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Digital Investments Nigeria

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How to use this deck

Relevant regulations

1. Investments
2. Data protection
3. Consumer protection
4. AML / KYC
5. Cybersecurity
6. Competition
7. Telecom regulation (if model incorporates comm. services)
8. Taxation (if mobile phone-based financial transaction)
9. Other relevant regulations

This deck provides **an overview of the various regulations relevant to digital investments in Nigeria.**

Each slide in this deck provides high-level facts about each of the relevant regulations as well as a link to the original source.

The Cambridge Centre for Alternative Finance (CCAF) and BFA Global's Catalyst Fund have developed this deck to help fintech startups working in Nigeria and those seeking to enter the Nigerian fintech market to navigate the regulatory environment.



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01

Investments



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Investment: Licensing process & corporate governance

Key regulations:

- **Investment and Securities Act (2007) (ISA)** outlines the laws on securities, including with respect to relevant fintech providers/activities
- **SEC Rules and Regulations (2013)** provide a consolidated list of rules relating to capital markets

Main regulator:

The Security and Exchange Commission (SEC)

Licensing process:

Registration requirements are found under Section A2 of the **SEC Rules**, and include:

- Application is made in prescribed form (per Schedule III).
- Submission of signed undertaking that the applicant will comply and secure compliance of its employees with the code of conduct for capital market operators (Section 16).
- Prescribed forms by sponsored individuals and compliance officers who must hold specified qualifications (see Sections 19 and 20). Additionally, executive directors must be approved by the SEC (Section 21).
- The registration fees payable vary depending on the type of market operator (see Schedule 1 Part A).
- The capital requirements vary by type of operator and are detailed under Schedule 1 Part B.

Corporate Governance:

- The **SEC Code of Corporate Governance** stipulates responsibilities, duties, and composition of the Board, and various Board committees (Part B), as well as sets out provisions relating to shareholders (Part C) and other matters such as risk management and audit (Part C), and accountability and reporting (Part F).
- This applies to all public companies with securities listed on a recognized exchange in Nigeria, companies seeking to raise funds from the capital markets either via issuance of securities or listing by introduction, and all other public companies

Investment: Virtual and crypto assets

- The **CBN** has taken a strong position against virtual and crypto assets:
 - In 2017, it issued a warning instructing financial institutions not to trade in virtual currencies, and to ensure that virtual currency exchanges have effective AML/CFT controls.
 - In 2018, it published a press release reiterating that virtual currencies are not licensed or regulated by the CBN, and warning consumers to treat them with caution.
 - On 5 February, 2021, it again reiterated this position in a letter to DBMs, OFIs, and non-bank financial institutions, where it asked them to close all accounts of cryptocurrency exchanges.
- The **SEC** has recently developed guidelines for the classification and treatment of digital assets (including crypto-token or crypto-coin investments):
 - In a statement issued in September 2020, the SEC stated that they consider virtual crypto assets to be securities, unless proven otherwise.
 - It directed issuers and sponsors of 'crypto assets', and other types of 'virtual asset' to register the assets. However, those who demonstrate that their assets fall outside the definition, or are exempt, will not need to comply with this requirement.
 - The registration process will be comprise of two stages – (i) initial assessment filing for determination regarding the burden of proof, and (ii) application for actual registration.
 - However, in the light of CBN's position on cryptocurrencies (as rearticulated in the 5 February, 2021 letter), it has suspended its sandbox program for crypto companies until they are able to operate bank accounts within the Nigerian banking system. It is unclear how this affects its registration of crypto assets.

Investment: Equity crowdfunding

- Equity crowdfunding was previously de facto illegal under Section 67 of the **Investment and Securities Act**, which prohibits issuance of securities by private companies. On this basis the SEC banned platforms engaging in equity crowdfunding in 2016.
- However, on 21 January, 2021, the SEC launched a bespoke regulatory framework for equity crowdfunding, the **Crowdfunding Rules and Regulations**.
- The main provisions include:
 - Crowdfunding Intermediaries, who must be registered, are the sole entities who can facilitate crowdfunding transactions, such as the offering or sale of securities or instruments, through an approved portal.
 - Retail investors can invest a maximum of 10% of their net annual income in a crowdfunding transaction per year.
 - To be able to use an approved crowdfunding portal, MSMEs must be incorporated in Nigeria with a minimum operating track record of 2 years or alternatively have a strong technical partner or core investor that possesses a minimum of 2 years operating track record.
 - Medium enterprises cannot raise more than N100 million (\$262,806), while the amount is set at N70 million (\$183,964) for small enterprises and at N50 million (\$131,403) for micro-enterprises.



Forthcoming investment legislation Q3 2021

The Securities and Exchange Commission (SEC) has become very active in unveiling new regulation governing the activities of startups in the Nigerian investment and capital market space, given the flurry of companies who have entered this space recently.

In April 2021, it [directed](#) Investment Technology platforms to **cease and desist from offering foreign stocks** to Nigerians.

One of the companies affected by this regulation has now acquired the **digital sub-broker license** introduced by SEC. This new license is part of a major amendment to its Consolidated Rules and Regulations, where the SEC recognizes sub-brokers who use digital platforms to serve multiple brokers.

The SEC also announced the imminent roll-out of the [SEC Regulatory Incubation \(RI\) Program](#) for all fintechs operating or seeking to operate in the Nigerian Capital Market.

- The RI program is designed to address the needs of new business models and processes that require regulatory authorization to continue carrying out full or ancillary technology-driven Capital Markets activities. This Program has been conceived as an interim measure to aid the evolution of effective regulation which aims to accommodate innovation by fintechs without compromising market integrity and within limits that ensure investor protection.
- The RI Program will be launched in Q3 2021 and will admit identified fintech business models and processes in cohorts for a one-year period.
- Starting Q3 2021, fintech platforms with no defined framework will have to go through this incubation program to operate legitimately.

Specifically, the RI Program impacts fintech companies in the capital markets space that consider that there is **no specific regulation governing their business models or that require clarity on the appropriate regulatory regime.**

02

Data protection



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Data protection: National provisions

Key Laws:

Nigeria Data Protection Regulation (2019)

The Constitution of the Federal Republic of Nigeria 1999 as amended

Main provisions:

- **Constitution of Nigeria** guarantees and protects privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications (Section 37).
- **Data Protection Regulation** applies to all storage and processing of personal data in respect of Nigerian citizens and residents.*

Data protection regulation on data processing:

- Processing of data is only lawful under certain conditions (Section 2.2), including if at least one of the following conditions is met:
 - The Data Subject grants consent
 - If it is necessary for the performance of a contract where the Data Subject is a party
 - If it is necessary for the Controller to comply with a legal obligation
- No data is to be collected unless the specific purpose for collection has been made known to the Data Subject. The data controller has an obligation to ensure consent was obtained without fraud or undue influence (Section 2.3).
- Sufficient security measures are required to be put in place to protect data (see 2.6 of the Regulation for examples).

*The enforceability of the Data Protection Regulations, and sanctions contained within them, [have been called somewhat into question](#) recently due to a March 2018 court case, although this related to the NOSDRA Act and not to financial regulation. In this case, the Nigerian Court of Appeal held that to the extent that regulations are not Acts of the National Assembly of Nigeria, sanctions imposed by them may not be enforceable without recourse to court action

Data protection: Sectoral provisions

These data protection provisions in sector specific regulation apply to specific types of financial service providers.

Institutions:

- The **Consumer Protection Framework 2016** prohibits disclosure of customers' personal information by financial institutions that fall under the remit of the CBN (i.e., banks, MMOs, and credit bureaus) (Section 1.2). It requires them to establish appropriate data protection measures and staff training programs to deter unauthorized access, alteration, disclosure, accidental loss, or destruction of customer data. It is mandatory for them to obtain prior written customer consent for the sharing of personal data with a third party, or usage in promotional offers.
- The **Cybercrimes (Prohibition, Prevention Etc) Act 2015** stipulates various requirements for financial institutions to retain and protect data, and criminalizes the interception of electronic communications (Part IV).
- The **Code of Conduct in the Nigerian Banking Industry** imposes confidentiality obligations on banks and their employees.

Telecom licensees:

- **Consumer Code of Practice Regulations 2007** issued by the Nigerian Communications Commission(NCC) stipulates general principles relating to collection and maintenance of customer information by licensees
 - Fair and lawful collection and processing
 - Information is not kept longer than necessary
 - Protections are put in place against improper or accidental disclosure
 - The transfer of customer information to any party is prohibited except where permitted by any terms and conditions agreed with the Customer; or as permitted or required by the NCC or other applicable laws or regulations (Section 35)

Data protection: Sectoral provisions (cont.)

These data protection provisions in sector specific regulation apply to specific types of data.

Credit data:

- **Credit Reporting Act (2017)** provides data subjects the right to privacy, confidentiality, and protection of their credit information (Section 9).

Personal data:

- The **National Identity Management Commission (NIMC) Act 2007** restricts the access of data within its database of registered individuals only to persons authorized by the Commission (Section 26).

Business secrets

- **Federal Competition and Consumer Protection Act (2019)** provides that in Commission investigations and hearings, the Commission should endeavour to protect the business secrets of parties involved.

Telephone Subscribers

- The **Registration of Telephone Subscribers Regulation (2011)** (issued by NCC) provides for data privacy and protection of subscribers. This includes the confidentiality of personal information of subscribers stored in the central database or a licensee's database, and states how that information shall not be released to a third party or transferred outside Nigeria except with the prior written consent of the subscriber and Commission (Regulation 9 and 10).

Data localization

- **ICT & government data :**
The Guidelines on Nigerian Content Development in ICT issued by the National Information Technology Development Agency (NITDA) require that all subscriber and consumer data of ICT service providers “as well as all government data” is stored locally within Nigeria (see Section 11-14 of the Guidelines), unless express approval is obtained from NITDA (Section 14). The Guidelines apply to public and private sector institutions, businesses, and individuals (Section 4).
- **POS & ATM transactions:**
CBN Guidelines on Point of Sale (POS) Card Acceptance Services (2011) apply to entities who undertake POS card acceptance services. It prohibits the routing of domestic POS and ATM transactions outside Nigeria for switching between Nigerian issuer and acquirer.



Data sharing: Open banking

- The CBN issued on 17 February, 2021 the **Regulatory Framework for Open Banking in Nigeria** ("Framework").
- The Framework applies to banking and other related services including: (i) payments and remittance services; (ii) collection and disbursement services; (iii) deposit-taking; (iv) credit; (v) personal finance advisory and management; (vi) credit ratings/scoring; (vii) leasing/hire purchase; and (viii) mortgages.
- The Framework-regulated Participants include providers (who use APIs to provide data or a service to another participant), API users, and fintech companies (they may be providers or API Users); their level of access is tiered depending on regulatory status.
- The CBN is responsible for the maintenance of an Open Banking Registry and the development of the Common Banking Industry API Standards. These Standards are to be developed within 12 months of issuance of the Framework.
- The categories of Financial Data that can be shared (depending on the tier of Participant) through APIs include Product Information, Market Insight Transactions, Personal Information and Financial Transaction, Profile, Analytics, and Scoring Transactions.
- The Framework mandates Participants to obtain the consent of customers in the customer's preferred language and to ensure the security of financial data of such customer.
- Participants and their partners would be jointly liable for any loss occurring to the customer as a result of data sharing except where the Participant can prove willful negligence or fraudulent actions against the customer.



03

Consumer protection



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Consumer protection: National & sectoral provisions



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National provisions:

- **Federal Competition and Consumer Protection Act (2018)** establishes the Federal Competition and Consumer Protection Commission (FCCPC) that is tasked with responsibility for promoting the welfare of consumers (Part II).
- The Act covers areas that may be relevant for firms including requirements on consumer rights (Part XV), and enforcement of consumer rights (Part XVII).

Sectoral provisions:

- The **CBN Consumer Protection Framework (CPF)** (2016) applies to all entities licensed by the CBN. It sets minimum standards for efficient customer service delivery and market discipline, and requires financial institutions to safeguard the privacy of their customers' data, including personal and financial information, and adequately address complaints. Firms are required to be transparent and not misleading in their advertisements or dealings with customers, not engage in uncompetitive practices, establish complaint channels, and not include unfair contract terms.
- CBN's **Consumer Protection Regulations 2019** prescribe requirements relating to fair customer treatment (Part 2), disclosure and transparency (Part 3), responsible business conduct (Part 4), and complaints handling and redress (Part 6).
- The **General Consumer Code of Practice (2007)** issued by the NCC contains provisions relating to the protection of the rights and interests of communication services consumers.

Sources: [Federal Competition and Consumer Protection Act \(2018\)](#), [CBN Consumer Protection Framework \(2016\)](#), [Consumer Protection Regulations 2019](#), [General Consumer Code of Practice](#)

04

Anti-money laundering (AML)/know your customer (KYC)



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AML/KYC: Key laws & main provisions

Key Laws:

- **The Banks and Other Financial Institutions Act (BOFIA)**
- **CBN Anti-money Laundering and Combatting the Financing of Terrorism (CFT) in Banks and Other Financial Institutions in Nigeria Regulations (2013)**
- **The Guidelines on Mobile Money Services in Nigeria**
- **The CBN Guidelines on Licensing and Regulation of PSBs**
- **Money Laundering (Prohibition) Act, 2011 (as amended)**
- **Terrorism Prevention Act, 2011**
- **Financial Reporting Council of Nigeria Act**

Main provisions:

- The **BOFIA** requires banks and other financial institutions to adopt policies that indicate their commitment to adhere to AML/CFT requirements provided in laws and regulations and to set up internal control measures to prevent related conduct (Section 66).
- The **AML Regulations** require that:
 - All financial institutions have to have policies on AML/CFT, as well as appropriate KYC requirements and record keeping.
 - Financial institutions implement internal controls to prevent the use of their facilities for money laundering and terrorist financing (Section 4).
 - Financial institutions are also required to report suspicious transactions (Section 31).
- **The Guidelines on MMS** require MMOs to comply with the AML/CFT Regulations (Section 15).
- The **CBN PSB Guidelines** provide for KYC requirements (Section 11). PSBs must comply with relevant provisions of the Money Laundering (Prohibition) Act, 2011, Terrorism Prevention Act, 2011, CBN AML/CFT Regulations for Banks and Other Financial Institutions 2013, and other laws and regulations on KYC issued by the CBN.
- Fintechs will have to comply with other laws on financial crime, including the **Money Laundering (Prohibition) Act (2011)** and the **Terrorism (Prevention) Act (2011)**
- The **Financial Reporting Council of Nigeria Act (2011)** sets out reporting and compliance with AML requirements.

Sources: [Banks and Other Financial Institutions Act 2020](#), [CBN Anti-money Laundering and Combatting the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria Regulations \(2013\)](#), [The Guidelines on Mobile Money Services in Nigeria](#), [The CBN Guidelines on Licensing and Regulation of PSBs](#), [Money Laundering \(Prohibition\) Act, 2011 \(as amended\)](#), [Terrorism Prevention Act, 2011](#), [Financial Reporting Council of Nigeria Act\(2011\)](#)

AML/KYC: Customer due diligence requirements



- Customer Due Diligence (CDD) requirements for financial institutions are contained in Part IV of the **CBN Anti-money Laundering and Combatting the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria Regulations (2013)**.
 - Financial Institutions are required to identify and verify the identity of their customers, and to apply the CDD measure on a risk sensitive basis. For customers considered to be higher risk, enhanced due diligence is to be conducted. Simplified due diligence is permitted for low-risk customers, transactions, or products.
 - A detailed breakdown of the type of information to be obtained for identification and data verification is set out in Schedule 11. For example, in the case of natural persons, must obtain an official personal identification number or other unique identifier contained in an unexpired official document e.g., a passport, ID card, residence permit, social security records, or driver's license with the customer's photo. Although the regulations provide a list of documents, this is only illustrative and equivalent documents may also be acceptable.
- CBN introduced three tiered KYC requirements in 2013 applicable to banks and other financial institutions. They allow for flexible account opening for low-value and medium-value account holders, including eKYC. (see CBN circular for details).
- Biometric registration for all SIM cards is required by the NCC. This data can be used by customers to satisfy Tier 1 KYC for a DFS account with transaction limits. Customers seeking higher transaction limits must satisfy Tier 2 and 3 KYC requirements, which are more stringent. (See Focus Note below)

Sources: [CBN Anti-money Laundering and Combatting the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria Regulations \(2013\)](#), [CBN Three tiered KYC Circular](#), [Focus Note: The Use of eIDs and eKYC for Customer Identity and Verification in Developing Countries: Progress and Challenges](#)

05 Cybersecurity



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Cybersecurity: Relevant legislation

National legislation:

- **Cybercrime (Prohibition, Prevention, Etc.) Act (2015)** promotes cybersecurity and cybercrime prevention. It sets out obligations for the private sector to report and cooperate with law enforcement authorities and the Nigerian Computer Emergency Response Team (ng-CERT).
 - Specific duties for Financial Institutions (see Part IV for details) include KYC and prevention of unauthorized debits.
 - Traffic data and subscriber information which the NCC might need to refer to should be kept for at least 2 years.

Financial sector:

- **The Risk-Based Cyber-Security Framework and Guidelines for Deposit Money Banks (DMB) and Payment Service Providers (2019)** provides guidance for DMBs and PSPs in the implementation of their cybersecurity programs towards enhancing their resilience. These include requirements on governance and oversight, including the need to appoint a Chief Information Security Officer, details on metrics and reporting, and operational resilience requirements.

Sources: [Cybercrime \(Prohibition, Prevention, Etc.\) Act \(2015\)](#), [The Risk-Based Cyber-Security Framework and Guidelines for Deposit Money Banks and Payment Service Providers \(2019\)](#)



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06 Competition

Competition: Relevant legislation & competition issues



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Key legislation:

- **Federal Competition and Consumer Protection Act (2018)** (FCPA) aims to encourage healthy competition.

The BOFIA stipulates that the FCPA is not applicable to “any function, act, financial product, or financial services issued or undertaking, and transaction howsoever described by a bank or other financial institutions” that are licensed by CBN (Section 65). This suggests that the requirements of **the FCPA is inapplicable for fintechs who are regulated through the BOFIA.**

Main provisions:

- The FCPA covers areas that may be relevant for firms including:
 - Restrictive agreements (Part VIII)
 - Abuse of dominant position, which is prohibited (Part IX)
 - Monopoly (Part X)
 - Price regulation (Part XI)
- Requirements include:
 - Marketing and testimonials should not be misleading or deceptive
 - Goods and services should not be displayed without the price
 - Products/services should not be bundled together, unless it can be demonstrated that the convenience to the consumer in bundling the services outweighs the limitation of the consumer’s right to choose
 - Notices should be in either the form specified by law or (if there is none) in plain language
- The FCPA establishes the Federal Competition and Consumer Protection Commission, which has control over mergers, and a Competition and Consumer Protection Tribunal, which adjudicates over matters which arise from the operation of the Act, including appeals or reviews of decisions.



07

Telecommunications regulation



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Telecommunication regulation: **Licensing for VAS**



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Key regulations:

- **Nigerian Communications Act 2003** (NCA 2003) sets up the Nigerian Communications Commission (NCC), the independent National Regulatory Authority for the telecommunications industry in Nigeria.
- **The Nigerian Communications Commission license Framework for Value Added Service** (“VAS Framework”)

Application to fintech:

- The NCC regulates fintech businesses where the services offered involve MNOs.
- The **VAS Framework** sets out requirements which may be applicable to fintechs, depending on the firm and business model:
 - A VAS Provider is any person or organization that engages in the provision of value added mobile/fixed services, including premium rated services — such providers are required to obtain a license from the NCC. The use of airtime for the repayment of loans to a mobile lender could constitute a premium rated service, the provision of which requires the approval of the NCC.
 - The VAS Framework contains various guidelines, including the need for a customer support/complaint framework, that service pricing information must be clearly and conspicuously indicated, and that the consumer must have the right to ‘opt-in’ or ‘opt-out’ of any promotion or service.
 - Application for licensing and the licensing fee charged depends on the individual licenses required. The VAS license is for a period of 5 years, after which it is renewable. Among other material, VAS applicants must present evidence of an agreement/an MoU entered between the company and the MNO.
 - The industry is required to develop a code of conduct that will be legally binding, but the VAS Framework does not give a deadline for this (nor consequences for lack of implementation) and thus this has not yet been developed.

Sources: [Nigerian Communications Act 2003](#), [The Nigerian Communications Commission license Framework for Value Added Service](#), [Value Added Services and Aggregator Framework\(amended\) \(2018\)](#), [NCC Licensing Application Process](#),



08

Taxation of financial services



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Taxation: Financial services

Relevant taxes:

- The **Nigerian Finance Act 2020**, introduced a number of tax laws of relevant fintech activities. These includes the **Companies Income Tax Act, 1990**, and the **Value Added Tax Act, 2004**.
- Nigerian companies collect income tax for non-resident companies that provide digital services and products to persons in Nigeria. This applies to firms which have a significant economic presence (undefined under the Act) in Nigeria, with their profits attributable to such activity.
- The Act also introduces Value Added Tax on intangible supplies. These changes may indicate future changes with respect to the taxation of digital transactions in Nigeria.
- From March 16th, 2021, the CBN and the NCC have imposed **a new charge for USSD enabled mobile banking services in the country**: USSD services for financial transactions conducted at DMBs and all CBN-licensed institutions will be charged at a flat fee of N6.98 per transaction. The new USSD charges will be collected on behalf of MNOs directly from customers' bank accounts. Banks shall not impose additional charges on customers for use of the USSD channel. (This charge replaces the current per session billing structure.)

Application to fintech:

- These taxes may impact fintech businesses, and fintechs are encouraged to consult the Federal Inland Revenue Service regarding the implications of the measures cited, as well as other requirements that may be relevant for their business model.



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09

Other relevant regulations

Other relevant regulations

Company incorporation:

- The Corporate Affairs Commission website contains step by step guidelines for matters under their purview, including how to register a company or change a company's name.

Employment of expatriates:

- If a fintech wishes to employ an expatriate(s), they are required to apply to the Ministry of the Interior via the eCitiBiz Portal, as detailed on their website.

Cross border technology transfer:

- If a fintech has a technology transfer agreement with a foreign company, it is required to register with the National Office for Technology and Promotion (NOTAP), and complete the relevant application form.

Foreign exchange:

- **Foreign Exchange (Monitoring and Miscellaneous) Provision Act (1995)** sets out rules on foreign exchange, including transactions, import and export of the Naira, and investment of foreign currencies in Nigerian businesses.

Cooperative societies:

- **Nigerian Cooperative Societies Act** provides for the registration of Cooperative Societies. (Part 1) Fintechs may obtain a cooperative license in conjunction with other licenses.

For more information and further guidance on engaging with regulators see [Fintech Regulation in Nigeria](#)

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