The Banks And Other Financial Institutions Act 2020

And Impact on Fintech Companies In Nigeria

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The President of the Federal Republic of Nigeria on 13 November 2020, signed the Banks and Other Financial Institution Act (2020) ("the Act") into law which repealed the extant BOFIA 1991 (as amended).

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SOME NOTABLE PROVISIONS OF THE ACT THAT IMPACT ON FINTECH COMPANIES IN NIGERIA

❑ Fintech Companies As “Other Financial Institutions”

- By virtue of Section 130 of the Act certain fintech companies are now expressly described as “Other Financial Institutions”.
- The Act now defines other Financial Institution to include “any individual, body, association or group of persons; whether corporate or unincorporated other than the banks licensed under this Act, which carry on the business of a discount house, bureau de change, finance company, money brokerage, authorised buying of foreign exchange, ***International Money Transfer Services***, mortgage refinance company, mortgage guarantee company, financial holding company or ***payment service providers*** regardless of whether such businesses are conducted digitally, virtually or electronically only and companies whose objects includes factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchases order financing and such other businesses as the bank may from time to time, designate regardless of whether such businesses are conducted ***digitally, virtually or electronically*** only” (emphasis ours).
- By the amended definition of “Other Financial Institutions” under the Act, fintech companies have now been brought under the regulatory purview of BOFIA.

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❑ Licensing Requirements

- Section 57 to 58 of the Act provides that no institution shall carry on business as an OFI without being duly incorporated in Nigeria; and obtaining a license from the Central Bank of Nigeria (CBN).
- OFIs operating without a license before the Act, are to within 3 months (of the passage of the Act), apply in writing to the CBN for a license.
- Section 58(5) of the Act also introduced penalties for transacting other financial banking business without a valid license, to attract imprisonment for a term of not less than 3 years or a penalty of the higher of N10,000,000 or two times the cumulative amount collected or both such imprisonment or fine.

❑ Regulatory And Supervisory Power Of The CBN Over OFI

- Section 60 of the Act enacts the right of the Governor of the CBN to appoint one or more officers of the CBN to supervise banks and OFIs, who shall have the right to inspect books of accounts (the mandate of OFIs to keep proper books of account in respect of all transactions is provided under Section 23 of the Act) and to require from the OFI certain information in exercise of its supervisory duties.
- The CBN also has the mandate to share information on OFIs and permit other agencies to have access to the books and records of OFIs.
- Section 69 (1) of the Act also provides that the CBN may prescribe the administration and standard, governing operations relating to payment, settlement and clearing.

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❑ Risk Based Capital Requirements

Section 63 (1) of the Act empowers the CBN to issue a notice requiring OFIs to maintain capital of such amount not less that the paid-up share capital requirement as may be designated by the CBN through the various guidelines issued by the CBN.

❑ Restriction On Certain Use Of Names

Section 43 of the Act provides that no person with the object to offer payments and other financial services shall be registered by the Corporate Affairs Commission (CAC) with the word "fintech" or any of the derivatives either in English language or any other language included in the description or title under which the person is carrying on business in Nigeria without the consent of the Board of the CBN.

- **Anti-money Laundering/Combating The Financing Of Terrorism (AML/CFT)**

  Section 66 of the Act requires OFIs to adopt policies showing commitments to comply with the AML, CFT and under subsisting laws and to implement internal control measures to prevent transactions that facilitates criminal activities, money laundering and terrorism.

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