

Running title: Appraisal of the Nigerian Credit Reporting Act

RECENT DEVELOPMENTS

Appraisal of the Nigerian Credit Reporting Act 2017

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Abstract

Credit reporting is the act of gathering information about the behaviour of borrowers and making such information available whenever a decision is to be made regarding a borrower's application for new credit. Following the introduction of credit bureaux in Nigeria in 2007, in 2017 the federal legislature enacted the Credit Reporting Act, creating a legal framework for the implementation of credit reporting and codifying global best practices adhered to in the practice and administration of credit reporting. This article examines the act in the light of its objectives and attempts to determine whether the legal framework it provides is conducive to the achievement of these objectives. It also considers the factors that might militate against the effective running of a credit reporting system in Nigeria and suggests measures to deal with these challenges.

Keywords

Nigeria, Credit Reporting Act, credit bureaux, data subjects, credit information

INTRODUCTION

Credit reporting has been in existence for a long time in some of the world's most advanced economies, such as the United States of America and the United Kingdom. In other parts of the world, such as Africa and even Eastern Europe, credit reporting is comparatively new.¹ Credit reporting is simply concerned with keeping track

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of an individual's credit behaviour in order to determine and ascribe a certain risk rating to that individual. This risk rating helps creditors to decide whether or not to grant the individual a credit facility, and the type and level of security to be demanded. The job of reporting an individual's credit history is usually carried out by credit bureaux or reporting agencies. These could be either publicly owned or private. The operation of credit bureaux is usually backed by a credit information registry, which holds all credit information in an economy. A natural reference point in any discourse on credit reporting is the USA. This is because of the comparatively long history and pervasiveness of credit and credit reporting in that country, which has a commensurately sophisticated credit reporting system. In the USA, there are three major private credit reporting agencies that handle the greater part of credit reporting: TransUnion, Experian and Equifax. They are consumer reporting agencies, meaning that they provide information on consumer credit. However there are four other types of credit reporting agencies. Therefore, the classes of credit reporting agencies in the USA are: national consumer reporting agencies, national business information companies, regional and affiliate bureaux, collection agencies, and medical information bureaux.²

Credit reporting is most useful in an economy with a strong credit culture. This is because, in a market where most transactions are on a pre-paid basis, the risk sought to be managed by the use of credit reports does not exist. Having said this, even in non-credit based societies like Nigeria, credit reports are useful for purposes such as determining whether a particular contractor is creditworthy, likely to secure a loan for the execution of a project, and thus, should be awarded a contract. Requiring that financial institutions base their loan decisions on credit reports helps to reduce the occurrence of non-performing loans and institutional failure.³ It is thus necessary to have a good understanding of how credit reporting works and how to establish a tailored credit reporting system. This is especially important in the light of past experiences of non-performing loans, bank failures and other undesirable occurrences in Nigeria's credit industry. The Credit Reporting Act 2017 (CRA) was designed to bring an end to bad credit practices and the objective of this article mirrors that of the CRA, by examining the detailed provisions of the act to determine whether they are able to eliminate, or at least reduce, the incidence of unfortunate occurrences, such as non-performing loans and bank failures.

MEANING OF A CREDIT REPORT

A credit report is a record of how a person has used credit in the past and his current standing with creditors.⁴ This could be summed up in a credit score.⁵ A credit report is usually divided into sections that deal with personal information, account history,⁶ payment history,⁷ creditor inquiries,⁸ public history⁹ and a consumer

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¹ N Mylenko "Developing credit reporting in Africa: Opportunities and challenges" (paper presented at African Finance for the 21st Century, a high-level seminar organized by the IMF Institute for Capacity Development in collaboration with the Joint Africa Institute, session VI: "Designing context-specific solutions: Reforms in weak institutional environments", Tunis, 4–5 March 2008) at 1.

² K Haney "How many credit bureaux are there in the United States?" (25 April 2018), available at: <<https://www.growingfamilybenefits.com/how-many-credit-bureaus-are-there/>> (last accessed 25 February 2020).

³ AT Popoola "Role of credit bureaux in effective risk management" (paper delivered at the second Annual Credit and Collection Conference, organized by the Institute of Credit and Collection Management of Nigeria, Lagos, 11 November 2014) at 2–4.

⁴ American Consumer Credit Counselling "Understanding credit reports", available at: <<https://www.consumercredit.com/financial-education/credit/understanding-credit-reports>> (last accessed 25 February 2020).

⁵ An example is the FICO Score, which is the most widely used credit score in the USA. It was developed by the Fair Isaac Corporation. See Sallie Mae and FICO "Understanding credit: What it is, why it is important, and how you can maintain it", available at: <<https://www.salliemae.com/assets/products/landing/FICO/understanding-credit-handbook-pdf.pdf>> (last accessed 27 February 2020).

⁶ This shows all the credit facilities that the customer has previously had and currently operates. It also shows the length of the individual's credit history.

⁷ This section details how an individual has paid his debts, including how much he has paid and how much remains unpaid.

⁸ This section is generated when an individual applies for credit and the creditor accesses their credit report. It usually has an impact on the individual's credit rating.

statement.¹⁰ However, not all payments are covered by a credit report. For instance, cash payments, cheques and sometimes utility bills are not included. This means that a person who has a good payment record in relation to excluded information might actually find it difficult to obtain credit if his payment record regarding included information is not encouraging. This has the potential of encouraging borrower responsibility with respect to credit considered for credit reporting purposes, while promoting default in the case of credit not so considered. However, it is necessary to add that creditors might consider other factors relating to the applicant's risk status apart from those contained in the credit report.

CREDIT REPORTING IN NIGERIA

In Nigeria, the practice of credit reporting can be traced to the Credit Risk Management System (CRMS), established by the Central Bank of Nigeria Act No 24 of 1991 for the supervision of banks and their loan practices. This act made it mandatory for all banks to render returns to the Central Bank of Nigeria (CBN) in respect of any credit with a total outstanding balance of N1 million or above (this has been amended to credits with outstanding payments of N1 million and above including principal and interest). Banks are also required to make enquiries at the CBN before granting credit facilities.¹¹ The CRMS provides credit reports in response to such inquiries. Building on this, three private credit bureaux were given licences to operate in 2009.¹² Much later, in 2017, the CRA was enacted to regulate the establishment and operation of credit bureaux and credit reporting in general.

The CRA is largely modelled on the US statutory provisions on credit reporting contained in laws such as the Fair Credit Reporting Act (1970),¹³ Fair and Accurate Credit Transactions Act (2003),¹⁴ Equality of Credit Opportunity Act (1974)¹⁵ and Credit Repair Organisations Act (1996).¹⁶ The CRA consolidates provisions similar to those found across these US laws.

Objectives and administration of the Credit Reporting Act

The CRA's stated objectives are to:

- “(a) facilitate and promote access to credit and enhance risk management in credit transactions;
- (b) promote access to accurate, fair and reliable credit information and to protect the privacy of such information;

⁹ This deals with the interaction between an individual's private credit life and public institutional and regulatory standards and procedures. It includes a record of events such as law suits and bankruptcies.

¹⁰ The consumer statement contains additional information the individual desires to be included in the credit report for some reason.

¹¹ CBN “Credit risk management system”, available at: <<https://www.cbn.gov.ng/Supervision/crms.asp>> (last accessed 25 February 2020).

¹² CRC Credit Bureau Limited, CR Services Credit Bureau Plc and First Central Credit Bureau (formerly XDS Credit Bureau Limited).

¹³ This is the principal statute dealing with credit reporting and it is this statute that the CRA emulates the most. This law dictates how credit data can be collected and used. Its provisions govern not only the activities of credit bureaux and data subjects, but also those bodies that supply information to credit bureaux. It applies to banks, credit unions, agencies that sell medical records and cheque writing or rental history records, as well as businesses that rely on credit reports for hiring. Notably, this law compels credit bureaux to ensure the accuracy of the information they gather.

¹⁴ This act protects applicants for mortgages and empowers them to call for their credit reports. It helps to prevent monetary and identity theft as well as fraud, by putting in place security standards and procedures. It also makes provisions for mitigating the effects of past incidences of identity theft and fraud by providing for the use of fraud alerts and the blocking of negative information generated by criminals.

¹⁵ This law prevents lenders from discriminating against people or businesses based on non-financial factors. It also applies to businesses, unlike most other laws that only apply to individuals.

¹⁶ This act applies to any person or business that takes money in exchange for improving credit and protects people in their dealings with credit repairers.

- (c) set standards and conditions for the establishment, regulation and operations of credit bureau [sic];
- (d) promote [sic] fair and competitive credit reporting system;
- (e) 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
- (f) facilitate credit information sharing.”¹⁷

The CBN administers the CRA and makes guidelines for the operation of credit bureaux, pursuant to the act.¹⁸ However, the CRA provides that the CRMS continue to perform its regulatory and prudential functions on behalf of the CBN.¹⁹ The Guidelines for the Licensing, Operations and Regulation of Credit Bureaux and Credit Bureau Related Transactions in Nigeria 2013 (the Guidelines) provide that: “[t]he CRMS shall operate as a Public Registry and would therefore share its information with the Credit Bureaux. Credit Bureaux may, from time to time request information from the CRMS and include information obtained from the CRMS in Credit Reports issued to Users.”²⁰

However, the Guidelines also provide that the CBN shall not be liable or joined in any dispute(s) arising from wrong information given in respect of a credit report on a data subject.²¹ This is curious, as there is no justification for excluding the CRMS from liability for disseminating incorrect information when other credit bureaux are subject to liability in such circumstances. Since the CRMS predates the CRA, one may ask what added value the CRA provides. The major contribution of the CRA, as seen from its provisions, is to provide a legal basis for credit reporting beyond the regulatory framework of the CBN and also to ensure that credit reporting is carried out in accordance with global best practices.

The CBN’s position as the regulator of credit reporting is in line with global best practice. According to the General Principles of Credit Reporting released by the World Bank in 2011 (the Principles),²² it is recommended that credit reporting systems be subject to appropriate and effective regulation and oversight by a central bank, a financial supervisor or other relevant authority.²³ The Principles also recommend that regulatory bodies be endowed with the powers and resources needed to carry out their functions.²⁴ Regulators’ powers should be extensive enough to enable them to enforce compliance with standards. They are also encouraged to publicise their objectives, roles, regulations and policies in order to create clear expectations and encourage voluntary compliance.²⁵ Such publicity would also promote transparency. The World Bank also suggests that states should adopt the Guidelines and apply them consistently in both national and international contexts.²⁶ Where the regulator owns a key component of the credit reporting system, the Guidelines and other standards should apply to it as they applies to other players. This means that, in Nigeria, the standards that bind credit

¹⁷ CRA, sec 1.

¹⁸ Id, sec 8.

¹⁹ Id, sec 4.

²⁰ The Guidelines, reg 10.3.

²¹ Id, reg 10.4.

²² World Bank “General principles for credit reporting” (September 2011), available at: <http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit_Reporting_text.pdf> (last accessed 25 February 2020).

²³ Id, para 217.

²⁴ Id, para 218.

²⁵ Id, para 223.

²⁶ Id, para 226.

bureaux should also bind the CRMS in as much as it functions as a credit reporting system. Lastly, the Principles recommend that authorities co-operate with each other in the regulation of credit reporting.²⁷ This implies that it is necessary for the CBN to synergize with other institutions or agencies in fulfilling its duty as a regulator.

The CBN, CRA and the 2013 Guidelines

Pursuant to its powers under section 57 of the CBN Act 2007 and section 8(1)(b) of the CRA, the CBN enacted the Guidelines in October 2008 and revised them in 2013. Except for a few differences, the provisions of the Guidelines are substantially the same as those of the CRA. One of the differences is the more detailed obligation regulation 5.4 of the Guidelines places on banks and other financial institutions to obtain credit reports before granting loans:

- “5.4.1 All Banks and Other Financial Institutions must have data exchange agreements with at least two (2) licensed Credit Bureaux.
- 5.4.2 All Banks and Other Financial Institutions must obtain credit reports from at least two (2) licensed Credit Bureaux before granting any new credit facility, or when reviewing, renewing or restructuring an existing facility.
- 5.4.3 All Banks and Other Financial Institutions shall obtain credit reports for quarterly credit reviews on all existing facilities from at least two licensed Credit Bureaux.
- 5.4.4 All Banks and Other Financial Institutions shall upload all existing loan data on all its [sic] existing credit customers to Credit Bureaux with which it has [sic] executed data exchange agreements. The data uploaded shall include names, date of birth, gender, legal status, addresses, photographs, existing credit facilities, existing overdraft arrangements, schedule of loan repayments, details of loan repayments, loan value and / or authorized credit limit, the outstanding balances, type of facility or product, maturity date, outstanding instalments due, types of collaterals offered in addition, and notice of legal action commenced, to any other information that meet the requirements of this guideline and the CBN.
- 5.4.5 All Banks and Other Financial Institutions shall update any change in the Data submitted to a Credit Bureau pursuant to clause 5.4.4 above at least on a monthly basis or more frequently or in accordance with a schedule provided by the Credit Bureau.”

Another difference in emphasis is that, while the CRA stipulates more generally the CBN’s authority and the obligations of prospective credit bureaux, the Guidelines provide specific requirements that have to be met. Section 2 of the CRA refers to regulations that the CBN may make with regard to the licensing and operation of credit bureaux. These regulations are embodied in the Guidelines. For example, the Guidelines provide for a three-step procedure for the registration of credit bureaux, including an application accompanied by necessary documents (such as the memorandum and articles of association) as well as fees and minimum capital deposits. The second step is the grant of an approval in principle (with conditions attached), valid for a period of 180 days, and the third step is the issue of a final operating licence.²⁸

While the CRA deals more cursorily with relations between credit bureaux and the CBN, and gives more detailed attention to the functioning of bureaux relative to data subjects, the Guidelines provide detailed

²⁷ Id, para 227.

²⁸ The Guidelines, reg 3.

and explicit representations of standards required of credit bureaux in relation to the CBN, thus emphasizing the regulatory stance of the CBN relative to credit bureaux. For example, the Guidelines contain provisions on the appointment and qualification of directors and top management officials of credit bureaux.²⁹

Obligation regarding the use of credit reports under the CRA

The CRA provides that credit information users must obtain information on a data subject before granting them a loan. There is an exception for 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 purposes and serves the purposes of the credit bureau; they shall not (in their capacity as credit information users) be obliged to obtain a credit report before extending credit or entering into credit-based transactions (unless they are otherwise regulated under any applicable law).³⁰

Establishment, regulation and operation of credit bureaux

The CRA contains provisions on the establishment, regulation and operation of credit bureaux. Commendably, it provides that only companies limited by shares may be registered as credit bureaux.³¹ This will bring some degree of professionalism to credit reporting in Nigeria, and at the same time reduce the incidence of fraud and conflicts of interest. In addition, regulation 3.1 of the Guidelines dictates the persons allowed to invest in a credit bureau and their permissible level of investment. Both individuals and banks may invest in a credit bureau. In the case of investment by banks, the investment must not exceed 10 per cent of the total paid-up capital of the credit bureau. Banks are also not allowed to invest in more than one credit bureau. The restrictions on investment by banks are desirable for both competition and accountability reasons. The restriction is also necessary to prevent society's enslavement to debt. It is common knowledge that banks are interested in debt, because debt means interest and interest means profit. It is also true that banks partly base their assessment of credit worthiness on past bank credit. The danger is that, if banks are allowed to control credit bureaux, the use of past bank credit may become the dominant factor to such an extent that people will be compelled to obtain credit from banks.³² It is actually desirable that banks and credit bureaux be kept totally separate in terms of both ownership and management. An exception may however be made for investment banks that are not part of larger financial institutions that include commercial banks or other institutions that offer credit to individuals.³³ Regulation 3.3 of the Guidelines stipulates the minimum qualifications and experience mandatory for the directors and senior managers in a credit bureau.

The functions of credit bureaux centre on the collation and dissemination of credit information,³⁴ with the bureaux acting as information routers between suppliers and users of credit information. This usually entails the production of credit reports.³⁵ In doing this, certain standards are imposed: confidentiality, neutrality,

²⁹ Id, reg 4.

³⁰ CRA, sec 12.

³¹ Id, sec 2(3).

³² "The credit bureaux aren't who you think they are" (10 February 2015) *The Pete the Planner Blog*, available at: <<https://petetheplanner.com/our-focus-on-our-credit-reports-have-taken-us-to-an-ugly-place/>> (last accessed 25 February 2020).

³³ This is because investment banks do not lend directly to individuals, even though they underwrite transactions by credit bureaux.

³⁴ CRA, sec 3. Credit information is defined under the act as information bearing on a person's credit worthiness, credit standing or capacity, and the history and profile of such person with regard to their credit, assets and any financial obligations, including the person's demographic data and such other information that may aid credit decision making.

³⁵ Id, sec 3(c). [A credit report 'is an electronic or other written report, credit score or statement issued by a credit bureau and that is used or collected to serve as a factor in establishing the data subject's eligibility for credit or some other service or product provided by a person on

accuracy, exclusion of sensitive information at the database and report levels, and a compulsory contractual relationship with credit information users or, in the absence of such consent, the data subject.³⁶

The use of credit information is limited to the purposes permitted under the CRA. The list of purposes in section 7(2) of the act reveals the functional role of credit reporting in the finance, labour, real estate and other sectors of the economy. These include:

- “(a) considering an application for credit by any person or considering a person’s qualification to act as a guarantor for any credit;
- (b) reviewing, renewing, restructuring or monitoring of existing credit facilities;
- (c) carrying out employment checks on employees or prospective employees;
- (d) assessing the credit worthiness of a prospective tenant in any lease or tenancy;
- (e) underwriting, reviewing, renewing insurance policies or analysing insurance claims;
- (f) considering applications for credit contracts or other post-paid services;
- (g) taking actions in respect of debt collection, enforcement of a monetary judgment or enforcement of any other debt;
- (h) satisfying a request by a data subject to validate the correctness or otherwise of credit information held by a credit bureau in respect of such data subject:
- (i) providing credit services by credit bureaux;
- (j) complying with any court order to provide credit information or where a person is required by applicable law to provide credit information in respect of any other person;
- (k) complying with the directive of a regulatory authority or a public body to provide credit information;
- (l) carrying out know-your-customer checks on any person for any permissible purpose or as may be required by law; and
- (m) such other purposes as the Bank may specify or direct.”

Credit bureaux are permitted under the CRA to request credit information from the CRMS, which implies that, apart from being a regulator, the CBN through the CRMS is also a credit information provider.³⁷ This is understandable because, being the bank of banks, it needs to gather information on the lending habit of banks and other financial institutions. Under the CRA, the need for the privacy, confidentiality and protection of information on data subjects is couched in human rights language. Thus, credit information must not be provided to credit information users in the absence of a data exchange agreement and the consent of the data subject, although such consent may be assumed in appropriate cases.³⁸ Information on a data subject may also be divulged pursuant to a request by the CBN, a court order or a law, or where it is needed to investigate a data subject who has tendered an invalid cheque, or is involved in other financial or credit-related malpractice.³⁹

Double checks, appeals and liability

a credit basis or for other permissible purposes, and which shall include, among other things, all or part of a data subject’s credit information that is available on such credit’. See CRA, sec 27 – is any of this a quote from the act?]

³⁶ Id sec 3(3).

³⁷ Id, sec 4.

³⁸ Id, sec 9.

³⁹ Id, sec 9(3)(b).

Where a data subject's application or transaction is declined as a result of information contained in a credit report, the data subject shall be entitled to receive from the credit information user, within 15 working days and at no extra cost, the credit report on which the decision was based.⁴⁰ In order to avoid unfair misrepresentations about data subjects, the CRA requires credit bureaux to afford credit information providers the opportunity to correct inaccurate, invalid, incomplete and out-dated data.⁴¹ The same opportunity is mandatorily to be made available to data subjects for the same reason.⁴² However, a questionable provision of the CRA in this regard stipulates that a data subject who seeks to contest the accuracy of the information on a credit report must do so within 15 working days of receiving the relevant credit report.⁴³ In a country where the average citizen lacks ready access to financial and other resources, the length of this period may be tantamount to denying some data subjects an opportunity for redress.

For the duration of the investigation or resolution of any complaint, the credit information held by a credit bureau must indicate that the data subject's credit information is under dispute.⁴⁴ Furthermore, where there are legal liabilities or costs arising from inaccurate data as a result of illegal activity, gross negligence, misconduct or reckless behaviour, the credit information provider or the credit bureau shall be liable, depending upon their degree of culpability. A credit bureau may claim against the credit information provider whenever it is held liable for any incorrect, incomplete or out-of-date information, and credit information users shall be held liable in the event of wrongful or fraudulent use of the credit information.⁴⁵

Information retention period

Credit reports are not meant to be perpetual statements on an individual or entity, but periodic descriptions that are subject to change. Therefore, it is necessary that credit reports be updated and old reports be declared excluded from routine application after the passage of a stipulated period of time. There is however a need to strike a balance between the avoidance of undue stigmatization over past poor credit ratings and an archival culture that fails to preserve information for a reasonable length of time. Section 5 of the CRA provides that a credit bureau shall maintain credit information for a period not less than six years from the date on which the information was provided to it, or from the date on which it last provided such information to a credit information user if this date is later; the information shall then be archived for a further period of ten years, after which the credit bureau may destroy it. Limiting the period during which credit bureaux may retain credit information allows for the removal of unfavourable information and also helps to deal with the issue of limited storage capacity.

Liability and penalty provisions

The CRA provides for criminal liability for the violation of its provisions. This relates to both natural persons and corporate entities, and includes both fines and imprisonment. The punishment for corporate offenders is limited to monetary fines.⁴⁶ The CBN may also suspend or revoke a credit bureau's licence if it breaches the

⁴⁰ Id, sec 9(6)(c).

⁴¹ Id, sec 6(d).

⁴² Id, sec 6(f).

⁴³ Id, sec 9(6)(b).

⁴⁴ Id, sec 13(6).

⁴⁵ Id, sec 13(7)–(8).

⁴⁶ Id, secs 20–23.

provisions of a law that deals with data protection, computer misuse or electronic transactions.⁴⁷ A person who is dissatisfied with the CBN's decision to revoke or suspend a licence may apply to the Federal High Court for review of the decision.⁴⁸

APPRAISAL OF THE CRA

There are certain features of the CRA that may require re-consideration. One such feature concerns the institutional arrangements for enforcement. Under the CRA, no one institution is exclusively dedicated to protecting consumers of financial products. The CBN, which bears primary responsibility for enforcing the CRA, is also the major regulator of the banking industry and is already saddled with a wide range of responsibilities. Furthermore, the Federal Competition and Consumer Protection Commission is not an industry-specific consumer protection body but has general jurisdiction over competition and consumer protection issues. This is unlike the situation in the USA where there is the Consumer Financial Protection Bureau, as well as the Federal Trade Commission and the Federal Reserve Bank.

Another feature of the CRA that may justify its amendment is the absence of provisions regarding the prevention of fraud (such as identity theft) and the removal of prejudicial information resulting from fraud. While the Cyber Crimes Prohibition Act 2015 prohibits and seeks to prevent internet fraud, it would have been better if provisions similar to those in the Fair and Accurate Credit Transactions Act were contained in the CRA, to provide for a nation-wide fraud alert system. This would have helped to integrate security as a core concern in credit information management in a country where inter-agency cooperation is poor: the primary responsibility for enforcement of the Cyber Crimes Prohibition Act rests on law enforcement agencies with the advice of the National Cyber Security Advisory Council, not the CBN. The point made with regard to difficulties in inter-agency co-operation and the need to integrate certain key aspects of credit information management and use in the CRA, also applies to the right to freedom from discrimination. Notwithstanding the fact that this is a constitutional right in Nigeria, it would have served the CRA's objectives better to include provisions on equality of credit opportunities in the CRA itself.

Credit industry trends before and after the CRA

Two major trends can be used to monitor how the credit market fared before and after the enactment of the CRA: the incidence of non-performing loans and the level of access to credit. With regard to non-performing loans, there had been a decline in the period around 2014 to as low as 3.2 per cent, but there was an upsurge in 2016–17.⁴⁹ This has been attributed to the economic recession that gripped the country, not the failure of the CRA and credit bureaux to impact positively on the credit industry.⁵⁰ Concerning access to credit, Nigeria has improved its ratings under the “getting credit” indicator of the World Bank's *Doing Business Report*. Nigeria made the greatest stride in improving access to obtaining credit. It moved from 32nd in 2017 to sixth position in

⁴⁷ Id, sec 14.

⁴⁸ Under id, sec 27, a “person” includes [any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organization or other entity whether or not having separate legal personality – is any of this a quote from the act?]

⁴⁹ CRC Credit Bureau Limited “The doyen of credit reporting in Nigeria”, available at: <<https://crccreditbureau.com/media/the-doyen-of-credit-reporting-in-nigeria>> (last accessed 25 February 2020).

⁵⁰ Ibid.

2018.⁵¹ However, its ranking dropped to 12th in the 2019 report.⁵² The gains made with respect to accessing credit were supported by the changes brought about by the Secured Transactions in Movable Assets Act 2017. This law created the National Collateral Registry (NCR) and enables micro, small and medium enterprises to obtain credit using movable assets as collateral. Creditors and credit bureaux may approach the NCR to determine whether or not assets are encumbered. The NCR is thus integrated within the credit reporting system.

However, notwithstanding the progress made, Nigeria remains largely a “cash and carry”⁵³ country with a minimal percentage of the population covered by credit bureaux and the NCR.⁵⁴

Likely obstacles to a successful credit reporting regime in Nigeria

As with many other reform efforts in Nigeria, failure is not likely to be experienced in the form of the absence of adequate laws, but rather their inadequate implementation. There are a number of factors that could hinder the proper implementation of credit reporting in Nigeria. First, effective credit reporting requires sufficient technological infrastructure. There needs to be capacity for the monitoring, sorting and storage of data. This requires that every individual has a unique identification. Although it could be said that the introduction of bank verification numbers has created a tool for such identification, it must be remembered that there is as yet no fully guaranteed way of ensuring that there is no falsification of identity and double registration by one person. This implicates the issue of security. With regard to security, one area that needs serious attention in a credit reporting context is identity theft. When there is identity theft, an individual’s identity might be used by a third party to obtain credit; this may then be negatively reflected in the individual’s credit report, which may well make it difficult for them to obtain credit.

Another challenge is the low level of participation. Credit reporting in Nigeria is largely limited to banks and formal financial institutions. However, a large sector of the credit industry operates informally. This includes money lenders and traditional collective credit arrangements (*osusu*). Therefore, credit reports might not accurately represent a person’s credit history.

Ultimately, the greatest challenge to the smooth running of credit reporting in Nigeria is probably corruption. In a financial sector rife with illegal practices, one wonders how much impact corruption would have on the effective operation of credit reporting.

RECOMMENDATIONS

One of the CRA’s main objectives is to improve access to credit. In this regard, having real time access to credit information and the status of movable assets would boost uptake of the NCR and credit bureau platforms. This would require improving technology infrastructure. Credit bureaux and the NCR should also increase awareness among micro lenders. Incentives, like ease of use, should be used to encourage formalized institutions to cooperate with credit bureaux; meanwhile, informal lenders should be incentivized to take up formal structures

⁵¹ B Famofofo “Ease of doing business: Nigeria’s prospect bright with reforms” (25 November 2018) *ThisDay* (Abuja), available at: <<https://www.thisdaylive.com/index.php/2018/11/25/ease-of-doing-business-nigerias-outlook-bright-with-reforms-2/>> (last accessed 25 February 2020).

⁵² World Bank Group *Doing Business 2019: Economy Profile of Nigeria*, available at: <<http://www.doingbusiness.org/content/dam/doingBusiness/country/n/nigeria/NGA.pdf>> (last accessed 25 February 2020).

⁵³ CRC Credit Bureau Limited “Research has shown that credit penetration is still very low in Nigeria”, available at: <<https://www.crccreditbureau.com/media/research-has-shown-that-credit-penetration-is-still-very-low-in-nigeria>> (last accessed 25 February 2020).

⁵⁴ World Bank Group *Doing Business 2019*, above at note 46.

that make them more amenable to accessing credit bureaux and reporting systems. As mentioned above, there should be a consumer protection body, specific to the credit-industry, to protect both current and prospective borrowers.

In addition, cyber-security should be mainstreamed in the credit information management sub-sector by having security provisions that provide, for example, for a fraud alert system in the CRA. This again would require an upgrade in technological infrastructure. There should also be mainstreaming within the CRA with respect to the right to equal treatment. This kind of mainstreaming is given greater impetus by Nigeria's poor record of inter-agency and inter-ministerial co-operation.

It is also necessary to achieve some level of standardization among stakeholders. Standards that help to curb arbitrariness and corruption should be developed as much as possible. Some of those standards, like the FICO Score,⁵⁵ may be discretionary, gaining voluntary acceptance over time, while others may be mandatory depending on the nature of the issue concerned. Lastly, effective credit information management in Nigeria cannot be carried out without an anti-corruption component.

CONCLUSION

Since the introduction of credit reporting, there have been some positive improvements in the finance sector. Unlike in the past, when serial debtors moved from one bank to another leaving behind a trail of non-performing loans, it is now easier to identify high-risk borrowers. As a result, credit penetration has increased. Nigeria moved up 73 places to 52nd in the World Bank's 2015 *Doing Business Report* ease of accessing credit ranking and from 32nd to sixth in the 2018 report. This placed Nigeria among the top five in Africa. However, for progress to be sustained, the problems identified in this article have to be addressed. Technological infrastructure has to be improved, security has to be guaranteed up to an acceptable level, crime and corruption effectively checked, standards developed, and participation improved to cover different kinds of lenders. In order to avoid a society enslaved to credit, it is also necessary that financial institutions should ensure the acceptance of alternative proof of creditworthiness in the case of applicants who totally lack or have insufficient credit history but can otherwise show they have been financially responsible. This would help to avoid forced borrowing for the sole purpose of creating credit history. One of the ways to ensure this is to avoid relying solely on credit reports by considering the "five Cs" of credit (capacity, capital, conditions, character and collateral),⁵⁶ traditionally used by creditors to analyse risk.

CONFLICTS OF INTEREST

None

⁵⁵ Above at note 5.

⁵⁶ For more information on this concept, see Bank of America "5 C's [sic] of credit: What are banks looking for", available at: <<https://www.bankofamerica.com/smallbusiness/business-financing/learn/5-cs-of-credit/>> (last accessed 25 February 2020).