

NEWSLETTER

BANKING

April 2017

This is G. Elias & Co.'s regulatory update for the month of April 2017. This update summarizes the recent developments in the banking and finance regulation space that are relevant to G. Elias & Co.'s clients operating in the Nigerian banking and finance sector.

ABOUT US

G. Elias & Co. is one of Nigeria's leading business law firms with an international outlook and an outstanding record of providing excellent solutions to complex legal problems. We are reputed for carrying out critical, innovative and complex work to the highest ethical and professional standards.

There are 3 significant recent developments in the Nigerian Banking regulatory landscape. The first, and by far the most significant, is the introduction of a new foreign exchange market to be funded by investors and exporters. The point of this new market is to incentivize foreign investors and Nigerian exports; both of whom have foreign currency ("Forex") to sell to the market and at more market-driven prices than hitherto.

The other two developments aim to extend license to non-bank lenders, anti-crime and price-control regimes that have long applied to bank lenders. We look at these developments more closely below.

ESTABLISHMENT OF INVESTORS' AND EXPORTERS' FOREIGN EXCHANGE WINDOW

The CBN introduced a special Forex window as one of the measures to stabilize the volatile and unstable Forex market. This volatility in the exchange rate is owing to the unavailability of Forex for international transactions.

Therefore, in order to further enhance efficiency, liquidity and transparency in the Forex market, the CBN, through its circular dated April 21, 2017, (the "Circular"), introduced a special window called the Investors' and Exporters'

Forex Window (the "Window"). This is for the benefit of foreign investors, exporters and end-users. The implementation of this directive, which took effect from April 24, 2017, will boost liquidity in the Forex market and ensure a timely execution and settlement for eligible transactions.

Participants. In this Window are portfolio investors, exporters, authorized dealers and other parties who have Forex to exchange to Naira. The CBN may also participate at the Window in order to promote liquidity and professionalism in the Forex market.

Permitted transactions include: (i) invisible transactions, including direct (i) and portfolio investment inflows but excluding international airlines ticket sales remittances; (ii) bills for collection; and (iii) any other trade-related payment obligations at the instance of the customer.

Operational Requirements

The modalities are that: (i) authorized dealers and their counterparties will agree on the exchange rates for transactions in the Window; (ii) the CBN reserves the right to intervene either as a buyer or a seller in its utmost discretion; (iii) authorized dealers may hold positions subject to their respective Foreign Currency Trading Position Limits (iv) authorized

dealers shall not exceed their trading limits without the approval of the CBN; (v) where an authorized dealer has a trading position in excess of its limits, it shall reverse such excess during trading hours either by offering it to the CBN or another authorized dealer with CBN's approval. The purchased funds bought by authorized dealers must be sold only to their customers and cannot be held overnight or resold to another authorized dealer; and (vi) information on transactions in the Window shall be reported daily to the Director, Financial Markets and Banking Supervision, CBN in hard and soft copy.

Over-the-Counter FX Futures

Participants in the market are permitted to hedge their position forwards, swaps, futures and options.

This new CBN FX policy is meant to encourage foreign investors to invest in the Nigerian Economy. It seeks to make Forex easily accessible for exports and portfolio investments

BVN ENROLLMENT FOR CUSTOMERS OF OTHER FINANCIAL INSTITUTIONS

On February 14, 2014, the CBN introduced a policy for the biometric registration of all customers of financial institutions. Through this exercise, the unique physical traits of the individual such as fingerprints and facial features are captured. This record is to be used for the proper identification of persons keeping accounts with commercial banks in Nigeria. Upon registration, the person is given a Bank Verification Number (BVN). The objective of this programme is to protect bank customers from fraud and further strengthen the integrity of Nigerian Banking system.

This exercise, which was initially exclusive to Banks, has now been extended to cover Other Financial Institutions ("OFIs"). OFIs include Primary Mortgage Institutions, Micro Finance Banks, Mortgage Refinancing Companies, Development Finance Institutions, Bureaux De Change; and Finance Companies. Thus, by a circular dated April 21, 2017, the CBN, in a bid to effectively implement the know- your-customer principle, eliminate fraud and avoid a broken link in the banking system, communicated the extension of the BVN enrollment initiative to OFIs. As such, the CBN directed all OFIs to on or before July, 2017, enroll all of their customers and assign them BVNs, sensitize their customers on BVN registration, and update the Director, OFIs Supervision Department of the CBN, on the progress of the BVNs registration by August 7, 2017.

The CBN stated that from August 1, 2017, customers who do not have BVN-linked accounts would not be allowed to make withdrawals from their accounts.

Effective August 1, 2017, OFI customers who do not have BVN-linked accounts would not be allowed to make withdrawals

GUIDE TO CHARGES BY BANKS AND OTHER FINANCIAL INSTITUTIONS IN NIGERIA (THE "GUIDE")

In order to eliminate all uncertainty regarding bank charges, the CBN, as financial regulator, released a Guide that stipulates the charges to be applied on various products and services offered by banks, other financial institutions ("OFIs") and mobile payment operators in Nigeria. The Guide took effect on May 1, 2017 and replaces the 2013 Guide to Bank Charges.

Charges Applicable to Banks

Interest on Deposits: interest rates on current accounts, term deposit accounts and domiciliary accounts are negotiable. This includes deposits held as collateral, however, subject to a minimum of 30% of Monetary Policy Rate ("MPR") *per annum*. For savings accounts, a minimum rate of 30% of the MPR *per annum* shall apply, however, this charge shall not apply to a customer who makes more than 4 withdrawals in a month. The MPR anchor rate is the rate at which the CBN, as lender of last resort, lends to Deposit Money Banks in order to boost the level of liquidity in the banking system. The current MPR in Nigeria is 14%.

Interest Rates: interest rates on loans (both local and foreign currency loans), authorized overdrafts, drawings against uncleared effects, equipment leasing and discountable instruments such as commercial papers and promissory notes and mortgage financing shall be negotiable (subject to a maximum of MPR + 5%).

Further, when a bank intends to introduce a new rate different from the agreed rate, the bank is required to notify the customer of the new rate at least 10 business days in advance of the application of the new rate. The penal rate for late repayment of Naira loans, unauthorized overdraft/credit shall be a maximum rate of 1% *per* month. For foreign currency loans and advances, the penal rate shall be a maximum rate of 0.25%. The Guide further allows a seven (7) days period before the penal charges on late repayments of loans and advances shall begin to apply.

Lending Fees: (a) Management fee (subject to a maximum of 1% of the disbursed principal), (b) facility enhancement fee (subject to a maximum of 1% of the additional disbursed amount), (c) restructuring fee (subject to a maximum of 0.5% of the outstanding amount being restructured); and (d) commitment fee (subject to a maximum of 1% on the undisbursed amount) shall all be negotiable and total lending fees shall not exceed 2%. Additionally, management fee shall not apply where facility enhancement fee is charged. Further, also negotiable are advisory/consultancy fee, interbank borrowing rate for overnight or tenured borrowing and current account maintenance fee (subject to a maximum of ₦1 *per* thousand shall be negotiable.

Consortium Lending: Negotiable rates shall apply to agency fee, management fee (subject to a maximum of 1% of the principal), commitment/non-drawing fee (subject to a maximum of 0.5% of the undisbursed amount) and commission charges for underwriting services.

Also, Commission on Bonds, Guarantees and Indemnities are negotiable subject to a maximum of 1% of the bond value.

The guide also stipulates the amount to be charged as commission of FX transactions, travelers' cheques, inward telegraphic/SWIFT, and other transfers expressed in foreign currency, bills for collection, inward and outward letters of credit, internal transactions (within Nigeria), internet banking, electronic funds transfer, card maintenance fee, which shall be \$20 *per* annum (or its equivalent) for foreign currency denominated debit/credit cards and ₦50 monthly for naira debit/credit card.

The Guide was so detailed that it stipulated the amount for credit card charges, debit card charges, ATM Transactions (which attracts ₦65 after the third withdrawal within the same month from third party ATM machines); transaction alert at ₦4 *per* SMS maximum.

Charges Applicable to Other Financial Institutions (“OFIs”); Microfinance Banks (“MFBs”), Primary Mortgage Institutions (“PMIs”), Finance Companies (“FCs”) and Mobile Money Operators (“MMOs”)

You will find that the CBN, as financial regulator is not only concerned with commercial banks. The Guide also applies to OFIs. The provisions as relating to OFIs are almost identical with that for Banks as outlined above. It makes similar provisions on **Interest Rates**, **Lending Fees**, commission on guarantees and indemnities, internal transactions (within Nigeria), internet banking charges, transfers within Nigeria, electronic funds transfer, naira debit card charges, ATM transactions, and transaction alerts. Mobile money operators are not also left out.

Contact

For more information or to seek further clarification on the foregoing, kindly visit www.gelias.com or contact the Managing Partner, Fred Onuobia via e-mail at fred.onuobia@gelias.com

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