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CBN

THE IMPLICATION OF LIMITATION OF CASH WITDRAWALS/DEPOSITS: PROS & CONS.

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INTRODUCTION.

The Central Bank of Nigeria (CBN)[1] vide its circular dated 6th December, 2022 with reference number BSD/DIR/PUB/LAB/015/069 directed all Deposit Money Banks (DMBS), Payment Service Banks (PSBs), and other financial institutions to limit cash withdrawals in a bid to bolster its cashless policy to wit:

I. Over-the-counter withdrawals (OTC) by individuals and organizations are now limited to ₦100,000 ($135) and ₦500,000 ($676), respectively.

II. Withdrawals at Automated Teller Machines have also been limited to ₦20,000 ($27) per day and a total of ₦100,000 per week.

III. Withdrawals above the limits set by the CBN will attract a 5% processing fee.

[1]Nigeria's Apex Bank and Regulator of all Deposit Money Banks in the Country.

THE NEW DIRECTIVES:

- Over-the-counter withdrawals (OTC) by individuals and organizations are now limited to ₦100,000 ($135) and ₦500,000 ($676), respectively.
- Third-party cheques above ₦50,000 ($67) will not be eligible for payment over the counter.
- Maximum withdrawal per week via Automated Teller Machines (ATMs) is now ₦100,000, while the limit for daily withdrawals is set at ₦20,000.
- Maximum cash withdrawals at point-of-sale (POS) terminals have also been reduced to ₦20,000 ($27) daily.
- Only denominations of ₦200 and below shall be loaded into the ATMs.

The CBN, however, added a caveat that "in compelling circumstances" where higher cash withdrawals need to be made, it cannot exceed ₦5 million ($6,765) and ₦10 million ($13,513) for individuals and organizations, respectively.

Unfortunately, the "compelling situations that will give room for the aforesaid increase in cash withdrawal cannot be more than once a month.

Secondly, what amounts to the phrase "compelling situations" was equally not defined.

On the 21st of December, 2022 the CBN in further exercise of its powers, reviewed the regulation by increasing the weeklywithdrawal limits across all channelsby individual and corporations alike to N500,000.00 (Five Hundred Thousand Naira) only and N5,000,000.00 (Five Million Naira) only, respectively. It however still maintained the provision for cash withdrawal above the limits in compelling circumstances for legitimate purpose which shall be subject to processing fees of 3% and 5% for individuals and corporate organisation respectively[2].

It should be noted that Monetary Policies limiting cash withdrawal is not limited to Nigeria, similar policies have been in existence for years in most Western Countries. The question therefore is whether the existing legal framework from a holistic perspective taking into account individual rights to personal properties for their use and enjoyment as provided under the constitution and other enabling laws have been carefully taken into reckoning in the establishment of these regulations.

[2] **By a circular with reference number: BSD/DIR/PUB/LAB/015/073.**

POWER OF CBN TO MAKE REGULATIONS.

The Central Bank of Nigeria (CBN) Act, 2007[3] and the Banking and Other Financial Institutions Act (BOFIA), 2020[4] empowers the Central Bank of Nigeria to make regulations for the management of the banking sector and other financial institutions in Nigeria.

More so, the Court of Appeal in the case of **Liberty Bank &Ors v. C.B.N &Ors**[5]gave judicial imprimatur to the powers of the CBN to make rules and regulations for the operation and control of banks in Nigeria as long as same is made towards achieving their statutory obligations wherein the court per **Tijani Abubakar (JCA, as he then was, now JSC)** held thus:

> ***"…Section 57(1) of the Act empowers the Governor of the Central Bank to make regulations, published in the Federal Gazette to give effect to the objects and objectives of the Act; while Section 57(2) states that " without prejudice to the provisions of Subsection (1), the Governor may make rules and regulations for the operations and control of all institutions under the supervision of the Bank."***
> ***On the other hand, Section 2 of the CBN Act aptly states that:***
> ***"The principal objects of the Bank shall be to:***
> ***(a) Ensure monetary and price stability;***
> ***(b) Issue legal tender currency in Nigeria;***
> ***(c) Maintain external reserves to safeguard the international value of the legal tender currency.***
> ***(d) Promote a sound financial system in Nigeria;***
> ***(e) Act as Banker and provide economic and financial advice to the Federal Government."***

[3] **Section 51 of the Central Bank of Nigeria Act, 2007.**
[4]**Section 56 of the Banks and Other Financial Institutions Act, 2020**
[5]**(2019) LPELR-50238(CA) pg 36-38**

WHETHER THE GUIDELINES ARE CONTRARY TO THE MONEY LAUNDERING (PREVENTION AND PROHIBITION) ACT, 2022.

Section 2 of the Money laundering (Prevention and Prohibition) Act, 2022, provides thus:

"(1) No person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding—

(a) N5,000,000.00 or its equivalent, in the case of an individual; or (b) N10,000,000.00 or its equivalent, in the case of a body corporate."

From the above provision vis-à-vis the provisions of the regulation under reference, it is apparent that the regulation did not prescribe an amount with respect of cash transaction higher than the threshold stipulated by the Act, but rather it further reduced the amounts drastically in a bid to encourage its cashless policy.

The pertinent question to ask therefore is that can the CBN without an enabling amendment to the Money Laundering (Prevention and prohibition) Act, 2022 reduce by mere regulation the amount of money an individual or corporation can transact in cash from its account as stipulated by the Act of Parliament?

It should be noted that money in a customer's account domiciled in a deposit money bank is the customer's real property which can be utilized at his prerogative, subject to the provisions of the enabling statutes. An Act of Parliament having stipulated a specific amount in **Section 2 of the Money Laundering (Prevention and Prohibition, Act) 2022** that can be transacted by cash**,** can a subsidiary legislation in this context without recourse to the law, reduce same under any guise?

It is our respectful opinion that the CBN Guideline, though made pursuant to an enabling Act of the National Assembly providing for general powers to make regulations, cannot override another Specific Act of the Parliament regulating cash withdrawals.

It is trite that an Act of the National Assembly ranks higher than a subsidiary regulation like the instant guideline under review, especially when the Act contains a specific provision as in this case.

While the underlining objective of the Guidelines under reference is well appreciated to further enforce its cashless policies and curb Money Laundering related issues perpetrated with cash, the propriety of same in light of the express provision of Section 2 of the Money Laundering (Prevention and Prohibition Act), 2022 calls in some question as to its legality.

Little wonder the Federal House of Representatives has summoned the CBN Governor to the floor of the House to explain the propriety or otherwise of the status. There is a need for harmonization of the laws and the regulation in order to foster consistency.

PERSPECTIVE FROM THE UNITED KINGDOM.

In the United Kingdom for example, the structural changes brought about in the Financial Services Act[6] will see the new Financial Conduct Authority ('FCA') become responsible for supervising many financial service providers under current money laundering legislation.[7] The FCA will also assume responsibility for supervising small electronic money (e-money) issuers.[8]

It is pertinent to note that, cash withdrawal limit in the UK is not static as it varies from one bank to the other. The withdrawal limit is largely influenced by the type of account, the owner of the account, and the particular bank in question. Also, where a person/corporate body intends to withdraw more than its daily threshold, it must give an advanced notice to enable the bank prepare beforehand. A very notable example is HSBC[9] where basic account holders can withdraw a maximum of £300, while a customer that has given an advanced notice is entitled to £500 daily. Preference is also given to customers with high net worth as they are allowed a daily withdrawal limit of £1,000.[10]

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[6]**FSA 2010.**

[7] **The HMRC also has responsibility for supervision and registration under the Money Laundering legislation.**

[8]**The FSA has already taken responsibility for supervising small electronic money (e-money) under the Electronic Money Regulations 2011, S.I 2011/99 (in force from 9 February, 2011). E-Money issuer had previously been registered with HMRC under Money Laundering Regulation 2007, SI 2007/2157.**

[9]**It is a British multi-universal bank, and the largest bank in Europe by assets.**

[10]**Henry Sandercook'How much can you withdraw from ATM? What is maximum amount of money I can get from UK cash machine in one day'<https://www.nationalworld.com/lifestyle/money/how-much-can-you-withdraw-from-atm-maximum-money-uk-cash-machine-day-3786097> Last accessed 21st December, 2022.**

Conversely, the withdrawal limit in Natwest[11]for student and basic account holders is £250 daily and £300 for silver and platinum accounts. For Black accounts, which is another word for premium account, the withdrawal limit is £750. As mentioned above, the withdrawal limit is not the same for every bank in the UK, but this is not the case in Nigeria owing to the CBN policy.

More so, the Money Laundering Provisions applicable to financial service providers in the United Kingdom are derived principally from:

- The UK Money Laundering Regulations 2007[12] (the 2007 regulations);
- Part 7 of the Proceeds of Crime Act (POCA) 2002[13]
- The Terrorism Act, 2000[14]. and
- Schedule 7 of the Counter Terrorism Act 2008.

Undoubtedly, there are apparent weaknesses in the banking system that enhance money laundering and abuse of cash issues such as vote buying and other forms of inducement the CBN is targeted at curbing. Criminals using legitimate financial institutions to launder criminal proceeds is likely to be one of the priorities of the new guidelines. The issue is highly topical and has a prominent international profile in recent times.[15] In June, 2011, the FSA reported on the role of UK banks in dealing with high-risk customers in FSA; Banks' Management of High Money-Laundering Risk Situations. It concluded that[16]:

> **"….around three quarters of banks in our sample, including the majority of major banks are not always managing high-risk customers and Politically Exposed People) relationships effectively and must do more to ensure they are not used for money laundering…. We are concerned there has been insufficient improvement in bank', Anti-Money Laundering systems and controls during this period"**

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[11]**National Westminster Bank, commonly known as NatWest, is a major retail and commercial bank in the United Kingdom based in London, England. It was established in 1968 by the merger of National Provincial Bank and Westminster Bank.**

[12]**S1 2007/2157, which came into force on 15 December, 2007.**

[13] **Amended by the Serious Organised Crime and Police Act 2005.**

[14] **Terrorism Act ('TA") 2000, ss. 18 and 21A as amended by both the Anti-Terrorism Crimes and Security Act 2001 and the Terrorism Act, 2006.**

[15] **In 2012, the accusation that billions of dollars from Mexican Drugs Cartels have been laundered through the HSBC Bank received prominent international attention.**

[16] **FSA Banks' Management of High Money-Laundering Risk Situations; How Banks Deal with High-Risk Customers (including PEPs), Correspondent Banking Relationships and Wire Transfers (June 2011), para 23-5**

PROS AND CONS OF THE POLICY.

From all indications, the essence of the new Regulation is to bolster its cashless policy owing to the present wave of financial technology across the globe. Beyond that, we have outlined some pros and cons of the CBN's financial policy on the country's financial ecosystem.

REDUCED RISK OF MONEY LAUNDERING.

Cash transactions are largely more challenging to track than online transactions. Without being oblivious of the fact that there are ways to make online transactions untraceable, cash transactions remain more susceptible to criminal activities and/or illegal activities.

According to a report on **Crime and Anti-Money Laundering by C. King et al, 2018,** cash is the primary means of transaction in money laundering/terrorist financing.

However, online financial transactions, such as cryptocurrencies, online auctions, and proxy servers, are also difficult to trace. Notwithstanding, in a Country like Nigeria, where most transactions are cash-based, it is plausible that most money laundering activities are offline.

The anti-money laundering activities put in place by financial regulators and financial institutions will flag large or suspicious deposits.

Ultimately, what the CBN seeks to achieve with its new policy is to track financial transactions and curb Money laundering related issues by limiting the circulation of the legal tender.

POTENTIAL FOR SMALL BUSINESSES TO GO DIGITAL.

Small businesses makeup 96% of the number of companies in Nigeria, and according to the 2020 World Play Global Payment Report[17], cash is used for 91% of in-store purchases in Nigeria.

The above figures are the realities of small businesses in the country, and the directive to cut down cash transactions could force businesses to embrace digital payments enabling them to better track daily sales and manage inventories more efficiently.

Digital payments for small businesses could also reduce the time spent on data entry and processing invoice papers. It also provides the business with readily available financial records for its loan applications.

According to statista,[18] over 60% of small businesses in Kenya use mobile money for transactions. This has, in turn, increased Kenya's financial market and positively affected loan disbursement and repayment.

IMPROVE FINANCIAL INCLUSION FOR UNDERSERVED COMMUNITIES

The financial inclusion evangelism in Nigeria has gone on for many years. Fin-tech and many other financial institutions have been created to solve this problem, but many Nigerians remain unbanked. According to the World Bank, Nigeria is one of seven countries that make up half of the 1.7 billion unbanked people globally.[19]

The CBN's new policy could force financial institutions and regulators to intensify economic inclusion efforts as unbanked citizens will need to transact digitally.

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[17] https://www.cashmatters.org/blog/nigeria-cash-accounts-91-in-store-purchases
[18] https://www.statista.com/statistics/1249097/usage-of-mobile-money-by-micro-and-small-businesses-in-kenya/
[19] https://www.thisdaylive.com/index.php/2022/06/30/world-bank-lists-nigeria-among-countries-with-huge-unbanked-population/

This could also give Nigeria's Payment Service Banks (PSBs), MTN (Momo PSB), Airtel (SmartCash PSB), Globacom (Moneymaster PSB, and 9mobile (9PSB) some leverage in incentivizing more Nigerians to turn to mobile money.

While we have seen the value of mobile money transactions increase over the years from ₦ 1.1 trillion to ₦5.1 trillion between 2017 and 2019. It still has a long way to go, as 63% of transactions in Nigeria are done with cash.

While the new directive could bode well for tackling illicit transactions and improving the payments ecosystem, it might also have some adverse effects.

POTENTIAL INCONVENIENCE FOR INDIVIDUALS AND ORGANIZATIONS WITH HIGH CASH TRANSACTION NEEDS.

Cash is the greatest asset for people who operate point of sale (PoS) terminals and organizations such as Moniepoint that facilitate these transactions. These PoS agents, like everyone else, get their cash from banks, and the cash withdrawal limit automatically makes it difficult for them to service their customers.

This inconvenience also extends to individuals such as artisans who accept cash for their services. With the new policy, those who do not have bank accounts or even Bank Verification Numbers (BVNs) may find it hard to receive payments.

It is verified that out of the 109 million adults in Nigeria, 56 million have BVNs. This leaves 53 million Nigerian adults without access to digital payment systems when little cash is available.[20]

According to Nigeria's National Bureau of Statistics (NBS), 34.4 million of the 39.6 million micro, small, and medium enterprises in Nigeria are informal. Another report by the

[20] https://www.nairametrics.com

NBS has also shown that only 22% of the 34.4 million informal businesses use the Internet daily.[21]

✹ LIMITED INFRASTRUCTURE TO SUPPORT DIGITAL PAYMENTS.

While the CBN indicated that its latest policy is to drive its cashless policy further, there is still need for proper infrastructures to support digital transactions. Besides the fact that Nigerians pay more for data, Internet connectivity failure is a well-known phenomenon in the country.

More so, other digital payment infrastructures, such as USSD, have also been known to fail often. On the other hand, internet connection or mobile phones are not needed to complete cash payments.

As stated earlier, cash transactions are rapid and instant; a digital equivalent of this would be contactless payments which is not widely used in Nigeria's payment ecosystem.

According to a Business Day article published on the 1st day of November, 2022[22], Hope Moses Ashike[23] in her article for the Business Day stated that the CBN recently added contactless payment as a new payment option for the financial sector. While the new payment option is innovative, it is seldom used in the space.

Similarly, in the UK, the EMI 2011 implement 2EMD, which replaces the first Electronic Money Directive 2000/46/EC ('1EMD') and seeks to remove barriers to market entry and facilitate the taking up of the business of issuing electronic money.

✹ CREATION OF A NAIRA BLACK MARKET.

One of the plausible problems that the limitation imposed by the CBN might cause is the likely creation of a Naira Black market.

By imposing limits, it is automatic that this creates room for speculation, leading to a black market and hoarding of the Naira. The policy of a cashless society envisaged might just lead to creating black markets.

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[21] Ibid

[22] https://businessday.ng/banking/article/new-payment-solution-to-drive-easy-efficient-cashless-options/#:~:text=According%20to%20the%20CBN%2C%20contactless,%2Dvalue%20large%2Dvolume%20payments.

[23] Hope Moses Ashike is a Senior correspondent at Business Day Media Ltd.

In Nigeria, bans and restrictions have sometimes created the opposite of its intended effect. The country's ban on rice is an example of how restrictions have led to bad actors creating a high-margin black market.

According to the data research company, Dataphyte,[24] 2million metric tons of rice are smuggled into the country annually, with rice consumption rates higher than its local production rate, illegal importation of rice into the country might continue for a while.

The same scenario could also play out with the current limit placed on cash withdrawals. Limited digital payment infrastructure might cause Nigerians to search for cash in undesignated financial markets.

CONCLUSION.

The CBN policy, despite its advantages and disadvantages, is here to stay having been done in accordance with the law. Therefore, any challenge to the regulation can only be sustained if the challenger is able to establish that the regulation is contrary to the provisions of any written law or was issued mala-fide.

RECOMMENDATION.

It is our view that, focus should be geared towards the positives of the policy, and how businesses and Individuals can thrive in the new regulatory regime. Notwithstanding the new policy, we believe that businesses can still thrive by doing the following, to wit:

1. Registration and operation of businesses through business entities.

2. Carrying out transactions via online banking and mobile banking.

Also, considering the current reality of the implementation of the policy, the CBN has a corresponding duty to create an enabling environment for the policy to thrive to wit:

1. A 24/7 response agency to tackle issues bordering on failed transactions which would improve confidence in online transactions.

[24] https://www.dataphyte.com/latest-reports/agriculture/nigeria-still-imports-rice-and-the-cbn-is-aware-but-have-they-told-president-buhari/#:~:text=It%20is%20clear%20that%20the,affects%20a%20country's%20economic%20stability.

2. Strict Regulations and Policies to further prevent and respond to Internet fraud, Cybercrimes and implementation of the CBN Guidelines for Electronic Banking 2003 which is tailored to protect end users of electronic or internet banking by ensuring financial institutions provide the necessary insurance to unsuccessful transactions. In **UNITED BANK FOR AFRICA PLC v. VERTEX AGRO LIMITED**[25] the Court of Appeal Abuja Division Per Agim JCA (as he then was) held thus:

> **"I agree with the holding of the trial Court that the tenor and nature of exemption/indemnity relied upon by the Defendant in this case is against the general and particular provisions of the Guidelines on Electronic Banking in Nigeria 2003 made pursuant to the Central Bank of Nigeria (Establishment) Act, which is generally tailored to protect end users of electronic or internet banking having in mind the complexity and fragility of that area of banking.**

3. Enforcement of the 72hour Rule for reversal of unauthorized transactions as stipulated in **Section 37(3) of the Cyber Crimes (Prohibition, Prevention, Etc) Act.**

Interestingly, the aforesaid 72hour Rule was judicially flavored in the recent case of **UNITED BANK FOR AFRICA PLC v. VERTEX AGRO LIMITED**[26] the Court of Appeal, Abuja Division **Per Agim JCA (as he then was)** held thus:

> **"By virtue of S.37(3) of the Cybercrimes (Prohibition Prevention) Act 2015, the appellant was bound to provide clear legal authorization for the unauthorized debits or reverse the unauthorized debits within 72 hours after it was informed by the Managing Director of the respondent on 21-10-2016 or it received the formal letter from the respondent on 24-10-2016 complaining about the unauthorized debits of 21-10-2016.**
> **The exact text of S.37(3) of the Cyber Crimes (Prohibition Prevention) Act 2015 reads thusly-**
> **A financial institution that makes an unauthorized debit on a customer's account shall, upon written notification by the customer, provide clear legal authorization for such debit to the customer or reverse such debit within 72 hours and any financial institution that fails to reverses such debit within 72**

[25] **(2020) 17 NWLR Pt. 1754 Pg. 467 at 508 Para D-E**
[26] **Ibid at 516-517.**

hours, commits an offence and is liable on conviction to restitution of the debit and a fine of =N5,000,000.00."

The appellant did not provide any clear authorization of the debits within 72 hours of receipt of the letter from the respondent on 24-10-2016 complaining about the unauthorized debits. It was bound to reverse the debits within the same 72 hours and enforcement of the 72hour rule stipulated on unauthorized withdrawals for deposit"

At page 519 of the Report the Court went further to hold thus:

"The provision makes the appellants failure to provide clear authorization of the unauthorized debit or reverse the debit within 72 hours of being notified of the debit by the respondent an offence punishable by a fine of 5 million. The provision did not prescribe any general damages that the Court must award for such wrongful debits. The 5 million naira mentioned therein is the fine it prescribes as punishment for the offence created therein.The provision did not prescribe any general damages that the Court must award for such wrongful debits. The 5 million naira mentioned therein is the fine it prescribes as punishment for the offence created therein."

This decision was on the invitation of Mr. Michael Jonathan Numa Esq (as he then was, Now SAN) which the Court of Appeal acceded to accordingly.

It is therefore incumbent on the CBN to impose the appropriate penalty stipulated by law in deserving cases when the deposit money banks have failed in their duty of giving clear authorization or reversing the customer's transaction within the timeframe stipulated by law.

4. Creating a Task Force for effective implementation such as the Financial Action Task Force on Money Laundering (FATF) established by the G7 summit, which was held in Paris in 1989. FATF is an international organization that attempts to set international standards in the fight against money laundering and terrorist financing. The European Union has implemented the FATF recommendations on money laundering in its three Money Laundering Directives Between 1991 and 2005.

5. The value of our currency must be taken into consideration as the daily withdrawal limit set by the CBN may not be able to purchase items that are moderately expensive owing to inflation

and other market determinants. By way of juxtaposition, what the daily withdrawal limit in the UK can purchase, the daily withdrawal limit set by the CBN cannot purchase the same item in our clime.

Finally, while the underlining objective of the regulation is laudable, a more robust framework can be created to establish a harmonized structure in order to avoid frequent judicial challenges on the basis of potential conflict with existing Legislations.

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