

JULY 2005 LEGAL ALERT: ARBITRATION, CORPORATE GOVERNANCE AND ETHICS.

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MOTIVATIONAL QUOTE.

Our motivational quote for this month is taken from Diamond Bank Plc Personal Development Series. It says "There is no such thing as luck. 'Luck' only happens when opportunity meets preparedness. You cannot achieve anything great if you are not prepared for it. If opportunity comes and you are not ready, you cannot tap into it".

REACTIONS TO LAST LEGAL ALERT ? Electric Power Sector Reforms Law.

Our above mentioned last Legal Alert was published by Business Day Newspaper on Thursday, July 07, 2005. You can also find it on www.moneywise-ng.com in the Home Page under the sub-head "Moneywise Law". We thank these publications for contributing to our drive to impact knowledge always. This Legal Alert and others are on our web site www.oseroghoassociates.com. We also received comments on the Legal Alert with the most outstanding critic coming from Mrs. Ifey Ikeonu, a strong and active stakeholder in the electric power sector. While she agreed with most of our analysis, she did not agree that the former NEPA failed only as a result of managerial ineptitude. In its stead, she contended that the entire power sector was grossly under-funded for many years. She also disagreed with our reservation about the automatic retention of the old NEPA staff under the new electric power regime as she expected a transition from a public "commercialisation" to full privatisation; this she said will sanitise both the labour and other aspects of the electric power industry. She lastly observed, and we agree with her, that there were inadequate provisions in the Law against electric power theft.

It is not our position that there should be a mass retrenchment of the old NEPA staff for there to be efficient and effective delivery of services in this area. Our position remains that where there is a level playing field, the best people, the industry and the country are the better served.

PENSION ADMINISTRATORS: Appointments-In-Principle.

In the first week of July, 2005 the National Pension Commission announced the issuance of Approvals-In-Principle for licences to thirteen (13) Pension Fund Administrators (PFA). In compliance with the Pension Act, the National Pension Commission further announced that these

Approvals-In-Principle have a validity period of 90 days from the date of the Approvals and that the Approvals were not synonymous with the grant of a Licence to operate as a PFA.

We will continue to keep you informed of the above and other long awaited regulations in this area of the Law.

INDEPENDENT CONTRIBUTIONS TO LEGAL ALERT.

We received two contributions from our Law Colleagues on two interesting areas of the Law namely Ethics for Arbitrators and Recent litigations on Sales Tax. The latter was published by THISDAY Newspaper on the 19th day of July 2005. To the latter publication, by our Colleague and friend in California, U.S.A we have our comments to be shared in another issue.

We are grateful for the above contributions and interest in our work. We are always open to receive more contributions provided we find them very relevant to our targeted audience.

We share with you, in the form of an edited synopsis, one of the received contributions in our Legal Alert for this month.

JULY 2005 LEGAL ALERT: ARBITRATION, CORPORATE GOVERNANCE AND ETHICS. INTRODUCTION.

This synopsis is based on the contribution titled "The Code of Ethics for Arbitrators in Commercial Disputes" received from Mr. Jideani Chukuemeka, a Barrister, Solicitor and Chartered Arbitrator. He is with the Legal Unit of Midas Bank Nigeria.

With litigation becoming an unsuitable medium for resolving business disputes, close attention is now paid to Arbitration. Like in business, where corporate governance rules are promoted and codified over time through usage, a code of ethics has also been done to secure Arbitration and the Arbitrators who play a primary role in the dispute resolution process.

THE CODE OF ETHICS FOR ARBITRATORS.

The general rules of natural justice, equity and good conscience also apply to Arbitrators. This ensures that the requirements for neutrality, impartiality, likelihood of bias, fair hearing, etc are maintained. These codes/cannons apply to all Arbitrators even when appointed by a defaulting party.

The American Arbitration Association in conjunction with the American Bar Association developed the codes in 1997 and revised them subsequently. Note that these codes should be read in conjunction with the other rules of law, professional rules of ethics applicable in your jurisdiction, etc. Note also that one of the cannons on Arbitrators being able to advertise their services, have been excluded because it is not applicable in Nigeria where many professional rules of practice bars open advertisement.

The codes, which are also called cannons, include: -

1. An Arbitrator should uphold the integrity and fairness of the Arbitration process. He has a responsibility not only to the parties but also to the entire Arbitration process so that the integrity and fairness of the process is not compromised but preserved.
2. An Arbitrator should make full disclosure of any interest or relationship likely to affect his impartiality or which might create an appearance of partiality. Where the Arbitrator is in doubt as to whether the disclosure is material enough for disclosure, the canon favours full disclosure to all the parties in the Arbitration.
3. An Arbitrator should avoid impropriety or the appearance of impropriety in communicating with the parties. All communications should be open and shared between all the parties.
4. An Arbitrator should conduct the proceedings fairly and diligently.
5. An Arbitrator should make decisions in a just, independent and deliberate manner.
6. An Arbitrator should be faithful to the relationship of trust and confidentiality inherent in that office. This canon equally applies where the Arbitration has come to an end or the Arbitrator had to stop to act in the Arbitration, for whatever reason.
7. An Arbitrator should adhere to integrity and fairness when making arrangements for compensation and reimbursement of expenses especially when they relate directly to the Arbitrator.
8. Arbitrators, whether appointed as neutrals or as an Arbitrator to a party, have a duty to determine and disclose their status and to comply with these codes/cannons.

CONCLUSION.

The attraction of the above ethical canons, to us as business Lawyers, is that they should be applied not only to Arbitrators but also to each and everyone of us in business. Where properly applied, it would reduce conflicts and resolution costs, and also improve and expand relationships. Have a good summer holiday!

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