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KEY POINTS ON

NIGERIAN COMPANY LAW

OBOAGWINA **O. CALEB** ESQ

NIGERIAN COMPANY LAW KEY POINTS

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I sincerely cannot conclude this work without reference to my mentors: *LATE. Dr. Francis Julius Oniekoro ESQ (PHD), DR. Gabriel Omo- Arise ESQ (PHD), DR. Emmanuel Olowononi ESQ (PHD) and DR. Bukola Akinola ESQ (PHD).*

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OUR VISION

As the saying goes, "**Old ideas die hard**". Legal writing has been bad for a long time. For an entertaining and educational explanation, read Peter Tiersma's book, Legal Language (Tiersma, Legal Language (1999), which give a fascinating history of how we got to the present state.

As lawyers, what we do most is write. Abraham Lincoln said that "lawyers' time and advice are our stock in trade, but we express the advice in words". And we use our time in drafting, in communicating mostly by the written word. Sometimes, though, we fail to remember the first object of writing is to communicate. The first question in all writing is: For whom are you writing?

Most legal writing is atrocious. Fred Rodell, Dean of Yale Law School before most of us were born, had it right when he said, "There are two things wrong with most legal writing. One is style, the other is content."

Cases are selected from law report not because they are examples of good writing, or even clarity, but because they illustrate the precepts of law in that course. Even when edited, many of these cases are wordy, redundant, and confusing. If the exposure to indecipherable writing in university/law school were not bad enough, then the young lawyer would ventures forth into the "real world" of law practice.

Hence, avoid the use of unnecessary preambles which weaken or hide the point they introduce. Some examples are; it is important to add that . . ., it may be recalled that . . . In this regard it is of significance that . . . It is interesting to note that... etc. Eschew legalese. "Hereinafter," "aforesaid," and the like do not add anything but wordiness and detract from readability.

It is important not use two or three or four words to illustrate one word e.g. "devise and bequeath"; "grant, bargain, and sell"; "right, title, and interest"; "make, ordain, constitute, and appoint". This goofiness originated with the Norman Conquest, after which it was necessary to use both the English and French words so that all could understand. Most of us now understand plain English. A related tendency of us will likely want to use many words when one is more understandable. This should be discouraged.

I encourage you to strive to explain yourself in writing in a way that an average person can understand. ***The fewer the words, the more memorable the point,*** Short paragraphs give the reader a chance to pause and digest what has gone before. For these reason some few words have been stated down for appropriate correction;

BAD	**GOOD**
The means by which	How
Entered a contract to	Contracted
Filed a counterclaim	Counterclaimed
Filed a motion	Moved

Filed an application	Applied
Adequate number of	Enough
For the reason that	Because
In the event of	If
In light of the fact that	Because
Notwithstanding the fact that	Although
Notwithstanding	Despite
Cause of action	Claim
In order to	To
At this point in time	Now
Until such time as	Until
Whether or not	Whether (usually)
During the month of May	In May
By means of	By
As a consequence of	Because of
A distance of five miles	Five miles
At a later date	Later
Is of the opinion that	Believes
Effectuate	Cause
In violation of	Violates
Made a complaint	Complained
Utilise	Use
A period of a week	A week
Made application	Applied
Made provision	Provided
It is contended by plaintiff	Plaintiff contends
With regard to	About
In connection with	With
Performed a sea on	Searched
Each and every	Either one
Provide responses	Respond
Offer testimony	Testify
Make inquiry	Ask
Provide assistance	Help
Place a limitation upon	Limit
Make an examination of	Examine
Provide protection to	Protect
Reach a resolution	Resolve
Bears a significant resemblance	Resembles
Reveal the identity of	Identify
Makes mention of	Mentions
Are in compliance with	Comply
Make allegations	Allege
Was in conformity with	Conformed
To effect settlement	Settle

TESTIMONIALS

"I used the easy read books and it helped me cover each topic before each class, the sample questions and drafts are important and effective to my excellent results at the law school".

-Abdulhaleem Sunusi Ahmed ESQ (BAYERO UNIVERSITY KANO) (FIRST CLASS GRADUATE- NLS)

"EASY READ made my Nigerian Law school Experience very easy for me, especially with his voice note session online.

Deborah ESQ
(UNIVERSITY OF BENIN) (FIRST CLASS GRADUATE- NLS)

"I resumed late and didn't understand all that Nigerian Law School was about, until I got a copy of the Easy read Material and participated in his programs, which built my confidence and glad I made the Nigerian Bar at one sitting".

- Nguve Williams ESQ
(Second Class – Upper Division NLS and Best Cameroonian Graduate)

TABLE OF CONTENT

LIST OF ABBREVIATIONS

AGIS	Abuja Geographic Information Systems
ALL FWLR	All Federal Weekly Law Report
ALL NLR	All Nigeria Law Report
C of O	Certificate of Occupancy
CA	Conveyancing Act
CAMA	Companies and Allied Matters Act
CGT	Capital Gains Tax
CITA	Companies Income Tax Act
E A	Evidence Act
FCDA	Federal Capital Development Authority
FCT	Federal Capital Territory
FWLR	Federation Weekly Law Report
HCLSCPR	High Court of Lagos Civil Procedure Rules 2019
JCA	Justice of Court of Appeal
JSC	Justice of Supreme Court
LFN	Laws of the Federation of Nigeria
LLRL	Lagos Lands Registration Law
LPA	Legal Practitioners Act
LPDC	Legal Practitioner Disciplinary Committee
LTD	Limited
LUA	Land Use Act
NBA	Nigeria Bar Association
NLR	Nigeria Law Report
NSCC	Nigerian Supreme Court Cases
NWLR	Nigerian Weekly Law Report
PCL	Property and Conveyancing Law
RPC	Rules of Professional Conduct in the Legal Profession
RTL	Registration of Titles Law
SAN	Senior Advocate of Nigeria
SCMR	Supreme Court of Nigeria Monthly Reports
SCNJ	Supreme Court of Nigeria Judgment
SDA	Stamp Duties Act
VAT	Value Added Tax
WACA	West African Court of Appeal
WRN	Weekly Report of Nigeria

CHAPTER ONE

OVERVIEW AND HISTORY OF COMPANY LAW IN NIGERIA

1.1 INTRODUCTION

Company law is a type of law which gives specifications, legislation and directions on how Company, Limited liability partnership, Limited partnership, Business name and Incorporated trustees is to be formed, registered, incorporated, run, handled, administered, governed, controlled and financed.

1.2 HISTORY OF COMPANY LAW IN NIGERIA

The history of company law in Nigeria can be traced to the era of colonialism in Nigeria. The Company Ordinance of 1912 was the very first company law in Nigeria but it was only used and enforced in southern Nigeria; of which Lagos had to be the primary place and location to where it was enforced. The introduction of Company Ordinance 1912 came as a result of the need to regulate a law that will help to settle fierce and controversial company issues. Prior to this time, a lot of people were going to England to settle company cases legally in courts since there were no existing laws binding the administration, control, and management of firms and companies in Nigeria as of that time.

In 1917, the Company Ordinance of 1912 was amended and replaced with the Companies Amendment and Extension Act of 1917. This Act did not legislate for a particular region or section but it was enforced to be applied by the whole country.

In 1922, the two ordinances (the Company Ordinance of 1912 and the Companies' Amendment and Extension Act of 1917) were repealed and replaced with another new ordinance which was known as "Companies Ordinance of 1922".

The Companies Ordinance of 1922 was culled from the United Kingdom as it based on the United Nations Kingdom Companies Act. The Companies Ordinance of 1922 was later amended and modified successively in subsequent years (1929, 1941 and the year 1954).

By 1960, Nigeria had gotten her independence from Britain in the year, precisely on the 1st of October 1960. The independence of Nigeria ensured that Nigerians had freedom and liberty to choose her own leaders, freedom to be a sovereign nation that will handle her affairs interference from external forces, freedom and they were free to make their own laws, select her own ministers, select their

leaders, preside over their matters, amend every law which should be amended in the constitution or removed.

In 1968, a new company decree was enforced under the military government of Nigeria (Supreme Military Council) to replace the Companies Ordinance which was named "The 1968 Companies Act".

One of the achievements attained and made by the 1968 Companies Act is that it ensured effectiveness in the affairs of a company as the shareholders increased their participation in the administration of the company and a lot of directors became more accountable and influential in the company.

In 1990, the 'Companies and Allied Matters Decree of 1990" was promulgated latter known as the Companies and Allied Matters Act 1990. The notable innovations of the Company and Allied Matters Act were;

a) Establishment of the Corporate Affairs Commission.[1]
b) Requirement of at least two members in the formation of companies.[2]
c) Codification of common law principles such as ratification of pre-incorporation contracts, duties of promoters, majority rules and minority protection etc.
d) Provision of written resolution.[3]
e) Abolishing of non-voting shares.[4]
f) Repealing of the Land and Perpetual Secession Act and incorporated its content as part C of the Companies and Allied Matters Act 1990.

Currently, the recognised company law in Nigeria is the Companies and Allied Matters Act 2020. The notable innovations of the Company and Allied Matters Act are;

a) Single shareholder and Director Company to be known as a 'small private company'.[5]
b) Incorporation of new structures such as Limited liability partnership and Limited partnership.[6]
c) Electronic mode of filing documents to Corporate Affairs Commission.[7]
d) Electronic transfer of shares of company.[8]
e) Holding of company meetings electronically.[9]
f) Change in the share capital.[10]

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[1]Companies and Allied Matters Act 1990, s 1(1).
[2]Ibid s 18.
[3]Ibid s 234.
[4]Ibid s 116.
[5]Companies and Allied Matters Act 2020, s 18(2)
[6]Ibid ss 748 & 807.
[7]Ibid s 422(3)
[8]Ibid s 175.
[9]Note that the company that holds electronic meeting is a private company, provided that such meetings are conducted in accordance with the articles of the company. See section 240 (2) of the Companies and Allied Matters Act 2020.
[10]Their minimum issued share capital of a private company is now N100, 000, formerly it was N 10,000 and for Public company is now N 2,000,000 formerly it was N 500,000. See section 27 (2) of the Companies and Allied Matters Act 2020.

g) Introduction of company rescues processes such as; company administration, company voluntary arrangements and netting.[11]
h) Updating the insolvency test for companies.[12]

[11]Companies and Allied Matters Act 2020, ss 434, 549, 718.
[12]The test for insolvency (i.e., inability to pay debts as they fall due) has been increased from N2,000 to N200,000, to reflect present day realities. See section 572 (a) of the Companies and Allied Matters Act 2020.

CHAPTER TWO

NATURE OF COMPANY

2.1. INTRODUCTION:

A company is a business entity set up to make profit and once incorporated has a separate identity from those who are its members or operate it.
According to Chief Justice Marshall of USA;

> *"A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of law, it possesses only those properties which the character of its creation confers upon it either expressly or as incidental to its very existence".*

2.2 CLASS OF COMPANIES:

Companies can be classified into four (4);

1. Incorporated company
2. Statutory company
3. Exempted company
4. Royal Niger company

2.2.1 INCORPORATED COMPANY:

These are companies that are incorporated with Corporate Affairs Commission in line with the provision of the Companies and allied matters act 2020 and upon incorporation it has a separate identity from those who are its members.[1] These company are also known as registered company.

2.2.2 STATUTORY COMPANY:

These are companies established by the Act of the National Assembly. These companies are not incorporated with Corporate Affairs Commission though has corporate personality upon its creation. Example of this company is Nigerian National Petroleum Company which was created by Nigerian National Petroleum Corporation Act.[2] Although with the enactment of Petroleum Industrial Act 2021, the Nigerian National Petroleum Company is now incorporated with Corporate Affairs Commission as a private company and must comply with the provision of Companies and allied matters Act 2020.

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[1] *Salomon v Salomon* [1897] AC 22.
[2] Cap N 123 LFN 2004.

2.2.3 EXEMPTED COMPANY:

These are companies that are not registered with Corporate Affairs Commission but have corporate personality as a result of the grant of exemption by the Federal government (Minister of Trade).[3] Once the company is granted exemption is has the status of unregistered company.

2.2.4 ROYAL NIGER COMPANY:

The Royal Niger Company was a British chartered company, active from 1886 through 1899 in the territory bordering the Niger and Benue Rivers in contemporary Nigeria. This company was formed before the enactment of the Companies and Allied Matters Act.

2.3 CHARACTERISTICS OF A COMPANY:

Once a company is formed or incorporated it becomes a corporate entity (corporate personality principle) and possess the following character;

1. It has a Separate Legal Entity (Legal Personality)
2. It is seen as an artificial person.
3. It members liability are Limited.
4. It has Perpetual Succession.
5. It can own its Separate Property other than that of members.
6. It has the capacity to Sue and Be Sued.
7. It must possess a Common Seal.
8. It can engage in any Contract.

[3]Companies and Allied Matters Act 2020, s 80.

CHAPTER THREE

CORPORATE PERSONALITY PRINCIPLES

3.1 INTRODUCTION:

A company by law is a different person from its subscribers to the memorandum. It involves the principles of corporate personality which include perpetual succession, proprietary interest, debts and the process of suing and being sued.[1]. A company with corporate personality is an independent legal existence separate from its shareholders, directors, officers and creators. This is famously known as the veil of incorporation.

3.2 PRINCIPLES OF CORPORATE PERSONALITY:

Once a company is formed or incorporated it becomes a corporate entity (corporate personality principle) and possess the following;

1. **Separate Legal Entity (Legal Personality):** A company is perceived to be a distinct legal entity once it is incorporated under the Companies and Allied Matters Act; the company is vested with a corporate personality which does not depend on its members. Therefore it is capable of owning property, incurring debts, borrowing money, having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual. Thus, 'incorporation' is the act of forming a legal corporation as a juristic person. A juristic person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law.[2]

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[1] *Foss v Hartbottle* (1843) 2 Hare 461, 67 ER 189.

[2] (n1); The principal of separate of legal entity was explained and emphasized in the famous case of Salomon v Salomon & Co. Ltd; in this case; Mr. Salomon, the owner of a very prosperous shoe business, sold his business for the sum of $ 39,000 to Soloman and Co. Ltd. which consisted of Solomon himself, his wife, his daughter and his four sons. The purchase consideration was paid by the company by allotment of & 20,000 shares and $ 10,000 debentures and the balance in cash to Mr. Soloman. The debentures carried a floating charge on the assets of the company. One share of $ 1 each was subscribed by the remaining six members of his family. Soloman and his two sons became the directors of this company. Soloman was the managing director. After a short duration, the company went into liquidation. At that time the statement of affairs' was like this: Assets: $ 6000, liabilities: Soloman as debenture holder $ 10,000 and unsecured creditors: $ 7,000. Thus, its assets were running short of its liabilities by $11,000. The unsecured creditors claimed a priority over the debenture holder on the ground that company and Soloman were one and the same person. But the House of Lords held that the existence of a company is quite independent and distinct from its members and that the assets of the company must be utilized in payment of the debentures first in priority to unsecured creditors. Salomon's case established beyond doubt that in law a registered company is an entity distinct from its members, even if the person holds all the shares in the company.

2. **Company as an artificial person:** A Company is an artificial person created by law. It is not a human being but it acts through human beings. It is considered as a legal person who can enter into contracts, possess properties in its own name, sue and can be sued by others.[3]

3. **Limited liability:** Limited liability means the company's debts are its own and members are protected from personal liability unless they are negligent or gave personal guarantees. A company may be limited by shares or by guarantee. In a company limited by shares, the liability of members is limited to the unpaid value of the shares. If the shares are fully paid i.e. if the amount has already been fully paid to the company, then the member need not contribute any more towards the company's debts. If the amount has not been fully paid, then the member's liability is limited to the unpaid amount. In the case of a company limited by guarantee, the liability of members is limited to a specified amount of the guarantee mentioned in the memorandum.

4. **Perpetual Succession:** Perpetual succession means that the membership of a company may keep changing from time to time, but that shall not affect the continuity of the company. Its life does not depend upon the death, insolvency or retirement of any or all shareholder (s) or director (s).

5. **Separate Property**: As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property. The company being a juristic person in whom all its property is acquire is the owner of such property.

6. **Shares:** In a public company, shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles. However, the articles shall prescribe the manner in which such transfer of shares shall be made but absolute restrictions on the rights of members to transfer their shares shall be ultra vires. However, in the case of a private company, the article of association may restrict the right of transfer of shares.[4]

7. **Capacity to Sue and Be Sued:** A company being a body corporate can sue and be sued in its own name. All legal proceedings against the company are to be instituted in its name. Similarly, the company may bring an action against anyone in its own name. A company's right to sue arises when some loss is caused to the company, i.e. to the property or the personality of the company.[5] A company, as a person distinct from its members, may even sue one of its own members.[6]

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[4]Companies and Allied Matters Act 2020, s 22 (2).
[5]*Foss v Hartbottle* (1843) 2 Hare 461, 67 ER 189.
[6]*Kate Enterprises v Daewoo* [1985] 2 NSCC 958.

8. **Common Seal:** A company cannot sign documents by itself. It acts through natural persons who are called its directors. A common seal is used with the name of the company engraved on it as a substitute of its signature. To be legally binding on the company, a document has to carry the company seal on it. Although, a company (under the New CAMA) may execute a document or deed without affixing a common seal on the document if the document is signed by the any of the following persons on behalf of the company;
    a. A director of the company and the secretary of the company;[7]
    b. At least two directors of the company ; or
    c. A director of the company in the presence of at least one witness who shall attest the signature.

Note, the document or deed signed on behalf of the company in the circumstances above, has the same effect as if the document was executed under the common seal of the company.[8]

9. **Contractual rights:** A company, being a legal entity different from its members, can enter into contracts for the conduct of the business in its own name.

10. **Limitation of Action:** A company cannot go beyond the power stated in its Memorandum of Association. The Memorandum of Association of the company regulates the powers and fixes the objects of the company and provides the edifice upon which the entire structure of the company rests.

3.3 LIFTING THE VEIL OF INCORPORATION:

Company and its members are protected by the veil of incorporation, and where the veil of incorporation leads to injustice, the court can decide to lift the corporate veil. Below are main instances of lifting the corporate veil;

1. Where the membership of the company drops below two (2).[9]
2. Where the company is involved in fraudulent trading.
3. Improper use of the company name.
4. Where the number of directors drops below two (2).
5. Misrepresentation in the company prospectus.
6. Where the company acts ultra vires its powers stated in its articles of association.

3.4 CORPORATE CRIMINAL LIABILITY:

Corporate crimes are defined as illegal acts, omissions or commissions by corporate organisations, social or legal entities or by corporate officials or employees acting in accordance with the organisation's operational objectives or standards, operating procedures and cultural norms, intended to benefit the corporations themselves.[10]

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[7]Companies and Allied Matters Act 2020, s 102 (2).
[8]Ibid s 102 (3).
[9]Ibid s 18 (1).
[10]Lederman, E. (2001). 'Models for Imposing Corporate Criminal Liability: From Adaptation and Imitation towards Aggregation and Search for Self-Identity'. Buffalo Criminal Law Review, 4, 661-666.

In Nigeria, the liability of a corporation under criminal law is provided for in various Nigerian legislations such as the Companies and Allied Matters Act, The Investment and Securities Act and in the regulatory filings of the Security and Exchange Commission. Although, the Criminal Code, a key statute that sets out crimes in Nigeria, makes no special provisions concerning the criminal liability of companies but it is evident from case law that a company can be prosecuted for crimes either alone or alongside their agents, officers and directors. In *Abacha v Attorney General of the Federation*,[11] when the court was called upon to determine whether a company can be prosecuted for a crime, the court emphatically held that a company can be prosecuted as if it is a natural person. Corporate *mens rea* is said to include corporate intent, knowledge and recklessness.

The first statutory intervention for corporate criminal liability for the conduct of corporate organs, officers and agents in Nigeria was in 1990. The Companies and Allied Matters Act was promulgated and section 65 provides thus:

> *...Any act of the members in a general meeting of the board of directors or of a managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person...*

Also the Nigerian Criminal Code in its interpretation section describes criminal responsibility as 'liability of punishment for an offence'.[12] It also defines an offence in the said interpretation section as 'an act or omission which renders the person doing the act or making the omission liable to punishment under any Act or Law.[13] Furthermore, both the criminal Code and the Penal Code included corporations in the definition of persons.[14] In a similar vein, the Interpretation Act also provides that a person includes persons corporate or unincorporated.[15] It can thus be deduced that companies in Nigeria can be held liable and prosecuted for criminal offences occasioned by its agents.[16]

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[11][2014] 18 NWLR (part 1438) 21.
[12]Criminal Code Act LFN 2010, Cap C38.
[13]Ibid.
[14]Special provisions are made for the criminal procedure applicable to corporations in both statutes. See Criminal Procedure Code, part VIII Chap XXVII; Criminal Procedure Act, Chap 11 part 51 and Administration of Criminal Justice Act 2015, part 47.
[15]Interpretation Act Cap I 23 LFN 2010, s 18(1).
[16]In *R v ZIK Press* [1947] 12 WACA 202 a corporation was found guilty of the offence of contravening section 51(1) (c) of the Nigerian criminal code; There has been a list of other statutes recognising a variety of crimes which may be committed by corporations and which proffer different penalties. Such statutes include: The Federal Environmental Protection Act, (FEPA), The National Drug Law Enforcement Agency Act, Harmful Waste (Special Criminal Provisions) Act, Food, Drugs and Related Products (Registration) Act, Trade Malpractices (miscellaneous offences) Act, the Companies Income Tax Act, and Money Laundering Act. Others are the Investment and Securities Act, Corrupt Practices and Other Related Offences Act, the Economic and Financial Crimes Commission Act, the Failed Banks (Recovery of Debt) and Financial Malpractice in Banks Act, the Environmental Protection and Waste Management Agency, and the Consumer Protection Council Act. These statutes were enacted to promote the social, economic and well-being of the Nigerians.

CHAPTER FOUR

REGULATION OF COMPANIES IN NIGERIA

4.1 INTRODUCTION:

There are various regulatory bodies regulating companies in Nigeria, namely;

1. Corporate Affairs Commission
2. Securities and Exchange Commission
3. Investment & Securities Tribunal
4. Nigerian Stock Exchange
5. Central Bank of Nigeria
6. National Insurance Commission
7. Federal Inland Revenue Service
8. Federal Competition and Consumer Protection Commission
9. Nigerian Investment Promotion Commission
10. Nigerian Communication Commission
11. National Agency for Food and Drug Administration and Control
12. Standard Organization of Nigeria
13. National Office for Technology Acquisition and Promotion
14. Federal High Court
15. Asset Management Corporation of Nigeria
16. National Industrial Court
17. Nigerian Deposit Insurance Commission
18. National Pension Commission
19. National Information Technology Development Agency
20. Nigerian Ports Authority
21. National Tourism Development Corporation
22. Economic and Financial Crimes Commission

4.2 ESTABLISHMENT OF THE CORPORATE AFFAIRS COMMISSION:

The corporate affairs commission is a corporate body established by the Companies and Allied Matters Act 1990 by section 1. It is a body corporate which can sue and be sued in its corporate name. It head quarter is in Abuja, while it branches are established in all the states of the federation.

4.2.1 FUNCTIONS OF THE CORPORATE AFFAIRS COMMISSION:

The functions of the Corporate Affairs Commission shall be performed through the Governing Board of the Commission.[1] The functions of the commission are:[2]

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[1] Companies and Allied Matters Act 2020, s 2.
[2] *Ibid* s 8.

1. Administer the Act, including the registration, regulation and supervision of the following:
   a) The formation, incorporation, management, striking off and winding up of companies, Limited Liability Partnerships and Limited Partnerships.
   b) The formation, incorporation, management and removal of business names from the register, and
   c) The formation, incorporation, management and dissolution of incorporated trustees.

2. Establishment and maintenance of Companies Registry and offices in all the states of the Federation.
3. Investigation into the affairs of any company where the interest of the shareholders and the public so demand.
4. Other functions as may be specified by any Act or enactment for giving full effect to the provisions of this Act.

4.3 ESTABLISHMENT OF THE SECURITIES AND EXCHANGE COMMISSION:

This body was established by the then Securities and Exchange Commission's Act, which was later repealed and replaced with the Investments and Securities Act 2007. It is a body corporate which can sue and be sued in its corporate name. Formerly they were vested with the regulation of merger between companies, now such regulation is done by Federal Competition and Consumer Protection Commission.

4.3.1 FUNCTIONS OF THE SECURITIES AND EXCHANGE COMMISSION:

The functions of the Securities and Exchange Commission are;[3]

1. Levying fees, penalties and administrative costs of proceedings or other charges on any person in relation to investment and securities business in Nigeria in accordance with the provisions of this Act;
2. Intervening in the management and control of capital market operators which it considers failed, failing or in crisis, including entering into the premises and doing whatsoever the Commission deems necessary for the protection of investors;
3. Freezing the assets (including bank accounts) of any person whose assets were derived from the violation of this Act, or any securities law or regulation in Nigeria or other jurisdictions, in furtherance of its role of protecting the integrity of the securities market (after seeking a court order to that effect).
4. Entering and sealing up the premises of persons illegally carrying on capital market operations;
5. Public companies' securities registration.

[3] Investments and Securities Act 2007, s 13.

4.4 ESTABLISHMENT OF NIGERIAN INVESTMENTS PROMOTION COMMISSION:

This commission is a Federal Government Agency established to encourage, promote, and coordinate investments in Nigeria. It was established in 1995 as a body corporate with perpetual succession under the **NIPC ACT No. 16 of 1995**. This commission was set up to eliminate barrier for foreign investors and allow for free investment into the country.

4.4.1 FUNCTIONS OF NIGERIAN INVESTMENTS PROMOTION COMMISSION:

1. To project Nigeria as a safe country to invest in and prosper.
2. To highlight investment opportunities in Nigeria.
3. To identify Nigerians who will invest in these opportunities.
4. To empower Nigerians to invest.
5. To register and keep records of all enterprises as applicable; etc.

4.5 FUNCTION OF CENTRAL SECURITIES CLEARING SYSTEM:

1. It is a depository for the shares of the quoted companies on the Nigerian Stock Exchange, that is, shareholding certificates of individual shareholders are captured into the depository, which maintains a record of them.
2. Dematerialization of shares: Since the shareholdings have been uploaded into electronic records, share transactions are expedited.

4.6 FUNCTIONS OF THE NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION COMMISSION (NOTAP):

The functions of the National Office for Technology Acquisition and Promotion Commissions are;[4]

1. Promoting investments of foreign technology in and outside Nigeria through effective promotional means;
2. Assisting incoming and existing investors by providing support services; and
3. Registering contracts and agreements that are registrable under the Act.
4. Issuance of Certificates of Registration.
5. Monitoring continuously the execution of contracts and agreements so registered under it.

Note that NOTAP may refuse the registration of foreign technology on the following grounds;

1. Obsolete technology is not allowed and would not be registered.
2. Where the technology already exists in Nigeria.
3. When the price or other valuable consideration is not commensurate with the technology.
4. Where limitations are imposed on technological research or development by the transferee.

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[3] National Office for Technology Acquisition and Promotion Act Cap N62 LFN 2004, ss 4(d) & 6(1).

4.7 FUNCTIONS OF THE NIGERIAN STOCK EXCHANGE:

1. It is a self-regulatory organisation.
2. It provides a trading floor for the sale and purchase of securities of public quoted companies.
3. It is responsible for the listing and delisting of public companies, and for general discipline on the floor of the exchange.
4. It publishes periodic reports on market capitalisation and all share indexes.
5. It regulates secondary market operations.
6. Any listed or quoted public company that intends to merge must notify it.
7. It admits "new shares" to Daily Official List and de-lists "scheme shares" of dissolved companies.

4.8 FUNCTIONS OF THE ASSET MANAGEMENT CORPORATION OF NIGERIA:

The Asset Management Corporation of Nigeria engages in the following:

1. Acquires eligible bank assets from eligible financial institutions.
2. Purchases or otherwise invests in eligible equities
3. Holds, manages, realizes and disposes of eligible bank assets
4. Pays coupons on, and redeems at maturity, bonds and debt securities issued by the Corporation as consideration for the acquisition of eligible bank assets.
5. Performs such other functions, directly related to the management or the realisation of eligible bank assets that the Corporation has acquired.

4.9 FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION:

1. The Chairman and other members are appointed from 6 geopolitical zones by the president.
2. The commission is duly composed of 8 members consisting of a chairman, a chief executive who is the executive vice chairman, 2 executive commissioners', 4 non- executive commissioners.
3. The commission is a juristic person having a common seal
4. Executive vice chairman shall see to the day to day affairs of the commission.
5. The commission shall initiate broad based policies and review economic activities in Nigeria to identify anti-competitive, anti-consumer protection and restrictive practices which may adversely affect the economic interest of consumers.
6. Report annually on market practices and the implications for consumer choice and competition in the consumer market.
7. Regulate and seek ways and means of removing or eliminating from the market, hazardous goods and services, including emission, untested, controversial, emerging or new technologies, products or devices.
8. Resolve disputes or complaints, issue directives and apply sanctions where necessary.
9. Publish, from time to time, list of goods and services whose consumption and sale have been banned.

10. Advise the Federal Government generally on national policies and matters pertaining to all goods and services and on the determination of national norms and standards relating to competition and consumers protection.[5]

4.10 ONE STOP INVESTMENT CENTRE:

One Stop Investment Centre is a concept that is meant to facilitate and encourage investment whereby relevant government agencies are brought to one location coordinated and streamlined to provide prompt, efficient, and transparent services to investors i.e. it is established to simplify and shorten procedures and guidelines for issuance of business approvals, permits, and authorisations thereby removing bottlenecks faced by investors in establishing and running businesses.

4.10.1 CHECKLIST OF REGULATORY AGENCIES OPERATING AT OSIC AND THEIR FUNCTIONS:

S/N.	Agency	Functions/Role
1.	Nigerian Investment Promotion Commission (NIPC)	Registration of Foreign Investments, Issuance of Business Permits, Complaint Management, Linkages with NIPC Departments, and other Government Agencies, Country -wide liaison with the 36 States on investment matters etc.
2.	Corporate Affairs Commission (CAC)	Name & corporate searches, Company Incorporation.
3.	Nigeria Immigration Service (NIS)	Expatriate Quota Positions, Regularization of permanent work permits, other immigration facilities.
4.	Nigeria Customs Service (NCS)	Issuance of import & export guidelines, procedure for citing facilitation and general information of fiscal policyissues.
5.	Federal Inland Revenue Service (FIRS)	Tax registration, payment of stamp duties, issuance of tax clearance certificates, and issuance of tax forms.
6.	National Office for Technology Acquisition Promotion (NOTAP)	Registration of contract agreements dealing with transfer/acquisition of technology, approvals/licenses for technology transfer, patents and franchises etc.
7.	National Agency for Food & Drug Administration & Control (NAFDAC)	Registration of regulated products, issuance of export certificates, authorization to import unregistered food and drug products.

[5]FFederal Competition and Consumer Protection 2019, s 17.

8.	Standard Organization of Nigeria (SON)	Facilitates all aspects of standardization activities, approvals or permits for use of standards.
9.	Federal Ministry of Solid Minerals Development	Formation Exploration licenses, mining leases and information and guidelines on investing in the solid minerals sector.
10.	National Bureau of Statistics	Statistical data on the Nigeria economy.
11.	Ministry of the Federal Capital Territory (FCT)	Land matters in investment projects and general information
12.	Federal Ministry of Finance	Administration of industrial incentives, tariff administration and general information and guidelines on fiscal policy.
13.	Central Bank of Nigeria (CBN)	Provision of information and technical advice on the Nigerian, Banking and Financial system, guidelines on correspondent banking and funds transfer, including capital importation.

CHAPTER FIVE

CHOICE /FORMATION OF BUSINESS AND NON- BUSINESS ORGANISATION

5.1 INTRODUCTION:

The choice of business and non- business organisations are usually obtained from clients during client interviews. These choices have been predetermined by the provisions of the Companies and Allied Matters Act (CAMA). Under CAMA, there are five (5) parts that determine the available choices of business/ non-business organizations, namely;

1. PART B – Companies.
2. PART C - Limited Liability Partnership.
3. PART D - Limited Partnership.
4. PART E - Business name.
5. PART F - Incorporated trustees.

5.2 PART B – COMPANIES:

Generally, companies are set up by at least two (2) juristic persons.[1] However, a private company may be set up by one person, in which case, such company will be considered a small company.[2]

Note: The following persons are not eligible to join in the formation of a company because they are 'non-juristic persons', and they include;[3]

a) Infants (persons below 18 years).
b) Persons of unsound mind.
c) An undischarged bankrupt.
d) A director that is disqualified.[4]
e) Companies undergoing liquidation.[5]

5.2.1 TYPES OF COMPANIES:

There are six (6) types of companies, namely;[6]

1. Private company limited by shares.
2. Public company limited by shares.
3. Public company limited by guarantee.
4. Private company limited by guarantee.

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[1] Companies and Allied Matters Act 2020, s 18.
[2] *Ibid* s 18(2).
[3] *Ibid* s 20(1).
[4] *Ibid* ss 281 & 283.
[5] *Ibid* s 20(3).
[6] *Ibid* s 21.

5. Private unlimited company.
6. Public unlimited company.

5.2.2 NAMES OF COMPANY:

The Memorandum of Association of the company should specify the name, along with the type of company that is being operated. The options available to them are;[7]

1. Private company limited by shares (LTD or Limited).
2. Public company limited by shares (PLC)
3. Company limited by guarantee (LTD/GTE)
4. Unlimited company (UNLTD)

5.2.3 PRIVATE COMPANY LIMITED BY SHARES (LTD or LIMITED):

1. Their membership is made up of a minimum of two (2) members, and a maximum of fifty (50) members, except for a small private company which may have a minimum number of one (1).[8]
2. They are business organizations and they also make profit.
3. Their minimum issued share capital is N100, 000.[9]
4. They do not hold statutory meetings nor do they file statutory reports.
5. Unless provided in its articles, a private company may place a restriction on the transfer of shares.[10]
6. Their directors do not suffer compulsory retirement (70 years and above).
7. Their shares are not offered to the public by way of prospectus (invitation to the public), instead, obtaining shares from private companies is done by private placement.[11]
8. Their secretaries need not be professionally certified before appointment. However, for a small private company the appointment of a company secretary is not necessary.[12]
9. There is no special procedure for removal of a company secretary
10. Private companies do not engage in takeovers as a restructuring option.
11. They end with the word Ltd. or Limited

5.2.4 PUBLIC COMPANY LIMITED BY SHARES (PLC):

1. Their membership is a minimum of two (2) members, with no maximum number.
2. They are business organizations and they make profits.
3. Their minimum issued share capital is N2, 000, 000.[13]
4. They must hold statutory meetings and file statutory reports. Failure to do so will amount to winding up.[14]

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[7] *Ibid* s 29 (1-5).
[8] *Ibid* s 22(3).
[9] *Ibid* s 27(2).
[10] *Ibid* s 22(2).
[11] *Ibid* s 22(5).
[12] *Ibid* s 330(1).
[13] *Ibid* (n 10).
[14] *Ibid* sss 235,236 & 567.

5. Directors of this type of company are compelled to retire at the age of 70 and those above 70 can only participate in re-election upon the disclosure of their age to members at the general meeting.[15]
6. They can offer their shares to the public by way of prospectus.

NB: For this to be possible, they must be registered with the Nigeria Stock Exchange (NSE) and obtain the status of a QUOTED or LISTED company. Public companies not registered with the NSE are called UNQUOTED or UNLISTED companies and can only offer their shares by private placement.

7. The secretary of this type of company must be professionally certified before their appointment.
8. There is a specified procedure for the removal of company secretaries.[16]
9. They engage in takeover bids.
10. Their names end with the word PLC.

5.2.5 COMPANIES LIMITED BY GUARANTEE:

1. They are set up to promote the following agendas; promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects.[17]
2. The income and properties of the company are to be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company.[18]
3. They are the only organization allowed to use the word "CHAMBER OF COMMERCE"[19] as part of their name.
4. They are exempted from paying tax.
5. The Attorney General of the Federation shall, within 30 days, approve the Memorandum of the Company Limited by Guarantee. Where he fails to do so, the promoters of the company shall advertise in three (3) national dailies, and if no objection is made within 28 days, the commission shall register the company and issue a certificate of incorporation[20] (there would be no need for the approval of the Attorney General of the Federation).
6. Upon dissolution, members are entitled to make a contribution of at least N100, 000 to settle the debts of the company (if any).[21]
7. Upon dissolution, their assets should be transferred to bodies with similar objectives.
8. They do not have share capital.
9. The number of people forming it must be clearly stated in their article.
10. There is no automatic right to proxy attendance at a general meeting, unless it is expressly stated in the article.[22]

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[15] *Ibid* ss 278 & 282.
[16] *Ibid* s 332.
[17] *Ibid* s 26.
[18] *Ibid* (n 18).
[19] *Ibid* s 852.
[20] *Ibid* s 26 (5-10).
[21] *Ibid* s 26 (12).
[22] *Ibid* s 254.

5.2.6 UNLIMITED COMPANY:

1. The memorandum and articles of association will provide for unlimited liability for its members.[23]
2. The members answer to all the claims against the company especially at winding up.
3. Members share the liability incurred by the company.
4. The company must have capital and not by guarantee.

5.3 PART C - LIMITED LIABILITY PARTNERSHIP (LLP):

This is a partnership in which some or all the partners have limited liability, that is, each partner is not responsible or liable for another partner's misconduct or negligence.

A Limited Liability Partnership is a body corporate with legal personality separate from its members. It is a hybrid business form that infuses two types of business; a partnership and a limited liability company.[24] It is setup with at least two juristic persons (partners).[25] A limited liability partnership shall have perpetual succession.[26]

Note: The following persons are not eligible to join in the formation of a limited liability partnership;[27]

1. A person of unsound mind who has been so found by a court in Nigeria or elsewhere.
2. An undischarged bankrupt.

5.3.1 FEATURES OF A LIMITED LIABILITY PARTNERSHIP:

1. All LLPs must be registered with the Corporate Affairs Commission in the form prescribed by the commission, in order to be given effect under the law.
2. After registration, the business becomes a legal entity separate from its partners, which may sue and be sued.
3. Partners are agents of the LLP and not of the other partners and cannot be liable for the wrongful actions of other partners.
4. The life of the LLP is not affected by the demise, retirement, insolvency or withdrawal of any of the partners.
5. LLPs must be registered with at least two designated partners (One of whom must be resident in Nigeria).[28]
6. LLPs are regulated by an agreement signed by all the partners.
7. Foreign companies can carry on business as LLPs as long as they are registered in the manner prescribed by the Act.[29]
8. Every limited liability partnership shall have the words, "limited liability partnership" or the acronym, "LLP" as the last words of its name.[30]

[23] *Ibid* s 25.
[24] Nexia, 'CAMA 2020 and the introduction of limited liability Partnership' [1st September 2020] https://nexianigeria.com/cama-2020-and-the-introduction-of-limited-liabiity-partnersip/ accessed12 July 2021.
[25] Companies and Allied Matters Act 2020, s 748.
[26] *Ibid* s 746 (2).
[27] *Ibid* s 747.
[28] *Ibid* s 749 (1).
[29] *Ibid* s 788 (1).
[30] *Ibid* s 757.

5.4 PART D- LIMITED PARTNERSHIP:

A limited partnership (LP) is a partnership made up of two or more partners. These partners can be classified as general partners and limited partners. A General partner oversees and runs the business, while limited partners do not partake in managing the business. Note that the general partner of a limited partnership has unlimited liability for the debt, and limited partners have limited liability up to the amount of their investment.[31] A limited partnership shall have perpetual succession. [32]

Note: The following persons are not eligible to join in the formation of a limited partnership;[33]

1. An infant.[34]
2. A person of unsound mind who has been so found by a court in Nigeria or elsewhere.
3. An undischarged bankrupt.

5.4.1 FEATURES OF A LIMITED PARTNERSHIP:

1. A limited partnership (LP) exists when two or more partners go into business together, but the limited partners are only liable up to the amount of their investment.
2. A limited partnership has both limited partners and a general partner (which has unlimited liability).[35]
3. A limited partnership shall not consist of more than 20 persons.[36]
4. The name of a limited partnership must end with the words "limited partnership" or the abbreviation "LP".[37]

5.4.2 SIMILARITY AND DIFFERENCES BETWEEN A LIMITED PARTNERSHIP AND A LIMITED LIABILITY PARTNERSHIP:

They both have a similar structure. However, limited partnerships have general partners and limited partners, while Limited Liability Partnerships have no general partners, as all partners in a Limited Liability Partnership have limited liability.

5.5 PART E - BUSINESS NAME:

Business name is covered in part E of the CAMA.[38] Note that a business registered (as a business name) under Part B of CAMA has no legal personality. It cannot sue or be sued in its business name, rather actions can be brought against the person(s)

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[31]Evan Tarver, 'Limited Partnership (LP)' in Janet Berry-Johnson (Revs), [31 May 2021] < > accessed 13 July 2021.
[32]Companies and Allied Matters Act 2020, s 807.
[33]*Ibid* s 796.
[34]*Ibid* s 852 (3).
[35]*Ibid* s 795(3).
[36]*Ibid* s 795 (2).
[37]*Ibid* s 802.
[38]*Ibid* s 812.

using the business name. e.g. Oboagwina Caleb (trading under the name and style of Easyread Study Shop). The following persons are not eligible to join in the formation of a business name;[39]

1. An infant.[40]
2. An insane person cannot join in a partnership agreement.
3. A person that is bankrupt/a company in liquidation.
4. Unincorporated association.

5.5.1 FEATURES OF BUSINESS NAMES:

1. **Simplicity:** It is simple because certain documents required in the incorporation of companies are not required for registration of business names.
2. **Less expensive:** The amount needed for the registration of a business name is quite cheap when compared to the incorporation of a company
3. **Easy management:** A business name is more easily managed. For instance, a sole proprietor makes decisions without any interference.
4. **Protected corporate name:** Although a business registered under business name does not have legal capacity, it is protected as a registered business name and cannot be used by another.

5.5.2 TYPES OF BUSINESS NAMES:

1. Sole proprietorship/trader (an Individual)
2. Partnership
3. Corporation

5.5.3 PARTNERSHIP:

This is the relationship which subsists between persons carrying on a business in common with a view to profit.[41] A partnership is a joint business between two or more persons.

5.5.4 FEATURES OF A PARTNERSHIP:

1. Existence of a business – a legal business agreed to be undertaken by parties.
2. A business between two or more persons but not more than 20 persons, except ***legal practitioners, accountants and Corporative.***[42]
3. The business must be in common.
4. The business must be profit-oriented.
5. The partners share both profit and loss.
6. Each partner is an agent of the other partner(s).
7. Its formation is less formal.

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[39]*Ibid* s 815 (6)
[40]*Ibid* s 852 (3) " a person less than 18 years cannot join in the formation of business name unless there is a statement that shows that at least two other individuals aged above 18 years".
[41]Partnership Law of Lagos, s 3(1).
[42]Companies and Allied Matters Act 2020, s 19(2).

5.5.5 CONDITIONS FOR PARTNERSHIP:

There are three (3) conditions that must be satisfied, and they include the following;

1. There must be a business.[43]
2. The business must be carried on in common by two or more persons; and
3. The business must be carried on with a view to making profit.[44]

5.6 PART F - INCORPORATED TRUSTEES:

These are non-business and non-profit organizations; they are formed to facilitate the acquisition of a corporate personality by a community of persons bound together by customs, religion, kinship, science, education etc. Note that a person shall not be qualified if;[45]

1. He is an infant;
2. He is a person of unsound mind and has been so found by the court;
3. He is an undischarged bankrupt;
4. He has been convicted of an offence involving fraud or dishonesty within five (5) years of his proposed appointment.

5.6.1 FEATURES OF INCORPORATED TRUSTEES:

1. They are regulated by Part F of CAMA.
2. They are non-business organizations as well as non-profit organizations.
3. They are set up to promote the following agendas; Sport (b). Science (c). Religion (d). Art (e). Education (f). Research (g) Charity, etc.
4. They must advertise in at least two (2) national dailies circulating in the area where the association is to be situated, and at least one of the newspapers shall be a national newspaper.[46]
5. They are regulated by the constitution.
6. They can be set up by at least two (2) trustees.[47]
7. Upon dissolution, their assets are transferred to bodies with similar objectives.[48]
8. They are exempted from paying tax.
9. Their name must contain "THE INCORPORATED TRUSTEES OF..."[49]
10. It may only be dissolved by the Federal High Court upon a petition by the governing council/board of trustees, 50% of its members or the CAC.[50]

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[43] *Henshaw v. Roberts* [1966] NNL.R 158; Uredi v. Dada [1988] 1 NWLR (part 69) 237

[44] Ugoji v. Uzorukwu [1972] 1 All N.L.R. (part 1) 289; Partnership Law of Lagos s 4; Partnership Act 1890, s 2.

[45] Companies and Allied Matters Act 2020, s 826 (1).

[46] *Ibid* s 828.

[47] *Ibid* s 823 (1).

[48] *Ibid* s 850 (4) & (5).

[49] *Ibid* s 825 (1) (a).

[50] *Ibid* s 850 (1).

5.6.2 BOOKS TO BE KEPT BY INCORPRATED TRUSTEES:

The association whose trustees are incorporated is to keep and maintain the following books:

1. Books of account (showing income and expenditure, assets and liabilities of the association).
2. Minutes book.
3. Register of members.
4. Register of trustees.

5.6.3 SIMILARITIES AND DIFFERENCES BETWEEN INCORPORATED TRUSTEES AND COMPANIES LIMITED BY GUARANTEE:

1. *They are both set up to promote the following activities; a). Sport (b). Charity (c). Art (d). Tourism (e). Research (f). Science (g). Culture (h) Religion i). Education, etc.*
2. For Incorporated trustees, they are NON-BUSINESS and NON-PROFIT organizations, while Companies Limited by Guarantee are BUSINESS and NON-PROFIT organizations.
3. A Company Limited by Guarantee is the only organization allowed to use the word "CHAMBERS OF COMMERCE" and it is not applicable to Incorporated Trustees.
4. A Company Limited by Guarantee, before incorporation, must obtain the consent of the AG of the Federation, while Incorporated Trustees must place adverts in at least two (2) national dailies before incorporation.
5. They are both exempted from paying tax.
6. A Company Limited by Guarantee is regulated by Memorandum of Association while Incorporated Trustees are regulated by a Constitution.
7. Both Company Limited by Guarantee and Incorporated trustees do not have share capital.
8. Upon dissolution of both organizations, their assets are transferred to bodies with similar objectives.
9. For Companies Limited by Guarantee, their name ends with "LTD/GTE" while for Incorporated Trustees, their name must contain "THE INCORPORATED TRUSTEES OF"_____

5.7 FORMATION OF AN ORGANISATION:

Formation of an organisation is done by a professional or an individual; by incorporation or registering their business or non-business organisation with the Corporate Affairs Commission. The incorporation of a company is done by a person who is accredited with the Corporate Affairs Commission (CAC) or by a subscriber to the Memorandum of Association of the proposed company. Other forms of organisation, however, do not require accredited persons for their registration.

5.8 ACCREDITATION WITH CAC:

As earlier mentioned, accredited persons with the Corporate Affairs Commissions (CAC) can incorporate a company, other than such accredited persons, the persons

allowed to incorporate companies are subscribers to the Memorandum of Association of the proposed company. There are three (3) categories of persons short-listed by CAC to be accredited;

1. Legal Practitioners or their Firm
2. Chartered Accountants or their Firm
3. Chartered Secretaries or their Firm

5.8.1 REQUIREMENTS FOR ACCREDITATION:

1. Pay the registration fee of N5, 000 for individuals or Firms.
2. Submit the filled Accreditation Form with the following documents attached:
   a) 2 passport photographs of the applicant
   b) A copy of his qualifying Certificate issued by the Council of Legal Education.
   c) A copy of his professional certificate. E.g. Call to Bar Certificate issued by Body of Benchers
   d) A copy of his receipt of payment of practicing fee.
   e) A copy of his NYSC discharge or exemption certificate.
   f) A copy of his registration receipt.
   g) The photocopies of the above documents submitted to the CAC together with the originals for sighting.

Note: Where the applicant has met the above requirements, an identification card will be issued by the Commission bearing a code which must be disclosed on all CAC forms being used for both pre-incorporation and post incorporation matters.

5.8.2 DOCUMENTS REQUIRED FOR REPLACEMENT OF LOST ACCREDITATION ID CARD:

1. Copy of a police report
2. Affidavit of loss
3. Practicing fee receipts
4. Copy of credentials
5. Replacement fee of N1000

5.9 PROCEDURE FOR E-REGISTRATION OF BUSINESS AND NON-BUSINESS ORGANISATION:

1. Log in to www.cac.gov.ng
2. Complete Form CAC1 online indicating the preferred and alternative names of the company
3. Verify all entries to be sure of their correctness
4. Submit application online
5. Print out the acknowledgement of your application from your email box
6. Check within 24 to 48 hours for a print out of the result of the search to know whether the name is approved or not.
7. File the incorporation documents with the CAC and pay the prescribed fees.
8. Download the Certificate of Incorporation.

5.9.1 ADVANTAGES OF E- REGISTRATION:

1. Speed.
2. Convenience.

3. It saves cost.
4. It increases productivity.
5. It reduces corruption.

5.9.2 CHALLENGES/IMPEDIMENTS TO ONLINE REGISTRATION IN NIGERIA:

1. Low level of computer literacy amongst legal practitioners.
2. Lack of steady power supply.
3. Absence of online stamp duty facilities.
4. Absence of a stable legal framework for electronic signature in Nigeria

5.10 STEPS IN THE FORMATION OF COMPANY:

1. Obtaining client's instruction during client interview.
2. Obtaining relevant forms from the Corporate Affairs Commission;
   i. FORM CAC 1 (Availability check and Reservation of Name)
   ii. FORM CAC 1.1 (Registration of Companies).

NB: The forms above are called the Pre-Incorporation Forms.

3. Preparation of Memorandum of Association and Articles of Association.
4. The Memo and Articles are stamped as a DEED at the FIRS. NB: (The Memo and Articles of a Company Limited by Guarantee are not subject to stamping).
5. Filing of the following documents at the CAC:
   i. The COMPLETED FORM CAC 1
   ii. The COMPLETED AND STAMPED FORM CAC 1.1
   iii. The STAMPED MEMO and ARTICLES.
   iv. Statement of capital and initial shareholding (for companies with share capital).[51]
   v. Statement of Guarantee (for companies without share capital).[52]
   vi. Statement of proposed directors.[53]
   vii. Evidence of Payment of Prescribed Fee.

6. The CAC thereafter issues a Certificate of Incorporation. The certificate of incorporation shall be *prima facie* evidence that all the requirements of registration and matters precedent and incidental to it have been complied with.[54] The Commission may withdraw, cancel or revoke a previously issued Certificate of Incorporation, where it is discovered that the certificate was fraudulently, unlawfully or improperly procured.[55]

Note: In the case of **Nkwocha Ernest v Minister of Industry, Trade and Investment & 2 Ors;**[56] it remains in the exclusive preserve of legal practitioners other than those in the employ of the CAC to make the statutory declaration of compliance with the requirements of CAMA as required by Section 40 (3) CAMA.

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[51]Companies and Allied Matters Act 2020, s 37 (1).
[52]*Ibid* s 38(1).
[53]*Ibid* s 39(1).
[54]*Ibid* s 41 (6).
[55]*Ibid* s 41 (7).
[56]FHC Kano, (FHC/KN/CS/86/2018).

5.11 CONTENTS OF A MEMORANDUM OF ASSOCIATION:

1. Heading
2. Name Clause
3. Registered Office Clause
4. Object Clause
5. Status Clause
6. Liability Clause
7. Share Capital Clause
8. Subscription Clause
9. Subscription Box
10. Date
11. Attestation

The Articles of Association of a company contain the constitution, rules and regulations that guide the conduct of meetings and decision making in a company. The Memorandum of Association defines the company, what the company is made up of and the purpose of its formation as provided by law.[57]

5.12 HOW TO CONTROL THE MANAGEMENT OF A COMPANY:

When a person who initiates the formation of a company wants to control the management of the company, there are certain things that he/she can do;

1. He can hold preference shares.
2. He can name himself a director or life director in the articles of the company.
3. He can hold the majority shares.
4. He can be in possession of the common seal of the company.
5. He can be the chairman of the company or the managing directors.
6. He can grant himself the power to appoint directors in the Articles of Association[58]

5.13 FORMATION OF A LIMITED LIABILITY PARTNERSHIP:

For a limited liability partnership to be incorporated, there must be at least two juristic persons (partners) associated, or carrying on a lawful business with a view to profit.[59]

5.13.1STEPS IN THE FORMATION OF A LIMITED LIABILITY PARTNERSHIP:

1. Obtaining client's instruction during client interview.
2. Obtaining relevant forms from the Corporate Affairs Commission;
   i. FORM CAC 1 (Availability checks and Reservation of Names)
   ii. FORM CAC/LLP 01 (Application to register a Limited Liability Partnership).[60]

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[57] *Edokpolor and Co. Ltd. V. Sem Edo Wire Industries Ltd* [1984] 7 SC 119.
[58] Companies and Allied Matters Act 2020, s 46 (1).
[59] *Ibid* s 753 (1).
[60] *Ibid* s 754 (1).

3. Filing the following documents at the CAC;
   i. The COMPLETED FORM CAC 1
   ii. The COMPLETED FORM CAC/LLP 01
   iii. 2 Passport photographs of each individual.
   iv. Tax Clearance Certificate of each individual;
   v. Qualifying Certificate; and
   vi. Registration Fees

2. The Corporate Affairs Commission shall within 14 days of compliance with the above procedure**;**
   i. Register the incorporation document; and
   ii. Give a certificate that the limited liability partnership is incorporated.

5.13.2 EFFECT OF REGISTRATION OF A LIMITED LIABILITY PARTNERSHIP:

Upon registration, a limited liability partnership may;
1. Sue and be sued in its name;
2. Acquire, own, hold and develop or dispose of property, whether movable or immovable, tangible or intangible;
3. If it decides to have one, have a common seal; and
4. Do and suffer such other acts and things as bodies corporate may lawfully do and suffer.[61]

5.14 FORMATION OF A LIMITED PARTNERSHIP:

For a limited partnership to be incorporated, there must be at least two juristic persons (partners) associated for carrying on a lawful business with a view to profit.

Note: Where a limited partnership is not registered, it shall be deemed to be a general partnership and every limited partner shall be deemed to be a general partner.[62]

5.14.1 STEPS IN THE FORMATION OF A LIMITED PARTNERSHIP:
1. Obtaining client's instruction during client interview.
2. Obtaining relevant forms from the Corporate Affairs Commission;
   i. FORM CAC 1 (Availability check and Reservation of Names)
   ii. FORM CAC/LP 01 (Application to register a Limited Partnership).

3. Filing the following documents with the CAC;
   i. The COMPLETED FORM CAC 1
   ii. The COMPLETED FORM CAC/LP 01
   iii. 2 Passport photographs of each individual.
   iv. Tax Clearance Certificate of each individual;
   v. Qualifying Certificate; and
   vi. Registration Fees

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[61] *Ibid* s 756.
[62] *Ibid* s 797(2).

3. The Corporate Affairs Commission shall**;**
   i. Register the limited partnership ; and
   ii. Issue a Certificate of Registration.[63]

5.15 REGISTRATION OF BUSINESS NAMES:

1. The business organisation involved must be carrying on a business in Nigeria under a business name
2. It must have a place of business in Nigeria.[64]
3. If a minor is involved in the registration of a business name, his signature must be countersigned by; a Magistrate, a Legal Practitioner or Police Officer of at least the rank of Assistant Superintendent of Police (ASP).[65]

Note: Where a business name contains the following, it need not be registered;

a) Only the true surnames of the partners – **Joromi & Leizou**
b) Only the true surnames and forenames of the partners – **Leizou Elijah & Joromi Chukwuma**
c) Only the true surnames and initials of the partners – **Leizou E. & Joromi C.**

However, where the name used does not contain the above names, i.e. forename and/or surname of the business owner (s), it must be registered within 28 days of commencing business.[66]

5.15.1 REQUIREMENTS FOR REGISTRATION OF A BUSINESS NAME:

1. 2 Copies of the Application Form (FORM 1-FIRMS) and (FORM 2 –INDIVIDUALS);
2. Form CAC 1-Availability and Reservation of Name
3. CAC/BN/01-Form of application for registration of Business Name
4. 2 Passport photographs of each individual
5. Tax Clearance Certificate of each individual;
6. Qualifying Certificate; and
7. Registration Fees

5.15.2 ADVANTAGES OF PARTNERSHIP AGREEMENT IN WRITING:

1. Submission to banks.
2. Submission to the government.
3. Submission to business institutions and tax authorities.
4. Non-application of common law principle.
5. Certainty of the terms of partnership.
6. Tax purposes.
7. Easy resolution of conflict.

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[63] *Ibid* s 799(1).
[64] *Ibid* s 814 (1).
[65] *Ibid* s 815(6).
[66] *Ibid* s 815 (1).

5.15.3 THE IMPLIED TERMS IN A PARTNERSHIP AGREEMENT:

Where the partnership Deed is silent, the following terms are implied;

1. Equal sharing of profits
2. Equal sharing of losses
3. Equal contribution of capital/ assets of the business
4. The death of a partner dissolves the partnership
5. A partner cannot be suspended, otherwise the partnership is dissolved
6. No payment of salaries to partners

5.16 FORMATION OF AN INCORPORATED TRUSTEE:

Incorporated Trustees can be formed by any community or persons bound together by custom, nationality, kinship, or any association established for educational, literary, scientific, social, development, cultural, sporting or charitable purposes. Such as; Religious bodies, Clubs and social-cultural associations, Schools and foundations.

5.16.1 PROCEDURE/REQUIREMENTS FOR THE INCORPORATION OF INCORPORATED TRUSTEES:

1. Completed application Form CAC/IT/01 to be submitted in 3 copies
2. Formal application letter for registration written and duly signed by either the Chairman and Secretary or Solicitor.
3. Attach the following documents to the Form in 1:
   a) Form CAC 1- Availability check and Reservation of Name;
   b) Formal Application Letter by the Legal Practitioner;
   c) Two (2) printed copies of the Constitution;
   d) Impression of the Common Seal;
   e) Signed copy of the minutes of the meeting where the Trustees were appointed;
   f) Copy of the resolution adopting the special clause;
   g) Two (2) passport photographs of each trustee;
   h) Evidence of advertisement in 2 national newspapers;
   i) Evidence of land ownership or undertaking in lieu;
   j) Sworn affidavit by each trustee (replacing SSS Report);
   k) Letter of Authority to the legal Practitioner; and
   l) Payment of filing fee (N20, 000.00).

4. Collect the Certificate of Incorporation of the Association.

5.16.2 EFFECT OF REGISTERING A COMPANY AS AN INCORPORATED TRUSTEE:

1. The organization cannot engage in business activities.
2. The members are not liable to contribute to the assets of the organization in the event of dissolution.
3. Any income it generates must be used to further the object for which it is set up.
4. Upon incorporation, the appointed trustees become a body corporate having perpetual succession and a common seal.

5. Incorporated trustees can sue and be sued in its corporate name.[67]

5.17 RESERVATION OF NAMES:

Every company, be it a limited liability partnership, limited partnership, business name or incorporated trustee during pre-incorporation, should have a preferred name and alternative name. Reservation of names is done using Form CAC 1; the names will be reserved for sixty (60) days after approval and during the period of reservation no other company shall be registered under the reserved name or under any name which, in the opinion of the Commission, nearly resembles the reserved name.[68]

5.17.1 GROUNDS FOR REFUSAL OF REGISTRATION OF NAMES:

There are two (2) basic grounds on which names can be rejected;[69]

1. **PROHIBITED NAMES:** CAC rejects names on the ground of prohibition in the following instances;
   a) Where a name conflicts with an existing name.
   b) Where a name is against public policy.
   c) Where the phrase "Chambers of Commerce" is used, except for Companies Limited by Guarantee.

2. **RESTRICTED NAMES:** Such names may be approved by CAC upon the permission of relevant authority. These names include names that:
   1. Contain the word "NATIONAL"
   2. Contain the word "NIGERIA"
   3. Contain the word "FEDERAL CAPITAL TERRITORY"
   4. Contain the word "LAGOS CITY"
   5. Contain the word "KWARA COUNCIL"
   6. Contain the word 'municipal' or 'chartered'
   7. Contain the word 'cooperative' or 'building society'
   8. Contain the word "group" or "holding".

[67] *Ibid* s 830 (1).
[68] *Ibid* s 32 (1).
[69] *Ibid* s 852(1).

CHAPTER SIX

PROMOTION OF COMPANY

6.1 INTRODUCTION:

Pre-incorporation matters include, but are not limited to, the following: promotion activities, pre contract documents and formation of business and non-business organisations. Promotion activities are vital aspects of a company's formation. Note that all corporate organisations are created by a set of persons who prepare for their formation. Promotion activities cover both local and foreign companies coming to establish businesses in Nigeria.

6.2 WHO IS A PROMOTER?

Whether a person is a promoter is a question of fact, and it depends on the circumstance and involvement of the person in promotion activities. Section 85 of CAMA defines a promoter as: "Any person who undertakes to TAKE PART IN FORMING A COMPANY ..."[1]

However, the proviso to Section 85 CAMA is to the effect that a person acting in a professional capacity for the person(s) engaged in procuring the formation of the company is not a promoter. For instance, a legal practitioner acting in his professional capacity in relation to a proposed company is not a promoter.[2]

Note: In order to determine who a promoter is; you are to ask the necessary question "*what did he do?*". If the person was involved in promotion activities, then he is a promoter, but if he acts in his professional capacity in procuring the formation of the company for a professional fee, he is not a promoter but a professional.

A person can be both a promoter and a professional if such a person engages in both activities. In the case of **Emma Silver Mining Co Ltd V. Lewis,**[3] a lawyer who incorporated the company at the CAC, and in lieu of his professional fees, decided to buy shares in the company. It was held that he is a promoter of the company. All subscribers to the memorandum and articles of association of a company are promoters of that company.

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[1] *Twycross v. Grant* [1877] 2 CPD 469.
[2] *Garba v Sheba Int. (Nig.) Ltd* [2002] 1 NWLR (Pt. 748) 372 at 401.
[3] [1879] 4 CPD 396,407-8.

6.2.1 PROMOTION ACTIVITIES:

Promotion activities involve the following:

1. Raising capital for a proposed or newly formed company.
2. Finding directors for a proposed company.
3. Acquiring properties on behalf of a proposed company.
4. Preparing prospectus for a proposed company.
5. Personality shopping for the proposed company.
6. Subscribing to the memorandum and article of association.
7. Obtaining requisite permits.
8. All activities towards incorporating a company, although the CAMA did provide for raising funds/capital for a newly formed company.

6.3 LEGAL POSITION OF PROMOTERS:

1. He is not an agent because there is no principal. He is not a trustee because there is no property. He is also not a beneficiary.
2. A promoter stands in a fiduciary position towards the company with duties of disclosure and accounting.[4]

6.4 DUTIES OF PROMOTERS:

1. Duty not to make secret profit, and
2. Duty of disclosure.[5]

6.5 REMEDIES FOR BREACH OF FIDUCIARY DUTIES (PROMOTERS):

1. Rescission of contract; or
2. Recovery of any secret profit by an action;
3. Claim for damages.

6.6 REMUNERATION OF PROMOTERS:

The position of the law generally is that a promoter is not entitled to remuneration, unless there is a clause in the articles of association that authorizes the directors to pay the promoter. In the absence of such a clause, a promoter is not entitled to remuneration. However, where a contract is entered with the company as to remuneration, and subject to the rescission or ratification of the said contract in accordance with **Section 86(3) CAMA, a promoter** may receive some remuneration for his promotion activities. Another option available to promoters in respect of contract for remuneration is to have the documents notarised by a notary public and upon a breach, as it is with other contracts, an action can be brought by the promoter in court.

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[4]Companies and Allied Matters Act 2020, s 86 (1).
[5]*Ibid* s 86 (2).

6.7 PRE-INCORPORATION CONTRACTS OR PRE-CONTRACT DOCUMENTS:

Pre-incorporation contracts or pre- contract documents are contracts purported to be made by promoters on behalf of a company before its incorporation; under common law, such contracts are invalid and unenforceable by or against the company.[6] **Note**: Under the CAMA, pre-incorporation contracts can be ratified but before the ratification, the promoter is personally liable.[7] A promoter will not be personally liable if an express agreement relieves him from personal liability.

6.7.1 TYPES OF PRE-INCORPORATION CONTRACT:

1. Joint Venture Agreement, especially between Nigerians and aliens.
2. Shareholders' Agreements.
3. Contract for payment of Promoters' expenses.
4. Directors' Service Contract (Appointment of the Managing Director).
5. Contract/Agreement for the acquisition of business or property (Take-over agreement).
6. Contract for conversion of partnership to incorporated companies.

6.7.2 RATIFICATION OF PRE-CONTRACT AGREEMENT BETWEEN A COMPANY AND PROMOTERS:

Section 86 (3) of CAMA is to the effect that if a company is to ratify a transaction between it and a promoter, there must be full disclosure and any of the following can ratify it on behalf of the company:

1. An independent board of directors of the company
2. All members of the company
3. The company, at a general meeting, with the exclusion of the promoter(s).

Note: Ratification is usually by a formal resolution that is passed by the company. The resolution must show in clear terms what was ratified.

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[6] *kelnar v Baxter* [1866] LR 2 CP 174.
[7] Companies and Allied Matters Act 2020, s 96 (1) & (2).

CHAPTER SEVEN

POST-INCORPORATION MATTERS

7.1 INTRODUCTION:

Post incorporation matters are transactions that follow incorporation. The law makes provisions for some post incorporation steps, while others are not stipulated by law, but are desirable to be carried out. Once the company is incorporated, the law provides for certain steps they must take, e.g;

1. Publication of Name.
2. Keeping of statutory books.

7.2 PUBLICATION OF NAME:

A company is expected to engage in publication of name in the following ways;

7.2.1 NAME PLATE :

They are designs affixed on the building at the physical address of the company containing the company's name and registration number. Every Company after incorporation shall paint or affix its name and registration number on the outside of all its offices, in a conspicuous position and in legible letters.[1]

7.2.2 COMPANY SEAL:

The company seal is also referred to as the "Common seal" of the company. The company logo or mark is engraved in legible characters on its seal and is usually affixed on documents executed by the company.[2] A company may execute a document or deed without affixing a common seal on the document if the document is signed by the any of the following persons on behalf of the company;

a) A director of the company and the secretary of the company;[3]
b) At least two directors of the company ; or
c) A director of the company in the presence of at least one witness who shall attest the signature.

Note: The document or deed signed on behalf of the company in the circumstances above, has the same effect as if the document was executed under the common seal of the company.[4]

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[1] Companies and Allied Matters Act 2020, s 729 (1).
[2] *Ibid* s 729 (2).
[3] *Ibid* s 102 (2).
[4] *Ibid* s 102 (3).

7.2.2.1 TYPES OF COMPANY SEAL:

There are two types of company seal:

a) **Common Seal:** This is affixed on documents to be executed in Nigeria, and the use of the common seal shall be regulated by the Articles of Association.[5]

b) **Official Seal:** This is affixed on documents to be executed outside Nigeria. The company's object must provide that the company can transact business in foreign countries.[6]

7.2.3 OFFICIAL PUBLICATION OF NAME:

This simply means that the company's documents should carry its name and registration number in legible characters in all business letters of the company and in all notices, advertisements, and other official publications of the company, such as; bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills or parcels, invoices, receipts, and letters of credit of the company.[7]

NB: Any company that defaults in the above publication will be liable to a penalty prescribed in the Regulations for every day that the default continues, and every director and manager of the company shall be liable to the likely penalty.[8]

7.3 KEEPING OF STATUTORY BOOKS:

Generally, companies are expected to keep eleven (11) statutory books, however private companies can only keep nine (9) out of these books to the exclusion of the "index of members" and the "register of substantial interest in shares".

7.3.1 CHECKLIST OF THE STATUTORY BOOKS:

1. **Register of Members:** The register is to contain the NAMES, ADDRESSES, DESCRIPTIONS of all the members, the number of shares and class (es) of shares held by each member, the amount paid on the shares, how cash or other considerations are paid on the shares. The register must also contain the date, the particular name of a shareholder and when he was registered as a member. Note that the name of a member must be registered within 28 days of his acquiring the shares, and in the case of a subscriber within 28 days of incorporating the company.[9]

2. **Index of Members:** This should contain a sufficient indication to enable the account of that member in the register to be readily found. Where the company arranges that the Register of Members should also include an index, there will be no need for a separate book containing the Index of Members.
   Note: Index of Members is only required where the membership of the company is more than 50 (Public company).[10]

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[5] *Ibid* s 98.
[6] *Ibid* s 99 (1).
[7] *Ibid* s 729 (1) (c).
[8] *Ibid* s 729 (2).
[9] *Ibid* s 109 (1) & (2).
[10] *Ibid* s 111.

3. **Register of Substantial Interest in Shares:** It is used to register those who have up to at least 5 percent of the total shares of the company.
   Note: This is required for public companies only.[11]

4. **Register of Charges**: Securities or debentures charged on the properties of the company, either on land, machinery or unpaid shares of the company or book debt of the company have to be included in this register.

Note: It is used to keep record of charges affecting property of the company.[12]

5. **Register of Debenture Holders:** The register shall contain the names and addresses of the debenture holders, the principal of the debenture and the debentures held by each of them.[13]

6. **Minutes Book:** This is a necessity for all companies and it must contain the minutes of proceedings of general meetings, Directors (Board) meetings and Minutes of its Managers' meeting. This Minutes Book shall prima facie be evidence of the proceedings.[14]

7. **Register of Directors' Share Holdings:** This register is a necessity for all companies, whether private or public, it is used to record the amount, number and description of director's shares.[15]

8. **Register of Directors:** This is another necessity for all companies. It must contain the names, usual residential address, nationality, date of birth and particulars of director's.[16]

9. **Register of Directors' Residential Addresses:** Every company shall keep a register of directors' residential addresses. The register shall state the usual residential address of each of the company's directors.

   Note: If a director's usual residential address is the same as the service address (as stated in the company's register of directors), the register of directors' residential addresses need only contain an entry to that effect, provided the service address is not the company's registered office.[17] The information of the directors' residential addresses shall be protected information subject to certain conditions. [18]

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[11] *Ibid* s 122.
[12] *Ibid* s 216.
[13] *Ibid* s 218.
[14] *Ibid* s 266(1).
[15] *Ibid* s 301(1).
[16] *Ibid* s 318 (1).
[17] *Ibid* s 320 (1), (2) & (3).
[18] *Ibid* ss 323,324,325.

10. **Register of Secretaries:** Every public company shall maintain a register of secretaries. It must contain the names, usual residential address, nationality, date of birth and particulars of secretaries.[19] Note: Private companies can keep a Register of secretaries unless in the case of small company, but it is mandatory for public company.[20]

11. **Accounting Records:** This is also a necessity for all companies and it shall show and explain the transactions of the company, that is, the financial position of the company and its assets and liabilities[21].

[19] *Ibid* ss 336 & 337.
[20] *Ibid* s 330.
[21] *Ibid* s 374 (1).

CHAPTER EIGHT

MEMBERSHIP

8.1 INTRODUCTION:

A person who is eligible to be a member of a company must own at least one share attracting at least one vote in the company in the case of a company with share capital, or possess some guaranteed voting interest in the case of a company limited by guarantee. He only becomes a member where his name has been entered in the Register of Members.

8.2 RIGHTS OF A MEMBER:

1. Right to attend company meetings and vote in the meeting.[1]
2. Entitlement to notice of meeting.[2]
3. Right to appoint proxy in a meeting where they will be absent.[3].
2. Right to transfer shares as personal property.
3. Right to receive dividends once it's declared by the board of directors.
4. Right to take up minority protection actions in the company.
5. Right to participate in the appointment and removal of directors.
6. Right to demand poll in company meeting.[4]
7. Right to requisition Extraordinary General Meeting (EGM).
8. Right to remain a member with no extra liability if shares are fully paid.
9. Right to remain a member unless restructured out and shares compulsorily acquired.

8.3 HOW TO BECOME A MEMBER:

There are four (4) basic ways through which one can become a member of a company. Namely by:

1. **Subscription:** Upon registration, the subscribers to the Memorandum of Association shall become members and their names must be inserted in the register of members. Note: The first members of the company acquire their membership by subscription. They must together subscribe to shares amounting in value to at least 25 percent of the authorised share capital.[5]

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[1] Companies and Allied Matters Act 2020 s 251 (1)
[2] *Ibid* s 243 (1).
[3] *Ibid* s 242(4).
[4] *Ibid* s 249(1).
[5] *Ibid* ss 105(1) & 27(2) (b).

2. **Allotment:** Upon an application for shares by an individual, the company may allot shares to him by notifying him of the company's acceptance of the offer made in his application. He then becomes a member and is entitled to have his name entered in the Register of Members. Note: Where the company accepts the application, the company is expected to make an allotment to the applicant and within forty two (42) days notify the applicant of the fact of the allotment and the number of shares allotted to the applicant.

3. **Transfer**: This is where an existing member transfers all or part of his shares to another person.[7].The instrument for transfer is called a deed of transfer and the parties involved are called the "transferor" and "transferee". Note that shares can also be transferred through electronic instrument of transfer.[8]

4. **Transmission:** This is an involuntary transfer occurring on the death or bankruptcy of a member. The ownership of the shares, on the occurrence of such an event, will automatically vest (by operation of law) in the personal representatives in the case of a dead member, and trustee in bankruptcy in the case of a bankrupt member respectively. Note: He shall become a member of the company upon the registration of his name in the Register of Members. Note also that, in case of the death of a member, the survivor or survivors where the deceased was a joint holder, shall be the only persons recognised by the company as having any title to his interest in the shares; i.e. the shares of joint shareholders in the event of the death of one the shareholders will automatically vest (by operation of law) on the survivor.[9]

8.4 HOW TO CEASE TO BE A MEMBER OF A COMPANY:

It may be by any of the following means:

1. Transfer of all one's shares to another.
2. Forfeiture of shares.
3. Transmission of shares.
4. Surrender of shares.
5. Liquidation of a company.

[6] *Ibid* s 151.
[7] *Ibid* s 139.
[8] *Ibid* 175 (1).
[9] *Ibid* s 179 (1).

CHAPTER NINE

COMPANY GENERAL MEETINGS

9.1 INTRODUCTION:

There are four (4) types of general meetings through which shareholders may exercise their powers. They are; Statutory Meeting, Annual General Meeting, Extraordinary General Meeting and Court Ordered Meeting. These meetings are usually presided over by the Chairman of the Board of Directors. Where the Chairman is one (1) hour late to the general meeting, he shall be replaced for that particular meeting.[1]

9.2 TYPES OF MEETINGS:

1. Statutory Meeting
2. Annual General Meeting (AGM)
3. Extraordinary General Meeting (EGM)
4. Court Ordered Meeting

9.3 STATUTORY MEETING:

This meeting is only held by public companies. This meeting should be held **within six (6) months** of the company being incorporated.[2] NB: Failure to hold this meeting as stipulated by CAMA will lead to compulsory winding up.[3] In order to determine the time frame within which the statutory meeting should be held, one must consider the following factors:

1. The date of incorporation of the companies.
2. Calculate using six clear calendar months: that is you must always begin on the first day of the month, and if the company was incorporated on a day other than the first day of the month, you must start your computation on the subsequent month.
3. After determining the six clear calendar months, the statutory meeting should be held not later than the eve of the incorporation anniversary.

9.3.1 AGENDA TO BE TRANSACTED AT STATUTORY MEETING:

1. Issues arising from statutory reports
2. Consideration of the statutory reports

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[1] Companies and Allied Matters Act 2020, s 265.
[2] *Ibid* s 235(1).
[3] *Ibid* s 571b.

3. Formation of company
4. Any other incidental matters.[4]

9.3.2 PROCEEDINGS AT THE STATUTORY MEETING:

1. The Board of Directors prepares the statutory report and it is attested to by at least two (2) Directors, or one director and the secretary, of the company.[5]
2. The copy of the statutory report shall be sent to members at least twenty-one (21) days before the meeting.[6]
3. The members convene the statutory meeting.
4. After passing a resolution on the statutory report, the director shall cause a copy of the statutory report to be delivered to the CAC for registration, within 14 days after the sending of copies to the members of the company.[7]

9.4 ANNUAL GENERAL MEETING (AGM):

This meeting is held by both private and public companies, except for a small company or any company having a single shareholder.[8] The **first** annual general meeting must be held **within eighteen (18) months** of incorporation[9] while subsequent AGM must be held within fifteen (15) months.[10]
NB: The CAC, upon application can grant extension of time of three (3) months.[11]

At the conclusion of the AGM, **Annual Returns** are filed to CAC within forty-two (42) days.[12] NB: If the company is an unregistered company that is granted an **Exemption**, they are to file annual reports.[13]

9.4.1 AGENDA AT THE AGM:

Generally, the agenda to be transacted at this meeting is called **Ordinary Business** because they can only be transacted once a year, although **Special Business** (businesses conducted as a result of urgency) can also be an agenda at this meeting.[14]

9.4.1.1 EXAMPLES OF ORDINARY BUSINESSES:

1. Declaring of dividends.
2. Payment of dividends.
3. Appointment of Auditors.
4. Appointment of Audit Committee.
5. Remuneration of Auditor.
6. Auditor's Reports'

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[4] *Ibid* s 235 (8).
[5] *Ibid* s 235 (3).
[6] *Ibid* s 235 (2).
[7] *Ibid* s 235 (6).
[8] *Ibid* s 237 (1).
[9] *Ibid* s 237 (1) (a).
[10] *Ibid* (n8).
[11] *Ibid* s 237 (1) (b).
[12] *Ibid* s 421 (1).
[13] *Ibid* s 81 (1).
[14] *Ibid* s 238 (1).

7. Election of Directors.
8. Retirement of Directors.
9. Directors' Reports.
10. Annual Returns *(filed by Nigerian registered companies)*
11. Annual Reports *(filed by unregistered companies granted exemption)*
12. Presentation of Financial Statements
13. Disclosure of remuneration of managers of a company.[15]

9.4.1.2 EXAMPLES OF SPECIAL BUSINESSES:
1. Change of Name.
2. Change of registered address.
3. Change of object clause.
4. Conversion of company.
5. Increase in share capital.
6. Reduction in share capital.
7. Removal of Directors.
8. Appointment of Directors.
9. Remuneration of Directors.
10. Removal of Auditor.

In summary, both ordinary and special businesses are done in the AGM.

9.5 EXTRA-ORDINARY GENERAL MEETING (EGM):
This meeting can be convened by the Board of Directors or requisitioned by members i.e. those who possess at least 10% of the company's share capital, and for companies limited by guarantee (companies without share capital) one-tenth of membership.[16] An extraordinary general meeting is usually held within twenty-eight (28) days of the board of directors receiving a special notice from an applicant or requisitionists. The requisition shall state the objects of the meeting, and be signed by the requisitionists and deposited at the registered office of the company.[17]

9.5.1 AGENDA AT THE EGM:
This meeting is held in cases of emergencies, therefore the agenda to be transacted at this meeting is called special businesses only.

9.5.1.1 EXAMPLES OF SPECIAL BUSINESSES:
1. Change of Name.
2. Change of registered address.
3. Change of object clause.
4. Conversion of company.
5. Increase in share capital.
6. Reduction in share capital.

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[15] *Ibid* s 257.
[16] *Ibid* s 239 (2).
[17] *Ibid* s 239 (3).

7. Removal of Directors.
8. Appointment of Directors.
9. Remuneration of Directors.
11. Removal of Auditor.

9.6 COURT-ORDERED MEETING:
This meeting is usually held whenever the Board of Directors fails to convene an Extraordinary General Meeting. In this case, members apply to the Federal High Court by Originating Summons, and once the order is made, such meeting should be held within three (3) months of the order being made.[18] The court may, either of its own motion, or on the application of any director of the company, or of any member of the company, who would be entitled to vote at the meeting, order the meeting of the company or board.[19]

9.6.1 AGENDA AT THE COURT-ORDERED MEETING:
The agenda transacted at this meeting are those stipulated in the special notice sent to the Board of Directors to convene an EGM, which they must have failed to do after the 21 day period. Therefore, no other agenda can be transacted at this meeting than the one stipulated in the special notice.

9.7 NOTICE OF GENERAL MEETING:
Generally, all members of a company must be notified of a meeting and failure to send a notice of meeting may nullify such meeting unless such failure is an accidental omission on the part of the person giving the notice.[20]

9.7.1 WHO IS ENTITLED TO NOTICE:
1. Every member of the company.
2. Those whom shares have been transmitted to by way of personal representatives.
3. Every auditor for the time being.
4. Directors of the company.
5. Company Secretary.
6. The Commission (CAC) in the case of public companies.[21]

9.7.2 TYPES OF NOTICE:
1. **Special Notice:** Special notices are made by members who possess at least one tenth of the company's share capital or for companies without share capital, one tenth of the membership shall serve the notice on the Board of Directors for at least 28 days. *NB:* Special notice is also known as applicant notice or 28 days' notice.[22]

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[18] *Ibid* s 239 (4).
[19] *Ibid* s247 (1).
[20] *Ibid* s 245 (1).
[21] *Ibid* s 243 (1).
[22] *Ibid* s 261.

2. **Membership Notice:** This is issued by the Board of Directors, and is to be served on all members of the company at least 21 days before the meeting. It is also known as 21 days' notice.[23]
3. **Abridged Notice:** This is a notice issued by members whenever they want a meeting to be held earlier than 21 days.
4. **Additional Notice:** This notice is only made by public companies. This simply means placing the membership notice in at least two (2) national dailies. Additional notice must be placed at least 21 days before the meeting.[24]

9.7.3 SERVICE OF NOTICE:

When notices are to be given by a company to any member it can be served in any of the following ways;[25]

1. Personally: Hand delivery.
2. By sending it to him by post or to his registered address.[26]
3. By electronic mail to any member who has provided the company with an electronic mail address.

Note: When the notice of meeting is sent by post; it would be deemed to have taken effect after 7 days of posting it[27]. Thus, for there to be compliance with 21 days' notice, the notice of the general meeting should be taken to the post office at least 28 days before the general meeting and there must be proof of service of notice made to members of a company.

9.7.4 EFFECT OF FAILURE TO GIVE NOTICE:

Failure to give notice of any meeting to any person entitled to receive notice shall invalidate the meeting unless such failure is an accidental omission on the part of the person or persons giving the notice.[28] Accidental omission does not include any misinterpretation of the provisions of CAMA or of the articles of a company.[29]

9.8 VENUE OF MEETING:

All statutory meetings and Annual General Meetings of companies must be held in Nigeria.[30] For Extraordinary General Meeting of companies, they may be held either within or outside Nigeria.[31] Note that a private company may hold its general meetings electronically,[32] provided that such meetings are conducted in accordance with the articles of the company, and where a general meeting of a private company is held electronically, the minutes of the meeting shall indicate so.[33]

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[23] *Ibid* s 241(1).
[24] *Ibid* s 246.
[25] *Ibid* s 244(1).
[26] *Ibid* s 244 (3).
[27] *Ibid* s 244 (2).
[28] *Ibid* (n20).
[29] *Ibid* s 245 (2).
[30] *Ibid* s 240 (1).
[31] *Ibid* s 239 (1).
[32] *Ibid* s 240 (2).
[33] Companies Regulations 2021, Reg 15.

9.9 ATTENDANCE AT GENERAL MEETINGS:
Every person who is entitled to receive notice of a general meeting of the company is entitled to attend a meeting.[34]

9.9.1 CORPORATE REPRESENTATION AT A COMPANY MEETING:
When a company is a member of another corporation which is a company within the meaning of CAMA, such a company may, by resolution of its directors or other governing council/body, authorize any person to act as its representative at any meeting of the company.[35] The person appointed can exercise, on behalf of the corporation, powers the corporate body might exercise if it were an individual shareholder of that other company.[36] Thus such a person can appoint a proxy to attend and vote in the other company's general meeting.

9.9.2 PROXY:
Proxy is when another person is sent to represent a member of a company at a meeting from which they would be absent.[37]

NB: A proxy need not be a member of that company.
The instrument appointing a proxy must be in writing and must be accompanied by a Certified True Copy of a power of attorney.[38] NB: Proxy is majorly used by companies limited by shares and where the company has no shares; it must be contained in its articles.[39]

9.9.3 TIME FRAME FOR SERVING THE INSTRUMENT APPOINTING A PROXY ON A COMPANY:
The instrument appointing a proxy can be served at the registered office, head office and any office where the meeting will likely be held, at least 48 hours before the meeting. *NB:* Where the voting at the meeting is determined by poll, such instrument should be served not later than 24 hours.[40]

9.9.4 RIGHTS OF A PROXY:
1. Right to attend meetings.
2. Right to vote at the meeting.
3. Right to be counted to determine quorum.
4. Right to demand poll votes when necessary.

9.9.5 REVOCATION OF PROXY:
The revocation of proxy is only valid where intimation in writing of such revocation by the appointer or his attorney has been received by the company before commencement of the meeting or adjourned meeting at which the proxy is used.[41] Note that for an instrument of proxy to be invalid by reason of death, insanity of

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[34]Companies and Allied Matters Act 2020,ss 251(1) & 252.
[35]*Ibid* s 255(1).
[36]*Ibid* s 255(2).
[37]*Ibid* s 254 (1).
[38]*Ibid* s 254 (6).
[39]*Ibid* (n 37).
[40]*Ibid* s 254 (1).
[41]*Ibid* s 254 (5).

principal or revocation, notice as aforementioned must have been given to the company.

9.10 QUORUM OF MEETINGS:
Quorum simply means the number of members present at the meeting to make it valid. Generally, a quorum is determined by the company's articles and where the articles are silent, the quorum will be determined by the provisions of CAMA; a quorum is not required for a company with one member.[42] Therefore, the quorum shall be 1/3 (one-third) of the total number of members, or 25 members (whichever number is lesser) present in person or by proxy unless the articles provide otherwise.[43]

9.11 RESOLUTION:
Decisions of a company are made by resolutions arrived at through voting. A resolution is used to determine the agenda of a meeting.

9.11.1 TYPES OF RESOLUTION:
1. **Ordinary Resolution:** Ordinary resolution is determined by a simple majority vote (the highest number of votes cast).[44] This resolution is used to determine ordinary businesses. I.e. ORDINARY BUSINESS = ORDINARY RESOLUTION (OB=OR).
2. **Special Resolution**: A Special resolution is determined by at least 75% or three-fourths of all votes cast being in support of the agenda, otherwise the agenda will not be deemed passed.[45] This special resolution is used to determine special businesses. I.e. SPECIAL BUSINESS = SPECIAL RESOLUTION (SB=SR). However, there are certain special businesses that may be determined by ordinary resolution. For instance;
    1. Increase in share capital.
    2. Removal of Directors
    3. Appointment of Directors
    4. Removal of Auditor.

3. **Written Resolution**: Written resolution is peculiar to private companies. These are resolutions passed without convening a formal meeting.[46]

9.11.2 PROCEDURE FOR VOTING AT GENERAL MEETING:
At any general meeting, a resolution put to the vote is to be decided by a **show of hands.**[47] Under this method of voting, there is equality of members' votes, irrespective of the number of shares held by them. Therefore, a show of hands equals one shareholder, one vote. On the other hand, the members can demand that the vote be **conducted by poll**, in which case the vote will be determined by number of shares held by a person.[48] **E.g.** If A has 10,000,000 units of shares, his

[42] *Ibid* s 256 (1).
[43] *Ibid* s 256 (2).
[44] *Ibid* s 258 (1).
[45] *Ibid* s258 (2).
[46] *Ibid* s 259.
[47] *Ibid* s 248(1).
[48] *Ibid* s 249 (1).

vote is 10,000,000 and if B and C hold 10 units each, their votes would be 20 votes cast. The persons that can demand a poll are:

1. The chairman, where he is a shareholder or a proxy
2. At least 3 members present in person or by proxy
3. Any member(s) present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.
4. Any member that has one-tenth paid up on all the shares conferring that right.[49]

Note that the articles of a company cannot exclude the right to demand poll.[50] Where voting is by poll, a member need not, if he votes, use all his votes or cast all the votes he uses in the same way (can use 'for' or 'against').[51]

Poll votes may be restricted in the following circumstances;

1. Election of the chairman of the meeting or adjournment of the meeting.[52]
2. Election of members of the audit committee.[53]

9.12 ADJOURNMENT OF MEETING:

Generally, a meeting can only be adjourned where a quorum is formed. The Chairman, with the permission of any of the members, may move an application for the adjournment.[54] If the meeting is adjourned for more than 30 days, notice must be served on members and where it is less than 30 days; there is no need for such notice.[55] If, on the adjourned date, no quorum is formed, such meeting will be nullified. Notwithstanding such nullification, the meeting may be adjourned to the next week on the same day and at the same time. If a quorum is also not formed, two (2) members will form the quorum and their decision shall bind the company. Where there is only one (1) member present on the adjourned date, that member shall apply to the court for its direction.

Note: The procedure for adjournment of meetings does not apply to a company with one member.[56]

9.13 FUNCTIONS OF A CHAIRMAN AT THE GENERAL MEETING:

The functions of the Chairman of the Board of Directors as regarding general meetings are as follows;[57];

1. To ensure the meeting is properly conducted
2. Preservation of order
3. He ensures that all questions that arise in the course of a meeting are properly decided

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[49] *Ibid* (n 47)
[50] *Ibid* (n 48)
[51] *Ibid* s 250 (1).
[52] *Ibid* s. 249 (1) (a).
[53] *Ibid* s 249(3).
[54] *Ibid* s 264 (1).
[55] *Ibid* s 264 (2).
[56] *Ibid* s 264 (5).
[57] *Ibid* s 265 (1-5).

4. To preside over both the Board and company meetings
5. To act bona fide in the interest of the company
6. He has the power to adjourn meetings
7. He has a casting vote on issues if there is a tie by the members.
8. He possesses power to sign the minutes of the meeting

Note: The chairman of a public company shall not act as the chief executive officer of such company.[58]

9.14 MINUTES OF MEETING:

The minutes are to be entered in the book kept for that purpose. Once the minutes of the meeting is signed by the chairman of the meeting or the chairman of the next succeeding meeting, such minutes shall be prima facie evidence of the proceedings. Where the minutes of a general meeting or board of directors' meeting are presented, there is a presumption that the meeting was duly held and convened, and all proceedings held at the meeting are views as being duly held and all appointments of directors, managers or liquidators shall be deemed valid until the contrary is proved.[59] The book containing the minutes of meetings is to be kept at the registered office of the company. The members of the company have a right to inspect the book without charge, subject to reasonable restrictions by the articles of the company. A member is entitled to be furnished with a copy of the minutes within 7 days of request for it at a charge not exceeding N100 for every hundred words. Where request by members are turned down, the court may by order, compel immediate inspection or sending of copies to members.[60]

Note that in the case of a company that has only one member, where that single member takes any decision that may be taken by the company in general meetings, and has effect as if agreed by the company in general meeting, he shall provide the board with details of that decision.[61]

9.14.1 FORMS OF MINUTES OF MEETINGS:

The minutes of meeting may be made by entries in bound books, or in loose leaves whether pasted or not in a photographic film form, or may be entered by any information storage device that is capable of reproducing the required information in intelligible written form within a reasonable time, or by recording the matters in question in any other manner in accordance with accepted commercial usage. If the minutes are entered in any other form aside bound books, precautions should be taken for guarding against falsification and for facilitating its discovery.[62]

9.14.2 FAILURE TO KEEP MINUTES OF MEETING:

Upon failing to keep minutes of meeting, the company and its officers shall be guilty of an offence and liable to such amount as the Commission shall specify in its regulations.[63]

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[58] *Ibid* s 265(6).
[59] *Ibid* s 266 (1-3).
[60] *Ibid* s 267 (1-4).
[61] *Ibid* s 266(4).
[62] *Ibid* s 731 (1-4).
[63] *Ibid* s 266(5).

9.15 STATUTORY FILINGS AFTER GENERAL MEETINGS OF A COMPANY:

These are to be made to the Corporate Affairs Commission by the Secretary;

1. All notifications of change of director or secretary are to be filed within 14 days.
2. All resolutions are to be filed within 15 days.
3. All filings of Annual Returns are to be filed within 42 days.
4. Statutory reports are to be filed within 14 days.

CHAPTER TEN

CODE OF CORPORATE GOVERNANCE: LEGAL FRAMEWORK, THEORIES, CONCEPTS AND INTERNATIONAL BEST PRACTICES

10.1 INTRODUCTION:

Corporate Governance is concerned with the processes by which corporate entities, particularly limited liability companies, are governed. A remarkable functional definition of corporate governance is the one offered by the **Organization for Economic Cooperation and Development** (OECD), thus; "Corporate Governance is the system by which business corporations are directed and controlled."

10.2 LEGAL FRAMEWORK FOR CORPORATE GOVERNANCE:

International Level:

a) OECD Principles of Corporate Governance 2004
b) UK Combined Code on Corporate Governance 2007
c) EU Combined Code on Corporate Governance 2011
d) USA SARBANES OXLEY Act 2002
e) UN Global Compact Business Human Rights 2011

Local Level:

a) Code of Corporate Governance For Banks And Discount Houses And Guideline For Whistle Blowing In The Nigerian Banking Industry 2014 - Issued By the Central Bank Of Nigeria
b) Code of Corporate Governance For Public Companies In Nigeria 2011- Issued By SEC
c) Code of Corporate Governance For Insurance Industry In Nigeria 2009 - Issued By the National Insurance Commission (NAICOM)
d) Code of Corporate Governance For Pension Operators 2008 - Issued By the National Pension Commission (PENCOM)
e) Code of Corporate Governance For Telecommunication 2014 - Issued By the Nigerian Communications Commission (NCC)

10.3 OECD PRINCIPLES OF CORPORATE GOVERNANCE:

1. Ensure the basis for all effective corporate governance frameworks:
2. Equitable treatment of shareholders
3. Right of shareholders and key ownership function
4. Disclosure and transparency
5. The Role of Stakeholders in Corporate Governance

6. The Responsibility of the Board

10.4 THEORIES OF CORPORATE GOVERNANCE:

Among other theories of corporate governance, the Agency (Stockholder), Stakeholder theories and Stewardship theories provide the guide for functional analysis of corporate governance in an economy.

1. **Agency/Shareholder Theory:** This theory stipulates that the shareholders are the principal of the company while the board and management team are the agent. The principal provides funds for the investment while the agent provides management skills to manage funds in the investment.
2. **Stakeholders Theory:** This theory stipulates that it is not only the shareholders and management team that are actors in a corporation; the Stakeholders also impact on the corporation of the company. The stakeholders' theory formed the basis of holding the organization to good ethical practices and corporate social responsibility. These stakeholders are long term employees who develop specialized skills or value to the corporation, and suppliers, customers and others who make specialized investments.
3. **Stewardship Theory:** This theory stipulates that man is essentially trustworthy and capable of acting in good faith and in the interest of other people with integrity and honesty.

10.5 CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development of affected communities.
2. Respect human rights
3. Development and apply self-regulatory practices
4. Support and uphold good governance principles and practice.
5. Abstain from any improper local political activities

10.6 WHISTLE BLOWING:

There shall be in place a whistle blowing policy to be made known to employers and stakeholders, which shall contain mechanisms for confidentiality that would encourage stakeholders to report unethical activities to the bank and/or CBN.

10.6.1 WHO IS A WHISTLEBLOWER?

A whistle-blower is any person(s) including the employee, management, directors, depositors, service providers, creditors and other stakeholder(s) of an institution who reports any form of unethical behavior or dishonesty to the appropriate authority.

10.7 SUMMARY PRINCIPLES AND PRACTICES THAT PROMOTE GOOD CORPORATE GOVERNANCE:

1. The establishment of strategic objectives and a set of corporate values, clear lines of responsibility and accountability.
2. To ensure transparency and avoid dominance of an individual as both chairman and managing director.

3. Installation of a committed and focused Board of Directors which will exercise its oversight functions with a high degree of independence from management and individual shareholders.
4. A proactive and committed management team.
5. There should be adequate procedures to reasonably manage inevitable disagreements between the Board, Management and staff of the bank.
6. The Board should meet regularly at a minimum of four (4) regular meetings in a financial year. There should also be adequate advance notice for all Board meetings as specified in the Memorandum and Articles of Association.
7. The code limits the tenure of office of a bank managing director to a maximum of 10 years.
8. The Board should have full and effective oversight on the bank and monitor its executive management.
9. There is a well-defined and acceptable division of responsibilities among various cadres within the structure of the organisation.
10. There is a balance of power and authority so that no individual or coalition of individuals has unfettered powers of decision making.
11. The Articles of Association should clearly specify those matters that are exclusively the rights of the Board to approve, apart from those for notification.
12. The number of non-executive directors should exceed that of executive directors.
13. All Directors should be knowledgeable in business and financial matters and also possess the requisite experience.
14. There should be a definite management succession plan.
15. Shareholders need to be responsive, responsible and enlightened.
16. Culture of compliance with rules and regulations.
17. Effective and efficient Audit Committee of the Board.
18. External and internal auditors of high integrity, independence and competence.
19. Internal monitoring and enforcement of a well -articulated code of conduct/ethics for Directors, Management and staff.
20. Regular management reporting and monitoring system.
21. An individual should not own 5% of the share capital of the Bank
22. Not more than two persons from the same family can be on the Board of Directors at the same time.

CHAPTER ELEVEN

DIRECTORS

11.1 INTRODUCTION:

Directors are persons duly appointed by the company to direct and manage the business of the Company.[1] They are also seen as alter egos and principal officers of the company. However, if a person not duly appointed as a director act in the capacity of a director, he is guilty of an offence and punishable by imprisonment for a term of 2 years or fine, or both, and the company can restrain him from continuing to act.[2]

1.2 TYPES OF DIRECTORS:

1. **Shadow Directors:** These are directors that other directors' take instructions from. This means that any person on whose instructions and directions the Directors are accustomed to acting is a Shadow Director.[3] These directors do not suffer retirement; however, they are subject to removal.

2. **Chairman, Board of Directors:** This director presides over the general meeting and board meeting and, where he is one (1) hour late for the general meetings, he would be replaced. He will however be replaced where he is five (5) minutes late for a board meeting.[4]

3. **Managing Directors:** These are directors that oversee the day to day running of the company. They occupy dual positions that are the position of an employer and alter ego. They are entitled to receive a salary. Note that the managing director is also the Chief Executive officer of the company.[5] Also; if his contract as managing director is terminated by the board of directors, he reverts to the position of an ordinary director. Where the members of the company remove him as a director, he ceases to be both a director and the managing director.

4. **Life Director:** They are not subject to retirement, but can be removed by members of the company.[6]

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[1] Companies and Allied Matters Act 2020, s 269 (1).
[2] *Ibid* s 269(3).
[3] *Ibid* s 270 (1).
[4] *Ibid* s 265 (1).
[5] *Yalaju-Amaye v Associated Registered Engineering Contractors Ltd* [1990] 4 NWLR (Pt. 145) 422 (they are servant of the company).
[6] Companies and Allied Matters Act 2020, s 281.

5. **Executive Directors:** These are directors that see to the day to day affairs of the company and they occupy dual positions; that of an employer and alter ego. They are entitled to payment of salaries but they are not the CEO of the company.

6. **Non-executive Directors:** These are directors who attend board meetings only. They are entitled to out-of-pocket expenses and can only be paid salaries if the articles permit such.

7. **Nominee Directors:** These are companies who are directors in another company. They may send a representative to attend the meetings of that company on their behalf, and that representative who attends the company's meeting on behalf of another company is called a nominee director.

8. **Alternate Directors:** These are persons appointed by directors to represent them at a meeting from which they will be absent. Note: The articles of association must permit such appointments.

9. **De Facto Directors:** These are persons who are not directors but pretend to be directors of the company and sometimes their acts may be ratified by the company.

10. **Casual Directors:** These are directors appointed by the Board of Directors to fill any casual vacancy arising out of death, resignation, and retirement or removal.[7]

11. **Independent Directors**: These are directors of the company whose relatives during the two years preceding the time of their appointment were not employees of the company; did not make to or receive from the company payments of more than N20, 000,000, or own more than a 30% share or other ownership interest, directly or indirectly, in an entity that made to or received payment from the company and was not engaged directly or indirectly as an auditor for the company. Note: A public company shall have at least three independent directors.[8]

11.3 NUMBER OF DIRECTORS:

Generally, every company must have at least two (2) directors unless it is a small company having one member.[9] NB: The number of directors as to its maximum number of directors may be determined by its articles.

However, where the number of directors drops below two (2), another director should be appointed within one (1) month, otherwise the company shall cease to do business[10]. Any member of the company who is aware that the company is carrying

[7] *Ibid* s 274 (1).
[8] *Ibid* s 275 (1-3).
[9] *Ibi*d s 271 (1).
[10] *Ibid* s 271 (2).

out business with less than two (2) directors after sixty (60) days shall be liable to pay fine.[11]

11.4 AGE OF DIRECTORS:

The minimum age of directors for every company is eighteen (18) years. For public companies, a director retires once he attains the age of seventy (70) years. However, he may still stand a chance for re-election where he indicates his age to the members of the company via a special notice.[12]

NB: Private companies are not affected by the age limit for retirement.

11.5 DISQUALIFICATION OF DIRECTORS:

1. A person of unsound mind.
2. An infant
3. A fraudulent person
4. An insolvent person (undischarged bankrupt).
5. A company undergoing liquidation
6. A corporation other than its representative appointed to the board for a given term.[13]

11.6 APPOINTMENT OF DIRECTORS:

1. **First Director:** They are appointed by subscribers whose names are entered into the Memorandum of Association.[14]
2. **Subsequent/Additional Director:** These are directors other than first directors and they are appointed by members at general meeting.[15]
3. **Causal Director:** These are directors appointed by the Board of Directors to fill any casual vacancy arising out of death, resignation, retirement or removal.[16]

11.7 CHANGE OF DIRECTORS:

Change of directors can occur in three (3) ways;

1. Vacation from office.[17]
2. Retirement by rotation.[18]
3. Removal.[19]

11.7.1 VACATION FROM OFFICE:

1. Failure to maintain and meet up with share qualifications.
2. Where a director becomes a person of unsound mind.
3. Where a director becomes insolvent (undischarged bankrupt).
4. Where a director is convicted for fraud.

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[11] *Ibid* s 271 (3).
[12] *Ib*id s 282.
[13] *Ibid* s 283.
[14] *Ibid* s 272.
[15] *Ibid* s 273.
[16] *Ibid* (n7)
[17] *Ibid* s 284.
[18] *Ibid* s 285.
[19] *Ibid* s 288.

5. Where a director resigns from office.
6. Where the director dies.
7. Where the tenure of office of a director has elapsed in accordance with regulatory authorities.

11.7.2 RETIREMENT BY ROTATION:

Generally, directors hold office for one (1) year and thereafter retire. This constitutes an ordinary business to be transacted at the AGM. The procedure for retirement is governed by the company's articles but when the articles are silent, the provision of CAMA will prevail. According to CAMA, the procedures are as follows:

1. At the First AGM, all directors retire, except for life and shadow directors.
2. At the Subsequent AGM, one-third of all the directors retire or the number nearest to one-third. The number of persons to retire will be determined by their dates of appointment (First to be appointed = first to be retired).

NB: Where all directors are appointed on the same day, the company should call for voluntary retirement. Where nobody retires voluntarily, the company casts lots to determine who retires.

11.7.3 REMOVAL OF DIRECTORS:

All directors are subject to removal. Removal constitutes special business. It can be done in either the AGM or EGM. The procedures for removing Directors are as follows;

1. A special notice is sent to the Board of Directors for the removal of a director.
2. The Board of Director informs the director of such notice within seven (7) days so as to prepare his representation.
3. The Board of Directors issues membership notices to members at least twenty-one (21) days before the meeting.
4. The members at the meeting pass an ordinary resolution.
5. At the close of the meeting, the Secretary sends the following documents to CAC;
   a) A copy of the ordinary resolution
   b) Form CAC 7A (Notice of removal)
   c) Form CAC 7B *(Change of Director)*
   d) Evidence of payment of filing fees

11.7.4 POST-PROCEDURES ON THE REMOVAL OF DIRECTORS:

The Secretary is to make an alteration on the following books;

a) Register of Directors.
b) Register of Directors Shareholding.
c) Filing to CAC the relevant documents.

11.7.5 REMEDIES FOR WRONGFUL REMOVAL OF A DIRECTOR:

Where a director feels he has been removed wrongly, he may sue for any of the following:

1. Declaration for wrongful removal.

2. An injunction restricting the company from the continued removal and barring him from entering the premises.
3. Damages for breach of contract.
4. Compensation.[20]

11.8 PROCEEDINGS OF DIRECTORS:

By virtue of Section 289 (1) CAMA provides that; the directors of a company shall have its first board of directors meeting within six (6) months of incorporating a company. The businesses to be transacted at the first board meeting include:

1. Appointment of the Chairman of the board.
2. Receipt and adoption of the certificate of incorporation,
3. Adoption of the company seal,
4. Appointment of Managing Director.
5. Appointment of FIRST Auditor.
6. Appointment of legal practitioner.
7. Appointment of Accountant.
8. Fixing the Financial Statement of the year of the company which is known as Accounting Reference year.

At subsequent Board of Directors meetings, the businesses to be transacted include:

1. Removal of Managing Director
2. Removal of Company Secretary
3. Replacement of Chairman *(Where he is more than five (5) minutes late for the board meeting.)*
4. Allotment of Shares
5. Transfer of Shares
6. Declaration of Solvency

Note: The decision of the board shall be by simple majority, and where there is a tie, the chairman shall have a second casting of vote. Also, the quorum for board meetings may be fixed by the articles. Where the articles are silent, the quorum will be two (2) or if the directors are more than 6, 1/3 of the number of directors. The company secretary who is not a director cannot be reckoned with in terms of quorum.

11.9 DUTIES OF DIRECTORS:

1. A director stands in a fiduciary (utmost good faith) relationship towards the company.[21] Note: The fact that a person holds more than one directorship shall not derogate from his fiduciary duties to each company. 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, resign from being a director from all but five of the companies.[22]

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[20] *Ibid* s 288(6).
[21] *Ibid* s 305.
[22] *Ibid* s 307 (1-3).

2. A director must, at all times; act in what he believes to be the best interests of the company.
3. A director acts as an agent to the company; since a company is an artificial person, it must function through its directors who are its agents.[23]
4. Duty not to allow conflict of his duties with his personal interest. I.e. they must show undivided concern for the company's interest.
5. He must not accept a bribe, gift or commission in cash or in kind from any person or share in profit of that person in respect of any transaction involving his company in order to introduce his company to deal with that person.
6. Every director of a company shall act honestly, in good faith and in the best interest of the company and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstances.[24]

11.10 LIABILITY OF DIRECTORS:

A director may be personally liable in contract or tort. A director, if found liable, may be asked to pay damages or account to the company for any secret profit made or unauthorized use of company's property or misuse of corporate information.

11.11 COMPENSATION FOR LOSS OF OFFICE:

The fact that a director is removed does not mean that compensation or damages payable to him in respect to termination of his appointment would be denied him.[25] In compensating a removed director, it is to be determined whether the director would be entitled to compensation by virtue of the contractual agreement between him and the company. If, by his terms of employment, he is entitled to be compensated, he will be compensated. There is then the non-contractual compensation. This is when by virtue of the contractual agreement he is not entitled to compensation.[26] However, compensation can be given to the director for loss of office if;

a) Particulars with respect to the proposed payment and the amount have been disclosed to members of the company.
b) The proposal is approved by the company.

[23] *Ibid* s 309.
[24] *Ibid* s 308.
[25] *Ibid* s 288(6).
[26] *Ibid* s 297.

CHAPTER TWELVE

SECRETARY

12.1 INTRODUCTION:

Every company must have a secretary unless it is a small company having one member.[1]

12.2 APPOINTMENT OF COMPANY SECRETARY:

The company secretary is appointed by the Board of Directors. He is a high ranking officer and may be part of the management.[2] A public company that has not appointed a secretary before the commencement of the New CAMA, should, not later than six months after the commencement of this Act appoint a secretary.[3]

12.3 QUALIFICATIONS FOR THE APPOINTMENT OF SECRETARY:

They are appointed by the Board of Directors (BOD). For private companies, the applicant must be skilled with the use of computers. For public companies, the applicant must fall within one of the following categories:

a) A legal practitioner or Firm
b) A chartered secretary or Firm
c) A chartered accountant or Firm
d) Any person who has held the 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.[4]

12.4 DUTIES OF COMPANY SECRETARY:

The duties of company secretaries[5] can be categorised into three (3);

1. Before meeting
2. During meeting
3. After meeting

12.4.1 DUTIES OF THE COMPANY SECRETARY BEFORE MEETING:

1. To prepare the notice of meeting.
2. To ensure that the notice of meeting has been served to members.
3. To ensure that the venue of the meeting is secured.

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[1] Companies and Allied Matters Act 2020, s 330.
[2] *Ibid* s 333(1).
[3] *Ibid* s 330 (2).
[4] *Ibid* s 332.
[5] *Ibid* s 335.

4. The company secretary is required to take the following documents to the meeting:
   i. A copy of the Memorandum of Association.
   ii. A copy of the Articles of Association.
   iii. A copy of the minute's book.
   iv. A copy of CAMA.
   v. Attendance register

12.4.2 DUTIES OF THE COMPANY SECRETARY DURING MEETING:

1. To enter the names of those present at and those absent from the meeting.
2. To check the time the Chairman arrives at the meeting.
3. Take count of those present at the meeting.
4. Take record of proceedings at the meeting.

12.4.3 DUTIES OF THE COMPANY SECRETARY AFTER THE MEETING:

1. To ensure that the final copy of the minutes of the meeting has been signed by the Chairman only.
2. To make possible alteration in the statutory books.
3. Filing the relevant documents to the CAC.

12.5 DOCUMENTS TO BE SIGNED BY BOTH CHAIRMAN AND SECRETARY:

1. Resolution
2. Annual returns
3. Financial statements.

12.6 DOCUMENTS TO BE SENT TO THE CAC BY THE COMPANY SECRETARY AND THEIR STIPULATED TIME FRAME:

1. A copy of resolution - within 15 days after the resolution is passed.
2. Notice of removal of Director or Secretary - within 14 days after the removal.
3. Notice of increase in share capital - within 15 days.
4. Statutory report – within 14 days.
5. Annual returns - within 42 days.
6. Returns of allotment - within 1 month.
7. Register of Charges - within 90 days.

12.7 REMOVAL OF COMPANY SECRETARY:

Removal of a company secretary depends largely on the type of company.

1. For private companies, there is no stipulated mode of removing secretaries by CAMA i.e. basically they adopt the mode of "hire and fire".
2. For public companies, they must comply with the modes stipulated by CAMA.[6] The procedure for the removal of public companies secretary is as follows;

[6] *Ibid* s 333 (1- 4).

1. The Board of Directors must issue a notice to the Secretary containing the following;
    i. An intention to remove.
    ii. Reasons for the removal.
    iii. An option to resign within 7 days.
    iv. An option to enter a defence within 7 days.

NB: If the Secretary neither resigns nor enters his defence or responds to the notice, such Secretary may be removed by the Board of Directors and a notification shall be made to members at the general meeting.

2. If the Secretary enters a defence and such defence is not satisfactory, the Secretary may be removed on the following grounds;
    i. If the offence is a great misconduct or if it relates to fraud, such Secretary may be removed.
    ii. If the offence is a minor offence, such Secretary will only be suspended.

3. If the Secretary is suspended, notice of suspension shall be sent to members at general meeting and if the members ratify such suspension, it will amount to removal and the date of removal shall be the date of his/her suspension.

CHAPTER THIRTEEN

CORPORATE SOVEREIGNTY AND MINORITY PROTECTION

13.1 INTRODUCTION:

The principle of corporate sovereignty is such that the courts will not interfere in the internal affairs of any company, because it should be within the competence of most of the shareholders to determine their company's course and direction, as only the company can sue to remedy that wrong and only the company can ratify the irregular conduct. This is also known as the majority rule which is in line with the rule set out in case of *Foss v. Harbottle*[1] and Section 341 CAMA.[2]

13.2 THE RATIONALE FOR CORPORATE SOVEREIGNTY PRINCIPLES:

1. It prevents multiplicity of suits over one or similar incidents; if each shareholder is allowed to sue over a single wrong done to the company, the company would be exposed to multiplicity of suits.
2. The members in the general meeting can ratify the wrongful acts of the Directors. If each individual shareholder could sue, this power to ratify would have been meaningless.
3. The company is a separate legal personality, thus it should institute actions on its own.
4. It preserves the principle of majority rule.

13.3 POWER OF THE MAJORITY:

1. Alteration of the Memo and Articles.
2. Appoint and remove Directors.
3. If they so desire, they can bring the company to an end.

13.4 MINORITY PROTECTION:

At Common Law, various devices were adopted to reduce the harsh effects of the rule in **Foss V Harbottle**[3] through the creation of various exceptions by the courts in the interest of justice as minority protection only arises where there is a wrong committed by the company and the majority fail to ratify such wrong. The circumstances that lead to minority protection are as follows:[4]

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[1](1843) 2 Hare 461, 67 ER 189.
[2]Companies and Allied Matters Act 2020.
[3]*Supra*.
[4]Companies and Allied Matters Act 2020, s 343.

1. Where the company enters into any transaction which is illegal or ultra vires;
2. Where the company is doing, or has purported to do, by ordinary resolution, any act which by its articles or by the provisions of CAMA is required to be done by special resolution;
3. Where the company does any act or omission affecting the applicant's individual rights as a member;
4. Where fraud is committed, either on the company or the minority shareholders and the directors fail to take appropriate action to redress the wrong;
5. 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;
6. 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;
7. Any other act or omission, where the interest of justice so demands; and
8. Unfairly prejudiced and oppressive conduct.

13.5 FORMS OF ACTIONS AND RELIEFS AVAILABLE TO MINORITY SHAREHOLDERS/MEMBERS:

An aggrieved shareholder/member can bring the following actions or reliefs against the company where the company fails to ratify the wrong done against the members or the company:

1. Members Direct Action.
2. Derivative Action.
3. Relief on the grounds of unfairly prejudicial and oppressive conduct.
4. Application for investigation of the affairs of the company by the CAC.
5. Application for Winding up on just and equitable grounds.

13.6 MEMBERS DIRECT ACTION:

A breach of **Section 343 of CAMA**[5] by the company entitles a member/shareholder to bring members direct action to enforce his rights against the company.[6] The members' direct action can be brought in two (2) forms, as follows;

1. **Personal Action:** A member can institute a personal action to enforce a right due to him personally. Personal action is restricted to such infringements directed at the individual membership rights in the company e.g. entitlement to notice of meeting, voting, attendance of meetings, payment of dividends when declared etc.
2. **Representative Action:** Members can bring action in a representative capacity for the enforcement of personal rights due to them. Such members must nominate those who would bring an action in a representative capacity for the enforcement of rights due to them. They can be named in the suit as their representatives and satisfy all the conditions for instituting

[5] *IIbid.*
[6] *Ibid* s 344(1).

representative actions in court.

13.6.1 PROPER PARTIES TO A MEMBERS DIRECT ACTION:

The member of the company sues in his name or in a representative capacity as the claimant, while the company and the directors are made defendants to the action.

13.6. 2 WHO CAN BRING A MEMBERS DIRECT ACTION?

1. Member / Shareholder.
2. Debenture holder secured by floating charge
3. Personal representative of a deceased member.
4. Any person to whom shares have been transferred or transmitted.[7]

13.6.3 REMEDIES AVAILABLE IN A MEMBERS DIRECT ACTION:

1. **Declaration:** This is used where the wrong has already been committed.
2. **Injunction:** This is used where the wrong is yet to be committed.
3. **Damages** for any loss incurred on account of the breach of their rights.
4. **The cost of instituting the action:** Where any member institutes an action against the company, the Court may award costs to him personally, whether or not his action succeeds.

Note: Where the Court finds the directors, or any one of them, liable for any wrongdoing committed against the members, the erring director would be personally liable in damages to the aggrieved member.[8]

13.7 DERIVATIVE ACTION:

Ordinarily, these actions are to be brought by the company through the directors and where the directors fail to bring up the action, a member can bring up the action on behalf of the company. This is an action brought by members whenever the directors fail to institute or discontinue the action because the wrong was committed against the company. The difference between members' direct action and derivative action is; for members' direct action, the wrong is committed against the members of the company, while for derivative action, the wrong is committed against the company. Also, a derivative action is an application made to the court (Federal High Court) for leave to bring an action in the name, or on behalf, of the company or to intervene in an action to which the company is a party for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.[9]

Note: In a derivative action, the parties are addressed as the members and the company (Claimants) against the directors and the company (Defendants).

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[7] *IIbid* s 345.
[8] *Ibid* s 344 (1-3).
[9] *Ibid* s 346 (1).

13.7.2 CONDITIONS FOR THE GRANT OF DERIVATIVE ACTION:

The court will only grant leave to bring a derivative action if the member satisfies the following;

1. That the Director has been informed of the wrong.
2. That the Director has failed to take the necessary steps/actions.
3. That the application is in the best interest of the company.
4. That the applicant acted in good faith.
5. That the cause of action has arisen from an actual or proposed act or omission involving negligence, default, breach of duty or trust by a director or a former director of the company.

Note that all the conditions are cumulative and must be contained in the affidavit in support of the application.

13.7.3 WHO CAN APPLY FOR DERIVATIVE ACTION:

The following persons can apply for derivative action for a company:

1. Registered holder or a beneficial owner and a former registered holder or beneficial owner, of a security of a company;
2. A director or an officer or a former director or officer of a company;
3. The Corporates Affairs Commission**;** or
4. Any other person who is permitted in the discretion of the Court.[10]

13.7.4 PROCEDURE FOR DERIVATIVE ACTION:

1. The applicant must obtain leave of court
2. Commence the action by originating summons at the Federal High Court with an Affidavit in support and a written address.

Note: The parties are usually written as **AGIP (NIG.) LTD V. AGIP (NIG) Ltd i.e.** the company would be reflected as applicant as well as respondent.

13.7.5 REMEDIES THE COURT CAN GRANT UPON A SUCCESSFUL APPLICATION FOR DERIVATIVE ACTION:

The court may, upon a successful derivative action, grant general reliefs as well as specific reliefs as follows;[11]

1. An order that the amount illegally collected from the company be returned to it.
2. An order authorizing the applicant or any other person to control the conduct of the action.
3. An order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the company instead of to the company.
4. An order requiring the company to pay reasonable legal fees incurred by the Applicant.
5. A direction that a Director of the company controls the action in Court to

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[10] *Ibid* s 352.
[11] *Ibid* s 347 (2).

redress the illegal act or to recover the company's property.
6. Appointment of a receiver/ manager of the property of the company.
7. Direct the company or its members to institute specific actions.
8. Vary or set aside a contract to which the company is a party.
9. Restrain a person from doing a specific action.
10. Require a person to do a specific act or thing.

13.8 RELIEF ON THE GROUNDS OF UNFAIRLY PREJUDICIAL AND OPPRESSIVE CONDUCT:

In this case, the affairs of the company are being conducted in an illegal or oppressive manner or unfairly prejudicial or discriminatory against a member or member's interest or in disregard of public interest[12]

13.8.1 PROCEDURE FOR RELIEF ON THE GROUNDS OF UNFAIRLY PREJUDICIAL AND OPPRESSIVE CONDUCT:

The member should file a petition to the Federal High Court.[13] The petitioner must prove pecuniary loss.

13.8.2 WHO CAN BRING A PETITION FOR RELIEF ON THE GROUNDS OF UNFAIRLY PREJUDICIAL AND OPPRESSIVE CONDUCT?

The following persons have **locus standi** to institute an action by a Petition to the Federal High Court;[14]

1. A member of the company,
2. The personal representative of a deceased member
3. Any person to whom shares have been transferred or transmitted by operation of law.
4. Director or officer or former Director or officer of the company.
5. Creditor;
6. Corporate Affairs Commission; or
7. Any other person who, in the discretion of the Court, is the proper to make the application.

Note: It is only the CAC that can petition on the ground that the affairs of the company are being conducted against the members in a manner which is in disregard to public interests.[15]

13.8.3 RELIEFS/ ORDERS THE COURT CAN GRANT UPON A SUCCESSFUL PETITION:

The court may make the following orders/reliefs:[16]

1. That the company be wound up.
2. Order directing an investigation to be made by the CAC
3. Order appointing a receiver or a receiver and manager of company's property
4. Order varying or setting aside a transaction.

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[12] *Ibid* s 354 (1).
[13] *Ibid* s 353 (1).
[14] *Ibid.*
[15] *Ibid* s 354(2) (c).
[16] *Ibid* s 355 (2).

5. Order for the purchase of the shares of any member by other members or by the company.
6. Order directing the company or a member to institute, prosecute, defend or discontinue specific proceedings etc.

13.9 INVESTIGATION OF COMPANY:

The CAC 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. This is an instance of lifting the veil.[17]

13.9.1 WHO CAN PROMPT AN INVESTIGATION INTO A COMPANY'S AFFAIRS:

The following can prompt such an investigation;[18]

1. In the case of a company having share capital, on the application of members holding at least one-tenth of the class of shares issued;
2. In the case of a company not having share capital, on the application of at least one-tenth in number of the persons on the company's register of members; and
3. In any other case, on the application of the company.

13.9.2 CIRCUMSTANCES WARRANTING AN APPLICATION FOR INVESTIGATION OF A COMPANY:

The CAC may order investigation if;[19]

1. 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; or
2. 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
3. The company was formed for any fraudulent or unlawful purpose or;
4. Persons concerned with the company's formation or the management of its affairs are in connection therewith guilty of fraud, misfeasance or other misconduct towards it or towards its members.
5. The company's members have not been given all the information with respect to its affairs which they might reasonably expect.

Note: 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 and Any employee relieved of his employment without any just cause, other than for reason of disclosure inspector's request, 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.[20]

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[17] *Ibid* s 357 (1).
[18] *Ibid* s 375 (2).
[19] *Ibid* 358 (2).
[20] *Ibid* s 357 (4&5).

CHAPTER FOURTEEN

AUDIT, FINANCIAL STATEMENT, AND ANNUAL RETURNS

14.1 INTRODUCTION:

It is compulsory for every company to keep or maintain accounting records in accordance with the provisions of CAMA.[1] An accountant is not needed before a company can produce an accounting record. The basic thing required by law is to put up a document that will evidence the financial composition sufficient to explain the transactions of the company.

14.2 CONTENT OF ACCOUNTING RECORDS:

Accounting records in particular shall contain the following:[2]

1. Entries reflecting the day to day income and expenditure of the company.
2. A record of the assets and liabilities of the company.

In addition, where the company deals in goods, the accounting record shall contain:[3]

1. Statements of stocks held by the company at the end of each year of the company.
2. All statements of stock taking from the annual statements of stocks held by the company.
3. Statements of all goods sold and purchased except for goods sold by way of retail trade.

14.3 LOCATION AND PRESERVATION OF ACCOUNTING RECORDS:

The accounting records of a company are to be kept in the company's registered office or such other place in Nigeria as the directors think fit, and they must be available or open to inspection by the officers of the company[4] Accounting records are to be preserved for a period of 6 years from the date on which they were made. The legal obligation to maintain them terminates after 6 years.

Note: This is not applicable where a company is wound up and its records are disposed.[5]

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[1] Companies and Allied Matters Act 2020, s 374(1).
[2] *Ibid* s 374 (3).
[3] *Ibid* s 374 (4).
[4] *Ibid* s 375 (1).
[5] *Ibid* s 375 (2).

In addition to original hard copies, the company can keep electronic copies or registers of its document, 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.[6]

14.4 FINANCIAL STATEMENTS:

Financial statements show the annual state of affairs of the company, and they are vital and of crucial importance not only to members of the company but also to third parties dealing with it. The financial statements enable a member to know if his investments are growing or depreciating; the statements also provide a potential investor with information that would either persuade him to invest or dissuade him from investing in a particular company.

The directors are to determine, at their first meeting after the incorporation of the company, the date in each year financial statements shall be made up. After determining the date, they are to give notice to the CAC within 14 days of the determination.[7]

14.4.1 CONTENTS OF FINANCIAL STATEMENT:

The following are the content of financial statements of Companies:[8]

1. Statement of the accounting policies;
2. Balance sheet or balance sheet as at the last day of the year;
3. Profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the year;
4. Notes on the accounts;
5. Auditors' report;
6. Directors' report;
7. Statement of the source and application of fund or statement of cash flow;
8. Changes in equity;
9. Value-added statement for the year;
10. Five year financial summary;
11. In the case of a holding company, the group financial statements; and
12. Such other matters which are required in accordance with the applicable accounting standards.

Note: The financial statements of a private company need not include;[9]

1. Statement of the accounting policies;
2. Statement of the source and application of fund;
3. Changes in equity; and
4. Value added statement for the financial year.

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[6] *Ibid* s 375 (3).
[7] *Ibid* s 377 (4).
[8] *Ibid* s 377(2).
[9] *Ibid* s 377(3).

14.4.2 DUTY TO PREPARE FINANCIAL STATEMENTS:
It is the duty of the directors to prepare a financial statement, in respect of each financial year of a company.[10]

14.4.3 PUBLICATION OF FINANCIAL STATEMENTS:
A company publishes its financial statements when the financial statements lie before the company in the general meeting and are delivered to the Commission (CAC). The provisions of **Section 398** of CAMA indicate that a company publishes its full account when the complete statements laid before the company at the general meeting are also those delivered to the Commission.

14.4.4 DUTY TO LAY AND DELIVER FINANCIAL STATEMENTS:
In respect of each year, the directors must at a date not later than eighteen (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 (9) months prior to the date of the meeting.[11]

Note: A company's balance sheet and every copy of it which is laid before the company in the general meeting or delivered to the Commission shall be signed on behalf of the board by two of the directors of the company.[12]

14.4.5 PERSONS ENTITLED TO RECEIVE FINANCIAL STATEMENT:
A copy of the company's financial statements for the financial year must, not less than 21 days before the date of the meeting at which the financial statement would be laid, be sent to each of the following persons;[13]

1. Every member of the company (whether or not so entitled);
2. Every holder of the company's debentures (whether or not so entitled); and
3. All persons other than members and debenture holders, being persons so entitled.

Note: In the case of companies not having share capital, a copy of the financial statement may not be sent to a member who is not entitled to receive notices of general meetings of the company, or to a holder of the company's debentures who is not so entitled.[14]

14.4.6 FAILURE TO DELIVER TO THOSE ENTITLED:
Where the financial statement of a company is not sent 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.[15]

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[10] *Ibid* s 377 (1).
[11] *Ibid* s 388 (1).
[12] *Ibid* s 386 (1).
[13] *Ibid* s 387 (1).
[14] *Ibid* s 387(2).
[15] *Ibid* s 389 (1).

14.5 AUDITORS:

These are persons who examine the books of accounts of a company with a view to ascertaining its compliance with the accounting policy of the company and accounting standard rules.

14.5.1 APPOINTMENT OF AUDITORS:

Every company must, at each annual general meeting, appoint an auditor(s) to audit the financial statements of the company. The first auditors may be appointed by the directors.[16] Where at an AGM, no auditors are appointed or reappointed, the directors may appoint a person to fill the vacancy.[17] The company is to notify the CAC of the fact within one week of the power of the auditor so appointed to fill the vacancy becoming exercisable.[18]

14.5.2 QUALIFICATION OF AUDITORS:

Auditors are essentially qualified accountants, since auditing is a specialized branch of accountancy, the following persons shall not be qualified for appointment as auditor of a company:[19]

1. An officer or servant of the company.
2. A person who is a partner of, or in the employment of, an officer or servant of the company.
3. A body corporate.
4. Any persons in the employment of another body corporate which is the company's subsidiary or holding company or a subsidiary of that company's holding company or where otherwise connected.
5. A person disqualified from acting as auditor of a company's subsidiary or holding company.

14.5.3 AUDITOR'S REPORT:

The auditors of a company shall make a report to the members on the account examined by them, and on the financial statement i.e. balance sheet, and profit and loss account and on all group financial statements copies of which are to be laid before the company at the general meeting during the auditors' tenure of office. In the case of a public company, a similar report shall be made to the Audit Committee.[20]

14.5.4 REMOVAL OF AUDITORS:

A Company may, by ordinary resolution, of which special notice is given, remove an auditor. Notice of removal of an auditor shall be given to the Commission within 14 days of the passing of the resolution.[21]

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[16] *Ibid* s 401 (1).
[17] *Ibid* 401 (3).
[18] *Ibid* s 401 (4).
[19] *Ibid* s 403.
[20] *Ibid* 404 (1&2).
[21] *Ibid* s 409 (1& 2).

14.5.5 POWERS, DUTIES AND LIABILITIES OF AUDITORS:

1. Every auditor of a company shall have the right of access at all times to the company's books, accounts and vouchers.
2. He is entitled to require from the company's office such information and explanations as he thinks necessary for the performance of the auditor's duties. The duty of the company's auditor includes carrying out investigations in preparing their report as may enable them to form an opinion on;
   a) Whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them.
   b) Whether the company's balance sheet and (if not consolidated) its profit and loss account are in agreement with the accounting records and returns.[22] Note that where the foregoing has not been done or not in existence, the auditors shall state the fact in their report.

14.6 AUDIT COMMITTEE:

The Audit Committee of the company shall consist 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.[23] Note that the nomination and notice to the Secretary of the Company should be sent to members at least 21 days before the annual general meeting.[24]

14.6.1 OBJECTIVES AND FUNCTIONS OF THE AUDIT COMMITTEE:

In addition to other functions and powers that the company's articles of association may stipulate, the following are the objectives and functions of the audit committee:

1. Examine the auditor's report and make recommendations thereon
2. Ascertaining whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices
3. Reviewing the scope and planning of audit requirements
4. Reviewing the findings on management matters in conjunction with the external auditor and departmental responses thereon
5. Keeping under review the effectiveness of the company's system of accounting and internal control
6. Making recommendations to the board in regard to the appointment, removal and remuneration of the external auditors of the company
7. Authorizing the internal auditor to carry out investigation into any activities of the company which may be of interest or concern to the committee

14.7 ANNUAL RETURNS:

Every company shall, once at least in every year, make and deliver to the Commission an annual return, but the company need not make a return in the year if the company does not hold a meeting in that year under review.[25] The annual

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[22] *Ibid* s 407 (1-5).
[23] *Ibid* s 404(3).
[24] *Ibid* s 404 (6).
[25] *Ibid* s 417.

return must be completed within 42 days after the AGM. See CAC Form 19 (Annual Returns Form) while CAC Form 22 is for annual report of exempted company (unregistered company).

14.7.1 FORM OF ANNUAL RETURNS:

1. Schedule 7 - Company having share capital other than small company.
2. Schedule 8 - Small company;
3. Schedule 9 - Company limited by guarantee.

14.7.2 DOCUMENTS TO BE ANNEXED TO ANNUAL RETURNS:

The following documents are to be annexed to annual returns;[26]

1. A written copy of every balance sheet and profit and loss account laid before the general meeting to be certified by a director and secretary
2. Also, every document to be annexed to the balance sheet, that is, auditors report and directors' report.
3. A copy of the report of the auditors and directors certified by a director and by the secretary of the company.
4. In addition, for a private company and small company, the annual returns will be accompanied by a certificate signed by both the director and secretary that the company.[27] A company is a small company when;[28]
   a) It is a private company limited by shares;
   b) The amount of its turn-over for that year is not more than N120,000,000 or such amount as may be fixed by the Commission;
   c) Its net assets value is not more than N60,000,000 or such amount as may be fixed by the Commission;
   d) None of its members is an alien;
   e) None of its members is a government, a government agent or nominee; and
   f) The directors among them hold at least 51% of the equity share capital of the company.

An unlimited company is exempted from attaching the foregoing documents to its annual returns if the company is not a subsidiary of a company limited by shares or a holding company of a company limited by shares.[29]

17.7.3 FILING OF ANNUAL RETURNS:

Annual returns of individuals, firms or corporations must be filed not later than the 30th of June of each year, except in the year it was registered.[30] While for incorporated trustees it must be filled not earlier than 30th June or later than 31st December each year.[31] The trustees of an association shall submit to the Commission a bi-annual statement of affairs of the association, as the Commission shall specify in its regulations.[32] Note that the time frame for filing of annual

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[26] *Ibid* s 422.
[27] *Ibid* s 423 (1).
[28] *Ibid* s 423 (2).
[29] *Ibid* s 424.
[30] *Ibid* s 822 (1).
[31] *Ibid* s 848 (1).
[32] *Ibid* 845(1).

returns for companies was not expressly stated by any provision in the new CAMA, as previously it was the same as that of firms, individuals and corporations.[33]

17.7.4 CONSEQUENCES OF FAILURE TO FILE ANNUAL RETURNS:

1. Non-compliance with the filing of annual returns is an offence for which the company and every officer in default would be held liable.
2. The CAC, after serving on the company a 14 days' notice, shall apply to the court for an order of court mandating the filing of the annual returns within the time stipulated by the order.[34]
3. By CAC striking off the company from its register of companies. Where a company does not file annual returns, the CAC can presume that such company is no longer carrying on the business for which it was registered or in operation.[35]

[33]Companies and Allied Matters Act 1990, CAP C 20 LFN 2004, s 587.
[34]Companies and Allied Matters Act 2020, 744 (1).
[35]*Ibid* s 629(1).

CHAPTER FIFTEEN

COMPANY SECURITIES: SHARES AND DEBENTURES

15.1 INTRODUCTION:

Company securities are assets of the company, and they basically consist of shares and debentures.

15.2 REGULATORY LAWS IN COMPANY SECURITY:

1. Companies and Allied Matters Act, 2020.
2. Investment and Securities Act (ISA).
3. Securities and Exchange Commission Rules.
4. Nigerian Stock Exchange Listing Rules.

15.2.1 REGULATORY BODIES IN COMPANY SECURITY:

1. Securities and Exchange Commission (SEC)
2. Nigeria Stock Exchange (NSE).
3. Corporate Affairs Commission (CAC).
4. Federal High Court.

15.3 BASIC TERMS IN COMPANY SECURITY:

1. **Prospectus:** These are documents presented for registration at the Securities and Exchange Commissions before any form of company securities can be offered to the public. There are three (3) types of prospectus;
   - i. **Deemed Prospectus:** This is a prospectus that complies with the basic requirements and it is used by companies who offer their shares by private placement.
   - ii. **Abridged Prospectus:** This kind of prospectus is used by public companies registered with NSE (quoted or listed). It is a summary of all that a prospectus ought to have.
   - iii. **Statement in lieu of Prospectus:** This is the statement made before embarking on a public offer.

2. **Capital Market Operators:** These are stock brokers or professionals who render assistance to the public at the capital market.

3. **Primary Market:** This is where the company sells its shares by itself without the help of an external body.

4. **Secondary Market:** This is where the company sells its shares by an external body. NB: there are two (2) types of secondary market:

i. Organised Markets are markets with physical structures such as the NSE.
ii. Unorganised markets are markets that are conducted over the telephone or computer without physical structure and they are also known as over-the-counter markets.

5. **Issuing House:** These are houses that help companies present their documents for registration. They can act in two (2) capacities;
   i. As an agent
   ii. As an underwriter.

6. **Right Issue:** These are shares issued to existing members only. These shares are paid by members and failure to pay for such shares shall amount to a forfeiture of the shares.

7. **Bonus Issue:** These are shares issued to existing members only but which have already been paid for by the company.

8. **Initial Public Offer (IPO):** This is the first time the company offers its shares to the public.

9. **Hybrid Issue**: This is a combination of Right issue and Initial Public Offer.

10. **Floatation of Securities:** This is simply the method by which a company can offer its securities to the public to raise money.

11. **Dividends Warrant:** This is the instrument used to pay dividends.

12. **Share Certificate**: For allotment of shares, share certificate is issued within 2 months while for transfer of shares it is issued within 3 months.[1]

13. **Numbering of Shares**: Every share is identified by its numbering unit i.e. every share is numbered.[2]

14. **Call on Shares**: This is a call made by the Board of Directors to those with unpaid shares. Once the call is made, members are expected to pay within 14 days.[3]

15. **Forfeiture of Shares:** This is where members abandon their shares.[4]

16. **Restriction of Shares:** Unless provided in their articles, a private company may place a restriction on the transfer of shares.[5]

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[1] Companies and Allied Matters Act 2020,s 171 (1).
[2] *Ibid* s 170.
[3] *Ibid* s 158 (1).
[4] *Ibid* s 165(1).
[5] *Ibid* s 22(2).

17. **Issued Share Capital:** The issued share capital is the amount of capital a company proposes to be incorporated with. The authorized share capital should not at any time fall below the minimum issued share capital as stipulated by Section 27(2) of CAMA.[6]

18. **Fully Paid Up Shares:**This is the portion of the issued share capital which has been fully paid up or credited as paid up by members. It should not be less than 25% of all shares.

19. **Unpaid Capital:** This is the amount still unpaid on the issued capital and which can be called up at any time when needed.

20. **Unissued Shares:** These are the reserved shares which have not been made available or issued to members. They are also referred to as reserved capital. They cannot be called except in the event of winding up.

21. **Lien on shares:** This is the right of the company to withhold unpaid shares.[7]

22. **Capital gearing:** This is the combination of the ordinary shares and the preference shares as to its value. Where the ordinary shares are more than the preference shares, we have low capital gearing. Where the ordinary shares are equal with the preference shares, we have medium capital gearing. Where the preference shares are higher than the ordinary shares, we have high capital gearing.

15.4 SHARES:

A share is a fixed identifiable unit of capital that represents a member's stake in a company's share capital. It represents the totality of rights and liabilities that a shareholder has in a company as provided in the terms of issue and the Articles of the company.[8]

15.4.1 RIGHTS OF A SHAREHOLDER:

1. Right to Notice of Meeting.
2. Right to attend meetings.
3. Right to vote at meetings.
4. Right to dividends when declared.
5. Right to be counted to determine quorum
6. Right to demand poll vote
7. Right to be paid dividends (dividends are money paid to shareholders).

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[6]Companies and Allied Matters Act 2020.
[7]*Ibid* s 164 (1).
[8]*Ibid* s 138 (1).

15.4.2 TYPES OF SHARES:

1. Preference shares.
2. Ordinary shares or Equity shares.
3. Deferred shares or founders shares.

15.5 PREFERENCE SHARES:

The Liability of this share is limited to its quantity and does not exceed it (the shareholders are paid first in the order of precedence as regarding dividends). Generally, every shareholder has equal rights of vote regardless of the type of shares. However, a preferential shareholder has the right of more than one vote in the following instances;[9]

a) Resolution as to payment of preferential dividends.
b) Resolution passed as to the right of a preferential shareholder.
c) Resolution passed as to the appointment and removal of auditors
d) Resolution passed in respect of winding up.

15.5.5 TYPES OF PREFERENCE SHARES:

There are four (4) basic types of preference shares namely;

1. Redeemable preference shares;
2. Convertible preference shares;
3. Cumulative preference shares; and
4. Participatory preference shares.

15.6 ORDINARY SHARES:

These are shares that bear the liability of the company i.e. they are the risk bearers of the company and are the "equity shares" of the company. In respect of payment of dividends, they are considered next after payment of preferential shareholders.

15.7 DEFERRED SHARES OR FOUNDERS SHARES:

They are also referred to as founders' shares and are usually acquired by promoters of the company. They are also way cheaper than other classes of shares. NB: In payment of dividends they are last considered in the payment order. Generally, by the provisions of Section 140 of CAMA;[10] non-voting and weighted shares with the exception of preference shares in certain circumstances are now abolished and prohibited.

15.8 MODES OF ACQUIRING SHARES:

There are four (4) modes of acquiring shares;

1. Subscription.
2. Allotment.
3. Transfer.
4. Transmission.

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[9] *Ibid* s 168 (1).
[10] Companies and Allied Matters Act 2020.

15.8.1 SUBSCRIPTION:
This is the mode of acquiring shares before the incorporation of the company. The names of the subscribers are entered into the Memorandum of Association.

15.8.2 ALLOTMENT:
This is a mode of acquiring shares after incorporation.[11] There are two (2) ways of allotment of shares;

a) Where the issue is not made public: This form of issue is done by the following companies;[12]
   i. Private companies limited by shares.
   ii. Public unquoted or unlisted companies (companies that are yet to register with the NSE). This is also referred to as private placement.

b) Where the issue is made public: This is issued by companies who are registered with the NSE and have assumed the status of a quoted or listed company.[13]

15.8.2.1 PROCEDURES FOR ALLOTMENT OF SHARES WHERE IT IS MADE PUBLIC:
1. Preparation of prospectus and registration with SEC.
2. Open a subscription list.
3. The names of the applicants shall be entered into the application and allotment sheet.
4. The board of directors or the allotment committee shall convene a meeting to discuss the following;
   i. Those to whom they shall issue letters of allotment.
   ii. Those to whom they shall issue letters of regret.
   iii. How to deal with a letter of renunciation (if any). NB: the above should be done within 42 days of the application.[14]
5. The allottees will be issued share certificates within 2 months.
6. The names of the allottees shall be entered into the register of members.
7. Returns of allotment shall be made to the CAC within 1 month in Form CAC 5.[15]

15.8.3 TRANSFER:
This is where an existing member transfers all or part of his shares to another person. The instrument for transfer is called a deed of transfer and the parties are known as the transferor and transferee. NB: Unless provided in its articles, a private company may place a restriction on the transfer of shares.[16] Note also that transfer of shares can now be done electronically.[17]

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[11] *Ibid* s 149(1).
[12] *Ibid* s 150 (1) (a).
[13] *Ibid* s 150(1) (b).
[14] *Ibid* s 150(1) (c).
[15] *Ibid* s 154 (1).
[16] *Ibid* (n290).
[17] *Ibid* s 175 (1).

15.8.3.1 TYPES OF TRANSFER:
There are two (2) types of transfer of shares;

a) Full transfer
b) Partial transfer

15.8.3.2 FULL TRANSFER:
This is where an existing member transfers all his shares to a person; All Shares + 1 Person = Full Transfer. The procedure for full transfer is as follows;

1. The transferor prepares a deed of transfer which is executed by both parties.
2. The transferor hands over to the transferee the following documents;
a. A copy of the share certificate.
b. A copy of the deed of transfer.
3. The copy of the deed of transfer shall be stamped at the stamp duties office.
4. The copy of the stamped deed of transfer together with the share certificate shall be sent to the company.
5. The board of directors shall pass a resolution approving the transfer and send to the CAC the returns of allotment in Form CAC 5 within 1 month.
6. Issuance of share certificate within 3 months of transfer.
7. Their names are entered into the register of members.[18]

15.8.3.3 PARTIAL TRANSFER:
A transfer of shares is termed partial in the following instances;

i. Where an existing member transfers part of his shares to a person. I.e. Part shares + 1 person = partial transfer
ii. Where an existing member transfers all his shares to two (2) or more persons.

The Procedures for Partial Transfer:

1. The transferor prepares the deed of transfer and it is executed by both parties.
2. The transferor stamps the deed of transfer at the stamp duties office.
3. The transferor send to the company, the following documents;
a) A copy of the stamped deed of transfer.
b) A copy of the share certificate which shall be marked certificate lodged.[19]

4. The board of directors shall pass a resolution approving the transfer and send to the CAC returns of allotment in Form CAC 5 within 1 month.
5. Issuance of share certificate within 3 months of transfer.
6. Entering of their names into the register of members.[20]

15.8.3.4 GROUNDS FOR THE REFUSAL OF TRANSFER OF SHARES:

1. Where the deed of transfer is not stamped.
2. Where the document issued by the transferor is not complete.
3. Where the shares transferred are unpaid shares.

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[18] *Ibid* s 176(1).
[19] *Ibid* s 181(2).
[20] *Ibid* (n303).

4. Where the company exercises its right of lien on the shares transferred.[21] Notification of refusal shall be sent to the applicant within 2 months.[22]

15.8.4 TRANSMISSION:

This is the mode of acquiring shares of a deceased shareholder by his/her beneficiaries'.[23] The documents the company may require for transmission of shares are;

1. Letter of Request.
2. A copy of the will (if any).
3. A copy of the probate grant.
4. A copy of the death certificate.
5. Any other document that the company may require.

15.9 REMEDIES FOR A PERSON ENTITLED TO SHARES BUT NOT REGISTERED:

1. Serve on the company a notice and affidavit of interest in the company's shares pursuant to **Section 180 CAMA** (protection of beneficiaries).
2. Apply to the Federal High Court to rectify the company's register of members in his favour; pursuant to **Section 115 CAMA.**
3. The transferee may bring an action against the transferor to account for the benefits derived within the period during which his interest was subsisting, especially dividends paid out within the period.

15.10 ISSUANCE OF SHARES:

There are two (2) ways by which shares can be issued;

- **i. Issuance at Premium:** This is where a share is issued higher than its nominal share value.
- **ii. Issuance of Redeemable Preference Shares:** This is only allowed where it is provided by the company's articles. It is redeemable through a fund known as "the Capital Redemption Reserve Fund".

Note: It is unlawful for a company to issue shares at a discount.[24]

15.11 FLOATATION OF SHARES:

Floatation simply means the way by which shares are offered publicly. There are three (3) ways of floatation;

1. **Direct Offer/Prospectus Issue:** In this case, the shares are issued to the issuing house as an agent. Where the issuing house acts as an agent, the company bears the liability of under subscription.
2. **Offer for Sale:** In this case, the shares are issued to the issuing house as an underwriter. Here, the issuing house bears the liability of under subscription.
3. **Placement:** In this case, the capacity in which the shares are issued is not relevant, rather the shares are issued to a select few.

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[21] *Ibid* s 176 (3).
[22] *Ibid* s 177 (1).
[23] *Ibid* s 179 (1).
[24] *Ibid* s 146.

15.12 DEBENTURE:
This is a transaction created whenever a company obtains a loan from the public or an individual. NB: At the point of dissolution, the debenture holders become the creditors of the company.

15.12.1 FORMS OF DEBENTURE:
There are two (2) forms of debenture, namely;[25]

i. **Simple Debenture:** This is where a company obtains a loan from a few persons, and the instrument created in this case is a **deed of mortgage.**
ii. **Debenture Stock:** This is where a company obtains loans from several persons i.e. the public, and the instrument created is called **debenture trust deed**.

15.12.2 PROCEDURE ON CREATING DEBENTURES:

1. Convene Board meeting to pass resolution authorizing the loan and preparation of loan documents including prospects, if necessary.
2. Preparation, execution and stamping of the following documents; Deed of mortgage (charge by way of legal mortgage debenture); Power of Attorney (if any); Debenture Trust Deed (if any).
3. Obtain Governor's consent if necessary, and where necessary.
4. File the above documents at the Land Registry.
5. File the documents for registration at the CAC; i.e. Mortgage/Charge by way of Legal Mortgage or Debenture; Trust Deed and Particulars of Charge in Form CAC 9.
6. Leave copies of all documents for inspection at the registered office of the company, that is, in the Record of instruments, and enter particulars of the charge in the Register of Charges and also in the Register of debenture holders (Where applicable).
7. Obtain the Certificate of registration from the CAC 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.

15.12.3 TYPES OF DEBENTURE:

1. **Perpetual Debenture:** These are debentures created with an agreement not to redeem or redeemable upon the happening of an event.[26]
2. **Redeemable Debenture:** These are debentures created with an agreement to redeem on a fixed date.[27]
3. **Secured Debenture:** These are debentures that are coupled with security which can either be fixed charge *(land)* or floating charge *(shares)*.[28]
4. **Unsecured/Naked Debenture:** These are debentures that are coupled with no security.[29]

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[25] *Ibid* s 192(2).
[26] *Ibid* s 196.
[27] *Ibid* s 199.
[28] *Ibid* s 198 (1) & (2).
[29] *Ibid* s 198 (1)

5. **Convertible Debenture:** These are debentures created with an understanding that the debenture will be converted to shares.[30]

15.12.4 REGISTRATION OF DEBENTURES:
Debentures should be registered with the CAC within 90 days of execution using Form CAC 9.[31] Note: Where a company fails to register the debenture, it shall be void against the liquidator and the debenture holder (creditors).

15.12.5 DOCUMENTS TO BE KEPT UPON CREATING DEBENTURE:
1. Register of Instrument
2. Register of charges
3. Register of debenture holders

NB: These documents should be kept at the registered office for inspection.

15.12.6 HOW TO DISCHARGE DEBENTURE:
A debenture is charged by a Memorandum of Satisfaction in Form CAC 10.[32]

15.12.7 REMEDIES FOR DEBENTURE HOLDERS:
The remedies available to a debenture holder are provided under Section 233 of CAMA.[33] They are;

1. **Action for recovery of principal and interest:** A debenture holder can sue for the recovery of the principal and interest upon default in payment, and thereafter levy execution on the property of the company, whether the debenture is a secured or unsecured debenture.

2. **Petition for winding-up:** A debenture holder can bring up an action to wind-up the company on the ground of inability of the company to pay its debt. Although, this is subject to any condition imposed by the debenture.

3. **Debenture holder's action:** A debenture holder may bring a representative action on behalf of the other holders of debentures of the same class (class action), where the debenture is one of a series, for payment and enforcement of the security.

4. **Power of sale:** The power of sale may be exercised by a debenture holder; subject however, to the condition that such power must be contained in the debenture or trust deed. Also, the power of sale may be exercised pursuant to the order of court following a debenture holder's action.

5. **Foreclosure action:** A debenture holder can also bring a foreclosure action which may extend to uncalled capital of the company. However, a foreclosure order will not be made unless all the debenture holders of every class are parties to the action.

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[30] *Ibid* s 197.
[31] *Ibid* s 222(1).
[32] *Ibid* s 229
[33] Companies and Allied Matters Act 2020.

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

7. **Appointment of Receiver/Manager:** Any person who appoints a Receiver or Manager by order of court or by powers conferred by the debenture instrument must within 7 days from the date of the court order or appointment of the Receiver or Manager, give notice of the fact to CAC, which will then register the fact in the register of charges.

CHAPTER SIXTEEN

CORPORATE INSOLVENCY ARRANGEMENT

16.1 INTRODUCTION:

A company is insolvent if its assets are insufficient to discharge its debts and liabilities.[1] Often, an insolvent company:

1. Is unable to pay its debts as they fall due (cash-flow insolvency).
2. Has liabilities in excess of its assets (balance-sheet insolvency).[2]

16.2 OPTIONS AVAILABLE TO AN INSOLVENT COMPANY:

1. Company voluntary arrangements
2. Company administration
3. Netting

16.3 COMPANY VOLUNTARY ARRANGEMENTS (CVA):

A CVA is an alternative arrangement available to companies facing financial challenges to propose to its creditors by entering into an agreement with them regarding the repayment of all, or a part, of its debts over an agreed period of time.

16.3.1 FEATURES OF COMPANY VOLUNTARY ARRANGEMENTS:

1. Company voluntary arrangements represent a shift from the traditional mindset that the only option available to an insolvent company is to be wound up.
2. The primary objective of Company voluntary arrangements is to restore a company to profitability so that it may be able to meet its financial obligations to its creditors.
3. Unlike other corporate insolvency arrangement options such as administration, a CVA allows directors to remain in control of the affairs of the company.
4. The approval by creditors of a company for a CVA only binds the Company and all unsecured creditors (including unsecured creditors that do not agree to the CVA). Secured creditors who do not consent to the CVA are not bound by the CVA and can enforce their security, notwithstanding the CVA.[3]

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[1] Companies and Allied Matters Act 2020, s 434 (1).
[2] Thomson Reuters, 'Corporate insolvency: a quick guide' [2021] https://uk.practicallaw.thomsonreuters.com/9-385-9763?transitionType=Default&contextData=(sc.Default)&firstPage=true accessed 21st July 2021.
[3] Udo Udoma & Bello-Osagie, 'what you need to know part 11 company voluntary arrangements' <https://www.mondaq.com/nigeria/directors-and-officers/1024128/the-companies-and-allied-matters-act-2020-what-you-need-to-know-part-11-company-voluntary arrangements> accessed 21st July 2021.

16.3.2 PROCEDURE FOR COMPANY VOLUNTARY ARRANGEMENTS:

1. A licensed Insolvency Practitioner[4] must be contacted to create the arrangement and draft a written proposal after gathering the necessary information about the company's affairs.
2. Once the proposal has been reviewed by the directors the Insolvency Practitioner will then write to creditors and invite them to vote at a creditors' meeting.[5]
3. The Insolvency Practitioner shall, within 28 days of receiving the notice of the proposal for a CVA, submit a report to the Federal High Court, stating whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal.[6] Note that the above requirement for the nominee (Insolvency Practitioner) to submit a report to the Court only applies where the company is not in administration or winding up. Where the company is in administration or winding up, the nominee may proceed to summon the necessary meetings without recourse to the Court.
4. The meetings of the members and creditors are to be held separately.
5. Once the CVA has been approved and the Insolvency Practitioner has been appointed as the Supervisor, they will distribute a report to the court and the creditors detailing the information of the meetings that were held and the votes that were cast.[7]

Note: Where the decision taken at the creditors' meeting differs from that taken at the members' meeting, the Court may, on application by a member, order that the decision of the members' meeting shall prevail, or make such other order as it thinks fit. The CVA can be challenged in Court on the grounds of unfair prejudice or material irregularity (or both) in relation to either of the meetings, and where such application is made, the Court may revoke or suspend any decision approving the CVA or direct the nominee to summon further meetings to consider a revised proposal with regard to the CVA.[8]

16.4 COMPANY ADMINISTRATION:

Company administration is a process that involves the appointment of an administrator to manage the company's assets, with a view to rescuing the whole or part of the company's undertaking as a going concern. As an alternative to winding up, administration provides the possibility for a company to survive its financial troubles and continue trading as a going concern.[9]

Immediately the appointment of an administrator takes effect, no legal action (including legal proceedings, execution, distress etc.) may be instituted or continued against the company or the company's property, except with the

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[4]Companies and Allied Matters Act 2020, s 868.
[5]*Ibid* s 434 (2).
[6]*Ibid* ss 435(1) & 436 (1).
[7]*Ibid* s 438 (1).
[8]*Ibid* s 440 (1).
[9]*Ibid* s 444 (1).

permission of the Federal High Court (the "Court") or the consent of the administrator, this is called a 'moratorium', and it protects the company from enforcement proceedings and legal action from its creditors, thereby enabling the administrator focus on implementing measures that are aimed at rescuing the company.[10]

16.4.1 APPLICATION TO THE COURT FOR ADMINISTRATION ORDER:

An application for an administration order can be made by:[11]

1. The company;
2. Its directors;
3. One or more creditors of the company;
4. The designated officer of the Court appointed to act as a receiver;
5. A combination of any of the persons listed in (1) to (4) above.

Note: Administration can also be commenced out of court and this happens where an administrator is appointed by either the company itself or its directors or the holder of a floating charge that meets the stipulated conditions. Where an appointment is made out of court, the person that appointed the administrator is required to file a notice of appointment, and such other documents as may be prescribed, with the Corporate Affairs Commissions, and in some instances, the person is also required to file a notice of appointment and such other documents as may be prescribed, with the Court.[12]

16.4.2 APPOINTMENT OF ADMINISTRATOR:

A person may be appointed as administrator of a company by;[13]

1. An administration order of the Court;
2. The holder of a floating charge; or
3. The company or its directors.

16.4.3 ADMINISTRATOR:

The administrator must be a qualified insolvency practitioner, whose remuneration and expenses are payable out of property, which is in the administrator's custody, in priority to the claims of holders of a floating charge. Two or more administrators may be appointed jointly or concurrently. It is noteworthy that the administrator is not an agent of the person that appoints him; upon appointment, an administrator becomes an officer of the court and an agent of the company.[14] An administrator is required to perform his/her functions as quickly and as efficiently as possible.[15]

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[10] *Ibid* s 480 (1-2).
[11] *Ibid* s 450 (1).
[12] *Ibid* s 455.
[13] *Ibid* 443 (1).
[14] *Ibid* s 446.
[15] *Ibid* s 445.

16.4.4 PROCESS OF ADMINISTRATION:

1. Within 60 days of appointment, the administrator is required to prepare a detailed schedule of assets and submit a copy to the person who appointed him.[16]
2. The administrator is also required to send a notice of their appointment to the company, obtain a list of the company's creditors, and send a notice of their appointment to each creditor of whose claim and address the administrator is aware.
3. The administrator is also required to publish a notice of appointment at the CAC, not later than 14 days of his appointment.[17]
4. The administrator may issue a notice to an officer (or former officer), any founder or any employee (or former employee) of the company, requiring such person(s) to provide a statement of the affairs of the company.
5. Having considered the state of the company's affairs, the administrator would circulate a proposal to the creditors for achieving the purpose of the administration.
6. Where the proposal is not approved by the creditors, the administrator will apply to the Court for further direction.

16.4.5 EFFECTS OF ADMINISTRATION:

1. Every business document issued by, or on behalf of the company or the administrator, as well as the company's website, must state the name of the administrator and clearly indicate that the company is in administration;
2. No resolution may be passed for the winding up of the company, and no order may be made for the winding up of the company, except in limited circumstances;[18]
3. All pending winding up petitions will either be dismissed or suspended, except in limited circumstances;
4. A receiver appointed by the holder of a floating charge will vacate office;
5. No steps shall be taken to enforce security over the company's property or to repossess goods in the company's possession under a hire purchase agreement, except with the permission of the administrator or the court;
6. A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except with the consent of the administrator or the permission of the court;
7. The administrator may remove or appoint a director, whether or not the appointment is to fill a vacancy;
8. Neither the company nor an officer of the company may exercise management powers without the consent of the administrator; and
9. The administrator is empowered to take custody of all the property to which he thinks the company is entitled.

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[16] *Ibid* s 444(6).
[17] *Ibid* s 455(1).
[18] *Ibid* s 477 (1).

16.4.6 BRINGING ADMINISTRATION TO AN END:

1. The appointment of an administrator expires at the end of a period of twelve months from the date on which the appointment took effect, except where it is extended by the court for a specified period (prior to expiration) or extended for a period not exceeding six months with the consent of each secured creditor of the company (and qualified preferential creditor(s) where applicable). Prior to the expiration of the administrator's term (or any extension thereof), the court may, upon an application by the administrator or a creditor, order the cessation of the appointment of the administrator.[19]
2. An administration will also come to an end before the statutory period, where the administrator files a notice at the Court and the CAC, stating that the objective of the administration has been sufficiently achieved.
3. An administration may also end through a public interest winding-up or upon the application of a creditor.
4. An administration may lead to a creditors' voluntary liquidation or the dissolution of the company.

16.5 DIFFERENCES BETWEEN COMPANY VOLUNTARY ARRANGEMENTS AND COMPANY ADMINISTRATION:

1. While the processes have their similarities, CVA is a different thing from administration. A company would go into administration if it was officially insolvent but remained viable. CVA's are usually done before the point of insolvency, as a means of avoiding that state of affairs being reached.

2. Companies in administration are under the control of insolvency practitioners whereas those under a CVA continue to be managed by directors.

16.6 NETTING:

Netting entails offsetting the value of multiple payments due to be exchanged between two or more parties from the several contracts to achieve a reduced net obligation.[20] E.g. Where “Company EASY” enters into a contract with “Company BENZ” (first contract) amounting to about N10 million in favour of “Company EASY” on the 6th of August 2021; and a second contract was executed on the 2 October 2021 amounting to N20 million between the same parties now in favour of “Company BENZ”. These two different agreements are individually valid and enforceable, however they may be combined by the process of netting so that eventually Company BENZ is settled by a single payment of N10 million from Company EASY.

16.6.1 REGULATORY BODIES IN NETTING:

1. Central Bank of Nigeria;
2. Securities and Exchange Commission;

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[19] *Ibid* s 460 (2).
[20] *Ibid* s 718.

3. National Insurance Commission;
4. National Pension Commission; and
5. Any other financial regulatory authority established by an Act of the National Assembly.

16.6.2 TYPES OF NETTING:

1. **Payment Netting:** This is also known as settlement netting, on a payment date, each party will aggregate the amounts of a currency to be delivered by it, and only the difference in the aggregate amounts will be delivered by the party with the larger aggregate obligation. E.g. Where "Company EASY" enters into a contract with "Company BENZ" (first contract) amounting to about N10 million in favour of "Company EASY" on the 6th of August 2021; and a second contract was executed on the 2 October 2021 amounting to N20 million between the same parties now in favour of "Company BENZ". These two different agreements are individually valid and enforceable, however they may be combined by the process of netting so that eventually Company BENZ is settled by a single payment of N10 million from Company EASY.

2. **Novation Netting:** In this case, if the parties enter into a transaction which gives rise to an obligation for the same value and in the same currency as an existing obligation, then the two obligations are cancelled and simultaneously replaced with a new obligation for the net amount. Novation netting can be classified into 2;
   a) **Matched Pair Novation Netting:** This Netting only occurs if the two transactions involve the same pair of currencies. For example: Deal 1: Buy JPY / Sell USD, Deal 2: Buy USD / Sell EUR. In this case no two deals involve the same currency pair, and therefore no netting under matched pair novation netting. Whereas, Deal 1: Sell 145 USD / Buy 100 GBP; Deal 2: Buy 147 USD / Sell 100 GBP. Here, there is a matched pair: USD/GBP, after Netting: 2 USD

   b) **Comprehensive Novation Netting:** This Netting only occurs if the two or more transactions involve several pairs of currencies.

3. **Close-Out Netting:** This Netting takes effect upon a default and once that happens, the following occurs;
   a) Existing transactions are terminated
   b) Termination values are calculated
   c) Termination values are netted to arrive at a single net amount
   d) Recourse to credit support, if any

4. **Bilateral/Multilateral Netting:** Bilateral Netting is between two parties, while Multilateral Netting involves netting among more than two parties, using a clearing-house or central exchange.

16.6.3 BENEFITS OF NETTING AND NETTING AGREEMENTS:

1. Netting saves companies unnecessary waste of time and costs by reducing

several deals entered into by corporations into a single transaction by narrowing the transaction and deal.

2. In the foreign exchange market, companies or banks can consolidate the number of currencies and foreign exchange deals into larger trades, reaping the benefits of improved pricing.
3. In situations where companies have more organized time frames and predictability in settlements, they can more accurately forecast their cash flows.
4. Netting is a method of reducing risks in financial contracts by combining or aggregating multiple financial obligations to arrive at a net obligation amount.
5. Netting is used to reduce settlement, credit, and other financial risks between two or more parties.

CHAPTER SEVENTEEN

CORPORATE RESTRUCTURING

17.1 INTRODUCTION:

A company undertakes this option in case of financial difficulties or where the company has completed its objective or is not doing business; and this is called a moribund state. Restructuring options available to companies undergoing financial difficulties are; Arrangement and Compromise, Management Buy-Out, Reduction in Share Capital, Merger, Take Over, Acquisition and Management Buy-In. On the other hand, for a moribund company, the restructuring options are Arrangement on Sale, Purchase and Assumption and Cherry Picking.

17.2 TYPES OF CORPORATE RESTRUCTURING:

1. **Internal Restructuring (Re-organisation):** This is a restructuring option carried out by a company without the assistance of an external company. i.e. 1 company = internal restructuring. Examples of Internal Restructuring: Arrangement and Compromise, Arrangement on Sale, Management Buy-Out and Reduction in Share Capital.

2. **External Restructuring:** This is a restructuring option carried out by two (2) or more companies. i.e. 2 or more companies = external restructuring. Examples of External Restructuring: Merger, Take Over, Purchase and Assumption, Cherry Picking, Acquisition and Management Buy-In.

17.3 ARRANGEMENT AND COMPROMISE:

Arrangement and compromise is essentially an arrangement by the Company with the creditors and/or the shareholders or a class of them to accept less than what they are ordinarily entitled to as full satisfaction of their obligation.[1] The key words in arrangement and compromise are as follows; ***Creditors, debt restructuring, going concern and rescheduling of the debt.***

17.3.1 BODIES THAT PLAY ROLES IN ARRANGEMENT AND COMPROMISE:

1. Board of Directors.
2. Creditors and Concerned members.
3. Federal High Court (FHC).
4. Securities and Exchange Commissions (SEC).

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[1]Companies and Allied Matters Act 2020, s 710.

5. Corporate Affairs Commissions (CAC).

17.3.2 PROCEDURES FOR ARRANGEMENT AND COMPROMISE:

1. The board of directors prepares a scheme of arrangement which should be sanctioned by the board of directors. Note that a scheme of arrangement may be proposed between two or more companies who are members of another company.[2]
2. A copy of the scheme of arrangement shall be sent to creditors and concerned members.
3. An application shall be made to the Federal High Court to convene the meeting by way of originating summons.
4. At the meeting, 75% of members must vote in support of the scheme of arrangement.[3]
5. A copy of the resolution shall be sent to the Federal High Court for sanctioning.[4]
6. The Federal High Court, before sanctioning, shall send the scheme and the resolution to the SEC for investigation.
7. Once the scheme has been sanctioned by the Federal High Court, it must be registered with the CAC within 7 days of making the order.[5] *NB: Upon registration with the CAC, the scheme becomes effective.*

17.4 ARRANGEMENT ON SALE:

This is the process of restructuring where the members appoint a liquidator in a meeting to sell the shares of the company to an interested buyer which can either be an individual or a company.[6] The key words are as follows; ***Solvency, Voluntary winding up, Liquidator and Moribund.***

17.4.1 BODIES THAT PLAY THE ROLE IN ARRANGEMENT ON SALE:

1. Board of directors.
2. Members at the general meeting.
3. Liquidator
4. SEC
5. CAC

17.4.2 PROCEDURES FOR ARRANGEMENT ON SALE:

1. The Board of Directors must prepare a statutory declaration of solvency 5 weeks before the meeting containing the following;
   a) A statement indicating that the company is willing to pay up its debt within 12 months of the commencement of winding up.
   b) It must contain the assets and liability of the company.
   c) It must be signed by a majority of directors.

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[2] *Ibid* s 711(1).
[3] *Ibid* s 711(2).
[4] *Ibid* s 711(3).
[5] *Ibid* s 711 (6).
[6] *Ibid* s 714 (1).

2. Membership notice is sent to members to convene the Extraordinary General Meeting.
3. The members pass a special resolution and appoint a liquidator to sell.
4. The dissenting members (those that disagree) shall notify the liquidator within 30 days and the liquidator has the following options;
    a) He may cease to carry out the resolution.
    b) He may enter an agreement as to how the shares are to be sold. (This is for private companies and for aliens; their negotiation shall be done by the SEC).[7]
5. The liquidator re-convenes a meeting to render accounts.
6. Notification to CAC.

17.5 MANAGEMENT BUY-OUT:

It is a form of **INTERNAL RESTRUCTURING**. It is used for the acquisition of shares or controlling shares of the company by members of the managing team. The document prepared by the board of directors is called **management buy-out (MBO) agreement.**

17.5.1 PROCEDURES FOR MANAGEMENT BUY-OUT:

1. The board of directors passes an ordinary resolution to approve the MBO agreement.
2. The members at the general meeting pass a special resolution to approve the MBO agreement.
3. The following documents is sent to SEC upon the approval of management buy-out;
    i. A copy of Certificate of Incorporation
    ii. A copy of the Memorandum of Association
    iii. A copy of the Articles of Association
    iv. A copy of the resolution passed by the board of directors.
    v. A copy of the special resolution passed by members.
    vi. A copy of the Management Buy-Out Agreement.
    vii. A copy of a trustee deed (if any).
    viii. Any other relevant documents that the SEC may require from time to time.

17.6 MERGERS:

A Merger is the amalgamation of two (2) or more companies' threshold.[8] Currently, mergers are regulated by the Federal Competition and Consumer Protection Act (FCCPA). Note that those incorporated trustees are now allowed to merge, though merger of incorporated trustees is regulated by Companies and Allied Matters Act.[9]

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[7] *Ibid* s 714 (4).
[8] Federal Competition and Consumer Protection Act 2019, s 92.
[9] Companies and Allied Matters Act 2020, s 849.

17.6.1 LEGAL DUE DILIGENCE IN MERGERS:

1. You must ensure that the companies are duly incorporated.
2. You must go through the company's statutory books.
3. You must go through the minutes book of the company
4. You must also confirm the asset and liability of the company.
5. You must also consider the company's properties.
6. You should also consider shareholders' agreement (if any).
7. You should also consider the various classes of shares.
8. You should also consider the company's intellectual properties.
9. You should also consider pending litigation against the company

17.6.2 CLASSIFICATION OF MERGERS:

1. **Horizontal Merger:** Horizontal mergers are the combination of two (2) or more companies in the same line of business. *NB:* these companies are usually rivals. E.g. merger of Access Bank and Diamond Bank.
2. **Vertical Merger:** These are companies in the same sector of business but whose objectives are complementary in nature.

17.6.3 CATEGORIES OF MERGERS:

There are two (2) categories of mergers namely;

1. **Small merger:** A Small Merger means a merger or proposed merger with a value at or below the lower thresholds as established from time to time by Federal Competition and Consumer Protection Commissions (FCCPC); currently the lower threshold for a small merger shall be below N5, 000,000,000.00 (five billion).[10]
2. **Large merger:** A Large Merger means a merger or proposed merger with a value at or below the lower thresholds as established from time to time by Federal Competition and Consumer Protection Commissions (FCCPC); currently, the lower threshold for a small merger shall be N5, 000,000,000.00 (five billion) and above.[11]

17.6.4 PROCEDURES FOR SMALL MERGER:

1. A party to a small merger may voluntarily notify the FCCPC of the merger at any time.
2. SEC may within six (6) months after a small merger has commenced implementation, require the parties to the merger to notify it of the merger in the prescribed manner and form.
3. Within 20 working days of parties to a small merger having fulfilled notification requirements. Note: This can be extended by a single period not exceeding 40 working days. The FCCPC must notify the parties after the initial consideration, that it;

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[10] Federal Competition and Consumer Protection Act 2019, s 92 (4).
[11] *Ibid* (n 360).

a) Approved the merger
b) Approved the merger conditionally
c) Prohibits the implementation of the merger
d) Declaration that it prohibits the merger if already implemented.

4. Where the FCCPC approves the merger; the parties shall apply to the court to sanction the merger.
5. Notification to Corporate Affairs Commission.[12]

17.6.5 PROCEDURES FOR LARGE MERGER:

1. A party to a large merger shall notify the FCCPC of the merger in the prescribed manner and form.
2. The primary acquiring company and the primary target company shall each provide a copy of the notification to FCCPC to;
   a) Any registered trade union that represents a substantial number of its employees
   b) The employees concerned or representatives of the employees concerned where there are no trade unions. Note: The parties shall not implement the merger until it is approved by the SEC.
3. The FCCPC will investigate or appoint inspectors to investigate the merger.
4. The FCCPC shall, after receiving notice of a large merger, refer the notice to the court; and within 40 working days after all parties to a large merger, have fulfilled notification requirements, forward to the court a statement, detailing whether or not it has:
   a) Approved the merger
   b) Approved the merger conditionally
   c) Prohibits the implementation of the merger by issuing a certificate.
5. Notification to Corporate Affairs Commission.[13]

17.6.6 PROCEDURES FOR MERGER BY INCORPORATED TRUSTEES:

The requirements for merger of incorporated trustees shall include the following;[14]

1. The parties to the merger must have similar aims and objectives.
2. The Resolution should be passed by 75% of the members of each of the associations.
3. Publication of application for merger in two daily newspapers circulating in the area where the associations are situated, one of which shall be a national newspaper.
4. The objections to the merger should be made to the Registrar-General of the Commission within 28 days of the last publication (if any).
5. Scheme of merger sanctioned by the Federal High Court

18.6.7 REVOCATION OF MERGER:

FCCPC may revoke its decision to approve or conditionally approve a small, intermediate or large merger if;[15]

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[12] *Ibid* s 95.
[13] *Ibid* s 96.
[14] Companies Regulations 2021, Reg 35.
[15] Federal Competition and Consumer Protection Act 2019, s 99.

1. The decision was based on incorrect information for which a party to the merger is responsible; or
2. The approval was obtained by deceit; or
3. A company concerned in the merger has breached an obligation attached to the decision.

17.6.8 ROLES OF PROFESSIONALS IN MERGERS (LEGAL PRACTITIONERS - THE SOLICITORS):

The following are the roles of the solicitor involved in mortgage transaction;

1. Conducting legal due diligence
2. Participating in the negotiation process
3. Drafting the memorandum of understanding, transaction implementation agreement, merger agreement and such other agreements that may be drafted such as exclusivity agreements.
4. Reviewing legal documentation and provide a legal opinion on actual and/or threatened litigation
5. Securing all necessary approvals
6. Ensuring the passing of all necessary resolutions required to effect the merger
7. Obtaining court hearing date for the proposed merger and obtain court order for court-ordered meeting
8. Obtaining court sanction for the merger scheme
9. Ensuring that proper procedure is followed and that the process is implemented in full compliance with all relevant legal requirement
10. Conducting the order of proceedings at the court-ordered meetings
11. Assisting with obtaining shareholders' support for the passing of the necessary resolutions at the court ordered meetings.

17.7 TAKE OVER:

This is a process whereby the sufficient shares in one company are acquired by another company to give the acquiring company control over that other company.[16] A take-over is different from a merger in that the company taken over remains in existence, but as a subsidiary of the acquiring company. The key words are as follows; ***Subsidiary and Acquisition of shares of 30% to 50%***.

Note: Take over can only be done by quoted public companies.

17.7.1 CONTENT OF A TAKEOVER BID:

1. The full names and addresses of the officer.
2. The bid must specify the maximum number and shares proposed to be acquired during the specified bid.
3. The price and terms on which the shares are to be acquired.
4. Valuation method adopted in arriving at the price offered for the shares.[17]

17.7.2 PROCEDURES FOR TAKE OVER:

1. The acquiring company prepares a takeover bid to be sent to the targeted company.

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[16] Investments and Securities Act 2007, s 131.
[17] Securities and Exchange Commission rules 2013, r 446.

2. The takeover bid should be advertised in at least two (2) national dailies.[18]
3. The takeover bid should be registered with SEC.[19]
4. Notification to CAC.

Note: A post-takeover inspection shall be carried out by the Commission not less than 3(three) months after registration of the bid.[20]

17.8 PURCHASE AND ASSUMPTION:

The purchase and assumption is a device in contemporary corporate investment to save ailing companies so that their investments will not be lost; it involves the purchase of the assets and assumption of liabilities. This is done by auction. For example; where Bank PHB buys over Spring Bank. The key words are as follows; ***Auction sale, judicial assent, certified surveyor or Valuer and Moribund.***

17.8.1 PROCEDURES FOR PURCHASE AND ASSUMPTION:

1. Both companies reach an agreement.
2. A certified Valuer is appointed to value the assets of the company.
3. Both companies prepare the final documents executed by both companies.
4. The sale of the company is done through auction.
5. The documents will be sent to the Federal High Court for judicial assent.
6. Notification to CAC. *NB: For banks, notification is to CBN.*

17.9 CHERRY PICKING:

This is an external restructuring option for a moribund or failing company, also aimed at reducing the loss of investment. Unlike purchase and assumption, the company/investor is not taking up all the liabilities of the failing/failed company, but is allowed to inspect the books, assets, business operations/activities of the failing company with a view to choosing or picking out those aspects it could save by integrating them into its own business activities. This is almost the opposite of purchase and assumption because under purchase and assumption all the liabilities of the failing company are taken; but under cherry picking, not all is taken.

[18] *Ibid* r 445(4).
[19] *Ibid* r 448.
[20] *Ibid* r 448 (7).

CHAPTER EIGHTEEN

WINDING UP AND DISSOLUTION

18.1 INTRODUCTION:

Winding up is the process by which a company, limited liability partnership and limited partnership comes to an end, while dissolution is the end of an organisation incorporated and registered under the provision of CAMA. The Federal High Court has jurisdiction to wind up.

18.2 APPLICABLE LAWS:

1. Companies and Allied Matters Act
2. Company Winding Up Rules 2001
3. Investment and Securities Act 2007
4. SEC Consolidated Rules 2013
5. Federal High Court Act
6. Banks and other Financial Institution Act

18.3 REGULATORY AGENCIES:

1. Corporate Affairs Commission
2. Federal High Court
3. Security and Exchange Commission
4. National Insurance Commission
5. Nigerian Stock Exchange

18.4 MODES OF WINDING UP COMPANIES:

Principally, there are three modes of winding up a company, namely

1. Winding up by the court (compulsory winding up)
2. Voluntary winding up by members or creditors
3. Winding up subject to the supervision of the court

18.5 GROUNDS FOR COMPULSORY WINDING UP:

1. The company has, by special resolution, resolved that the company be wound up by the court.
2. Where there is default in delivering the statutory report to the commission or in holding the statutory meeting. Note that this is only applicable to a public company.
3. The number of members is reduced to less than two.
4. The company is unable to pay its debts.
5. The condition precedent to the operation of the company has ceased to exist.

6. The court is of the opinion that it is just and equitable that the company should be wound up.[1]

18.5.1 INABILITY TO PAY DEBT:

This is a situation where a creditor to whom the company is indebted, to a sum of N200, 000 and above, has demanded that the company pays back, and the company neglects to pay the debt up to a period of 3 weeks after. In such a situation, winding up action can be brought by the creditor. For a court to wind up a company, four ingredients must co-exist;[2]

1. There must be a debt in existence
2. The debt must be due
3. There must have been a formal demand for it.
4. There must be an inability for the company to pay back the debt.

18.5.2 WHO MAY PETITION WINDING UP BY THE COURT:

Under the winding up by the court, certain persons are given the power to bring petitions namely;[3]

1. The company
2. A creditor, including a contingent or prospective creditor of the company
3. The official receiver
4. A contributory
5. A trustee in bankruptcy to, or a personal representative of a creditor or contributory
6. The commission
7. A receiver if authorised by the instrument under which he was appointed
8. By all or any of those parties, together or separately.

18.5.3 COMMENCEMENT OF WINDING UP BY THE COURT:

Where a special resolution has been passed before the presentation of petition for winding up by the court, winding up is deemed to have commenced at the time of the passing of the resolution and in any other case, the winding up by the court is deemed to commence at the time of the presentation of the petition for the winding up.

18.5.4 EFFECT OF COMMENCEMENT OF WINDING UP:

In a winding up by the court, any disposition of the property of the company, including things in action and any transfer of shares or alteration in the status of the members of the company, made after the commencement of the winding up shall, unless the court otherwise orders, be void.

18.5.5 PROCEDURE OF APPLICATION TO COURT FOR COMPULSORY WINDING UP:

Application for winding up is made by way of petition presented to the court. In case of petition by the company the procedures are;

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[1] Companies and Allied Matters Act 2020, s 571.
[2] *Ibid* s 572.
[3] *Ibid* s 573.

1. Call Board meeting to approve that the company be wound up by the court.
2. Call an EGM to pass special resolution
3. File the resolution with the CAC and
4. Forward copies to the SEC and Stock Exchange (in the case of a public company).
5. Prepare petition and other documents and file at the Registry of the Federal High Court.
6. Prepare a Statement of Affairs unless otherwise ordered by the Court. The petition must be verified by an affidavit referring to it.

18.5.6 DISSOLUTION UPON COURT ORDER FOR WINDING UP:
Where the affairs of the company have been fully wound up and the liquidator makes an application in that regard, the court shall order the dissolution of the company, and the company shall be dissolved accordingly from the date of the order. A copy of the order shall, within 14 days from the date when made, be sent to CAC by the liquidator.[4]

18.6 COMMENCEMENT OF VOLUNTARY WINDING UP:
A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up. Where the date or duration fixed by the article has expired, the resolution passed shall be ordinary; otherwise, the company shall pass special resolution for its voluntary winding up.[5]

18.6.1 TYPES OF VOLUNTARY WINDING UP:
There are two (2) types of voluntary winding up, namely;
1. Members voluntary winding up and
2. Creditors' voluntary winding up.

The procedure for voluntary winding up depends on the type.

18.6.2 MEMBERS VOLUNTARY WINDING UP:
Members' Voluntary winding up is winding up where the company has made a declaration of solvency and delivered it to the CAC. The directors or majority of the Directors shall make a statutory declaration of solvency to the effect that they have made 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. A declaration shall have no effect unless;[6]

1. It is made within 5 weeks immediately preceding (before) the date of the passing of the resolution for winding up the company and delivered to CAC for registration within 15 days after passing the resolution; and
2. It embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

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[4] *Ibid* s 617 (1-2).
[5] *Ibid* s 620 (1).
[6] *Ibid* s 625.

18.6.3 PROCEDURE FOR MEMBERS VOLUNTARY WINDING UP:

1. The board and the company pass a resolution for voluntary winding up and appoint one or more liquidators for the winding up of the affairs of the company.
2. The company gives notice of the resolution passed and the appointments of liquidators, to the CAC and the public within 14 days and also advertises. Note that all the powers of the Directors shall cease except so far as the company in general meeting or the liquidator sanctions the continuance thereof.
3. A declaration of solvency is made by the directors that the company can pay its debt within twelve (12) months of winding up.
4. The liquidator adopts the auditors' account of winding up and sends copies to members.
5. The liquidator holds a meeting, if the process of winding up lasts more than a year.
6. The liquidator shall prepare an account for the winding up showing;
   a) How the winding up has been conducted;
   b) How property of the company has been disposed

7. The liquidator holds a final meeting upon liquidation of the company and gives explanation thereof**.**
8. The liquidator sends a copy of the account returns to the CAC within 7 days of the meeting.
9. The liquidator sends to the members the audited accounts and he is required to preserve all the books/paper of the company for a period of 5 years before destruction.
10. The liquidator applies for dissolution under and sends the order to the CAC.

Note: The Company is deemed dissolved after 3 months of registration of the accounts.

18.7 CREDITORS VOLUNTARY WINDING UP:

This is voluntary winding-up where NO DECLARATION OF SOLVENCY has been filed by the directors to the Commission. Separate meetings of creditors and of members are held, i.e. the directors must call the meeting of all its creditors'.[7]

18.7.1 PROCEDURES FOR CREDITOR'S VOLUNTARY WINDING UP:

1. Meeting of company and creditors.
2. Notice of meeting (The notice is to be published in the Gazette and two newspapers). Note: The publication of the notice is tantamount to a declaration of insolvency.
3. Appointment of one of the directors as Chairman of the creditors' meeting.
4. Special resolution to wind-up.
5. Appointment of liquidator.
6. Notice to the Corporate Affairs Commission within fourteen (14) days.
7. The liquidator calls a meeting each year.
8. The liquidator shall call a general meeting of the company i.e. Final meeting

[7] *Ibid* s 634.

(liquidator shall also prepare an account of the winding-up showing how the winding-up has been conducted).[8]

18.8 WINDING UP OF UNREGISTERED COMPANIES (EXEMPTED COMPANY):

An unregistered company can only be wound up upon an order for compulsory winding up by the court.[9] An unregistered company may be wound up by the court in the following circumstances;

1. Company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs,
2. The company is unable to pay its debts, or
3. The court is of the opinion that it is just and equitable that the company should be wound up.

Note that an unregistered company is deemed to be unable to pay its debt if company is indebted to with the sum of N100,0000 and above and demand has been made to pay back, and the company neglect within the period of 21 days after winding up action can be brought by the creditor.[10]

18.9 MAJOR OFFICERS IN LIQUIDATION AND INSOLVENCY:

1. **Official Receiver:** The Official Receiver is the DEPUTY CHIEF REGISTRAR OF THE FEDERAL HIGH COURT or any other officer designated for the purpose by the Chief Judge of Federal High Court is the Official Receiver.[11]
2. **Receiver:** A Receiver is appointed by secured creditors under the power contained in the agreement between the company and the creditors. He represents the interest of the creditors and his main concern is to release the assets of the company and pay off the debt due to the creditors. When satisfactory discharge of his duty requires that he manages the affairs of the company, he is called a Receiver and Manager.
3. **Special Manager**: Where the Official Receiver becomes the liquidator of a company, he may apply to the court for an order appointing a Special Manager with such powers including those of Receiver or manager as the court may invest on him.[12] Note: The Official Receiver may be appointed as the Special Manager.
4. **Provisional Liquidator**: A provisional liquidator is usually appointed after the presentation of a petition and before the making of a winding up order and before the meeting of the company is held and the liquidator appointed. The court may limit and restrict the powers of the provisional liquidator by the order appointing him. The Official Receiver or any other fit person may be appointed as a Provisional Liquidator.

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[8] *Ibid* s 635.
[9] *Ibid* s 699 b.
[10] *Ibid* s 699.
[11] *Ibid* s 582 (1).
[12] *Ibid* s 599.
[13] *Ibid* s 585.

5. **Liquidator**: A liquidator is a person who is appointed by the company or the court to wind up the affairs of a company and to distribute its assets, if any, among creditors and contributories in accordance with the articles of association.[13] A liquidator represents the interests of all creditors, especially the unsecured creditors. Upon his appointment, all the powers of the Directors cease.

18.10 PROCEDURE FOR DISSOLUTION OF A COMPANY:

1. Winding up must have been complete.
2. The application is made to the court for the dissolution order by the liquidator.
3. Notice of the order of dissolution made is to be given to CAC within 14 days of the order.
4. CAC shall record the dissolution of the company in its books.

18.10.1 EFFECT OF DISSOLUTION OF A COMPANY:

Once a company is fully wound up and dissolved, it loses its legal entity and ceases to exist (dies) in law and the Liquidator is to preserve the books and paper of the company for five (5) years.

18.11 WINDING UP AND DISSOLUTION OF LIMITED LIABILITY PARTNERSHIP AND LIMITED PARTNERSHIP:

The winding-up of a limited liability partnership may be either voluntary or by the Court.[14] A limited liability partnership may be wound up by the Court if;[15]

1. All the partners decide that the limited liability partnership be so wound up by the Court;
2. For a period of more than six months, the number of partners of the limited liability partnership falls below two ;
3. The limited liability partnership is unable to pay its debts;
4. The limited liability partnership has acted against the interests of the sovereignty and integrity of Nigeria or against her security or public order ;
5. The limited liability partnership has made a default in filing with the Commission, the Statement of Account and Solvency or annual return for any ten (10) consecutive financial years ; or
6. The Court is of the opinion that it is just and equitable that the limited liability partnership be wound up.

18.12 DISSOLUTION OF INCORPORATED TRUSTEES:

An incorporated trustee is dissolved by the court by an application brought by the following persons;[16]

1. Governing bodies.
2. One or more trustees.
3. Members constituting at least 50%.
4. CAC.

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[14] *Ibid* s 789.
[15] *Ibid* s 790.
[16] *Ibid* s 850 (1).

18.12.1 GROUNDS FOR DISSOLUTION OF INCORPORATED TRUSTEES:

1. Where the purpose of which it was created has been fulfilled.
2. Where the purpose is against public policy.
3. Where it is just and equitable
4. Where the period has elapsed.[17]

18.13 DISSOLUTION OF BUSINESS NAMES:

1. By the act of the parties.
2. By lapse of time.
3. By operation of law.
4. By courts.

18.13.1 PROCEDURE FOR DISSOLUTION OF PARTNERSHIP:

a) Notice of dissolution is served on the other parties.
b) A dissolution agreement is entered.
c) The copy of the notice of dissolution is sent to CAC if registered.

[17] *Ibid* s 850(2).

CHAPTER NINETEEN

COMPANIES TAXATION

1. INTRODUCTION:

A corporate tax is a tax on the profits of a corporation. The taxes are paid on a company's taxable income. Corporate taxes are collected by the government as a source of income. Taxes are based on taxable income after expenses have been deducted.

2. TYPES OF COMPANY TAXATION:

1. **Company Income Tax:** This tax is regulated by the Company Income Tax Act (CITA). Companies Income Tax (CIT) is a tax on the profits of registered companies in Nigeria. It also includes the tax on the profits of foreign companies carrying on any business in Nigeria. The CIT is paid by limited liability companies inclusive of the public limited liability companies. Resident companies are liable to Corporate Income Tax (CIT) on their worldwide income while non-residents are subject to CIT on their Nigeria-source income. Corporate income tax is based on accounting profits adjusted for tax purposes. The CIT is currently charged at the rate of 30% for companies having more than N100 Million Naira turnover. It is also charged at the rate of 20% for companies with a turnover between N25 Million and N100 Million. The tax is assessed on a preceding year basis (i.e. tax is charged on profits for the accounting year ending in the year preceding assessment). The companies having less than N25 Million turnover are not liable to pay company income tax in line with the Finance Act 2019, although the Finance Act of 2021 did make any alteration to the provision of section 14 of the Finance Act 2019.

2. **Petroleum profit tax:** This is a tax on the income of companies engaged in upstream (the final product of the crude) petroleum operations in lieu of CIT. The Petroleum profit tax rates vary as follows: 50% for petroleum operations under production sharing contracts (PSC) with the Nigerian National Petroleum Corporation (NNPC).

3. **Tertiary Education tax:** This tax is now governed by Tertiary Education Trust Fund (Establishment, Etc.) · The rate of the **tax** is 2% of assessable profit ·

4. **Capital Gain Tax:** Capital Gains Tax is paid in respect of property transactions related to sale of land. Such a transaction must surely have gain.

5. **Stamp duties**: Stamp duties are regulated by the Stamp Duties Act and come into play in perfection stage of conveyance or instrument. Importantly, stamp duties is not paid on transaction or property or persons but on the document that evidences the relationship between the parties thus a document tax and no document can be stamped unless covered by the Act. The following are the documents to be stamped:
   i. Agreement or contract accompanied by a deposit
   ii. Agreement for a sale of property
   iii. Agreement for a lease or for any letting
   iv. Assignment
   v. Conveyances
   vi. Power of Attorney
   vii. Lease
   viii. Mortgage

6. **Value added tax:** The value added tax is governed by the value Added Tax Act. It is tax paid on goods and services. The Federal Inland Revenue Services is in charge of VAT.

19.3 COLLECTING AUTHORITIES:

The Federal Government through the Federal Inland Revenue Services, the taxes collected by it include:

1. Companies Income Tax
2. Personal Income Tax of residents of the FCT, Abuja etc.
3. Stamp Duties on corporate bodies and residents of the FCT, Abuja
4. Capital Gains Tax on residents of FCT and corporate bodies
5. Value Added Tax

State Government through the Board of Inland Revenue of the state, the taxes collected by it includes:

1. Personal Income Tax on residents (individual)
2. Capital Gains Tax (transactions between only individuals)
3. Stamp Duties on instrument executed by individuals.
4. Consent fees
5. Registration fees
6. Estate duty

Local Government Council; the tax collected by it is either tenement rate in other states and land use charge in Lagos State

CHAPTER TWENTY

PRIVATISATION AND COMMERCIALISATION OF PUBLIC ENTERPISES IN NIGERIA

20.1 INTRODUCTION:

The privatisation and commercialisation Decree No. 25 of 1988 (amended 1999) which provided the legal backing for the Technical Committee of Privatisation and Commercialisation (TCPC), began the major paradigm shift in the conceptualisation of public enterprises in Nigeria. The commercialisation of enterprises such as National Electric Power Authority (NEPA), Nigeria Telecommunications (NITEL) and Nigerian National Petroleum Corporation (NNPC), hardly showed any significant improvement in their operational and economic performance. However, the study discovered that only a few successful enterprises, Flour Mills, African Petroleum, National oil and Chemical Marketing Company Limited (NOLCHEM) were partially privatised.

One fact is clear the heydays of public enterprises in Nigeria are gone for good. It was on this note that the study concluded that privatisation is the appropriate economic recipe to achieve the much desired human development and good governance.

20.2 REASON FOR PRIVATISATION

Under His Excellency Olusegun Obasanjo administration, he inclined towards privatisation and the basic argument in support of his position is that government should leave the economy in the hands of the ever-efficient market forces. In other words, proponents of privatisation state that privatisation will inter alia;

1. Lead to a more equitable distribution of wealth;
2. Ensure greater efficiency in the running of enterprises as government bottlenecks are removed;
3. Reduce the public sector borrowing requirement;
4. Raise money for cash strapped governments; and
5. Increase consumer rights.

Note that those who oppose privatisation fear that privatisation may simply mean a replacement of government monopoly, which is a more dangerous variant of private monopoly. This fear becomes more pronounced with government's insistence on selling to core investors. This was the cause of the face-off between the Benue State government and the Federal government over the sale of Benue Cement Company to Dangote Industries. Another fear is that privatisation will cause an increase in prices as government subsidies are removed and the profit

motive totally over-rides social responsibility. This fear is greatest on the part of the workers. To them, privatisation means retrenchment, a downward review of conditions of service and insecurity of tenure.

20.3 WAYS OF PRIVATISATION AND COMMERCIALISATION OF PUBLIC ENTERPISES:

This is the transfer of ownership from government to the private sector, and it can be done through number of ways. Generally, privatisation may involve;

1. **Non-divestiture**: This includes concessions, restructuring and commercialisation joint ventures between public and private enterprises and the contracting out of public services. Non-divestiture options can help to create the necessary political will and to advance the privatisation process by demonstrating the commercial viability of public enterprises.
2. **Divestiture options:** This is privatisation of capital, which involve;
   a) Direct sale, full or partial, to general investors;
   b) Private placement with strategic investors or to joint venture partners;
   c) Public share offerings on stock markets;
   d) Public auctions (for small enterprises);
   e) Management or employee buy-outs (internal privatisation); and
   f) Liquidation followed by sale of assets (where the latter can fetch a higher price than the sale of the entire enterprise on where it may be necessary because of excessive strain on the budget.

20.4 GUIDELINES FOR PRIVATISATION AND COMMERCIALISATION OF PUBLIC ENTERPISES

1. Massive public awareness for the exercise.
2. The process of privatisation itself must be seen to be open and transparent
3. Ensuring efficient utilisation of the proceeds of privatisation
4. The challenge of having a stable political environment, which can be fostered by good governance

20.5 PREVENTIVE MEASURES FOR PRIVATISATION AND COMMERCIALISATION OF PUBLIC ENTERPISES

1. In offering shares for sale, the process should be supervised by the stock exchange. This will prevent discrepancies that allow confusion to occur.
2. Share ownership should be carefully monitored. Government should liaise with banks to finance loans at low rates to encourage participation. The core investor issue should be carefully looked into.
3. Government should retain 'golden shares' in privatised companies to prevent external take-over bid.
4. Pre-privatisation agreements between governments and these companies should be enforced.
5. The principle of social justice needs to be applied in privatisation.
6. Every privatisation decision should be preceded by a specific feasibility analysis and this must be followed by analysis of the social impact or the social cost or benefits or privatisation.

MAKING A MARK THAT CANNOT BE ERASED

Many years ago, one of the teachers at my Secondary School told me, that I would not be able to study Law due to my poor performance back then in school, but i thank God today, I have been called to the Nigerian Bar.

My main focus was not just to be called, rather to make a mark in the Legal Profession. Then I made inquiries of how I would make a mark, i came across a book titled **"ATTITUDE IS EVERYTHING" by KEITH HARRELL (1998),** this made me realise that in making a mark I should make a difference in someone else's life. The book further stated that the smallest gesture could have a major and lasting impact on one's life.

As a Devoted Lawyer, it was not more of 'what is in this life for me' rather I took up an attitude of 'what can I do for God and for you (others)'.

For this cause I decided to write the Easy Read Series (2014- till date) which aims to make a difference in your life. I believe you have greatness within you. Therefore, if you have not taken the step of faith by submitting your life to **JESUS,** you could do that by confessing this:

> *" Lord Jesus, I want to thank you for what I heard and believed you did for me while I was yet unborn knowing fully well I would one day come into this world full of sin, and you decided to die for me to save me, as a gratitude on my part I want you to be the lord and personal savior of my life, career and goal. Jesus I thank you for your Love. Grant I the grace to make a mark in life. Amen."*

I wish you the best in the Legal Profession.