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17TH NATIONAL SEMINAR ON BANKING AND ALLIED MATTERS FOR JUDGES

“Emergence of New Frontiers in Banking and its Legal Implications”



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Venue: Studies Seminar Hall, National Judicial Institute, Mohammed Bello Centre, Airport Road, Abuja

1.0 Introduction

The 17th National Seminar on Banking and Allied Matters for Judges which held from October 17 – 18, 2017 was declared open by the Honorable, The Chief Justice of Nigeria, Hon. Justice Walter S. N. Onnoghen, **GCON, FNJI** after he presented the Keynote Address on the theme of the Seminar – **Emergence of New Frontiers in Banking and its Legal Implications**. The Hon. Chief Justice of Nigeria was represented by Hon. Justice Musa Dattijo Muhammad, Justice of the Supreme Court of Nigeria. The Welcome Address was delivered by Hon. Justice R. P. I. Bozimo, **OFR**, Administrator, National Judicial Institute (NJI) while the Opening Remarks were delivered by Professor Segun Ajibola, Ph.D., FCIB, President/Chairman of Council, The Chartered Institute of Bankers of Nigeria (CIBN).

In his Keynote Address, Hon. Justice Onnoghen, **GCON, FNJI** noted that it was a known fact that the banking sector all over the world has been regulated by a set of laws, rules and regulations that are peculiar to each jurisdiction. As with most laws underpinning the sector, these laws seek to provide the assurances that depositors, as with other investors, have adequate protection for their assets and investments in the event of any dispute. Hence, as the arbiter of all disputes and dispenser of Justice, the Nigerian Judiciary has an empirical role to play in the expeditious and unprejudiced dispensation of cases to protect depositors' funds and shore up public confidence.

The Seminar had five Business Sessions with the following Sub-themes:

Session 1: Cryptocurrency and Block chain Technology: Legal Issues Arising

Session 2: The Legal Perspective of Electronic Credit Schemes: Challenges and Solution Options

Session 3: The Role of the Judiciary in the War against Cybercrimes

Session 4: Agricultural Financing in Nigeria: Legal and Regulatory Challenges

Session 5: Unbundling the Criminal Justice Process in a Digital Economy

The Business Session had pool of faculty from the relevant sectors of the economy such as regulatory institutions, legal profession, banking industry and law enforcement agencies. The faculty displayed an excellent dexterity of the exposition and provided pragmatic insights for the different stakeholders.

2. 0 Highlights and Recommendations

A. Highlights

- Banking has been transformed significantly by technology from the days of back office automation to online and integrated operations.
- The banking sector remains a consistent and an enduring necessity to all Nigerians. Hence, the need for legal and policy reforms in the banking sector should continue to be of utmost priority for bank professionals, legal luminaries and other key players in the banking and finance space.
- Both the banking and finance sector and the entire economy stand to benefit from the quick dispensation of justice arising from the implementation of the initiative on special court to administer corrupt and other allied cases.
- The Judiciary needs to help the industry combat the rising cases of cybercrime in Nigeria. One of the side effects of disruptive technology, artificial intelligence and other new tools is the use of the same technology to undermine the control systems in banks and other financial institutions. Unfortunately, fraudsters are usually a step ahead of operators while operators are usually a step ahead of regulators.
- Cryptocurrency is a digital medium of exchange that uses encryption to secure the processes involved in generating units and conducting transaction.
- Cryptocurrency does not depend on any third party, central authority, gold standard or the trust or faith of any government. The currency has its origin in the need to veer away from reliance on any government policy or regulation.
- Bitcoin is the first and most widely traded type of cryptocurrency. Other types of cryptocurrency include Litecoin, Darkcoin, Ripple, Moreno, Z-cash, and Ethereum, etc.
- Cryptocurrency is a peer to peer digital system of payment with addresses that are stored online in wallets that function like bank accounts.
- Blockchain is a publicly shared ledger where all confirmed cryptocurrency transactions are recorded and secured.
- Blockchain technology is adaptable for uses other than cryptocurrency especially to secure document sharing for possible use in the future and for case management in courts.

- Cryptocurrency has invited mixed reactions globally ranging from permission, prohibition, and restriction or cautionary. For example, China, Brazil and India have cautioned people of the associated risks while Canada, Norway and Singapore have classified it as “assets”.
- The Central Bank of Nigeria (CBN) has autonomous power to prescribe the circumstances and conditions under which other currencies may be used as a medium of exchange in Nigeria. “Other currencies” is not restricted to bank notes or coins and in the absence of an express definition, cryptocurrency may come under the purview of the CBN Act.
- The CBN has not exercised this power and as such cryptocurrency is not a valid currency within the Nigerian context.
- Whilst awaiting the Nigerian legislative and regulatory authorities’ declaration on the status of Cryptocurrency, the CBN has given a cautionary note in its Circular to Banks and Other Financial Institutions on Virtual Currency Operations.
- Prior to the introduction of the CBN’s cash-less policy and its underlying benefits, the Nigerian banking sector was riddled with a significant number of challenges which had direct impact on the quality of banking services rendered as well as the general growth of the economy.
- Globally, there is no definitive legislation on electronic payment systems. The law is determined from a mix of laws relating to contract, agency, tort, restitution and ad hoc rules and guidelines issued by Central Banks of different countries or other banking regulatory authorities. In a similar vein, the CBN has issued a number of guidelines and regulations on or touching upon e-payment.
- With the emergence of electronic payment systems in Nigeria and the recent restrictions or non-availability of foreign currency in Nigeria, the use of cryptocurrencies as a means of executing transactions (especially cross-border), and repatriating foreign investments from Nigeria and as an investment asset has been on the increase over the last couple of years.
- According to the CBN, Nigerian Deposit Money Banks lost ₦2.19 billion to online fraudsters through electronic channels in the 2016 fiscal period. The CBN further stated that 19,531 fraud cases were reported by banks in 2016 as against the 10,743 recorded in 2015.

- Till date, there is no definitive legal framework in Nigeria that clearly articulates the rights, obligations and penalties for infractions attendant with the use of the internet for commerce or any other purpose.
- Currently, the National Assembly is considering two proposed legislations to govern the sector namely: National Payments System Bill 2017 (“NPSB”) and Payment System Management Bill 2017 (“PSMB”)
- The cybercrime law is a new aspect of criminal law aimed at preventing the activities of the emerging form of criminals operating online. Cybercrime has become the most prevalent type of criminal activity due to the lack of adequate cyber space laws to check the activities of cybercriminals.
- Digital evidence is volatile, easily changed and easily tampered with. Hence, the requirement for validation has become more difficult.
- The role of the judiciary in fighting cybercrime is similar to their role in maintaining law and order in the physical environment. **(technically, the role of the judiciary is to adjudicate and interpret Laws)**
- Wrong policies are the major hindrance to the growth of the agricultural sector in the country. Hence, in drafting agricultural policies and laws, key stakeholders and agricultural practitioners should be deeply involved from the conception stage to implementation.

B. Recommendations

At the end of the Sessions, the participants broke into syndicates on each of the five Sessions and recommended the following for various stakeholders:

- The ardent use of Alternative Dispute Resolution (ADR) mechanisms such as Arbitration, Mediation and Conciliation would help ensure more expeditious resolution of financial disputes.

- Alternative Dispute Resolution (ADR) should be promoted in the country as it is more desirable given its potentials to be a catalyst of economic growth which in turn aids economic development, also, investors and financial institutions can be confident that their investments are secure.
- Stakeholders in the banking and financial sectors should ensure that records of financial transactions are not distorted, as it would aid in the speedy and effective adjudication of financial and commercial cases.
- Judges must be proactive by not allowing technicalities to stand in the way of substantial justice.
- The Judiciary should continue to abide by its constitutional mandate in their bid to ensure stability in the banking and financial sector in line with the Rule of Law.
- Sequel to the recent directive by The Hon.Chief Justice of Nigeria, there is the need for a deliberate policy to ensure that courts are designated to facilitate effective and speedy adjudication of commercial, banking and finance-related cases.
- The banking industry should ensure that proper enforcement of the Code of Corporate Governance in the industry is implemented as it is vital for improvement of company performance, attraction of investors and other numerous benefits.
- The banking sector should imbibe professional ethics as it revolves around a set body of values, reformative guidelines and principles that enhances the individual's sense of judgment in differentiation of right from wrong.
- The practice of joining all the banks in Garnishee Order Proceedings without proper investigation should be discouraged.
- There is need for continuous training of judges and relevant law enforcement agencies on Information Communication Technology (ICT) to update them on current technological developments.
- The need for relevant law enforcement agencies to ensure proper investigation and prosecution of cybercrime cases was emphasized.
- In addition to the provision of seed money, there is also the need for certain percentage of intervention funds to be deployed in providing the necessary infrastructure for agricultural development.
- The private sector should take the lead in financing agricultural projects.
- Security Plan/Insurance for protection of farmers from adverse condition, herdsmen attack etc should be put in place.
- Agriculture, being on the concurrent legislative list, requires input of the States and should not be left to the Federal Government alone.

- Commercial Agricultural Loan should be easily accessible, non-partisan and available to actual farmers.
- Government can minimize risk by prosecuting persons who access Agricultural loans fraudulently.
- There is a need for the sensitization of farmers on available loans and the applicable terms and conditions.
- Stakeholders should recapitalize and restructure Bank of Agriculture and relevant financial institutions to adequately finance agriculture.
- E-payment requires exhaustive legislation to regulate, supervise and protect stakeholders.
- There is the need for collaborative efforts across borders in fighting cybercrime as it is a global challenge.

3.0 Conclusion

The Seminar was adjudged insightful by participants and the resource persons displayed full grasp and knowledge of the subject matter.

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