

Corporate Capital under the Nigerian Company Law: A Key to Corporate Success.

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Abstract

Capital is the driving force for corporate success. Nigerian corporate law has provided a base line of minimum issued share capital for both private and public companies and the maintenance of same to avoid lack, depletion of corporate capital, company failure and to ensure success of companies. This Article examined the provisions of Nigeria Law relating to corporate capital and its maintenance using doctrinal approach and concluded that, there is an improvement under the extant Law (Companies and Allied Matters Act (CAMA) 2020) over that of CAMA 2004 in terms of provision of minimum issued share capital of ₦100,000 and ₦2,000,000 for both private and public companies respectively, however, the provision emphasised for subscription of shares only and not actual payment. Therefore, the article suggested that the law should provide for a 100% paid up capital or at least 75% of the minimum issued share capital of companies should be paid up for all categories of companies. Companies are also to be given certificate to do business after incorporation and after ensuring that they have enough capital to start off business. This is to ensure that they achieve their respective objectives without running into undercapitalization problems. The provisions allowing private companies to give financial assistance unlike public companies to buy their shares or shares of other private companies and provision relating to payment of dividends out of distributable profits need to be revisited since the assistance and dividend should be given or declared from distributable profit which is only calculated from current profit of the accounting year without recourse to previous loses. This is because to continue to allow that would mean that companies would continue to operate at a loss which could lead to corporate failure. Government Provisions of conducive and friendly business environment by way of tax reliefs or free tax on indigenous privately owned companies, good roads and accessible markets to sell companies' products would lessen the burden on companies' capital, ensure expansion and corporate success.

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1. Introduction

Capital is a factor of production and also very important for the success of any business. Corporate financial structure is, therefore, essential and of considerable value in the life of every company. Corporate capital mix which is the means by which a company is financed and how the capital is maintained¹ is equally of great significance under the Nigerian company law. This is because management of corporate capital by company managers and board of directors and financial decisions making by them will determine the sources of fund to finance their assets, the market value of companies is also affected by the operations and growth of the capital structure decisions²

Provisions are made for corporate capital at incorporation under the Companies and Allied Matters Act (CAMA) 2020 generally and other relevant provisions by other legislations depending on each particular sector for the takeoff, continuation and survival of companies. This article using a doctrinal approach of research seeks to examine the relevant provisions of Companies and Allied Matters Act and where necessary provisions of other corporate legislation in Nigeria concerning corporate capital. Recommendations are made where necessary.

2. Definition of Corporate Capital

Corporate capital has no single technical meaning to it in any statutory provisions, but is used to represent all funds subscribed or provided by members or creditors and assets in which such funds are invested. Capital is the foundation for taking off business, therefore, its sufficiency determines whether the business will or will not succeed³. Capital adequacy on the other hand essentially determines the soundness and aids economic performance of any organization. Capital adequacy is the sufficiency of capital for operational

¹ Biligees Ayoola Abdul Mumin 'Determinants of Dept financing in Nigeria' *Euroeconomica* (3) (39). 2020, P141 <https://dj.Univ.danubius.ro>>.PDF

² AI Sani and IT Idris 'Moderating Effects of Cost of Capital and Dept Financing and Firm Value in Nigeria. *International Journal of Research and Scientific Innovation*. (IJRSI) (vii) (vi) 156-159 9th June 2020 www.rsisinternational.org

³ *Incorporated Interest Property Ltd. v. Federal Commissioner of taxation* (1943) 67 CHR 508 at 575

existence⁴. Capital is needed in sufficient levels to assist absorption of operational or unanticipated losses, preserve confidence in the continued existence of a business entity and thus forestalling insolvency⁵. This goes to show that an important area of any company is the availability and adequacy of capital to run its business. Therefore, companies may run out of business if they fail to manage their capital effectively.

The business operating environment is becoming extremely tasking compared to the past, this arouses the need for a robust management of corporate fund enough to ensure organizational and operational sustainability. Companies are expected to handle risks that are associated with inadequate capital to facilitate different stakeholders' confidence in the firms and consequently strengthen its balance sheet⁶.

The first issue to handle is how to determine the adequacy of capital for a company to do business successfully in Nigeria. The Companies and Allied Matters Act 2020 has put up capital benchmarks for incorporation of companies generally and in doing that, companies are divided into private and public companies.

3. Requirement for Minimum Issued Share Capital

As opposed to the ₦10,000 and ₦500,000 minimum authorized share capital for incorporation of companies under the CAMA 2004 for private and public companies respectively, under the 2020 CAMA, initial minimum issued share capital of ₦100,000 capital is required upon incorporation by private companies and the public companies are also mandated to have a minimum issued share capital of ₦2,000,000⁷.

The minimum issued share capital is the minimum number of shares a company can be registered with and can issue to its

⁴ D. AL-Najjar and H.F Asous 'Key Determinants of Deposits Volume using Camel Rating System'. The case of Saudi Banks. Plos One (16) (12) 2021, Co 261164. <https://doi.org/10.1371/journal.pone.0261184>

⁵ Olubumi Adewole Ogunode and Olaolu Ayodeji Awoniyi and Ayodeji Jemitope Ajibade 'Capital Adequacy and Corporate Performance of Non-financial Firms: Empirical Evidence from Nigeria' Cogent Business and Management. <https://www.formline.com/doi/full/101080/2311975.2022.2156089#:text=furthermore%2c%zothe%20/research%20showed%20that,effect%20their%20respective%20corporate>

⁶ Ibid

⁷ Companies and Allied Matters Act 2020 S. 27 (2)

subscribers. This allows companies to keep their startup capital Costs Low by only creating shares that are needed at the time of incorporation. What this entails is that the relevant thing in incorporation is not the share capital of a company but the number of its shares issued at incorporation. The company might have more but the minimum to be issued is what is provided for under the law. It is equally not compulsory that all the issued capital must be paid up at incorporation, therefore, the subscribed capital is not really paid up but an agreement to pay and so cannot be termed as capital in the context as to be useful in the business expansion. This is because the subscribers are only called up to pay only in the event of winding up.

Considering the inflation and global modern technology development trend in the production sector, the amount provided as minimum issued share capital under the CAMA 2020 for both private and public companies though are improvements on the provisions of CAMA 2004 are still too small to provide the financial or adequate capital base needed to drive any meaningful business. The reason for the requirement of minimum issued share capital is to avoid undercapitalization and limit proliferation of small companies and incidents of irresponsible incorporations, it is, however, submitted that the minimum issued share capital requirement cannot equally stand the test of economic realities in Nigeria more so that subscription is only an undertaking to pay for the issued share and not actual payment per se⁸.

CAMA⁹ Provides that where after the commencement⁹ of the Act the Memorandum delivered to the CAC states that an association is to be registered with shares, the amount of the share capital stated in the memorandum to be registered shall not be less than the minimum issued share capital and no company having a share capital after the commencement of the Act be registered with a share capital less than the minimum issued share capital. Where, at the commencement of CAMA, the issued share capital of an existing company is less than the minimum issued share capital, the company shall, not later than six months after the commencement of CAMA,

⁸ TAT Yagba, and B.B Kanyip and SA. Ekwo, *Elements of Commercial Law* (Tamenza Publishing Company Limited, 1994) 249.

⁹ CAMA S. 124 (1) and (2)

issue shares to an amount not less than the minimum issued share capital¹⁰, where a company is registered with shares, its issued capital shall not at any time be less than the minimum issued share capital¹¹ and where a company allows its share capital to be less than the minimum issued share capital, the company is liable to such fine as the CAC may prescribe by regulation and in addition liable to daily default fine as the commission shall specify by regulation for everyday during which the default continues¹².

CAMA permits companies in general meeting to increase share capital by allotment of new shares of such amount as it considers expedient and notify the Corporate Affairs Commission within 15 days¹³. This increase should be by ordinary resolution and the memorandum of the company and its articles of association shall reflect the new issued share capital¹⁴, any default in complying with this section is liable to such fine as the commission may prescribe by regulation for every day during which the default continues¹⁵. Where a company allots new shares, thereby increasing its issued share capital, the increase shall not take effect unless at least 25% of the share capital including the increase has been paid up and the directors have delivered to the commission a statutory declaration verifying that fact¹⁶, failure will attract a fine as the CAC may prescribe by regulation¹⁷. If an unlimited company wants to be re-registered as a limited company, it may increase its nominal amount of issued share capital by increasing the nominal amount of each of its shares, this is however subject to the conditions that no part of the increased issued capital shall be capable of being called up except in the event and for the purpose of the company being wound up¹⁸. These are to avoid proliferation of capital and encourage business success.

¹⁰ Ibid S. 124 (3)

¹¹ Ibid S. 124 (4)

¹² Ibid S. 124 (5) (a) and (b)

¹³ Ibid S. 127

¹⁴ Ibid S. 127 (8) (1) and (2)

¹⁵ Ibid S. 128 (2)

¹⁶ Ibid section 128 (1) (a) and (b)

¹⁷ Ibid S. 128 (2)

¹⁸ Ibid S 129 (a) and (b)

CAMA does not allow private companies to create capital by issuing their shares to the public¹⁹ and most of these private companies do not even have enough assets to put up as securities to secure loan from credit houses, whose credit periods are usually short term with high and unended interest rates. Heavy and multiple taxes are also levied on companies which affect their capital negatively and make it even more difficult for expansion or success of their businesses.

In financial sector, even as traditional commercial banks and other financial institutions, maintenance of adequate capital levels is fundamental for the safety of depositors' funds and sustainability of the business operations, this position is always influenced through regulatory actions and pressures²⁰. This situation is however, less clear for non-financial firms like manufacturing, hospitality, oil and gas, telecommunications and agricultural sectors²¹. In Nigeria, Banks are expected to maintain adequate capital to protect their financial obligations, operate profitably and contribute to promoting a social financial system. It is for this reason that the CBN prescribes minimum capital requirement for banks. A component of a banks' capital shall comprise paid up capital and reserves²².

Inadequate capital is a significant determinant of failure of microfinance banks in Nigeria. This implies that the policy of the Central Bank of Nigeria (CBN) that mandated the microfinance banks to soar up their capital base by meeting their peculiar capital requirements by April 2021, and April 2022 was in the right direction²³. The minimum paid up share capital to be maintained for a national level banking license is ₦25 Billion Naira or any such amount that may be prescribed by the CBN. While for Regional

¹⁹ Ibid S. 22 (5)

²⁰ BJJ DAO and DD Nguyen: 'Determinants of profitability in commercial Banks in Vietnam, Malaysia and Thailand. *Journal of Asian finance economics and Business*'. (17) (4) 2020. 133-143. <https://doi.org/10./31/06/jafeb>.

²¹ Olubuni Adewole Ogunode and Olaolu Ayodeji; Awoniyi and Ayodeji Timitope Ajibade. 'Capital Adequacy and Corporate Performance of Non-Financial Firms: Empirical Evidence from Nigeria. *Cogent Business and management* (n5)

²² Mansur Lubabah Kwanbo and others 'Determinant of Corporate Failure in Nigeria': An Examination of Micro Finance Banks Using a Pragmatic Approach. <https://www.researchgate.net/publication/362593270-Determinants-of-corporate-failure-in-Nigeria-an-examination-of-microfinance-banks-using-a-pragmatic-approach>:PG2/link/62f3DC3fC6+6732999bf56b0/download. (3) (1) 2023 5-6.

²³ Ibid

Banking license is N10billion Naira and international commercial Banking License is ₦50 billion²⁴.

Under the insurance Act²⁵ carrying on of insurance business in Nigeria unless the insurer has and maintains a paid up share capital of not less than the following amounts in respect of the categories of insurance businesses named here under are prohibited;

- a. Life insurance - N 2 billion
- b. General insurance - N 3 billion
- c. Marine and Aviation insurance business other than goods in transit insurance business by road, water, air and rail, an additional paid up capital of not less than N 5 billion.
- d. Re-insurance - N 10 billion.

However, by a circular dated 20th May, 2019 National Insurance Commission (NICON) in exercise of its power under Section 10 (4) of NICON Act 2004 increased the paid up capital of insurance companies to:

- i. Life insurance from N2 billion to N5 billion Naira.
- ii. General insurance from N3 billion to N10 billion Naira
- iii. Composite insurance from N5 billion to N18 billion Naira
- iv. Re-insurance from N10 billion to N20 billion Naira.

All existing companies were given up to 30th June of 2020 to comply with the new paid up capital review.

In the Banking Business, the Banks and other Financial Institutions Act²⁶ provides that the Central Bank of Nigeria shall from time to time determine the minimum paid up capital requirement of each category of bank licensed under the Act.

It, therefore, follows that, the minimum share capital for bank does not depend on the provisions of the companies and Allied Matters Act but also on guidelines issued by Central Bank of Nigeria from time to time in exercise of its regulatory powers, and so the capital base of banks are subjected to changes. The current paid up

²⁴ 'An Overview of Types of Banking License in Nigeria' 23 Jan 2023 <https://trustedadvioslaw.com/an...>

²⁵ CAP 102 LFN, 2004. S.10.

²⁶ CAP 3 (2) LFN, 2004, S 9(1)

capital for banks in Nigeria is still 25 billion naira. The rationale behind the idea that the share capital be paid up is to ensure that undercapitalization problems in bank are avoided.

It is important to note that, the failure to comply with the provisions of the Act (within which period) as may be determined by the Central Bank of Nigeria from time to time shall be a ground for the revocation of any license issued pursuant to the Act. The shareholders of a proposed bank that apply for a license to operate shall deposit with the bank a sum equal to the minimum paid up capital that may be applicable under section 9 of the Act, before license is issued²⁷. The Act further provides that every bank shall maintain with the CBN cash reserve and special deposit and hold specified liquid assets or stabilization security, as the case may be not less in amount than as may from time be prescribed by the Central bank of Nigeria by virtue of section 45 of the Central Bank of Nigeria Establishment Act 2004²⁸.

In the aviation industry, the authorized paid up share capital are as follows;

- a. Five hundred million naira for domestic operators
- b. One billion Naira for regional operators.
- c. Two billion naira for international operators.

The Nigerian Civil Aviation Authority (NCAA) monitors the financial position of an air career by regular screening of up to date monthly management accounts, quarterly balance sheets and annual profit and loss account and cash flow projection. These are efforts made to minimize undercapitalization in companies and to avoid failure²⁹.

It is submitted that the requirement of paid up share capital in case of banks, insurance and Aviation industries should be emulated and extended to other sectors by CAMA, though it may Obviate the hope of creditors that the unissued and unpaid portion of the share

²⁷ Ibid.

²⁸ Ibid Cap 3 (3) S 3 (2)

²⁹ George Etomi & Partners https://www.sskohn.com/article/?content_ref=29&categoryID=5./2/30/2010, 'Doing Business in Nigeria-Aviation Sector May 1 2019. Lexology.com/library/... Nigerian Civil Aviation authority Guidelines and Requirement for Grant of air Transport License (ATL) <https://www.old.ncaa.gov.ng/direc...>

capital is a emergency fund to be called up and shareholders expect to pay at the time of winding up.

Under the Companies Act of 1968³⁰ as contrasted to the private company, which could commence its business as soon as the certificate of incorporation was issued, the public companies were required to await another certificate declaring that the company was entitled to commence business. This requirement was designed to ensure that the company had sufficient funds before commencing business therefore stemming undercapitalization of such companies. It is therefore submitted that all companies in Nigeria including private companies should require a certificate to do business before commencing operations; at least 70% if not all of a minimum issued share capital should be paid up by the subscribers before a certificate for commencing of business is issued to companies. This will help to check undercapitalization in companies and avoid company collapse. CAMA should revive the provision for certificate to do business as this will assist in tackling undercapitalization and ensure corporate survival.

4. The Corporate Capital Maintenance Rules

The provision of capital would be pointless if the companies raise capital and are at liberty to deplete it. It is, therefore, fundamental that company capital unless extenuated by expenditure on its business must be preserved for the discharge of its liabilities³¹. The rules relating to share capital, its maintenance and dealings, minimum issued capital, paid up share capital and ultra vires doctrine are to safeguard companies' capital as they ensure great measure of financial viability of companies and prevent corporate failure. The capital maintenance rules prevent companies from wasting shareholders' funds for unauthorized purposes, while the ultra vires doctrine prevents them from going outside their objects.

CAMA provides that share capital shall not be reduced unless in accordance with the provisions of the Act³², however, if authorized by the Articles of Association of a company, the company

³⁰ Section 107 (1)

³¹ EO Akanki 'Company Capital and Protection' *Nigeria's Bar Journal*(16) 1980 9 at 15

³² CAMA 2020 section 130 (1)

can by special resolution reduce its capital and this is also subject to confirmation by, the court³³ and this is done by;

- a. Extinction or reduction of liability on shares not fully paid up;
- b. Cancelling paid up shares lost or not represented by available assets;
- c. Cancel any paid up share capital which is in excess of any of the company's wants.

The resolution to reduce the share capital is subject to courts confirmation and a copy of the resolution is to be filed with the Corporate Affairs Commission (CAC)³⁴. The creditors are also entitled to make objections which are considered by the court³⁵. This is to safeguard the rights and interests of creditors, the just and equitable treatment of shareholders and the interest of the investing public.

The main rule relating to the raising of capital is that, shares shall not be issued at a discount³⁶. *In the case of Ooregun Gold Mining Co. Of India Ltd. v Roper*³⁷ a company needed money and its ordinary shares stood at a discount. It purported to issue its preference shares with on credit with shillings paid up leaving 5 shillings to be paid on allotment. The House of Lords held that there was no power under the companies Act to do this and therefore, it was held ultra vires and the allottees were liable to pay the full amount on their shares. CAMA provides that it is unlawful to issue shares at a discount³⁸. A Public Company shall not accept as payment or part payment for its shares consideration other than cash unless the cash value of the consideration as determined by a valuer is worth at least as much as maybe credited as paid up in respect of the shares allotted to the proposed purchaser³⁹.

CAMA also makes it clear that shares of a company and any premium on them shall be paid up in cash or by a valuable consideration other than cash if the Article of Association of the

³³ Ibid S. 131 (1)

³⁴ Ibid S 132 and 134

³⁵ Ibid 132 (3)

³⁶ Ibid S. 155

³⁷ 1892 (AC) 125 (HL)

³⁸ CAMA 2020 S. 146.

³⁹ Ibid S. 162 (4)

company permits, or partly by cash and partly by a valuable consideration other than cash⁴⁰ but this is subject to determination of the value by an independent valuer⁴¹. The above provisions are important because they seek to prevent watering down share capital in companies through the inflation of non-cash consideration. CAMA⁴² makes it unlawful for a company or its subsidiary to give financial assistance to a person to purchase its shares, however, a company can lend money in the ordinary course of its business where the lending of money is part of the ordinary business of the company. A company can also grant loan to its employees other than directors in good faith to enable them to acquire fully paid shares in the company to be held by themselves by way of beneficial ownership, also in accordance with any scheme for the time being in force of its holding company, being a purchase or subscription by trustees or for shares to be held by or for the benefit of employees of the company, including directors holding a salaried employment or office in the company⁴³.

It is important to note that CAMA⁴⁴ did not limit or prohibit private companies from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or if it is a subsidiary of another private company, provided that the financial assistance may only be given if the company has net assets which are not thereby reduced or to the extent that they are reduced, if the assistance is provided out of distributable profit⁴⁵ and the giving of assistance must be approved by special resolution of the company in general meeting and the directors of the company proposing to give financial assistance shall before the assistance is given make a statutory declaration in a form prescribed by the commission (CAC) and this is; if the shares to be acquired are shares in its holding company⁴⁶.

It is also important to state that the rule that dividends must be paid out of distributable profits is also rationalized on the ground that

⁴⁰ Ibid S. 160.

⁴¹ Ibid S. 162.

⁴² Ibid S 183 (1) (a)

⁴³ Ibid S 183 (3) (a-c)

⁴⁴ Ibid S 183 (4)

⁴⁵ Ibid S 183 (4) (a)

⁴⁶ Ibid S. 183 (4) (b and c)

if it is permitted to be paid from capital a company might run down its capital assets because until there is nothing left for the company. CAMA provides that a company may pay dividend only out of profits available for the purpose⁴⁷. A dividend is the share received by a shareholder of the company's profits which is legally available for distribution. The dividend reflects the shareholders' expectations of reward for their capital contributed to the enterprise and in economic terms, dividends are the cost of capital just like wages are cost of labour⁴⁸.

*In Lee v Neuchatel Asphalt Company*⁴⁹, it was held that dividends could be paid out of current trading profit without making provisions for the depreciation of fixed assets or making good earlier losses in capital. This means that previous losses are not considered but current year profits and loss is considered when declaring dividend. It is submitted that not reckoning with previous losses in this instance is not in keeping with maintenance of capital principle, because, without addition of previous losses or making provisions for depreciation of fixed assets, the principle is made mockery of. There is a difference between the previous year and current year in terms of success therefore, it is diligent commercially to first of all deal with the previous losses before talking about current profit to know if the company is actually making profit or not. The profits of a company available for payment of dividends are its accumulated, realised profit (so far as not previously utilised by distribution or capitalisation), less its accumulated, realised losses. (So far as not previously written off in a "lawfully made reduction or reorganisation of capital")⁵⁰.

Public companies have greater opportunities to acquire investment capital and expend their business as the law does not restrict them from soliciting for investment from the public. However, this freedom to solicit for fund is not without control. Rules relating to the statements made in connection with the advertisement for purchase and sale of securities are aimed at

⁴⁷ Ibid S 427 (1)

⁴⁸ TAT Yagba, and BB Kanyip and S. Okwor '*Elements of Commercial Law*' (Tamaza Publishing Company Limited 1994)

⁴⁹ (1889) 41 ChD 1.

⁵⁰ Ibid S. 427 (2)

ensuring that full disclosure of companies' affairs are made known to the investing public. The public offer and sale of securities are regulated by the investment and securities Act 2007 which makes it unlawful to issue any form of application for securities which includes shares, debentures, in a public company unless the form is issued with a prospectus which complies, with the Act⁵¹ and includes among others, the promoters' interest, the property and profits of companies, the minimum subscription, the purchase price of any property purchased or to be purchased from the proceeds of the issue, the expenses of the issue including commission payable to any person for agreeing to subscribe for or procuring subscriptions or any shares of the company, the repayment of any money borrowed by the company, the number, description and amount of shares or debenture of a company a person has taken or is entitled to be given, price to be paid on shares or debentures. In respect of any property, the names and addresses of the vendors (if more than one), the amount payable to each of them, the consideration and particulars of interest therein in the preceding two years; the auditors' and account reports as to the profit and losses, assets and liabilities of the company among others must be stated in the prospectus in each of the last five years immediately preceding the issue of the prospectus and the assets and liability of the company as at the last date to which the accounts were made up.

The rationale for these reports is for the offer to warrant a down to earth revelation of the companies' affairs and their subsidiaries to enable prospective investors and lenders to have a good idea of the interests involved and the performance of the company over a period of time so as to be able to make decision in respect of the invitations.

The rules also help to prevent fraudulent market practices in public companies as the security dealings to beef up companies' capital are regulated by the Securities and Exchange Commission (SEC). Capital Trade Points are registered by the Securities and Exchange Commission (SEC)⁵². SEC also deals with registration of capital market operators and intermediaries associated with security

⁵¹ Investment and Securities Act, No 29, 2007 S. 56.

⁵² Ibid S. 28

industries. Disciplinary powers are also conferred to it under the Act⁵³.

The above discussions on provisions of law on raising corporate capital and its maintenance are to ensure sufficient capital for Nigerian companies to carry out their businesses and expand without collapse. Despite the rules, low capital frustrates companies, forcing them to collapse and thereby creating negative consequences on corporate stakeholders. Muhammad Kai Aliba, the Managing Director of Intercontinental Bank in 2010 confirmed that about 1,346 staff of the bank were sacked because of poor financial position of the Bank⁵⁴.

5. Conclusion

Corporate capital provisions and its maintenance rules under the Nigerian corporate statutes are lead ways to business successes as benchmarks such as minimum issued share capital are provided for registration of companies generally and in some particular sectors minimum paid up capital are to be met for a company to be registered and start off business, however, the provisions for minimum issued share capital especially under the CAMA are not enough, and even the issued share capital must not be all paid before the company is registered with the corporate affairs commission therefore, right from the foundation of a company there is no way of confirming if a company has enough capital at hand to execute its objects. This means that the corporate capital provisions under the CAMA is shaky and to strengthen the law, and to ensure corporate survival or at least to minimise failure of companies, CAMA should consider providing a 100% paid up capital or at least 75% of the minimum issued share capital of companies be paid up.

There is also need to issue certificate to do business to companies by CAC after incorporation and after showing evidence that they have enough capital to start the kind of businesses they intend to do or to carry out in their various companies. Secondly, the provision under CAMA that dividends must be paid out of distributed profits, though extenuated on ground that if paid out of

⁵³ Ibid SS. 33 and 34

⁵⁴ Daily Truth Vol. 23 No.33 Wednesday January 6, 2010 P7

any other source of capital might lead to running down the capital of the company which will also lead to failure of the company, the fact that previous losses are not put in to consideration when calculating distributed profit is challengeable because, for one to know if a company is doing well, proper account is needed and a correlation between the previous loss and current profit is necessary to enable a deep perception into real profit of a company at a particular current year. Therefore, there should be a legal regime to include previous losses in calculating distributable profit for purposes of declaration and payment of dividend, otherwise, companies might be operating at a loss and at same time declaring and paying dividend which will lead to collapse.

Thirdly, the rule that public companies are not to give financial assistance to purchase their share does not extend to private companies which may give financial assistance to purchase their shares or shares of another private company provided that the assistance is from a distributable profit, as provided under section 183 of CAMA. This provision should also be revisited so that previous losses are considered in calculating distributable profit and to enable companies determine their real profit to see if they really have enough to give assistance or they are operating at a loss.

Under section 22 of CAMA 2020, private companies are not allowed to issue their shares to the public. It is submitted that since most of the companies do not even have assets to put up as securities for loan from credit houses and the credit periods of these financial credit houses are usually short-term with high interest which most at times lead the companies into difficulties and do not allow them to expand their business, Government should encourage indigenous companies by way of providing a tax reliefs or tax free business environment and good access roads and markets to sell their products and services to raise more capital from the sales. These will lessen the burden on the companies' capital.

Though the provisions of section 27 of CAMA 2020 on minimum issued share capital of ₦100,000 and ₦2,000,000 for both private and public companies respectively have improved more than that under the previous CAMA 2004 which was ₦10,000 for private companies and ₦500,000 for public companies, there is still room for

an increase in the minimum issued share capital as the amounts are too small considering the global inflation and cost of living in the business market environment. If companies must succeed, there must be an increment of at least ₦2 million for private companies and ₦50, million naira for Public Companies as minimum issued share capital and paid up capital base.