

"AFRICAN CONTINENTAL FREE TRADE AREA (AFCTFA): FRESH FRONTIER FOR A CHARTERED SECRETARY/GOVERNANCE PROFESSIONAL"

FELICITATIONS & PROTOCOLS

A warm congratulations to ICSAN on the 45th Anniversary of its corporate existence.

The Honourable Minister of Industry, Trade and Investments, the President and the Vice President and the Registrar and all the eminent members of the Institute of Chartered Secretaries and Administrators of Nigeria, the highly intellectual panel of discussants, distinguished audience.

I am thankful for the rare privilege of addressing a gathering as august as this and, most importantly, the opportunity to speak to the topic: **"AFRICAN CONTINENTAL FREE TRADE AREA (AFCTFA): FRESH FRONTIER FOR A CHARTERED SECRETARY/GOVERNANCE PROFESSIONAL."**

AFRICAN CONTINENTAL FREE TRADE AREA (AFCTFA):

The conception and the ongoing execution of the obligations of AFCTFA are deliberate and audacious efforts at expanding the frontiers of commerce, diversity and prosperity across the African continent. In seeking to deepen the economic integration of Africans by creating a single continental market with free movement of business, people and investments, the AfCFTA is indeed a testament to the power of cooperation and a shared vision.

The unsavoury fact must have perturbed the A.U. and its brave champions of pan-Africanist agenda that Intra-Africa trade accounted for just **15 per cent of Africa's total trade in 2019 and 2018**. Indeed, more worrisome is that over the last ten years, intra-Africa trade has remained low as the highest recorded was **20% as far back as 2016**.

It was, therefore, a welcome development when in March 2018, three separate agreements were signed: the African Continental Free Trade Agreement, the Kigali Declaration, and the Protocol on Free Movement of Persons. The three agreements can work to reduce bureaucracy, harmonise regulations and avoid protectionism. It will also expand intra-African trade through better harmonisation and coordination of rules across Africa.

The African Continental Free Trade Area (AfCFTA) will be the world's largest free trade area since the formation of the World Trade Organization. It aims to

bring together all 55 member states of the African Union (A.U.), covering a market of more than 1.2 billion people.

AfCFTA has eight strategic objectives: (1) creating a single market for goods and services, facilitated by the movement of people; (2) contributing to the movement of capital and people and facilitating investment; (3) creating a continental customs union; (4) expanding intra-African trade; (5) resolving the challenges of overlapping memberships in regional economic arrangements; (6) promoting sustainable and inclusive economic development; (7) boosting industrial development; and (8) enhancing competitiveness.

THE CHARTERED SECRETARY/GOVERNANCE PROFESSIONAL – FROM DISDAIN TO NOBLE

The position and status of the Company Secretary have progressively changed for the better through legislative and judicial interventions. The remarkable transition from a mindset that sees Company Secretaries as mere "Note takers" to a current conception of them as a vital part of Companies Management and advocates for efficient governance structures for companies.

The dicta of both Lords Esher, M.R and Denning, M.R in 1887 and 1971, two renowned English Jurist, are loud evidence of the fortunate transition. In the case of ***Barnett Hoares & Co. v. South London Tramways Co. [1887] 18 QBD 815***, Lord Esher ruled that:

"...a secretary is a mere servant. His position is that he has to do what he is told, and no person can assume that he has any authority to represent anything at all, nor can anyone assume that statements made by him are necessary to be accepted as trustworthy without further inquiry"

In contrast with the position of Lord Denning, M.R. in ***Panorama Developments (Guildford) Ltd. v. Fidelis Furnishing Fabrics [1971] 2 QB 711*** when he stated that:

"A company secretary is a much more important person nowadays than he was in 1887... This appears not only in modern Companies Acts, but also by the role which he plays in the day-to-day business of companies. He regularly makes representations on behalf of the company and enters into contracts on its behalf, which come within the day-to-day running of the company's business...All such matters now come within the ostensible authority of a company's secretary".

As a former vestige of the British empire, Nigeria shared a common conception about the Company Secretary and has also made the positive change by recognising that ***"A company secretary is indeed a high ranking officer in the company set up and is indeed part of the management of the company"*** ***Wimpey (Nigeria) Ltd V Balogun (1986) 3 NWLR (Pt 28) 324.***

Today, the company secretary owes a duty to the management, board of directors, shareholders and the company with statutory responsibilities, corporate governance, Board Development, Board and Committee processes, Communication with stakeholders. As well as Reporting and disclosure obligations.

TRANSNATIONAL COMPANY SECRETARIAL SERVICES - FRESH FRONTIER FOR PRACTITIONERS UNDER THE AfCTFA

One of the critical Protocols of the AfCTFA is the Trade in Services Protocol. Though still in embryo and subject of future negotiation, the expectation is that professional and business services such as legal, accounting, or company secretarial/corporate governance practitioners would exchange their professional services for value across the African borders.

Under Articles 7 and 8 of the AfCFTA Agreement, all countries are to participate in the Phase 2 negotiations, including trade in services protocols. The A.U. team are currently studying the functional patterns adopted by the World Trade Organisation's General Agreement on Trade in Services (GATS) to understand better the dynamics of liberalising the provision of services among member states. Upon completing the negotiation and firm accords on the terms of engagement by States Parties, the provision of professional services to clients within foreign jurisdictions would be catered for, physically and otherwise, without the restrictions imposed by differing legal regimes or cultural, economic, political and religious diversities.

A model for illustration and adoption is to understand the modus operandi of law firms that play in the global space.

- a. France permitted foreign professional advisers on legal services to render services to clients mostly in the areas of civil and commercial transactions and to establish branch offices of their foreign law firms in Paris. These professional advisers, mostly American & English lawyers, were commonly referred to as "**conseil juridique international**" (international legal advisers), constituted an unregulated body of foreign lawyers distinct from the regulated court lawyers called the advocats.

- b. The admission of foreign lawyers to practice as "legal consultants" in the United States of America first occurred in the State of New York following the amendment of the New York State Judiciary law by the State legislature to permit rules to be made to license "**as a legal consultant without examination and without regard to citizenship . . . a person admitted to**

practice in a foreign country as an attorney or counsellor or the equivalent."

Pursuant to this amendment, the New York Court of Appeal, adopted Part 521 of its Rules to formally recognise the status of legal consultants, also called foreign legal consultants. Once registered, a legal consultant is qualified to render legal advice on the law of his local jurisdiction, or upon international law or the law of New York as well as federal laws operating within the State of New York.

- c. The cross-border legal practice had also been permitted within the European Community by the European Union (E.U.) Law since the 1970s. The 1977 Lawyers' Services Directive allows lawyers in the European Community to provide legal services throughout the community. Similarly, the E.U. Directive on Lawyers' Establishment Rights 1998 facilitates practice of the profession of lawyer on a permanent basis in a member-state other than that in which the qualification is obtained.
- d. At a regional level, the North American Free Trade Agreement (NAFTA) signed on 12 August, 1992 to encourage the adoption of **Legal Consultant Rules in States interested in trade with Canada and Mexico**. Cross-border trade in services are covered in Chapter 12 of NAFTA while Annex 1210.5 deals with foreign legal consultants. The Annex 1210.5 seeks to encourage the adoption of legal consultant rules to facilitate cross-border provision of legal services. It is clear from the foregoing that efforts had been made at national and regional levels towards the globalisation of legal practice long before the adoption of GATS by the member -states of the WTO. However, with GATS, many more countries have made commitments on the liberalisation of legal services thus facilitating global legal practice on a wider scale.
- e. For instance, following the permission granted by the Chinese government about 1992 for foreign law firms to establish representative offices in mainland China, several foreign law firms from the United States of America, Britain, Japan, Germany and Australia set up local offices in major Chinese cities like Beijing and Shanghai.

Thus, in discussing the "typologies of globalisation" of law firms operating outside of their national boundaries, **Faulconbridge, Beaverstock, Muzio and Taylor** identified the following forms or models amongst global law firms:

1. As independents operating as global firms developed through organic growth of international office networks staffed by expatriate partners

and lawyers and locals, including merger and acquisition with local or host law firms or a combination of organic growth and merger and acquisition activity;

2. Through formal network relationships and strategic **alliances/partnerships** with local or host law firms; eg (Olajide Oyewole & DLA Piper Africa) Consortium formation for cross-border transactions
3. Through the emergence of conglomerates providing a suite of professional services of which law is one; and
4. Through ad -hoc membership in a loose, ephemerally-formed **affiliation or network with local or host firms.**

Zacchaeus Adangor, an erudite teacher of law, added that other models of transnational arrangement for the globalisation of legal practice are **outsourcing briefs to lawyers offshore**, which allows lawyers in particular local jurisdictions to address critical legal issues based on the applicable local laws. Outsourcing of briefs by offshore law firms to lawyers in local jurisdictions. Similarly, **franchising of local law firms** has also been adopted whereby local law firms take direct charge of legal services entrusted to the offshore firms by clients within local jurisdictions.

Therefore, my positive proposition is that company secretarial/governance professionals can tow the same courses highlighted above to advance their international ambitions.

CONSTRAINTS

There are no limitations or restrictions on market access to the service industry in Nigeria, except professional qualification requirements. This professional qualification requirement constitutes, in one breath, a limiting factor for foreigners and in another breath, a protectionist shield anchored on and driven by public interest for Nigerians.

As a limiting factor, the cases of **Chief Awolowo v. Hon. Mallam Usman Sarki and Chief Awolowo v. Federal Minister of Internal Affairs** come to mind and, more particularly, the combined reading of Rule 10(1) of the Rules of Professional Conduct for Legal Practitioners 2007 (RPCLP), sections 24, 2, 7 and 8 of the Legal Practitioners Act 1975, imposes the use of Stamps on Legal Documents and defines who a legal practitioner is and the associated rights.

- CJN's power to issue warrant. No record of exercise of power

WAY FORWARD/CONCLUSION

As Professionals that will be part of the eventual beneficiaries of a liberalised structure for trade in services in Africa, let me admonish that ICSAN as an Institute is at liberty to make a formal presentation to guide the A.U. team and the Nigerian government on the best structural and legal template that can be adopted to further its multinational drive.

References

- Globalisation of Legal Practice in Nigeria: Challenges and Obstacles March 2016
Zacchaeus Adangor
https://www.researchgate.net/publication/331685049_Globalization_of_Legal_Practice_in_Nigeria_Challenges_and_Obstacles) Journal of Law, Policy and Globalisation ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.51, 2016
- *Nigeria: The Company Secretary In Nigeria - Pertinent Issues 21 February 2014* by Felicia Mosuro <https://www.mondaq.com/nigeria/corporate-and-company-law/292694/the-company-secretary-in-nigeria--pertinent-issues>
- A Business Guide To The African Continental Free Trade Area Agreement
https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/AfCFTA%20Business%20Guide_final_Low-res.pdf)
- International Trade in Goods and Services in Nigeria: Overview by Damilola Salawu, Damilola Oyebayo, Damilola Obafemi and Doyinsolami Oyeleye, Olaniwun Ajayi LP [https://uk.practicallaw.thomsonreuters.com/w-0164262?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co_anchor_a249030](https://uk.practicallaw.thomsonreuters.com/w-0164262?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a249030)
- Companies & Allied Matters Act (CAMA) 2020
- The changing role of the company secretary; Joanne Whelan & Mary Shier
<https://www2.deloitte.com/ie/en/pages/legal/articles/changing-role-secretary.html>
- James R. Faulconbridge, Jonathan V. Beaverstock, Daniel Muzio, and Peter J. Taylor, "Global Law Firms: Globalization and Organizational Spaces of Cross-border Legal Work" (2008) 28(3) Northwestern Journal of International Law and Business 455, 465-466. Cited by Zacchaeus.
- Financial Reporting Council of Nigeria Act, No. 6, 2011.