

Legal Alert ? May, 2007 ? **The ABC of Contract Law in Nigeria**

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Business Quote for the Month

"Take time to deliberate; but when the time for action arrives stop thinking and go in" ? By
Napoleon Bonaparte

Legal News

There are new developments in the economic and legal reforms of the Federal Government of Nigeria. A good example is the signing into Law of the Minerals and Mining Act, 2007. This Law, among others, gives power to the Regulator of this sector to grant licences, secure the tenure of licenses, and make regulations among other matters, in relation to mineral and mining matters in Nigeria.

Also, the Nigerian Intellectual Property Commission (NIPCOCOM) has been established in Nigeria. This Commission integrates the Trade Mark and Patent Registry of the Department of Commercial Law of the Federal Ministry of Commerce and Industry, with the Nigerian Copyright Commission, to form NIPCOCOM. NIPCOCOM would be under the direct supervision of the Federal Ministry of Justice. It is expected that the establishment of NIPCOCOM would lead to greater efficiency in the administration and management of all intellectual property matters in Nigeria. The Nigerian Securities and Exchange Commission (SEC) recently announced an upward review in the minimum paid up capital for various category of operators in the Nigeria Capital Market. All capital market operators are required to meet these new minimum capital requirements on or before December 31st, 2008. You can visit the web site for SEC - www.sec.gov.ng - for more information.

The recapitalisation requirement has equally affected the aviation industry as some of the airline operators lost their operating licences after the deadline to increase their paid-up capital expired on April 30, 2007. The recapitalisation of the insurance operators is still going on as the Banks have not ceased to continue with their efforts to increase both their paid up capital and their sub-regional and global market share.

Legal Alert ? The ABC of Contract Law In Nigeria.

Introduction:

Daily, people enter into contracts. While most of these contracts appear simple, disputes continue to arise on the exact rights and obligation of all the parties to the contract. In many cases, a party may be under the impression that there is a contract when there is none recognised and enforceable under the Law.

This Alert is to present to you some of the legal principles guiding contracts in a format that allows you to know whether there is a binding and enforceable contract between you and another party or parties. The concluding part of this Alert recommends that formal contracts or full documentation of contracts, where a formal contract is not possible for whatever reason, is preferred as it is a more secured way of doing business.

What is Contract?

A contract can be described as the legally binding agreement between two or more people which create obligations that when breached can be remedied in damages or by specific performance of the contract. See the Black's Law Dictionary.

A contract only exists when there is an agreement. It is impossible for one or two people to claim that they have a contract when there is no agreement or "mutuality" or the "meeting of the minds" between them.

A contract must have a bargain or benefit in exchange for something else. A gratuitous promise is not a legally binding contract.

Essential Ingredients of a Contract

- a. An offer. An offer is a statement that is definite, certain and shows the clear intention to make the offer which when accepted becomes binding on the parties.
- b. An Acceptance. This is a final, unequivocal and unqualified expression of assent to an offer.
- c. Consideration. Consideration is a benefit or forbearance arising from an offer and an acceptance. Where there is no consideration but there is an offer and an acceptance, there is still no contract.
- d. Intention to create legal relationship. The parties must intend that their agreement would be binding on them. Where this intention is absent, there can be no legally binding contract.

Discharge and Remedies for Breach of Contract

A contract can be discharged (a) by the performance of the purpose of the contract itself; or (b) by mutual rescission of the contract; or (c) by renunciation; or (d) by the purpose of the contract been illegal or by an amendment to existing laws which makes the purpose of the contract to be or become illegal; or (e) by voluntary relinquishment of contractual rights; or (f) by accord and satisfaction; or (g) by novation; or (h) by material alteration, etc.

In Law, to every wrong, there is always a remedy or compensation. As a result, there are many remedies for the wrongful repudiation of a contract. The two most common remedies are: -

- a. Various types of damages like compensatory damages, punitive damages, exemplary damages etc.
- b. Specific performance of the contract could be awarded where monetary compensation would be inappropriate or inadequate.

Conclusion:

Ultimately, formal agreements are preferred when compared with informal contracts. It is therefore recommended that you formalise all your agreements before incurring any forbearance or liability. Where executing a formal contract is not feasible for any reason, a comprehensive exchange of documentation on the various aspects of the contract would be of great assistance in the event of a dispute on any aspect of the contract.

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