COUNTRY COMPARATIVE GUIDES 2022

The Legal 500
Country Comparative Guides

Nigeria
FINTECH

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This country-specific Q&A provides an overview of fintech laws and regulations applicable in Nigeria.

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NIGERIA
FINTECH

1. What are the sources of payments law in your jurisdiction?

The primary laws that regulate payments in Nigeria are the Central Bank of Nigeria (Establishment) Act 2007 (CBN Act) and the Banks and Other Financial Institutions Act (BOFIA) 2020 as amended. The CBN Act establishes the Central Bank of Nigeria as an independent entity to administer the CBN Act and BOFIA to ensure monetary and price stability; regulate banking, other financial institutions, and related businesses that the CBN may designate whether such businesses are conducted digitally, electronically or virtually [1] These laws empower the CBN Central Bank of Nigeria (CBN) in efficiently exercising its oversight function in the financial services and payments sector.

In exercise of its oversight functions, the CBN has released several Regulations that are core to the Nigerian payment ecosystem, which includes, but are not limited to the below:

a. CBN Three-Tiered-Know-Your-Customer (KYC) Requirements 2013
b. Guidelines on International Money Transfer Services in Nigeria, 2014;
c. Revised Guidelines for Finance Companies in Nigeria by the Central Bank of Nigeria 2014;
d. Regulatory Framework for Licensing Super-Agents in Nigeria, 2015;
e. Guidelines on Mobile Money Services in Nigeria, 2015;
f. Guidelines on Transactions Switching in Nigeria, 2016;
g. Guidelines on Operations of Electronic Payment Channels, 2016.
h. Regulatory Framework for Use of Unstructured Supplementary Service Data (USSD) Financial Services in Nigeria, 2018;
i. Regulation on Electronic Payments and Collections for Public and Private Sectors in Nigeria 2019;
j. Nigerian Payments System Risk and Information Security Management Framework;
k. Risk-Based Cyber-Security Framework and Guidelines for Deposit Money Banks and Payment Service Providers, 2019;
l. The New Licensing Categories for The Nigerian Payment System, 2020;
m. Consumer Protection Framework for Banks and other Financial Institutions Regulated by the CBN 2019;
n. Guidelines for Licensing and Regulation of Payment Service Banks in Nigeria, 2020;
o. Framework for Quick Response (QR) Code Payments in Nigeria, 2021;
p. Regulatory Framework for Mobile Money Services in Nigeria 2021;
q. CBN Guidelines for Licensing and Regulation of Payments Service Holding Companies in Nigeria 2021;
r. Circular on New License Requirements for the Payments System, 2021;
s. CBN Guidelines for the Registration & Operation of Bank Neutral Cash Hubs (BNCH) in Nigeria 2022
t. CBN Regulatory Framework for Open Banking in Nigeria 2022
u. Digital Financial Services Awareness Guidelines 2022

[1] Section 1 of the CBN Act and Section 29 and 57 of BOFIA

2. Can payment services be provided by non-banks, and if so on what conditions?

In the Nigerian financial ecosystem, entities other than licensed banks can provide financial services in Nigeria. These entities are referred to as the “Other Financial Institutions” (OFIs). The BOFIA defines OFIs to include Payment Service Providers licensed by the CBN to provide payment service.

The CBN’s New License Categorisation for Nigerian Payment Service Providers, 2020 has streamlined the categories of payment services based on permissible activities. These categories include; (a) Switching and

Processing; (b) Payment Solution Services (which players include persons licensed to act as Super Agents, Payment Terminal Service Providers (PTSPs), and Payment Solutions Service Providers (PSSPs)); (c) Mobile Money Operations (MMOs); and (d) Payment Service Banks (PSBs):

On 24th May 2021, the CBN issued a Circular on New License Requirements for the Payments System (Circular). The Circular sets out amongst others, the eligibility criteria, application/licensing fees, documentary, and minimum share capital requirements to apply as a payment service provider in any of the above categories. For example, to be licensed as a Switching and Processing Company, the Circular provides that the Company must have a minimum share capital of N2,000,000,000 (Two Billion Naira), amongst other requirements.

3. What are the most popular payment methods and payment instruments in your jurisdiction?

The most popular payment methods in Nigeria include;

a. Cash
b. Cheque, Bank drafts and other negotiable instruments
c. Quick response (QR) code
d. Electronic Banking (Electronic Transfer)
e. Unstructured Supplementary Service Data (USSD) Code
f. Point of Sale (POS) – Credit and Debit Card

The most popular payment instruments are as follows;

a. Mobile Phones for USSD
b. Cash
c. Cheque
d. Credit Card
e. Debit Card

4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

Prior to the introduction of open banking in Nigeria, there was an absence of a framework to regulate the growing integration of banks and other financial institutions with innovators in the financial services space and the increasing adoption of Application Programming Interface (API) based integrations. In resolving this, the CBN has now issued the Regulatory Framework for Open Banking in Nigeria, 2021. The Regulatory Framework fosters the sharing and leveraging of customer-permissioned data by banks with third party firms to build solutions and services in Nigeria. The Regulatory Framework is applicable to banking and other related financial services as may be determined by the CBN.

Furthermore, the CBN issued an exposure draft on the Operational Guidelines for Open Banking in Nigeria 2022, to provide an enabling regulatory environment for the provision of innovative and customer-centric financial services through the safe utilization and exchange of data and services. It is specifically for banking and other related financial services.

5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

There is no specific statute regulating data privacy and protection in Nigeria. However, the National Information Technology Development Agency (NITDA) laudably introduced the Nigeria Data Protection Regulations (NDPR) in 2019 and the NDPR: Implementation Framework 2020 to address data protection in Nigeria.

Worthy of note is that the National Assembly is currently legislating on the Nigeria Data Protection Bill 2020. Asides the NDPR, other laws that touch on data privacy and protection in Nigeria specific to the finance sector are the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Money Laundering (Prohibition) Act, CBN Consumer Protection Regulations 2016, the CBN (Anti-money Laundering 2011 and Combating the Financing of Terrorism in Banks and Other Financial. Institutions in Nigeria) Regulations 2013.

Asides the above laws, certain guidelines issued by the CBN such as the Consumer Protection Framework ('the Framework'), and recently, the draft Consumer Protection Guidelines of Disclosure and Transparency, make some provision for data protection and privacy in the financial sector. Highlighted are some of the impacts of financial services to consumers and businesses:

- The Framework requires financial services providers to obtain written consent from consumers before personal data is shared with a third party or used for promotional orders.
- The Consumer Protection Guidelines of

Disclosure and Transparency aims to protect consumers against the provision of inadequate, misleading or failure to disclose material and relevant information and generally guard against lack of transparency by Financial Institutions in their dealings with consumers.
- The NDPR mandates that all personal data is to be received and processed in accordance with the specific, legitimate and lawful purpose consented to by the customer/data subject.

6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

In past years, Nigerian regulators and authorities have shown significant interest in the FinTech sector.

The CBN has encouraged new entrants into the Payments System ecosystem and in this regard the CBN released the Framework for Regulatory Sandbox Operations for Fintechs. The regulatory sandbox is a formal process for firms to conduct live tests of new, innovative products, services, delivery channels, or business models in a controlled environment, with regulatory oversight, subject to appropriate conditions and safeguards. This encourages Fintech innovators in Nigeria by providing them an opportunity to test their products, services, or solutions under regulatory supervision without the immediate need to obtain a license from the CBN.

Similarly, the Securities and Exchange Commission (SEC) has also developed its own version of a Sandbox known as the Regulatory Incubation Program, which is aimed at enabling Fintech operators to carry out capital market activities without prior registration with SEC. It has also adopted a “Three-pronged Objective” to regulate innovation, hinged on safety, market deepening and providing solution to problems. This aims to guide SEC’s strategy, regulations and interaction with innovators seeking legitimacy and relevance. also created a Fintech & Innovation Office (FINO) to facilitate its communication with innovators within the fintech sphere, regulate fintech businesses and engage with innovation hubs nationwide.

The SEC (through the recommendations of the Fintech Roadmap Committee established in November 2018 for the Nigerian Capital Market) has also developed a legal framework for the regulation of virtual financial assets and virtual financial asset exchanges, established an innovation hub within the SEC and provided clear classifications of cryptocurrencies either as commodities, securities or currency, amongst others.

Furthermore, the Nigerian Startup Bill was passed on July 20, 2022, by the Nigerian Senate and is now awaiting Presidential assent. The Startup Bill is an initiative by Nigeria’s tech start-up ecosystem and the Federal Government to harness the potential of the Nigerian digital economy, with the primary objective to bridge the engagement gap between startups and regulators. The legislation seeks to provide for the creation and development of an enabling environment for technology-enabled startups in Nigeria and for related matters.

7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

The growth of Fintech in Nigeria has not been without its challenges. Fintech companies have faced and still face certain setbacks, influenced by different factors. Some of such include: (a) Cybercrimes; (b) Difficult Entry Requirements (i.e the licensing requirements for MMOs in Nigeria requires evidence of a minimum of N2,000,000,000 (Two Billion Naira) circa $7,000,000 (Seven Million Dollars) as its shareholders funds for a CBN mobile money license); (c) Ignorance of Law enforcement Agencies about FinTech and E-Commerce amongst others.

8. What tax incentives exist in your jurisdiction to encourage fintech investment?

There are currently no specific tax incentives for fintech companies in Nigeria. However, there are incentives that are generally available to companies in Nigeria. Under the Finance Act, 2020, companies with a turnover of NGN25 million and below are exempted from paying companies income tax, value-added tax and tertiary education tax. The Finance Act also provides that companies with a turnover of above NGN25 million and below NGN100 million are liable to pay companies income tax at the rate of 20% of taxable profits, lower than the generally applicable rate of 30%.

Section 26 of the Companies Income Tax Act 2004 (as amended) (“CITA”) provides that companies that engage in research and development activities for commercialisation are to enjoy 20% investment tax credit on their qualifying expenditure for that purpose. The CITA also provides that the profits reserved by a company for purposes of research and development are tax-deductible, provided such reserves do not exceed 10% of the total assessable profits for that company.

Pioneer status: Companies classified as operating in a pioneer industry or engaged in the production of pioneer products (such as software companies, e-commerce companies, outsourcing companies, etc.) are entitled to apply for pioneer status. If granted, such companies enjoy certain corporate tax relief/holidays.

Incentives for venture capital companies: Under the Venture Capital (Incentives) Act 2004 ("VCA"), companies that invest in Venture Projects may be eligible for the following tax incentives: accelerated capital allowance for equity investment by a Venture Company in a Venture Project for the first five years of their investment, reduction of withholding of tax on dividends declared by Venture Projects to Venture Companies for the first five years from 10% to 5%, export incentives such as export expansion grants if the Venture Project exports its products, exemption from payment of capital gains tax on gains realised by Venture Companies from a disposal of equity interest in the Venture Project; and exemption from company income tax for a period of three years, which may be extended for an additional final period of two years.

Reduction to the minimum tax rate: In response to the impact of COVID-19 on businesses, Section 33 of the CITA (as amended by the Finance Act 2020) reduces the minimum tax rate from 0.5% to 0.25% of gross turnover less franked investment income, for tax returns prepared and filed for any year of assessment falling between 1st January 2020 and 31st December 2021 (both dates are inclusive).

Kindly note that a Fintech Company which is classified as a startup under the Startup Bill will have its employees enjoy tax incentives under section 31, i.e an eligible employee will be entitled to a 35% tax exemption.

9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

From our experience, investors are more attracted to the following sectors:

a. Payments, Mobile Money and Digital Banking (Series A and Series B)
b. Lending (Series A)
c. Savings, Investments and Crowdfunding (Series A)
d. Enterprise Services & Infrastructure (Series A)
e. Cryptocurrency (Series A)
f. Health/InsurTech (Series A)

10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

a. Nigeria with a population of about 200 million people and an overall financial exclusion rate of over 40%, has a vast pool of untapped local market.
b. Nigeria has a huge supportive demographic trend that gives opportunity to technology in Nigeria.
c. Nigeria has a growing economy which seizes opportunities for investment and a huge potential upside.
d. Low banking penetration is also an advantage to investors looking to fund tech players within the ecosystem either in agency banking, digital banking, e.t.c
e. The Nigerian government through various regimes provides funding options to "small businesses" at single digit interest rates through the Bank of Industry and provides grants through the Ministry of Finance. Some state governments and private institutions also offer grants to new and growing businesses.

11. Access to talent is often cited as a key issue for fintechs – are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

Any company in Nigeria desirous of employing an expatriate must apply to the Federal Minister of Interior (MoI) for an Expatriate Quota (EQ) approval, depending on the number of expatriates to be employed.

Once granted, the employee must also obtain a Combined Expatriate Residence Permit and Aliens Card (CERPAC), which permits the expatriate to reside and work in Nigeria.

However, it is important to note the above will not be applicable to instances where a Temporary Work Permit ("TWP") is required. A TWP is a permit (valid for three months and may be renewed for a subsequent period of three months) granted to expatriates invited to Nigeria to provide specialized skilled services on a short-term basis.

12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

With the advent of the Startup Bill, there is a provision for the establishment of Technology Development Zones with the aim of spurring the growth and development of startups, accelerators, and incubators across Nigeria. This will help drive the talent pipeline in the Country. Also, the Startup Bill equally provides for the development and establishment of innovation hubs and parks in each state of the Federation. This will promote innovative collaboration between startups, and foster business between startups and stakeholders in the ecosystem.

13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

In addition to keeping its processes and trade secrets confidential, the following Intellectual property ("IP") laws can be used by FinTech companies to protect their IP;

- The Patents and Designs Act Cap P2 LFN 2004 (the "Patents and Designs Act") protects industrial designs and inventions.
- The Trademarks Act Cap T13 LFN 2004 (the "Trademarks Act") protects owners of registered trademarks.

Kindly note that the National Assembly has passed a bill for an Act to repeal the Copyright Act Cap C28 Laws of the Federation of Nigeria (LFN) 2004 and enact a new Copyright Act 2022.

The Copyright Bill seeks to protect the rights of authors and creatives by ensuring appropriate rewards and recognition for their intellectual efforts. It also provides for the effective regulation, protection, and administration of copyright in the digital environment in line with global best practices.

A person whose IP rights are infringed is entitled to institute legal proceedings in the requisite Nigerian court and obtain a wide array of relief against the infringing party.

14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

There are no specific legislations on cryptocurrencies in Nigeria. However, in September 2020, the Securities and Exchange Commission issued a circular on digital assets. In the circular, the SEC defined crypto assets as a digital representation of value that can be digitally traded and function as a medium of exchange and/or a unit account and/or store of value but does not have legal tender status in any jurisdiction.

The CBN on 5th February 2021 released a letter to relevant financial institutions. The letter prohibited all regulated financial institutions from dealing in cryptocurrencies or facilitating pay for same in Nigeria. The Letter also directed the institutions to identify persons transacting cryptocurrencies and/or operating cryptocurrency exchanges within their systems and ensure that such accounts are closed immediately.

Although, the Federal Ministry of Communications and Digital Economy (the "Ministry") has taken the other side of the road. The Ministry has released the National Blockchain Strategy, which admitted that there is no regulatory or legal framework for cryptocurrency in Nigeria but is optimistic that blockchain has a promising future in Nigeria.

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

In the wake of the actions of the CBN, several other regulatory authorities have refused to acknowledge cryptocurrency or the deployment of blockchain technology to enhance traditional processes. The CAC have also refused to register any company whose proposed objects entails cryptocurrency or the deployment of any form of distributed ledger technology. The SEC has however commenced studies into ICOs, and we foresee changes over the next 24 months.

16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

The Nigerian E-Naira, which is a central bank digital currency that is based on the Hyperledger Fabric, an opensource blockchain framework.

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

Today, there are certain forms of artificial intelligence which FinTech companies and banks have utilized to ensure efficient customer service i.e:

a. Anti-Money Laundering features that assist in detecting fraudulent activities and irregular payments, in order to improve the standard processes for combating money laundering problems. This has proved to be more efficient than complete reliance on human effort.
b. Customer support through technology bots that provide assistance at banking halls or through online mediums such as internet banking applications.
c. Regulatory compliance tools that monitor and track transactions, assess data for compliance issues, identifying suspicious issues, mediates risk of financial transactions etc.
d. Predictive Analytics: The advent of Machine Learning (ML) & AI has opened the door to accurate forecasting and prediction. Data Analytics and AI are being applied to revenue forecasting, stock price predictions, risk monitoring and case management. The exponential increase in the data collected has been pivotal in improving the performance of the models, resulting in a gradual decline in the level of human intervention required.
e. Credit Risk Management: As regulators continue to focus on risk management supervision, financial institutions are mandated to develop more reliable models and solutions. The use of AI in credit risk management is gaining more popularity especially in the Fintech and the Digital Banking market.

Regulation will encourage the further use of AI if structured in a way that both protects the public (user safety) and promotes industry innovation.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

Unlike fintech, Insurtech is one technology sector that is largely untapped in Nigeria. With its large population, it only has an insurance penetration rate of 1% per cent.

A few innovators have come up with solutions to fast track the rate of adoption of insurance in Nigeria by developing solutions and leveraging new technologies and tools like APIs, digital platforms, cloud computing and cyber security tools that have become so critical in this post-pandemic 'new normal' era..

With the low insurance penetration and Nigeria's large population, more Insurtech startups can leverage technology to take advantage of the gaps that currently exist in the Nigerian market.

19. Are there any areas of fintech that are particularly strong in your jurisdiction?

The strong areas of fintech in Nigeria today are;

a. Mobile and online banking;
b. Digital banking;
c. Blockchain;
d. Asset management (savings/investments); and
e. Alternative financing (crowdfunding/peer-to-peer lending).
f. Consumer/small and medium-sized enterprise (SME) lending

20. What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?

Banks no longer see Fintech's as disruptors but partners. More often, as a key part of their business with a shared responsibility for delivering to customers.

Nigerian Banks have realised that to deepen financial services in Nigeria, they are not completely capable of offering all the services of a fintech and this had led to the increase of the number of partnerships between fintechs and incumbent financial institutions and vice versa as fintechs specialise in different parts of the banking value chain, but not all of it. Many banks are partnering with Fintech companies to help them digitalise, enabling them to expand their services and reach more customers at the same time.

The future of financial services is collaboration.

21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

Several banks and financial institutions are carrying out their own innovative progammes. For example, Africa Fintech Foundry is an Access Bank Plc initiative that aims to nurture, fund, and accelerate the growth of FinTech startups in Africa through its mentorship and accelerator programmes while First Bank of Nigeria Limited hosts an annual FinTech Summit.

22. Are there any strong examples of disruption through fintech in your jurisdiction?

The last decade was a breakpoint for the Nigerian technology industry. The desire to use technology to solve problems grew with a new culture of entrepreneurship, allowing businesses to transform how millions of Nigerians live in the digital age.

Whilst there are no specific strong examples, Fintechs are taking on banks and disrupting their legacy operations by offering digitally native products and services. New innovative technologies are driving fundamental changes in the financial ecosystem.

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