



FINTECH HALF-YEAR REVIEW 2021 – RECENT REGULATORY AND LEGAL DEVELOPMENTS IN NIGERIA



LAGOS ■ PORT HARCOURT ■ ABUJA ■ ACCRA

7th Floor,
Marble House
1, Kingsway Road, Falomo
P. O. Box 52901, Ikoyi
Lagos, Nigeria

Telephone: (+ 234 1) 2793367; 2793368
4736296, 4617321-3;
Facsimile: (+ 234 1) 2692072; 4617092
E-mail: lagos@aelux.com

2nd Floor,
Right Wing UPDC Building
26, Aba Road
P.O. Box 12636, Port Harcourt
Rivers State, Nigeria

Telephone: (+234 84) 464514, 464515
574628, 574636
Facsimile: (+234 84) 464516, 574628
E-mail: portharcourt@aelux.com

4th Floor,
Adamawa Plaza
1st Avenue, Off Shehu Shagari Way
Central Business Area
FCT Abuja, Nigeria

Telephone: (+234 9) 8704187, 6723568,
07098808416
Facsimile: (+234 9) 5230276
E-mail: abuja@aelux.com

7th Floor, Suite B701
The Octagon
Accra Central, Accra
P.M.B 72, Cantonment Accra, Ghana

Telephone: (+233-302) 224828, 224845-6
Facsimile: (+233-302) 224824
E-mail: accra@aelux.com



Contents

1. Introduction.....	4
2. Financial Services.....	6
3. Capital Markets.....	11
4. Cryptocurrency.....	17
5. Data Protection.....	22

REPORT AUTHORS

Olubusola Oyeyosola O. Diya – Associate, AELEX

Opeyemi Araromi – Associate, AELEX

Kehinde Takuro – Associate, AELEX

Mubaraq Popoola – Associate, AELEX

Ifeoluwa Ebiseni - Associate, AELEX

Oluwatobi Oluwasanya - Associate, AELEX

Oluwapelumi Omoniyi – Associate, AELEX

Ilamosi Ekenimoh – Associate, AELEX

REPORT COORDINATORS AND EDITORS

Davidson Oturu – Partner, AELEX

Olubusola Oyeyosola O. Diya – Associate, AELEX





INTRODUCTION

INTRODUCTION

Since the beginning of 2021, there has been significant regulatory and legal developments in the framework for financial technology (“FinTech”) in Nigeria. Regulators have been keen on engaging with the FinTech ecosystem and have released several circulars, guidelines, regulations, etc. regulating FinTech entities and setting licensing determinations. These include the Regulatory Framework for Open Banking in Nigeria, the new licensing requirements for payments service providers, the framework for the regulatory sandbox for payment systems and other significant regulations.

In this report, we examine the developments in the first half of 2021 and consider the impact these regulations have had on the FinTech Ecosystem.





FINANCIAL SERVICES

FINANCIAL SERVICES

Further to its mandate to regulate the financial system in Nigeria, the Central Bank of Nigeria ("CBN") has issued a number of guidelines implementing its policies for the regulation of FinTech related services in the Nigerian financial sector.

The CBN's aim remains to facilitate an enabling environment for the delivery of financial services in an effective, efficient and sustainable manner while ensuring financial stability in Nigeria.

1.1. OPEN BANKING

Regulatory Guidance: The Regulatory Framework for Open Banking in Nigeria

In February 2021, the CBN released its Regulatory Framework for Open Banking in Nigeria (the "Open Banking Framework"), establishing Nigeria as Africa's Open Banking pioneer – being the first country on the continent to address Open Banking in its Regulatory Framework.

The Open Banking Framework adopts a supportive approach to open banking and establishes principles for data sharing across the banking and financial services ecosystem. It envisages the development of a common Banking Industry Application Programme Interface ("API") standard within 12 months of the Framework's release and centres the security and protection of customers' data.

The Framework aims to promote innovation, improve competition, broaden the range of financial services/products, and deepen financial inclusion in Nigeria. It is understandable that the CBN is taking steps to regulate Open Banking in Nigeria considering developments in the area.

Our Davidson Oturu, Head of our FinTech Practice Group, had previously examined the provisions of the Open Banking Framework and the opportunities for the Financial Technology (FinTech) industry and Financial Institutions in his article earlier this year.

Please [read here](#).

Deals: Okra and Mono fundraises

The core idea around Open Banking is that the entire banking industry should become integrated, and APIs are key to achieving this. Accordingly, in the first half of the year, some start-ups building the infrastructure to power this idea recorded the following developments:

- Okra – A FinTech start-up providing full API access to bank accounts across Africa raised \$3.5 million in a seed round in April 2021 to help expand its data infrastructure across Nigeria and further execute its expansion to Kenya and South-Africa. Notably, Okra is connected to every bank in Nigeria and its customers include Interswitch, Renmoney and Carbon [1].

[1] Taje Kene-Okafor, "Nigerian fintech Okra raises \$3.5m backed by Accenture Ventures and Susa Ventures". (Techcrunch, 21 April 2021) <<https://techcrunch.com/2021/04/21/nigerian-fintech-okra-raises-3-5m-backed-by-accenture-ventures-and-susa-ventures/>> accessed 27 May 2021

- Mono – A Nigerian FinTech API start-up launched in 2020 providing businesses and individuals access to financial information such as account statements, identity data and balances, closed a \$2 million in seed investment in May 2021. Earlier in the year, the company also received \$125,000 from American seed money start-up Ycombinator. Mono has also announced plans to expand to Kenya and Ghana by Q2 2021 [2].

1.2. PAYMENT SERVICES/SOLUTIONS

1.2.1. Regulatory guidance – New Licensing Requirements for Payment Service Providers

On 24 May 2021, the CBN released new licensing requirements for payment systems, consolidating its earlier release in December 2020. Notably, the release brought changes to the capital requirement of Payment Solutions Service Providers (PSSPs) and Payment Solutions Services (PSSs) while the capital requirement for Switching and Processing, Mobile Money Operator and Super Agent licences remain unchanged. Payments service providers have been ground-breakers in the FinTech ecosystem in Nigeria.

Our FinTech Team had examined the different licences introduced by the CBN, their requirements and changes introduced to the existing licensing regime in an article published on 26th May 2021, accessible [here](#).

Deal – Flutterwave raises \$170 million and achieves Unicorn status with over \$1 billion valuation

In March 2021, Flutterwave, the Nigerian payment solutions start-up raised \$170 million in a Series C fundraise that valued the start-up at over \$1 billion [3]. This came only five months after its fellow Nigerian payment solutions start-up, Paystack got acquired by Stripe for over \$200 million [4]. Furthermore, Flutterwave's CEO, Olugbenga Agboola has indicated that a public listing in the US is being explored. [5]

1.2.2. Regulatory Sandbox for Payments System

The CBN had earlier released a draft framework for the regulatory sandbox in July 2020. On 13 January 2021, the final version of the framework was released and the regulatory sandbox was created.

Through this regulatory sandbox, the CBN aims to control innovation in the FinTech sector as it presents a formal process for firms and start-ups to conduct live tests of all-new, innovative products, services, delivery channels or business models.

Importantly, the regulatory sandbox is open to both CBN licensees (financial institutions regulated by the CBN) and other Nigerian companies or enterprises not regulated by the CBN but who wish to test their innovative products.

[2] Taze Kene-Okafor, "Nigeria's Mono raises millions to power the internet economy in Africa" (TechCrunch, 24 May 2021) <<https://techcrunch.com/2021/05/24/nigerias-mono-raises-millions-to-power-the-internet-economy-in-africa/>> accessed 27 May 2021

[3] Taze Kene-Okafor, "African payments company Flutterwave raises \$170m, now valued at over \$1b" (TechCrunch, 10 March 2021) <<https://techcrunch.com/2021/03/09/african-payments-company-flutterwave-raises-170m-now-valued-at-over-1b/>> accessed 28 May 2021

[4] Ingrid Lunden, "Stripe acquires Nigeria's Paystack for \$200m to expand into the African continent" (TechCrunch, 15 October 2020) <<https://techcrunch.com/2020/10/15/stripe-acquires-nigerias-paystack-for-200m-to-expand-into-the-african-continent/>> accessed 28 May 2021

[5] Alexis Akwagiyiram and Chijioke Ohuocha, "African fintech firm Flutterwave eyes U.S. listing after raising \$170 million" (Reuters, 10 March 2021) <<https://www.reuters.com/article/us-flutterwave-funding-idUSKBN2B12TM>> accessed 28 May 2021

1.2.3. The Framework for QR Code Payments in Nigeria

The CBN released the Framework for QR Code Payments in Nigeria (the QR Framework) in January 2021 to regulate the use of QR codes as a payment means in Nigeria. The QR Framework sets out the obligations of the categories of persons identified as participants, acceptable QR code standards for implementing QR payments in Nigeria, interoperability of QR payments in Nigeria, risk management principles for QR code payments in Nigeria etc.

Our Senior Associate, Frances Obiabo, wrote an article examining the Regulatory Sandbox Framework and QR Frameworks, and their potential impact for the FinTech industry in Nigeria which can be read [here](#).

NIBBS launches the NQR Code

The Nigeria Inter-Bank Settlement System Plc ("NIBSS") announced the launch of the New Quick Response ("NQR") payment solution; an innovative payment platform implemented on behalf of all financial service providers and aimed at unifying the QR code experience for financial services users in Nigeria.

The NQR is in line with the CBN's QR Framework and will be a consolidation of the fragmented 'Pay by QR' method each service provider offered its merchant while retaining the swiftness, seamlessness and contactless ability of QR codes.

1.2.4. CBN and NCC Intervenes – Dispute Between Financial institutions and Telecommunication Companies.

Unstructured Supplementary Service Data ("USSD") services by financial transactions are majorly regulated by the CBN's Regulatory Framework for the Use of Unstructured Supplementary Service Data for Financial Services in Nigeria, 2018 and the Nigerian Communications Commission ("NCC") Guidelines on Short Code Operation in Nigeria, 2011.

The dispute between banks and telecommunication companies over who should pay for USSD sessions resurfaced on the 12th March 2021, when the Association of Licensed Telecommunication Operators of Nigeria ("ALTON") threatened to withdraw USSD services from deposit money banks until the ₦42 billion debt they allegedly owed was settled [6].

USSD is important for banks to provide a range of banking services to their customers but it is powered by telecommunication companies and the ongoing dispute is as a result of who should pay for the millions of transactions happening via USSD (over \$100 million as at first half 2021 [7]).

[2] Tage Kene-Okafor, "Nigeria's Mono raises millions to power the internet economy in Africa" (TechCrunch, 24 May 2021) <<https://techcrunch.com/2021/05/24/nigerias-mono-raises-millions-to-power-the-internet-economy-in-africa/>> accessed 27 May 2021

[3] Tage Kene-Okafor, "African payments company Flutterwave raises \$170m, now valued at over \$1b" (TechCrunch, 10 March 2021) <<https://techcrunch.com/2021/03/09/african-payments-company-flutterwave-raises-170m-now-valued-at-over-1b/>> accessed 28 May 2021

[4] Ingrid Lunden, "Stripe acquires Nigeria's Paystack for \$200m to expand into the African continent" (TechCrunch, 15 October 2020) <<https://techcrunch.com/2020/10/15/stripe-acquires-nigerias-paystack-for-200m-to-expand-into-the-african-continent/>> accessed 28 May 2021

[5] Alexis Akiyirirama and Chijioke Ohuocha, "African fintech firm Flutterwave eyes U.S. listing after raising \$170 million" (Reuters, 10 March 2021) <<https://www.reuters.com/article/us-flutterwave-funding-idUSKBN2B12TM>> accessed 28 May 2021

[6] Chike Ollisah, "USSD N42 billion debt: Telcos insist banks have to pay, seek CBN, NCC intervention" (Nairametrics, 19 April 2021) <<https://nairametrics.com/2021/04/18/ussd-n42-billion-debt-telcos-insist-banks-have-to-pay-seek-cbn-ncc-intervention/>> accessed 28 May 2021

[7] Olumuyiwa Olowogboyega, "In Nigeria, 'Banks vs Telcos' row over \$103m USSD debt may enter another round" (TechCabal, 15 April 2021) <<https://techcabal.com/2021/04/15/banks-telcos-ussd-debt/>> accessed 29 May 2021

The question of who should pay has been at the center of a dispute between banks and telecommunication companies since 2019.

After two years of negotiations, the price for USSD was pegged at N6.98 per transaction with the CBN and NCC deciding to pass on the fees to users. According to the regulators, the new USSD charges will be collected on behalf of telecommunication companies directly from customer's bank accounts and banks shall not impose additional charges on customers for the use of USSD channels.

1.3. BANK VERIFICATION NUMBER ("BVN")

1.3.1. Release of the Approved Standard Operating Guidelines for BVN Matching System Version 2.0

The Nigeria Inter-Bank Settlement System Plc (NIBSS) is owned by the CBN and all licensed Deposit Money Banks (DMBs) in Nigeria. The Board consists of the Deputy Governor, Financial System Stability, CBN as the Chairman and Representatives of the stipulated Banks.

On 29th March 2021, the NIBSS released the Approved Standard Operating Guidelines for BVN Matching System Version 2.0 (the "BVN Guideline") which is essentially Nigeria's BVN operation manual.

According to the BVN Guideline, non-bank players would no longer have access to the Bank Verification Number (BVN) system as a way to verify identity of new customers. This move affects all non-bank companies, with a lot of FinTechs falling under this category, that provide financial services.

1.3.2. Federal Government Plans to Replace BVN with NIN

The Federal Government of Nigeria has hinted that it intends to replace the BVN with the National Identification Number (NIN). The Minister of Communications and Digital Economy revealed this plan in February 2021 and further stated that the rationale behind the move is because BVN is only for those with bank accounts while NIN is for all Nigerian citizens [8]. Prior to the rejuvenation of NIN, BVN had become the standard identification number for Nigerians.

The BVN was conceived by the CBN in collaboration with all banks in the country to address the increasing incidents of compromise on conventional security systems used in financial transactions with banks [9]. It gives each bank customer a unique identity across the entire Nigerian banking system for easy identification and verification by deploying biometrics in enhancing identity management.

The success of this proposed replacement will depend largely on how efficient the National Identity Management Commission ("NIMC") can be in issuing NIN to Nigerians as there are still challenges with enrolment of Nigerians into the NIMC database.

[8] Chike Olishah, 'FG reveals plan to replace BVN with NIN' (Nairametrics, 9 February 2021) <<https://nairametrics.com/2021/02/09/fg-reveals-plans-to-replace-bvn-with-nin/>> accessed 29 May 2021

[9] "BVN Project" (Zenith Bank Website) <<https://www.zenithbank.com/personal-banking/bank-verification-number-bvn/#:~:text=In%20order%20to%20ensure%20trust,project%20in%20February%2014%2C%202014.>>> accessed 29 May 2021



CAPITAL MARKETS

4 4 5 5 6 6 7 7 8 8 9 9

CAPITAL MARKETS

The digitisation of financial services took the Nigerian financial institutions by storm with FinTechs in Nigeria primarily operating in payment services, lending, foreign exchange remittances, etc.

However, in recent years we have seen expansions into the capital markets with several developments taking place in investment technology and wealth management services. The regulator of the Nigerian capital markets, the Securities and Exchange Commission ("SEC") has been pro-active in engaging with FinTech stakeholders to better understand how to regulate digital solutions which affect investment businesses and securities in Nigeria.

2.1. CAPITAL MARKET OPERATORS

2.1.1. Digital Sub-Broker Regulations

SEC informed the public that on 17 December 2020, the Investments and Securities Tribunal, ("IST") had made interim orders restraining a Fintech company, Chaka Technologies Limited ("Chaka"), and its promoters from advertising or offering for sale shares, stock or other securities of companies or other entities.

At the said IST proceedings, SEC had asserted that Chaka's investment activities – including providing a platform for the purchase of shares in foreign companies - were carried out by Chaka outside SEC's regulatory purview and in breach of extant laws and regulations particularly the Investments and Securities Act and the Rules and Regulations of the SEC [10].

April 2021

Technology companies offering investment services in Nigeria were thrown into another frenzy as SEC on 8 April 2021 had stated that by the provisions of sections 67 to 70 of the Investments and Securities Act (ISA), 2007 and Rules 414 & 415 of the SEC Rules and Regulations, only foreign securities listed on any exchange registered in Nigeria may be issued, sold, or offered for sale or subscription to the Nigerian public. SEC also highlighted that even where investment technology companies have partnerships with registered Capital Market Operators in Nigeria to offer foreign shares to Nigerians, such arrangement is still illegal. [11]

Few days after the aforesaid statement by SEC, a way forward for the dilemma faced by technology investment companies in Nigeria offering shares to Nigeria was published by the SEC. Specifically, on 22 April 2021, SEC released amendments to its Consolidated Rules and Regulations (the "**Amendments**").

[10] The Investments And Securities Tribunal (IST) Restrains Unregistered Fintech Company From Stock Trading', (SEC Website, 19 December 2020) <<https://sec.gov.ng/the-investments-and-securities-tribunal-ist-restrains-unregistered-fintech-company-from-stock-trading/>> accessed 26 June 2021

[11] Proliferation of Unregistered Online Investment and Trading Platforms Facilitating Access to Trading in Securities Listed in Foreign Markets', (SEC Website, 08 April 2021) <<https://sec.gov.ng/proliferation-of-unregistered-online-investment-and-trading-platforms-facilitating-access-to-trading-in-securities-listed-in-foreign-markets/>> accessed 26 June 2021



In the Amendments, the new definition of Sub-Broker (in Rule 67 of the SEC Consolidated Rules and Regulations) was stated to be any person or entity not being a dealing member of an Exchange who acts on behalf of a sponsoring Broker/Dealer as an agent or otherwise for assisting the investors in buying, selling, or dealing in securities through such sponsoring Broker/Dealer.

The Amendments also provides that a Sub-broker who is serving multiple brokers through a Digital Platform is a sub-broker who utilises a digital platform to serve clients and interact with the sponsoring broker or brokers.

The definitions in the Amendments were a relief for many investment technology companies in Nigeria whose business entailed utilising their digital platforms to offer shares to clients based on partnerships with brokers.

To provide clarity on registration requirements for digital platforms, the Amendments expressly provide that an application for registration as a Sub-Broker/Sub-Broker serving multiple brokers through a digital platform must be made to SEC alongside the requirements listed in the Amendment.

Some of the registration requirements for a digital sub-broker include evidence of Required Minimum Paid up Capital of N10,000,000 (ten million Naira) (i.e. bank balances, fixed asset or investment in quoted Securities), current fidelity insurance bond covering at least 20% of the minimum paid-up capital as stipulated by the SEC's Rules and Regulations, minimum of three sponsored individuals, certification that the infrastructure is sufficient to perform the required function by an IT service provider registered by National Information Technology Development Agency or other recognized agency and evidence of documented policies and procedures for managing technology risks.

Our Associate, Oluwapeumi Omoniyi, had written an article discussing SEC's approach to resolving the regulation of investment tech in Nigeria and the framework it had introduced in this regard. Please read it [here](#).

June 2021

In June 2021, Chaka announced that it has been licenced by the SEC to operate as a digital sub-broker trading on local stocks and it was the first company to obtain the said licence. This approval by the SEC was commended by a number of stakeholders, especially in light of the earlier uncertainties in December 2020 and early 2021 in Nigeria on regulations of digital trading in Nigeria. [12]

However, the issue on investment tech and the offering of foreign securities is yet to be fully resolved. This had been a popular offering amongst Nigerian users, and it will be interesting to see whether the SEC introduces a regulation/amendment that provides an avenue for it.

[12] 'Chaka receives SEC's First Fintech License' (Chaka.com) <http://chaka.com/license?trk=organization-update_share-update_update-text> accessed 19 July 2021



2.1.2. Robo-Advisors

In a bid to have a regulation that takes cognisance of one of the recent technology trends in advisory services – Robo-advisors, the SEC on 5 May 2021 released an exposure draft on its Proposed New Rule on Robo-Advisory Services (the “Proposed Robo Rules”) for comments from the public. The Proposed Robo Rules sets out regulations on the provision of digital advisory services defined *as the provision of advice on investment products using automated, algorithm-based tools which are client-facing, with little or no human adviser interaction in the advisory process* by a robo adviser defined *as a person who provides digital advisory services*; and by a fully automated robo adviser defined *as a robo adviser with no human adviser intervention in the entire advisory process*.

Our Associate, Oluwapelumi Omoniyi, examined the provisions of the Proposed Robo Rules and highlighted the rationale behind the move to regulate Robo-Advisors in his articles published on 19 May 2021, accessible [here](#).

The innovations in the Proposed Robo Rules are quite commendable and can be regarded as one of those instances when regulators are actively making effort to be at par with emerging trends and technology. It is expected that the SEC will continue to update the public on the status of the Proposed Robo Rules and finalisation of same.

2.1.3. Crowdfunding Intermediaries

The SEC, after consultations with stakeholders and releasing a draft exposure to the general public, released its Rules on Crowdfunding (the “Crowdfunding Rules”) on 21 January 2021.

The rules were issued to govern investment-based crowdfunding in Nigeria and the relevant operators namely, Crowdfunding Portals (*a website, platform, portal, intermediary portal, application, or other similar module that facilitates interaction between Fundraisers and the investing public*), Crowdfunding Intermediaries (*an entity organized and registered as a corporation to facilitate transactions involving the offer or sale of securities or investment instruments through a Crowdfunding Portal*), Commodities Investments Platforms (*an electronic platform that connects investors to specific agricultural or commodities projects for the purpose of sponsoring such projects in exchange for a return*), and individuals who partake in investment based crowdfunding like fundraisers and investors.

The Crowdfunding Rules also created a transitional period for Crowdfunding Intermediaries to register with the SEC and restructure their operations to comply with the Rules. Although the Rules fixed 21 April 2021 as the Effective Date for its commencement (the transitional period given was within 90 days from the date of the issuance of the Rules), the SEC extended the deadline to 30 June 2021. You can check out our Oyeyosola Diya's article [here](#) if you want more insight on the Crowdfunding Rules.



Post 30 June 2021

The Crowdfunding Rules have made quite an impact on investment-based crowdfunding in Nigeria. According to a news report, Crowdfunding Intermediaries are defaulting in payment to investors and have rescheduled repayments of principal and interest in the wake of the Crowdfunding Rules [13], as they are in the midst of restructuring their operations.

The report contains complaints from various investors who have not been able to retrieve their investments because of the restructuring process being carried out by Crowdfunding Intermediaries. A stakeholder in the crowdfunding industry stated in the report that;

"A few had to get a different licence; some have gotten fund manager licence in order to go around the limitation or restriction in terms of volume they can raise, while others have adjusted instead of raising funds for projects, they are rather selling farmlands, farm projects, among others, to buyers. [14]"

A message from Farmsponsor, a Crowdfunding Intermediary to its investors recently said, *"The recent SEC cease and desist announcement on all crowdfunding platforms by June 30, 2021 has prompted us to update you with our next line of action."*

Farmsponsor website will no longer operate as a crowdfunding platform to focus on paying out sponsors. We will no longer be crowdfunding for Farmsponsor Poultry Business after June 30, 2021 [15]"

FarmCrowdy, one of the major Commodities Investment Platforms in Nigeria which focused on offering investors the opportunity to crowdfund agricultural processes or commodities to receive their returns after harvest, recently dropped its crowdfunding operations [16]. The source said that FarmCrowdy now provide loans to farmers through programs like the Central Bank of Nigeria's Anchor Borrowers Fund and other development finance institutions who have facilities for on-lending to operators in agriculture sector.

SEC on the other hand, has not disclosed how many companies have complied with the deadline, and it is unclear whether they will extend the deadlines to enable market participants comply with the Crowdfunding Rules.

2.2. SEC'S REGULATORY INCUBATION PROGRAM

On 16 June 2021, SEC issued a circular announcing that it would commence its Regulatory Incubation program ("RI Program") to address the needs of new business models and processes that require regulatory authorisation to continue carrying out full or ancillary technology-driven Capital Market activities.

[13] Nse Anthony-Uko and Olushola Bello, 'N20bn Investors' Funds in Crowdfunding Schemes at Risk' (Leadership Nigeria, July 2021). < <https://leadership.ng/n20bn-investors-funds-in-crowdfunding-schemes-at-risk/>> accessed 19 July 2021

[14] *ibid*

[15] *ibid*

[16] *ibid*



Incubators help founders grow their business and the SEC RI Program is no exception. Section 38(1) of the Investment and Securities Act 2007 prohibits any expert or professional from carrying out any activity in the Nigerian Capital Markets except it is registered by SEC. However, the SEC wants to use its RI Program to ensure that products offered by startups which operate in the capital market space or investment ecosystem in Nigeria which have no set regulation or are uncertain about what regulations apply to them are not outrightly prohibited, but can use the RI Program, to test, scale, grow and finally become regulatory compliant.

The RI Program is set to commence in the third quarter of 2021 and will have two stages: the Initial Assessment Phase and the Regulatory Incubation Phase. The RI Program will last for a period of one year which, according to the SEC, will *“enable the Commission to supervise some new models of providing Capital Market services in limited form before it becomes fully established to operate”*. You can check out the [article](#) by our Associate, Oluwapelumi Omoniyi, on the RI Program to see the requirements for getting into the SEC RI Program.

Though there are concerns by stakeholders that the RI Program may stifle innovation and the launch of products, the SEC has recently shown an understanding of FinTech programs and the ability to regulate innovation in the Nigerian Capital Market by providing tools and forums to promote regulatory compliance, regulatory supervision, and innovation in the FinTech space. It is hoped that the RI program becomes a platform for FinTech companies to be regulatory compliant and grow into efficiently run companies.





CRYPTO CURRENCY

CRYPTOCURRENCY

The Nigerian cryptocurrency space opened the year with the news of the country's massive Bitcoin trading volume in 2020, which perhaps set the pace for the events in the succeeding months. Nigeria was recorded as Africa's largest cryptocurrency market in 2020, with a trading volume of about \$309.6 million in Bitcoin [17], and about \$400million in cryptos generally [18].

The past six months have been an eventful ride for crypto enthusiasts in Nigeria- from crypto surges to regulatory updates by the CBN, to transaction structuring and increase in P2P exchanges, to the "dip".

The first half of 2021 has been interesting in terms of the regulation of the use of cryptocurrency in Nigeria. Please see articles by our Oluwapelumi Omoniyi examining the regulation of cryptocurrency and initial coin offerings in Nigeria, [part 1](#) and [part 2](#).

3.1.THE CBN TAKES A HARD STANCE

3.1.1.The Circular Dated 12 January 2017

On 12th January 2017, the CBN issued a circular titled "Circular to Banks and other Financial Institutions on Virtual Currency Operations in Nigeria", where the CBN expressed its reservation towards virtual currencies. According to the CBN, the unregulated and anonymous nature of virtual currencies made them susceptible to abuse by criminals.

The CBN particularly addressed the money laundering/terrorism financing risks associated with use of virtual currencies and set out actions to be taken by the institutions pending substantive regulation and decision by the CBN.

By the circular, banks and other financial institutions were to ensure that they do not use, hold, trade or transact in anyway in virtual currencies; and were to ensure that virtual currency exchanges that maintained accounts with them have effective AML/CFT controls.

[17] Taje Kene-Okafor 'In 2020, Nigerians Traded More Than \$400M Worth of Crypto on Local Crypto Exchange Platforms' (TechPoint Africa, 6 January 2021) <<https://techpoint.africa/2021/01/06/nigerians-traded-more-than-400m-worth-crypto-2020/>>. Accessed 17 July 2021. Full data available on Useful Tulip. See: https://www.usefultulips.org/combined_Sub%20Saharan%20Africa_Page.html

[18] Ibid



3.1.2. The Press Release on 28th February 2018

On 28th February 2018, the CBN issued a press release reiterating that cryptocurrencies and cryptocurrency exchanges are not regulated or licensed by the CBN, and that investments in crypto were not protected by law as cryptocurrencies are not legal tender in Nigeria.

The rationale behind the CBN's press release was to caution the investing public of the risks associated with investing in cryptocurrencies. However, the CBN's stance on cryptocurrency changed to a stricter one on 5 February 2021.

3.1.3. The Letter Dated 5 February 2021.

Following the buzz about the volume of crypto trade in Nigeria, the CBN on the 5th of February 2021, issued a letter to all deposit money banks, non-bank financial institutions and other financial institutions ("Regulated Institutions") reminding the Regulated Institutions that they are prohibited from dealing in cryptocurrencies or facilitating payments for cryptocurrency exchanges "CBN Letter").

The CBN Letter further instructed the Regulated Institutions to identify individuals or entities who transact in or operate cryptocurrency exchanges within their systems and close the accounts of such persons or entities.

The CBN Letter took cryptocurrency stakeholders and the Nigeria populace by storm, with varying reactions calling out the CBN. This led the CBN to issue a press release 2 days after titled "Response to Regulatory Directive on Cryptocurrencies", clarifying its position on the subject.

The CBN highlighted its reasons for prohibiting Regulated Institutions from dealing in cryptocurrencies or facilitating crypto transactions, which includes possible money laundering and terrorism financing due to the anonymity of traders, facilitating the purchase of small arms and light weapons, high volatility of the cryptocurrency market, lack of intrinsic value as opposed to fiat money and inconsistency with the CBN Act 2007.

However, contrary to popular opinion, the CBN did not ban cryptocurrencies in Nigeria. The CBN Letter only prohibited Regulated Institutions from facilitating or dealing in cryptocurrency-based transactions, and further instructed them to close all accounts of crypto traders and exchanges.



3.1.4. Aftermath of the CBN Letter

Regulated Institutions, for fear of sanctions by the CBN, began to close accounts of cryptocurrency traders and exchanges as instructed by the CBN. FinTech companies deactivated virtual accounts of customers that dealt with cryptocurrency while deposit money banks sent out text messages and emails to their customers stating the instructions of the CBN.

3.1.5. Effect of the CBN Letter on Crypto Transactions in Nigeria

Although the Regulated Institutions no longer facilitate payments for crypto exchanges, the Nigerian crypto community keeps blooming by the day. The appetites for crypto seems to have increased as crypto enthusiasts seek alternative means to trade. Data retrieved from Useful Tulips (a Bitcoin analytic data provider) shows that the usage of Bitcoin's peer to peer trading in Nigeria has surged at a high rate, as Nigerians moved about \$106 million worth of Bitcoins on just Paxful and Local Bitcoins channels alone as at May 2021 [19]

3.2. THE STATEMENT OF THE SECURITIES AND EXCHANGE COMMISSION

The SEC released a Statement on Digital Assets and their Classification dated 11 September 2020 which states that, unless proven otherwise, crypto assets are deemed as securities which fall within its regulatory purview as provided for in Section 13 of the Investments and Securities Act 2007. Please check out the article by our Oluwapelumi Omoniyi, exploring the SEC's Statement and its implications for initial coin offerings and Crypto Assets in Nigeria, [here](#).

Part of the comments of stakeholders, following the CBN Letter, was that it is inconsistent with the SEC's policy on crypto assets, revealing a policy clash between the regulators.

However, in a press release on cryptocurrencies on 11 February 2021, the SEC stated that there is no policy conflict between the SEC and the CBN over the ban placed on cryptocurrency transactions in the banking industry. SEC explained that contrary to the perceived policy conflict, it saw no such contradictions or inconsistencies. According to the SEC:

"The SEC made its statement at the time, to provide regulatory certainty within the digital asset space, due to the growing volume of reported flows. Subsequently, in its capacity as the regulator of the banking system, the CBN identified certain risks, which if allowed to persist, will threaten investor protection, a key mandate of the SEC, as well as financial system stability, a key mandate of the CBN."

The SEC also said that it was engaging with the CBN, and both regulators have agreed to work together to further analyse and better understand the identified risks to ensure that appropriate and adequate mitigants are put in place, should crypto be allowed in the future in terms of transactions by Regulated Institutions.

[19] Data available at https://www.usefultulips.org/combined_Sub%20Saharan%20Africa_Page.html



Furthermore, the Director-General of SEC, Mr. Lamido Yuguda, at the 2021 post-Capital Market Committee (CMC) virtual news conference disclosed that the SEC was in discussion with the CBN for better understanding and regulation of the crypto-assets market. He further stated that although the SEC is supportive towards the growth of Fintechs in Nigeria, it has suspended the implementation of crypto assets guidelines due to lack of access to Nigerian bank accounts [20]

3.3. PEER TO PEER (P2P) TRADING

Although P2P trading had been in existence before the CBN Letter, traders preferred trading via exchanges as they believed transactions on exchanges were more secure. However, following the CBN Letter, the volume of P2P trading has increased, with crypto exchanges stepping in to facilitate P2P transactions by providing some KYC investigations and matching verified interested parties.

The past six months have been quite eventful in the Nigerian cryptocurrency space and it is interesting to watch how things will unfold before the year runs out.

[20] 'SEC working with CBN on crypto trading regulation, says DG' (Premium Times, 16 April 2021) <<https://www.premiumtimesng.com/business/business-news/455542-sec-working-with-cbn-on-crypto-trading-regulation-says-dg.html>> accessed 26 June 2021





DATA PROTECTION

DATA PROTECTION

According to the Nigeria Data Protection Regulation Performance Report 2019-2020 issued by the National Information Technology Development Agency ("NITDA") ("the NITDA Report"), data is one of the most critical resource of the digital economy.

The digital economy accounts for about 17.8% of the Nigeria's GDP [21], meaning the value of data types cannot be understated in Nigeria. Regulating the use of and access to the personal data of Nigerians is key for several reasons including the rise of transactional internet and the need for Nigeria to comply with international data protection laws. It is no news that the necessity for data protection increases as the amount of data collected, processed and stored by a company skyrockets. Please see our FAQs on data protection in Nigeria [here](#).

In January 2019, the NITDA issued the Nigeria Data Protection Regulations ("NDPR") regulating data protection in Nigeria. Please check out the quick guide on compliance with the Nigeria Data Protection Regulation written by our Florence Bola-Balogun [here](#).

Highlight from the NITDA Report on status of the Nigerian data protection space include:

- NITDA received a total of 635 Audit filings for 2020;
- It was also reported that N12.6 million was paid to the Federal Government for filing NDPR Audit Report as at 2020;
- NITDA reported that 13 sectors were represented at the 2020 audit filings;
- 36.3% compliance was from the financial services sector (who are classified as the high risk organizations by NITDA);
- It was also reported that 2686 jobs were created as some were appointed Data Protection Officers, DPCOs were licensed, among others;
- The Nigeria Data Protection Regulation Implementation Framework was approved in November 2020 as against the use of the draft framework which merely served as a guide;

[21] National Information Technology and Development Agency and the Federal Ministry of Communications and Digital Economy 'Nigeria Data Protection Regulation Performance Report 2019-2020' page 9 <<https://nitda.gov.ng/wp-content/uploads/2021/03/NDPR-Lite-Performance-Report-2019-2020.pdf>> accessed 27 June 2021



- NITDA also reported that the Lagos Internal Revenue Service (“LIRS”) was investigated for a data breach, and they were sanctioned and fined N1,000,000 (One Million Naira). This was the first successful data breach case closed under the NDPR;
- Inauguration of Data Breach Investigation Team in conjunction with the Inspector General of Police;
- Launch of the NDPR portal for filing of 2021 audit reports and subsequent annual audit reports, and reporting of data protection breaches on the portal [22].

4.1. SIGNIFICANT INTRODUCTIONS TO DATA PROTECTION IN NIGERIA

- The Companies and Allied Matters Act 2020 and the Companies Regulations 2021 now provide for strict compliance with data protection.
- The Regulatory Framework of Open Banking in Nigeria incorporated the provisions of the NDPR.
- The number of Data Protection Compliance Officers (“DPCOs”) in charge of ensuring compliance of data protection in Nigeria as an intermediary with NITDA were increased from 70 to 102.
- On 12 March 2021, audit filing date was extended from 15 March 2021 to 30 June, 2021.
- NITDA fines Electronic Settlement Limited N5,000,000 for data breach and directed six months IT oversight.

The past six months have been quite eventful in the Nigerian data protection space as there has been more awareness, trainings, filings, enforcement, among others and it is interesting to watch how things will unfold before the year runs out.



Authors



Oyeyosola Diya



Kehinde Takuro



Opeyemi Adeleke



Mubaraq Popoola



Oluwapelumi Omoniyi



Oluwatobi Oluwasanya



Illamosi Ekenimoh



Ifeoluwa Ebiseni

For further information, please contact:



Davidson Oturu
(doturu@aelex.com)



Frances Obiagio
(fobiagio@aelex.com)



Florence Bola-Balogun
(fbola-balogun@aelex.com)

ÆLEX is a full-service commercial and dispute resolution firm. It is one of the largest law firms in West Africa with offices in Lagos, Port Harcourt and Abuja in Nigeria and Accra, Ghana. A profile of our firm can be viewed [here](#). You can also visit our website at www.aelex.com to learn more about our firm and its services.'

COPYRIGHT: All rights reserved. No part of the publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means without the prior permission in writing of ÆLEX or as expressly permitted by law.

DISCLAIMER: This publication is not intended to provide legal advice but to provide information on the matter covered in the publication. No reader should act on the matters covered in this publication without first seeking specific legal advice.

CONTACT DETAILS

LAGOS, NIGERIA

7th Floor,
Marble House
1, Kingsway Road, Falomo
P. O. Box 52901, Ikoyi
Lagos, Nigeria

Telephone: (+ 234 1) 2793367; 2793368
4736296, 4617321-3;
E-mail: lagos@aelex.com

PORT HARCOURT, NIGERIA

2nd Floor,
Right Wing UPDC Building
26, Aba Road
P.O. Box 12636, Port Harcourt
Rivers State, Nigeria

Telephone: (+234 84) 464514, 464515
574628, 574636
E-mail: portharcourt@aelex.com

ABUJA, NIGERIA

4th Floor,
Adamawa Plaza
1st Avenue, Off Shehu Shagari Way
Central Business Area
FCT Abuja, Nigeria

Telephone: (+234 9) 8704187, 6723568,
07098808416
E-mail: abuja@aelex.com

ACCRA, GHANA

7th Floor, Suite B701
The Octagon
Accra Central, Accra
P.M.B 72, Cantonment Accra, Ghana

Telephone: (+233-302) 224828, 224845-6
E-mail: accra@aelex.com