2023 Regulatory Roundup

As 2023 closed, we highlight some significant regulatory and legal developments within the Nigerian business landscape this year. Some of these pivotal developments signal possible regulatory directions for 2024. Recognizing the implications of these key milestones becomes imperative for businesses embarking on comprehensive enterprise-wide compliance reviews and planning; enabling the organization not only to align with current standards but also to anticipate and adapt to future possible shifts in the business environment.

The Business Facilitation (Miscellaneous Provisions) Act 2023

On February 14, 2023, the Business Facilitation (Miscellaneous Provisions) Act was enacted, amending 21 business-related laws, including the Companies and Allied Matters Act 2020, to create a more favorable environment for micro, small, and medium-sized enterprises (MSMEs) in Nigeria.

The Act focuses on eliminating regulatory bottlenecks and introduces full automation of application processes with the Corporate Affairs Commission (CAC), streamlining operations and promoting ease of doing business in the country.

Operational Guidelines for Open Banking

In March 2023, the Central Bank of Nigeria (CBN) introduced Operational Guidelines for Open Banking, signaling a transformative shift in the country's financial landscape. These guidelines establish a framework for secure data sharing and collaboration within the financial sector, unlocking potential benefits such as the creation of innovative financial products, increased accessibility and affordability of services for underserved populations, enhanced transparency and competition, improved financial management through integrated platforms, and the stimulation of new business models and technologies driven by open financial data.

The Securities and Exchange Commission's (SEC) Regulation Incubation Program (RI)

The SEC's Regulation Incubation Program (RI) started in 2021, admitting cohorts of Fintech models for a one-year period. On April 28, 2023, the SEC invited public applications for the first cohort. This program provides basic requirements for Fintech firms to operate under limited provisions, allowing the SEC to supervise new Capital Market service models before full establishment. This aligns with the SEC's innovation regulation objective and the government's Ease of Doing Business policy (Executive Order 001), aimed at removing business constraints and making Nigeria a more business-friendly environment.

Financial Reporting Council of Nigeria (FRCN) (Amendment) Act 2023

The Financial Reporting Council of Nigeria (Amendment) Act 2023 became law on May 3, 2023. This legislation seeks to promote corporate governance by emphasizing transparency, accountability, and ethical conduct. It introduces key changes to financial reporting regulations and standards with the aim of elevating the quality and reliability of financial reporting.

Finance Act 2023

The Nigerian Finance Act 2023, signed into law in May 2023, brings important changes to the country's fiscal framework. It aims for greater equity, sustainable development, and economic growth. The legislative goal focuses on fair and transparent tax regulations, stimulating economic activity, streamlining tax incentives, and improving tax collection and administration.

Recognizing the implications of these key milestones becomes imperative for businesses embarking on comprehensive enterprise-wide compliance reviews and planning; enabling the organization not only to align with current standards but also to anticipate and adapt to future possible shifts in the business environment.

Increased regulatory scrutiny of antitrust by the Federal Competition and Consumer Protection Commission (FCCPC)

On December 27, 2023, the FCCPC announced the mutual execution of a Consent Order, imposing a fine of $110 million on British American Tobacco. This follows an investigation into alleged anti-competitive conducts and other violations of the FCCPA (Federal Competition and Consumer Protection Act). The enforcement action underscores a growing trend of intensified regulatory scrutiny by the FCCPC in matters related to anti-competitive practices.

This development signals a heightened focus on regulatory surveillance and enforcement activities aimed at addressing conducts that diminish, restrict, or impede competition. The FCCPC's sustained commitment is evident in its ongoing multi-sectoral investigations targeting FCCPA violations across various industries. This signals a possible outlook for 2024.

The Nigeria Data Protection Act 2023

The NDPA 2023 represents a significant milestone in regulating data collection and protection in Nigeria. The Act introduces a set of data collection and protection principles along with security measures designed to mitigate unauthorized data collection and misuse. One of the key provisions of the Act is the establishment of the Nigeria Data Protection Commission. This institution serves as a crucial mechanism for enforcing the law and ensuring compliance. By entrusting the commission with these responsibilities, the Act reinforces the commitment to upholding data privacy standards and holding entities accountable for their data processing activities. Compliance with the NDPA is not just a legal requirement but also a strategic move for businesses. It fosters trust in Nigeria's digital ecosystem; and by extension bolsters Nigeria’s digital economy as users are assured that they share critical data within a protective regulatory framework.

The Nigeria Inter-Bank Settlement System PLC (NIBSS) Memo on delisting non-deposit-taking FinTech

On December 5, 2023, NIBSS issued a directive to financial institutions, instructing the delisting of non-deposit-taking financial institutions from commercial banks' outward transfer channels. The directive emphasized that although these entities may process outward transfers as inflows to banks, their licenses do not authorize them to receive inflows or hold customers' funds. This aligns with previous Central Bank of Nigeria (CBN) guidelines, circulars, and discussions, aiming to ensure service-focused licenses, maintain a clear separation of financial activities by Fintech companies, and prevent them from exceeding their approved license scope.

Regulation on operation of bank accounts for Virtual Assets Service Providers (VASPs)

IAt the close of 2023, the Central Bank of Nigeria (CBN) reversed its two-year restriction on virtual asset transactions, marking a significant policy reversal and showcasing the CBN's willingness to explore the regulation of virtual asset service providers (VASPs), including cryptocurrencies and crypto assets. Before this recent policy shift, the CBN actively discouraged investments in virtual assets, reflecting global regulatory concerns regarding potential systemic risks to the financial system, challenges related to ensuring market integrity, as well as investor and consumer protection. Subject to specific regulatory requirements, regulated financial institutions can now open accounts, provide designated settlement accounts and settlement services, and act as channels for forex inflows and trade for licensed VASPs involved in various virtual asset transactions. The guidelines outline enhanced Know Your Customer (KYC) requirements for account opening, restrictions on account use, operational and transactional limits, and ongoing reporting obligations for transaction activities on opened accounts, among other requirements. Account opening necessitates approval from senior management, and CBN authorization is mandatory for opening Designated Settlement Accounts (DSAs), which must be maintained and operated according to the settlement processes and guidelines outlined in the regulation.

While these regulatory changes signify a notable shift in the CBN's stance on virtual assets, transitioning from a ban to a more nuanced regulatory framework, it is crucial to note that the CBN has not conveyed any legal acceptance of virtual assets as substitutes for domestic currency or as a medium of exchange in domestic transactions. Banks and other financial institutions remain prohibited from directly holding, trading, or transacting in virtual assets. Essentially, the CBN's approach aims to manage associated risks while recognizing the potential benefits of virtual asset transactions. The impact of these changes and their contribution to the growth of the virtual assets market warrants close monitoring.

Enhanced consumer protection in digital lending

Building upon the Limited Interim Regulatory/Registration Framework and Guidelines for Digital Lending in 2022, the Federal Competition & Consumer Protection Commission (FCCPC) has initiated numerous investigations to identify unlicensed or guideline-violating Digital Money Lenders (DMLs). On July 20, 2023, the Commission delisted approved DMLs, rendering them legally inoperable. It further ordered Google to remove them from the Play Store and restricted payment gateways' services to these entities. Presently, the FCCPC is developing a comprehensive and permanent regulatory framework for digital lending, slated for release in 2024, aimed at addressing gaps and issues identified in the interim guidelines.

Concluding Remarks and General Outlook for 2024

The regulatory landscape in 2022 and 2023 set the stage for notable developments in the business sector, especially in the financial services industry. It is anticipated that regulatory bodies would enhance surveillance, enforcement, and supervision further by implementing recent frameworks and guidelines in 2024.

To succeed in this evolving landscape, businesses must proactively anticipate upcoming regulatory developments. Strategic compliance planning will be crucial for navigating regulatory changes, involving staying updated, understanding new regulations, and adjusting internal processes to align with evolving requirements. A proactive compliance approach not only safeguards businesses from liability but also cultivates a culture of diligence, transparency, and accountability, enhancing overall resilience and reputation in the Nigerian market.

Authors:

ABIMBOLA OJENIKE
abimbola@slingstonelaw.com

JESULAYOMI OYELAMI
jesulayomi@slingstonelaw.com