



# CORPORATE LAW PRACTICE

## Practice Handbook



**COUNCIL OF LEGAL EDUCATION  
NIGERIAN LAW SCHOOL**

# **CORPORATE LAW PRACTICE HANDBOOK**

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Nigerian Law School

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Published in 2022

**Printed by:**

Yaliam Press Ltd.  
No. 3, Abeokuta Street, Area 8, Garki, Abuja  
08060010202, 09093232264

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## **CLP COURSE OUTLINE**

1. WK 3 – Overview of Legal Framework and Regulatory Bodies on Corporate Practice in Nigeria. To include Overview of CAMA
2. WK 4 – Choice of Business Organisation and Formation of Companies
3. WK 5 – Promotion of Companies and Pre-incorporation Contracts
4. WK 6 - Foreign Participation in the Nigerian Business Sector
5. WK 7 - Post-incorporation Matters
6. WK 8 - Corporate Governance (1) – Legal Framework of Corporate Governance, Directors and Secretaries
7. WK 9–Corporate Governance (2) – Membership, Meetings and Resolution
8. WK 10 – Financial Statements, Audits and Annual Returns
9. WK 11 – Majority and Minority Protection
10. WK 12 – Shares, Debentures and Enforcement of Securities
11. WK 13 – Floatation of Securities and Collective Investment Schemes
12. WK 14 – Corporate Restructuring 1
13. WK 15 – Corporate Restructuring 2
14. WK 16 – Company Proceedings, Investment Disputes, Administrative Proceedings.

## **Committee (CAC) and Investments and Securities Tribunal**

15. WK 17 – Corporate Insolvency, Company Voluntary Arrangement, Administration and

- Receivership
16. WK 18 – Winding Up and Dissolution of Companies
  17. WK 19 – Business Names & Partnership & Limited Liability Partnershi (LLP) – Limited Liability Partnership (LLP) formation to dissolution.
  18. WK 20 – Incorporated Trustees and Dissolution

### **WEEK 3:**

#### **TOPIC: 1. AN OVERVIEW OF THE LEGAL FRAMEWORK & REGULATORY BODIES ON CORPORATE LAW PRACTICE IN NIGERIA.**

#### **B. LEARNING OUTCOMES:**

1. Identify various laws and regulatory bodies on corporate law practice in Nigeria.
2. List the regulatory bodies.
3. Procedure for accreditation and registration with the regulatory bodies.
4. Complete the forms required for accreditation with the regulatory bodies.
5. Identify ethical issues arising in choice of business and non- business organization
6. Overview of CAMA 2020

#### **C. CONTENT:**

1. Principal laws, subsidiary legislations and regulatory bodies on corporate law practice
2. Features and functions of the regulatory bodies and their relevance to corporate law practice- CAC, SEC, OSIC (one stop investment centre)
3. Procedure for accreditation with CAC and SEC.
4. Completion of forms required for accreditation and registration.

**D. ACTIVITIES.**

1. General overview by the Tutor-
2. Small groups discussion (question and answer) on Laws and the bodies-
3. Random presentation by students-

**15 minutes break.**

4. Random presentation by students' continue-
5. Brainstorming on the ethical issues-
6. Assessment by short test-

**E. EVALUATION/ feedback and Assignment for the next class-**

**F: RESOURCES:** Power point slides, Course handbooks, recommended textbooks and Statutes e.g CAMA & ISA.

**WEEK 4 - TOPIC: CHOICE OF BUSINESS ORGANIZATION AND FORMATION  
SECTIONS 18 – 42**

**I: Companies****A. LEARNING OUTCOMES:**

1. State the different types of business organisations (companies) that can be registered and advice on their features and suitability.
2. Prepare a checklist of documents required for registration of companies.
3. Conduct Client interview and apply Client instructions towards preparation of documents for registration of companies.
4. Identify the professional responsibilities involved in the formation of a company

**B. CONTENT:**

1. Types of business organisations that can be registered, and Take instruction from Client and apply the instruction to prepare of documents required for registration of companies at CAC.
2. Regulation of choice of corporate name
3. Document required for stamping
4. Documents required to be submitted for incorporation of companies at CAC.
5. Professional responsibility requirements under the RPC

**C. ACTIVITIES.**

1. Tutor overview-
  2. Brainstorm: Students give a checklist of different type of business organisations -
  3. Buzz group discussion by students-
  4. sample presentation-
  5. Role plays by students on client interview (taking instruction for preparation of documents for registration of companies at CAC –  
**15 minutes BREAK**
- 
6. Question & Answer session.-
- D. EVALUATION:** Random sampling questions and assignment on E- registration –
- E. RESOURCES:** Power points slides, flipcharts, relevant texts, and Electronic and Manual Handbooks.

## **WEEK 5- Promotion of Companies and Pre-incorporation contracts SEC 95 -104**

### **C. LEARNING OUTCOMES:**

At the end of the Lesson, students would be able to:

1. State the relevance of promotion activities, who is promoter, duties and liabilities of promoter, and legal relationship of promoter with the company and remuneration of promoter.
2. Discuss the incidences, types and features of pre-incorporation contracts (Joint venture and Shareholders agreement.).
3. Discuss the relationship between Memorandum & Articles and pre-incorporation Contract.
4. List the contents of Shareholders Agreement, Joint venture Agreement and commercial Memorandum of understanding.
5. Draft Pre-incorporation contracts.
6. Identify ethical issues involved in pre-incorporation matters.

### **C. CONTENT:**

1. Promoter and Nature of Promotion activities, duties and liabilities of promoter.
2. Legal relationship of promoter with the company, remuneration of promoter
3. Types and feature of different pre-incorporation contracts (Joint venture and Shareholders Agreements)
4. Drafting of Pre-incorporation contract
5. Ethical issues involved

**D ACTIVITIES:**

1. Tutor gives an overview by way of plenary discussion on promotion activities, duties Responsibilities and liabilities of promoter- 40 minutes.
2. Students list the type of promotion activities/pre-incorporation contracts familiar with that take place before formation of Company- 20.minutes.
3. Small group discussion by students on features of pre-incorporation contracts e.g (Joint Venture Agreement/ Share Holders Agreement/ Memorandum of Understanding in commercial transactions) and drafting of samples. – 50 minutes  
**15 minutes BREAK.**
4. Students in groups present samples of draft pre-incorporation contracts-50 minutes
5. Brainstorming on ethical issues arising- 15 minutes

**E. EVALUATION:** Questions and answers/Assignment. - 35 minutes.

**F. RESOURCES:** Power point slides, texts, Course hand books and Flip charts.

**WEEK 6.****TOPIC: POST-INCORPORATION MATTERS****SECTION 55 -77**

- a. **Preliminary Steps before Commencement of Business**
- b. **Conversion of Companies and Alteration of Registered Documents**

**A. OUTCOME:**

1. Identify the necessity and legal requirements for publication of Name, and significance for distinction between Corporate name and trade name
2. Prepare a checklist of statutory books and their uses

3. Identify the necessity and procedure for alteration of registered documents
4. Prepare board and company resolutions and other relevant documents in respect of the alteration of status of registered companies (conversion)
5. Prepare necessary documents relating to amendments/alteration of registered documents.
6. Conduct corporate searches and prepare report
7. Identify ethical issues arising in post-incorporation matters

### **C. CONTENT**

1. Checklist of relevant statutory books and preliminary steps before commencing Business.
2. Publication of name
3. Corporate searches
4. Conversion of companies
5. Alteration of registered documents- types and procedures
6. Ethical issues arising in post-incorporation matters

### **D. ACTIVITIES**

1. Overview by Tutor statutory books and preliminary matters before commencing business, relevant statutory books and corporate searches-
2. Small group discussion on relevant statutory books and preliminary matters, and corporate searches -
3. Prepare checklist of statutory books and corporate search report- 20 minutes
4. Sample presentation by the groups –  
**15 minutes BREAK**
5. Tutor overview on conversion of companies and alteration of registered documents- 30 minutes
6. Preparation of documents of conversion and alteration by the small groups- 30 minutes

7. Presentation by the small groups-30 minutes
8. Brainstorming on ethical issues arising in post – incorporation matters-10 minutes

**E. EVALUATION- Question & Answer- 20 minutes**

**F. RESOURCES:** Power point slides, flipcharts, CAMA and recommended text books.

**WEEK 7- FOREIGN PARTICIPATION IN NIGERIA  
IN BUSINESS SECTOR. SEC 78 - 84**

**B. OUTCOMES:**

1. Identify the various laws regulating participation in business in Nigeria by foreigners.
2. Identify companies / entities exempted from registration.
3. Identify the difference between foreign direct investments and foreign portfolio investment.
4. List the various incentives, permits and approval available under the law to encourage foreign participation in business in Nigeria.
5. Draft documents to be submitted to the relevant government agencies seeking reliefs and Approval on behalf of companies.
6. Give a checklist of documents to be attached in support of application to relevant Regulatory Agencies (NIPC, NOTAP & Immigration)

**C: CONTENT:**

1. Various laws regulating foreign participation in business in Nigeria.
2. Government agencies regulating foreign participation in business in Nigeria and their features.
3. Types of companies that can be exempted from registration and steps involved in applying to Relevant government agencies.

4. Permits/Approval/Reliefs/Incentives available under the law to encourage foreign participation.
5. Application for permits/approval /reliefs to relevant regulatory bodies

#### **D ACTIVITIES:**

1. Tutor overview on the various laws regulating foreign Participation in Nigeria and type of companies exempted from registration-
2. List different laws regulating foreign participation in business in Nigeria.-
3. Small group discussion by students on steps and requisite documents involved in applying for /incentives/reliefs/approvals, with sample presentation by each group-

**15 minutes BREAK.**

4. Tutor overview on requisite permits/approval /reliefs /incentives/approval
5. Drafting of documents/application for exemption

**E. EVALUATION:** Questions and Answers and Assignment on case study N0 2 as modified.-

**F. RESOURCES:** Handbook, power point slides, relevant statutes and recommended textbook.

### **WEEK 8: LEGAL FRAMEWORK IN CORPORATE GOVERNANCE, DIRECTORS AND SECRETARY**

#### **A. LEARNING OUTCOME:**

Identify the legal framework and the various codes of corporate governance in Nigeria particularly the code of corporate governance for public companies and code of corporate governance for banks – **CORPORATE GOVERNANCE (2):**

**OFFICERS OF COMPANY-(DIRECTORS AND SECRETARY)**

**A. LEARNING OUTCOME:**

1. Identify how Directors and company Secretary are appointed.
2. Identify types, duties, election, retirement, removal of directors and secretaries
3. List duties of Directors and Secretary in Corporate Governance.
4. Identify the breaches of statutory duties and processes for enforcement/remedies.
5. Complete the various statutory forms and Draft resolutions for appointment/removal of Directors and Secretary, notice of first board of directors' meeting.

**B. CONTENT.**

1. Directors- types, duties, appointment, election, retirement, removal.
2. Secretary- , appointment, duties, dual status and removal.
3. Breach of statutory duties and processes for enforcement/remedies.
4. Drafting of resolution for appointment and removal of directors, and company secretary, notice of first board of directors' meeting.

**C. ACTIVITIES.**

1. Tutor presents an interactive overview on types, appointment, duties and removal of Directors - 40 minutes.
2. Students prepare checklist of types and duties of directors - 20 minutes.
3. Discussion by Students in small group session on case study 2 as modified on the Appointment and removal of Directors and Secretary -20 minutes
4. Sample presentation by each group - 40 minutes

## **15 MINUTES BREAK.**

5. Students prepare checklist of types of duties of Secretary - 20 minutes.
6. Discussion by Students in small group session on case study 2 as modified on the appointment and removal of Secretary -20 minutes
7. Small group exercise on drafting of resolution for appointment/removal of directors and secretaries based on case study 2 as modified with sample presentation by each group - 40 minutes
8. Students simulate holding of board/general meeting for removal of director/secretary based on case study 2 as modified - 20 minutes
9. Brainstorming on Ethical issues in the appointment, duties, and removal of directors and secretary- 20 minutes.

E. **EVALUATION:** Questions and Answers- 10 minutes.

F. **RESOURCES:** Power point slides, flipcharts, CAMA and recommended text books, Power point slides, flipcharts, CAMA, and corporate governance codes and texts

## **WEEK 9 (MEMBERSHIP, MEETINGS & RESOLUTIONS).**

### **B. LEARNING OUTCOME:**

1. Identify various ways of acquisition of membership of company
2. Cessation of membership
3. Identify types of company meetings and resolutions
4. Prepare the relevant documents of company meetings.

### **C. CONTENT**

1. Overview by Tutor on membership, meetings and Resolutions.

2. Checklist of becoming a member and the types of meetings and Agenda of Meeting.
3. Cessation of membership
4. Preparation of meetings and Proceedings of meetings- Notices, Agenda, venue, voting, quorum, attendance, Minutes of Meeting, and different types of company resolutions.
5. Ethical issues involved in company membership, meetings and resolutions.

#### **D. ACTIVITIES.**

1. Tutor presents an overview on becoming member, types of meetings, preparation and proceedings of meetings and resolutions.
2. Students list types of membership, meetings and resolution- 10 minutes.
3. Discussion by students in small group session of the modified exercise in case study 2 or other case studies in respect of company meetings and proceedings -15 minutes
4. Sample presentations by each group on the legal issues involved in the exercise - 40 minutes
5. Drafting by students in small group sessions of Notice / Agenda of AGM and relevant Resolutions.-20 minutes
6. Simulation of AGM of a typical public company

#### **15 MINUTES BREAK.**

7. Sample presentation –40 minutes
8. Simulation of AGM of a Company -40 minutes
9. Consideration of ethical issues arising – 10 minutes

#### **E. EVALUATION:** Questions & Answers.- 10 minutes.

#### **F.RESOURCES:** Statutory forms, Electronic Handbooks, Power point slides/flip charts and recommended textbooks.

## **WEEK 10- CORPORATE GOVERNANCE 4: FINANCIAL STATEMENTS, AUDITS AND ANNUAL RETURNS**

### **A. OUTCOMES**

1. Identify various aspects of financial statements and persons entitled to receive Financial statement, and consequences and remedies for breach
2. Identify the procedure for appointment, duties and liabilities, resignation and removal of Auditors and who can be an Auditor
3. State the composition and function of Audit Committee
4. Filing of Annual Return forms and
5. Discuss the consequences for failure to file Annual Returns

### **ACTIVITIES**

1. Tutor overview on Audit , financial statement and annual return-30 minutes
2. small group discussion on audit, financial statement and annual-20 minutes
3. sample presentation- 30 minutes
4. filling and presentation of annual return form- 30 minutes
5. brainstorming and presentation on ethical issues on publication of financial statement-10 minutes

### **15 minutes-BREAK**

6. overview of financial statements, Audit and Annual Returns-30 minutes
7. small group discussion on qualification, appointment, removal and resignation of Auditor -20 minutes
8. presentation -30 minutes
9. small group discussion on financial statement, audit and annual returns-10 minutes
10. Evaluation-Q& A

## **WEEK 11- CORPORATE GOVERNANCE 5: MAJORITY RULE, MINORITY PROTECTION AND INVESTIGATION OF COMPANIES.**

### **A. OUTCOMES**

1. Identify the principles of Corporate Sovereignty and the scope of the Rule in *Foss V. Harbottle*.
2. Discuss various ways minority protection actions can be constituted/formulated
3. Prepare relevant petitions to CAC, resolutions and Court processes relating to the Institution of minority protection actions at the Federal High Court
4. Apply the procedure for litigating minority protection suits.
5. Discuss the necessity, procedure and consequences of investigation of company

### **ACTIVITIES**

1. Overview of minority protection and investigation of companies:- exceptions to section 299 and other incidents of minority protections in other provisions of CAMA
2. Small group discussion on corporate sovereignty and majority rule -20 minutes
3. Small group discussion on exception rules in minority protection-10 minutes
4. Students' brainstorming on other incidents of minority protection in the provisions of CAMA
5. Presentation on a checklist of incidents of minority protection under CAMA.
6. Presentation -30 minutes

**30 minutes-BREAK**

7. Prepare relevant petitions to CAC, resolutions and Court processes relating to the Institution of minority protection actions at the Federal High Court
8. preparation for filing minority protection suits
9. Evaluation-Q& A

**WEEK 12- TOPIC: COMPANY SECURITIES 1  
(SHARES & DEBENTURES AND ENFORCEMENT  
OF SECURITIES)**

**B.LEARNING OUTCOME:**

1. Identify and advise on various types of shares with the rights/obligations attached.
2. Class of shares: authorized shares, issued shares, paid-up shares, etc
3. Issue of shares at premium, par value and discount
4. List the method and procedure for acquisition of shares.
5. State the steps involved on each mode of acquisition of shares.
6. Prepare a checklist of the types of debentures that can be created.
7. State the procedure for perfection, registration and discharge of charges.
8. Prepare a checklist of records a company keeps upon creation of debenture.
9. Complete the relevant CAC Forms (CAC8, CAC9) for debenture transactions.
10. Identify the rights and remedies available to debenture holder and enforcement of securities, particularly by way of Receivership.

**C. CONTENT:**

1. Overview of types of shares, rights and obligations attached.
2. Class of shares: authorized shares, issued shares, paid-up shares, etc
3. Issue of shares at premium, par value and discount
4. Modes of acquisition of shares and their features

5. Procedure for allotment/transfer of shares.
6. Debenture –types and their features-.
7. Procedure for perfection and registration and discharge of charges
8. Records kept by company upon creation of debenture/charge.
9. Completion of Statutory Forms for return of allotment, creation and redemption of a charge.
10. Remedies and enforcement of debentures- receivership and other remedies.

**D. ACTIVITIES:**

1. Tutor overview on shares and debenture.
2. Class of shares: authorized shares, issued shares, paid-up shares, etc
3. Issue of shares at premium, par value and discount
4. Small group discussion on acquisition of shares - 20 minutes
5. Sample Presentation by each group

**15minutes BREAK.**

6. Small group discussion on debenture - 20 minutes
7. Sample Presentation by each group- 20 minutes
8. Preparation of checklist of procedure for perfection, registration and discharge of charge - 10 minutes.
9. Preparation of checklist of records to be kept by the company on the creation of debenture/charge- 10 minutes.
10. Drafting and presentation - filling of transfer form, return of Allotment and Resolutions- 30 minutes.

11. Brainstorming and presentation on ethical issues involved in shares and debentures-20 minutes

**E. EVALUATION:** Questions and Answers and random question by tutor- 10 minutes.

**F. RESOURCES:** Power point slides, Flipcharts, recommended textbooks/E-handbook.

## **WEEK 13.**

### **A. TOPIC: COMPANY SECURITIES 2: (FLOATATION OF SECURITIES AND COLLECTIVE INVESTMENT SCHEMES)-**

- 1. Public Offer/ Sale of Securities/Collective Investment Scheme.**
- 2. Capital Market Practice and Procedure.**

### **B. LEARNING OUTCOMES:**

1. List the methods of public offer/sale of securities- Direct offer, offer for sale & placement.
2. Identify and list the steps and procedure involved in floatation of shares in the capital Market.
3. State the legal nature of collective investment schemes and their significant difference from shares and other form of investments.
4. List the procedure for creation and management of collective investment scheme.
5. Identify the roles of Solicitors in capital market transaction.

### **C. CONTENT.**

1. Modes of public offer and sale of securities of –shares, debenture, GDR and bonds.
2. Steps and procedure for flotation of shares, debentures, GDR, bonds in the capital market.
3. Collective investment scheme/organs of collective investment scheme.
4. Procedure for creation and management of collective investment scheme.
5. Role of Solicitors in capital market transaction.

### **D. ACTIVITIES.**

1. Tutor overview-40 minutes

2. Students list mode of flotation of shares, GDR and bonds – 20 minutes.
3. Small group discussion on modes of flotation of securities- 20 minutes
4. Sample presentation by students- 20 minutes

**15MINUTES BREAK.**

5. Tutor overview on the creation and management of collective investment scheme. – 30 minutes.
6. Students lists types and features of collective investment scheme-10 minutes
7. Group discussion on modes of creation and regulation of mutual funds, real estate funds, unit trust scheme, and community scheme- 20 minutes
8. Sample presentation – 30 minutes
9. Brainstorming on the role of solicitor in capital market transaction distinction between investing in share and collective investment scheme -20 minutes
10. Brainstorming on ethical issues in floatation of securities- 10 minutes

**E .EVALUATION:** Random questions by tutors and questions and answers- 10 minutes.

**F. RESOURCES:** SEC Rules, I.S.A, Power point slides, texts and E-handbook.

**WEEK 14**

**A. TOPIC: CORPORATE RESTRUCTURING 1**

**B. LEARNING OUTCOME:**

1. State the options available for corporate restructuring.
2. Identify the relevant bodies concerned with the regulation of corporate restructuring.
3. List the types and procedures involved in corporate restructuring.

4. Draft the relevant documents for corporate restructuring.

**C. CONTENT:**

1. Types of corporate restructuring-options.
2. Steps and procedures for corporate restructuring.
3. Regulatory bodies concerned with corporate restructuring.

**D. ACTIVITIES:**

1. Tutor overview.-30 minutes
2. Students to list various options of corporate restructuring and regulatory bodies -20 minutes.
3. Brainstorming on the internal options
4. Students in small groups to write a legal opinion on the appropriate option for corporate restructuring based on case study 2 as modified– 20 minutes.
5. Sample presentation of the draft legal opinion –40 minutes.

**15 MINUTES BREAK**

6. Prepare checklist of relevant documents and draft resolutions involved in internal restructuring- 30 minutes
7. Students present sample presentation on the checklist and drafts. – 15mins
8. Brainstorming on ethical issues in internal restructuring- 10 minutes

**E.EVALUATION:** Questions and Answers -10 minutes.

**F.RESOURCES:** Precedents, power-point slides, flip charts, texts, etc.

**WEEK 15- CORPORATE RESTRUCTURING2**

**B. LEARNING OUTCOMES:** At the end of the lesson, the students should be able to:

1. List the options in external restructuring
2. State the Regulatory roles of the Securities and Exchange Commission and other relevant regulatory institutions in external restructuring- merger; take over, management- buy- out and purchase – and – assumption.
3. Identify the steps and procedure involved in external restructuring.
4. Compliance with professional responsibility and disclosure in external restructuring

**C. CONTENT:**

1. Options in external corporate restructuring.
2. Regulatory role of the SEC and other Institutions involved in external corporate restructuring.
3. Procedure and steps involved in external restructuring.
4. Professional responsibility and obligation in ensuring adequate disclosures in the Scheme documentations.

**D.ACTIVITIES:**

1. Interactive overview on the rationale, definition of terms and the legal framework for external restructuring – 1 hour.
2. Group discussion on the options in external restructuring-20 minutes.
3. Presentation - 40 minutes.

**15MINUTES BREAK.**

4. Small group discussion by students on Case study – Wadata & Sons Nig. Ltd case. - 10 minutes
5. Presentation- 20 minutes.
6. Brainstorming on regulatory bodies involved in external corporate restructuring and their roles – 10 Minutes.

7. Drafting exercise: pre-merger Notice, Merger application and application to Court – 20 Minutes.
8. Drafting of checklist of items in merger and take over schemes – 20 Minutes
9. Sample presentation – 20 Minutes
10. Brainstorming on ethical issues arising from internal restructuring-10 Minutes

E. **EVALUATION:** Questions and Answer session. -10 Minutes

F. **RESOURCES:** Power point projector, flip charts, texts, stationeries.

## **WEEK 16- TOPIC: COMPANY PROCEEDINGS AND INVESTMENT DISPUTES RESOLUTION**

### **A. LEARNING OUTCOME:**

1. Identify suitable applications for company's proceedings.
2. State the alternative dispute resolution options available to companies in lieu of litigation.
3. Draft the heading and prayer clause of an Originating Summons and Petition for winding up.
4. Evidential issues in companies proceedings-authentication of documents, companies contract, common seal and official seal.
5. Valid service of court processes and documents on companies
6. Draft and incorporate alternative dispute resolution clauses in commercial agreements involving companies.
7. Company Administrative Proceeding of CAC
8. Identify ethical issues involved in company proceedings

### **B.**

1. identify incidence of investment dispute

2. State the jurisdiction, powers and functions of the IST in investment dispute resolution
3. Identify suitable applications to court in respect of investment disputes resolution.
4. State the ADR options available to parties to investment disputes in place of litigation.
5. Draft and incorporate alternative dispute resolution clauses in investment agreements.

**C: CONTENT:**

1. Procedural rules in company proceedings.
2. Administrative Proceeding of CAC
3. Modes of application for court proceedings involving companies. (Originating Summons, Originating Motion & Petition
4. Jurisdiction of Federal High court in company proceedings.
5. ADR as alternative in the resolution of disputes involving companies.
6. Service of processes and documents on companies.
7. Evidential issues in companies' proceedings-authentication of documents, Companies contract, common seal and official seal

**C.**

1. Nature of investment disputes.
2. Jurisdiction, powers and functions of courts and tribunals in resolution of investment disputes.
3. Modes of commencing court actions in investment disputes.
4. ADR options in the resolution of investment disputes.

**D. ACTIVITIES.**

1. Tutor over view- 30- minutes
2. Students give a Checklist of relevant rules, modes of commencing company proceeding 15minutes

3. Students role played the case study 2 as modified on company Proceedings or other Case Studies. -40 minutes.
4. Discussion by students on the role plays 35minutes.

### **15MINUTES BREAK.**

5. Small group discussion on jurisdictions sample presentation on the jurisdiction, powers and functions of courts in investment disputes resolutions– 20 minutes
6. Group discussion and sample presentation on the jurisdiction, powers and functions of the Investment and Securities Tribunal in resolution of investment disputes resolutions – 20 minutes
7. Sample presentation by each group- 30 minutes
8. Drafting exercises on headings and reliefs of an Application -30 minutes.
9. Assessment of the draft by student- 20 minutes
10. Brainstorming on ethical issues in company proceedings and investment disputes resolution- 10 minutes

**E: EVALUATION:** Question and Answer -10 Minutes

**F: RESOURCES:** PowerPoint Projector. Flip Chart, texts, Statute books, FHC Rules and 1<sup>ST</sup> Rules, NIPC ACT.

## **WEEK 17 CORPORATE INSOLVENCY**

**B LEARNING OUTCOME:** At the end of this lesson, you will be able to:

1. Identity the significance of the concept of Insolvency up of companies.
2. List the procedure under CAMA.
3. Identify the various officers and rules governing Insolvency of companies in Nigeria.

4. Identify ethical issues in the Insolvency of companies.

**C. CONTENT:**

1. Legal effect of Insolvency of company.
2. Insolvency recognized by the Companies and Allied Matters Act
3. Officers involved in Insolvency.
4. Applicable Rules for Insolvency of Companies
5. Ethical issues involved in company winding up

**D. ACTIVITIES:**

1. Tutor overview on Insolvency- 40 minutes
2. Students prepare a checklist of types of winding up, various rules and officers involved in company winding up-15minutes.
3. Role play on one of the grounds for winding up a company as contained in the case study 2 by students- 45 minutes.
4. Discussion by students based on the role play- 20 minutes

**15MINUTES BREAK.**

5. Simulation of court proceedings on insolvency of a company by students based on case study 2.- 35 Minutes
6. Discussion by students in small group session and drafting of winding up resolution, declaration of solvency and petition for winding up -30 minutes
7. Sample presentation by each group.- 30 minutes.
8. Brainstorming on ethical issues arising from winding up of company- 10 minutes

**E. EVALUATION:** Questions & Answers- 15mins.

**F: RESOURCES:**

PowerPoint Projector, flip Chart, Statute books, Winding

up Rules and SEC Law Report.

## **WEEK 18 - WINDING UP AND DISSOLUTION OF BUSINESS**

### **A. WINDING UP OF COMPANIES:**

**B LEARNING OUTCOME:** At the end of this lesson, you will be able to:

5. Identity the significance of the concept of winding up of companies.
6. List the various types and features of winding up under CAMA.
7. Identify the various officers and rules governing the winding up and dissolution of companies in Nigeria.
8. Identify the relationship between winding up and dissolution of companies
9. Identify ethical issues in the winding up of companies.

### **C. CONTENT:**

6. Legal effect of winding up and dissolution of company.
7. Types of winding up recognized by the Companies and Allied Matters Act
8. Officers involved in winding up.
9. Applicable Rules for the Winding up of Companies
10. Procedure for different types of winding up of companies.
11. Ethical issues involved in company winding up

### **D. ACTIVITIES:**

9. Tutor overview on company winding up- 40 minutes
10. Students prepare a checklist of types of winding up, various rules and officers involved in company winding up-15minutes.

11. Role play on one of the grounds for winding up a company as contained in the case study 2 by students- 45 minutes.
12. Discussion by students based on the role play - 20 minutes

### **15MINUTES BREAK.**

13. Simulation of court proceedings on winding up a company by students based on case study 2.- 35 Minutes
  14. Discussion by students in small group session and drafting of winding up resolution, declaration of solvency and petition for winding up -30 minutes
  15. Sample presentation by each group.- 30 minutes.
  16. Brainstorming on ethical issues arising from winding up of company- 10 minutes
- E. **EVALUATION:** Questions & Answers - 15mins.

### **F: RESOURCES:**

PowerPoint Projector, flip Chart, Statute books, Winding up Rules and SEC Law Report.

## **WEEK 19 - Business name/partnership**

### **LEARNING OUTCOMES:**

1. Identify various types of business and non business Organization (**Business name/partnership**) and their features and suitability-.
2. List a checklist of content of and basic terms of partnership agreement and legal presumptions to be modified in partnership agreement.
3. Conduct Client interview and apply Client instruction towards preparation of documents for registration of business name at CAC.
4. Give a checklist of documents and items required for registration of business and non-organisation Business name at CAC.

5. List and draft the items to be included in the Partnership deed as regulated by CAMA.
6. List the procedure and steps for dissolution of partnership/ business name
1. Identify ethical issues in the winding up and dissolution of partnership/business name.

**C. CONTENT:**

1. Rules for winding up and dissolution of incorporated trustees
2. Procedure for the dissolution of Incorporated Trustee.
3. Procedure for dissolution of partnership and business name
4. choice of business and non business organizations- Registered Business Name: Sole Proprietorship and Partnership
5. Taking instructions/ client interview towards preparation of documents required for registration of business name and preparation of Partnership Agreement
6. Checklist of documents/items required to be submitted for registration of the business name with CAC.
7. Checklist of the items to be included in the Partnership Agreement.

**D. ACTIVITIES.:**

1. Tutor overview on dissolution of partnership/ business name- 40 minutes
2. Students prepare a checklist steps and procedures in winding up and dissolution of incorporated trustee and dissolution of business name/Partnership- 20 minutes
3. Presentation by small groups- 30 minutes
4. Small group discussion by Students- 30 minutes

### **15MINUTES BREAK.**

5. Tutor over view on dissolution of incorporated trustee – 40 minutes
6. Role play on the dissolution of incorporated trustee- 40 minutes
7. Drafting of relevant resolutions and document – 20 Minutes

**E: EVALUATION:** Question and Answer (10 Minutes)

**F: RESOURCES:** Flip charts, Course hand books, Statute.

### **WEEK 20- TOPIC: NON-BUSINESS ORGANISATION INCORPORATED TRUSTEES FORMATION**

**I: Companies**

#### **F. LEARNING OUTCOMES:**

1. Prepare a checklist of documents required for registration.
2. Prepare Constitution for incorporation
3. Complete statutory forms for incorporation and drafting of relevant documents-constitution, public notice under PART F
4. Taking instructions/ client interview towards preparation of documents required for registration of Incorporated Trustees
5. Checklist of documents/items required to be submitted for registration of the business name with CAC.
6. Checklist of the items to be included in the constitution.

#### **G. CONTENT:**

1. Preparation of documents required for registration of companies at CAC.- Drafting of CONSTITUTION and completion of statutory forms.

2. Completion of statutory forms and drafting of relevant documents-constitution, public notice, clauses in Constitution for non-business organizations.
3. Regulation of choice of corporate name
4. Refusal of CAC to register an organization- grounds and procedure for challenge
5. Interim management of IT
6. Professional responsibility requirements under the RPC

#### **H. ACTIVITIES.**

1. Tutor overview
2. Brainstorm: Students give a checklist and prepare sample of Constitution and statutory forms
3. Buzz group discussion by students-
4. Sample presentation- .
5. Simulation of CAC Registry and e-registration

#### **15 MINUTES BREAK**

6. Completion of statutory forms and drafting of relevant documents-constitution, public notice, clauses for non-business organizations
  7. Question & Answer session.-
- I. **EVALUATION:** Random sampling questions and assignment on E- registration –
- J. **RESOURCES:** Power points slides, flipcharts, relevant texts, and Electronic and Manual Handbook.

## **CASE STUDIES**

### **CASE STUDY 1:**

At the recently concluded Abuja International Trade Fair, Abdullah IbnSeikh and Abubakri Amin, Malaysian businessmen signed an M.O.U. with Chief NosakhireIyare, the Sole Proprietor of Nosak Palm Produce (Nig.) Enterprises towards the formation of Nigerian Limited Liability Company. The Malaysians are eager to know the position of the Nigerian Law on participation by non-Nigerians in the country's economy. Part of the agreements in the M.O.U. is the incorporation of a Company at the CAC with a minimum share capital of 10, 000,000 ordinary share of N1.00 each after signing the usual pre-incorporation documents. The proposed names of the company are (1) Gold Palms (Nig) Ltd or (2) West Coast Palms (Nig) Ltd. For the purpose of the incorporation, the subscribers to the memorandum and article of association will also be the first Directors. Their particulars are:

- 1) Chief Nosakhide Iyare, (73 years), 2,000,000 (ordinary shares) out of which 40% will be paid for through the provision of its business premises at No1 Ikpoba Road, Benin City, Edo State, as office accommodation for the company when formed.
- 2) Abdullah IbnSeikh (31 years) 5,000,000 (ordinary shares)
- 3) Abubakri Amin (17 years) 3,000,000 (ordinary shares).

The Malaysians are very optimistic that the Nigerian Company will gain immensely from their wealth of experience in Palm Produce business and are therefore looking forward to increasing the share capital and converting to a Public Company to take

advantage of the fast growing Nigerian capital market all within five years of incorporation.

They desire to know the procedure and cost implication ahead of time.

The Directors are also desirous of knowing the sources and types of Company capital in Nigeria as well as the procedure for the various restructuring options available to:

- 1) Private Companies in Nigeria and
- 2) Public Companies in Nigeria.

Directors also want to know the procedure and cost implication of registering a non-profit organization to enable their Company fulfill the CSR statutory obligations now imposed on Public Companies operating in Nigeria.

Five years after incorporation as a Public Company, Gold Palms (Nig.) Plc. employed Abdullah IbnSeikh as managing Director and Miss FynefaceAdah, a lawyer as Company Secretary. Six months after the Managing Director, gave the Company Secretary a sackletter for failing to honour a dinner date at Transcorp Hilton. The Board of Directors is bent on removing the MD which they believe will also automatically operate as his removal from office as a Director in the Company because of his insubordination and overbearing disposition to the Board of Directors. Mr. Abdullah has been served a letter to this effect.

As a result of the internal wrangling of the Board of Directors, the Company suffered series of financial losses that has prevented it from servicing the N1 Billion syndicated loan facility advanced to it by Zenith Bank (Nig.) Plc. Intercontinental Bank (Nig.) Plc and Skye Bank (Nig.) Plc; The Banks have resolved to exercise their rights as Creditors to wind up the Company and apply the

proceeds to satisfy their outstanding loans and accrued interest.

As one of the young lawyers in the law firm engaged by the persons involved, identify the legal issues arising from the above scenario and proffer appropriate legal remedy within the confines of the Nigerian Corporate Law and Practice.

### **CASE STUDY 2**

Alhaju Aminu Wadata carried on the business of importation and sale of sugar in Kano under the name of Wadata and Sons. Due to expansion of the business, he has decided to establish a Sugar factory in Wadata, a village in Kano State. His first son, Balawo holds an MBA from Harvard has prevailed on his father to incorporate a private company limited by shares to take over the business carried on by Wadata and Sons. In addition, Bala has been able to persuade two of his foreign friends to take part in the business.

The new company is to begin with a share capital of N5b divided into 5 billion ordinary shares of N1.00 each. The business of Wadata and Sons is to be acquired by the new company for the sum of N2.5b for which shares of that value is to be credited as fully paid up shares. While Bala and his 17 old sister would take 450 minutes and 50 minutes shares respectively. The remainder of the shares would be subscribed to equally by Bala's friends Ken Wood, an American and Richard Stone, a Briton. In addition, Ken Wood has promised to bring in loan from an American Bank to shore up the capital base of the Company

- 1) As the legal adviser to Alh. Aminu Wadata, explain to him the steps you will take to register the new company

- 2) What other issues would you have to ask for clarification in order to register the new company
- 3) Draft the memorandum of association of the company showing the first two object clauses
- 4) Outline the fiscal advantages that may accrue in Ken Wood's plan to bring in the foreign loan
- 5) Explain the extant laws relevant to the participation of Wood and Stone in this venture
- 6) Itemise all the documents that you would need to file in order to register the company.

After Wadata and Sons Limited was incorporated, it was discovered that the capital of the company was insufficient to run the business as planned. In order to raise capital from the public, it was suggested that the company be re-registered as a public company.

However, Alh. Aminu prefers that the name of the company be changed to Wadata International Limited. In addition, he was of the opinion that they should include sale of salt in the business of the company. State the procedure you would adopt and the documents you would file in the following circumstances:

- a) In effecting the re-registration from Wadata and Sons Limited to a public company
- b) Assuming they decided to change the name of the Company to Wadata International Limited
- c) Assuming they decided to include the sale of salt as part of the business of the company.

As a result of the company's decision to go public, Richard Stone signified his intention to opt out of the company. He indicated that he has concluded agreement to sell his shares to Mr. Ali Bambur, a Ghanaian friend of his. His decision did not go down well with Bala Wadata who has now moved that Richard Stone's shares be

transferred to his elder brother, Sale Wadata and Mr. Stone be removed as an Executive Director with immediate effect.

- i) Explain what steps Mr. Stone would take to effect the transfer of his shares. Assuming he is transferring only 50% of his shares, would the procedure be the same?
- ii) State the detailed steps required to remove Mr. Stone

The company had embarked on an ambitious project of setting up a world class sugar factory.

For this purpose, it borrowed S5M from Nat-West Bank Ltd., to finance the setting up of its factory. Unfortunately, the company could not obtain the much needed raw material i.e. sugarcane as a result of draught that persisted. In addition the government has since lifted the ban on importation of sugar. The loan taken from the Nat-West Bank had become due for payment since December 2005. The company is considering winding up the company.

1. (a) Briefly discuss the various types of winding up provided for under the CAMA  
(b) Assuming the North West Bank Ltd wants to get their own man apart from the directors to run the company, how will they achieve their aim.
2. (a) Draft the statutory letter of Demand  
(b) State the procedure that is to be adopted to enable the Bank have a upper hand in the winding up process
3. (a) Who are the persons that may bring a winding up petition

- (b) Draft the resolution where the company requires that its affairs be wound up by the court
4. (a) Assuming the company is able to pay its debt, state the procedure where it intends to wind up the company
5. (b) Draft the necessary Declaration
6. (a) Mention the steps you will take in presenting a winding up petition
- (b) Distinguish between
- a. Official Receiver and a Receiver
- b. Provisional Liquidator and Liquidator
7. Draft the Petition for winding Up

## **CHAPTER ONE**

### **OVERVIEW OF THE LEGAL FRAMEWORK & REGULATORY BODIES ON CORPORATE LAW PRACTICE IN NIGERIA**

#### **REGULATORY LAWS**

- 1.** Companies and Allied Matters Act
- 2.** Investments and Securities Act
- 3.** Nigerian Investment Promotion Commission Act
- 4.** Federal Competition and Consumer Protection Act
- 5.** National Insurance Commission Act
- 6.** Insurance Act
- 7.** Electric Power Sector Reform Act
- 8.** Banks and Other Financial Institutions Act
- 9.** Nigerian Communication Commission Act
- 10.** National Agency for Food and Drug Administration and Control Act.
- 11.** Standard Organization of Nigeria Act
- 12.** Immigration Act
- 13.** Foreign Exchange (Monitoring and Miscellaneous Provisions) Act
- 14.** National Office for Technology Acquisition and Promotion Act
- 15.** Industrial Development (Income Tax Relief) Act
- 16.** Industrial Inspectorate Act
- 17.** Companies Income Tax(Amendment) Act
- 18.** Petroleum Profit Tax Act
- 19.** Federal Inland Revenue Service (Amendment) Act

- 20.** Stamp Duties Act
- 21.** Partnership Law
- 22.** Federal High Court Act
- 23.** Constitution of the Federal Republic of Nigeria
- 24.** Asset Management Corporation of Nigeria Act
- 25.** Private Guard Companies Act
- 26.** Foods, Drugs and Other related Products Act
- 27.** Factories Act
- 28.** Export (Incentives and Miscellaneous Provisions) Act
- 29.** Nigerian Mineral and Mining Act

## **REGULATORY AUTHORITIES**

- 1.** Corporate Affairs Commission
- 2.** Securities and Exchange Commission
- 3.** Nigeria Stock Exchange
- 4.** Central Bank of Nigeria
- 5.** Federal Competition and Consumer Protection Commission
- 6.** National Insurance Commission
- 7.** Federal Inland Revenue Service
- 8.** Nigerian Investment Promotion Commission
- 9.** Nigerian Communication Commission
- 10.** National Agency for Food and Drug Administration
- 11.** Standard Organization of Nigeria
- 12.** National Office for Technology Acquisition and Promotion
- 13.** Federal High Court
- 14.** Asset Management Corporation of Nigeria
- 15.** National Council of Privatization

- 16.** National Industrial Court
- 17.** Bureau of Public Enterprises
- 18.** Investment & Securities Tribunal
- 19.** Nigerian Deposit Insurance Commission
- 20.** Nigerian Agricultural Insurance Corporation
- 21.** National Pension Commission
- 22.** Department of Petroleum Resources
- 23.** Nigerian Government Information Centre
- 24.** Nigerian Electricity Regulatory Commission
- 25.** Raw Materials Research and Development Council
- 26.** National Information Technology Development Council
- 27.** New Partnership of African Development (NEPAD)
- 28.** Nigerian Ports Authority
- 29.** Nigerian Export and Import Bank (NEXIM-Bank)
- 30.** Nigerian Export Promotion Council
- 31.** Debt Management Office
- 32.** National Tourism Development Corporation
- 33.** Economic and Financial Crimes Commission

President Muhammadu Buhari on Friday, 7th of August 2020 in Abuja assented to the Companies and Allied Matters Bill, 2020 recently passed by the National Assembly.

The new Act repealed the Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004 and enacted the Companies and Allied Matters Act, 2020 to provide for the incorporation of companies, limited

liability partnerships, limited partnerships, registration of business names together with the incorporation of trustees of certain communities, bodies, associations, and for related matters.

The new Act is made of 870 Sections, (as opposed to the 613 sections in the 2004 Act) and is divided into 7 Parts. Part A deals with the Corporate Affairs Commission (CAC), Part B provides for Incorporation of Companies, Part C deals with Limited Liability Partnership, Part D provides for Limited Partnership, Part E covers registration of Business Names, Part F deals on registration of Incorporated Trustees and Part G deals with general provisions and the establishment of Administrative Proceedings Committee.

## **OVERVIEW OF CAMA 2020**

### **PART A. THE CORPORATE AFFAIRS COMMISSION**

#### **PRE-ACTION NOTICE AND RESTRICTION ON LEVY OF EXECUTION**

Section 17 (1) provides that a suit shall not be commenced against the Commission before the expiration of 30 days after a written notice of intention to commence the suit is served upon the Commission by the intending plaintiff or his agent.

- (2) The notice referred to in subsection (1) shall clearly state the -
- (a) cause of action;
  - (b) particulars of the claim;
  - (c) name and place of abode of the intending plaintiff; and

(d) relief sought.

This is a new provision which would assist to minimise litigation brought against the CAC.

## **PART B. INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS**

### **PROVISION FOR SINGLE-MEMBER/ SHAREHOLDER FOR PRIVATE COMPANIES**

One person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies - S.18(2).

#### **Section 19**

No association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business for profit or gain by the association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other enactments in force in Nigeria.

(2) Nothing in this section shall apply to-

(a) Any co-operative society registered under the provisions of any enactment in force in Nigeria; or

(b) Any partnership for the purpose of carrying on practice -

(i) As legal practitioners, by persons each of whom is a legal practitioner, or

(ii) As accountants by persons each of whom is entitled by law to practice as an accountant.

(3) If at any time the number of members of an association or partnership exceeds 20 in contravention of this section and it carries on business for more than 14 days while the contravention continues, each person who is a member of the company, association or partnership during the time it so carries on business is liable to a fine as prescribed by the Commission for every day during which the default continues.

### **POWER OF THE COMMISSION TO WITHDRAW APPROVAL OF NAME RESERVED FOR REGISTRATION**

Section 31 (5) of the Act empowers the Commission to withdraw or cancel approval for reservation of name where it is discovered that the approval was fraudulently, unlawfully or improperly procured. This is an improvement on the current practice where an aggrieved party will need to apply to the court for an order directing the Commission to withdraw or cancel the name which was improperly registered.

### **INTRODUCTION OF STATEMENT OF COMPLIANCE**

Section 40 (1) introduces statement of compliance required to be delivered to the Commission. It is a statement by the applicant or his agent that the requirements of this Act as to registration have been complied with. Under the repealed Act, the applicant was required to submit a declaration of compliance signed by a legal practitioner or attested to before a Notary Public.

## **THE CORPORATE AFFAIRS COMMISSION**

The Corporate Affairs Commission is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and capable of acquiring, holding or disposing of any property movable or immovable for the purpose of carrying out its functions - Section 1(1) and (2). The headquarters of the Commission is located at Abuja with branch offices established in each state of the Federation – Section 1(3).

## **ESTABLISHMENT OF GOVERNING BOARD OF THE COMMISSION**

By the provisions of section 2(2), the board shall consist of:

- (a) a chairman who is appointed by the President on the recommendation of the Minister, and who, by reason of his ability, experience or specialised knowledge of corporate, industrial, commercial, financial or economic matters, business or professional attainment, is capable of making outstanding contributions to the work of the Commission;
- (b) one representative of the –
  - (i) business community, appointed by the Minister on the recommendation of the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture,
  - (ii) legal profession, appointed by the Minister on the recommendation of the Nigerian Bar Association,
  - (iii) accountancy profession, appointed by the Minister after consultation with professional bodies of

accountants as are established by Acts of the National Assembly,

(iv) Institute of Chartered Secretaries and Administrators of Nigeria, appointed by the Minister on the recommendation of the Institute,

(v) Nigerian Association of Small and Medium Enterprises, appointed by the Minister on the recommendation of the Association,

(vi) Manufacturers Association of Nigeria, appointed by the Minister on the recommendation of the Association,

(vii) Securities and Exchange Commission not below the rank of a Director or its equivalent, and

(viii) each of the Federal Ministries of Industry, Trade and Investment, Justice and Finance who shall not be below the rank of Director; and

(c) the Registrar-General of the Commission.

## **FUNCTIONS OF THE BOARD**

(a) review and provide general policy guidelines for performing of the functions of the Commission in accordance with international commercial best practice;

(b) have general oversight on the administration of the Commission;

(c) review and approve the strategic plans of the Commission;

(d) receive and consider management reports and advise the Minister on the reports;

(e) determine the terms and conditions of service of employees of the Commission;

- (f) fix the remuneration, allowances and benefits of employees of the Commission, in consultation with the National Salaries, Income and Wages Commission;
- (g) ensure compliance with the provisions of this Act; and
- (h) do such other things as are necessary to ensure the effective and efficient performance of the functions of the Commission.

## **FUNCTIONS OF THE COMMISSION**

- (a) administer this Act, including the registration, regulation and supervision of -
  - (i) the formation, incorporation, management, striking off and winding up of companies,
  - (ii) business names, management and removal of names from the register, and
  - (iii) the formation, incorporation, management and dissolution of incorporated trustees;
- (b) establish and maintain a company's registry and office in each State of the Federation suitably and adequately equipped to perform its functions under this Act or any other law;
- (c) arrange or conduct an investigation into the affairs of company, incorporated trustees or business names where the interest of shareholders, members, partners or public so demands;
- (d) ensure compliance by companies, business names and incorporated trustees with the provisions of this Act and such other regulations as may be made by the Commission;

(e) perform such other functions as may be specified in this Act or any other law; and

(f) undertake such other activities as are necessary or expedient to give full effect to the provisions of this Act.

The Chief Executive of the Commission is the Registrar-General who must be a legal practitioner so qualified for not less than 10 years and who has not less than 8 years' experience in company law practice or administration (section 9(1)). He is also the Registrar of Business Names.

## **ACCREDITATION**

### **ELIGIBILITY**

Professionals eligible for accreditation with the CAC include:

- i. Legal Practitioners;
- ii. Chartered Accountants; and
- iii. Chartered secretaries

### **PROCEDURE**

1. Fill the Application Form for Accreditation online ([pre.cac.gov.ng](http://pre.cac.gov.ng))
2. Gather the following accompanying documents and upload
  - i. Passport photograph
  - ii. Electronic Signature
  - iii. LL.B certificate
  - iv. National Youth Service Corps discharge certificate or exemption
  - v. Payment receipt of the current year practicing fee

- vi. Evidence of payment of the prescribed fee
3. Make payment of the prescribed fees via remita
  - i. Individual
  - ii. Firm
4. Send the filled form online and upload the accompanying documents.
5. CAC will send an email to the email address supplied to CAC confirming accreditation for the year.

## **Part G**

### **ESTABLISHMENT OF ADMINISTRATIVE PROCEEDINGS COMMITTEE**

The Commission shall establish an Administrative Proceedings Committee (in this Act referred to as “the Administrative Committee”) – S. 851. This is one of the innovations of CAMA, 2020.

## **CHAPTER TWO**

### **CHOICE OF BUSINESS ORGANISATIONS AND FORMATION OF COMPANIES**

Any two or more persons may form and incorporate a company upon fulfilling the statutory requirements for the particular type of company - S.18 of CAMA.

Hitherto, the Corporate Affairs Commission permitted only accredited professionals namely: legal practitioners, chartered accountants and chartered secretaries to be involved in the registration of companies. However, in pursuance to the powers conferred to the Minister of Trade and Investment, the Companies Regulation 2012 was amended in 2017 to widen the scope of persons who can file company incorporation documents to include first shareholders (subscribers to the memorandum) and the first directors. However, by the decision of the Federal High Court in *Nkwocha Ernest v Minister of Industry, Trade and Investment & 2 ors.* FHC/KN/CS/86/2018, it remains the exclusive preserve of legal practitioners other than those in the employment of CAC to make the statement of compliance in accordance with the requirements of CAMA as provided in Section 40 CAMA.

Formation of a company will involve the following schedule:

- a. Taking instructions from the promoters;
- b. Preparing the incorporation documents; and

- c. Filing the incorporation documents with the Corporate Affairs Commission and obtaining certificate of incorporation.

#### **A. TAKING INSTRUCTIONS**

- i. Client's Personal Details;
- ii. Date for completion of registration;
- iii. Name of company
- iv. Name of company

Note Section 852 CAMA on Prohibited and Restricted Names

#### **Compare the advantages and disadvantages of companies and partnerships.**

- a) The company may be :
  - i. “Limited by shares” i.e. having the liability of its members limited by the memorandum of association to the amount unpaid on shares respectively held by them, or
  - ii. “Limited by Guarantee” i.e. having the liability of its members limited by the memorandum of association to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up; or
  - iii. “Unlimited” i.e. Not having any limit on the liability of its members. ( S. 21(1) ).
- b) Private or Public Company: The company, whether limited by shares or by guarantee or unlimited, may

be PRIVATE or PUBLIC (S.21(2) subject to the following considerations:

- i. Kind and size of business
  - ii. Membership-maximum of 50 excluding employees and ex-employees shareholders for private company and no limit for a public company.
  - iii. Restrictions on issue and transfer of shares e.g. section 22(2), section 22(5).
  - iv. Formalities e.g. sections 235.
  - v. 258, 287, 394-396 and 419, Companies and Allied Matters Act; sections 48 and 61 Investments and Securities Act.
  - vi. Cost
- 1) Sphere of Operation: Anywhere within Nigeria. A company wishing to operate outside the country must comply with the laws of the foreign country concerned-need for official seal.
  - 2) Objects or business of the company see S. 27(1): These must be legal. Generally, a company must not carry on any business or object not authorised by its memorandum of association (Section 44(1)). However, an ultra vires transaction may no longer be fatal. Section 44(2) - (4).
  - 3) Capital: Generally, the capital of a company connotes the totality of its assets including borrowed money, which is loosely called loan capital. Specifically, the capital of a company refers to the share capital.
  - 4) Subscribers: These are persons who sign the memorandum of association (for a number of

shares) and the articles of association (section 27(2), (3) and (5)); (section 32). They must have capacity to form a company (S.20); must not be less than 2; however a private company may be formed by one person.

If there are non-Nigerian subscribers (see section 20(4)) applications must be made under the Nigerian Investment Promotion Commission Act Cap N117 LFN 2004.

- 5) Membership of company is made up of:
  - a) The subscriber who are deemed to have agreed to become members and whose names must be entered in the register of members (section 105(1); and
  - b) Every other person who agrees in the writing to become a member and whose name is entered in the register of members (section 105(2)).
- 6) Expatriate Employees, including directors, must be covered by expatriate quota (Immigration Act section 8).
- 7) Registered Office: Obtain an address to be used as the registered office of the company (section 36(1) and (2); (section 726)
- 8) Articles of Association: Contains regulations for the management of the company. Full instructions should be taken, bearing in mind that substantial portion of what used to be contained in the model Articles in Part I of Table A of the Companies Act, 1968 is contained in the main body of the Act.
- 9) Directors: Directors are the persons appointed by the company to manage the affairs of the company

(section 269(1) and need not be members of the company. Every company must have at least two directors (S. 271(1)). The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them or may be named in articles (section 272). A person may be appointed director for life. (S.281).

10) Control and Management: May be achieved e.g. through control over appointment of director, section life directorship, distribution of shares, classes of shares and rights attached to shares, and custody of common seal.

11) Public Issue of Shares and Prospectus: Only a public company can issue its shares or debentures to the public, usually by way of a prospectus 48 of Investments and Securities Act) but where no prospectus is issued a statement in lieu of prospectus is filed (section 61 of Investments and Securities Act).

Filing the prospectus is not a prerequisite for the formation of a public company. (Section 41(4) ).

12) Other Matters: e.g.

- a) Tax Relief: If any tax relief is to be claimed, particulars should be obtained to enable application to be made; e.g. under the Industrial Development (Income Tax Relief) Act. Cap 17 LFN 2004.
- b) Tax Clearance Certificates: for the subscribers and first directors.
- c) Pre-investment approvals e.g.

- i. See para. 8 on subscribers above.
- ii. Under Industrial Inspectorate Act. Cap. 18 LFN 2004.

## **PREPARATION OF DOCUMENTS FOR BUSINESS ORGANIZATION AND NON-BUSINESS ORGANIZATION.**

### **FORMATION**

#### **A. COMPANIES**

##### **1) PREPARATION OF INCORPORATION DOCUMENTS:**

On the relationship between memorandum and article of association of a company, see *Edokpolor and Co. Ltd v. Sem Edo Wire Industries Ltd. [1984] NSCC 553.*

The documents required for registering a profit oriented company are as follows:

- a) CAC 1- Availability Check and Reservation of name (fill online)
- b) CAC 1.1- Form for Company Registration (to be adopted online with little alteration allowed)
- c) Memorandum and articles of association (fill online)  
Other documents:
  - d) Residence permit (where foreigner's residential address is in Nigeria) (uploaded online).
  - e) Means of identification for every director, subscriber and secretary in the company (uploaded online)

- f) .Electronic signatures of the subscribers, directors, secretary and legal practitioner or agent incorporating the company (uploaded online)
- g) Other documents required by the Commission to satisfy the requirement of any law relating to the formation of a company (uploaded online):
  - i. Recognized means of identification are: a copy of the information page of international passport, driver's licence or national identity card.
  - ii. Where an infant is a subscriber, the infant's birth certificate duly issued by the National Population Commission should be attached.

## B. MEMORANDUM OF ASSOCIATION

### **Form of the Memorandum**

CAMA 2004 specified in Tables B, C, and D in Schedule 1 as the form of memorandum but has been removed. CAMA 2020 now gives CAC the power to endorse a model article that every company is expected to adopt. (S.33)

**Company Limited by Shares:** The memorandum shall state the following:

- a) The name of the company must end with the word “Limited” (Ltd) in the case of a private company; “Public Limited company” (PLC) in the case of a public company; (sections 27(1); 29(1) and (2)).

- b) Registered Office: The registered office of the company must be stated to be situated in Nigeria (section 27(1)(b) ; see further (section 36(2) (b)
- c) The objects or business clause: will state the business or businesses the company is authorised to carry on - section 27 (1)(c). The objects should be stated precisely and concisely. It is no longer necessary to include mere powers in the business clause since the company now has powers of a natural person of full capacity (section 43(1)). Nor does it now appear permissible to inflate the objects by giving the directors power to authorise the undertaking of any business which in their opinion may be undertaken advantageously or beneficially in connection with any stated business.
- d) Restriction: If any on the powers of the company (27(1)(d); s.45(1)
- e) Status of the company: That the company is a private or public company, (section 27(1)(e) ).
- f) Limitation of liability: That the liability of the members is limited by shares (section 27(1) (f). Note: sections 54, 117, 118, 315.
- g) Capital: The amount of the minimum issued share capital which shall not be less than N100,000.00 in the case of a private company and N2,000,000.00 for a public company and the division thereof into shares of a fixed amount - (section 27(2) (a)).

- h) Subscription Clause: The subscribers will write opposite his name the number of shares he takes (section 27(2)). See S.20(4) for alien subscribers.

Compliance with Stock or Commodities Exchange Regulations: If securities of the company are to be quoted on the stock or commodities market, the memorandum must comply with the regulations of the appropriate Exchange.

**Unlimited Company:** The contents of the memorandum will be same as a company limited with the following exceptions:

Name: To end with the word “Unlimited” (“Ultd”).

Limitation of liability: The liability of the members is unlimited (section 27 and 29).

### **Company Limited by Guarantee**

#### **Documents required to register company limited by guarantee**

- i. CAC 1- Availability Check and Reservation of name (fill online)
- ii. CAC 1.1- Form for Company Registration (to be adopted online with little alteration allowed)
- iii. Memorandum and articles of association (fill online) duly Stamped.
- iv. Approval of Attorney General of the Federation  
Other documents:
- v. Residence permit (where foreigner's residential address is in Nigeria) (uploaded online).

- vi. Recognised means of identification for every director, subscriber and secretary in the company (uploaded online)
- vii. Electronic signatures of the subscribers, directors, secretary and legal practitioner or agent incorporating the company (uploaded online)
- viii. Other documents required by the Commission to satisfy the requirement of any law relating to the formation of a company (uploaded online).

The Memorandum must state

1. The name of the company s.27(1(a), which must end with the words (“Limited by Guarantee”) (“Ltd/Gte”) in brackets (Section 29(3));
2. That the registered office of the company will be situated in Nigeria;
3. The nature of the object or objects for which the company is established;
4. The restriction, if any, on the powers of the company;
5. That the company is a private company;
6. That the liability of the members is limited by guarantee;
7. That the income and property of the company shall be applied towards the promotion of its objects, and that no portion thereof shall be paid or transferred directly or indirectly to the members except as permitted by the Act.
8. That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one

year after he ceases to be a member, for payment of the debts and liabilities of the company, and the costs of winding up, such amount as may be required not exceeding a specified amount- the total amount of which must not be less than ₦100,000. (s.27). See also section 26(12).

Note: Need for approval of the memorandum by the Attorney-General of the Federation- (section 26(5)).

Signature: Every memorandum must be signed by each subscriber, in the presence of at least one witness and must be stamped as a deed - Section 27(5) and (6).

## **ARTICLES OF ASSOCIATION**

A company shall have articles of association prescribing regulations for the company unless it is a company to which model articles apply. By virtue of section 34 it shall register articles of association - (s.32)

The Act seeks to abolish the mandatory prescription of Model Articles by the Commission and instead gives the Minister of Trade the powers, (under Section 33 of the Act, to prescribe model articles of association for companies. The Minister is permitted to prescribe different models for different companies and companies are allowed to adopt any of the models prescribed. This is a welcome development as it will give companies the flexibility to create their own Articles as against the current practice of the Commission insisting on the adoption of the model Articles in CAMA.

Articles of association registered by a company shall be -  
(a) contained in a single document, and  
(b) divided into paragraphs numbered consecutively.

On the formation of a limited company if articles are -

(a) not registered; or  
(b) registered, in so far as they do not exclude or modify the relevant model articles, the relevant model articles form part of the company's articles in the same manner and to the same extent as if those articles expressly included the relevant model articles in the form in which those articles had been duly registered.

## **CONTENTS OF ARTICLES**

1. Interpretation
2. Shares-classes and variation of class rights (section 144); restriction on transfer of shares (section 176(3); power of allotment; share certificate (section 171)
3. Prohibition of loans or financial assistance to buy shares in the company (section 164)
4. Calls on shares (section 158)
5. Transfer of shares (section 175)
6. Transmission of shares (section 179)
7. Increase of share capital (sections 127 and 128), Reduction of shares (sections 130 -136)
8. Borrowing
9. Meeting of the company- Types (sections 235, 237,239)
10. Notice of meetings
11. Proceedings at Meetings (sections 238, 242)  
Quorum (section 256)

12. Chairman (section 265)
13. Voting (s.248)
14. Poll (s.250)
15. Proxy (s.254)
16. Written Resolutions (s.259)
17. Number of directors (s.271)
18. Appointment of first directors and other directors  
(sections 272 and 273)
19. Casual vacancy (s.274)
20. Share qualification (s.277)
21. Life Director (s.281)
22. Vacation of office of Directors (s.284)
23. Tenure of directors (s.285)
24. Removal (s.288)
25. Proceedings at meetings (s.289)
26. Written Resolutions of Directors (s.289(8)  
Quorum (s.290))
27. Notice of meeting of directors (s.292)
28. Remuneration (s.293)
29. Managing Director
30. Duties of Directors (sections 305-309)
31. The Secretary
32. Appointment and removal (s.333)
33. Duties s.335
34. Common seal –custody
35. Authority to use
36. Signature of documents
37. Official seal
38. Dividends and Reserve
39. Declaration of dividends and interim dividends  
(s.426) Reserves (s.430)

40. Payment of dividends
41. Capitalisation of profits (s.430(2))
42. Accounts-Directors to cause proper books of accounts to be kept (S.374)
43. Audit- Appointment of auditors (S.401)
44. Stock Exchange if the company is to seek listing of its shares on a Nigerian Stock Exchange, the articles must comply with the regulations of the exchange
45. Note: Second tier Securities Market (SSM)
46. Notices(S.244)
47. Winding up
48. Indemnity

Effect of the memorandum and articles (section 46) see Yalaju-Amaye v Associated Registering Engineering Contractors Ltd. [1990] 4 NWLR (Pt. 145) 422.

Abolition of doctrine of constructive notice of registered documents (sections 92). See the presumption of regularity in section 69.

## **STAMPING**

Payment for stamping which is assessed automatically is now done online through Remita and electronic receipt is generated online and sent to the email address provided while filling the application form.

## **FILING AT CAC AND OBTAINING CERTIFICATE OF INCORPORATION**

After filling the Availability Check and Reservation of Name, Application for the Registration of Company, and adopting the memorandum and articles of association with or without alteration online, these documents will then be submitted online to the Commission. Other documents like:

- i. Means of identification (photo page of international passport, or current drivers' licence or national ID) of subscribers, directors, and company secretary (uploaded online);
- ii. Electronic signatures of subscribers, directors, company secretary and the legal practitioner or agent registering the company (uploaded online);
- iii. Evidence of change of name (where applicable) (uploaded online); and
- iv. Any other document required by the Commission to satisfy the requirement of any law relating to the formation of a company (uploaded online).

Apart from filling and submission of the relevant forms and documents, assessed registration fee is also paid online using Remita. The receipt for payment of registration of the company is generated online also and sent to the email address provided while filling the application form.

## **REGISTRATION**

Having complied with section 36, the Commission has no discretion but to register the memorandum and articles of association.

After registration of the company the Commission will issue electronic certificate of incorporation; memorandum and articles of association and status report to the legal practitioner or agent registering the company. The Commission will advise the legal practitioner or agent registering the company to download the above mentioned documents within seven days of the registration of the company as subsequent download of the documents will be charged a fee.

See, however, grounds for refusal to register (section 41(1), if the commission is of the opinion that the:

- a) Memorandum and articles do not comply with the Act;
- b) Business or object of the company is illegal;
- c) If there is an incompetent or, a disqualified subscriber-section 20) i.e.
  - i. An individual below 18 years except two other qualified persons are 18 and above,
  - ii. An individual found to be of unsound mind by a court in Nigeria or elsewhere,
  - iii. An individual who is an un-discharged bankrupt,
  - iv. An individual disqualified from being a director under section 280 i.e a fraudulent person,
  - v. A corporate body in liquidation.
- d) There is non-compliance with requirements of any other law as to registration and incorporation of company;
- e) The name conflicts with or is likely to conflict with an existing trademark or business registered in Nigeria.

If aggrieved by refusal to register, the company will give notice to the commission to apply to court for directions the Commission shall, within 21 days of the receipt of such notice, apply to the court for the directions - (Section 41(2)). If the Commission registers the memorandum and articles of association, it will under its seal certify that the company is incorporated, the type of limited liability and whether it is private or public.

The Certificate of Incorporation shall be prima facie evidence of compliance with the Act, that the association is a company authorised to be registered and is duly registered. Section 41(6)

### **EFFECTS OF REGISTRATION**

As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the powers and performing all functions of an incorporated company including the power to hold land, and having perpetual succession, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in the Act. See s. 42 of CAMA.

## **CHAPTER THREE**

### **PROMOTION OF COMPANIES AND PRE- INCORPORATION CONTRACTS**

#### **PROMOTERS**

##### **DEFINITION OF PROMOTER**

Anyone who undertakes to take part in forming a company with reference to a given project and to set it going and takes the necessary steps to accomplish that purpose or undertakes raising capital for it, is deemed to be a promoter - provided that a person acting in a professional capacity in the formation of the company is not deemed to be a promoter (e.g. lawyers and accountants) - Section 85 of CAMA. See Garba .v. Sheba Int. (Nig.) Ltd. [2002] 1NWLR (Pt.748) 372. He would normally be the client who wants to form the company of which he may not be a shareholder or may play other roles e.g. help in getting directors for company - personality shopping etc. or entering into agreements on behalf of the company e.g. get office accommodation, factory sites, etc. or help in getting the capital of the company by private placing of the shares of the company etc

#### **COMPANIES CONTRACTS**

Unless otherwise provided in any particular case, company contracts are entered the same way as an individual. Accordingly, contracts on behalf of a company may be made, varied or discharged under seal, in writing or by parol and not reduced into writing if

such forms would be proper in similar contracts between individuals see Trenco (Nig.) versus A.R.E.I Co Ltd. (1970) 1 LRN 146; (1979) II NSCC 220. A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if it is done in the name of the company or if expressed to be made, accepted or endorsed on behalf of or on account of the company by a person under its authority. See Metalimpex versus A.G. Leventis and Co. (Nig.) Ltd. (1976) 2.S.C 91). Every company may have a common seal (optional) the use of which may be regulated by the articles of association. Before now failure to use the common seal when necessary renders the agreement ineffectual (African Development Corp. Limited versus L.E.D.B. [1966] NCLR 438, but no longer so with the enactment of CAMA 2020 that makes the use of common seal optional. If the company is permitted by its objects to transact business in foreign countries it may, if authorized by its articles, have for use in any place outside Nigeria, an official seal which is a facsimile of the common seal with the addition on its face of the name of every country where it is to be used. A company may, by writing under its common seal, appoint an attorney either generally or in a particular matter, to execute deeds on its behalf within or outside Nigeria. A deed signed by such an attorney will bind the company and have effect to the same extent as if it had been executed under the common seal of the company.

## **AUTHENTICATION AND SERVICE OF DOCUMENTS**

A document or proceeding required to be authenticated by a company may be signed by a director, secretary or other authorised officer of the company and need not be under its common seal. A court process shall be served on a company in accordance with the provisions of the applicable Rules of Court while any other document may be served on a company by leaving it at, or sending it by post to the registered office or head office of the company.

## **PRE-INCORPORATION CONTRACTS**

- (1) Effect of pre-incorporation contracts - A company can ratify after formation as if it were in existence when the contract was entered into. The company then becomes bound and entitled to the benefits therein. Before such ratification, if there is no express agreement to the contrary, the promoter will be personally liable and can benefit therefrom. (section 96) Contrast with (1) Kelner versus Baxter (1878) 8 Ch.D3 88; Newborne versus Sensolid [1954] 1 Q.B. 45. See Societe Generale Bank (Nig.) Ltd. v, Societe Generale Favouriser etc. [1995] 3 NWLR (Part 384) 497.
- (2) Indications for pre-incorporation contracts:
  - (a) Payment of promoter's expenses
  - (b) Shareholder's agreement - need to secure interests of shareholders
  - (c) Takeover of business, or purchase of property

- (d) Joint - Venture Agreement especially between Nigerians and aliens
- (e) Conversion of partnership to registered company
- (f) Promoters/Directors' Service Contracts.

Note relationship between the memorandum and articles of association and pre-incorporation agreements e.g. joint venture and formation agreements see Edokpolor and Co. Ltd versus Sem-Edo Wire Industries (1984) 15 NSCC 553; (1984) 7 S.C. 119.

(3) Preliminary documentation e.g.

- (a) Appointment of first directors by the subscribers of the memorandum of association
- (b) Formation Agreements

## **CHAPTER FOUR**

### **POST INCORPORATION MATTERS**

#### **PRELIMINARY STEPS BEFORE THE COMMENCEMENT OF BUSINESS**

##### **PUBLICATION OF CERTAIN PARTICULARS**

- a) Publication of company name - s. 729 CAMA.
- b) Production of company seal, if authorised by the company's articles – see ss. 98, 99 and 840.
- c) Submission/Display of statement of affairs in the prescribed form- applicable to banking & insurance companies (s. 733 CAMA).
- d) Certificate of incorporation – the company is required to display the certificate conspicuously in all its offices.

##### **KEEPING OF STATUTORY BOOKS**

- a) Register of members – s. 109 CAMA
- b) Record of substantial shareholding in a public company - S. 120 CAMA
- c) Index of members – s. 111 CAMA
- d) Register of interest in shares – s. 122 CAMA
- e) Register of charges – s. 216 CAMA
- f) Register of debenture holders – s. 218 CAMA
- g) Minutes book – s. 266 (1) CAMA
- h) Register of directors shareholding – s. 301 CAMA
- i) Register of directors – s. 318 CAMA (see also s. 319)

- j) Register of directors' residential addresses – s. 320 CAMA
- k) Register of secretaries – s. 336 CAMA (see also s. 337) - Not compulsory for small companies (cf. s. 330 (1) CAMA)
- l) Accounting records – s.374 CAMA

## **CONVERSION OF COMPANIES AND THE ALTERATION OF REGISTERED DOCUMENTS**

A registered company may be converted from a particular form to another. This is however subject to the provisions of CAMA, ISA and the Stock Exchange Listing Rules.

### **TYPES OF COMPANY CONVERSIONS**

- 1) Re-registration/conversion of private company (whether "Limited" or "Unlimited") as public company limited by shares – s. 56 CAMA
- 2) Re-registration/conversion of public company as private limited company – s. 63 CAMA
- 3) Re-registration/conversion of a private company limited by shares, as unlimited – s. 68 CAMA
- 4) Re-registration/conversion of unlimited company, as a private limited by shares – s. 71 CAMA

### **RE-REGISTRATION/CONVERSION OF PRIVATE COMPANY AS PUBLIC COMPANY**

The procedural steps are:

- 1) Board of directors meet and pass a resolution proposing the conversion and re-registration.

- 2) Board authorises the company secretary to issue notice of general meeting to pass special resolution.
- 3) At the general meeting special resolution is passed, approving the re-registration/conversion of the company and consequential alteration of the memorandum and articles, in line with the new status of the company.
- 4) At the time of passing the special resolution, the following conditions must have been met:
  - a) The company has a share capital and the nominal value of the company's allotted share capital is not less than the minimum specified for public companies;
  - b) The allotted shares must have been paid up at least, to one quarter of the nominal value of the share and the whole of any premium on it; and
  - c) The company has not been previously re-registered as an unlimited company.
- 5) Application is made to CAC, using *Form CAC 4* (Application for Re-registration), authorised by a director, secretary or any appropriate officer of the company
- 6) Attach the following documents to the application:
  - a) A copy of a special resolution that the company should re-register as a public company;
  - b) A copy of the company's memorandum and articles, as proposed to be amended;

- c) A copy of the balance sheet of the company, prepared as at a date not more than 7 months, before the date on which the application is delivered to the Commission;
  - d) An unqualified report by the company's auditor on that balance sheet;
  - e) A written statement by the company's auditor that, in his opinion as at the balance sheet date, the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves;
  - f) If, during the period between the preparation of the balance sheet and the passing of the resolution for the re-registration of the entity as a public company, the business has undertaken an allotment of shares for non-cash consideration, a valuation report will be required annexed to the application; and
  - g) A statement of compliance to CAC, specifying that the requirements of the Act as to its re-registration as a public company have been complied with.
- 7) Where CAC accepts the statement of compliance as sufficient evidence that the company is entitled to be re-registered, it will issue a certificate of incorporation, altered to meet the circumstances of the company.

See ss. 56, 57, 59 and 60 and 62 CAMA

## **RE-REGISTRATION/ CONVERSION OF PUBLIC COMPANY AS PRIVATE**

The procedural steps are:

- 1) Board resolution proposing conversion and its re-registration
- 2) Special resolution by general meeting authorizing the re-registration/conversion of the company and consequential alteration of the memorandum and articles, in line with the new status of the company
- 3) Application is made to the CAC, using *Form CAC 4* (Application for Re-registration), authorised by a director, secretary or any other appropriate officer of the company
- 4) Attach the following documents to the application:
  - a) The company's memorandum and articles as proposed to be amended, in connection with its becoming a private company; and
  - b) A statement of compliance to CAC, specifying that the requirements of the Act as to its re-registration as a private limited company have been complied with.
- 5) Where CAC accepts the statement of compliance as sufficient evidence, the company will be issued with a new certificate of incorporation as evidence of the re-registration
- 6) **Minority objection:** An application can be made to the FHC for the cancellation of the special resolution for the re-registration of the company. Such application must be made to court within 28

days after the passing of the resolution; and can be made by any of the following category of members:

- a) By the holders of at least 5% in nominal value of the company's issued share capital or any class of the company's issued capital (disregarding any shares held by the company as treasury shares);
  - b) If the company is not limited by shares, at least by 5% of its members; or
  - c) By at least 50 members of the company, but not by a person who has consented to, or voted in favour of the resolution
- 7) On hearing the application, the court may confirm or cancel the resolution or make such other orders or directions as it deems fit in accordance with the circumstances of the matter
  - 8) In making the application to court to cancel the resolution, the applicant shall, without prejudice to the rules of court as to service, give immediate notice to CAC.
  - 9) On being served with any such application for the cancellation of the special resolution, the company shall immediately give notice to CAC
  - 10) Within 15 days of the making of the court order on the application for cancellation, or such longer time as the court may direct, the company, in accordance with the decision of the court, shall deliver the following documents to CAC:
    - a) **Where the court confirms the resolution**
      - i. A CTC of the court order; and

- ii. The company's memorandum and articles as proposed to be amended
- b) **Where the court cancels the resolution:**
  - i. A printed copy of the special resolution; and
  - ii. CTC of the court order cancelling the resolution.

11) Where CAC accepts the statement of compliance as sufficient evidence that the company is entitled to be re-registered, it will issue a certificate of incorporation, altered to meet the circumstances of the company.

See ss. 63, 64, 65, 66, 67 CAMA

**RE-REGISTRATION/CONVERSION OF  
COMPANY LIMITED BY SHARES AS  
UNLIMITED**

Procedural steps are:

- 1) Board resolution proposing the conversion.
- 2) Convene general meeting of the company where the prescribed form of assent to the company being registered as unlimited, will be subscribed by or on behalf of all the members of the company
- 3) Application is made to the CAC, using *Form CAC 4* (Application for Registration), authorised by a director, secretary or any other appropriate officer of the company

- 4) Attach the following documents to the application:
  - (a) the prescribed form of assent to the company's being re-registered as an unlimited company, authenticated by or on behalf of all the members of the company, who are to ensure that the company has not been previously been re-registered as limited
  - (b) a copy of the company's memorandum and articles of association as proposed to be amended
- 5) A statement of compliance to CAC, specifying that the requirements of the Act as to re-registration as unlimited company have been complied with. The statement shall contain a statement by the directors of the company as follows:
  - (a) that the persons by whom or on whose behalf the form of assent is authenticated constitute the whole membership of the company; and
  - (b) if any of the members has not authenticated that form himself, that the directors have taken all reasonable steps to satisfy themselves that each person who authenticated it on behalf of a

member was lawfully  
empowered to do so.

- 6) Where the CAC accepts the statement of compliance as sufficient evidence that the company is entitled to be re-registered, it will issue a certificate of incorporation, altered to meet the circumstances of the company. See S. 68 of CAMA.

## **RE-REGISTRATION/CONVERSION OF COMPANY FROM UNLIMITED TO LIMITED BY SHARES**

Procedure is as follow:

- 1) Board resolution proposing the conversion
- 2) Special resolution passed by general meeting authorising the re-registration/consequential alteration of the memorandum and articles of association, in line with the status of a company limited by shares or, as the case may be, by guarantee.
- 3) At the time of passing the special resolution, the following conditions must have been met:
  - a) The company must not have been previously re-registered as unlimited; and
  - b) The resolution for the re-registration shall specify whether the company is to be limited by shares or by guarantee
- 4) Application for the re-registration of the company made in Form CAC 4, authorised by a director, secretary or any other appropriate officer of the company.

- 5) The form is to be accompanied by the following documents:
  - a) a copy of the resolution that the company should re-register as a private limited company;
  - b) In cases where the company is to be limited by guarantee, a statement of guarantee; and
  - c) a copy of the company's memorandum and articles as proposed to be amended
- 6) A statement of compliance to the CAC, specifying that the requirements of the Act as to its re-registration as a limited company have been complied with.
- 7) Where the CAC accepts the statement of compliance as sufficient evidence that the company is entitled to be re-registered, it will issue a certificate of incorporation, altered to meet the circumstances of the company. See S. 71 of CAMA.

### **ALTERATION OF REGISTERED DOCUMENTS (MEMORANDUM AND ARTICLES OF ASSOCIATION)**

- 1) Memorandum: The conditions contained in the memorandum may only be altered in the manner and to the extent specified by the CAMA – s. 49 CAMA
- 2) Articles: Subject to the provisions of CAMA and to the conditions or other provisions contained in its memorandum, a company may, by special

resolution, alter or add to its articles – see s. 53 CAMA.

### **ALTERATION OF NAME CLAUSE**

There are two types of alteration:

1. Voluntary change of name
2. Compulsory change of name

See s. 30 CAMA

### **PROCEDURE FOR VOLUNTARY CHANGE OF NAME**

- 1) Board of directors resolution authorising the change of name
- 2) Search for availability and reservation of names – see s. 31 (2) & (3)CAMA
- 3) Convene a general meeting and the secretary will send out notices of the meeting
- 4) At the general meeting, special resolution will be passed for the alteration of the name of the company in line with its new status
- 5) Documents to be delivered to the Commission:
  - a. Notice of special resolution
  - b. Application to CAC, using *Form CAC 3* (Notice of Change of Name of a Company) requesting for its consent to the change of name (the application is to be signed by a director and secretary or any other authorised officer of the company)
  - c. Original certificate of incorporation
  - d. The company's memorandum and articles as proposed to be amended

## **CHANGE OF NAME POST-REGISTRATION PROCEDURE**

- a. Alteration of company seal (where the company's articles provide for the use of seal), certificates, letterheads, etc.
- b. Effect the alteration in the memorandum and articles of association, issued after the approval of the new name
- c. Advertise the change of name in daily newspapers circulating nationwide
- d. Advertisement of change of name in the official gazette of the gederation

NB: Any change of name made in line with s. 30 of the CAMA shall be published periodically by the CAC in a national daily newspaper and on its website – see s. 30 (7) CAMA

## **CAC REQUIREMENTS/DOCUMENTS FOR THE CHANGE OF COMPANY NAME**

- a. Availability search and reservation of new name
- b. Notice of change of the name of a company (Form CAC 3) - to be authorised by a director, secretary or any other appropriate officer of the company
- c. Special resolution stating the change desired, duly signed by director (s) of the company
- d. Surrender of the original certificate of incorporation for cancellation
- e. Payment of filing fees
- f. Up-to-date annual returns

- g. The company's memorandum and articles as proposed to be amended
- h. Compliance with s. 733 (where applicable)

Does a change of name affect the rights and liabilities of the company? See s. 30 (6) CAMA

### **ALTERATION OF BUSINESS OR OBJECTS CLAUSE**

The procedure is as follow:

1. Board of directors resolution proposing the alteration (in whole or in part) in the object of the company
2. Secretary to issue notice of general meeting – 21 days is to be given to all members of the company and debenture holders secured by floating charge
3. Holding of general meeting and passing of special resolution for alteration of the business or objects of the company as contained in the memorandum of association.
4. **Minority objection:** After passing the special resolution, the company allows 28 days for any objection and application to court for cancellation of the special resolution by minority members and holders of debentures secured by a floating charge
5. Within 15 days after the passing of the special resolution, the company shall deliver a copy of the resolution, which incorporates the alterations

6. If CAC approves the resolution, the company shall deliver to CAC, a copy of the altered memorandum of association
7. If CAC disapproves the resolution, it shall notify the company of its decision, and the aggrieved persons can appeal to the federal high court within 21 days from the day the company received the notice, or any extension of time as may be allowed by the court.
8. If the appeal succeeds, the company within 15 days of the court order will deliver to CAC the following documents:
  - a. The special resolution passed
  - b. Altered memorandum and articles of association
  - c. CTC of the court order
9. If application to cancel the resolution was made by aggrieved minority members or debenture holders secured by a floating charge, within 28 days of the passing of the resolution, the company notifies CAC immediately
10. If the court confirms the alteration, the company sends CTC of the court order and printed copy of the altered memorandum and articles of association to CAC within 15 days – s. 51 of CAMA

Note the persons who can challenge the alteration of the business/objects clause of a company – see s. 51 (2) (a) and (b) CAMA.

## **ALTERATION OF ANY RESTRICTION ON THE POWERS OF THE COMPANY**

Any restriction on the powers of the company may be altered in the same manner as the business clause or object clause

See s. 50 (3) CAMA

## **ALTERATION OF THE ARTICLES OF ASSOCIATION**

### **Procedure for the Alteration of the Articles of Association**

1. A special resolution is passed by the directors, approving the alterations
2. Convene general meeting of the company – notice of the meeting is to incorporate the resolution
3. Special resolution is passed, altering the memorandum and articles of association
4. The company delivers the following documents to CAC
  - a. Printed copy of the resolution; and
  - b. Printed copy of the memorandum and articles of association, as proposed to be amended.

## **ALTERATION OF CAPITAL CLAUSE**

1. Increase in share capital - s. 128 CAMA
2. Reduction in share capital – s. 130 CAMA
3. Alteration under s. 125 CAMA:
  - a. Consolidation and division of all or any part of its share capital into shares of larger

- amounts than its existing shares— s. 125 (a)  
**CAMA**
- b. Subdivision of shares into shares of smaller amounts – s. 125 (b) of CAMA

## **INCREASE IN SHARE CAPITAL**

Procedure for increase in share capital is as follow:

1. Board resolution that the capital be increased and authorising the secretary to take necessary steps to effect the increase
2. General meeting, where an special/ordinary resolution increasing the share capital is passed
3. Prepare and deliver to CAC within 15 days of the passing of the resolution authorising the increase:
  - a) A printed copy of the Notice of Increase;
  - b) A Statement of Increase, duly stamped; and
  - c) A copy of the resolution
4. Within 6 months of giving notice of the increase, ensure that not less than 25% of the share capital including the increase has been paid up – **s. 128 CAMA**
5. Have the directors deliver to CAC a statutory declaration verifying the fact in (4) above
6. Obtain certificate of increase to be issued by CAC
7. Have a copy of each of the resolutions and certificate of increase annexed to the memorandum of association, as proposed to be altered

## **REDUCTION IN SHARE CAPITAL**

The procedure is as follow:

1. Meeting of the directors to resolve that the share capital be reduced
2. Prepare scheme of reduction
3. Convene general meeting of the company  
NB: The notice of meeting should be accompanied by explanatory circular and the scheme of reduction
4. At the meeting, members will pass a special resolution for reducing the share capital of the company and approving the scheme of reduction – s. 131 CAMA
5. The company may apply to the court for an order confirming the reduction and approving the scheme of reduction – s. 132 (1) CAMA
6. Where the court is satisfied that the requisite conditions for granting the order has been fulfilled, it will confirm the reduction – s. 133 CAMA
7. The company shall deliver the following under-listed documents to CAC and shall obtain a certificate of registration from the Commission:
  - a) Copy of the special resolution
  - b) The order of court confirming the reduction of the company's share capital and extract of minutes of the company's meeting, showing the share capital as altered by the order - s. 134 (1) CAMA
8. On the registration of the order and minutes, the resolution for reducing share capital as confirmed

by the order so registered, shall take effect – s.  
134 (2) CAMA

9. The minutes when registered, is deemed substituted for the corresponding part of the company's memorandum and valid as if it had been originally contained in it - s. 134 (5) & (6) CAMA

## **CORPORATE SEARCHES: USES OF CORPORATE REPORTS**

1. To confirm whether the company was duly incorporated.
2. In some instances, the search may be used to verify entries made by applicants, who wish to open an account for a corporate organisation.
3. It is a means of verifying the profile of the company.
4. It is also useful in determining how the company has operated or complied with the law.
5. A search report may be required by bankers in reaching an informed opinion in cases of granting credit facility to a corporate body.

## **CONTENTS OF A SEARCH REPORT**

1. Date of search
2. Place of search
3. Name of company
4. Company Number: (RC Number)
6. Registered office address of the company
7. Date of Incorporation
8. Business/objects of the company

9. Borrowing powers
10. Share capital
11. Shareholders
12. Shareholding
13. Directors
14. Company secretary
15. Any change in the registered particulars such as  
alteration conversion or re-registration
16. Any encumbrance
17. Filing of annual returns
18. Remarks (If any)
19. Name and signature of the legal practitioner who  
conducted the search

A forwarding/covering letter should accompany the  
search report

## **CHAPTER FIVE**

### **FOREIGN PARTICIPATION IN NIGERIAN BUSINESS SECTOR**

An alien or foreign company may join in forming a company subject to compliance with the provisions of the laws regulating the rights and capacity of aliens to engage in business in Nigeria. Every foreign company intending to carry on business in Nigeria must take all necessary steps to obtain incorporation as a separate entity in Nigeria and until so incorporated, the foreign company shall not have a place of business in Nigeria for any purposes other than the receipt of notices and other documents as matters preliminary to incorporation. See S. 78(1).

#### **PARTICIPATION OF ALIENS IN BUSINESS**

##### **Relevant Statutes:**

Companies and Allied Matters Act, 2020

Nigerian Investment Promotion Commission Act, 2004

Foreign Exchange (Monitoring and Miscellaneous Provisions) Act

Investments and Securities Act, 2007

Immigration Act, 2004

National Office for Technology Acquisition and Promotion Act, 2004

Industrial Inspectorate Act, 2004

Industrial Development (Income Tax Relief) Act, 2014

Pioneer Status Incentive Regulations 2014.

## **POWER TO EXEMPT FOREIGN COMPANIES**

A foreign company may apply to the Minister for exemption from the provisions of section 78 of this Act if that foreign company belongs to one of the following categories, that is—

- a. Foreign companies other than those specified in paragraph (d), invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project;
- b. Foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation;
- c. Foreign government-owned companies engaged solely in export promotion activities; and
- d. Engineering consultants and technical experts engaged on any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.

## **PROCEDURE FOR APPLICATION FOR EXEMPTION**

An application for exemption under this section shall be in writing addressed to the Minister and shall set out—

- a. the name and place of business of the foreign company outside Nigeria;
- b. the name and place of business or the proposed name and place of business of the foreign company in Nigeria;

- c. the name and address of each director, partner or other principal officer of the foreign company;
- d. a certified copy of the charter, statutes, or memorandum and articles of association of the company, or other instrument constituting or defining the constitution of the company and if the instrument is not written in the English Language, a certified translation thereof;
- e. the names and addresses of one or more persons resident in Nigeria authorised to accept, on behalf of the foreign company, service of processes and any notice required to be served on the company;
- f. the business or proposed business in Nigeria of the foreign company and the duration of such business;
- g. particulars of any project previously carried out by the company as an exempted foreign company; and
- h. such other particulars as may be required by the Minister or Secretary to the Government of the Federation. See S. 80(2) of CAMA.

## **PARTICIPATION IN ENTERPRISES**

A non-Nigerian may now freely invest and participate in the operation of any enterprise in Nigeria (S.17 Nigerian Investment Promotion Commission Act Cap NII7 LFN) except enterprises in the “Negative List” (production of arms and ammunition and service uniforms, production and dealing in drugs etc.). The alien may operate alone or in joint venture with Nigerians by means of a company, which must first of all be formed and

registered by the Corporate Affairs Commission (S.19) and thereafter registered with the Nigerian Investment Promotion Commission (sections 20 and 27 of Cap N117). An alien not wishing to establish a business may buy shares in a Nigerian company in any convertible currency (section 21 of Cap N117). Investment will be effected with foreign currency imported freely into Nigeria through an authorised dealer and converted into the naira at the official foreign exchange market, see Foreign Exchange (Monitoring and Miscellaneous Provisions) Act Cap. F34 LFN 2004 sections 12, 13 and 15). The authorised dealer will issue a certificate of capital importation. Imported capital is guaranteed unconditional transferability and repatriation of funds with regard to both earnings and capital (section 15(4) of Cap F34 of 1995 and S.24 of Cap N117 of 1995).

Where a dispute arises between an investor and any government of the federation in respect of an enterprise, all effort shall be made to reach an amicable settlement through mutual discussion, failing which, the dispute may be submitted to arbitration at the option of the aggrieved party as follows:

- a) In the case of a Nigerian investor, in accordance with the Arbitration and Conciliation Act. (Cap A18); or
- b) In the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the federal government and the country of which the investor is a national are parties; or

- c) In accordance with any other national or international machinery for the settlement of investment dispute agreed on by the parties.

Where there is disagreement between the investor and the federal government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Disputes Rules will apply - (section 26 of Cap N117).

The Nigerian Investment Promotion Commission will act as liaison between the foreign enterprise and relevant government departments (Section 28 of Cap N117) especially with regard to issuance of permits.

## **MODES OF FOREIGN PARTICIPATION**

1. Foreign Direct Investment (FDI)
2. Foreign Portfolio Investment (FPI)
3. Foreign Exempted Company

## **PROCEDURES FOR APPLICATION TO NIGERIAN INVESTMENT PROMOTION COMMISSION**

Application to Nigerian Investment Promotion Commission is on NIPC Form 1 for

1. Business Permit and Expatriate Quota; and
2. Pioneer Status, Technical Assistance Agreement and in case of other fiscal incentives a separate Form is to be completed.

A non-refundable deposit of ₦10,000 naira is payable for each application in bank draft to the nearest Nigerian

Investment Promotion Commission office. The application should be forwarded to the Nigerian Investment Promotion Commission Headquarters, Abuja or State Ministries of Trade and Industries for onward transmission to Nigerian Investment Promotion Commission Headquarters, Abuja, along with two (2) copies of the receipt for purchase of the Form.

### **CHECKLIST OF ATTACHMENTS**

- i. Completed Nigerian Investment Promotion Commission Form 1 (1 copy) (accompanied by payment of ₦10,000 non-refundable deposit).
- ii. Partnership (Joint-Venture) agreement where applicable (1 copy)
- iii. Photocopy of payment receipt for application form ( 2 copies)
- iv. The certificate of incorporation of the applicant company.
- v. Memorandum and articles of association of the applicant company.
- vi. Tax clearance certificate of the applicant company.
- vii. Receipt for payment of stamp duties on the authorised share capital of the company as at the date of application.
- viii. Feasibility report and project implementation programme of the company for its proposed business.
- ix. Title deeds of land evidencing firm commitment to acquire requisite business premises for the company's operations.

- x. Training programme for Nigerian staff or personnel policy of the company, incorporating management succession schedule for qualified Nigerians.
- xi. Names, addresses, nationalities and occupations of the proposed directors of the company, including non-resident directors which should be marked “NRD”.
- xii. Job title designations of expatriate quota positions required, and the academic and working experience required, and the academic and working experience required for the occupants of such positions.
- xiii. Information brochure, if any, on the foreign partner.

See Abdulai Taiwo and Co. Solicitors- Registration of Foreign Investments and Enterprises: Nigeria, Practice Note Series, pp 11-14 for a detailed checklist of steps for establishing in Nigeria new companies with foreign shareholding.

## **SUMMARY OF PROCEDURE FOR ESTABLISHMENT OF BUSINESS**

- 1) Prepare joint-venture agreement and any other necessary pre-incorporation agreement.
- 2) Take steps to form a company to be registered with the Corporate Affairs Commission.
- 3) Application to the Nigerian Investment Promotion Commission (NIPC).
- 4) Application to the Securities and Exchange Commission for registration of the

security/investment. See Investments and Securities Act, 2007 section 54(1)

- 5) Application for other permits including application to the Nigerian Embassy in the country of the investor for grant of BUSINESS VISA “Subject to Regularization” (STR).
- 6) Importation of capital through an authorized dealer and obtaining certificate of capital importation.

### **IMPORTATION OF CAPITAL THROUGH THE DEBT-EQUITY CONVERSION PROGRAMME.**

This entails the exchange of a country's foreign currency debt for local currency that can be used for:

- a) Establishment of new enterprises
- b) Purchase of shares in existing business concerns whether privately or public owned.

It is a feature of the deregulation programme introduced by the federal military government in 1988. If for e.g. a foreigner needs to invest \$30 million but he has only \$10 million, he can take his \$10 million to any stock exchange anywhere in the world to buy Nigeria's debt instrument at a discounted value, i.e. he could pay \$10 million for a debt instrument with a face value and not the discounted value, the certificate is brought into Nigeria, taken to a bank as proof of their capital importation into Nigeria, he can obtain the naira equivalent of \$30 million.

It must be pointed out that the repatriation of part of the profits derived from the initial capital outlay i.e. (\$30 million) is postponed until after a minimum of five

years, while the capital proceeds cannot be repatriated until after 10 years, even then only 20 per cent per annum of such capital outlay can be repatriated.

It is implemented by the Debt Conversion Committee (DCC) in CBN.

### **STATUS OF AN EXEMPTED COMPANY**

A foreign company exempted pursuant to this Act shall have the status of an unregistered company and accordingly, the provisions of this Act applicable to an unregistered company shall apply in relation to such an exempted company as they apply in relation to an unregistered company under this Act. (S. 80)

This provision does not affect the liability of a foreign company to be sued by Nigerians in Nigeria or their right to sue Nigerians in Nigeria: (S.84) CAMA. RITZ PUMENFABRIK GMBH & CO KG v TECHNO CONTINENTAL ENGINEERS NIG. LTD (1999) 4 NWLR (PT.598) 298

### **FAILURE TO ADHERE STRICTLY TO THE PROVISIONS OF REGISTRATION FOR FOREIGN COMPANIES IN NIGERIA**

If any foreign company fails to comply with the requirements of section 80 of this Act in so far as they may apply to the company, the company commits an offence and is, in addition to being liable to prosecution, also liable to such penalty as the Commission shall specify by regulation. Every officer or agent of the company who authorises or permits the default or

failure to comply is, whether or not the company is also convicted of any offence, liable on conviction to such penalty as the Commission shall specify by regulation. Where the offence is a continuing one, the company and every officer or agent of the company are liable to a further penalty as the Commission shall specify by regulation for every day during which the default continues. (S.79)

### **PENALTIES FOR FALSE INFORMATION**

A person who, for the purpose of obtaining an exemption or of complying with any of the provisions of section 80 of this Act, makes any statement or presents any instrument which is false commits an offence unless he proves that he has taken all reasonable steps to ascertain the truth of the statement made or contained in the instrument so presented. Any person who contravenes subsection (1) commits an offence under this section and is liable on conviction to a fine or imprisonment as the court deems fit. (S.83)

### **PERMITS/APPROVALS**

#### **1. Business permit**

No person other than a Nigerian citizen shall on his own account or in partnership with any other person practice a profession or establish or take over any company with limited liability for any such purpose without the written consent of the Minister of Internal Affairs (Immigration Act s.8(1)(b) and Immigration Regulations).

#### **2. Expatriate Quota**

No person other than a citizen of Nigeria shall accept employment (not being employment with the federal or a

state government) without the written consent of the Chief Federal Immigration Officer (Immigration Act S.8(1)(a). Initial expatriate quota is sought and obtained usually along with the business permit. There are two types of expatriate quota:

- a) Permanent Until Reviewed (“PUR”)- usually for the post of chairman of the company’s board of directors or the managing director.
- b) Temporary- Directors and other employees of the company. The maximum number of years granted in the first instance is five years renewable for a further period of two years.

Application is made on Immigration Form T/2. It is the duty of the company and not that of the employee, to apply for expatriate quota. See Oilfields Supply Center Ltd v Johnson (No. 2) [1987] 2 NWLR 625; (1987) 18 NSCC 725; [1987] 1 All NLR (part 1) 321.

### 3. Resident Permit

Every alien may enter Nigerian and stay therein for three months without a residence visa (Tourist Visa). Any person who is not a citizen of Nigeria who desires to enter Nigeria for purpose of residence (i.e. beyond three months) must obtain a residence permit.

Application (2 copies) is made by the company requesting permission to employ the alien, accompanied by a valid passport of the alien, to the Immigration Department (via Consular Authorities).

## **COMBINED EXPATRIATE RESIDENCE PERMIT AND ALIENS CARD (CERPAC)**

The combined CERPAC scheme was introduced in 2002, providing for foreigners (except ECOWAS citizens, accredited diplomats and children below the age of 15 years) working or living in Nigeria to carry CERPAC card. The scheme is expected to simplify the process of acquiring residence permit and alien registration certificate. It provides a computerized unit at various points of entries like airports that is linked to a central database centre containing information on every foreigner residing in Nigeria. The residence permit allows a foreigner and his dependents or family to reside in Nigeria. This is in addition to the visa requirement as stated above, while every foreigner resident in Nigeria for more than 56 days is required to register: [1]. Unlike the residence permit, the alien registration certificate is essentially a movement chart.

Under the CERPAC scheme, registration is valid for one year, after which application for revalidation must be made.

Foreigners relocating to a different part of Nigeria must inform the nearest Aliens Office of the move. Also if a foreigner holding an Aliens Card leaves Nigeria permanently then the card has to be handed over to the Aliens Office.

The fee is US\$350. On payment and submitting of the completed application form, a temporary receipt is given. This receipt should be carried at all times as proof of

residence. Applicants will then be told when and where to collect their cards.

In conclusion, a foreigner doing business in Nigeria is required to have business permit, residence permit, alien registration card and business visa (3 types). Only residence permit and alien registration have been combined.

#### 4. Registration of Securities by SEC

The Securities and Exchange Commission is required to keep and maintain separate registers of foreign direct investments and foreign portfolio investments. Investments and Securities Act, 2007 section 8(k)

#### 5. Transfer of Technology

Every contract or agreement entered into by any person in Nigeria with another person outside Nigeria involving the transfer of foreign technology to Nigerian partners shall be registered with the National Office of Technology Acquisition and Promotion (NOTAP) in the prescribed manner not later than sixty days from the execution or conclusion of the agreement (National Office of Technology Acquisition and Promotion Act (S.5(2))). An agreement involves transfer of technology if its purpose or intent is, in the opinion of NOTAP, wholly or partially connected with any of the following matters:

1. The use of trademarks
2. The right of use of patented inventions.
3. The supply of technical expertise in the form of the preparation of plans, diagrams, operating manuals or any other form of technical assistance of any description whatsoever.

4. The supply of basic or detailed engineering.
5. The supply of machinery and plant; and
6. The provision of operating staff or managerial assistance and the training of personnel.

See section 4(d).

Every application for the registration of a contract or agreement shall be addressed to the Director of NOTAP. The application shall be accompanied by such number of certified true copies of such contract or agreement and by all other related documents and information as may be specified in any particular case by the director (section 6(1)).

The director may refuse to register a contract which falls within 18 specifications, e.g.

- a) Where its purpose is the transfer of the technology freely available in Nigeria.
- b) Where the price is not commensurate with the technology in question - 6(2).

Effect of non-registration (section 7)

Non-registration does not render the contract void or unenforceable between the parties but merely frustrates transfer of any fees or payment due under the contract to the account of the aliens outside Nigeria.

#### **INTENTION TO INCUR CAPITAL EXPENDITURE**

Any person proposing to start a new undertaking or in the case of an existing undertaking, to incur additional expenditure, of not less than ₦500,000 must give to the Director of the Industrial Inspectorate Division of the Federal Ministry of Industry notice of his intention. See Industrial Inspectorate Act (section 3(1)). Application is

made in Form 1 (2 copies) obtainable from the Federal Ministry of Industries, Inspectorate Division. If the director is satisfied with the valuation for the property, he issues a certificate of acceptance which binds other government like the Board of Customs and Excise and the Federal Board of Inland Revenue.

Fiscal Approval- in respect of fees for management, technical, consultancy agreement etc.

## **CHAPTER SIX**

### **LEGAL FRAMEWORK OF CORPORATE GOVERNANCE, DIRECTORS AND SECRETARY**

Corporate governance refers to the mechanism of internal and external controls of the actions and inactions of the organs of a company in a manner that ensures compliance with public policy, acts in the interest of stakeholders and ultimately avoids corporate failure and abuse. Commonly accepted principles of corporate governance include:

- i. Rights and equitable treatment of shareholders;
- ii. Interests of other stakeholders;
- iii. Integrity and ethical behavior; and
- iv. Disclosure and transparency.

Essentially, corporate governance aims at building and strengthening corporate transparency, accountability, credibility, integrity and trust.

Various codes of corporate governance emerged in response to corporate financial failures which has caused notable impacts in the macro economy. In Nigeria, some of the codes serve as international benchmarks. Such codes include those by the Organisation for Economic Cooperation Development (OECD), the Halsbury Report and the Cadbury Report.

The Financial Reporting Council of Nigeria has released a standardised code of corporate governance known as Nigerian Code of Corporate Governance, 2018 having its

commencement date as January 15, 2019. The following entities are required to adopt and comply with the Nigerian Code of Corporate Governance:

- a) All public companies (whether a listed company or not);
- b) All private companies that are holding companies of public companies or other regulated entities;
- c) All concessioned or privatized companies; and
- d) All regulated private companies being private companies that file return to any regulatory authority other than the Federal Inland Revenue Service (FIRS) and the Corporate Affairs Commission (CAC).

The code of good corporate governance for public companies is applicable to:

- i. All companies whose securities are listed on any recognised securities exchange in Nigeria;
- ii. All companies who seek to raise funds from the capital market through the issuance of securities or seeking listing by introduction; and
- iii. All other public companies.

The above entities shall report on the application of the Code in their annual reports for financial year ending after January 1, 2020 in the form and manner prescribed by the Financial Reporting Council of Nigeria.

The Nigerian Code seeks to institutionalise corporate governance best practices in Nigerian companies.

The sectoral codes are as follows:

- a) Code of Corporate Governance for Public Companies, 2011 by the Securities and Exchange Commission;
- b) Code of Corporate Governance for Banks and Discount Houses, 2014 by the Central Bank of Nigeria;
- c) Code of Corporate Governance for Licensed Pension Fund Operators, 2008 issued by the National Pension Commission;
- d) Code of Corporate Governance for the Insurance Industry, 2009 issued by the National Insurance Commission;
- e) Code of Corporate Governance for the Telecommunications Industry, 2016 issued by the Nigerian Telecommunications Commission;
- f) Code of Corporate Governance for Capital Market Operators and Their Employees, 2010 issued by Securities and Exchange Commission; and
- g) Code of Corporate Governance for Other Financial Institutions in Nigeria, 2018 issued by Central Bank of Nigeria.

These codes are sector specific corporate governance codes and are applicable to only the affected regulated sectors.

The Nigerian Code of Corporate Governance released by the Financial Reporting Council of Nigeria is aimed at providing a set of benchmark corporate governance standards applicable to the companies listed therein.

These codes evolved based on a series of theories put forward by different theorists at various times, prominent among them are:

- a) The Stakeholder Theory; and
- b) The Agency Theory.

The stakeholder theory posits that a company has more than the interest of its owners (shareholders) and employees at stake. It broadens the horizons of persons and classes which the welfare of the corporate unit affects. These are all referred to as stakeholders, viz: the shareholders, the management, the employees, the creditors, the society and the government. Because the interests of all these individuals or classes of individuals need to be protected, a good framework needs to be created to ensure same.

The agency theory on the other hand posits that the officers of the company are its agents who are to carry out the wishes of the company.

## **DIRECTORS**

### **DEFINITION**

Directors are persons duly appointed by the company to direct and manage the business of the company (section 269). See *Olufosoye v Fakorede* [1993] 1 NWLR (Part 272) 747. The term "Director" also includes a shadow director, i.e. a person on whose direction and instructions the directors are accustomed - section 270. Directors are not servants of the company but its *alter ego*. However, the managing director is a servant of the

company. See *Yalaju-Amaye* versus *Associated Registered Engineering Contractors Ltd.* [1978] 1 LRN 146; [1978] All NLR 124; (1978) 11 NSCC 220.

## **TYPES OF DIRECTORS**

1. Shadow Director:
2. Executive Director: Officers holding service contracts of the company appointed to the board. Executive directors are responsible for the day-to-day running of the company and their powers are usually circumscribed by the articles. He is entitled to be remunerated.
3. Non-Executive Director: A non-executive director is a director that attends board of directors meeting and is not entitled to be remunerated apart from re-imbursement of his out of pocket expenses in attending company's matters. But non-executive directors can be remunerated where the articles of association of the company provides for it.
4. Alternate Director: He is appointed by a director to sit on the board in his place under powers contained in the articles.

## **MANAGING DIRECTOR**

The managing director is appointed and removable by the board. He ceases to hold office if for any reason he ceases to hold office as a director. See *Yalaju - Amaye* versus *A.R.E.C. Ltd* [1990] 4 NWLR (Part 145) 425.

## **NUMBER OF DIRECTORS**

The minimum number is two for every company not being a small company (section 271). The articles may fix a maximum number. The directors may increase the number of directors as long as it is not above the maximum numbers but the general meeting has power to increase or decrease the number of directors generally S. 274(3)

## **APPOINTMENT**

1. First Directors: First directors are appointed by the subscribers of the memorandum and articles of association or a majority of them.
2. Subsequent Directors are appointed as follows:

Power to re-elect or reject directors lies with the annual general meeting (section 273(1)), but the memorandum or articles may confer power to appoint on any person including outsiders - *section 46(3)*. Where there is casual vacancy arising from death, retirement, resignation or removal, the board of directors can fill such casual vacancy subject to ratification by members at the next annual general meeting – S. 274. Where the memorandum or articles empower any person to appoint or remove any director or other officer of the company, such power will be enforceable by the person notwithstanding that he is not a member of the company – S 46(3). Where all directors and shareholders die any of their personal representatives may apply to court for an order to convene a meeting of all personal representatives of the shareholders, and if they fail to convene a meeting, creditors may do so (section 273(2)).

## **VOTING ON APPOINTMENT OF DIRECTORS**

Unless the articles otherwise provide, appointment of directors is by ordinary resolution. A private company can, and usually appoints its directors by a single resolution. But a public company is required to appoint each director by a separate resolution. However, a public company may appoint two or more directors by a single resolution if the meeting unanimously passes a resolution that it should be so made (section 287(1)).

## **RETIRING DIRECTORS**

Their re-appointment is one of the ordinary businesses at an annual general meeting. Where a director presents himself for re-election, a record of his attendance at the meeting of the board during the preceding one year must be made available to the members at the general meeting where he is to be re-elected. (section 284(2)).

## **CASUAL VACANCY**

Appointment to fill casual vacancy arising as a result of death, resignation, retirement, or removal, may be made by directors (section 274(1)). The person so appointed shall hold office till the next annual general meeting.

## **NOMINATION OF DIRECTORS**

Except in the case of a retiring director, no person is eligible for election to the office of director unless he is recommended by the directors. However, a member qualified to attend and vote at the meeting may nominate a director by leaving at the registered or head office of

the company not less than three or more than 21 days before the meeting, a notice in writing signed by him of his intention to propose such person for election. The proposed director will also leave at the registered or head office notice of his willingness to be elected - (section 285(4)).

### **DISQUALIFICATION FROM APPOINTMENT AS DIRECTOR**

The following persons are disqualified from being directors:

- a) An infant, that is, a person under the age of 18 years;
- b) A lunatic or person of unsound mind;
- c) A person suspended or removed under section 288 of this Act;
- d) A person disqualified under section 279 (insolvent persons), section 280 (fraudulent persons), and section 284 (vacation of office).
- e) A corporation other than its representative appointed to the board for a given period (section 283).

### **VACATION OF OFFICE**

A person appointed director shall vacate his office if he:

- (a) Ceases to be director by virtue of section 277 (share qualification); or
- (b) Becomes bankrupt or makes any arrangement or composition with his creditors generally; or

- (c) Becomes prohibited from becoming a director by reason of any order made under section 280 (restraint of fraudulent persons); or
- (d) Becomes unsound mind; or
- (e) Resigns his office by notice in writing to the company - (section 284).

### **ROTATION OF DIRECTORS**

Unless otherwise provided by the articles, at the first annual general meeting, all directors shall retire from office, and at the annual general meeting in every subsequent year one third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest to one third shall retire from office (section 285 (1)). The Directors to retire are those who have been longest in office since their last election (section 285 (2)). A retiring director who offers himself for re-election is deemed to have been re-elected unless:

- (a) Another person is elected to fill his place; or
- (b) It is expressly resolved at the meeting not to fill the vacancy created by his retirement; or
- (c) A resolution for his re-election has been put to the meeting and lost (section 285 (3)).

### **LIFE DIRECTOR**

A person may be appointed director for life but he is subject to removal under section 288, that is, by an ordinary resolution of which special notice is given. A life director is not subject to retirement by rotation - S. 281.

## **AGE OF DIRECTORS**

The minimum age of appointment of a person as a director is 18 years and above (section 283(a)). Generally, there is no maximum age for directors except that restriction has been placed in respect of a director of a public company who is 70 years or more. A person may be appointed a director of a public company notwithstanding that he is 70 years or more of age but special notice of the resolution for appointment or approving the appointment, of the director must be given to the company (section 282). The notice to the company and to the members must state the age of the director. A person who is 70 years or more who is appointed or to his knowledge is proposed to be appointed director of a public company must disclose this fact to the members at the general meeting- (section 278 (1))

## **REMOVAL OF DIRECTORS**

The articles or the contract appointing a director may provide for his removal from office. However, a company may by an ordinary resolution of which special notice is given remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and the director (section 288(1)).

Special notice is required also of any resolution to appoint as director some other person instead of the director so removed, at the meeting at which he is removed (section 288). The notice of resolution must be forwarded forthwith upon receipt to the director who is

entitled not only to be heard before the resolution at the meeting but also to make representation of reasonable length to be forwarded at his request to the members who are given notice of the meeting. A vacancy created by the removal of the director may be filled at the meeting at which he is removed or after as a casual vacancy (section 288(4)). Any person so removed is entitled to compensation or damages payable to him by reason of the termination of his appointment as a director or any other appointment terminating with that of director (e.g. managing director) (section 288(6)).

Removal under section 288 does not derogate from any power to remove a director which exists apart from the section – S. 288 (6).

## **PROCEDURE FOR REMOVAL UNDER SECTION 288**

- 1) Check to find out if direct and simpler power of removal other than section 288 is provided by the articles or contract and apply it if available.
- 2) The person(s) wishing to remove the director issue(s) notice of the resolution to the company at least 28 days before the date of the meeting - section 261).
- 3) Upon receipt of the notice, the secretary to the company will -
  - a) Send a copy of it to the director concerned;
  - b) Issue notice of the meeting at least 21 days before the date of the meeting. The notice will be accompanied by any representations

- made by the director and state the fact of the representations having been made;
- c) At the meeting:
    - i. Give audience to the director and read to the members his representations if they were received too late or were not sent to the members owing to the company's default; and
    - ii. Pass ordinary resolution removing the director.
  - d) File Form CAC 7A – Notice of vacation of office/removal of director to reflect the removal within 14 days of removal.
  - e) Enter the fact of removal in the register of directors, register of directors' residential addresses and where necessary also amend the register of directors' shareholding. (See generally *Yalaju -Amaye* versus A.R.E.C. Ltd. [1990] 4 NWLR (Part 145) 422.

## **REMUNERATION OF DIRECTORS**

The remuneration of the directors will be determined from time to time by the general meeting or may be fixed by the articles. But, unless otherwise agreed, the company is not bound to pay remuneration but must refund expenses properly incurred in the course of the business of the company. (Section 293)

## **PROCEEDINGS OF DIRECTORS**

The directors may meet as a board. The first meeting of the board must be held within 6 months of incorporation (section 289(1)).

A resolution in writing signed by all the directors entitled to receive notice of meeting of the directors is as valid and effectual as if it has been passed at a meeting of directors duly convened and held (section 289 (8)). See *A-G Enugu State versus Avop plc.* [1995] 6 NWLR (part 399) 90 (CA).

The quorum may be fixed by the articles otherwise it will be two or if there are more than 6 directors, one third of the number of directors or one third to the nearest number - section 290 of CAMA.

The directors may elect a chairman of the board from among themselves to chair board meetings and general meetings of the company - section 289 (4).

## **MULTIPLE DIRECTORSHIPS**

A person shall not be a director in more than five public companies.

Any person who is a director in more than five public companies shall, at the next annual general meeting of the companies after the expiration of two years from the commencement of this Act, resign from being a director from all but five of the companies.

The fact that a person holds more than one directorship shall not derogate from his fiduciary duties to each company, including a duty not to use the property, opportunity or information obtained in the course of the management of one company for the benefit of the other company, or to his own or other person's advantage. See S. 307 of CAMA.

## **INDEPENDENT DIRECTORS IN PUBLIC COMPANIES**

A public company shall have at least three independent directors – 275 of CAMA

### **SECRETARY**

Every company must have a secretary except a small company - section 330 (1). The company secretary services the board and may be responsible for the day to day running of the company. He is a high ranking officer and may be part of the management. See *Wimpey (Nig) Ltd versus Alhaji Balogun* [1986].3 NWLR (part 28) 324, *Panorama Development (Guildford) Ltd versus Fidelis Furnishing Fabrics* [1971] 2 QB 711; [1971] 2WLR 440; [1971] 3 All E.R. 16, *Oke-Owo versus Migliore* (1979) 11 S.C 138;(1979) NSCC 210

A company can appoint assistant or deputy company secretary – S 330(3) of CAMA.

A person can be a director and company secretary at the same time but acts required to be done by a director and the company secretary must be done by two separate persons (section 331).

### **QUALIFICATION**

#### **Private company**

Any person who appears to the directors to have requisite knowledge and experience to discharge the functions of a secretary of a company may be appointed.

### **Public Company:**

In the case of a public company, the person shall be:

- a) A member of the Institute of Chartered Secretaries and Administrators; or
- b) A legal practitioner; or
- c) A member of any professional body of accounts established from time to time by an Act of the National Assembly; or
- d) Any person who has held office of the secretary of a public company for at least three years of the five years immediately preceding his appointment in a public company; or
- e) A body corporate or firm consisting of members each of whom is qualified as chartered secretary, legal practitioner or chartered accountant – S. 332 of CAMA.

### **APPOINTMENT AND REMOVAL**

A company secretary shall be appointed by the directors and may be removed by them (section 333(1)). There is no special procedure for the removal of company secretary of a private company. However, where it is intended to remove the company secretary of a public company, the board of directors shall give him notice:

- a) stating that it is intended to remove him;
- b) setting out the grounds on which it is intended to remove him;
- c) giving him a period not less than 7 working days within which to make his defence and;
- d) giving him an option to resign his office within a period of 7 working days (section 333(2))

Where, following the notice prescribed above the company secretary does not within the given period resign his office or make a defence, the board may remove him from office and shall make a report to the next general meeting; but where the secretary, without resigning his office makes a defence and the board does not consider it sufficient, if the ground on which it is intended to remove him -

- (a) is that of fraud or serious misconduct, the board may remove him from office and shall report to the next general meeting; and
- (b) is other than of fraud or serious misconduct, the board shall not remove him without the approval of the general meeting, but may suspend him and shall report to the next general meeting (section 333(3)).

Notwithstanding any rule of law, where a company secretary so suspended is removed with approval of the general meeting, the removal may take effect from such time as the general meeting may determine (section 333(4)).<sup>1</sup>

## **REGISTER OF COMPANY SECRETARY**

Every public company shall maintain a register of secretaries which shall contain the particulars set out in section 337 of this Act - S 336 of CAMA.

## **DUTIES**

The duties of the company secretary include the following:

- a) Attending the meeting of the company, the board of directors and its committees, rendering all

necessary secretarial services in respect of the meeting and advising on compliance by the meetings with the applicable rules and regulations;

- b) Maintaining the registers and other statutory records;
- c) Rendering proper returns and giving notifications required to be given to Corporate Affairs Commission in the following cases; and
- d) Carrying out such administrative and other secretarial duties as directed by the directors of the company (section 335(1)). The secretary must not without authority exercise any power vested in the directors (section 335(2))

## **RETURNS TO BE MADE BY COMPANY SECRETARY**

- i. Court orders e.g. section 51(7)(b); section 65(3); section 115(4).
- ii. Notice of change of particulars of directors or secretaries (sections 321(1) & 339).
- iii. Registration of charges (section 222)
- iv. Registration of certain resolutions (section 262)
- v. Annual Returns (section 421). Note concessions granted to small companies section 419.
- vi. Return of allotment (section 154)
- vii. Returns on the alteration of share capital (sections 126, 127, 131, 134)
- viii. Statutory Reports (section 235(6)
- ix. Statement by Banks, Insurance Companies, etc. (section 733)

- x. Returns on the Auditors (s. 401; section 409(2); 412(3))
- xi. Returns during Receivership and Winding up e.g. (section 555)

Note: The period within which each filing is done.

## **CHAPTER SEVEN**

### **MEMBERSHIP, MEETINGS & RESOLUTIONS**

#### **MEMBERSHIP OF COMPANY**

##### **DEFINITION**

Membership of a company is defined in section 105(1) and (2) to include:

- (a) The subscribers of the memorandum of the company, who are deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members and,
- (b) Every other person who agrees in writing to become a member and whose name is entered in its register of members. Section 105(3) stipulates that in the case of a company having a share capital, each member shall be shareholder and shall hold at least one share.

#### **HOW TO BECOME A MEMBER**

In a company registered with a share capital, whether limited or unlimited, membership can be acquired by subscribing to the memorandum (section 105), by allotment and registration (section 150) and by transfer (section 175) or transmission (section 179) followed by registration of the transferee in the register of members.

#### **SUBSCRIPTION**

The subscribers are persons who sign the memorandum and articles of association of a company. They must together subscribe to shares amounting in value to the minimum share capital stated in the memorandum to be

registered (section 27(2) and section 124. On the registration of the company, the subscribers are deemed to have agreed to become members and their names must be put on the register of members.

### **ALLOTMENT**

This is the allocation of a specified number of shares of a company to an applicant. Upon receipt of an application, a company shall where it wholly or partially accepts the application, make an allotment to the applicant and within 42 days notify the applicant of the fact of the allotment and the number of shares allotted to him (section 150(c)).

### **TRANSFER**

The shares or other interest of a member in a company are property transferable in the manner provided in the articles of the company (section 175). A person may become a member of a company by having the shares of that company transferred to him by the holder of those shares.

### **TRANSMISSION**

The vesting of shares in the personal representatives on the death of a shareholder is known as transmission of shares rather than transfer. On the death of a member the survivor(s) where the deceased was a joint holder or the personal representative of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares (section 179(1))

## **MEETINGS**

Meeting of companies refers to any of the following general meetings of the company:

- a) Statutory Meeting;
- b) Annual General Meeting; and
- c) Extra Ordinary General Meeting.

## **STATUTORY MEETING**

This type of meeting is prescribed for public companies only (section 235). It is to be held within 6 months from the date of incorporation of the company. The meeting is principally to consider the statutory report which must be sent to the members at least 21 days before the date of the meeting (section 235 (2)). For contents of the statutory report see section 235(3). The members have a right to discuss at the meeting, any issue in respect of the formation of the company and commencement of business or any matter arising out of the statutory report (section 235(8)).

The statutory report is also to be delivered to the Corporate Affairs Commission within 14days (section 235(6)). Failure to deliver the report to the Commission or holding of statutory meeting may be a ground for winding up the company - *section 571*. There is a penalty for everyday of default in holding the meeting (section 236).

## **ANNUAL GENERAL MEETING**

Except in the case of a small company or any company having a single shareholder, every company (private or

public) is to hold an annual general meeting. The notice calling it must describe it as an annual general meeting. Not more than 15 months should elapse between the date of one annual general meeting and the next. However, the first annual general meeting of a company may be held within 18 months of its incorporation i.e. the company need not hold its first annual general meeting in the 1<sup>st</sup> or the following year of its incorporation (section 237(1)). For example if a company was incorporated on 1st November 1995, it need not hold annual general meeting in 1995 or 1996 but must hold it at least in April 1997. For subsequent annual general meetings, Corporate Affairs Commission may extend the time for holding the meeting by not more than 3 months (section 237(1)(b)).

If a company fails to call annual general meeting, a member can apply to Corporate Affairs Commission which will give directives on calling the meeting and such directive will include the power for one member to apply to court to make an order that such member shall take decisions that will bind members of the company section 237(2)). If there is a default in carrying out the directive of Corporate Affairs Commission there is a penalty on the company and every officer at fault - section 237(5).

## **BUSINESS TRANSACTION AT ANNUAL GENERAL MEETINGS**

The business transacted at an annual general meeting includes ordinary business and special business (section 238). The ordinary business of the meeting includes declaration of dividend, presentation of the financial

statement, directors' and auditors' reports, election of directors to replace those retiring, appointment and remuneration of auditors, appointment of members of the Audit Committee and disclosure of remuneration of managers of a company. Any other business is deemed special business.

### **EXTRA-ORDINARY GENERAL MEETING**

This type of meeting can be held at any time. It is meant to deal with any matter that is so important that it cannot wait until the next annual general meeting.

The board of directors may or any director of the company, if there are no other directors within Nigeria to form a quorum, whenever they or he deems fit convenes an extra-ordinary general meeting (section 239(1)).

Extra-ordinary general meeting may also be requisitioned by members holding not less than one tenth of the paid up capital or not less than one tenth of the total voting rights of members where the company has no share capital (section 239(2)). If after 21 days of the deposit of the notice of requisition the directors fail to call a meeting, the requisitionists may themselves call the meeting (section 239(4)).

All business transacted at extra-ordinary general meeting are deemed special (section 239(8)).

### **VENUE OF MEETINGS**

With the exception of small companies and companies having a single shareholder, all statutory and annual general meetings of a company shall be held in Nigeria (section 240 (1)).

A private company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company. (Section 240(2)

### **NOTICE OF MEETING**

All general meeting requires 21 days before the meeting. The notice of meeting is calculated from the date it is sent out or posted - (section 241(1)). However, shorter notice could be given:

- a) For annual general meeting if it is agreed to by all the members entitled to attend and vote at the meeting; and
- b) For any other meeting by a majority holding not less than 95% in nominal value of the shares with right to attend and vote (section 241(2)).

### **IMPORTANCE OF NOTICE**

To adequately inform the member of the kind of meeting he is called to attend, the venue, the business or items to be discussed so as to prepare either to participate in the discussion or even to understand what is going to be discussed.

### **CONTENT OF NOTICE**

To achieve aim and purpose, notice must be clear in its contents. It must not be misleading or ambiguous. Thus some important information must be contained in it. The contents of notice as provided for it section 242(1) are: place, date, time and general nature of business to be transacted in detail to enable members decide whether

the issue to be discussed are of interest to them and whether to attend the meeting in person or through a proxy. If there is going to be a special resolution, the terms of the resolution should be included in the notice (normally the resolution is quoted).

In annual general meeting, it will suffice to state in the notice that the purpose of the meeting is to transact the ordinary business of an annual general meeting (section 242(2)). For a list of those entitled to receive notice of meeting see section 243.

### **SERVICE OF NOTICE**

Notice of meeting is deemed to be effected after 7 days of posting the letter - Note especially section 244 (2). In addition to the notice given personally or by post, notice may also be given by electronic mail to any member who has provided the company an electronic mail address.

### **EFFECT OF FAILURE TO GIVE NOTICE**

Section 245(1) invalidates the meeting in favour of a person entitled to receive notice of it and was not given except if it was accidental omission. Misrepresentation or misinterpretation of the provisions of the Act or the articles of association of the company shall not amount to accidental omission (section 245(2)).

### **ADDITIONAL NOTICE**

Section 246 provides for additional notice to be given in the case of public companies besides notice sent to each member. Notice of such meeting must be advertised in at least two daily newspapers 21 days before the meeting.

## **COURT ORDERED MEETING**

Where it is impracticable for any reasons to call or conduct a meeting of the company, the court may on its own motion, or on application of directors or persons entitled to a vote at such meeting, order a meeting to be called - (section 247). See Okeowo versus migliore (1979) 11SC 138; (1978 A11 NLR (282; (1979)12 NSSC 210.

## **PROCEEDINGS AT MEETINGS QUORUM**

This is the minimum number of members that must be present at the meeting to enable the meeting to start. Normally it is a matter for the articles of the company to fix but where it is silent section 256(2) applies i.e. 1/3 of members or 25 whichever is less except it is a company with one member. In determining whether there is quorum, members and proxies will be counted - section 256 (2).

## **VOTING**

This is to be by show of hands except a poll is demanded (section 248).

Right to demand a poll cannot be taken away by the articles of the company except on issue of election of a chairman or adjournment of the meeting (section 249).

## **PROXY**

This is the person mandated by a member of a company to represent him at the company's meeting he will not attend. He may or may not be a member of the company. A proxy has the same right to speak and vote at the

meeting as the member appointing him (section 253). Stamp Duty is paid on proxy card.

## **CORPORATE REPRESENTATION**

A company which is a member of another company shall be represented at the general meeting of that company of which it is a member by a person authorised on a resolution of the board of directors or other governing council (section 255).

## **RESOLUTIONS**

There are two types of resolutions provided for in section 258(1) and (2) respectively:

- i. Ordinary resolution which is passed by a simple majority of votes, cast by members in person or by proxy. Ordinary resolution is presumed when the Act simply requires the passing of a resolution by the company, without saying which (ordinary or special); and
- ii. Special resolution which is passed by at least  $\frac{3}{4}$  (three - forth majority) of members voting in person or by proxy at a general meeting of which not less than 21days notice of intention to propose the resolution has been given (section 258 (2)). Shorter notice may however be given if agreed to by majority holding not less than 95% of the nominal value of the shares or by members representing not less than 95% of the total voting rights in case of company not having share capital.

## **WRITTEN RESOLUTION**

All resolutions shall be passed at general meeting otherwise it shall not be effective. But for a private company a written resolution signed by all members is as valid and effective as if passed in a general meeting (section 259).

## **REQUISITION OF RESOLUTION**

Holders of 1/20th of total voting rights can requisition a notice of their resolution to be circulated to members entitled to receive notice of the meeting to which the requisition relates (section 260(1)). For when to give notice of resolution or circulate member's statement in respect of statutory meeting see section 235(4).

## **RESOLUTION REQUIRING SPECIAL NOTICE**

When a resolution requires special notice, notice of intention to move it must be given to the company at least 28 days before the meeting - (section 261). The company in turn is to give notice to members of the proposed resolution at least 21days before the meeting or advertise it in a newspaper.

**Note Proviso:** Once a company receives notice, its failure to call a meeting for a date 28 days or less after the notice will not invalidate the meetings.

## **Registration of Some Resolutions**

Section 262 provides that printed copy of certain resolutions and agreements must be sent to the Corporate Affairs Commission within 15 days of passing the

resolution for registration. These resolutions and agreements are enumerated in section 262 (4) as follows:

- a. Special resolution
- b. Unanimous resolution, on issue, which requires special resolution;
- c. Unanimous class resolution; and
- d. Resolution requiring a company to wind up voluntarily passed under s.620(a)

## **MINUTES**

With the exception of a company having a single member, every company must cause minutes of proceedings of its general meetings, board of directors or management meetings to be kept (section 266(1)) at its registered office (section 267(1)).

The minutes must be entered in books kept for that purpose.

See *International Agricultural Industries (Nig.) Ltd. v Chika Brothers Ltd.* [1990] 1 NWLR70.

## **CLASS MEETINGS**

This is the meeting held by classes of shareholders where a company has different classes of shares see s.268. Provisions of the Act relating to meetings shall apply to any class meeting except if expressly excluded by the Act itself.

## **CHAPTER EIGHT**

### **FINANCIAL STATEMENTS, AUDITS AND ANNUAL RETURNS**

#### **COMPANIES TO KEEP ACCOUNTING RECORDS**

Every company must keep such accounting records (See s.374(1) ) as will be sufficient to show and explain the transactions of the company so as to-.

- i. Disclose with reasonable accuracy, at any time, the financial position of the company; and
- ii. Enable the directors to ensure that any financial statements prepared under this Part comply with the requirements of this Act as to the form and content of the company's financial statements. (See s.374(2) )

#### **CONTENTS OF ACCOUNTING RECORDS**

- a. entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure took place; and
- b. a record of the assets and liabilities of the company. (S. 374(3)

By the provisions of s.374 (4)), if the business of the company involves dealing in goods, the accounting records shall contain:

- a. statements of stocks held by the company at the end of each year of the company;

- b. all statements of stock-takings from which any such statement of stock as is mentioned in paragraph (a) has been or is to be prepared; and
- c. except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

## **LOCATION AND PRESERVATION OF ACCOUNTING RECORDS**

The accounting records of a company shall be kept at its registered office or such other place in Nigeria as the directors think fit, and shall at all times be open to inspection by the officers of the company - (s. 375(1))

The company is required to preserve the accounting records for a period of six (6) years from the date on which they were made (S. 375(2))

A company may, in addition to original hard copies, keep electronic copies or registers of any document or record it is obliged to keep or maintain under this Act, and where a company chooses to maintain electronic copies or registers of its documents or records, the company shall give sufficient consideration to the quality of the hardware and software to be used, and technical specifications such as protocol, security, anti-virus protection or encryption. (S. 375(3))

## **DIRECTORS' DUTY TO PREPARE ANNUAL ACCOUNTS**

It is the duty of the directors to prepare a financial statement in respect of each financial year of a company.  
S. 377(1)

### **CONTENTS OF FINANCIAL STATEMENT**

The financial statement must include:

- a. statement of the accounting policies;
- b. the balance sheet or balance sheet as at the last day of the year;
- c. a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the year;
- d. notes on the accounts;
- e. the auditors' report;
- f. the directors' report;
- g. a statement of the source and application of fund or statement of cash flow;
- h. changes in equity;
- i. a value-added statement for the year;
- j. a five year financial summary;
- k. in the case of a holding company, the group financial statements; and
- l. such other matters as are required in accordance with the applicable accounting standards. See s.377(2) of CAMA

The financial statements of a private company need not include the matters stated in subsection (2) (a), (g), (h) and (i) - S. 377(3).

The directors shall, at their first meeting after the incorporation of the company, determine what date in each year financial statements is made up, and they shall give notice of the date to the Commission within 14 days of the determination - S.377(4)

### **DIRECTORS' REPORT**

In the case of every company, there shall be prepared in respect of each year, a report by the directors:

- i. containing a fair view of the development of the business of the company and its subsidiaries during the year and of their position at the end of it; and
- ii. stating the amount, if any, which they recommend should be paid as dividend and the amount (if any) which they propose to carry to reserves - S.385(1)

The directors' report shall state the names of the persons who, at any time during the year, were directors of the company and the financial activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year - S.385(2)

### **SIGNING OF BALANCE SHEET AND DOCUMENTS TO BE ANNEXED THERETO**

A company's balance sheet and every copy of it which is laid before the company in general meeting or delivered to the Commission shall be signed on behalf of the board by two of the directors of the company - S.386(1)

If a copy of the balance sheet:

- a. is laid before the company or delivered to the Commission without being signed as required by this section, or
- b. not being a copy so laid or delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signature as the case may be, the company and each officer of it are liable to a penalty as the Commission shall specify in its regulations.

A company's profit and loss account and, so far as not incorporated in its individual balance sheet or profit and loss account, any group accounts of a holding company, shall be annexed to the balance sheet, and the auditors' report and the directors' report shall also be attached to the balance sheet.

The balance sheet and the profit and loss account annexed to it shall be approved by the board of directors and signed on their behalf by two directors authorised to do so.

## **DIRECTOR'S DUTY TO LAY AND DELIVER FINANCIAL STATEMENTS**

In respect of each year, the directors shall at a date not later than 18 months after incorporation of the company and subsequently once at least in every year, lay before the company in general meeting, copies of the financial statements of the company made up to a date not exceeding nine months previous to the date of the meeting - S.388(1)

## **PERSONS ENTITLED TO RECEIVE FINANCIAL STATEMENTS AS OF RIGHT**

In the case of every company, a copy of the company's financial statements for the year shall, at least 21 days before the date of the meeting at which they are to be laid in accordance with section 388 of this Act be sent to the following persons:

- a. every member of the company (whether or not entitled to receive notice of general meetings);
- b. every holder of the company's debentures, (whether or not so entitled); and
- c. all persons other than members and debenture holders, being persons so entitled - S.387(1)

In the case of a company not having a share capital, subsection (1) shall not require a copy of the financial statements to be sent to a member of the company who is not entitled to receive notices of general meetings of the company, or to a holder of the company's debenture who is not so entitled - S.387(2)

Failure to send to those entitled to it, the company and every officer who is in default shall be liable to a penalty as the Commission shall specify in its regulations. S.389

## **PUBLICATION OF FINANCIAL STATEMENTS**

This means the publication by a company of full individual or group financial statements required by section 388 to be laid before the company in general meeting and delivered to the Commission, including the directors' report - S.398.

## **SHAREHOLDERS' RIGHT TO OBTAIN COPIES OF FINANCIAL STATEMENTS**

Any member of a company, whether or not entitled to have copies of the company's financial statements sent to him, and any holder of the company's debentures (whether or not so entitled) is entitled to be furnished on demand and without charge with a copy of the company's last financial statements. S.392

## **MODIFIED FINANCIAL STATEMENTS BY SMALL COMPANIES**

A small company may deliver modified financial statements in accordance with part I of Schedule 6. S.393

For the definition of a small company see S.394

## **AUDIT**

### **APPOINTMENT OF AUDITORS**

Every company shall at each annual general meeting appoint an auditor or auditors to audit the financial statements of the company, and to hold office from the conclusion of that, until the conclusion of the next, annual general meeting - S.401(1).

### **APPOINTMENT OF FIRST AUDITORS**

The first auditors of a company may be appointed by the directors at any time before the company is entitled to commence business and auditors so appointed hold office until the conclusion of the next annual general meeting, provided that:

- a. the company may at a general meeting remove any such auditors and appoint in their place any

- other person who has been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company at least 14 days before the date of the meeting; and
- b. if the directors fail to exercise their powers under this subsection, the company may, in a general meeting convened for that purpose, appoint the first auditors and thereupon the said powers of the directors ceases. S.401(5)

At any annual general meeting a retiring auditor, however appointed, shall be re- appointed without any resolution being passed unless:

- a. he is not qualified for re-appointment;
- b. a resolution has been passed at that meeting appointing some other person instead of him or providing expressly that he shall not be re-appointed; or
- c. he has given the company notice in writing of his unwillingness to be re- appointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically re-appointed by virtue of this subsection. 401(2)

## **AUDITOR'S REPORT**

The auditors of a company shall make a report to its members on the accounts examined by them, and on every balance sheet and profit and loss account, and on all group financial statements, copies of which are to be laid before the company in a general meeting during the auditors' tenure of office - S. 404(1)

The auditors' report shall state the matters set out in the Fifth Schedule in addition to the report made under subsection (1), and the auditor shall in the case of a public company, make a report to an audit committee which shall be established by the public company - S .404(2)

## **QUALIFICATION OF AUDITORS**

The provisions of any Act establishing a body of accountants shall have effect in relation to any investigation or audit for the purpose of this Act and none of the following persons is qualified for appointment as auditor of a company,—

- a. an officer or servant of the company;
- b. a person who is a partner of or in the employment of an officer or servant of the company; or
- c. a body corporate – S. 403 (1)

See Section 407 for auditors' duties and powers

## **REMUNERATION OF AUDITORS**

- a. in the case of an auditor appointed by the directors, the remuneration may be fixed by the directors; or

- b. be fixed by the company in general meeting or in such manner as the company in general meeting may determine – S.408.

### **REMOVAL OF AUDITORS**

An auditor is removed by passing of ordinary resolution after special notice must have been given - S.409.

A special notice is required for a resolution at a general meeting of a company:

- a) appointing as auditor a person other than a retiring auditor;
- b) filling a casual vacancy in the office of auditor;
- c) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or
- d) removing an auditor before the expiration of his term of office. S.411

### **RESIGNATION OF AUDITORS**

An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office, and such notice operates to bring his term of office to an end on the date of which the notice is deposited, or on such later date as may be specified - S.412.

### **AUDIT COMMITTEE**

The audit committee is made up of five members comprising of three members and two non-executive directors. The members of the audit committee are not

entitled to remuneration, and are subject to election annually - S. 404(3).

All members of the audit committee shall be financially literate, and at least one member shall be a member of a professional accounting body in Nigeria established by an Act of the National Assembly - S. 404(5).

Any member may nominate another member of the company to the audit committee by giving written notice of such nomination to the secretary of the company at least 21 days before the annual general meeting and any nomination not received prior to the meeting as stipulated is invalid - S.404(6).

## **OBJECTIVES AND FUNCTIONS OF AUDIT COMMITTEE**

- a) examine the auditors' report and make recommendations thereon to the annual general meeting as it may deem fit - S.404(4);
- b) ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;
- c) review the scope and planning of audit requirements;
- d) review the findings on management matters in conjunction with the external auditor and departmental responses thereon;
- e) keep under review the effectiveness of the company's system of accounting and internal control;

- f) make recommendations to the board with regard to the appointment, removal and remuneration of the external auditors of the company; and
- g) authorise the internal auditor to carry out investigations into any activities of the company which may be of interest or concern to the committee.

### **ANNUAL RETURNS**

Every company shall, once at least in every year, make and deliver to the Commission an annual return but the company needs not make a return in the year if the company does not hold a meeting in that year under review. (S.417)

CAC Form 21 (Annual Returns Form) while CAC Form 24 is Annual Report of Exempted Company (unregistered company).

### **FORM OF ANNUAL RETURN**

Schedule 7 – Company having share capital other than small company. S.418

Schedule 8- Small Company S.419

Schedule- Company Limited by Guarantee S.420

### **TIME FOR COMPLETION AND DELIVERY OF ANNUAL RETURN**

The annual return shall be completed, signed by a director and the secretary, and delivered to the Commission not later than 42 days after the annual general meeting for the year, whether or not that meeting is the first or only general meeting of the company in

that year, but the company may apply to the Commission for extension of time within which to file its annual return for any given calendar year. S.421

## **DOCUMENTS TO BE ANNEXED TO ANNUAL RETURN**

Subject to the provisions of section 424 of this Act, there shall be annexed to the annual return:

- a) a written copy, certified both by a director and the secretary of the company to be a true copy, of every balance sheet and profit and loss account laid before the company in general meeting held in the year to which the return relates (including every document required by law to be annexed to the balance sheet); and
- b) a copy, certified in accordance with paragraph (a), of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet – S. 422

Any document required to be annexed to the annual return may be delivered to the Commission either in hard copy or through electronic communications - S. 422(3)

In the case of a private company, the annual return will be accompanied by a certificate signed both by a director and the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds 50,

also a certificate so signed that the excess consists wholly of persons who under section 22 (3) of this Act are not included in reckoning the number of 50 - S.423. For a further certificate for a private company classified as a small company - S. 423(2).

## **CHAPTER NINE**

### **MAJORITY RULE, MINORITY PROTECTION AND INVESTIGATION OF COMPANIES**

As a general rule, where irregularity has been committed in the course of the management of the affairs of the company or a wrong has been done to the company, it is only the company that can ratify the irregular conduct or sue to remedy the wrong (Section 341; *Foss v Harbottle* (1843) 2 Hare 461; 67 E.R. 189; *Abubakari v Associated Registered Engineering Contractors Ltd.* [1990] 4 NWLR (Part 145) 422; *Edokpolor and Co. Ltd v Sem-Edo Wire Industries Ltd.*(1984) 15 NSCC 553. The above rule is of two principles:

- i. The company will ultimately be the plaintiff to sue in respect of wrong done to the company; and
- ii. The court will not intervene in the management where the irregularity complained of is within the scope of powers of the majority shareholders to remedy by means of an ordinary resolution.

#### **Exceptions to the general rule in S.341**

A member may by injunction or a declaration restrain the company from the following:

- a) entering into any transaction which is illegal or ultra vires; (S.343 (a)) *Parke v Daily News* [1962] All Er 929; [1962] Ch 927; [1962] 3 WLR 566; *Hogg v Cramphorn* [1967] Ch. 254

- b) purporting to do by ordinary resolution any act which by its articles or this Act required to be done by special resolution; (S. 343 (b)) Edwards v Halliwell [1950] 2 All E.R 1064;
- c) any act or omission affecting the applicant's individual rights as a member; (S.343 (c) ) Pender v Lushington (1877) Ch.D 670
- d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done; (S.343 (d) ) Cook v Deeks [1916] A.C. 554 (P.C. [1916-17] All ER Rep. 285).
- e) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders;(S.343 (e)
- f) where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty; (343 (f))
- g) and any other act or omission, where the interest of justice so demands. (343 (g)).

## **ACTIONS THAT CAN BE BROUGHT BY THE MINORITY AGAINST THE COMPANY**

### **MEMBERS DIRECT ACTION**

See section 343 of CAMA

### **PERSONAL ACTION**

Personal action is one instituted by an individual in his personal name against the company and or its controlling members. A personal action does arise where a member seeks to redress a personal wrong to him in his personal

capacity (Pender v. Lushington (1877) 6 Ch. D. 70). It is brought solely to enforce a personal right. Where a member institutes a personal action to enforce a right due to him personally, or a representative action on behalf of himself and other affected members to enforce any right due to them, he or they are entitled to:

- a) damages for any loss incurred on account of the breach of that right; or
- b) declaration or injunction to restrain the company or the directors from doing a particular act. (S. 344(1)). A member under this heading includes the personal representative of a deceased member; and any person to whom shares have been transferred or transmitted by operation of law. (S.345).

The remedies available to personal and representative actions are either damages for loss or breach of right, injunction or declaration.

## **REPRESENTATIVE ACTION**

A representative action is one in which an individual or group of individuals sue for himself or themselves as representative(s) of a larger group of persons on allegation of a breach of a right common to them. Representative action thus involves the plaintiff suing for and behalf of himself and other shareholders of the company other than the defendants. See S.344 of CAMA

## **DERIVATION ACTION**

Derivative action is one in which an individual or minority is allowed to bring an action, as if it were

company itself suing for the wrong done to it. The basic feature and uniqueness of this domain of action is that it is an action which the company, alone, ordinarily is empowered to maintain (S. 346). However, the Act empowers a shareholder to, with leave of court, bring an action in the name or on behalf of the company or intervene in an action, or to intervene in an action to which the company or the company's subsidiary is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company or the company's subsidiary. (S.346(1).

In event the court is satisfied with the above application, the court will make the following orders:

- a) authorising the applicant or any other person to control the conduct of the action;
- b) giving directions for the conduct of the action;
- c) directing that any amount adjudged payable by a defendant in the action is paid, in whole or in part, directly to former and present security holders of the company instead of to the company; and
- d) requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings - (S.347(2)

## **RELIEF ON GROUNDS OF UNFAIRLY PREJUDICIAL AND OPPRESSIVE CONDUCT**

A member who alleges that the affairs of the company are being conducted in a manner oppressive or unfairly prejudicial to a member or members may apply to court

for relief by petition - S. 354(1); (see Ijale Properties Ltd v Omololu-Mulele [2000] FWLR (Pt.5) 709).

An application to the court by petition for an order under section 354 in relation to a company may be made by:

- a) a member of the company;
- b) a director or officer, former director or officer of the company;
- c) a creditor;
- d) the Commission; or
- e) any other person who, in the discretion of the court, is the proper person to make an application under section 354 - (S.353(1))

## **ORDERS THE COURT MAY MAKE IF SATISFIED WITH THE PETITION**

- a) that the company be wound up;
- b) for regulating the conduct of the affairs of the company in future;
- c) for the purchase of the shares of any member by other members of the company;
- d) for the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital;
- e) directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorising a member or the company to institute, prosecute, defend or discontinue specific proceedings in the name or on behalf of the company;
- f) varying or setting aside a transaction or contract to which the company is a party and

compensating the company or any other party to the transaction or contract;

- g) directing an investigation to be made by the Commission;
- h) appointing a receiver or a receiver and manager of the property of the company;
- i) restraining a person from engaging in specific conduct or from doing a specific act or thing; or
- j) requiring a person to do a specific act or thing.

See S.355(2) of CAMA.

## **INVESTIGATION OF THE COMPANY**

The Commission may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as it may direct - (S. 357(1)).

The appointment may be made:

- a) in the case of a company having a share capital, on the application of members holding at least one-tenth of the class of shares issued;
- b) in the case of a company not having a share capital, on the application of at least one-tenth in number of the persons on the company's register of members; and
- c) in any other case, on the application of the company - (S.357(2))

## **WINDING UP ON JUST AND EQUITABLE GROUND**

The Commission may appoint one or more competent inspectors to investigate the affairs of a company and to

report on them in such manner as it may direct.  
(S.357(1))

The appointment may be made:

- a) in the case of a company having a share capital, on the application of members holding at least one-tenth of the class of shares issued;
- b) in the case of a company not having a share capital, on the application of at least one-tenth in number of the persons on the company's register of members; and
- c) in any other case, on the application of the company. (S.357(2))

### **CIRCUMSTANCES THAT MAY WARRANT APPLICATION FOR INVESTIGATION OF A COMPANY**

CAC may order investigation if:

- a) the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some part of its members;
- b) any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose;
- c) persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud,

- misfeasance or other misconduct towards it or towards its members; or
- d) the company's members have not been given all the information with respect to its affairs which they might reasonably expect. See S. 358(2) of CAMA.

**Note the following:**

Where a company's employee, in compliance with an inspector's request, provides the inspector with any information concerning the company's affairs, the company shall protect the employee from any form of discrimination or other unfair treatment.

Any employee relieved of his employment without any just cause, other than for reason of disclosure made pursuant to the provision of this section, is entitled to a compensation which is calculated as if he had attained the maximum age of retirement or had served the maximum period of service, in accordance with his terms of employment or conditions of service to the company. (S.357 (4-5)

**POWER TO BRING CIVIL PROCEEDINGS ON COMPANY'S BEHALF**

If, from any report made under section 363, it appears to the Commission that any civil proceeding ought in the public interest to be brought by the company or anybody corporate, the Commission may itself bring such proceedings in the name and on behalf of the company or the body corporate. (S.364)

## **CRIMINAL PROCEEDINGS AND OTHER PROCEEDINGS BY THE ATTORNEY- GENERAL OF THE FEDERATION.**

If, from any report made under section 363, it appears that any person has, in relation to the company or anybody corporate whose affairs have been investigated by virtue of section 359, been guilty of any offence for which he is criminally liable, the report shall be referred to the Attorney-General of the Federation. (S.365)

## **POWER OF THE COMMISSION TO PRESENT WINDING UP PETITION**

If, in the case of any body corporate liable to be wound up under this Act, it appears to the Commission from a report made by an inspector under section 363 that it is expedient in the public interest that the body corporate should be wound up, the Commission may (unless the body corporate is already wound up by the court) present a petition for it to be wound up if the court considers it just and equitable to do so. (S.366)

## **INSPECTORS' REPORT TO BE USED AS EVIDENCE IN LEGAL PROCEEDINGS**

A copy of any report of an inspector appointed under sections 357 and 358, certified by the Commission to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report. (S.368)

## **APPOINTMENT OF INSPECTORS TO INVESTIGATE OWNERSHIP OF A COMPANY**

Where it appears to the Commission that there is good reason so to do, it may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company. (S.369)

## **CHAPTER TEN**

### **COMPANY SECURITIES 1: SHARES, DEBENTURES AND ENFORCEMENT OF SECURITIES**

#### **SHARES**

The securities of a company consist mainly of shares and debentures. A share represents a unit of the bundle of rights and liabilities, which a shareholder has in a company as provided in the terms of issue and the articles. Some of the rights attaching to shareholding include; the right to attend and vote at a meeting (section 138(a) and (b)). A share is a chose in action and is property transferable as provided in the articles (section 139). *See Okoya versus Santili [1994] 4 NWLR (Part 338) 256: (1994) 4 SCNJ (Part II 333).*

#### **PROHIBITION OF NON- VOTING AND WEIGHTED SHARES**

The Act prohibits the issue of non-voting and weighted shares except as permitted by the Act (section 140). The apparent permission granted by the Act is in section 140(3) which allows preference shareholders to more than one vote. The circumstances in which such shares can be issued are provided in section 168.

#### **ISSUE OF SHARES**

A company has the right, subject to the articles, to issue shares up to the total number authorised in the memorandum. The shares issued may be in classes i.e. shares with different rights e.g. right as to dividend or

sharing of capital on winding up (sections 141 and 143). It is usual to distinguish three main classes of shares namely, ordinary, founders or deferred and preference shares.

### **ISSUE OF SHARES AT A PREMIUM**

Shares of a company may be issued at a premium (section 145(1)). Shares are issued at a premium where the price at which they are issued is higher than the nominal value of the shares. Thus the shares of a company with a nominal value of 1.00 Naira per share may be issued at 1.75 Naira per share.

### **SHARE PREMIUM ACCOUNT**

When a company issues shares at a premium, the sum equal to the aggregate amount or value of the premium on those shares must be transferred to an account to be called the share premium account' (section 145(2)). The company is to apply the account for the purpose listed in s. 145(4). See also **Issue of Shares at a Discount (see s. 146) and Issue of Redeemable Preference shares (see. s.147)**

### **ALLOTMENT OF SHARES**

The power to allot shares is in the company, which may delegate it to the directors (section 149). Upon receipt of an application, a company shall where it wholly or partially accepts the application; makes an allotment to the application and within 42 days after the allotment notify the applicant of the fact of allotment and the number of shares allotted to him (section 150(c)).

## **METHOD OF APPLICATION FOR ALLOTMENT**

The method of application for allotment of shares is prescribed in section 150 depending on the type of company. In the case of a private company or of a public company where the issue of shares is not public, application is made in writing signed by the person wishing to purchase shares and indicating the number of shares he wishes to purchase. In the case of a public company where the issue of shares is public, subject to any condition that may be imposed by the Securities and Exchange Commission, the application for allotment is made by completing and returning to the company the form of application as prescribed in the company's articles.

Before any shares may be allotted, the company must have unissued minimum capital sufficient to cover the allotment. See *Okoya v Santili* [1994] 4 NWLR (Part 338) 256: (1994) 4 SCNJ (Part II 333). For allotment of securities of public companies offering shares to the public, see rules 68 and 69 of the Securities and Exchange Commission Rules and Regulations.

## **RETURN OF ALLOTMENT**

Whenever a company makes allotment of its shares, the company must within one month thereafter deliver to Corporate Affairs Commission for registration, returns as prescribed in section 154. This is made in a prescribed form (Form CAC 5).

## **PROCEDURE ON ALLOTMENT OF SHARES**

- 1) After issuing of prospectus, open a subscription list (if public)
- 2) Receive applications and record in application and allotment sheets
- 3) Convene board (or allotment committee) meeting to pass a resolution of allotment
- 4) Issue letters of allotment (and letters of regret)
- 5) Deal with letters of renunciation if any
- 6) Prepare share certificates
- 7) Enter allottee's names in the register of members
- 8) File return of allotments (Form CAC 5) within one month after allotment
- 9) If the shares are issued for a consideration other than cash:
  - a) Have the consideration valued and obtain particulars of valuation
  - b) If consideration involves capital investment of 20,000 Naira or more apply under the Industrial Inspectorate Act.
  - c) Prepare and file along with Form CAC 5
    - i. Agreement constituting the title of the allottees to the allotment;
    - ii. Agreement for sale of property or for services of other consideration; and
    - iii. Particulars of valuation.

## **TRANSFER OF SHARES**

Shares or other interests of a member in a company are personal property transferable subject to the articles (section 139).

## **RESTRICTIONS ON TRANSFER**

The right to transfer shares may be restricted by the articles or by statute. The articles of a private company must restrict the transfer of its shares (section 22)

## **METHOD OF TRANSFER**

Transfer of shares shall be effected by delivery of a proper instrument of transfer to the company and the subsequent registration of the transferee in the register of members. (section 175(1) & (2)). The transferor is deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect of the shares. (section 175(3). *Ferris George and Son Ltd. v Khoury* [1965] 1 ALL N.L.R. 91; *Starcola (Nig.) Ltd. v Adeniji* [1972] 1 All, N.L.R. (Part 1) 49

## **PROCEDURE**

Depends on whether the vendor is selling all the shares comprised in the share certificate or only part of the shares.

### **i. Where vendor sells all the shares in his certificate:**

- i. The vendor delivers to the purchaser an instrument of transfer duly executed together with the share certificate.
- ii. The purchaser then executes the transfer and sends it together with the share certificate to the company for registration although application for registration could be made by the transferor as well.

**ii. Where vendor sells part of his shares or all his shares to more than one purchaser:**

- i. The vendor executes the instrument of transfer with his share certificate and the company endorses on the instrument the words' "Certificate Lodged."
- ii. The endorsed instrument is then given to the purchaser in exchange for the price.
- iii. The purchaser executes and sends it to the company for registration. (section 181)

### **TRANSMISSION OF SHARES**

The vesting of shares in the personal representatives on the death of a shareholder is known as transmission of shares. On the death of a member, the survivor(s) where the deceased was a joint holder or the personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares (section 179(1)). The means to claim title to the interest in shares is the production of probate of the will or letters of the administration of the estate. (section 173). See *Tika Tore Press Ltd .v. Abina* [1973] 1 All N.L.R. Part II) 244; [1973] N M.L.R. 200. A personal representative may himself validly transfer the share or other interests of a deceased member even though he is not registered as a member. (section 178).

### **PROTECTION OF BENEFICIARIES**

The interests of a beneficiary under a will are equitable only until the shares are transferred to him and he has

been registered as a member. Any person claiming interest in any shares or dividends or interest in them may protect his interest by serving on the company concerned a notice and affidavit of interest. (section 180).

### **CALL ON SHARES**

When shares are issued, a specified sum may be paid on allotment and the balance paid subsequently. The demand to pay any sum outstanding on shares allotted is referred to as 'call on shares'. This call is made by the directors in accordance with the articles where shares are not payable in full on allotment. (*section 158*).

### **PAYMENTS FOR SHARES**

A person who acquires shares in a company is liable to pay the price of the shares or the amount remaining unpaid on the shares. Payment for shares may be made in cash or, by valuable consideration other than cash where the articles of association of the company permits - (section 160). Payment in cash may be by the actual handing over of cash in the form of legal tender or cheque or similar instrument. See s. 161 for meaning of "payment in cash."

A company may however agree to accept consideration other than cash in part or full as payment for shares. Where a public company agrees to accept payment for its shares by a consideration other wholly in cash, it shall appoint an independent valuer who will determine the true value of the consideration (section 162(1)).

## **LIEN ON SHARES**

The company has a first and paramount lien on shares (not being a fully paid share) for all monies outstanding unpaid on any such shares. (section 164(1)). A lien is an equitable charge on the shares and it entitles the company to sell the shares.

## **FORFEITURE OF SHARES**

Where shares allotted are not paid for by the allottee after calls are made, the directors may forfeit the shares of the member. If a member fails to pay any call or installment of a call on the day appointed for payment, the directors may at any time, serve a notice requiring him to pay up together with any interest that has accrued. The notice will stipulate a date for payment and state that unless that is done the share will be forfeited. (section 165(1)).

## **NUMBERING OF SHARES**

Each share in the capital of a company must be distinguished by its appropriate number but this requirement of numbering may be dispensed with, if all the issued shares are fully paid up and rank *pari passu* for all purposes. (section 170).

## **SHARE CERTIFICATE**

Every company must within 2 months after the allotment of any share and within 3 months after the lodging of share transfer, complete and have ready for delivery the

certificate of all the shares allotted or transferred (section I71(I)).

### **DIVIDEND WARRANT**

This is the instrument used for paying dividend due on profits to members. It is now regarded as a negotiable instrument. Stamp Duty on Dividend Warrant. Currently, dividend warrant is no longer in use. What is presently in use is E-dividend.

### **MORTGAGE OF SHARES**

Shares are property transferable as security for an advance. The mortgage may be legal or equitable.

### **ATTACHMENT OF SHARES**

Shares held by a judgment debtor in public company or corporation may be attached and sold by the judgment creditor. This is made possible by the Judgment Enforcement Rules (Order V Rule 1) under the Sheriffs and Civil Process Act.

## **DEBENTURES**

### **NATURE OF DEBENTURES**

A company may borrow money for the purpose of its business or objects and may charge or mortgage its undertaking or property and issue debentures (section 191). *General Auction Estate Co. v Smith* [1891] 3 Ch. 432; *Intercontractors (Nig.) Ltd. v N.P.F.M B.* [1988] 2 NWLR(Pt. 76) 280 at p.292. Debentures are instruments issued to lenders to acknowledge indebtedness by a company. The instrument is often, but not necessarily, by deed. See *Union Bank of Nig. Ltd.*

*v Tropic Foods Ltd.* [1992] 3 NWLR (part 228) 321.

## **TYPES OF DEBENTURES**

1. **Perpetual Debentures:** This is provided for in section 196. These are debentures, which are made redeemable or irredeemable only on the happening of a contingency however remote, or on the expiration of a period however long.
2. **Convertible Debentures:** These are debentures which are issued upon the terms that in lieu of redemption or repayment, they may at the option of the holders or the company, be converted into shares in the company upon the terms as are stated in the debentures (section 197).
3. **Secured and Naked Debentures:** A secured debenture is that which is secured by a charge over the company's property and it may be so secured by a fixed charge or by a floating charge, while a naked debenture is one which is not secured by a charge (section 198).
4. **Redeemable Debentures:** (section 199).

Note also Registered and Bearer debentures

## **ISSUE OF DEBENTURES**

Debentures are issued in accordance with the provisions in the memorandum and articles of association. If debentures are issued to the public, they must comply with requirements, of s. 44 of the Investments and Securities Act i.e. a prospectus must be issued.

## **FORM OF DEBENTURES**

For a loan from one person or a few persons, a simple debenture deed is used, but for loan from a large number of persons, it is done by issue of debenture stock under a trust deed entered into between the company and trustee of the debenture holders. A simple debenture is usually in the common form with conditions endorsed at the back. Offer of debentures by a public company to the public for subscription or purchase must be by debenture trust deed (section 208(1)).

**Contents of every debenture trust deed - see s. 209.**

**Contents of debenture covered by trust deed - s. 210.**

## **CHARGES SECURING A DEBENTURE**

Debentures may be secured by 'fixed" or "floating charges" (section 203). A fixed charge is a mortgage of a specified property of the company such as land. A floating charge on the other hand is an equitable charge over the whole or specified part of the undertaking or assets of the company including cash and uncalled capital both present and future.

## **PROCEDURE ON CREATION OF CHARGES**

- 1) Convene board meeting to pass resolution authorising the loan
- 2) Preparation of loan documents including prospectus (if necessary), execution and stamping of the documents:
  - i. Deed of mortgage (charged by way of legal mortgage or debenture);

- ii. Power of Attorney (if any); and
  - iii. Debenture Trust Deed (if any).
- 3) Obtain Governor's consent (if necessary).
- 4) File documents at Land Registry.
- 5) File documents for registration at the Corporate Affairs Commission viz:
  - i. Mortgage/charge by way of legal mortgage or debenture;
  - ii. Trust deed; and
  - iii. Particulars of charge in Form CAC 9
- 6) Leave copies of documents for inspection at the registered office of the company - i.e. in the record of instruments.
- 7) Enter particulars of charge in register of charges and also in the register of debenture holders where applicable.
- 8) Obtain certificate of registration of charge from the Corporate Affairs Commission and have a copy of the charge endorsed on every debenture or certificate of debenture stock issued by the company, the payment of which is secured by the charge.
- 9) On the satisfaction of the charge, file statement of satisfaction in whole or in part of a charge - Form CAC 10 along with deed of release or other instrument.
- 10) Notify Corporation Affairs Commission of the appointment of a receiver or manager upon enforcement of the security.

For debenture and governors consent, see *N.I.D.B. versus Olalomi Ind. Ltd.* [2002] 5 NWLR 761.

## **REGISTRATION OF CHARGES**

Section 222(1) requires that where a company creates on its property any of the charges specified in subsection (2) the company must within 90 days of the creation deliver to Corporate Affairs Commission certain particulars for registration. The registration is effected by filling the prescribed forms - Form CAC 9; which is used for the registration of mortgage(s)/charge(s).

When the charge is registered, Corporate Affairs Commission must issue a certificate. The certificate is a *prima facie* evidence of compliance with the requirements or registration (section 223(2)). The certificate must be endorsed on every debenture or debenture stock certificate issued by the company and secured on the charge (section 228(1)).

## **EFFECT OF NON REGISTRATION**

Failure to register a charge as required will render it void against the liquidator and any creditor of the company (section 222(1)). The obligation to pay the debt is, however, not thereby discharged. See *Capital Finance Co. Ltd. v Stokes* [1969] 1 Ch. 261.

When a company issues a debenture certain records are kept namely: register of charges (section 216); record of instruments (section 215); and register of debenture holders (section 218).

## **REMEDIES AVAILABLE TO DEBENTURE HOLDERS (section 233)**

### **1. Recovery of Principal and Interest**

Whether the debenture is a secured or an unsecured one, if there is default in the payment of the principal and interest, as for any other debt, and after judgment, he may levy execution on the property of the company.

### **2. Petition for winding up**

Subject to any conditions imposed by the debenture, the debenture holder may present a petition for winding up as creditor of the company if the company is unable to pay the principal and/or interest which, as a debt, will be ground for winding up under section 233(b)(ii).

### **3. Debenture holders' Action**

When the debenture is one of a series, one of the debenture holders may bring a debenture holders' action against the company on behalf of other debenture holders of the same class as himself (section 233(2)(b)). A secured debenture holder has both remedies and the following additional recourse:

- i. He may institute a debenture holders' action by which he may sue on behalf of himself and all other debenture holders to obtain payment and enforce his security by sale.
- ii. He may exercise the power to appoint a receiver or managers under an enabling power in the debenture or he may apply to court for the appointment.
- iii. He may apply to court for foreclosure of the company's right to redeem the debentures.

- iv. He may proceed to sell the charged property if such a power is conferred by the debenture instrument.
- v. Proof for the balance. If the company is insolvent and his security is insufficient, he may value his security and prove for the balance. In the alternative, he may surrender his security and prove for the amount of the debt.

#### **4. Sale**

The power of sale may be exercised in the following circumstances:

- i. If there is power in the debenture or trust deed. Where there is a single debenture, it will normally contain power of sale to be exercised by the receiver. Even where there is no express power, the implied power of sale by a mortgage may be exercised. Where there is a trust deed, there will normally be an express power of sale and a sale of the company's business operates to determine the contract of service of employees.
- ii. On the order of court following a debenture holder's action. When an order is made, the sale is generally carried out under the direction of the court and the purchased money paid into the court. The court may in special circumstances, authorise sale out of court.

#### **5. Foreclosure**

Foreclosure may be claimed and granted in a debenture holder's action (section 233(2)(b)(i)). The effect of the order is the same as for any mortgage, and the foreclosure may extend to uncalled capital of the

company. An order will not be made unless all the debenture holders of every class are parties to the action, but the court may order sale instead of foreclosure if it considers it just so to do.

**6. Valuation of Security and Providing for Balance on Winding up:** Where the debenture is secured, the debenture holder is in the same position as any secured creditor of the company and therefore, on winding up, he may value his security and if it is insufficient, he may prove for the balance like any unsecured creditor.

### **SATISFACTION OF CHARGE**

If the company repays the amount of the debenture, it has to file a memorandum of satisfaction of the charge. This is done using Form CAC 10 (section 229).

### **NOTICE OF ENFORCEMENT OF SECURITY**

Any person who obtain an order of court for the appointment of a receiver or manager of property of the company or appoints such a receiver or manager under powers contained in any instrument must within seven (7) days from the date of the order or appointment under the powers, give notice of the fact to the Commission which will register the fact in the register of charges (section 231)

## **CHAPTER ELEVEN**

### **FLOATATION OF SECURITIES AND COLLECTIVE INVESTMENT SCHEMES PUBLIC OFFER/ SALE OF SECURITIES/ COLLECTIVE INVESTMENT SCHEME**

It is unlawful for any person to make any invitation to the public to acquire or dispose of any securities of a company or to deposit money with any company for a fixed period or payable at call, whether bearing interest or not unless the company is a public company and the provisions of the Investments and Securities Act, 2007 are complied with.

#### **REGISTERABLE SECURITIES**

- i. All securities of public companies
- ii. Securities of collective investment schemes
- iii. Securities of investment trust companies
- iv. Securities of government and its agencies
- v. Securities of supranational bodies – see Rule 279 (1) (a) & (b), SEC Rules, 2013

Note also that securities arising from conversion of a private company to public limited company shall be registered by the SEC– Rule 279 (1) (d) SEC Rules 2013

#### **REGULATORY LAWS AND AUTHORITIES FOR CAPITAL MARKET PRACTICE/ FLOATATION OF SECURITIES**

##### **Regulatory Laws**

- 1) Investments and Securities Act

- 2) Companies and Allied Matters Act
- 3) Federal Competition and Consumer Protection Act
- 4) Federal High Court Act
- 5) Securities and Exchange Commission Rules.

### **Regulatory Authorities**

- 1) Securities and Exchange Commission
- 2) Nigerian Stock Exchange
- 3) Corporate Affairs Commission
- 4) Federal High Court
- 5) Federal Competition and Consumer Protection Commission
- 6) Debt Management Office.

## **CAPITAL MARKET PRACTICE AND PROCEDURE**

The capital market is a platform for companies and governments to raise medium and long term capital. It is a financial market for the buying and sale of securities, such as shares, debentures, bonds and units of collective investment schemes

In Nigeria, the capital market is divided into:

- i. The Primary Market;
- ii. Secondary Market

## **CAPITAL MARKET OPERATORS**

- a) Issuing Houses
- b) Securities Dealers
- c) Stock Brokers
- d) Trustees

- e) Portfolio Managers
- f) Underwriters
- g) Custodians

## **CAPITAL MARKET CONSULTANTS**

- a) Solicitors
- b) Accountants
- c) Investment Advisers
- d) Valuers
- e) Rating Agencies
- f) Engineers

## **ADMINISTRATION OF MATTERS RELATING TO PUBLIC OFFER AND SALE OF SECURITIES**

Administration of matters relating to public offer and sale of securities is vested with the Securities and Exchange Commission. See Investment and Securities Act Part V111 and Securities and Exchange Commission Rules and Regulations 2013.

## **METHODS OF OFFER OF SECURITIES TO THE PUBLIC**

- 1) Initial public offer
- 2) Offer by Introduction
- 3) Direct offer to the public (offer for subscription)
- 4) Offer for sale
- 5) Private placement by public companies and other entities (private company)
- 6) Rights issue
- 7) Bonus Issue
- 8) Debt equity conversion

- 9) Debenture/loan stock
- 10) Sukuk
- 11) Bonds - see Rule 279 (1)(c), SEC Rules 2013
- 12) Offer by Tender

**a. Direct Offer to the Public**

The company offers its shares (or debentures) to the public through an issuing house (usually a bank or other financial institution) by means of a prospectus. The risk of failure of the issue is born by the company which, in order to protect itself, arranges for the issue to be underwritten at an agreed commission by an issuing house.

**b. Offer for Sale**

The company sells the whole issue of shares or debentures to an issuing house which then invites the public to buy from it usually at a higher price. The risk of failure of the issue, is born by the issuing house which usually will underwrite the issue.

**c. Placing**

The company sells its shares to an issuing house which offers (or places) the shares not to the public at large but to clients e.g. Insurance companies and pensions funds. The company pays brokerage (commission) to the issuing house.

**d. Offer by Tender**

Applications are invited from the public to tender for shares. Allotments are made to the highest bidder

**e. Electronic Offer and transfer of securities.**

Section 55(1) of ISA and Rule 345 SEC Rules empowers a company to use electronic mode of offer and transfer of securities, subject to other rules and regulations. provided that where an investor elects to have a share certificate, the company shall issue him with a share certificate.

The electronic transfer is usually adopted for the over the counter (OTC) market transactions.

It is currently used at the secondary market of the NSE under the auspices of the Central Securities Clearing System (CSCS).

The CSCS provides an electronic platform, which enables stocks to be processed in an electronic book entry form.

Delivery of share certificates is replaced with electronic credits and debits to shareholders' stock position held at the Central Securities Depository at the CSCS.

**REGISTRATION OF SECURITIES**

All securities proposed to be offered for sale to or for subscription by the public or to be offered privately with the intention that the securities shall be held ultimately other than by those to whom the offers were made must be registered with the Securities and Exchange Commission - See Investments and Securities Act section 54 (1)(5).

## **ISSUANCE OF PROSPECTUS FOR PUBLIC OFFERS**

It is unlawful to issue any form of application for securities in a public company unless the form is issued with a prospectus.

For the definition of prospectus, see section 315 ISA

The prospectus shall -

Have endorsed on it or attached to it -

- a) the consent of every expert whose statement is contained in the prospectus,
- b) in the case of prospectus issued generally:
  - i. a copy of any applicable contract;
  - ii. written statement by an expert in respect of adjustment made in any report.
- c) state that a copy has been delivered for registration; and
- d) specify or refer to statements included in the prospectus which specify, any documents required to be endorsed on or attached to the copy so delivered (statement of experts).

See section 71 ISA

Note the exception in section 76 of the ISA

## **FORMS OF PROSPECTUS**

- 1) Full prospectus;
- 2) Abridged Prospectus;
- 3) Deemed Prospectus; and
- 4) Statement in Lieu of Prospectus

**Full Prospectus:** This document contains a detailed description of the prospectus

**Abridged Prospectus:** This is a summarised version of the prospectus containing the key requirements of a prospectus. This is usually in use because a full prospectus contains many documents, and bulky.

**Deemed Prospectus:** This is any document, though not titled prospectus, for all intents and purposes contains, the basic requirements of a prospectus, used in offer for sale to the public of companies securities.

**Statement in Lieu of Prospectus:** This is a statement delivered to the commission in place of a prospectus in certain circumstances:

- i. Where a public company that intends to allot shares to the public has not issued a prospectus; or
- ii. It has issued a prospectus but has not allotted the shares.

Where a statement in lieu of prospectus is issued, the company shall at least 3 days before the first allotment of the shares deliver to SEC for registration, the statement in lieu of prospectus signed by every person who is named in it as a director or a proposed director of the company or by his agent authorised in writing.

Statement in lieu of prospectus shall be in the form and contain the particulars set out in part 1 of the 4<sup>th</sup> schedule to this Act, and in the cases mentioned in part 11 of that schedule, set out the reports specified therein, and the said parts shall have effect subject to the provisions contained in part 111 of that schedule.

## **BONDS**

Bonds are fixed income securities issued as debt instruments with low interest yield but guaranteed return on investment over time.

## **CLASSIFICATION**

Bonds can be classified into Government and corporate bonds.

### **GOVERNMENT BOND**

Government bond is issued by government at all levels, while public companies issue corporate bonds.

Government bonds are considered the safest and most reliable loan instrument because it is difficult for government to be insolvent. They are secured by the revenue accruing to the issuer or the sponsor government from the consolidated fund of the federation, and encumbered by a sinking fund indemnity, with powers conferred on the trustees to enforce the debt instrument obligations.

### **TYPES OF GOVERNMENT BONDS**

- i. Sovereign bonds - by federal government;
- ii. Revenue bonds by states, local governments and government agencies; and
- iii. Municipal bonds by cities within a local government

Note the categories of persons who can issue public bonds – section 222 ISA

## **COLLECTIVE INVESTMENT SCHEMES (CIS)**

S. 153(1) ISA defines a CIS as a scheme in whatever form, including an open ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which:

- a. Two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; and
- b. The investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed, but not a CIS authorised by any other Act.

Investors in CIS are known as unit holders. They are not members of the company in which their money is invested; they only have a participatory interest in the scheme. They are only entitled to a pro rata share of dividends, interest or other income of the securities comprised in the unit based on the level of participatory interest in the scheme.

## **REGULATION OF CIS**

CIS is regulated by the Securities and Exchange Commission - S. 160(1) ISA, 2007 provides thus, “no person shall establish or operate a CIS or carry on the business of a CIS unless such scheme is authorized by and registered with the commission”.

## **TYPES OF CIS**

- a) Unit trust scheme;
- b) Real estate investment scheme;
- c) Investment trust scheme; and
- d) Community savings scheme.
- e)

## **UNIT TRUSTS**

### **Definition**

A “Unit Trust Scheme” means an arrangement made for providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from acquisition, holding, management or disposal of securities or any other property whatsoever. See Investments and Securities Act 2007, section 152.

## **REGULATION OF UNIT TRUSTS**

Regulation of unit trust is vested in the Securities and Exchange Commission. No person shall operate or register a unit trust scheme or carry on the business of dealing in units of a unit trust scheme unless the scheme is authorised by and registered with the Commission. See section 160(1) Investments and Securities Act.

## **ELEMENTS OF A UNIT TRUST SCHEME**

- 1) **Fund:** Money contributed by investors is gathered into a pool for purposes of investment. The investment of a contributor is merged in the pool and does not possess the distinctive character of shares.

- 2) **Units:** Any units into which are divided the beneficial interest in the assets subject to any trust created under the scheme.
- 3) **Trust Deed:** An agreement under seal drawn up between the trustees and the manager for regulating the scheme.
- 4) **Holder:** An investor who has acquired units under the unit trust scheme and trust deed and is entitled to pro rata share of the dividends, interests or income of the securities comprised in the unit.
- 5) **Manager:** A person in whom is vested the powers of management relating to property subject to any trust created under the scheme. The manager must be an incorporated company registered as a fund or portfolio manager by the Commission.
- 6) **Trustee:** A person in whom the property subject to any trust created in pursuance of the scheme is vested in accordance with terms of the scheme. The trustee must be a body corporate such as bank or an insurance company having a prescribed minimum paid up capital.

## **CONDITIONS FOR AUTHORISATION OF THE SCHEME**

A unit trust scheme may be authorized and registered only if:

- a) The Commission is satisfied that the competence in respect of matters of the kind with which they would be concerned in relation to a unit trust

scheme and the probity of the manager and trustee are such as to render them suitable to act as manager and trustee respectively, under the scheme;

- b) The manager under the scheme is a body corporate under the Companies and Allied Matters Act and duly registered by the Commission as a fund or portfolio manager;
- c) The trustee under the scheme is body corporate such as a bank or an insurance company licensed under the relevant statute and having minimum paid up capital as required for the industry;
- d) The Commission is satisfied that the scheme is such that the effective control over the affairs of the scheme is vested in the manager under the scheme and will be exercised independently of the company which is the trustee under the scheme;
- e) The Commission is satisfied that the trust deed is in compliance with the provisions of this Act and the rules and regulations for the time being in force thereunder, and a copy of the deed aforesaid is deposited with the Commission; and
- f) The name of the scheme is not, in the opinion of the Commission, undesirable.

## **CONTENTS OF THE TRUST DEED**

- 1) Definition of terms
- 2) Provisions as to certificates
- 3) Provisions as to holders (of Units)
- 4) Register of holders

- 5) Transfer and transmission
- 6) Constitution of the trust
- 7) Issue of units
- 8) Realisation of units
- 9) Investment of property held on the trust
- 10) Distributions
- 11) Voting right on assets held on the trust
- 12) Interest upon deposited cash
- 13) Remuneration of trustee and manager
- 14) The trustee and the manager
- 15) Accounts
- 16) Retirement of trustee
- 17) Removal or retirement of manager
- 18) Termination of the trust
- 19) Notices
- 20) Reconstruction and amalgamation
- 21) Meeting of holders

## **PRICE OF UNITS**

The calculation of prices at which units of any trust scheme may be bought or sold shall be done in accordance with the formula laid down by the Securities and Exchange Commission.

## **REGISTRATION**

Units are registered by the Securities and Exchange Commission. See Investments and Securities Act. Application for registration of units is made on Form SEC 6A in duplicates and made along with the application for authorisation of the scheme. An application for registration of units shall become effective on the 60<sup>th</sup> day after “filing thereof or such

earlier dates as the Securities and Exchange Commission may determine.

### **ALTERATION**

It is unlawful for any manager or trustee to make any alteration in the trust deed or in the name of the authorised scheme without the prior approval of the Commission.

### **PROSPECTUS**

Where units are to be offered to the public, the prospectus and other documents prepared by the managers must be approved by the trustee and submitted to the Securities and Exchange Commission for approval before they are published.

### **REDEMPTION OF UNITS**

A holder of units may redeem his units by requesting the manager to buy them and the manager when so requested shall buy the units within the time specified by the Securities and Exchange Commission at the price for the time being at which the manager buys units of the scheme. Upon the revocation of a unit scheme the manager must buy all the units under the scheme at the price at which the manager buys units of the scheme.

### **REAL ESTATE INVESTMENT SCHEME**

Established for the purpose of acquiring intermediate and long term interest in real estate or property development and to raise funds from the capital market through the issuance of securities with the following features:

- a) An income certificate giving the investor a right to a share of the income of any property or property development; and
- b) An ordinary share in the body corporate giving the investor voting right in the management of the body corporate.

### **INVESTMENT TRUST SCHEME (ITS)**

By Rule 41 of SEC Rules, investment trust scheme is regulated like the unit trust scheme but with remarkable difference. It is packaged as a specialised unit trust scheme.

**NOTE:** The unit holders define in advance the type of securities their money would be invested in. IBTC Ethical Fund is a good example, which prohibits investments in tobacco and alcoholic beverage companies.

### **COMMUNITY SAVINGS SCHEME**

The oldest form of collective investment scheme in various communities. It is popular among market women, low level workers and voluntary organizations. It is known variously as Esusu, Adashe, and Ajo among others. It is required to be registered at the local government where they operate – Rule 41(4) SEC Rules. It shall have a register of all the members and operates within the community where they are registered.

## **ROLE OF SOLICITORS IN CAPITAL MARKET TRANSACTION**

- 1) Review the statutory corporate documents of an issuer and other transaction parties to ensure that they have the necessary legal capacity and authority to enter into a transaction;
- 2) Carry out due diligence to ensure that all information material to a transaction are disclosed in the transaction documents;
- 3) Advise on the legal structure of the transaction and on legal risks associated with it;
- 4) Negotiate, draft and review all legal documentations required for a transaction including but not limited to the prospectus, offer/scheme documents, trust deeds, vending agreements, powers of attorney/consents and underwriting agreements;
- 5) Advise parties on disclosure obligations and general observance of and compliance with sound corporate governance principles, rules and regulations as they relate to a transaction;
- 6) Advise on compliance with the requirements of the Corporate Affairs Commission, the Securities and Exchange Commission, the listing requirements of the Nigerian Stock Exchange and other relevant industry specific regulatory requirements;
- 7) Certify or obtain certification of compliance with all statutory requirements by the issuer and other parties to a transaction;

- 8) Make all statutory filings and provide confirmations (legal opinion) as to the enforceability and effectiveness of transaction documents;
- 9) File necessary applications in court in support of transactions; and
- 10) Any other roles ancillary to any of the above.

See s. Rule 180 SEC Rules 2013

## **CHAPTER TWELVE**

### **CORPORATE RESTRUCTURING 1 (ARRANGEMENTS AND COMPROMISE)**

- a) Compromise or arrangement under sections 710 and 711 with creditors and shareholders; and
- b) Arrangement on sale under section 714 and 717.

#### **ARRANGEMENTS UNDER SECTIONS 711, 712, 713, 715, and 716**

The procedure for such arrangements is as follows:

- a) The scheme or compromise is prepared by the company, a member, creditor or where the company is being wound up, the liquidator;
- b) An application in a summary way is made to court for an order calling for a separate meeting of the applicants to be affected by the scheme to be summoned in such a manner as the court directs.
- c) The notice of the meeting shall be accompanied with a statement explaining the general effect of the arrangement and in particular state any material interests of the directors of the company and whether it would affect the directors differently from other persons. Similarly, if it affects debenture holders give particulars.
- d) If a majority representing not less than three-quarters in value of the shares of members or class of members, or of the interest of creditors or class of creditors, as the case may be, present and

voting either in person or by proxy, agree to the scheme, an application may be made to court by one or more of the companies, and the court shall sanction the scheme.

- e) The court shall refer the scheme to the SEC, which appoints one or more inspectors to investigate the fairness of the scheme or compromise and make a report thereon to the court. The court shall specify a time frame for its receipt of the report from the SEC.
- f) If the court is satisfied as to the fairness of the compromise or arrangement, it shall sanction it and shall be binding on all creditors or the class of creditors or on the members of the company as the case may be and also on the company and in the case of a company being wound up on the liquidator and contributories of the company. See *Re Lipton of Nig. Ltd. (Unreported) Suit No. FHC/ L /M2185* at 9.
- g) An order sanctioning the scheme shall have no effect unless an office copy of the order has been delivered by the company to the Corporate Affairs Commission for registration and copy of the order must be annexed to every copy of the memorandum of association of the company issued after the order has been made.

**Provisions applicable to schemes or contract involving transfer of shares in a company – section 712.**

**Provisions applicable to dissenting shareholders – section 713.**

**Powers to compromise with creditors and members – section 715.**

**Information as to compromise with creditors and members – section 716.**

## **ARRANGEMENT ON SALE UNDER SECTION 714**

The procedure is as follows:

- a) The members in general meetings pass a special resolution for members' voluntary winding up and appoint a liquidator. For the procedure on members voluntary winding up, see sections 620-633 of Companies and Allied matters Act.
- b) The liquidator to give effect to the resolution.
- c) A dissenting member may by notice addressed to the liquidator and deposited at the registered office or head office of the company within 30 days of the resolution, require the liquidator either to abstain from putting the resolution into effect or to purchase his shares at a price to be determined either by agreement in the case of a private company in which aliens do not participate or in the case of a public company or private company in which aliens participate by the Securities and Exchange Commission.

An application need not be made to court unless:

- i. a member obtains an order under sections 353 - 355 within one year of the special resolution, granting relief on the ground

- that the affairs of the company have been or are being conducted in an illegal, unfairly prejudicial or oppressive manner; or
- ii. an order is obtained for a creditor's voluntary winding up.

**Moratorium on creditors voluntary winding up in a scheme of arrangement – section 717**

## **CHAPTER THIRTEEN**

### **CORPORATE RESTRUCTURING 2 (EXTERNAL RESTRUCTURING)**

External restructuring involves the company and third parties. The types of external restructuring option known to Corporate Law in Nigeria are:

- a) Acquisition
- b) Take Over
- c) External restructuring (restructuring of a group of companies).
- d) Merger & Amalgamations
- e) Purchases and Assumptions

#### **ACQUISITION**

Acquisition is the takeover by one company of sufficient shares in another company as to give the acquiring company control over the other company. For an external corporate restructuring to qualify as an acquisition; the threshold of acquisition must be below 30%. See Rule 421 Consolidated SEC Rules, 2013.

Acquisition as a corporate restructuring strategy is peculiar to only private companies and public unquoted companies.

Securities and Exchange Commission as the apex regulatory body requires the acquirer to file an expression of interest/letter of intent accompanied with documents stated in the Consolidated SEC Rules, 2013. The filing shall be done by a registered capital market

operator registered as an issuing house/investment advisor.

## **POST ACQUISITION REQUIREMENTS BY SEC**

- a) Executed share/asset purchase agreement
- b) Evidence of settlement of purchase agreement
- c) Evidence of settlement of severance benefits of employees who may be affected by the restructuring exercise. Rule 436 of SEC Consolidated Rules 2013
- d) Post-acquisition inspection by SEC, three months after the approval and consummation of the exercise - Rule 439.

## **TAKEOVER**

A takeover is a situation where a person or group of persons acquire(s) or wish to acquire a minimum of 30% shares in a public company with the intention of taking over the control of that company. See Section 117 of ISA 2007 and Rule 445 of SEC Rules 2013.

A takeover bid must be made by such a person or group of persons or through the instrumentality of a market operator to the shareholders of the target company. Where a takeover bid is made by a corporate body, there must be a resolution of the board of directors approving the bid and also accompanying the bid.

The bid must be made to at least 20 shareholders representing 60% of the membership of the target company or such other members as may be prescribed by SEC.

A bid must not be made where the shares to be acquired are shares of a private company.

## **CONTENTS OF A TAKEOVER BID**

A bid, being an invitation under a takeover bid must be in a document that states as follows:

- A. The name and address of the offeror,
- B. The maximum number and other particulars of the shares in the offeree company proposed to be acquired during the period specified in the invitation.
- C. The term on which those shares are proposed to be acquired.
- D. The number and other particulars of the shares in the offeree company to which:
  - i. The offeree; and
  - ii. Any company in the same group of companies as the offeree or anyone of the offeree is or are entitled immediately before the date of the takeover bid.
- E. State whether it is going to acquire the shares of dissenting members at the fair market value. See Section 142(c) of ISA, 2007.

## **AUTHORITY TO PROCEED WITH THE TAKEOVER BID**

Authority to proceed must be granted by the Commission before a takeover bid could be made.

Authority to proceed remains in force for 3 months subject to renewal for another period of 3 months but the

request must be made within 14 days prior to the expiration of the first 3 months.

For the documents accompanying a takeover bid, see Rule 447(3).

A takeover bid must be signed by the maker and also registered with the Commission before the dispatch. The offer must be filed with SEC within 7 working days upon conclusion of the offer.

Note that the SEC must carry out a post takeover inspection not less than 3 months after the registration of the bid.

See RULE 447

## **ACQUISITIONS OF SHARES OF DISSENTING SHAREHOLDER**

**Please note** that if the acquiring company is to acquire between 30% to 50% of the shares of another company, it becomes a takeover (See S. 131 ISA). However, Section 133(3) provides that a takeover bid can target 51% of the issued shares of the target company. If the bid is targeted at acquiring more than 51% of the issued shares of another company it then becomes a merger.

This includes the restructuring of a group of companies and other related party transactions - Rule 440. For the procedure for obtaining approval for external restructuring, see Rule 441. See section 146 ISA, 2007.

## **REQUIREMENTS FOR FORMAL APPROVAL**

For the requirements for formal approval see Rule 443.

## **POST APPROVAL REQUIREMENTS**

- 1) Obtain court order sanctioning the scheme and within seven days of the court sanction file a copy with the SEC.
- 2) File a copy of newspaper publication of the court order.
- 3) File a statement of the actual cost of the scheme.
- 4) Report on the settlement of shareholders.
- 5) File a notification of completion or otherwise of the exercise within 3 months.

## **MERGERS**

Merger is a contemporary restructuring tool that has long been deployed in corporate law practice to resolve liquidity problems, leveraging on economies of scale, desire for growth, profitability and increase in market share, sectorial survival strategy etc.

A merger therefore is the amalgamation of the undertakings or any part of the undertaking or interest of two or more companies or the undertakings of part of the undertaking of one or more companies and one or more bodies corporate. See s. 92 Federal Competition and Consumer Protection Act (FCCPA), 2018.

SECTION 93 FCCPA provides that:

- 1) Every merger, acquisition or external restructuring between or among companies must be subject to the prior review and approval of the Federal Competition and Consumer Protection Commission (FCCPC).
- 2) Approval shall be given by the FCCPC to every merger, acquisition or external restructuring, if:

- (a) such acquisition, whether directly or indirectly, of the whole or any part of the equity or other share capital of the assets of another company is not likely to cause substantial restraint of competition or tend to create monopoly in any line of business enterprise.
- (b) The use of such shares by voting or granting proxies or otherwise shall not cause substantial restraint of competition or tends to create monopoly in any line of business.

The provisions shall not apply to:

Holding companies acquiring shares by voting or otherwise to cause or attempt to cause substantial restraint of competition or tend to create monopoly in any line of business.

In a small merger, the merging entities shall not be required to notify the Commission of the merger but must do so at the conclusion of the merger.

Notwithstanding the provision of S. 93(1) of FCCPA, an acquisition of a private company or unquoted public companies with assets or turnover below N500m shall not be subject to the prior review and approval of Commission.

A merger may manifest in any manner including by:

- i. the purchase or lease of the shares, an interest or assets of the other undertaking in question;

- ii. the amalgamation or other combination with the other undertaking in question, or
- iii. a joint venture.

Mergers are broadly classified into three types – Horizontal, Vertical and Conglomerate.

Horizontal merger is when it involves the fusion of enterprises in the same line of business.

Vertical merger is when it entails the fusion of enterprises that complement each other. This is loosely known as symbiotic relationship.

Conglomerate merger is when it involves the fusion of totally unrelated businesses.

### **CATEGORIES OF MERGER**

- a) A small merger; and
- b) Large merger

The FCCPC is saddled with the responsibility of prescribing the upper and lower thresholds on combinations of turnover and or assets in Nigeria. See section 92 (4) (a) & (b) FCCPA, 2018

### **SMALL MERGER**

The upper threshold for a small merger shall be N1billion and above of either combined assets and or turnover of merging companies.

Parties to a small merger are not required to notify the Commission and may even implement without an approval from the Commission, unless it expressly requires the notification. See section 95 FCCPA.

However, section 95(3) FCCPA, provides that the Commission may within six months after a small merger is commenced require the parties to notify it of the merger where it forms the opinion that the merger could substantially prevent or lessen competition or cannot be justified on the grounds of public interest.

See Section 95 FCCPA for the procedure for small mergers.

### **DEEMED APPROVAL OF SMALL MERGER**

If at the expiration of the 20 working days period provided in section 95(6) of FCCPA or the extension thereof contemplated therein, the Commission has not notified the parties of its decision, the small merger shall be deemed as having been approved subject to subsection 7.

### **LARGE MERGER**

A larger merger means a merger with the combined threshold of value above N5billion.

The procedural step for large merger is contained in sections 96 and 97 of FCCPA, 2018.

Also note the additional requirements for merger of associations in Regulation 35, Companies Regulations, 2021.

### **REGULATORY BODIES INVOLVED IN MERGER TRANSACTIONS**

- 1) Federal Competition and Consumer Protection Commission.
- 2) Central Bank of Nigeria.

- 3) Corporate Affairs Commission.
- 4) Nigerian Exchange.
- 5) Federal High Court.
- 6) Other sectorial specific regulators.

## **REGISTERED MARKET OPERATORS INVOLVED IN MERGER TRANSACTIONS**

- 1) Financial Advisers/Issuing Houses.
- 2) Solicitors.
- 3) Auditors.
- 4) Reporting Accountants.
- 5) Registrars.
- 6) Stockbrokers.

## **DOCUMENTATIONS IN MERGER TRANSACTIONS**

In the build up to the consummation of a merger transaction, the preparation and execution of certain agreements are very important. The agreements are as follow:

- a) Exclusivity Agreement;
- b) Memorandum of Understanding;
- c) Confidentiality Agreements; and
- d) Scheme of Merger.

## **DUE DILIGENCE**

Before the scheme of merger is prepared and handed in at the Commission for vetting, investigation/due diligence would be conducted to ascertain the accuracy and veracity of information supplied by the merging entities.

There are two types of due diligence:

- 1) Legal due diligence; and
- 2) Financial due diligence.

Some of the items to be covered under legal due diligences are as follow:

- 1) Ownership of company.
- 2) Directors of the company and any service contract.
- 3) Copies of license to do business.
- 4) Any change in the status of the company.
- 5) The date and registration status of the company.
- 6) All statutory books of the company.
- 7) All charges created by the company and the debenture holders.
- 8) All titles to the properties of the company.
- 9) Legal status of the assets and liabilities of the company.
- 10) Copies of collective bargaining agreement and employees benefit plans.

Some of the items to be covered under financial due diligences are as follows:

- 1) Accounting records of the company.
- 2) Value of assets and liabilities to be acquired.
- 3) Product development and competitors.
- 4) Capital investments, profitability, merger, price earnings ratio.
- 5) Tax liabilities of the company and tax implication of the transaction.

- 6) Ability to raise short term and long term capital as well as the cost of such capital in relation to general industrial indicators.

### **POWER OF FCCPC TO REVOKE MERGER**

The Commission is empowered to revoke its decision on approved or conditionally approved merger scheme if any of the following occurs:

- a) Incorrect information for which a party to the merger is responsible;
- b) Any approval obtained by deceit;
- c) The parties fail to implement the merger within 12 months after the approval was granted; or
- d) Breach of an obligation attached to the merger by any of the merging parties. See Section 99 FCCPA.

### **POWER TO ORDER BREAK UP OF COMPANIES**

If the Commission is of the opinion that the business practice of a company is found to substantially prevent or lessen competition, it can direct such company to break up into separate entities and re-register them within specific time. The commission must refer the order to the Federal High Court for sanctioning.

### **PURCHASE AND ASSUMPTION**

Under this category of external restructuring, the focus is usually the rescue of some of the investments in a moribund or failing company. The aim is to effect a reduction in losses occasioned by depreciating investments by allowing another company/investor to

purchase the liabilities of the failing company and assume ownership of its assets. The assumed company undergoes dissolution through judicial sale of its assets and liabilities.

## **CHAPTER FOURTEEN**

### **COMPANY PROCEEDINGS, INVESTMENT DISPUTES RESOLUTION, INVESTMENTS AND SECURITIES TRIBUNAL AND ADMINISTRATIVE PROCEEDINGS COMMITTEE (CAC)**

#### **GOVERNING LAWS AND PROCEDURAL RULES**

1. Companies Proceeding Rules 1992.
2. Companies Winding up Rules 2001.
3. Federal High Court Civil Procedures Rules 2009.
4. Securities and Exchange Commission Consolidated Rules 2013.
5. Investment and Securities Tribunal Procedure Rules 2003.

#### **MODES OF COMMENCEMENT OF COMPANY PROCEEDINGS**

1. Originating Summon.
2. Originating Motion.
3. Petition.

#### **COMPANIES PROCEEDING RULES 1992**

This is used for all proceedings under part B of CAMA 2020, please note Rule 21(1) of the extant Rule. Where there is no provision in the Companies Proceedings Rules, the Federal High Court Civil Procedure Rules 2009 will apply See Rule 19.

Criminal offences arising from corporate infractions are to be tried by courts of competent jurisdiction in the

place where the offence are alleged to have been committed; not necessarily the Federal High Court. See Section 734(1) CAMA.

### **TITLING OF COMPANY PROCEEDINGS**

The Companies Proceedings Rules, 1992 provides that every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavit notices and other documents in those proceedings shall be entitled “IN THE MATTER OF THE COMPANY CONCERNED AND IN THE MATTER OF THE COMPANIES AND ALLIED MATTERS ACT” See Rule 1(1) Companies Proceedings Rules.

Please note that the same Rule applies to commencement of winding up petition under the Companies Winding Up Rules, 2001.

### **APPLICATIONS TO BE MADE BY ORIGINATING MOTION**

- 1) Application under section 23(2) CAMA, 2020.
- 2) Application under section 51(9), 154(3) and 355(5) CAMA.
- 3) Application under section 115(1) CAMA.
- 4) Application under section 358 CAMA.
- 5) Application under section 362(3) & (4) CAMA.
- 6) Application under section 372 CAMA.
- 7) Application under section 691(1) CAMA

## **APPLICATION TO BE MADE BY PETITION**

- 1) Under Section 51(1) & (2) CAMA.
- 2) Under Section 52(1) CAMA.
- 3) Under Section 64(1) CAMA.
- 4) Under Section 145 CAMA.
- 5) Under Section 182 CAMA.
- 6) Under Section 131(1) CAMA.
- 7) Under Section 167(1) CAMA.
- 8) Under Section 354(1) CAMA.
- 9) Under Section 692(6) CAMA.
- 10) Under Section 738 CAMA.
- 11) Under Section 641 CAMA.

## **INVESTMENT DISPUTES**

### **REGULATORY FRAMEWORK**

- 1) Amicable settlement or reconciliation.
- 2) ADR & Arbitration/hybrid processes
- 3) Settlement by self-regulatory organisation for its members.
- 4) Administrative Proceedings Committee of SEC
- 5) Investment and Securities Tribunal
- 6) Federal High Court.

Investment disputes are disputes and controversies arising from the operation and application of Investments and Securities Act and the Rules and Regulation made therefrom. These may include disputes between:

- a) capital market operators
- b) capital market operators and their clients

- c) capital market operators and self-regulatory organisations
- d) an investor and a securities exchange or capital trade point or clearing and settlement house.
- e) the Commission and self-regulatory organisations
- f) capital market operator and the Commission.
- g) an issuer of securities and the Commission
- h) arising from the administration, operation and management of collection investment schemes.

For the jurisdiction of the Administrative Proceedings Committee, see generally **Schedule viii SEC Rules 2013.**

## **INVESTMENT AND SECURITIES TRIBUNAL**

Established by Section 274 ISA No 29, 2007

The Tribunal was established to provide an efficient dispute settlement mechanism with fairness, flexibility and transparency for the capital market investors, public companies, capital market operators, self-regulatory organisations and other market participants. See IST Procedural Rule 2 & 3(1) 2003.

## **COMPOSITION OF THE INVESTMENT AND SECURITIES TRIBUNAL**

The Tribunal is composed of ten members and the quorum at any sitting is three members.

## **POWERS OF THE TRIBUNAL**

- 1) Summon and enforce the attendance of any person and examine such person on oath;

- 2) Require the discovery and production of documents;
- 3) Receive evidence on affidavits;
- 4) Call for examination of witnesses or documents;
- 5) Review its decisions;
- 6) Dismiss an application for default or deciding matters ex-parte;
- 7) Set aside any order or dismissal of any application for default or any order made by it ex parte; and
- 8) It shall also have powers to do anything which in its opinion is incidental or ancillary to its function. See Section 290ISA 2007.

The Tribunal shall be deemed to be a civil court. See Section 290(3) I.S.A.

### **THE JURISDICTION OF THE TRIBUNAL**

The Tribunal has original as well as appellate jurisdictions. The person aggrieved by the decision of the Securities and Exchange Commission may institute an action in the Tribunal thereby activating the original jurisdiction of the Tribunal or appeal against such a decision from the Administrative Proceedings Committee of SEC.

The Commission must be notified by the aggrieved person and the length of the notice is 14 days.

In the case of an appeal, the appeal must be filed within 30 days of the receipt of the copy of the order sought to be appealed against. See Section 289 ISA.

The judgment of the Tribunal must be in writing and would be enforced as if it were a judgment of the Federal

High Court. See Section 293(3) ISA. Further Appeal will lie to the Court of Appeal and subsequently to the Supreme Court.

Please note that the Tribunal must adjudicate and decide a case within ninety days of the commencement of the proceedings.

**ADMINISTRATIVE PROCEEDINGS  
COMMITTEE (CAC) COMPOSITION OF THE  
ADMINISTRATIVE PROCEEDINGS  
COMMITTEE**

- i. The Registrar-General who is the chairman of the Committee;
- ii. Five representatives from the operational departments of the Commission not below the rank of director, one of whom shall be from the Compliance Department of the Commission; and
- iii. A representative of the Federal Ministry of Industry, Trade and Investment not below the rank of a director – section 851(1) of CAMA

**PERSONS THAT THE COMMITTEE MAY CO-OPT AT ITS MEETINGS**

- i. Representatives of association of shareholders;
- ii. Representatives of association of registrars; and
- iii. Representatives of association of trustees – 851(2) of CAMA

**Note:**

Members so co-opted do not count in determining the quorum and do not vote at such meetings.

## **SECRETARY OF THE COMMITTEE**

The person qualified to be secretary of the Committee must be a legal practitioner and an officer of the Commission with at least 10 years post-call experience – s. 851(3) of CAMA

## **JURISDICTION OF THE ADMINISTRATIVE PROCEEDINGS COMMITTEE**

The jurisdiction of the Administrative Proceedings Committee is in respect of non-criminal disputes arising from the operations of the Act as they relate to:

- i. Names of companies, limited liability partnership, limited partnership, business names and incorporated trustees;
- ii. Shares in private companies; and
- iii. Appointment or removal of directors, partners or trustees – Reg. 38 of Companies Regulations, 2021.

## **FUNCTIONS OF THE ADMINISTRATIVE**

- i. Provide opportunities for persons alleged to have breached the provisions of CAMA or its regulations to be heard;
- ii. Resolve disputes or grievances arising from the operations of CAMA or its regulations; and
- iii. Impose administrative penalties for breach of the provisions of CAMA or its regulations in the settlement of matters before it - 851(4) of CAMA

## **PROCEEDINGS OF THE MEETING OF THE ADMINISTRATIVE PROCEEDINGS COMMITTEE**

- i. The chairman presides over the meetings of the Committee and at any meeting the chairman is absent, the members present will appoint one of their members to preside over the meeting.
- ii. The quorum at the sitting of the Committee is four members present.
- iii. Issues are determined by the Committee by simple majority of the members present and where there is a tie, the chairman or the member presiding is entitled to a casting vote (second vote).
- iv. The Committee regulates its proceedings subject to the provisions of S.851 of CAMA.

## **PROCEDURE OF SETTLEMENT OF DISPUTES BEFORE THE ADMINISTRATIVE PROCEED- INGS COMMITTEE**

- i. Any party with complaint for adjudication by the Committee shall send it to the Registrar-General of the Commission.
- ii. If the Registrar-General on receipt of the complaint is of the opinion that the provisions of the Act in respect of which the Committee has jurisdiction to adjudicate have been or is about to be violated, he shall refer the complaint to the Committee for adjudication.
- iii. The Secretary of the Committee upon receipt of the complaint shall within two working days

schedule the complaint for hearing on a date that may be determined by the Chairman of the Committee.

- iv. The Secretary shall within five working days of receipt of the complaint send to the parties the notice of hearing.
- v. The notice shall contain the names of the parties, particulars of claim, details of the alleged violations, date, place and time of hearing.
- vi. The notice may be served on the parties personally or by registered post to their physical or electronic addresses and where it cannot be served on a party for whatever reason, the Chairman may direct that the notice be served by substituted means.
- vii. The hearing of the complaint shall not be scheduled for a day less than 21 days from the date of receipt of the complaint together with the report of the investigation.
- viii. Not later than 10 working days from service of hearing notice, the parties shall file their briefs with the Committee and serve each other notice of same.
- ix. Parties may file and serve each other further documents not later than five working days from filing and service of the initial pleadings on each other.
- x. The periods prescribed for filing and service of documents maybe extended by the leave of the Committee.

- xii. At the expiration of the time prescribed for further pleadings, the Secretary shall set down the matter for hearing.
- xiii. Parties shall attend the sittings of the Committee either in person or be represented by a legal practitioner.
- xiv. Proceedings of the Committee shall be recorded on audio or visual tape or such other electronic device.
- xv. The Committee may grant not more than two adjournments in a matter which may only be granted if it considers that refusing to grant adjournment may lead to miscarriage of justice and on condition of payment of administrative fees.
- xvi. Issues are determined by the Committee by simple majority of the members present and where there is a tie, the chairman or the member presiding is entitled to a casting vote (second vote).
- xvii. Decisions of the Committee are subject to confirmation by the governing board of the Corporate Affairs Commission.
- xviii. Parties dissatisfied with the decision of the Committee may appeal to Federal High Court.

**Note:**

- i. The venue of the sittings of the Committee unless otherwise indicated is the head office of Corporate Affairs Commission.

- ii. The chairman presides over the meetings of the Committee and at any meeting the chairman is absent, the members present will appoint one of their members to preside over the meeting.
- iii. The quorum at the sitting of the Committee is four members present.
- iv. The Committee regulates its proceedings subject to the provisions of S.851 of CAMA.
- v. The proceedings of the Committee shall be guided by the provisions of the Evidence Act Reg. 39 – 45 of Companies Regulations, 2021.

#### **SANCTIONS THAT THE ADMINISTRATIVE PROCEEDINGS COMMITTEE MAY IMPOSE**

- i. Imposition of administrative penalties;
- ii. Suspension or revocation of registration; or
- iii. Recommendation for criminal prosecution if matters brought before it reveals any criminal act or conduct - 851(10) of CAMA

**CHAPTER FIFTEEN**

**WEEK 17**

**TOPIC 15**

**CORPORATE INSOLVENCY, COMPANY  
VOLUNTARY ARRANGEMENT,  
ADMINISTRATION AND RECEIVERSHIP**

Corporate insolvency is inability of a company to pay its debts.

The principal law on corporate insolvency in Nigeria is the Companies and Allied Matters Act which came into force in January, 2021.

Insolvency Practitioner plays a major role in corporate insolvency

Section 704 provides for what constitute insolvency practice. For qualification of insolvency practitioner see section 705

**ACCREDITATION OF INSOLVENCY  
PRACTITIONERS BY CAC**

Company Regulation 2021 stated that members of the following professional bodies may apply to the CAC for accreditation as insolvency practitioners

- (a) Business Rescue and Insolvency Practitioners Association of Nigeria;
- (b) Nigerian Bar Association;
- (c) Institute of Chartered Accountants of Nigeria;

- (d) Association of National Accountants of Nigeria; and
- (e) Institute of Chartered Secretaries and Administrators of Nigeria (CReg.24).

## **REQUIREMENTS FOR ACCREDITATION**

Requirements for accreditation shall include the following:

- (a) Duly completed Form CAC-MISC 02
- (b) Payment of prescribed application fee;
- (c) Evidence of membership of relevant professional body;
- (d) Evidence of practice as insolvency practitioner for not less than five years immediately preceding the date of application;
- (e) Evidence of eligibility to practice for the current year; and
- (f) Evidence of completion of accredited course of continuous learning administered by the relevant professional body in the preceding year (in the case of renewal accreditation).

CAC will grant the application if it is satisfied that the applicant is a fit and proper person to act as an insolvency practitioner and meets the prescribed requirements with respect to education and practical training and experience (s.708(2)) and may withdraw the authorization if the requirements are no longer met (708(4)) or at the request or consent of the holder of the

authorization (s.708(5)). The authorization takes effect from the date of grant by the CAC (s.708(3)).

Accreditation by the CAC of an insolvency practitioner is renewable every two years and at no cost.

Accreditation may be withdrawn by the CAC where the holder of the accreditation is disqualified from practice by professional body or in any other case if it appears to the CAC not fit to act as an insolvency practitioner (CReg.24).

## **COMPANY VOLUNTARY ARRANGEMENTS (CVA)**

Company Voluntary Arrangement (CVA) is an insolvency procedure. It is usually employed when a company is unable to pay its debts which is normally characterized as insolvency.

### **PROCEDURE OF CVA**

#### **Proposal of CVA**

If the company is not in administration or liquidation, the directors of a company may propose a CVA to the creditors of the company for a composition in satisfaction of its debts or a scheme of arrangement of its affairs, to be known as voluntary arrangement: s. 434(1).

For proposal by Administrator and liquidator, see s.434(3)

#### **1. Appointment of supervisor of a CVA**

Only a person qualified to practice as an insolvency practitioner under the Act shall be appointed supervisor in a company voluntary arrangement.

2. Nominees report s.435
3. Summoning of meetings s.43
4. Decisions of meetings s.437
5. Approval of CVA s.438
6. Effect of approval s.439 C
7. Challenge of decisions, s. 440
8. Implementation of proposal s.442

## **ADMINISTRATION OF COMPANIES**

Administration is a statutory insolvency procedure introduced by the Companies and Allied Matters Act, 2020 with the primary purpose of rescuing an insolvent company instead of the company going into liquidation.

### **APPOINTMENT OF ADMINISTRATOR.**

A person may be appointed as administrator of a company (s.443(1)):

- by an administration order of the Court under s. 449,
- by the holder of a floating charge under s. 452,
- by the company under s.459, or
- its directors under s. 459.

### **PURPOSE OF ADMINISTRATION.**

The rescue of the company is the primary objective of the administrator unless the administrator believes it is not reasonably practicable or that a better result can be achieved for the company's creditors by pursuing some other course (s.444(2)).

The administrator of a company is appointed to manage the affairs, business and property of the company and

must perform his or her functions with the objective stated under s.444(1).

## **STATUS AND STANDARD OF PERFORMANCE EXPECTED OF ADMINISTRATOR**

An Administrator is an officer of the Court, whether or not he is appointed by the Court (s.446), and must perform his functions as quickly and efficiently as is reasonably practicable (s. 445).

**Capacity of an administrator see s.447**

**Appointment of administration by the court sections  
448, 449, 450, 451**

## **POWERS OF COURT**

An appointment of an administrator by an administration order takes effect at a time appointed by the order or where no time is appointed by the order, when the order is made (s.451(2)).

## **FILING NOTICE OF APPOINTMENT WITH CAC**

A person who appoints an administrator must file with the CAC the notice of appointment and such other documents as may be prescribed (s.455(1)).

- Appointment of administrator by company or directors out of court s.459
- Filing of notice of appointment s.466
- Commencement of appointment sections 469
- Notification of administrator of his appointment s.470

- **Effect of moratorium on the appointment of administrator 461**

## **APPOINTMENT BY THE HOLDER OF FLOATING CHARGE**

Where an administration application is made by the holder of a floating and includes a statement that the application is made in reliance on s.472 the Court may make an administration order whether or not satisfied that the company is or is likely to become unable to pay its debts and only if satisfied that the applicant could appoint an administrator under s.450(s.472).

## **EFFECT OF ADMINISTRATION ORDER**

1. Dismissal of winding up order
  2. Vacation of office by receiver
  3. No resolution may be passed or order made for winding up
  4. No steps may be taken to enforce security
  5. No repossession of goods under hire purchase agreement
  6. No right of forfeiture by re-entry of landlord
  7. No legal process
  8. Disclosure of administration and administrator
- Process of administration s.483
  - Request for statement of affairs of the company s.484
  - When to submit statement of affairs s.485
  - Administrator's statement of proposals s.486

- Initial creditors' meeting sections 487, 488, 489 and 490
- Request for a revision of proposal by the administrator after approval s.491
- Failure to secure approval to administrator's proposal s.492

## **FURTHER CREDITORS' MEETING**

The administrator must summon further creditors' meeting if it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10% of the total debts of the company or he is directed by the Court to summon a creditors' meeting (493(1)).

## **POWERS OF ADMINISTRATOR**

Powers of administrator are stated in the Tenth Schedule and are restated in the Eleventh Schedule to CAMA as additional powers the administrator shall exercise (s.497).

## **PRESUMPTION OF VALIDITY OF AN ACT OF ADMINISTRATOR**

An act of the administrator of a company is valid in spite of a defect in his appointment or qualification (s.542).

## **ADMINISTRATOR AS AGENT OF THE COMPANY**

The administrator of a company acts as its agent when managing the company (s.506).

## **CHALLENGE OF ADMINISTRATION**

Administration can be challenged by

1. Creditors
2. Members (s.511(1)).

## **GROUNDS FOR CHALLENGE**

1. That the administrator is acting or has acted so unfairly as to harm the interests of the applicant (whether alone or in common with some or all other members or creditors) (s.511(1)).
2. That the administrator proposes to act unfairly as to harm the interests of the applicant (whether alone or in common with some or all other members or creditors) (s.511(1)).
3. That the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable (s.522(2)).

## **END OF ADMINISTRATION**

1. Automatic cessation of administration s.513
2. Cessation on application of administrator to the court s.517
3. Cessation when the purpose of administration is achieved s.518
4. Cessation upon application of creditor s.519
5. Cessation upon a winding up order in the public interest s.520
6. Cessation upon registration of notice of administrator by CAC s.521 to 524

## **RESIGNATION, REMOVAL, VACATION OF OFFICE OF ADMINISTRATOR**

An administrator may resign in the prescribed circumstances stated in s. 525 and that is by giving written notice to his appointor which may be the court, holder of a floating charge, the company or the directors of the company. The court is also given power to remove an administrator under s. 526. An administrator must vacate office if he ceases to be qualified to act as an insolvency practitioner but he must give written notice to the court, holder of a floating charge, the company or the directors of the company, depending on its mode of appointment (s.527).

## **REPLACEMENT OF AN ADMINISTRATOR**

An administrator may die, resign, vacate office or be removed thereby creating the need for replacement (s.528)).

**Replacement of administrator by a holder of prior floating charge s.534**

**Discharge of administrator from liability s.536**

## **RECEIVERSHIP**

Among the remedies of the debenture holder as provided under section 233 is the appointment of a receiver.

## **WHO MAY NOT BE A RECEIVER OR MANAGER?**

The following persons cannot be appointed a receiver or managers of any property or undertaking of any company: -

1. An infant;
2. Any person found by a competent court to be of unsound mind;
3. A body corporate;
4. An undischarged bankrupt, unless he shall have been given leave to act as a receiver or manager of the property or undertaking of the company by the court by which he was adjudged bankrupt;
5. A director or auditor of the company;
6. Any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and who is disqualified under section 280 of the Act. – (s.550).

## **APPOINTMENT OF RECEIVER AND MANAGER BY THE COURT**

The court may, on the application of a person interested, appoint a receiver or a receiver and manager of a company Sections 551 and 552.

## **LEGAL STATUS OF A RECEIVER APPOINTED BY THE COURT**

A receiver or manager of any property or undertaking of a company appointed by the court will be deemed to be an officer of the court and not of the company and must act in accordance with the directions and instructions of the court (s.552 (2)). The receiver manager is personally liable on any contract entered into by him unless the contract expressly provide otherwise (s.557(1)).

## **RECEIVER AND MANAGERS APPOINTED OUT OF COURT**

A receiver or manager may be appointed over any property or undertaking consequent upon a power contained in any instrument.

### **Notice and Statement of Affairs of the Company s.559**

#### **DUTIES OF RECEIVERS AND MANAGERS**

A person appointed a receiver of any property of a company must, subject to prior encumbrances, take possession of and protect the property, receive the rents and profits and discharge all out-goings in respect of it, and realize the security for the benefit of those on whose behalf he is appointed but unless appointed manager, he will not have power to carry on any business or undertaking – (s.556(1)).

A person appointed manager of the whole or any part of the undertaking of a company must manage it with a view to the realization of the security of those on whose behalf he is appointed (s.556 (2)).

#### **Power of Receivers and Managers of the Whole or Substantially the Whole of the Company's Property under Section 556(3)**

#### **Notice and Publication of Appointment of a Receiver or Manager s.555(1)**

## **EFFECT OF THE APPOINTMENT OF A RECEIVER**

As from the date of appointment of a receiver or manager the powers of the directors or liquidators (in a members' voluntary winding up) to deal with the property or undertaking over which he is appointed must cease unless and until the receiver or manager is discharged or the security is realized – (s.556(4)).

## **CHAPTER SIXTEEN**

### **WINDING UP AND DISSOLUTION OF COMPANIES**

#### **RELEVANT LAWS**

1. Companies and Allied Matters Act, 2020
2. Winding Up Rules, 2001
3. Federal High Court Act and Civil Procedure Rules
4. Investments and Securities Act
5. Securities and Exchange Commission Consolidated Rule, 2013
6. Banks and Other Financial Institutions Act
7. Nigerian Communication Commission Act
8. Companies Proceedings Rules, 1992

This list is by no means exhaustive.

“A winding up proceeding is signing of the death warrant of a company or a pronouncement of the death of the company. It is a very serious matter”. See TATE INDUSTRIES PLC V DEVCOM M.B LTD (2004) 17 NWLR (PT 901) CA 182 at Pg. 225.

The above best captures the gravity of winding up. It is therefore a process by which a company is liquidated and dissolved and its assets distributed in accordance with the rules of priority for the benefit of its creditors, members and employees.

#### **MODES OF WINDING UP**

Winding up maybe:

- 1) Compulsory winding up by the court;

- 2) Voluntary; and
- 3) Subject to the supervision of the court

Voluntary winding up can be by the members or by the creditors. If a company passes a resolution for voluntary winding up before the presentation of the petition, the winding up would be deemed to have commenced at the time of the passing of the resolution – 578(1) of CAMA.

### **COMPULSORY WINDING UP BY THE COURT**

See section 571 of CAMA. This category of winding up is usually activated when any of the following happens:

- a) The company has by special resolution agreed that the company be wound up by the court;
- b) Default is made in delivering the statutory report to the CAC or holding of the statutory meeting;
- c) The number of members is reduced below two;
- d) The company is unable to pay its debts;
- e) The condition precedent to the operation of the company has ceased to exist; or
- f) The court is of the opinion that it is just and equitable that the company should be wound up.

The court with jurisdiction is the Federal High Court, within the jurisdiction of the company's registered office or head office - 570 of CAMA.

Please note that any attachment, distress, executing or sequestration against a company in the process of winding up by the court shall be void. See Section 576 of CAMA

## **INABILITY TO PAY DEBT**

See section 572 of CAMA. A company shall be deemed to be unable to pay its debt if;

- a. A creditor, by assignment or otherwise to whom the company is indebted in a sum exceeding N200,000 then due, has served on the company, by leaving it at its registered office or head office, a demand letter under his hand requiring the company to pay the sum due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor. For the court to wind up a company under section 571(d) CAMA, four essential ingredients must co-exist.

They are as follows:

- i. There must be a debt in existence;
- ii. The debt must be due;
- iii. There must have been a formal demand for the debt; and
- iv. There must be inability on the part of the company to pay the debt.

The demand is a statutory correspondence made under the hand of the creditor and it must last for a period of three weeks before a winding up action can be brought. See section 572(a) CAMA.

When the amount owed becomes contentious, a petition for winding up will be refused. See ONOCHE VS ALAN DICK & CO LTD (2003), NWLR (pt.832) pg. 451. TATE INDUSTRIES PLC. VS DEVCOM M.B. LTD (2004) 17 NWLR (pt. 901) CA 182. It should be

noted that in such cases, the matter will be referred to the State High Court for a determination of the amount owed.

### **PERSONS ELIGIBLE TO BRING PETITION FOR COMPULSORY WINDING UP BY THE COURT**

- a) The company or a director;
- b) A creditor, including a contingent or prospective creditor of the company;
- c) The official receiver;
- d) A contributory;
- e) A trustee in bankruptcy to, or a personal representative of a creditor or contributory;
- f) The CAC under section 323 of CAMA
- g) A receiver if authorised by the instrument under which he was appointed.
- h) By all or any of those parties, together or separately.

### **PERSONS ELIGIBLE TO BRING A PETITION WHEN THERE IS A DEFAULT IN DELIVERING REPORT OF HOLDING STATUTORY MEETING SECTION 235 OF CAMA**

It is only a shareholder or a group of shareholders that can bring a petition under this head. Please note that it must be brought before the expiration of 14 days immediately preceding the last day on which the meeting ought to have been held.

For conditions under which a contingent or prospective creditor can present a winding up petition, see s. 573(2)(c) CAMA

### **WINDING UP ON JUST AND EQUITABLE GROUNDS SECTION 571(f) OF CAMA**

Pursuant to this section, the following must exist:

- a) The company is formed for fraudulent purposes;
- b) The company is a “bubble” i.e. where a going concern does not have any business or assets;
- c) Unfairly prejudicial or discriminating acts against the minority or other members;
- d) If it is a small going concern, ground employable in the dissolution of partnership is enough to dissolve the company.

### **EFFECT OF COMMENCEMENT OF WINDING UP**

Upon commencement of winding up, there shall be no disposition of the property of the company, including chooses in action and any transfer of shares, or alteration in the status of the members of the company unless the court otherwise orders, is void. See section 576 of CAMA.

### **PROCEDURAL STEPS IN COMPULSORY WINDING UP BY THE COURT**

- 1) Filling of the petition with the affidavit verifying the petition;
- 2) Service of the petition (file affidavit/proof of service);

- 3) Obtain leave of court to advertise the petition;
- 4) Advertisement of the petition;
- 5) Filling of memorandum of compliance;
- 6) Filling notice of intention to appear, affidavit in opposition and affidavit in reply by the respondent;
- 7) Appointment of provisional liquidator;
- 8) Filing and leaving of summons for costs;
- 9) Filing of list of persons appearing;
- 10) Hearing of the petition;
- 11) Making of the winding up order;
- 12) Service of winding up order;
- 13) Delivery of statement of affairs;
- 14) Official receiver's preliminary report;
- 15) First meeting of creditors and contributories;
- 16) Appointment of liquidator;
- 17) Advertisement of appointment of liquidator;
- 18) Appointment of committee of inspection;
- 19) Winding up by the liquidator; and
- 20) Dissolution order.

A winding up proceeding, could be stayed after a winding up order has been made in the interest of justice see section 601(1) CAMA

Regulation 43 companies regulation 2012 sets out the requirements for winding up by the court. The steps are as follows:

- a) Special resolution for winding up by court, pursuant S. 571(a) CAMA (where applicable), to be filed at CAC within 14 days of its passing.
- b) CTC of court order for winding up

- c) Publication of notice of appointment of liquidator in the gazette or two daily newspapers.
- d) Liquidator's notice of his appointment, to be filed within 14 days of his appointment
- e) Liquidator's account of receipts and payments at least twice a year, which shall be in duplicate and verified by statutory declaration.
- f) CTC of court orders for dissolution of company
- g) Updated annual returns
- h) Updated filings
- i) Original certificate of incorporation (or CTC) for cancellation
- j) Payment of fees

## **VOLUNTARY WINDING UP**

A company may be wound up voluntarily in the following circumstances:

- a) when the period, if any fixed for the duration of the company by the articles expires, or the event, if any, occurs, on occurrence of which the articles provided that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; and
- b) If the company resolves by special resolution that the company be wound up voluntarily s. 620 of CAMA.

If a company passes a resolution for voluntary winding up it shall, within 14 days after the passing of the resolution give notice of the resolution by advertisement

in the Gazette or two daily newspapers and to the Commission, pursuant to s. 621 of CAMA.

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up s.622 of CAMA.

A winding up in any case where a declaration has been made and delivered in accordance with the provisions above is referred to as a members' voluntary winding up and a winding up in any case where a declaration has not been made and delivered as aforesaid is referred to as a creditors voluntary winding up. See S.457 CAMA.

### **DECLARATION OF SOLVENCY**

Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may at a meeting of the directors make a statutory declaration, to the effect that they have made a full inquiry into the affairs of the company and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period, not exceeding 12 months from the commencement of the winding up, as is specified in the declaration s. 625 of CAMA.

Such declaration must be made within 5 weeks immediately preceding the date -of the passing of the resolution for winding up the company and is delivered to the Commission for registration before that date and it should embody a statement of the company's assets and liabilities as at the latest practicable date for the making

of the declaration. Where this is not done, the statement will have no effect. See s. 625 of CAMA.

PLEASE NOTE THAT: all costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

## **SUMMARY OF PROCEDURE FOR MEMBERS VOLUNTARY WINDING**

- a) Statutory declaration of solvency duly signed by majority of the directors and embodying statement of the company's asset and liabilities, to be filed at CAC within 5 weeks of its making.
- b) Special resolution for voluntary winding up signed by a director and secretary or two directors, to be passed within 5 weeks of making of the statutory declaration of solvency, and filed with CAC within 14 days of its passage.
- c) Publication of notice of appointment of a liquidator in the Gazette or two daily newspapers.
- d) Resolution for appointment of liquidator.
- e) Notice of appointment of liquidator to be filed with CAC within 14 days of the appointment.
- f) Liquidator's notice of his appointment.
- g) Return of final meeting and account of liquidation as laid before and approved by the meeting, to be filed with CAC within 7 days after date of the final meeting.
- h) Original certificate of registration (or CTC where applicable) to be delivered to CAC for cancellation. See also s.630 and 631 (2) CAMA

## **Requirements for Creditors' Voluntary Winding Up**

The requirements of creditors' voluntary winding up include:

- a) Publication of notice of creditors' meeting in the gazette and two daily newspapers
- b) Resolution for the voluntary winding up, to be filed with CAC within 14 days of passing
- c) Appointment of liquidator
- d) Publication of notice of appointment of liquidator in the gazette or two daily newspapers
- e) Notice of appointment of liquidator to be filed with CAC within 14 days of the appointment
- f) Liquidator's notice of his appointment
- g) Publication of notice of final meeting in the gazette and at least two daily newspapers circulating in the locality where the meeting is being called
- h) Return of final meeting and account of liquidation as laid before and approved by the meeting
- i) Original certificate of registration (or CTC where applicable) for cancellation
- j) Updated annual return
- k) Updated S.553 filing where applicable
- l) Payment of fees. See also S.635(1) – (4), 636 and 637 of CAMA

## **WINDING UP SUBJECT TO SUPERVISION OF COURT**

If a company passes a resolution for voluntary winding up, the court may on petition order that the voluntary

winding up shall continue but subject to such supervision of the court, pursuant to S. 649 CAMA.

A petition for winding up subject to supervision of the court; operates as a petition for compulsory winding up by court- ss. 650, 651, & 652(2) of CAMA.

Where an order is made for a winding up subject to supervision of the court, the court may by the same order or any subsequent order appoint an additional liquidator. See s. 652(1) of CAMA The court may also remove any liquidator so appointed by the court or any liquidator continued under the supervision order, and may fill any vacancy occasioned by the removal, or by death or resignation- s. 652(3) of CAMA.

A liquidator appointed by the court shall have the same powers, be subject to the same obligations and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of CAMA with respect to the appointment of liquidators in a voluntary winding up. - s. 652(2) CAMA.

Where an order is made for a winding up subject to supervision of court, the liquidator may, subject to any restriction imposed by the court, exercise all his powers without the sanction or intervention of the court in the same manner as if the company were being wound up voluntarily, provided that he cannot exercise his powers under s.588 (1) (d) (e)(f) without the sanction of the court or the creditor or committee of inspection if the winding up was initially commenced as a creditors' voluntary winding up.

Order of supervision does not change the date of commencement of the winding up which will still be the day the resolution was passed by the company.

**The following persons, play major roles in winding up proceedings, they are:**

- 1) Liquidator;
- 2) Official receiver;
- 3) Provisional liquidator;
- 4) Receiver/Receiver Manager; and
- 5) Special Manager.

## **CHAPTER SEVENTEEN**

### **BUSINESS NAMES AND PARTNERSHIPS REGISTRATION OF BUSINESS NAMES AND PARTNERSHIP**

Note Advantages over incorporation.

Administration - by the Corporate Affairs Commission (section 811 under the Companies and Allied Matters Act, 2020 with the Registrar - General of companies as the Registrar of Business Names (section 812(1) Companies and Allied matters Act

The Business Names Registry is decentralised with offices and branches of CAC (section 811 requires each state of the federation to have a Business Name Registry) under Assistant Registrars (section 813 (3)).

#### **REGISTERABLE NAMES**

Every individual firm or corporation having a place of business in Nigeria and carrying on business under a business name must be registered if-

- a) In the case of a firm, the name does not consist of the true surnames of all partners without any addition other than the true forenames of the individual partners or the initials of such forenames (section 814 (1) (a) e.g. "Okeke and Okafor"
- b) In the case of an individual, the name does not consist of his surname without any addition other than his true forenames or the initials thereof (section 814 (1) (b)).

- c) In the case of a company, the name does not consist of its corporate name without any addition (section 814 (1) (c)).

### **Exceptions**

Registration is not required in the following cases (section 814(2) (a) to (c)

- a) Where the addition indicates that the business is carried on in succession to a former owner of the business.
- b) Where two or more individual partners have the same surname and there is the addition of an "S" at the end of the surname.
- c) The business is carried on by a receiver or manager appointed by any court-

**Note:** It is generally accepted that "and" will not render name registrable if it joins surnames.

### **Note prohibited and restricted names under section 852.**

- a. **Minors** - The Registrar may refuse to register an individual or firm if the age of the individual or partner in a firm is less than 18 years (section 852 (3)).
- b. **Fraudulent Trade Practices**- The registrar shall refuse to register a name if he has irrefutable evidence that the individual, firm or company applying has previously been involved in fraudulent trade malpractices in local or international trade (section 852 (4)).

## **PROCEDURE FOR REGISTRATION**

Instruction to be taken in respect of the following

1. The Firm name or names
2. The general nature of the business
3. Full postal address of the principal place of business and of any branches.
4. The full names of the partners or individual proprietor, presence of minors to be noted.
5. Where the business is to be carried on as nominee, trustee or general agent, full particulars of the principals should be taken.
6. Date of commencement of business.

## **TIME FOR REGISTRATION**

Application for registration to be submitted to the Registrar within 28 days of commencement of business - (section 815 (1)).

## **PLACE OF REGISTRATION**

The application for registration will be lodged at the Business Names Registry in each state capital (s 813). It is now lodged electronically at CAC website.

## **PARTICULARS TO BE FURNISHED TO THE REGISTRAR**

1. Particulars of firm and proprietors:
  - a) The business name;
  - b) The general nature of business;
  - c) The full postal address of the principal place of business, and of each branch.

- d) Full particulars of individuals including nationality, age and sex;
  - e) The corporate name and registered office of a corporation or company if any.
  - f) Date of commencement of the business (section 815 (1)).
2. Certified passport photographs (2 copies) of an individual or individual in a firm consisting only of individuals (section 815 (2)).
  3. Firm or individual acting as nominee, trustee (section 815 (3)).
  4. Firm or individual acting as general agent in Nigeria of a foreign concern (section 815 (4))

## **SIGNATURE**

The Statement must be signed by the individual or each partner and in the case of company or corporation, by a director or the secretary (section 815 (5)). For dispensation with the signature of a partner or partners, see proviso to (section 815 (5)).

## **SIGNATURE OF MINOR**

To be additionally counter-signed by a magistrate, legal practitioner and police officer of or above the rank of Assistant Superintendent of Police - (section 815 (6)).

Note (i) need for illiterate jurat in the case of illiterate proprietor.

## **REGISTRATION**

- 1. Items to be submitted for Registration:**
  - i. Application or Statement in Form 1 (Firms) or Form individuals (2 copies).
  - ii. Two passport photographs of each individual section 574 (2)
  - iii. Tax Clearance Certificate of each individual or partner.
  - iv. Availability of Name Form Corporate Affairs Commission
  - v. Qualifying Certificate in case of professional partnerships.
2. Entry of business name in the register (section 816.)

Note: Addition to the business name in brackets in the register, the identification letters of the state of registration (section 816 (2)).

3. Registrar's duty on registration - See *Domingo versus The Queen* [1963] 1 ALL NL.R. 81).
4. Certificate of registration (section 817).

The certificate will contain as part of the business name, the identification letters of the state of registration (section 816 (2)).

The original of the certificate must be exhibited conspicuously in the principal place of business and certified copies at each branch office (section 817 (3) & (4))

## **EFFECTS OF REGISTRATION**

(1) Registration does not give legal personality to the business or association but merely apprises the public of

the true identity of the person(s) who trade under the name (see *Domingo versus The Queen* [1963] 1 ALL NL.R. 81).

(2) Registration gives priority to use of the name even against registered companies (section 852 (1) (d); section 41(e)).

(3) Registration will not be construed as authorising the use of the name if apart from such registration the use of the name would be prohibited

(4) Not proof of partnership - (see *Henshaw versus Roberts* [1966] NNLR 158) but raises a rebuttable presumption of the existence of partnership (*Nwankwo versus Nwankwo* (1995) 5 SCJ 44)

## **REGISTRATION OF CHANGES**

(other than particulars of the age of an individual)-within 28 days after the change. The notification may be in writing signed in the same manner as the statement required on registration and must be lodged at the office where registration was effected (section 818) (CAC/BN 05 – Notice of Change/Correction in Particulars of Proprietor/Partner).

Publication of true name in all trade catalogues, business letters, etc (section 820). Searches and Copies of Entries (section 820).

## **DEFAULT OF REGISTRATION**

1. Penal sanctions (section 815) (7) Civil Remedies
  - a. Bar to action to enforce partnership rights.  
See *Alowonle versus Bello* [1972] 1 All N.L.R. 41.

- b. Effect on Contracts: contracts entered into during default are not void but merely unenforceable and application may be made to a high court in which any such contract would otherwise be enforceable for relief from the disability section 821. The high court may grant relief if it is satisfied that the default was as a result of any of the following grounds:
  - i. That the default was accidental or due to inadvertence or some other sufficient cause; or
  - ii. That on other grounds, it is just and equitable to grant relief.

**Note:** The other party or parties to the contract are free to enforce their right against the party in default but the defaulter will be free to counter - claim or otherwise enforce his rights against that party in that action.

### **ANNUAL RETURN**

To be delivered not later than 30th June in each year except the calendar year in which the name was registered (section 822).

### **REMOVAL OF NAME FROM THE REGISTER**

On notice by proprietors within 3 months of cessation of business.

At the instance of the Registrar where he has reasonable cause to believe that a business is no longer being carried on (section 819 (3) and (4)).

## **CESSATION OF BUSINESS NAME AND DISSOLUTION OF PARTNERSHIP**

Business name and partnership can only be brought to an end by dissolution as opposed to winding up in the case of companies.

Upon cessation of its business, either by the death of a sole proprietor or by consents of the partners or formal dissolution by the courts, the business name is deemed dissolved and the name is removed from the Register of Business Names at the CAC. See Section 819 CAMA. Any of the partners should within 3 months notify the CAC of the dissolution and the fact that the firm has ceased to do business.

## **FILING OF NOTICE OF CESSATION OF BUSINESS**

Notification to the effect that the business name has ceased to carry on business to the Commission. The notification is by the proprietor or the personal representative of the proprietor or the personal representative of the proprietor in the case of death of the proprietor and it has to be within 3 months of such cessation. See Section 819 CAMA.

## **DISSOLUTION OF PARTNERSHIP**

Partnership can be dissolved:

- a) By act of the general partners
- b) By operation of law
- c) By the Court

Relevant Corporate Affairs Commission Forms under Part E of Companies and Allied matters Act:

- a. CAC/BN 01 – Application to Register Business Name
- b. CAC/BN 02 – Notice of Change in Principal Place of Business or Branch Address of Business Name
- c. CAC/BN 03 – Change of Name of Business Name
- d. CAC/BN 04 – Notice of Change in Object(s) of Business Name
- e. CAC/BN 05 – Notice of Change/Correction in Particulars of Proprietor/Partner
- f. Corporate Affairs Commission/BN/6
- g. CAC/BN 06 – Annual Return of Business Name

## **LIMITED PARTNERSHIP**

### **MEANING OF LIMITED PARTNERSHIP**

The term limited partnership means a business entity that consists of minimum of two persons and maximum of twenty persons of which at least one of the persons is a limited partner and the other persons are general partners.

The business of the limited partnership must be carried on in common by the partners with a view of making profit. A limited partner has limited liability for the debts of the firm up to the amount of his investment and does not take part in the management of the firm. While a general partner has unlimited liability for the debts of the firm and oversees the running of the firm.

## **DOCUMENTS REQUIRED FOR REGISTRATION OF THE LIMITED PARTNERSHIP**

- i. Availability and Reservation of Name Form;
- ii. Form CAC/LP 01 – Application to Register a Limited Partnership;
- iii. Partnership Agreement;
- iv. Recent passport photographs of all partners;
- v. Copy of recognised and valid photo identification that is: either data page of International Passport, Driver's License, National Identity Card, Voter's Card or Birth Certificate (in case of a minor) must be submitted for every individual partner; and
- vi. Evidence of payment of filing fee.

## **CONSTITUTION OF LIMITED PARTNERSHIP**

A limited partnership shall not consist of more than 20 persons.

A limited partnership shall consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons called limited partners - (Section 795).

## **PARTNERS IN LIMITED PARTNERSHIP**

Individual or body corporate is qualified to be partners in limited partnership provided the individual shall not become a partner of a limited partnership, if he is:

- i. of unsound mind and has been so found by a court in Nigeria or elsewhere; or
- ii. an un-discharged bankrupt - (Section 795)

## **REGISTRATION OF LIMITED PARTNERSHIP**

A partnership carrying on business as a limited partnership must be registered as limited partnership failing which, it will be deemed to be general partnership - (Section 797).

## **NAME OF LIMITED PARTNERSHIP**

The name of a limited partnership must end with the words "limited partnership" or the abbreviation "LP" - (Section 802).

## **RESERVATION OF NAME AND CHANGE OF NAME OF LIMITED PARTNERSHIP** See section 803 of CAMA.

## **APPLICATION FOR REGISTRATION OF LIMITED PARTNERSHIP**

See section 798 of CAMA.

Application for registration of the partnership is made using Form CAC/LP 01 – Application to Register a Limited Partnership and other registration documents namely:

- i. Availability and Reservation of Name Form;
- ii. Partnership Agreement;
- iii. Recent passport photographs of all partners;
- iv. Copy of recognised and valid photo identification that is: either data page of International Passport, Driver's License, National Identity Card, Voter's Card or Birth Certificate (in case of a minor) must be submitted for every individual partner; and

v. Evidence of payment of filing fee.

### **CERTIFICATE OF REGISTRATION**

Upon fulfilling the requirements of incorporation and delivering the registration documents to the Commission, CAC shall register the limited partnership and issue certificate of registration of the Limited Partnership. (Section 799).

### **REGISTRATION OF CHANGES IN PARTNERSHIP**

See section 800 of CAMA.

### **NOTICE OF CHANGE IN STATUS OF GENERAL PARTNER OR ASSIGNMENT OF SHARE OF LIMITED PARTNER**

A general partner can become a limited partner if such an arrangement is agreed upon by the other partners and a notice of the arrangement or transaction specifying the change from general partner to limited partner is filed with Corporate Affairs Commission within five days of the change -Section 801.

### **COMMISSION TO KEEP REGISTER**

Corporate Affairs Commission must keep at its registry in respect of limited partnership the following books:

- i. Register of limited partnership; and
- ii. Index of limited partnership. (Section 805).

## **MODIFICATION OF GENERAL LAW IN CASE OF LIMITED PARTNERSHIPS**

See section 806 of CAMA.

**Application of Part C** (Section 807).

**Law as to private partnerships to apply where not excluded by this Act.** (Section 808).

**Inspection of document.** (Section 809).

**Liability for false statement.** (Section 810).

## **Relevant Corporate Affairs Commission Forms under Part D of Companies and Allied matters Act**

- a. Form CAC/LP 01 – Application to Register a Limited Partnership
- b. Form CAC/LP 02 – Notice of Change in Principal Place of Business or Branch Address
- c. Form CAC/LP 03 – Change of Name of an LP
- d. Form CAC/LP 04 – Annual Return of LP
- e. Form CAC/LP 05 – Notice of Change/Correction in Particulars of Partner of an LP
- f. Form CAC/LP 06 – Notice of Change in Object(s) of an LP
- g. Form CAC/LP 07 – Notice of Cessation of an LP

## **LIMITED LIABILITY PARTNERSHIP**

### **TYPES OF PARTNERSHIP**

Different types of partnership that is now recognised under our law are:

- a) Limited Liability Partnership;
- b) Limited Partnership; and
- c) General Partnership.

## **MEANING OF LIMITED LIABILITY PARTNERSHIP**

Limited Liability Partnership means a business entity that consists of minimum of two partners and no maximum. It is a body corporate with legal personality separate from its members and can sue and be sued in its corporate name. It has perpetual succession that is; the life of the limited liability partnership is not affected by the demise, retirement, insolvency or withdrawal of any of the partners.

It combines characteristics of partnerships and corporations, particularly in the area of limited liability because all the partners have limited liability. That is, in event where the partnership is sued or indebted to some people, the liability of its partners would be limited only to the amount contributed by each partner during the formation of the partnership. See sections 746 & 748.

## **QUALIFICATION OF PARTNERS**

Individual or body corporate is qualified to be partner in limited liability partnership provided the individual shall not become a partner of a limited liability partnership, if he is:

- i. of unsound mind and has been so found by a court in Nigeria or elsewhere; or
- ii. an un-discharged bankrupt. (sections 747).

## **DESIGNATED PARTNER**

Designated partners are partners of limited liability partnership with additional responsibility from other partners which include: compliance of the limited

liability partnership with the provisions of Companies and Allied Matters Act like filing of any document; return; statement and other report under this Act and as may be specified in the limited liability partnership agreement. They are liable to penalties imposed on the firm for any contravention of the provisions of the Act.

At least two designated partners who are individuals and at least one of them shall be resident in Nigeria is a requirement for every limited liability partnership. If a firm's partners are all bodies corporate or has one or more partners as individuals and bodies corporate, it is required that at least two individuals who are partners of the firm or nominees of the bodies corporate shall act as designated partners. See sections 746 -752 of CAMA.

## **INCORPORATION DOCUMENTS OF LIMITED LIABILITY PARTNERSHIP**

- a) Availability and Reservation of Name Form;
- b) Form CAC/LLP 01 – Application to Register a Limited Liability Partnership;
- c) Partnership Agreement;
- d) Copy of recognised and valid photo identification that is: either data page of International Passport, Driver's License, National Identity Card, Voter's Card must be submitted for every individual partner; and
- e) Evidence of payment of filing fee - (section 753)

## **RESERVATION OF NAME**

See section 758 of CAMA

## **INCORPORATION OF LIMITED LIABILITY PARTNERSHIP**

Upon fulfilling the requirements of incorporation and delivering the incorporation documents to the Commission, CAC shall within 14 days of receiving the documents register the incorporation documents and issue certificate of incorporation of the LLP - (Section 754)

## **NAME OF LIMITED LIABILITY PARTNERSHIP**

See section 757 of CAMA.

## **EFFECT OF REGISTRATION OF LIMITED LIABILITY PARTNERSHIP**

See section 757 of CAMA.

- i. The certificate of registration shall be *prima facie* evidence that the limited liability partnership came into existence on the date of registration;
- ii. The limited liability partnership can sue and be sued in its name;
- iii. The limited liability partnership may acquire, own, hold and develop or dispose of property, whether movable or immovable, tangible or intangible;
- iv. The limited liability partnership if it decides to have a common seal may have one; and

- v. The limited liability partnership may do and suffer such other acts and things as bodies corporate may lawfully do and suffer.

## **REGISTERED OFFICE OF LIMITED LIABILITY PARTNERSHIP AND CHANGE THEREIN**

See section 755 of CAMA.

## **PUBLICATION OF NAME OF LIMITED LIABILITY PARTNERSHIP**

See section 760 OF CAMA

- i. The invoices, official correspondence and publications of the firm to bear the name, address of its principle office and registration number of the limited liability partnership; and a statement that it is registered as limited liability partnership; and
- ii. Display of the certificate of registration conspicuously in its principle place of business and in all its branches where it has branch offices.

## **ELIGIBILITY TO BE PARTNERS**

See section 761 of CAMA

## **RELATIONSHIP OF THE PARTNERS**

See section 762 of CAMA

## **CESSATION OF PARTNERSHIP INTEREST**

- i. By agreement with the other partners of the firm;
- ii. By giving 30 day notice in writing of his intention to resign as a partner of the firm to the

- other partners of the firm in the absence of agreement;
- iii. Upon the death of the partner;
  - iv. When a partner is declared to be of unsound mind by a competent court;
  - v. Where a partner has applied to be adjudged or declared as an insolvent; and
  - vi. Upon dissolution of the partnership.

## **REGISTRATION OF CHANGE IN PARTICULARS OF PARTNERS**

See section 764 of CAMA

## **PARTNER AS AGENT**

See section 765 of CAMA

## **EXTENT OF LIABILITY OF LIMITED LIABILITY PARTNERSHIP**

See section 766 of CAMA

## **UNLIMITED LIABILITY IN CASE OF FRAUD**

See section 769 of CAMA

## **FORM OF CONTRIBUTION BY PARTNERS**

See section 770 of CAMA

## **MAINTENANCE OF BOOKS OF ACCOUNTS, OTHER RECORDS AND AUDIT**

See section 772 of CAMA

- i. Register of members.
- ii. Books of account.

iii. Minutes Book.

### **ANNUAL RETURN**

Form CAC/LLP/ 07 – Annual Return of Limited Liability Partnership. This is used for filing of annual returns of the partnership within 60 days of closure of its financial year accompanied by evidence of filing fee. See section 773 of CAMA

### **ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS**

Unless otherwise provided in the limited liability partnership agreement, the rights of a partner to a share of the profits and losses of a limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part. See section 774 of CAMA

### **INVESTIGATION OF THE AFFAIRS OF LIMITED LIABILITY PARTNERSHIP**

The Commission when called upon to investigate any partnership or the Commission suo moto wants to investigate a partnership, it may appoint one or more competent persons as inspectors to investigate the affairs of the partnership and the inspector(s) shall make report to the Commission in such manner as the Commission may direct.

The application for investigation of the partnership must be made by at least one-fifth of the total number of the partners. The application shall be accompanied by evidence that the applicants have good reason for

requesting for the investigation. See section 773 of CAMA.

### **THOSE THAT MAY APPLY FOR INVESTIGATION OF LIMITED LIABILITY PARTNERSHIP**

- a) The court by its order;
- b) Corporate Affairs Commission on its own motion;
- c) At least one-fifth of the total number of partners; and
- d) The limited liability partnership itself.

### **GROUNDS FOR INVESTIGATION OF A LIMITED LIABILITY PARTNERSHIP**

- a) Where the Commission is of the opinion that the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose;
- b) Where the Commission is of the view that the business of the limited liability partnership is being or has been conducted in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose;
- c) Where the Commission believes that the affairs of the limited liability partnership are not being

- conducted in line with the provisions of CAMA;  
or
- d) On receipt of a report of the Commission or any other investigating or regulatory agency, the Commission is of the opinion that there are sufficient reasons to show that the affairs of the partnership ought to be investigated.

## **APPLICATION BY PARTNERS FOR INVESTIGATION**

See section 776 of CAMA

## **POWER OF INSPECTORS TO CARRY OUT INVESTIGATION INTO AFFAIRS OF RELATED ENTITIES**

See section 778 of CAMA

## **PRODUCTION OF DOCUMENTS AND EVIDENCE**

See section 779 of CAMA

## **SEIZURE OF DOCUMENTS BY INSPECTOR**

See section 780 of CAMA

## **INSPECTORS REPORT**

At the end of the investigation the inspector will make his report and the following are entitled to receive the report:

- a) The limited liability partnership (which is sent to at its registered office);

- b) Any other entity or person dealt with or related to the report; and
- c) On request and on payment of the prescribed fee, the Commission may if it deems fit, furnish a copy of the report to any person or entity related to or affected by the report. See section 781 of CAMA

## **USES OF THE INSPECTOR'S REPORT**

The uses of the inspector's report are as follow:

- i. Corporate Affairs Commission may institute civil proceedings in the name and on behalf of the limited liability partnership on the basis of the inspector's report, where it appears to the Commission that civil proceedings ought to be brought by the partnership in the public interest.
- ii. Where from the inspector's report a person appears to have been convicted of an offence for which he is criminally liable, the report shall be referred to the Attorney-General of the Federation. Where the Attorney-General of the Federation considers that the case referred to him is one in which a prosecution ought to be instituted, he shall direct action accordingly.
- iii. Where from the inspector's report, it appears to the Commission that proceedings ought, in the public interest, be brought by the partnership dealt with by the inspector's report for the recovery of damages, in respect of fraud, misfeasance or other misconduct in connection with the promotion or formation of the

- partnership or the management of its affairs, or for the recovery of any property of the partnership which has been misappropriated or wrongfully retained, it may refer the case to the Attorney-General of the Federation for his opinion as to the bringing of proceedings for that purpose in the name of the partnership. If proceedings are brought, all past and present designated partners and partners of the partnership, other than the defendants in the proceedings, must give to the Attorney-General of the Federation all assistance in connection with the proceedings.
- iv. Where it appears to the Commission from the inspector's report that it is desirable in the public interest that the partnership be wound up, the Commission may present a petition for it to be wound up if the court deems it just and equitable to do so, unless the partnership is already wound up by the court.
  - v. A copy of the inspector's report authenticated in such manner, as may be prescribed shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

## **EXPENSES OF INVESTIGATION**

See sections 764 - 786 of CAMA

## **FOREIGN LIMITED LIABILITY PARTNERSHIPS**

As a general rule, any foreign limited liability partnership coming into Nigeria to carry on business

must first register a limited liability partnership in Nigerian with the Commission - section 788(1). But there are exceptions to the general rule.

Foreign limited liability partnerships exempted under S. 788 (2) of CAMA and Rule 22 of Companies Regulation, 2020 are as follows:

- i. Limited liability partnership invited to Nigeria by or with the approval of the federal government to execute any specified individual project;
- ii. Limited liability partnership in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation;
- iii. Limited liability partnership owned by a foreign government and engaged solely in export promotion activities; and
- iv. An engineering and technical expert engaged on any individual specialist project under contract with any of the governments in the federation or any of their agencies or with any other body or person, where such contract has been approved by the federal government.

A limited liability partnership may be wound up either voluntary or by the court - Section 789. If it is winding up by the court, the application to the court is by way of petition - Section 786.

## **CIRCUMSTANCES THAT WILL WARRANT WINDING UP OF THE PARTNERSHIP BY THE COURT**

- i. Where all the partners decide that the limited liability partnership be so wound up by the court;
- ii. Where for a period of more than six months, the number of partners of the partnership falls below two;
- iii. Where the limited liability partnership is unable to pay its debts;
- iv. Where the partnership has acted against the interests of the sovereignty and integrity of Nigeria or against her security or public order;
- v. Where the partnership has made a default in filing with the Commission, the statement of account and solvency or annual return for any 10 consecutive financial years; or
- vi. Where the court is of the opinion that it is just and equitable that the limited liability partnership be wound up.

See section 790 of CAMA.

## **DISCLOSURE OF SIGNIFICANT CONTROL IN A LIMITED LIABILITY PARTNERSHIP**

Where a partner becomes a person with significant control over a limited liability partnership, he shall within 7 days of becoming such a person, indicate to the limited liability partnership in writing the particulars of such control. Upon a limited liability partnership receiving or being in possession of the information that

a partner has become a person with significant control, the partnership shall within 1 month from the receipt of the information or any change therein, notify Corporate Affairs Commission of that fact. See section 791 of CAMA

### **BUSINESS TRANSACTIONS OF PARTNER WITH LIMITED LIABILITY PARTNERSHIP**

A partner may lend money to and transact other business with the limited liability partnership and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner. See section 792 of CAMA.

### **POWER OF COMMISSION TO STRIKE DEFUNCT LIMITED LIABILITY PARTNERSHIP OFF REGISTER**

The Commission can strike out a defunct limited liability partnership off the register if the Commission has reasonable cause to believe that the partnership is not carrying on business or operation – section 793

### **POWER TO MAKE RULES**

The Commission is mandated to make rules or regulations in respect of fees, forms, duties or additional duties to be performed by the Commission and generally, the conduct and regulation of registration under this part and any matter incidental thereto – section 794

**RELEVANT CORPORATE AFFAIRS  
COMMISSION FORMS UNDER PART D OF  
COMPANIES AND ALLIED MATTERS ACT**

- a. Form CAC/LLP 01 – Application to Register a Limited Liability Partnership
- b. Form CAC/LLP 02 – Notice of Change in Registered Office or Head Office Address of LLP
- c. Form CAC/LLP 03 – Application of Change of Name of LLP
- d. Form CAC/LLP 04 – Notice of Change in Particulars of Partner of LLP
- e. Form CAC/LLP 05 – Appointment of Partner of LLP
- f. Form CAC/LLP 06 – Termination of Appointment of Partner of an LLP
- g. Form CAC/LLP 07 – Annual Return of LLP

## **CHAPTER EIGHTEEN**

### **NON-BUSINESS ORGANISATION: INCORPORATED TRUSTEES**

#### **ORIGIN**

Earlier registration was under the Land (Perpetual Succession) Act Cap 98 LN 1958, later under Part C of Companies and Allied matters Act 1990 and now under Part F of Companies and Allied Matters Act, 2020. Section 869 validates all previous registrations under Companies and Allied matters Act 1990 which has been repealed by section 869.

Importance - see section 823 (1) Companies and Allied Matters Act

#### **WHO MAY REGISTER?**

Two or more trustees appointed by any community of persons bound together by custom, kinship or nationality or any association established for educational, literary, scientific, social, development, cultural, sporting or charitable purpose - section 823 (1)

- 1) Religious Bodies
- 2) Clubs and Social cultural associations
- 3) Schools, foundations etc.

#### **PROCEDURE FOR REGISTRATION**

See generally section 825

1. All applications should be submitted to the Corporate Affairs Commission electronically. Form CAC/IT 01 –

Application to Register Incorporated Trustees must contain, among other things:-

- 1) The name of the proposed corporate body which must contain the words, "Incorporated Trustees of \_\_\_\_\_"
  - 2) Registered office address
  - 3) Publication details
  - 4) Aims and objects of the association
  - 5) Trustees details – trustee personal information, residential address and service address
  - 6) Secretary's details – personal details of secretary and service address
  - 7) Impression of common seal (if any)
  - 8) Enclosures
  - 9) Details of chairman
2. The applications must be accompanied by separate enclosures as follow:
- a) Form for availability and reservation of name
  - b) The rules of the applicant body incorporating its objects duly signed and dated
  - c) Impression or drawing of the proposed common seal of the applicant body (if any)
  - d) Duly signed copy of the extracts of minutes of the meeting where the trustees were appointed
  - e) A copy of the resolution adopting the special clause
  - f) Evidence of land ownership or an affidavit in lieu
  - g) Evidence of advertisement in 2 National Dailies
  - h) Sworn affidavit by each trustee (in the prescribed form) that they are not disqualified from acting as trustees under section 826 Companies and Allied

matters Act. (This new requirement replaces the cumbersome and expensive state (SSS) Report on each Trustee)

- i) Payment of the prescribed filling fee
- j) Letter authorising the person effecting registration of the applicant body to so act.

(See section 825)

**Note:**

1. The requirement of advertisement and objection section 828
2. The content of the constitution (or rules of the proposed corporate body (section 827)
3. Effect of registration and certificate section 830
4. Related associations section 831
5. Change of names or objects section 832
6. Alteration of provision of the constitution section 833
7. Replacement and appointment of additional trustees section 834
8. Council or committee or governing body section 836
9. Suspension of trustees and appointment of interim managers section 839.
10. Common Seal and contract section 840
11. Accounts of dissolved incorporated trustees section 842
12. Accounts which cease to be dormant before transfer section 843
13. Bi-annual statement of affairs section 845
14. Accounting records and statement of accounts section 846
15. Annual Returns section 848
16. Merger of associations section 849

17. Dissolution of a corporate body formed under this Act section 850

### **COMPARISON BETWEEN INCORPORATED TRUSTEES AND COMPANY LIMITED BY GUARANTEE**

- (1) Both objects are non-profit oriented.
- (2) Both bodies enjoy tax exemptions. See section 23 Companies Income Tax Act
- (3) Both bodies are administered by the Corporate Affairs Commission.
- (4) Both enjoy benefits of incorporation or winding up of these bodies, and upon settling all claims against it, all the remaining assets of the body shall be transferred to a body with similar object as the body dissolved. See (section 26(9) and section 850 (4)).

#### **However:**

- (i) While company limited by guarantee may do business, incorporated trustees may not. See. Section 26(1) and section 823 (1)
- (ii) Registration requirements differ i.e. company limited by guarantee requires approval of its memorandum of association by the A.G. (Federation) while incorporated trustee do not (section 26 (4) & (5)).
- (iii) Incorporated trustees must fulfill the advertisement requirement before registration but company limited by guarantee need not advertise. Section 828

## **DISSOLUTION OF INCORPORATED TRUSTEES**

Incorporated trustees can only be brought to an end by dissolution as opposed to winding up in the case of companies. The dissolution can be actualised on certain grounds by certain persons subject to a petition being filed at the federal high court. The interested persons who may be affected by the petition can be put on notice at the learning of the petition.

### **PETITION FOR DISSOLUTION OF INCORPORATED TRUSTEES**

The petition for dissolution can be brought by any of the following:

- a) The governing body or council
- b) One or more of the trustees
- c) Members of the association constituting not less than fifty percent of the membership
- d) The Commission

See Section 850(1) CAMA.

### **GROUNDS FOR DISSOLUTION OF INCORPORATED TRUSTEES**

- a) Realisation of the aims and objects for the establishment of the association, and no useful purpose will be served by further keeping the association alive.
- b) The association was formed to exist for a specific period and that period has expired and it is not useful to still keep the association alive.
- c) That the aims and object of the association have become illegal and contrary to public policy.

- d) That is just and equitable that the association be dissolved.
- e) The certificate of registration of the association has been withdrawn, cancelled or revoked by the Commission. See section 850(2) of CAMA.

In the event of dissolution of the association, and after the satisfaction of all its debts and liabilities, there remains any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body. Such beneficiary institutions shall be determined by the members of the association at or before the time of the dissolution. See section 850(4) CAMA.

If effect cannot be given to the provisions of section 850(4) CAMA, the remaining property shall be transferred to some charitable object. See also Section 850(5) CAMA.

Relevant Corporate Affairs Commission forms under Part F of Companies and Allied matters Act

- (1) CAC/IT 01 – Application to register Incorporated Trustees
- (2) CAC/IT 02 – Change of Name of Incorporated Trustees
- (3) CAC/IT 03 – Replacement/Appointment and Change in Particulars of Trustees
- (4) CAC/IT 04 – Annual Return for Incorporated Trustees

(5) CAC/IT 05 – Bi-annual Statement of Incorporated Trustees

CAC/IT 06 – Notice of Merger of Incorporated Trustees

CAC/IT 07 – Notice of Alteration of Constitution of Incorporated Trustees.

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