

**NIGERIA CASH WITHDRAWAL LIMIT:
LEGALITY OF THE CENTRAL BANK OF
NIGERIA (CBN) CIRCULAR WITH
REF. NOS.: BSD/DIR/PUB/LAB/015/069
AND BSD/DIR/PUB/LAB/015/073**



INTRODUCTION

Following the redesigning of the currency (Naira i.e. 200, 500 & 1000) of Nigeria, the Central Bank of Nigeria (CBN)¹ issued a memo dated 6th December 2022 and referenced BSD/DIR/PUB/LAB/015/069 to all Deposit Money Banks (DMBs) and other financial institutions² in furtherance to its cashless policy. It mandated that effective from 9th January 2023, there will be a limit to over-the-counter cash withdrawals. Withdrawals in this regard by individuals would be limited to N100,000 (One Hundred Thousand Naira) per week while corporate entities would be limited to N500,000 (Five Hundred Thousand) per week. Also, the cash withdrawal per week via Automated Teller Machine (ATM) is limited to N100,000 (One Hundred Thousand Naira) subject to a maximum of N20,000 (Twenty Thousand Naira) cash withdrawal per day and the maximum cash withdrawal via Point of Sale (POS) terminal is limited to N20,000 (Twenty Thousand Naira) per day. In addition, where any individual or corporate entity is inclined to withdraw above the limit, processing fees will be payable which attracts a percentage - 5% & 10% respectively - of the cash.

The efficacy of the new CBN Policy on cash withdrawal limit has spawned many divergent views and critiques from stakeholders and the

banking public including the National Assembly of Nigeria. The Policy has allegedly³ been described as unconstitutional and unlawful. As a result of this feedback, the CBN on 21st December 2022 made a U-turn and declared an upward review of the Policy (via a new policy contained in a circular number BSD/DIR/PUB/LAB/015/073) by increasing the cash withdrawal limits to N500, 000 and N5,000,000 (Five Million Naira) for individuals and corporate entities, respectively.

However, there are claims that the aim of the Policy is to curb inflation, counterfeiting & corruption, discourage hoarding of local currency, enhance digitization, prevent vote buying during the forthcoming general elections in 2023, promote a cashless economy and generally reduce the high volume of cash circulating outside the banking system.⁴

Be that as it may, are the Policies in line with the law or international best practice? How practicable is its application given the lack of cashless infrastructure and financial exclusion of individuals (mostly in the rural areas) and/or small businesses who depend majorly on cash? Can the Policies be within the legal framework on cash transactions? These shall be addressed in this article.

1. The Central Bank of Nigeria (CBN) is the central treasury and apex monetary authority of Nigeria established by the CBN Act of 1958 and commenced operations on 1 July 1959.
2. Payment Service Banks (PSBs), Primary Mortgage Banks (PMBs) and Microfinance Banks (MFBs)
3. See the statement of the learned silk, Femi Falana, made available to Sahara Reporters on 12th December 2022.
4. BusinessDay Newspaper publication on December 16, 2023 – Has the CBN been arbitrary in its policies?

SOURCE OF THE CBN POLICIES

The CBN, as the financial and monetary regulator, was established⁵ as the apex bank in Nigeria and an autonomous body in the discharge of its functions with the objective of promoting stability and continuity in economic management including monetary and price stability.⁶ To effectively discharge its functions and achieve its objectives, the CBN makes monetary policies. The CBN is empowered by the Central Bank of Nigeria Act, 2007 (“**CBN Act**”)⁷ and Banks and Other Financial Institutions Act, 2020 (“**BOFIA**”)⁸ to make policies (including the policies under discussion) and/or rules and regulations.

The preeminence of the Policies on cash transaction limitation (in so far as it relates to banks and other financial institutions) is implied under **Section 53(2)** of BOFIA, which provides that where any of the provisions (i.e. provision on the power of CBN Governor to make rules and regulations which may be referred to as Policy) of any law or enactment is inconsistent with any of the provisions of the Act, the provisions of BOFIA shall prevail.

Generally, the validity of the CBN Policies on cash transaction limitations is not in dispute and we can state that CBN has the requisite statutory power to make the Policies. Where any

financial institution violates CBN's Policy, it may attract regulatory penalties and sanctions. However, it is important to scrutinize the legality of the Policies circulated by the CBN.

LEGALITY OF THE POLICIES

Apparently, monetary policies are introduced in an economy to manage money supply in terms of size and growth or money laundering and as such, a powerful tool in regulating macroeconomic variables e.g., inflation. The Policies are however subject to existing laws such as the Money Laundering Act, 2022 (“**MLA**”), 1999 Constitution of the Federal Republic of Nigeria, as amended (“**Constitution**”) and other applicable laws.

The **MLA** clearly stipulates the limitation for individuals and corporate entities to make and accept cash payments. **SECTION 2 (1)** of this Act provides that:

- “(1) No person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding—
- (a) N5,000,000 or its equivalent, in the case of an individual; or
- (b) N10,000,000 or its equivalent, in the case of a body corporate.”

The literal interpretation⁹ of the above statutory provision suggests that the lawful limit on cash

5. Section 1 of the CBN Act, 2007

6. <https://www.cbn.gov.ng/AboutCBN/history.asp> Accessed on 26.12.2022

7. Section 12 (1) & (3)

8. Section 56, 66 (2)

9. Literal Rule of interpretation encourages that where the words used in a statute are clear and unambiguous, they shall be given their ordinary natural and literal meaning in order to establish the intention of the law maker. See REGISTERED TRUSTEES OF THE AIRLINE OPERATORS OF NIG V. NAMA (2014) LPELR-22372(SC) (PP. 36 PARAS. B)

transactions is N5,000,000 (Five Million Naira) for individuals and N10,000,000 (Ten Million Naira) for corporations. A proviso therein, however, stipulates that for an individual or a corporation to transact above the cash limit, it shall do so through a financial institution. This is the enabling law on cash transaction limits in Nigeria as of date. However, the CBN made the Policies¹⁰ to provide for a parallel cash limit to that which is stipulated under the MLA. The legality of the Policies has been questioned essentially on the trite law that policy documents, commonly referred to as rules, regulations or guidelines, cannot ride roughshod with the provisions of a statute. In **LIBERTY BANK & ORS V. CBN & ORS**¹¹ the court held that

“I agree with the learned Counsel for the Appellants that even though Section 57 of BOFIA and 51 of CBN Act empower the 1st and 2nd Respondents to make rules and regulations for the operation and control of Banks in Nigeria, any such rules or regulations must be made towards achieving their statutory obligations under the Acts. The 1st and 2nd Respondents cannot, whimsically prompted by impulse make rules and regulations in an arbitrary and unreasonable manner. The exercise of discretion granted to the 1st and 2nd Respondent must be within the framework of the endowing statutes.”

Considering the position of the law above, it is

10. The Policy was made pursuant to Section 56 of the Banks and Other Financial Act, 2020 which provides that “(1) The Governor may make regulations, published in the Gazette or in any other medium, pursuant to the objects and objectives of this Act. (2) Without prejudice to the provisions of subsection (1) of this section, the Governor may make rules and regulations for the operation and control of all institutions under the supervision of the Bank.”

11. (2019) LPELR-50238(CA)

without doubt that the CBN Policies are secondary to enabling laws and/or statutes on cash transactions limit. Admittedly and based on the insight of the public in respect of the invalidity of the Policy of 6th December 2022, CBN increased the cash transaction limit, as stated above, through a new Policy issued on 21st December 2022 but this increase is yet to comply with the provisions of the MLA.

Can it, therefore, be legal for CBN to supplant the provision of the law (MLA) on cash limitation through the circulation of Policies? Can a policy on containment measures which is in breach of extant law command any validity and/or legitimacy? On the other hand, if the MLA authorizes cash transaction more than the limit compelled by the CBN otherwise than through financial institutions, how can the financial institutions therefore limit withdrawals in a manner that could scuttle the limit permitted under the MLA? The answers can be provided if we put in proper perspective the effect of the CBN Policy viz-a-viz the MLA.

EFFECT OF THE CBN POLICY

As discussed above, the CBN derived its power to make Policies from CBN Act and specifically from BOFIA (the statute that strengthens the CBN Policies with emphasizes on its supremacy as stated above) to regulate financial institutions in

Nigeria but the MLA made a crystal-clear provision on the subject - cash transactions limit. Therefore, given the circumstance of the subject, the source of the cash is not as important as the volume of cash individuals and corporate bodies can transact with.

Now, the MLA permits cash transactions not exceeding N5,000,000 and N10,000,000 but laid emphasis on the fact that where anyone intends to engage in a cash transaction above the stipulated threshold then it shall do so through a financial institution. This same financial institution through the Policy of its regulator intends to constrain individuals and corporate bodies to a cash limit of N500,000 and N5,000,000 respectively below the threshold of the MLA. It is important we bear in mind that a Policy can only be made to give effect to a subject that falls within the scope of an enabling statute and to do otherwise will be void. However, one may presume that there appears to be a conflict (direct and indirect) between the regulation made pursuant to BOFIA and the MLA (both of which are statutes enacted by the National Assembly).¹²

On the **DIRECT CONFLICT**, can it be lawful for a general statute (BOFIA) to render the provisions of more specific statute (MLA) redundant or inoperative? The answer is No because it has always been the position of the law

that a special statute and/or specific provision¹³ shall be applied over a general provision of a statute.¹⁴ The Latin maxim for that is “**generalia non derogant specialibus**” - general things do not derogate from special things, or “**specialibus derogant generalia**” - special things derogate from general things. This rule of interpretation has been applied by the Courts in numerous cases. The court in **BOARD OF CUSTOMS & EXCISE V. BARAU**¹⁵ the court held that “*It is an accepted canon of construction that a general enactment is pro tanto avoided by an express provision in a subsequent enactment which is entirely inconsistent with the general enactment. See Pilkinton v. Cooke (1847) 16 M & W 615; Mount v. Taylor (1868) LR 3 CP 645. The special enactment in a subsequent statute is, however, not a repeal of the provision of the previous general statute. Once the subsequent special enactment is contrarian to the previous general enactment the general provision does not apply to the special enactment although the general provision would remain in force.*”

Moreover, the MLA, 2022 is a more recent legislation than BOFIA, 2020, making the Later-In-Time Rule/Doctrine applicable in the circumstance. It follows, therefore, that when an Act of special character on a subject is clear in its provisions, its validity cannot be assailed for want of conformity to stipulations of a previous general enactment. It is important that the MLA should

12. For clarity, the MLA was enacted specifically to deal with the liquidity and availability of cash in circulation through individuals, banks, body corporates and the public at large whilst BOFIA is a statute that deals with banks and other financial institutions' affairs and activities (The MLA is specific statute and BOFIA is a general statute).

13. Section 2(1) MLA

14. Section 53 (2) BOFIA

15. (1982) LPELR-786(SC) (PP. 65-66 PARAS. G)

be construed and given effect to being the latest expression of the intentions of the draftsman. Accordingly, in determining the question in controversy as regards direct conflict, it is the special provisions of Section 2(1) of the MLA and not Section 53(2) of BOFIA that shall apply to cash transactions limit for the reasons given above.

Comparatively, on the presumption of **INDIRECT CONFLICT**, can we really conclude that the CBN Policies (a product of BOFIA) are in direct conflict with the MLA? It is our assessment that even though the provision of the Policy may not be in direct conflict with that of the MLA but the policy has the potentials of scuttling the threshold stipulated by MLA on cash transaction limit. For example, if an individual intends to make a cash withdrawal of N1,000,000 (One Million Naira) over-the-counter of a financial institution, such individual will be unable to give life to the literal interpretation of the MLA because the cash is above the N500,000 limit of the Policy and to successfully withdraw same he or she must pay a processing fee alongside the fulfilment of other requirements which run against the grain of the MLA.

The MLA is a more specific legislation on liquidity and cash transaction which has validly stipulated a limit on cash transactions and if a

financial institution does not allow anyone withdraw within the limit provided by the MLA, it may render the MLA unattainable. Therefore, the Policy should not be implemented in such a way as to restrict the seamless operation of an enabling statute. At risk of repetition, if the CBN embarks on the enforcement of the Policy, it may jeopardize the financial limit on cash transaction which has been specifically provided by the MLA.

In any event, in the hierarchy of laws in Nigeria (corpus juris Nigeriana), an Act of the National Assembly trumps and renders subservient any regulation issued under the power derived from another legislation. The CBN Policy is a subsidiary legislation which ought to bow to the superior provisions of the MLA. The regulation cannot ride roughshod over the provisions of the MLA.

Nevertheless, an investigation into the intention of the CBN in making such Policies, as stated above, might be for the common good of the people in general, the economy and in promotion of its statutory objectives, but the mode through which it is executing and/or seeking to achieve such intention may not be acceptable in law. For CBN to lawfully effect its reasoning behind the making of the Policies, it should approach the National Assembly for an amendment of the MLA to reduce the limit on cash transactions.

CONCLUSION

From the foregoing, the CBN cannot through a Policy, render null and void or even diminish the provisions of the MLA and to such extent, the revised Policy of 21st December 2022 circulated by the CBN should be withdrawn without further ado. The act embarked upon by the CBN without a proper amendment of the MLA is putting the cart before the horse. To this end, a withdrawal of the Policy will not only uphold law and order but enable the CBN to appreciate other legal means of ensuring the stability of the economy or promotion of its cashless agenda rather than seeking executive abrogation of existing Act and adding to the hardship of millions of Nigerians whose patience has been stretched by challenges experienced when transacting electronically. Nigeria is a country that has a lot of people who depend largely on cash transactions and this type of ill-advised policy will not help in promoting the cashless economic objectives but will only compound the issues and undermine commercial activities of the informal sector and the public at large.

Where the CBN refuses to withdraw this Policy that is null and void and persists on giving effect to it come 9th January 2023, the Policy may be invalidated by a court order where same is brought before the court.

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