

## 5 CORPORATE LAW PRACTICE

### OVERVIEW AND REGULATING LAW/BODIES

Highlight ten relevant laws regulating the legal framework for doing business in Nigeria. *May 2012 No 1(a)*

- ≈ Companies and Allied Matters Act
- ≈ Investments and Securities Act 2007
- ≈ Companies Income Tax Act
- ≈ Foreign Exchange (Monitoring and Miscellaneous Provisions) Act
- ≈ Industrial Inspectorate Act
- ≈ Central Bank of Nigeria Act
- ≈ Banks and Other Financial Institutions Act
- ≈ Insurance Act
- ≈ Nigerian Investments Promotions Commission Act
- ≈ Nigerian Deposit Insurance Corporation Act
- ≈ National Insurance Commission Act
- ≈ Federal Inland Revenue Service Act
- ≈ Immigration Act
- ≈ National Office for Technology Acquisition and Promotion Act
- ≈ Constitution of the Federal Republic of Nigeria 1999
- ≈ Federal High Court Act 2009
- ≈ Stamp Duties Act
- ≈ Asset Management Company of Nigeria Act

Identify *five regulatory bodies* saddled with the control of corporate business activities in Nigeria and briefly explain each. *May 2012 No 1(b)*

- ≈ **Corporate Affairs Commission:** established by CAMA in 1990. It administers the CAMA and oversees the formation, management and winding up of companies in Nigeria.
- ≈ **Securities and Exchange Commission:** Established by the ISA 2007 to regulate the condition for the registration and issuance of companies securities. Also regulates the capital market in Nigeria.
- ≈ **Central Bank of Nigeria:** the apex regulatory body for Banks and other Financial Institutions in Nigeria. Serves as an adviser to the Federal Government and licenses and regulates the activities of Banks and Other Financial Institutions.
- ≈ **Nigerian Investments Promotions Commission:** promotes the investment climate in Nigeria for foreign and local investors. Houses the One Stop Investment Centre (OSIC), an investment window through which most of the important investment regulatory bodies can be found.

- ≈ ***Nigerian Deposit Insurance Corporation:*** regulates mandatory insurance deposit for banks and other financial institutions and regulates some aspects of restructuring by Banks and other Financial Institutions.
- ≈ ***Nigerian Immigration Service:*** regulates the influx of foreign nationals into the country and regulates the issuance of the requisite permits including residence permit, visa, expatriate quota etc.
- ≈ ***National Office for Technology Acquisition and Promotion:*** promotes the acquisition of indigenous technological capacity in Nigeria. Regulates investment of foreign technology into the country, regulates the mandatory registration of such technologies and ensures that standard technologies are imported.
- ≈ ***Industrial Inspectorate Office:*** a division of the Ministry of Trade and Investment; regulates the grant of incentives to companies especially companies involved in the manufacturing sector to encourage participation in business in Nigeria.
- ≈ ***Federal High Court:*** has jurisdiction to entertain companies' proceedings and the operation of the CAMA as provided for under Section 251 CFRN 1999. Also responsible for the registration of companies resolutions and approval/sanctions of certain schemes.
- ≈ ***National Insurance Commission***
- ≈ ***Investment and Securities Tribunal:*** has jurisdiction to entertain capital market disputes.

## INCORPORATION/REGISTRATION OF COMPANIES

As a Solicitor engaged to facilitate the incorporation of a Company, highlight any five matters in respect of which you will take incorporation instructions during client interview. *2010 No 1(a)*

- ≈ Name of the Company
- ≈ Type of Company
- ≈ Particulars of Directors
- ≈ Particulars of subscribers
- ≈ Authorized share capital
- ≈ Object or business for which it is registered
- ≈ Registered office address
- ≈ Date of completion

As a Solicitor engaged to facilitate the incorporation of a Company, what instructions will you take in respect of the name of the proposed company? Explain what steps you will take regarding the instructions. *2010 No 1(b)*

- Obtain two names from the promoters of the company: preferred name and alternative name

- Application is made to the Corporate Affairs Commission in CAC Form 1 Availability Check and Reservation of Name to know which of the names are available and then reserved for the company pending completion of the registration process.

Draft the Memorandum of Association of the company (without subscription clause and subscription box) i.e. Heading and Clauses 1-6. 2009 No 1(a); 2010 No 1(f), May 2011 No 1(b)

**FEDERAL REPUBLIC OF NIGERIA  
COMPANIES AND ALLIED MATTERS ACT  
MEMORANDUM OF ASSOCIATION**

**OF  
TOSH COMPUTERS LTD**

1. Name clause
2. Registered office clause
3. Business/Object clause
4. Type of company/status of company clause
5. Liability clause
6. Share capital clause

Draft the memorandum of association of a company seeking re-registration from a private company to a public company, to be submitted to the CAC. August 2011 No 3(b)

1. Name clause
2. Registered office clause
3. Business/Object clause
4. Type of company/status of company clause
5. Liability clause
6. Share capital clause

**Subscription clause  
Subscription box.**

List the documents that will be submitted to the CAC for the incorporation of a Company. *2010 No 1(e); May 2012 No 1(d)(ii)*

1. Form of approval for name;
2. Duly Completed set of Incorporation Forms which include:
  - (a) CAC Form 1 Availability Check and Reservation of Name

- (b) CAC Form 2 Statement of Share Capital and Return on Allotment of Shares
  - (c) CAC Form 2.1 Particulars of Company Secretary
  - (d) CAC Form 3 Notice of Registered Office Address
  - (e) CAC Form 4 Statutory Declaration of Compliance by a Legal Practitioner
  - (f) CAC Form 7 Particulars of first Directors
3. Duly Stamped Memorandum and Article of Association;
  4. Photocopy of information page of International Passport or National Identity Card for each Director and Subscriber;

**Section 35 CAMA and Regulation 23, Companies Regulations, 2012**

Complete Forms CAC 2,3,4 and 7. *May 2011 No 1(a)*

**Complete CAC Forms**

Highlight the incorporation documents (as well as copies of each) required for stamping. *May 2011 No 1(c)(iii)*

- (1) Memorandum and Articles of Association duly stamped as a Deed
- (2) CAC Form 2 Form for Authorized Share Capital and Return on Allotment of Shares

Two copies each.

Mention the documents that must be presented to the CAC in order to register a Business Name. *2009 No 6(c)(ii)*

- (1) Business Form 1
- (2) CAC Form BN 1 Availability Check and Reservation of Name
- (3) Particulars of firm and proprietors
- (4) Tax clearance certificate of each individual or partners
- (5) Two passport photographs of Directors
- (6) Evidence of payment of filing fees

***(PLEASE SEE REGULATION 54, COMPANIES REGULATIONS. 2012)***

Ilo Essien, Olu Fadaka and Umar Abdul are partners in a business. Illustrate three business names they can adopt if they desire to avoid registration. *May 2012 No 5.*

≈ I. Essien, O. Fadaka & U. Abdul

≈ Essien, Fadaka & Abdul

≈ Ilo Essien, Olu Fadaka & Umar Abdul

List the documents to be attached to an application for registration of a Trustee. *2010 No 3(e); May 2011 No 2a (i); May 2012 No 6(a)*

- (1) CAC Form IT 1 Availability Check and Reservation of Name
- (2) Letter of application signed by Chairman and Secretary
- (3) Two copies of the Constitution
- (4) Minutes of the meeting where the Trustees were appointed
- (5) Minutes of the meeting where the special clause was adopted
- (6) Three passport photographs of Trustees
- (7) Receipt of payment of filing fee
- (8) Sworn affidavit by each Trustee
- (9) Evidence of publication in national dailies
- (10) Impression of the common seal

**(PLS SEE REGULATION 65, COMPANIES REGULATIONS, 2012)**

How many Trustees does Part C of CAMA require for registration? *2010 No 3(c)*

One or more Trustees. **Section 590 CAMA.**

List four clauses you will include in the Constitution of an Incorporated Trustee under Part C CAMA. *2010 No 3(f)*

- (1) Name
- (2) Commencement
- (3) Registered Address
- (4) Aims and Objectives
- (5) Sources of Funds
- (6) Board of Trustees
- (7) Powers and Duties of Trustees

- (8) Common seal
- (9) Meetings
- (10) Election of officers
- (11) Tenure of office
- (12) Bye-election
- (13) Special Clause
- (14) Dissolution.

What is a Special Clause? *2010 No 3(g)*

The **Special Clause** is a Clause in the Constitution of an Incorporated Trustee that provides for the application of the income and property of the association to the effect that the income and assets of the association shall be applied solely towards the promotion of the objects of the body and no portion of it shall be paid or transferred by way of profit to the members of the body; and that if, in the event of a winding up or dissolution of the body, there remains, after the satisfaction of all its debts and liabilities, any property, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body, or transferred to some charitable objects.

Draft the special clause of the Constitution of an incorporated trustee. *May 2012 No 6(b)*

**In the event of a winding up or dissolution of the incorporated trustees, if there remains, after the satisfaction of all its debts and liabilities, any property, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body, or transferred to some charitable objects.**

What are the differences between Incorporated Trustees registration requirements and requirements for incorporation of a Company Limited by Guarantee? *2010 No 3(h); May 2011 No 2a(2)*

- (1) Company Ltd by Guarantee requires a memorandum and articles of association while Incorporated trustees require Constitution
- (2) The memorandum and articles of association of a Company Ltd by Guarantee requires the consent of the Attorney General for registration but this is not so for Incorporated Trustees

- (3) Incorporated trustees require advertisement in national dailies but Company Ltd by Guarantee does not.
- (4) Company Ltd by Guarantee has Directors while Incorporated trustees has Trustees
- (5) Incorporated trustees requires the passport photographs of the Trustees for registration but Company Ltd by Guarantee does not require the passport photograph of the Directors
- (6) Evidence of payment of stamp duty fees is required to register a Company Ltd by Guarantee but this is not the case for Incorporated trustees.

Draft the introductory clause of the partnership agreement between a Company, Vintage Express Ltd and Mr X Xling. *2009 No 6(d)(i)*

THIS PARTNERSHIP DEED (is) made this ..... day of ..... 2009 BETWEEN Vintage Express Limited (A Company Registered under CAMA) Trading under the Name & Style of ..... of the one part AND Mr X Xling of the other part.

### TYPES/FEATURES OF BUSINESS/NON BUSINESS ORGANIZATIONS

How many Trustees does Part C of CAMA require for registration? *2010 No 3(c)*

One or more Trustees. **Section 590 CAMA.**

Senator Udoh is desirous of appointing his 16 yr old Son as a Trustee of an Association, advise him. *2010 No 3(b)*

Senator Udoh cannot appoint his 16 yr old Son as a Trustee of an Association, because he is in law an infant and disqualified from appointment as a Trustee. **Section 592(1)(a) CAMA**

What are the qualifications of a Trustee? *2010 No 3(d)*

#### Qualifications of Trustees

A person shall not be qualified for appointment as a Trustee if:

- ≈ He is an infant.
- ≈ He is a person of unsound mind, having been so found by a Court
- ≈ He is an undischarged bankrupt

- ≈ He has been convicted of an offence involving fraud or dishonesty within five years of his proposed appointment

### **Section 592 CAMA**

Advise the Trustees of a proposed Association on the legality or otherwise of carrying out its objectives prior to registration. *2010 No 3(a)*

The Trustees of an Association can legally carry out its objectives prior to registration and may even decide not to register at all if not so authorized by the association. **Section 590 (1) CAMA**

**However non registration will not afford it to enjoy the incidence and benefits of incorporation**

Outline the grounds for the dissolution of an Incorporated Trustees. *May 2012 No 6(c)*

The grounds for the dissolution of an Incorporated Trustees as contained in **Section 608(2) CAMA** include:

- (1) That the aims and objects for which the association was established have been fully realized and no useful purpose would be served by keeping the association alive
- (2) That the association was formed to exist for a specified period has expired and it is not necessary for it to continue to exist
- (3) That all the aims and objects of the association have become illegal or otherwise contrary to public policy.
- (4) That it is just and equitable in all the circumstances that the corporate body be dissolved

Advise the Trustees of an Incorporated Trustees on the rule guiding the distribution of the Assets of the Incorporated Trustees. *May 2012 No 6(d)*

The rule guiding the distribution of the assets of an Incorporated Trustee is that the income and assets of the association shall be applied solely towards the promotion of the objects of the body and no portion of it shall be paid or transferred by way of profit to the members of the body; and that if, in the event of a winding up or dissolution of the body, there remains, after the satisfaction of all its debts and liabilities, any property, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body, or transferred to some charitable objects. **Section 603 (1) CAMA.**



Give three reasons why you would advise partners to have a written agreement. May 2012 No 5(b)

- (1) A written partnership agreement is necessary for submission to banks for operation of current account; to government for transactions that require certain corporate documentation etc
- (2) A written partnership agreement is necessary for tax purposes
- (3) To exclude common law principles
- (4) For easy resolution of any conflict

Assuming Partners have agreed to have a written partnership agreement, explain why they must specifically agree on partnership capital, partnership property and dissolution of partnership. May 2012 No 5(c)

**Capital:** The amount contributed by each partner or the proportion of the contribution should be stated. There is a presumption of equality of shares unless otherwise provided **Section 25 (a) P. L. Lagos. Halaby vs Halaby.**

**Partnership property:** there is a presumption in respect of property bought with Partnership money as being partnership property unless otherwise provided. **Section 22 Partnership Law, Lagos ; Hanein vs Nasir.**

**Dissolution:** a partnership may be dissolved by

(a) Act of the parties:

By Notice (Section 33(1)(c) Partnership Law, Lagos ); By Illness (section 36(b)) PL. (L); By charge of partner's share of Partnership Property (section 34(1)(b) P.L.; By special clause in agreement e.g. power of expulsion.

(b) By Operation of Law:

Expiration of term (section 33 (1) Partnership Law, Lagos; Termination of venture or undertaking (section 33(l) Partnership Law, Lagos ). **Uredi vs Dada;** Death or bankruptcy of partner unless otherwise provided Section.34(a) Partnership Law; Supervening illegality (section 35(L)).

(c) By the Court (section 36 Partnership Law, Lagos

It is necessary to have a written agreement so as to exclude the operation of common law on dissolution.

## PRE-INCORPORATION AGREEMENT

Mention four pre-incorporation contracts you will advise your clients to execute in furtherance of the incorporation of a company involving Nigerians and Japanese Counterparts. 2010 No 1(c)

- (1) Joint Venture Agreement
- (2) Memorandum of Understanding
- (3) Directors' Service Contract

- (4) Property Acquisition Contract
- (5) Shareholder's Agreement
- (6) Transfer of Technology Agreement
- (7) Confidentiality Agreement
- (8) Payment of Promoter's Expenses Agreement

Draft the commencement of a Memorandum of Understanding between Nigerian and Japanese Business Partners to be executed on August 15, 2010. 2010 No 1(d)(i)

**THIS MEMORANDUM OF UNDERSTANDING** (is) made this 15 day of August 2010 **BETWEEN** Toshira Japan Incorporated of ..... (Referred to in this Agreement as "The Japanese Company") of the one part **AND** Zonix (Nig) Ltd of ..... (Referred to in this Agreement as the "Nigerian Company") of the other part.

Mention any five clauses you will include in the Memorandum of Understanding. 2010 No 1(d)(ii)

- (1) Commencement
- (2) Name of Company
- (3) Parties
- (4) Recital
- (5) Sphere of Operation
- (6) Object/Business
- (7) Appointment of Directors
- (8) Powers and Duties of Directors
- (9) Sharing ratio
- (10) Profit/Loss
- (11) Applicable Law
- (12) Conflict Resolution
- (13) Execution
- (14) Attestation

### **FOREIGN PARTICIPATION IN BUSINESS**

Advise a company on what major steps to take to ensure that the business between it and Mr X Xling, a Chinese Merchant does not offend the provisions of the law. 2009 No 6(d)(ii)

To avoid offending the provisions of the law in Nigeria, the steps to be taken by the Chinese Partner include

- (1) Registration of the Company with the **CAC Section 54 CAMA**
- (2) Registration with the NIPC **Section 20 NIPC Act**

(3) Registration of Securities with the SEC

(4) Compliance with the need to acquire relevant permits under the **Immigration Act**

(5) Compliance with the **Foreign Exchange (Monitoring and Miscellaneous Provisions) Act** on importation of foreign capital.

State the position of law in Nigeria on the issue of a foreign company, carrying on business in Nigeria in its own name without registering a Nigerian Company. 2010 No 4(a)

The position of law on the issue of a foreign company seeking to carry on business in Nigeria is that a company having the intention of carrying on business in Nigeria shall first obtain incorporation as a separate entity in Nigeria for that purpose. Section 54 CAMA

However, **Section 56(1) of CAMA** provides that a foreign company or entity may be exempted from registration if it belongs to any of the following categories or types of companies –

- ≈ A foreign company invited to Nigeria by or with the approval of the Federal Government to execute a specified individual project.
- ≈ A foreign company which is in Nigeria for the execution of a specific individual loan project on behalf of the donor organisation or agency.
- ≈ A foreign government-owned company engaged solely in export promotion activities.
- ≈ Engineering consultants and technical experts engaged on any individual specific project under contract with any of the governments of the Federation or any of their agencies or with any person where the Government has approved such contract.

To benefit from such exemption, the company needs to apply for exemption from the Federal Executive Council through the Secretary to the Government of the Federation.

Explain the exceptions to the requirement of registration by foreign companies intending to do business in Nigeria under the CAMA. May 2012 No 1(c)

Although, a company having the intention of carrying on business in Nigeria is required under Section 54 CAMA to first obtain incorporation as a separate entity in Nigeria for that purpose, by **Section 56(1) of CAMA** a foreign company or entity may be exempted from registration if it belongs to any of the following categories or types of companies –

- ≈ A foreign company invited to Nigeria by or with the approval of the Federal Government to execute a specified individual project.
- ≈ A foreign company which is in Nigeria for the execution of a specific individual loan project on behalf of the donor organisation or agency.

≈ A foreign government-owned company engaged solely in export promotion activities.

≈ Engineering consultants and technical experts engaged on any individual specific project under contract with any of the governments of the Federation or any of their agencies or with any person where the Government has approved such contract.

To benefit from such exemption, the company needs to apply for exemption from the Federal Executive Council through the Secretary to the Government of the Federation.

Draft a letter of exemption to the relevant authority. 2010 No 4(b), 2010 No 5(d)

**Letter of Exemption**

**Xling Refinery & Services Limited**

**20, Agbani Street, Lagos**

**Lagos State**

**Date.....**

**The President**

**Through:**

**The Secretary to the Federal Government of Nigeria,**

**Office of the Federal Government, Abuja.**

**Dear Sir,**

**APPLICATION FOR EXEMPTION FROM REGISTRATION**

**We, the above named foreign company having been invited to Nigeria by the Federal Government of Nigeria to execute a project hereby apply for exemption from incorporation as a Nigerian Company.**

**Please find attached the necessary documents as stipulated by section 56 (2) of the Companies and Allied Matters Act, 2004.**

**We remain grateful.**

**Yours faithfully**

**( signed)**

**Company Secretary**

List six documents that will accompany an application to the NIPC for obtaining business permit. 2010 No 4(c)

- ≈ NIPC Form 1
- ≈ Receipt of purchase of application form (NIPC Form 1)
- ≈ Payment of a fee of five thousand naira (N5,000).
- ≈ Partnership/ Joint venture agreement (if any)
- ≈ Certified True Copy of the memo and article of the company.
- ≈ Certificate of Incorporation
- ≈ Tax clearance certificate
- ≈ Certificate of capital importation
- ≈ Evidence of acquisition of business premises
- ≈ Feasibility study report (if any)
- ≈ Names, addresses, nationalities and occupations of the Directors
- ≈ Profile of expatriate personnel showing their qualifications, experience, positions to be held in the company and duration of each quota position.

Mention two incentives that will be available to a Company engaged in gas refinery for export purposes financed with foreign loan. 2010 No 4(d)

- ≈ Incentives to a company engaged in the utilization of associated gas under the **Petroleum Profits Tax Act (as amended by Finance (Miscellaneous Taxation Provisions) Decree No. 18, 1998)**.
- ≈ Exemption from tax for the first three years of its operation for investment in solid minerals. **Section 22(2) of Minerals and Mining Act Cap. M. 12 LFN 2004.**
- ≈ Export incentives and exemption from tax for the first three consecutive assessment years under the **Export (Incentives and Miscellaneous Provisions) Act**
- ≈ Retention of export proceeds in foreign currency in its domiciliary account is not taxed.
- ≈ Interest derived from foreign loan is exempted from tax.

Highlight the incentives available to a Company under relevant Nigerian statutes for manufacturing a pioneer product, doing business in Nigeria with foreign loan and importing raw materials to manufacture goods for export. 2010 No 1(g); May 2012 No 1(e)

- ≈ **Pioneer Status** – Tax exemption is granted for a period of **5 years** subject to extension for another **2 years**. **Industrial Development (Income Tax Relief) Act Cap. 17 LFN 2004.**
- ≈ **Duty Drawback and Suspension Scheme** –Duty Drawback Scheme/Regulation provides for the **refund of import duties on raw materials used in manufacturing goods that are exported.**

- ≈ **Doing business in Nigeria with foreign capital** – purchase of foreign capital at official CBN rate; free repatriation of capital/profit; tax relief on interest on the foreign loan.

Explain the procedure for foreign direct investment in Nigeria. May 2012 No 1(d)(i)

- ≈ **Preparation of Joint venture agreement and other necessary pre-incorporation agreements (where necessary)**
- ≈ **Take steps to incorporate a company by registration with the CAC**
- ≈ **Application to the NIPC**
- ≈ **Application to the SEC for registration of securities and foreign direct investment**
- ≈ **Application for relevant permits under the Immigration Act**
- ≈ **Importation of capital through an authorized dealer and obtaining certificate of capital importation.**

### **CONVERSION AND RE-REGISTRATION OF COMPANIES**

What type of resolution is to be passed for the re-registration of a company from private to public company? 2009 No 1(c)

#### **Special resolution**

State the consequential alterations to be made in the Memorandum of Association of a Company to bring it in line with that of a public company. 2009 No 1(c); August 2011 No 1(a)(iii);

- ≈ **Name clause: name of the company will be changed to public limited company (plc)**
- ≈ **Status clause: the status clause will be changed to public company**
- ≈ **Share capital clause must be increased to reflect the change (where there is increase in the authorize share capital)**

State two consequential alterations each to be made in the Articles of Association of the Company to bring it in line with that of a public company. 2009 No 1(c); August 2011 No 3(d)

- ≈ **Name clause: name of the company will be changed to public limited company (plc)**
- ≈ **Removal of restriction on shares**
- ≈ **Removal of the clause providing for pre-emptive rights of members**
- ≈ **Regulation on appointment of Directors (with respect to 70 years age requirement)**
- ≈ **Qualification of Secretary**
- ≈ **The provision for written resolution will be deleted.**

Itemize the pre and post re-registration documentation at the CAC before a Company can achieve a change of status from private to public company. 2010 No 5(a)

- ≈ **Application letter in the prescribed form to the CAC signed by at least one Director and Secretary**
- ≈ **A copy of the Special resolution**
- ≈ **A printed copy of the MEMOART duly altered**
- ≈ **Statutory declaration signed by Director and Secretary that the paid up capital is not less than 25% of the aggregate net asset of the company**
- ≈ **Statutory declaration of compliance signed by Director and Secretary**
- ≈ **Copy of the Company Balance Sheet**
- ≈ **A Copy of prospectus/statement in lieu of prospectus issued in the last 6 months**
- ≈ **Certificate of Incorporation. **Section 50 CAMA****

Outline the procedural steps to take to re-register a company from private to public. August 2011 No 1(a)(iii)

- ≈ **The Company's Board of Directors calls a meeting to propose the conversion and re-registration of the company**
- ≈ **A Special resolution is passed at the meeting for conversion and re-registration of the company from private to public**
- ≈ **The MEMOART of the company is altered to reflect the conversion**
- ≈ **An Application letter is delivered to the CAC accompanied by:**
  - **A copy of the resolution**

- MEMOART of the Company duly altered to bring it in line with the MEMOART of a Public Company
- Statutory declaration of compliance signed by Director and Secretary that resolution was duly passed
- Statutory declaration signed by Director and Secretary that the paid up capital is not less than 25% of the aggregate net asset of the company
- Copy of Company Balance Sheet
- Copy of prospectus/statement in lieu of prospectus issued in the last 6 months
- Certificate of Incorporation

**Section 50 CAMA**

Draft the resolution of the company made at the *General Meeting* to change its status from a private to a public company. 2010 No 5(b)

The Draft Resolution:

(NAME OF COMPANY)

**SPECIAL RESOLUTION FOR CONVERSION OF (name of company) INTO PUBLIC COMPANY PURSUANT TO SECTION 50 OF THE COMPANIES AND ALLIED MATTERS ACT**

At the *General Meeting* of (name of company) held on (date of meeting), the following resolution was passed:

That the Company be and it is hereby converted into a public company and that the directors be and that they are hereby authorised and directed to take all steps as may be necessary or proper for effectuating such conversion.

DATED THIS .....DAY OF.....20...

Director.....  
.....

Secretary

Draft a detailed application to the *CAC* to effect a change of a private company to a public company. August 2011 No 3(a)

Draft Application for re-registration:

**FIRST CAPITAL AIRLINE LIMITED**

15 Ahmadu Bello Way,



Ikoyi, Lagos.

10<sup>th</sup> August, 2011

The Registrar-General,  
Corporate Affairs Commission,  
Abuja.

Dear Sir,

**APPLICATION FOR THE CONVERSION OF FIRST CAPITAL AIRLINES LTD TO FIRST  
CAPITAL AIRLINES PLC PUSUANT TO SECTION 50 OF THE COMPANIES AND  
ALLIED MATTERS ACT**

We write to apply for the conversion of First Capital Airlines Ltd to First Capital Airlines Plc i.e. from a private company to a public company. We forward herewith the following documents:

1. A printed copy of the memorandum and articles of association duly altered.
2. A copy of written statement on oath.
3. The balance sheet of the company dated 30<sup>th</sup> May, 2011.
4. The statutory declaration signed by the director and secretary.
5. Printed Copy of the Resolution.
6. The old certificate of incorporation

Thank you

Yours Faithfully

.....  
.....

Director

Secretary

State the procedure involved in increasing the authorized share capital of a company.  
2010 No 6(d); August 2011 No 2(b)

- ≈ The Company's Board of Directors calls a meeting to authorize the increase in the share capital of the company

- ≈ A general meeting is called to pass an ordinary resolution (**now special resolution by Regulation 29**) to increase the share capital
- ≈ A special resolution is passed at the meeting to increase the authorized share capital of the company
- ≈ Preparation and delivery to the CAC within 15 days of passing the resolution
- A copy of the Special Resolution duly signed by a director and secretary or two directors.
- A printed copy of the Notice of Increase to the CAC
- A duly stamped Form CAC 2.4 (Notice of change of Authorised Share Capital)
- Updated Annual Return
- Updated **533 of CAMA** i.e. if it involves a bank or insurance company, then a statement of affairs.
- Evidence of payment of Financial Reporting Council (FRC) annual dues
- Payment of fees
- Altered MEMOART
- Statutory declaration verifying the fact of issuance of 25% of the authorized share capital. This must be delivered to the Commission by the director within 6 months of the filing of the above documents. **Regulation 29 (3)**

See Regulation 29 in general

Outline the necessary documents that would be submitted to the CAC and the documents that would be issued by the Company after a successful registration of increase in share capital. August 2011 No 1(b)(i)

- ≈ Special resolution
- ≈ Notice of Increase to the CAC
- ≈ Statement of increase duly stamped
- ≈ Statement of authorized share capital and return on allotment of shares
- ≈ Statutory declaration verifying the fact of issuance of 25% of the authorized share capital

Complete Form CAC 6 (now Form CAC 2.4) in readiness for filing. August 2011 No 1(b)(ii)

(Complete Form CAC 6)

Draft the resolution increasing the share capital of a company 2009 No 1(d); 2010 No 6(d); August 2011 No 2(c)

Draft Resolution:

**MATJOY TEXTILE NIGERIA LIMITED**

(Any address)

**RESOLUTION TO INCREASE SHARE CAPITAL (SECTION 102)**

AT the 5<sup>th</sup> General Meeting of MATJOY TEXTILES NIGERIA LIMITED held at (venue of meeting) the following resolution was proposed and passed:

“That the capital of the company be increased to N 10, 000, 000.00 by the creation of 9, 000, 000 ordinary shares of N1 each, such new shares to rank pari passu in all respects with the existing ordinary shares in the capital of the company.”

DATED THIS.....DAY OF.....

.....

DIRECTOR

.....

SECRETARY

Outline the procedure for change of name of a registered company. August 2011 No 3(e)

- ≈ The Company’s Board of Directors passes a resolution for change of name
- ≈ Availability check and reservation of name will be conducted at the CAC
- ≈ A meeting of the company is called and a Special resolution is passed at the meeting to change the name of the company
- ≈ The consent of the CAC is sought by delivering to the CAC the following:
  - Application signed by a director and secretary or two directors stating the reasons for change of name.
  - Form of approval for new name
  - Special Resolution for change of name signed by a director and secretary or two directors

- Original Certificate of Incorporation
- Duly signed memorandum and article of association reflecting the new name.
- Updated annual returns
- Payment of filing fees
- Updated section 553 CAMA

Draft the resolution for the change of a name of company. May 2011 No 6(b)(iii).

Draft Resolution:

**SPECIAL RESOLUTION TO CHANGE NAME OF A COMPANY PURSUANT TO  
SECTION 31 OF COMPANIES AND ALLIED MATTERS ACT**

At the General Meeting of (name of company) held on (date), at (venue) the following resolution was proposed and duly passed:

THAT the name of the company (original name of company) be and it is hereby changed in to (new name) and the company secretary be and is hereby authorised and directed to take all such steps as may be necessary or proper for effectuating such change.

.....

**DIRECTOR**

.....

**SECRETARY**

**OR**

.....

**DIRECTOR**

.....

**DIRECTOR**

**STATUTORY BOOKS**

State six statutory books required to be kept by a Company. August 2011 No 2(d)

- Register of members
- Index of members
- Register of substantial interest

- Register of Director's holding
- Register of charges
- Register of debenture holders
- Register of Directors and Secretary
- Minutes of Meeting
- Accounting Records

State the period within which to register a charge and discuss the legal implication of failure to register the charge within the specified period. 2009 No 1(g)

Every charge created in accordance with the provision of the law is a registrable instrument and must be registered within 90 days of creation. Section 197 CAMA.

The failure to register a charge renders such charge void against any liquidator or any creditor of the company but the obligation to pay the debt is not thereby discharged and becomes payable immediately.

#### **CORPORATE SEARCH**

Write a search report to a Bank on a company seeking grant of a loan facility. August 2011 No 2(a)

Draft Search Report:

(LEGAL PRACTITIONER'S ADDRESS)

DATE.....

(ADDRESSEE'S ADDRESS)

Dear Sir,

#### **SEARCH REPORT ON (NAME OF COMPANY)**

Please refer to your instruction on us to conduct a search on (name of company) at the Corporate Affairs Commission, Abuja. Find below the report on the search conducted.

1. Date of Search: 9<sup>th</sup> August, 2011
2. Place of Search: Corporate Affairs Commission, Abuja
3. Name of Company: (name of company)
4. Reg. No.:
5. Date of Incorporation:

6. Registered Address:
7. Share Capital:
8. Increase in Shares:
9. Subscribers:
10. Directors:
11. Annual Returns:
12. Registered Charge:
13. Conclusion

All information obtained as a result of search conducted at the Corporate Affairs Commission, Abuja.

There are no registered charges against the company.

Name of Solicitor

.....

## **CORPORATE GOVERNANCE**

### **DIRECTOR**

With the aid of relevant authorities, write a reply on points of law to the contention that once made a Director, only death can terminate the appointment. 2009 No 4(a) (v); August 2011 No 5(d)

**By Section 255 CAMA, a person may be appointed as a Director for life. However, such person shall be removable under Section 262 CAMA just like any other Director. The only exemption that a Life Director enjoys is that he is not subject to retirement by rotation. The contention that once made a Director, only death can terminate a person's appointment is invalid.**

Comment on the dual status of a person appointed as a Director and also a Secretary in the light of the provisions of the CAMA 2009 No 5(a); May 2011 No 6(a).

**By a combined reading of Section 293(2) & 294 CAMA, a person can validly occupy the dual position of Director and Secretary at the same time but where an act or thing is required to be done by a Director and Secretary, such things cannot be validly done by the same person.**

Discuss the validity of a document attested to a person acting in the dual capacity of a Director and Secretary of a company. 2009 No 5(b); May 2011 No 4(c).

By a combined reading of Section 293(2) & 294 CAMA, it is possible for a person to validly occupy the dual position of Director and Secretary at the same time but where an act or thing is required to be done by a Director and Secretary, such things cannot be validly done by the same person.

A document attested to by a person in the dual capacity of a Director and Secretary is invalid.

Assuming all the Directors of a Bank died in a plane crash on their way to a meeting with a core investor in London, what will be your advice to the creditors. August 2011 No 4(b) (i)

In the event of the death of all the Directors of a Company, any of the personal representatives shall be able to apply to the Court for an order to convene a meeting of all the personal representatives of the shareholders to attend and vote at a meeting to appoint new Directors to manage the company and if they fail to do so, the Creditors shall have the powers to do so. Section 248(2) CAMA.

What are the options available to a Board of Directors of a company for the removal of the Managing Director? 2009 No 5(d)

The only option/procedure available for the removal of a Company Director is the procedure as set out in Section 262 CAMA. **Bernard Longe v First Bank of Nigeria Plc.**

Please Note: the old position used to be that a Company had three options available to it when it seeks to remove a Director, to wit: look at the

- ≈ Contract of service
- ≈ Articles of Association
- ≈ Section 262 CAMA

And then choose the easiest option to effect the removal of the Director. **Yalaju Amaye v AREC. This is clearly no longer the case.**

What is the procedure for the removal of a Director. 2009 No 5(e); May 2012 No 2(2)(a)

1. The person(s) wishing to remove the director must issue(s) notice of the resolution to the company at least 28 days before the date of the meeting – Section 236 of CAMA.
2. Upon receipt of the notice, the Secretary to the company will:
  - send a copy of the notice to the director concerned;

- issue notice of the meeting at least 21 days before the date of the meeting. The notice will be accompanied by any representations made by the Director and state the fact of the representations having been made.
- At the meeting:
  - give audience to the director and read to the members his representations if they were received too late or were not sent to the members owing to the company's default.
  - Pass ordinary resolution removing the director.
  - File form of particulars of directors and of any changes therein, that is, Form CAC 7 to the CAC to reflect the removal within 14 days of remove.
  - Enter the fact of removal in the Register of Directors and where necessary also amend the Register of Directors' Shareholding – *Yalaju-Amaye v. Associated Registered Engineering Contractors Ltd.*

Comment on the propriety of the suspension of a Director for granting loan facility without due process and subsequent summary dismissal without notice. May 2011 No 4(d).

**Section 262 CAMA** contains the procedure for the removal of a Director and the first requirement is that person(s) wishing to remove the director must issue(s) notice of the resolution to the company at least 28 days before the date of the meeting **Section 236 of CAMA**, which notice must be served on the Director sought to be removed. The Director shall be entitled to receive the notice of the Director's notice otherwise the meeting and the purported removal of a Director without serving him notice shall be null and void. **Longe v First Bank of Nigeria.**

Complete form *CAC 7* to effect a change of Director. 2010 No 5(c); May 2012 No 2(2)(c)

#### Complete CAC Form

Draft the resolution that a Company will file with the *CAC* to effect a change of a Director. May 2012 No 2(2)(b)

#### Draft (resolution)

As a Company Secretary, state the rules applicable to rotation of Directors at the AGM August 2011 No 5(a)



**The rule on rotation of Directors as provided for under Section 259(1), (2) & (3) CAMA to the effect that except as stated in the Articles of Association of the Company, at the first Annual General Meeting of the Company, all Directors shall retire from office and at every subsequent Annual General Meeting, one third of the Directors for the time or where the number is not three or a multiple of three, then the number nearest to one third shall retire from office. Also, the directors to retire first shall be those who have been longest in office since their last election and as between Directors who were elected the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lots.**

Examine the possibility of appointing a 72 year old man and a 16 year old as Directors of Axe (Nig) Plc. August 2011 No 5(c)

**An adult is qualified for appointment as a Director of a Company. But in the case of a Public Company, a person above the age of 70 years owes the Company the duty to disclose his age to the members at the general meeting. Section 252 CAMA. Failure to so declare his age renders the person guilty of an offence and liable to a fine of N500. The notice seeking to appoint a 72 year old man must state the age of the person.**

**An infant, being a person less than 18 years old is disqualified from appointment as a Director of a Company. Section 257(1)(a) CAMA**

What is the legal implication of a person's conviction for fraudulent misrepresentation in his capacity as a Director of a Company. August 2011 No 5(b)

**Section 257(1)(a) CAMA provides for the category of persons who are disqualified from holding office as Directors. One of such persons is the person disqualified under Section 254 CAMA.**

**By Section 254(1)(b) CAMA, a person who has been found guilty, while as an officer of a Company, of any fraud in relation to the Company shall be disqualified from holding office as a Director of the Company or otherwise take part in the management of the Company for a specified period not exceeding ten years.**

Comment on the representation of a Company which is the Shareholder in another Company, at the meeting of such other by Company by an NYSC Lawyer. August 2011 No 6(c)

**A Company which is a Shareholder in another Company shall have the right to be represented at the Board of such other Company as a Nominee or Representative Director by resolution of its Board of Directors or other Governing Body. Section 231 CAMA. There is so special requirement to be**

fulfilled by any person before being appointed such Nominee or Representative Director so long as the appointment was done by the resolution.

The appointment of an NYSC Lawyer as a Nominee or Representative Director in the board of another Company is valid.

## **SECRETARY**

Prepare a checklist of the duties of a Company Secretary before, during and after an AGM. August 2011 No 6(d)

### **Duties of the Company Secretary before the AGM**

- The Secretary gives notice of meeting to all those entitled to notice of the meeting. Section 219 CAMA.
- Give additional notice in newspapers (for public companies) Section 222 CAMA
- Ensure that the Annual Reports and Accounts are ready
- Prepare the agenda of the meeting
- Ensure that the venue and other logistics are in place

### **Duties of the Company Secretary during the AGM**

- Assist the Chairman in ensuring that the meeting is conducted in compliance with the Law.
- Take the minutes of the meeting
- Render other secretarial duties to the meeting

### **Duties of the Company Secretary after the AGM**

- File annual returns within 42 days after the meeting
- Prepare the final draft of the minutes of the meeting
- Carry out other statutory duties of the Company Secretary. Section 298 CAMA.

Comment on the grounds for the removal of a company secretary by a Managing Director for failure to honour a dinner date. 2009 No 5(c)

Section 296 CAMA provides for the procedure and grounds for the removal of the Company Secretary as well as the appropriate authority to remove the Secretary.

The Board of Directors may remove a Company Secretary only on the grounds of fraud or serious misconduct. Where the ground for the removal is other than fraud or serious misconduct, then the Board of Directors shall not have powers to remove the Company Secretary without the approval of the General Meeting but may only suspend the Secretary. However, by Section 64(b) CAMA and Section 263 (5) CAMA, the Board of Directors may delegate any or all their powers to the Managing Director.

The removal of the Company Secretary by the Managing Director on the ground of failure to honour a dinner date, not being a ground of fraud or serious misconduct is invalid.

Complete Form CAC 5 for submission to the CAC for change of Secretary. May 2012 No 2(2) (d) Complete CAC Form 5

## MEETINGS

State three matters each that will be contained in the ordinary business and special business at the Annual General Meeting of the company 2009 No 1(b)

### Ordinary business

- Declaration of dividends
  - Presentation of financial statements
  - Directors/Auditors' Report
  - Election of Directors to replace retiring Directors
  - Appointment and fixing of remuneration of Auditors
  - Appointment of Audit Committee members
- Section 214 CAMA

### Special business

- Alteration of Object Clause
- To change the name of the company
- Removal of Director
- Removal of Secretary
- Conversion and Re-registration of Company
- Increase or reduction in share Capital
- Voluntary winding up
- Removal of Auditor before the expiration of his term if office

When is a Company incorporated on September 30, 2010 supposed to hold its statutory meeting and what businesses are transacted therein. May 2011 No 6(b)(i).

The statutory meeting of a Public Company must be held within a period of six months from the date of incorporation – **Section 211(1) of CAMA.** A company incorporated on September 30, 2010 must hold its statutory meeting before March 30, 2011.

The business to be transacted at the Statutory Meeting of the Company is to consider the statutory report. The statutory report must be forwarded to every member of the Company at least 21 days before the meeting.

When is a Company incorporated on September 30, 2010 supposed to hold its first AGM and what businesses are transacted therein. May 2011 No 6(b)(ii).

The first annual general meeting a Company must be held within eighteen months from the date of incorporation – **Section 213 of CAMA**. Thus for a company incorporated on September 30, 2010, its first annual general meeting must be held not later than March 30, 2012.

The business to be transacted at the Annual General Meeting of the Company are the ordinary business and the special business. The ordinary businesses are

- Declaration of dividends
- Presentation of financial statements
- Directors/Auditors' Report
- Election of Directors to replace retiring Directors
- Appointment and fixing of remuneration of Auditors
- Appointment of Audit Committee members

**Section 214 CAMA**

All other businesses other than the above are deemed special business of the Company. **Section 214 CAMA**.

List three persons that are entitled to receive notice of AGM under the CAMA 2009 No 3(iii)

The persons entitled to receive notice of AGM are:

- Every member
- Every person on whom ownership of shares devolve by reason being a personal representative, receiver or a trustee in bankruptcy of a member
- Every Auditor
- Every Director
- The Secretary

**Section 219 CAMA**. Apart from those listed above, no other person is entitled to receive notice of meetings.

Advise a person who was not given a notice of meeting about the remedies available to him under the law. 2009 No 3(iv)

**Failure to give notice of any meeting to any a person entitled to receive notice of such meeting shall invalidate the meeting except where such failure is an accidental omission. Section 221 CAMA**

**In addition to the above, a minority who complains of failure to serve notice of meeting on him shall be entitled to bring minority actions under Section 300 CAMA for either an injunction restraining the company from holding the meeting or giving effect to the resolutions passed at the meeting or a declaration to invalidate such meeting or resolution. *Pender v Lushington, Parke v Daily News; Bernard Longe v First Bank.***

With the aid of relevant authorities, write a reply on points of law to the contention that unless the Directors convene a meeting, there is nothing the shareholders can do, since such power is exclusively reserved for the BOD. 2009 No 4(a)(iii)

**The contention that there is nothing the shareholders can do where the Directors fail to convene a meeting is misconceived in law.**

**Apart from the Board of Directors calling a meeting, a meeting of the Company may also be called by:**

- **A Director of the Company**
- **A requisition of members holding at least 1/10<sup>th</sup> of the shares or 1/10<sup>th</sup> of the members of the company. Section 215 CAMA.**
- **The Court in the event of failure of the Board to convene a meeting. Section 223 CAMA.**

Advise the aggrieved shareholders on the possibility of holding a meeting of the company in the event that the BOD refused to hold same. May 2011 No 5(ii).

**The Board of Directors have the duty of calling the general meeting of the Company, but where they fail to do so, the members of the Company can requisition a General Meeting of the Company.**

**The procedure for the requisition of the meeting is as follows:**

- **Members holding at least 1/10<sup>th</sup> of the shares or 1/10<sup>th</sup> of the members of the company may requisition the meeting by depositing the requisition at the registered office of the company;**
- **The requisition shall state the objects of the meeting and must be signed by the requisitionists;**

- The Directors shall on the receipt of the requisition, forthwith proceed duly to convene the general meeting of the Company;
- If the Directors do not within 21 days from the date of the deposit of the requisition proceed to convene the meeting, the requisitionists, or any one of them representing more than one-half of the total voting rights of all of them, may themselves convene the meeting;
- The meeting so convened must be held not later than 3 months from that date;
- Upon holding the meeting, any reasonable expenses incurred by the requisitionists in convening the meeting shall be repaid to the requisitionists by the Company.

**Section 215 CAMA.**

Note however: that the members of the company cannot requisition an Annual General Meeting stricto sensu. The procedure for requisition relates to Extraordinary General Meeting. By Section 213 (2) CAMA, where there is failure of the Board of Directors to convene an Annual General Meeting, the CAC on the application of a member may give ancillary or consequential directions as it may think expedient in relation to calling, holding and conducting the meeting; and such directions shall include a direction that one member of the company present in person or by proxy may apply to the Court for an order to take a decision which shall bind all the members.

Outline the procedure for requisitioning of an EGM by aggrieved shareholders of a Company. 2009 No 4(c); May 2011 No 5(ii).

The procedure for the requisition of the meeting is as follows:

- Members holding at least 1/10<sup>th</sup> of the shares or 1/10<sup>th</sup> of the members of the company may requisition the meeting by depositing the requisition at the registered office of the company;
- The requisition shall state the objects of the meeting and must be signed by the requisitionists;
- The Directors shall on the receipt of the requisition, forthwith proceed duly to convene the general meeting of the Company;
- If the Directors do not within 21 days from the date of the deposit of the requisition proceed to convene the meeting, the requisitionists, or any one of them representing more than one-half of the total voting rights of all of them, may themselves convene the meeting;
- The meeting so convened must be held not later than 3 months from that date;

- Upon holding the meeting, any reasonable expenses incurred by the requisitionists in convening the meeting shall be repaid to the requisitionists by the Company.

**Section 215 CAMA.**

Draft the notice of Statutory meeting of a Company, itemizing the agenda. May 2012  
No 2(1)

**Draft (Notice of Meeting)**

Draft the notice of the first meeting of the Board of Directors of a Company. 2009 No  
6(a)

**Draft Notice of Meeting:**

**COMPANIES AND ALLIED MATTERS ACT, 2004**

**(NAME OF COMPANY)**

**NOTICE OF FIRST BOARD MEETING**

**TO:**

**MR.....**

**(ADDRESS)**

You are hereby informed that the first board meeting of the company is schedule to take place at.....on the (date) at 10.00am to transact the following business:

**Appointment of Secretary**

**Appointment of Managing Director**

**Appointment of Auditor**

**Allotment of Shares**

**Adoption of Common Seal**

**Fixing of Financial Year**

**Adoption of pre-incorporation contracts**

**DATED THIS .....DAY OF.....20.....**

**(Note that this date must not be later than the meeting date)**

.....

**DIRECTOR**

Draft the notice for EGM of a Company. 2010 No 4(g)

**Draft Notice of Meeting:**

**XLING REFINERY & SERVICES LIMITED  
20, AGBANI STREET, LAGOS  
LAGOS STATE**

**NOTICE OF EXTRA-ORDINARY MEETING**

Notice is hereby given that an Extra-Ordinary General Meeting of this company will be held at (venue of meeting) on (date of meeting) at (time of meeting), for the purpose of considering and if thought fit to pass a Special Resolution, “that the affairs of Xlng Refinery Service Ltd be merged with Ental Oil Servicing Ltd.”

DATED.....DAY OF.....20.....

**COMPANY SECRETARY**

.....

**(By order of the Board of Directors)**

Comment on the validity of a resolution passed by the Board of Directors of a Company, where only one of the Directors was available in Nigeria while the others forwarded their consent by e-mail. 2009 No 6(b)

The Board of Directors ordinarily takes decisions by resolutions passed at meetings. Section 263(1) CAMA. However, by Section 263(8) CAMA, a resolution in writing signed by all the Directors for the time being in force, entitled to receive notice of a meeting of the Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held. Thus the Directors can validly pass a resolution in writing without necessarily being present physically.

The resolution signed by one Director while others sent their consent via email is invalid because Section 263(8) CAMA contemplates a resolution signed by



**the Directors entitled to receive notice of the meeting and not a consent sent via email.**

**Also where the other Directors are outside Nigeria and did not leave an address in Nigeria, then they are not entitled to receive the notice of the meeting (Section 266(4) CAMA) and hence not entitled to sign the written resolution in the first place. Section 263(8) CAMA. Thus the only Director available in Nigeria would not form the quorum necessary for any transaction. Section 264(1) CAMA.**

*Comment on the challenge of a meeting of the Board of Directors by the Chairman on the ground that the Board appointed another person as Chairman after 10 mins. May 2011 No 4(b)(i)*

**The Board of Directors of a Company may elect a Chairman of their meetings and determine the period for which he is to hold office, but if no such Chairman is elected or if at any meeting, the Chairman is not present within five minutes after the time appointed for the holding same, the Directors present may choose one of their number to be the Chairman of the meeting. Section 263(4) CAMA.**

**The objection by the Chairman that another person was appointed as Chairman after ten minutes is misconceived.**

*Comment on the challenge of a meeting of the Board of Directors by the Chairman on the ground that the Board meeting was held in Dubai, UAE. May 2011 No 4(b)(ii)*

**The Directors of a Company may meet together from time to time for the dispatch of business, adjourn and otherwise regulate their meetings as they deemed fit. Section 263(1) CAMA. Also By Section 216 CAMA, all statutory and annual general meetings of the company shall be held in Nigeria. It therefore follows that all other types of meetings, including meeting of the Board of Directors can validly hold outside Nigeria.**

**The objection by the Chairman that the Board meeting is invalid having been held in Dubai is also misconceived in law.**

*Comment on the validity or otherwise of the appointment of another person as Chairman of an AGM in the absence of the Chairman after 30 mins of the time scheduled for the commencement of the meeting. August 2011 No 6(a)(i)*

**The Chairman of the Board of Directors has the right to preside as Chairman at every general meeting. But where at a general meeting, there is no such Chairman if he is not present within one hour after the time appointed for the holding same or is unwilling to act, the Directors present may choose one of their number to be the Chairman of the meeting. Section 240 CAMA.**

**The objection by the Chairman that another person was appointed as Chairman after 30 minutes is invalid because the Directors ought to have waited for one hour before appointing another person as the Chairman of the meeting.**

Assuming a person is duly appointed to chair an AGM in the absence of the substantive Chairman, advise him on his role as the Chairman. August 2011 No 6(a)(ii)

**Where at a general meeting, there is no Chairman present within one hour after the time appointed for the holding same or is unwilling to act, the Directors present may choose one of their number to be the Chairman of the meeting. Section 240 CAMA.**

**The duty of the Chairman so appointed shall include:**

- **To preserve order**
- **To ensure that the proceedings are conducted in a regular manner**
- **Ensure that the proceedings are conducted in compliance with the law**
- **To ensure that all questions that arise are promptly decided**
- **Ensure that the true intention of the meeting is carried out**
- **Act bona fide in the interest of the Company.**
- **To cast his vote bona fide in the interest of the company as a whole, provided that if he is Shareholder, he may cast his votes in his own interest.**

**Section 240 (3) & (4) CAMA**

Advise a Shareholder who cannot attend an AGM due to his daughter's wedding on how his views and opinions can be presented at the AGM. 2009 No 3(iv)

**A person who cannot be present at a meeting has the right to appoint a proxy to represent him at the meeting and attend and vote in his stead. Section 230 CAMA.**

Advise a person appointed as a proxy to a meeting on her role. August 2011 No 6(b)

**A person appointed as a proxy to represent another person at the meeting shall have the right to attend, speak and vote at the meeting. Section 230 CAMA.**

**MEMBERSHIP**

State the four modes by which a person can acquire shares of a Company and become a member of the Company. 2010 No 2(d)

- By subscription Section 20 & 79 CAMA;
- By allotment and registration Section 125 CAMA;
- By transfer Section 151 CAMA; or
- By transmission Section 155 CAMA.

With the aid of relevant authorities, write a reply on points of law to the contention that shares of a deceased joint shareholder are registered in favour of the legal representatives of the deceased shareholder by transmission. 2009 No 4(a)(iv)

The objection is misconceived in view of the fact that the ownership of the shares of joint shareholders in the event of the death of one the shareholders will automatically vest (by operation of law) on the survivor. **Section 155 of CAMA.**

#### **MINORITY PROTECTION**

Advice a client, Timipreye who owns N1,000,000 shares in a Company with N10,000,000 share capital. He complained that the Directors have been paying salaries to themselves regularly but failed to pay members' dividends for 5 yrs; that he has not been getting notice of meetings and that a Director of the Company was removed and another appointed in the same meeting. May 2011 No 3(a)

Timipreye is a Minority Shareholder in the Company. He is entitled to payment of dividend on the recommendation of the Directors once declared. **Section 379 CAMA.**

The Directors of the Company are entitled to be paid remuneration as determined by the General Meeting or by the terms of service of the Directors. **Section 267(1) CAMA.**

It is not justifiable to continue to pay salaries of Directors where the Shareholders have not been paid dividends for the past five years.

Timipreye as a member of the Company is also entitled to receive notice of meetings under Section 219 CAMA and under Section 221 CAMA, the failure to give notice of meeting to any person entitled shall invalidate the meeting unless such failure amounts to an accidental omission.

Timipreye is thus entitled to bring a member's direct action seeking a declaration or injunction against the company. **Section 300 CAMA. Pender v Lushington; Park v Daily News.**

**A Director of a Company can be removed at a general meeting of the Company and another person appointed to replace him in the same meeting. Section 262 CAMA. But every person entitled to receive notice of the meeting must be served a notice otherwise the meeting will be invalidated. Section 221 CAMA. Failure to serve notice on Timipreye thus invalidates the removal of the Director and the subsequent appointment of another Director.**

Advise your Clients on the minority protection action available to them where the Directors have failed to pay dividends but approve huge allowances for themselves; indicate the wrongs they can complain of and the remedy or remedies they can obtain. May 2012 No 4(b)(i)

**Shareholders in a Company are entitled to payment of dividend on the recommendation of the Directors once declared. Section 379 CAMA. The Directors of the Company are also entitled to be paid remuneration and allowances as determined by the General Meeting or by the terms of service of the Directors. Section 267(1) CAMA.**

**However, where Directors propose to pay themselves car and sitting allowances to the tune of N30 million and N20 million respectively, when there is no money to pay the dividends of the members, it is clearly excessive and a breach of the fiduciary duty of the Director owed to the Company.**

**Since the allowances have not been paid, the members can take up a members' direct action against the Directors under Section 300 (d) CAMA for fraud on the company and Section 300(f) CAMA where the Directors are likely to derive a profit or benefit from their breach of duty.**

**For the gift of N10 million to Chief Okon's wife, it also appears excessive but since it has also be completed, the members can take up a derivative action under Section 303 CAMA.**

**On the issue of non payment of dividend, Shareholders in a Company are entitled as of right to payment of dividend on the recommendation of the Directors once declared. Lack of funds cannot be an excuse in this circumstance since the Directors have proposed to pay themselves such huge allowances. Being a right infringed, the members can take up member's direct action under Section 300 (c) CAMA.**

The members of a company sought to pass a resolution to inter alia re-register a company from private to public, increase its share capital etc to revive the ailing company but the Board of Directors for selfish reasons refused. Identify the legal reasons and the appropriate minority protection suit that could be instituted by the members to revive the resolutions. August 2011 No 1(a)(i)

By virtue of Section 299 CAMA, where any wrong is done to the Company, or there has been an irregularity in the management of the company, only the Company has the capacity to sue to remedy the wrong or to ratify the irregularity due to the minority rule principle. **Foss v Harbottle**. Section 300 (c) CAMA.

However, by Sections 300-308 CAMA, there are several minority actions that can be instituted by the members to revive the resolution including member's direct action, derivative action, investigation by the CAC, and petition based on grounds of oppressive and prejudicial conduct. The most appropriate minority protection suit that could be instituted to revive the resolution is derivative action under Section 303 CAMA.

List who should be the Plaintiff and Defendant the suit above. August 2011 No 1(a)(ii)

The Plaintiff in the suit above will be the aggrieved minority shareholders while the Defendants will be the Company and the erring Directors as follows.

**BETWEEN**

1. Okey Ibe
2. Sheni Osun (suing for themselves and on behalf  
of the aggrieved shareholders of Vinefield Ltd) Plaintiffs

**AND**

1. Vinefield Ltd Defendants
2. Aminu Shehu (Director)
3. Yusuf Oke (Director)
4. Kemi Yaro (Director)

Comment on the propriety of the actions of the Executive Directors of a Bank, who double as Shareholders of the Bank, in selling 30 out 42 branches of the Bank by a resolution without notice to the other Non Executive Directors of the Bank. August 2011 No 4(a)(iii)

Every member of a Company is entitled to receive notice of meetings under Section 219 CAMA and under Section 221 CAMA, the failure to give notice of meeting to any person entitled shall invalidate the meeting unless such failure amounts to an accidental omission.

Also every Director (whether an Executive or Non Executive Director) is entitled to receive notice of the meeting of the Directors at least 14 days to the meeting unless such Director is disqualified by any reason under the Act from continuing to hold the office of a Director. Section 266(1) CAMA. Failure to give notice of a meeting to any Director entitled to receive notice of such meeting shall invalidate the meeting Section 266(3) CAMA.

The meeting where the 30 Branches of the Bank was sold without notice to the 4 Non Executive Directors is invalid.

Comment on the propriety of the donation of money made by the management of a company, with the approval of the general meeting to the campaign organization of a political party. August 2011 No 4(a)(ii)

A Company is prohibited under Section 38(2) CAMA from directly or indirectly making any donation or gift of any of its properties or funds to a Political Party or Political Association. The decision of the Management of the Bank and the approval of the General meeting to make donations to a Political Party are contrary to law and to the officers who voted to approve the donation are guilty of an offence and liable to refund the money to the Bank.

#### **FINANCIAL STATEMENTS/ANNUAL RETURNS**

As Secretary of a Company, state three returns you will make to the Corporate Affairs Commission and the period for filing each return. 2009 No 1(e); State six annual returns a Company is required to make and the period within which the return is to be made. August 2011 No 2(e)

≈ Annual returns	42 days	Section 370 CAMA
≈ Return on allotment of shares	1 month	Section 129 CAMA
≈ Alteration of share capital	1month	Section 101 CAMA
≈ Registration of charges	90 days	Section 197 CAMA
≈ Change of Directors/Secretary	14 days	Section 292 CAMA
≈ Special Resolutions	15 days	Section 237 CAMA
≈ Return of Auditors	14 days	Section 357 CAMA
≈ Notice of increase in share capital	15 days	Section 102 CAMA
≈ Return during receiverships	14 days	Section 392 CAMA
≈ Notice of appointment of a Liquidator	14 days	Section 191 CAMA

Mention the financial statements which the Directors of a Private Company are obliged to lay before the AGM. 2009 No 3b(iii)

- ≈ The balance sheet as the last day of the financial year;
- ≈ A profit and loss account (or in the case of a company not trading for profit, an income and expenditure account for the financial year);
- ≈ Notes on the accounts;
- ≈ The auditor's report;
- ≈ The director's report;

Section 334 CAMA (3) CAMA.

Note that Public Companies are required to keep the full financial statements comprising of:

- ≈ Statement of the accounting policies;
- ≈ The balance sheet as the last day of the financial year;
- ≈ A profit and loss account or, in the case of a company not trading for profit an income and expenditure account for the financial year;
- ≈ Notes on the accounts;
- ≈ The auditor's report;
- ≈ The director's report;
- ≈ A statement of the source and application of fund;
- ≈ A value added statement for the financial year;
- ≈ A five year financial summary.

Section 334 CAMA.

Advise the CAC on the procedure to adopt to strike out the name of a defunct Company for failure to file its annual returns. May 2012 No 4(b)(iii)

The procedure for the CAC to adopt to strike out the name of a defunct Company failure to file its annual return is contained in Section 525 CAMA. The procedure is as follows:

- ≈ Where the CAC has reasonable cause to believe that a Company is not carrying on business or in operation, it may send to the Company by post a letter inquiring whether the Company is carrying on business or in operation
- ≈ If the CAC does not within one month of sending the letter, receive any answer, it shall within 14 days after the expiration of the one month send to the Company by post, a registered letter referring to the first letter and stating that no answer thereto has been received and that if answer is not received to the second letter within one month, notice shall be published in the Gazette with a view to striking out the name of the Company off the register
- ≈ If the CAC receives an answer to the effect that the Company is not carrying on business or in operation, or does not within one month of sending the second letter, receive an answer, it may publish in the Gazette and send to the Company by post, a notice that at the expiration of three months from the date of that notice, the name of the Company mentioned therein shall unless cause be shown to the contrary, be struck off the register, and the Company shall be dissolved.
- ≈ Any Company or member aggrieved by the striking off the name of the Company may apply to the Court at any time before the expiration of twenty years from the publication of the notice striking off the name of the Company for the name of the company to be restored to the register.

## **AUDITORS**

Comment on the validity of the grounds for the challenge of the appointment of an auditor of a company on the ground that he was appointed by the General Meeting instead of the Board of Directors. May 2011 No 4a(i)

The challenge of the appointment of an auditor of a company on the ground that he was appointed by the General Meeting instead of the Board of Directors is invalid because, the appointment of an Auditor of a Company is to be done at every General Meeting of the Company. It is only the appointment of the first Auditor that is done by the Board of Directors. Section 357 CAMA.



Comment on the validity of the grounds for the challenge of the appointment of an auditor of a company on the ground that being a Registrar of ICAN, his independence could not be guaranteed. May 2011 No 4a(ii)

The challenge of the appointment of an auditor of a company on the ground that he is a Registrar of ICAN is invalid because the affinity of the Auditor with ICAN is not a valid ground for the removal of an Auditor. However, the second arm of the objection which is that his independence may not be guaranteed due to his previous dealings with the company may be a valid objection. By Section 358 CAMA, a person is only qualified to be appointed an auditor if he is a member of a body of accountants established under an Act of the National Assembly in Nigeria. However, an officer or servant of the company, a person or a firm who offers professional services to the company in respect of taxation, secretarial or financial management and a body corporate are disqualified from being appointed as auditors of the company – Section 358(2) of CAMA.

Comment of the validity of the procedure adopted for the removal of an auditor of a company by the Board of Directors at the meeting of the BOD and the refusal of his entry to the venue of the AGM of a Company on the ground that he has been removed by the Board of Directors? May 2011 No 4a(iii)

The procedure for the removal of an Auditor of the Company by the Board of Directors is wrong. An Auditor is appointed at the AGM of a Company and holds office from the AGM to the conclusion of the next AGM (Section 357 CAMA) expect if he is removed from office by the company at any time before the expiration of his term by an ordinary resolution of the company. The removal of the Auditor by the Board of Directors is invalid.

The action of the Board of Directors to refuse the Auditor to the AGM of the Company is wrong.

State the procedure for the removal of an auditor of a company. May 2011 No 4(a)(iv)

An Auditor is appointed at the AGM of a Company and holds office from the AGM to the conclusion of the next AGM (Section 357 CAMA). However, he may be removed from office by the company at any time before the expiration of his term by an ordinary resolution of the company notwithstanding anything to the contrary in any agreement between him and the company – Section 362(1) of CAMA.

When an auditor has been removed, the company has a duty to give notice of his removal to the Corporate Affairs Commission within fourteen (14) days of the passing of the resolution leading to the removal of the auditor. Failure to do so makes the company and its officer who is in default guilty of an offence and liable to a daily fine of N100 – Section 362(2) of CAMA.

## COMPANY SECURITIES

### SHARES

State the procedure for the allotment of shares to an applicant. May 2012 No 3(a)(i)

1. Issuing of the prospectus, open a subscription list (if public).
2. Receive applications and record in Application and Allotment Sheets.
3. Convene Board (or Allotment Committee) meeting to pass a resolution of allotment.
4. Pass the resolution for allotment of shares
5. Issue Letters of Allotment (and letters of regret) deal with letters of renunciation, if any.
6. Prepare Share Certificates.
7. Enter allottee's names in the register of Members.
8. File Return of Allotments (Form CAC 2.5) within one month after allotment.

List the documents to be submitted to the CAC for allotment of shares. May 2012 No 3(a) (ii)

- i. Resolution for allotment of shares signed by 2 directors
- ii. Resolution of Companies for allotment of shares where applicable
- iii. Duly stamped CAC Form 2A (Return of Allotment Form)
- iv. Updated Section 553 CAMA where applicable
- v. Evidence of Payment of FRC annual dues
- vi. Payment of fees
- vii. Deed of transfer;
- viii. Particulars of Valuation (where consideration is other than cash).

Return of Allotment shall be filed with the Commission within one month of allotment.

-Regulation 31, Companies Regulation, 2012

Complete Form CAC 2 for return on allotment of shares. May 2012 No 3(a)(iii)

### Complete Form CAC 2

Outline the procedure for *total transfer* of shares by a shareholder. May 2012 No 4(a)(ii)

- ≈ A deed of transfer is prepared and duly signed by the parties and a witness.
- ≈ Transferor gives the deed of transfer and the share certificate to the transferee.
- ≈ The deed of transfer is stamped at the stamp duties office.
- ≈ The stamped deed of transfer together with the resolution of the company approving the transfer and Form CAC 2A (return of allotment) is filed with CAC.
- ≈ Transferee registers the stamped deed of transfer with the company.
- ≈ Company issues share certificate and register transferee as the new owner.

A client has 10,000 shares and wants to sell 4,000 shares to a person and 2,000 to another but does not know how to go about it. Outline the procedure to him. May 2011 No 3(b)(i); May 2012 No 3(a)(iv)

The procedure for the transfer of part of the shares of a Transferor is as follows:

- ≈ Prepare the deed of transfer, and both parties will execute the deed of transfer.
- ≈ The deed of transfer is stamped at the stamp duties office.
- ≈ The stamped deed of transfer together with the resolution of the company approving the transfer and Form CAC 2A (return of allotment) is filed with CAC.
- ≈ Transferor delivers the certificate and the stamped deed of transfer to the company.
- ≈ The Company may recognize the instrument by endorsing on it the words, "CERTIFICATE LODGED"
- ≈ Company cancels the certificate to cover the part that is transferred and register transferee as the new owner of the shares transferred to him.

**Section 157 CAMA.**

Advise a client on the step to take to protect her interest in the shares of a company. May 2012 No 4(a)(i)

A person who wants to protect her interest in the shares of a Company may do so by serving on the Company, a notice and affidavit of interest. Section 156(1) CAMA.

The Company shall then enter on the register if members, the fact that such notice has been served and shall not register any transfer or make any payment in respect of the shares contrary to the terms of the notice until the expiration of 42 days notice to the Claimant of the proposed transfer or payment.

## **DEBENTURES**

State the procedure for perfection of loan by a Company May 2012 No 3(b)(i); Give a checklist of the steps a Company is expected to take in order to perfect a fixed charge on its head office building. 2010 No 6(a)

- ≈ Convene Board meeting to pass resolution authorizing the loan and preparation of loan documents including prospectus if necessary.
- ≈ Preparation, execution and stamping the documents: Deed of mortgage (charge by way of legal mortgage debenture); Power of Attorney (if any) or Debenture Trust Deed (if any). With counterpart copies.
- ≈ Obtain Governor's consent
- ≈ Register the documents at the Land Registry
- ≈ File Form CAC 8, particulars of the mortgage/charge for registration at the CAC. This must be done within 90 days of the creation of the charge.
- ≈ Enter particulars of charge in Register of Charges and also in the Register of Debenture holders where applicable.
- ≈ Obtain Certificate of registration of charge from the CAC and have a copy of the charge endorsed on every debenture or certificate of debenture stock issued by the Company the payment of which is secured by the charge.

(section 197 CAMA; Regulation 34, Companies Regulation, 2012)

Complete Form CAC 8 for registration of a mortgage. May 2012 No 3(b)(ii)

### **Complete Form CAC 8**

If you have been appointed as a Company Secretary of Bank of Commerce Plc, state the remedies available under the Law to recover the loan granted to another Company. 2010 No 6(b)

**The remedies available to the Debenture Holder in the event of failure of the Company to repay include:**

- ≈ Action to recover principal sum and interest
- ≈ Action for recovery for principal and interest;

- ≈ **Debenture holder's action;**
- ≈ **Power of sale;**
- ≈ **Foreclosure action;**
- ≈ **Valuation of security and proving the balance on winding-up; and**
- ≈ **Appointment of Receiver/Manager.**

State the effect of non registration of a charge. 2010 No 6(c)

**Every charge created in accordance with the provision of the Act is a registrable instrument and must be registered within 90 days of creation. Section 197 CAMA.**

**The failure to register a charge renders such charge void against any liquidator or any creditor of the company but the obligation to pay the debt is not thereby discharged and becomes payable immediately.**

## **BOND**

Advice a State Government on at least 3 requirements/conditions for the valid floatation of a Govt. Bond in the Nigerian Capital Market May 2011 No 2b(i)

- **The amount to be raised must not be more than 50% of the capital revenue of the state in the preceding year**
- **The Bond must be registered with the SEC**
- **The date of redemption of the bond must not exceed 25 years from the date of the issuance of the bond**
- **A separate sinking fund must be established for each loan**
- **Bond certificate should be issued to the bond holders within 2 months**
- **A legislation/resolution of the State House of Assembly must be issued to the office of the Accountant General.**

Outline at least 3 documents that would be attached to the application for approval of a Govt. Bond by the SEC. May 2011 No 2b (ii)

- **Copy of the legislation/resolution of the State House of Assembly authorizing the bond**

- Copy of a rating report by an accredited rating agency registered with the SEC
- Irrevocable letter of authority issue by the State Accountant General to the Accountant General of the Federation to deduct from source, the State Statutory Allocation to redeem the bond.

## **COLLECTIVE INVESTMENT SCHEMES**

Mention four types of Collective Investments Schemes under the ISA. 2010 No 2(e);  
May 2011 No 2b (v)

- (a) Unit trust scheme;
- (b) Open-ended investment company;
- (c) Real Estate Investment Company or trusts.
- (d) Investment trust schemes;
- (e) Community saving schemes.

### **Section 154 ISA**

Advice your State Govt. on how to set up a Community Savings Scheme for its rural dwellers under the ISA. May 2011 No 2b (iii)

- Establish the Community saving schemes within the LGA or Community where the Participants reside
- Register the Community saving schemes with the SEC
- Obtain and complete a registration form to be submitted to the LGA

Distinguish btw ownership of shares and investment in collective investments schemes.  
May 2011 No 2b(iv)

- A shareholder has individual rights in the Company but Unit holders have collective interest as their money loses its individuality
- Investors in a CIS have participatory interest while shareholders are members of the Company

- Shareholders are entitled to dividends but unit holders are entitled to share pro rata
- Shareholders invest in an identifiable company while CIS may involve investment in more than one Company
- Participants in a CIS are unit holders while owners of shares are shareholders
- Share holding in Companies are based on MEMOART but under the CIS, they are created by Trust Deed
- Shareholders have a right in the management of the Company but Unit holders have no such rights.

### **CORPORATE RESTRUCTURING**

Outline the various corporate restructuring options available under the Nigerian Corporate Law and Practice and recommend a suitable option to salvage a company. 2009 No 2(i); May 2011 No 5(iii); August 2011 No 1(b)(iii)

- Share reconstruction/consolidation - **Section 100 CAMA**
- Reduction in share capital - **Section 105-108 CAMA**
- Arrangement or Compromise - **Section 537 & 539 CAMA**
- Arrangement on Sale - **Section 538 CAMA**
- Management buy out
- Merger
- Take-over/Acquisition
- Purchase and assumption.

Outline the procedure a Company should adopt to restructure internally. May 2011 No 5(i).

- Shares reconstruction/consolidation - **Section 100 CAMA**
- Reduction in share capital - **Section 105-108 CAMA**
- Arrangement or Compromise - **Section 537 & 539 CAMA**
- Arrangement on Sale - **Section 538 CAMA**

➤ **Management buy out**

Outline the procedure to actualize a scheme of arrangement whereby the depositors and preferential share holders would relinquish their credits in lieu of shares under the CAMA. 2009 No 2(ii)

- This is provided for under **Sections 539 & 540 CAMA.**
- A scheme of arrangement or compromise is prepared by *the Board of Directors of the company, between the company and members or class of members, or creditors or class of creditors, or the liquidator* where the company is being wound up.
- Application is made to the Federal High Court in a summary way by the company or creditor or member of the company, or the liquidator if the company is being wound up, praying the Court for an order that a meeting of the company or class of members or class of creditors be summoned – **Section 539(1).**
- If the order is granted, then the meeting is convened accordingly. The notice of the meeting must be accompanied with a statement explaining the general effect of the arrangement, any material interest of the directors of the company and whether it would affect the directors differently from other persons. **Section 540(1) and (2).**
- At the meeting, if a majority representing not less than three-quarters in value of the shares of members or class of members, or of the interest of creditors or class of creditors, as the case may be being present and voting either in person or by proxy, agree to the scheme, report shall be made to the Court of the meeting – **Section 539(2).**
- The Court shall refer the scheme to the Securities and Exchange Commission, which shall appoint one or more inspectors to investigate the fairness of the scheme or compromise and make a report thereon to the court within the time specified by the Court – **Section 539(2).**
- If the Court is satisfied as to the fairness of the scheme, it shall sanction it and it shall be binding on all creditors or the class of members of the company, and also the company or in the case of a company in the course of being wound up, on the liquidator and contributories of the company – **Section 539(3).**
- An Order made to sanction the scheme shall have no effect until a certified true copy of the order has been delivered by the company to the Corporate Affairs Commission for registration – **Section 539(4)**
- A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made – **Section 539(4).**



List three documents that would be prepared under a scheme of arrangement 2009 No 2(iii)

The documents required to effect an arrangement and compromise include:

- The scheme of arrangement or compromise
- Resolution of  $\frac{3}{4}$  of the creditors or members as the case may be sanctioning the scheme of arrangement or compromise
- An Order of Court convening the meeting
- The notice of meeting
- The report of SEC investigation on the fairness or otherwise of the scheme
- Order of Court sanctioning the scheme

Outline the key steps to be followed should a company choose to merge with another. 2009 No 2(iv)

The steps to be followed where two companies choose to merge depends on the category of the merger, whether: a Small merger; Intermediate merger; or Large merger.

The summary of procedure for merger is as follows:

1. Board of Directors propose the Scheme of merger
2. Notice of meeting of the company to approve the proposed scheme of merger
3. Special resolution approving proposed the merger scheme and report made to SEC
4. SEC refers the scheme to the Federal High Court
5. FHC Order calling for a meeting of the shareholders of the merging companies to hold simultaneously
6. Scheme of merger approved by the shareholders of the two companies and report is made to SEC for formal approval
7. SEC carries out investigation itself or through appointed inspectors
8. SEC reports to the FHC for sanction
9. FHC Order sanctioning the scheme
10. Scheme shall be delivered to SEC within seven days for registration
11. Report of post merger compliance to SEC

State the procedure for the merger of two companies with a combined annual turnover of two billion naira. 2010 No 4(e); State the procedure for the merger of two companies with a combined annual turnover of one billion naira. 2010 No 6(e)

The category of the merger here is an Intermediate merger.

The summary of procedure for the merger is as follows:

1. Board of Directors propose the Scheme of merger
2. Notice of meeting of the company to approve the proposed scheme of merger
3. Special resolution approving proposed the merger scheme and report made to SEC
4. SEC refers the scheme to the Federal High Court
5. FHC Order calling for a meeting of the shareholders of the merging companies to hold simultaneously
6. Scheme of merger approved by the shareholders of the two companies and report is made to SEC for formal approval
7. SEC carries out investigation itself or through appointed inspectors
8. SEC reports to the FHC for sanction
9. FHC Order sanctioning the scheme
10. Scheme shall be delivered to SEC within seven days for registration
11. Report of post merger compliance to SEC

Mention the grounds for the revocation of a merger approval by the Securities and Exchange Commission 2009 No 2(v)

By Section 127 ISA, the SEC may revoke a merger approval in the following circumstances:

1. Where the decision was based on incorrect information for which a party to the merger is responsible
2. The approval was obtained by deceit

**3. A company concerned in the merger has breached an obligation attached to the decision**

Comment on the validity of an oral take-over bid accepted unanimously by the general meeting of a private company as a result of which the Company was taken over. August 2011 No 4(a)(i)

**A take-over bid is not capable of acceptance by a private company whether or not there was a unanimous resolution to do so by the company. Section 133(3)& (4) ISA. The unanimous acceptance of the take over bid by the Company cannot stand.**

Mention three regulatory authorities that have a role to play in a merger August 2011 No 4(b)(ii)(a)

- 1. Securities and Exchange Commission**
- 2. Corporate Affairs Commission**
- 3. Central Bank of Nigeria**
- 4. Federal High Court**
- 5. Nigeria Stock Exchange**
- 6. Nigerian Deposit Insurance Corporation**

State three laws that will regulate a merger transaction. August 2011 No 4(b)(ii)(a)

- 1. Investments and Securities Act (ISA)**
- 2. Companies and Allied Matters Act (CAMA)**
- 3. Securities and Exchange Commission Rules**
- 4. Central Bank of Nigeria Act**
- 5. Constitution of the Federal Republic of Nigeria**
- 6. Federal High Court Act**
- 7. Federal High Court (Civil Procedure) Rules**
- 8. Banks and Other Financial Institutions Act**
- 9. Nigerian Deposit Insurance Corporation Act**
- 10. Assets Management Company of Nigeria Act**

As a Solicitor, state five areas of a Company you may have to conduct a due diligence search in furtherance of a merger. August 2011 No 4(b)(ii)(c)

- 1. The ownership of the bank**

2. **Directors**
3. **Date of registration**
4. **Currency of banking license**
5. **Filing of annual returns**
6. **Returns to CAC**
7. **All statutory books**
8. **All titles to properties**
9. **All indebtedness**
10. **All claims and litigations**
11. **Legal status of assets and liabilities**
12. **Collective agreement with workers**

State five principal provisions you will include in a merger agreement. August 2011 No 4(b)(ii)(d)

- **Parties to the merger**
- **Basic terms of the agreement**
- **Representation and warranties**
- **Employees' matters**
- **Financial statements**
- **Covenants and undertakings**

State five of your roles as a Solicitor engaged in a merger transaction. August 2011 No 4(b)(ii)(e)

- **To ensure the proper procedure is followed;**
- **Giving advice**
- **Conducting due diligence**
- **Participating in the negotiating process**
- **Drafting the memorandum of association**
- **Drafting the transaction implementation agreements**

- **Drafting the merger agreement**
- **Securing all necessary approvals**

### **COMPANY PROCEEDINGS/INVESTMENT DISPUTES RESOLUTION**

With the aid of relevant authorities, write a reply on points of law to the contention that the Federal High Court lacks jurisdiction in all matters touching on shares of a company because such matters are now reserved for exclusion jurisdiction of the IST. 2009 No 4(a)(i)

**The objection is misconceived on the ground that the dispute in question touches on the shares of a company because issues relating to the operation of the CAMA and the internal affairs of a Company are within the exclusive jurisdiction of the Federal High Court by Section 251 CAMA. Garba v Sheba International Company Ltd.**

With the aid of relevant authorities, write a reply on points of law to the contention that an action for the rectification of a Company's register is incompetent unless it is commenced by a petition, since the parties are quarreling 2009 No 4(a)(ii)

**By virtue of Rule 3 of the Companies Proceedings Rules 1992, proceedings for the rectification of register of members under Section 90(1) CAMA is commenced by an Originating Motion. The objection that the matter should have commenced by petition is misconceived.**

Prepare a checklist of at least three items each on the jurisdiction of the FHC and the IST. 2009 No 4(b)

#### **Federal High Court**

- **Operation of the provisions of CAMA**
- **Interpretation of CAMA**
- **Winding up of companies**
- **Internal affairs relating to running and management of the company**
- **Matters relating to appointment and removal of the Directors**

#### **Investments and Securities Tribunal**

- **Investment disputes between capital market operators;**
- **Investment disputes between capital market operators and their clients;**

- Investment disputes between an investor and a securities exchange or capital trade point or clearing and settlement agency;
- Investment disputes between capital market operators and self regulatory organizations

State the appropriate mode of commencing action in the Court to ensure that beneficiaries of a deceased shareholder are registered as the new shareholders in the register of members. 2010 No 2(a)

#### **Originating Motion filed at the Registry of the Federal High Court**

Mention the documents that will be attached to an application by beneficiaries of a deceased shareholder to be registered as the new shareholders in the register of members. 2010 No 2(b)

- Letter of Administration from the Probate Registry
- Notice to the Company stating their intention to become members of the company
- Evidence of payment of prescribed processing fees
- Share certificate

Describe how service of a Court process is effected on a Company. 2010 No 2(c)

**A court process shall be served on a Company in the manner by the Rules of the Federal Court. Section 78 CAMA. This effected by service on any of the Principal officers of the Company or at the Registered office of the Company.**

### **WINDING UP/DISSOLUTION**

Comment on the chances of success of an action instituted to wind up a company for failure to honour an agreement to pay its Lawyer's professional fees. What Court should the action be instituted. 2009 No 3(i)

**Inability to pay its debt may be a ground for the winding up of a company. By Section 409 of CAMA a company is deemed to be unable to pay debts if the company owes a creditor a sum exceeding ₦2,000 (Two thousand naira) which is due for payment and a demand has been made on the company for payment with the company not being able to pay, secure or compound the debt to the satisfaction of the creditor for three (3) weeks after the demand has been made.**

**An action brought by the Legal Practitioner under this ground may be successful.**

**The action should be commenced at the Federal High Court.**

Draft the petition for winding up on behalf of a person claiming to be owed by a company. 2009 No 3(ii)

**Draft Petition for Winding Up:**

**IN THE FEDERAL HIGH COURT**

**HOLDEN AT PORT HARCOURT**

**SUIT NO.:.....**

**IN THE MATTER OF DELTA OIL GROUP PLC**

**AND**

**IN THE MATTER OF COMPANIES AND ALLIED MATTERS ACT, 2004**

**BETWEEN:**

**MR. EMEKA ADE**

**PETITIONER**

**AND**

**DELTA OIL GROUP PLC**

**RESPONDENT**

**PETITION FOR WINDING UP**

The humble person of Mr. Emeka Ade (petitioner)  
of.....

Is presented for filing based on the ground of inability of the Respondent to pay 15% of \$100 Million (USD) based on the following facts:

1. The Petitioner is a sole Legal Practitioner with his office at the Federal Capital Territory, Abuja.
2. The Respondent is a company incorporated in accordance with the provisions of the Companies and Allied Matters Act, 2004.
3. The Respondent agreed to pay 15% of \$100 Million (USD) as professional fee to the Petitioner.
4. The Petitioner has demanded for payment of his professional fee and the Respondent has refused, failed and or neglected to settle his indebtedness.
5. The Petitioner prays for the winding up of the Respondent Company.

DATED THIS....DAY OF...20

(name of the lawyer that draft the petition)

(his address)

What type of resolution will be passed for Members' voluntary winding up and list the circumstances when Ordinary Resolution can be passed for voluntary winding up of a Company. 2010 No 4(f)

The type of resolution to be passed is a special resolution, but in some circumstances it may also be by an ordinary resolution.

Ordinary resolution may be passed for voluntary winding up in the following circumstances:

- When the period, if any fixed for duration of the company by the Articles of Association
- The event, if any occurs on occurrence of which the articles provided that the company is to be dissolved
- When the company has accomplished its purpose.

Draft a resolution for members' voluntary winding up. 2010 No 4(i)

Draft Resolution for Winding Up:

**XLING REFINERY AND SERVICES LIMITED**

**RESOLUTION TO WIND UP THE COMPANY PURSUANT TO SECTION 401 OF THE COMPANIES AND ALLIED MATTERS ACT, 2004**

At the extra-ordinary General Meeting of the Company held on the.....day of.....2010, the following resolution was proposed and duly passed THAT Xling Refinery Services be voluntary wound up.

Dated this.....day of.....2010

.....

.....

**DIRECTOR**

**SECRETARY**



With the aid of relevant authorities, write a reply on points of law to the contention that once a resolution for member's voluntary winding up is passed, that creditors can no longer be involved in the winding up process. 2009 No 4(a)(vi)

**The objection is misconceived in view of the fact that if a resolution for members' voluntary winding up is passed and the company fails or refuses to file a declaration of solvency; it may be converted to a creditor's voluntary winding up wherein the creditors will be involved. Section 401 CAMA.**

What is Declaration of Solvency and what are the conditions to be fulfilled in making a declaration of solvency. 2010 No 4(h)

**Declaration of solvency is a statutory declaration made by the Directors or Majority of the Directors of a Company to the effect that, they have made full inquiry into the affairs of the company and are of the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months from the commencement of the winding up of the company.**

**The conditions to be fulfilled in making a declaration are as follows:**

- **The declaration must be made within five (5) weeks immediately preceding the date of the passing of the resolution for voluntary winding-up and must be delivered to the Corporate Affairs Commission for registration.**
- **It must also embody a statement of the company's assets and liabilities as at the latest date before the making of the declaration – Section 462(2) of CAMA.**

Who can bring a petition for dissolution of an Incorporated Trustees May 2011 No 2a(3)(i)

- **The Governing Board**
- **At least 50% of the members**
- **The Corporate Affairs Commission**
- **1 or more Trustees**

**Section 608(1) of CAMA.**

What are the grounds for the dissolution of an Incorporated Trustee May 2011 No 2a(3)(ii)

- if the aims and objectives have been fully realized and there is no longer need for its existence,
- its aims and objectives have become illegal or otherwise contrary to public policy,
- that it is form for a specified period which has elapsed,
- it is just and equitable in all the circumstances that it should be dissolved

**Section 608(2) of CAMA.**

**ETHICAL ISSUES**

Briefly comment on the ethical implication of a Legal Practitioner who was given instructions and paid money to incorporate a company and he failed to incorporate the company and refused to take the calls of the client. 2009 No 1(h)

**It amounts to a breach of trust and a breach of professional responsibility for a legal practitioner to fail to carry out the instructions of his clients for which the legal practitioner may face disciplinary actions and punishable punishments under Section 11 LPA.**