



# The Legal Luminary

In- house E-Newsletter of the Legal Department

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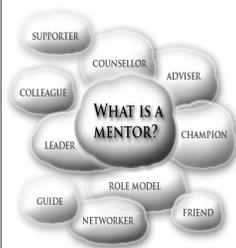
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### NEWS

**Habemus Papem.** A new Pope, Francis the 1st has been elected to lead the Catholic Faithfuls worldwide.

At least 60 people were killed when a suicide bomber drove into a bus park in Sabon Gari Kano State on the 18th of March.

Renown Nigerian Author Chinua Achebe died on the 21st of March after a brief illness. He will be mostly remembered for his ground breaking novel "Things Fall Apart"

Leader of MEND Henry Okah, Tuesday bagged a 24-year jail term for his complicity in the October 1 twin car bombings that disrupted the celebration of Nigeria's 50th independence anniversary in 2010.

### From the Editor!

Welcome to another interesting edition of "The Legal Luminary". As always this edition promises to be a good read. In this issue of Legal Luminary we will be looking at a very topical issue "Legal Implications of State Pardon Under Nigerian Law".

The first quarter of the year is almost gone and has been a very eventful one. As we prepare for the next quarter we wish everyone a very Happy Easter.

**Q.** What are the differences between Insured Institutions and Special Insured Institutions under the Nigerian Deposit Insurance Scheme?

**A.** Insured Institutions are Deposit Money Banks (DMBs). The Special Insured Institutions consist of Micro Finance Banks (MFBS) and Primary Mortgage Banks (PMBs). Some of the differences are:

- For Insured Institutions NDIC guarantees payment of deposits up to N500,000 while for Special Insured Institutions the maximum guaranteed sum is N200,000
- Special Insured Institutions like MFBS are designed to cater for the small unsophisticated customer and render financial assistance to them while DMBs cater to a variety of customers on a large basis. PMBs majorly

The Capital base requirements differ. For Insured Institutions there are three categories ;Regional, National and International (Insured Institutions) the capital base for each one is N10b, N25b and N50b respectively. For Special Insured Institutions there are also three categories For Micro-Finance Bank capital base is N20million for Unit MFBS, N100m for State MFBS and N2b for National MFBS. For PMLs its N1b .

The Premium payable by Insured Institutions and Special Institutions to NDIC differs. By virtue of Section 17 of the NDIC Act Insured Institutions are obliged to pay a premium which shall not exceed fifteen-sixteenth of one percent per annum of its total deposit liabilities, while for Special Insured Institutions it should not exceed eight-sixteenth of one percent per annum of its total deposits.

## LEGAL IMPLICATIONS OF STATE PARDON UNDER NIGERIAN LAW

Pardon is an executive action that mitigate or sets aside punishment for a crime. It is an act of grace from Governing power which mitigates the punishment the law demands for the offense and restores the rights and privileges forfeited on account of the offence. **Verneco inc V Fidelity \$ Cas. Co. of New York**, 253 La. 721,219 So. 2d 508, 511. Furthermore, a pardon releases the offender from the entire punishment prescribed for an offense and from disabilities consequent upon conviction; it reinstates his civil liberties. See **State ex rel. Herman V Powell**, 139 Mont 583, 367 P.2d 553, 556. For a pardon to be effective it must be accepted. See **Burdick v U.S.** 79, 35 S.Ct. 267, 268,59 L.Ed. 476.

Pardon applies to the individual, and releases him from the punishment fixed by law for his specific offense. See **Knote V U.S.** 149, 153, 24 L.Ed. 442, 443. See **Burdick v U.S (Supra)** Under Nigerian Law, pardon had been provided for in the Constitution of the Federal Republic of Nigeria 1999(as amended), which is cited the "prerogative of mercy". Section 175 of the constitution states thus:

- (1) The President may -
- (a) grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;
  - (b) grant to any person a respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
  - (c) substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or
  - (d) remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the State on account of such an offence.
- (2) The powers of the President under subsection (1) of this section shall be exercised by him after consultation with the Council of State.
- (3) The President, acting in accordance with the advice of the Council of State, may exercise his powers under subsection (1) of this section in relation to persons concerned with offences against the army, naval or air-force law or convicted or sentenced by a court-martial.

From the foregoing, it is crystal clear that the power to pardon any criminal suspect or convict who has committed a federal offence is vested in the President. A careful perusal of Section 3 of the Constitution indicates that the President in consultation with council of state shall exercise this power to grant pardon; once the President consults, he activates the power which he can exercise straight ahead. The Constitution does not provide for the President to state reason(s) for the pardon to be granted and to whom, in other words, no reason what so ever need be given by the President in exercising this prerogative of mercy which can be exercised in any circumstance provided he or she is a convicted felon.

The effect of State pardon was thus stated by the Court of Appeal in **Falae v. Obasanjo** (No. 2) (1999) 4 NWLR (PT 599) 476 at 495 where it held that:

*"Under the Nigerian Law a 'pardon' and 'full pardon' have no distinction. A pardon is an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and the privileges forfeited on account of the offence. See Verneco Inc. v. Fidelity & Cas C. of New York 253 LA 721, 219 SO 2D 508, 511. The effect of a*

*pardon is to make the offender, a new man (novus homo), to acquit him of all corporal penalties and forfeitures annexed to the offence pardoned."*

### SOCIAL DIARY

Easter and Good Friday are widely regarded as the most important Christian religious holiday. Good Friday marks the death of Jesus Christ it is the fundamental part of Christianity along with the resurrection of Jesus Christ marked on Easter Sunday. Happy Easter to all our Christian colleagues as they observe this year's Easter celebrations.

In a bid to enhance the gaining expertise, and skill for career growth of staff of the Corporation, the Human Resources Department of the Corporation has successfully completed sensitization workshop on employee mentoring and counselling. Kudos to the HRD for such a worthy initiative

### REPLY BRIEF

The article on Guarantee's, Bonds and Indemnities was very informative and educative., especially as it relates to my job schedule. We encourage more articles that will enhance our job Performance.

Sam G. Waklek

The Corporation's involvement in issues of State Pardon was in respect of the conviction of Moses Odaro by the failed Banks Tribunal for Banking Malpractices. Moses Odaro was convicted for fraud committed while he was the MD of Great Merchant Bank. Following his conviction, the property he surrendered in mitigation of his crime was forfeited in accordance with the provisions of the Failed banks (Recovery of Debts) and Financial Malpractices in Banks Act, 1994. However he was granted pardon by President Obasanjo. The effect of the pardon was that his previously forfeited assets were released to him.

Thus the implication of receiving a State Pardon is to make the offender a new man (novus homo), it acquits him of all corporal penalties and status connected to the offence pardoned.

Some Examples of Pardons Granted by Nigerian Presidents in recent times include;

- State Pardon granted by President Goodluck Jonathan to the Former Governor of Bayelsa State Diepriye Alamaseigha and others in March 2013
- State Pardon granted by President Obasanjo to former Speaker of the House of Representatives, Alhaji Salisu Buhari and others
- State pardon and immediate release from prison granted by Gen. Abdusalami Abubakar to Gen. Obasanjo the "Coup Plot" set which included Major Akinloye Akinyemi, O. Oloruntoba, R.S.B. Bello-Fadile, R.N. Emokpae, Mrs Chris Anyanwu and others.
- State Pardon granted by President Shehu Shagari to Gen. Yakubu Gowon and Col. Odumegwu Ojukwu.