

**A REFLECTION ON THE POWER OF THE CENTRAL BANK OF NIGERIA TO
REGULATE BANKING IN FREE TRADE ZONES**

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The Central Bank of Nigeria (“CBN”) on 1st February 2016 published a Guideline titled “Guidelines for Banking Operations in the Free Zones in Nigeria, 2016” (“the CBN Guidelines”) seeks to regulate the operations of banking activities in the Free Trade Zones in Nigeria. The CBN Guidelines were published pursuant to the Powers of the CBN under Sections 2(d) and 47 of the Central Bank of Nigeria Act 2007² (“the CBN Act”). One of the objectives of the CBN Guidelines is to complement and enhance the provisions of the existing Free Trade Zones Acts³.

Questions have been raised about the authority of the CBN to make banking regulations for the Free Trade Zones.

These questions are predicated on the fact that the mandate to grant all approvals for operators within the Free Trade Zones to the exclusion of other governmental bodies and agencies is vested in the Nigeria Export Processing Zones Authority (“NEPZA”) by virtue of the Nigeria Export Processing Zones Act⁴ (“NEPZ Act”) and the Oil and Gas Export Free Zone Authority (“OGEFZA”) by virtue of the Oil and Gas Export Free Zone Act⁵ (“OGEFZ Act”) for Oil and Gas Free Trade Zones, the NEPZA and OGEFZA are jointly referred to as “Free Trade Zones Authorities” in this article. On the other hand, it can be argued that by virtue of the CBN Act, and the Banks and Other Financial Institutions Act (“BOFIA”), the CBN has wide powers to

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² Section 2(d) of the Central Bank of Nigeria Act provides that the principal objects of the Bank shall be to promote a sound financial system in Nigeria amongst other objects. Section 47 of the CBN Act provides for powers of the CBN in the regulation of payment and settlement systems.

³ They are; the Nigerian Export Processing Zones Act Cap. N107, LFN 2004 and Oil and Gas Export Processing Free Zones Act Cap. O5, LFN 2004.

⁴ Section 9(1) of the NEPZ Act provides that it is only the NEPZA that has the power to grant approval to any enterprise which proposes to undertake an approved activity within a Free Trade Zone. One of such approved activity as listed in the third schedule to the Act includes: “Banking, Stock exchange and other financial services, insurance and reinsurance”

⁵ Section 9 of the OGEFZ Act provides that only the OGEFZA that has the power to grant an approval to any enterprise including Banks who wish to carry out activities within an Oil and Gas Free Trade Zone.

make regulations in relation to the operation of banks and banking activities anywhere in Nigeria as such the Free Trade Zones cannot be an exception.

What is a Free Trade Zone?

A Free Trade Zone is a designated area that eliminates traditional trade barriers, such as tariffs and minimizes bureaucratic regulations. The goal of a free trade zone is to enhance global market presence by attracting new business and foreign investments⁶.

The power to operate and manage Free Trade Zones is vested in the NEPZA by virtue of Section 4 of the NEPZ Act⁷. The NEPZ Act under Section 9(1) provides that any enterprise which proposes to undertake an approved activity within a zone, shall apply to NEPZA in writing for permission to do so, NEPZA may grant approval subject to such terms and

conditions for an enterprise to undertake such approved activity. The approved activities are contained in the third schedule to the NEPZ Act and one of such approved activity is “Banking, Stock Exchange and other financial services, Insurance and Reinsurance”. Pursuant to Section 18(2) of the NEPZ Act, NEPZA is the only agency qualified to issue or cancel approvals or licenses within the Free Trade Zones. A combined reading of Sections 4, 6, 9, 18 and third schedule to the NEPZ Act, suggests that the power to make rules and regulations in relation to Banking in the Free Trade Zones is vested in NEPZA⁸ and therefore raises doubt as to the powers of the CBN to regulate banking in Free Trade Zones.

The NEPZA pursuant to its powers under Section 10(4) and 27⁹ of the NEPZ Act published a guideline titled “Investment Procedures, Regulations and Operational

⁶ DCSL Corporate Services Limited, “Operating in Nigeria: The Essential Guide for Every Foreign Investor”

⁷ A similar provision is contained in Section 2 of the Oil and Gas Export Free Zone Act Cap O5 Laws of the Federation of Nigeria, 2004 which provides that the Oil and Gas Export Free Zone authority shall be administer and manage the oil and Gas free zones.

⁸ A similar provision is also contained in Section 9 of the Oil and Gas Export Free Zone Act which provides

that any enterprise which proposes to undertake an approved activity within the export free zone shall apply to the authority (Oil and Gas Export Free Zone Authority).

⁹ Section 10(4) provides that the authority shall by order, from time to time, prescribe the regulations governing the Zone and Section 27 provides that the authority may with the approval of the minister, make regulations for the proper implementation of this Act.

Guidelines for Free Zones in Nigeria 2004¹⁰ (“NEPZA Guidelines”)¹¹. Part 7 of the NEPZA Guidelines provides for Banking Procedures and Regulations for Free Trade Zones in Nigeria. It provides that Banks in the Free Trade Zones are granted approval under the NEPZ Act by NEPZA and only a Bank licensed under BOFIA or other relevant legislations or licensed foreign bank shall qualify to apply to NEPZA for approval to establish a Bank to carry on banking business in Nigeria’s Free Trade Zones. The NEPZA guidelines therefore provide for the provision of two types of banks in the Free Trade Zone: a bank established by a bank licensed under BOFIA and a licensed foreign bank.

The Central Bank of Nigeria

The CBN is charged with the responsibility of regulating banks and other financial institution in Nigeria. The objects of the CBN is contained in Section 2 of the CBN Act, one of which is to promote a sound

financial system in Nigeria. Pursuant to its powers under the CBN Act, it published the CBN guidelines. One of the objectives of the guidelines is to complement and enhance the provisions of the Free Trade Zones Acts; the NEPZ Act and OGEFZ Act and to provide details of regulatory and supervisory requirements necessary to promote efficient and sustainable banking services in Nigeria’s Free Trade Zones.

Rule 3 of the CBN guidelines recognizes the powers of Free Trade Zones Authorities to grant licenses for Banks that intend to carry on banking activities in Free Trade Zone, however the CBN has placed additional regulatory regimes for Banks seeking to carry out banking activities in the Free Trade Zones. The application of such Banks shall be forwarded by Free Trade Zones Authorities to the CBN with supporting documentation¹², the CBN has thus conferred upon itself supervisory powers over the powers of the Free Trade

¹⁰ The Nigeria Export Processing Zones Authority with the approval of the Minister of Commerce and Industry also made the Tinapa Free Zone and Resort Regulations, 2009 which has similar provisions with the NEPZA guideline.

¹¹ The OGEFZA with the approval of the Honourable Minister of Commerce pursuant to its power under

Section 25 of the OGEFZ Act also published the Oil and Gas Export Free Zone Regulations, S.I 12 of 2003, its provision are similar to the NEPZA Guidelines.

¹² As listed in Rule 3 (3) (a-n) of the CBN Rules.

Zones Authorities conferred upon it by statute.

Rule 2(4) of the CBN guidelines provides that the provisions of NEPZ Act, OGEFZ Act, BOFIA, CBN Act and NDIC Act and all guidelines and regulations issued pursuant to these Acts shall apply to banks operating in the Free Trade Zones. The CBN failed to avert its mind to the fact that there have been prior and existing regulations issued by the Free Trade Zones Authorities to regulate Banking activities in the Free Trade Zone pursuant to the provisions of Sections 6, 9 and 27 of the NEPZ Act and Sections 9 and 25 of the OGEFZ Act which expressly mandates the authority to make regulations with regard to banking in the Free Trade Zones.

In light of the above, there appears to be an attempt by the CBN to take over the statutory powers of the Free Trade Zones Authorities to regulate banking for Free Trade Zones. As of today, there are conflicting guidelines regulating the activities of banks and banking in the Free Trade Zones in Nigeria: the CBN guidelines of 2016 and the NEPZA guidelines of 2004. The CBN guidelines

purports to complement and operate alongside with other laws regulating the Free Trade Zones in Nigeria. However, there are variations between the provisions of the CBN guidelines and the NEPZA's guidelines.

An example of such variation is, the provision for incentives for banks operating in the Free Trade Zones which are almost similar in both guidelines however the CBN guideline omitted to include; "interest rates on loans and freedom of deposits from domestic monetary controls. This imposes additional obstacles for Banks operating in the Free Trade Zones thereby defeating the main purpose for the establishment of Free Trade Zones which is to create an environment whereby trading will not be subject to the bureaucratic control of Government and its agencies.

Concluding Remarks

The view generally expressed by the legal community is that the power of the CBN to regulate banking activities in the Free Trade Zone is subject to the power of the Free Trade Zones Authorities. Therefore, the CBN cannot legally make banking



regulations for the Free Trade Zones which are at variance with provisions of the NEPZ Act, OGEFZ Act and its subsidiary regulations.

Where it is intended that the regulation of banking operations in the Free Trade Zones should be under the control of the Central Bank of Nigeria, perhaps a more expedient and practical approach will be to amend the provisions of the NEPZ Act and OGEFZ Act by eliminating the powers of

Free Trade Zones Authorities to regulate banking in the Free Trade Zones. It should also be noted that excessive hurdles and bureaucracies over-burdening the operations of banking in the free trade zones will defeat the purpose of the establishment of free trade zones in Nigeria. Therefore, the CBN should consider regulations which are less burdensome for banks intending to operate in the Free Trade Zones.

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