



POWERS OF FRCN

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“The Financial Reporting Council of Nigeria lacks the requisite statutory powers to regulate the affairs of private companies”- Justice Okon Abang.

The combined effect of Sections 7(1), 18(f) and 41(1) of the FRCN Act 2011 is that :

- **Registration with the FRCN is limited to professional accountants and professionals engaged in the financial reporting process.**
- **There is no express provision compelling**

EDITOR’S NOTE

In today’s newsletter, Nigeria is our focus, as we provide you with a cursory look at the functions and power of the Financial Reporting Council of Nigeria over private companies and public interest entities.

The Financial Reporting Council of Nigeria Act, 2011, states the developing and publishing of accounting and financial reporting standards as its primary responsibility. It goes forward to state that such formulated standards are to be observed by Public Entities in the preparation of their financial statements.

In recent times the Financial Reporting Council of Nigeria (hereinafter referred to as FRCN) has been very zealous in carrying out its duties. This year it had to meet with other regulatory agencies such as the National Office for technology Acquisition and Promotion (NOTAP), Securities and Exchange Commission (SEC), Central Bank of Nigeria (CBN), in its own capacity and based on the complaint of minority shareholders of Stanbic IBTC in relation to the latter’s financial reporting methods, one of the complaint being that Stanbic IBTC allegedly failed to report the sale of its Banking Application Software and annual fee income relating to the sale in its Profit and Loss Statement, specifically not recognizing the software as an intangible asset in its financial statements.

Last year in similar circumstances, as a result of this same zealousness, it received a court order against it in a suit instituted by Eko Hotels Limited (Eko Hotels, a private company doing business in the hospitality industry). The Honourable Justice Okon Abang the federal high court on the 21st of March 2014 held that there was no legal authority giving the FRCN powers to regulate the affairs of a private company, and there was no express provision compelling private companies to be registered with the FRCN. The FRCN has subsequently appealed against this decision to the Court of Appeal.

Apart from the FRCN Act, the FRCN also has guidelines/regulations for inspection and monitoring of entities, under these regulations it has the power to insist that an entity’s directors make material adjustments to its financial statements when discrepancies are observed by the FRCN.

In this article we want to peruse the applicable laws to find out whether the FRCN powers and functions under the Act cover its investigation into the financial reporting methods of banks, law firms and other entities which of a necessity keep accounting records and audit accounts.

Generally, the FRCN will query any audit report or financial statement that gives generic descriptions of expenses such as “other operating expenses”, “miscellaneous expenses” etc, especially when they are substantial and therefore should be more detailed, as such description is seen as poor disclosure, bothering on concealment, and unfair representation of transactions to stakeholders.

In writing this issue of our newsletter we have also highlighted the opinion of various legal luminaries as to the issues raised.

private companies to be registered with FRCN.

- **The FRCN cannot under the Act enlarge its power beyond the limit of statute to exercise penal powers over a private company.**

Succinct review of the Financial Reporting Council of Nigeria Act 2011

The powers given in **Section 7** of the Financial Reporting Council of Nigeria (FRCN) Act is very wide in that it states that "The Council shall have powers **to do all things necessary** for or in connection with the performance of its functions".

This section is instructive especially when one considers one of the issues raised by the FRCN's recent suspension of certain Stanbic IBTC directors who had attested to financial statements, adjudged by the FRCN to be poorly disclosed statements and filled with discrepancies. It would seem that the FRCN under this section has the power to take the above mentioned regulatory decision. The courts will have to decide this issue.

It is exciting to see that they will have an ample opportunity to do so, as Stanbic IBTC has brought an action against the FRCN. The former may be contending that whatever the FRCN's findings against it, the provisions of the FRCN Act do not give the FRCN explicit power to suspend directors, rather their power over directors is limited to the provisions of section 7 (i), which provides that the Council shall have power to "pronounce forfeiture by Chief Executive Officers and Chief Financial Officers of certain bonuses received from the company and profits realized from the sale of company shares owned by them, where the company is required to prepare an accounting restatement."

Section 7 goes further in subsection 2(a) to give the FRCN powers to enforce compliance with accounting, auditing and financial reporting standards, in addition subsection 2(h) gives the FRCN powers to require **entities** to provide disclosures on material changes in financial conditions or operations.

It is noteworthy that the above section does not state the type of entity the FRCN has power over. However section 8 of the FRCN Act, which bothers on the functions of the FRCN, provides in subsection 1(a) that "The Council shall develop and publish accounting and financial reporting standards to be observed in the preparation of financial statement of **public interest entities.**"

When the afore stated section is read in combination with the opening/preamble to the FRCN Act which states "An Act to repeal the Nigerian Accounting Standards Board Act, No. 22 of 2003 and enact the Financial Reporting Council of Nigeria charged with the responsibility for, **among other things**, developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statement of **public entities** in Nigeria; and for related matters" it would seem clear that the FRCN power extends to only public entities and public interest entities.

The Interpretation section of the FRCN Act, section 77 defines Public Interest Entities to mean "governments, government organizations, quoted and unquoted companies and all other organizations which are required by law to file returns with regulatory authorities and this excludes private companies that routinely file returns only with the Corporate Affairs Commission and the Federal Inland Revenue Service."

Consequently one may say that the FRCN's powers and functions covers only public entities and public interest entities and this is the writer's view.

However the provisions of Section 23 (a) and 24 of the FRCN Act which provide that the FRCN shall establish a **Directorate of Accounting Standards for the Private Sector**, may cause one to argue that the FRCN has powers and functions that govern the private sector.

Section 24(e) of the FRCN Act provides that "the Directorate of Accounting Standards for

the Private Sector shall develop accounting and financial reporting standards to be observed in the preparation of financial statements in the private sector and small and medium scale enterprises” while subsection (e) provides that the Directorate of Accounting Standards for the Private Sector shall “promote compliance with the accounting and financial standards adopted by the Council”, all pointing to the functions of the FRCN that relates to the private sector, and consequently to law firms, hotels etc.

The Act is silent as to the methods that may be adopted by the Directorate of Accounting Standards for the Private Sector in promoting compliance in the private sector, but one may argue that the FRCN’s wide powers given in section 7 of the FRCN Act mentioned above, would enable the FRCN to insist on the registration of professionals engaged in financial reporting in the private sector in order to promote their compliance with the FRCN’s accounting and financial standards.

The FRCN has made a regulation for the registration of professionals engaged in the financial reporting process called the FRCN Order No. 1 2014. The regulation is however silent as to whether the financial reporting process carried out by such professional is restricted to only those professionals working for a public entity or public interest entity or includes those working in the private sector.

Therefore it would seem that it is arguable that under the regulation, a lawyer who is a company secretary of a private sector entity and who engages in the attestation of financial statements and accounts must be registered with the FRCN.

In further support of the argument that the FRCN Act covers financial reporting carried out by private entities, is Section 44(1) (b) of the FRCN Act which provides that “Where a professional accountant makes a report on the financial statements of an **entity** which he has audited he shall express a clear written opinion in his report giving details as to whether the financial statements comply with the provisions of this Act...”. While Section 77 defines an “entity” to mean “any person or body of persons, whether incorporated or unincorporated”.

It would therefore seem that it is completely arguable that the powers and functions of the FRCN under the FRCN Act covers financial reporting methods carried out both in the public and private sector, and therefore covers banks, Small and Medium Scale Enterprises, Law firms etc. The Court of Appeal would have to decide on this issue. A list of professionals as envisaged by the FRCN Act and its regulations is provided at the end of this article. The FRCN Act shows that the FRCN can enforce fines as part of its sanctions, howbeit only after obtaining a conviction from the Court.

Finally, it is the writer’s view that the powers and functions of the FRCN in the FRCN Act and its Regulations must be interpreted strictly. If they are contrary to Company Law as expressed in the Companies and Allied Matters Act (CAMA) 2004, then the latter Act must prevail. For instance CAMA specifies the procedure for the suspension and removal of directors in a company and it does not include the process being carried out by the FRCN against the directors of Stanbic IBTC, while the FRCN Act has no express provision granting the FRCN power to sanction directors by their suspension or removal.

The GOS Newsletter has been prepared for clients and professional colleagues as a general guide to the subject matter, it is not meant to substitute specialist legal advice about your specific circumstances.

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A list of professionals as envisaged by the FRCN Act and its regulations is provided below.

LIST

1	Institute of Chartered Accountants of Nigeria	www.ican-ngn.org
2	Chartered Institute of Bankers of Nigeria	www.cibnonline.org
3	Chartered Institute of Taxation of Nigeria	www.citn.org
4	Nigeria Institute of Estate Surveyors & Valuers	www.niesv.org
5	Association of General & Private Medical Practitioners of Nigeria	www.agmpn.org
6	Association of National Accountants of Nigeria	http://www.anan.org.ng
7	Business Education Exams Council	www.beetraining.com
8	Centre for Law & Development	www.clds.org
9	Certified Pension Institute of Nigeria	www.pensioninstitute.com
10	Chartered Institute of Marketing of Nigeria	www.thenimn.org
11	Chartered Insurance Institute of Nigeria	www.ciinigeria.com
12	Chartered Institute of Personnel Management of Nigeria	www.cipmnigeria.org
13	Chartered Institute of Stockbrokers	www.cisnigeria.com
14	Certified Institute of Cost Management	www.icmn.org
15	Medical & Dental Consultants Association of Nigeria	www.mdcan-ng.org
16	Nigeria Bar Association	www.nigeriabar.com
17	Nigerian Institute of Management	www.managementnigeria.com
18	Nigeria Institute of Quantity Surveyors	www.niqs.org
19	Nigerian Institute of Social and Economic Research	www.niser.org
20	Nigerian Institute of Town Planners	www.nitp-ng.org
21	Nigerian Medical Association	www.nigerianma.org
22	Nigerian Society of Engineers	www.nse.org.ng
23	Science Teachers Association of Nigeria	www.stan.org.ng
24	Strategic Management Centre	www.smg nigeria.org
25	West African College of Physicians	www.wac-phycisians.org
26	Institute of Directors	www.iodnigeria.com
27	Advertising Practioners Council of Nigeria	www.apcon.gov.ng
28	Outdoor Advertising Association of Nigeria	www.oaan.org
29	Manufacturers Association of Nigeria	www.manufacturersnigeria.com
30	The Nigerian Institute of Safety Professionals	http://www.nispnigeria.com
31	Nigerian Institute of Public Relations (NIPR)	http://nipreko.org
32	Pharmacist Council of Nigeria	www.pcng.org
33	West African Institute for Financial & Economic Management	www.waifem.org
34	Financial Institutions Training Centre (FITC)	www.fitc-ng.com
35	Money Market Association of Nigeria	www.moneymarketng.com
36	African Institute for Applied Economics	www.aiae-nigeria.org
37	Nigeria Computer Society	http://www.ncs.org.ng
38	Institute of Credit & Risk Management	http://icrmng.org/index.htm
39	Portfolio & Debt Management Institute	http://www.pdmin.org
40	Institute of Chartered Economists of Nigeria	www.icennig.org
41	Association of National Accountants of Nigeria	www.anan.org.ng
42	Institute of Registered Administrative Managers of Nigeria	http://www.regdmanager.com

43	The Institute of Certified Geographers of Nigeria	www.icgnig.org
44	The Institute of Business Development	www.ibd-ng.org
45	The Institute of Benefits and Trusts Management	www.institute-benefits.org
46	The Institute of Pensions Management	www.penmgt.org
47	Chartered Institute of Administration	http://www.cia-ng.org
48	Nigerian Institute of Professional Secretaries	http://www.nipsecretaries.org
49	Pipeline Professionals' Association of Nigeria (PLAN)	http://plan-ng.com/index.p
50	National Teachers' Institute	http://www.ntinigeria.org/a
51	Nigeria Institute of Public Relations	http://www.nipr-ng.org
52	Pharmaceutical Society of Nigeria	http://www.ps-nigeria.org
53	The Institute of Chartered Secretaries of Nigeria	http://www.icsan.org/about
54	Council for the Regulation of Engineering in Nigeria (COREN)	http://www.corenng.org/in
55	Nigerian Institute of Architects	http://www.niarchitects.org
56	Nigeria Insurers Association	http://www.nigeriainsurers
57	Nigerian Institute of Building	http://www.niobuilding.org
58	Nigeria Computer Society	http://www.ncs.org.ng/abo
59	Information Technology Association of Nigeria	http://www.itan.org.ng/abo
60	Certified Institute of Warehousing & Materials Management	http://www.cism-ng.org
61	Institute of Certified Public Accountants of Nigeria	http://cpanigeria.org/educ
62	Certified Pension Institute of Nigeria	http://www.pensioninstitute
63	Money Market Association of Nigeria	http://www.moneymarketn
64	Institute of Chartered Economists of Nigeria	http://www.icennig.org/inc
65	Chartered Institute of Cost & Management Accountants of Nigeria	http://www.cicma-ng.org
66	The Institute of Credit Administration of Nigeria	http://www.icanigeria.com
67	The Institute of Company & Commercial Accountants of Nigeria	http://iccaofnigeria.org/ab
68	The Institute of Registered Administrative Managers of Nigeria	http://regdmanager.org
69	The Chartered Institute of Purchasing & Supply	http://www.cips.org
70	Institute of Industrial Security & Safety of Nigeria	http://iissn.org/about_us.h
71	Institute of Public Analysts of Nigeria	http://www.ipanng.org Enabling
72	Institute of Investment Management & Research	http://www.investment-fa.
73	Nigerian Institute of Safety Professionals (NISPP)	http://www.nispnigeria.com
74	Institute of Public Management (Unique)	www.ipm-unique.org Enabling
75	Institute of Fraud Examiners	http://acfeng.org/members
76	Nigerian Institute of Industrial Management	http://www.niim.org/index
77	Medical & Dental Council of Nigeria	http://www.mdcnigeria.org
78	Association of West African Professional Economists Bodies	www.awapeb.org Enabling
79	Institute of Strategic Management of Nigeria	http://ismng.org/default.as
80	Institute of Professional Recruitment Consultants, IPRC Nigeria	www.iprcng.net Enabling
81	Institute of Finance & Control of Nigeria	www.ifcnnig.org Enabling
82	The Chartered Institute of Logistics & Transport	http://ciltnigeria.org/index
83	Institute of Treasury Management	www.instituteoftreasuryma
84	The Chartered institute of Purchasing and supply management of Nigeria	http://cipsmn.com
85	Chartered Institute of Commerce of Nigeria	http://www.cicng.org Enab
86	Nigeria Institute of Civil Engineers	http://icenigeria.org
87	Institute of Data Processing Management of Nigeria	www.idpmnigeria.org

88 Society of Construction Industry Arbitrators of Nigeria

<http://www.sciarb.com/ind>

89 Nigerian Institution of Surveyors

“Sections 8 (i) (h), 28 (1) (a) and 11 (d) of the FRC Act shows that the FRCN has a duty to monitor compliance with International Financial Reporting Standards and to ensure accuracy of financial reports and corporate disclosures”- www.ngrguardiannews.com.



“One of the powers of the FRCN is that they can require public interest entities to provide real time disclosures on material changes in financial conditions and operations, this is explicitly stated in section 7 (2) (h) of the FRCN Act”-Barrister B.V Enwesi, BL,LLM(E-commerce Law Hertfordshire)



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