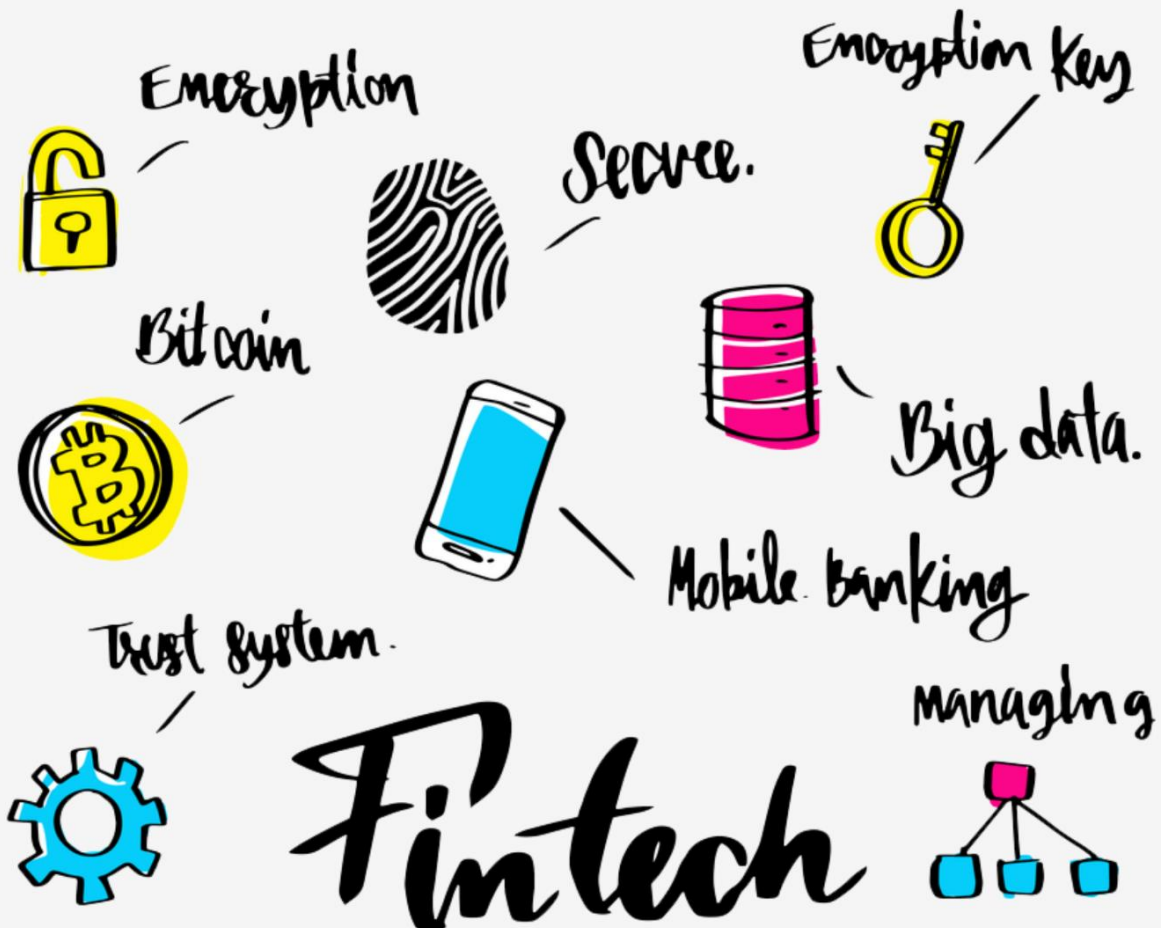
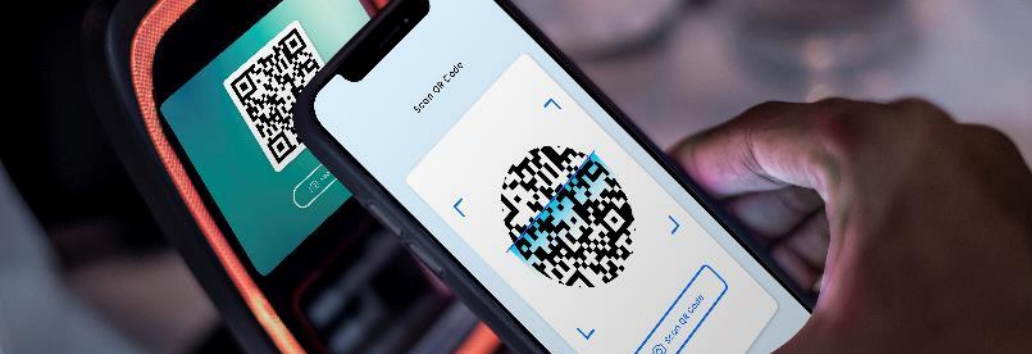




2021 IN REVIEW

HIGHLIGHTS OF REGULATORY CHANGES IN THE FINTECH SPACE IN 2021





In a year when two of Nigeria's Fintechs (Flutterwave and Opay) acquired unicorn status, it became clear that the Fintech industry in the country had come of age. In line with this, there was a raft of new regulations affecting the industry. The local regulators sought to facilitate innovation and monitor the industry more closely. With this, some activities that were previously unregulated became subject to new restrictions and guidance from regulators.

Importantly, the enactment of the Banks and Other Financial Institutions Act 2020 ("BOFIA") at the end of 2020 empowered the Central Bank of Nigeria ("CBN") to regulate certain categories of Fintechs (in addition to those that it already regulated). In the BOFIA, many of the regulatory requirements hitherto only applied to commercial banks were extended to include Fintechs. These include the intervention powers of the CBN over insolvent institutions. Unfortunately, the CBN is yet to publish regulations giving effect to these powers, but the expectation is that these regulations will be published at some point within 2022. The BOFIA, therefore, signals a new attitude to the regulation of Fintechs.

We have highlighted in this brief article some of the key regulatory reforms witnessed in the sector in 2021.

1. Payments

In 2021, the CBN introduced a number of innovations paving the way for new products which support the Fintech industry and access to financial services. These include regulations for the use of QR Codes, regulations to guide its regulatory sandbox and some others.

a. QR Code Payments

On 13th January, 2021 the CBN issued the Framework for Quick Response (QR) Code Payment which sets out the parameters for the implementation of QR Codes payments in Nigeria. This framework also set out the compliance requirements for issuers (such as deposit money banks, mobile money operators and other financial institutions), acquirers and payment service providers (i.e. switches and PSSPs). This framework is now operational in the country.

b. Sandbox Operation

On 18th January, 2021, the CBN published the Framework for Regulatory Sandbox Operations which set out the requirements for qualification and application to participate in the CBN sandbox programme. This initiative is geared at encouraging innovation in the Fintech sector and promoting financial inclusion in Nigeria. This framework requires the applicants to, among other things, identify risk to financial institutions and financial consumers that may arise from the testing of the product, service or solution in the sandbox and propose appropriate safeguards to address the identified risks. In addition, the framework set out consumer safeguards to be implemented by participants. The requirements were put in place to mitigate the risk of consumers who may participate in the exercise.

c. New Licence Requirement

In 2021, we started seeing the impact of the new licensing regime for the Nigerian payment system. The new licensing regime was announced in December 2020 by which the CBN consolidated the licensing requirements for operators in the payments sector in Nigeria. In addition to other provisions, the CBN streamlined the payment system licensing activities into four broad categories:



- Switching and Processing;
- Mobile Money Operations;
- Payment Solution Services (PSS) (which consists of PSSP, PTSP and Super-Agent); and
- Regulatory Sandbox.

Furthermore, the CBN also provided consolidated licensing requirements for persons wishing to obtain any of the licenses. One confusion caused by this was that some media houses misunderstood the requirements and wrongly reported that the CBN had increased the capital requirement for the Payment Solution Services category. Whereas what the CBN did was that it consolidated the capital requirements for Payment Solution Services into one and also clearly indicated that entities could apply for individual licences under the PSS i.e. PSSP, PTSP or Super-Agent licence.

Based on our assessment, we believe that CBN is ensuring that existing payment providers and stakeholders have visibility on its requirements for persons looking to obtain licences to operate in the payments sector in any of the categories.

d. Non-Bank Acquirers

In May 2021, the CBN published the Regulatory Framework for Non-Bank Acquiring in Nigeria to establish a regulatory landscape for non-bank acquirers. We believe that this became necessary as it was previously not clear whether a non-bank acquirer was regulated in Nigeria. This framework highlights, among other things, the various participants and their roles in the provision of non-bank acquiring services in Nigeria. It also sets out the requirement for companies looking to provide non-bank acquiring services in Nigeria and states that such companies must be CBN licensed switches or any other company approved by the CBN.

e. Payment Service Holding Companies

The CBN introduced a new regulation on 3rd August, 2021 which affects mobile money operations, switching and processing, payment solution services and all other actions to be approved by the CBN. This new regulation requires affected financial institutions and payment service providers to set up Payment Service Holding Companies (PSHC). A PSHC is a business set up for the purpose of making and managing equity investments in two or more subsidiaries, essentially making the PSHC a “parent company”. A PSHC is required to have at least one Mobile Money Operator (that is, a financial service provider that develops and delivers financial services through mobile phones and telephone networks) and one switching company (that is, a company which facilitates exchange of funds between financial service providers, merchants and customers in Nigeria).

The regulation was introduced to enable companies that are interested in holding more than one licence category and operating in the various categories in the payment services space to be able to do so. The introduction of the PSHC would also help in mitigating against the risk of muddling up permissible activities among entities, make the management of risks easier and allow the CBN have regulatory oversight on all the operating companies within the group.

f. Licensing of Payment Service Bank

As at 31st December, 2021, the CBN has issued licenses to three separate payment service banks namely; Hope PSB Limited, Moneymaster PSB Limited and 9 PSB Limited who are backed by Unified Payment Services Limited, Globacom Limited and 9mobile respectively – the latter two being key players in the telecommunications sector in Nigeria. This was pursuant to the guidelines



regulating the licensing and operations of payment service banks which were issued about two years earlier. As at 31st December, 2021, the licensed PSBs are Hope PSB Limited, Moneymaster PSB Limited and 9 PSB Limited. Licensing of the proposed MoMo Payment Service Bank Limited and SMARTCASH Payment Service Bank Limited is still ongoing and they have obtained an Approval-in-Principle from the CBN. However, the final licence is yet to be issued to either of them. These PSBs are expected to play key role in the payment system in Nigeria, deepen financial inclusion and the development of the payment system through a secured technology-driven environment. With the coming into play of these licensed PSBs, we expect them to play a key role in the Fintech space and contribute significantly to the sustained growth of Fintechs in the Nigerian economy.

g. Mobile Money Operations/E-wallets

On 9th July 2021, the CBN released the new Regulatory Framework for Mobile Money Services in Nigeria (“**MMS Framework**”) and the new Guidelines on Mobile Money Services (“**MMS Guidelines**”) in Nigeria. These replaced the 2015 CBN Regulatory Framework and Guidelines for Mobile Payment Services in Nigeria. Some of the changes introduced by the MMS Guidelines include the introduction of savings wallet services which a Mobile Money Operator (“MMO”) can only provide after it has first notified the CBN and obtained its “No objection”.

The MMS Guidelines also outlined the permissible and non-permissible services that a MMO can engage in. The permissible activities include wallet creation and management; e-money issuing; agent recruitment and management; pool account management; non-bank acquiring as stipulated in the regulatory requirements for non-bank merchant acquiring in Nigeria; card acquiring; and any other activities that may be permitted by the CBN. The non-permissible activities include granting any form of loans, advances and guarantees (directly or indirectly); accepting foreign currency deposits; dealing in the foreign exchange market except where it involves carrying out payments and remittances (including inbound cross-border personal remittances) and accepting deposits from individuals and small businesses; insurance underwriting; accepting any closed scheme electronic value (e.g. airtime) as a form of deposit or payment; establishing any subsidiary; undertaking any other transaction which is not prescribed by the guidelines and any other activities that may be prohibited by the CBN. The MMS Guidelines also require MMOs to ensure that the total outstanding unspent balance which represent a MMO’s subscriber’s unspent funds shall be insured up to the applicable coverage level by the Nigeria Deposit Insurance Corporation.

In relation to card account based, stored-Value (e-wallet) account based, and bank-account based transactions, the MMS Guidelines cleared the ambiguity created in the 2015 guidelines regarding the bank that defines the standards on the authorisation of transactions originating from or terminating on bank-account based accounts. Under the 2015 guidelines, the issuing bank was required to have that responsibility, but it has now been clarified that the CBN has that responsibility. The MMS Guidelines also require a card account-based transaction to be traceable, monitored and logged. With respect to stored value account, the guidelines provide that where a mobile money service provider accepts, transmits, processes or stores card transactions and/or data, it shall comply with the Payment Card Industry Data Security Standards.

2. International Money Transfer Operators (“IMTO”)

The IMTO space saw a lot of growth in 2021 as the CBN on 22nd March 2021 released a list of 47 approved IMTO’s as of 28th February 2021^[1]. The CBN subsequently increased that list to 57^[2]. In an effort to sustain the inflow of diaspora remittances to Nigeria, the CBN through a circular to Deposit Money Banks and IMTOs on 5th March 2021 introduced the “CBN Naira 4 Dollar Scheme” which entitles recipients of foreign remittances to receive ₦=5.00 for every US\$1.00 collected by the recipient of a remittance. The essence of this was to incentivise senders and recipients of offshore money remittances to Nigeria. This CBN Naira 4 Dollar Scheme is coming on the heels of the circular released by the CBN on 30th November 2020 in which the CBN directed that all remittances by IMTOs to Nigeria must be received by the recipients in United States Dollars (“US Dollars”) either in cash or paid into a domiciliary account. This change was important because, historically, the CBN had insisted that Nigerian recipients of US Dollars through IMTOs should be paid the Naira equivalent at a rate determined by the CBN and communicated to IMTOs. For many, this rate was unattractive, and it led many senders to make remittances through the purchase and sale of crypto currency and using other unorthodox sources for same. This is thought to have diverted US Dollars remittances to Nigeria from the IMTO channels. The CBN’s change of policy to insist that recipients can now only receive the remitted foreign currency in cash or in their domiciliary account was welcomed in many quarters.

Still on IMTOs, one of the main issues that our IMTO clients battled with in 2021 was the CBN’s refusal to recognise proxies. As the inbound IMTOs are generally located outside of the country, they have tended to rely on aggregators of relationship banks to carry out their filings and interaction with the CBN. In the course of 2021, the CBN’s attitude to such proxies changed or became hardened and many IMTOs had to adjust their practices to comply. The CBN also strongly enforced its requirement that IMTOs must file their returns regularly as prescribed and renew their respective licences annually.

3. Cryptocurrency and Digital Assets

The CBN issued a circular on 5th February 2021 to all Deposit Money Banks, Non-Bank Financial Institutions, Other Financial Institutions (“Regulated Institutions”) and the general public to reiterate its position on dealings in cryptocurrencies in Nigeria. The CBN’s position is that Regulated Institutions are prohibited from dealing in cryptocurrencies or facilitating payments for cryptocurrency exchanges. It also directed these Regulated Institutions to identify persons and/or entities transacting in or operating crypto currency exchanges within the banking system and to close such accounts. The Securities and Exchange Commission (“SEC”) had earlier issued a statement on digital assets, their classification and treatment on 11th September, 2020¹. The SEC subsequently issued a press statement² stating that there are no inconsistencies between the CBN’s position and that of the SEC. The SEC indicated that it was engaging with the CBN to understand the risks involved in dealing in cryptocurrencies and to put in place adequate mitigants. Notwithstanding the SEC’s

^[1] https://www.cbn.gov.ng/Out/2021/CCD/TED_IMTOList.pdf

^[2] <https://www.cbn.gov.ng/Out/2021/CCD/UPDATED%20LIST%20OF%20INTERNATIONAL%20MONEY%20TRANSFER%20OPERATORS%20IN%20NIGERIA%20AS%20AT%201st%20April.pdf>

¹ [file:///C:/Users/DO.UUBO/Downloads/SEC-STATEMENT-ON-DIGITAL-ASSETS-AND-THEIR-CLASSIFICATION-AND-TREATMENT_11920%20\(1\).pdf](file:///C:/Users/DO.UUBO/Downloads/SEC-STATEMENT-ON-DIGITAL-ASSETS-AND-THEIR-CLASSIFICATION-AND-TREATMENT_11920%20(1).pdf)

² <https://sec.gov.ng/press-release-on-cryptocurrencies/>



statement, admittance into the SEC Regulatory Incubation Framework and the assessment of all persons (and products) affected by the CBN's circular was suspended until such persons were able to operate a bank account.

The year 2021 also saw the CBN's introduction of the eNaira. On 25th October 2021, the CBN released the Regulatory Guidelines on the eNaira ("eNaira Guidelines")³ which provide, among other things, that the eNaira is the digital form of Nigeria's fiat currency (i.e., the Naira) issued by the CBN in line with section 19 of the Central Bank of Nigeria Act 2006. The eNaira is a direct liability of the CBN and will complement the use of cash as the eNaira will be less costly, more efficient, safe, and trusted means of payment and store of value. The eNaira Guidelines also provides that the Digital Currency Management System of the CBN shall be responsible for minting and issuing the eNaira, managing unresolved eNaira issues escalated from financial institutions and disputes between financial institutions. End users of the eNaira will be able to store the eNaira in their speed wallets which can be downloaded via the Google Play store or the Apple App store.

4. Investments

In 2021, the SEC introduced two new licences to the Nigerian regulatory landscape, the digital sub-broker licence and the robo advisor licence. The digital sub-broker licence was established to regulate platforms offering securities for sale. These platforms generally offered Nigerian and foreign securities in partnership with regulated brokerage houses. While there is a general requirement that capital market intermediaries should be registered with the SEC, the platforms generally took the view that it simply facilitated the transactions which were between the investors and the registered brokers. In the course of the year, the SEC decided that the platform itself should be regulated and issued an official circular⁴ on 8th April 2021 ("SEC Circular") which suggested that trading in foreign securities offered by online investment and trading platforms that are not registered in Nigeria was unlawful. The SEC categorically stated in the SEC Circular "... that by virtue of the provisions of sections 67-70 of the Investments and Securities Act 2007 (ISA) and Rules 414 and 415 of the SEC Rules and Regulations, only foreign securities listed on any Exchange registered in Nigeria may be issued, sold or offered for sale or subscription to the Nigerian public. Accordingly, capital market operators who work in concert with the referenced online platforms [were] notified of the Commission's position and advised to desist." In addition to this, the SEC specifically identified three investment Fintechs that it threatened to sanction for carrying out these breaches. Shortly thereafter, the SEC implemented a digital sub-broker licence, and we understand that the three affected Fintechs are all in various stages of obtaining the prescribed licence from the SEC,

- a. **Digital Sub-broker licence:** In its amendment⁵ to the SEC rules and regulations ("SEC Rules") on 26th April 2021, the SEC amended the definition of a "Sub-Broker". Following the amendment, the SEC defines a sub-broker as any person or entity not being a dealing member of an exchange who acts on behalf of a sponsoring broker/dealer as an agent or otherwise for assisting the investors in buying, selling, or dealing in securities through such sponsoring broker/dealer. The SEC further defines a "Sub-broker Serving Multiple Brokers through a Digital Platform" as a sub-broker who utilises a digital platform to serve clients and interact with the sponsoring broker or brokers. The effect of these amendments is that where a person/entity not

³ <https://www.cbn.gov.ng/Out/2021/FPRD/eNairaCircularAndGuidelines%20FINAL.pdf>

⁴ <https://sec.gov.ng/proliferation-of-unregistered-online-investment-and-trading-platforms-facilitating-access-to-trading-in-securities-listed-in-foreign-markets/>.

⁵ [file:///C:/Users/MB/Downloads/Major-Amendments-to-the-SEC-NIGERIA-rules-26-April-2021%20\(1\).pdf](file:///C:/Users/MB/Downloads/Major-Amendments-to-the-SEC-NIGERIA-rules-26-April-2021%20(1).pdf)





licensed with the SEC offers investment products and offerings of licensed entities on its digital platform for users of the digital platform to purchase, such person/entity will be regarded as a sub-broker serving multiple brokers through a digital platform, and will be required to obtain a license from the SEC.

- b. **Robo-Advisory licence:** The SEC on 30th August 2021 issued new rules on Robo-Advisory services (“RA Rules”)⁶. A robo adviser is defined in the RA Rules as a person who provides digital advisory services, while “digital advisory services” is defined as the provision of investment advice using automated, algorithm-based tools which are client-facing, with little or no human adviser interaction in the advisory process. These rules apply to all capital market operators and persons (individual and corporate) offering or seeking to offer digital (Robo) advisory services in the Nigerian capital market.

5. Pan African Payments and Settlement System

In a bid to facilitate the implementation of the African Continental Free Trade Agreement (“AfCFTA”), boost cross-border transactions across Africa and facilitate payments for such transactions, the CBN on 11th October 2021 issued Guidelines on the Operations of Pan African Payments and Settlement System in Nigeria (the “PAPSS Guideline”). This is novel to the payment system helping to facilitate inter-African trade and transactions in Nigeria and Africa. Some of the key features of the Pan African Payments and Settlement System (the “PAPSS”) include the following:

- supporting cross-border payments in the local currency of the customer in the sending country, and receipt in the local currency of the beneficiary country.
- making inter-bank settlement of transactions to be in US Dollars based on a multilateral netting arrangement.
- ensuring that the inter-bank net settlement would be based on prefunding by participating financial institutions, through the domestic Real Time Gross Settlement System.
- making Afreximbank to be the settlement agent and requiring each central bank will maintain a settlement account with Afreximbank to settle eligible transactions from its country on a net basis.
- empowering each central bank to determine the eligible transactions for which foreign exchange will be provided.
- Participating commercial banks may also operate a US Dollars settlement account with Afreximbank, to settle obligations for payments in respect of ineligible transactions, for which, in the case of Nigeria, the CBN will not provide foreign exchange

6. Crowdfunding

The SEC, on 21st January 2021, issued the rules on crowdfunding. The new rules established a legal framework for crowdfunding that allows private companies to engage in crowdfunding activities (Crowdfunding Rules)⁷. The key provisions of these rules include the following:

- a. **Applicability:** the Crowdfunding Rules apply only to investment based crowdfunding.
- b. **Eligibility:** The Crowdfunding Rules allow Micro Small and Medium Enterprises (MSMEs) incorporated as a company with a minimum of two-years operating track records to raise funds through registered crowdfunding portals in exchange for investment instruments.
- c. **Key Participants:** The key participants are the fundraisers, the investors, and the intermediaries. The Crowdfunding Rules requires that every entity involved in crowdfunding in Nigeria must be registered with the SEC. The fundraiser is the originator, maker, or obligor of the investment instrument to be issued. The investor

⁶ [file:///C:/Users/DO.UUBO/Downloads/New-Rules-and-Amendments- Executed-30-August-2021%20\(4\).pdf](file:///C:/Users/DO.UUBO/Downloads/New-Rules-and-Amendments-Executed-30-August-2021%20(4).pdf)

⁷ <file:///C:/Users/DO.UUBO/Downloads/Jan-2021-Executed-Rules.pdf>





is defined in the ISA as any person or entity that seeks to make, are making, or have made an investment in an investment vehicle with the expectation of achieving returns. On the other hand, the crowdfunding intermediary is the entity that operates the crowdfunding portal pursuant to Rule 4(a) of the Crowdfunding Rules and registered by the SEC as such. This Rule provides that, “every portal that facilitates, operates, provides or maintains interactions between fundraisers and investing public (crowd) in Nigeria for the purpose of an investment-based crowdfunding shall be operated only by an entity registered as a crowdfunding intermediary”.

Other obligations: The Crowdfunding Rules place further responsibilities on the intermediaries. Such other responsibilities include information disclosure, due diligence, reporting obligations, data protection and privacy, operation of a trust account, compliance, and restriction on cross-ownership.

7. Lending

The increasing trend of players entering, and investments in, the lending space continued in 2021. Companies offering quick unsecured loan offerings and loans to small businesses gained popularity and attracted more investments in the year. For instance, Tiger Global led a US\$42 million Series B raise for FairMoney and PayHippo’s raised US\$3 million seed funding which attest to the growth and successes witnessed in the space.

Notwithstanding the positive outlook, there was an increase in regulatory scrutiny on lending practices particularly on the manner and approach deployed in recovering loans from defaulting borrowers. On 15th November, 2021, the Federal Competition and Consumer Protection Commission (“FCCPC”), alongside the Independent Corrupt Practices Commission, National Information Technology Development Agency and the CBN, announced that it will be leading efforts to address what it considered “questionable repayment practices” introduced by lenders which include acts such as “public shaming and violations of privacy, harassment and exploitative interest rates”. The FCCPC concluded by stating that it will pursue urgent enforcement action against already known violators and ensure criminal prosecution is meted against offenders, where applicable.

As such, the strength and maturity of the lending space will be critical to lending policy and growth of the lending space. We, however, expect that regulators are going to probably adopt a ‘hawkish’ approach in pursuing lenders who are found to have been involved in credit recovery exercises in a manner which violates the rights of defaulting borrowers. We believe that lenders, in reacting to the development, should adopt practices which do not violate the rights of defaulting customers.

Conclusion

The year 2021 saw many regulatory developments and we expect that 2022 will proceed in the same vein. More regulation is awaited within the ever growing lending sector to mitigate the “questionable repayment practices” that the FCCPC has identified. It is also expected that the SEC will provide more regulation to address the investments sector as more individuals are gravitating towards these investment platforms because they see it as a means of increasing their wealth and hedging against the depreciation of the currency. We look forward to seeing how the PAPSS will be implemented and hope that the CBN will release the much awaited regulations on how it intends to implement the Fintech provisions in the BOFIA and the extent of their application on existing participants in this sector. A key game changer is the formal entry in 2021 of the large Nigerian telecomms companies into the fintech space. Some of them are already announcing significantly increased revenues due to these activities and we expect that the impact of their presence will only really be felt in 2022.

This update is for general information purposes only and does not constitute legal advice. If you have any questions or require any assistance or clarification on any aspect of the Nigerian fintech system, please contact fintech@uubo.org.