

Legal and Institutional Frameworks for Company Investigation in Nigeria

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Abstract

A company being an artificial person acts through natural persons whose mind and acts are attributable to the company. The directors of a company are the hands and feet of the company and sometimes commit irregularity or some offence in the management of the company. These infractions would have to be investigated before necessary action can be taken. This paper examined the Legal and Institutional Framework for company investigation in Nigeria and finds that the provisions of Companies and Allied Matters Act as regards investigation of companies are too rigid and burdensome to the courts. A doctrinal approach of research is adopted by examining statutes, case laws, existing literature on the topic. The paper recommends a review of the Company and Allied Matters Act to incorporate the use of Alternative dispute mechanism in settlement of claims as opposed to the involvement of the regular courts in Nigeria owing to delay in litigating cases in court and its negative effects on foreign investment and economic growth. The Corporate Affairs Commission should commit to their mandate of ensuring compliance with the Act as regards registration of companies to winding up of same and not be saddled with the duty of appointment of inspectors to investigate a complaint. They should rather refer the matter to an appropriate agency.

Keywords: *Company, investigation, legal framework, Institutional framework, CAMA 2020, Nigeria*

1. Introduction

The company being an artificial person acts through its directors who control and manage its business affairs.¹ The Director of a company is a person duly appointed by the company to direct and manage the business of the company. The directors may sometimes abuse this responsibility by committing some irregularity or outright offence against the company which works against the interest of the shareholders. The power to investigate a company is therefore essential in corporate governance, ensuring compliance, transparency and accountability.²

This paper shall examine the legal and institutional frameworks for company investigation in Nigeria. The first segment clarifies concepts; the second segment shall discuss the theoretical framework for company investigation in Nigeria. The third segment shall examine the legal frameworks for Company Investigation in Nigeria and the fourth segment, the institutional

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¹ Companies and Allied Matters Act, 2020. S. 87(3)

² Orojo J.O. (2008) *Company Law and Practice in Nigeria* 5th ed. Lagos, Nigeria: Mbeyi & Associates (Nigeria Ltd). 220 p.

framework for company investigation in Nigeria. The fifth segment shall appraise judicial attitude towards company investigation in Nigeria; the sixth segment shall do comparative perspectives to company investigation in selected jurisdictions and summarize findings. The seventh segment shall outline the challenges of Company investigation in Nigeria, and the final segment concluded the paper and made some recommendations.

2. Conceptual Clarifications

2.1 Company

A company has been defined as a legal entity subscribed to by an individual or groups of individuals to provide goods or services.³ The Companies and Allied Matters Act⁴, defined a company or existing company to mean 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'. This concept of a company by the Act does not provide clarity as to the meaning of a company. A clearer understanding of the idea of company is the provided in the Act. "*As from the commencement of the Act, any two or more persons may form and incorporate a company by complying with the requirements of the Act in respect of registration of a company*"⁵ The implication is that a company can be formed by registration in compliance with the Act. In the case of *Gani Fawehinmi v NBA (No 2)*,⁶ a company was defined as an "indivisible, intangible being, existing only in the contemplation of law, a legal concept". The Supreme Court of Nigeria in the case of *Omisade v Mande*⁷ in describing what a company is, aligned with the submissions of Lord Denning, MR in *Wallersteiner v Moir*⁸ where the court held that it is a fundamental principle of our law that a company is a legal person with its own corporate identity, separate and distinct from the directors or shareholders and with its own property rights and interest to which alone is entitled.⁹ Once a company therefore is incorporated in accordance with the law, it becomes a legal personality, different from its shareholders.¹⁰ The company then has rights and obligations. It can own properties. It can sue and be sued.¹¹ It has the rights to investigate its activities.

2.2. Company investigation

Company investigations involve the systematic examination of a company's operations, financial activities, and business practices to uncover any wrongdoing, non-compliance or inefficiencies.¹²

³<https://www.invesopedia.com> "What is a Company? Types and How to start one" Accessed on 22nd August, 2025

⁴ Companies and Allied Matters Act, 2020. S. 868

⁵ Ibid. s.18

⁶ (1989)2 NWLR pt. 108, 558 -633

⁷ (1987) 2 NWLR (PT.55) 155, 170

⁸ (1997) 2 NWLR 389 at 395

⁹ Orojo J.O. (2008) *Company Law and Practice in Nigeria* 5th ed. Lagos, Nigeria: Mbeyi & Associates (Nigeria Ltd. 220 p.

¹⁰ Companies and Allied Matters Act, 2020. S. 42

¹¹ Motel Kaduna Ltd v Deyemo (2006) 7 NWLR pt. 978 p. 87

¹² <https://invesstopedia.com> "What are Company Investigation?/Definition and Examples" Accessed on 23rd August, 2025

It aims to identify and address issues such as fraud, misconduct, regulatory non-compliance and financial irregularities.¹³ Effective investigations contribute to strong corporate governance by promoting transparency, accountability and ethical behavior within the organization.¹⁴

A company being an artificial person, acts through natural persons whose minds and acts are attributable to the company. A company is an abstraction. It has no mind of its own. It needs a person called an agent who is really the directing mind and will of the company. The directors of a company are saddled with the responsibility of managing the affairs of the company.¹⁵ Sometimes, the directors may engage in activities that are not in the best interest of the company or the shareholders. Fraud and allied activities may be perpetrated by these group of people hence the need for company investigation as a tool for safeguarding, deterring and punishing offenders. In the case of *Northwest Halst v Secretary of State for Trade*,¹⁶ Lord Denning succinctly captured it this way:

“It sometimes happens that public companies are conducted in a way which is beyond the control of ordinary shareholders. The majority of the shares are in the hands of two or three individuals. These have control of the company’s affairs. The other shareholders know little and are told little. They receive glossy annual reports. Most of them throw them into waste paper basket. There is an annual general meeting but few shareholders attend. The whole management and control is in the hands of the directors. They are a self-perpetuating oligarchy, and are virtually unaccountable. Seeing that the directors are the guardians of the company, the question is asked: quis custodit ipsos custodies? Who will guard the guards themselves?”

The recent investigation of Quintessential Investment Limited for illegal capital market and forex trading activities clearly shows the power of Company investigation in Nigeria. The EFCC received complaints from investors in the company who did not receive their capital or returns. The EFCC sent letters of inquiry to SEC, CBN and CAC. The inquiry showed that the company did not obtain license for Investment and forex trading. The company was prosecuted and convicted.¹⁷

3. Legal Framework for Company Investigation in Nigeria

3.1 Companies and Allied Matters Act 2020

The Company and Allied Matters Act 2020 is the principal legislation guiding the operations of companies in Nigeria. It made ample provisions for the investigation of companies’ in some

¹³ *ibid*

¹⁴ *ibid*

¹⁵ Companies and Allied Matters Act., 2020. S. 87 (3)(4)

¹⁶ (1781) 3 ALL ER 280

¹⁷ <https://www.corruptioncases.ng> “FRN vs Quitessesential Investment Company Ltd” Accessed 18th September, 2025

circumstances. The Act created the Corporate Affairs Commission (Commission) as a regulatory body to streamline business registration and corporate compliance.¹⁸

The Act¹⁹ gave the Corporate Affairs Commission (CAC) the mandate to arrange or conduct an investigation into the affairs of any company, incorporated trustees or business names where the interest of shareholders, members, partners or public so demands. The scope of such powers are also clearly delineated by the Act.

Where a petition has been made to court that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members, the court can order the commission to conduct an investigation into the matter.²⁰

The Commission also on application by at least one-tenth of the class of shares issued, in case of a company having a share capital or one-tenth in number of persons on the company's register of members for a company not having a share capital or on the application of the company, appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as it may direct.²¹

Finally, the Commission shall appoint one or more competent inspectors to investigate the affairs of the company and report on them in such manner as it directs, if the court by order declares that its affairs ought to be investigated.²² This can happen when there are circumstances suggesting that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some parts of its members; any actual or proposed acts or omission of the company (including an act or omission on its behalf) is or would be so prejudiced, or that the company was formed for any fraudulent or unlawful purpose; persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or the company's members have not been given all the information with respect to its affairs which they might reasonably expect.²³

In the light of the above provision of the Act, the Commission can conduct investigation into the affairs of a company *suo- motu* or by the order of the court. It is important to note that the inspectors appointed by the commission to investigate the affairs of any company shall have the powers to investigate the subsidiary or holding company or a subsidiary of its holding company so far as it thinks that the results of the investigation of its affairs are relevant to the investigation of the first mentioned company.²⁴

¹⁸ Companies and Allied Matters act, 2020. S. 1,

¹⁹ Companies and Allied Matters Act, 2020. S.8 (c)

²⁰ Ibid. s.355 (g)

²¹ Ibid. s 357

²² Ibid. s. 358

²³ Ibid .358 (2) (a –d)

²⁴ Ibid .s. 359 (1) (2)

The Corporate Inspectors appointed by the commission have the powers to compel the production of documents²⁵, examine financial records, interview directors²⁶.

The report of these investigations by the inspectors can result in civil and criminal prosecutions²⁷, regulatory sanctions, or the winding up of the company²⁸.

3.2 Investment and Securities Act 2025

The rapid evolution of global financial markets, the rise of digital financial markets and emerging technologies such as blockchain showed some gaps in the Investment and Securities Act 2007. The Investment and Securities Act 2025 appears to be a comprehensive legislation, governing investments and capital market operations. It repealed the Investment and Securities Act 2007 and aligns Nigeria's capital market framework with global practices and addresses regulatory gaps that had emerged over the years.²⁹ The Act made ample provision for investigation of capital market operations and the protection of investors.

The Act established the Securities and Exchange Commission. (The Commission).³⁰ The Commission is the apex regulatory authority for the Nigerian capital market of the Federal Republic of Nigeria.³¹ Among the objectives of the Commission is to act in public interest having regard to the protection of investors and the maintenance of fair, efficient and transparent markets.³² In performing its functions, the Commission shall have the powers to call for information from, inspect, conduct inquiries on, and audit securities exchanges, capital market operators, collective investment schemes and all other regulated entities or associated persons; audit, call for the production of records and documents of public companies and other regulated entities; call for, or furnish to any person, such information as it may consider necessary for the efficient performance of its functions; investigate any person in connection with the violation or suspected violation of this Act or other securities laws, codes and regulations.³³ etc. For instance, the Securities and Exchange Commission is granted authority to obtain user data from telecommunication companies in Nigeria.³⁴ This access facilitates the Commission's investigation and enforcement processes.

3.3 Money Laundering (Prevention and Prohibition) Act 2022

Among the objectives of the Act is to provide for an effective and comprehensive legal and institutional framework for the prevention, prohibition, detection, prosecution and punishment of

²⁵ Ibid. s.360 (1) (a)

²⁶ Ibid (b) and (c)

²⁷ Ibid. s.364 and 365

²⁸ Ibid s.366

²⁹ The Investment and Securities Act, 2025.

³⁰ Ibid.s..1

³¹ Ibid. 3

³² Ibid. 3 (2) (a)

³³ Ibid. 4 (f) – (i)

³⁴ Ibid. 4 (j)

money laundering and other related offences in Nigeria; to strengthen the existing system for combating money laundering and related offences; to make adequate provisions to prohibit money laundering; to expand the scope of money laundering offences and provide appropriate penalties; and to establish the Special Control Unit against Money Laundering under the Economic and Financial Crimes Commission for effective implementation of the money laundering provisions of the Act in relation to the designated non- financial businesses and professions.³⁵

By virtue of the Act, a financial institution, designated non –financial business and profession must report any suspicious transaction to the Nigerian Financial Intelligence Unit within 24 hours after the transaction.³⁶ A suspicious transaction is one which involves a frequency which is unjustifiable or unreasonable , is surrounded by conditions of unusual or unjustified complexity, appears to have no economic justification or lawful objective, is inconsistent with the known transaction pattern of the account or business relationship, or involves the proceeds of criminal activity, unlawful act, money laundering or terrorist financing.³⁷ It is immaterial whether the transaction is complete or otherwise.³⁸

A competent authority may demand, obtain and inspect the books and records of a financial institution business or profession to confirm compliance with the Act.³⁹ A competent authority includes the Nigeria Financial Intelligence Unit (NFIU), Special Control Unit against Money Laundering (SCUML) and other regulatory authorities as designated by the Act.⁴⁰

3.4 Nigeria Police Act 2020

The Police Act 2020 aims to ensure effective management of the police force and uphold professional conduct reinforcing its mandate to provide efficient and accountable policing to the populace.⁴¹ The objectives as stated in the Act are to provide for a Police Force that is more responsive to the needs of the general public and has entrenched in its operations the values of fairness, justice and equity; reposition the Police force to uphold and safeguard the fundamental rights of every person in Nigeria in its operations; bring about a positive change in the police perception of the Police Force by ensuring that its functions are performed in a manner sensitive to the needs and well-being of the general public; empower the Police Force to effectively prevent crimes without threatening the liberty and privacy of persons in Nigeria; ensure that the police Force performs its functions by creating the enabling environment to foster cooperation and partnership between it and the communities it serves to effectively prevent, reduce or eradicate crimes; develop professionalism in the Police Force by providing relevant training in all police formations in Nigeria for enhanced performance; and respect for rights of victims of crimes and

³⁵Money Laundering (Prevention and Prohibition) Act, 2022. S.1

³⁶ Ibid. s 7(2)

³⁷ Ibid s. 7(1)

³⁸ Ibid. s. 7 (10)

³⁹ Ibid s.24

⁴⁰ <https://placng.org> “ Money-Laundering-Prevention-and-Prohibition-Act-2022.” Accessed on 23rd August, 2025

⁴¹ Nigeria Police Act 2020, s.1

an understanding of their needs⁴². Every crime or offence including corporate crimes against the State and the victim. The Nigeria Police Act empowers the police force to investigate the commission of offences or crimes in Nigeria including corporate crimes on complaints. It is their Primary duty.⁴³

3.5 Advanced Fee Fraud and other related Offences 2006

This is an Act to prohibit and punish certain offences pertaining to advance fee fraud and other fraud related offences. The Act creates the offence of obtaining property by false presence;⁴⁴ offences like presenting self as capable of producing from a piece of paper or from any other material, any currency note by washing, dipping or otherwise treating the paper or material with or in a chemical substance or any other substance with intent to defraud or presenting self as possessing power of money doubling by any means or being central Bank of Nigeria prints, makes or issues or presenting self as capable of issuing any currency note;⁴⁵ being an occupier knowingly allows his premises to be used for any purpose;⁴⁶ Fraudulently inviting a person to visit Nigeria for any purpose connected with commission of crime;⁴⁷ Receipt of fraudulent document by victim constitutes attempt;⁴⁸ A person who unlawfully conducts or attempts to conduct a financial transaction which involves the proceeds of a specified unlawful activity;⁴⁹ conspiring, aiding , abetting, or counselling any other person to commit an offence;⁵⁰

Where an offence under this Act has been committed by a body corporate and is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he , as well as the body corporate , where practicable, shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly⁵¹

These legal regimes outlined above, established institutions to ensure compliance with the law, promote transparency in operation and generally protect investors from fraud. Among the various advantages of these institutions are the enthronement of corporate governance, fortification of investors' confidence, protection of stakeholder interest, company and National; Stability.

4. Institutional Framework for Company Investigation in Nigeria

4.1 Corporate Affairs Commission

⁴² Nigeria Police Act 2020, s. 3 (a) –(h)

⁴³ <https://radionigeria.gov.ng> “ Understanding the Police Act 2020” Accessed on 24th August, 2025

⁴⁴ Advanced Fee Fraud and other Related Offences 2996, s.1 (a) – (c), (2)

⁴⁵ Ibid. 2 (a) –(c)

⁴⁶ Ibid. s.3

⁴⁷ Ibid. s.4

⁴⁸ ibid. s. 5

⁴⁹ Ibid. s. 7

⁵⁰ Ibid 8

⁵¹ Ibid s. 10

The Corporate Affairs Commission (CAC) is a creation of the Companies and Allied Matters Act 2020.⁵² It is a regulatory body, established to oversee the operation of companies, business names, and incorporated trustees in Nigeria from incorporation to winding up in accordance with the Act.

The functions and powers of CAC as provided under the Act is to administer the Act, including the registration, regulation and supervision of the formation, incorporation, management, striking off and winding up of companies, business names, management and removal of names from the register and the formation, incorporation, management and dissolution of incorporated trustees; establish and maintain company's registry and office in each the states of the federation suitably and adequately equipped to perform its functions under the Act or any law; arrange and conduct an investigations into the affairs of any company, incorporated trustees or business names where the interests of the shareholders, members, partners or public so demand; ensure compliance by companies, business names and incorporated trustees with the provisions of the Act and such other regulations as may be made by the commission; perform such other functions as may be specified in this Act or any other law; to undertake such other activities as are necessary or expedient for giving full effect to the provisions of the Act.⁵³

The Act specifically mandates the CAC as part of its primary functions to arrange or conduct an investigation into the affairs of any company, incorporated trustees or business names where the interest of shareholders, members, partners or public so demands.⁵⁴

The Companies and Allied Matter Act made clear provision as to the circumstances that can lead to investigation of a company by the Commission. First, where a petition has been made to court that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members, the court can order the Commission to investigate the matter.⁵⁵

The Commission also on application by at least one-tenth of the class of shares issued, in case of a company having a share capital or one-tenth in number of persons on the company's register of members for a company not having a share capital appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as it may direct.⁵⁶

4.2 Securities and Exchange Commission

The Investment and Securities Act 2025 created the Securities and Exchange Commission (SEC),⁵⁷ as the apex regulatory authority for the Nigerian capital market.⁵⁸ The objectives⁵⁹ of the Commission as enshrined in the Act among which is to act in the public interest having regard to

⁵² Companies and Allied Matters Act, 2020. S.1

⁵³ Ibid. s. 8

⁵⁴ Ibid. s.8 (c)

⁵⁵ Ibid. s.355 (g)

⁵⁶ Ibid. s 357

⁵⁷ Investment and Securities Act, 2025. S 1

⁵⁸ Ibid. s.3

⁵⁹ Ibid .3 (2)

the protection of investors and the maintenance of fair, efficient and transparent markets; protect the integrity of the securities market against all forms of market abuse and insider dealing; prevent unauthorized, illegal, unlawful, fraudulent and unfair trade practices relating to securities and investment etc.⁶⁰

The Commission has wide investigative powers to enable effective execution of its mandate which includes uncovering capital market infractions. These powers are more technology driven taking into cognizance of the new reality. The Commission is to audit and compel the production of records and documents not only from capital market operators but also from public companies and other regulated entities.⁶¹ The Commission is to investigate any person suspected of violating securities laws or engaging in unregistered investment activities.⁶² The Commission also is to obtain subscriber and communications data from telecom and internet service providers, marking a substantial expansion into digital surveillance and data-driven enforcement.⁶³

4.3 Nigeria Police Force

The Nigeria Police Act created the Nigeria Police Force and made it subject to the Constitution of the Federal Republic of Nigeria.⁶⁴ Among the duties of the Police force is the prevention and detection of crimes including corporate crimes and the protection of the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and Peoples Rights and any other law; maintenance of public safety, law and order; protection of lives and property of all persons in Nigeria etc.⁶⁵

Police officers are recruited into the Police force to actualize the objectives of the force.⁶⁶ These officers are trained in the act of crime detection and enforcements; investigation and gathering of evidence etc.⁶⁷ The primary duty of the police officers is that of investigation and arrest. Where an alleged offence including corporate offence is reported to the police, or a person is brought to the police station on the allegation of committing an offence, the police shall investigate the allegation in accordance with due process and report its finding to the Attorney-General of the Federation of State for legal advice.⁶⁸

4.4 Economic and Financial Crimes Commission

The Economic and Financial Crimes Commission (Establishment) Act 2004 created the Economic and Financial Crimes Commission (Commission).⁶⁹ The EFCC is one of the financial Intelligence

⁶⁰ Ibid 3 (2) (a) –(c)

⁶¹ Ibid 4 (f) –(h)

⁶² Ibid. s.4 (i)

⁶³ Ibid. (j)

⁶⁴ The Police Act, 2020. S. 3

⁶⁵ Ibid s. 4 (a) – (c)

⁶⁶ Ibid. s. 17

⁶⁷ Ibid. s 18

⁶⁸ Ibid. s. 31

⁶⁹ Economic and Financial Crimes Commission (Establishment) Act, 2004. S. 1

Unit in Nigeria charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.⁷⁰

The EFCC among other duties is settled with the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.⁷¹

The EFCC has powers to cause investigation to be conducted as to whether any person, corporate body or organization has committed any offence under the Act or other law relating to economic and financial crimes.⁷² The EFCC also has powers to cause investigations to be conducted into the properties of any person if it appears to the commission that the person's lifestyle and extent of the properties are not justified by his source of income.⁷³

4.5 Independent Corrupt Practices and other Related Offences Commission

The Act⁷⁴ created the Independent Corrupt and other Related Offences Commission.⁷⁵ The interpretation section defined corruption to include bribery, fraud and other related offences.⁷⁶ Corporate body means any legal entity artificial or otherwise recognized by the companies and Allied Matters Act or created under the authority of law in Nigeria.⁷⁷

The duties of the commission includes to receive, investigate complaint and prosecute offenders.⁷⁸ Where reasonable grounds exists for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under the Act or any other law prohibiting corruption, the commission receives and investigates any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases prosecute the offenders.⁷⁹

The report or complaint requiring investigation could be made orally or in writing but shall be reduced in writing read over and signed or thumb –printed by the person reporting.⁸⁰

The officer investigation the offence has the powers to order the production of persons, books or documents of any certified true copy, statement in writing on oath that could assist in the investigation.⁸¹

⁷⁰ Ibid. 2 (c)

⁷¹ Ibid. 6 (b)

⁷² Ibid 7 (1) (a)

⁷³ Ibid. s.7 (b)

⁷⁴ The Independent Corrupt Practices and other Related Offences Act, 2000

⁷⁵ Ibid. s. 1

⁷⁶ Ibid 2

⁷⁷ Ibid.

⁷⁸ Ibid. s. 6

⁷⁹ Ibid.

⁸⁰ Ibid. s 27

⁸¹ Ibid. 28 (1) (a) – (b)

There is no doubt that these agencies and institutions have overlapping roles in investigation and prosecution of corruption and financial crimes. They can however synergize for effectiveness where possible.

5. Judicial Attitude towards Company Investigation in Nigeria

The attitude of the judiciary towards company investigation in Nigeria appears not too clear. The courts seem to suggest in some cases that once an application is brought under section 357 of the Act, the Commission has the power to initiate investigation into the affairs of the company without an order from the court. In some other situations like in non –governmental organizations, the court seems to see such inquiry or investigation as an interference and a violation of their fundamental rights.

In *Corporate Affairs Commission v United Bank for Africa & 5 Ors*,⁸² the issue before the Supreme Court was whether the CAC is required to seek court's order when it satisfies itself that a company ought to be investigated. The Supreme Court upheld the decision of the Court of Appeal and stated as follows:

“while the concerns raised by the Respondents and trial judge are considered logical to an extent, the ruling of the Court of Appeal is very solid as it expressly seeks out the intention of the legislature in the creation of the law and it further draws our attention to the mischief the legislature was looking to override in the creation of the law.”

The plaintiff/ Appellant instituted an action in Federal High Court Lagos Division for failure to comply with the directives given to them. The plaintiff appellant demanded from the Defendants/Respondents records of all loan transactions and documentation between the banks and public and private companies between 1st January, 2008 and 31st December, 2010. The Defendants/Respondents failed to comply with the demand on ground that compliance with such demand would be a breach of their confidentiality duty owed to their customer and also that the Plaintiff/Appellant failed to obtain a court order in that respect hence an action at the trial court wherein the plaintiff/ Appellant sought for some reliefs. At the conclusion of the trial, the court granted two reliefs but declined to grant the third relief which is an order directing the Defendants/Respondent to comply with the inspection exercise schedule of the Plaintiff/Appellant by supplying the information sought by the Plaintiff/ Appellant. Aggrieved with the judgment of the trial court, the Plaintiff/ Appellant appealed to the court of Appeal. The Appeal was allowed.

Also in the case of *Odutola Property Dev & Investment Co Ltd v CAC*,⁸³ an appeal was filed against the judgment of the Federal High Court Abuja. The children of the deceased majority shareholder of the appellant company had caused a petition to be written to the Defendant/ Respondent on the allegation of irregularities and depletions in the deceased's shareholding and advised that a restriction be placed on the file of the Appellant pending the final determination of the suits at both

⁸² (2017) 2 N.W.L.R

⁸³ (2024) LPELR 61717 (CA)

the Lagos and Ogun High Courts in respect of the same issue. The Respondent notified the Appellant Company about the petition written against the company and furnished them with a copy. In their reply, the Appellant admitted irregularities in the affairs of the company but cautioned the Defendant/Respondent against placing a restriction without court order. The Defendant however placed a restriction on the file of the appellant.

When the Appellants could access the certified true copy of their file from the defendant, they approached the trial court. After the conclusion of hearing, the trial court dismissed the claims of the Appellants. Dissatisfied with the judgment, the Appellants appealed.

One of the issues for determination was whether the Learned Trial Judge was right to hold that the Respondent has unlimited powers to place a restriction on the file of the Appellant with the Respondent on the bases of a petition from the children of the deceased majority shareholder and prevent the Appellant from exercising their rights and performing their statutory duties without the order of the court.

In the final analysis, the court dismissed the appeal thereby upholding that the Commission has the right to investigate the affairs of the company under section 357 without the order of the court.

Furthermore, in the case of *Emmanuaul Ekpenyong v The National Assembly & 2 Ors*,⁸⁴ by an originating summons, the plaintiff, in this case argued against the provision of CAMA gave unilateral powers to CAC which includes investigatory powers in contravention of sections 6(6) (b), 36 (1), 38, 40, 251 (1) e of the Constitution⁸⁵. The plaintiff contended that giving powers to the CAC to suspend trustees, appoint an interim manager, make decisions regarding the accounts of the association- dominant or not, review the statement of account of the association, and ultimately determine the affairs of the association infringes on his right to freedom of thought, conscience and religion enshrined in section 38 of the Constitution. In addition, the plaintiff asserted that the powers granted to the CAC under sections 839,842,844 to 848 of CAMA, contravene section 40 of the Constitution which safeguards the rights to freedom of peaceful assembly and association.

Agreeing with the plaintiff, the FHC in its judgment held that the said sections of CAMA were inconsistent with the constitution. The Court held that the provisions of CAMA gave excessive powers to CAC over the affairs of incorporated trustees. The Court explained that in an instance where an association is a registered trustee of a church or community, and the CAC appoints an interim manager who is not a member of that church or community, this will violate the rights of the members to freedom of association and peaceful assembly. The court also stated that one of the fundamental principles of such association is the freedom to choose their own leaders and it would be erroneous to allow the CAC to meddle in the affairs of the association. Holding the said sections were unconstitutional, the Court stated that allowing the disputed provisions in CAMA

⁸⁴ (2023)5 CLRN 116

⁸⁵ 1999 Constitution of the Federal Republic of Nigeria

would lead to chaos and problems within the associations and arrogating such powers to the CAC is not justifiable as an exception under the Constitution

Finally in *Amalgamated Union of Public Corporations & Ors v CAC*,⁸⁶ the claimant took out an action against the defendants by way of originating summons. Among the issues for determination is:

- i. Whether having regard to section 36 of the Constitution of Nigeria 1999 as Amended, the defendants can unilaterally purport to inquire into, audit or probe the finances of the claimant and conclude that fraud had been committed by the claimant or its members, contrary to the constitutional rights to fair hearing and the presumption of innocence and the separate legal entity of the claimant.

The court held that the interference in the activities of the claimant in the manner that the defendants did is not only wrong but is an infringement of the right of the claimant for which the claimant is entitled to recompense. The court in the judgment expressed displeasure to the actions of the defendants, especially the 1st defendant who according to the court, over the years have shown marked displeasure and hence disapproval to having trade unionism take place and flourish. The court pointed out that since the case of *CAC V Aupctre*⁸⁷ the defendants have never hidden their dislike of trade unionism in their premises.

It appears that there is no clear cut decision on the propriety of the investigatory powers of the CAC as provided for in CAMA. It is hoped that more judicial interpretation on the matter will provide clarity.

6. Comparative Perspectives on Company Investigation in Selected Jurisdictions

6.1 South Africa

The primary legal regime for investigating companies in South Africa is the Companies Act, 2008.⁸⁸ The Act established the Companies and Intellectual Property Commission (CIPC) which oversees company registration and compliance.⁸⁹

The Commission has the power inter alia to:

- a. Issue compliance notices as provided under the Act.⁹⁰
- b. Enter into consent order.⁹¹
- c. Apply for administrative fines.⁹²

⁸⁶ Suit No: NICN/ABJ/125/2019 and NICN/ABJ/103/2019

⁸⁷ (2004) 1 NWLR (Pt.1) 1

⁸⁸ Companies Act, 2008 (Act No. 71 of 2008),

⁸⁹ <http://lawfulliving.co.za> "the Crimes About Companies-Lawful living" Accessed on 25th August, 2025

⁹⁰ Companies Act, 2008 (Act No. 71 of 2008),s 171

⁹¹ Ibid. s. 173

⁹² Ibid. s.175

- d. Refer matters to the National prosecuting authority (NPA), Companies Tribunal and other regulatory authorities concerned and /or for alternate dispute resolution.⁹³
- e. The commission has inter alia the power to summons.⁹⁴
- f. Enter and search under warrant⁹⁵

There are three ways in which investigation process can be initiated. The investigation process can be initiated by a complaint, the CIPC itself, or a directive from the Minister of Trade, Industry and Competition to CIPC to initiate the process or on request from another regulatory authority.⁹⁶

A person may file a complaint in writing alleging that:

- a. A person has acted inconsistent with the Companies Act. or
- b. A person's rights under the Act, memorandum of incorporation (MCP) or rules have been infringed.

When this complaints is received, the commission may inter alia decide (a) not to investigate the complaint if it appears frivolous, vexatious or does not allege any facts that would constitute grounds for remedy under the Act; (b) Refer it for more practicable resolution for resolution, conciliation or arbitration to the Companies Tribunal or an accredited entity or any other person and / or (c) Direct an investigator or inspector to investigate.⁹⁷

It is a requirement that the allegations are fully substantiated. Note that if the allegations do not constitute grounds for remedy under the Act, it would not be investigated⁹⁸

Alternative dispute Resolution is an alternative to applying for a relief to a court or filing a complaint with the commission. A complainant under the Act, may refer the matter to a Companies Tribunal, an accredited entity or any other person for resolution by mediation, conciliation or arbitration.⁹⁹

Where any of these entities has resolved or assisted parties in resolving the disputes, it may record the resolution in the form of an order, and if the parties consent to that order, submit it to a court to be confirmed as a consent order.¹⁰⁰

The application for a consent order must be heard by the court. The court may make the order as agreed and proposed in the application, make changes to the draft order before making it an order

⁹³ <https://www.cipc.co.za> "Company investigations" Accessed on 25th August 2025

⁹⁴ Companies Act, 2008 (Act No. 71 of 2008), s. 176

⁹⁵ Ibid. 177

⁹⁶ Ibid. s. 168 along with s. 208. <https://www.cipc.co.za> "Company Investigation=CIPC" Accessed on 25th of August 2025

⁹⁷ <https://www.cipc.co.za> "Company Investigation=CIPC" Accessed 25 August 2025

⁹⁸ ibid

⁹⁹ ibid

¹⁰⁰ ibid

of court or refuse to make the order.¹⁰¹ A confirmed consent order may include damages, and only when the confirmed consent order includes an award of damages that person can apply to an award of civil damages. A court may order the proceedings closed to the public, if confidentiality is in the interest of the parties.¹⁰²

There are other relevant legislations which include the Criminal Procedure Act, 51 of 1977 for establishing corporate criminal liability, the Prevention of Organized Crime Act(POCA) which is for economic crimes, and various other Acts depending on the nature of the alleged offence (e.g., competition law, environmental law). Prevention of Organized Crime Act (POCA), for Asset Forfeiture Unit (AFU) to deal with and seize proceeds of economic crimes and assets derived from criminal offences.¹⁰³

6.2 Canada

Canada's company investigation legal regime includes federal and provincial legislation, The Canada Business Corporations Act (CBCA) is a federal Act. The Act delineated Inspectors powers for corporate misconduct investigations. There is no specific body to enforce the provision of CBCA. Its provisions are enforced by the court and a Director appointed under the Act. The Director issues certificates of incorporation and receives filing and incorporation documents from companies¹⁰⁴

By virtue of the Act,¹⁰⁵ a security holder or the Director may apply, ex parte or on such notice as the court may require, to a court having jurisdiction in the place where the corporation has its registered office for an order directing an investigation to be made of the corporation and any of its affiliated corporations.

Where on an application as shown above, it appears to the court that;

- a. the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person;
- b. the business or affairs of the corporation or any of its affiliates are or has been carried on or conducted, or the powers of the directors are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unlawfully disregards the interests of a security holder;
- c. The corporation or any of its affiliates was formed for a fraudulent or unlawful or is to be dissolved for a fraudulent or unlawful purpose or

¹⁰¹ ibid

¹⁰² ibid

¹⁰³ <https://www.hsfkramere.com> " South Africa: White-Collar Crime-Law and Practice" Accessed on 25th August, 2025

¹⁰⁴ <http://laws-lois.justice.gc.ca> " Canada Business Corporations Act (RSC, 1985, C c-44) Accessed on 25th August, 2025

¹⁰⁵ The Canada Business Corporations Act, s.299 (1)

d. persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in connection herewith acted fraudulently or dishonestly,¹⁰⁶

The court may order an investigation to be made of the corporation and any of its affiliated corporations.¹⁰⁷ A security holder who makes an application under subsection (1) shall give the director reasonable notice thereof and the director is entitled to appear and be heard in person or by counsel.¹⁰⁸

The applicant is not required to give security for costs,¹⁰⁹ and an ex parte application under this application shall be heard in camera.¹¹⁰ No person may publish anything relating to ex-parte proceedings under this application except with the authorization of the court or the written consent of the corporation being investigated.¹¹¹

Where criminal allegation is involved, especially offences codified in the criminal code, the Criminal Code or Competition Act are the legal laws that apply. The Royal Canadian Mounted Police (RCMP) can investigate. Provincial bodies like the Ontario Securities Commission (OSC) also have powers to investigate. Investigation are often initiated by a tip or referral after which a federal crown attorney can pursue charges¹¹²

6.3 United Kingdom

The legal framework for investigating companies in UK is primarily governed by the Companies Act, 2006. It depends on the subject of the investigation. It could range from uncovering financial misconduct, or compliance failures. Identifying the relevant official bodies like companies House, the Financial Conduct Authority (FCA) or Serious Fraud Office (SFO) to conduct the investigation becomes imperative.¹¹³

The company House is the Registrar of Companies for the United Kingdom, the primary role of this regulatory agency is to incorporate and dissolve limited companies. Among the duties of the Company House are incorporating (registering/setting up) companies in accordance with Companies Act 2006 and supplementary legislation and regulations; examining and storing information and statutory company filings (e.g confirmation statements and annual accounts). Company House does not have investigatory powers but it does have power to enforce company law and can refer matters for investigation to other agencies such as SFO or police¹¹⁴

¹⁰⁶ Ibid s. (2)

¹⁰⁷ Ibid

¹⁰⁸ Ibid s. 3(1)

¹⁰⁹ Ibid s.4

¹¹⁰ Ibid s.5

¹¹¹ Ibid 6

¹¹² <HTTPS://RCMP.CA> "Sensitive and International Investigation" Accessed on 27 August, 2025

¹¹³ <http://blog.net.com> "Understanding the Complexities of UK Criminal Justice Sector" Accessed on 27 August, 2025

¹¹⁴ <https://www.companydebt.com> "What is the Insolvency Service and What Does it Do?" Accessed on 25 August, 2025

The Insolvency Service carries out investigation into directors for breaches of their duties, which can result in director disqualification.¹¹⁵ It ensures enforcement with the Companies Act and works alongside Companies Act in upholding standards.¹¹⁶ The Serious Fraud Office investigates and prosecutes allegations involving serious or complex fraud and corruption.¹¹⁷ The Financial Conduct authority (FCA) investigates and prosecutes matters involving regulated entities or activities and often investigates allegations relating to money laundering

6.4 Summary of Findings

Company investigation process under Companies Act, 2008, in South Africa is problem – resolution friendly. It is settled in an informal setting. A complainant may refer the matter to a Companies Tribunal, an accredited entity or any other person for resolution by mediation, conciliation or arbitration.¹¹⁸ The court only comes in when resolution are reached by the entities or persons who assisted in the resolution and are submitted to the court to be confirmed as a consent order. This to an extent frees up the time of the court and ensures that such matters are arbitrated upon and the regular courts are not burdened unnecessarily.

In UK, the Company House unlike its counterpart the CAC IN Nigeria does not have investigatory powers but it does have power to enforce compliance with the company Act and can refer matters for investigation to other agencies such as SFO or police¹¹⁹ They are primarily concerned with incorporating (registering/setting up) companies in accordance with Companies Act 2006 and supplementary legislation and regulations; examining and storing information and statutory company filings (e.g confirmation statements and annual accounts).

In Canada, a security holder or the Director may apply, ex parte or on such notice as the court may require, to a court for an order directing an investigation to be made of the corporation and any of its affiliated corporations. Nigeria could learn a lot from the investigating procedure of South Africa and UK. Under Companies Act, 2008, in South Africa, a complainant may refer a matter to a Companies Tribunal, an accredited entity or any other person for resolution by mediation, conciliation or arbitration.¹²⁰ The employment of arbitration and conciliation method in settlement of matters is laudable. This ensures less burden to the courts.

¹¹⁵ <https://www.companydebt.com> “What is the Insolvency Service and What Does it Do?” Accessed on 25 August, 2025

¹¹⁶ <https://www.taylorwessing.com>” UK Insolvency Service: New Broader Role to Fight Economic Crime” Accessed on 28 August , 2025

¹¹⁷ <https://globalinvestigationsreview.com>” United Kingdom: Understanding the anti-money laundering landscape in the context of the proceeds of Crime” Accessed on 26 August, 2025

¹¹⁸ *ibid*

¹¹⁹ <https://www.companydebt.com> “What is the Insolvency Service and What Does it Do?” Accessed on 25th August, 2025

¹²⁰ *ibid*

The court only comes in when resolutions are reached by the entities or persons who assisted in the resolution and are submitted to the court to be confirmed as a consent order. Nigeria can benefit greatly by adopting the conflict resolution means of Arbitration and conciliation as practiced in South Africa. Nigeria can also benefit from the investigatory practice in UK. The company House is the Registrar of Companies for the United Kingdom, the primary role of this regulatory agency is incorporation of limited liability companies to dissolution.

In the UK Company House does not have investigatory powers but it does have power to enforce company law and can refer matters for investigation to other agencies such as SFO or police.¹²¹ It is advised that the regulatory agency in Nigeria should refrain from going the extra-mile of appointing investigators to investigate a complaint from any person. They should rather refer the matter to any of the agencies created for the purpose. The advantage of this is that CAC will focus and channel all its efforts in company incorporation and other regulatory functions.

7. Challenges of Company Investigation in Nigeria

There are no clear cut provisions for the different regulatory bodies having investigatory powers on the area to focus. This results in power and jurisdictional dispute. The provisions of the Companies and Allied Matters Act, 2020 on Company Investigation may be adequate but they are not efficacious. The Investigatory Powers of the CAC is a draw back from their core function which is to administer the Act¹²² from company incorporation to winding up.

The traditional methods of perpetrating crimes in a Company is fast giving way to more sophisticated and digital methods that may not be detected except with training in forensic accounting, and digital investigation. Most investigative powers are so poorly funded that they cannot legitimately undertake and conclude investigation on complaint without being compromised. We live in an imperfect system. Where integrity is low, bribery and corruption takes over. This can lead to deliberate overlooking of core area that will solve the crime instead of focusing the searchlight of the investigator on them. Whenever money changes hands or great influence or interference, politically or otherwise is brought to bear, investigation is killed. Sometimes the directors of companies use fronts and the investigators may have a hard time uncovering crime. There is usually no fact checking mechanism in place to ensure the accuracy of data submitted to CAC. Loss of data is a common feature among the agencies that is saddled with company investigation. Also, the wheels of Judiciary sometimes grind so slowly that justice is sacrificed at the altar of delay.

8. Conclusion and Recommendations

The legal and Institutional framework in Nigeria for company Investigation is adequate but not efficacious.

¹²¹ <https://www.companydebt.com> “ What is the Insolvency Service and What Does it Do?” Accessed on 25 August, 2025

¹²² The Companies and Allied Matters Act, 2020

The paper recommends a review of the Company and Allied Matters Act to incorporate the use of Alternative dispute mechanism in settlement of claims as opposed to the involvement of the regular courts in Nigeria owing to delay in litigating cases in court and its negative effects on foreign investment and economic growth. The Corporate Affairs Commission should commit to their mandate of ensuring compliance with the Act as regards registration of companies to winding up of same and not be saddled with the duty of appointment of inspectors to investigate a complaint. They should rather refer the matter to an appropriate agency.

These agencies saddled with investigatory responsibilities should be well funded so as to ensure commitment in carrying out their primary obligations. The various agencies like EFCC, ICPC, and Police etc. should device strategies that will enable them synergies for optimal result and for the benefit of the country at large. Constant training for the agencies is advocated so that they can be aware of the new trends in criminality especially technology driven crimes.