AN OVERVIEW OF THE DRAFT REVISED REGULATORY AND SUPERVISORY GUIDELINES FOR BUREAU DE CHANGE 4 IN NIGERIA.

INTRODUCTION

On February 23, 2024, the Central Bank of Nigeria (the "**CBN**") issued a circular with reference number FPR/DIR/-PUB/CIR/002/006. The circular is titled "**Revised Regulatory and Supervisory Guidelines for Bureau De Change Operations in Nigeria – Exposure Draft**" (the "**Draft Guidelines**") and it is directed to all Bureau De Change Operators and Stakeholders in the Financial Services Industry.

Pursuant to the powers conferred on the CBN in Section 56 of the Banks and Other Financial Institutions Act, 2020 (**BOFIA**), the CBN issued the Draft Guidelines for stakeholder comments and/or inputs. As noted in the circular, the Draft Guidelines seek to enhance the regulatory framework for the operations of Bureau De Change ("**BDC**") as part of the ongoing reforms of the Nigerian foreign exchange market ("**NFEM**") to, inter alia, ensure foreign currency liquidity stability. The Draft Guidelines will revise the permissible activities, licensing requirements, introduced new record-keeping and reporting requirements, corporate governance, and Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) provisions of BDCs.

In this newsletter, we have reviewed the key provisions of the Draft Guidelines.

KEY PROVISIONS OF THE DRAFT GUIDELINES

Eligibility

The CBN in the Draft Guidelines listed the categories of persons or entities that are prohibited from participating in the ownership of BDCs either directly or indirectly. The guidelines identified fifteen (15) unexhaustive categories of people who are not eligible to participate in the operations of BDCs, as the CBN is empowered to subsequently designate any entity it deems fit as prohibited. The prohibited entities/persons include commercial, merchant, non-interest and payment service banks, serving staff of financial services and supervisory agencies, non-governmental organizations, cooperative societies, charitable organizations, telecommunication services providers, amongst others.

The above listed persons/entities are referred to as non-eligible promoters[1].

Permissible and Non-Permissible Activities

Article 3 of the Draft Guidelines set out permissible activities that a BDC may engage. They include, acquiring foreign currency from the sources permitted in the Draft Guidelines, sell foreign currency, open foreign currency, and naira accounts with commercial or non-interest banks, collaborate with banks to issue prepaid cards, and serve as cash out points for International Money Transfer Operators ("**IMTOs**").

On the other hand, BDCs will be prohibited from engaging in activities such as street trading, opening or maintaining any account with any bank or financial institution outside Nigeria, acting as custodian of foreign currency on behalf of customers, engaging in offshore business or maintaining foreign correspondent with any foreign establishment, dealing in gold or other precious metals, granting loans or advances in any currency, etc.

Sources of Foreign Currencies

A BDC may source foreign currency from designated persons or places. Some of them are tourists, returnees from the diaspora, expatriates, or residents with foreign exchange inflows from work, travel, investment or their domiciliary accounts, IMTOs, embassies, hotels that are authorized buyers of foreign currencies, the NFEM, and any other source that the CBN may specify.

Furthermore, the Draft Guidelines will also tighten the know-your-customer requirements for sellers of foreign exchange to BDCs. Sellers of Ten Thousand United States Dollars (US$10,000.00) and above will be required to declare to BDCs the source of the foreign exchange and comply with all AML/CFT/CPT regulations and foreign exchange laws and regulations.

Sale of Foreign Currencies by BDCs

The Draft Guidelines list the types of transactions BDCs may undertake. They include foreign exchange transactions for personal travel allowance ("**PTA**"), business travel allowance ("**BTA**")[2], payment of medical bills, payment of school fees, repurchase of unused Naira from a non-resident from whom the BDC had sourced foreign currency in the course of that visit.

BDCs will not be allowed to sell more than Four Thousand United States Dollars (US$4,000.00) per individual for PTA, and Five Thousand United States Dollars (US$5,000.00) for BTA.

1. A promoter is a person involved in setting up and funding a new company.
2. Provided that a person who receives BTA on behalf of a non-individual entity shall not be entitled to PTA for the same period.

A beneficiary of BTA or PTA can receive up to twenty-five percent (25%) of the foreign currency in cash, and the rest must be transferred to the customer's Nigerian domiciliary account or prepaid card. However, payments for all sales of foreign exchange by BDCs must be by transfer to the BDC's Naira account.

Notwithstanding the above, a beneficiary of BTA or PTA of the equivalent of Five Hundred United States Dollars (US$500.00) or less may receive the BTA or PTA in cash.

Categories of Licence

The Draft Guidelines categorized BDC licences into two (2); Tier 1 BDC and Tier 2 BDC. A Tier 1 BDC is authorized to operate on a national basis and can open branches (subject to the approval of the CBN) and appoint franchisees, whilst a Tier 2 BDC is authorized to operate only in one state or the Federal Capital Territory.

Financial Requirements

To set up a BDC business, the applicant must satisfy the following capital requirements:

a. The minimum capital requirement for a Tier 1 BDC is Two Billion Naira (₦2,000,000,000.00) and the mandatory caution deposit is Two Hundred Million Naira (₦200,000,000.00).

b. For Tier 2 BDC, the company must have a minimum capital requirement of Five Hundred Million Naira (₦500,000,000.00), while the mandatory caution deposit is Fifty Million Naira (₦50,000,000.00).

It is important to note that the prescribed minimum capital of BDCs and any subsequent capital injection must be subject to verification by the CBN. Also, the licences of all BDCs must be renewed annually.

Licencing

Like an approval for banking and other financial institution licencing applications, application for BDC licence will be processed in two (2) stages, namely: Approval-in-Principle ("AIP"), and Final Licence.

a. Approval in Principle

An application for the grant of AIP is to be addressed to the CBN Governor. The application will be accompanied by documents in Appendix 1 to the Draft Guidelines. CBN must be satisfied with certain things (such as the quality of management staff of the proposed BDC and that they have met the minimum pre-qualification criteria, the adequacy of capital and earning prospects of the proposed BDC, etc.) when considering the application.

Where the CBN is satisfied with the application, which will include verification of the capital contributions of the prospective shareholders, it will issue an AIP to the promoter(s). The proposed BDC must not be incorporated/registered with the CAC until AIP is granted by the CBN in writing, a copy of which must be presented to the CAC for registration. This means, an already incorporated company cannot apply for the grant of a BDC licence.

Finally, an AIP is not an approval to commence business.

b. Final Licence

Grant of licence will be implemented in two (2) sub-stages, namely: Provisional Approval and Final Licence.

i. Provisional Approval

The promoters of a BDC will submit their application (with supporting documents) for the grant of a final licence to the Director, Financial Policy and Regulation Department, CBN, Abuja, not later then six (6) months after the grant of AIP. Upon review of the documents submitted, the CBN will conduct pre-licencing inspection to assess the readiness of the proposed BDC to commence operations.

ii. Final Licence

Upon the grant of provisional approval, promoters of the proposed BDC will apply for final licence within sixty (60) days, accompanied with the relevant supporting documents. Upon satisfactory review, the CBN may approve the grant of final licence to the proposed BDC, to enable it commence operations and the BDC may commence operations upon grant of final licence, after payment of the non-refundable licence fee.

Corporate Governance Requirements

The Draft Guidelines prescribe the minimum and maximum number of directors on the Board of a BDC. A Tier 1 BDC is permitted to have a minimum of five (5) directors, and a maximum of nine (9) directors, and at least two (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.

While it is compulsory to have an Executive Director (ED) other than managing director/chief executive officer for a Tier 1 BDC, a Tier 2 BDC is only encouraged rather than mandated to have an INED.

In addition to this, the Board of a BDC is expected to practice gender diversity, as no board must consist of only one gender.

In the event of resignation of a director of a BDC from the Board, such director must submit a written notice of resignation addressed to the Chairman of the Board, ninety (90) days before the effective date of resignation, and where such director is an INED, and such resignation would result in non-compliance with the requirements of the number of INEDs, the Board must within the ninety (90) days' notice period appoint a replacement. Also, where a NED resigns from the Board, and such resignation results in NEDs not being in the majority, the Board must within the ninety (90) days' notice period appoint a replacement.

Furthermore, where a director of a BDC elects to resign from the Board on account of unresolved concerns relating to the running of the BDC, such director must detail the concerns in written statement and submit to the Chairman for onward transmission to the Board. In addition to this, the resigning director must, within seven (7) days of the notice of resignation, forward a copy of the statement to the Director, Other Financial Institution Supervisory Department of the CBN.

The maximum tenure of a non-executive director (NED) will be three (3) terms of four (4) years each. INEDs will serve for a single term of four (4) years, which may be renewed only once for another term of four (4) years.

Operations of BDCs

A BDC can deal in banknotes and coins, plastic cards, and all other permissible activities under the Draft Guidelines.

Nigerian residents can only commence transactions with a BDC after electronic retrieval of the potential customer's Bank Verification Number or Tax identification Number from Nigeria Inter-Bank Settlement System Plc or the Federal Inland Revenue Service's databases, respectively, and the details confirmed to match with the potential customer's standard identification document. Conversely, all transactions by non-residents can only commence after obtaining a copy of the potential customer's passport identification document and validation with the relevant Nigerian agency.

Anti-Money Laundering, Combating the Financing of Terrorism and Combating Proliferation Financing (AML/CFT/CPF) Requirements.

Every BDC must comply with the requirements of Money Laundering (Prevention and Prohibition) Act, 2022, Terrorism (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.

Preservation of Records

Every BDC must keep records obtained from its customers for at least five (5) years after the consummation of the transaction.

Functional Units

Every BDC must establish some functional departments/divisions/units such as: Operations, Compliance, Risk Management, Internal Audit, Information Technology, and Legal Services.

Revocation of Licence

The CBN may revoke the licence of a BDC, where the BDC or any of its directors/officers do any of the following, amongst others:

a. forges, mutilates, alters, or defaces any foreign currency, or other instruments of exchange in the foreign exchange markets with intent to defraud.
b. engages in multiple ownerships of BDCs.
c. obtains foreign currency from any ineligible source or from an eligible source but in a fraudulent manner.
d. has been found guilty of fraudulent or dishonest practices by a court of competent jurisdiction.
e. fails to render any returns for three (3) consecutive months, amongst others.

CONCLUSION

The Draft Guidelines, when it becomes operational, will standardize the operations of BDCs in Nigeria, regulate the eligibility for licencing of BDCs and grounds for revocation of operating licence. The Draft Guidelines, if implemented, can help in the ongoing reform of the foreign exchange market by the CBN.

However, the Draft Guidelines do not have transition provisions. For instance, it is not clear if the existing BDCs would have to comply with the new capital requirements and board composition. We would assume that every BDC in Nigeria must comply with the Draft Guidelines upon coming into effect. As such, the CBN should consider including transition provisions and timeline within which existing BDCs will comply with the provisions of the Draft Guidelines.

For additional information on the above newsletter and legal assistance in understanding the Draft Revised Regulatory and Supervisory Guidelines for Bureau De Change Operations in Nigeria, please contact your usual contact at Bloomfield LP.