

# AN OVERVIEW OF THE EFCC ALERT ON DOLLARIZATION AND ITS LEGAL STATUS.

## INTRODUCTION

On April 9, 2024, the Economic and Financial Crimes Commission (“EFCC”) in its monthly e-magazine Alert released a statement on the use of foreign currency (“FX”) as a means of payment for local transactions and dollarization of Nigeria’s economy (the “Alert”).

Through this Alert, the Chairman of EFCC – Mr. Ola Olukoyede stated that it is illegal for schools, supermarkets, hotels **and other businesses** to charge and receive payment for services in FX, especially for local transactions.

Consequently, the EFCC issued a stern warning that anyone found engaging in receiving payment or charging for services in FX would be charged and prosecuted accordingly. However, the EFCC allows businesses to accept payment in FX where a foreigner elects to make payment in FX and the only means of making such payment must be with a credit card and cash FX, and where such is the case, it must be properly documented.

In this newsletter, we have assessed the legality of the Alert in light of the scope of what the EFCC intends to achieve.

## THE LEGAL FRAMEWORK FOR DE-DOLLARISATION

Section 20 of the Central Bank of Nigeria Act, 2007 (“**CBN Act**”), provides that currency issued by the Central Bank of Nigeria (the “**CBN**”) is legal tender in Nigeria at its face value. Accordingly, a person who refuses to accept the Naira as a means of exchange and payment is guilty of an offence and liable on conviction to a fine or six (6) months imprisonment.

Relying on the above provision, the CBN on 17 April 2015 issued a de-dollarisation circular titled “Currency Substitution and Dollarisation of Nigeria Economy” (the “**Dollarisation Circular**”) purporting to ban payment in FX in Nigeria for transactions consummated between Nigerians or Nigerian entities. Through the Dollarisation Circular, the CBN prohibited deposit money banks from collecting FX for payment of domestic transactions or on behalf of their customers and of their customers’ domiciliary accounts for making payments for visible and invisible transactions (fees, charges, licenses, etc.) originating and consummated in Nigeria.

The Dollarisation Circular created confusion amongst stakeholders in Nigeria, raising serious concerns on how businesses that, by the nature of their operations, largely generated their revenues in FX will operate. To this end, the CBN in the same 2015 issued a clarification circular to set the record straight (the “**Clarification Circular**”).

The Clarification Circular goes on to clarify that authorized dealers are to note that the pricing of goods and services in Nigeria shall continue to be in Nigerian Naira, and it is a criminal offence for any person or corporate body to reject or refuse to accept the Nigerian Naira as a medium of exchange.

The Clarification Circular went further to exempt FX revenue-generating government agencies such as the Federal Inland Revenue Service, Nigerian Ports Authority, the Nigerian Maritime Administration and Safety Agency, etc., operators in the oil and gas sectors, including oil service companies, and operators in the maritime and aviation industries.

While there may be a sound legal basis to question whether the CBN has the power to ban payments for goods and services in Nigeria with FX, most transactions within Nigeria since the issuance of the Dollarisation Circular have been transacted in Nigerian Naira or priced in FX and paid in Naira. In other words, to ameliorate the impact of the Dollarisation Circular, businesses that price their goods and services in FX now benchmark the price of their products or amount due for payment for services on the black-market rate of FX to Naira on the payment date.

Furthermore, neither the Dollarisation Circular nor the Clarification Circular made express provisions on whether the entities (government agencies and companies in selected industries) can pay for goods and services supplied or rendered to them locally in FX. It is not clear whether these entities can (for instance) engage employees within Nigeria (whether expatriate or Nigerians) for services and pay them in FX. Practically, some banks in Nigeria rely on the Dollarisation Circular to refuse processing salary payments for employees of companies in FX including employees of companies operating in the exempted sectors.

## POWER TO REGULATE CURRENCY IN NIGERIA

The EFCC was established in 2002 pursuant to the Economic and Financial Crime Commission (Establishment) Act (the “**EFCC Act**”). Section 7(2)(f) and 6(c) of the EFCC Act empowers the EFCC to prosecute ONLY economic and financial crime under the Criminal Code, Penal Code and other written laws in Nigeria. The Supreme Court of Nigeria has also delineated the functions of the EFCC by defining the meaning of economic and financial crime to mean **non-violent criminal and illicit activity committed with the objective of earning wealth either individually or in a group or organized manner thereby violating existing legislation governing economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering embezzlement, bribery, looting and any form of corrupt**



1. NWOBIBE v. F.R.N (2022) 6 NWLR (Pt. 1826) 293

*malpractices, illegal arms deals, smuggling, human trafficking and child labour, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.*<sup>1</sup> In a nutshell, the job of the EFCC is to prevent and enforce all laws dealing with economic and financial crime in Nigeria.

As of today, the Dollarisation Circular and the Clarification Circular have set out the type of companies and government agencies that are permitted to consummate their transactions in FX. Therefore, if the Alert issued by the EFCC attempts to limit the scope of the exemption, a strong argument can be made that the Alert is invalid as the EFCC lacks the power to regulate currency in Nigeria.

However, the EFCC may be able to enforce the provisions of the CBN Act and the provisions of the Dollarisation Circular where the action of a person or corporate body infringes on these provisions. This notwithstanding, the EFCC does not have the right to limit the list that was issued in the Clarification Circular.

### CONCLUSION

While we understand that the intention of the EFCC is to control the dollarization of the economy and the use of FX for local transactions, the EFCC must do this in accordance with the law. A strong argument can be made that it is only the CBN that has the power to regulate the use of FX and legal tender in general and where there is an infringement of these regulations that lead to the commission of a financial crime, the EFCC pursuant to the EFCC Act may be able to enforce and prosecute person or corporate body that infringed on the relevant laws.

Furthermore, it is not clear how the EFCC will treat companies operating in the oil and gas, maritime, and aviation industries in relation to transactions locally consummated by these entities in FX. Whether they will be deemed to be exempted from the provisions of the Alert and the Dollarisation Circular and allowed to pay in FX since they generate their FX independently from the banks.

**For additional information on the above newsletter and legal assistance in understanding the Alert and the Nigerian FX Regime, please contact your usual contact at Bloomfield LP.**

**This alert is for general information only. It is not offered as advice, on any matter, whether legal, procedural or otherwise.**



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