



Jackson, Etti & Edu

2018: DEFINING LEGAL MOMENTS

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As a precursor to the beginning of an election cycle, there was pressure on the part of the Nigerian Government to ensure that the macroeconomic fundamentals in 2018 would be better than 2017 given that the election would be a direct referendum on its performance. Expectedly, as is typical of any pre-election year, market outlook usually extends beyond the calendar year into elections season proper and is characterised by a bearish investor perception with market activities slowing down from the 2nd half of the preceding year. Nonetheless, the economy did show signs of sluggish recovery on the back of stable oil prices which trended above \$50 for the most of 2018 and well into 2019 hence provided the much-needed ammunition to maintain currency stability and aggressively obtain debt leverage.

2018 was not without its undulating milestone moments and we, at Jackson, Etti & Edu, have taken the time out to curate some key milestones that shaped the legal scene and which we expect will also have long lasting impact in the commercial environment.

1. Access Bank Merger with Diamond Bank – strategic alliance or marriage of convenience?

Arguably the merger of the decade in the banking sector but more importantly this merger cemented the mercurial rise of Access Bank and solidified both its reputation and position as a tier 1 banking institution. Upon consummation of the business combination, Access will most likely emerge with the largest bank in terms of assets and retail footprint. Undoubtedly, a win-win for both banks not only in terms of the inherent value proposition driving the business combination but also as regards the enhancement of their brands as the market reacted positively to the news particularly given the precarious situation of Diamond Bank at the time.



We expect that post-merger integration of both institutions would be significantly expedited given the enormous experience of Access Bank in acquisitions of this nature. Additionally, we see greater competition on the retail segment of

the banking industry with potentially Access Bank leading the pack by leveraging on Diamond's existing technological platform in that segment. Finally, the chasm between the tier 1 and tier 2 banks will continue to widen and we expect a situation whereby in the next 10 -15 years the number of banks will drastically reduce. Early days, but with the increased competition, the customers are bound to be the ultimate beneficiaries.

2. MTN's CBN Certificate of Capital Importation (CCI) SAGA – Regulatory Overkill or Regulatory Activism?

Sometimes in the 3rd quarter of the year, the Central Bank of Nigeria (CBN) ordered MTN and four banks to return \$8.134billion repatriated illegally, according to CBN, over a ten-year period in direct breach of forex regulations as MTN had allegedly used irregular Certificate of Capital Importation (CCIs) to remit dividends on behalf of MTN Nigeria's offshore investors. Also, a fine of ₦5.8billion was imposed on the banks for assisting MTN in the "illegal" capital repatriation.

The sanction by CBN generated significant amount of uproar not only in terms of its impact on validity of issued CCIs but more importantly the

integrity of the repatriation process. Also, the suspicion that MTN was being specifically targeted by Nigerian authorities did not help in convincing the investor community that this was just the regulator proactively doing its job. Undoubtedly, the optics were not great for both the country and CBN, particularly given the timing of the sanction which conflicted with the friendly investor destination narrative being marketed by the Government. Predictably, a compromise solution was negotiated and agreed between CBN and MTN but nonetheless it would be naïve to imagine that the net effect on investor confidence in the repatriation process does not remain rattled even if ever so slightly.

In retrospect, there is consensus that the matter could have been better handled by all parties and the engagement process could have been less confrontational.

3. THE AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT – A missed opportunity or dodged bullet?

With globalization currently being assaulted by the rising tide of trade protectionism especially between US and its key trade partners, the case for the development of a continental free trade area is more germane now

than ever before. Considered as history's largest free trade agreement, with a market size in the region of \$3 trillion and with almost 49 out of 55 African countries (including South Africa) signing the AFCFTA treaty and about 6 ratifying it, the AFCFTA has huge potential to recalibrate trade dynamics across Africa and potentially make Africa the largest free trade area in the world.

Industry experts are still gobsmacked that Nigeria, a market leader has refused and neglected to sign this epoch-making agreement.

In our view, the advantages of entering into the deal far outweigh the perceived downsides but nonetheless we do agree that as the largest economy in Africa we should get the best possible deal out of AFCFTA.

4. Initial Public Offering (IPO) by Notore – will fortune favour the bold?

Notore Chemical Industries Plc last August listed N1.61 billion ordinary shares of N0.50 each at N62.50 per share on the Nigerian Stock Exchange (NSE). At its listing price, it amounted to a market capitalisation of N100.75 billion. The listing by way of introduction was significant because of dearth

of entrants into the bourse in the last 3 years.

Generally, we expect the listing will support the NSE's effort to deepen the capital markets, but also it should act as a catalyst for more listing on the bourse which should incentivise SMEs to access liquidity from the market and ensure tradability of their shares, whilst also increasing its visibility and credibility in the Nigerian market and beyond. Presumably, the listing did accelerate the listing of SACHOL in the market even as we expect the Federal Government to float more of its shares in already privatized ventures.

We expect that with the additional liquidity generated, Notore will be able to achieve its short to medium term goals and grow the industrialized fertilizer segment.

5. Revamping the Nigerian Tax Landscape through Robust Tax Policies



The Federal Executive Council (FEC) in pursuance of the new National Tax Policy approved two Executive Orders and five Amendment Bills to the country's tax policies aimed at reducing tax burden on Nigerians and boosting the ease of doing business. These Executive Orders are: *Value Added Tax Act (Modification) Order and Review of Goods Liable to Excise Duties and Applicable Rate Order*. The five Amendment Bills are the *Companies Income Tax Act (Amendment) Bill*, *Value Added Tax Act (Amendment) Bill*, *Customs, Excise, Tariff ETC (Consolidation) Act (Amendment) Bill*, *Personal Income Tax Act (Amendment) Bill* and *Industrial Development (Income Tax Relief) Act (Amendment) Bill*.

It is our belief that the new tax policies if effectively implemented would remove dated, ambivalent and contradictory provisions in the laws, increase government revenue and simplify the process of paying taxes and doing business.

Overall, we hope that these instruments will lessen tax burden on tax payers while at the same time capture potential tax payers who are outside the tax net.

6. The emergence of Payment Service Banks (PSBs): Deregulation of the Banking Industry

In a move to deepen financial inclusion and provide financial services for the underserved Nigerian populace, the CBN issued the **Draft Guidelines for the Licensing, Regulation and Operation of Payment Service Banks**.

In our view, this has the potential of being the most revolutionary piece of regulation since the review of the universal banking model in 2010 and represents CBN's boldest attempt at replicating the success of Kenya's mobile money ecosystem.

The technological infrastructure, market reach and agility of the telecommunication companies put them at an obvious advantage over other players in terms of exploiting the potential opportunities in reaching the circa 70 percent of Nigeria's adult population of 96.4m that remain unbanked or underbanked.

Despite the excitement and interesting opportunities we anticipate, we think that the preclusion of PSBs from granting any form of loans, advances and guarantees need to be reviewed if truly the goal of financial inclusion is to be achieved.

As the regulations are still in draft form and the final versions yet to be released, the market with bated breath to see the changes that have been made by CBN and also for the actual commencement of operational activities.

7. Nigerian Immigration Service (NIS) Commences Issuance of Nigerian Passport with 10 years Validity

The NIS announced that plans were in the offing to increase the validity of adult passports from five (5) to ten (10) years with information also indicating that the cost of the new passport will be somewhere around ₦70,000.



We consider this a commendable initiative as it will reduce the burden of renewal of passports with its attendant red-tapism and bureaucracy typically associated with the renewal process. Furthermore, the passport according to NIS' reports is weather friendly, complies with latest international standard, has polycarbonate technology that reduces the incidence of damage.

Arguably, the high monetary cost will be offset by the quality and longevity of the passport.

8. The Transition of Skye Bank to Polaris Bank: Another Body Bag in the Banking Sector

Apparently, the concept of too big to fail doesn't yet exist in Nigeria's banking vocabulary as evidenced in the demise of Skye Bank Plc, a behemoth of a financial institution in the last decade such that it was categorised as a Systemically Important Bank. It was no secret that Skye Bank has been distressed since 2016 when CBN sacked its management for several infractions relating to insider loans, gross risk management failures among others but there was faint hope that the bank would be recapitalized by white knight investor but those dreams never materialized hence the bank ended up in the same fate as those banks that were bridged during the 2011 banking crisis.



Whilst the proactivity of CBN needs to be applauded for initiating and completing the seamless process, the

case of Skye Bank shows that some management may not have learnt enough from the 2011 banking crisis and also re-emphasizes the need for more institutional reform in terms of corporate governance and risk management for banks.

9. Introduction of Multi Funds Structure of Pension Funds: Innovation in the Pension Industry

The National Pension Commission (PenCom) on July 1, 2018 started the implementation of Multi Fund investment structure, a new investment regulation that allows pension contributors to make choices on how they want their pension fund invested based on their risk appetite.

This leap, according to PenCom would help improve returns on pension. The multi-fund structure is a new system of fund management that allows the splitting of the RSA 'Active' fund into 3 different funds; Fund 1, Fund 2 and Fund 3. The 'Retiree' fund remains, and it's called Fund 4. These funds are classified by age bracket and risk potential of the investment.

It is a commendable effort that this new leap of the PenCom is built on the objective of achieving a proper alignment between the assets and liabilities of pension funds as well as

making pension fund investments in line with the risk appetite and profile of pension contributors

10. NOSDRA V. MOBIL – A Reaffirmation of the Exclusive Penal Jurisdiction of the Courts

On Thursday, March 22, 2018, judgment was delivered in the appeal between the National Oil Spill Detection and Response Agency (NOSDRA) and Mobil Producing Nigeria Unlimited (Mobil) - Unreported- Appeal no. CA/C/244/2017.

The appeal considered the vexed question of whether an Administrative/Regulatory Agency has the inherent power to impose fines without proper adjudication by a Court of law.

The Court of Appeal held that NOSDRA being an administrative agency, does not possess the *vires* to impose fines as only the Courts by virtue of section 6 of the Constitution has the power to impose fines after conviction.

The pronouncement of the Court is of significance as businesses routinely have to deal with Administrative Agencies who wield enormous powers in the discharge of their duties

without making recourse to established norms of fair hearing.

There is no gainsaying the fact that the decision of the appellate court accords with sound legal reasoning as it perpetuates the age-long doctrines of Separation of Powers and Fair Hearing. We are also glad that the Court of Appeal did not miss the opportunity to call out NOSDRA, who in our view was a usurper of judicial powers.

11. Jackson, Etti & Edu – Domestic Accolades, International Acclaim

2018, was a great year for us at Jackson, Etti & Edu with us receiving awards and recognitions for our exemplary legal work. At the ESQ Nigerian Legal Awards, we were recognised as the Private Equity Firm of the Year and also crowned the Intellectual Property Team of the Year.

In recognition of our sectoral excellence in Real Estate we were named the Property, Infrastructure and Construction Team of the Year at the Law Digest Africa Awards and awarded the Intellectual Property Law Team of the Year by the Intellectual Property Law Awards 1.0.

Additionally, our Abayomi Adebajo and Ismail Muftau, were acknowledged in the 40 under 40 category at the ESQ Nigerian Legal Awards while our Laide Adeyemo and Ngozi Aderibigbe were also declared Rising Stars by the IP Stars 2018 Global Ranking. This recognition came as a result of their important contributions and commitment to the legal profession.

Our Abayomi Adebajo went on to repeat this feat at the Law Digest Africa Awards where he was also recognised as a Rising Star.

Key Contacts



Fola Olusanya

Partner

e: folaulusanya@jacksonettiandedu.com



Taiwo Adeshina

Sector Head, Real Estate & Infrastructure

e: taiwoadeshina@jacksonettiandedu.com



Abayomi Adebajo

Co-Head, Financial Services Sector

e: abayomiadebanjo@jacksonettiandedu.com



Adekunle Soyibo

Co-Head, Financial Services Sector

e: kunlesoyibo@jacksonettiandedu.com

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For further information, please contact us at jacksonettiedu@jacksonettiandedu.com



Jackson, Etti & Edu

RCO Court 3-5, Sinari Daranijo Street,
Victoria Island, Lagos, Nigeria.

t: +234 (1) 4626841/3, +234 (1) 2806989
e: jacksonettiedu@jacksonettiandedu.com

f: +234 (1) 2716889
www.jacksonettiandedu.com