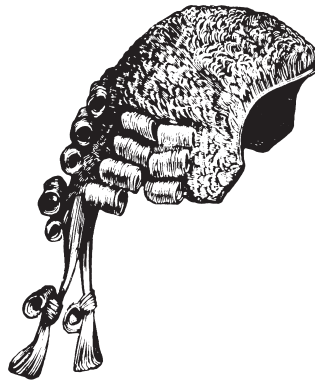


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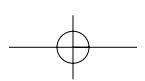
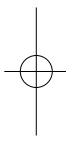
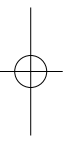
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Principal Partner of **NEWMAN LEGAL**, a law firm based in Lagos and Abuja assisting domestic and international clients with advice and representation across the full range of legal matters. Twenty-Five (25) years post-qualification experience with notable expertise both as counsel, arbitrator, conciliator and mediator in corporate, commercial, energy, construction and maritime matters in Nigeria and abroad.

Special Assistant to the President of Nigeria on Federal Capital Territory Matters (May 2001-Sept 2002); Special Assistant to the President on G77 Matters and Nigerians In The Diaspora Organisation (Sept 2002-May 2003).

Former Managing Partner, Joint Head of the Energy Law Department and Head of Company Law Department of **Akinjide & Co**, one of the leading Nigerian law firms with legal practices, in Nigeria, England and The Gambia.

Dual qualifications as a Barrister and Solicitor of the Supreme Court of Nigeria and a Solicitor of England & Wales. **Obtained First Class Honours in the Solicitor's Final of England and Wales**

Fellow of the Chartered Institute of Arbitrators (U.K)

Member, National Working Group On The Reform Of Investment Laws , 2007

Chair-Person of the West African sub-group of the Association of International Petroleum Negotiators (AIPN).

## **PUBLICATIONS**

1. Delivered papers at domestic and international conferences on the following topics:
2. Investment Opportunities for Oil Service Companies in Nigeria (1996)
3. Legal Aspects of International Environmental Protection (1996)
4. Current Legal Issues for Gas Production and Utilisation in Nigeria (1997)
5. The Office of the Company Director - Rights, Duties and Liabilities (1998)
6. Corporate Social Responsibility in the Petroleum Industry (1999)
7. Oil and Gas Arbitration (1999)
8. Legal Framework of the Petroleum Industry (2000)
9. The Nigerian Power Sector: An Industry in Transition (2001).
10. Local Content-Provision of Professional Legal Services in the Petroleum Industry (2004)
11. Good Governance & Africa's Development (2007)
12. Globalisation of Legal Services – Fears of African Countries (2007)
13. Globalisation and Nigerian Legal Practice (2009)

## **AKINJIDE & CO PUBLICATIONS:**

1. **Petroleum Group, Energy and Natural Resources**
2. **Advocacy, Ethics and the Bar**
3. **Why do Oil Companies do Farm-Outs and Farm-Ins?**
4. **Wrongful Arrest of a Ship**
5. **Oil and Gas**
6. **Schedules of Trade Marks, Patent and Design Fees**
7. **Much Ado about Lawyers**
8. **Current Legal Issues for Gas Production & Utilisation in Nigeria.**
9. **Golden Shares in Privatisations: All that Glitters is not Gold**
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17. **Arbitration before the International Centre for Settlement of Investment Dispute (ICSID) and Unitisation in the Upstream Sector of Oil and Gas**
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Is He the Only Directing Mind and Will of the Company?  
Part 2: Power and Leadership? What Power and What Leadership?**
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25. **Recent Guidelines Relating to World Freezing Orders, that is, MAREVA Injunction**
26. **Globalisation of Legal Services – Fears Of African Countries, 2007.**
27. **Babcock University Eminent Persons Day Address.**
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31. **New York Convention 50 Years On.**
32. **Property: Investing In Hotel Rooms.**
33. **Oil & Gas And The Games Of Nations**
34. **The Ousted Monarchs And Global Financial Earth-Quake**
35. **Globalisation And Nigerian Legal Practice**

## **GLOBALISATION AND NIGERIAN LEGAL PRACTICE**

**By**

**OLAJUMOKE AKINJIDE**

**LLB (Hons) (Lond), LLM (Harvard), B.L., FCI Arb. (U.K)**

### **LIBERALISATION: RISK & REWARD**

#### **CURRENT POSITION**

For us in Nigeria, we bear the risk of taking the wrong path on the road to globalization. Should we make mistakes in the timing and/or manner in which liberalization of legal services takes place in Nigeria, severe consequences, both intended and unintended, may ensue. We run the real risk of wiping out local commercial/corporate firms entirely. We only need to look at the accounting industry to see the stultifying effect of the global accounting firms on the development of local ones. Experience has proved it is near impossible for local accounting firms to build up the client base or capacity to challenge the dominance of the “big five” - KPMG, Accenture, PriceWaterhouseCoopers, Ernst & Young, Deloitte. This is a critical experience to bear in mind in deciding on the trajectory we wish the Nigerian legal profession to take. The past 15 years have seen an organic growth in the size, skills, competencies, use of ICT and sophistication of Nigerian corporate/commercial law firms. There is fierce competition among these commercial firms, mostly Lagos based, and new entrants and partnerships are coming into the market year on year. So there arise two questions: first is a question of timing; is this the right time for the Nigerian legal profession to be liberalized, bearing in mind the current state of the profession as a whole? Second, how do we open up the legal services industry without killing off the nascent local commercial law firms? So while, admittedly, the world is becoming more integrated and global in terms of movement of capital, goods, services and even labour, it is incumbent upon us, the Nigerian Bar, to make sure that we are comfortable with the choices we make in this regard. We need to be certain, as far as is possible, that the Nigerian legal industry is protected both as a profession and as a vital national institution. Especially because liberalization is a one way street; there is no way back once we embark on that journey.

So, the beginning of the debate is: in what state is the Nigerian legal services industry? With all due respect, in my humble opinion, the answer is that the local Bar is weak, shallow and poorly regulated. In its current state, liberalization poses a high risk of decimating the local Bar in return for the scant/meager reward of introducing “new products” into the domestic market.

Mr. David Stewart said:

“Where analysts point to the lack of domestic law firms amongst the large players in jurisdictions like France and Germany, it is because those players did not exist and foreign law firms have brought with them an entirely new market in international transactional work that did not previously exist.”

Again he said of foreign law firms:

“They are generally serving a different market to domestic law firms, providing services that are unavailable in the domestic market. This means the presence of foreign firms could reduce costs to local clients without undercutting local lawyers – local clients will be able to access international services at home without needing to fly foreign lawyers in or fly abroad to consult with them.”

First, I would question the whole premise of the statement, as to there existing legal services which are unavailable or incapable of being supplied by local firms. Second, even if there are, in my view the possible benefits to the Nigerian economy remain negligible using Mr Stewart’s own statistics as evidence; 4,000 lawyers employed in 200 branches of US law firms within the whole of the EU. The EU has 27 member states, a population of nearly half a billion, and a GDP far in excess of that of Nigeria. The Nigerian law school produces close to 3,000 legal practitioners annually. It is clear that these global firms will employ a negligible number of lawyers, cream off the most lucrative work while leaving the local firms to fight over the rest. A classic case of the 80:20 principle!

Conversely, the foreign firms bear a low risk of failure of the liberalisation process. If Nigeria liberalises legal services and a foreign law firm, say Olswang, having opened shop in Nigeria decides for any reason that it no longer wishes to have a Nigerian presence, it can simply disengage local staff, pack up and leave for greener pastures. The foreign law firms’ goals are purely financial. The primary question for them is: does it make commercial sense to have a Nigerian office? Providing service to its international clients is secondary, and dependent on the first question being answered in the affirmative.

We therefore need to restructure and realign our profession in order to achieve the desired goal of low risk in relation to the survival of the local commercial Bar, and high reward to be earned by re-tooling the Nigerian Bar to successfully compete and profit from the liberalisation process.

## COMPETING INTERESTS

In order to draw up a roadmap for liberalising legal services in Nigeria we must first identify our vital national interests. The legal services industry is an important sector of the Nigerian economy and we are duty bound to protect, nurture and develop it. Recent turmoil in the global financial world demonstrates graphically that discourse on the subject of national interests and institutions should now change radically. The old paradigms of deregulation are no longer inviolate or sufficient. We have seen national interests take front & centre, when market forces have failed. Governments have intervened directly and massively to protect national economies, financial institutions, jobs etc. In so doing they have debunked forever the myth of the perfectly functioning, self-regulating marketplace. It is now clear that markets need regulation to avoid self destructive tendencies resulting from the single most powerful driving force of any market – greed! The trick is to design an effective and efficient regulating mechanism. We need no longer be coy about identifying and promoting legitimate national interests. It is now clear that “market forces” will not preserve these interests neither will foreign firms or capital do so. The Nigerian Bar and the Government must work together to identify and promote national objectives.

### **National Interests & Goals**

1. Building a vibrant legal profession capable of providing the full range of legal services for local and international clients.
2. Protect and promote legal practitioners qualified to practice in Nigeria.
3. Strengthen the professional ethics and practices of the Nigerian Bar to achieve global standards.
4. Provide first class legal education for entry into the legal profession and on a continuing basis for legal practitioners.
5. Attract the level of earnings necessary to employ and train qualified Nigerian lawyers.
6. Assume a leadership role among African Bar Associations.

While our friends in foreign jurisdictions cannot decide our goals for us, they have an important role to play in helping us to discover the right path, strategies and pace to adopt by sharing experiences & know-how, assist with capacity building, etc. Building long term relationships on the basis of mutual trust & respect, will translate into future financial gain. In its bid to prise open new markets for its law firms, developed countries should avoid the temptation to coerce or pressure developing countries to open up their markets prematurely.



Presently, as I said earlier, the Nigerian Bar is relatively weak. True, there are many law firms with extraordinarily gifted lawyers doing work of highest standards, however, the legal profession as a whole, and indeed the entire administration of justice system itself, need to be overhauled. The approach implied in Mr. Stewart's paper posits that reform and benefits will come to the Nigerian legal profession as a result of opening our doors to foreign law firms. Be that as it may, that is not the purpose for which these firms will come to Nigeria. Their purpose is purely the prospect of commercial gain. The goals enumerated above are as described, national goals which should be addressed directly internally first. We should not open up legal services in the hope that the presence of foreign firms will have a beneficial collateral impact on the local bar. It is my firm belief that we must do the hard, but necessary, work of putting our house in order first in order to be able to take advantage of any benefits accruing from the international market place.

### **NECESSARY FIRST STEPS**

There are some points on which I agree with Mr. Stewart. It is a fact that the Nigerian Bar is already losing a high percentage of the most lucrative business to foreign law firms. But the answer cannot be to legitimize and give national approval to this unfortunate situation. Surely, we should not throw our hands up in surrender as this would be based on the false premise that we cannot compete and that there is only one path to becoming competitive, to invite foreign firms to help us get up to speed. I also agree that doing nothing is NOT an option. My view is that we should instead remedy this unfortunate situation of haemorrhaging the best legal business by reforming the Nigerian Bar and positioning it to hold its own before throwing open our doors.

#### **1. Legal Audit**

- What is the size of the legal market?
- What are its component parts?
- How many legal practitioners are in each area of expertise?
- What is the skills gap and how can it be filled?

#### **2. Reform Of The legal Profession**

- Revise Legal Professional Rules to remove restrictions that make Nigerian law firms uncompetitive, e.g. prohibition of advertising, partnerships as the only vehicle for multiple practitioners to work together.

- Update and enforce Professional Ethics and Disciplinary Code.
  - Adopt mandatory continuing legal education.
  - Enact legislation or adopt policy compelling the Nigerian Government to use Nigerian lawyers.
3. The Nigerian Bar Association should draw up a road map for liberalizing legal services setting out necessary benchmarks and targets within a time frame, and partner with the government in the GATS negotiations.
4. I must acknowledge the fact that we have started taking small steps toward reform. The **NBA Working Group on Liberalisation of Legal Services**, of which I am a member, was set up to a) educate, inform and consult the Nigerian Bar, b) Represent the Nigerian Bar in relation to the Government, c) Liaise and collaborate with international, regional and national bar associations.

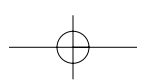
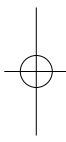
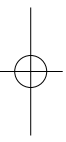
## FINAL OBSERVATIONS

### **China's Model**

- Limit the number and location of offices.
- Disallow Chinese lawyers from being employed by foreign lawyers, thereby creating a rigid foreign firm/local firm dichotomy. This ensures that local firms can grow and that host country law remains the preserve of local firms.

### **Bilateral Agreements**

- Should be discouraged because of the **Most Favoured Nation** status imposed by the GATS.
- Must deal with the greatest barrier to **Market Access**: immigration, specifically the grant of visa and work to permits to qualified Nigerian lawyers.



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