EXAMINING SOME GAINS AND PITFALLS OF NIGERIA'S COMPANIES AND ALLIED MATTERS ACT[1]: URGENT NEED FOR REVIEW*

Abstract

Codification of law provides an important opportunity for a clear statement of legislative and judicial principles while also permitting an opportunity for reform. The review and drafting processes leading up to Companies and Allied Matters Act, Cap C20 Laws of the Federation of Nigeria 2004 (CAMA) embraced all of these aspects and delivered a formidable combination of carefully arranged and well-drafted primary legislation. The legislation reframed and updated familiar statutory principles, while adding important reforms and codification of some common laws, most notably, in the area of directors' duties, ratification of pre-incorporation contract, derivative action etc. This work examined repealed Companies Act 1968 and the novelties introduced by CAMA. The study also compared some corporate practices in United Kingdom and India with those in Nigeria within the relevant laws. It equally appraises the recent reform Bill as passed by the Nigerian Senate. This paper utilized doctrinal methodology in analysing both the repealed and extant laws as they relate to company law. Comparative approach was also adopted in seeing how the company law in stated jurisdictions can contribute in the reform of CAMA. It is the authors' submission that despite the huge positive impact made by CAMA, there is still work to be done in the areas of small companies, ease of doing business in Nigeria, structure of Corporate Affairs Commission, protection of minority shareholders, directors and management of companies, and special provisions for rescuing distressed company.

Keywords: *Jurisprudence, Innovations, CAMA, Corporate practice, Nigeria, Reform Bill,*

1. Introduction

Recently, the Nigerian Senate passed the Bill for the Amendment of Companies and Allied Matters Act (CAMA), which it termed the 'biggest business reform bill in Nigeria in over 28 years.'[2] The Bill, when operational, is expected to reform the Nigerian business environment in many ways, and improve on the reforms currently in place, by making business registration faster, and less cumbersome. The Bill also seeks to shape Nigeria's economy to be globally competitive, achieve inclusive growth and sustainability, create jobs, and cater to the wellbeing of Nigerians. These intents make it imperative to have an effective legal framework of company law, which is a critical building block of a modern and business friendly economy. The Senate claims that the framework provides significant benefits to companies by reducing bureaucratic red tape and making it easier to comply with regulatory obligations. Most of the reviews seek to encourage investments that will allow small businesses and start-ups thrive, lower costs and ease regulatory burdens. Be that as it may, the Bill has further hurdles to jump, namely, support of the House of Representatives and Presidential Assent. Until then, the extant CAMA remains the law.

Like most areas of law in Nigeria, Company law as it is today was foreign to Nigeria. The development of this aspect of Nigerian law is credited to the British Colonial rule. Before the advent of CAMA, there had been various laws governing companies in Nigeria which were repealed at various times by subsequent statutes. These laws include the Supreme Court Ordinance 1876 (particularly Section 14 thereof); Companies Ordinance 1912; Companies Ordinance 1922; and Companies Act 1968. Prior to 1876, in Nigerian and indeed African traditional systems, there were types of mini corporations and partnership. These corporations of individuals came together for usually economic reasons with a particular object of business with a view to pulling resources together in order to

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[1] Cap C20 Laws of the Federation of Nigeria 2004.

[2] BellaNaija.com, *Senate passes Repeal & Re-enactment of CAMA, Lists Benefits for SMEs.* .https://www.bellanaija.com/2018/05/senate-passes-repeal-re-enactment-cama-lists-benefits-smes/ Accessed on 22/5/18.

make some profit. They held their own peculiar regulations that bound members who operated within the confines of these often unwritten rules. Most of the bodies relied on traditional institutions in place in their various localities to help enforce agreed terms among what was akin to shareholders of the Association. More still, apart from what could be termed local bodies, there were also companies duly registered in England as limited liability companies that operated in Nigeria and had all the privileges of companies registered in England under the Companies Act 1862 which applied to foreign companies including those that were based in Nigeria. It is noteworthy that this applicability of the Companies Act 1862 applied to Lagos colony having been ceded to the British Crown in 1861. The Corporations in England were legal entities with status different from their members. This also applied to companies in Lagos. Hence, in Nigeria, at this era, there was no general regulation of companies except in Lagos that had companies duly registered under English Laws. Other Associations were basically subject to the codes agreed by members.

Between 1876 and 1912, the regulations of companies were not significantly different from the 1861 era where the laws in England were the compass with which affairs of companies were directed. However, in 1876, the Supreme Court Ordinance was promulgated for the Colony of Lagos. The Ordinance made it obligatory for courts to apply the Common Law, Doctrines of Equity and Statutes of General Application in Lagos as a colony of Britain. This still meant that corporate regulations in England were applicable to companies operating in Nigeria. It is instructive to note that before 1876, most unincorporated companies in Nigeria fell into series of mishap and fraudulent practices in the hands of shareholders and promoters of companies since there were no regulations except certain conventions in England that were not justiciable in Nigerian courts. The 1861 Supreme Court Ordinance gave a mere temporary relief.

As a result of the shortcomings in company practice and regulation, three principal companies statutes were successively introduced: Companies Ordinance 1912, Companies Ordinance 1922, and Companies Ordinance 1968. The 1912 law was the first company statute in Nigeria and was meant to provide for the operation of companies by incorporation. Initially, it was meant to apply to Lagos only but was later had its application extended to entire country after the amendment of the law in 1917 by virtue of the Companies' Ordinance (Amendment and Extension). Based on the usual clamour for improvement, the Companies Ordinance 1922 was akin to the English Companies (Consolidation) Act 1908 and English Companies Act 1917. The Act soon became inadequate in regulating company practice. This was due to the fact that the Companies Act 1922, which was later designated Companies Act 1963, could no longer cope with the nature, pace, and scope of business activities in Nigeria.

This study examines in brief the Companies Act 1968 as the first autochthonous companies legislation in Nigeria with its values therefor and discusses in relative detail the innovations in CAMA with a view to identifying areas for improvement towards a better corporate practice and economic development in Nigeria. A look is cast at the current Bill recently passed by the Senate in the light of its benefits. The study draws some recommendations from some corporate practices in the United Kingdom and India.

2. Jurisprudence of Companies Act 1968

Companies Act 1968 was the first indigenous legislation in Nigeria. Although it was made during the military rule, it was the first legislation in the administration of company law after the British Colonial administration ended in Nigeria. It was first called Companies Decree.[3] Immediately the military rule ended in 1979, it was designated in 1980 as Companies Act 1968.[4] This Act came into effect as a result of agitation against the continued existence of the Companies Ordinance 1922 to cope with the growth of economic activities in a developing country like Nigeria. There is no doubt that Companies Act 1968 represented a great improvement on what had existed hitherto. It demanded a compulsory incorporation of foreign companies in Nigeria. Before the new Act, foreign companies were operating in Nigeria without passing through our indigenous incorporation. There was little or no regulation in

[3] No. 51 of 1968
[4] SI 1980, No.13

administration of foreign companies in Nigeria then. Nigerian company law before this Act was still much under the influence of British rule. The Act for the first time introduced the need to monitor and approve all companies in Nigeria (whether foreign or domestic) through incorporation. It also introduced comprehensive provisions for publicising the affairs of the company. This was done to protect the interest of the shareholders and the general public in the area of accounts, auditing, meetings, annual returns and directors. These provisions helped in promoting transparency and checking fraud.

The Act like every other law evolves with human beings. After many years of its existence, scholars started criticizing Companies Act 1968.[5] One of the grounds for their criticism was that it was a mere product of repealed Companies Act 1958[6] and adapted sections of the English Companies Act 1948. It was further contended that 1968 company legislation should have required full consultation for its review and possible reform in order to suit Nigerian economic system. This point was noted and meticulously utilized by the Nigerian Law Reform Commission in 1987. The desired objective of the Reform Commission was to evolve a comprehensive and suitable body of legal principles and rules governing companies for sustainable economic growth of the country. The Commission's reports were also reviewed by consultative assembly on company law in 1988. The final product was Companies and Allied Matters Act 1990.[7] This Act repealed and replaced the Companies Act 1968.

3. Companies and Allied Matters Act

The criticisms already highlighted above against Companies Act 1968 were well considered in the process of drafting CAMA. This Act is divided into three parts: Part A concerns companies; Part B provides for business names; and Part C is on incorporated trustees. During the drafting stages of the Act, the existing statutes, the common law principles and doctrines of equity in relation to company law in Nigeria were all considered. These laws were examined by the Committee and later adopted and/or modified before enactment as legislation.[8] CAMA is a comprehensive and to a great extent, detailed piece of legislation in the field of company law. This is because, it tries as much as possible in bringing the old statutes, common law principles and what is obtainable in other jurisdiction together. For example, the common law rules in *Foss v Harbottle*[9] and *Royal British Bank v Turquand*[10] are now part of CAMA provisions. It further reviewed them with amendment to suit Nigerian economic environment as at that time. Some of the major innovations of CAMA are hereunder discussed:

3. Innovations in the Extant CAMA

Establishment of Corporate Affairs Commission (CAC)

Prior to CAMA, the body responsible for the administration and regulation of Companies Act 1968 was Companies Registry in the Corporate Affairs Division of the Ministry of Trade. However, its organisation and employees were the joint responsibility of both Ministry of Trade and Ministry of Justice. Despite the fact that the said body was a revenue generating body, it lacked fund and necessary facilities to carry out its function as provided in the Act. Nigerian Law Reform Commission during the course of drafting CAMA visited Company Registry's office at Abuja. The level of neglect the Commission witnessed led to the recommendation that independence of the Registry is paramount in achieving proper regulation of corporate affairs in Nigeria.[11] The said recommendation was accepted. CAC was established as body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and of acquiring, holding or disposing of all types of property for the purpose of its functions.[12] CAMA also provided for the qualification and appointment[13], tenure of office[14], remuneration[15], proceedings[16] and functions of the commission[17].

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[5] J. O. Orojo, *Company Law and Practice in Nigeria*, LexisNexis, Butterworths, 5th Edition, 2008, p. 17
[6] Cap. 37, LFN, 1958
[7] Cap. C20, LFN 2004.
[8] Nigerian Law Reform Commission Report of Company Law, 1988, Vol.1 pp. 10-11
[9] (1843) 2 KB 461
[10] (1856) 6 E and B 327
[11] Orojo, p, 23
[12] CAMA, Cap C20,LFN, 2004, Section 1
[13] Ibid, Section 2

Prohibition of Non-Voting Shares and Weighted Votes

Before the commencement of CAMA, non-voting shares were freely issued and weighted shares were permitted. This was often used during the early years of Nigerian Enterprises Promotion Act to frustrate government effort in giving more control of business to Nigerians. CAMA in order to remedy the situation prohibited both non-voting shares and weighted shares. It provides that any share subsequently issued must have voting right and shall be on one share one vote basis.[18] The only exception where CAMA allows variation of rights accorded to a share is as it relates to preferential shares[19].

Abolition of Common Law Rule with regard to Pre-Incorporation Contract

The provision of the common law in respect of pre-incorporation contract is that it is not binding on the company[20]. The reason behind the rule is that there is no principal on behalf of whom an agent could have contracted. The company is not allowed to ratify or adopt it. The contracting party cannot enforce it or sue for breach of contract on behalf of the company[21]. The maker is personally liable on the contract and where the intention is that the company should be liable, the contract will be a nullity.[22] This common law rule was a serious challenge in the effort towards promoting business/company. CAMA under Section 72(1) provides that such act done on company's behalf prior to its formation may be ratified by the company; hence, the company is bound by and entitled to its benefit as if it has been a party thereto[23]. This new provision gives the company option of ratification while protecting the interest of the agent and third party with whom he contracted on behalf of the company.

Abolition of Constructive Notice

This is a common law rule that was meant to protect third parties who are not aware of internal management of the company. In *Royal British Bank v Turquand,*[24]the respondent was a liquidator to three companies who gave bond of £2,000 to the bank and secured it with the company's assets. When action for claim was brought by the bank, it was argued that the articles of association allow the company to borrow up to certain extent (which is smaller to what is borrowed in this case). It was held that constructive notice could not apply to exonerate the company from liability.[25] This common law principle has been codified in Section 68 CAMA. It provides that a person shall not be deemed to have knowledge of the content of memorandum and articles of association of a company merely because such book is registered with the Corporate Affairs Commission or available for inspection at the office of the Commission. The exception to this rule relates to registered charges[26].

Provision for Greater Accountability by Directors

Before the coming into effect of the CAMA, one director is enough to keep the company going. CAMA makes it mandatory that a company must have at least two directors[27]. At any point where the numbers of directors fall below two for six months, such company thereafter cannot carry on business[28]. In further ensuring directors' greater accountability, CAMA provides for the appointment[29], removal of directors[30], persons not qualified to be

[14] Ibid, Section 3
[15] Ibid, section 4
[16] Ibid, Section 5
[17] Ibid, Section 7
[18] Ibid, Section 116
[19] Ibid, Section 143
[20] *Trans Bridge Co Ltd v Survey International Co Ltd* (1986) 17 NSCC 1084
[21] *Kelner v Baxter* (1886) LR 2 CP
[22] ibid
[23] *SGF (Nigeria) Ltd v SGF* (1995) 3 NWLR (pt .384) 497.
[24] (1856) 6 E and B 327.
[25] See also *Trenco v African Real Estate Ltd* (1978) 4 SC. 9
[26] CAMA, Cap C20,LFN, 2004, Section 197
[27] Ibid, Section 246(1)
[28] Ibid, Section 244(2)
[29] Ibid, Section 247
[30] Ibid, Section 262

directors of company[31] and their duties to a company[32]. The Commission, company, creditors etc can call for investigation of the company to tackle embezzlement and/or fraud done to the company by its directors[33].

Improved Participation and Control of Company's Affairs through Meetings

The decisions of a company are generally taken during meetings. CAMA provides for the statutory meeting, Annual general meeting (AGM) and extra ordinary general meetings. Prior to CAMA, there was no detail on when such meetings should be conducted. This lacuna creates room for ineffective participation in the decision of the company. It is now mandatory for statutory meeting to be held within six months of incorporation of public company.[34] Even the business to be transacted at AGM is well stated.[35] There is also penalty for non-compliance with these provisions.[36]

Detailed Provisions on Derivative Action and Remedies

The affair of the companies is usually conducted in a democratic setting. There are situation when such majority decision or inaction may be oppressive to minority members. In these cases, minority derives the right to sue after seeking leave of the court to do so.[37] One of the reliefs available to successful claimants under this type of action is remedy for oppressive or unfairly prejudicial conduct. The Companies Act 1968 created alternative remedy to winding up for the purpose of relieving oppression which might not work in his own interest. This is called an order as the court thinks fit.[38] This provision was ineffective because of its link to liquidation and being subject of judicial interpretation. CAMA provides a detailed remedy which does not have to deal with winding up. It expanded the scope of who can bring the action to include a member, director, creditor, CAC and subject to discretionary powers of the court, any other person[39]. The relief under CAMA has extended the relief now to cover both oppression and unfairly prejudicial conduct[40].

Provision of Minimum Authorised Share Capital and Subscription

Minimum share capital is the capital with which a company must be registered and below which the share capital must not at any time fall. This is also regarded as authorised share capital[41]. Prior to CAMA, there was no minimum share capital to be adhered to by companies in Nigeria. CAMA pegs the minimum share capital at N10,000 and N500,000 for private and public companies respectively.[42] It should be noted that twenty five percent of the minimum authorised share capital must be issued. Even companies that do not have up to the requirements are mandated to comply within thirty days of commencement of CAMA. There is also penalty for breach of this provision.

Detailed Provision for Company Secretary

Companies Act 1968 introduced mandatory appointment of company secretary in Nigeria[43]. However, it was silent on the general duties of the secretary. These were left to the directors and the general meeting to determine. Such lacuna begs the question of the relevance of the real status of a secretary as to whether he/she is mere clerical staff or servant of the directors. Despite the case law approach in enhancing the importance of company secretary[44], it is CAMA that specified the duties of Company secretary[45]. It also provides for qualification[46], appointment and

[31] Ibid, Section 257
[32] Ibid, Sections 279, 280 and 282
[33] Ibid, Sections 214 and 315
[34] Ibid, Section 217
[35] Ibid, Section 214
[36] Ibid, Section 212
[37] Ibid, Section 303
[38] CA 1968, Section 201
[39] CAMA, Cap C20,LFN, 2004, Section 310
[40] Ibid, Section 311
[41] Ibid, Section 567
[42] Ibid, Section 99
[43] CA 1968, Section 169
[44]See *Okeowo v Migliore* (1979) 11 SC 138;*Wimpey Ltd v Balogun* (1987) 2NWLR (Pt. 28) 322
[45] CAMA, Cap C20,LFN, 2004, Section 298

procedure for removal of a secretary[47]. These clear provisions have really helped to strengthen the role of company secretary of a public company.

Improvement in the Forms and Content of Financial Statement

Companies Act 1968 introduced mandatory provisions in respect of the form of financial statement. CAMA while adopting the mandatory provision for financial statement, further provides in details the content of financial statements.[48] This clear provision has made it very difficult for the directors of public company to hide some aspects of their financial statement that are not favourable to the company. This new provision is there to protect third parties, future investors and shareholders who may want to buy or sell off their shares in the company.

More Comprehensive Provisions on Receivership

CAMA provides for who has the power to appoint a receiver[49], who cannot be appointed a receiver[50], publication of appointment[51], powers, rights and obligation of a receiver[52]. Such provisions are not detailed in Companies Act 1968 but were in most cases filled up by case laws. These provisions help to protect in a special way debenture holders and secured creditors. It has further helped in regulating receivers on how to perform their duties.

4. Appraisal of the Nigerian Senate's CAMA Repeal/Re-enactment Bill

The Bill for an Act to repeal the Companies and Allied Matters Act 1990 (CAP C20, LFN2004) and Enact the Companies and Allied Matters Act 2018 was recently read the third time and passed, prior to transmission to the President for subsequent assent. The passage foreshadows a new dawn for Small and Medium Enterprises (SME) development in Nigeria. This has far-reaching and positive implications for building competitive and attractive investment environments. The Bill seeks to allow business owners to register their businesses in a faster and more efficient way by using technology such as e-Registration system. It also removes all the regulatory provisions such as the requirement for 'annual general meetings' and 'company secretaries'. Rather than increase, it reduces the minimum share capital for all companies and start-ups in Nigeria which, purportedly, will encourage more investments and create new jobs. The Bill equally creates Limited Liability Partnership, which is a new form of legal identity for businesses in Nigeria. This is targeted at increasing foreign investment in the country.[53]

The overall intent of the regulatory framework is to promote the ease of doing business and reduce regulatory hurdles. As a pro-business law, the Bill creates a "support for small scale industries to promote innovations, and encourage enterprise. It empowers Nigerians to create an environment that enables them to be able to create business and seek opportunities." Under the Bill, one person can float a company. This reform is necessary especially as it is reported that Nigeria ranks 145 out of 190 countries in the World Bank's Ease of Doing Business ranking, which rates countries for the ease at which one can open, conduct and perhaps close down businesses.[54] One of the indicators measured is the relative ease or difficulty in establishing and running a business in Nigeria. In this regard, Nigeria is ranked on the Starting a Business indicator as 130 out of 190 economies.[55] This Bill contemplates an influx of Foreign Direct Investment into Nigeria because of its relevance to ease of doing business and ease of investing in Nigeria.

5. CAMA *versus* Extant Companies Statutes in United Kingdom and India

The choice of United Kingdom and India for the purpose of this comparative study is based on the fact that both are members of the Commonwealth of which Nigeria is also a member. They practice common law adversarial system

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[46] Ibid, Section 295
[47] Ibid, Section 296
[48] Ibid, Section 335
[49] Ibid, Sections 209 and 389
[50] Ibid, Section 387
[51] Ibid, Section 392
[52] Ibid, Sections 209 and 393
[53]https://www.vanguardngr.com/2018/05/senate-passes-cama-bill-most-comprehensive-pro-business-reform-bill/ Accessed 22/5/18.
[54] Editorials, *Welcome Revised CAMA*, http://www.businessdayonline.com/welcome-revised-cama/ Accessed 22/5/18.
[55] Ibid.

just as Nigeria. The evolution of modern company law in both countries can be traced to British administration, thus having a lot legal commonalities. The main law controlling the administration of Company law in UK is Companies Act 2006 (CA 2006) which repealed Companies Act 1985. It has about forty-seven parts and one thousand three hundred sections. Until the enactment of Tax Act, it is the most voluminous piece of legislation ever made in the UK[56]. It should be noted that while CAMA touched almost the whole areas of Companies Law, aspects of Insolvency Law is not part of it. Nigerian CAMA and CA 2006 have almost similar provisions. The reason is not farfetched considering that Nigeria is former British colony and has always looked upon the British legal system in the development of hers. However, some of the striking differences in the provisions of CA 2006 when compared to CAMA include: The abolition of authorised share capital. The provision on authorised share capital is conspicuously missing in CA 2006 although it used to be a provision in CA 1985.

Again, the constitution of company is defined in CA 2006 to include articles of association, constitutional type resolution and agreements[57]. This is wider than CAMA provision. In CA 2006, a single individual may form any type of company. This includes public companies.[58] This is far-fetched under CAMA. Execution of document in CA 2006 is defined to include where one director signs in the presence of a witness who attests the signature.[59] This is also not applicable under CAMA. Under CA, there is provision for rights of holders of beneficial interest, which rights include right to information, right to receive proposed written resolution, and right to appoint proxy.[60] CA also abolishes company secretary for private companies.[61] Prohibition of private companies from giving financial assistance to acquire its shares is equally abolished.[62] Under the UK law, there is provision for electronic dissemination of information to members once the article allows it or the member agrees to it; and private companies can now dispense with meeting of shareholders by passing written resolution signed by shareholders.[63]

In India, the Companies Act 2013 (CA 2013) is an Act of the parliament which regulates incorporation of company, duties of directors and company secretary etc. It has about four hundred and seventy sections as against 658 sections the repealed CA 1956 have. It came into force on 1st of April 2014.[64] India is a common law country and provisions of Indian Companies Act are almost *in pari materia* with those of the UK law and CAMA. However, there are some notable differences in the provision of CA 2013 in relation to CAMA. CA 2013 introduces another kind of company to public and private limited company. This is called One person company.[65]It should be noted that it is only Indian citizens that are allowed to incorporate such company. It also provides that a public company with paid up capital of Rs 100 or turnover of Rs 300 Crores and listed company shall have at least one woman director.[66] There is no such requirement in CAMA. Again, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more shall constitute a corporate social responsibility committee of the board.[67] In Nigeria, corporate social responsibility is not yet provided for in any law. Under CA 2013, there is a provision for dormant company. These are companies that do not have significant accounting transaction, for example, companies formed for future project or to hold assets of intellectual property. They apply to registry of companies to obtain such status.[68] There are also provisions made to revive and rehabilitate sick companies through appointment of an administrator.[69] The administrator shall prepare report specifying the measures for revival and rehabilitation. All these are not contained in CAMA.

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[56] A. Reisberg, "Corporate Law in the UK After The Recent Reform: The Good, The Bad and The Ugly"(2010) *Current Legal Problems* 63 (1) p. 315.
[57] CA 2006, Section 17
[58] Ibid, Section 7
[59] Ibid, Section 44
[60] See for instance Ikenga K.E. Oraegbunam, Pricilla Nnawuba, Ngozi C. Uzoka, 'Nonye Njoku & Kenneth C. Nzediegwu, 'Proxy Contests: Prospects and Challenges for Corporate Governance In Nigeria', *Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* Vol. 4, 2013, pp. 183-191. Available at http://www.ajol.info/index.php/naujilj/article/view/136307.
[61] CA 2016, Section 270
[62] See "Companies Act 2006: A Summary of What it Means for Private Companies" (November (2007) http://www.berr.gov.uk/files/file42262.pdf (visited 23 May 2017).
[63] S. W. Holden, "CA 2006 Evaluation" (2011)34 CSR 21, Pg. 161
[64]PWC India, "Companies Act, 2013 Key Highlights and Analysis" (30th November,2013) https://www.pwc.in/assets/pdfs/publications/2013/companies-act-2013-key-highlights-and-analysis.pdf visited 24th May 2017
[65] Ibid, Section 3
[66] Ibid, Section 149
[67] Ibid, Section 135
[68] Ibid, Section 455
[69] Ibid, Sections 253-262

The respective draftsmen of CAMA, CA 2006 and CA 2013 have one main common objective which is, to make Company law more practical and easy to adapt to the economic changes of our time. The approach has always been '*think small first'*. Whether this objective has been achieved may be a task for another study. The truth is that 'think small first' is a mere smoke-screen which the draftsmen have totally disregarded. The greater part of CAMA has been lifted uncritically from the previous Act with only minor titivation. There is little or no practical consideration of small companies in anyone's mind.

A number of pointed questions should however be raised. Why not acknowledge the fact that so much of the baggage of our traditional company law is irrelevant to the running of small businesses and is in fact ignored in practice? Why should a small company be required by law to have two levels of management (shareholders and directors)? Why do we still require small companies to compile a directors' report? Why meeting and voting by small companies? Partnership law manages without all this, and in practice so do most small companies. Why not a new charge registration system? Why require every company to keep at its registered office a copy of every instrument creating a charge, not only those charges registrable at CAC?

Looking back with the benefit of hindsight, it is fair to say that the achievement of the objective of CAMA has been considerably met. However, the perfect vision afforded by same hindsight will always admit some quibbles. Some stakeholders consider that CAMA did not go far enough, particularly having regard to how difficult it is for a small private company to incorporate and maintain itself in Nigeria. Some discordant notes are to be expected from mammoth legislation of this kind which is highly technical in content. One must be realistic about what one can expect from legislation, particularly legislation which is designed to regulate the corporate firm. The wheels of commerce do not stop turning nor should our legislation. There are already a raft of amending provisions and a labyrinth of statutory instruments to contend with. It is to be noted that no legislation is set in stone. The best one can hope for is that the coming companies legislation will be both reactive and responsive.

6. Conclusion and Recommendations

Implementation of CAMA has revealed that some provisions thereof are inadequate to deal with the unanticipated challenges that arose after its promulgation. Moreover, in the light of CAMA's application vis-à-vis best practice, some lacunae have been identified. It is therefore a welcome development that Nigeria has commenced the process of having a new companies law[70]. A genuinely modern and effective legal framework can promote enterprise, enhance competitiveness and stimulate investment. Conversely, an ineffective or archaic framework can inhibit productivity and growth and undermine investor confidence. There are basic principles one must, nevertheless, have in mind before embarking on the repeal of CAMA. There should be a use of 'think small first' approach (that is, achieving simplest, cheapest and fastest incorporation process). There should also be less interference with management. Appropriate investors' protection should be the watch-word. In the light of these, there should be a provision for one Person Company. There is also need for better framework for the rescue and recovery of companies in Nigeria, for instance, giving of moratorium. Introduction of registration of beneficial shareholders of private companies needs too to be allowed. It is also time to remove authorised minimum share capital for companies to ensure greater liberalization and participation. Finally, it is urgent to review membership of CAC by clarifying the distinction between a body and its governing body. Even the composition of the board should be altered to include more active staff not just focusing on the Registrar General. The Bill passed by the Senate is to a large extent appropriate as ease of doing business plays a crucial role in the economic growth of any country. The processes, rules, and regulations set up by the government or government agencies can either help promote a business-friendly environment or hold businesses back from their entrepreneurial ambitions. The reform of Nigerian company law and practice must take into consideration the sustainability of economic development in Nigeria.

There is no gainsaying that operators of companies are smarter than policy makers, devising always for ways to circumvent even the best of laws. Some of these challenges that need to be addressed are discussed hereunder together with suggested remedies:

Minimum Share Capital

This study has an antipathy with the provision of the Bill currently passed by the Senate which seeks to reduce further the minimum share capital for various companies. Most analysts agree that N10, 000 and N500, 000

[70] A. Olukunle, 'Of Reforms, Revolutions and Amendment of Companies and Allied Matters Act' *This Day Online* (18 September 2016) https://www.thisdaylive.com/index.php/2016/09/08/of-reforms-revolutions-and-amendment-of-companies-and-allied-matters-act/ (visited 23 May 2017)

minimum share capital for private and public companies respectively are no longer deterrent to those who want to float brief case companies. To bid for a project, the same set of people now incorporate up to 40 companies using fictitious names as directors. Every day, CAC is inundated with applications to register mushroom companies due to low incorporation amount required by the CAMA as minimum share capital. There is therefore need to increase the minimum share capital in order not only to curb or eliminate brief case companies as vehicle for fraud but also to reflect the current economic realities in the country.

Disqualification and Removal of Directors

Grounds under which a director of a company can be disqualified from holding the office leave much to be desired. Section 254 (1) (a) & (b) of CAMA restricts grounds for disqualification of a director to when he/she is convicted in connection with promotion, formation or management or has been found guilty of any offence in the course of winding up a company. Hence, the effect is that any other conviction, for instance, of any offence involving fraud but not connected with a company should not disqualify one from being a director in a company. This implies that anyone convicted under the Advanced Fee Fraud and other related Offences Act or Money Laundering Act or any other law is not disqualified from holding office as a director in a company.

Sequel to the above is the question of when the period of 10 years for which anyone convicted of fraud should take effect. Section 254 (1) (b) (ii) of CAMA provides that 'the court shall make an order that a person shall not be a director of any or in any way, whether directly or indirectly, be concerned with or take part in the management of a company for a period not exceeding 10 years'. It is however observed that if disqualification starts just after conviction, such a person may simply go back to the boardroom after a short period of time to continue with his nefarious activities. .It appears a better deterrent would be that the disqualification should start after the person so convicted has served the sentence.

Directors and Conflict of Interests

The issue of conflict of interests arising from a director holding multiple directorships in companies also calls for concern. Section 281 allows a person to be a director in as many companies as he wishes, and at the same time, the law requires him to maintain his fiduciary duties to these companies. Such fiduciary duties include not using information obtained in the course of managing a company for the benefit of another. The argument is that such leeway given to directors is a recipe for corporate abuse. It is suggested that a director should not be a director in more than five companies at the same time necessitating that the director must disclose in writing of any directorship in another company held by him at a meeting in which he is being considered for a director in a new company.

Custody of Unclaimed Dividends

Another vexed issue is that of who should have custody of unclaimed dividends, the company or government? Section 382 (1) & (2) allows a company to invest any unclaimed dividends for its own benefit at the expiration of a three months' notice to the members, and no interest shall accrue on the dividends against the company. However, where the unclaimed dividends are as a result of the fault of the company in omitting to send the dividends, members shall earn interest at the current bank rate from three months after the date on which they ought to have been posted. More often than not, members do not get their dividends not necessarily as a result of an omission by companies but because postal system is unreliable. Sometimes, shareholders change addresses without notifying the registrar of the companies where they have shares. Today, unclaimed dividends have ballooned into billions of naira, a situation that has forced government to show interest in who keeps the money. There is therefore need for review of the law in such a way that unclaimed dividends should be managed within the company. There is also need for the list of unclaimed dividends to be published in two national dailies, and at the expiration of six months after the publication, and the dividends remained unclaimed, it should be vested in the Federal Government as *bona vacanta* under a law promulgated specifically for that purpose.

Appointment to Audit Committee

Recently, getting appointed into audit committee has become a fierce battle among shareholders' associations. Section 359(3)-(6) of CAMA provides for the mandatory establishment of an Audit Committee by every public company and for its functions. The Committee is to, among others, examine the auditor's report and make recommendations thereon to the Annual General Meeting. A further analysis of the law and the practice of the Audit Committee would reveal that the idea whilst being laudable has not really achieved its objective. Several factors can easily be identified as responsible for lack of impact of the Audit Committee in promoting good corporate governance in Nigeria. First the law did not provide for any qualifications to membership of shareholder representatives. The result was that those who cannot understand a financial statement get elected to the Committee and thus bring no value to the meeting. Second, since voting is by show of hand, organized shareholder groups with little holdings in the company who are susceptible to manipulation by the Board and or management of the company get elected.

Lastly, there is no term limit for membership of the Audit Committee. Whilst the burgeoning shareholder associations are to be commended for their active participation in protection of shareholder rights through elections into Audit Committees, the truth is that they are part of the problem. Many of them are only interested in the associated sitting allowances and are therefore willing tools for manipulation by management and or Board of some companies. Even though the purpose of creating the Committee appears to be to checkmate directors, there is no way the Committee can perform this function effectively when it must be constituted by an equal number of directors and representatives of shareholders. Directors have also designed ways of making sure that only people who are favourably disposed to them are appointed into the Committee among shareholders. To serve the purpose for which it was created, Audit Committee should not have directors as its members.

More still, it may be appropriate that members of the Audit Committee be paid out-of-pocket expenses. Section 359 (4) of CAMA prohibits payment of remuneration to members of the Committee. In practice, shareholders see membership of Committee as a big job and they jostle for appointment thereto. No sooner have they been appointed into the Committee than they started pestering directors for contracts. It appears paying members of Audit Committee some allowances will reduce pressure on directors.

Fees and Fines/Other Penalties

Many of the fees, fines and penalties in the Act are ridiculously low and should be reviewed upward. For instance, the fee payable by a non-member to inspect a company's register of members is N1.

Attorney General's Consent

The requirement of the consent of the Attorney General of the Federation before the Memorandum and Articles of Association of a company limited by guarantee are registered[71] should be discarded. Experience has shown that it takes between two to three years before such consent is given. This makes doing business in Nigeria very difficult.

Grounds for Winding Up

The provision on grounds for winding up of companies is lean. There is need for more grounds in the light of current discoveries. It is, for instance, urgent to include when there is a complete deadlock in the management of the company; and when the company defrauds the public.

Need for Cumulative Voting

Cumulative voting is alien to CAMA which only provides for voting on show of hands and by poll. Cumulative voting technique which is a proper technique for protection of minority shareholders' interest in the company by giving them the opportunity to secure some representation on the Board may be considered for incorporation into CAMA.[72]

[71] CAMA, section 26 (5).

[72] See Onyeka C. Aduma & Ikenga K. E. Oraegbunam, 'Adoption of Cumulative Voting Technique in Corporate Governance in Nigeria: Prospects and Challenges', *Nigerian Current Law Review 2015-2016: The Journal of Nigerian Institute of Advanced Legal Studies*, 2016, pp. 30-53. This paper was also published in *Benue State University Law Journal*, vol. 7 No.1, 2016, 258-276.