- **BANKING**
- **FINTECH**

NEW REGULATORY FRAMEWORKS TO GOVERN ELECTRONIC PAYMENTS & COLLECTIONS AND ISSUANCE OF BANKERS ACCEPTANCES & COMMERCIAL PAPERS IN NIGERIA

The Central Bank of Nigeria (***"CBN"***) is the apex regulator of Nigeria's monetary and financial sectors and has statutory powers to issue regulations for the administration of the financial market and promotion of a sound financial system in Nigeria[1]. Recently, the CBN issued regulations in respect of two separate frameworks for governing operations of key stakeholders in the Nigerian Payments System and the Nigerian Financial System, respectively.

Central Bank of Nigeria

The first framework, issued on September 10, 2019, is titled: ***Regulation on Electronic Payments and Collections for Public and Private Sectors in Nigeria*** *(the **"Regulation"**);* and is a revision of the *"Guidelines on Electronic Payment of Salaries, Pensions, Suppliers and Taxes in Nigeria",* which was issued by the CBN in 2014. It provides all stakeholders with the operational procedures for end-to-end electronic payments and collections in Nigeria.

The second framework followed hot on the heels of the first. Thus, on September 11, 2019, the CBN issued the ***Guidelines on the Issuance and Treatment of Bankers Acceptances and Commercial Papers*** *(the "**Guidelines**").* The Guidelines set uniform procedures for the issuance of *Bankers Acceptances (**"BAs"**)* and *Commercial Papers (**"CPs"**)* in Nigeria, in order to ensure that they are correctly treated by banks and discount houses.

This article reviews the Regulation and the Guidelines (which both became operational immediately after they were issued) and provides a synopsis of the key provisions of each of them.

[1] See section 57, Banks and Other Financial Institutions Act, Cap. B3, Laws of the Federation of Nigeria 2004 and section 32(1), Central Bank of Nigeria Act, 2007.

1. Regulation on Electronic Payments and Collections for Public and Private Sectors in Nigeria

OBJECTIVE

The Regulation appears to be an offshoot of the CBN's goal to fully align with the core objectives of the *National Payments System Vision 2020 (PSV2020)*, which in effect, is to ensure availability of safe, effective and efficient mechanisms for conveniently making and receiving all types of payments from any location and at any time, through multiple electronic channels. This way, significant reduction in the time and costs of transactions is expected to be achieved and leakages in revenue receipts minimized. Furthermore, implementation of the Regulation is expected to aid the provision of reliable audit trails which will ensure that the Nigerian Payments System aligns with international best practices.

SCOPE

The Regulation applies to all *CBN regulated Stakeholders* and mandates the adoption, implementation and compliance with the directives on *End-to-End Electronic Payments* of all forms of salaries, pensions & other remittances, suppliers and revenue collections (including but not limited to taxes, levies, penalties, recoveries, assessments, and the disbursement of funds for social programs payments bills, honorarium, scholarships, allowances) both in the public and private sectors of the economy. The Regulation also applies to, and defines the roles of, *Other Stakeholders* in electronic payments and collections.

According to the Regulation, *End-to-End Electronic Payment* refers to the seamless electronic processing of all forms of salaries, pensions and other remittances, suppliers and revenue collections on a CBN approved electronic platform which transmits the instruction to debit a payer's account and credit a beneficiary's account or any other electronic channels without depending on any third party, manual or semi-manual means.

The Regulation also refers to *CBN regulated Stakeholders* as all financial institutions, Payments Service Providers and other entities licensed and regulated by the CBN; including Deposit Money Banks

(“DMBs”), Other Financial Institutions (“OFIs”), Mobile Money Operators (“MMOs”) and Payment Service Solutions Providers (“PSSPs”)”. Similarly, the Regulation describes *Other Stakeholders* as all other players in the electronic payments and collections market which are not regulated by the CBN.

KEY STAKEHOLDERS

Under the Regulation, the roles of the CBN, CBN regulated Stakeholders, and that of Other Stakeholders are clearly spelt out.

- The main role of the CBN is to promote the adoption of end-to-end electronic payment by all stakeholders. To this end, the CBN shall license, regulate and supervise the operations of the end-to-end electronic payment solution, systems and service providers. The CBN is also expected to create and maintain a platform that will allow for constant interactions and engagements among the stakeholders while collaborating with other statutory and regulatory agencies for the effective implementation of the Regulation. In addition to the foregoing, the CBN is expected to maintain a help desk for the purposes of carrying out public enlightenment, receiving complaints and monitoring prompt resolution of the complaints while also adjudicating in cases of disputes among the stakeholders.

- DMBs, OFIs and MMOs are to provide payers and beneficiaries with appropriate accounts with DMBs, OFIs or any other approved channel for receiving payments (such as mobile money/electronic wallet), subject to the CBN’s approved Know-Your-Customer (“KYC”) limits. Furthermore, they are to process electronic payment instructions in accordance with subsisting payments system and clearing system rules. In carrying out the foregoing roles, they are to maintain customer service contact centers where enquiries and challenges can be promptly attended to within stipulated timelines. Also, in the event of duplicated or excess payments, they are to establish a recovery process in line with appropriate CBN regulation. Whilst filing their mandatory monthly returns with the CBN, these key players are required to provide a set of transaction data, as may be specified, relating to salary, pension and tax payment.

- PSSPs are to obtain operating licenses from the CBN and offer approved end-to-end electronic payment solutions, systems and services to all stakeholders. Similar to DMBs, OFIs and MMOs, PSSPs are expected to maintain customer service contact centers for resolution of complaints and publish the details via multiple media. Also, they are to provide, alongside their mandatory monthly returns to the CBN, a set of specified transaction data relating to salary, pension and tax payment. In carrying out their roles, PSSPs are to comply with CBN stipulated timelines for returns regarding transaction completion and unapplied funds.

- The Regulation also prescribes operational standards for Other Stakeholders including Payers and Beneficiaries. Accordingly, Payers with a staff strength of twenty (20) and above are to adopt end-to-end electronic payment of salaries for their employees and maintain appropriate account with DMBs or OFIs. They are also required to adopt a CBN approved end-to-end electronic payment platform to be used for all forms of payments and collections. In addition to the foregoing, Payers are to remit taxes, statutory payments, contributory pension funds with associated electronic schedules only on a CBN approved end-to-end e-payment platform. For Beneficiaries (which include Employees; Pensioners; Suppliers; Revenues Collecting Organizations; Pension Fund Administrators and Pension Fund Custodians), they are to maintain appropriate bank or collection accounts with DMBs or other CBN approved financial institutions as may be applicable to them. They are also required to use or adopt a CBN approved electronic payment platform while equally rendering required returns to the CBN, as may be specifically applicable, on all electronic transactions carried out.

COMPLIANCE REQUIREMENT & SANCTIONS FOR NON-COMPLIANCE

From the date of commencement of the Regulation, all DMBs are required to dishonor payment instructions issued by organizations (Payers) with more than twenty employees, for all forms of salaries, pensions, suppliers and taxes; when the instructions are not transmitted on a CBN approved straight-through electronic payment and collection platform. This is to ensure that qualifying public and private sector organizations no longer transmit payment instructions and associated schedules to DMBs through unsecured channels. Such channels classified as unsecured by the Regulation include paper-based mandates, flash drives, compact discs (CDs) and email attachments.

The Regulation provides for relevant infractions that may be committed by CBN regulated Stakeholders. The stated infractions and the sanctions prescribed against them (which range from warning, to payment of fines, and suspension of operating licenses/approvals, or as may be prescribed in applicable CBN circulars) are contained in the two (2) Schedules to the Regulation.

DISPUTE RESOLUTION

The new Regulation makes provisions for settlement of any dispute, controversy or claim that may arise out of the implementation of the Regulation. The dispute resolution provisions also cover any claim for breach, termination or invalidity of any terms made pursuant to the Regulation. Accordingly, such disputes or claims shall be settled in accordance with the CBN's dispute resolution mechanism, and if unresolved, may be referred to arbitration in accordance with the rules for arbitration of the Regional Centre for International Commercial Arbitration, Lagos, Nigeria.

2. Guidelines on the Issuance and Treatment of Bankers Acceptances and Commercial Papers

OBJECTIVE

The Guidelines were issued in furtherance of the CBN's goal to deepen the Nigerian money market. Thus, it is expected that they will facilitate the effective and efficient functioning of the market for negotiable financing instruments; through a framework that will ensure uniformity and standardization in the treatment of BAs and CPs across the banking industry.

GENERAL CONDITIONS

The Guidelines prescribe general conditions guiding the creation of a BA and CP, which also include applicable restrictions.

Hence, among other things, a BA

- is required to have an underlying trade transaction which will stand as collateral. This is designed to work by requiring banks to hold the title documents to the associated merchandise as the basis for acceptance;
- is required to be represented by a physical instrument that should be signed by the drawer and properly executed by the bank;

- is required to be drawn on and accepted by a bank, pursuant to an acceptance credit line to finance the drawer's purchases of goods from, or sale of same to, either a resident or non-resident person;
- shall not be drawn to finance the sale or purchase of services unless otherwise allowed under the Guidelines;
- shall not be drawn to finance the sale or purchase of goods by individuals; where the two parties to the trade transactions are parts of a single legal entity, or if the two parties are sole proprietorships operated/owned by the same individuals or where the two have related proprietors, and if the transacting parties are partnerships in which the partners are the same individuals or where there are common partners holding majority shares in the partnerships; and
- is allowed to be drawn where the two transacting parties are related corporations only upon the conditions; that the two related parties are indeed separate legal entities, that the trade transaction was undertaken at arm's length and involved a genuine transfer of title to goods verifiable through documentary evidence, and if the transaction is to finance cross border trade.

In like manner, there are conditions which a CP must meet under the Guidelines, which include the following:

- In order for a CP to qualify as a financing vehicle in the Nigerian money market, the issuer must have a three (3) years audited financial statements the most current of which must not exceed eighteen (18) months from the last financial year end. Also, where the CP is guaranteed by the bank, the issuer must have an approved credit line with a Nigerian bank acting as an issuing and payment agent (**"IPA"**);
- The identity of the issuer of a CP must be disclosed to the investors;
- Unlike a BA, a CP cannot be accepted but can only be guaranteed by a bank;
- When a bank disburses its own funds to invest in a CP, the transaction is required to be reported on the balance sheet and treated as a loan but where the bank merely guarantees the instrument, the transaction is required to be shown off-balance sheet as a contingent liability; and
- Resale of CPs by banks and discount houses is required to be accompanied by adequate documentation, which Examiners are to be provided with on request.

DOCUMENTATION REQUIREMENTS

Under the Guidelines, creation of a BA requires the presentation of a complete set of documents evidenced by:

- Drawer's declaration that no other source of finance has/is/would be entered into in respect of the trade transaction;
- Full set of commercial and/or financial documents in respect of the trade transaction, and
- A receipt or other documentary evidence of payment (where the drawer-purchaser has already made payment to the supplier prior to the creation of the BA.

The Guidelines require that original copies of the commercial and/or financial documents are to be presented to the accepting bank. In the event that the original documents are not available (either immediately or on the acceptance date), copies of such documents which are produced by reprographic or automated/computerized systems as well as second/carbon copies may be accepted by a bank; provided that such secondary copies contain a serial number and are authenticated by authorized signatories, where applicable.

The Guidelines also provide alternative documentation requirements for the creation of a BA, where the full set of commercial and/or financial documents may not yet be available on the drawing date or where the transaction is only evidenced by a single document.

Similarly, the standard documentation requirements for a CP transaction in Nigeria is prescribed in the Guidelines to include the following:

- CP raising mandate
- Board Resolution to borrow
- Issuing, placing and paying agency agreement
- Commercial Paper Note
- Bank Guarantee, where applicable
- Investment Instruction/Investment Mandate
- Investment Advice
- Custodial Agreement
- Information memorandum on the issuer in the case of clean CPs
- Latest rating report from the credit rating agency
- Backstop loan request for guaranteed CPs.

PROCEDURE FOR ISSUANCE OF BAs AND CPs

The general procedure to be followed in creating a BA is provided for in the Guidelines. Accordingly, the following steps are required to be followed sequentially:

i. Arrange an acceptance credit line with a bank;
ii. Present the required documentary evidence of trade to the bank, for the purpose of drawing a BA on the bank; and
iii. The bank accepts the BA, upon satisfactory evidence that: the documents presented are in order; the BA complies with the terms of the acceptance of a normal credit facility; and all the applicable conditions for the creation of BA have been complied with, as specified in the Guidelines.

In the same vein, the procedure to be followed in creating a CP is set out in the Guidelines as follows:

i. A company proposing to issue CPs is required to submit a proposal to the IPA with its rating report issued by a credit rating agency. The IPA is required to scrutinize the proposal and thereafter take it on record (or record the proposal in its blotter) if satisfied with same;

ii. The Company is expected to ensure that the proposed issue of CP is completed within the period of two (2) weeks from the date of opening of the issue for subscription;

iii. After the exchange of deal confirmation between the IPA and the issuer, the IPA is required to issue physical certificates to the investor or arrange for crediting the CP to the investor's account with a Securities Depository; and

iv. All IPAs issuing the CPs are required to advise the relevant Securities Depository on the amount of CPs actually issued, within three working days from the date of completion of issue.

PENALTY FOR NON-COMPLIANCE

Henceforth, all BA and CP transactions in Nigeria are to strictly comply with the provisions of the Guidelines. According to the Guidelines, non-compliance (either wholly or partially) with any of the provisions contained there-in shall attract appropriate penalties; as prescribed in Section 60(1) of the *Banks and Other Financial Institutions Act, 1991 (as amended)*. As further stated in the Guidelines, applicable penalties may also include the debarring of erring stakeholders from the BA or CP market or any other sanction as the CBN may prescribe from time to time.

OTHER KEY PROVISIONS

In addition to the above mentioned provisions, the Guidelines also spell out other governance principles and prudential measures which, from now on, are to guide the issuance and treatment of BAs and CPs in the market. Thus, provisions are also made with regard to rating requirements; tenor & roll-over; denominations; limits & the amount of issue; underwriting; investors; forms of maintaining the instruments; IPAs; mode of payment & issuance; roles and responsibilities of parties; registration; reporting requirements; accounting treatment; provision of stand-by facility; and disclosure requirements. It is expected that full implementation of the Guidelines will positively impact the Nigerian money market, as projected.

The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo

For further information or guidance, please contact B&I Banking & Loan Syndication Team on banwigho@banwo-ighodalo.com

Contact Persons

SEYI BELLA

sbella@banwo-ighodalo.com

OLUWATOBA OGUNTUASE

ooguntuase@banwo-ighodalo.com

48, AWOLOWO ROAD, SOUTH WEST IKOYI
LAGOS, NIGERIA

AFRI-INVESTMENT HOUSE
50, AGUIYI-IRONSI STREET, MAITAMA
ABUJA, NIGERIA

234 9060003561-2; 8050875883; 8092714452; 9020524921
(ABUJA - 09 2912127)
www.banwo-ighodalo.com