
THE IMPLICATION OF BANNING BUREAU DE CHANGE (BDG) ON SECURED CREDIT TRANSACTIONS IN NIGERIA

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Abstract

The introduction of Bureau De Change as a form of business venture, playing an intermediary role in sourcing foreign exchange in Nigeria for end users, is one that elicits a mixed reaction. While to some they are a necessary evil since they are able to meet their immediate demand notwithstanding what they pass through to get their forex needs achieved, to others, who noted with disappointment and great concern that our Bureau De Change operators have abandoned the original objective for their establishment which was to serve retail end users who need \$5,000 or less and have instead become wholesale dealers, illegally in foreign exchange to the tune of millions of dollars per transaction. To these set of persons, the undoing of Bureau De Change operators were so unpardonable as such they should be banned. This view culminated to the pronouncement of the ban of Bureau De Change by the immediate past Governor of the Central Bank, Mr. Godwin Emefiele on 27th July, 2021 which had had a negative impact on secured credit transaction. This paper therefore, looked closely at the ban of Bureau De Change by the Central Bank of Nigeria with a view to unravel its impact on secured credit transactions in Nigeria. The paper from its findings discovered that, as a result of shortage of foreign exchange from the Central Bank, corporate industries and businesses were forced to source foreign exchange from the parallel market thereby encouraging the business of Bureau De Change operatives as arbitrageurs. The implication of this is sufficient incentive in terms of returns to investment to the Bureau De Change Operators who their businesses were also sustained by the recalcitrant round tripping monster, the authority, who allows them feed fat on this business. This paper by further looking at the way Ghana, a neighbouring Country handled the excesses of Bureau De Change in their Country and the benefits that accrued to them by so doing, drew out conclusions and made recommendations on how best Bureau De Change as a business venture could be reorganized to enable secured credit transactions in Nigeria play its pivotal role in revamping our economy.

Introduction

A close observation of the parallel market condition in Nigeria before now reveal that it became extremely difficult to regulate the activities of Bureau De Change's (hereinafter simply referred to "BDC") operators in the last few years as most of them have become notorious conduit pipes for illicit financial transactions. Money laundering, round tripping, rent-seeking, funding of terrorism and hoarding of forex are usually associated with some of the BDCs operators because of how difficult it became to regulate their activities.

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The Nigeria's Central¹ Bank (CBN) through her Governor, Godwin Emefiele consequently made an announcement at an end of the monetary policy committee (MPC) meeting in Abuja on Tuesday, 27th July 2021, when he said that:

We have noted with disappointment and great concern that our Bureau De Change operators have abandoned the origin objective for their establishment, which was to serve retail end users who need \$5,000 or less. Instead, they have become wholesale dealers, illegally in foreign exchange to the tune of millions of dollars per transaction.

Despite the fact that Nigeria is the only country in the world today where a central bank sells dollars directly to the Bureau De Change, operators in the Nigeria Bureaus De Change segment have not reciprocated the bank's gesture to help maintain price stability in that market.

Consequent upon the above pronouncement, CBN stopped the sale of foreign exchange (FX) to Bureau De Change (BDC) operators in the country and also halted the registration of new players into the market with immediate effect. CBN further directed commercial banks to put on no-debit-status of all accounts of persons or firms that engage in foreign exchange parallel market in Nigeria.

CBN being the regulator will henceforth sell dollars and other foreign currencies directly to commercial banks, which have been mandated to sell to Nigerians. The² Central Bank of Nigeria in ending the sales of forex to Bureau De Change operators, said that the parallel market has become a conduit for illicit forex flows and graft.

Furthermore, the CBN as a regulator and body that registers operators in the foreign exchange market also stopped the processing of applications for BDC licences in the country as a further regulatory step.

In the present directive, the weekly sales of foreign exchange by the CBN will henceforth go directly to commercial banks who will sell directly to Nigerians. CBN also directed that banks henceforth maintain specific tellers in their banks that will be directly handling sales of foreign exchange directly to the people. Also, customers not attended to by the banks are to report to the CBN through a toll free number: 0700 22 55 226 or email: cbd@cbn.gov.ng. CBN also maintained that it will retain its benchmark policy rate.

As with almost every announcement made by the CBN regarding the regulation of foreign currency, the decision has sparked a debate between economists, monetary policy experts, and other Nigerians on social media. As a contribution to this recent discuss, this paper is set out to look at the legal impact the recent ban of parallel currency exchange market has on secured credit transactions.

In doing this, this seminar paper will take the following steps: Looking at what is parallel currency exchange market, evolution of foreign exchange market in Nigeria, why parallel exchange market strives, the ban parallel market operators by the Central Bank of Nigeria, regulatory powers of Central Bank of Nigeria, impact of the ban on the availability of foreign

¹ Michael Ajifokwe, "Here's why Nigeria's central bank is banning forex sales to money changers", accessed from <https://techcabal.com/2021/07/28/cbn-forex-sales-bdcs-nigeria/>, on 3/9/2021.

² Oge Udegbumam, Premium Times of 27/7/2021, "CBN bans sales of forex to BDCs", accessed from <https://www.premiumtimesng.com/news/headlines/475998-breaking-cbn-bans-sales-of-forex-to-bdcs.html>, on 3/9/2021.

currency, on one hand and secured credit transactions, the role of parallel currency exchange market on secured credit transaction and the legal impact of the ban on secured credit transaction, on the other hand. The paper will further draw up its summary, make its conclusions and recommendations.

What is Parallel Currency Exchange Market?

To Kolesnik³ “Many dictionaries define parallel market as an informal market that exists alongside the official market in the countries with controlled economies, or if the existing market has proven to be insufficient for satisfying people’s needs. There are many other names for parallel market, such as black, illegal, hidden, shadow, grey etc. Most of these words hint to the ‘wrongness’ of this kind of market. However, it is not always bad or entirely illegal. In some countries, it is a better alternative to what the government has to offer them” According to Google.com⁴ Parallel foreign exchange systems are those in which a market-determined exchange rate, typically applying to financial transactions but often to a portion of trade transactions as well, coexists with one or more pegged exchange rates. Such arrangements are common in developing countries. It is an unofficial market in foreign currencies, especially in a country with a controlled economy.

However, parallel market as used in this seminar paper refers to registered Beaurue De Change that is regulated by the Central Bank of Nigeria who deals with foreign exchange distinct from commercial banks, whom the Central Bank of Nigeria allocates certain amount of dollars weekly who are supposed to argument the supply of foreign exchange to persons or firms that need same for their transactions.

Evolution of Foreign Exchange Market in Nigeria

In tracing the evolution of foreign exchange market in Nigeria, it is good to recognise what part various intervening factors in the market played in shaping the market from inception to the present day. The⁵ evolution of the foreign exchange market in Nigeria up to its present state was influenced by a number of factors such as the changing pattern of international trade, institutional changes in the economy and structural shifts in production. Before the establishment of the Central Bank of Nigeria (CBN) in 1958 and the enactment of the Exchange Control Act of 1962, foreign exchange was earned by the private sector and held in balances abroad by commercial banks which acted as agents for local exporters. During this period, agricultural exports contributed the bulk of foreign exchange receipts. The fact that the Nigerian pound was tied to the British pound sterling at par, with easy convertibility, delayed the development of an active foreign exchange market. However, with the establishment of the CBN and the subsequent centralisation of foreign exchange authority in the Bank, the need to develop a local foreign exchange market became paramount.

Then comes the 1970s era influenced by the increased export of crude oil in the early 1970s, following the sharp rise in its prices which enhanced official foreign exchange receipts. The foreign exchange market experienced a boom during this period and the management of foreign exchange resources became necessary to ensure that shortages did not arise.

³ Kolesnik Kay, *What is parallel market in Nigeria*, accessed from <https://www.legit.ng/1112272-what-parallel-market-nigeria.html>, on 10/9/2021.

⁴ Google.com, *what is parallel exchange market?*, accessed from <https://www.google.com/search?q=what+is+parallel+exchange+market&oeq=what+is+parallel+exchange+market&aqs=chrome..69i57j0i22i30l2j0i390.10744j0j15&sourceid=chrome&ie=UTF-8>, 10/9/21.

⁵ Central Bank of Nigeria, *Foreign Exchange Market in Nigeria*, accessed from <https://www.cbn.gov.ng/IntOps/FXMarket.asp>, on 3/9/2021.

However, it was not until 1982 that comprehensive exchange controls were applied as a result of the foreign exchange crisis that set in that year. The increasing demand for foreign exchange at a time when the supply was shrinking encouraged the development of a flourishing parallel market for foreign exchange.

The exchange control system was unable to evolve an appropriate mechanism for foreign exchange allocation in consonance with the goal of internal balance. This led to the introduction of the Second-tier Foreign Exchange Market (SFEM) in September, 1986. Under SFEM, the determination of the Naira exchange rate and allocation of foreign exchange were based on market forces. To enlarge the scope of the Foreign Exchange Market Bureaux de Change were introduced in 1989 for dealing in privately sourced foreign exchange.

As a result of volatility in rates, further reforms were introduced in the Foreign Exchange Market in 1994. These included the formal pegging of the naira exchange rate, the centralisation of foreign exchange in the CBN, the restriction of Bureaux de Change to buy foreign exchange as agents of the CBN, the reaffirmation of the illegality of the parallel market and the discontinuation of open accounts and bills for collection as means of payments sectors.

The Nigerian foreign exchange market has witnessed tremendous changes. The Foreign Exchange Market was liberalised in 1995 with the introduction of an Autonomous Foreign Exchange Market (AFEM) for the sale of foreign exchange to end-users by the CBN through selected authorised dealers at market determined exchange rate. In addition, Bureaux de Change were once more accorded the status of authorized buyers and sellers of foreign exchange. The Foreign Exchange Market was further liberalized in October, 1999 with the introduction of an Inter-bank Foreign Exchange Market (IFEM).

The Second-tier Foreign Exchange Market (SFEM) was introduced in September, 1986, the unified official market in 1987, the autonomous Foreign Exchange Market (AFEM) in 1995, and the Inter-bank Foreign Exchange Market (IFEM) in 1999.

Bureaux de Change were licensed in 1989 to accord access to small users of foreign exchange and enlarge the officially recognised foreign exchange market. Exchange rates in the Bureaux de Change are market determined. A parallel market for foreign exchange has been in existence since the exchange control era. It has been established that scarcity in the official sector and bureaucratic procedures necessitated the growth and development of the parallel market.

Why Parallel Exchange Market Strives in Nigeria

Parallel markets generally develop in conditions of excess demand for a commodity subject to legal restrictions on sale, or to official price ceilings, or both. Foreign exchange transactions in a large majority of developing countries are subject to both kinds of restrictions. Typically, the exchange rate is officially pegged by the Central Bank and only a small group of intermediaries are permitted to engage in transactions in foreign exchange. Sale of foreign currencies is, in principle, restricted to uses judged by the authorities to be "essential" for reasons such as economic development or balance of payments viability. As a consequence, some of the supply is diverted and sold illegally, at a market price higher than the official price, to satisfy the excess demand. This is the true story of Nigeria where shortage of foreign exchange is forcing corporate industries and businesses to source this resource from the parallel market.

According to Timothy Omoarelogie⁶ “in no other market has arbitrage taken a firmer root than in foreign exchange. The differential between the investors’ and exporters’ (I&E) and the parallel market windows is above N85”. As a result of the sufficient incentive in terms of returns to investment, arbitrageurs in the parallel market tends to flourish and is being sustained by the recalcitrant round tripping monster, the authority, who allows them feed fat on this business.

Another factor is that the parallel market rate, which is about N540/\$ is considered the truest reflection of the worth of the naira. You can only get this value when you bring in your capital to invest in the market through the black market. The authorised banks will never pay you this or any value near it. The foreigners, who feel cheated by this rule and the high inflation rate, rather steer clear of the authorised market but prefer the black market where they directly exchange their foreign currencies directly with those that need them.

It can safely be said that why parallel market thrive in Nigeria is as a result of market inefficiencies. Where all markets are perfectly efficient, arbitrage becomes a mere academic discourse. The differential in Nigeria’s forex rates, which is almost as old as the market, is the cause and effect of the management of the local currency are all contributory factors to why it is flourishing albeit now the Central Bank of Nigeria has wielded this big stick. The Central Bank of Nigeria (CBN), perhaps, also realised this damage last year when it muted the rate coverage plan but as usual, political willpower has persistently held her hand back.

This is what had led us today to where we are today, where black-market dealers buy foreign currencies even from end users and sells them at exorbitant prices without hindrance from the regulating authorities. This is a situation where we don’t blame any of these black market dealers are they are merely filling a vacuum. Had everything worked the way they supposed to work, their presence will not be felt.

This trade is not entirely new to Nigerians but there is an aspect of it only the ‘dealers’ and their customers, as well as a few observers, know about. Big organisations run to them when they have an urgent need. Also, they regularly come to the aid of manufacturers whose requests when they need to pay for inputs and equipment are rarely met through the official window.

From past experience, the CBN always plays the ostrich when the parallel market issues are on the table. For instance, it often warns the market against patronising the parallel market when it does not have enough dollars in its vault to give to meet all genuine demands. Presently in her directives, commercial banks are advised to have dedicated teller in their front desk to attend to persons that need foreign exchange, even that customers whom their needs are not met to send their requests directly to CBN through a provided email. We are all looking to see how this pans out in the face of an inadequate availability of foreign currency supply through our foreign earnings, especially now that the international oil market price is highly unpredictable. Even when CBN was allocating directly to bureau de change to serve the public, it was allocating weekly the sum of \$10,000 to a bureau de change (BDC) operator who gets a \$100,000 request from perhaps an individual that same week.

⁶ Timothy Omoarelogie, “*Parallel market witch-hunting and our sanity*”, The Guardian Newspapers, 8/2/2021, accessed from <https://guardian.ng/opinion/parallel-market-witch-hunting-and-our-sanity/>, on 3/9/2021.

Parallel markets make available commodities (food, intermediate inputs, durable goods, etc.) which would not have otherwise been forthcoming, due to the existence of rationing in the official market for foreign exchange. Needless to say that the alternative market reduces social and political tensions while employing thousands of Nigerians. This seminar paper sees the above as the reason why parallel markets flourish in Nigeria. To this paper, the best forex market is one with harmonised rates.

But the second is not one where the larger majority of businesses that need forex are starved to death because there is no alternative to inaccessible official windows that cannot meet the needs. The second scenario is the likely result of CBN's highhandedness towards the parallel market.

The Reasons for Banning of Parallel Market Operators by the Central Bank of Nigeria

According to Vanguard News Nigeria⁷ "The entry of BDCs into the Nigerian financial system in 1989 was to broaden the foreign exchange market and improve access to foreign currencies, due to challenges encountered by commercial banks in offering such services." This was the essence of the setting up of BDCs. However, as observed by the Central Bank of Nigeria, the ban of sale of foreign exchange to the Bureau de Change (BDC) operator was necessary because most of them have become conduit for illicit forex flows and graft. The CBN Governor, Godwin Emefiele, while announcing the ban said CBN would also not issue new licences for operation of BDCs⁸. "We are concerned that BDCs have allowed themselves to be used for graft. They have turned themselves away from their objectives," he said.

It was further found out that majority of the BDCs hoard foreand round-trips for the selfish purposes of exploiting Nigerians by creating artificial scarcity, the essence of funding the BDCs by the apex bank, has been defeated, it becomes drainpipe used by economic saboteurs to stifle the economy. Some of the "black market" sellers of forex go beyond their stipulated daily benchmark and to 'dollarise' the system, thereby putting naira under intense pressure.

Furthermore, another factor to be considered is that, it is estimated that the CBN sells about \$5.7 billion dollars annually to over 5000 BDCs. This figure is not only outrageous but highly unsustainable. Imagine selling most of the forex to BDCs on official rate while manufacturers as the people that really need the forex struggles to access needed forex to import raw materials. It is like starving one's asset portfolio and funding his liability portfolio; bankruptcy is in the offing. And yet we wonder why naira is depreciating and unemployment rate is skyrocketing. It is not only self-harming but self-defeatist.

It was based on the foregoing that apex bank through her Governor made the announcement, which in effect banned the weekly allocation of foreign exchange to the beareux De Change Operators and directed commercial banks to immediately set up teller points in designated branches for the sale of forex to end users. The CBN will thus, be selling directly to commercial banks, from where customers who have legitimate and applicable transactions will be able to buy. The commercial banks were advised to ensure that no customer was turned back or refused forex, provided that documentation and all other requirements were satisfied.

⁷ Vanguard News Nigeria of August 5, 2021, accessed from <https://www.vanguardngr.com/2021/08/cbn-bdcs-and-forex-ban-question/>, on 19/9/2021.

⁸ Vanguard Newspaper of August 5, 2021, *ibid*.

Regulatory Powers of Central Bank of Nigeria

Upon the reading of the riot act by the Central Bank of Nigeria banning parallel currency exchange market in Nigeria which had led to several discussions as to its impact on the economy, the central question asked by this paper is under what regulatory powers of the Central Bank of Nigeria, did the Governor of the apex bank act upon?

In answering this question it is necessary to look at the provisions of *Section 30(a)*⁹ which provides that the Central Bank of Nigeria has the power “to carry out open market operations for the purpose of maintaining monetary stability in the economy of the country and without prejudice to the generality of the foregoing, the Bank may also for that purpose issue, place, sell, repurchase”. While the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act¹⁰, in creating a foreign exchange market provided in its *Section 1(2)* as follows “There is hereby established an Autonomous Foreign Exchange Market (in this Act referred to as “the Market”) where transactions in foreign exchange shall be conducted in accordance with the provisions of this Act”, the same Act¹¹ made the Central Bank of Nigeria to be a regulator of the Foreign Exchange Market by empowering her through *Section 1(2)* which provides thus: “Subject to this Act, the Central Bank of Nigeria may with the approval of the minister, issue from time to time, guidelines to regulate the procedures for transactions in the Market and for such other matters as may be deemed appropriate for the effective operation of the Market.” The next was on the directive given to the commercial banks by the Central Bank of Nigeria, for the commercial banks to maintain tellers in their various branches who will be attending to customers for the specific function of selling foreign currencies to them. The Central Bank of Nigeria relied on her powers derived from the combined provisions of *Section 1(1) and (2)* of the Banks and Other Financial Institutions Act¹² which is the Act that regulates banking and other financial institutions and for matters connected therewith, states that “(1) The Central Bank of Nigeria (hereinafter in this Act referred to as “the Bank”) shall have all the functions and powers conferred and the duties imposed on it under this Act subject to the overall supervision of the Minister; (2) The Bank shall in addition to the functions and powers conferred on it by this Act, have the functions and powers conferred and the duties imposed on the Bank by the Central Bank of Nigeria Act.”

It was pursuant to these powers that the Central Bank of Nigeria in an attempt to salvage naira and curtail the excesses of Bureau De Change (BDC) operators who exploit and artificially inflate dollar/naira exchange, the Central Bank of Nigeria (CBN) stopped the sales of forex to them in an exercise of her powers.¹³

Summarizing the regulatory powers of the Central Bank on Nigeria, Nonyerem Ibiam¹⁴ opined that due to the volatility of the forex market, the Nigerian government through the Central Bank comes up with measures to regulate the sector. He outlined the following statutory provisions that empower the Central Bank of Nigeria in carrying out this regulatory functions.

⁹ Central Bank of Nigeria (Establishment) Act, 2007.

¹⁰ Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995.

¹¹ Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, *Ibid*.

¹² Banks and Other Financial Institutions Act, 2007.

¹³ Odewale Abayomi, “The Economic Implication of BDC Ban”, Daily Trust Newspapers, July 28, 2021, accessed from <https://dailytrust.com/the-economic-implication-of-bdc-ban>, on 19/9/2021.

¹⁴ Nonyerem Ibiam, “Nairmetrics, Is Forex trading legal in Nigeria?”, access from <https://nairmetrics.com/2020/08/26/is-forex-trading-legal-in-nigeria/>, on 25/9/2021.

Foreign exchange regulations and laws empower the Central Bank to make policies to control foreign exchange transactions in Nigeria.

Some of these laws and policies include:

- The Exchange Control Act of 1962.
- The Central bank of Nigeria Act.
- Banks and Other Financial Institutions Act, 2007.
- The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.
- The Money Laundering (Prohibition) Act.
- Second-Tier Foreign Exchange Market 1982.
- Bureau De Change 1989.
- Autonomous Foreign Exchange Market (AFEM) 1995.
- Foreign Exchange Market (IFEM) 1999.

Impact of the Ban on the Availability of Foreign Currency

As observed by Yusuf M.¹⁵ Foreign exchange illiquidity aggravates investment risk which could negatively impact asset quality in the banking system. Foreign currency denominated loans account for between 30 per cent and 35 per cent of banks' loan books. Foreign exchange volatility is associated with risks relating to asset quality and financial stability.

In some other climes, the parallel market exist side-by-side with the official market as an alternative source. In Nigeria, the role of the parallel market has never been to usurp the official market but to complement it in providing liquidity when needed, thus reducing pressure on businesses and liquidity, which is king. It has created an alternative for people in dire need of foreign exchange however, recent revelations leading to their ban as opined by the Governor of Central Bank of Nigeria has revealed that the operators have deviated from this their principal role.

What the apex bank just did is tantamount to taking the recalcitrant bull by the horn in its noble quest to save the naira from downward spiral of depreciation and preserving depleting foreign reserve, amidst dwindling forex inflows from crude oil sales and increasingly rising debt burden. Nigeria's economy is hemorrhaging; this is not time to pander to public sentiments and emotions¹⁶. Events have shown that most of the times, tough economic decisions do not resonate with populist yearnings.

Succinctly put, Chidiebere Nwobo further said¹⁷

Godwin Emefiele, like a proverbial leader of a group of surgeons in the intensive care unit, trying hard to save an endangered patient, got to that crescendo and needed to act pragmatically before it was too late. The CBN has managed BDCs like cancerous tumors for decades now, with little or no positive impact on the economy, especially naira. The cancerous cells kept expanding; eating deep into the fabrics of the economy, while the CBN struggled to manage it, at the same time ensured that the economy did not bleed profusely to death.

¹⁵ Yusuf Muda, *Forex Shortages Force Nigerian Corporates to Turn to Parallel Market*, sourced from <https://news.bitcoin.com/forex-shortages-forcing-nigerian-corporates-to-source-parallel-market/>, on 10/9/21.

¹⁶ Chidiebere Nwobo, *"BDCs: With one stone Emefiele has shot at corruption, money laundering, terrorism"* Vanguard Newspapers, July 31, 2021, accessed from <https://www.vanguardngr.com/2021/07/bdcs-with-one-stone-emefiele-has-shot-at-corruption-money-laundering-terrorism/>, on 19/09/2021.

¹⁷ Chidiebere Nwobo, *"BDCs: with one stone Emefiele has shot a corruption, money laundering, terrorism"*, *ibid.*

Rather than attack or chase players in the non-cash market, the CBN should see them as partners in nation-building. The system will wield out the parallel market when it becomes redundant. But to artificially get rid of them is an invitation to economic starvation the country may live to regret.

What is Secured Credit Transaction?

A lender has two options in providing credit facility. Reliance may be placed on the borrower's covenant to repay having been satisfied of the viable purpose for which the credit facility is required and the certainty of the source of repayment. Another option is for the lender to take, in addition to the debtor's covenant to repay, tangible assets and/or personal assurances in the form of guarantee or indemnity as security for the loan. This option which has been preferred from the earliest times is necessitated by the disappointments and losses identified with unsecured credit¹⁸. This later option of taking the debtor's asset as security for the loan, is what is called secured credit transaction. Giving his thought, Ehigiato E.O.¹⁹, said "secured credit may be described as a lending advanced to a debtor, in which the creditor is not satisfied with his normal remedy of suing for breach of obligations by the debtor and requires from the latter additional means either of enforcing the obligations or having its monetary equivalent." The need for security arises from both the specific or particular perspective and the general perspective. In its particular perspective, security provides the creditor with an alternative source of recoupment if the debtor either cannot or will not pay voluntarily.²⁰

In the view of Chianu, Individual and corporate money lenders desire to recover the money they lend. They have a choice between relying on a borrower's promise to repay and asking for something in addition to the bare promise. Most prudent lenders realize the precariousness of a bare promise: the borrower may drop dead, he may become bankrupt, or he may simply obdurately refuse to pay. Consequently, most shrewd lenders insist on something to assure them that on the borrower's default they would not have lost their investment.²¹

To Dugger "When a debtor borrows money, the credit transaction can be secured or unsecured. A secured transaction is any deal in which a creditor receives a security interest in the debtor's property. The creditor is known as the secured party. The secured party holds a security interest in the debtor's property in order to ensure the debtor's payment."²²

Secured credit transaction drawing from the foregoing, therefore, refers to the practice in which the debtor or a party creates an interest in an asset in favour of the creditor as a guaranty to pay a loan granted him. The guaranty is done with a view that upon the debtor's default the creditor is entitled to take possession of the asset and sells same to satisfy the obligation. In contrast thereto, unsecured credit transaction has no pledge of asset but considers the personal integrity of the borrower as well as guarantee of a third party.

¹⁸ Smith I.O. *Nigerian Law of Secured Credit*, Ecovatch Publications (Nigeria) Limited, Lagos (2001), 1-2.

¹⁹ Ehigiato E.O., *The Law of Credit and Security*, Ben Auster Ventures Limited, Lagos, (2008), 10.

²⁰ Omotola, J, *The Law of Secured Credit*, Evans Brothers (Nig. Publishers) Ltd, Ibadan, (2006), 4.

²¹ Chianu, E. *Law of Securities for Bank Advances (Mortgage of Land)*, Benin City, Ambik Press, 2007, 1

²² Dugger A. *Academy lesson*, <http://study.com/academy/lesson/secured-transactions-examples-explanations.html>, on 30 August 2016.

Legal Impact of the Ban on Secured Credit Transaction

Commercial loans (also known as secured loans or as secured transactions) are loans particularly suited to satisfy the credit needs of small and medium sized enterprises. Its major economic significance is that secured lending reduces commercial risks, it increases the borrowers' access to credit and lowers the rates of interest. The role that the risk of non-payment plays as a component of the rates of interest is apparent in a 1999-2000 study by the Central Bank of Brazil which showed that One-third of the approximately forty percent per annum interest rate paid at that time by Brazilian commercial borrowers was attributable to the legal uncertainties of collection. On the other hand, World Bank studies demonstrate that in a competitive lending environment, the risk reduction that results from adopting an effective secured lending system can be passed on as savings to the borrower in the form of lower interest rates.²³

Agreeing further with this view, John I. Simpson said²⁴

Purpose of security is to reduce the risk of giving credit by increasing the chances of the lender recovering the amounts that become due to him. By doing so, security increases the availability of credit and improves the terms on which credit is available: the offer of security influences the lender's decision whether or not to lend, it also changes the terms on which he is prepared to lend (typically by increasing the amount of the loan, by extending the period for which the loan is granted and by lowering the interest rate). The economic value of security can be formulated in a simple rule which links the economic value to the risk reduction achieved by security: the more the risk of giving credit is reduced, the greater the value of the security to the lender and the greater the security's economic effect. A reduction of the risk of the lender is of most immediate value to the lender but benefits flow at the same time to the borrower and to the economy generally.

Taken from the above, the essence of secured credit transactions is to make credit readily available to businessmen and corporate organizations that need them for one reason or the other. When they are readily available it impacts positively to the cost of production and help in economic development of a country and *vice*.

Again, foreign investors inevitably seek out stable countries with strong economic performance in which to invest their capital. A country with such positive attributes will draw investment funds away from other countries perceived to have more political and economic risk. Political turmoil, for example, can cause a loss of confidence in a currency and a movement of capital to the currencies of more stable countries. This move thus made by the Central Bank of Nigeria which has the long run effect of bringing about stable economic performance will positively impact on secured credit transaction by making foreign investments available to secured lenders. Agreeing with this, Akpan Ekpo, speaking on the new monetary policy by the CBN on BDC operators said²⁵ "the move by the CBN is to sanitise the foreign exchange market by curbing the nefarious activities of some Bureau De Change (BDC) operators which I believe is a good initiative".

²³ Kozolchyk B. "Secured Lending and Its Poverty Reduction Effect, Texas International Law Journal, Vol. 42 (2007), 278.

²⁴ John I Simpson et al, *General Principles of a Modern Secured Transactions Law*, 3 LAW & BUS.REV.AM.73 (1997), accessed from <https://scholar.smu.edu/Ibra/vol3/iss2/4>, on 28/8/2021.

²⁵ Udeme Clement, "New CBN Policy on BDCs: Forex scarcity looms", Vanguard Newspaper, July 13, 2014, accessed from <https://www.vanguardngr.com/2014/07/new-cbn-policy-bdcs-forex-scarcity-looms-prof-ekpo/>, on 19/9/2021.

From an ideal perspective, the directive is a move to discourage illicit financial flows, BDC racketeering, arbitrage and indiscriminate round tripping which all adversely affect secured credit transactions.

The directive cannot be effective without addressing the underlying factors that push people to the black market. In 2016, the CBN banned sale of forex to Bureau De Change operators (BDC's). As at then, the black market rate was N270. 25 and rose to about N340, a staggering 26% rise in dollar/naira exchange rate within 25 working days.

Though banks will sell forex at a cheaper and affordable exchange rate, the banks' administrative bottlenecks and difficulty while filing applications for forex also makes the parallel market attractive to impatient customers. Are there measures to seamlessly process forex applications and transactions on time?

There is skepticism on whether banks will now provide forex outside Personal Travel Allowance (PTA) and Business Travel Allowance (BTA) purposes a vacuum which BDCs hitherto cover.

Currently, due to the existing monthly dollar limit of \$100 on naira accounts, foreign shoppers patronise black markets in order to cover the forex deficit.

It is pertinent to review and increase the monthly dollar limit on naira accounts now that CBN has increased their forex flow. The CBN's statement failed to clearly state the conditions for accessing dollars at the banks. Will the conditions favour non-business men who patronise the parallel market?

Even if it favours non-business men, there are speculations that some banks could hoard forex, deny legitimate citizens forex, collude with BDC operators thereby, diverting the forex into the parallel market at exorbitant rates. What are the stringent measures to sanction erring commercial banks? These are the germane downsides and concerns. .

Since most Nigerian local industries rely on forex to drive production, failure to address these grey areas would push people to BDC operators; who will aggressively source forex in the deeper black market. Suffice to say the ripple effects on the economy and accompanying staggering inflation will plunge more Nigerians into poverty.

The Development and Determinants of Foreign Exchange Market in Ghana

From 1983, Ghana embarked on an economic recovery programme (ERP), an important feature which was trade and foreign exchange liberalization. This called for a legalization of the black market into foreign exchange (forex) bureaus. The shift in the exchange rate management in Ghana took place between 1983 and 1992 from a rigidly fixed to a flexible exchange rate regime. The rigidly fixed exchange rate regime Ghana had pursued before 1983 led to a substantial overvaluation of the cedi, especially in the late 1970s and early 1980s when inflation hovered around 140 percent.

There was a highly developed parallel foreign exchange market which, coupled with the foreign exchange surrender laws, acted as a tax-type disincentive to exporters. The exchange rate reform, therefore, aimed at realigning the overvalued exchange rate, eliminating the parallel market premium and moving away from the rigidly fixed and controlled regime towards flexibility.

The hope was that the new flexible exchange rate regime would make adjustment of the exchange rate somewhat automatic thereby maintaining external competitiveness of the economy. In addition, a flexible exchange rate regime would eliminate the need for the politically risky and difficult devaluations.

The exchange rate reform had numerous benefits such as providing tax-type disincentive to exporters, eliminating the parallel market premium and moving away from the rigidly fixed and controlled regime towards flexibility. The aim was that the new flexible exchange rate regime would make adjustment of the exchange rate automatic thereby maintaining external competitiveness of the economy. In addition, a flexible exchange rate regime would eliminate the need for the politically risky and difficult devaluations.

Since the liberalization of the foreign exchange market, the tempo at which a unit of Ghana's currency (the cedi) exchanges for the US dollar and the other currencies of her major trading associates saw substantial swings. During floating exchange rate regime in 1986 in Ghana, the cedi depreciated in opposition to the US dollar. For example, during the first quarter of 1986, about 0.01 cedis could be exchanged for a dollar; on the other hand, by the end of April 2015, the rate had risen to 3.84, representing a depreciation of 98.7% over that period.

In private sector-led market-oriented economies such as Ghana, the expectedness of key market prices such as the exchange rate is of significant importance. In the face of uncertainty, private enterprises were incapable to take the long view, preferring to stay and see attitude.

The exchange rate of the Ghana cedi in opposition to major currencies, (e.g., the US dollar) is quoted as the number of Ghana cedis necessary to buy one US dollar. An unforeseen change in the Ghana cedi/US dollar exchange rate had significant impact on the success of enterprises working in the tradable division of the economy exporters and importers.

In order for the proper corrective action to be taken, the Bank of Ghana (BoG) took a decision as to whether the unforeseen change was more than the outcome of the policy stance in Ghana or of that of the US Federal Reserve, the equivalent central bank of the United States of America. Determining the response was not easy. One of the broadly used approaches was to observe other exchange rates, for example, in reverence of the British pound and the euro. Thus, if the cedi is depreciating/appreciating falling in value/rising in value alongside all three key major currencies, it is reasonable to end that the unexpected or undesirable transform in the value of the cedi requires corrective action by the BoG.

This move gave rise to the concept of the nominal effective exchange rate (NEER) also known as the multilateral exchange rate. It is computed as the weighted average of the exchange rates of the Ghana cedi next to the US dollar, the British pound, and the euro. The weights used by the BoG are the shares of worldwide trade values of imports and exports of Ghana with the particular trading-partner countries.

The weight given to the US dollar is the figure of all the shares of trading partners other than the United Kingdom and the European Union. Weights are revised from the moment in time to reflect changes in trading patterns. The NEER therefore measures the cost of a "made-in-Ghana" good relative to the average cost of the same good of our trading partners, computed on the base of the share of international trade with each partner. It provides a much more complete assessment of the cedi than using any one of the major currencies it interacts with. It provides a much more comprehensive assessment than comparing with any one of them.

The interpretation of the NEER is that if the cedi is weaker or depreciated against at least one of the currencies of the trading associates then more cedis is needed to pay for imports.

Similarly, a lesser value of the NEER means the cedi is stronger or appreciated against at least one of the currencies of the trading partners, then less cedi is needed to pay for imports. In other words, domestic producers are positioned at a disadvantage against importers in terms of profitability.

Foreign exchange reserve is one of the most vital elements required to stabilize the worth of home currency against foreign currencies. Considering the significant role, a stable currency has on a country's investment drive; it is pertinent to examine the impact of foreign exchange reserve on a country's investment performance.

The exchange rate which is the rate at which one country's currency can be exchanged for other currencies has some significant relationship with money supply, inflation, and GDP which determines the exchange rate of a country. But at times, when money supply always has an impact on the exchange rate; this often leads to monetary system losing explanations of the effects on the exchange rate that is the basis of this research.

The fluctuation and instability that characterize foreign exchange market and money supply, the compensating explicit and implicit effects on all sectors of the Ghanaian economy, are of the great concern and an extreme interest to the government, exporters and importers, the general citizenry, students and lecturers of economics. The increase in the prices of imported goods has unbearable economic hardships on consumers who have inadequate knowledge of how foreign exchange rate impact on their pattern of consumption and behavior.

Local importers are more worried and express fear of been thrown out of businesses as a result of depreciation in the Ghanaian cedi to major international currencies. Therefore, there is a need to check this unstable exchange rate pattern. The main objectives of this study are to examine the determinants of real exchange rate and its overall performance on Ghanaians economy from 1998 to 2016. The outcome of this study is to contribute to monetary and financial policies literature.

Types of Foreign Exchange Market in Ghana

In Ghana, Foreign Exchange Market is of two types' retail and wholesale market, although there exist other minor participants.

1. Retail Market: The retail market is a secondary price maker. Here travellers, tourists and people who are in need of foreign exchange for permitted small transactions, exchange one currency for another.
2. Wholesale Market: The wholesale market is also called interbank market. The size of transactions in this market is extremely large. Dealers are very professionals and are primary price makers. The major participants are Commercial banks, Business corporations and Central banks. Multinational banks are mostly in charge for determining exchange rate.
3. Other participants:
 - a) Brokers: Brokers have more information and better knowledge of market. They provide information to banks about the prices at which there are buyers and sellers of a pair of currencies. They act as middlemen between the price's makers.

- b) Price Takers: Price takers are those who buy foreign exchange which they require and sell what they earn at the price determined by primary price makers.

Determinants of the Cedi/Dollar Exchange Rate in Ghana

In Ghana, since interest rates, inflation and exchange rates are all highly correlated, by manipulating interest rates, their central bank exerts influence over both inflation and exchange rates. Higher interest rates offer lenders in an economy a higher return relative to other countries.

Therefore, higher interest rates attract foreign capital and cause the exchange rate to rise. The impact of higher interest rates is mitigated, however, if inflation in the country is much higher than in other countries, or if additional factors serve to drive the currency down. The opposite relationship exists for decreasing interest rates that is, lower interest rates tend to decrease exchange rates.

In determining exchange rate in Ghana, an empirical model that links the foreign exchange market to its potential determinants are specified and the variables used for the analyses were Gross Domestic Product (GDP growth), government public debt, trade openness, terms of trade, political stability and Inflation rate. To analyse the determinants of real exchange rate in Ghana, the Ordinary Least Square method was chosen to the other techniques, because of its several advantages over those alternative techniques²⁶.

Summary

The foreign exchange market is an integral part of our economic development. No country in the world lives in isolation. There is always the need to import or export one commodity or the other across international boundaries. Services are also sought across the borders too and as it relates to the seminar, those who engage in secured credit transactions may have the need to carry on business across the international boundaries. All these transactions require foreign exchange as such whatever that happens to the foreign exchange market affects them directly. It is good to observe that the foregoing transactions can be the basis of a secured credit transaction as such the recent ban of the parallel currency exchange market has legally impacted on secured credit transaction.

Conclusion

The ban of parallel currency exchange market in Nigeria from the view of this seminar paper has a correspondent legal impact on secured credit transaction as it impinges on the availability of foreign exchange in circulation. Sourcing dollars and other forex from a third source (including buying from Nigerians who receive foreign currencies) means the BDCs may likely be selling at higher rates and this will negatively impact secured credit transactions as the ability debtors to honour repayment as at when due will greatly reduce.

Recommendations

This paper recommends a thorough study of the foreign exchange market (i.e. real exchange rate) and the factors that influence its fluctuations so as to fully derive the intended benefits that the recent ban of parallel currency exchange market by Central Bank of Nigeria hopes to achieve. The recommended study should analyse the behavior of the foreign exchange market, the relationship between the foreign exchange market and its theoretical

²⁶ Accessed from <https://www.scirp.org/journal/paperinformation.aspx?paperid=95492>, on 7/10/2021.

determinants. A queue should be taken from Ghana who carried out an extensive review of their determinants of the foreign exchange market and the background of their foreign exchange market that produced an empirical model which linked the foreign exchange market to its potential determinants using their Gross Domestic Product (GDP growth), government public debt, trade openness, terms of trade, political stability and Inflation rate.

This should be done so as to ameliorate the immediate impact this ban will have on secured credit transaction and ensure the realisation of the long run gain that this ban will have on secured credit transactions by creating a stable foreign exchange rate.

Furthermore, rather than attack or chase players in the Bureau De Change market, the CBN should see them as partners in nation-building. The system will wield out the parallel market when it becomes redundant. But to artificially get rid of them is an invitation to economic starvation the country may live to regret. There should be concerted effort by Government to make foreign exchange available to those who need it for the new parallel foreign exchange regime to bear a meaningful positive impact on secured credit transactions.