Introduction

At Independence from British Colonial Rule in 1960, and until the establishment of the Central Bank of Nigeria (?CBN?), foreign currencies earned by exporters, most of who dealt in agricultural produce, were retained in Foreign Bank Accounts with the Nigerian Pound tied at par to the British Pound Sterling, thus ensuring easy currency convertibility. With the discovery of crude oil, the establishment of the CBN, the ?shock? fall in crude oil prices, etc. the Exchange Control Act was enacted to restrict and require both Importers and Exporters to possess a Licence before they could participate in the Foreign Exchange Market (?the FX Market?).

Exchange Controls were discarded in 1986 with the second-tier Foreign Exchange Market introduced in its place, to enable the FX Market evolve its own market-driven, transparent and robust foreign exchange rate mechanism.

Foreign Exchange Policy reversals continued in 1987 with the merger of the first and second-tier FX Markets. In 1992, the Nigerian Currency, the Naira, was completely floated in the FX Market. In 1994, the Naira exchange rate was formally pegged to that of the US Dollar, with the centralisation of foreign exchange regulations with the CBN; restrictions on Bureau de Change dealing in the FX Market; the reaffirmation of the illegality of the Parallel Black Market; etc. The latter are but some of the frequent policy reversals that the FX Market has experienced. The constant Foreign Exchange Policy reversals led in 1995 to the establishment of the Autonomous Foreign Exchange Market (?AFEM?) with some guided deregulation introduced into the FX Market. AFEM Metamorphosed in 1999 into a daily two-way Quote Inter-Bank Foreign Exchange Market.

Unfortunately, the Foreign Exchange Market in Nigeria continues to be unstable. An examination of the enabling legislation that regulates transactions in the FX Market is therefore necessary to enable you have a better appreciation of how the Foreign Exchange Market is expected to function under Nigerian Law.

The Foreign Exchange (Monitoring & Miscellaneous Provisions) Act, 1995

The Foreign Exchange (Monitoring & Miscellaneous Provisions) Act 1995 established the Autonomous, Independent Foreign Exchange Market, with a charge to the Central Bank of Nigeria (?CBN?) to regulate foreign exchange transactions in the FX Market. Also, with the approval of the Minister of Finance, the CBN issues from time to time the Guidelines which regulate the protocol for transactions in the FX Market. Transactions in the FX Market are usually between members of the public and Authorised Dealers licensed by the CBN. Transactions in the FX Market can also be undertaken between the Authorised Dealers themselves. All transactions in the FX Market shall be conducted in any easily convertible foreign currency in the commonly known money market instruments like Foreign Bank Notes, Coins, Travelers? Cheques, Bank Drafts, Telegraphic Transfers, etc.

The importation and exportation of the Naira remains prohibited except as permitted under the Guidelines issued by the CBN.

CBN 2016 FX Revised Guidelines

In June 2016, the CBN issued its Revised Guidelines for the Nigerian Inter-Bank Foreign Exchange Market (?FX Guidelines?). These Guidelines are intended to achieve a liberalised, efficient, liquid and transparent FX Market.

From the provisions of the FX Guidelines, the CBN established a Single Market Structure for the Autonomous Inter-Bank Market (?FX Inter-Bank Market?), with the CBN participating in the FX Inter-Bank Market either through direct interventions or through indirect secondary interventions. Participants in the FX Inter-Bank Market include licensed Authorised Dealers, Licensed Buyers, Oil and Oil Service Companies, Exporters and other end-users, etc.

According to the CBN FX Guidelines, in addition to the CBN direct intervention in the Market, the FX Inter-Bank Market will also be supported with the introduction of additional risk management products offered by the CBN and CBN Licensed Authorised Dealers.

To also promote global competitiveness in the Market, the CBN is authorised to appoint FX Primary Dealers (?FXPDs?), from the already Licensed Authorised Dealers, to transact with the CBN as large FX Traders on a two-way or one-way Quote basis and in accordance with the other obligations stated in the FXPD Guidelines.

FX Market Disclosure of Sources

In furtherance of efforts to liberalise the Nigerian economy, and subject to the existing Money Laundering Regulations on appropriate transaction documentation and Know-Your-Customer (?KYC?) compliances, persons transacting business in the FX Market, with persons who maintain Domiciliary Accounts, are not obligated to disclose the source of any foreign currency that they trade on in the Market.

Also, no foreign currency imported into Nigeria, invested or held in domiciliary accounts in Nigeria shall be expropriated or seized save where such transaction relate to goods or services absolutely prohibited under Nigerian Law. Examples of some of the prohibited items contained in the Export Prohibition List include Cassava, Maize, Beans, Rice, Yam, all imported food items, etc.

Foreign currencies purchased or imported into Nigeria and invested in Nigeria, with the dividend or profits accruing, net of all local taxes, are also guaranteed unconditional repatriation but only through an Authorised Nigerian FX Dealer.

Offences and Punishments

Based on the current practice in Nigeria, it must be highlighted that it remains a criminal offence under Nigerian Law for any person to make cash withdrawals from a Domiciliary Account and sell such cash withdrawn from a Domiciliary account to an unauthorised Dealer or person, whether in or outside of Nigeria.

It is also an offence for any person, with the intent to defraud another person, to forge, mutilate, alter or deface any foreign currency, travelers? cheques or such other instrument of exchange used in the FX Market. Punishments for the various infractions in or outside the FX Market include terms of imprisonment and fines in multiple times the amount involved in the infraction. The foreign currency or instrument of exchange shall also be forfeited to the Federal Government of Nigeria (?FGN?) after a Court hearing with the further option of the assets of any Corporation involved in the offence also forfeited to the FGN after such a Corporation is wound-up by the Federal High Court.

Where an Authorised Dealer is found guilty of a foreign exchange offence, its FX Market Licence, in addition to some of the above penalties, may be suspended or revoked.

Conclusion

The Foreign Exchange Market is still principally funded by the FGN through the CBN utilising the proceeds from the sale of crude oil for this purpose. Any time there is a fall in the price of crude oil, the FX Market gets destabilised and the economy suffers until crude oil prices appreciate upwards.

The lack of political will and discipline to encourage local production, reduce imports and diverse the Nigerian economy towards more non-oil exports to shore-up the external foreign exchange reserves and the Exchange rate will continue to inhibit the economic development and prosperity of Nigeria.

Government interference, with the adoption of different exchange rates for different economic activities, a mono foreign exchange earner ? i.e. sale of crude oil, weak exports and high imports, various FX policy reversals, the CBN?s conflicted dominant role in the FX Market, etc continues to undermine the confidence that a transparent and robust FX Market must have; the latter development is therefore discouraging long-term local and foreign investments in the Nigerian economy. These have sadly allowed the illegal Black or Parallel FX Market to thrive with the exchange rate of the illegal FX Market now used to benchmark the exchange rate for transactions outside the official FX Market.