

Overview of the Corrupt Practices & Other Related

Offences Act, 2002

Introduction

Cultural and institutionalised corruption remains the bane and a clog in the economic development of most third world countries including Nigeria . To combat this practice, the National Assembly enacted the Corrupt Practices and Other Related Offences Act, No. 5 of 2000 (?the Act?). The Act, in the main, prohibits bribery and corruption and prescribes punishment for those who fall foul to its provisions with either terms of imprisonment or monetary fines, or both imprisonment and fines.

Salient Provisions of the Act

The Act seeks to prohibit and prescribe punishments for corrupt practices and other related offences throughout the federation of Nigeria . The Act establishes the Independent Corrupt Practices and Other Related Offences Commission (?the Commission?). Also, the Act makes provision for the protection of anybody who gives information to the Commission in respect of any offence committed or likely to be committed by any person.

The Act makes it an offence for any person to ask for, receive or obtain any kind of property or benefit, or to give, confer or procure any anything, either for himself or for any other person, as an inducement or reward for doing, forbearing to do or having to do anything outside the ordinary cause. A majority of these offences carry terms of imprisonment of either seven (7) or five (5) years imprisonment.

Also, the failure to report any act of corruption or bribery is an offence under the Act, which carries a term of imprisonment of two (2) years or a fine or both.

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In this case, the government of Ondo State challenged the constitutionality of the Anti-Corruption Act on the ground that the National Assembly did not have the constitutional power to legislate on matters of bribery and corruption such that the Law will be applicable to citizens in Ondo State .

The Supreme Court held that with the exception of some sections of the Act, the Act was

constitutional as the National Assembly was empowered by the 1999 constitution to make laws for the peace, order and good government of every person subject to the jurisdiction of Nigeria including the establishment by the Act, of the Independent Corrupt Practices and Other Related Offences Commission. Section 4 (2) and items 60 (a) and 67 of the exclusive legislative list of the 1999 constitution is the authority for this.

The Supreme Court further held that: the Act was applicable to both public and private individuals and corporations; that Section 26 (3) of the Act which requires the prosecution of an offence and delivery of judgement within ninety (90) working days was unconstitutional as it constituted a usurpation of the powers of the judiciary; that Section 35 of the Act, which empowers the Commission to arrest and detain suspects indefinitely, is unconstitutional as it violates the fundamental human rights provisions of the Constitution on personal liberty.

Mention must be made that the Plaintiff in this matter has further filed an application to the Supreme Court seeking for a review of this decision. While we await the outcome of this decision, we must say that it will be an uphill task, as the Supreme Court usually does not overturn its own decision unless special circumstances are shown and established.

Conclusion

Most unfortunately, this will not be the first legislation that has been made to discourage and combat corruption. The Military regime of General Gowon promulgated the Public Officers (Investigation of Assets) Decree, 1966; that of General Murtala Mohammed promulgated the Corrupt Practices Decree, 1975; under the civilian government of Shehu Shagari, there was the Code of Conduct Tribunal established under the 1979 constitution; that of General Babangida was the Corrupt Practices & Economic Crimes Decree; that of General Abacha was Indiscipline, Corrupt Practices and Economic Crimes (Prohibition) Decree, 1994; and now the above Act.

Since independence, there have been no reported decision(s) of a superior court of record in Nigeria where either a private or public officer have been arraigned and convicted of either bribery or of corruption. The above Act was enacted as an Act of the National Assembly in the year 2000 but the efficacy of the Act and the Commission established under it have not been felt as sufficient funds have not been provided to the Commission by the government for the Commission to function effectively.

However and in spite of the above discouraging observations, corporate organisations must in the spirit of good corporate governance and business sense, embrace anti-corruption and anti-bribery

behaviours as with the perpetuate downturn in the economy, the politicians will be too pleased to turn this issue into an election issue and use some big corporations as an example. Recent corporate developments in the United States of America involving Enron, WorldCom, etc should also serve as a guide in the consideration of bribery and corruption issues.

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