

FOR THE LOVE OF CHRIST JESUS; THE BEGINNING AND THE END.

**ESSENTIALS OF COMPANY LAW AND PARTNERSHIP**

**Composed by Nwosu Isochukwu.**

**Year: 2016**

**isochukwunwosu@gmail.com**

KINDLY NOTE:

1. All you need is to understand the principles, then back it up with one or two popular case(s) therefore this note presents the discussion on this subject area in a succinct and straight-to-the-point manner while noting the essential authorities.
2. My language and referencing are informal and abbreviations were used in this work. E.g. HC means High Court, CoA means, Court of Appeal, CFRN means, Constitution of the Federal Republic of Nigeria, etc. I apologize.
3. If viewing the notes on your laptop, press Ctrl + F (Ctrl key and Key F at the same time) to find a specific word/phrase. If viewing from a mobile device, select the “search” option from your browser’s tool menu.
4. The next update of the note shall be released on April, 2020.
5. For advanced legal research on any area of law kindly visit [vitesolutions.com.ng](http://vitesolutions.com.ng). Thank you and hope you find the notes helpful.

## Contents

HISTORY OF COMPANY LAW .....	4
SOURCES OF COMPANY LAW IN NIGERIA .....	10
ADMINISTRATIVE AND REGULATORY BODIES. ....	11
THEORIES OF CORPORATE LAW. ....	14
INCORPORATION OF COMPANIES.....	15
PRE-INCORPORATION CONTRACTS.....	19
CONSEQUENCES OF INCORPORATION. ....	21
LIFTING THE VEIL OF INCORPORATION. ....	23
CAPACITY AND POWERS OF A COMPANY.....	27
ALTERATION OF THE MEMO. ....	29
ALTERATION OF THE ARTICLES. ....	32
LEGAL EFFECTS AND NATURE OF THE MEMART.....	32
CAPACITY OF COMPANIES. ....	34
AUTHORITY, POWER AND LIABILITIES OF A COMPANY.....	38
CSR, CORPORATE GIFTS POLITICAL DONATIONS .....	42
COMPANY CAPITAL.....	49
MAJORITY RULE AND MINORITY PROTECTION.....	53
CORPORATE ADMINISTRATION AND MANAGEMENT AND LIABILITY FOR CORPORATE ACTS. ....	58
ORGANS OF CORPORATE ADMINISTRATION.....	58
THE MEMBERS IN GENERAL MEETING.....	58
THE BOARD OF DIRECTORS.....	59
LIABILITY OF THE COMPANY FOR ACTS OF ITS OFFICERS. ....	64
FINANCIAL STATEMENT, AUDIT, DIVIDENDS. ....	65
FINANCIAL STATEMENTS .....	65
DIVIDENDS.....	67
MERGERS AND ACQUISITIONS. ....	69
MERGER.....	69
ACQUISITION.....	71
SHAREHOLDING AND MEMBERSHIP.....	72
ISSUE, SALE AND TRANSFER OF SHARES. ....	74
GOING PUBLIC .....	79
CAPITAL MARKET MANIPULATIONS AND INSIDER DEALINGS.....	79
WINDING UP AND LIQUIDATION.....	80
CASE REPORTS FOR WINDING UP AND LIQUIDATION. ....	83

PARTNERSHIP.....89  
REGISTERED/INCORPORATED TRUSTEE` .....92

## HISTORY OF COMPANY LAW.

:: History being a record of past events shapes the future-**Prof Abugu**.

:: When did the “company-like” form rear its head and how did it evolve over the years? Some scholars say the history of Company Law is traceable to the practice of Italian Merchants<sup>1</sup> others say it is traceable to **13<sup>th</sup> Century England**. Our discussion shall adopt the latter position.

13<sup>th</sup> -17<sup>th</sup> Century.

The following endeavours were accorded “corporate” status during this period.

1 **The Church of England, Monasteries and other Ecclesiastical Bodies:** Procured charters from the crown for the sole propagation of their objects. These were the earliest forms.

2. **The Borough System:** A charter<sup>2</sup> could be obtained from the crown to recognize a particular community/municipality as a corporation. This practice was given legal backing by the **Municipal Corporation Act of 1835**.

3. **The Guilds:** People involved in the same business would come under the auspices/umbrella of the guild. Members contribute/pool money and make bulk purchases and share according to contribution/interest. This united form protected their interests and gave them better bargaining power. Charters were procured in this regard.

4. **Partnerships:** not exactly like the ones we have now. This type took two forms viz:

- **The Commenda:** a temporary association of two or more people where “A” (called the Commendator) lends money to “B” (his partner called the Commendatarus) to employ in trade and take a percentage of the profit (usually 25 percent) The commendator bears the capital and risk while the commendatarus deals with the running and administration.
- **The Societas:** Here, members conglomerate under the auspices of the societas but each traded with his own stock and on his own account<sup>3</sup>. Charters were obtained to acquire monopoly of trade for members and to give them (their members) power over the territory in which they traded.

:: By this time, international trading began to gain prominence. However, due to the huge risk and capital involved, a single individual found it herculean to undertake. Therefore, “Joint Stock Companies” were formed (and obtained charter<sup>4</sup>) to pursue international and

---

<sup>1</sup> Writers Like Sir William Holdsworth.

<sup>2</sup> To secure the charter of the crown, the town’s men had to diligently perform their civic duties.

<sup>3</sup> They just had to identify with and obey the rules of the societas.

<sup>4</sup> In **Edmund v Brown and Tillard**, it was recognized that a JSC can own property, survive the lives of its members, sue and be sued, and members may not be liable for debts of the corporation.

social undertakings. The **Muscovy Company** was the first joint stock<sup>5</sup>, followed by the **East Indian Company**.

A Joint Stock essentially involves a large number of people pooling money together in common stock. The common stock is divided into units of (readily transferable) shares based on the contribution/interest of each member. The profit is shared to each member based on his interest.

### **17<sup>th</sup> - 18<sup>th</sup> Century:**

The Bank of England was formed in 1694. This bank lent money to the State at an interest.

### **The South Sea Bubble**

A group of individuals were in the habit of lending money to the State at an interest. A royal charter was granted to incorporate the group. The **South Sea Company**<sup>6</sup> emerged on this premise. The company was granted a monopoly to engage in trade with South America. This Company bought over major national debts<sup>7</sup> thereby unburdening the State and acquiring the favour and loyalty of the government and the governed<sup>8</sup>. The **South Sea Act** was enacted to recognise and legitimate them.

As time went on, the cost of trading skyrocketed. This led to a high demand for Royal Charters to acquire a corporate personality to undertake sophisticated business in the harsh economy. People utilised fraudulent devices to circumvent the difficulty of obtaining a proper charter from the crown.

- Unscrupulous people enriched themselves by forming sham companies with gross misrepresentation of object and financial projections. This led to the exploitation of the gullible public.
- Charters of defunct companies were acquired and utilised.
- Companies undertook businesses outside that for which they were formed.

The parliament intervened with the **Bubble Act 1720**. This Act prohibited<sup>9</sup> people from saying that they are a corporate body except and until they have been granted a charter to carry out the particular business or purpose they purport to carry. However, this Act did not ameliorate the hardship/difficulty attendant in getting a charter.

---

<sup>5</sup> Chartered in 1555.

<sup>6</sup> **Company of Merchants of Great Britain Trading to the South Sea formed by James Blunt in 1711.**

<sup>7</sup> NB: the Co paid E7,500,000. The Company also bribed certain ministers which led to the enactment of the South Sea Act to protect and legitimate them.

<sup>8</sup> The People started investing in them with little or no knowledge of the enterprise or what they undertook (speculative investment).

<sup>9</sup> Specifically **Section 18** which declared it illegal and prescribed penalties thereof.

Smart lawyers circumvented this inconvenience by executing a deed<sup>10</sup> which established a “corporate-like” relationship. The courts of equity permitted this practice and noted that the Act was not contravened. This is equity’s contribution to the advancement of company law

In 1825, the **Bubble (Repeal) Act** was enacted. It enabled the crown to grant charters of incorporation to trading companies without giving them limited liability.

In 1834, the **Trading Companies Act** was enacted enabling the Crown to grant privileges of incorporation without actually granting the Charter or conferring limited liability.

**Next came Joint Stock Companies Act of 1844.**

- Regulated Joint Stock Companies and provided for **registration**<sup>11</sup> of all new companies which must have not less than 25 members.
- The registration process was in two stages. You first file<sup>12</sup> the name, address, object and place of business... of the company. The second stage is to file the deed of settlement<sup>13</sup> signed by the at least ¼ of the holders.
- This Act introduced the office of the registrar of companies.
- There was no limited liability under this Act but each member’s liability was to cease three years after they had transferred their shares (i.e. left)

**Next: The Companies Clauses Consolidation Act 1845** which sought to streamline the incorporation process. Standard forms and provisions were set out for promoters to adopt.

**Next: The Limited Liability Act of 1855**<sup>14</sup>.

- Enacted the Limited Liability Principle<sup>15</sup>. However directors could be liable if they declare and pay any dividend when they know that the company is insolvent or if the dividend (which they paid) causes the company to go insolvent.
- It prescribed a minimum capital requirement of E250.
- Provided that the Deed of Settlement had to be executed by at least 25 shareholders.

---

<sup>10</sup> In which the property of the company was vested in the trustees and the members were entitled to the beneficial interest in the company from its shares and profits. This made them seem like companies even if they did not have a separate legal entity. At least people could invest in the undertaking and have “trustees” do the work and at the end of the day; get their profit. These deeds were as comprehensive as today’s memorandum and articles.

<sup>11</sup> This Act provided for incorporation by mere registration. Rather than hoping for a charter or Act of Parliament.

<sup>12</sup> Something similar to today’s Memo.

<sup>13</sup> Something similar to today’s Articles. This deed of settlement contained provisions on internal regulation.

<sup>14</sup> It was enacted following the recommendations of **Mr Bellendun in 1837, The Mercantile Law Commission in 1852** and the **Resolution of the House of Commons** in 1854.

<sup>15</sup> Which provides that the liability of members shall be limited to their interest/share in the company. Their personal assets/properties cannot be touched/used to offset the company’s liability.

- Banking and insurance companies were excluded from the application of this Act<sup>16</sup>.

**Next: The Joint Stock Companies Act 1856** which eased up the regulation of companies.

- No minimum amount of shares required, no need for government approved auditors.
- The Deed of Settlement was replaced with the Memorandum of Understanding and Articles of Association.
- Reduced the minimum number of Subscribers to the memo from 25 to 7<sup>17</sup>.
- The register of members (which was only open to shareholders) was made available to the public under this Act.
- Provided for limited liability under **Section 60** and **Section 61**.

In **1857, the Punishment of Fraud Act** was enacted to make directors criminally liable for false statements published with intent to deceive or make someone become a shareholder.

**Next: Companies Act 1862** which:

- Consolidated the various extant laws.
- Recognized Limitation by Guarantee, Limitation by Share and Unlimited Liability.
- Banking was brought under the operation of this act. This meant that there could now be Limited Liability in banking business.
- Alteration of object clause was absolutely prohibited.
- This Act introduced the ultra vires rule.

Then came the **1867 CA...** no substantial or overwhelming improvement. Next, the **Director's Liability Act 1890** dealt with Liability of Directors. Then came the **1877 Companies Act**. This was followed by the **Companies Act of 1890**.

Then came **Companies Act 1900<sup>18</sup>, Companies Act 1907, Companies Consolidation Act 1908<sup>19</sup>, Companies Act 1917, Companies Act 1929<sup>20</sup>**, then **Companies Act 1948**. With similar provisions.

The Nigerian Perspective

The West discovered the Commercial potential in Nigeria. Charters were granted to certain companies like the **Royal Niger Company (RNC), East Indian Company (EIC), United African Company(UAC) and South Sea Company**.

---

<sup>16</sup> The Liability of Banking and Insurance Companies was unlimited until 1862 and 1858 respectively.

<sup>17</sup> It however prohibited a co from carrying on business with less than 7 members for more than 6 months. Else, each shareholder shall be liable for all the debts of the company contracted during that period.

<sup>18</sup> No substantial difference... except that it mandated the Auditing of a company's account.

<sup>19</sup> This Act introduced the concept of Private Companies.

<sup>20</sup> Was enacted to consolidate the existing laws. It introduced the concepts of redeemable preference shares and minority protection.