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# A Compendium of the Historical, Legal and Institutional Framework for the Practice of Company Law and Corporate Governance in Nigeria

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## Abstract

*This paper aims chiefly to supply a synopsis of the historical development, from the colonial era and to the present time, as well as the legal background, and regulatory or institutional framework for Company and Corporate Law Practice in Nigeria. Starting with a highlight of the historical development of Company Law in Nigeria, through an overview of some innovative provisions of the Companies and Allied Matters Act (CAMA), 2020,the author proceeds into an analysis of some relevant laws, including subsidiary legislation and case law, regulating, and the various administrative authorities relevant to, Company and Corporate Law Practice in Nigeria; a total of about fifty relevant laws and twenty-nine regulatory institutions are considered. However, the author does not make assurances of absolute exhaustiveness in the list of the laws and institutions discussed in this paper, yet it is believed that this modest effort could serve as a general guide as well as provide crucial resource materials to researchers, stakeholders, students, teachers and practitioners of Company and Corporate Law in Nigeria and beyond, as well as to the general public, on the issues discussed.*

**Key Words:** Company Law, Corporate governance

## 1. Historical Development of Company/Corporate Law in Nigeria

Company Law or Corporate Law in Nigeria forms part of what is often referred to as received English Law, which has now been integrated into the Nigerian Legal System. There were no Nigerian made laws regulating operations of companies before 1876. Companies operating in Nigeria then were all foreign companies and maintained their foreign status as conferred on them in their countries of origin. However, the Supreme Court Ordinance of 1876[1] incorporated English common laws, principles of equity and English statutes of general application in force as at 24 July 1874 into the legal system of the Colony of Lagos. Thereafter, the Supreme Court Ordinance of 1914 extended the application of the English common law, principles of equity and statutes of general application as at 1900 into the legal system to the entire Colony and Protectorate of Nigeria. The English Company Law thus became applicable in Nigeria --- e.g., the principle in Salomon v. Salomon, the concept of *ultra vires*, etc.

The first company statute enacted in Nigeria was the Companies Ordinance 1912, which was modelled after the English Companies (Consolidation) Act, 1908. The Companies Ordinance, 1912 first applied to only Lagos, but was later amended by the Companies (Amendment & Extension) Ordinance, 1917 to extend its application to the entire Nigeria. Both the 1912 and the 1917 Ordinances were later consolidated and re-enacted as the Companies Ordinance of 1922[2],

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1 Section 14

2 Cap 37, LFN, 1958

which was amended by the Companies (Amendment) Ordinance, 1941 and the Companies (Amendment) Ordinance, 1954. The Companies (Amendment) Ordinance, 1941 was designated the Companies Act in 1963, later repealed by the Companies Act 1968.

A comprehensive reform of the Nigerian Company Law was subsequently undertaken,[3] resulting in the repeal and replacement of the Companies Act 1968 by the Companies & Allied Matters Act (CAMA), 1990, Cap C20, LFN 2004.[4] The 1990 CAMA was amended, first in 1990 by the Companies & Allied Matters (Amendment) Decree No 32, 1990; then again in 1991 by the Companies & Allied Matters (Amendment) Decree No 46, 1991; and later in 1992 by the Companies & Allied Matters (Amendment) Decree, No 46 1992. The Investment & Securities Act (ISA) 1999[5] repealed sections 541 to 623 of CAMA and re-enacted the same sections as sections 1 to 148 of the ISA, 1999. For example, provisions of the original Act (CAMA) dealing with Unit Trusts, Insider Trading, mergers & Take Overs, public offer and sale of securities, and related matters have been omitted from the Act and now contained in the ISA.[6] The Investment & Securities Act (ISA), 1999 was itself repealed and replaced by the Investment & Securities Act (ISA), 2007, which was later amended by the Investment & Securities (Amendment) Act, 2011[7]. The Companies & Allied Matters Act (CAMA), 1990, Cap C20, LFN, 2004, has now been repealed and replaced the by the Companies & Allied Matters Act (CAMA), 2020.[8]

Unlike the 1990 Act which has only four parts, the CAMA, 2020 is divided into seven parts, namely:

- ✓ Part A: sections 1 to 17 dealing with the Corporate Affairs Commission;
- ✓ Part B: sections 18 to 745 dealing Incorporation of Companies and Incidental Matters;
- ✓ Part C: sections 746 to 794 dealing with the Limited Liability Partnership;
- ✓ Part D: sections 795 to 810 dealing with the Limited Partnership;
- ✓ Part E: sections 811 to 822 dealing with Business Names;
- ✓ Part F: sections 823 to 850 dealing with the Incorporated Trustees;
- ✓ Part G: sections 851 to 870 dealing with the Limited Partnership;

The CAMA applies throughout the Federation of Nigeria, because incorporation, regulation and winding up of companies and registration of business name and incorporated trustees are matters within the exclusive legislative competence of the National Assembly.[9]

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[3] The reform was carried out by the Nigerian Law Reforms Commission in 1987

[4] This Act shall hereinafter be referred to as CAMA

[5] No 46, 1999; Cap I24, LFN, 2004

[6] Cap I24, LFN, 2004, repealed by ISA, 2007, as amended

[7] The 2011 amendment relates to sections 20, 21, 23 & 26 of the 2007 Act

[8] Signed into law on August 07, 2020. available at <https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMA-NOTE-BOOK-FULL-VERSION.pdf?> accessed February 10, 2021.

[9] See item 32 of the Exclusive Legislative List under Part 1, Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

## 2. Major Innovations of the Companies and Allied Matters Act (CAMA), 2020[10]

The new CAMA does contain several notable and laudable provisions which include:

**a)** *Single Member Company*:[11] Any one person, not being a minor, may establish a private company, as against the former minimum requirement of two people to form a company.

**b)** *The total liability* of a member of a company limited by guarantee, to contribute to the assets of the company in the event of wounding up shall not be less that ₦100,000 as opposed to ₦10,000 provided in the old CAMA.[12]

**c)** *Minimum Issued Share Capital:* In the new CAMA, 'authorised share capital' with 'minimum issued share capital.' This provision implies that promoter(s) of a business are not required to pay for or allocate shares that are not needed at the specific time of incorporation and can retain them for future allocation, provided that shares worth the value of at least ₦ 100, 000 in respect of a private company and ₦ 2, 000, 000 in respect of a public company are allocated at the time of incorporation. This is consistent with what obtains in some other jurisdictions like England, US, and India.[13]

**d)** *Reservation of Name:* The CAC may withdraw or cancel an approval already granted for the reservation of a name where it is discovered that the approval was fraudulently, unlawfully or improperly procured or that such name is identical with that by which a company in existence is already registered, or so nearly resembles it as to likely deceive.[14]

**e)** *Statement of Compliance:* Section 40(1) replaces the previous requirement for a Declaration of Compliance attested to by a Lawyer or before a Notary Public with a Statement of Compliance signed by an Applicant (or agent), who need not be a Lawyer or Notary Public. This means that participation of lawyers in the process of incorporation of a company, is no longer a sine-qua-non.

**f)** *Powers of the Commission:* Section 41(7) empowers the Corporate Affairs Commission to withdraw, cancel or revoke a certificate of incorporation already issued under the Act where it is discovered that the certificate was fraudulently, unlawfully or improperly procured.

**g)** *Common Seal:* Section 98 abolishes the mandatory possession and use of a Company's common seal, making such possession and use simply optional.

**h)** Section 99(1) makes provision for Companies who transact business in foreign countries to have an official seal that indicates on its face, the name, territory, district, or place where it is to be used as long as it is authorized by its articles.

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[10] "Key Innovations of the Companies and Allied Matters Act 2020 and Their Commercial Implications." (Primera Africa Legal) <https://primeraal.com/news/key-innovations-of-the-companies-and-allied-matters-act2020/> accessed May 01, 2021

[11] Companies & Allied Matters Act (CAMA), 2020, section 18(2).

[12] CAMA, section 26(12)

[13] *Op Cit.*, section 27(2)(a)

[14] *Op Cit.*, section 31 (3) & (5)

**i)** *Electronic Signature:* In respect of authentication and service of documents, an electronic signature is deemed to satisfy the requirement for signing.[15]

**j)** *Disclosure of Substantial Shareholding:* The new CAMA emphasizes corporate accountability and transparency by mandating any person with significant control over a company to, within seven days of assumption office, to indicate to the company in writing the particulars of such control. Disclosure of capacity as substantial shareholderis no longer restricted to Public companies.[16]

**k)** *Electronic Transfer:* Transfer of company shares may now be effected through electronic means.[17]

**l)** The prohibition hitherto placed on private companies with regard to giving certain financial assistance regarding acquisition of shares.[18]

**m)** *Share Buy Back:* Section 184(1) allows a limited liability company to purchase its own shares including redeemable shares.

**n)** Significant reduction of Filing Fees for Registration of Charges.[19]

**o)** Small companies and/or any company having a single shareholder are not mandated to hold an Annual General Meeting.[20]

**p)** Small companies may have one director.[21]Public companies must have at least three independent directors on their Board.[22]

**q)** Authorization of Virtual Meetings for private companies so long as it is conducted in accordance with the Articles of Association of the company.[23]

**r)** With the exception of small companies and companies having a single shareholder, all statutory and annual general meetings shall be held in Nigeria.[24]

**s)** Chairman of a public company is barred from simultaneously acting as the Chief Executive Officer of the same company.[25]

**t)** One single person cannot be a Director in more than five (5) different Public Limited Liability Companies at the same time.[26]

**u)** Small Companies need not have a Company Secretary.[27]

**v)** Audited of a public company accounts must be displayed on the company`s website.[28]

[15]section 101
[16]Section 119(1) & (3).
[17]Section 176(1); see also section 175(1); section 861
[18]Section 183(4).
[19]Section 222 (12)
[20]Section 237(1)
[21]Section 271 (1), (2) & (3).
[22]Section 275.
[23]Section 240(2)
[24]Section 240(1)
[25]Section 265 (6)
[26]Section 307 (1):
[27]Section 330(1)
[28]Section 374(6):

**w)** Special definition of a Small Company.[29]

**x)** Small companies or companies having one shareholder are not mandated to appoint auditors.[30]

**y)** Instead of being forced to wind up, insolvent companies can now be rescued from distress and liquidation, through the following options: Voluntary Arrangements, Administration, and Netting.[31]

**z)** Permission of registration Limited Liability and Limited Partnerships with an independent corporate legal personality.[32]

**aa)** Mergers of Non-Governmental Organizations (NGOs): The new Act extends mergers beyond LLCs to Incorporated Trustees. This implies that two or more NGOs as well as social entrepreneurships with similar aims and objects may merge.[33]

**bb)** Establishment of an Administrative Proceedings Committee which is charged with the responsibility of hearing persons alleged to have contravened the provisions of the Act or its regulations, resolving disputes arising from the operation of the Act and imposing administrative penalties for contravention of the provisions of the Act.[34]

**cc)** The trustees of an association shall submit to the CAC a bi-annual statement of affairs of the association, as the CAC shall specify in its regulations.[35]

Note that, notwithstanding the innovative provisions, the new CAMA is not without some sore points.[36]

## 3. Legal Framework: Laws Regulating Company/Corporate Law Practice In Nigeria

The laws regulating corporate law practice in Nigeria include the following, among numerous others

**a)** **The Companies & Allied Matters Act (CAMA), 2020:**[37]regulates registration, operation and winding up or dissolution of Companies, business names, incorporated trustees, limited liability partnerships, etc. Is the most central enactment in Corporate Law Practice. Part A of CAMA deals with companies; Part B deals with business names; and Part C deals with Incorporated Trustees. CAMA establishes the Corporate Affairs Commission (CAC)[38], which is charged with the responsibility of registration of companies, business names and incorporated trustees, Limited partnerships, etc., and with overall administering the CAMA.

[29]Section 394(3)(b)
[30]Section 402(1)(b)
[31]Sections 434 – 549; 718 – 721
[32]Sections 434 – 549; 718 – 721
[33]section 849
[34]Section 851(1) & (4).
[35]Section 845(1)
[36] Primera Africa Legal, *Op Cit*
[37]. supra
[38] CAMA, section 1 (1); We shall discuss the roles of the CAC under CAMA later in this Chapter

**b)** **Investment & Securities Act (ISA), 2007:**[39]The long title of the ISA aptly explains its relevance to Corporate Law Practice in Nigeria: An Act to repeal the ISA, 1999, and to establish the Securities and Exchange Commission (SEC) as the apex regulatory authority for the Nigerian capital market and to regulate the capital market in order to ensure the protection of investors, maintaining a fair, efficient and transparent market and reduction of systemic risk and for related matters.

**c)** **Constitution of the Federal Republic of Nigeria, 1999:**[40]The constitution is the *grund norm*, the basic norm, an underlying basis for the entire Nigerian Legal System of which corporate law is a part; it is the enabling statute for all other enactments in Nigeria. All the courts that exercise jurisdiction in corporate law proceedings as well as all the regulatory authorities in corporate law practice are either established by the Constitution or pursuant to powers given by the Constitution. The Constitution for example establishes and confers exclusive original jurisdiction on the Federal High Court in certain corporate matters.[41] The Federal High Court, Court of Appeal, and Supreme Court are all established by the Constitution[42]

**d)** **Nigerian Investment Promotion (NIPC) Act:**[43]The Act establishes the NIPC to encourage, promote, coordinate and monitor investment and investment promotion activities in the Nigerian economy.

**e)** **Banks & Other Financial Institutions Act (BOFIA),**Cap B3, LFN, 2004**:** regulates Banks and some other financial institutions. These institutions to be able to carry out their banking businesses, must be registered as corporate bodies under CAMA; hence BOFIA is relevant to corporate law practice, as we shall see later in this work.

**f)** **Insurance Act,** Cap I 17, LFN, 2004: regulates insurance business in Nigeria.

**g)** **National Insurance Commission Act,** Cap N54, LFN, 2004:establishes the National Insurance Commission as a regulatory body in the insurance sector.

**h)** **National Office for Technology Acquisition & Promotion (NOTAP) Act,** Cap N62, LFN, 2004**:** establishes the National Office for Technology Acquisition & Promotion (NOTAP) to monitor and register (agreements for) transfer/acquisition of foreign technology into Nigeria.

**i)** **Central Bank of Nigeria Act (CBN), Cap , LFN, 2004:** An Act to repeal the Central Bank of Nigeria Act, 1991 and to re-enact the Central Bank of Nigeria Act, and for related matters. The Act established the CBN as the apex banking sector regulator in Nigeria and regulates its activities.

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[39]. This Act repealed and replaced the Investment & Securities Act (ISA), 1999, Cap I24, LFN, 2004, which was later amended by the Investment & Securities (Amendment) Act, 2011

[40]. Cap C23, LFN 2004; amended three times in 2010, first by the Constitution of the Federal Republic of Nigeria (First Alteration) No 5, 2010; second by the Constitution of the Federal Republic of Nigeria (Second Alteration) Act No 2 2010; and thirdly by the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010

[41] See for example the Constitution of the Federal Republic of Nigeria, 1999, as amended, section 251 (1) (b), (e) and (f) relating to company taxation and operation of CAMA, and to business names, etc.

[42] Ibid, ss. 230 (1), 237 (1) & 249 (1)

[43] No 16, 1995; now Cap N117, LFN, 2004; amended by the Nigerian Investment Promotion (Amendment) Act No 32 1998 and the ISA No 45 1999, Cap I24, LFN, 2004

**j)** **Industrial Inspectorate Act, Cap I8, LFN, 2004:** establishes the Industrial Inspectorate Division of the Federal Ministry of Industries, generally to carry out investigations into any proposed, new and existing undertaking involving any proposed capital expenditures or additional capital expenditure of not less than N20,000 in Nigeria.

**k)** **Companies (Income Tax) Act (CITA), Cap C21, LFN, 2004:** regulates taxation of companies in Nigeria.

**l)** **Federal Inland Revenue Service (Establishment) Act No13 2007:**establishes the Federal Inland Revenue Service (FIRS) for the purpose of assessing, collecting and accounting for taxes and revenues accruing to the Federation, including assessing and collecting taxes from corporate bodies and individuals.

**m)** **Stamp Duties Act (SDA) Cap S8, LFN, 2004:** the long title of the Act explains its object: An Act to provide for the levying of stamp duties on certain matters.

**n)** **Industrial Development (Income Tax Relief) Act Cap I7, LFN 2004:** regulates granting of tax relief or exemption to certain companies or industries in Nigeria. The Act created "Pioneer Companies," who enjoy tax relief for up to three years in the first instance, subject to extension for a further period of two years.

**o)** **Nigerian Customs Service Board Act, Cap N100, LFN 2004:**establishes the Nigerian Customs Services Board, to formulate policies for the Nigerian Customs Service, administer the Customs & Excise Management Act, control and manage the administration of the customs and excise laws, and collect the revenues of customs and excise and account for them in such manner as the Federal Minister of Finance shall, from time to time, direct.

**p)** **Customs & Excise Management Act (CEMA), Cap C45, LFN 2004:**[44]regulates management, assessment and collection of duties of Customs & Excise & related matters.

**q)** **Immigration Act, Cap I1, LFN 2004:** to consolidate all immigration laws in Nigeria and regulate immigration matters, including matters relating to entrance into and exit from Nigeria. These extend to aliens and foreign companies wishing to come into, or to reside in, Nigeria for the purpose of participating in the Nigerian business environment or taking up employment or setting up a business.[45]

**r)** **Federal High Court Act, Cap F12 LFN, 2004:**to establish the Federal High Court and confer certain special powers on it, including exclusive jurisdiction over administration of CAMA, company taxation, registration of business name, among others[46]

**s)** **Arbitration & Conciliation Act, CapA18, LFN, 2004:** An Act to provide a unified legal frame work for the fair and efficient settlement of commercial disputes by

[44] Amended by the Customs & Excise Management (Amendment) Act No 20, 2003, to provide for a new method of valuation of goods based on transaction value

[45] See for example The Immigration Act, Cap I1, LFN 2004, sections 8, 9 and 10 dealing with application for and issuance of business permit, entry permit/approval, residence permit and other entry requirements, for aliens.

[46] See also the Constitution of the Federal Republic of Nigeria, 1999, as amended, section 251

arbitration and conciliation; and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting State arising out of international commercial arbitration. Corporate and investment disputes and other disputes arising from the operation of CAMA and other corporate law practice enactments could be resolved by Alternative Dispute Resolution (ADR) mechanisms ---- arbitration or conciliation, etc.; hence the Act is very relevant to Corporate Law Practice.

**t)** **Foreign Exchange (Monitoring & Miscellaneous Provisions) Act, Cap F34, LFN, 2004:**An Act to establish an Autonomous Foreign Exchange Market (AFEM) and to provide for the monitoring and supervision of the transactions conducted in the market, in accordance with provisions of the Act. Under the Act, the Central Bank of Nigeria (CBN) may from time to time appoint as an Authorised Dealer or Authorised Buyer of foreign currency, any bank or non-banking corporate organization which shows evidence of adequate resources and capacity to operate in accordance with the provisions of the Act. Such Authorized Dealers or Authorized Buyers of foreign currency may operate in the market, subject to such condition as may be imposed by the CBN.[47] Under the Act[48], Any person may invest in any enterprise or security in Nigeria, with foreign currency or capital. Such foreign capital must be imported into Nigeria through an Authorized Dealer either by telegraphic transfer, cheques or other negotiable instruments[49] and converted into the naira in the AFEM in accordance with the provisions of this Act.**T**he Authorized Dealer through which the foreign currency or capital for such investment is imported shall, within 24 (twenty-four) hours of the importation, issue a Certificate of Capital Importation (CCI) to the investor and shall, within 48 (forty-eight) hours thereafter, make returns to the Central Bank of Nigeria, giving such information as the CBN may, from time to time, require.

**u)** **The Central Bank of Nigeria Foreign Exchange Instruction Manual:**Is a form of subsidiary legislation, and was compiled and issued by the CBN pursuant to the powers conferred on it by the Foreign Exchange (Monitoring & Miscellaneous Provisions) Decree No. 17 of 1995[50]. The Manual is intended as a guide to the Authorized Dealers in processing foreign exchange applications for their customers; hence is relevant to corporate law practice in Nigeria.[51]

**v)** **Export (Incentives & Miscellaneous Provisions) Act, Cap E19, LFN, 2004:** provides for incentives to certain companies/industries for manufacturing goods in Nigeria for export and for related matters.

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[47] See the Foreign Exchange (Monitoring & Miscellaneous Provisions) Act, Cap F34, LFN, 2004, section 5

[48] Section 15 (1) and (2)

[49] Transactions in the market (AFEM) shall be conducted in any convertible foreign currency, and also through the usual money market instruments, including foreign bank notes, foreign coins, travellers' cheques, bank drafts, mail or telegraphic transfers, and such other money market instruments as the Central Bank may, from time to time, with the approval of the Minister, determine.

[50] See section 1(2) of the Act

[51] See Memoranda 19 and 20 of the Manual

**w)** **Nigerian Minerals & Mining Act No 20 2007:** regulates the reconnaissance, exploration, beneficiation, possession, retention, transportation, sale, and marketing of mineral resources in Nigeria and for related matters.

**x)** **Institute of Chartered Accountants of Nigeria (ICAN) Act, Cap I11, LFN, 2004:**This Act is relevant to corporate law practice in Nigeria; CAMA[52] provides that the provisions of the ICAN Act shall have effect in relation to any investigation or audit for the purpose of the CAMA.

**y)** **Petroleum Profit Tax Act (PPTA), Cap P 13, LFN, 2004:** An Act to impose a tax upon profits from the winning of petroleum in Nigeria, to provide for the assessment and collection thereof and for purposes connected therewith. Section 8 of the Act specifically requires some tax to be levied upon the profits of each accounting period of any company engaged in petroleum operations during that period. Such tax is to be charged, assessed and payable in accordance with the provisions of the Act[53]

**z)** **Nigerian Communications Commission (NCC) Act, Cap N97 LFN 2004:**The Objective of this Act is to create and provide a regulatory framework for the Nigerian communications industry and all matters related thereto and for that purpose and without detracting from the generality of the foregoing.[54]

**aa)** **Education Tax Act, Cap E4, LFN, 2004:**An Act to impose an education tax on companies registered in Nigeria and to establish an Education Fund and a Board of Trustees to manage and administer the Fund. The Act imposes an annual education tax which shall be at the rate of two per cent on the assessable profit of a company registered in Nigeria[55]

**bb)** **Partnership Act, 1890:**Received English Law, regulating formation, operation and dissolution of partnership in Nigeria in States, in Nigeria, that are yet to enact their own Partnership Laws

**cc)** **Partnership Laws of the various States in Nigeria:** Example, Partnership Law, Cap P1, Laws of Lagos State of Nigeria, 2009, which makes certain provisions in relation to Partnerships and Limited Partnerships.

**dd)** **Personal Income Tax Act (PITA) No 104 1993, now Cap P8 LFN, 2004:**An Act to impose income tax on individuals, communities and families and on executors and trustees; and to provide for the assessment and collection and administration of the tax. PITA has now been amended by The Personal Income Tax (Amendment) Act No 20, 2011.

**ee)** **Companies Winding Up Rules, 2001:** made pursuant to CAMA, and regulates winding up of companies under the CAMA.

[52] Section 358
[53] See also sections 11, 61 and 62 of the Act dealing with relief from double taxation
[54] See Nigerian Communication Commission Act, sections 1 and 2 relating to the objectives, application & scope of the Act.
[55] See sections 1 (1) and (2)

**ff)** **Companies Regulation, 2012:**[56] made pursuant to sections 16, 585 and 609, CAMA, 1990: The Regulation was made by the Corporate Affairs Commission (CAC), the principal Companies regulator in Nigeria, in a bid to ease the process of corporate regulation in Nigeria and enhance good corporate governance in areas either not elaborated on or adequately provided for in the CAMA, pending its next amendment.

**gg)** **Companies Regulation, 2021:** made pursuant to the CAMA, 2020.[57]

**hh)** **Company Proceedings Rules, 2004:** provides rules of practice and procedure regulating company proceedings.

**ii)** **Evidence Act, 2011:** An Act to enact a new Evidence Act which shall apply to all judicial proceedings in of before courts in Nigeria and for related matters. Relevant to Corporate Law Practice, especially to corporate or company proceedings.

**jj)** **Legal Practitioners Act (LPA), 1975, Cap L11, LFN, 2004:**Section 2 of the LPA provides for entitlement to practice law in Nigeria. Legal practitioners play major roles in corporate law practice and capital market operations – drafting legal documents, representation of clients, etc. Section 24 defines the expression, "legal practitioner.[58]" Section 567 (1) of CAMA provides that the expression "legal practitioner" shall have the meaning assigned to it by the Legal Practitioners Act 1975. By virtue of section 8, a legal practitioner shall have the right of audience in all courts of law sitting in Nigeria. Sections 16 to 19 of the Act deals with remuneration of Legal Practitioners.[59]

**kk)** **Rules of Professional Conduct for Legal Practitioners, (RPC) 2007:**regulates professional and ethical conduct and responsibility of legal practitioners, including those involved in corporate law practice and the capital market. Rule 1 of the RPC sets out the general professional responsibility of legal practitioners:

> A lawyer shall uphold and observe the rule of law, promote and foster the course of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner

**ll)** **Securities & Exchange Commission (SEC) Rules & Regulations;** in order to effectively and efficiently carryout the objectives ofsecurities regulation as embedded in the ISA the SEC has prescribed this Rules and Regulations. This Rules and Regulations provides participants (regulated persons) in the capital market with more precise notice of what is expected of them, what conduct will be sanctioned and also promotes fairness and equality of treatment among similarly situated persons.[60]

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[56]Replaced by Companies Regulation, 2021:

[57]Available at <https://www.cac.gov.ng/wp-content/uploads/2021/01/COMPANIES-REGULATIONS-2021-published.pdf?> accessed 24 April 2021.

[58] "a person entitled in accordance with the provisions of the Legal Practitioners Act to practise as abarrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings; "prescribed" means prescribed by rules of court."

[59] See also section 35 (3) CAMA, which grants exclusive right to legal practitioners to sign the statutorydeclaration of compliance in the prescribed form, stating that requirements of CAMA for the registration of a company have been complied with.

[60] See the introduction to the SEC Rules & Regulations made pursuant to the ISA No 45 1999, Cap I 24, LFN,2004.

**mm) Federal High Court (Civil Procedure) Rules:** made pursuant to section 254 of the 1999 Constitution: the rules regulate practice and procedure in civil matters before the Federal High Court, which has exclusive jurisdiction in civil causes and matters relating to company taxation in Nigeria, operation of the CAMA, registration of business name, among others.[61]

**nn) Investment & Securities Tribunal (Procedure) Rules, 2003: S**ection 290 (1), ISA provides that the Investment & Securities Tribunal shall have power to make rules to regulate its own procedures.

**oo) Case law (Judicial Precedent):** Judicial precedent means a judgment of a court of law cited as an authority for deciding a similar set of facts; a case which serves as authority for the legal principle (*ratio decidendi*) embodied in its decision. A judicial precedent is a decision of the court used as a source for future decision making This is known as *stare decisis,* a principle by which precedents are authoritative and binding on, and must be followed by, later courts under the same legal system. Judicial precedents cover pronouncements, decisions and judgments of superior courts, both within and outside Nigeria.[62] The case law has contributed in no small measure to the development of corporate law practice in Nigeria.

**pp) Customs Tariff (Exemption) Order, 2001**, made pursuant to the Nigeria Export Processing Zones Authority Act, CapN107, LFN, 2004: This order seeks to exempt all goods consigned to the export processing zones and export processing factories from payment of import duty etc.[63] Accordingly, section 1 of the Order provides that all goods consigned to all the export processing zones and export processing factories shall be imported into Nigeria duty free from the commencement of activities by the export processing zones or export processing factories.

**qq) Nigeria Export Processing Zones Authority Act No 63, 1992, Cap N107, LFN, 2004:** An Act to provide for the establishment of the Nigeria Export Processing Zones and for matters connected therewith.

**rr) Immigration & Prison Services Board Act:[64]** established the Immigration & Prison Services Board, which shall be responsible for general management of Nigerian Immigration laws, appointing the Director of Immigration, among others.[65] The Director of Immigration is specifically charged with the responsibility of administering the provisions of the Immigration Act, subject to general direction of the Minister in charge of Immigration.[66]

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[61] 1999 Constitution Op Cit., section 251.

[62] See for example Foss v. Harbottle (1843) 2 Hare 461; Royal British Bank v. Turquand (1856) 6 El AND Bl 327; Longe v. First Bank [2010] 6 NWLR (PT. 1189); Yalaju-Amaye v. Associated Registered Engineering Contractors Ltd (1990) 4 NWLR (Pt. 145) 422, very many others

[63] See the Explanatory Note to the Customs Tariff (Exemption) Order, 2001 S I 18, 2001

[64] Cap I2 L.F.N. 2004; mended by the Board of Customs & Excise Act No 45 of 1992, and the Board of Customs & Excise (Amendment) Act No 77 of 1993

[65] See Cap I2 LFN, 2004 , sections 1 (1), 3 (b) & 4

[66] See the Immigration Act, Cap I1 LFN 2004, section 5

**ss) Asset Management Corporation of Nigeria (AMCON) Act, 2010:**[67]This Act establishes the Asset Management Corporation of Nigeria for the purpose of efficiently resolving the non-performing loan assets of banks in Nigeria.

**tt) Nigerian Customs Service Board Act:** Establishes the Nigerian Customs Service Board.

**uu) The Finance Act, 2019:**[68] Introduced amendments to several tax and fiscal laws including the Companies Income Tax Act (CITA), the Personal Income Tax Act (PITA) and the Capital Gains Tax Act (CGTA), with a view to making them more responsive to tax reforms. The Finance Act, 2019, which took effect on 13 January 2020,[69] is aimed to provide clarity to some previously grey areas, address areas of possible non taxation or double taxation and introduced an income exempt category.

**vv) Companies Income Tax (Significant Economic presence) Order, 2020:** made on February 03, 2020, by the Honourable Minister of Finance, Budget and national Planning, pursuant to section 13(4) of the Income Tax Act (CITA), CAP C2, LFN, 2004. The Finance Act, 2019 introduced the concept of significant economic presence (SEP) to expand the scope of Nigerian tax on foreign companies deriving income from their activities in the country which were hitherto not captured in the tax net. The Order provides clarification on what would constitute a SEP for foreign companies doing business, or providing services to customers, in Nigeria, in line with Section 13(2)(c) and (e) of CITA.[70]The SEP Order sets out the conditions under which non-resident companies (NRCs) involved in digital transactions; or provide technical, professional, management, or consultancy services (TPMC); to Nigerian customers, from outside Nigeria will be deemed to have a taxable nexus, and therefore taxable in Nigeria.[71]

**ww) Trustee Investment Act, Cap T22, LFN, 2004:** Ac to facilitate te investment of trust and other funds in Nigeriain locally issued securities, and for purposes connected therewith. Scope of securities to which the Act applies is set out in section 2 of the Act.

**xx) Principles of Equity:** Equity follows the law.

## 4. Regulatory and Administrative Authorities Relevant to Company/Corporate Law Practice in Nigeria

Some of the relevant administrative and regulatory bodies and institutions are set out below:

[67]Available at <https://www.orandcconsultants.com/Downloads/AMCON_Act_2010.pdf> accessed April 20, 20212. Amended by the Asset Management Corporation of Nigeria (Amendment), 2010, and later the the Asset Management Corporation of Nigeria (Amendment No. 2), 2019

[68]Available at <https://pwcnigeria.typepad.com/files/finance-act-2019-official-gazette.pdf> accessed April 22, 2021.

[69]assented to by the President of Nigeria on 31 December 2020.

[70] (Companies Income Tax (Significant Economic Presence) Order, 2020) <https://www.proshareng.com/news/Taxes & Tariffs/Companies-Income-Tax--Significant-Economic-Presence--Order--2020/51733> accessed April 23, 2021

[71]See <https://pwcnigeria.typepad.com/files/pwc-tax-alert_significant-economic-presence-order_may2020-1.pdf> Accessed April 23, 2021.

**a)** **The Corporate Affairs Commission** (CAC):[72] The CAC is the principal regulatory body in corporate law practice, in Nigeria. It was established under section 1 of CAMA as a body corporate with perpetual succession and a common seal, capable of suing or being sued in its corporate name, and capable of acquiring, holding or disposing of property and with contractual capacity. CAC headquarters is in Abuja. Section 1 (3) of CAMA requires CAC to establish a branch office in each State of the Federation. Pursuant to this provision, CAC has established and maintains 38 (thirty-eight) branches spread across all States of the Federation and Abuja (the Federal Capital Territory), in addition to its head office in Abuja. CAC maintains two offices in each of Lagos and Abuja.[73] The establishment of CAC as an autonomous body followed perceived inefficiency and ineffectiveness of the erstwhile Company Registry, a department within the Federal Ministry of Commerce and Tourism which was then responsible for the registration and administration of the repealed Companies Act of 1968.[74] Section 8 of the Act sets out the functions of the CAC. Note however that nothing in section 7 of CAMA shall affect the powers, duties or jurisdiction of the SEC as set out under the ISA.[75]

**b)** **The Securities & Exchange Commission (SEC)** ----- SEC is the apex regulatory body in the Nigerian capital market. It was established under section 1 of the ISA as a body corporate with perpetual succession and a common seal, capable of suing or being sued in its corporate name, and capable of acquiring, holding or disposing of property and with contractual capacity. Its head office is in Abuja, but it may establish zonal offices in any part of Nigeria in accordance with the decision of its Board. SEC shall have a Board, whose composition[76] and duties[77] shall be as set out in the Act. The Commission (SEC) shall have a Secretary and also may establish specialized departments for the purpose of regulating and developing the Nigerian capital market.[78] Section 13 of the Act sets out the functions of the Securities and Exchange Commission (SEC) itself.

**c)** **Nigerian Investment Promotion Commission (NIPC)** **---**Established by section 1 of the NIPC Act,[79] as a body corporate with perpetual succession and a common seal, capable of suing or being sued in its corporate name, and capable of acquiring, holding or disposing of property and with contractual capacity. NIPC shall have a

[72]See CAMA, 2020, ss. 2,(1) and(2), 3, 4, 5, and 6 for establishment of the Governing Board of the CAC, composition of the Board, tenure of office of members, functions of the Board, remuneration, and proceedings of the Board, respectively.

[73]See http://www.cacnigeria.org/jm/index.php?option=com_contact&view=category&catid=0&Itemid=69&http://www.cacnigeria.org/jm/index.php?option=com_contact&view=category&catid=0&Itemid=69&limitstart=20

[74] See the Welcome Note by the Registrar-General/CEO of CAC as shown on CAC official website <http://www.cacnigeria.org/jm/> accessed December 22, 2020

[75] CAMA, section 8 (2).

[76]ISA, section 3.

[77]*Ibid*, section 4.

[78] ISA, sections 14 and 15.

[79] No 16, 1995; now Cap N117, LFN, 2004; amended by the Nigerian Investment Promotion (Amendment) Act No 32 1998 and the ISA No 45 1999, Cap I24, LFN, 2004

Governing Council,[80] which shall discharge its functions. It shall be the responsibility of the NIPC to encourage and promote investment in the Nigerian economy, among other responsibilities sections 4 and 5 of the Act set out other powers and functions of the NIPC

**d)** **The Investments and Securities Tribunal (IST) ---** established under ISA[81] as an independent specialized judicial body. It has jurisdiction, original and appellate, to interpret and adjudicate on all capital market and investments civil disputes as specified under the ISA, 2007. IST has also original and appellate jurisdiction in pension disputes.[82]

**e)** **The Minister of Internal Affairs, The Director of Immigration, The Nigerian Immigration Services & Nigerian Embassies & High Commissions in foreign countries ---** These are jointly and severally given various responsibilities and powers under the Immigration Act, the Immigration & Prison Services Board Act, among other enactments, in relation to issuance of visas, entry permits, residence permits, business permits, CERPAC (**Combined Expatriate Residence Permit and Aliens**), expatriate quota, etc, to aliens or foreign companies seeking to visit, reside in, Nigeria for residential, business or other purposes.[83]

**f)** **The Nigerian Stock Exchange (NSE)** – The NSE is a major player so to say in the Nigerian capital market**.** The Nigerian Stock Exchange (NSE or the Exchange), a registered company limited by guarantee, was founded in 1960. NSE is licensed under the ISA and is regulated by SEC. NSE is an automated exchange and provides listing and trading services, as well as electronic Clearing, Settlement and Delivery (CSD) services through Central Securities Clearing System (CSCS) Plc., an associate company to The NSE, which also offers custodian services. Along with securities listing and trading services, The Exchange offers market data dissemination services, market indices and much more.

**g)** **Federal High Court (FHC) -----** established under section 249 of the 1999 Constitution, Cap C23,LFN, 2004 and the Federal High Court Act, Cap F12, LFN, 2004 and conferred with exclusive original jurisdiction in certain corporate matters, including administration of CAMA, company taxation, registration of business name, among others.[84] See a detailed discussion of the Court's jurisdiction in Chapter Thirteen.

**h)** **Central Bank of Nigeria ---** is the highest bank in Nigeria and the apex regulatory institution in Nigeria's banking sector. Established under section 1 of the Central Bank of Nigeria Act, 2007.

**i)** **One Stop Investment Centre (OSIC) ---** The OSIC was established in 2006 by the Federal Government to march the growing interest of Investors in our economy. It is

[80] NIPC Act, Cap N117 LFN 2004, section 2.
[81] No 29, 2007, as amended by the Investment & Securities (Amendment) Act, 2011
[82] Pension Reform Act No. 2 of 2004, section 93.
[83] See for instance the Immigration Act, sections 8, 9, 10.
[84] Cap C23, LFN, 2004, section 251

an investment facilitation centre/mechanism which brings relevant government Agencies to one location, coordinated and streamlined, to provide efficient and transparent services to investors. It provides investors with a single place to pick up all documents and approvals that are statutorily needed to set up an investment project in Nigeria. The Centre also aims to remove obstacles and overcome bureaucracy faced by investors in setting up and running of businesses. In addition, the Centre provides statistical data and information on the Nigerian economy, investment climate, legal and regulatory framework as well as sector and industry specific information to aid existing and prospective investors in making informed business decisions. OSIC's areas of coverage include company incorporation and registration, business permit and registration, tax registration/ Clearance, work permits and other Immigration facilities, facilitation of Customs clearance for investment projects, information and data on Nigeria's economic sectors and industry, familiarization on Nigeria's regulatory environment, and sorting out of any administrative barriers confronting local and foreign investors. The specific objectives of OSIC as well as the services rendered by the Centre are set out in the NIPC website.[85]

**j)** **National Office for Technology Acquisition & Promotion (NOTAP):** Established by the NOTAP Act,[86] the NOTAP NOTAP's Mission and statutory mandates include Evaluation/Registration of Technology Transfer Agreements; Promotion of Intellectual Property; Technology Advisory and Support Services; Commercialization of R& D Results; Research Industry Linkage; Maintenance of a Compendium on R&D activities in the country; Production and Publication of Industrial Project Profiles on SMEs, etc.[87]

**k)** **The Secretary to the Government of the Federation, the Minister for Trade:** These play prominent roles in corporate law practice in Nigeria.[88]

**l)** **Federal Inland Revenue Service (FIRS):**Federal Inland Revenue Service (FIRS) was created in 1943. Prior to that time, its functions had been performed by the Inland Revenue Department of British West Africa. The Board of Inland Revenue was created in 1958, and the service gained autonomy with the passing of the FIRS (Establishment) Act 13 of 2007.[89]

**m)** **Stamp Duties Office:** Nigeria operates the Integrated Stamp Duties & Levies Services (ISDLS). A flat rate charge is prescribed as stamp duties for appointment of a receiver, trustee, etc.[90]

**n)** **National Industrial Court (NIC):** The National Industrial Court is established by section 235A(1) of the Constitution and has exclusive jurisdiction in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial

[85]<https://www.nipc.gov.ng/iguide/getting-started/#osic> accessed April 20, 2021.
[86]Cap N62, LFN, 2004
[87]"*About Us"*<https://www.notap.gov.ng/content/welcome-notap> accessed April 20, 2021.
[88]Se the Companies and tech https://www.notap.gov.ng/content/welcome-notap
[88]Se the Companies a Allied Matters Act, 2020, ss. 80(2)(h) and 868(1).
[89]"FIRS Profile". www.firs.gov.ng. accessed April 20, 2021.
[90]See <https://stampduty.gov.ng/stamp_duty_charges> accessed April 10, 2021.

relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matter incidental thereto or connected therewith, among other matters. All disputes relating to company employers-employees in Nigeria are resolved the NICN.[91]

**o)** **Court of Appeal:** Established by section 237 of the Constitution of the Federal Republic of Nigeria, 1999, with exclusive jurisdiction[92] to hear appeals from the Federal High Court, the National Industrial Court, State High courts, and all tribunal set up by law, including matters relating to administration of the CAMA, 2020, other company legislation in Nigeria and issues relating to company law and corporate law practic.

**p)** **The Supreme Court:** Established by section 230 of the Constitution of the Federal Republic of Nigeria, 1999 as the apex court, the final Court of Appeal in Nigeria, with exclusive jurisdiction[93] to hear appeals from the Court of Appeal in civil and criminal matters, including matters relating to company law and corporate law practice

**q)** **Asset Management Corporation of Nigeria:**Asset Management Corporation of Nigeria (AMCON) was established on the 19th July 2010, when the President of the Federal Republic of Nigeria signed the AMCON Act into Law.AMCON was created to be a key stabilizing and re-vitalizing tool aimed at reviving the financial system by efficiently resolving the non-performing loan assets of the banks in the Nigerian economy.[94]

**r)** **National Insurance Commission** (NAICOM): Established in 1997 by the National Insurance Commission Act 1997 with responsibility for ensuring the effective administration, supervision, regulation and control of insurance business in Nigeria and protection of insurance policyholders, beneficiaries and third parties to insurance contracts.[95]

**s)** **Bureau for Public Enterprises:** Established under the provisions of the Public Enterprises (Privatisation and Commercialisation) Act of 1999, through its secretariat, the Bureau of Public Enterprises (BPE), was charged with driving the Federal Government's programme of privatizing public enterprises, carrying out sector reforms and liberalization of key economic sectors especially the infrastructure sector.[96]

**t)** **National Council on Privatization:**[97]The National Council on Privatisation (NCP) is charged with overseeing the privatisation and commercialisation of public enterprises. The NCP is a think tank sponsored by the Nigerian government to determine the

[91]Constituion of the Federal Republic of Nigeria, 1999, s. 254C
[92]Constitution of the Federal Republic of Nigeria, 1999, s. 240.
[93]*Op Cit*, s. 233(1)
[94]Corporate Overview, <https://amcon.com.ng/about-us.php> accessed April 20, 2021.
95"Overview", (National Insurance Commission) <https://www.naicom.gov.ng/index.php/about-us/overview> accessed April 19, 2021
[96]See <https://bpe.gov.ng/about/> accessed April 20, 2021.
[97] "National Council on Privatization" (The Statehouse, Abuja, April 15, 2021) <https://statehouse.gov.ng/policy/councils-committees/national-council-on-privatization/> accessed April 16, 2021.

political, economic and social objectives of the privatization and commercialization of Nigeria's public enterprises.

**u)** **Nigerian Customs Service:**[98] Collection and administration of import and export duty on import and export, respectively, on companies, etc, is the responsibility of the Nigerian Customs Service. The Service was established in 1891.

**v)** **Abuja Securities & Commodities Exchange:**The **Abuja Securities and Commodities Exchange** (ASCE) is (besides the Nigerian Stock Exchange) one of two principal stock exchanges in Nigeria. It is located in Abuja, the country's capital, and it was founded in 1998.The ASCE is primarily involved with the trading of commodities such as maize, sorghum and millet, as opposed to trading in securities such as bonds and company stock.[99]

**w)** **Nigerian Copyright Commission (NCC):**The Nigerian Copyright Commission supervises the Nigerian Copyrighte-Registration System (NCeRS), which offers a platform for creators of copyright works or persons who have acquired rights in these works to register the work online with the Nigerian Copyright Commission.[100]

**x)** **Nigerian Communication Commission (NCC):**The Nigerian Communications Commission is the independent National Regulatory Authority for the telecommunications industry in Nigeria. The Commission is responsible for creating an enabling environment for competition among operators in the industry as well as ensuring the provision of qualitative and efficient telecommunications services throughout the country.[101]

**y)** Institute of Chartered Accountants of Nigeria (ICAN) ---- Is an umbrella body of all Chattered Accountants in Nigeria.

**z)** **Legal Practitioners Disciplinary Committee (LPDC)** ----- The Body of Benchers is among the organs responsible for professional discipline of legal practitioners in Nigeria. It performs this function through the LPDC, which its disciplinary arm/committee.This is the principal disciplinary organ for lawyers in Nigeria, including corporate law practitioners

**aa)** **National Judicial Council (NJC)** --- Established under the constitution, and responsible for discipline of judicial officers and in Nigeria. This is the principal disciplinary organ for judicial officers in Nigeria, including those who adjudicate in corporate matters

**bb)** **Industrial Inspectorate Division:** Established by the Industrial Inspectorate Act,[102]Division of the Federal Ministry of Industries, generally to carry out

[98]<https://customs.gov.ng/> accessed 20 April 2021.
[99]See <https://zims-en.kiwix.campusafrica.gos.orange.com/wikipedia_en_all_nopic/A/Abuja_Securities_and_Commodities_Exchange> accessed April 20, 2021.
[100]See <http://www.eregistration.copyright.gov.ng/ncc/about> accessed April 22, 2021.
[101] Bello M, "About The Commission" (Nigerian Communications Commission) <https://www.ncc.gov.ng/the-ncc/who-we-are> accessed May 19, 2021
[102]*supra*

investigations into any proposed, new and existing undertaking involving any proposed capital expenditures or additional capital expenditure of not less than N20,000 in Nigeria.

**cc) Department of petroleum Resources:** DPR has the statutory responsibility of ensuring compliance to petroleum laws, regulations and guidelines in the Oil and Gas Industry. The discharge of these responsibilities involves monitoring of operations at drilling sites, producing wells, production platforms and flowstations, crude oil export terminals, refineries, storage depots, pump stations, retail outlets, any other locations where petroleum is either stored or sold, and all pipelines carrying crude oil, natural gas and petroleum products, while carrying out the following functions, among others.[103]

## 5. Conclusion

Company and Corporate Law Practice in Nigeria has come of age. This author believes that the Companies and Allied Matters Act, 2020 is the single most comprehensive and innovative piece of legislation in Company Law and Corporate Governance in Nigeria, since the advent of that branch of law in the country. As the author has clearly demonstrated, the Act brings on board several unprecedented and inspiring provisions, aimed chiefly to bring Corporate Law practice and governance in Nigeria in line with prevailing international best practices as well as to promote/attract investment and enhance the ease of doing business in the country. However, this work has brought to the fore, one major truism; although the CAMA is the principal legislation in that field, yet, one can hardly suggest that Company Law or Corporate Law Practice in Nigeria is regulated by just a single piece of legislation. The truth is that several legislation, laws and subsidiary legislation apply to several aspects of that subject, depending on the circumstances. And, considering that the filed of company/corporate law is both wide and complex, it would not be easy to produce an exhaustive outline of all legislation, applicable laws or regulatory institutions and authorities on the subject. The author however hopes that his modest effort in this work would serve to provide strong introductory guide and resource materials to researchers, stakeholders, students, teachers, practitioners and the general public on the historical, legal and institutional framework for Company/Corporate Law Practice under the Nigerian Legal System as well as on major pioneering provisions of the CAMA, 2020.

[103] *"Functions of the DPR"*<https://www.dpr.gov.ng/functions-of-dpr/> accessed April 22,