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The FCCPC Guidelines on Digital Lending: The Start of a New Regulatory Approach?

Introduction

In the last couple of years, the Nigerian fintech ecosystem and the digital lending space specifically, has witnessed significant growth and innovation both in terms of players and product offerings. From instant / payday loans to other forms of bespoke lending products, for better or worse, digital lending has fast become one of the most active sub-sectors of the Nigerian financial services industry.

On the one hand, digital lending platforms are particularly attractive as an alternative to traditional financial institutions due to their less restrictive credit risk assessment criteria and short timelines to disbursement. Recently however, their operations have come under greater regulatory scrutiny as a result of perceived predatory lending practices such as risk-based pricing, inflated fees and charges and the use of unethical debt recovery tactics.

It is against this backdrop that the Federal Competition and Consumer Protection Commission (the "**FCCPC**") in August 2022 issued interim guidelines for the registration of digital lending platforms in Nigeria (the "**DL Guidelines**"). It is expected that once registered, the FCCPC will be in a better position to query high interest rates and unethical lending practices.

In this client alert, we look at some of the key registration requirements, the practical implications for digital lending platforms and the respective roles of the FCCPC and the CBN in regulating this sector.

The Obligation to Register with the FCCPC

Citing the powers of the FCCPC as the regulatory body responsible for the administration and enforcement of the Federal Competition and Consumer Protection Act 2018 ("**FCCPA**"), the DL Guidelines require that all digital lending platforms be registered with the FCCPC.

FCCPA 2018

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Amongst other things, the DL Guidelines expressly provide that the requirement for registration is a demonstration of the FCCPC's approach to regulating the digital lending space in Nigeria. Due to the volume of complaints received by the FCCPC with respect to digital lending platforms, a move to regulate the sector is unsurprising given the FCCPC's consumer protection mandate.

This is in the same vein as the FCCPC tackling a number of commercial banks over bank charges in the past. Specifically, in August 2022, the FCCPC released a statement directing Google to remove certain loan applications (Apps) from the Google Play Store. The FCCPC also directed fintechs and technology service providers to cease providing services to lenders under investigation or operating without the approval of the FCCPC. This was perhaps the first indication that the FCCPC would move towards a form system of regulating digital lending.

Digital lending is not defined under the DL Guidelines, as a result, it is not entirely clear if existing license holders (under any of the regimes) are exempt from registration. Therefore, the assumption is that all lenders operating via digital platforms are required to be registered with the FCCPC.

From a consumer protection standpoint, the DL Guidelines are a welcome development as the expectation is that registration will bring digital lending platforms under greater regulatory scrutiny and provide the FCCPC with the necessary regulatory backing to address predatory lending practices.

General Information Requirements

As part of the registration process, the DL Guidelines require digital lending platforms to fill out a form known as the Form DGL 001 detailing address; website; identity and nationality of promoters, directors and initial key role players; source(s) of funding including equity, debt or otherwise; affiliations with any other companies, institutions or similar businesses, whether domestic, regional or global; consultants, agents, or any person assisting with registration process, operations, or management and proposed interest rate regime and loan balance calculation methodologies.

Digital lending platforms are also required to provide information on their operational license (issued by either the CBN or a state government) and provide a list of all Apps in operation or intended for operation.

Supporting Documents

The Guidelines further require digital lending platforms to submit supporting documents alongside the completed Form DGL 001.

Amongst other things, the platforms are required to provide a certified copy of the certificate of incorporation of the applicant; a brief description of business; organogram showing role players and location of key role players; name and address of a person within the business who is authorized to accept all correspondence and accept service on behalf of the business; evidence of membership in any trade or professional associations; any service level agreements with any service providers with respect to operations but excluding administration; evidence of feedback and complaint resolution mechanism; evidence of tax payments or tax waivers where applicable; all applicable fees associated with service; and a completed Form 002 which serves as a declaration for digital lending businesses in Nigeria.

Compliance Declaration

Lastly, the Guidelines require digital lending businesses to complete a declaration form (Form 002).

On the declaration form, digital lending businesses are required to confirm that their business is legitimate, lawful and will operate in continuing compliance with any prevailing and applicable laws such as the FCCPA, the Nigeria Data Protection Regulations 2019 (NDPR) and the anti-money laundering regime in Nigeria particularly with respect to third-party privacy rights and personal data including data unrelated to principles of lending as well as recovery practices that are consistent with fair lending principles.

The roles of the FCCPC and the CBN in Digital Lending

Whilst the DL Guidelines represent an appreciable effort towards curbing the noted predatory practices of such lenders, the FCCPC's involvement in regulating lending of any form has become a subject of debate in the market. This is particularly within the context of the role of the CBN and the provisions of the Banks and other Financial Institutions Act 2020 ("**BOFIA**").

The BOFIA provides that it is the CBN's primary responsibility to supervise and regulate the activities of banks and other financial institutions which has been interpreted to include lenders via any platform.

It is also note-worthy that section 65(1)(a) of the BOFIA provides that the provisions of the FCCPA shall not apply to any function, act, financial product, or financial services issued or undertaking, and transaction howsoever described by a bank or other financial institutions licensed by the CBN. Hence concerns regarding possible regulatory overlap between the CBN and the FCCPC. That said, we note that section 65(1)(a) qualifies the banks or financial institutions to which the FCCPA shall not apply as those "*licensed by the CBN*". This is significant as market observers will be aware that not all of the digital lenders are operating under CBN licenses which creates a regulatory lacuna of sorts and the FCCPC appears to be within its ambit in regulating those lenders.

Section 65(a)

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Historically, the business of lending has always been understood to be under the regulatory purview of the CBN even though certain aspects of the operations of banks and other financial institutions may require additional regulatory oversight from other regulators. For example, the National Information Technology Development Agency (NITDA) regulates the processing of personal data by banks and other financial institution but this does not bring lending business under the regulatory purview of the NITDA. Similarly, the Nigerian Communications Commission (NCC) regulates the offering of banking services such as the use of USSD to access lending platforms. However, it does not regulate the offering of lending business. Under the circumstances therefore, the expectation is that the FCCPC intends to adopt a collaborative regulatory approach towards digital lending with the CBN such that both the consumer protection aspects of digital lending and the financial are well covered.

Conclusion

Currently, digital lending platforms in Nigeria operate as either CBN licensees or money lenders under a relevant state money lenders' law. We have also seen the structured use of cooperative society registration as a lending vehicle. As a result, the regulatory standards tend to differ and this has contributed to the increasing consumer protection concerns particularly amongst entities that do not hold a CBN license.

To regulate unethical lending practices, some jurisdictions have gone as far as introducing bespoke legislation and so, the DL Guidelines are a step in the right direction. From a market perspective though, it is important that the registration requirements do not create regulatory overlap between the FCCPC and the CBN in terms of licensing and the general regulation of the business of lending.