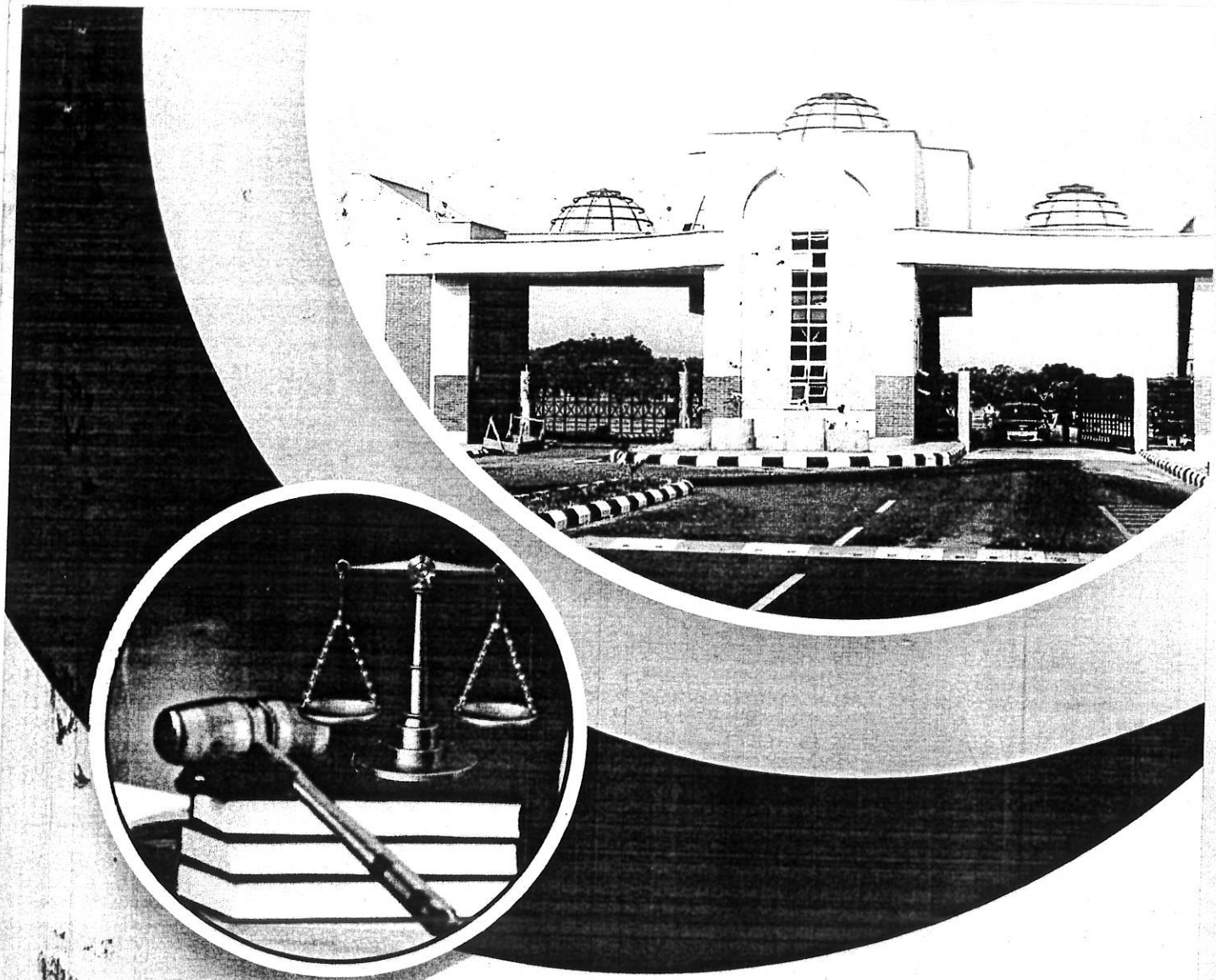


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*is **dedicated** to our beloved Vice-Chancellor*
Kwara State University Malete - Ilorin, Nigeria



Late Professor Mohammed Mustapha Olarongbe Akanbi, SAN

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A LEGAL ANALYSIS OF THE INNOVATIONS AND REFORMS IN THE COMPANIES AND ALLIED MATTERS ACT, 2020 AND THE ENVISAGED CHALLENGES

Ayodele, John Alade,* Okunowo O. Oladele & Oyesola O. Animashaun*****

Abstract

The last time there was a reform in the Companies and Allied Matters Act (CAMA) was in 1990; this means that in the last thirty years, the Companies and Allied Matters Act has not undergone any major reform, not unlike its precursor, the Companies Act of 1968. The reform witnessed in the Companies and Allied Matters Act 2020 is long overdue because the old CAMA, 1990 is outdated, as it has been overtaken by changes in economic imperatives and technological developments. Thus, the need to make companies law more investor-friendly necessitates the enactment of this law. The enactment of the Companies and Allied Matters Act, 2020 is expected to enhance economic development and boost tax revenue, by creating more job opportunities, reducing poverty and accelerating the attainment of the United Nations Sustainable Development Goals (SDGs) No.8 which deals with decent work and economic growth. Attaining the SDGs as stated by the United Nations is one of the fundamental objectives of all the governments in Nigeria. This article concludes that the innovations contained in the Companies and Allied Matters Act 2020, if well implemented, will enhance the ease of doing business in Nigeria and will attract both local and foreign investors, with the caveat that the related challenges be addressed.

Keywords: *Companies and Allied Matters Act, 2020;* Ease*of doing business; Economic Development; Tax; Sustainable Development Goals (SDGs)*

1. Introduction

Prior to the arrival of the British colonial masters, there was nothing like company law hence, company law is foreign to the company law in Nigeria,[1] hence, prior to 1876, there no indigenous law governing the operation of companies in Nigeria. The first law regulating companies in Nigeria was the Companies Ordinance of 1912. This was applicable to the Colony of Lagos, and in 1917, it became applicable to the rest of country. The Companies Ordinance of 1912 was amended by the Companies Ordinance (Amendment and Extension) Ordinance 1917 which became enforceable on the 1st day of January, 1918. In 1922, the Companies Ordinance of 1912 and the Companies (Amendment and Extension Ordinance of 1917 were consolidated and re-enacted and named the Companies Ordinance of 1922 and it came into effect on the 7th day of December, 1922. In 1968, the military administration of General Gowon promulgated the Companies Decree No. 51 of 1968 (later renamed the Companies Act of 1968 in 1979). In 1990, the Companies Act of 1968 was repealed and the Companies and Allied Matters Act of 1990 was

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[1] Olakunle Orojo, *Company Law and Practice in Nigeria* (3rd edn, Mbeyi & Associates Ltd. 1992).

enacted.[2] Similarly, in 2020, the Companies and Allied Matters Act, 1990, Cap. C20 LFN 2004 was repealed, and replaced with the Companies and Allied Matters Act 2020. The Companies and Allied Matters Act, 2020, among others, provides for the incorporation of companies, Limited Liability Partnership, Limited Partnerships, registration of business names and incorporation of trustees of certain communities, bodies, and associations.

This article focuses on itemizing and discussing the observed innovations in the Companies and Allied Matters Act 2020; and the prospects and the challenges thereof. This article is divided into four parts. Part one is the introductory aspect, part two discusses the innovations in the 2020 Act. Part three discusses the positive aspects and the prospects of the 2020 Act and the fears that it may occasioned while part four consists of the recommendations and conclusion.

2. A Legal Analysis of CAMA 2020

There are many innovations in CAMA 2020 and many improvements were introduced to deal with the deficiencies of the CAMA 1990, which are discussed hereunder.

i) **Increase in the number of sections: -** The first major issue noticed in the Companies and Allied Matters Act 2020, is the fact that it consists of 870 sections while the Companies and Allied Matters Act 1990 consists of 612 sections.

ii) **Increase in the number of membership of the Corporate Affairs Commission:-** S. 2 (2) (b) (iv) of the 2020 Act included one representative of the Institute of Chartered Secretaries and Administrators of Nigeria, to be appointed by the Minister on the recommendation of the Institute, into the membership of the Corporate Affairs Commission, (CAC).

iii) **Introduction of accounting profession bodies as against the specific reference to the Institute of Chartered Accountants of Nigeria (ICAN): -** This provision is meant to include the Association of National Accountants of Nigeria (ANAN) and maybe other accounting bodies that may be licensed by the National Assembly in the future- s. 2(b)(iii).

iv) **Introduction of pre-action notice: -** Prior to the 2020 Act, an aggrieved person can sue the Corporate Affairs Commission without serving on the Commission any prior notice of intention to sue. However, under S. 17 of the 2020 Act, it compulsory for an intending plaintiff or claimant to issue on the Commission a 30 day notice of intention to sue known as pre-action notice. The notice must state succinctly, the cause of action, particulars of the claim, name and address of the intending claimant and the relief sought.

v) **Reduction in the number of persons that can form a private company: -** Prior to 2020, The CAMA 1990 permits any two or more persons to form and incorporate a company. However, s. 18 (2) of the 2020 Act permits either one or more persons to form and incorporate a private company; while s. 18 (3) introduces a caveat that a company cannot be incorporated for an unlawful purpose.

vi) **Inclusion of the right of first refusal:-**Both s. 22 of the old and new Acts provide for private company. However, the new Act of 2020 has added paragraphs a – c to subsection 2. By these paragraphs, the right of first refusal has been added in the event of sale of shares by any member of the company. It is now mandatory that any

[2]Companies and Allied Matters Act, 1990 Cap C20 LFN, 2004.

member or shareholder of a private company who intends to sell his shares must first offer same to the existing members. It is only where the existing members refused or decline the offer that same can be sold to a non-member. Also, the consent of all members of the company is now required before the assets of the company amounting to more than 50% of the company's assets can be sold.

vii) **Detailed reform to s. 26 of CAMA, 1990:** - Both the 1990 and the 2020 Acts, provides for the formation of company limited by guarantee. However, the 2020 Act has provided elaborately, the procedures for obtaining the authority of the Attorney – General of the Federation (AGF) before the formation of a company limited by guarantee.[3] The approval of the AGF shall not be unduly withdrawn if there is no petition against the application. S. 26(6) of the 1990 Act has been altered by s. – 26 (11) of the 2020 Act which now gives the CAC the power to prescribe the penalty to be paid by officers and members of a company limited by guarantee for violating the non- profit making status of a company limited guarantee. In the event of a company limited guarantee being wound up, the minimum liability of its members has been increased from ₦10,000 to ₦100,000.[4] Prior to 2020, the breach of s. 26(6) of the 1990 Act attracts a penalty of N10,000 for every director and for every member, ₦50 for every day during which the default continue. S. 26 (14) of the 2020 Act provides for not less than ₦100,000 penalty of every member and every member and director of the company who is cognizant of the breach is liable to a penalty as presented by the Commission for every day during which the default continues.

viii) **An Increase in the minimum share capital of a company:-** Another major change made in the 2020 Act is the minimum issued share capital, which is now a minimum sum of ₦100,000.00 as against a minimum sum of ₦10,000.00 for private companies and ₦2,000,000.00 as against ₦500,000.00 for public companies. Also, each member of a company limited by guarantee is expected to undertake to contribute to the assets of the company in the event of its being wound up, an amount which will not less than ₦100,000.00 as opposed to a minimum sum of ₦10,000.00 under CAMA 1990.

ix) **Power of the Minister to prescribe model articles of different type of companies:** - Regarding the Articles of association, the Minister now has the power to prescribe model articles of different type of companies. This is provided for under s. 33(1) of the 2020 Act.

x) **Inclusion of acceptance of declaration of compliance by an applicant:-** Prior to 2020, by the provisions of s.35(3) of the 1990 Act, a company was required to submit to the Commission a declaration of compliance signed by a lawyer or attested to before a notary public. However, s. 40 (1) of the 2020 Act now provides that the statement of compliance required to be delivered to the Commission is a statement by the applicant or his agent that the requirement of the Act as to registration have been complied with. This in effect is that the Commission can accept the declaration of an applicant, his agent or that of a lawyer attested to before a notary public.

xi) **Power of the Commission to withdraw, cancel or remove a certificate** of **incorporation issued under the Act:** - s. 36 of the 1990 Act is in pari material with s. 41 of the 2020 Act. However, the later has added sub sections 7 and 8 which ...

[3] See s. 26 (3) – (10) CAMA 2020 and s. 26 CAMA 1990.
[4] See s.26 (12) CAMA 2020

empower the Commission to withdraw, cancel or remove a certificate of incorporation issued under the Act where it is discovered that the certificate was fraudulently, unlawfully or improperly procured and publication of the said withdrawal, cancellation or revocation of certificates of incorporation periodically may be made in the Federal Government Gazette.

xii) **Increase in the cost of copies of memorandum:** - s. 47(1) of the 2020 Act has increased the cost of members requesting for copies of the memorandum and articles of association from ₦20.00 as prescribed in S. 42 of the 1990 Act to a maximum sum of ₦500.00, ostensibly due to the inflationary rate and the general increase in price. Subsection 2 of this section now allows the Commission to prescribe the penalty against any company in default of this section abrogating the penalty of not more than ₦25.00 in the 1990 Act. S. 43 (2) of CAMA 1990 provides for the issuance of copies of the memorandum of a company not in accordance of with altered memorandum shall be liable to pay not more than ₦25.00 for every copies of such memorandum issued and every officer of the company who is in default shall be liable to the like penalty. S. 48 of the 2020 Act now saddles the Commission with the responsibility of prescribing the penalty payable by erring companies and its officers.

xiii) **Powers of the Minister in respect of a foreign company:** - by virtue s. 56 of the 1990 Act, application for exemption by a foreign company is made to the Secretary to the Government of the Federation who will in turn pass same on to the President of the Federal Republic of Nigeria. However, under the provision of s. 80 of CAMA 2020, such application is now made to the Minister whose duty it is to publish in the Federal Government Gazette, the name of the foreign company that has been exempted. By virtue of s. 868 of CAMA 2020, Minister means the minister charged with responsibility for trade. More so, the new Act has introduced subsections 7 and 8 respectively. Sub section 7 provides that notice of exemption of a foreign company shall be given to the CAC within 30 days of such exemption; while sub section 8 allows the CAC to give penalty for failure to comply with sub section 7.

xiv) **Courts' discretion to fix penalty:-** s. 83 (2) of the 2020 Act has jettisoned ₦5,000.00 fine or imprisonment for a term of three years as contained in s.59 (2) of CAMA 1990. The 2020 Act only provides for liability on conviction to a fine or imprisonment as the court may deem fit. This has given the court the discretion to determine the amount of fine or term of imprisonment a person who contravenes the provisions for providing false information in order to obtain exemption of a foreign company from s. 78 of the Act.

xv) **Common seal at company's discretion:** - The provision of s. 74 of CAMA 1990 makes it compulsory for a company to have a common seal with the use of word shall. S. 98 of CAMA 2020 however, provides that a company may have a common seal but need not have one and where a company has a common seal, the design and use of that seal shall be regulated by the company's article and shall have its name engraved in legible character on the seal. By this provision, a company now has the discretion as to whether or not to have a common seal. But where the company so decides to have one, it must comply with provisions of the Act. This innovation is apt as it is in line with international best practices as most jurisdictions all over the world have jettisoned this requirement from their laws.

xvi) **Discretionary power of the Commission under ss. 108 and 109:-** S. 108 of CAMA 2020 has improved upon s.82 of the CAMA 1990. The 2020 Act has repealed the ₦2,500.00 for impersonation by allowing the Commission to specify the fine payable by the impersonator. Similarly, s. 108 of CAMA 2020 provides that anyone convicted of the offence can be made to account to the aggrieved member for any benefit which he directly or indirectly derived as a result of his act of impersonation. The penalty set out in s.83 (4) of CAMA 1990 dealing with default by a company in keeping a register of members has been modified by s. 109 (4) (a – b) of CAMA 2020. The commission under the new Act is to specify the penalty and additional daily default fine that the Commission may also specify. This modification is also applicable under s. 110 (3) of the CAMA 2020 which modified s. 84 (4) of the CAMA 1990.[5]

xvii) **Disclosure of capacity by shareholder: -** One notable innovation in CAMA 2020 is s.119, which provides for openness and transparency in relation to control of a company by providing that anyone who has person or persons holding shares on their behalf as trustees or proxies, whilst being shareholders themselves in the same company are to disclose such relationship so as to ensure transparency. Another innovation in CAMA 2020 is s. 120 which is s. 94 of the CAMA 1990. Sub section 2 of S.120 of the 2020 Act provides that a person is a substantial shareholder in a public company if he or his nominee holds shares of the company which entitle him to exercise at least 5% of the unrestricted voting rights at any general meeting of the company. This is in contradistinction with S. 94(2) of CAMA 1990 which provides for 10% of the unrestricted voting rights.

xviii) **Removal of certain aspect relating to alteration of share capital: -** On alteration of share capital, s. 125 of the 2020 Act has abolished s. 100 (1)(b) & (d) and s. 100 (2) of CAMA 1990 which deals with cancellation of shares.

xix) **Validation of improperly issued shares: -** Another notable improvement by the 2020 Act is s. 148 (2). This sub section is an improved version and an extended form of s. 123 of the CAMA 1990 which has only 2 sub sections. Under s. 148 (2) of CAMA 2020, companies are now mandated to validate the issuance or allotment of shares that were improperly issued or allotted by way of a special resolution. It provides further that where a company refuses to so do, the affected person may apply to the court for such validation, and upon the court being satisfied that in all the circumstances, it is just and equitable, will validate the improperly issued shares.

Introduction of electronic register of transfer of share: - s. 176 (1) of CAMA 2020 is another important innovation. It has recognized electronic register of transfer of share. This is an improvement on s. 152 (1) of CAMA 1990. In addition to this, s. 860 of the 2020 Act also states that any document required to be filed with the Commission for registration may be filed electronically.

xxi) **Inclusion of floating charge to register of particulars of charges: -** s. 223 of CAMA 2020 makes provision for register of particulars of charges as it was provided for in s. 198 of CAMA 1990. However, paragraph v has been added to s. 223 (1) of CAMA 2020 to wit: or a floating charge, a notice indicating the existence of any

[5] See also s. 122 (6) (a) – (b) CAMA 2020 which provides for register of interests in share, which has altered the penalty under s. 97 (6) of CAMA 1990 and S. 124 (5) CAMA 2020 which altered the provisions of s. 99 (5) CAMA 1990.

provisions in the charge that prohibit or restrict the company from granting any further charge ranking in priority to or a pari passu with floating charge

xxii) **Powers of a private company to hold its general meetings electronically:-** s. 240 (2) of CAMA 2020 provides that a private company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company. This is an innovation and an improvement upon s. 216 of the 2004 Act.

xxiii) **The chairman of a public company shall not act as the chief executive officer of such company:** - s. 265 of CAMA 2020 provides for the powers and duties of chairmen of public companies. However, the 2020 Act now contains an additional sub section 6, which provides that the chairman of a public company shall not act as the chief executive officer of such company. The implication is that the chairman of the board of directors of a public company cannot double as the chief executive officer of that same company. This is an improvement upon s. 240 of CAMA 1990.

xxiv) **Provision for the enhancement of minority shareholder protection and engagement:** - Another important innovation in the 2020 Act is the enhancement of minority shareholder protection and engagement. It is an improvement on the s. 240 of CAMA 1990. S. 265 of CAMA 2020 which is a replica of s. 240 of CAMA 1990 now has sub section 6 which prohibits the chairman of a public company from acting as the chief executive officer of such company of the same time or concurrently.

xxv) **Discretionary power of court under S. 269:-** S. 269 (3) & (4) of CAMA 2020 has abolished the fine for any person who is not appointed as a direction but holds out himself as a director.[6] The 2020 Act has abolished the ₦100 or ₦1000 fine for each day he so holds himself out. The court is left with the discretion to determine the fine applicable.

xxvi) **An increase in the number of independent directors for public company:** - Prior to the enactment of CAMA 2020, the Stock Exchange Commission under its Code of Corporate Governance for public companies[7] and the Nigerian Code of Corporate Governance, 2018 provides that companies should have a minimum of one independent director. However, s. 275 (1) provides that a public company shall have at least three independent directors. Sub section 3 went further to provide that an independent director means a director of the company who or whose relatives either separately or together with him or each other, during the two years preceding the time in question was not an employee of the company, did not make or receive from the company payment of more than N20,000,000 or own more than 30% share or other ownership interest directly or indirectly...., was not engaged directly or indirectly as an auditor for the company and did not directly or indirectly own more than 30% of the shares of any type or class of the company. This section has no equivalent in CAMA 1990.

xxvii) **Restriction of multiple directorships in public companies:** - s. 281 of CAMA 1990 and s. 307 of the 2020 make provisions for multiple directorships. However, subsections 2, 3 & 4 have been added to s. 307 of the 2020 Act. Subsection 2 provides that a person shall not be a director in more than 5 public companies. And that if any person is a director in more than five companies, such person shall after

[6] See S. 244(3) & (4) CAMA 2004 .

[7] See Part B paragraph 5.5(b) of the Code of Corporate Governance for Public Companies of May 12, 2014.

the expiration of two years from the commencement of the Act, resign from being a director in all the five companies.[8] S. 307 (4) of the 2020 Act provides for the penalty for anyone in default of the provisions. Such person shall be liable to a daily penalty in such amount as the Commission shall determine and the person shall refund to the companies every remuneration and allowances paid to him as a director in each of the companies.

xxviii) **Provision of mandatory period within which to appoint company secretaries:** - S. 293 (1) & (2) of CAMA 1990 make provisions for the position of secretaries. S. 330 (1) & (3) of the 2020 Act are replica of the provisions of CAMA 1990. However, the 2020 Act has added two subsections as an improvement. Subsection 2 now makes it mandatory to appoint secretary not later than six months after the commencement of the Act while sub section 4 provides for punishment for breach of the section.

xxix) **Register of secretaries and particulars for individual secretaries:** - CAMA 2020 has also introduced a new provision dealing with register of secretaries,[9] particulars of secretaries to be registered if such secretaries are individuals, if the secretaries are corporate secretaries and firm and duties to notify the Commission of changes of secretaries. S. 336 of the 2020 Act makes it compulsory for every public company to maintain a register of secretaries of which shall contain the particulars set out in s. 337. S.337 of the 2020 Act lists out the particular for individual secretaries. These include things such as names (and any former names) address, e-mail address the address is a service address which may be stated to be the company's registered address.

xxx) **Particulars of the secretary if it is a corporate secretaries or firms:-** S. 338 of CAMA 2020 provides for particulars of the secretary if it is a corporate secretaries or firms, to include the corporate or firm name, registered or principal office and e-mail address s. 339 of the 2020 Act now makes it compulsory for a company to notify the CAC within 14days when a person becomes or ceases to become a secretary, or where there is any change in the particulars contained in the register of secretions among others.

xxxi) **Power of Minister to vary particulars of secretaries:** - S. 340 of CAMA 2020 empowers the minister to make regulations to vary the particulars required to be contained in a company's register of secretaries as provided for in s. 337 and s. 338.

xxxii) **Protecting company's employees' who comply with inspector's request in providing information from discrimination:** - S. 314 of CAMA 1990 and s. 357 of CAMA 2020 provide for the investigation of a company on the application of the members of the company or on the application of the company itself. However, the 2020 Act contains provisions to protect any company's employee that complies with the inspector's request in providing information about the affairs of the company from any form of discriminations or other unfair treatment.[10] By s. 375 (5) of CAMA 2020, where an employee is relieved of his employment for reason of disclosure made pursuant to this section, such employee is entitled to a compensation to be calculated as if he had attained the maximum age of retirement or had served the maximum period of service in accordance with his terms of employment or conditions of service

[8] S. 307(3) CAMA 2020.
[9] See s. 336 CAMA 2020
[10] See s. 357 (4) CAMA 2020.

of the company. S. 374 of the 2020 Act is an improvement on the provisions of s. 3[illegible] of the 1990 Act, because the former by sub section 5, requires a parent company that has a subsidiary undertaking to ensure that reasonable steps are taking to keep such accounting records of that subsidiary undertaking; while subsection 6 makes it non-compulsory for a public company to display its audited account on its website.

xxxiii) **Qualification of a small company:-** On the qualification of a small company, s. 394 of CAMA 2020 has been expanded and amended as against the provision of s. 351 of CAMA 1990. S. 394 (3) (b) of CAMA 2020 has increased the amount of turnover for a small company from ₦2,000,000 under CAMA 1990 to ₦120,000,000 and under s. 394 (3)(c) of CAMA 2020, the assets value of not more than ₦60,000,000. Also subsections 4 – 7 have been added which were not contained in the 1990 Act.

xxxiv) **Exemption from audit requirement:** -Another novel innovation is the provisions of s. 402 of CAMA 2020, which exempts certain companies from audit requirement. A company is exempted from audit if it has not carried on any business since its incorporation or it is a small company within the meaning of s. 394. S. 402(2) excludes insurance companies, banks or any other company as may be prescribed by the commission from this exemption.

xxxv) **Distributable profits:-** By the provisions of s.427 of CAMA 2020, the payment of profits by a company as dividend is restricted to the company's accumulated, realized profits (so far as not previously utilized by distribution or capitalization), loss its accumulated, realized losses (so far as not previously written off in a lawfully made reduction or re-organisation of capital).

xxxvi) **Rescuing a company in distress and its administration:-** The 2020 Act in a bid to rescue a company in distress and keep it afloat has provided a comprehensive framework for the rescuing of a company in distress under s. 434 – s. 442. The administration of such companies is also provided for under s. 443 – s. 549. These sections provide for issues bordering on who may be appointed as administrator, purposes of administration, those restricted from being appointed as administrator etc.

xxxvii) **Increment in the amount of debt a company is unable to pay :-** S. 572 (a) of the 2020 Act has increased to ₦200,000 the amount of debt a company may be unable to pay which may lead to its being wound up. It is worthy to note that the amount was ₦2000 under S. 409 (a) of CAMA 1990.

xxxviii) **Improvement on avoidance of attachment: -** S. 577 of CAMA 2020 is an improvement on s. 414 of CAMA 1990. The former contains provisions to the effect that the provisions of s. 577 do not apply to a fixed charge or any other validly created and perfected security interest other than a floating charge.

xxxix) **Protection of secured creditors: -** On the application of bankrupting rules in certain cases, s. 656 of CAMA 2020 contains a proviso to safeguard the power of any secured creditor. The proviso is to the extent that nothing in s. 656 shall affect the power of any secured creditor to realize or otherwise deal with his security during the winding up of an insolvent company registered in Nigeria. This provision is an improvement upon s. 493 of CAMA 1990.

xl) **Improvement of preferential payments: -** It is instructive to note also that s.657 of CAMA 2020 has added sub sections 5 and 6. Subsection 5 makes preferential payment subject to the retention of such sums as may be necessary to discharge the costs and expenses of the winding up. While subsection 6 makes a secured creditor to

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[11] See generally s
[12] See s. 748 CAI
[13] See s. 749 CAI
[14] See s. 824 CAI

rank in priority to all other claims including any preferential payment under the Act and that equity holder shall rank last. These subsections are not included in s. 494 of CAMA 1990.

xli) **Provisions for netting:** - Another important innovation in the 2020 Act is the introduction of Chapter 28 dealing with netting. s. 718 define all applicable concepts in the chapter. Netting according to this section, means the occurrence of the following: termination, liquidation or acceleration of any payment or delivery obligations or entitlement under one or more qualified financial contracts entered into under a netting agreement[11] simply put, netting can be said to be a process of reconciling and setting off two or more obligations to achieve a reduced net obligation between two persons. S. 719 of CAMA 2020 provides for the powers of financial regulating authority, while s.721 deals with the enforceability of netting agreement.

xlii) **Creation of limited liability partnerships (LLPs) and Limited partnerships (LPS):** - One other improvement in the 2020 Act is the creation of limited liability partnerships (LLPs) and limited partnerships (LPS) under s. 746 – s. 810. S. 746 defines a limited liability partnership as a body corporate formed and incorporated under this Act and is a legal entity separate from the partners and has perpetual succession. Every LLPs shall have minimum of two partners.[12] Also, CAMA 2020 provides that every LLP shall have at least two designated partners who are individuals and at least one of them shall be resident in Nigeria.[13] Under s. 752, the liability of partners in LLP in contravention of s. 749 – s. 751 is provided for and it is the Commission that is saddled with the authority to determine the amount to be paid as penalty. S. 795 of the 2020 Act makes provisions for a limited partnership (LPs). ss. 795 – 810 contain detailed provisions on a limited partnership.

xliii) **Suspension of trustees, etc. and appointment of interim manager or managers:-** Perhaps one aspect of the 2020 Act that has occasioned a lot of debates and generated controversies is part of the Act dealing with incorporated trustees which was formerly Part C under the 2004 Act. Issues connected with incorporated trustees are now provided for under ss. 823 – 850 of the 2020 Act. These sections are now grouped as Part F in the 2020 Act. It is now the discretion of the Commission to determine the classification of associations to be registered under this part.[14] S. 839 of the 2020 Act provides for the suspension of trustees, etc. and appointment of interim manager or managers to manage the affairs of an association where it reasonably believes among others that: there has been any misconduct or mismanagement in the administration of the association, it is desirable to protect the property of the association, if the affairs of the association are being run fraudulently etc. Note that the use of the word 'order' in s. 839 (1) suggests that the Commission can only suspend based on the order of a court, which invariably through the provision of s.868 is the Federal High Court (court of first instance), Court of Appeal and the Supreme Court. Subsection 2 of s. 839 further buttresses this assertion when it provides that 'the trustees shall be

[11] See generally s. 718 CAMA 2020.
[12] See s. 748 CAMA 2020.
[13] See s. 749 CAMA 2020.
[14] See s. 824 CAMA 2020.

suspended by an order of court....' On who may apply to the Federal High Court is the Commission or members of the association consisting one – fifth of the association that can file a petition for such suspension and the petitioners shall present all reasonable evidence or such evidence as may be requested by the Court in respect of the petition. Upon filling of the petition parting thereto are to be heard before an order of court is made. It is the court that will order the functions to be performed by the interim manager or managers which may include duties of the trustees of the associations concerned while being supervised by the Commission. One obvious fact about Part F of CAMA 2020 is that, it is a court of competent jurisdiction that has the authority to order for any act to be done upon a petition filed by the Commission or at least one – fifth of the members of the association. Chapter 6 of Part F comprising s. 842 – s. 848 provide generally on accounts and annual returns of associations. S.-5 makes it mandatory for trustees of an association to submit to the Commission a true annual statement of affairs of the association. The accounting records must disclose at any time, with reasonable accuracy the financial position of the association at that time. It shall contain from day to day all sums of money received and expanded by the association and the matters in respect of which the receipt and expenditure took place. S. 849 of CAMA 2020 allows two or more associations that have been registered differently but with similar aims and objectives to merge under terms and conditions as the Commission may prescribe if they so wish.

3. Innovations in CAMA 2020: Prospects and Challenges

One of the economic agenda of the Federal Government of Nigeria is to make business activities in Nigeria as easy as possible. One of the positive aspects of the 2020 CAMA is that it will enhance the ease of doing business in Nigeria thereby encouraging both local and foreign investors. The various innovations discussed above are believed to be aimed at removing some if not all the bureaucratic bottlenecks that once characterized the doing of business with the Corporate Affairs Commission in particular and in Nigeria in general. For the sake of emphasis and the avoidance of repetition, most of these all important innovations are stated here. For instance, an individual can now form and incorporate a private company, the right of first offer has been provided for, the introduction of the concept of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs), which enables entrepreneurs to form partnerships and as well enjoy limited liability or reduce liability. Similarly, CAMA 2020 provides an easy and practical framework for rescuing a company in distress and to keep it afloat in order to preserve jobs and enhance government revenue collection such as personal and companies' income taxes. Other innovations such as restriction on multiple directors in public companies, holding of virtual annual general meeting, electronic filling and share transfer, safeguards for incorporated trustees and associations are noble innovations. Similarly, the pre-action notice provided for under CAMA 2020 may create an opportunity for an aggrieved person to first intimate the Commission of a pending dispute, which may eventually lead to amicable settlement of disputes.

However, these innovations are not bereft of challenges. One of the major challenges the CAMA 2020 may elicit is the provisions of s. 839 dealing with suspension of trustees. This fear is likely to from religious leaders. Similarly, the CAMA 2020 seems to grant the Commission enormous and wide discretionary powers capable of abuse in relation to fines as state above. We posit that the Commission should create operation manual in line with the provisions of the Act to act as a

[15] S. 330(1

guide to companies, incorporated trustee and others; and a check on abuse of power. Second, s. 275 of CAMA 2020 mandates all public companies to have at least three independent directors. This innovation may improve corporate governance and transparency while at the same time it may increase the cost of doing business. Third, CAMA 2020 exempts small companies within the definition of Section 394(3) from the requirement of appointing company secretaries.[15] The removal of this requirement may reduce the number of company's employees, thereby maximizing profit, however, lawyers who are predominantly company's secretaries may be at a disadvantage and the absence of lawyers may negatively affect the regulatory compliance of these small companies. Fourth, as laudatory as e signature, e meeting e notice, e registration and e transfer may be, there is the associated challenge of fraud. There is the need for the encryption and fortification of the electronic devices of the Commission in order to ensure secured transactions. Further, the law enforcement agents must be trained about electronic devices and the associated transactions in order to detect, arrest and apprehend fraudulent transactions.

4. Conclusion

One of the economic policies of the Government of Nigeria is doing all things possible to make Nigeria an investor's friendly country. Therefore, the Companies and Allied Matters Act 2020 is undoubtedly a welcome development and likely to be a catalysis that will enhance the attainment and achievement of the ease of doing business campaign /policy of the federal government. The Companies and Allied Matters Act 2020, being a comprehensive and robust legal enactment, will no doubt remove most of the bureaucratic bottlenecks that has over the years negatively impacted the ease of doing businesses in Nigeria, with special emphasis on small and medium enterprises and will most likely enhance business expediency generally. However, the challenges highlighted above must be addressed in order for the full potential of CAMA 2020 to be realized.

[15] s 330(1) of CAMA 2020.