

# HIGHLIGHTS OF LEGAL SERVICES DEPARTMENT'S PROCESSES & FUNCTIONS AND POWERS OF CBN UNDER BOFI & CBN ACTS AND RELATED LAWS

PRESENTED AT CBN PROMOTION  
EXAMINATION CLASS, 2018

# OUTLINE

- ▣ Introduction
- ▣ Legal Services Department (LSD) Processes
- ▣ Traditional Functions
- ▣ Regulatory Functions
- ▣ Developmental Functions
- ▣ Conclusion

# LSD'S PROCESSES

- Important Dates.
- LSD started out as an office from inception of the CBN on 1<sup>st</sup> July 1959
- 1988 Upgraded to an Autonomous Unit
- 2000 – Attained Status of a Department
- 2004 – Merged with the then Secretary's Dept. to form Corporate Secretariat Department
- 2010 – Restored as a Department

# LSD PROCESSES (CONTD.)

## VISION

To ensure an **effective legal framework** for the Bank's operations and the **protection** of the Bank's legal rights.

## MISSION

To guide policy formulation and implementation in a way that ensures proper alignment with the dynamics of the law in order to facilitate achievement of the Bank's objectives.

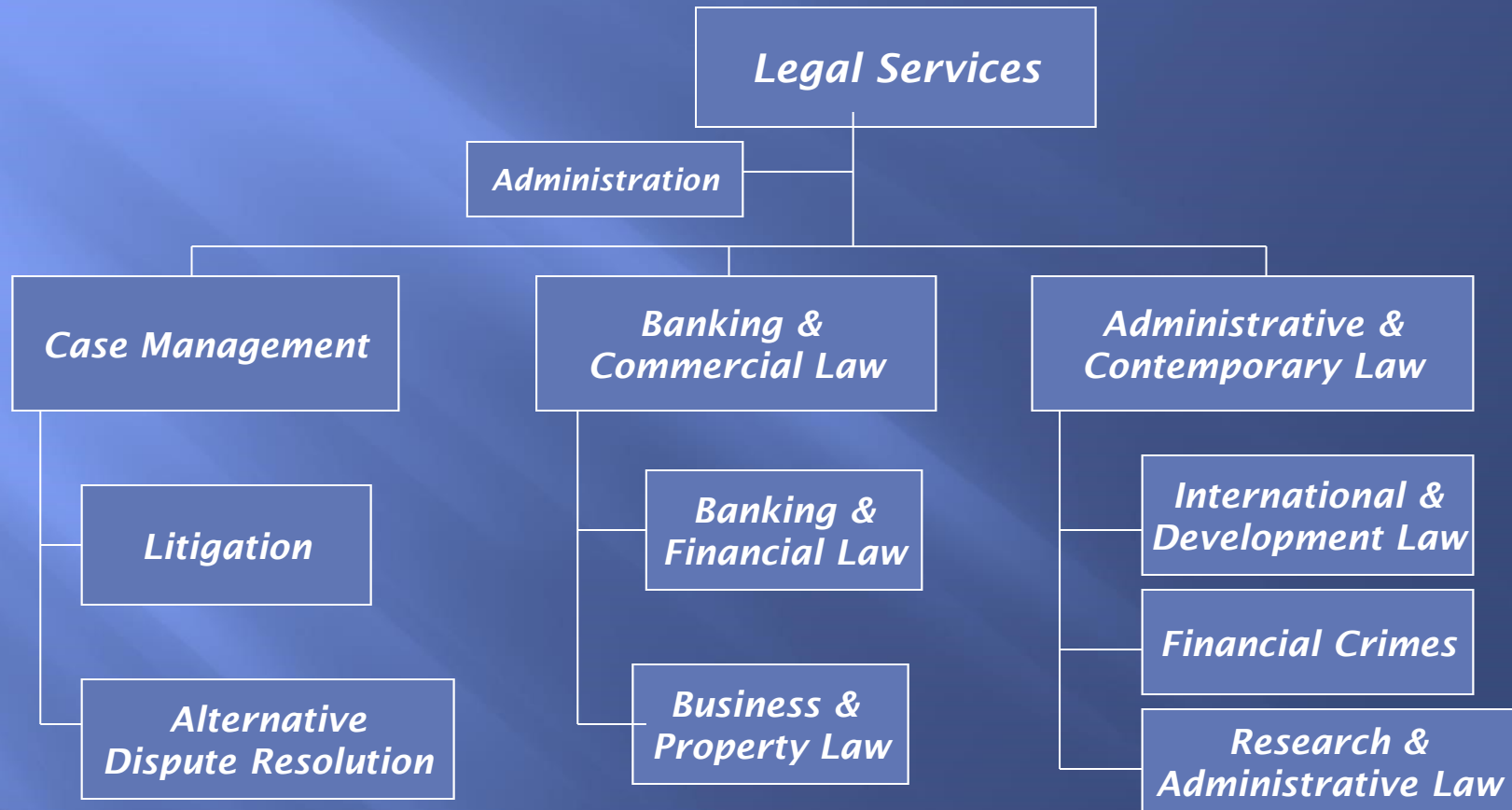
# MANDATE/STRATEGIC OBJECTIVES

The strategic objectives of the Department as defined by Management are:

- ▣ To provide prompt and reliable advisory services;
- ▣ Support the enactment and amendment of relevant legislations;
- ▣ Ensure effective dispute resolution;
- ▣ Increase internal and external collaboration, engagement and co-ordination to ensure effective service delivery; and
- ▣ Develop and maintain strong legal and analytical capabilities.

# LEGAL SERVICES DEPARTMENT

## Organizational Structure



# CASE MANAGEMENT DIVISION



# CASE MANAGEMENT DIVISION

## *Litigation Office*

- The Litigation Office handles the Bank's court cases.
- Oversees all the civil and criminal cases involving the Bank and/or its employees in the course carrying out the Bank's duty.
- Examines court processes and advises Management accordingly.
- Liaises with stakeholder departments to collate and forward vital evidence to external attorneys.
- Manages the Bank's pool of external attorneys.
- Coordinates court attendance within and outside Nigeria on behalf of the Bank in order to guide external attorneys on matters concerning the Bank.
- Drafts and reviews legal processes for the Bank.

# CASE MANAGEMENT DIVISION

## *Litigation Office (Cont'd)*

- Examples of cases: Master/Servant: Contracts; Banker/Customer disputes; Challenge to exercise of regulatory powers (Revocation; Sanctions or Removal of bank MD/CEOs etc.) &
- Garnishee Proceedings – Enforcement of Money Judgment brought under ss. 83 – 92 of the Sheriffs and Civil Processes Act, 1945
- Parties include: Judgment Creditor; Judgment Debtor & Garnishee
- Two Stages – Order Nisi ; Order Absolute
- s. 83(2) – Service within 14 days; s. 84 – Attorney General's Consent; s. 85 Order binds debt in hands of garnishees; s. 87 Trial of liability of garnishee (Affidavit Showing Cause); 91- Payment by garnishee operates as a valid discharge
- Risk of being cited for contempt –
- Form 48 is the “Notice of Consequences of Disobedience to Order of Court.” While Form 49 is the “Notice to Show Cause Why Order of Committal Should Not be Made.”

# CASE MANAGEMENT DIVISION

## *Alternative Dispute Resolution Office*

- The Alternative Dispute Resolution Office focuses on out-of-court settlements. (Prior to; During; or Post- Trial)
- ✓ Examines court processes and advises Management accordingly.
- ✓ Liaises with external solicitors handling cases involving the Bank.
- ✓ Attends court proceedings to monitor the progress on all cases relating to the Bank and prepares periodic report on these for the Management of the office. (The rationale is to identify possible cases for out of court settlement)
- ✓ Coordinates settlement meetings within and outside Nigeria on behalf of the Bank.
- ✓ Liaises with arbitration and mediation panels in settling disputes involving the Bank.

CASE MANAGEMENT DIVISION  
*Alternative Dispute Resolution Office*  
(Cont'd)

- ✓ Liaises with stakeholder departments for information that will be useful in timely resolution of cases.
- ✓ Monitor the progress on all disputes being settled out-of-court and prepares periodic report on these for the Management of the Department.
- ✓ Offers legal opinions on all issues referred to the department in respect of ADR.

# ADMINISTRATIVE & CONTEMPORARY LAW DIVISION

***Administrative &  
Contemporary Law***

```
graph TD; A["Administrative & Contemporary Law"] --> B["International & Development Law"]; A --> C["Research & Administrative Law"]; A --> D["Financial Crimes"];
```

***International &  
Development Law***

***Research &  
Administrative Law***

***Financial Crimes***

# ADMIN. & CONTEMPORARY LAW DIVISION

## *International & Development Law Office*

- Prepares and offers legal opinions on international matters.  
E.g., Trade Finance; ISDA; Reserve Management Agreements; Sec. Lending Agreements; Swaps et al.
- ✓ Prepares advice on legal issues relating to regional cooperation and integration.
- ✓ Collaborates with regional & international bodies with a view to fostering co-operation and integration
- ✓ Drafts and reviews Memoranda of Understanding on international/regional matters. Cross Border Banking Supervision; BEAC; BCEAO.
- ✓ Drafts and reviews both local and international statutes and conventions. African Union; The African Continental Free Trade Area (AfCFTA); WAMZ; WAMI MOUs & Protocols .
- ✓ Monitors compliance with agreed international standards and statutes.

# ADMIN. & CONTEMPORARY LAW DIVISION

## *Research & Administrative Law Office*

- This office deals mainly with staff matters.
- ✓ Offers legal advice to administrative panels (CDC) and to inter-departmental investigation panels
- ✓ Drafts and reviews queries issued to staff by Human Resources Department
- ✓ Offers legal advice on staff and ex-staff related matters (e.g., terminal benefits; death benefits (NOK) and contract of employment)
- ✓ Conducts research on emerging legal issues
- ✓ Liaises with the FOI Office in the Corporate Secretariat on matters relating to the Freedom of Information Act
- ✓ Delivers lecture at seminars and workshops
- ✓ Attends court proceedings on matters involving the Bank locally and internationally

# ADMIN & CONTEMPORARY LAW DIVISION

## *Financial Crimes Office*

- This office handles financial crime issues for the Bank
- ✓ Drafts and reviews statutes on financial crimes matters.
  - EFCC Act; AML/CFT; ICPC etc.
- ✓ Prepares responses to financial crimes victims' complaints. **Obtaining by False Pretence -s.419 of Criminal Code**
- ✓ Reviews and analyses financial crimes reports.
- ✓ Offers legal opinions on alleged financial crimes.
- ✓ Liaises with law enforcement agencies on financial crimes matters.
- ✓ Monitors financial crimes prosecutions referred by the Bank.

# ADMIN & CONTEMPORARY LAW DIVISION

## *Financial Crimes Office (Cont'd)*

- ✓ Collaborates with both governmental & non-governmental agency on financial crimes. – with adoption of e-payment channels there is an increase in electronic fraud thus the setting up of the **Nigeria Electronic Fraud Forum (NeFF)** by CBN and stakeholders to safeguard the integrity and efficiency of **payment channels**- LSD is one of the departments representing the Bank on the Forum
- ✓ Conducts researches on contemporary legal issues.
- ✓ Delivers lectures at seminars and workshops. (This is generic and courts across divisions depending on the subject matter)
- ✓ Attends court proceedings on matters involving the Bank locally and internationally

# BANKING AND COMMERCIAL LAW DIVISION

***Banking &  
Commercial Law***

```
graph TD; A["Banking & Commercial Law"] --> B["Banking & Financial Law"]; A --> C["Business & Property Law"]
```

***Banking &  
Financial Law***

***Business &  
Property Law***

# BANKING AND COMMERCIAL LAW DIVISION

## *Business & Property Law Office*

- This Office mainly protects the Bank propriety interests.
- ✓ Drafts and reviews legal instruments.
- ✓ Drafts and reviews agreement on asset matters for the Bank.
- ✓ Prepares MOUs; Deeds of Guarantee; Confidentiality Agreements; letters of indemnities and undertakings.
- ✓ Verification of Advance Payment Guarantee (APGs) and Performance Bond (PB) in line with ss. 35 & 36 of Public Procurement Act (PPA), 2007 to protect the interest of the Bank
- ✓ s. 35 – 15% maximum mobilisation fee supported by bank guarantee or insurance bond. CBN policy – only bank guarantee is acceptable
- ✓ s. 36 – Once a mobilisation fee is to be paid the APG must be accompanied with a PB of not less than 10% contract value or amount equal to the APG whichever is higher

# BANKING AND COMMERCIAL LAW DIVISION

## Business & Property Law Office

- ✓ Conducts investigation of title documents.
- ✓ Drafts and registers Mortgage Deeds and Deeds of Release in respect of Staff Loans;
- ✓ Draft and register Powers of Attorney; and Deeds of Assignment in respect of CBN Property.
- ✓ Offers legal opinions on all issues involving the Bank's assets referred to the department. See ss. 34 & 53 of CBN Act – Right to hold property limited to Gov. Residence & Business Premises; and Exemption from payment of property tax
- ✓ Delivers lectures at seminars/workshop.
- ✓ Attends courts within and outside Nigeria on behalf of the Bank in order to monitor cases.

# BANKING AND COMMERCIAL LAW DIVISION

## *Banking & Financial Law Office*

- This Office mainly offers legal advise on policy formulation and implementation in the Bank.
- ✓ Drafts and vets Circulars, Regulations, & Guidelines issued by the Bank.
- ✓ Drafts and vets legal instruments and documents – SLAs from ITD; PSSD; COD; FMD; CBN Branches etc.
- ✓ Offers legal opinion on matters related to banking & commercial law.
- ✓ Drafts & Publication of statutory instruments for the Bank in FGN Official Gazette. **E.g., Revocation Orders; CBN Regulation On The Scope Of Banking Activities& Ancillary Matters, No. 3, 2010; Collateral Registry Regulation, 2014.**
- ✓ Delivers lectures at seminars/workshop.
- ✓ Attends courts in and outside Nigeria on behalf of the Bank in order to guide external attorneys on matters concerning the Bank.

# CBN'S FUNCTIONS & POWERS

## ➤ INTRODUCTION

- A **central bank**, reserve **bank**, or monetary authority is an apex financial institution that manages a state's currency, money supply, and interest rates.
- **Central banks** also usually oversee the commercial **banking** system of their respective countries.
- Central banks also act as a “**lender of last resort**” to the **banking sector** during times of **financial crisis**. Most central banks usually also have supervisory and regulatory powers to ensure the solvency of member institutions, prevent “**bank runs**” and prevent reckless or fraudulent behavior by member banks.
- The functions of central banks are basically the same globally, viz:

# Common Functions of Central Banks worldwide

- ▣ implementing monetary policies.
- ▣ setting the official interest rate – used to manage both **inflation** and the country's **exchange rate** – and ensuring that this rate takes effect via a variety of policy mechanisms
- ▣ controlling the nation's entire money supply
- ▣ Act as the Government's banker and the bankers' bank "**lender of last resort**"
- ▣ managing the country's **foreign exchange** and **gold reserves** and the Government's stock register
- ▣ regulating and supervising the banking industry

# CBN'S CORE MANDATE

- The CBN is the apex regulatory authority of the Nigerian financial system. Section 2 of the CBN Act, 2007 provides the core mandate of the CBN:
  - ✓ **ensure** monetary and price stability;
  - ✓ **issue** legal tender currency in Nigeria;
  - ✓ **maintain** external reserves to safeguard the international value of the legal tender currency;
  - ✓ **promote** a sound financial system in Nigeria; and
  - ✓ **act** as banker and provide economic and financial advice to the Federal Government.
- ✓ **\*\*EIMPA \*\***

# CBN AUTONOMY

- ✓ Section 1(3) expressly provides that the CBN shall be independent in the discharge of its mandate.
- ✓ Section 8(5) Reporting Obligations to the President & Relevant Committee of National Assembly to keep them abreast with developments in the economy and affairs of the Bank

# FUNCTIONS OF CBN (CONT'D)

In order to achieve its mandate, the CBN undertakes the following functions which can be broadly categorized into 3:

1. Traditional functions;
2. Regulatory functions; and
3. Developmental functions.

# FUNCTION OF CBN

## ➤ Traditional functions

1. It **issues the legal tender** (currencies) - Naira and Kobo.
2. It acts as the **Banker** and financial **adviser** to the federal government.
3. CBN act as the **banker to other banks** and finance institution.
  - Cheque Clearing.
  - **Lender of last resort.**
4. It **manages** the accounts of the country (domestic & International)
5. Banking **supervision** and **examination**.

# TRADITIONAL FUNCTIONS OF CBN

1. It issues the legal tender (currencies) - Naira and Kobo.
- ▣ Section 17 – CBN shall be the sole issuing authority of currency notes and coins in Nigeria
- ▣ Section 20 – The currency notes issued by CBN shall be legal tender in Nigeria
- ▣ Section 20(5) It is an offence to refuse to accept Naira as a means of payment and the penalty is **N50,000 fine or 6 months imprisonment** upon conviction

Proviso to s.20– CBN shall have the power to prescribe the conditions and circumstances under which other currencies may be used as medium of exchange in Nigeria

- ▣ Section 21 creates offences of tampering or trading in notes and coins. These include “**Matching**”\*(sic) & “**Spraying.**”\* Penalty
  - N50,000 fine or 6 months in prison.

\* Notable Typos and Corrigenda in the Act

# TRADITIONAL FUNCTIONS

1. It acts as the Banker and financial adviser to the federal government.
2. CBN act as the banker to other banks and financial institution.
3. Manage accounts of the country with other central banks or banks outside the country

Section 27 empowers the CBN to open accounts for and accept deposits from all the tiers of Government (Federal; State; Local) ; MDAs and banks and OFIs.

Section 29(1)(c) – As part of its credit operations CBN grants temporary advances to banks for clearing purposes

- Lender of last resort. – Section 42 – CBN may grant financial accommodation to banks with liquidity problem at such interest rate and terms as the CBN may determine

# TRADITIONAL FUNCTION

Financing Budget Deficit (**Ways and Means**)

- ▣ Section 38 of CBN Act empowers CBN to –
- ▣ (1) Grant temporary advances to Federal Government to in respect of deficiency of budget revenue
- (2) Total amount shall **not exceed 5%** of the previous years' actual revenue of Fed. Govt.
- (3) Such advances are **repayable as soon as possible** and must have been repaid in the previous year it was granted for Fed. Govt. to be granted such further advances in any subsequent year.

# TRADITIONAL FUNCTIONS

Section 2 - Ensure monetary and price stability.

Section 30 Empowers CBN to –

- (a) carry out open market operations (OMO) for the purpose of maintaining monetary stability in the economy of the country.
- (b) issue other forms of securities including treasury bills **for liquidity management.**

Section 35 – Publication of Monetary Policy Rate (MPR) always.

5. Regulating and supervising the banking industry  
– See BOFIA

# REGULATORY FUNCTIONS

- The regulatory functions of the CBN include:
  - Banks & OFIs
  - Payment System
  - Foreign Exchange Market

# REGULATORY FUNCTIONS

- **Regulate Banks and Other Financial Institutions**
- -.2(d) CBN Act - promote a sound financial system in Nigeria.
- BOFIA makes ample provision for Licensing of banks and OFIs – ss. 2 - 3;
- Revocation of license – S.12;
- Rendering of Returns – ss. 24 & 25 e-FASS – electronic Financial Analysis and Surveillance System deployed Oct. 2006;
- Supervision (Routine and Special Examination)– ss. 32 & 33 ;
- Management of Failing banks ss. 35 - 38- Resolution Options – Bail Out; Bail In; Financial Accommodation; Removal of MD/CEOs; Hand Over to NDIC to manage; Bridge Bank; Purchase & Assumption;

# REGULATORY FUNCTIONS

- Disqualification of unfit persons from management of banks (**Blacklisting**) – s. 48 ;
- Offences and Penalties ss. 49 -51.
- Section 51 of CBN Act and Section 57 of BOFIA

Grants CBN the power to make regulations to give effect to the provisions of the Acts .

CBN in exercise of this power has issued several guidelines, circulars, rules and regulations in respect of banks and OFIs and in furtherance of its mandate.

- ▣ s. 64 BOFIA empowers CBN to impose a penalty not **exceeding N2,000,000** or suspend the licence of a bank or OFI for non-compliance with CBN rules, regulations, guidelines or directives.

# REGULATORY FUNCTIONS

- 2. **Regulate Payment and Settlement System**
- - s. 2(d) – promote sound financial system and
- s. 47 CBN Act – empowers CBN to facilitate clearing of cheques and credit instruments for banks carrying on business in Nigeria;
- Power to make rules and regulations for the efficient operation of all clearing and settlement systems.
- CBN initiatives IRO payment System:
  - ∞ Deployment of **RTGS** in 2006
  - ∞ Establishment of National Central Switch - 2006
  - ∞ Cheque Truncation – i.e., dematerialization of physical cheques
  - ∞ Guidelines on **Mobile Money**
  - ∞ E-Dividend Payment – in collaboration with SEC & NIBSS
  - ∞ The Nigeria electronic Fraud Forum (NeFF) - 2011
  - ∞ Cashless Policy -2011
  - ∞ Nigeria Uniform Bank Account Number -**NUBAN** (2010)
  - ∞ Bank Verification Number (**BVN**) – launched Feb.14, 2014

# REGULATORY FUNCTIONS

## 3. Regulate Foreign Exchange (FX) Market.

- By virtue of s. 2(c) CBN Act –
- Maintain external reserves to safeguard the international value of the Naira ,
- Foreign Exchange (Monitoring & Miscellaneous Provisions) Act of 1995 ( **FEMMPA**) - s. 1(2) Empowers CBN to regulate the FX Market.
- CBN issued FX Manual in Sept. 2006 pursuant to FEMMPA as a guide to Authorised Dealers, Authorised Buyers and the General Public in processing FX applications
- Liaison with FMDQ – **MOU on Futures**
- Circulars on FX Markets - Abolition of Charges on Invisible transactions (BTA & PTA; school fees; Medical Bills – Feb 12, 2018: Non-Deliverable Forwards (NDF)
- Circular on 41 Items not-eligible for FX at Nigerian FX Market.

# DEVELOPMENTAL FUNCTIONS

- ▣ Section 31 of the CBN Act empowers the bank to invest in a corporation *or* company approved the Federal Government for the purpose of promoting the:
  - ▣ 1 development of money market
  - ▣ 2 development of the capital markets; and
  - ▣ 3. to stimulate financial & economic development.
- ▣ Proviso – **in any such case, the total value of the holdings of shares or debentures shall not at any time exceed ten times the aggregate of the Bank's paid-up capital and the general reserve fund of the Bank.**
- ▣ Examples of Dev. Functions & Interventions – NDIC; SEC; DMO; AMCON; NIRSAL; PAIF; MSMEDF; ABP; AGSMEIS

# DEVELOPMENTAL FUNCTIONS OF CBN (CONT'D)

- ▣ Section 34 – Prohibited Activities
- ▣ **CBN shall not:**
- ▣ Engage in trade or commercial activity save as provided in sections 27 – 32 of CBN Act
- ▣ grant loans upon security of shares provided that in the event of loss of such debt secure same on any real or other property to be disposed of at the earliest suitable time
- ▣ Purchase or lease real property save for Governor's residence or business premises for CBN, its agencies or clearing houses.



ACCOLADES