

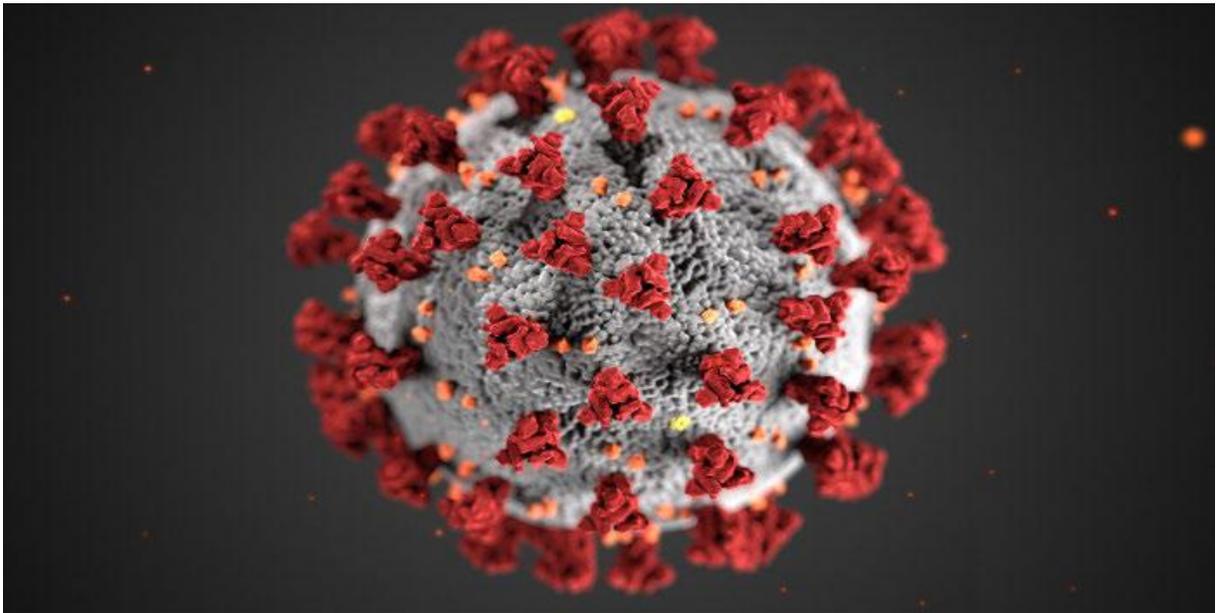
GREY MATTER

COVID-19 LEGAL ADVISORY SERIES

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BANWO & IGHODALO



Policy & Regulatory Measures against the Coronavirus Pandemic in Nigeria



BANWO & IGHODALO

The Coronavirus Disease (COVID-19) continues to significantly impact people's health, businesses and the global economy. From country shutdowns, disruption of supply chains, crash in stocks, drop in commodity prices, loss of daily income, the negative economic effects are numerous. Now a global pandemic, corporates, regulators and governments across the world are responding to the scourge.

In Nigeria, various measures – championed by the Central Bank of Nigeria (“**CBN**”), the National Assembly, the Organized Private Sector under the aegis of the *Nigerian Private Sector Coalition Against COVID-19* (“**Private Sector Coalition**”) and other key market players – have been put in place, while others are currently being developed, to cushion the negative impact of the Coronavirus on businesses, households and the larger economy. These measures include special intervention funds, credit support facilities, regulatory forbearance, and tax reliefs. This article highlights the key policy, regulatory and legislative actions being taken to mitigate the adverse impacts of the currently ravaging coronavirus disease in Nigeria.

1. CBN POLICY MEASURES

On March 16, 2020, in the wake of the plunge in international oil prices and the COVID-19 outbreak, the CBN, in a move to preserve the stability of the Nigerian financial market, introduced some policy measures via a circular, referenced: FPR/DIR/GEN/CIR/07/049 and titled “**CBN Policy Measures in response to COVID-19 Outbreak and Spillovers**”, which provides for the following:

- i. **Extension of moratorium for all CBN intervention facilities** – With effect from March 1, 2020, all CBN intervention facilities have been granted additional one year on all principal repayments. In this regard, the participating financial institutions are required to provide new amortization schedules for the beneficiaries of the various loans.
- ii. **Reduction in the applicable interest rates on all CBN intervention facilities** – Interest rates on all applicable CBN intervention facilities have been reduced from 9% to 5% per annum, with effect from March 1, 2020.
- iii. **Creation of a ₦50 Billion Targeted Credit Facility** – A Fifty-Billion-Naira (₦50) facility has been created to provide support for targeted sectors of the economy, particularly households and the micro, small and medium-sized enterprises (“**MSMEs**”), that are particularly affected by the COVID-19 outbreak. The credit facility, which is established through the NIRSAL Microfinance Bank, is also open to other vulnerable entrepreneurs including hoteliers, airline service providers and healthcare merchants.
- iv. **Credit Support for the Healthcare Industry** – Given the serious pressure brought on the healthcare industry by the COVID-19 outbreak, a special One-Hundred-Billion-Naira (₦100) intervention facility has been established, open to pharmaceutical companies, hospitals and healthcare practitioners intending to expand/open their drug manufacturing plants in Nigeria or expand/build their health facilities to first class centers, as the case may be.

- v. **Regulatory forbearance** – Deposit Money Banks (“DMBs”) have been given leave to extend the tenors of credits granted to businesses and households affected by the Coronavirus outbreak. In this regard, temporary and time-limited restructuring of loan terms are to be considered for all credits granted to businesses, particularly in the oil & gas, agriculture, and manufacturing sectors.
- vi. **Strengthening of the CBN Loan/Deposit Ratio (LDR)** – In order to sustain the successful implementation of the existing LDR Policy, in the light of the negative consequences of the COVID-19 on the financial system, the CBN is considering further support for the industry funding levels (by providing liquidity backstops as the lender of last resort) in order to maintain the capacity of DMBs to continue to extend low-interest and longer-tenured credits to households and businesses.

IMPLEMENTATION GUIDELINES

Further to the establishment of the aforementioned policy measures, the CBN issued two governing documents (“**Implementation Guidelines**”), prescribing the operational modalities for the *₦50 Billion Targeted Credit Facility* and the *₦100 Billion Healthcare Credit Support Scheme*.

On March 23, 2020, the first governing document titled: “**Guidelines for the Implementation of the ₦50 Billion Targeted Credit Facility**”, was introduced by the CBN via a circular referenced: FPRD/DIR/GEN/CIR/07/050. Also, on March 25, 2020, the second governing document titled: “**Guidelines for the Operations of the ₦100 Billion Credit Support for the Healthcare Sector**”, was similarly introduced via another circular referenced: FPR/DIR/GEN/CIR/07/051.

Some of the operational modalities, prescribed by the Implementation Guidelines, are shown in the table below.

MODALITIES	₦50 BILLION TARGETED CREDIT FACILITY	₦100 BILLION HEALTHCARE CREDIT SUPPORT SCHEME
Eligible Participants	Households and enterprises with verifiable evidence of the adverse impact of the COVID-19 pandemic, and enterprises with a bankable plan to benefit from the intervention fund.	Manufacturers of pharmaceutical drugs and medical equipment; Hospitals/clinics; Diagnostic centers/laboratories; Fitness & wellness centers; Rehabilitation centers; Dialysis centers; Blood banks and the like; Enterprises involved in pharmaceutical & medical products’ distribution and logistics services; and other enterprises in the healthcare sector as may be determined by the CBN, from time to time.
Activities Covered	Agricultural value chain activities, Hospitality (accommodation & food services), Health (pharmaceuticals and medical supplies), Airline Services, Manufacturing or Value addition, Trading, and any other income	Manufacturing of pharmaceutical drugs and medical equipment; Distribution of medical & pharmaceutical drugs and supplies; Establishment/expansion/upgrade of basic and specialized healthcare facilities;

	generating activities prescribed by the CBN.	Medical & pharmaceutical supplies; Manufacturing of distribution technology for medical & pharmaceutical drugs; Medical and pharmaceutical Research and Development (R&D); and any other healthcare value chain activity prescribed by the CBN.
Funding	The source of funding shall be the Micro, Small and Medium Enterprises Development Fund (MSMEDF)	The source of funding for the Scheme shall be the Real Sector Support Facility – Differentiated Cash Reserves Requirement (RSSF-DCRR)
Participating Financial Institutions	NIRSAL Microfinance Bank (“NMFB”)	Deposit Money Banks (“DMBs”), and Development Finance Institutions (“DFIs”)
Loan Limit & Tenor	Maximum of ₦25 Million for MSMEs. Maximum of ₦3 Million for Households.	Working Capital – 20% of the average of 3 years of an enterprise’s turn-over, subject to a maximum of ₦500 Million per obligor (20% of the previous year’s turn-over for an enterprise that is less than 3 years in operation). The tenor of Working Capital shall be maximum of 1 year with provision for rollover for a period not more than 3 years; and Term Loan – Maximum of N2 Billion per obligor. The tenor of Term Loan shall be maximum of 10 years with a maximum of 1 year moratorium on repayment (In case of construction, the tenor shall be determined by the completion date)
Interest Rate	5% per annum (all inclusive) up to 28 th February 2021; and 9% per annum (all inclusive) as from 1 st March 2021.	5% per annum (all inclusive) up to 28 th February 2021; and 9% per annum (all inclusive) as from 1 st March 2021.
Collateral Requirement	Movable assets duly registered with the National Collateral Registry, Deposit of title documents (in perfectible state), Deed of Debenture for Stocks (in perfectible state), Irrevocable domiciliation of proceeds, Two acceptable guarantors, Personal guarantee, and Insurance Policy (Life & Comprehensive Insurance) with NMFB as the First Loss Payee.	The collateral to be pledged by borrowers under the Scheme shall be as may be required under the RSSF-DCRR.
Repayment	On installment basis according to the	On installment basis, according to the

Modalities	nature of the particular enterprise, and as contained in the repayment schedule or work plan provided at the application stage.	approved repayment schedule.
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2. EMERGENCY ECONOMIC STIMULUS BILL

In a similar move to the regulatory actions of the CBN, the House of Representatives of the Federal Republic of Nigeria (the “**Federal House**”), has proposed a bill tagged “**Emergency Economic Stimulus Bill 2020**” (“**the Bill**”), for legislative debate and possible passage into an Act of the National Assembly.

The Bill, which is expected to apply and have effect throughout the country if passed into law, generally seeks to provide for reliefs on Corporate Tax Liability, Import Duty on Selected Goods and Mortgage Obligations to the Federal Mortgage Banks; as a legislative response to the economic downturn occasioned by the COVID-19 outbreak in Nigeria.

The provisions of the Bill are drafted to give effect to its broad aims and objectives, which include:

- Provision of temporary relief to companies and individuals to alleviate the adverse financial consequences of a slowdown in economic activities;
- Protection of the employment status of Nigerians, who might otherwise become unemployed as a consequence of management decision to retrench personnel in response to the prevailing economic realities;
- Provision for a moratorium on mortgage obligations for individuals, at a time of widespread economic uncertainty;
- Elimination of additional fiscal bottleneck on the importation of medical equipment, medicines, personal protection equipment, and other such medical necessities; as may be required for the treatment and management of the coronavirus disease in Nigeria; and
- Catering to the general financial wellbeing of Nigerians, pending the eradication of the coronavirus pandemic and a return to economic stability.

Some of the specific reliefs sought by the Bill include:

- i. Fifty percent (50%) income tax rebate¹ on the total of the actual amount of tax due or paid as Pay-As-You-Earn (PAYE) under the Personal Income Tax Act² (“PITA”), for companies that maintain the same employee status, without retrenching their staff, as at 1st of March 2020 till the rest of the year ending 31st of December 2020. It should be noted that only employers duly registered under “Part A” and “Part B” of the Companies and Allied Matters Act³ (“CAMA”) are eligible to claim the tax rebate⁴. The eligible employers, however, exclude those that are subject, either partly or wholly, to the Petroleum Profit Tax Act⁵. Subject to ratification by a majority of the members of the National Assembly, the rebate period may be extended by the President, for such duration in which the COVID-19 remains an urgent and severe public health emergency.
- ii. Deferral for a period of 180 days effective from 1st of March 2020, of the payment of all mortgage obligations on residential mortgages obtained by individual contributors to the National Housing Fund (“NHF”), notwithstanding the provisions of the NHF Act, 2018 or any other applicable law or regulation. The deferral may be extended by the President for another period of 180 days, subject to a majority vote by members of the National Assembly.
- iii. Waiver of import duty on medical equipment, medicines, personal protection equipment and other such medical necessities⁶ as may be required for the treatment and management of the Coronavirus Disease in Nigeria. The import duty waiver shall remain in force from the 1st of March, 2020 to the 31st of December, 2020 or any other time as may be extended by the President under the enabling law⁷.

3. PRIVATE SECTOR COALITION

The Private Sector Coalition was formed, following series of CBN's engagements with key private sector players and stakeholders⁸. It was created out of the urgent need to provide support to the Federal

¹ As defined in the Bill, the income tax rebate shall be 100% refund of the employer's income tax (Companies Income Tax or Personal Income Tax, whichever is applicable) for the period, subject to a limit of 50% of the PAYE tax remitted on behalf of the employees for the same period.

² Cap. P8, Laws of the Federation of Nigeria, 2004.

³ Cap. C20, Laws of the Federation of Nigeria.

⁴ An employer shall not be deprived of the tax rebate, in the relevant period, where an employee dies of natural death; voluntarily leaves the employment or has indicated interest to leave the employment before March 1, 2020; or where the employee breaches the Labour Act, Cap. L1, Laws of the Federation of Nigeria 2004.

⁵ Cap. P13, Laws of the Federation of Nigeria, 2004.

⁶ The Bill empowers the Honourable Minister of Health to specify any other goods qualified for import duty waiver, by regulations published in the Federal Government Gazette.

⁷ Section 13(1) (a), Customs, Excise, Tariffs, Etc., (Consolidated) Act of 1995.

⁸ The Private Sector Coalition was formed by the CBN Governor, Aliko Dangote, Herbert Wigwe, Jim Ovia, Tony Elumelu, Segun Agbaje, Femi Otedola, Abdulsamad Rabi'u while many other prominent business personalities, foundations, and corporate entities have since joined and made donations to the Coalition. Membership is open to anyone willing to contribute at least ₦1 Billion, and able to influence his/her organization to donate towards the realization of the objectives of the Coalition.

Government in combating the Coronavirus pandemic, particularly the required funding⁹ for the procurement of necessary medical equipment, materials and infrastructure.

The Coalition aims to combat the Coronavirus through achieving the following objectives:

- Mobilize private sector thought leadership;
- Mobilize private sector resources;
- Increase general public awareness, education and buy-in;
- Provide direct support to private and public healthcare's ability to respond to the crisis; and
- Support Government effort.

The Coalition is structured to work with reputable institutions and consultants, through its four (4) major committees¹⁰.

4. COMMENTARY

The CBN Policy Measures are appropriate responses to the negative economic impact of the COVID-19 outbreak. By covering the worst hit and most vulnerable sectors, the measures are expected to effectively cushion the adverse effects of the pandemic on households, MSMEs and large corporates alike.

It is our view that, if credit to households and businesses is stimulated and sustained at this time with fiscal relief and regulatory forbearance granted to individuals and corporates, [the challenges posed to business entities and disruptions to commercial transactions in the wake of the Coronavirus pandemic](#), will be substantially mitigated.

The targeted nature of the various intervention funds enhances project-tied or sector-specific financing. This way, development of critical sectors of the economy with the most impact on households and businesses, such as agriculture, manufacturing, and trading can be accelerated. Similarly, the provision of long-term, low-cost finance for the development of a world-class aviation and healthcare infrastructure in the country will significantly reduce capital flight and conserve foreign exchange. This will enhance the capacity of the economy to absorb the shocks from a global pandemic like the COVID-19.

Also, we note that the efforts of the Private Sector Coalition will provide the needed private sector support for the successful implementation of the various CBN intervention policies. However, restricting its membership to only persons who can contribute a minimum of ₦1 Billion, has the potential to exclude interested members of the society, who may not have the capacity to donate up to the prescribed minimum amount. In our view, reducing the minimum membership contribution, will likely reduce the time to raise the target fund, as well as ensure a more diverse organization in terms of skills.

⁹ The Private Sector Coalition estimates that a minimum of ₦120 Billion is required to procure medical equipment and materials needed to fight the COVID-19 outbreak in Nigeria.

¹⁰ Steering Committee, Funding Committee, Operational Committee, and Technical Committee.

Finally, whilst the proposed Emergency Economic Stimulus Bill is a right step in a right direction, as it appears to provide legislative backing for some of the policy measures already introduced by the CBN, considering the realities of the COVID-19 pandemic and the need to take drastic and urgent measures; in our view, the Bill ought to have been passed into law by now. On the contrary, it is not clear whether the Federal House has actually passed the Bill, and if yes, when it will be transmitted to the Senate for the required legislative concurrence.

In any event, the policy and regulatory measures being undertaken to mitigate the pains of the Coronavirus outbreak in Nigeria are expected to yield positive results for households and businesses and promote stability in the economy.

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

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Contact Persons



SEYI BELLA

Partner

sbella@banwo-ighodalo.com



OLUWATOBA OGUNTUASE

Practice Support Lawyer (PSL)

ooguntuase@banwo-ighodalo.com

OUR OFFICES:

LAGOS

48, AWOLOWO ROAD, SOUTH WEST IKOYI,
LAGOS, NIGERIA

ABUJA

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

TEL

234 9060003561-2; 8050875883; 8092714452;
9020524921
(ABUJA - 09 2912127)

EMAIL - banwigho@banwo-ighodalo.com

WEBSITE - www.banwo-ighodalo.com