An Overview of CBN's Revised Regulatory and Supervisory Guidelines for Bureau De Change Operations In Nigeria

THE TRUSTED ADVISORS

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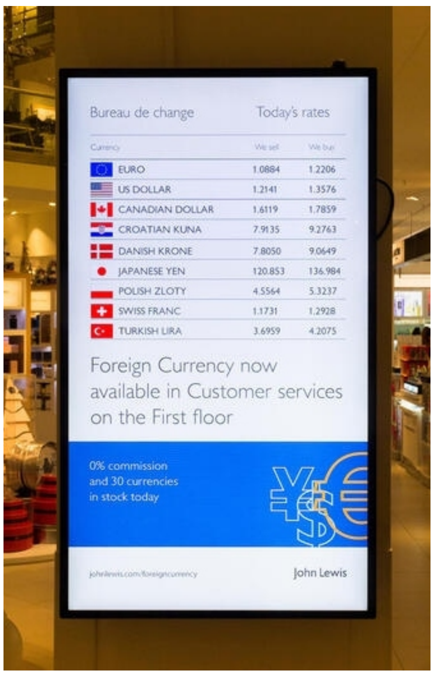
A draft of the "Revised Regulatory and Supervisory Guidelines for Bureau De Change Operations (BDCs) in Nigeria-" was made public on February 23, 2024 by the Central Bank of Nigeria (CBN) via circular; FPR/DIR/PUB/002/006 pursuant to its power under section 56 of the Banks & other Financial Institutions Act, 2020. The Federal Government of Nigeria is working to restructure the country's foreign exchange market and organise and control BDC operations in Nigeria through the implementation of these guidelines. This draft seeks to amend the previous guidelines for BDCs in Nigeria-2015 guidelines.

KEY PROVISIONS OF THE DRAFT GUIDELINES

1. Non-eligible promoters: The guidelines specified groups of individuals who may directly or indirectly participate in BDC ownership. Fifteen (15) kinds of people were listed in the criteria as being ineligible to participate in BDC operations. Some of these people and organisations that are prohibited are:

a) Commercial, merchant, non-interest and payment service banks
b) Other Financial Institutions (OFIs), including holding companies and payment service providers
c) serving staff of financial services regulatory and supervisory agencies
d) serving staffs of regulated financial service providers
e) Government at all levels
e) A shareholder in another BDC.
f) Charitable Organisations.

2. Permissible/Non-Permissible Activities: The scope of permissible and non-permissible activities has increased under the Draft Guidelines. A BDC's authorised operations are outlined in Article 3 of the Draft Guidelines. Purchasing foreign currency from the sources allowed by the Draft Guidelines, selling foreign currency, opening accounts with commercial or non-interest banks for foreign currency and naira, working with banks to issue prepaid cards, and acting as cash out locations for International Money Transfer Operators (also known as "IMTOs") are all examples of this.



Some changes were introduced into the draft guidelines with respect to non-permissible activities. For example, the 2015 Guideline expressly precludes BDCs from opening foreign currency (FX) accounts, it is now contemplated that this will be permissible where the FX accounts are held locally. Amongst others, the Draft Guidelines preclude BDCs from engaging in derivative transactions and borrowing in excess of 30% of their shareholder funds (unimpaired by losses). The restrictions on street trading, capital market activities and foreign businesses/correspondentrelationships have been retained.

3. Sources of Foreign Currencies by BDC: Foreign exchange may be obtained by a BDC from certain individuals or locations. Some of them are visitors, expatriates, returnees from the diaspora, or locals with foreign exchange inflows from employment, travel, investments, or their domiciliary accounts; other sources that the CBN may designate include IMTOs, embassies, hotels that are approved buyers of foreign currencies, the NFEM, and any other source.

4. Categories of Licence: A two-tiered approach for issuing BDC licenses—Tier 1 and Tier 2 licenses—has been implemented under the Draft Guidelines. Subject to the CBN's clearance, a Tier 1 BDC will have the ability to operate nationally, open branches, and select franchisees. If the Draft Guidelines are accepted in their current form, the 2015 Guidelines—which forbid BDCs from running branch offices and

don't include any provisions for franchise operations—will be practically repealed.
There is just one state or the Federal Capital Territory where Tier 2 BDC is permitted to operate. Subject to the CBN's approval, it may operate out of up to three locations: a main office and two branches.

5. Financial Requirements: In order to set up a BDC business, the applicant must satisfy the following capital requirements:
a.A Tier 1 BDC must have a caution deposit of two hundred million naira (₦200,000,000.00) and a minimum capital requirement of two billion naira (₦2,000,000,000.00).
b.In order to qualify for Tier 2 BDC, the business must have a minimum capital requirement of 500,000,000 Naira (₦500,000,000.00) and a caution deposit of 50,000,000 Naira (₦50,000,000.00).

6. Application for Licence: The 2015 Guidelines' two-level approval process—Approval-in-Principle (AIP) and Final Approval—remains in place under the Draft Guidelines. Furthermore, the Final Licence will be granted in two phases: Provisional Approval and Final Licence. The prospective BDC must pay the non-refundable licence fee of N5,000,000.00 (five million naira) for Tier 1 BDCs and N2,000,000.00 (two million naira) for Tier 2 BDCs upon receiving notification from the CBN to grant a Final Licence. Compared to the current N1,000,000.00 (One Million Naira) that is available under the 2015 Guidelines, this represents a huge increase .

7. Operations of BDCs: The Draft Guidelines varies the amount of forex to be sold based on the purpose of the purchase. For instance, not more than US $4,000.00 (Four Thousand United States Dollars) and US$ 5,000.00 (Five Thousand United States Dollars) may be sold as personal and business travel allowances respectively.

8. Preservation of Records: Compared to the current record keeping timeline of six (6) years, the Draft Guidelines reduce the number of years BDCs are required to maintain documents collected from consumers to five (5) years.

9. Revocation of the Licence: The purchase or sale of foreign exchange (FX) above stated unauthorised accounts for FX transactions are new grounds for the revocation of a BDC licence, in addition to the grounds already listed in the 2015 Guidelines.

10. Corporate Governance Requirements: The Draft Guidelines specify the following corporate governance requirements for BDC. It describes the board structure and the number of directors for both Tier 1 and Tier 2 BDCs. A Tier 1 BDC is permitted to have a minimum of five (5) directors, and a maximum of nine (9) directors, and at least (2) of these directors must be independent non-executive directors ("INEDs"). On the other hand, a Tier 2 BDC will be permitted to have a minimum of five (5) directors, and a maximum of seven (7) directors, and at least one (1) director must be an INED.

11. Anti-Money Laundering, Combating the Financing of Terrorism and Combating Proliferation Financing (AML/CFT/CPT) Requirements: The Draft Guidelines will significantly enhance AML compliance measures compared to the current 2015 Guidelines. Every BDC must comply with the requirements of Money Laundering (Prevention and Prohibition Act, 2022 and any other relevant laws and regulations that include the following elements:
a.AML/CFT/CPF Policy;
b.Development of compliance unit and function;
c.Compliance officer designation and duties;
d.The requirement to co-operate with the competent or supervisory authorities;
e.Conduct of customer due Diligence;
f.Monitoring and filing of suspicious transactions reports with the Nigerian Financial Intelligence Unit (NFIU) and other reporting requirements;
g.Record keeping; and
h.AML/CFT/CPF employee training.7

CONCLUSION

The CBN is attempting to regularise the foreign exchange market in order to increase the value of the Naira, reduce inflation, and lessen economic volatility. This is demonstrated by the proposed revisions to the 2015 Guidelines.

When the Draft Guidelines go into effect, they will standardise how BDCs operate in Nigeria, govern who can licence BDCs, and specify when an operating licence may be revoked. If put into practice, the Draft Guidelines may aid the CBN's ongoing efforts to reform the foreign exchange market.

The federal government should take up certain concerns. An important point to think about is how the new ownership structure terms will affect BDCs that already exist.
Additionally, there is no transition clause in the Draft Guidelines. For example, it's unclear if the current BDCs would need to adhere to the new board makeup and capital criteria.

As soon as the Draft Guidelines are implemented, we would anticipate that all BDCs in Nigeria will have to abide by them. Therefore, the CBN ought to think about incorporating transitional clauses and a schedule for how long current BDCs will have to comply with the Draft Guidelines' requirements.