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Law and Practice

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1. FINTECH MARKET

1.1 Evolution of the Fintech Market

The fintech ecosystem in Nigeria is largely comprised of businesses focused on mobile payments, digital banking, merchant solutions and personal finance, including wealthtech.

Nigerian Fintechs See Resurgence in Venture Capital Funding and an Increased Role in the Growth of Nigeria's Economy

Overall, Nigeria has experienced a remarkable performance in the fintech market in the past 12 months, marking an improvement from 2020, when the COVID-19 pandemic hit. Data obtained from the country's central switch, the Nigeria Inter-Bank Settlement System (NIBSS), reveals that the transaction value of instant payments hit NGN241.7 trillion between January and November 2021, compared to the NGN137.9 trillion processed within the same period of the preceding year.

With the inflow of investments reaching new levels and an influx of innovative product features, fintech contributed a great deal to Nigeria's economy in 2021. Collectively, Nigerian start-ups reportedly received a total of about USD903,680,000, which is 501% above the inflow in the previous year, when Nigeria ranked second on the continent with its combined total of USD150,358,000. In 2021, Nigeria received 42.1% of the total funding secured in Africa. Of the total amount raised by Nigerian start-ups in 2021, fintech start-ups raised a total of USD536,655,000, a 59% share of the total amount raised by all start-ups in the period under review (The African Tech Startups Funding Report by Disrupt Africa, 2021). 2021 also witnessed three Nigerian start-ups – Flutterwave, Opay and Andela – hit a USD1 billion valuation, attaining unicorn status. Notably, Flutterwave attained a USD3 billion valuation in February

2022, ranking as one of Africa's highest-valued start-ups.

Notably, there were significant acquisition transactions in the Nigerian fintech market, such as MFS Africa's acquisition of Baxi, one of Nigeria's leading super-agent networks. In a bid to expand market and service reach, there was an increased number of strategic partnerships and collaborations in the year, especially in the payments space. Notably, Paystack entered strategic partnerships with companies such as Apple Pay and WooCommerce, Flutterwave announced a collaboration with Paypal to facilitate payments for African businesses, and the Nigerian fintech start-up Carbon announced a strategic five-year partnership with Visa to offer digital and physical issuance of Visa cards to its customers.

2021 saw a shift towards agency banking, and other banking models targeted at banking the unbanked and improving access to financial solutions in rural and hard-to-reach areas. Agency banking grew, with more players – such as TeamApt (which announced a monthly transaction value of about NGN1.4 trillion in 2021), Kudi and Paga – making incursions. A statistic reflective of this shift is in point-of-sale transaction value between January and November 2021, which hit NGN5.7 trillion.

Regulations Impacting the Nigerian Fintech Market

The regulators have also contributed to the growth of the fintech market in the past 12 months as they have demonstrated a commitment to creating an enabling environment that will support innovation in financial services, without compromising stability within the overall financial system. The regulatory developments for the Nigerian fintech market in 2021 kicked off with the Central Bank of Nigeria (CBN) releasing a Framework for QR Code Payments in Nigeria

in early January 2021. Riding on the shutdown of most physical cash payment systems due to the outbreak of COVID-19, the new QR code regulation was targeted at driving the growth of contactless payments, as a safer option of transacting within Nigeria.

Also, in January 2021, the Securities and Exchange Commission (SEC) issued the Rules on Crowdfunding (the “Crowdfunding Rules”), which provide a formal regulatory and supervisory framework for investment-based crowdfunding in Nigeria. January 2021 also witnessed CBN’s release of its Framework for Regulatory Sandbox Operations (the “CBN Sandbox Regulations”), which is designed to aid innovations by start-ups amidst stringent regulations.

In February 2021, the CBN released the Regulatory Framework for Open Banking in Nigeria (the “Open Banking Framework”), to facilitate access to financial data, whilst in April 2021, the SEC issued the Major Amendments to the Securities and Exchange Commission Rules and Regulations, 2013 (the “SEC Rules”), requiring digital sub-brokers (ie, entities that are not a dealing member of a Nigerian exchange but act on behalf of a sponsoring broker/dealer as an agent or otherwise for assisting investors in buying, selling or dealing in securities through such sponsoring broker/dealer) and those who utilise a digital platform to serve clients and interact with the sponsoring broker or broker to be registered with the SEC. This is notable in recognising that a sub-broker may utilise a digital platform to engage investors and has the ultimate effect of encouraging innovations in the capital market space. In June 2021, Chaka became the first to acquire a digital sub-broker licence issued by the SEC.

Also, in June 2021, the SEC released its Regulatory Incubation (RI) programme, also seeking to create an enabling environment for fintechs

operating, or seeking to operate, in the Nigerian capital market.

Amongst others, the CBN issued the Supervisory Framework for Payment Service Banks (PSBs), targeted at streamlining the operations of PSBs, ensuring transparency in their operations, and ensuring adequate customer protection. Notably, in November 2021, the subsidiaries of telecom giants MTN and Airtel were granted approvals in principle (AIPs) to operate PSBs by the CBN.

In October 2021, the CBN launched its digital currency project – the eNaira. The eNaira is the digital form of the country’s fiat currency (naira) issued by the CBN, and it is exchangeable with the digital currencies of other central banks. Like the physical/paper naira, the eNaira is legal tender and forms part of the currency in circulation. The Guidelines for the Operation of the Pan African Payments and Settlements System (the “PAPSS Guidelines”) – a cross-border, financial market infrastructure enabling payment transactions across Africa – was also issued by the CBN.

Amidst the positive outlook of the regulatory developments, there have also been some policies that have been viewed with apprehension by players in the Nigerian fintech market. For example, the CBN, via a letter dated 5 February 2021 (the “CBN Letter”), issued a reminder to all deposit money banks (DMBs), non-bank financial institutions and other financial institutions (OFIs) that dealing in cryptocurrencies or facilitating payments for cryptocurrency exchanges is prohibited.

The CBN further directed the closure of all accounts owned by individuals or entities transacting in or operating cryptocurrency exchanges in Nigeria. Whilst this does not outrightly ban trading in virtual currencies, it has had a strong

adverse impact on the operations of crypto transactions in Nigeria, forcing most users to switch to peer-to-peer models in exchanging cryptocurrencies.

Fintech Trends for the Next 12 Months in Nigeria

Other issues or trends that may continue to impact the Nigerian fintech market in the next 12 months include:

- increased buy now, pay later (BNPL) offerings;
- increased agency banking operations by banks targeted at the unbanked population and the prominence of PSBs to close the financial inclusion gap in rural communities;
- increased operation of financial data sharing platforms under the Open Banking Framework;
- increased regulatory activity that may foster growth in the market;
- increased investments from local investors; and
- seamless cross-border payments and settlement in Africa by virtue of the Pan-African Payment and Settlement System.

2. FINTECH BUSINESS MODELS AND REGULATION IN GENERAL

2.1 Predominant Business Models

The most prevalent fintech business models in Nigeria are mobile payments, lending services, crowdfunding, personal finance and wealthtech.

Payments

The payments subsector of the fintech industry is by far the most active in Nigeria and has received the most interest from investors and regulators alike. Payment services covers business-to-business applications such as payment

processing providers and solutions for accepting payments, and business-to-consumer applications, which includes services such as mobile wallets and payment applications that enable individuals to pay on the go and make peer-to-peer transfers. This subsector comprises fintechs and legacy players such as DMBs.

Lending

Mobile lending applications and BNPL services also referred to as “point of sale installment loans” have also proliferated the Nigerian fintech space. According to the Q4 2021 BNPL Survey, BNPL payments in Nigeria are expected to grow by 111.2% on an annual basis to reach USD1920.3 million in 2022. The ability to provide quicker loans through a simplified lending process (mostly without collateral) gives this model a competitive advantage over traditional lending but legacy players are also deploying similar solutions.

Crowdfunding

Due to the cost of raising funds from traditional banks, crowdfunding applications have become attractive platforms for raising finance for ventures/projects in Nigeria. Most agritech companies in Nigeria are funded through crowdfunding.

Personal Finance

Another popular business model for fintechs in Nigeria is to offer a personal savings solution that manages personal bills, accounts and/or credit.

Wealthtech

A number of fintechs in Nigeria focus on deploying solutions to improve and democratise investment and wealth management to their customers.

2.2 Regulatory Regime

Nigeria operates a three-tier federal system of government with powers shared by the Nige-

rian Constitution among the federal, state and local governments. The regulation of banking activities falls within the purview of the federal government, thus the operations of most fintech companies are regulated by the federal laws. Furthermore, there is no specific regulatory regime focused on fintech companies in Nigeria; rather, they are generally subject to the regime applicable to other companies operating similar businesses/models in a particular sector.

Notably, in 2021, the federal government and players in the tech start-up ecosystem in Nigeria kick-started the Nigeria Startup Bill project, targeted at harmonising all pieces of legislation governing start-ups and contributing to the creation of an enabling environment for growth, attraction and protection of investment in tech start-ups.

Payments

This subsector is principally regulated by the Banks and Other Financial Institutions Act, 2020 (BOFIA), supplemented by various guidelines issued by the CBN from time to time that apply to legacy players and fintechs alike. Fintechs operating as payment service providers (PSPs) are required to obtain a CBN licence to operate.

Lending

This subsector is also principally regulated by BOFIA, supplemented by various guidelines issued by the CBN from time to time that apply to legacy players and fintechs alike, including relevant prudential guidelines. To hold deposits and engage in lending operations in Nigeria, fintechs require any of the following:

- a commercial banking licence (national or regional);
- a merchant banking licence;
- a specialised banking licence, or a microfinance banking licence (national or state or unit); or

- a finance company licence from the CBN.

However, fintechs that are not focused on holding deposits or providing lending services across the entire country may operate with a moneylender's licence pursuant to the moneylender laws of the relevant state(s) they operate in. The moneylender's licence application regime is less onerous than the BOFIA regime, thus the attraction to fintechs. Yet another alternative is for a fintech to partner with entities that hold the relevant lending licences and merely provide the technology platform through which the loans are advanced.

Crowdfunding

The Crowdfunding Rules permit micro, small and medium-scale enterprises to raise financing through crowdfunding intermediaries who will facilitate fundraising activities such as that of an offer for sale of securities or instruments via crowdfunding portals. To protect the investing public, the SEC limits the amount that retail investors can invest in a crowdfunded investment to 10% of their net annual income in a calendar year. However, this limit does not apply to high net worth individuals.

Personal Finance

To accept deposits from customers, fintechs are required to obtain any of the banking licences identified under "Lending" from the CBN. In practice, however, fintechs offering personal finance applications in Nigeria typically operate through partnerships with established microfinance banks (MFBS) or DMBs. Fintechs have also begun to acquire microfinance banking licences to deliver their products.

Wealthtech

Entities engaged in the provision of investment services must register with the SEC as capital market operators. Much like personal finance applications, wealthtech companies have also

begun partnering with registered capital market operators in order to provide these services.

Financial Services through Telecommunications Infrastructure

In addition to the foregoing, pursuant to the License Framework for Value Added Services, the Nigerian Communications Commission (NCC) regulates businesses that offer financial services by leveraging on mobile phones or other telecommunications infrastructure.

2.3 Compensation Models

The compensation models for the industry participants vary depending on the business model.

For payment services, the compensation model is highly regulated in Nigeria. Companies in this subsector profit by receiving a percentage of the transaction fees that are typically incurred when making payment transfers. In this regard, the Electronic Payment Guidelines provide that fees and charges for web transactions are to be agreed between service providers and banks/entities to which the services are being provided. They also provide that the maximum total fee that a merchant shall be charged for web transactions shall be subject to negotiations between the merchant and the acquirer (the bank that maintains the merchant bank's account), and these negotiations must take into account the provisions of the CBN's Circular on the Implementation of Interchange Fee (the "Interchange Guidelines"). The Interchange Guidelines regulate the interchange fees paid by the acquirers to card issuers (the financial institution that issues credit/debit cards to customers).

For online lending, the moneylender laws of various states prescribe limitations on the interest on loans that may be imposed by moneylenders.

2.4 Variations between the Regulation of Fintech and Legacy Players

In Nigeria, there is generally no difference between the regulation of fintech industry participants and the regulation of legacy financial institutions.

Fintechs generally operate within the existing regulatory regime for the financial services industry. This is evident from the provisions of BOFIA, which explicitly recognise PSPs and international money transfer operators (IMTOs) as financial institutions to be regulated like other financial institutions (such as finance companies, which are legacy players) in the manner provided for by BOFIA.

Also, legacy players are developing products to compete with fintech companies, thereby obscuring the regulatory lines.

2.5 Regulatory Sandbox

In 2019, a Financial Industry Sandbox launched by the Financial Service Innovators Association of Nigeria in conjunction with the CBN and the NIBSS was designed to allow fintechs to test solutions and products within a controlled environment through the NIBSS APIs and those of other existing companies. The RI programme introduced by the SEC is targeted at individuals and businesses (registered, or intending to register, with the SEC) planning to launch an innovative product or process in the Nigerian capital market. Such innovators are expected to complete the fintech assessment form that can be accessed through the [Innovation and FinTech Portal](#) (FinPort) on the SEC website.

In furtherance of the CBN's commitment to build a financial services sector that promotes innovation, effective service delivery, healthy competition and financial inclusion, the CBN Sandbox Regulations were released in January 2021. The Sandbox Regulations set out the requirements

for conducting live tests on innovative products, services and other solutions in a controlled environment provided by the CBN. To this end, the CBN will review the products and solutions of applicants (licensed institutions, fintechs, innovators and researchers) during their implementation.

2.6 Jurisdiction of Regulators

The legislation establishing various regulators usually specifies the jurisdiction limits of such regulators.

The CBN is the apex monetary authority of Nigeria responsible for the regulation of all banks and financial institutions operating in Nigeria. The bulk of fintechs in Nigeria deal in payment/financial services, and, in so doing, assume quasi-banking functions, thereby coming within the regulatory purview of the CBN.

The SEC is the primary regulatory body for investments and capital markets transactions in Nigeria. The jurisdiction of the SEC in the regulation of fintechs that operate can be found in the operation of wealthtech applications and crowdfunding platforms, among others. In the same vein, certain fintechs that offer the option of pooling together capital from individual investors towards investment in certain asset classes (collective investment schemes) must be registered with the SEC.

The National Insurance Commission (NAICOM) regulates the insurance industry in Nigeria, with its jurisdiction extending to insurtech companies that carry on insurance businesses.

The National Information Technology Development Agency (NITDA) is the regulatory body responsible for promoting and developing policies and guidelines for information technology in Nigeria. Fintechs in Nigeria are required to ensure compliance with the data privacy and

protection rules, as stipulated by the NITDA, especially the requirements of the Nigeria Data Protection Regulations (NDPR).

Finally, the NCC is empowered by the Nigerian Communications Act, 2003 to regulate the telecommunications industry in Nigeria. Thus, fintech companies offering services that involve the use of mobile networks or mobile phones are subject to the NCC's regulatory purview and must obtain operating licences from the NCC.

2.7 Outsourcing of Regulated Functions

Generally, the powers given to players in the financial services industry by the regulator(s) through the various licences cannot be transferred, assigned or otherwise outsourced to third parties without the consent of the regulator. However, there are exceptions.

For instance, certain financial services can be provided by a third party (agent) to customers on behalf of DMBs or mobile money operators (as vendors) pursuant to the CBN Guidelines for the Regulation of Agent Banking and Agent Banking Relationships in Nigeria. The vendors are required to submit an application for approval to the CBN, stating the extent of agent banking activities and responsibilities of relevant parties, as well as the risk management, internal control, operational procedures and any other policy and procedures relevant to the agent banking arrangement. The parties to the agent banking arrangement are also required to enter into service-level agreements and agent banking contracts satisfactory to the CBN.

2.8 Gatekeeper Liability

BOFIA imposes an obligation on financial institutions (including fintechs operating as digital banks, IMTOs, PSPs and fintechs whose objectives include investment management) to adopt policies stating their commitments to comply with anti-money laundering (AML) and com-

bating financing of terrorism (CFT) obligations under subsisting laws and regulations, as well as to implement control measures to prevent any transaction that facilitates criminal activities, money laundering or terrorism.

More specifically, the CBN AML/CFT Regulations 2013 (as amended) require financial institutions to, amongst other things:

- adopt customer due diligence measures for the purpose of identifying and verifying their customers; and
- monitor and report transactions that may be deemed suspicious.

2.9 Significant Enforcement Actions

Nigerian laws establishing the various regulatory bodies also empower these bodies to enforce compliance with the regulations and impose sanctions for the infringement of these regulations. Sanctions imposed by the CBN, the SEC and other regulatory bodies include fines, the suspension of licences and, in some instances, the institution of criminal proceedings against the principal officers of the company.

In August 2021, the CBN obtained an interim court order from the Federal High Court (FHC) for the freezing of the bank accounts of six online investment platforms – Rise Vest Technologies Limited (“RiseVest”), Bamboo Systems Technology Limited, Bamboo Systems Tech. Ltd OPNS, Chaka Technologies Limited, CTL/Business Expenses and Trove Technologies Limited – for 180 days, pending investigations of their alleged involvement in illegal foreign exchange trading, and accessing/procuring of foreign exchange, foreign securities and cryptocurrency. Further to a motion filed by RiseVest, this interim order was overturned in October 2021 by the FHC. The presiding judge held that the CBN could not rely on a mere circular to freeze the bank accounts of a company using its accounts to

trade in cryptocurrency, as circulars cannot create an offence, not being shown to have been issued under an order, act, law or statute.

2.10 Implications of Additional, Non-financial Services Regulations

In addition to the primary regulations governing their businesses, fintechs are subject to general laws/regulations with attendant compliance obligations. However, there is generally no difference in the application of these regulations to fintechs compared to legacy players.

The NDPR is the principal privacy law in Nigeria and all companies collecting and processing customers’ data must comply with its provisions. The NDPR mandates operators to maintain security measures for the protection of such data.

Fintechs are also required to comply with the Money Laundering (Prohibition) Act in addition to the CBN (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013 (as amended).

Another major additional regulation is the Federal Competition and Consumer Protection Act. Its provisions extend to fintechs and prohibit anti-competitive practices, including price fixing and arrangements that are a restraint on competition.

2.11 Review of Industry Participants by Parties Other than Regulators

The NIBSS, amongst others, initiates and develops an integrated nationwide network for electronic or paperless payments, funds transfer and settlement of transactions. To fulfil its mandate, the NIBSS sets verification standards that must be complied with by industry participants who seek to consummate transactions on the NIBSS network.

In addition, the Companies and Allied Matters Act, 2020 (CAMA) stipulates that all companies in Nigeria shall prepare audited financial statements, which shall consist of an auditor's report certified by an independent auditor. However, companies that have not carried on business since incorporation and small companies as defined under Section 394 of CAMA are exempt from preparing audited financial statements. Thus, all fintechs operating in Nigeria must be audited annually by certified independent audit firms, except those that fall within the exemption bracket.

2.12 Conjunction of Unregulated and Regulated Products and Services

Generally, it is not permissible for licensed/registered companies offering regulated products to offer unregulated products and services. Regulated entities operating in the financial services industry submit annual returns of their operations/businesses and undergo an annual examination that will expose any unregulated products/services. Nonetheless, certain participants offer regulated and unregulated products and services through the same legal entity.

2.13 Impact of AML Rules

The main legislation prohibiting money laundering in Nigeria is the Money Laundering (Prohibition) Act 2011 (as amended) (MLPA). The CBN (Anti-money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013 (as amended) (the "CBN AML/CFT Regulations") regulate financial institutions under the CBN's regulatory purview and the SEC (Capital Market Operators Anti-Money Laundering and Combating the Financing of Terrorism) Regulations 2013 (the "SEC AML/CFT Regulations") regulate institutions under the regulatory purview of the SEC.

The MLPA, which is more general in its scope, imposes the obligation to conduct KYC checks

on financial institutions (FIs) and designated non-financial institutions (DNFIs). To the extent that an unregulated entity does not fall under the definition of an FI or a DNFI, it is not bound by the requirements of the MLPA as it relates to FIs and DNFIs, including the fulfilment of the KYC requirements. However, a fintech that holds a CBN or SEC licence or falls under the definition of a DNFI under the MPLA is required to comply with the KYC requirements as stipulated under the relevant laws and regulations and to make the required periodical returns.

3. ROBO-ADVISERS

3.1 Requirement for Different Business Models

In August 2021, the SEC issued the Rules on Robo-Advisory Services in Nigeria (the "Robo-Advisory Rules") in a bid to regulate the adoption and deployment of robo-advisory services in the Nigerian capital market. Pursuant to the provisions of the Robo-Advisory Rules, every robo-adviser is required to comply on an ongoing basis with applicable business conduct requirements set out in the Investments and Securities Act No 29 of 2007 (as amended) (ISA) and the Rules and Regulations, Notices and Guidelines issued pursuant to the ISA.

Whilst the SEC Rules are silent on the types of business models that can be established, they recognise that the services provided by robo-advisers can be fully automated, with no human intervention in the entire advisory process.

3.2 Legacy Players' Implementation of Solutions Introduced by Robo-Advisers

Robo-advisory solutions have been sparsely deployed in providing financial advisory services in Nigeria as traditional (human) models continue to be popular. However, in recent times, numerous wealthtech/wealth management ser-

vice providers (such as RiseVest and Cowrywise) have emerged and popularised the use of more robo-advisory-based interfaces (ie, the process of gathering information from a client/user through surveys and questionnaires, and investing or providing investment recommendations based on such data). Predominantly, the legacy asset management/stockbroking firms have implemented automated solutions more for first-link interfaces with customers.

3.3 Issues Relating to Best Execution of Customer Trades

Robo-advisory services are limited in their deployment in Nigeria. However, regulators have taken a proactive approach in ensuring that robo-advisers, as they expand in the Nigerian market, ensure best execution of customer trades.

In July 2018, the Nigerian Exchange Group Plc (then, the Nigerian Stock Exchange, or NSE) issued the Rules on Order Handling and Best Execution (the “NGX Order Handling Rules”), which stockbrokers/dealing members (whether they utilise technology solutions in their service offerings or not) are required to comply with in the execution of customer trades. The Robo-Advisory Rules also seek to regulate the adoption and deployment of robo-advisory services in the Nigerian capital market, and set out compliance requirements and standards robo-advisers in Nigeria are required to adhere to in ensuring adequate protection for their clients.

4. ONLINE LENDERS

4.1 Differences in the Business or Regulation of Loans Provided to Different Entities

Differences in the business or regulation of loans exist in Nigeria based on the nature of the borrower. Loans are typically provided under a

commercial bank licence issued by the CBN or an MFB licence from the CBN. Whilst the commercial banking licence targets the general populace, MFBs target low-income earners, vulnerable groups, informal sector operators, micro-entrepreneurs, subsistence farmers and small and medium enterprises (SMEs), and provide loans with less stringent application and collateral requirements. It is not unusual to see online or digital lenders collaborate with MFBs or obtain MFB licences due to relaxed application and compliance processes compared with the traditional banks, with restrictions on the value of loans that may be granted to individual businesses, albeit that traditional banks are not prevented from granting loans to similar entities, many of which have already introduced specialised online lending products targeted at SMEs.

Also, fintechs that are not focused on holding deposits and focused on providing lending services within the geographical limits of a state may operate with a moneylender’s licence pursuant to the moneylender laws of the relevant state(s) they operate in. The moneylender’s licence application regime is less onerous than the BOFIA regime, hence the attraction.

4.2 Underwriting Processes

To improve underwriting processes, online lenders are using deep-learning algorithms to process vast amounts of data and more accurately quantify the risk of default. The introduction of the Credit Reporting Act in 2017, which facilitates credit reporting and gathering, appears to have also strengthened the underwriting process since the loans availed through these platforms are mostly provided without collateral. This has allowed the banks to underwrite loans for the mass markets with credit loss rates well below the industry average. Furthermore, the Global Standing Instruction (GSI) mandate of the CBN became effective in August 2020 and is aimed

at facilitating loan recovery from individual borrowers across the financial system.

However, there are no specific regulations that provide for a particular underwriting process for online lenders in Nigeria. Thus, general requirements applicable to traditional players will apply to online lenders.

4.3 Sources of Funds for Loans

There is no particular source of funds peculiar to fintech companies for online lending purposes in Nigeria. However, the most popular is lender-raised equity, whilst other sources of funds include loans (shareholder or third-party), deposit-taking activities, debt capital markets instruments, peer-to-peer bilateral funding and securitisations.

4.4 Syndication of Loans

Loan syndications are quite popular in the Nigerian financial market but mostly with traditional banking institutions, as against online lenders, since the value of loans typically disbursed through online lending platforms is generally small.

Typically, where the value of a loan to be procured by a borrower is huge, a financial institution will pool together a syndicate of other banks to provide the loan on similar terms. A security trustee is appointed to hold collateral provided by the borrower for the benefit of the syndicate of lenders. A facility agent is also appointed to collect interests and repayments from the borrower and distribute to the syndicate as well as monitor the borrower's financial covenants and administer waivers and amendments to the loan documentation. Syndicated loans are also subject to prudential guidelines prescribed by the CBN from time to time.

5. PAYMENT PROCESSORS

5.1 Payment Processors' Use of Payment Rails

Payment processors and payment gateways in Nigeria often operate within existing payment rails established by the CBN, such as the Real Time Gross Settlement System. Within this system, payment processors and payment gateways (acting through settlement banks) are able to provide an avenue for real-time processing and settlement of transactions undertaken between customers and merchants.

5.2 Regulation of Cross-Border Payments and Remittances

The CBN regulates cross-border payments and remittances, and issues licences to organisations seeking to provide such services in Nigeria. The most relevant regulations in this regard are the PAPSS Guidelines, the Guidelines on International Money Transfer Services in Nigeria (the "IMTS Guidelines") and the Guidelines on International Mobile Money Remittance Services (the "IMMRS Guidelines").

Specifically, the IMTS Guidelines provide minimum standards and requirements for international money transfer operations, specify delivery channels for such money transfer operations and provide guidelines for the implementation of processes and flows of international money transfer services.

The IMMRS Guidelines were issued to complement the IMTS Guidelines by facilitating foreign exchange transactions through mobile applications.

The PAPSS Guidelines were issued with the objective of regulating cross-border payments within the African Continental Free Trade Agreement framework. The PAPSS Guidelines have the objective of enabling innovation in cross-border

der trade and access to new markets, providing a simple process that reduces the complexities and costs of foreign exchange for cross-border transactions between African markets, and provides secure and instant cross-border payment capability to their customers all over Africa.

6. FUND ADMINISTRATORS

6.1 Regulation of Fund Administrators

Fund administrators are primarily regulated under Nigerian law by the ISA and the SEC Rules. The SEC Rules set forth that fund managers may engage in investment advisory services, selection of securities for the fund/portfolio, publication of financial market periodicals, management of funds and portfolios on behalf of investors, or any ancillary activities. Thus, where an entity is looking to engage in these services, registration with the SEC as a portfolio/fund manager is mandatory.

6.2 Contractual Terms

Investors or fund advisers may negotiate additional provisions in relevant contracts with fund administrators to ensure they administer their functions with due care and skill in line with investors' commercial objectives.

To assure investor protection, the SEC Rules contain robust provisions around information to be placed in any prospectus, trust deed or contract with fund administrators (including maximum incentive fees chargeable by a fund manager, governance framework and approved investment instruments for deposited funds).

7. MARKETPLACES, EXCHANGES AND TRADING PLATFORMS

7.1 Permissible Trading Platforms

The applicable and permissible platforms for trading securities in Nigeria are dependent on the type of security intended to be listed. For debt securities, the current trading platforms permissible are the Nigerian Exchange Limited (NGX) and the FMDQ Securities Exchange Limited (FMDQ). Equity securities can be traded on the NASD OTC PLC (NASD) and NGX, whilst commodities can be traded on the AFEX Commodities Exchange, the Abuja Securities and Commodities Exchange and the FMDQ.

Pursuant to the completion of the demutualisation process of the NSE in 2021, a new non-operating holding company, the Nigerian Exchange Group Plc ("NGX Group"), was created. NGX Group has three operating subsidiaries:

- NGX, the operating exchange;
- NGX Regulation Limited, the independent regulation company; and
- NGX Real Estate Limited, the real estate company.

The NGX is responsible for listing, trading, technology, market data and other core exchange functions.

The NGX also provides the Alternative Securities Market (ASEM) and Growth Board, which are trading platforms available to small and mid-sized fast-growth companies to raise critical long-term capital at relatively low cost to realise their business potential. The NGX, in December 2021, also issued an exposure draft for the proposed rules for listing on the Technology Board of the NGX, which seek to provide guidance on listings for start-up tech companies and bigtech companies. The Technology Board is expected

to serve as a specialised platform for technology-based companies to list and raise capital on the NGX.

Currently, the primary regulation for listing on the NGX is the NGX Rulebook, 2015 (as amended). The regulations for listing securities on the FMDQ include the FMDQ Bond Listing and Quotation Rules December 2014, the FMDQ Short Term Bonds Registration Process and Listing Rules, 2016, the Sukuk Listing Rules, 2017 and the FMDQ Commercial Paper Registration and Quotation Rules April 2021, whilst the regulation for listing on the NASD is the NASD OTC Market Rules. These rules are, however, amended from time to time.

In addition to the above, FMDQ Private Markets Limited (a subsidiary of FMDQ Group PLC) provides a platform for the inclusion of private companies in the capital markets. FMDQ Private Markets provides a medium for the disclosure of activities of private companies in the Nigerian debt capital markets, serving as an information repository for the recording of these activities via a restricted access portal, the [Private Companies' Securities Information and Distribution Portal](#), and on the FMDQ Private Markets PCB (i) Main Board, (ii) Growth Board or (ii) Cradle Board, depending on the nature of the issuer.

7.2 Regulation of Different Asset Classes

The rules and regulations applicable to each asset class extend to securities listing, transaction monitoring, and compliance by members with the ISA, the SEC Rules and the various rules of the applicable exchanges and trade points. For example, the ISA empowers the SEC to regulate the derivatives market and in December 2019, the SEC approved and published rules regulating derivatives trading in Nigeria, which apply to exchange-traded derivatives and OTC derivatives where specifically mentioned.

7.3 Impact of the Emergence of Cryptocurrency Exchanges

Cryptocurrency exchanges are not specifically regulated in Nigeria. In February 2018, the CBN issued a press release wherein it reiterated that further to the circular to banks and OFIs on virtual currency operations in Nigeria, virtual currencies are not legal tender in Nigeria and any bank or institution that transacts in such business does so at its own risk. The CBN further stated that, for the avoidance of doubt, dealers and investors in any kind of cryptocurrency in Nigeria are not protected by law.

On 11 September 2020, the SEC released a statement with respect to the classification and treatment of digital assets offerings (the "SEC Publication"). In issuing the SEC Publication, the SEC relied on the provisions of Section 13 of the ISA, which empowers it to regulate securities business in Nigeria. According to the SEC Publication, the SEC will regulate crypto-token or crypto-coin investments when the character of the investments qualifies as securities transactions. The SEC Publication further states that the SEC's position is that virtual crypto-assets are securities unless proven otherwise, thus the burden of proving that crypto-assets proposed to be offered are not securities and therefore do not fall under the jurisdiction of these is placed on the issuer or sponsor of the said assets.

Further to the SEC Publication, the following individuals/professionals will be regulated by the SEC.

- Any person (individual or corporate) whose activities involve any aspect of blockchain-related and virtual digital asset services.
- Issuers or sponsors (start-ups or existing corporations) of virtual digital assets shall be guided by the Commission's regulation. The SEC may require foreign or non-residential issuers or sponsors to establish a branch

office within Nigeria. However, foreign issuers or sponsors will be recognised by the SEC where a reciprocal agreement exists between Nigeria and the country of the foreign issuer or sponsor.

It is important to clarify that the SEC Publication does not address the use of cryptocurrencies as legal tender in Nigeria as same is outside its regulatory purview. Accordingly, whilst the SEC Publication is a clear indication that the SEC has taken steps towards regulating the trading of digital assets as securities in Nigeria, it does not contradict the position of the CBN in the CBN Letter. Significantly, the SEC has also suspended the admittance of all persons affected by the CBN Letter into its RI programme until such persons are able to operate bank accounts within the Nigerian banking system, showing further consistency with the directives of the CBN with respect to the trade of cryptocurrency in Nigeria through financial institutions.

Please refer to **2.9 Significant Enforcement Actions** on the decision of the FHC overturning the court order obtained by the CBN to freeze the accounts of certain fintechs alleged to be facilitating trade in cryptocurrency.

7.4 Listing Standards

Companies seeking to be listed on the NGX must comply with the NGX's listing rules in the NGX Rulebook as well as the relevant provisions of CAMA, the ISA and the SEC Rules. A company may be listed on the Main Board, the Premium Board, the ASEM or the Growth Board of the NGX. In addition, the main board of the NGX has three listing standards that are applicable to companies seeking to list on the main board. The NGX Rulebook also stipulates other listing requirements for companies seeking to be listed on the Premium Board, the Growth Board and the ASEM.

Furthermore, the FMDQ Bond Listing and Quotation Rules December 2014 provides for the listing standards for the quotation of securities for companies, mutual funds, exchange-traded funds, and mortgage-backed and asset-backed securities on the FMDQ, whilst the NASD OTC Market Rules sets out the requirements for a company seeking to be listed on the NASD OTC.

Also, private companies seeking to note bonds and other securities on the FMDQ Private Companies' Securities Information and Distribution Portal must comply with the requirements of the FMDQ Private Companies' Bonds Noting Guidelines June 2021 and the FMDQ Private Companies' Securities Noting Guidelines June 2021.

7.5 Order Handling Rules

There are no general order handling rules applicable to dealers in the Nigerian capital markets regulatory sphere as each exchange is expected to issue its order handling rules.

For example, the NGX Order Handling Rules regulates order handling and execution for dealing members. It provides that when executing a client's order, a dealing member shall take into account the following criteria for determining the relative importance of the execution factors:

- the characteristics of the client, including the categorisation of the client as retail or institutional;
- the characteristics of the client order; and
- the characteristics of securities that are the subject of that order, including expected return, risk, liquidity and volatility.

7.6 Rise of Peer-to-Peer Trading Platforms

Peer-to-peer trading platforms are not regulated under Nigerian law. Therefore, the regulated OTC trade points and recognised exchanges are still

the main platforms, such as Binance, BuyCoins and Quidax.

7.7 Issues Relating to Best Execution of Customer Trades

An issue that relates to the best execution of customer trades is that under the NGX Order Handling Rules, every dealing member must establish and implement an order execution policy to allow it to obtain, for its client order, the best possible result. Pursuant to this best execution obligation, investment companies are obliged to execute customer orders in a way that would provide the best results for the customers, considering customer preferences such as price, cost, speed, clearing, settlement, custody and counterparty.

7.8 Rules of Payment for Order Flow

There are currently no rules or regulations expressly permitting or prohibiting payment for order flow. However, the NGX Order Handling Rules provides that each dealing member shall execute its client's specific instructions and take all reasonable steps to obtain the best possible result for a client whilst executing an order or a specific aspect of an order. In addition, the NGX rules on the registration of market makers provides that every applicant who intends to be a market maker must ensure that they have in place a proper supervisory programme and a system to ensure a proper management of conflict of interest.

7.9 Market Integrity Principles

Currently, the NGX has a market surveillance and investigation department whose primary mission is to protect the integrity of the capital market from fraud, manipulation and abusive practices and to ensure fair and orderly market and investor protection. Additionally, the NGX launched the X-Whistle, a whistle-blowing portal for secure and effective submission of information relating to violations of rules and regulations

in the Nigerian capital market. X-Whistle allows any person, on an anonymous basis, to raise genuine concerns about unethical or unlawful conduct by market participants with the objective of protecting market integrity. In 2020, the NGX (then NSE) upgraded X-Whistle to strengthen investor protection. The upgraded portal features a single repository for complaints, tips and referrals, and the ability to generate detailed and varied reports, with analytics for proper tracking.

Just like the NGX, the FMDQ also has a market surveillance department that monitors members' trading activities to ensure transparency, credibility and integrity in the FMDQ markets. The FMDQ whistle-blowing policy provides an avenue for stakeholders (members, employees, regulators, investors, industry professionals, issuers and the general public) to provide tips regarding activities/issues within the FMDQ portals.

8. HIGH-FREQUENCY AND ALGORITHMIC TRADING

8.1 Creation and Usage Regulations

There are currently no regulations in relation to high-frequency and algorithmic trading in Nigeria. The NGX, however, has five software applications for trading, which are FIX, VPN, X-NET, FAST and X Gen; the introduction of which has improved mobile trading technologies in the Nigerian capital market and some dealers have taken advantage of these applications to improve access to the market.

Whilst high-frequency trading is not prevalent in Nigeria, the NGX Rulebook provides that firms wishing to be considered for market-making functionality when applying for a dealing membership will need to meet higher technological requirement levels that include the ability to manage, measure and control their portfolio risk using probability algorithms that take into

consideration their open positions, borrowing inventory and collateralised obligations.

8.2 Requirement to Register as Market Makers when Functioning in a Principal Capacity

The SEC Rules and the ISA do not specifically provide for the registration of market makers in high-frequency and algorithmic trading when they are functioning in a principal capacity.

8.3 Regulatory Distinction between Funds and Dealers

There are no regulatory distinctions between funds and dealers engaged in high-frequency and algorithmic trading.

8.4 Regulation of Programmers and Programming

There are currently no regulations in relation to high-frequency and algorithmic trading, and programmers in respect of same in Nigeria. However, the Robo-Advisory Rules provide that robo-advisers shall, at a minimum, disclose in writing the following to their clients:

- assumptions, limitations and risks of the algorithms;
- circumstances under which the robo-advisers may override the algorithms or temporarily halt the robo-advisory service; and
- any material adjustments to the algorithms.

In addition, robo-advisers are required to have policies, procedures and controls in place to monitor and test the algorithms on a regular basis to ensure that they are performing as intended and, at a minimum, processes and controls to detect any error or bias in the algorithms.

9. FINANCIAL RESEARCH PLATFORMS

9.1 Registration

In Nigeria, financial research platforms and participants are not subject to registration. Non-registration of such platforms and participants thereto with the regulators only applies to the extent that such a platform only provides factual financial data, news, research and analytics for engaging in the Nigerian financial markets.

However, where such platforms proceed to offer investment advisory services and make recommendations as to the types of securities to buy and sell, such platforms would be required to register with the SEC.

9.2 Regulation of Unverified Information

Presently, rumours and other unverified information on financial research platforms are not specifically regulated. Financial research platforms seek to preserve their reputation by ensuring that they gather their information from authoritative sources and due care and caution is taken in compiling their publications. They may also limit their liability by inserting language in their terms and conditions (T&Cs) to the effect that absolute accuracy, adequacy or completeness of information furnished cannot be guaranteed. Nonetheless, liability for false and misleading statements may be incurred under general common law principles and under Nigerian criminal law.

9.3 Conversation Curation

Presently, there are no ways to curate conversations to avoid pump and dump schemes, spreading insider information and other types of unacceptable behaviour on financial research platforms.

Financial research platforms that provide a forum for users to exchange information harbour an inherent risk that such information may

be socially and legally unacceptable, and pump and dump schemes are touted. However, some platforms typically reserve the right to deny access to public forums to users. Unacceptable behaviour may prompt a financial research platform to deny access to its site. It should be noted that in the T&Cs developed by the financial research platform, there is typically language around limitation of liability such that users are aware that they bear some risk when they rely on information posted on the platform to make an investment decision.

10. INSURTECH

10.1 Underwriting Processes

Typically, insurtech companies may directly provide insurance services where they obtain an insurance licence from NAICOM or may serve as an aggregator, where they provide the platform on which individuals can access different types of insurance cover from different insurance companies in Nigeria. Where an insurtech company serves as an aggregator, it would not be required to provide any form of underwriting services. However, to the extent that the insurtech company engages in the business of directly providing insurance services, it would be required to underwrite the insurance cover provided.

There are no specific regulations governing underwriting for insurtech in Nigeria. However, the Prudential Guidelines for Insurers and Reinsurers in Nigeria (the “NAICOM Guidelines”) provide an obligation for insurtech companies directly providing insurance services to provide a risk management framework to address material risks, which includes underwriting risk. In order to comply with the NAICOM Guidelines, insurtech companies may use sophisticated software to assess risk.

In February 2022, the UK aid-funded FSD Africa and NAICOM partnered to launch “BimaLab (Nigeria)”, an accelerator programme designed to boost the development and adoption of digital solutions for the insurance sector through the education, nurturing and promotion of innovators and insurtech start-ups. The programme lasts ten weeks and is intended to enhance the development of a vibrant ecosystem for start-ups, through collaboration with corporate partners, investors and research institutions to accelerate and scale innovation in the insurance industry in Nigeria.

10.2 Treatment of Different Types of Insurance

The Insurance Act provides for two main classes of insurance businesses: life insurance business and general insurance business. Life insurance is classified into individual life insurance, group life insurance and health insurance business, while general insurance business is classified into fire, motor vehicle, marine and aviation, bonds credit guarantee and suretyship insurance, and these main classes of insurance are treated differently by industry participants and regulators.

To the extent that insurtech companies are directly providing insurance services, they will be required to register with NAICOM before commencing operations and the type of insurance business they intend to provide (life, general, composite) will determine the obligations (including minimum capital requirements and registers/records) they will be required to fulfil under the Insurance Act.

There are also separate application and registration processes for insurtech companies (directly engaged in insurance services) depending on which of the classes of insurance they provide.

11. REGTECH

11.1 Regulation of Regtech Providers

There is no substantive law that regulates regtech providers in Nigeria. However, depending on the nature of tools adopted and the services provided, the activities of regtech companies may be regulated by cross-sectorial laws and/or regulation. An example of such regulation is the NDPR. Accordingly, regtech providers whose activities entail processing of personal data of data subjects would be bound to comply with the provisions of the NDPR. For instance, where the activities of regtech providers involve the processing of personal data of a customer of a financial institution, such regtech company will be directly obliged to comply with the provisions of the NDPR.

11.2 Contractual Terms to Assure Performance and Accuracy

Generally, the nature and terms of the contract between financial services firms and regtech providers are predominantly governed by the general principles of contract and the agreed terms of the parties during negotiation. Notwithstanding the existence of such contracts, financial services firms have a duty to ensure that specific contractual terms/clauses are inserted in service contracts to make the services consistent with regulatory provisions.

The CBN, through the Consumer Protection Framework 2016, imposes a duty on financial services institutions to ensure that they put in place effective consumer risk management frameworks to protect consumers' information and assets. Consequently, financial services firms, in contracting with regtech providers, insist on assurances that the regtechs accurately process and adequately protect consumer details.

The authors expect that, in response to the COVID-19 pandemic, business continuity in the

services being provided by regtech companies will be paramount to financial services firms, and contracts will contain sufficient provisions to mitigate service disruption.

12. BLOCKCHAIN

12.1 Use of Blockchain in the Financial Services Industry

The application of blockchain technology in the Nigerian financial services industry is gradually gaining traction as industry players are now utilising same in their service delivery. Notably, in 2021, Appzone, a Nigerian fintech software company, announced the launch of Zone, Africa's first blockchain platform for payment processing that facilitates local and intra-African payments in fiat and digital currencies. The authors understand that a number of commercial banks in Nigeria are currently utilising Zone in processing the transactions of their customers.

12.2 Local Regulators' Approach to Blockchain

Blockchain technology is generally unregulated in the Nigerian financial services industry; however, the adoption of blockchain technology via crypto-assets is now being regulated in certain respects. Pursuant to the 2020 SEC Statement on Crypto-Assets, crypto-assets are, by default, classified as securities unless proven otherwise and the burden of proving that the crypto-assets proposed to be offered to the public are not securities is placed on the issuer or sponsor of the crypto-assets. Consequently, the SEC will regulate crypto-token or crypto-coin investments when the character of the investments qualifies as securities transactions. Notably, the authors understand that the eNaira is run using private blockchain technology.

12.3 Classification of Blockchain Assets

Based on the authors' interpretation of the 2020 SEC Statement on Crypto-Assets, the authors are mindful that the SEC's default classification of crypto-assets as "securities" would apply in scenarios where a person or entity wishes to offer such crypto-assets to members of the Nigerian investing public as a means of raising capital (unless such offer is exclusively made through crowdfunding portals).

12.4 Regulation of "Issuers" of Blockchain Assets

The 2020 SEC Statement on Crypto-Assets requires issuers or sponsors of blockchain-related and digital assets to be registered by the SEC such that they will be subject to the relevant regulatory guidelines issued by the SEC.

In addition, pursuant to the 2020 SEC Statement on Crypto-Assets, the SEC may require foreign or non-residential issuers or sponsors to establish a branch office within Nigeria. However, foreign issuers or sponsors will be recognised by the SEC where a reciprocal agreement exists between Nigeria and the country of the foreign issuer or sponsor.

Additionally, all digital assets token offerings, initial coin offerings (ICOs), security token ICOs and other blockchain-based offers of digital assets within Nigeria or by Nigerian issuers or sponsors or foreign issuers targeting Nigerian investors are subject to the regulation of the SEC.

12.5 Regulation of Blockchain Asset Trading Platforms

There are no specific regulations that regulate the licensing or operation of blockchain asset trading platforms in Nigeria. Notwithstanding the foregoing, the authors note that blockchain asset trading platforms as well as the secondary trading of blockchain assets in Nigeria oper-

ate purely as unregulated trading platforms that merely facilitate transactions between parties.

12.6 Regulation of Funds

Pursuant to the 2020 SEC Statement on Crypto-Assets, derivatives and collective investment funds of crypto-assets, security tokens and utility tokens will be regulated under the ISA and SEC rules and regulations. In addition, market intermediaries and market operators dealing in such derivatives and collective investment funds will need to be registered or approved by the SEC.

12.7 Virtual Currencies

The eNaira is the only virtual currency recognised as legal tender in Nigeria. Pursuant to the 2020 SEC Statement on Crypto-Assets, virtual currencies will be treated as commodities if traded on a recognised investment exchange and/or where they are issued as an investment. Utility tokens that simply provide users with a product or service (as opposed to security tokens) will be treated as commodities but spot trading and transactions in utility tokens will not fall within the purview of the SEC unless same is undertaken on a recognised investment exchange.

On the other hand, security tokens, which have the features and characteristics of a security and represent participation in earning streams or an entitlement to receive dividends or interest payments, will be deemed securities and treated as such.

12.8 Impact of Regulation on "DeFi" Platforms

DeFi is a relatively new concept globally and in Nigeria. The authors are not aware of any regulations that specifically define decentralised finance in Nigeria. Thus, DeFi platforms in Nigeria will be subject to extant regulations issued by the SEC, the CBN or NAICOM depending on the

nature and scope of the activities being undertaken by the relevant DeFi platform.

12.9 Non-fungible Tokens (NFTs)

NFTs are not yet specifically regulated in Nigeria. Nonetheless, pursuant to the 2020 SEC Statement on Crypto-Assets, the SEC stated that any person (individual or corporate) whose activities or transactions involve any aspect of blockchain-related and virtual digital asset services (to the extent that such virtual digital asset qualifies as “securities” or “a unit of investment”, or when the character of the transactions qualifies as “securities transactions”) will fall under the regulatory purview of the SEC. Thus, being a blockchain-related virtual digital asset, in the event that an NFT is traded in the manner aforementioned, it could trigger the regulatory supervision of the SEC.

13. OPEN BANKING

13.1 Regulation of Open Banking

Prior to the issuance of the Open Banking Framework, banks operated in a closed ecosystem, with exclusivity of access to customer

information, locking out innovators and forcing customers to rely solely on the digital channel offerings of their respective banks. The Open Banking Framework seeks to enhance financial inclusion by fostering the sharing and leveraging of data with third-party financial services firms to build solutions and services that provide efficiency, greater financial transparency, synchronisation and options for account holders across Nigeria to interoperate within the financial system in Nigeria. Notably, key players in Nigeria’s evolving open banking space – such as Mono, Indicina and Stitch – are leveraging technology in facilitating access to financial data.

13.2 Concerns Raised by Open Banking

The ease of accessibility to data occasioned by open banking raises confidentiality and privacy concerns. It is, however, commendable that the Open Banking Framework requires the participants to comply with all data privacy laws and regulations, including the NDPR. Participants are also required to comply with consumer protection obligations stipulated under the Open Banking Framework as well as the provisions of the Consumer Protection Framework of the CBN in their dealings with customers.

Banwo & Ighodalo is a leading full-service Nigerian law firm with capacity to offer legal services across several West African countries. The firm is structured as a partnership, currently comprising 15 partners and over 70 lawyers. The FinTech practice is well positioned to offer clients the benefit of its extensive technology experience, combined with regulatory and financial services knowledge and excellent relationships with regulators. It regularly advises technology companies, start-ups and investors looking to utilise technology innovations in the complex and rapidly changing legal and regulatory landscape. The areas of work include data privacy protection, e-commerce and internet services, financial services regulation, M&A,

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