



Enforceability of Employment Contracts of Expatriates Working with Virtual Fintech Companies: Straightening the Knotty Issues



Introduction

The shift to digital platforms has created a competitive landscape and increased reliance on remote work, particularly for expatriates in software development and cybersecurity.¹ This shift has also largely impacted the fintech sector in Nigeria, which has emerged as a key player in Africa with fintech companies like Paystack, Flutterwave, and Kuda taking the lead in facilitating payments and lending.

However, this remote setup presents legal challenges regarding the enforceability of the employment contracts of expatriates working from various jurisdictions. This article evaluates the complexities of jurisdiction, foreign law application, remuneration, and dispute resolution concerning expatriates in Nigeria's fintech sector.

Legal Framework Governing Employment Contracts In Nigeria

Employment contracts in Nigeria are generally governed by a combination of statutory laws and common law principles. Several laws contain significant provisions that may impact

the conditions of employment of expatriates working in online or virtual fintech companies in Nigeria. These include, amongst others:

¹Remote Work and Digital Transformation, <https://vorecol.com/blogs/blog-remote-work-and-digital-transformation-9962> accessed 26th November 2024.

- i. The Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- ii. The Labour Act, 2004.
- iii. The National Industrial Court Act, 2006.
- iv. The Immigration Act, 2015 and Immigration Regulation 2017.
- v. National Office for Technology Acquisition and Promotion (NOTAP) Guidelines.
- vi. The Central Bank of Nigeria Act, 2007.
- vii. The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995.
- viii. The Central Bank of Nigeria (CBN) Guidelines.

Fintech companies must take cognizance of and comply with the provisions of these laws and guidelines relating to the employment and payment of expatriates. Provisions such as Section 20 (5) of the CBN Act² that prohibits the rejection of Naira as

a means of payment must be duly noted, whilst entering remuneration agreements with expatriates. Non-compliance may lead to difficulties in enforcing salary-related terms in expatriate contracts.

Challenges to Enforceability of Employment Contracts of Expatriates in Online Fintech Companies

The enforceability of employment contracts of expatriates in online fintech companies presents legal challenges. It's crucial to consider Nigerian labour laws, international regulations, and the unique nature of virtual work environments. Key challenges affecting enforceability include:

Determining the Governing Law: In expatriate contracts with Nigerian-based fintech companies, it can be unclear which country's laws apply. A governing law clause often specifies whether Nigerian law or the expatriate's home country's law applies. However, courts in other countries may refuse to

apply Nigerian law and vice versa³ if it conflicts with local policies, creating potential jurisdictional conflicts when disputes arise as well as the issue of precedence.

Multiple Jurisdictions Involved in Dispute Resolution: Virtual employment involving expatriates can lead to jurisdictional disputes over where legal issues should be resolved. Expatriates may argue for their home country's courts, while Nigerian fintech companies may prefer local courts,⁴ complicating dispute resolution and raising legal costs.

² Central Bank of Nigeria Act, 2007 CAP A66, No. 7 Laws of Federation

³ *Sonnar (Nig) Ltd & Anor v. Partenreedri M.S. Nordwind & Anor* (1987) 4 NWLR (Pt. 66) 520

⁴ Adeola Oluwabiye, "Jurisdictional Issues in Electronic Banking", University of Ibadan Law Journal, <https://journals.ui.edu.ng/index.php/uljr/article/download/1265/1014/3555> accessed 26th November 2024.

Recognition and Enforcement of Foreign Judgments: Enforcing cross-border judgments can be difficult, even with jurisdiction clauses in place. Although Nigeria has the Foreign Judgment (Reciprocal Enforcement) Act,⁵ enforcing Nigerian judgments abroad or vice versa depends on local enforcement mechanisms, which may refuse foreign judgments that conflict with domestic laws.⁶

Payments in Foreign Currency and Exchange Regulations: Expatriates in the fintech industry often prefer salaries in foreign currencies like the U.S. Dollar or Euro. Whilst Nigerian law permits this, strict foreign exchange regulations, governed by the Foreign Exchange Act and Central Bank of Nigeria (CBN) guidelines, must be followed. Non-compliance, such as not securing CBN approvals, may disrupt salary payments and render contract clauses unenforceable.

However, we note that strict regulations may lead to a scarcity of foreign currency, causing delays in expatriate salary payments. This can create conflicts between Nigerian fintech employers and expatriate employees. Another area of potential conflict is the applicable exchange rates, as currency fluctuations in Nigeria may result in disputes over which rate should be used when converting payments between Naira and foreign currency—whether it is the rate at the commencement of the contract or at the time of payment.⁷

Double Taxation: Virtual expatriates may face double taxation in Nigeria and

their home country if no double taxation agreement (DTA)⁸ exists between the expatriate's country and Nigeria. Contracts lacking clear tax treatment provisions may lead to disputes over enforceability.

Compliance with Nigerian Employment Laws: Online fintech companies, despite operating virtually, must comply with Nigerian labour laws like the Labour Act, Pensions Reform Act, and Employees' Compensation Act. This includes providing statutory benefits such as pensions and health insurance to expatriates. However, ensuring compliance for expatriates working remotely and possibly outside Nigeria can be difficult, especially when foreign benefits schemes are involved. If contracts fail to address these statutory obligations, expatriates may challenge the enforceability of the agreement.

Intellectual Property and Confidentiality Concerns: Fintech companies face challenges in enforcing intellectual property (IP) and confidentiality agreements when dealing with remote expatriates. Differences in local laws, such as Nigeria Data Protection Regulation, Nigeria Data Protection Act and Europe's General Data Protection Regulation (GDPR), can complicate the enforcement of confidentiality and IP clauses. For example, an expatriate in the EU working for a Nigerian fintech company may be subject to GDPR, creating discrepancies in data protection standards.

⁵ Cap F35, laws of Federation 2004.

⁶ The Recognition and Enforcement of Foreign Judgment in Nigeria, <https://lawpavillon.com/blog/the-recognition-and-enforcement-of-foreign-judgements-in-nigeria/amp/> accessed 26th November 2024.

⁷ Conquering currency changes - Protect your expatriates from the drawbacks of exchange rate movements, <https://www.eca-international.com/insights/blog/october-2023/expatriate-salaries-and-exchange-rate-movements> accessed 27th November 2024.

⁸ Tax Treaties, <https://www.firs.gov.ng/tax-treaties> accessed 27th November 2024.

Helpful Recommendations to Address the Challenges in Enforcing Expatriates' Contracts

1. Proper Delineation of the Terms of Expatriate Employment Contracts.

When dealing with expatriates in virtual fintech companies, employment contracts must cover all legal and practical considerations. Given the complexities of remote work and cross-border operations, careful negotiation and documentation of key terms enhance enforceability. Some of the key terms in expatriate virtual employment contracts that must be carefully negotiated are:

a. Terms of Remuneration

i. **Foreign Currency Payments:** Expatriate compensation in foreign currencies poses challenges under Nigerian law, particularly concerning the country's foreign exchange regulations. Whilst not explicitly prohibited, payments must comply with the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act and the Central Bank of Nigeria (CBN) Act and Guidelines. Non-compliance can render salary clauses unenforceable. Also, documented agreements must be specifically reached as to the currency of payment, applicable exchange rates, time of application etc.

ii. **Net vs. Gross Salary Agreements:** For ease of enforcement, agreements with expatriates should specify whether their compensation is net or gross of taxes and other statutory remittances, especially for remote workers subject to Nigerian tax laws.⁹ If not clarified, disputes may arise.

iii. **Double Taxation Clauses:** Employment contracts should clearly define tax liabilities, specifying whether the employer will cover these costs or offer tax equalization benefits to protect the expatriate from double taxation and financial loss.

b. Dispute Resolution Mechanism

i. **Dispute Resolution Clauses (DRCs):** Expatriates' contracts must contain a DRC stipulating the mode of resolving disputes arising from employment contracts. These may include Mediation, Conciliation, Arbitration, litigation, etc. Before arbitration or litigation, ADR methods like mediation and conciliation can be opted for first,¹⁰ as these promote amicable dispute resolution, especially for remote expatriates where litigation costs may be exorbitant.

⁹ Section 10(3) Personal Income Tax Act, The gain or profit from any employment exercised in Nigeria shall be deemed to be derived from Nigeria whether the gains or profits from the employment are received in Nigeria or not.

¹⁰ Dispute Resolution Methods: Uses of Alternative Dispute Resolution, <https://www.dwt.com/blogs/family-business-resource-center/2022/03/alternative-dispute-resolution-methods> accessed 27th November 2024.

Where Mediation and Conciliation fail, Arbitration is the next preferred method for resolving disputes in expatriate contracts, particularly in virtual fintech settings where parties operate across different jurisdictions. Arbitration clauses¹¹ must specify the procedure, location, language, mode of selection of the arbitrator (s), and governing rules (e.g., ICC Arbitral Tribunal Rules), providing a neutral platform and avoiding prolonged litigation in unfamiliar jurisdictions.

ii. **Jurisdiction Clauses:** Jurisdiction clauses address the challenge of determining the applicable law in cross-border fintech employment contracts.¹² These clauses clarify whether disputes will be governed by Nigerian law or another jurisdiction, preventing costly multi-jurisdictional litigation. Fintech companies must ensure employment contracts explicitly state jurisdiction and choice of law, with internationally recognized dispute resolution mechanisms such as arbitration through the International Chamber of Commerce (ICC), etc., clearly outlined to enhance enforceability.

iii. **Enforcement of Foreign Judgments:** When expatriates file cases in their home countries, enforcing foreign judgments becomes crucial. Although Nigeria has agreements allowing the enforcement of foreign court decisions, as seen in the Foreign Judgment (Reciprocal

Enforcement) Act, however, the process can be complex and time-consuming. Fintech companies should include clear dispute resolution and choice of law provisions in contracts to mitigate foreign judgment enforcement issues.

C. Confidentiality

i. **Protection of Trade Secrets and Proprietary Information:** Fintech companies handle sensitive data such as financial records, intellectual property, and proprietary software.¹³ Expatriate contracts must include robust confidentiality clauses that define confidential information and the expatriate's duty to protect it, especially in remote work settings. This can be achieved by including meticulously drafted Non-disclosure Agreements/Clauses (NDAs), prohibiting the disclosure of sensitive information during and after employment.¹⁴ These agreements must specify the duration of confidentiality and the penalties for violations, ensuring enforceability under both Nigerian law and in any jurisdiction where the expatriate may reside or work. It is very essential to engage the services of labour law experts in preparing these clauses to ensure they comply with Nigeria's data policies, and competition laws; otherwise unfairly restrictive NDAs may be unenforceable by the courts.

¹¹ IBA Guidelines for Drafting International Arbitration Clauses, <https://www.ibanet.org/MediaHandler?id=D94438EB-2ED5-4CEA-9722-7A0C9281F2F2> Accessed 27th November 2024

¹² Analysing Nigeria's Choice Of Law Regime For Cross-Border Contracts, <https://lawpavilion.com/blog/analysing-nigerias-choice-of-law-regime-for-cross-border-contracts/> accessed 27th November 2024.

¹³ Copyright Compliance for Financial Technology Platforms: A Primer, <https://www.scoredetect.com/blog/posts/copyright-compliance-for-financial-technology-platforms-a-primer> accessed 27th November 2024.

¹⁴ Non-Disclosure Agreement (NDA) Explained, With Pros and Cons, <https://www.investopedia.com/terms/n/nda.asp> accessed 27th November 2024.

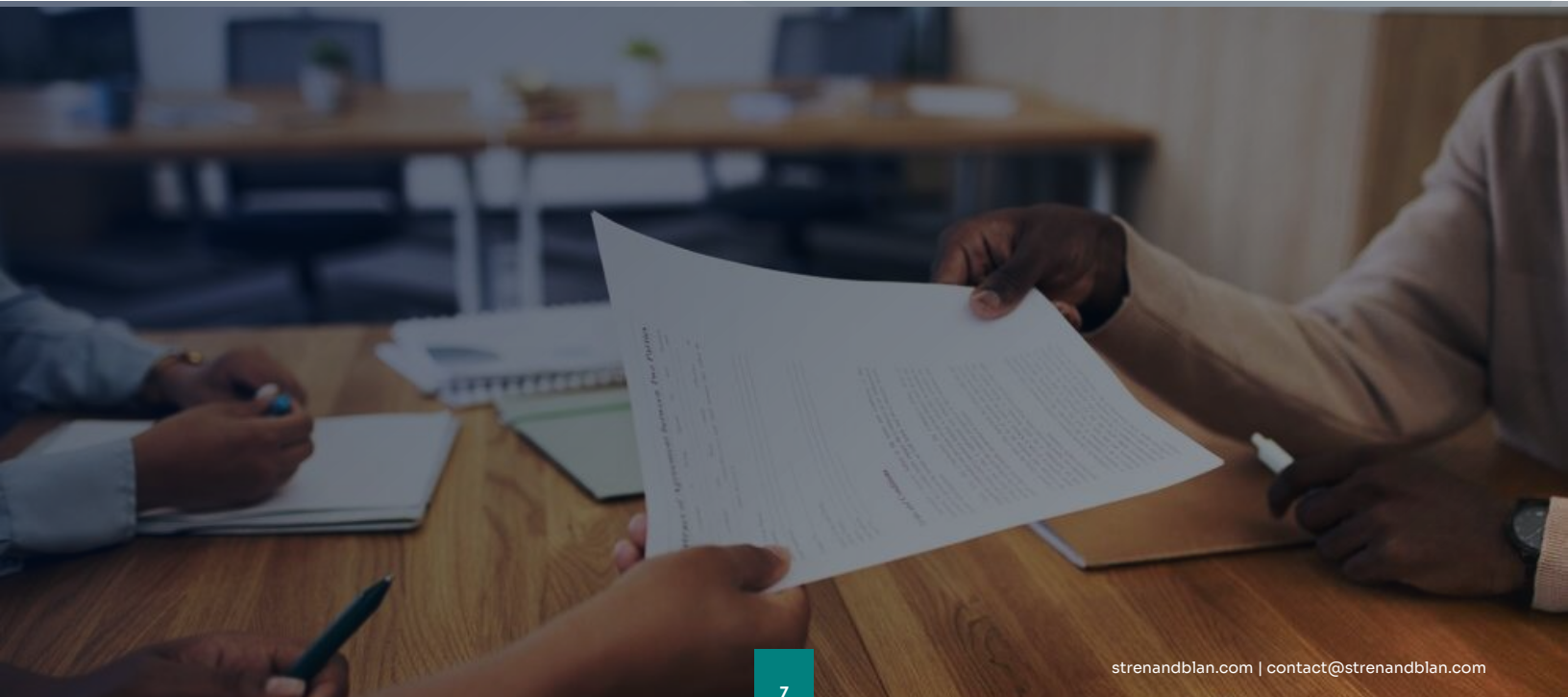
D. Regulatory Updates and Amendments.

To address some of the challenges surrounding the enforceability of expatriate employment contracts in Nigeria's virtual fintech sector, a comprehensive legal update is required. This involves amending Nigeria's labour laws, including the Labour Act, Pension Reform Act, and Foreign Exchange

(Miscellaneous and Monitoring Provision) Act, to reflect the realities of remote work and expatriate employment. Clear guidelines on remuneration in foreign currencies, tax obligations, and benefits for expatriates must be established. Additionally, clarifying work permit requirements for remote workers will help prevent unnecessary restrictions on expatriates.

Conclusion

The enforceability of expatriate employment contracts in the virtual fintech sector depends on careful legal drafting, compliance with Nigerian labour laws, and adherence to international standards. Fintech employers and expatriates should engage labour law and data protection experts to audit/review their employment contracts for legal compliance, clearly outlining remuneration, benefits, tax obligations, and foreign currency payments, etc. Expatriates should also seek legal advice on payroll and tax responsibilities and data protection compliance.



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