

Nigeria's Court of Appeal holds failure to register agreements with NOTAP does not render such agreements invalid

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Executive summary

Nigeria's Court of Appeal (CoA) reversed the judgment of the Federal High Court (FHC) in the case of *Stanbic IBTC Holdings Plc (Stanbic or the Bank) v Financial Reporting Council of Nigeria (FRCN)* which pertains to the validity of an agreement that has not been registered with the National Office for Technology Acquisition and Promotion (NOTAP).

The FHC had, on 14 December 2015, ruled that failure to obtain the NOTAP approval on a contract or agreement which falls under the NOTAP's purview, renders such contract or agreement illegal and void, and that payment in respect of such contract could not be made.

In its ruling, the CoA held that agreements or contracts for which no NOTAP approval has been obtained remains valid and enforceable. The ruling which was in favor of Stanbic, affirmed that the non-registration of a registrable agreement or contract with the NOTAP should only affect the ability to make foreign payments through the Central Bank of Nigeria (CBN) or a Nigerian licensed bank in respect of the financial obligations of the parties under such agreement or contract.

Detailed discussion

The appeal by Stanbic is against the decision by the FHC, Lagos (Lower Court), delivered on 14 December 2015. The questions submitted to the lower Court by Stanbic for answers were on the legal consequences of failure to register a registrable agreement under the *NOTAP Act, 1979* establishing the NOTAP (2nd Respondent) and on the powers of the FRCN (1st Respondent) under its *Establishment Act, 2011 FRCN Act*.

In its ruling, the FHC held that failure to obtain the NOTAP approval on a registrable contract rendered such contract illegal and void. The FHC further held that payments could not be made in respect of such contracts.

Stanbic then filed an appeal at the CoA to determine among others, the following issues:

1. Whether the *NOTAP Act* applies to agreements for the export of technology from Nigeria to a foreign country.
2. Whether the appellant's affiliate software license agreement of 2 September 2013 was approved and registered with the NOTAP.
3. What is the effect of the failure to register an agreement that is registrable under the *NOTAP Act, 1979*?

The Judgment

After considering the arguments of the parties, the CoA ruled as follows, resolving all issues for determination in favor of Stanbic:

Regarding the first issue, the CoA, in setting aside the decision of the lower court, ruled that the *NOTAP Act* applies to the importation of technology into Nigeria and not on the export of technology from the country. Relying on Section 4 of the *NOTAP Act*, the Court ruled that the purpose for which NOTAP was set up is to regulate and monitor the execution of contracts or agreements for the acquisition and importation

of foreign technology into Nigeria and that none of the provisions of the Act deals with or refers to the exportation of Nigerian technology to another country outside Nigeria. The CoA in upholding the arguments of Stanbic on this issue stated that the Lower Court erred in law to have held that the provisions of Section 4(d) or any other provisions of the *NOTAP Act, 1979*, apply to agreements or contracts entered into by Nigerians and other parties for the export, exportation or transfer of Nigerian indigenous technology from Nigeria to a foreign country outside Nigeria.

With respect to the second issue, the CoA, relying on the evidence of the NOTAP approval presented by Stanbic, ruled that under Stanbic's affiliate software license agreement in respect of the application of 2 September 2013 the subject matter of the case was approved and registered by NOTAP. Regarding the final issue, the CoA in setting aside the lower court's judgment ruled that the failure to register a registrable contract or agreement under the *NOTAP Act, 1979*, is not a criminal offense and that the failure to register a registrable contract or agreement under the Act does not render the contract or agreement illegal, null and void or unenforceable.

Furthermore, the CoA stated that the effect of non-registration of a registrable contract or agreement under the *NOTAP Act, 1979* is to prevent payment of money in Nigeria to the credit of any person outside Nigeria, in respect of financial obligations of the parties under the contract or agreement, by or on the Authority of the Federal Ministry of Finance, Central Bank of Nigeria or any bank licensed in Nigeria, as plainly and clearly stated in Section 7 of the Act.

Implications

Based on this judgment, registrable agreements or contracts for which no NOTAP approval has been obtained remain valid and enforceable in Nigeria. Also, the judgment clarifies that NOTAP registration is not required for the export of technology from Nigeria to a foreign country.

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