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## **WHAT CHANGES DOES THE REVISED FX MANUAL 2018 BRING TO THE FX REGIME IN NIGERIA?**



The Central Bank of Nigeria (“CBN”) recently released a “Revised Edition” of its *Foreign Exchange Manual* (“**revised FX manual**”). The CBN has powers – pursuant to section 1(2) of the *Foreign Exchange (Monitoring & Miscellaneous Provisions) Act, 1999 [Cap. F34, Laws of the Federation of Nigeria 2004]* (“**Forex Act**”) – to issue from time to time, subject to the approval of the Minister of Finance, guidelines to regulate transactions in, and operations of, the Nigerian Foreign Exchange Market.

According to a Circular dated July 26, 2018, issued by the Trade and Exchange Department, CBN, and referenced: TED/FEM/FPC/GEN/01/004, the revised FX manual has, with effect from August 1, 2018, repealed and replaced the *Foreign Exchange Manual 2006* (“**old FX manual**”).

The revised FX manual was necessitated by the need to review the old FX manual, with the aim of incorporating into the Nigerian foreign exchange (the “FX”) regime various policies and contemporary developments, which had taken place in the Nigerian FX market since 2006 when the old FX manual was issued. The revised FX manual was also intended to streamline documentation requirements, enhance transparency of transactions and engender compliance by stakeholders in the FX market.

This article highlights some of the notable changes which the revised FX manual introduced to the regulation and processing of FX transactions in Nigeria.

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## GENERAL CHANGES

The revised FX Manual comprises several changes; some of which are general (rather than specific in nature). These include (i) the mode and form of certain required documents (ii) revision of offences and sanctions; and (iii) inclusion of two new schedules; the details of which are outlined below.

Some of the general changes introduced in the revised FX manual reflect the technological, innovative, administrative and policy measures which the CBN has taken, in recent times, to align transactions in the FX market with the overall goal of the extant *Monetary, Credit, Foreign Trade and Exchange Policy Guidelines* in the country.

Accordingly, a few concepts have been redefined under the revised FX manual. For instance, **Capital Importation** now denotes the “inflow of foreign currency or goods (plant, machinery and equipment) mainly as equity/loan”. This was stated to be “mainly as equity” only under the old FX manual. Similarly, the **Electronic Certificate of Capital Importation (“eCCI”)** has replaced the use of the physical Certificate of Capital Importation (“CCI”) for the confirmation of inflow of foreign currency or goods. Another change of a general nature is the replacement of the physical Form “M” with **Electronic Form “M” (“e Form M”)** for import of goods and capital while **Certificate of Origin (“CO”)** has replaced the Combined Certificate of Value and Origin (“CCVO”) used under the old FX manual.

In line with the CBN’s current FX rate liberalization policy, the revised FX manual defines **Exchange Rate** as “the prevailing market rate as published daily by the CBN” whereas there was no specific description of what comprised the “exchange rate” under the old FX manual.

In order to enhance regulatory compliance among FX market participants, the revised FX manual made amendments to Appendix II of the old FX manual. Appendix II outlines offences and sanctions applicable to FX transactions, in accordance with sections 29 and 30 of the Forex Act. Accordingly, from the effective date of the revised FX manual:



**Central Bank of Nigeria**



- **Where a bank fails to deliver to the CBN funds (FX) sold by the bank**, the sanctions applicable shall include interest to be charged at LIBOR plus 1% or 2% (as may be determined by the CBN) until funds are credited, and these sanctions also now equally apply to Forward Contract transactions. The applicable LIBOR rate was not specified under the old FX manual.

- **Failure or delay by banks to render appropriate returns to the CBN on their FX transactions (Non-rendition/Late Rendition) attracts penalties.** Whilst non-rendition of daily returns attracts same penalty of Four Thousand Five Hundred Naira (₦4,500) under both the old and revised FX manuals, the sanctions on monthly returns have been amended. Accordingly, monthly returns not rendered by the tenth day following the reporting month (this used to be the day following the reporting month under the old FX manual) now attracts penalty of Ten Thousand Naira (₦10,000) daily until the returns are rendered (this used to be ₦4,500 daily under the old FX manual).
- **Failure by a bank to return unutilized balance of FX to the CBN, as required, is now an offence under the revised FX manual.** For this offence, the bank shall return the unutilized funds (FX) with interest charged at LIBOR plus 5%. A penalty of Two Million Naira (₦2,000,000) shall also be imposed on the erring bank in addition to the CBN repurchasing the funds at the ruling rate/CBN buying rate at the time of such repurchase, whichever is lower.
- **Consummating FX transactions with inadequate documentation is also an offence under the revised FX manual.** For this offence, the penalty is the same as the offence of failure to return unutilized balance of FX to the CBN.
- **Non-compliance with the requirements/provisions of the Export Guidelines is an offence under the revised FX manual.** Accordingly, new sanctions have been imposed in respect of Exports-related contraventions. Thus, non-repatriation of export proceeds as required (within 180 days for non-oil exports and 90 days for oil & gas exports) shall attract a penalty of 1% of the amount of the outstanding export proceeds. Similarly, delay in the issuance of the Clean Certificate of Inspection (“CCI”) by any Pre-Shipment Inspection Agent (“PIA”) later than 72 hours (for non-oil exports) and later than five working days (for oil & gas exports) after inspection and receipt of all relevant documents, shall render the PIA liable to a fine of 25% of the service fee due to the PIA on the affected transaction. Also, any export (both non-oil and oil & gas) done without the proper Application Form for commercial export of goods and services (“Form NXP”) and proper issuance of CCI due to the fault of a PIA shall have the affected PIA queried and warned. Persistent defaults in like manner for six months shall have the contract of the PIA terminated. Where it is established that this fault is not that of the PIA but of the shipping line/agent, it shall be reported to the Nigerian Shippers Council for appropriate sanctions. Furthermore, failure of a PIA to report attempts to export substandard goods attracts immediate query, warning and subsequent suspension; defaults in filling Form NXP by any oil & gas exporter and/or in the payment of Nigerian Export Supervision Scheme (“NESS”) levy would result in the non-processing of such an exporter’s export permit by the Department of Petroleum Resources while non-payment of NESS levy within thirty (30) days of the shipment date, for oil & gas exports, shall attract a penalty of 25% of the outstanding NESS levy; among other sanctions.

Unlike the old FX manual, two *Schedules (“A” and “B”)* containing respectively a list of **“Export Goods Exempt from Inspection”** and a list of **“Prohibited Exports”**, are annexed to the revised FX manual.

The new Schedule A exempts the following items from inspection: 1) Personal effects; 2) Used motor vehicles; 3) Perishables i.e. day old chicks, human eyes and human remains; 4) Vaccines, Yeast; 5) Objects of art; 6) Explosives; 7) Pyrotechnic products and Arms; 8) Ammunition; 9) Weapons; 10) Implements of war; 11) Live animals; 12) Household and other non-commercial products; 13) Gift and

personal effects, trade samples/printed business matter; 14) Machineries and equipment for repairs abroad; 15) Machineries for the execution of specific contracts, re-exports; 16) Return of empty containers; 17) Trans-shipments; and 18) Supplies to Diplomatic/Consular Missions and supplies to the United Nations for their own needs.

The new Schedule B of the revised FX manual prohibits the following goods from exports: 1) Raw hides and skin; 2) Timber (rough and sawn); 3) Scrap metals; and 4) Unprocessed rubber latex and rubber lumps.

## **SPECIFIC CHANGES**

### **Specified Currencies:**

In relation to allowable currencies for FX transactions in Nigeria, the Chinese Yuan/Renminbi is now an allowed instrument contrary to what obtained under the old FX manual. On the other hand, the Swedish Kroner and Danish Kroner which were instruments of FX transactions in the old FX manual have been dispensed with in the revised FX manual. Also, the Australian Dollar is now the specified currency unlike the Australian Shilling which used to be the allowed instrument of FX transactions under the old FX Manual.



### **Foreign Exchange Forms: Requirement for Declaration of Import and Export of FX:**

Under the old FX manual, "Form TM" was used for declaration of import into Nigeria and "Form TE" for declaration of export from Nigeria, of foreign currency and financial instruments above US\$5,000 or its equivalent, precious stones, jewelry and works of art (including antiquities).

The new limit for which declaration is required on both "Form TE" and "Form TM" is US\$10,000 pursuant to the revised FX manual.

**Importation/Exportation of Foreign Currency and Nigerian Currency Notes/Coins:**

Foreign currency, either in cash or any other instruments, was, under the old FX manual, allowed to be imported into Nigeria without declaration; provided the amount did not exceed US\$5,000 or its equivalent in other foreign currencies. Any amount above this limit was to be declared at the point of entry. This limit has been increased to US\$10,000 in the revised FX manual.

Similarly, export of foreign currency from Nigeria was allowed without declaration subject to a limit of US\$5,000. Export of any amount in excess of this was subject to declaration at the point of exit together with evidence of transaction/procurement through an Authorized Dealer. The limit above which declaration is now required at the point of exit has been increased to US\$10,000 but not more than US\$50,000 or its equivalent in other foreign currencies.

For Nigerian currency notes/coins, a traveler exiting Nigeria or arriving in Nigeria was allowed to carry currency notes and coins not exceeding Ten Thousand Naira (₦10,000) without declaration under the old FX manual. Any amount in excess of this limit was subject to declaration and prior approval of the CBN. The revised FX manual has modified this requirement by raising the applicable limit to One Hundred Thousand Naira (₦100,000).

**Travels:**



The limits for Personal Travel Allowance (“PTA”) and Business Travel Allowance (“BTA”) were respectively US\$4,000 and US\$5,000 per quarter, under the old FX manual. The revised FX manual retains the limits for both PTA and BTA but specifically defines a “quarter” to mean: January to March; April to June; July to September; and October to December.



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Whilst age limit for purchase of PTA was not provided in the old FX manual, only persons 18 years and above are now qualified to purchase PTA under the revised FX manual. In the same vein, the old FX manual contained no provisions as to whether a person entitled to BTA was also eligible for PTA or vice versa while on the same trip. Under the revised FX manual, travelers who are entitled to BTA are disqualified from eligibility for PTA or vice versa in respect of the same trip.

The old FX manual provided no specific limit as to purchase of foreign currency by Hotels licensed as Authorized Buyers. Under the revised FX manual however, the amount of foreign currency which licensed Hotels can purchase per approved transaction has been limited to US\$5,000.

Notably, the timeline for licensed Hotels to submit monthly returns to the CBN on total purchases and sales of foreign currency (including “nil” returns where applicable), was “not later than ten days after the end of each month” under the old FX manual. This timeline has now changed. Henceforth, licensed Hotels are to render returns to CBN not later than five days after the end of each month.

❖ **This publication is an abridged version of the authors’ article on the subject.**

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

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