August 2017 Edition[1]

BANKING UPDATES: RECENT LANDMARK REGULATIONS, LEGISLATION AND CASE LAW AFFECTING THE BANKING AND FINANCE SECTORS

This newsletter contains a review of:

- The Central Bank Of Nigeria's ("**CBN's**") amendment to the Commercial Agricultural Credit Scheme (CACS) Guidelines;
- The CBN circular on payment of port and Nigerian Maritime Administration and Safety Agency (NIMASA) charges by oil marketing companies; and
- The CBN circular on the introduction of two (2) new instruments – "funding for liquidity" and "intra-day facility" for non-interest banks.

AMENDMENT TO THE COMMERCIAL AGRICULTURAL CREDIT SCHEME (CACS) GUIDELINES

The CBN has, pursuant to a circular dated August 15, 2017 (and referenced **REF: FPR/DIR/GEN/CIR/06/023**), amended certain provisions of the Commercial Agricultural Credit Scheme ("**CACS**") Guidelines (the "**Revised CACS Guidelines**"). The Revised CACS Guidelines took effect from the date of this circular and supersedes the initial CACS guidelines issued in 2010, and subsequent amendments in respect thereof.[2]

The CACS was established by the CBN in collaboration with the Federal Government of Nigeria, represented by the Federal Ministry of Agriculture and Rural Development (FMARD), primarily to promote commercial agricultural enterprises by providing credit facilities at single digit interest rates[3] to such enterprises. The CACS is financed from the proceeds of the ₦200 Billion (Two Hundred Billion Naira), three (3) year bond raised by the Debt Management Office. These funds are made available to participating bank(s)[4], to finance commercial agricultural enterprises.[5]

[1] **Please note that the period under review is August 2017.**
[2] The CACS guidelines were subsequently amended in 2014 and 2015.
[3] Interest on CACS facility advanced to an agricultural enterprise shall not exceed 9% (inclusive of all charges)
[4] The CBN has approved the participation of all deposit money banks under the CACS.
[5] A commercial agricultural enterprise is any farm or agro-based enterprise with agricultural asset (excluding land) of not less than N100 million for an integrated farm with prospects of growing the assets to N250 million within the next three years and N50 million for non-integrated farms/agro-enterprise with prospects of growing the assets to N150 million, except in the case of on-lending to farmers' cooperative societies.

The Revised CACS Guidelines essentially expand the responsibilities of the borrower[6] under the CACS by including a requirement for the borrower to insure the project being financed with the Nigerian Agricultural Insurance Corporation ("**NAIC**").[7]In addition, we note generally that the Revised CAC Guidelines now contemplate that the NAIC will play certain roles under the CACS including: (i) providing insurance cover for agricultural projects in the event of losses arising from the various hazards insured in the value chain; (ii) providing the pre-determined premium rate from time to time to the lending banks; and (iii) issuing and incorporating the financial interest of the lending bank as the first loss payee into the policy document to the extent of their rights and interests. Furthermore, in connection with the NAIC insurance cover, participating banks are, *inter alia*, required to: (i) educate and enlighten the borrower to take NAIC insurance policies for the various items across the agricultural value chain; and (ii) obtain NAIC insurance covers as a condition precedent to the draw down/disbursement of the loan. It should be noted that the CBN has directed, pursuant to this circular, that borrowers immediately commence insurance premium payments under the CACS.

Please refer to the circular for further details at:

https://www.cbn.gov.ng/Out/2017/FPRD/AUGUST%202017%20CIRCULAR%20%20ON%20THE%20AMENDMENT%20TO%20THE%20CACS%20GUIDELINE%20MERGED.pdf

PAYMENT OF PORT AND NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (NIMASA) CHARGES BY OIL MARKETING COMPANIES

Pursuant to a circular dated August 15, 2017 (and referenced **REF: TED/FEM/FPC/GEN/01/001**), the CBN informed Authorised Dealers[8] and the general public that payment for port charges to the Nigerian Ports Authority, NIMASA, etc. by oil marketing companies can now be accommodated by the CBN using Form "A".[9] This development is aimed at improving foreign exchange availability in the Nigerian foreign exchange market and ameliorating challenges encountered by stakeholders.

Accordingly, the CBN has directed Authorised Dealers to accept the request for port charges from oil marketing companies and forward same to the CBN foreign exchange window.

---

[6] Borrowers under the CACS include corporate and large scale commercial farms or agro-enterprises, medium scale commercial farms or agro-enterprises, state government or the Federal Capital Territory

[7] Paragraph 17 (e) (ii) of the Revised CACS Guidelines

[8] An Authorised Dealer is any bank licensed by the CBN and issued with a license to deal in foreign exchange

[9] "Form A" is a foreign exchange form used for applications to pay for service transactions (invisible trade)

BANWO & IGHODALO

INTRODUCTION OF TWO NEW INSTRUMENTS "FUNDING FOR LIQUIDITY" AND "INTRA-DAY FACILITY" FOR NON-INTEREST BANKS

The CBN has, vide a circular dated August 23, 2017 (and referenced **REF: FMD/DIR/CIR/GEN/08/009**) introduced two new financial instruments at its window for access by Non-Interest Financial Institutions (**NIFI**) licensed by the CBN. These instruments, namely: (i) Funding for Liquidity Facility ('**FLF**'); and (ii) Intra-Day Facility ('**IDF**'), were created in a bid to aid liquidity management and deepen the financial system.

The key features of the new financial instruments are as follows:

- **Funding for Liquidity Facility**

  The FLF is provided by the CBN on an overnight basis which means its maturity date would be the next business day after the date of creation.[10] The NIFI must be either in clearing[11] and have a temporary debit balance and or have a liquidity problem to be eligible or authorised to use this facility. In addition eligible securities must be provided to the CBN as collateral. The transactions shall be at zero interest rate and at maturity, the transaction unwinds and CBN receives its funding and returns collateral to the NIFI. However, upon failure to provide adequate funding in the account for the unwinding of the transaction at maturity, CBN shall rediscount the pledged securities at par, recover the facility amount and then return the net value to the NIFI.

- **Intra-Day Facility**

  The IDF is provided by CBN for settlement on the same business day[12] (i.e. it is created and settled on the same business day) and eligible securities are required as collateral for the IDF. Furthermore upon termination, the transaction unwinds and the CBN recovers its funding and returns the collateral securities to the NIFI. In the event of failure to repay the IDF as at when due, the CBN shall rediscount the pledged securities at par and recover the facility amount and return the net value to the NIFI.

Please refer to the circular for further details at:

https://www.cbn.gov.ng/Out/2017/FMD/Introduction%20of%20Two%20New%20Instruments%20for%20Non%20Interest%20Banks.pdf

[10] The opening hours for the FLF shall be between 2.00pm to 3.30pm, and shall terminate on the commencement of the next business day.
[11] We understand this to mean that the bank must be in the process of settling transactions
[12] The operating hours for the IDF shall be between 9.00am to 3.30pm