

PEARLS OF LAW

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Internet Banking in Nigeria: How Secure is your Data?

Internet Banking

The adoption of internet banking (also referred to as electronic banking) by Nigerians in recent years can be safely attributed to the desire of Nigerian Banks to offer world class banking services. Most of the major banks in Nigeria offer their customers this alternative platform for conducting their

banking operations. A notable researcher has observed that electronic banking increases the speed of transactions which has created new competitors and services, changed banking operations and support functions, and expanded the reach of financial institutions. The truth is that although internet banking is attractive because of its speed and convenience, it is still not very popular among members of the public because of a dearth of supporting infrastructure.

One of the pertinent issues raised by internet banking is cybersecurity. A bank is obliged under its common law duty of confidentiality to ensure that the personal details of its customers are protected from third party use without their consent. This seems to be an area where our banks are seriously erring because customers regularly complain about receiving messages requesting for confidential information such as PIN Numbers and ATM Card numbers, sometimes the "Banker" goes as far as threatening to close the individual's account until there is a registration. Customers even receive e-mails requesting for their BVNs. These are issues customers are confronted with on a daily basis. Although the banks have been good enough to send out messages warning their customers about that these scams, unsuspecting customers often end-up losing a lot of money.

What Legal Protection is Offered by Nigerian Banks?

The relevant laws on electronic banking are the Central Bank's Directive on Electronic Banking, the Central Bank's Directive on Card Issuance and Usage and the Cybercrimes Act 2015.

The Central Bank of Nigeria's (CBN) electronic banking guidelines were developed from the



findings of a Technical Working Committee set up by the Central Bank in 2003 to prescribe rules for the effective operation of electronic banking in Nigeria. The report of the committee stated that "CBN will monitor the technological acquisitions of banks and all other related investments, which exceed 10% of free funds, to subject such to approval. Where banks use third parties or outsource technology, they are required to comply with the CBN guidelines." Section 1.3 paragraph 4 of the guidelines, emphasise that banks should put in place procedures for maintaining the bank's Web site, including the various security features needed for Internet banking services.

Despite its attempt to provide comprehensive protection for customers, the CBN guidelines have been criticised for not containing exhaustive provisions to safeguard customers from sophisticated cybercrime and internet fraud. Specifically, according to experts it falls short in four major areas namely "changing the traditional lines upon which existing regulatory structures are laid; handling concerns about existing public policy issues; changing the nature and scope of existing risks; and rebalancing regulatory rules and industry discretion." More importantly, the guidelines did not include a very important recommendation of the Technical committee contained in paragraph 6.1 which recommended that all banks aiming to offer

transactional services on the Internet/other e-banking services should obtain an approval from CBN before commencing these services.

If properly implemented, it is hoped that the Cybercrimes Act 2015 will fill in the lacuna created by the CBN guidelines notably section 37 (1) of the Act provides that a financial institution "shall verify the identity of its customers carrying out electronic financial transactions by requiring the customers to present documents bearing their names, addresses and other relevant information before issuing ATM cards, credit cards, debit cards and other related electronic devices". An official or organisation who fails to obtain proper identity of customers before executing customer electronic instructions in whatever way commits an offence and is liable on conviction to a fine of N5, 000,000. This is provided for under section 37 (2) of the Act. Instructively Section 8 provides that any person who accesses without authorisation, any computer system or network for fraudulent purposes and also obtains data which is vital to national security, is liable on conviction to a term of not more than 5 years or to a fine of not more than N5,000,000,000 or both; any unlawful system interference for fraudulent purposes by deleting, transmitting, damaging or suppressing computer data which prevents the system from functioning, is liable on conviction to a fine of N5,000,000 or imprisonment for a term of not

more than 2 years or both.

The CBN's Guidelines for Card Issuance and Usage places a heavier burden on banks to guarantee the security of cards. It states that, "the issuer shall ensure full security of the payment card. The security of the payment card shall be the responsibility of the issuer and the losses incurred on account of breach of security or failure of the security mechanism shall be borne by the issuer, except the issuer establishes security breach on the part of the card holder. Issuers should ensure that the process of card issuance is completely separated from the process of PIN issuance, and done in accordance with best practices thus minimizing the risk of compromise."

In the United Kingdom and the US there are more sophisticated rules for regulating electronic banking and data protection. These are the EU Data Protection Directive and the US Gramm-Leach-Bliley Act and regulations of the US Securities & Exchange Commission (SEC). Under EU law, personal data can only be gathered legally under strict conditions, for a legitimate purpose. Therefore, persons or organisations which collect and manage personal information must protect it from misuse and must respect certain rights of the data owners which are guaranteed by EU law. Furthermore, the EU's Data Protection Directive is seeking to develop specific rules for the transfer of personal data outside the EU. Notably, under the US Gramm-Leach-Bliley Act financial institutions are required to explain their information-sharing practices to their customers and safeguard sensitive data.

Conclusion

Banks and other financial institutions should pay more attention to their internal data protection mechanisms to prevent the unauthorised use of customers' data. More importantly, there needs to be a revision of the Central Bank directives on electronic banking as they are slightly outdated, there have significant developments in electronic banking since they were initially developed. In carrying out this reform the Bank's policy makers should consult the EU Directive on Data Protection and the US Gramm-Leach-Bliley Act.

'THE RULE OF LAW IS THE FULCRUM OF CIVILISATION' CONTINUED FROM PAGE 10

drastic statements and measures from the CBN and yet, they leave the populace with the false impression that things can be managed when in reality, they cannot.

The insurance industry aids the development of other industries in Nigeria. Given the significant unpopularity of insurance with the Nigerian public, how can the value of having insurance-cover be conveyed successfully to Nigerians?

My ideal National Orientation Agency would be run from the Vice-President's office with a Special Adviser, National Orientation in charge. The born-again National Orientation Agency will

by means of text messaging in English and major Nigerian languages including pidgin English, reorient Nigerians on everything; from wearing crash helmets to the sheer imperative of insurance covers. When the building housing my chambers got burnt down 4 years ago, I discovered that my landlady did not have the building insured contrary to the Insurance Act. 15 odd years ago, most Nigerians did not wear seat belts. Most Nigerians now wear seat belts. The secret was aggressive campaigning couples with enforcement. This can happen with insurance cover.

What is the ordinary recourse for policy holders when insurance disputes arise?

I would advise the customer to utilise litigation as a last resort but when it comes to litigation, the Federal High Court is the place to go to as the following legislations confer exclusive jurisdiction on the Federal High Court in matters to do with insurance, viz

S. 7 (1) (s) of the Federal High Court (Amendment) Act 1991;

S. 102 of the Insurance Act 2003; and S. 80 of the Insurance Act 2003. But the first step is to use your insurance agent or broker for resolving your disputes with the insurance company since the agent or broker already has an established relationship with the insurance company. If you

have no luck resolving the dispute through your agent, write a letter to the insurance company. Not only does this engage the insurance company and gives them further opportunity to offer redress; if they do not respond to your letter as is typical of many Nigerian businesses, your allegation is deemed admitted, on the authority of *GWANI v EBULE*. If still unresolved, the customer may get a third-party involved, for example the Consumer Protection Council, the Commissioner for Insurance, a chartered Mediator and Conciliator, or Chartered Arbitrator.

As a final step, I would now advocate litigation in the Federal High Court aforesaid.

LEDAP SUES FG, LAGOS STATE OVER EKO ATLANTIC CITY'S DREDGING OF THE ATLANTIC OCEAN CONTINUED FROM PAGE 5

residential and tourist accommodations with state-of-the-art urban architecture in line with modern and environmental standards.

LEDAP, in instituting the suit argued that the project will have an adverse effect on the adjacent communities, especially those around the Atlantic Coastline of Lagos State.

According to LEDAP's coordinator, Mr. Chino Obiagwu, the state has a mandate under section 2(1)(2) of the Environmental Impact Assessment Act 1992 to first consider the effects that the project would have on adjoining communities before embarking on it.

Joined as the 1st to 3rd defendants in the suit are the Federal Ministry of Environment, Lagos State Government and South Energyx

Nigeria Limited.

Obiagwu stated that LEDAP had requested the Environmental Impact Assessment (EIA) for the Eko project from the National Environmental Standards and Regulations Enforcement Agency (NESREA), a parastatal of the Federal Ministry of Environment charged with powers to regulate the environment.

In response, NESREA, in a letter, signed by the deputy director Mrs. E.O Eze, who is also the State coordinator of the Lagos field office, said, "the Agency wishes to clarify that the Federal Ministry of Environment is the designated National authority on the conduct of EIA processes in Nigeria after which a certificate is awarded at the conclusion of the process which

is the Environmental Impact Statement, EIS."

The group later wrote to the Federal Ministry of Environment, which replied saying NESREA is the one mandated to carry out the EIA.

"It is clear that there is no EIA, because if there is one, there will be a statement.

"The failure of the 2nd and 3rd defendants to carry out an Environmental Impact Assessment of the Eko Atlantic City project, as required under the Environmental Impact Assessment Act, renders the said project and its approval by the 1st defendant a nullity," Obiagwu argued.

The plaintiff claimed that the request it made on May 6, 2015 to the defendants for the EIA report on Eko Atlantic City project was ignored.

"The Atlantic Ocean is Federal waters and

Lagos State is not supposed to do anything on it without carrying out an impact assessment.

"The question is why wouldn't you conduct an Environmental Impact Assessment? It's a simple governance question", the plaintiff argued.

It therefore prayed the court to restrain Lagos State Government and South Energyx Nigeria Limited from carrying on with the project until they have overtaken the appropriate environmental impact assessment of the project approved by the Federal Ministry of Environment.

The plaintiff also sought an order directing Lagos State Government to resettle all the communities along the Atlantic coastline of the state.