



**Aurora** Q4 2020

**AN OVERVIEW OF THE CBN  
OPERATIONAL GUIDELINES ON GLOBAL  
STANDING INSTRUCTION**

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**INSIDE TOKUNBO ORIMOBILP**

## INTRODUCTION

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Pursuant to the powers conferred on the Central Bank of Nigeria (the "**CBN**") by section 2(d) of the CBN Act 2007, the CBN issued to all banks and financial institutions in Nigeria, the operational guidelines on Global Standing Instruction ("**GSI**") for individuals (the "**Guidelines**") with effect from August 1, 2020. The GSI is primarily aimed at facilitating an improved credit repayment culture, reducing non-performing loans in the Nigerian banking system and watch-listing consistent loan defaulters.

The GSI operates as an option of last resort by a creditor bank to recover past loan obligations being principal and accrued interest only, excluding any penal charges from a defaulting borrower through a direct set-off from investments and/or funds held in the borrower's other bank accounts domiciled with CBN licensed financial institutions that are connected to the Nigeria Inter-Bank Settlement System Plc ("**NIBSS**") Instant Payment (NIP) platform.

According to the Guidelines, the only types of accounts eligible for GSI are joint and individual savings accounts, joint and individual current accounts, joint and individual domiciliary accounts, investment/deposit accounts (including local & foreign currency) and electronic wallets. Similarly, the stakeholders involved in GSI include, the borrower, creditor bank, participating financial institutions ("**PFI**"), NIBSS and CBN.

The Guidelines provide that prior to the execution of loan agreements, the borrower being an account holder in a PFI must also execute an instruction (written or digital), authorizing the recovery of an amount specified by the creditor bank from any or all accounts maintained by the account holder across all PFIs (the "**GSI Mandate**"). In executing the GSI Mandate, the borrower shall ensure that all the other accounts are linked to his or her Bank Verification Number ("**BVN**") and in the event that an account of the borrower which is not linked to his/her BVN is discovered, such BVN shall be watch-listed.

In this edition of Aurora, we have analyzed the effect and legality of the Guidelines in relation to the Constitution of the Federal Republic of Nigeria 1999.

# LEGAL ISSUES

Despite the novelty of the Guidelines as it seeks to facilitate an improved credit repayment culture in Nigeria, we have highlighted certain legal concerns below:



## Privity of Contract:

This is a fundamental principle of contract which means that only parties to a contract can claim benefit from such contract. By opening an account with a financial institution, a customer establishes a contractual relationship with such financial institution, hence there is privity of contract solely between the customer and financial institution. It thus appears that in an instance where a creditor triggers the GSI and instructs another PFI to apply the funds in the account domiciled with such PFI towards the settlement of the borrower's debt with the creditor, a contractual obligation between the borrower and the other PFI is breached.

While it can be argued that upon execution of the GSI mandate agreement by the borrower, the other PFIs will enjoy some pseudo privity to the contract by virtue of their GSI master agreement with NIBSS, which empowers NIBSS to access the accounts of the bank's customers of the PFIs, the absence of a direct contractual obligation between the borrower and other PFIs for transfer of funds to settle a loan obligation will definitely expose the PFIs to a floodgate of litigation for breach of confidentiality obligation and unauthorized deduction of funds.



## Sanctity of Property Ownership in Nigeria:

Section 44 of the 1999 Constitution of the Federal Republic of Nigeria ("**CFRN**") provides for the right of every Nigerian citizen to own property and further prohibits compulsory acquisition of any property without allowing the owner the right to access a court or tribunal for the determination of his rights. By enabling the creditor to attach accounts of the borrower with other PFIs without a court order and without informing the borrower, the Guidelines is likely to breach this provision of the constitution.

It thus means that except the GSI contains a waiver clause which ensures that the borrower waives his right and enables the creditor to deal with his other bank accounts, without obtaining his consent, the borrower can maintain an action in court against the PFI for breaching the fiduciary duty owed to customers by PFIs to keep safe the funds deposited with them and produce same upon demand.

On the other hand, what happens in the event that there is a dispute as to the level of indebtedness of the borrower to the creditor? Will the borrower be allowed to exercise his constitutional right to approach the court before the GSI is triggered, or would the creditor seek to become the Judge in its own cause? Could this amount to an attempt at usurping the powers of the court.

In *Guaranty Trust Bank v Adedamola*<sup>1</sup>, the court condemned the post no debit instruction of the Economic and Financial Crimes Commission to a financial institution as unconstitutional and illegal. Similarly, in *Fidelity Bank Plc v Bayuja Ventures Ltd & anor*<sup>2</sup>, it was held that no bank has the powers to freeze an account without a court order. In view of the foregoing, it is unlikely that the courts would allow transfer of funds from accounts without a court order.

It is worthy of note however, that where the GSI mandate is not executed by a borrower, there can be no recourse to the use of GSI in the event of default in loan repayment.

<sup>1</sup>(2019) 5 NWLR 30  
<sup>2</sup>(2011) JELR 33410 (CA)



### **Joint Accounts:**

A major legal concern is the likely infringement of the right of a co-joint account holder in the event of the implementation of a GSI. A co-joint account owner has rights to property enshrined in the CFRN and has not in any way waived such rights as he is not party to the GSI agreement. In our view, the attachment of a joint account of a borrower will infringe the constitutional right of the co-joint account holder. The individuals hold a joint interest in the account and thus, execution should not be levied against the account where the debt is the liability of just one of the holders of the account.



### **Wrongful application of the GSI:**

Although, the Guidelines make provisions for penalties for wrong use of the GSI, it does not provide a clear cut procedure on how a borrower wrongfully subjected to GSI may seek redress. Similarly, the time limit within which a creditor must make a refund in the event of a wrongful trigger is not included in the Guidelines. Moreover, the Guidelines are not clear as to who will take the benefit of the penalties to be meted out on the creditor in the event of a wrongful trigger. Will the fine be paid to the CBN, or to the borrower?

## CONCLUSION AND RECOMMENDATIONS

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From the above, it is apparent that the Guidelines, if implemented properly, has the potential of resolving the loan delinquency issues in Nigeria. The CBN needs to be cautious in implementing these Guidelines as it could create bigger legal issues in their efforts to resolve the issue of loan delinquency.

The Guidelines omitted corporate accounts from the list of qualified account types to which a GSI will be applicable. Meanwhile, majority of delinquencies are attributable to corporate organizations and we are uncertain as to the intention of the CBN on the application of the GSI to corporate organizations. Also, the Guidelines do not provide adequate protection to borrowers or third parties that are wrongfully subjected to GSIs as it is unclear on how individuals may seek redress. The Guidelines only provide the punishment for an offending PFI without timelines and recipient of such fines.

Whilst the efforts of the CBN to significantly improve credit repayment culture and reduce non-performing loans in Nigeria is commendable, the legal implications of the Guideline amongst other concerns as expressed above must be considered to avoid possible judicial issues.



# INSIDE TOKUNBO ORIMOBİ LP

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## GREENWICH MERCHANT BANK LIMITED

- Tokunbo Orimobi LP is proud to officially announce the conversion of Greenwich Trust Limited into a Merchant Bank.

The Central Bank of Nigeria has recently approved the conversion and we are proud to have acted as Solicitors on this very novel transaction in Nigeria.

We congratulate our Securities, Mergers and Acquisitions team for a job well done.



## LAW UNION AND ROCK INSURANCE PLC

- Tokunbo Orimobi LP is proud to officially announce the 100% acquisition of the issued share capital of Law Union & Rock Insurance Plc via a Scheme of Arrangement by Kanuri LUR Limited.

Tokunbo Orimobi acted as Solicitors to the Company on this deal and we are proud to be one of the few Law Firms to have advised on deals of this nature in 2020.

We congratulate our Securities, Mergers and Acquisitions team for a job well done.



## WEBINAR ON “REAL ESTATE DEVELOPMENT AND FINANCING IN NIGERIA – THE COVID-19 EFFECT”

- On August 28, 2020, the Tokunbo Orimobi Foundation hosted a Webinar themed “Real Estate Development and Financing in Nigeria – The Covid-19 Effect” as one of its CSR initiatives.

The Webinar which was moderated by a Director of Trillium Real Estate Partners, Mr. Lanre Fatimilehin, also featured a panel of thought leaders in the Real Estate Industry – Co-Founder/CEO, Purple Group, Mr. Olaide Agboola; Chief Executive Officer, Iron Capital Partners Limited, Mr. Jubril Enakele; Group CEO, Landmark Group, Mr. Paul Onwuanibe and Managing Director, Willao Nigeria Limited, Mr. Femi Williams.

The discussion centered around the effect of the Pandemic on the Real Estate Industry, response of the Industry to the Pandemic, issues confronting the Industry prior to the Pandemic, source of financing available to the Industry, how to make Real Estate cheaper and accessible to citizens, ideal ways to finance the Industry putting into consideration the Covid-19 Pandemic and suggestions on how to stimulate consumers to increase investment in Real Estate.

The panelists were in agreement that the importance of the Real Estate Industry on the economy cannot be over emphasized as it influences health, security, social behavior, education, general welfare etc. Therefore, to allow for better financing of the Industry, there is the need to involve Government Institutions that have been set up solely for that purpose to partner with the private sector to ensure that both the supply and demand sides of the Real Estate Sector are strong, as the weakness of one will be to the detriment of the other.

As expected, the panel session had very exhaustive discussions on the various ways to make real estate cheaper and accessible to customers, with emphasis on the Government as a key stakeholder, having a major role to play, which can be in the form of providing palliatives to the citizens through the taxes, structuring some form of credit enhancement that allows developers to access funds easily, and consideration of Sharia Compliant Financing Solutions by developers/consumers.

After an insightful panel discussion, the Webinar ended with closing remarks by Mr. Michael Orimobi – President, Tokunbo Orimobi Foundation.



## WEBINAR ON “NIGERIA IN 2020 – THE FEAR OF THE UNKNOWN”

- On December 16, 2020, the Tokunbo Orimobi Foundation hosted a Webinar themed “Nigeria in 2021- The Fear of the Unknown” as one of its CSR initiatives.

The Webinar which was moderated by the Global Chairman, Tokunbo Orimobi Legal Group/President, Tokunbo Orimobi Foundation, Mr. Michael Orimobi, also featured a panel of thought leaders in various leading sectors in Nigeria - Commissioner, Securities and Exchange Commission, Mr. Dayo Obisan; Managing Director, Autochek, Mr. Etop Ikpe; Chief Executive Officer, Page Financials, Mr. Segun Akintemi; Managing Director, RT Briscoe Nigeria Plc, Mr Seyi Onajide; and Managing Director, Red Star Express Plc, Mr. Sola Obabori.

The discussion centered around the effect which the Pandemic has had on the various businesses, innovative strategies which Executives have implored to surmount these hurdles and 2021 projections and expectations for various sectors in the Nigerian economy and Global markets.

The Panelists shared similar views on how the Pandemic affected their businesses, which brought about the need to re-strategize their human capital needs, supply chains, customer demands and finances. They opined that as the country begins to settle into the new normal, businesses have to look for new ways to compensate for their losses in 2020 by employing different innovative methods such as diversity in product offerings, good corporate governance, financial discipline, sound macroeconomic analysis and optimal regulatory environment.

As expected, the panel session had very exhaustive discussions on profitable investment opportunities in 2021, the need to consider technology as a veritable investment/asset class and the wisdom to raise cheap debt capital in 2021 etc.

After an insightful panel discussion, the Webinar ended with closing remarks by Mr. Michael Orimobi - President, Tokunbo Orimobi Foundation.