

# J-K GADZAMA LLP

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L-R: Anyim Pius Anyim, GCON, Fmr. Senate President of Nigeria; Joe-Kyari Gadzama, SAN; Hon. Justice R. B. Hastrup; Mela Audu Nunghe, SAN; Mrs. Ruth Audu Nunghe and H.R.H Jacob A. Hastrup (the *Olumobi* of Imobi-Ijesa) during a dinner in honour of Mela Audu Nunghe, SAN on his conferment as a Senior Advocate of Nigeria at the Pent Floor, J-K Gadzama Court, Abuja on Wednesday, 3rd February, 2021.



# Editorial

Welcome to the 2<sup>nd</sup> quarter of the year 2021. We are pleased to present to you this edition of our newsletter.

In this edition, we bring you an analysis of the recent Central Bank of Nigeria's policy on crypto-currency jointly authored by Mr. Oluniyi Adediji (Senior Associate), Mr. Victor Onyekachukwu Ehiosun (Junior Associate) and Mr. Diebo Raphael Gillis-Harry (Intern). Also featured in this edition is a highlight of the key changes in the recently passed Finance Act, 2020 prepared by Lamar Joe-Kyari Gadzama (Associate).

As a pleasant diversion, you will also be entertained with sights from a number of events, including the reception held in honour of Mela Nunghe, SAN (Magayakin Tangale) who was conferred with the rank of Senior Advocate of Nigeria in January, 2021.

As always, we hope you will find this edition informative and entertaining.

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## 1. CRYPTOCURRENCIES: WHAT ARE THEY?

Cryptocurrencies are a new form of digital assets (or virtual currencies) and systems that allow for secure payments online which are denominated in terms of virtual "tokens"<sup>1</sup>, which are represented by ledger entries internal to the system<sup>2</sup>. Hence, the "Crypto"<sup>3</sup> in cryptocurrencies simply refer to the various encryption algorithms and cryptographic techniques that safeguard these entries<sup>4</sup> and as a result of these encryption techniques, cryptocurrencies, unlike physical legal tender such the Nigerian Naira (₦) or the US Dollar (\$), are nearly impossible to counterfeit.

## 2. HOW HAVE CRYPTOCURRENCIES EVOLVED?

Central to the appeal of today's cryptocurrencies is blockchain technology, which is used to "keep an online ledger"<sup>5</sup> of all transactions that have ever been conducted using these cryptocurrencies, thus providing a data structure for the ledger that is quite secure and trusted<sup>6</sup>. And according to Euromoney Learning, the main reason why blockchain technology is critical for cryptocurrencies is because

they help in resolving issues of trust. For instance, "if someone creates a new currency called the X dollar, how can we be sure that they don't give themselves a million X dollars", or "steal your X dollars for themselves"<sup>7</sup>. The first blockchain-based cryptocurrency, which still remains the most valuable cryptocurrency today, was Bitcoin<sup>8</sup>. Bitcoin was launched in 2009 by an individual or group known by the pseudonym, "Satoshi Nakamoto", after they published a white paper on the subject<sup>9</sup>. Today, there are thousands of alternative cryptocurrencies, with different functions and specifications. Some of the competing cryptocurrencies that were largely triggered by Bitcoin's success include Ethereum, Litecoin and Namecoin<sup>10</sup>.

## 3. WHAT DOES THE CBN LETTER SAY?

The concise CBN letter<sup>11</sup> dated 5th February, 2021 was issued to remind all regulated financial institutions (including deposit money banks (DMBs), financial institutions and non-bank financial institutions)<sup>12</sup> that dealing in cryptocurrencies or facilitating payments for cryptocurrency exchanges is prohibited. Financial institutions and other CBN-

regulated entities are now obligated to identify and "immediately close"<sup>13</sup> bank accounts belonging to individuals and/or entities transacting in cryptocurrencies or operating cryptocurrency exchanges.

#### 4. WHEN DOES THE LETTER TAKE EFFECT AND ARE THERE ANY PENALTIES FOR NONCOMPLIANCE?

The CBN letter is expressed to have "immediate effect"<sup>14</sup> and as it warns, failure to comply with its directives shall lead to "severe regulatory sanctions"<sup>15</sup>. Furthermore, although the CBN Letter is addressed to regulated financial institutions, and as such any severe regulatory sanctions will be directed at them, as some legal writers have pointed out, the only sanction noted at this stage for individuals and business entities will be the closure of their bank accounts. Nonetheless, increased regulatory scrutiny may be triggered where an individual or business entity has several of its accounts closed for non-compliance with the new directive<sup>16</sup>.

#### 5. THE CBN LETTER AND ITS BACKGROUND – HOW DID WE GET HERE?

Although the purpose of the CBN Letter was clear in that it seeks to remind all entities under the CBN's regulatory purview of the illegality of dealing or otherwise transacting in cryptocurrencies, the letter itself is not the first time the CBN, Nigeria's premier financial regulator, has confronted the complex issue of cryptocurrencies regulation. On the 12<sup>th</sup> of January 2017, the apex financial regulator had issued an initial circular which cautioned deposit money banks, non-bank financial institutions, other financial institutions as well as the general public on the risks associated with cryptocurrency transactions.

It is therefore important to note that the directives contained in the CBN letter does not place any new restrictions on cryptocurrencies, given that all banks in the country had earlier been forbidden, through CBN's circular dated January 12, 2017, not to use, hold, trade and/or transact in cryptocurrencies. That said, for some critics, the main problem with the 2017 circular, is that at the time it was issued, the CBN did not give detailed reasons to clarify why it had taken this position. This was only done in its recent press release titled: Response to Regulatory Directive on Cryptocurrencies in which, among several considerations, the apex bank cited the fact that cryptocurrencies experience "far greater volatility than is found with normal currencies"<sup>17</sup> and that, owing to their "opacity"<sup>18</sup>, cryptocurrencies have become "well-suited"<sup>19</sup> for conducting many illegal activities including "money laundering, terrorism financing and tax evasion"<sup>20</sup>.

#### 6. HOW SIGNIFICANT IS CRYPTOCURRENCIES TRADING IN NIGERIA?

COUNTRY	VOLUME OF TRADE (IN \$USD)	COUNTRY	VOLUME OF BITCOINS TRADED(IN 1,000s)
USA	\$3,755,463,837	USA	535,660
Nigeria	\$566,668,692	Nigeria	60,215
China	\$181,329,392	China	20,553
Canada	\$131,108,721	Canada	15,367
UK	\$119,440,278	UK	11,169
India	\$94,794,948	India	10,017
Australia	\$75,643,905	Australia	7,050
Kenya	\$55,292,942	Kenya	5,895
Philippines	\$22,733,649	Philippines	3,323
South Africa	\$18,935,812	South Africa	2,121

The Table above reflects data collected and analysed by Paxful in the last 5 years. It shows that Nigeria is the 2<sup>nd</sup> largest bitcoin market on Paxful<sup>21</sup>. Between the top 10 countries for cryptocurrencies trading on Paxful, as shown by the table above, the total volume of cryptocurrencies traded in the last 5 years was over \$4 trillion (USD). Nigeria alone accounts for over 11% of this figure. Data from other sources such as Techpoint Africa<sup>22</sup> and ICT works<sup>23</sup> indicate that in 2020 alone, Nigerians traded more than \$400 million worth of cryptocurrencies on local

crypto exchange platforms<sup>24</sup>. In fact, between January and September of 2020, Paxful, now the largest peer-to-peer exchange platform (P2P) in Africa, reported a 137% increase in new registrations in Nigeria on its platform. The company also says that Nigerians make up around a quarter of its global customer base with 1.3 million registered accounts<sup>25</sup>. From the above figures, it is very clear that cryptocurrencies trading has recently gained a strong foothold in Nigeria, hence why it has steadily attracted the regulatory attention of the CBN.

## **7. ARE THERE ANY IMPORTANT REGULATORY OVERLAPS TO BE AWARE OF?**

Yes, in fact there are. Most importantly, for example, the Securities and Exchange Commission (the "SEC")<sup>26</sup> issued a statement dated 14 September 2020 wherein the regulator stated that, unless otherwise demonstrated, virtual crypto assets will be treated as securities. For instance, the SEC statement provides that any person, (individual or corporate) whose activities are blockchain-related and involves the provision of digital asset services, will be required to be registered with the SEC and comply with the SEC's regulatory guidelines. Some reports even suggested that the SEC was actively working with the Federal Ministry of Finance to "provide a regulatory environment for blockchain"<sup>27</sup> and digital assets<sup>28</sup>. The CBN and SEC are both independent regulators. As such, while it is unlikely that the scope of the CBN Letter is such as to override the position of the SEC, it remains unclear how this regulatory overlap and the complicated issues which it will ultimately create for regulated entities, will be resolved. In any event, given the conflicting messages being sent to the market from both regulators, in the interest of regulatory certainty, it is imperative that this and similar overlaps be determined expediently to avoid the

abuse of any exposed lacunas which will undoubtedly defeat some of the primary objectives of the CBN's ban on cryptocurrencies trading<sup>29</sup>.

## **8. WHO ARE THE CRITICS AND PLAUDITS OF THE CBN'S RESTATED BAN ON CRYPTOCURRENCIES?**

The reaffirmed CBN policy on cryptocurrencies has an almost equal share of vocal supporters and critics. On the one hand, you have the former deputy governor of the apex bank, Professor Kingsley Moghalu, who disagreed with the policy, and was quoted in The Guardian Nigeria saying that there were better ways to regulate than adopting a "knee-jerk" approach<sup>30</sup>. Other prominent critics of the CBN's ban include, most recently, the current Vice President, Yemi Osinbajo, who argued that in developing a robust regulatory regime, "we must act with knowledge and not fear"<sup>31</sup>. On the flip side, a number of key associations in Nigeria have expressed their support for the policy. In the same article of The Guardian Nigeria, the president of the Association of Bureaux De Change Operators of Nigeria (ABCON), Dr. Aminu Gwadabe, was reported to have thrown his weight behind the decision of the decision of the central bank, saying it would enhance financial safety and increase anti-money laundering compliance<sup>32</sup>. To be fair, the CBN's policy banning cryptocurrencies trading is not itself an outlier. As the apex bank's press release argues, other countries such as China<sup>33</sup>, Canada, Taiwan and Saudi Arabia have all made "similar pronouncements"<sup>34</sup> base of the significant risks that transacting in cryptocurrencies portends, including risk of loss of investments, money laundering, terrorism financing, illicit fund flows etc. Indeed, illicit financial flows in Africa are well documented<sup>35</sup>. Additionally, it is important to note that the reasoning behind the CBN's argument that crypto assets pose a significant threat to small retail and

unsophisticated investors isn't also new. Academics and regulators alike routinely argue that more should be done to protect retail investors<sup>36</sup>. However, in spite of some of the well-founded justifications put forward by the CBN, a number of critical questions remain unanswered. Some of Nigeria's most respected corporate and finance lawyers have argued, for instance, that the position of the CBN will stifle innovation and significantly restrict the operation of cryptocurrency businesses in Nigeria<sup>37</sup>. It however remains to be seen whether that will indeed be the case.

## 9. THE CBN BAN ON CRYPTOCURRENCIES: WHAT DOES THE FUTURE HOLD?

In conclusion, the CBN's policy on cryptocurrencies powerfully demonstrates one challenge that confronts 21<sup>st</sup> century regulators the world over. This is that technology is constantly evolving and innovating at a rate that is faster than what regulation can match. As this article sought to argue, the case is not that the CBN's reasons for its policy are unjustifiable or unfounded. Many of them are. Rather, its aim was to only give an overview of the current debate surrounding the recently restated CBN policy. And while it is too early to predict its long-term implications, in the immediate term, it is imperative, as some have rightly advised, that the CBN and SEC align their policies on cryptocurrency to provide the market with "much needed clarity"<sup>38</sup>.

## END NOTES

<sup>1</sup> Jake Frankenfield, "Cryptocurrency" (5th May 2020). Available at: <https://www.investopedia.com/terms/c/cryptocurrency.asp> Accessed 18 February 2021.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>EUROMONEY LEARNING: "What is blockchain?". Available at: <https://www.euromoney.com/learning/blockchainexplained> Accessed 18 February 2021.

<sup>8</sup> See n (1).

<sup>9</sup> Available at: <https://bitcoin.org/bitcoin.pdf> Accessed 18 February 2021.

<sup>10</sup> See (n 1).

<sup>11</sup> The CBN Letter. Available at:

<https://www.cbn.gov.ng/Out/2021/CCD/Letter%20on%20Crypto.pdf> Accessed 10 February 2021.

<sup>12</sup> Otherwise referred to as regulated financial institutions.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Zelda Akindede (Partner) and Victor Sameria (Associate) of TEMPLARS law firm: THE CBN LETTER ON CRYPTOCURRENCY: YOUR FAQs ANSWERED. Available at: <https://www.templars-law.com/wpcontent/uploads/2021/02/Templars-Fintech-Update-CBN-Letter-on-Crypto-FAQs-Answered.pdf> Accessed 10 February 2021.

<sup>17</sup> Central Bank of Nigeria (Press Release): Response to Regulatory Directive on Cryptocurrencies. Available at: <https://www.cbn.gov.ng/Out/2021/CCD/CBN%20Press%20Release%20Crypto%2007022021.pdf> Accessed 10 February 2021.

<sup>18</sup> Ibid. See at p. 2.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> QUARTZ AFRICA: Nigeria is now the no. 2 bitcoin market on this fast-growing global market place. Available at: <https://qz.com/africa/1947769/nigeria-is-the-second-largest-bitcoin-market-after-the-us/#:~:text=In%20the%20last%20five%20years,%2Dto%2Dpeer%20bitcoin%20marketplace.&text=Between%20January%20and%20September%2C%20Paxful.in%20new%20registrations%20in%20Nigeria> Accessed 10 February 2021.

<sup>22</sup> ICT Works: How will Nigerians spend \$451 million Bitcoin Cryptocurrency in 2021. Available at: [https://www.ictworks.org/nigerians-spend-bitcoin-cryptocurrency/#\\_YCRPU-hKhPZ](https://www.ictworks.org/nigerians-spend-bitcoin-cryptocurrency/#_YCRPU-hKhPZ) Accessed 10 February 2021.

<sup>23</sup> See (n 20).

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Securities and Exchange Commission of Nigeria: Statement on Digital Assets and Their Classification and Treatment. Available at: <https://sec.gov.ng/statement-on-digital-assets-and-their-classification-and-treatment/> Accessed 10 February 2021.

<sup>27</sup> Sam Bourgi, "Nigeria is establishing a framework for wide scale crypto adoption" COINTELEGRAPH (24th November 2020). Available at: <https://cointelegraph.com/news/nigeria-is-establishing-a-framework-for-widescale-crypto-adoption> Accessed 11 February 2021.

<sup>28</sup> Ibid.

<sup>29</sup> See (n 17).

<sup>30</sup> Geoff Iyatse, Assistant Editor, "CBN sticks to unpopular option on digital currency" The Guardian Nigeria (9th February 2021). Available at: <https://guardian.ng/news/cbn-sticks-to-unpopular-option-on-digital-currency/> Accessed 11 February 2021.

<sup>31</sup> Abdulkareem Mojeed, "The Vice President calls for a knowledge-based regulation" of virtual currency" (26 February 2021). Available at: [Osinbajo opposes cryptocurrency ban \(premiumtimesng.com\)](https://osinbajoopposes cryptocurrency ban (premiumtimesng.com)) Accessed 3 March 2021.

<sup>32</sup> See (n 30).

<sup>33</sup> Rain Xie, "Why China had to "Ban" Cryptocurrency but the U.S. did not: A Comparative Analysis of Regulations on Crypto-Markets Between the U.S. and China" (2019) Washington University Global Studies Law Review Vol. 18(2). See at p. 2-15. Available at:

[https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1684&context=law\\_globalstudies](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1684&context=law_globalstudies) Accessed 11 February 2021.

<sup>34</sup> See (n 17). At page 1.

<sup>35</sup> Payce Madden, "New trends in illicit financial flows from Africa" BROOKINGS (2ND March 2020) Available at:

<https://www.brookings.edu/blog/africa-in-focus/2020/03/02/new-trends-in-illicit-financial-flows-from-africa/> Accessed 11 February 2021.

<sup>36</sup> Michael Lloyd, "FCA says more work needs to be done to protect retail investors" Peer2Peer Finance News (10 June 2020). Available at: <https://www.p2pfinancenews.co.uk/2020/06/10/fca-says-more-work-needs-to-be-doneto-protect-retail-investors/> Accessed 11 February 2021.

<sup>37</sup> See (n 16). At page 5.

<sup>38</sup> Ibid.

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# PHOTO SPEAK

Dinner in honour of Mela Audu Nunghe, SAN at the Pent Floor, J-K Gadzama Court, Abuja on Wednesday, 3rd February, 2021



Mela Nunghe, SAN; Chief Joe-Kyari Gadzama, SAN and Senator Anyim Pius Anyim, GCON



Hon. Justice R. B. Hastrup and H.R.H Jacob A. Hastrup (The Olumobi of Imobi-Ijesa)



Mela Nunghe, SAN and Mrs. Ruth Audu Nunghe



A cross section of the guests during a toast



Senator Anyim Pius Anyim, GCON giving goodwill remarks



Chief Joe-Kyari Gadzama, SAN presenting a congratulatory card to Mela Nunghe, SAN



GMD of Leadership Group Ltd, Alhaji Abdul Gombe (right) and his wife (left) with the celebrant and his wife



The celebrant with some Counsel in Chambers of J-K Gadzama LLP



Former Minister of State for Power and Steel, Alhaji Murtala Aliyu (left) and his wife (right) with the celebrant and his wife



Mela Nunghe, SAN giving appreciation remarks

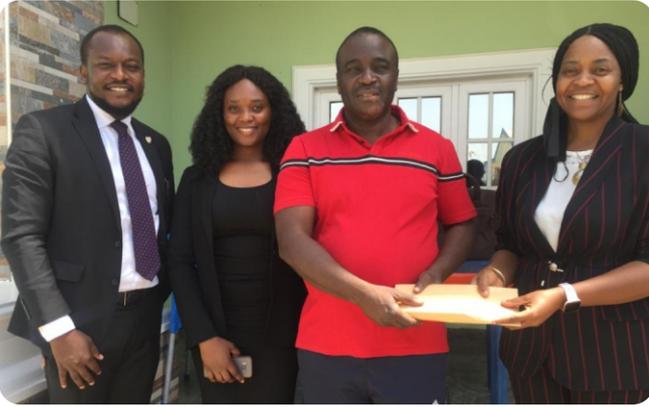
# WORD SUDOKU

J	U	D
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The completed board will be provided in our next issue

# PHOTO SPEAK



L-R: Madu Joe-Kyari Gadzama, Martha Babatunde, S. T. Hon, SAN and Geraldine Mbah during a visit to S. T. Hon's, SAN residence on behalf of J-K Gadzama LLP to felicitate with the learned silk's family following the traditional marriage of his son, Chris Hon



L-R: Chris Okougha, Joe-Kyari Gadzama, SAN; Olumide Akpata, President, Nigerian Bar Association (NBA) and Francis Oronsaye during a courtesy visit to the NBA National Secretariat, Abuja



Joe-Kyari Gadzama, SAN and Amb. Young-Chae, Kim the Ambassador of the Republic of Korea to Nigeria, during the Ambassador's visit to J-K Gadzama LLP



L-R: (back row) Adediji Oluniyi; Jerry Musa; Rashidat Obamajure; Darlington Onyekwere and Madu Joe-Kyari Gadzama. L-R: (front row) Francis Oronsaye, Mr. Ju Yoel Lee; Joe-Kyari Gadzama, SAN; Amb. Young-Chae Kim and Geraldine Mbah



Joe-Kyari Gadzama, SAN leading other members of the Body of Benchers at a procession/traditional dinner at the Nigerian Law School, Bwari Campus, Abuja



Dr. Abdulkarim A. Kana (left); Joe-Kyari Gadzama, SAN (2nd right); Chief Adegboyega Awomolo, SAN (right); Senator Michael O. Bamidele, FCI Arb (3rd left) with other dignitaries and students at the Nigerian Law School dinner, Bwari Campus, Abuja



Joe-Kyari Gadzama, SAN and Tijjani Gazali, SAN at the Supreme Court Complex, Abuja



Courtesy call on the Chief of Air Staff, Air Marshal Sadique Abubakar by Borno State Elders, including Joe-Kyari Gadzama, SAN the *Sardauna* of Uba

# KEY CHANGES IN THE FINANCE ACT 2021



It is now gradually becoming a custom for the Nigerian government to pass the Finance Act yearly. This act alters the fiscal policy of the Country to adequately respond to the ever-changing economic realities. The Finance Act (2020) ('FA' or 'Act') is a statute which itself introduces new provisions and amends other fiscal laws. The FA amends a total of 14 laws, consisting:

- I. Companies Income Tax Act.
- II. Capital Gains Tax Act.
- III. Industrial Development (Income Tax Relief) Act.
- IV. Personal Income Tax Act.
- V. Tertiary Education Trust Fund (Establishment etc.) Act.
- VI. Customs and Excise Tariff, etc. (consolidation) Act.
- VII. Value Added Tax Act.
- VIII. Stamp Duties Act.
- IX. Federal Inland Revenue Service (Establishment) Act.
- X. Nigerian Export Processing Zones Act.
- XI. Oil and Gas Export Free Zone Act.
- XII. Companies and Allied Matters Act.
- XIII. Fiscal Responsibility Act.
- XIV. Public Procurement Act.

The FA seems to harbour numerous objectives. It particularly aims to merge the increase in the generation of revenue through the increase in taxation and to decrease the tax liability of the low earners and small companies in the Country. It also seems to make the fiscal policy more efficient and provides clarification on certain areas which were previously obscure. This article aims to explain the rationale for some of the key amendments noticed in the FA.

## CREATION OF THE UNUSED FUNDS TRUST FUND (UFTF) AND CRISIS INTERVENTION FUND (CIF):

As gleaned from the FA, the Federal Government of Nigeria has created the UFTF and the CIF. By this creation, all unutilized funds in dormant accounts spanning 6 years and all dividends declared by Public Companies that have not been claimed will be remitted to the UFTF. As expected, this provision has not settled in well with Nigerians – possibly due to lack of trust in the Government. The idea, if diligently enforced without misappropriation would make more funds to the government to support key plans, infrastructure deficit and rising debt. It is pertinent to point out that the CIF is a sub-trust fund of the UFTF and the initial funding of this fund is N500 billion from the Consolidated Revenue Fund and special accounts.

The rationale for the creation of this fund is obvious. The Federal Government has repeatedly echoed the lack of funds in the government purse for the administration of the Country and has in numerous instances sought loans from financial institutions within and outside the Country. The Government aims to utilize these unused and unclaimed funds for the development of the Country.

## THE PANDEMIC AND THE PRESIDENT'S ABILITY TO EXCEED THE AGGREGATE EXPENDITURE CEILING IN THE BUDGET:

Previously, the President could not exceed the aggregate expenditure ceiling allowed by the budget of the fiscal year; however, there are now certain conditions wherein the President may exceed the aggregate expenditure ceiling without

prior recourse to the national assembly for approval.<sup>1</sup> These additional circumstances now include wars, breakdown of public order or public safety, pandemic, natural disaster and any other public danger threatening the existence of Nigeria.

Possibly the key factor that led to this innovation was the COVID-19 pandemic and the requirement to spend more funds than what was available in the event of such an outbreak. Similarly, the Country has been plagued with numerous security threats—although, not to the extent of threatening the existence of Nigeria.

### **MORE EFFICIENT PROCEDURES:**

It seems that the FA aims to expressly legalize the use of technology in certain fiscal actions and to reduce delay in government procurement and concession activities as well as improve the collection of tax.

Specifically, (i) the electronic submission of bids for government contracts are now permitted. Although some government agencies previously utilized electronic means to conduct its bidding process, the FA gives statutory support to the practice (ii) the FA reduces the timeframe for the submission of such bids. Previously, the minimum timeframe allowed between the submission of a bid and the acceptance of same was 6 weeks. This may have caused unreasonable delay in the procurement activities of the government. The current FA has reviewed this provision and imposed that the maximum timeframe for the acceptance of bids is now four (4) weeks, (iii) the payment of any tax charged by any assessment with no objection has further been revised to 30 days from 2 months, (iv) the service of notice of assessment can now be done by courier, email or any other electronic means and (v) the Federal Inland Revenue Service is now empowered to receive assistance from the government of another country or any other person and to provide assistance to any other country.

### **ASSISTANCE TO SMALL COMPANIES AND LOW EARNERS:**

Asides from the FA seeking more revenue for the government purse, the FA seems to provide comfort for the low earners and small companies through numerous changes in taxation. Essentially, the FA states that Minimum tax no longer applies to

persons who earn National Minimum Wage or less under Section 37 of the Personal Income Tax Act.

Similarly, small companies are now exempt from paying Tertiary Education Tax. On the same line, small or medium-sized companies involved in these activities are eligible to apply for pioneer status incentive.

### **INCREASED TAXATION:**

As mentioned above, the FA seeks avenues for an increase in the generation of tax. This is highlighted by the imposition of the electronic money transfer levy which applies to electronic receipts or electronic transfer for money deposits in any deposit money bank or financial institution. The charge is N50 for receipts or transfers above N10,000

Similarly, Ships and aircrafts used in international traffic, and owned by Nigerian residents are deemed situated in Nigeria for capital gains tax purposes. Still, on the issue of capital gains taxes, taxes on compensation for loss of employment and redundancy are limited to an amount over N10 million therefore, any amount below this will not be subject to capital gains tax. Furthermore, companies that are not resident in Nigeria may now appoint tax representatives to comply with tax obligations.

The government has also tinkered with the requirement which obligates one to register for tax purposes. Previously, one was required to register for tax purposes when one 'carried on business in Nigeria' but this instance has been expanded to when one 'makes a taxable supply of goods or services to Nigeria'. Although it may not be clear what a taxable supply of goods or services is, the FIRS has explained that it means any transaction for the sale of goods or the performance of a service, for a consideration in money or money's worth. This definition seems broad and will certainly encompass more business than the previous trigger, 'carry on business' would have.

On a similar note, the FA introduces the Significant Economic Presence (SEP) rules to the taxation of certain categories of non-resident individuals, executors and trustees with regards to Personal Income Tax. The Minister of Finance is expected to issue rules to define SEP within the context of the Personal Income Tax Act.

<sup>1</sup>Even though, such spending is expected to be ratified by the national assembly.

To act as a deterrent to the increase in the filing of false returns, the FA now imposes penalties and interest where a company pays less tax than it should have deliberately and dishonestly. It thus seems that if a company in good faith pays less than it ought to, there would be no penalty imposed. The FIRS may now face an uphill task in proving that returns were submitted dishonestly.

### **CLEARER DEFINITIONS:**

The FA sets out to make certain clarifications and further expand the meaning of some items. For example, the FA now defines Stamp to include the utilization of adhesive stamp produced by the Nigerian Postal Service.

There was some controversy as to whether penalties and fines that are non-deductible for income tax purposes included those imposed by laws of state houses of assembly, or if same were merely limited to the National Assembly. The FA now specifically includes those imposed by laws of any state house of assembly. It also confirms that the application of a 7.5% VAT rate commenced on 1<sup>st</sup> February 2020.

The Public Procurement Act now specifically applies to all three (3) arms of government – Executive, Legislative and Judiciary. This includes the national defence, security agencies, government ministries, parastatals, institutions and departments. Possibly, this move may have been due to the fight between the Military and the Legislature during the probes into the activities of the military last year.

Quite interestingly, the filing of capital gains tax returns and the payment of tax arising from the disposal of such assets in a particular year is due on or before 30<sup>th</sup> June and 31<sup>st</sup> December of the same year. Now, there have been differing interpretations of the meaning of this provision. While some believe that citizens now have the right to dispose of this asset at either of the two windows, we believe that all applicable taxes which may be due before or as of 30<sup>th</sup> June, ought to be paid by then and the taxes that become applicable after 30<sup>th</sup> June would be paid before the 31<sup>st</sup> December window.

### **EXEMPTION FROM TAX LIABILITY:**

The FA has also provided exemptions from tax liability in numerous instances, these include (i) tax-deductibility of COVID-19 crisis intervention fund

donations; however, this is limited to only 10% of the assessable profit, (ii) Annual premium paid during the year preceding the year of assessment to an insurance company in respect of insurance on the individuals' life or the life of his spouse shall be allowed as a deduction, (iii) introducing "primary agricultural (i.e. crop, livestock, forestry and fisheries) production" as pioneer industries.

It is not out of place for the government to provide certain tax exemptions. The stand out exemption is to those that contributed to the COVID-19 Crisis Intervention Fund earlier last year.

Furthermore, the goods exempt from VAT was expanded to include commercial aircraft, engines and spare parts. Services exempt from VAT was expanded to include airline transportation tickets issued and sold by commercial airlines registered in Nigeria and hired, rented or leased agricultural equipment for agricultural purposes.

But on the flip side, previous exemption from excise duty on imported goods and raw materials that were not locally produced in Nigeria and that is not locally available in Nigeria respectively, will no longer apply. Also, companies involved in agricultural production may no longer be entitled to a 5-year tax holiday.

### **CONCLUSION:**

As expressed earlier and shown in this article, the FA has carved out more avenues to generate money for the government, legalized the use of technology in the fiscal administration of the country, expanded the scope of certain laws and clarified the definition of certain phrases. But in as much as the act sought to interpret some confusion which was left unanswered, it has, in turn, created some new confusion, particularly relating to the Capital Gains Tax which will require further clarification.

For further information, clarification and guidance kindly contact:



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# PHOTO SPEAK



Prof. Agbo Madaki and his staff with Joe-Kyari Gadzama, SAN at Prof Agbo Madaki's office, Abuja



L-R: Prof. Agbo Madaki and Joe-Kyari Gadzama, SAN



The Legal Team of the Christian Association of Nigeria and some Officers of the Association after a Court sitting at the Federal High Court, Abuja



Joe-Kyari Gadzama, SAN; Hon. Justice Oguntade, JSC Rtd and Folu Oguntade, SAN at the 81st Birthday Anniversary Celebration of Hon. Justice Oguntade at Lekki Phase 1, Lagos



L-R: Jerry Musa; Mr Jung Won Choi, Korean Embassy Economic Secretary; Amb. Young-Chae Kim, Republic of Korean Ambassador to Nigeria and Joe-Kyari Gadzama, SAN at a Private Dinner



Joe-Kyari Gadzama, SAN paying his last respect at the residence of Hon. Justice Ibrahim Mammen Watila of the Federal High Court, Abeokuta, Ogun State Division



R-L: Mr. Caleb Dajan, former first Vice President of the Nigerian Bar Association (NBA); Joe-Kyari Gadzama, SAN; Mela Audu Nunghe, SAN with a colleague at NBA NEC meeting held in Uyo, Akwa Ibom in March 2021



Korean Ambassador, Amb. Young-Chae Kim, his wife, Joe-Kyari Gadzama, SAN and Lamar Joe-Kyari Gadzama at the IBB Golf Club, Abuja

# LEGAL HUMOUR



## NEWS FROM THE FIRM

- Miss Lawal Nafeesah, Miss Babatunde Martha, Miss Egesie Adanma Comfort, Jattu Sunday, Esq. and Chukwu Micheal, Esq., completed their NYSC programme with the firm. The firm wishes them success in their future endeavours.
- Miss Adinze Amazing-Grace Sokoato, Miss Uhunmwangho Osarogie Glory, Miss Owe Mary Oritsemoyogbemi and Ehiosun Victor Onyekachukwu, Esq., joined the firm for their NYSC programme. The firm wishes them a fruitful stay.
- Miss Maryam Gambo Suleiman and Oluwabiyi Olasukanmi Emmanuel, joined the firm as Interns. The firm wishes them a fruitful stay.
- Miss Zainab Suleiman (of Kogi State Univeristy) and Diebo Raphael Gillis-Harry (of University of Warwick, UK), completed their internship with the firm. The firm wishes them success in their future endeavours.
- Rashidat Banke Obamojore and Oluniyi Adediji joined the firm as Senior Associates. The firm wishes them a fruitful stay.
- The entire management and staff of J-K Gadzama LLP congratulate our Founding Principal Partner, Joe-Kyari Gadzama, SAN, on appointment as a member of the Advisory Board of the Nigerian Law School's Law and Practice Journal.

# UPCOMING EVENTS

## AND CONFERENCES



J-K Gadzama LLP 6<sup>th</sup> Annual Hon. Justice Chuwudifu Oputa, JSC (Rtd) Professional Training and Mentoring Programme for Young Lawyers, 24th April, 2021.



J-K Gadzama LLP Annual Public Lecture at the J-K Gadzama Court, 22nd June 2021, Abuja.



Celebrating a Legal Everest @60. Lecture/Book Presentation/Golf Tourney/Celebration marking the 60<sup>th</sup> Birthday of Chief Joe-Kyari Gadzama, SAN.



International Bar Association Annual Conference at Paris  
17 – 22 October, 2021.



# OUR PEOPLE

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This publication among many other  
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