



REFORMING CAPITAL MOBILIZATION IN NIGERIA: THE ROLE AND EFFECTIVENESS OF THE COMPANIES AND ALLIED MATTERS ACT 2020

by

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Abstract

Access to capital remains a significant challenge for Nigerian businesses, particularly startups and SMEs. The Companies and Allied Matters Act (CAMA) 2020 introduced major legal and regulatory reforms aimed at creating a better business environment and encouraging capital mobilization. This paper evaluates the effectiveness of CAMA 2020 in helping Nigerian companies gain access to funding. It examines key reforms such as the introduction of single-member companies, provisions for private companies to issue debentures and shares with fewer restrictions, and the recognition of company promoters and digital filings. Through doctrinal analysis and comparisons, the paper investigates whether these reforms have successfully lowered funding barriers and increased investor confidence. The study concludes with suggestions for further legal and institutional reforms necessary to promote sustainable capital growth and private sector development in Nigeria.

Keywords: CAMA 2020, capital mobilization, Nigerian company law, corporate finance, business reforms, access to funding, legal reforms, private sector development, SMEs in Nigeria, company regulation.

INTRODUCTION

Companies are business organizations formed to carry out businesses to maximize profit.¹ It is a highly organized entity with a clearly structured administration that is statutorily regulated.² Upon incorporation, unless it is taking over an existing going concern,³ a company is immediately confronted with the challenges of raising fund or capitalization to enable it carry into activation the object of the company as entrenched in the memorandum and

¹ Ogbuanya N.C.S. (2010) Essentials of corporate law practice in Nigeria, Lagos: Novena publishers Ltd. Pg 53

² Ibid.

³ Where a company is taking over an existing business the capital and assets of the existing company is usually transferred to the new company in return for shares and/or debenture which represent the valuation of the business.

Article of Association.⁴ This is known as the floatation of a company i.e taking off of a company. The necessary funds or finances required for the floatation of a company can be sourced through Shares Capital or Equity contribution, Placement, Debenture, Mortgage Loan, Retained Earnings, Leases, Government Assistance and Franchising.

Companies like any other natural person is entitled to raise debt finance to enhance its activities. The way and manner of going about this is also very numerous, it may raise loan from a bank either secured or unsecured, it may ask its customers to deposit money with it before being supplied with products of the company, it may acquire its assets by leasing them, or it may raise securities in the public market with incentives to buy back its debt at a later specified date.

1.1.WHAT IS CAPITAL?

The term capital has several meanings, and it is used in several areas in business. In general, capital is accumulated assets or ownership. The roots of the term "capital" go back to Latin, where the term was capitālis, "head," and Latin capitale "wealth."

In literal terms, Capital is the money or wealth needed to produce goods and services⁵. In the most basic terms, it is money all businesses must have in order to purchase assets and maintain their operations. Business capital concerns are in two main forms: debt and equity. Debt refers to loans and other types of credit that must be repaid in the future, usually with interest. Equity, on the others hand, generally does not involve a direct obligation to repay the funds. Instead, equity investors receive an ownership position in the company which usually takes the form of stock, and thus the term "Stock Equity"⁶

Capital is important to businesses because the cost of buying and owning these investments can affect the business's value and tax situation.⁷

Business capital is in the form of assets (things of value). Capital is a necessary part of business ownership because businesses use assets to create products and services to sell to customers. Capital can have one of three specific meanings:

- The amount of cash and other assets (owned by a business, including accounts receivable, equipment, inventory, and buildings of the business)
- The accumulated wealth or net worth of a business, represented on a balance sheet by its owner's equity (ownership) minus liabilities
- Stock or ownership in a company, the capital account of a stockholder.

The capital structure of a business is the mix of types of debt (borrowing) and equity (ownership). Business capital is shown on the business's balance sheet.

SOURCES OF CAPITAL AND FINANCE OF A COMPANY IN NIGERIA

SHARE CAPITAL / EQUITY CONTRIBUTION: This is the money invested in a company by the shareholders. In return for such an investment, shareholders gain a share of the ownership of the company⁸. The

⁴ Memorandum and Article of Association of are company are twin paramount incorporation documents of a company, which if registered becomes a contract between the company and its members. See; section 41(1) CAMA.

⁵ www.inc.com-Encyclopedia.

⁶ Ibid.

⁷ Available at <https://www.thebalancesmb.com/capital-and-capital-structure-of-a-business-398170> accessed on 6th August, 2022.

⁸ See section 79(3) CAMA (supra)

share capital⁹ of a company covers all the assets of the company and the borrowed money which is referred to as loan capital. It also includes fixed and circulating capital.¹⁰

Floation or capital formation of a private company will often not require a large capital and by their nature, they will rely largely on the properties and shareholders to provide the capital and where the paid up capital is not sufficient to start up the company, new shares may be issued for cash.¹¹ This may be in form of a “Right Issue” whereby offer of shares are made to the existing share holder to buy same in proportion to their respective shareholding at a concessionary price. The right issue in this circumstance is usually made to preserve the ownership of the company.¹²

The floatation of a public company can also be done through above means used by the private companies. However, in addition to that, a public company have right to invite the public to buy or subscribed to its shares or purchase its debenture¹³ and it is therefore in position to raise funds from an unlimited number of persons and thus accumulate adequate capital for its take off and continuous business activities.

The contributed capitals of the companies are used by it to make profit, which may be shared among its members.¹⁴ If the company is wound up when it is solvent then the contributed capital may be returned to members, but if it has to be wound up when it is insolvent then all the assets acquired which the members contributed will have to be used to pay the company debt and nothing will be returned to the members.¹⁵

TYPES OF COMPANY SHARE CAPITAL

There are various kind of shares which companies derive finance from, these includes: Nominal or Authorized capital; Issued Share Capital; The Called-Up Share Capital; The Paid-up Share Capital; The Unpaid capital; Reserve Capital.

Nominal or Authorized Share Capital: This is the amount of money with which the company is registered¹⁶. It is required to be stated in the capital clause of the memorandum of Association¹⁷ and the amount so stated cannot be changed without due process of the law.¹⁸ Companies at incorporation derive funds from share capital, in that, the law prescribed that at least 25% of Authorized share capital must be taken.¹⁹

Issued Share Capital: This is an amount of authorized share capital which has been issued to members. This presupposes that where a company decided to retain part of it nominal capital so that it issued out a portion of it, the specified capital issued out to the public is what is termed as the issued capital and is a viable source of finance to a company.²⁰

The Call-Up Share Capital: This is the amount of issued share capital of a company on which calls have been made, that is a demand for payment of the amount outstanding on the issued share capital. The money rise from the call-up share is used for the ventures of the company and a viable source of finance to keep a company running as a going concern.²¹ Payment of call must be made in cash but if the shareholder is entitled to some

⁹ See section 567(1) CAMA(supra)

¹⁰ Orojo J.O. (2008) (supra)

¹¹ ibid

¹² Ibid.

¹³ See investment and security Act, 2007; Section 67(a)

¹⁴ Aminu K. K (2005), Business law in Nigeria; Kano: Benchmark publisher Limited. Pg 213

¹⁵ Ibid.

¹⁶ ibid

¹⁷ See section 27 (1)(2)CAMA. (supra)

¹⁸ See section 48 CAMA. Ibid.

¹⁹ See section 27(2)(b) CAMA.

²⁰ Aminu K.K. op.cit pg 3.

²¹ Ibid.

payment from the company for services, the call may be set off against the amount, provided this is done before the winding up.²²

The paid-up share capital: this is the amount of called-up share capital on which payment has been made. It represents that proportion of the company's share capital which is ready available to finance the businesses of the company.²³

The Un-paid Capital of the Company: This is the balance amount for the value of each share subscribed by the public but which the company has not demanded payment for. They are therefore paid for only when the company makes calls for them.²⁴

Reserve Capital: A company limited by shares may by special resolution decided that a specific portion of its uncalled share capital shall not be capable of being called except in the event of and for the purpose of the company being wound up. This specified portion is termed as the reserved portion because the company cannot deal with it in any manner except for the purpose of being wound up.²⁵

DEBENTURE

In corporate finance, a debenture is a medium to long term debt instrument used by large companies to borrow money, at a fixed rate of interest. In legal terms "debenture originally referred to a document that either creates a debt or acknowledges it. Thus, could be called a "certificate of indebtedness" evidencing the fact that the company is liable to pay a specified amount with interest and although the money raised by the debenture, becomes a part of the company's capital structure, it does not become share capital.²⁶

Legally a company has power to borrow money for the purpose of its business or object and may charge or mortgage its undertakings or properties and issue debentures²⁷ therefore, debenture are instrument issued by the company to its lenders to acknowledge the indebtedness by the company. The instrument is often, but not necessarily by deed.²⁸

However, where a company issues debenture to the public its must comply with the extant provisions of the investment and security Act (ISA).²⁹ i.e a prospectus must be issued. The companies and Allied Matter Act³⁰ provides that offer of debenture by a public company to the public for subscription or purchase must be by debenture trust deed, and must be accompanied with a prospectus as stipulated under ISA and Security and Exchange Commission Rules.³¹

TYPES OF DEBENTURE

Debenture may be any of the following types:³²

- 1- **Registered debenture**, payable to the registered holder.
- 2- **Bearer debenture**, in other word payable to bearer. They are negotiable instruments.

²² Topman and Ivamy, "Company Law" 14th Edition, page 164.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ www.legalserviceindia.com

²⁷ See section 166 CAMA and also the case of General Auction Estate Co V. Smith (1891) 3 ch. 432

²⁸ See Union Bank of Nig. Ltd V. Tropic Food Ltd. (1992) 3 NWLR (pt 228) 321.

²⁹ See section 44 of ISA.

³⁰ See section 183 (1) CAMA.

³¹ Ogbuanya N.C.S. op. cit page 1.

³² Orojo J.O. op.cit page 3

- 3- **Perpetual debenture** which are made “irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long...”³³
- 4- **Convertible debentures**, in other words which are issued upon the terms that is lieu of redemption or repayment, they may, at the option of the holder or the company, be converted into share in the company upon such terms as are stated in the debenture.
- 5- **Secured and naked debenture**, a secured debenture is one which is secured by a charge over the company’s property and it may be so secured by fixed charge on certain of the company’s property or by a floating charge over the whole or a specified part of the company’s undertaking and assets, or by both fixed charge on certain property and floating charge. A naked debenture on the other hand is one which is not secured by any charge.

MORTGAGE LOAN

Mortgage Loan also referred simply to as a ‘mortgage’ is used either by purchaser of real property to raise funds to buy the real estate; or alternatively by an existing property owners, to raise funds for any purpose; while putting a lien on the property being mortgaged. The loan is “secured” by the borrower’s property being mortgage. This means that a legal mechanism is put in place which allows, the lenders to take possession and sell the secured property {foreclosure or re possession} to pay off the loan in the event that the borrower’s defaults on the loan or otherwise fails to abide by the terms.³⁴

Just like individual Mortgage borrowers can be a corporation or a company mortgaging commercial property to raise funds to conduct the businesses of the company. For example, a company can mortgage its own business premises, residential property to rake funds into the company investments.

RETAINED EARNINGS

For any company the amount of earning retained within the business has a direct impact on the amount of dividends³⁵. Profit re-invested as retained earnings is profit that could have been paid as a dividend. The major reasons for using retained earnings to finance new investments or raise new equity for new investments are as follows:

- a) The management of many companies believes that retained earnings are funds which do not cost anything although this is not true. However, it is true that the use of retained earnings as a source of funds does not lead to a payments of cash.³⁶
- b) The dividend policy of the company in practice is determined by the directors. From their stand point, retained earnings are an attractive source of finance because investment projects can be undertaking without involving either the shareholders or any outsiders.³⁷
- c) The use of retained earnings as opposed to new shares or debentures avoids issue cost.
- d) The use of retained earnings avoids the possibility of a change in control resulting from an issue of new shares.

³³ Section 567(1) CAMA (supra)

³⁴ www.inc.com-Encyclopedia-BusinessTerms.

³⁵ www.yourarticlelibrary.com

³⁶ ibid

³⁷ ibid

LEASE

A lease is an agreement between two parties, the “lessor” and the “lessee. The lessor owns a capital asset, but allows the lessee to use it. The lessee makes payments under the terms of the lease to the lessor for a specified period of time.

TYPES OF LEASE

There are two basic types of lease to wit; “*Operating Leases*” and “*Finance leases*”.

Operating Leases: are rental agreements between the lessor and the lessee whereby:

- a) The lessor supplies the equipment to the lessee
- b) The lessor is responsible for servicing and maintaining the ceased equipments.
- c) The period of the lease is fairly short, less than the economic life of the asset, so that at the end of the lease agreement, the lessor can either:
 - i) Lease the equipment to someone else, and obtain a good rent for it or.
 - ii) Sell the equipment second hand.

Finance Leases: are lease agreements between the user of the leased asset (the lessee) and a provider of finance (the lessor), for most or all of the assets with expected useful life.

Suppose that a company decides to obtain a company car and finance the acquisition by means of a finance lease. A car dealer will supply the car. A finance house will agree to act as lessor in a finance leasing arrangement, and lease will purchase the car from the dealer and lease it to the company. The company take possession of the car from the car dealer, and make regular payments (monthly, quarterly, Six monthly or annually) to the finance house under the terms of the lease.³⁸

HIRE PURCHASE

Hire Purchase is a form of installment credit. Hire Purchase is similar to leasing with the exception that ownership of the goods passing to the hire purchase customer on payment of the final credit installment, where as a lessee never becomes the owner of the goods.

Hire purchase agreements usually involve a finance house.

- i) The supplier delivers the goods to the customers who will eventually purchase them.
- ii) The hire purchase arrangement exists between the finance house and the customer.

An industrial or commercial business can use hire purchase as a source of finance. With industrial hire purchase, a business customer obtains hire purchase finance from a finance house in order to purchase the asset. Goods bought by business on hire purchase include company vehicles, plants, machinery etc.³⁹

GOVERNMENT ASSISTANCE

The government provides finance to companies in cash grants and other forms of direct to develop the national economy, especially in high technology industries and in areas of high unemployment.⁴⁰

³⁸ ibid

³⁹ ibid

⁴⁰ ibid

FRANCHISING

Franchising is a method of expending business on less capital than would otherwise be needed. For suitable business, it is an alternative to raising extra capital for growth. Under a franchising arrangement, a franchisee pays a franchisor for the right to operate a local business, under the franchisor trade name. The Franchisor must bear certain costs (possibly for architects work, establishment costs, legal costs, marketing costs and the costs of other support services) and will charge the franchisee an initial franchise fee to cover set-up costs, relying on the subsequent regular payments by the franchisee for an operating profit. These regular payments will usually be a percentage of the franchisee's turnover.⁴¹

BANK LENDING

Lending from banks is an important source of finance to companies. Bank lending is mainly short term. This short term lending may be in the form of:

- a) **An overdraft:** this is a bank facility which allows a company to overdraw their account within a certain limit set by the bank. Interest is charged (at a variable rate) on the amount by which the company has overdrawn from its account on a day-to-day basis.
- b) **A short-term loan:** for up to three years.
- c) **Medium-term loans:** are loans for a period of from three (3) to ten (10) years. The rate of interest charged on medium-term bank lending to large companies is usually with a set margin, the size of the margin depending on the credit standing and risk of the borrower. A loan may have a fixed rate of interest or a variable interest rate, so that the rate of interest charged will be adjusted every three, six, nine or twelve months in line with recent movements in the base lending rate.⁴²

RAISING CAPITAL: CHALLENGES AND PROSPECTS UNDER CAMA 2020

There is no gainsaying the fact that Nigeria is a country blessed with human, mineral and natural resources. When it comes to starting a business in Nigeria, the potentials are so great that any investor or entrepreneur will be tempted to jump in with both feet without first testing the waters, and that is why apart from countries such as China, South Africa, etc. that are striving to launch businesses in Nigeria, a good number of companies like Tiger Brands, Shoprite, Techno have moved into Nigeria and are expanding aggressively.

These potentials notwithstanding are deposited amidst various challenges which this paper offers to identify with suggested solutions to get intending entrepreneurs' home and in diaspora familiar with the terrain and also enable the government and the concerned stakeholders play their roles in the provision of a conducive, reliable and liberalised business environment in Nigeria. As expected, there are general business challenges and factors that start-up entrepreneurs face all over the world but when it comes to economic and environmental challenges, it varies from region to region. Thus the following are the identified challenges of starting and running a business in Nigeria.

The new Companies and Allied Matters Act, 2020 ("CAMA 2020" or "Act") sustains the gains made by the Federal Competition and Consumer Protection Act, 2018 and the Finance Act, 2020 towards improving ease of doing business in Nigeria. Some of the amendments and fresh provisions are geared towards further liberalisation of Nigeria's business environment.

Just like the Finance Act, 2020, efforts have been made to reduce the regulatory burden on small businesses by eliminating administrative bottlenecks. The CAMA 2020 incorporates innovative business rescue and recovery

⁴¹ *ibid*

⁴² *Ibid.*

provisions to support and protect insolvent companies. No doubt the Act has altered the corporate, economic, and business landscape in Nigeria. This article focuses on implications of the Act for startups and small businesses generally.⁴³

INCREASE OF SHARE CAPITAL AND ALLOTMENT OF SHARES

Recall that the previous CAMA 1990 operated the “*authorised share capital*” rule. Section 99 of the old CAMA 1990 required every company to have a prescribed authorised share capital out of which 25% must be issued to shareholders. Also, the previous CAMA 1990 pegged the minimum authorised share capital for private companies at N10,000 and public companies at N500,000. This 25% minimum-issued authorised share capital allowed companies the opportunity to retain unissued shares for future allotments by way of future investments into the company.

However, with the signing into law of CAMA 2020, the “*authorised share capital*” rule has now been abolished and replaced with the “*issued share capital*” rule. Section 124 of CAMA 2020 provides “that no company shall have a share capital which is less than its minimum issued share capital and that every company with unissued shares, must not later than six (6) months from the commencement of CAMA 2020, issue shares up to an amount, not below its minimum issued share capital”. Also, section 27(2) of the CAMA 2020, has pegged the minimum issued share capital of private companies at N100,000, while public companies must have at least N2,000,000 as their minimum issued share capital.

What this means is that unlike in the previous CAMA 1990 where companies were required to issue at least 25% of their authorised share capital, under the new CAMA 2020, by implication, the entire share capital of a company must be fully issued at all times. This has ended the ability of companies to retain unissued shares for future allotments or for employee share schemes amongst other purposes. Similarly, under the CAMA 2020, if a company seeks to increase its issued share capital, such an increase can only be effective if 25% of the company’s issued share capital (including the increase) is paid up.

REDUCTION OF FILING FEES

One of the most significant changes in CAMA 2020 is the reduction of the fees payable for creating charges over a company’s assets. As provided under the New Act, the total fees payable to the Commission in connection with filing, registration or release of a charge shall not exceed the sum of 0.35% of the value of the charge or such other amounts as may be specified by the Minister in the Federal Government Gazette. This is a significant improvement on the 1990 CAMA regime where a percentage (1% or 2% for private and public companies respectively) of the secured sum is paid. This will provide additional comfort to both lenders and borrowers alike and will act as incentive to perfect security interests for full value in the Nigerian market.

SECURED CREDITORS AND INSOLVENT COMPANIES

Under the 1990 CAMA, bankruptcy rules apply in certain cases during the course of winding up of insolvent companies. However, the New Act introduces a proviso which clearly preserves the power of any secured creditor to realize or otherwise deal with his security during the winding up of an insolvent company registered in Nigeria.⁴⁴ The implication of this is that New Act has now clearly stated, as a general principle, that secured lenders will be able to realize their security interest over duly perfected security during insolvency. This will in turn increase investors’ confidence and reassure creditors of their stake in a company’s securities; consequently, it

⁴³ Available at <https://techpoint.africa/2020/09/16/cama-2020-what-benefits-for-startups-and-msmes> accessed on 4th August, 2022.

⁴⁴ Section 656, CAMA 2020

will be easier for businesses to generate capital which would be used in ensuring operation and increase prospects of profitability.

CONCLUSION

The machinery whereby companies may raise debt finance, which is much cheaper, simpler and flexible than equity finance was examined. The debenture holder's while not being members of a company are actually having very powerful influence over the way the company is managed. The actual interplay of influence of the creditor with the management of the company, and various rules specifically designed to protect the investment of the debenture holders, also help to keep the company to continue as a going concern. The rules on registration helps in determining priority and to notice to third parties and thus prevent fraud. The law however needs to be reviewed in such a way that many loopholes like the ninety day rule in Nigeria is changed, either reduced or changed to one of immediate notification of such transaction to the commission, to ensure some level of certainty in this area of the law.

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