

The Impact of the Recent Judgement on the Powers of the Financial Reporting Council of Nigeria



This precedent is far reaching and has effectively limited the powers of the FRCN in all respects to public companies, public interest entities, professional accountants and professionals engaged in the financial reporting process.

Financial reporting involves the presentation of a company's operating performance, position and flow of funds during a specified accounting period. The disclosure requirements in financial reporting vary with legal and regulatory requirements of various jurisdictions but the primary objective of the process is usually the same in most jurisdictions – the presentation of reliable financial information to the stakeholders and the public.

All companies in Nigeria are required, under the Companies and Allied Matters Act (CAMA), to prepare and keep accounting records in a specified format. The disclosure requirements are also specified by CAMA and the directors have an obligation to prepare annual accounts that must be audited and presented to the shareholders at general meetings of the company. These disclosure requirements may be altered by the Minister in statutory instruments that have been issued after due consultation with the Nigerian Accounting Standards Board (NASB). The functions of the NASB were transferred to the Financial Reporting Council of Nigeria (FRCN) with the repeal of the NASB Act when the FRCN Act was passed on 3 June 2011.

The audited financial statements must also be filed along with the annual return at the Corporate Affairs Commission (CAC) after being presented to shareholders at general meetings. The financial statements become public documents after being filed at the CAC and can be viewed by anyone. Certified true copies of the financial statements and other documents in a company's file can also be obtained from the CAC. This completes the cycle that guarantees full disclosure of a company's financial reporting to not only stakeholders but to the public.

The development and issuance of accounting standards in Nigeria was the principal role of the NASB. The FRCN has however been given a much larger role to play in the FRCN Act. The functions of the FRCN are specified in section 8 of the Act and its functions include development of accounting and financial reporting standards, enforcement of accounting standards, advising the federal government on accounting and financial reporting standards, maintaining a register of professional accountants and other professionals engaged in the financial reporting process, monitoring compliance with the code of corporate governance, promotion of compliance

with standards issued by the International Federation of Accountants and International Accounting Standards Board, conduct practice reviews on registered professionals, receiving qualified reports, specifying minimum disclosure requirements and performing such other functions that give effect to the Act.

The FRCN's powers are wide and its management has sought to exercise them to the fullest extent possible.

Section 33(a) of the Act requires every registered professional to pay an annual levy of not less than N5,000 to the FRCN's fund. The FRCN appears to have extended the definition of a professional beyond what is contemplated by the Act. The definition on the FRCN's website is "a professional, for the purpose of this registration, refers to any person whose education and training allow for his judgment to be relied upon and possesses a certification issued by a recognised professional body or association and is currently working or wishing to work in Nigeria". The initial registration fee is N17,000 and the registration is thereafter renewable annually upon payment of an annual levy of N5,000.

A non-exhaustive list of 89 professional institutions ranging from the Institute of Chartered Accountants of Nigeria to the Nigerian Institution of Surveyors has been provided on the website and any members of institutions that are not listed have been advised to contact a counselor at the FRCN for guidance on registration. This interpretation of the law has basically given the FRCN power over all professional bodies in Nigeria even those that are not involved with financial reporting. This is not the role of any similar agency around the world and it is unlikely that this would have been the legislative intent at the time the law was passed.

The registration requirement has also been extended to private companies and not-for-profit organisations. The biometric details of the chief executive officer and chief financial officer (CFO) must be obtained to conclude the registration process. CFOs are also required to hold a suitable Nigerian professional qualification or other professional certification that is recognised by the FRCN.

This registration requirement is difficult to comply with for various reasons. The registration requirement contemplates that all companies have CFOs, have resident directors that can submit to biometric data capture and it effectively bars holders of foreign professional qualifications from being CFOs of Nigerian companies.

Foreign owned businesses in Nigeria that operated effectively with non-resident directors are being asked to comply with the options of either appointing resident directors or presenting themselves for registration in Nigeria.

The FRCN appears to have overlooked a critical aspect of the Act while seeking to enforce their powers. A close reading of the Act from the long title to the definition section shows that the FRCN's powers are meant to be exercised over "public interest entities" in Nigeria. The

Act is clear and unequivocal on this issue as the phrase is mentioned anytime a direct reference is made to the exercise of powers specified therein.

The International Federation of Accountants (IFAC) defines public interest entities as listed entities and entities defined by regulation or legislation as public interest entities; or for which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to audit of listed entities.

Various jurisdictions use different thresholds for defining public interest entities and we have chosen to define it by legislation in Nigeria. In the FRCN Act public interest entity means governments, government organisations, quoted and unquoted companies and all other organisations which are required by law to file returns with regulatory authorities excluding private companies that routinely file returns only with the CAC and Federal Inland Revenue Service (FIRS).

The FRCN sought to enforce its powers against Eko Hotels Limited (EHL) but the company objected by instituting an action at the Federal High Court; and Justice Abang delivered judgment in favour of EHL on 21 March 2014.

The FRCN wrote to EHL on 2 June 2012 requesting evidence of compliance with the registration requirements of the Act and payment of statutory and renewal dues. EHL informed the FRCN that it was a private company that only filed returns with the FIRS and CAC and was not a public interest entity as contemplated by the Act. The FRCN however contended that EHL was a public interest entity because it filed returns with the Nigerian Tourism Development Corporation.

The court ruled in favour of EHL and provided guidance on the following notable issues –

1. There is no provision in the FRCN Act that requires private companies to be registered with the FRCN as the registration can only be extended to public companies and public interest entities.
2. The FRCN cannot seek to exercise implied, incidental or consequential powers where there are no express provisions in the Act empowering it to do so as implied or incidental powers can only be necessary for carrying out express powers in the statute.
3. Private companies are not liable to pay statutory or renewable annual dues to the FRCN.
4. Private companies are not liable to file returns with the FRCN or provide evidence of their filings to the CAC and FIRS to the FRCN.
5. The functions and powers of the FRCN can only be exercised over public interest entities, public companies, professional accountants and other professionals engaged in the financial reporting process.
6. The FRCN cannot enlarge its regulatory powers beyond the limit provided in the statute.
7. The FRCN has no power to penalise private companies that fail to comply with its directive as it has no disciplinary or regulatory control over them.

This precedent is far reaching and has effectively limited the powers of the FRCN in all respects to public companies, public interest entities, professional accountants and professionals engaged in the financial reporting process. The court has clearly curtailed the powers of the FRCN in this landmark ruling and one can only watch and see how it develops where the FRCN decides to take it through the appeal process.

The effect of the judgment is a reduced compliance burden on private companies and it would have been ideal if the court also addressed other pertinent issues in the Act like the definition of the financial reporting process in relation to the FRCN and also provided a definition of professionals involved in the financial reporting process. These are moot points as they are not presented before the court so it would be interesting to see how they are addressed in future.

Dafe is the leader of the Regulatory Services team at PwC Nigeria and the general counsel of PwC's West Market Area in Africa.

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