

# International Comparative Legal Guides



## Fintech 2021

A practical cross-border insight into fintech law

### Fifth Edition

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## 1 The Fintech Landscape

**1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic. Are there 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, payment processing, mobile lending and personal finance are the most prevalent types of fintech businesses in Nigeria.

**Mobile payments:** The payments and remittance subsector is the most prevalent subsector of the fintech sector in Nigeria and has become a source of investment in Nigeria. Following the release of the Payments Systems Vision 2020 (“PSV 2020”) of the Central Bank of Nigeria (“CBN”) 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 and processing methods. In furtherance to the PSV, the CBN on 13<sup>th</sup> January 2021 released the Framework for Quick Response Code Payments in Nigeria (the “QR Framework”). As a result of the QR Framework, QR Codes can be used to present, capture and transmit payment information across payments infrastructure in Nigeria. Fintech companies are able to offer the option of making payment by scanning the QR Code. In addition, many licensed banks have also updated their mobile applications to enable customers to utilise QR Codes as a payment method. QR Codes present another avenue for promoting electronic payments to micro and small enterprises. We believe that the QR Framework was in response to the COVID-19 pandemic and social-distancing measures, which necessitated the demand for reliable touch-free payment options.

**Lending:** As a result of the impact of COVID-19 on the economy, we have seen a rise in mobile lending in Nigeria. The lenders are able to leverage payment data to determine lending risk more easily and to conduct the Know Your Customer requirements before disbursing loans. The ability to provide loans through a digitalised lending process has made mobile lending more attractive. 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 aim

to provide retail loans for individuals and small and medium-sized enterprises (“SME”) loans, and actively use machine learning and data science for credit analysis and approval. These lenders are gaining market share from microfinance banks and other retail banking divisions of traditional banks.

**Personal finance:** Several fintech companies and some banks now offer personal savings solutions which are available on mobile phones. Fintech companies develop mobile applications that are able to analyse spending habits and periodically monitor cash flow, diverting small amounts into a separate account as savings. In order to be able to take deposits, the fintech company will need one form of banking licence or another from the CBN. As a result, particularly because of the regulatory and supervisory issues around obtaining and holding a banking licence, fintech companies often find it convenient to team up with existing banks and other financial institutions to offer this type of service.

The most notable development in this area is the release of the Framework for Regulatory Sandbox Operations in Nigeria (the “Regulatory Sandbox”) by the CBN. The Regulatory Sandbox encourages innovation that can improve the design and delivery of payment services in Nigeria and is therefore also suitable for fintechs in relation to proposed new products, services or solutions that are either not contemplated under the prevailing laws and regulations, or do not precisely align with existing regulations. The implementation of this framework would enable the CBN to stay abreast of innovations while promoting a safe, reliable and efficient Payments System. It would assist the CBN to encourage and foster innovation without compromising on the value and protection for customers.

In addition, the CBN has also been authorised to regulate certain categories of fintech businesses in Nigeria by virtue of the Banks and Other Financial Institutions Act 2020. The CBN has, however, not issued any regulations to that effect.

**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 circular issued by the CBN to Deposit Money Banks, Non-Bank Financial Institutions, and Other Financial Institutions regulated by it (“Regulated Institutions”) on transacting in cryptocurrencies (the “Circular”), Regulated Institutions are prohibited from dealing in cryptocurrencies and facilitating payments



for Cryptocurrency Exchanges in the Nigerian financial system. The Circular went further to instruct these Regulated Institutions to identify persons and/or entities transacting in or operating Cryptocurrency Exchanges within their systems and to close such accounts with immediate effect. While this is not an outright ban of cryptocurrency and Nigerian residents as parties can still deal in cryptocurrencies, it will however have an impact on the growing use of cryptocurrency as a means of effecting remittances in Nigeria and payments in connection with the buying and sale of cryptocurrencies, thereby hampering trading in cryptos in Nigeria.

In addition, under Nigerian law, private companies are prohibited from offering their securities to the public. The Securities and Exchange Commission (the “SEC”), based on its interpretation of the current regulations, has placed some restrictions on crowdfunding aimed at raising debt or equity financing from members of the public. The SEC, in its updated guidelines and rules governing the operation of crowdfunding activities in Nigeria, introduced Crowd Funding Intermediaries (“CFI”) who will facilitate crowdfunding transactions such as offer for sale of securities or instruments through its portal. This means that anyone seeking to raise money through a crowdfunding service will have to go through a CFI. Thus, a fundraiser (the initiator of the fund) will need to go through a CFI web portal to raise capital. The SEC, by these new rules, has also limited the amount retail investors can invest in a crowdfunding transaction to just 10% of their net annual income in a year. This means individuals cannot invest more than 10% of their net salaries in crowdfunding activities but this excludes High Net Worth Individuals who do not have limits.

Other than as set out above, there are generally and expressly no types of fintech business that are at present prohibited or restricted in Nigeria. Whether a particular form of business will be permissible under Nigerian law and the required licence/approval will depend on the nature of such a business.

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. Any of these types of funding can be provided by Nigerian or foreign companies. Mostly, we have seen fintech companies raise equity rather than debt as investments have mainly come from venture capitalist and private equity firms. There are, however, a few fintechs that have been able to obtain debt financing. In addition to this, there are funds set up by certain individuals and entities that are available to SMEs and we have increasingly seen venture capital and private equity funds that are focused on African fintech.

In addition, the Nigerian government has provided funding options to “small businesses” at single digit interest rates through the Bank of Industry and provided grants through the Ministry of Finance. In addition, certain state governments and private bodies also offer grants to new and growing businesses in Nigeria.

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 to various categories of companies in Nigeria that may be relevant to tech and fintech investment.

**Small companies tax exemptions:** Small companies with a turnover of NGN25 million and below are exempted from paying companies income tax, value-added tax and tertiary education tax.

**Intermediate companies:** Intermediate companies with a turnover above NGN25 million and below NGN100 million are liable to pay companies income tax at the rate of 20% of taxable profits, lower than the generally applicable rate of 30%.

**Deduction for research & development:** Section 26 of the Companies Income Tax Act 2004 (as amended) (“CITA”) provides that companies 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 (such as software companies, e-commerce companies, outsourcing companies, etc.) are entitled to apply for pioneer status. If granted, such companies enjoy corporate tax relief/holidays for an initial term of three years starting from the production date of the pioneer company 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 and employment generation capacity at the relevant time. The company could be entitled to a cumulate tax relief period of five years. The tax exemptions which the company will be entitled to include exemption from the payment of companies income tax and tertiary education tax, and no withholding tax on the payment of dividends.

**Incentives for venture capital companies:** Under the Venture Capital (Incentives) Act 2004 (“VCA”), companies that invest in Venture Projects may be eligible for the following tax incentives:

- 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.

**Reduction to the minimum tax rate:** In response to the impact of COVID-19 on businesses, Section 33 of the CITA (as amended by the Finance Act 2020) reduces the minimum tax rate from 0.5% to 0.25% of gross turnover less franked investment income, for tax returns prepared and filed for any year of assessment falling between 1<sup>st</sup> January 2020 and 31<sup>st</sup> December 2021 (both dates are inclusive). Minimum tax is payable by all Nigerian companies, except those exempted from the tax, that have no taxable profits or have taxable profits less than the minimum tax.

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

In order for a company to undertake an IPO, it must be a public

company and its constitutional documents must show that it is a public company. It must have registered its securities with the SEC and also have audited accounts for the preceding five years with a minimum of two years' operating track record and must also comply with the other requirements of the SEC.

The Nigerian Stock Exchange has made the changes to the Exchange's listing rules to encourage small businesses to raise funds on its platform and have their securities listed. The companies must be registered as public companies and are required to have a market capitalisation of not less than NGN50 million at the time of listing, a minimum of two years' operating track record, audited accounts for the preceding two years and must also comply with other requirements of the Exchange.

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

There have been few notable exits of founders from fintech businesses in Nigeria. The private equity investors in one of the largest and oldest Nigerian fintechs, Interswitch, have been looking at an exit and sold down some of their interest in a trade sale to Visa. Visa purchased a minority shareholding in Interswitch from Helios, one of the early investors in the company. It is expected that Interswitch may IPO in the near future, providing an exit to some of its current investors. Another notable exit was the acquisition of Paystack, a Nigerian payment provider start-up, by Stripe. The acquisition is currently regarded as the largest acquisition of a Nigerian start-up.

### 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") with the CBN pursuant to the Banks and Other Financial Institutions Act 2020. 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 in which it wishes to operate from. Unlike entities licensed by the CBN that can operate throughout the country (excluding local and unit micro-finance banks), 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, the CBN Guidelines on International Money Transfer Services in Nigeria and other regulations including various Circulars that the CBN releases from time to time. 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 Switching Companies, Payment Solutions Service Providers, Payments Terminal Service Providers, Super-Agents and Card Scheme Providers are also regulated by the CBN.

**Banking services:** In 2018, the CBN introduced the PSB category. 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 under-banked locations targeting financially excluded persons, with not less than 25% financial service touch points in such rural areas as defined by the CBN from time to time. PSBs are currently regulated under the CBN Guidelines for Licensing and Regulation of PSBs in Nigeria (2020) and can be promoted by fintechs, Telcos, supermarket chains, etc. The CBN also recently published the framework for open banking in Nigeria, defining the parameters of customer information that can be shared between banks and fintechs in Nigeria.

In addition, the Nigerian Communications Commission ("NCC") also regulates fintech businesses where the service offered involves the use of 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 through a Telco, including premium-rated services, and such provider is required to obtain a licence from the NCC. For instance, 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.

**Crowdfunding:** The SEC regulates investment-based crowdfunding and released rules on crowdfunding in 2021. There are currently no regulations for reward- and donation-based crowdfunding.

In addition, BOFIA 2020 has amended the definition of OFIs to capture all payment service providers regardless of whether such businesses are only conducted digitally, virtually or electronically. BOFIA 2020 has also introduced some restrictions on bank agents, which include: prohibition from accepting withdrawal by cheques or being a direct member of the Nigeria Bankers Clearing System; and prohibition from accepting deposits, except as prescribed by the CBN.

#### 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 in Nigeria. As stated in question 1.2 above, the CBN in 2021 issued a Circular to Regulated Institutions on transacting in cryptocurrencies. This Circular reiterated the position of the CBN that these Regulated Institutions are prohibited from dealing in cryptocurrencies while adding that they are prohibited from facilitating payments for Cryptocurrency Exchanges. The Circular went further to instruct these Regulated Institutions to identify persons and/or entities transacting in or operating Cryptocurrency Exchanges within their systems and to close such accounts with immediate effect. The CBN also issued a press release titled *Response to Regulatory Directive on Cryptocurrencies*, and in that press release the CBN gave the reasons behind the Circular. The reasons include: (i) the volatility of cryptocurrencies and the consequent inability of cryptocurrency to be used as a lasting means of payment; (ii) anonymity associated with cryptocurrency transactions; (iii) that "cryptocurrencies are not backed by any real assets or fundamentals" and as a result could crash in value; and (iv) the promotion of illegal activities such as money laundering and terrorism financing, etc.

Prior to the 2021 CBN Circular, the SEC, on 14<sup>th</sup> September 2020, released a Statement on Digital Assets and their

Classification and Treatment (the “Statement”). The statement confirms that the SEC will regulate all crypto-token or crypto-coin investments when the character of the investment qualifies as securities transactions. The SEC, however, issued a press release stating that there were no contradictions or inconsistencies between the 2021 CBN Circular and the Statement released by the SEC in 2020 and reiterating the fact that where digital assets can be classified as investments, trading in such assets falls within the SEC’s regulatory purview. The SEC’s press release also stated that persons and products affected by the CBN Circular of 2021 will have their admittance into SEC Regulatory Incubation Framework put on hold until such persons are able to operate bank accounts in Nigeria.

In 2020, the National Information Technology Development Agency (“NITDA”) published the Nigerian Blockchain Adoption Strategy to guide the possible adoption and use of blockchain technology in Nigeria. The primary objective of the Nigerian Blockchain Adoption Strategy is to identify and utilise the opportunities provided by blockchain technologies to strengthen the country’s security in cyber space and stimulate the growth of the economy. The strategy is built on the following initiatives: (i) the establishment of the Nigerian Blockchain Consortium; (ii) strengthening of the regulatory and legal framework; (iii) focusing on the provision of the national digital identity; (iv) the promotion of blockchain digital literacy and awareness; (v) the creation of blockchain business incentive programmes; and (vi) the establishment of a national blockchain sandbox for proof of concepts and pilot implementation. This blockchain adoption strategy is aimed at and will promote blockchain technology in Nigeria and will help to mitigate the risks regarding its implementation by government agencies and corporate organisations.

**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 receptive to fintech innovation and technology-driven new entrants to regulated financial services markets in Nigeria. As a result, they are interested in promoting technology companies and solutions and this applies to fintech businesses. The CBN, as the primary regulator of banks and OFIs in Nigeria, 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. As we have already indicated above, in 2021 the CBN released the Framework for Regulatory Sandbox Operations for Fintechs.

Similarly, the SEC has shown keen interest in the use of legitimate and relevant financial innovation mechanisms and has adopted a “Three-pronged Objective” to regulate and facilitate innovation in the Nigerian Capital Market which includes: safety; market/financial deepening; and providing solutions to existing problems. In furtherance of this objective, the SEC has created a Fintech & Innovation Office (“FINO”) in order to facilitate its communication with fintech innovators, regulate fintech businesses and constantly engage with innovation hubs around the country. The SEC has successfully approved two fintech firms to operate within the Nigeria Capital Market and this number will continue to grow as its rules are amended to facilitate the registration of fintech firms in Nigeria. Also, the SEC implemented the recommendations of the Fintech Roadmap Committee (which

was established in November 2018 for the Nigerian Capital Market) during the different quarters of 2020. Some of these recommendations included the development of a framework for the regulation of virtual financial assets and virtual financial asset exchanges, the establishment of an innovation hub within the SEC and the classification of cryptocurrencies either as commodities, securities or currency, amongst others.

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 in order 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, and depending on the nature of its business, 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 relevant service in Nigeria. There may be instances where a fintech entity may need to combine two or more separate licences in order to operate its businesses successfully in compliance with the applicable laws.

**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 NITDA released the Nigeria Data Protection Regulations (the “NDPR”), which replaced the 2017 Regulations. The NDPR:

- places 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;
- provides 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;
- requires 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 NDPR;
- places an obligation on any medium through which personal data is being collected or processed to display a simple and conspicuous privacy policy that the class of Data Subject being targeted can understand;



- requires that Personal Data can only be processed where the processing: (a) has been consented to by the Data Subject; (b) is for the performance of a contract; (c) is required for compliance with a legal obligation; (d) is required for protection of the vital interest of a Data Subject or another natural person; or (e) is necessary for the performance of a task carried out in the public interest; and
- provides that a transfer of personal data to a foreign country may be allowed where the NITDA has decided that the affected country ensures adequate data protection. Transfer activities are subject to the supervision of the Honourable Attorney General of the Federation (“AGF”).

In November 2020, the NITDA further released the NDPR: Implementation Framework (the “Implementation Framework”), which is intended to serve as a guide to further assist Data Controllers and Data Administrators/Processors understand the controls and measures required in order to comply with the provisions of the NDPR. The Implementation Framework provides clarity and/or context to the NDPR and is, therefore, to be read and applied in conjunction with the provisions of the NDPR.

Fintech companies which collect and use customers’ data must comply with the NDPR and the Implementation Framework.

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 2016 (“CPF”), 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 Protection Regulations 2019, issued by the CBN to improve overall compliance with the CBN’s CPF, contains provisions on data protection and privacy that could apply to fintech business. The Regulation mandates FIs to: obtain the written consent of consumers to collect and use their personal data for a specific purpose with an option to withdraw such consent; inform consumers whenever their data is exchanged with an authorised third party; and to keep accurate and updated data of consumers always.
- d. 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.
- e. The Credit Reporting Act 2011 protects the privacy and confidentiality of credit information of a Data Subject. The Act permits the disclosure of a Data Subject’s credit information by a Credit Bureau to a Credit Information

User (“CIU”) with the written consent of the Data Subject or if the Credit Bureau has a data exchange agreement with the CIU. The Act restricts the CIU from disclosing any credit information received from a Credit Bureau to any person or using it for any purpose other than a permitted purpose. However, the Act permits the CIU to disclose credit information to a Credit Bureau without the consent of the Data Subject.

#### 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 NDPR applies to entities that handle the personal data of Nigerian citizens and Nigerian residents.

- a. Under the NDPR, the transfer of data must be carried out under the supervision of the 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 NDPR (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 a fine of 2% of its annual gross revenue of the preceding year or payment of the sum of NGN10 million, whichever is greater; or
- b. in the case of a Data Controller dealing with less than 10,000 Data Subjects, payment of a fine of 1% of its annual gross revenue of the preceding year or payment of the sum of NGN2 million, whichever is greater.

In addition, the NDPR provides that any breach of its provisions will be construed as a breach of the provisions of the National Information Technology Development Agency Act, 2007 (“NITDA Act”). Consequently, the penalties stipulated in the NITDA Act would also apply in such circumstances. The NITDA Act stipulates that any entity who commits an offence is liable on conviction:

- a. for a first offence, to a fine of NGN200,000 or imprisonment for a term of one year, or to both the fine and imprisonment; and
- b. for any subsequent offence, to a fine of NGN500,000 or to imprisonment for a term of three years, or to both the fine and imprisonment.

The penalties for breach of the provisions of the Credit Reporting Act 2011 is a prescribed monetary fine of not less than NGN10 million or imprisonment for a term of 10 years or both. 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. These cyber security laws or regulations include:

- a. the Cyber Crime (Prohibition, Prevention) Act 2015; and
- b. the CBN's Risk-Based Cybersecurity Framework and Guidelines for Deposit Money Banks and Payment Service Providers 2018 which came into effect on 1<sup>st</sup> January 2019.

**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) (Amendment) Regulations, 2019. 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 Laws of the Federation of Nigeria 2004.
- Economic and Financial Crimes Commission (Establishment, etc. Act), Chapter E1 Laws of the Federation of Nigeria 2004.
- Terrorism (Prevention) Act, No. 10 of 2011.
- Terrorism Prevention (Freezing of International Terrorist Funds and Other Related Matters) Regulations, 2013.
- Advance Fee Fraud and Other Fraud Related Offences Act, 2006.
- CBN Anti-Money Laundering/Combating the Financing of Terrorism (Administrative Sanctions) Regulations, 2018.

**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 in order for the parties to be able to repatriate the fees payable under such agreements through the Nigerian official foreign exchange market.

## 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 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.

Under Nigerian law, the term "dismissal" typically refers to the termination of a contract of employment due to the employee's misconduct, and this may be done summarily without notice and without payment *in lieu* of notice. Where the employer merely brings the employment relationship to an end, not owing to any fault of the employee, this is referred to as a "termination of employment". Generally, an employer can terminate the employment of an employee for a 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 for no reason, 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?**

The following 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 Laws of the Federation of Nigeria 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 emoluments 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 emoluments), to the employee's retirement savings account. Employers are also required to obtain life insurance cover for all of 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 his 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 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 Laws of the Federation of Nigeria 2004 (the “Copyright Act”) protects literary works (including computer programs), musical works, artistic works, cinematographs and broadcasts. The Patents and Designs Act Chapter P2 Laws of the Federation of Nigeria 2004 (the “Patents and Designs Act”) protects industrial designs as well as inventions which are new or an improvement upon an existing patented invention, or result from inventive activity and are capable of industrial application. The Trademarks Act Chapter T13 Laws of the Federation 2004 (the “Trademarks Act”) protects owners of registered trademarks. Owners of unregistered trademarks are not protected by the Trademarks 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 trademarks, 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. Trademarks 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)?

Trademarks, 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 is not conclusive proof of authorship or ownership of the work and would not invalidate the good title of the true owner.

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.

### 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. Trademarks, patents and designs do not have a similar requirement; hence, the owners of these rights are permitted to trade their rights in whatever manner they so wish. 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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