



OPINION STATEMENT

RE; CBN POLICY BSD/DIR/LAB/12/054 - NEW OFFER
LETTER CLAUSE FOR CREDIT FACILITIES - 2019

Recently, the Central Bank of Nigeria has embarked on making and implementing policies to spur economic growth in Nigeria. In the course of their implementation and policy making agenda, an economic and financial policy aimed at providing credit facilities to real sector businesses inter alia within the country has been implemented via a circular to all Deposit Money Banks within Nigeria. The aim of which is to eradicate the prevalent bad debt situations in the finance sector and generally boost economic growth in Nigeria inter alia.

The immediate benefits of these policies though questionable are manifestly tangible. One need only take a look at the rather recent policy that mandates;

“All deposit money banks to maintain a minimum Loan to Deposit Ratio (LDR) of 60% by September 30, 2019. “This ratio shall be subject to quarterly review.”

The aim of which is to increase lending to small businesses, individuals and garner more mortgages. These sectors shall be assigned a weight of 150% in computing the LDR.

What is Loan Deposit Ratio (LDR)?

LDR shows a bank's ability to cover loan losses and withdrawal by customers. It is used to ensure that there is adequate liquidity to cover loans in case of an unforeseen downturn in loan defaults.

To simplify the above, banks are now compelled to give out more loans to the Real sector, which inadvertently implies that small businesses and individuals alike would find loan facilities easier to access. And in this moment, the policy seems to be paying great dividends as there have been recorded increment in credit facilities advancement to the private sector over the past few months.

Nigeria's credit culture is easily classified as abominable with the Asset management Corporation of Nigeria having over 100 billion in debts, this being part of the reasons that banks were reluctant to give out real sector loans in the first place. However in a bid to improve our credit management system which would invariably boost investor confidence in the Nigerian economy the Bankers Committee at its 345th meeting held on August 26, 2019 considered a novel measure which entailed thus: that banks shall have access and utilize the deposits of defaulting customers across the banking industry to regularize their non-performing facilities.

The CBN in furtherance of the above issued the following implementation guidelines:

1. With effect from August 26, 2019, the terms and conditions in offer letters and loan agreements must amongst others, contain the following undertaking to be signed by prospective obligors:

"By Signing this offer letter/loan agreement and by drawing on the loan, I covenant to repay the loan as and when due. In the event that I fail to repay the loan as agreed, and the loan becomes delinquent, the bank shall have the right to report the delinquent loan to the CBN through the Credit Risk management System (CRMS) or by any other means and request the CBN exercise its regulatory power to direct all banks and other financial institutions under its regulatory purview to set-off my indebtedness from any money standing to my credit in any bank account and from any other financial assets they may be holding for my benefit.

I covenant and warrant that the bank shall have power to set-off my indebtedness under this loan agreement from all such monies and funds standing to my credit/benefit in any and all such accounts or from any other financial assets belonging to me and in the custody of any such bank.

I hereby waive any right of confidentiality whether arising under common law or statute or in any other manner whatsoever and irrevocably agree that I shall not argue to the contrary before any court of law, tribunal, administrative authority or any other body acting in any judicial or quasi-judicial capacity."

2. Accordingly, all loan documentations from that date must contain the undertaking referred to in 1 above as well as the Bank Verification Number (BVN) of the obligor for individual loans and that of the directors of the company and its Tax Identification Number for corporate loans for ease of identification of other deposits of the individual or corporate borrower as the case may be.

3. Where personal guarantees are provided, the BVN of the guarantor in respect of individual or corporate loan should equally be provided.

4. Upon default on a credit obligation by a borrower, the bank that originated the credit shall request the CBN to invoke the utilization of the defaulting borrower(s) deposits in other banks in repayment of the obligation.

Whilst this policy is hailed by bankers and economists alike, representing a rather efficient and expedient solution to satisfaction of non-performing loans and debts, the hitherto existing principles of case law and established statutes that had previously regulated these types of transactions may have been rendered redundant, procedures such as seeking a foreclosure order from a court of law in respect of collateral will now exist in abeyance. Thus it seems like this policy may have just presented banks a means to circumvent going to court.

Also clause 2 above seems to imply that directors may now be held liable for the satisfaction of their company's debts. This goes against the very doctrine of a corporate identity and the principle of the veil of incorporation which separates the personality of a corporation from the personalities of its shareholders and protects them from being personally held liable for the company's debts (**see. Salomon v. A Salomon & co. Ltd**). Furthermore, the **Companies and Allied Matters Act in section 21** effectively provides for limited liability companies and in the light of these statutory provision, a policy by a government institution seeking to use the deposits of a company director to fulfill the credit obligation of said company is void ab initio. And whilst it may be easy for one to point out that clause 2 simply states that their BVN shall be used for identification purposes only it is our humble submission that said clause is plagued with technicalities and shall be the subject of many contentions to come.

Whilst the efforts of the CBN in encouraging economic growth and real sector financing are commendable, it is only proper that legal considerations be adhered to in policy making. A policy excessively perforated by legal technicalities shall easily be truncated and may end up only spurring legal debate and not economic growth. In analyzing this policy, a number of legal

issues that may unsettle individuals easily arise and at the end of the day this policy may serve as a deterrent to seeking loans thus risking economic downturns.

IMPORTANT NOTICE The information provided in this paper does not and is not intended to constitute legal advice. The contents of this paper are for general information purposes only. Please formally engage a lawyer in the relevant jurisdiction before acting on any information in this paper.***

Key Contacts



Mfonobong Ukpe

Head, Corporate Strategy & Commercial LP

mu.unanaowo@manifieldsolicitors.com



Emmanuel Aniekpeno

Associate

emmanuel.aniekpeno@manifieldsolicitors.com

Office Locations

Lagos Office

Plot 7, Block 52a,
Omorinre Johnson Street
Lekki Phase 1
Lagos

Benin City

Akenzua Street
(2nd floor)
Off Plymouth Road
Benin City, Edo state

Abuja Office

Plot 2669 Aguiyi Ironsi Street
Maitama
Abuja

+234 8027405535

+234 8104242598

+234 9093857000

immanioj@manifieldsolicitors.com

manioj@hotmail.com

immaniohio@yahoo.com

twitter.com/manifold_firm

www.manifieldsolicitors.com

[instagram.com/manifieldsolicitors](https://www.instagram.com/manifieldsolicitors)

www.linkedin.com/company/manifieldsolicitors