

**Boosting Access to Credit in Nigeria:  
A Glimpse into the Credit Reporting Act, 2017.**

**By:**

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## **Introduction**

It has become good global market practice for would-be creditors to consider credit reports before advancing loans, goods or services to another party, with the understanding that payments are to be made in the future. Credit checks helps providers of such facilities to determine the creditworthiness of the other party and the level of risk that comes with such transaction.

The World Bank notes<sup>3</sup> that two types of frameworks can facilitate access to credit and improve its allocation, one of which is credit information systems, which (i) enable lenders' rights to view a potential borrower's financial history (positive or negative) —valuable information to consider



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<sup>3</sup> World Bank "Doing Business 2016 Measuring Regulatory Quality and Efficiency" Available at: <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB16-Full-Report.pdf> Accessed on 30/8/17.

when assessing risk; and (ii) permit borrowers to establish a good credit history that will allow easier access to credit<sup>4</sup>.

Based on its resolve to eradicate the impediments to doing business in Nigeria, the Nigerian government<sup>5</sup> in 2017 drove and passed the Credit Reporting Act, 2017 (herein after referred to as the Act) to provide a framework for credit reporting, and other related matters.

Prior to the enactment of the Act, credit reporting was regulated solely by the Central Bank of Nigeria (CBN)'s Guidelines for the Licensing, Operations and Regulation of Credit Bureaux in Nigeria of October 2008, as amended and renamed in November 2013 as 'The Guidelines for the Licensing, Operations and Regulations of Credit Bureaux and Credit Bureaux Related Transactions'. The Act not only gave the CBN Guidelines statutory form but created a more robust and holistic system not just for the operation of credit bureaux<sup>6</sup> but for credit reporting and the gathering and utilisation of credit information generally<sup>7</sup>.

### ***Objectives of the Act***

The objectives of the Act, which are six, portray and emphasise the vision and intention of the Act. This is a plus because the Act, in simple and clear style, communicates, even to a non-legal mind, the core of the Act. The objectives are to:

- facilitate and promote access to credit and enhance risk management in credit transactions;



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<sup>4</sup> Nigeria was ranked 59 and 52 (out of 189 and 170) in the World Bank Doing Business Report for 2016 and 2015 respectively.

<sup>5</sup> Working in conjunction with the International Finance Corporation, the Nigerian National Assembly and the private sector, namely the Nigerian Economic Summit Group and the Nigerian Bar Association Section on Business Law

<sup>6</sup> Which was the focus of the CBN Guidelines

<sup>7</sup> Until recently, formal access to credit by consumers in Nigeria was largely dependent on the credit applicant's capacity to pledge security and the creditor's ability to value and confirm the pledged security as genuine and free of encumbrance. In the informal sector, access to credit from friends and families, was based fundamentally on existing transactional relationship and evidence of previously fulfilled similar pledges. These processes systemically limits and delays access to credit, and comes with attendant consequence on the economy.

- promote access to accurate, fair and reliable credit information and to protect the privacy of such information;
- set standards and conditions for the establishment, regulation and operation of credit bureau;
- promote fair and competitive credit reporting;
- promote responsibility in the credit market by encouraging responsible borrowing, avoidance of over indebtedness, and fulfilment of financial obligations by consumers and discouraging reckless credit granting by credit providers and contractual default by consumers; and
- facilitate credit information sharing.

As ordinarily expected, there are provisions for the licencing and regulation of Credit Bureaux. Section 2 of the Act provides that no person shall establish, operate or conduct business as a credit bureau or otherwise engage in, or perform the functions or activities of a credit bureau, unless such person is licenced by the Central Bank of Nigeria (CBN) in accordance with the provisions of the Act. We note that no person shall be licensed to operate as a Credit Bureau unless:

- it is duly incorporated as a limited liability company in Nigeria;
- it meets the minimum capital requirements and such other requirements set by the CBN from time to time.

The Act<sup>8</sup> provides that where CBN refuses to grant a licence, it must communicate the refusal in writing stating the reasons for such refusal and may proffer remedial steps to be taken by the applicant before reapplying. CBN is also required<sup>9</sup> to communicate its decision on an application for a Licence within 3 months of application. These provisions are not only a considerable improvement on legislative drafting in Nigeria, by creating a transparent application process, it is a declaration of intention to check any arbitrariness in the regulator's power to grant licence, as well as guarding against delays and bottlenecks inimical to the ease of doing business. The Act also shows a desire for a less adversarial regulator by giving the regulator an option to provide an applicant information on what is needed before refilling.

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<sup>8</sup> Section 2.5

<sup>9</sup> Section 2.6

While the Act may be considered silent on the options available to an applicant, who notwithstanding the refusal reason(s) adduced by the regulator, remains unsatisfied and some have suggested that the failure to provide for options negates the derivable benefits of Section 2.5, the Authors of this paper thinks otherwise. Providing a course of recourse to an unsatisfied applicant simply adds another layer of administrative oversight, while not necessarily resolving the issue. The right of recourse to the courts by a person aggrieved by an administrative act is fundamental to Nigerian law and accordingly rather than provide for a secondary review of the CBN's decision, the best recourse for an applicant aggrieved is recourse to the courts. In giving CBN a maximum period of 3 months to communicate its decision, an applicant is able to assess its options quickly and decide whether to seek judicial remedy.

### ***Functions of Credit Bureaux***

A major role of Credit Bureaux is the creation and maintenance of a database of credit and credit related information.

Maintaining the database is key<sup>10</sup>, considering that all credit related information obtained from credit information users<sup>11</sup> and credit information providers are stored on the database, and they need to be updated regularly, and adequately secured to ensure the continuous integrity of data, and confidentiality of information<sup>12</sup>.

These protocols are also to ensure the detection of any misuse of the information on its database and ensure that credit information users are given the opportunity to correct any outdated, incorrect or incomplete information<sup>13</sup>. This is in recognition of the fact that the information at the disposal of Credit Bureaux is not absolute, and the need to ensure that both Credit Information User and Data Subjects are adequately protected. These provisions protecting the confidentiality and integrity of data are very reassuring, in the absence of data protection laws.

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<sup>10</sup> Section 3(1)(a)

<sup>11</sup> Credit Information Users on the other hand include Credit Information Providers and other persons that are allowed under the Act or any regulations or guidelines made under the Act to seek Credit Information from a Credit Bureau for Permissible Purposes

<sup>12</sup> Section 5

<sup>13</sup> Section 9(6) (a)

Also, Credit Bureaux are required to keep credit information for minimum of six years from the date of receipt, ensuring that credit reports are based on an analysis of a Data Subject's credit character over a period of time. It also serves as a subtle notice to Data Subjects that their credit history impacts significantly on the success of their credit application. This, again, is indicative of the Act's objective of ensuring disciplined lending and borrowing.

In addition, every credit bureau is required use credit information only for Permissible Purposes.

### ***Permissible use of Credit Information***

While some have wondered whether Credit Bureaus are to have access to "all their information", it is worthy to note that under the Act, Credit Information is provided to Credit Bureaux by Data Providers, who then provide relevant information to Data Users<sup>14</sup>.

Also, the dissemination and use of such information is not meant to be arbitrary, as the Act has graciously provided a well-articulated guidance on acts that fall within Permitted Purposes under Section 7. Using Credit Information for a purpose other than a permissible purpose is as an offence<sup>15</sup> with steep penalties<sup>16</sup>.

### ***Access to Credit Information***

As mentioned above, one overriding objective of the Act is the promotion of financial discipline across all strata of the Nigerian society, and to achieve this objective, the Act expanded the sources of credit information over and above what was included in the CBN Guidelines for operation of credit bureaux.

Credit Information Providers under the Act now include not only financial institutions but utility companies; asset management companies; suppliers of goods and providers of services on a post-paid, deferred or instalment payment basis; and other entities that in their ordinary course of business have relevant information that complies with Permissible

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<sup>14</sup> Credit Information on the other hand means information bearing on a person's credit worthiness, credit standing or capacity, and to the history and profile of such person with regard to credit, assets and any financial obligations, including such person's demographic data and such other information that may aid credit decisions making

<sup>15</sup> Section 20(1)(f)

<sup>16</sup> Section 21

Purposes and serves the purposes of the Credit Bureau. The CBN is also allowed to add or remove any person from the aforementioned categories, as it may prescribe.

The Act was purposeful in allowing some flexibility into categories of credit information providers and users, with the aim of creating a law robust enough to deal with changing financial environment and requirements, and expand or shrink the categories of credit information providers and users as may be required, without going through an arduous legislative process.

In performing its functions, a Credit Bureau is not permitted to release or provide credit information to any credit information user with which it does not have an agreement for the submission of credit information or for the request for credit reports respectively, unless with the written consent of the relevant Data Subject<sup>17</sup>.

The combined effect of the foregoing is that availability of credit information on Data Subjects, will not be limited to the formal or organised sectors of the economy. The onus will therefore be on any person; individual or corporate, formal or informal sector, to, if required, enter into data exchange agreement with the credit bureaux<sup>18</sup> or obtain the express consent of the Data Subject for a credit check<sup>19</sup>.

The Act, in seeking to ensure that Data Subjects are not absolutely ignorant of the content of their credit information with the credit bureaux provides that Data subjects shall be entitled to an annual credit report at no cost<sup>20</sup>.

### ***Complaints***

The complaint process is a pyramid, starting from a complaint letter to instituting an action in court.

The first point of complaint by the Data Subject who has any complaint regarding the accuracy, validity, completeness or otherwise of its data is the Credit Information Provider or Credit Bureau, requesting for the correction of credit data.<sup>21</sup>

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<sup>17</sup> Section 3(f)

<sup>18</sup> Section 9(2)(b)(i)

<sup>19</sup> Section 9(2)(b)(ii)

<sup>20</sup> Section 9(6)(a)

<sup>21</sup> Sections 6 (1)(d) and 13(1)

To ensure that complaints are promptly resolved, the recipient of the complaint has 10 working days to deal with the complaint and communicate the outcome to the complainant. If this is not resolved, it may be escalated to the CBN who has a further period of 10 working days to resolve the issue. If unresolved, a party may proceed to court to resolve the matter.

While the introduction of timelines is considered both strategic and advantageous, the adequacy of the given 10 working days is arguable. The authors of this paper are however of the view that the timelines are reasonable, due to the fact that the right of recourse to the courts to resolve grievances is an inalienable right of every person, and any law or rule which may inadvertently amount to a stay on this fundamental right (even when it aims at a quick resolution of the dispute) must necessarily be short, so as not to deprive claimants of their constitutional rights or put these rights in abeyance. The short timelines should also provide an incentive to affected parties to make dispute resolution high priority, to avoid the monetary and temporal costs of a lengthy judicial process.

## **Conclusion**

As Nigeria focuses on improving the ease of doing business, access to credit has been identified as one of the key indices impacts on its ability to be one of the destinations of choice for investments. The Credit Reporting Act, 2017 addresses some of the deficiencies by providing one of the pillars on which access to credit rests. The Act sets out a transparent, efficient and credible means of providing information on the creditworthiness of consumers. The clear enumeration of the rights, roles and functions of different stakeholders in the credit information chain makes the Act easy to understand.

The race to the top is however not yet won, as Nigeria continues to improve on its financial inclusion goals by enhancing creditors rights, providing sound collateral laws to enable businesses to use movable property as security as well as tackling other identified impediments to the ease of doing business both within its shores and across its borders.

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