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The Administrative Proceedings Committee Under CAMA 2020 – Matters Arising

The signing into law of the Companies and Allied Matters Act, 2020 (the “CAMA 2020”) has been lauded as a remarkable feat, a game changer in the corporate regulatory framework, and described as Nigeria’s most revolutionary piece of business legislation in decades. The CAMA 2020 repealed and replaced the outdated Companies and Allied Matters Act of 1990 (the “CAMA 1990”).

In tune with the government’s desire to improve the ease of doing business, the CAMA 2020 introduced commendable provisions such as the replacement of authorized share capital with minimum issued share capital, the introduction of single-member companies, the disclosure of persons with significant control, the introduction of electronic filing, the recognition of electronic share transfers, and the holding of virtual annual general meetings by private companies.

Another significant innovation in the CAMA 2020 is the establishment of the Administrative Proceedings Committee (the “Committee”)¹ which is empowered to resolve disputes or grievances arising from the operation of CAMA 2020 or its regulations and impose penalties for any contraventions. The decisions of the Committee are subject to confirmation by the Governing Board of the Corporate Affairs Commission (the “CAC”) and may be the subject of an appeal to the Federal High Court.

In this article, we look at the critical issues arising from the creation of the Committee and the possible legal challenges that may be thrown its way.

Composition of the Committee – Likelihood of Bias

CAMA 2020 makes the Registrar-General of the CAC the Chairman of the Committee whilst five (5) of its members are to be representatives of the operational departments of the CAC. The membership of the Committee also includes a representative of the Federal Ministry of Industry, Trade and Investment (the CAC’s supervising ministry). What this essentially

means is that of the seven (7) voting members of the Committee², six (6) are employees of the CAC while the seventh is a representative of its supervising ministry.

Given that the functions of the CAC include administering and ensuring compliance by companies with the provisions of the CAMA 2020, the registration of companies and the maintenance of the companies registry³, it is inevitable that the CAC will be a party to most of the disputes or grievances that will come before the Committee (either as an accuser or a defendant). The question that then arises is whether a party in a dispute with the CAC will get a fair hearing before the Committee which is made up almost entirely of employees of the CAC. It is an established principle of law that a party cannot be the accuser and judge at the same time. Likewise, one cannot be a judge in a dispute in respect of which it is a party. This principle is embodied in the maxim *nemo iudex in causa sua* and in Section 36 of the Constitution. It is therefore our view that the composition of the Committee will lead to a breach of the constitutional right to a fair hearing where the CAC is a party to the dispute. Any decisions arrived at under such circumstances are liable to be set aside on appeal.

Usurpation of the Power of the Federal High Court?

Another issue the Committee may have to contend with is the exclusive jurisdiction of the Federal High Court (the “FHC”). Section 251(1)(e) of the Constitution gives the FHC exclusive jurisdiction to adjudicate disputes arising from the operation of the CAMA 1990 (or any enactment replacing it). The section provides that:

Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –

(e) arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act.

On the other hand, Section 851(4) of the CAMA 2020 gives the Committee the

power to “resolve disputes or grievances arising from the operations of this Act or its regulations”. It is probable that this power may be construed by the FHC as encroaching on the exclusive power given to it by Section 251(1)(e) of the Constitution.

We are however not unmindful of similar jurisdictional issues that have confronted administrative tribunals such as the Tax Appeal Tribunal, and the decision of the Court of Appeal in *FIRS v TSKJ*



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*Construcoes Internacional Sociadade Unipessoal LDA*⁴ where it held that the Tax Appeal Tribunal “. . . is a mere administrative tax appeal tribunal which is not on concurrent jurisdiction with the Federal High Court nor can it in a way be capable of usurping the jurisdiction of the

Federal High Court.” It will be interesting to see if the courts will tow this line in the case of the Committee.

Imposition of Penalties

As the voting members of the Committee are either employees of the CAC or of the Ministry of Industry, Trade and Investment which are both part of the executive arm of government, it is doubtful that they can validly exercise the power conferred on the Committee to impose “administrative penalties” for contravention of the provisions of CAMA 2020. This is because the courts have held that penalties, being criminal in nature, can, by virtue of Section 6 of the Constitution, only be imposed by a court of competent jurisdiction. Specifically, the Court of Appeal in *NOSDRA v ExxonMobil*⁵ has held that “penalties or fines are imposed as punishment for an offence or violation of the law. The power as well as competence . . . belongs to the Courts.” In light of this, there is a possibility that administrative penalties imposed by the Committee may be set aside for being unconstitutional and a usurpation of the judicial powers vested in the courts by Section 6 of the Constitution.

Conclusion

Although the establishment of the Committee is a welcome development as it is likely to provide a speedy means of resolving disputes relating to companies, it is obvious that the Committee will face different constitutional challenges ranging from nature of its composition, to its ability to validly impose administrative of penalties. It remains to be seen how the Committee will operate in practice in the face of these constitutional challenges.

¹ Section 851(1) of the CAMA 2020

² Section 851 (2) of the CAMA 2020 permits the Committee to co-opt other persons as members but such persons shall not count towards a quorum and shall not have a right to vote on any decisions of the Committee.

³ Section 8 (1) of the CAMA 2020

⁴ (2017)JPELR-42868 (CA)

⁵ (2018)JPELR-44210 (CA)