MERGER OF INCORPORATED TRUSTEES UNDER CAMA 2020 AND ISA 2007: ADMINISTRATIVE INTERFERENCE OR REGULATORY PROTECTIONS CONTRARY TO ASSOCIATIONS' PRIVITY OF CONTRACT?[*]

Abstract

The direct consequences of incorporation are that a registered company is hereby conferred with the Privilege of Corporate Personality. The fundamental attribute of corporate personality is that the company is a legal entity distinct from the members. Hence, it is capable of enjoying rights and being subject to duties which are not the same with as those enjoyed or borne by its members. In other words it has legal personality. It is a legal creation, an artificial person as opposed to natural person. It is capable of suing or being sued in its corporate name. It is agreed that these apply to associations or NGOs incorporated under Companies and Allied Matters Act (CAMA), 2020. A company is also defined as a corporation, partnership, association, joint stock company, trust, fund, or organized group of persons, whether incorporated or not, and (in an official capacity) any receiver, trustee in bankruptcy or similar official or liquidating agent, for any of the foregoing. Associations qua non-governmental organizations (NGOs) refer to any scientific professional, business or public interest organizations that are neither affiliated with nor under the direction of a government: an international organization that is not the creation of an agreement among countries, but rather is composed of private individual, or organization. The rising profile of these organizations is not unconnected with the level of awareness created by their participations in international governance which have made different countries unless the United Nations to be aware of those happenings at international affairs. This consciousness made them to demand for the rights and privileges of countries in the areas of human rights, environmental rights, humanitarian and global governance participations under the UN charters. Notwithstanding these benefits and strength of international non-governmental organizations, Nigeria Law like Companies and Allied Matters Act 2020 introduced stringent regulations for organizations registered as incorporated trustees which includes NGOs, civil society organizations, community and faith-based organizations. It follows therefore that as incorporated trustees are formed into a business company with legal status to hold properties in trust for their beneficiaries. The objectives of this paper is to evaluate the provisions of Companies and Allied Matters Act 2020, Investment and Securities Act (ISA) 2007 on Merger of Incorporated Trustees to see whether such regulations amounts to interference by the respective Commissions or whether it offers protections to these associations. Put in another way, this paper seeks to x-ray the effect of incorporated trustees which is duly registered by the commission in line with the procedure, stated by law which made the trustees a body corporate with all incidental powers thereto may turn round to be regulating their associations; merged affairs reached upon their agreements. We found that it may amount to double jeopardy or synergy suicide. We recommended that the Corporate Affairs Commission and Investment and security commission should trade with cautions and of course, allow associations and NGOs to operate within their Constitutions, Judicial Precedents and Law for good corporate governance and societal development.

Keywords: Merger, Incorporated Trustees, Companies and Allied Matters Act (CAMA), Investment and Securities Act (ISA), Administrative Interference and Regulatory Protections.

1. Introduction

It is provided that where two or more trustees are appointed by any community or persons bound together by custom, religion, kinship, or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, they may, if so authorized by the community, body or association (in this Act referred to as 'the association') apply to the Commission in the manner provided for registration under this Act as a corporate body[1] (emphasis supplied). Upon being so registered by the Commission, the trustees shall become a corporate body in accordance with the provisions of section 830 of this Act.[2] This sub section made incorporated trustees of an associations or non-governmental organizations (NGOs) to acquire the powers of incorporated companies under the same Act. Thus, company is defined as a corporation, partnership, association, joint stock company, trust fund, or organized group of persons, whether incorporated or not, and (in an official capacity) any receiver, trustee in bankruptcy, or similar official or liquidating agent, for any of the foregoing.[3]

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[1] S. 823(1) of the Companies and Allied Matters Act, 2020

[2] Ibid, S. 830(3)

[3] B A Garner, Black's Law Dictionary, (United States of America: 11th edn. Thomson Reuters, 2019), 350

The Law contains in sections 81, 83, 839, 842, 843, 844, 845, 846, 848 and 849 provisions which are harmful to the abilities of NGOs to operate and deliver on the purpose for which they were set up. Section 81 deals with annual report, sections 83 deals penalties for false information, section 839 deals with suspension of business and appointment of interim managers…, sections 842 which deals with accounts of dissolved incorporated trustees, sections 843 which deals with accounts which cease to be dormant before transfer, section 844 which deals with Dormant accounts: supplementary, section 846 which deals with account records and statement of accounts, section 848 which deals with Annual returns and section 849 which deals with mergers. These sections demand immediate legislative re-think to avoid reducing the strength of Nigerian standard. However, we shall restrict ourselves with section 849 for the purpose of this paper. Thus, section 849 of CAMA, for instance provides. 'Two or more associations with more similar aims and objects may merge under terms and conditions as the Commission may prescribe by regulations.[4]

The above provisions show that the associations mentioned above may state the terms and conditions that will guide them under the merger agreement as directed by the Commission and under the CAMA, Act, 2020. Consequently, after the formation and agreeing to be bound by the merger agreement, expecting the Commission to regulate them again may amount to double jeopardy. After all, court, let alone the Commission should not make agreement for the parties. Put in another way, generally, if the conditions necessary for the formation of a contract are fulfilled by the parties therein, they will be bound by it. Although it is not the function of a court to make a contract for the parties or to rewrite the one which may have made, in certain circumstances, a court may intervene and imply a term into an agreement.[5] The law is firmly settled that the terms and conditions of an agreement or contract in whatever form, freely entered into by the parties bind them alone as parties thereto and do not bind any other person not a party thereto even if the agreement or contract was made for the benefit of that other party. In other words terms and conditions of an agreement or contract entered into by two (2) contracting parties do not bind a 3rd party who was/is not a party to the agreement or contract even if the contract confers some benefit on such a party.[6]

We argue that subsequent poke around by the Commission on merged associations by way of regulations should be treated as unnecessary oversight interference once the associations has followed the due processes of law and procedures for the merger. Moreso, where the Incorporated Trustee of associations of non-governmental organizations - NGOs have followed the legal procedures for their incorporations and have incorporated, followed the procedures of mergers as stated in both Companies and Allied Matters Act and Investment and Securities Act, subsequent regulation by these commissions may amount to unnecessary interference which may require courts interpretation or legislative overhauls.

Since the '90s, the use of certain words has gained currency in our lexicon. Prominent among them are 'mergers' and acquisitions. We have seen the emergence of mega-mergers like that of DaimlerChrysler; Chase Manhattan/Chemical Bank, Gillette/Duracell, ExxonMobil, and TotalElf. Consequently, the combined effect Of these mergers is rapidly approaching a level where the Gross Corporate Product (GCP) of some of the merging companies will exceed the Gross Domestic Product (GDP) of some nation states in West Africa. We have seen what happened in Europe where the combined Gross Corporate Product (GCP) of DaimlerChrysler ExxonMobil and Citigroup is now at the level of exceeding the Gross Domestic Product of countries like Canada, a member of the G 7 countries.[7] So much value can be added to shares. So also, a merger or reconstruction that is not well managed more often lead to collective catastrophe and synergy suicide. We have seen companies acquire or swallow, like the python swallowing its prey, but get choked or poisoned. At times, it takes time for the meal to digest, thereby leading to negative metabolism in form of corporate frustration and boardroom aggression. Lawyers, both ancient and modern, are therefore confronted constantly with issues relating to this topic. The directive of the Central Bank of Nigeria for banks to increase their capital base to a minimum of N25 billion on or before 31st December, 2005 has raised the issue of mergers and acquisition in the banking sector to an unprecedented level. Not too long from now the Insurance industry will witness the same. Some of the several ways the rights of members of a company can be modified, abrogated or altered have been variously classified as reconstruction, reorganisation, schemes of arrangement, amalgamation, mergers and acquisitions.[8] Others are consolidation, divestitures, and spin-offs. What then do these terms mean?

[4] Op.cit s. 849
[5] See *Union Bank of Nigeria Ltd v Prof Ozige*, (1994) 3 NWLR (Pt 333) p. 385
[6] See *Niger Insurance Company Ltd v. ABED Brothers Ltd* (1976) 7SC 20, *ECOSOLAR International Ltd & Anor v. River Bank Capital Ltd* (2020) LCN/14047CA
[7] See Olakanmi & Co, *Companies and Allied Matters Act Cap C20 LFN, 2004 Synoptic Guide,* (Abuja: Lawlord, 2006)
[8] Ibid

A *merger typically* refers to two corporate entities coming together (usually through the exchange of shares) to become one. In the case of acquisition, it has one company, the *buyers,* who purchases the assets or shares of the *seller,* with the form of payment being cash, the securities of the buyer, or other assets of value to the seller. While a merger is the combination of all or part of the assets, liabilities, and the undertakings and business of two or more companies, an acquisition is the take-over by one company of a substantial shares in another company, which gives the acquiring company control over the target company. Whichever way we see it, most mergers are not more than acquisition as demonstrated by the acquisition of UBA by Standard Trust Bank (DBA/STB) which is mostly referred to as a merger.

Other forms of corporate restructuring are spin-offs and divestitures. Divestitures entails outright disposal by way of sale of any of the non-core business. Companies these days now want to focus on their core-competencies. Therefore, any other interest which does not fail within the perimetres of core-businesses are sold Spin-offs can occur when a subsidiary becomes a new legal personality completely
Each of these transactions is to be regulated and administered by the Securities and Exchange Commission ('SEC'), Corporate Affairs Commission (CAC), The Nigerian Stock Exchange (The NSE). All mergers and acquisitions or combination between or among companies (both private and public) are subject to the prior review and approval of both 'SEC' and NSE.[9]

In whichever direction any company decides to go, it must be in substantial compliance with the law. It is important to measure the extent of opposition to the reconstruction or merger from members and creditors. Before a merger becomes effective, it has to be approved by the Shareholders of the merging companies and the Federal High Court. An application is made to the High Court which then orders that separate meetings of the merging companies be convened. We have seen such court ordered meetings between banks in recent time. At such, court ordered - meetings, the scheme must be approved by majority representing not less than 75% in value of the shares of members present and voting either in person or by proxy. It is expected of every shareholder to have considered the valuation of the merging entities which entails market capitalisation, projected earnings and net assets.[10]

2. Mergers and Acquisitions

Memorandum of Understanding
When a merger is contemplated and agreement is reached in principle, then memorandum of understanding becomes a necessary foundation for negotiation. It usually provides for the terms of the proposed transaction, the steps to be taken by the parties in the negotiation process in a non-binding term. It is like an agreement to negotiate and usually does not provide for a binding legal transfer. Memorandum of understanding comes before conducting due diligence and executing a binding legal transfer. Memorandum of understanding may not be necessary if the merging companies are already known to each other by reason of an existing relationship that is a Holding Company consolidating some of its subsidiaries.[11]

Due Diligence
Before any binding transfer or final purchase contract is drawn, there is a need to investigate and be satisfied with the accuracy of information supplied to the acquiring company by the company to be acquired so that the acquisition is not made on faulty assumptions or inaccurate information on for example, the legal status; indebtedness et cetera , of the company to be acquired. Several professionals are involved in conducting this investigation that is Solicitors, Accountants, Estate valuers, *et cetera*. The company being acquired may also have to conduct due diligence on itself to avoid misstatements that may render it liable and also conduct due negligence on the acquiring company to see if it has the ability to acquire it. In carrying out the legal due diligence, there is a need to investigate and examine the following among others:

- The ownership of the company
- The directors of the company and any service contracts The status of the company, private or public, limited by shares or unlimited company et cetera.
- The date of registration of the company and whether the company is still subsisting.
- Copies of licenses to do business that is banking, insurance or mortgage license
- The filing of the annual returns of the company as at when due
- Any change in the status of the company
- The share capital of the company and any alteration thereon and when the alteration was carried out

[9] Ibid
[10] Ibid
[11] See YH Bhadmus, *Corporate Law Practices* (Enugu: CHENGLO Limited, 2009) p. 434

- All the statutory books of the company
- All returns made to the Corporate Affairs Commission
- All charges created by the company and the debenture holders
- The business and any change in the business of the company
- The registration of the business with any regulatory body of the business.[12]
- All titles to the properties of the company
- All indebtedness of the company
- All claims and litigations the company is involved
- Legal status of the assets and liabilities of the company
- All relationships of the company with other companies
- The memorandum and Articles of Association of the company searches, at company registry, land registry and town planning office et cetera.[13]
- Copy of the company's organizational charts or similar documents,
- Certified copy of certificate of incorporation
- Register of members /Register of substantial shareholdings
- All agreements relating to mergers, acquisitions, arrangements, joint ventures, et cetera.
- Copies of all minutes of all general meetings, class meetings, board of directors meetings and board committee meetings
- Copies of all registration with Securities and Exchange Commission
- Copies of ail applications for listing at the Stock Exchange
- Copies of all Shareholders agreements
- Copies of all collective bargaining agreements, employee benefit plans
- Copies of loans and financing agreements
- Copies of all tax returns to Federal, State and Local Governments

Note: this list should not be taken as complete. Other documents may need to be examined depending on the transaction.[14]

Role of Solicitors in Mergers and Acquisitions

Solicitor plays a very important role in every stage of mergers and acquisitions. At early stage he takes part in the formulation of the business bargain to make sure it complies with all laws and regulations. He coordinates all necessary investigations and prepares all the relevant documents. In particular:

- He draws up the memorandum of understanding
- He conducts the legal due diligence
- He participates in the negotiation process
- He gives the necessary legal advice at every stage of the transaction
- He obtains all relevant permits, approvals and registrations.
- He peruses, prepares and sees to the execution of all material contracts.
- He advises on the categories of merger whether small, intermediate and large merger, the procedures and implications.
- He advises on when and how to acquire shares of dissenting shareholder as well as the rights of a dissenting shareholder to compel acquisition of his shares
- He advises on how, when and to whom a take - over bid may be made
- Assisting in securing authority to proceed with the take over bid
- Registration of copy of the proposed bid

He advises on requirements as to a bid, making a takeover bid, dispatch of bid, Arrangement of Funds, issue of directors' circular, inclusion of expert opinion in a bid, acquisition of shares of dissenting shareholders, duties of Offeree Company, rights of remaining shareholders and offences in relation to takeover bid.[15]

Mergers and Takeovers

A growing phenomenon of modern company management is the different types of changes effected in the structure of these companies. These structural changes may take the form of mergers or take-overs.[16] A merger is defined by section 590 as an amalgamation of the undertakings or interest in undertakings or any part of the undertakings of one or more companies and one or more bodies corporate. On the other hand, a take-over is the

[12] Ibid
[13] Ibid
[14] Ibid
[15] Ibid
[16] J O Orojo, *Company Law and Practice in Nigeria* (Lagos: 3rd edn., Mbeyi & Associates Nig. Ltd, 1992) p. 426

acquisition by one company of sufficient shares in another company to give the acquiring company control of that other company.[17] Whilst in a merger, the whole undertaking of the acquired company is merged in the acquiring company, in a take-over, the target company remains separate and distinct but as a subsidiary of the acquiring company. While a scheme of merger of companies contemplates a transfer of properties and liabilities of one or more companies to another, such transfer does not include rights and obligations which are not transferable such as contracts of personal service,[18] and these have to be specially provided for if desired. The term 'acquisition' has not been defined in the Act but it has been said 'to describe a business combination in which ownership and management of independently operating enterprises are brought under the control of a single management.'[19] In this regard, acquisition connotes a takeover, that is, the acquisition of control over the target company. Thus, in business and commercial terms, the expression 'acquisition' is properly used interchangeably with the term 'take-over' as distinct from a merger. It is suggested that with the definition of 'merger' and 'take-over' in the Act, the mix-up in the meanings of these terms should now come to an end.[20]

Reasons for merger or take-over

There may be several reasons and motives for a merger or take-over. These may include the desire to diversify and reduce risks, to take advantage of the resulting economy of scale by the large scale production, thus lowering unit costs and so enhance profits, to secure efficient management where the acquired company is poorly managed, to eliminate or reduce competition for example in respect of sales, raw materials, market, etc., so as to control that sector and if necessary raise prices for higher profits, and to prevent the liquidation of a failing company by saving it. In any of these cases, it may be desirable to reconstruct a company by transferring its assets to another company owned by the same persons, under an arrangement whereby the shareholders of the transferor company receive shares or other interests in the transferee company.

Types of mergers and take-overs

The business combination may be -

(a) a vertical integration of two businesses in the same industry but at different levels in the process of production and selling of a product, e.g. production of raw materials, manufacture of final product and marketing; or
(b) horizontal integration whereby there is a combination of businesses in the same level within the same industry to eliminate or reduce competition; or
(c) conglomerate mergers or take-overs whereby businesses in unrelated or only indirectly related industry are combined, e.g. for diversification purposes.[21]

3. Mergers and Take-Overs in Nigeria

Until 1982, mergers and acquisitions were largely of mere academic interest in this country. One of the few cases before 1982 was that of *Re Bendel Line Co. Ltd*[22] where the scheme for sanction was that Bendel Line Co. Ltd., Bendel Intra-City Bus Service Ltd. and Trans-Kalife Ltd. be amalgamated under a new company known as Bendel Transport Service Ltd. But this was before the SEC had any role to play in such matters. It was only in 1982 that SEC started its regulatory functions. Between that time and 1988, it had supervised 13 mergers, and of these only 2 have been unsuccessful. Some of the companies involved in the mergers during these periods were quoted while others were unquoted companies.[23] It is generally agreed that the present economic climate in Nigeria with the effect of the Structural Adjustment Programme (SAP) from 1986 to 1988 has put many companies under unprecedented financial strain making survival rather agonising for many of them. In that kind of situation, it is little wonder that many economists and financial experts have urged that much greater use be made of the process of mergers and acquisitions.

4. Regulation of Mergers and Takeovers

The need for regulation arises for two reasons. First, although the ostensible reason given by those who engage in mergers and take-overs is that they are in the interest of the company and of the shareholders, it is common

[17] See s. 590 of CAMA, 1990

[18] *Re Bendel Line Co. Ltd.* (1979) FHCR. 19; *Nokes* v. *Doncaster Amalgamated Collieries Ltd. (1940) 3* A.I E.R. 549

[19] See *Akamiokhor, Mergers and Acquisitions: The Nigerian Experience,* being a paper presented at a Seminar on *Perspectives and Options in Mergers and Acquisition on* 11/5/89.

[20] Op.cit

[21] See A.A. Famoroti, Mergers and Acquisitions, (1989) 2 GRBPL NO. 5, p. 35; also Akamiokhor, op.cit

[22] *Op.cit*

[23] The mergers include AG. Leventis & Co. Nig. Ltd. and Leventis Stores Ltd.; Lever Bros. Nigeria Ltd. and Lipton of Nig. Ltd., John Holt Ltd. and Bauchi Bottling Co, Ltd.; S.C.O A. Nig- Ltd. and Nig. Automotive Components Ltd.; Nig. Match Co. Ltd. and United Match Co. Ltd.; John Holt Ltd. and John Holt Investment Ltd.; Startiaid Breweries Nig. Ltd and United Beverages Ltd.; Lever Bros. Nig. Ltd. and Chesebough Products lnd. Ltd

knowledge that mergers and takeovers are subject to various abuses to the detriment of the company and the shareholders. Such abuses include manipulation of the market price of the shares, and insider-trading, payment of premium as an inducement to the controlling shareholder in the target company, deliberate failure to give adequate information upon which the shareholders can form a reasonable opinion as to whether or not to accept the offer, directors applying various delaying and opposing tactics to frustrate a merger or take-over where they do not want it, and other subtle acts.[24] Secondly, in the interest of national economic policy and development, it is necessary to prevent undue restraint of competition or monopoly in business enterprise. Otherwise, the purchaser will be at the mercy of the producer. Various statutory provisions are made to regulate mergers and take-overs not only in the interest of the shareholders, but also in the interest of the public. The statutes include the Companies and Allied Matters Act, 1990, Securities and Exchange Commission Act 1988 and the Nigerian Enterprises Promotion Act 1989.

Companies and Allied Matters Act 1990

Sections 590 to 613 make various provisions regulating the reconstruction, merger and take-over of companies as we shall see shortly.

Securities and Exchange Commission Act 1988

Section 6(g) of 'the Act provides that one of the functions of the Securities and Exchange Commission[25] is 'reviewing, approving and regulating mergers, acquisitions and all forms of business combinations.' The necessary powers to achieve this are contained in section 8. Subsections (1) and (2) of the section provide as follows: '8(1) - Notwithstanding anything to the contrary contained in any other enactment, every merger, acquisition or combination between or among companies shall be subject to the prior review and approval of the Commission.

(2) - The Commission shall approve any application made under this section if and only if the Commission finds that -

(a) such acquisition, whether directly or indirectly, of the whole or any part of the equity or other share capital or of the whole or any part of the assets of another company is not likely to cause substantial restraint of competition or tend to create monopoly in any line of business enterprise;

(b) the use of such shares by voting or granting proxies or otherwise shall not cause substantial restraint of competition or tend to create monopoly in any line of business enterprise.'

These provisions have filled an open vacuum in the process of the combination of enterprises by preventing a monopoly tendency or an undue restriction of business enterprises to the detriment of general economic activities in the country. Certain combination transactions are exempted from the control of SEC. These are acquisition of shares by holding companies solely for the purpose of investment and not using same for voting or otherwise to cause or attempt to cause substantial restraint of competition or tend to create monopoly in any line of business enterprise (ibid. s. 8(3), and also transactions duly consumated pursuant to authority given by any Federal Government owned agency under any statutory provision vesting such powers in the agency. To ensure compliance with the provisions of the section, the Commission is given power to call for information from companies seeking its approval under the section in order to carry out its function effectively. In addition, very stiff penalties are prescribed for contravention of the section. For example, the company is liable to a fine of ₦100,000 and, in addition, to a fine of ₦1,000.00 for each day during which the offence subsists; and every director who is in default is liable to a fine of ₦10,000.00 or to imprisonment for three years or to both. It is clear from the above provisions of the SEC Act 1988 that the Commission is now charged with the functions of antitrust regulation and monopolies control.

Approval of Price

Another regulatory function of SEC is in respect of the sale or transfer of securities. Section 7(1) provides that no securities of any enterprise in which aliens participate whether constituted as a public or private limited or unlimited liability company or partnership, and no securities of any public company shall be issued, sold or transferred without the prior approval of the Commission with respect to, inter alia, the price at which the securities are to be sold and the timing and amount of sale. Although the provision is general, it, of course, applies in respect of transfer and sale in mergers and take-overs.

[24] See Osunbo. *The Nigerian Law of Take-Overs and Mergers* (1989) GRBPL No. 5 at p. 40,

[25] In this chapter, unless the context otherwise admits, reference to 'Commission' is to the Securities and Exchange Commission

Mergers

(1) Form of Merger

A merger may take the form of an amalgamation of two or more companies into one of them, e.g. as in *Re Upton of Nigeria Ltd.*[26] in which Lipton of Nig. Ltd was merged with Lever Brothers Nig. Ltd; *Re John Holt Investment Ltd. and John Holt Ltd.*[27] where the former was merged in the latter, and in *Re Chesebrough Products Industries Ltd. and Lever Brothers Nig. Ltd.*[28] where the former was again merged in the latter. The merger may also take the form of the amalgamation of 2 or more companies into another one formed for the purpose as in *Re Bendel Line Co. Ltd.*[29] where the scheme for sanction was that Bendel Line Co. Ltd., Bendel Intra-City Bus Service Ltd. and Trans-Kalife Ltd. be amalgamated under a new company known as Bendel Transport Services Ltd.

(2) Procedure for Merger

The procedure for merger is regulated by the SEC Act 1988, the Companies and Allied Matters Act, 1990 and the SEC Guidelines on Mergers, Acquisitions and Combinations, subject, of course, to the particular facts of each case. Based on these provisions, the following stages can be identified.

Pre-merger Notice

Under paragraphs 6 and 7 of the Guidelines, the SEC requires to be given notice of an intention to arrange a merger. This is the pre-merger Notice. Before giving the Notice, the directors of the acquiring company must have satisfied themselves of the need for the merger. Informal consultations would inevitably have been held with the directors of the target company. The pre-merger Notice must contain the following information and documents-

(a) letters of intent signed by the merging companies;
(b) a detailed description of the proposed transaction including all the background studies relating to the merger and the justifications for it;
(c) a detailed information about the product line of the companies;
(d) a list of the major competitors in that product market and the market position or market share of each company (including the merging companies);
(e) the structure and organisation of the merging companies;
(f) revenue information about the operations of the merging companies;
(g) the latest financial statements of the companies;
(h) an analysis of the effect of the acquisition on the relevant market including the post - acquisition market position of the acquiring or surviving company.

The SEC will consider the Notice and if it approves it will grant permission for a formal application to be made.

The Merger Document

After the preliminary approval of the SEC, the acquiring company will prepare Merger Proposals with the assistance of its professional advisers such as accountants, financiers, lawyers, et cetera. The proposals are submitted to the board of directors of the target company. The expert advisers of both companies will then work on the proposals to produce a scheme containing the agreed and negotiated terms of the merger. An explanatory statement is prepared by each company for its shareholders. These two documents together constitute the Merger Document. Thereafter, the regulatory bodies are, as a matter of practice, consulted for their clearance. These are the F.B.I.R., the Stock Exchange, where necessary, and the Industrial Development Coordination Committee. The shareholders of the respective companies are informed at this stage, so as to prepare them for the meeting to come.

Corporate Affairs Commission

Subject to section 541 of CAMA 2020, the Corporate Affairs Commission shall *administer* this the provisions of this Act including the regulation and supervision of the formation, incorporation, registration, management and winding up of companies under or pursuant to this Decree; *establish and maintain* companies registry and office, in the States of the Federation suitably and adequately equipped to discharge its functions under this Decree or any other law in respect of which it is charged with responsibility; *arrange or conduct* an investigation into the affairs of any company, where the interest of the shareholders and the public so demand; *perform* such other functions as may be specified by any Decree or enactment;[30] and *undertake* such other

[26] Suit No. FHC/L/M21/8S of 5/6/85 Unreported
[27] Suit No. FHC/L/M68/87 of 18/5/87, Unreported
[28] Suit No. FHC/L/M49/88 of 14/11/88, Unreported
[29] Supra
[30] See s. 7(1) (a) – (d) of Companies and Allied Matters Act, 1990

activities as are necessary or expedient for giving full effect to the provisions of this Decree.[31] Nothing in this section shall affect the powers, duties or jurisdiction of the Securities and Exchange Commission under the Securities and Exchange Commission Decree 1988.[32] *administer* this Act, including the registration, regulation and supervision of-the formation, incorporation, management, striking off and winding up of companies; business names, management and removal of names from the register, and; the formation, incorporation, management and dissolution of incorporated trustees;[33] *establish and maintain* a company's registry and office in each State of the Federation suitably and adequately equipped to perform its functions under this Act or any other law;[34] *arrange or conduct* an investigation into the affairs of any company, incorporated trustees or business names where the interest of shareholders, members, partners or public so demands;[35] *ensure* compliance by companies, business names and incorporated trustees with the provisions of this Act and such other regulations as may be made by the Commission;[36] *perform* such other functions as may be specified in this Act or any other law; and[37] *undertake* such other activities as are necessary or expedient to give full effect to the provisions of this Act.[38] Nothing in this section affects the powers, duties or jurisdiction of the Securities and Exchange Commission under the Investments and Securities Act (or any amendment thereto or re-enactment thereof).[39]

Investment and Securities Commission

The Commission under the Investments and Securities Act 2007, shall be the apex regulatory organisation for the Nigerian capital market and shall carry out the functions and exercise all the powers prescribed in this Act and, in particular, shall- *regulate* investments and securities business in Nigeria as defined in this Act; *register and regulate* securities exchanges, capital trade points, futures, options and derivatives exchanges, commodity exchanges and any other recognized investment exchange; *regulate* all offers of securities by public companies and entities; *register* securities of public companies; *render* assistance as may be deemed necessary to promoters and investors wishing to establish securities exchanges and capital trade points; *prepare* adequate guidelines and organise training programmes and disseminate information necessary for the establishment of securities exchanges and capital trade points;[40] *register and regulate* corporate and individual capital market operators as defined in this Act; *register and regulate* the workings of venture capital funds and collective in vestments schemes in whatever form; *facilitate* the establishment of a nationwide system for securities trading in the Nigerian capital market in order to protect investors and maintain fair and orderly markets; *facilitate* the linking of all markets in securities with information and communication technology facilities; *act* in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by securities exchanges and capital trade points; *keep and maintain* a register of foreign portfolio investments;[41] *register and regulate* securities depository companies, clearing and settlement companies, custodians of assets and securities, credit rating agencies and such other agencies and intermediaries; *protect* the integrity of the securities market against all forms of abuses including insider dealing; *promote and register* self regulatory organisations including securities exchanges, capital trade points and capital market trade associations to which it may delegate its powers; *review, approve and regulate* mergers, acquisitions, takeovers and all forms of business combinations and affected transactions of all companies as defined in this Act; *authorise and regulate* cross-border securities transactions; *call for* information from and inspect, conduct inquiries and audit of securities exchanges, capital market operators, collective investment schemes and all other regulated entities; *promote* investors' education and the training of all categories of intermediaries in the securities industry; *call for, or furnish to* any person, such information as may be considered necessary by it for the efficient discharge of its functions;[42] *levy* fees, penalties and administrative costs of proceedings or other charges on any person in relation to investments and securities business in Nigeria in accordance with the provisions of this Act; *intervene* in the management and control of capital market operators which it considers has failed, is failing or in crisis including entering into the premises and doing whatsoever the Commission deems necessary for the protection of investors; *enter and seal*

[31] Ibid s. 7(1)(e)
[32] Ibid s. 7(2)
[33] See s. 8(1)(i) – (iii) of Companies and Allied Matters Act, 2020
[34] Ibid s. 8(b)
[35] Ibid s. 8(c)
[36] Ibid s. 8(d)
[37] Ibid s. 8(e)
[38] Ibid s. 8(f)
[39] Ibid s. 8(2)
[40] See s. 13(a) – (e) of Investment and Security Act, 2007
[41] Ibid at s. 13(f) – (i)
[42] Ibid at s. 13(m) – (t)

up the premises of persons illegally carrying on capital market operations. In furtherance of its role of protecting the integrity of the securities market, seek judicial order to freeze (he assets (including bank accounts) of any person whose assets were derived from the violation of this Act, or any securities law or regulation in Nigeria or other jurisdictions, the Commission shall *relate* effectively with domestic and foreign regulators and supervisors of other financial institutions including entering into co-operative agreement on matters of common interest; *conduct research* into all or any aspect of the securities industry; *prevent* fraudulent and unfair trade practices relating to the securities industry; *disqualify* persons considered unfit from being employed in any arm of the securities industry;[43] *advise* the Minister on all matters relating to the securities industry; and *perform* such other functions and exercise such other powers not inconsistent with this Act as are necessary or expedient for giving full effect to the provisions of this Act.[44]

4. Conclusion and Recommendations

We have evaluated the Laws regulating the merging of companies and associations under before enactment of companies and Allied Matters Act, 2020. We found that the ways companies and associations are being regulated now were not the same as they were in the preceding CAMA Acts before the coming of the new Act. Laws are amended to bring innovations due to the dictates and the positive changes in the society and for the development of the society and should not be the other way round. We have pointed out certain provisions or clauses of the Act that urgently demand immediate legislative overhauls. This can be by a way of amendments. These provisions do not conform to the regulation of international nongovernmental organizations under International Administrative Laws. NGOs ordinarily are the creation of individuals and citizens seeking to contribute in social development. The Nigeria Legislatures owe it as a duty to support these initiatives without overlooking the need to assist their operations and existence within Nigeria and international laws. Therefore, anything on the contrary must demand societal demands for changes hence this paper. We therefore, recommended that: The National Assembly should quickly amend the provisions of sections 81, 83, 839, 842, 844, 846, 848 and particularly 849 of the CAMA, 2020 which portends double regulations on the merged incorporated trustees of NGOs. This is to avoid what we stated to be double jeopardy and/or synergy suicide. Government at all tiers in Nigeria should provide enabling conditions that would make our NGOs participative in governmental affairs and should be protected as their counterparts are protected at the international level.

[43] Ibid at s.13(u) – (z)
[44] Ibid s. 13(z)(cc) – (dd)