

LEGAL ALERT. JULY 2006. **NIGERIAN ACCOUNTING STANDARDS BOARD LAW & PRACTICE.**

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Business Quote of the Month.

"Do not go where the path may lead. Go where there is no path and leave a trail". ? Emerson.

Legal News.

Pension & Life Policy for Employees. In compliance with the provisions of the Pension Reform Act, 2004 requiring all employers to maintain on behalf of and in favour of each of their employees, a life insurance policy for a minimum of three times the annual total emoluments of each employee, the National Pension Commission (Pencom) and the National Insurance Commission (Naicom) have executed and issued the "Guidelines for Life Insurance Policy for Employees". These guidelines can be found on the web site of Pencom: www.pencom.gov.ng Employers are instructed by the Guidelines not to transfer the costs of procuring the life insurance policies to their employees as these costs are solely that of the employer; this is in addition to and separate from the pension contributions made monthly by both the employer and the employees to each employee's pension retirement savings account.

We encourage employers to comply strictly with the provisions of the Pension Law and all its guidelines. In the same vein, employees should increase their education on the workings of the new pension regime and stop perceiving their compulsory contributions, deducted from their salaries, as another form of "tax" by the "government" or their employers. This is because retirement is real and early preparation makes retirement worth while. Pension planning is also essential particularly when contributions to a retirement savings account alone may not guarantee you a worthy life style in retirement.

Legal Alert ? Nigerian Accounting Standards Board Law.

A key response to our Legal Alert for May 2006 was a complaint from one of our Subscribers requesting for an examination of the powers of the Nigerian Accounting Standards Board in view of the fact that they can allegedly visit any business premises without invitation or notice, charge exorbitant fees for each day that they remain in the business premises, remain in the premises for as long as they wish, etc. For small businesses, this was alleged to be another disincentive to new or further investments in Nigeria.

In the week following the above, the Nigerian Accounting Standards Board (NASB) and the Institute of Chartered Accountants of Nigeria (ICAN) acknowledged these complaints in an advertorial inviting Accounting Firms, Chief Executive Officers, Chief Financial Officers, etc to a one day interactive session on the Nigerian Accounting Standards Board Act 2003, its enforcement, compliance and on other related matters.

This Legal Alert is a token contribution to the above Subscriber and also to you in appreciating what the NASB stands for, the responsibility of your company under the NASB Law and NASB's powers under Nigerian Law.

What is Accounting Standards?

Our research shows that accounting standards are "... the principles that govern current accounting practices are used as a reference to determine the appropriate treatment of complex transactions".

Accounting Standards & Nigerian Companies?

Increases in global corporate failures from the latter part of the twentieth century were a wake-up call on the international business community to harmonise best practices when it came to financial reporting, international standards and codes on accounting and auditing matters.

In Nigeria, the Companies & Allied Matters Act (CAMA) requires all registered companies to prepare financial statements embodying among others the balance sheet and profit and loss account of each company, for the review of the Shareholders, Directors, Debenture Holders, and other stakeholders, of each company.

In the preparation of the financial statements of a company, CAMA requires that both the preparers of the financial statements, i.e. the Directors of the company, and the Auditors must comply with the accounting standards and guidelines published by the Nigerian Accounting Standards Board (NASB).

Functions of NASB.

The NASB Law 2003 defines the functions of the Board to include:

(a) The development and publication of accounting standards to be observed in the preparation of

financial statements;

(b) The promotion of general acceptance of the accounting standards by the preparers and users of financial statements;

(c) The promotion and compliance with and enforcement of accounting standards developed or reviewed from time to time by the Board of NASB;

(d) The review from time to time of notices of non-compliance with the accounting standards from the preparers, users or auditors of an account;

(e) The receipt of copies of qualified financial statements and accounting reports together with detailed explanations of such qualifications within sixty days of the issuance of such qualification.

Members of Council of NASB.

Users and preparers of financial statements are very diverse. To accommodate these diversity, the governing council of the NASB is drawn from representatives of many bodies which include the Institute of Chartered Accountants of Nigeria (ICAN), Association of National Accountants of Nigeria (ANAN), Federal Ministries of Commerce and Finance, the Central Bank of Nigeria (CBN), the Corporate Affairs Commission (CAC), the Federal Board of Inland Revenue (FBIR), the Nigerian Deposit Insurance Corporation (NDIC), the Securities & Exchange Commission (SEC), the Chartered Institute of Taxation (CITN), the Nigerian Accounting Teachers Association, the Nigerian Association of Chambers of Commerce, Industries, Mines & Agriculture, etc.

Funding of NASB.

To ensure that NASB is adequately funded, the NASB Law allows it to, in addition to grants and subventions received from the Federal Government of Nigeria, charge not less than N500 annually from every practicing member of ICAN, ANAN and CITN. All publicly quoted companies in Nigeria must also pay an annual subscription sum of not less than N100,000 to NASB while other non public registered companies are required to pay not less than N1,000 annually. These fees are subject to review.

Offences Under NASB Law.

NASB is required to give Notice of non compliance with the provisions of the NASB Law requiring compliance with published accounting standards to a defaulting company. The NASB Law expects that within sixty days of receipt of the Notice, the financial statement of the company in question would be withdrawn by the company and amended in compliance with the accounting standards published by NASB.

However, failure to prepare the financial statements using the prescribed accounting standards, and presumably after notice of non compliance is served on the defaulting company and no

amendment is made, is an offence which on conviction attracts a fine of N5Million or imprisonment for a term of one year or to both the fine and the term of imprisonment. Accountants, Auditors and their Firms, who are the key preparers of these accounts, are also captured by the offences provisions of this Law. In addition to the fines and term of imprisonment, where found guilty by a Court of Law, these professionals risk the added punishments of outright proscription from ICAN or ANAN or delisting for such periods as the Court may deem fit in the light of the circumstances of each case.

Constraints to the Implementation of NASB Standards.

The first reported constraint has remained the lack of adequate funds and other resources to prosecute the objectives of NASB as enumerated above.

The second constraint is the inability of important regulators like the Corporate Affairs Commission, the Securities and Exchange Commission, the Institute of Chartered Accountants of Nigeria, etc to physically inspect the financial statements submitted by companies and ensure that they comply with both NASB standards and those of the International Accounting Standards Board (IAS).

Comments on NASB.

Some Practitioners are of the view that the NASB Law is another example of the duplication or multiplication of the supervisory/regulatory Laws on the same subject matter. The natural question would be whether this legislation is not another silent admission of the non effectiveness of our regulatory bodies - e.g. Corporate Affairs Commission, ICAN, SEC, NDIC, etc ? to perform their statutory duties?

Also, some practitioners including some audit firms, chief financial officers or accountants of companies are not very familiar with the existing accounting standards issued by NASB or the IAS in spite of the existence of the NASB Law since year 2003. We recommend greater enlightenment of the applications of the NASB Law be undertaken and published by all concerned including NASB.

It is recommended that NASB grants to all companies a moratorium of a whole year before the full implementation of sanctions for non compliance with NASB standards. You can visit the web site of NASB ? www.nig.asb.org - for more information on the standards, guidelines, etc of NASB.

Lastly, the application of the Public Officers Protection Law to NASB officers, etc as done in other government legislation, needs urgent review in the light of recent global practices which make regulators and governments more accountable to citizens and businesses for abuses of office.

Conclusion.

Chief Financial Officers, In House Accountants, external Auditors, Directors and Shareholders, Investors, etc would do well to familiarise themselves with the provisions of the IAS standards and those of NASB, their regulations and compliance requirements. This is especially as any conflict(s) between accounting standards issued by NASB and those of the International Accounting Standards Committee would, according to the NASB Law, be resolved in favour of standards issued by NASB.

NASB would equally do well to work with all stakeholders to ensure that the primary objectives of the Law establishing it are achieved to the benefit of members of the investing public.

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