

OVERVIEW OF THE CBN'S GUIDELINES FOR CONTACTLESS PAYMENTS IN NIGERIA 2023



BACKGROUND

Since 2011, the Central Bank of Nigeria (CBN) has taken steps to introduce contactless payments into Nigeria from the recognition that existing Point of Sale (PoS) terminals may include contactless readers¹ to the issuance of the Framework for Quick Response Code Payments in 2021. This culminated in the issuance of the exposure draft of the Guidelines on Contactless Payment in Nigeria on 17 October 2022 (the **Draft Guidelines**).² Sequel to the release of the Draft Guidelines, the CBN on 27 June 2023 published the final version of the Draft Guidelines (the **Final Guidelines**), as

well as the Circular on Transaction Limits for Contactless Payments, 2023 (the **Circular**) which seek to prescribe minimum standards and requirements for the operation of contactless payments in Nigeria.

In this newsletter, we consider key provisions introduced in the Final Guidelines and the Circular not originally contemplated in the Draft Guidelines as well as the key issues that may arise in the deployment of contactless payment technologies in Nigeria pursuant to the Final Guidelines.

1. The CBN Guidelines on Point of Sale Card Acceptance Services 2011.

2. See Olaniwun Ajayi LP, 'CBN Issues Draft Guidelines on Contactless Payment in Nigeria' (8 November 2022) <https://www.olaniwunajayi.net/blog/cbn-issues-draft-guidelines-on-contactless-payments-in-nigeria/> for our newsletter on the Draft Guidelines. As stated in the newsletter, contactless payment, also referred to as "Tap to Pay", is an electronic payment system by which credit and debit cards, smartcards, tags, mobile devices and any other devices that have radio-frequency identification or near-field communication (NFC), are used for making secure payments.

HIGHLIGHTS OF THE FINAL GUIDELINES

The Final Guidelines retain the provisions set out in the Draft Guidelines³, however, the CBN has introduced new provisions in the Final Guidelines which we discuss in the ensuing paragraphs.

Minimum Security Standards

In addition to the mandatory security standards set out in the Draft Guidelines, the Final Guidelines provide that stakeholders shall ensure that their terminals, applications, and processing systems comply with:

- a) ISO 14443, an international standard for identification cards, contactless integrated circuit cards and proximity cards specifications; and
- b) all required Payment Scheme and Card Scheme certifications for contactless cards and terminals.⁴

Furthermore, contactless payment devices shall be configured to work within a maximum of two (2) centimeters from the contactless payment terminal to manage the risk of data interception.⁵

Compulsory Routing of Transactions

All acquirers⁶ are required to route all POS contactless payment transactions through the Payment Terminal Service Aggregator, that is, the Nigeria Inter-Bank Settlement System Plc (NIBSS).⁷ This aligns with the contactless payments regime with extant CBN regulations on the routing of PoS transactions through NIBSS and ensures that NIBSS monitors and maintains oversight over contactless payment transactions.⁸

Opt-out by Customers

As a corollary to the obligation on Issuers⁹ to activate contactless payments upon demand by a customer and with the consent of a customer¹⁰, Issuers shall provide an opt-out option for customers who no longer desire contactless payment products.¹¹

Documentation Requirements

Switching companies¹² that process contactless payments shall enter service level agreements with relevant stakeholders in accordance with the minimum requirements stipulated by the CBN.¹³ Such service level agreements must specify in clear terms, the responsibilities of each party, operational rules and procedures, and liabilities of parties in the event of loss of funds arising from negligence of any of the parties¹⁴.

Upgrades to POS Software

Payment Terminal Service Providers (PTSPs)¹⁵ are required to upgrade or update the software of PoS terminals used for contactless payments regularly, otherwise such PoS terminals shall not be permitted to process contactless transactions.¹⁶ However, the Final Guidelines do not specify the frequency of upgrades to the PoS software.

3. See Olaniwun Ajayi LP, 'CBN Issues Draft Guidelines on Contactless Payment in Nigeria' (8 November 2022) <https://www.olaniwunajayi.net/blog/cbn-issues-draft-guidelines-on-contactless-payments-in-nigeria/> for a detailed summary of the relevant stakeholders involved in contactless payments and their obligations.Regulation 5.1(viii) & (ix) of the Final Guidelines.
4. Regulation 5.5 of the Final Guidelines.
5. An acquirer could be a bank or any other legal person concluding contracts with merchants concerning acceptance of payment by means of electronic payment instrument. See Regulation 5.0(1) of the CBN's Guidelines on Transactions Switching in Nigeria, 2016 (Switching Guidelines).
6. Regulation 6.1.18 of the Final Guidelines.
7. Paragraph 3.4.1.5 and 3.4.3.4 of CBN Guidelines on Operations of Electronic Payment Channels in Nigeria 2020 and paragraph 4.4.5 of CBN Guidelines on Point of Sale Card Acceptance Services 2011
8. Issuers are CBN-licensed institutions that issue payment cards with contactless payment functionalities.
9. Regulation 6.2.2 of the Final Guidelines.
10. Regulation 6.2.2.1 of the Final Guidelines.
11. Switching companies refers to CBN-licensed financial institutions that operate an electronic system that captures electronic financial transactions from touch-points, applies rules, determines destinations, delivers the transactions and gives appropriate feedback. See Regulation 5.0(14) of the CBN's Guidelines on Transactions Switching in Nigeria 2016.
12. Regulation 6.5.3 of the Final Guidelines.
13. Regulation 2.4.4 of the Switching Guidelines.
14. PTSPs are institutions licensed by the CBN to deploy PoS terminals.
15. Regulation 6.6.7 of the Final Guidelines.

Retention of Contactless Payment Records

Furthermore, merchants¹⁷ must store all contactless payment records, data, and documents in accordance with the minimum retention period stipulated by extant laws and regulations. By the Nigeria Data Protection Act, 2023 (NDPA), personal data may only be retained for as long as is necessary to achieve the lawful basis for which the personal data was collected or further processed.¹⁹

Security Breach Reporting

All stakeholders are to report incidences of fraud, breaches, and other security events immediately. These reports will need to be made to the CBN within 24 (twenty-four) hours after the occurrence of such incident.²⁰

Transaction Limits

The Final Guidelines provide that contactless payment transactions below the stipulated transaction and daily cumulative limits may be conducted without requiring customer's authorisation (such as personal identification numbers, tokens, biometrics etc), however, contactless payments above such stipulated limits shall require customer verification.²¹

Further to the foregoing, the Circular sets the transaction limit for contactless payments at ₦15,000 (fifteen thousand Naira) and the daily cumulative limit at ₦50,000 (fifty thousand Naira). This is without prejudice to the right of customers to request their bank to perform transactions above the maximum limit subject to the provision of an indemnity by the customer and the bank's internal risk management policies.²² However, transactions above the daily cumulative limit shall be conducted using contact-based technology.

ISSUES ARISING FROM THE CONTACTLESS PAYMENTS GUIDELINES

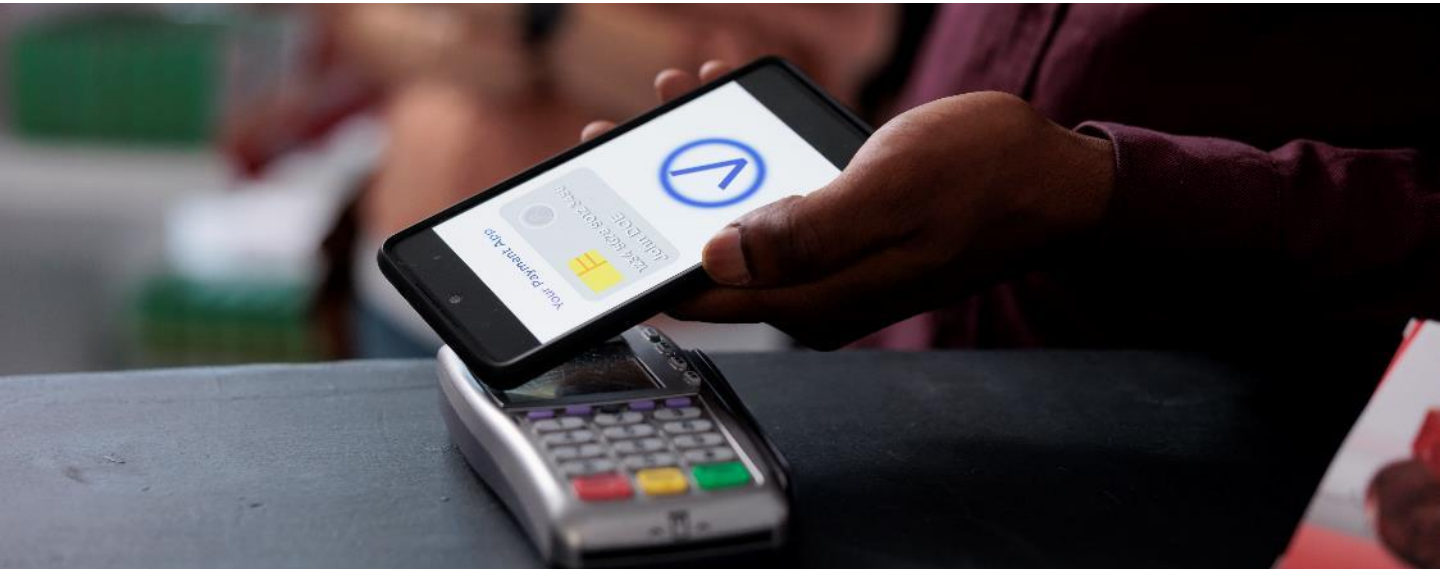
Adequacy of the Transaction Limit

Given that transactions above the limits set by CBN require authorisation or contact-based technology, the seamless experience typically associated with contactless payments may be affected and this raises concerns around adequacy of the transaction limits. In this regard, we envisage that the transaction limit will eventually be increased subject to careful consideration of potential security risk factors by the CBN. The approach adopted by the CBN largely aligns with the approach taken by financial regulators in jurisdictions such as the United Kingdom²⁴ and India²⁴. In both jurisdictions, the regulators gradually increased the transaction limit for contactless payments based on various factors including accelerated use of the contactless payment option during the coronavirus pandemic, feedback from stakeholders or analysis of the fraud rates pre and post increase of transaction thresholds.

Liability for Fraudulent Transactions

The Final Guidelines stipulate that certain stakeholders shall be liable for fraudulent contactless payment transactions arising from their negligence or connivance.²⁵ However, the Final Guidelines are silent on the liability of PTSPs despite the likelihood that fraudulent transactions may occur due to defective PoS devices or PoS devices with outdated software. Nonetheless, affected persons may rely on the doctrine of negligence to establish the liability of the implicated PTSP.

17. A merchant refers to a business or individual that sells goods or services and accepts electronic payments (including contactless payments) from customers.
 18. Section 65 of the NDPA defines "personal data" as any information relating to an individual, who can be identified or is identifiable, directly or indirectly, by reference to an identifier such as a name, an identification number, location data etc.
 19. Section 24(1)(d) of the NDPA. By paragraph 8.2 of the Nigeria Data Protection Regulation Implementation Framework, the retention period shall be 3 (three) years after the last active use of a digital platform or 6 (six) years after the last transaction in a contractual arrangement, where applicable law does not specify a retention period.
 20. See Regulation 5.6 of the Risk-Based Cybersecurity Framework and Guidelines for Deposit Money Banks and Payment Service Providers, 2018 and Regulation 7.6 of the Risk-Based Cybersecurity Framework and Guidelines for Other Financial Institutions, 2022.
 21. Regulation 9.1 and 9.2 of the Final Guidelines.
 22. Regulation 9.5 of the Final Guidelines.
 23. Financial Conduct Authority, 2021 Policy Statement: Amendments to single and cumulative transaction thresholds for contactless payments (PS21/2) <<https://www.fca.org.uk/publication/policy/ps21-2.pdf>> accessed: 04 July 2023.
 24. Reserve Bank of India's Circular: Card transactions in Contactless mode - Relaxation in requirement of Additional Factor of Authentication, 2020 (RBI/2020-21/71 DPSS.CO.PD No.752/02.14.003/2020-21) < <https://www.rbi.org.in/commonman/Upload/English/Notification/PDFs/DPSS57.PDF>> accessed 05 July 2023
 25. Regulation 6.1.13, 6.2.12, and 6.8.3 of the Final Guidelines



Further, the Final Guidelines do not expressly address the liability of stakeholders for unauthorised transactions in the absence of their negligence or collusion. In this regard, the CBN Circular on Sanctions on Erring Banks/ePayment Service Providers for Infractions of Payment System Rules and Regulations, 2015 (**Sanctions Circular**) which provides for the liability of financial institutions on a strict liability basis will apply to banks and scheme operators²⁶ involved in contactless payments. However, the strict liability provisions only apply to limited circumstances, namely, unauthorised transactions occurring when a payment card is in the custody of the financial institution or the unauthorised transaction is above transaction limits. To this end, the CBN can take a leaf from extant regulations in the United Kingdom which provide that payment service providers are liable to refund the amount of unauthorised payment transactions unless the payment service provider can prove that the transaction was authenticated, accurately recorded and not affected by a technical breakdown.²⁷

Security Concerns

While contactless payment affords users increased convenience and is faster, one major concern is the risk of fraud and card skimming as hackers can intercept the

payment data to carry out fraudulent transactions. With the minimum-security standards and certifications, and the two (2) centimetre maximum distance requirements under the Final Guidelines, we expect that this will, upon proper implementation and enforcement, facilitate the security of contactless payments. Also, the imposition of transaction limits on contactless payments reduces the risks associated with fraudulent transactions as any transactions in excess of the regulatory limit will trigger a request for additional verification.

CONCLUSION

The Final Guidelines ensures that the contactless payments ecosystem operates in accordance with the set standards and regulations, promoting a more secure environment for contactless payments. Accordingly, the issuance of the Final Guidelines is laudable as it creates new opportunities for the use of contactless payments in Nigeria thus paving the way for increased convenience and efficiency in electronic payments.

26. A "scheme operator" ordinarily refers to the provider and/or administrator of an electronic payment method. In this context, this refers to an Issuer given that they administer the electronic payment methods and enforce the transaction limits of such transactions.

27. Section 74-77 of the Payment Services Regulations 2017.



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