CBN Guidelines on Imports Not Valid For Forex

In an effort to ensure the stability of Nigeria's foreign exchange market, the Central Bank of Nigeria (**CBN**), has issued a series of circulars excluding certain goods and services from the list of items valid for importation with funds sourced from the Nigerian Foreign Exchange Markets (**FEM**) (**Forex Restriction Guidelines**). The circulars also defined the width of the FEM to include the interbank foreign exchange market, bureaux de change sources and proceeds derived from exports. Importers will now be required to fund the items on the list entirely with finances obtained via alternative sources. A wide variety of visible items were included on the list including rice, cement, toothpicks, iron rods, private airplanes, clothing, tiles, plastic and rubber products, Indian incense, soap and cosmetics. Also included in the list are products including Euro bonds, Foreign currency denominated bonds and foreign currency denominated shares. This considered move is in an apparent bid by the CBN to preserve the country's foreign reserves as well as facilitate the resuscitation of domestic industries and to improve employment generation.

Pre The Forex Restriction Guidelines

Pursuant to Section 1(2) of the Foreign Exchange (Miscellaneous Provisions) Act (**Forex Act**), the CBN is empowered to issue guidelines regulating the procedures for transactions, in the FEM. In exercise of this

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and also pursuant to this power, the CBN issued the Foreign Exchange Manual (**Forex Manual** or **Manual**), which acts as a guide for authorised dealers, authorised buyers and the public in processing foreign exchange applications. The Forex Manual prescribes a list of eligible transactions in respect of which importers may access the FEM for forex purchases. Included on the list of eligible transactions are visible imports (i.e. imported goods excepting goods under absolute prohibition) and invisible trade transactions which includes amongst other things securities denominated in foreign currency.

The Manual also delineates the general guidelines for importation of goods and services, of which an importer intends to access the FEM. It stipulates that any person intending to import physical goods into Nigeria shall initiate the importation by processing a Form M through an authorised dealer (licensed bank), irrespective of the value, and whether or not payment is involved. Alongside the Form M, a host of other documentation will be presented to the authorised dealer. The import of Form M for imported goods, is that where approved, the Form M serves as authority to the authorised dealers to open letters of credit for foreign exchange transactions on behalf of the importer. Following the introduction of the Forex Restriction Guidelines, while the Form M and the additional documentation will still be required for the importation of items, however items excluded by the Forex Restriction Guidelines will now also require, written confirmation from the authorised dealer on the source of funds, and evidence of the source of funds. This information is to be provided to the Director of the Trade & Exchange Department of CBN, before validation for necessary approval. Additionally, as aforementioned, with the introduction of the Forex Restriction

Guidelines, Nigerian Residents are now restricted from using forex sourced from the FEM for the importation of Euro bonds, Foreign currency denominated bonds and foreign currency denominated shares. A practice previously permitted by the Forex Manual subject only to the provision of certain documentation.

Implications

The implications of the introduction of the Forex Restriction Guidelines will undoubtedly have far-reaching consequences for the Nigerian economy, especially its financial sector. Firstly, importers of the excluded items will henceforth be incapable of obtaining letters of credit (LCs) from authorised dealers except where such LCs are funded from private sources. These importers will be forced to seek alternative (and possible more expensive) modes of financing their importations possibly through the use of bills for collection, direct remittances and advance payment.

Secondly, a large number of Nigerians who may have concluded contracts with foreign counterparties based on the state of affairs prior to the introduction of the Forex Restriction Guidelines will be unable to meet their obligations thus: (i) triggering a default by the Nigerian counterparties; and (ii) exposing the Nigerian counterparties to damages.

Furthermore, the decline in the number of letters of credit issued will create a gap in the supply of the excluded items. If domestic manufacturers are unable to meet the capacity for the production of the excluded items vis-à-vis their demand, a scarcity of the excluded items will ensue leading to inflated prices.

Additionally, the Forex Restriction Guidelines will cause an increased reliance on Nigerian banks by manufacturers, whose current lending policies are not usually as favourable as those obtained by way of letters of credit. High interest rates and unattainable fixed assets will be demanded by banks and domestic manufacturers may, as a consequence, be unable to meet these bank policies, causing defaults in loan repayments.

Finally, the newly issued guidelines completely eliminate the ability to finance the importation of foreign currency denominated securities (euro bonds, foreign currency denominated bonds and share purchases) with foreign exchange, a practice that was previously encouraged.

Nevertheless, the guidelines will however encourage domestic production of the excluded items, boosting productivity, and the economy through the increase in jobs and …

Sanctions

The Manual specifically provides sanctions for the use of foreign exchange for non-eligible purposes, which include (x) the return of the foreign exchange sold should with interest of 1% above LIBOR rate and duly credited; (y) a letter of warning will be issued to the contravening bank; (z) the blacklisting of involved companies; and (xx) reference to the sub-committee on ethics of the Bankers' Committee for notification.

Conclusion

While the motives behind the guidelines are laudable, the implementation of the guidelines will have broad consequences for the financial sector and the existing foreign exchange obligations created by Nigerian counterparties.

Click here to access the CBN Guideline published on 24 June 2015

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