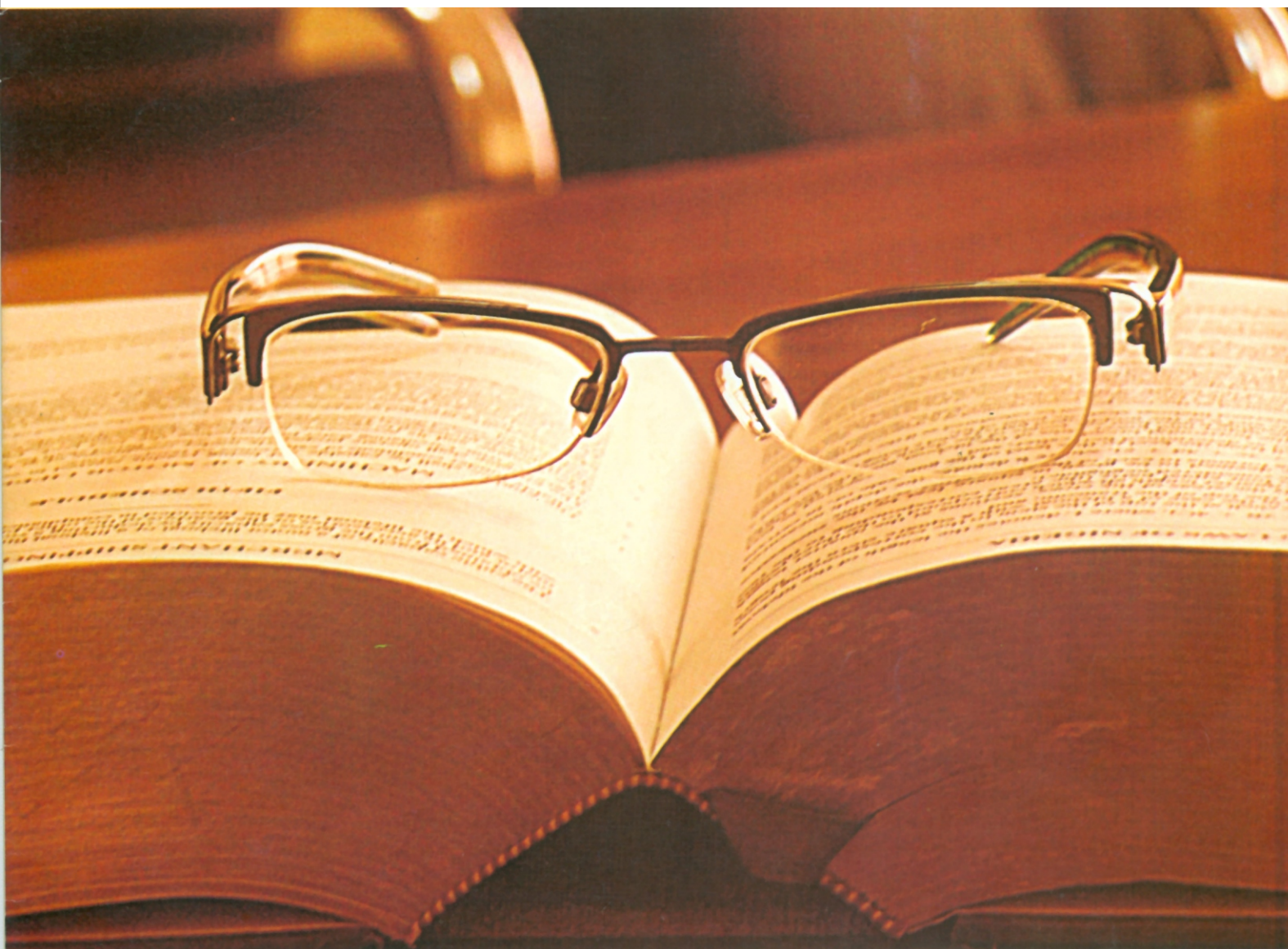


# BUSINESS LAW DIGEST

A QUARTERLY PUBLICATION OF AUSTEN-PETERS & CO.

ISSUE 5 APRIL - JUNE 2009

ISSN 0795-1124



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## INTESTATE SUCCESSION IN NIGERIA

By Tunde Oladipo

Intestacy has been defined as the condition of the estate of a person who dies “without making a valid will”, or fully disposing of his property by Will.

In Nigeria, Intestate Succession is viewed under the following headings:

- A. Customary Succession
- B. Statutory Succession

Under the heading of Customary Succession, inheritance rights are broadly classified into four distinct patterns in the patrilineal societies that exist in the country, namely:

- i. The Yoruba system
- ii. The Bini system
- iii. The Ijaw system
- iv. The Igbo system

Other variants of the systems mentioned above exist to a lesser degree among the clans within these major tribes.

### Yoruba System

Previously under the traditional Yoruba system which traverses the Yoruba speaking states of South-western Nigeria, when a man dies, his disposable landed property (land, houses, economic trees and plants) are inherited by his sons while movable property are inherited by his younger brothers. Amongst the sons, the eldest (the Dawodu) is entitled to the largest share by virtue of his position as the eldest son. However, the traditional rules have been modified and the present position is as follows:

- A. All children of the deceased, irrespective of sex are entitled to inherit from their father upon intestacy.
- B. The Dawodu is no longer entitled to the largest share of the estate by virtue of his position.
- C. The children now inherit to the exclusion of the deceased's brothers.

Inheritance is by all the legitimate and legitimated children of the deceased. Legitimated children are the children born to the deceased outside his recognised marriage(s) and had been acknowledged in his lifetime. Please note that an illegitimate child not legitimated by



acknowledgment by his father has no rights or interests in his father's estate either in his lifetime or in death. The fact that a child was an infant or a married daughter at the time of death of his/her father or the time of distribution of property does not affect the inheritance rights of such child.

In the case of *Salami V Salami (unrep)*, the High Court of the Western Region held that an infant daughter who was taken to the French Cameroons by her mother shortly after her father's death in 1927 was entitled to a portion of her father's estate. Fifteen years after their father's death, the other two surviving children distributed the estate between themselves leaving nothing for their absent sister. She returned to Abeokuta in 1953 and demanded for her share of the estate and she was informed by her siblings that women had no inheritance rights in their father's estate and also that she was an infant when the estate was distributed. Her action for enforcement of her rights was successful as the trial judge held that neither the daughter's minority, absence nor the fact that she was a woman affected her right to inherit under Yoruba law.

**The modes of distribution of a man's estate are:**

- i. Per Capita: Where all the children are born to the deceased by one and the same woman (Ori-Ojori)
- ii. Per Stripes: Where the children of the deceased are born by more than one woman (Idi-Igi).

In distributing the estate of a woman, the same rules governing the distribution of a man's estate apply except that in this circumstance, only the per capita system of distribution is applied and a child's illegitimacy does not affect his inheritance rights of his mother's estate. In the event of a child dying

intestate, his disposable property is inherited by his children, if they survive him. In the absence of any child, his siblings of full blood shall inherit; but in the absence of any sibling, his parents shall have a prior claim even if he is survived by siblings of the half-blood.

### **Bini System**

The principle of primogeniture operates amongst the Bini people which connotes that property owned by a man goes to his eldest son upon his death if survived by children born to him by one wife only. However, for the maintenance of peace, it has become an acceptable custom that the younger children are given shares at the discretion of the eldest son. If however, the deceased is survived by children born to him by more than one woman, disposable assets pass to the eldest sons of each wife in equal shares to the exclusion of the younger brothers. The right to inherit the estate comes with attendant duties imposed on the eldest son who is obliged to perform the deceased father's funeral ceremonies and to provide maintenance and advancement for the younger children and other dependants of the deceased.

Regarding the mother's estate, it is also inherited by the son, usually by the eldest son exclusively but household utensils and articles of personal adornment are shared by the daughters.

### **Ijaw System**

The Ijaw system is very similar to that of the Bini people with variations depending on whether the children are born into a big dowry marriage (Iya) or a small dowry one (Igwa). In the former case, the principle of primogeniture would prevail whilst in the latter, the children shall inherit from their maternal uncles. This system is being eradicated however. For the mother's estate, the Bini system applies.

### **Igbo System**

The principle of primogeniture is also applied under the Igbo system. The eldest son is exclusively entitled to any property by virtue of his position as family head including the "Obi" (the principal house of the deceased) and immediate surrounding compound subject to the right of occupancy of any member of the family put in occupation by the deceased during his lifetime.

The right of succession in other lands and houses is vested in the sons as a body and pending distribution, the eldest son assumes the position of manager of the estate and family caretaker and he is accountable to his younger brothers. Where a title survives the holder, the eldest son inherits the title. The eldest son is also legally obliged to cater for the needs of his younger ones and he cannot be compelled by a legal action to share their late father's money or movable property. An action can only be brought for land, houses, economic trees and this is if he fails to fulfil his duties as the head of the family. The distribution of the estate is done by the per capita system in a homogenous family and per stripes in a composite one.

Where the deceased died without leaving any sons, the right to inherit is that of the eldest full brother. A woman's property (other than money) passes to her daughters. The eldest daughter is entitled to some items (kitchen ware, articles of clothing) but the bulk of the mother's estate goes to the youngest daughter (ultimogeniture). There are local variations to this rule, however where in some areas, the daughters inherit jointly whilst in others, the eldest daughter takes exclusively. Money is inherited by sons, usually the eldest son who is duty-bound to perform the funeral and second burial rites of the mother.

A woman's landed property is inherited by her sons who are all entitled to shares in the estate, with the eldest son taking control of the administration of the estate until the final distribution. Where a woman dies without any children, her property is inherited by her husband or his heir (where he is deceased). However, her ante-nuptial landed property reverts to her maiden family. An unmarried woman's property is inherited by her siblings, the brothers inheriting land and the sisters inheriting the movable property.

### **Northern Nigeria**

Succession under Islamic law refers to the net estate of the intestate after the payment of funeral expenses, legacies, debts and other charges due to be paid by the deceased. On the death of the intestate, the rules of distribution are as follows:

- i. If he is survived by one widow, she will get one-quarter of the estate. If there is more than one widow, they will share one-quarter.
- ii. If he is survived by children or grandchildren, the share of the widow will be reduced to one-eighth.



- iii. If the intestate is a woman, the husband is entitled to half of her estate and if they had children, his entitlement shall be reduced to one-quarter.
  - iv. The children of the deceased inherit the entire estate or remainder thereof after the share of the spouse and ancestors (if any) have been paid in the appropriate portion.
  - v. A single daughter is entitled to half of the estate. If there are two or more daughters, they shall be entitled to two-thirds of the estate shared equally amongst them.
  - vi. If the intestate had only one son, the son shall inherit the whole of the estate after the payment of shares of any ancestor. If the deceased was survived by his father, the father gets one-sixth of the estate and the remainder goes to the only son. Distribution under Islamic Law is per capita and not per stripes.
- c. If the intestate is survived by parents, siblings of the whole blood, nephews or nieces but no issue, surviving spouse shall take all personal chattels absolutely and half of residuary interest of estate whilst the other half shall go to surviving parents or siblings of the intestate.
  - d. If the intestate is survived by issue(s) but not a spouse, the entire residuary estate shall devolve on the issue(s).
  - e. If intestate leaves no spouse, but is survived by both parents, residuary estate shall be held in trust for parents in equal shares.
  - f. If intestate leaves no spouse but one parent, residuary estate shall be held in trust for surviving parent absolutely.
  - g. If the intestate leaves no spouse, issue or parent, residuary interest shall be held in trust for the following:
    - Brothers and sisters of full blood; or in the absence of this,
    - Brothers and sisters of half-blood; or
    - Grand-parents; or
    - Uncles and Aunts (Siblings of full blood of intestate's parents); or
    - Uncles and Aunts (of half-blood); or
    - In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the state as *bona vacantia*, in lieu of any right to escheat.

### Statutory Law

Legislative powers in respect of succession are vested in the States of the Federation of Nigeria. The Administration of Estates Law of Western Nigeria was made applicable to Lagos State in 1972 and was amended and included in the Laws of Lagos State (2004). Section 10 of the Administration of Estate Law, Law of Lagos State(2004) provides that the estate of a deceased person shall vest in the Chief Judge of the State until the grant of Letters of Administration. Section 24 of the law provides that probate or administration shall not be granted to more than four persons in respect of the property of the deceased person and not less than two persons who are usually relatives of the deceased. The court has the discretion to grant administration and shall have regard to the rights of all persons interested in the estate of the deceased or the proceeds of the sale thereof. Where the deceased died wholly intestate, administration shall be granted to some or more persons interested in the residuary estate of the deceased. (Section 26{1a}).

Section 49 provides that the residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section namely:

- a. If the intestate is survived by a husband or wife but is not survived by any issue, residuary estate shall be held in trust for surviving wife or husband absolutely.

Section 49 (5) provides that; “*where any person who is subject of customary law contracts a marriage in accordance with the provisions of the Marriage Act and such person dies intestate after the commencement of this law leaving a widow or husband or any issue of such marriage, any property of which the said intestate might have disposed by Will shall be distributed in accordance with the provisions of this law, any customary law to the contrary notwithstanding*

- (a) *provided that where by virtue of paragraph f of sub-section 1 of this section the residuary estate*

would belong to the state as bona vacantia, such residuary estate shall be distributed in accordance with customary law and shall not belong to the state.

(b) Any real property, the succession to which cannot by customary law be affected by testamentary disposition shall descend in accordance with customary law anything hereon notwithstanding”.

The Administration of Estates Law of 1959 has been adopted by the States comprised in the former Western Region which include the Mid-Western State and is applicable till date therein.

In Northern and Eastern Nigeria, there are no Statutory Laws governing the sharing of intestate estate except for Anambra State that in 1987 adopted the Succession Law Edict(1987), provisions of which are essentially the same as that of Lagos State Administration of Estate Law,(2004)

## LEGAL, REGULATORY AND TAX ISSUES RELEVANT TO THE NIGERIAN BOND MARKET

By Femi Bamisile

### Introduction

The Bond Market, the world over, is a market for long-term fixed-income securities. It provides essential services to a modern economy and facilitates the needed capital formation, through the mobilization of domestic savings, by offering a variety of creative financial instruments that enable economic agents to pool, price and exchange risks. Through assets with attractive yields, liquidity and risk characteristics, a bond market encourages savings and investment for Governments in need of long-term funds and provides outlet for suppliers of such funds. The Bond market primarily includes government-issued securities and corporate debt securities and facilitates the transfer of capital from savers to issuers or organizations requiring capital for government projects, business expansions and on-going operations.

### Imperatives for a Virile Domestic Bond Market

Quite a number of conditions are necessary and must be met for a bond market to thrive in any economy. Among these are:

- A conducive Legal Framework
- A supportive Regulatory Environment
- An accommodative Tax System

The above are by no means exhaustive, but constitute the pre-requisites for the development of an efficient Government domestic currency securities market.

### Characteristics of Government Debt Market

- Government bonds are special securities
- They are largely a market for professional participants
- Bonds are securities while being a close substitute to bank loans

### Major Regulatory Authorities

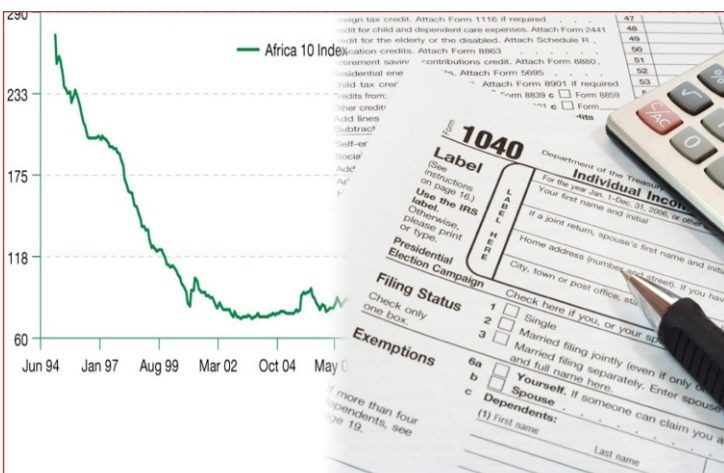
- i) Securities and Exchange Commission (SEC)
- ii) Nigerian Stock Exchange (NSE)
- iii) Central Bank of Nigeria (CBN)
- iv) Central Securities Clearing Systems (CSCS)
- v) Federal Inland Revenue Service (FIRS)

### Legal Components of Public Debt Management

- Clear borrowing authority to issue public debt
- A description of the process by which the legislation enables the government to issue debt
- A description of the internal management process and the delegation of legal authority
- The legal status of the different types of government securities

### Regulatory Tools of Public Debt Management

- Borrowing Limits
- Internal Management
- Transparency and Accountability
- Disclosure



### 1) Borrowing limits

- Legislations on a specific ceiling on total debt or net borrowing
- Requirement of specific approval for issuance by the legislature
- Limitations on government guarantees

### 2) Internal Management

- Defining the Debt Management Office's (DMO) role, function and organization
- Giving the DMO sufficient latitude, while ensuring accountability, to execute debt management efficiently

### 3) Transparency & Accountability

- Requirement of record-keeping and reporting
- Issuance and management of debt subjected to audit and internal control procedures
- Accountability ultimately to the Legislature

### 4) Disclosure

- Disclosure on government's financial condition, its future borrowing plans, etc.
- Special requirement on disclosure with respect to international issuance
- Offers must be listed with SEC and NSE

### Tools for the Debt Manager

- Terms of instruments
- Access to the market

#### i) Terms of the Instrument

Government should have the authority to issue various bonds:

- Issued as registered or bearer bonds
- Represented in physical or book-entry form
- Have short, medium, or long-term Maturities
- Coupon or discount or indexed
- Some callable

### Primary Market Access

- Fair, not necessarily equal, access
- Potentially justifiable cases of differentiated access and exclusivity:
  - Institutions with ability to settle and distribute
  - Allocation to institutional investors
  - Primary dealer system

### Legal and Regulatory Framework for the Secondary Bond Market

The status of "exempt securities" should not jeopardize the integrity of the secondary market.

#### An effective regulation should include:

- Regulation of market intermediaries
- Prudential requirements
- Regulation of the secondary market and self-regulation
- Market conduct and surveillance
- Transparency requirements
- Secured transactions

### Secondary Market Structure and Regulation

- i) Over the Counter (OTC): Requires intermediaries of post-trade reporting, record keeping, and audit trail requirement
- ii) Exchange, Electronic Trading System: Impose requirements for reporting, record-keeping, fair access and risk management
- iii) Regulation of Market Intermediaries: This is necessary particularly when market is poorly organized. It can be done in the following ways:
  - Setting minimum entry standards
  - Requirements to comply with standards for internal organization and control
  - Requirement for initial and ongoing capital
  - Requirement for proper management of risk
  - Requirement for high standards of conduct
  - Providing procedures for dealing with the failure of an intermediary

### Legal and Regulatory Framework

#### Regulation and Oversight

- The Central Bank and financial regulators should cooperate with one another and with other relevant authorities.
- The objectives and responsibilities of the regulators with respect to Clearing & Settlement system should be clearly defined and publicly disclosed.
- The regulators should gather information on Clearing & Settlement system and assess the operation and design of the system.

## Sequencing of the Regulations on Government Securities Market

- Be cautious of over-regulation
- Clarify regulators and their responsibilities
- Develop a framework to match the different stages of development of the Government securities market

### Key elements of a legal framework are:

- Clear borrowing authority and its clear delegation
- Rules for the issuance of Government securities
- Clearing and Settlement system rules
- Rules governing the organization and functioning of the primary and secondary markets
- Rules setting out the legal status of Government securities

## TAX: THE ROLE OF GOVERNMENT

The Government should develop fiscal and tax policies that promote stability and growth.

- Tax Policy: Includes Personal Income Tax, Corporation Tax, Value-Added Tax, etc.

### Tax incentives that may be given include:

- Tariffs
- Simplified Rates
- Corporation Tax Rate
- Tax depreciation and investment tax credits
- Tax holiday

## Conclusion

It is important that the legal framework for bond issues be followed assiduously. Also, the regulators ought to work hand in hand to ensure that frictions are not encountered in the issuance of bonds.

Lastly and most importantly, the Government should recognize the important role that tax-exempt bond financing plays in providing a source of lower-cost financing for critical public infrastructure projects and other significant public-purpose activities. It is important to ensure that the tax-exempt bond programme is properly targeted so that it works most effectively and that the Federal subsidy for tax-exempt bonds is justified in light of the revenue costs and other costs imposed. The Administration should work with the Legislature in reviewing possible options on the workability of this important Federal subsidy. ■

## Tax Reform Roadmap

Nigeria should develop a Tax Reform Roadmap that will amend laws and ordinances to make the legal tax system framework compatible with international rules and practices. Also, a common tax table will be applied to both foreigners and Nigerians.

## Tax-Exempt Bonds and Federal Subsidy

It is important that we have some tax-exempt bonds for which a form of subsidy would be provided by the Federal Government (it has been suggested that income from bonds with maturity of five years or more should be totally tax-exempt). A rationale for this, especially in respect of State and Local governmental projects and activities exists when they serve some broader public purpose. The tax policy justification for a Federal subsidy for State or local governmental projects and activities is clearest in the case of traditional public infrastructure projects to carry out traditional governmental functions where the public purpose is clear, particularly when the Federal subsidy is necessary to induce the projects to be undertaken.



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**Editor-in-Chief's Note:**

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