

**REPORT ON THE SHOWCASE SESSION OF THE 5<sup>TH</sup> ANNUAL BUSINESS LAW  
CONFERENCE OF THE NIGERIAN BAR ASSOCIATION SECTION ON BUSINESS LAW**

- THEME:** REGULATING THE BUSINESS ENVIRONMENT: TOO LITTLE OR TOO MUCH?
- CHAIR:** Mr. Atedo Peterside, OON  
Chairman, Stanbic/IBTC Bank PLC
- FACILITATOR:** Mfon Ekong Usoro  
Managing Partner, Paul Usoro & Co
- PANELISTS:** Fidelis Oditah, QC, SAN
- Profesor Bart Nnaji  
Chaurman/CEO Geometric Power Limited
- Mr. Jide Mike  
Director General, Manufacturers Association of Nigeria
- Mr. Chris Chukwu  
Head, Financial Policy & Regulation (“**FDR**”) Department  
Central Bank of Nigeria
- DATE:** 08 April 2010
- START TIME:** 10.33am

The Session commenced with Mrs. Mfon Ekong Usoro welcoming the Chair, Panelists and Delegates to the Session. She stated that the Showcase Session was different from the other Sessions as there would be no formal presentations. She invited delegates to ask questions during the discussion of the Session’s theme. The Session Chair, Mr. Atedo Peterside re-iterated this position and informed delegates that the Panelists would each make opening remarks after which the interactive session will begin.

**Fidelis Oditah SAN, QC**

Mr. Oditah began speaking at 10.45am and commenced his opening remarks by defining regulations as “rules governing a particular process”. He stated that almost every aspect of business is somewhat governed by regulations. He further stated that the regulatory attitude of the regulator is not encouraging as the regulator assumes it

knows everything. Mr. Oditah termed this the “know it all Syndrome”. This syndrome stifles innovation and impedes progress.

### **Mr. Chris Chukwu**

Mr Chris Chukwu began speaking at 10.52 am. He defined regulations as rules given by the regulator and traced the history of various regulations in the Banking Sector, for example, the Central Bank of Nigeria Act, the Banks and other Financial Institutions Act (“**BOFIA**”). He pointed out that some individuals are of the opinion that the regulatory power of the Central Bank of Nigeria (“**CBN**”) is inadequate while others say the CBN’s regulatory power is excessive. He invited delegates to comment on this statement.

### **Mr. Jide Mike**

Mr. Jide Mike began speaking at 11am and highlighted the importance of the manufacturing sector (“**the Sector**”) to the Nigerian economy. He pointed out that regulations have a major role to play in the economy of a nation but over-regulation could be counter-productive. He insisted that the sector is plagued with over-regulation as there are too many regulatory agencies whose functions overlap. This inevitably leads to multiple taxation and discourages foreign investors. He concluded by stating that there are no arbiters between the overlapping agencies and called for the regulation of the regulators.

### **Prof. Bart Nnaji**

Prof. Nnaji began speaking at 11.15am. He stated that the Nigerian Electricity Regulatory Commission (“**NERC**”), which regulates the power sector, is a new regulator which has a lot to learn. He pointed out that until 2005, Nigeria had a monopoly of the power sector but with the enactment of the Electric Power Sector Reform Act (“**EPSRA**”), the sector was unbundled and new entrants were allowed. According to Prof. Nnaji, who considered regulation as a balancing act which protects the consumer and also ensures that the market is sensitive to attract investors. Regulators have a tremendous role to play. They are to be transparent and independent, provide predictable and consistent policies and ensure that tariffs are

market sensitive. He pointed out that the independence of regulators in Nigeria is not guaranteed. For example, the NERC had its board ousted and a sole administrator appointed. This destroyed the market confidence of investors in the power sector as the legitimacy or otherwise of the NERC was an issue. Prof. Nnaji posited that the EPSRA be reformed in the following areas:

- a. License is valid for ten (10) years. It should be valid for 20-25 years or more;
- b. The amount of power for which you can build a plant to generate is too small and should be increased;
- c. The law should make it possible for private power stations to provide power to States.

After Prof. Nnaji's remarks, Mr. Peterside threw the floor open for the interactive part of the Session.

## **QUESTION 1**

### **WHAT RISKS ARE OPERATORS EXPOSED TO WHEN THE REGULATORS ARE OPERATING OUTSIDE THE LAW?**

In answering the above question, Prof. Nnaji stated that international investors become wary when the regulatory environment is unstable. Fidelis Oditah SAN was of a similar opinion. To him, the regulatory framework should be for an independent regulator not a sole administrator who can be manipulated. Such a sole administrator put in without the proper procedure is illegal and this makes investors jittery.

## **QUESTION 2**

### **ARE THE EXISTING BANKING REFORMS ADEQUATE?**

The above question was directed to Mr. Chris Chukwu and he replied by saying that any operator in a society should have some legitimate control. To him, the CBN had to make the decisions it did. If the CBN had not carried out its reforms, the financial sector in Nigeria would have become non-existent by now. The adequacy or otherwise of the banking reforms depends on personal opinions, as some people are happy with the CBN's decisions while others are not. Mr. Chukwu further stated that the

authority of the regulator should be balanced with the feelings of the tax payers. He believes the CBN has used the authority given to it diligently to protect the public and was justified in making the banking reforms.

### **QUESTION 3**

#### **WHO IS REGULATING THE REGULATORS?**

Mr. Chris Chukwu answered the above stated question by pointing out that CBN and Nigeria Deposit Insurance Corporation (“**NDIC**”) are regulated by the National Assembly. Presentations are done to the National Assembly at least once a year.

### **QUESTION 4**

#### **HOW CAN THE REGULATORS BE PREVENTED FROM ABUSING THEIR POWERS IN THE MANUFACTURING SECTOR?**

The above question was directed to Mr. Jide Mike who replied by pointing out the Manufacturing sector does not have a single regulator, rather there are so many, in fact too many, Agencies regulating the manufacturing sector. He cited some examples of the Agencies - The Nigeria Customs Service, the National Agency for Food and Drug Administration and Control (“**NAFDAC**”) and the Standard Organization of Nigeria (“**SON**”). This over-regulation inevitably translates to high cost of production.

### **QUESTION 5**

#### **WHAT ARE YOU DOING TO IMPROVE THE POWER SITUATION IN NIGERIA?**

In answering the above question, Prof. Nnaji started by stressing the point that the Presidential Advisory Council (“**PAC**”), of which he is a member, is just an advisory body. According to him, the stalled EPSRA should be recognized and implemented. This would improve the electricity generation and distribution in Nigeria. Pointing out that the power sector is a very expensive sector to run and the government cannot afford to effectively operate it seeing that it lacks the requisite funds, Prof. Nnaji proposed that the private sector should be invited to participate in the various phases of the power sector from electricity generation to distribution. Privatization will lead to

the interplay of market forces and efficiency. It is Prof. Nnaji's belief that the power sector in Nigeria will be greatly improved if fully privatized.

#### **QUESTION 6**

##### **IS THERE A LAW PROHIBITING PRIVATE GENERATION OF POWER BY CITIZENS?**

According to Fidelis Oditah SAN QC, there is no law preventing citizens from harnessing solar energy for their private use. He highlighted the fact that no one has been prosecuted for doing that so far.

#### **QUESTION 7**

##### **COULD THE RECENT CRISIS IN THE BANKING SECTOR HAVE BEEN PREVENTED?**

Mr. Chris Chukwu answered the above query in the affirmative. He admitted that there were mistakes that should not have been made and took responsibility, on behalf of CBN, for the mistakes.

#### **QUESTION 8**

##### **WHAT IS THE ADEQUACY OF THE REGULATIONS IN THE NIGERIAN FINANCIAL SECTOR AS COMPARED WITH THE FINANCIAL SECTOR IN THE UNITED KINGDOM ("UK") AND WHAT REFORMS WOULD YOU SUGGEST?**

The above question was thrown to Fidelis Oditah SAN, QC. He highlighted the following:

- Both the Nigerian and the UK financial sectors are statute based.
- In UK, there is only one apex regulator – the Financial Services Authority ("**FSA**") while in Nigeria, the regulatory agencies are fragmented – CBN, NDIC, Securities and Exchange Commission ("**SEC**").
- In UK, there is a lot of consultation between the regulators and the regulated. In Nigeria, most of the regulators do not have such consultation forums.
- In UK, there are guidelines within which the regulators should act. This does not apply in Nigeria. Even where they have guidelines, the guidelines are for

“their eyes only”. He enjoined the regulators to change their attitude and be more balanced in their approach.

Fidelis Oditah SAN, QC recommended that information concerning properties should be made available online.

#### **QUESTION 9**

##### **WHAT WOULD HAPPEN TO THE BANK EXECUTIVES/DIRECTORS AFFECTED WHEN THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (“EFCC”) CLEARS THEM?**

Fidelis Oditah SAN, QC replied to the above question by stating that regulators ignore the procedural rights of an individual being investigated. He pointed out that procedural rights are as important as substantive rights. According to the learned silk, none of the provisions for the removal of directors provided for under the Companies and Allied Matters Act, 2004 (“**CAMA**”) was complied with. Furthermore, some of the directors have employment contracts which should govern their removal process which were also not complied. He therefore foresaw a huge amount of unfair removal Suits in the nearest future.

#### **QUESTION 10**

##### **WHAT IS MANUFACTURERS ASSOCIATION OF NIGERIA (“MAN”) DOING TO REVERSE THE UGLY SITUATION OF THE OVER-REGULATED SECTOR?**

Mr. Jide Mike replied to the above question by stating that MAN has written to the Federal Government to complain on this issue and MAN is currently lobbying members of the National Assembly to amend some of the laws affecting the manufacturing sector.

#### **QUESTION 11**

##### **IS IT LEGAL FOR THE PRESIDENT TO OVERSEE A MINISTRY?**

In response to the above query, Mr. Fidelis Oditah SAN, QC declined to give his opinion as the point raised by the question is an issue in an ongoing litigation. He

however pointed out that the law states that the President can appoint ministers to assist the running of government's affairs. The learned silk believes the President doesn't have to surrender all his powers in respect of running the affairs of the nation.

## **QUESTION 12**

### **WHAT REGULATIONS WILL PROMOTE TRANSPARENCY AND ACCOUNTABILITY IN THE POWER SECTOR?**

This question was thrown to Prof. Nnaji who responded that the executive should allow for the independence of the regulator. This would greatly aid transparency in the sector and reduce the current problems facing the sector.

The Chairman thanked the Panelists and the delegates for an enlightening and satisfying Session. Mr. George Etomi handed out gifts to the Panelists. While Mrs Usoro, after thanking everyone present for attending the Session, closed the Session at 12.34pm.