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6. British spellings and usages, as against their American versions, are used throughout the work. Cases and names of articles and books should be italicized while citations are left in normal letters. Book citation should be italicized this way: John Reading, *The Law and Practice of Evidence*, 2nd ed. Thoroughood Press, Abakaliki, Nigeria, 2004 p. 203.

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CHECKMATING A DISASTER TROUBLED WORLD: THE CHALLENGE OF SCIENCE AND THE LAW

Prof Amari Omaka C. Ph.D., *
Agom Ucha C., *
Uzoigwe Nnenna *

Abstract

In the last two decades, property damage estimated at 150-1000 billion dollars resulted from natural disaster worldwide. Tropical cyclones have caused worldwide losses of an estimated 60-70 billion dollars annually. The comparable loss for landslide exceeds 50 billion dollars. These figures merely hint at the scale of loss due to natural disasters. This work discussed the human, economic and environmental impact of natural disasters, the role of science, social measures and law in advising local authorities in checkmating the recurrent incidences. The paper also discussed the legal and policy tools for reducing vulnerability, enhancing emergency preparedness and response, and increasing environmental protection. In doing this, we deployed the doctrinal, analytical and descriptive methods of research. While data was collected via both primary and secondary sources; to wit, statutes, conventions, books, journals, case laws and other documentary sources. We also displayed pictures and tables to describe the monumental nature of the subject under discussion. At the end, it was found that due to the global rise in temperature due to climate change, all countries are at risk of risk disaster devastation. We also found that natural hazards do not recognise geographical boundaries or national territories. Our finding also revealed that as a result of industrialisation, developed countries suffer more monumental economic loss to disasters than developing countries. Sadly, it was shocking to know that the magnitude of disasters globally appears to defy foreseeable solution. Ironically, disaster reduction success only showed that heavy losses at the hands of nature are not completely inevitable. It was concluded that while it may not be completely possible to eradicate the occurrence of all natural hazards, but the disaster they generate can often be minimised, if our proffered recommendations are followed.

Introduction

By natural disasters we mean unintended destruction of lives and properties, the environment, infrastructure, means of livelihood, domestic and public live-lines by man-made and natural incidents/accidents, negligence and other un-envisaged vicissitudes. They include wild fires, windstorms, drought, volcanic eruptions, earthquakes, tsunamis, avalanches etc. Under Myanmar law, incidents such as damage to crops by pests, plant disease and outbreak of epidemics, violent insurgencies and industrial accidents are classified as natural disasters.¹ According to the United Nations, disaster is defined as "a

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¹ Natural Disaster Management Law, (The Pyidaungsu Hluttaw Law No. 21, 2013)

(1992). Ultimately, both development and human right movements share the same enthusiasm and motivation to promote the freedom, wellbeing and dignity of individuals. On the one hand, human development improves the capacities and freedoms of individuals while on the other hand, human rights provide the framework for a social arrangement that facilitates and secures capabilities and freedoms expressed by human development. It is therefore recommended that the legal framework should be reconnected by means of expunging ouster clauses that inhibit the justiciability of ESC rights in Nigeria and other developing economies of Africa. Above all, government of developing countries, including Nigeria, should put in place enforcement procedures as well as administrative remedies to enhance access to justice without any form of restraint in an effort to assert individual human rights. This is more asserting in view of the fact that the indices of development are founded on the human rights based conditions of the individual personality. The development and enforcement of human rights creates a necessary condition for the realization of sustainable development in developing economies such as Nigeria.

DISPUTE RESOLUTION MECHANISMS IN THE NIGERIAN CAPITAL MARKET: AN OVERVIEW

HAFSAT IYABO SA'ADU, Ph.D.*

Abstract

The capital market plays a very important pivotal role and it serves as source of funding for all sectors particularly the financial sector of the economy. Thus, such vital sectors of the economy are regulated by a set of laws, rules and regulations, ethics /code of conduct and market practice. However, dispute will arise in the course of different activities and transactions which are at variance with the legislations and rules of the market. Hence, there is need to set up dispute resolution agencies to ensure strict compliance with the rules and regulations of the market. The rules and regulations for dispute resolution in the Nigerian capital market have been geared towards protecting the investors and the sanctity of the market. In view of this, the Nigerian capital market is guided by extensive regulatory law which includes the Investments and Securities Act (ISA) 2007. The main objectives of this paper include highlighting various legal and regulatory institutions which regulate the capital market in Nigeria and reposition the extent of the various investors' protection under the various laws. The method adopted is basically analytical and shows deeply how effective ADR can serve as instrument of dispute resolution in the capital market without recourse to court of law. It is found that with proper regulatory structures in place, all fraudulent activities in the market will be dealt with and this will later pave way for sustainable development where orderliness, fairness, efficiency and transparency in security trading are achieved. It is recommended that the laws, rules and regulations regulating the capital market should be reviewed from time to time in order to meet current economic challenges and this concludes the paper.

Keywords: Dispute Resolution, Mechanism, Capital Market, Overview.

1. Introduction

This work seeks to survey the importance of Alternative Dispute Resolution (ADR) in the Nigerian capital market. The work defines capital market and analyzes the purpose of regulating the market to ensure fair play and transparency in market operations. The work examines the adjudicatory and regulatory system of Nigerian capital market and the various dispute resolution mechanisms. It is obvious that the apex capital market regulator (SEC) and the Self Regulatory Organization (SROs) like the Stock Exchange were flooded with cases from the markets but lack powers of a court with limitation in their enforcement abilities. The Investments and Securities Tribunal will therefore ensure the efficient and effective resolution of capital market disputes. To achieve this, there

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must be proper supervision and also experience and technical expertise must be engaged in order to foster higher confidence in the adjudicatory system of the Nigerian capital market.

2. Overview of the Capital Markets

The capital market is a market where corporate and governments can raise long term funds through the issuance of long-term securities. These securities are tradeable instruments which represent financial value and rights of an owner (equity securities), a creditor (debt securities) or any other rights of ownership (options, derivatives).¹ According to Black's Law Dictionary².

Capital market is a financial market in which long term securities are bought and sold. In a simpler term, capital market is a financial market, which trades in medium to long term financial instruments which include:

- (a) debentures, stock or bonds issued or proposed to be issued by a government;
- (b) debentures, stocks, share or bonds or notes issued or proposed to be issued by a corporate body;
- (c) any right or option in respect of any such debentures, stocks, shares bonds or notes or;
- (d) commodities futures, contracts, options and other derivatives, and ... any securities in the category of the securities listed in (a) – (d) above which may be transferred by means of electronic mode approved by the securities and exchange commission and may be deposited, kept or stored with any license depository or custodian company³.

However, the capital market can be broadly divided into primary and secondary markets. The primary market is where new securities are sold while the secondary market is where already issued securities are sold⁴. The primary market operates when there is a major investment by an existing shareholder and it also implies admission of a company into daily official list of the Nigerian Stock Exchange. The mode of offer for the securities in the primary market includes offer for subscription, right issues, offer for sale, private placement and initial public offer (IPO)⁵.

The secondary market operates after issues have been completed in the primary market. Therefore, it is a market for existing securities. In effect, the holders of the securities or instruments in the primary market sell their instruments to other holders of the instruments or to completely new investors in the secondary market⁶. The main pivots of the secondary market are the stockbrokers. They are the only people permitted by law to

¹ Investments and Securities Law Journal (Vol. 1 Mark Anthony Law Publishing Ltd, Abuja 2006) p. 87

² (13th edn. West Publishing Co. 2004) p. 1496

³ Investments and Securities Act, 2007 Section 315.

⁴ Ekitan, O., *Basic Understanding of Capital Market Operations* (The CIBN Press Limited, Lagos 1999) pp22-24.

⁵ *Ibid*.

⁶ *Ibid*.

trade securities on the floor of the Nigerian Stock Exchange and they do it on behalf of their clients or themselves⁷.

The stakeholders in the markets include investors, issuers, capital market operators (like issuing houses, brokers, investment advisers, underwriters, fund portfolio managers, receiving banks, registrars and trustee), self regulatory organizations (like Nigerian Stock Exchange) and the regulatory authorities (like Securities and Exchange Commission)⁸.

2.1 Major Operators in the Nigerian Capital Market

The stakeholders in the markets are the major participants in the Nigerian Capital Market and the market is constituted by certain major operators and institutions which facilitate the issuance and secondary trading of financial instruments. These can be categorized into four namely⁹:

- (a) Fund providers /investors
- (b) User of funds
- (c) Intermediaries and
- (d) Regulators.

These will be explained one after the other

(a) Fund providers

The fund providers are essentially seeking appropriate portfolios to invest and have good returns on their investments based on short or long term investments.

The fund providers are:

- * Individuals
- * Unit Trusts/ mutual fund holders
- * Pension funds
- * Insurance Companies
- * Other institutional investors.

(b) Users of funds

The fund users mainly obtain long-term capital to meet their different needs such as capital expansion, acquisition of new technology, financing of fixed investments such as buildings, plants, bridges etc. The users of funds in the capital markets are:

- * Companies and
- * Government

(c) Intermediaries

The intermediaries offer range of services in the capital market in order to ensure that trading takes place. They are usually:

- * Issuing Houses
- * Underwriters

⁷ Investments and Securities Act 2007 Section 38

⁸ Investments and Securities Law Journal (Vol. 1 Mark Anthony Law Publishing Ltd., Abuja 2006) pp. 66-69.

⁹ Abiola Sanusi, "Tax Reform in the Capital Market - A Welcome Development" Paper Presented at a Seminar Organized by the Ogun State Board of Internal Revenue, Abeokuta, 2007 p.6.

- * Stockbrokers
- * Trustees
- * Solicitors
- * Reporting Accountants
- * Auditors

(d) **Regulators**

The basic functions of the regulators are to provide a legal framework within which the various activities in the market are conducted and enforced.

The regulators are:

- * Securities and Exchange Commission
- * The Nigerian Stock Exchange
- * The Central Bank of Nigeria
- * The Federal Ministry of Finance

2.2 Legal and Regulatory Framework of the Nigerian Capital Market

The Nigerian Capital Market is regulated by various laws, decrees, acts and rules which set up relevant institutions that are responsible for the orderly growth and development of the market¹⁰.

The purpose of regulating securities markets is to ensure fair play and transparency in market operations. In essence, the regulations spell out the rules guiding the conduct, place, time etc. for carrying out certain activities in the market¹¹.

However, the relevant laws regulating the Nigerian Capital Market include:

2.2.1 The Nigeria Securities and Exchange Commission (SEC)

The Nigeria Securities and Exchange Commission (SEC) is an autonomous agency of the Federal Government, created by the Securities and Exchange Commission Decree No. 71 of 1979. It was re-enacted as Decree No. 29 1988. Established on the heels of complaints of inappropriate valuation of shares of public companies during the second leg of the indigenization programme, the SEC is responsible for¹²:

- a. promoting investors' interest and enhancing their confidence in the capital market;
- b. ensuring orderly, fair and equitable dealings in securities; and
- c. promoting the growth and development of the capital market.

It is important to note that the Nigeria Securities and Exchange Commission (SEC) is the apex regulatory body for the Nigerian Capital Market after the Ministry of Finance

¹⁰ Osaze, E.B., *Capital Markets - African & Global* (The Book House Company, Lagos 2007) p. 71 and Akamiohkor G.A., 'The Role of Regulatory Bodies in Capital Market Development: The Nigerian Experience', Paper Presented at the Conference on Promoting and Developing Capital Markets in Africa, Abuja 1992.

¹¹ Osaze, E.B., *op. cit.* and Ekiran O., *op. cit.* p. 131.

¹² Emenuga, C., 'The Nigerian Capital Market and Nigeria's Economic Performance' in the *Capital Market and Nigeria's Economic Development* Proceedings of one day Seminar held at the N.I.L.A., Lagos on January 21 1998, p. 26.

and the Central Bank of Nigeria. The Commission was set up to perform two broad functions, regulatory and development¹³.

Its major objective is the promotion of an orderly and active capital market. In doing this, the Securities and Exchange Commission has a major function of ensuring adequate protection of the investing public. The Securities and Exchange Commission continues to maintain surveillance over the market to enhance efficiency. In 1993, the Securities and Exchange Commission issued guidelines on the establishment of Stock Exchange in furtherance of the deregulation of the capital market¹⁴.

2.2.2 The Central Bank of Nigeria (CBN)

The Central Bank of Nigeria falls with the institutional regulators of the Nigeria capital market. The CBN is the apex financial institution that is charged with the responsibility of overseeing the orderly growth and development of the financial system, the company at large and the money and capital markets¹⁵.

The Central Bank of Nigeria plays a major role in the capital market which deals with long term funds by fostering its growth through the annual subvention granted to them¹⁶. The Federal Government through the Central Bank has been actively involved in building the nation's money and equity canter, forming securities regulatory board and introducing treasury instruments into the market¹⁷. The Central Bank of Nigeria was established by the Central Bank of Nigeria Act of 1958 and commenced operation on 1st July, 1959¹⁸. Following this was the establishment of the Lagos Stock Exchange in 1960, which began actual trading in 1961. Earlier in 1959, the Central Bank of Nigeria had floated the first Nigerian development loan stock, which was listed overseas. Subsequent issues in 1961 and thereafter were listed on the new Local Exchange.

The Lagos Stock Exchange was changed to the Nigerian Stock Exchange in 1977 following recommendations by the Government Financial System Review Committee of 1976. It received initial financial support from the Central Bank of Nigeria (CBN) through an annual subvention¹⁹.

2.2.3 The Investments & Securities Act, 2007

The Investment and Securities Act (ISA) 1999²⁰ repealed the SEC Act of 1988 and re-established the SEC as the apex regulatory body in the Nigerian capital market with enlarged powers and functions²¹. The Act empowers the SEC to employ various ways to carry out its regulatory functions viz:

¹³ Osaze, E.B., *op. cit.* p. 8.

¹⁴ Available at <<http://www.nasrawastate.org/invest.htm>> accessed on 4 April, 2011

¹⁵ Osaze, E.B., *op. cit.* p. 77.

¹⁶ Investment Laws - Babalakin & Co., Available at <<http://www.babalakinandco.com/resources/ia>>

accessed on 31 March, 2012.

¹⁷ Know the Rules available at <<http://www.sec.gov.ng/>> accessed on 4 April, 2012.

¹⁸ The CBN Act 1958 has been repealed and replaced with CBN Decree 24 of 1991. This was also repealed and re-enacted in 2007.

¹⁹ Know the Rules Available at <<http://www.sec.gov.ng/>> accessed on 4 April, 2012.

²⁰ As Amended by the Investments and Securities Act, 2007.

²¹ Investments and Securities Act, 1999 Section 8.

- (i) Registration
- (ii) Surveillance
- (iii) Inspection
- (iv) Investigation
- (v) Enforcement

(vi) Administrative Proceedings Committee (APC) is one of the major mechanisms for disputes resolution in the Nigerian Capital Market and part of the focus of this paper.

(vii) Rule Making

These will be explained one after the other.

(i) **Registration**

Registration is the hallmark of regulation and by its enabling statutes the Commission is empowered to register all players in the Nigerian Capital Market. With respect to a foreign investor who wishes to carry out securities business in Nigeria, such investor must be registered with the Commission after complying with the required documentation²².

However an unregistered market operator who before the coming into force of the Act, operates as such, may continue to operate in the Securities Industries for a maximum period of 3 months or where such unregistered operator has filed an application for registration with the Commission, he will continue to operate in the market until when his application has been disposed of²³.

(ii) **Inspection/Investigation/Surveillance**

Section 45(1) of Investments and Securities Act, 2007 provides that the Commission shall conduct routine and special inspection and investigation of capital market operators. Through the reporting requirements of the Investments and Securities Act and Securities and Exchange Commission Rules, the Commission investigates all reports of violations and monitors trading activities on the floor of the Nigerian Stock Exchange. One of the most effective means of surveillance is the reporting obligation placed on capital market operators. By this requirement, they are to report all transactions to Securities and Exchange Commission²⁴.

The code of conduct for Capital Market Operators imposes an obligation to report all cases of fraud and suspected fraud. In the case of *Union Bank Plc v. SEC*²⁵ where it was held that for a capital market operator to discharge this burden, it must show that it has taken all reasonable steps in its operation to detect and possibly prevent fraud.

Section 13 (n) of the Investments and Securities Act, 2007 provides that the Commission shall protect the integrity of the securities market against all forms of abuses including insider dealings.

²² Investments and Securities Act, 2007 Sections 28-30 and See further Investments and Securities Law Journal (Vol. 1 Mark Anthony Law Publishing Ltd., Abuja 2006) p. 90.

²³ Investments and Securities Law Journal (Vol. 1 Mark Anthony Law Publishing Ltd., Abuja 2006) p. 90.

²⁴ *Ibid* p. 91.

²⁵ (2004) 1 NISLR 113

The power of investigation is a necessary tool in surveillance of the capital market. It enables the Securities and Exchange Commission to monitor the activities of the Nigerian Stock Exchange trading floors in order to ensure orderly, fair and equitable dealings in securities and to forestall illegal deals by privileged insiders at the expense of innocent and often ignorant investors²⁶.

(iii) **Enforcement**

Section 14 of the Investments and Securities Act 2007 gives Securities and Exchange Commission the power to establish specialized departments for the purpose of regulating and developing the Nigerian Capital Market. The Enforcement and Compliance Department of the Commission is an offshoot of this section. The Department is responsible amongst other functions, for administering the Commission's enforcement programmes or case.

(iv) **Rule Making**

In order to keep the market in check and balance the Commission employs the instrument of rule making as well as creating and reviewing procedure as the occasion demands. In formulating or reviewing rules and regulations, the Commission is guided amongst others, by experience and emerging developments in the market and the financial system, as well as by the macro-economic environment²⁷.

2.2.4 The Companies and Allied Matters Act (CAMA) 2010

The companies and Allied Matters Act of 2010 is one of the relevant laws which affect the operations of the Nigerian Capital Market. It affects it in the areas of incorporation of Companies²⁸ Share Ownership, Divisions and Allotment²⁹, Debenture Stocks³⁰ Accounting Books and Financial Records³¹, Prospectus³², Unit Trust Schemes³³ and Insider Trading³⁴.

However, other relevant legal and regulatory bodies which have impact on the Nigerian capital market include:

- The Federal Ministry of Finance
- The Abuja Securities and Commodity Exchange (ASCE)
- Foreign Exchange (Monitoring & Miscellaneous Provision) Act, 1999.
- Public Enterprises (Privatization & Commercialization) Act, 1999.
- Nigerian Investment Promotion Commission Act, 1995.

²⁶ *Ibid* p.92 and Osaze, E.B., *op. cit.* p. 78.

²⁷ Investments and Securities Act, 2007 section 313(1) and Investments and Securities Law Journal (Vol. 1 Mark Anthony Law Publishing Ltd., Abuja 2006), p. 93

²⁸ Investments and Securities Act, 2007 Sections 18, 21, 22, (2 & 3), 24, 25, 27, 28 and 29 of CAMA 2004

²⁹ CAMA 2010 Sections 99-110, 114-123, 124-129, 133-139, 141- 150, 151, 157 and 158-165.

³⁰ CAMA 2010 Sections 166, 168, 183, 189, and 192.

³¹ CAMA 2010 Sections 331 - 334 and Sections 80-81 ISA, 2007

³² *Ibid* Sections 67-68, 77-87. You may see sections 554, and 562, CAMA 2004.

³³ CAMA 2010 Sections 576 - 577 and 583. In fact, Section 577 of CAMA states that all unit trust

may be registered pursuant to section 6 (b) of the Securities and Exchange Commission Decree, 1988.

³⁴ Investments and Securities Act, 2007 Sections 106, 108 and 110-111.

- Capital Gains Tax Act, 1999
- Bank and other Financial Institution Act, 1991
- Chartered Institute of Stockbrokers Act
- Lagos Stock Exchange Act, 1961.

3. A Brief History of the Adjudicatory and Regulatory System of Nigerian Capital Market.

Formal Capital Market activities in Nigeria started with the establishment of the Lagos Stock Exchange in September 1960 through the backing of the Central Bank of Nigeria (CBN) and Ministry of Finance³⁵. In 1962, the Federal Government established the capital issues committee an arm of the Central Bank of Nigeria. The Committee was saddled, inter-alia, with the responsibility of regulating the timing for public issues of securities³⁶. To further strengthen the regulatory oversight of the capital market, the Capital Issues Commission (CIC) was established pursuant to Capital Issues Commission Decree, 1973. The Commission was the first body to formally regulate the capital market in Nigeria, exclusively empowered to resolve disputes and to regulate the activities of all participants in the market³⁷.

In 1980, the Securities and Exchange Commission (SEC) was established pursuant to the enactment of the Securities and Exchange Commission Act of 1979. The dispute resolution arrangement of the 1973 Decree was retained by Act³⁸.

In 1986, the Lagos Stock Exchange was renamed the Nigerian Stock Exchange in response to the challenges of the need to mobilize resources for the development of the national economy³⁹. In 1988, the 1979 Act was reviewed and repealed by the Securities and Exchange Commission Act of 1988, which vested the Federal High Court with the jurisdiction over offences and violations arising from capital market transactions. The Act also empowered the Securities and Exchange Commission to convene Administrative Hearing Proceedings to resolve capital market disputes. Any party that was dissatisfied, with the decision of the Commission could appeal to the Federal High Court⁴⁰. In March 1996, the Federal Government constituted a panel headed by Chief Dennis Odife to undertake a comprehensive review of the operations of the Nigerian Capital Market in line with International Best practices and standards. The panel was also to prepare the necessary framework for further development of the market to serve the Nigerian economy through the strengthening of market regulations. The panel carried out its mandate in a consultative manner by receiving memoranda from key actors in the economy as well as other interested members of the public and submitted its reports in

³⁵ Investments and Securities Law Journal (Vol. 1 Mark Anthony Law Publishing Ltd., Abuja, 2006) p. 62

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ Nigerian Investments and Securities Law Reports (2004) 1 NISLR p. 6.

³⁹ *Ibid*

⁴⁰ *Ibid*

October 1966⁴¹. The recommendations of the panel culminated in the enactment of the Investments and Securities Act (ISA), 1999⁴².

One of the far-reaching recommendations of Odife panel embodied in the Act was the establishment of the Investments and Securities Tribunal (IST). The Act empowered the Tribunal to resolve disputes and controversies that arise by operation of the Act.

3.1 Dispute Resolution Mechanisms in the Nigerian Capital Market

It is a known fact that the capital market is the barometer of the economy which must not be allowed to suffer. It is a barometer because people only buy shares when things are in order and people have more than enough or can sacrifice after taking adequately. Hence, there is the need to protect such investor. An investor refers to a person who invests in company shares.

Generally, in a company having share capital, a person who subscribes to its memorandum and articles of association or is allotted share(s) thereof upon application becomes a shareholder or member of the company. In Nigeria, shareholding interest is the condition for membership of a company that has share capital⁴³.

The Nigerian laws recognized the need to protect the investors against fraudulent misconducts inherent in company administration particularly in its dealing with the capital market operation. Therefore, disputes are bound to occur between parties to transactions which must be resolved in the interest of sustainability and stability of the market.

The only medium apart from litigation in line with the principles and standards of the Intercontinental Organization of Securities Commissions (IOSCO), is the Alternative Dispute Resolution (ADR). According to the former Director General of Securities and Exchange Commission (SEC) Mr. Musa Al-Faki⁴⁴:

Before formal statutory institutions were set up and dedicated to the resolution of capital market disputes, statutes regulating the capital market has recognized the need for dispute resolution mechanisms in this important sector of the economy and had always empowered the major capital market regulators to resolve dispute arising in the market.

Meanwhile, what is happening to most part of the world now is the gradual shift from traditional dispute resolution (court) to private justice system. The capital market is not an exception to this because the whole issue of dispute resolution boils down to saving time, cost and building relationship. It means that alternative dispute resolution in the capital market is very useful. 1999 Constitution of the Federal Republic of Nigeria

⁴¹ Nigerian Investments and Securities Law Reports (2004) 1 NISLR p. 7

⁴² Investments & Securities Law Journal (Vol. 1 Mark Anthony Law Publishing Ltd., Abuja, 2004) p. 63.

⁴³ Companies and Allied Matters Act (CAMA) Cap C20 LFN 2010 Section 7 a (1), (2) & (3).

⁴⁴ While speaking at the opening ceremony of the Workshop for Stakeholders on Alternative Dispute Resolution (ADR), organized by the Nigerian Capital Market Institute (NCMI) and Perchstone & Carey, a Law Firm in Lagos, 2009 see the Guardian Newspaper Nigeria, 17 March, 2009.

provides the rights to dispute resolution as a right in view of the fact that justice delivery is a fundamental function of the Government⁴⁵.

In Nigeria, there are three major structures for the resolution of conflicts and disputes in the capital market⁴⁶. These are:

1. The Self Regulatory Organizations (SROs)
2. The Administrative Proceedings Committee (APC)
3. Investments and Securities Tribunal (IST)

These will now be explained one after the other.

The Self Regulatory Organizations (SROs)

The Self Regulatory Organizations (SROs)⁴⁷ are instituted in the Nigerian capital market. By their functions, they register, licence their members, they also prescribe code of ethics to be followed and discipline any erring members who violate the rules and regulations⁴⁸. The Self Regulatory Organizations received all complaints, grievances and disputes that cannot be resolved among the parties to the disputes through arbitration, conciliation, mediation and litigation. This applies mainly to cases that relate to transactions in the secondary market where parties to the dispute who are registered with the securities market or the self regulatory organization⁴⁹.

In a situation where cases involve parties who are not members of the security exchange or the SRO but are with the Securities and Exchange Commission, grievances, complaints and disputes are directly handled and adjudicated upon by the Commission⁵¹. In the same vein, all cases involving registrars and other market operators who are neither members of any exchange nor SRO are handled by the Securities and Exchange Commission (SEC)⁵². Where disputes cannot be resolved by the Nigerian Stock Exchange (NSE) or the Self Regulatory Organizations (SRO), such cases are referred to the Securities and Exchange Commission (SEC) either for review or adjudication⁵³. Schedule IX of the Securities and Exchange Commission Rules and Regulations provides that disputes among capital market operators must first be referred to the relevant Self-Regulatory Organizations (SROs) to which the capital markets operators belong or other relevant organization established for the resolution of dispute between its members, before such disputes can be referred to the Administrative Proceeding Committee (APC), and thereafter to litigation. Article 125 of the Nigerian Stock Exchange Rules and Regulations authorizes the Nigerian Stock Exchange to

⁴⁵ See Section 6

⁴⁶ Emphasis Mine

⁴⁷ Osaze, E.B., *op. cit.* p.83

⁴⁸ Means any securities exchange, capital trade point, an association of securities dealers, clearing house, capital market trade associate, or any other self regulatory body approved as such by the Commission.

⁴⁹ Investments and Securities Law Journal (Vol. 1 Mark Anthony Law Publications Ltd., Abuja, 2006)

pp.69

⁵⁰ Osaze, E.B., *op. cit.* pp. 83-84

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ Investments and Securities Act, 2007 Section 34

adjudicate on disputes between its members, members and clients, and members and management of the Nigerian Stock Exchange.

The Administrative Proceedings Committee (APC)

The Investments and Securities Act, 2007⁵⁴ provides for the functions and powers of the Commission among which is to promote and register self regulatory organizations including securities exchanges, capital trade points and capital market trade associations. The Administrative Proceeding Committee⁵⁵ is an internal committee of the Securities and Exchange Commission to look into disputes, conflicts, grievances and violations between operators and investors. The Administrative Proceeding Committee (APC) is a quasi-judicial Committee of the Securities and Exchange Commission and major rule breaches are usually brought before it for adjudication. The Committee has very broad powers to sanction erring parties.

However, while emphasizing on the Administrative Proceedings Committee of the Securities and Exchange Commission, the Investments and Securities Tribunal held in the case of *Assets Management Co. Ltd. v. Securities & Exchange Commission*⁵⁶ that it is the position of the Tribunal that APC of SEC should not be equated with an ad hoc Committee. As a Committee of SEC it is still part of SEC. Without APC, SEC would still carry out the quasi-judicial aspect of its regulatory functions one way or the other. Section 13 (r) of the Investments and Securities Act, 2007 empowers the Securities and Exchange Commission to call for information and conduct investigations into disputes and infractions of market regulations as it deems appropriate. Investigations by the Commission are essentially fact-finding and do not amount to determination of guilt or prosecution of the party under investigation⁵⁷.

At the end of the fact finding, the alleged violator of capital market laws is given a chance to defend himself and if he is found to be culpable, the Commission may resort to the following steps⁵⁸:

- Report the matter to the Inspector General of Police, the Economic and Financial Crimes Commission and/or the Attorney General of the Federation for further investigation and prosecution.
- Institute a civil action against such a party for a claim, interpretation, declaration, injunction at the Investment and Securities Tribunal established under Section 274 of the Investment and Securities Act, 2007 or
- Commence administrative proceedings hearing against such an erring party.

The Administrative Proceedings Committee comprises of the Director-General of the SEC, some members of the Board of the SEC, Director in the Operations Department of the SEC as well as observers representing capital market trade associations, including

⁵⁴ Section 13

⁵⁵ The APC is established pursuant to Section 310(1) of the Investment and Securities Act, 2007.

⁵⁶ Appeal No. IST/APP/02/2003 Case No. APC/21/2003 See Nigerian Investments and Securities Law Reports (2007) 2 NISLR 81 at 92.

⁵⁷ Osaze, E.B. *op. cit.* p. 84

⁵⁸ *Ibid*.

Association of Issuing Houses, Association of Stockbrokers, Association of Registrar, Association of Trustees and Chartered Institute of Stockbrokers of Nigeria⁵⁹. The jurisdiction of the Administrative Proceedings Committee covers all disputes in the capital market between⁶⁰:

- Capital market operators
- Capital market operators and their clients,
- The SEC and capital market operators
- The SEC and stock or commodity exchange or capital trade points.

At the conclusion of its proceedings the decisions of the Administrative Proceedings Committee is dispatched to the affected parties within seven days of the sitting. The said decision may be on any of the following⁶¹:

- suspension from the marketing
- withdrawal of registration
- fines
- warning
- disgorgement of illegal profits
- cease and desist orders
- cancellation of transaction
- disqualification of unfit persons from the market
- blacklisting.
- recommendation for indictment by professional bodies in the case of professionals like Lawyers.

The Investment and Securities Tribunal (IST)

The major aim of inaugurating Investment and Securities Tribunal (IST) by the Federal Government in 2002 was to adjudicate on disputes and controversies in the nation's capital market transaction⁶². The need to establish the Tribunal was necessitated by undue delays arising from frequent adjournments characteristic of the normal courts procedures, as well as apparent lack of sufficient knowledge of the operations of the capital market by the judicial officers. Thus the establishment of the Tribunal brought about speedy trials and well reasoned judgements⁶³. The Tribunal, an independent specialized judicial body, was consequently established under section 224 of the Investments and Securities Act (ISA) 1999 which has been repealed by section 274 of the Investments and Securities Act (ISA) 2007.

Section 274 states:

⁵⁹ 1999 Constitution of the Federal Republic of Nigeria as amended, section 36 (1) & (2).

⁶⁰ Osose, E.B., *op.cit.* pp. 84-85

⁶¹ *Ibid* p. 85

⁶² Stockwatch Weekly Newspaper Nigeria Vol.4 No. 110 8 February, 2009.

⁶³ Chief A.I. Idigbe 'Legal Regime for the Regulation of Capital Market as a Tool for Secured Investment in Nigeria in Investments and Securities Law Journal (Vol. 1 Mark Anthony Law Publishing Ltd., Abuja 2006) p. 98.

There is established a body to be known as the Investments and Securities Tribunal (in this Act referred to as 'the Tribunal') to exercise the jurisdiction, power and authority conferred on it by or under this Act.

The Investments and Securities Tribunal (IST) is vested with onerous responsibility of adjudicating on disputes and controversies in capital market transaction.

Section 284 of the Investment and Securities Act 2007 provides:

(1) The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving:

- (a) a decision or determination of the Commission in the operation and application of this Act, and in particular, relating to any dispute:
 - (i) between capital market operators;
 - (ii) between capital market operators and their clients;
 - (iii) between an investor and a securities exchange or capital trade point or clearing and settlement agency;
 - (iv) between capital market operators and self regulatory organization;
- (b) the Commission and Self Regulatory Organization;
- (c) a capital market operator and the Commission;
- (d) an investor and the Commission;
- (e) an issuer of securities and the Commission; and
- (f) disputes arising from the administration, management; and operation of collective investment schemes.

(2) The Tribunal shall also exercise jurisdiction in any other matter as may be prescribed by an Act of the National Assembly.

(3) In the exercise of its jurisdiction the Tribunal shall have the power to interpret any law, rules or regulation as may be applicable.

Examples of cases that could be brought before the Tribunal include but are not limited to the following⁶⁴:

- (a) Misappropriation of client's money by market operators;
- (b) Non-remittance of issue proceeds by an issuing house to the issuer/company;
- (c) Non-remittance of dividends by a registrar/public company/stockbrokers
- (d) Late transfer and/or registration of shares/stocks by any stockbroker.
- (e) Disputes over mergers and acquisitions between the shareholders and the public quoted company, self-regulatory authority, the commission etc;
- (f) Disputes between operators and any SRO in the market (e.g. stockbrokerage firm and a stock exchange and disputes between a Registrar and an Exchange.
- (g) Disputes arising from the rules, regulations and such other guidelines made by the commission, or any securities exchange;
- (h) Disputes arising from any decision, notice and /or decision issued by the commission;

⁶⁴ Nigerian Investments and Securities Law Reports (2004) 1 NISLR p.14

- (i) Appeals against disciplinary measures by the commission such as suspension and/or barring participants from the market.
- (j) Appeals against delisting of any security of company by an exchange; and
- (k) Disputes/claims arising from non disclosure, misrepresentation or false statements in offer documents in a securities transaction.

By virtue of Section 290(3) of the ISA 2007 it is deemed to be a civil court for all purposes. Section 6(1) (a)-(i) of the 1999 Constitution of the Federal Republic of Nigeria list 9 courts which are vested with judicial powers of the Federal Republic of Nigeria. However, paragraph (j) and (k) of the Section also include such other courts as may be authorized by law to exercise jurisdiction on matter with respect to which the National Assembly may make laws; and at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

By virtue of Section 315 (4) (b) of the Constitution, the Investments and Securities Act, 1999 repealed and reenacted by the Investments and Securities Act, 2007 is an existing law. Consequently, the IST is inclusive of the courts recognized by the Constitution.

The concept of IST, though novel, is not peculiar to Nigeria. In the United Kingdom, there is the Financial Services and Markets Tribunal (FSMT) and in India, the Securities Appellate Tribunal (SAT), amongst others⁶⁵. It is important to emphasize here that the need for a Tribunal rather than a regular courts to adjudicate on civil cases in the capital market is to ensure that such cases are given speedy resolution by a body which is only vast in the general practice of law, but is conversant with the Securities Law, the practices and operation of capital market⁶⁶. Experience has shown that the regular courts take months and sometimes years to resolve matters. This can be frustrating and discouraging to parties. Besides, the judgments of the regular courts have sometimes shown lack of understanding and essence of the capital market adversely⁶⁷.

The Tribunal is not empowered to adjudicate on criminal matters, as Section 304 of the ISA 2007 provides that:

Where in the course of its investigation, the Commission discovers evidence of possible criminality, the Commission shall be obliged to pass such information to the appropriate criminal prosecuting authorities, such as, the office of the Attorney General of the Federation, the Attorney-General of a State and the Economic and Financial Crimes Commission.

Under Section 290 ISA 2007, apart from the powers to make rules regulating its proceedings, the IST is vested with the following powers to:

- (a) summon and enforce the attendance of any person and examine him on oath;
- (b) require the discovery and production of documents;
- (c) receive evidence on affidavits;
- (d) call for the examination of witness or documents;
- (e) review its decisions;

⁶⁵ Nigerian Investments and Securities Law Reports (2004) 1 NISLR p. 9.

⁶⁶ *Ibid*

⁶⁷ "Country Experience with Capital Market Development: The Nigerian Experience" Available at <<http://www.nationsencyclopedia.com/economics/Africa/Nigeria>> accessed on 24 July, 2012.

- (f) dismiss an application for default or deciding matters ex-parte.
- (g) set aside any order or dismiss any application for default or any order made by it ex-parte; and
- (h) do anything which in the opinion of the Tribunal is incidental or ancillary to its functions under the Act.

The Investments and Securities Tribunal is composed of 10 members who are appointed by the Minister of Finance for a period of 5 years. The membership of the Tribunal shall comprise of the following⁶⁸:

- (a) a full time Chairman who shall be a legal practitioner of not less than fifteen years with cognate experience in capital market matters;
- (b) four other full time members, three of whom shall be Legal Practitioners of not less than 10 years experience and one person who shall be knowledgeable in capital market matters who shall devote themselves to issues relating to adjudication and shall not exercise any administrative function;
- (c) Five other part time members who shall be persons of proven ability and expertise in corporate and capital market.

A party may appear before the Tribunal either in person or authorize one or more Legal Practitioners to represent it⁶⁹.

The Tribunal acts as the court of first instance on disputes and controversies arising from the operations of capital market through interpretation of the relevant laws, rules and regulations by issuance of directives, making awards and giving judgment. The award or judgment of the Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the chief Registrar of the Federal High Court by the party seeking to enforce it⁷⁰. Appeals could be made against the decisions of the Tribunal on point of law to the Court of Appeal and further appeals could be made to the Supreme Court⁷¹.

4. Possible Benefits of the Tribunal to the Nigerian Capital Market

The apex capital market regulators (SEC) and the self-regulatory organizations (SROs) like the Stock Exchange were flooded with cases from the markets but lack the powers of a court with limitation in their enforcement abilities. The Investments and Securities Tribunal will therefore ensure the efficient and effective resolution of capital market disputes with firmness, flexibility and transparency in the following manners⁷²:

- Provide a reliable, informed, expedient and affordable dispute settlement mechanism for investors, public companies, capital market operators, self-regulatory organizations and other market participants.
- Promote capital market integrity and a stable economy

⁶⁸ Investments and Securities Act, 2007 Sections 275 and 277

⁶⁹ Investments and Securities Act, 2007 Section 291

⁷⁰ Investments and Securities Act, 2007 Section 393

⁷¹ Investments and Securities Act, 2007 Sections 295 and 297

⁷² Order 2 Rule 1 and Order 1 Rule 2 Investments and Securities Tribunal (Procedure) Rules 2003

- Deal with cases in ways which are proportionate to the complexity of the issues and to the resources of the parties.
- Bring the technical competence and the tribunal's special expertise to bear on the resolution of market disputes.
- Avoid delay, so far as compatible with the proper consideration of the issues.
- Positively affect the fundamental dynamics of operations and raise investor confidence in the market.
- Through deterrence, foster good corporate governance in public companies and among other participants and operators.

5. Conclusion and Recommendations

The paper has highlighted the various legal and regulatory institutions which regulate capital market operations in Nigeria. It has further analyzed different ways by which disputes that arise in the market can be resolved without necessarily going to court for adjudication. For this, as a specialized court, Investments and Securities Tribunal (IST) should bring to bear experience and technical expertise in the resolution of capital market disputes in Nigeria.

Pursuant to the ISA and the rules issued to the ISA (i.e. the SEC Rules and Regulations, Rule 312), capital market related disputes are to be referred to the Administrative Proceedings Committee (APC) of Securities and Exchange Commission (SEC) and/or the Investments and Securities Tribunal (IST). Disputes can also be referred to the Federal High Court by virtue of section 251(e) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which confers the court with exclusive jurisdiction in civil matters arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act, 2010.

It is recommended that the rules and regulations regulating the Nigerian Capital Market should be reviewed from time to time in order to meet current economic challenges. It is also recommended that there should be proper supervision of the capital market operations in Nigeria and this should be a continuous process.

The paper discussed the issue of the power of the IST to try criminal matters as contained under section 304 of the ISA 2007, and concludes that it does not have the power to do such. It is recommended that the membership of the Tribunal should constitute experienced and trained legal officers who are experienced in the practice of capital market operations. Also, the enforcement abilities of the court should be strengthened.

TEACHING LEGAL ETHICS: A NECESSARY TOOL FOR THE RESTORATION OF THE LEGAL PROFESSION IN NIGERIA.

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&
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Abstract

The Law floats on a Sea of Ethics. In Nigeria, various stakeholders in the Legal Profession all agreed that standards have fallen in the profession. Several solutions have been proffered to tackle this matter. However, not much attention has been paid to the role teaching legal ethics can play in restoring the age-old values of the profession. Apart from the Nigerian Law School, Legal Ethics should be taught in Universities and be part of Continuing Legal Education Programmes for practicing lawyers. Thus, if the commitment of the legal profession and legal academia to producing ethical lawyers is genuine, legal ethics must be the most important subject in curriculum. This paper intends to focus on the topic: Teaching Legal Ethics: A Necessary Tool for the Restoration of the Legal Profession in Nigeria by examining: Development of Legal Education in Nigeria; An Overview of how Law Faculties and Law School should teach the Subject either in Stand-Alone or Specific Skill Classes; and The Need for Integration of Legal Ethics into Legal Education. In the final analysis, the paper recommends among others, what Law Faculties and Law School should be teaching as part of the Legal Ethics Curriculum and an advice on best practices for assessment depending on size, goals, and scope of the class.

1.1. Introduction.

Despite what seems to be far greater attention paid to the teaching of legal ethics than to any other law subject, legal ethics remains no better than a second class subject in the eyes of law students, faculty of law and law school. This paper suggests that all efforts at innovation in legal ethics teaching are doomed to a marginal impact at best. Only recognition that legal ethics is the most important subject in the law faculty and law school curriculum will lead to real and significant changes in the teaching of legal ethics. If the commitment of the legal profession and of legal academia to producing ethical lawyers is genuine, legal ethics must be the most important subject in the curriculum. Properly taught, ethics courses should provide the lens through which students view what it means to be a lawyer and discover how to find meaning in their work. From a pragmatic perspective as well, legal ethics is the only course in law school which every

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