



## ABSTRACT

The need for credit facilities in order to bring about economic development in every society cannot be overemphasised. Credit spreads for secured debt are lower than for unsecured debt, especially when a firm's credit quality deteriorated, the economy slowed, or average credit spreads widen. Yet investment-grade firms tend to be reluctant to issue secured debt at all times. The study therefore overviewed the

# SECURING THE SECURITY OF SECURED CREDIT TRANSACTIONS IN NIGERIA

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## Introduction

Micro, Small and Medium Scale Enterprises (MSMEs) have limited or no access to credit for their businesses. To get credit to grow their businesses they are expected to use immovable property such as land as collateral. Immovable properties might not have been available to them to use as security, thereby denying them the much needed credit to transact their respective businesses.<sup>1</sup>

The importance of credit to economic growth cannot be overemphasised. It is also the driving force of private sector development. However, in Nigeria more than 70 percent of private enterprises, typically MSMEs, have limited or no access to credit. Credit applications get rejected due to insufficient credit history and information for the lender to use to make a reasonable judgment, as well as unacceptable collateral.<sup>2</sup>

In May 2017, two new Bills were signed into Law, The Collateral Registry Act of 2017 and The Credit Reporting Act 2017. The Collateral Registry Act 2017 was enacted to reform the Secured Transactions landscape in Nigeria which prior to now restricted collateral to Immovable Property.

With the enactment of the new laws, movable asset such as motor vehicles, equipment and so on. can be used to access loans from credit bodies. The movable properties will have to be registered in the National Collateral Registry before it can be

<sup>1</sup> Goode R. M, (2003) Legal Problems of Credit and security, 3rd Ed. London, Sweet and Maxwell, p. 3.

<sup>2</sup> Ikeanyi vs. Adighohu (1957) 2 ERNLR 39.



concept of secured credit. Doctrinal method was used in data collection. The primary sources of data were the Collateral Registry Act 2017, the Credit Reporting Act 2017, Companies and Allied Matters Act 2020, Financial Act 2019, Financial Act 2020, Banks and Other Financial Institutions Act 2020; sources of secondary data were journal articles, published and unpublished work, seminar papers, newspapers, and internet. Data were content-analysed and presented thematically. Findings of the study revealed that the depositors' funds were not properly secured. The deposit banks do compromise in following to the latter the required procedures in verifying the documents presented as security. The borrowers did think that money collected from the deposit banks are part of the national cake and need not be repaid. The study concluded that the need to ensure that depositors' funds are secured is very important in order to make the economy a continuous exercise. The era of giving money to borrowers without proper security be jettisoned and whoever is found culpable about fraudulent act in terms of lending and borrowing money from financial institutions be let to face the wrought of the law.

**Keywords:** Secured credit, depositors' funds, overview, enforcement, financial institutions

used as collateral for loans. The Credit Reporting Act 2017, provides for credit information sharing between Credit Bureaus and lenders, such as Banks and also other services provided on credit such as telecommunication companies and retailers.<sup>3</sup>

The Central Bank of Nigeria has been a major driver of various reforms and activities in terms of Nigeria grapples with the economic challenges arising from the global economic problems ranging from recession to covid-19 pandemic. Nigeria's fiscal and monetary regulators have sought to deploy a number of economic and regulatory tools or interventions with the objective of stabilising the economy, facilitating and improving access of the real sector of the Nigerian economy to credit and job creation.<sup>4</sup>

### **Security in Secured Credit Transactions**

Security simply put is a right given to one party in the assets of another in other to secure payment.<sup>5</sup> The concept of security therefore is in the nature of a security interest, which is distinguished from other interests with the following characteristics.

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3 Okuneye vs. FBN (1996) 6 NWLR (pt 457) p.749.

4 D. A. Odunaike, A. Lawal-Arowolo & T. Ajibade, (2019) Intellectual property in digital banking services: maximizing and safeguarding inherent values in assets, JAPBE, Vol. 5, No. 1, page 270.

5 R.M Goode Legal Problems of Credit and Security (sweet and Maxwell 2nd Edition (1988) p1`



- i. **Origin:** It should arise out of a transaction with the main intent of being a security. The parties must deliberately intend it as security.
- ii. **Nature of right created:** It should not be a right in 'personam', rather it should be a right in 'rem'.
- iii. **Mode of creation:** It is created by grant or declaration of trust, and not by mere reservation.

One of the important motives for security in secured transactions is that it affords the lender access to assets, which can be directly realized, and the proceeds therefore applied to the indebtedness in the event of a default.<sup>6</sup>

Another important motive for taking security in financing a project is the desire to control the destiny of the financed project, should things start going wrong.<sup>7</sup>

#### **Forms of Secured Credit Transactions**

Secured transactions do come in various forms, but the most common forms are as follows:

- i. **Pledge:** A pledge does not involve the transfer of a title, but it merely gives the creditor the right to possess the security. Two elements are involved, actual delivery or constructive delivery. For the creditor to be able to sell the property upon default, he must have the right to sell.<sup>8</sup>
- ii. **Mortgage:** This is the actual or constructive transfer of the ownership of an asset by way of security to another, upon condition that the asset will be re-transferred to the other upon the discharge of the obligation. Having an equity of redemption, a mortgage is indeed a true and time tested security. Its drawback however, lies in the cumbersome and time involving procedure for documentation and perfection.<sup>9</sup>
- iii. **Charge:** A charge is simply an agreement between a creditor and a debtor. In the agreement, the assets would be appropriated to the satisfaction of the debt. The creation of a charge does not need to be in a specific form. The parties must have an intention to create a security.
- iv. **Lien:** A lien is a contractual right to detain property but does not confer right to sell. The bankers Lien is however different because it goes with a power of sale.<sup>10</sup>

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<sup>6</sup> Aluminium Industries Vaassee BV. vs. Romalpa Aluminium Ltd. (1976) NWLR 676

<sup>7</sup> Denton Wilde Sapte: A Guide to Project Finance (2000 Edition, pp 68-69)

<sup>8</sup> Moore and Bevins "Security for lending - Pledges, Letters of Hypothecation and Trust Receipt."

<sup>9</sup> I. O Smith SECURED CREDIT IN A GLOBAL ECONOMY (2003 Edition pg. 271-272)

<sup>10</sup> Smith, I. O., (2001) Nigerian Law of Secured credit, Lagos Ecowatch, p. 6.



### **Secured Credit Transactions in Nigeria Prior to the Collateral Registry Act, 2017**

- a. Prior to the enactment of The Collateral Registry Act 2017 and the Central Bank of Nigeria 'Registration of Security Interests in Movable Property by Banks and Other Financial Institution in Nigeria Regulation No.1 2015', secured transactions were mostly conducted by using immovable properties as collateral for loan. Anything short of that was not always acceptable especially by banks and other credit institutions.
- b. Banks and other Financial Institutions only give loans to businesses that can provide fixed land and property as collateral. This move shuts out Micro, Small and Medium Enterprises (MSMEs) which usually owns mostly movable assets like motor vehicles and equipment. The downside of this arrangement is that many businesses with the potential to succeed maybe screened out and thus deprived access to financing.<sup>11</sup>
- c. Since MSMEs account for the major share of the private sector and employment in Nigeria, it is quite unfortunate that despite the size and overall importance of these businesses, they rarely had access to credit from Financial Institutions except in situations where they have landed properties to be used as collateral. It is safe to say that the overall business climate was affected since MSMEs which plays a major role in any country's economic development had a huge challenge before it.<sup>12</sup>

### **Collateral Registry Act, 2017**

Modern Secured Transactions Laws and Collateral Registries are of vital importance to any country's economic development. Collateral provides the basis for free-flowing credit markets, cutting the losses lenders might face from non-payment of loans. While land and buildings are widely accepted as collateral for loans, the use of movable collateral (such as inventory, accounts receivables, crops and equipment) is restricted because many countries do not have functioning laws and registries to govern secured transactions.<sup>13</sup> With the enactment of Collateral Registry Act 2017 and The Credit Reporting Act 2017, Nigeria has joined the league of countries with reformed Secured Transactions Laws. Reforming the framework for movable collateral lending allows businesses and MSME's to leverage their assets into capital for investment and growth. The creation of these Registries therefore increases the availability of credit and also reduces the cost of credit.

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<sup>11</sup><http://www.mondaq.com/Nigeria/x/32173/Insolvency+Bankruptcy/Enhancing+Nigerias+Economic+Development+A+Case+for+Institutional+and+Regulatory+Reforms+in+Nigerias+Banking+Sector>

<sup>12</sup>[http://www.ifc.org/wps/wcm/connect/Industry\\_EXT\\_Content/IFC\\_External\\_Corporate\\_Site/Industries/Financial+Markets/MSME+Finance/](http://www.ifc.org/wps/wcm/connect/Industry_EXT_Content/IFC_External_Corporate_Site/Industries/Financial+Markets/MSME+Finance/)

<sup>13</sup> Section 1 Collateral Registry Act 2017



The major objective of the Act is to enhance financial inclusion in Nigeria; stimulate responsible lending to MSMEs; facilitate access to credit secured with movable assets; facilitate perfection of Security Interests in movable assets; facilitate realization of Security Interests in movable assets; and establish a Collateral Registry and provide for its operations.<sup>14</sup>

The Act applies to all Security Interests in movable assets created by an agreement that secures payment or the performance of an obligation; a person who is a Creditor, Borrower or Grantor under this Act; and all financing and operating leases entered into after the commencement of this Act.<sup>15</sup>

Section 5 of the Act goes ahead to lay down the content of a security agreement and it states as follows:

S.5 A Security Agreement shall:

- (a) Reflect the intention of the Grantor and Creditor to create a Security Interest;
- (b) Identify the Grantor and Creditor;
- (c) Describe the secured obligation including the maximum amount for which the Security Interest is enforceable;
- (d) Describe the Collateral adequately; and
- (e) Indicate the tenor of the obligation secured

The Act goes further to describes what an adequate collateral should contain which is the item, kind, type or category, year of manufacture or any other description that can identify the Collateral.<sup>16</sup>

### **The Establishment of the National Collateral Registry**

There is established in the Central Bank, a registry to be known as the National Collateral Registry (in this Act referred to as “the Collateral Registry”). The Governor of the Central Bank of Nigeria shall appoint the Registrar and such other staff as may be required for the attainment of the objectives of this Act. The Registrar shall supervise and administer the operations of the Collateral Registry.<sup>17</sup>

### **Function of the National Collateral Registry**

The National Collateral Registry is to perform the following functions

Receive, register and store information about Security Interests in movable assets.

Provide access to persons who may seek information on Security Interests from the Collateral Registry

Perform such other functions as may be prescribed by Regulations made under this Act.<sup>18</sup>

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<sup>14</sup> Section 2 Collateral Registry Act 2017

<sup>15</sup> Section 6 of The Collateral Registry Act 2017

<sup>16</sup> Section 10 Collateral Registry Act 2017

<sup>17</sup> Section 11 Collateral Registry Act 2017

<sup>18</sup> Section 12(1) Collateral Registry Act 2017



### **Procedure for the Registration of a Financial Statement**

A Financing Statement may be registered by or on behalf of a creditor at any time with the consent of the grantor as required under the Act. A Financing Statement is registered when the Collateral Registry assigns a unique registration number, date and time to it. The Collateral Registry shall, after a Financing Statement has been registered, issue a Confirmation Statement to the Creditor who files for registration.

Registration of an initial Financing Statement is ineffective unless the Grantor consented to it in writing. A Security Agreement in accordance with Section 4 is sufficient to constitute consent by the Grantor for the registration of an initial or amendment Financing Statement covering the collateral described therein. The Grantor may give consent in writing to register a Financing Statement prior to the conclusion of a Security Agreement. Registration of an Amendment Financing Statement is ineffective unless consented to by the Grantor in writing if the Amendment Financing Statement adds a description of new Collateral; or adds a new Grantor unless the new Grantor is a transferee of the collateral already described in the registration.

### **Description of Collateral**

The financing statement must include a description of the Collateral that reasonably allows its identification. A description of Collateral is sufficient if the Collateral is described by: (a) item, kind, type or category; (b) a statement that a Security Interest is taken in all of the Grantor's present and after-acquired property; or (c) any other description that reasonably identifies the collateral. If a Financing Statement covers serial-numbered goods it must contain information of the serial number, in addition to the information as defined above. (4) Serial-numbered goods that are held as inventory need not be described by a serial number. A description of serial-numbered goods held as inventory is sufficient if it satisfies the requirements of sub section 2.

### **Search at the Registry**

A person may conduct search at the Registry for information provided in registered financing statement according to criteria set. The following are the criteria-

The unique-based identifier of the granter.

The serial number of the collateral, or,

Such other criterion as may be prescribed by Regulations.

It should be noted that for search to be conducted, prescribed search fees must be paid.

### **Priority of Secured Interest**

Priority shall be determined by order of registration. The priority of a Security Interest in collateral shall be determined by order of registration while the priority of a Security Interest in Collateral and the proceeds derived from the collateral shall be the same.



A Secured Creditor may transfer a secured obligation notwithstanding any agreement with the Grantor or the Borrower limiting the right to transfer the secured obligation and without having to obtain consent of the Grantor or the Borrower. In other words, transfer does not affect priority.

### **Realisation of Security Interest**

In instances where there is a default, a Creditor can exercise his rights under the Act and in the Security Agreement and can also resort to any appropriate judicial remedy. In a situation where a borrower defaults, the Creditor shall give the Borrower and Grantor a notice of the default and the intention to repossess the Collateral. The notice can be delivered either by hand, courier service, email, registered mail or any other means stipulated in the agreement.

The Creditor may after 10 days of sending the notice of default either take possession of the collateral or render it inoperative. A Creditor can relinquish possession either through a Judicial Process where it was stated in the Security Agreement that possession can occur without a Court Order. In the second instance, the assistance of The Nigerian Police Force can be sought for repossession.

A Creditor who intends to sell a collateral shall in not less than 10 working days before selling the collateral, send Notice to the Borrower, Grantor or any other Creditor who registered a Financial Statement in respect of the collateral. Exception to this is where the Collateral may perish within 10 working days of repossession or the value will decline if not disposed of immediately, or cost of care/storage is large in relation to its value.

A Creditor shall within 15 working days after the sale of a Collateral, give to the person entitled to receive a Notice of Sale , a Statement of Account in writing, stating the amount realized, amount of costs and balance due Grantor.

### **Right to Redeem Collateral**

A borrower or grantor can any time before a Creditor sells the Collateral redeem it by either-

Fulfilling all obligation secured by collateral; and payment of any reasonable expenses incurred by the creditor. At any time before a creditor sells the collateral, a borrower may reinstate the Security Agreement by: paying the sums owed; remedying any other default; and paying a sum equal to the reasonable expenses incurred by the creditor unless otherwise agreed, a Borrower shall not be entitled to reinstate a Security Agreement more than twice in each year.

### **Classification of Security**

Real and Personal Security are the main types of security recognized by law. Each type is classified with defined characteristic features in terms of creation and enforcement. Real security - real security gives the creditor certain rights over property, which has been appropriated to meet the debt. This takes the form of a right in rem over specific property



to the satisfaction of a particular debt, so that the debt is the primary charge on the property. There are three traditional methods of classifying real security. These are: Security by which the creditor obtains proprietary rights in the subject matter of the security such as mortgage - in this form of real security, title whether legal or equitable is conveyed to be creditor by the debtor to be held by the former until all his claims under the mortgage have been satisfied. Security, which depends on the creditor's actual possession of the subject matter of security - the existence of this form of security, depends on the creditor's continued possession and not on conveyance of title by the debtor. Examples are found in the English pledge and possessory lien.<sup>19</sup> Although possessory security generally gives a right of retention to the creditor, in the case of the English pledge, the creditor may sell under special circumstances, even though he cannot foreclose. Security, which gives the creditor neither proprietary nor possessory right, but a simple appropriation of specific property to the satisfaction of the debt a good example of this form of real security, is an equitable charge or hypothecation. Under this class of security, the creditor may liquidate the debt through judicial sale of the property. While foregoing classification may be a convenient way of classifying real security, it may serve no useful purpose in practice. This is because one type of security may fall into different heads of classification, making a strict compartmentalisation difficult. For example, although a mortgage is a proprietary security, it is not absolutely correct to say that possession is not one of the incidents of a mortgage, for a mortgagee may enter into possession in the absence of a mortgager's default and collect rents and profits. A pledge as a possessory security on the other hand, gives the pledgee a right to sell, a remedy characteristic of proprietary security.

### **Personal Security**

Personal security gives the creditor a secondary contractual action against the surety, should the principal debtor default. It gives the creditor no claim upon any particular thing, but a claim against a particular person who assumes liability as surety for the principal debtor. Personal security or suretyship exists in two forms namely: by guarantee or by indemnity. A contract of guarantee assures the creditor of the guarantor's secondary liability in the event of the inability of the principal debtor to meet his financial obligations even after adjudged liable by the Court. In this case, the creditor will have to proceed first against the principal debtor by action in court, and it is only where the latter's assets are insufficient to meet the financial obligation that the guarantor is proceeded against.<sup>20</sup> A contract of indemnity assures the creditor of the primary liability of the indemnifier upon failure of the principal debtor to fulfill his obligation under the loan agreement. In this case, the creditor is not obliged in law to proceed against the principal debtor first before suing the indemnifier under the contract of indemnity. While

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<sup>19</sup> Allan D., *Security: Mysteries, Myths and Monstrosities*, Monash L. R. (1989) p. 345.  
<sup>20</sup> Omotola J., (2006) *The law of Secured Credit*, Evans Brothers, Nigeria, p. 27.





the foregoing classification remains water - tight in the law of secured credit, it does not follow that the security may be obtained only in accordance with the methods suggested. More often than not, creditors take real security from such sureties, and may attach same in the event of default by the principal debtor .

### **Consensual Security: Preliminary Inquiries and Legal Requirements**

It has been argued that non-judicial remedies as a means of settling disputes arising from commercial transactions serve useful purposes by preventing the acrimony and frustrations that may arise from litigation. As it particularly relates to secured transactions law, one of the remedies considered handy for settling creditor/debtor enforcement disputes, is the self-help repossession. In its simplest form, the lender/creditor, pursuant to an agreement signed by the borrower is granted a right to - either by himself or through his agent - step in, take possession of the property that serves as the security or collateral and possibly dispose of the asset, without first approaching the courts.

The most popular method of making real security available for credit facility involves a true agreement between parties of full capacity in law, the existence, availability and viability of the subject matter of security.<sup>21</sup> Therefore, if creditors want to make the security viable and realizable, the following factors should be taken into consideration: a) Recognition of parties in law – an agreement cannot have the force of law or be enforceable between the parties to it, except the parties are juristic persons.<sup>22</sup>

### **Legal and Regulatory Developments**

#### **The Companies and Allied Matters Act, 2020**

On 7 August 2020, the President of the Federal Republic of Nigeria signed into law the Companies and Allied Matters Act, 2020 (the CAMA 2020). The CAMA 2020 repeals the Companies and Allied Matters Act, 1990, which had been in force for the past 30 years. One of the major implications of the CAMA 2020 on secured lending transactions is the mode of execution of documents. A company seal is no longer a mandatory requirement under the CAMA. The company's articles shall regulate where a company chooses to have a common seal or continues to use its existing company seal, the design and use of the seal, and the name of the company shall be engraved in the seal. Therefore, a company may validly execute a document as a deed, without affixing a common seal, if the document is executed by (1) a director and the company secretary; (2) at least two directors of the company; or (3) by a director of the company in the presence of at least one witness who shall attest the signature. A director, secretary, or other authorised officer of the company may sign documents or proceedings (other than deeds) that

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<sup>21</sup> Savannah Bank Plc. vs. Ajilo (1989) SCNJ 159.

<sup>22</sup> Okoiko vs. Esedalue (1974) 3 SC 15 3



require authentication by a company. The CAMA 2020 also recognises the use of electronic signatures as due authentication of documents or proceedings by a company. The CAMA 2020 also introduces provisions for netting arrangements, which confirms the enforceability of netting arrangements against an insolvent party, and, where applicable, a guarantor or other person providing security for a party. Any applicable insolvency law limiting the right to set-off or net-out obligations, payment amounts, shall not affect provisions of a netting arrangement under qualified financial contracts or values owed between an insolvent party and another party.

The CAMA 2020 has also introduced new insolvency proceedings such as administration and company voluntary arrangements, and thus both secured and unsecured lenders need to pay particular attention to the nature of their rights, powers and the new statutory protections that a company facing financial difficulties may seek to take advantage of.

The CAMA 2020 and the subsequent Companies Regulations 2021 have also significantly reduced transaction costs for secured lenders. Under the CAMA 1990, the cost of registration of charges was 1 per cent and 2 per cent of the secured amount for private and public companies respectively. The CAMA 2020 has significantly reduced the previously mentioned cost of registration to 0.35 per cent of the secured amount. It is important to also note that particulars of any negative pledge must be noted at the companies' registry and will constitute constructive notice to any subsequent holder of a charge, which is a departure from the previous situation where registration did not constitute constructive notice.<sup>23</sup>

### **The Banks and Other Financial Institutions Act 2020**

The Banks and Other Financial Institutions Act 2020 (BOFIA 2020) was signed into law on Thursday, 12 November 2020. The BOFIA 2020 repeals the Banks and Other Financial Institutions Act (BOFIA 1991).

The BOFIA 2020 has among other things expanded the definition of 'banking business' (which was previously limited to receiving deposits, paying or collecting cheques and provision of finance) to include the provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person whether businesses are conducted digitally, virtually or electronically only or other business as the governor of the CBN may, by an order published in the Gazette, designate as a banking business.

The BOFIA 2020 has also expanded the definition of other financial institutions to include credit bureaus, international money transfer services, mortgage refinance, mortgage

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<sup>23</sup> Omo-Bare vs. New Nigerian Bank Ltd (1978) ALR Comm 180 (1904) AC 355.



guarantee, financial holding company or payment service providers and businesses whose principal objects include factoring (regardless of whether the businesses are conducted digitally, virtually or electronically).

The implication of these expanded definitions is to bring a wide variety of financial services companies, businesses and activities under the regulatory oversight of the CBN. This will subject all of these businesses and activities, such as payment service companies and financial holding companies, to additional regulatory compliance obligations that may be imposed by the CBN.

Another key feature of the reform brought under the BOFIA 2020 is its recognition and protection of netting agreements. It should be noted that in relation to banks and OFIs, the netting provisions in BOFIA 2020 will take precedence over the netting provisions in the Companies and Allied Matters Act 2020. The triggers for netting under BOFIA 2020 are where: (1) the license is revoked; (2) the bank is wound up; and (3) a liquidator is appointed.

Furthermore, the BOFIA 2020 has expanded the rescue tools for failing banks and has empowered the CBN so that it may employ any one of the following tools to rescue a failing bank:

1. suspend any payment or delivery obligations under any contract to which the bank in question is a party;
2. transfer part or the whole of the banking business to third party private purchasers or employ any other intervention tool that the CBN considers appropriate;
3. acquire the shares of any failing bank up to a level that guarantees its control of the bank. However, the CBN must dispose of the equity investment in the failing bank at the earliest suitable time;
4. issue a bail in certificate that operates to cancel, modify or suspend an eligible instrument (including judgment debts);
5. transfer the assets of a bank, specialised bank or OFI to one or more private asset management vehicles; and
6. transfer to a purchaser, shares or other instruments of ownership issued by the bank and assets of the bank.

Finally, the changes introduced by the BOFIA 2020 were driven by the need to close the regulatory gaps in BOFIA 1991 and to ensure that the primary statute regulating banking and other related matters Nigeria is modern and aligns with international best practices.<sup>24</sup>

### **The Finance Act 2020**

Further to the changes introduced by the Finance Act 2019, on 31 December 2020, the Finance Act 2020 was signed into law. The Finance Act 2020 amends various provisions in

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<sup>24</sup> Siebe Gorman and Co Ltd vs. Barclays Bank Ltd. (1979) 2 Lloyds Rep142.



14 tax and fiscal statutes, geared towards preventing tax evasion, enlarging the tax base in Nigeria, clarifying ambiguous tax statutes and improving general tax administration. The effective date of the Finance Act 2020 is 1 January 2021.

The Finance Act 2020, among other things, limits the categories of agricultural companies that would enjoy tax exemption on interest income for loans to only companies engaged in 'primary agricultural production' as defined under the Finance Act 2020. In addition, the moratorium on these loans must not be less than 12 months.

The Finance Act 2020 also resolved the debate about the power of the Minister to determine the effective date of the new VAT rate introduced by the Finance Act 2019 by statutorily recognising the effective date for computation of VAT at the new rate of 7.5 per cent. The Finance Act 2020 expressly provides that the effective date for computing VAT at the rate of 7.5 per cent is 1 February 2020. The implication of this is that all invoices issued on 1 February 2020 or after are required to utilise the VAT rate of 7.5 per cent.

The Finance Act 2020 has also revised the definition of taxable supply of goods and services. Taxable goods have been redefined to include all forms of tangible property, movable or immovable, but excludes money, securities, land and building, while taxable services are redefined to include incorporeal rights, but this excludes interests in money, securities, land and building. The revised definitions were instructive to clarify that VAT is not payable on the sale of shares, securities or land, as this was not made clear under the Finance Act 2019.

Both the Nigerian Export Processing Zone Act and Oil and Gas Export Processing Free Zone Act were also amended to make their provisions subject to the provisions of the Banks and Other Financial Institutions Act and to mandate companies in the zones to file companies income tax returns in compliance with Section 55 of the Companies Income Tax Act.<sup>10</sup> Another significant provision introduced by the 2020 Finance Act is the significant economic presence rule.

### **The CBN Guidelines on Global Standing Instructions (GSI)**

In 2015, Nigeria joined the league of countries that have reformed their secured transactions legislations, with the enactment of the Central Bank of Nigeria (CBN) Regulation No. 1, 2015. This reform introduces a new wave of changes to the way by which personal property will be used in the future for the purpose of securing credit in Nigeria. Amongst other things, the Regulation provides a reconceptualisation of personal property securities as conceptualised under English law to a functional system, such as that of UCC Article 9.<sup>25</sup>

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25 Siyanbola, T. T. & Adebayo, K. K. (2021), Credit Risk Management and Financial Sustainability of Listed Deposit Money Banks in Nigeria, QJRBM Vol. 9 Issue 6 pp: 64-77 ISSN (Online): 2347-3002 [www.questjournals.org](http://www.questjournals.org)



On 13 July 2020, the CBN issued the Guidelines on the Global Standing Instruction for Individuals (the GSI Guidelines). The Guidelines took effect from 1 August 2020. The CBN through the GSI Guidelines seeks facilitate an improved loan repayment culture, reduce non-performing loans, watch-list consistent loan defaulters and enhance loan recovery across the Nigerian banking industry.<sup>26</sup>

The borrower must have executed a GSI mandate in favour of the participating financial institution (PFI) to come under the GSI Guidelines. Thus, execution of the GSI mandate is likely to be inserted in the standard offer letters of most PFIs and made a condition precedent to disbursement. Pursuant to the GSI Guidelines, in the event of default, the PFI may, as a last resort and without recourse to the borrower, recover past due obligations (principal and accrued interests only, excluding any penal charges) from a defaulting borrower through a direct set-off from deposits or investments held in the borrower's accounts with any other PFI.

To be eligible, a PFI must:

1. be a financial institution duly licensed by the CBN;
2. have adequate information technology infrastructure to meet all the connectivity and protocol requirements at Nigeria Inter-Bank Settlement System Plc (NIBSS) and CBN;
3. provide access to customers' NUBAN accounts; and
4. execute the GSI Master Agreement with NIBSS with a copy sent to CBN.

It should be noted that the GSI can only be triggered for the purpose of recovering loans (principal sums and interest only) granted to natural persons (individuals) and may be triggered in respect of savings accounts, current accounts, domiciliary accounts, investment or deposit accounts, and electronic wallets (whether held individually or jointly). The GSI Guidelines have been criticised on the basis that it cannot be validly levied against a joint account for an obligation owed by only one of the joint account holders. Unless the other joint account holder is a guarantor to the loan, the GSI cannot be validly levied against a joint account. This is, however, yet to be tested in court, and it is not certain the approach the Nigerian courts will take on this issue.<sup>27</sup>

The biometric verification number (BVN) system shall be used to track linked accounts in other financial institutions. The GSI Guidelines, however, provide that where a borrower's BVN is not linked to any of the qualifying account types listed above, the account will be 'watch-listed'.

### **The CBN Guidelines on Payment Service Banks**

On 27 August 2020, the CBN issued the guidelines for the licensing and regulation of payment service banks (the Guidelines) in Nigeria. Pursuant to the Guidelines, payment

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<sup>26</sup> A.C.B. Ltd. v. Ihekwoaba (2003) 16 NWLR (Pt.846) 249

<sup>27</sup> John S. James, Stroud's Judicial Dictionary of Words and Phrases 4th Ed, Vol 5, p. 2470.



service banks (PSBs), are required to have not less than 25 per cent of their financial service touch points located in the rural areas and unbanked locations targeting financially excluded persons. The permissible activities for PSBs include: (1) accepting deposits from individuals and small businesses, which shall be covered by the deposit insurance scheme; (2) carrying out payments and remittances (including inbound cross-border personal remittances) services through various channels within Nigeria; (3) selling foreign currencies realised from inbound cross-border personal remittances to authorised foreign exchange dealers; (4) issuing debit and pre-paid cards on its name; (5) operating electronic wallets; (6) rendering financial advisory services; (7) investing in FGN and CBN securities; and (8) carrying out such other activities as may be prescribed by the CBN from time to time. PSBs are prohibited from carrying out the following activities: (1) granting any form of loans, advances and guarantees (directly or indirectly); (2) accepting foreign currency deposits; (3) dealing in the foreign exchange market except as permitted by the Guidelines; and (4) undertaking any other transaction that is not prescribed by the Guidelines.<sup>28</sup>

PSBs may be set up by banking agents, telecommunications companies, postal services providers and courier companies, mobile money operators and financial holding companies among others.

The Guidelines are a welcome development particularly in light of the CBN's objective to promote financial inclusion especially in the rural areas and unbanked locations in Nigeria.<sup>29</sup>

### **Conclusion**

The Nigerian government continues to make efforts through legislative and regulatory actions to promote economic growth, job creation and spur lending to the real sector of the economy. However, Nigeria continues to face significant headwinds, such as double-digit inflation, reduction in foreign currency earnings and liquidity, increasing oil subsidy payments and a significant funding requirement, to meet the country's infrastructure requirements.

The need to ensure that depositors' funds are secured is very important in order to make the economy a continuous exercise. The era of giving money to borrowers without proper security be jettisoned and whoever is found culpable about fraudulent act in terms of lending and borrowing money from financial institutions be let to face the wrought of the law.

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28 James R.W. (1974) *Modern Land Law in Nigeria*, University of Ife Press, p 224

29 *Fasakin vs. Fasakin* (1994) 4 NWLR (Pt 340) 597 CA.