

Regulatory Update: Banking & Finance

April 2024

**ONE REGION
ONE VISION
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INTRODUCTION

This is an update on the circulars and regulations released by the Central Bank of Nigeria (the “CBN”) in April 2024. We have also provided a report of the market and case law updates that are relevant to the financial services sector that occurred during the month of April 2024.

SYNOPSIS

CBN REGULATORY UPDATES

1. CBN PROHIBITS THE USE OF FOREIGN CURRENCY-DENOMINATED COLLATERAL FOR NAIRA LOANS

The CBN on 08 April 2024 through a letter addressed to all banks has prohibited the practice of securing naira loans with foreign currency denominated collateral, except in permitted exceptions.

2. CBN REDUCES THE LOAN-TO-DEPOSIT RATIO OF DEPOSIT MONEY BANKS

The CBN on 17 April 2024 via a letter addressed to all banks announced the reduction of the statutory loan-to-deposit ratio (LDR) by 15 percentage points from 65% to 50%.

MARKET UPDATES

1. CBN OFFERS SALE OF FX TO BDCs TO MEET RETAIL MARKET DEMAND FOR ELIGIBLE INVISIBLE TRANSACTIONS

The CBN on 08 April 2024 and 22 April 2024 announced the sale of \$10,000 to Bureau de Change Operators (BDCs) at the rate of N1101/\$1 and N1021/\$1 respectively, instructing them to sell to eligible end users at a spread of not more than 1.5% above the purchase price.

2. CBN GOVERNOR DELIVERS PRESS BRIEFING AT THE IMF/WORLD BANK SPRING MEETINGS 2024

The CBN Governor on 20 April 2024 at the spring meetings of the International Monetary Fund (IMF) and the World Bank engaged with international policy counterparts and stakeholders from around the world and shared among other things, the CBN's commitment to doubling remittance flows through formal channels into Nigeria via collaboration with International Money Transfer Operators (IMTOs) and the setting up of a collaborative task force.

3. CBN CONDUCTS SUCCESSFUL APRIL AUCTION OF NATIONAL TREASURY BILLS, INCREASES ALLOCATION TO ADDRESS OVERSUBSCRIPTION

Based on media reports, the CBN on 24 April 2024 conducted a successful auction of national treasury bills, raising NGN362.45 billion across various maturity dates and recording an oversubscription of 254.23%.

4. FMDQ GROUP APPOINTS CBN DEPUTY GOVERNOR MUHAMMAD ABDULLAHI AS BOARD CHAIRMAN

The FMDQ Group PLC has announced the appointment of Mr. Muhammad Sani Abdullahi as the Group Chairman of the Board effective Friday, 26 April 2024. Mr.

Muhammad Sani Abdullahi currently serves as the Deputy Governor of the Economic Policy Directorate at the CBN.

5. CBN DIRECTS KUDA BANK, MONIEPOINT, OPAY, PAMLPAY TO STOP ONBOARDING NEW CUSTOMERS

Based on media reports, the CBN has directed Kuda Bank, Moniepoint, OPay and Palmpay to pause/cease account opening for new customers following a directive from the CBN on 26 April 2024. The directive stems as a result of concerns surrounding unauthorised foreign exchange transactions conducted by the customers of these financial institutions.

6. EFCC SECURES FEDERAL HIGH COURT ORDER TO FREEZE 1,146 BANK ACCOUNTS

Based on media reports, the Federal High Court sitting in Abuja granted an order dated 24 April 2024 freezing up to 1,146 bank accounts owned by individuals and corporate entities under investigation by the Economic and Financial Crimes Commission (EFCC) for offences involving unauthorised foreign exchange transactions, money laundering, and terrorism financing. The interim order was made following an ex-parte application by the EFCC and will be in force for a period of ninety (90) days.

NGX UPDATES

1. NGX ANNOUNCES SIGNIFICANT INVESTMENT IN ETHIOPIAN SECURITIES EXCHANGE

The Nigerian Exchange Group Plc (NGX) announced its investment in the Ethiopian Securities Exchange (ESX), joining other institutional investors like FSD Africa and Trade and Development Bank Group.

SEC UPDATE

1. APPOINTMENT OF NEW BOARD MEMBERS TO SEC

The President, Bola Ahmed Tinubu approved the reconstitution of the Board of the Securities and Exchange Commission (SEC) and the appointment of Emomotimi Agama as the new Director-General of SEC.

2. SEC TO ISSUE GUIDELINES TO FACILITATE CAPITAL RAISING

The Securities and Exchange Commission is partnering with the Central Bank of Nigeria and other relevant agencies to facilitate an efficient capital-raising process in the recapitalization exercise.

CASE LAW UPDATE

1. FIRST BANK OF NIGERIA v. YUNUSA GARBA ALIYU CA/J/199/2022.

This is a Court of Appeal decision involving a claim of fraud and negligence in relation to unauthorised electronic transfers from a customer's account. The bank succeeded on appeal as the customer failed to plead cogent and credible evidence to establish elements of fraud and negligence against the bank. The customer was also unable to prove that he did not share his Automated Teller Machine (ATM) PIN with a third party that carried out the transactions on his account.

2. FIDELITY BANK PLC V PETER (2024) LPELR-6155 (CA)

This is a Court of Appeal decision involving the appellant and two other persons in respect of banking transactions the respondent directly had with the second defendant in the action (Mr. Inyang Emmah), who was the branch manager of the appellant. The respondent had complained that she made fixed deposits of some money with the appellant, which the appellant later refused to pay her. The appellant maintained at the trial that the bank was not officially involved in the transaction with the respondent and that the respondent dealt with Mr. Inyang Emmah in his private capacity and as such, the appellant was not liable for the claims of the respondent.

LEGISLATIVE UPDATE

1. FEDERAL GOVERNMENT ENACTS CYBERCRIMES PROHIBITION, PREVENTION, ETC) (AMENDMENT) ACT, 2024

The Cybercrimes (Prohibition, Prevention, etc) (Amendment) Act, 2024 (**the** 'Amendment Act') was recently passed by the President on 28 February 2024. The Amendment Act, which is an improvement to the Cybercrimes (Prohibition, Prevention, etc) Act 2015 (the 'Principal Act') now includes consequential words that were inadvertently omitted in the Principal Act.



CBN REGULATORY UPDATES

CBN PROHIBITS THE USE OF FOREIGN CURRENCY DENOMINATED COLLATERAL FOR NAIRA LOANS

The CBN on 08 April 2024 through a letter addressed to all banks stated that it has observed the prevailing market practice of securing naira loans with foreign currency denominated collateral.

The CBN has henceforth prohibited the use of foreign currency collateral for naira-denominated loans. The letter however provides for two exemptions, which are where the foreign currency collateral are:

- Eurobonds issued by the Federal Government of Nigeria; or
- Guarantees of foreign banks, including Standby Letters of Credit.

The CBN has given a timeline of ninety (90) days for banks to wind down naira loans backed by foreign currency collateral except where they fall within the permitted category.

We note that banks that fail to comply with the CBN directive shall have their exposure risk weighted at 150% in the computation of their Capital Adequacy Ratio (CAR), in addition to other regulatory sanctions.

Please refer to the link below for more information.

[CBN Letter to all Banks on the Use of Foreign Currency Denominated Collateral for Naira Loans](#)

CBN REDUCES THE LOAN-TO-DEPOSIT RATIO OF DEPOSIT MONEY BANKS

The CBN on 17 April 2024 via a letter to all banks announced its regulatory directive to reduce the statutory loan-to-deposit ratio (LDR) by 15 percentage points from 65% to 50%. This reduction comes as a result of the recent increase by the CBN of the Cash Reserve Ratio (CRR) for banks.

Recall that the CRR rate was increased at the Monetary Policy Committee (MPC) meeting in February 2024 from 32.5% to 45%.

The CBN has stated that this move is in line with its policy stance towards a more contractionary approach and aligns with the monetary tightening policy of the CBN.

The CBN specified that it will use average daily figures to gauge compliance and encourages banks to maintain strong risk management practices in their lending operations.

In addition, the CBN has stated that it will review the market and make necessary alterations in the LDR where it deems it appropriate.

Please refer to the link below for more information.

[CBN Reduces the Loan-To-Deposit Ratio of Banks](#)

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MARKET UPDATES

CBN OFFERS SALE OF FOREIGN CURRENCY TO BDCs TO MEET RETAIL MARKET DEMAND FOR ELIGIBLE INVISIBLE TRANSACTIONS

The CBN on 08 April 2024 and 22 April 2024 announced the sale of Foreign Currency (FX) to (BDCs) to meet retail market demand for eligible invisible transactions. The CBN offered to sell \$10,000 to each BDC at the rate of N1101/\$1 and N1021/\$1 respectively and instructed the BDCs to sell to eligible end users at a spread of not more than 1.5% above the purchase price.

All eligible BDCs are directed to commence payment of the Naira deposit to the CBN Naira deposit account numbers provided and to submit confirmation of payment with other necessary documentation at the appropriate CBN branches.

We note that this intervention marks the fourth (4th) FX sale by the CBN this year to increase FX liquidity into the market and stabilize the naira exchange rate since the first tranche of sales to BDCs on February 27, 2024.

Please refer to the links below for more information.

[CBN Letter to BDCs on Sale of FX \(8.04.2024\)](#)

[CBN Letter to BDCs on Sale of FX \(22.04.2024\)](#)

CBN GOVERNOR DELIVERS PRESS BRIEFING AT THE IMF/WORLD BANK SPRING MEETINGS 2024

The CBN Governor on 20 April 2024 delivered a press briefing at the spring meetings of the International Monetary Fund and the World Bank.

The Governor, Mr. Olayemi Cardoso, highlighted the productive discussions held with multilateral financial institutions and foreign investor groups, including a critical gathering at the US Chamber of Commerce.

The Governor also noted that the CBN has transitioned from firefighting to strategic planning across key areas, emphasizing the CBN's commitment to doubling remittance flows through formal channels into Nigeria through collaboration with International Money Transfer Operators (IMTOs). He shared that the approach involved the setting up of a collaborative task force that would report directly to him.

In addition, he stated that the month of April 2024 witnessed the Naira emerge as the best-performing currency globally. Also, due to the foreign currency market experiencing a lot of robust activities as a result of market stability, it has instilled confidence in investors, businesses, and other partners in doing business in Nigeria as they are assured fluidity in their interactions with the Nigerian foreign currency market.

The Governor also stated that irrespective of the positive changes that have accompanied his mission to boost foreign currency liquidity in Nigeria, he is aware of the challenges that persist. He predicted that challenges such as inflation driven by high food prices, transportation costs, and energy expenses will experience a fall in the coming months.

Lastly, the Governor stated that the apex bank is committed to solving all problems and is eager to translate the discussions held into tangible outcomes.

Please refer to the link below for more information.

[CBN Press Briefing](#)

CBN CONDUCTS SUCCESSFUL APRIL AUCTION OF NATIONAL TREASURY BILLS, INCREASES ALLOCATION TO ADDRESS OVERSUBSCRIPTION

Based on media reports, the CBN on 24 April 2024 conducted a successful auction of national treasury bills which raised about NGN362.45 billion across various maturity dates.

It was stated that the CBN offered NGN7.85 billion in 91-day bills, receiving subscriptions up to NGN18.70 billion. The allotment for this tenor concluded at NGN16.48 billion, with bids that ranged from 15.000% to 18.500%, and the stop rate was finalized at 16.240%.

The CBN also made an offer of NGN12.95 billion for the 182-day treasury bills and attracted subscriptions totalling NGN13.48 billion. The CBN allocated NGN11.99 billion to successful bidders. The range of bids for this category spanned from 15.000% to 21.000%, with the stop rate settling at 17.000%.

The 364-day bills saw the highest demand with an offer of NGN121.77 billion and a subscription surge to NGN725.66 billion. The total allotment reached NGN333.98 billion. The bids for this long-term instrument varied from 19.000% to 25.760%, with a stop rate of 20.700%.

The CBN recorded an oversubscription of 254.23% as investors' total subscriptions stood at NGN531 billion as against the NGN142.57 billion offered. The CBN allocated a total of NGN362.45 billion to investors, more than double the total offer of NGN142.57 billion, to complete the auctions for April.

The auction signals strong market liquidity and boosts confidence in the government's fiscal instruments.

Please refer to the links below for more information.

[Report on National Treasury Bills Auction in April](#)

[Report of Treasury Bills Auction in April](#)

FMDQ GROUP APPOINTS CBN DEPUTY GOVERNOR MUHAMMAD ABDULLAHI AS BOARD CHAIRMAN

FMDQ Group PLC, Africa's first vertically integrated financial market infrastructure group, has announced the appointment of Mr. Muhammad Sani Abdullahi as the Group Chairman of the Board effective Friday 26 April 2024, following the retirement of the fourth (4th) chairman, Dr. Kingsley Obiora, OFR in September 2023.

Mr. Muhammad Sani Abdullahi currently serves as the Deputy Governor of the Economic Policy Directorate at the Central Bank of Nigeria, where he oversees critical aspects of economic policy and development.

Mr. Muhammad Sani Abdullahi brings with him a wealth of experience and expertise, having held key leadership positions in the private, public, and international development sectors. He previously served as a Member of the World Bank Expert Advisory Council and as a Policy Adviser at the Executive Office of the United Nations Secretary-General. In addition, he has also served as the Commissioner of Economic Planning and Budget, Chief of Staff to the State Governor, and Chairman of the Infrastructure Council in the Government of Kaduna State.

Mr. Abdullahi was welcomed and congratulated by Mr. Bola Onadele Koko, Chief Executive Officer, FMDQ Group.

Please refer to the link below for more information.

[FMDQ Press Release on Appointment of New Group Chair](#)

CBN DIRECTS KUDA BANK, MONIEPOINT, OPAY, PAMLPAY TO STOP ONBOARDING NEW CUSTOMERS

Based on media reports, Kuda Bank, Moniepoint, OPay and Palmpay have paused account opening for new customers following a directive from the CBN on 26 April 2024. The directive comes as result of concerns surrounding unauthorised foreign exchange transactions.

This directive is linked to an ongoing audit of the Know-Your-Customer (KYC) processes of the fintech companies, following the EFCC's investigation of unauthorised foreign exchange transactions which involved freezing 1,146 bank accounts connected with the investigation.

Customer deposits and banking activities are reported not to be affected, and representatives of the affected fintech companies have said that this is expected to be a temporary state of affairs.

Please refer to the link below for more information.

[CBN Directs Four Fintechs to Stop Onboarding New Customers](#)

EFCC SECURES FEDERAL HIGH COURT ORDER TO FREEZE 1,146 BANK ACCOUNTS

The Federal High Court sitting in Abuja granted an order dated 24 April 2024 freezing up to 1,146 bank accounts owned by individuals and corporate entities under investigation by the Economic and Financial Crimes Commission (EFCC) for offences involving unauthorised foreign exchange transactions, money laundering, and terrorism financing, according to media reports.

The order was granted by Hon. Justice Emeka Nwite while ruling on an ex-parte motion in suit number FHC/ABJ/CS/543/2024 which was moved by Ekele Iheanacho Esq., counsel to the EFCC. The motion was brought under section 44 (2)(k) of the 1999 Constitution, section 34 of the EFCC (Establishment) Act 2004, section 7(8) of the Money Laundering (Prevention and Prohibition) Act 2022, and under the inherent jurisdiction of the court. The judge directed that the order would remain in force for a period of ninety (90) days pending the conclusion of the investigation and possible prosecution by the EFCC.

The hearing of the matter was consequently adjourned until 23 July 2024.

Comment:

We note that interim orders made by the court are to last for a period of seven (7) days and maybe further renewed for another period of seven (7) days. However, the interim order made by the Federal High Court in this matter is to last for a timeframe of ninety (90) days. We will monitor this case to observe whether any of the affected individuals or corporate entities will bring an application to set aside this order as it is in direct contravention of the purpose of an interim order.

Please refer to the links below for more information.

[EFCC Secures Court Order to Freeze 1,146 Bank Accounts](#)

[Illegal Forex Trading: Court okays EFCC's request to freeze 1, 146 bank accounts](#)



NGX UPDATES

NGX ANNOUNCES SIGNIFICANT INVESTMENT IN ETHIOPIAN SECURITIES EXCHANGE

On 7 April 2024, the Nigerian Exchange Group Plc (NGX or the Group) announced a significant investment in the Ethiopian Securities Exchange (ESX), joining other institutional investors like FSD Africa, the financial arm of the Common Market for Eastern and Southern Africa (COMESA) trade bloc, and Trade and Development Bank Group.

This investment signifies the entry of NGX into East Africa and underscores the Group's commitment to fostering growth and innovation in African capital markets, while strategically positioning itself as the largest foreign institutional investor in the ESX. By becoming the largest foreign institutional investor in ESX, NGX aims to foster cross-border investment flows, boost liquidity, and support economic development across the continent.

Following the investment, Temi Popoola, the CEO of NGX will join the board of ESX as a nominee of NGX.

Please refer to the link below for more information

[NGX Announces Significant Investment in the Ethiopian Securities Exchange](#)

An abstract graphic featuring two large red circular nodes. The top node is connected to the bottom node by a thick red line. Another thick red line extends from the bottom node towards the bottom right corner. A third thick red line extends from the top node towards the bottom left corner. The text "SEC UPDATE" is positioned in the center of the image, between the two nodes.

SEC UPDATE

APPOINTMENT OF NEW BOARD MEMBERS TO SEC

On 19 April 2024, the President of the Federal Republic of Nigeria, President Bola Tinubu approved the appointment of new individuals to the Board of the Securities and Exchange Commission (the "SEC").

The persons appointed to the Board are:

1. Mariga Aliyu Katuka – Chairman
2. Emomotimi Agama – Director-General
3. Frana Chukwuogor – Executive Commissioner (Legal and Enforcement)
4. Bola Ajomale – Executive Commissioner (Operations)
5. Samiya Hassan Usman – Executive Commissioner (Corporate Services)
6. Lekan Belo – Non-Executive Commissioner
7. Kasimu Garba Kurfi – Non-Executive Commissioner

Please refer to the link below for more information.

[Appointment of New Board Members to SEC](#)

SEC TO ISSUE GUIDELINES TO FACILITATE CAPITAL RAISING

On 28 February 2024, the CBN issued a circular with reference number FPR/DIR/PUB/CIR/002/009 to all commercial, merchant, and non-interest banks to increase their minimum capital (the "Circular").

Further to the Circular, on 20 April 2024, the SEC announced its plan to issue appropriate guidelines to facilitate an efficient capital-raising process at a virtual press briefing at the 2024 first quarter Capital Market Committee (CMC) meeting.

The outgoing Director-General of the SEC, Dr. Lamido Yuguda, stated that the SEC intends to partner with the CBN and other relevant agencies to ensure a smooth recapitalisation process for the banks.

Please refer to the link below for more information.

[SEC to Issue Guidelines to Facilitate Capital Raising](#)



CASE LAW UPDATE

FIRST BANK OF NIGERIA v. YUNUSA GARBA ALIYU CA/J/199/2022

SUMMARY OF FACTS

The facts of the case originated from a banker-customer relationship. The customer operated an account with the bank and at the time of the action, he had an outstanding sum of NGN6,872,255.00 (Six Million, Eight Hundred and Seventy-Two Thousand, Two Hundred and Fifty-Five Thousand Naira) standing to his credit in his account.

In 2017, the customer was met with debit alerts which occurred at night in the tune of NGN1,800,000,000.00 (One Million, Eight Hundred Thousand Naira). He proceeded to file a complaint with the bank and the bank conducted investigations and discovered that the sum of NGN399,903.00 (Three Hundred and Ninety-Nine Thousand, Nine Hundred and Three Naira) had been debited from the customer's account and paid into one Aghaku Osariemen Steven who operated an account with the United Bank for Africa (UBA).

The bank further provided the customer with a printout showing two transactions with konga.com. One of the transactions had the sum of NGN237,499.00 (Two Hundred and Thirty-Seven Thousand, Four Hundred and Ninety-Nine Naira), and the other was the sum of NGN7,500.00 (Seven Thousand Five Hundred Naira). The bank advised the customer to change his Automated Teller Machine (ATM) card from a verve card to a master card as the master card was more secure.

Over time, the customer received another debit alert in the sum of NGN1,800,000.00 (One Million, Eight Hundred Thousand Naira) from his account. He filed another complaint with the bank who assured him that his complaint was receiving immediate attention. The customer alleged that the loss of money affected his business and his ability to pay his employees.

Due to a lack of response from the bank, he solicited a lawyer who petitioned the bank demanding the debited sums. The customer claimed that the debit was a result of negligence and fraud perpetrated by the bank's officials whose duty was to keep safe customers' monies left in their custody. He also alleged that the only means of making withdrawals from his account was either through cheque or ATM and he was sure that he had not shared his ATM PIN with a third party.

Following the lack of response from the bank, the customer filed an action at the High Court alleging that the bank officials had been negligent and fraudulent in carrying out their duties to him as a customer. The High Court ruled in favour of the customer.

Dissatisfied with the judgment of the High Court, the bank filed an appeal at the Court of Appeal on 1 September 2020. One of the issues for determination before the Court of Appeal was:

- i) whether the customer proved his case at the lower court to be entitled to judgment.

PRINCIPLES ESTABLISHED BY THE CASE

- i) where a party alleges fraud and the tort of negligence, he must plead evidence before the court to establish his case.

RESOLUTION OF THE ISSUE

Whether the customer proved his case at the lower court to be entitled to judgment.

The Court of Appeal resolved that the fact that transactions were made online is presumptive of the fact that they were carried out by the customer or by a third party who may have come into possession of his ATM PIN or other ATM details. There is evidence to show that the transactions were done online and the customer did not adduce contrary evidence to rebut the evidence. Moreover, the transactions were carried out at night and while the ATM of the customer was under his firm control. If the customer was unaware of the withdrawals made on his account, it could only mean that his secret PIN and other debit card details had been compromised. The court relied on the case of *Agi v Access Bank Plc* (2014) 9 NWLR (Pt.1411).

In addition, the Court of Appeal stated that it is not sufficient for a party to plead that his money in the custody of the bank was withdrawn without his instruction or knowledge. Once fraud and negligence are alleged, he is required to establish them according to the law. The customer predicated his claim on fraud and negligence and neither supplied the particulars of same nor led credible and cogent evidence in proof thereof. The customer also failed to discharge the onus of proof on him that he did not disclose his PIN to a third party. The Court of Appeal stated that the trial court erred when it gave judgment in favour of the customer as the customer failed to discharge the burden of proof on him.

SIGNIFICANCE OF THE CASE/KEY TAKEAWAYS FOR BANKS

The case is significant because it sheds light on the duties and obligations of banks to their customers in the context of online banking. Banks must approach their obligations with a high sense of responsibility; however, customers on the other hand must exercise safety measures to ensure that their details in relation to online banking are not shared with third parties. Customers have a duty to keep their personal information (ATM PIN, ATM card number etc) safe and this responsibility can only be the sole responsibility of the customer and not the bank.

FIDELITY BANK PLC v. PETER (2024) LPELR-61551(CA)

SUMMARY OF FACTS

This is an appeal against the judgment of the High Court of Akwa Ibom State in Suit No. HU/330/2009 coram judge, Hon. Justice G. J. Abraham, delivered on 21 March 2013.

The respondent took action against the appellant and two other persons in respect of the banking transactions the respondent directly had with the second defendant in the action (Mr. Inyang Emmah), who was the branch manager of the appellant. The respondent had complained that she made fixed deposits of some money with the appellant, which the appellant later refused to pay her. The appellant basically maintained at the trial that the bank was not officially involved in the transaction with the respondent and that the respondent dealt with Mr. Inyang Emmah in his private capacity and as such, the appellant was not liable for the claims of the respondent.

At the end of the trial, the Court found in favour of the respondent. The appellant was dissatisfied with the judgment, hence the appeal.

One of the issues for determination before the Court of Appeal was:

- i) whether, in the circumstances of this case, the trial court was right in holding the appellant liable for the actions of Mr. Inyang Emmah;

PRINCIPLES ESTABLISHED BY THE CASE

- i. circumstance(s) where a branch manager of a bank will not be held to have acted outside his scope of authority to incur the liability of the bank in his dealing with a customer of the bank; and
- ii. when the defence of *volenti non fit injuria* will not avail a party in a banker–customer transaction.

RESOLUTION OF THE ISSUE

Whether in the circumstances of this case, the trial court was right in holding the appellant liable for the actions of Mr. Inyang Emmah

The Court of Appeal first established that there existed a banker-customer relationship between the appellant and the respondent relying on the case of UBA PLC v. Pel (2017) LPELR -43202 (CA). The court resolved that the fact that the Mr Inyang Emmah acted within the scope of his duties when he transacted with the respondent and that where a customer deals with the manager of a bank, the bank cannot be heard to say that the customer was dealing with the wrong staff. At all material times where Mr Inyang Emmah transacted with the respondent, he did so clearly as the appellant’s manager and there is nothing in the evidence provided to show that he acted in a private capacity and that Mr Inyang Emmah acted in his official capacity as an agent of the appellant who being the branch manager and was legally empowered to act on behalf of the appellant, the Court of Appeal relied on the Supreme Court decision in Ifeanyi Chukwu (Osondu) Co. Ltd v. Soleh Boneh (Nig) Ltd (2000) LPELR-1432(SC).

Furthermore, the Court of Appeal resolved that the appellant’s contention that the principle of *volenti non fit injuria* afflicted the transaction between the respondent and Mr Inyang Emmah is not tenable and the appellant did not provide any evidence to suggest that the transactions between the respondent and the appellant through Mr Inyang Emmah were done in a private location outside the bank premises of the appellant to infer that the respondent assumed the risk of conducting a banking transaction with a staff of the appellant outside the bank. Accordingly, the Court of Appeal noted that the trial court was right when it discountenanced the invocation of *volenti non fit injuria* by holding that the respondent “acted with utmost care” by dealing directly with the appellant’s manager and “there is nothing to show that the respondent acted negligently”.

Conclusively, the Court of Appeal agreed with the trial court that the respondent dealt with Mr Inyang Emmah officially as the manager of the appellant within the bank premises and without anything to show that the respondent knew Mr Inyang Emmah before the time she went to the bank to have a fixed deposit or had any special relationship with the branch manager to suggest that she knew he was acting outside his scope of employment. The Court of Appeal, therefore, resolved against the appellant and in favour of the respondent.

SIGNIFICANCE OF THE CASE/KEY TAKEAWAYS FOR BANKS

The case underscores the principle that when a customer interacts with a bank official on the bank’s premises, it constitutes direct dealings with the bank itself, given that the official is perceived as representing the bank. It also outlines the distinction between a bank official acting in a private capacity versus an official capacity. Particularly pertinent within the

banker-customer relationship is the recognition that a bank manager serves as a representative or agent of the bank, rendering the bank liable for any misconduct committed within the bank manager's scope of duties. Customers should however note that they are responsible for ensuring that transactions with bank officials occur on the bank's premises and within their official capacity, thereby avoiding the application of the principle of *volenti non fit injuria*.

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LEGISLATIVE UPDATE

PRESIDENT TINUBU ENACTS THE CYBERCRIMES (PROHIBITION, PREVENTION, ETC) (AMENDMENT) ACT, 2024

The Cybercrimes (Prohibition, Prevention, etc) (Amendment) Act 2024 (the 'Amendment Act') was recently passed by the President on 28 February 2024. The Amendment Act, which is an improvement to the Cybercrimes (Prohibition, Prevention, etc) Act 2015 (the 'Principal Act') now includes consequential words that were inadvertently omitted in the Principal Act. Notwithstanding these amendments, other provisions of the Principal Act remain relevant and applicable and must be read in conjunction with the Amendment Act.

The Amendment Act emphasizes that Financial Institutions (FIs) are now required to obtain the National Identification Number (NIN) of their customers in addition to other valid documents, before issuing ATM cards, credit cards, debit cards, and other related electronic devices. This acts as a necessary cybersecurity, risk, and compliance measure to prevent fraudulent and illegal activities. We have also provided the table below highlighting *(in red)* the changes introduced by the Amendment Act.

S/N	SECTIONS	AMENDED PROVISIONS OF THE PRINCIPAL ACT
1.	Duties of financial Institutions-S.37(1)(a)	(1) A financial institution shall- (a) verify the identity of its customers carrying out Electronic financial transactions by requiring the customers to present <i>National Identification Number issued by the National Identity Management Commission and other valid documents</i> bearing their names, addresses and other relevant information before issuance of ATM cards, credit cards, Debit cards and other related electronic devices.
2.	Electronic Signature-S.17(1)(b) and (2)	(1) (b)- Whenever the <i>genuineness</i> or otherwise of such signature is in question, the burden of proof, that the signature does not belong to the purported originator of such electronic signature shall be on the contender. (2) The following transactions shall be excluded from the categories of contractual transactions or declarations that are valid by electronic signature <i>except where they are legally verified in "Certified True Copies"</i> . (b) creation and execution of wills, codicils and or other testamentary documents; (c) death certificate; (d) birth certificate; (e) matters of family law such as marriage, divorce, adoption and other related issues; (f) issuance of court orders, notices, official court documents such as affidavit, pleadings, motions and other related judicial documents and instruments; (g) any cancellation or termination of utility services; (h) any instrument required to accompany any transportation or handling of dangerous materials either solid or liquid in nature; and

		any document ordering withdrawal of drugs, chemicals and any other material either on the ground that such items are fake, dangerous to the people or the environment or expired by any authority empowered to issue orders for withdrawal of such items.
3.	Reporting of Cyber Threats-S.21(1)(3)	(1)- Any person or institution, who operates a computer system or a network, whether public or private, must immediately inform the National Computer Emergency Response Team (CERT) Coordination center <i>through their respective sectoral CERTs or sectoral Security Operation Centres (SOC)</i> of any attacks, intrusions or other disruptions liable to hinder the functioning of another computer system or network, so that the National CERT take the necessary measures to tackle the issues. (3)- Any person or institution who fails to report any such incident to the National CERT within <i>72 hours of its detection</i>, commits an offence and shall be liable to denial of internet services. Such persons or institution shall in addition, pay a mandatory fine of N2,000,000.00 into the National Cyber Security Fund.
4.	Identity Theft and Impersonation-S.22(1)	(1)- Any person who is engaged in the services of any Financial Institution, <i>public or private organization</i> , and as a result of his special knowledge commits identity theft of its employer, staff, service providers and consultants with intent to defraud is guilty of an offence and upon conviction shall be sentenced to 7 years imprisonment or N5,000,000.00 fine or both.
5.	Cyberstalking-S.24(1)(a)(b)	(1) Any person who knowingly or intentionally sends a message or other matter through computer systems or networks that- (a) <i>is pornographic;</i> (b) he knows to be false, for the purpose of <i>causing a breakdown of law and order, posing a threat to life</i> or causing such message to be sent: commits an offence under this act and shall be liable on conviction to a fine of not more than N7,000,000 or imprisonment or to both such fine and imprisonment.
6.	Attempt, conspiracy, aiding and abetting-S.27(2)	(2)- Any employee of <i>any public or private organization</i> found to have connived with another person or group of persons to perpetrate fraud using computer systems(s) or network, commits an offence and shall be liable on conviction to imprisonment for a term of not more than 7 years and in addition, refund the stolen money or forfeit any property to which it has been converted to the bank, financial institution or the customer.
7.	Manipulation of ATM/POS terminals-S.30(1) and (2)	(1)- Any person who manipulates an ATM machine, Point of Sale terminals <i>or any other payment technology means</i> , with the intention to defraud shall be guilty of an offence and upon conviction sentenced to Five years imprisonment or N5,000,000.00 fine or both.

		(2)- Any employee of a financial institution found to have connived with another person or group of persons to perpetrate fraud using an ATM <i>or any other payment technology means</i> shall be guilty of an offence and upon conviction sentenced to seven years imprisonment without an option of a fine.
8.	Data Preservation and Protection of Data by Service Providers - S.38(1)	(1)- A service provider shall keep <i>and protect specific</i> traffic data and subscriber information <i>in accordance with the Provision of the Nigeria Data Protection Act 2023</i> and as may be prescribed by the relevant authority for the time being, responsible for the regulation of communication services in Nigeria, for a period of two (2) years.
9.	Co-ordination and Enforcement-S.41 (1)(d) and (e)	(d)- <i>ensure the establishment of sectoral Computer Emergency Response Teams (CERT) and sectoral Security Operation Centres (SOC) that shall feed into the national CERT.</i> (e)- <i>ensure that all public and private organizations integrate and route their internet and data traffic to the sectoral SOCs thereby protecting the national cyberspace.</i>
10.	Establishment of a National Cyber Security Fund- S.44(2)(a), S.44(6)	(2)- There shall be paid and credited into the Fund established under subsection (1) of this section and domiciled in the Central Bank of Nigeria: (a) a levy of <i>0.5% (0.005) equivalent to a half percent of all electronic transactions value</i> by the business specified in the Second Schedule to this Act. (6) <i>The Office of the National Security Adviser shall administer, keep proper records of the accounts and shall ensure compliance monitoring mechanisms.</i> (7) <i>The Account of the Fund shall be audited in accordance with guidelines provided by the Auditor General for the Federation.</i> (8) <i>A business specified in the Second Schedule of this Act that fails to remit the levy under section 44 (2)(a) of this Act commits an offence and is liable on conviction to a fine of not less than 2% of the annual turnover of the defaulting business and failure to comply shall lead to closure or withdrawal of the business operational licence.</i>
11.	Order of forfeiture of Assets-S. 48 (4)	48 (4)- Any person convicted of an offence under this Act shall have his passport cancelled. In the case of a foreigner, his passport shall be withheld and only returned to him after he has served the sentence or paid the fines imposed on him. – <i>now deleted</i>

Please refer to the below for more information.



Act No. 17 - Cybercrime Act
Cybercrimes (Prohibi2024- as amended.p

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