

Thought Leadership | Afolabi Elebiju, Blessing Agoruah and Denis Ogunbowale¹

Locations: Issues in 'Geographical Boundaries' Regulation and Digital Operations of Microfinance Banks in Nigeria

Introduction

The emergence of microfinance banks (MFBs) in Nigeria was a conscious regulatory policy initiative to bank the unbanked, financially disadvantaged 'bottom of the pyramid'² but significant segment of the economic populace: traders, artisans/low skilled workers, farmers, with an inclusive focus on also those in the rural areas.³ The army of unbanked or financially excluded people has been a global phenomenon, especially in developing economies, with concomitant efforts to close the "financial access" gaps. On its own part, the **United Nations' Millennium Declaration 2000** which laid out the Millennium Development Goals (MDGs),⁴ also gave a boost to the MFB regulatory framework in Nigeria.



a.elebiju@lelawlegal.com



d.ogunbowale@lelawlegal.com

This raises some pertinent questions: *can non-National MFBs not validly transact online with 'out of boundary' customers? Is the territorial regulatory restrictions not limited to physical operations? Why should a non-National MFB that has made the necessary investments in technology not able to leverage its platform and other (third party, including industry) ICT infrastructure that it can access to have a wider online reach, rather than being constrained by the physical limitational prescriptions of its license?*

This article aims to address these and other questions regarding the emerging operational and business challenges faced by MFBs, in the context of their applicable regulatory cum commercial framework. However, we will preface our discussion with a historical overview of MFB regulatory policy in Nigeria.

¹The authors acknowledge the helpful comments of Chimezirim Echendu to the earlier drafts of this article, but take responsibility for all the views expressed (and errors), herein. Blessing Agoruah and Chimezirim Echendu are LeLaw alumni.

²See M.O Oladeji, 'The Nigerian Microfinance Policy: A Perspective from Cooperative Societies', *International Journal of Economic Development Research and Investment*, Vol. 2 No. 1, p.127, April 2011: https://icidr.org/ijedri_vol2no1_april2011/The%20Nigerian%20Microfinance%20Policy%20A%20Perspective%20from%20Cooperative%20Societies.pdf (accessed 07.05.2021).

³For example, per World Bank statistics, globally as at 2017, 1.7 billion people did not have access to modern financial services, despite strides by most countries in improving financial inclusion. See Omovefe Oghotomo, 'Banking Services for All: Legal Imperatives in Driving Financial Inclusion in Nigeria', *LeLaw Thought Leadership Insights*, February 2019, p.1: https://lelawlegal.com/add11pdfs/Financial_Inclusion.pdf (accessed 07.05.2022). According to some commentators, in Nigeria, the financial exclusion rate as at 2020 was 35.9% (46.3% in 2010); and it was estimated that it will take about 40 years to arrive at 10% exclusion rate. See J. Okuduwa and N. Odiboh, 'Nigeria's Financial Inclusion: The Way Forward', *KPMG Insights*, 23.08.2021, pp. 1-2: <https://assets.kpmg/content/dam/kpmg/ng/pdf/nigerias-financial-inclusion-the-way-forward.pdf> (accessed 11.05.2021). See also related literature and referenced data, in: Ope Adeoye, 'Nigeria's Missed Financial Inclusion Goal and Solution', *The Guardian*, 01.04.2022: <https://guardian.ng/opinion/nigerias-missed-financial-inclusion-goal-and-solution/>; Tayo Fabusiwa, 'Financial Inclusion and Digital Financial Services in Nigeria', *BusinessDay*, 17.08.2022: <https://businessday.ng/opinion/article/financial-inclusion-and-digital-financial-services-in-nigeria/>; 'Financial Inclusion Rising, Sustain the Tempo', *Punch Editorial*, 18.07.2022: <https://punchng.com/financial-inclusion-rising-sustain-the-tempo/>; See also Nigerian results in Asli Demiguc-Kunt et al, 'The Global Findex Database 2021: Financial Inclusion, Digital Payments and Resilience in the Age of Covid-19', World Bank Group, 2022: <https://www.worldbank.org/en/publication/globalfindex> (accessed 18.11.2022).

⁴Note particularly, the MDG's Goal 1 – to eradicate extreme poverty and hunger. One of the metrics to measuring this was through the poverty gap ratio which could be affected by access to capital. See 'UN Launches International Year of Microcredit 2005', *United Nations Press Release*, 18.11.2004: <https://press.un.org/en/2004/dev2492.doc.htm> (accessed 16.12.2022).

⁵Whilst National MFBs are authorised to operate in more than one State including the Federal Capital Territory (FCT), a newly licensed National MFB shall not commence operations with more than ten (10) branches. See *Guideline 3.4, 'Guidelines for the Regulation and Supervision of Microfinance Banks in Nigeria'* (Exposure Draft, January 2020), p. 9: <https://www.cbn.gov.ng/out/2020/fprd/mfb%20regulation%20draft%20merged.pdf> (accessed 20.12.2022).



Evolution of Pro-Poor Financial Services in Nigeria: from Community Banks to Microfinance Banks

The current MFB regime in Nigeria was preceded by the following three major phases: (1) *Traditional Contributory Thrift Savings Schemes* such as *Àjo* or *Esusu* (in the South-West), *Isusu* (in the South-East), and

Adashe (in the North);⁶ (2) *Community Banks (CBs)* established in the mid/late 1990s to further institutionalise traditional savings schemes,⁷ but which cumulated into failure during the ‘failed banks’ era,⁸ such that in 2005, CBs were required to convert into MFBs before December 2005.⁹ The Nigerian CB regime was also influenced by pro-

poor financing initiatives in other developing economies, such as Bangladesh;¹⁰ and (3) *Pre-immediate current MFB Regime*.

Pre-Immediate Current MFB Regime

The current Nigerian MFB regime can be said to have started in December 2005, when the CBN issued the **Microfinance Policy Framework for Nigeria (the Policy)**. The **Policy** was in exercise of the CBN's powers in **section 28(1)(b) CBN Act**¹¹ and pursuant to erstwhile **sections 57-61(1)(a) Banks and Other Finance Institutions Act**¹² (**BOFIA**), which is *in pari materia* with **sections 56-60(1)(a) BOFIA 2020**.¹³

With the **Policy**, the government sought to address different issues needed to strengthen microfinance institutions (MFIs) in Nigeria. For example, **the Policy** mandated CBs to convert into MFBs and to meet minimum capital thresholds of ₦20 million shareholder funds unimpaired by losses for a *Unit MFB* and ₦1 billion for *State MFBs*, on or

⁶*Ajo, Isusu and Adashe* mean thrift savings contributions scheme in the Yoruba, Igbo and Hausa languages respectively, whereby members contributes a certain sum daily, weekly or monthly, and respective members collects the entire contributions once in a rotational cycle. Thereafter, another cycle begins, with same or new/additional members. It is usually based on trust and members can be family and friends, colleagues (employees, tradesmen/women group members), etc. Under another variant, a thrift collector goes round to collect daily contributions for a fee (typically equivalent to a daily contribution) and pays over the cumulative amount to the contributor at the end of every month. The thrift collector can also earn income on the float that the contributions represent between collection and payment to contributors, for example by providing loans to members or third parties. These arrangements obviated the formalities associated with bank borrowings. See Gboyinwa Ajomale, ‘*Ajo - Benefits of Contributory Thrift Saving Scheme*’, *Pulse.ng*, 02.02.2018: <https://www.pulse.ng/lifestyle/money/saving-scheme-ajo-benefits-of-contributory-thrift-saving-scheme/25fb1ne>; and Anayo Okoli et al, ‘*Isusu, A Traditional Savings and Loans Scheme Boosting Petty Businesses in Igboland*’, *Vanguard*, 24.03.2021: <https://www.vanguardngr.com/2021/03/isusu-a-traditional-savings-and-loans-scheme-boosting-petty-businesses-in-igboland/> (both accessed 26.05.2021).

⁷The Federal Government instituted the regulatory framework for the establishment of CBs *vide* the **Community Banks Decree No. 46 of 1992** ((now **Community Banks Act, Cap. C18, Laws of the Federation of Nigeria (LFN) 2004**) (**CB Act**)), partly in response to the closure of rural branches of commercial banks, following the Structural Adjustment Program (SAP). The **CB Act** established the National Board for Community Banks (NBCB) charged with promoting, developing, monitoring and supervising CBs. **Section 2 CB Act** provided for the composition of the NBCB; the CBs were also regulated by the CBN and the Federal Ministry of Finance. For example, **Section 1(2) CB Act** states that to obtain a CB License, an application must be made in writing by the community or a group of communities to the Governor of the CBN, through the NBCB. CB Licenses were revocable by the CBN Governor, on the recommendation of the NBCB. The *raison d’être* of CBs was need to promote rural development through the provision of banking and financial services, enhancement of rural productive activities and improvement of economic status of low income rural and urban residents. Thus, the primary activities of CBs were encouraging savings and issuing credit facilities to their members and to a lesser extent, to the public. See O.F Ayadi et al, ‘*The Role of Community Banks in Economic Development: A Nigerian Case Study*’, 2008, p.164: <https://aisberg.unibg.it/retrieve/handle/10446/27408/9010/AYADI%202-2008.pdf> (accessed 09.05.2021).

⁸The Nigerian CB system failed due to the following reasons: (i) CBs’ weak capital base; (ii) weak institutional capacity; (iii) the existence of a huge un-served market; (iv) low economic empowerment of the poor, employment generation and poverty reduction; (v) inadequacy of appropriate savings opportunities and products for the poor; (vi) lack of a robust microfinance framework to stimulate the interest of local and international communities in micro-financing; and (vii) under-utilisation of the Small and Medium Enterprises Equity Investment Scheme (SMEIS) Fund. See **Paragraphs (Paras) 3.0 – 3.7, the Policy**. See also, C.M Anyanwu, ‘*Microfinance Institutions in Nigeria: Policy, Practice and Potentials*’, paper presented at the G24 Workshop on “*Constraints to Growth in Sub Saharan Africa*” in Pretoria, South Africa, 29.11.2004, p.4: <https://g24.org/wp-content/uploads/2016/01/Microfinance-Institutions-in-Nigeria.pdf> (accessed 09.05.2021).

⁹**Para 9.2 the Policy** states that: “All licensed community banks, prior to the approval of this Policy, shall transform to microfinance banks licenced to operate as a unit bank on meeting the prescribed new capital and other conversion requirements within a period of 24 months from the date of approval of this Policy. Any community bank which fails to meet the new capital requirement within the stipulated period shall cease to operate as a community bank. A community bank can apply to convert to a microfinance bank licenced to operate in a State if it meets the specified capital and other conversion requirements.”

¹⁰See for example, Professor Muhammad Yunus’ world famous the Grameen Bank launched in 1976 to provide banking services to the rural poor, expanding its footprint nationally with increasing success. The Grameen Bank is self-described as “bank for the poor”: <https://grameenbank.org/> (accessed 20.01.2023). In October 1983, the Grameen Bank project was transformed into an independent bank by government legislation. Following its enormous impact, Professor Yunus and the Grameen Bank were awarded the 2006 Nobel Peace Prize for their work to “create economic and social development”. See Karl Grandin, ‘*The Nobel Prizes 2006*’, Nobel Foundation, Stockholm, 2007: <https://www.nobelprize.org/prizes/peace/2006/yunus/biographical> (accessed 20.05.2021). The Grameen Bank’s objectives were: “to extend banking facilities to poor men and women; eliminate the exploitation of the poor by money lenders; create opportunities for self-employment for the vast multitude of unemployed people in rural Bangladesh; bring the disadvantaged, mostly the women from the poorest households, within the fold of an organisational format which they can understand and manage by themselves; and reverse the age-old vicious circle of ‘low income, low saving & low investment’, into virtuous circle of ‘low income, injection of credit, investment, more income, more savings, more investment, more income’”. See M.D Mohinuddin, ‘*Grameen Bank: History, Objectives and Methodology*’, *Sweducarebd*, 09.02.2018: <https://socialworkeducationbd.blogspot.com/2018/02/grameen-bank-history-objectives-and.html?m=1> (accessed 20.05.2021).

¹¹**Cap. C4, LFN 2004**, originally enacted as **CBN Act No. 7 of 2007**.

¹²**Cap. B3, LFN 2004**.

¹³**Act No. 5 of 2020**. **BOFIA 2020** repealed **BOFIA, Cap. B3, LFN 2004**. See also, Obadeyi J.A, ‘*Microfinance Banking and Development of Small Business in Emerging Economy*’, *Nigerian Approach, IOSR Journal of Economics and Finance*, (April 2015), Vol 6, p. 50: <http://www.iosrjournals.org/iosr-jeff/papers/Vol6-Issue2/Version-1/H06215060.pdf> (accessed 20.05.2021).

See **Important Notice on the Deadline for Conversion of Existing Community Banks (CBs) to Microfinance Banks (MFBs)** CBN, August 2007: <https://www.cbn.gov.ng/OUT/CIRCULARS/OFID/2007/OFID-08-2007.PDF> (accessed 07.05.2022). **The Policy’s prescription of only two categories of MFBs was to ensure an orderly and even spread of MFBs thereby obviating over-concentration of Financial Institutions (FIs) in some areas to the detriment of others: Para 6.0.** Obviously, **the Policy** did not envisage that MFBs could operate via online platforms outside the geographical boundaries of their licences.

before 31st December 2007.¹⁴ It also mandated that any intending MFB operator must be licensed by the CBN¹⁵ and gave not for profit MFIs the option to either incorporate a subsidiary MFB, while still running their not for profit operations, or convert into a fully licensed one.¹⁶ The aim was to have adequate regulation and supervision over the microfinance sector in Nigeria.

The Policy was revised in 2011,¹⁷ to, amongst others, use the MFB platform to “increase financial inclusion rate in Nigeria [by improving] access for the economically active poor, pursue poverty eradication and mainstream the informal microfinance sub-sector into the formal financial system.” The envisaged MFB services included “micro-savings, micro-credits, transfer services and other financial products targeted at the economically active poor. These services have over time, evolved to include the transmission of government's developmental initiatives.”¹⁸

According to the **2020 Guidelines**, in 2012, the CBN issued the **Revised Regulatory and Supervisory Guidelines for Microfinance Banks in Nigeria (the 2012 Guidelines)**,¹⁹ to address the features and risks of

microfinance which effectively support the orderly development and sustainability of MFIs to enable them foster improved financial inclusion and poverty alleviation.²⁰ **The 2012 Guidelines** also sought to address the challenges observed in the implementation of **the Policy**, by highlighting the following, amongst others, for MFBs: permissible and prohibited activities,²¹ ownership and licensing requirements,²² corporate governance structure,²³ funding and accounting regulations,²⁴ reporting obligations,²⁵ prudential requirements,²⁶ risk assessment measures,²⁷ and operational controls and requirements.²⁸

Current Regime: Categories of Microfinance Banks in Nigeria

The current regime as reflected in CBN's **Guidelines for the Regulation and Supervision of MFBs 2020 (the 2020 Guidelines)**,²⁹ divided MFBs into four (4) categories, to wit:

1. Tier 2 Unit Microfinance Bank (T-2MFB)

T-2MFB with rural authorisation shall operate only in the rural, unbanked or underbanked areas, and is allowed to open one branch outside the head office within the same LGA subject to the approval of the CBN. It has a ₦50 million minimum capital requirement.³⁰

2. Tier 1 Unit Microfinance Bank (T-1MFB)

Tier-1MFB with urban authorisation shall operate in the banked and high-density areas, and is **allowed to open not more than four (4) branches outside the head office within five (5) contiguous Local Governments Areas (LGAs), subject to the approval of the CBN.**³¹ T-1MFB has a ₦200 million minimum capital requirement.³²

3. State Microfinance Bank (SMFB)

SMFB is authorised to operate only in one State or the Federal Capital Territory (FCT). It is allowed to open branches within the same State or the FCT, subject to prior written approval of the CBN for each new branch or cash centre. An SMFB cannot open more than two branches in the same LGA, unless it has established at least one branch or cash centre in every LGA of the State. A newly licensed SMFB shall not commence operations with more than ten (10) branches. The minimum capital requirement for a SMFB is ₦1 billion.³³

4. National Microfinance Bank (NMFB)

NMFB is authorised to operate in more than one State including the FCT; however, a newly licensed National MFB shall not commence

¹⁴See Para 4.3, the Policy.

¹⁵See Para 6.0, the Policy.

¹⁷Vide the CBN's 'Revised Microfinance Policy Framework for Nigeria', 29.04.2011: <https://www.cbn.gov.ng/Out/2011/pressrelease/gvd/Reviewed%20Microfinance%20Policy%20April%202011.pdf> (accessed 07.05.2022).

¹⁸Para 1.0. (Introduction), 'Guidelines for the Regulation and Supervision of Microfinance Banks in Nigeria, January 2020', (the 2020 Guidelines), p.5: <https://www.cbn.gov.ng/Out/2020/FPRD/MFB%20REGULATION%20DRAFT%20MERGED.pdf> (accessed 20.05.2021).

¹⁹See CBN, 'Revised Regulatory and Supervisory Guidelines for Microfinance Banks in Nigeria (the 2012 Guideline)', 2012: <https://www.cbn.gov.ng/Out/2013/CCD/Amended%20Regulatory%20and%20Supervisory%20Guidelines%20for%20MFB.pdf> (accessed 08.11.2022).

²⁰See Guideline 1.0, the 2012 Guidelines.

²¹See Guideline 2.0, the 2012 Guideline.

²²See Guideline 3.0, the 2012 Guideline.

²³See Guidelines 4.0 and 14.0, the 2012 Guidelines.

²⁴See Guideline 5.0, the 2012 Guidelines.

²⁵See Guideline 7.0, the 2012 Guidelines.

²⁶See Guideline 8.0, the 2012 Guidelines.

²⁷See Guideline 9.0, the 2012 Guidelines.

²⁸See Guideline 13.0, the 2012 Guidelines.

²⁹This was a revision of CBN's 'Revised Regulatory and Supervisory Guidelines for Microfinance Banks (MFBs) In Nigeria', 18.12.2012: <https://www.cbn.gov.ng/Out/2013/CCD/Amended%20Regulatory%20and%20Supervisory%20Guidelines%20for%20MFB.pdf> (accessed 09.05.2022).

³⁰Guidelines 3.2 and 4.2.7, the 2020 Guidelines.

³¹Notably, one of the major innovations in the 2020 Guidelines is amending the provision of the 2012 Guidelines (particularly Guideline 3.2), which prevented Unit MFBs from having branches and/or cash centres. This was particularly challenging to Unit MFBs and made expansion of Unit MFBs cumbersome as it required them to get the State MFB license to be able to expand.

³²Guidelines 3.1 and 4.2.7, the 2020 Guidelines.

³³Guidelines 3.3 and 4.2.7, the 2020 Guidelines.

operations with more than ten (10) branches. The minimum capital requirement for NMFB is ₦5 billion.³⁴

The Scope Question: Legality of Operation of MFB outside Jurisdiction vis-à-vis Online Operation of MFBs

From the above categorisations, it is clear that MFBs operations have geographical connotations: this is underscored by the prescriptive rule that if an MFB engages in an activity or function outside the permissible scope of its licence, the penalty is a revocation of its MFB licence.³⁵ **The 2020 Guidelines** is silent on the possibility of online banking by MFBs, but permits MFBs to “appoint agents to provide financial services on its behalf in line with CBN Agent Banking Guidelines, within the geographic coverage of its licence”.³⁶ This is suggestive of the CBN's emphasis on MFB's physical operations within their geographical boundaries.

Notwithstanding, some MFBs engaged or could be tempted to engage in online banking transactions with residents outside their licensed geographical boundaries, whilst (as a risk management measure), having



such accounts domiciled in their branches in the approved locations. It would be extremely difficult for MFBs not to take advantage of current digital infrastructure to offer countrywide loans, credit facilities, and other online services. Such practices, which helps them extend their tentacles to the nooks and crannies of the country while broadening their target audience, is consistent with the substance and spirit of the CBN's financial inclusion strategy.³⁷

For example, according to a commentator, an MFB player which came into operation in 2016, (four years before **the 2020 Guidelines**) has since then helped Nigerians save and obtain loans online without limiting their operations to a geographic location. By the end of 2018, the MFB

player had helped over 53,000 users save close to ₦1 billion.³⁸ However, online MFBs/Fintechs that are in breach of **the 2020 Guidelines** must be wary of unexpected outcomes such as the CBN seeking to regulate against their online operation in future,³⁹ and other risks like enforcement issues on recovery of loan defaults.⁴⁰ Experience has shown that the CBN can wield its statutory enforcement powers (by way of fines, penalties, litigation and even licence suspensions or revocations) against sectoral operators that it established have stepped outside the confines of regulatory prescriptions.⁴¹ Recently, the CBN even applied to the Federal High Court (FHC) for *ex parte* orders* freezing accounts of allegedly unlicensed financial institutions.⁴²

³⁴Guidelines 3.4 and 4.2.7, the 2020 Guidelines.

³⁵Guideline 23.0, the 2020 Guidelines.

³⁶Guideline 2.1(h), the 2020 Guidelines. Emphasis supplied. Guideline 2.1(g), the 2020 Guideline also permits MFBs to “Act as agent for the provision of mobile banking, micro insurance and any other services as may be determined by the CBN from time to time, within the geographic coverage of its licence”. Cf. how moneylenders are prohibited from employing agents or canvassers to market their products and services but breach of such prohibition attracts does not attract any specific penalty. See section 20 Moneylenders Law, Cap. M7, Laws of Lagos State of Nigeria (LLSN) 2003 and section 16 Moneylenders Law, Cap. M7, Laws of Cross River State: <https://laws.lawnigeria.com/2018/04/16/moneylenders-law/> (accessed 24.12.2022).

³⁷The CBN's National Financial Inclusion Strategy Implementation 2019 Annual Report,

18.02.2022: <https://www.cbn.gov.ng/Out/2020/CCD/2019%20Annual%20Report%20of%20the%20National%20Financial%20Inclusion%20Strategy%20Implementation.pdf> (accessed 08.11.2022) set 80% and 95% financial inclusion target for 2020 and 2024 respectively. Part of the strategies for achieving the targets is to improve community lending by leveraging networks of MFBs and MFIs. Incidentally, CBN's *Financial Inclusion Strategy (Revised)*, October 2018, p.30.: <https://www.cbn.gov.ng/Out/2019/CCD/national%20financial%20inclusion%20strategy.pdf> (accessed 08.11.2022) set a target for 5 MFB branches per 100,000 adults by 2020, as part of its strategy to solve financial exclusion problems. Part of the indicative progress may be that as at June 2021, 875 MFBs were operating in Nigeria. See CBN's 'List of CBN Licenced Microfinance Banks as at June 30, 2021', 30.06.2021: <https://www.cbn.gov.ng/Out/2021/fprd/mfbs%20as%20at%20jun-30-2021.pdf> (accessed 23.12.2022). Cf. generally, 'Why Financial Inclusion is Important to Bank of Uganda', BOU: <https://www.bou.or.ug/bou/bouwebsite/FinancialInclusion/>; and 'The Republic of Uganda: National Financial Inclusion Strategy (2017-2022)': https://bou.or.ug/bou/bouwebsite/bouwebsitecontent/publications/special_pubs/2017/National-Financial-Inclusion-Strategy.pdf (both accessed 23.01.2023).

³⁸Kiki Mordi, 'Nigeria is Quietly Rewriting Fintech's Rulebook', *Wired*, 19.05.2021: <https://www.wired.co.uk/article/nigeria-fintech>, (accessed 21.05.2021).

³⁹Guideline 23.0, the 2020 Guidelines prescribes sanctions for breach; engaging in business outside the approved business by an MFB attracts: “A fine of ₦500,000. In addition, the bank shall forfeit the estimated profit from the engagement.”

⁴⁰It can however be argued that CBN restriction is only applicable to physical locations, and not individuals. Therefore, MFBs can arguably continue country wide operations via online platforms. See elaborate discussions in the next subheading.

⁴¹See sections 95 – 99 BOFIA 2020 and Guideline 23.0, the 2020 Guidelines. This is in line with CBN's objective to “promote a sound financial system in Nigeria” and its power to make regulations for the good order and management of the Bank in sections 2(d) and 51 CBN Act Cap. C4, LFN 2004.

⁴²For example on 17th August 2021, the CBN secured *ex parte* orders of the FHC to freeze the accounts of Rise Vest Technologies Limited, Bamboo Systems Technology Limited, Bamboo Systems Tech. Ltd OPNS, Chaka Technologies Limited, CTL/Business Expenses, and Trove Technologies Limited for 180 days pending the outcome of CBN investigation, for using foreign exchange sourced from Nigeria to purchase foreign securities in contravention of CBN's directives, and operating without licence as asset management companies. See Samson Toromade, 'CBN Freezes Bank Accounts of Rise Vest, Bamboo, Trove, Chaka over Alleged Illegal Trading', *Pulseng*, 17.08.2021: <https://www.pulse.ng/business/cbn-freezes-rise-vest-bamboo-accounts-over-illegal-trading/cev4cv3> (accessed 17.12.2022). See also section 97(1) BOFIA 2020: “Notwithstanding anything contained in any other enactment, where the Governor has reason to believe that transactions undertaken in any account with any bank, specialised bank or other financial institution are such as may involve the commission of any criminal offence under any law, the Governor may make an *ex-parte* application for an order of the Federal High Court verifying on oath the reasons for the Governor's belief, and on obtaining such court order direct or cause a direction to be issued to the manager of the bank, specialised bank or other financial institution where the account is situated or believed to be, or in the alternative to the head office of such bank, specialised bank or other financial institution directing the bank, specialised bank or other financial institution to freeze the account.”

What could be the risks or deterrence factors for MFBs' 'in-geographical boundary' operations? We discuss these *seriatim* below.

Disbursement and Recovery of Loans

The ability to recover loans disbursed with interest, determines the operating sustainability of an MFB. Therefore, MFBs must ensure minimal delinquency/default of loans. MFBs may find it difficult to recover principal and interest where same is (usually) granted without collateral,⁴³ which makes the chances of loan delinquency/default its Achilles heel, especially with loan disbursed outside jurisdiction may potentially be at risk of non-recoverability on the grounds of illegality (discussed in further detail below).

However, MFBs' robust compliance with Know Your Customer (KYC) requirements⁴⁴ may help to minimise the default risk, since same will engender better credit

decisions. Also, chronic defaulting customers who have negative credit ratings on the Credit Risk Management System (CRMS) and the databases of licensed credit bureaus, might find it difficult to access further loans.⁴⁵ This is because financial institutions are mandated to make reference to the CRMS as part of their respective credit appraisal process and keep such information in borrowers' files.⁴⁶ It is unlikely that credit bureaus will decline to give the appropriate rating to a defaulting borrower, just because the latter transacted online with an MFB, outside the physical geographical boundaries of such MFB. This consideration will make it difficult for any customer to evade paying back its loan, on that basis. Thus, the issue of jurisdiction may not pose an issue, once the lender has proper controls in place that will eradicate default.

Furthermore, the CBN's **Guidelines on Global Standing Instructions (GSI) (Individuals)**⁴⁷ allows an MFB to recover loans (principal and interest) without recourse to the borrower, where same has been agreed to by the borrower through a direct set-off

from deposits/ investments held in the borrower's qualifying bank accounts using the customer's Bank Verification Number (BVN).⁴⁸ In essence, a licensed MFB can recover money due from a defaulting customer in any part of the country through his/her account in other participating financial institutions, without initiating legal proceedings.

Will Illegality be a Valid Defence?

However, where 'out-of-boundary' customers default on loans, can they plead as defence, the MFB's non-compliance with geographical prescription of the **Guideline**? In other words, does the lending amounts to an illegal contract which disentitles the MFB from recovering such debts; as courts are precluded from enforcing illegal contracts, based on the legal rule of "ex turpi causa non oritur actio"?⁴⁹

A response in the affirmative (that extra territorial transactions are illegal), looks quite appealing.⁵⁰ In **Nwosu v. A.P.P.**,⁵¹ the Supreme Court (SC) held, per Augie, JSC quoting **Anialogu, JSC in Sodipo v. Lemminkainem**⁵² that:

⁴³Though most loans are granted on the basis of the applicant's character, combined cash flow of business and other income.

⁴⁴This is in furtherance of, for example, the provisions of sections 2 and 52 CBN Act Cap. C4, LFN 2004, CBN (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction in Financial Institutions) Regulations 2022: <https://www.cbn.gov.ng/Out/2022/FPDR/AML%20CIRCULAR%20AND%20REGULATIONS%20MERGED.pdf> (accessed 24.12.2022), Regulatory Framework for Bank Verification Number (BVN) Operations and Watch-List for The Nigerian Banking Industry 2021: [https://www.cbn.gov.ng/Out/2021/CCD/REVISED%20REGULATORY%20FRAMEWORK%20FOR%20BANK%20VERIFICATION%20NUMBER%20\(BVN\)%20OPERATIONS%20AND%20WATCH-LIST%20FOR%20THE%20NIGERIAN%20BANKING%20INDUSTRY%20121021%20FINAL.pdf](https://www.cbn.gov.ng/Out/2021/CCD/REVISED%20REGULATORY%20FRAMEWORK%20FOR%20BANK%20VERIFICATION%20NUMBER%20(BVN)%20OPERATIONS%20AND%20WATCH-LIST%20FOR%20THE%20NIGERIAN%20BANKING%20INDUSTRY%20121021%20FINAL.pdf) (accessed 24.12.2022) and CBN's circular on 'Introduction of Three-Tiered Know Your Customer (KYC) Requirements' dated 18.01.2013: <https://www.cbn.gov.ng/out/2013/ccd/3%20tiered%20kyc%20requirements.pdf> (accessed 24.12.2022).

⁴⁵The CBN mandates that all Commercial, Merchant and Non-interest Banks must upload appropriate KYC information of borrowers (including BVN, Tax Identification Number (TIN) and valid email address) on the CRMS before disbursement of approved loans. See CBN's 'Guidelines 3.1(a), 4.5 and 5.1(a) Regulatory Guidelines for the Operation of the Redesigned CRMS for Commercial, Merchant and Non-Interest Banks' (CRMS Guidelines), February 2017: <https://www.cbn.gov.ng/out/2017/FPDR/circular%20to%20banks%20on%20redesigned%20crms.pdf> (accessed 17.12.2022). This also applies to Other Financial Institutions (OFIs). See CBN's circular to OFIs, 'Re: Enrolment of Other Financial Institutions on the Credit Risk Management System', 24.05.2022: <https://www.cbn.gov.ng/Out/2022/FPDR/CIRCULAR%20ON%20ENROLLMENT%20OF%20OFIS%20ON%20CRMS.pdf> (accessed 17.12.2022).

⁴⁶Guideline 4.5 CRMS Guidelines.

⁴⁷CBN, 'Guidelines on Global Standing Instructions (GSI) (Individuals)', July 2020: <https://www.cbn.gov.ng/Out/2020/CCD/CBN%20-%20Operational%20Guidelines%20on%20Global%20Standing%20Instructions%20GSI%20-%20Individuals.pdf> (accessed 19.07.2021).

⁴⁸See generally, Denis Ogunbowale, 'Measures and 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', LeLaw Thought Leadership Insights, April 2022: https://lelawlegal.com/add11pdfs/Dennis_-_GSI_Article_Final.pdf (accessed 07.05.2022).

⁴⁹According to B.P. Ishaku, 'Judicial Law Dictionary', 2nd ed. (2017), p. 150: "Ex turpi causa non oritur actio: An action does not arise from a base cause such as illegal or immoral consideration. A party to a contract [cannot] avoid an obligation under a contract on ground that it is void except when the contract is ex facie illegal: **B.B Apugo & Sons Ltd v. Oo.H.M.B [2016] 13 NWLR (Pt. 1529), 206 at 272[G-H]**." See also Prof. I.E. Sagay, 'Nigerian Law of Contract', (3rd ed., 2018 (Spectrum), p. 471. According to **Black's Law Dictionary**, 9th ed. (2009), p. 666 – 667: "ex turpi causa: ... this phrase ... expresses the principle that a party does not have a right to enforce performance of an agreement founded on a consideration that is contrary to public interest." Analogy may be drawn with the requirement to obtain Governor's consent to property transactions and the consequence of default, pursuant to sections 21 and 26 Land Use Act, Cap. L5, LFN 2004 wherein the Courts moved from a strict constructionist approach typified by **Savannah Bank v. Ajilo [1989] NWLR (Pt. 97), 305** (following **Solanke v. Abed (1962) 1 SCNLR 371**) to holding that absence of consent merely renders the transaction inchoate, rather than invalidating it. This was a way to disentitle a party from relying on his own breach (or even by the other party, having taken benefit under the contract) to avoid his own obligation, as the Courts will not allow the law to be used as an engine of fraud. See Afolabi Elebiju, 'Implications of Judicial Attitudes to the Interpretation of Consent Provisions of the Land Use Act for Secured Credit Transactions in Nigeria', [1997] 12 ICCLR 431; Afolabi Elebiju and Oluwaseyi James, 'Factors: A Discussion on Property Tax Delinquency and Allied Issues in Nigeria', LeLaw Tax Monograph Series No.2, October 2021, p.11 (footnote 76): [https://lelawlegal.com/add11pdfs/Ellebiju_James_-_Property_Tax_Delinquency_in_Nigeria_and_Allied_Issues_\(Final\)_1.pdf](https://lelawlegal.com/add11pdfs/Ellebiju_James_-_Property_Tax_Delinquency_in_Nigeria_and_Allied_Issues_(Final)_1.pdf) (accessed 30.01.2023). Another analogy can be the erstwhile section 54 Companies and Allied Matters Act, Cap. C20 LFN 2004 (CAMA 2004), now section 78 CAMA 2020: The latter wording of section 54(1) CAMA 2004 categorically states that a foreign company shall not amongst others, "carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business". Section 54(2) takes this a notch higher by providing that any actions in contravention of section 54(1) shall be void. Since the legislator is presumed to never legislate in vain, the extreme wording of section 54(2) is to reinforce the gravity of section 54(1) and to act as a compulsive incentive for compliance with same. In other words, section 54(2), confirms the obvious: that acts without capacity would be deemed as if they never happened - they would be ineffectual; and cannot, in the eyes of the law, have the intended (valid) effect. Nigerian courts have been unequivocal about the effect of section 54 CAMA 2004. See for example, **CITEC International Estates Limited v. Edicomisa International Inc. & Associates, [2018] 3 NWLR (Pt. 1606) 332, at 356G-H, per Ejembi-Eko, JSC**: "Where a foreign company, not registered in Nigeria, purports to carry on business in Nigeria in defiance of section 54(1) of the [CAMA], such a transaction is not only void, it is illegal and a crime to do so. That is the legislative intent or purpose of section[s] 54(2) and 55 of CAMA.... The legislature has enacted sections 54 and 55 purposely not to allow a foreign company carry on business in Nigeria without being first duly registered in Nigeria in accordance with the provisions of the CAMA. That is why the conduct is expressly criminalised by section 55 of CAMA. Thus any conduct of a foreign company in defiance of section 54(1) of CAMA renders whatever business it carries on not only void ... it is criminal to do so by section 55 of CAMA. The law as put in Latin is ex dolo malo non oritur, is simply that the court of justice will not lend its aid to a man who grounds his cause on illegality. If from the plaintiff's own pleading, his cause of action is founded on illegality or some transgression of the positive law of this country, then, as the trial court stated in its judgment in this case, he has no right to be assisted by our law courts."

“No court... ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction, which is illegal, if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It mattered not whether the defendant pleaded the illegality or not. If the evidence adduced by the plaintiff proved the illegality, the court ought not to assist him.”

MFBs from such, thereby impliedly prohibiting nationwide or extra territorial online business by such MFBs. This view finds support from the Latin maxim: ‘*Expressio unius est exclusio alterius*’ (express mention of a thing, excludes others not mentioned).⁵³ Also, by the golden rule of statutory interpretation, whereby words are to be given their ordinary meaning,⁵⁴ the regulatory intent is reflected by the wordings of **the Guideline** by its emphasis on the branches that the various cadres of MFBs can operate from.

Guideline’s prescription for geographical limitations seemed to have been informed by capacity considerations, customer protection and proper risk management, in furtherance of long term sustainable operations. But is it reasonable in the face of current realities not to expect CBN’s “regulatory permissiveness” for wider online operations vis a vis physical geographies?⁵⁵

Waking Up to Tech Enabled Financial Inclusion Business Realities: ‘Location Irrelevance’ is the Ultimate Destination of Microlending in Nigeria

Undeniably, financial technology (FinTech) could be an unrestrained enabler of MFBs scaling in furtherance of their financial inclusion objectives – our view is that it would be unreasonable to restrict MFBs from extending the sphere of their operations beyond their licensed geographical boundaries, once adequate provision is made for appropriate risk management. In this regard, it is noteworthy that MFBs recorded an 82% boost in lending, from N300.2 billion in 2019 to N546.6 billion 2020 and have since been increasingly trending upwards, largely as a result of their online presence and leverage of improved technology in Nigeria.⁵⁶



Arguably, online operations are in disregard to the provisions of the **Guideline**, and therefore amounts to illegality.

The same reasoning can provide a basis for the CBN to sanction MFBs that engage in extra territorial transactions – because **the Guideline** expressly prohibits non-National

The strict implication of this is that MFBs who want to leverage technology to operate nationwide have to obtain National MFB Licenses. Since non-National MFBs should presumably be unable to eat their cake and have it; MFBs that want to operate nationally should be requisitely licensed, to avoid possible sanctions from the CBN. The

⁵³MFBs that disclose the scope of their licence to customers prior to transacting with them might be able to escape liability under the “*in pari delicto*” rule if it is established that the liabilities arising from the contract was due the mutual fault of the MFB and its customer. In *Nwaolisah v. Nwabufoh* [2016] 13 NWLR (Pt. 1529), 206 at 272G-H, the SC per Galadinma, JSC held: “Now to the consideration of the sole issue, the latin catch-phrase ‘*in pari delicto*’ simply means ‘in equal or mutual fault.’ Where the fault is mutual the law will leave the case as it finds it. In other words, since both parties are equally at fault, the court will not involve itself in resolving a claim of one party over the other and whoever possesses whatever is in dispute, may continue to do so in the absence of any superior claim.” This is predicated on the fact that banker-customer relationships are that of a contractual nature. See *Unity Bank Plc v. Nwadike* [2009] 4 NWLR (Pt. 1131), 352 at 373C-D.

⁵⁴[2020] 16 NWLR (Pt. 1749) 28 at 61-62 G-B.

⁵⁵[1986] 1 NWLR (Pt. 15) 220.

⁵⁶See *Ehuwa v. OSIEC & 3 Ors* [2006] 18 NWLR (Pt. 1012), 544 at 568H-569A per Ogbuagu, JSC.

⁵⁷See *SPDC of Nig Ltd v. Katad* [2006] 1 NWLR (Pt. 960) 198 at 216E-F and *INEC v. Yusuf* [2020] 4 NWLR (Pt. 1714) 374 at 410F-H.

⁵⁸An indication in this regard may be gleaned from the fact that the 2020 **Guidelines** does not have similarly specific forceful language on out of boundary operations, as section 54(2) **CAMA 2004** (now section 78(2) **CAMA 2020**). Another analogy can be made with the Court’s shift in approach for deciding contractual disputes involving illiterate persons (who are presumed to require protection of the law or the law has specific provisions for their protection, like the MLLs). According to Prof. Sagay (*supra*, at p.471): “Again happily, there are signs that the [SC] has abandoned technical approach for the more equitable one of, ‘purpose and object’. In *Anaeze v. Anyaso* [1993] 5 NWLR Pt. 291, 1, Karibi-Whyte, JSC made it clear that mere technical non-compliance would not avail even an illiterate person the opportunity to escape from his liability in a document signed or thumbprinted by him. He must additionally show that he did not understand the content of the document or that he would not have signed if he had understood the content.”

⁵⁹See ‘**Microfinance Banks Record 82% Boom in Lending in 2020**’, Nairametrics, 26.042021: <https://nairametrics.com/2021/04/26/microfinance-banks-record-82-boom-in-lending-in-2020/?amp> (accessed 24.05.2021). According to the report, “As of 2018 total microfinance loans to the private sector was just N250 billion. This has now doubled in two years due to improved technology, easier processing of loans, better loan recovery methods, increased competition, and a growing class of employees with an appetite for short-term credit.” Per the CBN, as at September 2021, the MFBs lending rose to N1.075.14 billion from N768.71 billion at the end of 2020: ‘**2021 Statistics Bulletin: Financial Statistics**’, Table A8.1, p. 1, 23.5.2022: https://www.cbn.gov.ng/Out/2022/STD/2021%20Statistical%20Bulletin_Financial%20%20Sector.xlsx (accessed 20.12.2022). According to a news report, “Loans by Microfinance banks surged to N1.12 trillion as of the end of June 2022, representing a 115.7% increase compared to N521.25 billion recorded as of the end of 2021. This means that microfinance banks issued an aggregate of N602.8 billion new loans. This is according to data culled from the [CBN]. Notably, most of the loans were to the private sector of the economy at N1.11 trillion, while N7.26 billion of the loans are to other financial corporations.” See Samuel Oyekanmi, ‘**Microfinance Banks’ Loan to Nigerian Private Sector Hits N1.12 Trillion in June 2022**’, Nairametrics, 04.08.2022: <https://nairametrics.com/2022/08/04/microfinance-banks-loan-to-nigerian-private-sector-hit-n1-12-trillion-in-june-2022/> (accessed 22.12.2022).

The CBN's 95% financial inclusion target by 2024,⁵⁷ and the fact that “financial inclusion is achieved when adult Nigerians have easy access to a broad range of formal financial services that meet their needs at affordable costs”,⁵⁸ leaves no other pragmatic solution than not to enforce geographical restrictions to online MFB lending. Thus, in order to reach the target and achieve countrywide access to the financial system, we respectfully submit that CBN regulatory policy should allow MFBs leverage both physical and online operation; what is important is to ensure that appropriate safeguards to address the geographical considerations are addressed. Furthermore, the grant of National Digital MFB licence, which in effect is branchless or wholly digital operations is reflective that the regulator is coming round to the realisation that geography should not be a huge factor.⁵⁹ Another indicator could be CBN's non-aggressive interpretation or enforcement of the geographical coverage/limitation requirements, compared to other infractions.⁶⁰

It is also noteworthy that a CBN-permissive-stance for MFBs to leverage FinTech to access customers would aid the ease of doing business sectorally, and nationally, potentially impacting Nigeria's country competitiveness. Furthermore, although the language of *the Guideline* prescribes geographical restriction for MFB operations, it is silent on what measures are to be taken when a customer who is domiciled within these geographical ambits, has to leave these ambits temporarily. Does this mean that such a customer should not have access to banking services whilst “outside jurisdiction”? For obvious reasons, we think the answer should be in the negative. Again we think appropriate risk management, including robust KYC process and documentation⁶¹ adequately takes care of the mischief envisioned by the geographical limitations.

Conclusion

Arguably, the geographical limitation of MFB is antithetical to optimally actualising the objectives of banking the unbanked, and also improving

the ease of doing business in Nigeria (especially in the informal sector). Geographical limitations, given current technological realities, and leverage of initiatives like the **GSI**, is tantamount to tying the legs of MFBs, as they want to embark on a 100 metres race at the Olympics. MFBs' leverage of *Fintech* in furtherance of financial inclusion is akin to inserting a round peg in a round hole; and limiting MFB online access to geographical boundaries would be tantamount to taking ten steps backwards, and actually runs contrary to use of technology in other sectors.⁶²

An online MFB platform that is accessible extra-territorially within Nigeria, cannot be seen as an infringement of the relevant provisions of the **2020 Guidelines** since it does not expressly mandate MFBs to preclude or restrict online transactions to geographical boundaries except when they “Act as agent for the provision of mobile banking, micro insurance and any other services as may be determined by the CBN from time to time”⁶³ and/or “Appoint agents to provide

⁵⁷Joseph Attah et al (eds), ‘Financial Inclusion Newsletter’, CBN, 2nd Quarter, Vol 4, Issue 2, July 2019, p. 1: https://www.cbn.gov.ng/Out/2019/CCD/Q2%202019%20Financial%20Inclusion%20Newsletter_Final_08.08.19.pdf (accessed 21.05.2021).

⁵⁸CBN, *National Financial Inclusion Strategy*, October 2018, p.vii: <https://www.cbn.gov.ng/out/2019/ccd/national%20financial%20inclusion%20strategy.pdf> (accessed 21.05.2021).

⁵⁹Generally speaking, it should be noted that there are no specific CBN regulations that lay out the licensing requirements for the grant of the Digital MFB Licence. Any organisation that wants to have only a Digital-Only MFB must obtain a MFB licence and comply with all data protection and risk management standards prescribed by the CBN and other relevant government agencies in the deploying and operating their digital platform. See Seun Timi-Koleolu and Eustace Aroh, ‘Establishing a Digital Bank in Nigeria – Legal Requirements’, *Pavestones Legal, Mondaq.com*, 04.10.2021: <https://www.mondaq.com/nigeria/financial-services/1117638/establishing-a-digital-bank-in-nigeria-legal-requirements> (accessed 19.12.2022). Examples of digital-only MFBs include ALAT, Kuda, Rubies, Eyowo, VFD, Fairmoney and Sparkle. See David Odu, ‘(Digital Only Banks) The Changing Face of Global Banking: Challenges, Opportunities, and AML/CFT Implications For Nigeria’, *Bullion*, October – December 2021, Vol. 45, No.4, pp. 4 and 10: <https://www.cbn.gov.ng/Out/2021/CCD/CBN%20Bullion%20Volume%2045%20No%204%20October%20-%20December,%202021.pdf> (accessed 19.12.2022).

⁶⁰See for example, Ubah Jeremiah Ifeanyi, ‘CBN Cautions Microfinance Banks Against Forex Transactions and Wholesale Banking’, *Nairametrics*, 21.08.2021: <https://nairametrics.com/2021/08/21/cbn-cautions%2e%80%afmicrofinance-banks-against-forex-transactions-and-wholesale-banking/> (accessed 19.12.2022). According to the report, “The [CBN] has advised microfinance institutions against engaging in certain prohibited activities, including wholesale banking and foreign exchange transactions. This was disclosed in a circular titled ‘Cessation of Non-Permissible Activities by Microfinance Banks,’ signed by Ibrahim Tukur on behalf of CBN's Financial Policy and Regulation Department. ... ‘The CBN has observed the activities of some microfinance banks that have gone beyond the remit of their operating licence by engaging in non-permissible activities, especially wholesale banking, foreign exchange transactions and others. Given the comparatively low capitalisation of MfBs, dealing in wholesale and/or foreign exchange transactions are a significant risk with dire consequences for financial system stability. Therefore, it has become imperative to remind all MfBs to strictly comply with the extant Revised Regulatory and Supervisory Guidelines for Microfinance Banks in Nigeria 2012. For the avoidance of doubt and consistent with the permissible activities of specialised micro-institutions: MfBs are strictly prohibited from foreign exchange transactions. MfBs are to primarily focus on providing financial services to retail and/or micro-clients with a limitation of ₦500,000 per transaction for Tier 2 Unit MfBs and ₦1m for other categories. MfBs shall constitute a minimum of 80 per cent of the total loans portfolio for MBs. The CBN would continue to monitor developments in the MfB sector and apply stringent regulatory sanctions for violations of extant regulations, including revoking licenses of non-compliant MfBs.’” Emphasis supplied.

⁶¹This includes getting the customer's details including his picture (traditionally passport photograph), name, date of and place of birth, gender, address, telephone number. See CBN's circular on ‘Introduction of Three-Tiered Know Your Customer (KYC) Requirements’ dated 18.01.2013: <https://www.cbn.gov.ng/out/2013/ccd/3%20tiered%20kyc%20requirements.pdf> (accessed 19.12.2022).

⁶²Apparently whilst commercial banks with regional authorisation seem to have similar issues; in practice, the CBN does not seem to have taken any enforcement action against regional banks operating extra-territorially, via digital means. This is despite that “The CBN guidelines stipulated that a Commercial Bank with a Regional Banking authorization is entitled to carry on its banking business operations within a minimum of six and a maximum of 12 States of the Federation, which lies within not more than two geographical zones of the Federation as well as within the Federal Capital Territory.” Ifeanyi Onuba, ‘Three Months After Obtaining CBN's Regional Banking License, Signature Bank Begins Operation’, *The Whistler*, 21.11.2022: <https://thewhistler.ng/three-months-after-obtaining-cbns-regional-banking-license-signature-bank-begins-operation/>; and “The [CBN], pursuant to section 8(g) of the [CBN] Scope, Conditions & Minimum Standards for Commercial Banks Regulations No. 1 2010 as revised on September 4, 2019; and in furtherance of its objective to promote financial inclusion hereby prescribes additional requirements for licensed regional banks (Commercial and non-interest). Effective the date of this Circular, all banks with regional authorization shall be required to operate from one additional geo-political zone as may be prescribed for each institution by the CBN, without prejudice to the existing requirement of minimum of two (2) geopolitical zones of the Federation. The essence is to promote spread and balance of regional banks across the country. ...” ‘Expansion of the Scope of Regional Banks in Nigeria’, CBN Circular 26.06.2020 (Ref. No. FPR/DIR/GEN/CIR/07/057): <https://www.cbn.gov.ng/out/2020/fprd/circular%20on%20expansion%20of%20the%20scope%20of%20regional%20banks%20in%20nigeria.pdf> (both accessed 22.01.2023). Regional banking operations may be the most optimal or pragmatic modus, based on the relevant bank's circumstances at the relevant time. For example: “Wema Bank became a regional financial powerhouse in 2009 and from there, it took us a short six years to achieve national relevance.” See ‘Our History’ Wema Bank’, Wema Bank: <https://wemabank.com/about-us/our-history/> (accessed 22.01.2023).

⁶³*Guideline 2.1(g), the 2020 Guidelines.*

for branches prescribed by it. See ‘Kudimoney Gets CBN License, Rebrands to Kuda’, *Vanguard*, 20.06.2019: <https://www.vanguardngr.com/2019/06/kudimoney-gets-cbn-license-rebrands-to-kuda/> (accessed 19.12.2022).

financial services on its behalf in line with the CBN Agent Banking Guidelines...”.⁶⁴ It should be noted that despite the prescription of National MFBs to have more than ten branches nationally, innovations in FinTech is gradually shifting CBN’s approach to regulation, and rightly⁶⁵ so, given emerging business models.

Recent experience has shown that regulators across sectors has often had to play catch-up;⁶⁶ we respectfully submit that ‘regulatory humility’ in this regard is not a sign of weakness but can be justified in the light of the policy objectives of financial inclusion which the CBN is championing through the MFB framework⁶⁷ and would also etch CBN’s footprint as a pan-African pacesetter.⁶⁸

It may even well be that the CBN’s current MFB branch threshold/equity capital classifications are an anachronism. In addition to the aforementioned

pro-online operations arguments, small capital MFBs (from Unit to State) may not necessarily be disadvantaged to access working capital (ability to take on as much debt as prudential guidelines allow) whilst the market should be the determinant of their success and scaling potentialities.

The contribution of MFB in banking the unbanked, and citizens at the bottom of the economic pyramid cannot be overemphasised. The poor, unemployed and low income earners are now able to save and obtain loans without collateral – a rarity with commercial banks. The CBN should therefore amend the language of *the Guideline* to make undoubtedly clear, its intendments in favour of the liberalisation of MFB online operations, irrespective of the MFB categorisation.⁶⁹ Current and anticipated digital reality should make the CBN relook the *Guideline* with a view to ensuring that MFB sails should take advantage of the headwinds that online transactions represent.

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⁶⁴*Guideline 2.1(h), the 2020 Guidelines*. As noted earlier, by the *expressio unius est exclusio alterius* rule, arguably the express geographical limitation of *Guidelines 2.1(g) and (h), 2020 Guidelines* means that all other permissible activities under *Guideline 2.1* are not subject to such geographical restrictions and that branch number thresholds is only for purposes of physical operations, MFB classification and categorisation? See *INEC v. Yusuf (supra)*.

⁶⁵For example, CBN granted Kuda MFB (formerly Kudimoney) a National MFB License and waived the requirement

⁶⁶For example, the Securities and Exchange Commission (SEC) published ‘*SEC Regulatory Incubation Guidelines*’,

https://www.google.com/url?sa=t&rc=1&q=&esrc=s&source=web&cd=&ved=2ahUKFwj8tFK_pH8AHU8UKQEHVdCYAQFnoECAoQAQ&url=https%3A%2F%2Fsec.gov.ng%2Fwp-content%2Fuploads%2F2021%2F06%2FSEC-Regulatory-Incubation-Guidelines_18521.pdf&usq=AovVaw3w8o5XnUW_H8DcfEDvCoRf (accessed 24.12.2022). See also some various LeLaw Thought Leadership articles on recent Nigerian tax developments: Afolabi Elebiju, ‘*Synchronisations: Size Categorisations Under Nigerian Companies And Tax Legislation*’, August 2021: https://lelawlegal.com/add11pdfs/AE_-_Synchronisations_Companies_Size_3.pdf; Afolabi Elebiju, ‘*Rendezvous: Implications of Tax Provisions of Nigeria’s Finance Act (No.2) for Non-Residents*’, January 2021: https://lelawlegal.com/add11pdfs/TLR_AE_-_FA2_2020.pdf; Afolabi Elebiju, ‘*Nigeria’s Finance Act 2020 Tax Amendments - Should the Oil and Gas Sector Be Nervous?*’, March 2020: <https://lelawlegal.com/add11pdfs/Nigeria-Finance-Act-2020-Oil-Industry-Impact.pdf>; Afolabi Elebiju and Chimezirim Echendu, ‘*Boundaries: Taxation of Nigerian Residents Providing Varying Services Remotely or Non-Residents*’, August 2021: https://lelawlegal.com/add11pdfs/Boundaries_edited.pdf; Chimezirim Echendu, ‘*Navigations: Revisiting The Tax Liability Of Non-Resident Shipping Companies In Nigeria*’, May 2021: https://lelawlegal.com/add11pdfs/TAX_LIABILITIES.pdf; Afolabi Elebiju and Chuks Okoriekwe, ‘*“Counting the Cost”: An Impact Analysis of Nigeria’s Tax Incentive Regime*’, LeLaw Tax Monograph Series No. 1, March 2021 (Originally published in (2021) 3 TLJN, pp. 1-30): https://lelawlegal.com/add11pdfs/AEChuks_Tax_Inequality_Final_new.pdf; Afolabi Elebiju, ‘*Connections, Collections: Issues Arising from the Imposition of Excise Duties on Telecommunications Services in Nigeria*’, April 2021: https://lelawlegal.com/add11pdfs/Connections_Collections_.pdf; ‘*Addendum – “Withholding Tax: The A-Z of Grossing-Up”*’, April 2021: https://lelawlegal.com/add11pdfs/Afolabi_-_Addendum_updated.pdf; Afolabi Elebiju, et al, ‘*Winter 2020/Spring 2021: Transfer Pricing Forum, Nigerian Chapter*’, Bloomberg: <https://lelawlegal.com/add11pdfs/Nigeria.pdf> (all accessed 23.01.2023).

⁶⁷Notably, the CBN has put measures in place to ensure that it is able to keep up with the pace of the ever-changing Fintech space. One of such measures was the creation of its framework for the operation of regulatory sandboxes. See CBN’s ‘*Framework for Regulatory Sandboxes Operation*’, July 2021:

[https://www.cbn.gov.ng/Out/2021/CCD/FRAMEWORK%20FOR%20REGULATORY%20SANDBOX%20OPERATIONS.pdf#:~:text=In%20view%20of%20increasing%20consumer%20appetite%20for%20payment,without%20compromising%20on%20the%20delivery%20of%20its%20mandate.~:msclkid=f499e5c8ce5311ecb21be2280787e4ba](https://www.cbn.gov.ng/Out/2021/CCD/FRAMEWORK%20FOR%20REGULATORY%20SANDBOX%20OPERATIONS.pdf#:~:text=In%20view%20of%20increasing%20consumer%20appetite%20for%20payment,without%20compromising%20on%20the%20delivery%20of%20its%20mandate.) (accessed 07.05.2022).

⁶⁸For example in Kenya, MFBs operating licenses are categorised with geographical limitations, thus: “(a) nationwide microfinance institution, which may carry out its deposit-taking business operations countrywide; or (b) community microfinance institution which may carry out its deposit-taking business operations – (i) within one Government Administrative District or (ii) within one Government Administrative Division, where the deposit-taking business is operated in a City; or (iii) in any other specified region as the Central Bank may deem appropriate.” See *Regulation 3, Microfinance (Categorization Of Deposit-Taking Microfinance Institutions) Regulations, L.N. 57/2008*: <https://faolex.fao.org/docs/pdf/kem28662.pdf> (accessed 19.12.2022). The Kenyan Regulations does not appear to envisage leveraging FinTech for geography neutral online operations, and also has the same gaps with the Nigerian MFB framework. The Central Bank of Kenya (CBK) like most financial services regulators in the world are welcoming technological innovations in the Sector and taking steps to regulate it. For example, the *Central Bank of Kenya (Amendment) Act No. 15 of 2021* enacted in December 2021 sought to regulate digital credit providers by providing specific Licensing Requirements and Information Sharing and Reporting Obligations for them. See KN Law LLP, ‘*The Central Bank of Kenya (Amendment) Act, 2021*’, *Legal Alert*, 26.01.2022: <https://kn.co.ke/wp-content/uploads/2022/01/Final-CBK-Amendment-Act-2021.pdf#:~:text=The%20Central%20Bank%20of%20Kenya%20%28Amendment%29%20Act%20%28the,the%20supervision%20of%20Central%20Bank%20of%20Kenya%20%28CBK%29> (accessed 24.12.2022). It should also be noted that the regulatory framework for MFBs in Ghana is slightly different from Nigeria’s. This is because Microfinance Institutions (not necessarily MFBs) are categorised based on their organisational and operating characteristics (i.e. the services they provide), rather than their size. There seems not to be a separate legislation for MFBs. These Microfinance Institutions (MIs) include: (i) Rural and Community Banks (RCBs) and Savings and Loans (S&L) Companies (Tier 1 MIs); (ii) Credit Unions and Microfinance Companies (Tier 2 MIs); (iii) Moneylender Institutions and Financial NGOs (Tier 3 MIs); (iv) Individual Susu and Individual Money Lender (Tier 4 MIs). “*The Microfinance Regulatory Council (MFR) in South Africa was established in 1999 as non-profit organization to regulate the South African micro-lending industry. The MFR had a dual mandate in ensuring the sustainability of the industry in providing access to finance for lower income individuals as well as ensuring consumer protection. It could be observed that the MFIs are not directly regulated by the Reserve Bank of South Africa unlike what can be witnessed in other countries... The MFR was not only mandated by the Reserve Bank but also by the also South Africa’s Department of Trade & Industry to regulate the micro lending industry by virtue of an exemption to the country’s Usury Act which establishes consumer protection framework for money-loans and includes a cap on interest rates.*” See James Atta Peprah and Camara Kwasi Obeng, ‘*Microfinance Regulation in Ghana: Missing Issues and Implications for Efficient Financial System*’, Researchgate, June 2015: https://www.researchgate.net/publication/279189185_MICROFINANCE_REGULATION_IN_GHANA_MISSING_ISSUES_AND_IMPLICATIONS_FOR_EFFICIENT_FINANCIAL_SYSTEM/link/558d481608ae18fc19dd845/download (accessed 27.01.2023).

⁶⁹As earlier stated the *Policy, its revision in 2011, the 2013 Guidelines and 2020 Guidelines* all prescribe geographical limitations/classifications for MFBs but do not expressly state whether or not it also extends to online operations.

The contribution of MFB in banking the unbanked, and citizens at the bottom of the economic pyramid cannot be overemphasised. The poor, unemployed and low income earners are now able to save and obtain loans without collateral – a rarity with commercial banks. The CBN should therefore amend the language of **the Guideline** to make undoubtedly clear, its intendments in favour of the liberalisation of MFB online operations, irrespective of the MFB categorisation. Current and anticipated digital reality should make the CBN relook the **Guideline** with a view to ensuring that MFB sails should take advantage of the headwinds that online transactions represent.



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