



REVISED CASH WITHDRAWAL LIMITS: LEGAL, REGULATORY AND COMPLIANCE IMPLICATIONS FOR BUSINESSES

In furtherance of its cashless policy, on December 6, 2022, the Central Bank of Nigeria (“**CBN**”), via a Circular referenced BSD/DIR/PUB/LAB/015/069 and titled “**Naira Redesign Policy – Revised Cash Withdrawal Limits**” (the “**Circular**”), set new weekly (and daily) limits to the amount of cash withdrawals allowed by individuals and corporates over the counter (OTC) and via Automated Teller Machines (ATM) or points of sale (PoS), effective January 9, 2023.

The Circular, addressed to all Deposit Money Banks (“**commercial banks**”) and Other Financial Institutions (“**OFIs**”), levies processing fees on cash withdrawals above the prescribed limits and further

subjects such above-the-limit withdrawals to enhanced due diligence involving additional documentation and approval requirements. Furthermore, commercial banks and OFIs are required to render monthly returns to the CBN on cash withdrawals above the prescribed limits, as well as ensure compliance with extant regulations on anti-money laundering/combating the financing of terrorism (“**AML/CFT**”), know-your-customer (**KYC**) regime, customer due diligence and suspicious transaction reporting, among others.

This article considers the regulatory directives in the Circular and the various implications for businesses.

S/N		CORPORATES	INDIVIDUALS
1.	OTC Cash Withdrawal Limit.	<ul style="list-style-type: none"> • ₦500,000 maximum per week 	<ul style="list-style-type: none"> • ₦100,000 maximum per week
2.	OTC Cash Withdrawal Above Limit.	<ul style="list-style-type: none"> • Attracts 10% processing fee. • Permitted in compelling circumstances, not more than once in a month. • Allowed only for legitimate purposes. • Requires payee’s valid means of identification (NIN, International Passport or Driver’s Licence). • Requires payee’s Bank Verification Number (BVN). • Requires notarized declaration by the customer, stating the purpose for the cash withdrawal. • Requires senior management approval of the drawee’s Managing Director (where applicable). • Requires written approval of the MD/CEO of the bank/ OFI authorizing the withdrawal. 	<ul style="list-style-type: none"> • Attracts 5% processing fee. <p>Apart from the rate of processing fee, every other term and condition for OTC Cash Withdrawal Above Limit for corporates applies to individuals.</p>
3.	ATM Cash Withdrawal Limit.	<ul style="list-style-type: none"> • ₦100,000 maximum per week subject to daily maximum of ₦20,000. 	<ul style="list-style-type: none"> • Same applies.

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4.	PoS Terminal Cash Withdrawal Limit.	<ul style="list-style-type: none"> • N20,000 maximum per day. 	<ul style="list-style-type: none"> • Same applies.
5.	Third Party Cheque OTC Payment & Clearing Limits.	<ul style="list-style-type: none"> • Third party cheques of values above N50,000 shall not be eligible for cash payment over the counter. • Extant limits of N10,000,000 on clearing cheques continue to apply. 	<ul style="list-style-type: none"> • Same applies. • Same applies.

Legal implications

The CBN, as the monetary and financial sector policies' regulator, is charged with the responsibility for ensuring monetary and price stability, issuing legal tender currency, and promoting a sound financial system in Nigeria, among others. In furtherance of this, the Central Bank of Nigeria Act (CBN Act) and the Banks and Other Financial Institutions Act (BOFIA) empower the CBN to issue policies and make regulations, for the purpose of ensuring high standards of banking practice and financial stability through surveillance activities and the promotion of an efficient payment system. The Circular setting new cash withdrawal limits is therefore within the CBN's statutory powers. In essence, any violation of the Circular by the relevant financial institutions will amount to an offence punishable under the BOFIA and relevant codes, guidelines and regulations issued by the CBN.

The new requirement for a notarized declaration (stating the purpose for the withdrawal) by a bank customer who wishes to make cash withdrawals over the counter, above the specified limit, is expected to lend further credibility or validity to the purpose for such withdrawal. Considering the current state of the Nigerian market, especially the operations of informal sector participants like MSMEs, high demand for above-the-limit withdrawals to meet daily cash transactions is very likely. Thus, the new requirement

for a notarized declaration for above-the-limit withdrawals will have a consequential increase in the demand for the services of notaries public (It is not clear if a declaration made before a Commissioner for Oath at a court registry will also be acceptable for this purpose).

Furthermore, we are aware that concerns have been expressed regarding the legality (hence validity) of the Circular since cash withdrawals above the prescribed limits are allowable under certain statutes. For instance, the *Money Laundering (Prevention and Prohibition) Act of 2022* permits cash transactions of up to N5 million and N10 million respectively for individuals and corporates. Thus, queries are being raised on whether a circular (with the powers of subsidiary legislation) can prevail over the provisions of primary legislation (like the Money Laundering Act, 2022) and whether the Circular should be void to the extent of its inconsistency with such primary legislation.



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We note that section 56 of the BOFIA confers on the Governor of the CBN powers to regulate and supervise banking business and activities of OFIs in Nigeria, as well as make rules and regulations for the operation and control of all institutions under the supervision of the CBN. Further, by virtue of section 53 of the BOFIA, in so far as it relates to banks and other financial institutions, BOFIA supersedes any other laws or enactments, thus it may be argued that the Circular, being a product of properly exercised powers under the BOFIA, is valid. Nonetheless in our view, in order to avoid the confusion that may arise where a circular has provisions that are inconsistent with extant legislation, particularly primary legislation enacted in the same year as the relevant circular, prior public engagement is useful.

Regulatory implications

The revised cash withdrawal limits are set, further to the recently announced *Naira Redesigned Policy* of the CBN – a monetary and regulatory measure to control the amount of money in circulation and reduce the amount of cash outside the banking system. To facilitate implementation of the cash withdrawal limits outside the banking floors, commercial banks are directed in the Circular to load only denominations of ₦200 and below into ATMs; this also applies to OFIs (e.g., Payment Service Banks, Primary Mortgage Banks, Microfinance Banks etc.). Financial

institutions are required to encourage customers to make use of alternative channels (internet banking, mobile banking apps, USSD, cards/PoS, eNaira, etc.) to conduct their banking transactions, in line with the country's ongoing **cashless policy**.

The CBN first took a concrete step towards the cashless policy in 2007, when it launched the *Payment Systems Vision 2020* (“PSV2020”), with the overall objective of migrating from a cash-dominated economic environment to one dominated by electronic payments, through the development of a robust fintech landscape. The PSV2020 was supposed to enhance attainment of the **National Financial Inclusion Strategy** later launched in 2012, with the goal of achieving 80% financial inclusion by the year 2020. With the timeline for the attainment of the PSV2020 already past, the new cash withdrawal limits are seen as a regulatory measure for reviving the cashless policy and pushing it back on track.

Compliance implications

As implementation of the Circular kicks off in January 2023, commercial banks and OFIs are required to ensure immediate compliance with the regulatory directives or face severe sanctions. This is expected to throw up several issues for the CBN-regulated entities, as well as MSMEs and individuals engaged in daily cash transactions. For instance, the numerous PoS agents who provide quick cash withdrawal services to rural dwellers and people in the informal sector across the length and breadth of the country require substantial cash to operate. It is not clear how they will thrive when cash withdrawal from their bank accounts over the counter is limited to ₦100,000 weekly. Considering that agency banking is itself a product of the cashless economy, it remains to be seen how implementation of the Circular will be done without being counterproductive to agency banking business.



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In a bid to have access to higher weekly cash withdrawal limits, there is a possibility that some unregistered cash dependent MSMEs trading as individuals may take steps to convert to corporate entities, by registering their businesses as companies. This will result in more businesses being captured in the regulatory and tax nets, given the ongoing digitization and integration of the systems and processes of relevant agencies including the CBN, Corporate Affairs Commission (CAC), Trademarks Registry, Federal Inland Revenue Service (FIRS), Nigerian Customs Service (NCS), National Agency for Food and Drug Administration and Control (NAFDAC), etc. Where more corporate bank accounts are opened and more transactions done via e-Channels, it will become easier for tax authorities to have more accurate assessments of the tax obligations of businesses with respect to companies' income tax (CIT), value added tax (VAT), withholding tax (WHT), education tax, etc. However, many MSMEs may not yet be ready for the cost and tax implications of registering companies and whilst the relevant regulations seek to provide a more reduced cost profile for small businesses, more cost

reduction may be required to cater for nano businesses who may now be forced to migrate to the formal corporate sector.

By the same token, commercial banks and OFIs are expected to take their governance, regulatory & compliance (GRC) obligations more seriously in the new regime. The likely occurrence of many above-the-limit cash withdrawals by businesses or individuals demands that financial institutions take extra steps regarding due diligence, KYC, AML/CFT, suspicious transaction reporting, and returns rendition, among others.

The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo.

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