

MEMBERSHIP OF COMPANIES IN NIGERIA: AN APPRAISAL OF THE PROVISIONS OF THE COMPANIES AND ALLIED MATTERS ACT (CAMA) 2020*

Abstract

In ordinary commercial usage, the term member denotes a person who holds shares in a company. The members or shareholders are the real owners of a company. They collectively constitute the company as a corporate body. This paper looked at who a member of a company is with respect to those qualified to be members, mode of membership, the rights of members, register of members, the class of person(s) or individual(s) that are not qualified to be members, the statutorily allowed number of member(s) and the location of the members register. Relevant terms were also defined and reference made to the statutory provisions for membership and case law authorities, with recommendations on areas Nigeria can improve on the existing statutory provisions with respect to membership of a company.

Keywords: Membership of Companies, Companies and Allied Matters Act 2020, Nigeria, Appraisal

1. Introduction

Member of a company is someone who has a proprietary interest in the company and whose name is on the register of members of the company.¹In membership of a company, entry in the register is an indispensable condition. A shareholder will not necessarily be a member of a company, if his/her name has not been entered in the company register. She/he becomes a member, when the name is entered in the register.² In the case of *Jethwani v Nigeria Wire Ind. PLC*³, it was held that by virtue of section 152(2) of the Act, until the name of the transferee of shares is entered in the register of members in respect of the transferred shares, the transferor shall so far as concerned the company, be deemed to remain the holder of the shares.

Once a shareholder is registered, he becomes a member of the company. This is why Nnaemeka Agu JCA stated that in modern company law, there is actually no difference, in practice, at least, between being a member and being a shareholder of a company under section 20 of the companies Act, 1968 which is in *pari materia* with section 79 of the Companies and Allied matters Act. In *Spacks (Nigeria) Ltd v SB Ponnile*⁴ it is mandatory that a member of a company, must own at least one share of the company, so a member who seeks to claim back his share or contribution to the company, also seeks to remove himself/herself from the membership of same. Note that, a shareholder must be registered within 28 days of the conclusion of the agreement to become a member, or in the case of a subscriber of the memorandum, at the registration of the company, and if default is made in entering the name, the court may compel the company to do so.⁵ Note also, that the minimum number of members of a company is one, and the membership must not be allowed to fall below this number for more than a period of six (6) months. If this happens, the directors may be personally liable for the debts of the company. If they carry on business in spite of that.⁶Membership of a company as a general rule is open to any legal person, however, infants, personal representatives of deceased persons, companies and aliens are subject to special rules.⁷

Following the repeal of C20 LFN 2004 (CAMA), the new Act CAMA 2020 ('the Act') was enacted. The newly enacted Act introduces measures to ensure efficiency in the registration and regulation of corporate vehicles, reduce the compliance burden of small and medium enterprises (SMEs), enhance transparency and stakeholder's engagement in corporate vehicles and, overall, promote a more friendly business climate. The overhaul of the CAMA, which is the fundamental legal basis for corporate vehicle regulation, is long overdue as this is its first comprehensive update in 30 years. To mitigate entry barriers for Small and Medium Enterprises (SMEs), the Act provides that a private company can now be formed by one person.⁸ This should stimulate the growth of smaller owner – controlled business and assist in making the business regulatory environment favourable to them. Based on the Act, shareholders now have power to bring derivative action against a company and its affiliated entities. This amendment further enhances minority shareholders rights and seeks to promote transparency in corporate governance in Nigeria. The Act permits private companies to hold virtual meetings⁹ subject to the provisions of their articles. Virtual meetings have become a necessity, as the Covid-19

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¹ Section 105(2), CAMA, 2020

² *ibid*, S. 105(1)

³ (1999) 5 NWLR (PT 602) 326 @ 333

⁴ (1986) 2NWLR (Pt23) 516 @ 522

⁵ S. 105(3), CAMA, 2020

⁶ Section 109(4), CAMA, 2020

⁷ Olankunle Orojo, *Company law and practice in Nigeria*, 5th Edition (2008) Lexis Nexis Buttersmith @ pg 191

⁸ Section 18 (2) CAMA 2020 ('The Act')

⁹ Section 240 CAMA 2020 ('The Act')

pandemic and rules on social distancing have made virtual meetings inevitable. However, the ability to hold virtual meetings was not extended to public companies. It is hoped that this gap will be addressed in due course.

2. Definition of Terms

Member: A member of a company is a person who has a constituent proprietary interest in the company and whose name is on the register of members of the company.

Company Register of Members: A company register is a register of organizations in the jurisdiction they operate under. The register of members, or register of shareholders, is a record of the individuals who own the company and the details of the shares they hold. Every company is required to keep a register of members¹⁰

Shareholder: A shareholder is any person company or institution that owns at least one share of a company's stock. As equity owners, shareholders are subject to capital gains (or losses) and/or dividend payments as residual claimants on a firm's profits.¹¹

Shares: A unit of ownership that represents an equal proportion of a company's capital. It entitles its holder (the shareholder) to an equal claim on the company's profits and equal obligation for the company's debts and losses. There are two major types of shares. One is 'Ordinary shares' (common stock) which entitles the shareholder to share in the earnings of the company as and when they occur, and to vote at the company's annual general meetings. The other is 'Preference shares' (preferred stock) which entitle the shareholder to a fixed periodic income (interest) but generally do not give him or her voting rights.

Infant: Infants from a legal perspective are persons who are under the age of legal majority - at common law, 21 years, now generally 18 years. Common law held an infant, also called a minor or child, to be a person less than 21 years old. Currently, most state statutes define the age of majority to be 18.

Equitable Interest: An equitable interest is an interest held by virtue of an equitable title or claimed on equitable grounds, such as the interest held by a trust beneficiary. The equitable interest is a right in equity that may be protected by an equitable remedy.¹²

Registrars: Is an institution often a bank or trust company, responsible for keeping records of bond holders and shareholders after an issuer offers securities to the public.¹³ In practice, especially in quoted companies, with their larger number of members, the registers are today maintained by registrars which are usually separate bodies established for that purpose. For example; The First Registrars United, established by First Bank Plc.

3. Membership of a Company

Section 105 Companies and Allied Matters Act (CAMA), 2020 defines Member as

1. The subscribers of the memorandum of a company shall be deemed to have become members of the company, and on its registration shall be entered as members in its register of members.
2. Every other person who agrees in writing to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.
3. In the case of a company having a share capital, each member shall be a shareholder of the company and shall hold at least one share.

Capacity to be a member

An individual lacks the capacity to be a member of a company if (a) he is of unsound mind, and has been so found by a court in Nigeria or elsewhere – see S. 106 (1) (a.) CAMA; (b) he is an undischarged bankrupt;¹⁴(c) A minor under the age of 18 years shall not be counted for the purpose of determining the legal minimum number of members of a company;¹⁵ (d) A corporate body in liquidation shall not be capable of becoming a member of a company. S106(3) CAMA. Note that shares owned or transferred to persons falling within the provisions of S106(1) CAMA will be vested in their committee or trustee. Transferred shares to persons falling within same provision shall remain in the purported transferor or his personal representatives, who shall hold the shares in trust during the period of incapacity.¹⁶

¹⁰Section 110, CAMA, 2020

¹¹ Shareholders: <https://www.investopedia.com/terms> accessed 19th May,2024

¹² Shares:<https://sklawyers.com/dictionary> accessed 19th May2024

¹³ Equitable interest:<https://www.investopedia.com/terms> accessed 20th May,2024

¹⁴ Section 106(1)(b), CAMA, 2020

¹⁵ *ibid* S.106 (2)

¹⁶ Section 106(5), CAMA, 2020

Right of Members to attend Meetings and Vote

Members have the right to attend any general meeting of the company and to speak and vote on any resolution before the meeting. However, the articles may provide that a member shall not be entitled to attend and vote unless all calls or other sums payable by him in respect of shares in the company have been paid.¹⁷ Other rights of membership include the right to dividends in appropriate cases, the right to seek redress against oppressive and unfair treatment, and the right to make various applications to court or the commission. It was observed in the case of *Iwuchukwu v Nwizu*,¹⁸ that registered shareholders become entitled to certain rights, benefits and privileges. Except as otherwise provided by the law and the memorandum and articles of association of the company, he has the right to sell, mortgage or otherwise dispose of the shares. He is entitled to receive dividends on the shares registered in his name and to keep the dividend received for his own use.

Personation of Members

Any person who falsely and deceitfully personates a member of a company and thereby obtains benefits or endeavours to obtain benefits due to any such member, shall be guilty of an offence and be liable on conviction to imprisonment for a term of not more than 7 years or a fine of not more than ₦2,500.¹⁹

Register of Members

Every company shall keep a register of its members, and enter in it the following particulars: (a) The names and addresses of members and for a company having share capital, a statement of the shares and class of shares, if any held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; (b) The date on which each person was registered as a member, and; (c) The date on which any person ceased to be a member. However, where the company has converted any of its shares to stocks, and given notice of such conversion to the commission, the register shall show the amount of stock held by each member, instead of the number of shares and the particulars relating to shares specified in the Act.

Location of Register

The register of members is kept at the registered office of the company, except in the following: (a) Where the work of making it up is done at another office of the company, it may be kept at that office; and (b) The company arranges with some other person for the making up of the register to be undertaken on behalf of that person, it may be kept at the office of that other person at which the work is done.²⁰ However, note that the register shall not be kept in the case of a company registered in Nigeria in a place outside Nigeria. The Commission must be kept informed of where the register is kept by companies. However, if at all times since it came to existence, the register has been kept in the company's registered office, then the company need not send notice of where the register is kept to the commission.²¹

Register and Index of Members

It is required that companies keep a register of members. The register may be in the form of bond or whether pasted or not, or in a photographic film form, or stored in a computer device, or 'in any other manner in accordance with accepted commercial usage'.²² A company that has more than fifty (50) members, must keep an index of the names of the members of the company unless the register is in such a form as to constitute an index.²³ The index must be kept in the same place as the register of members.²⁴ Failure to comply with the provisions as to the register or the index is punishable with a fine.²⁵ Note that except when the register is closed under the provisions of the Company and Allied Matters Act, the register and the index of members' names shall be open during business hours, this is however, subject to such reasonable restrictions the company may impose in their general meeting. Be that as it may, two (2) hours in each day shall be allowed for inspection without charge to remedy. However, non members are expected to pay the amount of or less as prescribed by the company.²⁶

When the register is kept with another person, in a place that is not the registered address of the company, and cannot comply with any requirement of the Act as to the production of the register when requested, that other person, will be treated as though he/she was an officer of the company and the courts have powers to make an order against such a person and his officers and servants for such default.²⁷ The company also has the power to close the registers of members, for a

¹⁷ *ibid* Proviso to S.107

¹⁸ (1994)7NWLR (PT257) 379 @467

¹⁹ Section 108, CAMA, 2020

²⁰ Section 110(1)(b), CAMA, 2020

²¹ *Ibid* S110(2)

²² Section 550(2), CAMA, 2020

²³ *Ibid* Section 111(1)

²⁴ *Ibid* Section 111(4)

²⁵ *Ibid* Section 111(5)

²⁶ *ibid* Section 112(2)

²⁷ *Ibid* Section 112(3)

period not exceeding 30 days in a year. This the company can do by placing an advertisement of such closure of the register in a daily newspaper in the district in which the registered office of the company is located.²⁸ Note also, that the courts have the power to rectify register based on the application of any registered person where (a) The name of a person is, without sufficient cause, entered in or omitted from the register of members of a company; or (b) Default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member.²⁹ Note however, that in a case of a company that is required to send the list of their members to the commission, the court when making such order for rectification of the register shall, by its order direct notice of the rectification to be given to the commission.³⁰

Liability of Members

Prior to the winding up of a company, a member of the company with shares shall be liable to contribute the balance, if any, of the amount payable in respect of the shares held by him in accordance with the terms of agreement under which the shares were issued or in accordance with a call validly made by the company pursuant to its articles.³¹ The liability of a member shall continue, notwithstanding that the shares held by him are subsequently transferred or fortified under a provision to that effect, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.³² In the event of the company being wound up, every past and present members are liable to contribute to the assets of the company to an amount sufficient for payment of its debt and liabilities and for the costs, charges and expenses of the winding up and for the adjustment of the rights of members and past members among themselves, but subject to certain qualifications, such as;³³

- a. A past member not being liable to contribute, if he has ceased to be a member for a period of 1 year or upward before the commencement of the winding up.
- b. A past member is not liable to contribute, unless it appears to the court that the present members cannot meet up the requirement.
- c. In the case of a company limited by shares, no contribution shall be required from any member or past member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member.
- d. In the case of a company limited by guarantee, no contribution shall be required from any member or past member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up etc.

Note that when a company is operating with less than the statutory minimum of one (1) member, the liability will be on any director or officer jointly or severally, who ran the affairs of the company during such period to pay all debts incurred by the company during such period.³⁴

Protection of Membership Rights

The rights and obligation of members, depends on whether the rights are individual or corporate rights.

Individual Rights of Membership

A member has the right 'to maintain (himself) in full membership with all rights and privileges appertaining to that status'.³⁵ The rights are statutory or provided for by the memorandum and articles. These will include the right to vote where the shares carry voting rights, the right to refuse to grant consent to an increase in shareholding, and the right to exercise various statutory rights.³⁶ In the case of *Pan Atlantic v Aleyidieno*³⁷ the court of appeal held that the right to have a proper notice of a meeting and to have a meeting held with a prescribed quorum to take valid decisions is an individual right and not a corporate right. Note that an individual who feels aggrieved, can seek redress in the courts in that individual capacity, since the wrong has been to him as an individual, he does not need the consent or permission of any other member to sue.

Corporate Membership Rights

There are qualified minority rights, that is rights that can be exercised not by a single individual, but by a number of individual members acting in co-operation, for example by a resolution. These rights are subject to the decision of the majority which according to the Act or the articles can take a decision. The rights of corporate membership are protected

²⁸ Ibid

²⁹ Section 115(1)(2), CAMA, 2020

³⁰ ibid S. 115(2)

³¹ ibid S.117(1)

³² Ibid S. 117(4)

³³ ibid

³⁴ S. 121(4), CAMA, 2020

³⁵ *Edward v Halliwell* (1950) 2 ALLER 1064 @1067 Per Jenkin LJ

³⁶ Olakunle Orojo, *Company Law and Practice in Nigeria*, Lexus Nexis Butterworth 5th Edition (2008) @ p 205

³⁷ *Pender v Lushington* (1877) 6 Ch 9 70 @ 80

among others, by the rule in *Foss v. Harbottle*³⁸ which is to the effect that where irregularity has been committed in the course of a company's affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can rectify the irregular conduct.³⁹ The rule in *Foss v Harbottle* also applies to unincorporated associations. In the case of *Carter v National Union of Seamen*⁴⁰ and *Mbere v Ofili*⁴¹ where the rule was applied in the union case. The rule was also applied to the *Janat-Ui-Muslim of Lagos* on the ground that it was a body possessing a constitution or a set of rules and regulations entitling it to sue and be sued as a legal entity. However, there are exceptions to the rule in *Foss v Harbottle*. Note that in spite of the powers of the controlling shareholders, the majority rule in *Foss v Harbottle* even at common law was not an inflexible rule and it was relaxed whenever necessary in the interest of justice. Various exceptions were adopted to cushion the harsh effect of the *Foss v Harbottle* rule of common law. These exceptions are now enacted under section 300 of the Act. In addition, other provisions for redress are made in the Act, for example: - (a) By petition for winding-up under the just and equitable rule;⁴² (b) By the use of the provisions for relief on the grounds of illegal or unfairly prejudicial and oppressive conduct;⁴³ (c) By inspection and investigation.⁴⁴ The rule in *Foss v Harbottle* was summed up by Karibi-Whyte, JSC in *Elufioye v Halilu* as follows: 'this principle is founded on the rationale that since the rectification of the wrong or irregularity is intra the company or association which can rectify the act of, by the majority who have the power to do so, it is an idle exercise for the court to interfere. The ultimate authority being the decision of the majority, it can always get its wishes done. Hence such action concerning wrongs to the company, the company and not any other person is the proper plaintiff'.

Derivative Action

This is another type of action to perfect corporate membership rights or the rights of the company. The action in reality is an action by the company for the wrong done to it but since it will not sue as plaintiff, provisions are made for a minority to sue on its behalf and not on behalf of the shareholders. Although the action is framed as a representative one on behalf of the aggrieved minority and other shareholders, it is, in fact, an action which should be properly brought by the company, the action is derived from the right of the company, hence it is described as derivative action.⁴⁵ However, there are certain conditions to be met as provided by section 303 of the Act, before an applicant can bring an application on behalf of the company. The conditions to be satisfied are as follows: (a) That the wrongdoers are the directors who are in control, and will not take necessary action; (b) That the applicant has given reasonable notice to the directors of the company of his intentions to apply to the court if the directors do not bring or diligently prosecute or defend or discontinue the action; (c) That the applicant is acting in good faith; and (d) That it appears to be in the best interest of the company that the action be brought, prosecuted, defended or discontinued. It follows, therefore, that the applicant must bring an application for leave of court in order to bring an action under section 303.⁴⁶ The following may apply count under derivative action as an applicant: (a) A registered holder or a beneficial owner and a former registered holder or a beneficial owner of a security of a company; (b) A director or an officer, or a former director or officer of a company; (c) The corporate affairs commissions; (d) Any other person who, in the discretion of the court, is a proper person to make an application for that purpose.⁴⁷ A stakeholder cannot bring the action if his conduct is such as to disqualify him. For example, if he was a party to the wrong about which he complains.⁴⁸

4. Conclusion and Recommendations

Membership of a company denotes the holders of shares in a company. The members of a company or the shareholders are the real owners of the company. This study has looked at the class of persons or institutions that are qualified to be members of a company, and conversely those classes of persons or institutions that are not qualified. The study appraises the CAMA 2020 ('The Act') with respect to membership of companies in Nigeria, and highlighted relevant features of the provisions of the CAMA, 2020 as regards membership of a company and other allied matters. Conclusively, it is pertinent to note that a company only exists legally when there is a member or members as determined by the company laws of that particular jurisdiction, members are therefore, the lifeline of the company, by virtue of the pivotal position they hold in the affairs and administration of the company. The CAMA 2020 ('The Act') which is the new law governing the operation of companies in Nigeria, is expected to address some of the difficulties faced by businesses (such as administrative bottlenecks, high compliance costs etc) and lead to significant improvements in the country's ease of doing business rankings. The Act seeks to improve the commercial visibility of the Nigerian market as an investment destination by introducing additional insolvency mechanisms, registration of LLP and LP etc.

³⁸ (1843) 2KB 461; 67 ER 189

³⁹ CAMA CAP C20 LFN SECTION 299

⁴⁰ (1929) 2 Ch 58

⁴¹ 1968 (1) ALR Comm. 235; (1968) NCLR 293

⁴² Section 408, CAMA, 2020

⁴³ Ibid Section 310

⁴⁴ Ibid Section 314-329

⁴⁵ Olakunle Orojo, *Company Law and Practice in Nigeria*, Lexus Nexis Butterworth 5th Edition (2008), p 212

⁴⁶ CAMA 2020

⁴⁷ Section 309, CAMA

⁴⁸ *Prudential Assurance Co. Ltd v Newman Industries Ltd.* (1979) 3 ALLER 507.

The nature and the conduct of business is dynamic, and not static. Therefore, it is this researcher's opinion that the overhaul of the CAMA, which is the foundational legal basis for corporate vehicle regulation, is long overdue, as it has taken a period of about 30 years to do an update. The global business environment is changing rapidly, and these changes necessitate commensurate changes in business policy and enabling legal framework to also play favourably at that global or international sphere. In furtherance to the foregoing, the writer recommends the following: It is strongly suggested that the CAMA being the foundational basis for corporate vehicle regulation, be updated within the period of five (five) years, in order to accommodate and proffer solutions to prevailing business dynamics. It is recommended that public companies should also be allowed to hold virtual meetings, since the CAMA 2020 allows other companies to hold virtual meetings, same should be extended to public companies, to enhance the smooth flow of business and allied activities uninterrupted by the covid-19 pandemic. It is further recommended that the blanket authority of the CAC to impose penalties according to their discretion as enshrined in the new CAMA 2020 should be addressed in subsequent updates, because the commission may assess fees as it thinks fit regardless of the gravity of non-compliance. The writer suggests that related charges should be specified in line with the prevailing times and values of such stipulated amounts, since the amount in C20 LFN 2004 CAMA may be obsolete. The Act seems to favour small companies as they are exempted from regulatory bottlenecks and corporate governance standards. However, companies whether large or small require certain level of legal and regulatory decorum for optimal growth and profitability. Such companies are therefore, advised to engage the services of professionals to advise and manage their affairs.