DRAFT TAX APPEAL TRIBUNAL (PROCEDURE) RULES IN NIGERIA

A SYNOPTIC EVALUATION

by

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1.0. INTRODUCTION

An appeal system provides a taxpayer who is dissatisfied with the final decision of the tax authority an avenue to ventilate his or her grievances before a quasi judicial body for tax adjudication.\(^1\) Considering the nature of tax as a compulsory imposition, a good appeal system, is a bulwark against arbitrary assessment and sustains the confidence of taxpayers to some extent. The establishment of the Tax Appeal Tribunal (TAT) under section 59 of the recently enacted *Federal Inland Revenue Service (Establishment) Act*\(^2\) (FIRS Act) is one of the landmark features of the ongoing tax reform of the Federal Government of Nigeria.\(^3\) The TAT is an attempt to provide a single appeal tribunal for the adjudication of disputes arising from the administration of all the federal taxes\(^4\) administered by the Federal Inland Revenue Service (FIRS) instead of the prior arrangement whereby the Value Added Tax Tribunal was responsible for determination of appeals on Valued Added Tax (VAT) while the Body of Appeal Commissioners was responsible for appeals arising from the administration of other federal taxes.\(^5\) The TAT was recently inaugurated in the expectation that it will soon commence operation\(^6\). The Body of

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\(^1\)The Tax Adjudicating body usually known as the Body of Appeal Commissioners (BAC) is not independent of the tax authority as such. The Tribunal consists of people with knowledge of the tax system and the business environment outside the Federal Inland Revenue Service (FIRS). Although the Commissioners were appointed by the Minister of Finance on the recommendation of the FIRS, the assumption is that they will determine the cases before them without fear or favour, ill will or affection to everyone.

\(^2\)No. 12 of 2007.

\(^3\)The tax reform of the Federal Government which started in 2003 is based on the recommendations of the Tax Study Group, 2003 and Tax Working Group 2004 respectively. The Tax Study Group was Group headed by Prof. Dotun Phillips while the Working Group set up to review the recommendations of the Tax Study Group was headed by Mr. Seyi Bickersteth. The exercise recently culminated in the enactments of four statutes viz: (i) National Automotive Council (Amendment) Act No. 10, 2007, (ii) Companies Income Tax (Amendment) No. 11 of 2007, (iii) Federal Inland Revenue Service (Establishment) Act No. 12, 2007 and (iv) the Value Added Tax Act No 13 of 2007.

\(^4\)See Para.11 (I) of the Fifth Schedules to the FIRS Act which provides that “the Tribunal shall have power to adjudicate on disputes and controversies arising from (i) the Companies Income Tax Act, Cap, 60 Laws of Federation of Nigeria (LFN), 1990, (ii) the Personal Income Tax Act No. 104, 1993, (iii) the Petroleum Profits Tax Act Cap. 354 LFN, 1990, (iv) the Value Added Tax Act No. 102; 1993, (v) the Capital Gains Tax Act Cap. 42 LFN ; 1990 and any other law contained in or specified in the First Schedule to this Act or other laws made or to be made from time to time by the National Assembly”.


\(^6\)While the Training Programme for the Chairmen and commissioners had been done that of the Secretaries and other key administrative of the Tribunal preparatory for the commencement of the Tribunal is yet to take place.
Appeal Commissioners and VAT Tribunal are now defunct while their jurisdictions are subsumed under the TAT.

This paper provides a panoramic view of the *Tax Appeal Tribunal (Procedure) Rules, 2009* (TAT Rules) - the basic document which will facilitate the operation of the TAT.

The salient and unique features of the TAT rules and how the TAT is expected to operate will be discussed. The paper is divided into seven parts. Parts One and Two are devoted to introduction and the theoretical framework against which the Rules will be appraised. Part Three undertakes a synoptic evaluation of the Rules while Part Four examines the procedure for taking evidence before the Tribunal. Part Five focuses on the procedure for hearing cases and delivery of decisions while Part Six is on appeals from the decisions of the Tribunal. The paper is concluded in Part Seven with suggestions.

### 2.0. THEORETICAL BACKGROUND

Civil procedure is the body of laws governing the methods and practices used in civil litigation, a particular method or practice used in carrying on civil litigation. The civil procedure of each court sets out the rules and standards that govern the initiation and conduct of a civil lawsuit in the court. It covers the methods of commencing an action, prescribes what kind of processes are required of parties, the timing and manner in which these must be done, the conduct of trials, the process for judgment, and how the courts and its key official must function.

Every Court has inherent jurisdiction to regulate its procedure. Thus each court has its rules. Although some of these rules sometimes have striking similarities, they do diverge in fundamental ways which make the rules of each court unique to the court. Rules by juridical nature are subsidiary legislations made by bodies other than the legislature in pursuance of the power vested on them by the enabling statute. The Rules may be made by the Chief Judge or Chief Justice or by a Minister in respect of certain Tribunals. The TAT Rules were made by the Minister of Finance pursuant to paragraph 21 of the 5th Schedule to the FIRS Act 2007. Any provisions of the Rules which conflict with the provisions of the Constitution and or the enabling law otherwise stand the risk of being declared null and void to the extent of their inconsistencies.

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9 According to Nwadialo, "The law establishing a court, almost invariably provides for the making of the rules to regulate its proceedings. The power to make such rules may be conferred by the law on the head of that court or the Governor of the State or on a rule making body. Sometimes, approval of the Executive or the Legislature may be necessary for the rules to become operative." Nwadialo, F., Civil Procedure in Nigeria, 2nd edn. University of Lagos Press, (2000) p.11.
10 Id
11 The State High Court or the Federal High Court is headed by a Chief Judge.
12 The Court of Appeal and Supreme Court are headed by the President of the Court of Appeal and the Chief Justice of Nigeria respectively.
13 Section 1(3) of the Constitution
14 There must be no inconsistency between a delegated legislation and the enabling law; otherwise the delegated legislation will be void: See Akingbade v. Lagos Town Council (1955) 21 NLR 90.

For the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.”
The Rules are binding and not made for the fun of it. For example, if a party fails to allow the rules in follow the rules in commencing an action, the non compliance, depending on the nature, may rob the court of its jurisdiction and render the action incompetent. However, the court will not allow technicalities to defeat the ends of justice. The Nigerian Courts have always rejected any invitation, no matter how ingenuous, which seeks to enthroned mere technicalities over substance. Ostensibly in an attempt to capture this sensible rule, Order 2(2)(f) of the TAT Rule provides that:

"The fair and just application of the provisions of the tax laws include (f) seeking informality and flexibility by avoiding undue adherence to technicality in the proceedings under the Rules". (Emphasis mine)

A literal interpretation of these provisions would vest the Tribunal with power to liberally construe the "provisions of the tax laws". It is submitted that this is an aberration from the well established principle that there is no equity in taxation. This principle has been applied in a number of Nigerian cases such as S.A v. Regional Tax Board and Aderawos Timbers Trading Company Ltd. v. FBIR. If the provisions of Order 2(2)(f) of the TAT Rule were to be applied to the fullest, it would lead to uncertainty in the determination of the applicable tax law as justice will then vary according to the length of the foot of the Chairman of TAT. What seems to be the correct intendment of the drafters of the TAT Rule is captured by or. 73(2) which enjoins a liberal approach in the "conduct of the proceedings" rather than the "strict interpretation of the tax law"

3.0. TAX APPEAL TRIBUNAL (PROCEDURE) RULES A SYNOPTIC EVALUATION

The TAT Rules consist of 104 Orders with two Schedules. Schedule 1 contains a list of Forms for different purposes in the course of the proceedings designated as FORM TAT 1 TAT 10. Schedule 2 stipulates the filing fees. The Rules are divided into seven Parts.

15" In Madukolu v. Nkemdilim, (1962) 1 All NLR (Pt.4) at p 557, the Supreme Court held that in order for a court to have jurisdiction in a matter the case must have "come be
18(1970) 1 ALR Comm.68.
19(1969) 1 All NLR 247
20 The uncertainty in the decisions of the Chancellor when evoking his equitable jurisdiction led to the famous comment by Seldon that equity varied according to the conscience of the individual Chancellor in the same way as the length of their feet. See Table Talk of John Selden, (ed, by Pollock 1927), p.43, when he said: "Equity is a roguish thing, for law we have a measure, know what to trust to. Equity is according to the conscience of him that is Chancellor, and as it is larger or narrower so is equity. It is all one as if they should make the standard for the measure we call a foot to be the Chancellor's foot; what an uncertain measure would this be, one Chancellor has a long foot, another a short foot, a third an indifferent foot. It is the same thing in the Chancellor's conscience". Quoted by Fabunmi J.O., Equity and Trusts in Nigeria (Ile-Ife: University of Ife Press Ltd, 1986) p.2.
21From N2, 000.00 to N50, 000.00 depending on the amount being claimed. Fees for filing of motion, declaration of oath, scaling exhibit and service range from N50.00 to N500.00.
Unfortunately, the TAT Rules has no Table of Contents which would have aided easy location or direction to particular subject of interests.

3.1. Objectives of the Tribunal

The overriding objective of the TAT Rules is to promote substantive justice above formal justice. Substantive justice connotes a relaxation of the strict rules, especially where it will wreck injustice on a party in circumstances where the Tribunal considers undeserving of such. Order 2 provides that the Tribunal shall ensure that its procedure is flexible, informal, and inexpensive, avoid delay and ensure that no party enjoys procedural advantage. This writer considers the objective to promote tax awareness in Order 2(b) to be out of sync with the basic functions of a tax Tribunal. Section 8(1) (r) of the FIRS Act already vests on the FIRS the power to "carry out and sustain rigorous public awareness and enlightenment campaign on the benefits of tax compliance within and outside Nigeria". It will be out of character for the Tribunal, for instance, to sponsored jingles in the media on obligation to pay tax. It is better for the Tribunal to steer clear of such propaganda in order to safeguard its impartiality and neutrality. It is hoped that TAT will not get itself involved in any such enlightenment campaign or public awareness.

3.2. Commencement of Proceedings

Any person aggrieved by (i) an assessment or (ii) Demand Notice made by the Service or (iii) by any action or decision of the Service may, by way of written notice, appeal to the Tribunal. The notice must be "sent or delivered" not later than 30 days after the date on which the disputed decision was sent to or received by the Appellant provided that the Tribunal may extend the time within which the Notice of Appeal may be filed where it seems just and equitable to the Tribunal. The notice shall be in a standard Form No TAT 1 or any other form acceptable to the Tribunal. The Notice of Appeal shall state certain basic information such as name and address (including e-mail address) among others. The notice shall state in numbered paragraphs, in clear and concise terms, each and every error which the appellant alleges has been made by the Service (e.g. in issuing a notice of deficiency or in denying a refund application), together with a statement of the facts upon which the Appellant relies to establish each said error; and the relief sought by the Appellant. The reason for the appeal may also be stated in a separate written statement. A prescribed form approved by the Tribunal may be obtained from the office of the Service or the office of the Tribunal. There shall be attached to the application a statement on oath of each witness to be called by the Appellant with all the relevant documents and a copy of the disputed decision. Where the Appellant files an appeal that

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22 See Order (Hereinafter Ord.) 2 rule 2(f).
23 Supra note 1
24 Ord 5 r.1 & 2
25 Ord 5 r. 6
26 Ord 8 r. 1.
27 Ord 5 .r 3
28 There seems to be printers devil as there is already a sub rule 2. The provision should have been sub rule 4.
29 Ord 5 r. 7.
30 Ord. 6 r.3 & 4
31 Ord 5 r. 4 & 12
32 Ord. 5 r. 5.
does not conform to the prescribed form, he shall be given a period of 30 days to file a corrected version failing which the Tribunal will dismiss the appeal.\textsuperscript{33}

The rules make provisions for front loading ostensibly to fast track the hearing of cases.\textsuperscript{34} Front loading also applies with equal force to a reply.\textsuperscript{35} The essence of the concept of front loading is that in initiating and defending an action, parties are obliged to place before the Tribunal all documentary and potential oral evidence that they intend to rely upon to prosecute or defend the action at the time of filing the originating process or lodging of a defence to the action.\textsuperscript{36} Where a party fails to comply with the requirement of front loading Or 21 r. 2 expressly provides that his "notice of appeal or reply, as the case may be shall not be accepted for filing". Front loading of cases is the trend even in most State and Federal High Courts and Election Tribunals in Nigeria since the front loading system was introduced with a measure of success in Lagos State since 2004.\textsuperscript{37} It is commendable that the Rules make provision for e-mail addresses and telephone numbers ostensibly to establish contacts and communicate effectively with parties and their counsel about the development and management of the case. One of the constant sources of worry in the regular courts in Nigeria is the utter lack of respect for the time and convenience of parties and their counsel. There were occasions where parties and counsel would travel hundreds of kilometer to attend court sessions only to learn that the court was not sitting without being mindful of the attendant risk and waste of resources.

It is remarkable that Order 5 .r3 still implies that Form No TAT 1 "may be obtained from the office of the Tribunal". There is no reason, in our view, why the Tribunal should not accept downloaded form or forms printed by the parties once all the requisite information are contained in the form in the spirit of the substantial justice objective.\textsuperscript{38} This is more so when the form does not attract payment of fee under the Second Schedule to the Rules. There is also no reason why another form should be prescribed for a separate statement (stating) the reason for the appeal under Order 5 rules 8 &10 since this is just an appendage to the Notice. The provisions that make the appellant or his representative liable to prosecution in the event of a wilful misstatement seem to smack of intimidation and is unnecessary. It is sufficient to require that a statement should be made on oath to verify the facts.

\textbf{3.3. Representation}

Order 9 provides that an appellant may appear by himself or by a Legal Practitioner or by a Certified Accountant or a General Partner (in case of partnership ) or an employee provided a power of attorney

\begin{itemize}
\item \textsuperscript{33} Ord. 27
\item \textsuperscript{34} A similar provision is contained in Order 3 rule 2(1) of the High Court of Lagos State (Civil Procedure) Rules 2004 which provides that in filing an action by writ of summons, the writ must be accompanied by (i) the Statement of Claim, (ii) List of Witnesses to be called at the trial, (iii) Written statement on oath of the witness to be called; and (iv) Copies of every document to be relied on at the trial.
\item \textsuperscript{35} See Ord 13 & 21.
\item \textsuperscript{37} The overriding objective of the new Lagos High Court Civil Procedures Rules, 2004, is the quick dispensation of justice. This was necessitated by the fact that the erstwhile procedure for litigation was at a snail-pace hence the need to evolve rules of civil procedure that will aid the expeditious administration of justice. See Banire, \textit{id.} at p.vi.
\item \textsuperscript{38} See section 3.1 above
\end{itemize}
is executed to that effect or an adult (in case of an infant). It is not clear from the provisions of Order 9 whether a representative must be either a Legal Practitioner or Chartered Accountant in all cases. It should be noted that Para 18(2) of the Fifth Schedule to the FIRS Act gives "solicitors, chartered accountants or adviser" the right of audience before the Tribunal. Therefore, any restriction of right of audience under the rule will be inconsistent with the substantive provisions of paragraph 18(2) of the Fifth Schedule, to the FIRS Act and therefore null and void. Failure to make reference to Chartered Tax Practitioners is a grave oversight on the part of the drafters of the Rules, the Chartered Institute of Taxation of Nigeria (CITN) being the only statutory body in Nigeria charged with the regulation of tax profession in all ramifications. There is no basis in our view why the right of audience should not be extended to Chartered Tax Practitioners if the parties consider them to be good enough to be their representative. Also, the requirement of a power of attorney for an employee to appear on behalf of his employer seems to be unnecessarily formal contrary to the objective of the Rule. A simple letter authorisation from the management of the company should be sufficient proof of authorisation.

3.4. Reply

The Respondent shall send a written reply within 14 days stating whether or not he intends to oppose the appeal. The reply shall include summary of the relevant facts, a statement whether or not he intends to contest the initiating application, positive denial of claims or reliefs sought, grounds for opposing, and copies of all the relevant documents. The possible reason for making separate provisions for reply by FIRS in Order 14 is not clear more so when it is almost a verbatim reproduction of Order 13 governing reply generally. There is no provision for the Appellant to respond to issues that may be raised in the Respondent's reply. Typically, in the normal order of proceedings, the Appellant should have the final say by filing a reply. The reason for departing from this well settled order of proceedings is not clear.

3.5. Amendment

A party may apply to the Tribunal seeking leave to amend his reply or initiating application provided hearing has not commenced. The Tribunal may grant the permission on such terms as it thinks fit, including the payment of cost or expenses. As a rule, a party cannot amend more than once provided that the Tribunal may allow one further amendment where very cogent reason is shown. Except as otherwise ordered by the Tribunal, the other party shall have seven days to reply. There is a departure

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39 Ord.9. Order 76 also deals with representation of parties before the Tribunal. The basis of this duplication of provisions on representation is not clear.
40 See section 11 (c) of the Chartered Institute of Taxation of Nigeria Act No. 76. 1992, Cap C10, LFN 2004.
41 Ord. 13 r. 3
42 Ord. 15 r. 1 (b)
43 Ord. 15 r. 2
44 Ord.13 r 1 & 2
45 Ord. 23
46 Ord. 23 r. 4(a)
47 Ord. 23 r. 4(b)
48 Ord. 23 r. 4(5)
from the rigid rules as to pleading by providing that 'when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings'. This is salutary and in sync with the overriding objective of doing substantive justice.

3.6. Pre-hearing Review & Interlocutory Applications

Where the Chairman of the Tribunal is of the view that a pre-hearing review will facilitate any proceedings, he may suo moto or based on the application of either party direct that a review be held. The Tribunal may also direct that any question of law be decided at a preliminary hearing without an oral hearing make a decision or grant a relief accordingly. The decision may take the form of an interlocutory or interim relief such as stay of execution of the previous decision or direction that certain documents or materials be delivered to the Tribunal for the purposes of determination of any matter before it.

3.7. Hearing Bundle

The Secretary is saddled with the duty of compiling a hearing bundle which shall contain copies of all the documents filed by parties to the appeal. This is similar the compilation of the record of appeal. The question is whether this is necessary since most tax cases are usually on interpretation of law and not facts and therefore relatively simple. What is more, all the parties must have been in possession of all the documents filed by the other party. Except where the documents are exceptionally bulky, there may not be any need to follow this route in all circumstances.

3.8. Case Management Power

The Tribunal is vested with powers to regulate its proceedings and it may extend the time for doing anything under the Rules, postpone the date and place of hearing or adjourn to allow a case to be settled through. Alternative Dispute Resolution, require a party or his representative to attend the

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49 The general rule as to pleadings is that any fact that is not pleaded is irrelevant and goes to no issue, see Ogiamen v. OgianienNMLR 245.
50 Supra note 33.
51 Ord. 32 r. 1
52 Ord. 33
53 Ord. 28
54 Ord. 29
55 Ord. 34
56 An appellate court re-evaluates both oral and documentary evidence and it does this by the means of the record of appeal which contains the transcripts of the oral evidence and copies of documents and exhibits used at the trial court, court's, process and records of interlocutory proceedings. See Nwadialo, supra note 8 at p. 841.
57 Ord. 35 r. 1
58 Ord. 35 r. 3(a).
59 Ord. 35 r. 3(b).
Tribunal require a party to provide a statement of agreed facts, facts in dispute, and an issue or issues to be decided by the Tribunal including a list of agreed documents, specify points of law on which it will require oral argument at any hearing, hold hearing and receive evidence by telephone, through a video link or by using any other method of direct oral communication, decide that part of any proceedings be dealt with as separate proceedings, stay the whole or part of any proceedings or decisions either generally or until a specified date or event, decide the order in which issues are to be considered, exclude an issue from consideration, strike out a matter or amendment of any Notice of Appeal or reply or supplementary statement or written representation. Where the Tribunal proposes to exercise a power suo moto it may give any person who is likely to be affected a minimum of three days notice before the hearing. Where a party or a witness is an illiterate the Secretary shall make arrangement for the assistance of an interpreter at no cost to the party or witness. The Tribunal can also act as an arbitrator on a question, dispute or matter or on a question or dispute referred to the Tribunal for arbitration by agreement of the parties in writing.

3.9. Group Proceedings Direction (GPD)

Where the appeals or applications before the Tribunal are related to the same issues of fact or law the Tribunal may give a Group Proceedings Direction (GPD). The effect of a GPD is that an order or direction made pursuance to one or more GPD issues affects and is binding on all parties to other appeals or applications that are on the group register. The Tribunal may, suo moto or on the application of any of the parties, consolidate or hear together two or more appeals where such appeals are in respect of the same matter or issues or in respect of several interests but in the same subject matter in dispute. Where two or more appeals involve the same issues, based on the written consent of all the parties to the appeals or initiating applications, the Tribunal may select one or more of the appeals and hear it in the first instance as a test case and the decision from it shall be binding on all parties to the other appeals or initiating applications but without prejudice to the right of the parties to appeal against the decision to the Federal High Court.

60 Ord. 35 r. 3(c).
61 Ord. 35 r. 3(d).
62 Ord. 35 r. 3(e).
63 Ord. 35 r. 3(f).
64 Ord. 35 r. 3(g).
65 Ord. 35 r. 3(h).
66 Ord. 35 r. 3(i).
67 Ord. 35 r. 3(j).
68 Ord. 35 r. 3(k), (1) & (m).
69 Ord. 35 r. 7
70 Ord. 38.
71 Ord. 39.
72 Ord. 44 r. 1.
73 Ords. 44 and 45.
74 Ord. 49
75 Ord. 50
4.0. EVIDENCE

Part Four of the Rules deals with proof of facts which form the basis of the right which a party is seeking to vindicate and or relief that he is seeking. Law of evidence governs what type of testimony or statement will be admitted by the court and who is competent to give evidence. The whole essence of the law of evidence is to guard against admission of an "irrelevant" piece of evidence that may unfairly prejudice the position of a party.76 The Rules contain provisions on issues ranging from summoning of witnesses, witness statements, affidavits and expert evidence, *inter alia*.

Subject to any contrary provision of the Rules or any direction of the Tribunal, evidence77 of witnesses shall be proved at the hearing by witness statements and oral evidence. Order 55 rule 4 provides that the Tribunal may permit a witness giving oral evidence to amplify his witness statement and give evidence on new matters which have arisen since the witness statement was filed. There is a unique provision in Order 53 which permits a witness to give evidence by telephone, video link or by any other electronic means of direct communication if the Tribunal is satisfied that this will not prejudice the administration of justice. This provision can be useful in situations where a witness who is supposed to testify before the Tribunal is resident abroad and it will be very expensive to bring him to Nigeria. It appears that the testimony of witnesses recorded on a Video Compact Disc (VCD) or Digital Versatile Disc (DVD) might not be admissible under this provision as it requires that it must be an electronic means of ‘direct’ communication.

A party may call an expert or put in evidence an expert's report.78 Generally, expert evidence is to be given only through a written report unless the Tribunal otherwise directs.79 An expert's report must be addressed to the Tribunal and not to the party who invited the expert.80 The report must contain details of the expert's qualifications, the material instructions which formed the basis of the report, details of any literature or material relied upon by the expert, how experiments were carried out, the qualification of the person who carried out the experiment, reasons for the expert's own opinion, summary of the conclusions reached and a statement that the expert understands the nature of his duty to the Tribunal and that he has complied with that duty.81 The overriding duty of an expert shall be to the Tribunal.82 Where two or more parties want to submit expert evidence on a particular issue, the Tribunal can direct that the evidence on that issue be given by only one expert. Where the parties cannot agree on the choice of expert the Tribunal can select from a list prepared by the parties or direct that the expert be selected in such a manner as it deems appropriate.83 The Tribunal is vested with power to appoint an expert where it is of the view that it is desirable to have the assistance of an expert on any technical question that has arisen.84 Parties are allowed to put written questions to experts (whether appointed

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76According to Aguda, "As a general rule, it is only facts which are relevant to the fact in issue that can serve as the basis for the admissibility of evidence. In other words, evidence will be admitted only in proof of facts in issue, facts relevant to the facts in issue, and fact relevant to some other facts which are relevant to the facts in issue." Aguda, Law and Practice Relating to Evidence in Nigeria. (London Sweet & Maxwell) 1980 at p.29.
77Ord. 52 rule 2.
78Ord. 60 rule 2.
79Ord. 62 rule 1.
80Ord. 62 rule 2.
81Ord 61 rule 3.
82See Or. 61 rule 2.
83Ord 64 rule 2.
84Ord 70.
by a party or jointly or by the Tribunal) and the expert’s answers to questions put shall be treated as part of the expert’s report.85

5.0. HEARING AND DECISIONS

The Secretary of the Tribunal is mandated to serve a hearing notice at least 7 days before the date fixed for the hearing of the matter. When a party receives the hearing notice he is expected to inform the Tribunal if he will be present or represented at the hearing and whether he intends to call witnesses.86 At the commencement of the hearing, the Chairman is expected to explain the manner and order of proceeding with regard to rules of evidence including the burden and standard of proof.87 The Tribunal is empowered to require the personal attendance of persons who make witness statement or who depose to affidavits or an expert whose report has been filed.88 The Tribunal is also permitted to admit any evidence which ordinarily might not be admissible in a court of law. The Tribunal can also allow a party to rely on reasons not stated in the notice of appeal or reply or evidence not presented to FIRS before the action.89 The Tribunal has a duty to assist any party who appears to be unable to make the best of his case without advocating the course that such a party should take.90 A cumulative reading of the provisions of Order 73 will reveal that there is a high degree of informality in the proceedings of the Tribunal compared to that of the regular court of law.91 The rules of evidence, especially as it relates to admissibility of evidence, are more relaxed and there is less emphasis on rigid adherence to technical rules. For instance, copies of public documents which have not been certified as required under the Evidence Act92 might be admitted in evidence by the Tribunal.

As a general rule, all hearings and decisions of the Tribunal must be in public.93 The hearings and decisions of the Tribunal can be held in private if the Tribunal considers that a private hearing is required in the interest of morals, public order or national security or where publicity would prejudice the interest of justice; or where all the parties to the proceedings indicate in writing that the hearing be in private provided the Tribunal is satisfied there is no important public interest consideration that calls for the public to be present.94 The Tribunal may decide that only a part of the proceedings shall be heard in private or that the names and identifying characteristics of the parties in the proceedings shall not be made public.95 All the members of the Tribunal must be present before the Tribunal can decide any

85See Or. 65 generally
86Ord. 71 r 3.
87Ord. 73 r 1. Generally in civil proceedings, the burden of proof is on the party who will fail if no evidence is called by either side as stated in section 137 of the Evidence Act, while the standard of proof is based on the balance of probabilities as opposed to proof beyond reasonable doubt which obtains in criminal proceedings.
88Ord 73 r 4.
89Ord 73 r 5.
90Ord 73 r 6.
91Ord 73 r 8.
92Section 96(1)(e) & (2) (c) of the Evidence Act specifically provide that only the certified true copy of public document is admissible as evidence.
93Ord 75 r 1.
94Ord 75 r 1 (a) & (b).
95Ord 75 r 2.
question. This is undesirable as it can cause unnecessary delay in the determination of disputes before the Tribunal. This requirement is inconsistent with the provisions paragraph 2(4) of the Fifth Schedule to the FIRS Act which provides that the quorum at the sitting of the Tribunal shall be three members. It is therefore hope that the provisions of Order 74 of the Rules will be streamlined with that of section 2(4) of the Fifth Schedule to the FIRS Act or be deleted since it has been taken care of.

Order 77 specifies the persons who could be present at the hearing of an appeal. Such persons include, the Chairman or members of the Tribunal even if they are not part of the panel at that particular hearing, staff of the tribunal and any other person permitted by the Tribunal or with the consent of the parties. Only members of the panel hearing an appeal or an application can take part in the deliberations or decisions of that panel. These provisions appear to be in conflict with that of Order 75 r.1 which mandates as a general rule that all hearings and decisions of the Tribunal shall be in the open. Considering that the "privilege" to watch proceedings is limited to only members of the Tribunal, it hard to see how the hearing can be said to be open.

Where a party fails to attend the hearing either personally or through a representative and the Tribunal is satisfied that the party was duly notified of the hearing and that there no sufficient reason for the absence, the Tribunal may hear and decide the appeal or adjourn the hearing. Different options are open to an absent Appellant or Respondent against whom a default judgment had been given. An absentee Appellant may apply to the Tribunal the Tribunal for prior permission to institute a fresh appeal in respect of the same facts or apply for a review pursuant to Order 84 or appeal on points of law to the Federal High Court. An absentee Respondent on his part may apply to the Tribunal to vary or set aside the judgment within a reasonable time showing a good defence to the appeal or application and show that there is a just cause for his default.

The decision of the Tribunal may be taken by a majority and the decision must record whether it was unanimous or a majority decision. Where the Tribunal is constituted by an even number of members, the Chairman shall have a second or casting vote. It is hard to envisage how the Tribunal can be constituted by an even number in view of the express prescription that all the members must sit to hear and determine all cases as stated in Order 74. The decision of the Tribunal must be signed and dated by the Chairman. A better approach would have been to allow every member including those who may dissent to sign the decision.

The decisions of the Tribunal may be reviewed if a party entitled to be heard at the hearing failed to be present or represented for a good reason; or if the decision of the Tribunal was obtained by fraud; or if new evidence has become available; or the interest of justice requires that there should be a review. The last ground might constitute a very fertile ground for frivolous applications for review if not controlled by the Tribunal considering the nebulous nature of what constitutes the "interest of

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96 Ord 74
97 Ord 77 r 1.
98 Ord 77 r 3.
99 Ord 79 r 1.
100 Paragraph 17 of the Fifth Schedule to the FIRS Act. Supra note 3.
101 Ord 79 r 4. See also Ord 10r 11 of the Lagos High Court Civil Procedure Rules, 2004 which contains a similar provision.
102 Ord 82 r 1.
103 Ord 82 r 2 (c).
An application for review must be made not later than 14 days after the Applicant received the decision or became aware of the "new evidence." It is mandatory that the review must be heard by the same panel (members) which originally decided the case. While all the members would have been familiar with the facts of the case and aid quick review, a review may become impossible if one of the members or all of them could no longer sit due to certain reasons such as death, disqualification, permanent incapacity, ill-health, conviction for an offence or resignation. In such exceptional circumstance, it is sufficient in our view if a minimum of three members, who originally decided the matter, are included in the review panel.

Where any application is made to the Tribunal for a stay of execution of its decision, such application shall be made by motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought. The Tribunal may refuse or grant the order subject to such conditions as shall appear just, including the deposit in the Tribunal of any money adjudged due to any party in the judgment appealed from.

6.0. APPEAL FROM THE DECISION OF THE TRIBUNAL

There is incongruence in the provisions of Order 88 in terms of where appeals from the Tribunal lie to. The head note made reference to the Federal High Court while reference is made to the Court of Appeal in the main body of the provisions. For ease of reference, the provisions are reproduced below:

"Appeals to the Federal High Court

88. (1) Any party dissatisfied with a decision of the Tribunal may, pursuant to section 243 of the Act, appeal against such decision on points of law to the Court of Appeal upon giving notice in writing to the Secretary to the Tribunal within 30 days after the date on which such decision was given."

Reference is also made to a nonexistent section 243 of "the Act" without full description the title of any particular statute. Whilst Order 104 provides that reference to "Act" in context of the Rules means the FIRS Act which contains only 70 sections. If the provisions is taken to mean that appeal shall lie to the Court of Appeal, this will be in conflict with the substantive provisions of paragraph 17 of the 5th Schedule to FIRSEA which categorically provides that any appeal shall go to the Federal High Court. What is the more, provisions will be inconsistent with the provisions of section 251 (a) of the Constitution of the Federal Republic of Nigeria, 1999. In a recent case of Stabilini Visinoni Ltd. v. FBIR, section 20 of the Value Added Tax Act which provided that appeals from the decisions of the VAT

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104 This provision appear to confer a discretion on the Tribunal. It must be stressed that judicial discretion must be exercised judicially and judiciously. In CBN v. Okojie (2002) 8 NWLR pt. 768 p.45 it was held by the Supreme Court that "a discretion is exercisable not on the mere figment of the person doing so but upon facts or circumstances necessary for the proper exercise of that discretion should be exercised judicially and judiciously, that is reasonably, in the sense that relevant matters taken into consideration while extraneous or irrelevant matters are avoided and a decision which suits the occasion is arrived at",perUwaifoJSCat61-62parasH A)

105 Ord 84 r 2.

106 Ord 96 r 8.

107 Ord 96 r 9.

tribunal shall lie to the Court of Appeal was declared to be null and void on the basis that it was an encroachment upon the exclusive jurisdiction of the Federal High Court on causes and matters pertaining to the revenue of Federation. The entire provisions of Order 88 is, therefore, mired in myriads of ambiguities For it to be meaningful, the phrase "pursuant to section 243 of the Act" should be deleted while the phrase "Court of Appeal" should be substituted with "Federal High Court".

7.0. CONCLUSION

The sheer volume of the TAT Rules alone makes it *sui generis*. The document is almost twice that of the Civil Procedure Rules of Federal High Court\(^{109}\) and High Court of Lagos State.\(^{110}\) The Rules is almost 10 times more than that of the Court of Appeal\(^{111}\) and Supreme Court\(^{112}\). The procedure before the Body of Appeal Commissioners (BAC) was governed by few substantive sections under the Companies Income Tax Act\(^ {113}\)with no special rules developed for the BAC. The VAT Tribunal Rules on its part has only 17 Orders. It is not far to seek, therefore, that the drafters of the rules set out to be as comprehensive as possible. The objective of comprehensiveness seems to have been overdone especially with regard to provisions on evidence.\(^{114}\) Being a quasi judicial body, whose overriding objective is to do substantive justice, it is sufficient to prescribe the observance of the rules of natural justice as the benchmark for the Tribunal while the Tribunal is at liberty to control its proceedings. The need for elaborate rules of evidence seems to be unnecessary in view of the requirement for front loading.

It is also our expectation that the Chairmen and members of the Tribunal will constantly keep the overriding objectives of the Rules\(^ {115}\)at the back of their minds in resolving procedural issues. Since the Rules vest the Chairmen with enormous powers and responsibilities in the conduct of cases, there is bound to be a measure of divergent approaches from different zones of the Tribunal.\(^{116}\) It is, however, hoped that there will periodic review among the Chairmen and members when they meet at a common forum to share experiences and form consensus on what seems to be the best approach. Following this approach, what may initially seem to be a cacophony of voices may eventually give way to the "common law" of TAT Rules in Nigeria. Considering that the Tribunal has eight zones,\(^ {117}\) there is the need to prescribe specific rules on place of institution a suit and trial. In doing this, it is suggested that parties should have the options of instituting an action either where he is resident or the zone where the decision giving rise to the appeal originated in furtherance of the objective of facilitating access to justice. In the final analysis, the TAT Rules can benefit from a painstaking review to avoid number of

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\(^{109}\)Federal High Court (Civil) procedure Rules, 2000 contains 54 Orders  
\(^{110}\)High Court of Lagos State (Civil) procedure Rules. 2000 contains 55 Orders  
\(^{111}\)The Court of Appeal rules has 7 Orders  
\(^{112}\)The Supreme Court has 10 Orders  
\(^{113}\)See sections 73 – 75 of CITA  
\(^{114}\)The entire Part 4 of the Rules spanning Orders 51 to 70 were devoted to evidence.  
\(^{115}\)See section 3.1 above  
\(^{116}\)The TAQT has given eight zones. The zones are Abuja, Lagos, North Central. North East, North West, South East, South South and South West.  
\(^{117}\)Id
repetitions\textsuperscript{118} and omissions.\textsuperscript{119} It is hoped that future revision of the Rules will streamline the provisions and make it more focused and compact.

\textsuperscript{118}For instance, both Orders 9 and 76 deal with representation of parties before the Tribunal. Ord 14 which applies to reply by FIRS is needless being only a repetition of the general provisions on reply in Ord 13.

\textsuperscript{119}Ords 66, 67 and 69 are missing.