Proposed Changes to the Foreign Exchange Regime in Nigeria

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A Foreign Exchange (Control and Monitoring) Bill 2016 has recently passed second reading at the National Assembly. The bill seeks to repeal the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act ("FEMMPA") 1995, the principal law regulating Nigeria's foreign exchange regime.

Highlights of the Changes

Powers of CBN: Under the Bill, the powers of the Central Bank of Nigeria ("CBN") to regulate the foreign exchange market shall not be subject to approval of the Minister of Finance as is the case under FEMMPA.

Applicability: It is intended that the Bill will govern foreign currency transactions in Nigeria including those performed in a foreign country which will have effect in Nigeria. This provision does not exist under FEMMPA.

Exchange rate: The Bill seeks to empower the CBN to determine the exchange rate for all foreign exchange transactions where necessary. This is different from current provision in Section 9 of FEMMPA which provides that the rate for foreign exchange transactions shall be as mutually agreed between the parties.

Licencing: To ensure regulation of the market, the Bill introduces provisions in relation to licencing of authorised buyers and sellers. The licence is valid for one year subject to renewal. The Bill also sets out the time frame for the granting of these licences as well as procedure for suspension or revocation of the licence.

Issuance of CCIs: The timeframe within which certificates of capital importation must be issued has been extended to 48 hours from the previous provision of 24 hours under FEMMPA.

Export Proceeds: The Bill introduces a penalty for failure to remit export proceeds into export proceeds accounts. The penalty is a fine of 25% of the Free-On-Board (FOB) value of the export upon conviction and an administrative fine of 10% imposed by CBN.

Payment in foreign denominated currencies: Section 30(1) of the Bill prohibits foreign currency payments for goods and services in Nigeria. In 2015, the CBN through a circular dated 21 May 2015 prohibited the refusal to accept Naira in line with section 20(5) of the CBN Act. The Circular superseded the Circular dated 17 April 2015 which sought to prohibit even the pricing of goods and services in foreign currency.

The new Bill seeks to codify the prohibition of payments in foreign currency.

Takeaway

From all indications, the Bill was drafted in response to the current forex challenges in Nigeria. It however appears that certain provisions of the Bill are inconsistent with the forex policy direction of the federal government as articulated in the recent Economic Recovery and Growth Plan. For instance, the determination of exchange rates by CBN in certain instances as proposed under the Bill is inconsistent with the principles of a market determined rate of exchange.

While supply of forex may increase with less scrutiny, the risk of money laundering is likely to increase. On forex demand, the Bill states that all legitimate transactions are eligible for forex but the CBN still has the power to determine eligible transactions. Also, the restriction on payment for goods and services in forex, may mean that companies in Nigeria cannot even charge foreign customers in forex for services provided to them.

Overall, more work is needed to ensure that while addressing some of the current challenges, the Bill fully aligns with other policies of government and long term economic development of the country.