

## **APRIL 2005 LEGAL ALERT: MY AGENT & MY RESPONSIBILITY.**

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### **REACTIONS TO LAST LEGAL ALERT.**

We are informed that there were some typographical errors (typos) in our last Legal Alert. We were equally informed that some recipient received the Legal Alert twice.

We apologise for the typos. On the possibility that you may receive a Legal Alert twice, we advise that we have a policy of keeping your electronic address private and confidential, and because of this, we have not outsourced this service and will continue to manage it manually until such time as we can find a satisfactory company that guarantees the privacy of the electronic addresses of our Clients and friends. Should you receive a Legal Alert twice, kindly inform us. Thank you.

### **LEGAL NEWS.**

The Federal Government, on April 12th 2005, signed into Law the 2005 Appropriation Bill after protracted differences with the National Assembly. For sports and especially football lovers (and people interested in sports business), efforts to comply with FIFA regulations on the democratisation of National Football Associations continued at the Nigerian National Assembly with the Senate going through the second reading of a new Bill which seeks to amend the draconian Law ? popularly called Decree 101, governing the administration and management of Football in Nigeria ? the former Law permitted government interference.

On Pensions, the Nigerian Pension Commission issued two important Notices; the first was to warn employers to comply with the provisions of the Pension Act, 2004 and to reassure employees that the Commission will protect the interest of employees and Pensioners. The second Notice was an amendment to the guidelines on the licensing of Pension Fund Managers (PFAs) and Pension Fund Custodians (PFCs). Applicants for licensing as either PFA or PFC are now required to seek a provisional approval in principle from the Nigeria Pension Commission before they seek to apply for the registration of their organisation with the Corporate Affairs Commission ? this will ensure pre-registration compliance. This new requirement is inapplicable to Applicants who have already registered their companies and applied for a Pension License. Unfortunately, no licence has been issued by the Nigerian Pension Commission.

Also, the legal, corporate and technical unbundling of the National Electric Power Authority (NEPA) ? which was the agency legally responsible for generating and distributing electric power

in Nigeria, continued with the registration of the holding company for the new subsidiary companies of the old NEPA, at the Corporate Affairs Commission, Abuja. This is as a result of the provisions of the new Power Reform Law which requires the dissolution and or acquisition of NEPA as a legal entity and the creation of new specialised entities. We look forward to the establishment of a Regulatory Commission, etc for the power sector in Nigeria soon. We also will serve you with the highlights of the new Power Law and how it will affect you if you reside and do business in Nigeria, in subsequent Legal Alerts.

#### LEGAL ALERT: MY AGENT & MY RESPONSIBILITY.

The modern practice of outsourcing and other old business practices like sub-contracting, delegation of functions or businesses, contract employees, regular employment, etc have come to stay. Some of the reason for this is because of the increase in specialisation, globalisation, maximisation of opportunity cost(s) and profits, etc.

However, your selection of a company or person, to represent you or your company in a task comes with some legal implications to you or your company and the party that has awarded the contract to you. Some of the legal implications are examined in this Legal Alert.

Who is an Agent?

An Agent is any person who is appointed or authorised by a principal to act on his or her behalf.

An Agency relationship is created not only by a written contract as is generally presumed, but also in a number of other ways. Examples of the ways in which an Agency relationship can arise include:

1. By express appointment; e.g. orally, formally, by Power of Attorney, etc.
2. By the direct or indirect ratification of the Agent's acts by the Principal.
3. By virtue of the doctrine of estoppel ? where the Principal has accepted the action(s) of the Agent.
4. By implication of the Law in the case of Agency of necessity ? e.g. in a Husband and Wife situation.
5. By presumption of Law in the case of cohabitation.

Concern?

Your Agent could be many different people, from your Solicitor, Doctor, Sub-Contractor, Supplier, Advertiser, Business Manager, Estate Manager, etc. The reason why attention should be paid to the relationship you have with your Agent is that in Law, your Agent incurs no direct liability for actions taken whilst acting on your behalf and authority, as his/her principal, particularly when you identify as the principal of the Agent, is known or disclosed to other parties. Following from the above, the fact that the disclosed principal may be a foreign company is of no

relevance. Therefore, you the principal can be sued and you can sue on contracts made on your behalf by your Agent.

Equally, there exists a fiduciary relationship between you and your Agent. Fiduciary relationships exist where one party is under a duty to act for the benefit of another party usually with financial advantages and implications. With this duty to act, is also a responsibility to give an account.

Your Agent acting on your behalf also carries on your behalf that fiduciary responsibility that you may have to other person or persons. This means that your Agent's duty to give an account of all incomes received or expenditure expended, where applicable, also applies to you. Ditto, should your Agent receive money on your behalf and misappropriate it, you will be liable to the principal for the misappropriated moneys including any side-profits.

The Law does not permit an Agent to make an undisclosed profit to the detriment of you, the principal. Where this occurs, the Law will ensure, under the principles of equity, that all such profits are returned to you, the principal. However, the primary liability between you and the appointing party, for the wrong actions of your Agent, remains with you the principal at the first instance; subsequently, you can seek restitution from the erring Agent.

Remedy.

You should enter into contracts with your Agents clearly defining what the relationship between both of you is/are, with the roles, etc. Naturally, whether the Agent has the authority to bind the principal or not must be defined. These contracts need not be drafted by a Solicitor in formal legalese but letters with extensive provisions can suffice. Where you have not done so, please act now.

This is also a good opportunity for you to incorporate in your contract with the Agent, applicable local and international conventions. Customs of that particular trade, etc should also be referred to and made binding where they are to your business advantage.

Lastly, due diligence and process in the appointment and retention of an Agent must be undertaken by you knowing fully well that any liability that arises will be borne by you. The mixture of personal affiliations and relationship in business, without attention to competence and reliability is usually not a good mix.

**MOTIVATIONAL QUOTE.**

Life is all about choices and not circumstances.

"When you cut away all the junk every situation is a choice.

You choose how you react to situations.

You choose how people will affect your mood.

It's your choice how you live your life".

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