



Measures & Effects

Legal Regulatory and Commercial Issues in Central Bank of Nigeria (CBN)'s Extension of Global Standing Instructions (GSIs) to Micro-Finance Banks (MFBs) and Corporate Accounts



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The role of banks in financial intermediation and as economic facilitators - collecting deposits from their customers and converting them into loans for borrowers or investments while using some of the interest and other charges/fee income to sustain (profitable) operations – cannot be overstated. Banks, therefore, have a critical role in economic growth through credit provision/funding of commercial activities that have an overall positive effect on the economy.

The creditworthiness of a borrower is an important consideration made by banks before a credit facility is granted because default can have adverse effects on the profitability of the bank, its capacity as a financial intermediary, and sometimes even its very existence. Although this consideration – which is of paramount importance to banks – is usually made, notable lapses occasionally occur such as in the run-up to the global financial crisis of 2008.¹

Due to the adverse effects that non-performing loans² (NPLs) can have

¹ See Ian Rossa O'Reilly, *'The Investment Industry: A Top-Down View'*, Institute of Chartered Financial Analyst Investment Foundation Programme Course Material 2020, 16.11.2021, p. 8.

² According to the Corporate Finance Institute (CFI), an NPL "...is a loan in which the borrower is in default and has not paid the monthly principal and interest repayments for a specified period. Non-performing loans occur when borrowers run out of money to make repayments or get into situations that make it difficult for them to continue making repayments towards the loan." See CFI, *'What Is a Non-Performing Loan?'*: <https://corporatefinanceinstitute.com/resources/knowledge/finance/non-performing-loan-npl/> (accessed on 24. 11.2021).

"THE CREDITWORTHINESS OF A BORROWER IS AN IMPORTANT CONSIDERATION BY BANKS BEFORE A CREDIT FACILITY IS GRANTED"



on the stability of banks and the economy as a whole, governments all over the world always take steps to ensure that NPLs of financial institutions (FIs) are always under control. In Nigeria for example, measures that have been taken to manage burgeoning NPLs include the establishment of Asset Management Corporation of Nigeria (AMCON) in 2010,³ the introduction of Credit Protection Clause⁴ (CPC) and other such similar measures.

One of the recent measures taken by the CBN to minimise incidences of NPLs in the banking sector was the introduction of Global Standing Instructions (GSIs) for individual customers, as a mechanism to aid the expeditious recovery of loans by banks from chronic defaulters. This article seeks to highlight the effects of the CBN's GSI Policy on the banking sector in Nigeria, the

possible effects of an extension of the policy to MFBs and corporate accounts; and an in-depth analysis of all the legal issues surrounding its extension and implementation.

Historical Context

The Nigerian banking system has gone through various major epochs of crises such as the collapse of the industrial and commercial banks established in 1929, the dearth of banks in anticipation of new banking acts⁵ and the effect of the Structural Adjustment Program (SAP) of 1986 that led to the liberalisation of the grant of banking licenses. According to a commentator, the periods of bank crisis in Nigeria were caused by many factors such as " ... poor corporate governance/management capital base inadequacy, policy and

regulatory environment, widespread incidence of non-performing loans arising mainly from economic downturn, negative lending and borrowing culture, asymmetric information and aftermath of competition."⁶ These factors were the catalysts that produced the failed banks for the mid to late 1990s, and also the bank crisis of 2008 in Nigeria.

Due to the potential crises that NPLs can cause to the stability of banks and consequently the economy, the government in collaboration with various regulators in the industry such as the CBN has made various interventions to ensure that financial institutions are in a healthy state. The CBN introduced "**The Alpha Project Initiatives (API)**" in 2010 tailored towards: (1) Enhancing the quality of banks; (2) Establishing financial stability; (3) Enabling healthy financial sector evolution; and (4) Ensuring the financial sector contributes to the real economy.⁷

The implementation of **API** gave birth to notable interventions such as the establishment of AMCON, credit risk regulations,⁸ CBN's Credit Risk Management System (CRMS), prescription of minimum liquidity ratio for deposit money banks (DMBs), maximum NPL ratios, recapitalisation directives and

³ Vide the **AMCON (Establishment) Act Cap. A24A, LFN 2004** which was initially amended by the **AMCON (Amendment) Act 2015** and subsequently by the **AMCON (Amendment No. 2) Act 2019**. See Ejiro Eferakeya, 'Impressions: Personal Liability of Directors under the Asset Management Corporation of Nigeria Act (AMCON Act) As Amended', *LeLaw Thought Leadership Reflections*, March 2021, p. 1: https://lelawlegal.com/add111pdfs/TLR-AMCON_corrected.pdf (accessed 14.04.2022).

⁴ The Bankers Committee at its 345th meeting of 26th August 2019, as part of initiatives to improve credit culture and credit risk management prescribed "credit protection clause" for loan offer letters and set out the implementation guidelines for its enforcement.

⁵ The **Central Bank of Nigeria Ordinance 1958** empowered the Minister of Finance in collaboration with the CBN to revoke the banking license of a bank for public interest. The **Banking Act 1969** also prescribed a company holding a banking license as a condition precedent to transacting banking business. It also prescribed that an application for the licence and submission of the memorandum of association must be made to the Minister of Finance through the CBN. This led to the winding up of a lot of weak banks winding up.

⁶ L.A. Ibadin et al, 'Crises in Nigerian Banking Sector: Causes, Effect and Resolution Strategies', *Researchgate.net*, March 2009: https://www.researchgate.net/publication/342803082_CR1SES_IN_NIGERIAN_BANKING_SECTOR_CAUSES_EFFECT_AND_RESOLUTION_STRATEGIES (accessed 17.10.2021).

⁷ Cajetan M. Anyanwu, "The Central Bank of Nigeria and Its Developmental Functions: A Review of Current Initiatives", *CBN's Economic and Financial Review*, Vol. 49, No. 4, December 2011, p. 198: <https://www.cbn.gov.ng/Out/2015/RSD/EFR%20Vol%2049%20No%204%20Dec%202011.pdf> (accessed on 11.12.2021).

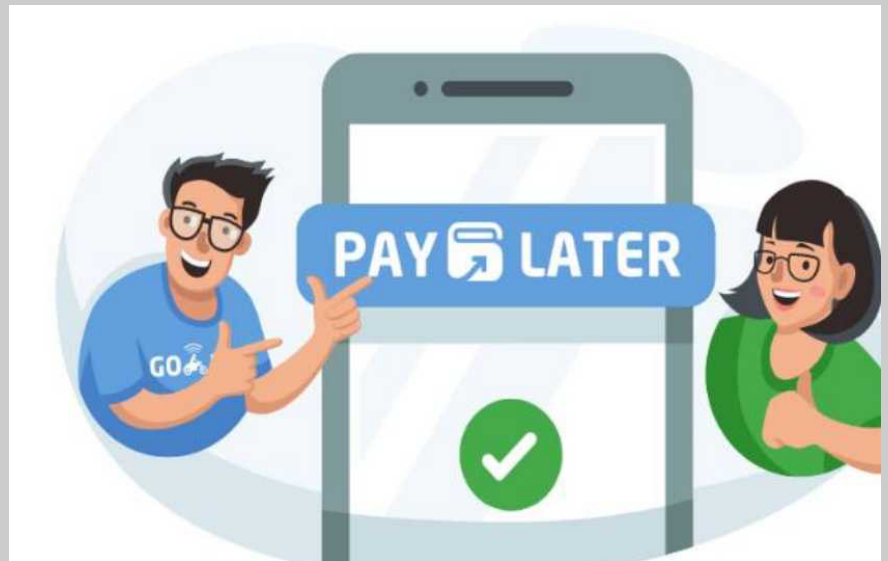
⁸ These include: CBN's *Guidelines for the Licensing, Operations and Regulation of Credit Bureaus In Nigeria 2008*, *Regulatory Guidelines for the Operation of Redesigned Credit Risk Management System Guidelines 2017* and *Additional Regulatory Guidelines for the Operation of Redesigned Credit Risk Management System 2018*.

other similar measures to improve the asset quality of Banks. Despite these interventions, high levels of NPL ratios are still a recurring issue in the banking industry. To prevent a reoccurrence of excessive NPLs ratios, the CBN monitors the activities of banks to ensure that their NPLs ratios are stable. Despite the regime of consumer protection in Nigeria, banks have still suffered under the bite of NPL assets.⁹

Prior to the advent of the **GSI** system, banks had two ways of recovering debts or costs from their customers. The Banks could either consolidate the debts owed by a customer and set them off against the deposits available in different accounts in the same bank or file an action against the customer in the High Court of the State¹⁰ where the subject matter arose. The **GSI** Mechanism is a great innovation if properly utilised within the confines of already established laws.

Global Standing Instructions: Conceptual Analysis and Operation

Consequential to the approval by the Banker's Committee, on 13th July 2020, the CBN pursuant to its powers under the **CBN Act**¹¹ published the **Operational Guidelines on Global Standing Instruction for Individuals (OGGSII)**.¹² The aim of the **OGGSII** is: (i) facilitating an improved credit repayment culture; (ii) reducing the NPLs in the Nigerian banking system; and (iii) watchlisting consistent loan



defaulters.¹³

GSI is a debt recovery mechanism in which debt owed by an individual borrower to a Creditor Bank can be recovered by it from other accounts of the borrower in third-party financial institutions. This method is used as a last resort; the Creditor Bank has to ensure that the **GSI** scheme is appropriately used because it shall be responsible to indemnify the Nigeria Inter-Bank Settlement System Plc (NIBSS) and other Participating Financial Institutions (PFIs), from liabilities that may arise as a result of improper use.

At the point of a loan application, the Creditor Bank

has a duty to educate the borrower about the **GSI** System and ensure that the **GSI** Mandate¹⁴ is executed by the Borrower either electronically or physically. On default by a Borrower, the Creditor Bank initiates a **GSI Trigger**¹⁵ to the NIBSS in respect of the loan amount. The NIBSS will then conduct an Account Search¹⁶ to find out what financial institutions the Borrower has qualifying accounts¹⁷ with. The search may be done on the Industry Customer Accounts Database (ICAD) or any other service created or provisioned for this purpose.

The PFIs will individually execute a **GSI Mandate**¹⁸ with NIBSS and a **GSI Master Plan (GSIMP)** will be executed by all participants excluding the debtor. A copy of the GSIMP will be submitted to the CBN. Funds in the Qualifying Accounts of the Borrower will then be utilised to satisfy the debt owed to the Creditor Bank. The debts that can be recovered under the **GSI** Scheme are the principal sum and accrued interest of a loan by the Creditor Bank but does not extend to penal charges.¹⁹

9 Friday Okafor Onasom, 'Law and Creditor Protection in Nigeria', (2016, Malthouse), p.3

10 See proviso to section 251 1999 Constitution of the Federal Republic of Nigeria (as amended).

11 Cap. C4, LFN 2004. Section 2 CBN Act lists the principal object of CBN which includes to "... promote a sound financial system in Nigeria".

12 See CBN's 'Circular on 'Operational Guidelines on Global Standing Instruction (GSI) – Individuals', 13.07.2020: <https://www.cbn.gov.ng/Out/2020/CCD/CBN%20-%20Operational%20Guidelines%20on%20Global%20Standing%20Instructions%20GSI%20-%20Individuals.pdf> <https://www.cbn.gov.ng/Out/2020/CCD/CBN%20-%20Operational%20Guidelines%20on%20Global%20Standing%20Instructions%20GSI%20-%20Individuals.pdf> (accessed on 19.10.2021).

13 See Guideline 1.1 OGGSSII.

14 Under the OGGSSII, a **GSI** Mandate is "An instruction (written or digital) executed by a borrower being an Account Holder in a Participating Financial Institution, authorizing the recovery of an amount specified by the Creditor from any/all accounts maintained by the Account Holder across all Participating Financial Institutions."

15 According to the OGGSSII, a **GSI** Trigger is "An electronic instruction from a Creditor bank to initiate a **GSI** Transaction (upon default by the borrower)."

16 The OGGSSII, defines an Account Search is "The process of identifying all qualifying bank accounts maintained by a Customer across Participating Financial Institutions by NIBSS." The search is usually carried out on the NIBSS Instant Payment Platform.

17 Per Guideline 2.0 OGGSSII, "Qualifying Accounts" include: a) Individual Savings Accounts; b) Individual Current Accounts; c) Individual Domiciliary Accounts; d) Investment/Deposit Accounts (₦ & Foreign Currency); and e) Electronic Wallets. It also applies to Joint Accounts.

18 Guideline 3.2.3 OGGSSII.

19 Guideline 1.0 OGGSSII.

The **GSI** system is to apply to loans granted by PFIs since 28th August 2019. It is unclear if creditor banks had ensured that borrowers executed **GSI** mandate instruments prior to 13 July 2020. Any non-execution of such **GSI** mandates would render the **GSI** unenforceable against such borrowers.²⁰

Potential bottlenecks in the implementation of the **GSI** system

Like any innovation, the implementation of the **GSI** system has attracted mixed reactions. One school of thought believes that **GSI** implementation has brought about expeditious recovery of debt from chronic debtors, while the other believes that due to fundamental flaws in its structure and legal considerations, the cons outweigh the pros. However for purposes of fine-tuning for potential improvement, we examine some of the criticisms of the **GSI** system:

1) Application to joint account holders

According to **OGGSII**, eligible accounts for the application of the **GSI** system include joint accounts. Although such provisions seem to be fundamentally flawed *prima facie*, the intendment of the **OGGSII** could have been to prevent the creation of additional loopholes that chronic defaulters can explore to shirk the fulfilment of their loan obligations. For example, a debtor could move money to a joint account, to avoid paying his debt and frustrate debt recovery under the **GSI**, if same did not cover joint accounts. This is an understandable concern on the part of the Creditors but the cure to such sharp practices must be within the confines of established laws.

By its nature, a joint account is an account opened by two or more

parties. Intrinsic to the nature of a joint account is that a joint mandate is required for the bank to take any action affecting the account. This means that there is no legal basis for the application of the **GSI** system to joint accounts if all account holders of the joint account are not eligible borrowers in the context of the **GSI** system.²¹ This is in line with the trite principle of law that the rights and obligations of a party must not be determined without recourse to him.²²

The Supreme Court (SC) in **Ndoma-Egba v ACB Plc**²³ held *per Oguntade, JSC* that where joint-account holders have jointly executed a mandate form for a joint account, the bank owes each account holder a duty not to allow either of them to draw funds from the joint account, without the concurrence of the other parties signified by its signature.

Furthermore, the application of the **GSI** system to joint accounts also violates the principles of privity of contract.²⁴ This is evident in the fact that a non-privy party to the **GSI** mandate between the PFI and the borrower bears the inherent risk of having the **GSI** system being applied against his funds. This clearly violates the rights accruable to such third party. It is therefore improper for PFIs to apply the **GSI** system to joint accounts without recourse to other joint account holders or without judicial orders.

In **Nospecto Oil and Gas v. Olorunnimbe & Ors**,²⁵ *Augie, JSC*



²⁰ Kubi Udofia, 'A Critical Appraisal of the Global Standing Instruction', *ThisDay Lawyer*, 25.08.2020: <https://www.thisdaylive.com/index.php/2020/08/25/a-critical-appraisal-of-the-global-standing-instruction/> (accessed 10.01.2022).

²¹ Kubi Udofia, (*supra*).

²² Section 36 CFRN as amended.

²³ [2005] 14 NWLR (Pt. 944) 79, at 112-113H-B.

²⁴ Unini Chioma, 'The Implications of the CBN's Guidelines On Global Standing Instruction (GSI) (Individuals) On Joint Accounts', *TheNigeriaLawyers*, 12.08.2020: <https://thenigerialawyer.com/the-implications-of-the-cbns-guidelines-on-global-standing-instruction-gsi-individuals-on-joint-accounts/> (accessed 6.02.2022).

²⁵ [2022] 1 NWLR (Pt. 1812) 495, at 532A-B.

held that the doctrine of privity of contract will not apply to a non-party to the contract, who may have to, unwittingly, be dragged into the contract with a view to becoming a shield or scapegoat against the non-performance by one of the parties. Consequentially, a PFI which authorises such a **GSI** transaction may be liable in damages to the third party.

2) Restriction to individuals alone

As earlier stated, the **GSI** system applies only to Individual Accounts. This limits the ambit of the enforceability of the **GSI** system and affects its effectiveness, because corporate bodies utilise more debt than individuals. This means the coverage of the **OGGSII** does not cover a large percentage of borrowers. For example, Nigerian companies raised over 1 trillion from the issuance of debt securities in 2020.²⁶ The **GSI** System would operate more effectively if it is extended to corporate accounts.²⁷

3) Absence of mechanism challenging debt

Although the **OGGSII** provides for penalties for improper application of the **GSI** system, it is silent on what immediate procedure can be taken to dispute a debt. A robust but simple methodology of



challenging the application of the **GSI** to one's account has to be incorporated into the **OGGSII**.

A step to cure this defect will be to ensure that PFIs apply by motion *ex parte* to the State High Court before applying the **GSI** to a borrower's account. This will checkmate the potential of the **GSI** system being wrongly used by PFIs.²⁸ It is however important to note that this will only be possible if the debtor gets wind of **GSI**'s utilisation to his deposits to recover debt.

4) Contractual Obligations of PFIs that are not the Creditor Bank

A major drawback to the application of **OGGSII** is that it could potentially lead to PFIs breaching their statutory obligations. This is so because, for every account maintained by a person with a bank, there is an implicit obligation on the part of the bank not to disclose the account details to a third party without the consent of the account holder.²⁹ The application of the **GSI** Guidelines would not absolve the participating bank from liability arising from a breach of its

contractual obligation to an account holder. More elaborate provisions have to be incorporated in the **OGGSII** to prevent such infractions.

Effects of Expansion of GSIs to Corporate Accounts and MFBs

Although FIs are always affected by macroeconomic factors, the various government interventions to strengthen financial institutions and consequently reduce NPLs have been reasonably effective. For example, according to World Bank statistics,³⁰ the NPL ratios of Nigerian banks have been steadily falling since 2009. Whilst the NPL percentage to gross loans in 2009 was 37.25%; as of December 2020, it had dropped to approximately 6%.³¹

Even though this data shows considerable improvement in NPL ratios, there is room for improvement to meet the 5% target CBN prescribed maximum NPL ratio for Deposit Money Banks (DMBs).³² Nonetheless, the **OGGSII** is a useful tool for debt

²⁶ Lolade Akinmurele, 'After Blockbuster 2020, Nigeria's Corporate Debt Issuance to Remain Robust', *Businessday.ng* 20.05.2021: <https://businessday.ng/business-economy/article/after-blockbuster-2020-nigerias-corporate-debt-issuance-to-remain-robust/#:~:text=Nigerian%20corporates%20issued%20a%20record%20N1.02%20trillion%20%28USD,low%20interest%20rate%20environment%20spurred%20appetite%20for%20borrowing> (accessed 11.04.2022).

²⁷ It should be noted that there are other measures that a creditor can utilise to recover debts owed by a debtor company. This includes initiating winding up proceedings, appointing a receiver manager to manage the company until its debts are paid, reputation risk and regulatory sanctions. The application of the **GSI** would be better suited for relative smaller debts.

²⁸ Adenike Oyalowo, 'CBN's 'Global Standing Instruction (GSI) and Loan Recovery in Nigeria'', *LinkedIn*, 18.07.2020: <https://www.linkedin.com/pulse/cbns-global-standing-instruction-gsi-guidelines-loan-recovery/> (accessed 06.02.2022).

²⁹ Kemi Pinheiro, 'GSI Directives: Did the CBN Get it Right?', *TheNigeriaLawyers*, 21.07.2020: <https://thenigeria-lawyer.com/gsi-directives-did-the-cbn-get-it-right/> (accessed 06.02.2022).

³⁰ World Bank Data, 'Bank Nonperforming Loans To Total Gross Loans (%) - Nigeria': <https://data.worldbank.org/indicator/FB.AST.NPER.ZS?locations=NG> (accessed 24.11.2021).

³¹ See CBN's 'Communique No. 134 of the Monetary Policy Committee Meeting Held on Monday 25th and Tuesday 26th January 2021', 26.01.2021, p.7: <https://www.cbn.gov.ng/Out/2021/CCD/COMMUNIQUE%20No.%20134%20%20OF%20THE%2027%20MEETING%20OF%20THE%20MPC%20%2025%20-%2026%20JANUARY%202021.pdf> (accessed 26.11.2021).

³² Guideline 6.15 CBN's Prudential Guidelines for Deposit Money Banks in Nigeria 2019 prescribes the maximum NPL ratio in relation to total gross loans for banks as 5%, with effect from August 2019: https://www.cbn.gov.ng/Out/2019/FPRD/Exposure_DMBs%20%20August%202019.pdf (accessed 24.11.2021).

recovery and will undoubtedly help in the reduction of NPLs in Nigeria. It is very important because if not for the **OGGSII**, chronic defaulters on payment of credit facilities will have a leeway to delay the process of loan recovery and this will negatively impact FIs.³³

Whilst the **OGGSII** does not apply to corporate accounts, the CBN's prescription for CPC to be inserted in loan offer letters applies also to corporate obligors /accounts.³⁴ Although this might seem to be a credible solution to the non-payment of loans by corporates and other individual obligors, this is not necessarily the case. This is because CBN's circular that birthed the CPC only prescribes the content and form of the CPC and other related matters, but does not prescribe for sanctions for failure to include the clause in loan offers or a robust framework for the implementation of the innovation.

This, therefore, necessitates the need for more robust legislation covering the application of deposits of a customer in Third-party Banks and OFIs to set off the loan debt on default by a Debtor. For example, CBN Director of Financial Policy and Regulation, Mr. Kevin Amugo, said at a virtual conference with the theme: 'Non-Performing Loans and Global Standing Instruction Policy: Impact and Insight for Financial Stability', that the implementation of the policy in the first nine days in August 2020 led to the recovery of ₦50 million.³⁵

Due to the restriction of its enforceability to individual accounts and its effectiveness in reducing NPLs in the banking sector, there is a need to extend the **GSI** system to corporate accounts and MFBs. This is an important step to take as it will consolidate the positive strides that have been made on the reduction of NPLs through the application of the **GSI** system.

It is also important to note that there are superior rights that are traditionally connected to corporate accounts that will override the application such as trust account, accounts of companies under receivership. **GSI** application is also inferior to banker's right to set off.³⁶ These instances highlight the possible situations where the **GSI** system would not be appropriate mechanism to recover debt.

Notwithstanding the foregoing, the proposed extension of the **GSI** system to corporate accounts and MFBs, judging from its effectiveness, is a welcome development that will reduce the prevalence of NPLs in the banking sector and consequently further strengthen the integrity and stability of the banking sector as a whole. There is however room for improvement and there has to be an evolution of **OGGSII** for it to be able to optimally achieve the purposes for which it was stipulated.

The GSI system and Banker-Customer Relationship

It is trite that the banker-customer relationship is that of debtor and creditor founded on a simple contract.³⁷ The repayment obligation of the bank usually arises when the customer demands that the payment be made to him or any other person specified by him. Thus, if the Bank does not satisfy its obligation to pay the debt when so demanded,



33 On 22nd October 2021 at the Financial Correspondents Association of Nigeria workshop in Ibadan, Mr. Adekunle Adeniji – CBN's Assistant Director of Banking Supervision reportedly stated as follows on the potential extension of the GSI policy: "The GSI started with personal accounts but we are expanding to corporate accounts and microfinance banks... We understand that an individual can take a loan with commercial banks and choose not to fund his account and take his money to OFI... Microfinance banks are going to be part of the Global Standing Instruction (GSI) policy but that phase would come gradually". See Jeremiah Ifeanyi, 'CBN to Expand GSI to Corporate Accounts and Microfinance Banks', Nairametrics, 23.10.2021: <https://nairametrics.com/2021/10/23/cbn-to-expand-gsi-to-corporate-accounts-and-microfinance-banks/> (accessed 27.12.2021).

34 See CBN's Circular, 'New Offer Letter Clause for Credit Facilities', 26.08.2019: <https://www.cbn.gov.ng/Out/2019/BSJ/Circular%20on%20New%20Clause%20for%20Credit%20Facilities.pdf> (accessed 14.04.2022), for further details.

35 'Global Standing Instruction Implementation in Nigeria' Breaking Africa News: <https://breakingafricanews.com/global-standing-instruction-implementation-in-nigeria/> (accessed 09.12.2021).

36 The Court of Appeal held per Uwaifo, JCA (as he then was) in *FBN (Nig.) Ltd. v. Osunodo* [1997] 11 NWLR (Pt. 527) 132, at 142H-143A that a banker has the right to set off debt against deposit in a customer's account.

37 See *Unity Bank Plc v. Nwadike* [2009] 4 NWLR (Pt. 1131) 352 at 373C-D, per Ogunwumiju JCA (as she then was).

the customer would have a valid cause of action against the Bank for the sum so demanded and damages.

By the same token, the contractual relationship also implies that a bank has an obligation not to pay out money in the account of a customer except to the customer's order or by its instruction.³⁸ This is in line with its fiduciary duty to exercise reasonable care and skill in carrying out its duties *vis-à-vis* its relationship with its customer.³⁹ This is crucial because failure to exercise the same can make the bank a tortfeasor in an action for negligence by its customer(s).

Furthermore, although it might seem on the face of it that the implementation of the **GSI** system would lead to PFIs flouting their fiduciary, contractual and statutory responsibilities to their customers, this is not the case. The **GSI** system as it is structured does not conflict with the duty of care inherent in banker-customer relationships. This is so because the Borrower/Customer is a party to the **GSI** Mandate and the Bank has a duty to educate the customer on the **GSI** system at the point of the application in line with the **OGGSII**.

Flowing from the above, a question worth answering is, are the PFIs that were not originally parties to the initial **GSI** Mandate bound by it? The simple answer is that the PFIs



are not expressly privy to the contract and therefore they are not *prima facie* bound by the terms of the **GSI** Mandate. However, since the consent of the customer would be obtained by his Bank and the credit protection clause would be inserted into his loan offer, the customer and the PFIs would be bound by it. The CBN also has inherent regulatory powers through the CRMS to direct the PFIs to set off the indebtedness of a customer to his deposits in his Bank accounts when same has been agreed to by the customer.

Conclusively, since obtaining the customer's consent is a condition precedent for the valid utilisation of the **GSI** system to recover a customer's debt, there is no conflict between the fiduciary duties of a bank to its customer and the utilisation of the **GSI** system to facilitate debt recovery when such consent has been sought.

Consumer Data Protection and the GSI System

Nigeria as a country has made considerable strides in Data Protection Laws in recent years such

as the delivery of the first judgement on data protection by the Lagos State High Court on 26th October 2021 in the case of **Hillary Ogom v. Google LLC & Anor**,⁴⁰ the recent imposition of a 10 million fine by National Information Technology Development Agency (NITDA) on Soko Lending Company Limited for data privacy breaches, the introduction of the **Nigeria Data Protection Regulation 2019 (NDPR)**⁴¹ amongst others.

Central to the Nigerian data utilisation and protection clime is the principle that a data subject's data should not be utilised without consent. To entrench a healthy data and consumer protection framework within the FSI, the CBN through its circular dated 20th December 2019 issued the **Consumer Protection Regulation 2019 (CPR). Regulation 5.4 CPR 2019** stipulates the data protection provisions for the FSI.

As it relates to the FSI, financial institutions have a duty to “*protect the privacy and confidentiality of consumer information and assets against unauthorized access, and be accountable for acts or omissions in respect thereof*”⁴². It should be

³⁸ See *FBN Ltd v African Petroleum Ltd* [1996] 4 NWLR (Pt. 443) 438 at 444H, per Ayoola, JCA (as he then was).

³⁹ See *STB Ltd. v. Anumnu* [2008] 14 NWLR (Pt. 1106) 125 at 154H – 155A, per Adekeye, JCA (as she then was).

⁴⁰ *Unreported Suit No. IKD/3191GCM/2019 Judgement of 26.10.21.*

⁴¹ NITDA, ‘NITDA Sanctions SokoLoan For Privacy Invasion’, 17.08.21: <https://nitda.gov.ng/nitda-sanctions-soko-loan-for-privacy-invasion/> (accessed 21.01.2022).

⁴² *Regulation 5.4.1 CPR 2019.*

noted that in recent times, there has increasingly been a paradigm shift to optimising flexibility in the utilisation of customers' data in the FSI. Although the trend is rapidly moving towards ensuring that the utilisation of customers' data catalyses enhancing customers' convenience, the proliferation of innovation in the FSI and financial inclusion; the widely recognised core principles for the data protection framework (such as obtaining consent from data subjects and utilisation of data for the purposes that consent was granted for) must be complied with, for the protection of data subjects.


Bringing the analysis to the **GSI** System, it might on the face of it seem to violate data and consumer protection laws of the debtor in that the PFIs that are not parties to the initial **GSI** Mandate between the Creditor Bank and the Borrower have to reveal and/or confirm the information that their customers have with them and subsequently aid the utilisation of their customer deposits to the payment of their debt. This is not the case because the customer would have been educated by the Creditor Bank on the **GSI** System and his consent will have been obtained for the utilisation of his deposits and data in other banks and FIs before same is done by the PFIs in conjunction with regulatory bodies.

Conclusion

There is no gainsaying that the CRMS in the FSI has on average been improving since the end of the banking crises in 2008-2009 due to increased industrialisation and the strengthening of the legal framework supporting its proper utilisation through the enactment of laws and various government interventions. The **GSI** is one of such interventions. Although the **GSI** will not eradicate the incidence of debts, it incentivises properly utilising of borrowed funds to increase chances of payback. The **GSI** would also enable banks lend for other important purposes such as developmental banking, patient capital to Small and Medium Enterprises (SMEs).⁴³

There is need to enact a federal statute that will cover **GSI**'s implementation, enforcement, and also include interim methods of challenging debt within the context of the **GSI** to make such legislation more robust and concretised, than the **OGSII**. An extension of the **GSI** to corporate accounts and OFIs with measures taken to shrink its shortcomings is a welcome development as it will further improve the strides that have been made in reducing incidences of NPL and will

hopefully mirror the results it has had in its utilisation against individual accounts.

Efforts also need to be made towards sensitising the public on the importance of good credit ratings and how debts can be leveraged to grow business to further strengthen efforts been made towards the improvement of the financial system, the economy and financial inclusion. Although the **GSI** policy has come decades late, "it is better late than never". 



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⁴³ Joy Odigie, 'Global Standing Guidelines Will Encourage Lending for Developmental Purposes - Expert', 20.07.2020: <https://nnn.ng/cbn-global-standing-guidelines-will-encourage-lending-for-developmental-purposes-expert/> (accessed 04.04.2022).