

**THE FCCPC LIMITED INTERIM
REGULATORY/REGISTRATION FRAMEWORK AND
GUIDELINES FOR DIGITAL LENDING 2022 AND
MONEY LENDING BUSINESS IN NIGERIA**

On 26th August 2022, the Federal Competition and Consumer Protection Commission (“FCCPC”) issued the “Limited Interim Regulatory/Registration Framework

and Guidelines for Digital Lending 2022” (the “Guideline”). It was, indeed, issued pursuant to the powers of the FCCPC under sections 17, 18 and 163 of the Federal Competition and Consumer Protection Act, 2018 (“FCCPA”) – that is, the general functions and powers of the FCCPC and its power to make regulations and issue guidelines and notices for the effective implementation and operation of the provisions of the FCCPA.

According to a statement made by the Chief Executive Officer of the FCCPC, Babatunde Irukera, the Guideline was mutually developed and adopted by the Inter-Agency Joint Regulatory and Enforcement Task Force¹ as the first and interim step to establishing a clear regulatory framework on digital lending. The purport of the Guideline is to regulate digital lending business, and provide for the requirements for approval and registration to carry out the business of digital lending in Nigeria.

The Guideline is comprised of the FCCPC Interim Digital Lending Guidelines Form 001 (Form DLG 001) and explanatory notes and provisional guidance to Form 001. The applicant for registration is required to provide the following information to the FCCPC using Form 001: name of the digital money lender; physical address; telephone numbers; email 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 the registration process, operations or management; bankers, proposed interest rate regime and loan balance calculation methodologies; any licences authorizing the business to operate; and list of all apps in operation or intended for operation.

In addition, the applicant is required to submit the following documents:

- a. Certified true copy of the certificate of incorporation of the applicant;
- b. A brief description of the business of the applicant and where relevant, their groups;
- c. Organogram showing role players and location of key role players and any operational approving authorities/person;

¹ The Inter-Agency Joint Regulatory and Enforcement Task Force is comprised of the FCCPC, National Information Technology Development Agency (NITDA), and the Independent Corrupt Practices Commission (ICPC).

- d. Name and address of a person within the business who is authorized to accept all correspondence and accept service on behalf of the business;
- e. Evidence of membership in any trade or professional associations;
- f. Any service level agreements with any service providers with respect to operations but excluding administration;
- g. Evidence of feedback and complaint resolution mechanism;
- h. Evidence of tax payment or tax waivers where applicable;
- i. All applicable fees associated with service; and
- j. Declaration for Digital Lending Business in Nigeria (Form 002).

Save for the registration/approval requirements stated above, the Guideline (being an interim document) did not prescribe any other obligation or rules by which the digital lenders will operate. It is expected that the main guideline will be more detailed in terms of the FCCPC's expectations from the digital lenders, applicable fees (if any) and the consequences of breaching any of the provisions of the guidelines.

Prior to the issuance of the Guidelines, the FCCPC had investigated some digital lenders which resulted in [the FCCPC mandating](#) Google Play Store to scrub out such lenders. The FCCPC also directed payment service providers and telecommunication companies to desist from facilitating the business of those lenders or known lenders who are targets or otherwise operating without regulatory approvals. The Guideline, therefore, is an improvement on the efforts of the FCCPC to clamp down on digital lenders who violate consumer privacy, fair lending terms and ethical loan repayment/recovery practices.

Notwithstanding the expected outcome of this move by the FCCPC, it has been argued that the FCCPC is usurping the powers of Central Bank of Nigeria ("CBN"), particularly because the regulation of banks and other financial institutions, falls within the exclusive purview of the CBN by virtue of section 60 of the Banks and Other Financial Institutions Act, 2020 ("BOFIA"). Most interestingly, section 65(1)(a) of the BOFIA specifically and clearly 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 Bank²..."

It is our view that a more plausible interpretation would be that the provisions of the FCCPA will not apply only where the financial institution is a licensee of the CBN. Where such entity is not licensed by the CBN but has a licence issued pursuant to the Money Lenders Law of a state in Nigeria, the provisions of the FCCPA would conveniently apply, provided that the said entity deploys technological infrastructure in providing services to consumers.

² Emphasis supplied.

Money lending business in Nigeria is largely regulated by the Money Lenders Law of various states in Nigeria³. The relevant agency of the state government has the powers to licence and regulate the activities of money lenders. It would, therefore, appear that where the money lender, licensed by the relevant agency of the state, deploys technology in providing loans to consumers, it will fall within the scope of the Guidelines, and by implication, it is expected to register with the FCCPC.

Beyond the issues around the FCCPA and BOFIA, the Guideline has created a room for what appears to be a regulatory powerplay between the FCCPA and the agencies of the various state governments. The obvious implication of the Guideline is that a digital money lender will be required to register with both the FCCPC and the relevant agency of the state government (Lagos state Magistrate Court and Ministry of Home Affairs, in the case of Lagos State) that is saddled with licensing and regulating the activities of money lending business in the state.

It may be argued that the essence of the Guideline is to ensure strict compliance with consumer protection best practices and nothing more, but one would assume that the state agencies should ordinarily have working consumer protection/customer care desks that regularly address consumer related issues. Considering that the state government agencies occupy very important position in the ecosystem, our opinion is that the Inter-Agency Joint Regulatory and Enforcement Task Force should, as a matter of urgency, co-opt the state government agencies in its bid to promote a transparent alternative lending opportunity in Nigeria, not just to avert avoidable conflict between the two bodies, but to ensure an all-inclusive regulatory framework.

No part of this article should be relied upon as legal advice. It is only intended as a general guide on the subject and as such, we advise that you consult a specialist where legal advice is desired. For further information on the subject, kindly contact us - insights@lexsetters.com.

Author

Kelechi Attamah

Head, Fintech Practice Group

kelechi@lexsetters.com

LEXSETTERS LLP

3C, Obadeyi Close, Ikoyi, Lagos

www.lexsetters.com

³ The Moneylenders Law of Lagos State is obsolete and was omitted in the 2015 edition of the Laws of Lagos State. However, there are [reports](#) that the law is being reviewed by the Lagos State House of Assembly.