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## Introduction

To curb money laundering, corruption and tax evasion, the Nigerian apex regulatory Bank, the Central Bank of Nigeria ("CBN") has continued to publish its regulatory circulars which will enshrine a more robust digital payment system, in contrast to the current predominantly cash-carrying, informal payment system.

Many Nigerian licensed Banks have, in furtherance of the Central Bank of Nigeria cashless directive, commenced the aggressive marketing of various credit and debit card products from renowned international payment card companies and brands.

Unfortunately, many of the money payment cards in Nigeria are not accepted by international merchants, especially in the United States of America and in some parts of Western Europe. This therefore raises the legal question of what regulatory regime is presently in place on this subject matter, and what reliefs are available to the Nigerian customers who possesses some of these payment cards but cannot enjoy the services promised by their Banks and the money payment cards franchisors?

## Legislation

There is no direct and explicit law in Nigeria that deals with the existing credit or debit card payment systems in Nigeria. The Central Bank of Nigeria Act (as amended), and the Banks and other Financial Institutions Act (as amended), however gives the CBN wide powers to oversee and regulate all manner of payment systems in Nigeria.

The Nigerian Deposit Insurance Corporation Act also requires the Nigerian Deposit Insurance Corporation ("NDIC") to complement the oversight financial regulatory functions of the CBN.

## Central Bank of Nigeria Act (as amended)

In addition to issuing the legal tender or currency, and ensuring monetary and price stability in

Nigeria, the CBN also has the principal responsibility of promoting a sound financial system in Nigeria by co-ordinating with the NDIC, the Securities and Exchange Commission ("SEC"), the Corporate Affairs Commission ("CAC"), the National Insurance Commission ("NAICOM") and other regulatory bodies, the supervision of all financial institutions and their conglomerates.

Another one of the CBN statutory function is the establishment of a Financial Services Regulatory Coordinating Committee. Members of this Committee include the Governor of the CBN, the Managing Director of NDIC, the Director General of SEC, the Commissioner of Insurance, the Registrar General of CAC, and a representative of the Federal Ministry of Finance.

Also, Section 47 (2) of the CBN Act provides that the CBN shall "...continue to promote and facilitate the development of efficient and effective systems for the settlement of transactions (including the development of electronic payment systems)."

#### Nigerian Deposit Insurance Corporation Act

In addition to the principal function of insuring all deposit liabilities of all licensed Banks, and of other deposit-taking financial institutions in Nigeria, the NDIC is also statutorily mandated to assist other monetary authorities, especially the CBN, in the formulation and implementation of banking policies in Nigeria, that will ensure sound banking practices and fair competition among insured financial institutions.

All insured financial institutions are also mandatorily required to have Fidelity Insurance Coverage up to such levels as may be prescribed from time to time by the NDIC.

#### Banks and Other Financial Institutions Act (as amended)

In addition to the above highlighted statutory functions of the CBN, the Banks and Other Financial Institutions Act (as amended) further confers on the CBN the authority to license and regulate Banks and other Financial Institutions, including their employees and Directors.

The CBN also has the statutory authority to revoke, vary, or impose new or additional licence conditions on any banking or other financial institution's operating licence.

#### Card Holders Contractual Rights

Traditionally, it is the terms and conditions of the Agreement between the card holder and the

card issuer(s) - which in Nigeria are presently the licensed Banks - that will govern any dispute that may arise from the use of a debit or a credit card.

Many of these Agreements are written in very small prints that many customers never have the time and opportunity to read the exclusion of liability clauses, among other disadvantageous clauses that are contained in such card agreements.

It is however a time honoured principle of law that a Bank will be liable in breach of contract, and possibly too, damages for libel, anytime a customer with sufficient funds with a Bank is unable to obtain the benefits of such funds, from his or her Bank because the Bank refused to honour the instructions of the customer to pay.

### Other Jurisdictions Legislations on Card Payment

The Credit Card Accountability, Responsibility and Disclosure Act of 2009 is a Federal statute passed in the United States of America to provide for a comprehensive credit card reform legislation which "... establish fair and transparent practices relating to the extension of credit under an open and consumer credit plan, and for other purposes." This legislation also limits how credit card companies can charge consumers, but it does not enshrine price controls, or rate caps, or fee settings on the market.

The United States Credit Card legislation does however require Credit Card companies to give their customers 45 days notice before they can increase their interest rates on debits on a card, change their fees, or make any significant changes to the terms of the Credit Card Agreement.

In the United Kingdom, there is a Consumer Credit Act, which, among other things, holds the credit card companies jointly and severally liable with a retailer or trader for any breach of contract or misrepresentation. This legislation also applies to goods bought online, by telephone or by mail order, whether or not the consumer is resident in the United Kingdom.

### Conclusion

The non-existence of an explicit and comprehensive legislation on money payment cards and systems in Nigeria will not encourage an already adverse society to formal banking services, to embrace an electronic payment system fraught with infrastructural challenges and unregulated Card charges. The Nigerian Financial Services Regulator can borrow a leaf from the United

Kingdom, where there is in addition to the principal legislation, a "Credit Protection (Payment Surcharges) Regulations 2012". Similar legislations like this one also exist in the United States of America.

Equally worrisome is the current perception that consumer rights, especially in the Financial Services Sector of the Nigerian economy, are negligible if not non-existent, while the litigation option is time consuming and too expensive to many consumers.

Lastly, the proactive intervention of the CBN in enlightening the members of the public about their present consumer rights, and the enforcement of those rights by the Central Bank of Nigeria Consumer Protection Department will advance Nigeria's long term economic development.

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