

## Non-lawyer investors for UK Law Firms: What effect on Nigeria?

With a proposed legislation in the UK the legal profession in England and Wales, is about to experience unprecedented transformation. With the UK being the worlds hub for Common Law the rippling effects on the legal services market is inevitable. This article seeks to highlight the 4<sup>th</sup> leg of Sir David Clementi's report that heralded these reforms that have been broadly accepted by UK Government and currently in legislative process. It seeks from the "global village" perspective to ask the pertinent question: How would the legal profession in Nigeria be affected when Sir David Clementi's reforms come to pass?

### What did the Sir David Clementi Committee recommend?

The Committee's recommendation is four fold.

1. Regulatory functions now involve substantial lay involvement and separated from representative functions.
2. New Legal Services Board to oversee the professional bodies.
3. A single independent body to handle consumer complaints.
4. The establishment of alternative business structures for solicitors.

Notwithstanding the import of the first three recommendations this article deals solely with number 4 - the establishment of alternative business structures for solicitors. This recommendation pertains to solicitors (not barristers) and creates avenues for different professions to work together as equal partners in law firms and permits outside owners to invest in law firms - bringing fresh capital and commercial expertise. Simply put, ordinary companies from banks to supermarkets and non-legally trained businessmen can now own and manage law practices. This proposed law is aptly dubbed "Tesco Law" (after the British supermarket giant) because it would allow a free wheel version of multidisciplinary practice that sees a company, bank or grocery store offer legal services directly to the public using an employed lawyer for that purpose. To bring this concept home imagine that a solicitor in Nigeria can now be approached by non-lawyers seeking to invest in his law firm as equity partners or that you can order a Deed of Assignment from the legal section of Park N Shop Stores. UK's Constitutional Affairs Secretary Lord Falconer in support of this mode surmised thus: *"Increased liberalisation, supported by stringent regulation, will provide the opportunity for people to get a whole range of services they want, in the form they want and at the time they want"*. And *"demands will continue to change and providers will continuously adapt to meet these demands"*.

### How do lawyers in other jurisdictions view this development?

- David Black the deputy Business Editor for a Scottish Publication said concerning the reform that *"Although it targets only the profession in England and Wales, its recommendation will have far reaching implications for Scots law firms doing business down south"* Concerning such law firms he wrote *"They fear that if the Scottish profession clings to the status quo, they will be left fighting for business on an "uneven playing field" and that could leave the entire profession stagnating on the sidelines, haemorrhaging talent, as the law "industry" elsewhere transforms itself into a multinational money-spinner"*. (Underlining mine) - I see this concept of "multinational

money spinners” as a great threat to solicitors in Nigeria and elsewhere. I will dwell more on this below.

- Ron Ward the President of the Washington State Bar Association (WSBA) forwarded an article on this Tesco Law to the members of the WSBA and he introduced the article by saying *“It constitutes real food for thought, to the degree that I wanted to share it with you”* Also at the end of the article he inserted his comments as follows: *“I hope you found the foregoing as provocative as I. ....I think it is a subject worthy of thoughtful discourse. The question is not whether we can; it is whether we will. We can and we will because working together, there is nothing we cannot change for the better.”* In this article the author quoted Richard Granat of the American Bar Association as saying *“It would definitely be an interesting experiment. I for one don’t know the outcome”*

- Robert Hanley, managing partner of the London office of an Australian law firm Minter Ellison says: *“It would be interesting if you had an investment bank set up an arm for its transactional work. Most of them already have in-house lawyers. But if they wanted to expand that and have a transactional capability, that is interesting because I can see with their buying power, they could possibly attract lawyers who are top of their field”*. He says further that this would probably relieve the need for the investment bank owned law practice to do aggressive business development because the bank guarantees a steady transaction flow. He was also of the opinion that if Australian law firms could raise more capital they could compete with the UK and US firms in overseas markets by paying higher salaries.

Back to Nigeria, it is clear that Rule 30 of the Legal Practitioners Rules of Professional Conduct outlaws business modes like the Tesco law in Nigeria. However like our colleagues in other jurisdictions should we not be proactive rather than reactive? I think yes! Therefore some discourse on how this “new way” will affect us is inevitable. As a basis for further exchange, may I share a few of my thoughts on possibilities post the Tesco Law.

#### **(1) Increased Competition from foreign solicitors.**

I use the word “increased” advisedly because competition already exists from foreign solicitors. What type of competition already exists? You may recall the Privatization briefs from the BPE going to foreign firms and the outcry from Nigerian lawyers. Have you forgotten the multinationals (I know several by name) that outsource major Nigerian based transactional work to overseas firms? “Graciously” these overseas firms in turn use some local firms on a needs basis for sundry back-end research and legal opinions. What of the competition from the local accounting (sorry “consulting”) firms who leverage on a foreign franchise to mop up a fair amount of transactional work that should come to Nigerian solicitors? Ask your bank friends involved in consolidation how many of these accounting (“consulting”) firms won all-in bids for both financial and legal due diligence under the ongoing bank consolidation exercise. And will this competition increase with the Tesco law? Yes! Today many of the foreign law firms who have done any work for Nigerian establishments/governments or multinationals operating in Nigeria came in by solicitation from Nigerian firms or bodies who required their expertise for leverage (privatization a case in point) or they followed their multinational client who they serviced overseas. For these law firms their incursion into Nigeria so far has been a case of being wooed or sheer necessity rather than an active interest in the Nigerian market. With the Tesco law this will change. How? My thinking is that with greater

funding from investors UK law firms will increase their capacity. Money will no longer be the hurdle in recruiting the best, affording top class training, branding, and market development at the highest levels. The UK solicitor firms will metamorphose into highly efficient market-oriented profit-driven blue chip institutions. The solicitors services market in the UK will begin to grow in exponential proportions, branding, advertising, niche marketing, and all the trappings of well oiled business machineries will be rolled out - applying the best of practice in management and business development. And what next? As is the case with all profit driven multinational businesses they will seek business expansion internationally and amongst emerging markets in Africa Nigeria is a key destination. Nigeria will be an attractive market if some current trends continue over the next 10 years. These trends include new legal fields catalysed by the current deregulation – power, telecoms, gas etc. These events coupled with increasing oil prices will see a greater influx of foreign investors. The clients in that new season (particularly the foreign clients) will insist on spot-on value added solicitor services in comparison with what they get abroad. Many foreign companies in Nigeria would encourage their UK law firms to come into this market, (just as US firms followed their clients to the UK). The competition in the UK market would become intense with the “magic circle” (the top 5 firms in the UK) feeling the heat. Heat brings expansion - territorial expansion translating into searches for new markets. Do you know that export services of UK law firms in 2001 was £1,339m, which was triple the amount in 1990? Do you know that 50-65% of the lawyers of the top four firms in London work in overseas offices? You can see that the trend is already in place. The influx of US law firms into the UK beginning in the mid 90’s fuelled this trend that saw Asia and other places as targets for International law firms. Over time some multinationals in the UK will take advantage of the Tesco law to establish their own law firms for backward integration, confidentiality, cost savings etc. And if these multinationals have a presence in Nigeria they will encourage their law firms to establish a presence in Nigeria. Have you noticed the influx of South African support service firms in Nigeria following after the big South African players like MTN? This is a type in this direction. I foresee the UK solicitor firms beginning to show an active interest in Nigeria. And if this happens it would only begin a process of infiltration.

## **2. Infiltration**

They (international law firms) will arrive our shores. They will find innovative ways of working in Nigeria. Some possibilities: International firms may buy into Nigerian law firms with a report structure that see the offshore investors at the head or they may employ Nigerian lawyers to man the Nigerian transactions desk located anywhere in the world. They may even apply to the Chief Justice to be admitted to practice in Nigeria. They would do what they have to do when they have to do it.

## **3. Shrinking is inevitable**

The principle is simply that as UK firms become larger we get even smaller. Funding has always been a major problem with lawyers since they do not operate like a company that is outfitted with avenues for raising capital. However with the Tesco law this impediment will be no more, the Solicitor firms in the UK will step onto a superhighway platform. Their growth will be exceeding! What will happen to Nigerian law firms’ as they (UK firms) grow bigger? The law firms in Nigeria that are already small in comparison with the typical 300-partner law firms in the UK will begin to look even smaller. What has size got with it? A lot. Certain levels of

transactional work need a minimum level of personnel deployment. Some due diligence can take 10 lawyers dedicated to the project several months to finish. How many of our firms have up to 10 lawyers? If we do, can we afford to deploy them on one project for that long? Our capacity will also be shrinking comparatively as the UK law firms compete favourably in salaries, technology, training etc with the Goldman Sachs of this world.

### **Conclusion**

Perspectives on this are never ending. The simplest of them is to ponder on the fact that if the UK with a respected “workable” system has picked holes in their framework for the legal profession should we not see a need find our own holes and plug them? Perhaps we need our own Sir David Clementi with a similar reference: ***“to consider the regulatory framework that would best promote competition, innovation and public and consumer interest in an efficient, effective and independent legal sector”***

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