



# The Legal Luminary

In- house E-Newsletter of the Legal Department

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### Editorial Board

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### Inside this issue:

From the Editor:  
Chioma N. Momah

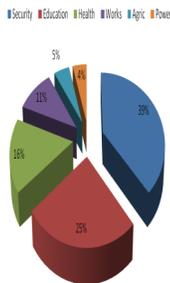
Q & A:  
Talatu Akhidime

Social Diary:  
Talatu Akhidime

Feature Article:  
B.A Taribo

### Current Affairs

Sectoral Allocation for 2013 Budget (%)



### NEWS

The Ministry of Foreign Affairs has said that a total of N13.395bn has been approved for the settlement of debts incurred by the nation's foreign missions

The President, Chartered Institute of Taxation of Nigeria, Mr. John Jegede, has prescribed life imprisonment as punishment for tax evasion and corruption.

Suicide bombers on the 25th of November attacked the St. Andrews Military Protestant Church, Jaji, Killing 15.

The Corporation organised a 3 day workshop in Dutse, Jigawa from the 14th November 2012 for Financial Correspondents (FICAN).

On the 20th of November 3897 Lawyers were called to the Nigerian Bar in Abuja.

### From the Editor!

Welcome to another edition of the in-house Newsletter "the Legal Luminary".

Its amazing that we are already at the eve of the year and already counting down to Christmas.

This year saw a lot of changes and new innovations in the Corporations such as the Biometrics System clocking in system which has been a success.

In this edition our Editor-in-Chief B. A. Taribo has written on the Bridge Bank Process. This will clarify a lot of question our readers may have as to how the Bridge Process works.

Please send in any questions or comments

### Q. What is claim settlement?

A. Claim settlement is the process of verifying, processing and paying deposit claim filed by proven depositors, creditors and shareholders of failed financial institutions. Claim settlement usually comes into play when the failure resolution option of deposit pay-out is adopted instead of purchase and assumption. In the event of failure of insured financial institution claim settlement is made in the following order :  
DEPOSITORS. The NDIC guarantees payment to depositors of all participating institutions up to a maximum limit in accordance with its statute in the event of failure. The current statutory maximum now stands N 500,000.00 for deposit money bank and N 200,000.00 for

mortgage banks and Microfinance banks The payments of the statutory maximum sums are usually made from the DIF.

SECURED CREDITORS: These are creditors whose loan or credit is backed by collateral of some sort such as a bond or mortgage on a building, e.t.c. A Judgment Creditor although not traditionally a secured creditor can be ranked among this category. These payments are made from the liquidation dividends.

GENERAL and SHAREHOLDERS: This category consists of unsecured creditors and shareholders of the defunct financial institution. These payments are also made from liquidation dividends.

### UNDERSTANDING THE BRIDGE BANK PROCESS

Following the conduct of special examination of the Deposit Money Banks [DMB] in 2009, the Central Bank of Nigeria (CBN) in pursuance of its mandate to promote a safe and sound banking system intervened in 8 banks that were under capitalised and in grave financial condition. The intervention required the affected banks to recapitalize within a stipulated period, change of Board and Management and rendition of financial assistance, and diagnostic study, among others.

The Supervisory Authorities kept a close watch over the progress of the intervened banks and while 5 out of the 8 intervened banks made significant progress in their recapitalization process, it became clear that three of them, namely: Afribank Plc, Spring Bank Plc and Bank PHB Plc, were not likely to recapitalize on or before September 30, 2011.

Consequently, a resolution option suitable for resolving their failing condition other than outright liquidation involving payout, had to be fashioned in view of their combined sizes, in terms of their volume of deposits, number of branches and employees. The Regulatory Authorities, after much deliberation, resolved to adopt the bridge bank mechanism for resolving the failing condition of the affected 3 intervened banks. This had to be carried out immediately to avoid hemorrhage of the banks liquidity, stem further capital erosion and avoid asset stripping, deterioration and dissipation in the affected 3 banks.

The authority for establishing bridge banks in Nigeria is provided in Section 39 (1) of the NDIC Act, 2006 which provides that:

*"The Corporation, in consultation with the Central Bank of Nigeria may organize and incorporate, and the Central Bank of Nigeria shall issue banking licence to one or more banks, to be referred to as bridge banks which shall be insured institutions to assume such deposits and or liabilities, and shall purchase such assets of a failing Insured Institution and perform any other function or business as the Corporation may determine."*

The Nigeria Deposit Insurance Corporation Act 2006 defines a "bridge bank" as a new bank organized by the Corporation in accordance with Section 39 of the Act." Thus being a bank, it must first and foremost be registered and incorporated as a limited liability company under the provisions of the Companies and Allied matters Act 1990 before it could be issued a banking license by the CBN. [ See BOFIA 1991].

From the above, the following factors are evident in respect of a bridge bank:

- It is a bank organized by the Corporation;
- It is incorporated i.e. registered as a corporate body under the Companies and Allied Matters act 1990;
- It must be licensed by the Corporation as a bridge bank
- It is an insured institution; and
- Its main object is to acquire the assets and assume the liabilities of a failing bank [insured institution]

The first task of the Corporation in the formation of the bridge banks was to hold consultation with the Central Bank Nigeria as the apex financial regulator, on adoption of the bridge bank mechanism as a failure resolution option to address the problems of the three intervened banks. The Corporation being mindful of the novelty in the application of the mechanism in the Nigerian banking sector, was very careful to ensure that other relevant stakeholders were sufficiently educated on the process. But this was done discreetly and with utmost confidentiality bearing in mind the sensitive nature of banking business as information leakage could lead to excessive run on the banks and automatically frustrates the efforts to rescue them.

Among the stakeholders consulted were Mr. President, the Hon. Minister of Finance, the Hon Attorney-General of the Federation, SEC, CAC and FIRS. The Board of the Corporation deliberated on the matter and gave its approval for the Corporation to embark on the regulatory intervention of establishment of bridge banks.

As part of the initial process of organizing and incorporating the bridge banks, the following three [3] private limited liability companies were incorporated and registered at CAC under the Companies and Allied Matters Act 1990;

i] Michi Noku Resolution Limited, Shokun Chukin Limited and Klinki Osaka Custodian Limited  
The above names were deliberately chosen to ensure utmost secrecy and confidentiality concerning the intent of the Supervisory Authorities in order to safeguard the assets of the 3 affected failing banks. The share capital of each of the shelf companies was N100, 000.00 made up of 100,000 .00 ordinary shares of N1.00 each to ensure that they do not reveal prematurely, the resolution mechanism being implemented.



### Social Diary

Abdullahi Musa of the Legal Department is set to wed his sweetheart Maryam Yahaya Hamza in a wedding fatiha on Friday the 30<sup>th</sup> November, 2012. Luminary wishes the about-to-wed couple happy married life in advance.

Congratulations to Luminary staff writer Aisha Almakura on the arrival of her bouncing baby boy on the 7<sup>th</sup> November, 2012 .May God bless and keep Ahmed Isa Almakura Jnr.

At the point of converting the companies to bridge banks, the following processes were carried out in compliance with the requirements of law regulating the incorporation and registration of bridge banks. viz;

By special resolutions passed by the companies;

[a] the names of the Companies were changed to Main Street Bank Limited, Keystone Bank Limited and Enterprise Bank Limited to reflect that they were banks in accordance with the provisions of the Companies and Allied Matters Act 1991 [CAMA] and the BOFIA which requires all banking companies to have the name Bank in their names.

[b] the objects clause of the companies as stipulated in their Memorandum of Association was amended to reflect that they were banking companies as required by BOFIA and in compliance with the NDIC Act which stipulates the main objective of bridge banks. The main objects in the amended Memorandum of Association were;

- i] to assume all or part of the deposits and /or liabilities of the intervened banks;
- ii] to purchase such assets of the intervened bank as the Boards of the Companies may determine,
- iii] to provide banking and finance services
- iv] to perform any other functions or business as the Nigeria Deposit Insurance Corporation may determine.

[c] the authorised share capital of each the companies in their Statement of Share Capital were increased from N100,000.00 to N25 billion being the minimum capital required for Deposit Money Banks [DMBs] under the Banks and Other Financial Institutions Act 1991 as amended.

The above special resolutions and amended Memorandum of Association were filed at the Corporate Affairs Commission [CAC] which conducted availability tests for the change of names of the companies. All the above mentioned change of names and other processes were accepted for registration by the CAC which issued new Certificates of Incorporation of the companies bearing their new status as banking companies. Thereafter the CBN issued banking licenses to the companies in their new names and they became operational as the three bridge banks. The above companies, now bridge banks were owned by the Nigeria Deposit Insurance Corporation, through its nominee shareholders.

By virtue of the powers conferred on it pursuant to Sections 38 and 39 of the NDIC Act 2006, the NDIC transferred the assets of the three intervened banks [Afribank Plc, Spring Bank Plc and Bank PHB Plc] to the three Bridge banks owned by the Corporation [Mainstreet Bank Ltd, Enterprise Bank Ltd and Keystone Bank Ltd] in consideration of the assumption of the liabilities of the intervened banks by the bridge banks. The intervened banks had negative net worth as their capital had been eroded. Therefore, the bridge banks after their acquisition of the assets of the intervened banks and assumption of the liabilities of the intervened banks also had negative capital.

It is to be noted that the authorized share capital of N25 billion for each of the 3 bridge banks did not imply injection of N25 billion capital each into the banks by the NDIC as Section 39 [3] of the NDIC Act empowers the Corporation to operate the bridge bank without capital. That Section provides as follows;

*'(3) Notwithstanding the provisions of the Companies and Allied Matters Act, the Central Bank of Nigeria Act, the Banks and Other Financial Institutions Act or any other law, the bridge bank shall not be subject to any requirement relating to issued or paid up capital, and the Corporation may make available to the bridge bank, upon such terms and condition, and in such form and amounts, as the Corporation may determine, funds for the operation of the bridge bank.*

Section 39 [4] of the NDIC Act 2006 also empowers the following Regulatory Authorities: CBN, CAC, SEC, NSE and any other Regulatory Authority not specifically mentioned to grant waivers, forbearances and exemptions to the bridge bank.

Contrary to the mistaken impression conveyed on the Report of the House of Representatives Ad-Hoc Committee on the Capital Market, the subscribers to, and Directors of, the bridge banks organized by the Corporation were not fictitious persons but nominees/appointees of the Corporation pursuant to Section 39 [2] of the NDIC Act which provides that:

*"The Corporation shall appoint, remove and fix the remuneration of the Board of Directors and Management of the bridge bank."*

The Corporation instructed its Legal Advisors to incorporate the shelf companies in the course of establishing the bridge banks and further instructed that the directors/shareholders of the companies be appointed from officers in the employment of their firms. The use of nominees as shareholders was to ensure discretion and avoid leakages which would further exacerbate the precarious financial condition of the intervened banks, lead to loss of confidence in the banking sector and result in the use of tax payers funds for the resolution of their failure.

It is important to note that the above bridge banks did not acquire the failing banks as going concerns, but merely acquired the assets and assumed most of the liabilities of the 3 failing banks. Following this, the operating licences of the failing banks were revoked by the Governor of the Central Bank of Nigeria and the Corporation which became their provisional Liquidator pursuant to the NDIC Act 2006 filed winding up petition to wind up the affairs of the banks.

The Corporation resolved to dispose of the three bridge banks through the sale of majority of their equity to any person other than the Corporation and another bridge bank, in compliance with Section 39 [6] [b] of the NDIC Act 2006. Section 39 [6] of the NDIC Act 2006 provides that;

*6) The status of a bridge bank shall terminate upon the earliest of:*

- (a) the merger or consolidation of the bridge bank with an insured institution that is not a bridge bank; or*
- (b) the sale of a majority of the equity of the bridge bank to any persons, other than the Corporation and another bridge bank; or*
- (c) the assumption of all or substantially all deposits and other liabilities or the acquisition of all or substantially all of the assets of the bridge bank by an insured institution that is not a bridge bank, or*
- (d) the expiration of the period provided in subsection [5] of this Section or the earlier dissolution of the bridge bank by the Corporation at any time.*

Accordingly, the Corporation took advantage of the establishment of AMCON as a vehicle for bank failure resolution and negotiated the purchase of majority of the equity of the bridge banks with it. The mechanism for purchase of majority equity of the bridge banks was through capital injection by AMCON into the bridge banks in view of their negative net worth.

AMCON agreed to inject capital to the tune of N670 billion into the three bridge banks as follows: Main Street Bank Limited, N285 billion; Enterprise Bank Limited, N110 billion; and Keystone Bank Limited, N283 billion, respectively.

The above capital injection was consummated through the issue and allotment by the bridge banks to AMCON out of their un-issued share capital [24.9 billion ordinary shares]. It would be recalled that the bridge banks had been registered with authorized share capital of N25 billion made up of 25 billion ordinary shares of N1.00 each at par value.

It was thus agreed that AMCON would acquire and each of the bridge banks would allot to AMCON 6,250,000,000 subscription shares. It was further agreed that out of the 100,000 share capital that had been issued to the 2 shareholders serving as nominees of the NDIC in each bridge bank [50,000.00 ordinary shares per subscriber] a total of 99,999 of those shares would be surrendered to form part of the 6,250,000,000 subscription shares that were issued to AMCON. Therefore, only 1 share was left with one shareholder in each bridge bank serving as the NDIC nominee.

The prices which AMCON paid for each of the 6,250,000,000 subscription shares in respect of each bridge bank as stated in the Share Subscription Agreements were as follows; Main Street Bank Limited, N45.66; Enterprise Bank Limited, N17.68; and Keystone Bank Limited, N45.29, respectively. Thus, the Aggregate Subscription Amounts which is a reflection of the capital injected by AMCON into the bridge banks was the total consideration which AMCON paid for the majority equity which it acquired in each of the Bridge banks.

AMCON effected payment for the Subscription Shares with Subscription Consideration Bonds and the balance of about 18 billion shares out of the 25 billion share capital remains un-issued. Accordingly there are no beneficiaries to those shares as the shares have not been issued. The Share Subscription Agreements executed between AMCON and the bridge banks embody the above terms.

The 6,250,000,000 subscription shares allotted to AMCON representing 99.9% of the issued share capital in each of the erstwhile bridge banks were subsequently transferred to **Eligible Securities Limited**, a subsidiary of AMCON. The 1 share that was left with one shareholder serving as the NDIC nominee was transferred to NDIC which in turn transferred it to **Resolution Trust Company Limited**, another subsidiary of AMCON. Thus, AMCON acquired 100% of the issued share capital in each the bridge banks. The above transfers have all been registered at the Corporate Affairs Commission in compliance with the Companies and Allied Matters Act 1990.

The Corporation notified the Nigeria Stock Exchange that the assets and liabilities of the 3 intervened/closed banks had been transferred to the 3 bridge banks pursuant to the NDIC Act 2006 while the Governor of the Central Bank of Nigeria had revoked the operating licences of the 3 intervened/closed banks. Accordingly, the NSE was requested to delist their shares from the Exchange.

Expectedly, there have been challenges to the actions of the Regulatory Authorities in the establishment of the 3 bridge banks. Such challenges have come in the form of institution of action in court to reverse the actions of the Regulatory Authorities or petitions to the National Assembly.