



The Legal Luminary

In- house E-Newsletter of the Legal Department

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From the Editor!

Welcome once again to your source for educative and enlightening information "The Legal Luminary".

In this edition we are looking at the topic "Revocation of Banking license in Nigeria: A Regulatory Blindside", which is a most interesting piece that focuses on the revocation of banking licenses in Nigeria.

We appreciate all the comments and questions please kindly keep them coming in. Also feel free to send us your own pieces on issues pertaining to your departments, the Corporation and the Financial Industry at large. Happy reading.

Q I will like to know, how many units do you have in your department? (question sent in by B.I. Obeke of Research Department)

A The Legal Department is made up seven [7] Units, namely Litigation Unit [LU], General Legal Services (GLS), Admin & Personal Services Unit, [APS] Board Secretariat Unit (BSU) all situate in Abuja and Legal Services Units [I], [II] and [III] at Lagos Office.

The Litigation Unit deals primarily with case management and judgment enforcement and it is made up of 4 Teams. The LSU is also involved in case management, predominantly debt recovery cases. The

Admin Services Unit handles the budgeting and all administrative needs of the Department, while GLS is the unit responsible for drafting of Legal Instruments and conducting of searches. e.g. vetting and drafting of all the Corporation's Contracts, Bonds, Agreements etc.. The Unit is made up of two sections, namely Legal Drafting and Property Administration. The BSU provides corporate secretarial services and support to the Board and Management of the Corporation. BSU is also made up of two sections, namely Board Support and Meeting. The Department also has presence at Enugu Consolidation Centre which is under LSU [I], Lagos.

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GOVERNMENT HAS FOUND A LASTING SOLUTION TO BAD ROADS

NEWS

Three media organisations were hit by suicide bombers in Abuja and Kaduna this April. The affected newspapers are ThisDay, The Sun, and The Moment.

Banking sector credit to the private sector increased significantly by 11.3 per cent to N14.207 trillion in March.

International judges have found former Liberian leader Charles Taylor guilty of aiding and abetting war crimes during the Sierra Leone civil war.

An Abuja High Court has granted leave to the EFCC to seize 108 properties belonging to the six accused persons involved in the alleged diversion of N32.8 billion from the Police Pension Fund

REVOCATION OF BANKING LICENSE IN NIGERIA: A REGULATORY BLINDSIDE

CBN GIVES AND CBN TAKES AWAY.

The only authority in Nigeria imbued with the powers to issue operating license to banks and revoke such license is the Governor of the Central Bank of Nigeria (CBN). These powers flow from the mandate of the CBN to promote a sound financial system in Nigeria as contained in section 2 (d) of its enabling Statute, the CBN Act 2007. The Governor of the CBN derives his power to revoke the operating licence of any bank in Nigeria from sections 12 and 36 of the Banks and other Financial Institutions Act (BOFIA) 1991 (as amended), the statute enacted to specifically govern banking operations, supervision and resolution in Nigeria.

WHY BOTHER WITH REGULATION?

The pivotal role played by banks in financial intermediation to move an economy forward makes their birth, life and death subjects of crucial concern to any nation. It is a foolish nation therefore that does not take careful and painstaking measures to ensure the existence of effective laws to guide the successful ingress, operations and exit of banks from the economy. The effect of any laxity in regulation impacts negatively on the operators, the regulators/supervisors, the beneficiaries of the services and the economy at large. The international financial bodies have indeed acknowledged this crucial role of banks in the success or failure of the local and world economy that they came out with standards and guidelines to guide nations in developing their own banking regulations to ensure harmony and best practices. As a matter of fact, the Basel Committee of Banking Supervision (BCBS) which consists of governors of central banks of diverse nationals and other regulatory authorities reviews and updates these guidelines and standards to meet emerging economic challenges. The current international guidelines on bank regulations including Core Principles for Effective Banking.

Supervision and Core Principles for Effective Deposit Insurance address the best means of regulating and supervising banks and adapting the recommendations to the circumstances of each jurisdiction

NIGERIA'S LEGAL PROVISION REVOCATION OF BANKING LICENCE

The legal provisions for revocation of banking licence are contained in the BOFIA while the Companies And Allied Matters Act, 1990 and the Nigeria Deposit Insurance Corporation (NDIC) Act, 2006 provide, amongst others, laws regulating winding up of the affairs of the banks. S. 12 of the BOFIA has been the consistent provision used by the CBN to revoke the licence of a failed bank though such provisions as S.36 of BOFIA equally gives CBN the power to revoke the licence of a bank after applying certain measures.

AFTERMATH OF REVOCATION OF THE BANKING LICENCES OF SOCIETE GENERALE BANK AND SAVANNAH BANK NIGERIA PLC

Except for Jesus Christ and Lazarus as espoused in biblical teachings, when a person dies, he stays dead. It is also expected that when the CBN declares a bank failed and revokes its operating licence, the bank stays dead. It will now be the responsibility of the mourners, chief among whom would be the depositors of the bank, the shareholders, the management and staff and all other creditors of the bank, led by the NDIC, to ensure that the bank is given a befitting burial and laid to rest. However, the situation in Nigeria is such that the banks' throes of death sometimes lead to their resurrection. Unlike the biblical accounts of the functioning of those who survived death, the two entities which rose from revocation of their operating licenses are yet to function. [continued on page 2]

SOCIAL DIARY

Hip! Hip! Hurray

Congratulations to our dear colleagues, Joe, Ruth and Sam who all celebrated their birthday this month of April. The luminary says may you always look forward to your Birthdays as days that bring you new milestones and ventures to accomplish in life, not as days of growing old. Happy Birthday!

Bien venue, baby

Congrats to Hafiz Mohammed on the birth of his new baby girl. May the little parcel of joy bring prosperity, joy and luck.

Wedding bells

Congratulations to Ifiok and Aliu both of legal department who decided to quit bachelorhood and got joined to their wives in matrimony. Happy married life to the new couples as they embark upon a beautiful journey of togetherness and love.

"NDIC Calling"

The Corporation's public enlightenment television programme will now air on the NTA Network Service every Saturday by 10pm. All staff are enjoined to tune into the program.

Interview for successful candidates who sat for the 2012 promotion exams held on the 17th and 19th of April respectively.

The luminary wishes all that took part in the exercise, success.

REPLY BRIEF

This is great!!! Thank God for a good initiative. It is well
Oluwaseun Adedeji

WHAT WENT WRONG?

To borrow from the famous poser of the CBN Governor Sanusi Lamido, at the ABU Zaria Convocation lecture of 2010, “The Nigerian Banking Industry: what went wrong and the way forward”, what went wrong in the revocation of the banking license of the two banks? How could a dead bank rise? The answer lies in the fact that though the CBN has the right to give life to a bank and take it away, that power was made subject to judicial review. That innocuous proviso which was inserted in section 49 (1,) which section ironically was to protect the CBN and its officers from adverse claims or liability arising from litigation, ensures that CBN’S action were carried out in good faith. The section empowers the shareholders of the banks to challenge the revocation of the operating licence of their bank with the sole aim of proving that there was bad faith in the revocation of their operating licences. So far two banks are have successfully invoked the section and are now successfully the living dead banks. The first bank got back its operating licence when it successfully canvassed that the CBN prematurely revoked its operating license while the second bank successfully argued that the revocation of its operating licence was done in bad faith. Since the CBN declined to challenge two decisions of the Federal High Court and Court of Appeal respectively or take further action to resolve the anomaly in the banking system, while the shareholders are yet to recapitalize the banks and make them functional, the two banks are still in a state of limbo.

WHERE DO WE GO FROM HERE?

The consequences of the inertia on the part of the Shareholders of the two banks to recapitalize them and put them back on stream, on the one hand and the reluctance of the CBN to take a decisive action to resolve the banks is causing an unwarranted distortion in the banking system. The most unfortunate aspect of this drama is the wanton disregard of the rights of the depositors of the two banks who have been deprived of their deposits for ten years and six years respectively. Revocation of the operating licence of a bank is like the lawful termination of a human life for the greater good. When a person is executed in the exercise of a lawful duty, the courts do not order his resurrection. While it may be possible to reanimate a human tissue or to keep a person whose life force is spent on a life support machine, it is impossible to imbue it with what it needs to function as a person. Some families realise the fact that there is a season for everything, a time to be born and a time to die. Such families when told authoritatively that their loved ones were brain dead, assist in the transition of their loved ones to another life to make way for the living to move on with their lives. Some families however, out of fear or selfishness refuse to let go until the inevitable happened. Well since a bank is not a living tissue, it is incumbent upon the CBN to guard against the painful occurrence of restoration of banking license. While it may be a victory for the law and the shareholders are basking in the euphoria of their success, the celebration appears to be grotesque in view of the injustice of the whole piece. The main persons affected by the drama, the hapless depositors whom the law is designed to protect, are suffering the negative effects of the death and resurrection of the two banks. The CBN in the interest of justice has to champion the reform of the current law which allows for the distortion in the system. The law must be amended to ensure the dead remain dead. The right of the shareholders to challenge the revocation of the operating licence of their bank is guaranteed and must remain, however, the courts should not encourage a distortion in the system by creating zombie banks, rather it should punish the CBN with punitive damages which should compensate the shareholders while allowing the depositors and creditors receive their dues as determined by law. Public interest, which is the interest of the depositors who are the mainstay of the bank, should override the narrow interest of the shareholders which is purely profit.