Repatriating funds from Nigeria: Unrestricted but fettered

Nigeria has a liberal "free entry, free exit" approach to the movement of foreign investment funds into and out of its economy. Subject to payment of all relevant taxes, overseas investors are guaranteed unrestricted repatriation of their investment capital and proceeds, in any convertible currency, if that capital was brought into Nigeria under a Certificate of Capital Importation (a **CCI**). However, the Central Bank of Nigeria's efforts to defend the Naira, prompted by the global decrease in crude oil prices and the consequent fall in Nigeria's foreign currency reserves, has fettered the ease with which foreign investment capital and profits can be repatriated from Nigeria.

What is a CCI?

A CCI is a certificate issued by "an authorised dealer", i.e. a Nigerian commercial bank, to a foreign investor at the time the investor brings capital (cash (either as debt or equity) or goods) into Nigeria. The CCI confirms the inflow of foreign capital into Nigeria and should be issued to that investor within 24 hours of the capital inflow otherwise the investor may lose the benefits attached to that CCI.

The inflow and outflow of the capital investment to which a CCI relates must be carried out by the commercial bank that issued the CCI. However, where prior approval is obtained from the Central Bank of Nigeria (the **CBN**), the outflow may be conducted by a different bank.

Benefits of a CCI

A CCI is a pre-requisite document for the transfer, in any convertible currency, of proceeds of an overseas capital investment out of Nigeria using the Nigerian foreign exchange market. The Nigerian foreign exchange market comprises the Nigerian interbank market, proceeds of foreign exports and bureaux de change.

The holder of a CCI can open a foreign currency denominated account and a special non-resident Naira denominated account into which receipts of capital inflows from its Nigerian investment may be credited. The investor's foreign currency denominated domiciliary account and non-resident Naira denominated account would usually be opened with the commercial bank that has issued the CCI.

Is repatriation possible without a CCI?

Foreign investment capital must be brought into Nigeria under a CCI for an investor to be able remit the imported capital and its proceeds via the Nigerian foreign exchange market.

Remittances of the proceeds of a foreign investment made by providing services into Nigeria do not require a CCI. However, the relevant contract for provision of such services, if a contract involving a transfer of technology or technical expertise, will require registration with the National Office for Technology Acquisition and Promotion (**NOTAP**) so that payments made under that contract can be remitted out of Nigeria through the Nigerian foreign exchange market.

Whilst it is possible to access foreign currency for repatriation of foreign investment capital and/or proceeds without a CCI or NOTAP registration, i.e. by accessing the informal market for foreign exchange that exists in parallel to the Nigerian foreign exchange market, it should be noted that such repatriation outside of the Nigerian foreign exchange market is more expensive and plagued with practical difficulties including the risk of breaching anti-money laundering regulations.

Nature of a CCI

The CBN introduced electronic CCIs, also knowns as e-CCIs, in September 2017, before which time CCIs had been issued in hardcopy.

E-CCIs are issued, managed, and monitored via an electronic platform administered by the CBN, to which the commercial banks and investors have access.

The e-CCI was introduced to address the problems such as misplaced or inadvertently destroyed CCIs that resulted in investors being unable to repatriate the proceeds of their investment.

Benefits of the e-CCI regime include:

1. A convenient means of safe-keeping and tracking CCIs;
2. Ease of monitoring the status of a CCI application, as all CCI applications must be made on the CBN e-CCI platform; and
3. An investor can track all of the CCIs issued to it by multiple banks.

Source: CBN Circular TED/FEM/FPC/GEN/01/012 dated 7 September 2017.

The fetter of foreign exchange restrictions

The CBN's efforts to defend the Naira in the face of depleting national foreign currency reserves has resulted in the imposition of a series of foreign exchange control measures, including a short-lived ban on receiving cash payments into foreign currency denominated domiciliary accounts, that have limited the use of, and access to, foreign exchange in Nigeria.

These measures by the CBN have had an adverse effect on the former ease with which foreign capital could be repatriated from Nigeria, as the tightly controlled access to foreign currency within the Nigerian foreign exchange market has restricted amounts that can be repatriated and caused serious delays to the timing of repatriation.

The major foreign exchange restrictions that currently apply in Nigeria are:

1. **Restricted imports deemed "Not Valid for Forex"**: The CBN published a list of goods "Not Valid for Forex". Importers of the dubbed "list of 41" are precluded from access to the Nigerian foreign exchange market. Such importers must source foreign exchange to pay for their imports by alternative means.

   The list of 41 is varied and includes food items, private jets, incense, steel sheets, furniture, wooden doors, plywood and wood fibre boards, plastic and rubber products, cellophane wrappers, finished aluminium cans, textiles and clothes, steel drums, nails and pipes, and Eurobond/ foreign currency bonds and share purchases (however, capital importation to invest in Nigerian debt or equity securities has been expressly encouraged by the CBN).

Sources: CBN Circulars TED/FEM/FPC/GEN/01/010 dated 23 June 2015; TED/FEM/FPC/GEN/01/011 dated 30 June 2015; TED/FEM/FPC/GEN/01/012 dated 1 July 2015 and TED/FEM/FPC/GEN/01/021 dated 23 October 2015.

2. **Restriction on export proceeds domiciliary accounts**: Previously, holders of domiciliary accounts had "unfettered access to … their accounts". The term "unfettered access" has now been limited, in respect of domiciliary accounts opened to receive foreign currency export proceeds, such that export proceeds can only be used to finance other export activities or transactions, or sold to an authorised dealer for uses approved by the CBN. An exporter who uses the funds in its export proceeds domiciliary account for any other purpose will be barred from the Nigerian foreign exchange market.

Source: CBN Circular TED/FEM/FPC/GEN/01/006 dated 20 February 2015.

3. **Restriction on foreign denominated loans:** Nigerian banks have been prohibited from granting foreign currency loans to non-foreign currency generating businesses, also a loan initially denominated in Naira cannot be converted to a foreign currency loan where the borrower does not have foreign currency receivables.

   Nigerian banks also have been made subject to an aggregate foreign currency borrowing (excluding intergroup and Nigerian inter-bank borrowing) limit of 75% (reduced from 200%) of shareholders' funds unimpaired by losses.

Sources: CBN reference BSD/DIR/GEN/LAB/08/037 Letter to all banks dated 4 August 2015, titled Granting of Foreign Currency Loans to Non-Dollar Generating Businesses. CBN reference BSD/DIR/GEN/LAB/07/037 Letter to all banks dated 24 October 2014, titled Prudential Regulation for the Management of Foreign Exchange Risks of Banks.

4. **60% of available foreign currency must be applied for the benefit of imports aimed at local manufacturing**: Authorised dealers in the Nigerian foreign exchange markets (broadly commercial banks) are required to dedicate at least 60% of sales of foreign exchange towards the importation of raw materials, plants and machinery to aid the

local manufacturing and production of goods in Nigeria. This is monitored by requiring authorised dealers to publish details of weekly foreign exchange trades in the national papers.

Source: CBN Circular TED/FEM/FPC/GEN/01/007 dated 22 August 2016.

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