



# FINTECH REGULATION IN NIGERIA

- 1 <http://thenationonlineng.net/nigeria-has-highest-number-of-unbanked-population-worldwide/>
- 2 [https://www.cbn.gov.ng/icps2013/papers/NIGERIA\\_PAYMENTS\\_SYSTEM\\_VISION\\_2020%5Bv2%5D.pdf](https://www.cbn.gov.ng/icps2013/papers/NIGERIA_PAYMENTS_SYSTEM_VISION_2020%5Bv2%5D.pdf)
- 3 <https://www.thisdaylive.com/index.php/2019/03/25/cbn-mulls-extension-of-payment-system-vision-to-2030/>
- 4 <https://www.cbn.gov.ng/out/2017/01/20/aml%20january%202017%20circular%20to%20fis%20on%20virtual%20currency.pdf>
- 5 <https://www.cbn.gov.ng/out/2018/ccd/-press%20release%20on%20virtual%20currencies.pdf>

## Regulatory Policy

Nigeria has a pro-innovation stance on the provision of payment services and fintech services and products targeted at its unbanked and underserved population – which is arguably the highest in the world when compared to other countries across the globe<sup>1</sup>. This tone was set in 2010 by the Central Bank of Nigeria (“CBN”), the apex regulator of financial services (including payment services) in Nigeria and subsequently followed, in September 2013, with the policy document known as **Payments System Vision 2020**<sup>2</sup>.

According to the Payments System Vision 2020, the goal of the CBN is to “*create an electronic payments infrastructure that is nationally utilized by all sectors of the economy and all regions of the country and internationally recognized as being world class*”. In line with the foregoing, the CBN generally adopts a friendly approach to providers of payments services whose services are not envisaged by existing regulations, and will typically issue customized regulatory requirements to such service providers.

It is reported that the CBN is undertaking a review of the Payments System Vision 2020, with a view to setting new targets for the advancement of financial technologies under a proposed Payments System Vision 2030<sup>3</sup>.

Notwithstanding the foregoing, the CBN continues to maintain a cautious attitude towards cryptocurrency and cryptocurrency-related activities due to concerns about consumer protection, monetary policy control, and visibility over the payments ecosystem. The CBN issued a circular dated January 12, 2017<sup>4</sup>, requiring banks, pending the issuance of formal regulation, to (i) refrain from transacting in virtual currencies,

(ii) ensure that their existing customers who are cryptocurrency exchanges have effective Anti-Money Laundering (“AML”) and Countering the Financing of Terrorism (“CFT”) controls, or discontinue the relationship with such customers if their AML/CFT controls are not satisfactory; and (iii) to report suspicious transactions by such customers to the CBN. The CBN issued another circular dated February 28, 2018<sup>5</sup> stating that cryptocurrencies and exchanges are unregulated, and warning the general public to exercise caution in cryptocurrency transactions.

## Fintech Specific Laws and Regulations (Extant and Envisaged)

There is no fintech-specific statute in force in Nigeria. However, there is a bill pending before the legislative houses – the Electronic Transactions Bill, which seeks to regulate certain aspects of fintech services if passed into law. Particularly, the Electronic Transactions Bill contains provisions regulating the protection of data in electronic transactions, electronic contracts, and the use of electronic signatures

Under Nigerian law, a bill will be passed into law if it is approved by both houses of the National Assembly (i.e. the Senate and the House of Representatives) and subsequently assented to by the President within thirty (30) days after it is presented to the President. Where the President withholds his assent and the bill is passed again by two-thirds majority of each house of the National Assembly, the bill will become law, and the assent of the President will no longer be required. Where a bill is not passed into law before the dissolution of the National Assembly, such a bill will lapse.



- 6 Section 19(3) Cybercrimes Act.
- 7 Section 21(1) Cybercrimes Act.
- 8 Section 21(3) Cybercrimes Act.
- 9 Section 38(1) Cybercrimes Act.
- 10 Section 38(6) Cybercrimes Act.

The Electronic Transactions Bill has been approved by the National Assembly and is currently awaiting assent by the President. However, in view of the recently concluded Presidential and National Assembly elections, the current National Assembly is to be dissolved on June 8, 2019. The Electronic Transactions Bill will lapse if not passed into law at the time of dissolution of the National Assembly. We certainly hope that President assents to the Electronic Transactions Bill in the very near future.

The CBN regularly issues regulations and guidelines governing various payments services including mobile money, switching services, payment gateways, and card payments. The CBN has issued the following regulations:

- (i) Guidelines on Operations of Electronic Payment Channels in Nigeria, 2016;
- (ii) Guidelines on Transaction Switching in Nigeria, 2016;
- (iii) Guidelines on Mobile Money Services in Nigeria;
- (iv) Guidelines on International Mobile Money Remittance in Nigeria;
- (v) Circular on the Implementation of Interchange Fee dated November 1, 2016; and
- (vi) Regulation for Bill Payments in Nigeria, 2018.

#### Government Authorities that Regulate the Provision of Fintech Products and Services

The CBN primarily has regulatory oversight over fintech services and products. The National Communication Commission (Nigeria's telecommunications regulator) ("NCC") also regulates the provision of financial services leveraging on telecommunications networks and infrastructure (e.g. mobile money and Unstructured Supplementary Service Data (USSD) banking). Cryptocurrencies remain unregulated in Nigeria.

#### Licensing Requirements

The CBN has issued sundry regulations which require providers of fintech services to obtain a licence from the CBN. Fintech operators which are licensed by the CBN include mobile money operators, switching companies, payment gateways, and payment terminal service providers and aggregators. Operators of bill payment platforms are required to either obtain a licence from the CBN or be integrated into a licensed payments service provider. Mobile money operators and other fintech service providers which make use of telecommunications infrastructure, also require the approval of the NCC.

#### Prohibited Fintech Products or Services

No fintech products or services are prohibited in Nigeria. The CBN, however, has adopted a cautious stance towards cryptocurrencies and has prohibited banks from transacting in cryptocurrencies. However, there is no general prohibition on cryptocurrency-based fintech services and products in Nigeria.

#### Data Protection and Cybersecurity

Data protection and cybersecurity are governed by the Nigeria Data Protection Regulations, 2019, issued by the National Information Technology Development Agency (NITDA) pursuant to the National Information Technology Development Agency Act, 2007, and several CBN regulations, some of which contain overlapping provisions.

A common cybersecurity requirement across these regulations is that fintech services must be compliant with the Payment Card Industry Data Security Standards (PCI DSS) issued by the Payment Card Industry Security Standards Council. The regulations also prescribe a minimum encryption standard of Triple Data Encryption Standard (Triple DES) and implementation of firewalls. These standards are also applicable to payment cards.

There is some data protection legislation in the works. The Electronic Transactions Bill, when enacted, will have far reaching consequences for organizations that process personal data, including fintech companies. For example, data controllers and processors (including fintech companies) will be restricted from transferring personal data of individuals to a country outside Nigeria, unless such country has adequate provisions for the protection of data. The Electronic Transactions Bill will also give individuals the right to request their personal data from a data processor or controller, and to claim compensation against such data processors and data controllers for any data breaches. Whilst the Electronic Transactions Bill is yet to be enacted, it is highly recommended that companies and organisations that process personal data should, if they don't already do, create and implement policies that safeguard personal data in their possession, or revise their existing data protection policies, with the current draft of the Electronic Transactions Bill as a baseline standard.

#### Anti-fraud, Anti-Money Laundering and Other Financial Crime Regulations that Govern Fintech Services

The Cybercrimes (Prohibition, Prevention, etc) Act, 2015 (the "Cybercrimes Act") requires financial institutions to put in place effective counter-fraud measures to safeguard their sensitive information.<sup>6</sup> Although this provision applies specifically to financial institutions, it is considered best practice for fintech service providers to comply with its requirements to the extent possible.

The Cybercrimes Act also requires an operator of a computer network whether private or public (including fintech service providers), to inform the National Computer Emergency Response Team Coordination Centre of any attacks, intrusions and other disruptions liable to hinder the functioning of the network<sup>7</sup>. Failure to report any such attack is punishable with a fine of Two Million Naira (N2,000,000)<sup>8</sup>. Further, the Act requires service providers, including fintech companies, to keep all traffic data and subscriber information for a minimum of two (2) years<sup>9</sup>. Failure to do so is an offence punishable by a fine of Seven Million Naira (N7,000,000) or imprisonment, or both<sup>10</sup>.

The CBN (Anti-Money Laundering and Combatting the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations, 2013 ("AML/CFT Regulations") requires financial institutions to implement internal controls to prevent the use of their facilities for money laundering and terrorist financing. Financial institutions are also required to undertake customer due diligence and report suspicious transactions. Mobile money operators are required by law to comply with the AML/CFT Regulations. It is also considered best practice for fintech companies to comply with the requirements of the AML/CFT Regulations.

#### Competition and Consumer Protection

The Federal Competition and Consumer Protection Act, 2018 (the "FCCP Act"), which is applicable to all entities carrying on business in Nigeria, including fintech companies, prohibits anti-competitive practices, including price fixing, market sharing, collusive tendering, or entering into any arrangement which might cause a restraint on competition.



11 Section 114 FCCP Act.  
 12 Section 115 FCCP Act.  
 13 Section 119 FCCP Act.  
 14 Section 125 FCCP Act.  
 15 Section 126 FCCP Act.  
 16 Section 127 FCCP Act.  
 17 Section 128 FCCP Act.

The FCCP Act also requires all undertakings, including fintech companies, among other things:

- (i) to ensure that notices to customers in respect of products or services are displayed in the form prescribed by law, or where no form is prescribed, are displayed in plain language<sup>11</sup>;
- (ii) not to display any goods or services for sale without displaying to the consumer a price for such goods or services, or require a customer to pay a price higher than the price displayed<sup>12</sup>;
- (iii) to refrain from tying or bundling products or services, unless it can be demonstrated that the convenience to the consumer in bundling the services outweighs the limitation of the consumer's right to choose<sup>13</sup>;
- (iv) in the marketing of good or services, not to directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact, or fail to correct an apparent misapprehension on the part of a consumer<sup>14</sup>;
- (v) not to publish a testimonial by any person as to the performance, efficacy or length of life of their goods or services unless (a) the testimonial was in fact made by such person, and (b) the maker of the testimonial permits the publication of such testimonial<sup>15</sup>;
- (vi) not to enter into any transaction with a consumer for the supply of goods or services in a manner that is unfair, unreasonable or unjust, or require a consumer to waive any rights, assume any obligation, or waive any liability of the supplier on terms which are unfair, unreasonable or unjust<sup>16</sup>; and
- (vii) display any notice to consumers or potential consumers which limits their liability, constitutes an assumption of risk on the part of the consumer, constitutes an

obligation on the consumer to indemnify the supplier or any other person, or constitutes an acknowledgment of any fact by the consumer, to be drawn to the attention of the consumer in a conspicuous manner<sup>17</sup>.

Further, the CBN's Consumer Protection Framework dated November 7, 2016, provides guiding principles for the protection of consumers of financial services.

The Consumer Protection Framework provides that entities licensed by the CBN, including fintech companies, will be required to:

- (i) be transparent in their dealings with consumers;
- (ii) not issue misleading or exaggerated advertisements on their products and services;
- (iii) not include unfair contract terms in their contracts with consumers;
- (iv) put in place effective controls to safeguard consumer assets and data, and carry out regular systems updates;
- (v) establish channels for the lodging of complaints by consumers and put in place processes for the redress of such complaints; and
- (vi) not engage in anti-competitive practices.

### Cross Border Regulation

Foreign fintech companies that wish to carry on business in Nigeria will be required to incorporate a company in Nigeria and obtain the necessary licences from the CBN, and NCC as appropriate. Persons resident in Nigeria may access offshore fintech products. Any such transaction will be subject to foreign exchange controls under the CBN's Foreign Exchange Manual dated August 1, 2018.

For more information on this Article, please contact



**Adedoyin Afun**

Partner

adedoyin.afun@bloomfield-law.com



**Jane Iroagalachi**

Senior Associate

jane.iroagalachi@bloomfield-law.com

or your usual contact at Bloomfield LP.



© 2019 All rights reserved [www.bloomfield-law.com](http://www.bloomfield-law.com)

#### DISCLAIMER

This is a publication of Bloomfield LP and is for general information only. It should not be construed as legal advice under any circumstance and Bloomfield LP shall bear no liability for any reliance on this publication. For further information about the Firm, its practice areas, publications and details of seminars/events, please visit: [www.bloomfield-law.com](http://www.bloomfield-law.com).

