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The Rights & Responsibilities of External Auditors Under Nigerian Company Law

Introduction

Recent developments in the United States of America respecting the conduct of the management and an audit firm's handling of the books of accounts of ENRON have again brought to light deep rooted concerns, by members of the public and governments world-wide, about the role, rights and responsibilities of external auditors in the auditing of the books of accounts of companies, as statutorily provided and the declaration of "paper" profits by companies. These developments are also a remainder of the collapse of some financial institutions in Nigeria in the early 1990's, in spite of their public declared accounts showing massive profits. Also, the experience of Lever Brothers Nigeria Plc. in 1998 and most recently, that of another Nigerian company quoted on the stock exchange, are reminiscent of these kinds of development and concerns.

Unfortunately, in most of the above incidents, it was the shareholders and employees who invested in the stocks of these companies that were the victims and casualties whereas the parties who were entrusted with these huge investments, smiled to the banks in spite of their mismanagement of the investments.
Interestingly, there are a number of statutory and professional regulatory rules that should have prevented these incidents from occurring and also protected the audit firms and the directors of these companies from either civil or criminal liability or both. Also, as the client is king, the auditing firms and not interestingly, the directors and key managers of the companies, have suffered more public criticism, professional humiliation and loss of required good will whenever the books of accounts of a company are called to question.

Appointment of Auditors

Under Nigerian Law, Auditors are appointed by a special resolution passed at an Annual General Meeting of a company. Persons traditionally entitled to be appointed, as external Auditors of a company are usually Accountants who are licensed by either the Institute of Chartered Accountants of Nigeria ("ICAN") or members of the Association of National Accountants of

Nigeria ("ANAN").

Persons disqualified by law, from being appointed as external Auditors of a company include: - (a) officers and servants of the company; (b) person(s) who are partners of officers or servants of the company; (c) a body corporate with the exception been individual members who are qualified for appointment as Auditors.

Function of Auditors

By the Companies & Allied Matters Act, 1990 ("CAMA") the primary functions of an Auditor of a company is to audit the financial statements of the company and form an opinion as to whether (a) proper accounting records have been kept by the company and, (b) the company's balance sheet and profit and loss account are in agreement with the accounting records and returns provided to the Auditor by the company.

Other ancillary functions of an Auditor include: - (a) making a report to the company and its shareholders; (b) qualifying its report where necessary; (c) ensuring its acquaintance with the articles and other statutes of the company so that its audit will be in due compliance; (d) investigation of and request for supply of information omitted from the company's financial statement supplied to the Auditor for the audit by the company.

It is therefore clear from the above that the role of an external Auditor is purely investigatory. He is not a watchdog neither is he detective, a bloodhound or a financial adviser.

Rights of Auditors

It is paramount that an external Auditor is as independent as possible. For this reason, his appointment is usually by special resolution, i.e. two-thirds majority of the voting members of a company, passed at an Annual General Meeting of the company. His removal is also by the same method, i.e. special resolution. In the event of a removal, he is entitled to attend the next Annual General Meeting of the company to present his report and if necessary, to defend himself against any allegations that may have been made against him by the Board of the company. The external Auditor is also entitled, whilst carrying out his audit, to request for all necessary books of accounts kept by the company. In the event of a refusal or failure to furnish these books, he is required to state this fact in his report.

Obligations Of An Auditor

The external Auditor by law, shares a special fiduciary relationship with the company that it audits its books. As a result, the law requires of the Auditor that he does, in the performance of his duties, exercise all due diligence and skills that a reasonably Auditor will deem necessary in the performance of his statutory duties.

The duty of an Auditor is more succinctly stated in the decision of IN RE: LONDON & GENERAL BANK (NO. 2) [1895] CH.D 673 @ 683 where the court said: - "It is the duty of an Auditor to bear on the work he had to perform that skill, care and caution which a reasonably competent, careful, and cautious Auditor would use. What are reasonable skill, care and caution must depend on the particular circumstances of each case. An Auditor ? is not bound to do more than exercise reasonable care and skill in making inquiries? He is not an insurer; he does not quarantee that the books do correctly show the true position of the company's affairs; ? He must be honest - i.e., he must not certify what he does not believe to be true and he must take reasonable care and skill before he believes that what he certifies is true ??. Where there is nothing to excite suspicion very little inquiring will be reasonably sufficient ??. Where suspicion is aroused, more care is obviously necessary; but still, an Auditor is not bound to exercise more than reasonable care and skill, even in a case of suspicion?.."

Liabilities of Auditors

The general principle of negligence under the common law has been made to apply to statutorily appointed Auditors. This is because, as stated above, Auditors share statutory fiduciary relationship with their clients, the companies. Negligence is a breach of legal duty to take care, which breach result is damages undesired by the party in breach, to the other party.

There is also the related civil liability of misfeasance. Misfeasance is the improper performance of some lawful act. Where there exist facts to this effect, a company is entitled in law to file a court action against the Auditor.

An Auditor may also be criminally liable where he, in his report to a company makes a statement, which is false, knowing that the statement is false. Where this established, CAMA provides that the statement is false. Where this is established, CAMA provides that such statement is false. Where this is established, CAMA provides that such an Auditor is liable on conviction, by a High Court of Justice, to Two (2) years imprisonment or, alternatively, on conviction by lower court, i.e. a Magistrate Court, to a fine of =N=1,000 (One Thousand Naira) or Four (4) months imprisonment or both the fine and the imprisonment.

Conclusion

An Auditor is a professional who provides customer related services. His main stock in trade is the trust and goodwill of his client which ought to protect at all times otherwise he will go out of business. Also, with the advent of democracy in Nigeria and globalisation world-wide, professionals, including Auditors, should exercise more care and diligence in the performance of their statutorily responsibility in order to avoid loss of trade or incur civil and criminal liability as a result of a breach of statutory duty.

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