

**FROM EASE OF DOING BUSINESS
TO EASE IN ACCESSING CREDIT**

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The drive of the Federal Government of Nigeria to facilitate the ease of doing business and guarantee easy access to credit for businesses-especially Micro, Small and Medium Enterprises (“MSMEs”)-recently recorded another milestone with the signing into law of the Credit Reporting Act 2017 (the “CRA”) and the Secured Transactions in Movable Assets Act 2017 (the “Collateral Registry Act”). These Acts, which are to replace the hitherto existing guidelines issued by the Central Bank of Nigeria (“CBN”) on their respective subject matters, are products of extensive stakeholder engagements and will provide the statutory framework for the regulation of credit bureaux and a collateral registry in Nigeria.

We have set out below, brief highlights of the Collateral Registry Act and the CRA:

THE SECURED TRANSACTIONS IN MOVABLE ASSETS ACT 2017

To stimulate economic growth, the Collateral Registry Act establishes a regime that guarantees access to affordable credit secured by movable properties of MSMEs in Nigeria. In relation to raising seed capital and financing, the bane of MSMEs has been that financiers prefer to extend credit to corporates with established credit histories and real properties to secure the credit granted. MSMEs typically have no real properties and can only offer their movable properties as security, an offer which financiers in many cases are unwilling to accept. With the enactment of the Collateral Registry Act, those difficult days may be over for MSMEs as they may now obtain credit secured by their movable assets.

In addition to its general objective of providing and developing a framework guaranteeing access to credit secured by movable assets, the specific objectives of the Collateral Registry Act include: (i) establishing a National Collateral Registry; (ii) stimulating affordable lending to MSMEs; (iii) facilitating the perfection and realisation of security interests in movable assets; and (iv) enhancing financial inclusion in Nigeria.

Some highlights of the Collateral Registry Act include:

The National Collateral Registry

The Collateral Registry Act establishes a National Collateral Registry (the “NCR”) within the CBN to receive, register and store information on security interests created over movable assets, and provide access to persons who may seek information on such security interests from the NCR. Searches on registered security interests on movable properties may also be conducted at the NCR. The NCR would be headed by a registrar appointed by the Governor of the CBN.

Perfection of security

Under the Collateral Registry Act, when security is created, the secured creditor may perfect the security by filing the prescribed forms and other relevant information relating to the security interest at the NCR. Although such secured creditor may take possession of the collateral, physical possession without more does not amount to perfection of the security.

Creditor protection and realisation of security

To protect creditors, the Collateral Registry Act provides that the security interests created over movable assets in favour of creditors attach not only to the collateral itself, but also to all identifiable and traceable proceeds of the collateral. Even if the security interest was created before the collateral was comingled in a mass or product, the security interest automatically continues in that mass or product. In this way, the Collateral Registry Act has given creditors a statutory right to trace and claim their security interests even if the essential character of the collateral materially changes.

In relation to the realisation of security, the Collateral Registry Act provides that in the event of a default by a borrower, the creditor may enforce and realise his security either

by: (i) resorting to any judicial remedy under law or under the security agreement; (ii) taking physical possession of the collateral, with or without a court order if the security agreement permits; (iii) rendering the collateral inoperative; and (iv) appointing a receiver or take the benefit of all the other remedies provided by the Companies and Allied Matters Act ("CAMA").

Security registration costs

In providing or taking secured credit, a major concern for obligors has always been the prohibitive costs of perfecting security. Finance parties have had to devise several structures to reduce or avoid perfection costs comprising stamp duties and registration fees of different kinds. The Collateral Registry Act has solved this problem in relation to security interests created over movable assets by exempting such security interests from payment of stamp duties. This should ordinarily make it easier for MSMEs to access credit with minimal transaction costs. Unfortunately, the financing costs of MSMEs that are registered as limited liability companies under the CAMA will remain the same because the Collateral Registry Act does not prevent the creation and registration of security interests in the form of charges by companies registered under CAMA. Thus, even if those companies do not incur stamp duties for the purposes of registration at NCR, they will still be required to make such payments for the purpose of registering security created by them pursuant to CAMA.

THE CREDIT REPORTING ACT, 2017

The CRA provides a platform for "credit information providers" to provide credit bureaux with information relating to a person's credit worthiness, credit standing or capacity, and to the history and profile of such person with regard to credit, assets and any financial obligations. The credit bureaux may then share such information with "credit information users" that satisfy certain conditions.

The key objectives of the CRA include (i) facilitating and promoting access to credit; (ii) enhancing risk management in credit transactions; (iii) promoting responsibility in the credit market by encouraging responsible borrowing; and (iv) discouraging reckless credit granting by credit providers. The Act also provides a framework for licensing credit bureaux including the terms and conditions upon which the licences may be suspended or revoked.

Some highlights of the CRA include:

Licensing of Credit Bureau

The CRA requires any person seeking to establish, operate or conduct business as a credit bureau or to perform the functions of a credit bureau to obtain a licence for that purpose from the CBN. The minimum capital requirements and other conditions regulating the grant or issuance of the licence are to be fixed and determined by regulations issued by the CBN.

Credit information must be provided

The CRA mandates all credit information providers to provide credit and credit-related information to credit bureaux upon entering into a credit related transaction with their customers. The credit information providers are thereafter required to provide information on a periodic basis on the status of performance of such customer's obligations under the transaction. Additionally, a credit information provider does not require the consent of the customer in order to provide a credit bureau with information relating to such customer or client.

The list of entities that qualify as credit information providers and which are required to furnish credit bureaux with credit information of their customers is fairly extensive. It includes banks and other financial institutions; leasing companies; insurance companies; cooperative societies and institutions that offer credit to MSMEs; utility companies including but not limited to electricity companies, telecommunications companies, and water corporations; asset management companies; suppliers of goods and providers of services on a post-paid, deferred or instalment payment basis. The CBN is empowered to expand the list from time to time.

Credit Information Users

When credit information providers furnish the credit bureaux with the credit information of their customers or clients, the credit bureaux are authorised to disclose such information to "credit information users" who may require them.

Generally, a credit information user must have entered into a data exchange agreement with a credit bureau before a person's credit information can be released by the credit bureaux to the credit information user. In the case of those credit information users who do not have data exchange agreements with the credit bureaux, such users must obtain the written consent of the relevant customer or client before such customer's information can be released to the credit information user.

Credit information users include all credit information providers (as defined above) and such other persons as the CBN may from time to time prescribe.

The credit information users are required to keep information provided to them confidential and are allowed to use such information only for "permissible purposes".

Permissible Purposes

The CRA restricts the purposes for which credit information may be accessed. As mentioned above, information provided or received pursuant to the CRA can only be used for what the Act has termed "permissible purposes". The permissible purposes include considering an application for credit or considering a person's qualification to act as a guarantor for the grant of credit; reviewing, renewing, restructuring or monitoring of existing credit facilities; carrying out employment checks on employees or prospective employees; assessing the creditworthiness of a prospective tenant in any lease or tenancy; complying with the directive of a regulatory authority or a public body to provide credit information, etc.

Offences under the Act

The CRA creates various offences including knowingly providing inaccurate, misleading or false information to credit bureaux, credit information providers or credit information users; using credit information for a purpose other than a permissible purpose; failing to submit or update credit information within the required timeframe, and other related offences.

Conclusion

The significance of MSMEs in the development of any economy cannot be overstated. Studies have shown that most MSMEs do not survive past their early years, and only about 5% to 10% of them flourish to maturity. One of their greatest challenges is inadequate access to capital, or where accessible, the cost of such capital.

The absence of credit history by most MSMEs, coupled with their relatively low asset base to be used as collateral for credit renders them unattractive to commercial lenders and other credit providers. It is hoped that the implementation of the Collateral Registry Act and the CRA will address these problems and ultimately have a somewhat resurging effect on the Nigerian economy.

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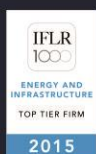
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