

January 2018

ISAN V. FRCN; COURT OVERRULES FRCN ON CHAIRMAN OF AUDIT COMMITTEE

The Federal High Court has recently overruled **Rule 2(c)** of the Financial Reporting Council of Nigeria (FRCN) that requires only a qualified accountant to be chairman of the Audit Committee of a Public Liability Company (PLC). The FRCN had in 2015 issued and published Rule 2(c), which states that

'any person attesting as Chairman of Audit Committee to annual report statement, accounts, financial report, return, and other documents of a financial nature, shall be a professional member of an accounting body established by act of National Assembly.'

Members of Independent Shareholders Association of Nigeria (ISAN) considered this rule as an anomaly and against the letters and spirit of the Companies and Allied Matters Act (CAMA) this rule.

FRCN also required public companies that could not provide a professional qualified accountant as their Audit Committee chairman to apply for a waiver before their annual reports could be approved. FRCN collected a sum of N600, 000 for the waiver to be granted.

In light of this development, the ISAN instituted an action against the FRCN at the Federal High Court challenging this rule. The Court declared that:

For further information, please contact:

Yimika Phillips

Partner

+234-1-2702551 Ext 2700

yphillips@olaniwunajayi.net

Michael Amadi

Senior Associate

+234-1-2702551 Ext 2611

mamadi@olaniwunajayi.net

1. FRCN has no power under the FRCN Act to make any rule stipulating a qualification for membership or headship of audit committees of companies incorporated under the CAMA.
2. FRCN has no power under the FRCN Act to prescribe any standard of financial reporting or any other standard that requires of any company incorporated under CAMA anything that is inconsistent with or that modifies in any respect any provision of the CAMA.
3. FRCN is bound to exercise its functions in accordance with any law in force in the country and therefore may not prescribe any standard or make any other prescription, which is inconsistent with any other law made by the National Assembly.

With this ruling, the Rule 2(c) of the FRCN is now null and void. Also, affected companies may apply and collect refunds from the FRCN for the Fees paid for waivers under the Rule 2(c) now declared null and void.

Whilst we expect the FRCN to appeal and challenge this judgment, we expect that in the meantime the FRCN will fully comply with the judgment of the Court.

David Oluranti

Senior Associate

+234-1-2702551 Ext 2724

doluranti@olaniwunajayi.net



www.olaniwunajayi.net



Olaniwun Ajayi LP



Olaniwun Ajayi LP



@OlaniwunAjayiLP