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REGULATION OF DIGITAL LENDING IN NIGERIA

Introduction

It is widely acknowledged that there are limited funding sources for entrepreneurs in emerging economies, such as Nigeria. Traditional financing usually comes with high interest rates and collateral security. Consequently, alternative financing options, such as peer-to-peer lending and crowdfunding, have grown more popular amongst SMEs.

SMEs contribute 48% of Nigeria's GDP, constitute 96% of businesses, and provide 84% of local employment.[2] However, they have been extremely affected by the impact of the coronavirus. The frantic search for capital to quickly inject into their businesses and constraints to traditional funding has brought digital lending, amongst other financing options, to the fore. The flexibility, lower interest rates, ease, and speed of digital lending, compared with traditional financing, has increased its attractiveness amongst SMEs searching for capital.

1. Regulatory Framework for Digital Lending in Nigeria

An individual or company that wishes to carry on the business of digital lending must obtain a Money Lending License in any of the 36 states of Nigeria and the Federal Capital Territory. A license obtained under the Money Lending Law of a state permits money lending activities only within that state.

The process involved in obtaining a license within each state is similar. It generally involves making an application in the prescribed form with the applicant's letter headed paper to the designated authority within the state. The application will be supported with requisite documents, such as the incorporation documents of the

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[2] SMEDAN and National Bureau of Statistics Collaborative Survey: Selected Findings (2013) <http://nigerianstat.gov.ng/download/290> (accessed 25th August 2020).

company, empowering it to carry on business as a money lender, tax clearance certificate, and evidence of payment of requisite application fees. Upon the fulfillment of all regulatory requirements, an annually renewable license will be granted to the company.[3]

Alternatively, a company wishing to carry on money lending activities in Nigeria may be licensed by the Central Bank of Nigeria as a Finance Company under the Revised Guidelines for Finance Companies in Nigeria ("the Guidelines").[4] This license is, however, more suitable for companies wishing to offer ancillary services in addition to money lending. The Guidelines permits finance companies to provide consumer loans; funds management; asset finance; project finance; local and international trade finance; debt factoring; debt securitization; financial consultancy; loan syndication, and issuing of vouchers, coupons, cards, and token stamps. It is worthy of note that both money lenders and finance companies are prohibited from receiving deposits from the public unless they acquire a Microfinance Bank License.

2. Data Protection and Digital Lending in Nigeria

The nature of the digital lending business model is such that the regulatory framework for data protection cannot be ignored by a digital money lender offering its services to Nigerian residents. This is more so as the digital lending platforms utilise borrowers' data to verify their identity, assess their credit worthiness or ability to repay the loan, and ensure loan repayment by asking their friends, family, or workplace to repay the loan or compel the borrower to repay. Data collected include contact information, call logs, SMS logs, Facebook friends, contact list from other social media accounts, mobile money transaction history, geolocation, bank verification numbers, emails, passport photos, videos, and data from use of any third-party application.

The Nigeria Data Protection Regulation, 2019 places an obligation on digital lenders as Data Controllers to disclose what data is being processed, the specific purpose of processing the data, and obtain consent of the Data Subjects to process the data.[5]

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[3] See sections 5 and 7 of the Lagos State Money Lenders Law, 1972, Chapter M7, Laws of Lagos State, 2018.

[4] Central Bank of Nigeria, Revised Guidelines for Finance Companies in Nigeria, 2014 <https://www.cbn.gov.ng/out/2014/ccd/revised%20guidelines%20for%20finance%20companies%20in%20nigeria.pdf> (accessed 25th August 2020).

[5] Regulation 2.3(i), Nigeria Data Protection Regulation, 2019 made pursuant to the powers granted to NITDA under sections 6(c) and 32 of the National Information Technology Development Agency (NITDA) Act, 2007.

The Data Subject must also be informed of his right and the ability to withdraw his consent at any time.[6]

These disclosures are expected to be made in a conspicuous Privacy Policy written in clear and plain language and placed on the website of the Lender.[7] Lenders must, however, be wary of demanding for excessive data. Consent is deemed to have not been freely given where the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary (or excessive) for the performance of that contract.[8] This plays out where a borrower is required to either give consent to use of excessive data to access funds via the application or withdraws consent to excessive data requested by logging out and uninstalling the application.

Additionally, where the data is to be used for a purpose other than that for which it was collected, the Data Subject must be informed of this purpose and give additional consent.

Notably, before collecting personal data, the Data Controller must disclose the period for which the date will be stored, or if that is not possible, the criteria used to determine that period.[9] This is usually missing, or at best, vague in the Privacy Policy of some lending applications.

Conclusion

There is currently no specific legislation on digital lending in Nigeria. Thus, digital money lenders are forced to operate within the extant moneylending laws of the States, which are modelled after the UK's Money Lenders Act, 1927. While these laws contain general provisions on money lending, they are not in tune with developments in the lending market. For instance, section 14(2) of the Lagos State Money Lenders Law, 1972[10] renders a contract between a money lender and a borrower unenforceable if the money borrowed was not lent through a cheque drawn on the current account of the lender to the order of the borrower. With digital money lenders promising five-minute loans through an automatic transfer to the borrower's digital wallet or bank account, such archaic provisions pose an otiose limitation to digital lending.

Additionally, the cracks in the extant moneylending laws have provided an opportunity for some digital lenders to offer lending services without registering as a Money Lender. The

[6] Regulation 2.3(ii)(c).
[7] Regulation 2.3(ii)(d).
[8] Regulation 2.5.
[9] Regulation 2.13.6(g).
[10] Chapter M7, Laws of Lagos State, 2018.

moneylending laws of the States exclude co-operative societies registered under the Co-operative Societies Law from the purview of the law. Consequently, some digital lenders have set up as co-operative societies to receive contributions from their members and give loans to same.

Finally, the absence of a federal law on lending and the requirement for money lenders to be licensed under the laws of each state they intend to operate creates extra layers of regulatory requirements and increases the cost of lending. Therefore, it is not rare to see digital lenders opt for a Microfinance Bank license, which permits them to operate in all states of the country and offer a greater diversity of services.

These concerns call for greater clarity on the regulation of digital lending in Nigeria. Any amendment of the current laws should be carefully drafted to ensure a balance between regulating the market and killing the market. Digital lending has become a source of hope for many SMEs and should be encouraged. An attempt to create excessively stringent laws will not only stifle the market, but also limit funding to SMEs in an already difficult business environment.

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