

Legal Alert October 2008 **Corporate Social Responsibility Bill**

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Legal Alert for October 2008 ? Corporate Social Responsibility Bill

Introduction:

The exploration of mineral resources have resulted in grave environmental degradation of the local areas where the exploration activities are taking place with the associated consequence of civil and military unrest, poverty, lack of minimum and or basic infrastructure, etc.

Exploration corporations, especially the multinationals some of whom are into joint venture arrangements with the federal government of Nigeria, are usually in a quagmire with their host communities in the discharge of their corporate responsibilities to the government, in the form of high mineral and corporate taxes, and their equally important social responsibilities to their host communities. The latter is frustrated by government's inability to efficiently discharge its constitutional duty of providing the basic necessities of life to the host mineral communities and the conflict of interest of the host mineral community leaders with those of their community members, whom they have sworn to serve.

In the hope of addressing some of the above problems, the Nigerian upper house of parliament, i.e. the Senate, is presently considering passing into Law a Corporate Social Responsibility Bill ("CSR Bill"). This Alert seeks to provide a purview of what Corporate Social Responsibility ("CSR") entails and also what the CSR Bill seeks to achieve.

What is Corporate Social Responsibility?

Society and businesses have always recognised that doing good is essential and fundamental to mankind. The concept of Corporate Social Responsibility ("CSR") has therefore tried to capture the various ramifications and benefits of doing good in our community.

According to Wikipedia, the free online encyclopaedia, CSR extends beyond the statutory obligations of a person or corporation; in it's stead, CSR sees a person or corporation taking further voluntary steps to improve the quality of life of their employees and their families as well as the welfare of the local community and the larger society where they carry out their activities.

Also in a paper entitled "Corporate Social Responsibility in Nigeria: Western Mimicry or indigenous practices?" by Kenneth M. Amaeshi, Bongo C. Adi, Chris Ogbechi and Olufemi O. Amao, the authors adopted the definition of CSR as propounded by McWilliams & Siegel to the

effect that CSR are "... actions that appear to further some social good beyond the interest of the firm and that which is required by law".

The above Paper goes further to state that CSR in substance is not a modern concept as corporations from the earliest time of record keeping have realised the added value of doing good in the communities where they operate. The authors expressed concern that there are no statutory provisions for CSR in Nigeria or for a mechanism for bench marking its performance. In its stead, the supremacy of the interest and survival of the shareholders of a corporation are legally promoted by existing Nigerian Law above minimum CSR requirements. This is in marked contrast with other jurisdictions like the United Kingdom where the concept of an "enlightened shareholders value" amongst other things requires companies to report on the impact of their operations on other stakeholders in the society like their employees, suppliers, host communities, the environment, etc.

Corporate Social Responsibility Bill

Corporate Social Responsibility Commission

The CSR Bill seeks the establishment of the Corporate Social Responsibility Commission ("CSR Commission") with its primary functions including the formulation, implementation, supervision and provision of policies and reliefs to host communities for the physical, material, environmental or other forms of degradation suffered as a result of the activities of companies and organisations operating in these communities.

The CSR Commission is required by this Bill, when passed into Law, to be a body corporate with its own common seal and the legal authority to sue and be sued, to purchase or sell its property, etc. The CSR Commission is also expected to be administered on a daily basis by a Director General with assistance from other departmental directors and a governing council.

CSR Utilisation Charge

The CSR Bill mandatorily seeks to compel all registered companies in Nigeria to utilise not less than three and a half percent (3½%) of their annual gross profits on CSR programmes in their locations of doing business. Such programmes are expected by this Bill to include educational, cultural, environmental and economic programmes.

Penalty for None Compliance

The CSR Bill recommends the authorisation of the CSR Commission to temporarily shut down and suspend the operations of any company, corporation or organisation, for a minimum number of 30 days, as penalty for none compliance with the statutory requirement(s) of this proposed Law. The CSR Bill further provides that first offenders of the statutory provisions of this proposed Law shall be liable to a fine of not less than 2% of the offending organisation's or corporation's gross

annual profit in addition to the statutory CSR contribution that was not expended. For subsequent none compliance, the penalty is a fine of not less than 3.5% in addition to the mandatory compliance with the statutory CSR obligations of the company or organisation for the period under consideration.

The CSR Bill also makes it a criminal offence for any person or organisation or corporation or company to wilfully withhold information from the CSR Commission or to wilfully fail to comply with the lawful directives of the CSR Commission. Should such a party be prosecuted and convicted, he/she shall be liable to imprisonment for a term of not less than six months imprisonment.

Conclusion

The culture of doing good comes from cultural awareness, habitual practice and conviction as opposed to coercive legislation. The CSR Bill does not make provision for extensive enlightenment of the society on the benefits of CSR. An amendment in this regard is therefore recommended.

The CSR Bill does not reiterate the minimum constitutional duties that are imposed on the Nigerian government. Until all governments in Nigeria provide good leadership and governance, local and multinational companies would always feel short-changed by the Nigerian authorities. The CSR Bill is more of a reactive legislation as opposed to a proactive Law. An amendment in its reactive objectives is therefore also recommended.

The CSR contributory charge could be a disincentive to investments in Nigeria in the light of the already existing high and multiple taxes at various strata of the Federal, State and local governments. The proposed charge of 3½% could be reduced to a basic minimum charge for all companies and organisations whilst the penalty charge for none compliance with the statutory requirements of the Law could be increased by the same margins of the CSR charge itself.

The CSR Bill has failed to follow recent legislative practices which impose criminal liability on both the corporation and all the directors and managers of any corporation or company who are aware of the breach of an existing Law. The CSR Bill should therefore be amended to capture this requirement.

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