



ICLG

The International Comparative Legal Guide to:

Fintech 2019

3rd Edition

A practical cross-border insight into fintech law

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

Two general chapters. These chapters provide an overview of artificial intelligence in fintech, and of the recent trends and challenges in the financing of cross-border fintech start-ups.

Country question and answer chapters. These provide a broad overview of common issues in fintech laws and regulations in 51 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

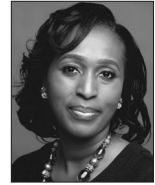
Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

Mobile payments, mobile lending and personal finance are the most prevalent fintech businesses in Nigeria.

Payments: The payments and remittances subsector remains the most active (and arguably) the most developed area of the fintech sector in Nigeria. Following the release of the Payments Systems Vision 2020 (“PSV 2020”) of the Central Bank of Nigeria in 2007, Nigeria has witnessed an increase in the number of mobile and electronic payments solutions. One of the recommendations of the PSV 2020 was to encourage electronic payment methods. The innovations in this subsector include the adoption of blockchain, Unstructured Supplementary Service Data (“USSD”) services for payments by operators and the use of artificial intelligence via chatbox. Licensed banks have also adopted the use of a USSD service for payments and transfer services. Competition among the various participants has resulted in new and simplified solutions for funds transfer and payments services.

Lending: We have seen an increase in mobile lending in Nigeria. For websites that offer mobile lending, the application and review process is completed online or on mobile phones and loans are mostly provided without collateral. These lenders target retail and SME loans and actively use machine learning and data science for credit analysis. These lenders are gaining market share from micro finance banks and other retail banking divisions of traditional banks.

Personal Finance: Several fintech businesses and some banks now offer personal savings solutions which are available on mobile phones. In order to be able to take deposits, you need a banking licence, and so fintech businesses are often teaming up with existing banks and other financial institutions to offer this service.

Blockchain: There are entities using blockchain technology for payments and other operations in Nigeria. There are also Bitcoin exchanges and other Bitcoin wallet providers in Nigeria.

Reward and donation crowdfunding are also prevalent in Nigeria and there are a few digital insurance providers.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

Further to a warning from the Central Bank of Nigeria, banks and other regulated financial institutions are restricted from trading or dealing in virtual currencies. The CBN has also issued a warning to the public that virtual currencies are not legal tender in Nigeria and that dealers or investors in virtual currencies have no legal protection in Nigeria.

Also, under Nigerian law, private companies are restricted from offering their securities to the public. The Securities and Exchange Commission (the “SEC”), based on its interpretation of the current regulations, does not permit crowdfunding as it is deemed to be an invitation to the public. The SEC has undertaken to consider regulatory amendments to permit equity crowdfunding in Nigeria.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Equity, debt and mezzanine funding are available to new and growing businesses in Nigeria. Except where the articles of association of the company provide otherwise, companies are permitted to raise debt from individuals, banks, financial institutions and, subject to regulatory requirements, from the capital market. There are no special funding requirements for fintech businesses. Mostly, we have seen fintech companies raise equity rather than debt as investments have mainly come from venture capitalist and private equity firms.

In addition to this, there are funds set up by certain individuals and entities that are available to small- and medium-sized businesses and we have increasingly seen private equity funds that are focused on African fintech.

Also, the Government has provided funding options to “small businesses” at friendly rates to small businesses through the Bank of Industry.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

There are currently no special incentive schemes for investment in fintech specifically. We have discussed below some of the incentives

that are generally available in Nigeria that may be relevant to tech and fintech investment.

Deduction for Research & Development: Section 26 of the Companies Income Tax Act, Chapter C21 LFN 2004 (“CITA”) provides that companies and other organisations that engage in research and development activities for commercialisation are to enjoy 20% investment tax credit on their qualifying expenditure for that purpose. The CITA also provides that the profits reserved by a company for purposes of research and development are tax-deductible, provided such reserves do not exceed 10% of the total assessable profits for that company.

Pioneer Status: Companies classified as operating in a pioneer industry or engaged in the production of pioneer products are entitled to apply for pioneer status; and, when granted, such companies enjoy corporate tax relief/holidays for an initial term of three years starting from the date that the pioneer company commences business, which may be extended for a further period of one year, and a further one-year term subject to factors such as the relative importance of national development of the industry at the relevant time.

Incentives for Venture Capital Companies: Under the Venture Capital (Incentives) Act, Chapter V2 LFN 2004 (“VCA”), companies that invest in Venture Projects may be eligible for the following:

- a. accelerated capital allowance for equity investment by a Venture Company in a Venture Project for the first five years of their investment;
- b. reduction of withholding of tax on dividends declared by Venture Projects to Venture Companies for the first five years from 10% to 5%;
- c. export incentives such as export expansion grants if the Venture Project exports its products;
- d. exemption from payment of capital gains tax on gains realised by Venture Companies from a disposal of equity interest in the Venture Project; and
- e. exemption from company income tax for a period of three years, which may be extended for an additional final period of two years.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

In order for a company to IPO, it must be a public company and its constitutional documents must show that it is a public company. It must also have audited accounts for the preceding five years with a minimum of two years’ operating track record.

Currently, the Nigerian Stock Exchange is considering the changes that may need to be made to the Exchange’s rules to permit small businesses to raise funds on its platform.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

None that we are aware of.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Lending: An entity that wishes to provide marketplace lending may do so by registering as a bank or Other Financial Institution (“OFI”)

pursuant to the Banks and Other Financial Institutions Act, Chapter B3 LFN 2004. Banks and OFIs are licensed and supervised by the CBN. In addition to this, a marketplace lender may be registered as a money lender in accordance with the Money Lenders Law of the state in Nigeria which it wishes to operate from. There are geographical limits on money lenders and restrictions on the interest rate they can charge.

Payments: The CBN regulates mobile payments pursuant to the CBN Guidelines on Mobile Money Services in Nigeria 2015 (the “Mobile Money Guidelines”), the CBN Guidelines on Operations of Electronic Payment Channels in Nigeria, the CBN Regulatory Framework for the use of Unstructured Supplementary Service Data in Nigeria, CBN Guidelines on International Money Transfer Services in Nigeria and other regulations. The Mobile Money Guidelines define a mobile money operator as an entity that provides “the infrastructure for the mobile payment systems for the use of participants that are signed-on to their scheme”. Mobile money operators must be licensed by the CBN on such terms and conditions as contained in “Appendix I” to the Guidelines. The activities of other participants in the payment space such as Switch Companies, Payments Terminal Service Providers and Card Scheme Providers are also regulated by the CBN.

Banking Services: In 2018, the CBN introduced the payment service bank category (“PSB”). A PSB is a bank that is authorised to, among other functions, accept deposits, provide payment and remittance services and also issue electronic wallets. A PSB should operate in rural and underbanked locations. PSBs are regulated under the CBN Guidelines for Licensing and Regulation of PSBs in Nigeria (2018).

In addition, the Nigerian Communications Commission (“NCC”) also regulates fintech businesses where the service offered involves mobile phones pursuant to the Licence Framework for Value Added Services (“VAS”) issued by the NCC. A VAS Provider is any person or organisation that engages in the provision of value added mobile/fixed services, including premium rated services, and such provider is required to obtain a licence from the NCC. The use of airtime for the repayment of loans to a mobile lender could constitute a premium rated service, the provision of which requires the approval of the NCC.

Asset Management: An entity that wishes to provide asset-management services or securities-trading services may be registered with the SEC.

There are no regulations for reward- and donation-based crowdfunding.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

Presently, there is no regulation specifically directed at cryptocurrencies or cryptoassets. Banks are mandated by the CBN to ensure that any existing customer that is a virtual currency exchanger should have effective AML and CFT controls.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory ‘sandbox’ options for fintechs in your jurisdiction?

Financial regulators and policy makers are generally interested in promoting technology companies and solutions and this applies to fintech businesses. As the primary regulator of banks and OFIs, the

CBN plays a major role in determining the ease of entry or otherwise into the financial services space. As far as we are aware, the CBN has encouraged new entrants into the payments system through its promotion of the cashless policy. The CBN launched a regulatory sandbox for fintechs but we are not aware if the sandbox is now operational. Also, the SEC is also working towards a regulatory sandbox where start-ups and businesses can test innovation products, services, business models and delivery mechanisms relating to capital markets.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

There are no regulatory hurdles that are particular to a foreign fintech business other than the requirement that any foreign entity that wishes to carry on business in Nigeria is required to incorporate a Nigerian entity for it to do so. Once incorporated, the local entity becomes subject to the rules and regulations that apply to other local entities. In addition to local incorporation, the foreign entity may be required to obtain a licence from the CBN, SEC, NCC or a money lender's registry in order for it to provide the service in Nigeria.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

In 2019, the National Information Technology Development Agency (the "NITDA") released the NITDA Data Protection Regulations 2019, which replace the 2017 Regulations. The NITDA Regulations:

- place an obligation on anyone or any organisation involved in data processing or the control of data to develop security measures to protect such data;
- provides that data processing by a third party should be governed by a written contract between the third party and the Data Controller, i.e. any person or body that determines the purposes for and the manner in which personal data is processed or is to be processed;
- provide that a Data Subject has the right to object to the processing of his data at any time. Consequently, the Data Subject has the right to (a) object to the processing of his personal data by the Data Controller for marketing purposes, and (b) be expressly and manifestly offered the mechanism for objection to any form of data processing at no cost whatsoever to the Data Subject;
- require public and private organisations in Nigeria that control data of natural persons to make available to the public their respective data protection policies, which should conform with the provisions of the Regulations.

Fintech companies which collect and use customers' data must comply with the NITDA Regulations.

In addition, the following legislation and regulations have provisions on the use, collection or transmission of data in Nigeria which could apply to a fintech business:

- a. Cyber Crime (Prohibition, Prevention) Act 2015. Under this Act, a financial institution ("FI"), which may include a fintech company, is required to: verify the identity of customers carrying out electronic financial transactions; observe adequate "know-your-customer" processes; keep all traffic data and subscriber information as may be required by the NCC for a period of two years; and preserve, release or retain any traffic data or subscriber information upon the direction of a law enforcement agency.
- b. Under the CBN's Consumer Protection Framework, FIs regulated by the CBN must safeguard the privacy of customers' data, adopt data protection measures and implement staff training programmes to prevent the unauthorised disclosure of data.
- c. The Consumer Code of Practice Regulations 2007 issued by the NCC provides that all licensees must take reasonable steps to protect customer information against "improper or accidental disclosure" and ensure that such information is securely stored. It also guarantees that customer information is "not transferred to any party except as otherwise permitted or required by other applicable laws or regulations". Under the NCC's Consumer Bill of Rights, consumers have the right to personal privacy, to protection from unauthorised use of their records and personal information, and to reject intrusive communications and technology. A fintech business that is regulated by the NCC is enjoined to protect this right.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The NITDA Regulations apply to entities that handle data of Nigerian citizens.

- a. Under the NITDA Regulations, the transfer of data must be carried out under the supervision of the Honourable Attorney General of the Federation ("AGF") or in very limited circumstances, such as where explicit consent of the Data Subject is obtained and the consequence of the absence of the AGF's decision has been made clear to the Data Subject.
- b. FIs are required to notify the CBN and the Nigerian Financial Intelligence Unit ("NFIU") if they intend to engage in information sharing and they must ensure that they have established and will maintain adequate procedures to protect the security and confidentiality of the information.
- c. The NCC's Registration of Telephone Subscribers Regulations 2011 provide that no subscriber information shall be transferred outside Nigeria without the prior written consent of the NCC.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

The penalties for a breach of the NITDA Regulations (in addition to any other criminal liability that such breach might give rise to) are:

- a. in the case of a Data Controller dealing with more than 10,000 Data Subjects, payment of the fine of 2% of its annual gross revenue of the preceding year or payment of the sum of N10,000,000.00 (ten million Naira), whichever is greater; or
- b. in the case of a Data Controller dealing with less than 10,000 Data Subjects, payment of the fine of 1% of its annual gross revenue of the preceding year or payment of the sum of N2,000,000.00 (two million Naira), whichever is greater.

There are no specific sanctions for the sharing of information without the approval of the CBN.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

Yes. The Cyber Crime (Prohibition, Prevention) Act 2015.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

An FI regulated by the CBN must comply with the CBN (Anti-money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013. Under the Regulations, such FI must adopt a policy on AML and combat the financing of terrorism and must also have policies and procedures to address any risks for customers in relation to AML and the financing of terrorism.

In addition, the following financial crime laws may apply to fintech businesses as they apply to financial institutions generally:

- Money Laundering (Prohibition) Act 2011 (as amended).
- Corrupt Practices and Other Related Offences Act, Chapter C31 LFN 2004.
- Economic and Financial Crimes Commission (Establishment, etc. Act), Chapter E1 LFN 2004.
- Terrorism (Prevention) Act, No. 10 of 2011.
- CBN Anti-money Laundering/Combating the Financing of Terrorism (AML/CFT) Risk-based Supervision Framework 2011.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

In addition to the above, agreements for the transfer of technology between a foreigner and a fintech business in Nigeria should be registered with the National Office for Technology Acquisition and Promotion.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

The principal law governing the employment of persons in Nigeria is the Labour Act, Chapter L1 LFN 2004 (the “Labour Act”), but this law only applies to junior and non-professional staff.

The terms of the employment of senior staff are governed primarily by the contract of employment and principles of Nigerian case law, as well as any collective agreements.

In general, an employer can terminate the employment of an employee for good, bad, or no reason at all, provided the required notice is given. Notwithstanding this, the National Industrial Court has begun to apply international labour law and principles and had, in one of its recent decisions, ordered that an employee, whose contract was terminated, be reinstated; and in another case, extended the amount of damages that can be awarded in the case of wrongful termination.

In terminating contracts, employers must comply with the terms of the employment contracts, such as giving the required notice or

salary *in lieu*. An employer must also adhere to the terms of other applicable employment documentation and ensure that the employee has received all accrued contractual entitlements to avoid actions for wrongful termination by employees.

In addition, an entity in Nigeria that wishes to employ an expatriate must apply to the Federal Minister of Interior for approval to do so.

5.2 What, if any, mandatory employment benefits must be provided to staff?

- a. The Labour Act contains specific provisions on annual leave, overtime, sick leave and maternity leave entitlements. With respect to senior staff, these matters are primarily determined contractually.
- b. There is no obligation on an employer or an employee to contribute to the health insurance scheme under the National Health Insurance Scheme Act, Chapter N42 LFN 2004. An employer may, however, be in breach of the Act if, after electing to contribute to the insurance scheme, it fails or refuses to remit its contribution.
- c. The Pension Reform Act 2014 requires employers to contribute to the pension fund of their employees. Employers contribute a sum equal to 10% of each employee’s monthly salary as its contribution to the contributory pension scheme, and remit this contribution, together with each employee’s contribution which is to be deducted at source (8% of the employee’s monthly salary), to the employee’s retirement savings account. Employers are also required to obtain life insurance cover for all their employees for a value of no less than three times the annual emoluments of all the employees.
- d. Employees are entitled to receive compensation if injured at work under the Employee’s Compensation Act 2010. Every employer is required to make a minimum monthly contribution of 1% of its total monthly payroll into the Employee’s Compensation Fund.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

There are no special routes for fintech businesses to bring employees from outside Nigeria. The same rules apply to all local entities. An entity in Nigeria that wishes to employ an expatriate must apply to the Federal Minister of Interior for an expatriate quota position approval for the relevant number of expatriate personnel it intends to employ. The expatriate quota approval entitles the entity to employ and bring in any employee for the positions approved. The number of expatriate quota positions is limited and the company must justify the number applied for and explain why the posts cannot be filled by Nigerians. Once the approval is granted, the employee must obtain a Combined Expatriate Residence Permit and Aliens Card, which is the authorisation that enables an expatriate to reside and to work in Nigeria.

The exception to the requirements above is where a temporary work permit (“TWP”) is obtained. A TWP is a permit (which is valid for three months and may be renewed for a subsequent period of three months) which is granted to an expatriate invited by corporate bodies in Nigeria to provide specialised skilled services, such as after sales installation, maintenance and repairs of machines and equipment.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Innovations and inventions are generally protected by Nigerian intellectual property (“IP”) laws. The Copyright Act, Chapter C28 LFN 2004 (the “Copyright Act”) protects literary works (including computer programs), musical works, artistic works, cinematographs and broadcasts. The Patents and Designs Act, Chapter P2 LFN 2004 (the “Patents and Designs Act”) protects industrial designs as well as inventions which are new or an improvement upon an existing patented invention, result from inventive activity and are capable of industrial application. The Trade Marks Act, Chapter T13 LFN 2004 (the “Trade Marks Act”) protects owners of registered trade marks. Owners of unregistered trade marks are not protected by the Trade Marks Act but are entitled to seek relief under the common law principles applicable in Nigeria. A person whose IP rights are infringed is entitled to institute legal proceedings in the requisite Nigerian court and obtain reliefs (which may include damages, order for account, injunctions and delivery-up of the infringing articles, etc.) against the infringing party. Infringement of copyright also constitutes a crime punishable with a term of imprisonment under the Copyright Act.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

In Nigeria, recognised IP rights include trade marks, patents, industrial designs and copyright. Ownership of any of these IP rights confers the right to exclusively use, exploit and appropriate the IP, subject to the duration of time prescribed by law. Trade marks expire after seven years from the date of the application and are renewable for successive periods of 14 years; patents expire after 20 years and are not renewable; industrial designs expire after five years from the date of the application and may be renewed for two further consecutive periods of five years each, and the duration of copyright depends on the nature of the copyright that is created and ranges between 50–70 years.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

Trade marks, patents and industrial designs must be registered in accordance with the procedure prescribed in the relevant legislation in order to enjoy protection under Nigerian law. Copyright subsists

automatically in a work from the moment the work is created. Registration is, therefore, not a prerequisite to copyright protection under Nigerian law. The Nigerian Copyright Commission (the “Copyright Commission”), however, administers and operates a notification/depository scheme. Under this scheme, creators of copyright works or persons who have acquired any copyright in respect of eligible works may give notice of/register their copyright with the Copyright Commission. The purpose of this scheme is to provide notification to the Copyright Commission of the creation and/or existence of a work and also serve as evidence of authorship/ownership in legal proceedings in which there are competing interests.

Nigeria is a party to several treaties such as the Patent Cooperation Treaty 1970 (the “PCT”), the Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, the Paris Convention for the Protection of Industrial Property 1979, etc.; however, most of these treaties are currently not being enforced in Nigeria because the Nigerian Constitution requires treaties to be domesticated as local law before they can be enforced, and the treaties have not yet been domesticated. We should, however, mention that although the PCT is yet to be domesticated, the Nigerian patents registry continues to accept and accord foreign priority to PCT national phase applications. The patent rights granted subsequent to the applications are protected and enforceable under Nigerian law. The Berne Convention for the Protection of Literary and Artistic Works 1886 has been domesticated; therefore, works originating from other contracting states are protected under the Nigerian copyright laws to the same extent as Nigerian nationals are.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

IP rights are tradeable just like any other property. They may, therefore, be assigned, transferred or licensed for monetary consideration. With respect to copyright, the moral right of the author (i.e. the right of the author to claim authorship of his work, in particular that his authorship be indicated in connection with the work) is perpetual, inalienable and imprescriptible. Trade marks, patents and designs do not have a similar requirement; hence, the owners of these rights are allowed to trade their rights in whatever manner they may choose to. Other than restrictions regarding moral rights (in relation to copyright) and the prohibition of contracts that may be illegal or contrary to public policy, there are no limitations on the exploitation of IPs and they are governed by contracts. Where any IP right is assigned, transferred or licensed, the parties are required to comply with the provisions of the respective IP laws regarding registration (or notification in the case of copyright) and payment of the prescribed fee.

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