

**PAPER BY BARR ZIK C. OBI II ON “STATUTORY OBLIGATIONS & REGULATIONS FOR ENGINEERING CONSULTANCY BUSINESS IN NIGERIA” DELIVERED AT THE ASSOCIATION OF CONSULTING ENGINEERS NIGERIA (ACEN) 2011 ANNUAL CONFERENCE HOLDING AT SHERATON HOTEL & TOWERS, IKEJA, LAGOS FROM NOVEMBER 22 - 23, 2011**

## **PROTOCOLS.**

May I start by expressing my thanks to the President and officers of the Association of Consulting Engineers Nigeria (ACEN) and particularly Engr. (Dr.) Temilola Kehinde for inviting me to deliver this paper at this year's Annual Conference. I have been asked to speak to you today on the topic “**Statutory Obligations & Regulations For Engineering Consultancy Business In Nigeria**” as part of the theme for this year's conference, “**Developing the Engineering Consultancy Industry**”. I will therefore in this paper draw your attention to the various laws and the rules, taxation laws and statutory obligations to staff as it concerns the running of the business of the Association and its member-firms and member-companies.

### **WHO IS AN ENGINEER UNDER THE LAW?**

It is important to start by stating what you all already know very well and that is that the law that governs the practice of engineering in Nigeria is the Engineers (Registration, Etc) Act Cap E11 Laws of the Federation of Nigeria (LFN) 2004 which came into force on 5<sup>th</sup> December, 1970 and was amended in 1992 and it stipulates in Section 6(1) & (2) the qualifications for a person to be entitled to be fully registered under the Act as an Engineer. Therefore, to say that you are or want to use the title of an Engineer, you must have the qualifications and be registered with COREN. Membership of ACEN is open only to qualified and experienced consulting engineers who are not only registered by COREN but also working fulltime in the area or field of consultancy engineering.

## **THE LAWS & REGULATIONS GOVERNING THE RUNNING OF ACEN & ITS MEMBERS**

### **REGISTRATION OF ACEN AND ALSO OF ITS MEMBERS**

ACEN which was registered on April 12, 1979 under the Companies Act of 1968 as a Company Limited by Guarantee and by virtue of the provisions of Section 543(b) of the Companies and Allied Matters Act (CAMA) Cap C20, LFN 2004, it is now deemed to have been registered under Part A, Section 26 of CAMA. By virtue of the incorporation, ACEN became a corporate body with perpetual succession and a common seal and with power to sue and be sued and to hold land. A member firm or company of ACEN must be either a sole partnership or partnership registered as a Business Name under Part B of CAMA or incorporated as a limited liability company under Part A of CAMA.

### **ACEN'S NON-COMPLIANCE WITH POST-INCORPORATION REQUIREMENTS**

Section 29(3) & (5) of CAMA requires that the name of a company limited by guarantee shall end with the words (Limited by Guarantee) in brackets and that a company may use the abbreviations (Ltd/Gte) in the name of the company but I have observed from the letter-headed paper and other documents of ACEN that it merely goes by the name Association of Consulting Engineers Nigeria without the said words (Limited by Guarantee) in brackets or the abbreviations (Ltd/Gte) and this in my view is a contravention of the provisions of Section 29 of CAMA that needs to be corrected as soon as possible unless ACEN has a waiver to that effect .

Also, Section 548(1) (c) of CAMA states *inter-alia* that "Every company, after incorporation shall ... have **its name and registration number** mentioned in legible characters on all business letters of the company and in all notices, advertisements and other official publication of the company" and Subsection (3) imposes a fine on the company for non-compliance while subsection (4) (b) provides that if any officer of a company or any person on its behalf issues or authorizes the issue of any business letter of the company or any notice or other official publication of the company, he shall be guilty of an offence and on conviction liable to a fine. I have observed from the letter-headed paper and other documents of ACEN even on its website, that the registration or incorporation number is not shown.

#### **FILING OF ANNUAL RETURNS AND OTHER DOCUMENTS AT CAC**

Section 370 of CAMA requires ACEN to deliver to the Commission once at least in every year its annual returns which shall pursuant to Section 373(1) be in the form prescribed in Schedule 10 of the Act showing amongst other things, its registered office, situation of the register of members and debenture holders, particulars of indebtedness and particulars of its directors and secretary. Section 373(2) requires the company to annex to its annual return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under CAMA. By Section 374, the annual returns shall be completed within 42 days after the annual general meeting for the year and forthwith forwarded to CAC a copy signed both by a director and by the secretary of the company. Apart from the filing of annual returns, ACEN should also ensure that it files with the CAC the relevant forms whenever there is a change of registered office address, company secretary, directors, etc.

**For a member firm** of ACEN which, of course, must be registered as a Business Name under Part B of CAMA, it must file an annual return not later than 30<sup>th</sup> day of June in each year (except the calendar year in which the business name is registered) in the prescribed form showing the particulars of the firm, the nature of the business carried on and the state of affairs of its business during the preceding January 1 to December 31. **For a member company** of ACEN which must be incorporated under Part A of CAMA, the Memorandum and Articles of Association and the provisions of CAMA apply and it must file its annual returns every year except in the year in which it was incorporated. By Section 374, the annual returns shall be completed within 42 days after the annual general meeting for the year and forthwith forward to CAC a copy signed both by a director and by the secretary of the company.

Failure by ACEN or its member firms or companies to file the annual returns or other relevant forms or document is punishable by various fines and other penalties prescribed by CAMA. Most firms registered as business names and companies incorporated under CAMA often fail or neglect to file their annual returns or other relevant forms for years and when they apply to obtain certified copies of documents from, or make changes to their registered particulars at, the CAC they are refused until they file the arrears of documents and pay the necessary penalties.

#### **The PARTNERSHIP [AMENDMENT] LAW OF LAGOS STATE 2009**

It is very important to know that in 2009, Lagos State passed into law the **Partnership [Amendment] Law of Lagos State 2009** (the New Partnership Law) which amended its Partnership Law. The amendment which is applicable to Lagos State only introduced a new Part 4 which provides for what is known as Limited Liability Partnerships (LLP). What is LLP you may ask? Black's Law Dictionary defines LLP as *a partnership in which a partner*

*is not liable for a negligent act committed by another partner or by an employee not under the partner's supervision.* For you to register as a LLP, you must first of all have a partnership or a registered business name. For your information, a website [www.lagosregistry.gov.ng/llp](http://www.lagosregistry.gov.ng/llp) has since been launched for online partnership registration.

The New Partnership Law allows for the registration of LLPs in the State's Partnership Registry with all the partners legally capable of limiting their liability in the event of winding up of the partnership. This limitation of liability by all partners is the major difference between LLPs and limited partnerships (LP), which is also provided for in the law. Under LP, although some partners can limit their liability, there must be a general partner who is liable for the debts and liabilities of the partnership. The partners in a LLP may take part in the management of the partnership business without being held accountable for the debts and liabilities of the partnership; this is in contrast to a LP where a limited partner who takes part in management may be held accountable for the debts and liabilities of the partnership.

The New Partnership Law provides *inter alia* that while a LLP may sue and be sued in its own name, a limited liability partner may be sued in his personal capacity for acts of the partnership in cases of fraud, misrepresentation and other improper conduct alleged to have been committed by the limited liability partner; or with the written consent of the Commissioner where it is established that it is in the interest of the public for an action to be maintained against such a partner. One of the pre-conditions for registration as a LLP and which is designed to ensure the protection of members of the public is that the partners must take out indemnity bonds and maintain a professional or business liability insurance policy with a registered insurance firm.

The principal advantage of a LLP is the fact that it combines its being an association of persons legally recognized for the purpose of engaging in business or trade with the benefits of a limited liability company. These are (i) a separate legal existence from the members of the partnership and (ii) in the event of winding up of the LLP, the liability of the partners for the debts and liabilities of the LLP is limited to the amount which he has subscribed to under the terms of the registration document and/or the limited liability partnership agreement submitted to the Registrar. The LLPs have a tax advantage in that unlike a limited liability company, members of the partnership pay the Personal Income Tax which is about 22% as opposed to the Company Income Tax which is about 40%. The Personal Income Tax is paid to the relevant tax authority of the State Government while the Company Income Tax is paid to the Federal Government.

This law on Limited Liability Partnerships is applicable in Lagos State only and to the best of my knowledge and information, no other State has passed a similar law. Lagos State has always been a trailblazer. For example, it was the first State to introduce the new Rules of Civil Procedure which makes 'front-loading' of oral evidence on oath and documents in support of a claimant's case and also pre-trial conferencing and seeing the benefits, the Federal Capital Territory and several other States have also introduced similar rules.

#### **REGISTRATION WITH SECURITIES AND EXCHANGE COMMISSION ("SEC")**

Section 38(1) of the Investments and Securities Act No 29 of 2007 provides that no person shall operate in the capital market as an expert or professional unless that person is registered in accordance with this Act and the rules and regulations made there under. Rule 207 (1) (d) of SEC's New Consolidated Rules and Regulations provides that the following

experts/professionals whose opinion impact directly on capital market transactions are subject to registration by the Commission (a) Legal Practitioners (b) Accountants; (c) Auditors; (d) Engineers, (e) Estate Valuers and (f) any other expert/professional that may be determined by the Commission from time to time. Some of you may want to ask, what is the business of engineers or consulting engineers with SEC or the capital market? The answer is simple. If, for example, the Bureau for Public Enterprises (BPE) has a project under the privatization exercise that calls for the services of engineers or other professionals, any of them not registered with SEC, is most unlikely to be considered for the job.

## **TAXATION LAWS APPLICABLE TO ACEN AND ITS MEMBERS**

### **PAYMENT OF INCOME TAX BY ACEN**

By virtue of its registration as a Company Limited by Guarantee, ACEN is a corporate body but is ordinarily not liable to pay income tax as its income is primarily contributions and payments received from its members. A Company Limited by Guarantee is not allowed to make and distribute profits as its income and property are to be applied solely towards the promotion of its objects. However, under the Companies Income Tax Act, such a company like ACEN is liable to the payment of tax on any income it generates from commercial activities or transactions.

### **PAYMENT OF INCOME TAX BY MEMBER FIRMS & COMPANIES**

Partners of member-firms are required to pay tax on their incomes as defined under the Personal Income Tax Act, Cap. 98 LFN 2004 (õPITAö) to the relevant tax authority and the member-companies are required to pay tax under the Companies Income Tax Act (õCITAö) to the Federal Government where the company's registered or principal office is situated.

### **PAY AS YOU EARN (P.A.Y.E.) DEDUCTIONS & REMITTANCE**

Section 81 of the PITA makes it obligatory for every employer of labour to deduct income tax from salaries of employees and remit to the state relevant tax authority. Before now, there was an administrative limit of a minimum of five employees or staff but this no longer appears to be the case.

The õrelevant tax authorityö is defined by Section 108 of PITA to mean in relation to õan individual, for a year of assessment, the tax authority of the territory in which the individual is deemed to be resident in that yearö and in relation to õa partnership, for a year of assessment, the tax authority of the territory where the principal office or place of business of the partnership is situated on the first day of that year or is first established during that yearö. The tax authority of the territory in which the individual is deemed to be resident in that year, i.e. the õResidency Ruleö is very important. For example, if you live in Ogun State but work in Lagos State, you must pay your tax to Ogun State Internal Revenue Service and vice versa. Employers in Lagos State must remit the personal income tax deducted from employees living in Ogun State to the Ogun State Internal Revenue Service and vice versa.

### **DEDUCTION OF WITHHOLDING TAX**

The Law requires every company, firm or person paying rent to a landlord, professional fees, director's fees, interest, etc to deduct withholding tax and remit to the relevant tax authority of the person to whom the payment is due.

Both CITA and PITA provide for severe penalties for failure to pay tax or to remit withholding tax or tax deducted from salaries of employees.

## **VALUE ADDED TAX**

The Value Added Tax, Act Cap VI, LFN 2004 which came into force on 1<sup>st</sup> December 1993, imposes and charges Value Added Tax on certain goods and services. By section 2, the VAT shall be charged and payable on the supply of all goods and services and the current rate of tax is 5%. Section 8 of the Act requires that every taxable person shall within 6 months of the commencement of the Act or within 6 months of the commencement of the business, whichever is earlier, register with the FBIR for the purpose of the VAT scheme.

A "taxable person" for the purpose of VAT is defined by the Act as including "an individual or body of individuals, family, corporations sole, trustees or executors or a person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income there from by way of trade or business or a person or agencies of Government acting in that capacity"

The Act provides for penalties for non-registration and non compliance and for various other offences like furnishing of false documents, evasion of tax, failure to issue tax invoice, failure to register, failure to collect tax, failure to submit returns, etc. Section 37 provides that where the offence is committed by a body corporate or firm or other association of individuals (a) every director, manager, secretary or other similar officer of the body corporate; or (b) every partner or officer of the firm; or (c) every person concerned in the management of the affairs of the association; or (d) every person who was purporting to act in any capacity as aforesaid, shall be guilty of that offence unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

## **EMPLOYERS – ACEN & ITS MEMBERS - OBLIGATIONS TO THEIR STAFF**

The **LABOUR ACT**, CAP L1, LFN 2004

Section 7(1) of the Act which came into force on 1<sup>st</sup> August 1971 provides that not later than three months after the beginning of a worker's period of employment with an employer, the employer shall give to the worker a written statement or document specifying the terms and conditions of the employment and Section 22(1) makes it an offence for an employer not to comply with the said Section 7(1) and other provisions of the Act.

A "worker" is defined in the Act as "any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour, but does not include (a) a person employed otherwise than for the purposes of the employer's business, or (b) persons exercising administrative, executive, technical or professional functions as public officers or otherwise, or (c) members of the employer's family". A "worker" as defined under this law does not include a "domestic servant" who is defined as "any house, stable or garden servant employed in or in connection with the domestic services of any private dwelling house, and includes a servant employed as the driver of a privately owned or privately used motor car."

The **NIGERIAN SOCIAL INSURANCE TRUST FUND ACT**, CAP N88, LFN 2004 which came into force on 1<sup>st</sup> January, 1992 established the Nigerian Social Insurance Trust Fund (NSITF) into which shall be paid all contributions and other monies as may be required to be paid or contributed under the Act and which Fund shall be operated and managed by a Management Board as provided in the Act. NSITF is the successor to the defunct National Provident Fund and is the sole government agency statutorily vested with the functions of providing social security and social protection for the aged, the disabled and the disadvantaged members of the Nigerian citizenry.

Section 10 provides that **the Act applies in respect of every person who (a) is employed by a company incorporated (or deemed to be incorporated) under the Companies and Allied Matters Act; or (b) is employed by a partnership irrespective of the number of persons employed by the company or partnership; or (c) in any other case, where the number of persons employed is not less than five.** Section 12 dealing with **Categories of contributions** provides that **an employee** referred to in the Act shall be required to make the following contributions to the Fund (a) contributions of the first category, being contributions payable by or on behalf of the employees against the contingencies of retirement, pension, death, invalidity and emigration; or (b) contributions of the second category, being contributions payable on behalf of the employee by the employer against the contingency of employment injury. Section 13 provides that the contributions of the various categories shall be paid on a monthly basis at the rate prescribed by regulations made under the Act which shall be computed by reference to the wages of the employee concerned and that the contributions payable in respect of each month shall fall due on the last day of the month concerned.

The Act defines “**employee**” as any person who is employed in Nigeria under any contract of service or apprenticeship with an employer whether the contract is express, implied, oral or in writing or who is ordinarily resident in Nigeria and is employed outside Nigeria under such contract of service with an employer in Nigeria by whom he is paid; and “**employer**” as the person with whom an employee has entered into a contract of service or apprenticeship and who is responsible for the payment of the wages of the employee and includes the lawful representatives, successors or assigns of such person.

The Act stipulates various penalties by way of fines and/or imprisonment for employers who fail to pay or evade the payment of the contributions. For corporate bodies, every director or officer shall be deemed guilty of the offence and for partnerships or other associations of individual, every partner or officer shall be deemed to be guilty of the offence.

The **NATIONAL HEALTH INSURANCE SCHEME ACT**, CAP N42 LFN 2004 which came into force on 10<sup>th</sup> May, 1999 established the National Health Insurance Scheme for the purpose of providing health insurance which shall entitle insured persons and their dependants, the benefit of prescribed good quality and cost-effective health services as set out in this Act. Section 16 dealing with payment of contributions under the Scheme provides that (1) **Any employer who has a minimum of ten employees** may, together with every person in his employment, pay contributions under the Scheme, at such rate and in such manner as may be determined, from time to time, by the Council and (2) **An employer under the Scheme shall cause to be deducted from an employee’s wages the negotiated amount of any contribution payable by the employee** and shall not, by reason of the employer’s liability for any contribution (or penalty thereon) made under this Act, reduce,

whether directly or indirectly, the remuneration or allowances of the employee in respect of whom the contribution is payable under this Act.

An employer under the Scheme is required to register itself and its employees under the Scheme and pay into the account of a designated health maintenance organization, its contributions and the contributions in respect of its employees, at such time and in such manner as may be specified, from time to time, in guidelines issued by the Council.

Section 28 stipulates penalties of fines and/or imprisonment for failure by any person to pay into the account of an organization and within the specified period any contribution liable to be paid under the Act or deducts the contribution from the employee's wages and withholds the contribution or refuses to remit the contribution to the organization concerned within the specified time. Section 29 provides that where the offence is committed by a body corporate or firm or other association of individuals a person who at the time of the commission of the offence (a) was an officer of the body corporate, firm or other association or was purporting to act as an officer of the body corporate, firm or other association is deemed to have committed the offence unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

The **PENSION REFORM ACT**, CAP P4 LFN 2004 which came into force on 25<sup>th</sup> June, 2004 established a Contributory Pension Scheme for employees in the Public Service and Private Sectors in the Federal Republic of Nigeria for the payment of retirement benefits of employees to whom the Scheme applies under this Act. The objective of the scheme is to ensure that every person who worked either in the Public Service of the Federation or the Private Sector receives his retirement benefits as and when due, etc In the case of the Private Sector, **the scheme applies to employees who are in employment in an organisation in which there are five or more employees.**

Section 9 stipulates that the **rates of contribution to the Scheme** for any employee to which this Act applies shall be made in the following circumstances relating to his monthly emoluments **which in the case of the private sector, is (i)** a minimum of seven and a half percent by the employer and (ii) a minimum of seven and a half percent by the employee. The rates of contribution mentioned in subsection (1) of this section may, upon agreement between any employer and employee, be revised upwards, from time to time and the Commission shall be notified of such revision.

Section 102 defines "**employee**" as any person employed in the Public Service of the Federation and Federal Capital Territory **or private company or organisation or firm** and "**employer**" as the Federal Government of Nigeria and **any organisation or business that employs five persons or more.**

By Section 11(1), every employee is required to maintain an account in his name with any pension fund administrator of his choice and by sub-section (5), the employer shall (a) deduct at source the monthly contribution of the employee in his employment and (b) not later than seven working days from the day the employee is paid his salary, remit an amount comprising the employee's contribution under paragraph (a) of this sub-section and the employer's contribution to the custodian specified by the pension fund administrator of the employee to the exclusive order of the pension fund administrator. Section 8 exempts from the scheme any employee who at the commencement of this Act is entitled to retirement benefits under any pension scheme existing before the commencement of this Act or has

three or less years to retire. The Act stipulates severe penalties for non-compliance with its provisions.

Section 71(2) of the Pension Reform Act provides that from the commencement of this Act, **the National Social Insurance Trust Fund shall provide every contributory citizen social insurance services other than pension in accordance with the NSITF Act 1993** and Sub-section (3) provides that from the commencement of this Act, **the National Social Insurance Trust Fund Act 1993 shall be deemed amended in all particulars to bring it in full compliance with this Act.**

The **EMPLOYEES' COMPENSATION ACT** No. 13 of 2010 which came into force on 17<sup>th</sup> December 2010 repealed the Workmen's Compensation Act. Its objectives are to (i) provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any such death, injury, disease or disability arising out of or in the course of employment and (ii) provide rehabilitation to employees with work-related disabilities as provided in this Act; It is a kind of a social security scheme.

The Act applies to all employers and employees in the public and private sectors in the Federal Republic of Nigeria. It stipulates in Section 4 for **Employee's Notification of Injury and in Section 5 for the Employer's Obligation to report death, injury or disease of an employee. Section 33** dealing with **Employers' contribution to the Fund states that** (1) every employer shall, within the first 2 years of the commencement of this Act, make minimum monthly contribution of 1.0 per cent of the total monthly payroll into the Fund.

The Act defines "**employee**" as a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy and an "**employer**" as including any individual, body corporate, Federal, State or Local Government or any of the government agencies who has entered into a contract of employment **to employ any other person as an employee or apprentice.** (No minimum number of employees stipulated and this Act applies to every employer of labour.)

**The Nigerian Social Insurance Trust Fund Management Board has been mandated to implement this Act as well as the Employees' Compensation Fund established by the Act** into which shall be credited all moneys, funds or contributions by employers for adequate compensation to employees or their dependents for any death, injury, disability or disease arising out of or in the course of employment.

#### **ARE NATIONAL YOUTH SERVICE CORPS ("NYSC") MEMBERS SERVING IN COMPANIES OR FIRMS EMPLOYEES OF THE SAID COMPANIES OR FIRMS?**

My view is that NYSC members posted to companies and firms are not employees of the companies or firms for the purposes of the above statutory obligations to staff. They are on National Service for which their primary employer is the Federal Government of Nigeria which reserves the right to withdraw the Corps Member from where he or she is posted at any time. According to the Policy Guidelines with regards to posting of corps members for their primary assignment which are listed in their letters of posting, the statutory responsibility of employers to the Corps Members are (a) to provide Corps Members with a modest accommodation or at least reasonable allowance per month in lieu; (b) to provide

Corps Members transport to and from place of work or reasonable amount per month in lieu; (c) extend medical facilities and other welfare services provided for other members of staff to Corps Members; (d) issue monthly clearance letters to the Corps Members to enable them receive their monthly allowances from the NYSC Secretariat.

## CONCLUSION

In concluding, I would like to deliberate more on the issue of "Who is an Engineer?" vis-a-vis "an Engineering firm" for the purposes of drawing your attention to the recent court decisions regarding the signing of documents issued by a professional firm.

The Engineers (Registration, Etc) Act stipulates in Section 6(1) & (2) the qualifications for a person to be entitled to be fully registered under this Act as an engineer some of which *inter-alia* are that (a) he has attended a course of training approved by COREN; (b) the course was conducted at an institution so approved, or partly at one such institution and partly at another or others; (c) he holds a qualification so approved; (d) he holds a certificate of experience issued in pursuance of section 9 of this Act; (e) he has completed a minimum of two years post-graduate training and has passed or is exempted from professional interview, etc. Thus an engineer is a person who satisfies the above criteria and so is fully registered and thus an engineering firm cannot be said to qualify to be registered under the said Section 6.

The **Court of Appeal** in the case of **New Nigeria Bank Plc v Denclag Limited [2005] 4 NWLR (PT 916) 549** considered the provisions of Sections 2(1) & 24 of the Legal Practitioners Act on who is a legal practitioner authorized to sign a Notice of Appeal which in this case had been signed by a law firm and held that the said Notice signed by a law firm was fundamentally defective, null and void not having been signed by a registered legal practitioner and therefore the appeal incompetent, The court held that the said law firm is not a registered legal practitioner but simply a registered legal firm or a business name. The **Supreme Court** in **Okafor V Nweke [2007] 10 NWLR (PT 1043) 521** in considering the said provisions of Sections 2(1) & 24 of the Legal Practitioners Act vis-à-vis processes signed by a law firm held that a law firm is not a legal practitioner and therefore cannot sign processes and that it is only human beings actually called to the Bar that can practice law and sign documents. The Supreme Court further held that it is not permissible for a legal practitioner to sign court processes in a partnership or firm name without an additional indication on the process of the name of the legal practitioner who is a member of the partnership or firm handling the matter and therefore declared the processes signed by and in name of the law firm as incompetent in law and null and void. The **Federal High Court, Lagos** has in a recent suit, **Mazi Okechukwu Unegbu v KPMG Professional Services & Guinness Nigeria Limited** decided on November 19, 2010 applied and extended the Supreme Court decision in **Okafor v Nweke** to accountants and auditors when it held that the audit firm of KPMG is not a person duly qualified and enrolled as an accountant or auditor pursuant to Section 8(1) of the Institute of Chartered Accountants of Nigeria (ICAN) Act and declared as incompetent, null and void the 2009 Independent Auditor's Report of Guinness Nigeria Plc signed by and in the name of "KPMG" which is the name of the audit firm instead of being signed by a named partner of the audit firm and also restrained KPMG from further signing audit reports and financial statements in its name of "KPMG".

In view of the above stated decisions of the various courts and particularly the Supreme Court in the interpretation of the said provisions of the Legal Practitioners Act and of the ICAN Act which are similar to the said Section 6 of the (Engineers (Registration, etc) Act, it

follows that an engineering firm cannot be said to be a registered engineer for the performance of certain functions required by law to be performed by an engineer like signing a document or certifying a job. I am aware of the fact that Section 11 of the Engineers (Registration, etc) Act provides that COREN shall register annually all organizations performing engineering consultancy services and that no firm or partnership shall practice as engineers unless it is registered by COREN but this does not change this position of who is an engineer under Section 6. In the suit against KPMG mentioned above, the latter relied on Section 358(4) of CAMA which stated that "a firm is qualified for appointment of auditor of a company if, but only if, all the partners are qualified for appointment of auditors of it" but the court rejected the argument and held that KPMG is not an auditor within the ICAN Act.

I would therefore advise that all documents or reports prepared by any firm of consulting engineers should be signed by a named engineer for and on behalf of the firm and not signed by or in the name of the firm itself in order to avoid future problems of such documents being declared incompetent, null and void.

I thank you for your attention.

ZIK C. OBI II ESQ.  
Solicitor & Notary Public  
Western House (9<sup>th</sup> floor)  
8/10 Broad Street, Lagos.  
Email: zedceeobi@gmail.com