

**ADVANCED LEGAL DUE DILIGENCE  
IN FINANCIAL INSTITUTIONS**

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**THE ABC APPROACH**



**AINA, BLANKSON & CO.**

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*“Credit risk is most simply defined as the potential that a bank borrower or counterparty will fail to meet its obligations in accordance with agreed terms. The goal of credit risk management is to maximise a bank's risk-adjusted rate of return by maintaining credit risk exposure within acceptable parameters. Banks need to manage the credit risk inherent in the entire portfolio as well as the risk in individual credits or transactions. Banks should also consider the relationships between credit risk and other risks. The effective management of credit risk is a critical component of a comprehensive approach to risk management and essential to the long-term success of any banking organisation.”*

***Bank for International Settlements (BIS), Basel, Switzerland***

## **INTRODUCTION**

**T**he year 2005 is a clearly a watershed in Nigeria's banking industry and for some banks it was the year the “sky fell down” and for the prepared few, it was the year of “great opportunities”. The regulator driven reform in the banking industry has forever changed the financial landscape.

The reforms are still ongoing and consequently, the Central Bank of Nigeria (CBN) has set its sight on the next stage of reforms which include:

- adoption of a risk focused, and rule based regulatory framework
- adoption of zero tolerance in the regulatory framework
- the automation process for rendition of returns by banks and other financial institutions through the electronic financial analysis and surveillance system (e-FASS)
- strict enforcement of the contingency planning framework for systemic banking stress



The bottom line being the integration of an internal enterprise wide and external regulator driven risk based framework into the Nigerian banking sector.

The issue of risk and its management has long been a top priority for banks in Nigeria and thus far each bank has had to come up with its own risk management system to complement the regulatory checks put in place for the same reasons.

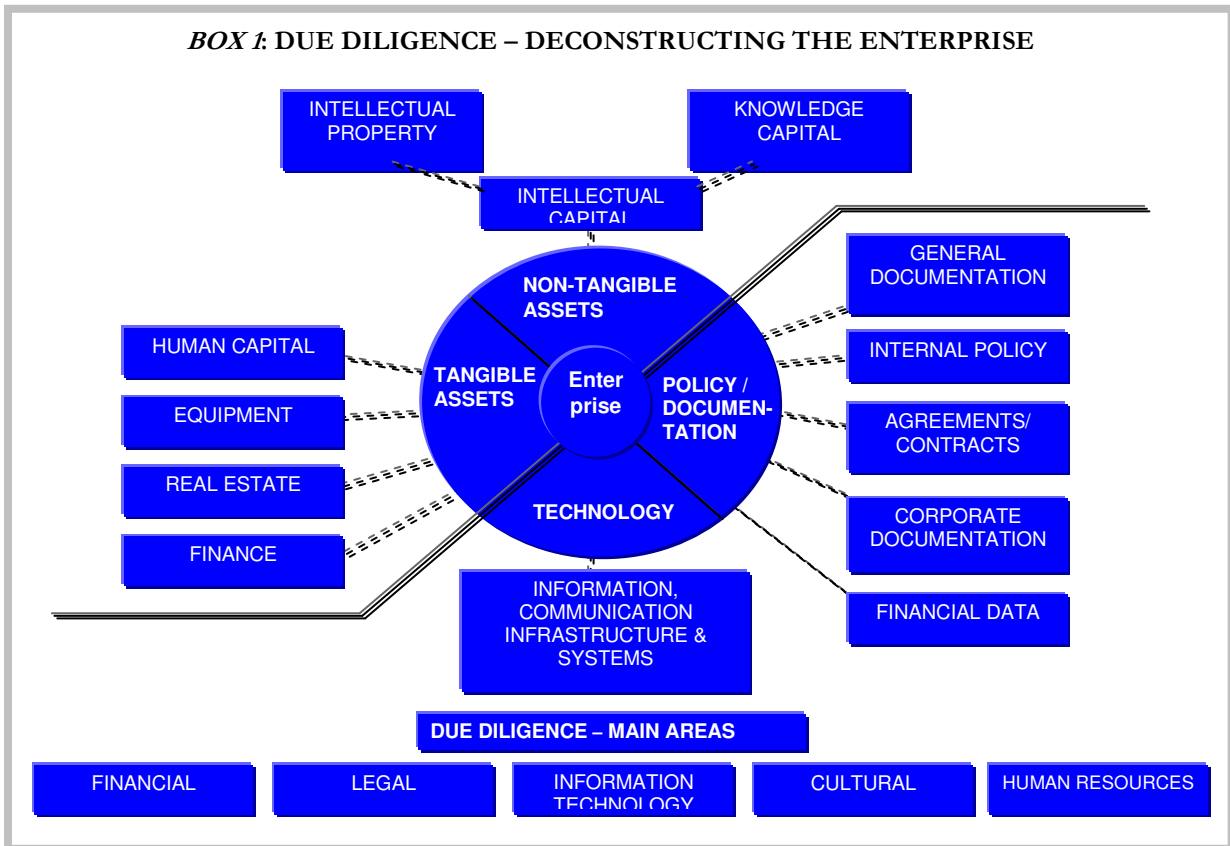
### **THE ABC RISK PROFILE AUDIT METHODOLOGY**

At ABC we are continuously perfected the art of legal due diligence and have acquired a reputation as the benchmark for same over the years. Our success stems greatly from our approach which is a function of our experience and proven track record – locally and internationally.

We understand that though the legal due diligence is but one of the due diligence areas focused on (usually in conjunction with Financial Due Diligence, Information Technology Due Diligence, Human Resource Due Diligence and Cultural Due Diligence) the Legal Due Diligence is the most wide sweeping in its scrutiny of a companies affairs and risk status see ***Box 1***.



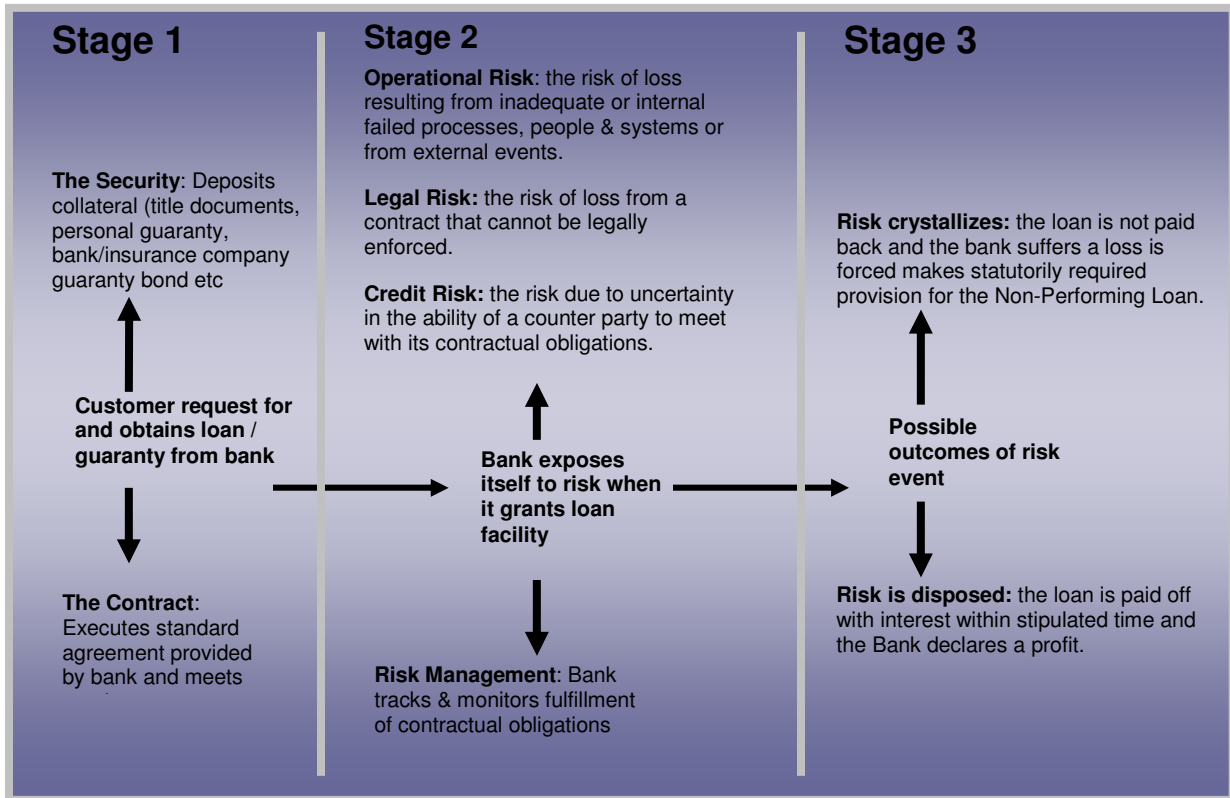
**BOX 1: DUE DILIGENCE – DECONSTRUCTING THE ENTERPRISE**



Our Risk Profile Audit methodology is designed to provide a comprehensive legal audit trail of all the relevant stages of the risk event life cycle in a banking institution after which we identify the legal issues and make recommendations based on clear cut criteria and risk analysis (*see Box 2 on next page*).



**Box 2: Typical risk event that takes place in a Banking Institution.**



From **Box 2** above we can clearly see that the key elements in the risk events that a banking institution is routinely exposed to are:

1. **The Contract:** an understanding between the bank and its counterparty that the latter will service the loan disbursed by the former in accordance to what has been agreed and acceded to.
2. **The Security:** the tangible guarantee that the loan will be serviced and in the event that it is not serviced the means by which the loan will be adequately liquidated.

3. **The Risks:** amongst others the bank is primarily concerned with effectively mitigating Credit, Operational and Legal risk throughout the transaction.
4. **The Risk Management System:** each bank has its own risk management system apart from the system put in place by the regulator. Both bank and regulator share the same goal, which is to ensure that the risk is effectively identified, monitored and mitigated.

ABC's Legal Due Diligence methodology will enable our due diligence teams:

1. **Accurately identify** the banks Legal, Credit and Operational risk profile from a Legal and Regulatory point of view,
2. **Analyze** the available data on the bank with a view to proffering legal opinions and recommendations on the status of the bank (limited to the areas of focus mandated by our client), and
3. **Advise and recommend** to our clients the best possible approach to take with regards to the bank under review based on internationally recognized best practices.

We combine the above review with a thorough and detailed ***Regulatory Compliance Audit***. Thus our legal due diligence approach remains in tandem with current international best practices, we combine this with our long held principles of thoroughness, professionalism, integrity and impartiality which have become the hallmark of the ABC Legal Due Diligence exercise.



## THE SIMULTANEOUS APPROACH (CONDUCTING THE DUE DILIGENCE EXERCISE)

The ABC approach to the actual due diligence exercise is unique for the following compelling reasons:

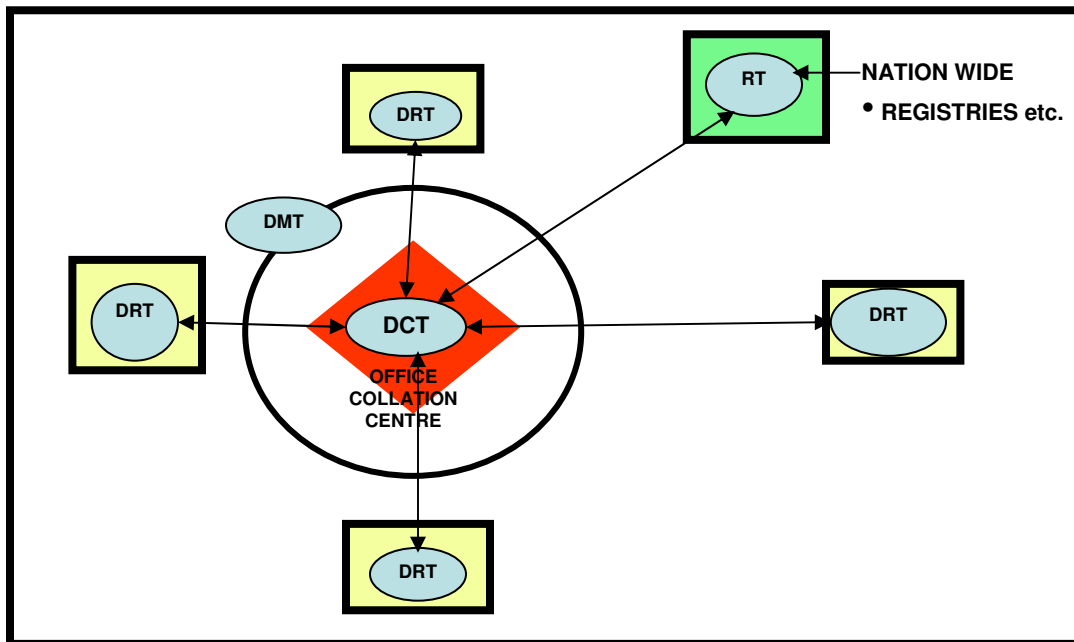
1. **The Teams:** the ABC due diligence teams are function specific and highly trained and consist of:
  - a. **Roving Team (RT):** this team specializes in court and regulatory agency searches, that usually have to be carried out in wherever the said court or regulatory agency resides thus this team is usually deployed all over the country, depending on the scope of the due diligence exercise,
  - b. **The Data Retrieval Team (DRT):** this team is deployed to the data room prepared by the subject of the exercise, which in this case would be a bank and they carry out the retrieval of data to be subjected to analysis,
  - c. **The Data Management Team (DMT):** this team ensures that the technical and logistic challenges of getting the information retrieved from the banks and relayed to the collation team is accurate and conforms to our high data integrity standards, and
  - d. **The Data Collation Team (DCT):** this team analysis the data and prepares the legal due diligence report draft that will be reviewed by each of the specialized departments in the firm et al the Dispute



Resolution Group, The Corporate Services Group, The Corporate Commercial Group, The Energy and Environmental Group (where applicable) and The Telecoms, Media & Technology Group (where applicable).

The teams interact to ensure speedy delivery time without compromising on the integrity of the process.

***Box 3: Teams Tango***



**FEATURES OF THE ABC DUE DILIGENCE LEGAL REPORT**

Although as a matter of practice each client usually have areas of focus that form our mandate when designing a legal due diligence format, there are standard areas of focus that recur in legal due diligence reports such as:



1. **Claims & Litigation:** to identify the extent of the banks contingent liability profile,
2. **Asset Verification:** focusing on the banks moveable/prime assets (cars and heavy equipment like generators, ATM Machines and VSAT equipment) and immoveable assets (real property; owned and leased),
3. **Regulatory Matters:** focusing on the banks corporate good standing and compliance status with the relevant regulatory bodies, specifically the CBN, NDIC, SEC, EFCC and NDLEA.
4. **Corporate Information:** focusing on the banks corporate personality status, especially with regards to its compliance with CAC requirements and periodic statutory filings,
5. **Tax Matters:** focusing on the banks compliance with FIRS, SIRS requirements on tax remittances,
6. **Material Contracts:** focusing on any contract or undertaking entered into by the bank that is capable of impacting greatly on its capital base upon default if of a financial nature or exposing the bank to great reputational risk if mishandled,
7. **Human Capital:** focusing on the banks employees and contract/outsourced staff, with a view to identifying areas that have exposed the bank to dispute amongst other things,
8. **Corporate Acquisitions and Disposals:** focusing on the banks recent/major acquisitions whether in assets and or shares and conversely its disposals whether in assets or in shares,
9. **Banking Facilities and Borrowings:** focusing on the banks top users of funds as well as its substantial borrowings from other financial institutions amongst other things,



10. **Intellectual Property:** focusing on any Trademark, Copyright (especially with information technology hardware and software service providers), Registered User License Agreements e.t.c, and
11. **Insurance:** focusing on the banks insurance status i.e. outstanding premiums and claims, extent of coverage over human resource assets, financial assets, immoveable and moveable assets amongst other things.

Our due diligence system is nevertheless user customizable and we can focus on specific areas as outlined by our clients. The major advantage and differentiating factor of our system is our data analysis system which has incorporated target risk analysis tools and models into the legal analysis of the retrieved data, whatever the area of focus.

Our due diligence report is the only one in Nigeria thus far that can boast of the following features:

1. **Legal Risk Analysis** of individual subjects of review i.e. each litigation case in our claims and dispute review process is analyzed individually and a *Likely Outcome* analysis are carried out on same,
2. **Recommendations** are based on clearly defined criteria which is explained in explanatory notes wherever they occur,
3. **Statistics Tables** that give an instant assessment of the overall status of the area of focus are a distinct feature in an ABC report, and



4. Our trademark **Executive Summaries** that conclude our recommendations, analysis, statistics and overall legal opinion on each area of focus.

We do not stop at presenting the report to our clients; we also provide follow up services with a view to ensuring the complete satisfaction of our clients, our post due diligence services include:

1. **Presentations** on the overall findings of the legal due diligence exercise pointing out the 'Red Flags' (specific findings of great interest) that also consist of comparative analysis of the objects of the legal due diligence exercises.
2. **Detailed Opinions** on topical issues that need special attention, and
3. **Executive Briefings** that create a forum for brainstorming on the possible approaches and strategies with regards to the due diligence results.

## **OUR TRACK RECORD**

In the past year the firm has been involved in the consummation of a number of high net worth merger transactions involving no less than 22 banking institutions, one of which was the single largest merger to be successfully concluded in Nigeria.



<b>CRITERIA</b>			
<b>BANKS</b>	<b>RELATIVE SIZE OF TRANSACTION</b>	<b>NO. OF BANKS MERGED</b>	<b>ABC'S ROLE</b>
<b>UNITY BANK GROUP</b>	<b>4</b>	<b>9</b>	DUE DILIGENCE REVIEWERS
<b>SKYE BANK GROUP</b>	<b>3</b>	<b>5</b>	LEAD LEGAL CONSULTANTS/DUE DILIGENCE REVIEWERS
<b>STERLING BANK GROUP</b>	<b>5</b>	<b>5</b>	DUE DILIGENCE REVIEWERS
<b>INTERCONTINENTAL GROUP</b>	<b>1</b>	<b>4</b>	LEAD LEGAL CONSULTANTS/DUE DILIGENCE REVIEWERS
<b>ACCESS BANK GROUP</b>	<b>6</b>	<b>3</b>	—
<b>UBA/STB</b>	<b>2</b>	<b>2</b>	—

The facts speak for themselves.



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