



The Limited Interim Regulatory/Registration Framework and Guidelines for Digital Lending 2022



October 2022

Introduction

The Federal Competition and Consumer Protection Commission (the “Commission”) has released the Limited Interim Regulatory/Registration Framework and Guidelines (the “Guidelines”) for Digital Lending 2022. This is stated to be in exercise of the powers conferred upon it by sections 17, 18 and 163 of the Federal Competition and Consumer Protection Act, 2018.

The Guidelines provide that it is the Commission’s approach to regulating the digital lending space and makes provisions for the requirements for approval/registration to carry out the business of digital lending in Nigeria. It aims to provide guidance to the operators and businesses in the digital lending industry pending the development of a more comprehensive framework by the Inter-Agency Joint Regulatory and Enforcement Task Force comprising of the Commission, the National Information Technology Development Agency (NITDA) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC).

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The Guidelines contain an application form (Form 001) for approval which is to be filled by prospective digital lending businesses. They are required to disclose the following details: name of the business; physical address; telephone numbers; email address; website; identity and nationality of promoters, directors and initial key role players; source(s) of funding including equity, debt or otherwise; affiliations with any other companies, institutions or similar businesses, whether domestic, regional or global; their consultants, agents, or any person assisting with registration process, operations, or management; their bankers; their proposed interest regime and loan balance calculation methodologies; any licences authorizing them to operate; and their list of proposed apps.

The Guidelines list the documents to accompany Form 001. These are:

1. A certified copy of the certificate of incorporation of the applicant;
2. A brief description of the business of the applicant and where relevant, their groups;
3. Organogram showing role players and location of key role players and any operational approving authorities/person;
4. Name and address of a person within the business who is authorized to accept all correspondence and accept service on behalf of the business;
5. Evidence of membership in any trade or professional associations;
6. Any service level agreements with any service providers with respect to operations but excluding administration;
7. Evidence of feedback and complaint resolution mechanism;
8. Evidence of tax payments or tax waivers where applicable;
9. All applicable fees associated with service; and
10. Form 002 – Declaration for Digital Lending Businesses in Nigeria

The Guidelines require digital lending businesses to sign an undertaking in the appropriate form that their business is legitimate, lawful and will operate in compliance with applicable laws; that they have complied with all applicable regulatory requirements and or approvals for any technology to be deployed in or used for their business in Nigeria; that the capital to be invested in their business has no illegal origin or flow from proceeds of any illegal activity; that they will comply with privacy and personal data laws as well as recovery practices that are consistent with fair lending principles in the FCCPC Act and NDPR 2019. Digital lenders must also undertake that their processes comply with the CBN’s AML/CFT guidelines.

We consider that the inclusion of this undertaking in the Guidelines is to ensure digital money lenders comply with data privacy laws and other relevant laws.

The need for the Guidelines is due to the recent breaches of data privacy by online loan sharks in their loan recovery practices, with customers and their phone contacts subjected to harassment, cyberbullying etc. The Guidelines are a response to these anti-consumer practices. The FCCPC has previously attempted to curb the illegal activities of digital lenders, some of which are not incorporated by issuing takedown notices to Google Play Store to remove the offending apps. Fintech companies were instructed by the FCCPC not to provide transaction services to online loan sharks which were under investigation for violating consumers' rights. Telecommunication service providers were also instructed not to provide services to these lenders.

There is a concern as to whether the Commission has the power to regulate digital lending in Nigeria as the Central Bank of Nigeria ("CBN") is the primary regulator for banks and other financial institutions while the Commission has oversight in all matters relating to competition and consumer protection (subject to sector-specific legislation) under the Federal Competition and Consumer Protection Act.¹

The Banks and Other Financial Institutions Act ("BOFIA Act") 2020 provides that the provisions the Federal Competition and Consumer Protection Act will not apply to any function, act, financial product, or financial services issued or undertaking and any transaction howsoever described by a bank or other financial institution licenced by the CBN.² In addition to this, notwithstanding the provision of any other enactment, the CBN Governor has the power to issue regulations, guidelines and policies to banks, specialised banks and other financial institutions to promote competition in the Nigerian financial system and protect the interest of consumers of financial products and services.³

Where there is any conflict with the provisions of the Federal Competition and Consumer Protection Act, the provisions of the BOFIA Act will prevail. This is based on the principle that where there is a specific statute and a general statute on the same subject, the specific legislation will apply.⁴ It is also a general principle that where a latter statute is inconsistent with the provisions of an earlier one on a subject, the latter statute will prevail. This will be applicable to the extent that the FCCPC Act was enacted in 2018 while the BOFIA Act was enacted in 2020.

Conclusion

Our view is that the Guidelines will apply to digital lending businesses, which operate pursuant to moneylenders' licences and are not licenced by the CBN. These digital lenders are licenced under states' laws to carry out the business of money lending in accordance with the Money Lenders Laws of various States. For such moneylenders' activities regulated by state law, the provisions of the FCCPA will apply to their commercial business activities and their services (which are not regulated by subject matter legislation and regulators) provided to the public. If, as we have assumed, the Guidelines can bring these state-licenced money lenders which provide their services to consumers via digital platforms, within the Commission's regulatory purview for the purposes of consumer privacy protection, then the

¹ Section 104 of the FCCPA

² Section 65 of the BOFIA

³ Section 30(1) of the FCCPA

⁴ NDIC v. Governing Council, I.T.F (2012) 9N NWLR (pt. 1305) 252 @ 273



Guidelines are not ultra vires and to that extent are valid and will help bring much needed order to a service sector that has raised consumer privacy concerns. More clarity on the specific oversight scope of the Guidelines will be useful to ensure that the markets and operators are well informed on the scope of legislative and regulatory roles.

A copy of the Guidelines is available [here](#).



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