An Overview of the New Regime for Bureaux De Change Operations in Nigeria



Joseph Eimunjeze

Chisom Okolie

Uchechukwu Ojimba

On 22nd May, 2024, the Central Bank of Nigeria ("CBN") issued new Guidelines for Bureaux de Change Operations in Nigeria 2024 (the "New Guidelines") to regulate Bureaux de Change operators ("BDCs"). The New Guidelines, which became effective on 3rd June, 2024, replaced the previous Revised Operational Guidelines for Bureau de Change in Nigeria 2015 and all circulars or directives issued pursuant to the old guidelines. This development comes off the back of recent efforts by the CBN and the Office of the National Security Adviser to combat the activities of foreign currency speculators, which they claimed were worsening the depreciation of the Naira against other major foreign currencies and contributing to inflationary pressure and economic instability.[1] The CBN believed that foreign currency speculation was partly fuelled by illicit activities of some BDCs and roadside money changers. As such, the New Guidelines were issued to better regulate BDCs operating in the country.

The New Guidelines contain many major changes regarding licensing, capital requirements, permissible and non-permissible activities, sources of foreign exchange by BDCs, mode of disbursement of funds for transactions, issuance of cards, and operation of bank accounts by BDCs. We have highlighted in this article the key updates to the regulation of BDCs introduced by the New Guidelines and analysed the potential implications of these changes on the BDC sector in the Nigerian foreign exchange market, assessing how they may influence market stability, regulatory oversight, customer protection, and overall operational efficiency.

KEY CHANGES IN THE NEW GUIDELINES

1. The Introduction of a Two-Tiered Licensing Structure

The New Guidelines introduced a tiered licensing system, separating BDCs into two tiers, namely Tier 1 and Tier 2.

Tier 1 BDCs are allowed to:

(a) operate in all the States in Nigeria, including the Federal Capital Territory ("FCT"); and

(b) establish branches and franchises in all the States in Nigeria and the FCT with CBN's approval.

On the other hand, Tier 2 BDCs are allowed to:

(a) operate in only one State in Nigeria or the FCT; and

(b) establish five branches in the chosen State of operation or the FCT with the CBN's approval. Tier 2 BDCs are, however, not allowed to operate franchises. A Tier 1 BDC is required to have a minimum capital of NGN2 billion, while a Tier 2 is to have a minimum capital of NGN500 million.

[1] https://leadership.ng/onsa-partners-cbn-to-clamp-down-on-forex-speculators/

2. Non-eligible promoters of BDCs

The New Guidelines provide an extensive list of entities and individuals prohibited from owning or having interests in BDCs, effectively preventing potential conflicts of interest and ensuring that only qualified entities engage in BDC operations. Such persons include commercial, merchant, non-interest and payment service banks; financial holding companies and other financial institutions including International Money Transfer Operators ("IMTOs") and payment service providers; serving staff of financial services regulatory and supervisory agencies; serving staff of regulated financial services providers; non-governmental organisations; cooperative societies; charitable organisations; non-Nigerian natural persons; non-resident non-regulated companies; telecommunication services providers; a shareholder in another BDC (whether directly or indirectly), etc.

3. The Introduction of Franchising by BDCs

The New Guidelines introduce franchising and allow Tier 1 BDCs to appoint franchisees, significantly expanding their operational reach while maintaining stringent control and compliance standards. The provisions on franchising include that each franchisor must have a franchising policy approved by the CBN, and franchisees can only be appointed with CBN's approval. In addition, franchisors must monitor their franchisees to ensure adherence to operational standards, and franchisees must be incorporated as limited liability companies. A franchisor can appoint a maximum of five (5) franchisees in a State and the FCT, but it cannot appoint a franchisee in a State where it does not have a branch.

4. Permissible and Non–Permissible Activities

The New Guidelines clearly state the permissible and non-permissible activities of BDCs aimed at preventing BDCs from engaging in illegal practices and streamlining their operations. The permissible activities for BDCs include:

(a) acquiring foreign currency from approved sources;

(b) selling foreign currency for approved purposes (such as personal travel allowance);

(c) opening foreign currency and Naira accounts with commercial or non-interest banks;

(d) issuing prepaid debit cards to their customers in collaboration with banks; and

(e) serving as cash-out points for IMTOs.

The New Guidelines reiterate that BDCs remain prohibited from engaging in the street trading of foreign currencies. Some of the other newly added non-permissible activities for BDCs include:

(a) maintaining accounts for members of the public, including accepting any asset for safekeeping/custody;

(b) taking deposits from or granting loans to members of the public in any currency and in any form;

(c) retail sale of foreign currencies to non-individuals, except for Business Travel Allowance (BTA);

(d) international outward transfers;

(e) opening or maintaining any account with any bank or financial institution outside Nigeria without the prior written approval of the CBN; and

(f) dealing in cryptocurrency or with entities dealing in cryptocurrency, crypto assets or virtual assets. BDCs are also prohibited from acting as custodians of foreign currency on behalf of customers, receiving international inward transfers (except for BDCs that serve as cash-out points for IMTOs) and engaging in forwards, futures, options, derivatives and speculative transactions.

5. Sourcing of Foreign Currencies

The New Guidelines now make clear provisions on BDCs sourcing foreign currencies from diverse sources. It permits BDCs to purchase foreign currency from tourists, returnees from the diaspora, expatriates and residents with funds in their domiciliary accounts, IMTOs, Embassies, High Commissions and other diplomatic missions in Nigeria, hotels that are authorised buyers of foreign currencies etc. For the first time, BDCs are now permitted to purchase foreign currencies from the Nigerian Foreign Exchange Market subject to meeting the requirements for an authorised dealership licence.

6. Declaration and payment into bank accounts

Any person selling the equivalent of USD10,000 and above to a BDC is now required to declare the source of the foreign exchange and comply with all AML/CFT/CPF regulations and foreign exchange laws and regulations. Foreign currencies purchased by a BDC from customers in their individual domiciliary accounts shall be credited to the BDC's Nigerian domiciliary account. Payments for all such digital/transfer purchases of foreign currency by a BDC shall be by transfer to the customer's Naira account. If the customer is a non-resident (whether Nigerian or not), the BDC may issue the customer a prepaid NGN card.

Payments to customers for cash purchases of foreign currency above the equivalent of USD500 shall be by transfer to the customer's Naira bank account while cash purchases of foreign currency below the equivalent of USD500 may be made in cash.

7. Sale of Foreign Currencies by BDCs

BDCs are permitted to sell foreign currencies to their customers for a limited number of transactions. The guidelines require that the sale of foreign currencies by BDCs shall be for the purpose of personal travel allowance ("PTA"), business travel allowance ("BTA"), overseas medical bills, school fees abroad, professional examination and annual subscription fees etc. All applications for PTA or BTA shall be through the CBN's Trade Monitoring System, and a beneficiary of BTA or PTA may receive up to 25% of the foreign currency in cash, while at least 75% shall be transferred to the customer's prepaid card. Payments for all sales of foreign exchange by BDCs shall be by transfer to the BDC's Naira account.

8. Operations of BDCs

To ensure efficient and transparent operations by BDCs, the CBN has imposed several operational requirements. In that regard, a BDC is required to deal in banknotes and coins, plastic cards and such other permitted businesses and ensure the confidentiality and protection of the personal information of its customers in line with the Nigerian Data Protection Act 2023. Furthermore, all transactions by residents shall only commence after electronic retrieval of the potential customer's bank verification number or tax identification number from the relevant databases, while all transactions by non-residents shall only commence after obtaining a copy of the potential customer's passport identification document and validation with the relevant Nigerian agency.

For foreign currency cash purchases, sellers of USD10,000 and above shall be required to declare the source of the foreign exchange. In addition, for all customer-present transactions, all the Naira proceeds shall be electronically credited or transferred to the same customer's Naira account or prepaid card.

9. Introduction of Defined Prudential Requirements for BDCs

The New Guidelines introduced strict prudential requirements for BDCs. It requires that BDCs must: maintain a Net Open Position (NOP) limit in foreign currency of 30% of shareholders' funds; maintain a borrowing limit set at 50% of shareholders' funds; and maintain mandatory insurance coverage for cash in office and in transit and insurance against fire and staff fidelity risks. Furthermore, BDCs are required to ensure that dividends are not paid until:

(a) all expenses not represented by tangible assets have been written off;

(b) the BDC has met the minimum capital requirements;

(c) adequate provisions have been made for actual and contingent losses to the satisfaction of the CBN; and

(d) it has satisfied corporate governance and prudential requirements stipulated by the CBN. These requirements are intended to enhance the financial stability and operational resilience of BDCs.

10. Changes in Ownership Structure

Except with the prior approval of the CBN, no BDC is permitted to enter into various agreements or arrangements relating to management or change in control. This is consistent with the requirements of the Banks and Other Financial Institutions Act 2020. Consequently, a BDC will need to obtain the prior approval of the CBN before entering into any arrangement or agreement:

(a) which results in a change in the control or ownership of the BDC;

(b) for sale, disposal or transfer of the whole, or any part of the business of the BDC or its licence;

(c) for the amalgamation or merger of the BDC with any other entity;

(d) for the reconstruction of the BDC; and

(e) to employ a management agent or transfer its business to any such agent. Any BDC wishing to enter into a merger and/or acquisition transaction shall apply to the CBN for approval.

POTENTIAL IMPLICATIONS OF THESE CHANGES

As discussed above, the New Guidelines introduce a lot of novel provisions for BDC regulation in Nigeria, and we believe that these novel provisions will have the implications discussed below.

1. Barriers to Entry

By the introduction of the New Guidelines, the CBN has raised the bar for old players and new entrants into the BDC sector in Nigeria. The introductory letter to the New Guidelines requires all existing BDCs to reapply for a new licence according to the new tiers, and these existing BDCs must meet the new minimum capital requirements for BDCs. This requirement will likely lead to the loss of licence for a number of existing BDCs, and it will also limit the number of new entrants into the BDC Sector. This will potentially create and maintain a high standard of operation for BDCs by ensuring that only financially sound and well-prepared entities participate in the market. This move also poses the risk of reduced competition and the creation of a few dominant players in the BDC sector.

2. Enhanced Regulatory Oversight

The provisions of the New Guidelines, including the prudential requirements, restrictions on promoters, prohibition of street-trading of foreign currencies, and delineation of permissible activities, depict that the CBN is imposing additional scrutiny on BDCs to sanitise this sector. This improved regulatory oversight can help curb the alleged illicit operations of BDCs and, potentially, improve stability and transparency in Nigeria's foreign exchange market.

3. Improved Operational Efficiency

The new prudential requirements should promote the operational efficiency and financial stability of BDCs. By stipulating the minimum net open position limit and borrowing limits, BDCs are mandated to manage their foreign exchange and borrowing risks more effectively. The mandatory insurance coverage for cash will protect BDCs from operational risks and ensure continuity in their services. These measures will likely lead to more resilient BDCs capable of withstanding economic shocks and operational challenges.

4. Issuance of Prepaid cards by BDCs

The New Guidelines permit BDCs to issue prepaid Naira debit cards to persons who are non-resident in collaboration with their bankers (limited to commercial or non-interest banks). The prepaid Naira debit cards allow non-resident persons without accounts in Nigeria to receive the Naira equivalent of their foreign currency purchases electronically. This initiative will modernise BDC transactions and improve customer convenience, as such transactions will no longer be conducted with cash. Additionally, the shift from cash transactions to electronic payments promotes transparency and reduces the risk of illicit activities, thereby increasing security and accountability in Nigeria's foreign exchange market.

5. Receipt of funds in Naira or domiciliary accounts

Under the New Guidelines, BDCs and their customers are required to process significant portions of their sale and purchase transactions through their Naira or domiciliary accounts. For example, customers can sell foreign currencies from their domiciliary accounts to BDCs, with sales credited to the BDC's domiciliary account. Additionally, payments by BDCs to customers for foreign currency cash purchases above US$500 must be paid to the customer's Naira bank account. These measures will improve transaction transparency in the BDC sector.

CONCLUSION

The New Guidelines are a welcome development, especially in light of the recent instability in Nigeria's foreign exchange market. Although the New Guidelines impose strict requirements and increased costs on BDCs, they are crucial steps towards creating a more transparent and stable foreign exchange market in Nigeria. In addition, BDCs can now issue prepaid cards in limited circumstances and can also serve as cashpoints for IMTOs. These are reforms that we believe will, potentially, boost the activities of BDCs in the country. We believe that players in the BDC sector would take the desired steps to comply with the new provisions, as the New Guidelines became effective on 3rd June, 2024.

This article is for general information purposes only and does not constitute legal advice. This article has been authored by Joseph Eimunjeze, Chisom Okolie, and Uchechukwu Ojimba of the Banking and Finance team at Udo Udoma & Belo-Osagie. They can be reached at joseph.eimunjeze@uubo.org, chisom.okolie@uubo.org and uchechukwu.ojimba@uubo.org. For more information about our Banking and Finance practice group and other practice groups' offerings, please visit our website at www.uubo.org or email us at uubo@uubo.org.