NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF BUSINESS AND HUMAN RESOURCES

COURSE CODE: MBA 704

COURSE TITLE: COMPANY LAW

COURSE GUIDE

MBA 704

COMPANY LAW

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TABLE OF CONTENTS

PAGES

Introduction ……. 1
Course Aim ……. 1
Course Objectives ……. 1
Steps to Working Through this Course……... …….. 1
Course Materials …… 2
Study Units …….. 2-3
Textbooks and References ……... 3
Assessment ……. 3
Tutor Marked Assignment (TMA) ……. 3
Final Examination and Grading …… 3
How to get the most from this Course ……. 4
Tutor Contact…….. ……. 4
Conclusion
…… 5

Introduction

In this course, LAW (MBA) 704, we are concerned with Company Law. The development and growth of global business transaction has made it imperative for learners to be acquainted with new trends in company law. Recall that before the advent of Portuguese and British traders, the place known today as Nigeria had its own indigenous ways of trading. The kind of trade embarked then was trade by barter. However, the advent of imperial trading activities impacted not only on the political landscape. The economy was also affected thus resulting in the modernization of commerce. This growth in trade created an imperative to formation, registration and regulation of company operations. From the Company Ordinance of 1912, company law developed to the current Companies and Allied Matters Act operating in Nigeria today.

Course Aim.

The overall aim of this course is to expose learners to Company Law and its critical role in economic development of the country.

Course Objectives

By the end of this course, you should be able to:

- Understand the historical development of Company law in Nigeria;
- Know the various types of business forms operating in the Nigeria.

- Understand the various ordinances/laws that were enacted from the period of imperial rule from 1912 to the present period where we have Companies and Allied Matters Act 2004.
- Identify the functions of Corporate Affairs Commission. (CAC)
- Know the steps to the formation of a company and the role of promoters in the formation of the Company.
- Identify who members of a company are.
- Learn how a company conducts its affairs/business.
- Identify who Company Directors are; their duties and powers in the company.

- Know what shares of a company are and how they are acquired.
- Understand how a company is wound up.

Steps to working through this Course

To complete this course, you are advised to read the study units, read recommended books and other materials provided by NOUN. Each unit contains Self Assessment Exercises, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course, there is a final examination. The course should take you about 16 weeks to complete. You will find all the components of the course listed below. You need to allocate your time to each unit in order to complete the course successfully and on time.

Course Materials

The major components of the course are:

- Course guide
- Study units
- Textbooks
- Assignment file
- Presentation schedule

Study Units

We will deal with this course in 4 Modules. Each Module is divided into study units as outlined below. Altogether there are 16 study units in the 4 Modules. If you follow the units seriatim, you will discover that the units are arranged in logical sequence to give you a flow as you study the course content. You will also discover that it gives you stimulating reading as you catch your breath to want to know what follows next. You are advised to first of all read through the units as hereunder contained so that you have a mental flow as you go into the course content proper.

Module 1 Development of Company Law in Nigeria

Unit 1. Development of Company Law in Nigeria
Unit 2. The role of Corporate Affairs commission
Unit 3. Type of Companies

Module 2 Registration/Incorporation of a Limited Liability Company

Unit 4 Conditions Precedent to Registration.
Unit 5 Pre-Incorporation Contracts.
Unit 6 Promoters: their duties and liabilities
Unit 7 Effect of Registration.

Module 3 The Company

Unit 8 Corporate Personality
Unit 9 The Constitution of the Company
Unit 10 Membership of the Company
Unit 11 Share Capital and Shares
Unit 12 Meetings of the Company
Unit 13 Directors of the Company

Module 4 Winding Up of the Company

Unit 14 Winding up by the Courts
Unit 15 Voluntary winding up
Unit 16 Winding up subject to the supervision of the court.

Textbooks and References

Certain books have been recommended in the course. You should read them where you are so directed before attempting the exercise.

Assessment

There are three aspects of the assessment of this course; the self-assessment exercise, the tutor- marked assignments and a written examination. In doing these assignments, you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for final assessment in accordance with deadlines stated in the presentation schedule and the ***Assignment file***.

Tutor- Marked Assignment (TMA)

There is a Tutor-Marked Assignment at the end of every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best 3 performance will be used for assessment.

When you have completed each assignment, send it together with a (Tutor Marked Assignment) form, to your tutor. Make sure that each assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension. The work that you submit to your tutor for assessment will count for 30% of your total score.

Extension will not be granted after the due date unless in exceptional circumstances.

Final Examination and Grading

The duration of the final examination for LAW 704 –Company Law is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of Self Assessment Exercise and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review your Self Assessment Exercise and Tutor- Marked Assignment before the examination.

How to get the most from this Course

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study material at your pace and at a time and place that suits you best**.** Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, your study units provide exercise for you to do at appropriate times.

Each study unit consists of a week's work and includes specific objectives; directions for study, reading material and Self Assessment Exercise (SAEs). Together with Tutor-Marked Assignments, these exercises will assist you in achieving the stated learning objectives of the individual units and of the course.

Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignment and the examination. You should do each Self Assessment Exercise as you come to it in the study unit.

Tutor Contact

Do not hesitate to contact your tutor by telephone or e-mail if you need help. Contact your tutor if:

i) You do not understand any part of the study units or the assigned readings;
ii) You have difficulty with the self assessment exercise;
iii) You have a question or a problem with an assignment, with your tutor's comments on an assignment or with grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively. The commitment you display in addressing the Self Assessment is the key to success.

Conclusion

The course Company Law (MBA 704) exposes you to the issues involved in the development of company law in Nigeria, the establishment of corporate Affairs commission, the incorporation, management, and all the nitty-gritty of company administration in Nigeria.

MBA 704

COMPANY LAW

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TABLE OF CONTENTS **PAGES**

MODULE 1 **3**

Unit 1. Development of Company Law in Nigeria 3
Unit 2. The role of Corporate Affairs commission 11
Unit 3. Type of Companies 15

MODULE 2
REGISTRATION OF A LIMITED LIABILITY COMPANY. 19
Unit 4 Conditions precedent to Registration. 19

Unit 5 Pre-Incorporation Contracts. 23

Unit 6 Promoters: Their duties and liabilities 26

Unit 7 Effect of Registration. 30

MODULE 3 THE COMPANY **33**

Unit 8 Corporate Personality 33

Unit 9 The Constitution of a Company 37

Unit 10 Membership of the Company 43

Unit 11 Share Capital and Shares 47

Unit 12 Meetings of the Company 55

Unit 13 Directors 63

MUDULE 4 WINDING UP OF COMPANIES **69**

Unit 14 Winding up by the Courts 69

Unit 15 Voluntary winding up 74

Unit 16 Winding up subject to the supervision of the court. 80

MBA LAW 704 COMPANY LAW

MODULE 1

Unit 1. Development of Company Law in Nigeria
Unit 2. The role of Corporate Affairs commission
Unit 3. Type of Companies

UNIT 1. DEVELOPMENT OF COMPANY LAW IN NIGERIA

1.0 Introduction
2.0 Objectives
3.0 Main content
3.1 Evolution of Commercial activities in Nigeria
3.2 Development of Company law in Nigeria
4.0 Conclusion
5.0 Tutor-Marked Assignment
7.0 Reference /Further Readings

1.0 INTRODUCTION

In this unit you will learn how company law developed in Nigeria. At this stage, we are referring to a company as a group of people who organize themselves for the purpose of trading or running a business. Hitherto trade was predominantly done by barter in the Sub-Saharan Africa including what is known today as Nigeria. However as commercial activities intensified both from Arabian traders from the North Africa and the British traders from the South, it became necessary to modernize the way commerce and other business activities were being conducted.

This unit also introduces you to the understanding about what a company is. You will also have insightful understanding of the brief historical development of how commerce and business transactions assumed legal regulation in Nigeria.
It is important that you have this background knowledge as it will greatly assist you understand generally the growth of business environment in Nigeria.

2.0 OBJECTIVES

At the end of this unit, you should be able to

- Explain what company law is and its evolution
- Understand the legal environment within which commerce and other business activities are carried out in Nigeria and

- Also be able to explain to others the evolution of company law in Nigeria.

3.0 MAIN CONTENT

3.1 EVOLUTION OF COMMERCIAL ACTIVITIES IN NIGERIA

It is important for you to know that prior to the amalgamation of Northern and southern Nigeria in 1914, the preoccupation of the indigenous communities was principally agriculture, hunting and trading by barter. The scope of trading was basically situated in the rural peasant setting. However, with the advent of cross border trading first between the North African in Northern Nigeria and subsequently with the arrival of Europeans firstly by Portugal and later the British, international trade began to be built up. The articles of trade included raw materials from Nigeria and manufactured goods from Europe.

In the 19th century, the British established some form of administrative authority over Nigeria. As the contact between Europe and Nigeria increased, trade and other business transactions also increased. Therefore, there was the dire need to regulate the fast growing business environment. Consequently, the first companies' statute, the Companies Ordinance 1912 was promulgated. We shall elaborate much more on the issue of ordinances later on in the unit.

According to J. Olakunle Orojo, after the end of the Second World War, a comprehensive development programme was formulated in Nigeria and a Ten-Year Development, 1945-1955 was launched. The essence of the plan was to reorganize the handling and marketing of agricultural primary produce and to improve social and economic activities. Another primary consideration was to enhance industrial and commercial activities in the country. This effort stimulated the formation of public Corporations and marketing boards in no small measure. There were also other incentives from the government which increased the tempo of economic activities resulting in the incorporation or registration of many companies. As time went on, there was the dire need to encourage indigenous participation in the economic activities of the country. Consequently, the Nigerian Enterprises Promotion Act was promulgated. An Act is a law passed by the National Assembly and signed by the President. The Act sought to reserve certain aspect of economic activities for Nigerians. This led to nationalization of certain businesses which were hitherto owned by aliens. This nationalization process gave Nigerians opportunity to buy into these enterprises. This led to change in the legal status of many of these businesses as new owners emerged with diverse membership who would want to come up with new companies.

3.2 DEVELOPMENT OF COMPANY LAW IN NIGERIA

In the previous sub-topic, we looked at the evolution of commercial activities in Nigeria. We learnt that the preoccupation of the indigenous communities were principally agriculture, hunting and trading by barter. We studied how increased business activities led to a process whereby formal and more forms of organized commercial activities/businesses began to take shape. In this section, we will study how companies began to acquire legal status leading to the development of company law in Nigeria. From the studies above you must have noticed that company law is alien to Nigeria. It was not originally part of Nigerian customary law or the indigenous legal system. Company law in Nigeria can be considered as part of the received English law. Two phases have been identified as periods of development of company law in Nigeria. These periods are the period before 1912 and the period from 1921 to date.

I) PERIOD BEFORE 1912

The year 1876, marked the beginning of legal regulation of legal issues including the regulation of company activities in the territory known today as Nigeria. Prior to this time, there were no local laws governing the operation of companies in Nigeria and the companies operating in Nigeria which were, in any case all foreign, carried their foreign status with them. They were corporations and enjoyed those rights and privileges of their status as were available here.

In 1876, Lagos was ceded to the British Crown and in 1876, the Supreme Court Ordinance was promulgated for the Lagos colony. The ordinance provided for the establishment of legal system and the reception of some English laws into the system. Section 14 of the then Ordinance provided as follows:

> ``the common law, the doctrines of equity, and the statutes of general application which were in force in England on the 24th day of July, 1874, shall be in force within the jurisdiction of the court.''

Thereafter, the Supreme Court Proclamation 1900 which covered Southern Nigeria and the Supreme Court Proclamation 1902 which covered Northern Nigeria were introduced to create a Supreme Court for each of the protectorates. Each of the Proclamations contained a provision making applicable, ``the common law, the doctrines of equity and the statues of general application which were in force in England on the 1st January 1900 … '' applicable in the protectorates.

The two protectorates were amalgamated in 1914 and a Proclamation was then promulgated to cover the whole country and a Supreme Court was established for the whole country. Section 14 of the ordinance provided that:

> ``subject to the terms of this or any other ordinance, the common law, the doctrines of equity, and the statutes of general application in England on the 1st day of January, 1900 shall be in force within the jurisdiction of the court.''

And so, with particular reference to company law, the English common law and the doctrines of equity in so far as they applied to company law in England were made applicable in Nigeria and have since formed part of Nigerian company law subject to any later relevant local statutes.

It is to be noted that the statutes of general application, which regulated company law in England then was the Companies Act 1862 which now became part of the received English Law in 1900.
Since 1900, four principal Companies' statutes were brought into force. These were the Companies' Ordinance 1912, the Companies' Ordinance 1922, the Companies Act 1968 and the Companies and Allied Matters Act, 1900 now revised and known as Companies and Allied Matters Act 2004. We shall deal with the four principal Companies statutes brought into force since 1912.

THE COMPANIES ORDINANCE 1912

This was the first companies' statute in Nigeria. It was first applied to the colony of Lagos and later, in 1917, to the rest of the country. The Companies Ordinance 1912 provided for the first time in Nigeria, a procedure for incorporating a company by registration. The objects and reasons for the Ordinance were stated as follows:

> ``to provide for the formation of limited companies within the colony and protectorate. It is hoped thereby to foster the principles of cooperative trading and effort in the country.''

THE COMPANIES ORDINANCE 1922

After the end of World War in 1918, another Companies ordinance came into force by 1922. This ordinance was first applied to the colony of Lagos and later extended to the rest of the country. In 1963, the 1922 ordinance was designated Companies Act and it continued to regulate companies until its repeal in 1968 by the Companies Act 1968.

COMPANIES ACT 1968

The Companies Decree No: 51 of 1968 was promulgated during the Military regime. It was re-designated in 1980 as the Companies Act. Before the promulgation of the Act, there had been an urgent need for a modern companies' legislation because the Companies Act, 1922 had become, for the most part, inadequate to cope with growth of the economic activities in a developing country like Nigeria.

THE COMPANIES AND ALLIED MATTERS ACT, 2004

This Act has made some revolutionary and landmark provisions not only for companies, but also for the registration of business names and for the incorporation of trustees. This was done in order to take care of emerging global trend in the conduct of business transactions. The Act is divided into four parts, namely, Part A deals with registration of companies, Part B deals with the registration of Business Names, Part C deals the registration of Incorporated Trustees and Part D- Citation and commencement. With reference to companies, the declared objective and the Nigerian Law Reform Commission was to evolve a comprehensive body of legal principles and rules governing companies and suitable for the circumstances of the country.

In pursuance of this objective, a broad approach was adopted. Not only the statutory provisions but also the common law principles and the doctrines of equity applicable to company law in Nigeria were examined and, wherever desirable, enacted, and often with necessary amendments. As indicated above, the Act is a product of careful consideration and extensive consultation. It represents the general views and consensus of users of company law in Nigeria. The following major innovations of the Act may be noted.

(a) Comprehensiveness of the Act: first by the enactment of some relevant principles of common law and doctrines of equity; and secondly, by incorporation in the substantive enactment many of the common and general provisions of the articles in Table A of the Companies Act. 1968
(b) More logical arrangement of the subject matter of the Act.
(c) Establishment of a Corporate Affairs Commission to administer the Companies and Allied Matter Act.
(d) Encouraging greater seriousness and commitment in the formation and registration of companies by requiring a minimum authorized share capital and minimum subscription.
(e) Prohibition of non-voting shares and of weighted votes.
(f) Abolition of the common law rules on pre-incorporation contracts and the provision for ratification and adoption of such contracts.

(g) Provision for greater and more effective participation in and control of, the affairs of the companies through improved provision in respect of meeting.
(h) Expanded provisions for relief against illegal and oppressive acts including provision for derivative action relief against unfairly prejudicial conduct
(i) Provisions for greater accountability by directors.
(j) Provision for the appointment, qualification, duties and tenure of office of secretaries of public companies.
(k) Improvement in the forms and contents of financial statement, classification of companies into small, and others for the purpose of greater financial disclosure, incorporation of Accounting Standards and provision for greater and more relevant disclosure in the Directors' Report.
(l) More comprehensive provisions in respect of receivership
(m) Provisions for the incorporation, authorization and control of unit trust schemes.
(n) Provisions dealing with insider trading.
(o) Provisions regulating mergers and take-over subject to the Securities and Exchange Commission Act.

Another innovation introduced by the Act is the Administration of the Act itself: The administration of the Act is divided between the Corporate Affairs Commission which administers the whole of the Act except part XVII.. Part XVII which is administered by Securities and Exchange Commission makes provisions in respect of Public Offer and sale of securities, Unit Trusts, Reconstruction, Mergers and Take-overs of companies, and insider trading.

SELF ASSESMENT EXERCISE

Now review the major innovations in the Companies and Allied Matters Act 2004

4.0 CONCLUSION

The history of the development or evolution of company law in Nigeria is a very interesting and compelling study. Before the advent of cross border trade in the territory now known as Nigeria, trading was done predominantly by barter. However with the advent of the Arab traders in the north and Portuguese and British traders in the South, trade began to expand astronomically. However, there was no regulatory mechanism to guide business transactions in any form. There then arose the need to protect the interests of the aliens whose method of trading was much more advanced and sophisticated. As the political development of Nigeria was going with the creation of colonies and protectorates so also ordinances were being introduced to regulate and formalize the formation of

companies**.** Altogether, the Ordinances that were introduced included the Companies Ordinances of 1912, 1922, Companies Act of 1968 and the current Companies and Allied Matters Act 2004. Note that the Companies Ordinances of 1912 and 1922 introduced the reception of English law into the Nigeria legal system. Above all, the companies and Allied matters Act 2004 brought some revolutionary provisions which have come to bear much on the development of formation and management of companies in Nigeria.

5.0 SUMMARY

Under this unit we have studied the history of the development of company law in Nigeria. We have studied how, before the advent of foreign traders, trade was conducted purely according to traditional norms of trade by barter. However cross border trading both in the southern Nigeria and northern Nigeria changed as trading became more complex. The involvement of Portuguese and British traders heightened the need to give business transactions a global view. Consequently, formation of companies needed to be regulated.

The company Ordinance of 1912 was the first company statute which applied to the Lagos Colony. The Companies Ordinance 1912 provided for the first time in Nigeria, a procedure for incorporating a company by registration.

The second Company Ordinance was in 1922. This ordinance also first applied to Lagos Colony but eventually it was extended to the rest of the company. This ordinance was designated company act in 1968.

The 1968 Company Act was promulgated to accommodate the expanding businesses in Nigeria.

The 1968 Company Act for the most part, also became inadequate to cope with growth of the economic activities in a developing country like Nigeria. This led to the Companies and Allied matters Act 2004 which brought revolutionary trend in the operations of all manner of businesses in Nigeria.

The Act is divided into four parts, namely, Part A deals with registration of companies, Part B deals with the registration of Business Names, Part C deals the registration of Incorporated Trustees and Part D- Citation and commencement

As indicated above, the Act is a product of careful consideration and extensive consultation. It represents the general views and consensus of users of company law in Nigeria

6.0 TUTOR-MARKED ASSIGNMENT

i) Which of the Ordinances made provisions for the registration of Companies for the first time in Nigeria?

ii) How many parts is the Companies and Allied Matters Act 2004 divided into.

iii) Name them.

.

7.0 REFERENCES/FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London

Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

The Nigerian Law School Course HandBook on Company Law & Practice, 2005/2006.

UNIT 2 THE ROLE OF CORPORATE AFFAIRS COMMISSION

1.0 Introduction
2.0 Objectives
3.0 Main content
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/ Further Readings

1.0 INTRODUCTION

In the last unit, we traced the historical development of company law and the regulation of companies through the enactment of company ordinances which governed business environment in Nigeria up to the period of the enactment of the Companies and Allied Matters Act 2004. You will also recall that the Companies and Allied Maters Act 2004 set up the Corporate Affairs Commission. As we shall learn, the Corporate Affairs Commission is the legal body which has the regulatory powers to regulate the operation of companies in Nigeria. In this unit we will look at the functions of the Commission.

2.0 OBJECTIVES.

The objectives of this unit are

- To explain the legal nature of the Corporate Affairs Commission.
- The role the Commission plays in regulating the legal environment within which the companies operate.
- To make you acquainted with the functions of the Commission.

3.0 MAIN CONTENT

As stated earlier the Companies and Allied Matters Act 2004 provides for the establishment of the Commission. According to the Act, the Corporate Affairs Commission is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and capable of acquiring, holding or disposing of any movable property for the purpose of carrying out its functions.

Body Corporate.

The Commission is authorized by law to act as one individual and is regarded as having a separate existence from the people who manage its affairs. As body Corporate, the Commission also has:

Perpetual Succession.

Unlike human beings who die and cease to exist at a point in time, the Commission live in perpetuity except terminated or repealed by another law. The Commission also has

The power to hold land

Land holding or legal possession or ownership of land is regulated by the Land Use Act. For any organization to be legally entitled to land, government authorities must be satisfied that the organization is duly registered with the appropriate government agencies to ensure that government is not dealing with an illegal body.

Have Common Seal.

The seal here signifies a stamp of authority. It is used as a means of authentication or attestation. It is used as a symbol to confirm a bargain.

Sue and be sued in its corporate name.

The Commission has the status of a legal personality or entity which can sue or be sued in its corporate name.

The functions of the Commission include:

(a) Administration of the Act including the regulation and supervision of the formation, incorporation, regulation, management and winding up of companies.
(b) Establishment and maintenance of Companies Registry and offices in all the states of the Federation.
(c) Conduct of investigation into the affairs of any company where the interest of the share holders and the public so demand, and
(d) Administration of the Business Names and Incorporated Trustees as provided for in Parts B and C of the Act.

The Chief Executive of the Commission is the Registrar-General who must be a legal practitioner so qualified for not less than 10 years and who has not less than 8 years experience in Company Law practice or administration. He is also the Registrar of Business Names.

It is important for you to know that only Legal practitioners, Chartered Accountants and Chartered Secretaries who are Professionals are authorized and accredited to transact business with the Commission in respect of Part A of the Act. In respect of registration of Business Names and Incorporated Trustees in part B and C, any other person including you and other non-professionals can be accredited to transact business with the Commission. Transacting business here means registering and incorporating companies on behalf of other people, preparing and filling of annual returns, conducting searches etc.

SELF ASSESSMENT EXERCISE

What does it mean when it is said that the Corporate Affairs Commission is a corporate body.

4.0 CONCLUSION

The Corporate Affairs Commission is the body charged with the responsibility of administering the Companies and Allied Matters Act 2004. It is a body Corporate with perpetual succession capable of suing and being sued. The group of professionals accredited or authorized to transact business with the Corporate Affairs commission include Legal Practitioners, Chartered Accountants and Chartered Secretaries.

5.0 SUMMARY

In this Unit, we learnt about the Corporate Affairs Commission as the body charged with the responsibility of

i) Regulating and supervising the formation, incorporation, regulation, management and winding up of companies.
ii) Establishment and maintenance of Companies Registry through out the federation
iii) Conduct investigation into the affairs of any company
iv) The Commission also regulates the affairs of Business names and Incorporated Trustees.
v) Those accredited to transact business with the Commission are Legal Practitioners, Chartered Accountants and Chartered Secretaries.

6.0 Tutor-Marked Assignment.

List four functions of the Corporate Affairs Commission

7.0 References/ Further Readings

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

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Companies and Allied Matters Act, 2004

UNIT 3 TYPES OF COMPANIES

1.0 Introduction
2.0 Objectives
3.0 Main content
3.1 Sole proprietorship
3.2 Partnership
3.3 Cooperative Societies
3.4 Limited Liability company

4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/ Further Readings

1.0 INTRODUCTION

Recall that in Unit 1, we learnt about the development of company law in Nigeria. In this unit we will move further to consider the types or different kind of companies or business organizations which operate in Nigeria. You will again recall that the Act which regulates business activities in Nigeria is divided into four parts, namely, Part A which deals with registration of Companies, Part B which deals with registration of Business Names, part C which deals with Incorporated Trustees and part D which deals with Citation and Commencement.
Under part A which regulates the activities of Companies there are various types of businesses. It is these types of businesses that we are going to consider below.

2.0 OBJECTIVES

The objectives of this unit are

- To equip you with the knowledge of various types of companies or business organizations that operate in Nigeria
- To teach you the nature of each type of business
- To enable you to know how each operates and
- To assist you in making a rational decision when proffering an advice or deciding to go into business.

3.0 MAIN CONTENT

3.1 Sole proprietorship

This is the oldest and commonest unit of business undertaking in the country if not worldwide.

It is widely known as a one man business. While this type of business seems to be attractive and satisfying an important social and economic need, it has no possibility of succession and continuity as the sole owner can die resulting in the discontinuation of the business. Usually many of such sole proprietors register their businesses under part B of the Companies and Allied Matters Act. Under this part, there is no liability of the individual arising from his business. The Act only permits the individual to trade with that name and no more. Financial institutions are sometimes unwilling to give credit facilities to such individuals because their liability is limitless and lack of security.

3.2 Partnership

A partnership is the relation which subsists between two or more persons carrying on business in common with a view of profits. In Uredi V Dada (1998) NWLR part 69 at page 237 the court held that the essential element common to all partnerships is the pooling together of resources (capital or labour or skill) for the purpose of business for the common benefit of the partners which by necessary implication involves the making of profits.

Sometimes partnership is classified into General Partnership and Limited Partnership.
General partners have the right to take part in the business. The liability of the general partners for the debts of the firm is unlimited. The general partner has power to bind the firm in respect of its management. The death, bankruptcy or mental disorder of a general partner may lead to the dissolution of the partnership.

Limited Partnership shall not consist of more than twenty persons and must consist of one or more persons called general partners who shall be liable for all debts and obligations of the firm.

It may interest you to know that the law regulating the relation between partners is enacted by each state.
Sometimes an individual or a partnership carries on business under a business name. Such a name may be required to be registered under part B of the Companies and Allied Matters Act 2004.

3.3 Cooperative Societies.

There are statutory provisions for the formation and registration of co-operative societies. These societies are designed to assist the individual farmers, traders and producers of various goods to form co-operatives for producing or marketing their goods.

The society has the advantage that the registration makes it a corporation with perpetual succession and with power to hold property and enter into contracts.

3.4 Limited Liability Company

This registered company is called Limited Liability Company. Here the liability of the members is "limited by shares" i.e. having the liability of its members limited by the memorandum to such amount as the members may respectively be liable thereby undertaking to contribute to the assets of the company in the event of its being wound up. The maximum number membership of a limited liability company is 50 excluding employees.

By far this is the most important unit of business organization for modern economic activities once it is registered. Because of its legal personality, perpetual succession, the opportunity for investment and for raising capital, and the strict legal control and protection of members and creditors, the registered company has played and will continue to play an ever-increasing role in the development of the national economy. The Companies and Allied Matters Act requires that the word "Limited or Ltd" must appear at the end of the name of the company.

SELF ASSESSMENT EXERCISE

Read again the general partnership and the limited partnership and distinguish between the two

4.0 CONCLUSION

In this unit we learnt the types of companies or organizations that can operate in Nigeria under the law. Each of this companies or organizations has its mode of operations; its advantages and disadvantages and the procedure for registration.

5.0 SUMMARY

In this Unit we learnt about different types of business recognized by law in Nigeria.
We learnt that there are several types of business activities which include

* Sole proprietorship
* Partnership
* Corporative Societies
* Limited Liability Companies
* Public Liability Companies

* Companies Limited by Guarantee

6.0 TUTOR-MARKED ASSIGNMENT

Distinguish between sole proprietorship and a Limited Liability Company

7.0 REFERENCES/ FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

The Nigerian Law School Course HandBook on Company Law & Practice, 2005/2006.

Companies and Allied Matters Act, 2004

MODULE 2 REGISTRATION OF A LIMITED LIABILITY COMPANY.

Unit 4 Conditions precedent to Registration.
Unit 5 Pre-Incorporation Contracts.
Unit 6 Promoters: their duties and liabilities
Unit 7 Effect of Registration.

UNIT 4 CONDITIONS PRECEDENT TO REGISTRATION.

1.0 Introduction
2.0 Objectives
3.0 Main content
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 Reference/Further Readings

1.0 INTRODUCTION

In this unit, you will study the limited liability company as a special consideration. The reason for picking the limited liability company as a unit of study is because of its unique nature. Furthermore it is the type of business most embarked upon in the country. This unit introduces you to the legal requirements for consideration in the formation of a limited liability company. The law requires that certain conditions be met or present before the Commission may consider issuing a certificate of registration to any company. These conditions are statutory provided and cannot be breached or ignored.

2.0 OBJECTIVES

The objectives of this unit are:

- To acquaint you with the requirements of the registration of a limited liability company.
- To instruct you that these requirements must be met before registration.
- Highlight the advantages of incorporating a limited liability company.

3.0 MAIN CONTENT

Limited Liability Company (LTD) remains the most attractive form or tool with which businesses are carried out in Nigeria. Three quarters of the Companies and Allied Matters Act 2004 dwells on the operations of the limited liability company.

Consequently, you must learn to be acquainted with certain provisions of the law. Therefore, understand here that to know what the law is saying you cannot avoid referring to the appropriate sections of the law. Therefore section 18 of CAMA 2004 requires that at least two or more persons may form and incorporate a company by complying with requirements of the Act in respect of registration of such company. Any two or more persons may form and incorporate a limited liability company upon fulfilling the statutory requirements for the particular type of company.

Responsibility for formation of companies is vested exclusively in legal practitioners.
Formation of a company will involve the following schedule:

(a) A search will be conducted at corporate Affairs Commission to verify whether the proposed name of the company is available.
(b) If the name is available, then further instructions are taken from the promoters.
(c) Then preparing the incorporation documents, and
(d) filling the incorporation documents with Corporate Affairs Commission and
(e) obtaining the certificate of incorporation.

Take note that certain categories of persons are not allowed to participate on the formation of a company.
Accordingly an individual shall not join in the formation of a company if-

(a) He is less than 18 years of age; or
(b) He is of unsound mind and has been so found by a court in Nigeria or elsewhere; or
(c) He is an undischarged bankrupt; or
(d) He is disqualified under section 254 of CAMA from being a director of a company.

However, if a person is 18 years of age but there are two others who are qualified and who have signed the Memorandum of Association, such 18 year person can be qualified to participate in the formation of a company.
Furthermore, there are some documents that must be submitted to the Corporate Affairs Commission before a company can be registered. Some of the most important documents that shall be delivered to the Corporate Affairs Commission include:

(i) the Memorandum of Association and Articles of Association.
(ii) the list and particulars of the first directors.
(iii) the authorized share capital and any other document as required by the Commission, once the documents submitted satisfy the Commission, then the Commission can go ahead and register the company.

SELF ASSESSMENT EXERCISE

There are many forms or types of businesses. Which one is most preferred?

4.0 CONCLUSION

There are certain requirements which must be met before a limited liability company is registered. First the subscribers must not be less than two. Taking instructions from the promoters is also a prerequisite step for the formation of the company preparing the incorporation documents; and filling the incorporation documents with Corporate Affairs Commission and obtaining the certificate of incorporation.

5.0 SUMMARY

At the preliminary stage of trying to form a company it must be noted that two persons can subscribe to the Memorandum and Articles of Association.
However, certain persons are precluded from participation in the formation of a company: They are:

- Any person below the age of 18 years
- Any person who is of unsound mind and has been so found by a court of law.
- An undischarged bankrupt.
- Any person who has been prevented from being a director of a company.

6.0 TUTOR-MARKED ASSIGNMENT

Name 3 categories of persons who cannot participate in the formation of a limited liability company.

7.0 REFERENCES/FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

The Nigerian Law School Course HandBook on Company Law & Practice, 2005/2006.

Companies and Allied Matters Act, 2004

UNIT 5 PRE- INCORPORATION CONTRACTS

1.0 Introduction
2.0 Objectives
3.0 Main content
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 Reference/Further Readings

1.0 INTRODUCTION

In the previous unit, you learnt about the registration of a company and the procedure involved. Sometimes before a company is registered, and in anticipation of registration, there is need for a company to enter into some contracts. The contracts entered into between the anticipated company and other parties are known as pre-incorporation contracts. This unit will therefore introduce you to these pre-incorporation contracts and the legal implications of such contracts. Since law basically relates to facts, we will in limited circumstances refer to some facts in a real life case and see how the law applies to those facts. In other words we will start making use of case law. Case law is the law as decided by the courts in the course of judicial pronouncements when cases are brought before it for adjudication.

2.0 OBJECTIVES

The objectives of this unit are:

- To explain the nature of pre-incorporation contracts
- To explain who are promoters
- To introduce you to case law.
- To understand the legal effect of pre-incorporation contracts

3.0 MAIN CONTENT: PRE- INCORPORATION CONTRACT

Pre-incorporation contract refers to various types of agreements which a proposed company enters into before its eventual registration. At this point it will be necessary to mention promoters. A Promoter is anyone who undertakes to take part in forming a company with reference to a given project. He takes the necessary steps to accomplish that purpose or undertakes raising capital for the formation of the company. However, Promoters will be dealt with in more details in unit 6. The law is that where a contract is entered into on behalf of a company not yet formed, the company will not be bound by the contract. The company

cannot even sue on the contract. See the case of Caligara Vs Sartori Company Limited (1963) 3 All N. L. R. page 543. The short point for determination in this case was whether a contract entered into by a promoter of a company before its incorporation is enforceable. The facts are as follows: sometimes in December 1956, one G. Sartori (a promoter of the defendant) approached the plaintiff for a loan of money for the defendant company. At the time, unknown to the plaintiff, the defendant was not in existence. The plaintiff gave a cheque for 800 pounds in the name of the company to Sartori who cashed it on 9th January 1957. The company was eventually incorporated on 24th January 1957. The court held that at the time the cheque was cashed, the defendant company was not in existence and it could not be said to have taken benefit of the contract. The plaintiff's case failed.
However, if in the course of formation of the contract a promoter agreed in writing to be bound by a contact entered into before the company was formed, then such a promoter will be bound. The argument here is that a company has no legal existence before its incorporation. Therefore it is not capable of entering into any valid contract itself. However, a company can be bound by a pre-incorporation contract if after its incorporation it ratifies any contract entered into on its behalf prior to incorporation. The company can ratify a contract after its formation as if it were in existence when the contract was entered into; the company then becomes bound and entitled to the benefits thereof. Before such ratification of the contract, if there is no express agreement to the contrary, the promoter will personally be liable and can benefit from the contract.

SELF ASSESSMENT EXERCISE

Considering the facts in Caligara's case, what is the legal principle in the court's decision?

4.0 CONCLUSION

Pre-incorporation contracts are an agreement entered into before a company is formed. The law is that where a contract is entered into on behalf of a company not yet formed, the company will not be bound by the contract. A promoter can seek to bind a company in certain agreements before the company is formed. The law is clear that a company which was not in existence before incorporation is not capable of entering into any contract.

5.0 SUMMARY

Before a company is formed, it is not bound by any agreement purportedly made on its behalf by the promoters. In the case of Caligara Vs Sartori Company Limited (1963) 3 All N. L. R page 534, Sartori, a promoter obtained a loan 800 pounds in the name of the company from Caligara. The court held that the company is not bound to pay back the loan because at the time the loan was obtained in its name, the company had not yet been incorporated.
However, if in the course of formation of the contract a promoter agreed in writing to be bound by a contract before the company was formed, then such a promoter will be bound as a person.

6.0 TUTOR-MARKED ASSIGNMENT

Considering the facts in Caligara's case, what is the legal principle in the court's decision?

7.0 REFERENCE/FURTHER

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

Caligara Vs Saritori Company Limited (1963) 3 All N. L. R. page 534.

UNIT 6 PROMOTERS: THEIR DUITES AND LIABILITIES.

1.0 Introduction
2.0 Objectives
3.0 Main content
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 Reference/Further Readings

1.0 INTRODUCTION

Before the formation of a contract, some people play key roles in relation to the proposed company. As we had earlier alluded to in the preceding unit, this unit introduces you to who a promoter is; and his role in the formation of a company. In this unit, we will also continue with our case law scenario. Let us emphasise again that the essence of case law is to show how the courts, the arbiters, interpret the law and resolve some disputes between third parties based on the facts before the courts. So you are welcome to the world of hard facts, the law and the courts. Therefore in this unit, we consider the promoter, his duties and liabilities

2.0 OBJECTIVES

The objectives of this unit

- To make you understand who a promoters is.
- To teach you their duties and liabilities
- To help you make decisions whether you can accept to be one or not.

3.0 MAIN CONTENT

Anyone who undertakes to take part in forming a company with reference to a given project and to set it going and takes the necessary steps to accomplish that purpose or undertakes raising capital for it, is deemed to be a promoter. However, lawyers, accountants and secretaries who act in a professional capacity to assist in the formation of the company are not deemed to be promoters. They are only acting on behalf of their client who wants to form the company.

As stated in the earlier unit, an act of a promoter cannot bind an unincorporated company.

Thus in the case of ORHOBO V. TARKA (1976) 1 F.N.L.R. 208 the 1st defendant contracted on behalf of the 2nd defendant a company, which was unincorporated at the time, for an assignment of the plaintiff's leasehold to the 2nd defendant. The 1st defendant had falsely represented to the plaintiff that the 2nd defendant company was already registered and that he was a director and shareholder of it. Acting on this misrepresentation, the plaintiff executed an assignment of the lease to the 2nd

defendant company. When the plaintiff discovered that the 2nd defendant company was only incorporated after the assignment was made, he claimed a declaration that the assignment of the lease was void for misrepresentation. The defendants counter-claimed for specific performance of the agreement to assign on the ground of part performance.

The court held that the crucial point to decide in this case was, what is the effect of the agreement to assign entered into by the plaintiff and the 1st defendant before the incorporation of the 2nd defendant company.
The law is that before its incorporation a company has no capacity to contract, consequently, in common law, nobody can contract for it as agent because an act which cannot be done by the principal himself cannot be done by him through an agent, nor can a pre-incorporation contract be ratified by the company after its incorporation. If a pre-incorporation contract is purported to be made by a company which does not exist the contract is a nullity, and neither the company when formed, nor the promoter whose signature is added can sue or be sued on the contract. To make a contract valid there must be parties existing at the time who are capable of contracting. Both upon principle and upon authority, a non-existing company cannot be held liable under a contract entered into before its incorporation and it cannot take any benefit under it.

Having established the above position, the duties and liabilities of a promoter are:

i) The promoter stands in a fiduciary relationship to the company and must observe utmost good faith in any transaction entered on behalf of the company.
ii) The promoter must account for any profit made from user of information on property acquired in the course of his duty to the company.
iii) The transaction between the promoter and the company can be rescinded by the company-except where after full disclosure by the promoter, such transaction is ratified on behalf of the company by either an independent board of directors (i.e, independent of the promoter) or a general meeting at which such promoter cannot vote.
iv) There is no limitation period for a company to sue a promoter under this section but the court may give relief from liability to he promoter if it deems it equitable to do so.
v) He is not entitled to remuneration either for services rendered as a promoter or even for promotion expenses but the Articles of Association allows Directors to pay.

SELF ASSESSMENT EXERCISE

Who is a promoter?

4.0 CONCLUSION

A promoter is anyone who undertakes to take part in forming a company with reference to a given project and to set it going and takes the necessary steps to accomplish that purpose or undertakes raising capital for it. Thus before incorporation, a person or group of person may decide to raise capital or perform some duties in furtherance of the incorporation of a company. It must however be noted that a contractual obligation entered into on behalf of the company before its incorporation is not binding on the company but the promoter can agree to be personally bound on the contract. A clarification is also made that lawyers, accountants and secretaries who act in a professional capacity to assist in the formation of the company is not deemed to be a promoter.

5.0 SUMMARY

In this unit we have learnt that a promoter is anyone who undertakes to take part in forming a company with reference to a given project and to set it going and takes the necessary steps to accomplish that purpose or undertakes raising capital for it, is deemed to be a promoter. A promoter has his duties and liabilities which include:

iv) The promoter stands in a fiduciary relationship to the company and must observe utmost good faith in any transaction entered on behalf of the company.

v) The promoter must account for any profit made from use of information on property acquired in the course of his duty to the company.

vi) The transaction between the promoter and the company can be rescinded by the company except where after full disclosure by the promoter, such transaction is ratified on behalf of the company by either an independent board of directors (i.e. independent of the promoter) or a general meeting at which such promoter cannot vote.

vii) There is no limitation period for a company to sue promoter under this section but the court may give relief from liability to the promoter if it deems it equitable to do so.

viii) He is not entitled to remuneration either for services rendered as promoter or even for promotion expenses but the Articles of Association allows Directors to pay.

6.0 TUTOR-MARKED ASSIGNMENT

Enumerate at least three duties of promoters

7.0 Reference/ Further Readings

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

The Nigerian Law School Course HandBook on Company Law & Practice, 2005/2006.

Companies and Allied Matters Act, 2004

ORHOBO v. TARKA (1976) 1 F. N. L. R. 2008 High Court of Lagos State.

UNIT 7 EFFECT OF REGISTRATION

1.0 Introduction
2.0 Objectives
3.0 Main content
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 Reference/Further Readings

1.0 INTRODUCTION

This unit introduces you to the effect of issuance of the Certificate of Incorporation to the company. The law is that when all the processes of formation of a company have been completed and the Registrar-General is satisfied that all pre-registration conditions are met, certificate duly signed under his hand is issued to the company. The issuance of a Certificate of incorporation signifies that the company has been empowered to carry out business according to the its Memorandum and Articles of Association.

2.0 OBJECTIVES

The objectives of this unit are

- To teach you the legal effect of issuing the Certificate of Incorporation to the company which has met all the conditions prerequisite for registration.
- For you to know the full consequences of registration both upon the company, the Commission and third parties.

3.0 MAIN CONTENT

Section 36(6) and section 37 of CAMA provides that the issuance by the Commission of a certificate of incorporation shall be ``prima facie'' evidence of the regularity of the incorporation and all matters precedent and incidental thereto. As from the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land and having perpetual succession and a common seal. The issue of the certificate of incorporation by the Registrar-General is an act authorized by law establishing the Commission. Thus from the date mentioned in the certificate as the date of incorporation, the company comes into existence as a legal person- a body corporate. This is a status it continues to enjoy until the company is dissolved.

SELF ASSESSMENT EXERCISE

As a Promoter of XYZ Limited Mr. Heavens was just issued with certificate of Incorporation; what does that mean to him and the company?

4.0 CONCLUSION

Thus from the date mentioned in the certificate as the date of incorporation, the company comes into existence as a legal person- a body corporate. The issuance by the commission of a certificate of incorporation shall be ``prima facie'' evidence of the regularity of the incorporation and of all matters precedent and incident thereto.

5.0 SUMMARY

In this unit, you have learnt that once a company has compiled with all necessary conditions pursuant to registration, it is issued with a certificate of registration under the hand of Registrar-General of the commission. It is very important to note that from the date mentioned in the certificate as the date of incorporation, the company comes into existence as a legal person- a body corporate. The company now has the power to hold land, have perpetual succession and common seal.

6.0 TUTOR-MARKED ASSIGNMENT

What is the significance of issuing a certificate of incorporation to a company?

7.0 REFERENCE/FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

MODULE 3 THE COMPANY

Unit 8 Corporate Personality
Unit 9 The Constitution of a Company
Unit 10 Membership of the Company
Unit 11 Share Capital and Shares
Unit 12 Meetings of the Company
Unit 13 Directors and Secretaries

UNIT 8 CORPORATE PERSONALITY

1.0 Introduction
2.0 Objectives
3.0 Main content
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 Reference/Further Readings

1.0 INTRODUCTION

In the previous unit you learnt that once a certificate of incorporation is issued to a company, the company becomes a body corporate. In other words it assumes a legal personality. This unit therefore introduces you to Corporate Personality. In this unit, you will learn that a registered company has a distinct legal personality from those who comprise its directors and members. Here you will understand that a company is different from its members. One important lesson to learn here is that any contract entered into by the company cannot be binding upon any of its members. In this unit, we will also rely on some court cases which have made pronouncement in this regard.

3.0 OBJECTIVES

The objectives of this unit are:

- To acquaint you with the legal distinction between corporate personality and human individual personality.
- To make you understand how the act of one does not legally affect the other.

3.0 MAIN CONTENT

Corporate Personality

You have learnt in the previous units that a company assumes a status of its own once it is registered. It will also interest you to know that a company is an entity distinct from its shareholders. That distinction confers on the company a personality known as ``Corporate Personality.'' The principle of corporate personality was eloquently expounded in the English case of Salomon v. Salomon & Co Ltd (1897 AC22). In the case of Salomon, the facts were that, Salomon was a leather merchant and wholesale boot manufacturer. When he became insolvent, he converted his business into a company. Of the shares in the capital, Salomon took 20, 000 and his wife and his five children took one each. Later the company was in financial difficulties; the holder of the debentures (a debenture is an acknowledgement of a debt) appointed a receiver and the company went into liquidation. The Courts were asked to decide whether the debentures originally to Salomon were valid and entitled to priority over the unsecured creditors who denied them priority on the ground that the company was a one-man company and a sham. The court was of the opinion that Salomon & Co Ltd was a mere alias or agent for Salomon, and therefore that Salomon was bound to pay the unsecured creditors of the company out of his own pocket notwithstanding that his shares had all been fully paid. The decision in this case represents a judicial stamp of an enabling power, which through an administrative system causes legal personality to be conferred upon business associations. It has been said that corporate personality is a "cornerstone of company law'. Nigeria has also adapted the position in the Salomon's case. According to Aguda, J. (As he then was):

> "Legal personality relates basically to human beings but over years the English common law, faced with problems of property law and of commerce and business transactions, evolved a system of "corporate personality". Today it is well recognized that the state may grant legal personality to any group of persons and it may even refuse it to natural person".

In the Nigerian case of Dunlop Nigerian Industries Ltd Vs Forward Nigerian Enterprises Ltd & Fafore (1976) (1) A.L.R. the court held that it does not matter if the company's shares are owned substantially by one of the share holders with only a very small fraction held by one or few of others. The Act by which a limited liability company is incorporated is not concerned with quantum of interest of its members. Some of them may even hold a nominal or minute interest that may qualify them to be described as dummies. Nevertheless such a company maintains its independence as a person distinct from any of its members irrespective of the number of shares. The doctrine that a company is a legal entity, existing separate and distinct from its shareholders is a legal theory, established upon an expedient fiction. The fiction has been introduced for the convenience of the company in making contracts, in holding property, in suing and being sued, in managements of its affairs, and to preserve the limited liability of its shareholders.

It is chiefly for the purpose of clothing associates of natural persons with the characteristics of a distinct entity at law, that corporations were invented and are in use.
It is therefore settled that a company is distinct from its members.

SELF ASSESSMENT EXERCISE

How true is it that an incorporated company is distinct from its members?

4.0 CONCLUSION

An incorporated company has a distinct personality from its members. This personality is known in law as corporate personality. The case of Salomon Vs Salomon clearly illustrates the point. This was an English case where Salomon wanted to avoid liability of the debts he had earlier obtained before converting his business into a limited liability company. The courts held that Salomon should be personally liable as the company is different from him and so cannot inherit his debts as the company has its debts to pay.

5.0 SUMMARY

In this unit you have learnt that corporate personality is the personality conferred by law on an incorporated company.
Once the company acquires that personality, it becomes different from its members or shareholders. Thus the can sue and be sued in its name. It can acquire land and can also live in perpetual succession until dissolved according to law.

6.0 TUTOR-MARKED ASSIGNMENT

Why is an incorporated company distinct from its members?

7.0 REFERENCES/ FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

UNIT 9 THE CONSTITUTION OF A COMPANY

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 Memorandum of Association
  3.2 Articles of Association
  3.3 Effect of registration of Memorandum and Articles of Association
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/ Further Reading

1.0 INTRODUCTION

This unit introduces you to how companies are governed. The idea is that the rule of law is paramount if order and ethics are to be maintained in any given community or society. Therefore the Companies and Allied Matters Act prescribes how every company registered by the Commission has to be governed. In other words, every company has its own constitution. This constitution is known as the Memorandum and Articles of Association. As earlier stated, the Memorandum and Articles of Association has to be in accordance with the prescribed requirements of the Commission. The Memorandum spells out the kind of business the company intends to carry out while the Articles spell out how the company will be run from time to time. In this unit, we will together be studying the Memorandum and Articles of Association.

2.0 OBJECTIVES

The objectives of this unit is

- To equip you with the contents of both Memorandum and Articles of Association as the tools with which a company is governed.
- To make you understand the importance of the Memorandum and Articles of Association.

3.0 MAIN CONTENT

3.1 MEMORANDUM OF ASSOCIATION.

It is obvious that the memorandum is a very important document in relation to the proposed company. Where a company is limited by shares, the memorandum has to comply with section 27 of CAMA which requires that the memorandum of the company shall state its objects in the clauses.

The first clause is:

a) The name clause.

This clause states the name of the company', with "limited' as the last word in the case of companies limited by shares and 'plc' in case public liability companies. The certificate of incorporation when given will then incorporate the company by that name.

b) Situation of the registered office.

This clause states in which part of Nigeria the registered office of the company is to be situate. The statement that the registered office of the company shall be situated in Nigeria is important for the purpose of tracing the company and service of court processes

c) The Object Clause

Every Memorandum of Association must state the objects of the proposed company. The nature of the business or businesses which the company is authorized to carry or, if the company is not formed for the purpose of carrying on business, the nature of the object or objects for which it is established. This statement has two main functions:

i) It restricts the powers or affirmatively determines the powers of the company.
ii) It restricts the powers of the company to those conferred.

It is important to note that once registered, the company has:
i) power to do whatever is necessary to do with a view to the attainment of the objects stated in its memorandum.
ii) power to do whatever fairly may be regarded as incidental to and consequential on the stated objects.
iii) power to do such other things as it is allowed to do by the Act or by any other statute.

d) The status of the company.

The memorandum also states whether the company is a private or public company, as the case may be;

e) The limited liability Clause

The memorandum is also explicit that the liability of its members is limited by shares or by guarantee or is unlimited, as the case may be. The provisions of the Act limiting the liability of the members are of utmost importance. They concern a fundamental right of the member who normally is only willing to become a member because he is aware that this right cannot be abrogated by the company or a majority of members. Accordingly no alteration in the memorandum or the Articles can on principle compel a member to take shares than the number which he held at the date when the alteration was made or increase his liability to contribute money.

(1) If the company has a share capital-

a) the memorandum shall also state the amount of authorized share capital, not being less than =N=10,000 in the case of a private company and =N=500,000 in the case of a public company proposes to be registered, and the division thereof into shares of a fixed amount:

b) the subscribers of the memorandum shall take among them a total number of shares of a value of not less than 25 percent of the authorized share

c) each subscriber shall write opposite to his name the number of shares he takes.

d) A subscriber of the memorandum who holds the whole or any part the shares subscribed by him in trust for any other person shall disclose in the memorandum that fact and the name of the beneficiary.

(2) The memorandum of a company limited by guarantee shall also state that-

a) the income and property of the company shall be applied solely towards the promotion of its objects, and that no portion thereof shall be paid or transferred directly or indirectly to the members of the company except as permitted by or under the Act; and

b) each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, and of the costs of winding up, such amount as may be required

not exceeding a specified amount and the total of which shall not be less than =N=10,000.

(3) The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest to the signature.
(4) The memorandum shall be stamped as a deed.

3.2 ARTICLES OF ASSOCIATION

Articles of Association contain regulations for the management of the affairs of the company. Before the 2004 CAMA, it was the practice that companies could file the Articles separately. However, the 2004 Act has now made it mandatory that every company must file the Articles of Association. The Commission has also simplified the process of filling both the Memorandum and Articles of Association. Consequently the Commission requires that the form and content of the Articles of Association of a private company limited by shares be in the form of Table A in Schedule 1 of the Act which may be used with such additions, omissions or alterations as may be required in the circumstances.

The Articles must be expressed in separate paragraphs and numbered consecutively. They must be printed and signed by each of the subscribers of the Memorandum of Association and witnessed accordingly.

The subject matter of Articles include among others:

- Increase of capital
- Reduction of capital
- Transfer and transaction of shares
- Borrowing
- General meeting
- Directors
- Dividends
- Special provisions for winding up etc

3.3 EFFECT OF MEMORANDUM AND ARTICLES

Section 41 (1) provides that subject to the Act, the Memorandum and Articles when registered have the effect of a contract under seal between the company and its members and between the officers and members themselves whereby they agree to observe and perform the provisions of the memorandum and articles.

SELF ASSESSMENT EXERCISE

Name four clauses that are mandatorily required in the Memorandum of Association

4.0 CONCLUSION

As with all human beings in the society which have laws that govern them, so is the company which also has corporate personality. Thus the company is governed through its own constitution which is the memorandum and articles of association. The memorandum contains the objects clauses stating the name of the company, the registered address of the company, the business to be carried out by the company; that the company is limited liability company limited by shares, the share capital on the other hand, the Articles of association contain regulations for the internal management of the company.

5.0 SUMMARY

In this unit you learnt about the constitution of a registered company.
You learnt that a company must file for the registration of the memorandum and articles of association. The memorandum spells out

- The name of the company.
- The registered office of the company
- The object clause (what business the company shall be doing)
- That the company is a private company whose liability is limited
- 25% of the share capital taken by the subscribers.

The Articles provide regulations for the internal management of the company

- Increase of capital
- Reduction of capital
- Transfer and transaction of shares
- Borrowing
- General meeting
- Directors
- Dividends
- Special provisions for winding up etc.

6.0 TUTOR-MARKED ASSIGNMENT

(a) State the importance of the object clause in the memorandum of association
(b) Name 3 subject-matters of articles of association

7.0 REFERENCE/FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

UNIT 10 MEMBERSHIP OF THE COMPANY

1.0 Introduction
2.0 Objectives
3.0 Main content
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 Reference/Further Readings

1.0 INTRODUCTION

This unit introduces you to how membership of a company is constituted. In this unit you will learn about who qualifies to be a member of a company. Membership of a company is very critical to the existence and management of the company. In this unit you will also learn about the nature of membership, who may become a member, rights and liabilities of membership.

4.0 OBJECTIVES

The objectives of this unit are to teach you

- Who is qualified to become a member of a company?
- Types of membership.
- Rights of membership

3.0 MAIN CONTENT

3.1 NATURE OF THE MEMBERSHIP

Every company is composed of members, though in the contemplation of the law it is an entity distinct from its constituent members. In the case of a company limited by shares, a member of a company is a person who has constituent proprietary interest in the company and whose name is on the register of members. Thus, a shareholder of a company having a share capital is a member when his name is entered in the register, and a person who undertakes to make a contribution in the event of the winding up of a company limited by guarantee becomes a member of the company when his name is entered in the register of members.

CAMA provides that in the case of a company having a share capital, each member shall be a shareholder of the company, the term ``members'' and ``shareholder'' may be synonymous. However, the courts have distinguished

between members and shareholders. In Ponmile v. Sparks Electrics (Nig) Ltd (1986) 2 NWLR page 519. the court distinguished between a shareholder and a member of a company limited by shares and also observed that ``entry in the register of the company is another method of proof of being a shareholder, but it is not the only method nor can the absence of that method of proof invalidate other methods.'' In Oilfields, another case, it was also held that the share certificate is not the only means of establishing shareholding and that even oral evidence, if cogent, may suffice. This is not the case of membership as entry in the register is an indispensable condition. While a member of a company registered with shares must be a shareholder of a company, the converse is not necessarily true, for a shareholder will not necessarily become a member.

3.2 WHO MAY BECOME A MEMBER

As a general rule, any legal person may become a member of a company, but infants personal representatives of deceased persons, companies and aliens are subject to special rules.

3.2.1 Infant

Section 20 of the Act provides that a person under the age of 18 years shall not join in the formation of a company or be a subscriber to the memorandum of association unless there are at least two other subscribers not disqualified under the Act from joining in forming a company. Thus, before a person under 18 years can be a subscriber to the memorandum of association there must be at least two other duly qualified subscribers. If an infant becomes a member, he will not be counted in determining the legal minimum number of members.

Subject to these restrictions, any person under the age of 18 years not otherwise disqualified may subscribe to the memorandum or otherwise become a member. He is, however, subject to the general disability of an infant to contract under general law. Thus, his contract to take shares in a company is voidable at his instance anytime before he attains 18 years of age or within a reasonable time thereafter. If he so repudiates, he cannot recover the money paid for the shares unless there has been a total failure of the consideration for which the money was paid.

3.2.2 Married women

Pursuant to section 42 of the constitution which provides for freedom from discrimination, a woman has the same contractual rights and is liable to the same obligation as any one else as regards the holding of shares.

3.2.3 Personal Representatives

On the death of a shareholder, the shares are transmitted to his personal representatives, i.e. his executors or administrators and the production of the probate of the will or letters of administrations of the estate of the deceased person is sufficient evidence of the grant. This, however, does not make the personal representative a member of the company. The personal representatives are only persons recognized as having any title to the deceased's interest in the shares. They can sell and transfer the shares without being first registered as members. Such personal representatives are entitled to the same dividends and other advantages to which they would be entitled if they were the registered holders of the shares, but cannot unless otherwise provided in the articles, before being registered as members in respect of the shares be entitled in respect of them to exercise any right conferred by membership in relation to meetings of the company. The directors may, however, give the personal representatives notice to elect either to be registered as members; the directors may withhold the payment of dividends or other money until compliance.

3.2.4. Companies

A company is a person and, therefore, by virtue of section 18 it may be one of the subscribers of the memorandum of another company in formation and when that company is incorporated, it will become a member of it. Similarly, it may as general rule, purchase shares from another company and so become its member.

SELF ASSESSMENT EXERCISE

How is membership of a company acquired?

4.0 CONCLUSION

Every company is made of membership. Every company is composed of members, though in the contemplation of the law it is an entity distinct from its constituent members. In the case of a company limited by shares, a member of a company is a person who has a constituent proprietary interest in the company and whose name is on the register of members. Thus, a shareholder of a company having a share

capital is a member when his name is entered in the register, and a person who undertakes to make a contribution in the event of the winding up of a company limited by guarantee becomes a member of the company when his name is entered in the register of members.
A company can also be a member of another company

5.0 SUMMARY

A person becomes a member of a company in any of the following ways:

- By subscribing to the memorandum of the company upon the registration of the company
- By agreeing with the company to take a share and being placed on the register of members.
- By taking a transfer of shares and being placed on the register of members.
- By succeeding to the estate of a deceased member and being placed on the register of members.

6.0 TUTOR-MARKED ASSIGNMENT

Who is a member of a company?

7.0 REFERENCE/FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

UNIT 11 SHARE CAPITAL AND SHARES

1.0 Introduction
2.0 Objectives
3.0 Main content
3.1.1 Meaning of Share capital
3.1.2 Authorised share capital
3.1.3 Authorised minimum share capital
3.1.4 Issued Capital
3.1.5 Paid-up capital
3.1.6 Reserve capital
3.1.7 Fixed capital and circulating capital
3.1.8 Equity share capital
3.2.1 Shares: Nature of share

3.2.2 Rights attached to shares

3.3.0 Classes of shares
3.3.1 Rights attached to classes of shares
3.3.2 Ordinary shares
3.3.3 Founder's or deferred shares
3.3.4 Preference shares
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 Reference/Further Readings

1.0 INTRODUCTION

This unit introduces you to share capital and shares. Recall that in Unit 9 you learnt about the constitution of the company and share capital clause. You also learnt how each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member. You also learnt that acquisition of shares qualifies one to be a member of a company. You would have noticed that recently there has been instability on the stock market where the value of shares has dropped. This unit will give you an idea about share capital and shares generally. This unit will be divided into 2 parts. Part A will deal with Share Capital. Part B will deal with Shares simpliciter.

2.0 OBJECTIVES

The Objectives of this unit are

- To teach you about share capital.
- To explain the minimum capital a company is supposed to have at incorporation
- To explain the types of shares known to law.
- To explain the role shares play in the functioning of a company.

3.0 MAIN CONTENT

3.1 Meaning of share capital

The expression "capital of a company" covers all the assets of the company and includes the share capital and borrowed money which is sometimes referred to as loan capital. It also includes fixed and circulating capital. Share capital may be distinguished into authorized or nominal, issued, paid-up, reserved or equity share capital.

3.2 Authorized share capital

When a company is registered, it is registered with a given share capital. That is its authorized Share- capital at the time. Thus authorised share capital is defined as "the share capital of a company at any given time." It is also sometimes called the nominal share capital.

You also learnt in Unit 9 that the authorized share capital must be divided into a number of shares each having a specified value, e.g. authorised share capital of =N=10,000 divided into 10,000 shares of =N=1 each.

3.3 Authorised minimum share capital

This is the minimum share capital with which a company must be registered and below which the share capital must not at any time fall. This is =N=10,000 in the case of a private company and =N=500,000 in the case of a public company. A company is not allowed to reduce its share capital to below the prescribed minimum. Apart from the fact that after the commencement of the Act, a company cannot be registered with less than the authorised minimum share capital. However, where at the commencement of the Act a company has a share capital lower than the authorised minimum, it must, not later than 30 days after the appointed day, increase its share capital to an amount not less than the authorised minimum and at least 25 per cent of this must be issued.

3.4 Issued Capital

This is the portion of the authorised share capital which has been subscribed or issued to shareholders and the expression "issued share capital" when used in relation to a reduction of share capital includes the share premium account and any capital redemption reserve account of a company.

3.5 Paid-up capital

This is share capital which is issued and paid up.

3.6 Reserve capital

Section 104 provides that if an unlimited company resolves to be re-registered as a limited company, it may increase the nominal amount of each share but subject to the condition that "no part of the increased capital shall be capable of being called up, except in the event and for the purposes of the company being wound up". The company may also provide that a specified portion of its uncalled capital "shall not be capable of being called up except in the event and for the purposes of the company being wound up".

3.7 Fixed capital and circulating capital

The fixed capital is assets which are retained in the company and upon which subscribed capital is expected to produce income or profit; while the circulating capital is the capital of the company, such as money and goods, circulated in the business, and which are intended to return with some accretion.

3.8 Equity share capital

"Equity share" is defined as "a share other than a preference share," and "preference share" is defined as "a share, by whatever name designated, which does not entitle the holder of it to any right to participate beyond a specified amount in any distribution whether by way of dividend or on redemption, in a winding up, or otherwise" (s. 650(1)). Thus, the equity share capital includes the ordinary, deferred and even participating preference shares whose participating rights are unlimited. The equity share capital therefore bears the main risk of the business.

3.2.1 SHARES: NATURE OF SHARE

A share in a company is the expression of a proprietary relationship: the shareholder is the proportionate owner of the company but he does not own the company's assets which belong to the company as a separate and independent legal entity.
Section 650(1) defines "share" as "the interests in a company's share capital of a member who is entitled to share in the capital or income of such company; and except where a distinction between stock and shares is expressed or implied, includes stock." It is a chose in action and is property transferable.

3.2.2 **Rights attached to shares**

Section 114 provides that subject to the provisions of the Act, the rights and liabilities attaching to the shares of a company depend on the terms of issue and of the company's articles; but that notwithstanding anything to the contrary in the terms or the articles, the rights will include that of attending any general meeting of the company and voting at the meeting. The other rights usually attached to a share include, for example, the right to dividend, if any, to participate in distribution of assets in the winding up of the company, to receive notice of general meetings, to receive a copy of the memorandum and articles and of every balance sheet to be laid before the general meeting, to inspect and obtain copies of minutes of general meetings, and to petition for winding up, or in the alternative, to apply for a remedy under part x.
Right to one vote: Before the commencement of the Act non-voting shares were freely issued and weighted shares (i.e. attached) were permitted. This device of classes of shares with their differing voting rights has been extensively used since the early years of the Nigerian Enterprises promotions Acts to frustrate Government's objective of giving more control of business to Nigerians.
In order to remedy the situation, the Act prohibited both non-voting shares and weighted shares except as provided in the Act. Section 116(1)(a) provides that any shares issued by a company after the date of commencement of the Act shall carry the right on a poll at a general meeting of the company to one vote in respect of each share and no company may by its articles or otherwise authorize the issue of shares which carry more than one vote in respect of each share or which do not carry any right to vote. If at the commencement of the Decree, any share of a company carries more than one vote, or does not carry any right to vote. If at the commencement of the Act, such a share is deemed, as from the appointed day, to carry one vote and one vote only (s. 116(1)(b)).

If a company fails to comply with these provisions it is liable to a daily default fine and any resolution puprportedly passed by the company while the default continues is void.
There are two important exceptions to this right to one vote.

3.3.0 CLASSES OF SHARES

3.3.1 Rights attached to classes of shares

Normally, the rights attached to shares rank pari passu, i.e. confer equal benefits to the holders, but a company may, if so authorised by its articles issue its shares with different rights, e.g. as to dividend or sharing of capital on winding-up. Shares are not to be treated as being of the same class unless they rank equally for all purposes. Although the rights attached to shares are to be ascertained from the articles, it is usual to distinguish three main classes, namely, ordinary, founders (or differed) and preference shares. Sometimes the classes are simply described as Group A, B or C shares and rights are attached to them as appropriate. Section 119 provides that without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in a company may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, return of capital or otherwise as the company may from time to time determine by ordinary resolution. The memorandum may, but need not, set out the classes of shares. In practice, when it is intended to create classes of shares, power is usually given in the articles to effect it.

3.3.2 Ordinary shares

These are shares which have no special rights or restrictions attached to them. They bear the main financial risk of the business so that if the company is unsuccessful they bear most of the loss, but if it succeeds, they offer the greatest reward. They are sometimes referred to as the “equity” or “risk” capital.
On winding up, after paying all liabilities of the company and returning the capital of other classes, the ordinary shares are entitled to all the surplus assets except where preference shares have a right to participate in the distribution of such assets.

3.3.3 Founder’s or deferred shares

The promoters of companies or vendors who sell their business to a company may take shares that give them special rights. These shares are

called founders' or deferred shares. They are usually deferred and rank in priority after the ordinary shares and may take a large proportion of the surplus profits because they bear much of the risk of the business and, in the past, very often carried a large proportion of voting rights. Because of the special rights conferred by these shares, their particulars are required to be stated in the prospectus.

3.3.4 Preference shares

A preference share is defined in section 650(1) as "a share by whatever name designated, which does not entitled the holder of it to any right to participate beyond a specified amount in any distribution whether by way of dividend or on redemption, in a winding up otherwise." With regard to dividend, it is entitled to a specified percentage of dividends, e.g. seven per cent, if declared, and even though no dividend is paid on the ordinary shares. The right as to capital may entitle it to the return of capital on winding up in priority to ordinary shares. As a general rule, the preference share does not participate in dividend beyond the specified percentage not in capital beyond its full value, but it is possible to create participating preference shares.
The mere description of shares as preference does not tell what the rights are. Indeed, an ordinary share may be described as preferential in relation to the deferred shares. One must look for the specific rights in the memorandum or articles (sometimes, they are to be found in the terms of issues) although it is more usual to state them in the articles.

SELF ASSESSMENT EXERCISE

What do you know by authorised Share Capital?
Name at least 4 categories of authorised share capital.

4.0 CONCLUSION

The capital clause of the memorandum of association of a company limited by shares states the share capital with which the company proposes to be registered and the nominal value of each share into which the share capital is to be divided. The share capital is the amount contributed by the company's shareholders to the company's resources. The share holder has contractual and statutory rights against the company for the contribution it makes to it through the purchase of shares but

the contribution made is the company's property. The nominal capital of a company is the total of the nominal values of the shares which it may issue. The figure appears in the capital clause of the memorandum of association.

5.0 SUMMARY.

In this Unit you have learnt about share capital and the nature of shares. The expression "capital of a company" covers all the assets of the company and includes the share capital and borrowed money. You have also learnt that Share capital may be distinguished into authorized or nominal, issued, paid-up, reserved or equity share capital.
As you had also learnt in unit 9 the authorized share capital must be divided into a number of shares each having a specified value, e.g. authorised share capital of =N=10,000 divided into 10,000 shares of =N=1 each.

On shares you were taught that a share in a company is the expression of a proprietary relationship: the shareholder is the proportionate owner of the company but he does not own the company's assets which belong to the company as a separate and independent legal entity.
You also learnt about classes of shares and the rights attached to each class of share.

6.0 TUTOR-MARKED ASSIGNMENT

Name and briefly explain the 3 classes of shares.

7.0 REFERENCE/FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

UNIT 12 MEETINGS OF THE COMPANY

1.0 Introduction
2.0 Objectives
3.0 Main content
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 Reference/Further Readings

1.0 INTRODUCTION

Members of a company express their will at general meetings of the company by passing resolutions. This unit introduces you to meetings of a company. The meetings have to be properly convened and due notice of them have to be given. In this unit, we will look at the different type of meetings. How they are convened. Generally, the Act recognizes three types of meetings. They are statutory meetings, annual general meetings and extraordinary general meetings

2.0 OBJECTIVES

The objectives of this unit are to:

- To teach you to understand the forum through which members of a company express their will.
- The type of meetings recognized by the Act.
- How the meetings are convened.

3.0 MAIN CONTENT:

MEETINGS OF A COMPANY.

3.1 Nature of meetings

The decisions of a company are generally taken at the meeting of its members which constitutes its primary organ. But if all the members agree, a decision may be taken even though no formal meeting is held. Indeed, section 234 of the Act provides that in the case of a private company, a written resolution signed by all the members entitled to attend and to vote shall be as valid and effective as if passed in a general meeting.

The procedure of the meeting of the company depends on the type of meeting being held. It may be a meeting of all the shareholders or of a class of

shareholders. Some meetings are mandatory while others are left to the discretion of the company and they may be regulated by the Act or the articles or both.

3.2 Types of meetings

There are three types of general meetings, namely, the statutory meeting, annual general meeting and extraordinary general meeting.

(i) Statutory meeting.

The Act requires that every public company must hold a statutory meeting of the members of the company within a period of 6 months from the date of its incorporation.

The purpose of the statutory meeting is to give members an opportunity of having a first progress report from the directors and promoters. The Act stipulates that failure to hold the meeting is a ground for winding up the company. But the court may, instead, order that the meeting should be held and the defaulter to pay the costs.

The directors must, at least 21 days before the meeting (or any shorter period agreed by all the members entitled to attend and vote), forward a report called the ``statutory report'' to every member of the company. The report must state the following:

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up, the extent to which they are so paid up and in either case, the consideration for which they are allotted;
(b) the total amount of cash received by the company in respect of all the shares allotted.
(c) the names, address and descriptions of the directors, auditors and managers, if any, and secretary of the company;
(d) the particulars of any pre-incorporation contract, together with the particulars of any modification or proposed modification thereon;
(e) any underwriting contract that has not been carried out and the reason for this;
(f) the arrears, if any, due on calls from every director; and
(g) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to an director or manager.

The report must also contain an abstract of the receipts and payments of the company, the balance in hand, and an amount or estimate of the preliminary expenses of the company. It must be certified by at least two directors and the number of shares allotted, the cash received in respect of such shares and the receipts and payments of the company on the capital must be certified by the auditors, if any.

A copy of the statutory report must be delivered to the commission for registration after copies have been sent to members. Failure to deliver the report to the commission may be ground for winding up the company. But the court may order that it shall be delivered and that the defaulter shall pay the costs.

At the commencement of the meeting, a list showing the names, description and addresses of members of the company, and the number of shares held by them respectively must be produced and remain open and accessible to all members throughout the duration of the meeting.
The members present may discuss any matters relating to the formation of the company or arising from the statutory report but no resolution of which due notice has not been given may be passed.

(ii) Annual general meetings
The company's annual meeting must be held in each year i.e. January – December, and not more than 15 months should elapse between the date of one annual general meeting and the next; but if the company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year. Thus, if a company was incorporated on September 1, 1989, it may hold its first annual general meeting in February 1991. the commission may extend the time for holding the meeting by not more than few months, but the time for the first annual general meeting cannot be extended.
If default is made in holding the annual general meeting, the commission may on the application of any member, call, or direct the calling of, a general meeting and give such directions as it thinks fit including direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting which may take decisions binding on the members and may be deemed to be the annual general meeting.

(iii) Extraordinary general meeting.

Any general meeting other than an annual meeting is an extraordinary general meeting. Such meetings are usually convened by the directors to deal with urgent matters which cannot await the next annual general meeting, and if at any time

there are not within Nigeria sufficient directors capable of acting to form a quorum, any director may convene an extraordinary meeting. While the administrative duty of giving notice of meeting is properly the function of the secretary, he cannot without the approval of the directors give notice of a meeting. A notice issued by de facto directors may be valid.

3.5 NOTICE OF GENERAL MEETINGS

Proper notice of general meetings must be given to members unless the articles otherwise provide. Such notice must contain the requisite information, and sufficient time must be allowed and the notice must be properly served

Length of notice

The Act provides that the notice required for all types of general meetings is 21 days from the date on which the notice was sent out.

The notice usually provides for ``clear'' days, and therefore is exclusive of the date on which it is given.

A meeting called by a notice shorter than that required under section 217(1) of the Act may be deemed to be duly called if it so agreed:

iv. in the case of the annual general meeting, by all the members entitled to attend and vote there, and

v. in the case of other meetings, by a majority in number of the members holding not less than 95 per cent in nominal value of the share giving a right to attend to meetings and to vote.

3.4 ATTENDANCE OF MEETINGS

Persons entitled to attend

Every person who is entitled to receive notice of a general meeting of the company as provided in section 227 of the Act is entitled to attend the meeting.

Proxy

Any member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and the proxy also has the same right as the member to speak at the meeting but unless otherwise provided in the articles, the above provisions do not apply in the case of a company not having a share capital.

Corporation

A corporation which is a member of another company, may by resolution of its directors or other governing body, authorize such person as it thinks fit to represent it at a meeting of the company or of any class of members of the

company. So also, a corporation which is a creditor of another company may authorize such person as it thinks fit to represent it at any meetings of creditors of the company (s. 231(1).

3.5 RESOLUTIONS

The decisions of a company take the form of resolutions. To be effective these must be passed at a general meeting of the company, but in the case of a private company, a written resolution signed by all the members entitled to attend a vote will be as effective as if it has been passed at a general meeting.
A resolution may be ordinary or special.

i) **Ordinary resolution**
An ordinary resolution is one which has
a) been passed by a simple majority of votes cast by such members of the company as being entitled to do so, vote in person or by proxy at a general meeting and
b) which requires only an ordinary resolution for the removal of a director provides that special notice of that resolution must be given. A company may take a decision by an ordinary resolution at a general meeting unless the Act or the company's articles otherwise require.

2) **Special resolution**
This is a resolution which is passed by a majority of three-fourth of the votes of the members as being entitled to do so, vote in person or, where proxies are allowed, by proxy, at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given. The length of notice may, however, be shortened if this is agreed to by a majority of members entitled to attend and vote at such a meeting and holding not less than 95 per cent, in nominal value of the shares giving that right, or in case of a company having no share capital, by a majority representing not less than 95 per cent, of the total voting rights at the meeting. A special resolution is required for the more important matters such as:
a) the alteration of objects of the company,
b) changing the name of the company,
c) altering the articles ,
d) the reduction of share capital,
e) making liability of director unlimited,
f) winding up a company by court,
g) winding up of a company voluntarily and
h) authorizing the liquidator on the sale of the undertaking of the company for distribution among members.

SELF ASSESSMENT EXERCISE

In what circumstances is a special resolution expected to be passed in a meeting of the company.

7.0 CONCLUSION

The decisions of a company are generally taken at the meeting convened by members which constitutes its primary organ
But if all the members agree, a decision may be taken even though no formal meeting is held. Indeed, Section 234 of the Act provides that in the case of a private company, a written resolution signed by all the members entitled to attend to vote shall be as valid and effective as if passed in a general meeting.

There are three types of general meetings.
They are statutory meetings, annual general meetings and extraordinary general meetings. For the statutory meeting, a statutory report is expected to be sent to members at 21 days to the meeting by the directors. The report must contain the total number of shares allotted, distinguishing in the case of shares partly paid up, the extent to which they are so paid up and in either case, the consideration for which they are allotted:
The total amount of cash received by the company in respect of all the shares allotted, distinguished as above;
The names, addresses and descriptions of the directors, auditors and managers, if any, and secretary of the company;
The particulars of any pre-incorporation contract, together with any underwriting contract that has not been carried out and the reason for this;
The arrears, if any, due on call from every director; and
The particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to a director or manager.

Before meetings are convened, notices of the meetings are given. Then length of notices depends on the nature of each meeting. At the meetings, decisions are carried through passing of resolutions.

5.0 SUMMARY

In this unit you have learnt about how members of the company express their will. You have also learnt that the decisions of a company are generally taken at the meeting of its members which constitutes its primary organ.

There are three types of meetings viz:

- The statutory meeting
- The annual general meeting
- The extraordinary general meeting

The statutory report must be sent to members by the directors 21 days to the meeting. The report must contain the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up, the extent to which they are so paid up and in either case, the consideration for which they are allotted:

- The total amount of cash received by the company in respect of all the shares allotted.
- The names, addresses and descriptions of the directors, auditors and managers, if any, and secretary of the company;
- The particulars of any pre-incorporation contract, together with the particulars of any modification or proposed modification thereon;
- Any underwriting contract that has not been carried out and the reason for this;
- The arrears, if any, due on calls from every director; and
- The particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to a director or manager (S. 211(3).

Proper notice of every general meeting must be given to members unless the articles otherwise provide. The length of notice depends on the type of meeting.

At the meetings decisions are carried through resolutions. There are two types of resolutions:
i) Ordinary resolution or
ii) Special resolution.

A member can attend the meeting in person or through a proxy.

6.0 TUTOR-MARKED ASSIGNMENT

By virtue of CAMA how many types of meetings are required? Which of the meetings is the first to be held in the life of a public company?

7.0 REFERENCES/ FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

UNIT 13 DIRECTORS

1.0 Introduction
2.0 Objectives
3.0 Main content
    3.1 Definition of a Director
    3.2 Appointment of Directors
    3.3 Powers of Directors
    3.4 Duties of Directors
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/ Further Readings

1.0 INTRODUCTION

The company is an artificial person who needs to run its affairs through other means or instruments. Those other instruments are human agents. The human agents who help the company run its affairs are known as directors. They may be described as directors, governors, governing body, governing committee or any other similar expression and the Act defines "directors" as including "any person occupying the position of director by whatever name called".

2.0 OBJECTIVES

The objectives of this unit are

- To teach you how a company is governed through its human instruments known and called as "Directors"
- To equip you with the various roles of directors in a company
- To explain to you the duties and functions of Directors

3.0 MAIN CONTENT

3.1. DEFINITION OF A DIRECTOR

The Act defines a "director" as including "any person occupying the position of directors by whatever name called." These directors could be referred to as governors, governing body, governing committee.

Directors are persons duly appointed by the company to direct and manage the business of the company. Where a person not duly appointed a director acts as such, his acts do not bind the company, but where the company describes a person

as director, there is in favour of any person dealing with the company, a rebuttable presumption that all persons who act as directors, whether as sales, executive or otherwise have been duly appointed.

3.2 APPOINTMENT OF DIRECTORS

As we had studied in Unit 9 the appointment of the first directors is governed by the Act and articles. Section 247 of the Act provides that "the number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles". Thus where the articles provide for the manner of the appointment of directors, and provisions have not been complied with, a purported appointment would be invalid. The first directors of the company shall not be less than two. Section 246 provides that every company registered on or after the commencement of the Companies and Allied Matters Act, 2004 must have not less than 2 directors and every company which at the date of the commencement of the Act had less than 2 directors must, not later than 6 months after such commencement have not less than 2 directors. Any company whose number of directors falls below 2 must, within one month of such fall appoint one or more new directors. If a company fails to appoint directors to make up the statutory minimum within the time limit, it cannot thereafter carry on business unless it has not less than 2 directors.

However, subsequent directors can be appointed. With regard to subsequent appointments, the members at the annual general meeting may re-elect or reject the first directors and appoint new ones, and in the event of all the directors and shareholders dying, any of the personal representative of the shareholders may apply to the court for an order to convene a meeting of all the personal representatives of the shareholders entitled to attend and vote at a general meeting to appoint new directors to manage the company. If they fail to hold a meeting, the creditors, if any, may do so. The article may give power to some particular persons to nominate a director.

3.3 POWERS OF DIRECTORS

The powers of the directors are regulated by the Act and the Articles of Association. Section 63(2) of the Act provides that subject to the provisions of the Act, the respective powers of the members in general meeting, and the board of directors shall be determined by the company's articles; and the law further provides that "except as otherwise provided in the company's articles, the business

of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting."

It is important to note that the powers of directors are limited in two ways: first being agents of the company, the directors can do nothing which the company itself, their principal, cannot do under its memorandum of association, and any purported act by them which is ultra vires the company will be void and of no effect. Secondly, when acting within the powers of the company, the directors are limited to the powers which the company has delegated to them.
However, if they act outside their own powers but intra vires the company, the latter may ratify their acts n the general meeting.

3.4 DUTIES OF DIRECTORS

The principles on which the duties of directors are based are now set out in section 279 of the Act. The section provides as follows:

(1) A director of a company stands in a fiduciary relationship towards the company and shall observe with utmost good faith towards the company in any transaction with it or on its behalf.

(2) A director shall also owe fiduciary relationship with the company in the following circumstances-
(a) where a director is acting as agent of a particular shareholder:
(b) Where even though he is not an agent of any a shareholder, such a shareholder or other person is dealing with the company's securities.

(3) A director shall act at all times in what he believes to be the best interest of the company as a whole so as to preserve its assets, further its business, and promote the purpose for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances.

(4) The matters to which the directors of a company are to have regard in the company's employees in general, as well as the interest of its members.

(5) Directors shall exercise their powers for the purpose for which they are specified and shall not do so for a collateral purpose; and the power, if exercised for the right purpose does not constitute a breach of the duty if it incidentally does not affect a member adversely.

(6) A director shall not fetter his discretion to vote in a particular way.

(7) Where a director is allowed to delegate his powers under any provisions of this Act, such a director shall not delegate the power in such a way and manner as may amount to an abdication of duty.

(8) No provision, whether contained in the articles or resolutions of a company, or in any contract shall relieve any director from the duty to act in

accordance with this section or relieve him from any liability incurred as a result of any breach of the duties conferred upon him under this section.

(9) Any duty imposed on directors under this section shall be enforceable against the director by the company.

SELF ASSESSMENT EXERCISE

Briefly explain the duties of Directors.

4 CONCLUSION

A company can only act through its agents, and usually the persons by whom it acts and by whom the business of the company is carried on or superintended are termed directors.

These directors could be referred to as governors, governing body, governing committee. Directors are persons duly appointed by the company to direct and manage the business of the company. As we had studied in Unit 9 and in this unit, the appointment of the first directors is governed by the Act and the Articles. Section 247 of the provides that "the number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles". The first directors of the company shall not be less than two. Section 246 provides that every company registered on or after the commencement of the companies and allied Matters Act, 1990 must have not less than 2 directors and every company which at the date of the commencement of the Act had less than 2 directors must, not later than 6 months after such commencement have not less than 2 directors. The powers of the directors are regulated by the Act and the Articles of Association. Section 63(2) provides that subject to the provisions of the Act, the respective powers of the members in general meeting, and the board of directors shall be otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.

5.0 SUMMARY

In this unit, you have learnt that

- The business of a company is managed through human agents known as directors. Directors could be referred to as governors, governing body, governing committee.
- The first directors of the company shall not be less than two.
- In appointing directors, the number of the directors and the names of the first directors shall be determined in writing by the subscribers of

the memorandum of association or a majority of them or the directors may be named in the articles.

- The powers of the directors are regulated by the Act and the Articles of Association, for section 63(2) provides that subject to the provisions of the Act, the respective powers of the members in general meeting, and the board of directors shall be determined by the company's articles; and section 63(3) provides that "except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting."
- The powers of the directors are regulated by the Act and the Articles of Association, for section 63(2) provides that subject to the provisions of the Act, the respective powers of the members in general meeting, and the board of directors shall be determined by the company's articles; A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf.

In this unit, you have also learnt about the duties of directors as follows:

- A director shall also owe fiduciary relationship with the company where a director is acting as agent of a particular shareholder; and where even though he is not an agent of any shareholder, such a shareholder or other person is dealing with the company's securities.
- A director shall act at all times in what he believes to be the best interest of the company.
- The matters to which the directors of a company are to have regard in the company's employees in general, as well as the interest of its members.
- Directors shall exercise their powers for the purpose for which they are specified and shall not do so for a collateral purpose.
- A director shall not fetter his discretion to vote in a particular way.
- A director shall not delegate the power in such a way and manner as may amount to an abdication of duty.
- Any duty imposed on directors under this section shall be enforceable against the director by the company,

6.0 TUTOR-MARKED ASSIGNMENT

Who is a director? Name at least five duties of a director to the company.

7.0 REFERENCES/ FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

MUDULE 4 WINDING UP OF COMPANIES

Unit 14 Winding up by the Courts
Unit 15 Voluntary winding up
Unit 16 Winding up subject to the supervision of the court.

UNIT 14 WINDING UP BY THE COURTS

1.0 Introduction
2.0 Objectives
3.0 Main content
3.1 Grounds for winding up by the court.
3.2 Who may petition?
3.3 Commencement of winding up
3.4 steps leading to presentation of petition
3.4 Winding up order
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/ Further Readings

1.0 INTRODUCTION

Just as a company can come into existence under the statute, so also it can cease to exist only in accordance with statutory provisions. Companies and Allied Matters Act has made adequate provisions on how a company would be wound up. Consequently, a company may be struck out of the register by the Commission in certain circumstances. However the normal way of putting an end to the existence of a company is by winding up. In this unit you will learn the various ways by which, and how a company may be wound up. The various ways include grounds for winding up, who may petition, commencement of winding up, steps leading to presentation of petition and the winding up order.

2.0 OBJECTIVES

The objectives of this unit are to:

- To teach you one of the ways by which a company may be wound up, that is by the courts.
- To help you make an informed choice of the appropriate method.
- To make you know which court has jurisdiction in proceedings involving companies.

3.0 MAIN CONTENT

Under the Act, the Federal High court has jurisdiction to wind up a company (s. 497); jurisdiction simply means the power a statute or a law confers on a court of law to act or exercise certain judicial powers. However, a court does not act on its own volition. Someone has to initiate the action or move the court to so act. Consequently there must be good grounds upon which the court can act to wind up a company. Don't forget that as we said earlier winding up a company means bringing the life of a company to an end.

3.1 Grounds for winding up by the court:

A company may be wound up by the court if the following grounds are found to exist.

a) The company has by special resolution resolved that the company be wound up by the court. If the company passes a special resolution that it wants to cease to exist then the court will do the biding of the company and give effect to it. So where a special resolution has been passed before the presentation of petition for winding up by the court, winding up is deemed to have commenced at the time of the passing the resolution. In any other case, the winding up by the court is deemed to commence at the time of the presentation of the petition for the winding up.

b) Secondly, where default is made in delivering the Statutory Report to the Commission or in holding the statutory meeting. The law requires that annual reports be filed with the commission annually. Where there is failure to file the annual report, it is taken to be a serious default which could constitute very good grounds for winding up the company.

c) Thirdly, as we had learnt during the lessons the conditions to be fulfilled before registration, a company can only be registered where there are two or more subscribers. Therefore where the number of members is reduced below two, the court can also wind up the company upon its attention being drawn to the fact.

d) The company can be wound up where it becomes bankrupt and is unable to pay its debts.

e) Where the court is of opinion that it is just and equitable that the company be wound up, then the court can go ahead and wind up the company.

3.2 WHO MAY PETITION.

Questions normally arise about who has the competence to initiate winding up proceedings. The answer is very clear that the following categories of persons can file the petition for winding up proceedings. These categories of people include:

a) The company,
b) A creditor, including a contingent or prospective creditor;
c) The official receiver,
d) A contributory;
e) A trustee in bankruptcy to, a personal representative of a creditor or contributory;
f) The Commission (CAC),
g) A receiver if authorized by the instrument under which he was appointed, or
h) By all or any of the parties, together or separately.

3.3 COMMENCEMENT OF WINDING UP

To commence means to start something; in this case to initiate winding up proceedings

Application for winding up is made by way of petition presented to the court.

3.3.1 STEPS LEADING UP TO PRESENTATION OF THE PETITION

(1) In case of petition by the company
   a) Call Board Meeting to approve the special resolution that the company be wound up by the court
   b) Call Emergency General Meeting to pass the special resolution
   c) File Resolution with the Commission and forward copies to Securities and Exchange Commission.
(2) Prepare the petition and other documents and file at Registry of Federal High Court.
(3) Prepare statements of Affairs unless otherwise ordered by the court.

3.4 WINDING UP ORDER

On the making of a winding up order, a copy shall be forwarded by the company to the Commission.

SELF ASSESSMENT EXERCISE

What kind of resolution is required to be passed by members for winding up of a company?

4.0 CONCLUSION

Just as a company comes to life through incorporation, a company can cease to exist through due process of the law. The process through which a company will cease to exist is called winding up. One of the ways to wind up a company is by the courts. However, there must be grounds for winding up of a company by the courts. There must also be petitioner who will move the court when there are sufficient grounds to do so. There are steps leading to eventual winding up. The winding up process ends up when the courts so orders.

5.0 SUMMARY

In this unit, you have learnt that a company acquires life through incorporation when the certificate of incorporation is issued by the commission, the same company can also lose its life through a winding up process One of such ways is through the courts. However there must be sufficient grounds for commencement of winding up proceedings through the courts. Some of the grounds include:

- If the company passes a special resolution that it wants to cease to exist then the court will do the winding up of the company and give effect to it.
- Where default is made in delivering the statutory Report to the commission or in holding the statutory meeting.
- A company can only be registered where there are two or more subscribers. Therefore where the number of members is reduced below two, if the court can also wind up the company upon its attention being drawn to the fact.
- The company can be wound up where it becomes bankrupt and is unable to pay its debts.
- Where the court is of the opinion that it is just and equitable that the company be wound up, then the court can go ahead and wind up the company.

6.0 TUTOR-MARKED ASSIGNMENT

Summarise the grounds upon which, if they exist, the courts can intervene to wind up a company.

7.0 REFERENCES/ FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

UNIT 15 VOLUNTARY WINDING UP

0.0 Introduction
1.0 Objectives
2.0 Main content
3.0 Conclusion
4.0 Summary
5.0 Tutor-Marked Assignment
6.0 References/ Further Readings

1.0 INTRODUCTION

In the earlier units we had discussed that there are various ways of winding up a company. In the last unit we treated winding up by the court. In this unit we are going to consider voluntary winding up. Under this unit you will realize that there are two approaches to voluntary winding up of a company. The first approach could be embarked upon by members of the company; the second approach could be commenced by the creditors of the company. This will be explained more explicitly in the main content

2.0 OBJECTIVES

The objective of this unit is

- to teach you how a company could be voluntarily wound up.

3.0 MAIN CONTENT

The procedure for winding up a company voluntarily depends on whether it is members' winding up. Section 463 of the Companies and Allied Matters Act provides that sections 464 to 470 of the Companies and Allied Matters Act shall, subject to the alternative provisions of section 469, apply in relation to a members' voluntary winding up. Section 471 on the other hand, provides that sections 472 to 478 of the Companies and Allied Matters Act shall apply in relation to creditors' voluntary winding up. Section 479 provides that sections 480 to 485 shall apply to both.

3.1 MEMBERS VOLUNTARY WINDING UP

Here we will consider how steps are to be taken when members of a company voluntarily wish to wind up their company.

i) The company should call a general meeting and appoint one or more liquidators for the winding-up affairs (Companies and Allied Matter Acts.

ii) After the appointment of a liquidator(s), all the powers of the Directors shall cease except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

iii) The liquidator should summon a meeting in the event of the winding-up continuing for more than one year. The meeting should be at the end of each year; but subject to s. 469 of the Act which makes alternative provisions as to annual and final meetings in insolvency cases.

iv) The meeting should be called by notice published in the Gazette and in some newspapers printed in Nigeria (s. 468(2)).

v) The liquidator should prepare an account for the winding-up showing:

a) How the winding-up has been conducted;

b) How property of the company has been disposed.

vi) The liquidator should lay the account before the general meeting to be called by him and give explanation thereof.

vii) The liquidator shall within 7 days send a copy of the account to the commission.

If a vacancy occurs by death, resignation or otherwise in the office of the liquidator, a general meeting will be called to fill up the vacancy.

The liquidator should keep proper records and books of account with respect to his act and dealings and of the conduct of the winding-up and of all receipts and payments by him and so long as he caries on the business of the company, shall keep a distinct account of the finding.

As soon as the affairs of the company are fully wound-up, the liquidator should prepare and send to every member of the company financial accounts of the winding-up showing how the winding-up has been conducted, the result of the trading during such time as the business of the company has been disposed of: convene a general meeting of the company for the purpose of laying before it such accounts and given an explanation thereof.

Within 28 days after the meeting, the liquidator should send to the commission for registration copies of the accounts and a statement of the holding of the meeting and its date.

The account should be audited by the auditors of the company prior to being laid before the company in general meeting and the auditors should state in a report annexed thereto whether, in their opinion and to the best of their information that they have obtained all the information and explanations necessary for the purpose of the audit.

Proper books and records have been maintained by the liquidator and required by the Act in the manner therein required and give a true and fair view of the matters stated in such accounts.

The liquidator shall preserve the books and papers of the company and of the liquidator for a period of 5 years from the dissolution of the company but thereafter may destroy such books and papers unless the commission shall otherwise direct in which event he shall not destroy the same until the commission consents in writing.

3.2 CREDITIOR'S VOLUNTARY WINDING UP

This is voluntary winding-up where no declaration of solvency has been filed with the commission.

Procedure

The procedure for creditors' voluntary winding up is as follows:

a) The company should summon a meeting of the creditors of the company at which it is to propose the resolution for voluntary winding up.

b) The notices of the meeting of the creditors should be sent by post to them simultaneously with the sending of the notices of the meeting of the company. The notices of the meeting should be published once in the Gazette and at least once in two newspapers printed in Nigeria and circulating in the district where the registered office or principal place of business of the company is situated. The meeting should be presided over by the directors of the company.

c) The directors should cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting.

d) The meeting may also appoint a liquidator and a committee of Inspection. A liquidator is an officer of the court and is appointed for the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose.

e) If different persons are nominated as liquidators at the separate meeting of the creditors and of the company, then the person nominated by the creditors will be the liquidator, and if no person is nominated by the creditors, the company's nominee will be the liquidator.

f) Any director, member or creditor may apply to court, within seven days after the date on which the nomination was made by the creditors, for an order that the person nominated by the company shall be the liquidator instead of or jointly with the creditors' nominee, or that another person be appointed.

g) If a vacancy occurs in the office of a liquidator, it may be filled by the creditors unless the liquidator was appointed by the direction of the court.
h) The liquidator should, publish in the Gazette and in two daily newspapers and deliver to the commission, a notice of his appointment
i) An extraordinary general meeting of the company should be called to pass the winding up resolution in accordance with section 457 of the Act.
j) The notice of winding up resolution must be advertised in the Gazette and in two daily newspapers within 14 days and a copy of the resolution must be filed with the commission within that same period.,
k) If the winding up continues for more than one year, the liquidator should summon a general meeting of the company and a meeting of the creditors within three months after the end of the first and every succeeding year and lay before the meeting, an account of his acts and dealing and of the conduct of the wining up during preceding year.
l) As soon as the affairs of the company have been fully wound up, the liquidator must prepare an account of the winding up showing how the winding up has been disposed of. He should then call a general meeting of the company and a meeting of the creditors and lay the account before them.
m) The notice of each of the meetings must be at least one month before the meeting, be published in the Gazette and in some newspapers printed in Nigeria and circulating in the locality where the meeting is being called.
n) After the meetings, the liquidator must, within 7 days, send a copy of the account to the commission and also make a return to the commission of the holding of the meetings or the fact that they were summoned but not held because a quorum was not formed as the case may be.
o) On receipt of the account and the return, the commission will register them.
p) The company is deemed to be dissolved three months after the account and returns are registered by the commission.

SELF ASSESSMENT EXERCISE

Explain the role of the Liquidator in member's voluntary winding up.

4.0 CONCLUSION

In this unit, recall that there are two methods of winding up a company thus: there is the members' voluntary winding up and creditors' voluntary winding up. Each of the method has its own approach. Each commences with convening a meeting of the company and appointing a liquidator who initiates the winding up proceedings. Once the processes are completed, the legal consequences of winding up the company takes effect.

5.0 SUMMARY

In the last unit, we learnt about the winding up of a company by the courts. In this unit, we have also looked at another method of winding up a company, which is voluntary winding up of a company. This method is also subdivided into two. The first is members voluntary winding up of a company; the second is Creditors voluntary winding up of the company. Each has its own approach. If it is members voluntary winding up,

- A general meeting of the company shall be called to appoint one or more liquidators who will conduct the winding up affairs of the company.
- The powers of the directors shall then cease
- The liquidator should prepare an account for the winding-up showing:
    a) How the winding-up has been conducted;
    b) How property of the company has been disposed of:
- The liquidator should lay the account before the general meeting to be called by him and give explanation thereof.
- As soon as the affairs of the company are fully wound-up, the liquidator should prepare and send to every member of the company financial accounts of the winding-up.
- Within 28 days after the meeting, the liquidator should send to the commission for registration copies of the accounts and a statement of the holding of the meeting and its date.

In the creditor's voluntary winding up,

- The company should summon a meeting of the creditors of the company at which it is to propose the resolution for voluntary winding up.
- The notices of the meeting of the creditors should be sent by post to them simultaneously with the sending of the notices of the meeting of the company.
- The directors should cause a full statement of the position of the company's affairs to be laid before the meeting.
- The meeting may also appoint a liquidator and a committee of inspection.
- As soon as the affairs of the company have been fully wound up, the liquidator must prepare an account of the winding up, showing how the winding up has been disposed of. He should then call a general meeting of the company and a meeting of the creditors and lay the account before them.
- After the meetings, the liquidator must, within 7 days, send a copy of the account to the commission.
- On receipt of the account and the return, the commission will register them.
- The company is deemed to be dissolved three moths after the account and returns are registered by the commission.

6.0 TUTOR-MARKED ASSIGNMENT

In both members' voluntary and creditors' voluntary winding up of the company, the liquidator plays a key role. Stress the role the liquidator plays in both

7.0 REFERENCES/ FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

Kiser Barnes (1992) *Cases and Materials on Nigeria Company Law.* Obafemi Awolowo University press Ltd, Ile-Ife, Nigeria.

Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

Clive M. Schmitthoff and James H. Thompson (1968) *Palmer's Company Law*. Stevensons & Sons Limited. London
Boyles & Birds' (2002) *Company Law*. Jordans Publishing Limited

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Companies and Allied Matters Act, 2004

UNIT 16 WINDING UP SUBJECT TO THE SUPERVISION OF THE COURT.

1.0 Introduction
2.0 Objectives
3.0 Main content
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/ Further Readings

1.0 INTRODUCTION

In the previous Units 13 and 14 you studied the two method by which a company is wound up. Recall that Unit 13 dealt with winding up by the courts. Unit 14 dealt with members' voluntary winding up and creditors' voluntary winding up. This unit deals with winding up subject to the supervision of the courts. At the end of this unit, you will see the difference in the involvement of the courts in this unit and unit 13.

1.0 OBJECTIVES

The objective of this unit is to

- teach you winding up of a company subject to the supervision of the court as another method of winding up of a company.

2.0 MAIN CONTENT

Where a company passes a resolution for voluntary winding up, the court may on petition order that the voluntary winding up shall continue subject to the supervision of court.

Effect: A petition for winding up subject to the supervision of the court operates for most purposes as a petition for winding up by the court.

Presentation:
The petition may be presented by any one or more of the parties entitled to petition for compulsory winding up of the company.

Form of petition:
The form of petition and procedure are very similar to those for compulsory winding up.

Official Receiver
The Deputy Chief Registrar of the Federal High Court or any other officer designated for the purpose by the Chief judge of that court is the Official Receiver. His duty is to receive the statement of Affairs of the company and to collate information about the company e.g. the capital, assets and whether there is need for further enquiry concerning the promotion, formation or failure of the company. He becomes the liquidator when the winding order is made in a compulsory winding up until the appointment of a liquidator and acts as such whenever there is a vacancy.

Provisional Liquidator
A liquidator is a person who is appointed by the company or the court to wind up the affairs of a company and to distribute its assets, if any among creditors and contributors in accordance with the articles. He represents the interests of all creditors, especially the unsecured creditors. Upon his appointment, all the powers of the directors cease.

Receiver
A receiver is appointed by secured creditors under power contained in agreement between the company and the creditors. Accordingly he represents the interest of the creditors and his main concern is to release the assets of the company and pay off the debt due to the creditors. When satisfactory discharge of his duty requires that he manages the affairs of the company he is called a "Receiver and Manager"

Special manager
Where the Official Receiver becomes the liquidator of a company, he may apply to the court for an order appointing a special manager with such power, including those of Receiver or manager as the court may invest on him. The Official Receiver himself may be appointed special manager.

COMPANIES PROCEEDINGS

Jurisdiction
The Federal High Court has exclusive jurisdiction in companies proceedings, subject to the appellate powers of the court of Appeal and the Supreme Court.

Rules of court
The governing procedural rules in companies are to be found in the companies proceedings Rules, the companies winding up Rules and Federal High court (civil procedure) Rules.

The companies proceeding Rules apply to all proceedings taken out or arising from any provision of any section of Part A of the Companies and Allied Matters Act.

Types of Applications

Applications under the companies and Allied Matters Act may be made by Originating summons, Originating motion, or Petition.

1) **Application by Originating summons**
   Unless otherwise specifically provided every application under the Decree shall be made by originating summons in Form 2 of the Rules. An application under s.317 or s. 638 may be made by exparte originating summons.
2) **Originating Motion**
   Applications under the appropriate sections of the law shall made by originating motion
3) **Petition**
   Application under the appropriate sections of the law shall be made by petition.

SELF ASSESMENT EXERCISE

Which court has jurisdiction to supervise winding up proceedings?

4. 0 CONCLUSION

Where a company passes a resolution for voluntary winding up, the court may on the petition order that the voluntary winding up shall continue subject to the supervision of court.

5.0 SUMMARY

In this unit you have learnt that the Federal High Court can supervise the winding up of a company once the company passes a resolution and present a petition to that effect.

Applications can be made to the court either by Originating Summons, Originating Motion, or Petition.

8.0 TUTOR-MARKED ASSIGNMENT

State officers who take part in winding up of the company subject to supervision of the court.

7.0 REFERENCES/ FURTHER READINGS

J. Olakunle Orojo (1992), *Company Law and Practice*. Lagos Nigeria: Mbeyi & Associates (Nig) LTD.

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Owolabi, N.B and Badmus, M.A. (Eds) (2003) *Nigerian Business & Co-Operative Law*. Printarts Limited; Lagos.

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