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'BANKING SERVICES FOR ALL':

LEGAL IMPERATIVES IN DRIVING FINANCIAL INCLUSION IN NIGERIA

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FEBRUARY 2019

"TECHNOLOGICAL INNOVATIONS WILL BE THE HEART AND BLOOD OF THE BANKING INDUSTRY FOR MANY YEARS TO COME AND IF BIG BANKS DO NOT MAKE THE USE OF, THE NEW PLAYERS FROM FINTECH AND LARGE TECHNOLOGY COMPANIES SURELY WILL."

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Financial Inclusion (FinInc) has recently become an increasingly significant topic amongst all stakeholders (both public and private sectors), in Nigeria`s financial service industry (FSI).[2] For most people, access to financial services and becoming part of formal financial ecosystem is or ought to be, an important part of everyday life. It is a pre-requisite for gaining employment in most countries.[3] Absence presents a significant barrier to engagement in modern society, and can also lead to individuals incurring significant additional costs due to reliance on suboptimal forms of financial access. Those who are financially excluded in this way typically experience other forms of social exclusion, or have other vulnerabilities related to old age, disability, deprivation or a lack of digital skills, meaning that the effects of financial exclusion are compounded.

An alarming 1.7 billion people globally still lack access to modern financial services.[4] The finance gap is most acute in the developing world. Although governments and non-governmental organizations traditionally led the charge on its development, the private sector is at the forefront of accelerating the inclusion of underserved populations into the financial system. The private sector also recognizes that investments in FinInc can also improve market prospects in the future. According to ***Enhancing Financial Innovation and Access*** (**EFInA**) ***Survey (A2F) for 2018,***[5] Nigeria adult population who are both formally and informally excluded from the financial market stands at 36.6 million.

This article seeks to address how government and the private sector can properly create an enabling business environment through legal and institutional reforms which will help deepen the effect of FinInc in Nigeria. As Nigeria became the poverty capital of the world,[6] the need for

1 ***JAX Finance Journal, 3-6 April 2017 available at*** https:finance.jaxlondon.com/fintech-conference-interview-david-m-brear> (accessed 9.02.2019)

2 *Most banks in Nigeria have created their own app(which helps to improve financial services by increasing productivity and also the clients experience provided such an individual has an account with a bank) or partnering with other companies to help drive FinInc.*

3 *Bala Augie, ' **Why Financial Exclusion Rate is Highest in Northern Nigeria, Way Forward'**, BusinessDay, 8 January 2019:* https://businessday.ng/financial-inclusion/article/why-financial-exclusion-rate-is-highest-in-nothern-nigeria-way-forward (accessed 15.01.2019)

4 ***The Global Findex Database 2017, page 5,*** available at .<http:globalfindex.worldbank.org/sites/ globalfindex/files/2018-04/2017%20Findex%20report-0> (accessed 17.01.2019)

5 ***Key Findings: EFInA Access to Financial Services in Nigeria 2018 Survey*** *11 December 2018:<* https:/www.efina.ng/wp-content/uploads/2019/01/A2F-2018-Key-Findings-11-01-19. Pdf> (accessed 6.01.2019)

6 *Bukola Adebayo,* **'Nigeria Overtakes India in Extreme Poverty Ranking',** *CNN.Com,26.06.2018*: intl /index.html/>(accessed 15.01.2019)

FinInc has never been this important as an anti-poverty strategy which will play a role in enabling shared prosperity and also help in reducing poverty. The consequences of being unbanked are severe which even extends to the fact that most households in Nigeria either have no savings nor any insurance package. FinInc spans across various financial subsectors ranging from the most known which is banking followed by microfinance and insurance etc. There has to be a collaboration between the financial and non-financial sector in order to ensure that FinInc helps to alleviate poverty.[7]

What is 'Financial Inclusion'?

The reality and definition of FinInc varies from country to country, but many have common elements, including those related to physical access, diverse and appropriate products, responsibility and safety. In Nigeria, the ***National Financial Inclusion Strategy (NFIS),*** explained that *"FinInc is achieved when adults have easy access to a broad range of formal financial services that meet their needs and are provided at affordable cost."*[8]

Also, ***Plan for Advancing the Development (PAD)*** in China defines FinInc *"as the provision of financial services to all social strata and groups with the demands for approval and valid financial services, at an affordable cost, based on the principles of opportunity, equality and commercial sustainability."*[9] Nigeria is reputed to have a low level of FinInc with its FinInc rate at 63.6% for a population of more than 180 million.[10] This is in contrast with Kenya, where ***Safaricom*** launched and scaled the successful ***M-PESA*** product, which has enjoyed about 81% FinInc success.[11]

Needed: Legal Improvement Points for FinInc in Nigeria

FinInc in Nigeria will have more effects if attention is given to the following:

A. How is Agent Banking Featuring in the New Model?

Agent banking is the provision of financial services to customers by a third party (agent) on behalf of a licensed deposit taking Financial Institution (FI) and/or ***Mobile Money Operator (MMO)***.[12] Agents all over the world have played an important role in making available to many low-income earners their first-time access to financial services. Agent networks is also important because with it comes the opportunity to render services to people in areas that lack bank branches or other physical financial access points like ATMs. Consequently, a functional agent network is imperative for extending financial services to the unbanked.

In ***Munn v Burch***,[13] it was held that *"a bank cannot take the benefit of an agency and not be bound by the agent's acts and representation in securing the benefits."* Also in ***Day***

7 Endurance Okafor, **'The Importance of Partnerships and Collaboration in Financial Inclusion'**, Businessday.ng, 6 June 2018:<https:// www.businessdayonline.com/financial-inclusion/article/the-importance-of-partnerships -and-collaboration-financial-inclusion >(accessed 15.01.2019)

8 ***National Financial Inclusion Strategy, 2018 at page vii*** available at https:www. Cbn.gov.ng/out/2019/CCD/ NATIONAL%20FINANCIAL%20INCLUSION20STRATEGY. Pdf> (accessed 15.01.2019)

9 ***Notice of the State Council on Printing and Publishing for Advancing Inclusive Finance Development (2016-2020) published December, 2015 by State Council.***

10 ***EFInA Survey, 2018, page 35.***

11 *Michael Tarazi,* ***'Regulating Banking Agents', March 2011, No. 68 CGAP Publication, page 10,*** available at: https:// bank %20 and20agent%20liability%202 pdf.>(accessed 15.01.2019)

12 See ***'Guidelines for the Regulation of Agent Banking and Agent Banking Relationship in Nigeria 2013', page 5.***

13 ***25 l11.35.***

v Dages,[14] it was stated that *"a bank is liable for acts of the agents when acting in the apparent scope of his authority even though the acts are fraudulent, and where a principal authorizes an act by his agent, he is bound by the act and representation of the agent while doing that act."*

One question which usually props up is how can the financial regulators ensure that third party liability is addressed without increasing the regulatory requirements of the providers and agents? According to ***Paragraph 3(1) Guidelines for the Regulation of Agent Banking and Agent Banking Regulation in Nigeria (GRAAN) 2013*** *"Every agent banking contract shall contain reference to the FIs full liability with respect to customers, and it shall specify the obligation of both the FI and the agent."* ***Paragraph 3(1)(xi) GRAAN*** notes that *"The FI shall be responsible for all actions or omissions of the agent notwithstanding anything contained in the contract to the contrary; provided they relate to banking services or matters connected therein."*

This is also similar to the provision in ***Paragraph 6 (iii) GRAAN,*** which states that *"FIs are wholly responsible for all the actions or omissions of its agent. This responsibility shall extend to actions of the agents even if not authorised in the contract so long they relate to agent banking".* ***Paragraph 8(iv) GRAAN*** now goes further to state that *"FIs shall implement measures to control operational risks, including having clause(s) in the contract establishing the liabilities of the agent."* This particular provision in itself seems to contradict the earlier provisions in the sense that, it has already been established that the Financial Institution will be liable irrespective of its agent's action whether or not it relates to banking. This was among the reasons why FIs did not embrace agent banking before now.

Overall, it is right to say the following provisions are unfair on the part of the FI as there should be a regulation which should impose bank liability for agent actions but clearly limit the extent of such liability to the provision of financial services on the bank's behalf.

It is therefore prescient that if an agent is found to have committed a crime in the course of the transaction and after investigation such an agent is found to have acted alone, such an individual should be accordingly sanctioned. Looking at the whole regulation there are no specific punishment on agents as it pertains to imprisonment (it will to an extent serve as a deterrent to people) except from those laid in ***Paragraph 22(1-vi) GRAAN*** which lists the followings as sanctions: *I. Prohibition from engaging in any further agent banking business; ii. Prohibition from contracting new agents; iii. Revocation of agent banking approval; iv. Termination of agent banking contract; v. Withholding Corporate approvals;* vi. *Financial Penalties.*

For example, ***Para 2.6.1(4) Consumer Protection Framework (CPF 2016)*** addressed the issue where an employee aids in the commission of such crime by stating that: *"Financial institutions shall enforce disciplinary action against employees involved in fraud and report same to the regulator."* In situations where the banks cover up for employees who aid in the commission of the crime, the superiors responsible for such and the bank should be held liable.

Comparative Picture: The M-Pesa Liability Clause

A comparative illustration may be drawn from Kenya. ***Safaricom*** claims no liability for its agents, and indeed, the ***M-PESA*** terms and conditions customers sign expressly states that *"Agents are independent contractors and Safaricom shall not be liable for the acts or omissions of M-PESA Agents."*[15] Nevertheless, the service has so far been well- received with relatively few complaints, suggesting that market forces (i.e., incentives to protect brand reputation and other business benefits) may be sufficient to ensure security and service quality. Now the issue in Kenya is that the Central Bank of Kenya position is that banks are liable for the actions of their agents hence a clash of laws.[16]

B. Consumer Protection

An important aspect in FinInc is the issue of consumer protection. Good consumer protection practices are critical to enhance consumer trust and accelerate commercial partnerships that will enable FinInc to scale. To keep customers information is no easy task, hence the need for upgraded

14 ***17 Ind.App.228.***
15 See **'MPESA Customer Terms and Conditions', page 9,** available at: https:www. safaricom.co. ke/images/ Downloads/ Terms-and-Conditions/CUSTOMER-TERMS-March-2012.pdf/ (accessed 25.02.2019)
16 *ibid*

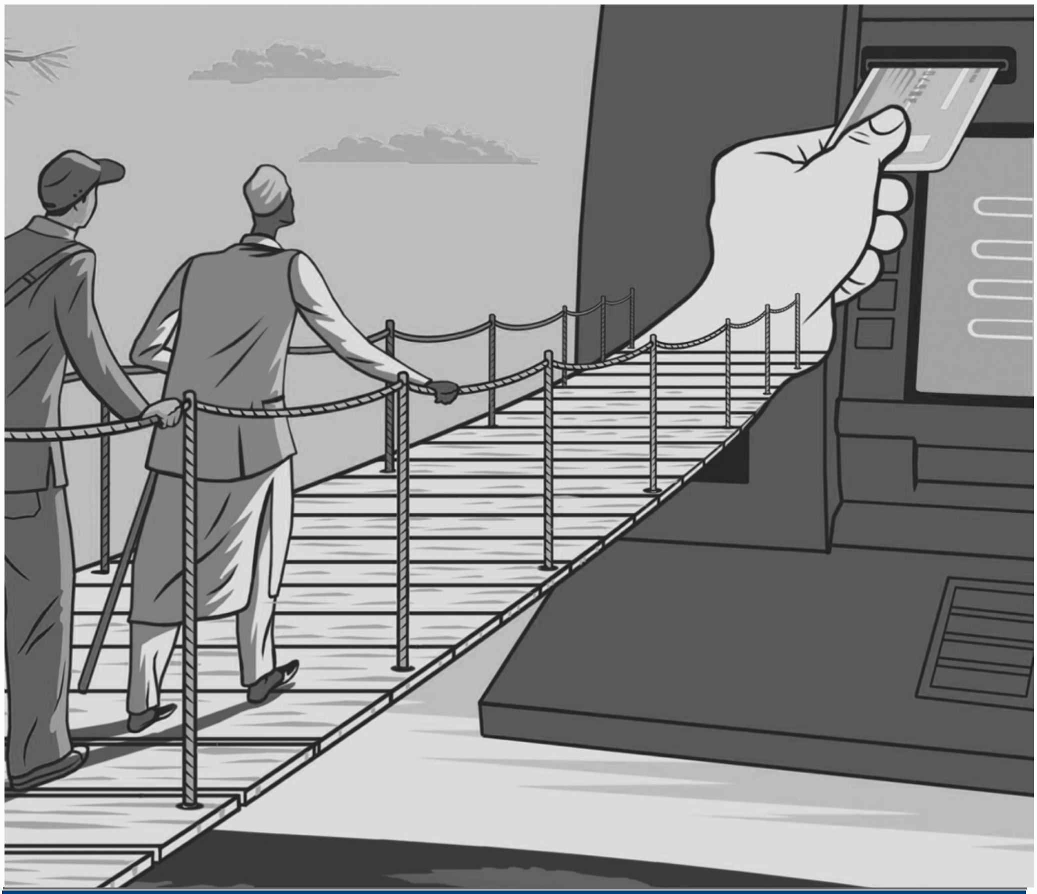
systems. For instance, ***Paragraph 6.0(iii) Regulatory Framework for Licensing Super-Agents in Nigeria 2016*** enunciates that *"All MMO platforms shall at all times be upgraded to the latest technology (inclusive of mandatory integration to NIBSS), tested and active to ensure interoperability between MMOs."* ***Paragraph 5.1(c) GRAAN 2013,*** provides that *"FIs shall keep all information provided by the agent safe and confidential and makes this information available to CBN on request."* How best can the relevant regulatory authorities provide guidance to mobile money providers on consumer protection? One way is through creating regulations which will help promote transparency.

There should also be the prohibition of agents from charging fees/extra fees and lastly requiring agents to disclose their status as an agent of a licensed institution. In this regards, ***Paragraph 6.3(iii) GRAAN*** states that an agent shall not charge customers any fee. See also ***Paragraph 3(ix) GRAAN:*** *"Agents shall not be permitted to charge any fees directly to customers, and details of remuneration for the agent shall be specified in the contract between the agent and the principal."* It should also be noted that a responsible digital governance practices that support the safeguarding of privacy rights will need close collaboration between policymakers, various regulators and mobile money providers.

Another issue will be that of the agent checking the customer's identity before carrying out any transaction. This is backed up by ***Paragraph 14.2(1) GRAAN*** that *"Customers are identified with at least any of the following: IDs, PINs, passwords, payment card, secret code or secret message while performing any transaction requiring identification."* This is important so as to help curb the occurrence of money laundering and as well as funding terrorism.

C. Payment Service Bank (PSB)

The ***CBN*** proposed the ***PSB*** with the aim of deepening FinInc in the country where only about half its total adult population is included into the financial cycle. ***Para 5 Draft Guidelines for the Licensing and Regulation of Payment Service Bank 2018(PSB Regulation)***[17] states the ***PSBs*** can only be from a narrow class: Banking Agents, Mobile Money Operators (MMOs), Retail Chains (Supermarkets), Telecommunications companies (Telcos) and they must be able to present an initial capital of N5 billion for newly set up subsidiaries to be licensed to operate as PSBs with the motive of ensuring access to financial services for the unbanked segments of the society.
The question to be asked is why did the ***CBN*** feel the need to restrict the eligibility of PSBs to only Telcos, Supermarkets, MMO and banking agents? The reason why it was restricted to only those four is because the PSB is technology driven and all four proposed founders are involved in



[17] Issued by the CBN in October 2018, available at: http://www.cbn.gov.ng/Out/2018/FPRD/ OCTOBER%202018%20EXPOSURE%20PAYMENT%20BANK.pdf (accessed 16.02.2019)

promoting the sales of products via technology. It should be noted that the ***MMOs*** or bank agents may find it difficult in raising N5 billion as paid up share capital and only time will tell if this is a viable option for ***MMO*** and bank agents.

As for a few big retail supermarkets, raising such an amount will not necessarily be difficult but how many of them will be willing to move to the rural areas? This only leaves the Telcos in an advantageous position since they have their services already in the rural areas. This is because their services (mobile network) is readily available to people in the rural areas, therefore with the use of Unstructured Supplementary Service Data (USSD), rural traders are able to pay for goods and services.

PSBs will not be allowed to grant loans, advances, guarantees or underwrite insurances pursuant to ***Paragraph 4.2(i-vi) PSB Regulation,*** so how then will PSBs impact affect the small businesses in the rural areas? It therefore contradicts its purpose of creation by not being able to give out loans to those who actually are in dire need of it. Hence why should anyone invest in a ***PSB***?

Conclusion:

FinInc is a cornerstone of modern economic and social development. Access to the financial system for the currently excluded should be reviewed with the same seriousness as the provision of social services to the underserved public. FinInc should be viewed as a fundamental human right in the same mould as the right to life as enshrined in chapter IV of the 1999 constitution. Given the size of the challenge and the diverse nature of the financially excluded segment in Nigeria, the onus of promoting FinInc lies on all stakeholders in public and private sectors. Government needs to create an enabling atmosphere for banks to work effectively

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