



**A CRITICAL EVALUATION OF THE LEGAL
REGIME OF ELECTRONIC PAYMENT
SYSTEMS IN NIGERIA, PAYMENT SERVICE
PROVIDERS (PSPS) IN CONTEMPLATION**

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ABSTRACT

In recent years, the financial sector has witnessed the introduction and adoption of digital banking and other payment solutions other than traditional banking. Fintech Startups have sprung up to complement the existing participants by leveraging technology and the internet to ease the conduct of financial transactions. Consequently, traditional banks have transitioned in part to digital banking where they render digital services using mobile technologies such as mobile apps and websites. This has led to the rapid growth of the electronic payment system in Nigeria. Regulations must thus exist to administer the operation of this composite system of payment. This paper critically examines the available regulations and addresses the challenges in the regulatory regime of Payment Systems in Nigeria, paying requisite attention to Payment Service Providers.

1.0. INTRODUCTION

The currency in Circulation in Nigeria has risen to 3.2 trillion Naira as of September 2022, 2.7 trillion Naira out of which was outside the treasuries of commercial banks.¹ Data from the Nigerian Interbank Settlement System (NIBBS) has pegged the volume of financial transactions done through mobile devices to 1.8 trillion Naira as of August 2022.² A bulk of these transactions are carried out by Payments Service Providers. A Payments Service Provider (PSP) is a corporate entity licensed by the CBN to provide services involving direct interactions with the payment, settlement and clearing systems and payment system arrangements as may be authorized by the CBN from time to time and may include Banks, Mobile Money Operators (MMOs) and Other Financial Institutions (OFIs).³ Paystack, Flutterwave, GTPay, 9 PSB, MoneyMaster PSB, Paga, ALAT by Wema and KongaPay are a few examples of PSPs in Nigeria.

Realistically, it is important to note that PSPs, like conventional banks, are governed by regulatory frameworks that oversee their incorporation, license, and operations. They are largely governed by the Companies and Allied Matters Act 2020, the Banks and Other Financial Institutions Act (BOFIA) 2020, and the Central Bank of Nigeria (CBN) Establishment Act 2007 due to their designation as

¹Ignatius Igwe, 'CBN To Redesign N200, N500 and N1,000 Notes' *Channels TV* (October 26 2022) <<https://www.channelstv.com/2022/10/26/breaking-cbn-to-redesign-n200-n500-and-n1000-notes/>> accessed 13 December 2022.

² Editorial, 'Nigeria's Mobile Transfers Surge 151% in One Year' *NIBSS* (September 21 2022) <<https://nibss-plc.com.ng/news/4vr7p01acrgf7yqgqj5xcyvr49>> accessed 13 December 2022.

³CBN Regulation for Bill Payments in Nigeria 2018, s 4.5.

OFIGs under BOFIA 2020.⁴ These service providers are subject to the same laws and rules as conventional banks, including those that cover consumer protection, anti-money laundering, data privacy and protection, cybersecurity, and capital requirements.⁵ While these rules typically control how PSPs as a whole operate, it is crucial to investigate the rules that control how these financial institutions' payment systems are run.

Foremost, the 2020 amendment of BOFIA, unlike previous amendments took a new approach towards the definition of Other Financial Institutions by including Payment Service Providers.⁶ In its interpretation section, the Act interprets Payment Service Provider to mean “an entity licensed by the Bank (CBN) to provide payment services”.⁷ Payment Service on the other hand is interpreted to mean “technical or technology infrastructure, software solutions or services for facilitating end-to-end electronic payment to third parties and such other services as the Governor may by regulation designate”.⁸ This brings PSPs within the purview of fintech entities. The effect of the inclusion of PSPs as OFIGs is that PSPs will be subjected to the CBN Act, BOFIA and regulations and guidelines incidental thereto.

In furtherance of the CBN's powers to make regulations to promote a sound financial system in Nigeria⁹ and in its bid to create a

⁴ Banks and Other Financial Institutions Act 2020, s. 57(2)(i).

⁵ G. Elias & Co. Global Legal Insights, 'Fintech 2020, Second Edition'. Pg 178-187.

⁶ Banks and Other Financial Institutions Act 2020, s. 57(2)(i).

⁷ Banks and Other Financial Institutions Act 2020, s. 131.

⁸ Ibid.

⁹ Central Bank of Nigeria Establishment Act 2007, s. 2(d), 33(1)(b), and 47(2).

financial system that complies with the Core Principles for Systemically Important Payment Systems, the CBN has issued various regulations and guidelines administering the payment system regime in Nigeria. While some of these are drafts and yet to receive the force of law, others have already been implemented.

2.0. LICENSE CATEGORISATION FOR PAYMENT SERVICE PROVIDERS

The CBN circular on the New License categorization For the Nigerian Payments System is a cardinal regulation in this regard. Issued on the 9th of December, 2020, the circular offers clarity to new and existing market participants by streamlining payment system licenses in four categories. In addition, it sets out the permissible activities and minimum capital requirements of each of these payment system categories. The first category - Switching and Processing Companies - are permitted to carry out Switching, Card Processing, Transaction Clearing and settlement agent services. Their minimum Share Capital is set at N2 Billion. The range of permissible activities for Mobile Money Operators - the second category - includes E-Money issuance, wallet creation and management, and pool account management, while their minimum share capital is also N2 Billion.

Payment Solution Services (PSS) constitute the third category under this circular. With a minimum share Capital of N250 Million, activities permissible under this license category are sub-categorized into three, to wit; Super Agents, Payment Terminal Service Providers (PTSPs) and Payment Solutions Service Providers (PSSPs). With a minimum Share Capital of N50 Million, Super

Agents are permitted to take on agent recruitment management and other activities as specified in the CBN regulatory framework for Licensing Super Agents. PTSPs with a minimum share capital of N100 Million are permitted to undertake POS Terminal Deployment and services, POS Terminal Ownership and Merchant/Agent training and support. The third sub-category, PSSPs with a minimum share capital requirement of N100 Million are permitted to carry out Payment processing gateway and Portals, Payment Solution/application development, Merchant Service aggregation and collections. It is to be noted that, in addition to their respective permissible activities, Switching and Processing Companies are permitted to carry out activities of Super Agents, PTSPs and PSSPs while MMOs are permitted to undertake Super-Agents' permissible activities.¹⁰

The fourth and last category of licensing - Regulatory Sandbox - provides an avenue for FinTech Startups and innovators to test their products and technologies under the supervision of the CBN. Although this category has no minimum share capital requirement, an applicant under this license must, as a requirement for all categories, obtain a no-objection letter from the Payment System Management Department of CBN.¹¹ Paramount to note is that the Circular provides that only MMOs can hold customer funds.¹² Also of importance is the provision that the object clauses in the

¹⁰ Circular on New License Categorizations for the Nigerian Payments System 2020, Appendix 1.

¹¹ Circular on New License Categorizations for the Nigerian Payments System 2020, Para 5.

¹² Circular on New License Categorizations for the Nigerian Payments System 2020, Para 2.

Memorandum and Article of Association of these companies shall be restricted to their permissible activities under the circular.¹³ Lastly, the circular introduces the concept of Payment Services Holding Company (PSHC) for companies seeking to combine Switching and MMO-permitted activities. The caveat is that the subsidiary companies under the PSHC must be demarcated to prevent commingling.¹⁴ This notwithstanding, On August 3rd 2021, the CBN issued a specific guideline regulating the licensing and operation of PSHCs.¹⁵

The 2020 circular was followed by the circular on the licensing requirements of PSPs issued on the 24th of May, 2021. This circular makes specific regulations for the licensing requirements of each category of license, including provisions for eligibility, capital requirement, contact, documentary requirements, application and licensing fees and license validity.

3.0. OPERATION OF PAYMENT SERVICE BANKS

Aside from these general regulations on PSPs, there also exist regulations for Payment Service Banks (PSBs) such as the CBN guidelines on Licensing and Regulations of Payment Service Banks in Nigeria, 2020 and Supervisory Framework for Payment Service Banks, 2021. The issuance of these regulations demonstrates the CBN's resolve to ensure adequate customer protection considering

¹³ Circular on New License Categorizations for the Nigerian Payments System 2020, Para 6.

¹⁴ Circular on New License Categorizations for the Nigerian Payments System 2020, Para 3.

¹⁵ Guidelines on Licensing and Regulation of Payments Service Holding Companies in Nigeria 2021.

that PSBs are classified as MMOs and, as earlier established, are the only PSP permitted to hold customer funds. The permissible activities of PSBs include accepting deposits from individuals and small businesses, payments and remittances, sale of foreign currencies, issuance of debit and prepaid cards, electronic wallet operation and financial advisory services.¹⁶ They are however prohibited from granting loans, accepting foreign currencies, dealing in the foreign exchange market, underwriting insurance, accepting closed scheme electronic value and any other transaction not prescribed by the guideline.¹⁷

As a result, PSBs are required to adhere to the CBN's Know Your Customer (KYC) and Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) regulations.¹⁸ The rules require them to abide by the rules of the Terrorism Prevention Act of 2011 and other current legislation as well as the provisions of the Money Laundering (Prohibition) Act of 2011. Additionally, PSBs are required to guarantee compliance with CBN policies regarding payment system security, risk management, and consumer protection.¹⁹ To avoid or lessen the likelihood of data breaches and cybercrime occurring while PSBs are in operation, there is also a

¹⁶ CBN guidelines for licensing and Regulation of Payment Service Banks in Nigeria 2020, para 4.1; See also Supervisory Framework for Payment Service Banks in Nigeria 2021, para 2.1.

¹⁷ CBN guidelines for licensing and Regulation of Payment Service Banks in Nigeria 2020, para 4.2; See also Supervisory Framework for Payment Service Banks in Nigeria 2021, para 2.2.

¹⁸ CBN guidelines for licensing and Regulation of Payment Service Banks in Nigeria 2020, para 11; See also Supervisory Framework for Payment Service Banks in Nigeria 2021, para 6.0.

¹⁹ CBN guidelines for licensing and Regulation of Payment Service Banks in Nigeria 2020, paras 12, 13 and 14.

provision relating to the expected data infrastructure and cybersecurity standards.²⁰

4.0. OPERATION OF MOBILE MONEY SERVICES

In July 2021, the Central Bank as the chief regulator issued a circular which aims to regulate the operation of Mobile Money Services in Nigeria. This circular, with the appellation 'Framework and Guidelines for Mobile Money Services in Nigeria' is an essential regulation in the discourse of Nigeria's legal Regime on Payment Systems. The circular has two sections. The first section is 'The Regulatory Framework for Mobile Money Services in Nigeria' (The Framework). The framework divides operable Models under mobile money into two categories: The Bank-Led Model and The Non-Bank Led Model, with the goal of creating a supportive and regulated environment for the operation of mobile money services in the country. When utilizing a mobile payment system, a bank or group of banks uses the "Bank-led Model" to provide banking services to customers. On the other hand, the Non-Bank Led Model permits a corporate entity that has obtained proper CBN licensing to offer its customers mobile money services.²¹

Furthermore, the framework outlined three mobile money service scenarios: stored value (wallet) account-based, card account-based, and bank account-based.²² On the one hand, Bank Account Based implies the use of a customer's bank account for transactions. A card-account-based situation is one in which a customer's mobile phone

²⁰ Supervisory Framework for Payment Service Banks in Nigeria 2021, para 9.0.

²¹ Regulatory Framework for Mobile Money Services in Nigeria 2021, para 3.0.

²² Regulatory Framework for Mobile Money Services in Nigeria 2021, para 6.0.

is used to make payment transactions using a payment card. On the other hand, Store Value Account-Based implies carrying out payment transactions using a system-based account (such as Mobile Wallet) that adheres to the framework's requirements. It's also important to note that the rules now allow MMOs to provide Savings Wallet Services. The CBN must first issue a letter stating that it has no objections to this.²³

The Guidelines require that all transactions conducted with the mobile payment system shall contain a unique transaction reference, payer and payee numbers, transaction amount, date and time stamps and all other relevant information peculiar to each transaction,²⁴ which shall be securely logged and archived for a minimum of three years and seven years respectively.²⁵ The summary of this information shall be displayed to the user and a conforming receipt issued.²⁶

The general obligations of MMOs in the conduct of mobile money services are also outlined by the guideline. MMOs must adhere strictly to standard technologies that are compliant with the requirements of international best practices for mobile money services. They must also comply with KYC/AML and Customer Due Diligent (CDD) requirements. Three tiers were outlined concerning the transaction limit of mobile money services. The first tier has a transactional daily limit of N50,000 with a cumulative transaction limit of N300,000. The amounts are pegged at N200,000 and

²³ Guideline for Mobile Money Services in Nigeria 2021, para 10.1.

²⁴ Guideline for Mobile Money Services in Nigeria 2021, para 7.4.

²⁵ Guideline for Mobile Money Services in Nigeria 2021, para 17.0 (d).

²⁶ Guideline for Mobile Money Services in Nigeria 2021, para 17.0 (c).

N500,000 for tier two while tier three can transact up to N5,000,000 daily with no limit to their account balance.²⁷

MMOs are also enjoined to emplace a dispute resolution mechanism and adhere strictly to risk management requirements.²⁸ They are simultaneously enjoined by the guideline to observe consumer protection measures, and ensure that; a channel of communication is available at all times to entertain complaints and enquiries,²⁹ adequate disclosures are made on every transaction,³⁰ there is adequate consumer protection against loss of service, fraud and customer information breach,³¹ and complaints are resolved not more than 48 hours after they are lodged.³²

5.0 INSUFFICIENCY OF REGULATIONS

While these regulations and many others have in the long-run structured the momentum of mobile money services and payments in Nigeria,³³ stakeholders of the system have asserted these regulations have not tended satisfactorily to the fintech payment ecosystem, being one of the most sophisticated fintech ecosystems in

²⁷ Guideline for Mobile Money Services in Nigeria 2021, para 16.0.

²⁸ Guideline for Mobile Money Services in Nigeria 2021, para 12, 13, 14, 15 &16.

²⁹ Guideline for Mobile Money Services in Nigeria 2021, para 18.0 (b).

³⁰ Guideline for Mobile Money Services in Nigeria 2021, para 18.0 (a).

³¹ Guideline for Mobile Money Services in Nigeria 2021, para 18.0 (d).

³² Guideline for Mobile Money Services in Nigeria 2021, para 18.0 (f).

³³ Other regulations include: Regulations for Bill Payments in Nigeria 2018; Regulatory Framework for the use of Unstructured supplementary service Data (USSD) for Financial Services in Nigeria 2018; regulation for Direct Debit Scheme in Nigeria 2018; Regulations for Electronic Payments and Collections for Public and Private Sectors in Nigeria 2019; Guidelines on Transaction Switching in Nigeria 2016; Guidelines on Operations of Electronic Payment Channels in Nigeria 2016; Framework for Quick Response (QR) Code Payments in Nigeria 2021; Nigerian Payments System Risk and Information Security Management Framework etc.

the country. These regulations are described as playing ‘catch-up’ with the fintech sector’s fast-paced growth trajectory. This has kept the regulators on their toes drafting, publishing and implementing new regulations.

6.0. ABSENCE OF A NATIONAL PAYMENT SYSTEM LAW

Despite this unbalance between the law and the system, the federal legislature appears to be a day late and a dollar short of their catching up. This is evident in its failure to pass to law either of the two bills on the National Payment System presented before it. The National Payment System Bill (NPSB) introduced in 2017 and the Payment System Management Bill (PSMB) introduced in 2016 but harmonized with a similar bill titled ‘Payment System Bill 2016’ in 2017 have yet to witness the light of the day as laws of the Federation. The longstanding reservation harboured against the National Payment System Bill of 2017 is that despite its aim to address the challenges of administration and operation of the Payment System of the country, through its provisions, it undermines the power of the CBN as the authority for regulation, oversight and management of the Country’s Payment System. Rather, it proposes the establishment of an association of payment service participants as regulators of the system.

This anomaly is addressed by the Payment System Management Bill 2017 (drafted by representatives of the CBN, Deposit Money Banks, the Federal Ministry of Justice, Payment System Service Providers, and the National Identity Management Commission), which recognizes the CBN as the sole authority to manage and oversee the payment system in accordance with international best practices.

Despite this benefit, the Nigerian Payment System Management Act has not yet been enacted. This violates international standards, making it necessary to pass a National Payment System Law as done by neighbouring African countries like Tanzania,³⁴ Kenya,³⁵ Zambia,³⁶ and Ghana.³⁷

7.0. CONCLUSION

The issuance of various regulations and guidelines by the CBN to regulate the fintech space of the Payments System in Nigeria is commendable. It has in no little way enabled the growth of fintech as it relates to Payment Service Provision in Nigeria. However, these regulations are still unable to meet up with the sector's high demands due to its fast-paced growth and need for instant regulations. A proactive approach towards these regulations must be taken to enable the implementation of swift regulations for every innovation in the payment service system. This will foster a serene regulatory environment for participants thereby driving the sector to its maximum potential.

This study further revealed the necessity for National legislation on the Payment System in the country. Notwithstanding the various guidelines, circulars and frameworks administering various subject matters under the Payment System, a National Legislation in form of an Act of the National assembly should be enacted to serve as an umbrella law under which all of these specific guidelines will apply. It is therefore recommended that the Federal Legislature in

³⁴ National Payment System Act of Tanzania 2015.

³⁵ National Payment Systems Act of Kenya 2011.

³⁶ National Payments System Act of Zambia 2007.

³⁷ National Payments Systems Act of Ghana 2003 (Act 662).

conjunction with the President enact the Payment System Management Bill into law as the Payment System Management Act. This is projected to guarantee a smooth regulatory framework for Payment Systems in Nigeria.