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Overview of CBN Draft Guidelines on Dormant Accounts

Introduction

On April 6, 2023, the Central Bank of Nigeria (the “**CBN**”) issued the Exposure Draft Guidelines on the Management of Dormant Accounts, Unclaimed Balances and Other Financial Assets in Banks and Other Financial Institutions in Nigeria (the “**Draft Guidelines**”). The Draft Guidelines was issued to clarify the procedures for the management of monies in dormant accounts and other inactive accounts in banks and financial institutions (“**FIs**”) in Nigeria. This article examines (a) the import of the Draft Guidelines; (b) compares them to the existing regulatory regime for dormant accounts; (c) examines a pertinent existing provision under the Finance Act, 2020 (the “**Finance Act**”); and (d) makes recommendations for the way forward. We recommend that (i) areas of conflict between the Draft Guidelines and the Finance Act be identified by the CBN before finalizing the Draft Guidelines and (ii) the CBN should collaborate with other relevant stakeholders in the management of dormant accounts.

The Previous Regulatory Regime for Dormant Accounts

The Draft Guidelines was introduced with the aim of establishing a legal framework that meets the present banking realities in Nigeria regarding unclaimed funds and balances in banks and FIs. The previous regulatory regime for dormant accounts was the “Guidelines on the Management of Dormant Accounts and Other Unclaimed Balances by Banks and Other Financial Institutions in Nigeria, 2015” (“**Previous Guidelines**”). The Previous Guidelines provided no framework for the specific actions that banks and FIs could take in respect of dormant accounts. Also, the Previous Guidelines did not apply to Savings Accounts, and banks were to bear the responsibility for ensuring that such inactive accounts were not used for fraudulent purposes.¹ The Draft Guidelines contains elaborate provisions for the management of dormant accounts in Nigeria. The Draft Guidelines is to supersede the provisions of the Previous Guidelines.

Overview of the Draft Guidelines

The Draft Guidelines makes a distinction between inactive and dormant accounts. Inactive accounts are accounts that have had no customer-initiated transaction for 6 to 11 months. Dormant accounts, on the other hand, are accounts that have remained inactive for at least 1 year with no customer-initiated activities except for the posting of interest accrued credits by the FIs. When account balances and other financial assets have remained dormant for at least 10 years, such unclaimed balances are to be transferred to the CBN.

The CBN is obligated to open an account called the Unclaimed Balances Trust Fund Pool Account (the “**UBTF Pool Account**”) in which these unclaimed balances would be warehoused. However, certain accounts, albeit dormant or with unclaimed balances, are exempted from the provisions of the Draft Guidelines. These include: (a) government-owned accounts; (b) accounts subject to litigation; (c) accounts being investigated by a regulatory authority or law enforcement agency; and (d) encumbered accounts – accounts used as collateral, or on which liens have been placed.²

The CBN, as the manager of these unclaimed funds, is empowered to invest the funds in Nigerian treasury bills and other securities approved by the unclaimed balances management committee. It is also obligated to refund unclaimed funds to beneficiaries through their FIs not later than 10 working days from the receipt of request from the appropriate FI.³

Reactivation of Dormant Accounts

Where a customer seeks to reactivate a dormant account, such customer must provide the FI with: (a) evidence of account ownership; (b) a valid means of ID; (c) evidence of present place of residence; and (d)

¹ Paragraph 6, of the Previous Guidelines.

² Par. 2, of the Draft Guidelines.

³ Par. 6, of the Draft Guidelines.

affidavit on the accuracy of the information to reactivate the account.⁴ On the side of the FI, where a customer desires to reactivate a dormant account, it shall: (a) require the account owner to complete a reactivation form in person; (b) verify the information provided on the reactivation form; (c) not charge any fee for the reactivation of dormant accounts; (d) reactivate a dormant account only with the approval of two authorized officers one of whom is the Branch Operations Manager; (e) reactivate dormant accounts within a maximum of 2 working days; and (f) notify the account owner, free of charge, upon reactivation of the account.⁵

Procedure for Reclaiming Unclaimed Balances

This procedure applies to funds already transferred to the UBTF Pool Account maintained by the CBN. Such beneficial owners can access the list of unclaimed balances already transferred to the CBN on the websites of FIs and/or the CBN and/or newspaper publications. The procedure is as follows: (a) the beneficial owner visits any branch or office of the FI and completes an 'Asset Reclaim Form'; (b) the FI verifies the claim and initiate request to CBN within 10 working days; and (c) the CBN is to refund the unclaimed amount to the beneficiaries through the FIs within 10 working days from the date of receipt of the FI's request.⁶ It is important to note that beneficial owners cannot make partial claims as all unclaimed balances are to be claimed at once.⁷ Also, the right of beneficial owners to reclaim are to be indefinite. Where the FI is in liquidation, the Nigeria Deposit Insurance Corporation assumes the role of the FI in reclaiming unclaimed balances.⁸

Provision of the Draft Guidelines v the Finance Act

The provisions of the Draft Guidelines are similar and overlap with some provisions of the Finance Act. This creates room for confusion for banks and FIs with whom dormant accounts lie. We have highlighted key overlapping provisions side by side below:

1. **Creation of Trust Fund:** The Draft Guidelines purports to create the UBTF Pool Account which warehouses all unclaimed balances in dormant accounts. Equally, the Finance Act establishes an Unclaimed Funds Trust Fund (the "**Trust Fund**") that houses any unclaimed dividends of a quoted public limited company and any unutilized amounts in a dormant bank account in a deposit money bank.⁹
2. **Maximum Period:** The Draft Guidelines provides that any unclaimed money in a dormant account for a minimum of 10 years is to be transferred to the UBTF Pool Account. Under the Finance Act, the minimum period in which such transfer is to be made to the Trust Fund is 6 years.¹⁰
3. **Supervision of the Fund:** The Draft Guidelines provide that the CBN shall establish a management committee to oversee the operation of the UBTF Pool Account. Also, the Banks and Other Financial Institutions Act, 2020 grants the CBN the power to regulate unclaimed funds in dormant accounts.¹¹ On the other hand, the Finance Act provides that the Debt Management Office (the "**DMO**") shall supervise the operations of the Trust Fund,¹² and the secretariat of the Trust Fund shall be operated by the DMO with the CBN and Securities and Exchange Commission ("**SEC**").¹³

⁴ Par. 4.3(v) of the Draft Guidelines.

⁵ Par. 7, of the Draft Guidelines.

⁶ Par. 8.0 (i-iv), of the Draft Guidelines.

⁷ Par. 8.0 (v), of the Draft Guidelines.

⁸ Par. 8.0, of the Draft Guidelines.

⁹ Section 77(1), Finance Act, 2020.

¹⁰ Section 77(2), Finance Act, 2020.

¹¹ Section 72, Banks and Other Financial Institutions Act, 2020.

¹² Section 77(3), Finance Act, 2020.

¹³ Section 77(7), Finance Act, 2020.

4. **Responsibility:** Under the Draft Guidelines, the CBN has the responsibility to issue regulations, guidelines, and circulars on the administration of dormant and unclaimed balances and financial assets in FIs.¹⁴ However, under the Finance Act, the DMO has the role to prepare and implement a plan for the efficient management of the obligations of the Trust Fund including setting guidelines and modalities.¹⁵
5. **Duty to Publish:** Under the Draft Guidelines, CBN is mandated to publish annually on its website the list of owners of unclaimed balances that have been transferred to the UBTF Pool Account.¹⁶ A similar provision exists in the Finance Act as the DMO is to maintain a reliable database of all unclaimed dividends and dormant bank balances warehoused by the Trust Fund which shall be verified and reconciled with the CBN and SEC on a bi-annual basis.¹⁷
6. **Sanctions:** Under the Draft Guidelines, sanctions for breaches of the provisions are fixed at ₦2,000,000 (Two Million Naira) and ₦200,000 (Two Hundred Thousand Naira) for each day of default.¹⁸ The Finance Act, however, provides that any contravention of its provision *e.g.* non-remittance by any deposit money bank of amounts in a dormant account for more than 6 years, attracts a fine of not less than thrice the value of the funds in the dormant bank account plus accumulated interest at the CBN's monetary policy rate.¹⁹

Considering these overlapping provisions, banks and FIs may be perplexed about compliance with the said provisions and the applicable regulatory regime for dormant accounts. However, it is noteworthy that where there is a conflict between an Act of National Assembly and a subsidiary legislation, the Act of National Assembly prevails.²⁰ To this extent, the Finance Act would prevail over the Draft Guidelines in areas of conflict. Our expectation is that the CBN will identify areas of conflict before finalizing the Draft Guidelines.

Conclusion

With the advent of the Draft Guidelines, the expectation is that bank customers and owners of financial assets will be proactive in managing their accounts rather than having them mopped over to the UBTF Pool account. Also, rather than these unclaimed balances lying fallow, CBN would be empowered to utilize them for various investment purposes leading to economic growth and development.

However, in view of the provisions of the Finance Act regarding dormant accounts, there is need for the CBN to collaborate with other relevant stakeholders such as the DMO, SEC and perhaps the National Assembly in its bid to regulate dormant accounts.

¹⁴ Par. 4.1(b), Draft Guidelines.

¹⁵ Par. 78(d), Draft Guidelines.

¹⁶ Par. 4.1(g), of the Draft Guidelines.

¹⁷ Section 78(a), Finance Act, 2020.

¹⁸ Par. 12.0 of the Draft Guidelines.

¹⁹ Section 77(10), Finance Act, 2020.

²⁰ *Nyesom v. Peterside et al.*, (2016) LPELR-40036 (SC); *Chabo et al. v. Achir et al.* (2019) LPELR-48757 (CA).

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