# PROPRIETY OF THE APPROPRIATION OF UNCLAIMED DIVIDENDS AND DORMANT BANK BALANCES

## BY THE FEDERAL GOVERNMENT OF NIGERIA

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## INTRODUCTION

Sequel to the decision of the Federal Government to appropriate and securitize unclaimed dividends estimated at N850billion[1] and dormant account balances of up to six (6) years in the country, legitimate concerns have been raised by stakeholders on the move backed by the Finance Act 2020 (The Act).

Despite these concerns, the Federal Government is riding on the back of the Act to perfect ways to borrow funds from unclaimed dividends and dormant bank account balances that has remained unutilized for at least six years. This write up seeks to consider the legal implications of these provisions vis a vis established principles of the law.

## SECTION 77 OF THE FINANCE ACT 2020: ISSUES ARISING

The provisions of Section 77 of the Act states as follows-

"77

(1) Subject to **Section 44 (1) and (2) (h)** of the Constitution of the Federal Republic of Nigeria, 1999, there is established by way of trust, as a sub-fund of the Crisis Intervention Fund, an Unclaimed Funds Trust Fund:

(2) From the commencement of this Act, any unclaimed dividend of a public limited liability company quoted on the Nigerian Stock Exchange and any unutilized amounts in a dormant bank account maintained in or by a deposit money bank which has remained unclaimed or unutilized for a period of not less than six years from the date of declaring the dividend or domiciling the funds in a bank account shall be transferred immediately to the Unclaimed Funds Trust Fund:

(3) Provided that this section shall not apply to official bank accounts owned or belonging to the Federal Government, State Government or Local Government, or any of their Ministries, Departments or Agencies. For the establishment of Unclaimed Dividends and Balances Trust Fund the management of unclaimed dividends and dormant account balances......."

## a. Right to Property

The Constitution of the Federal Republic of Nigeria, 1999[2] (Constitution) as amended affirms and protects the right of every Nigerian to acquire and own movable and immovable property. This otherwise absolute right can only be derogated from in accordance with the law. Section 44 of the Constitution provides-

> "No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things-
>
> **a. requires the prompt payment of compensation therefore; and**
>
> **b. gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria."**

A registered holder of shares in a company has a vested interest[3] in the shares of the company which entitles him to certain rights, benefits, and privileges. These include the right to sell, mortgage or otherwise dispose of the shares, to receive dividends on the shares and to keep the dividends so received for his own use.[4]

The derogation from this right to property intended by Section 77 of the Act which empowers the Federal Government to forcefully convert private property to public funds is inconsistent with the express provisions of the constitution and thereby void. Plethora of authorities abound that lend credence to the supremacy of the Constitution. See Section 1(3) of the Constitution.

It is implicit in the provisions of Section 44 of the Constitution to which Section 77 of the Act is subject to, that the payment of compensation is a mandatory requirement. To comply with this, will, in effect render Section 77 of the Act redundant, in that, the process of payment of compensation will lead to the inevitable identification of the owners of the otherwise unclaimed dividends and dormant bank balances effectively exempting it from the Fund.

To this end therefore, Section 77 of the Act is void ab initio and should be accordingly expunged.

## b. Principle of Nemo Quod Non Habet

Though the Act which the Federal Government is leveraging on to take over private property has made bogus provisions on the Unclaimed Funds Trust Fund, it is apposite in view of the above principle to analyze the provisions of Section 77 (4) of the Finance Act 2020 which is to the effect that the unclaimed dividends and unutilized amounts in a dormant bank account shall be transferred either by the public limited company, Registrar, or the bank where the money is deposited.

The settled principle of nemo quod non habet stipulates that one cannot give what one does not have. That is, the right to deal in property, movable and immovable alike is the exclusive preserve of the owner to the exclusion of all others.

Having established above that the proprietary rights in the shares and by extension, dividends reside with the registered shareholder who has inherent authority to transact on it, it is incomprehensible that a company, registrar, or a bank, devoid of any titular interest in the property will be directed as in Section 77(4) of the Act with sanctions for default imposed[5].

# CONCLUSION

Although the volume of unclaimed dividends and dormant bank balances is alarming, it has received wide attention from companies and regulatory authorities alike[6] and the intervention of the Federal Government on the subject is most unwelcome. The agitation of stakeholders is rightly founded on the inability of the government to manage these funds effectively, failure of which would have adverse effects on investor confidence and future growth of the stock market.

Section 77(11) of the Act for instance, that provides for reclaim of the funds by the beneficiaries is unclear how such procedure will be initiated, whether the sums will be forthwith transferred or at a fixed date and the rate of interest accruable to such funds. With such vagueness and uncertainty, expropriation is foreseeable.

Finally, the obligation to fund the budget and provide infrastructure for the citizenry is constitutionally that of the government, therefore the subtle transference of this burden to the citizenry by forceful conversion of their private property is not a welcomed development.

# ENDNOTES

1. Minister of Finance, Budget and Planning, Mrs. Zainab Ahmed, at the presentation of 2021 budget breakdown.
2. Section 44
3. See Chief R. A. Okoya v. S. Shantili & Ors (1994) 4 N.W.L.R. (Pt. 338) 256 where it was held inter alia that even an allotee of shares who has not paid for the shares has an equitable interest in it.
4. Kotoye v. Saraki (1994) 7 N.W.L.R. (Pt. 357) 467
5. Section 77 (10) of the Act
6. For instance, the Securities and Exchange Commission introduced the electronic dividends payment to shareholders while the Companies and Allied Matters Act(CAMA) 2020 imposes an obligation on companies to publish a list of unclaimed dividends and the intended beneficiaries. See Section 429 CAMA 2020.

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