



Guide to the

INVESTMENTS & SECURITIES TRIBUNAL

THIS GUIDE IS ISSUED FOR INFORMATION PURPOSES ONLY AND DOES NOT FORM PART OF THE TRIBUNAL RULES.

A Production of the
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1.0 Introduction

1.1 The Investments and Securities Tribunal

The Investments and Securities Tribunal (IST) was established under section 274 of the Investments and Securities Act (ISA) 2007. It was duly constituted with the approval of the President of the Federal Republic of Nigeria and inaugurated by the Honourable Minister of Finance on December 19th 2002.

It is a dedicated, specialized and **fast-track** civil court for the resolution of disputes arising from investments and securities transactions. These disputes are resolved in an accessible, flexible and cost-effective as well as efficient and transparent manner. The ISA 2007 stipulates that all matters before the Tribunal are to be disposed off within three months from date of commencement of hearing of substantive case.

The Tribunal is a major reform of the legal framework for the adjudication of capital market disputes in Nigeria to evolve a more transparent, fair and secure financial sector that is responsive to the rule of law.

The judgment of the Tribunal is enforced as a judgment of the Federal High Court; and appeals from the Tribunal lie directly to the Court of Appeal.

The membership of the Tribunal is composed of an Honourable Chairman and 9 other Honourable Members, who must be either legal practitioners and/or experienced capital market professionals. The Tribunal also has a Chief Registrar with power to administer oath and perform other duties with respect to any proceedings in the Tribunal as may be prescribed by the Rules or delegated by the Honourable Chairman.

1.2 Objectives

The primary objective of the Tribunal is the timely and efficient resolution of investments/capital market disputes with fairness, flexibility and transparency. Its vision is to be a world-class tribunal that dispenses justice to all capital market participants without fear or favour.

1.3 Jurisdiction

The Tribunal is empowered to hear all civil disputes arising from transactions in the capital market. These disputes may be between participants; investors, self-regulatory organisations and operators as well as the Securities and Exchange Commission (the Commission) the apex regulator in the capital market. The jurisdiction of the Tribunal is as follows:

1. The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving:
 - (a) a decision or determination of the Commission (SEC) in the operation and application of this Act, and in particular, relating to any dispute:
 - i. between capital market operators;
 - ii. between capital market operators and their clients;
 - iii. between an investor and a securities exchange or capital trade point or clearing and settlement agency;
 - iv. between capital market operators and self-regulatory organization;

- (b) a capital market operator and an investor and the Commission;
- (c) an issuer of securities and the Commission; and
- (d) dispute arising from the administration, management and operating of collective investment schemes.

2. The Tribunal shall also exercise jurisdiction in any other matter as may be prescribed by an Act of the National Assembly.

1.4 Types of Cases:

- a. Misappropriation of clients' funds by a stockbroker;
- b. Non-remittance of issue proceeds by an Issuing House to the issuer/company;
- c. Non-remittance of dividends by a Registrar/ Public company/ Stockbroker;
- d. Late transfer and/or registration of shares/stocks by any stockbroker;
- e. Disputes over mergers and acquisition between the shareholders and the public quoted company, self regulatory authority, the SEC etc;
- f. Disputes between operators and any Self-Regulatory Organisation (SRO) in the market (e.g. stockbrokerage firm and a stock exchange and dispute between a registrar and exchange);
- g. Disputes arising from the rules, regulations and such other guidelines made by the SEC, or any securities exchange;
- h. Dispute arising from any determination, decision and/or notice issued by the SEC;
- i. Appeals against disciplinary measures and or sanctions by SEC such as suspension and/or barring participants from the market;
- j. Appeals against delisting of any securities or company by an exchange;
- k. Refusal by the Commission to register a takeover bid;
- l. Disputes/claims arising from misrepresentations or false statements in offer documents or in a securities transaction;
- m. Disputes/claims between market participants;
- n. Enforcement orders of the directives of the SEC;
- o. Action for rescission of allotment;
- p. Action for payment out of the investor protection fund; and
- q. Action for restitution.

1.5 Powers

- 1. The Tribunal may make rules regulating its procedures.
- 2. The Tribunal shall have, for the purpose of discharging its functions under this Act, power to:
 - a. Summon and enforce the attendance of any person and examine him on oath;
 - b. Require the discovery and production of documents;
 - c. Receive evidence on affidavits;
 - d. Call for the examination of witness or documents;
 - e. Review its decisions;
 - f. Dismiss an application for default or deciding matters ex-parte;

- g. Set aside any order or dismissal of any application for default or any order made by it *ex-parte*; and
- h. Do any thing which in the opinion of the Tribunal is incidental or ancillary to its functions under this Act.

Any proceedings before the Tribunal shall be deemed to be judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes.

1.6 Operational Difference from that of a High Court

The Tribunal combines the rule of law with the responsiveness, flexibility, speed and cost effectiveness associated with expeditious proceedings. IST has specialised knowledge of the capital market/securities law and operations due to the varied technical and operational skills of its Panel Members and staff, which the Tribunal applies in deciding each case.

The Technical & Operations and Legal Services Departments of the Tribunal are responsible for technical and legal research support services. The Tribunal does not strictly apply the rules of evidence as done in the traditional courts but considers the substantial justice of the case or application.

The Tribunal is primarily guided and regulated by the Investments and Securities Act, 2007 and the Investments and Securities Tribunal (Procedure) Rules 2014 in its proceedings.

1.7 Similar Tribunals in the financial markets outside Nigeria

There are various financial markets abroad that implement similar tribunals. Examples of such are the Securities Appellate Tribunal (SAT) of India; the Hong Kong Market Misconduct Tribunal and the Competition Tribunal of South Africa amongst others.

1.8 Other dispute resolution means

There are varied means of resolving disputes in the capital markets such as through self-regulatory organisations (the stock exchanges), trade associations and/or professional bodies as well as the Securities & Exchange Commission (the apex regulator in the market). Parties may also decide to resolve issues between themselves as they deem fit *e.g.* through mediation/conciliation or arbitration.

1.9 Schedule of filing and sundry fees

The Tribunal has a schedule for filing and sundry fees which can be obtained from the Registry and it contained in Order 2 Rule 3 of the Investments and Securities Tribunal Rules, 2014. The Appellant or Applicant shall **file** a notice of appeal or originating application with the evidence of payment (Bank draft or Receipt) the approved fees to the **Chief Registrar**.

The cost incurred by a party in preparing his or her application or referral will depend on the facts of each case and whether he or she decides to handle the matter himself or herself or his or her legal representative. The Chairman may reduce or waive the filing fees for indigent litigant on the recommendation of the Chief Registrar

1.10 Representation by a legal practitioner or self

A party can be represented by a legal practitioner or conduct his own case by himself.

2.0 PRELIMINARY MATTERS

2.1 Commencement of action

Cases can be brought before the Tribunal either by direct application from an aggrieved party or reference or an appeal from a decision of the Securities and Exchange Commission.

2.2 References

Cases are begun when the applicant or his authorised representative completes and sends a reference notice to the Tribunal, with a copy to the Commission, containing all the information required by **Order 2 Rule 5 of the IST Rules, 2014**. A form (**IST 1**) is available from the Tribunal for this purpose. **If you are being represented by a legal practitioner**, all subsequent correspondences and processes will be sent to **his contact information**. Therefore if you or your representative should change your contact information during the course of the proceedings you are advised to notify the Tribunal as quickly as possible.

2.3 Originating Application

Cases are originated by the applicant or his authorised representative completing and sending to the Tribunal Form IST 1 (See IST Rules 2014) and attaching all the documents required by **Order 2**, Rule 6 and subject to **Order 2**, Rules 5 and 10 of the IST (Procedure) Rules 2014. *Note that only capital market disputes can be originated directly with the Tribunal.*

2.4 Appeal

A person dissatisfied by any action or decision of the Commission can file an appeal in the Tribunal within thirty (30) days from the date the decision was given or action taken. Provided that the aggrieved party shall give the Commission fourteen (14) days notice of his intention to appeal against its decision.

An appellant shall file his or her notice of appeal in full compliance with Order 2 Rules 1 and 6 of the IST Rules, 2014.

2.5 Time limit for filing cases or applications

For a reference (being an appeal from the decision of the Commission), the notice of appeal must be filed with the Tribunal within 30 days from the date of the disputed decision.

Where a party is unable to meet the time limit for filing a notice of appeal, the party may apply for extension of within which to file the notice of appeal Order Rule 4 of IST Rules, 2014. Such application shall contain reasons for the delay in filing the notice of appeal.

Upon receipt of this application for extension of time, the Tribunal **will decide in accordance with Order 2 Rule 4 and as it may deem just.**

2.6 Reference by the Commission to the Tribunal

Section 36 (4) of ISA 2007 provides instances of capital market matter for which reference can be made to the Tribunal. **Applications for reference shall comply with Order 2 Rule 5 of the IST Rules 2014** which sets out the procedure for presenting such reference before the Tribunal.

2.7 Application for direction

At any stage of the proceedings, the Tribunal may on its own initiative or on the application of a party, give whatever directions it considers necessary or desirable to enable it deal with

the case fairly and justly or for the case to be properly prepared for hearing. A party applying for any direction shall do so in writing to the Tribunal stating his name and address, the suit number, the direction(s) sought and the reasons for seeking the direction(s). **The decision of the Tribunal shall be in accordance with the provisions of Order 4 Rule 11 of the IST Rules 2014.**

2.8 Types of directions

Order 4 Rules 11 and 12 of the IST Rules provide examples of the types of directions the Tribunal may give. These include the production of further particulars; **summoning of a person to attend as a witness**; **exclusion of evidence** that otherwise was admissible; **limiting of cross-examination**; and any **other** direction necessary for the exercise of any of the powers conferred by the IST Rules.

2.9 Pre-Hearing

In some cases, the Tribunal may direct that a pre-hearing conference be arranged **for parties in the matter** in order to expedite the **proceeding**. At the pre-hearing conference, frivolous applications **and issues** are eliminated or struck out while interim applications are heard and decided on. An action may be disposed of at this stage.

2.10 Withdrawal or Discontinuance

At any time during the proceedings, an applicant may withdraw whole or part of his or claim by filing a motion on notice to withdraw.

Parties also may opt for an out of court settlement or undertake to resolve the dispute through mediation at the IST ADR Centre. If parties request for mediation at the IST ADR Centre, they **may** also consent in writing. Where this position is adopted, parties upon agreement will apply that the terms of settlement be entered as the judgment of the Tribunal.

2.11 Enquiries

The Client Service Unit (CSU) of the Registry Department attends to enquiries and responds to correspondences and telephone calls. The CSU does not advise you on the merits of your case.

Should anyone desire advice on any dispute, such person should seek professional advice from a legal practitioner or other qualified person.

3.0 THE HEARING

3.1 Time and place of hearing

As soon as court process has been served on parties, the Tribunal will set the matter down for hearing and place it on the Cause List. All parties will be sent hearing notice informing them of the date, venue and time of the hearing.

Order 6 Rules 1 – 2 explain in detail the procedure for hearing. Hearing notices will be sent not less than 7 days before the scheduled date for hearing. The notice will state the date, time and place of the hearing and thereafter, **in not less than 3 days notify the parties of any change in date, time and venue for the hearing**. Hearings will take place at the Tribunal's headquarters in Abuja and its four divisions – Lagos, Enugu, Kano and Port Harcourt. In addition, **litigants resident in Anambra State and or its environs may file their processes** at the Awka Desk Office located in the Anambra State High Court, Awka.

3.2 Determination of suit without a hearing

A matter may **subject to the consent of the parties** in the matter be determined using the written arguments and submissions filed along with application or appeal. Where the parties does not oppose the appeal or application and in writing adopts his submission and consents to the matter being determined on records the matter will be determined accordingly.

3.3 Hearing in public

Hearings are normally held in public unless the Tribunal directs that it is necessary to conduct all or part of the hearing in private. A party may apply in writing to the Tribunal to be heard in private.

The Tribunal will direct a private hearing if satisfied that it is required in the interest of morals, public order or national security or to the extent strictly necessary in the opinion of the Tribunal in special circumstances where publicity would prejudice the interest of justice. Also, the Tribunal must be satisfied that a hearing in private would not prejudice the interests of justice.

The decision to hear and determine a matter in public or private shall be at the discretion of the Tribunal and shall be in compliance with Order 6 Rule 5 of the IST Rules 2014.

3.4 Adjournment of a hearing

The Tribunal is usually reluctant to postpone a hearing but if it is essential for a legal practitioner/party to seek an adjournment:-

- (a) Legal practitioner or the party should immediately **notify** the Tribunal of his or her intention to apply for adjournment, if necessary by telephone or fax;
- (b) Legal practitioner shall thereafter file his or application by motion on notice , giving his reasons for requesting for an adjournment;
- (c) Legal practitioner may agree to an alternative hearing date when he and his witnesses will be ready, where relevant;
- (d) **Where the reason for seeking for an adjournment is related to ill health, the legal practitioner or the party shall produce a medical certificate evidencing his or her health status from Government hospital.**

Please note that an engagement elsewhere is not normally sufficient reason to justify an adjournment; the legal practitioner should be ready to explain why the other engagement takes priority over the Tribunal's hearing. **A legal practitioner will also not** assume a hearing will be cancelled merely by asking. Once a hearing has been arranged it is not cancelled until the legal practitioner is notified in writing or telephone of its cancellation by the Tribunal.

3.5 Evidence of a witness

It is a party's responsibility to prepare, arrange and ensure the attendance of his or her witnesses at the hearing. If a witness is reluctant to attend, the Tribunal has powers to compel attendance by means of a **witness summons**.

The IST Rules 2014 Order 5 Rule 1 provides the procedure on how a party can obtain a witness summons to compel the attendance of reluctant witness.

If the other party does **not** dispute the evidence of a witness, it can be presented in writing (a **"witness statement"**) but all disputed evidence must be given in person at a hearing. Contact

the respondent if you think a witness statement might be acceptable to them and likewise they may contact you about the evidence of their witnesses.

3.6 Failure to attend a hearing

Where a party is absent and/or unrepresented at a hearing, the Tribunal may, if it is satisfied that the party has been duly given notice of the hearing and there is no sufficient reason for his absence, hear and determine the matter or adjourn the hearing.

3.7 Close of a hearing

The Tribunal may announce its decision orally in open court or reserve it to be given in writing later. In either case, the reasons for the decision will be given and a copy of the written decision signed by the Honourable Chairman will be sent to each of the parties.

3.8 Review of the decision of the Tribunal

You can only ask the Tribunal to review its decision **if in your opinion the Tribunal's decision was wrongly made as a result of an error on the part of the Tribunal, its staff or new evidence has become which in your view will do justice to the matter.**

If you wish to request a review you must do **by application** to the Tribunal so within 14 days after the date the decision was sent to the parties or yourself.

A party applying for the review of the Tribunal's decision shall do so within the provisions of Order 7 Rule 4 of the IST Rules, 2014

3.9 Award of costs to any party

If the Tribunal rules wholly or partly in your favour you may ask for costs. **Order 7**, Rule 6 of the IST Rules provides that the Tribunal can award costs only against any party, including the applicant, where it considers the party's action vexatious or where the party's conduct in making, pursuing or resisting an appeal or application is unreasonable among others. Provided the other parties shall be allowed an opportunity to make representation against the making of the order of award.

3.10 Appeal from a decision of the Tribunal

Appeals against decisions of the Tribunal lie to the Court of Appeal and should be made within 30 days after the decision was given. You may appeal **ONLY** on points of Law by giving notice to that effect in writing to the Tribunal within 30 days after the decision is sent to you.

4.0 IST ADR Centre

The establishment of the IST ADR Centre encapsulates the overriding objective of the Tribunal which is *“to deal with cases fairly and justly by providing reliable, informed, expedient, flexible and affordable dispute settlement mechanisms proportionate to the complexity of the issues and resources of the parties and ensuring equal footing of the parties”*.

The IST ADR Centre has the following features among others:

- Enhanced, timely, cost effective **access to justice**
- Higher turnaround of settlement and client service satisfaction
- **Improvement of capital market climate which leads to the increased of foreign/domestic investment drive resulting in higher investments.**

IST ADR process of mediation and conciliation gives parties the opportunity to direct the process and fashion out an amicable settlement suitable to their respective needs. This process is voluntary and flexible, easily adaptable to suit complex disputes and parties' needs. It is an **effective dispute resolution mechanism**.

The IST ADR Centre focuses on the cultivation of patient negotiation, mutual understanding, tolerance and accommodation by parties. The process requires effective communication, persuasion, mediation and trust, capable of directing the parties' energy into reaching consensus.

It offers various techniques which are flexible and adaptable to suit the peculiarities of each case. The Centre assists parties in choosing the technique suitable to their specific needs.

These techniques are:

1. Mediation
2. Negotiation
3. Neutral fact finder
4. Early Neutral Evaluation
5. Conciliation
6. Expert Determination

4.1 Steps to Submitting to dispute resolution mechanism at the IST ADR Centre

- ❖ Filing of Complaint at the IST ADR Centre
- ❖ Assessment of Complaint to determine whether it is within the powers of the Centre
- ❖ If within the powers of the Centre, the Complainant is invited to complete the Request for Mediation Form 01
- ❖ Invitation to the other party to submit to mediation
- ❖ Upon acceptance of this invitation, the other party is given Submission to Mediation Form 02
- ❖ Mediation – this process involves negotiation and bargaining; plateau/caucusing; break out/breakthrough; settlement; settlement agreement; execution of the settlement agreement; and application to the Tribunal to make the settlement agreement its judgment.

The Centre is currently located at the Head Office, Plot 1072, Cadastral Zone B10 Along Jabi – Airport Road, Opposite Major Oil Filling Station, Dakibiyu, Abuja. Our email address is: istadr@ist.gov.ng.

5.0 OTHER INFORMATION

5.1 The address of the Investments and Securities Tribunal is:-

Head Office:

Plot 1072, Cadastral Zone B10,
Along Jabi – Airport Road,
Opposite Major Oil Filling Station
Dakibiyu, Abuja.

Tel: +234 9 291 7178

Website: www.ist.gov.ng

Email: info@ist.gov.ng

5.2 Zonal Offices

Lagos Zonal Office (LZO)

No. 25 Harold Shodipo Crescent,
Ikeja G.R.A. Lagos
Lagos State

Tel: +234 – 1-462-7261

Email: lzo@ist.gov.ng

Head (LZO) Wale Ojo - Tel: 0803 5950 964

Enugu Zonal Office

59 Nza Street, Independent Layout

Enugu, Enugu State.

Email: ezo@ist.gov.ng

Head (EZO) Uche Aruodo - Tel: 09098644172

Kano Zonal Office

Plot 1019, Sheikh Nasiru Kabara Estate

(Amana City) Zaria Road, Kano.

Email: kzo@ist.gov.ng

Head (KZO) Yahaya Ishaq - Tel: 0803 7019 264

Port Harcourt Zonal Office

No 12 Orogbum Crescent, by Onne Road

G.R.A. Phase II,

Port Harcourt, Rivers State.

Email: pzo@ist.gov.ng

Head (PHZO) Sulu Omotosho - Tel: 0806 8387 600

5.3 IST ADR Centre

Plot 1072, Cadastral Zone B10,

Along Jabi – Airport Road,

Opposite Major Oil Filling Station

Dakibiyu, Abuja.

Email: istadr@ist.gov.ng

Head (ADR) Emmanuel Chukwuorji - Tel: 0802 323 8445

5.4 Addresses of some capital market bodies

Securities and Exchange Commission

SEC Tower, CBD

P.M.B. 315, Garki, Abuja.

Website: www.sec.gov.ng Email: info@sec.gov.ng

The Nigerian Stock Exchange

Stock Exchange House

2/4 Customs Street, Marina, Lagos.

Email: contactcentre@nse.com.ng

Website: www.nse.com.ng Tel: 234 1 4638333-5

Chartered Institute of Stockbrokers

10th Floor, Bookshop House

50/52 Broad Street, Lagos.

Website: www.cisnigeria.com

email: info@cisnigeria.com

5.5 Applicable Laws, Rules and Codes:

- a. Investments and Securities Act, 2007
- b. The Investments and Securities Tribunal (Procedure) Rules 2014
- c. Securities and Exchange Commission Rules
- e. Listing Rules of the Nigerian Stock Exchange

- f. Investor Protection Fund Rules 2007
- g. Rules of the Central Securities Clearing System (CSCS)
- h. Code for Capital Market Operators
- i. Code of Corporate Governance
- j. Trustee Investments Act
- k. Abuja Securities & Commodities Exchange Rules

5.7 Law Reports

Nigerian Investments & Securities Law Reports

5.8 Disclaimer

This Guide is issued for information purposes **ONLY** and does not form part of the Rules of the Tribunal or its practice and procedure.

The IST Rules 2014 are available at its head, zonal offices and website as well as that of the Securities & Exchange Commission and the Nigerian Stock Exchange.