REGULATION AND ADJUDICATION OF DISPUTES IN THE SECURITIES BUSINESS: A CASE AGAINST STATUTORY CONSTRAINTS IN NIGERIA.

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1. Introduction

The Investment and Securities Act, 1999 (hereinafter referred to as ISA 1999) is a comprehensive legislation in respect of investment in shares and generally in securities business. It is an answer to the shortfalls noticed in the application of previous laws on investment in securities. These previous laws include the Securities and Exchange Commission Acts of 1978 and 1979

The legislators in drafting these laws proceeded on the basis that having a securities law that would provide a framework for securities business without a legal body with oversight functions and disciplinary powers would be a legislative act in futility. The consequence of this situation may be likened to the great stock crash of 1929 which led to a slump of the United States economy. Thus, the United States government was prompted to enact the Securities Act of 1933 which provided guidelines for securities business. This Act did not create any legal body with an oversight function. One year after the Act became operative, it was discovered that the absence of a body with oversight functions, in spite of the new law, deprived the market of the needed control to forestall a re-occurrence of the stock crash. So, in 1934 the Securities and Exchange Commission Act was enacted. Thus, began the world over, the regulation of security business.

In Nigeria, the first regulatory body, known as the "Capital Issues Commission" (CIC) was created in 1973 by the Capital Issues Commission Act. Apart from regulating the timing of issues, it also determined the floatation price of new issues and general regulation of the capital market. The Securities and Exchange Commission Act 1979 repealed the CIC and in its place created the Securities and Exchange Commission which operated till 1988 when a new Securities and Exchange Commission Act was enacted. The power of the Securities and Exchange Commission (SEC) under the 1988 Act was enlarged to include capital market development. However, the current legal regime on securities business is the Investments and Securities Act, 1999. The Act, while abolishing the SEC under the 1988 Act created the current SEC.

This article will therefore, dwell essentially on two institutions created by the Investments and Securities Act, 1999 (ISA 1999) for the purpose of implementing the provisions and intendment of the securities law. The institutions are the

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Securities and Exchange Commission (SEC) and the Investments and Securities Tribunal (IST).

2. Securities and Exchange Commission (SEC)

General

The SEC was created by section 1 of the Investment and Securities Act, 1999. In doing so[1] the Act made SEC a body corporate with perpetual succession[2], headquarters in Abuja[3] and power to create zonal offices throughout the states of the Federation[4]. Its composition[5] is inclusive of a chairman; representatives of the federal Finance Ministry; Central Bank of Nigeria; two full time Commissioners; the Director-General and five Commissioners. All, except the Director-General and the two full time Commissioners, are appointed on part-time basis.

The functions of SEC are provided for in section 8 of ISA 1999. The functions can be grouped into three broad areas;

- Investor protection
- Capital Market Development
- Educational

Investor Protection

This function involves registration of securities and operators within the market, as provided for in section 8 (a and b) of ISA 1999. Thus, in using registration as a tool of regulation, SEC, make it mandates for all fund raisers to register the instruments through which such funds are to be raised, whether through shares, debentures or bonds. The law also requires that all players in the capital market must register with SEC. This registration is underlined by the desire of having strict and effective control over players and activities in the market. Thus, in **SEC v. Prudential Securities & 9 ors**[6] the SEC instituted an action to restrain the Defendants/Respondents, their agents, servants and privies from participating in the capital market until they register with SEC, but while the action was subjudice, the Defendants/Respondents complied[7] with the registration order.

Investors protection also involves inspection, surveillance and investigation. SEC inspections could either be routine inspections, off-site and on-site inspections. It is on-site where there is a physical examination of the office of the market

[1] Section 1 Investments and Securities Act, 1999. (ISA 1999)

[2] Ibid Section 1(2)

[3] Section 1(3), ISA 1999

[4] Ibid

[5] Section 1(2), ISA 1999

[6] (1992) 1. S.L.R 34

[7] Securities and Exchange Commission Vs Dominion Trust Ltd. (1992) 1. S.L.R 53

operators, while off-site inspection involves the call by SEC of specific documents to be brought to it for inspection. Investigative and surveillance powers as tools of regulation, are derived from ISA 1999 and the Rules and Regulations made pursuant thereto.

Capital Market Development.

This function of SEC is performed whenever expansion of the market is done. The expansion here implies increase in the existing number of trading floors, improvement in the number of days within which to complete a transaction and equipping the market with up-to-date trading and communication gadgets. The Nigerian Stock Exchange has at present 9 (nine) trading floors across Nigeria. A subsidiary of the stock Exchange, Central Securities Clearing System (CSCS) was incorporated to act as a custodian for the purpose of effective securities transaction.

Educational Function

It is the statutory duty of SEC to sensitize the citizenry to the presence and use of securities as instruments of investment. This is achieved through the medium of workshops, conferences, seminars and public campaigns.

3.Practical/Logistical Problems of Securities &.Exchange Commission

As in all human activities, SEC, as an apex regulatory body, saddled with the primary responsibility of investor protection, and development of the capital market, is hampered in the performance of these functions by some practical problems.

Absence of Statutory allocation

The SEC, by government policies, is a parastatal under the Federal Ministry of Finance and by this fact SEC is statutorily required to report to the finance ministry. This, however, presupposes that a start-off grant of finance for SEC to carry out duties was given to it by the finance ministry through budgetary provision. Now the SEC is empowered by ISA 1999 to establish and maintain a fund into which will be paid money provided by the Federal Government to the Commission. This provision appears to suggest that government gives subvention to SEC but the Director-General in an interview claimed that SEC does not receive any money whatsoever from the government.[8] Therefore, SEC relies for funds on the charges, fees and fines realized in the performance of its duties as provided for in section 15 of ISA 1999. The monies

[8] Sec News Vol.1 No. October 2002 at page 13

generated by this means alone are barely enough to cover over-head, which leaves nothing for effective policing of the securities business and capital market. This poor state of finance and the subsequent inability to effectively perform culminated in the rating of SEC seventy-five (75%) percent compliant with International Organisation of Securities commissions (IOSCO'S) directive principles of regulation. Though an impressive rating, it reflects the financial handicap suffered by SEC.

Lack of Up-to-Date Equipment

The inadequate funding of SEC translates also to the lack of up-to-date technology which enhances activities regarding regulation of the securities business and the capital market. The absence or lack of these up to date technology is compounded by the absence of its own building into which these equipment may be installed. There are equipments which do not lend themselves to frequent movement and re-fixing as such acts may damage the equipment and because SEC is, as at the time of writing, occupying a leased building it cannot, of necessity, acquire such equipments. The absence of a V-SAT has made it difficult for the zonal offices and the headquarters to be inter-linked. Globalization is a concept that acts to remove economic barriers and thus widen the fund raising horizon of many corporate organizations and government, but this opportunity can hardly be fully and effectively harnessed where the apex regulatory body is starved of funds to complement this effect of globalization.

Government disinterest in Securities Business

The inadequate provision of sufficient funds to work with is informed by the disinterest which the Federal Government has for securities market as for over fifteen years prior to the 2002, the Federal Government has never accessed the capital market to raise funds for financing deficit budget. This disinterest is exemplified in the way government directs its budgetary policies towards the money segment of the financial market. Thus, in formulating monetary and fiscal policies recourse is never had to SEC for input, making the policies bank-driven. By this neglect, the government loses sight of the fact that as an engine of a nation's economy, the greater and more efficient the capital market is the more and better profits public companies make, leading to greater dividends on the part of the shareholders as the public companies source and raise funds for expansion of their business resulting in the creation of jobs. The ultimate of the chain reactions is to leave more funds in the hands of the government by means of revenue from taxes – company income tax from the profits of the public companies, personal income tax from earnings of the employee, value added and excise tax from the company's sale of its products, withholding tax from the dividends of shareholders and capital gains tax from the disposal of shares by shareholders. The revenue thus realized empowers the government to carry out its social responsibilities. It has been suggested[9] that in order to deepen the capital market and to foster investor confidence, the government should access the capital market for funds which will engender full participation by the citizens in the capital market. The viability of the capital market would have been enhanced had the government raised the sixty-four (₦64b) Billion Naira used in the construction of the National stadium at Abuja which hosted the 8th All African Games. This is in sharp contract with Australia where the funds for the construction of all the stadia that hosted the 2000 Olympics were raised in the capital market with the understanding that the projects would offset the cost of construction and probably in future raise further revenue for the government of Australia.[10]

Irregular Review of Statute

The immediate consequence of this lack of interest in SEC and capital market affairs is that the reviews and amendments of the laws governing securities business are too far apart and irregular. This translates into SEC operating under a legal regime that is obsolete compared with international trends and practices. The Companies and Allied Matters Act (CAMA) 1990, for example, is fifteen (15) years old since its commencement, and no overall review has been done. The ISA 1999 came into existence after the Securities and Exchange Commission Act, 1988 had been repealed by it eleven years after its enactment. The ISA 1999 is, itself, due for a review after five years of its application. The insufficiency of the draconian nature of the provisions of the ISA 1999 makes for flouters and breaches to go with the most liberal punishment ever by any securities law. The U.S.A. for example, is the most liberal and deregulated economy in the world, but its securities laws are not as liberal as would be imagined. This is so because the capital market, the world over is prone to manipulations so as to cheat the system or defraud the innocent investors. The seriousness attached to SEC in America as well as securities business is illustrated by the swift government reaction to the recent wave of corporate collapse (particularly Enron and WorldCom) by the introduction of an accounting bill designated as Sarbanes Oxley Act, 2002 to install corporate responsibility and punish criminality. The Act also seeks to increase to ten (10) years the penalty for securities fraud and to empower U.S SEC to freeze payments to corporate executives under investigation.[11] This was followed by a granting of one hundred million

9 Ekineh D: Deepening the Nigerian Capital Market: Regulatory, Supervisory and Operational Imperative in a Global Financial Environment, being a paper delivered at the 1st Annual National Capital Market Conference at Sheraton Hotel & Towers on 13th & 14th October, 2000.

10 Ibid at page 13

11 SEC News Vol.1 No.1 October2002 at page 19

dollars ($100m) to U.S. SEC to further empower it in its regulatory responsibilities which will forestall a repeat of the capital market crash of 1929.[12]

Unethical Behaviour by Operators

What has equally been a problem for SEC is the effect of misconduct by members of some of the professional bodies acting in the capital market, which negatively impact in the success of public quoted companies and erode investor confidence. Instances abound such as Enron in America and African Petroleum (AP) in Nigeria, where the accounting report of public quoted companies painted the company as doing very well, whereas, opposite is the case, prompting the collapse of an erstwhile successful company. The case of the American corporate giant Enron is too fresh to be forgotten. A Houston Jury had found Finance Director Dan Boyle of the company guilty of falsifying accounting records which artificially boosted the profits of the company.[13] Here in Nigeria, the case of AP is still generating shock in investors across the country. SEC has investigated the matter, but has not made its findings public. As a result of this, SEC has been holding talks with these professional bodies, such as the Nigerian Accounting Standards Board and Institute of Chartered Accountants of Nigeria (ICAN) with a view to sensitizing its members on the consequence (for the companies and for themselves) of the falsification of accounting records.[14]

Buy-to-Hold Syndrome

The attitude of Nigerian investors, that is, buy-to-hold, impact negatively on the viability of the securities market. This attitude brings about an apparent dearth of securities speculators through whose activities there is a high rate of securities turnover in the capital market. This may not directly affect the duties of SEC, but a buy-to-hold (sometimes up to 15 years) attitude reduces the availability of tradable stocks.

4. Statutory Limitations on the Power and Functions of the Securities and Exchange Commission

Suspension of SEC

Securities and Exchange Commission is under the Federal Ministry of Finance which acts as a supervising ministry over the activities and affairs of the SEC. It is to this ministry that the SEC reports. The Federal Minister of Finance by the provisions of section 255 of ISA 1999 can, without recourse to the SEC, exempt

[12] Ibid page 13
[13] Business Times of Nov. 8-14, 2004 at page 42
[14] SEC News Vol.1 No.1 Oct. 2002 at page 20

any person or class of persons who deal(s) in investment business or securities market from the operation of the provisions of the ISA 1999. Where this happens it presupposes that the SEC has no power whatsoever, be it supervisory, disciplinary or managerial, over the exemptee. This in totality undermines the power and functions of SEC. To such exempted person, the ISA 1999 exists as though it does not. The section provides the ground upon which the Minister may exempt such person or persons, that is, in the public interest, but what amounts to public interest in this circumstance is subjective. The provision of this section does not make for the Finance Minister to consult any person whatsoever for the purpose of determining what in the circumstance amounts to public interest. This limitation on the powers and functions of the SEC is climaxed in the power of the Finance Minister to supercede the Commission in all matters and in all circumstances. What amounts to a ridicule of the SEC's power and functions is the fact that the reason(s) upon which the omnipotent power of the Minister will descend on SEC is questionable and highly subjective. There is nothing in the length and breadth of ISA 1999 which provides objective or statutory grounds upon which the Minister may so act. Under section 247(1) of ISA 1999 it would undoubtedly appear as if the law has provided statutory grounds for the invocation of the Minister's power in superceding or limiting the SEC's powers and functions, but upon closer scrutiny it would be realized that the wordings of section 247(1)(a-d) are amorphous and highly equivocal. First, subsection (a) of that section provides that the Minister may recommend for the suspension of the SEC to the President and Commander-in-Chief if he (Minister) is of the opinion that on account of "grave emergency" the SEC is unable to discharge the functions and duties imposed on it by or under the ISA 1999. Nowhere in the ISA 1999 is the word 'grave emergency' defined but it is here submitted that what may readily come to the mind of any unbiased observer is that 'grave emergency' can be interpreted to mean a war situation. This conclusion has been reached after a lot of propositions have been considered. Such proposition include; death of all members of the SEC, which is most unlikely; and even where this happens a new SEC can be constituted so as not to lead to the suspension of the entire SEC. Moreover, the performance of the functions and duties of the SEC hinges on the availability of funds. Where no funds are available the performance of these functions are either truncated or jeopardized. These do not by any stretch of imagination amount to or mean grave emergency as to warrant a recommendation for the suspension of the SEC. If, therefore, grave emergency is akin to a war situations it is deducible that the Minister would not be in a friendly situation as to hold an opinion in the first place, because he equally would be affected by the war situation which has the likelihood of negating normalcy. Paragraph (b) of subsection 1 of section 247 ISA 1999 also gives another ground which is that where the SEC has persistently made default in complying with any directive issued by the Minister, then suspension of the SEC can be recommended by the Minister to the President and Commander-in-Chief. There appears to be a lacuna in this provision because the ISA 1999 is silent as to whether or not the Minister could ask for justification or reasons for the persistent default in complying with his directives. The SEC after thoroughly analyzing the Minister's directive may find its implementation impossible or difficult, or awkward and unprofitable. That two heads are better than one also applies in such scenario as this, for the SEC is composed of professionals and men experienced in capital markets matters[15] and corporate issues.[16]

The sanction of suspension, upon the Finance Minister's recommendation to the President, runs counter to the all important doctrine of natural justice, good conscience and equity, which is expressed in the latin maxim 'audi alteram parterm'. No harm would be done to the securities law, were it to recommend or provide that the President, after the receipt of the Minister's recommendation for suspension, constitutes a committee of enquiry with a view to examining the situation or circumstances that led to the Minister recommending suspension of a Commission that is composed of professionals and competent persons. The soundness of any reason for the persistent default may persuade or convince the Minister to act otherwise. Finally, advising or recommending for suspension of the Commission when circumstances exist in the public interest brings the exercise of such power within the realm of subjectivism. The invocation of section 255 of ISA 1999 totally eliminates the relevance of the Securities and Exchange Commission.

Moribund Administrative Proceedings Committee (APC)

The ISA 1999 gave the SEC powers to resolve disputes amongst operators in the capital market and to sanction breaches of the laws, rules and regulations applicable thereto. To achieve this, therefore, SEC, in schedule VII of its rules and regulations created and empowered the Administrative Proceedings Committee (APC) to discharge SEC's function of adjudicating over issues and breaches within the capital market. Therefore, the sole purpose of APC, as a quasi-judicial body, is to give opportunity for hearing to capital market operators and other institutions in the market who are perceived to have violated or threaten to violate the provisions of ISA 1999 and Rules and Regulations made pursuant thereto or such operators against whom investors have lodged complaint.

The establishment of the APC by SEC has been one of its most effective moves in the regulation of the capital market. A law is ineffective where there are no sanctions for its breaches. The sanctions remain irrelevant and inapplicable where there are no adjudicative bodies to establish breaches and infringements so as to

[15] Section 2 (1)(a) Investments and Securities Act, 1999

[16] Ibid Section 2(1)(f)

apply those sanctions. SEC would have been a moribund and ineffective body had it not been given powers of oversight within the capital market, but what orderliness would there have been were SEC to be given regulatory or oversight powers without an accompanying disciplinary powers?

The APC, under Rule 10 of the rules of Procedure is empowered, to examine issues on

- suspension or cancellation of registration of capital market operators.
- revocation of the certification of a Securities Exchange or Capital Trade Point.
- review of disciplinary actions taken by a Securities Exchange or Capital Trade Point against its members.
- dealing in securities or sale of securities to the public by unregistered persons.
- abuses of insider trading and others.

With the full take-off of the IST the APC may become redundant because parties may doubt the importance of APC if any party dissatisfied with its decision can always appeal to the IST. Besides, the mandate of the APC is also within the terms of jurisdiction of the IST. So, it may be more reasonable, even economical to go straight to the IST rather than expend energies at the APC level. This situation can only be avoided where the IST is vested with appellate jurisdiction only thereby making all operators, both institutions and individuals, within the capital market and other complainants to first seek redress at APC. In the alternative, the APC should be abolished now that the IST has commenced sitting.

The belief that SEC is amply living up to expectation in respect of instilling discipline in the capital market is deduced from the number of complaints looked into by APC and the readiness with which parties accept its decisions. In the year 2000, twenty administrative hearings were freshly handled out of which eight involved the corporation of De-canon Investment Ltd[17].

What has always been the question in respect of the APC decisions is whether the doctrine of fair hearing has been adhered to. This question often arises because the composition of the APC leaves much to be desired and may be said to breach the legal maxim that no one can be a judge in his own cause. The Commission may be a complainant, and through its APC, be the judge, whose decision will also be confirmed by the Commission. This state of affairs may engender a spate of certiorari actions by those who feel that the doctrine of fair hearing has been infringed upon.

[17] SEC's Annual Report and Accounts for 2000 at page 47

5. The Investment and Securities Tribunal (IST) and its Jurisdiction

The Investments and Securities Act, 1999 in section 224 created the Investments and Securities Tribunal (hereafter referred to as IST) to exercise adjudicative powers conferred on it by the law. This means that the IST is not a department or committee of SEC, but a creation of statute, which members, nine in total, shall be appointed by the Federal Minister of Finance. This power to appoint conferred on the Finance Minister appears to be absolute as there is no confirming authority. There shall be nine members with a Chairman who shall be a legal practitioner with at least a fifteen (15) year post – call cognate experience, particularly in capital market matters. Under the strict rule of literary interpretation capital market matters is narrow and this will not allow for expansion to accommodate matters of securities not dealt with in the capital market (Exchanges). For instance, a lawyer who has worked with SEC or in an investment department of a bank and not with or in the capital market may stand disqualified from acting as chairman of the Tribunal. There is, in section 224(2), a curious provision which is in conflict with section 234. The Investments and Securities Act, 1999, in section 224(2), provides that the Minister of Finance shall specify the matters and places in relation to which the tribunal may exercise jurisdiction. These 'matters' referred to in the section were equally stated by the Investment and Securities Act, 1999 in section 234(1) as the matters on which the tribunal may adjudicate. The question then is who as between the Act and Minister of Finance shall have final power to decide matters on which the tribunal can adjudicate? It is the supposition that in legal drafting and interpretation the last in time takes currency or precedence. Applying this, therefore the Finance Ministers powers have been superceded by the later provisions of Section 234(2).

The IST has been granted both powers and matters on which to adjudicate in the law establishing it. Section 234(2) authorizes it to determine issues relating to; the interpretation of any law, enactment or regulation to which Investment and Securities Act, 1999 applies; disputes between capital market operators and the Securities Exchanges or Capital Trade Point; disputes between capital market operators and their clients; and disputes between quoted companies and the regulators (SEC) or the Securities Exchanges.

A critical analysis of the matters upon which IST can adjudicate will reveal that state or local government matters or issues involving securities business have been excluded. Does this mean that, in spite of the right to assess the capital market in order to raise revenue by the issue of bonds, the state and local governments do not come under the jurisdiction of IST in the event of any misconduct or breach of the rules and regulations on their part? This issue may be resolved by the principle of derivation as the local and state governments issues can be conveniently handled under the disputes between capital market operators and their clients as well as in issues that go on appeal from the APC. The APC, on the question of jurisdiction, has wider reach over matters on which it can adjudicate than the IST. In all matters in respect of securities and capital market, the IST is a court with both original and appellate jurisdiction.

One peculiarity with the IST is that the law establishing it has statutorily fixed the time frame within which it must dispose of any matter that is before it.[18] What makes it peculiar is that the law has not just admonished it to expedite matters before it, but that such matters shall (mandatorily) be disposed of within three (3) months from the date of the commencement of the action. This is an improvement on the worrisome delay and clustering of matters in the traditional courts where cases stay as long as five years.

The IST, apart from matters into which it can inquire, has been empowered to do certain acts in the realization of its mandate. This includes power to; summon and enforce the attendance of any person and to examine him on oath, that is power to subpoena; require the discovery and production of documents; receive evidence on affidavits; call for the examination of witness or documents; review its decisions; dismiss an application for default or dealing matters ex-parte; set aside any order or dismissal of any application for default or any order passed by it ex-parte; and do anything which is incidental or ancillary to its functions.[19] All these functions and powers are in relation to investment and securities matters which make the IST a specialized civil court, and being so, criminal jurisdiction has not been conferred on it. Section 235 of Investments and Securities Act, 1999 provides that where, in the course of investigation (and also during APC hearings) SEC discovers evidence of possible criminality, it shall obligatorily pass such information to the appropriate criminal prosecuting authorities, such as, the Attorney-General of the Federation or State.

The judgments of the IST must be in writing of which certified true copies (CTC) shall be supplied to the parties upon request. Any party is free to enforce an award or judgment of IST when the party has registered a copy of such award or judgment with the Chief Registrar of the Federal high Court so as to enable the Federal High Court (officials) enforce it as if it were its own judgments. This procedure raises a fundamental question of legal status of the IST. The implication of this is germane in determining how the public views the judgment and decisions of the IST.

First, it implies that the IST has no enforcement powers in respect of its judgments and awards. If a court, established by an Act of Assembly, cannot enforce

[18] Section 236(5) Investment & Securities Act, 1999.
[19] Ibid Section 237 (2)

its judgments or awards then where is the relevance of its existence, activities and decisions? Parties may be discouraged in the first instance, from seeking justice from the IST knowing that whatever decisions taken thereat cannot be enforced except and until the Federal High Court is brought in by virtue of subsection 3 of section 241 of Investment and Securities Act, 1999. Obedience to this provision will presuppose additional expenses on the part of the party desirous of enforcing an award or judgment.

Secondly, this provision, that is section 241(3) brings to the fore the inherent contradiction and conflict between it and section 243 of ISA 1999 and section 6(4a) of the Constitution of the Federal Republic of Nigeria 1999. The IST is a creation of the National Assembly and therefore legitimate, but the legitimacy of its creation was derived from the combined effect of the provisions of section 6(4a) and 5(j) of the Constitution of the Federal Republic of Nigeria (hereinafter 1999 Constitution Section 6(4a) of the 1999 Constitution states that "Nothing in the foregoing provisions of this section shall be constructed as precluding the National Assembly or any House of Assembly from establishing courts; other than those to which this section relates, with subordinate jurisdiction to that of a High Court (underscore provided). The implication of this provision is to empower the National Assembly or House of Assembly of a state to create courts, but that such courts/tribunal must of necessity have subordinate jurisdiction to that of a High Court, either a Federal or a State High Court which presupposes that appeals ought to lie from such created courts to the High Courts either Federal or State. Investments and Securities Act, 1999, by virtue of section 241 (3) fulfills the intendment (IST being a tribunal of subordinate jurisdiction) of the 1999 Constitution when, in the absence of appeals from IST to the High Court, it enjoined parties wishing to enforce the IST's award or judgment to register same with the Chief Registrar of the Federal High Court (FHC) which registration implies an adoption of the awards or judgment by FHC as its own.[20] If this is so, then the provision of section 243 Investment and Securities Act, 1999 is in direct conflict with the 1999 Constitution particularly, section 6(4a) when it equates the IST to the High Court by making appeals lie from the IST to the Court of Appeal. It is the position of this paper that this provision of section 234 of ISA 1999 has been enacted in order to avoid a legislative quagmire that would ensue if after registering the awards or judgment of IST with the Federal High Court (thereby assuming the IST's awards or judgment to be its own) appeals still lie to the FHC on judgment it has assumed, adopted or enforced as its own.

[20] Section 241(3) Investments and Securities Act, 1999.

6. Conclusion/Recommendations

Conclusion

This paper has stressed the existence and importance of the institutions in the enforcements and regulation of securities business and discipline within the capital market. The relevance of these institutions is such that the government and the stakeholders must do everything that will positively impact on the securities business. It is true that no system is ever perfect, but attempt must be made to bring as near perfection as possible the activities, institutions and operators in the capital market. This desired situation is underscored by the fact that every progressive and vibrant economy must be a consequence of an effective capital market, which has been described as an engine room of any nation's economy[21].

An effective capital market requires a proactive Securities and Exchange Commission that will easily adapt to international standards, cause a regular review of the securities law and engender obedience of the laws by operators within the capital market.

Recommendations

Thus, it is the recommendation of this paper that adequate funds for effective oversight functions and capital market developments be budgetarily provided to the Securities and Exchange Commission. This is necessary as availability of money underlies the effective carrying out of its (SEC) statutory duties.

The securities laws of the country and the rules and regulations should be reviewed regularly to bring the provisions in line with international standards and developments in securities business. This would ensure the dispensing with obsolete provisions that cast doubt on the credibility and integrity of the Nigerian capital market.

The Investment and Securities Tribunal's Jurisdiction should be clearly provided for by the abrogation or amendment of the provision of section 243 of Investment and Securities Act 1999. Or, in the alternative, where amendment will be cumbersome the courts, as suggested[22] could use its inherent jurisdiction to apply the principle of judicial review or blue pencil rule[23] to pronounce the offensive provision null and void and of no effect.

[21] Anyameluhor T: Understanding the market: An overview of the Nigerian Financial market. SEC News Vol.1 No.2, Jan. 2003 page 21

[22] Akume A.A: "The unconstitutionality of the Investment and Securities Tribunal in Nigeria", BSULT. Vol 3 2004. at page 64

[23] Ibid at page 66.