

Innocuous Letters of Offer

Legal News:

I obtained some favourable decisions at the Courts in the month of February 2004. The lesson to be shared from this is that a closer interaction and conferencing with the Clients assist Legal Counsel to appreciate the facts in dispute the more and accordingly, apply the right portions of the Law to the resolution of the dispute. The Nigerian Supreme Court re-affirmed this practical behaviour in the case of NEKA B.B.B Manufacturing Co. v. ACB International Bank Plc in its judgement delivered on January 16th 2004 where it held that "evidence, whether oral or documentary, consist of facts, and facts are the fountain head of the Law".

Also in February 2004, a new Chief Judge was sworn into office in Lagos State on the retirement of the old one. Unfortunately, some Court rooms at the Lagos High Court, Tafawa Balewa Square were gutted by fire.

The proposed amendment to the Economic and Financial Crimes Act passed through the National House of Representatives. Some of the proposed amendments include a restriction on the volume of cash that individuals and corporations can carry at a time and the reporting procedures.

In the United States , the former Chief Executive Officer of ENRON was arraigned for numerous charges of fraud, etc. This again brings for discussion, the issue of corporate governance and the personal liability of Executive Directors of a company for unacceptable executive decisions. I intend to send to you a newsletter on the latter in the coming month.

Tax Aspects to Mergers & Acquisitions in Nigeria

My senior tax colleagues at PriceWaterHouseCoopers, particularly Mr. Azeez Alatoye, drew my attention to my non mention, in my January 2004 Newsletter, of the tax aspects in a Merger and or Acquisition deal particularly to Section 32 of the Capital Gains Tax Act and Section 25 (9) of the Companies Income Tax Act.

Section 32 of the Capital Gains Tax Act provides that "A person shall not be chargeable to tax under this Act, in respect of any gains arising from the acquisition of the share of a company either merged with, or taken over or absorbed by another company as a result of which the

acquired company loses its identity as a limited liability company, provided that no cash payment is made in respect of the shares acquired ?. The underlining is mine.

Section 25 (9) of the Companies Income Tax Act on the other hand gives the Federal Board of Inland Revenue (?the Board?) the additional discretion of requiring either company involved in a merger or acquisition to guarantee or give security to the satisfaction of the Board, for the payment in full of all tax due or which may become due by the company selling or transforming such assets or business.

Innocuous Letters of Offer

Businesses continue to receive letters of offer from third parties offering introductory assistance in various areas, from recruitment of staff to products and services. The legal risk arises when the recipient acts on the letter and receives an ?offending large invoice?.

The position of most legal Counsel, who represent the party who transmits the innocuous correspondence, is usually that an offer was made to the recipient company, which was accepted by conduct. The latter party is therefore estopped from denying a binding contract.

The Supreme Court in the case of *Vulcan Gas Limited v. G.I.V Limited* [2001] 5SC (Part 1) 1 @ 12 paras. 15-20 held that an agency relationship could arise in any one or more of the following ways:

- By express appointment of the agent by the principal, whether orally or formally;
- By ratification of the agent's acts by the principal;
- By virtue of the doctrine of estoppel;
- By implication of Law in the case of agency of necessity, and
- By presumption of Law in the case of cohabitation.

Opinion

It is recommended that to avoid unwanted liability, each formal or informal offer should be followed by a polite inquiry as to the terms, conditions and consideration of the offer, in the same manner in which it was made or received. Should the response be contrary to the principle of your company or firm, nicely inform the person making the offer and thank him for the attempt.

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EHIJEAGBON O. OSEROGHO

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