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REGULATING MEMORANDA OF UNDERSTANDING (MoUs): A COMPARATIVE
ANALYSIS OF NIGERIA AND OTHER COUNTRIES

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Abstract

Memoranda of Understanding (MoUs) have emerged as essential instruments in regulatory cooperation, both within domestic systems and across international jurisdictions. While typically categorized as non-binding agreements, MoUs carry significant regulatory and governance implications, mainly when used by public authorities.

This paper explores the legal, institutional, and policy implications of MoUs in Nigeria and across Africa, drawing on comparative insights from the United Kingdom, the European Union, and the United States. It argues that while MoUs offer flexibility and efficiency, they raise critical concerns about legitimacy, enforceability, transparency, and accountability in regulatory practice.

1. Introduction

Regulatory agencies increasingly rely on collaboration to achieve policy goals in complex governance environments. In Nigeria and other African jurisdictions, Memoranda of Understanding (MoUs) have become standard tools for fostering inter-agency cooperation, information sharing, and joint enforcement. These agreements, often signed between government institutions or between public and private entities, outline mutual intentions and operational frameworks without necessarily creating binding legal obligations. However, their growing prevalence has sparked debate over their legal and regulatory implications, particularly concerning accountability, transparency, and enforceability.

This paper examines these issues through a comparative legal lens. It assesses the regulatory role of MoUs in Nigeria and selected African jurisdictions, contrasts their use with models in the United Kingdom and the United States, and evaluates their implications for public governance. The central argument is that while MoUs enhance flexibility and responsiveness in regulatory systems, their informal and non-binding nature can obscure accountability and, if not correctly managed, weaken institutional oversight.

2. Conceptual Framework

A Memorandum of Understanding is generally defined as a formal document that expresses mutual agreement between parties on a matter of common interest. In legal terms, an MoU falls somewhere between a mere gentleman's agreement and a legally enforceable contract. The distinction lies in the parties' intention to create legal relations and the specificity of obligations outlined in the document.

In Nigeria, MoUs are commonly used by agencies such as the Central Bank of Nigeria (CBN), the Securities and Exchange Commission (SEC), and the Economic and Financial Crimes Commission (EFCC) to coordinate policy and enforcement strategies. These MoUs facilitate cooperation and avoid duplication of functions, particularly in complex areas such as financial regulation and anti-money laundering enforcement.

3. Legal and Regulatory Implications

The regulatory implications of MoUs can be examined from three main perspectives: their legal enforceability, their impact on accountability and transparency, and their role in administrative coordination.

3.1 Legal Enforceability in Nigerian Courts

While MoUs are often described as "non-binding," courts have occasionally recognised them as enforceable where the parties' language and conduct indicate an intention to be bound. In **RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2010] UKSC 14**, the UK Supreme Court held that even in the absence of a formally executed contract, a binding agreement could be inferred from the parties' conduct. This illustrates that the enforceability of MoUs depends less on nomenclature and more on substantive intention and reliance. An agreement could be enforceable if performance had commenced and mutual intent was clear {1}

When disputes arise over the terms of a Memorandum of Understanding (MoU), parties often seek legal recourse to obtain remedies. Nigerian courts typically undertake a thorough examination of the circumstances surrounding the MoU to ascertain its enforceability.

3.1.2 Key Considerations

Specific Performance: Nigerian courts may order specific performance if the terms of the MoU are clear, specific, and the party seeking enforcement can demonstrate that the breach would result in irreparable harm. This entails compelling the defaulting party to fulfil its obligations as stipulated in the MoU in the case of **Tower Securities and Investment Co. Ltd V Coronation Merchant Bank Ltd.** (2020) LPELR)-51415 (CA)

Presence Of A Defined And Concluded Agreement: Iguh JSC, in the case of **Alfotrin Ltd. V Ag Federation & Ors**, (1996) 9 NWLR (PT.475)634 at 656 stated that for a contract to be enforceable, "there must be a concluded bargain which has settled all essential conditions that are necessary to be settled and leaves no vital term or condition unsettled." Also, Adekeye JSC in the case of **Bilante International Ltd. V. Nigeria Deposit Insurance Corporation** stated that "It is trite that before any contract or agreement can be said to have come into existence in law, there must be an unmistakable and precise offer and unconditional acceptance of the terms mutually agreed upon by the parties thereto. In other words, the parties to the agreement must be in consensus ad idem as regards the terms and conditions freely and voluntarily agreed upon by them.

Quantum Meruit: In cases where one party has fulfilled its obligations under the MoU while the other party fails to reciprocate, the performing party may seek compensation based on quantum Meruit. This refers to the reasonable value of the services provided. *Isa v. C.G.C Nigeria Ltd* (2014) LPELR -23977 (CA) (Pp. 14-15, paras. E-B)

Evidence of Intent: Courts closely scrutinise the language used in the MoU and the surrounding circumstances to ascertain the parties' intent. If the document explicitly disclaims enforceability, it may be compromised. Conversely, if the language implies an intention to create legal relations, the court may enforce it. In **Star Finance and Property Ltd -Anors V NDIC**, (2012) LPELR – 8394 (CA). (Pp. 18-19, paras A-B

Fraud or Misrepresentation: Demonstration of fraud, misrepresentation, duress, or undue influence in the formation of the MoU may render it voidable and unenforceable by the court. **Sallau v. Minister F.C.T& ORS** (2023) LPELR – 60657 (CA) (Pp. 33-34, paras A-D); *Keystone Bank Ltd v. Okeb (Nig.) Ltd & Anor* (2016) LPELR – 41266 (CA) (Pp. 14-15, paras E-C) In **Oraka V Oraka & Anor** (2019) LPELR – 47675 (CA) (Pp. 35-36, paras E-B, the presence of fraud, misrepresentation, or a lack of voluntariness renders the agreement unenforceable by the parties.

Statute of Frauds: Nigerian law requires specific contracts, such as those for the sale of land or an interest in land, to be in writing for enforcement. Failure to comply with this statutory requirement may render the MoU unenforceable. In **Ankama & Anor v Nzeoji & Anor**, the court held that commercial agreements passing legal interest must be in writing and signed by the parties to be legally enforceable. (2022) LPELR – 57998 (Pp. 57-58, paras C-B)

Waiver of Legal Advice: Courts may consider whether parties knowingly waived their right to legal advice when entering into the MoU. If a party can show that they were coerced into signing without adequate legal advice, the court may scrutinise the fairness of the agreement.

In Nigeria, MoUs typically fall outside the realm of legally enforceable contracts. Yet, when they specify mutual obligations and consideration, they may give rise to legal consequences. The uncertainty surrounding their enforceability makes it imperative that parties draft them

carefully to reflect whether they intend to create legal relations. In **Safe Trust Savings and Loans Ltd v Government of Ekiti State**, the court determined that an MoU is not legally binding but serves as written evidence that can be used to draft a formal contract in the future.

In **Star Finance and Property Ltd - Anors v NDIC**, it was emphasised that the enforceability of an agreement should be determined by examining the parties' intentions from its terms, regardless of its form.

3.2 Accountability and Transparency

The informal nature of MoUs raises significant accountability concerns. When regulatory bodies make commitments or share powers through MoUs, they may act beyond their statutory mandates, effectively creating "soft law" without legislative oversight.^{2} This can undermine transparency, particularly when MoUs are not publicly disclosed or subjected to parliamentary scrutiny.

In Nigeria, many regulatory MoUs are executed without publication, limiting public awareness of their scope and implications. This practice conflicts with principles of open governance and erodes public trust in regulatory institutions. By contrast, in the United Kingdom, many regulatory MoUs are made publicly available, demonstrating a culture of accountability and institutional transparency.

3.3 Administrative Coordination

MoUs also have significant operational value in enhancing inter-agency coordination and avoiding jurisdictional conflicts. For example, MoUs between the EFCC and the CBN facilitate cooperation on anti-money laundering and financial intelligence matters.^{3} Similarly, collaboration between the Nigerian Communications Commission (NCC) and the National Information Technology Development Agency (NITDA) through an MoU helps manage regulatory overlap in the ICT sector. However, such coordination must be balanced against the risk of policy duplication and regulatory capture.

4. Comparative Analysis

4.1 United Kingdom

In the United Kingdom, MoUs are used extensively to delineate responsibilities between regulators. For instance, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) maintain a published MoU that clarifies their respective roles in supervising financial institutions.^{4} This transparency enhances accountability and ensures that cooperative frameworks are subject to public and parliamentary review.

4.2 United States

In the United States, MoUs serve as practical coordination tools between agencies such as the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC). These instruments, while not legally binding, carry significant operational weight and are often made public to preserve transparency. At the international level, the International Organisation of Securities Commissions (IOSCO) employs a Multilateral MoU to facilitate cross-border cooperation and information exchange, demonstrating how MoUs can underpin effective transnational regulation.^{5}

4.3 African Context

Within Africa, regional organizations such as the African Union (AU) and ECOWAS use MoUs to harmonize regulatory standards and promote cooperation among member states. However, implementation challenges persist due to weak institutional capacity and inconsistent domestic legal frameworks. In Nigeria, the absence of clear statutory guidance on the form and oversight of MoUs exacerbates these challenges.^{6}

For example, MoUs between Nigerian regulatory agencies and foreign development institutions, such as the African Development Bank, often entail commitments to policy reforms that may lack parliamentary backing. This blurs the line between executive discretion and legislative authority.

5. Policy and Governance Implications

The use of MoUs by regulatory agencies underscores a tension between flexibility and formal accountability. While they allow for adaptive governance and faster decision-making, excessive reliance on MoUs can sidestep formal rule-making processes and weaken democratic oversight. Therefore, regulatory bodies must strike a balance between pragmatic cooperation and legal formality.

One key implication is the need for institutional oversight. All MoUs entered into by government agencies should undergo legal vetting by the Ministry of Justice or an equivalent body to ensure consistency with statutory mandates. Additionally, MoUs affecting public interest should be registered or published to promote transparency and public trust.

Furthermore, standardising MoU formats and introducing periodic reviews can prevent abuse or obsolescence. Agencies should be mandated to conduct regular assessments of MoU outcomes and report findings to oversight institutions such as the National Assembly or sectoral ministries.

6. Recommendations / Conclusion

Memoranda of Understanding occupy a vital but complex space in modern regulatory governance. In Nigeria and other African states, they have facilitated cooperation, efficiency, and policy alignment across institutions and borders. However, the absence of clear legal parameters has created accountability and transparency gaps. Comparative experiences from the UK, EU, and US reveal that structured frameworks, legal oversight, and public disclosure are essential to mitigate these risks. Ultimately, MoUs should complement, not replace, formal legal instruments, ensuring that flexibility in governance does not come at the expense of legitimacy or the rule of law.

1. **Legal Oversight:** All MoUs executed by public institutions should be reviewed for legality and consistency with enabling statutes by legal officers.
2. **Transparency:** Regulatory MoUs should be published or registered in a central repository accessible to the public.
3. **Standardisation:** Develop model MoU templates to guide structure, content, and accountability mechanisms.
4. **Periodic Review:** MoUs should include clauses mandating review every two to three years to ensure relevance.

5. Capacity Building: Provide training for regulators and legal officers on drafting and managing MoUs effectively.
6. Legislative Framework: Introduce statutory provisions defining the status, scope, and oversight of MoUs in public administration.

Bibliography

Black J, 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' (2008) 2 Regulation and Governance 137.

OECD, Principles for Effective Regulatory Governance (OECD Publishing, 2018).

International Organization of Securities Commissions (IOSCO), Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (2020).

RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2010] UKSC 14.

Federal Republic of Nigeria, Financial Institutions Regulatory Framework (CBN, 2021).

FCA and PRA, Memorandum of Understanding on Coordination Arrangements (UK, 2014).

Endnotes

1. RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2010] UKSC 14.

2. Black J, 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' (2008) 2 Regulation and Governance 137.

3. Federal Republic of Nigeria, Financial Institutions Regulatory Framework (CBN, 2021).

4. FCA and PRA, Memorandum of Understanding on Coordination Arrangements (UK, 2014).

5. International Organization of Securities Commissions (IOSCO), Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (2020).

6. OECD, Principles for Effective Regulatory Governance (OECD Publishing, 2018).