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Issuing Foreign Currency Denominated Securities in Nigeria:

Regulatory Framework, Constraints and Implementation Considerations




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1 Introduction

In a world where financial markets transcend borders, there is a debate on whether Nigerian companies can issue securities denominated in foreign currency domestically in Nigeria. This debate is a result of the rules around access to foreign exchange ("FX") in the official market through Nigerian banks and the effect of the CBN de-dollarisation policy. While there have been precedents of Nigerian companies issuing foreign currency-denominated securities offshore, such issuances have largely been absent from the domestic market. In recognition of the growing need of some Nigerian companies to have access to FX, the Nigerian Exchange Limited (the "NGX"), on 22 August 2023, unveiled its plan to allow Nigerian companies with significant foreign exchange revenue and companies operating in free trade zones ("FZEs") to issue and list bonds and stocks denominated in United States Dollars ("USD") on the Nigerian Exchange Group (the "NGX Exchange") and pay coupons or dividends in USD (the "Initiative"). The Initiative is the NGX's bid to provide an avenue to meet the FX needs of such companies in Nigeria. Where implemented, the Initiative would be a significant development with the potential to further enhance investment opportunities in the Nigerian capital markets, boost FX liquidity and stability in Nigeria, and diversify investment options for local and international investors in the Nigerian capital markets.

While the potential economic benefits of the Initiative, particularly for corporate issuers, are widely anticipated, a critical examination of Nigeria's existing legal and regulatory framework is essential to understand the legal requirements, existing bottlenecks and actions expected to be taken by various institutions to ensure its effective implementation and long-term success. This publication, therefore, provides an insight into the legal regime relevant to the issuance of securities denominated in USD and other foreign currencies in the domestic market.

Since the Initiative was announced in August 2023, there appear not to have been any formal implementation by the NGX of a framework specifically permitting Nigerian corporate issuers to issue and list FX-denominated securities on the NGX. The domestic market has, however, witnessed an important development in this regard, with the Federal Government of Nigeria ("FGN") successfully issuing its inaugural domestic US Dollar-denominated bond in 2024. While the FGN issuance demonstrates the potential for a domestic market for FX-denominated securities, it was a sovereign issuance

implemented pursuant to arrangements specific to the FGN and does not constitute implementation of the Initiative aimed principally at corporate issuers. The regulatory and practical issues considered in this publication, therefore, remain relevant to the implementation of the Initiative.

2 An Overview of the Existing Legal Frameworks for the Issuance of FX-denominated Securities in Nigeria

2.1 The FEMM Act and the FX Manual

Generally, the issuance of foreign currency-denominated securities ("FX-Denominated Securities") by Nigerian companies is governed by the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 2004 (as amended) (the "FEMM Act"), which is the principal legislation regulating dealings in convertible foreign currencies in Nigeria. Section 26 of the FEMM Act permits Nigerians and non-Nigerians, whether or not they are resident in Nigeria, to deal in, invest in, acquire or dispose of, create or transfer any interest in, securities and other money market instruments, whether *they are denominated in foreign currencies in Nigeria or not*. What this means is that the FEMM Act permits (a) Nigerian companies to issue FX-Denominated Securities in the domestic market; and (b) both Nigerian residents and non-Nigerian residents to invest in such FX-Denominated Securities.

In recognition of the above provision of the FEMM Act, under Memorandum 16(b)(2) of the Central Bank of Nigeria ("CBN") Foreign Exchange Manual (4th Edition) 2026 ("FX Manual"), Nigerian diaspora holders of non-resident Nigerian investment accounts are permitted to maintain both a foreign currency account and/or a local currency account to enable them to invest in either local or foreign currency-denominated assets in Nigeria. Conversely, while Nigerian resident persons and companies are permitted to maintain domiciliary accounts (ordinary and export proceeds) with Nigerian banks and fund such accounts in FX pursuant to the FEMM Act and the FX Manual, the CBN does not permit the balances in such export proceeds domiciliary accounts and ordinary domiciliary accounts to be used for investment purposes in the domestic market.

2.2 Company Law Consideration

The provisions in relation to share capital in the Companies and Allied Matters Act 2020 (as amended) (the "CAMA"), which is the principal legislation regulating companies in Nigeria, are all stated in Naira. For instance, Section

27(2)(a) of the CAMA requires that the minimum issued share capital of a Nigerian company shall not be less than NGN100,000 for a private company and NGN2,000,000 in the case of a public company. The CAMA does not, however, contain any provisions that expressly prohibit Nigerian companies from denominating their stocks/shares or debt securities, and/or paying out dividends or interest to shareholders or investors,s respectively, in a foreign currency. This means, in our opinion, that a Nigerian company could issue shares in a foreign currency, provided that the nominal value of such shares is not below the Naira-equivalent of the prescribed minimum issued share capital. The same position applies to debt securities such as bonds.

2.3 Investments and Securities Law Consideration

The Investments and Securities Act 2025 (“ISA”) and the Securities and Exchange Commission (“SEC”) Rules and Regulations 2013 (as amended) (“SEC Rules”) regulate the issuance of securities to the public by Nigerian companies and foreign entities in Nigeria. The ISA and the SEC Rules prescribe the conditions and requirements for the issuance of securities.

Under the ISA, no issuer may make a public offer of securities or invite the public to subscribe for securities without first registering the securities with the SEC. In relation to FX-denominated Securities, the ISA does not prohibit issuers from issuing securities denominated in foreign currency, provided that such issuances comply with applicable SEC registration requirements and other relevant laws. Where FX-denominated Securities are offered to the public, the offer must still be registered with the SEC, and disclosure must clearly specify the currency of denomination, currency risks, exchange rate implications, and the mechanism for payment of principal and returns.

2.4 Laws Regulating FZEs

Free Zone Enterprises (“FZEs”) in Nigeria are established and regulated pursuant to the Nigeria Export Processing Zones Act 2004 (as amended) (“NEPZA”), the Oil and Gas Export Free Zone Act 2004 (as amended) (“OGEPZA”) (for oil and gas FZEs), and the various regulations applicable to the specific free trade zones (“Zones”) (the “FZE Legislations”). FZEs previously enjoyed express exemption from foreign exchange regulations in Nigeria pursuant to sections 18(1)(a) of the NEPZA and 18(1)(a) of the OGEPZA before both Acts were amended by section 196 of the Nigeria Tax Act

2025 (the "NTA"). The respective sections 18(1)(a) of the NEPZA and OGEPZA provided that legislative provisions pertaining to, among other things, foreign exchange regulations shall not apply within the Zones. Section 196 of the NTA has, however, amended the NEPZA and OGEPZA by deleting the referenced sections 18(1)(a) of both Acts. Nonetheless, there remains a restriction in the FX Manual regarding the ability of FZEs to source FX from Nigeria's official foreign exchange market under Memorandum 21(2) of the FX Manual. The Memorandum provides that transactions of operators in FZEs, not being part of the Nigerian customs territory, shall not qualify for remittance with funds from the Nigerian Foreign Exchange Market ("NFEM"). The CBN, however, exempts FZEs from the dollarisation policy, as Memorandum 14 of the FX Manual lists FZEs among entities that are permitted to price their goods and services in FX. This means that FZEs may be permitted to issue FX-denominated Securities in Nigeria.

Having said that, based on the foregoing analysis, it is our view that while FZEs are not permitted by the CBN to source foreign currency from the NFEM, they are permitted to source foreign currency from independent sources. Such independent sources would, in our view, include the issuance of FX-denominated Securities, provided that the proceeds for investment in such securities are not sourced from the NFEM.

3. Constraints on the Issuance of FX-Denominated Securities by Nigerian Corporates

3.1. Memorandum 14 of the FX Manual provides that the pricing and payment of products and services provided by a Nigerian company to another Nigerian company shall be in Naira only. This provision further provides that, except in instances where such has been expressly permitted by statute, the use of foreign currency for the payment of goods and services in Nigeria is prohibited. Although not expressly stated, we believe that the above restriction was imposed by the CBN pursuant to its regulatory and supervisory powers over banking and foreign exchange activities under the Central Bank of Nigeria Act, 2007 ("CBN Act"). The aim of Memorandum 14 was to curtail the rising trend of currency substitution and the denomination of the cost of local products and services offered in Nigeria in foreign currency, as opposed to the Naira.

3.2. As we have stated in the preceding paragraph, the CBN may have relied on section 20(5) of the CBN Act, which criminalises the refusal to accept Naira as

a means of payment. Memorandum 14 outlines a number of revenue-generating government agencies and other private sector organisations (such as operators in the oil and gas, maritime and aviation sectors and FZEs) that are permitted to denominate their transactions and make payments in foreign currency.

3.3. One may argue that the issuance of FX-denominated Securities in Nigeria by Nigerian companies is unlawful under the provisions of Memorandum 14 of the FX Manual. We, however, hold the view that the issuance of FX-denominated Securities in Nigeria is permitted by the FEMM Act and is not prohibited under any extant Nigerian law. As a result, Memorandum 14 cannot, in the absence of a statutory provision, prohibit the issuance of FX-denominated Securities. In any case, Memorandum 14 contains an exception for transactions permitted by statutes. This exception covers the FEMM Act. The only prohibition under the CBN Act is the refusal to accept Naira as a means of payment in Nigeria, and not the issuance of FX-denominated Securities. In addition, the operators in the oil and gas, maritime and aviation sectors and FZEs exempted from the restriction in Memorandum 14 may issue FX-denominated Securities. The supposed prohibition by the CBN of the pricing of transactions in FX through the FX Manual has the effect of a purported amendment of a statute by subsidiary legislation, which renders the subsidiary legislation void.

3.4. The effect of the above analysis, therefore, is that in the absence of any amendment to the provisions of the FEMM Act or the CBN Act, or the enactment of an equivalent statute that prohibits or criminalises the denomination of transactions in foreign currency in Nigeria, the issuance of FX-denominated Securities by Nigerian companies would not, in our view, be unlawful.

4. Constraints on investment in FX-Denominated Securities by Nigerian Residents

4.1 Having concluded that the issuance of FX-denominated Securities in Nigeria is not unlawful, the next issue would be whether potential investors will have access to foreign currency to invest in such securities. The first issue is that such potential investors will be unable to access the NFEM to purchase foreign currency to invest in such securities. This is because investments in such securities will not be eligible transactions. The second issue is that holders of ordinary domiciliary accountsand export proceeds domiciliary accounts in

Nigerian banks are not permitted to use the balances in these accounts for investment purposes in the domestic market. This prohibitionion is contained inMemorandum 18(1)(ii) of the FX Manual.

4.2 The FEMM Act and FX Manual, however, state that investors are permitted to invest in securities in Nigeria, provided that investment funds are remitted from offshore through authorised dealer banks and an electronic certificate of capital importation (“eCCI”) is issued upon the conversion of the FX into Naira. An eCCI will not be issued if the inflowed FX is invested in FX-denominated Securities and is not converted into Naira. In the same vein, the FX Manual permits Nigerian diaspora holders of non-resident Nigerian investment accounts to invest in either local or foreign currency-denominated assets. If the inflowed FX are first deposited in a domiciliary account, the FX Manual restricts such funds from being used to invest in securities domestically.

5. Potential Benefits of Issuing FX-denominated Securities in the Domestic Market

The issuance of FX-denominated Securities by Nigerian companies will transform Nigeria’s investment landscape, unlocking new opportunities for diversification and risk management. These securities will provide a crucial investment opportunity for local and foreign investors and allow them to hedge against exchange rate volatility and preserve asset value while diversifying their portfolios beyond Naira-denominated instruments. It will also enable eligible issuers to have access to sources of long- term foreign capital for their operations. The Initiative, if implemented, will also remove a major barrier to entry for foreign investors by offering investments in familiar foreign currencies, reducing perceived local currency risks and making Nigeria’s capital market potentially more attractive to residents who hold FX in their domiciliary accounts.

6. Legal Restrictions and Proposed Solutions for the Implementation of the Initiative

We have outlined below some legal restrictions that could hamper the implementation of the Initiative and proposed implementation solutions to mitigate them.

6.1 The CBN Act's Restriction on Foreign Currency as a Medium of Payment

As previously discussed, Section 20(5) of the CBN Act designates the Naira as the sole lawful means of payment in Nigeria. Under this provision, refusing to accept the Naira as a means of payment constitutes an offence, punishable by a fine of NGN50,000, six months' imprisonment or both. The CBN, however, retains the authority to prescribe exceptions permitting the use of foreign currencies in certain circumstances. Absent such an exception, issuers of FX-denominated Securities may opt to settle their obligations in Naira and the investors will be obliged to receive Naira from the issuer. This could undermine investor confidence in the Initiative. To address this, the NGX may need to engage the CBN to issue a directive explicitly allowing foreign currency as a permissible medium of exchange for FX-denominated Securities issued by Nigerian companies.

6.2 Restrictions on the use of balances in ordinary domiciliary accounts and export proceeds domiciliary accounts for investment domestically

As previously noted, under the FX Manual, balances in ordinary domiciliary accounts and export proceeds domiciliary accounts are not permitted to be used for investment purposes in the domestic market. This restriction would undermine the effective implementation of the Initiative, as it limits investors' ability to move funds efficiently from ordinary domiciliary accounts or export proceeds domiciliary accounts for investment purposes, including investments in FX-denominated Securities. To address the lack of clarity and promote an efficient process to aid investment in FX-denominated Securities that may be issued by Nigerian companies, the CBN may need to create a special dispensation and prescribe conditions under which potential Nigerian-resident investors could use funds held in ordinary domiciliary accounts and export proceeds domiciliary accounts to invest in FX-denominated Securities. To do this, the restriction contained in Memorandum 18 (1)(ii) of the FX Manual may need to be relaxed to permit the use of balances in those domiciliary accounts for investment in FX-denominated Securities domestically. The CBN's relaxation T of the restriction could also be done in the manner adoptedadopted when the FGN issued the FGN Domestic USD Bond. In addition, a framework could be developed that would enable issuers of FX-denominated Securities to discharge their payment obligations in respect of such securities in FX, provided that they generate FX from their operations.

7. Conclusion

The implementation of the Initiative would represent a transformative opportunity for Nigeria's capital markets, with the potential to unlock significant economic benefits. Its success would, however, depend on addressing the lack of clarity and complexities of Nigeria's existing legal and regulatory framework. We expect this to catalyse further amendments to existing regulations to ensure a comprehensive and enabling framework for all market participants.

As the NGX pioneers this landmark reform initiative, collaboration among legal experts, regulators, and market stakeholders will be essential to developing a robust and adaptive legal infrastructure, aligning Nigerian laws with global best practices, and safeguarding investor confidence and market integrity. Ultimately, the success of the Initiative would hinge on the ability of Nigeria's legal and regulatory framework to facilitate seamless implementation while ensuring compliance, transparency, and investor protection. We hope that the NGX will revisit the Initiative soon with a view to putting in place the market infrastructure for implementation.

This publication has been provided by Joseph Eimunjeze, Abolanle Ayoola, Itoro Uwemedimo Etim, and Tobi Oladepo of the Banking & Finance team at Udo Udoma & Belo-Osagie. For more information about our Banking & Finance practice group offerings, please visit our website at www.uubo.org or email us at financeteam@uubo.org.