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## International Bar Association Banking Law Committee

# Fintech: how is the world shaping the financial innovation industry?



# Nigeria

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## 1. Fintech regulatory framework: a summary of the most relevant laws and regulations concerning fintech and financial innovation.

Depending on the nature of their business, fintech operators in Nigeria are subject to different laws and regulated by various institutions. Such laws include the Companies and Allied Matters Act 2020 (CAMA), the Central Bank of Nigeria Act, 2007 (CBN Act), the Banks and Other Financial Institutions Act, 2020 (BOFIA), Moneylenders Laws applicable in the various states in Nigeria, and regulations, guidelines and circulars issued pursuant to these laws.

The Central Bank of Nigeria (CBN) is the principal regulator of the Nigerian fintech space. The CBN derives its powers from the CBN Act and the BOFIA. BOFIA requires that any entity carrying on the business as a financial institution must obtain a licence from the CBN.

Regarding moneylending, any entity not licensed by the CBN, but which wishes to carry on the business of moneylending is required to obtain a moneylender's licence from the state government in the state in which it intends to carry on its business.

Lastly, every entity wishing to do business in Nigeria is required to be incorporated with the companies' registry and comply with the requirements of CAMA. For fintech companies, CAMA prescribes the minimum requirements for incorporation, share capital, operations, management, meetings, directors, shareholding, and other related matters.

There are other laws which apply to fintech companies in varying degrees not discussed in this update. We have set out below a summary of some of the most important regulations with respect to fintech and financial innovation in Nigeria.

## New licence categorisations for the Nigerian payments system

The CBN issued the *New Licence Categorizations for the Nigerian Payments System, 2020* (NPS Circular) in 2020 to provide for the different categories of licences and requirements for carrying on business as a

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payment operator in Nigeria. Furthermore, the CBN subsequently issued the approved new licence categorisations in 2021 to provide for the specific requirements to be satisfied by an applicant before being issued each of the payments related licences. Some of the payments-related licences in Nigeria are discussed in Table 1.

## **Guidelines on operations of electronic payment channels**

These guidelines were introduced with the aim of promoting and facilitating the development of an efficient and effective payments system for the settlement of transactions in Nigeria, including the development of electronic payment systems. The guidelines have various sub-parts which cover the following operations:

- automated teller machine (ATM) operations;
- point of sale (POS) card acceptance services;
- mobile point of sale (MPOS) acceptance services; and
- web acceptance services.

Each fintech operator is required to comply with the parts of the guidelines which applies to its operations.

## **Regulatory framework and guidelines for mobile money services**

The Regulatory Framework for Mobile Money Services in Nigeria and the Guidelines on Mobile Money Services in Nigeria, 2021, cover the licensing regime, capital requirements and rules of operation for mobile payment transactions.

The regulations identified the following two models for the implementation of mobile money services:

- the bank-led model (with a bank and/or consortium of banks as lead initiator); and
- the non-bank led model (with a corporate organization duly licensed by the CBN as lead initiator).

In addition, the regulations prescribe the permissible and non-permissible activities for mobile money operators in Nigeria.

## **Guidelines on transactions switching**

The Guidelines on Transactions Switching in Nigeria, 2016 set out the procedure for the operation of switching companies and the provision of switching services in Nigeria. It also covers the rights and obligations of the parties to a switching contract, prohibits exclusivity arrangements, prescribes operational modalities and the mandatory minimum standards required for providing switching services in Nigeria, as approved by the CBN.

## **Supervisory Framework for Payment Service Banks, 2021**

Payment Service Banks (PSBs) are financial service providers who leverage the use of technology to provide limited banking and financial services to persons in Nigeria. This regulation provides for the permissible and non-permissible activities of PSBs, ownership and licensing requirements, and the corporate governance structure for PSBs.

PSBs have in recent years gained popularity in Nigeria following the CBN's issuance of the Supervisory Framework for Payment Service Banks in 2021: one of the key objectives of the regulations is to improve the access of everyday Nigerians to financial services.

## **Regulatory Framework for Non-Bank Acquiring in Nigeria, 2021**

The Regulatory Framework for Non-Bank Acquiring in Nigeria, 2021 sets out the procedure for the operation of non-bank merchant acquirers in Nigeria including the rights and obligations of parties involved in the acquiring process and business.

According to the CBN, a merchant acquirer is an institution responsible for processing and settling credit and debit card transactions on behalf of merchants or other businesses. Merchant acquirers play an integral role in the electronic payment system and transaction processing as they enable merchants to accept card payments by acting as a link between merchants, financial institutions and card schemes. Their functions typically include transaction authorisation, processing, and settlement of electronic payment transactions.

## **The Nigerian Startup Act**

The Nigeria Startup Act was a joint initiative of the Presidency and stakeholders in the Nigerian fintech space. The Act defines a start-up based on certain criteria, some of which include:

- the nationality of the company;
- objects of the company;
- shareholding of the company;
- goods/services provided by the company; and
- expenses of the company.

The Act establishes the Council for Digital Innovation and Entrepreneurship (the Council) which has, as one of its principal functions, the responsibility to support digital and technological development through grants to persons, research institutions and universities pursuing postgraduate programmes in the areas of science, technology and innovation. The Act also seeks to harness Nigeria's ever-growing fintech space by providing tax and fiscal incentives for qualified startups. Some of the incentives include exemption from payment of income tax for a period of about four years and access to export initiatives and financial assistance to qualified entities involved in the exportation of products and services.

It is expected that the Act will further help to increase investments in the Nigerian fintech space by incentivising potential investors and creating an enabling environment for startups, and by extension, fintech and financial innovation.

In relation to new laws or regulations that may be enacted or issued in the near future, or any bill on fintech and financial innovation in Nigeria, we have provided a high-level overview of some proposed laws and regulations below:

## **Operational Guidelines for Open Banking in Nigeria, 2022**

In 2022, the CBN issued the exposure draft of the Operational Guidelines for Open Banking in Nigeria, 2022 (Open Banking Regulations) to the general public. The Open Banking Regulations, which are yet to be issued by the CBN, seek to regulate, among other things, open banking activities and operations of financial institutions in Nigeria. The regulations will be applicable to banking and other related financial services and service providers as categorised and determined by the CBN.

Service providers covered by the Open Banking Regulations will be required to adhere strictly to certain security standards when accessing and storing data, and will be subject to minimum privacy standards, operational standards, risk management standards and customer experience standards as prescribed by the CBN. It is anticipated that the Open Banking Regulation will, when issued and becoming operational, drive competition and improve accessibility to banking, financial and payments services in Nigeria.

## **2. Regulations on crypto assets: a summary of the legal framework regarding crypto assets and how they are regulated.**

Generally speaking, crypto assets are not statutorily defined or regulated in Nigeria. As a result, parties are generally free to engage in crypto transactions on a bilateral basis. The Securities and Exchange Commission (SEC) has, however, issued the *Rules on Issuance, Offering Platforms, and Custody of Digital Assets* (the Rules) in which the SEC defines virtual assets and digital assets. Under the Rules, digital assets are defined as digital tokens that represent assets such as a debt or equity claim on the issuer, while virtual assets are defined as a digital representation of value that can be transferred, digitally traded, and can be used for payment or investment purposes excluding digital representations of fiat currencies, securities, and other digital assets. Under the Rules, the SEC seeks to regulate the offering of virtual and digital assets which may include cryptos targeted at the general public in the country.

In relation to CBN-regulated entities, the CBN has taken an entirely different approach regarding crypto transactions by its regulated entities. The CBN released a circular dated 5 February, 2021, titled *Letter to All Deposit Money Banks, Non-Bank Financial Institutions and Other Financial Institutions* (CBN Circular). The CBN Circular applies to all deposit money banks, non-bank financial institutions and other financial institutions (together, regulated institutions). Pursuant to the circular, the CBN prohibits the regulated institutions from dealing in cryptocurrencies or facilitating payments for cryptocurrency exchanges. The CBN also mandated regulated institutions to ensure that they do not hold, trade, use or transact in cryptocurrencies and virtual currencies in any way.



The above diverging positions of the CBN and the SEC has been clarified by the SEC, which has issued a press release stating that there are no inconsistencies between the CBN circular and the Rules. It adds that, in recognition of the fact that digital assets may have the full features of investments as defined in the Investments and Securities Act 2007 (the legislation governing investments and securities in Nigeria) the trading of such assets falls under the purview of the SEC, unless proven otherwise. Notwithstanding the position of the SEC, it is currently unclear how entities engaging in crypto business can comply with the Rules if such entities cannot operate bank accounts from the settlement of transactions in cryptos.

### 3. Payment service providers and digital wallets: a summary of regulations applying to payment service providers and/or digital wallets.

In order to operate as a payment service provider or provide services relating to a digital wallet in Nigeria, an entity is required to obtain a licence from the CBN. Payment service providers in Nigeria are classified into various categories and we have provided a high-level overview of each category and the permissible activities in the table below as stipulated by the CBN.

No.	Category/licence	Permissible activities
1.	Payment Solution Services	All activities permitted under the Payment Solutions Service Provider (PSSP), Payment Terminal Service Provider (PTSP) and Super-Agent categories.
2.	Payment Solutions Service Provider	Payment processing gateway and portals, payment solutions/application development, merchant service aggregation and collections.
3.	Payment Terminal Service Provider	Point of sale (POS) terminal deployment and services, POS terminal ownership, payments terminal application development, merchant/agent training and support.
4.	Super-Agent	Agent recruitment and management, bills payment (utilities, taxes, tenement rates, subscription etc), payment of salaries; funds transfer services (local money value transfer), balance enquiry, generation and issuance of mini-statements, collection and submission of account opening and other related documentation, agent mobile payments/banking services, cash disbursement, cash repayment of loans and cash payment of retirement benefits, cheque book request and collection, and collection of bank mail/correspondence for customers.
5.	Mobile Money Operator (MMO)	E-money issuing, wallet creation and management, pool account management, bill payment, agent recruitment and management, pool account management, non-bank acquiring as stipulated in the regulatory requirements for non-bank merchant acquiring in Nigeria, any other activities that may be permitted by the CBN from time to time and all activities permitted under the Super-Agent category.
6.	Switching and Processing	Switching, card processing, transaction clearing and settlement agent services, non-bank acquiring services.
7.	Payment Service Banks	Accepting deposits, payments, and remittance (inbound), operation of electronic wallets, issuance of debit and pre-paid cards, financial advisory and investment in Federal Government of Nigeria and CBN securities.

*Table 1: Payment service provider categories*

In relation to the question on the regulatory framework for mobile wallet creation, one of the permissible activities for MMOs includes the creation and management of e-wallets. Therefore, entities which intend to provide digital wallet-related services to persons in Nigeria will be required to obtain an MMO licence or PSB licence from the CBN.

#### **4. Special support to fintechs: a description of special programmes supporting the fintech ecosystem, fintech startups (eg, regulatory sandboxes and accelerator programmes) and regulations regarding special support.**

The CBN, as the primary regulator of the Nigerian financial and payment system, plays a major role in determining the ease of entry or otherwise into the financial services space.

As part of its efforts to support fintechs, the CBN in 2021 released the Framework for Regulatory Sandbox Operations (Sandbox Regulations). According to the Sandbox Regulations, the sandbox encourages innovation that can improve the design and delivery of payment services and is, therefore, also suitable for proposed products, services, or solutions that are either not contemplated under the prevailing laws and regulations or do not precisely align with existing regulations.

The sandbox application process is open to both existing CBN licensees (financial institutions with fintech initiatives) and other local companies. The latter may include financial sector companies, as well as technology and telecom companies intending to test an innovative payments product, or service industry deemed acceptable by the CBN. The CBN also has the power to review an approval granted to any participant before the end of the testing period of the participant in the sandbox.

Similarly, the SEC has adopted a 'Three-Pronged Objective' to regulate and facilitate innovations in the Nigerian fintech landscape which includes: safety; market/financial deepening; and providing solutions to existing problems. In furtherance of these objectives, the SEC released the Regulatory Incubation Guidelines for Specific Category of Fintech Entrepreneurs (Incubation Guidelines) and created a Fintech & Innovation Office (FINO) to facilitate its communication with fintech innovators, regulate fintech businesses and constantly engage with innovation hubs around the country.

The Incubation Guidelines allow the SEC to supervise some new models of providing capital market services in limited form before it becomes fully established. Interested participants are required to show, among other things, that they are using innovative technology to offer a new type of product or service or apply innovative financial technology to an existing product or service.

#### **5. Open banking: a summary of regulations regarding open banking and direct or indirect regulations that affect open banking.**

In Nigeria, we currently have regulations on open banking. In February 2021, the CBN released the Regulatory Framework for Open Banking in Nigeria (Open Banking Framework) which establishes the principles for data sharing across the banking and payment system to promote innovations and broaden the range of financial products and services available to bank customers.

The Open Banking Framework applies to the following financial services: deposit taking, credit, credit ratings and scoring, payment and remittance services, leasing and hire purchase mortgage, collection and disbursement services and treasury management. Prior to the issuance of the Open Banking Framework, Nigerian banks enjoyed exclusive access to customers' information, thereby locking out innovators and forcing customers to rely solely on the digital channel offerings of their

respective banks. With the issuance of the Open Banking Framework, financial services are expected to experience better growth and invention of innovative products.

Further to, and in line with, the Open Banking Framework, the CBN released the exposure draft of the Operational Guidelines for Open Banking in Nigeria which sets out, among other things, detailed provisions on the roles, minimum requirements, responsibilities, and expectations for the participants in the open banking system.





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