

A CRITIQUE OF THE ADMINISTRATIVE PROCEEDINGS COMMITTEE

1. INTRODUCTION

1.1 The Administrative Proceedings Committee (the Committee) is an internal administrative committee established under Section 851 of the Companies and Allied Matters Act 2020 (the Act). A similar committee exists under the Securities and Exchange Commission and so it was only a matter of time that the Corporate Affairs Commission would set up their committee.¹ To fully appreciate the recently established committee, it is necessary to discuss the two committees.

1.2 The APC Committee (SEC) was established pursuant to Section 310(1) of the Investment and Securities Act 2007 and Rule 599(1) of the Securities and Exchange Commission Rules and Regulation 2013 to hear complaints on alleged violations of securities laws governing the market. Whilst the APC Committee (CAC) was established pursuant to Section 851 of the Companies and Allied Matters Act 2020 to resolve disputes or grievances arising from the operation of the Act and impose administrative penalties for contravention of provisions of the Companies and Allied Matters Act.

2. CONSTITUTION OF THE ADMINISTRATIVE PROCEEDINGS COMMITTEE

2.1 Under the Investment and Securities Act, 2007 and SEC regulations, the constitution of the APC (SEC) is determined by the SEC. Based on this, it consists of the Director-General of the SEC (who presides), members of the Board of the SEC, Directors in the operations departments of the SEC and observers who are representatives of trade associations in the market e.g. the Associations of Stockbrokers, Registrars, Trustees, Issuing Houses etc. Where a person other than a member of the Commission holds office on the committee, then it must be in accordance with his terms of appointment.

2.2 The Companies and Allied Matters Act makes specific provisions for the constitution of the APC (CAC). It consists of the Registrar-General (chairman), five representatives from the operational departments of the Commission, one of whom shall be from the Compliance Department, a representative of the Federal Ministry of Industry, Trade and Investment. It would also have a secretary who must be an officer of the Commission with at least 10 years post-call experience in the legal profession.² In addition to other members, the Committee may co-opt persons at any of its meetings, as observers, representatives of relevant associations, including associations of shareholders, registrars, or trustees as considered necessary.

¹ Section 303(5) and 310 of the Investment and Securities Act 2007

² Section 851(1), (3) of the Companies and Allied Matters Act 2020

2.3 It would seem that the Committees are interested in including the general public to boost the quality of processing decisions but under the APC(CAC), they do not count towards a quorum nor do they have the right to vote on decisions.

2.4 The quorum at a sitting of the APC (CAC) is four in which the chairman presides at every meeting. In his absence, members present shall elect one of their numbers to preside over the meeting. Determination of any issue shall be by a simple majority of members present and where there is an equality of votes, the chairman or member presiding shall be entitled to a casting vote. Whereas the quorum of at a sitting of the APC (SEC) is to be determined by the SEC Board and there are no provisions as to how the committee determines any issue.

2.5 All decisions of both Committees are subject to confirmation by the Governing Board of the CAC and SEC respectively. Therefore, the board exercises supervisory jurisdiction over the Committee to aid in fair and accessible justice and keeping the committee under review. However, members of the governing board may also be members of the committee like for instance the Registrar- Member is a member of both the committee and the Board. This raises concerns about the level of independence and impartiality of decisions of either Committee.

3. JURISDICTION OF THE COMMITTEE

3.1 The APC (CAC) has general jurisdiction over any dispute or grievances arising from the operations of the Act or its regulators and persons alleged to have contravened the provisions of the Act. Also, it has original jurisdiction over objections to the registration of names of companies, limited liability partnerships, limited partnerships, business names, or incorporated Trustees.³

3.2 With this general jurisdiction, the line between the jurisdiction of the Federal High Court and the Administrative Proceedings Committee is rather blurred and so unclear as to whether an aggrieved can do away with going to the Administrative Committee and proceed to court or whether it is a condition precedent for matters in court. However, it is certain that for objections to the registration of names of companies, limited liability partnerships, limited partnerships, business names, or incorporated Trustees must go first to the APC (CAC) before proceeding to the Federal High Court on appeal.

3.3 On the other hand, the jurisdiction of the APC(SEC) is more defined as it has jurisdiction over all disputes between:

- a. Capital Market Operators
- b. Capital Market Operators and their clients
- c. The Commission and Capital Market Operators
- d. The Commission and the Stock or Commodity Exchange or Capital Trade Point

3.4 It must be noted that these Committees do not deliberate on criminal violations under the jurisdiction of law enforcement agencies and office of the Attorney General of the Federation. Where matters before the Committees reveal any criminal act or conduct, they recommend same for criminal prosecution.⁴

³ Section 857(2) of the Companies and Allied Matters Act 2020.

⁴ Section 851(10) of the Companies and Allied Matters Act 2020, Schedule VIII of the Securities and Exchange Commission Rules 2013.



4. PROCEEDINGS OF THE COMMITTEE

4.1 Subject to the provisions of the Companies and Allied Matters Act 2020, the APC (CAC) regulates its proceedings and where parties are invited to attend, they are to do so in person or through their legal counsel to represent them at the proceedings. The proceedings are recorded on audio and visual tape or such other electronic devices.

4.2 At the end of the proceedings, the decision of the Committee is dispatched to the affected parties no later than 14 (Fourteen) days after the confirmation by the Board. However, in the case of objections to the registration of names, decisions, and reasons for it are to be made available to the public within 30 (Thirty) days.

4.3 The sanctions which may be imposed include administrative penalties, suspension or revocation of registration, recommendation for criminal prosecution, indictment by professional bodies, fines, warnings amongst others. Where parties are dissatisfied with the decisions of the Administrative Proceedings Committee, they may appeal to the Federal High Court.

4.4 On the other hand, the proceedings of the APC (SEC) and sanctions which may be imposed are set out under Schedule VIII of the Securities and Exchange Rules 2013.

5. NATURAL JUSTICE AND FAIRNESS BEFORE THE ADMINISTRATIVE PROCEEDINGS COMMITTEE

5.1 The principles of natural justice and fairness are at the foundation of decision making. Natural justice requires that a person receives a fair and unbiased hearing before a decision is made that will negatively affect them. The three main requirements of natural justice are adequate notice, fair hearing and no bias.

5.2 The bedrock for establishing the Administrative Proceedings Committee (CAC) is to provide the opportunity of being heard for persons alleged to have contravened the provisions of the Companies and Allied Matters Act 2020 or its regulations. Thus, the principles of natural justice and fairness are at the foundation of APC's decision making but could it be said to be only in writing and not in practice?

5.3 As noted earlier, all decisions of the APC (CAC) are subject to the final confirmation by the Board of the CAC who may also be members of the APC. One of the requirements of natural justice is that the person making the decision must act impartially when considering the matter and must not have any relationships with anyone that could lead someone to reasonably doubt their impartiality. A reasonable person evaluating the constitution of the APC (CAC) will immediately doubt their impartiality.

5.4 Whilst noting their efforts towards achieving impartiality by involving the general public, they prove futile as the persons invited cannot vote and, in the end, the Commission determines the decision of the APC(-CAC). When the person who contravened the provisions is the CAC, can an aggrieved person be assured that the governing board of the CAC will not be biased in reaching its decisions?



6. CONCLUSION

6.1 The provisions of the Companies and Allied Matters Act 2020 does not succinctly cover all necessary parts of the Committee and its proceedings unlike the APC (SEC). However, it is expected that once the committee is set up and running, regulations guiding its proceedings will be set out.

6.2 The establishment of the Administrative Proceedings Committee does not deprive the Federal High Court but relieves the court of the caseload for matters whilst strengthening the culture and integrity in the registration and operation of business organisations in Nigeria.

6.3 However, it is not without its disadvantages. For instance, the level of independence and impartiality where members of the governing board may also be members of the committee, the interested persons invited only have right of attendance limiting the general public's involvement in decision making. Nevertheless, it is expected to be a vital tool in the Corporate Affairs Commission's enforcement machinery.

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