



**OVERVIEW OF CENTRAL BANK'S
CIRCULAR ON OPERATIONAL
GUIDELINES OF GLOBAL STANDING
INSTRUCTION (GSI) FOR INDIVIDUAL**

INTRODUCTION

In 2019, the Central Bank of Nigeria issued a directive mandating banks to increase their loan portfolios. This was further to the Monetary Policy Committee (MPC) meeting held on 19th and 20th of September 2019 where members lamented the significantly low credit to the private sector relative to the absorptive capacity of the economy and the need to grow consumer, mortgage and corporate credit to drive aggregate demand and increase output growth.¹

The effect of this directive was a surge in personal loans as conditions for loan applications and disbursements were relaxed by Banks in compliance with the Directive. While Banks have complied with the directive, there have been fears about probable spate of default obligation and increase of non-performing loans.

Further to its mandate to promote sound financial system in Nigeria and enhance loan recovery across the banking sector, the Central Bank of Nigeria published a circular on Operational Guidelines on Global Standing Instruction (GSI) for individuals on 13 July 2020². The GSI aims to facilitate improved credit repayment culture, reduce Non-Performing Loans in the banking industry and serve as a watchlist for consistent loan defaulters. Although the circular takes effect from 1st August 2020, it is stated to have a retrospective effect and applies to eligible loans granted from 28 August 2019.

PERVASIVE IMPLICATION OF THE CIRCULAR

Without recourse to a Defaulting Borrower, a Creditor Bank can recover past due obligations (Principal and Accrued Interest) from a defaulting Borrower through a direct set-off from deposits/investments held in the Borrower's bank accounts with other Participating Financial Institutions. Disbursement of loans is dependent on execution of the GSI Mandate by the Borrower in either hard copy or digital form.

What this means is that a customer who takes a personal loan from the Bank will have all other personal accounts linked to the loan. Hence, if a defaulting Borrower abandons a loan account in Bank V and maintains a credit balance with Bank M; Bank V, under the GSI, is at liberty to recover the loan owed to it by appropriating the funds in Bank M.

Under the old regime, a Borrower could have a loan account and other accounts with the same Bank. In the event of a default on the loan account, the Creditor Bank had no business applying the right of set-off in respect of credit balance standing in the other accounts of the Borrower except same is expressly given by the Borrower. Under the GSI regime, a Creditor Bank is not only at liberty to set-off the loan using the credit balance of the Borrower in other qualifying accounts in its own bank but can recover same using the credit balance in the accounts of the Borrower held with other participating financial institutions. The affected account types which the Creditor Bank can apply the GSI in a bid to recover loans from the Borrower are: Individual Savings Account, Individual Current Account, Individual Domiciliary Accounts, Investments/Deposits Accounts (Naira and Foreign Currency), Electronic Wallets and Joint Accounts. The implementation of this Circular will reduce the incidence of banks resorting to courts for loan/credit related debt recovery as a Creditor Bank no longer needs to pursue an action in court, obtain judgment against a Borrower and apply via garnishee proceedings for an Order Absolute before the credit balance standing in favour of the Borrower in Participating Financial Institutions can be attached for the Bank's use.

1 <https://www.cbn.gov.ng/Out/2019/MPD/Central%20Bank%20of%20Nigeria%20Communique%20No.%20126%20of%20the%20Monetary%20Policy%20Committee%20Meeting%20of%20September%202019%20and%2020,%202019.pdf>

2 <https://www.cbn.gov.ng/Out/2020/CCD/CBN%20-%20Operational%20Guidelines%20on%20Global%20Standing%20Instructions%20GSI%20-%20Individuals.pdf>



The stakeholders involved in the implementation of the GSI are:

- a. The Borrower
- b. The Creditor Bank
- c. Participating Financial Institutions
- d. Nigeria Inter- Bank Settlement System (NIBSS)
- e. Central Bank of Nigeria

For a Financial Institution to participate under the GSI, it must have been duly licensed by the Central Bank of Nigeria as a Financial Institution, have adequate IT infrastructure to meet connectivity and protocol requirements at NIBSS and CBN. It must also provide access to customers' NUBAN accounts and execute the GSI Master Agreement with NIBSS and have a copy sent to CBN.

The CBN in collaboration with the NIBSS will provide training for Participating Financial Institutions on GSI related processes and settlement procedures.

LIMIT OF GSI APPLICATION

The GSI Mandate does not apply to any penal charges that may have accrued on a credit/loan as part of outstanding balance/obligations of a Borrower. Notwithstanding the provision of penal charges in the loan contract between the Creditor Bank and Borrower, the GSI mandate does not extend to recovery of penal charges. In fact, the Circular provides sanctions against the Creditor Bank who includes penal charges in the GSI Trigger Amount (outstanding principal amount and accrued interest). In the event of a successful GSI Trigger, the erring Creditor Bank shall refund the full penal charge amount with interest calculated using

the penal rate from the date of GSI trigger to refund date in addition to a fine of N100,000 (One Hundred Thousand Naira).

In the event of an unsuccessful GSI trigger, the erring Creditor Bank shall pay the fine of N100,000 (One Hundred Thousand Naira) only.

ACCOUNTABILITY UNDER THE CIRCULAR

To promote integrity and ensure responsibility on the part of the Creditor Bank, the role of the Chief Risk Officer (CRO) of the Creditor Bank is expanded as he/she is deemed accountable for the appropriateness of the entire GSI process. This is in addition to his/her responsibilities under section 6.2 of the Regulatory Guidelines for the Operations of the Redesigned Credit Risk Management System (CRMS).

It must be noted that this does not absolve the MD/ CEO of the Participating Financial Institution of the overall responsibility over the Bank's activities. The Chief Information/ Technology Officer (CIO or CTO) is also expected to ensure continuous connectivity to the GSI platform and availability of all internal systems to honour GSI mandates and protocols including tagging "unavailable accounts" for audit log/trail purposes.

On the other hand, the Apex Bank is bound to ensure uninterrupted availability of the CRMS platform and connectivity to the NIBSS platform.

GSI REPORTING LINES

The accountability regime under the Circular provides for operational reports in respect of GSI transactions. Upon written request from the Chief Risk Officer (CRO), a report detailing outcome of a GSI transaction may be provided. Such a report will contain the GSI Transaction ID, total amount recovered and any other information deemed relevant. The reports for all GSI Transactions and reversals shall be contained in respective Participating Financial Institutions (PFIs) settlement reports to the Credit Risk Management System (CRMS).

Participating Financial Institutions (PFIs) are required to submit monthly returns to the Central Bank of Nigeria. These monthly returns must capture the total volume of triggers, total amount triggered and total amount recovered. These details must be accompanied by a cover letter signed by at least the Chief Risk Officer or Chief Compliance Officer. Soft copies of the returns must be submitted to

GSI>Returns@cbn.gov.ng no later than the 8th day of each month in accordance with routine monthly update of CRMS records outstanding balance. Lastly, the Nigeria Interbank Settlement System shall provide back-end related reports to the CBN in the required format and frequency.

Stakeholders' Responsibilities under the GSI:

The Borrower

The Borrower is expected to execute a GSI mandate in hard copy or digital form. Before executing the GSI Mandate, the Borrower has the responsibility to ensure that he understands the terms and conditions. The Borrower also has to ensure that all qualifying

accounts are linked to his Bank Verification Number (BVN). Where it is identified that a Borrower has a qualifying account which is not linked to his BVN, such BVN shall be watch-listed.

The Creditor Bank

The Creditor Bank is to ensure that Borrowers are properly educated about the GSI mandate and its implications and enshrine same in their loan application process.

The Creditor Bank is also saddled with the responsibility of reviewing and validating the GSI Mandate Instrument prior to disbursement as the Bank will be bound to indemnify NIBSS and other Participating Financial Institutions from all liabilities that may arise from the inappropriate use of the GSI infrastructure. Copies of executed GSI (either physical or digital version) must be retained by the Creditor Bank and provided when required.

The GSI Trigger amount to be recovered using the GSI covers only outstanding principal and accrued interest without more.

The GSI Trigger Amount expressly excludes recovery of penal charges, as such, no Creditor Bank is permitted to recover penal charges applicable to the loan in the use of the GSI. The Managing Director/ Chief Executive Officer (CEO) of each Participating Financial Institution must routinely update the Board of Directors on the GSI process, as a risk management tool as it relates to how frequently the GSI is used and amounts recovered or released. The Creditor Bank is also expected to comply with CBN's Prudential Guidelines as it applies to loan classification.

It is not out of place for Borrowers to seek relief such as short-term reduction or suspension of repayment in response to hardship. However, before such forbearance can be granted, there must be evidence of unsuccessful GSI trigger which will necessitate full loan provisioning, which is an expense reserved for default/bad performing loans must apply.



Participating Financial Institutions (PFIs)

The GSI Mandate Agreement is expected to be executed by the Participating Financial Institutions with the NIBSS. The duty to ensure that all qualifying accounts are properly maintained and visible to NIBSS on the Industry Customer Accounts Database (ICAD) or by any other service created or provisioned for that purpose rests on the PFIs. These accounts in NIBSS' ICAD must be properly tagged with correct BVN to avoid incurring liability for wrongful activation of the GSI Trigger.

Aside ensuring and maintaining connectivity to the Nigeria Central Switch, Participating Financial Institutions must honour all balance enquiry and debit advice received from NIBSS for GSI Trigger in accordance with Master Agreement and this includes GSI recall instructions.

Nigeria Inter-Bank Settlement System (NIBSS)

As a major stakeholder in the Nigerian financial sector, the NIBSS is saddled with the responsibility of infrastructure provision for automated processing and transaction settlement between banks. Under the GSI, the NIBSS has the additional responsibility of ensuring that the availability of the ICAD database is uninterrupted for Participating Financial Institutions to update. The NIBSS must also execute the Master GSI Agreement with Participating Financial Institutions and administer the back-end of the GSI services by debiting instructions on identified accounts and completing GSI operations by instantly transferring the collated funds to the Borrower's pre-designed repayment account in the Creditor Bank. Finally, the NIBSS must render periodic reports as prescribed by the CBN.

SANCTIONS UNDER THE CIRCULAR

Fully aware that stakeholders may abuse the GSI and explore its use indiscriminately; the Circular makes

express sanctions for violations as follows.

- a. A Creditor Bank which activates a GSI mandate in error assumes all liability including but not limited to a flat fine of N500,000 per incident. All associated GSI charges borne by the Creditor Bank shall not be refundable.
- b. Where a Participating Financial Institution places a CBN approved restriction on an eligible account in order to shield it from the GSI Trigger and it results in the GSI being unable to either perform an Account Status Check Enquiry or debit the account, the erring PFI shall be fined the amount in that "restricted/shielded" eligible account. The amount fined against the Creditor Bank will not be considered as part of any subsequent GSI Trigger Amount. In addition, the Chief Risk Officer (CRO) of the erring PFI must submit a formal explanation letter to the Director, Banking Supervision and Director, Financial Policy & Regulation Departments.

If the GSI is to be effective as anticipated, this sanction must be seen to be implemented to serve as a deterrence as it is not the duty or business of a PFI to play the role of an advocate for a Borrower by trying to shield and protect the money of the Borrower in its custody.

- c. Where a PFI fails to grant the GSI permission to perform an Account Status Enquiry Check/Request, the erring PFI must pay a flat fee of N100,000 per initial incident and for each subsequent repeat/instruction regardless of the GSI Trigger Amount. In addition, the Chief Information/Technology Officer

(CIO/CTO) of the erring PFI must submit a formal explanation letter to the Director, Banking Supervision and Director, Financial Policy & Regulation Departments.

d. Where a PFI fails to grant the GSI permission to debit an eligible account, the erring PFI shall pay a flat fine of N100,000 per initial incident and each subsequent repeat request/instruction, regardless of the GSI Trigger Amount. Additionally, the erring PFI shall pay a fine equivalent of the account balance shielded from the GSI's Debit Request. For each incident, the Chief Information/Technology Officer (CIO/CTO) of the erring PFI must submit a formal explanation letter to the Director, Banking Supervision and Director, Financial Policy & Regulation Departments.

e. Where the amount in the account is insufficient to satisfy the mandate placed by the GSI Block Feature, the PFI must honour subsequent Amount Block/Debit Advice when the available balance becomes identified in the account. Where a PFI fails to honour subsequent Debit Advice, the amount shall be paid by the erring PFI to the Creditor Bank and the PFI shall pay a fine of N100,000 per incident regardless of the GSI Trigger Amount.

f. Where an account is debited in error due to a PFI incorrectly tagging an account in NIBSS' ICAD with the wrong unique identifier, the erring PFI has the responsibility to promptly notify the Creditor Bank of the incident quoting relevant customer & GSI details, refund the wrongly debited amount with the same amount of the GSI Debit and ensure that no additional charges accrue in the account.

In addition to the above, the erring PFI must pay a fine equivalent to the amount erroneously debited to the wrong account. Finally, the erring PFI must bear any other liabilities that may follow.

g. Where an Arbitration Clause is contained in the loan contract and the Arbitrator rules against the Creditor Bank in a disputed GSI transaction, the Creditor Bank shall, in addition to fines for erroneous transactions, pay an additional fine of N10,000,000 (Ten Million

Naira) or 10% of the disputed sum, whichever is greater. An Arbitrator may also propose additional sanctions for grievous violations, malfeasance by a PFI and/or disputes arising from other incidents. This penal sanction is one-sided as there is no corresponding liability on the Borrower where the Arbitrator rules in favour of the Creditor Bank in a disputed GSI transaction.

h. Where a Creditor Bank includes Penal Charge in the GSI Trigger Amount, the erring Creditor Bank shall refund the full penal charge

amount to the Borrower where the GSI Trigger was successful. The amount must be refunded with interest calculated using the penal rate from date of GSI Trigger to refund date.

In the event of both a successful and unsuccessful GSI Trigger, the erring Creditor Bank must pay a fine of N100,000 or equivalent of the penal charge amount; whichever is greater.

MATTERS ARISING

Like other CBN Circulars, no directive is without operational burden. The Circular provides that the GSI will apply to loans granted from 28 August 2019. This raises the issue of legality of the Circular's retrospective effect in view of the Supreme Court's decision in *Olabode George v Federal Republic of Nigeria* (2013) LPELR -21895 (SC) that laws cannot apply retrospectively.

In the circumstance, affected Borrowers who took loans before the operation of the Circular are bound to argue that they neither agreed to consolidation of their bank accounts nor execute the GSI mandate to warrant data sharing with other stakeholders for implementation of the Mandate against them. Again, since the terms of the loan contract were mutually agreed between the Borrowers and the Creditor Bank, there is no privity of contract with the Central Bank of Nigeria to warrant an introduction of guidelines in a private contract.

On the other hand, many will argue that the Circular is a product of necessity as the Central Bank of Nigeria, the Apex regulator, seeks to protect the integrity of Nigeria's banking system and its economy in the long run. Like the Asset Management Corporation of Nigeria Act, 2019, policy makers may opine that the CBN's circular aims at improving economic well-being of the banks in the wake of growing burden of bad loans and this transcends the individual rights of the Borrower.

A brooding point for affected Borrowers is how the GSI will apply where the Creditor Bank and Borrower are in dispute over the GSI Trigger Amount (principal and interest) sought to be recovered? Is the Borrower at the absolute mercy of the Creditor in this regard or will the Creditor Bank await the resolution of the dispute before activating the GSI? Seeing that the Circular provides that application of the GSI shall serve as a last resort by a Creditor Bank, it is in the interest of justice for the Trigger Amount to be clear, ascertainable and devoid of any dispute before activation of the GSI.

Another area for consideration is the issue of banker-customer confidentiality and data privacy. By executing the GSI, it is deemed that the duty of secrecy owed by the bank to the Borrower (to the extent of full plenitude of GSI regime) has been waived such that all Participating Financial Institutions where the Borrower's BVN has been linked are duty bound to act on a GSI Mandate once activated.

Under the Nigerian Data Protection Regulation (NDPR), data may only be collected and processed with the consent of the data Subject (Borrower). While it may appear that execution of the GSI amounts to consent to data sharing between GSI Stakeholders, it is important to state that use of the Borrower's data given pursuant to execution of the GSI for unintended purposes amounts to violation of the Borrower's privacy rights and breach of the NDPR. This may expose the data controller to regulatory sanctions and legal liability.

The Central Bank of Nigeria is saddled with ensuring uninterrupted availability of the CRMS Platform and connectivity to the NIBSS Platform. Steps must be taken to ensure constant access to the Platform and all network challenges, when they arise, are promptly resolved. The issue of cybersecurity will have to be taken seriously as the integrity of the Platform must be protected from cyberattacks and sabotage.

CONCLUSION

While the circular is indeed a welcome development within banking and economic corridors in view of increasing non-performing loans, it will be interesting to see how stakeholders will navigate the obvious issues bound to arise from the Circular implementation. Ultimately, the Courts will have to interpret the rights, liabilities and obligations of stakeholders in the coming days as each case will have to be treated on its merits.

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