
**A REVIEW
OF THE BANKS AND
OTHER FINANCIAL
INSTITUTIONS ACT 2020
– EFFECTS ON NIGERIA’S
FINTECH ECOSYSTEM**

**Ugochukwu Mbakogu
Oluwatitoni Oyefeso**

Introduction

On 12 November 2020, President Muhammadu Buhari assented to the Banks and Other Financial Institutions Act 2020 (the Act). The Act repealed the Banks and Other Financial Institutions Act 1991 and with the addition of novel provisions, seeks to improve the efficiency of the country’s financial system.

Some of the objectives of the Act include – to modernize laws governing financial institutions and financial services in line with current trends in the banking sector; enhance the efficiency in granting licenses to banks and other financial institutions (OFIs); set-out the regulatory functions of the Central Bank of Nigeria (CBN) in the financial services industry; set out the laws for the licensing and regulation of micro finance banks, and regulate the activities of financial technology (Fintech) companies.

Inclusion of Fintech Companies under the Regulatory Purview of the Act

Chapter B of the Act makes provisions for Specialised Banks and OFIs. The Act prohibits any person from carrying on specialised banking or business of an OFI except it is a company duly incorporated in Nigeria and holds a valid license.¹ Crucially, the Act expands the definition of OFIs to include finance company or money brokerage, international money transfer services, financial holding company or payment service providers and businesses whose objects include; project financing, debt administration, private ledger services, investment management and any other business as the CBN may determine from time to time irrespective of whether such businesses are conducted digitally, virtually or electronically only.² This effectively enlarges the scope of the CBN’s regulatory powers to include certain types of Fintech companies. Such companies that were operating before the commencement of the Act must make a written application to the CBN for a license within 3 months of the commencement of the Act.³ Other application documents include a feasibility report for the proposed financial business including financial projections for at least 5 years, a draft copy of the Memorandum and Articles of Association of the company, such other information as the CBN may require and payment of the prescribed application fee.⁴

¹ Section 57 (1) Banks and other Financial Institutions Act 2020

² Section 57 (2) Banks and other Financial Institutions Act 2020

³ Section 57 (3) Banks and other Financial Institutions Act 2020

⁴ Section 58 (1) Banks and other Financial Institutions Act 2020

Section 61 provides for the application of Chapter A of the Act to Specialised banks and OFIs. Chapter A of the Act regulates banks, and this section stipulates that the provisions of the chapter including all of its offences, penalties and the powers of the CBN will apply with necessary modifications to specialised banks and OFIs. Some notable provisions that apply to Fintech



companies under the Act include; special examination of the books or affairs of banks or OFIs, where it is in the public interest to do so, where there has been contravention of provisions of the Act, where such company has insufficient assets to cover its liabilities to the public or on application by a director or shareholder or a depositor or creditor of the bank or OFI.⁵ In exercising its functions over failing banks and OFIs, the CBN may bail-in failing banks or financial institutions by determining that any eligible instrument issued or to which the bank or financial institution is eligible to be cancelled, modified or have effect as if a right of modification had been exercised.⁶ However, the provisions on asset separation tool grants overarching

powers to the CBN to transfer the assets of an OFI to one or more asset management vehicles and the CBN may issue instruments transferring the property. Such a provision poses a potential risk for shareholders and creditors of an OFI as it significantly limits the rights or claims by shareholders and creditors against the assets transferred to the private asset management vehicle.

Prior to the Act, there was tacit regulation of Fintech companies as OFIs through various CBN guidelines, but with the commendable additions made to the definition of OFIs under the Act, there will be a greater and clearer supervisory role by the CBN in regulation of Fintech companies. However, in exercising its statutory powers, the CBN must ensure that the right balance is reached between its supervisory role, encouraging growth, allowing innovation flourish, and ensuring financial stability in the industry. The CBN must encourage collaboration with these Fintech

⁵ Section 33 (1) Banks and other Financial Institutions Act 2020

⁶ Section 37 (2) Banks and other Financial Institutions Act 2020

companies and ensure that through its policies and regulations, Fintech companies are provided a stable and enabling environment to operate and grow.

The increasing importance of Fintech to the economy of Nigeria cannot be understated. In a report published by Enhancing Financial Innovation and Access (EFInA) in 2018, there were at least 250 Fintech companies in Nigeria at the time⁷, and there was an expectation of market growth in subsequent years as well as an increase in the transaction value in the Fintech landscape. In Q1 2020, Nigerian start-ups raised \$55.37 million which is higher than the amounts raised in Q1 2018 and Q1 2019 combined. Fintechs accounted for 82.2% of this funding.⁸ This demonstrates the vast potential that these companies possess. In addition to this, the recent acquisition of Paystack (a Nigerian Fintech company) by Stripe, an American fintech giant for a figure in the region of \$200,000,000 (Two Hundred Million Dollars)⁹, reflects the massive opportunity and importance of this sector to the Nigerian economy. The CBN must therefore take steps to enable constant innovation and growth within the sector.

Cybersecurity

Cybercrime is a malicious activity that cripples the economy of nations. The rise in innovation and technology presents this risk and Banks and OFIs are the most susceptible to cyber-attacks. The combination of personal data of individuals and corporations as well as the assets attached make these institutions easy victims. Section 68 of the Act takes this into consideration and asserts that the CBN may issue regulations and guidelines to banks, specialised banks, or OFIs to address cybersecurity issues in the delivery of financial or banking services. This section also attaches a penalty of ₦2,000,000 (Two Million Naira) for any officer of a bank, specialised bank or OFI for failure to comply with any cybersecurity guidelines and regulations issued by the CBN, and an additional penalty of ₦50,000 (Fifty Thousand Naira) for each day the contravention subsists.¹⁰ This is a laudable provision in the new Act. The information and intelligence available to banks and OFIs is sensitive



⁷ <https://www.efina.org.ng/wp-content/uploads/2019/04/EFInA-FinTech-Report-Global-and-Nigeria-Landscape.pdf>

⁸ Yinka Awosanya “Update: Nigerian startups raised \$55.37m in Q1 2020, with over 99% from foreign sources”
[<https://techpoint.africa/2020/04/23/nigerian-startups-raised-70-5-million/>]

⁹ Olumuyiwa Olowogboyega, “Stripe acquires Nigerian fintech startup, Paystack for over \$200 million”
[<https://techcabal.com/200/10/15/stripe-acquires-paystack/>]

¹⁰ Section 68 (2) Banks and other Financial Institutions Act 2020.

and they have the obligation to protect the data of consumers. The financial sector is a high-risk sector in terms of the potential effect of loss of consumer data and supplementary measures must also be included to combat cybercrime.

Section 68 of the Act arrives as a sequel to the Risk-based cybersecurity framework and guidelines (“the guidelines”) for Deposit Money Banks (DMBs) and Payment Service Providers (PSPs) which came into effect on January 1, 2019.

Under the guidelines, some of the salient provisions are the appointment of a Chief Information Security officer to oversee the end-to-end cyber-security program (day to day cybersecurity activities and mitigation of cybersecurity risks), regular cyber-security self- assessments, an annual assessment to be submitted to the CBN by March 31 every year, and regular cyber-security policies and strategic leadership implemented by the Board of Directors and Senior Management of DMB’s and PSP’s. As opposed to the regulator imposing cybersecurity governance measures on DMB’s and PSP’s, the approach adopted by the CBN in these guidelines allows these companies to prescribe their own cybersecurity governance measures, while remaining accountable to the CBN. In the interim, there has been no update on these guidelines, so it can be assumed that these guidelines will also extend to OFIs included under the scope of the CBN’s power in the new Act.

Banks, specialised banks and OFIs are also required to adopt policies that represent their commitments to comply with Anti-Money Laundering and Combatting Financing of Terrorism under subsisting laws, regulations and other regulatory directives.¹¹ These control measures must be put in place to prevent any transaction that facilitates criminal activities, money laundering or terrorism.

The Case for Regulation

With the exponential growth of Fintech, and the drive towards financial inclusivity, there is no doubt that this industry has great potential. With this potential comes great risk. Although technology is a tool for solving problems and making processes work seamlessly and more effectively, it has its pitfalls. Some of these include loss of personal data, risk of fraud, and unfair use of data, and also increasing criminal activities such as money laundering. Although regulation may not accomplish the goal of completely eliminating these risks, it aims to minimise them. For

¹¹ Central Bank of Nigeria (Anti-money laundering & Combatting the Finance of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013; Central Bank of Nigeria (Anti-money laundering & Combatting the Finance of Terrorism (Administrative Sanctions) Regulations 2018; Central Bank of Nigeria (Anti-Money laundering & Combatting the Finance of Terrorism in Banks and Other Financial Institutions in Nigeria Policy and Procedure Manual 2018.

instance, the CBN ensures Banks and OFIs implement certain policies and failure to do this attracts penalties such as the revocation of licences or other monetary penalties as the case may be. This will ensure that companies within this sector are constantly kept in check and are looking out for their vulnerable customers.

Asides from protection of customers, regulation can also be a tool for promoting innovation. The idea of different organisations coming together to address prevalent issues within the sector can help to foster growth of the sector. A regulator should create an environment where innovation is encouraged. With the vast potential of the Fintech industry, this should constantly be emphasised as it will have a rewarding effect on the economy. The role of the regulator will thereby aid and enhance investor confidence, restore public trust in the financial industry and augment the legitimacy of these companies in the public’s perception.

Fintech companies must nonetheless ensure compliance with the law and understand the extent and scope of regulation that BOFIA 2020 places over them.

Conclusion

There is no question that the BOFIA 2020 is a necessary introduction and improvement on the erstwhile laws regulating banks and OFI’s. With the advent of technology and innovation, in order to remain relevant our laws must also modernise and change with the times. These laws will aid in fostering growth and development in the financial sector. The responsibility however falls on the CBN to not just exercise supervisory powers over the sector but to adopt and implement policies, guidelines and regulations as empowered under the Act¹² that support the advancement of the sector, promote competition, and nurture the vast potential that the age of technology has birthed and enforcing these policies through stringent actions and penalties.

Authors



Ugochukwu Mbakogu
Associate
umbakogu@alp.company



Oluwatitoni Oyefeso
Associate
ooyefeso@alp.company

¹² Section 30 Banks and other Financial Institutions Act 2020