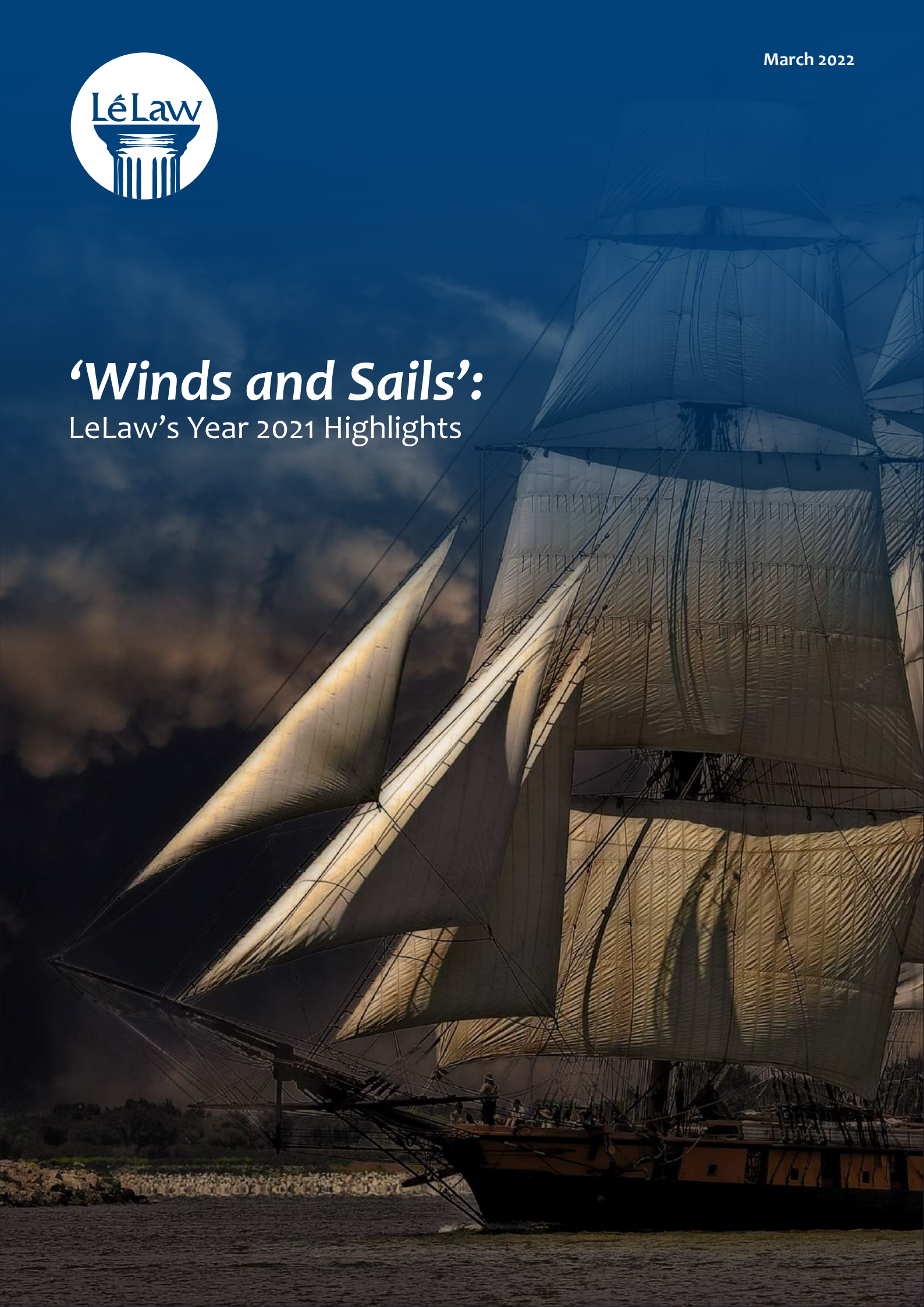




# *‘Winds and Sails’:* LeLaw’s Year 2021 Highlights





2021 was an interesting year for us at LeLaw Barristers & Solicitors – we soldered on, learnt, grew and kept maturing in the midst of our challenges! We are pleased to share below, key highlights of our Year 2021 with you.

## **A. Client Wins/ Major Client Engagements**

We were privileged to undertake some interesting Client work in the course of the year such as:

**1. Private Equity (PE) Investment into FMCG Company** – We acted for the investee company in respect of circa **US\$7.5 million** investment by two private equity firms, and also covered sweat equity arrangements by our Client's financial advisers. Engaged after the Term Sheet (TS) had been signed, we were heavily involved with every aspect of transaction – providing support on negotiations in light of post TS dynamics/recognition of subsequent developments, working on the Share Subscription Agreement (SSA), Shareholders Agreement (SHA), Directors' Service Contracts, drafting/review of corporate documentation changes, and other transaction related regulatory compliance support.

**2. International Oil Company (IOC)**- We provided a host of advisory services on: taxing authority in light of Personal Income Tax Act 2011 (given conflicting claims by two tax authorities (RTAs)); pension transition compliance arrangements; analysis of the **FIRS FHC Practice Directions**, etc. Retained as co-counsel with a leading firm, in pre-emptive litigation by client as part of risk management strategy relative to conflicting demands by two RTAs, continued with representation in tax appeal against judgment of the Tax Appeal Tribunal (TAT), client's appeal at the TAT having succeeded in part.

**3. Nigerian Data Regulation Protection (NDPR) Compliance** - We advised several Clients on risk management and **NDPR** compliance strategy.

**4. Nigerian Subsidiary of Multinational ICT Player** - We successfully represented a major player in the Nigerian telecommunication industry and got our client struck out of the suit on the basis of the grounds argued in our preliminary objection.

**5. Start-Up of Real Estate (RE) Focused PE Fund** - Currently assisting a PE firm (in conjunction with a 'Big Four' firm), with structuring and establishing its

**₦30 billion** RE Fund focused on residential and commercial urban developments in Nigeria's major cities.

**6. Employment Law Advisory and Litigation for Multinational Microfinance Institution** – Following earlier advisory work, engaged to defend multinational MFB in employment related dispute.

**7. Varied Advisory & Transaction Support for Leading Nigerian RE Group** – provided varied advisory services including on: RE JV structuring options and considerations for two large scale projects; start-up compliance advisory and support for proposed innovative foreign licensed hospitality training institute; reviewed documentation and commercial arrangements for a multi-storey ocean view residential tower; foreign exchange implications of transactions with non-resident subscribers; intellectual property rights issues including enforcement options for third party use of conflicting name; resolution strategy of liability issues from third party transactions; etc, amongst other engagements.

**8. Leading PE Firm** – We assisted our retained client to divest from a long term agric sector SME investment to the main promoter, involving preparation of Share Sale and Purchase Agreement with creative features, etc.

**9. Retained Counsel for Not for Profit Promoter of Aspirational Tertiary Institution** – involved with advisory and implementation support on various aspects of start-up and operational issues: corporate governance, transactions with counterparties, regulatory application requirements management towards attaining NUC licensing, funding/marketing strategy support, KYC, etc.

**10. Fintech Financing Advisory** - advised Client on the regulatory compliance on the implementation of innovative Fintech platform.



11. **Fintech M&A** - provided legal due diligence and transaction support to a multinational fintech player on a micro finance bank institution acquisition deal, entailing: transaction structuring advisory, due diligence, preparation of draft transaction documents before transaction was aborted.

12. **Dispute Resolution Management Strategy and Litigation Counsel for Nigerian Oil Services Firm** – provided advisory on dispute resolution management strategy for client on issues arising from an accident whilst completing well workover assignment for client involving client provided 3rd party barge. Eventually engaged to litigate client's recovery claims from its client and the OML asset owner, post aborted mediation, etc.

13. **Ikoyi Luxury Project Advisory & Transaction Support for RE Development Company** – advised new retainership client (start-up) on structuring of its proposed Ikoyi 10 storey luxury residential development, including providing transaction roadmap from pre-Term Sheet negotiations with JV partner to commissioning; drafting and reviewing detailed Term Sheet, etc.

14. **Advisory & Transaction Support for Innovative Nigerian Microfinance Institution** – continued to provide a wide range of advisory and operational support to this client as it implements its growth strategy.

15. **RE Litigation Instructions** – We were instructed

to represent leading RE development firm in litigation on a major commercial mall development, management issues.

16. **Oil and Gas Downstream (Commercial) Advisory** – advised a downstream client (seller) on anti-trust implications of its commercial arrangements, and reviewed Gas Sale and Purchase Agreement (GSPA) to ensure optimal risk management for client.

17. **Contract Drafting and Reviews** – We undertook varied and sometimes intensive contract reviews for our clients in the educational, insurance, oil and gas, RE, and other sectors.

18. **Secretarial Clients** – We assisted our clients across sectors with company secretarial tasks, arranging and attending Board, Committee and Shareholder meetings, working on various compliance issues, and providing varied advisory on operational issues.

19. **Multi-Clients Perfection of Title** – We were instructed and are currently assisting, multiple subscribers of units in an estate developed by a leading player to perfect their titles at the Lagos State Lands Registry, Alausa.

20. **Regulatory Updates** – We provided regulatory updates advisory to various retained clients, highlighting issues of relevance in light of new regulatory developments – proposed and enacted legislation (especially amendments), policy changes, etc and suggesting responsive strategies, etc.





## B. Thought Leadership

Our commitment to contributing to Nigerian legal tax regulatory business discourse was exemplified through the many articles published by the Firm both on our and external platforms in the course of 2021.

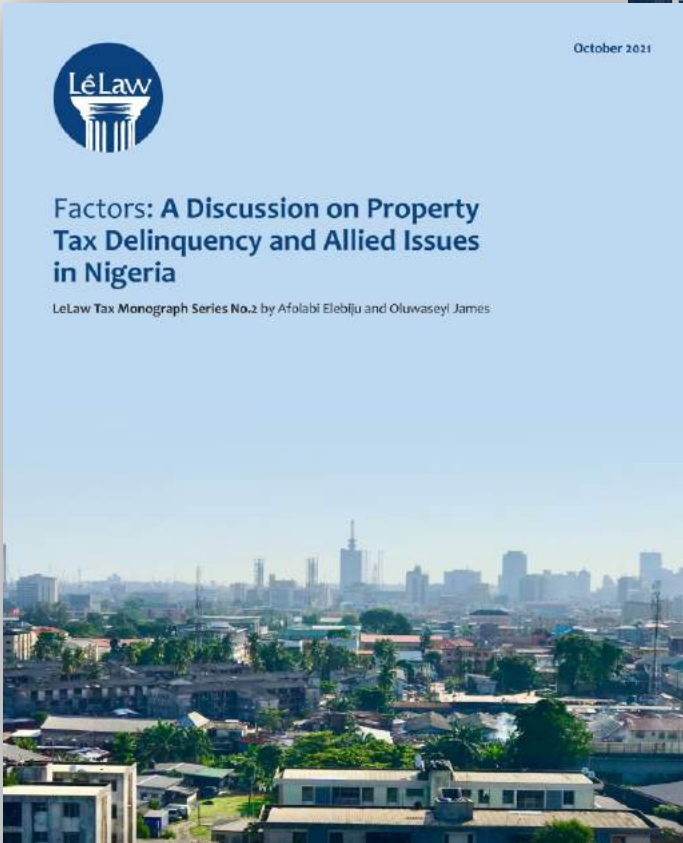
The publications were in various shapes and sizes, such as solo and joint articles/case reviews, Nigerian Chapter contributions, special firm publications on specific areas and issues, etc. Our special

publications included inappropriate consensual employee relationships, property tax delinquency whilst we contributed Nigerian chapters to leading publications by *Bloomberg* and *Mondaq*. Together with two leading Nigerian firms, we contributed Nigerian regulatory input to IAB/OneTrust's Data Privacy project. The Firm also maintained its 'Law and Economy' column in *Arbiterz*, publishing several articles on diverse topics in the course of the year. Many attracted intensive engagement and trended amongst most popular articles, for example on Mondaq:

The screenshot shows the Mondaq website interface. At the top, there is a navigation bar with 'About | Awards | Blog | News Alert | a.elebiju@lelawlegal.com' and a search bar. The main header includes the Mondaq logo and navigation links for 'Topics | Regions | Comparative Guides | Advice Centres | Webinars | Key Account'. The article path is 'Home > Middle East & Africa > Nigeria > Corporate/Commercial Law'. The article title is 'Nigeria: Corporate Governance Comparative Guide', dated 22 November 2021, by Afolabi Elebiju and Gabriel Omoniyi. It features a contributor profile for LeLaw, social sharing options, and a list of article tags including 'Nigeria', 'Corporate/Commercial Law', and 'Corporate Governance'. A 'Related Articles' section is also visible on the right.

This screenshot displays a filter and article list page on Mondaq. The current filter is 'Nigeria'. There are four tabs: 'LATEST ARTICLES', 'TRENDING ARTICLES', 'LATEST VIDEOS', and 'MOST POPULAR ARTICLES'. The 'MOST POPULAR ARTICLES' tab is active, showing a list of articles. The top article is 'Nigeria Insurance Comparative Guide' by LeLaw Barristers & Solicitors. Other articles include 'Naicom's Corporate Governance Guidelines For Insurance And Reinsurance Companies 2021 (CGGIRC)' and 'The Exclusive Legislative List And The Concurrent Legislative List - A Case For Restructuring Or Constitutional Defect?'. On the right, there are sections for 'Comparative Guides' (listing Alternative Investment Funds, Anti-Corruption & Bribery, etc.) and 'Mondaq Advice Centres' (listing Global Trademarks in SAARC Countries, etc.).

LeLaw's 2021 publications include:



**Factors: A Discussion on Property Tax Delinquency and Allied Issues in Nigeria**

LeLaw Tax Monograph Series No.2 by Afolabi Elejiju and Oluwaseyi James

**INTRODUCTION**

President Buhari signed the Finance (No.2) 2020 (FA2 2020) into law on 31<sup>st</sup> December 2020 – an event over the signing of the 2020's predecessor legislation, January 2020. Commendably, we are back to the days of related legislation being enacted alongside the annual Appropriation Bill in order to keep the tax system afloat and enable traction, cum range, for meeting budgetary objectives. It is particularly noteworthy that the Buhari administration is keeping its promise, made in 2019, to enact the Finance Act annually. Between 1999 and 2019, the practice basically fell into disuse, not to talk of many tax legislative initiatives that did not see the light of day. Under the military, the Budget Speech was usually followed/accompanied by the Finance (Miscellaneous Taxation Provisions) Decree (FMTPD) that gave fillip to the budgetary policies of the relevant year, through amendments to extant tax legislation.

The FA2 2020 is arguably the widest scope and most far ranging tax amendment legislation in recent history, if not overall in Nigerian tax history. Embodying 81 sections, it amends not only the 'usual suspects' – but also strictly non-tax but budget impacting legislation, like the Public Procurement Act (PPA) and the Fiscal Responsibility Act (FRA). Even the Companies and Allied Matters Act 2020 (enacted in August 2020), was not left out! Expectedly, many provisions formalise long desired amendments, introduce new tax incentives or further refine them, whilst also reviewing sanctions for breach of tax laws. But for a brief reference to gas utilisation incentives (amending section 39 CITA),

**LABOUR & EMPLOYMENT NEWSLETTER**  
March 2021

**Lessons: 'Employers as Victims' of Inappropriate Consensual Employee Relationships (ICERs)**  
Afolabi Elejiju, Titilade Adelekan Hesami, Ejiroghene Eferakeya and Blessing Agoruzah



**Introduction**

Employees to employee inappropriate workplace behaviours occur in various forms. They are any behaviour that goes against the employer's documented corporate policies, applicable statutory and regulatory provisions, codes of conduct etc., with potential for negative consequences such as: poor morale, employee stress, sub-optimal productivity, high employee turnover, toxic work environment, reputational damage/diminution of brand equity, direct and indirect financial losses, etc. Some examples of employees' inappropriate workplace behaviour include bullying, sexual harassment (SH), victimisation, favouritism and gross unfair advantage, verbal abuse, physical violence, connivance (for example to commit fraud), etc.

Whilst some of the improper employee's conducts are expressly forbidden – and many upon the pain of severe sanctions, because of the potential or presumed injury to employees – one that is always taken for granted as not being harmful to employers, is consensual romantic liaisons or trysts. We submit that it is seemingly, but acutely not, innocuous. Some may wonder, why should the employer be concerned about relationships between [two] consenting adults, especially if there are no obvious negative impact on the consensual employees' productivity? Would enquiry into such relationships not amount to a breach of the employees' right to privacy? Is it not more 'convenient', especially when staff performance are involved, to turn a blind eye and not rock the boat?

This Newsletter discusses the issues around inappropriate Consensual Employee Relationships (ICERs), how ICER could be potentially harmful to employers, and the scope for recourse that such employers who suffer resulting damage, can have against the 'erring' employees.

**Background Assumptions:** The Employer's Work Environment and Culture

For the purposes of this Newsletter, we have assumed that the typical employer engages staff in furtherance of its strategic business objectives, and provides them with the platform and resources (staff work environment, adequate training, agreed compensation, requisite work equipment, etc.) to enable them perform the duties of their employment. Employees (who probably met for the first time at their employer's organisation), have their individual contracts of employment with their employer, and an incidence of that is that they are required to collaborate with fellow employees for optimal realisation of their employer's corporate objectives. A major component of such corporate objective is sustainable and profitable operations – which is critical to corporate growth and expansion. In turn, this may underpin whether such employees continues to have a job, because a failed business will usually lay off employees, if not totally shut down operations.

Also, depending on sectors (which could impact whether or how regulated the employer is, exemplified by the employer's compliance requirements, etc.), and importantly, the employer's specific cultural context (its culture), employees have a sense of how unwelcome/unacceptable or otherwise, the ICER is. They fully understand that such is not an incidence of their consent of employment and the employer probably does not consider it important for the purposes of the employees delivering on their performance targets.

# Transfer Pricing Forum

Transfer Pricing for the International Practitioner

Reproduced with permission from Transfer Pricing Forum, 12 TPTIFFID, 4/1/21. Copyright © 2021 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

**Bloomberg Tax & Accounting**

APRIL 2021

April 2021

Thought Leadership | **Afolabi Elebiju**

### 'Connections, Collections': Issues Arising from the Imposition of Excise Duties on Telecommunications Services in Nigeria

Introduction

One of the unique features of the second Finance Act 2020 (FA2 2020) which received Presidential assent on December 2020 is that it 'strangely' introduced excise duties on telecommunications (telecoms) services. FA2 2020 introduced a new (very brief, but portentous) section 21(2) to the Customs & Excise (Consolidation) Act (CETCA): "Telecommunication services provided in Nigeria shall be charged with duties at the rates specified under the duty column in the Schedule as the President may by Order prescribe pursuant to this Act (CETCA)."<sup>1</sup>



I discussed this fleetingly (by way of footnote reference) in an earlier piece, 'Rendezvous: Implications of Tax Provisions of Nigeria's Finance Act (No.2) 2020 for Non-Residents', but the resulting multidimensional issues requires more detailed consideration, which is the purport of this article. I will start by excerpting from page 5 of my earlier article as follows:

imported' are now also subject duties – alongside locally made ones. Customarily, imports are subject to customs (import not excise).<sup>2</sup> The provision that one wonders if it is a error? This writer thinks it is the new section 21(1) CETCA: "Goods imported or manufactured in Nigeria"<sup>3</sup>...

April 2021

Thought Leadership | **Afolabi Elebiju**

### Relationships and Scrutinisations: The Companies and Allied Matters Act 2020 and Transfer Pricing in Nigeria

"Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."  
- Louis Brandeis, former US Supreme Court Justice

Introduction

Recently, as part of LeLaw's Nigerian country chapter contribution to Bloomberg's Winter 2020/Spring 2021 Transfer Pricing Forum,<sup>1</sup> (Bloomberg Publication), we used TP lenses to look closely at the Companies and Allied Matters Act 2020 (CAMA). It was an interesting exercise that revealed the complementarity of CAMA's provisions to that of the Income Tax (Transfer Pricing) Regulations 2018 (ITPR 2018). In fact, the bulkwork of Nigeria's TP regime is in carrying the policies that Nigeria's TP regime was until recently stuck at, its basic state – prompting calls by commentators for requisite regulatory actions.<sup>2</sup> Happily, the ITPR 2018, Nigeria's inaugural TP focused instrument, was issued thereafter in August 2018, to much acclaim.<sup>3</sup>



Surely, heightened TP enforcement action is on the horizon of the Federal Internal Revenue Service (IRS), and (to a lesser extent), FIRS' State counterparts. Also, taxpayers fear

Panel (DRP) level, envisaged by Reg. 21 ITPR 2018.<sup>4</sup>

Has CAMA's provisions (CAMA 2020 and this TP disclosure) can CAM play as the oversight over CAMA in relevant professional lawyer their provide amendment ITPR? TP enforcement discussion there and concludes that the intent behind it, is a

December 2021

Thought Leadership Perspectives

### Change Your Style: Envisaging A Potential Model Framework For Fast Fashion Industry in Nigeria

Sarah Ordiah

Introduction

Fashion is inherently time conscious, with many trendy styles, rapidly replaced by the period where such styles were in the limelight. Two examples are the 'preppy' styles of the 1950s and the 'Spring/Summer' trend of the 2020s. The fashion industry probably tops in four seasons a year (fall, winter, spring and summer). Designers' creative workflow involves sketching, planning and fashion design and making key predictions on what the consumers desire to buy (color, and the 'mid' or 'core' colors). This process requires 'creative power' by the designer, taking considerations, 'small things' where the designer put out for particular seasons. During this time, fashion was still and 'timeless', and had a few 'cliques' that were more or less followed.

However, it defines Fast Fashion (FF) as a term used to describe 'fast fashion' that means quickly from the sketch to the ready-to-wear (RTW) items. The sketch is often based on styles presented at fashion week runway shows or more by operators. FF designs do not necessarily have to come from the runway; they could be expressions of designer's fabric, textures or already constructed wear. FF makes for faster, cheaper manufacturing processes and facilities.

The global market for the fast fashion industry (FFI) is projected to reach US\$39.4 billion by 2027 from US\$29.05 in 2020 at a

Comp of 7% CAGR players in their market in market include Zara, H&M Group, Shein, Primark and Forever 21. These companies are manufacturers, producers and distributors, but often manufacture their own production capacity.

In Nigeria, the structure for the FFI is peculiar, because the history in the recent interpretation of its fashion is still foundational about there is a whole business structure that mirrors it, producing fashion items and based on trends and 'ready-to-wear' fashion items and the marketplace.

Surprisingly, there is a somewhat integrated business structure existed in production and manufacturing, situated in the South Eastern part of Nigeria. It mirrors the FF but skips the design stage, making copies of their other designers' creations. This makes it a breeding ground for designs and trademark infringement.

This article examines the sustainability of the FFI, against the backdrop of the traditional fashion industry. It considers also its economic implications from the perspectives of taxation, ITPR, intellectual property regulation and its potential as an asset for the growth of the Nigerian economy. This article will discuss FF's environmental, financial and economic, whilst making necessary recommendations on how to make it own mark as a segment of the emerging Nigerian fashion industry.

Fast Fashion Retailers and Business Proposition

Nigeria's economic challenges in forcing her to stop more attention to local operators, encouraging Nigerian products that can serve regional needs and ultimately, compete on the global stage. The FFI is disruptive, because most of the designs are heavily influenced by styles that are unique to Nigeria's global fashion heritage. Traditional fashion players like the 'gala', 'l'gala' and 'l'gala' reflects this heritage. The Sub-Saharan fashion market is worth US\$1.1 billion north Nigeria, largely represented by efficient small and medium scale enterprises, accounting for about 75% of US\$4.7 billion. Nigeria is currently at the heart of Africa's fashion, 'trend' influencing many African countries' fashion trends.<sup>1</sup>



April 2021

Thought Leadership | **Afolabi Elebiju and Gabriel Fatokunbo**

### OVERVIEWS: NAICOM'S CORPORATE GOVERNANCE GUIDELINES FOR INSURANCE AND REINSURANCE COMPANIES 2021 (CGGIRC)

Introduction

The National Insurance Commission (NAICOM) issued the CGGIRC 2021 on 17<sup>th</sup> March 2021, with an effective date of 1<sup>st</sup> June 2021. The CGGIRC 2021 replaced the Code of Good Corporate Governance for the Insurance Industry in Nigeria 2009 (CGGII) vide Guideline 1.0(v) CGGIRC 2021. Prior to the issuance of CGGIRC 2021, the Financial Reporting Council of Nigeria (FRCN) pursuant to sections 11(c) and 51(c) FRCN Act 2011 essentially harmonised all sectoral codes into the Nigerian Code of Corporate Governance 2018 (NCCG).



Therefore, the NCCG 2018 displaced prior sectoral codes: (a) Code of Corporate Governance for the Telecommunications Industry 2016, issued by the Nigerian Communications Commission (NCC); (b) Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014 issued by the Central Bank of Nigeria (CBN); (c) Code of

given harmonised code under the NCCG 2018? Whilst there is no law that restricts NAICOM from issuing guidelines, circulars or directives that will further deepen the insurance penetration rate/compliance except it falls the repugnancy test; besides, the Guideline 1.0(v) CGGIRC 2021 states that: "The Guidelines shall be read and interpreted in conjunction with the

August 2021

Thought Leadership Perspectives

### Boundaries: Taxation of Nigerian Residents Providing Varying Services Remotely or Non-Residents

Introduction

When Covid-19 made landfall in Nigeria in Q4 2020, many Nigerians for the first time in their professional careers had a taste of remote work. However, this had been a norm in some sectors like the Information Technology (IT), Data Analysis, Copy Writing industry and the like. The new reality is that remote or location irrelevant work arrangements leveraging technology has become more commonplace, a situation that is likely to assume increasing dimension in the years to come, especially as they obviate or minimise expatriate mobility costs.<sup>1</sup> However, whilst associated regulatory issues with "offshoring" may be presumed to insignificant, this may not always be the case.

This article examines "high level" the tax issues surrounding the gains and profit earned from the provision of such services to non-residents regardless of the existence of an employer-employee relationship.

Residency as a Basis of Personal Income Taxation in Nigeria

Section 88 PITA states that in relation to an individual, the RTA for a year of assessment (YA) is the tax authority of the territory in which the individual is deemed to be resident in that year.

Residency, which is determinable from the table in Sixth Schedule PITA, is to be paid in each YA on the total income of every individual deemed to be resident for that year in the relevant State.<sup>2</sup> Hence, although PITA is a Federal legislation, its administration is within the purview of States in Nigeria, and thus the RTA for the purposes of PITA is the State Boards of Internal Revenue (SBIR). However, for residents of the Federal Capital Territory, Abuja, the RTA is the Federal Capital Territory Internal Revenue Service (FCTIRS), and not the Federal Internal Revenue Service.<sup>3</sup>

PITA, which is determinable from the table in Sixth Schedule PITA, is to be paid in each YA on the total income of every individual deemed to be resident for that year in the relevant State.<sup>4</sup> Hence, although PITA is a Federal legislation, its administration is within the purview of States in Nigeria, and thus the RTA for the purposes of PITA is the State Boards of Internal Revenue (SBIR). However, for residents of the Federal Capital Territory, Abuja, the RTA is the Federal Capital Territory Internal Revenue Service (FCTIRS), and not the Federal Internal Revenue Service.<sup>5</sup>



Afolabi Elebiju

Chimezie Echemdu

premiums, benefits allowed, given or granted to any temporary or permanent employee.<sup>6</sup>

In essence, any person resident in Nigeria for tax purposes is taxable by the relevant tax authority (RTA) on his/her world-wide earnings; subject however, to certain exceptions (considered later on in this article), as well as the provisions of applicable Double Taxation Agreements (DTAs).

Residency as a Basis of Personal Income Taxation in Nigeria

Section 88 PITA states that in relation to an individual, the RTA for a year of assessment (YA) is the tax authority of the territory in which the individual is deemed to be resident in that year.

PITA, which is determinable from the table in Sixth Schedule PITA, is to be paid in each YA on the total income of every individual deemed to be resident for that year in the relevant State.<sup>7</sup> Hence, although PITA is a Federal legislation, its administration is within the purview of States in Nigeria, and thus the RTA for the purposes of PITA is the State Boards of Internal Revenue (SBIR). However, for residents of the Federal Capital Territory, Abuja, the RTA is the Federal Capital Territory Internal Revenue Service (FCTIRS), and not the Federal Internal Revenue Service.<sup>8</sup>



www.lawlegal.com

© 2021 LeLaw (Barristers & Solicitors), Plot 9A Oshodi Moore Street, Off T1 Rubery Road, Lekki Phase 1, Lagos, NIGERIA

**Thought Leadership Reflections**  
May 2021

**Unravellings:  
Tax Implications of Divorce Settlements and Optimality Structuring Possibilities in Nigeria**

Afolabi Eiebiju and Chimesirim Echendu  
a.eiebiju@lelawlegal.com | c.echendu@lelawlegal.com

"Official statistics vastly understate Nigeria's divorce rates". The Economist<sup>1</sup>

"Divorce, 'can have a pretty meaningful effect on the outcome for individuals' incomes,' says Katie Prentke English, co-founder of Harness Wealth, a New York-based digital platform that helps individuals find financial, tax, and legal advisers."<sup>2</sup>

**INTRODUCTION**

The cliché that only death and taxes are certain in life has been proved right all too often; even in events as discomfiting as divorce, it is prudent to pay attention to the tax implications of property settlement before, and after, the dissolution of marriage. The recent high profile divorces of (Jeff and Mackenzie Bezos and Bill and Melinda Gates, has without doubt, made this a topic of interest. According to a recent Forbes article, of the fifty (50) wealthiest people in America, nine (9) are divorced, whilst another eleven (11) have divorced and remarried.<sup>4</sup> These 're-alignments' will obviously

have financial, and therefore, tax implications.

In Nigeria too, high net worth individuals also in the news from this article examine provisions and potential tax implications of dissolution.

**The Nigerian Family Property Owners' Cases**

We will discuss the framework and subheadings below.

**No Fixed Formula Division**

<sup>1</sup> The author is grateful to the Hon. Chiketa, Chairman, Supreme Court of Nigeria for the opportunity to write this article.

<sup>2</sup> <https://www.economist.com/finance-and-economics/2021/05/10/divorce-can-have-a-pretty-meaningful-effect-on-the-outcome-for-individuals-incomes>

<sup>3</sup> <https://www.forbes.com/wealth-management/2021/05/10/divorced-wealthy-people-in-america/>

<sup>4</sup> <https://www.forbes.com/wealth-management/2021/05/10/divorced-wealthy-people-in-america/>

**Thought Leadership Reflections**  
February 2021

**Cessations and Destinations:  
Issues in Gas Flare Commercialisation in Nigeria**

a.eiebiju@lelawlegal.com | dodiye@lelawlegal.com

"On behalf of the Federal Government of Nigeria (FGN), this programme seeks to attract investments and develop a transparent market mechanism through a competitive procurement process for allocating gas flares, under clear and transparent criteria, to competent third party investors using proven technologies in commercial application globally. The Nigerian Gas Flare Commercialisation Programme (NGFCP) is an opportunity for Government, Industry, State Government, ethnic nationalities, and local communities to work together to resolve an oil field unacceptable practice."

NGFCP website: <https://ngfcp.dpr.gov.ng/about-us/historical-background/>

"... The FGN has approved the National Gas Policy 2017 with specific policy measures for the upstream, midstream and downstream segments of the petroleum sector. On that



er of crude oil, she has often been petroleum Corporation (NNPC) recently cubic feet (TCF), with unproven gas arms of proven natural gas reserves, ronicall, at 05,896.5 million cubic tion of natural gas."

<sup>1</sup> <https://www.nnpcc.gov.ng/About-Us/Our-Work/Upstream-Operations/Flare-Management>

<sup>2</sup> <https://www.nnpcc.gov.ng/About-Us/Our-Work/Upstream-Operations/Flare-Management>

**Thought Leadership Reflections**  
August 2021

**Coercions:  
Reflections on Constructive Dismissal in Nigerian Labour Practice**

a.eiebiju@lelawlegal.com

**Introduction**

Apprehensions associated with negative work environment could lead to constructive dismissal or constructive discharge (CD). Such may not only negatively affect employees' performance, it could also lead to pecuniary injuries and some other non-economic damages, which may not be easily quantifiable.<sup>2</sup> Despite employment relationships being typically at-will,<sup>3</sup> the law does not permit employers to treat employees unfairly or dehumanise them.<sup>4</sup> Thus, Nigeria's regulatory regime, upholds the imperative of decent work environment in furtherance of strategic development and national competitiveness objectives. Same also aligns with international labour standards<sup>5</sup> and best practices.

The doctrine of CD is a relatively novel employment concept, that to the fair of employment with the Thankful has gained other of labour market provide what claim for requirement successful are avail

**Concept Dismissal**

Advancing trust employee CD; on develop law of Labour provide in the em ri(s) pro section d

It is trite that terms and conditions of contract of employment must be respected by both parties. However, when the employer's conducts violates the contract, this would give rise to claims for constructive dismissal.

**What's in a Name?:  
Issues in Conflict of Corporate Names in Nigeria**

a.eiebiju@lelawlegal.com | a.eiebiju@lelawlegal.com

**CAMA**, "a person or association of persons shall not carry on business in Nigeria as a company, limited liability partnership, limited partnership or under a business name without being registered under this Act." Thus, the only persons free from this requirement are those individuals who intend to do business as sole proprietors or partnerships using their, or combination of their own names.<sup>2</sup>

Effectively, company incorporation is the birthing of a new person in law; hence, choosing a name for a company is almost as important as naming a natural person. As for natural persons, it is names that will distinguish one company, from other companies. Unsurprisingly, many promoters apply their creative gifts to come up with distinct, unique and memorable names, subject to legal restriction

**LeLaw Tax Monograph**  
Series No. 1

**Nigerian Investment Commission**

**'Counting the Cost':  
An Impact Analysis of Nigeria's Tax Incentive Regime**

(Originally published in (2021) 3 TLJ, pp. 1-30)

<sup>1</sup> <https://www.cac.gov.ng/>

<sup>2</sup> <https://www.cac.gov.ng/>

<sup>3</sup> <https://www.cac.gov.ng/>

<sup>4</sup> <https://www.cac.gov.ng/>

<sup>5</sup> <https://www.cac.gov.ng/>



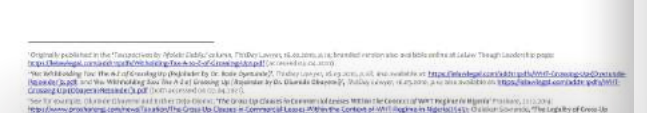
'Winds and Sails': LeLaw's Year 2021 Highlights

Thought Leadership | Afajabi Elebiibi
April 2021
Addendum – 'Withholding Tax: The A-Z of Grossing-Up'

Thought Leadership Reflections
May 2021
Autonomies: Choice of Law and Courts' Jurisdiction in Nigerian Arbitration

Introduction
In my 2019 'Taxspexives' article, 'Withholding Tax: The A-Z of Grossing-Up', (the Article), I argued that gross-up clauses in commercial transactions were, subject to proper structuring, perfectly legal and could continue to be used, in the absence of any mandatory prohibition in Nigerian tax law.

Introduction
Arbitration is widely regarded as a... to sidestep the disadvantages of litigation, is just one of the... Act' (ACA), and the Lagos State Arbitration Law' (LAL).



Thought Leadership Perspectives
February 2021
Electric Power Generation, Distribution And Pegging: Is The New NERC Order On The Capping Of Estimated Bills A Solution?

INTRODUCTION
Globally, the generation and transmission of electricity has continued to grow rapidly, albeit not keeping pace with population growth in emerging and 3rd World economies. There is no gainsaying that the socio-economic, technological and industrial development of any nation, Nigeria inclusive, is largely dependent on electricity.

Thought Leadership Perspectives
January 2021
TAXATION OF THE DIGITAL ECONOMY: RETHINKING THE FIXED BASE RULE IN NIGERIA!

Introduction
Globalisation continues to drive the global economy, having spurred the growth of the digital economy (DE), which itself has been defined as, "a worldwide network of economic activities, commercial transactions and professional interactions that are enabled by information and communication technologies".

Thought Leadership | Adefunke Muturo
September 2021
Developments: Finance Acts 2020 and the Tax Treatment of Regulated Securities Lending Transactions in Nigeria

Introduction
In November 2018, the Nigerian Exchange Group Plc (NGX) published its Interpretative Guidance to Securities Lending Guidelines (IGSLG) which became effective from 7th January 2019. The Exchange sought to include retail investors in the securities lending (SL) programme in order to enable their participation, widen the pool of securities available for lending and ultimately enhance the capital market subsector.

Given Nigeria's strategic DE growth estimated to generate US\$88 billion by 2027 and the urgent need to diversify Nigeria's revenue base, this article seeks to examine legal impediments to taxing DE, especially non-residents. It also takes cognizance of developments in other jurisdictions, particularly the EU which recently proposed a reform of its tax laws to annul the imposition of CIT on DEs without a fixed base in the EU.



© 2021 LeLaw (Barristers & Solicitors), Plot 64 (Bantay) Asoju Street, Off TF Kuboke Road, LAKE 1, Lagos, NIGERIA

www.lawlegal.com



**Impressions: Personal Liability of Directors under the Asset Management Corporation of Nigeria Act (AMCON Act) As Amended**

*Esther Akroy*

**INTRODUCTION**

The Asset Management Corporation of Nigeria (AMCON) was created in 2010 vide the **Asset Management Corporation of Nigeria Act, No. 4 of 2010 (the AMCON Act)** to resuscitate the Nigerian financial system by recovering non-performing loans (NPLs) of Nigerian Banks. The debts presently said to be about N4.4 trillion have thus far proven difficult to recover.<sup>1</sup> AMCON is under immense pressure to fulfil its objective, amidst the calls by the International Monetary Fund (IMF) for the Federal Government (FG) to wind down AMCON so as to avert "moral hazard and fiscal risks".<sup>2</sup>

Funding for AMCON was initially provided by the Central Bank of Nigeria (CBN) through a sinking fund known as the Banking Sector Resolution Cost Fund.<sup>3</sup>

Cost Sinking Fund (the Fund) set up by CBN and the deposit money banks (DMBs) in 2011.<sup>4</sup> CBN was to contribute ₦50 billion annually for ten (10) years starting from 2011,<sup>5</sup> whilst the DMBs were to contribute as annual levy, 50 basis points (or such higher basis points as may be determined by the CBN) of their total assets at the end of the preceding financial year, commencing on 30th April 2014.<sup>6</sup> The Fund is now vested in the Banking Sector Resolution Cost Fund.<sup>7</sup>

This has led several commentators to wrongly assume that AMCON was established to last for ten (10) years, presumably from 2011 when CBN started contributions to the Fund.<sup>8</sup>

Another commentator has (rightly in this writer's view), argued that it would make for more optimal realisation of AMCON's objectives for it to consider securitizing the NPLs.<sup>9</sup>

In order to strengthen the powers of AMCON in its crusade, President Muhammadu Buhari assented to the **Asset Management Corporation of Nigeria (Amendment No.2) Act 2019 (AMCONAA 2019)**, itself an amendment of the **AMCON Act** which had also earlier been amended by the **Asset Management Corporation of Nigeria (Amendment) Act, 2015**.

**POTENTIALS:**  
INSURANCE COVER FOR INTELLECTUAL PROPERTY MISAPPROPRIATION IN NIGERIA

**Thought Leadership Reflections**  
June 2021

**Combustions: Prospects for Mandatory Licensing of Patents in Nigeria**

*Esther Akroy*

**Introduction**

The recent surge in the number of confirmed cases of COVID-19 in India has furthered the discussions on the propriety of exclusive patent rights in times of national or global emergencies impacting public health and safety.<sup>1</sup> The emergence of the virus in late 2019 and 2020 has had multilateral efforts involving many pharmaceutical companies, research institutes and governmental agencies to venture into research and development of vaccines to stem the onslaught of the virus. Many vaccines which have successfully rates of testing and production, are already being administered to citizens worldwide; also, various vaccine diplomacy issues have come to the fore.

Going down history lane, the COVID-19 pandemic is not the first major public health challenge that has forced the world into rethinking the exclusivity rights of the patent holders. The early years of the 21<sup>st</sup> century have been filled with the conversation on raising patents of their rights on drugs for HIV/AIDS, tuberculosis, etc. to ensure that majority of the people are treated, as the battle for insulating the world continues, there has been a call for the waiver of the intellectual property (IP) rights to allow (third party) local production from different countries to deepen vaccination which is currently low.<sup>2</sup>

Despite all kinds of safety mechanism appropriation of such IP, while for regulation and safety, together in case of infringement or assurances do not prevent the consumers to have an impact on the IP holders and challenges of infringement management can offer some so as an IP risk management tool by also evaluate current status, profits due to him for his creativity. Aside from the economic rights the Berne Convention for the Protection of Literary and Artistic Work (1886 (Berne Convention) was reviewed in 1928 vide the **Rome Act**,<sup>3</sup> to identify and make provision for another 'leg' or variant of the right of a copyright author: the moral right.<sup>4</sup>

Moral right seeks to regulate the right of the author by granting him the right to attribution, paternity and against derogation which, depending on the jurisdiction, may either be for the lifetime of the author, coexist with the economic right, or be in perpetuity. Varied implementation of some of the provisions, has followed the international recognition of moral right since 1928. Whilst the World Trade Organisation (WTO)'s **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** has not explicitly provided for moral rights, it has been interpreted to require WTO members to provide for moral rights.<sup>5</sup>

**'BREACH OF IP RIGHT HAVE A PREJUDICIAL DAMNABLE EFFECT DIFFERENT STAKEHOLD INDIVIDUALS, GOVERN AND CORPORATE ENTITIES'**

**'PINTS': WHEN DOES EXTRACTING MORE TAX REVENUE BECOME TOO MUCH?**

*Frank Okete*

**Introduction**

Revenue generation across States in Nigeria continues to remain a critical concern to most stakeholders, not just the Revenue authorities and the public sector. Tax, levies and other charges have always been a tool by State Governments to generate additional revenue. According to the 2019 Internally Generated Revenue (IGR) data released by the National Bureau of Statistics (NBS), States in Nigeria generated the total sum of ₦986.2 billion between January and September 2019. During the period, Lagos and Rivers States recorded the most IGR of Nigeria's 36 States and FCT, Lagos State, Nigeria's commercial hub generated ₦497.09 billion, representing 50% of IGR generated by all the States.<sup>1</sup> This is understandable as Lagos State Government (LASG) cannot but benefit from the economic activities in its territory.

In 2020 however, according to the 2020 figures released by NBS, States in Nigeria generated a sum of ₦611.87 billion as IGR between January and June 2020. The IGR collected by the 36 states in the first half of 2020 dropped by 37.2% compared to ₦651.9 billion recorded in the corresponding period of 2019.<sup>2</sup> Lagos State was the highest performing State, with IGR of ₦204.51 billion between January and June 2020, accounting for 33.4% of the total states' revenue during the period.

The Governor Sarwo-Olu administration IGR strategy continues on the foundation laid by his predecessors, starting with Governor Tinubu, intending to use enhanced tax collections to fund its ₦147 trillion 2020 Budget, through monthly revenue of ₦73.86 billion. Whilst the projected monthly IGR of Lagos State Government (LASG) for 2018 (under Governor Ambode) was ₦60bn or (₦720bn for the year), but it only realised about ₦48 billion (₦53) at the end of the year.<sup>3</sup> Incidentally, the figure was a slight drop from LASG's 2019 revenue of ₦938.75 billion.<sup>4</sup>

With increased tax revenues comes the concomitant implications of the long term effect of the additional tax burdens especially on formal sector taxpayers. It has been often said that the most efficient taxes are those which do not alter or modify the taxpayers' behavioural patterns. This article seeks to highlight some of the recent revenue generation mechanisms introduced by the Federal and State Governments and their effect of same on the economy.

**Sectoral Analysis - Recent Developments**

**Mobility Sector**

After LASG's ban on commercial motorcycles (Okada) in Lagos State in January 2020 which forcibly altered the business model of tech-based mobility franchisees such as MAX.ng, GoKada, (or in the case of ORiDE resulted in complete cessation of operations.)

LASG released its **Guidelines for Online Hailing Business Operation of TaxiIn Lagos State (The Guidelines)**<sup>5</sup>

Part 4 of the Guidelines provides that from 20<sup>th</sup> August 2020, service entities in Lagos City with less than 1,000 drivers are expected to pay a ₦10 million licence fee, while those with more than 1,000 drivers are to pay ₦25 million. Subsequent renewals are pegged at ₦10 million for those with more than 1,000 drivers and ₦5 million for those with less.

As a result of the public outcry on the development, the LASG made a volte face when on 15<sup>th</sup> August 2020, it reduced the operational licence fee placed on ride-hailing companies operating within the State by 30%. LASG however included a flat fee of ₦20 to be known as contribution to Road Improvement Fund which will be levied on each ride trip.

**Thought Leadership | Afolabi Elebiyu and Gabriel Omoniyi**

**Incidences: Moral Rights in Nigerian Intellectual Property Regulatory Framework**

**Introduction**

From its humble origins reportedly dating back to the United Kingdom (UK)'s **English Copyright Act 1709**,<sup>1</sup> copyright has assumed increasing importance, especially as the society recorded advances in intellectual breakthroughs. For some countries like the United States of America (USA), the concept of Intellectual property (IP) rights has been recognised in their Constitution through the **Commerce Clause** and seen as one of the ways of furthering national development.<sup>2</sup>

Copyright, a right that automatically becomes vested in an author,<sup>3</sup> gives such copyright owner some rights,<sup>4</sup> all geared towards enabling the author accrue and maximise all profits due to him for his creativity. Aside from the economic rights the Berne Convention for the Protection of Literary and Artistic Work (1886 (Berne Convention) was reviewed in 1928 vide the **Rome Act**,<sup>5</sup> to identify and make provision for another 'leg' or variant of the right of a copyright author: the moral right.<sup>6</sup>

Moral right seeks to regulate the right of the author by granting him the right to attribution, paternity and against derogation which, depending on the jurisdiction, may either be for the lifetime of the author, coexist with the economic right, or be in perpetuity. Varied implementation of some of the provisions, has followed the international recognition of moral right since 1928. Whilst the World Trade Organisation (WTO)'s **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** has not explicitly provided for moral rights, it has been interpreted to require WTO members to provide for moral rights.<sup>7</sup>

**'BREACH OF IP RIGHT HAVE A PREJUDICIAL DAMNABLE EFFECT DIFFERENT STAKEHOLD INDIVIDUALS, GOVERN AND CORPORATE ENTITIES'**

## Thought Leadership Perspectives

August 2021

### Interpretations: A Review of Niger Delta Development Commission v. Rivers State Board of Internal Revenue [2020] 3 NWLR (Pt. 1711), 371

## Thought Leadership Perspectives

December 2020

### Actions: Beyond the Nigerian Data Protection Regulations (NDPR) 2019

**Introduction**  
The Pay-As-You-Earn (PAYE) Scheme, pursuant to which employers are statutory agents for deducting and remitting their employees’ personal income taxes (PIT), is perhaps the missing piece of the Nigerian tax administration system. According to the Nigerian Bureau of Statistics, PAYE remittances remain the most significant contributor of tax revenue to States. In Rivers State for instance in 2020, PAYE accounted for a staggering 92.7% of total tax collected.<sup>1</sup>

**A. The PAYE Mechanism in Nigeria**  
Section 81(1) of the Income Tax Act, 2007 (ITA) provides the primary statutory backing for PAYE in Nigeria. It stipulates that “income tax chargeable on an employer by an assessment whether or not the assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any emolument paid, or from any payment made on account of the emolument, by the employer to the employee.” The aforementioned direction is to be in writing and either addressed to the employer or published in the State Gazette. The direction is to stipulate the emolument of the employer which it refers to and the income tax to be deducted.<sup>2</sup> The RITA is obligated by PIT to ensure that the total amount deducted is equal to the income tax chargeable in respect of all the taxpayer’s emoluments for that year.<sup>3</sup>

In a sense, it is similar to the withholding tax (WHT) system where companies and other categories of tax payers are mandated to deduct and remit a fixed percentage from payments to suppliers, to the relevant tax authority (ITA) as advance payment of tax on behalf of the supplier. It is salutary to state at this point that PAYE is not a tax or levy per se, but it means to collect the PIT of employees in advance, from source.<sup>4</sup>

Mainly because of the way it operates, there has been a lot of confusion as to whether the employer or the employee is the taxpayer under the PAYE scheme. This stems from the fact that tax authorities have appeared, enforcement powers against the employers of labour that they consider are non-compliant. The Nigerian Courts have however, in a long line of cases, ruled that under the PAYE system, the employee is actually the tax payer, not the employer, who is at best an agent of government.<sup>5</sup>

Considering the importance of tax to the proper functioning of every government, and especially PIT remitted via PAYE for States in Nigeria, the Personal Income Tax Act (PITA) is structured to allow speedy enforcement and recovery of taxes due to the government.<sup>6</sup> This article reviews the recent decision of the Court of Appeal (CoA) in *Niger Delta Development Commission (NDDC) v. Rivers State Board of Internal Revenue (RSBIR)* and highlights new developments that might have been unwittingly introduced in the machinery of PIT administration in Nigeria.

The RITA is at liberty, in calculating the amount to be deducted, to take into account income of the employee from any other source chargeable to tax under PITA, but where taken into cognisance, the amount deducted emoluments will be set-off against tax assessments.<sup>7</sup> However, these PAYE provisions - as can be gleaned from section 81(1) of the ITA - generally for carrying out the provisions of the Regulation (Reg.) 1, Operation of Pay-As-You-Earn (OPAYE) imposes a duty on the employer from the tax authority. The employer is deducting from employee emoluments within six (6) months of commencing business of the commencement of the OPAYE.<sup>8</sup>

**Regulation (Reg.) 1, Operation of Pay-As-You-Earn (OPAYE)** imposes a duty on the employer from the tax authority. The employer is deducting from employee emoluments within six (6) months of commencing business of the commencement of the OPAYE.<sup>8</sup>

**Introduction**  
The evolution of the Internet has changed the world in many ways. Physical (traditional) operations and daily interactions have over time been supplemented, covered, or totally supplanted by online versions riding on the back of developments in information and communication technology (ICT), and consequent migration into cyberspace. ICT has become, within a very short time, one of the basic building blocks of modern society, forcing and creating a culture of dependence on innovative technology.<sup>1</sup> The Fourth Industrial Revolution (4IR) is

**The Concept of Data Protection and Privacy**  
Data insecurity is borne out of the fact that data is often not in the absolute control of Data Subject (DS) and as such, might be prejudicial if not in safe hands, given the advent of information technologies to create, collect, manage, manipulate, store, and share information regardless of time and space.<sup>2</sup>

Data is defined by NDPR to mean “characters, symbols and binary on which operations are performed by a computer, which may be stored or transmitted in the form of electronic signals is stored in (relates to the DS) while data being with data”

MAY 2021

ough there has been an emphasis on the right to technological

braced to the (IT Policy)”, and institutions include the 5, Freedom of Information Act, these laws and regulate data

ment to section 6(1) of the Guidelines in accordance with the

# NAVIGATIONS: REVISITING THE TAX LIABILITY OF NON-RESIDENT SHIPPING COMPANIES IN NIGERIA

THOUGHT LEADERSHIP BY:

CHIMEZIRIM ECHENDU



Author: Chimezie Echemendu, Solicitor General, Rivers State Level 2 & 3rd Floor, 100A, April 2021. <http://www.lelawlegal.com/insights/publications/2021/04/21/2021-04-21-NAVIGATIONS-REVISITING-THE-TAX-LIABILITY-OF-NON-RESIDENT-SHIPPING-COMPANIES-IN-NIGERIA>

## Thought Leadership Perspectives

OCTOBER 2021

# SOUNDS AND SONGS: EVALUATING THE BALANCE OF RIGHTS IN ARTISTES AND RECORD LABEL ARRANGEMENTS

Thought Leadership by: SARAH ORDIAH

sordiah@lelawlegal.com

In recent times, record labels (the major recruiter of music artistes), have shifted from the traditional record deals that they oblige prospective signee artistes, to more expansive types of contracts such as the multiple rights deal - commonly referred to as the “360 deal”. Major record labels seem to fancy these sort of artist arrangements, because they are lower risk than traditional contracts or artiste development deals; so much so that they urge artistes previously signed to traditional arrangements, to consider renegotiating their contracts to, multiple rights contracts.<sup>1</sup>

A 360 deal can be expressed in different variations like a 90 deal, a 180 deal or a 270 deal; however, these do not have standard definitions, and are thus in practice, used loosely. Although the content of the 360 deal may vary from artiste to artiste, a basic definition for this arrangement is that it is a kind of artiste record label agreement that

## Thought Leadership Perspectives

February 2021

### Protections: A Commentary on Trade Secrets in Nigeria

“Forget patents, trademarks and copyrights... trade secrets could be your company’s most important and valuable assets.”

James Peckley  
Solicitor General, Lagos State

**Introduction**  
From Compa to Coca-Cola to Google’s algorithm, businesses and corporations have continued to keep their trade secrets (TS), to enhance prospects of their long-term, sustainable future through market relevance and profitable business operations. Some of these TS have spanned decades, generations and centuries; therefore the need for adequate protection against preudicial disclosures, cannot be overemphasized. While Nigeria - through lack of subject specific legislation - can be said to be partly different from TS, other countries like Uganda (through her Trade Secrets Protection Act 2018), the United States of America (through their Uniform Trade Secrets Act 1919 (UTSA) and the Defend Trade Secrets Act 2016 (DTSA)) and the World Trade Organisation (WTO), through Article 39 Trade-Related Aspects of Intellectual Property Rights 1995 (“TRIPS”), have sought to protect TS.<sup>2</sup>

businesses, TS - as a subset of intellectual property - is a critical asset that must not be misused, essentially through unfair competition.<sup>3</sup> TS is essentially a formula, process, device, or other business information kept confidential to maintain an advantage over competitors; information - including a formula, pattern, compilation, program device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>4</sup>

investment competitiveness, an issue of efforts, especially to emerging economies. This article offers a perspective of TS through an analytical exploration of the applicable Nigerian legal framework, the relationship with other IP rights, a comparative analysis with other jurisdictions and concludes with suggestions for more efficacious TS protection in Nigeria, pursuant to identified gaps.

Unlike patents that can be documented, the concept of TS lies in the fact that it is a ‘secret’ hence a bit ‘difficult’ to regulate and protect. Where protection of TS in law, the effect could be drastic and demerit for

<sup>1</sup> Justin Cantel, ‘The 360 Deal in Agreements’, *What’s Legal in Nigeria* (June 17, 2019), available at <http://www.legalinsights.com/insights/viewstory.aspx?storyid=621&storytitle=The-360-Deal-in-Agreements> (last visited June 17, 2019).

<sup>2</sup> Justin Cantel, ‘The 360 Deal in Agreements’, *What’s Legal in Nigeria* (June 17, 2019), available at <http://www.legalinsights.com/insights/viewstory.aspx?storyid=621&storytitle=The-360-Deal-in-Agreements> (last visited June 17, 2019).



# 'Winds and Sails': LeLaw's Year 2021 Highlights



MARCH 2021

## IMPACTS:

ISSUES ARISING FROM INVALIDATION OF THE TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) ACT IN UYO LOCAL GOVERNMENT COUNCIL V. AKWA IBOM STATE GOVERNMENT & ANOR (2020) LPELR-49991 (CA)

THOUGHT LEADERSHIP BY:

CHIMEZIRIM ECHENDU



The Taxes and Levies (Approved List for Collection) Act (TAL Act) is probably one of the most controversial and criticized law in Nigeria's history.<sup>1</sup> A hybrid legislation originally promulgated by the military in 1998 to quench rampaging internally generated revenue through two subnational tiers of government in Nigeria, it delineated taxes and levies collectible by the respective tiers.<sup>2</sup>

Though a child of the military, the Decree was deemed a law in force by the Act of the National Assembly by section 315, 1999 Constitution Federal Republic of Nigeria (1999 Constitution). The mischief promulgated to address has, since the return to democracy in 1999 at the crux of the judicial interpretation of the provisions of the Act.

However, the Court of Appeal (CoA) recently in *Uyo LG Council*

1. See, P. Lawal, *The Invalidation of Nigeria's TAL Act*, 10 *Journal of Tax and Finance* (Approved List for Collection) (December 2018), available at [www.lelawlegal.com](https://www.lelawlegal.com).
2. This Act was passed by the National Assembly and signed by the President in 1998. See P. Lawal, *The Invalidation of Nigeria's TAL Act*, 10 *Journal of Tax and Finance* (Approved List for Collection) (December 2018), available at [www.lelawlegal.com](https://www.lelawlegal.com).
3. See, P. Lawal, *The Invalidation of Nigeria's TAL Act*, 10 *Journal of Tax and Finance* (Approved List for Collection) (December 2018), available at [www.lelawlegal.com](https://www.lelawlegal.com).
4. The Decree was signed by the President and later approved by the National Assembly.



Thought Leadership Reflections  
June 2021

### X-Rays: Deconstructing Personal Data Under the Nigerian Data Protection Regulation 2019



The world is always in a reformative, renewal or rediscovery process and over time, human experience has shown that the only constant is change. From the earliest days of subsistence living (barter), trade by barter, and cash based trading, the world has progressed to significantly transacting online in the digital economy. The technologies of Blockchain, Artificial Intelligence (AI) and Internet of Things (IoT) are the forces driving this economy and almost every country, including Nigeria is striving not to be left behind. The quest for a digital economy means more Personal Data (PD) will be processed; and this has privacy implications.

Nigeria enacted the **Nigerian Data Protection Regulation 2019 (NDPR)** to guide PD of Data Subjects (DS). The concept of PD is a bit complicated, as determining what data does or does not amount to PD, involves a holistic consideration of circumstances. Unfortunately, grasping this concept is key to complying with the principle of Data Protection (DP). Therefore, this article examines the scope of PD under the NDPR against the background of relevant ramifications.

#### What is Personal Data?

As a matter of law, NDPR does not apply to every kind of data; rather it applies only to "[P]D of natural persons". This is provided under **Article 1.2(a) NDPR**, viz: "this Regulation applies to all transactions intended for the processing (DP) of personal data."

information relating to an identified or identifiable natural person ("Data Subject")..." Certain elements can be deduced from this definition: 'any information', 'relating to', 'an identified or identifiable' and 'natural person'; they are respectively considered seriatim below.

#### Any information

This may entail any information about an individual processed in an automatic or non-automatic medium. It does not matter if the information is true or false, about the individual.<sup>3</sup> Such information may be in the form of alphabetical, numerical, graphical, photographic or acoustic form, provided it represents information about an individual. Thus, a statement about a person's working condition or the person's phone or gender or blood group is information in this regard. For instance, a child who underwent a neuro-psychiatric test made a drawing representing her family, her mood and what she feels about the different members of her family. The drawing was considered information amounting to a court proceeding.<sup>4</sup>



Thought Leadership Reflections  
May 2021

### 'Data Colonialism': Comments on National Information Technology Development Agency (NITDA)'s Advisory on WhatsApp's New Privacy Policy in Nigeria.

LeLaw Regulatory Alert by Sam Ngwa



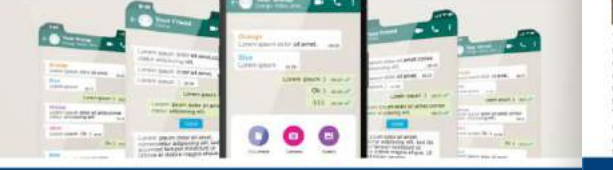
#### INTRODUCTION

At the beginning of the year, precisely on 8th January 2021, WhatsApp introduced a new privacy policy (the **New Policy**) to share more commercial user data with its parent company, Facebook and indicating its intention to enforce same on 8<sup>th</sup> February 2021. The **New Policy** sparked widespread outcry from WhatsApp users; prompting WhatsApp on 12<sup>th</sup> January 2021, to clarify that they do not share personal data messages with Facebook. Instead, the update includes changes related to messaging a business on

WhatsApp, which is optional, and provides further transparency about how WhatsApp collect and use data.<sup>1</sup>

The explanation did not assuage the feelings of the users who felt 'betrayed'. Some users started migrating to alternative platforms like Telegram and Signal (the latter endorsed by Elon Musk).<sup>2</sup> The impending foreseeable mass exodus of users, coupled with the trenchant criticisms, made WhatsApp to retract and delayed the implementation of the **New Policy** until 15th May 2021.<sup>3</sup>

Particularly striking is the fact that the **New Policy** is discriminatory in nature as it grants the right to opt-out to only users in the European Union. Consequently, many privacy/cyber security experts, and entrepreneurs have come out to urge people to migrate to alternative platforms.<sup>4</sup> Given that the **New Policy** has now been implemented, NITDA, Nigeria's data privacy regulator, on 17<sup>th</sup> May 2021, issued an advisory opinion (the **NITDA Advisory**) to Nigerians on requisite responsive actions.<sup>5</sup>



<sup>1</sup> The Regulatory Alert (downloaded from the review and sign-off of [www.lelawlegal.com](https://www.lelawlegal.com)), dated 22nd January 2021. See P. Lawal, *WhatsApp's New Privacy Policy: A Regulatory Alert*, 10 *Journal of Tax and Finance* (Approved List for Collection) (December 2018), available at [www.lelawlegal.com](https://www.lelawlegal.com).

<sup>2</sup> See, P. Lawal, *WhatsApp's New Privacy Policy: A Regulatory Alert*, 10 *Journal of Tax and Finance* (Approved List for Collection) (December 2018), available at [www.lelawlegal.com](https://www.lelawlegal.com).

<sup>3</sup> See, P. Lawal, *WhatsApp's New Privacy Policy: A Regulatory Alert*, 10 *Journal of Tax and Finance* (Approved List for Collection) (December 2018), available at [www.lelawlegal.com](https://www.lelawlegal.com).

<sup>4</sup> See, P. Lawal, *WhatsApp's New Privacy Policy: A Regulatory Alert*, 10 *Journal of Tax and Finance* (Approved List for Collection) (December 2018), available at [www.lelawlegal.com](https://www.lelawlegal.com).

<sup>5</sup> See, P. Lawal, *WhatsApp's New Privacy Policy: A Regulatory Alert*, 10 *Journal of Tax and Finance* (Approved List for Collection) (December 2018), available at [www.lelawlegal.com](https://www.lelawlegal.com).



Thought Leadership Reflections  
December 2020

### REFLECTIONS: BLOCKCHAIN POTENTIALS FOR REAL ESTATE ECOSYSTEM IN NIGERIA



"If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on and that will be bad for both."  
-Lord Deming in *Parker v Parker* (1954) 118 ER 22.

#### INTRODUCTION

The historical antecedent of man is inundated with changes orchestrated mainly by man's quest for a better and easier means of survival. Starting from the era when according to Thomas Hobbes, "the life of man was solitary, poor, nasty, brutish, and short" to the modern technological age, change has

remained constant in almost all spheres of life. This quest for change led Satoshi Nakamoto in 2008 into developing a new technology offering. Blockchain (BC) is widely believed to potentially be a significant driving force behind the next wave industrial revolution, due to its versatile and trust characteristics.

Blockchain Technology (BT) which was initially created to facilitate peer-to-peer transfer of digital currency is now considered, through ingenious creation of Ethereum (technology behind Smart Contract by Vitalik Buterin), to have many more underlying benefits. It is thus fast becoming a fertile ground of interest for several industrial and institutional sectors including real estate, health, financial services, energy, media, public sector, and intellectual property. To underline the global effects of BT, Estonia has kick-started its use to secure health records, UK Government considered using BT to pay and control research grant in 2016 and the Catalan Government (in Spain) recently introduced 'Catalan Blockchain Strategy' aimed at implementing a BC ecosystem for regional administration.

This article aims to discuss how BT can reposition real estate ecosystem in Nigeria, and its attendant legal and regulatory implications.

<sup>1</sup> *Lord Deming in Parker v Parker* (1954) 118 ER 22. (Accessed 23/01/2021).

<sup>2</sup> *Lord Deming in Parker v Parker* (1954) 118 ER 22. (Accessed 23/01/2021).

<sup>3</sup> *Lord Deming in Parker v Parker* (1954) 118 ER 22. (Accessed 23/01/2021).

<sup>4</sup> *Lord Deming in Parker v Parker* (1954) 118 ER 22. (Accessed 23/01/2021).

<sup>5</sup> *Lord Deming in Parker v Parker* (1954) 118 ER 22. (Accessed 23/01/2021).



**WWL 2021** - Our Principal was listed in Who is Who Legal 2021 amongst the most highly regarded corporate tax lawyers in Nigeria.

Home | Analysis and Features | Analysis

## Nigeria 2021 – Corporate Tax

09 Sep 2021 by WWL Editorial

In this chapter we highlight nine corporate tax lawyers for their top-notch work across contentious and advisory matters.

[in](#) [twitter](#) [facebook](#) [email](#)

**Most highly regarded**

- Theophilus I Emuwa** – AÉLEX, Lagos

**Theophilus Emuwa** at AÉLEX is held in high esteem for his exemplary tax advisory services.

**Afolabi Elebiju** from LeLaw Barristers & Solicitors is "a wonderful tax expert" with a deep understanding of tax structuring and regulation.

**WWL Editorial**  
Law Business Research

**Content by this Author**

**Insurance & Reinsurance 2022 - Legal Marketplace Analysis**  
24 Feb 2022

**Insurance & Reinsurance 2022 - Expert Witnesses - Legal Marketplace Analysis**  
24 Feb 2022

**UK Bar 2022 - Leading Sets**  
23 Feb 2022

We use cookies so we can provide you with the best online experience. By continuing to browse this site you are agreeing to our use of cookies. Click on the banner to find out more.

[Cookie Settings](#) [Accept All Cookies](#)

Afolabi Elebiju was one of Mondaq’s three award winners for Environmental Law in Autumn 2021, for his article **Cessations And Destinations: Issues In Gas Flare Commercialisation In Nigeria** published in February 2021:


Two LeLaw Associates (now Alumni), Ejiroghene Eferakeya and Chimezirim Echendu won Lexology’s Legal Influencer Awards in Q2 2021 for Financial Services and Corporate respectively:

Mondaq.com

**mondaq**  
Connecting knowledge & people

Topics ▾ Regions ▾


# Autumn 2021 Thought Leadership Awards Environmental Law



**Ejiroghene Eferakeya**  
LeLaw Barristers & Solicitors

**Legal Influencer**  
Q2 | 2021

Financial services  
Africa and Middle East



**Chimezirim Echendu**  
LeLaw Barristers & Solicitors

**Legal Influencer**  
Q2 | 2021

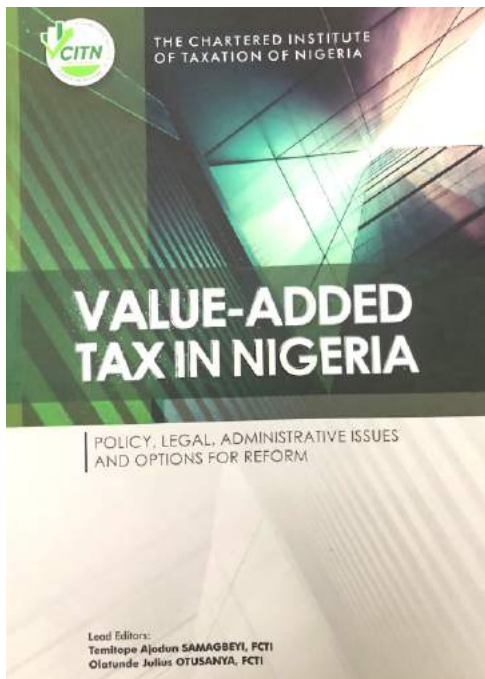
Corporate  
Africa and Middle East

## C. Other Corporate Social Responsibility (CSR) Initiatives

1. **Host Community Development Fund Advisory** – Following enactment of the Petroleum Industry Act 2021, our Principal with other volunteer team members advised a not for profit advocacy organisation in outlining set-up compliance steps.

2. **National Tax Debate 2021** – our Principal was a judge at the 4th edition of the National Tax Debate hosted by the University of Lagos. It continues to be a huge platform for tax education sensitisation.

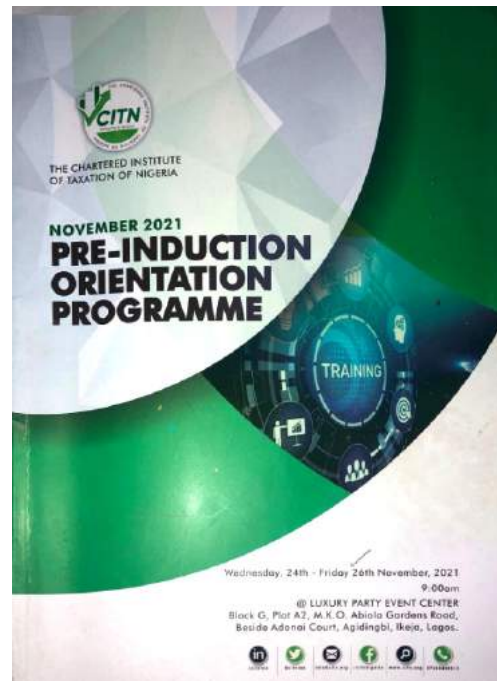
3. **Chartered Institute of Taxation of Nigeria (CITN)** – our Principal chaired some new member induction programmes of the CITN (in April and November 2021); his co-authored article, **Value Added Tax and the Informal Sector** was published in Samagbeyi and Otusanya (eds.), **'Value Added Tax in Nigeria: Policy, Legal Administrative Issues and Options for Reform (CITN, July 2021), at pp. 170-179.'** He was also a member of the book's Editorial Board, and attended the 3 day pre-publication Editorial Board retreat in June 2021.



4. **OneTrust Data Guidance** - Two (then) LeLaw Associates, Gabriel Omoniyi and Sam Ngwu and alumnus Chuks Okoriekwe represented the firm in a

multiform project (with Templars and Olisa Agbakoba Legal) to contribute Nigerian chapter to the multijurisdictional IAB project, **'IAB Cross-Jurisdiction Privacy Project Compendium'** championed by One Trust.<sup>1</sup> Following publication in July 2021, (see announcement at: <https://www.iab.com/news/iab-releases-cross-jurisdiction-privacy-project-compendium-and-legal-specifications/>). Gabriel Omoniyi spoke at the post publication webinar.

5. **Social Media Posts/Various Career Presentations** – We posted many career presentations on our LinkedIn account which attracted a lot of engagement and positive feedback, including the New Wigs Series, and 'Becoming a Tax Expert' which was a virtual presentation delivered to students of OAU Faculty of Law Tax Club.



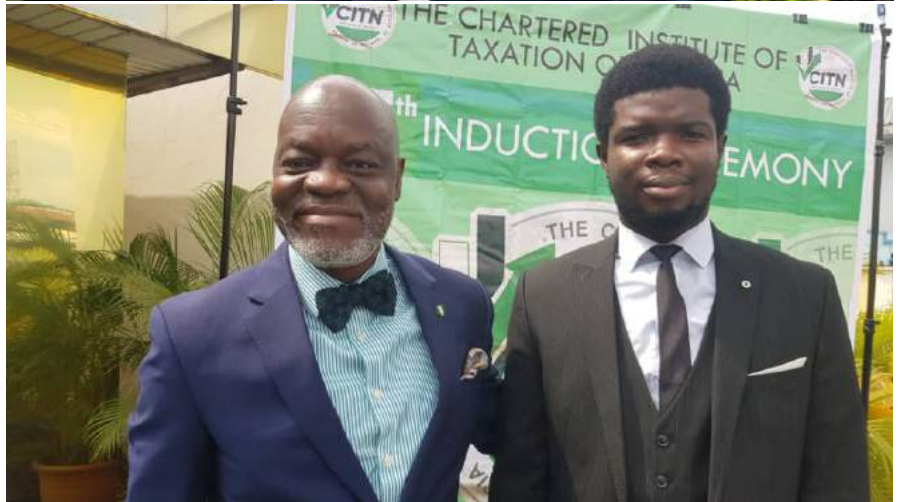
### 6. Professional Development:

**Internships/External Mentorships** – LeLaw hosted several undergraduate and graduate interns giving them exposure to client engagements, and other professional development opportunities. The Firm also mentors many individuals remotely, virtually through various touch points, including telephone and social media.

1. See the publication at: <https://www.dataguidance.com/resource/iab-cross-jurisdiction-privacy-project-compendium>

In June 2021, our Principal spoke at the 2021 Law Week of the Ikorodu Branch of the NBA on 'Anatomies: Key Implications of the Finance Acts 2020', and 'Opportunities for Lawyers in Taxation'; the second topic was as an on the spot stand-in for the guest speaker who could not make the event due to flight cancellation.







*“His mercies are new every morning...”*

*Lam 3:23.*

*We are grateful for 2020 and wish you a  
Merry Christmas and a Happy 2021.*

## Conclusion

We are looking forward to being of continuing assistance to our clients and other stakeholders in 2022. Our desire is to, by God’s grace, scale higher heights this year. We are always grateful for your support and feedback; you can reach us at: [info@lelawlegal.com](mailto:info@lelawlegal.com) (email) or on: +234 703 818 6924 (mobile). Thank you.



**Afolabi Elebiju,**  
Principal  
LeLaw Barristers & Solicitors  
1st March 2022



**2021:**  
Sustained by His grace.

**2022:**  
New vistas. Faith, Hope and Love (1Cor. 13:13).

Wishing our clients, friends and everyone,  
**Merry Christmas and a Happy New Year!**