

Introduction TO BUSINESS

A CONTEMPORARY APPROACH

Edited by
B. A. Agbonifoh, Ph.D

Introduction To Business: A Contemporary Approach

Copyright © 2015, B. A. Agbonifoh

Published by:

Mindex Publishing Co. Ltd.

#22, Benin Technical College Road,

Ugbowo, P. O. Box 5089, Benin City, Nigeria.

Tel: +234 802.345.3848, 803.740.4398, 805.475.5695

Email: info@mindexpublishing.com, mindexpublishing@gmail.com

website: www.mindexpublishing.com

*Benin *Lagos *Abuja *Aba

All rights reserved under the Pan-American and International Copyright Conventions. This book may not be reproduced, in whole or in part, in any form or by any means electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system now known or hereafter invented, without written permission from the copyright owner or Mindex Publishing Co. Ltd..

ISBN 978-978-8515-20-3

Printed in Nigeria by: Mindex Press Ltd. Benin City. Tel: 08054755695

CONTENTS

Dedication	iii
Preface	v
List of Contributors	vii

SECTION ONE: BUSINESS AND ITS ENVIRONMENT

Chapter 1: The Nature of Business and the Business Organisation - <i>Barnabas. A. Agbonifoh</i>	3
Chapter 2: Environment of Business - <i>Andrew Tafamel</i>	26
Chapter 3: The Role of Government in Business - <i>Ofe Inuwa</i>	47
Chapter 4: Regulatory Environment of Business in Nigeria - <i>F. A. Oluleye</i>	69
Chapter 5: Government Incentives and Strategies for Business Development - <i>O. R. Dania & J. O. Eguavo</i>	82
Chapter 6: Business and Society - <i>Florence Ogunrin</i>	109
Chapter 7: How to Start and Manage a Business - <i>E. O. Odia & A. E.</i>	136

SECTION TWO: FORMS OF BUSINESS OWNERSHIP

Chapter 8:	Legal Forms of Business: Sole Proprietorships - <i>O. M. Uadiale</i>	163
Chapter 9:	Legal Forms of Business: Partnerships - <i>Solomon Aghaebe</i>	173
Chapter 10:	Private and Public Companies - <i>Sylvester Eriabie</i>	191
Chapter 11:	Cooperative Societies - <i>O. S. Ighoremehor</i>	208

SECTION THREE: INTRODUCTION TO BASIC BUSINESS FUNCTIONS

Chapter 12:	Operations Management - <i>Edith Odia</i>	227
Chapter 13:	Introduction to Business Finance - <i>Esther. I .Evbayiro-Osagie</i>	265
Chapter 14:	Introduction to Human Resource Management - <i>Ogaga. Z. Agbaragu</i>	287.
Chapter 15:	Introduction to Marketing - <i>Patrick E. Oseyomon</i>	317

CHAPTER 10

PRIVATE AND PUBLIC COMPANIES

By
Sylvester Eriabie

Introduction

A company can either be a private company or a public company whether unlimited, limited by shares or by guarantee. The term "company" has become a common feature of modern economies as a result of the demerits of both sole proprietorship and partnership. Most businesses, usually of considerable size are organized as companies or corporations.

The word "company" has been defined in several ways with no "strict technical or legal meaning" (Oshio, 1995:5). It is normally reserved for an association of a number of persons carrying on business with the view to making profits. This definition is incomplete and lacks full legal meaning of a company. It does not include companies that are not formed for the purpose of making profits or for the purpose of the benefits of its members. For example, CAMA 2004, allows the incorporation of guarantee companies which by s. 26 (4) and (6) are prohibited from carrying on business for the purpose of making profits for distribution to members.

Company has also been defined as a complex network of

contract binding on various interest groups (Ilaboya, 2005: 113). This definition recognizes the stake of other interest groups in the corporate activities.

These stakeholders are the government, the society, creditors, suppliers, labour unions, employees etc.

There is a statutory definition of a company to be found under s. 567 of CAMA which provides: "Company" or "existing company" means a company formed and registered under this Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act."

However, a company can be legally defined as "a juristic person having no physical existence of its own but recognized by law as performing its functions through agents and servants who do exist physically (Cap. 113, Laws of Federation of Nigeria, 1990).

Capacity to form a company

Only a person who is qualified under the Act may join in forming a company. S. 20 of CAMA, 2004, provides that the following are disqualified from joining in the formation of a company.

- i. An individual who is less than 18 years of age, unless there are two other persons of full age and capacity who have already subscribed to the memorandum.
- ii. A person who is of unsound mind and has been so found by a court in Nigeria or elsewhere.
- iii. An individual who is an undischarged bankrupt.
- iv. A person disqualified under s. 254 of CAMA from being a director of a company namely:
 - a. A person convicted by High Court of any offence in connection with the promotion, formation or management of a company.
 - b. In the course of winding up of a company a person who appears to be
 - i. guilty of an offence for which he is liable (whether he has been convicted or not) under section 506 of CAMA, 2004.
 - ii. otherwise guilty, while an officer of the company, of any fraud in relation to the

company or of any breach of his duty to the company.

Registration of a public or a private company

Under section 35 of CAMA, 2004., registration of either a public or a private company is carried out by filling the prescribed forms and documents which must be delivered to the Corporate Affairs Commission. The forms and documents prescribed under the CAMA, 2004. are as follows:

- a. Memorandum of Association.
- b. Articles of Association.
- c. The statement of the company's nominal capital. This is contained in a prescribed printed form.
- d. Notice of the company's registered office, or the head office, if different from the registered office.
- e. Particulars of the first directors of the company.
- f. Any other document as may be required by law e.g Tax Clearance Certificate.
- g. Statutory declaration in a prescribed form by a legal practitioner to the effect that the requirements of this Act for the registration of a company have been complied with.

On registration, the most important documents to be filed are the Articles of Association and the Memorandum of Association. These documents together set out the constitution and bye-laws of the company.

Articles of Association

Articles of Association contain the rules and regulations for conducting the internal affairs of the company such as:

- i. Appointment and removal of directors. S. 41(3) of CAMA, 2004.
- ii. The procedures for the issue and transfer of shares.
- iii. The rights and responsibilities of shareholders.
- iv. The alteration of capital.
- v. The procedure for auditing and accounting for the company's business.

Memorandum of Association

Memorandum of Association is commonly referred to as the constitution of the company. The Memorandum of Association regulates the external dealings of the company, i.e., its relationship with outsiders. The contents of the memorandum of Association under s. 27 of CAMA, 2004, are spelt out as follows:

- i. The name of the company.
- ii. The registered office or location of the business.
- iii. The type of business it is set up to do.
- iv. The restriction, if any, on the powers of the company.
- v. A statement as to whether the company is a private or a public company.
- vi. A statement that the liability of its members is limited.
- vii. A statement on the minimum amount of authorized share capital. In the case of a private company, it is not less than N10,000 while in the case of a public company, it is not less than N500,000.00.
- viii. The number of shares into which the company's share capital is divided.

Certificate of Incorporation

After completion of the registration process, a thorough examination of all necessary documents is done. This is followed by the issuance of a certificate by the Corporate Affairs Commission certifying that the company is incorporated. It is only after this is done that the company is regarded as a corporate body and is authorized to start business. S. 36(5) of CAMA, 2004.

THE CORPORATION

A corporation (usually known as a company) is an entity that has legal personality i.e. it is capable of enjoying and being subject to rights and duties (juristic person) and possesses the capacity of succession. It is a company that is registered under the Companies & Allied Matters Act, being regarded as a corporate aggregate since it (i.e. company) consists of a number of members who fluctuate from time to time. As a perpetual "artificial" person, it lives forever and has certain characteristics recognized by law. It may sue and be

ed, make a contract, own property, and be required to pay taxes.

The Corporate Organization

The main parties in a company are:

- a. The Shareholders
- b. The Board of Directors
- c. The Top Management

The Shareholder

The shareholders as owners of equity shares in a company, are the true and legal owners of the company. They are the providers of permanent capital in a company. They bear the risk of ownership.

Their rights and claims are as follows:

- i. **Claim on income:** Ordinary shareholders have a residual ownership claim. They have a claim to the residual income which is earnings available to ordinary shareholders after paying expenses, interest charges, taxes and preference dividend and retained earnings. Retained earnings are reinvested in the business and shareholders stand to benefit in future on the firm's enhanced value and earning power and ultimately enhanced dividend payments and capital gain.
- ii. **Claim on Assets:** Ordinary shareholders also have a residual claim on the company's asset in the event of liquidation. Liquidation can occur on account of business failure or sale. Out of the realized value of assets, the claims of debt holders and preference shareholders are satisfied first and the remaining balance, if any, is paid to ordinary shareholders. In liquidation, the claims of ordinary shareholder may generally remain unpaid.
- iii. **Right to Control:** Control may be defined as the power to appoint directors. Ordinary shareholders have the legal power to elect directors on the board. If the board fails to protect their interest, they can replace the directors.
- iv. **Voting Right:** Ordinary shareholders are entitled to vote at general meetings. They are required to vote on a number of important matters. The most significant matters are: election of directors and change in the memorandum of association. For

example, if the company wants to change its authorized share capital or objectives of business, it requires ordinary shareholders' approval. Directors are elected at the annual general meeting by the majority of votes. Thus an ordinary shareholder has votes limited to the number of shares held by him. A shareholder may vote in person or by proxy.

- v. **Pre-emptive Rights:** The pre-emptive right entitles a shareholder to maintain his or her proportionate share of ownership in the company. This has to do with purchasing new shares in the same proportion as their current ownership. Thus if a shareholder owns one percent of the company's ordinary shares, he has a pre-emptive right to buy one percent of new share issued.
- vi. They have a right to hold or sell their stock certificate.
- vii. They have a right to receive annual financial reports.

The Board of Directors

The Board of Directors are in charge of directing the affairs of the business. They are elected by the shareholders. Their rights are as follows:

- i. They have the powers to appoint or terminate the services of top officers.
- ii. They decide on the objectives and policies of the company.
- iii. They may be entitled to be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors. Remuneration of directors is to be determined from time to time by the company in general meeting. S. 267(2) & S. 267(1) of CAMA, 2004.

The Top Management

The Managing Director is the chief executive officer of the company. As an employee of the company, he executes the major corporate policies by working together with other directors.

Each executive director is in charge of an operating division of the company. For example, personnel division has an executive director as finance division which also has an executive director who is in charge.

The company's secretary: He or she records all corporate decisions of the company and also keeps records of annual meetings. (Unugbro, 1997: 31).

Advantages of a Corporation

The advantages of a corporation are as follows:

Access to Funds: A corporation that is listed on the stock exchange has the advantage of sourcing for funds with ease. This ease is made possible by members' limited liability and the freedom of a member to transfer his or her shares. Prospective shareholders who have strong faith in the future growth and expansion of a company and having at the back of their mind the freedom to transfer shares for cash, will be attracted to invest in the company through purchase of shares that have the possibility of ensuring capital gain in the future.

Permanent life: As a legal personality, it is separate and distinct from its owners (i.e. shareholders). As a result, it exists forever subject to termination by liquidation. The death of any of the shareholders does not affect its continuous existence as an artificial person recognised by law.

Disadvantages of a Corporation

Some of the disadvantages of a corporation are as follows:

i. **Expenses associated with sourcing for funds.**

The legal and accounting costs of carrying out an initial public offering of a company is expensive. Subsequent sourcing for funds will require additional expenses to be incurred in order to meet with the difficult requirements of regulatory authorities.

ii. **Lack of Confidentiality:-** The need to ensure that each shareholder gets the annual report of the company's performance may have the tendency of making it impossible for a company to handle its financial matters with utmost confidentiality.

iii. **Compliance with Government Regulations**

A company requires time and commitment in order to comply with government regulations. This no doubt will result in a lot of paper work and sourcing for information. The negative

effect is that it has the tendency of distracting the attention of the company and making it to lose focus from activities directed towards meeting its goals and objectives.

WINDING UP OF A CORPORATION

One primary characteristic of a corporation is that it has a perpetual existence which suggests that it lives forever.

Winding up is the bringing to an end of the activities of a company. A number of different circumstances can bring about an end to its existence.

Under s. 401 of CAMA, 2004, a winding up may be effected in three ways:

1. By the court;
2. Voluntarily;
3. Subject to the supervision of the court.

Winding up by the court

Section 408 of CAMA, 2004 provides that a company may be wound up by the Federal High Court if:

1. The Company has by special resolution resolved to be wound up by the court.
2. Default is made in delivering the statutory report to the commission or in holding statutory meeting.
3. The number of members is reduced below two
4. The company is unable to pay its debts, or
5. The court is of the opinion that it is just and equitable that the company should be wound up.

Voluntary Winding Up

This may be done at the instance of members or creditors of the company. By s. 457 of CAMA, 2004, a company may be wound up voluntarily under the following circumstances:

- a. When the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.

- b. If the company resolves by special resolution that the company be wound up voluntarily.

Winding Up Subject to Supervision of Court

By s. 486 of CAMA, 2004, if a company passes a resolution for voluntary winding up, the court may on petition order that voluntary winding up shall continue but subject to such supervision of the court and with such liberty for creditors, contributories, or others to apply to the court and generally on such terms and conditions, as the court thinks fit or just.

Dissolution of the Company

When the affairs of a company have been fully wound up and the liquidator makes an application on its behalf, the court shall order the dissolution of the company and the company shall be dissolved from the date of the order.

In the case of voluntary winding up, the company is deemed to be dissolved on the expiration of three months from the date of the registration by the Corporate Affairs Commission of the return in respect of the winding up of the company, s. 468 and 478 of CAMA, 2004.

CLASSIFICATION OF COMPANIES

The following different types of companies may be identified under the Act as follows:

- a. Public company limited by shares.
- b. Private company limited by shares.
- c. Public company limited by guarantee.
- d. Private company limited by guarantee.
- e. Public unlimited company.
- f. Private unlimited company.

NAME OF THE COMPANY

Section 29 of CAMA, 2004. states the following as regards the name of a company.

- i. The name of a private company limited by shares shall end with the word "Limited" which is abbreviated as "ltd".

- ii. The name of a public company limited by shares shall end with the words "Public Limited Company" which is abbreviated as "Plc".
- iii. The name of a company limited by guarantee shall end with the words "(Limited by Guarantee)" in brackets, which is abbreviated as (Ltd/Gte).
- iv. The name of an unlimited company shall end with the word "Unlimited" which is abbreviated as "Ult'd".

A PRIVATE COMPANY

A private company is one in which is stated in its memorandum to be a private company. Section 22 of CAMA, 2004.

Features of a Private Company

A private company has the following features or characteristics. S. 22 of CAMA, 2004.

- i. There is restriction by its articles on the members to transfer their shares.
- ii. It has a minimum membership of two and a maximum of fifty.
- iii. It is prohibited from inviting the public to subscribe for its shares or debentures unless authorized by law.
- iv. It must have at least two directors.

ADVANTAGES OF A PRIVATE LIMITED COMPANY

1. A private limited company has a separate legal existence. This implies that properties will be owned by the company itself and all contracts would be signed on its behalf. The directors and secretary can only act as agents. As a result, the company is not dissolved on the resignation, bankruptcy or death of a director.
2. Incorporation as a limited company will protect the selected company's name. Once incorporated, it is listed in the register of companies maintained by the Corporate Affairs Commission. Therefore no one else can incorporate using this name.
3. A private limited company has strong and structured procedures to resolve any disputes between the shareholders of the company.

DISADVANTAGES OF A PRIVATE LIMITED COMPANY

- i. The prohibition of private companies from inviting the public to subscribe for its shares tends to prevent them access to the capital markets. This limits their ability to source for funds as other alternative sources may not provide the adequate funds needed for growth and expansion purposes.
- ii. Because of limited liability, the directors or members of a private limited company may have to give personal guarantee to banks, lenders or landlords.

PUBLIC COMPANY

A public company is defined by s. 24 of CAMA, 2004 as any company other than a private company. Such a company is required to state in its memorandum that it is a public company.

Features of a Public Company

- i. The minimum membership of a public company is two without any limit to the number of members.
- ii. Members (i.e. shareholders) are free to transfer their shares.
- iii. It can invite the public to subscribe for its shares.
- iv. It must have a minimum of two directors.

ADVANTAGES OF A PUBLIC COMPANY

Some of the advantages of a public company are as follows:

1. Access to capital

The capital markets allow public limited companies with strong growth potential to raise the capital necessary for growth and expansion purposes. Once, the company is public, subsequent financings are easier as the company has a track record with investors and securities regulators.

2. Liquidity

A shareholder of a company that has gone public and listed its securities on a stock exchange can sell his or her shares through the capital market for cash in return. This is called liquidity. Prior to a company going public, it is very difficult, if not impossible, for the

with liquidity makes it much easier to attract investment into the company, as the investors have a built-in exit strategy.

3. Incentive Stock Options

In view of high cost of living, devalued currency and intense competition, some companies find it difficult to attract and retain experienced management and technical personnel. One partial solution to this problem is the granting of incentive stock options. Some companies are able to attract the people they need by providing them with a reasonable salary coupled with a substantial number of incentive stock options. These options imply granting the employee or consultant the right to buy a certain number of shares of the company at the market price of the shares at the date of the grant for a specified period. As the market price of the shares of the company rises, the shares become worth a significant amount of money.

4. Acquisitions

In today's rapidly changing world, companies need to grow quickly in order to survive. One method of achieving rapid growth is to grow by acquisition. Often the easiest and quick way to deal with a competitor, or potential competitor, is to buy it. Public Companies can use their stock, instead of their cash, to make acquisitions, as the capital markets provide companies with a ready valuation for their stock.

5. Profile

There is no doubt that taking a company public increases its profile. The increased profile assists the company in attracting investors and customers. As people come to understand the company's products they will be much more likely to purchase its stock.

DISADVANTAGES OF A PUBLIC COMPANY

1. Time Commitment

The going public process requires a large commitment of management's time and energy and it takes management's focus off

the company's core business. Once the company has carried out its initial public offering and listed its shares on an exchange, a portion of management's time will be taken up dealing with regulatory requirements and generating market interest in the company.

2. Expenses as regards to obtain and maintain

Professional advisers, such as lawyers, and accountants must be extensively involved in the going public process in order for the company to avoid costly errors. The legal and accounting costs to carry out an initial public offering of a company is much and it does not end there. Once a company is listed on an exchange, it must continue to retain professional advisers in order to ensure that it complies with the complex requirements of securities regulators.

3. Disclosure requirements.

When a company carries out an initial offering it must file with the regulatory authorities a prospectus containing full, true and plain disclosure of all material facts relating to the company. The prospectus is usually publicized as in the case of a public issue. Many aspects of the company's business such as its financial performance, the terms of its material contracts, and the compensation it pays its executives, become a matter of public record and accessible to its competitors. This public disclosure of material facts can have a disadvantageous impact on public companies' ability to compete against other private limited companies that are not forced to make such disclosure.

4. Investors relations

While a public market for a company's shares provides a mechanism for valuing the company on a daily basis, a company's share price can become too much of a focal point. This can be a distraction for employee owning shares or options and can result in management decisions being made to focus on the short term to boost the share price rather than to strengthen the company in the long term. While a public listing may hold the promise of enhanced liquidity, it is up to the company to generate market for its shares. This requires the assistance from investor relations experts. This

kind of assistance is expensive and often does not result in immediate tangible results.

DIFFERENCES BETWEEN A PUBLIC COMPANY LIMITED BY SHARES AND A PRIVATE COMPANY LIMITED BY SHARES

Some of the differences between a public company and a private company are as follows:

- a. A private company (unless there is alien participation) can allot its shares without any external control but a public company and any company in which aliens participate cannot do so without the prior approval of the securities regulators.
- b. A private company cannot invite the public to subscribe for its shares or debentures or to deposit money with it unless otherwise authorized by law [s. 22(5)] of CAMA, 2004 but a public company can.
- c. The total number of members of a private company is limited to a maximum of 50; but this excludes persons who are bona fide in the employment of the company, or were while in that employment, and have continued after the employment, to be members of the company, [s. 22 (3)] of CAMA, 2004. There is no such limit in the case of a public company.
- d. A private company must by its articles restrict the transfer of its shares, s. 22 (2) of CAMA, 2004. There is no restriction on members of a public company to transfer their shares.
- e. Every public company must hold a statutory meeting and file a statutory report under s. 211 of CAMA, 2004 but a private company is not required to do so.
- f. In appointing directors of a public company they have to be voted into office individually unless the meeting had first resolved without any dissenting vote that two or more persons may be appointed directors by a single vote, but this restriction does not apply to a private company, s. 261 of CAMA, 2004.
- g. The name of a public company limited by shares must end with the words "Public Limited Company" (i.e. Plc) while that of a private company Limited by shares must end with the word "Limited" (i.e. Ltd), s. 29 of CAMA, 2004.

- h. The authorized share capital of a public company is at least ₦500,000 while that of a private company is not less than ₦10,000, s. 27 of CAMA, 2004.
- i. In the case a public company, full accounts must be filed and financial statement should comply with schedule 2 of the Accounting Standard issued by the Nigerian Accounting Standards, Sch. 3. As for a private company, some exemptions occur to deliver a modified financial statement, if, it qualifies as a small company, s. 334, s. 350 & s. 351(1) of CAMA, 2004.
- j. Additional notice of general meeting by way of advertisement to members, S. 222 of CAMA, 2004, is required in the case of a public company but not applicable to a private company.
- k. Additional report is required to be made to the audit committee by the auditors on accounts examined by them in the case of a public company. This does not apply to a private company.

Similarities between Public and Private Companies

Some of the similarities between public and private companies are as follows:

1. As for a private company, the minimum number of directors is two, s. 246 of CAMA, 2004. This is also the same with a public company which has two as its minimum.
2. The minimum number of shareholders for a public and a private company is two.
3. As regards right to sue, both a public and a private company can each sue but cannot be jailed but can be convicted and sentenced to a fine in lieu of imprisonment.
4. Artificiality of personality is applicable to both a public and a private company.
5. Veil of incorporation can be lifted for both of them.
6. Property and debts are not those of the shareholders but that of the company in respect of both public and private companies.
7. Subscribers of the memorandum shall take among them a total number of shares of a value of not less than 25 per cent of the authorised share capital. This applies to both a public and a private company.
8. Articles of association, s. 33 & s. 34 of CAMA, 2004, to be

registered with memorandum in form and in contents is applicable to both a public and a private company.

9. Written application for shares where shares are not issued to public are permitted for both a public company and a private company.
10. Return as to allotments to the commission, s.129 of CAMA 2004, is required to be complied with by a public company and a private company.
11. Valuation of consideration for shares, otherwise than in cash s. 137 of CAMA, 2004, is applicable to both a private and a public company.

Review Questions

1. What is a company?
2. Who may form or join in forming a company?
3. Explain the procedure and requirements for forming a company?
4. What issues are covered in (i) a memorandum of association and (ii) articles of association?
5. Who is a shareholder? What are rights and obligations of shareholders in a company?
6. What are the (i) advantages and (ii) disadvantages of a limited liability company over a sole proprietorship?
7. What are the features of (i) a private company and (ii) a public company?
8. Distinguish between a private company and a public company.
9. What are the similarities between a public and a private company/
10. How may a company be dissolved?

References And Further Reading

- Akpotaire, V. (1999). *Nigerian Company and Securities Law*. Ahure: Sylva Publications Ltd.
- Companies and Allied Matters Act 2004.
- Ola, C.S (2001) *Company Law in a Nutshell*, Ibadan; Univer Press Plc.

- Oshio, P.E. (1995). *Modern Company Law in Nigeria*, Benin City: Department of Business Law, University of Benin & Lulupath Int. Ltd.
- Boya, O. F. (2005). *Advanced Financial Accounting*, Ibadan: Dalag Prints & Packaging Ltd.
- Benbor, A.U. and Osaze, E.B. (1997). *Introduction to Business*, Benin City: Malthhouse Press Ltd.