under the Nigerian Constitution and by international standards. There should also be an effective mechanism for prosecuting terrorism suspects. The requisite expertise and political will to combat terrorism and counter terrorism financing should complement the legal framework. Furthermore, there is need for a unified definition of terrorism as different statues proffer divergent definitions. This will no doubt help the prosecutor and investigation agencies. Presently, there are several bodies or agencies that can charge a suspect for terrorism in Nigeria- ranging from the Attorney-General of a State, to the Economic and Financial Crimes Commission under the EFCC Act and the Attorney-General of the Federation under the Terrorism (Prevention) Act. There should be coordination and synergy amongst these agencies and prosecutorial authorities.

5.0 CONCLUSION

As discussed above, terrorist groups have, to date, caused substantial damage to Nigeria and Nigerians such as abduction, armed robbery, mass murders, illegal mining, drug trafficking to mention but a few. Consequently, various AML/CTF statutes were enacted in a bid to discourage and combat money laundering and terrorist financing activities in Nigeria. Nonetheless, the identified statutory gaps, when plugged would, in our view, advance the seamless combat of terrorism and terrorism financing.

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SEC RULES ON DIGITAL ASSETS EXCHANGE (DAX)

BY: STALWART LEGAL

Digital Assets are the digital equivalents of financial assets such as securities, currencies, properties or commodities, and have emerged as a growing asset class with a renewed rise in investor's interest. The Securities and Exchange Commission defines Digital Assets (DA) as a digital token that represents assets such as a debt or equity on the issuer. Example of digital asset include cryptocurrency, non-fungible tokens (NFTs), asset-back tokens and tokenized commercial real estate. The first time a Digital Asset was used was when cryptocurrencies were first introduced, they were known as "cyber currencies" and date back to the 1980s. With the launch of cryptocurrency, which was developed by a group of programmers under the name Satoshi Nakamoto, digital assets have gained popularity. As a matter of fact, El-Salvador and Central African Republic have passed legislation recognizing digital assets as a legal tender. Other Countries, including Nigeria, Australia, Germany, Finland, Japan, Sweden, the US, the UK and Ukraine have legalized the use of Bitcoin and other digital assets, but are yet to give it the status of a legal tender. It is without doubt that their popularity has increased over the last few years as more and more people make investments in them.

With a total cryptocurrency transaction volume amounting to $400M, Nigeria ranks third after the United States and Russia according to 2020 estimates. According to a 2020 online survey, 32% of participating Nigerians used cryptocurrencies.[1] On the 5th of February 2021, the Central Bank of Nigeria (CBN) released a letter addressed to banks and other financial institutions which stated that dealing in cryptocurrencies and facilitating payment for cryptocurrency exchanges are prohibited.[2] The CBN further instructed all banks and other financial institutions to identify individuals or entities who transact in cryptocurrency or operate cryptocurrency exchanges and close the accounts of such persons or entities. The directive opined that cryptocurrencies are largely speculative, anonymous and untraceable they are increasingly being used for money laundering, terrorism financing and other criminal activities. This directive had an effect on the cryptocurrency market in Nigeria as it essentially prevents traders from buying cryptocurrencies with their credit/debit cards issued by Nigerian banks or receiving proceeds of cryptocurrency sales from exchanges which facilitate the buying and selling of cryptocurrency. Further to this, there was a switch to peer-to-peer trading, exchanges have discovered a means to get past the ban and allow anyone to purchase or sell cryptocurrencies directly from traders rather than from exchanges.

To further regulate the era of cryptocurrency in Nigeria, The Securities and Exchange Commission issued a regulation on the 21 st of May, 2022 regulating digital assets in Nigeria.
Under the regulations, there are specific requirements for digital assets that can be registered. The regulations divided digital assets into five major categories, for the purpose of setting out the rules;

1) Digital Asset Custodian
2) Digital Assets Exchange(s);
3) Virtual Asset Service Providers
4) Digital Assets offered as securities; and

5) Digital Assets offering platforms

Rules on Digital Asset Custodians: A Digital Asset Custodians (DACs) means a person who provides the services of safekeeping, storing, holding or maintaining custody of virtual assets/digital tokens for the account of another person[3] A DAC is required to satisfy eligibility requirements for registration as a Custodian or Trustee, and any additional requirements which the Securities Exchange Commission ("Commission") may prescribe from time to time; The applicant must comply with the general requirements for Virtual Assets Service Providers(VASPs), in addition to the following; a) where a registered Custodian or registered Trustee seeks to provide DAC services shall apply to the Commission for approval; b) Payment of fees as prescribed by the Commission[4] The commission may register a foreign DAC provided that the applicant is authorized to operate or carry out an activity of a similar nature in the foreign jurisdiction; and the applicant is from a comparable jurisdiction with whom the Commission has regulatory arrangements on enforcement, supervision and sharing of information[5]. Under the regulations, DACs are required to perform internal audits on its operations, establish a risk management framework to identify, monitor and report all material risks to which the digital asset custodian could be exposed to, provide a verifiably secured storage medium designated to store its clients' virtual assets/digital tokens and ensure that there is an up-to-date transactional record relating to the clients' virtual assets/digital tokens.

Rules on Digital Assets Exchange (DAX)[6] : Digital Assets Exchange is defined as an electronic platform that facilitates the trading of a virtual or digital asset. An applicant seeking to register as a DAX Operator shall make an application in SEC Form 2 and 2D and pay the prescribed application, processing and registration fees The regulation imposes a N500 million (five hundred million naira only) minimum paid up capital requirement and evidence of payment includes bank balances, fixed asset or investment in quoted Securities. The applicant needs to have a current fidelity bond covering at least 25% of the minimum paid-up capital. DAX applicants are to provide corporate documents including copies of their certificate of incorporation, Memorandum and Articles of Association, tax clearance and audited accounts. For an effective monitoring framework, the DAX is required to consist of a board with responsibilities of overseeing the operations of the DAX platform.

Rules on Virtual Assets Service Providers (VASP): SEC Rules define a VASP as any entity who conducts one or more of the following activities or operations for or on behalf of another person: exchange between virtual assets and fiat currencies; exchange between one or more forms of virtual assets; transfer of virtual assets; safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset7. The rule under Part D applies to all platforms that facilitate trading, exchange and transfer of virtual assets whose activities involve any aspect of Blockchain-related virtual/digital asset services; all issuers and sponsors of virtual/digital assets, including foreign and non-residential issuers and sponsors; and any operator that actively targets Nigerian investors.

However, the rule excludes technology service providers who merely provide infrastructure, software, or a system to a Digital Asset Exchange (DAX); operators of communication infrastructure who merely enable orders to be routed to an Exchange; and operators of financial portals that aggregate content and provide links to financial sites of service and information providers.

Unless as otherwise provided by the SEC, a VASP must be structured as a body corporate. It must obtain a license from the SEC to lawfully operate in the country. The requirements for registering a VASP are outlined in Rule4, which states that an application for registration as a VASP must be filed on the appropriate SEC Form and accompanied by the required papers.

Digital Assets offered as Securities: Part A of the Rules applies to issuers seeking to raise capital through digital assets offerings. It defines Digital assets as "a digital token that represents assets such as debt or equity claim on the issuer". The Rules did not clearly say who can issue digital assets to the public, but it can be assumed that only those permitted to issue securities under the Investment and Securities Act 2007, and other SEC Rules, can issue digital assets to the public. Before digital assets can be issued to the public, it must first be registered. The application process begins by filing an Initial Assessment Form alongside a draft white paper which will include; comprehensive information on the sustainability and scalability of the token and how the digital asset offering will benefit investors and deepen the market; detailed description of the Digital Asset, the risks associated with investing, the lock up period (if any), the bonuses, profits, rights and privileges (monetary and non-monetary) to the buyer of the token, the value of each token, its technology and system architecture; legal opinion on whether or not the tokens to be sold through the Initial digital asset offering are securities, including sufficient justifications; and the minimum amount ("Soft Cap") and Maximum amount ("Hard Cap") of capital intended to be raised, among other things.

Thereafter, SEC would determine if the proposed digital asset qualifies as "securities" under the ISA 2007. Upon confirmation, the issuer shall file an application for the registration of the digital assets,[8] which the SEC may accept or deny the application.

Digital Assets offering Platforms: The Rule defines a Digital Assets Offering Platform ("DAOP") as an electronic platform operated by a DAOP operator for offering digital assets. DAOPs must be registered with the SEC. An applicant seeking to register as a DAOP must comply with the requirements in Rule 11 as well as the general requirements for the registration of Virtual Assets Service Providers ("VASP"). The requirements include filing an application through the appropriate SEC form, payment of prescribed fees, the applicant having a minimum paid-up capital of N500 million and a current fidelity bond covering at least 25% of the minimum paid-up capital, comply with requirements for registration of sponsored individuals as contained in SEC Rules and Regulations, submit necessary corporate documents and comply with other additional requirements[9]

CONCLUSION

The SEC's New Rules on Issuance, Offering Platforms, and Custody of Digital Assets are a welcome move in the right direction, but its implementation remains uncertain. This is due to the CBN Circular, which restricts financial institutions within its regulatory scope from engaging in or facilitating payments for transactions using cryptocurrencies and virtual assets, resulting in a significant delay in the Rules' implementation. This is because issuers will be required to maintain bank accounts in order to demonstrate that they have sufficient funds to pay subscribers and do business. This will be difficult unless the CBN relaxes the prohibition. Despite the fact that the Rules are still relatively new and there will inevitably be challenges, it is hoped that they remain effective and aid the SEC achieve its goal of promoting digital transactions in Nigeria.

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REGULATION ON VALUATION OF PENSION FUND ASSETS IN NIGERIA

BY: STREN AND BLAN PARTNERS

In Nigeria's financial landscape, the pension system stands as a social security obligation for old and retired Nigerian workers, who participated in the contributory pension scheme. The introduction of the Pension Reform Act (PRA/Act) 2014 1 marked a transformative milestone in Nigeria's pension sector, initiating significant regulatory evolution. Prior to the introduction of the Act, most private sector establishments did not accord any priority to their retired workers after years of service. The pension scheme is seen as an important social security system that addresses both structural and institutional dysfunctions in the country's social security obligations The periodic payments for the purposes of pension contribution form the pension fund assets. Pension fund assets are defined as assets bought with contributions to a pension plan for the exclusive purpose of financing pension plan benefits. Notably, the pension fund is a pool of assets forming an independent legal entity. 2 Prior to the Act, the National Pension Commission (the "Commission") released the Regulation on Valuation of Pension Fund Assets, (the "Regulation"), 2006. The Regulation amongst others, establishes a uniform framework for valuing pension fund asset portfolios by Pension Fund Administrators (PFAs), outlines precise procedures to calculate net assets, accounting unit values, and rates of return, and ensures transparency and fairness in pension fund management..

Therefore, how adequate have the applicable laws been able to cater for, simplify, or solve the teething issues such as; standardization, market, and economic risk arising out of the valuation of pension fund assets? This paper provides an exploration into Nigeria's pension fund asset valuation by exploring the background of the regulation of the valuation of pension funds' assets in Nigeria. It further appraises the standardization of valuing pension fund assets, its impact on the financial market, and economic challenges. Future reforms will also be considered to ensure a comprehensive perspective on the discourse.

REGULATORY FRAMEWORK FOR PENSION FUND ASSETS

Pension fund assets have always been regulated by the Act and administered through the guidance of the Commission. Sec. 120 of the Act defines a pension fund as an investment fund within the pension scheme which is intended to accumulate during an individual working life from contributions and investment income, with the intention of providing income in retirement from the purchase of an annuity or in form of a programmed withdrawal, with the possible option of an additional tax-free cash lump sum paid to the individual.

Further, Sec. 55 of the Act provides that the pension funds shall only be managed by the Pension Fund Administrators who have been licensed by the Commission, and pension fund assets shall only be held by pension fund custodians licensed by the Commission under the Act.

Also, to create a standardized procedure for the valuation of pension fund assets in Nigeria for the PFAs, the Regulation was made by the Commission in line with its powers to regulate, supervise, and ensure the effective administration of pension matters and retirement benefits in Nigeria as enshrined under Sec. 18 (b) of the Act.

Therefore, this responsibility or mandate to regulate the pension fund asset confers on the Commission a wide range of power to regulate, supervise, and execute the pension fund assets in total compliance with the Act.

1 The Pension Reform Act, (PRA) 2014 CP4 Laws of the Federation of Nigeria (LFN) 2004.

STANDARDISATION OF THE VALUATION OF PENSION FUND ASSETS

As at December 2020, Nigerian pension funds cumulatively held assets amounting to ₦12.31 trillion (roughly US$29.9 billion) across all fund types.[3] In 2023 times, it has been projected to reach ₦16.76 trillion, (roughly US$21.86 billion).[4] The vastness of this financial reservoir underscores the significant need for stringent oversight and transparent policies by the Commission, particularly in the valuation and standardization of pension fund assets.

Further to this, the need to standardize procedures in this valuation process cannot be overstated. Standardization is vital for ensuring consistent, transparent, and equitable management of these substantial financial assets. Accordingly, a uniform framework when established will enhance the accuracy and reliability of valuation processes and equally foster investors' confidence.

In a diverse and dynamic financial landscape like Nigeria, standardized valuation procedures should be seen to create a level playing field, ensuring that pension funds are evaluated consistently, regardless of their types or sizes. Thus, a lack of a unified standardization of the pension fund assets can put the pension fund assets in a spiral decline and will affect the economy. Clearly, consistency in standardization is vital in safeguarding the interests of the players, maintaining the integrity of the pension system, and promoting the stability of the overall financial market.

Relatedly, Sec. 1.1 of the Regulation seeks to address the pressing need for consistency and lays the groundwork for a robust, reliable, and investor-friendly pension system in Nigeria. Further, this is achieved by noting the necessity to standardize the procedures to be adopted in the valuation of pension fund assets portfolios, by the pension fund to include the method and manner PFAs calculate the value of net assets under management, and the value of an accounting unit for the equitable pricing of interest of each individual contributor, to a pension fund Therefore, a uniform standardization of the valuation of the pension funds' assets is rather significant to thewelfare of the pension assets as it is to the economy of Nigeria.

VALUATION OF PENSION FUND ASSETS IN NIGERIA

Valuation of the pension fund assets demands a cursory look on the various components of the Regulation to determine upon its application the implication on the Nigerian financial viz a viz;

1. Introduction and Purpose: Sec. 1.1 of the Regulation aims to standardize procedures for valuing pension fund assets by PFAs. Evidently, it determines the value of net assets under management and accounting units for individual contributors. It also mandates the calculation of the rate of return for PFAs.

2. Responsibility for Valuation: Sec. 2.0 of the Regulation makes the PFAs responsible for determining fair values independently of their investment functions. It states that valuation must be conducted on recognized, transparent platforms. Moreover, it also mandates PFAs to maintain records and provide justifications for assigned asset values.

3. Timing and Frequency of Valuation: Sec. 3.0 of the Regulation provides for the daily valuation of pension fund assets by PFAs. It also provides that the Net Asset Value (NAV) and Accounting Unit Values (AUV) are to be calculated based on asset market values available at 6:00 p.m. local time of the previous working day. Real estate and unquoted investments are to be valued at agreed times, not later than one year.

4. Valuation Methods: Sec. 4.0 of the Regulation provides for various methods for valuing different securities, including certificates of deposit, bankers' acceptance, quoted securities, open-end investment funds, and debt securities. For quoted securities, the value shall be determined by ascertaining the market value of such securities. Unquoted investments and real estate are to be valued on a fair value basis. Cash balances are treated as capital assets.

5. Calculation of Accounting Unit Value (AUV): Sec. 5.0 of the Regulation provides for each AUV to be valued at N1.00 initially. Subsequent values are calculated based on NAV and the total number of AUVs. AUVs are to be rounded to four decimal places.

6. Calculation of the Rate of Return: Sec. 6.0 of the Regulation provides that the rate of return is to be calculated for 36, 24, or 12 months and converted into an equivalent annual rate of return. Different formulas are applied for different periods to ensure accuracy in rate calculation.

7. Reporting Requirements: Sec. 7.0 of the Regulation provides that PFAs are required to disclose all valuation

2 OECD, 'Definition of Pension Funds' Assets' Available at https://data.oecd.org/pension/pension-funds-assets.htm#:~:text=Pension%20funds'%20assets%20are%20defined,of%20financing%20pension%20plan%20benefits Last accessed on 3 rd of October 2023.

reports to the Commission daily. Daily reports are to be submitted to the Commission by 5:00 p.m.

8. Reviews: Sec. 8.0 of the Regulation provides that the Regulation would be subject to regular reviews by the Commission to ensure relevance and effectiveness.

Therefore, having understudied the relevant sections of the Regulation above and its application for pension assets, Clearly, there is a guideline that regulates the activities of pension assets, however, the adequacy of the regulation of the guidelines will be explored to unearth issues that may arise in the application, to this, certain issues are identified below, and clarity provided therein.

ISSUES AND CHALLENGES

Considering the challenges specific to the Nigerian market and the enforcement mechanisms and penalties for non-compliance outlined in the Regulation, the following issues are noteworthy:

i. Market Volatility: Nigeria's financial markets are prone to volatility that may impact the valuation of pension fund assets. Economic uncertainties pose challenges in determining stable asset values. This is a gap that was captured in the Regulation

3 African Private Equity and Venture Capital Association (AVCA) and Pension Fund Operators Association of Nigeria (PENOP), 'PENSION FUND AND PRIVATE EQUITY IN NIGERIA', AVCA 2021. Available via:https://www.avca.africa/media/523mzpsh/avca-penop-pension-funds-study-nigeria-2021.pdf. Last Accessed 2 nd October 2023.

Thus, understanding the movement of the markets as it relates to pension fund assets will ensure that proper information is obtained before the investment of the fund assets in the market.

ii. Lack of Standardization in Valuation Methods: While the sectoral regulations provide guidelines, there might be inconsistencies in applying valuation methods. The absence of standardized approaches tailored to the Nigerian market nuances can lead to disparities in asset values across PFAs. As such, ensuring adequate uniform standardization will strengthen the valuation of the pension fund assets as against various assets.

iii. Valuation of Real Estate and Unquoted Investments: Valuing these assets presents unique challenges. The lack of a standardized approach for these types of investments can lead to subjective valuations, potentially affecting the overall accuracy of fund valuations.

iv. Currency Exchange Risks: For pension funds holding foreign-denominated assets, fluctuations in the Naira's value against other currencies can impact asset valuations. Managing these currency risks effectively is crucial for accurate valuation and economic stability.

v. Regulatory Oversight: While the regulations outline responsibilities, there might be gaps in regulatory oversight. Strengthening the monitoring mechanisms to ensure PFAs adhere strictly to valuation guidelines is vital. Regular audits and checks by the Commission can enhance compliance.

vi. Penalties for Non-Compliance: Clear and stringent penalties for PFAs found in violation of valuation regulations are essential. Penalties should be proportionate to the severity of the offense, acting as a deterrent against non-compliance. Transparent reporting of penalties imposed can foster a culture of compliance within the industry.

FUTURE OUTLOOK

Reforms in pension fund asset valuation are essential for stable and effective pension systems. One key reform is enhancing regulatory oversight and standardization, which involves strengthening how regulatory authorities monitor and enforce valuation guidelines among the PFAs. This could include more frequent audits and checks to ensure PFAs consistently follow standardized valuation procedures and preserve the integrity of pension fund asset valuation.

Another critical aspect of reform centers on transparent reporting and penalties. There's a growing expectation for increased transparency in reporting penalties imposed on non-compliant PFAs to enhance accountability and adherence to valuation guidelines.

Public disclosure of these penalties acts as a strong deterrent, motivating PFAs to uphold standards and fostering compliance within the pension industry. This transparency not only holds PFAs accountable but also builds trust among pension fund participants.

Additionally, reform anticipates continuous benchmarking against international pension systems. Learning from successful practices in countries with established pension systems offers valuable insights. Nigeria can adopt effective strategies from such countries, enabling ongoing improvement and alignment with global standards in pension fund asset valuation. This benchmarking ensures the Nigerian pension system remains competitive and resilient in the long run.

CONCLUSION

Conclusively, Nigeria's pension system, guided by the Pension Reform Act and the Regulation on Valuation of Pension Fund Assets, has established a critical framework for transparent and consistent asset valuation. The continued standardization, development, and improvement of the valuation of pension fund assets are essential to sustain the Nigerian pension system's growth and reliability. Addressing the challenges and enforcing the regulatory framework outlined in the Regulation on Valuation of Pension Fund Assets will contribute to the long-term success of the pension industry, benefiting stakeholders and the broader financial market in Nigeria.

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4 https://www.vanguardngr.com/2023/08/pension-fund-assets-hits-n16-76tn/#:~:text=National%20Pension%20Commission%2C%20PenCom%2C%20has,half%20of%202023%2C %20from%20N14. Last accessed, 5 th October 2023

The code of corporate Governance for Licensed Pension Operators details rules based on international best practice to guide Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs) on standard corporate governance structures needed in order to ensure an efficient and stable operating structure. The Code was created due to the need to ensure proper corporate governance for PFAs and PFCs and to safe guide the interest and boost the confidence of the stakeholders.
It is pertinent to state that every worker must receive his/her retirement benefit as at when due. Hence the importance of the creation of a Code of Corporate Governance for Licensed Pension Operators
This article sets out to highlight the importance and benefits of the Code of Corporate Governance for Licensed Operators, the challenges in place and recommendation.

Definition of key terms

Corporate Governance

Corporate governance is the system by which companies are directed and controlled. It is what the Board of Directors of a company does and how it sets the values of the company, which is different from the day-to-day operational management of the company by full-time executives.

Corporate governance refers to the processes and structure by which the business and affairs of the company are directed and managed, in order to enhance long term shareholder value through enhancing corporate performance and accountability, whilst taking into account the interests of other stakeholders.

Pension

It is a fixed amount, other than wages, paid at regular intervals to a person or to the person's surviving dependents in consideration of past services, age, merit, poverty, injury or loss sustained, etc.

Pension Fund Custodians

It is a company licensed by the National Pension Commission to keep money and assets in the Retirement Savings Account (RSA) in trust for the employee on behalf of the PFA. It is the custodian of the pension funds assets and acts to the order of the PFA in line with regulations.[1]

Pension Fund Administrator

It is a company licensed by the National Pension Commission to manage and invest the pension funds in the employee's Retirement Savings Account (RSA).[2] PFA manages the pension funds through various investments in accordance with the investment guidelines by the National Pension Commission.

Purpose of the Code

- To ensure Transparency amongst the Pension Operators
- To ensure a clear delineation between the owners, Board of directors and the Executive Management
- To ensure a clear division of roles and responsibilities between the various levels of authority

PENSION OPERATORS IN NIGERIA

Below is the list of Pension Operators in Nigeria with offices in different parts of the country.

1. The National Pension Commission (PenCom)
2. The Pension Fund Administrators (PFAs)
3. Closed Pension Fund Administrators (CPFAS)
4. Pension Fund Custodians (PFCs)
5. Pension Operators Secretariat (PenOps)
6. Pension Transitional Arrangement Directorate (PTAD)[3]

LEGAL AND REGULATORY FRAMEWORK

There are certain regulatory framework that regulates the affairs of the Pension Operators in Nigeria and some of them are;

1. The Pension Reform Act, 2014

2. Code of Ethics and Business Practices for Licensed Pension Operators 2008
3. Code of Corporate Governance for Licensed Pension Operators 2008
4. The Nigerian Code of Corporate Governance 2018
5. Guidelines on Corporate Governance for Pension Operators in Nigeria 2021

CODE OF CORPORATE GOVERNANCE FOR LICENSED PENSION OPERATORS

The National Pension Commission developed the Corporate Governance Guidelines for Pension Fund Operators (PFOs), which is consistent with the Pension Reform Act (PRA) rules, regulations and guidelines of the Commission. This Guideline is aimed at strengthening corporate governance practice and also assist Pension Fund Operators in meeting their responsibilities and ensuring accountability. This is a measure to ensure that every worker receives his or her retirement benefits promptly and also regulate the affairs of the Pension Operators.

The Code was developed to institutionalize corporate governance best practices in Pension Fund Operators in Nigeria, promote awareness of essential corporate values and ethical practices in the industry, show a clear delineation of roles, board and management of the Pension Fund Operators. The Code aims to set out rules based on best practices to guide PFAs (including CPFAs) and PFCs on the structure and processes to be adopted towards achieving optimal governance set up.

The Code states the minimum Corporate governance requirements to follow to ensure that governance policies are entrenched in the companies. The Code majorly deals with two broad areas: board issues and industry transparency.

CODE ON BOARD ISSUES

To ensure balance on the Board, the minimum numbers of the non-executive members asides the Chairman must equate number of the executive members where applicable. There must also be at least one Independent Director that has no relationship with the company and must not be perceived to interfere with the judgment that are in the best interests of the Company.

It is important to note that for a director to be considered as independent, he must have fulfilled the conditions below;

- he must not have been employed for any form of service by the company or any related companies for the current year or the past three financial years
- he must not have any immediate family member that has been employed for any form of service by the company or any related companies for the current year or the past three financial years
- he must not have accepted compensation from the company or any related companies other than compensation for Board service for the current year or the past three financial years.
- he must not be a substantial shareholder or partner with more than 5% or more equity interest, or an executive officer of any profit-making organization to which the company made or from which the company received significant payments, in the current or past three financial years.

However, if the Pension Fund Administrator (PFA) or Pension Fund Custodian (PFC) intends to make a director independent where there exist one or more of the conditions stated above, it shall disclose in full to the Commission the nature of the director's relationship and explain why the director should be considered independent.

The Code also makes a provision that the office of the Chief Executive Officer and Chairman shall be separate to ensure appropriate balance of power but in circumstances where it is not separate, the relationship between the Chairman and the CEO must be disclosed to the Commission whether they are related.

Responsibilities of Directors

After the directors have been duly appointed in line with the provision of the Code of Corporate Governance for Licensed Pension Operators, the directors are to set objectives for the company's business operations and make sure that the company has an appropriate strategy and management for achieving the objectives.

The Board is also required to have an effective management team to monitor and evaluate the performance of the management team on a regular basis. The Board is to endeavor to give accurate picture of the company's progress, profitability, financial position and risks to the owners of the company and also ensure that there is a satisfactory process to monitor the company's compliance with laws and regulations governing its operations.4

Performance Evaluation of the Board

The Board on an annual basis is required to undertake a formal and rigorous evaluation of its own performance as well as that of its committees and individual directors. The valuation is to show the contribution of each director to the Board and the result of the evaluation shall be prepared in two copies, one to be submitted to the Commission along with the company's annual report on corporate governance.

CODE ON INDUSTRY TRANSPARENCY

This code deals basically on conflict of interest between The Public Fund Administrators and Public Fund Custodians. The Code of Corporate Governance for Licensed Pension Operators states that The PFA shall not have any relationship with the PFC which it chooses to do business, as specified in the Code of Ethics and Business Practices, issued by the Commission. While a PFA/PFC engages a service provider that has a relationship with it on arms length basis and customary, disclosures shall be made in their audited financial statements. (Example is when the service provider has common ownership or directorship or is an immediate family member of a

shareholder or director of a PFA which the PFA appoints).
In order to avoid conflicts of interest, spouses of Licensed Pension Fund Operators are prohibited from working at the Commission and vice versa.
The Code provides that the company's Remuneration policy should be disclosed in the annual reports, alongside remuneration for all directors. The Board is tasked with the duty to report to the shareholders each year on remuneration. The report should also show the company's policy on directors' remuneration and draw attention to factors specific to the PFA/PFC.

Result of Non-Compliance

The Code encourages the board to ensure that the company is in compliance with the Code and other applicable regulations. These Code was introduced to strengthen and promote a culture of regulatory compliance. Non-compliance with the provision of the Code attracts sanctions to be prescribed by the Commission

CONCLUSION

The Code of Corporate Governance for Licensed Pension Operators advocates for a good governance practice, common value system within the Pension Operators and also promotes accountability to the shareholders and the owners.

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SEC RULES RELATING TO THE COMPLAINTS MANAGEMENT FRAMEWORK OF THE NIGERIAN CAPITAL MARKET: DOES THIS SERVE AS AN ADEQUATE MECHANISM FOR COMPLIANTS RESOLUTION AND AVOIDANCE ?

BY: TRIZON LAW

The Nigerian Capital Market plays a vital role in boosting foreign exchange reserves, attracting foreign investments thereby serving as a catalyst for economic growth in the country. It also plays an important role in providing domestic investors an avenue to grow their investment portfolio and thereby increase funding into Nigerian and foreign businesses operating in Nigeria. The Securities and Exchange Commission(SEC) is a government agency mandated to regulate and develop the Nigerian Capital Market, by ensuring that it is dynamic, fair, transparent and efficient. In futherance of this purpose, SEC set up the Complaints Management Framework of the Nigerian Capital Market and its Rules to address complaints arising out of issues that are covered under the Investments and Securities Act, 2007 (ISA). The rules and regulations were made pursuant to the ISA, the rules and regulations of Securities Exchanges and guidelines of recognized trade associations.

These Rules mandates SEC, Self Regulatory Organizations and recognised capital market trade groups and market operators to establish fair and impartial objective compliants management policies for the handling of complaints against operators by clients, complaints between operators, complaints against regulators and SROs, complaints against operators by SROs and regulator and trade manipulation, accounting frauds and Ponzi schemes.

The SEC complaint management framework is designed to be multi-layered. It commences with complaints by clients to be resolved by listed public companies and CMO(Capital Market Operator) within 10 days of the issue being noticed. The complaints are then lodged at first instance with the relevant competent authorities and is to be resolved within 20 days. Complaints against competent authorities, complaints against operators by SROs/Regulator, trade manipulation, accounting frauds, Ponzi schemes and other complaints are determinable by the SEC.

These may periodically be referred to the SEC for further investigation, and ultimately to the Administrative Proceedings Committee (APC) of the SEC. If the regulations of the ISA is fully followed, disgruntled complainants with SEC decisions have the option of appealing to the Investments and Securities Tribunal (IST).

It is crucial to understand that senior management of each company/firm is in charge of implementing and overseeing compliance with the Complaints Management Policy.

The 'relevant Competent Authority' within a company, is responsible for making sure that Companies/firms have a complaints management process that enables complaints to be investigated fairly and potential conflicts of interest be discovered and mitigated.

Before the Complaints Management Framework was established, aggrieved complainants would use law enforcement agencies like the Police and the Economic Financial Crimes Commission (EFCC) to resolve criminal disputes such as misappropriations of investor's fund. This Framework was brought about to discourage the resort to the police and to prevent the complaints from escalating into legal disputes with other implications beyond those involving the investor and the responsible party.

A closer examination of the SEC Complaints Framework' rules reveals that, despite its name, they appear to be more concerned with complaints regarding violations of SEC Rules and the Investment Securities Act (ISA) than they are with complaints that border on the internal procedures of specific capital market participants and businesses. It seems that the Complaint Management Framework's initial goal was to prevent disputes from arising from complaints. The Rules, however, do not quite reflect this, as they essentially serve as a duplication of some of the duties of the IST that settle disputes that are adequately covered by the ISA and the SEC Administrative Proceedings Committee (APC).

This indicates that rather than focusing solely on regulatory violations, the Rules could have focused more on the internal procedures and policies of businesses and specific capital market operators. The Rules mandate that businesses post their complaints management policies online, however they are vague about the guidelines of what is required in this document. Additionally, it should have been made explicit in the Rules that each company's compliant management policies be tailored towards the internal process of each company. The Rules are also silent on what happens to self regulatory organisations and capital market operators that fail to comply in setting up appropriate complaint management systems.

The Rules also does not differentiate between 'complaint' and 'disputes'.

It would appear that the ISA made some sort of difference, as it uses complaints for matters referred to the SEC APC and disputes for the IST. The Administrative Proceedings Committee will decide on complaints made to the SEC by a party against an operator for any securities transaction. The Investment and Securities Tribunal (IST) accepts appeals of the (APC)Committee's ruling. According to the Investment and Securities Act of 2007, all actions must be completed at the IST within 90 days. The Court of Appeal and ultimately the Supreme Court will hear appeals of IST rulings. It then begs the question as to why the Complaints Management Framework was deemed necessary with this already established statutory dispute resolution under the SEC APC and the IST.

The Rules mandate that all SROs, recognized Trade Associations, CMOs, and public companies keep an electronic complaints register that includes information like the complainant's identity, the date and type of the complaint, as well as notes and comments. It must be updated frequently, and the SEC must receive quarterly status reports on the complaints. This Register is crucial because it prevents recurring complaints which is as important as successfully resolving a complaint. It is important that organizations find effective ways of keeping track with these complaints across various communication channels (email, customer response surveys and social media).
This will help in understanding customer insights and how improvements can be made in achieving higher efficiency in the complaints systems and reduce complaints generally.

Although there are no statutory obligations under the ISA to resolve capital market dispute through non-court based disputes resolution such as arbitration and mediation, these have however become common place and very attractive options for the resolution of investments disputes generally.

There is also the issue of awareness on the existence of the Framework and of individual companies/firms of the customer complaint policies. Even though the Rules provide that Companies shall post their Complaint Management Policies on their websites, it is still inadequate. The SEC Rules should contain a provision that mandates companies/firms to notify their customers and stakeholders of their customer complaint policies. Raising awareness can be done better by engaging stakeholders and customers through various seminars or forums by each company, where each respective company in togetherness with SEC explains the Complaint Management System and how to achieve efficient results in this process.

Additionally, in addressing some of the problems as explained above, sector specific panels asides from the IST may be established. Here, professionals with adequate knowledge and expertise can constitute such panels. The ISA provides for the composition of members of the IST, stating that the Tribunal shall consist of 10 persons to be appointed by the Minister which includes the chairman and other members who are required to have knowledge and expertise in capital market matters and corporate issues. This does not take into consideration, niche areas of businesses such as public listed companies in construction, oil & gas where more specific experience is required in reaching fair and equitable decisions by the Tribunal. Sector specific dispute resolution panels would close the gap in this knowledge areas, while also promoting quick and speedy adjudication of disputes that arise from complaints.

Finally, the SEC Complaints Management System is a laudable effort to SEC's commitment of regulation of the Nigerian Capital Market. However, there is room for improvement considering the issues highlighted above. It is suggested that the various solutions as enumerated in this article be looked into, analysed and considered for implementation as this would greatly improve the overall complaints management system.

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CODE OF CORPORATE GOVERNANCE FOR BANKS AND DISCOUNT HOUSES

BY: THE NEW PRACTICE

The Central Bank of Nigeria (the "CBN") recently updated the Corporate Governance Guidelines applicable to commercial, merchant, non-interest, and payment service banks, and financial holding companies in Nigeria (the "Guidelines"). The Guidelines, which became effective on 1st August 2023, seek to enhance the CBN's earlier guidelines and circulars on corporate governance for financial institutions in Nigeria and ensure that the corporate governance practices adopted within the Nigerian banking sector are in line with global best practices. The provisions of the Guidelines supersede the Code of Corporate Governance for Banks and Discount Houses in Nigeria, 2014, the Guidelines on Shariah Governance for Non-Interest Financial Institutions in Nigeria, 2010, and all other prior guidelines and regulations on corporate governance principles that for financial institutions. The Guidelines state that its provisions are to be read and applied simultaneously with the Nigerian Code of Corporate Governance, 2018 (the "NCCG") issued by the Financial Reporting Council of Nigeria.

The Guidelines are made pursuant to the Banks and Other Financial Institutions Act (the "BOFIA") which empowers the Governor of the CBN to issue regulations and guidelines with respect to the corporate governance of financial institutions in Nigeria. In this article, we consider the salient changes and new principles introduced by the Guidelines.

1. Board Structure, Composition and Exit

Commercial, merchant and non-interest banks ("CMNIBs") are required to have no less than seven (7) directors and a maximum of fifteen (15) directors on their boards. Under previous guidelines, they were required to have a minimum of five (5), and a maximum of twenty (20) directors. Payment service banks ("PSBs") are to have a minimum of seven (7) and a maximum of thirteen (13) directors. In addition, the minimum number of independent non-executive directors to serve on the board of CMNIBs is three (3), while the minimum for PSBs, regional commercial banks, and regional non-interest banks is two (2). In the case of banks that are publicly listed, the Guidelines defer to the provisions of the Companies and Allied Matters Act 2020 ("CAMA") on the minimum number of independent non-executive directors, which is presently three (3).[1]

With an increased focus on cybersecurity and the role of technology in curbing money laundering and other financial crimes globally, the Guidelines specify that at least two (2) non-executive directors (with one being an independent non-executive director), must have sufficient knowledge and experience in financial technology and or cybersecurity.

A director must resign by giving ninety (90) days written notice of his or her intention to the Chairman of the board. Where the resignation of an independent non-executive director will result in non-compliance with the minimum notice period, the board must appoint a replacement within the ninety (90) day period.

2. Tenure

The Guidelines specify that the maximum cumulative tenure of all directors, including executive directors, managing, and deputy managing directors is twenty-four years (this was previously twenty years). The tenure is calculated from the date of a director's first appointment to the board of the bank and includes periods served before and after any merger or business restructuring involving the bank.

Up until February 2023,[2] there were no limits on the tenure of directors of financial institutions in Nigeria. This is similar to the practice adopted in the European Union and the United States which do not impose tenure limits for corporate board members.

Our view is that the introduction of tenure limits, which has been re-enforced by the Guidelines, will ensure adequate succession planning, encourage the introduction of new perspectives to board management, and will likely curb incidences of previously independent directors becoming no longer independent.

1 Section 275(1) of CAMA.

3. Responsibilities of the Board

The boards of CMNIBs and PSBs are required to:

a. review the board and committee charters at least once every three (3) years and obtain the CBN's no objection before the implementation of the charter(s);

b. ensure a review of the investment policies and strategies of the bank at least once every three (3) years, and submit the same to the CBN;

c. have oversight of the bank's anti money laundering/combating the financing of terrorism and countering proliferation financing ("AML/CFT/CPF") policies and procedures;

d. develop and implement an information technology (IT) Framework that covers data confidentiality, network security, third party connections, incidence response and reporting at a minimum;

e. designate executive director as the Executive Compliance Officer and notify the CBN of such appointment;

f. review the Board approved succession plan for the Managing Director/Chief Executive Officer, other executive directors and senior management staff at least once every two (2) years;

g. approve all insider credit applications, irrespective of the amount on the recommendation of the Board Credit Committee ("BCC");

h. institutionalize a robust Shariah governance mechanism that is commensurate with the size and complexity of an NIB;

i. oversee the implementation of the resolutions of the Financial Regulation Advisory Council of Experts (FRACE) and the rulings of the NIB's Advisory Committee of Experts;

j. ensure that the nature and manner of the NIB's CSR is in line with the underlying principles of the operations of the NIB's NPI will not be construed as part of its CSR.

4. Board Committees

Banks are required to have a Board Audit Committee ("BAC"), Board Nomination and Governance Committee ("BNGC"), and Board Remuneration Committee ("BRC"). While CMNIBs must have a Board Risk Management Committee ("BRMC"), PSBs must establish a board committee responsible for information and communications technology ("ICT") and cybersecurity. The BAC, BRC and BNGC must be chaired by independent non-executive directors.

5. Remuneration of Board Members

The Guidelines retain the obligation on the board to develop a Remuneration Policy. The remuneration of the Managing Director, Chief Executive Officer, Deputy Managing Director, and Executive Director are to be linked to performance and structured to prevent excessive risk taking. The board is now required to approve the remuneration of all senior management employees (including the Managing Director, Chief Executive Officer, Deputy Managing Director, and Executive Director), while the fees for non-executive directors are to be approved by shareholders (acting on the recommendation of the board).

At the end of each financial year, the board is to confirm that the implementation and execution of the board's Remuneration Policy achieved its objectives.

Where stock options are granted as part of the executive compensation package, they cannot be priced at a discount and may only be exercised a year after the resignation or removal of the director.

6. Delineation of Functions

CMNIBs are prohibited from combining their company secretarial and core legal functions without the prior approval of the CBN. In addition, the company secretarial functions cannot be outsourced and must be handled internally. CMNIBs are also precluded from combining the functions of the BRMC and the BAC. These restrictions do not apply to PSBs as; the roles of the company secretary and the Head Legal or Legal Advisor may be combined.

The positions of Executive Chairman, Vice Chairman, and Deputy Managing Director are not permitted on the boards of financial holding companies.

We are of the view that the separation of these functions and roles is to ensure proper oversight and a clear delineation of responsibilities.

7. Equity Ownership

The Guidelines now align with the provisions of the BOFIA requiring the approval or "no objection of the CBN" before the transfer of significant shareholding[3] irrespective of whether the financial institution is incorporated as a private company or is a listed public company. Under the previous guidelines, a letter of no-objection obtained from the CBN after the share transfer would suffice, provided the shares were traded publicly.

The maximum direct and indirect equity holding that a government may hold in a bank has been retained at ten percent (10%). The Guidelines, however, seem to have introduced an obligation on such government to divest their shares to private investors within five-years from the date of the investment.

We are of the view that the limitation on government

2 Please see the CBN circular, FPR/DIR/PUB/CIR/001/070 dated 24th February 2023.
3 The Guidelines prescribe this as 5% of the paid-up share capital of the financial institution and above.

shareholding is necessary to reduce political influence. However, a key issue for consideration is whether the requirement to divest shares amounts to a constitutional breach of the right to own immovable property.

8. Risk Management

The board must ensure that the risk management function is headed by an executive director. For NIBs with regional authorisation and PSBs, the risk management function must be led by a senior management officer with the relevant qualification, competence, and experience.

9. Cool-Off Period

By the circular titled "Review of Tenure of Executive Management and Non- Executive Directors of Deposit Money Banks in Nigeria",[4] all cadres of directors of deposit money banks and financial holding companies were required to serve out a cool-off period of one (1) year in order to be eligible for appointment to the board of any other bank or, the same bank as a non-executive director. Under the Guidelines, this period has been increased to two (2) years.

Furthermore, former senior managers of the CBN and the Nigeria Deposit Insurance Corporation ("NDIC") are precluded from being employed by banks in any capacity until after a cool-off period specified by the board of the CBN or NDIC, as applicable.

The cool-off period applicable to senior managers of the CBN and the NDIC appears to effectively operate as a restraint of trade. The attitude of the Nigerian courts to restraint of trade provisions in employment agreements has been to place an obligation on the employer to show:

a. a proprietary interest deserving of protection;

b. the imminent danger from which he seeks to protect that interest; and

c. that the restrictive covenants put in place to safeguard that interest is reasonable. That is, reasonable with respect to the time, geographical area to which it is limited, and competition concerns.

Noting that the CBN and the NDIC are yet to prescribe the applicable cool-off periods, we envisage that this provision of the Guidelines will be problematic unless the CBN and NDIC also provide compensation to their ex-

4 FPR/DIR/PUB/CIR/001/070 dated 24th February 2023.

employees who will essentially be barred from working in the entire Nigerian banking industry during the cool-off period. Such compensation could take the form of CBN and NDIC continuing to pay the salaries and benefits of the affected ex-employees until the end of the cool-off period or until they take up employment outside the Nigerian banking sector (whichever occurs first).

10. Compliance and Related Party Transactions

The Guidelines distinguish between the roles of the Chief Compliance Officer and the Executive Compliance Officer. The Executive Compliance Officer shall be a member of the board and will work with the Company Secretary on board related compliance matters, coordinate regulatory requirements along control and operational functions and report regulatory infractions to the board. The Chief Compliance Officer is primarily responsible for coordinating and monitoring the implementation of regulatory requirements cascaded by the Executive Compliance Officer and shall report to the board through the Executive Compliance Officer.

An Executive Compliance Officer must not combine her responsibility with income generating activity.

The Guidelines also supplement the provisions of the BOFIA with respect to related party transactions involving directors. A director will cease to be on the board of the bank and will be precluded from acting as a director in any other financial institution (which in our view, may extend to entities designated as "Other Financial Institutions")[5] where any credit facility granted to the director remains non-performing for more than a year.

In addition, director-related loans and accrued interest shall not be written off without the approval of the CBN.

Conclusion

Banks are in a unique position as they are the arteries of the financial system and are integral to financial stability. Due to the crucial role banks and other financial institutions play in the economy, a robust corporate governance framework with a focus on compliance and risk management is essential.

In line with global best practices, the Guidelines place an emphasis on "expertise" and "independence," with respect to key governance functions, control, and risk management. It is therefore a welcome development in the banking industry.

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5 This will include all CBN licensed entities categorised broadly as "fintech companies".

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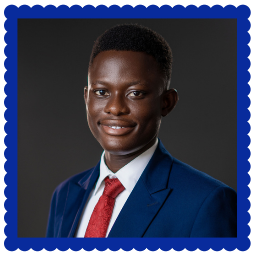

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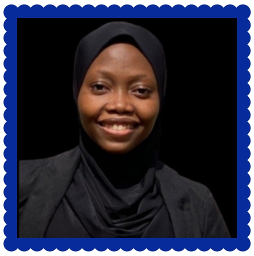

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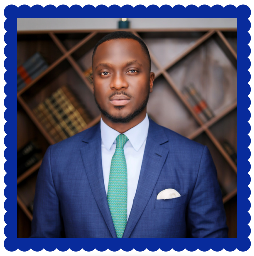

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