WEEK 3

LEGAL FRAME WORK AND REGULATORY AGENCIES OF CORPORATE BODIES IN NIGERIA

Sources of Corporate Law in Nigeria include every statute, law, rule, regulation, guideline, code, circular, regulatory body, etc. that says something about the way a business should be done in Nigeria, or about the incorporation, operation, management and administration of any type of company in Nigeria.

Generally, the applicable laws could be divided into general/principal laws/regulations and sector-specific laws/regulations.

PRINCIPAL LAWS/GENERAL LAWS/REGULATIONS

1. **CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (CFRN) 1999 AS AMENDED:** It is the grundnorm of all laws in Nigeria ab initio. It is from it all other laws or legislations derive their validity. It gives companies their legal capacities to sue and be sued. The Constitution established the Federal High Court and the National Industrial Court of Nigeria, which both deal with most issues of corporate law. See Sections 249(1) and 254A (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended. The Constitution confers jurisdiction to deal with matters/disputes arising from the operation of CAMA or any other law in its place on the Federal High Court. See section 251(1) (e) CFRN. The Constitution also exclusively vested in the National Assembly the power to confer incorporated status on a corporation and the power to enact any other law related to corporate practice; **See item 32 Exclusive Legislative list, Part 1 Second Schedule to the CFRN, 1999 as amended.**

2. **COMPANIES & ALLIED MATTERS ACT CAP C20 LFN, 2004 (CAMA)**: CAMA is divided into three major/material parts Viz—
   - **Part A** regulates matters of **INCORPORATED COMPANIES**: Sections 1—568 CAMA
   - **Part B** deals with matters concerning procedure for the registration of **BUSINESS NAMES:** Sections 569—589 CAMA
   - **Part C** regulates the procedure for the registration of **TRUSTEES** of non-profit organizations: Sections 590—612 CAMA

   SUBSIDIARY LEGISLATIONS TO CAMA INCLUDE:
   - Companies Proceedings Rules 2004 (formerly 1992)
   - Companies Winding -Up Rules, 2001
   - Companies Regulations, 2012
   - Code of Corporate Governance for Public Companies 2011, issued by CBN, (pursuant to BOFIA, CBN Act and CAMA)
   - Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing 2014. (Issued by CBN pursuant to BOFIA, CBN Act and CAMA).
   - Pioneer Status Incentive Regulations 2014 (made pursuant to the Industrial Development Income Tax Relief Act "IDITRA")
3. **INVESTMENTS & SECURITIES ACT (ISA) 2007**: The ISA 2007 repealed the ISA 1999. The provisions of the Investments and Securities Act were formerly prescribed under Part 17 of CAMA prior to 1999. As it is now; The Act established the Securities and Exchange Commission (SEC) and regulates the activities of the Nigeria Capital Market i.e. it regulates investments and securities business in Nigeria. ISA also regulates all offers of securities by public companies as well as registration of securities. It similarly regulates procedures and means of Corporate Restructuring vis-à-vis the SEC Rules 2013, as amended 2015.

   SUBSIDIARY LEGISLATIONS TO ISA 2007 ARE—

   a.Securities and Exchange Commission Rules (SEC Rules 2013; as amended 2015)

   b. Listing Rules of the Nigerian Stock Exchange (NSE Listing Rules).
4. **FEDERAL HIGH COURT ACT**: It's one of the regulatory laws or legal frameworks in corporate law practice. In the Act, the Federal High Court is conferred with original jurisdiction in matters involving the regulation and the operations of companies and matters arising from the operations of CAMA in accordance with SECTION 7 of the FEDERAL HIGH COURT ACT. Except simple contract cases Federal High Court has the jurisdiction to hear matters relating to banks, CAMA and other enactments relating to incorporation of companies. See section 251 (1) (a) - (e). CFRN, 1999 as amended. A

Subsidiary legislation to the Federal High Court Act is the Federal High Court Civil Procedure Rules 2009 regulating the rules of practice and procedure of the court.

5. **NIGERIAN INVESTMENT PROMOTION COMMISSION ACT CAP N117 LFN 2007 {NIPC ACT}**: (Enacted for the promotion and regulation of investment in Nigerian economy by Aliens and Nigerian citizens alike). *Simpliciter* it promotes investments by both foreigners and Nigerians. SEE SECTION 4 OF THE ACT for the functions of the commission. There are sections in this law which state some assurances to foreigners in relation to their investments in the Nigerian economy and many other provisions like means of settling disputes between foreigners and Nigerians in relation to businesses and investments. please see sections 17- 20 and 25-28 of the ACT.
6. **NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT, NOTAP ACT CAP. N62 LFN 2004:** The Act deals majorly with issues of Intellectual property law with regards to technological invention and innovation and transfer into Nigeria. It also provides that every contract or agreement entered into by any person in Nigeria with any person outside Nigeria which involves the transfer of foreign technology to Nigeria must be registered with the NOTAP within 60 days of execution of the Agreement. See section 4 of the Act on the functions of NOTAP. In the Act, Foreign technology has a wide definition **it involves technical expertise and management expertise of technology, management services contract and technical contracts.** The law ensures that obsolete technologies are not imported into Nigeria. All the technology Nigeria already has would not be allowed into Nigeria again! NOTAP also ensures how the technology adapts to the environment of Nigeria when imported or transferred. The nature of the transfer agreement is also provided for in the Act. **See Section 7 of the Act which provides for the payments and charges on allowances in relation to such a transaction/agreement.**

   A subsidiary legislation to the Act is the NOTAP GUIDELINES, issued by NOTAP to provide the necessary guides to the operation of the Act. See also the case of STANBIC IBTC v FRCN and NOTAP for further directions and clarity on this.
7. **IMMIGRATION ACT. CAP 111 LFN 2004**: The Act regulates Non-Nigerian's participation in businesses in Nigeria. It requires that Aliens willing to work in Nigeria should obtain Residence permit and Business permit as the case may be. Companies that are willing to employ Aliens are similarly required to obtain Expatriate Quota before they can do so. It also contains many other important provisions on the coming in of foreigners into Nigeria either for business activities or otherwise.
8. **COMPANIES INCOME TAX ACT (CITA)**: Companies Income Tax Act (CITA) regulates the tax chargeable on income of companies required to be remitted to the Government of Nigeria periodically.
9. **BANK AND OTHER FINANCIAL INSTITUTIONS ACT (BOFIA)**: It regulates the operations of the Banking sectors and other financial institutions like Insurance Houses etc.
10. **FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS) PROVISIONS ACT CAP F34 LFN 2004**: This Act provides for foreign investment by aliens to be done in convertible currency freely imported into Nigeria through an authorized dealer. It regulates exchange of foreign currency and other allied matters. The Act is useful in understanding Foreign Participation as a topic. Please consult it.
11. **INDUSTRIAL INSPECTORATE ACT CAP 1 8 LFN 2004**, as amended **2012:** This Act requires any person proposing to start a new undertaking or in the case of an existing undertaking, proposing to incur additional expenditure of not less than N 20, 000. 00 to give notice of his intention to the Director of the Industrial Inspectorate Division of the Fed. Ministry of Industry.
12. **MORTGAGE INSTITUTIONS ACT CAP M 19 LFN 2004**: This Act provides that no mortgage business can be transacted in Nigeria except by a company which is duly incorporated in Nigeria for that purpose and in possession of a valid license granted by the Minister of Works and Housing. The minimum paid up share capital for a company to be licensed or continued as a mortgage institution is N5 million according to the Act. see Section 1 of the ACT

13. **STAMP DUTIES ACT CAP S. 8 LFN 2004:** This Act provides that the nominal share capital of any company registered with limited liability or any increase thereto shall be charged with ***ad valorem*** duty. Also noteworthy is the fact that the Memorandum and Articles of Association of a company must be stamped as deeds. See sections 27(6) and Section 34 (4) of CAMA for the stamping of MEMORANDUM and ARTICLES OF ASSOCIATION of a company; respectively.

14. **PARTNERSHIP ACT/LAW**: This Act/law makes provisions for the nature of partnership, the rules for determining partnership, and relations of partners, the dissolution of partnership and all other related matters.

15. **NATIONAL INDUSTRIAL COURT ACT, 2006**: The Act was enacted for the creation of the National Industrial Court of Nigeria to hear labour/employment law related cases. Such jurisdiction is to be given exclusively to the Court and no other. You may see the Constitution of FRN for more details. section 254A-F

16. **FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT FIRS ACT**: A subsidiary legislation to this Act is the Transfer Pricing Regulation 2012. To regulate the taxes payable on the operation of companies in Nigeria and transaction connected thereto.

17. **CAPITAL GAINS TAX ACT:** The Act regulates tax on capital and regulate avoidance of tax and other allied matters.

18. **FINANCIAL REPORTING COUNCIL OF NIGERIA ACT 2011(*FRCN ACT):** To regulate financial reporting in Nigeria; It has sections that create laws on Corporate Governance and sections to register professionals.

19. **INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT ("IDITRA")**: it contains the conditions for the qualification/application for tax reliefs and the issuance of pioneer certificates to qualified industries/companies. Pioneer Status Incentive Regulations 2014 is a subsidiary regulation made pursuant to this Act and NIPC Act

20. **EDUCATION TAX ACT**

21. **EFCC ACT AND ICPC ACT**

22. **MONEY LAUNDERING ACT** etc.

23. **PRIVATE GUARDS COMPANIES ACT**

24. **FACTORIES ACT**

25. **FOREIGN EXPORT (INCENTIVE AND MISCELLANEOUS PROVISION) ACT**

26. **NIGERIA MINERAL AND MINING ACT.**

27. **NIGERIA EXPORT PROCESSING ZONE AUTHORITY ACT.**

OTHER LAWS/SECTOR-SPECIFIC LAWS

OIL AND GAS SECTOR

a. Petroleum Profit Tax Act
b. Petroleum Act
c.Petroleum Products Pricing Regulatory Agency Act
d. CAMA (applies to all companies)
e.ISA (applies to all public company (SEC) and issues of NSE)
f. Guidelines for Obtaining Ministerial Consent for the Assignment of Oil and Gas Interests

BANKING SECTOR

a. CAMA
b. Central Bank of Nigeria Act
c.ISA
d. Asset Management Corporation of Nigeria Act
e.Banks and Other Financial Institutions Act (BOFIA)
f. Pension Reform Act 2004.
g. NDIC Act
h. Asset Maintenance Corporation Of Nigeria Act AMCON Act
i. Mortgage Institution Act

INSURANCE SECTOR

a.National Insurance Commission (NAICOM Act)
b. Nigerian Deposit Insurance Commission (ACT) All banks are required to insure with NDIC
c.Insurance Act 2004
d. Companies and Allied Matters Act
e.Investments and Securities Act
f. National Insurance Corporation of Nigeria (NICN Act)
g. Insurance Regulations,
h. Several guidelines and prudential guidelines,
i. code of corporate governance for insurance companies, 2009

FOOD INDUSTRY

a. National Agency for Food and Drug Administration and Control (NAFDAC) Act
b. CAMA
c.Standard Organisation of Nigeria (SON) Act
d. Trade Marks Act
e.Food, Drug and other related Product Act
f. Consumer Protection Act

ISSUES ON INTELLECTUAL PROPERTIES

a. Patent and Design Act 2004.
b. Copy Right Act

COMMUNICATION INDUSTRY

a. CAMA
b. Nigerian Communications Act
c. National Information Technology Development Agency ACT (NITDAA)
d. ISA
e. Several regulations including the Regulation on Competition Practices

POWER SECTOR

a. Hydro-electric power producing Areas Act
b. Electric Power Sector Reforms Act, 2005 established Nigeria Electricity Regulatory Commission (NERC)
c. CAMA
d. Guidelines for obtaining clearance certificate for the importation of generating set
e. Guidelines for assessment for participation in regulated electricity undertaking
f. Draft regulations for Local Content in the Nigerian Electricity Supply Industry

AVIATION INDUSTRY

a. Civil Aviation Act 2004.
b. Federal Airport Authority ACT
c.Nigeria Air Space Management Authority Act.
d. Customs and Excise Management Act

e.Nigeria Immigration Service ACT.
f. CAMA

REGULATORY BODIES

1. **THE CORPORATE AFFAIRS COMMISSION (CAC) SECTIONS 1-17 OF CAMA:** The Corporate Affairs Commission is created under CAMA, 1990 by virtue of Section 1. It was established with the main purpose/function of Registration and Regulation of Business and Non- Business Organisations in Nigeria. The CAC is a body Corporate with perpetual succession and common seal, capable of suing and being sued in its corporate name and capable of acquiring, holding and disposing of any property (movable and immovable) for the purpose of carrying out its functions. See Section 1(1) and (2) (a) (b) (c) of CAMA 2004 respectively. **The functions of the CAC are provided under Section 7 of CAMA.**

2. The Commission is headed by the Registrar-General, who is the Chief Executive of the Commission who must be a Legal practitioner; so qualified for not less than 10 years and who has not less than 8 years' experience in Company law practice or administration, see section 8(1) and (2) CAMA. He is also the Registrar of Business Names and the Registrar of Companies. There may also be appointed from time to time as may be necessary other officers or persons to be Assistant-Registrars of Business Names or other officers for the administration of Part B of CAMA. Membership of the CAC is for a three year term and subject to re-appointment for a further term of three years, this does not include the Ex-officio members. All members are part time members except the **Registrar – General** only. See section 3 (1) (2) (3) CAMA respectively.

MEMBERSHIP OF CAC CONSISTS OF THE FOLLOWING PERSONS:

1. A Chairman (appointed by the President on the recommendation of the **Minister**)
2. A representative of the business Community (Appointed by the Minister on the recommendation of **NACCIMA)**
3. A representative of the Legal Profession (Appointed by the Minister on the recommendation of the **NBA)**
4. A representative of the Accounting Profession (Appointed by the Minister on the recommendation of **ICAN**)
5. A representative of the Manufacturers Association of Nigeria (**MAN**) (Appointed by the Minister on the recommendation of the Association]
6. A representative of the Securities and Exchange Commission not below the grade of Directors or its equivalents
7. A representative of the Federal Ministry of Commerce
8. A representative of the Federal Ministry of Justice
9. A representative of the Federal Ministry of Industry
10. The Registrar-General of Corporate Affairs Commission himself.

QUORUM FOR THE MEETING OF THE CAC: The quorum for the meeting of members of the Commission is 5 (five) - section 5(3) CAMA.

FUNCTIONS OF CAC (S. 7(1) CAMA)

1. It administers the provision of CAMA as well as regulates and supervises the Formation, Incorporation, Registration, Management and Winding up of Companies pursuant to the provisions of CAMA.
2. To establish and maintain company registries and offices in all the states of the federation for the suitable discharge of it functions.
3. It investigates into the affairs of any company where the interest of the share-holders and the general public is at stake.
4. To perform any other function that may be required of it by CAMA and any other Act in Nigeria.
5. It also undertakes such other activities as are necessary or expedient to give full effect to the provisions of CAMA
6. It is also responsible for the Administration of Business Names and Incorporated Trustees under Parts Band C of the Act.

ACCREDITATION WITH CAC

Accreditation with CAC topically deals with issues on the professionals that can fully transact business with the CAC in the performance of any of its function specified under CAMA. CAMA does not expressly provide for the procedure for Accreditation with CAC before business can be transacted with the Commission but accreditation is required by CAC

themselves as a matter of regulation; this is to regulate the categories of persons that could deal with them. Therefore the professionals that can be accredited with CAC are:

1. Legal Practitioners
2. Chartered Accountants
3. Chartered Secretaries
4. Any firm of the above three (i.e. a firm of legal practitioners, a firm of chartered secretaries, or a firm of chartered accountants).

N.B: Accreditation is only applicable or required under Part A i.e. for incorporation of companies, to ensure that it is only designated people that can transact business with CAC. However, in practice, accreditation is often required for transactions under part B and C.

WHY ACCREDITATION?

a. **Accreditation is merely a confirmation that the professional actually belongs to the stated profession and he is entitled to practice therein.**
b. **It enables the CAC to regulate and know better the kinds of professionals it deals with.**
c. **It weeds out meddlesome interlopers (i.e. touts and busy bodies) from the premises and transactions of CAC**
d. **It ensures documentary credibility, integrity and efficiency in corporate transactions.**
e. **It enables the CAC to be able to report or sanction any professional that spurns the rules of the Commission.**

PROCEDURE/REQUIREMENTS FOR ACCREDITATION WITH THE CAC

1. Obtain and complete CAC accreditation form free of charge from CAC
2. Submit/return the duly completed Accreditation Form with the following documents/materials:—
a. Two passport photographs of the individual or partners of the firm if it is a firm that is been accredited.
b. A copy of the Qualifying Certificate of the professional (for Legal Practitioners—Call to Bar Certificate)
c.Practicing fee receipt for the year of application
d. National Youth Service Corps (NYSC) Discharge or Exemption Certificate
e.Accreditation fee of N 2, 500 for individuals and N 5, 000 for firm.

- Kindly note that under the new Companies Regulations 2012 at schedule 3 (three), N 5000 is required for both individuals and firms no discrimination or differences as to the accreditation fee.
- **Upon satisfaction of the above requirement for accreditation and sighting of the original certificates presented for sighting to the Verifying officer at CAC; the Verifying Officer or appropriate Officer would issue an Identity Card/Accreditation card which serves as a reference code for the practitioner/firm in carrying out transactions at/with the CAC. The card bears the code of the profession.**
- Identification/Accreditation number for legal practitioner looks like these: **CAC/NBA/IND/0001** or for the Firms **CAC/NBA/FIRM/0001**.
- For Accountants it is **CAC/ICAN/IND/0001** or **for the accounting firm it is CAC/ICAN/FIRM/3300**.
- The accreditation number must be used for both pre and post incorporation transactions requiring accredited practitioners with the CAC. HOWEVER, **IF THE ACCREDITATION CARD IS LOST, IT CAN BE REPLACED.**

THE REQUIREMENTS FOR REPLACEMENT ARE:

An Application letter for replacement to be accompanied by the following documents:

a) Police Report
b) Affidavit of loss
c) Copy of receipt of payment of practicing fee for the year of application
d) Copy of qualifying certificate (call to bar certificate if it is a legal practitioner) and the NYSC discharge or exemption certificate.

e) Payment of Replacement fee

DRAFT: APPLICATION FOR THE REPLACEMENT OF ACCREDITATION CARD:

Clement Owolabi Esq

(Legal Practitioner)

No 24 Law School close

Victoria Island

Lagos

1 May 2017

The Registrar General

Corporate Affairs Commission

Plot 420 Tigris Crescent

Off Aguiyi Ironsi Street

Maitama

Abuja.

Dear Sir,

APPLICATION FOR REPLACEMENT OF ACCREDITATION CARD

The above subject matter refers.

I, Clement Owolabi, Legal practitioner of the above named address hereby applies for the replacement of my lost CAC accreditation card.

The card was issued to me on 1 May 2015 after due fulfilment of registration requirements; but unfortunately it was misplaced on 23 February 2017 while returning from Cotonou from a business trip.

Kindly find attached the following documents as evidence of loss/mispalcement and in due compliance with the CAC regulation for replacement:

a. Police report

b. Affidavit of loss

c. Copy of the receipt of payment of practicing fee for the year 2017

d. Copies of my Call to Bar Certificate and NYSC discharge certificate

e. Evidence of payment of replacement fee

Thanks for your cooperation.

Yours faithfully,

~~*Ihtyg*~~

Clement Owolabi Esq

THE ADVANTAGE A LAWYER HAS OVER OTHER PROFESSIONALS: It is only Legal Practitioners that can start and complete a brief to incorporate a company. Other professionals must engage a legal practitioner at one point or the other at the course of the registration. FORM CAC 4 (Statutory Declaration of Compliance with the Requirement of CAMA pursuant to Section 35(3) (CAMA) can only be filled and attested to by a Legal Practitioner.

1. **SECURITIES AND EXCHANGE COMMISSION (SEC):** The SEC is established under Section 1 of the Investments and Securities Act, 2007 and it is a body corporate with perpetual succession and common seal having capacity to sue and be sued in its corporate name. It similarly has power to acquire and dispose of properties, both movable and immovable for the purpose of carrying out its functions. The Chief Executive Officer of the body is the **Director-General** who must have at least 15 years' cognate experience in Capital Market operations, he is similarly the Accounting officer of the Commission; see section 3(b) Investments and Securities Act, 2007. SEC is the apex regulatory body/organization for the Nigerian Capital Market.

2. CAC requires accreditation while SEC requires registration. While accreditation is a confirmation, registration is not. See the case of **SECURITIES AND EXCHANGE COMMISSION V PROF A. B. KASUNMU SAN (2009) 10 NWLR (Pt. 1150) 509,** see the new Section 13(g) ISA, 2007 wherein it was stated that professionals including capital market operators are to be registered by the SEC as part of the functions of SEC.

FUNCTIONS AND POWERS OF SEC—Section 13 ISA, THE COMMISSION SHALL:

1. Regulate investment and securities business in Nigeria
2. Register and Regulate securities exchange, Capital Trade Points (CTP), commodity exchange and other recognised investment exchange.
3. Regulate all offers of securities by public companies and entities
4. Register securities of public companies
5. Render necessary assistance to investors wishing to establish CTP and securities exchange
6. Prepare adequate guidelines and disseminate necessary information for establishment of CTP and securities Exchange
7. Register and regulate individual capital market operators
8. Register and regulate working of venture capital funds and collective investment schemes
9. Facilitate the linking of all markets in securities with ICT facilities
10. Keep and maintain a register of foreign portfolio investments
11. Protect the integrity of securities market against all form of abuse
12. Promote and Register Self-Regulatory Organisations (SROs) to which it may delegate its power.
13. Review, approve and Regulate Mergers, acquisitions and take-over of all forms of business combinations and affected transactions of all Companies.
14. Authorise and Regulate Cross-border Securities Transactions
15. Conduct research into all or any aspect of securities industry
16. Call for or furnish information to any person as may be necessary for effective discharge of its duties.
17. Enter and seal up the premises of persons illegally carrying on capital market operations
18. Administer all matters relating to securities industries
19. Prevent fraudulent and unfair trade practices relating to securities industries
20. Disqualify any person consider unfit to be employed into any arm of the securities industry
21. Conduct and perform other functions as are necessary for the discharge of its duties or give full effect to the provision of ISA.

REGISTRATION OF CAPITAL MARKET OPERATORS (CMO) AND/OR CAPITAL MARKET CONSULTANTS (CMC) WITH SEC:

The requirement of Registration as a CMO or CMC with SEC unlike accreditation with CAC is statutory. See s. 38(1) ISA. The reasons for registration requirement with SEC is simply to show competence and provide for professional indemnity. On those who are qualified for registration as CMO or CMC, Rule 178 of the SEC Rules 2013 provides that experts/professionals whose opinion impact directly on capital market transactions are subject to registration. **The List of the Professionals according to Rule 178(1) of Securities and Exchange Commission Rules are:**

a. Legal Practitioners;
b. Accountants;
c.Auditors;
d. Engineers;
e.Estate Valuers;
f. Property Managers
g. Any other expert/professional that may be determined by SEC from time to time

Capital Market Experts or professionals may register as— Companies—5 million, Firm—2 million or Individuals—500 Thousand (NB: indication of the Net worth of Applicants).

- ❖ Corporate bodies: Limited liability Companies (LLC)
- ❖ Firms and persons/Individuals carrying on business in their true names. (F & P)

REGISTRATION REQUIREMENTS FOR CORPORATE BODIES LLC—R. 178(2) (A) SEC RULES

1. An application by the corporate body to be registered as a Capital Market Expert/Professional. The application by the corporate body shall be accompanied by—

2. Set of duly completed Form SEC 3

3. 2 sets of duly completed Form SEC 2 to be filled by at least two sponsored individuals one of whom shall be the principal officer of the company;

4. Curriculum vitae of the sponsored individuals including details of activities stated in order of time from secondary school till date;
5. A copy of the certificate of incorporation (COI) of the company certified by the company secretary. Where a copy not certified is filed, the applicant shall present the original for sighting;
6. Profile of the company indicating details of past and current activities;
7. 2 copies of the Memorandum and Articles of Association certified by CAC;
8. Signed copy of the Audited account or Audited statement of affairs of the company;
9. Full postal address of immediate past employers of sponsored individuals;
10. Sworn undertaking to keep proper records and render returns as may be specified by SEC from time to time;
11. Evidence of minimum paid-up capital of N5 million or minimum net worth of same amount.
12. A sworn statement that the requirements of Investments and Securities Act have been complied with.

REQUIREMENTS FOR REGISTRATION AS A FIRM/INDIVIDUALS CARRYING ON BUSINESS IN THEIR TRUE NAMES --- RULE 178 (2) (B) SEC RULES

1. Application shall be made in Form SEC 2 accompanied by the following:-
a. Certified copy of certificate of business name (where applicable);
b. Curriculum vitae of at least two officers known as sponsored individuals including details of activities arranged in order of time from secondary school till date;
c.Profile of the firm including details of past and current activities; (INCLUDING NATURE OF BUSINESS)
d. A copy of the partnership deed (where applicable);
e.Full postal and electronic address of immediate past employer of sponsored individuals;
f. Sworn undertaking to keep proper records and render returns as may be specified by SEC from time to time;
g. Evidence of minimum net worth of N 2, 000, 000 for partnership and in the case of an individual N500, 000;
h. A sworn statement that the requirements of Investments and Securities Act have been complied with.
i. Sworn statement that the information contained in the valuation report is true and fair and in compliance with the standard prevalent in the industry (where applicable)
j. Copy of evidence of payment of their annual practicing fee of sponsored individuals;
k. Professional indemnity insurance policy.

- **SEC has sixty (60) days to consider these applications for registration, and issue its decision/notice to register or otherwise.**
- Where SEC refuses to register, the notice of refusal must set out the reasons for such refusal and give the applicant at least 14 days from the date of the notice for the applicant to come and make representations to SEC. See Rule 178 (B) (4) of SEC Rules

- **NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION (NOTAP): It is estab**lished by the NOTAP Act with main objective of monitoring on continuous basis the transfer of technology to Nigeria. NOTAP focus majorly on the examination of the quality of imported technology with a view to determining its price and to check the abuses and dumping of obsolete technologies in Nigeria. The body is headed by a Director. It issued **Revised Guidelines for the Registration and Monitoring of Technology Transfer Agreements in Nigeria, 2011**.

FUNCTIONS—S. 4 NOTAP ACT

1. To encourage a more efficient process for the identification and selection of foreign technology;

2. To Facilitate the development of the negotiation skills of Nigerians with a view to ensuring the acquirement of the best contractual terms and conditions by Nigerian parties entering into any contract or agreement for the transfer of foreign technology;

3. To Provide a more efficient process for the adaptation of imported technology in Nigeria ;

4. To Register all contracts or agreements for the transfer of foreign technology to Nigerian parties; contract or agreement registerable are those with purpose or intent in connection with—the use of trademarks; the right to use patented inventions; the supply of technical expertise in the form of the preparation of plans, diagrams, operating manuals or any other form of technical assistance of any description whatsoever; the supply of basic or detailed engineering; the supply of machinery and plant; and the provision of operating staff or managerial assistance and the training of personnel; and

5. Monitoring, on a continuous basis, of the execution of any contract or agreement registered pursuant to the NOTAP Act.

REQUIREMENTS FOR THE REGISTRATION OF TECHNICAL TRANSFER AGREEMENT (TTA)

a. **An application for the registration of TTA, which must be addressed to the Director of NOTAP, must be made within 30 days from the effective date of the TTA.**

b. Attach the following documents:

1. Completed application form
2. Memorandum and Articles of Association of the recipient company
3. Copy of Certificate of Incorporation of the company
4. Two copies of the TTA to be registered
5. Copy of feasibility study of the relevant project, if applicable
6. Annual audited account for the last 3 years of the company
7. Shareholders' resolution authorising the registration of the TTA
8. Two copies of duly completed NOTAP questionnaire
9. Completed monitoring form (for renewal agreements)
10. Completed TTA Pre-qualification Form (for ICT agreements)
11. Relevant approval/license from the relevant sector-specific regulators
12. Detailed engineering drawings for agreements involving engineering projects
13. Tax clearance certificate of the company for preceding 3 years, and the Tax identification number
14. Bank guarantee or performance bonds for all front-end payments
15. Detailed address and website of the transferor
16. Presentation fee of N50, 000 and Registration fee to be assessed from N100, 000 and above.

- **PENALTY** for late submission: N100, 000
- If successful, a NOTAP **CERTIFICATE OF REGISTRATION** will be issued. Section 6(1) NOTAP Act
- **GROUNDS** for refusal/rejection of an application for registration of a TTA– section 6(2) NOTAP Act
- **CANCELLATION OF REGISTRATION**: post-registration amendment/modification of the TTA in a manner inconsistent with NOTAP Act – section 8 NOTAP Act.
- Any **REMEDY** to the above? – Within 60 days from the date of the notice of refusal or cancellation, **FILE A NOTICE OF APPEAL TO THE GOVERNING COUNCIL OF NOTAP**. Section 9 NOTAP Act.

- **Effect of non-registration: No repatriation of funds through the official market. Section 7 NOTAP Act; see the case of STANBIC IBTC v. FRCN & NOTAP**

- **NIGERIAN INVESTMENT PROMOTION COMMISSION:** Established under Section 1 of NIPC Act, It is headed by an Executive Secretary. It is established to encourage, promote and coordinate investments in the Nigerian economy. It issued the **NIPC Pioneer Status Incentive Regulations, 2014.** Requires that foreign participants in business in Nigeria must register their enterprise with NIPC before commencement of business
  - **Functions of the NIPC – section 4 NIPC Act:**

ROLES/FUNCTIONS OF NIPC– section 4 NIPC ACT:

1. Initiate and support measures which will enhance investment climate in Nigeria for both Nigerian and *Non-Nigerian* investors.

2. Project Nigeria as a safe country to invest in and prosper.

3. Highlight investment opportunities in Nigeria

4. Empower Nigerians to Invest.

5. Identify specific projects and invite investors to participate in those projects

6. Promote investments in and outside Nigeria through effective promotional means

7. Provide and disseminate up-to-date information on incentives available to investors

8. Assist incoming investors and existing investors by providing support services: **OSIC**

9. Advise the FGN on policy matters and fiscal measures designed to promote industrialization of Nigeria

10. To effectively facilitate investment promotion in Nigeria

11. To encourage, promote and coordinate investment in Nigeria.

12. To monitor all investment promotion activities.

13. To enhance investment climate in Nigeria for both Nigerian and Alien investors.

14. Advise the Federal Government on policies to promote Industrialisation of Nigeria.

15. To register and keep records of all enterprises as applicable.

16. Grant approvals on fiscal concession on industries related incentives such as—

PIONEER INDUSTRIES INCLUDING:

a. Local material utilisation
b. Export oriented industry
c. Implant training
d. Investment on infrastructural facilities
e. Research and development
f. Investment in economically disadvantaged areas (for tax concession incentives)

- **BUREAU OF PUBLIC ENTERPRISES (BPE): The main objective of the Bureau of Public Enterprises is to implement government policies on privatisation and commercialisation to revamp decaying public enterprises.**
- **FUNCTIONS OF BPE**

1. It regulates the privatisation and commercialisation of government owned utilities.
2. Prepares public enterprises approved for privatisation and commercialisation.

3. Ensures update of accounts of all commercialised enterprises for financial discipline,
4. Make recommendations on the appointment of consultants, advisers, investment bankers, issuing houses, stock brokers, solicitors, trustees, accountants, and other professionals required for the purpose of privatisation.
5. Implements Nigerian policies on privatisation and commercialisation.

❖ **ASSET MANAGEMENT CORPORATION OF NIGERIA (AMCON)**: It is established by the AMCON Act 2010.

OBJECTIVES: See Sections 4 and 5 of the ACT

1. To resolve liquidity problems in the financial sector.
2. To assist banks in moderating the cost of bank distress.
3. To manage and dispose toxic assets of Nigerian banks including Non – performing Loans (NPLs)

AMCON is empowered to apply to court by motion *ex parte* for an order to freeze the debtors or debtor's company account in case of default. See Sections 49 and 50 of the AMCON ACT.

4. To commence debt recovery action against a debtor or debtor's company whose account was frozen.
5. **Restore confidence in the capital market and Banking Sector of the Nigerian Economy**
6. Maximise returns from disposed assets and encourage investment activities in the capital market
7. Provide vehicle for acquisition of shares of Deposit Money Banks (DMBs)

❖ **FEDERAL HIGH COURT:** It is created under Section 249 CFRN 1999 as amended.

FUNCTIONS/POWERS OF THE FHC WITH REGARDS TO COMPANY ARE AS FOLLOWS:

1. Wound up the affairs of a company as at when necessary see section 401 CAMA
2. Appointment or removal a liquidator in any voluntary winding up, see section 422 and 482 of CAMA
3. Appointment of an Official Receiver for debenture holders and others. see section 388 CAMA
4. appointment of receiver and managers of the property of the company see section 389 CAMA
5. Cancel the alteration of a company's objects or object clauses. see section 46 CAMA
6. Make order for the rectification of register of members. S. 90 CAMA
7. Make order of the meeting of creditors or class of creditors when necessary amongst others.
8. Sanction restructuring scheme etc see the provisions of ISA .and section 538 CAMA

FINANCIAL REPORTING COUNCIL OF NIGERIA FRCN (For public company): They are majorly for proper financial management and disclosure of financial institutions. Any professional signing account of public office must be registered with FRCN.

SECTOR-SPECIFIC LAWS, REGULATIONS AND REGULATORY BODIES

a. **POWER SECTOR:** Nigerian Electricity Regulatory Commission (NERC)
b. **OIL AND GAS SECTOR:** Ministry of Petroleum; Department of Petroleum Resources;
c. **TELECOMMUNICATIONS SECTOR:** Nigerian Communications Commission
d. **INSURANCE SECTOR:** National Insurance Commission (NAICOM)

OTHER REGULATORS:

a. Nigerian Immigrations Service
b. Nigerian Customs Service
c. National Agency for Food and Drug Administration and Control (NAFDAC)

d. Standards Organisation of Nigeria

e. Nigerian Stock Exchange … Ltd/Gte

f. Debt Management Office - DMO

WEEK 4

CHOICE OF BUSINESS ORGANISATION

INTRODUCTION

A COMPANY MAY BE FORMED:

1. By Registration; or
2. By An act of Parliament

A company may be formed for profit or for purposes other than profit. a company may be formed for business purposes and non-business purposes.

TYPES OF BUSINESS ORGANISATIONS

1. Sole proprietorship (also called sole trader sometimes not registered as a Business Name, therefore he may carry on business without registration)
2. Business Names (may be registered as a sole proprietorship and a partnership, therefore business ventures and firms fall under this category registered under Part B of CAMA)
3. Incorporated Companies/Trustee (registered under part A and/or Part C of CAMA)

LAWYER-CLIENTS INTERVIEW ON REGISTRATION OF COMPANY (TAKING INSTRUCTIONS) SPECIFIC INSTRUCTIONS: PARTICULARS OF INSTRUCTION NEEDED FOR THE PREPARATION OF INCORPORATION DOCUMENTS FOR A COMPANY S. 18, 20, 21, 22, 26, *27*, 30,31,35,39, 65, 66, 71, 72, 90, 257

1. Particulars of client-name/address/age/occupation
2. Two proposed names of the company, one most preferred name and an alternative name
3. Place of the business
4. Particulars of subscribers of the shares of the company
5. participation of foreigners
6. Particulars and nationality of the proposed Directors and secretary
7. Qualification of secretaries
8. Objects/ business of the company
9. Amount of share capital of the company
10. Extent of liability of its members
11. Purpose and use of the profit
12. Particulars of information to prepare the Articles of Association of the company
13. Sphere of the business
14. Type of proposed company
15. Classes of shares envisaged
16. Share capital distribution ratio
17. Number of members
18. Ages of the persons forming the company.
19. Control and management of the company
20. Particulars of any known legal disability
21. Would its shares be transferable?
22. Would the shares be offered to the public for subscription?

23. Details of any pre incorporation contracts

24. Proposed date of completion of registration **NOTE THE FILING FEES AND PROFESSIONAL FEES**

ETHICAL RESPONSIBILITIES/DUTIES IN CLIENT'S RELATIONSHIP

1. Duty to take full instruction, RULE 15 and 16 RPC
2. Lawyers should not come late to office SEE RULE 14 RPC
3. Professional fee must be signified. section 22 LPA and Rules 48 and 49 RPC
4. Duty not to call at the client house or office except in cases of exceptions see RULE 22 RPC

CONTENTS OF A MEMORANDUM OF ASSOCIATION

1. NAME OF THE COMPANY

Generally, any name can be used in the formation of a Company. Name that may be used includes personal name, combination of names, generic name, invented or geographical names. However, reservations must have been created under Section 30 of CAMA on specific names that cannot be used. An applicant is expected to conduct availability check for the reservation of name under S. 32 CAMA. Form CAC 1 is used in reserving names. (The Names will be reserved for 60 days). The names that cannot be used may either be restricted or prohibited names and they are as follows:

PROHIBITED NAMES—S. 30(1) (A-D) CAMA

a. Identical Names: Names identical to a company already registered or likely to mislead the public are prohibited from being used save where the existing company is in the course of being dissolved and signified its consent to the use of the name in manner required by the CAC. See the case of NIGER CHEMIST V NIGERIAN CHEMIST.

b. Names that contains the word "Chamber of Commerce" except it is a company limited by Guarantee.

c.Names considered Misleading as to the nature or extent of the business of the company, offensive names and names contrary to public policy are prohibited.

d. Names that violate existing registered business name or trademark of a company or business entity unless the consent of the owner is obtained.

RESTRICTED NAMES—S. 30(2) (A-D)

a. Names Suggesting Government Patronage: these are names that includes words like 'National', 'Regional', 'State', 'Government' or in any way suggest that the company enjoys government backing in Nigeria or that the company enjoys backup from government departments or ministries.

b. Names containing the word 'Municipal' or 'Charter' or likely to suggest connection with any municipality or local authority.

c.Names that contains the word 'Co-operative' or 'Building Society'

d. Names that contains the word 'Group' or 'Holding'

REQUIREMENTS FOR THE USE OF THE WORD GROUP—REG. 20 CR 2013…….. FEERSUU

a. Formal Application for Consent

b. Evidence of not less than 3 Associate Companies to form the GROUP company

c.Evidence of Common Membership of the Associate Companies

d. Resolution of each associate companies consenting to the GROUP Relationship.

e.Statement by majority of the Directors of the proposed GROUP Company that the share capital of the group company shall not be less than the highest capital amongst the associate companies.

f. Updated annual returns of associate companies

g. Updated S. 553, CAMA filling where applicable.

REQUIREMENTS FOR THE USE OF THE WORD HOLDING REG. 21 CR 2013….FESUU

a.Formal Application for Consent
b. Evidence of not less than 2 Subsidiary Companies
c.Statement of majority of the Directors of the proposed HOLDING company that the company shall acquire more than half of the shares of each of the subsidiary companies within 90 days of its incorporation.
d. Updated annual return of the subsidiary companies
e.Updated S. 553 CAMA filing of the subsidiary companies where applicable.

REQUIREMENTS FOR THE USE OF THE WORD CONSORTIUM—REG. 22 CR 2013……. FEERSSIU

a.Formal Application for consent
b. Evidence of not less than 3 companies forming the Consortium
c.Evidence of registration in home Country in case of a foreign company
d. Resolution of each company consenting to the consortium and stating the object of the consortium
e.Statutory declaration to wind up the company in accordance with provision of CAMA upon completion of the object of the consortium
f. Statement of the object in the MEMORANDUM OF ASSOCIATION of the consortium
g. Inclusion of clause to Wind up the consortium in the Article of the consortium.
h. Updated s. 533 CAMA filing by companies forming the consortium where applicable.

2. REGISTERED OFFICE SITUATED IN NIGERIA

Importance of Registered Office

a.For receiving of correspondences
b. For service of Legal Processes- S. 78 CAMA
c.For keeping of all the statutory books and all the statutory books have/bear the address of the registered office and they are generally to be kept therein. **NB: The Registered office Address must be a physical address and must be situated in Nigeria. Postal address of the company shall not be addressed as a proper address in place of registered address.**

3. THE NATURE OF BUSINESS OR OBJECT CLAUSE

The object of the company state the business in which the proposed company intends to undertake as a going concern. The main aim of the object clause is to protect the members/investors by giving them notice of the Company's undertaking.

Effect of **Object Clause**: The Object clause is just a statement of a mere intention and hence failure to execute the entire object contained therein does not mean the company is legally bound to do all of it. See. NIPC v THOMPSON and the case of EDOKPOLOR V SEM EDO WIRES. **Similarly, a company can do what is not in its object clause— see section 39 CAMA on ultra vires act of third parties are protected. Note that, ordinarily, where a company acted outside it object clause, it amounts to ultra vires. However, acts done ultra vires can be ratified by members at the general meeting and similarly, any transfer or conveyance of property by a company outside its object clause will also be valid. See s. 39(2) and (3) CAMA**

4. RESTRICTION CLAUSE (IF ANY): the memorandum of association may create restriction to the power of the company.

5. STATUS CLAUSE

The status of a company may be private company, public company, company limited by Guarantee or an unlimited company.

FEATURES OF PRIVATE COMPANY

1. Must be stated in the memorandum that it is a private company, section 22 CAMA

2. Articles must restrict transfer of shares, section 22
3. No requirement to hold statutory meetings see section 211 CAMA
4. The name must end with Ltd- 29 CAMA
5. There is no strict legal requirement as to the person who can be the secretary of a private company. What is required is that the person must possess general knowledge and skills, while in a public company, a Legal practitioner, a Chartered accountants or a Chartered Secretary or any person who has been a secretary of a public company for at least 3 years of the past 5 years immediately preceding his appointment.
6. The disclosure requirement and formalities are less for meetings
7. Pre- emption clause (applicable to both private and public company) and restriction in transfer of share

FEATURES OF A PUBLIC COMPANY

1. Must be stated in the Memorandum of the company—s. 24 CAMA
2. Can offer its shares to the public

6. LIABILITY CLAUSE:

Liability of the members is either limited by share or guarantee.

7. SHARE CAPITAL

1. **NOMINAL SHARE CAPITAL**: it is the amount with which the company proposed to start business and it is included in the memorandum of association of the company. The members of the company must subscribe to at least 25% of the Nominal Share Capital. SEE section 27 (2) (b) CAMA.
2. **AUTHORIZED SHARE CAPITAL:** The Authorised Share Capital is the amount authorised by law with which a company may start business. The minimum Authorised Share Capital for a private company is N 10, 000 and N500, 000 for a public company. see section 27 (2) (a) CAMA. Please Note that there is no maximum to the Authorised Share Capital of a company. Also take further notice that other legislations like the BOFIA and Insurance Act prescribe the minimum Authorised Share Capital with which Banks and Insurance companies resectively may start business.
3. **ISSUED CAPITAL:** It is the amount of the Authorised Share Capital issued for subscription to the public.
4. **UNISSUED CAPITAL**: part of the Authorised Share Capital that have not been issued for subscription to the public.
5. **CALLED UP CAPITAL**: part of the issued capital yet unpaid and called for payment by the company.
6. **PAID UP CAPITAL**: Part of the issued capital that have been wholly or partly paid for by the members either in cash or in consideration other than cash.
7. **RESERVED CAPITAL**: Part of the Authorised Share Capital that have not been issued or part of the issued capital that have not been called up. **It is reserved for the purpose of winding up the affairs of the company. Please note that the decision on reserved capital is by special Resolution.**
8. **EQUITY SHARE CAPITAL**: the whole of the ordinary share of the company with no limited rights as to dividends. Equity capital does not consist of the preference share of the company
9. **CIRCULATING CAPITAL**: portion of the subscribed capital intended to be used for business and to always flow back to the Authorised Share Capital with an increment
10. **FIXED CAPITAL:** capital retained in form of an asset and meant to generate income into the company
11. **DEBT/LOAN CAPITAL**: capital raised through loans and thus represent debt owed by the company.

CLASSES OF SHARES

1. **ORDINARY SHARE:** they are the risk bearers of the company, least to be paid in the event of winding up. Not entitled to dividend by share unless when dividend is declared. Also called equity capital/share.
2. **PREFERENCE SHARE**: They have a fixed interest rate of return. Preference share is often a combination of both equity and debt capital. It is divided into **Cumulative preference shares and non-cumulative preference shares and also redeemable preference shares and convertible preference share.**

3. FOUNDERS OR DEFERRED SHARE: usually ordinary shares often used to refer to share held by the first subscribers to the Memorandum of association of the company.

PLEASE NOTE THE PAYMENT FOR SHARE — SECTIONS. 135, 136 AND 137 OF CAMA

Shares in the capital of the company or premium on them may be paid for either wholly or partly in any of the following ways:

a. CASH—shares are considered paid for in cash when the company receives actual cash for them either at the time of the agreement for taking the share or subsequently afterwards.

b. CONSIDERATION OTHER THAN CASH e.g. services, transfer of interest and capital asset etc.

Where a company undertakes to receive payment in consideration other than cash, the following must be done by the company —

1. Appoint an Independent valuer who shall value the consideration and submit a report of the valuation to the company
2. Valuer appointed is entitled to request any information necessary for the discharge of his duties form any of the officers **of the company**
3. The company shall within 3 days after receiving the valuation report send a copy to the person proposing to buy the share and signify intention whether or not to accept the consideration either in full or as part payment for the shares
4. Consideration may only be received by the company if it worth its equivalent when paid up in cash after the valuation.

NB: When it comes to payment other than cash, there are issues. Hence form CAC 2 - on statement of share capital and return of allotment of shares is not enough, the following documents should accompany it.

- **Deed/instrument of transfer**
- **Valuation report**
- **Evidence of agreement between the party and the company**
- **Resolution of promoters (pre-incorporation) or board of directors (post incorporation) adopting the consideration other than cash.**

Note: persons to be appointed as valuer includes—An Auditor, A Valuer, A Surveyor or An Accountant (they must not be persons in the employment of the company nor associated with the company in any manner or be its Directors)

8. SUBSCRIBERS

THEY ARE:--

a. Persons who signed/subscribed to the articles & memorandum of association of the company at the time of incorporation
b. They must subscribe to at least 25 % of the Authorised Share Capital of the company. section 27 (2)
c.A minor can be a subscriber provided there are two other matured/adult subscribers (capacity)
d. Minimum of two and maximum of 50 for private company and no limit to public companies.

9. SUBSCRIPTION CLAUSE

It contains the association clause and subscription clause. The association clause contains declaration by the subscribers of which must be at least two.

10. SUBSCRIPTION BOX

The subscription box shows the name and particulars of subscribers, the unit of shares taken by each and their signature.

11. ATTESTATION CLAUSE—S. 27 (5) CAMA

The above section requires that the memorandum be attested to by at least one witness. Professionals engaged in formation of the company or some other reputable person can attest.

DIRECTORS

Directors are:

1. Appointed by the Subscribers to the Memorandum and Articles of Association or majority of them or by the company in an annual general meeting.
2. A Company must have at least 2 Directors at a particular period of time
3. A minor cannot be a Director
4. Disqualification- S. 257 CAMA: A person is disqualified from being appointed in any of the following circumstances:
a. An Infant (persons under the age of 18 years)
b. A lunatic or persons of unsound mind
c.A corporation other than its representatives appointed to the BOD for a given term
d. An adjudged bankrupt
e.Persons adjudged of fraud while dealing with the management of a company.

INCORPORATION DOCUMENTS 35 CAMA AND REG. 23 CR 2013

1. Duly stamped Memorandum of Association and Articles of Association of the company.
2. Duly Completed Set of Incorporation Forms:--
a. CAC 1- Availability check/ reservation of name
b. CAC 2- Statement of authorized share capital and return of allotment
c.CAC 2.1- Particulars of company secretary (Incorporation and post-incorporation)
d. CAC 3- Notice of situation of registered address
e.CAC 4- Declaration of compliance with the provision of CAMA
f. CAC 7- Particulars of first directors
3. Photocopy of information page of international passport or National ID card for each Director and Subscriber
4. Evidence of Consent Letter where applicable
5. Proficiency certificate where applicable
6. Residence permit in case of foreign participation
7. Photocopy of Duly verified CAC 7, CAC 2 together with the MEMART for certification as CTC.
8. Duly signed and sealed resolution of a company authorising subscription where a company is one of the subscriber to the Memorandum of association of the company.
9. Affidavit stating circumstance of Cancellation or alteration in the signature on any document or any difference in the name on stamp duty to receipt and name on other documents.
Please note that: The Memorandum of Association of the company is referred to as the Company's charter and the Article is referred to as the Company's Bye Law: Both Are Company's constitutions, in cases of conflict the Memorandum of association prevails over the Article of association. See the case of **WELTON** V **SAFFERY**

DOCUMENTS FOR STAMPING

1. Memorandum and Articles of association of the company
2. Form CAC 2 (statement of share capital and return of allotment) **not applicable to Unltd & Ltd/Gte**

DOCUMENTS FOR FILING

1. Stamped Memo and Article (at least two copies)
2. Stamped CAC 2 statement of authorized share capital
3. All other documents above are going for filling (list them)

EFFECT OF INCORPORATION – 37 CAMA

A company from incorporation shall become a body corporate with the name contained in the Memo having perpetual succession and common seal and is capable of exercising all the power and functions of a natural person including the power to

hold and dispose properties but with liabilities on part of the members to contribute to the asset of the company in the event of its being wound up.

ADVANTAGES/EFFECT OF INCORPORATION

1. Perpetual succession
2. Limited liability
3. Subscribers become automatic members of the company.
4. Separate legal personality and Separation of ownership from management.
5. Power to hold and acquire property in the name of the company.
6. The company would now have a common seal.
7. It is now ready as a Perfect vehicle for raising finance

Disadvantages of Incorporation

1. Formalities and partnership

REJECTION OF INCORPORATION DOCUMENTS section 36(1) CAMA

The CAC may reject incorporation documents in any of the following circumstances—

1. Failure to comply with the requirement of CAMA or any other law regulating the formation of a company
2. Where the objects are illegal
3. Where the name is no longer available or conflicts with an existing trademark or business name.
4. where the subscribers or any of them are incompetent

OPTIONS OPEN TO AN AGGRIEVED PERSON/PROMOTER WHERE THE CAC REJECTS AN APPLICATION FOR THE INCORPORATION AND REGISTRATION OF A COMPANY:

a. **Give notice to the CAC requiring it to apply to the Federal High Court for direction**
b. **CAC shall, within 21 days from the date it received the notice, apply to the Federal High Court for directions**
c. **The Federal High Court will consider the application for the incorporation of the company and if it finds the application meritorious, it will make an order that the company be registered.**
d. **A copy of the order will be attached to the application and sent back to the CAC for registration and incorporation.**
e. **The company will be registered**

Section 36(2) CAMA

CERTIFICATE OF INCORPORATION (COI)—s. 36(6) CAMA

A Certificate of Incorporation is a prima facie evidence of incorporation and a compliance with all the requirements of CAMA on matters precedent or incidental to it—that the company is duly registered under CAMA and may serve as a proof of legal personality of the incorporated company.

REQUIREMENTS FOR THE APPLICATION FOR THE CTC OF CERTIFICATE OF INCORPORATION

1. Formal Application for CTC of the Certificate.
2. A duly sworn affidavit by a Director of the company explaining the circumstances of the Application
3. Updated Annual Return filing
4. Updated 553 CAMA where applicable
5. Payment of fees

WEEK 5

CHOICE OF BUSINESS AND NON BUSINESS ORGANISATION II

BUSINESS ORGANISATIONS

They are profit oriented organisations and primarily formed for doing business and making returns on investments for their members. Types of business organisations include:

a. Companies
b. Sole Proprietorship (Not registered as Business name)
c.Business Name (Registered as Sole proprietorship or Partnership)
d. Partnership (unregistered Partnership or Limited Liability Partnership)

NON-BUSINESS ORGANISATION

They are not formed for business purpose neither are they profit oriented. They are formed by aggregate of members that are willing to pursue common objective in selected area of members which seek to pursue corporate name. They are usually formed for charitable purposes which may be educational, scientific, social, development etc.

TYPES OF NON- BUSINESS ORGANISATIONS ARE:

a. Company Limited by Guarantee
b. Incorporated Trustees

GENERAL FACTORS AFFECTING CHOICE OF BUSINESS AND NON-BUSINESS ORGANISATION

a. Cost of Registration and Expenses
b. Speed of Processing and Completion of Registration
c.Documentation and Legal Compliances
d. Post-Regulation Compliances and Regulatory Supervision
e.Sphere/ Extent of operation.

FACTORS AFFECTING CHOICE OF BUSINESS ORGANISATION

1. Nature of the business
2. Amount of capital available
3. The number of members.
4. Extent of liability of members.
5. Commercial expediency.
6. The extent and sphere of operation.
7. Statutory requirements.
8. The cost of registration and expenses
9. Speed of processing and completion of registration.
10. Post registration compliance and regulatory supervision
11. Client's Desire.

COMPANIES

All companies are distinct legal entities and separate from persons which they consist. A company may be formed for profit purpose or for purposes other than profit and the liability of members of a company may either be limited or unlimited. A company may be created by two or more persons provided it is formed in compliance with the provision of CAMA. S 18 CAMA.

WAYS OF CREATING A COMPANY?

a. By Registration under Part A of CAMA (Incorporation)

b. By establishment through Act of parliament

CAPACITY TO FORM A COMPANY

Generally, two or more persons of full legal capacity can join in the formation of a company. However, restrictions have been created under s. 20 CAMA on the list of persons that can join in the formation of a company and these include:

1. **Persons less than 18 years of age, unless there are two other persons of "full age and capacity" who will join in subscribing to the Memorandum of Association of the company.**
2. **Persons adjudged to be of unsound mind AND have been so found by the court**
3. **An undischarged bankrupt,**
4. **Persons Convicted of fraud cannot join in being a Director a company or disqualified under section 254 of CAMA**
5. **Under Section 20(3) of CAMA, a corporate body in liquidation shall not join in the formation of a company.**
6. **Under s. 20(4) CAMA, an Alien may join in the formation of a company subject to provision of laws regulating alien participation in business in Nigeria.**

For example, Sections 19 and 20 of the Nigerian Investments Promotion Council Act provide that before an alien can join in the formation of a company in Nigeria, he is required to register with the Commission and CAC, among other requirements, failing which such an alien will lack capacity as provided under Section 20(4) of CAMA

FACTORS TO BE CONSIDERED IN THE FORMATION OF A COMPANY

1. Number of the Members.
2. The size and nature of the proposed business
3. The cost/ capital intensity of the business.
4. Restrictions on the issue and transfer of shares.
5. The formalities to be complied with.

ADVANTAGES OF FORMING A COMPANY

1. **Perpetual succession**: a company once incorporated, enjoys perpetual succession. In partnership, when one of two partners dies, that is the end of the partnership. For company where shareholders die, other persons will take over the shares.
2. **Limited liability**: when it is a company that is either limited by shares or guarantee, the liabilities of its members are thus limited. For sole proprietorship and partnership, the owners and partners have unlimited liability.
3. **Investors for a company:** investors invest in a company more than in any sole proprietorship and partnership.
4. **Availability of funds**: a company can easily approach the bank for loan.
5. **Management:** in a company the management is different from the owners.
6. **Suitability;** some businesses cannot be easily and legally done without incorporation as a company.

COMPULSORY FORMATION OF COMPANY

The following business are mandatorily required to be registered in the form of a company.

a. Partnership of more than twenty persons not lawyers, corporative societies or accountants (see section 19 CAMA)
b. Insurance Company.
c.Mortgage institution
d. Private Guards
e.Issuing house
f. Underwriters
g. Custodial agencies
h. Registrars

i. Trustee or trust corporation
j. Fund/portfolio manager
k. Rating Agency
l. Banks etc.

CLASSIFICATION AND TYPES OF COMPANY ACCORDING TO LIABILITY

1. Private/ Public company limited by share (members liability is limited to the amount of the share unpaid in the event of company's liabilities during winding up)
2. Private/ Public unlimited company (no limit on the liability of the members and it starts or must be registered with a share capital … see Section 25 CAMA) director is precluded from laying an account. Precluded from filing return of allotment- Section 129 …
3. Private/Public Company limited by Guarantee. (Liability limited to the amount guaranteed to be contributed in the event of winding up, not less than 10,000 collectively by all the members). It is often formulated for the promotion of education, art etc. they can do business but cannot declare profit or transfer income to any of their members. It shall be applied solely towards the promotion of the object. - section 27 (4) and 26 CAMA. You need the consent of the A.G. it does not have any share capital. Members are not expected to contribute while the company is a going concern. The Memo must contain the Guarantee clause stating that the members will be liable to contribute to the liabilities of the company in the event of its being wound up.

FROM THE ABOVE, SIX TYPES OF COMPANY MAY BE CREATED UNDER S. 21 OF CAMA AND THEY INCLUDE:

a. Private Company Limited By shares (Ltd)
b. Public Company Limited By shares (Plc)
c. Private Company Limited By Guarantee (Ltd/ Gte)
d. Public Company Limited By Guarantee Plc/Gte
e. Private Unlimited Company (Unltd)
f. Public unlimited Company.

NOTE: In practice, public unlimited company and public company limited by guarantee is not feasible or advisable. This position is supported by s. 29 CAMA on the compulsory acronyms to be added at the end of Companies name and this also stands for the purpose of bar part two.

PRIVATE COMPANY LIMITED BY SHARES

A private company limited by share is the one stated in its memorandum of Association that it shall be a private company and the extent of the liabilities of the members is limited to the amount if any unpaid in the respect of the shares held by them. NB: A private Company may be limited by Guarantee in case of Ltd/Gte

CHARACTERISTICS OF A PRIVATE COMPANY

1. It restricts the transfer of its shares to the public by its Article- S. 22(2) CAMA. This is done by the inclusion of restriction clause in the Article and a Pre-emptive clause may as well be included.

2. The minimum Authorised share capital is N 10, 000- S. 27 (2) (a) CAMA. 25% of the Authorised Share Capital must be subscribed to by its members. S. 27(2) (b) CAMA and S. 99 (1) (2) & (4) CAMA.

3. The membership is between 2 to a maximum of 50 persons –S. 22 (3)

4. It cannot invite the public to subscribe to any of its **SECURITIES** unless as authorized by law–S. 22(5) CAMA.

5. Similarly UNLESS authorised by law, it cannot invite the public to deposit money with it for a fixed period or payable at call, whether or not bearing interest. S. 22(5) CAMA (This is applicable to private company in Banking Business.)

6. It can have a written Resolution of a General Meeting instead of actually convening a formal meeting –Section 234

7. The name of a private company must end with the word limited (Ltd) S. 29(1) and (5) CAMA.

8. It can send modified Financial Statement to the CAC and it must not be published…..352 CAMA

9. No specific qualification of a secretary is needed except knowledge and skills for the job

10. Not required to hold statutory meeting.

11. Not required to keep statutory books like index of members and register of substantial interest in shares

12. Directors over 70 years can be appointed without complying with any formality.

13. Can appoint several directors by a single resolution. Section 261 CAMA

SUITABILITY OF A PRIVATE COMPANY

A private Company is suitable in any of the following instances—

a. Where the capital available to start off business is relatively small, (This is the case where the capital is not enough to float a public company. Say capital between N 10, 000 and N 499, 000)

b. Where small and medium scale business organizations need to acquire incorporated status.

c.Where family and friends want to engage in business expected to last over a long period and enjoy corporate personality.

PUBLIC COMPANY LIMITED BY SHARES—SS. 21(1)(a) & (2) and 24 CAMA

A company other than a private company is a Public Company and it shall be stated in the Memo of the Company that it is a public Company. S. 24 CAMA. The liabilities of the members is limited to the amount if any unpaid in respect of the shares held by them.

CHARACTERISTICS OF A PUBLIC COMPANY

1. It must be stated in the memo of the company that it is a public company
2. It can offer shares and debentures to the public. This can be done through various methods of offering shares to the public listed under the SEC Rules. It similarly have the opportunity of trading it shares at the floor of the Nigerian Stock Exchange if listed or quoted. This feature makes it easy for the company to raise fund and grow larger than the Ltd
3. It must have minimum of 2 members and there is no legal maximum.
4. The minimum Authorised Share Capital of the company shall not be less than N500, 000. Section 27(2) (a) CAMA and not less than 25% of the share capital must be subscribed to by the members at incorporation and even at all times. See section 27(2) (b), 99(1), (2), & (4) CAMA.
5. Persons of age 70 and above cannot be appointed as Director of a PLC unless a special notice of such appoint is given to the company and the members and the proposed director must give Notice of disclosure of his age before the next Annual General Meeting scheduled for the appointment. Section 252 and 256 CAMA
6. There is no restriction on transfer of shares to the public. S. 151(1) CAMA
7. The name of the company must end with 'Public Limited Company' (PLC) s. 29(2) & (5) CAMA
8. Persons to be appointed Secretary of the company must be Legal Practitioner, Chartered Accountant or Chartered Secretary or a firm of any of them or must have held the office of company secretary of a public company for at least three (3) of the five (5) years immediately preceding his appointment in a public company. He must also possess requisite knowledge and experience. See s. 295 CAMA.
9. The company must hold statutory meeting within 6 months of its incorporation s. 211 CAMA
10. It must publish additional notice of its Annual General Meeting to its members in 2 daily Newspapers at least 21 days before Annual General Meeting/Extra-Ordinary General Meeting.

11. Cannot appoint two or more directors by a single resolution.

SUITABILITY OF A PUBLIC COMPANY

A public company is suitable in any of the following instances—

1. Where a growing medium or large scale business needs to acquire incorporated status
2. Where the capital available to start up the business is relatively large. That is N500, 000 and above
3. Where the business intends to raise capital from the public through the invitation of the public to subscribe for shares or debentures
4. Where the membership of the company is not restricted in terms of share acquisition and disposal
5. Where the business is not driven by family ties or relationship
6. Where sector regulations require a business organisation to be a public company in order to be permitted to operate.
7. Where 50 persons or more want to join in the formation of a company as subscribers and do not intend to be joint holder of shares

SIMILARITIES BETWEEN LTD AND PLC

PRIVATE	PUBLIC
Minimum membership of 2 persons—s. 18	Same
Liability of Members is Limited by shares	Same
Incorporation must be in accordance with the provision of CAMA	Same
Can be wound up voluntarily or compulsorily by the court	Same
Subject to regulation of CAC	Same
Subject to regulation of SEC during restructuring	Same as well as during issuance of shares to the public
Govern by the provision of CAMA	Same
Must start with an Authorised Shares Capital	Same
Must have Memorandum and Article of Association	Same
Must minimum of 2 Directors	Same
Pass its messages through resolution	Same
Have legal personality	Same
Have common seal and official Seal	Same
Enjoys perpetual succession	Same
Have minimum Authorised Share Capital prescribed by law	Same
An Infant and a corporate body cannot be a Director	Same

DIFFERENCES BETWEEN LTD AND PLC

PRIVATE COMPANY	PUBLIC COMPANY
Maximum of 50 members	No Maximum of membership
Contains the word Ltd at the back of the name	Contains the word Plc at the back of the name
Article restrict transfer of shares to the public	Shares can be transferred to the public
No requirement to hold statutory meeting	Statutory meeting must be held within 6 months of incorporation. S. 211
Not required to keep index of members and register of substantial interest in shares	Required to keep all statutory books including index of members and register of substantial interest in shares

Suitable for small scale business	Suitable for large scale business
Any person with requisite skills can be the company secretary	The company secretary must be either a LP, CA or CS or their firms or persons with pass 3 years experiences as Secretary of a Plc.
Any person with legal capacity can be a Directors without additional formality	Persons of 70 years and above cannot be a director unless notice of such appointment and disclosure of age is given
It can pass written resolution—s. 234 CAMA	It cannot pass written resolution
Not required to publish additional Notice of it AGM/EGM	Required to publish additional Notice of its Annual General Meeting/Extra-Ordinary General Meeting in 2 News papers
Its shares cannot be listed , quoted or traded at the NSE	It share can be listed, Quoted or traded at the NSE
Cannot be a target company of a take-over bid	Can be a target company of a take-over bid
The Minimum Authorised Share Capital is N 10,000	The Minimum Authorised Share Capital is N 500, 000

COMPANY LIMITED BY GUARANTEE—s. 26 CAMA

A Company limited by Guarantee is one in which the liability of its members is limited by the memo of the company to such an amount the members undertake to contribute in the event of its being wound up. S. 21(1) (b) CAMA. It is a non- profit oriented company and is often formed for promoting commerce, art, science, religion. Sport, Culture, education, research, charity and similar objects. The income and property of the company are to be applied solely towards the promotion of its objects and no portion of it should be transferred either directly or indirectly to the members SAVE in circumstances permitted by law.

CHARACTERISTICS OF A LTD/GTE

1. Liabilities of the members is limited to the amount guaranteed which shall not collectively exceed N10, 000 to contribute to the liabilities of the company in the event of winding up.
2. They are not registered with a share capital. They do not have share capital. Section 26(2) CAMA. Form CAC 2 is not filled or filed when you register the company.
3. The memo of the company cannot be registered without the consent and authority of the Attorney General of the Federation. The consent of the AG Federation must be sought and obtained see Section 26(5) CAMA.
4. Liability of the members is not payable at call but payable only at winding up.
5. Upon winding up, after the discharge of its debts, any assets of the company remaining shall not be distributed among the members, but shall be transferred to another Ltd/Gte having similar objects or given to charitable purpose, such company to be determined by the members at the General Meeting before dissolution of the company. S. 26(10) CAMA.
6. It is allowed to do business, but not with a view to making profits for distribution to its members. Section 26(4)
7. Any provision in the MEMART of the company or any resolution which gives any member the right to participate in the divisible profits of the company or to divide the company's undertaking into shares or interests shall be void. See section 26(3). Therefore, profit is not distributable to members
8. The memo of the company must contain special and guarantee clauses that the income and property of the company shall be applied solely towards the promotion of its objects. Section 27(4) CAMA and that the liabilities of the members shall be limited to the amount guaranteed in the event of winding to such an amount not less than 10, 000.
9. The name of the company must end Ltd/Gte. S. 29(3) CAMA
10. Their subscribers are called members of the company, they can declare profits but cannot distribute the profits

SUITABILITY

An Ltd/Gte is suitable in the following situation—

a.Where the company's object is for promotion of commerce, art, science, religion, sports, culture, education, charity.
b. Where the company's profits is not to be distributed to members.
c.It is may be used as a Subsidiary company set up to render Corporate Social Responsibility (CSR) obligations for the main company.
d. NOTE- IT IS NOT SUITABLE FOR ANTI GOVERNMENT PROGRAMMES, AN NGO IS ADVISABLE IN THIS CIRCUMSTANCE BECAUSE AG FEDERATION'S CONSENT MAY BE HEARD TO GET.

SIMILARITIES BETWEEN LTD/GTE AND COMPANY LIMITED BY SHARES

1. Both are limited liability companies
2. Both have legal personalities
3. Both are registered/incorporated in accordance with the provision of CAMA
4. Both are governed by CAMA
5. They can both carry out business for the purpose of making profits
6. They are both governed by their MEMART
7. Both are regulated by the CAC
8. They can both be public or private

DIFFERENCES BETWEEN LTD/GTE AND COMPANY LIMITED BY SHARE

LTD & PLC	LTD/GTE
Liability is limited by share	Liability is limited by guarantee
Liability may be called up during the running of the company as a going concern or at winding up	Liability is only implementable at winding up of the company
Incorporated for the purpose of making and sharing profit	Incorporated for advancing charitable causes
Consent of the AGF is not required for Registration	Consent of the AGF is required for registration
Must be registered with a share capital	Not registered with a share capital
Remaining Assets after satisfaction of the company's liabilities may be distributed among members at winding up	Remaining Assets after satisfaction of the company's liabilities at winding up is given to another Ltd/Gte with similar objects or to a charitable cause
Name ends with 'Ltd' or 'Plc'	Name ends with Ltd/Gte
There is automatic right to proxy of members at company's meeting	Right to proxy is only exercisable as contained in the Article of the Ltd/Gte—s. 230(1) CAMA
Profit of business can be distributed to members through declaration of dividends	Profit acquired are only channelled towards promotion of the objects for which the company is created.
No need for inclusion of special clauses in the memo of the company	Special and Guarantee/undertaking clauses must be included in the company's memo.

SIMILARITIES BETWEEN LTD/GTE AND INCORPORATED TRUSTEES

1. Both are not incorporated for profit making purposes
2. They both enjoy tax exemptions
3. Both are administered and regulated by the CAC and CAMA
4. Both have Legal personalities
5. Their incomes are not distributed to members by way of dividend, bonus or reward
6. Both of them are not incorporated with share capital.
7. Both are governed by the provisions of CAMA
8. Assets of both are not distributed among members in the event of dissolution but given to company/Organisation with similar objects or to other charitable cause.

DIFFERENCE BETWEEN LTD/GTE AND INCORPORATED TRUSTEES

LTD/GTE	INCORPORATED TRUSTEES
It can engage in Business but profit are not distributed among members	It cannot engage in business at all
AGF' s Consent is needed for registration	Consent of the AGF is not needed to incorporate an IT
Does not require publication of notice calling for possible objection to its registration	Must publish notice in News-papers calling for possible objection to its incorporation
There is no Oath of Directors form during Registration	The Trustees of an IT must depose to a Trustees Declaration form at the High Court before an IT can be incorporated
The name (juristic) must end with Ltd/Gte	Name start with Incorporated Trustees of ……
There must be at least 2 Directors	There can be a single Trustee for an IT. In practice, it is often 2. S. 590(1) CAMA
It is registered and regulated under Part A of CAMA	It is registered and regulated under Part C of CAMA
MEMART is used as guiding laws of the company	Constitution of an IT is the guiding law
Passport photographs and Impression of Common Seal are not required for Registration of Ltd/Gte	Passport Photographs of the Trustees and Impression of Common Seal are required for the registration
Affairs is run by the Board of Directors (BOD)	Affairs is run by the Board of Trustees or Governing Council
The company acquire a corporate status upon Incorporation	Only the Registered Trustees acquire corporate status not the organisation/association
A Ltd/Gte must hold mandatory Annual General Meeting	Annual General Meeting is not compulsory for an IT, only when included in its Constitution

NB1: An Ltd/ Gte can be registered as an NGO and also An Ltd/Gte must fill form CAC 10B (Annual Return for a company limited by guarantee) for its Annual Report.

UNLIMITED COMPANY—s. 21(1) (c) CAMA.

An unlimited Company is a company in which there is no limit in the liabilities of the members on the amount to contribute to the debt owed by the company in the event of winding up of the company's affairs. In this instance, the limitation of liability is one sided as the company does not bear liability of the members but the members bears the liability of the company. It must be registered with a share capital—s. 25 CAMA.

EXAMPLES OF:

a.Mobil Producing Unlimited and
b. Texaco Overseas Petroleum Company Unlimited

An unlimited liability company is akin to a partnership being that the liabilities of partners to a partnership are not limited and in the event of dissolution, the partners are liable to all debts incurred by the partnership. However, the difference between Unltd and Partnership is—

a. Legal Personality accrue to an Unltd why partnership is merely a business name
b. Liability of members of an Ultd is to the company while liability of the partners in a partnership is to the creditors.

CHARACTERISTICS OF AN UNLTD

1. Liability of members is unlimited.
2. An unlimited company must be registered with a share capital -S. 25 CAMA
3. The name of an unlimited company must end with 'Unltd'—s. 29(4) & (5) CAMA

SUITABILITY

An unlimited liability company is suitable in the following circumstances—

a.A large scale Partnership that the number of its members is exceeding the Legal maximum
b. Professional service company with core values of honesty and integrity
c.Where persons wish to form a company in a manner rendering them liable, without limitation for the debts of the company.
d. May be imposed by law for organisations involved in management of public funds. Used where contributed funds are to be managed by a company exhibiting due honesty-stock brokers, insurance companies, etc.

CLASSIFICATION OF COMPANIES ACCORDING TO SIZE

Companies may similarly be classified in order of their sizes these are:

1. Small Companies
2. Holding companies
3. Subsidiary companies
4. Wholly-owned subsidiary companies
5. Group of Companies
6. Consortium Companies
7. Financial Holding Companies

SMALL COMPANY—s. 351(1) CAMA

A small company is a company that meets the following conditions in a given financial year:

1. It is a Private company having a share capital
2. Amount of its turnover for the year is not more than N 2 million or such amount as may be fixed by CAC from time to time
3. Its net asset value is not more than N1 million or such amount as may be fixed by CAC from time to time
4. Does not have Alien membership
5. No government participation (membership)
6. The Directors between themselves hold not less than 51% of the company's equity share capital

NB: A small company fill Form CAC 10 for its Annual Return

HOLDING AND SUBSIDIARY COMPANY—S. 338 CAMA

A company is deemed to be a subsidiary of another in the following instances—

1. It is a member of it and control the composition of its BOARD OF DIRECTORS
2. Hold more than half in the nominal value of its equity share capital
3. It is a subsidiary of a company which is subsidiary to another company.

WHOLLY OWNED SUBSIDIARY COMPANY—S. 338(5) (b) CAMA

A company is considered to be wholly-owned subsidiaries of another if it has no member except that of the other company and that other company's wholly owned subsidiaries are its nominees or their nominees. Note that any corporate body can be a subsidiary of another. Also note that, for the purpose of lifting the veil of incorporation, a Holding Company and a subsidiary Company are different and separate entities.

GROUP OF COMPANIES

These are associates of 3 or more companies coming together to form a group perhaps to achieve a desired objectives.

CONSORTIUM COMPANIES

It is an association of 3 or more companies that pass resolution to form a consortium company to achieve a stated objective and upon completion or realisation of the objective; the consortium company will be wound up in accordance with the Articles of Association of the Consortium. A consortium is usually used by foreign engineering companies that are in Nigeria mainly for the purpose of executing a particular project within a period of time. It is like a venture partnership except that it enjoys incorporated status or corporate personality.

NB: KINDLY NOTE THE FOLLOWING:

1. Holding and Group Companies file Annual Returns in Form CAC 10A
2. Note the Requirement for registration of Group, Holding and Consortium at Pages ante. see Regulations 20 to 22 of Companies Regulation 2012.
3. For the requirements note the following codes:
a. For Group—FEERSUU, Regulation 20
b. For Holding—FESUU, Regulation 21
c.For Consortium—FEERSSIU, Regulation 22

FINANCIAL HOLDING COMPANY (FH Co):

In addition to CAC's requirements for the use of "holding", the following are also required for financial holding companies under CBN Regulations on Financial Holding Companies 2014. Regulation 2.1 defines FHCo as a company whose principal object includes the business of a holding company set up for the purpose of making and managing (for its own account) equity investment in two or more companies, being its subsidiaries, engaged in the provision of financial services, one of which must be a bank. The requirements are:

1. Formal Application for Consent to the CAC
2. The FHCo shall be a body corporate registered with CAC as a company and licenced by the CBN.
3. The size of its board of directors must be between 7-12 members.
4. It must have at least two subsidiaries, one of which must be a bank
5. The focus of its business must be the provision of financial services
6. The FHCo is permitted to have only two hierarchies namely, the parent and intermediate financial holding companies.
7. Other documents required for a registering a Holding Company other than FHCo.

SAMPLE DRAFT OF FORMAL APPLICATION FOR CONSENT

DIAMOND CHAMBERS

(LEGAL PRACTITIONERS AND CHARTERED ARBITRATORS)

Address: No 56 Law School drive, Victoria Island Lagos Phone: +2348011223344

Email: OWOLABI@diamond.com **Web: www.diamondchambers.com**

Our Ref: _____ Your Ref: _____

4 December 2016

The Registrar-General,

Corporate Affairs Commission,

Maitama Lane,

FCT, Abuja.

Dear Sir/Ma,

APPLICATION FOR CONSENT TO REGISTER "ABC GROUP LTD"

PURSUANT TO SECTION 30(2) (d) OF THE COMPANIES AND ALLIED MATTERS ACT AND REGULATION 20 OF THE COMPANIES REGULATIONS, 2012

Kindly refer to the above subject-matter.

We are Solicitors to A Ltd, B Ltd and C Ltd, (Our clients) and we have their permission to write this letter. Pursuant to the instructions of our clients, we apply, on their behalf, for the consent of the Corporate Affairs Commission to register ABC Group Ltd.

We have attached, for your kind consideration and approval, the following documents to the application:

1. Copies of the Certificates of Incorporation of A Ltd, B Ltd and C Ltd as evidence of the three (3) associate companies to form the "Group" company.
2. Copies of the Statements of Authorised Share Capital and Return of Allotment Forms of A Ltd, B Ltd and C Ltd as evidence of common membership of the associate companies.
3. Copies of the resolutions passed by A Ltd, B Ltd and C Ltd consenting to the formation of ABC Group Ltd.
4. A copy of a statement by all (or a majority) of the first directors of the proposed ABC Group Ltd that the share capital of the company shall not be less than the highest share capital amongst the associate companies.
5. Updated annual returns of A Ltd, B Ltd and C Ltd
6. Updated section 553, CAMA filing where applicable

We undertake to pay the necessary fees.

Thank you.

Yours faithfully,

……thyeg……

Clement Owolabi Esq.

Partner, DIAMOND CHAMBERS

For: DIAMOND CHAMBERS

NOTE:

1. If the letter above is for a holding company, the heading will be 'Application for Consent to register **'A'** Holding pursuant to sections 30(2) (d) and 338(5) of CAMA and regulation 21 of the CR 2012. The Particulars of requirement for a holding Company will be listed.
2. If the letter is for a consortium company, then the heading becomes: "application for consent to register ABC Consortium pursuant to Regulation 22 of the Companies Regulations 2012" and the particulars would be as listed in Regulation 22

IN REGISTRATION OF COMPANIES: Note the followings and refer to them in the pages ante—

STEPS TO BE TAKEN TOWARDS INCORPORATION OF A NEW COMPANY

1. Take instructions from client
2. Obtain the forms of Incorporation
3. Conduct availability check and reservation of name using form CAC 1 (it may be conducted online at CAC's website)
4. Fill the incorporation Documents and prepare the MEMART of the proposed company in accordance with the instruction taken.

5. 2 copies of the MEMART and Statement of Authorised share capital (Form CAC 2) will be taken to FIRS for stamping. Note that Ltd/Gte don't pay for stamping because they don't have share capital.

6. Obtain AGF's Consent for Ltd/Gte WHERE APPLICABLE.

7. Take the incorporation documents and the stamped documents to CAC for filing and pay filing fees

8. Obtain Certificate of Incorporation (COI) as prima facie evidence of Incorporation and CTC of other incorporation documents.

POINTS TO NOTE IN FILLING REGISTRATION FORMS

- ACCREDITATION NUMBER: CAC/ NBA / IND /001
- Form CAC 1 is now harmonized: Thus it is used to reserve name for companies and bodies under Parts A, B and C. When applying for change of name, FORM IA will be used still check appropriately i.e. tick the "Change of Name Box".
- Company Number: Because we are applying for registration, the box for company no should be left blank. The REGISTERED CERTIFICATE (RC) number will be given by CAC after incorporation.
- Ordinarily, FORM CAC 2 is not an incorporation document i.e. form for statement of share capital and return of allotment, because S. 129 CAMA gives a company one month to deliver it to CAC for registration but in practice, this form is filed with the rest while incorporating the company
- FORM CAC I is the form still filled online for incorporation. The CAC will give a Response. You should print the Response and thereafter submit to CAC.
- When registering under PART C, the principal aims and objectives are required in the FORM CAC/IT I. This is to determine and ensure that the objects are not for profit/business aims.

PROCEDURAL STEPS FOR ONLINE SEARCH AND RESERVATION OF NAME,

1. Purchase CAC e-payment refill card for online payment for the form CAC 1
2. Using the reserved name and password in the e-payment card log on to www.cac.gov.ng
3. Complete Form CAC 1 online indicating the preferred and alternative names
4. Verify all entries to be sure of their correctness
5. Submit the application
6. Print out the acknowledgement of your application from your e-mail box
7. 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.

PROCEDURAL STEPS FOR ONLINE REGISTRATION OF COMPANIES

1. Log in with your reserved user name and password in the CAC e-payment card to www.cac.gov.ng

2. Download or fill statutory forms online and print out the completed copies for signature

3. If not filled online, complete the downloaded forms and other documents of Incorporation, sign and stamp them (MEMART and CAC 2) while you also make oath or swear an oath on Form CAC 4.

4. Scan and upload the completed document in pdf/word format

5. Submit the application—registration fee is deducted from the card

6. Upon Incorporation of the company, CAC will send original of COI and CTC of relevant documents via surface mail.

CHALLENGES/IMPEDIMENTS TO ONLINE REGISTRATION

1. Low level of computer literacy amongst legal practitioners
2. Lack of steady power supply
3. Absence of online stamp duties facilities
4. Time consumption in scanning of documents
5. No provision for online Declaration under the Oath Act 2004
6. Delivery of documents under s. 35(2) CAMA does not cover e-filing or delivery
7. Absence of a stable legal framework for electronic signature in Nigeria.

ADVANTAGES OF E- REGISTRATION

1. Speed
2. Convenience
3. It saves cost
4. It increases productivity
5. It reduces corruption

CLAUSES TO RETAIN MANAGEMENT OF A COMPANY

When a person who initiates the formation (a floater or a promoter) of a company wants to control the management of the company, there are certain things which he can do.

1. Appointment as a life director, S. 255 of CAMA
2. Retain power to appoint directors—s. 41(3) CAMA
3. Appointment of a person as Chairman /Managing Director of the Board of Directors
4. Substantial Shareholding—holding majority shares in the company.
5. To be in custody of the common seal and counter sign documents in which seal is to be affixed.
6. Creation of classes of shares with preferential rights for such persons
7. Be a signatory to all documents of the company
8. Secure pre-emptive rights

NB: THE FOLLOWING ARE NEW REQUIREMENTS UNDER THE COMPANIES REGULATIONS 2012

- The CAC can accept documents in electronic form with electronic signatures. See Regulation 5(3)
- Where the proposed objects of the company is professional, the CAC may demand for adequate proof of proficiency. See Regulation 9 COMPANIES REGULATIONS

TYPES OF BUSINESS THAT MAY REQUIRE PROFICIENCY CERTIFICATE

a. Pharmaceutical Business
b. Engineering Firms & Consultants
c.Hospital/Clinic
d. Consulting Firms
e.Training and Advising Services
f. Schools or institutions of learning

By Regulation 11, there are now three (3) ways of delivering documents to the CAC. They are:

- Physical delivery
- Electronic delivery
- Delivery by courier

Also note that, in case requirement for passport photographs, the photographs must be certified by a Notary Public, Magistrate or Commissioner for Oath before Delivery— Where the certification is done by Notary public he shall state his full name, address and telephone number. Reg. 14 CR 2012.

REFUSAL OF CAC TO REGISTER A COMPANY, GROUNDS AND PROCEDURE FOR CHALLENGE

GROUND FOR REFUSAL—s. 36(1)

1. Failure to comply with the requirement of CAMA
2. Illegal objects
3. Subscribers are incompetent or disqualified under Section 20 CAMA

4. Non-compliance with the provision of any other laws on registration of companies. E.g. the NIPC Act Provision on Foreign Participation

5. Proposed name is prohibited or restricted.

PROCEDURE FOR CHALLENGE—s. 36(2) CAMA

1. Aggrieved party will give notice to CAC requesting CAC to apply to FHC for direction in respect of its decision on its refusal to register the company

2. CAC must apply for the direction within 21 days of the receipt of the Notice from the aggrieved party.

3. If CAC refuses to give positive reaction after 21 days of the receipt of the notice, the complainant may apply to the FHC for determination of the complaint.

4. The FHC upon determination can direct the CAC to register the organisation as presented or subject to amendments.

5. The Court Order is annexed to the incorporation documents and returned to CAC for filing and registration of the organisation.

6. CAC is bound to comply with the Court Order and register the Organisation and issue Certificate of Incorporation/registration as the case may be.

NB: the steps to take on refusal depends on the stage of registration in which the refusal was given, if it were to be a refusal on acceptance of proposed name, the appropriate step is to take out originating summons for declaration of mandamus compelling CAC to accept the name. See the case of CAC V AYEDUN.

LIFTING THE VEIL OF INCORPORATION

The corporate façade of a company may be lifted in some circumstances as provided for under the statute and case law and it includes inter alia—

- Allegation of crime—see CHINWO V OWONDA
- Allegation of fraud
- Non-compliance with legal requirement: this is replete in the provisions of CAMA examples are:

a. Company acting below the legal minimum as to membership of a company.

b. Less than 2 Director managing the affairs of the company etc.

MEMORANDUM OF ASSOCIATION

The following are the contents of memorandum of association in order of hierarchy as contained under section 27 CAMA.

1. Heading
2. Name clause (Name of the company)—s. 27(1)(a) CAMA
3. Registered office clause—s. 27(1)(b) CAMA
4. Object clause—S. 27(1)(c) CAMA
5. Restriction clause (for Ltd)—s. 27(1)(d) CAMA
6. Status Clause (whether Ltd or Plc)—s.27(1)(e) CAMA
7. Liability clause (whether Ltd, Plc or Ltd/Gte or Unltd)— s. 27(1)(f) CAMA
8. Share Capital Clause (if limited by shares)—s. 27(2) CAMA
9. Special Clause (For Ltd/Gte)—s. 27(4)(a) CAMA
10. Guarantee/ Undertaking Clause (for Ltd/Gte)—s. 27(4)(b) CAMA

11. Subscription Clause
12. Particulars of Subscribers (a trustee holding shares on another's behalf must disclose such fact)—s. 27(3) CAMA
13. Attestation clause—s. 27() CAMA—note that only one witness suffices

ARTICLES OF ASSOCIATION

The Article regulates the internal arrangement and management of the company. It must be signed by the subscribers and registered together with the memo. The drafting design for Article is to modify, adapt or exclude certain provisions of CAMA by making use of instruction obtained from the client. Issues that may be contained in the Article includes inter alia— **the number of members and all other internal compositions of the company, control of unissued, unpaid and new shares, share qualification of Directors, exclusion on rules on retirement and rotation of Directors under s. 259 CAMA, Pre-emptive right of shareholders, Dispute Resolution model, control of the company by certain shareholders.**

The content of an Article is contained under s. 35 CAMA and the provision is to the following effect—

a. Article of a Plc is contained under Part I (Table A) of the 1st schedule to CAMA
b. Article of a Ltd is contained under Part II (Table A) of the 1st schedule to CAMA
c. Article of a Ltd/Gte is contained under Part III (Table A) of the 1st schedule to CAMA
d. Article of an unlimited company is contained under Part IV (Table A) of the 1st schedule to CAMA.

NB: the articles are in general format and are to be modelled alongside the instructions received from the client.

CONTENTS OF AN ARTICLES OF ASSOCIATION A PLC AND LTD.

1. Interpretation clause
2. Classes of shares
3. Restriction in transfer of shares (for Ltd)
4. Pre-emptive Rights of shareholders
5. Commission and Brokerage
6. Alteration of capital
7. Meetings
8. Voting
9. Directors
10. Secretary
11. Borrowing Power
12. Authentication of document
13. Account
14. Audit
15. Indemnity
16. The seal
17. Notices
18. Winding up
19. Dispute Resolution
20. Subscription
21. Attestation

CONTENTS OF AN ARTICLE OF ASSOCIATION OF A LTD/GTE

1. Interpretation clause
2. Membership of the company
3. Meetings
4. Directors
5. Secretary

6. Borrowing Power
7. Authentication of document
8. Account
9. Dividends
10. Audit
11. Indemnity
12. The seal
13. Dissolution
14. Dispute Resolution
15. The seal
16. Notices
17. Subscription
18. Attestation

CONTENT OF AN ARTICLE OF ASSOCIATION OF AN UNLIMITED COMPANY

1. Interpretation clause
2. Membership of the company
3. Classes of shares
4. Commission and Brokerage
5. Alteration of capital
6. Meetings
7. Voting
8. Directors
9. Secretary.
10. Borrowing Power
11. Authentication of document
12. Account
13. Dividends
14. Audit
15. Indemnity
16. Winding up
17. Dispute Resolution
18. The seal
19. Notices
20. Subscription
21. Attestation

SAMPLE DRAFTS: FOR COMPANY LIMITED BY SHARES AND UNLIMITED COMPANY

FEDERAL REPUBLIC OF NIGERIA

COMPANIES AND ALLIED MATTERS ACT, 2004

COMPANY LIMITED BY SHARES/GUARANTEE/UNLIMITED COMPANY

MEMORANDUM OF ASSOCIATION

OF

ABC LTD/PLC/UNLTD

1. The Name of the company is ABC LTD/PLC/UNLTD

2. The Registered office of the company is situate n Nigeria

3. The object for which the company is established are:

a.To carrying on business of shoe making

b. To do all such other things as may be considered incidental or conducive to the attainment of the above object or any of them

4. The Article of the company shall restrict the transfer of shares (for Ltd)

5. The company is a Private/ Public Company

6. The liabilities of the members is limited by shares/unlimited

7. The nominal share capital of the company is N 10,000 000 divided into 10, 000 000 shares of N1 each (for Ltd, Plc and Unltd)

We, the several persons whose names and addresses are subscribed hereunder are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the company set against our respective names.

Name of subscribers	**Address**	**Description**	**Number of shares taken**	**Signature**.
OWOLABI LAR A	10, NLS St. Villa V.I Lagos.	Business man	10, 000, 000.00	
ADEMIDE OMIDE	20, Ik. GRA LAGOS.	Business woman	10, 000, 000.00	
MAZIDA OBONG	2, NLS Rd. V.I Lagos	Business man	10, 000, 000.00	
		Total shares taken	30,000,000	

DATED THIS ……..DAY OF …….. 2016

WITNESS to the above signatures:

Name of Witness:

Occupation:

Address:

Date:

Signature:

DRAFT OF THE MEMORANDUM OF A COMPANY LIMITED BY GUARANTEE:

FEDERAL REPUBLIC OF NIGERIA

COMPANIES AND ALLIED MATTERS ACT 2004

COMPANY LIMITED BY GUARANTEE

MEMORANDUM OF ASSOCIATION

OF

ABC LTD/GTE

1. The name of the company is ABC Limited by Guarantee''.

2. The registered office of the company will be situated in Nigeria.

3. The objects for which the company is established are:

a.The promotion of education and research in Lagos state
b. To do all such things incidental or conducive to the attainment of the above object.

4. The company is a private company.

5. The liability of the members is limited by guarantee

6. The income and property of the company shall be applied solely towards the promotion of its objects, and no portion of the income or property shall be paid or transferred directly or indirectly to the members of the company. However, nothing herein shall prevent the payment in good faith of remuneration to any servant of the company or to any other person, for services actually rendered.

7. Every member of the company undertakes to contribute to the assets of the company in the event of the company being wound-up where he is a member or within one year after he ceases to be a member, and the costs, charges and expenses of winding-up such amount as may be required not exceeding N 2, 000 so however that the total amount to be so contributed by all the members shall not be less than N 10, 000.

8. If upon the winding-up or dissolution of the company there shall remain after the satisfaction of all its debts and liabilities any property of the company, the same shall not be paid or distributed among the members of the company but shall be given or transferred among some other companies having similar objects of this company which shall be determined by the members prior to the dissolution of the company.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company limited by guarantee in pursuance of this Memorandum of Association.

Name of subscriber	Address	Description	Sign.
Chinemenma Gift	5, NLS, V. I Lagos	Principal	
Oreoluwa Babs	10, Ojo Road, Lagos State.	Head Teacher	
Ujunwa Flococo		Head teacher	

DATED THIS ……..DAY OF ……. 2016

WITNESS to the above signatures:
Name:
Occupation:
Address:
Date:
Signature:

SAMPLE DRAFT: ARTICLE OF ASSOCIATION

FEDERAL REPUBLIC OF NIGERIA

COMPANIES AND ALLIED MATTERS ACT 2004

(COMPANY LIMITED BY SHARES)

ARTICLES OF ASSOCIATION

OF

ABC NIGERIA LIMITED

1. INTERPRETATION

a. In this Articles of *association any* reference to "The Act" means the Companies and Allied Maters Act 2004.

b. "This Articles" means this Articles of Association as originally formed or as from time to time altered by a special Resolution.

c. 'The Office" means the Registered Office of the Company.

d. 'The Seal" means the Common Seal of the Company.

e. "The Director" means the directors present at a duly convened meeting of the Directors at which a quorum is present. "Directors" includes any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the Company are accustomed to act.

f, "The Secretary" means the person appointed to perform the duties of the Secretary of the Company and may include a corporation.

(2) Unless the context otherwise requires, words or expressions contained in this Articles bear the same meaning as in the Act.

2. CLASSES OF SHARES

The company may from time to time issue classes of shares. It shall be the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but such rights may at any time be varied in accordance with the provisions of section 141 of the Act.

3. RESTRICTION OF TRANSFER OF SHARES

The Directors may, in their absolute discretion and without giving any reason, refuse to register any transfer of any shares, whether or not it is a fully paid share.

4a. PRE-EMPTIVE RIGHT OF SHAREHOLDERS OF THE COMPANY

The company shall not allot any new or unissued shares unless the same are offered in the first instance to all the shareholders of the company or shareholders of the class or classes of shares being issued in proportion as nearly as may be to their existing holdings.

4b. The offer of existing shareholders shall be by notice specifying the number of shares to which the shareholder is entitled 'to. subscribe and limiting a time-; not being less than 28 days after the service of the notice, after the expiration of which the offer, if not accepted, will be deemed to be declined. On the receipt of an intimation from the shareholder that he declines to accept the shares offered or after the expiration of the stipulated time as the case may be, the board of directors may, subject to the terms of any Resolution of the company, dispose of the shares at a price not less than that specified in the offer, in such

manner as they think most beneficial to the Company. **Regulations in paragraph 4a and 4b. above are not alterable except with unanimous consent of all the members of the Company.**

- **COMMISSION AND BROKERAGE**

The company may exercise powers of paying commissions conferred By section 131 of the Act provided that the rate of the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid share or partly in one way and partly in the other. **The company may also on any issue of shares pay such brokerage as -maybe lawful.**

- **ALTERATION OF CAPITAL**

The company may from time to time by ordinary Resolution effect an alteration of its share capital in any of the ways set out in sections 100 and 102 of the Act.

- Subject to the provision of the Act on reduction of capital, the company may, whenever it considers it expedient to do so by special Resolution reduce its share capital, any capital redemption fund or any premium account.

- **GENERAL MEETINGS**

The annual general meeting shall be held at such time and place in Nigeria as the directors shall appoint.

The Chairman, if any, of the board of the directors shall preside as Chairman at every general meeting of the company, or if there is no such Chairman or if he is not present within one hour after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their members to be Chairman of the meeting.

If at any meeting no director is willing to act as Chairman or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairman of the meeting.

No member shall be entitled to vote at any general meeting unless all calls or other sums payable by him in respect of shares in the company have been paid.

No business shall be transacted at any general meeting unless a quorum of members is present at the time when proceeds to business and for the purpose thereof, - unless it is otherwise provided, two members present in person or by proxy shall be a quorum.

Subject to the provisions of the Act, a Resolution in writing signed by all members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

- **DIRECTORS**

The directors of the company shall be not less than two and not more than five, unless and until otherwise determined by the Company in general meeting.

Subject to the provisions of these Articles, the first directors and subsequent directors of the company shall continue to hold office unless any of them is removed by the company in general meeting.

The directors may from time to time appoint one of their body to the office of Managing Director for such period and on such terms as they think fit and subject to the terms of any appointment entered into in any particular case, may revoke such appointment. The appointment of Managing Director shall be automatically determined if he ceases from any cause to be director.

A Resolution in writing, signed by all Directors for the time being entitled to receive notice of a meeting of directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

- **SECRETARY**

The Secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions, as they may think fit, and any Secretary so appointed may, subject to the Act, be removed by them.

- **THE SEAL**

The Directors shall provide for the safe custody of the Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorized by the Directors in that behalf, and every instrument to which the Seal shall be affixed shall be signed by one Director and shall be counter-signed by the Secretary or by a second director or by some other person appointed by the Director for the purpose.

- **DIVIDENDS AND RESERVES**

The company in general meeting may declare dividends but no dividends shall exceed the amount recommended by the Directors .The Directors may from time to time pay to the members such interim dividends as appears to the Directors to be justified by the profit of the company.

No dividend shall be paid otherwise than out of distributable profits and the declaration of the Directors as to the amount of profits of the company shall be conclusive.

Subject to the rights of persons, if any entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on the share in advance of calls shall be treated for the purposes of this Articles as paid on the share.

Any general meeting declaring a dividend may direct payment of such dividend wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of the company or of any other company, or in any one or more of such ways, and the Directors shall give effect to such Resolutions.

All unclaimed dividends may be invested or otherwise made use of by the Directors until claimed. And no interest shall be paid on dividends.

The company may by Ordinary Resolution on the recommendation of the Directors resolve that it is desirable to capitalize any undivided profits of the Company.

The Directors 'may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied and pending such application may, at their discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve, carry forward any profits which they may think prudent not to divide.

- **ACCOUNTS**

The Directors shall cause proper accounting records of the company to be kept and the provision of the statutes in this regard shall be complied with.

- **AUDIT**

The provisions of the statutes as to the appointments, powers, rights, remuneration and duties of the Auditors shall be complied with.

- **WINDING UP**

If the company shall be wound up, the liquidator may with the sanction of a Special Resolution of the Company and any other sanction required by law, divide amongst the members in specie or kind the whole or any of the assets of the company (whether they shall consist of property of the same kind or not) and may, for such value as he may deem fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between, the members or different classes of members. The liquidator may, with like sanction, vest the whole or any part of such assets in trustees upon such trust for the benefit of the contributories as the liquidator with the sanction shall think fit but so that no members shall be compelled to accept any share or other securities whereon there is any liability.

- **INDEMNITY**

Every Director, Manager, or Officer of the company or any person (whether an officer of the company or not) employed by the company as Auditor shall in the execution of his duties be indemnified out of the funds of the company against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which be is relieved by the Court under section 558 of the Act.

- **NOTICE**

A notice may be given by the Company to any member either personally or by sending it by post to him or his registered address or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the Company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting. a letter containing the notice, and to have been effected at the expiration of 7 days after the letter containing the same is posted;

Name of subscriber	Address	Description	Signature
Mr M. R Clement	**5 Adeola St. Lagos State**	**Businessman**	**hd**
2. Abubakar Amin	**10 baba St. Lagos State.**	**„**	**ah**
4. Abdullah IBN Sheikh	**33 Law School Drive Ikoyi**	**„**	**ws**

DATED THE ……..DAY OF ……..2016

WITNESS to the above signatures:

Name:

Occupation:

Address:

Date:

Signature:

ETHICAL RESPONSIBILITIES

a. Duty to uphold the law, duty to deal with fairness as regards the clients property and documents
b. Duty of confidentiality and duty of competence
c.Duty to take full instruction at the lawyer's office and duty to advise the client fairly and candidly
d. Fiduciary duty as regards the company or his client

e. Duty not to enforce illegality
f. Duty to act within the bounds of the law etc.

WEEK 6

CHOICE OF BUSINESS AND NON-BUSINESS ORGANISATIONS III

- **BUSINESS NAME**
- **PARTNERSHIP**
- **INCORPORATED TRUSTEES**

BUSINESS NAMES—PART B OF CAMA

- Business Names like companies is another form of given legal backing to business organisations. But for the purpose of corporate law practice, It means the name or style which any business is carried on whether in partnership or otherwise (may be as a firm or enterprise etc.). See Section 588 CAMA It flows from this provision that the essence for registering a business name is to secure the name style. Individuals, partnerships and companies can register business names either as sole proprietor or as partners.

- Save in cases where there is mandatory statutory provision requiring a particular form of business undertaking to be registered as a company under Part A of CAMA, all forms of business undertaking may similarly be registered as business names but due regard and consideration must be had to the instructions received from the client. Because ultimately it determines the choice of business to make. The forms of business undertakings that are to be registered as business names include: 'Sole proprietorship and Partnership';

- Business Names are regulated by the CAC and governed by Part B of CAMA—s. 569—589 CAMA. While Section 570 CAMA provides for the establishment of the office of the Registrar of Business Names in every state of the country.

FEATURES/ADVANTAGES OF BUSINESS NAMES OVER INCORPORATION

- **Simplicity**—it is simple to register compared to the registration of companies.
- It is relatively **cheaper** to register as there is no need to pay stamp duties
- **Easy management**—this is so as there is ease of decision making among the proprietor(s).
- It shows the true **identity** of those behind its formation
- Less **formality** in administration
- Easy **dissolution** in cases when required.
- **Like a Company, it enjoys the benefits of a registered business name except in litigation where the proprietors are sued in their own names but described as "trading under the name and style of ……"**
- **The registered business name is protected from subsequent registration of the name either as corporate name, business name or trademark**
- **Although the registration of a business name with other person is not proof of a partnership, it raises a rebuttable presumption of the existence of a partnership.**
- **Dissolution: there is no procedural requirement for dissolution of business registered as business names. S. 578 only provides for notice to be given to Registrar for removal of the name of any firm, company or individual registered under part B which/who has ceased to carry on business or if the individual in a sole proprietorship is dead.**

CAPACITY TO REGISTER A BUSINESS NAME

Person that can register a business name are—an Individual (as a sole proprietor), Group of persons (carrying on business as Partnership or Firm) and Corporations (Companies—statutory or incorporated)—s. 573(1) CAMA. However the following cautions must be taken—

1. **AN INFANT:** Generally an infant (persons below 18 year) can register or partner with others in the registration of Business Names. Where this is the case, the law requires that the signature of such infant to be appended on the Statement in the Prescribed Form **(Form CAC/BN/1—Application for the Registration of Business Name)** must be **COUNTERSIGNED** by

a **Magistrate**, **Legal Practitioner** or **Police officer** of or above the rank of Assistant Superintendent of Police. **See section 574(6) CAMA**. Similarly, by virtue of Regulation 55 of the Companies Regulation 2012, where a Magistrate, Legal Practitioner or Police officer of or above the rank of ASP counter-signs a minor's signature, such person **shall state his full name, address and phone number.**

2. **FRAUDULENT PERSONS:** They are barred from registering or joining to register a business name. The law provides that where the Registrar has irrefutable evidence to the effect that an individual, firm or company that has previously been involved in fraudulent trade malpractices, either in local or international trade, is submitting an application for the registration of a new business name, the Registrar shall refuse to register such a business. See section 579(4) CAMA.

3. **ILLITERATE AND BLIND PERSONS**: attention should be reserved to include **JURAT** in the case of participation where any of these persons join in the registration of Business name. I.e. the Legal Practitioner after having taken full instruction and ready to register the business name should include the appropriate ***Jurat*** where necessary.

NUMBER OF PERSONS WHO CAN REGISTER A BUSINESS NAME

- **The minimum number of persons who can register a business name is 1 (for Sole Proprietorship) and 2-20 (for Partnership). Except partnerships of Legal practitioners and Accountants while not forgetting cooperative societies. See Section 19 CAMA.**

RESTRICTED AND PROHIBITED NAMES

Like companies under Section 30 CAMA. The law similarly placed guidelines in the choice of names to be chosen to register as business names.

- Accordingly, names generally likely to mislead the public or otherwise contrary to public policy will not be accepted for registration as a Business Name. The list of RESTRICTED and PROHIBITED NAMES have been provided for under s. 579 as follows:

RESTRICTED NAMES—S. 579(1) (a-e) CAMA

1. Names containing words like "**National**", "**Municipal**", "**State**", "**Federal**" or other words suggesting government patronage (be it Federal, State or Local government).
2. Names that contains the word "**Co-operative**" or its equivalent
3. Names containing words like, "**Chamber of Commerce**", "**Building Society**", "**Guarantee**", "**Trustee**", "**Investment**", "**Bank**", "**Insurance**" and **words of similar connotations.**
4. **Identical** or **similar** names with existing registered business name or company
5. Names similar to a registered trademark
6. **Names likely to mislead the public in the opinion of the Registrar of business name.**

NB: restricted names may be a ground for refusal of registration of the business name or if already registered may be a ground for cancellation. It may also be used if the Registrar consents or the Commission consents. See Section 579(1) (e)

PROHIBITED NAMES: The Registrar may refuse the registration of a business or cancel an already registered business name if in his opinion—

1. They are identical names or names Contain words likely to mislead the Public as to nationality, race or religion of the person(s) controlling the business. See NIGER CHEMIST V NIGERIA CHEMIST
2. They contain **deceptive** or **objectionable** names—as to personage, practice or institution or otherwise unsuitable for business names. **NB: Persons aggrieved by the Registrar's decision may appeal to CAC within ONE MONTH of the refusal or cancellation of registration.**

MANDATORY REGISTRATION OF BUSINESS NAMES—Section. 573(1) (a-c) CAMA

The law requires mandatory registration of business name in the following instances—

1. For firms/partnerships: if the firm's name does not consist of the true surnames of all partners without any addition
2. For individuals (sole-proprietorship): if the name of the business does consist of the true surname of the proprietor
3. For Corporation (both Statutory and incorporated intending to set up an undertaking and register it as a business name)—the name DOES NOT consist of its Corporate Name without any addition.

INSTANCES WHERE REGISTRATION OF BUSINESS NAME IS NOT MANDATORY—s. 573(1) (a-c) and 2 (a-c) CAMA

1. For Firms/Partnership: where the addition to the SURNAME of the Partners is their forenames or their initials of the forenames
2. For Individual (Sole-Proprietorship): where the Addition to the surname of the individual is the forename of the individual or the initial of the forenames.
3. Where the addition only indicates that the business is carried on in Succession to a former owner of the business
4. Addition of 's' to a same surnames of the partners
5. Where business is carried on by a receiver or manager appointed by the court.
6. Addition of the word 'and'

TIME FOR THE REGISTRATION OF A BUSINESS NAME

Firm, individual or corporation carrying on Business and are required to be registered under Part B must register at the Business Register Office of the state in which they are carrying on business **within Twenty-Eight (28) days from the date of the commencement of the business.**

CONDITIONS FOR THE REGISTRATION OF BUSINESS NAME

The conditions for registration of business names are:

- The business organisation involved must be carrying on business in Nigeria under a business name,
- The business organization must have a place of business in Nigeria – See section 573 CAMA

EFFECT OF REGISTRATION OF BUSINESS NAME

1. Preserves the name against subsequent use
2. Does not confer legal personality but make true names of the partners Known—**DOMINGO V QUEEN**
3. It raises rebuttable presumption of partnership
4. Does not permit the use of prohibited names
5. Registration is not a proof of partnership. However, it may be used in proof of the good will of the firm. See NWAKWO V NWAKWO.

EFFECT OF NON-REGISTRATION OF BUSINESS NAME—s. 584(1)

Firms, individuals or corporate bodies that are required to register under Part B of CAMA if not registered will—

1. Commit/be liable for an offence punishable with a fine of N50 daily from the day of default and ordered to register—Section 584(1).
2. Contract made by the defaulters in relation to the Business is not enforceable by the defaulters but are enforceable against them.— Section 583 CAMA.

NB: the defaulter may apply to the High Court of the state in which the contract took place for a relief against the provision of Section 583 and the court may grant the relief if the conditions stated under the section has been met. Also note that a third party may enforce the contract against the defaulter. If action is so commenced against him, he may bring an action in counter claim or set-off and it will stand.

DOCUMENTS REQUIRED FOR REGISTRATION OF BUSINESS NAME

1. Form for approval of Name i.e. Form CAC 1—Availability Check/Reservation of Name.

2. Duly completed Business Names Application Form, FORM CAC/BN/1 (application for registration of business names)
3. 2 passport-sized photographs (for individuals)
4. **Certificate of Incorporation (for corporate bodies)**
5. **CTC of Resolution of the company approving the creation of the business and the name (for corporate bodies)**
6. **Updated Annual Returns (for corporate bodies)**
7. **Tax clearance Certificate of Individual Partners**
8. Proficiency certificate where professionals are involved
9. Evidence of payment of filing fees.
10. Evidence of payment for CTC of Certificate of Registration
11. Deed of Power Of Attorney may be required for an attorney acting for a Donor etc. see Regulation 54 Companies Regulation

PLACE OF REGISTRATION OF BUSINESS NAME: It is registered at the state in which the principal place of Business of the firm or individual is situate.—Section 574(1) CAMA

TAKING INSTRUCTION FOR REGISTRATION OF BUSINESS NAME

1. The Name of the Business (take note of prohibited and restricted names)
2. General nature of business (to know the legality of the business)
3. Full Address of the Principal place of Business and Branches (if any)
4. Full Names of Partners or Proprietors without any abbreviation (take maiden name where a woman is included and if there is any previous name). Also note the presence of illiterate or blind person as proprietors of the business {illiterate Jurat and blind person's Jurat should be included}
5. Nationality of the partners
6. Sex
7. Age
8. Residential Address of the Partners/Proprietor
9. Particulars of Husband (in case of a married woman)
10. Date of commencement of business.
11. Full particulars of Principal and Agent (in cases of Agency)
12. Particulars of Guardian (where a minor is involved)
13. Particulars of Incorporation for a company with copy of the Certificate Of Incorporation and CTC of the Particulars of Directors and Evidence of Updated Annual Returns
14. Particulars of proficiency (for professionals)
15. Work and Residential permit where foreigners are involved
16. Other business occupation of the partners if any.

PROCEDURE FOR THE REGISTRATION OF BUSINESS NAMES—s. 574 CAMA

1. Where a company is registering a business, the Board of Directors passes Board Resolution for the Registration of Business Name.
2. Apply for availability check and reservation of name using Form CAC 1
3. Obtain CAC Forms for the registration of Business Names
4. Dully fill and file Form CAC/BN/1—Application for the Registration of Business.

NB: Note that additional particulars will be filled for principals in case the business is being carried out and wants to be registered by an agent. See Section 571 CAMA, also note that for general agents for business ventures not in Nigeria, full postal address of the concerns will be stated and if the venture is outside Nigeria it is sufficient to state the countries and that the business is being carried on for the ventures.

The Form CAC/BN/1 will be accompanied by the following documents:

a. Form of approval of proposed business name

b. Duly completed and signed application for the registration of a business name

c.Two passport- sized photographs for individuals & firm, and in the case of a corporate body, a copy of the Certificate of Incorporation and CTC of the resolution authorising the formation of the business name and Updated annual return in the case of a corporate body

d. Payment of filing fees

e.Payment of fees for certified true copy of certificate for display at each disclosed branch office

5. Collect Certificate of Registration (COR) of the Business Name

6. Give the Certificate of Registration and CTC of CAC/BN/1 to the Client

NB: kindly note the following cautions on signing of the CAC/BN/1—s. 574(5) CAMA:

a) Application by an individual must be signed by him

b) Application by a firm must be signed by each individual who is a partner, and by the director or the secretary of each corporation which is a partner.

c) Application by a company must be signed by a director and/or the secretary of the company.

d) Also note the caveat and procedure to be followed when a minor is to sign the application form. See section 574(6) CAMA and Regulation 55.

*It is advisable for a firm/individual to make an availability and reservation of name at the CAC before commencing business under the business name where it has not be registered.

*The reservation of name must be utilized within 60 days. If after the 60 days the reserved name is not used to carry on business. You can apply for revalidation of the name. The revalidation will last for another 60 days. There are no limits as to the number of times a person can apply for revalidation. Sec 32 CAMA

***A company can register a business name as a Proprietor (floater).**

*Where a proprietor is not available to sign the FORM CAC/BN/I a partner can sign on his behalf provided that there must be an express Declaration that the Proprietor was not available.

*For Incorporated Trustees; In Article 6 meetings, you should make provisions for AGM, other meetings where there is a contingency.

*There is no form to be attached or filed along with the FORM CAC/BN/I for registration of business name. As a solicitor, you may draft a Partnership Agreement for the Parties, but you are not to file the Agreement at the CAC for registration.

***Note the principle of publication of true name requiring the word (a minor) to be attached to the back of the name of a minor who is part of the partnership. See Section 582(2) CAMA.**

DOCUMENTS TO BE GIVEN TO THE CLIENT

1. Certificate of Registration

2. CTC of CAC/BN/1—Application for the registration of business name

POST REGISTRATION PROCEDURE.

1. The proprietor or partner displays the Certificate Of Registration in a conspicuous place in the principal and all other places of Business.— Section 576(4) CAMA

2. The proprietor and the partners will write their names, nationality and the registration number of the business legibly in all trade catalogues, trade circulars, show cards and business letters written in the name of the business—s. 583 CAMA.—note that a minor's name should include the word (a minor) at the immediate end.

3. Annual returns to be filed not later than the 30th Day OF JUNE of each year EXCEPT in the year it was registered. S. 587 of CAMA.

REMOVAL OF BUSINESS NAME FROM THE REGISTER—s. 578 CAMA

A business name may be removed from the register through the following ways—

1. If the business name ceases to carry on business, the proprietor or partners is expected to give notice of termination of business to the Registrar of Business name within **3** months of such termination at the receipt of which the registrar may remove the name.

2. By the Registrar where he believes that it is no more carrying on business he may give a Notice to the business name requiring it to answer whether it still carries on business.

a. If he (the Registrar) receives no response within 2 month he may remove the name from the Register

b. If he receives responses that the business name is no longer carrying on business, he may remove the name from the register.

SOLE PROPRIETORSHIP

Sole proprietors are individuals who do business on their own or alone. They take all the profit and bear all the risk all alone. Whether or not a sole proprietor will register a business name depends on the name he chooses for his business. He is merely subject to local regulatory laws and there is relatively less or no formality at all in a sole proprietorship business as no need for statutory filings or keeping bulk statutory records. An alien can carry on sole proprietorship business in Nigeria provided he complies with regulatory laws on alien participation in business in Nigeria. e.g. the NIPC ACT.

FEATURES OF SOLE PROPRIETORSHIP

1. The sole trader takes all the profit and bears all the risk (Unlimited Liability)

2. The death of the sole trader may result to the death of the business. (No Perpetual Succession)

3. A sole trader needs not register his business if he carries on his business under his surname, his surname and the initials of his forename, or under his full name. (Less Formalities)

4. Where a sole proprietor desires to carry on business with a different name other than those aforementioned, he will need to register the business name under PART B CAMA

5. Only the Sole trader has capacity to sue and be sued as a natural person not the Business name.

PARTNERSHIP

A relationship that subsists between two or more persons carrying on business in common with a view to making profit. See s. 3(1) of Partnership Law of Lagos. A partnership is presumed to exist if the parties agree to proportions in the capital with which the business is floated, the profit and losses that flows therefrom. Unlike a company, a partnership does not have legal personality and the partners are jointly liable for debts and other expenses incurred in the cause of the business unless where it is a limited Partnership or a limited liability Partnership.

THREE MAJOR ELEMENTS OF A PARTNERSHIP SEE-- UREDI V. DADA

1. there must be a business
2. The business must be carried on in common by two or more persons
3. The business must be carried on with the intention to make and share profit.

LAWS REGULATING PARTNERSHIP

- Save where a partnership is registered as a Business name under part B as discussed above and other provisions of CAMA regulating business organisations, partnership is not mandatorily regulated by CAMA. It is generally regulated by Partnership Act 1890 (Statute of General Application applicable in the NORTHERN & EASTERN STATES), Partnership Law of 1959 (applicable in old western and mid-western states of Nigeria—Oyo, Ogun, Osun, Ondo, Ekiti, Edo, Delta) and the Partnership law of various states. However, the focus of Corporate Law will be more on the Partnership Law of Lagos state. The law recognises limited partnership and established a Registry and is headed by Registrar of limited partnership.

- It is important to note that partnerships are largely regulated by the partnership deed executed between the parties to the partnership. Note that in practice, it is difficult to operate a partnership without its registration under CAMA as a business name. The practical challenges that accompany the carrying on of a partnership without its due registration are:

1. Difficulty in opening or operating a current account
2. Difficulty in undertaking commercial transactions that require certain corporate documentations
3. Loss of priority if someone else registers or reserves the partnership name first; particularly if the partnership has gained popularity, large clientele and goodwill
4. Uncertainty of tax liability
5. Uncertainty of the terms of the partnership

FEATURES OF PARTNERSHIPS

The features of partnership are as follows:

1. There must be a legal business which the parties have agreed to undertake. See HENSHAW v. ROBERTS; section 3(1) Partnership Law Lagos
2. It must be a business between two or more persons but not more than 20 persons.
3. The business must be carried on in common by the partners. See UGORJI v UZOUKWU.
4. The business must be profit-oriented and the partners agree to share the profits and losses. See UGORJI v. UZOUKWU; section 3(1) Partnership Law Lagos
5. Each partner is deemed to be an agent of his co-partner(s)
6. Its formation is less formal compared to that of a company.
7. Less capital outlay required.
8. It could be registered as a business name, but the Partnership Deed is not a registrable instrument under CAMA or at the CAC, please note…

POINTS TO NOTE

- Co-owners or joint tenants of Business is not the same as partners to the business, all the minimum of three features must be present. **On determination of a Partnership**: As a general rule, partnerships are prima facie evidence of existence of a common business (partnership) which may include acts of joint capital contribution, sharing of profits and losses etc.

THE FOLLOWING EXCEPTIONS MUST BE NOTED AS REGARDS POOLING CAPITAL AND DISTRIBUTION OF PROFITS: DSA

a. Where the capital injected in the partnership formation is a debt to be repaid,
b. Where a servant is remunerated, or
c.Where the widow/child of a deceases partner receives annuity from the business. See section 4 Partnership Law Lagos.
There is presumption of the existence of a partnership once the essential elements of are present. Thence, a partnership may be formed orally, in writing, by deed, by conduct or implied by law. See THOMOPHOLOUS v. MANDILAS

CAPACITY TO FORM A PARTNERSHIP

All Persons (natural or juristic) of full legal age and capacity can join in the formation of a partnership. Caution must however be taken of the following category of persons —

a. AN INFANT: Even though an infant can join in **registration** of partnership under Part B of CAMA (section 574(6), he cannot join in the formation of a partnership or in the partnership agreement as a general rule of contract. This is because under the general law of contract, he remains an infant and the partnership is not a contract for necessaries or a beneficial contract for service.
b. An insane person cannot join in a partnership agreement because he lacks the legal capacity
c.An undischarged bankrupt/a company in liquidation cannot join in the formation of a partnership.
d. Unincorporated Association because of legal personality

e.For a company, caution must be taken of any provision in the Article or statute creating the company that prevent the company from entering into a partnership arrangement.

NUMBER OF PERSONS THAT CAN FORM A PARTNERSHIP

Generally, by the decision in UREDI V DADA it is clear that like a company, the minimum number of persons that can join in the formation of a partnership arrangement are 2 persons. The maximum has been stated under s. 19 of CAMA to be the maximum of 20 persons with the following exceptions:

a) Partnership Association formed in pursuance of any other enactment in force in Nigeria—s. 19(1) CAMA
b) An association of co-operative society registered under the provisions of any enactment in Nigeria—S. 19(2)(a) CAMA
c) Partnerships of Law Firm. It is important to note that each of the partners must be legal practitioners.—S. 19(2)(b)(i) CAMA
d) Partnership of Accounting Firm of which each partner is legally allowed to practice accounting.—S. 19(2)(b)(ii) CAMA

TYPES OF PARTNERSHIP

1. General partnership
2. Limited partnership—mostly used by professional firms and has been recognised in Lagos by the partnership Law of Lagos State (with Limited Liability Partnership Amendment) Laws 2009
3. Limited liability partnership—see discussion on LLP ante. Also note that the members are called members not partners. I.e. members of the partnership.
4. Venture partnership—it is a form of partnership established on a given venture and dissolved upon execution of the venture and completing all issues relating to its formation. The scope and the terms of the venture depends upon the memorandum of understanding executed between the parties.

PARTNERSHIP DEED/AGREEMENT (Contents and Guides)

A partnership Deed is liken to the Articles of Association of a company. It regulates the relationship of the partners to the partnership and the management of the partnership affairs. As earlier said, a partnership may be oral, in writing or inferred from the conduct of the partners. Hence, a Partnership Deed or Agreement is not compulsory but advisable.

The basic reason for a partnership agreement/agreement is to alter the common law presumptions on partnership e.g. the presumption that property belongs to the partnership, presumption of dissolution of partnership by death of a partner etc.

ADVANTAGES OF A PARTNERSHIP DEED

1. For ease of official transactions.
2. For ease of conflict resolution, where the details are reduced into writing, obligations, liability and privileges can be determined.
3. To avoid common law presumptions e.g. dissolution of partnership on the death of a partner, a partner has no right to exile another partner, every partner has equal right to withdraw from the partnership funds.

THE FOLLOWING ARE THE CONTENTS OF A PARTNERSHIP DEED:

1. Name of partnership
2. Parties Clause: this include particulars of all parties involved in the partnership
3. General nature of business: disclose the object for which the partnership is formed
4. Place of business of the partnership and branches, if any
5. Commencement Clause: this is very important because of the requirement of registration within 28 days from the date of commencement of business. Section 574(1) CAMA
6. Capital & Capital contribution: there is a presumption of equality in the absence of a contrary intention. By the provision of section 25(a) Partnership Law Lagos, all the partners are required to make equal contribution to the capital and entitled to

equal sharing of profit and losses of the partnership. This is the position implied by law in the absence of an express provision to the contrary. Therefore, if the partners intend otherwise, then instructions should be taken to include a clause in the deed which will provide the proportions or percentages of partners' share in the capital and their contributions thereto. It should clearly state how much each partner should contribute

7. Sharing of profits and losses formulae: the formula for this must be expressly stated or the law will imply equal division. By section 25(a) Partnership Law Lagos, each partner is entitled to share equally in the profits and losses of the partnership. Therefore, if the parties intend to share the profits and losses unequally, a clause should be inserted to reflect the sharing formula according to the intention of the partners

8. Partnership property: when a partner brings in any personal property, it should be expressly specified in the partnership agreement because the law presumes that every property used by the firm is bought with the partnership money and belongs to the partnership. See sections 21, 22, & 23 Partnership Law Lagos

9. Remuneration of Partners: the law presumes that partners are not entitled to any form of remuneration.—s. 25(d) Partnership Law Lagos. Therefore, if the partners intend that remuneration should be paid, specific instructions must be taken to include an express clause to that effect

10. Suspension and expulsion of partners: when a partnership agreement does not expressly provide for expulsion and suspension of any partner for gross misconduct, no partner can be expelled or suspended irrespective of his conduct. If any partner is expelled or suspended, it determines/terminates the partnership. See section 26 Partnership Law Lagos

11. Admission of new parties: under the law, the law presumes that when a new partner is admitted, the partnership is dissolved hence a new partnership is being formed. Thus, if the partners intend to admit new partners without dissolving the partnership, a clause to that effect must be expressly provided for. See section 25(g) Partnership Law Lagos

12. Duration Clause: the law presumes partnership at will as partnership does not enjoys perpetuity like companies. A partnership can only live as long as the partners wills or dissolved upon the death of either of the parties. Thus:

i. There is a need to specify the duration of partnership failure of which it terminates at will.
ii. Sustenance of duration of partnership through admission of new members

13. Dispute Resolution Clause: there should be a clause which provides for means of resolution of dispute between the partners. It can be submission to an arbitrator, conciliator or mediator.

14. Retirement and Resignation Clause: the retirement or resignation of a partners determines the partnership. See section 27(1) Partnership Law Lagos. To avoid this, express provisions to the contrary must be provided for in the partnership deed.

TERMS IMPLIED TERMS IN A PARTNERSHIP DEED

Where the partnership Deed is silent, the following terms are implied, to modify or exclude their implications, the solicitor must receive specific instructions on them to modify their implications.

1. Equal sharing of profits
2. Equal sharing of losses
3. Equal contribution of capital/ assets of the business
4. The death, suspension, expulsion or bankruptcy of a partner dissolves the partnership
5. A partner cannot be suspended otherwise it is dissolved
6. No payment of salaries to partners
7. Retirement or resignation of any partner determines the partnership

NB: KINDLY NOTE THE FOLLOWING:

1. A sleeping partner is as liable as an active partner in a partnership as his personal assets will be attached but a shareholder will only be liable as to the amount unpaid on his shares—(difference between a sleeping partner and a shareholder)
2. Where the partners have a partnership deed, it may not be necessary for the partnership to be registered.
3. Where the partners will not be undertaking commercial transactions that require certain corporate documentation, a partnership need not be registered.
4. No requirement for registration where the partnership will be established in the real names of the partners.—see s. 573 CAMA

DIFFERENCE BETWEEN PARTNERSHIP AND COMPANY LIMITED BY SHARES

POINTS	COMPANY LIMITED BY SHARES	PARTNERSHIP
Personality	Legal Personality & Perpetual Succession	Registered partnership only have juridical personality.
Liability	Limitation of liability to the amount unpaid if any of the share held in the company	Partners are jointly liable for the debts incurred except in limited liability partnership
Membership	Minimum Of 2 Members And Maximum Of 50 For Ltd, No Maximum For Plc	Minimum of 2 and maximum of 20 except Co-operative Societies, Firms of LP and Accountants
Agency	No agency relationship among shareholders save where corporate governance theory of agency is adopted which affect only the directors	Partners are agent of one another and are liable one another's act save in LLP
Managements	Restricted to the BOD with minimum of 2 Directors.	All partners manage the firm and are called managers except in LLP arrangement
Formality and Publicity	It is higher due to regulatory requirements	Highly confidential even when registered as a business name
Secretary	A secretary is required to successfully register a company	There is no requirement for Secretary to register a business name
Oath of Compliance—Form CAC 4	Required for registration	Not required
Stamp duties	Paid for registration	Not paid
Borrowing Power	There are greater chances—through issuance of securities to the public	Chances are limited
Capital	ASC is N10, 000 for Ltd and N 500,000 for Plc,-- minimum	No legal minimum for capital to float a partnership
Capital Contribution	Members subscribe to the amount of shares desired in the capital of the company	Law presume equal contribution of capital unless varied by the agreement between the parties
Capacity to sue	Have legal capacity	Can only sue through the partners.
Membership Capacity (minors)	Minor can be a subscriber provided he is with other two subscribers of legal capacity—s. 20 CAMA and he cannot act as a Director—s. 254 CAMA (slightly regulated)	For registered partnership, minor capacity is subject to ss. 574(6)—on signature requirement and s. 583(2) on publication of true name. For partnerships not registered, it is subject to the ordinary rule of contract, a minor only have capacity if it for his necessaries. (highly regulated)
Registration	Registered under Part A of CAMA	Registered under Part B of CAMA
Alien Participation	Can participate subject to law regulating alien involvement in Business in Nigeria and subsequently subject to regulatory law if floated mainly by aliens. There is also incentives for alien participation under foreign participation laws	Alien can similarly participate subject to Lawson alien participation but not subject to regulatory laws if not registered or subject to slight regulation if registered as a Business name.
Dissolution	Dissolved through winding up which is more technical and costly	Dissolution is very simple as it is based on arrangement agreed upon by the parties or notice of dissolution in case of a registered business name.

SAMPLE PARTNERSHIP DEED/AGREEMENT

THIS DEED OF PARTNERSHIP made this 12th day of December 2013

BETWEEN: JOHN OTTO & MARY OTTO both of No 2 John Otto street Kebbi, Kebbi State, (1st partner) of the one part

AND PAUL ETTEH AND LOIS ETTEH both of 12 Mbanugo Street Kebbi, Kebbi state, (2nd partner) of the other part

NOW THIS DEED WITNESSES AS FOLLOWS

OR

IT IS AGREED that the parties shall become partners in the business of providing catering services upon the terms contained below, namely:

1. NAME OF THE FIRM-

The firm's name shall be Chop-Chop Restaurants which shall be registered pursuant to the Companies and Allied Matters Act, 2004.

2. PLACE OF BUSINESS-

The partnership business shall be carried at No 12 Kogi Avenue, Kebbi, Kebbi State or at such other places as the partners may from time to time agree upon.

3. DURATION-

Duration of the partnership shall be for ten years and is to commence from the 12 day of January 2013 but subject to prior determination as provided in clause 10 of this agreement/deed.

4. CAPITAL AND CAPITAL CONTRIBUTION

The capital of the partnership shall be the sum of Twenty Million Naira (N20, 000, 000.00) to be contributed by the partners on 70-30 % basis by 1st Partner and 2nd Partners respectively immediately after the day of this agreement/deed.

5. PROFIT AND LOSS SHARING

Proceeds from the partnership shall be shared based on the percentage of each partner's contribution and such net profits shall be divided among the partners immediately after the settlement of the annual accounts.

6. PROPERTY OF THE PARTNERSHIP

The property used as the head office of the partnership at No. 12 Koggi Avenue, Kebbi, Kebbi State has been contributed by JOHN & MARY OTTO and that property shall upon the cessation of the partnership continue to be the property of JOHN & MARY OTTO.

7. BANKERS

The bankers of the partners shall be Guaranty Trust Bank PLC or such other bankers as may be agreed upon by the partners. All monies of the partnership (other than monies from petty expenses) shall be paid to and kept with the said bankers.

Each partner shall have powers to draw checks in the name of the firm.

8. REMUNERATION/SALARY

As compensation for his or her services in and to the Partnership business, each Partner shall be entitled to a salary of N70, 000 each month, which shall be deducted by the Partnership as an ordinary and necessary business expense before determination of

net profits. The salary of any Partner may, however, be increased or reduced at any time by mutual agreement of all the Partners.

9. ACCOUNTS

Proper and usual books of account shall be kept and maintained at the place of business of the Partnership and shall be open to inspection by either partner or their agent.

On 30th December and on the same day in each succeeding year, an account shall be taken of all assets and liabilities of the Partnership and a balance sheet and profit and loss account shall be prepared and be signed by each partner who shall be bound thereby unless some manifest error shall be found their within three months in which case the error shall be rectified.

10. AUDITORS

Fresh waters Auditors shall be the external auditors of the partnership.

11. WITHDRAWAL/DETERMINATION OF PARTNERSHIP

Any of the partners shall upon giving three months' notice to the other partner withdraw from the partnership and such withdrawal shall determine the partnership.

12. DISSOLUTION.

On dissolution of the Partnership, the affairs of the Partnership shall be wound up, the assets of the Partnership liquidated, the debts paid, and the surplus divided equally among the Partners

13. DISPUTE RESOLUTION.

All disputes between the partners in relation to any matter whatsoever touching the partnership affairs or the construction of this agreement and whether before or after the determining of the partnership shall be referred to as single arbitrator in accordance with the provisions of the Arbitration and Conciliation Act .Cap. A18 LFN 2004

IN WITNESS OF WHICH THE PARTIES HAVE EXECUTED THIS DEED/AGREEMENT IN THE MANNER BELOW THE DAY AND YEAR FIRST ABOVE WRITTEN

SIGNED SEALED AND DELIVERED

By the within named Partners

_____	_____
John and Mary Otto	Paul and Loisetteh
Chop- Chop Restaurants	PTL Restaurants

IN THE PRESENCE OF

NAME:

ADDRESS:

OCCUPATION:

SECOND SESSION— NON BUSINESS ORGANISATIONS

INCORPORATED TRUSTEES—PART C OF CAMA—s. 590 to 612 CAMA

INCORPORATED TRUSTEES are non-business or profit oriented organisations formed for the promotion or championing of a particular cause. They are formed for the purpose of acquiring an incorporated/corporate status by community of persons bound together by custom, religion, kinship or nationality or anybody or association of person established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose. S. 590(1) & (2) CAMA. The law require such association of persons to nominate one or more trustees for the purpose of registering the organisation as an IT.—s. 590(1) CAMA. Registration of Organisations as an IT under Part C of CAMA is not compulsory but advisable for the purpose of acquiring a corporate status. However, it is important to note that unlike a company which acquires distinct corporate personality, the corporate personality of an IT vest in the trustees. S. 590(2) CAMA.

EFFECT OF REGISTRATION—s. 596 CAMA
Registration of an Organisation as an IT have the following effects—

1. The trustee(s) become a body corporate by the name described in the certificate
2. Perpetual succession
3. Common Seal
4. Power to sue and be sued in its corporate name as such trustee(s)
5. Power to hold, acquire, transfer, dispose of any property or interests for the benefit of the Association

FEATURES OF AN INCORPORATED TRUSTEES

1. Corporate personality only vest in the trustees and not other members or the organisation itself. S. 590(2) and 596(1) CAMA
2. The proposed name of the organisation must start with the phrase "Incorporated Trustee of……(name of the Association) "
3. It is not a business or profit oriented organisation
4. It has capital and receive incomes from grants, levies, dues and properties which are not be distributed among the members but are to be used for promotion of the object of the Association
5. The constitution of an IT must have the special clause on application of its income and capital and transfer of its assets on dissolution.
6. It is mandatory post registration requirement that within 2 years the IT must acquire a landed property or show evidence of interest in Land.
7. The minimum number of trustee is one.—s. 590(1) CAMA
8. The trustees must swear to an oath of integrity (Trustees Declaration Form) as evidence of their good character
9. It may only be dissolved by the FHC upon a petition by the governing council/Board of Trustees signed by 50% of its members or the CAC

SUITABILITY OF INCORPORATED TRUSTEES

1. Non- Business organisations where common affinity drives members needed to acquire and take advantage of Corporate Status
2. Associations of Persons bound together by common interest in certain area of life activities.—e.g. NGOs
3. Registering Professional Association—e.g. NBA and Nigerian Medical Association (NMA)
4. Setting up of a foundation to immortalise a person.

QUALIFICATION FOR THE APPOINTMENT OF TRUSTEE(S)

All persons of full age and legal capacity is qualified to be appointed as a Trustee(s). However, the following persons are disqualified from being registered as a Trustee—s. 592(1).

1. Infants (persons under 18 years)
2. Persons adjudged to be of unsound mind.
3. An undischarged bankrupt
4. A person convicted of an offence involving fraud and dishonesty within five years of his proposed appointment.

EFFECT OF REGISTERING AN ORGANISATION AS AN INCORPORATED TRUSTEE UNDER PART C OF CAMA

1. The organization cannot engage in business activities.

3. The members are not liable to contribute to the assets of the organization in the event of dissolution.

4. Any income it generates must be used to further the object for which it is set up.

5. Upon incorporation, the appointed trustees become a body corporate having perpetual succession and a common seal. SECTION 596 (1)CAMA

6. Incorporated trustees can sue and be sued in its corporate name SECTION 596

REGISTRATION REQUIREMENTS FOR IT—Regs. 65 and 66 CR 2012. SEE ALSO SECTION 591

1. Form for Approval of Name—(Form CAC 1—Availability Check/reservation of Name)
2. Duly completed set of Incorporation Forms
3. Formal Application for registration duly signed by the chairman and Secretary or the Solicitor
4. Extract of minutes of the GM appointing the trustees and adopting special clause in the constitution.
5. 2 Printed Copies of the Association's Constitution
6. Trustee Declaration Form duly deposed to by each Trustee in the HC
7. Impression of Common Seal of the Association on the application form
8. Notice of the situation of the address of the association or any changes therein
9. Payment of filing fees & CTC of the IT constitution and application forms—Reg. 66 CR.
10. Cuttings (or National Library certified copy) of publication page 3 x 2 "Notice of Application for Registration" in 2 daily Newspapers (one local circulating within locality of association and the other, a national newspaper)
11. Illiterate jurat for thumb print by an illiterate trustee or officer.

SPECIFIC INSTRUCTIONS TO BE TAKEN FOR INCORPORATION OF AN IT

1. Name of the proposed body or organisation
2. Aim and objectives of the body
3. Particulars of proposed trustee(s) to include the age (to determine the qualification).
4. Name of chairman and secretaries with their telephone numbers
5. The constitution of the Organisation setting out the following:

a. Governing council
b. Source of income
c. Review and amendment of the constitution
d. Powers, duties and tenure of office of the Trustees
e. Use and custody of the common seal
f. Matters relating to meetings (types and rule of proceedings)
g. Procedure for disbursement of funds and Accounting policies
h. Special clause to be inserted in the constitution in respect of distribution of profit and event of dissolution of the Association

6. Obtain the following documents:

a. Evidence of availability of landed properties or undertaking in lieu

b. Payment for the Publication of 28 days Notice of Objection to registration 2 Newspapers

c. Two passport photographs from each trustee and copies of their ID card

d. Details of current and past affiliation with existing organizations

e. Extract of the minutes of the meeting where the Trustees were appointed

7. Address and registered office of the body

8. Obtain letter of authority from members of the Association to enable CAC receive and accept the processing of the incorporation from the solicitor.

9. Filing fees

10. Professional fees.

PROCEDURE FOR THE INCORPORATION OF INCORPORATED TRUSTEES

1. Obtain instructions from Client

2. Obtain form CAC 1 and conduct availability check and reservation of Names

3. Summon a meeting of members and appoint proposed trustees

4. Prepare the constitution, the common seal and minute of the of the Association appointing the trustees and adopting resolution for inclusion of special clause in the constitution of the Organisation

5. Obtain incorporation forms and complete application Form of registration of Incorporated Trustees—Form CAC/IT/01 to be submitted in triplicate

6. Formal application letter for registration written and duly signed by either, the chairman and Secretary or Solicitor

7. Form CAC/IT 1 must be submitted with the following documents:

a.Extract of the meeting appointing the trustees and adopting the special clause into the constitution signed by the chairman and secretary.

b. Two printed copies of the Constitution of the organization

c.Impression of the proposed common seal of the body on the application forms.

d. Evidence of ownership of land or an undertaking in lieu to own a land within two years of incorporation.

e.Cuttings of the original (National Certified Copy) of 2 daily Newspapers (1 National and 1 circulating within the locality of the Association) advertisement calling for objections to the registration of the Association within 28 days.

f. Two passport photographs each of the Trustees attached to the Trustees Declaration Form.

g. Trustee Declaration Form duly completed by the proposed trustees and sworn at the registry of the HC stating that the trustees are not disqualified from acting as trustees pursuant to s. 592 CAMA

h. Letter authorizing the solicitor to incorporate (where applicable).

i. Evidence of proficiency (if requested by the CAC)

8. If the commission is satisfied that the application complies with the relevant provisions, notice of application is to be published in two national newspapers stating the following

i. Name of the association

j. Principal objects of the association

k. Full names of the proposed trustee(s)

l. Invitation to the public to object the name, object and proposed trustee(s) of the association within 28 days – R 65(4) Companies Regulations

9. Payment of filing fee and for CTC of the Constitution and Incorporation Forms.

10. Collect the Certificate of Incorporation of the Association

11. Give the client the COI, the CTC of the Constitution of the Association and CTC of CAC/IT 1.

EFFECTS OF CERTIFICATE OF INCORPORATION OF AN IT

1. A certificate of incorporation vest in the body corporate all property or interest of the community body or association of persons for which it was incorporated.—S. 593(2) CAMA

2. A certificate of incorporation of trustee is a prima facie evidence that all preliminary requirement have been complied with—s. 596 (3) CAMA

STATUTORY BOOKS FOR AN IT

Incorporated trustee - the association whose trustees are incorporated is to keep and maintain the following books:

- Books of account (showing income and expenditure of income, assets and liabilities of the association)
- Minutes book
- Register of members
- Register of trustees

CONTENT OF AN IT CONSTITUTION

1. Preamble
2. Name of the Association
3. Address of the Organisation
4. Aim and Objectives
5. Appointment, power, duties, tenure and replacement of trustees
6. Use and custody of common seal
7. Meeting
8. Governing Body
9. Procedure for disbursement of funds collected and subscribed if any
10. Accounting
11. Appointment of Auditors
12. Amendment of the Constitution
13. Special clause—provides for the application of income and property of the IT in the event of dissolution
14. Dispute Resolution if any
15. Date
16. Signature (Chairman and Secretary)

Note the following important points in filing of registration forms;

- Accreditation Number CAC/IND/NBA/5678
- Form CAC 1 is now harmonized. Thus it is used to reserve name for companies and bodies under Parts A, B and C. When applying for change of name, FORM IA will be used still. Check appropriately i.e. tick the "Change of Name Box".
- Company Number: Because we are applying for registration, the box for company No should be left blank. The RC number will be given by CAC after incorporation.
- Ordinarily, FORM CAC 2 is not an incorporation document i.e. form for statement of share capital and return of allotment, because S. 129 gives a company one month to deliver it to CAC for registration but in practice, this form is filed with the rest.
- FORM CAC 1 is the form still filled online for incorporation. The CAC will give a Response. You should print the Response and it is the Response that you submit to CAC
- When registering under PART C, the principal aims and objectives are required in the FORM CAC/IT 1. This is to determine and ensure that the objects are not for profit/business aims.

SAMPLE NOTICE OF OBJECTION TO REGISTRATION

PUBLIC NOTICE

FOUNDATION FOR WELFARE OF THE IDPs (Internally Displaced Persons)

NOTICE is hereby given to the general Public that the Foundation for the Welfare of the IDPs has applied to the Corporate Affairs Commission for registration under Part C of the Companies and Allied Matters Act, LFN 2004

The Trustees are:

1. OWOLABI Ladi
2. Demilade Omisore
3. Rapheal Obotidem

The Aims and Objectives of the Foundation are;

1. To create awareness among Nigerian citizens on the need to associate with the Internally displaced persons in the Northern region of the Country
2. To provide social amenities to the internally displaced persons in the different IDP camps in the Country
3. To sponsor the education and welfares of the children at the IDP camps till they obtain university degree
4. To organise vocation training for the IDPs as an empowerment tool.

Any objection to the registration should be forwarded to the Registrar General, Corporate Affairs Commission, House 7, Asokoro Crescent, Off Earnest Ojukwu Street, Maitama, Abuja, within 28 days of this Publication.

_____

M.A OWOLABI

Solicitor for the Foundation

SAMPLE DRAFT OF A SPECIAL CLAUSE OF AN IT

"the income and property of the association shall be applied towards the promotion of the objectives of the body and no portion shall be paid or transferred directly or indirectly by way of dividends, bonus or otherwise however by way of profit to the members of the association". If in event of dissolution of the corporate body there remains after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among members of that association but shall be given or transferred to some other institutions having objects similar to the objects of the association, such institutions to be determined by members of the association at or before dissolution.

TABLE OF CAC FORMS AND THEIR USES

FOR COMPANIES

CODE	NAME	PART	STATUS
CAC 1	Availability Check and Reservation of Name	A, B & C	Pre-Incorporation/Registration
CAC 1A	Change of Name, Availability Check and Reservation of Name	A, B & C	Post-Incorporation/Registration
CAC 2	Statement of Share Capital and Return of Allotment	A	Pre-Incorporation
CAC 2A	Return of Allotment (Post incorporation)	A	Post-Incorporation
CAC 2.1	Particulars of person who is the Company Secretary of a company or any change therein	A	Pre-Incorporation and Post Incorporation
CAC 2.4	Notice of Change of Authorised Share Capital	A	Post- Incorporation
CAC 2.7	Application for Re-Re-registration and Conversion of a Company	A	Post Incorporation
CAC 3	Notice of Situation/Change of Registered Address	A	Pre-Incorporation and Post-Incorporation
CAC 4	Declaration of Compliance with Requirements of CAMA	A	Pre-Incorporation
CAC 7	Particulars of Persons who are the First Directors of the Company	A	Pre-Incorporation
CAC 7A	Notice of Change of Directors, or in the Name, Residential Address or postal Address of Directors	A	Post Incorporation

CAC 8	Particulars of Charges	A	Post Incorporation
CAC 9	Declaration verifying Memorandum of Satisfaction of charge	A	Post Incorporation
CAC 10	Annual Return for a Small Company	A	Post Incorporation
CAC 10 A	Annual Return for a Company having shares other than a small company	A	Post Incorporation
CAC 10B	Annual Return for a Company Limited by Guarantee	A	Post incorporation
CAC 10C	Annual Report of Exempted foreign Companies	A	Post – Exemption
CAC 11	Statement by Liquidator as to pending Liquidation and Disposal of Unclaimed Asset	A	Winding up stage
FOR BUSINESS NAMES			
CAC/BN/1	Application for Registration of Business Name	B	Pre-Registration
CAC/BN/2	Notice of Change Business Name	B	Post-Registration
CAC/BN/3	Notice of Change of Registered Business Name Objects	B	Post-Registration
CAC/BN/4	Notice of Change of Registered Business Name Address	B	Post-Registration
CAC/BN/5	Notice of Change of Registered Business Name Proprietors	B	Post-Registration
CAC/BN/6	Notice of Cessation of Business	B	Dissolution Stage
CAC/BN/7	Annual Returns for Business Name	B	Post- Registration
FOR INCORPORATED TRUSTEES			
CAC/IT/1	Incorporated trustees Application Form	C	Pre-Incorporation
CAC/IT/2	Change of Incorporated Trustee Name	C	Post-Incorporation
CAC/IT/3	Change of trustees	C	Post-Incorporation
CAC/IT/4	Annual Return of Incorporated Trustees	C	Post-Incorporation

WEEK 7

PROMOTION AND PRE-INCORPORATION CONTRACTS

PROMOTION OF COMPANIES

Promotion of company is the process of set machinery in place to float or bring the company into existence. It involves wide range of activities that form vital aspects of formation of the company. Promotion activities may cover both local company about to be set up or foreign companies coming in to establish business in Nigeria, the persons involved in seeing to the complete execution of the activities required to float the company are referred as PROMOTERS of the company.

PROMOTERS

WHO IS A PROMOTER?

A person who contribute every bit towards the formation of a company. It also means one who undertakes to form a company with reference to a given project and to set it going, and who takes necessary steps to accomplish that purpose.—see. GARBA v SHEBA INTERNATIONAL (NIG) LTD.

Under s. 61 CAMA, a person prima facie deemed to be a promoter is he who undertake to take part in forming a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose, or who with regard to a proposed or newly formed company, undertakes a part in raising capital for it.

From the above definition, a person will be deemed a promoter if he do all or any of the following promotion activities:

1. Raising capital for a proposed or newly formed company
2. Partake in raising capital to float the company through private placement
3. Engage in personality shopping of directors for a proposed company
4. Acquiring properties on behalf of a proposed company
5. Preparing prospectus for a proposed public company
6. Personality shopping for the proposed company
7. Obtaining requisite permits
8. All activities towards incorporating a company, although CAMA did provide for raising funds/capital for a newly formed company.

QUERY: Would you deem a person e.g. a lawyer who takes steps at the CAC towards accomplishing the formation of the company a promoter of the company?

The answer to the above is a NO. Persons acting in professional capacity and paid fee cannot be deemed a promoter. Proviso to section 61 CAMA state that persons acting in professional capacity or persons engaged in procuring the formation of company is not deemed a promoter.

In light of the above position, Legal Practitioners, Accountant, Estate surveyor and Chartered Secretaries are NOT deemed promoter of a company when acting in their strict professional capacities toward the promotion of a company).

However, this does not mean that they can't participate in the promotion of a company. Hence, where he did over and beyond his capacity as a professional, he can be deemed a promoter or where he shows interest in the company. In order words he must have offered something more than just professional service. Take note that, a lawyer who incorporated the company at CAC and in lieu of his professional fees decides to buy shares in the company is a promoter of the company. EMMA SILVER MINING CO LTD V LEWIS. Also, a lawyer who negotiates property for the proposed company at a profit is promoter of that company. **TWYCROSS V. GRANT.** Similarly, a legal practitioner who is a subscriber to the memorandum and articles of association of is a promoter.

Kindly Note the following:

1. All subscribers to the memorandum and articles of association are promoters of the company
2. Not all shareholder of the company are promoters of the company—Only shareholders that are subscribers to the memorandum

LEGAL RELATIONSHIP BETWEEN PROMOTERS & THE COMPANY

In determining the legal relationship that exist between a promoter and the company, the following questions are considered apt and necessary—

1. A promoter is an agent of the company and therefore in a fiduciary relationship with the company? True or false
2. A promoter is a trustee of the company and therefore must act in trusteeship for the benefit of the company?
3. A Promoter is both an agent and a trustee?

In response to the questions raised above, it is important to note that the relationship that promoters and company is neither an agency nor a trusteeship. This is because, the promoters are not the Principal nor the company is an agent or vice versa. Likewise, the legal interest in the company's property does not vest in the promoters due to the principle of legal personality that separate the company from the promoters upon incorporation of the company. However, the legal relationship that exist between the promoters and the company is a fiduciary relationship. They act in a fiduciary relationship inferring trust, confidence and loyalty.

The law mandated the promoters to observe utmost good faith in his dealings with or towards the company. It is important to note here that the promoters are the principal and by that status are saddled with some duties and responsibilities towards the company. See s. 62(1) CAMA

QUERY 1: What happens where in a situation where the company suffers a loss as a result of the promoter's failure to act in good faith? The promoter will be liable and must compensate the company for any loss suffered for failure to act in good faith in dealings involving the company. See s. 62(1) CAMA

QUERY 2: Is the promoter allowed to acquire information or property in the course of being a fiduciary on behalf of the company? Yes, he may acquire information or property but must act within the confine of his duty and must account for all profits made to the company. Where he fails to disclose excess profit, the company can sue to recover of the profit and also against him for breach of fiduciary relationship. See s. 62(2) CAMA.—He shall be accountable to the company for such property and any profit which he may have made from the use of such property or information.

DUTIES OF PROMOTERS—s. 62(1) & (2) CAMA.

1. Duty to act in utmost good faith. See section 62(1)
2. Duty not to be negligent in transactions done on the company's behalf.
3. Duty not to exploit confidential information acquired in the cause of promotion activities… section
4. Duty to account for money/properties received in the course of the promotion activities- GARBA V. SHEBA INTL LTD… section 62 (2)
5. Duty not to make secret profit: this duty is the cornerstone of the fiduciary relationship. The principle stress the need to make profit and where made, it is not for the personal benefit of the promoter but must be returned to the company.
6. Duty disclose any property or information which he acquired on behalf of the company in the course of promotion activities.
7. Duty to disclose conflicting interests in transactions with the company: this envisage a situation where the promoter have personal interest in any transaction with the company. The law requires that he must make full disclosure of such personal interest and not that he cannot enter into a personal transaction with the company.
8. Duty not to expose the company to loss—this similar stress his duty to act in utmost good faith towards the company.

NB: kindly Note that in addition to accounting for the property acquired and profits secretly made as a fiduciary, other remedies for breach of duties by the promoter include, Damage for breach of confidential information, Failure to disclose conflict of interest. Etc.

LIABILITIES OF PROMOTERS

The following are the liabilities that may occasion in the cause of breach of the duties the promoter owed to the company as enumerated above. The company can take all or any of the following actions in the court against the promoters:

1. Action to render account: to render account of profit and properties acquired on behalf of the company during the cause of floatation of the company.
2. Action for secret profit: to compel promoters to surrender profits secretly made back to the company which has been discovered by the company.
3. Action for damages or inquiry as to damages for wrongful exploitation of confidential information obtained in course of promotion activities and in abuse of fiduciary duty as a promoter.
4. Refusal to ratify pre-incorporation contract tainted with conflict of interest and abuse of fiduciary duties
5. Action to rescind contracts or transactions which were not well perfected by the promoter, and damages where rescission becomes impossible because of third party interest or other factors.

LIMITATION PERIOD:

Generally, there is no period of limitation as to bringing action against a promoter by the company for any breach of fiduciary duty occasioned during the cause of promotional activities. However, exception have been created where the court finds it just and equitable to relief the promoter of liability either in part or in whole including lapse of time. S. 62(4) CAMA

RATIFICATION/RESCISSION OF CONTRACT BETWEEN THE PROMOTER AND THE COMPANY

As a promoter is carrying on work for a company that is yet to come into existence. The telling question remain—By what possible means can a promoter protect himself for work done for an entity not in existence? The promoter can in the cause of promotional activities enter into pre-incorporation contract with the company for remuneration of services performed and expenses incurred in the course of flotation of the company to be ratified or rescinded when the company come into being. Ratification simply denotes a processes of formal endorsement or recognition of services performed by the promoters on behalf of the company during the process of its floatation. The company has an option to rescind or to ratify the company.

The company often opt for recession of pre-incorporation contract where it is discovered that there is breach of the fiduciary duty owed by the promoter.

On the other hand, where the company intends to ratify the contract, the following steps need to be taken.—s. 62(3)

1. The promoter must make full disclosure of everything done for and on behalf of the company and the company can ratify.
2. Ratification is usually by a formal resolution which is passed by the company. The resolution must show in clear terms what was ratified.
3. The contract will be deemed ratified if ratification is done by any of the following people:

a. By the company Board of Directors excluding the promoter

b. By all the members of the company

c. By the company in an annual general meeting provided that neither the promoter nor any shareholders having interest shall exercise vote in passage of the resolution.

SAMPLE RESOLUTION FOR RATIFICATION

"THAT the company does ratify, confirm and approve the purchase of assets by agreement dated------2005 made between the promoter and---- Bank Plc and the affixing of the company seal upon the accompanying contract entered into between the promoter and the bank"

RECOVERY OF PROFIT AND DAMAGES

Kindly note that, where breach of fiduciary duties is discovered after the ratification of pre-incorporation contract which make it no longer possible for the company to rescind the contracts, the company may recover the profit made in that transaction.

Sometimes, recovering profit only may not be sufficient thus; the company is entitled to sue for damages for the breach of the fiduciary duty.

Also, a subscriber has a right to sue for damages where he relied on the false information given to him by the Promoter in subscribing for the shares.

REMUNERATION OF PROMOTERS

Generally, a promoter is not entitle to remuneration. However, when it is included in the Article of Association of the company that the directors pay him/her he can be paid. Optionally, he can include remuneration clause in the pre-incorporation contract between him and the company and hence can be paid where the contract is ratified by the company.

Alternatively, he could enter into a contract with the investors or persons instructing him on the flotation of the company. This contract can be notarised by the notary public and like all other contracts, can be sued upon breach in the court.

SUSPENSION OF PROMOTERS

A promoter may be suspended where it is proved that he committed any act which is an offence.

Where a person has been convicted by a court for any offence in connection with the promotion or formation of a company, he may be barred from being a director or from taking part in the management of any company for a period not exceeding 10 years as may be specified by the court. S. 254(1) CAMA

PRE-INCORPORATION CONTRACTS—(PIC)

Meaning of PIC: Contract purportedly entered into by any person on behalf of a company before it is incorporated for the company to take over the contract upon attainment of an incorporated status. They are also referred to as Promotion Agreement and Preliminary Agreements. The contract must be on behalf of the company and not by or for the promoter himself. See KELNER V. BAXTER.

The Position of Pre-Incorporation under common law is that such contracts are not enforceable against the company. Hence, both contracts on behalf of a company prior to incorporation with intention for the company to take over the contract upon incorporation, and contract by the proposed company itself prior to incorporation was not binding on the company. Thus, the company cannot ratify pre-incorporation contracts upon acquiring an incorporated status. See EDOKPOLOR & CO LTD V. SEM-EDO WIRE INDUSTRY LTD and KELNER V BAXTER supra. The contract is not binding because there was no principal in existence as at the time of making the contract.

However, a way was created that promoter used in circumventing the rigid position of the law. A NOVATION AGREEMENT can be made to either adopt the pre-incorporation agreement drafted by the promoter or make same term as those entered into prior to the incorporation of the company. The Agreement must be made by deed because consideration is past.

Under CAMA, PIC contracts have relatively same position as it is under the common law. However, the PIC are treated as if they were drawn at the time of incorporation and are made valid upon ratification or given credence to at the time of incorporation. S. 72(1) CAMA. In other words, this means that a PIC is not automatically binding on the company when it attained an incorporated status but may be ratified by the company and upon the ratification, the company will be bound by the terms and benefits contained in the contract. Here, there is no necessity of drafting a new agreement like under the under Novation Agreement under Common law. What the company is required to do is to summon a GM and ratify the content of the Agreement in accordance with the provision of CAMA. SOCIETE GB (NIG) LTD v SOCIETE GENERALE FAVOURISER ETC (1995)3 NWLR (pt. 384) 497

Please note that, there is a proviso under s. 72(2) CAMA that before the ratification by the company, if there is no express agreement to the contrary, the person who purported to act on behalf of the company shall be expressly bound by the contract. Other express agreement in this case could be an agreement made between a promoter and investors, if contract between promoters and company is not ratified, the person making the contract on behalf of the company can fall back to any other agreement, absence of which he is bound by it.

NECESSITY OF PRE-INCORPORATION CONTRACT

The need for Pre-incorporation may arise in the following instances:

1. Payment of promoter expenses and remuneration
2. Joint Venture Business between a Nigerian and Non-Nigerian
3. Takeover of business or purchase of property of an existing business name/company by a new company
4. Conversion of partnership to registered company.
5. Shareholders' Agreement (SA)/Formation Agreement (FA)/Memorandum of Understanding (MOU) needed to secure respective interests of shareholders
6. Promoters/Directors' Service Contracts (SC) is to be executed before the company is formed
7. Protection of technical/confidential information used for promotion activities is highly desired
8. Regulatory permits and other steps are preconditions before the company can be incorporated or commence business.

TYPES OF PRE-INCORPORATION CONTRACTS

The following are the types of Pre-Incorporation Contracts

1. Joint Venture Agreement (JVA)
2. Shareholders' Agreement (SA)
3. Contract for payment of Promoter's expenses.
4. Directors' Service Contract (DSC)
5. Contract for Conversion of Partnership into Incorporated Company.
6. Contract for Acquisition of Property.
7. Confidentiality/Non-disclosure Agreements
8. Employment Contracts
9. Procurement Contract
10. Technology Transfer Agreement (TTA)
11. Loan Agreement
12. Deed of Assignment
13. Memorandum of understanding
14. Business Acquisition Agreement/Contracts (BAA)

PRELIMINARY DOCUMENT USED

The need to document instruction given to a promoter is informed on ensuring precision of instruction given which will be contained in the documents of Incorporation. Things to be documented includes:

1. Instruction on the Appointment of First Directors by the subscribers of the Memorandum of Association. S. 247 CAMA;
2. Instruction on the appointment of Secretary; and
3. Name/Nomination of the registered Office/Address.

DRAFT: NOMINATION OF FIRST DIRECTORS, SECRETARY AND SITUATION OF REGISTERED ADDRESS

"SANTIAGO TEXTILE Limited (Name of the proposed company)

WE, THE UNDERSIGNED, being the subscribers (or majority of the subscriber) to the memorandum of association of the above named company hereby:

1. State that the number of the directors shall be three (3)
2. Appoint ourselves to be its first directors (or appoint a. OWOLABI Clement of 121 NLS Hostel, b. Raphael Obotidem of, 301 NLS Lagos c. Gift Ike of 701 NLS Lagos to be its first directors)
3. Nominate Oreoluwa Babatope of 901 NLS Lagos to be its secretary
4. State that its registered office shall be at-Auditorium road, V.I Lagos

Dated the 17the day of December 2015
Signed---------- Raphael Obotidem
---------- OWOLABI Clement

FORMATION AGREEMENT (FA)

A FA is a comprehensive agreement which details the circumstances of the company formation and how it can be run. An example of a FA is a Shareholders' Agreement. A Shareholder Agreement, it details the relationship of the shareholder inter se.

CONTENT OF A FORMATION AGREEMENT

1. The Parties
2. Nature of Business
3. Capital Source and Financing
4. Dividend policy
5. Borrowing powers
6. Appointment of key Officers
7. Management and decision making
8. Dispute Resolution
9. Confidentiality and Restrain to competition
10. Ratification by Company upon Incorporation
11. Winding up and dissolution.

PRELIMINARY AGREEMENT IN THE MEMO & ARTICLE OF ASSOCIATION (MEMART)

It is usual to refer to relevant Preliminary Agreements and other transaction in the object clause of the memo. Thus, it may be stated in the memo that the company is formed to take over a business or to take over some property or to implement an agreement. It must however be noted that the inclusion of the Agreement in the object clause of the memorandum does not make it binding on the company. This position have been settled by the court. The SC in EDOKPOLOR & CO LTD v. SEM-EDO WIRE LTD stated that object clause are no more than a list of the object the company may lawfully carry out. They are certainly not objects the company must carry out. Pre-incorporation agreement is not binding on the company.

DRAFT: the object of the company is to takeover and carry on to the effect the agreement made between-------and ----------, dated ------ and a copy annexed thereto marked X (draft by reference and the document is an unregistered document unknown to CAC)

DRAFT 2 "To acquire and take over as a going concern the business of --------now being run by----------located at----------" (preferable) (more specific)

WAYS OF PROTECTING TERMS OF A PRE-INCORPORATION CONTRACTS

The following are the methods by which key terms of a PIC may be preserved in the formation of a company

a. Include it as its object clause in the Memorandum of Association, e.g. take over agreement of an existing business.
b. Other terms are to be included as clauses in the Articles of Association.

The reason for this is because upon incorporation, the Memorandum and Articles of Association of the company are the superior contracts of the company. -S. 41(1) of CAMA.

QUERIES

1. Is it possible to register PIC Documents as part of the Incorporation document? PIC documents cannot be registered as part of Incorporation Documents unless when demanded by CAC. However, the clauses or terms of the PIC documents can be inserted into the relevant part of the object MOA and the Article

2. Is the company bound by the Object Clause carrying the terms of the PIC Documents? The company is not bound by its object clause. The object clause is just a statement of intention and a list of lawful businesses in which the company may do and not what it must do. See Edokpolor & Co ltd v Sem-Edo Wire Ind. Ltd. There is no liability on the part of the company by this inclusion. It has been held "object clauses are no more than a list of the objects the company may lawfully carryout. They are certainly not the object that must be carried out by the company. However, note that any clause in an Article of Association of the company is binding because an AOA is more of a contract.

CONFLICT BETWEEN MEMART AND PIC?

In cases of conflict between the provision of the MEMART of a company and a FA, the Provision of the MEMART Prevails. see s. 41(1) CAMA. A supremacy clause may be included in the FA to make it have overriding effect over other documents between the parties. In practice however, supremacy clause is not viable because they are not part of the documents of incorporation. In this like, even when they are inserted in the FA, it is settled that, as far as the company is concerned, the MEMART are paramount and prevail over other Agreement between the shareholders. See section 41(1) and 35(2)(a) CAMA. See also NIB Investment WA Ltd v Omisore (2006) 4 NWLR (pt 969). See also s. 102 EA.

Note that in the vent the supremacy clause is inserted in the MEMO or Article or the MEMART, the FA prevails over the MEMART.

NB: note that the above position regulates affairs between the promoters and the company. However, in contact between parties themselves (between the promoters or shareholder) the content of the FA prevails. Thus, the content of a Shareholder or Joint venture Agreement will be binding between the parties to the contract. Similarly, if the terms of the contract are included in the Article of the company or in the object clause of the Memo, it can be made enforceable.

SHAREHOLDER AGREEMENT

A shareholder agreement is a contract usually between the parties forming the companies or those willing to be the first subscribers of the company stating terms and conditions as to rights and privileges between the parties upon the incorporation of the company. The terms of Shareholders' Agreement are binding on parties to it. The content of a SA include:

1. Parties
2. Date
3. Recital
4. Consideration

5. Registered Office
6. Company's business
7. Dividend Policies
8. Directors, Secretary
9. Auditors and Bankers
10. Warranties, Guarantees and Indemnities.
11. Financing Accounts
12. Transfer of Shares and Loans
13. Restrictive Covenants
14. Procedure on voting
15. Important management decisions
16. Waiver clause
17. Governing law clause
18. Jurisdiction clause
19. Confidentiality
20. Winding up
21. Arbitration/Dispute Resolution clause

22. Notices
23. Shareholders consent etc.

MEMORANDUM OF UNDERSTANDING

An MOU is used for commercial purposes. It is often drafted when people to a business enterprise meet, discuss and agree on basic terms for forming or entering into a venture. They may decide to reduce the basic terms of agreement into writing. This will form a basis for further discussions between them. This may not culminate to the execution of the business venture.

JOINT VENTURE AGREEMENT

A JVA is more specific and formal than a MOU. It is often used when setting up a business venture between a Nigeria and Alien. At this stage, parties are certain as to the term of the venture. It contains provisions as to consideration or contributions. The content of a JVA include:

1. Date
2. Recital
3. Nature of business
4. Registered office
5. Dividend Policies
6. Financing Accounts
7. Confidentiality
8. Restrictive Covenants
9. Directors and Secretary
10. Winding up
11. Consideration

SAMPLE MOU

THIS MEMORANDUM OF UNDERSTANDING is made the 10th day of November 2013.

BETWEEN Chief Nosakhire Iyare of No. 1 Ikpoba Road, Benin city, Edo State, Nigeria (1st member) of the first part;

Abdullah Ibn Seikh of 4th Street Lumpurg, Malaysia (2nd members) of the second part; AND

Abubakri Amin of 10 Kanchan Way, Malaysia (3rd members) of the third part all of whom are businessmen.

BACKGROUND

1. The 1st member is the Sole Proprietor of Nosak Palm Produce (Nig) Enterprises.

2. The 2nd and 3rd Members are Malaysian businessmen who also engage in palm produce business.

THE PARTIES MUTUALLY UNDERSTAND AND AGREE TO THE FOLLOWING:

1. To form a limited liability company whose object is to extract and export palm oil.

2. The proposed names of the company are Gold Palms Nig. Ltd or West Coast Palms (Nig) Ltd.

3. The company would carry on business at No. 1 Ikpoba Road Benin City, Edo State which shall be registered as its corporate office.

4. The office accommodation of the 1st member's sole proprietorship is to be bought over and used as business premises by the company.

5. The business premises is to be in exchange for payment of shares to be subscribed by the 1st member in the company.

6. The company is to be incorporated at the CAC with a minimum share capital of 10,000,000 ordinary shares of N1.00 each.

7. The parties are to contribute towards the funding of the company.

CONFIDENTIALITY

The 1st, 2nd and 3rd members agree to maintain confidentiality with respect to details of this Memorandum of Understanding. Each party further agrees to maintain in confidence all proprietary information received from the other including but not limited to reports and any financial or fiscal information.

IN WITNESS OF WHICH THE PARTIES HAVE EXECUTED THIS MEMORANDUM OF UNDERSTANDING IN THE MANNER BELOW THE DAY AND YEAR FIRST ABOVE WRITTEN

SIGNED AND DELIVERED by the 1ST Member

_____

Chief NosakhireIyare

IN THE PRESENCE OF:

NAME

ADDRESS

OCCUPATION

SIGNATURE

SIGNED AND DELIVERED by the 2ND Member

_____

Abdullah IbnSeikh

IN THE PRESENCE OF:

NAME

ADDRESS

OCCUPATION

SIGNATURE

SIGNED AND DELIVERED by the 3RD Member

_____

Abubakri Amin

IN THE PRESENCE OF:

NAME

ADDRESS

OCCUPATION and SIGNATURE

WEEK 8

POST INCORPORATION MATTERS

Final documents to be given to the Client after incorporation

For Companies:

1. Certificate of Incorporation
2. Certified True Copy of CAC 2: Statement of Authorized Share Capital and Return of Allotment
3. Certified True Copy of CAC 7, Particulars of First Directors

For Business Names:

1. Certificate of Registration.
2. Certified True Copy of CAC BN 1- form for application for registration of business name

For Incorporated Trustees:

1. Certificate of Incorporation
2. Certified True Copy of the Constitution of the Incorporated Trustees
3. Certified True Copy of CAC IT 1—Incorporated Trustees Application Form.

PRELIMINARY MATTERS BEFORE COMMENCEMENT OF BUSINESS—PART I

Preliminary matters are statutory requirements which a newly formed company is expected to observe before it can commence business. It similarly applied to Business names and Incorporated Trustees. Preliminary matters of a company can be broadly categorised under:

- Publication of Name and
- Keeping of Statutory Books.

PUBLICATION OF NAME

A company often goes by two names viz—Corporate Name and Trade Name. A corporate name is the name that is registered with the Corporate Affairs Commission and is reflected in the Certificate of Incorporation of the Company. A Trade name on the other hand is the name by which the company does business and it's popularly known for. For example: The Corporate Name of Zenith Bank is Zenith Bank of Nig Plc while its Trade name with which it transact with people is Zenith Bank. Similarly, the corporate name of GTB is Guarantee Trust Bank Plc while its Trade name is GT Bank. The legal effect lies in the name in which the company may use in exercise of its legal personality. Simpliciter the name it can sue and be sued. In this wise, in the commencement of action or institution of court proceeding by or against a company the corporate name of the company should be used as that is the only name that signifies legal personality of the company. See the case of BANK OF BARODA V. IYALABANI LTD and Section 30 of CAMA. A trade name should be registered at the Trade Mark Registry of the Federal Ministry of Commerce.

Section 548(1) CAMA requires publication of company Name in the following circumstances after incorporation of the company:

1. Affix or paint its name and registration number in a conspicuous place outside every place of its business or office or have it painted in its name plate and affixed to outside places of business.
2. Engrave its name on its common seal, official seal and other seals in legible characters
3. Have its name written in all its official publications like;

a. Business letter of company/ letter heading papers of the company

b. In All notices

c. In all advertisement

Please note that this is a personal note. Therefore, it is not meant to be sold or used as a substitute for textbooks or other NLS recommended materials thanks.

BUT NO MATTER WHAT, STAY CALM AND ENJOY YOURSELF (SEE YOU AT ICC)!

d. Other official publications

e. Bill of exchange

f. Promissory notes

g. Endorsements

h. Cheques

i. Orders for goods and money purporting to be signed by or on behalf of the company

j. In all bills, parcels, invoices, receipts, and letters of credit of the company.

CONSEQUENCES OF FAILURE TO PUBLISH NAMES

Non-compliance with the requirements for publication of names attracts penalty:

- The company will be liable to a fine of ₦100 for everyday it carries on business during which its name is not so published in its name plate. Section 548 (2) CAMA. Similarly, every director of the company who knowingly and willfully authorizes or permits default shall be liable to like penalty;
- The company shall be guilty of an offence and liable to a fine of ₦500 for not publishing its name in the common seal, official documentation and Bills of exchange. Section 548 (3) CAMA;
- Failure to comply with Section 548 (1) (b & c) (publication of name and registration number in the name plate, the seal and official documentation), the veil of incorporation will be lifted and such erring officers of the company will be guilty of an offence and on conviction, liable to a fine of ₦500, and shall further be personally liable to the holder of any such Bill of exchange for the amount thereof UNLESS it is duly paid by the company.

BUSINESS NAME—S. 582 CAMA

There is similarly requirement for publication of true name after the registration of business name. This has earlier been discussed in the note ante but will be repeated for emphasis. CAMA required publication of individual or firm that register a business to so publish the name in the following manners:

a. For individuals—his present Forenames or initials of forenames and present surname or his former forenames or surname and his nationality.

b. For firms—present Forenames or initials of forenames and present surname or former forenames or surname and Nationality of all the partners.

The names above shall be published with the registration number of the of the registered business name in all trade catalogues, trade circulars, show cards and business letter issued or sent by the individual or the firm.

NB: s. 582(2) CAMA specifically requires that where the individual is a minor carry on business alone or connection with other partners, in the cause of publication of true name, his name should have the word ‘a minor’ added to it in a bracket. E.g. OWOLABI Ladi (a minor).

INCORPORATED TRUSTEES

S. 604 CAMA requires the use of common seal by an IT. Similarly, the common seal of the IT shall bear its incorporated name as well as the letter headings of the IT.

STATUTORY BOOKS/ RECORDS/ REGISTERS

They are books or records required by law for a company to keep at its registered office or head office and they are as follows:

1. **REGISTER OF MEMBERS. (ROM)—S. 83 & 84 CAMA**

The register is expected to be kept by all companies, both private and Public as well as those with or without share capital. The register shall contains the particulars of all the members and particulars of shares held by each of them (where applicable). Entries into the register of members must be made within 28 days of incorporation (for first subscribers and members) and within 28 days in which any person become a member of the company whether by allotment or transfer of shares. Note that

failure to include a member's name in the ROM attracts liabilities which only inures for 20 years after which it becomes unenforceable. Similarly, the ROM must be rectified within 28 days of cessation f membership (after a person ceases to be a member of a company). It must be kept at the Registered Office of the company. Notice of change in location of the ROM must be given to CAC. The ROM should be made accessible to members and payment may be demanded to furnish members with a copy. The ROM serves as a prima facie evidence of information contained in it provided it is as directed by CAMA. S. 91 CAMA

2. **INDEX OF MEMBERS (IOM)—S. 85 CAMA**

The IOM is to be kept with public companies only whose members exceeds 50. It is to contain the list of members and other particulars to qualify their description. The index shall be kept at the same place as the ROM. Alteration to the index must be made within 14 days after altering the ROM. Kindly note that the IOM is not compulsory if the ROM itself is structured in a manner as to contain index.

3. **REGISTER OF SUBSTANTIAL INTEREST IN SHARES—SS. 95 & 97 CAMA**

This register is required to be kept by a public company. It is a register of shareholders having shares that entitled them to 10% or more of the unrestricted voting rights at the General Meeting of the company or having such rights through their nominee. Such persons are required to give notice of the shares held by them to the company within 14 days after he becomes aware that he is holding such shares in the company.

4. **REGISTER OF DIRECTORS SHAREHOLDING—S. 275 CAMA**

The register is required by both private and public companies having shares. It contains the particulars of shares and Debentures hold by the Directors of the company. It must details of shares held in the company or other body corporate its holding or subsidiary. However, the registrar need not include shares or debentures held in a wholly owned subsidiary company. The registrar is open for inspection for at least 2 hours during business days—14 days preceding the AGM and 3 days afterwards by members and creditors of the company. Kindly note that the register is open for inspection of CAC at any time and a copy of it may be requested by the CAC. It should be kept open during the AGM and must be kept at the registered office of the company other place of business designated with notice of such place given to the CAC.

5. **REGISTER OF DIRECTORS AND SECRETARIES—S. 292 CAMA.**

It must be kept by all companies. It include the particulars of present and past Directors and Secretaries of the company from the date of its Incorporation. The register is to be kept at the registered office of the company and shall be open for inspection subject to reasonable restriction. Notice of any change in appointment or cessation of Director or secretary must be given to CAC.

6. **RECORD OF INSTRUMENT—S. 190 CAMA**

It is required to be kept by every company. It contains copies of any instrument creating charge which requires registration under Part A of CAMA. It must be kept at the registered office. It is open for inspection by members and creditors subject to reasonable restriction decided at the GM.

7. **REGISTER OF CHARGES—S. 191 CAMA**

Every company is required to keep register of fixed and floating charges created in respect of the company's assets. It shall contain the description of the property charged, amount of the charge and the name of the person entitled to the charge. It is open for inspection by members and creditors subject to reasonable restriction decided at the GM.

8. **REGISTER OF DEBENTURE HOLDERS—S. 193 CAMA**

All companies issuing debentures is required to keep register for the holder of the debentures issued. The register shall contain the following:

a. Particulars of the debenture holders
b. Principal of the debenture held by each holder
c. Amount or highest amount of premium payable on redemption of the debentures
d. Issue price of the debentures and amount paid up on the issue price
e. Date on which the name of each holder was entered in the register
f. Date on which each person ceased to be a debenture holder.

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Note that the entries into the ROD must be made within 30 days upon conclusion of the agreement to be a debenture holder and when the person ceases to be a debenture holder.

9. **MINUTES BOOK—SS. 241& 242 CAMA**

The minute book is expected to be kept by every company at the registered office of the company. It shall contain the detail of proceedings of GM, BOD meeting and Managers meeting (Where applicable) and shall serve as prima facie evidence of the issue contained therein if signed by the chairman of the meeting or by the next chairman of the subsequent meeting. Note that the minute book may be in bound book or other form of storage be it photographic or other electronic storage. If recorded in other forms other than a bound book, caution must be taken to guard against its falsification and the need to make it retrievable within a reasonable time. See s. 550 CAMA. It shall be open for inspection in every business day subject to restriction which shall not be less than 6 hours per day.

10. **ACCOUNTING RECORDS—S. 331 CAMA**

Every company is expected to keep accounting records which shall disclose with reasonable accuracy the financial position of the company at any time. It is to be kept at the registered office of the company or any other place in Nigeria. It shall be open for inspection to all officer of the company. S. 332 CAMA. The records must be kept for the minimum period of 6 years from the date in which they were made. S. 332(2) CAMA

The accounting records must be reflective of the following contents:

a. Day to day entries of all money received and expended by the company and particulars of the receipt and expenditures
b. Records of assets and liabilities of the company
c. For companies that involved in dealing in goods:

- Statement of stock held by the company at the end of each year of the company
- All statements or stocktaking from which the statement of stock is prepared
- Statement of all goods sold and purchased and their particulars save goods sold by way of ordinary retail trade.

POST INCORPORATION MATTERS—PART II

ALTERATION OF MEMORANDUM OF ASSOCIATION OF THE COMPANY

The Memorandum of Association of a company can only be altered in accordance with the provision provided for under CAMA—s. 44(1) CAMA. Matters in respect of which alterations can be made in the Memo of a company are as follows:

1. Name of the company – s. 45(1)
2. The business or object of the company – s. 45(2)
3. Restriction on the powers of the company – s. 45(3)
4. The share capital of the company – s. 45(4)
5. Any other provisions/conditions which are required by s. 27 CAMA in accordance with s. 46 and subject to s. 49 CAMA.

CHANGE OF NAME/ALTERATION OF NAME CLAUSE

Changing the name of a company may compulsory or voluntary. Circumstances warranting change of name compulsorily or voluntarily defers as well as the procedures to be followed.

COMPULSORY CHANGE OF NAME—S. 31 CAMA

Compulsory change of name may occur in the following instances:

1. Inadvertent registration of a new company by a name of an already existing company or so nearly resembling it as to be likely to deceive. NIGER CHEMISTS V. NIGERIA CHEMISTS

2. Later discovery that a company's name conflicts with an existing trade mark or business name registered in Nigeria without the consent of the owner of the trade mark.
3. After a successful passing off Action, the court can direct the newly registered company to change its name. HALIFAX PLC V. HALIFAX RE-POSSESSION LTD & ORS.

With regards to the first two circumstances, the CAC can direct compulsory change of name by the company and the procedure to follow are as contained under s. 31 CAMA.

Procedure.

a.The existing company will write a letter to the erring company to change voluntarily within reasonable time.
b. If the second company company failed to comply within the time given;
c.The existing company will write a protest letter to CAC.
d. CAC will conduct an investigation to know who registered first
e.After investigation if the protesting company registered first , CAC will write to the infringing company to go and embark on voluntary change of name within 6 weeks

NB: Note that CAC can only so direct within 6 months of registration of the infringing company. Once the period exceeds 6 months, the protesting company can only go through a passing off action at the Federal High Court.

VOLUNTARY CHANGE OF NAME

A company may change its name voluntarily at any time.—s. 31(2) CAMA. It denotes situation where the company change its name voluntarily without mandate from CAC or a court order compelling the change.

PROCEDURE

1. The Board of directors
2. passes a resolution proposing the change of name and suggesting the new name
3. Notice of an Extra Ordinary General Meeting within 21 days to be conveyed to all members by the secretary
4. The members pass Special Resolution at the EGM adopting the change of name and the new name.
5. Conduct availability check and reservation of the proposed new names -- using Form CAC1--s. 32(1) CAMA. Name can be reserved for 60 days at most – s. 32(2) CAMA
6. Make necessary alterations in the MEMART
7. Write a letter for application for change of name to the CAC within 15 days after passing of the special resolution to be attached with the following documents:

a.Stamped altered Memo and Article reflecting the change of name
b. Approved Form CAC 1A—Availability Check and Reservation of Name for the new name.
c.Duly signed Special Resolution of the Company approving the change and adopting the new names.
d. Original Certificate of Incorporation
e.Evidence of filing of updated Annual return (receipt/copies)

8. CAC issues new certificate of Incorporation reflecting the new name. The RC No is still maintained.

ACTIVITIES AFTER ALTERATION OF NAME CLAUSE

1. The company change the names in its sign post, letter heads and official documents to reflect the new name
2. The company change its common seal to reflect the new name and get it adopted at the general meeting.
3. The Company gives Notice of change in Newspaper
4. CAC publish the name in a Federal gazette. S. 31(7) CAMA
5. CAC alters the Register of Companies by entering the new name in place of the old one. S. 31(5) CAMA

NB: change of name does not have any effect on transactions with third parties. Accordingly, all pending proceedings by or against the company will remain valid as if same has been commenced or instituted in the new name. s. 31(6) CAMA.

CHANGE OF REGISTERED OFFICE ADDRESS—ss. 35 & 547 CAMA—Reg. 46 CR 2012

A company may change its registered office address provided notice of the change is given to CAC within 14 days after the change and the change is carried out in accordance with the provision of CAMA. Note that a registered address or any change to it shall be a physical address in which the company can receives its correspondences and not a postal or electronic address.

PROCEDURE

1. The BOD pass a Board Resolution proposing the change and suggesting the new address
2. The Secretary issue Notice of an EGM to all members within 21 days
3. The members passes an ordinary resolution approving the change and adopting the suggested address to be signed by the a Director and the Secretary or two Directors
4. Obtain and Fill Form CAC 3, Notice of Situation/ change of Registered Address
7. Application for notifying CAC of the change will be written and attached with the following:

a. Duly signed Resolution for change of registered address
b. Duly Completed Form CAC 3
c. Updated Annual return Filing
d. Updated s. 553 CAMA where applicable
e. Payment of fees

8. Altera the MEMART to reflect the change where applicable. It is always advisable to fill the address as Nigeria to forestall alteration to the MEMART.

CHANGE OF OBJECT—s. 46 CAMA

A company may alter its object clause to include a new nature of business or to replace the business in which the company use to carry on or for other purposes best known to the company.

PROCEDURE

- ✓ BOD pass a resolution proposing the alteration (in whole or in part) in the object of the company
- ✓ The Secretary issue a Notice of an EGM within 21 days to be given to all members of the company (even when not entitled to) and debenture holders secured by floating charge – s. 46(1) & (6) CAMA.
- ✓ The members pass a special resolution at the EGM for alteration of object - s. 46(1)
- ✓ Space of 28 days is given for Application (if any) to court to set aside the resolution by: - s. 46(2)(a)(b) CAMA

• Shareholder(s) holding not less than in the aggregate 15 percent in nominal value of the company's issued share capital or 15 percent of the company's members for company not having share capital (Gte)
• Debenture holder(s) holding 15 percent of company's debenture entitling them to object.

Application is to be made within 28 days of passing the resolution. The court can make an order confirming the alteration or cancel it - s. 46(4) CAMA.

- ✓ When upon application, the court confirms the resolution or cancel the resolution, the company must within 15 days deliver the following to CAC:
- ✓ CTC of the order refusing to confirming the resolution
- ✓ CTC of the order confirming the resolution and a copy of altered memorandum - s. 46(7)(a)(i)(ii) CAMA.
- ✓ If no application is made, the company shall after the 28 days elapsed within 15 days deliver to CAC a copy of resolution passed altering the object—s. 46(7)(b) CAMA. CAC can do one of the two things

i. If satisfied, demand delivery of altered memorandum
ii. If not satisfied, give notice in writing of its decision to the company.

An appeal can be made to the FHC by the person aggrieved within 21 days upon the receipt of CAC's decision rejecting the alteration. Orders to be made by the FHC upon application - s. 46(4) CAMA.

• Cancel the alteration

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- Confirm the alteration in whole or in part
- Adjourn proceedings in order that an arrangement may be made for purchase of the interests of dissenting members
- Make or give directors or orders expedient for facilitating or carrying into effect any such arrangement.

NB: Restriction of powers of company in its alteration has the same procedure as alteration of its objects.

NB: the issue of the application in section 46(2) is meant for the protection minorities and people having financial interest in the company.

ALTERATION OF SHARE CAPITAL—ss. 100-111 CAMA.

A company may alter the share capital clause in the memorandum of Association in accordance with sections 100 to 111 CAMA—s. 45(4) CAMA. The following are the means in which the shares capital of a company may be altered.

1. Consolidation and division of any part or all of the nominal value of unit of its shares into shares of larger amount—s. 100(1)(a) CAMA
2. Conversion and re-conversion of paid up shares into stocks or shares.—s. 100(1)(b) CAMA
3. Subdivision of the nominal value of units of its shares into shares of smaller amount.—s. 100(1)(b) CAMA
4. Cancellation of unissued share—s. 100(1) (d) CAMA
5. Increase of share capital—s. 102 CAMA
6. Reduction of Share Capital—s. 106 CAMA.

INCREASE OF SHARE CAPITAL—s. 102 CAMA

A company may increase its share capital at any time in general meeting whether or not the shares have been converted into stock.

Procedure

1. The BOD convey Board meeting and pass resolution proposing the increase by the creation of additional shares in the capital of the company
2. The Board ordered the Secretary to summon an EGM of members by issuing 21 days' notice
3. The members pass ordinary resolution increasing the share capital at the EGM stating the term of increase—s. 102(2) CAMA
4. Obtain and fill Form CAC 2.4—Notice of change in Authorised share capital and stamp it.
5. File notice of Increase with CAC within 15 days after passing the special resolution. The notice must be accompanied by the following documents:

a. Special resolution for increase in Authorised share capital signed
b. Duly stamped form for notice of increase in authorised share capital—stamped Form CAC 2.4
c. Updated Annual Return
d. Updated s. 553 CAMA where applicable
e. Evidence of payment of FRC annual dues
f. Evidence of payment of fees

6. Increase only take effect if at least 25% of the total Authorised share capital of the company to include the increase have been issued within 6 month after the notice of increase has been filed with the CAC. The Directors are similarly required to make Statutory Declaration verifying that at least 25% of the ASC including the increase has been issued and deliver it to CAC.—s. 103 CAMA
7. Form CAC 2A should be filled and equally submitted to CAC for return of allotment after the increase.
8. Obtain Statement/Certificate of Increase from CAC and attach it to the MEMO.

NB: while increasing Share Capital, there is no need to alter the MEMO, certificate of increase will be obtained and attach to the MEMO. This is evidence enough of increase of share capital

SAMPLE RESOLUTION FOR INCREASE IN SHARE CAPITAL

EGBE NIGERIA PLC

RC NO: 1234

NO 56 ADEYEMO ALAKIJA DRIVE, VICTORIA ISLAND LAGOS

OUR REF ……. ……. YOUR REF…….

SPECIAL RESOLUTION FOR INCREASE OF SHARE CAPITAL PURSUANT TO SECTION 102 OF COMPANIES AND ALLIED MATTERS ACT.

At the 10th Extraordinary/Annual General Meeting of the above named company held at Adetokunbo Ademola Hall, Victoria Island, Lagos on 14th February, 2016, the following resolution was proposed and duly passed as special resolution of the company:

"That the Authorised Share Capital of the Company BE and is HEREBY increased from N1,000,000 (one million naira) divided into 2,000,000 (two million) ordinary shares of 50k each to N10,000,000 (ten million) by creation of additional 18,000,000 (eighteen million) ordinary shares of 50k each ranking pari passu in all respects with the ordinary shares in the share capital of the company".

Dated this _____ day of _____ 2016

_____ _____

Director Secretary/Director

REDUCTION OF SHARE CAPITAL—S. 106 CAMA

Ordinarily, a company is restricted form reducing its share capital except as permitted by CAMA.—s. 105(1) CAMA. Note however that reduction must be below the legal minimum of the ASC permitted under s. 27(2)(a) CAMA. Reduction may similarly be made if authorised by the Company's Article. A company may reduce its share capital in any of the following ways—s. 106(2)(a-c) CAMA:

1. Extinguish or reduce liability of shares not paid for
2. Cancel any paid up shares which is lost or unrepresented by available Assets
3. Cancel any paid up shares in excess of the company's want.

NB: the resolution for reducing shares is special resolution as required by s. 106(3) CAMA.

CONDITIONS FOR THE REDUCTION-S. 105(1) CAMA

1. The Articles of Association of the company must authorize reduction; otherwise first amend the Articles.
2. Special Resolution must be passed by members in General meeting.
3. Confirmation by the Fed High Court of the reduction.
4. Reduction must not below the prescribed minimum share capital

PROCEDURE

1. The BOD pass resolution proposing to reduce the share capital and prepares scheme of reduction.
2. The BOD authorises the Secretary to issue Notice of an EGM of members and those entitled to attend. The Notice must be accompanied by Explanatory Circular and Scheme of Reduction.
3. The company passes a special resolution to reduce the share capital at the EGM and adopt the Scheme of reduction.

4. Application is made to the FHC for the approval and confirmation of the Special Resolution for reduction of share capital and minutes of company's meeting passing the resolution.—s. 107 CAMA
5. Alter the Memo and Article to reflect the reduction and stamp them.
6. Obtain and fill Form CAC 2.4 and deliver the following Documents to CAC:
a. Special Resolution for reduction of the Share Capital
b. CTC of the court order sanctioning the reduction of the share capital
c. Evidence of publication of Notice of reduction of share capital if so directed by the court
d. Court approved minutes of the company's meeting stating as altered:
- Amount of share
- Number of shares into which the share capital is divided
- Amount on each share
- Amount (if any) deemed paid on each share at the date of registration.

e. Duly stamped MEMART reflect the reduced share capital
f. Updated Annual Returns
g. Updated s. 553 CAMA where applicable
h. Evidence of payment of FRC Annual Dues
i. Payment of fees (evidence)
7. Obtain Certificate of Registration of the court order and minutes from CAC.
8. Notice of reduction of share capital is delivered to the CAC within 15 days of the court order confirming the reduction. Reduction takes effect after registration with CAC.

SAMPLE RESOLUTION FOR THE REDUCTION OF SHARE CAPITAL

COMPANY'S LETTER HEADING

SPECIAL RESOLUTION OF REDUCTION OF SHARE CAPITAL PURSUANT TO SECTION 106 OF COMPANIES ALLIED ACT

At the 14th Extraordinary/Annual General Meeting of the above named company held at Ademola Adetokunbo Hall, Nigerian Law, Victoria Island, Lagos on 19th April 2016 at 12:00, the following resolutions was proposed and dully passed as special resolution of the company:

1. "That the Authorised Share Capital of the company BE and is HEREBY reduced from N50,000,000 divided into 50,000,000 ordinary shares of N1 each, BY cancelling N20,000,000 of 20,000,000 being unrepresented by available assets".
2. That immediate action be taken for confirmation of this resolution at the Federal High Court.
3. That the Board of Directors should take other necessary steps to give effect to the attainment of this resolution.

Dated this _____ day of _____ 2016

_____ _____

Director Secretary

NB: note that:

- Cancellation of unissued shares is different from reduction of share capital as share capital can be reduced even when it has been paid up. Cancellation of unissued shares will not require any objection from members and it only applies to shares that have not been issued.
- Subdivision of nominal value of units of share capital is the reduction of the nominal value of each unit of shares. If nominal value of shares is subdivided, the quantity of shares will go up while the share capital nominal value will remain the same. For instance

i. N5,000,000 at N1 will be 5,000,000 units
ii. N5,000,000 at 50k will be 10,000,000 units
iii. N5,000,000 at N2 will be 2,500,000 units

- Shares can be converted into stock which can be broken into fractions. Similarly, stocks can be reconverted back into shares.

ALTERATION OF ARTICLES—s. 48 CAMA & Reg. 25 CR 2012

A company is allowed by law to alter the provisions contained in its Article in accordance with the provision of CAMA and subject to other provision contained in the MEMO.—s. 48 CAMA. Alteration may be addition, deletion, subtraction or substitution.

PROCEDURE

1. The BOD passes board resolution proposing the alteration of the Article
2. The Board direct the Secretary to notice of an EGM of Members
3. Special Resolution altering the Article is passed at the EGM
4. Necessary alteration is made to the Article
5. The Altered Article is stamped and delivered to CAC within 15 days of passing the resolution with the following documents:

a. The special resolution altering the Article
b. Duly stamped Article as altered reflecting the altered clauses—(must be marked as altered)
c. Updated Annual Returns
d. Update s. 553 CAMA filing where applicable
e. Evidence of payment of FRC Annual dues
f. Payment of fees.

POST INCORPORATION MATTERS—PART B CAMA.

Business names registered under Part B of CAMA may similarly make necessary alteration to the affairs of the business. Alterations may be change of Name, change of Registered, Change of Nature of business, change of Proprietors and change of registered business Address.

CHANGE OF BUSINESS NAME—Reg. 56 CR—s.557 CAMA

PROCEDURE

1. Conduct Availability Check and Reservation of Name using Form CAC 1A
2. Apply for change of Name to CAC. The Written Application must state reason for change of name and should be accompanied by the following documents:

a. Approved Form CAC 1A
b. Duly Completed Form—CAC/BN/1—Application for the Registration of Business Name
c. Duly Completed Form for Change of Business Name
d. Original Certificate of Registration and CTC of Form CAC/BN/1 for cancellation
e. Updated Annual Return
f. Evidence of payment of filing fees.

3. A new COR is issued by the CAC. Obtain CTC of the new CAC/BN/1.
4. File notice for change of Business Name using Form CAC/BN/2

NB: Notice of change of name must be made within 28 days after the name is changed.

CHANGE OF PROPRIETOR(S) NAME—s.577 CAMA & Reg. 57 CR

REQUIREMENTS ARE AS FOLLOWS:

1. Duly completed application form
2. Evidence of change of name
3. Duly completed form
4. Formal application for change of name
5. Original registration form for cancellation
6. Form of identification where necessary
7. Updated annual return
8. Payment of filing fees

CHANGE OF NATURE OF BUSINESS—s. 557 CAMA & Reg. 58 CR

REQUIREMENTS:

1. Duly completed application form
2. Duly completed form for change of nature of business
3. Formal Application and proficiency certificate where applicable
4. Original certificate of registration and form for cancellation
5. Form of identification where necessary
6. Updated annual return
7. Payment of filing fees

CHANGE OF ADDRESS OF BUSINESS NAME—s. 557 CAMA & 59 CR

REQUIREMENTS:

1. Duly completed application form
2. Duly completed form for change of address
3. Formal application for change of address
4. Original certificate of registration and form for cancellation
5. Form of identification where necessary
6. Updated annual return
7. Payment of filing fees

ADDITION/ REMOVAL OF PARTNERS—s. 557 CAMA & Reg. 60 CR

REQUIREMENTS:

1. Duly completed application form
2. Duly completed form for removal or addition of partner
3. Formal application for addition or removal of partner
4. Two passport-sized photographs for the new partner in case of individual and CTC of resolution together with photocopy of certificate of incorporation in case of company
5. Copy of partnership agreement where applicable
6. Form of identification where necessary
7. Updated annual return
8. Payment of filing fees

NOTICE OF CESSATION OF BUSINESS & REMOVAL OF NAME FROM THE REGISTER OF BUSINESS NAME—s. 578 CAMA & Reg. 61 CR

Requirements:

1. Notice of cessation of business by proprietor or personal representative of proprietor in case of deceased proprietor
2. Consent of all partners in case of partnership (Evidence)

3. Submission of certificate and documents of registration for cancellation
4. Updated annual return
5. Payment of filing fees

NB: The personal representative shall deliver the notice of cessation business to the Commission within three months of the cessation of the business.

POST INCORPORATION MATTERS—PART C CAMA.

ALTERATION OF CONSTITUTION OF INCORPORATED TRUSTEES

An Incorporated Trustees registered under CAMA may later the provision of its Constitution. Alteration must be done in accordance with procedure laid down by CAMA with a resolution passed by a simple majority of its members and approved by the CAC—s.598 CAMA. The provisions of the IT Constitution that may be altered includes—Name of the Association, Aims and objectives, Appointment, powers, duties, tenure of office and replacement of the trustee, Use and custody of the common seal, Meeting Clause, number of members of the governing body (if any), their powers and procedure for appointment and removal, Procedure for disbursement of funds, Amendment clause. There can also be replacement or appointment of additional trustees.—s. 599 CAMA.

PROCEDURES

CHANGE OF NAME OF INCORPORATED TRUSTEES—s. 597 CAMA & Reg. 67 CR

1. The Trustees make proposal for change of Name and Summon a general meeting of Members

2. Members Pass a Resolution at the GM approving the change.

3. Fill Form CAC 1A- for check and reservation of the new name

4. Advertise the proposed change in 2 Newspapers for objections to be made within 28 days

5. Alter the Constitution of the Association to reflect the new name

6. Make a written to the CAC for change of Name to be accompanied with the following documents:

a.Form for Approval of New name—Form CAC 1A duly approved
b. Duly completed application form—CAC/IT/1—Application for Registration of Incorporated trustees.
c.Formal application for change of name signed by the chairman and secretary or the solicitor
d. Extracts of minutes of general meeting where change of name was approved and signed by the chairman and secretary
e.2 copies of the constitution reflecting the new name as approved
f. Original certificate of incorporation (or CTC of certificate where applicable) for cancellation
g. Copy of the public notice as pasted at the registered office of the association
h. Cuttings or National Library Certified copy of the Newspapers publciation
i. Updated annual returns
j. Evidence Payment of fees.

7. CAC will issue a new Certificate of Incorporation reflecting the new name

NB: application for change of name must eb accompanied by application for amendment of the constitution to reflect the new name.

CHANGE OF OBJECTS AND AMENDMENT OF CONSTITUTION—ss. 597 & 598 CAMA & Reg. 68 CR 2012

1. The Trustees make proposal for change of Name and Summon a general meeting of Members
2. Members passes a resolution approving the change by simple majority at the GM
3. Advertise the notice of application in 2 daily newspapers stating the Provisions of the constitution to be amended and invite objections to the application within 28 days of the publication
4. Formal application for change of object or amendment is made to CAC to be accompanied by:

a.Duly completed application form

b. Formal application for change of objects and amendment of constitution signed by the chairman and secretary or the solicitor

c.Extracts of minutes of general meeting where change of objects and amendment of constitution was approved and signed by the chairman and secretary

d. Two copies of the constitution as amended and marked' Amended.

e.Copy of the public notice as pasted at the registered office of the association

f. Cuttings/National Library Certified copy of publication page of notice of application for change of objects and amendment of the constitution in two daily newspapers.

g. Updated annual returns

h. Evidence of Payment of fees

5. The application becomes valid upon CAC consent.

CHANGE OR APPOINTMENT OF TRUSTEES—s. 599 CAMA & Reg. 69 CR

1. Convene a General meeting of members and pass resolution for adoption of the change by simple majority of the members
2. Advertise Notice of Application for change or appointment of trustees in two daily newspapers within 28 days.
3. Make a Formal Application for change or appointment to CAC to be signed by the chairman or Secretary or solicitor accompanied with the following documents:

a.Duly completed change of trustees form

b. Extracts of minutes of general meeting where change or appointment of additional trustees was adopted signed by the Chairman and Secretary

c.Trustees declaration form duly deposed to by each of the new trustees in the High Court

d. Photocopy of information page of international passport or national identity card for new trustee(s)

e.Cuttings or National Library certified copy of the newspapers publication advertising the application.

f. Original certificate of incorporation (or CTC of certificate where applicable) for cancellation

g. Copy of the public notice as pasted at the registered office and every branch of the association

h. Updated annual return

i. Payment of filing fee

NB: Thumb prints by an illiterate trustee or officer shall be accompanied by an illiterate jurat.

POST INCORPORATION MATTERS—CONVERSION AND RE-REGISTRATION OF COMPANIES.—SS. 50—53 CAMA

This is a post incorporation matter that deals majorly with the change in the status of the company. It requires alteration of the MEMART as may be necessary but with a more unique procedure. Conversion and Re-registration is generally covered by ss. 50—53 CAMA and are essentially of four types. It must be noted that only companies having share capital can be re-registered. The law similarly provides for the prohibition of some certain types of conversion. The following are the permitted form of re-registration of company:

1. Re-registration of Private as Public Company—s. 50 CAMA—LTD—PLC
2. Re-registration of company limited by shares as unlimited—s. 51 CAMA—LTD-- ULTD
3. Re-registration of unlimited company as a company limited by shares—s. 52 CAMA—ULTD—LTD.
4. Re-registration of public as private company—s. 53 CAMA—PLC—LTD.

NB: the foregoing are the ones provided for under CAMA. However, there is another type which is the re-registration of a statutory corporation as a company limited by shares or as unlimited company. This is often done via process of unbundling through privatization or commercialisation with the Bureau of Public Enterprise and the Nigerian Privatisation commission. The company will be subsequently registered under CAMA as required.

PROCEDURES

RE-REGISTRATION OF PRIVATE COMPANY AS A PUBLIC COMPANY LIMITED BY SHARES—S. 50 CAMA

1. The BOD convene a meeting and passes a resolution proposing the re-registration from LTD to PLC
2. The board instruct the Secretary to send notices to convene a EGM
3. The members passes a Special Resolution at the EGM stating the following:

a.Approving the re-registration of the company from LTD to PLC

b. That memo be altered to reflect that the company is to be a public company

c.That other necessary alteration be made to the memo to conform with the status of a public company

d. That necessary alterations be made to the Article to make it conform with the Article of a public company.—s. 50(2)(a—c) CAMA

4. Obtain and fill Form CAC 1A to conduct availability check and reservation of name.
5. Increase share capital of the company where necessary
6. Apply to CAC for re-registration of the company as a PLC using Form CAC 2.7 which must be signed by at least one Director and the Secretary accompanied with the following Documents:

a.A copy of the special resolution approving the re-registration

b. Printed copy of the MEMART as altered in pursuance of the special resolution. Where the ASC is increased the Altered MEMART must be stamped.

c.A copy of written statement certified on Oath by the Director and the Secretary that the paid up capital of the company is not less than 25% of the ASC as at the date of the Application.

d. A copy of the company's balance sheet as at the date of the resolution or the preceding 6 months, whichever is later.

e.A statutory declaration by the Directors and the Secretary that:

- That the special resolution required for the re-registration has been duly passed
- That the net asset of the company are not less than the aggregate of its paid up capital and undistributable reserve.

f. A copy of the prospectus or statement in lieu of prospectus delivered to SEC within the preceding 12 months if the company's shares is to be listed or quoted at the NSE or other capital Market.

g. A copy of the Original or CTC of the Certificate of incorporation for cancellation.

h. Approved CAC 1A

i. Evidence of payment of filing fees

j. Evidence of Updated Annual Returns

7. If satisfied, CAC register the application and the accompanying documents and issue a new COI indicating that he company is now registered as a PLC
8. Fill and file Form CAC 2.1 for change of Secretary where necessary.
9. Make necessary modification to the name plate of the company, official documents, common seal and official seal.

NB: A COI serves as a prima facie evidence of compliance with provision of CAMA for re-registration and that the company is a PLC—s. 50(6) CAMA

NB: Also note that a company that has been previously re-registered from LTD to an Unlimited cannot be re-registered as PLC —s. 50(7) CAMA.—No LTD—ULTD—PLC.

CONSEQUENTIAL ALTERATION IN THE MEMO

1. Alter the name clause to reflect PLC
2. Remove the restriction clause in the memo
3. Alter the status clause to reflect that the company is a public company

4. Alter the share capital clause where necessary

CONSEQUENTIAL ALTERATION IN THE ARTICLE

1. Alter the name to reflect PLC
2. Remove restriction in transfer of share clause
3. Amend qualification of Director with regards to age
4. Amend qualification of secretary to professionals permitted under CAMA
5. Make provision for the Audit Committee where necessary
6. Remove provision on written resolution
7. No need to remove the pre-emptive clause

RE-REGISTRATION OF COMPANY LIMITED BY SHARES AS UNLIMITED COMPANY—S. 51 CAMA

CONDITION PRECEDENT—PROHIBITIONS

Note that:

i. An unlimited company re-registered as a limited company cannot be re-registered as unlimited.—No ULTD—LTD—ULTD.—s. 51(2) CAMA
ii. A public company cannot be re-registered as an unlimited company.—No PLC—ULTD.—s. 51(3) CAMA
iii. Company previously re-registered as unlimited company cannot be re-registered as unlimited company.—No LTD—ULTD—LTD—ULTD.—s. 51(3) CAMA

PROCEDURE

1. The BOD convene a meeting and passes a resolution proposing the re-registration from LTD to UNLTD
2. The board instruct the Secretary to send notices to convene an EGM
3. The members passes a Special Resolution at the EGM approving the proposal and making consequential alteration to the MEMART to comply with the requirement of an ULTD Company and Signs Form of Assent to give effect to the resolution.
4. Obtain and fill Form CAC 1A to conduct availability check and reservation of name.
5. Application is made in to CAC using Form CAC 2.7 signed by the Director and the Secretary setting out the Alteration in the MEMART as necessary to conform with the status of an UNLTD company.
6. Submit the application with the following documents:

a. Prescribed form of Assent to the re-registration to be subscribed by or on behalf of all the members of the company
b. A statutory declaration made by directors of the company that:

- That the persons or on whose behalf the form of Assent is signed constitute the whole membership of the company
- That reasonable steps have be taken that persons who subscribed on behalf of a members are legally authorised to do so.

c. A printed copy of the altered MEMART. (stamping should be done where necessary)
d. Original or CTC of the Certificate of Incorporation for cancellation.
e. Approved Form CAC 1A
f. Evidence of payment of filing fees
g. Evidence of updated Annual Returns

7. Upon submission, CAC register the application and the Documents is satisfied and issue a new Certificate of Incorporation to reflect the new status as ULTD. The COI serves as a prima evidence of compliance with CAMA requirements on re-registration as a ULTD and that the company was re-registered as a ULTD.
8. Upon issuance of new COI, the company takes status of a ULTD and all alterations in the MEMART takes effect as if altered by a resolution of the company and it becomes governed with CAMA provision on ULTD.—s. 58(8) CAMA
9. Make necessary modification to the name plate of the company, official documents, common seal and official seal.

RE-REGISTRATION OF UNLIMITED COMPANY AS COMPANY LIMITED BY SHARES—S. 52 CAMA

CONDITION PRECEDENTS

NOTE:

1. An unlimited company cannot be re-registered as a public company.—No ULTD—PLC.—s. 52(2) CAMA
2. An Unlimited company cannot be re-registered as a company limited by guarantee.—No ULTD—LTD/GTE—s. 52(2) CAMA
3. Companies previously re-registered as unlimited company cannot be re-registered as a company limited by share.—No LTD—ULTD—LTD.—s. 52(2) CAMA

PROCEDURE

1. The BOD convene a meeting and passes a resolution proposing the re-registration from ULTD to LTD
2. The board instruct the Secretary to send notices to convene a EGM
3. The members passes a Special Resolution at the EGM stating the following:

a. Approving the re-registration of the company from ULTD to LTD
b. State the proposed authorised share capital.
c. That consequential alteration be made to the MEMART to reflect a LTD company.

4. Obtain and fill Form CAC 1A to conduct availability check and reservation of name.
5. Apply to CAC for re-registration of the company as a LTD using Form CAC 2.7 which must be signed by at least one Director and the Secretary accompanied with the following Documents not later than 15 days from the date of passing the Special resolution:

a. A copy of the special resolution approving the re-registration
b. Printed copy of the MEMART as altered in pursuance of the special resolution.
c. A copy of the Original or CTC of the Certificate of incorporation for cancellation.
d. Approved Form CAC 1A
e. Evidence of payment of filing fees
f. Evidence of Updated Annual Returns

6. If satisfied, CAC register the application and the accompanying documents and issue a new COI indicating that he company is now registered as a LTD
7. Make necessary modification to the name plate of the company, official documents, common seal and official seal.

NB: upon issuance of a new COI, the status of the company shall change from ULTD to LTD and the alterations in the MEMART shall take effect accordingly.—s. 52(7) CAMA.

NB: the COI issued is a prima facie evidence of compliance with CAMA requirement of re-registration of the company as an LTD and that the company was duly re-registered.—s. 52(8) CAMA.

NB: re-registration of a ULTD as a LTD shall not affect the rights and liabilities of the in respect of the debt or obligation incurred or any contract entered into before re-registration.—s. 52(9) CAMA.

RE-REGISTRATION OF PUBLIC COMPANY LIMITED BY SHARES AS PRIVATE COMPANY LIMITED BY SHARES.—S. 53 CAMA

CONDITION PRECEDENT

Note:

1. There is recognition of minority rights in the process of conversion.
2. Application for cancellation of Special resolution can only be made by holder of not less than in the 5% of the issued nominal share capital or 5% of any class of shareholders or by 5% of the total members of the company who have not voted for the approval of the special resolution.—s.53(3) CAMA.
3. Space of 28 days must be given after passing the Special Resolution for conversion for members willing for make application for court for cancellation of the resolution.

PROCEDURE

1. The BOD convene a Board meeting and pass resolution proposing the re-registration of the company from PLC to LTD
2. Board instruct the Secretary to send notices of an EGM
3. Members passes Special Resolution at the EGM authorising the re-registration and approving of consequential in the MEMART.
4. Apply for availability check and reservation of name using form CAC 1A
5. Period of 28 days is given after passing the Special Resolution for members willing to make application to the FHC for cancellation of the resolution.
6. Where no application is made after the expiration of the 28 days, apply to CAC for re-registration using Form CAC 2.7 and accompany it with necessary documents
7. Where an application is made within the 28 days period, the applicant shall give notice of the application to CAC and the company.—53(4) CAMA
8. The FHC fix date for hearing of the application and upon hearing of the application may make an order for cancellation of the Special resolution or confirming the Special resolution and any such order it deems fit necessary in the circumstances.
9. Where an order is made (either cancelling or confirming the resolution), the company shall deliver a CTC of the court order to CAC within 15 days after the order is made or such time as the court may prescribe. The order must be delivered with the following documents:

a. A printed copy of the special resolution approving of the re-registration
b. A copy of Form CAC 2.7—application for Re-registration of company
c. Approved Form CAC 1A for reservation of name
d. Original or CTC of the Certificate of Incorporation for cancellation
e. A printed copy of the Altered MEMART reflecting the company as an LTD
f. Evidence of payment of filing fees
g. Evidence of updated Annual Returns

10. If satisfied, CAC register the application and accompany documents and issue a new Certificate of Incorporation reflecting the status of the company as a LTD.
11. Make necessary modification to the name plate of the company, official documents, common seal and official seal.

NB: the COI issued pursuant to re-registration under this section is a prima facie evidence that the requirements of CAMA with regards to the re-registration are complied with and that the company is a private company.—s. 53(10) CAMA

REGISTRATION OF STATUTORY CORPORATION AS COMPANY LIMITED BY SHARES

By the provision of s. 1 of the Public Enterprise (Privatisation and Commercialization) Act, government owned enterprise are either being partly or fully privatised or commercialised. A statutory corporation is thus unbundled into small entities or re-registered as public companies.

PROCEDURE

1. The Bureau of Public Enterprise obtains a government white paper to commercialize and privatize the enterprise/parastatal and arrange its sale
2. BPE takes steps to incorporate the new company as a public (PLC) with CAC. All the approved documents would be submitted to CAC along with the incorporation documents
3. BPE hands over the new company to its core investors with the necessary documents.

ESSENTIAL FEATURES CONVERSION OF A STATUTORY CORPORATION

1. The company would cease to be statutory corporation and be formally registered with CAC.
2. The company would have MEMART which becomes its source of its governance rather than enabling law that set up the corporation

3. The company ceases to enjoy the status of statutory corporation thus it no longer enjoy the immunity of pre-action notice in the course of initiating suits against it which is enjoyed by almost all the public corporations set up by statutes in Nigeria.
4. The company would be subject to CAC
5. The company can be investigated by CAC while exercising its power under CAMA
6. A statute is no longer needed for its winding up. Winding up will be done in accordance with the provision of CAMA.
7. Modes and method of offering shares to the public will no longer be governed by Public Enterprise (Privatisation and Commercialisation) Act. It will be solely govern by the provision of ISA and CAMA.

PROHIBITIONS ON RE-REGISTRATION

1. LTD—ULTD—PLC—s. 50(7) CAMA
2. ULTD—LTD—ULTD—s. 51(2) CAMA
3. PLC—ULTD—s. 51(3) CAMA
4. LTD—ULTD—LTD—ULTD—s. 51(3) CAMA
5. ULTD—PLCs. 52(2) CAMA
6. ULTD—LTD/GTE—s.52(2) CAMA
7. LTD—ULTD—LTD—s. 52(2) CAMA

CORPORATE SEARCHES—PART III

The relevance of corporate search lies in the facts that the companies documents filed at the CAC are public documents and persons willing to know about the affairs of the company may apply for search at the Company Registry of the CAC after satisfaction of the laid down requirements. The person can similarly obtained a CTC of the documents where relevant. See Sections 580, 581 and 606 CAMA. The CTC of the relevant documents searched, shall be received in evidence without any further or other proof, in all legal proceedings civil or criminal—ss. 551 & 581(2) CAMA.

Reasons and Use of a Corporate Search
1. To Reveal any irregularities in incorporation process of a company
2. To know the corporate status of a company.
3. To determine priority in registration of two companies using identical name
4. Operating of a bank account for a company/organization: Bankers usually request a corporate search report to verify entries made by applicants to open an account for a corporate body.
5. Granting of credit facility to a company - the borrowing capacity of the company.
6. Investigation of a company - there will be particulars of directors, annual returns among others at CAC
7. For conducting due diligence/legal audit - determining if there has been compliance with the laid down rules.
8. To discover any encumbrances or charge on the company's assets.
9. Investigation of a company/organisation by CAC or other regulatory/security agencies
10. Verification of corporate profile for award of contract/project

While conducting search, application must first be made to the Registrar general of CAC and the documents to be search depends on the reasons or use for which the search is to be put. Generally, the following documents are often required for conducting corporate search.

1. Records and Registers of the company
2. Memorandum and articles of association of the company, the object clause, restriction clause and liability of member's status.
3. Statement of share capital
4. Particulars of directors - who are in control of the company
5. Annual returns of the company

PROCEDURE FOR CORPORATE SEARCH—s. 551 CAMA and Reg. 47 CR 2012

1. Obtain CAC Form for search or write formal application to conduct a search to the CAC.
2. Payment of prescribed search fee and for CTC of the documents needed.
3. Attach evidence of updated annual return filling if the application is made on behalf of a company or any of its directors or secretary.
4. Conduct the search and obtain certified true copy of relevant documents
5. Prepare of search report and attach the certified true copy of the relevant documents.

NB: In Witt Butch Ltd v. Goodwill and Trust Investments Ltd, the court held that the appropriate authority to issue and certified true copies of company's documents is the CAC and not the High Court Registry (or Notary Public). Note generally that issuing authority should certify public documents. Regulations 49, 63, 66 & 76 of Companies Regulation 2012 on the requirements for certified true copy.

NB: Gaby made the following tabular and helpful content of a Search Report.

CHECK LIST OF CONTENTS OF CORPORATE SEARCH REPORTS (PART A,B&C CAMA)

	COMPANIES(11)	BUSINESS NAME OR FIRM(9)	INCORPORATED TRUSTEES (10)
1	Client's Name & Address	Client's Name & Address	Client's Name & Address
2.	Date of search	Date of Search	Date of Search
3	Name of Company	Business Name	Name of the organization
4.	Registered Certificate Number (RC. No and Registered office)	Registration No. and Registered Office/brand	RC. No. and Registered Office
5	Date of incorporation	Date of Registration	Date of Incorporation
6	Business Object	Nature of Business	Aims & Objectives, and basic clauses in the constitution with special clause
7	Directors	Proprietor/Partners	Trustees and Governing Board/Board of Trustee
8	Share capital and Distribution of issued shares (if limited by shares) or Guarantee value (if limited by Guarantee)	Filing of Annual Return (for Business Name)	Filing of Annual Return (for Incorporated Trustees)
9	Any change in the registered particulars – alterations, conversion and re-registration etc		Ownership of landed property and any encumbrance
10.	Any Encumbrance pending or discharged		Any change in registered particulars – names, trustees, address, etc.
11	REMARK: Comment on suitability to deal with the company	REMARK: Comment on suitability to deal with the Business Name or Firm	REMARK: Comment on suitability to deal with the organization.

SAMPLE DRAFTS

APPLICATION FOR CORPORATE SEARCH AT CAC

OWOLABI & OWOLABI

(Legal Practitioners)

House 3, Santiago Lane, Banana Island, Lagos

Email: ramlad@legalpractitioners.com

Website: www.OWOLABIandOWOLABIlp.com

Phone: +2347064650692

Our Ref: 12/2S/2016 Date: 2nd May, 2016

The Registrar-General,

Corporate Affairs Commission,

2, Maitama Lane, Asokoro, Abuja,

FCT Abuja.

Dear Sir,

APPLICATION TO CONDUCT CORPORATE SEARCH ON TROPICAL INVESTMENT NIGERIA LIMITED WITH RC NO: 1234

Kindly refer to the above subject matter.

We are the external solicitors to Sterling Bank Plc which intends to open and operate an account for Equator Investments Limited. In view of this, we kindly seek your permission to conduct a corporate search on Tropical Investments Limited with RC NO: 1234. We humbly request the following documents be made available for our search:

1. Certificate of Incorporation
2. Particulars of Charges and Debentures
3. Memorandum and Article of the Company
4. Statement of Authorised Share Capital and Return of Allotment.
5. Particulars of Directors.

Kindly find attached a copy of the receipt for the payment of Search fee and receipt for payment of the CTC of the documents.

Thank you.

Yours faithfully,

(signature)

OWOLABI OWOLABI

Founding Partner

For: OWOLABI &OWOLABI (LP)

COVERING LETTER WITH SEARCH REPORT

OWOLABI & OWOLABI

(Legal Practitioners)

House 3, Santiago Lane, Banana Island, Lagos

Email: ramlad@legalpractitioners.com

Website: www.OWOLABIandOWOLABIlp.com

Phone: +2347064650692

Our Ref: 12/2S/2016 Date: 2nd May, 2016

The Company Secretary/Legal Adviser,

Sterling Bank Plc,

20, Marina Street,

Lagos State.

Dear Sir,

RE: CORPORATE SEARCH REPORT OF TROPICAL INVESTMENT LIMITED WITH RC NO: 1234

Kindly refer to your letter dated 2/3/2016 in respect of the above subject matter.

We are pleased to inform you that the corporate search on Tropical Investments Limited with RC NO: 1234 has been successfully carried out. Please find attached a copy of the search report and our bills of charges for the professional fees.

Thank you

Yours faithfully,

(signature)

OWOLABI OWOLABI

Founding Partner

For: OWOLABI &OWOLABI (LP)

ENCLOSED

- A copy of the search report
- CTC of the Memo and Article
- CTC of Certificate of Incorporation
- CTC of Statement of authorised share capital
- CTC of particulars of directors
- Copy of the Bills of Charges for the professional fees.

SEARCH REPORT ON TROPICAL INVESTMENT LIMITED

1. Date of search: 20th April, 2016

2. Place of search: Corporate Affairs Commission

3. Name of company: Tropical Investments Limited

4. RC Number: No 1234

5. Registered offices: 5, Ikoyi Lane, Victoria Island, Lagos.

6. Date of incorporation: 17th July, 2006

7. Business/object: Hotel and House keeping

8. Directors: Jeffery Owhor-Chuku, Theo Maimako, Arome Abu, Titus Agundu

9. Share capital: N2, 000, 000 divided into 2,000,000 ordinary shares of N1 each

10. Encumbrance: NIL

11. Annual Return: The annual return of the Tropical Investment Limited is up to date.

12. Remark: there is no pending encumbrances, the parties can go on with the transaction

Dated this _____day of _____ 2016

Prepared By:

(signature)

OWOLABI OWOLABI

Founding Partner

For: OWOLABI &OWOLABI (LP)

Contracts of company

S. 71 CAMA empowers a company to contract in the following capacity:

- Contracts required to be made by deed and determined by deed can be done by a company in writing under the common seal of the company (i.e contract under seal).
- Any written contract which can be validly entered into by individuals (i.e a written contract).
- Any oral contract which can be validly entered into by individual (contract by parol).

Thus for the purpose of contract, a company has the same capacity like an individual. However it is not advisable for an individual to enter into oral contract with a company as company is just a person at law.

Instances of execution of company's contract:
1. Bills of exchange and promissory notes are deemed to have been made, accepted or endorsed on behalf of a company, if so done in the name of the company or by a person acting under its authority - s. 73 CAMA
2. Common seal of a company in its use is regulated by the articles of association of the company - s. 74. African Dev Co Ltd v. LEDB.
3. Official seal, it is usually used outside Nigeria, where the object of the company permits transacting in foreign countries and if authorised by its article - s. 75
4. A company can appoint an attorney under deed to act on its behalf within and outside Nigeria. A deed signed by the attorney binds the company and has the same effect as deed under company common seal - s. 76
5. Authentication of document: where a document or proceeding requiring authentication by a company, such may be signed by:
a.A director
b. A secretary
c.Other authorised officers of the company

And need not be under its common seal unless CAMA provides for such - s. 77 CAMA. See SPAC Nig Ltd v. Allaprinta. S. 78 - service of court processes.

SAMPLE DRAFTS

GOLD PALMS LIMITED RC NO. 1350

NO. 15 BROAD STREET

IKEJA LAGOS

OUR REF.:

DATE: 26 JAN 2014

SPECIAL RESOLUTION TO CHANGE THE NAME OF GOLD PALMS PLC TO

SUGAR PALMS LTD PURSUANT TO SECTION 31(3) OF THE COMPANIES AND ALLIED-MATTERS ACT 2004

At the Extra- Ordinary General Meeting of Apex Investment Limited held at the Board conference room of the company, it was dully proposed and resolved as follows:

‘’ That the company name be changed to SUGAR PALMS LIMITED subject to the consent of the Corporate Affairs Commission’’.

DATED THE …… 25 DAY OF MAY 2012.

……. …….

Director Secretary

WEEK 10

CORPORATE GOVERNANCE

What is corporate governance?

Corporate Governance: deals extensively with the manners in which corporate entities are administered or governed for the purpose of achieving the desired objectives. Corporate governance encourages accountability on the part of the administrators of corporate entities

INGREDIENTS FOR CORPORATE GOVERNANCE

The corporation

Separate legal personality: Section 37 of CAMA…
Case Law:
Salomon v Salomon & Co ltd
Lees v Lees Air Farming ltd
Macaura v Northern Assurance Co
a. Limited liability
b. Shareholders: section 18 CAMA " and Section 19 (3): shareholders operates through the general meeting
c. Directors: Section 35(1) CAMA: Board of Directors , policy direction and management of the company
d. Dispersed ownership… the Berle and Means
e. The Enlightened Shareholder Value
f. Separation of ownership and control

Corporate Governance Scandals: CARDBURY, 2007 and NIGERIAN BANKS 2010

These gave rise to the corporate governance codes.

CORPORATE THEORY:

g. The concession or fiction theory: the company is an artificial person, set up by a charter from England.
iii. Realist theory:
iv. Aggregate theory:
v. Agency theory
vi. stakeholders theory

Corporate gov in Nigeria

COMPANIES AND ALLIED MATTERS ACT

INVESTMENT AND SECURITIES ACT

BANKS AND OTHER FINANCIAL INSTITUTIONS ACT

INSURANCE ACT

NATIONAL INSURANCE COMMISSION ACT

MORTGAGE INSTITUTIONS ACT

CODE OF CORPORATE GOVERNANCE FOR BANKS in Nigeria

Updated in 2014, targeted at Nigerian Banks and Discount houses; It made provisions for whistle blowing and required bank auditors to report the central bank of Nigeria.

Highlights:

a. Board and management: responsibilities, succession
b. Board committee: audit committee,
c.Board meetings:
d. Remuneration
e.Board appraisal
f. Shareholders
g. Equity ownership
h. Protection of shareholders' rights
i. Shareholders' association
j. Rights of other shareholders
k. Notice / meetings
l. Disclosure and transparency
m. Whistle bowing
n. Risk management
o. Ethics and professionalism
p. Conflict of interest
q. Sanctions

CODE OF CORPORATE GOVERNANCE FOR PUBLIC COMPANIES

Prescribed by the SEC:

a. Responsibility of the board
b. Multiple directorship
c.Family and interlocking directorship
d. Board committee
e.Risk management committee
f. The governance and remuneration
g. Meetings
h. Insiders trading
i. Relationship with shareholders
j. Relationship with other stakeholders
k. Whistle blowing policy

CORPORATE SOCIAL RESPONSIBILITY

Initiatives that benefits the society

Environmental efforts

Philanthropy

Ethical labour practices

Volunteer work

MODELS OF CSR:

a.STOCK HOLDERS THEORY: this deals with the shares, shares are donated to the directors… SHAREHOLDERS THEORY: Directors are holding the shares on behalf of the shareholders with the aim of maximizing
b. STAKEHOLDERS THEORY: the shareholders are the owners of the company of a company. The employees are also part of the holders of responsibility.

CORPORATE SUSTAINABILITY… UN ten principles of Global compact on sustainability

ENLIGHTENED SHARE HOLDERS VALUE

CODE OF CORPORATE GOVERNANCE FOR THE INSURANCE INDUSTRIES

REGULATORS:

r. CAC
s. SEC
t. CBN
u. National insurance Commission
v. National Communications Commission
w. Federal Mortgage Bank
x. Nigerian Stock Exchange

Organization for Economic Cooperation and Development OECD Principles of corporate Governance, reviewed in 2015… it contains six chapters:

1. Ensuring the basis for an effective corporate governance framework.
2. the rights of shareholders and key ownership functions should be protected,
3. equitable treatment of shareholders
4. The rights of shareholders established by law should be protected.. institution investors, stock markets and other intermediaries … the role of stakeholders in corporate governance,
5. There should be full disclosure and transparency, the responsibilities of the board.

INTERNATIONAL BEST PRACTICES:

THE office of the CEO/MD should no longer be fused

The tenure of the office of the CEO should be fixed

The board of directors should include a

There should be transparency in the appointment of auditors

Limitation on the number of shares that can be held by the members

There should be regular

There should be transparent relationship between internal and external auditors of the company to avoid ..

No individual should unduly hold large number of shares in the company

Rules of corporate democracy and soveriengty must be imbibed by the company

There should be transparency, accountability

a. UK COMBINED CODE

b. SARBANES-OXLEY ACT.

COMPANIES SECRETARY

Every company must have a company secretary. S. 293(1) CAMA The secretary services the board and may be responsible for the day to day running of the company.

See. PANORAMA DEVELOPMENT (GUILDFORD) LTD V FIDELIS FURNISHING FABRICS (1971) 2 WLR 440

✓ On validity of the appointment of Miss Becky Odums, by virtue of the provision of CAMA nothing precluded her from being the secretary. Section 294

✓ No, the answer will not be the same, CAMA precludes him signing a document in both capacity. 294

A company secretary cannot act without the authority of the BOD. 298(2) CAMA

APPOINTMENT OF COMPANY SECRETARY

A first company secretary is appointed by the BOARD OF DIRECTORS and the name is filled in the company requisite CAC Form (CAC 2.1,) 296(1)

Notify the CAC within 14 days of appointment.

Particulars of the secretary should be entered in the register of directors and secretaries. The register should contain, in case of an individual secretary, his present names and usual residential address and in the case of a corporation, its registered name and register or head office. 292(3).

Where a company act as the secretary, the person to act on behalf of the company must be any of the member of the company at any of the meeting convened for that purpose (for purpose of dual responsibility) appointed must have the requisite qualification under 295.

QUALIFICATION (295)

There is no stipulated qualification for secretary in private company.

For public companies

1. A member of the Chartered Institute of Secretaries and Administrators {ICSA}
2. A legal practitioner within the meaning of the Legal Practitioners Act {LPA}
3. A member of the Institute of Chartered Accountants of Nigeria {ICAN} and other bodies established for that purposes.
4. Persons who have held the office of a Secretary of a public company for at least 3 years of the 5 years immediately preceding his appointment in a public company
5. A body corporate or firm consisting of members each of who is qualified under any of the above grounds

DIRECTORS RESOLUTION

a.Name of the company with RC Number
b. Use a letter headed paper
c.Heading of the resolution (Board Resolution pursuant to section 296 of CAMA for the removal/appointment of……as the company's secretary)
d. At the Board of Directors meeting held on the ------day of----at the company's board room, the following resolution was proposed and passed as the resolution of the board of directors:
e.That Mrs JAMES, a legal practitioner be appointed the company secretary with effect from……..date……..
f. Dated this----of------2016
g. Signature
h. Director Director

Note: the date must not exceed 14 days from the date of the resolution

STATUS OF A COMPANY SECRETARY

Company secretary is no longer a mere clerk of the company. He can bind the company. See WIMPEY (NIG) LTD v BALOGUN.

ACTS OF THE SECRETARY BINDING THE COMPANY

Any act of the secretary that he was authorised to perform on behalf of the company 298(2).

DUTIES OF A SECRETARY – SECTION 298(1)

i. To attend meetings (both BOD and Committee meetings)
ii. To render secretarial services in meetings
iii. To advise on compliance by the meetings; with applicable rules and regulations.
iv. Maintain register of companies and other records
v. Renders proper return and give notifications to required by CAMA to CAC.
vi. To carry out such administrative and other secretarial duties as directed by the directors of the company.

STATUTORY FILINGS

1. Alteration of object by special resolution or Court order- 15 days Section 46(7)
2. Notification of change of directors- 14 days Section 292(4)
3. Registration of charges – 90days. SECTION 197
4. Special resolution – 15 days- SECTION 237
5. Annual returns within 42 days of the conclusion of the AGM Section 370
6. Return of allotment = 1 month Section 129
7. Return of Auditors- 14 days. Section 357
8. Return during receivership- within 14 days Section 392.
9. Notice of change of Directors and Secretaries within 14 days Section 292 (4)
10. Notice of resolution to windup voluntarily-14 days Section 458
11. Notice of increase in share capital- 15 days, Section 102
12. Notice of appointment of liquidator-14 days Section 491

SERVICE OF PROCESSES AND DOCUMENTS

The service of a particular document is governed by the rules of the court. However, Section 78 of CAMA

✓ Drop it at the registered office address.—for other documents.
✓ Court processes is served personally or substituted means (as prescribed by the rule of court) on the secretary, director, any of the principal or drop it at the head office of the company while other processes are served by leaving it at, or sending by post to the registered office head. 78, RANCO TRADING COMPANY LIMITED V UNION BANK OF NIGERIA LIMITED.

GOOD SERVICE

The process can be served either on the director, secretary, or other principal officer, or by leaving it at the registered or head office of the corporation or company.

FIDUCIARY DUTY OF SECRETARY

Naturally and generally, a secretary do not owe any fiduciary duty to the company but where he is acting as an agent of the company lawfully, he is under duty to act in good faith and to make account of profit because he has held himself out to the company. He shall disclose secret profits made. See Section. 297

CESSATION OF OFFICE

1. A secretary may resign by notice in writing to the company
2. Cannot resign orally
3. He may also be removed from office at any time by resolution of the directors.(for PLC)

REMOVAL OF SECRETARY (PUBLIC COMPANY) 296 (1) (2) (3) and (4) CAMA

The mode of appointment determines the mode of removal. Where a company secretary of a public company is to be removed, the board of directors shall give him notice:

1. Notice of intention to remove him;
2. Setting out the grounds for removal
3. Must be given not less than 7 working days to state defence. 296 (2).
4. Must be given 7 working days to resign if he fails to state defence.
5. Failure to state defence, Board of Directors may remove him and shall report to the general meeting.
6. Where it based on fraud or misconduct, the board can remove him and announced to the general meeting.
7. On grounds other than fraud and misconduct, he will only be removed subject to approval at the general but may be suspended and the Board of Directors shall report to the next general meeting
8. The effective date of removal will be determine at the general meeting
9. Notify the commission within 14 days of the termination of the secretary appointment and appointment of the subsequent one

The secretary can act in dual capacity. See Section 294: when executing a document he cannot do that in both capacities. See DAILY TIMES OF NIG. PLC V AKINDIJI (1998)

REQUIREMENT FOR FILING OF NOTICE OF APPOINTMENT/ CHANGE OF A SECRETARY DOCUMENTS TO FILE AFTER REMOVAL AND APPOINTMENT

1. Resolution of BOARD OF DIRECTORS of the company signed by two directors;
2. duly completed form for particulars of the secretary
3. updated annual return filing
4. payment of fees

QUESTION: Hameed Nigeria Ltd was appointed as the company secretary to Egbe & Kanu Nig Ltd.

1. Draft the resolution for the appointment and removal of Hameed Nig Ltd

R**ESOLUTION FOR APPOINTMENT**

EGBE & KANU NIGERIA LIMITED

RC NO:23548

Registered Office: 123 NLS Road, Banana Island Lagos State

Email: ramlad4sure@gmail.com

Hotline:+2347064650692

Our Ref: ---------- Your Ref----------

Date: 19, January 2016

BOARD RESOLUTION PURSUANT TO SECTION 296 OF COMPANIES AND ALLIED MATTERS ACT FOR THE APPOINTMENT/REMOVAL OF THE SECRETARY

At the Board Meeting held on the 14th of January 2016 at the company's conference room, the following resolutions was proposed and passed:

That Hameed Nig Ltd acting through Mr M. R Clement, a legal practitioner be and is hereby removed/ appointed as the company secretary with effect from…….day of…….2016 subject to the ratification of the members of the company at the annual general meeting.

Dated this ……..19th day of January 2016.

Signed
Signed

Director
Director

DIRECTORS

A person duly appointed by the company to direct and manage the business of the company. 244(1) CAMA

LEGAL STATUS OF DIRECTORS

Naturally, directors are not trustees of the company in the strict legal sense but they serve as trustees of the company money and property in that they must render account of the management of the money and the property.

DIRECTORS AS AGENT OF THE COMPANY

Owing to the fact that the company cannot act on its own, directors may when acting within their authority and power be regarded as agent of the company. 283(2) CAMA see also Ferguson V Wilson (1866) L. R. 2 Ch

TYPES OF DIRECTOR

a. EXECUTIVE DIRECTORS

- ✓ They are appointed by the company and are therefore full staff of the company; they are the employees of the company. They devote their whole time and attention to the company to the exclusion of other jobs.
- ✓ They enjoy the all the right benefits of the staffs
- ✓ They are on contract of service agreement with the company

NB: between Article and Contract of service agreement, the article prevails.

PART OF CONTRACT OF SERVICE OF AN EXECUTIVE DIRECTOR

AN AGREEMENT made this 2nd day of February 2017

BETWEEN Kenneth Nig Ltd whose Registered address is at No 3 Law School Drive, (hereinafter called the company) of the one part and Mrs Ola Bakare of No 5 law School Drive (hereinafter called Mrs Bakare) of the other part

APPOINTMENT CLAUSE

The company HEREBY APPOINTS Mrs Bakare .and Mrs Bakare agrees to act as… the Executive Director. ..

EXECUTION CLAUSE

The common seal of the company is hereby affixed to this agreement and it is duly delivered

IN THE PRESENCE OF

NON-EXECUTIVE DIRECTOR

- ✓ They are not employees of the company
- ✓ They Do not have service contract
- ✓ Don't collect salaries save out of pocket stipends or allowances.
- ✓ The remuneration paid to them are in the nature of fees or allowances fixed at the Annual General Meeting.
- ✓ They could be engaged in other duties aside that of the company. LONGE V First Bank Nigeria.

- ✓ They are portfolio directors and their name is not included in the nominal role
- ✓ They do not form part of the company's staff
- ✓ Section 267 (2) and (4) CMA

SHADOW DIRECTORS

These consists any person on whose instructions and directions the directors are accustomed to act. They direct the real directors on what to do and how to perform their duties. Section 245 of CAMA: they are not appointed by any one. They are not subjected to rotation too. Professionals employed by the company are not naturally shadow directors …

SIDE NOTE: DOES ACT OF THE NON EXECUTIVE DIRECTOR AND A SHADOW DIRECT OR BINDS THE COMPANY?

NOMINEE OR REPRESENTATIVE DIRECTOR

Where a company is a company is a director in another company is obliged to appoint a nominee to represent it in the Board for a fixed period.

Upon filing returns at CAC, the company files the name of the representative of the Director of the company. Section 257 (d)

MANAGING DIRECTOR

He is usually appointed from either the Directors or from the employees of the company. They are tasked with the responsibility to oversee the management of the day to day business of the company.

Once appointed he is regarded as an employee of the company. He maintains dual position as an employee of the company and the alter ego.

He is removable by the Board of directors as the managing director if appointed from amongst the directors of the company unless he is removed in pursuance to Section 262 and 263 (5) and 64 CAMA

ALTERNATE DIRECTOR

This is the director who is appointed to represent in the director or take the position of another director in the event of the absence. It is the director who appoints his alternate but such appointment is approved by the resolution of the General Meeting. Provisions in the Articles of Association of the company must recognise he position. He enjoys the rights of the substantive director:

- ✓ Receive notice of all meetings of the director
- ✓ Can attend meeting
- ✓ Can form quorum of the meeting
- ✓ Can perform all of the function of the director that appoint him.
- ✓ The duty of alternate director cease at the revocation of appointment or the termination of appointment of the director that appoint him.

LIFE DIRECTOR

Section 255 CAMA

A permanent director of the company but he can be removed by the provision of Section 262 of CAMA

- ✓ He cannot be made to retire by rotation
- ✓ He does not need to submit himself for himself for re-election
- ✓ May be removed pursuant to section 262

CHAIRMAN

SECTION 239 AND 240

PRESIDES OVER the Board and General Meeting of the company and he is also a director figure head.

NUMBER OF DIRECTORS 246

- ✓ Under CAMA, every company must have at Minimum number 2
- ✓ The memo and article can set minimum and maximum
- ✓ May be less than two if it does not exceeds one 60 days
- ✓ Must be regularized within one month
- ✓ Members aware of operation after 60 days will be penalised
- ✓ Purpose of minimum of 2, to introduce checks and balances

Commencement date of CAMA, 2nd January 1990.

APPOINTMENT OF FIRST DIRECTORS: initial, subsequent and appointment by personal representative

Appointment is by naming them in the MEMART and the CAC for Particular of Director CAC 7

- ✓ When not included in CAC 7, it is void
- ✓ Appointment based on share qualification in the MEMART, the director must be notified for the requisite number of shares and failure to possess the required shares nullifies the appointment.

DRAFT OF INSTRUMENT OF APPOINTMENT OF DIRECTORS

That _____ (name of the directors) of _____ ()

SUBSEQUENT DIRECTORS

The members of the company at the Annual General Meeting have the power to re-elect, reject or appoints new directors subject to the procedure required under the article. Section 248.

- ✓ Filing form CAC 7A (change in particulars of directors) within 14 days of the change accompanied with the resolution of the appointment see section 291 (4) CAMA
- ✓ FHC for an order to convene a meeting to appoint new directors:

APPOINTMENT BY PERSONAL REPRESENTATIVE

If directors die at the same time, their personal representatives can apply to the Federal High Court to authorise them to convene a meeting of all personal rep and shareholders to vote appoint new directors for the company

(Directors die or directors + shareholders die), new directors from the shareholder or personal representatives)

Where they fail to convene the meeting a creditor can outsider can

Section 41(3) CAMA

WOODLAND v LOGAN

DEFECTIVE APPOINTMENT OF DIRECTORS

The acts of a director wrongly appointed by

Section 260 CAMA, IWUCHUKWU v NWIZU

CASUAL DIRECTORS

Where there is a vacancy arising out of death, resignation, retirement or removal of a director, the Board of Director shall appoint new persons to fill such casual vacancy subject to approval by the members in General Meeting

The new appointees steps into the shoes of the removed, dead or retired director. He merely

Section 249 (1) (2) CAMA

CASUAL VACANCY

Instances in which casual vacancy can occur are:

1. Death
2. Resignation
3. Retirement
4. Removal of one or any number not consisting all the directors.
5. May be approved by the members at the AGM. 291(1)

RESOLUTION OF THE BOARD FILING CASUAL VACANCY ON THE BOARD

That Mr……of……be appointed a director of the company until the next Annual General Meeting in the place of Mr…….retired/removed/deceased …etc.

Directors can increase the number of directors and the GM. The increase should not conflict with the provision of MEMART

ADDITIONAL DIRECTORS

The number of directors can be increased by:

a. The directors
b. General meeting

Section 249 (3) CAMA

Such increase or reduction must however not conflict with the provision of the articles and memorandum of the company

ROTATION OF DIRECTORS 259

If no provision on the retirement or rotation of directors is made in the articles of Association of a company, then the provisions of the Companies ans Alied- Matters Act can apply which are as follows:

a.All director must retire at the first Annual General Meeting unless there is provision to the contrary in the Memorandum and Articles of Association of the company. Except the life director…
b. Subsequently, one-third of the directors, would have to retire or a number nearest to one third.
c.Order of retirement is according to long term of office…. First in first out
d. A retired director may be reappointed
e.No rotation if the number of the director is reduced to 2

Any other new person proposed to be appointed a director must be nominated by members of the company with a prior notice to the company left at the company's registered office Between 3-21 days to the meeting or by Board Resolution nominating a person

Nomination must take place at least 3 days before the AGM

Where two or more directors are appointed the same day, retirement

Where a director at retirement presents himself for RE-ELECTION whether the company is silent or not, he is deemed to be re-elected

Section 262(5)

EXCEPTIONS TO RETIREMENT AND ROTATION RULE

A life Director

AGE OF DIRECTORS

- ✓ No age limit in private companies
- ✓ Public company, below 70 years IF Above 70 years gives special notice
- ✓ Failure attracts N 500
- ✓ Private company NO AGE RESTRICTION AS TO 70

NOTICE OF AGE BY DIRECTOR OVER AGE

To the Secretary of ……..plc

Sir,

With respect to my appointment as a director of----------plc, I hereby give you notice that I attained the age of ---------- on the ----------day of------- 2017

Yours faithfully

Signature

DISQUALIFICATION OF DIRECTOR… SECTION 257

PROVIDES that the following persons stand disqualified from being a director:

- ✓ An Infant (below 18 years of age)
- ✓ A Lunatic or of unsound mind
- ✓ A person disqualified under section 253 (insolvent), 254 (Fraudulent persons) under 253
- ✓ A corporation other than its representatives appointed to the board for a given term

VACATION OF OFFICE OF DIRECTORS

This occurs if the director:

Ceases to be a director by virtue of Failure to obtain share qualification .251

Becomes bankrupt or makes any arrangement or composition with creditors generally

Become prohibited by any other reason under 254.

Becomes of unsound mind

Resigns from his office by notice in writing to the company see Section 258

CERTAIN PUBLICATIONS IN RESPECT OF DIRECTORS

a.Register of director's shareholding Section 275
b. Register of directors and secretaries: Section 292
c.Particulars of directors in trade catalogues

SHARE QUALIFICATION

This is mandatory if the Articles requires it. It is not a condition under CAMA.

Condition specifying owing share as condition precedent to being a director

Section 251 CAMA

- ❖ Share qualification is not an obligatory act the company must do
- ❖ The article can excuse the director from owing a share.

If the article so requires:

- ✓ The director must own share or he will be disqualified from occupying the office
- ✓ The director upon appointment has 2 months after his appointments to comply
- ✓ If he does not buy share after 2 months, he becomes disqualified and must vacate his office immediately
- ✓ If during the subsistence of his term, he disposes of his share, he will vacate his office
- ✓ Compulsory share qualification for subsequent reappointment.
- ✓ If he for any reason he does not vacate his office after his disqualification, he is liable to fine of 50 per day. 251 and 258

REMOVAL OF DIRECTORS

The provisions of the company

DISQUALIFICATION ON CONVICTION

- ✓ Convicted for any offence under CAMA and ISA relating to running of a company by the FHC and the court hands a disqualification order, the person is barred from being a director. (conviction+ disqualification order= disqualification)
- ✓ Disqualification order is for a period of time usually 10 years. See. 254 and R v Goodman

SPECIAL NOTICE TO THE BOD

*****PLC

I hereby give notice, pursuant to sec

RETIREMENT

- ✓ Look at the Article to see if there are retirement provisions- not mandatory
- ✓ 1st AGM all
- ✓ If not up to 1/3, number nearest to 1/3
- ✓ If appointed on the same day, the most popular among the directors or decided by lots
- ✓ life director can be removed(anytime by the members 262) but cannot retire by rotation.

VACANCY ON RETIREMENT

- ✓ Check the article
- ✓ Provision under CAMA
- ✓ Where the retiring director offers himself for re-election,
- ✓ The members must vote for his re-election
- ✓ If the members did not vote for his re-election bid, he is deemed to be re-elected in such a situation
- ✓ Where there is another person offering for new appointment for the vacancy, he is to:
- ❖ Prior notice of intention to propose a new appointment is to be give between 3 to 21 days before the AGM
- ❖ The notice must be accompanied by the proposed director's consent to act
- ❖ If the new person is coming on the recommendation of all the board member acting as a member, no need of notice of intention to propose a new director for replacing a retiring director.

❖ Where there is vacancy as a result of retirement at the AGM without replacement, a casual vacancy is created which can be filled by the BOD subject to members ratification at the next AGM

REMOVAL FROM OFFICE

MANAGING DIRECTORS

✓ Director appointed by the BOD
✓ On removal removed as the managing director by the directors who appointed him
✓ Removal as director proper must be in accordance with the provision contained in the service contract or the Article
✓ Under CAMA, recourse to Article and Service contract as to provision against removal does not prejudice the power of the company to remove.

Procedure:

✓ Special notice given at least 28 days prior to holding the meeting, 236
✓ Special notice and requisition of holder of minimum of 10% paid up share capital of the company followed by ordinary resolution for removal.
✓ For those not up to 10% of the paid capital (minority), he give special notice to the BOD who may accept or rejects his resolution

PROCEDURE FOR REQUISITION

✓ Requisitionist to deposit a signed requisition at the registered office stating resolutions which he intends to propose

REQUISITION BY SHAREHOLDERS

TO: Board of Directors

"WE, the undersigned, being holders of more than one-tenth of the paid up capital of the company as at the date of this notice require you forthwith to proceed to convey an EGM for the Purpose of considering and if thought fit approving the following resolution which will be proposed as an ordinary resolution namely:"

✓ If after 21 days of deposit, no meeting is called, the requisitionist or simple majority of them can call the meeting within 3 month from the date of deposit of the requisition.
✓ Meeting is convened in usual
✓ If it is not practicable to call the meeting, notice may be given by an advertisement in a newspaper at least 21days before the meeting
✓ All expenses incurred will be recovered from the defaulting directors
✓ If no quorum is present at the requisitioned meeting within one hour, from the time appointed for the meeting, meeting is dissolved and there is no adjournment.
✓ If meeting is to hold, ordinarily or by requisition, copy of special notice and proposed resolution must be sent to the directors affected so he can make representation against his removal. 262(3).
✓ Note that, a director cannot be removed behind his back. LONGE V FBN
✓ He must be given a right to defend himself.
✓ A written resolution cannot be used to remove a director. See TRADE LINKS V BANK OF AMERICA NIGERIA LTD.
✓ If required and if time allows, the company must send a copy of such representation to every members alongside the notice
✓ The director also have the right to be heard on the requisition at the meeting.
✓ Where requisition is received lately, it may be circulated to members prior to commencement of the meeting or ask the secretary to read it out to the members
✓ An executive director ceases to be so if removed as a director

REMOVAL BY STATUTE

✓ Regulatory authorities are given power to remove company directors.
✓ An example is that conferred on the CBN to suspend or remove director of failing banks notwithstanding the provision in CAMA or Article. See section 35 BOFIA (as amended)

NON-COMPLIANCE WITH THE PROCEDURE IN CAMA

✓ If the procedure is not complied with, the purported removal will be set aside by the court. LONGE v FBN
✓ IWUCHUKWU V NWISU- special notice followed by an ordinary resolution
✓ YALAJU-AMAYE v AREC- no termination of appointment orally

OTHER POWERS OF REMOVAL 262(6)

✓ Company may make further provision for removal in then article (either making it difficult or flexible)
✓ The article cannot override the mandatory provision of section 262

The principle in BUSHELL V FAITH- weighted vote for removal

✓ S. 116(1 share 1 vote,1 person 1 vote), prohibition of weighted shares and 143 gives exception
✓ Use of weighted vote
✓ - a preference shareholder
✓ - company owes the holder arrears of dividends

VACANCIES CREATED BY REMOVAL

✓ Special notice for removal
✓ Special notice for appointment

DATE OF APPOINTMENT OF NEW DIRECTOR

REMEDIES FOR WRONGFUL REMOVAL OF A DIRECTOR

✓ The new director will be deemed to have been appointed on the day the removed director was appointed. This is for the purpose of retirement by rotation. 262(5)

DOCUMENTS TO BE FILED AFTER REMOVAL

1. Particular of director CAC 7A- 14 days
2. Necessary changes in the register of director
3. Changes in the Particular of directors in the trade catalogue

ADDITIONAL REQUIREMENT UNDER REG 37 OF THE COMPANIES REGULATION 2012

✓ Abstract of aggregate amount of what he has received and what he has paid during the pendency of his appointment till removal
✓ Resolution removing or appointing director- signed by 2 directors or director and secretary
✓ Letter of consent in case of retirement or resignation
✓ Residence permit where applicable
✓ Resignation letter where applicable
✓ Death certificate where applicable
✓ 5-9 above are more related to cessation of office
✓ Updated annual return filing. 553 where applicable
✓ Banks and insurance company before the start of business, on the first Monday in February and first Tuesday in August every year during carrying on business filled updated return with CAC (553) as listed under the 14th schedule to CAMA
Documents to file
1. Authorised share capital

2. Number of issued shares call
3. Amount paid on called liabilities of the company on the first date of January (or July) were- debts, assets of the company
4. Government securities
5. Bill of exchange and promissory notes
6. Cash at the bankers

COMPENSATION FOR LOSS OF OFFICE

- ✓ Determine whether it is contractual or Non-contractual compensation for loss of office.
- ✓ Executive directors are compensated being on a service contract with the company
- ✓ Non-executive directors are not entitled save where compensation is approved by members of the company in general meeting after proper disclosure. 262(6)
- ✓ Where the company is sued for breach of contract. SOUTH FOUNDERIES LTD V SHIRLAW

DIVISION OF POWER

- ✓ Two organs- Board of Directors and the Members in the general meeting
- ✓ Section 63(1) some powers may be exercised by the directors exclusively
- ✓ Other may be exclusively reserved for the shareholders in general meeting
- ✓ No one can usurp the power of the other
- ✓ The decision of the directors not to sue can be overridden by the members in general meeting – 63(5)(b) CAMA.
- ✓ But their decision to sue cannot be overridden

GENERAL AND SPECIFIC POWERS

- ✓ General power of management conferred on the director
- ✓ Specific e.g 64, the directors are empowered to appoint on their number to be MD
- ✓ Power to recommend dividends-directors
- ✓ Powers of directors are exercised by ordinary resolution and written resolutions

POWERS RESERVED TO MEMBER

- ✓ Expressed by resolution(ordinary and special) in the GM

EXAMPLE

- ✓ Re-registration
- ✓ Change of name
- ✓ Alteration of name
- ✓ Reduction of share capital
- ✓ Change of registered address

AG LAGOS STATE v EKO HOTELS

REMUNERATION OF DIRECTORS

GENERALLY, No automatic right save executive director

- ✓ Other provision in the company's Article.
- ✓ Once fixed, it becomes a debt due to him
- ✓ Where article fixes remuneration, it can only be altered by special resolution ,267
- ✓ Directors does not have power to fix their remuneration.
- ✓ Those not entitled to remuneration are entitled to be paid traveling, hotel and other expenses properly incurred by them in attending and return from company meetings
- ✓ Remuneration is gross subject to income tax

- ✓ Not lawful to pay remuneration not subject to tax

SERVICE CONTRACT

- ✓ Contract of employment of more than five years or
- ✓ That can only be terminated in certain circumstances
- ✓ Is not allowed unless it is approved by a resolution of the member- 291

DUTIES OF DIRECTORS 279(1)

Two basic duties:

- ✓ Fiduciary duty and Duty of care. TRENCO (NIG) LTD V AFRICAN REAL ESTATE AND INVS & ANOR.
- ✓ He must observe good faith towards the company. INDUSTRIAL DEVELOPMENT CONSULTANT LTD V COOLEY
- ✓ No provision in the article can absolve the director from the duty. REGAL (HASTINGS)
- ✓ Act bona fide in what he believes is in the best interest of the company
- ✓ Powers should be for the purpose specified not personal gains
- ✓ Delegation of power should not be for abduction of duty
- ✓ Not take bribe, commission or gift in any transaction involving the company. NB when after transaction is concluded, it is not a bribe provided he discloses it to the GM, 277&280

WEEK 11

MEETINGS

IMPORTANCE OF MEETINGS

✓ Day to day management of the company's matters which cannot be resolved at the BOD meetings are referred to the General Meetings
✓ As a rule, the minority must accept a majority decision but there are exceptions.

TYPES OF GENERAL MEETINGS

✓ Statutory meeting (reserved for only PLC and is held once in a life time of the company within six months of date of incorporation. S. 211
✓ Annual General meetings AGM
✓ Court Ordered Meetings: used in restructuring
✓ Extra ordinary General Meeting EGM (held from time to time as the need arises)

VENUE OF MEETING S. 216

✓ All statutory and AGM shall be held in Nigeria
✓ EGM can hold outside Nigeria

Separate Meetings of a Class of Members (Also an EGM) CLASS MEETINGS

✓ When a separate meetings of a class of members are held. The same procedural rules of GM apply but there is a different rule of quorum s. 243

REQUISITION MEETING BY Members/AUDITORS (Also EGM)

✓ Meetings could be convened on a requisition of members. Similarly, an auditor who gives reasons for his resignation in his written notice may also requisition a meeting to receive and consider his explanation. 366
✓ Also an auditor who resign and give reasons for resignation may requisition a meeting for explaining the reasons why resigned. 366

MEETINGS ORDERED BY CAC

The CAC have the right to call or direct the calling of an AGM as well as the meetings of Debenture Holders. S. 177

STATUTORY MEETINGS

✓ Held by a public company within six months of its incorporation. 211
✓ At least minimum of 21 days before the meeting, directors send out a statutory reports to the members
✓ Certified by at least 2 directors or a director and the company secretary

CONTENT OF A STATUTORY REPORT

✓ Matters on pre-incorporation and matters that have affected the company since incorporation
1. Total numbers of shares allotted
2. Fully and partly paid up share
3. Shares paid up for in cash and those in consideration other than cash
4. Partly paid up share
5. Cash received in respect of all the share

** all the above must be certified by the company's auditors as being true and the certified report must be registered with the CAC. 211 (6)

6. Particulars of the directors, auditors, a manager and company secretary

Please note that this is a personal note. Therefore, it is not meant to be sold or used as a substitute for textbooks or other NLS recommended materials thanks.
BUT NO MATTER WHAT, STAY CALM AND ENJOY YOURSELF (SEE YOU AT ICC)!

7. Particulars of any pre-incorporation contract and the modification thereto if any
8. Any underwriting contract
9. The arrears due on call from every director
10. Commission and brokage fee paid
11. All monies received and paid from incorporation up to at least seven days of the date of the report
12. Full particulars of each items.

PROCEEDINGS OF STATUTORY MEETINGS

The directors are expected to prepare a list of the particulars of members and the share held by them, to be produced at the commencement of the meetings and to remain open and accessible to any members of the company during the continuance of the statutory meeting.

The statutory meeting is the forum where the members discuss any matters relating to the formation and commencement of business or matters arising out of the statutory report: 211(8)

If a member wishes to propose a resolution at the statutory meeting arising out of any matter out of the statutory report, he must give a further 21 day notice to the company, from the date on which the report of the statutory meeting is served…..

Failure to hold a statutory meeting is an offence, the company, and all officer of the company are all liable to a fine of 50 per day during the default. S. 211(2

Failure to hold a statutory or to submit portions of statutory report to CAC is a ground for winding up by the court under section 408. Under 411(3) the court instead of making a winding up order may direct compliance and order the costs to be paid by the persons responsible. See GUARDIAN EXPRESS BANK V ODUKWU {2009} 14 NWLR PT 1160 See 211 (1)

ANNUAL GENERAL MEETING AGM 213

- ✓ compulsory in addition to all other GM in that year
- ✓ Not more than 15 months must elapse between one AGM to Another.
- ✓ On the first AGM, once the company hold it within 18 months of the year of incorporation.
- ✓ It need not hold it in the year of incorporation or the following year. E.g. a company incorporated in Dec 1 2014, need not hold an AGM in 2014 or 2015 but must hold the meeting latest by 1 june 2016.

TYPES OF MEETING TRANSACTED AT THE AGM

- ✓ Ordinary and special
- ✓ Ordinary business not necessary to details just list them
- ❖ Declaring a dividend
- ❖ Consideration of financial statement and the report of the directors and auditors
- ❖ Election of directors in place of those retiring
- ❖ Appointment and fixing of the remuneration of auditors
- ❖ Appointment of the members of the audit committee for public companies. 359 and 214
- ✓ Except for the first AGM, CAC have power to extend the time by which an AGM can hold by 3 months. 213(1)(a) (usually on application of the member)
- ✓ A member can apply to the CAC urging the CAC to call or direct the calling of a meeting. (not necessarily termed AGM)
- ✓ If a member's application is timely, e.g 1991 AGM, and he applies to the CAC any time that year, then the meeting is deemed to be the AGM of that year.
- ✓ However, if the application is made at a later period like 1992, then section 213(3) provided that the meeting is not to be treated as the company's AGM of 1991, unless at that meeting the company resolves that it shall be so treated.
- ✓ Where a company resolves that a meeting shall be treated as its 1991 AGM, they file a copy of the resolution within 15 days of such resolution to treat a meeting held in another years. 213(4)

NOTICE OF AN AGM

ABC LIMITED

NOTICE IS HEREBY GIVEN that the seventh AGM of members of ABC Limited will be held at ……venue on…… date……..at…….time

To transact the following businesses

Ordinary Business

- ✓ List out the ordinary business
- ✓ Present directors' report and auditors reports
- ✓ To receive the report of the Audit Committee (not applicable to LTD)
- ✓ To declare a final dividend
- ✓ Election of directors in place of those retiring.
- ✓ To approve the appointment of……as new auditors
- ✓ To authorize the directors to fix remuneration of Auditors
- ✓ To appoint members of the audit committee

Special Business

- ✓ To approve the remuneration of directors
- ✓ To increase the share capital of the company

That the ASC of the Company be and is hereby increased from…..to …..by the creation of….additional…..shares to rank parri passu with,…..the existing shareholding of the company

Proxy:

By Order of the BOD

Board company Secretary

Dated this……..day of 2016

The meeting to be so termed must hold in the year of the application

EGM

- ✓ Any meeting that is not an AGM is an EGM
- ✓ Convened by the directors. Or
- ✓ Requisitioned by members. S. 215

SAMPLE NOTICE OF EGM

For the purpose of considering and if thought fit, of passing a special resolution…..

If a special resolution is proposed in the Notice of the EGM, it must be attached

NB: the requirement of proxy form must be deposited to the company Registered Address 48 hrs before the meeting, not alterable by the article.

Include the SR in the notice of the meeting.

CONVENING GM

- ✓ BOD

- ✓ Shareholders having power to requisition or by the Auditors
- ✓ By the CAC and
- ✓ FHC. 366

NOTICE OF MEETINGS

It is 21 days written notice for all type of GM

By 220, if the company decide to post the notice, 7 days must be added to the 21 days' notice and if it is properly addressed and stamped then the addressee is deemed to receive it after the 7 days had elapse

Regulations 24 of CCGPC reaffirms the additional 7 days

(Applicable to AGM)The notices should be copies of documents, including Annual reports and audited financial statements and other information that will enable the members prepare adequately for the meeting.

JOINT HOLDERS

220 recognises that a notice may be given by the company to the joint holders of shares by giving the notice to the joint holder first named person in the register of members in respect of the share.

MEETINGS CALLED BY SHORTER NOTICE

Valid, provided that,

If it is an AGM, all members must agree to such shorter notice

Any other meeting, by 95% majority of shareholder or 95% voting right in Ltd GTE. 217(2)

FORMAT

We the undersigned, all the members for the time being of AC LTD, and in attendance at the AGM of that company held on.

PERSONS ENTITLED TO RECEIVE NOTICE

- ✓ Every member
- ✓ Shareholders PR, Directors, Receiver or a trustee in Bankruptcy of a member
- ✓ Auditors
- ✓ All directors
- ✓ Secretary 219(1)
- ✓ Not other person is so entitled to receive notice 219(2)

CONTENT OF NOTICE

- ✓ Date, place, time
- ✓ PLS I BEG YOU SUPPLY THE REST , PLEASE 218

EFFECT OF FAILURE TO GIVE NOTICE

Failure invalidates the meeting and all the resolutions passed unless the failure is accidental omission on the part of the person giving the notice. 221(1). YOUNG LADIES IMPERIAL CLUB

NATIONAL PALM PRODUCE ASSOCIATION OF NIGERIA LTD(GTE) V UDOM [2014] 8NWLR PT 1410 479

MUSSLE WHITE V CH MUSSEL WHITE & SON LTD: where couples transfer their shares but their name have nt been removed from the register of members ares till entitled to notice

RE: WEST CANANDIAN COLLERIES [1952] CH 370

An accidental omission: is a question of fact depending on the circumstances of each case.

EVERY PUBLIC companies shall, at least 21 days before the meeting advertise the meeting in 2 national dailies. 222

QUORUM

Minimum number required to proceed to the business of the meeting. The article of the company fixes it. It is always at the minimum of 2. Where no provision in the Article, CAMA provide 1/3 of the total number of members or 25 members whichever is less, present in person or by proxy. 232. If the members are not upto the multiple of 3, then the number nearest to 1/3. Where the number of the member is 6 or less, the quorum is 2. For the purpose of determining, quorum, all members or their proxies must be counted. 232(3).

DURATION OF THE QUORUM'

Look at the Article (the provision of the article in this instance override the provision of CAMA). Otherwise quorum must exist at the start and throughout the meeting. 231-(1). Where there is Quorum of the meeting but no quorum as the meeting progresses then, the chairman will decide whether the meeting will be adjourned or continue.

The chairman considers the reason for disruption of quorum. If for sufficient reason, then he can adjourn for one week. 232(5) to the same place or another place, same time. If no quorum at the adjourned meeting, the members present shall then be the quorum and their decision shall bind all the shareholders and where only one member is present, he may seek direction of the court to take a decision. 232(4).

If insufficient reason, the chairman may direct that the meeting may continue with the numbers present, and their decision shall bind all the shareholders and where there is only one member, he may seek direction of the court to take a decision. 232(4)

COURT ORDERED MEETINGS

- ✓ Where all the directors and shareholder are dying: 248(2)
- ✓ Scheme of merger etc one company can apply to the FHC to order separate meetings of the Companies. 121 ISA 2007
- ✓ A member can apply to court to order the calling of a meeting of the company if for any reason it is impracticable to call or conduct a meeting in the manner prescribed by its article. IRO V PARK, CAMA or in the manner in which meeting of the coy may be called he may ask for an order to take a decision which shall bind all the members. OKEOWO V MIGLIORE. ITALCOMM (WESTERN NIG) V SCAVUZZO
- ✓ If a coy does not hold the mandatory AGM, a member can apply to CAC to direct that he should apply tic our t – 213
- ✓ On quorum 25 232(5)

CORPORATE REPRESENTATION

Member authorised by the company shareholder by the company shareholder will attend meeting on its behalf. 231 or by a board resolution appointing the person.

PROXY

- ✓ In every cases in which a member is entitled to attend and vote at a company's meeting, he has the right to appoint a proxy to attend and vote in his stead. 230
- ✓ No right to proxy in LTD GTE unless the Article so provide
- ✓ Proxy: a person who come in your place or instrument by which the person is appointed… proxy form
- ✓ In every notice, there must be a statement recognising the right to appoint proxy. Failure to include is an offence
- ✓ A proxy form should be lodged at the company's office at list 48 hours before the meeting. Any earlier so prescribed is void

REVOCATION

✓ Unless the shareholder informs the company ahead of the meeting that he has revoked the proxy's appointment, the proxy's vote is valid.
✓ The article specify the time for the notice
✓ A proxy have right as the substantive shareholder in the meeting
✓ Same goes for the personal representative of the shareholder who dies after appointing a proxy
✓ Same goes to trustee in bankruptcy and
✓ A transferee of a shareholder who buys shares from a shareholder after appointing a proxy
✓ The instrument appointing a proxy shall be in writing under the hand of the appointor and is usually included in the notice of meeting

VOTING

✓ Voting is by show of hands
✓ By demanding a poll. 224(1)
✓ Who can demand a poll?
✓ The chairman, where he is a shareholder or a proxy of another share holder
✓ Minimum of 3 members present in person or by proxy
✓ Any member or his proxy holing not less than 1/10 of the total voting right or 1/10 of the paid up shares. 224(1)

POLL VOTING

✓ Article cannot deny a right to demand poll. Any such provision in the article is void. 225

EXCEPT RESOLUTION RELATES TO

✓ Election of a chairman of the meeting
✓ The adjournment of the meeting, 225(1)
✓ CAMA allows the company to decide election of a chairman or adjournment of a meeting on a show of hands

OR

✓ By poll
✓ So check the article.
✓ If the article allows poll voting on those two issues, then as soon as the issue is raised, it is taken forthwith (the company must go for it immediately) s. 226(4)
✓ The voting on the show of hands before demand of poll is disregarded.
✓ In other instances, the poll is to be taken in such manner as the chairman directs
✓ The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded 226
✓ Chairman casting vote equality of votes, on a show of hands or on a poll, chairman is entitled to a second or casting vote. 226
✓ A qualified proxy can demand a pole.
✓ No right to demand a poll on the election of the members of the Audit committee (plc) under 359. See 225(3)
✓ Not modifiable by article

RESULTS

1. The chairman declaration of the result of the vote on a show of hands is made conclusive
2. No one can re-count hands unless a poll is demanded
3. Entry in the minutes book, shall be conclusive evidence of the facts. 233(3)

ADJOURNMENT 239

✓ It is the chairman that can adjourn the meeting

✓ Apart from the disruption of quorum, it can be adjourn for any other reason with the consent or directive from the members. BYNG V LONDON LIFE ASSOCIATION

✓ The chairman may adjourn, with the consent of any meeting at which a quorum is present and shall if so directed by the meeting

✓ No new business at the adjourned meeting only unfinished businesses

✓ Time and place of the adjourned meeting will be determined at the original meeting. 239

✓ No need to give a formal notice of an adjourned meeting unless it is for a period of 30 days and more.

✓ At an adjourned meeting, if quorum is not formed within one hour from the time the meeting is due to start, what happens next depends on the type of meeting

❖ If it is requisitioned meeting, then it is the end of the matter, the meeting shall be dissolved

❖ In any other case, it shall stand adjourn for one week to the same day, time or how the chairman direct

❖ At the second adjournment, any two or more person persons present shall for a quorum and take decision binding all other member

❖ Note the situation of one person present

Date of resolution passed in an adjourned meeting 238

✓ Date of a resolution passed at adjourned meeting will be the date it was passed and not any earlier date.

RESOLUTION

✓ Ordinary- simple Majority (51%)

✓ Special Resolution (3/4 of the vote cast) 233- members present and voting

SPECIAL PRESENT

✓ Not necessarily members present

✓ Those who are present and voting

✓ If quorum is disrupted for no sufficient reason, ¾ of those present

✓ Written resolution-only to private companies (applies to BOD of both Ltd and Plc. Members of Plc. cannot pass a written resolution)

RESOLUTION VIA SPECIAL RESOLUTION BY CAMA

By law, special resolution only

✓ Change of name

✓ Alteration of article

✓ Change of object

✓ Reduction of share capital

✓ Voluntary winding up

✓ Winding up by court

✓ Re-registration

✓ Arrangement or reconstruction on the sale of the assets of a company. 538

✓ Rendering the liability of the directors unlimited 289

✓ Variation of class rights 141

RESOLUTION REQUIRING SPECIAL NOTICE

✓ To remove an auditor

✓ To appoint an auditor other the auditor who was appointed at the previous year's meeting 364- ordinary resolution

✓ To appoint or reappoint director aged more than 70 in plc. 256

✓ To remove a director or

- ✓ To appoint a substitute after removal of a director except if the nomination is by the BOD… all are by ordinary resolution
- ✓ To requisition an EGM by a member.

PROCEDURE FOR SPECIAL NOTICE

- ✓ Members give special notice of his intention to the company at least 28 days before the date of the meeting
- ✓ On receiving, the company Secretary must include the notice in the notice of meeting going out to the members
- ✓ Notice going to members usually refer to the matter in the notice convening the meeting that: …….

But if not practicable to include it in the notice of meeting, the company may give the special notice to the members in the newspapers or by any other means permitted by the article at least 21 before the bolding of the meetings

Removal of director 262 or to change ….- note if the directors call the meeting for a shorter period that will reduce the 28 days period required for giving special notice the meeting will not invalidate the meeting

WRITTEN RESOLUTION- LTD

- ✓ A Ltd may use written resolution
- ✓ Musts be signed by all the shareholders
- ✓ The date of the resolution is the day the last man signed

EXCEPTION

- ✓ Increase in share capital 102
- ✓ Removal of directors or auditors before the expiration of their period of office.

MINUTES OF MEETING

- ✓ Minutes must be kept and are open to inspection.
- ✓ Minutes when signed by the chairman are prima facie evidence of the proceedings of the meeting 241(1). See 550
- ✓ Also constitute conclusive evidence of the resolution passed 224(2)
- ✓ The fact that minute book contains inaccuracies or breached some procedure in its recording does not disqualify it as a minutes book. OGUNTAYO V ADEBUTU
- ✓ Offence not keep minutes 241(2)
- ✓ But meeting bot necessarily rendered void or illegal. 241 merely prescribes penalty. NSIRIM V ONUMA CONSTRUCTION COMPANY NIG e in a LTD

MINUTES BOOK 550

- ✓ To be kept in bound books
- ✓ In loose leaves
- ✓ They could also be in a photographic film form, stored in any retrievable media.
- ✓ Any information storage device like cds or storage that is capable of reproducing the required information in intelligible written form within a reasonable time.
- ✓ Where it is not kept in a bound book, but some other means, adequate precautions must be taken to prevent it from being altered.

INSPECTION

- ✓ Kept at the registered office of the company, and shall be open for inspection for at least 6 hours in a day without charge. 242 (1)
- ✓ If a member wants to take copies of the minutes, maximum charge of 10 kobo for every hundred words
- ✓ The minutes taken by the member must be certified by the Secretary
- ✓ The company is given 7 days to make the minute available after the request by the member. 242(2)

✓ It is an offence to refuse inspection and giving of the copies. See INTERNATIONAL AGRICULTURE INDUSTRIES V CHIKA BROTHER [1990] 1 NWLR 70

REGISTRATION OF SOME RESOLUTION

✓ Company to register resolutions with CAC within 15 days after resolutions is passed 237. They are:
❖ Special resolutions
❖ Unanimous resolutions on issues requiring special resolution to be effective
❖ Unanimous resolution on class members meeting
❖ Resolutions which bind all members of a class of shareholders though not all members agreed in favour of the resolution
❖ Special resolution to wind up the company voluntarily. 457

SPECIAL BUT DIFFERENT

✓ 458 voluntarily winding up- 14 days after the passing

REQUISITION OF MEMBERS RESOLUTION

✓ Giving notice of resolutions submitted to be moved by a members to other members in the next AGM.
✓ Also, statement of the affairs contained in the resolution of not less than 1000 words or its summary must be given to members.
✓ Members representing not less than 1/20 of the total voting right (for Ltd/Gte) and not less than 100 members holding shares which an average of N 500 has been paid up per members …… 235

MEMBERSHIP—section 79

Conditions to be a member

a.Must be a shareholder
b. Name must be included in the Register of members
✓ Entering into the REGISTER OF MEMBERS are made within 28 days upon allotment or transfer or where he ceases to be a members

MEMBERSHIP

✓ By subscribers in the Memo
✓ By allotment with application/agreement in writing to be a member
✓ By transfer
✓ By transmission

A member must have at least one share in the capital of the company.

ALLOTMENT: 124-125

Allotment of shares refers to the issuing of shares to existing shareholders or to third parties. Company have power to allot shares—usually delegated to the Directors.

TRANSFER: section 151 CAMA

A member can transfer his share either wholly or partly. Transfer shall by an instrument of transfer, subject to articles, any member,

PROCEDURE:

a.The transferor and transferee execute a deed of transfer
b. Stamp the deed or instrument of transfer

c.The transferor gives both the original share certificate and the deed of transfer to the transferee
d. The transferee will lodge both deed and certificate within the company and he will be registered as the owner of the shares
e.A new share certificate will be issued to the transferee within 3 months by the company and name entered in register of members
f. CAC to be notified

PROCEDURE OF TRANSFER OF PART SHARES

a.Execute a deed of transfer between the parties
b. The instrument must be signed by both parties. Section 151 (1) and (3) CAMA
c.Stamp the deed of transfer
d. The transferor takes the stamped deed and his original share certificate to the company
e.The company acknowledges it by endorsing at the back of the certificate " certificate lodged section 157 (1)&(2)
f. The company will issue a new share certificate to the transferor
g. Enter the names of the new member's certificates and register of members.

EFFECT OF CERTIFICATE LODGE

COMPANY'S RIGHT TO REFUSE REGISTRATION

a. If the shares are not fully paid up
b. The company has alien on the shares
c.Non—payment of requisites fees on instrument of transfer
d. Instrument of transfer is not accompanied with the share certificate
e.Instrument of transfer is in respect of different classes of shares.

EFFECT OF NON REGISTRATION OF TRANSFERRED SHARES

Section 151(3), 152 (2), 153 (1)

REMEDIES FOR A PERSON ENTITLED TO SHARES BUT NOT REGISTERED

A. Serve on the company a notice and affidavit of interest in the company's shares pursuant to 156
B. Apply under section 90
C. The transferee may bring an action against the transferor to account

Section 157 (2)(3)(4)

TRANSMISSION

Transmission of shares occurs upon the death of a shareholder, his shares vests in Arise in circumstances of joint holder or personal representatives

PROOF OF ENTITLEMENT

a.Grant of probate
b. Letter of administration
c.Court order of bankruptcy

A personal representative can validly transfer, share of a deceased member although he is not himself a member of the company.

A personal representative also has the option of also transferring

PROTECTION OF BENEFICIARIES: section 156

EFFECT OF FAILURE TO ELECT BY THE PERSON ENTITLED

Section 155(5)

RETURNS TO CAC: Regulation 33 Companies REGULATION

Within 14 days of receiving the notice of election or transfer, the company is to notify CAC

SHARE CERTIFICATE: section 146 and 147

RIGHTS OF MEMBERS/ SHAREHOLDER

- ✓ Right to proxy
- ✓ Right to attend GM and CM
- ✓ Right to vote
- ✓ Right to transfer subject to restriction in the Article
- ✓ Right to Dividends
- ✓ Power to void meeting for failure to give notice
- ✓ Right to notice of meeting
- ✓ Right to demand poll

LIABILITIES

Liable to the extent of unpaid share

CAPACITY/QUALIFICATION FOR MEMBERSHIP/SHAREHOLDER—section 80 CAMA

1. All persons save those not allowed by law
2. Adjudged unsound mind
3. Bankrupt
4. Persons under 18 years: shall be not be counted for determining minimum
5. Corporate body in liquidation

SHARES—114 CAMA

A share is listed as a company securities—315 ISA

Rights in share are claimed under CAMA, Article and Term of issue

SHARES ARE TRANSFERRABLE—115

Shares are personal properties transferrable

CLASS OF SHARES—119

Company have power to create classes of shares

Each classes of shares have power to hold their meeting

Each classes have right

Class of shares: authorized shares, issued shares, un-issued shares paid-up shares, and unpaid shares etc.

Section 99 CAMA- authorized share capital section 27 (2) (b)

PROHIBITION OF SOME CLASSES OF SHARES—116

Not allowed in the Article and it includes:

Weighted Shares: carries more than one vote per share

Non- voting shares: does not entitle te right to vote

PREFERENCE SHARES… section 143 CAMA

An hybrid of both equity and debt capitals

Have rights to cumulative dividends

Fixed income depends on the declaration of dividends

Preference shareholders are not entitled to any surplus

Preference shareholders carry more than vote

On an

ORDINARY SHAREHOLDERS

They bear all burdens and liabilities of the company

They are entitled to surplus

They are not entitled to profits if dividends are not declared

ALLOTMENT OF SHARES

Shares may be allotted at:

a.Par value: at the normal nominal value or face value, stamp duty is paid based on this value. This is the amount that appears on the share certificate and has no connection to the market value.
b. Premium: above nominal value or face value, CAMA Specifically provides that any excess is to be paid into the share premium account of the company. Section 120 CAMA, regulates the circumstances under the under section 120(3)
c.Discount: below nominal value, provided the following conditions are met:company resolution approving the issue stating the maximum rate of discount at which the shares are to be issued. The resolution is sanctitoned by the court., the shares to be issued aare issued within one month after the date on which it was sanctioned by the court or within such extended

RULES ON APPLICATION OF MONIES IN SHARE PREMIUM ACCOUNT—120

1. To pay up unissued shares of the company for the purpose of issuing it out as bonus to the members according to their respective shareholdings as fully paid up shares—
2. For the purpose of writing off the preliminary expenses of the company
3. To write off a discount or expenses incurred on issue of discount shares
4. To provide OR PAY THE premium PAYABLE for redeemable PREFERENCE share

UNDISTRIBUTABLE RESERVE

1. **Sh**are premium Account
2. Capital Redemption Account
3. Authorised share capital account.

ISSUANCE ON DISCOUNT

Reasons

1. Company is suffering

CONDITIONS

a.Ordinary resolution at the GM sanctioned by the FHC
b. Resolution specify the maximum of discount to be allowed on each share
c. Offer must be concluded within one month from the date the FHC sanction the resolution or extended period as the court may determine.

PAYMENT FOR SHARES—135 and 136

By cash

By consideration other than cash—137

ALLOTMENT

METHODS

For public

- ✓ Offer for sale
- ✓ Direct offer
- ✓ Placement

For private company

- ✓ By private placement

PROCEDURE

FOR PUBLIC—see 129 and 137 CAMA

For cash considerations

- ✓ By issuing prospectus
- ✓ Set up allotment committee
- ✓ Receive application for allotment
- ✓ Allotment committee seat and pass resolution of allotment
- ✓ If awarded wholly within 42 days send letters of allotment and if rejected letter of regret accompanied with a cheque for value of the money paid on the share.
- ✓ Prepare and send share certificate within 2 month of the allotment
- ✓ Register returns to CAC within 1 month—CAC 2/2A for return of allotment as the case may be.
- ✓ Update Register of Members

FOR CONSIDERATION OTHER THAN CASH

- ✓ Ensure issuance is permitted by Article
- ✓ Sent the consderation for valuation
- ✓ Notify the applicant of the value of his property
- ✓ Other conditions as above

TRANSFER s. 151

May be by:

1. Transfer all shares to one person
2. Transfer all shares to different persons as joint holders
3. Transfer all shares to different persons as different holders

4. Transfer part of the shares to single or different of persons.

RESTRICTION OF TRANSFER

- ✓ Ltd is mandatory to restrict transfer subject to approval by the Directors
- ✓ For Plc. not mandatory

REGISTRATION OF TRANSFER

- ✓ Until completed, the company deemed the transferor as the member of the company

EFFECT OF CERTIFICATE LODGED ON INSTRUMENT OF TRANSFER

1. Operate as a share certificate recognised by the company—company is liable
2. Where the original share certificate is the offshoot misrepresentation—against the person misrepresenting not the company… see 157(4) and 157(3)

TRANSMISSION—154 AND 155 CAMA

- ✓ Death (personal representatives)
- ✓ Mad (committee in lunatics)
- ✓ Bankrupt (trustee in bankruptcy)

For joint shareholders; the surviving holder need not take any step with regards to the share, it devolves on him by operation of the law.

DEVOLUTION

- ✓ Shares held as a joint holder, the death of one makes the share devolves on the other.
- ✓ Only right to the share devolves not the liabilities.
- ✓ The liabilities of the dead shareholder returns to its estate.

Note principle of Severance—it may be contained in the agreement between the joint owners. It becomes tenant in common.

PUBLIC OFFERS OF A SHARE TO THE PUBLIC

Offer for sale in a prospectus must be within a period of 28 days unless extended by SEC or order of court.

SHARE WARRANT—149

- ✓ It has been abolished under CAMA and no company is allowed to issue share warrant again.
- ✓ Used as a bearer document, liquid in nature and easily transferrable—liken to a bearer debenture

DIVIDEND WARRANT

- ✓ Like a cheque issued by the company for dividends declared stating the amount of dividends.

WEEK 12

AUDIT, FINANCIAL STATEMENTS AND ANNUAL RETURNS

FINANCIAL STATEMENTS

Every company shall cause accounting records to be kept.

Company's Bill of Health

Annual State of Affairs

Important to members of the company and third parties (like investors and creditors)

- ✓ Duty to prepare financial statements. 334(1) CAMA
- ❖ Director's duty
- ❖ Each financial year (note the provisions of FIRS)

COMPONENT OF FINANCIAL STATEMENT

- ✓ Must be in accordance with accounting standards. AND THE ACT
- ✓ Standards are set by the accounting Boards
- ✓ SHOWS that the company is in compliance with all the laws
- ✓ Balance sheet
- ✓ Profit and loss account
- ✓ Income and expenditure Account (to non profit making companies. eg NGO)
- ✓ S. 335(2) CAMA
- ✓ State and utilization of funds
- ✓ Disbursement…. Sub 4
- ✓ Five years financial summary
- ✓ Directors report
- ✓ Auditors Report

Public Company s. 334	Private Company
Statement of accounting policies	Balance sheet as at the last day of the year
Profit and Loss/ Income and expenditure account	Profit and Loss/ Income and expenditure account
Notes on the accounts	Notes on accounts
Statement of the source and application of the money	Auditors report
Directors report	Directors report
5 years financial summary	
Value added statement	
Group holding financial statement for a holding company.	
Balance sheet as at the last day of the year	

TYPES OF FINANCIAL STATEMENT

❖ Modified individual statement: an abridged financial statement. It is not as detailed as those required to be submitted by a company other than a small company

- ❖ No need for profit and loss account, Director's and Auditor's report.
- ❖ Must be signed by at least 2 directors.

DUTIES RELATING TO FINANCIAL REPORT

Directors' duties 342, 345, 357 --

i. Fix financial year
ii. Prepare and lay the financial statement
iii. Duty to appoint the first auditor and fill casual vacancy of auditor
iv. Give directors report.

Directors must not present false or defective financial statement. 348, 349

It must be laid once in a year. Lays copies of the financial statement that does not exceeds period of 9 months before the date of the meeting… 345 (1)

Time frame for delivery of Financial Report: 21 days after Annual General Meeting

It must be open to all members

Must be kept at the registered office

Must be preserved for six years after which it subsides

✓ The financial statement of a company must be sent to the following persons not less 21 days before the date of the meeting in which the financial statement
✓ Persons entitled to be given/ entitled to receive financial statement: members, debenture holders and other persons having interest.-- . 344 (1)
✓ Failure to lay financial statement:-- s. 344(5) CAMA, members responsible is guilty of an offence and liable to fine of N 250
✓ If copies of the financial statements are sent less than 21 days before the date of the meeting, it shall, notwithstanding that fact…… agreed by all members 344(4)
✓ Persons and members may demand for financial statement within 7 days of demand they must be given—s. 349

DUTIES OF AUDITORS

❖ Examine accounting records
❖ Prepare auditor's report and submitted to the audit committee in case of Plc.
❖ Keep proper accounting records
❖ Verify the accuracy of accounting policies presented to them.

AUDIT

It deals with the examination of the books of accounts of the company by experts with a view to ascertains books to ensure compliance with accounting standards

❖ Proof of financial status of a company
❖ Best indication of financial condition of a company. See LIVESTOCK FEEDS PLC V IGBINO FARM LTD

An auditor is a person that verifies and checks the compliance of accounting record s of the company with basic accounting standards and legal requirements. They conduct a private audit of the activities of a company and comment/reports thereon. R v Shacter.

APPOINTMENT:

First auditors are called statutory auditors. They are appointed by the board of directors. Director appoints the first auditors- 357(5) CAMA … at any time before the company starts business. Such auditors shall hold office until the conclusion of the next Annual General meeting Section 357(5). See 357 (1) CAMA, the hold office from AGM to AGM. Not same as internal auditors. External auditors are independent of the company.

REMOVAL:

The first auditors appointed by the directors may be removed by the coy at AGM. The company can replace the affected auditor with any other person who has been nominated for appointment by any member of the coy and notice of his nomination. Appointment is given by notice of nomination within 14 days before the AGM to be considered at a general meeting. See 357-(5)(a)CAMA.

Failure of the directors to appoint first auditors:

SAMPLE RESOLUTION OF THE BOARD APPOINTING AUDITORS

.THAT >>>>>>>>>>>>>……. Be appointed as an auditor of the company until the conclusion of the Firs Annual General Meeting at the fee of ……..

SAMPLE RESOLUTION OF THE GENERAL MEETING APPOINTING AUDITORS

THAT …… be appointed as an auditor of the company in place of ……..for the ensuing year at a fee of ……..

Appointment of subsequent auditors Section 357 (1),

Re-appointment can be done at AGM done without any resolution being passed unless section 357 (2)

- ✓ Not qualified
- ✓ A resolution has been passed at that appointing person other than him
- ✓ A resolution passed barring his reappointment
- ✓ He give notice of resignation.
- ✓ See 357 (3) CAMA: where at any AGM, no auditor is appointed….
- ✓ CAC must be notified of vacancy within a week of the vacancy- 357 (4)

SAMPLE RESOLUTION OF THE BOARD APPOINTING AN AUDITOR TO FILL CASUAL VACANCY

THAT MR ……of……. Be appointed an auditor of the company in place of MR…… (deceased or resigned) until the next general meeting of the company and that the remuneration for his services be the sum, ……

QUALIFICATION: ELIGIBILITY 358

- ✓ Members of Accountants bodies established under the Act of N/A- 358(1) CAMA

DISQUALIFICATION section 358 (1)

- ✓ An officer or servant of the company cannot be auditor
- ✓ Persons who is a partner to or servants in the employment of an officer of the company
- ✓ A body corporate.
- ✓ A firm is qualified for appointment as auditor of a company, if and only if all the partners are qualified as auditors. Section 358 (4)

Offence- knowingly serving as auditor by persons who are not eligible- 358

- ✓ Auditors must be independent- 358
- ✓ Attendance at meeting
- ✓ Have rights to attend general meetings
- ✓ Have right to receive notices and communication connected to the meetings—363(1) CAMA

Auditors can attend meeting after their removal: on financial year of removal or AGM for lapse of his tenure or meetings filing vacancy of removal

- ✓ Failure to attend even after removal—219, 221 and 363(1) and (2) CAMA

RESIGNATION OF AUDITORS SECTION 365

- ✓ Auditor deposit a notice of his resignation TO THE COMPANY'S registered office.
- ✓ Resignation takes effect from the date of deposit

a.Notice deposited to CAC within 14 days

b. Statement of Circumstances: clarify notice of resignation.

c.Company can challenge the statement: apply to FHC. Ground: using resignation to secure needless publicity on defamatory ground—365(4)-(5)

d. When resigning on circumstance of interest to members:-

e.Resigning Auditor can call for an EGM- 366(1) CAMA: a statement as to the reason for his resignation can be included in the notice or he can requisition an EGM to explain so to the members and creditors.

REMOVAL

Can be removed before the expiration of his term- 362(1) and 364(1)(d) CAMA

- ✓ Issue a special notice to the company for his removal stating the grounds
- ✓ At the AGM, pas an ordinary resolution removing him from office as auditor
- ✓ Notice of removal must be given to CAC within 14 days, 362(2) CAMA
- ✓ Removed Auditor may be entitled to compensation for damages resulting from his termination or other charges accruable to him- 362(3) CAMA
- ✓ Ordinary resolution upon special notice is required for removal
- ✓ Banks Auditors that resigns by provision of 2010 CBN CGB or removed is not entitle to compensation.

Sector specific regulatory bodies can make laws.

AUDITORS DUTIES AND LIABILITIES

- ✓ Duty of care and skill
- ✓ Duty to determine the accuracy of the director's report for the year.
- ✓ Duty to write an Audit report
- ✓ Duty to investigate and form opinions on the accounting records& returns of the company
- ✓ Duty to report any non-compliance with the provision of CAMA on preparation and preparation of accounts
- ✓ Duty to consider Directors' s report and confirm whether it is consistent with accounts
- ✓ Duty to report (plc) to members and audit committee on accounts he has examined
- ✓ Ascertain and state the true financial position of the company. LEEDS ESTATE CO V SHEPARD
- ✓ Act honestly with reasonable care and skill. Re Kingston Cotton Mill Co. (No. 2)

LIABILITIES- 368(1)

- ✓ Where negligence results in loss of damage of the company. Re: THOMAS GERALD because of the breach of the fiduciary duties.
- ✓ Directors may bring an action 368(2), where Directors fail, member may do so. Section 368(3)
- ✓ Where the directors fail to institute the action against the auditor,
- ✓ It is an offence for officer to make false statement to the Auditor- 369. the Auditor is not absolve of his liabilities
- ✓ False information supplied is not a defence for the Auditor. He is to raise an audit query to clarify any relevant information. Section 369 CAMA

AUDITOR' S REMUNERATION 361

- ✓ Appointed by directors- remuneration fixed by directors. 361(1)(a)
- ✓ Auditors appointed at GM- remuneration fixed by the general meetings

AUDITORS' REPORT: 359 (1)

AUDIT COMMITTEE

A committee (comprising of equal number of directors and shareholders not more than 6 persons) that examines the auditor's report and make

Every Public company must establish Audit Committee- 359(3) CAMA

- ✓ Audit committees should have formal, written terms of reference and properly constituted.
- ✓ Audit Committees should provide assurance to shareholders that auditors are in a position to, and are indeed safeguarding their interest
- ✓ Members of the audit committee may be re-elected annually, but they are not paid remuneration, only sitting allowance. 359(4) CAMA

COMPOSITION AND MEMBERS OF THE AUDIT COMMITTEE

—359(4) –(5) CAMA

- ✓ Independent person able to understand financial statement and make valuable consideration
- ✓ Equal number of directors and representative of shareholders Not more than 6 member
- ✓ Nomination shall be made by a member to the company secretary … 359(5)
- ✓ Member may be reappointed 359(5)
- ✓ Chairman- a non-executive directors

QUALIFICATION

- ✓ Must have sufficient knowledge of financial system
- ✓ Should possess integrity
- ✓ Willingness to accept accountability
- ✓ objectivity
- ✓ They should not be a barrier between member and BOD
- ✓ They should not be under influence of any dominant person
- ✓ Make examination of the Audit report and make recommendation to the company at the AGM

FUNCTIONS:

Examine the auditor's report and make recommendation thereon section 359 (4)

Ascertain that the accounting and reporting policies of the company are in accordance with the legal requirements and agreed legal and ethical practices

- ✓ Review findings on management matters
- ✓ Review scope and finding of auditors investigation
- ✓ Article 30.4 of CCGFPC
- ✓ Establish internal audit control and ensure that there are sufficient means of regularly reviewing the internal control of the company
- ✓ Ensure the development of comprehensive internal control framework
- ✓ Give additional oversight to ensure the integrity of the company's financial statement and legal compliance

ANNUAL RETURNS

It is to be filed every year

Section 370 CAMA

✓ Every company is statutorily obliged to submit annual returns to the CAC. 370 CAMA. Annual returns must be in the prescribed form

✓ Annual returns must be signed by a director and the secretary of the company

✓ Annual return must be filed within 42 days after the AGM. For business names it's to cover Jan-Dec of each year except the year of registration. Incorporated Trustees are to be filled June 30th/Dec 31st

CAC FORMS FOR FILING ANNUAL RETURNS

- FORM CAC 10
- FORM CAC 10A
- FORM CAC B
- FORM CAC 10C
- FORM CAC/IT4
- FORM CAC BN 7

RETURNS TO CAC

- ✓ Annual Returns- within 42 days after AGM-370 CAMA
- ✓ Return of Allotment of shares- 1 month- 129
- ✓ Registration of charges
- ✓ Change of Directors/Secretary
- ✓ Special resolutions
- ✓ Return of Auditors
- ✓ Notice of Increase in SC
- ✓ Returns of receivership
- ✓ Notice of appointment of a liquidator

SIGNED BY THE DIRECTOR AND SECRETARY SECTION 374

CERTIFICATES TO BE ANNEXED TO THE ANNUAL RETURNS OF A PRIVATE COMPANY …. 376 (1) CAMA

1. A certificate by a director and the secretary that the company has not issued any invitation to the public to subscribe for any share or debenture of the company

CERTIFICATE TO BE ANNEXED TO ANNUAL RETURNS FOR SMALL COMPANIES 376 (2)

A small company shall deliver to CAC a certificate signed by a director and the secretary that:

a. It is a private co ltd by shares
b. The amount of its turnover for that year is not more than N@million or such amounts fixed by CAC
2.

CONTENT

- ✓ Forms: see 372(small company), 371, 373-ltd Gte
- ✓ Content
- ✓ Address of registered office
- ✓ Particulars of directors and secretaries
- ✓ Documents
- ✓ Written copies of balance sheet and profit and loss and account certified by the Director of the company
- ✓ Copies of Auditors and directors report. Certified
- ✓ Certificate of LTD that the company did not in the year of review offers its share to the public

In practice, inactive companies accompany annual returns with a statement of affair in lieu of financial statement.

- ✓ Filing- reg 40
- ✓ Payment of fees
- ✓ Audited financial report signed y two directors and certified by a chartered accountant
- ✓ Completed form of annual return
- ✓ Failure to file: It is an offence, it attracts fines from the company and each of the Director. Plc=1000 and ltd= 100. In practice CAC take 1000 for both. 378

Enforcement- 565

Striking off a defunct company- 525

AMENDMENT OF ANNUAL RETURNS

An already filed annual returns cannot be be withdrawn and amended. Rather, an amended annual returns (stating that a correction has been made) will be filled after the error has been detected. See section 375 (2) CAMA

CONSEQUENCES OF FAILURE TO FILE ANNUAL RETURNS… 378 CAMA

1. Penal sanctions: a penalty of N1000 for public company

Under schedule three of Companies Regulation the penalties are as follows:

2. Small companies are to pay #3000 per year of default
3. Private companies other than small companies #5000 per year
4. Public companies # 10 000 per year
5. Companies ltd by gte 5ooo per year.

ADDITIONAL RETURN

- ✓ Banks, deposit and benefit societies, insurance companies—updated 553 of CAMA and Regulation 50

WEEK 15

COMPANY SECURITIES

WAYS OF RAISING CAPITAL

- ✓ Equity finance/equity capital—SHARES
- ✓ Debt finance/ loan capital—DEBENTURES

SHARES AND DEBENTURES

EQUITY FINANCE	DEBT FINANCE
Capitals are raised through shares	Capitals are raised through debt/debenture (usually for big companies) (Ltd and Plc)
Rights of shareholder	Rights of lenders
Cheaper when gotten from ordinary shareholders	Cheaper
Flexible	Rigid
Dividends	Interest rate
Offers and term of issue of shares	Debenture is a contact itself
Saves the company from the use of the company' s assets for collateral	Fixed reward

LARGE COMPANIES raise capital through issuance of shares and debentures.

LARGE SCALE DEBT FINANCING FOR COMPANIES.

WAYS:

1. From banks
2. From securities

SECURITIES—315 ISA: debenture, stocks or bonds issued or proposed to be issued by a government and body corporate.

- ✓ Any right or options in respect of any such debentures, stocks, shares, bonds or note
- ✓ Debt security is issued by a company and it is largely of contact between lender and company.
- ✓ Securities have a maturity date
- ✓ Can be made irredeemable
- ✓ Maturity date is upon termed agreed by parties
- ✓ The commonly used debt finance device used in Nigeria is debenture
- ✓ Usually repaid in instalment
- ✓ There is fixed interest which could be rolled on payable and a latter

SHAREHOLDER is a member of a company while the DEBENTURE HOLDER is no more than a creditor of a company having rights

- ✓ Rights of shareholder and debenture in reality may not be strictly admit of much difference

POWERS TO RAISE DEBENTURE

- ✓ It depends on the power conferred on the company in its object clause
- ✓ Establish if the company can have the power to borrow money
- ✓ Company can borrow money by issuing debenture secured on a charge over the company's asset.
- ✓ Express power to borrow in under section 166 of CAMA

DEBENTURE: a written acknowledgment of indebtedness by the company, setting out the terms and conditions of the indebtedness and includes debenture stock, bonds and any other securities of a company whether constituting a charge on the asset of the company—567 (1) CAMA

- ✓ It need not be sealed but usually done in practice
- ✓ It need not be by creating charge on the company's asset but is advisable in practice.--- UNION BANK LTD V TROPIC FOOD LTD (1992) 3 NWLR PT 328 AT 231
- ✓ The power to borrow money, scope and limitations may be regulated by the AOA
- ✓ On exceeding borrowing power—see section 39 CAMA and the rule in ROYAL BRITISH BANK V TURQUAND

DOCUMENT OF TITLE TO DEBENTURE OR DEBENTURE STOCK: after allotment or transfer deliver certificate of debenture stock under the common seal of the company to the registered debenture holder. Section 168 CAMA, S. 169, 170.

TYPES OF DEBENTURES

a.**Perpetual debenture**- 171: these are made redeemable only on the happening of a contingency however remote or on the expiration of a period however long or upon fulfilment of a certain conditions. If the borrower company is ready to redeem it would not be accepted.

b. Convertible debentures- 172

c.**Secured or naked debenture- 173**: which means that a charge has been placed on the company's property as security for the loan …

Floating is equitable over the future assets of the company.

CRYSTALLIZATION OF A FLOATING CHARGE:

The security becomes enforceable

The court appoints a receiver or manger

The company upon liquidation

d. **Redeemable debenture**- 174: a company limited by shares may issue debentures which are or at the option f the company are liable to be redeemed. It repayable at a fixed term as per terms of issues.

e.**Syndicated Loan/Series of Debenture *parri pasu:*** this involves a consortium, f lenders having one asset charged and created in a series but with a pari pasu clause (the later series created shall equally with the earlies)

Conditions: the separate legal personalities of the individual lenders are subsumed under and held by the trustee of the debenture holders appointed under the trust deed

The company within 90 days after executing the deed

f. **Bearer debenture**: opposite of registered, it is repayable to the holder of the instrument, It is transferrable by mere delivery until due time for redemption

g. **Registered debentures:** this is repayable only by the holder of the instrument and operates only between the original debenture holder and the borrower company.

FIXED DEBENTURE	FLOATING DEBENTURE
Charge identifiable asset of the company	Charge a class of the company's asset
Traditionally on the immovable asset of the company, such as land, Assets rooted into the land	Could be money or other intangible assets
See 178 CAMA:	See 178 CAMA: equitable charge over the whole or specified part of the company's undertakings and assets including cash and uncalled capital of the company both present and future and such charge shall not preclude the company from dealing with the property(there may be

	partial restriction)
Legal	Equitable
Exception:	It becomes fixed asset if: The security becomes enforceable The debenture holder appoints receiver or manager
A fixed charge is given priority over a floating charge—179	

EXECUTION OF DEBENTURE TRUST DEED—183 CAMA

Where land is involved in series of debenture created, it should be by deed

REGISTRATION OF CHARGES

Section 198

EXTENSION OF TIME TO REGISTER:

REMEDIES OF DEBENTURE HOLDERS—209 CAMA

1. Action for recovery for principal and interest
2. Petition for winding up
3. Debenture holders Action
4. Power of sale
5. Foreclosure
6. Appointment of receiver/ receiver and manager

PROCEDURE FOR CREATING A CHARGE/DEBENTURE

1. Convene Board meeting passing resolution authorizing the loan
2. Authorisation of loan document at the General Meeting if necessary
3. Issue a prospectus
4. Preparation and execution of loan documents: note appointment of a trustee if it is a syndicate loan
5. A deed of mortgage involving landed property
6. Create a POA if necessary
7. Where there are series of debenture, Debenture Trust deed—183
8. Governor's consent if it involves landed property
9. Register at land Registry if landed property is involved.

- Register at the CAC the stamped and sealed deed of Mortgage, Particular of charges CAC 8
- If there is a court order extending time within which to register at the CAC, CTC of the Order.
- Photocopy of previously registered deed (applicable in up-stamping)
- Evidence of application of governor's consent where relevant
- Evidence of payment of fees

REG 34 OF COMPANIES REGULATION

1. File:

a.Duly stamped and sealed deed with counterpart copy

b. Duly completed form for notice of charge –

c.Court order where applicable

EFFECT OF NON-REGISTRATION OF CHARGE SECURING A DEBENTURE-- 197(1) CAMA

1. The charge/debenture will be void as against the liquidator and other creditor who will be other debenture holders of the company – on the part of the debenture holders
2. The charge will lose priority over other debenture holders right in the company

3. Effect to the borrower company, the charge become becomes unsecured and immediately repayable and any agreed date for the payment of the loan is terminated
4. The interest of the mortgagee is then equitable and it loses priority over the debentures that are registered.

Capital finance co ltd v stokes

CERTIFICATE OF REGISTRATION OF CHARGE—198 CAMA

1. CAC issue certificate of charge upon registration and shall be properly endorsed in accordance with section 203

SATISFACTION OF CHARGE –reg 35(2) CR 2012

1. Memorandum of satisfaction of charge is filed at CAC- CAC 9
2. Duly stamped deed of release
3. Evidence of payment of fees
4. Must be filed within 14 days after the release or satisfaction

206 CAMA

REG 36 CR

APPOINTMENT OF RECEIVER/MANAGER

In appointment by court:

1. CTC of the order- to CAC- within 7 days of the order

REGISTER TO BE KEPT

1. Record of Instrument- 190
2. Register of debenture Holders—193

a. Names and addresses of the debenture holder
b. Principal sum of the debenture held by each of them
c. The highest amount of any premium payable on debenture
d. Issued priced and amount paid up
e. Date of entrance as a debenture holder and date in which each person cease to be a debenture holder
f. Entries shall be made within 30 days on the conclusion of the agreement

3. Register of Charges 191
4. Accounting Records—s. 331 CAMA
5. Register of Directors and Secretaries
6. Register of substantial interest in shares
7. Register of Directors shareholding
8. Minutes Book

REMEDIES OF DEBENTURE HOLDERS IN EVENT OF DEFAULT CONSTRUCTIVE NOTICE UNDER S. 193

COLLECTIVE INVESTMENT SCHEME

Defined under 153 and 315 of the ISA

See NONSPECTO OIL AND GAS LTD V OLORUNNIBE (2012): the definition under 153 ISA is wide and all embracing

Scheme where members of the company are invited or permitted to invest money or other asset in the portfolio

They only have participatory interest not same as shareholders

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It is a form of arrangement where people pool together their resources for the investment for profit or income whether in securities or not or through the effort of a third party portfolio manager.

The participant have no control whatsoever over the management of the arrangement in which they are involved

TYPES OF SCHEMES UNDER THE ISA--154

1. OPEN ENDED INVESTMENT SCHEME: A company whose article authorise the acquisition of its own share
2. REAL ESTATE INVESTMENT SCHEME—193 ISA: a body corporate for the purpose of acquiring intermediate or long term interest in real estate or property development which may raise capital market through the issuance of securities
3. UNIT TRUST SCHEME: ----

REGULATION AND ADMINISTRATION—160—RULE 450 SEC RULE

KEY PLAYERS IN THE CIS

1. Manager- 155 ISA: powers of management of properties for the time being subject to the scheme.

a.He must act honestly and fairly
b. Skill, care and diligence
c.In the interest of investors and the securities industry
d. Must be a corporate company

DUTIES OF THE MANAGER- 157 ISA

2. Holder/ Unit holder- 152 ISA

a.Beneficiaries that have acquire the unit of CIS and entitle to share or dividends of the unit

3. Issuer: the investment company running the CIS.
4. Trustee: persons registered by the SEC to so act ……
5. Custodian: person who has a custody as a bailee of securities or certificate issued in the investors name.--, 152, 153 and 315

APPOINTMENT OF TRUSTEE – 178 ISA

QUALIFICATION AND REGISTRATION OF TRUSTEE OF A CUSTODIAN—179 ISA

DUTIES OF TRUSTEES AND CUSTODIANS—181 ISA

181(2) AND (3)—additional duties

LIABILITIES OF TRUSTEE AN D CUSTODIANS—183 AND 168 ISA

Manager, trustees and custodians must register and obtain COI under CAMA-- see 160 generally ISA. See also 170 and 171 ISA

METHODS OF PUBLIC OFFER AND SALE OF SECURITY

1. Direct offer—public offer: company offer its shares or debenture to the public through an issuing house. Inform by means of prospectus which could be manual or electronic. Risk of failure is borne by the company—it protect itself by arrange for the issue to be underwritten by an issuing house at an agreed commission usually 10%.

2. Offer for sale: where the company sell its shares or debenture to an issuing house and the issue house invite the public to but at a higher rate. The issuing house borne the risk and it is usually underwritten as in case of direct offer. It must be done with the issuance of a prospectus

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3. Placement: invitation is not made to the public whether directly or indirectly, the company sell to an issuing house and the issuing house does not offer to the public at large but to high profile investor who will buy and operate it privately. The issuing house takes a brokage fees. Normally securities of blue-chip companies are sold this way.

ROLES OF SOLICITORS IN PUBLIC OFFER AND SECURITIES—CAPITAL MARKET LAWYER

1. Ensure the company is a plc. If it is a private company, it complies with the procedure of reconversion
2. Ensure the shares issued is within the Nominal share capital of the company
3. Ensure necessary returns are made to the CAC in case of any post incorporation matters
4. Ensure that shares issued are registered with SEC
5. Advice on whether the issue is such that will requires full prospectus, abridged or fall within exceptions not requiring prospectus
6. Ensure necessary information is disclosed in the prospectus
7. Inquire and make necessary advice on the implication of any ongoing litigation which…
8. Drafting and registration of prospectus
9. Ensure the signature of directors and necessary detailed are complied with
10. Ensure all parties to the issue hold current and subsisting registration with the SEC
11. Advice and investigate opening of subscription list on allotment etc…
12. Ensure that issue conforms to all necessary laws and regulations
13. Ensure the lsiting requirement of the NSE and SEC are complied
14. Attend all necessary meetings
15. Act honestly and diligently

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WEEK 13

MAJORITY RULE AND MINORITY PROTECTION

The general rule is that any irregularity committed in course of running or managing a company can only be regularised or ratified by the company itself . Where any wrong. It centres on the rule in FOSS V HARBOTTLE, that if a wrong is done to a company, only the company can sue and not some other person…section 299 CAMA

The reasons:

✓ The company has a distinct legal personality form its members and can the individual shareholders cannot enforce the right of the company being a legal entity. Since By virtue of section 37, 63, 233 of CAMA
✓ The concept of corporate democracy. Sections 224, 225, 233

TYPES OF ACTIONS THAT MAY BE BROUGHT BY WAY OF EXCEPTIONS TO THE GENERAL RULE:

a.Member's direct action (personal or representative actions)
b. Derivative actions as opposed to members direct actions
c.Actions for relief on grounds of illegal, unfairly prejudicial and oppressive conduct: omnibus ground:
d. Investigation by the CAC: can be triggered by the minority of the members, members holding ¼ of the issued share capital.
e.When the directors have benefited from their wrongs.
f. Winding up on just and equitable grounds:

INSTANCES PERMITTING THE CIRCUMVENTION OF THE GENERAL RULE: EXCEPTIONS—section 300 CAMA

1. Entering into illegal or ultra vires acts (members direct)
2. Doing by ordinary resolution, an act which should be done by special resolution (members' direct)
3. Acts affecting applicant's individual rights (members' direct)
4. Committing fraud on the company or minority shareholders and directors fail to take steps to address the wrong, (members' direct or derivative)
5. Company meeting cannot be called in time to remedy the wrong done to company or minority shareholders (members' direct)
6. Directors deriving benefit or profit form their negligence or breach of duty (derivative)

Note that any action brought for any of these issues under section 300, the only reliefs or remedies the applicant can get form the court are DECLARATIONS AND INJUNCTIONS. No damages.

Where a member's direct action is commenced on any matter under section 300 to give securities for costs if it thinks fit section 301

a.Could be a personal action or a representative action section 301 (1)& (2)

The exception are not exhaustive, they are spread throughout CAMA

✓ See also section 299:
✓ Try and find the exceptions that matches the scenario. If exceptions cannot be clearly found, the protection on oppression is apt though with some limitations.—see 311, 312, 313, 315—omnibus protection—the company is being run in an unfairly prejudicial and oppressive manner.

NOTE

✓ If an actionable wrong has been done to a company whether arising from a statute, contract, tort or the fiduciary position of the party in breach, the company is the proper person to seek a remedy for the breach. Codified under section 299 CAMA

The questions are:

1. Who is the proper plaintiff?
2. Are there any sufficient reason for the court to interfere with the way the company is being run?

FOSS V HARBOTTLE

FACT: Facts Two shareholders brought this action against the company's directors and promoters alleging, inter alia, that they had sold land to the company at an exorbitant price. They brought this action on behalf of themselves and all other shareholders except the defendants. It was held that the conduct complained of was a wrong done to the company and that only the company could sue.

Cases in Nigeria:

- ✓ **ELUFIOYE& ORS V HALILU & ORS (1993) 6 NWLR PT 301 570**
- ✓ **ABUBAKRI & ORS V SMITH& ORS (1973) NSCC 451**
- ✓ **FBN V LONGE**

Held: it is applicable to bodies not necessarily a company. It is only the company that can be the proper plaintiff

✓ Shell Petroleum v Nwakwa (2001) FWLR pt 48 1363 Held: Nwakwa does not have the locus to bring an action against Shell that the company is engaged in expatriate quota manipulation. It affects none of his rights as an employer.

BASIS OF RULE IN FOSS V HARBOTTLE

✓ Court will not interfere in the internal affairs of a company, because it should be within the competence of most of the shareholders to determine company's course and direction
✓ The company have a legal personality of its own
✓ Minority must always respect the wishes of the majority
✓ The case preserve the majority rule—corporate democracy
✓ It prevents multiplicity of actions from minority shareholder going to court every time a wrong occurs in the running of a company.
✓ Powers of a company are exercised by the directors and the members
✓ No one can usurp the powers of the other—between powers reserved for the directors and members at the GM
✓ If the directors decides not to sue, the shareholders can in GM decide that they must sue.
✓ Shareholders on their own cannot maintain an action on their own except they fall under the rule in FOSS V HARBOTTLE
✓ Case law now permitted by CAMA—299
✓ A minority member including the personal representatives of a deceased member; and any person to whom shares have been transferred or transmitted by operation of law to bring legal proceedings—302

DIRECTORS POWER

1. Power to manage
2. Appointment of managing directors
3. Power to sue

MEMBERS in GM

THE EXCEPTIONS

1. Illegal or Ultra Vires Act—300(a)—see Injunction or Declaratory relieves to set aside, restrain of prevent the doing of the act.—PARKE V DAILY NEWS (1961) 1. WLR 493

Fact: See also ASHBBURY RAILWAY CARRIAGE& IRON CO V RICHIE (1875) LR 7 HL

Fact:

2. A company purporting to do by ordinary resolution what the article or CAMA requires to be done by a special resolution. —300(b) CAMA

See. EDWARD V HALLIWELL:

Fact and Held;

3. Minority can bring a personal or representative action that his individual right has been infringed upon. The company will be the defendant.—300(c)

EXAMPLES

a. Right to vote

b. Right to notice of meeting

c. Right to air opinion at the GM

d. Right to dividends when declared

e. Right to etc

✓ Only join the directors if some specific relief is being sought against them: Pender v Lushington (1877) 6 Ch D 70, 46

See CBN V KOTOYE

4. FRAUD ON THE MINORITY:--300(d)

THINGS THE MINORITY MUST PROVE:

a. What was taken belong to the company

b. It passed to those against whom the action is made

c. Those who appropriated the company's property are in control of the company

d. The persons against who the claim is being made would not ordinarily report themselves

e. Those who approve the misappropriation are in control and management of the company

f. This is similarly applicable if the money went to their protégé

See COOK V DEEKS

Usually difficult to prove if the money does not pass directly to the directors and the person it passes to cannot be proved to be connected with the directors. See DANIELS V DANIELS—minority shareholders can sue the director and the controlling shareholders for negligence if one of them make a profit from the act. and PAVLIDES V JENSEN.—held: it must be proven that the majority shareholder benefited from the sale. Alleging negligence under fraud is not enough.

EXAMPLES OF WHERE MINORITY SHAREHOLDERS ARE DEFRAUDED

✓ Where the majority SH attempt to expel the Minority SH forcefully or by scheming. It can only be excused where it is shown the exception is done bona fide. See BROWN V BRITISH ABRASIVE WHEEL CO. (1919) I Ch 290

✓ Inequitable use of the majority power. See CELMENS V CLEMENS (1976) 2 ALL ER 268

5. WHERE A MEETING CANNOT BE HELD IN TIME TO BE OF PRACTICAL USE IN REDRESSING A WRONG DONE TO THE COMPANY.—300(e)

✓ The minority shareholder must still sue in the name of the company.

6. DIRECTORS LIKELY OR HAVE BENEFITED FROM THEIR NEGLIGENCE OR THEIR DUTIES—300(f)

✓ See COOK v DEEKS supra

✓ See also Alexandra v Automatic Telephone Co. (1900) 2 Ch. 56

OTHER EXCEPTIONS

✓ Variation of class rights—s. 142. Not less than 15% of the issued share of the class: Where the rights attached to any class right of shares are at any time varied

✓ Cancellation and variation of objects—section 46. Not less than 15% of the issued share of the class or nominal value or not less than 15% of members of company not with share capital. See Rules 4 company proceedings Rule 1992

✓ Under Arrangement on Compromise/Sale. Members of the class of creditors or members not satisfied with the scheme of the compromise in sale of the Asset. Meet the liquidator for his share to be purchased by the company or to refrain from carrying out the scheme of the compromise This can be brought under the omnibus ground of unfair prejudice to the interest of the minority.

Read and digest 310 and 538 CAMA

Power given to 1/10 holders of the paid up capital to requisition meeting. See 215

Power to requisition a members resolution—235

Power to cancel change from plc to ltd—53(3)

Winding up under just and equitable ground under section. 408 CAMA

RELIEFS AGAINST UNFAIR PREJUDICE—see 311—315 CAMA

✓ Who can bring a petition under 311?

a. The members
b. The shareholder
c. A director
d. A former director
e. An officer of the company (Auditor, general manger)
f. A former officer
g. Personal representatives of member
h. CAC
i. Any other person the court considers proper

Ground: the affairs of the company are being, have being and will be conducted in a manner unfairly prejudicial to my interest as a member. Unfairly discriminatory, oppressive, illegal, in total disregard to my interest or the interest of all the members as a whole.

The CAC have additional power to go to court and allege that the affairs of the company are being conducted in total disregard of public interest—see 311(2) (c)

The petition on unfairly prejudicial must be well founded and should not be on ground specifically stated

See BELLADOR SILK LTD (1965) 1 ALL ER 667.

See also OMOLOLU-MULELE V IJALE PROPERTIES CO. LTD

RELIEFS

There are SPECIFIC and GENERAL Reliefs

SPECIFIC

1. An order regulating running of the company's affairs in the future
2. Order restraining the company from doing or continue the doing of the act
3. Order the company to do a specific act—Re H R HARMER Ltd (1958) 3 All ER 689
4. The court may order the purchase of the shares of the minority shares at a fair price.(either by other members or by the company)
5. The court may direct that the affairs of the company be investigated by the CAC
6. The court may order winding up
7. In lieu of winding up, the court may order that ASC of the company be reduced
8. The court could direct the company or a member to institute, prosecute, defend or discontinue pending or fresh proceedings in favour or against the company.
9. Order appointing a receiver or a receiver and manger of the property of the company. See 312(4) and (5)

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BUT NO MATTER WHAT, STAY CALM AND ENJOY YOURSELF (SEE YOU AT ICC)!

SAFEGUARDS FOR ENSURING COMPLIANCE WITH THE COURT ORDER
Where a court makes an order making changes to the MEMART it can only be further altered afterwards by a court order

- ✓ Notify CAC of the order within 14 days.
- ✓ It is an offence not to comply. Section 313

** An aggrieved minority can bring one action or combine three types of actions i.e, personal, derivative and representative actions

- ✓ PERSONAL ACTION—in the name of the shareholder—where the right of the shareholder is infringed.
- ✓ REPRESENTATIVE ACTION—me and my fellow disgruntled shareholders—

✓ **DERIVATIVE ACTION**—303-309: actions derived from the company. The proper plaintiff is the company. The plaintiff right of action derive from that of the company. Actions commenced, intervened, defended or discontinued in the name of or on behalf of the company.

A member (s) may seek leave of court to commence, defend or discontinue

- ✓ See PRUDENTIAL ASSURANCE CO LTD V NEWMAN INDUSTRIES LTD (NO 2)
- ✓ Any benefit from a Derivative Action accrues to the company. The court can order that the company should be pay a cost incurred by the holder in instituting the case even if the action fails – 301(3)
- ✓ See also OMISADE V AKANDE AND
- ✓ LADEJOBI V ODUTOLA HOLDINGS

MODE OF COMMENCEMENT OF A DERIVATIVE ACTION

- ✓ Application to the FHC
- ✓ Commenced by filing an Originating Summons supported by a verifying affidavit seeking leave to commence, or intervene for the purpose of prosecuting, defending or discontinuing the action on behalf of the company. See 303(1). See AGIP(NIG) LTD V AGIP PETRO

Title of the summons must be

IN THE MATTER OF THE ABC CO LTD

And

IN THE MATTER OF THE COMPANIES AND ALLIED MATTERS ACT 2004

CAUSE OF ACTIONS

Thing to prove to court before grant of the applications in the verifying Affidavit

- ✓ That the directors(wrong doers) are those in control
- ✓ They will not take any action in redressing the wrong or defending the action
- ✓ The applicant has given the directors notice of his intention to apply to the court to commence a derivative action on behalf of the company
- ✓ That as an applicant, he is acting in good faith—See Towers v African Tug Co, (1904) 1 CH. 558
- ✓ That it appears in the best interest of the company that the action be brought. Section 303(1)

POWERS THE COURT CAN GRANT IN RESPECT OF THE APPLICATION

- ✓ Court may make consequential orders. E.g. authorising the applicant or any other person to take control of the conduct of the actions

- ✓ General directions as to the conduct of the action
- ✓ An order to pay money realised from the proceeding to security holders instead of given the money realised to the company.
- ✓ An order requiring the company to bear the legal cost. Section 304(1)

INSPECTION OF COMPANIES

POWER OF CAC

- ✓ The CAC can appoint competent inspectors to investigate the affairs of the company and to report thereon
- ✓ Right is exercisable by the CAC if the company itself applies or
- ✓ Members holding not less than ¼ of the class of shares issued
- ✓ In case of company not limited by shares,1/4 of the members having voting rights
- ✓ CAC investigation
- ✓ Power of CAC is also exercisable if it appears that the affairs of the company is being run in such a way as to prejudice the interest of the creditors or that the company was formed for any illegal or fraudulent purpose.
- ✓ Or it can be done for the purpose of lifting the veil of incorporation
- ✓ CAC can institute civil proceedings against the company in respect of the investors report. –321
- ✓ If crime is committed the CAC refer the matter to the AGF for prosecution—322

POWERS OF THE INSPECTORS IN INVESTIGATING THE COMPANY

1. The company must give the inspector every document needed for the investigation
2. He may inspect the company's subsidiary or holding company or subsidiary of its holding or a holding of its subsidiary
3. He may call for books of records
4. He can examine the company's officers, agent, auditors, bankers and solicitor's Oath.
5. He can give an interim report to the CAC pending a final report—317
6. The report can be used as expert evidence in court
7. CAC may direct that a copy of the inspector's report be forwarded to the company at its registered or head office or the court
8. CAC can also make a copy available to anybody affected by the report on request and on payment of the prescribed fee--see 320

WEEK 14

FOREIGN PARTICIPATION

WAL-MART SHOPPING SCENARIO:

a.Boosting the economy by bringing capital to Nigeria.
b. Job creation in the country

THE DISADVANTAGE IS THAT:

a. They employ basically people with low skill and they under employ Nigerians.
b. They displace local businesses from the market.

Therefore for Nigeria to benefit from the foreign investments there is need to be a frame work to protect.

Note: Read the STANBIC V FRCN

A foreigner is free to do business alone or in partnership with any other person. No one (foreigners and Nigerians cannot engage in businesses on the negative list.). The negative list

STEPS FOR FOREIGN INVESTMENTS IN NIGERIA

** * obtain visa from the Immigration service/ embassy

*** NECESSARY PERMIT (residence and business) FROM NIGERIAN IMMIGRATION SERVICE

*** SUBJECT TO REGULATION

**** ADDRESS FOR NOTICE**

** Joint Venture Agreement If PARTNERSHIP

** Register WITH CAC

** IMPORTATION OF CAPITAL AND Certificate of Capital Importation

** REGISTER WITH NIPC

** REGISTER INTERESTS WITH SECURITIES AND EXCHANGE COMMISSION

** APPLY FOR INCENTIVES FROM NIPC.

*** REGISTER WITH NOTAP IF IT INVOLVES TTA

1. The foreign company must be registered as a foreign company
2. Register with NIPC
3. Obtain Expatriate quota from the NIPC
4. Import capital through authorized dealers/ banks and obtain certificate of capital importation (CCI)
5. Assurances/ benefits
6. **Immigration- visa- business and residence permit**
7. Operating license- those in specialized area of business like oil, banks etc
8. Incentives- tax incentives

INTRODUCTION

Save businesses on the negative list, a foreigner is free to do business alone or in partnership with any other person. Section 20(4) of CAMA and Section 17 of NIPC Act. It is important to note that foreigners as well as Nigerians are not allowed to do businesses on the negative list— Rules 409 of SEC Rules 2013 provides prohibited investments as follows:

1. Petroleum enterprises (as defined in the Nigerian Investment Promotion Commission (NIPC Act)
2. Production of arms, ammunition, etc.;
3. Production of and dealing in narcotic drugs and psychotropic substances;
4. Production of military and paramilitary wears and accoutrement including those of the police and the customs, immigration and prison services;
5. Such other items as the Federal Executive Council may from time to time determine.

CATEGORIES OF FOREIGNERS THAT CAN DO BUSINESS NIGERIA

Those exempted from registration s. 54 CAMA. These are categories of Foreigners that are not interested to do business in Nigeria, they are in Nigeria for the purpose of a specified project and leave after the execution of the project. They may be invited by the government or on behalf of the government.—UNREGISTERED EXEMPTED FOREIGN COMPANIES.

1. **Direct investors who invest in the Nigeria market with foreign currency**.—FOREIGN DIRECT INVESTORS
2. **PORTFOLIO INVESTORS**: foreigners who want to have shares or stock in Nigerian company and are not willing to have direct participation in business. S. 26 FEM Act 2004. See Rule 410 of SEC Rules 2013. They are allowed but must be through a registered capital market operators or through a license broker or dealer when transacting in the secondary market.—FOREIGN PORTFOLIO INVESTORS.
3. **UNREGISTERED EXEMPTED COMPANIES**… UNDER SECTION 56 AND SECTION 54(3)

WHEN FOREIGNERS COME INTO NIGERIA THEY GET:

- Assurances/guarantees
- Incentives
- Permits

ASSURANCES …GUARANTEES NO CONDITION

A. The right to do business involving Nigerians or not
B. Capital importation policy, unconditional transferability of funds (dividends and profits)
C. Total repatriation of proceeds
D. No compulsory acquisition of property in the event there would be prompt and adequate compensation
E. Amicable settlement of disputes, bilateral agreements or treaties, international arbitration organization

INCENTIVES… ASSURANCES WITH CONDITIONS

A. Tax exemption
B. Tax relief
C. Pioneer status incentives (pioneer incentives list) first three years tax exemption
D. Tax relief on foreign loans: no tax on interest
E. Research and development allowance
F. Rural investment allowance
G. Double taxation: treaties with a number of countries, both countries have agreements as to taxation of companies

SEE:

2. CAMA
3. Companies Regulations 2012.
4. ISA 2007 and Regulation
5. NIPC Act 2004

6. Immigration Act, 2015
7. Foreign Exchange Monitoring & Miscellaneous Provision Act
8. NOTAP Act
9. Industrial Inspectorate Act
10. Companies Income Tax Act
11. Personal Income Tax Act, 2004

OVERVIEW- CAMA

❖ A foreign company must first register as a separate entity before they can operate. Section 54 CAMA. And until incorporated. It cannot carry on any business in Nigeria or exercise any of the power of a registered company

❖ It cannot have a place of business but a place for service of documents or processes in Nigeria, except receipt document as a prelude to incorporation.

CONSEQUENCES OF NON-COMPLIANCE

✓ Cannot carry on business in Nigeria
✓ No address for service
✓ If foreign company does not register any transaction entered not is void and illegal 54 (2)
✓ The court will therefore not enforce the contract at the instance of any party to the transaction. See SOLANKE V ABED (that a contract entered into prior registration of a foreign company will be decided on the circumstances of the case and the use of the provision of the law on illegality).
✓ The company shall be guilty/LIABLE of an offence and liable on conviction to a fine of #2500 and every officer or agent #250 and #25 for continuing days section 55 CAMA

CAN A FOREIGN COMPANY SUE OR BE SUED?

S. 60 CAMA nothing precludes a foreign company not carrying on business in Nigeria from doing business with a Nigeria. Hence he can sue. See. RITZ PUMPEN FABRIK GMBH & CO KG V TECHNO CONTINENTAL ENGINEERS NIG LTD (1999). Doing business in Nigeria is different from doing Business with a Nigerian. See NBCI V EUROPA TRADERS (UK) LTD (1990) SEE ALSO: WATANMAL (SINGAPORE) PTE LTD V LIZ OLOFIN AND COMPANY PLC.

It all suggests ones you've benefited under a business, you are to be questioned on the usage as a sword or a shield

EXEMPTED COMPANIES 56 CAMA AND SECTION 54(3) CAMA

❖ Foreign companies in Nigeria for a specific purpose can apply to the president for exemption from registration
❖ THESE COMPANIES ARE:
❖ Foreign companies invited to Nigeria by or with the approval of the Government to execute any specified individual or loan Nigeria.
❖ Foreign companies in Nigeria for the execution of an individual loan project on behalf of an international organization
❖ Foreign government owned companies engaged solely in export promotion activities
❖ Engineering consultants, technical experts engaged on any individual specialist project approved by the Federal Government (CBN), both state and federal government are inclusive.
❖ Companies exempted under part x of companies act of 1968
❖ Companies exempted under bilateral treaties e.g. Airlines agencies

APPLICATION FOR EXEMPTION: An application for exemption from registration as a Nigerian company is addressed to the secretary to the Federal Government. S. 56 CAMA it is considered that the president give the approval:

SECTION 56 (2):

A. THE NAME AND place of business of the foreign company outside Nigeria
B. The name

Where exemption is granted, the company is given an exemption order and the period of the order is stated therein.

The president is given liberty to revoke order if in his opinion the company contravened any provision of CAMA or has to fulfil the terms of the exemption order or for any good or sufficient reason. Note the only known provision in CAMA is the requirement to file annual report with CAC.

FILLING OF REPORTS WITH CAC

- ❖ Annual report shall disclose the following;

a. Place and country of the exempted company registration
b. Date of registration
c. Share capital of the company
d. Principal place of business
e. Date of exemption etc

STATUS OF AN EXEMPTED COMPANY

It has the status of an unregistered company save filing annual returns with CAC

REGISTRATION

a.Registration process, starts with the registration with the CAC, same as registration of a new company in Nigeria
b. In the meantime, draft Joint Venture Agreement if its partnership with Nigerians. Where there is a Nigerian partners.

CONTENTS OF JOINT VENTURE AGREEMENT

- ✓ parties to the agreement
- ✓ Purpose of the JVA
- ✓ Duration of the JVA
- ✓ Confidentiality
- ✓ Board composition of the proposed company
- ✓ Resolution of deadlock situations,
- ✓ Use of shareholdings in meeting for voting
- ✓ Voting by poll= number of shares you hold, 1 share 1 vote
- ✓ Agreement to incorporate the provision of the JVA not the MEMART
- ✓ Proceeding at meetings
- ✓ Transfer of technology provisions
- ✓ Shareholding structure 1. Mode of subscription by parties, mode of payment of shares.

APPLICATION BY FOREIGN INVESTORS

- ✓ A foreign investor must after incorporation as a Nigeria company with CAC but before starting business, apply to the NIPC on the prescribed form for registration.
- ✓ He may apply through OSIC (one stop investment center) to other agencies like immigration or apply directly to those agencies
- ✓ NIPC register a foreign company and register Pioneer status only.
- ✓ NIPC has a Governing Council, a representative each from federal ministries, section 2(2) NIPC Act
- ✓ Has an Executive Secretary
- ✓ NIPC is a federal government agency that co-ordinates all investments promotion activities in Nigeria
- ✓ Register all foreign investors in Nigeria
- ✓ Promote investments in and outside Nigeria through effective promotional means.
- ✓ Identifies specific projects and invite interested investors for participation in those projects.
- ✓ Disseminates up to dates information on incentives available to investors
- ✓ Provide support service by coordinating and obtaining all permits and license required pf a foreign company.
- ✓ Organizes exhibitions…

- ✓ Advice government on policy matters relating to investment and promote economic development

BUSINESS ON THE NEGATIVE LIST: Prohibition to everybody from engaging in such business.

a.Production of arms and ammunitions
b. Production of and dealing in narcotic drugs and psychopathic substances
c.Production of military and paramilitary wears including those of the police, customs, immigration and prison.
d. Petroleum enterprises as explained or defined under the NIPC ACT

AFTER SUBMISSION OF THE DOCUMENTS

Nigerian Investments Promotion Commission to register the company within 14 working days from receiving the application or advice accordingly in cases of refusal to register.

IMPORTATION OF INVESTMENTS

Must be in foreign currencies through any of the Bank/authorized dealers into the country and the dealer will issue a certificate of capital Importation.
The capital importation to be imported could be cash, consideration other than cash, e.g importation of equipment or raw materials, through the Debt Equity Conversion Program.

ADVANTAGES OF Certificate of Capital Importation

Open a foreign currency domiciliary account with any authorized dealer. S, 17 FEMMP Act

Open a special non-resident naira account (no tax paid)
Buys shares in Nigeria companies out of the naira account
Repatriate the capital, dividends and incomes at autonomous market rates (the current CBN rate) minus taxes.
Acquisition of foreign enterprise and payment of compensation
No enterprise shall be nationalized or expropriated

CONSEQUENCE OF EXPROPRIATION

- ✓ Payment of the compensation; and right of access to the courts as to quantum of compensation.
- ✓ Compensation to be paid promptly and adequate in foreign exchange.
- ✓ Dispute Settlement procedure.
- ✓ S. 26 1st by mutual discussion to reach an amicable settlement.
- ✓ Dispute between a Nigerian Investor and Government- the rules of procedure for arbitration are in Arbitration and Conciliation Act LFN 2004.
- ✓ Dispute between foreign investor and Government
- ✓ Does Nigeria have any bilateral or multilateral treaty with the country of the foreign investors? If so, they can use any machinery for settlement of investment disputes agreed on by the parties. See for example the UNCITRAL Conciliation Rules of 1980.
- ✓ In cases where there are no treaty between the country of the foreign investor and Nigeria, the rule of International Centre for Settlement of Investment Disputes will be applicable. ICSID. SEE SECTION 25 AND 26 NIPC ACT

FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS) PROVISIONS ACT

Created an Autonomous Foreign Exchange Market where transactions in foreign exchange are conducted foreign currency form the following sources may be freely sold in the Market, that is:
A. Foreign currency in domiciliary accounts.

Section 12. Nobody is required to declare any foreign currency in excess of US $5,000 or its equivalent and even then, the amount that is declared is mainly for statistical purpose. See Money Laundering Act, 2012 any amount in Excess of $10, 000.

B. Forfeiture of undeclared funds or negotiable instrument or to imprisonment of not less 2 years or to both.
C. Amount increased to $ 10,000.
D. Agency commissions, professional fees and other forms and invisible earnings;

DEBT EQUITY PROGRAMME

Capital can be brought into the country through the debt-equity programme of the FEDERAL GOVERNMENT, whereby Nigeria debt instrument is bought at a discounted value from any stock exchange anywhere in the world the foreign investor will get the naira equivalent of the face value of the instrument.

Debt for equity programme was introduced by the Babangida Regime. It is implemented by the Debt Management office. To participate a company must have minimum authorized share capital of 5 million dollars. Minimum debt to be bought, $250,000

- ✓ Before, the capital must stay in Nigeria economy for 5 years but now, repatriation may be done anytime.
- ✓ FOREIGN CURRENCY DOMICILIARY ACCOUNT
- ✓ SPECIAL NON-RESIDENT NAIRA ACCOUNT
- ✓ TOTAL REPATRIATION
- ✓ THE ADVANTAGE IT HAS OVER CCI IS THAT IT IS GOTTEN AT A DISCOUNTED RATE.

IMMIGRATION REQUIREMENTS FOR THE FOREIGNER

- ✓ They are:
- ✓ **BUSINESS PERMIT**: for individual wishing to take up employment in Nigeria. It is granted by the comptroller General of Immigration. See section 18 of the Immigration Act 2015. See OILFIELD SUPPLY CENTER LIMITED V JOSEPH LLOYD JOHNSON (1987)2 NWLR pt. 58 625=== failure to obtain business permit does not invalidate a contract entered into by the foreigners with the Nigeria, also that it is the responsibility of the company that employ him to obtain the business permit. Failure to obtain permit only afford deportation as punishment. See 49(3).

Consequences of not obtaining a business permit is outlined above is that expatriate has committed an offence and the punishment is deportation as a prohibited immigrant and section 49(3) of the IA 2015, the employer shall bear the cost of his repatriation from Nigeria.

- ✓ **EXPATRIATE QUOTA**: for companies wishing to employ a foreigner s. 38 and 105 of **Immigration Act**. This is the permission given to a business concern to employ non-Nigerians in the numbers and capacities in the quota. Offences for failure to obtain the prior consent of the Comptroller general of the Nigerian Immigration Service will make it void.

Businesses with a capitalization of N 15m and above are given fixed quotas. All others are given on merit.

Types of Quota

- ✓ Permanent until reviewed (PUR) given to companies intending to have a foreigner as chairman…
- ✓ Temporary quota : granted until given to ….

- ✓ **VISA-**

An employee who is coming into Nigeria to work under quota
Subject to Regularisation (STR)
Business visa
Cable visa
Visitor's visa

- ✓ Process starts with obtaining Subject to Regularisation Visa as a Short Term Residence in other jurisdiction to enable him come into Nigeria and later obtain Resident permit

RESIDENCE PERMIT

- ✓ Temporary Work Permit

NB: foreign debts of all countries all over the world are traded at the stock exchange.

This is the combined Residence permit and aliens Card for exparriates.

COMBINED EXPATRIATE RESIDENCE AND ALIENS CARD (CERPAC)

- ✓ Issued to foreigner willing to work in Nigeria for a period of more than 52 days, it is for 2 years.

Permits and Licenses

INDUSTRIAL INSPECTORATE ACT, 2004

Industrial development and inspectorate department

- ✓ To stop Nigeria from being a dumping ground for obsolete items. A department of the federal ministry of industry trade and Investment.
- ✓ The department will value and certify capital expenditure
- ✓ On being satisfied that the valuation put on the capital equipment
- ✓ They issue certificate of Acceptance

COMPANIES AND INCOME TAX ACT CITA

- ✓ The federal Government has an exclusive jurisdiction over the taxation of companies
- ✓ The profits of nay company accruing in derived from, brought into, or received in, Nigeria in … FIRS 30% of chargeable income

PERSONAL INCOME TAX ACT

- ✓ This Act governs taxation of income individual, family ..

OPERATING LICENSES

- ✓ Apart from the requirement under CAMA

Tax Incentives

Main Categories

- ✓ Exemption: No tax at all
- ✓ Reliefs: pay but at reduction rate
- ✓ Grants: giving money for boosting the business
- ✓ Tax credits: get a credit relief on subsequent tax obligation

NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION PROMOTION NOTAP ACT

- ✓ Established by the NOTAP Act
- ✓ Monitor on continuous basis transfer of foreign technology

NB: the IID only access the capital value of the technology to be brought into Nigeria and give certificate in return, while NOTAP take a deep extermination of the use and effect of the technology and the register the technologies.

FUNCTIONS OF NOTAP

- ✓ Register contracts/agreements which deal with the transfer and acquisition of technology into Nigeria
- ✓ Certificate of approval or refusal of registration is given.
- ✓ It is registrable at the instance of both parties to the agreement.
- ✓ Notap vets the agreement in order to determines its conformity with its own evaluation criteria

- ✓ Pays all the necessary required fees
- ✓ When the agreement is finally accepted, registration fees will be paid
- ✓ Certificate is usually valid for 1-10 years or as applied for by the parties

REGISTRABLE AGREEMENTS WITH NOTAP

- ✓ Contracts involving:
- ✓ The use of
- ✓ Technical expertise
- ✓ The supply of detailed engineering drawings;
- ✓ The supply of machinery and plant;
- ✓ The provision of operating staff, managerial assistance and the training of personnel.

EFFECT ON NON- REGISTRATION

Does not render the contract void only that repatriation of fees profits, royalties through CBN is disallowed unless a certificate of registration accompanies the application ….

Refusal

- ✓ The director may refuse on the grounds contained in section 6 of NOTAP
- ✓ Price not commensurate with technology acquired
- ✓ Illegality
- ✓ Obsolete technology
- ✓ Where the Nigeria is forced to subject to foreign jurisdiction in cases of dispute resolution etc.

INDUSTRIAL DEVELOPMENT (INCOME TAX ACT RELIEF) ACT

- ✓ Pioneer status certificate is issued by the NIPC to the effect that the company is exempted form payment of tax for 3 years initial period renewable for another 2 years in aggregate totalling five years.
- ✓ The company or business must be listed as a pioneer business
- ✓ Must be a novelty

REQUIREMENTS

- ✓ Applicant to show
- ✓ The company must be a public company, private company are not allowed.
- ✓ The industry is listed and not being carried on on scale suitable to development of the country.
- ✓ There are favourable prospects of for further developments in Nigeria
- ✓ That it is of public interest to encourage the industry by declaring it a pioneer industry
- ✓ The designation is not necessarily a reflection that a company was pioneer per se in the industry, it must be listed.
- ✓ the minimum amount of capital to inject is 10 million and above, see

PIONEER STATUS INCENTIVE REGULATIONS REG. 1 NO 2 2014

- ✓ see 2014 Regularization a service charge 2% based on estimated
- ✓ tax savings to be paid to the NIPC
- ✓ the Regulations do not address the controversial issues of pioneer
- ✓ status incentive to companies
- ✓ the company must not be more than one year old from the commencement of business before application
- ✓ Evidence of physical development of factory site.

Double Taxation Treaties- see 33-35 CITA

- ✓ if a Nigeria company has paid or is liable to pay tax, proves that it has been paid the tax in a common wealth or another

- ✓ there must a double taxation treaty with the parent country of company claiming the relief
- ✓ receipt of payment of the tax in the foreign country

DUTY DRAWBACK/ SUSPENSION SCHEME

✓ Importers of materials used in the manufacture of exported goods may claim repayment of import duties earlier paid in respect of the materials Export. (incentives and Miscellaneous Provisions Act), Customs Duties (dumped and subsidised Goods) Act, 2004

✓ Time limit: must be applied within a maximum of two years from the date of exportation

You pay tax on your taxable income… 30%

TAX EXEMPTION

✓ The Profits of an exporter are exempted from taxation, provided that the proceeds are repatriated to Nigeria and are used to exclusively for the purpose of buying raw materials, plants, equipment and spare parts and expansion of the business in Nigeria See 23 CITA.

a. Capital allowance on expenditure may be calculated to reduce taxable income
b. Investment allowance.
c.Rural investments allowance
d. Research and development
e.Investment in company on the pioneer list
f. Local materials utitllization
g. Petroleum investment allowance

✓ The profit of 100% export oriented company is exempted form tax

✓ Dividends, interest derived from foreign exchange brought back into the country through the CBN or any bank, there is 100% tax exemption even though they are taxable income.

✓ Interest on foreign currency domiciliary account accruing in Nigeria.

✓ IT and LTD/GTE are precluded from paying tax on incomes provided they are not used for trade or business

✓ No tax on profit from cooperative societies

✓ No tax on dividends of manufacturing companies

✓ A new company going into the mining of solid minerals shall be exempted from tax for the first 3 years of its operations.

✓ 25% of Incomes in foreign exchange collected by a hotel shall be exempted from tax provided that such income is put in a reserved fund to be utilized within five years for the expansion of new hotels, conference centers etc. see section 37 CITA. Note also that development of holiday resorts, hotels =, sporting and recreational facilities is a pioneer industry so no tax.

✓ Interest on al loan to a company engaged in agricultural business, the fabrication fo local plant or machinery

✓ Foreign loans to Nigeria companies. S. 11 CITA minimum of 150,00- it is available to the foreign companies alone. It deals with the tax on interest that will accrue to the money lend by the Foreign company. i.e the capital and interest of the loan given by the foreign company is declared exempted form tax.

✓ The loan agreement must be approved by the Federal Ministry of Finance and Copies deposited with them and FIRS

INVESTMENT TAX CREDIT

✓ Companies that are engaged in research and development activities for commercialization

✓ Company in production sharing (Petroleum Investment Allowance) Contract with the NNPC is entitled to petroleum…

✓ Business in fabrication spare part and equipment for majorly local consumption and export allowed 25% investment tax credit on their qualifying expenditures

✓ Those that use made in Nigeria facilities and equipment are given 15% are allowend Investment tax credit

✓ Where company buy a new machinery for replacing the old ones, there is investment tax credit on qualified expenditure

BONUS FOR FILING RETURN ON TIME

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- ✓ A company which files return within the time stipulated will be given a 1% tax credit off

RURAL INVESTMENT ALLOWANCE

- ✓ Industries located in rural areas, investment allowance will be given for taking the factory there. NB: does not mean they are exempted from paying tax.
- ✓ Infrastructure: at least 20 kilometers away
- ✓ No facilities- 100%
- ✓ No electricity 50%
- ✓ No water 30%
- ✓ Tarred road 50%

EXPORT EXPANSION GRANT FUND SCHEME

- ✓ Cash grant essentially given to reduce production cost.

LABOUR INTENSIVE MODE OF PRODUCTION

- ✓ Tax concession for five years. The rate is graduate in such a way that

EXPORT PROCESSING ZONE ALLOWANCE

- ✓ Capital allowance 100%. A company which has incurred expenditure …

EXPORT FREE ZONE

- ✓ The profit of a 100% export oriented undertaking established within and outside an export free Zone shall be exempted from tax for the first three years consecutive assessment.
- ✓
- ✓ **NIGERIAN EXPORT PROCESSING ZONE AUTHORITY (NEPZA)**

NEPZA is a FG agency under the supervision of the Federal Ministry of Industry, trade & Investment established 1992……

- ✓ Investment procedure
- ✓ Apply to NEPZA using the described form
- ✓ Minimum investment is $500,000

CONDITIONS

- ✓ New business
- ✓ New plant and machinery
- ✓ Export proceeds forms 75 % of turn over

NB: the only advantage in the ECOWAS Liberalization scheme is no Visa requirement within the member state. All other things must be complied with.

WEEK 15:

COMPANIES SECURITIES 2: FLOATATION OF SECURITIES, BONDS AND COLLECTIVE INVESTMENTS.

CORPORATE FINANCING SYSTEM,

Floatation of securities dealing with a public company's financing system from the public. Simpliciter raising money or capital from the public.

- **FINANCIAL MARKET**- market where financial securities, commodities at low transaction costs are traded, rule of demand and supply.
- **MONEY MARKET**: it is a market, less than 1 year deposit, collateral loans, acceptances, bills of exchange. Short term transaction are traded.
- **CAPITAL MARKET**- a market where long term trade in securities, bonds. A market where all these things are traded and sold. It allows the trading of these commodities achievable. In the capital market --equity capital – securities, shares, collective investment scheme like unit trusts and debt capital- treasury bills, bonds and notes etc. are sold and traded.

THE ROLE OF THE CAPITAL MARKET:

- It creates an avenue for public companies to raise capital
- It contributes to the growth of business because capital is sold and traded
- It is an avenue for the government to raise money for infrastructural development.
- It provides long term finance.
- It affords the savers the opportunity to invest and sell.
- It is relevant to economic development of the country.
- It helps in liquidity
- They register securities of public-quoted companies
- It is a market and a meeting point for investors and sellers
- **It is an opportunity for foreign portfolio investment (FPI)**
- Bullish: shares are going up, Bearish: shares going down / falling down.

FLOATATION OF SECURITIES

- **PRIMARY MARKET**: newly issued securities, or allotment of shares, Initial Public Offers, Public Offers, Offer Sale, Placements, and Right Issues Etc Are Sold.
- **SECONDARY MARKET:**
- A place where sale of existing securities, transfer of shares etc. are sold or traded. People buy from those who have shares in the company call others to buy.
- **INITIAL PUBLIC OFFERS**

Invitation of members of the public by a company to subscribe for its shares for the first time. Subsequent offers are public offers.

FEATURES:

- **D**IRECT OFFER to the public through an issuing house by means of a prospectus. The issuing house does not bear the risk of failure of the issue. The company bears the risk. The company may arrange for the issue to be underwritten by e.g. an insurance company**.**
- **OFFER FOR SALE:** Company Sells Securities to An issuing House. The issuing house sells to the public at higher price, Risk of under subscription is borne by the issuing house, underwriting is arranged by the issuing house.
- P**RIVATE PLACEMENT:** it is a question of facts, if it goes beyond domestic concern. see **Government Stocks v Christopher,** (Sherwells's cas**e) Private placement** shall mean the issue of securities by public company to select persons,

Rule 339 SEC Rules..**For private companies: section 69 ISA:** Even if they are not under SEC control, it goes beyond private concern, even though they are private companies.

RULE 340. CONDITIONS FOR APPROVAL OF OFFER

(1) .No public company shall offer securities by way of private placement without the prior approval of the Commission.

(2) Private placement by public companies shall be subject to the following conditions:-

a) The company shall show evidence of dire need of fresh funds or technical expertise and shall satisfy the Commission that private placement remains the only viable option to achieving its objective.

b) The securities shall not be offered to more than 50 subscribers.

c) The resolution of the company authorizing the placement shall be Special as defined in the Companies and Allied Matters Act, and shall state the number of shares to be offered and the price.

d) The notice of the general meeting authorizing the placement shall be published I two national daily newspapers and evidence of the publications shall be filed with the Commission.

e) The aggregate number of shares to be offered through private placement by a public quoted company shall be 30% of its existing issued and paid-up capital prior to the offer:

Provided that where the company is ailing, it may offer a higher number of shares, subject to the approval of the Commission.

f) The price of the securities of the company, if quoted, shall be on technical suspension during the period of placement.

g) The offer shall be for a period as proposed by the issuer and approved by the Commission but not exceeding ten (10) working days:

Provided that the Commission may extend the period under special circumstances:

h) All subsequent capital raising shall be approved only upon satisfactory account of utilization of previous issue proceeds**.** ***[SECRR(A) March 2010]***

(2) Private Placements shall not be advertised, mentioned and/or discussed in the print and electronic media. Approval of a private placement may be suspended or withdrawn for violation of this rule. Any Capital Market Operator engaged in an advisory role on the private placement may also be sanctioned. ***[SECRR] (A) March 2010]***. **Public companies regulation 340 SEC Rules, Section 69 ISA. Shares offered by issuing house to institutional investors.**

RIGHT ISSUES

- Pre-emption rights
- Dilution of shares
- Discount
- Capital gain: for existing shareholders
- Rights circular

Advantages: shares are usually at discount. Though still invitation to treat.

BONUS ISSUE: Proportionate issuance of new shares to existing shareholders by capitalisation of accumulated reserves from profits earned in previous years. SEC Rules 279:

REGISTRABLE SECURITIES

(1) (a) All securities of public companies and other entities shall be registered by the Commission.

(b) **"Entity"** in this rule means investment trust companies, other collective investment schemes, government and its agencies and supranational bodies.

(c) All securities subject to registration by the Commission may be offered through the following methods:

i. offer for subscription;

ii. Offer for sale;

iii. Rights issue;

iv. Bonus issue;

v. debt - equity conversion

vi. Private placement by public companies and other entities;

vii. Offer by introduction.

viii. debenture/loan stock.

ix. State and Local government bonds

x. Sukuk *[SECRR(A) Febuary,2013]*

d) Securities arising from conversion of a private company to public limited company shall be registered by the Commission.

REGISTRATION OF SECURITIES: section 54 ISA

Compulsory registration of securities and investments of public companies and collective investment schemes

(1) All securities of a public company and all securities or investments of a collective investment scheme shall be registered with the Commission under the terms and conditions herein contained and as may be supplemented by regulations prescribed by the Commission from time to time.

(2) The issuer shall file with the Commission a registration statement which shall be signed by each issuer, its chief executive officer or officers, its principal financial officer and every person named as a member of the Board of Directors or persons performing similar functions and in case the issuer is a foreign person, by its duly authorised representative in Nigeria.

(3) A registration statement shall be deemed effective only as to the securities or investments specified therein as proposed to be issued.

(4) The Commission shall issue a certificate of registration in respect of securities and investments registered by it.

(5) No securities or investments of a public company or collective investment scheme shall be issued, transferred, sold or offered for subscription by or for sale to the public without the prior registration of the securities or investment with the Commission.

(6) Any person who issues, transfers, sells, or offers for subscription or sale to the public, the securities or investments of a public company or collective investment scheme without the prior registration of the securities or investments with the Commission commits an offence and is liable on conviction to a fine of N1,000,000 or to a term of imprisonment of 3 years or to both such fine and imprisonment.

(7) The Commission may, in lieu of a prosecution under subsection (2) of this section, impose a penalty of N 1,000,000 and a further sum of N 5,000 for every day which the violation continues.

PROSPECTUS: Section 315 ISA:

Meaning : "prospectus" means any written or electronic information, notice, advertisement or other forms of invitation offering to the public for subscription or purchase, any shares, debentures or other approved and recognised securities of a company and other issues or scheme;

TYPES

Statements in lieu of prospectus: Rule 291

Deemed prospectus: section 82 (1) ISA

Abridged prospectus: summarised, contains key elements Rule 289 -290

Contents of a prospectus: section 71 ISA and Rule 285

a. Advisory clause 284 (11) SEC Rules: you are advised to read this document carefully to understand the content.
b. Form, size number 285
c.Date of prospectus 286
d. Statement required in prospectus 287
e.Content
f. Invitation column front cover 288
g. Table of content
h. Summary of the offer
i. Names
j. Directors interests

Exemption certificate: section 76

Registration of prospectus section 80 (4)

Liabilities for Mis-statement in prospectus

Section 79 (3) ISA

Civil liabilities section 85

Criminal liabilities 86 and 87 se

See exemption of experts from section 85 (3) and section 86 (2)

PARTIES TO THE ISSUE

- Lead issuing house: presents the issue to the public. Make sure the floatation are wekl coordinated.
- Joint issuing house
- Solicitor to the company: represent the issuer, ensures compliance with their company documents eg. Memorandum and articles of association, if there is need for a resolution to be passed. legal due diligence to make sure all the filings are done well .
- Solicitor to the issue : issuing house packaging all the agreement , therefore the solicitor to the issuing house does all the crosschecking the documents
- Auditors: auditing accounts
- Receiving banks: the receiving banks that received=s the payments of the investments.
- Registrars; dispatch of the necessary correspondences must be doen by the registrars
- Receiving banks
- Lead stock brokers
- Stockbrokers: they liaise with the capital market, they act as the agents in securities, he understands the market, they offer advice to investors see Rule 287 sec rules . they are registered with the SEC

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BUT NO MATTER WHAT, STAY CALM AND ENJOY YOURSELF (SEE YOU AT ICC)!

- Reporting accountant
- Portfolio managers
- Investments analyst
- Capital market professionals: section 38 (1) ISA, section 315.
-

ROLE OF LEGAL PRACTITIONERS IN CAPITAL MARKET TRANSACTIONS: Rule 180

LEGAL PRACTITIONER

The legal practitioner shall have the following functions, amongst others:

(1) Review the statutory corporate documents of an issuer and other transaction parties to ensure that they have the necessary legal capacity and authority to enter into a transaction;

(2) Carry out due diligence to ensure that all information material to a transaction are disclosed in the transaction documents;

(3) Advise on the legal structure of the transaction and on legal risks associated with it;

(4) negotiate, draft and review all legal documentations required for a transaction including but not limited to the prospectus, offer/scheme documents, trust deeds, vending agreements, powers of attorney/consents and underwriting agreements;

(5) Advise parties on disclosure obligations and general observance of and compliance with sound corporate governance principles, rules and regulations as they relate to a transaction;

(6) Advise on compliance with the requirements of the Corporate Affairs Commission, the Securities and Exchange Commission, the listing requirements of the Nigerian Stock Exchange and other relevant industry specific regulatory requirements;

(7) Certify or obtain certification of compliance with all statutory requirements by the issuer and other parties to a transaction;

(8) Make all statutory filings and provide confirmations (legal opinion) as to the enforceability and effectiveness of transaction documents;

(9) File necessary applications in Court in support of transactions;

(10) Any other roles ancillary to any of the above.

REGULATORY BODIES

a. Securities and Exchange Commission
b. Nigerian Stock Exchange
c. Central Securities Clearing System LTD: CSCS: to make the transfer of shares to be done electronically, avoid forgery of share certificate, to make the transfer easier and less complex. , it enhances speed.
d. Corporate Affairs Commission

BENEFITS OF CSCS

a. Investor details ascertainable
b. Statement can be used for collateral
c. Incidences of loss of share certificate removed
d. Huge cost of production of share certificate s removed
e. Entrance efficiency of stock broking firms an capital market transactions
f. Facilities inter member ,money and stock settlement

g. Removed the problem of cancellation of share certificates in respects of several transfers that may be made in secondary market transaction

h. It is in tandem with international best practices. S

STOCK EXCHANGE

OTC: Over the counter: for unquoted companies public companies not listed on the stock exchange. Public unquoted companies

METHOD OF OFFER

- Direct
- Offer for sale
- Private placement
- Right issue
- Offer by introduction
- Bonus issue
- Debenture / loan stock
- Bonds
- Debt / equity conversion
- Offer by tender,
- Sukuk

WEEK 16

BONDS AND COLLECTIVE INVESTMENT SCHEMES

Bank loans are more expensive than bonds and loan notes. Bonds are long terms issued by big companies. Not any company issue bonds.

WHAT IS A BOND?

A bond is affixed income security used by government and corporate bodies to generate funds. Bonds attract fixed payment. At fixed interest rate. It is paid at regular interval. The features of a bond include that:

- It is issued per value, it could be issued at premium and discount.
- It is issued at coupon rates (if bonds are sold at discount it would affect the coupon rate)
- It is also dealing with it maturity.

When a bond is issued a bond certificate is given to the lenders. Containing the value, the interest rate and when it will mature. Interests are paid at regular intervals and after the maturity the actual or principal sum is paid. By this the company makes profits.

TYPES OF BONDS

- **GOVERNMENT BONDS are the bonds issued by the government.**
- **CORPORATE BONDS are the bonds issued by the qualified corporate bodies.**

Differences between a bond and a bank loan:

Bonds	**Bank loans**
Used for long term capitals (for government bond maximum is 25 years while the corporate bond depends on the agreement)	Relatively shorter term than bonds
They are very liquid i.e. can be sold or transferred easily done.	Not as easily transferrable as a bond without the consent of the bank…
They are also easily negotiable, they easy negotiable instrument.	A lot a discussions with the issuers is required.
A trustee can be appointed for bond holders so the identity of the investors are protected and for easy communication dissemination. Federal government bond are risk free bonds. Risk free bonds are issued at low interest rates.	**Transaction cost is higher.**
The identity of the bond holders are more secured.	**The identity is open and under watch**
As to the payment it floats according the	

BENEFITS OF ISSUING BONDS

- Reduces over reliance on banks
- Reduces vulnerability to collapses in bank lending
- Provides long term capital at cheaper rates
- Reduces tax liabilities of the issuer
- Easily tradable as between bond holders
- Issuing bonds cheaper than raisings equity; priority over equity on insolvency and interest paid

GOVERNMENT BONDS

- **Government bonds are on cheap long term fund, because it lessens burden to tax payers.**
- **To investors it is risk free, secured on consolidated revenue fund**

WHO CAN ISSUE GOVERNMENT BONDS: section 222 ISA, 2007

a.Federal government
b. Federal government agencies
c.State government and their agencies
d. The federal capital territory and its agencies
e.Local government
f. Any company which is wholly owned by the federal government, state, FCT, and local government.

CONDITIONS FOR THE ISSUANCE OF GOVERNMENT BONDS SECTION 224(3) ISA

IN THE CASE OF A STATE GOVERNMENT AND THE FEDERAL CAPITAL TERRITORY-

(ii) a copy of the law authorising the issue of the bond specifying that a sinking fund to be fully funded from the consolidated revenue fund account of the issuer be established;
(iii) a copy of a rating report by an accredited rating agency registered by the Commission; and
(iv) an irrevocable letter of authority issued by the Accountant-General of the State or any person performing that function in the Federal Capital Territory, to the Accountant-General of the Federation, to deduct at source from the statutory allocation due to the issuer in the event of default by or failure of the issuer to meet its payment obligations;

CONDITIONS FOR THE REGISTRATION OF GOVERNMENT BONDS Rule 565 SEC Rules

REQUIREMENTS FOR REGISTRATION

1**. a copy of the feasibility report on the specific project(s) to be financed;**

(a) counterpart copy of original of the irrevocable letter of authority from the Local Government/State accountant-general or other Government agencies authorizing the Accountant-General of the Federation to deduct the principal and interest amount directly from statutory allocation in case of default;

(b) Letter of confirmation from the accountant-general of the Federation of receipt of the irrevocable letter of authority to deduct the principal and interest from statutory allocation of the State/Local Government in case of default;

(c) Details of the sinking fund to be managed by the trustee and fully funded from the consolidated revenue account of the issuer

d) audited account of the State/Local Government or other Government agencies for preceding five (5) years or such number of years in existence (if less than five (5) years);

(e) two (2) copies each of draft prospectus and abridged prospectus;

(f) two (2) copies of the law authorizing the issue of the bond;

(g) two (2) copies of underwriting agreement(where applicable);

(h) two (2) copies of trust deed;

(i) Two (2) copies of vending agreement;

(j) The reporting accountant's report;

(k) Rating report by a registered rating agency;

(l) a write-up on the issue;

(m) Schedule of claims and litigations;

(n) Bridging loan agreement if any;

(o) Material contracts;

(p) Letters of consent of the parties to the issue;

(q) State and Local Government shall publish their audited annual financial statements in at least two (2) national newspapers throughout the life of the bond. Also, the rating of the state and local government bonds shall be reviewed annually provided that the rating shall be no more than twelve (12) months apart and shall be published in at least two (2) national newspapers;

(r) State and Local Government shall publish information on funds utilization annually in at least two (2) national newspapers. The publication shall be subject to clearance by the Commission;

(s) Underwriting shall be at the discretion of the issuer. In the event that the issuer and its financial adviser decide that there shall be no underwriting, the minimum level of subscription shall be in line with the provisions of this rules and regulations;

Provided that, where an issue not underwritten is undersubscribed, the Commission shall be informed of the source of the funding gap and such information shall be filed together with the proposed basis of allotment;

(t) Any other document or information required by the Commission from time to time.

(2) The total loans outstanding, including the proposed bond, shall not exceed 50% of the actual revenue of the issuer for the preceding year.

(3) (a) In the event of default by the issuer the trustee shall, within six months of such default take necessary steps to ensure that the accountant-general commences direct deduction from the issuer's statutory allocation.

(b) The trustee shall within thirty (30) days of such default notify the Commission and file a copy of the letter to the accountant-general in (a) above, with the Commission.

(4) A copy of the irrevocable letter of authority shall be lodged with the trustee not later than five (5) days before the issue is open to the public.

(5) The registrar to the issue shall issue a bond certificate to the bondholders within two (2) months of the allotment of the securities in accordance with rule 104 of these rules and regulations.

(6) Where the Commission is satisfied with the securities offered by the issuer, it shall on an application by the issuing house waive the requirement for an irrevocable letter of authority provided that the issuing house shall not revert to the use of the irrevocable letter of authority to the office of the accountant-general of the Federation for the recovery of the loan.

CORPORATE BONDS

WHO CAN ISSUE: SEC RULES 568 (1)

- Any public company,
- foreign public company or
- supranational body is eligible to issue corporate bonds;

Modes SEC RULES 568 (2)

Mode of issue

Corporate bonds may be issued by way of

- an offer for subscription, you must be listed with the NSE

- rights issue or, you must be listed with the NSE
- Private placement. No need to be listed but you need registraton.

Board resolution 568 (2) (c)

COLLECTIVE INVESTMENT SCHEMES

- Investor pool funds together to invest in a particular portfolio of securities or assets or other designated scheme. See **Nospetco** V **Olorunmimbe**.
- Management of the fund is handled by s professional and registered fund manager
- Collective investment scheme must be registered and approved by the SEC section 154, ISA 2007, Rule 450 SEC RULES.
- Every collective investment scheme must be registered and approved by the SEC.
- They usually have trustees and custodians.
- **Duties of a custodians.**
- Keeps custody of the CIS documents does not have legal titles.
- The unit holders are the beneficiaries.

TYPES INVESTMENT SCHEMES

- **UNIT TRUST SCHEME**: money is given for investment to be invested wisely. The fund manager can buy government bonds, corporate bonds, treasury bills etc.
- **REAL ESTATE INVESTMENT SCHEME:** the interest of the investors is as to a real estate. Land or building or any derivative
- **INVESTMENT TRUST SCHEME**: just like real estate investment scheme, they invest in specific projects intended in particular purposes and also make returns for themselves…humanitarian e.g. don't invest in anything against our intention. Example, IPTC ETHICAL FUND
- Open ended investment scheme:
- Community savings (adashe, esusu, ajo)

UNIT HOLDER AND SHAREHOLDER : distinctions

CLASS TWO: CORPORATE RESTRUCTURING

WHAT IS CORPORATE RESTRUCTURING?

INTRODUCTION

"Society should not reward the cautious man who buries his talent and takes no chances; but should do everything in its power to assist the man who creates jobs and which strives to turn his ine talent into ten –even if he fails in the attempt.

BUSINESS RESCUE:

"one of the aims of a good modern insolvency law is to …

- Process of rearranging one or more aspects of the company.

ARRANGEMENT AND COMPROMISE

Section 537: CAMA: **"arrangement"** means any change in the rights or liabilities of members, debenture holders or creditors of a company or any class of them or in the regulation of a company, other than a change effected under any other provision of this Act or by the unanimous agreement of all parties affected thereby.

COMPROMISE: an arrangement that terminates a dispute. The synonyms reconstruction, business rescue. Arrangement and compromise. **NFU DEVELOPMENT (1972):** a compromise or arrangement which has to be sanctioned by the court must be reasonable and no arrangement can be said to be reasonable in which you can get nothing and give up everything. It must be beneficial, have the element of give and take and not confiscation.

ALSO RE –SAVOY HOTEL LTD (1981)

The rights and obligations existing between the company and its members would be sufficiently affected by the proposed scheme for it constitute and arrangement between the company and its members.

ARRANGEMENT

Section 537: CAMA

a.Members
b. Debenture
c.Creditors

ARRANGEMENT UNDER SALE – SECTION 538 (1)

For one reason or the other the company may have issues with the existing set up of the company or the company's image as a company. Corporate conflict internal conflicts. For example in a consortium, they can do an arrangement under sale. To avoid tax or obligations from a company limited by shares to company limited by guarantee.

This procedure is simpler compared to 539 that it involves the court ordered meeting. Selling the shares of the existing company to the new one.

- Board of directors meeting
- Filing the statutory declaration of insolvency
- Special resolution members voluntary winding up
- Sell to another company
- Exchange for shares, debenture s, policies, cash, or interests in Transferee Company.
- Sanction

COMPROMISE WITH CREDITORS AND MEMBERS section 539 CAMA

WHEN RESTRUCTURING HAPPENS?

- Significant modification to the debt of the company
- Modification to operations of the company
- Modification to the structure of the company.
- Difficult financial problems
- Liabilities out weights assets
- Risk of imminent business failure
- Increased market share
- Economies of scale

TYPES OF RESTRUCTURING

1. Internal restructuring
2. External restructuring

MODIFICATION TO OPERATIONS

IT MAY INVOLVE:

- Cutting cost by combining departments
- Reassigning responsibilities
- Disengaging some personnel

MODIFICATION TO STRUCTURE

- It becomes necessary if the current situation of the company may lead to its collapse
- Reducing the size through sale of some assets

** Restructuring may be designed to manage corporate debts, improve profitability and efficiency.

** When modifying debts, company may consolidate and adjust the terms of the debt in a debt restructuring to make the payment of the debt easier.

** Main focus of internal restructuring is on survival of the company

** External restructuring may similarly be used for survival strategy, its main focus is on expansion or to eliminate competitions in order to increase profit

** Options to be used in restructuring depends on the reason for restructuring

INTERNAL CORPORATE RESTRUCTURING

OPTIONS

1. Consolidation of shares into shares of larger amount
2. Subdivision of shares into smaller amount
3. Conversion of stocks into shares
4. Conversion of shares into stocks
5. Reduction of capital
6. Compelling Members to contribute capitals
7. Cancellation of unissued shares
8. Conversion of debts into shares
9. Arrangement on Sale
10. Arrangement on Compromise
11. Management Buyout

REDUCTION OF SHARE CAPITAL

1. Cancel your paid up capital which is lost or has been over-blotted—Reduction to reflect a true reflection of the asset of the company—shareholders in which share is reduced gets nothing
2. Reduce share capital in order to extinguishes the liabilities of issued or unpaid shares
3. Reduction to cancel any paid up share capitals in excess of the company's need. The excess cancelled will be returned to the shareholders

Consolidation and subdivision of shares into larger amount—section 100(1)(a) CAMA

- Consolidation is the merging of shares and dividing them into shares of larger amount.

Sample Resolution to Consolidate Shares

"That the 1000 shares of 50k each in the capital of the company be and is hereby subdivided into 500 shares of N1 each, and That every four of the 500 shares of N1 each resulting from such subdivision be consolidated into one share of N4"

Subdivision of shares – 100(1)(c) CAMA

- Company may subdivided its shares or any of them into shares of smaller amount.
- The capital will still remain the same
- Subdivision may be used to make expensive shares more remarkable

Sample Resolution for Subdivision

"that each of the existing shares of N2 each in the capital of the company be subdivided into four of 50K each"

Sample Resolution to subdivide shares into Preference and Ordinary shares

"that each of the existing shares of N1 each in the capital of the company be divided into two shares of 50K each, one of which shall be called a preference share and the other ordinary share; and that the holders of the said preference shares shall be entitled to be paid out of the profit for dividends in each year a cumulative preferential dividend at "the rate of 5% per annum, and that the surplus profit for each year so available shall be applied in payment of dividends on the said ordinary shares"

Conversion of Shares and Stocks

- Shares cannot be bought in small fractions of any amount
- Stock can be bought, split up and subdivide into small fractions
- Company cannot issue stock directly but can convert paid up shares into stocks and reconvert the stock into paid up shares of any denomination—100(1)(b) CAMA
- any direct issue of stock is ultra vires

Sample resolution to convert shares into stock

"that 1000 shares in the capital of the company which have been issued and fully paid up be converted into stock.

That the whole of the preference shares in the capital of the company be converted into stock, to be called preference stock."

Cancellation of Unissued Shares—100(1)(d)

- shares not taken and have not been agreed to be taken may be cancelled by a company
- Cancellation of shares which have not been taken but agreed to be taken is termed as DIMUNITION OF CAPITAL.
- Cancellation of unissued share does not have the same meaning as reduction of share capital under CAMA

Sample Resolution for cancelling Unissued Shares

"that the capital of the company be reduced from N 1000 to N500 by cancelling 500 of the existing shares Preference share of N 1 each which have not been or agreed to be taken by any person."

Regulatory Laws and Authorities for Corporate Restructuring

LAWS	REGULATORY AGENCY	APPLICATION
1. CAMA 2004	CAC	For all companies
2. ISA 2007	SEC/IST	For all companies
3. BOFIA	CBN/	for Banks and other financial institutions
4. National Insurance Commission Act (NICA)	National Insurance Commission (NIC)	For insurance companies
5. Stamp Duties Act (SDA)	FIRS	For all companies
6. Federal High Court Act (FHCA)	FHC	For all companies
7. National Deposit Insurance	National Deposit Insurance Corporation	Banks and others

Corporation Act (NDICA)	(NDIC)	
8. Asset Management Corporation Act (AMCA)	Asset Management Corporation of Nigeria (AMCON)	Banks and others
9. Nigerian Investment Promotion Commission Act (NIPC Act)	Nigerian Investment Promotion Commission (NIPC)	Companies with foreign investments and others
10. Nigerian Communication Commission Act (NCC Act)	Nigerian Communication Commission (NCC)	Telecommunication companies
11. Company Proceeding Rules	FHC/ IST	All companies
12. Code of Corporate Governance for public companies 2013	CAC/SEC/NSE	All public companies
13. Listing Rules of the Stock Exchange	NSE	Public quoted companies
14. SEC Rules	SEC	All companies
15. CITA	FIRS	All companies except unregistered and foreign exempted companies
16. CGTA	FIRS	All companies
17. Transfer Pricing Regulations		
18. EPSRA	NERC	
19. NCC Competition Regulations 2007		
20. Guidelines for obtaining Minister's Consent/ Moni-pulo		
21. PDPR	DPR	

CONDITION PRECEDENT

- For approval of any form of corporate restructuring, SEC Rules 2013 requires a

a.A Letter of "NO OBJECTION" from relevant regulatory agencies

b. Clearance Letter from FIRS regarding tax liabilities (where applicable)

EXAMPLE OF ARRANGEMENT

- Conversion of convertible debentures into shares
- Agreement on creation of a higher or pari passu ranking charge

ARRANGEMENT ON SALE

- Arrangement means any change in the rights and liabilities of members, debenture holder, creditors of a company or any class of them or in the regulation of the company, other than a change effected under the provision of CAMA or by unanimous agreement of all parties affected thereby.—s. 537 CAMA
- Arrangement is done by special resolution—538 CAMA
- Arrangement on sale bothers on the sale of a Company's asset/undertakings to another corporate entity for consideration either fully or partly paid of shares of the other company, such shares to be distributed among members of the company in accordance to their rights in liquidations
- This is often done in cases of members voluntary winding up and the liquidator is authorize to sell the whole or part of the Company's assets solely for the fulfilment of debt owed by the company
- Transferee company may be another corporate body
- The transferee company may be a company within the meaning of CAMA or not.—see RE IRRIGATION CO. OF FRANCE EXP. FOX
- ***The authority to sell and carryout the sale must be conferred on the liquidator by special resolution.—ETHERIDGE V CENTRAL URUGUYAN NORTHERN EXTENSION RY.***

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BUT NO MATTER WHAT, STAY CALM AND ENJOY YOURSELF (SEE YOU AT ICC)!

- There is need for special resolution for members voluntary wind up
- Notice of meeting for passage of special resolution for the arrangement must state that the resolution is proposed pursuant to section 538: Re Irrigation Co. of France, exp. Fox

NB: things that will occasion obtaining sanction of court before Arrangement on sale can be obtained

1. Where there is an action on ground of unfairly prejudicial running
2. Creditor's voluntary winding up

PROCEDURE FOR ARRANGEMENT ON SALE

1. BOD meeting proposing the Arrangement and preparing the scheme of arrangement
2. Notice of 21 days for general meeting must be sent to members of the company and the notice must state a special resolution is proposed pursuant to section 538 CAMA
3. Before passing the resolution, the Directors must make a statutory declaration of solvency…s. 462. That from the assets from the date of commencement of winding up, the company would be able to pay up its liabilities within 12 months.
4. The members in the GM passes a special resolution stating the following:

a. Voluntary wind up of the company

b. To appoint and authorize the liquidator to carry out the sale and distribution of all or part of the company's Asset to a transferee company whether or not…. In consideration for a part or fully paid shares in the shares of the transferee company

5. The liquidator gives effect to resolution
6. A dissenting member may give notice to the liquidator within 30 days of the resolution, a copy of which must be deposited at the company's registered office or head office instructing the liquidator to either

- Abstain from carrying the resolution into effect or;
- To purchase his own shares at a price determined. Either by agreement or by SEC.

7. The liquidator convene a final meeting for the purpose of given account of liquidation and distributing the proceeds therefrom and for dissolving the company.
8. Any sale carried out pursuant to the special resolution is binding on the entire members of the company save those who signified dissent and
9. Sale shall similarly not be valid if there is order under s. 310-312 on an application for unfair prejudice and oppressive conduct or winding up by creditors made within one year from the date of passing the special resolution except if sanctioned by the court-- 538(2) and (4) CAMA.

Effect of the Arrangement on creditors

- They remain the creditors of the transferor company and have all rights their debt confer against the company
- It is usually part of the arrangement that the transferee company extinguishes the liabilities of the transferor company by indemnifying the creditors or transferor companies retains sufficient assets to extinguishes his liabilities
- If the creditors feel the arrangement is affecting their rights(variation or abrogation of rights), they can bring action for creditor's winding up of the company-- 538(5) CAMA

EFFECT OF THE ARRANGEMENT ON SHAREHOLDERS

- The resolution and distribution of the shares are valid and binding on the shareholder
- The terms of the arrangement will not be binding on the dissenting shareholders

ARRANGEMENT AND COMPROMISE—539 CAMA

- A compromise or arrangement may be proposed
- The proposal may be between

a. a company and its creditors

b. a company and any class of its creditors

c. a company and its members

d. class of members
- An order of the court is needed to summon meeting for the discussing the Agreement or Compromise
- The summon is issued in a way the court directs
- The order of the court is given on application by either
a.the company or
b. its creditors or
c.any class of the creditors or
d. members of the company
e.liquidator (for companies being wound up)
- The application must be in summary way
- The order convening the meeting must be for a meeting of;
a.Creditors or
b. Class of creditors
c.Members of the company
d. Class of members

Compromise: only resorted to where there is a dispute between the company and the creditors—SNEATH V VALLEY GOLD LTD.

PARTIES TO COMPROMISE AND ARRANGEMENT

- The company and its creditors, or any class of its creditors to EXCHANGE DEBENTURES FOR SHARES
- The company and its members or any class of its members to CONSOLIDATE AND SUBDIVIDE SHARES.
- The scheme to be used depends on whether the company is still a going concern or in the course of winding up.
- The procedure involves only one company but requires sanction of the court for its validity
- Market operators must notify SEC of intention to compromise with creditors at least 3 months before meeting of the creditors. See- Rule 47 SEC Rules

PROCEDURE

a.Scheme of Arrangement or compromise is prepared by the company, a member(s), creditor(s), or the liquidator where the company is being wound up
b. Application for summon to convey court ordered meeting made to the FHC in summary by the company or creditor(s) or member(s) or liquidator in cases of companies being wound up praying that the court summon the meeting of the company, creditors or class of creditors, members or class of members in such manner as the court may direct.
c.If order is granted, the meeting is conveyed accordingly
d. Notice of court ordered meeting is issued and must be accompanied by statement explaining the general effect of the arrangement or compromise, any material interest of the directors of the company and whether it would affect the directors differently from other persons.
e.If it will affect debenture holders, the statement in (d) above must give such explanation
f. If meeting is summoned by advertisement, it must contain the statement or notice of where the statement can be obtained by those entitled to attend the meeting—540(1)(2)
g. At the meeting if majority (special resolution 3/4) not less than ¾ of the class the in favor of which the order for meeting is given vote in support of the scheme of compromise, the report of the meeting is sent back to the court
h. The court will refer the scheme to SEC for investigation of fairness of the compromise and SEC will in turn return the investigated scheme back to the court within the time prescribed by the court
i. If the court is satisfied with the fairness of the scheme on the SEC report, it shall sanction the compromise and the scheme shall become binding on all the parties to the compromise
j. An order of the court sanctioning the Scheme shall not become effective unless registered with CAC
k. A copy of the Sanctioning Order shall be annexed to all copies of the Memorandum of the company issued after the order.

ARRANGEMENT ON SALE	ARRANGEMENT AND COMPROMISE
1. In members voluntary winding up	Not necessary in members voluntary winding up
2. Special resolution take effect immediately subject to some limitations.	Special resolution must be sanction by court before it can take effect
3. No court ordered meeting	There is court ordered meeting
4. There is no need for sanctioning of the scheme	Scheme only become binding when sanction by the FHC
5. No referral to SEC by the court of the scheme for investigation of fairness	There referral to SEC by the court of the scheme for investigation of fairness
6. No inspector is appointed for inspecting the scheme	An inspector is appointed by the SEC to investigate fairness of the scheme
7. There is a transferee company to acquire the asset of the company	No transferee company, it is only between the company and its members or creditors
8. It takes effect from the passing of the special resolution	It takes effect from the date of registration of the court order sanctioning the scheme with the CAC
9. No prior notice to SEC is required.	SEC must be given 3 months prior notice of intention to compromise by the Market operators
10. No going to court save in two instances	

MANAGEMENT BUY OUT (M.B.O)—Rule 449 SEC Rules

- An acquisition by a management team of a company, of controlling the shares of the company or its subsidiaries with or without 3rd party financing.
- The target management plays the leading role
- Acquisition is effected by a management group which uses debt financing supplied by a bank or other lender to acquire a company
- Asset of the company so acquired may be pledged as collateral for the loan
- It is usually expected that the loan will be repaid out of the cash flow of the company
- MBO may create conflict of interest because the management stand in two fold capacities:

a. As an equity participant in the buyout group and;
b. As a representative of the target's company shareholders

- Application for approval of buyout must be filed with SEC by the management team making the acquisition
- Documents to accompany the application to be submitted to SEC:

a. The company resolution approving the buyout
b. Resolution of the management team authorising the buyout
c. A copy of the Certificate of Incorporation(COI)
d. A copy of the company's MEMART
e. Two copies of the Prospectus
f. Share Sale and Purchase agreement between the management team and company
g. Trust Deed(where applicable)
h. Other documents SEC may require from time to time

EXTERNAL RESTRUCTURING

OPTIONS AVAILABLE

1. Acquisition
2. External Restructuring (restructuring of a group of companies) and related transactions
3. Mergers
4. Take over

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5. Purchase and Assumption
6. Cherry-Picking

Regulatory Laws and Authorities for External Corporate Restructuring

LAWS	REGULATORY AGENCY	APPLICATION
1. CAMA	CAC	for all companies
2. ISA	SEC/IST	For companies
3. BOFIA	CBN/	for Banks and other financial institutions
4. National Insurance Commission Act (NICA)	National Insurance Commission (NIC)	For insurance companies
5. Stamp Duties Act (SDA)	FIRS	For all companies
6. Federal High Court Act (FHCA)	FHC	for all companies
7. National Deposit Insurance Corporation Act (NDICA)	National Deposit Insurance Corporation (NDIC)	banks and others
8. Asset Management Corporation Act (AMCA)	Asset Management Corporation of Nigeria (AMCON)	Banks and others
9. Nigerian Investment Promotion Commission Act (NIPC Act)	Nigerian Investment Promotion Commission (NIPC)	Companies with foreign investments and others
10. Nigerian Communication Commission Act	Nigerian Communication Commission (NCC)	Telecommunication companies
11. Company Proceeding Rules	FCH/ IST	All companies
12. Code of Corporate Governance for public companies 2013	CAC/SEC/NSE	All public companies
13. Listing Rules of the Stock Exchange	NSE	Public quoted companies

Application of SEC Rules, 2013

- Rule 422 SEC Rules, provisions on corporate restructuring applies to:
  - Public or Private companies
  - Every merger, acquisition or combination between or among companies, involving acquisition of shares or assets of another company.
  - Any merger, takeover, acquisition or external restructuring undertaken by FG owned agencies pursuant to statutory power vested in it.

MERGERS – 119 ISA

Definition: it means amalgamation of two or more undertakings or any part of the undertakings or interest of two or more companies or the undertakings of part of the undertakings of one or more companies and one or more body corporate.—s. 119(1) ISA. E.g

- A+B= A—Good Will of A
- A+B= B—Good Will of B—e.g ECO+ OCEANIC= ECO
- A+B= C
- A+B=AB—EXONN-MOBIL etc
- **MERGER may be achieved by either:**

a. PURCHASHING or LEASING the shares, interest or assets of the company in question or;
b. Amalgamation or combination with the other company in question.—119(2) ISA

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REASONS FOR MERGER

a.Risk of imminent business failure
b. Economic of scale—reduce cost of production and increase of profit
c.Growth increased revenue and increased market shares
d. To survive regulatory requirement. E.g CBN's policy on N25 Billion Authorised Share Capital

CATEGORIES OF MERGER—s. 120 ISA

a.Small Merger
b. An intermediate Merger
c.A Large Merger
- The categorisation of Merger depends on the threshold set down for determination by SEC
- SEC from time to time determine the lower and upper threshold of combined annual turnover or assets or
- A lower and upper threshold of combinations of turnover and assets in Nigeria, in general or in relation to specified industries for the purpose of determining the categories of mergers and a method of calculation of annual turnover or assets to be applied in relation to each of the prescribed thresholds.
- Threshold: Assets and Turn over in Nigeria and not outside—Rules 427 SEC Rules 2013
- Lower threshold
- Intermediate threshold
- Upper Threshold

TYPES OF MERGER

a.Horizontal : Direct competitors. Red Flag: would it lead to monopoly or erasure of competitions.
b. Vertical: Non competitors but object somehow related
c.Conglomerate: non related objects

PRELIMINARY CONSIDERATIONS

NEED FOR MEMORANDUM OF UNDERSTANDING (MOU)

- It is a necessary foundation for negotiation
- It provides for the terms of the proposed transaction
- It provides for disclosure and non-disclosure Agreement
- It provides for steps to be taken by the parties in the negotiation process in a NON-BINDING TERM
- It is simply put an agreement to negotiate and usually does not provide for a binding legal transfer
- It comes before conducting due diligence and executing binding legal transfer
- MOU may not be necessary if the companies are already known to each other by reason of an existing relationship. E.g a holding company merging or consolidating some of its subsidiaries.
- MOU are usually marked subject to contract.

REPRESENTATIONS AND WARRANTIES

- Obtained in order to indemnify the other party against untrue or false statements upon which that other party has acted, as a result of which action he has suffered some loss or damages
- Parties can seek further assurances by way of contracts of indemnity, guarantees or performance bonds.
- Each companies certify existence of due diligence of one and another.

DUE DILIGENCE

- Necessary before any binding transfer or final purchase of contract is drawn

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- It centres on investigation and satisfaction of the accuracy of information supplied to acquiring company by the company to be acquired
- It is done so that acquisition is not made on faulty assumptions or inaccurate information
- Several professionals are employed in conducting due diligence—solicitors, Accountants and Estate valuers etc
- Legal due diligence may similarly be conducted by the company to be acquired on self mis-statement that may render it liable and conduct same on the acquiring company.

TYPES

1. Legal Due Diligence
2. Financial Due Diligence

CHECK LIST OF THINGS TO INVESTIGATE WHY CARRYING OUT LEGAL DUE DILIGENCE.

1. Corporate Records and Constitutional Documents—COI, MEMART.
2. Material contracts
3. Litigation Dispute profile
4. Intellectual property
5. Employees
6. Regulatory compliance
7. Ownership of the company
8. Directors of the company and any service contract (previous, subsisting and future)
9. Status of the company—Ltd, Plc, Ltd/Gte/ Unltd
10. Date of registration of the company and whether the company is still a going concern
11. copies of licences to do business (where applicable)
12. Filing of Annual Returns as at when due
13. Changes in status of the company (if any)
14. Share capital of the company and alterations made to it (if any and date when the alteration was carried out)
15. Collective Bargain Agreement
16. Constitution of trade unions in Large Merger
17. All statutory books of the company
18. All returns made to CAC
19. All charges created by the company and the debenture holders
20. Object/ Business of the company and changes therein if any
21. Registration of business with any regulatory authorities
22. All title to the properties of the company
23. All indebtedness of the company
24. Relationship of the company with other companies
25. MEMART of the Company
26. All agreements entered into by the company
27. All statutory obligations to be fulfilled by the companies
28. All statutory returns to be filed by the company
29. Copies of application made by the company to different regulatory authorities.

ETHICS: any variance in due diligence report can be the basis of liability for the Solicitor.

CHECK LIST OF THINGS TO INVESTIGATE WHY CARRYING OUT FINANCIAL DUE DILIGENCE

1. Existing tax liabilities of merging companies and tax implication of proposed scheme
2. General financial information
3. Revenue and expenditure
4. Investment Profile

5. Accounting and financial control system of the company
6. Valuation of assets and liabilities to be acquired.
7. Credit Worthiness profitability
8. Accounting records
9. Comparison of the company's historic trading result and current trading position , contrasted with its budget
10. ability of company to raise short term and long term capital, and the cost of capital in relation to general industrial indicators
11. tax liabilities of the company
12. tax implication of the proposed deal
13. value assets and liabilities to be acquired
14. product development and competitors
15. Capital investment, profitability, margin price, earning review of forecast of trading results.

DRAFTING MERGER AND ACQUISITION AGREEMENT

1. Introduction
2. Parties and date
3. Recitals
4. Basic terms of the transaction
5. Representation and warranties
6. Corporate Authority
7. Consent and Authorisation
8. Financial statement
9. Title to properties
10. Litigation
11. Employee matters
12. Licenses
13. Compensation plan for employees
14. Full and complete disclosure
15. Covenants and undertakings
16. Notification of default/adverse developments
17. Indemnification and insurance
18. Conduct of sellers business prior to closing
19. Conduct of purchasers business prior to closing
20. Conditions at closing
21. Amendments
22. Termination and effective termination
23. Extension
24. Miscellaneous

PRELIMINARY POINTS

- Pre-merger notification/approval in principle
- In a small merger, the merging entities are precluded from payment application for notification fees

No obligIt is advisable because SEC can compel to give premerger notice.—122(2) ISA

- ation for small merger to file pre-merger Notice
- Pre-merger notice is mandatory in larger and intermediate merger.

- Formal Approval—Rule 423 SEC Rules 2013

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1. All merger, Acquisition or external restructuring between or among companies is subject is subject to prior review and approval by SEC
2. SEC approve the proposed restructuring scheme upon satisfaction of the following:

a.The Acquisition/merger either directly or indirectly is not likely to cause substantial restraint of competition or tend to create monopoly in any line of business enterprise

b. The use of the shares to be acquired by voting or granting proxies or otherwise shall not cause substantial restraint of competition or tend to create monopoly in any line of business enterprise

c.Where the contemplated merger is likely to cause restrain, one of the parties have agreed that it is failing.

NB: the provision is not for holding companies acquiring shares to cause restraint or small merger. The merging entities in a small merger is only required to notify SEC at the conclusion of the merger.

3. Private and public unquoted companies with assets or turnover below N 500 Million are not required to notify SEC for prior review and approval
4. Parties to small merger my willingly notify SEC at any time or SEC may be required to be notified if the scheme will cause financial restraint
5. In every merger, there must be notification to every relevant regulatory authority

REQUIREMENT FOR FORMAL APPROVAL—Rule 428

Before making application for court ordered meeting in intermediate and large merger, documents that follows must be file for review with SEC

1. Duly notarised letter of consent by parties to the scheme or duly executed POA giving consent.
2. Any other documents SEC may require

Upon receipt of approval (favourable notification) to the merger notification from SEC, a formal application for the merger must be filed with two hard copies and a soft copy of the scheme document containing:

a.Separate letters from the chairman of the merging companies and;

b. Explanatory statement to the shareholders by the joint financial advisers addressing some specified facts.

Requirement for formal Approval—Rule 429

1. Extract of minutes of court ordered meeting of the merging entities in support of the merger duly certified by a director and the company secretary.
2. Two copies of scheme documents duly signed by the parties to the merger
3. Evidence of the executed resolutions passed at the separate court ordered meetings.
4. Scrutineers report showing the result of voting and total number of votes casts;
5. Stamped Power of Attorney of directors who were absent at the separate court – ordered meetings (where applicable);
6. Evidence of clearance letter from the Federal Inland Revenue Services regarding any tax liability (where applicable);
7. Amended copy of the Memorandum and Articles of Association of the resultant company (where applicable).
8. CAC form showing particulars of directors;
9. CAC form showing allotments (for private companies) only;
10. Evidence of payment of processing fee;
11. Relevant SEC Form.

When all the requirements have been fulfilled, SEC shall inform the court in writing whether the merger is approved or not.

PROCEDURE

- Law determines threshold
- Threshold determines categories
- Categories determines the procedure

SMALL MERGER—122 ISA

1. Pre-merger notification (not compulsory but highly recommended)
a.BOD meetings to agree on merger scheme
b. Scheme documents will prepared
2. Send notification to SEC
a.Notification is send to trade union for large and intermediate merger
b. SEC appoint inspectors to investigate the fairness of the scheme
3. SEC gives approval in principle and it is taken to court to apply for a court ordered meeting.
4. ¾ Resolution at the court ordered meeting approving the merger scheme and the scheme document
5. The merger scheme and other documents for Formal approval will be send to SEC for Formal Approval
Responses
a.It may be out rightly approved
b. Conditional approval
c.Prohibit the merger or
d. Prohibit continuation of the merger
6. Go to FHC for an order sanctioning the scheme documents

7. Post Approval Requirements—Rule 430

After approval by SEC and the court ordered court ordered meeting sanctioning the scheme, the following requirement must be complied with by the Applicant:

1. File a copy of the court-order sanctioning the scheme within seven (7) days of the court making the order;
2. File a copy of the newspaper publication of the court-order;
3. File a statement of the actual cost of the scheme;
4. File a notification of the completion or otherwise of the exercise within three (3) months of the court's order;
5. File summary reports of the scheme in respect of the following:-

a.Arrangement relating to employees of the acquired company;
b. Settlement of shareholders;
c.Utilization of monies injected into the company, if any.
d. Treatment of dissenting shareholders;
e.Submission of gazetted copy of the court sanction;
f. Evidence of allotment of shares;
g. Evidence of settlement of severance benefits of employees (where applicable).
h. Statement of the actual cost of the scheme
8. Post-Merger Inspection—Rule 431

Three (3) months after approval by SEC, a post- merger inspection shall be carried out by SEC to ascertain the level of compliance with the provisions of the scheme documents.

Documents to be inspected include:-

a.The board minutes book;
b. Original certificate of incorporation of the resultant company (where applicable);
c.Copy of the amended Memorandum and Articles of Association
d. Severance benefits of employees of the dissolved companies;
e.Final settlement of shareholders;
f. Dispatch of share certificates;
g. Settlement of debts;
h. Report of shareholders repFresentatives on the merger;
i. Any other document that may be required by SEC from time to time.

9. The Merger must also be registered with CAC.—Regulation 53 Companies Regulations 2012

Requirement for Registration of notice of merger with CAC

1. Documents to be submitted for registration include the following:

a. Special resolution of each companies to the merger scheme
b. Scheme of the Merger Arrangement duly approved by SEC
c. Court order—sanctioning the merger
d. Evidence of publication of court order in Gazette and at least 1 news paper
e. Original COI of each dissolved company for cancellation
f. Updated annual return
g. Updated 553filing where applicable
h. Payment of registration fees

2. The special resolution shall be filed within 15 days of the passing of the special resolution
3. Notice of court order sanctioning the scheme shall be filed with CAC within 15 days of making the order.

TABLE OF MERGER PROCEDURE

S/N	SMALL	INTERMEDIATE	LARGE
STEP 1			
BOD Meeting & Preparation of Merger Scheme	Compulsory	Compulsory	Compulsory
Pre-Merger Notification	Not compulsory (highly recommended)	Compulsory	Compulsory
Destination of Notification	Only SEC (where applicable)	SEC and Trade unions of the merging entities	SEC and Trade unions of the merging entities
Amount of filing	Not applicable	N50, 000	N 50, 000
Inspecting fairness of the scheme	By inspector appointed by SEC (where applicable)	By inspector appointed by SEC	By inspector appointed by SEC
Approval in principle	Given by SEC where applicable	Given by SEC	Given by SEC
Application for Court Ordered Meeting @FHC	Compulsory	Compulsory	Compulsory
¾ Resolution at the separate court ordered meetings approving the scheme & scheme document	Compulsory	Compulsory	Compulsory
STEP 2			
Application for formal Approval	Compulsory	Compulsory	Compulsory
Destination	SEC	SEC	SEC
Likely Responses	a. Outright approval b. Conditional approval c. Prohibition of merger d. Prohibit cont. of merger	a. Outright approval b. Conditional approval c. Prohibition of merger	a. Outright approval b. Conditional approval c. Prohibition of merger
Duration for response by SEC	20 working days & 40 working days extension	20 working days & 40 working days extension	40 working days, no extension.
Court Order sanctioning the fully/conditionally Approved Scheme	Compulsory	Compulsory	Compulsory

Destination	FHC	FHC	FHC
STEP 3			
Post Approval requirement	File necessary documents	File necessary documents	File necessary documents
Destination	SEC	SEC	SEC
Post-Merger Inspection	Compulsory	Compulsory	Compulsory
Carried out by:	SEC	SEC	SEC
Time	Within 3 months after approval	Within 3 months after approval	Within 3 months after approval
STEP 4			
Registration with CAC	Compulsory	Compulsory	Compulsory

SUMMARY PROCEDURE FOR MERGER—Rules 428—431 SEC Rules

1. Directors convey a board meeting proposing the merger and prepare scheme of merger.
2. Preparation of scheme for the merger.
3. File pre- merger notification with SEC
4. If, SEC approve of the merger scheme, file an application for and holding of court ordered meeting of the merging companies
5. ¾ resolution of the separate court ordered meeting of the merging companies approving the scheme and the scheme document.
6. Formal application of the merger for approval by SEC with relevant documents and compliance with the requirements for formal approval of the merger.
7. If merger is approved, SEC inform the court by a statement in writing of approval of the merger either wholly or conditional or prohibited
8. Court sanction the merger scheme and the court order is published in the Newspaper
9. Post Approval compliance by merging companies—file with SEC:

a.Copy of court order sanctioning the merger

b. Statement of the actual cost of the scheme

c.Notification of completion or otherwise of the merging exercise within 3 months of the court Order

d. Summary of report of the scheme in respect of certain matters

10. Post—Merger inspection by Sec within 3 months after approval to after approval to ascertain the level of compliance with the provisions of the scheme documents
11. Registration of Notice of Merger with CAC pursuant to Regulation 53 of the companies Regulations 2012.

REVOCATION OF APPROVAL FOR MERGER BY SEC—127 ISA

Grounds

a.Where incorrect information is given by any of the parties to the merger

b. Approval obtained by deceit

c.Breach of conditions for conditional approval either of the party to the merger.

NB: Power of SEC to revoke merger is unreserved and not barred by time limit stipulated under ISA.

POWER OF SEC TO BREAK UP A MERGED COMPANY/ COMPANY—s. 128 ISA and Rule 432 SEC Rules 2013

GROUNDS:

- Company has created a monopoly in any line of business and the activities is restraining competition.
- Company is creating monopoly and has engaged in Anti—competition conducts.
- Factors: to ensure reasonable competition is created in the market.
- The provision for checkmating monopoly and dominant companies under ISA is called Anti-thrust provision.

Procedure—s. 128 ISA and Rule 432 SEC Rules 2013

1. SEC send notice in writing stating basis of its observations to the company that the company give a written response within 30 days of the receipt of the letter.
2. SEC review the response of the company and where it is found that competition is restrained, the senior officers of the company will be invited to defend their position before SEC
3. SEC Forwards final decision to the company and a copy to FHC for sanctioning
4. The company will be un-bundled and become competitors
5. SEC re-register the breakup entities within a specified period

GUIDELINES FOR DETERMINING MONOPOLY OR RESTRAINT OF COMPETITION BY SEC—R. 432

a. The entry into agreements with other companies or business undertakings which have as their object or effect the prevention, restriction or distortion of competition in any part of the Nigerian market, and in particular those which:

i. Directly or indirectly fix purchase or selling prices or any other trading conditions;

ii. Limit or control production, markets, technical development, or investment;

iii. Share markets or sources of supply;

iv. Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

v. Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

b. The abuse by companies or business enterprises of dominant positions achieved by them in any part of the Nigerian Market irrespective of how such positions of dominance were achieved. Such abuse may, in particular, consist in:

i. Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

ii. Limiting production, markets or technical development to the prejudice of consumers;

iii. Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

iv. Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

DISSENTING SHARE HOLDERS IN MERGER—129 ISA

- Dissenting shareholder
- They must get 9/10

REGULATION OF MERGER AND ACQUISITION—s. 121 ISA

- Regulated because of competition law concern

Questions SEC will determine before grant of approval for merger where it appears to cause restraint in competition

- Whether or not merger is likely to result to technological efficiency or other pro-competitive gains which will be greater than and offset the prevention or lessening competition which would not likely to be obtained if the merger is prevented?
- Whether merger can or cannot be justified on grounds of substantial public interest?

- Whether shareholders are fairly, equitably and similarly treated and given sufficient information regarding the merger?

Roles of Solicitors in Mergers and Acquisition

1. Conduct due diligence
2. Formulation of business bargain at the early stage of the arrangement to ensures strict legal compliance
3. Coordinates all necessary investigation and prepare all relevant documents

The documents the solicitor prepare includes:

a.Memorandum of Understanding (MOU)

b. Scheme of merger

c.All material contracts

4. Coordinates legal due diligence
5. Participate in negotiation process
6. Give necessary legal advice at each stage of the transaction
7. Obtains all relevant permits, approvals and registrations
8. He peruses, prepares and sees to the execution of all material contracts
9. He advice on the categories of merger, the procedure and implication
10. Advises on procedures on acquisition of shares and rights of a dissenting shareholder
11. He advises on takeover bid
12. Assist in securing authorities needed from relevant regulatory agencies
13. Assists in relevant and required registrations

ROLES OF REGULATORY AUTHORITIES

1. Corporate Affairs Commission (CAC)—s. 7(f) CAMA

a.Regulation and supervision of management of the arrangement

b. Receiving and registering the relevant returns required by the law.

2. Nigeria Stock Exchange (NSE)

a.Notification of any price sensitive information e.g change in directors, change in capital structure, merger, takeover, MBO, and other forms of corporate restructuring

b. Listing of resulting shares after restructuring

3. Role of SEC

a.SEC is the apex and primary regulation body for merger and acquisitions

b. All merger must be reviewed and approved by SEC

4. Role of FHC
5. Role of CBN
6. Role of Issuing House

NB: When merging a private and a government owned body, the government body will first be unbundled. The Bureau and Public Enterprise (BPE) will be involved

TAKE OVER—131 ISA and 445 SEC Rules

- Occurs where a person, or group of persons or company acquiring not less than 30% of shares of the company with the intention to take over and control the company

GENERAL CONDITION

1. Obtain notification and approval of SEC of the take-over bid through a Registered market operator
2. Takeover bid must be made to at least 20 members of the target company and the members must constitute at 60% of all the members of the company
3. A take-over bid cannot be made in respect of shares in a private company
4. A private company may be an acquiring company but cannot be a target company

SPECIFIC CONDITIONS

- Obtain authority of SEC before proceeding to the takeover bid
- SEC grant authority to proceed for three months
- The takeover bid must be dispatch to the target share holder within three months.
- Application for extension of time for dispatching the take over bid must be made to SEC within 14 before expiration of initial takeover bid

TAKE OVER

- A restructuring process which results in acquisition/ purchase of a substantial interest in shares by an individual or a company (the ACQUIRER) in another company known as the TARGET COMPANY, sufficient enough to give the acquirer substantial control over either management and/or overall affairs of the target company
- Persons that acquire the sufficient shares in the target company are known as CORE INVESTORS of the target company.
- If the acquirer and the target company are both corporate entities, they would form a single group in which the Acquirer would be the Holding company and the target company would be its subsidiary.
- Value of shares for Acquisition under s. 131 ISA is between 30% and 50% of the voting rights of the called up shares of the target company.(or a lower or higher threshold as may be prescribe by SEC from time to time)
- Note, R.445 SEC Rules 2013 prescribes Acquisition of 30% of the shares of publicly quoted companies with intention of taking over control of the company.
- Acquisition of the shares may not be at once, it may be acquired in series of transactions with the company over a period of time or taken together with shares held or acquired by persons acting in concert with the offeror.

MODE OF ACQUIRING TAKE OVER SHARES

1. Acquisition of the shares alone at once
2. Acquisition of the shares in series of transactions over a period of time with the target company.
3. Acquisition of shares alone by the investor or Acquirer
4. Acquisition of the shares together with shares the investor/Acquirer already have in the company
5. Acquisition of the shares with the shares of persons/company acting together with the investor/Acquirer already have in the company.

TAKE OVER BID

- Upon acquisition of the requisite of the minimum of 30% called up shares of the target company, the Acquirer can proceed with Takeover Bid in accordance with R. 445 of the SEC Rules, 2013.
- When making a takeover bid through an agent, the agent must be a capital market operator

CONDITIONS/ STEPS FOR ISSUE OF A TAKE OVER BID

1. Agent that dispatches the bid shall be a Registered Capital Market Operators
2. Takeover bid must be dispatch to not less than 20 shareholders representing at least 60% of the members of the target company (or such number as may prescribed by SEC from time to time)
3. If the bid is offered by a corporate body, it must be accompanied with a resolution approving it signed by at least one Director and a Secretary
4. The takeover bid must be advertised in at least two National daily Newspapers for the purpose of information
5. The bid must not be in respect of a private company
6. Authority to dispatch the bid must be obtained from SEC
7. The bid must be dispatched to the target members within 3 months of obtaining authority to dispatch from SEC
8. The bid must contain requisite content under R. 446 SEC R
9. The bid must be registered with SEC.

CONTENT OF A TAKEOVER BID

Please note that this is a personal note. Therefore, it is not meant to be sold or used as a substitute for textbooks or other NLS recommended materials thanks.

BUT NO MATTER WHAT, STAY CALM AND ENJOY YOURSELF (SEE YOU AT ICC)!

a.Full names and addresses of the offerror/acquirer
b. The bid must specify maximum numbers and shares proposed to be acquired during the period specified in the bid
c.The price and terms on which the shares are to be acquired.
d. Valuation method adopted in in arriving at the price offered for the shares.

AUTHORITY TO PROCEED WITH TAKEOVER BID—s. 134 ISA and R. 447(1) SEC R

REQUIREMENTS

a.Application for authority to proceed with takeover bid to SEC. made by or on behalf of the person proposing the bid.
b. The application must be made before the proposed bid is made
c.The Application shall be accompanied by the following—
i. Name and other particulars of the person(s) making it
ii. Particulars of the proposed bid with supporting documents
iii. Any other information or document as SEC may require from time to time
- The Authority if granted shall be for a period of three month subject to renewal upon application by person making the bid.
- The application for renewal shall be made within 14 days prior to the end of the initial subsisting period of three months authority granted
- The renewal shall be for a period of not more than 3 months

REGISTRATION OF A TAKEOVER BID—R. 448 SEC R

- Copy of the Proposed Takeover Bid shall be lodged with SEC before dispatch
- If SEC is satisfied of the compliance of the Bid with the relevant regulations, it register the bid or if refused, notify the applicant Accordingly
- Applicants whose bids were refused by SEC have right to apply for review of SEC decision within 30 days of service on him of the Notice of refusal.
- Application for review shall be made to SEC to refer a copy of the proposed bid to the Investment and Securities Tribunal for review.
- If SEC granted the Authority to proceed with the Takeover Bid, the applicant shall file the following documents—

a.Two (2)draft copies of the takeover bid;
b. Consent letters of directors and other parties to the transaction;
c. CTC Form CAC 7 of the offeror;
d. A copy of draft Financial Services Agreement between the financial adviser and the offeror, and any other agreement(s) entered into in the course of the transaction;
e.Annual report and accounts of the offeror for the preceding period of five (5)years or the number of years the company has been in existence;
f. Payment of N50,000 application fee and relevant SEC fee based on the value of shares to be taken over;
g. A draft newspaper publication of the proposed takeover;
h. Evidence of source of funds;
i. Any other documents SEC may require from time to time.
- The offeror shall file with SEC, within seven (7) working days of the conclusion of the offer, the following:
a.schedule of target company shareholders who accepted the offer containing the volume and value of the respective shares;
b. Evidence of settlement of consideration.
- A post-takeover inspection shall be carried out by SEC not less than three (3) months after registration of the bid.

SUMMARY OF PROCEDURE FOR TAKEOVER

STEP 1—PREPARATION AND APPLICATION TO PROCEED WITH TAKE OVER BID

1. Preparation of the takeover bid

2. Application to SEC for Authority to proceed with the takeover bid

STEP 2—if authority is granted—REGISTRATION OF TAKE OVER BID

3. Registration of the Takeover bid with SEC

STEP 3—After Registration of the Bid (FORMAL DISPATCH OF TAKE OVERBID)

4. Formal dispatch of the takeover bid to not less than 20 members representing not less than 60% of the members of the target company.

NB 1: there must be aim to take over the target company an d the offeror or acquiring company must have at least 30% of the shares of the target company with express intention to take control of the company.

NB 2: the takeover bid must not be made to a private company

STEP 4—POST TAKEOVER REQUIREMENT

5. Offeror shall file within 7 working days of the conclusion of the takeover bid the following documents:

a.Schedule of target company shareholders who accepted the offer containing the volume and value of the respective shares;

b. Evidence of settlement of consideration.

6. SEC makes post take over inspection within 3 months after the registration of the bid.

TAKE OVER	ACQUISITION
1. SEC approval	Not all acquisition requires SEC approval
2. At least 30% AND at most 50%	Acquiring most if not all of the ownership stake in a company • Target at least 51%
3. Restricted in scope, not applicable to Ltd etc	Very wider scope covers Ltd, unquoted plc, quoted plc, partnership, mergers, unltd etc
4. At the end of takeover, there 2 companies. Acquirer and acquiring	The acquired company is subsumed into the acquiring company.
5. Documents is different	

S/N	MERGER	ACQUISITION	TAKEOVER
1. Aim	Companies merged for strength and expansion	Take control of target companies	Take control of target company
2. Act	The two or more companies merged to form one	Majority or all of ownership interest is acquired	Substantial interest is acquired to have control
3. Interest	All assets and liabilities of the companies are merged	51% and above of the shares or class of shares is acquired	Between 30% and 50% of the interest of the target company is acquired
4. Results	Merging company forms a new entity retaining names of either company, combination of both or an entirely new name	The acquired company form a subsidiary of the acquiring company	The acquirer have control over the management of the acquired company
5.	Both Private(Ltd) and Public (Plc) can be participate in merger	Acquisition can be done by both Ltd and Plc	A Private (Ltd) company cannot be a target company but may be an acquiring company
6. Subject	It is only between corporate	It can be between person(s) and	It can be between

	entities.	corporate entities	person(s) and corporate entities
7. Parties	Merging entities	Acquirer and target/Acquired company	Acquirer and Target company
8.			

ACQUISITION

- Definition: where a person or group of persons buys most (if not all) of a company's ownership stake in order to control of a target company—R. 443
- It is loosely used to describe merger or take-over but it technically relates to any acquisition of not less than 30% of the shares or undertaking of another company
- Take-over: the acquiring company acquires between 30% and 50% of the shares of another company—131 ISA:

a. Person acquires 30% or more of the voting rights of a company
b. Persons holds not less than 30% but not more than 50% of the voting rights

CONDITION PRECEDENT FOR ACQUISITION UNDER THE SEC RULES—Rule 433

- Filling requirements for acquisition by corporate entity/individual
- Acquirer file a letter of intent accompanied with documents stated in the rule
- Filing shall be done by a registered capital market operator to function as issuing house.
- Please see exception under 424(1) and (2) SEC RULES

The Documents:

1. 2 Draft Copies of Information Memorandum
2. Extract of the board Resolution of the Acquirer and Acquiree agreeing to the acquisition signed by the Company's Secretary and Director (where applicable)
3. A recent CAC CTC of the MEMART of the Acquirer and Acquiree company (where applicable) certified by the company secretary.
4. A certificate of Incorporation of the Acquirer and Acquiree (where applicable)
5. Extract of shareholders resolution of the acquirer and the Acquiree agreeing to the acquisition to be signed by a director and a secretary(where applicable)
6. Summary of claims and litigations of the company to be acquired
7. A copy of "No Objection" Letter from relevant regulatory body (where applicable)
8. Copy of letter appointing the financial adviser(s)
9. CTC of Form CAC 7 and CAC2 and CAC 2A of both the Acquirer and Acquiree company (where applicable)
10. Notarised consent of the Acquirer and Acquiree (where applicable)
11. Financial Service Agreement between the Acquirer and Acquiree and their respective Financial Advisers (where applicable)
12. Share purchase Agreement and any other relevant Agreement executed between the parties
13. Evidence of payment of N 50,000.00 as application fee
14. Payment of processing fee based on the value to be acquired on the graduation fee
15. Annual reports and Accounts of both companies for the preceding period of 5 years or a shorter period of 3 years for LTD and companies that have been operating for less than 5 years
16. Documentary evidence on source of fund to finance the acquisition
17. Report of valuation of shares/assets
18. Publication of the acquisition in at least two national dailies after consummation.

POST ACQUISITION REQUIREMENTS

Documents to be forwarded to SEC—Rule 437 SEC Rules

1. Executed share/Asset purchase Agreement
2. Evidence of settlement of the purchase Agreement
3. Evidence of settlement of severance benefits of employees who may lose their jobs as a result of the acquisition(where applicable)

DISSENTING SHARE HOLDERS UNDER TAKE OVER AND ACQUISITION—146 and 147 ISA

- Share in which offer was made shall be "shares subject to Acquisition"
- Shares in which offers was not accepted= "outstanding shares"
- The number of shares acquired in the shares subject to Acquisition/target shares must not be less than 90%
- The offeror may within one month after the Acquisition of such shares give notice to the dissenting offeree stating the following:

a.That the offer for acquisition has been accepted
b. That the offeror is bound to take up and pay or has taken up and pay for the shares of the offeree who accepted the offer
c.That the dissenting offeree may elect within 20 days of receiving the notice do either of the following:

- Transfer his shares to the oferror on the terms in which the other shares subject to acquisition was acquired
- Demand payment of fair value of his shares in accordance with the provision of s. 147 ISA

d. Informing the dissenting offeree as to the effect of 146(4) ISA and as to the requirement of 146(5) ISA—giving requirement in each case

PROCEDURE WHERE THE DISSENTING OFFEREE DOES NOT MAKE ANY ELECTION

- Section 146(4) ISA: if the dissenting offeree does not make any election given to him in the notice within the time frame, he would be deemed to have agreed to the transfer of his shares to the offeror in line with the terms of the acquisition.
- Section 146(5) ISA: the dissenting offeree shall send his share certificate (the class to which the acquisition relates) to his company within 20 days from the receipt of the notice served on him by the oferror.
- Section 146(6) ISA: the oferror shall within 20 days after sending the notice to the dissenting offeree pay or transfer to the offeree company the amount of money or other consideration he would have paid if the dissenting offeree agreed to the offer for the acquisition.

The offeree company after receipt of the money or the consideration is under the following presumption and liability:

- Deemed to hold the money or other consideration in trust for the dissenting offeree
- Shall pay the amount into the bank established for the purpose or keep safe the other consideration not in cash in custody of the bank.

- Section 146(7) ISA: the offeror shall:
  - Send a copy of the notice sent to the dissenting offeree to the offeree company
  - Notify the offeree company of the election made or deemed to have been made by the dissenting offeree
- Section 147(8) ISA: the offeror shall similarly sent a copy of the notice sent to the dissenting offeree to SEC not later than 1 month from the date in which it was sent to the dissenting offeree.

PROCEDURE WHERE THE DISSENTING OFFEREE MAKES AN ELECTION—s. 147 ISA

1. The offeror apply to court to fix fair value for all dissenting offeree who elect to have their shares transferred in fair value —this he does within 20 days after he has pay or transfer the money or other consideration to the offeree company
2. Where an offeror fails to apply to court to fix the fair value, the dissenting offeree may apply to court for similar purpose
3. The dissenting offeree shall not be required to give securities for costs in his application to court at the refusal of the offeror
4. Where the application is made for fixing fair value, all dissenting offeree who elect for fair value will be joined as parties and will be bound by the court's decision in the determination of their rights
5. The offeror notify all dissenting offerees of the date, time and place of the application and his right to appear to be heard in person or be represented by a counsel

6. The court may appoint an independent valuer to assist in fixing a fair value for the shares of the dissenting offeree
7. The final order on the amount to be paid in favour of the shares of the dissenting offeree shall be made by the court against the offeror—General Order
8. Specific orders the court may make:
a.Fixed the amount or the consideration to be held in trust for the dissenting offerees by the offeree company
b. Order that the money be held in trust by person other than the offeree company
c.Allows an interest at the current bank rate on the amount payable from the day the dissenting offeree send his share certificate to his company until the date of payment
9. If the money or other consideration fixed by the court exceeds the initial amount already paid to be in trust to the offeree company, the offeror shall:
a.Make additional payment to comply with the court order or transfer additional consideration as required
b. Where the court change the trustee, he shall make rectification as necessary in line with the option above.
10. Where court order separate trustee of the money, the offeree company shall be divested of the money or the consideration and the person so appointed by the court shall be vested with them

DUTIES OF THE OFFEREE COMPANY IN RELATION TO THE MONEY OR CONSIDERAION OF THE SHARES OF A DISSENTING SHAREHOLDER

1. If the company is satisfied that the offeror has made the necessary payment as required by law, it shall issue a share certificate to the offeror in respect of the shares held by the dissenting offeree
2. Upon application by the dissenting offeree who has given his share certificate to the company give him the money or transfer the consideration to him or give notice of the application and compliance to persons holding the money or the consideration
3. If the dissenting offeree refuses to give his share certificate as required, the offeree company shall give notice of cancellation of his shares and give to him his entitlement upon submission of the share certificate

POST ACQUISITION INSPECTION—Rules 439 SEC Rules

- SEC shall conduct post Acquisition inspection 3 months after approval of the application for acquisition

EXTERNAL RESTRUCTURING (under BHADMUS)

- It includes restructuring of a group of companies and other related party transaction.

PROCEDURE FOR OBTAINING APPROVAL—Rule 440 SEC Rules 2013

1. File application for external restructuring with SEC
2. SEC clear the Application
3. If cleared, the Company file application at the FHC seek order to convene a court ordered meeting
4. The scheme of the external restructuring is deliberated upon at the court ordered meeting
5. The shareholders resolves for approval of the scheme
6. The resolution and the scheme is taking to court for sanction.—the court sanction the transaction.

REQUIREMENT FOR EXTERNAL RESTRUCTURING—Rule 442 SEC Rules 2013

7. The applicant file formal application for approval of external restructuring with SEC. the following documents will be submitted:
a.Shareholders resolution of the companies approving the external restructuring;
b. A copy of certificate (s) of incorporation of the entities certified by the company secretary;
c. CAC certified true copies of particulars of directors and allotment of shares of the affected companies;
d. 'NO OBJECTION' letter from relevant regulatory authorities (where applicable);
e.Scheme of external restructuring containing the following information:
A. Directors of the companies;

B. Profile/share capital history of the companies;
C. Shareholding structure of the companies; d. Directors beneficial interest;
D. Status of the subsidiary (ies) after the external restructuring;
E. Status of the shares of the combined company;
F. Percentage or level of involvement of the combined companies (if they have similar products);
f. Any other information or document required by the Commission from time to time;
g. Additional requirements:
iv. Consents of directors and other parties to the transaction;
v. Board resolutions;
vi. 2 years Financial statement of the entities;
vii. Evidence of payment of processing fees.

EXTERNAL RESTRUCTURING OF A GROUP OF COYS AND OTHER RELATED TRANSACTION. Rule 440-444 SEC Rules 2013 (In Ogbuanya)

- It usually occurs between group and holding companies
- Don't go outside the group relationship
- Done when one of the subsidiary company is failing or having financial trouble

REQUIREMENTS—R. 442 SEC R

- Application for External restructuring shall be filed by submitting the following documents to SEC:
1. Shareholders resolution of the companies approving the external restructuring
2. A copy of COI of the companies certified by the company secretary
3. CTC of Form CAC7 and CAC2 of the affected companies
4. Letter of NO OBJECTION from relevant regulatory bodies
5. Information Memorandum
6. Any other information or documents required by SEC from time to time.
7. Additional Requirements:

a.Consents of Directors and other parties to the transaction
b. Board resolutions
c.2 years financial statement of the entities
d. Evidence of payment.

PROCEDURE FOR OBTAINING SEC APPROVAL—R. 441 SEC R

1. File application for External Restructuring with SEC
2. Upon clearance of the Application, the companies shall file an application at the FHC for an order to convene court ordered meeting
3. Following the resolution of the court ordered meeting approving the scheme and sanctioning the transaction by the court, the applicant shall file a formal application for approval for external restructuring with SEC

PURCHASE AND ASSUMPTION

- An external restructuring option aimed at rescuing some parts of the investment in a moribund or failing company
- It reduces loss of investment by allowing another company/investor to purchase liabilities of the failing company and assume its assets (usually at auction price)
- Assumed company does not go through a formal winding up but dissolved through a judicial sale of its assets and liabilities to the purchasing company
- Upon successful purchase, assumed company take up the status of the purchasing company through a judicial accent
- A duly Executed Deed of Purchase and Assumption is required to perfect the transaction between the parties and the resolution approving the transaction.

- Perfection document are to be filed along with court processes for the judicial sanction of the FHC.

CHERRY PICKING

- An external restructuring option aimed at rescuing some parts of the investment in a moribund or failing company
- It similarly reduces the loss of investment by failure of the company
- Investor access the statutory books of the company with a view to picking out the liabilities of the company it could save and integrate into its own operations.

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WEEK 18

PRE CLASS ACTIVITIES, FILL FORM 1.1

COMPANY PROCEEDINGS & SETTLEMENT OF INVESTMENT DISPUTES

INTRODUCTION: Dispute is a natural phenomenon which is bound to occur. Overtime, man has devised institutional ways to settle those disputes. But before then let us discuss the highlights of the applicable laws.

OVERVIEW OF APPLICABLE LAWS AND RULES

- 1999 Constitution as amended
- Companies and Allied Matters Act
- Companies Proceedings Rules 1992—applies only to part A CAMA. see 21(1) Companies Proceedings
- Companies Winding Up Rules 2001
- Investments and Security Tribunal
- SEC RULES 2013
- Investment and Securities Tribunal (Procedure) Rules 2014.
- Federal High Court act
- Federal High Court (Civil Procedure) Rules
- Nigerian Investment Promotion Commission.

APPLICABLE COURTS AND TRIBUNALS

- **FEDERAL HIGH COURT**
- **INVESTMENTS AND SECURITIES TRIBUNAL**
- **INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES (ICSID)**

- Manner and forum for instituting company proceedings
- How to go about resolving investment dispute
- The investment and securities tribunal
- Alternative Dispute resolution
- Administrative Proceedings Committee of SEC—(sit over disputes at their earliest stage)

COURT/TRIBUNAL

- Investment and securities Tribunal
- Tax Appeal Tribunal
- National Industrial Court
- Federal High Court

FEDERAL HIGH COURT

- Established under s. 249 CFRN 1999
- Exclusive Jurisdiction of the FHC—s. 251(1)(e) CFRN—exclusive jurisdiction on CAMA

INVESTMENTS AND SECURITIES TRIBUNAL

- Establish under 274 ISA 2007
- It is a fast track court—s. 289(5) ISA
- It has original jurisdiction over capital market disputes—s. 284(1)(b-f) ISA
- It has appellate jurisdiction over capital market dispute—s. 284(1)(a) ISA—from decisions of Administrative Proceedings Committee of Securities and Exchange Commission-
- INVESTMENT AND SECURITIES TRIBUNAL set up an ADR centre in Abuja to give parties to a dispute an opportunity for mutual settlement. The centre is put in place to promote quick resolution of disputes

- ADR methods include, mediation, Negotiation, and Arbitration
- Rule 4 of the IST (procedure) Rules, 2003—facilitation of amicable settlement among the parties to the dispute.

Benefits of ADR

- Less contentious than litigation
- Confidential
- Saves times and money
- Improves and preserves inter-party relations

JURISDICTION LA CONFLICT BETWEEN FHC AND IST

- See NONSPECTO OIL &GAS LTD V OLORUNNIBE—jurisdiction of the FHC overrides that of the IST

APPLICABLE LAWS

- Companies Proceedings Rules 1992 (applies to part A CAMA)
- Investment & Securities Tribunal Rules
- Companies winding-up Rules
- Tax Appeal Tribunal Rules
- Federal High Court (Civil Procedure) Rules
- Securities & Exchange Commission Rules

IST		FHC
Appeal lies to the CA and to SC		Same
Decision of IST are enforced as judgment of FHC		
Appeals can only be on grounds of law not fact		
Final court of court on facts in terms of capital market disputes		
Hear and determines disputes on: a.Investor and a security exchange b. SEC and SROs c.Capital Market and SEC d. Dispute from management and administration of collective investment scheme. e.Other matters prescribed by the NA		

COMMENCEMENT OF PROCEEDINGS

FHC

- Originating summon—default mode. Usually used save where the law provides.
- Originating motion
- Petition

ORIGINATING SUMMONS —Rules 2(1) Company Proceedings Rules 2004: disputed but application of law/rules- to determine rights and obligations of parties

- Mostly used unless excepted- in Form 2 of Companies Proceedings Rules

- Can be *ex parte* or on Notice e.g. application under S. 317

ORIGINATING MOTION- prayer- facts disputed- need to remedy error or omission or benefit from set rules/principles of law

E.g. Applications under Ss. 23(2), 46(8), 129(2), 90(1), 205, 312(5), 315, 319(3) and (4), 329, 524(1),

- Rectification of the Register of Members
- For extension of time within which to file a documents under the sections to CAC
- Application for inspector to inspect the affairs of the company under 315
- See Rule 3(a-g) Companies Proceedings Rule

PETITION-request by law—Rule Company Proceedings Rules

Must be expressly provided for- Form 3

E.g. Applications under S. 46(1), (2), 47(1), 53(3), 120, 121(2), 311(1), and winding up

- A complaint and request
- Winding up proceedings
- Cancellation of object
- Cancellation of a SR for conversion from plc to ltd
- Sanction issue of shares into discount
- Confirm of reduction of share capita
- Cancellation of reduction or variation of right to any class of shares
- Affairs conducted in an unfairly prejudicial manner
- Restoration of the name of company
- Sanctioning merger scheme

ORIGINATING MOTION- E.g. 90, CAMA

ORIGINATING APPLICATION- for use at IST

CRIMINAL PROCEEDINGS: Offence to be tried by court of competent jurisdiction in the place of the offence

S. 554(1), CAMA

See criminal acts arising from civil jurisdiction of the FHC under S. 251(3), 1999 CFRN: concurrent with State HC

ISSUES OF EVIDENCE

COMMON SEAL: Upon incorporation, every company must have a common seal- Ss. 37, 74, CAMA

S. 74, the use of the common seal shall be regulated by the Articles of Association and CAMA.

Failure to use the common seal when necessary renders the agreement ineffectual- AFRICAN DEVELOPMENT CORPORATION LTD V L.E.D.B

OFFICIAL SEAL: paper semblance

It is used in place of common seal for the company outside Nigeria

It is a facsimile of the common seal with the addition of, on its face, name of every country where it is to be used or add international for general purpose.

- The company's object must provide for the company to transact business in foreign countries

- It must also be authorised by the company's articles of association

S. 75(1), CAMA

Execution of company document by Attorney

S. 76(1), CAMA, a company may, by writing under its common seal appoint a person as its Attorney, either generally or for a specified matter to execute deeds on its behalf in any place in Nigeria or outside Nigeria

A deed signed by such an attorney binds the company and have the same effect as if it had been executed under the common seal of the company- S. 76(2)

AUTHENTICATION OF DOCUMENTS

S. 77, CAMA, a document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal unless otherwise so required

- Presence of seal depends on the nature of transaction

SPDC (NIG) LTD V ALLAPUTA: if a document is signed by the *alter ego* of a company, sealing is no longer a *sine qua non* to the validity of the same since its purpose is to ensure that the right person entered into an agreement on behalf of the company.

SERVICE OF COURT PROCESS AND OTHER DOCUMENTS ON COMPANY

- S. 78, CAMA, a court process is served on a company in accordance with the provisions of the applicable Rules of Court- Order 7 Rule 9, Lagos Rules

INTEGRATED BUILDERS V DOMZAQ VENTURES (NIG) LTD

- Other documents are served on the company by leaving it at, or sending it by post to the registered office of head office of the company-S. 78, CAMA

Service must be given to a person properly so known in the company.

- Service to a security man is not a proper service

NB: MARK V EKE:

Query: Is leaving it at the registered office not substituted service?

INVESTMENT DISPUTES

Options for investment disputes resolution:

- Dispute resolution under the Nigerian Investment Promotion Commission (NIPC) Act

- ADR and Litigation at IST and Arbitration at the International Centre for Settlement of Investment Disputes (ICSID) and Regional Centre for International Commercial Arbitration

STEPS OF DISPUTE RESOLUTION

- ADR option

- Proper Arbitration

- If parties is a local investor—local ADR laws may be applicable

- For foreigner investors, Bilateral Investments Treaties or Multilateral Investment or in the absence, parties may agree on international DR laws. E.g UNICAL

- If parties did not agree, rules of ICSID

Content of arbitration agreement/clause

i. Applicable law

ii. Language of construction

iii. Procedure applicable and finality of award

iv. Rules to be adopted

v. Venue

Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the rules for Arbitration follows:

The appointing authority shall be…….

Number of Arbitrators shall be

Rules

Place

Language

Law

Corporate dispute

Commercial Dispute

Labour dispute

Investment Dispute: capital market and its operation

Civil dispute

FRAMEWORK OF INVESTMENT DISPUTE RESOLUTION

- Amicable settlement

- ADR & Arbitration and Hybrid process

- Administrative Hearing- Administrative Proceedings Committee of SEC

- Litigation

Pensions= NIC and not IST

IST=Court of Appeal

TAT=FHC

Judgment of IST enforced as that of FHC

IST to conclude proceedings within 3 months

Appeal: on points of law alone

PROCEDURE FOR INVESTMENT DISPUTES RESOLUTION UNDER NIPC

Investment in an enterprise

- ADR & Arbitration- amicable settlement, if not, mode based on bilateral or multilateral agreements between or among parties, if not- ICSID

Ss. 24-26 NIPC Act

Bilateral Investment Treaty: countries, for the benefit of enterprises

MIT

Dispute covered under the NIPC Act

- The dispute must involve any level of government in Nigeria- local, State or Federal

- The dispute must involve the business enterprise i.e. the investment

- The dispute may involve a local or foreign investor

HOW TO RESOLVE DISPUTE UNDER THE NIPC ACT

1. Exhaust ADR options

2. Resort to arbitration within reasonable time

3. If a local investor, ACA applies

Domestic arbitration does not mean it must be in Nigeria

4. If foreign investor, consider existence of bi/multilateral agreement and resolve it within that framework

If there is BIT/MIT, resolve in accordance with any other national or international machinery for the settlement of investment disputes agreed on by the parties e.g. UNCITRAL Conciliation Rules 1980 and Rules of Lagos Regional Centre for International Commercial Arbitration, under The Asian-African Legal Consultative Committee in Cooperation With Nigerian Government

Content of arbitration agreement

i. Applicable law

ii. Language of construction

iii. Procedure applicable and finality of award

iv. Venue

Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the rules for Arbitration by……..…..

The appointing authority shall be…….

Rules

Place

Language

Law

OWOLABI 'S CORPORATE LAW PRACTICE CLASS NOTES 2016/2017
Please note that this is a personal note. Therefore, it is not meant to be sold or used as a substitute for textbooks or other NLS recommended materials thanks.
BUT NO MATTER WHAT, STAY CALM AND ENJOY YOURSELF (SEE YOU AT ICC)!

WEEK 19

PRE-CLASS

- Company cannot be served by substituted service—SKY BANK PLC v OKPARA (2015)
- MARK V EKE
- AGIP V EZENDU (2010) 1 SC PT 11 at 98

ADVANTAGES OF EQUITY CAPITAL

1. It is much cheaper as there may not be pressure of interest in the money borrowed as opposed to debenture since the shareholders are fixed rate lenders and risk bearers of the company. This is not applicable to preference share holders
2. In equity, if profit is not made, not obliged to give profits
3. Similarly, no right to dividend except when declared

DEBENTURES—to investors

- High possibility of security
- Fixed interest
- Existence of Debenture Trust deed—trustee help to control the interests accruing to members

How do you raise equity capital?

- Raise money via the Capital Market—both equity and debt
- By increasing shares of the company, re-issue and call up

Role of SEC in the capital market

- Issue license to and register capital market operators

Professionals qualified as capital markets

- Lawyers
- Auditors
- Accountants
- Property managers
- Estate surveyors
- Engineers

Role of NSE

- NSE is regulated by SEC
- It list company, and some companies are quoted
- NSE is the floor for which shares in the secondary market can be traded
- Primary market for issuance of the newly listed securities
- Secondary markets for the trading of securities already listed
- It ensures information and securities
-

NB: plc may issue shares to the public at large but for it to trade through NSE, it must be quoted

Primary Market:, IPO, PO—the company is offering its shares to the public by itself

Secondary Market: offered through a registered or organised avenue for those that already owe share. Transfer of shares already listed with the capital market

Prospectus advice that advice be sought from solicitor, stock broker, accountant or investment adviser.

METHOD OF OFFER

- Direct offer—company—issuing house—members of the public. (company bears the loss)
- Offer for sale—company—sell to—issuing house—sell at a higher rate—member of the public (issuing house bears the risk)
- Right issue—invitation to the existing shareholders of the company in the proportion to the existing shares they have in the company. Usually offered at a discounted rate. It helps in maintain the proportion of shares each shareholder have in the company. It indicates level of corporate governance in the company. Note: an offer to the public and need SEC approval
- Bonus Issue—company paying for it's paid up share capital. Not an offer to the public. Money gotten from premium account may be used for bonus issue. Premium offer is selling at a price higher than the nominal value.
- Private placement: offer not made to the general public but to some selected high network individuals or institution. It cannot be renounced in favour of another person hence it becomes a public offer. GOVERNMENT STOCKS & OTHER SECURITIES INV LTD. V CHRISTOPHER. See Rule 340(2) SEC Rules. Thing to be done must be a domestic affairs and thus must not involved the public. See s. 69 ISA—right of renunciation takes it from private placement to public offer.
- Offer by Introduction—done when a company is fulfilling its listing requirement with NSE for the first time
- Offer by Tender:
- SUKUK

PROSPECTUS

- Document used to invite the public for a subscription of the company's shares
- Rationale is for disclosure of material information of the company raising money from the public.

Content—s. 73 ISA

- Name of the issuer
- Method of offer (e,g direct offer)
- Number of shares (if over subscribe, SEC approval must be sought)
- Type of shares
- Nominal value of the shares
- Market value
- Date of open and closure of offer
- Issuing Houses
- Solicitor to the issue
- List of all professionals involved
- Names of directors
- Financial history
- Expert statement:--
- Statement as to…. ()
- Date

** Abridged Prospectus: where issuing shares to the existing members, issues relates to debenture

** Deemed Prospectus

** Statement in lieu of Prospectus

People responsible for mis-statement in a prospectus—see s. 85 ISA

- Directors
- Officers of issuing house
- Employee of the company that participate

Please note that this is a personal note. Therefore, it is not meant to be sold or used as a substitute for textbooks or other NLS recommended materials thanks.

BUT NO MATTER WHAT, STAY CALM AND ENJOY YOURSELF (SEE YOU AT ICC)!

- Persons who consent to the statement in the prospectus

** liability for expert statement: the expert and

What is the role of the registrar— Solicitor to the issuer—give adequate advice to the issuer on legal requirement for public offering

- Advice and ensure strict legal compliance with relevant documents
- Ensure that the amount to be issued out is covered by the ASC and that there are unissued shares that will cover the offer
- Ensure that all statutory requirement are complied.

Solicitor to the issue—the issuing house

- Prepare the Vending Agreement
- Helps to arrange the Prospectus
- Conduct due diligence on the legal and statutory requirement

BONDS

- Government(there is security of principal and interest) and corporate bond

Difference between debenture stock and bond= life span of a bond is longer, for a span of 25 years compared to the debenture stock. Security of tenure in a bond, payment of interest of bond is lesser than a bo…. Risk factor in bond. In liquidation, bond holder have priority over debenture holders

Unit Trust Scheme

Real Trust Scheme

- For property investment

Between a unit holder (interested majorly from the fund, a portfolio managers manages it, investment is not always identifiable) and a shareholder (shareholders have a more participatory interest). A shareholder can transfer his share, a unit holder cannot easily transfer his interest, the manager must redeem it.

General Rules of Collective investment

General Rules For Collective Investment Schemes.

1. A Collective Investment Schemes shall have an Investment Committee comprising not less than three (3) persons knowledgeable in investment and financial matters one of whom shall be a party independent of the fund manager, trustee and custodian.

2. The sponsor of an authorized scheme shall subscribe to a minimum of 5% of the registered units of the Scheme at inception, and such units shall be held throughout the life of the scheme.

3. An authorized scheme shall effect the distribution of not less than 25% of the schemes income annually where such income is realized.

Provided however that this provision shall only apply to schemes with a stated objective of distributing income.

4. Where a meeting of a collective investment scheme is convened, the quorum shall be formed by at least five (5) unit holders holding not less than 25% of the issued units of the scheme.

CORPORATE GOVERNANCE

- Sarbanes- Act

ORGANS OF THE COMPANY

- BOD
- Members
- Secretary and officers of the company

Shareholders theory—company should be managed in the interest of the shareholders. The shareholders are the owners and directors are agents. NO MD/CEO, MORE NED THAN ED

Stewardship theory—directors are agent and they have good interest towards the managements of the company for proper elevation of their image.-- MD/CEO, MORE ED THAN NED

Stakeholders—the company should be managed for the interest of every persons having interest in the company. The corporation is an institutional arrangement for governing the relationship of all the parties that contribute to the company's assets. The doctrine of Corporate Social Responsibility/ citizenship (CSR) is an offshoot of the stakeholder's theory.

CG—systems by which company are directed and controlled. Process of monitoring and control to ensure management runs the company in such a way as to achieve its objectives. It is all about disclosure, transparency, accountability and integrity.

NB: Code of Corporate Governance in Nigeria merely remain an ethical guide but not a law.

Management: running the business

Governance: see that the business is managed properly.

- Independent Directors
- BOD plc meeting, at least 4 times in a year
- Directors that did not attend at least two third of BOD meetings is not eligible for re-nomination

WEEKS 20

WINDING UP AND DISSOLUTION OF COMPANIES; BUSINESS AND NON BUSINESS ORGANIZATION

WINDING-UP OF COMPANIES

It is the process of liquidation of the assets of a company for the benefits of its creditors, members and employees in accordance with certain rules of priority. **SEE … TATE INDUSTRIES PLC V. DEVCOM M. B. LTD.**

COURT WITH JURISDICTION

The court having jurisdiction to wind up a company shall be the Federal High Court **within whose area o**f jurisdiction the registered or head office of the company is situate or where it has maintained registered office for the **PAST 6 MONTHS** preceding the presentation of the petition**.- S. 407 CAMA.**

APPLICABLE LAWS

1. CAMA
2. FHC ACT
3. FHC CIVIL PROCEDURE RULES 2009
4. COMPANY WINDING UP RULES 2001
5. BANKS- NDIC ACT & CBN ACT & BOFIA
6. INSURANCE COMPANIES ---- NAICOM ACT/INSURANCE ACT.

REGULATORY AGENCIES-

a. CAC –It can present petition for winding up and it is a custodian of company records-A company must file returns during winding up process to it.

b. FHC-court with jurisdiction to entertain winding up petitions.

COMMENCEMENT OF WINDING UP PROCEEDINGS

It depends on the type of winding up as follows:

(a.) If a members' special Resolution to wind up was passed, it is commenced at the time of passing the Resolution

(b.) If it is a Petition to wind up that is filed, at the time of presentation of the Petition. S**. 415 of CAMA**; **- MERCANTILE BANK OF NIGERIA PLC V. NWABUDE**

EFFECT OF COMMENCEMENT OF WINDING UP PROCEEDINGS

1. **No attachment of a company's property is allowed.**
2. **No judgment debt can be claimed in the interim**
3. **No more carrying on of the business of the company.**
4. **Its properties cannot be disposed of nor can its shares be transferred unless such is sanctioned by the Court S. 411-414 of CAMA**

EFFECT OF WINDING UP PROCEEDING ON THE LEGAL PERSONALITY OF A COMPANY

The winding up of a company or the appointment of liquidator does not by itself result in the death of the corporate body or removing its legal personality. **A company under a winding up proceedings has not died it is still alive though sick. Because a company "dies" on its dissolution. - C. S. (NIG.) PLC V. MBAKWE**

EFFECT OF A WINDING –UP ORDER

1. Action/proceedings against the company **must be with the leave of Court**
2. Employees are automatically laid off
3. Any disposition of the company's property and transfer of its shares after the commencement of a winding up is void.
4. The directors' power to run the company ceases

NB-if a **winding up order is made or a provisional liquidator** is appointed, no action or proceedings shall be proceeded with or commenced against the company except by leave of the court **S. 417 CAMA.**

NOTE-However, what the section prohibits is **action against the company without leave of court** and not the **company proceeding against another person**. **- ONWUCHEKWA V. NDIC**

DISSOLUTION OF A COMPANY

The procedure is:

1. Winding up must have been completed.

2. The application is made to court by the liquidator for a dissolution Order.

3. Notice of the Order of dissolution made is to be given to the CAC **WITHIN 14 DAYS of the Order-S. 454 (1) CAMA**

4. CAC shall record the dissolution of the company in its books – **section 454(2) of CAMA**.

NOTE-The liquidator or any other interested person may apply to the court to make an order deferring the date of the dissolution. By virtue of **S. 524** even where the company is deemed to be dissolved, the court may on application void the dissolution.

EFFECT OF NON COMPLIANCE-Failure to comply with the provision by the liquidator will attract a fine of ₦25 (Twenty five naira) daily of the breach – **section 454(3) of CAMA**.

EFFECT OF DISSOLUTION ORDER: Once a company is fully wound-up and dissolved, it loses its legal entity and ceases to exist (DIES) in law – CBCL (NIG.) LTD. V. OKOLI ; SECTION 454(1) AND (2) The incorporated name cannot be used any longer.

DIFFERENCE BETWEEN LIQUIDATION AND DISSOLUTION OF A COMPANY

During liquidation, the company can still sue in its corporate name. However, it cannot be a member of a new company. Conversely, during dissolution of a company, the company no longer exists in its corporate entity as it is now dead.

TYPES/FORMS OF WINDING UP

Basically, there are three types of winding – up

a. Winding up by the order of court.

b. Voluntary winding up by members

c. voluntary winding up by creditors

d. Winding up subject to the supervision of the court- **S.401 CAMA**

1. COMPULSORY WINDING UP BY THE COURT

The grounds for winding up by the court are provided under **S. 408 CAMA** viz:

a. **The company has by special resolution resolved that the company be wound up by the court.**

b. default is made in delivering the statutory report to the CAC or holding the statutory meeting;

c. The number of members is reduced below two;

d. The company is unable to pay its debts

e.The court is of the opinion that it is just and equitable that the company should be wound – up.

A-MEMBERS SPECIAL RESOLUTION FOR COMPULSORY WINDING UP

PROCEDURE-

1. Pass board Resolution and company special Resolution to wind up the company

2. Send Notice of the Resolution to CAC, NSE if it is a quoted company and to SEC

3. Present a Petition for winding up to the Court accompanied with:

i. .verifying affidavit

ii. copy of the Resolution

4. the Court will appoint a liquidator

5. After the liquidation, the Court will give a winding up order

6. The company is dissolved upon application to the Court

B-DEFAULT MADE IN DELIVERING STATUTORY REPORT

This can only be brought by a shareholder and it must be before the **expiration of FOURTEEN (14) DAYS after the last day on which the meeting should have been held** under **section 410(2)(b) of CAMA**.

The court may, instead of **making a winding-up order**, direct that **a meeting be held** or the report be delivered, and make orders as to costs as it thinks fit – **section 411(3) of CAMA.**

This ground is only applicable to public companies – **section 211(1)& 212 CAMA**

C-REDUCTION OF MEMBERS BELOW TWO

A company cannot be incorporated with less than two persons which is the legal requirement – **SECTION 18 OF CAMA**.

A company which is in default of this **would be wound-up by the court** in addition to other sanctions as to liability – **SECTION 93 OF CAMA.**

This is one of the cases **where a contributory** is expressly **authorised to** bring a petition for winding-up – **SECTION 410(2) OF CAMA.**

D-INABILITY TO PAY DEBTS-S. 409

A company would be deemed to be unable to pay its **debts** if the creditor to whom it is indebted.

a.in a sum **exceeding** N2,000 (it must exceed N2000)

b. by a notice in writing demanded for the debt to be paid.

c.the company has for a **PERIOD OF 3 WEEKS** thereafter neglected to pay, then the company is unable to pay its debts.- **ADO IBRAHIM & CO LTD V. B.C.C. LTD**

d. execution or other processes issued on a judgment or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part;

e.the court, taking into account any contingent or prospects liability of the company is satisfied that the company is unable to pay its debts.- **S. 409 (b) CAMA**

EXCEPTIONS-

S. 409; TATE V. DEVCOM

A company will not be deemed to be unable to pay its debt if:

1. The debt to a creditor is not due

2. No evidence of due demand for payment was made

3. If there is a bonafide dispute of the debt **ONOCHIE V. ALAN DICK & CO. LTD.; RE LONDON & PARIS BANKING CORP.**

4. There is no evidence that the company is insolvent.

s. 409 of CAMA and

NB-demand must be made by an officer of the company-In **NIGERIAN COMMERCIAL & INDUSTRIAL ENTERPRISES LTD. V. REGISTRAR OF COMPANIES** it was held that a demand made by the solicitor to a company for payment of debt was not a demand by an officer of the company.

NB-the SHC has jurisdiction when the debt claimed is unascertainable or in dispute.

NB-however the denial of debt in **bad faith CANNOT STOP PETITION IF AMOUNT ADMITTED IS MORE THAN 2K**

* The Demand is a statutory document and not a mere letter of correspondence, and should be formally titled as a **STATUTORY DEMAND FOR PAYMENT,** and clearly set out the amount owed and a request to **pay within three weeks** and a Notice that upon expiration, the creditor would take steps to wind up the company.

NB ==➔ Draft a Statutory Letter of Demand PURSUANT TO S.409

WINDING UP ON JUST & EQUITABLE GROUNDS UNDER S. 408 (e) CAMA

The grounds upon which the court **MAY ORDER** winding up under just and equitable grounds are:

a.The substratum of the company has disappeared, such as the inability of the company to achieve its object clause or the company is deeply indebted.**RE YENIDIJE TOBACCO LTD**

b. The company is formed for fraudulent purpose.

c.The company is a “bubble” as it has no business or asset or never intended to carry on business in a proper manner.

d. Unfairly prejudicial or discriminatory act against the minority or other members, culminating in lack of confidence in the management of the company's affairs by those in control of the company. **IBRAHIM V. WESTBOURNE GALLERIES LTD.**

e.If the company is small, grounds that would justify dissolution of partnership on just and equitable ground is enough, such as deadlock. **THE MATTER OF THE STEVEDORING (NIG.) CO. LTD.**

FACTORS GUIDING COURTS DISCRETION IN WINDING UP UNDER 408 E

- Whether it is just and equitable to wind-up a company depends on the facts which are available to the court at the time of hearing of the application as set out in the petition – **RE WONDOFLEX TEXTILES PROPERTY LTD. (1951) VLR 458.**
- However, a petition on just and equitable ground should not be dismissed basically because the petitioner has some other remedies since the motive of the petitioner is irrelevant – **OBASI V. PUREWAY CORPORATION (NIG.) LTD. (1878) 4 FRCR 214.**

NOTE- The petitioner is not entitled to a winding-up order on the just and equitable ground if his object is not a **company purpose but the pursuit of a selfish advantage** in a question between himself and other shareholders –
ANGLO AMERICAN BRUSH CORPORATION LTD. V. SCOTTISH BRUSH CO. LTD.

WHO MAY PETITION FOR COMPULSORY WINDING UP-S. 410 CAMA

a.The company;

b. A creditor, including a contingent or prospective creditor of the company;

c.The official receiver;

d. a contributory;

e.A trustee in bankruptcy, personal repr of creditor, contributory.

f. The CAC under S. 323 CAMA

g. A receiver if authorized by the instrument under which he was appointed; or

h. By all or any of those parties, together or separately.

PROCEDURE FOR COMPULSORY WINDING UP

An application shall be made to the court for the winding up of a company which must be in the form of a petition. Every petition shall be in any of the **Forms 2, 3, or 4** in the Appendix – **Rule 15 of the Winding-Up Rules, 1983**/2001.

1. Filing of the Petition for winding-up along with a verifying affidavit – **Rule 16 and Rule 18 of the Winding-Up Rules**
2. Service of the Petition and Affidavit on the respondent with proof of Service – **Rule 17 of the Winding-Up Rules**.
3. Obtain leave of court to advertise petition and advertise–**Rule 19 of the Winding-Up Rules**.
4. Petitioner will File of Memorandum of Compliance.

5. The Respondent will then file a Notice of intention to appear, Memorandum of Appearance and an affidavit in opposition to the petition-**Rule 23 and 25 of the Winding-Up Rule**

6. The petitioner files a Reply to the Respondent's processes **–Rule 25**

7. Appointment of Provisional Liquidator – **Rule 21 of the Winding-Up Rules**.
8. Filing and hearing of Summons for Security for Costs.
9. Filing of List of Persons Appearing(creditors) – **Rule 24 of the Winding-Up Rules**.

10. Hearing of Petition – **Rule 22 of the Winding-Up Rules**.
11. Making of winding-up order – **section 415 of CAMA**.
12. Service of winding-up order – **section 416 of CAMA**.
13. Application for dissolution and the order of dissolution made
14. Appeals from the order of dissolution and enforcement

STAYING OF WINDING UP AFTER WINDING UP ORDER

S. 438 (1) CAMA empowers the Federal High Court to **stay winding up** even after the order is made.

It is not a form of Appeal, but a **review of** the entire proceedings leading to the order.

This may be on the application of **either a liquidator** or **official receiver, a creditor or contributory**.

APPOINTMENT OF LIQUIDATOR

The court may appoint a liquidator for the purpose of conducting the proceedings in winding-up a company – **section 422(1) of CAMA.**

On the making up of a winding-up order, if no liquidator is appointed, the official receiver shall by virtue of his office become the liquidator – **section 422(3)(b) of CAMA.**

POWERS OF A LIQUIDATOR IN WINDING UP BY THE COURT

The liquidator, in a winding-up by court, exercises some powers, but the powers must be sanctioned by the court or the committee of inspection – **section 425(1) of CAMA.** These powers include –

1. The power to bring or defend any action in the name and on behalf of the company; **AGBAOYE V. CHIEF FEDERAL LAND OFFICER**
2. The power to carry on the business of the company as may be necessary for the purpose of the beneficial winding-up;
3. The power to appoint relevant professionals or legal practitioner to assist him in the performance of his duties;
4. The power to pay all classes of creditors in full;
5. The power to make any compromise or arrangement with creditors or persons claiming to be creditors; and
6. The power to compromise all calls, debts and liabilities capable of resulting in debts**.**

VOLUNTARY WINDING UP-SECTION 457 CAMA

WHEN CAN A COMPANY BE WOUND UP VOLUNTARILY

A company may be wound up voluntarily

a.when the period, if any fixed for the duration of the company by the articles expires, or the event, if occurs, on occurrence of which the articles provided the company is to be dissolved and the company in meeting has passed a resolution requiring the company to wound up voluntarily.

b. if the company resolves by special resolution that company be wound up voluntarily.

If a company passes a resolution for voluntary winding up, it **MUST WITHIN 14 DAYS AFTER** the passing of the resolution

i. Give notice of the resolution by advert in the Gazette, or

ii. Advertise in two daily newspaper and

iii. Give notice to the commission **– s. 458**

NB-The passing of the resolution is deemed to commence the voluntary winding up S. 459

TYPES OF VOLUNTARY WINDING-UP

Voluntary winding-up is of two types, namely –

1. Members voluntary winding-up; and
2. Creditor's voluntary winding-up.

MEMBERS VOLUNTARY WINDING-UP

This is where a statutory declaration of solvency shall be made by the directors to the effect **section 462(1) of CAMA.**

PROCEDURE FOR MEMBERS' VOLUNTARY WINDING-UP

1. The company pass Board and company special Resolution to wind up the company and to appoint a liquidator to wind up the company

2. it gives notice of the special Resolution and appointment of liquidator passed to CAC and the public **within 14 days** of its passage and advertises it in the Gazette or two daily newspapers – **section 457(B)& 458(1) of CAMA.**

3. a Statutory Declaration of Solvency that the company can pay its debts **within 12 months of winding-up** is made by the Directors **within 5 weeks of passing the Special Resolution** to wind up voluntarily and delivered to CAC –**S. 462 CAMA.**
4. The liquidator holds meeting if the process of winding-up last **more than a year**
5. The liquidator holds meetings to adopt the audited accounts of the winding-up and send copies to members
6. The liquidator holds **final meetings** upon liquidation of the company and send a copy of the accounts/ return of the meeting to CAC **WITHIN 7 DAYS of the meeting–S. 468 &469 CAMA**
7. The liquidator send to the members the audited accounts and he is required to preserve all the books/papers of the company on his activities as liquidator for a period **of 5 years before destruction**.-**s. 470 CAMA**
8. The liquidator apply for dissolution Order FHC and send the Order to CAC. The company is deemed dissolved **after 3 months of the registration of the accounts**/returns with CAC-**section 468 (4) CAMA.**

CIRCUMSTANCES WHERE MEMBERS' VOLUNTARY WINDING-UP WILL BE CONVERTED TO CREDITORS WINDING-UP

a.There is no Statutory Declaration of Solvency made and filed in support of the Resolution for winding-up

b. The liquidator is of the opinion that the company will not be able to pay its debts **within the 12 months** stated in the declaration of solvency

CREDITORS' VOLUNTARY WINDING-UP

This occurs where the directors are not able to make a declaration of solvency at the CAC – **section 471(1) of CAMA.**

PROCEDURE FOR CREDITORS' VOLUNTARY WINDING-UP

1. Both the company and its creditors hold separate meetings to propose for a winding up of the company. The creditors' meeting is to be held **some days** before the company meeting.

2. The notice of both meetings must be sent simultaneously **creditors-section 472(1) of CAMA.** The **notice is to be published** in the **Gazette and two newspapers**; the publication of the **notice is tantamount to a declaration of insolvency** – **section 472(2) of CAMA.**

3. The meeting of the creditors is to be presided over by one of the directors who shall be appointed from one of them – **section 472(3) of CAMA.**

4. The directors lay before the meeting, a full statement of the company's affairs with a list of the creditors of the company. A breach of this is an offence. **S. 472(3) (b) and (4) of CAMA**

5. The liquidator and a Committee of inspection(5 persons max) is to be appointed by the creditors and the company, but if the creditors reject the persons appointed by the company they stand disqualified –Section 474

6. **Upon appointment of the Liquidator**, all powers of the Directors shall cease except as sanctioned by the Committee of Inspection or in its absence the creditors. **S. 473 (2) of CAMA**

7. the liquidator should **within 14 days of his appointment**, publish it in the gazette and 2 daily Newspapers and he is to deliver to the CAC for registration a Notice of his Appointment**.- S. 491 of CAMA**

8. The resolution to wind-up the company and appointment of liquidator are given to the Corporate Affairs Commission and **published in the Gazette and two newspapers WITHIN FOURTEEN (14) DAYS**

9. A general meeting of the company and creditors is to be summoned if the winding up continues for more than **1 year** within **3 MONTHS** of the end of the first year and every succeeding year.**-S. 477 of CAMA**

10. The final meeting and dissolution of the company is held to enable the liquidator lay the account and give explanation.

11. After the meeting, the liquidator **MUST WITHIN 7 DAYS** send a copy of the account and return of the holding of the meeting to the CAC for registration- **Section 478(3)**

12. The company is deemed dissolved **AFTER 3 MONTHS** of the registration of the accounts and return to the CAC. **S. 478 (4) of CAMA**

13. However, the Court upon an application by the liquidator or a person interested (a creditor) can defer the date which the dissolution can take effect**. Section 524**

NOTE-If separate persons are nominated as liquidators at the separate meetings, the person nominated by the **creditors would be the liquidator – S. 473 (1)**

However, a director, member or the company may apply to court **within 7 days** for an order that the person nominated by the company shall be the liquidator –If the creditors did not nominate, the company's nominee would be the liquidator

CONSEQUENCES OF A VOLUNTARY WINDING-UP

The consequences of a voluntary winding-up are –

1. The company shall cease to carry on its business except so far as may be required for the beneficial winding-up thereof**.- S. 460**
2. The corporate status and powers of the company shall not withstanding anything to the contrary in its articles, continue until it is dissolved – **Proviso to S. 460**
3. Any transfer of shares not made with the sanction or approval of the liquidator shall be void.
4. Any alteration in the status of members of the company made after the commencement of the voluntary winding-up shall also be void – **section 461 of CAMA**

5. On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof – **S. 464 (2)**

6. In a creditor's voluntary winding up, the powers of the directors shall also cease, except so far as the committee of inspection or if there is one, the creditors sanction the continuance **S. 473(2)**

7. A voluntary winding up will operate as a discharge of employees of the company is wound up because it is insolvent just as it will in the case of a compulsory winding up.

WINDING-UP SUBJECT TO THE SUPERVISION OF THE COURT

This is provided for under sections **486, 488 and 490 of CAMA**

This usually occurs when a company passes a special Resolution for winding-up backed by a Petition filed to the Court to wind up the company subject to its supervision.

The Court is the one to appoint the liquidator. **Section 489(1) of CAMA.**

A winding-up subject to the supervision of the court **is deemed to be a winding-up by the court** for the purposes of sections 413 and 414 – **section 488 of CAMA.**

The liquidator is usually in addition to the one appointed by the directors and their powers are the same – **section 489(2) of CAMA.**

- The court is also empowered to remove any liquidator so appointed by the court and may fill any vacancy, occasioned by the removal, resignation or death – **section 489(3) of CAMA.**

THE PROCEDURE FOR A WINDING UP SUBJECT TO THE SUPERVISION OF THE COURT IS AS FOLLOWS:

1. Pass a special Resolution for winding up of the company

2. File a Petition supported with a verifying affidavit requesting the Court to wind up the company subject to its supervision

EFFECT OF SUPERVISION ORDER

An order for winding-up subject to the supervision of the court has the following effects –

1. The liquidator so appointed is free to exercise all his powers without the sanction or intervention of the court **Section 490 (1) of CAMA**.

2. The liquidator shall not exercise the powers specified in paragraphs (**d), (e) and (f) of section 425(1) of CAMA,** that is, the power to pay all classes of creditors in full; the power to make any compromise or arrangement with creditors or persons claiming to be creditors; and the power to compromise all calls, debts and liabilities capable of resulting in debts respectively, **EXCEPT** with the sanction of the court – **proviso to section 490(1) of CAMA.**

3. A winding-up subject to the supervision of the court does not amount to winding-up by the court for the purpose of the provisions of CAMA as specified in Schedule 12 – **section 490(2) of CAMA.**

MAJOR OFFICERS OF WINDING UP

1. Liquidator

2. Official Receiver

3. Provisional Liquidator

4. Receiver/Receiver Manager

5. Special Manager

LIQUIDATOR

- A liquidator is a person appointed by the company or court to wind up the affairs of the company and to distribute its assets among the creditors and contributories in accordance with the articles.
- A liquidator represents the interest of the creditors, especially the unsecured creditors. Thus upon appointment all powers of directors cease.
- The **LIQUIDATOR MUST, WITHIN FOURTEEN (14) DAYS AFTER HIS APPOINTMENT PUBLISH IN THE GAZETTE AND IN TWO (2) DAILY NEWSPAPERS** and deliver to the commission for registration a notice of his appointment – **SECTION 491 OF CAMA.**

DISQUALIFICATION FOR APPOINTMENT AS LIQUIDATOR

The following are persons who are incompetent to be appointed or to act as liquidator in a winding-up by the court –

1. An infant.
2. An unsound mind.
3. A body corporate.
4. An undischarged bankrupt.
5. Any director of the company under liquidation.
6. Any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and in respect of whom there is a subsisting order to restraint fraudulent persons – **section 509(1) of CAMA.**

NB-Any appointment made in contravention of the above shall be void – **section 509(2) of CAMA.**

There are also further powers of a liquidator which are provided under **section 425(2) of CAMA –**

1. The power to sell the property of the company by public auction or private arrangement.
2. The power to do all acts and to execute in the name and on behalf of the company, all deeds, receipts and other documents.
3. The power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory.
4. The power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company.
5. The power to raise any money required on the security of the assets of the company.
6. The power to appoint an agent to do any business which the liquidator is unable to do himself

OFFICIAL RECEIVER-S. 422 CAMA

- An official receiver is **the Deputy Chief Registrar** to the Federal High Court or any other officer designated for that purpose by the Chief Judge of the Federal High Court. He is to receive the statement of Affairs of the company and to collate information about the company in winding up.

==➔ Official Receiver is just a nomenclature given to the **Deputy CR of FHC.**

PROVISIONAL LIQUIDATOR

He is appointed by the Court before the making of a winding up Order and the formal appointment of a liquidator. S-S. 422(3) (a) of CAMA

An official receiver may be a **PROVISIONAL LIQUIDATOR** when the winding up order is made in a compulsory winding up until the appointment of a liquidator. He continues to be so act wherever there is vacancy in the office of a liquidator**. S. 422 (3)(b)**

RECEIVER

A receiver is appointed by **the secured creditors** under the power contained in the **debenture instrument**, executed by the company and the creditors.

A receiver need not get involved in **the management of the company**. He only has an eye in **the income and expenditure** of the company in order to realize assets and pay off the debt due to the creditors.

RECEIVER MANAGER

A Receiver Manager is not only concerned to realize the assets of the company but takes over the management of the affairs of the company, to stabilize it to make profit and pay off the creditors and then handover the company to the members.

SPECIAL MANAGER

He is an officer appointed by the Chief Judge of the Federal High Court to assist the Deputy Chief Registrar (ie Official Receiver) in the winding up of a company by the order of the court.

POWERS OF THE RECEIVER/MANAGER

1. Power to carry on the business of the company
2. Power to use the company's seal
3. Power to appoint other professionals to assist him
4. Power to sell and dispose of the property
5. Power to establish subsidiaries of the company
6. Power to raise or borrow money and grant security due over the property of a company.

NB ==➔ Distinguish between a company in Receivership and a company in liquidation.

A COMPANY IN RECEIVERSHIP is a company which has appointed a receiver to **manage the debts of the company**. The company may still bounce back as an effective going concern. A COMPANY IN LIQUIDATION is a company in the process of winding up.

THE ORDER/PRIORITY OF PAYMENTS OF LIABILITIES UPON WINDING-UP OF A COMPANY

1. All costs including the remuneration of the liquidator are paid out, S**. 484, 494(5) of CAMA**

2. Outstanding local rates and charges due from the company and payable **within 12 months next before** the date of the winding-up Order or its commencement are paid.

3. Pay all PAYEE (Pay As You Earn) tax deductions, assessed taxes, land taxes, properties or income taxes from the company **not exceeding 1 year** before the winding-up Order or its commencement.

4. Pay salaries of junior staff or servants of the company for services rendered to the company and deductions under the National Provident Fund Act

5. Settle claims of creditors and members. Secured creditors with fixed/floating charges are paid first before the unsecured debentures

6. Settle preferential shareholders

7. Distribute the remaining assets to the ordinary shareholders -S**. 494 of CAMA**

IN THE FEDERAL HIGH COURT

HOLDEN AT PORT-HARCOURT

SUIT NO: FHC/198/09

IN THE MATTER OF DELTA OIL GROUP PLC

AND

IN THE MATTER OF COMPANIES AND ALLIED MATTERS ACT, 2004

BETWEEN:

MR. EMEKA ADE…… PETITIONER

AND

DELTA OIL GROUP PLC……. RESPONDENT

PETITION FOR WINDING UP

The humble petition of Mr. Emeka Ade (Petitioner) of No. 1 Agbani Road, Garki, Abuja is presented for filing based on the ground that the respondent refused to pay his professional fees based on the following facts:-

1. The petitioner is a sole Legal Practitioner with his office at FCT, Abuja.
2. The respondent is a company incorporated in Nigeria in accordance with the provisions of CAMA, 2004.
3. The respondent agreed to pay N5 million dollars as professional fees to the petitioner.
4. The petitioner has demanded for payment of his professional fee and the respondent has refused, failed and or neglected to settle his indebtedness.
5. The petitioner prays the winding up of the respondent company

……..
Uju Ofem
Plot 113, Garki, Abuja.

WINDING-UP OF BUSINESSES/PARTNERSHIPS UNDER PART B OF CAMA

DISSOLUTION OF A SOLE PROPRIETORSHIP OR PARTNERSHIP REGISTERED UNDER PART B

The procedure for the dissolution of a business name is as follows**: S. 578 of CAMA**

1. The business will cease to be in existence by either a Resolution by the partners or by a Court order or death of a sole proprietor.
2. The PR/partners shall file a Notice to CAC **WITHIN 3 MONTHS** of the cessation of the business, stating that the firm/ individual has ceased to do business under a business name with evidence attached.

a.A copy of the court order or evidence of consent must be annexed to the notice.

b. The original particulars of the business registration should be surrendered for cancellation.

c.Pay the prescribed fees for filing the Notice.

3. Upon delivery of the notice to the Registrar, the Registrar may remove the firm, company or individual from the register.
4. If the Registrar has reasonable cause to believe that the firm, company or individual is not carrying on business, the Registrar may send a notice to the firm, company or individual enquiring whether or not the business is being carried on.
5. Where there is no response **WITHIN TWO (2) MONTHS**, or the answer to this is that there is no business being carried on, the Registrar may remove the business name from the Register –

Section 578(3) and (4) of CAMA.

DISSOLUTION OF PARTNERSHIP

This can be caused by any of the partners in the following ways –

1. **By act of the parties**.

This can be done either –

(i) By giving notice of intention to dissolve the partnership if provided for in the agreement – **section 33(1)(c) of Partnership Law of Lagos;** or

(ii) By reason of ill-health making a partner permanently incapacitated and the partnership not being able to continue; or

(iii) Where a partner creates a charge on his or her share of the partnership property – **section 34(b) of Partnership Law of Lagos;** or

(iv) By providing for a clause like power of expulsion in the agreement.

2. **By operation of law** if –

(i) It is for a fixed term at the expiration of the term – **section 33(1) of Partnership Law of Lagos.**

(ii) It is for an undertaking at the performance of the undertaking – ***Ureli v. Dada (1988) NWLR (Pt. 69) 237.***

(iii) It is supervening illegality – **section 35 of Partnership Law of Lagos.**

(iv) It is for death or bankruptcy of a partner – **section 34(a) of Partnership Law of Lagos.**

3. **By order of Court**, in which a partner can apply that the partnership be dissolved based on –

(i) Breach of agreement-**UREDI V. DADA**; or

(ii) Permanent Mental ground; or

(iii) incapacity; or

(iv) Carrying on the business at a loss or on any equitable ground – **section 36 of Partnership Law of Lagos.**

PROCEDURE FOR DISSOLUTION OF THE PARTNERSHIP

1. Notice of requirement, dissolution, or expulsion is served on another partner referring to the appropriate clause in the partnership agreement.

2. The partners prepare and execute the dissolution agreement.

3. Distribution of assets and liabilities will commence

4. Notice of dissolution/cessation is given to(THIS CAN BE DONE AFTER expulsion)

b Corporate Affairs Commission, if registered

c Published in the gazette and national newspapers.

d Clients or customers.

WINDING-UP OF NON-BUSINESS ORGANISATIONS (INCORPORATED TRUSTEES/ ASSOCIATIONS) UNDER PART C OF CAMA

WHO CAN BRING PETITION FOR DISSOLUTION

The Petition for its dissolution can be brought by any of the following persons:

1. The Governing Body or Board of Trustees

2. One or more trustees of the association

3. Members of the Association constituting not less than 50 % of the total membership

4. The Corporate Affairs Commission

S. 608(1) & (5) of CAMA

GROUNDS FOR DISSOLUTION-

S. 608 (2)

The grounds for the dissolution of incorporated trustees may be any of the following:

1. That the aims and objects for which it was established have been fully realized and no useful purpose would be served by keeping the corporation alive

2. That the body corporate is formed to exist for a specified period and that the period has expired

3. That all the aims and objects of the association have become illegal or otherwise contrary to public policy; and

4. That it is just and equitable to do so in the circumstances

THE PROCEDURE FOR THE DISSOLUTION

1. It is dissolved voluntarily by an ordinary Resolution passes by not less than 50 % of the members on any of the grounds stated above

2. File a Petition to the Court for a formal and effectual dissolution

3. All the persons likely to be affected by the dissolution (e.g. creditors/trustees) shall be put on Notice**. -S. 608(3) of CAMA.**

NOTICE OF DISSOLUTION

At the hearing of the petition, all persons whose interest or rights may, in the opinion of the court, be affected by the dissolution, shall be put on NOTICE **S. 608(5)**

A formal advertisement of the hearing of the petition following an Order of Court will suffice as Notice.

DISTRIBUTION OF ASSETS OF A DISSOLVED INCORPORATED TRUSTEE

The distribution of the assets of a dissolved incorporated trustee is to be done in accordance with the Special Clauses in its Constitution as follows:

1. Satisfy all debts and liabilities of the Association

2. If the properties remained after the payment of liabilities, they are not to be distributed among the members of the Association but to be transferred to some other institutions having similar objects of the Association as will be determined by the members of the association

3. If there is no institution with similar objects, the properties shall be transferred to some Association/body with charitable objects**. S. 608 (4) of CAMA.**

DRAFTS

1. Statutory Notice of demand

NAT WEST BANK LIMITED

RC 10145

NO 40 ADEOLA STREET

VICTORIA ISLAND LAGOS

OUR REF:

DATE:

The Board of Directors

Be Come Limited

Ikoyi-Lagos State.

Dear Sir,

STATUTORY NOTICE OF DEMAND TO REPAY N15, 000, 000.00 LOAN

PURSUANT TO SECTION 409 OF THE COMPANIES AND ALLIED-MATTERS ACT

I, …… the Finance Director of the above named bank write to notify your company of the repayment of a facility advanced to it to the sum of fifteen million naira only (N15, 000, 000.00) at an interest of 13 percent per annum dated the 18 day of July 2008 with its due date of repayment to be on/ before the 10 day of March 2014.

Please be informed that no amount of the loan has been paid in partial discharge of the loan sum and interest.

You are hereby demanded to repay the principal loan and interest within twenty-one (21) clear days of your receipt of this Notice otherwise Legal action will be taken against your company.

You can kindly make payment into account No 1276589308 at First Bank belonging to us or account No 4356008693 at Great Bank Ltd.

Yours faithfully,

Finance Director For: Great Bank Ltd.

WADATA NIGERIA LIMITED

10 IKOYI ROAD IKOYI

LAGOS STATE

OUR REF:

SPECIAL RESOLUTION TO WIND-UP THE COMPANY AND TO APPOINT A LIQUIDATOR/FIX

HIS REMUNERATION

PURSUANT TO SECTION 457 OF THE COMPANIES AND ALLIED-MATTERS ACT 2004

At an Extra-ordinary General meeting of the above named company held on the 10 day of May 2014 at the company's conference room, it was dully proposed and resolved as follows:

1. That the company be wound up voluntarily.

2. That Chief Anthony Ibru, an accountant of …….. (Address) be and is hereby appointed liquidator to wind-up the company at a remuneration of N100,000.00 per annum.

DATED THE 25 DAY OF MAY 2014

…. Director Director

3. **DECLARATION OF SOLVENCY TO ENABLE MEMBERS' VOLUNTARY WINDING UP.**

WADATA NIGERIA LIMITED

10 IKOYI ROAD

IKOYI

LAGOS STATE OUR REF:

DECLARATION OF SOLVENCY EMBODYING A STATEMENT OF THE ASSETS AND LIABILITIES PURSUANT TO SECTION 462 OF THE COMPANIES AND ALLIED-MATTERS ACT 2004

We, John Bui of ….. and Bamba Audu of …… being all the Directors of the above company, solemnly declare that we have made a full enquiry into the affairs of this company and that having done so, we have formed the opinion that the company will be able to pay its debt in full within a **period of twelve (12) month**s from the commencement of the winding up, and we append a statement of the company's assets and liabilities as at the 10 day of January 2014 being the latest practicable date before making this declaration.

And we make this solemn declaration, conscientiously believing the same to be true by virtue of the Oaths Act.

1. John Bui …….

2. BambaAudu …….. Deponents

Sworn to at the Federal High Court Registry, Lagos

This …day of ……. 2014.

BEFORE ME

COMMISSIONER OF OATHS

NOTICE OF RETIREMENT/RESIGNATION

To (Name of Partner or Partners other than the partner giving notice).

I, (Name of partner giving notice) hereby give you notice under clause ..... of our partnership agreement (or

deed of partnership) dated the ..... day of ..... of my intention to retire from the partnership subsisting between us as from and immediately after the ..... day of. ..... '" ..... next

Dated the ..... day of .....

(Signature of Partner giving notice)

NOTICE OF DISSOLUTION

To (Name of Partner to whom notice is given)

Pursuant to clause ..... of our partnership agreement (or deed of partnership) dated the ..... day of.....I , (Name of partner giving notice) hereby give you notice dissolving the partnershipsubsisting between us under said agreement (or deed). I hereby exercise my option to purchase on . the date of dissolution your share in the partnership on the terms therein stipulated.

Dated the ..... day of 2004

(Signature of partners giving notice)

NOTICE OF EXPULSION

To (Name of Partner to whom notice is given)

We, (Name of partner(s) giving notice), hereby give you notice that in exercise of the power for this purpose given us by clause ..... of the partnership agreement (or deed of partnership) dated the ..... day of..... under which we have carried on business in partnership with you, we hereby expel you from the said partnership with effect form the date of service of this notice upon you on the ground (state the grounds, for example "that you have suffered your share in the partnership to be charged for your separate debt under the Partnership Law).

Dated the..... day of..... 2014

(Signature of partners giving notice)

NOTICE OF DISSOLUTION FOR INSERTION IN THE OFFICIAL GAZETTE OR NEWSPAPER

NOTICE IS HEREBY GIVEN that the partnership subsisting between (state in full names of all the formerpartners) carrying on business as (state nature of business) at..... under thestyle of or firm of..... has been dissolved as from the ..... day of.....(or as from the date hereto) so far as concerns the said (name of retiring partner) who retires from the said firm). All debts due to and owing by the said late firm will be received and paid respectively by (State by whom) who will continue to carry on the said business in partnership under the style or firm of .....

Dated the..... day of ..... 2014 –

(Signature of partners giving notice)