



NOTAP Approval No Longer Required for Recognition of Contract Obligations in Financial Statements.

The Financial Reporting Council of Nigeria (FRCN) has issued a Public Notice (the "Notice") revoking its Rule 4 ("the Rule") titled ***"Transactions requiring registration from statutory bodies such as the National Office for Technology Acquisition and Promotion"***. The revocation which is to be applied prospectively became effective on 11 July 2019.

The erstwhile Rule provided that:

"Transactions and/or events of a financial nature that require approval and/or registration or any act to be performed by a statutory body in Nigeria and/or where a statute clearly provides for a particular act to be performed and/or registration to be obtained; such transactions or events shall be regarded as having financial reporting implication only when such act is performed and/or such registration is obtained. Accordingly, the details of the required act and/or registration obtained from such statutory body shall be disclosed by way of note in the financial statements if the transaction is recognized as part of the financial reporting of the entity..."

In effect, the purport of the now revoked Rule was that transactions carried out by a company which required the registration with, and approval of a statutory body could only be reported in the company's financial statements when such registration is completed and/or approval is obtained. The revocation of this Rule therefore implies that companies may now report in their financial statements, expenses relating to unregistered and/or unapproved agreements.

The decision to revoke this Rule seems to be further to the judgment of the Court of Appeal ("the Court") in Stanbic Holdings Plc ("Stanbic") v. Financial Reporting Council of Nigeria ("FRCN") & Anor (2019). Stanbic had acquired a banking software, customized it for its use and thereafter sold it to its South African parent, with agreement to lease same for an annual license fee. Stanbic consequently made yearly provisions for this expense but could not obtain NOTAP's (National Office for Technology Acquisition and Promotion) approval to enable it remit the fees to the parent company in line with the agreement. The Federal High Court (FHC) held at the first instance, that Stanbic's failure to obtain the approval of NOTAP on a registrable document, rendered same void and as such payment could not be made on the contract, and if made, could not be recognized. The Court however overturned the judgment of the FHC and held inter alia that the failure to register an agreement with NOTAP does not render it void,

and that parties can validly enforce the terms of the contract.

Our Comments

1. The NOTAP Act established NOTAP for the following functions:
 - a. To encourage a more efficient process for the identification and selection of foreign technology.
 - b. To develop the negotiation skills of Nigerians to ensure acquirement of the best contractual terms and conditions while entering into an agreement for the transfer of foreign technology
 - c. To provide for a more efficient process for the adaptation of imported technology
 - d. To register contracts and agreements entered into for the transfer of foreign technology to Nigerian parties.
2. Section 7 of the NOTAP Act does not render unregistered registrable contracts invalid nor void. Rather, the effect on non-registration is the prevention of payment to the credit of any person through the Central Bank of Nigeria or any licensed bank in Nigeria, in respect of such unregistered agreement or contract.
3. The NOTAP Act does not provide for the requirement of approval for the exportation of technology, that is, transfer of technology from Nigeria to a foreign company. The Court's judgement reiterates this and held that it is inconsequential whether the companies are within or outside a Group.
4. The approval of NOTAP does not affect the enforceability of the terms of a contract, even where such approval has been withheld.

The revocation of Rule 4 of FRCN puts to rest the uncertainty that had prevailed from the discrepancy between the judgment of the Court and the Rule. It is now therefore expected that the Federal Inland Revenue Service (FIRS) will henceforth exercise its discretion to determine the deductibility of these expenses by companies as enshrined in Sections 24 and 27 of the Companies Income Tax Act (CITA), considering that evidence of NOTAP's registration had until now been its measurement yardstick.

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