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Recent Developments in the Nigerian Company Law

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Abstract

One of the various modes of doing business is to form a registered company. Prospective business persons and entrepreneurs who are desirous of pursuing commercial ventures in Nigeria would be forming companies limited by shares (that is a company where the liability of the shareholders for the debts of the company is limited to the amount unpaid on their shares). There are other types of company and business entities that can be registered in Nigeria (e.g. the company limited by guarantee and trust companies etc.). The contribution of the Company Law of Nigeria to orderly regulate business and economic affairs need not be overemphasized. The earliest known piece of company legislation of significance in Nigeria was the Company Act of 1912 which at first applied only to the colony of Lagos. It was later extended to the whole of the country. Plainly, students and practitioners will wish to know something of the ways in which the company law of tomorrow is likely to develop if the reforms which are now being planned or proposed receive the blessing of the present government. Thus it has been necessary to discuss some of the innovative changes being proposed in the anticipated Amendment to our Company Legislation. It became apparent that the entire Nigerian corporate landscape was heavily hamstrung by several provisions in the CAMA 2004 which have been described as impeding modern business practices in the light of national and global reforms. It has therefore been determined that the provisions of the current Act are not in tandem with global trends and that same requires extensive amendments to make the Act more contemporary and relevant. This commentary discusses/examines some of these amendments in context.

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Introduction

Law students, legal practitioners, law researchers and the judiciary and local and foreign investors in Nigeria should be aware of the recent amendment to the Nigeria's Companies and Allied Matters Act (CAMA) 2004, which is the main legislation governing the formation, management and liquidation (winding up) of companies in Nigeria. The Nigeria's Companies and Allied Matters (Amendment) Act 2018 which has just been passed in the Senate on Tuesday 15 May, 2018 is intended to improve the efficiency and ease of doing business in Nigeria as well as the efficiency of corporate regulation and to reduce regulatory burdens on business and other users of company law in Nigeria-both by removing and streamlining the regulatory obligations imposed by the company law and facilitating and simplifying the ease of doing business in Nigeria.

The Senate of the Federal Republic of Nigeria on the afore-mentioned date passed the **Companies and Allied Matters Act, (1990) (CAP C20, LFN 2004) Repeal and Re-Enactment Bill, 2018 ("The Bill")** following a recommendation of the Senate Committee on Trade and Investment (The Committee).This Bill consolidates the proposed amendments from two related Bills, i.e. the Companies and Allied Matters Act CAP C20, LFN 2004 (Amendment) Bill, 2016 and the Companies and Allied Matters Act CAP C20, LFN 2004 (Amendment)Bill, 2017.

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Substantial amendments have been made to a wide range of the Companies and Allied Matters Act 2004 provisions, including provisions to meetings (s.312), forming companies(single-member companies/limited liability partnership)(s.18),share capital (s.105), financial assistance (s.159), resolving insolvency (s.408), company secretary (s.293-298),minority shareholders' rights (ss.300-304, 307, 310-313), beneficial ownershipand exemption from audit (s.357) and limited liability partnership etc.

This commentary contains a brief outline of the changes effected by the Companies and Allied Matters (Amendment) Act, 2018 which has just been passed on Tuesday 5 May 2018 in the Senate of the Federal Republic of Nigeria,[1]and which are directly relevant to the formation, ownership, and management and liquidation of private and public companies in Nigeria. The Companies and Allied Matters Act (CAMA) of Nigeria contributes to orderly development and regulation of business and economic affairs of the country. The overriding objective for reform or amendment became imperative and pertinent to prevent fraud, mismanagement and abuse and to protect the interest of investors and creditors-as well as to cope with modern corporate trends and changes like what is obtainable in other progressive jurisdictions.We will now examine these amendments to the CAMA 2004 highlighted above seriatim:

Single Member Companies

[1]The Companies and Allied Matters Act (Repeal and Re-Enactment Bill, 2018)

https://doi.org/10.53982/apblj.2018.0201.01-j

Section 18 of the Companies and Allied Matters Act 2004 is now amended by the new Amendment Act. Section 18 of the CAMAwhich deals with the "right to form a company" provided that:

> *As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of such company*.

By virtue of this recent Amendment Bill, provisions which make it possible for a single person to incorporate, register or form a company are being introduced for the first time in Nigeria. This provision is consistent with what is obtainable in several other progressive jurisdictions/economies such as the United Kingdom, India and Singapore.[2]

For instance, a UK company is formed by one or more persons (which may be companies) subscribing their names to a memorandum of association and complying with the registration requirements contained in ss. 9-13 of the UK Companies Act 2006.[3]

Note that in the light of the new Amendment Act 2018, a Nigerian Company can now be formed by one or more persons (which may be companies)by subscribing their names to a memorandum of association and complying with the requirements contained in ss.

[2] See for example s. 3(1) (c) of the Indian Companies Act

[3] For registration/incorporation requirements in Nigeria, see ss. 27-32 of the CAMA 2004.

https://doi.org/10.53982/apblj.2018.0201.01-j

27-32 of the Nigeria's Companies and Allied Matters Act, LFN, 2004. Note further that, if the Corporate Affairs Commission (CAC) acting through the Registrar of Companies, is satisfied that the registration requirements of the Act have been complied with, he must register the documents delivered to him and must issue a certificate that the company is incorporated.[4]Arefusal by the Registrar of Companies (CAC) is subject to judicial review.[5]It should also be noted that a company may not be formed for an unlawful purpose[6] and the Registrar/Commission can refuse to register if he has any information to that effect e.g from or in any of the documents delivered to the Registrar of Companies/ the Commission. A notorious case in the UK involving a company registered to run a brothel[7] established that even thoughs.13 (7)(a) of the UK Companies Act 1985[8] states that a certificate of incorporation is conclusive evidence "that the requirements of this Act as to registration have been complied with",However, a certificate of incorporation is not conclusive evidence that a company has been formed for a lawful purpose.[9]

[4] See section36 of the CAMA 2004, see also *Lasis v Registrar of Companies* (1976) 7S C.73 (1976) IF.N.R.101SC.

[5] See also ss. 14 and 15 of the UK Companies Act 2006.

[6] See the UK Companies Act 2006, s.7 (2).

[7]*R v Registrar of Companies ex parte Attorney-General (1991) B C L C 476.*

[8]Note that s.13(7)(a) of the UK Companies Act 1985is equivalent to the provisions of s.36 (6)of the Nigeria's CAMA 2004 and and s.15 (4) of the UK Companies Act 2006.

[9]But see section 36(6) of the CAMAwhich provides that the certificate of incorporation shall be prima facie evidence that all the requirements of this Act in respect of registration and matters precedent and incidental to it have been complied with and that the Association is a company authorized to be registered and duly registered under this Act.

https://doi.org/10.53982/apblj.2018.0201.01-j

Limited Liability Partnership

This is one of the legal structures or "corporate vehicles" of business organisations newly introduced in Nigeria by the new Companies and Allied Matters Act, 1990 (CAP C20 LFN, 2004,Repeal and Re-enactment Bill, 2018 ("the Bill") or more appropriately, referred to as the CAMA Amendment Act 2018, in Legal parlance. The Limited Liability Partnership (LLP) is a legal structure or corporate vehicle which was not available under the existing CAMA 2004 until this new amendment Act of 2018. The Limited Liability Partnership (LLP) is an important structure to understand, not least because of its popularity among professionals, including lawyers, in progressive jurisdictions like the UK, Canada, Australia and New Zealand.

The Limited Liability Partnership (LLP) is the legal structure of choice for firms of accountants and solicitors. The Limited Liability Partnership (LLP) combines the organizational flexibility and tax status of a partnership with limited liability for its members and entity-shielding for creditors. It exists in the UK due to intense lobbying by the accountancy profession. It appears that in the UK that accountants sought and in the Limited Liability Partnership (LLP) have secured protection from unlimited liability, particularly in relation to auditing service shortcomings. Companies that have not been audited properly may sue the companies' auditors.[10]

[10] See *Caparo Industries Ltd v Dickman (1990) 2A.C 605; (1990) 1All E.R.568.*

https://doi.org/10.53982/apblj.2018.0201.01-j

LLPs in the context of the new amendment to the CAMA 2004 will be incorporated organisations governed by the principles of limited liability, and rules/regulations applying appropriate parts of the CAMA 2004 relating to limited liability will be extended to limited liability partnership in Nigeria. These LLPs will be considered and treated as separate legal entities from their members yet (if the UK model is to be followed in Nigeria), they will be 'tax transparent'. This means that the Federal Inland Revenue Services (FIRS) in Nigeria will have to look through the LLP ignoring its existence for tax purposes, and will treat the profits of the LLP business as if they have been earned by the members of the LLP, just as in an ordinary partnership.

Thus, the limited liability of members of an LLP mirrors the liability of a shareholder in a limited (liability) company. But the foregoing is the modus operandi of limited liability partnership (LLP) in the UK. This is achieved in the UK by the version of the s.74 of the UK Insolvency Act 1986 applicable to LLPs (as substituted by Regulations 4(2) (f) and sch. 3 of the Limited Liability Partnership Regulations 2001 (S1 2001/1090)) which provides:

> *Where a Limited Liability Partnership (LLP) is wound up, every present and past member of the Limited Liability Partnership who agreed with the other members or with the limited liability partnership that he will, incircumstances which have arisen, be liable*

https://doi.org/10.53982/apblj.2018.0201.01-j

> *to contribute to the assets of the Limited Liability Partnership in the event that the limited liability partnership goes into liquidation, is liable to the extent that he has so agreed, to contribute to the assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.*
> *However, a past member shall only be liable if the obligation arising from such agreement survived his ceasing to be a member of the Limited liability Partnership".*

Furthermore, Limited Liability Partnership (LLP) conventionally offers the benefits of asset shielding and continues in existence notwithstanding the death or resignation of a member, quite unlike a conventional partnership, under which the death of one partner brings an end to the partnership. It is most likely that for a number of reasons that a member is unlikely to be able to exit with the ease with which shareholders can exit a company with publicly traded shares. Besides, even if the LLP agreement were to permit transfer, a member is likely to find difficulty finding a buyer for his interest. In most cases, provisions in the Limited Liability Partnership (LLP) agreement are likely to preclude transfer and contain provisions governing the rights of an existing member to withdraw his or her investments:

https://doi.org/10.53982/apblj.2018.0201.01-j

Business Registration

Online Reservation**:** To enhance ease of doing of business in Nigeria, the Bill provides for online reservation of business names. This will result in a significant improvement in turnaround time for potential promoters of companies in Nigeria and improve the ease of registering new businesses.[11]

Company Re- Registration

The Bill provides for a robust framework on registration of companies from private to public company; from limited to unlimited company or limited by guarantee or vice versa. Particularly, the provisions are aimed at providing flexibility and protecting shareholders' rights during the conversion process.[12]

Removal of Attorney General's Consent for Company Limited by Guarantee: The Bill proposed to delete the requirement for companies limited by guarantee to obtain the Attorney General of the Federation's consent for registration purpose.The application process has now been amended to include publication of the application for registration in three national newspapers. This change would make the registration process similar to what is currently obtainable for incorporated trustees, as an alternative legal vehicle for registration of not-for-profit organisations.[13]

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[11]For reservation of business names, see s.32 of the CAMA 2004. Note that s. 32 of the CAMA provides for reservation of a company's name prior to incorporation, but in the light of the new amendment to the CAMA 2004, this can now be done online.

[12] See Chapter II on Conversionand Re-registration of Companies; see ss. 50-53 of the CAMA 2004.

[13] See s.21 (1)(b) of the CAMA 2004 and see also s.26 (5) of the CAMA 2004 which has now be repeal/replaced.

https://doi.org/10.53982/apblj.2018.0201.01-j

Provision of Model Articles**:** The Corporate Affairs Commission (CAC) would also prescribe a model Articles of Association that would apply to companies, except where a company chooses to register its preferred Articles of Association.[14]

Empowerment to amend the form of Memorandum of Association**:** The CAC will likely be empowered to amend, through its Regulations,[15] the form of the Memorandum of Association adopted by companies. The proposed amendments are to address the needs of Nigerian companies in a technology-driven century.

Financial Assistance

The restriction upon a company giving financial assistance for the purchase of its own shares has been relaxed under the new Amendment to the CAMA 2004. It is no longer necessary to hold a general meeting to seek approval for the giving of such financial assistance, unless the financial assistance would materially prejudice the interests of the company or its shareholders, or the company's ability to pay its creditors.But it should be noted that most of the exceptions previously contained in the CAMA have been preserved, pursuant to the provisions of s.159 of the Nigeria's Company and Allied Matters Act 2004.[16]

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[14]See s.8 of the UK Company's Act 1985; see also ss.33 and 34 of the CAMA 2004.

[15] See ss.3 and 4of the UK Company's Act 1985;see also ss.28 and 45 of the CAMA 2004.

[16]But note that despite the general prohibition for Companies purchase of its shares under s.159 of the CAMA 2004, there are exceptions to this general prohibition and the exceptions are found in s.160 (2)a-e of the CAMA 2004. Note further the conditions for purchase by a

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Thus, in the light of the new Amendment to the CAMA 2004, companies will now be permitted to provide financial assistance to their shareholders under the new Bill. The current position pursuant tosection 159 of the Nigeria's Companies and Allied Matters Act (CAMA) is that a company and its subsidiaries are prohibited from giving gifts, loans, indemnities, credit or other assistance, for the purpose of aiding a person to purchase the company's shares, where such financial assistance would result in a reduction in the net assets of the company or result in the company having no assets.

It has been rightly observed that the proposed Bill reflects a market friendly advancement from the current position. The proposed Bill will also improve companies' chances of attracting much needed investment, since there are now provisions in the Bill which enable shareholders/potential shareholders to have access to funds which in turn enable them invest in such companies.

Share Capital

Elimination of front-loaded fees-The Bill replaces the concept of "*authorized share capital*" with "*minimum issued share capital*" in order to eliminate front loading stamp duty and CAC filing fees on the entire share capital which typically exceeds companies.[17]

Reduction of Share Capital

company of its own shares are found in section 161 a-c of the CAMA 2004. Note that ss.160 and 161 of the CAMA 2004 ought to be construed cumulatively and conjunctively.

[17] See s. 99 of the CAMA 2004; see also s. 27(2)(a) of the CAMA 2004; see further s.11 ands. 118 of the UK Companies Act 1985.

https://doi.org/10.53982/apblj.2018.0201.01-j

In order to ease the process of doing business in Nigeria, robust amendments have been proposed in the Bill to the process by which a company can reduce its share capital, by enabling private companies to reduce shares of such companies if a special resolution to that effect is passed, without the added burden of applying to court for a confirmation of the reduction in contrast with the previous position under sections 105 and 106 of the CAMA 2004. Under the provisions of the section 105 and section 106 of the CAMA 2004, there is a prohibition on reduction of share capital of a company. The convention/statutory rule is that once a company has been incorporated with its initial share capital, the company may not alter its share capital except in the ways set out in section 100 (1)(a) – section 106 (1), but more specifically in section 106(1) of the CAMA 2004.[18]

Thus, sections 105 and 106are the crucial sections or provisions in the CAMA dealing with reduction of companies share capital. Just as it is permissible fora company to increase its share capital pursuant to ss.102 and 103 of the CAMA 2004, so also is the company empowered to reduce its share capital, subject however to certain stringent, cumbersome, onerous and elaborate procedure.[19]

Elimination of court order/sanction as a condition precedent for share reduction:To enhance the ease and flexibility of operating a private company, the Bill proposed to remove the requirement for

[18] For reduction of share capital of a company, see ss. 105-111 of the CAMA 2004.

[19]See generally s.105 and s.106 of the CAMA .This is with a view to protecting the creditors. See Dada Principles of Nigerian Company Law, Third Edition, University of Calabar Press, 2008, p. 197.

https://doi.org/10.53982/apblj.2018.0201.01-j

obtaining a court order prior to reduction of share capital. Consequently, special resolution passed by the shareholders of the company may be sufficient to reduce share capital. This modification may expose creditors and minority shareholders to higher risk of diminution of the value of their investments and it is hoped that the harmonized version will contain mitigating provisions to protect these classes of shareholders and retain the necessity for an endorsing court order for publicly listed companies at least.[20] It should be noted that s.135 of the UK Companies Act 1985 permits a company to carry out a reduction of capitalby special resolution (which requires a majority of three-quarters of those voting) but only if its articles authorises it to do so and only if the reduction is confirmed by the court.[21]

Prohibition of issuance of irredeemable preference shares and discounted shares:The Bill prohibits the issuance of irredeemable preference shares or shares at a discount. The prohibition of issuance of irredeemable preference shares settles the discordance between the legal and accounting interpretation of such shares.[22]

Inclusion of requirement for paid up shares: in addition, all companies will now be required to have at least 25 percent of its issued share capital paid up at all times.[23]

[20] See ss. 135, 136 of the UK Companies Act 1985; see further s. 105 of the CAMA 2004.

[21] Note that a reduction of capital is generally illegal unless authorised by statute. See Trevor v Whitworth (1887)12 App. Cas 409.

[22] See ss.121 and 122 of the CAMA 2004. See also s.158 of the CAMA 2004.

[23] See s.27 (2) (a) and (b) of the CAMA 2004.

https://doi.org/10.53982/apblj.2018.0201.01-j

Inclusion of possibility of share repurchase: The bill also clearly provides for share repurchase subject to specified conditions and electronic transfer of shares.[24]

Resolving Insolvency

This amendment under this heading is very relevant to companies in financial difficulties:When a company experiences financial difficulty, it may struggle to pay its debts as they fall due or to service its debt,that is,make interest payments,capital repayments,and/or meet certain covenants conditions,specified in the loan agreements.The situation may deteriorate rapidly into one in which there is no reasonable prospect that the company can avoid going into insolvent liquidation, or in which an individual creditor considers it has no option but to seek a winding up order.[25]The law and procedure envisaged by the new amendment are designed to facilitate restructuring of the rights of creditor,and sometimes,shareholders of a company in financial difficulties.

The proposed AmendmentBill introduces a “company rescue and insolvency legal regime” which is not focused on a company’s demise,but on salvaging and rescuing companies from insolvency through inclusion of an insolvency framework.It appears that this insolvency framework was borrowed or transplanted from the UK Company Voluntary Arrangements (CVA) scheme which seems to be part of a procedure under Part 1 of the UKInsolvency Act 1986

[24]See s. 160 and s.161 of the CAMA 2004.

[25] See s.408 and more particularly s.408 (d) of the CAMA 2004;For the statutory definition of inability to pay debts, see S.409 of the CAMA 2004.

https://doi.org/10.53982/apblj.2018.0201.01-j

which contains a procedure by which a company may put in place a composition in satisfaction of its debts,or a scheme of arrangement of its affairs,that binds all affected company creditors even though not all of them agree to its terms.

The proposal, approval and implementation of such a scheme is called a Company Voluntary Arrangement(CVA).[26]Thus,it can be said that corporate rescue has become a pivotal aspect of an effective insolvency regime in Nigeria.An effective insolvency regime in Nigeria appears to have a dual aim: to save viable businesses, and to ensure that non-viable businesses can quickly exit the market, allowing deployment of assets to more productive firms. An effective insolvency regime in Nigeria will see to the following benefits: lower costs of credit; increased assets and availability of credit, improved creditor recovery; strengthened job preservation through reorganisation and business rescue, promotion of entrepreneurship, and other benefits for small businesses.

It is crucially important that directors and officers of companies understand the options available to facilitate a corporate rescue, thatis, the procedures that can be utilized to allow a breathing space to take stock of the situation and to restructure the company's debts (and sometimes the shareholder arrangements) to give the company or group the best chance to trade its way back to financial good

[26]Since the UK Insolvency 1986 Act was enacted in the UK, the general approach to corporate insolvency has changed to facilitate corporate rescue and to make the law operate more fairly in relation to unsecured creditors.

https://doi.org/10.53982/apblj.2018.0201.01-j

health. This, in turn, improves and increases overall economic stability in the country.

The insolvency provisions will border on: (1)Administration-which serves as a rescue mechanism for insolvent entities and allows such entities to carry on running their businesses:One of the main advantages of this model is that the administrator is appointed to act in the interest of the company and not,as in the case of the receivership,in the interest of the person that appointed him. (*If the UK model is to be followed,)*which now places emphasis on administration;it is likely that receivership is less important than it used to be.[27](ii)Netting Provision-which are geared towards addressing provisions contained in the insolvency provisions in the Bill;and (iii)Corporate Voluntary Arrangements-which is a procedure which allows a company to settle debts by paying only a proportion of the amount that it owes to creditors and also allows a company to come to some other arrangement with its creditors over the payment of its debts.[28]

Company Secretary

Section 293 of the Companies and Allied Matters Act 2004 provides that:"every company shall have a secretary".What then

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[27] The new provisions governing administration in the UK are to be found in Schedule B1 to the 1986 Insolvency Act and the procedure to put in place a small company moratorium(together with the procedure applicable to approval and implementation of a company arrangement where a moratorium is, or has been, in place) is set out in Schedule AI.

[28] But see andcompare this with Part XVI, ss.537- s.540 of the CAMA 2004 dealing with "Arrangements and Compromise": see also part I of the UK Insolvency Act 1986 which contains a procedure by which a company may put in place a composition in satisfaction of its debts, or a scheme of arrangement of its affairs, that binds all affected company creditors even though not all of them agree to its terms.

https://doi.org/10.53982/apblj.2018.0201.01-j

does the new amendment to the CAMA 2004 say in the context?[29]It is crucial to note that in the light of the provision of s.293 of the CAMA 2004,the requirement to havea Company Secretary does not admit of any distinction between a privatecompany and apubliccompany. The new (proposed) amendment which seems to have been borrowed or transplanted from the UK Companies Act 2006 has changed this requirement with respect to private companies in Nigeria.[30]

The Amendment Bill that has just been passed by the Nigerian Senate is seeking to further the ease of the regulatory burden of companies in Nigeriaby making provisions which limit the requirement to appoint a company secretary to public companies, thereby making it optional for small companies and companies with one shareholder.This is consistent with what is obtainable in the UK where a private company is not required to have a company secretarypursuant to section 270 of the UK Companies Act 2006. Note however, that in the UK, where a private company takes advantage of exemption, anything authorised or required to be sent to the secretary may be sent to the company itself,and anything authorised or required to be done by the secretary may be done by a director or a person authorised by the director.Note however,that a public company must have a company secretary. [31]

[29] See the Companies and Allied Matters Act 2004 sections 293 -298 dealing with Company Secretaries.
[30] See S. 270 of the UK Company Act 2006 whichis to the effect that a private company is not required to have a company secretary. A public company, however must have a company secretary; see s.271 of the UK Company Act 2006.
[31]See section 271 of the UK Companies Act 2006

https://doi.org/10.53982/apblj.2018.0201.01-j

In terms of the role and responsibilities of the Company Secretary[32], the Company Secretary is the Chief Administrative Officer of the company.[33]His functions are not defined in the Act.[34] They are administrative rather of a business nature, as stated in *Re Maidstone Building Provisions Ltd*:[35] where it was observed that:

> '*a companysecretary… is not concerned in the management of the company. Equally, I think he is not concerned in carrying on the business of the company… a person who holds the office of secretary may in some other capacity be concerned in the management of company's business'*.

It is crucial to note that the Supporting Principle of B.5 of the UK Company Corporate Governance Code (June 2010) states some of the responsibilities of the Company Secretary:

> *"Under the direction of the chairman, the company secretary's responsibilities include ensuring (that) good information flows within the board and its committee and between senior management and non-executive directors,as well as facilitating and assisting with professional development as required."*

[32] In the Nigeria's Companies and Allied Matters Act, the statutory rules governing Company Secretaries are to be found in Chapter 11 of the CAMA 2004 (ss. 293-298) and the responsibilities of the Company Secretary are to be viewed as part of the Nigeria's corporate governance framework.

[33] See *Panorama Development (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd (1971)* 2QB 711 Per Salmond LJ.

[34]But see section 298 of the CAMA dealing with the duties of a Company Secretary.

[35] (1971) IWLR. 1085.

https://doi.org/10.53982/apblj.2018.0201.01-j

This is highly recommended to Nigeria in the context of a better corporate governance regime in Nigeria. The Company Secretary should be responsible for advising the board through the chairman on all governance matters.

Minority Shareholders' Rights

This is one of the most complex areas of company law and broad reference need to be made to the rule in *Foss v Harbottle* by practitioners, researchers and students of company law in order to appreciate the complexity and abstruseness in this area of law.

Thus, minority shareholders' rights and protection must be construed in the context of the rule that the company is the proper claimant in proceedings in which a wrong is alleged to have beendone to a company (the proper claimant rule), or the rule in *Foss v Harbottle* and the limits of that rule.[36] One also need to examine or look at the circumstances in which shareholders may commence, and will be permitted to continue, a derivative claim to enforce directors' duties on behalf of the company.[37]Although the shareholders may have a personal rights to sue in his own name for legal wrongs done to him in a personal capacity, [38] to make good losses he has suffered, including potentially reflective losses,[39]minority shareholders may also bring petitions based on "a company's affairs having been conducted in a manner that is

[36] See s.300 of the CAMA 2004.

[37] See section 303 of the CAMA 2004but s. 303 must be read in conjunction with s. 300 of the CAMA 2004 and against the background of the provisions of s. 299 of the CAMA 2004. (to the effect that only a company can sue or be sued to redress and alleged wrong done to the company.)

[38] See section 301 of the CAMA 2004.

[39] Section 301 of the CAMA 2004.

https://doi.org/10.53982/apblj.2018.0201.01-j

unfairly prejudicial to the interest of the shareholders".[40] The effectuation of the remedies that may be available to minority shareholders are fraught with procedural difficulties and insurmountable obstaclesand hurdles in practice.[41]

The replacement (Amendment) Bill 2018 in this regard is geared towards enhancingshareholder's rights. It proposes to regulate related-party transactions and shareholders access to judicial redress.Whether the Bill (i.e. the new amendment to the CAMA 2004)has succeeded in mitigating the seemingly insurmountable procedural obstacles inherent in enforcing minority shareholders' rights/remedies in Nigeria will be seen with time.The proposed amendment to the CAMA 2004 also protects the shareholders' rights in corporate governance as a proxy for Nigeria's overall corporate governance standards and the ease of doing business in Nigeria and access to financing from capital markets.

Shareholders under the amendment to the CAMA 2004 with respect to this area of company law will be able to bring actions both in respect of a company and any other subsidiary companies and other companies related to the parent company.

Beneficial Ownership

The Amendment Bill has clear and lucid provisions which mandate the disclosure of beneficial interests in a company's shares and prescribes punitive measures for failing to disclose such interests. In this regard, where a person holds interests on behalf of another in a nominal capacity in a company, both parties (the owner and

[40] See s. 311 (1) (2a) of the CAMA 2004; See also section 994 of the UK Companies Act 2006.

[41] See for example, s.300, s.303 (1) and s.303 (2)of the CAMA 2004

https://doi.org/10.53982/apblj.2018.0201.01-j

the nominal holder) are required to disclose the beneficial interests to the company in question.

Exemption from Audit

The Amendment Bill has provisions which exempt small companies from appointing auditors. Specifically, the Bill exempts a company from appointing auditors; (i) if it has not carried on business since its incorporation; or in a particular financial year; and (ii)where the company's turnover is not more than ₦10m and its balance sheet total is not more than ₦5.

The general requirement to have a company's annual account audited and the exemption from audit are part and parcel of the regulation process of modern companies. Section 357 of the CAMA 2004 is to the effect that every company needs to be audited yearly. The new amendment of 2018 is to the effect that private companies need not audit their account annually. Thus, section 357 of the CAMA 2004 is now amended to apply to only public companies (i.e. private companies are entitled to exemption from audit).[42]

Conclusion and Recommendations

The recent amendments to the Nigerian Companies and Allied Matters Act 2004 affected a wide range of the existing CAMA 2004 provisions which we have attempted to discuss in the foregoing. The changes effected by the Amendment Act recently passed by the Nigerian Senate will go a long way in not only rectifying the present defects and noticeable inadequacies in our

[42] See s.477 of the UK Company's Act 2006 and compare it with s.357 of the Nigeria's CAMA 2004.

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company law/legislation, but will also make our companies in Nigeria to cope with modern corporate trends and changes like in other progressive jurisdictions. There can be no doubt about it that some of the provisions of the CAMA 2004 are not in tandem with current global trends and some of the provisions do require extensive amendments to make the Act more contemporary and relevant.

We are of the view that by virtue of the recent innovative amendment to the CAMA that the foundation for future development of Nigeria's company law would have been firmly reinforced. It is beyond any dispute that an effective legal framework of company law in Nigeria can promote enterprise, enhance competitiveness and stimulate investments whereas; an ineffective or outdated framework can inhibit and stultify productivity and growth and undermine investor confidence in our country.

It is also important to note that none of the provisions of the CAMA 2004has been abolished simplicita by the recent amendment to the CAMA. The amendment strengthened and improved the existing provisions of the CAMA. All the existing provision of the CAMA will continue to apply to the extent that they are not excluded or modified by the provisions in the new amendment to the Act. It is our opinion that the changes are likely to be of benefit to foreign investorsin Nigerian companies.

The amendments will also benefit companies in Nigeria by streamlining the format of the CAMA and making simpler and

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more flexible the regulatory obligations it imposes. Foreign investors involved in the management of any company in Nigeria should ensure that they are aware of the recent amendments to the CAMA and carefully consider whether they should amend theirarticles of Association, in order to best take advantage of the reforms and innovations effected by the Act (CAMA Amendment), while at the same time, retaining control over their company's internal governance. All the recent amendment to the CAMA when looked at cumulatively will ensure that the legal and regulatory framework within which businesses operate in Nigeria promotes enterprise, growth and the right conditions for investment and employment; - as it is beyond dispute that an effective legal framework of company law is a key building block of a modern and business friendly economy.