PROPOSED AMENDMENTS TO THE COMPANIES AND ALLIED MATTERS ACT CAP C20 LFN 2004					
S/NO	**CITATION/SECTION**	**EXISTING PROVISION**	**PROBLEMS/GAPS IDENTIFIED**	**SUGGESTED AMENDMENT**	**JUSTIFICATION**
1	2	The Commission shall consist of the following members, that is- a. a chairman who shall be appointed by the President on the recommendation of the Minister, being a person who by reason of his ability, experience or specialised knowledge of corporate, industrial, commercial, financial or economic matters or of business or professional attainments would in his opinion be capable of making outstanding contributions to the work of the Commission; b. one representative of the business community, appointed by the Minister on the recommendation of the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture; c. one representative of the legal profession, appointed by the Minister on the recommendation of the Nigerian Bar Association; d. one representative of the accountancy profession, appointed by the Minister on the recommendation of the Institute of Chartered Accountants of Nigeria; e. one representative of the Manufacturers Association of Nigeria, appointed by the Minister on the recommendation of the Association; f. one representative of the Securities and Exchange Commission not below the grade of Director or its equivalent; g. one representative of each of the following Federal Ministries, that is I. Commerce; II. Justice;		Section 2 should be amended as follows: "There shall be for the Commission a board which shall consist of the following: (a) A part time chairman who shall be appointed by the president. The chairman shall be a person who by reason of his ability, experience or specialized knowledge of corporate, industrial, commercial or economic matters or of business or professional attainments would in his opinion be capable of making outstanding contributions to the work of the Commission" (b) Registrar General and Chief Executive as accounting officer (c) Two full time Commissioners (With this appointment the RG and the full time commissioners shall constitute the Executive Management of the Commission.) (d) One representative of the business Community appointed by the Minister on the recommendation of the Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture (e) One representative of the legal profession appointed by the Minister on the recommendation of the Nigerian Bar Association (f) One representative of the Accounting profession appointed by the Minister after consultation with recognized accounting bodies as established by an Act. (g) One representative of the Institute of Chartered secretaries and Administrators of Nigeria appointed by the Minister on the recommendation of the Institute. (h) One representative of the Manufacturers Association of Nigeria appointed by the Minister on the recommendation of the Association	Amendment of Section 2 of the Act to provide for the appointment of two Executive Commissioners as members of the Board to assist the Registrar-General in his day -to -day administration of the Commission

		III. Industry, and h. the Registrar-General of the Commission.		(i) One representative of the Securities and Exchange Commission not below the rank of a director or its equivalent (j) One representative each of the following Federal Ministries not below the rank of a director (i) Industry, Trade and Investment (ii) Justice (iii) Finance (2) All members of the Board except the Registrar General and the two full time Commissioners shall be part time members.	
2	3	1. Subject to the provisions of subsection (2) of this section, a person appointed as a member of the Commission (not being an ex-officio member) shall hold office for three years and shall be eligible for re-appointment for one further term of three years. 2. The Minister may, with the approval of the President at any time remove any member of the Commission from office if the Minister is of the opinion that it is not in the interest of the Commission for the member to continue in office and shall notify the member in writing to that effect. 3. The members of the Commission except the Registrar-General shall be part-time members of the Commission. 4. Any member of the Commission shall cease to hold office if- a. he becomes of unsound mind or is incapable of carrying out his duties; b. he becomes bankrupt or has made arrangement with his creditors; c. he is convicted of a felony or	Section 3 of CAMA prescribes a five -year tenure for members of the Board and eligibility for re-appointment. It is recommended that the Chairman and members other than those representing government ministries and agencies should have a single term of 4 years. The Registrar general should have a five -year tenure subject to re-appointment for another five years and no more. The full time Commissioners should have four years tenure subject to re-appointment for another four years and no more.	A new Section 3 is proposed as follows: **DUTIES OF THE BOARD** **(1)** The Board shall be responsible for the general administration of the Commission and in particular shall: **(a) Formulate general policies for the regulation and supervision of formation, incorporation, registration, management and winding up of companies.** **(b) Approve the audited and management accounts of the Commission** **(c) Appoint auditors for the Commission** **(d) Consider and approve the annual budget of the Commission as may be presented by Management** **(e) Establish state and zonal offices of the Commission** **(f) Carry out such other activities as are necessary and expedient for the purpose of achieving the objectives of the Commission** **(2)** The Board shall, on the recommendation of the Registrar General approve the duties of the full time Commissioners. 3. The President should be responsible for the appointment of the Registrar-General on the recommendation of the Minister. He should be a legal practitioner of not less than 10 years post call experience. The current provision of CAMA seems	To accommodate additional provisions for the Board of the Commission

		any offence involving dishonesty; d. he is guilty of serious misconduct relating to his duties; or e. in the case of a person possessed of professional qualifications, he is disqualified or suspended (other than at his own request) from practising his profession in any part of Nigeria by the order of any competent authority made in respect of him personally.		to give the Commission power to appoint the Registrar General. 4. The tenure of the Registrar-General (we propose five (5) years subject to renewal for another five (5) years and no more) should be specified in the Act. 5. The Executive Commissioners should have tenure of four (4) years subject to renewal for another four (4) years and no more. 6. A new Section 7 on subscription to a Code of Ethics by the members of the Board is hereby proposed as follows: "The members of the Board of the Commission shall subscribe to and be bound by a Code of Ethics to be approved by the Minister."	
3	8	1. There shall be appointed by the Com mission a Registrar-General who shall be qualified to practise as a legal practitioner in Nigeria and has been so qualified for not less than 10 years and in addition, has had experience in company law practice or administration for not less than 8 years 2. The Registrar-General shall be the chief executive of the Commission an d shall be subject to the directives of the Commission and shall hold office on such terms and conditions as may be specified in his letter of appointment and on such other terms and conditions as may be determined, from time to time, by the Commission with the approval of the President. 3. The Registrar-General shall be the accounting officer for the purpose of controlling and disbursing amounts from the fund established pursuant to section 12 of this Act.		**Section 8.** The side note of this Section should be amended as follows: "**Appointment of Registrar General and two full time Commissioners."** 8. A new Section 8(4) is hereby proposed as follows: **"There shall be appointed by the President, on the recommendation of the Minister, two full time Commissioners, one of whom shall be a legal practitioner of not less than 8 years post call experience while the other shall have not less than 8 years experience in Corporate, Industrial, Commercial, Financial or Economic and information technology matters."** 9. **Section 8(5)** is also proposed as follows: **"The Registrar General and the two full time Commissioners shall devote their full time to the service of the Commission and while holding office shall not hold any other office or employment except where appointed by virtue of their Office in the Commission into membership of the Board of any agency of the government in Nigeria or any international organization to which the Commission is a member or an affiliate."** 10. **Section 8(6)** is proposed as follows: **"The Registrar General and the two full time Commissioners shall be paid such remuneration**	To accommodate additional provisions with regards to the qualifications of the Registrar General and Full time Commissioners

				and allowances as may be determined by the Board of the Commission." 11. Section 5(4) is proposed to be deleted while a provision for the appointment of a Secretary to the Commission should be made in Section 9 as follows: **"(a) There shall be for the Commission, a Secretary who shall be appointed by the Commission** **(b) The Secretary shall be a legal practitioner of not less than 8 years post call experience.** **(c) The Secretary shall act as Secretary to the Board of the Commission and its Committees and carry out other functions as may be prescribed by the Board."** Section (2) should be created as follows: **"The Remuneration of the Secretary and other staff of the Commission shall be determined by the Board of the Commission."** **DUTIES OF THE SECRETARY** A provision should be made for the duties of the Secretary as follows: **"1. The Secretary shall:** **(a) Attend all meetings of the Board and its Committees and render all necessary secretarial services in respect of the meetings and advise on compliance by the meetings with applicable laws and regulations;** **(b) Keep and maintain records of the Board of the Commission** **(c) Carry out such administrative and other secretarial duties as may be required by the Board or the Registrar General** **2. The Secretary shall exercise the powers of the Board only with the authority of the Board."**	
4	16	The Minister may, with the approval of the President, make regulations generally for the purpose of this Act and		Section 16 should be amended as follows: **"(1) The Commission may from time to time, make rules and regulations for the purpose of giving**	This will make the Commission prepare its annual report and audited accounts within the first three months of the year

		in particular, without prejudice to the generality of the foregoing provisions, make regulations- (a) prescribing the forms and returns and other information required under this Act; (b) prescribing the procedure for obtaini ng any information required under this Act; (c) requiring returns to be made within the period specified therein by any com pany or enterprise to which this Act applies; and (d) prescribing any fees payable under this Part, that is, Part A of this Act.		**effect to the provisions of this Act and may in particular and without prejudice to the generality of the foregoing make rules and regulations:** **(a)……** **(b)……..** **(c)……** **(d)……** **(e) providing for anything requiring to be prescribed under this Act** **(g) Generally for carrying out the principles and objectives of this Act."** **"(2) The Commission shall in the exercise of powers to make rules and regulations in this Section consult with stakeholders."** **"(3) Any instrument issued under sub-section 1 of this Section shall be under the signature of the Registrar General of the Commission and the Secretary or any two members as may be authorized."** **"(4) Any rule or regulation under this Act shall be deemed made fifteen days after receipt by the Minister unless the Minister, before the expiration of the fifteen days directs that it be modified, amended or rescinded."** **"(5) Every rule or regulation made by the Commission shall be published in the gazette or any official document or any other information dissemination platform of the Commission."** **"(6) Notwithstanding the provisions of Section 1 of this Section, the Commission may from time to time amend or revoke rules or regulations for purpose of giving effect to the provisions of this Act and the rules and regulations made thereunder."** **"(7) Any regulations or rules made under this Act may where appropriate prescribe penalties for default."** 20. The following is proposed with regards to **Committees of the Commission:** **"(i) The Commission may appoint one or more**	(and not 6 months) as is required of public companies that are subject to the regulatory oversight of the Commission. This I believe will enhance the compliance of the Commission with corporate governance principles. The above amendment will make Section 15 no longer necessary and therefore should be replaced with the proposed amendment. Section 16 should be amended to empower the Commission to make regulations instead of the Minister

				Committees to carry out on its behalf such of its functions as the Commission may determine. **(ii) A Committee appointed under subsection (1) of this Section shall consist of such number of persons as may be determined by the Commission; and a person other than a member of the Commission shall hold office on the Committee in accordance with the terms of his appointment.** **(iii) A decision of the Committee shall be of no effect until it is confirmed by the Commission."** 21. The following is proposed as amendment to Section 14 on auditing of the accounts of the Commission: **"(1) The Commission shall cause to be kept, proper books of records and accounts which shall be audited by auditors appointed by the Board of the Commission from the list provided by the Auditor General of the Federation."** **"(2) The Commission shall not later than three months after the end of each year, submit to the Minister and the National Assembly, a report of the activities and administration of the Commission during the immediately preceding year and shall include in such reports, audited accounts of the Commission and the report of the Auditor on the accounts."** The following is proposed with regards to the validity of the proceedings of the Commission: **"The validity of any proceedings of the Commission or of a Committee thereof shall not be adversely affected by any vacancy in the membership of the Commission or Committee or by any defect in the appointment of a member of the Commission or of a Committee or by reason that a person not entitled to do so took part in the proceedings of the Commission or Committee."**	
5	18	As from the commencement of this Act, any two or more persons may form and	With the current position, where the number of	**"As from the commencement of this Act, *one or more persons may* form and incorporate a**	Globally today, an individual is permitted to form a company and this form of

		incorporate a company by complying with the requirements of this Act in respect of registration of such company.	members is reduced below two, it is a ground for winding up by the court. The company should be allowed to go on so long as it is a going concern.	**company by complying with the requirements of this Act in respect of registration of such company..**"	companies have not been seen to be less effective or functional than companies with 2 or more members. In South Africa, 3 or more members are allowed for not-for-profit organisations, but two directors. The new Malaysian Companies Act permits single member companies: 1. Single member can also be the sole director 2. Public Companies must have at least 2 directors.
6	19 (3) and all other sections with prescribed fines/penalties.	If at any time the number of members of a company, association or partnership exceeds twenty in contravention of this section and it carries on business for more than fourteen days while the contravention continues, every person who is a member of the company, association or partnership during the time that is so carries on business after those fourteen days shall be guilty of an offence and liable on conviction to a fine of **N**25 for every day during which the default continues.	The fine/penalty prescribed in this section and several other sections of Parts II, XI and XII are insignificant	***"If at any time the number of members of a company, association or partnership exceeds twenty in contravention of this section and it carries on business for more than fourteen days while the contravention continues, every person who is a member of the company, association or partnership during the time that is so carries on business after those fourteen days shall be guilty of an offence and liable on conviction to a fine of N…….. for every day during which the default continues".***	Please see general comment below on the penalty regime. All penalties should be commensurate to the offences they relate to and should be modified in line with current economic trends. Stiffer penalties are more likely to engender compliance with the provisions of the Act that they relate to.
7	22 (5)	A private company shall not, unless authorized by law invite the public to- a. subscribe for any shares or debentures of the company; b. deposit money for fixed periods or payable at call, whether or not bearing interest.	Private companies not allowed to have fixed deposits of any sort	"A private company shall not, unless authorised by law invite the public to- (a) subscribe for any shares or debentures of the company; (b) deposit money for fixed periods or payable at call, whether or not bearing interest <u>*other than on the basis of rules and regulations made by SEC from time to time.*</u>"	This does not make business sense. It is not in the interest of economic development especially in view of the present recession.
8	27 (1)(c)	The memorandum of every company shall state the nature of the business or	The object of the company is an internal issue which	To delete this in its entirety, and to reflect that the object be included in the Articles of Association	Under the Malaysian law, the object is now in the articles and not the

		businesses which the company is authorized to carry on, or, if the company is not formed for the purpose of carrying on business, the nature of the object or objects for which it is established;	may not necessarily be included in the memorandum of association.		memorandum of association.
9	27 (2) (a)	If the company has a share capital the memorandum shall also state the amount of authorized share capital, not being less than **N**10,000 in the case of a private company and **N**500,000 in the case of a public company, with which the company proposes to be registered, and the division thereof into shares of a fixed amount;	The minimum share capital prescribed are too small. The minimum share capital for these companies need to be adjusted in view of current economic realities. 10,000 for private companies and 2m for public companies.	If the company has a share capital- (a) the memorandum shall also state the amount of authorised share capital, not being less than **N**100,000 in the case of a private company and **N**5,000,000 in the case of a public company, with which the company proposes to be registered, and the division thereof into shares of a fixed amount;	This will ensure that only companies that have the financial capabilities to operate as going-concerns will be registered.
10	30 (1a)	No company shall be registered under this Act by a name which is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Commission requires;	This is a restrictive provision. A company should be able to make a case for the use of a name and the Commission should make allowances for reasonable justifications	We recommend that section 30(1) be amended to provide as follows: (1) If a company, through inadvertence or otherwise, on its first registration or on its registration by a new name, is registered under a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be likely to deceive, (a) the second-mentioned company may obtain the approval of the Commission to change its name; or (b) the second-mentioned company shall, upon the direction of the Commission, change its name within a period of six weeks from the date of the approval/direction or such longer period as the Commission may allow. We recommend the insertion of a new subsection (2) of section 30 as follows: (2) Any company aggrieved by the decision of the Commission under subsection (1) of this section, may give notice to the Commission (within 30 days	A company should be able to apply to change its name on the ground that its name is identical with a prior existing name. There should also be procedures for challenging CAC's direction for a company to change its name.

				of being notified of the Commission's decision) requiring it to apply to the court for directions and the Commission shall within 21 days of the receipt of such notice apply to the court for directions".	
11	31 (2)	If a company makes default in complying with a direction under subsection (1) of this section, it shall be liable to a fine of N25 for every day during which the default continues.	There is a gap in that the Act fails to state the consequence for not changing the name within the grace period. Beyond the fine, a stiffer penalty ought to be enforced	"(2) If a company makes default in complying with a direction under subsection (1) of this section, it shall be liable to a fine of N…… for every day during which the default continues. Provided that where the default persists for a period of 30 days, the Commission shall be at liberty to de-register the defaulting Company."	Please see general comment below on the penalty regime. The defaulting company should be struck off from the register of companies and published as de-registered in the official Gazette. This may be after a further notice of intention to delete the company's name has been forwarded to the company. This again will ensure that Company's comply with the provision and change the company name within the stipulated period. There is a growing trend of companies' willingness to pay the fines/penalties prescribed by the Act rather than actually complying with the provision, this is aided by the paltry fines prescribed by the Act.
12	32	1. The Commission may on written application and on payment of the prescribed fee reserve a name pending registration of a company or a change of name by a company. 2. Such reservation as is mentioned in subsection (1) of this section shall be for such period as the Commission shall think fit not exceeding 60 days, and during the period of reservation no other company shall be registered under the reserved name or under any other name which in the opinion of the Commission bears too close a resemblance to the reserved name.	(1) Applications are said to be delivered to the commission via written application only. This is restrictive in view of the jet age that we live in and other technological advancements. Applications could also be sent via electronic means (emails) to speed up the registration process in general. (2) The Act is silent on the use of a name by another company where the name	(1) The Commission may on application forwarded in writing or via electronic mail, and on payment of the prescribed fee reserve a name pending registration of a company or a change of name by a company. The Commission may also approve the transfer of any reserved name within the reservation period upon confirmation that the said transfer shall not be premised on fraud.	We are in a digital age, electronic means of communicating with the Commission will increase the ease of doing business in Nigeria in general. It will also hasten the incorporation process. Cost cutting, paper saving for all parties concerned. Where names are not utilized after the reservation/revalidation period, they should be made free and open to use by any other company

			is not used by the initial company that reserved the name, after the 60 days reservation period (or any revalidations) expire. (3) The Act is silent on the propriety of transferring a reserved name between promoters.		
13	35 (1)and (2a) On Documents of incorporation	1. As from the commencement of this Act, a company shall be formed in the manner set out in this section. 2. There shall be delivered to the Commission: a. the memorandum of association and articles of association complying with the provisions of this Part of this Act; b. the notice of the address of the registered office of the company and the head office if different from the registered office: Provided that a postal box address or a private bag address shall not be accepted by the Commission as the registered office; c. a statement in the prescribed form containing the list and particulars together with the consent of the persons who are to be the first directors of the company;	The Act provides for only hand delivery/ post-delivery of these documents.	As from the commencement of this Act, a company shall be formed in the manner set out in this section. (2) There shall be delivered (whether by hand or electronically) to the Commission- (a) the memorandum of association and articles of association complying with the provisions of this Part of this Act;	There should be an option of sending Incorporation documents via electronic means, e.g. scanned PDF files. Ease of doing business and improves the TAT for incorporation. This implies that the Commission will need to have its website and other electronic mail addresses functional and accessible to the general public.
14	36	1. The Commission shall register the memorandum and articles unless in its opinion- a. they do not comply with the provisions of this Act; or b. the business which the company is to carry on, or the objects for which it is formed, or any of them,	The Act is silent on the timeline for the registration of a company and the issuance of a registration certificate number	Section to be rephrased to insert a timeline. We propose 5 working days or such other period as may be determined from time to time.	Predictability of a process helps an intending Company to plan around the timeline and also fosters investor confidence.

		are illegal; or c. any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 20 of this Act; or d. there is non-compliance with the requirement of any other law as to registration and incorporation of a company; or e. the proposed name conflicts with or is likely to conflict with an existing trade mark or business name registered in Nigeria. 2. Any person aggrieved by the decision of the Commission under subsection (1) of this section, may give notice to the Commission requiring it to apply to the court for directions and the Commission shall within 21 days of the receipt of such notice apply to the court for the directions. 3. The Commission may, in order to satisfy itself as provided in subsection (1) (c) of this section, by instrument in writing require a person subscribing to the memorandum to make and lodge with the Commission, a statutory declaration to the effect that he is not disqualified under section 20 of this Act from joining in forming a company. 4. Steps to be taken under this Act to incorporate a company shall not include any invitation to subscribe for shares or otherwise howsoever on the basis of a prospectus. 5. Upon registration of the memorandum and articles, the Commission shall certify under its seal- a.that the company is		

		incorporated; b. in the case of a limited company, that the liability of the members is limited by shares or by guarantee; or c. in the case of an unlimited company, that the liability of the members is unlimited; and d. that the company is a private or public company, as the case may be. 6. The certificate of incorporation shall be prima facie evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the Association is a company authorized to be registered and duly registered under this Act.			
15	50-52	New provision in respect of re-registration of a Company Limited by Guarantee as Limited by Shares	The Act is silent on the conversion of a company from a limited by guarantee company to a limited by shares Company.	We recommend the insertion of a new Section 53 or 54 to provide as follows: 1. Notwithstanding any other provision of this Act and subject to this section, a company limited by guarantee within the capital market may be re-registered as a company limited by shares if- a. a special resolution that it should so be re-registered is passed; and b. an application for re-registration is delivered to the Commission together with the documents prescribed in subsection (3) of this section. 2. The special resolution shall: a. alter the company's memorandum of association so that it states that the company is to be a company limited by shares; and b. make such other alterations in the memorandum of association as are necessary to bring it into conformity with the requirements of this Act with respect to the memorandum of association of a company limited by shares in accordance with section 27 of this Act; and	It is necessary to provide for the conversion from a company limited by guarantee to a company limited by shares where a continual operation as a company limited by guarantee is no longer able to sustain the objects of the company. However, only companies registered for commerce, education and research purposes should be eligible for conversion. Foreign companies – exemptions from registration. The issue is do people really have to go through incorporation to do business in Nigeria. Other options to registration includes: - Branch offices, - Representative offices.

				c. make such alterations in the company's articles of association as are necessary in the circumstances. 3. The application shall be made to the Commission in the prescribed form and be signed by at least one director and the secretary of the company, and shall be delivered along with the following documents– a. a printed copy of the memorandum and articles as altered in pursuance of the resolution; and b. a copy of a written statement by the directors and the secretary certified on oath by them, and showing that the paid up capital of the company as at the date of the application is not less than 25 per cent of the authorized share capital as at that date; c. a copy of the balance sheet of the company as at the date of the resolution or the preceding 6 months, whichever is later, c. a copy of the statement of authorised share capital in prescribed form; and d. a statutory declaration in the prescribed form by a director and the secretary of the company - i. that the special resolution required under this section has been passed; and ii. that the company's net assets are not less than the aggregate of the paid up share capital and distributable reserves; and e. a copy of any prospectus or statement in lieu of prospectus delivered within the preceding 12 months to the Securities and Exchange Commission. 4) If the Commission is satisfied that a company has complied with the provisions of this section and may be reregistered as a company limited by shares, it shall -	

				(a) retain the application and other documents delivered to it under this section; (b) register the application and other documents; and (c) issue to the company a certificate of incorporation, stating that the company is a company limited by shares. (5) Upon the issue to a company of the certificate of incorporation under this section - (a) the company shall by virtue of the issue of that certificate become a company limited by shares; and (b) any alterations in the memorandum and articles set out in the resolution shall take effect accordingly. 6. The certificate shall be prima facie evidence that a. the requirement of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with; and b. the company is a company limited by shares. 7. The Commission shall forthwith notify the Attorney-General of the Federation of the conversion and re-registration. 8. Only companies registered for commerce, education and research purposes shall be eligible for conversion in accordance with the foregoing provisions.	
16	55 **Penalties**	If any foreign company fails to comply with the requirements of section 54 of this Act in so far as they may apply to the company, the company shall be guilty of	The penalty prescribed here is insignificant.	We are recommending that the section provide as follows: If any foreign company fails to comply with the requirements of section 54 of this Act in so far as they may apply to the company, the company	Please see general comment below on the penalty regime. Penalties should be made more stringent considering the current value of the currency.

		an offence and liable on conviction to a fine of not less than N2,500; and every officer or agent of the company who knowingly and wilfully authorises or permits the default or failure to comply shall, whether or not the company is also convicted of any offence, be liable on conviction to a fine of not less than N250 and where the offence is a continuing one to a further fine of N25 for every day during which the default continues.		shall be guilty of an offence and liable on conviction to a fine of not less than ₦.....; and every officer or agent of the company who authorises or permits the default or failure to comply shall, whether or not the company is also convicted of any offence, be liable on conviction to a fine of not less than ₦..... and where the offence is a continuing one, to a further fine of ₦..... for every day during which the default continues.	
17	**72**	1. Any contract or other transaction purporting to be entered into by the company or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the comp any shall become bound by and entitled to the benefit thereof as if it h as been in existence at the date of su ch contract or other transaction and h ad been a party thereto. 2. Prior to ratification by the company, th e person who purported to act in the name of or on behalf of the company shall, in the absence of express agree ment to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.		Section 21 of South Africa Companies Act 2009. (1) A person may enter into a written agreement in the name of, or purport to act in the name of, or on behalf of, an entity that is contemplated to be incorporated in terms of this Act, but does not yet exist at the time. (2) A person who does anything contemplated in subsection (1) is jointly and severally liable with any other such person for liabilities created as provided for in the pre-incorporation contract while so acting, if - (a) The contemplated entity is not subsequently incorporated or (b) After being incorporated, the company rejects any part of such agreement or action (3) If, after its incorporation, a company enters into an agreement on the same terms as, or in substitution for, an agreement contemplated in subsection (1), the liability of a person under subsection (2) in respect of the substituted agreement is discharged.	Section 21 of the South African Companies Act should be replicated in the CAMA as it is very apt.

				(4) Within three months after the date on which a company was incorporated the board of that company may completely or partially or conditionally ratify or reject any pre-incorporation contract or other action purported to have been made or done in its name or on its behalf, as contemplated in subsection (1) (5) If within three months after the date on which a company was incorporated, the Board has neither ratified nor rejected a particular pre-incorporation contract, or other action purported to have be made or done in the name of the company, or on its behalf as contemplated in subsection (1), the company will be regarded to have ratified that agreement or action. (6) To the extent that a pre-incorporation contract or action has been ratified or regarded to have been ratified in terms of subsection (5) – (a) The agreement is as enforceable against the company as if the company had been a party to the agreement when it was made, and (b) The liability of a person under subsection (2) in respect of the ratified agreement or action is discharged. (7) If a company rejects an agreement or action contemplated in subsection (1), a person who bears any liability in terms of subsection (2) for that rejected agreement or action may assert a claim against the company for any benefit it has received, or is entitled to receive, in terms of the agreement or action.	
18	74	A company shall have a common seal, the use of which shall be regulated by the articles.		The need for a common seal should be optional 1. A company may have a common seal but need not have one (section 45 of U.K. Companies Act 2006) 2. A Company which has a common seal shall	The UK Companies Act should be replicated in the CAMA to replace Section 74.

				have its name engraved in legible characters on the seal. 3. If a Company fails to comply with subsection (2) an offence is committed by the company and every offer of the company who is in default. **OFFICIAL SEAL FOR SHARE CERTICATE E.T.C** (Section 51 of U.K. Companies Act 2006) (1) A company that has a common seal may have an official seal for use – (a) For sealing securities issued by the company or (b) For sealing documents creating or evidencing securities so issued. (2) The official seal- (a) Must be a facsimile of the company's seal, with the addition on its face of the word "Securities" and (b) When duly affixed to the document has the same effect as the company's common seal.	
19	81	Every member shall, notwithstanding any provision in the articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting; provided that the articles may provide…..	The option of virtual attendance and electronic voting was not contemplated in this provision	Every member shall, notwithstanding any provision in the articles, have a right to attend any general meeting of the company (either physically or electronically) and to speak and vote on any resolution (physically or through electronic means) before the meeting; provided that the articles may provide…..	To conform with technological advancement
20	83 (1) and (4)	(1)Every company shall keep a register of its members and enter in it the following particulars-…… (4)If a company makes default for twenty-eight days in complying with subsection (2) of this section, the company, and every one of its officers who is in default shall be guilty of an offence and liable on conviction to a fine of N25 and, for continued contravention, to a daily default fine of N5.	The option of virtual attendance and lectronic voting was not contemplated in this provision. The penalty for default does not reflect economic realities.	(1)Every company shall keep a register (physical or electronic) of its members and enter in it the following particulars-…… (4)If a company makes default for twenty-eight days in complying with subsection (2) of this section, the company, and every one of its officers who is in default shall be guilty of an offence and liable on conviction to a fine of ~~N10~~ N10,000 and, for continued contravention, to a daily default fine of ~~N5~~ N2000.	To reflect economic realities and impose a penalty that will serve as a deterrent.

21	84	The register of members shall be kept at the registered office of the company, except that if…	Electronic register has not been contemplated and the penalty for default does not reflect economic realities	The register of members shall be kept at the registered office of the company, and an electronic register shall be available on the company's website, except that if…	To conform with technological advancement and for penalties to reflect economic realities that will serve as a deterrent
22	87 (1)	Except when a register of members is closed under the provisions of this Act, the register and the index of member's names shall be open during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so however, that no less than 2 hours in each day shall be allowed for inspection) to the inspection of any member of the company without charge, and with the permission of the company to any other person on payment of N1 or any less sum as the company may prescribe for each inspection.	Electronic register should be uploaded on the company's website and access should not be restricted.	Except when a register of members is closed under the provisions of this Act, the register and the index of member's names shall be open during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so however, that no less than 2 hours in each day shall be allowed for inspection) to the inspection of any member of the company without charge, and with the permission of the company to any other person on payment of ~~N1~~ N5000 ~~or any less sum~~ or as the company may prescribe for each inspection, provided that the electronic register which shall be uploaded on the company's website shall be accessible to members without restriction or payment.	Access to records (register) of members of a company should not be restricted in the spirit of transparency and disclosure.
23	87 (2)	Any member or, with the permission of the company, any other person may require a copy of the register, or of any part thereof, on payment of 50 kobo, or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied, and the company shall cause any copy so required by any person to be sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.	Economic and technological realities have not been reflected.	Any member or, with the permission of the company, any other person may require a copy of the register, or of any part thereof, on payment of ~~50 kobo~~ N1000, or such ~~less sum~~ amount as the company may prescribe, for every 100 words or fractional part thereof required to be copied, and the company shall cause any copy so required by any person to be sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.	Option of electronic transfer of the register to be available to members at a negligible fee.
24	87 (3)	In the case of a member, if any inspection required under this section is refused or if any copy required under this section is not sent within the prescribed period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine of N10.	Economic realities are not reflected in this provision.	In the case of a member, if any inspection required under this section is refused or if any copy required under this section is not sent within the prescribed period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine of ~~N10~~ N10,000.	To discourage companies and their principal officers from defaulting.
25	89	A company may, on giving notice by	The company's website	A company may, on giving notice by	In order not to short-change members

		advertisement in a daily newspaper circulating in the district in which the registered office of the company is situated, close the register of members or any part of it for any time or times not exceeding on the whole thirty days in each year.	has not been taken into consideration.	advertisement in a daily newspaper and on the company's website ~~circulating in the district in which the registered office of the company is situated~~, close the register of members or any part of it for any time or times not exceeding on the whole thirty days in each year.	outside the jurisdiction of the registered office.
26	94 - 96	Notwithstanding the provisions of Section 95 of this Act, a public company may by notice in writing require any member of the company, within such reasonable time as is specified in the notice- (a) to indicate in writing the capacity in which he holds any shares in the company ; and (b) if he holds them otherwise than as beneficial owner, to indicate in writing the particulars of the identity of persons interested in the shares in question and whether persons interested in the same shares are parties……..	All requirements that notices be sent in writing are cumbersome and should include option of sending emails.	The provisions should include the option of sending emails not just notice in writing. The penalty of N25 in Section 94(4)(b)to be reviewed to N10,000	To give room for electronic notices via emails and increase the penalty to be sufficiently deterrent.
27	95 (5)	A person who fails to comply with the provisions of this section shall be liable to a fine of N50 for every day during which the default continues.	The penalty does not reflect economic realities and does not serve as a deterrent to defaulters.	A person who fails to comply with the provisions of this section shall be liable to a fine of ~~N50~~ N5000 for every day during which the default continues.	To reflect economic realities and serve as a deterrent to defaulters.
28	96 (1)	A person who ceases to be a substantial shareholder in a public company shall give notice in writing to the company stating his name and the date on which he ceases to be a substantial shareholder and giving full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.	Requirement that the notice be in writing is restrictive and should be amended to include the option of electronic notices.	A person who ceases to be a substantial shareholder in a public company shall give notice in writing or through an email, to the company stating his name and the date on which he ceases to be a substantial shareholder and giving full particulars of the circumstances by reason of which he ceased to be a substantial shareholder	To reflect technological advancement.
29	97 (1)-(5)	1. A public company shall keep a register in which it shall enter- a. in alphabetical order, the names of persons from whom it has received a notice under section 95 of this Act; and b. against each name so entered, the information given in the	Electronic registers have not been contemplated by this section.	The provision of this section should include the maintenance of electronic registers on the company's website	To reflect technological advancement.

		notice, and where it receives a notice under section 95 of this Act, the information given in that notice. 2. The register shall be kept at the place where the register of members required to be kept under section 84 of this Act is kept and subject to the same right of inspection as the register of members. 3. The Commission may, at any time, in writing, require the company to furnish it with a copy of the register or any part of the register and the company shall furnish the copy within 14 days after the day on which the requirement is received by the company. 4. If the company ceases to be public company, it shall continue to keep the register until the end of the period of six years beginning with the day next following that on which it ceases to be such a company. 5. A company shall not, by reason of anything done for the purposes of this section, be affected with notice of, or put on enquiry as to, a right of a person to or in relation to a share in the company.			
30	97 (6)	If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of N25 and a daily default fine of N5.	The penalty does not reflect economic realities and does not serve as a deterrent to defaulters.	If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ~~N25~~ N 10,000 and a daily default fine of ~~N5~~ N5000.	To reflect economic realities and serve as a deterrent to defaulters.
31	**100, 102,114**	S.100: 1. A company having a share capital may in general meeting and not otherwise alter the conditions of its memorandum to the following extent, that is to say, it may- a. consolidate and divide all or any	The insistence that any alteration must be done at a general meeting and not otherwise, does not take into consideration the possibility of alteration via electronic	Should be amended to allow for electronic meetings/resolutions by members.	Following amendment of Sections 216 and 224, definition of what constitutes attendance of general meetings of companies and voting at these meetings (as referred to in other sections of the Act) would have to change accordingly.

		part of its share capital into shares of larger amount than its existing shares; b. convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination; c. subdivide its shares or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each educed share shall be the same as it was in the case of the share from which the reduced share is derived; d. cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. 2. Cancellation of shares made in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act. S. 102: 1. A company having a share capital, whether or not the shares have been converted into stock, may in general meeting and not otherwise, increase its share capital by new shares of such amount as it thinks expedient. 2. Where a company has increased its share capital it shall, within 15 days after the passing of the resolution authorizing the increase, give to the Commission notice of the increase and the Commission shall record the	meeting/voting/resolution.		

		increase. 3. Where, in connection with the increase of shares, any approval is required to be obtained under any enactment other than this Act, the Commission may on application by a company extend the time within which to give notice of the increase to the Commission. 4. The notice to be given under this section shall include any particulars prescribed with respect to the classes of shares affected and the condition subject to which the new shares have been or are to be issued and the notice shall be accompanied by a printed copy of the resolution authorizing the increase. 5. If default is made in complying with the provisions of this section, the company in default shall be liable to a fine ofN50 for every day during which the default continues. S.114: Subject to the provisions of this Act, the rights and liabilities attaching to the shares of a company shall- a. Be dependent on the terms of issue and of the company's articles; and b. Notwithstanding anything to the contrary in the terms or the articles, include the right to attend any general meeting of the company and vote at such meeting			
32	**146 (1)**	Every company shall, within two months after the allotment of any of its shares and within 3 months after the date on which a transfer of any such shares is	The current provision does not support dematerialization of shares and provides a leeway for	Every company shall, within two months after the allotment of any of its shares and within 3 months after the date on which a transfer of any such shares is lodged with the company, deliver proof of	The Act should clearly recognize issuance of electronic printouts in light of the dematerialization exercise.

		lodged with the company, complete and have ready for delivery the certificates of all shares allotted or transferred, unless the conditions of issue of the shares otherwise provide.	registrars of companies to issue physical shares instead of leveraging on the SEC's mandate on dematerialization and also save cost of printing physical certificates.	all shares allotted or transferred, by share printouts from the CSCS Depository or any licensed Depository that has custody of the Company Register of shares, and shall have the Company Registrar confirm these shares, unless the conditions of issue of the shares otherwise provide.	
33	**147 (1)**	A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares	The current provision does not recognize electronically generated printouts from CSCS, which is also an acceptable proof of ownership of shares	A statement generated from CSCS Depository or any licensed depository, specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares.	The Evidence Act (as amended) allows for relevance and admissibility of electronically generated documents. To this end, stock printouts are tenable to prove ownership of shares held in CSCS database
34	212	**Non-compliance and penalty** Without prejudice to the provisions of section 408 of this Act, if a company fails to comply with the requirements of section 211 of this Act, the company and any officer in default shall be guilty of an offence and liable to a fine of N50 for every day during which the default continues.	The penalty is inconsequential and needs to be increased to between N5,000 – N10,000 to constitute reasonable deterrence.	Without prejudice to the provisions of section 408 of this Act, if a company fails to comply with the requirements of section 211 of this Act, the company and any officer in default shall be guilty of an offence and liable to a minimum fine of ~~N50~~ N5,000.00 for every day ~~during which~~ the default continues.	N50 penalty contained in the current provision is not in line with present reality nor does it present a justifiable deterrence.
35	215 (1)	**Extraordinary general meeting** (1) The board of directors may convene an extraordinary general meeting whenever they deem fit, and if at any time there are not within Nigeria sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting.	The requirements for the presence of directors in Nigeria may be a restriction on the full adoption of electronic meetings.	**Extraordinary general meeting** (1) The board of directors may convene an extraordinary general meeting whenever they deem fit, and if at any time there are not ~~within Nigeria~~ available sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting.	The reference to physical presence in Nigeria of the said directors may defeat the spirit of electronic meetings.
36	216	**Place of meeting** All statutory and annual general meetings shall be held in Nigeria	This defeats the purpose and inhibits the full application of the proposed new Section 213 (2), that allows private Companies to hold electronic general meetings. Additionally, public Companies should	(1) All statutory and annual general meetings shall be held in Nigeria (2) Notwithstanding the provisions of Sub-section (1) of this Section, Company ~~-ies~~ may create a framework for the participation of shareholders by electronic means at ~~its~~ **their** general meetings provided that such electronic participation framework is organized in	This is to fully align this requirement with the proposed electronic general meetings proposed in sub section (2).

			be allowed to opt for electronic meetings.	accordance with regulations made by the Commission from time to time	
37	**216**	All statutory and annual general meetings shall be held in Nigeria	**Technology Enhanced Meetings (voice and video conferencing)** Not currently provided for in the Act.	All statutory and annual general meetings shall be held in Nigeria Provided that companies can seek exemption from the Commission to conduct their statutory and annual meeting via voice conferencing, which approval shall be given within 14 days failing which approval shall be deemed obtained.	E-Meetings for companies should be introduced in light of technological advancement.
38	**220**	A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for giving of notice to him	**E-Notices for Meetings** Not currently provided for in the Act.	A notice may be given by the company to any member either personally, elctronically or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for giving of notice to him	There should be a provision allowing and regulating issuing of Notices for meeting via electronic channels such as email and other technological means to be developed.
39	220 (1)	**Service of notice** (1) A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for the giving of notice to him.	The current provision did not anticipate nor make specific reference to electronic notices – emails, sms etc	**Service of notice**(1) A notice may be given by the company to any member either personally or by electronic means in the form and manner prescribed by the Commission or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for the giving of notice to him.	To accommodate voting by electronic means. **Comment [pt1]:**
40	224 (1)	1. (1) At any general meeting, a resolution put to the vote shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by-…… 2. Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact,	Electronic voting is not specifically provided for. This is important to ensure that this provision is aligned with the proposal that companies should be allowed to conduct general meetings electronically	(1) At any general meeting, a resolution put to the vote shall be decided on a show of hands or by electronic means in the form and manner prescribed by the Commission, unless a poll is (before or on the declaration of the result of the show of hands) demanded by-…… (2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands or by electronic means been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact,	To accommodate voting by electronic means.

		without proof of the number or proportion of the votes recorded in favour of, or against, the resolution		without proof of the number or proportion of the votes recorded in favour of, or against, the resolution	
41	Section 226 (3):	In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote	Electronic polling is not specifically mentioned.	(3) In the case of an equality of votes, whether on a show of hands, by electronic means or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote	Same as above
42	242 (1(& (2):	1. The books containing the minutes of proceedings of any general meeting of a company held on or after the commencement of this Act, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that no less than six hours in each day be allowed for inspection) be open to inspection by members without charge. 2. Any member shall be entitled to be furnished within seven days after receipt of his request in that behalf to the company, with a copy of any such minutes certified by the secretary at a charge not exceeding 10 kobo for every hundred words	Due to technological advancements, Companies should be required to make available electronic copies of meeting minutes either by posting same on their websites or by circulating same electronically to shareholders	**Inspection of minute books and copies: A new sub rule I and a re-numbering of sub 1 & 2 as sub 2 & 3 are hereby proposed as follows:** (1) The minutes of proceedings of any general meeting of a company held on or after the commencement of this Act, shall be circulated via electronic means to members and in the case of a public company, be published on the Company's website or: (2) The books containing the minutes of proceedings of any general meeting of a company held on or after the commencement of this Act, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that no less than six hours in each day be allowed for inspection) be open to inspection by members without charge. (3) Any member shall be entitled to an electronic copy or be furnished within seven days after receipt of his request in that behalf to the company, with a copy of any such minutes certified by the secretary ~~at a charge not exceeding 10 kobo for every hundred words.~~	Electronic circulation of copies of meeting minutes will be cost effective and timely

43	**246 (1)**	1. Every company registered on or after the commencement of this Act shall have at least two directors and every company registered before that date shall before the expiration of six months from the commencement of this Act have at least two directors.	The minimum number of directors is two (2).	The minimum number of directors for companies shall be: a. In the case of public companies two directors. b. In the case of private companies one director; unless otherwise provided by their articles or any applicable industry specific legislation.	To align with modern global practice, provisions for single directorship for private companies should be adopted.
44	**259 (1)**	Unless the articles otherwise provide, at the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest one third shall retire from office.	This exercise is cumbersome and unnecessary	This section should be deleted or restricted to public companies only	To allow flexibility of the process especially for private companies.
45	**262 (1)**	A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.	Directors can only be removed by the company in a general meeting	A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him. ***"Provided that following a majority vote, and subject to ratification at the next general meeting, the board of directors may remove an executive director before the expiration of his period of office."***	The directors should be able to remove executive directors from the board if the need arises prior to a general meeting
46	**263 (2)**	Any question arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes, the chairman shall have a second or casting vote.	The chairman's second/casting vote in the case of an equality of votes is imposed on all companies	Any question arising at any meeting shall be decided by a majority of votes. Provided that where provided for in the articles, the chairman ***may*** have a second or casting vote in case of an equality of votes.	A company should be at liberty to decide the mode of settlement of equality of votes
47	**266 (2)**	There shall be given 14 days' notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.	This provision does not provide for consent to shorter notice by the directors	There shall be given 14 days' notice in writing to all directors entitled to receive notice unless otherwise provided in the articles. **Provided that a meeting of the directors shall, notwithstanding that it is called by a shorter notice**	The reality is that as in the case of members, there could be urgent matters which require the attention of the board and in such instances, the board should be at liberty to convene a meeting within a shorter notice period.

				than that specified in this section, be deemed to have been duly called if it is so agreed by all the directors entitled to attend and vote thereat.	
48	**282 (3)**	Each director shall be individually responsible for the actions of the board in which he participated, and the absence from the board's deliberations, unless justified, shall not relieve a director of such responsibility.	This wording of this provision is misleading as "***actions of the board in which he participated***" suggests physical presence at the meeting and this contradicts the latter portion "***absence from the board's deliberations, unless justified***"	Each director shall be individually responsible for the actions of the board ***of which he is a member***, and the absence from the board's deliberations, unless justified, shall not relieve a director of such responsibility	The current wording is misleading and contradictory
49	**293 (1)**	Every company shall have a secretary.	The provision requires all companies to have a company secretary	(1) Every public company shall have a secretary. (2) A private company shall not be required to have a secretary unless otherwise provided by their articles or any applicable industry specific legislation	Companies which are small in size usually do not require the services of a permanent company secretary and may outsource for legal assistance
50	**333 (3)**	A person guilty of an offence under this section, shall be liable to imprisonment for a term not exceeding six months or to a fine of N500.	The fine is very negligible	(3) A person guilty of an offence under this section, shall be liable to imprisonment for a term not exceeding six months or to a fine of N……..	An upward review of the penalty would discourage willful violation of the rule.
51	**334**	(1) In the case of every company, the directors shall in respect of each year of the company, prepare financial statements for the year. (2) Subject to subsection (3) of this section, the financial statements required under subsection (1) of this section shall include- (a) statement of the accounting policies; (b) the balance sheet as at the last day of the year; (c) a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the year; (d) notes on the accounts;	This section is not in line with IFRS in terms of terminology and composition of a financial statement.[1]	(1) In the case of every company, the directors shall in respect of each year of the company, prepare financial statements for the year. (2) Subject to subsection (3) of this section, the financial statements required under subsection (1) of this section shall include- (a) statement of the significant accounting policies; (b) the statement of financial position as at the last day of the year; (c) a statement of profit or loss and other comprehensive income or, in the case of a company not trading for profit, an income and expenditure account for the year; (d) statement of cash flow (e) statement of changes in equity (f) related notes for each of the above items;	By the decision to adopt International Financial Reporting Standards (IFRS), Nigeria is required to comply with the requirements of the IFRS.

		(e) the auditors' reports; (f) the directors' report; (g) a statement of the source and application of fund; (h) a value-added statement for the year; (i) a five-year financial summary; and (j) in the case of a holding company, the group financial statements		(g) the auditors' reports; (h) the directors' report; (i) a statement of the source and application of fund; (j) a value-added statement for the year; (k) a five-year financial summary; and (l) in the case of a holding company, the group consolidated financial statements	
52	**334 (3)**	The financial statements of a private company need not include the matters stated in paragraphs (a), (g), (h) and (i) of subsection (2) of this section.	This section like the preceding one is not in line with IFRS.	(3) This could be replaced with the IFRS for SMEs	The requirements of the IFRS for SMEs is not as stringent as the full IFRS.
53	**335**	1. The financial statements of a company prepared under section 334 of this Act, shall comply with the requirements of the Second Schedule to this Act (so far as applicable) with respect to their form and content, and with the accounting standards laid down in the Statements of Accounting Standards issued from time to time by the Nigerian Accounting Standards Board to be constituted by the Minister after due consultation with such accounting bodies as he may deem fit in circumstances for this purposes: Provided that such accounting standards do not conflict with the provisions of this Act or the Second Schedule to this Act. 2. The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the year	Reference is made to the NASB The Second Schedule referred to in this section is not in line with IFRS.	(1) The financial statements of a company prepared under section 334 of this Act, shall comply with the requirements of the Second Schedule to this Act (so far as applicable) with respect to their form and content, and with the accounting standards laid down in the Statements of Accounting Standards issued from time to time by the Financial Reporting Council of Nigeria to be constituted by the Minister after due consultation with such accounting bodies as he may deem fit in circumstances for this purposes: ~~Provided that such accounting standards do not conflict with the provisions of this Act or the Second Schedule to this Act.~~ (2) The statement of Financial position shall give a true and fair view of the state of affairs of the company as at the end of the year; and the statement of profit or loss and other comprehensive income shall give a true and fair view of the profit or loss of the company for the year	The NASB has been replaced by the Financial Reporting Council of Nigeria (FRCN).
54	**335**	1. The financial statements of a	This section is not in line	The financial statements of a company prepared	By the decision to adopt International

		company prepared under section 334 of this Act, shall comply with the requirements of the Second Schedule to this Act (so far as applicable) with respect to their form and content, and with the accounting standards laid down in the Statements of Accounting Standards issued from time to time by the Nigerian Accounting Standards Board to be constituted by the Minister after due consultation with such accounting bodies as he may deem fit in circumstances for this purposes: Provided that such accounting standards do not conflict with the provisions of this Act or the Second Schedule to this Act. 2. The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the year. 3. The statement of the source and application of funds shall provide information on the generation and utilisation of funds by the company during the year. 4. The value added statement shall report the wealth created by the company during the year and its distribution among various interest groups such as the employees, the government, creditors, proprietors and the company. 5. The five-year financial summary shall provide a report for a comparison over a period of five years or more of	with IFRS in terms of terminologies	under section 334 of this Act, shall comply with the requirements of the Second Schedule to this Act (so far as applicable) with respect to their form and content, and with the accounting standards laid down in the Statements of Accounting Standards issued from time to time by the Financial Reporting Council of Nigeria (FRC) ~~Provided that such accounting standards do not conflict with the provisions of this Act or the Second Schedule to this Act.~~ (2) The statement of financial position shall give a true and fair view of the state of affairs of the company as at the end of the year; and the statement of profit or loss and other comprehensive income shall give a true and fair view of the profit or loss of the	Financial Reporting Standards (IFRS), Nigeria is required to comply with the requirements of the IFRS.

		vital financial information. 6. Subsection (2) of this section shall override- a. the requirements of the Second Schedule to this Act; and b. all other requirements of this Act as to the matters to be included in the accounts of a company or in notes to those accounts; and accordingly the provisions of subsections (7) and (8) of this section shall have effect. 7. If the balance sheet or profit and loss account drawn up in accordance with those requirements would not provide sufficient information to comply with subsection (2) of this section, any necessary additional information shall be provided in that balance sheet or profit and loss account, or in a note to the accounts. 8. If, owing to special circumstances in the case of any company, compliance with any such requirement in relation to the balance sheet or profit and loss account would prevent compliance with subsection (2) of this section, (even if additional information were provided in accordance with subsection (4) of this section), the directors shall depart from that requirement in preparing the balance sheet or profit and loss account (so far as necessary) in order to comply with subsection (2) of this section. 9. If the directors depart from any such requirement, particulars of the departure, the reasons for it and its effects shall be given in a note to the accounts.			

		10. Subsections (1) to (9) of this section shall not apply to group accounts prepared under section 336 of this Act and subsections (1) and (2) of this section shall apply to a company's profit and loss account (or require the notes otherwise required in relation to that account) if- a. the company has subsidiaries; and b. the profit and loss account is framed as a consolidated account dealing with all or any of the subsidiaries of the company as well as the company- i. complies with the requirements of this Act relating to consolidated profit and loss account; and ii. shows how much of the consolidated profit and loss for the year is dealt with in the individual financial statements of the company. 11. If group financial statements are prepared and advantage is taken of subsection (7) of this section, that fact shall be disclosed in a note to the group financial statements.			
55	**336**	1. If, at the end of a year a company has subsidiaries, the directors shall, as well as preparing individual accounts for that year, also prepare group financial statements being accounts or statements which deal with the state of affairs and profit or loss of the company and the subsidiaries. 2. The provisions of subsection (1) of this section shall not apply if the company is a wholly owned	The term 'group financial statement' is not in line with the IFRS terminology	The financial statement referred to here should be called 'Consolidated'	This is to comply with IFRS requirement.

		subsidiary of another body corporate incorporated in Nigeria. 3. A group financial statement may not deal with a subsidiary, if the directors of the company are of the opinion that- a. it is impracticable, or would be of no real value to the members, in view of the insignificant amounts involved; or b. it would involve expense or delay out of proportion to its value to members of the company; or c. the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or d. the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking. 4. The group financial statements of a company shall consist of a consolidated- a. balance sheet dealing with the state of affairs of the company and all the subsidiaries of the company; and b. profit and loss account of the company and its subsidiaries. 5. If the directors are of the opinion that it is better for the purpose of presenting the same or equivalent information about the state of affairs and profit or loss of the company and its subsidiaries, and that to so present it may be readily appreciated by the members of the company, the group financial statements may be prepared in a form not consistent with subsection (1) of this section and			

		in particular the group financial statement may consist of- a. more than one set of consolidated financial statements dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries; or b. separate financial statements dealing with each of the subsidiaries; or c. statements expanding the information about the subsidiaries in individual financial statements of the company, or in any other form. 6. The group financial statements may be wholly or partly incorporated in the individual balance sheet and profit and loss account of the holding company.			
56	**337**	1. The group financial statements of a holding company shall comply with the requirements of the Second Schedule to this Act, so far as applicable to group financial statements in the form in which those accounts are prepared with respect to the form and content of those statements and any additional information to be provided by way of notes to those accounts. 2. Group financial statements together with any notes thereon shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with by those statements as a whole. 3. Subsection (2) of this section shall override- a. the requirements of the Second Schedule to this Act; and	Form and contents including name not in line with IFRS	Same as above points on IFRS requirements	To comply with IFRS

		b. all the requirements of this Act as to the matters to be included in group financial statements or in notes to those statements and accordingly subsections (4) and (5) of this section shall have effect. 4. If group financial statements are not in accordance with the requirements of this Act by not providing sufficient information in compliance with subsection (2) of this section, any necessary additional information shall be provided in, or in a note to, the group financial statements. 5. If, owing to special circumstances in the case of any company, compliance with any such requirements in relation to its group financial statements would prevent the statements from complying with subsection (2) of this section, (even if additional information were provided in accordance with subsection (4) of this section, the directors may depart from that requirement in preparing the group financial statements).			
57	**339 (3)**	Whenever it is stated in the Third Schedule to this Act that this subsection shall apply to certain particulars or information, the particulars or information shall be annexed to the annual return first made by the company after copies of its financial statements have been laid before its shareholders in a general meeting and if a company fails to satisfy an obligation thus imposed, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine of N50 and for continued	The fine is very negligible which would lead to complacency on the part of the company.	Whenever it is stated in the Third Schedule to this Act that this subsection shall apply to certain particulars or information, the particulars or information shall be annexed to the annual return first made by the company after copies of its financial statements have been laid before its shareholders in a general meeting and if a company fails to satisfy an obligation thus imposed, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine of ₦..... and for continued contravention, to a daily default fine of ₦.....	This would discourage willful violation of the rule.

		contravention, to a daily default fine of N10.			
58	**343**	The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the year. 1.A company's balance sheet and every copy of it which is laid before the company in general meeting or delivered to the Commission shall be signed on behalf of the board by two of the directors of the company. 2. If a copy of the balance sheet- a. is laid before the company or delivered to the Commission without being signed as required by this section; or b. not being a copy so laid or delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signature as the case may be, the company and every officer of it who is in default shall be guilty of an offence and liable on conviction to a fine of N300. c. A company's profit and loss account and, so far as not incorporated in its individual balance sheet or profit and loss account, any group accounts of a holding company, shall be annexed to the balance sheet, and the auditors' report and the directors' report shall also be	Section is not in line with IFRS and FRC requirements.	The statement of financial position shall give a true and fair view of the state of affairs of the company as at the end of the year; and Statement of profit or loss and other comprehensive income shall give a true and fair view of the profit or loss of the company for the year. (1) A company's statement of financial position and every copy of it which is laid before the company in general meeting or delivered to the Commission shall be signed on behalf of the board by at least two of the directors of the company which must include the Managing Director and the Finance Director (CFO). (2) If a copy of the statement of financial position- (a) is laid before the company or delivered to the Commission without being signed as required by this section; or (b) not being a copy so laid or delivered, is issued, circulated or published in a case where the statement of financial position has not been signed as so required or where (the statement of financial position having been so signed) the copy does not include a copy of the signature as the case may be, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine of N……. (3) A company's profit or loss and other comprehensive income and, so far as not incorporated in its individual statement of financial position or statement of profit or loss and other comprehensive income, any group accounts of a holding company, shall be annexed to the statement of financial position, and the auditors' report and the directors' report shall also be attached to the statement of financial position. (4) The statement of financial position and the statement of profit or loss and other comprehensive income annexed to it shall be approved by the board of directors and signed on their behalf by at	This is to comply with the provisions of IFRS and FRC Act. Please see general comment below on the penalty regime.

		attached to the balance sheet. d. The balance sheet and the profit and loss account annexed to it shall be approved by the board of directors and signed on their behalf by two directors authorized to do so.		least two directors authorised to do so and which must include the Managing Director and the Chief Finance Officer.	
59	**344 (1 & 5)**	1) In the case of every company, a copy of the company's financial statements for the year shall, not less than 21 days before the date of the meeting at which they are to be laid in accordance with section 345 of this Act be sent to each of the following persons 5) If default is made in complying with subsection (1) of this section, the company and every officer of it who is in default shall be guilty of an offence and is liable to a fine of N250.	The section did not state the type of copy (whether hard or soft) and the sanction is too small.	1) In the case of every company, a copy (hard or soft copy) of the company's financial statements for the year shall, not less than 21 days before the date of the meeting at which they are to be laid in accordance with section 345 of this Act be sent to each of the following persons 5) If default is made in complying with subsection (1) of this section, the company and every officer of it who is in default shall be guilty of an offence and is liable to a fine not less than N…….....	Please see general comment below on the penalty regime. The allowance for soft copies of financial will reduce the cost producing financials statements to be distributed to members of the company. The proposed fine is to serve as deterrence and prevent willful violation of the act.
60	**345 (3)**	(3) In respect of each year, the directors shall deliver with the annual return to the Commission a copy of the balance sheet, the profit and loss account and the notes on the statements which were laid before the general meeting as required by this section.	Some terminologies are not in line with IFRS requirements	(3) In respect of each year, the directors shall deliver with the annual return to the Commission a copy of the statement of financial position, the statement of profit or loss and other comprehensive income and the notes on the statements which were laid before the general meeting as required by this section.	This complies with the requirements of IFRS
61	**346 (1)**	(1) If in a year any of the requirements of section 345 (1) or (3) of this Act is not complied with by any company, every person who immediately before the end of that period was a director of the company shall in respect of each of those subsections which is not so complied with, be guilty of an offence and liable to a daily default fine of N50 in the case of a small company, a company limited by guarantee or an unlimited company, and N500 in the case of any other company.	Penalty is too small	(1) If in a year any of the requirements of section 345 (1) or (3) of this Act is not complied with by any company, every person who immediately before the end of that period was a director of the company shall in respect of each of those subsections which is not so complied with, be guilty of an offence and liable to a daily default fine of not less than ₦……. in the case of a small company, a company limited by guarantee or an unlimited company, and not less than ₦……. in the case of any other company.	The proposed fine should serve as deterrence and prevent willful violation of the section.
62	**348 (1)**	(1) If any financial statements of a company (other than its group financial statement) of which a copy is laid	Penalty is too small	(1) If any financial statements of a company (other than its group financial statement) of which a copy is laid before the shareholders in general meeting	The proposed upward review of the fine is to serve as deterrence and prevent willful violation of the act.

		before the shareholders in general meeting or delivered to the Commission do not comply with the requirement of this Act as to the matters to be included in, or in a note to, those financial statements, every person who at the time when the copy is laid or delivered is a director of the company shall be guilty of an offence and in respect of each offence, liable to a fine of N100. (2) If any group financial statements of which a copy is laid before a company in a general meeting or delivered to the Commission do not comply with section 345 (4) and (5) or section 346 of this Act and with the other requirements of this Act as to the matters to be included in or in a note to those financial statements, every person who at the time when the copy was so laid or delivered was a director of the company shall be guilty of an offence and liable to a fine of N250.		or delivered to the Commission do not comply with the requirement of this Act as to the matters to be included in, or in a note to, those financial statements, every person who at the time when the copy is laid or delivered is a director of the company shall be guilty of an offence and in respect of each offence, liable to a fine of not less than ₦..... or any other amount as may be determine by the commission from time to time. (2) If any group financial statements of which a copy is laid before a company in a general meeting or delivered to the Commission do not comply with section 345 (4) and (5) or section 346 of this Act and with the other requirements of this Act as to the matters to be included in or in a note to those financial statements, every person who at the time when the copy was so laid or delivered was a director of the company shall be guilty of an offence and liable to a fine of not less than ₦..... or any other amount as may be determine by the commission from time to time.	
63	**349 (2)**	If, when a person makes a demand for a document with which he is entitled by this section to be furnished, default is made in complying with the demand within seven days after its making, the company and every officer of it who is in default shall be guilty of an offence and liable to a daily default fine of Nl00, unless it is proved that the person has already made a demand for, and been furnished with, a copy of the documents.	Penalty is too small	(2) If, when a person makes a demand for a document with which he is entitled by this section to be furnished, default is made in complying with the demand within seven days after its making, the company and every officer of it who is in default shall be guilty of an offence and liable to a daily default fine of not less than ₦....., unless it is proved that the person has already made a demand for, and been furnished with, a copy of the documents.	The proposed upward review of the fine is to serve as deterrence and prevent willful violation of the section.
64	**351**	1. A company qualifies as a small company in a year if for that year the following conditions are satisfied- a. it is a private company having a share capital; b. the amount of its turnover for that year is not more than N2 million or such amount as may be fixed by the Commission;	The criteria for a small company should be redefined	The amount of its turnover for that year is not more than N10 million or such amount as may be fixed by the Commission; 1c- its net assets value is not more than N5 million or such amount as may be fixed by the Commission;	This is more realistic

		c. its net assets value is not more than N1 million or such amount as may be fixed by the Commission; d. none of its members is an alien; e. none of its members is a Government or a Government corporation or agency or its nominee; and f. the directors between them hold not less than 51 *per cent* of its equity share capital. 2. In applying subsection (1) of this section, to a period which is a company's year but not in fact a year, the maximum figures for turnover in paragraph (b) of that subsection shall be proportionately adjusted.			
65	**356 (1)**	(1) The Minister may after consultation wit h the Nigerian Accounting Standards Board by regulations in a statutory instrument- …..	FRC has replaced NASB	(1) The Minister may after consultation with the Financial Reporting Council of Nigeria may by regulations in a statutory instrument- …	The FRC Act has repealed the defunct NASB
66	**358 (1)**	The provisions of the Institute of Chartered Accountants of Nigeria Act shall have effect in relation to any investigation or audit for the purpose of this Act so however that none of the following persons shall be qualified for appointment as auditor of a company, that is- a. a. an officer or servant of the company; b. a person who is a partner of or in the employment of an officer or servant of the company; or c. a body corporate,	(1) 358(1) mentions only the ICAN Act. This is too restrictive. (2) "A body corporate" as stated in section (1)(c) is somewhat ambiguous	The provisions of the Institute of Chartered Accountants of Nigeria Act or any other applicable Act shall have effect in relation to any investigation or audit for the purpose of this Act….. (2) We recommend the insertion of the following in subsection 1(c): (c) a body corporate partnership or business name,	(1) There are other Acts that may be equally applicable on this subject. We suggest that there should be qualification for membership of audit committees not necessarily accounting qualification. There should also be mechanisms put in place for continuous education of members of audit committees (especially non-executive directors) in order that they may have sufficient literacy in financial matters and be able to monitor the management more effectively, thereby reducing the risk associated with dissociation of ownership rights and management rights in a company. A new subsection can cover

					for this new requirement. (2) It is necessary to exclude Partnerships and Business Names from appointment as auditors.
67	**359 (1, 2, 4).**	(1) The auditors of a company shall make a report to its members on the accounts examined by them, and on every balance sheet and profit and loss account, and on all group financial statements, copies of which are to be laid before the company in a general meeting during the auditors' tenure of office. (2) The auditors' report shall state the matters set out in the Sixth Schedule to this Act (4) The audit committee referred to in su bsection (3) of this section, shall consist of an equal number of directors and representatives of the shareholders of the company (subject to a maximum number of six members) and shall examine the auditors' report and make r ecommendations thereon to the annual general meeting as it may think fit: Provided, however, that such member of the audit committee shall not be entitle d to remuneration and shall be subject to re-election annually	Clause 1 is using wrong nomenclature while the sixth schedule referred under clause 2 needs to be amended to align with relevant ISAs. Clause 4 did not include the qualification/experience of members to be nominated to the audit committee of a company	(1) The auditors of a company shall make a report t o its members on the accounts examined by them, and on every statement of financial position and statement of other comprehensive income, and on all group financial statements, cop ies of which are to be laid before the company in a general meeting during the auditors' tenure of offi ce. (2) The auditors' report shall state the matters set ou t in the Sixth Schedule to this Act (4) The audit committee referred to in subsection (3) of this section, shall consist of an equal number of directors and representatives of the shareholders of the company (subject to a maximum number of six members) and shall examine the auditors' report and make recommen dations thereon to the annual general meeting as it may think fit: Provided, however, that such member of the audit committee shall not be entitled to remuneration, shall be subject to re-election annually and have relevant accounting/financial knowledge to discharge his/her duties as an audit committee	This section has to align with the requirements of IFRS and relevant International Standards on Auditing (ISA). Secondly, Audit Committee members should be able to function effectively by possessing relevant accounting/financial knowledge. We should amend the sixth schedule to comply with relevant requirements of ISA especially the newly released ISA 702.

				member effectively	
68	**374**	The annual return shall be completed within 42 days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting of the company in that year, and the company shall forthwith forward to the Commission a copy signed both by a director and by the secretary of the company.	This provision should not apply to private companies.	The annual return shall be completed within 42 days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting of the company in that year, and the company shall forthwith forward to the Commission a copy signed both by a director and by the secretary of the company. <u>This provision shall be applicable to only public companies.</u>	- Private companies should not be compelled to file annual returns. - The annual returns should be circulated to members and thereafter submitted to the Commission within 30 days of the circulation. - There should be no requirement to hold a general meeting regarding the annual returns for private companies. - The Malaysian companies law has abolished the requirement for private Companies to hold Annual general meetings (AGM).
69	**382**	1. Where dividends are returned to the Company unclaimed, the Company shall send a list of the names of the persons entitled with the notice of the next annual general meeting to the members. 2. After the expiration of 3 months of the notice mentioned in subsection (1) of this section, the Company may invest the unclaimed dividend under this section for its own benefit in an investment outside the company, and no interest shall accrue on the dividends against the Company. 3. Where dividends have been sent to members and there is an omission to send to some members due to the fault of the company, the dividends shall earn interest at the current bank rate from three months after the date on which they ought to have been	The fact that companies are allowed to keep and invest the unclaimed dividends has resulted in the quantum of unclaimed dividends in the country as such companies do not make concerted efforts to locate the owners of those dividends. .	It is proposed that the company should publish a list of unclaimed dividends with the names of persons entitled to the dividends in two national dailies and the company's website simultaneously. The unclaimed dividends shall be paid into a Trust Fund to be managed by an Independent Fund Manager and regulated by the SEC. The Fund Manager should invest only in Federal Government Bonds and the payment to the Fund Manager shall not be more than 0.25% of the total Fund or as may be determined by SEC from time .	This is in line with best practice

		posted.			
70	**385**	Dividends shall be special debts due to, and recoverable by shareholders within twelve years, and actionable only when declared.	This section is a very controversial provision in respect of unclaimed dividends. It does not state what will happen to the entitlements after 12 years. The implication is that since the company is empowered under section 382 to invest the unclaimed dividend, it should continue to do so after 12 years unhindered. Section 385 has been criticized in various quarters as unfair and unjust to shareholders/investors who are barred perpetually from reaping their profits after 12 years limitation period	The 12 years limitation period in section 385 should be abolished. Consequently section 385 of the Principal Act should be amended by deleting the following words thereof – "within 12 years."	Shareholders should be empowered under the Act to collect their entitlements whenever they appear. Dividends should be recoverable by a shareholder in perpetuity.
71	**387**	1. The following persons shall not be appointed or act as receivers or managers of any property or undertaking of any company- a. an infant; b. any person found by a competent court to be of unsound mind; c. a body corporate; d. an undischarged bankrupt, unless he shall have been given leave to act as a receiver or manager of the property or undertaking of the company by the court by which he was adjudged bankrupt; e. a director or auditor of the company; f. any person convicted of any offence involving fraud,	This section only prescribes for persons who are disqualified from appointment or acting as a receiver or manager based on their capacity and integrity, but is silent on the qualifications required from a person to hold such an office.	There should be a provision in the section specifying the qualifications required from such persons to be appointed or act as receiver or manager, to encourage higher standards in practice and professionalism. (For instance, people with proven track record or confirmed by relevant professional bodies). This should be defined as "insolvency practitioners" and qualifications should be provided.	This will ensure appointment of experienced and qualified persons who possess sufficient background knowledge of the law and practice required to hold such office.

		dishonesty, official corruption or moral turpitude and who is disqualified under section 254 of this Act. 2. Any appointment made in contravention of the provisions of subsection (1) of this section shall be void and if any of the persons named in paragraphs (c), (d), (e) and (f) of that subsection shall act as a receiver or manager, he shall be guilty of an offence and liable to a fine not exceeding N2,000 in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine not exceeding N500. 3. Where any of the persons mentioned in subsection (1) of this section is at the commencement of this Act acting as a receiver or manager, he may be removed by the court on an application by a person interested.			
72	**387 (1f)**	Any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and who is disqualified under section 254 of this Act.	The "and" is conjunctive, meaning a person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude can be a receiver or manager as long as he is not disqualified under sections 251 and 252 of the Act, which is rather limiting.	"Any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude ***or*** who is disqualified under sections 251 and 252 of this Act"	The wording is misleading
73	**387 (2)**	Any appointment made in contravention of the provisions of subsection (1) of this section shall be void and if any of the persons named in paragraphs (c), (d),	The fine prescribed is too small	"...he shall be guilty of an offence and liable ***to a fine in the case of a body corporate or***, in the case of an individual, to imprisonment for a term not exceeding	The fine is not substantial enough to serve as a deterrent.

		(e) and (f) of that subsection shall act as a receiver or manager, he shall be guilty of an offence and liable to a fine not exceeding N2,000 in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine not exceeding N500.		six months or to a fine or both"	
74	**387 (3)**	Where any of the persons mentioned in subsection (1) of this section is at the commencement of this Act acting as a receiver or manager, he may be removed by the court on an application by a person interested	Provides for the right to apply to the court to remove a person disqualified, but should add that the removal does not excuse the illegality of the appointment in the first place.	"Where any of the persons mentioned in subsection (1) of this section is at the commencement of this Act acting as a receiver or manager, he may be removed by the court on an application by a person interested, ***but without prejudice to the provisions of subsection (2) of section 387 of this Act"***.	This eliminates any ambiguity
75	**387 (3)**	Where any of the persons mentioned in subsection (1) of this section is at the commencement of this Act acting as a receiver or manager, he may be removed by the court on an application by a person interested	The term "person interested" is too wide and is subject to different interpretations.	This should be qualified, e.g. "member, creditor, employee, or such other persons as the Commission may prescribe"	The term is ambiguous and could lead to frivolous applications from persons who do not have a stake
76	**391**	A receiver or manager of the property of a company appointed in accordance with the provisions of subsection (1) of section 390 of this Act may apply to the court for direction in relation to any particular matter arising in connection with the performance of his functions, and on any such application, the court may give such directions or make such order declaring the rights of persons before the court or otherwise, as it thinks just.	This provision should contain a right for the appointor to apply for directions of the court in a matter concerning the performance of the receiver or manager	"A receiver or manager of the property of a company appointed under a power contained in any instrument, ***or the persons by whom or on whose behalf a receiver or manager has been so appointed***, may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application, the court may give such directions or make such order declaring the rights of persons before the court or otherwise, as it thinks just".	The beneficiaries of the appointment should also be entitled to apply to court for directions as it is their interest which is at stake.
77	**392 (1)**	Where a receiver or manager of the property of a company has been appointed, notice shall be given to the Commission within 14 days, indicating the terms of and remuneration for the	In light of technological advancement, the website is the most	"Where a receiver or manager of the property of a company has been appointed, notice shall be given to the Commission within 14 days, indicating the	This will conform with modern day realities

		appointment, and every invoice, order for goods or business letter issued by or on behalf of the company, or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.	visible place for a company to give notice of such appointment, and should contain a statement that a receiver has been appointed	terms of and remuneration for the appointment, and every invoice, order for goods or business letter issued by or on behalf of the company, or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, ***and all the company's websites, being a platform on or in which the company's name appears,*** shall contain a statement that a receiver or manager has been appointed"	
78	**396 (1a)**	(1)Where a receiver or manager of the whole or substantially the whole of the property of a company (in this section and in section 397 of this Act referred to as "the receiver") has been appointed on behalf of the holders of any debentures of the company secured by a floating charge, then, subject to the provisions of this section and of section 397 of this Act the receiver shall forthwith send notice to the company of his appointment and the terms; and	The receiver is only required to send notice to the company of his appointment. He should be required to publish a notice of his appointment as prescribed in section 181	The receiver shall forthwith send notice to the company of his appointment and the terms ***and publish the notice of his appointment in the manner prescribed in section 181 of this Act***"	This will harmonise the provisions of the Act in relation to appointment of receivers and managers
79	**399 (2)**	In the case of any such default as is mentioned in paragraph (a) of subsection (1) of this section, an application for the purposes of this section may be made by any member or by the Commission, and in the case of any such default as is mentioned in paragraph (b) of that subsection	This subsection provides that the application can be made by any member or the Commission	"In the case of any such default as is mentioned in paragraph (a) of subsection (1) of this section, an application for the purposes of this section may be made by any member ***or creditor of the company*** or by the Commission, and in the case of any such default as is mentioned in paragraph (b) of that subsection...	A creditor of the company should also be entitled to make such an application
80	**402**	In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company as provided in section 92 of this Act	This provision lacks clarity.	It is recommended that the following sub-paragraph be inserted in Section [92(4)] of the Act: "Nothing in this Act invalidates any provision in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract."	Section 404 references Section 90 (i.e. 92(4) of the Act on liability of members upon winding up. The qualifications of liability provided in Section 92(4) of the Act are not exhaustive, as it does not envisage restrictions on liability that may arise from insurance policies or other contracts.

81	**404**	The liability of a contributory shall create a debt of the nature of a speciality accruing and due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.	Use of the term "Specialty Debt"- A specialty debt is a debt that is created by a deed or an instrument. Under the current state of the law both a debt created by simple contract or by deed are enforceable, and this distinction is unnecessary.	It is recommended that the phrase "a debt of the nature of a specialty" be replaced with the phrase "a debt of the nature of an ordinary contract debt".).	This aligns with the approach in the UK Insolvency Act 1986 ("UKIA")
82	**404**	Same as above	There is no period of limitation specified for enforcing the debt claim against the contributory, and it is important to peg the limitation period for instituting an action against a contributory for debts due to a company as created under this section.	"An action to recover a debt created by this section shall not be brought after the expiration of 6 years from the date on which the cause of action accrued**".**	This aligns with practices in other jurisdictions.
83	**407 (1)**	The court having jurisdiction to wind up a company shall be the Federal High Court within whose area of jurisdiction the registered office or head office of the company is situate.	Ambiguity on the issue of head office and registered address and the Jurisdiction of the Federal High Court.	It is recommended that the provision refer to either head office or registered office and not both, and that the term "head office" (if elected), be defined as ***"principal place of business of the company at the time of presentation of the petition for winding up."***	Contrary to the assumption underpinning this section, we note that in some cases, the registered office address of a company on record at the Corporate Affairs Commission (**CAC**) may be different from its head office.
84	**407 (1)**	The court having jurisdiction to wind up a company shall be the Federal High Court within whose area of jurisdiction the registered office or head office of the company is situate.	Ambiguity on the territorial jurisdiction of the Federal High Court	It is recommended that the provision makes reference to the Division of the Federal High Court closest to the registered address or head office of the company as the case may be.	This will enhance clarity on the jurisdiction to commence a Winding Up proceeding. This is because the Federal High Court is one in Nigeria with Divisions across the country.
84	**407 (1)**	The court having jurisdiction to wind up a company shall be the Federal High Court within whose area of jurisdiction the registered office or head office of the company is situate.	As presently drafted, there may be instances of cases being struck out for commencement in a wrong jurisdiction.	There should be a provision for the transfer of proceedings if they are started in the wrong court or the wrong jurisdiction. This is to prevent waste of time when cases are struck out and have to be started all over again. The CAMA can provide that the court on application, or suo motu, can transfer the case to the appropriate court, upon discovery that it lacks the jurisdiction to hear the matter.	This is the position in the U.K, and it is a commendable position to adapt in our laws.

85	**409 (a)**	A creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding N2000, then due, has served on the company, by leaving it at its registered office or head office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or…	a. The proposed floor of N2000 for winding up appears too low. b. The timeframe within which a petitioner is to file a petition for winding up a company after the expiration of the three weeks' notice for payment is not set.	It is recommended that the threshold should be reviewed upwards. In the alternative, the law can utilize different thresholds for companies of different sizes or for private and public companies. The recommended timeframe for bringing a winding up action should be 2 months after the expiration of the 3 weeks' period.	A higher threshold will serve to obviate the filings of frivolous petitions or petitions with the motive of debt collection. Setting a timeframe will prevent the right to bring an action from existing in perpetuity.
86	**410 (2c)**	the court shall not hear a winding-up petition presented by a contingent or prospective creditor until sufficient security for costs has been given and a prima facie case for winding up has been established to its satisfaction;	This provision appears onerous as it provides for both securities for cost as well as the establishment of a prima facie case.	"the court shall not hear a winding-up petition presented by a contingent or prospective creditor until sufficient security for costs or such other satisfactory undertaking has been given, or a prima facie case for winding up has been established to its satisfaction;"	The requirement for security for cost as well as establishment of a prima facie case appears to be onerous. The word **"and"** should therefore be replaced with **"or"** to give the court a wide latitude to hear a winding up petitions.
87	**420 (5)**	If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of N25 for every day during which the default continues.	The fine is too low to be a deterrent.	"If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of N10,000 and N1000 for every day during which the default continues. ."	The enhancement of the penalty regime will ensure compliance.
88	**425 1 (c)**	The liquidator in a winding up by the court shall have power, with the sanction either of the court or of the committee of inspection, to appoint a legal practitioner or any other relevant professional to assist him in the performance of his duties;	The section mandates the liquidator to obtain the sanction of the court or the committee of inspection to carry out the appointment of a legal practitioner.	It is recommended that section 425 (1) (c) should be expunged in the face of 425 (2)(g). The former requires sanction to appoint a legal practitioner whilst the latter permits – without sanction- the liquidator to appoint any agent for the performance of any act that the liquidator is unable to perform.	A legal practitioner is an agent thus the liquidator can rely on 425 (2)(g) to make an appointment of a legal practitioner without any restriction and this accords better with business efficacy.
89	**427 (1)**	Subject to the provisions of this Act, the	The drafting language is	(1) Subject to the provisions of this Act, the	This phrase is not drafted elegantly. Since

		liquidator of a company being wound up by the court shall, in the administration and distribution of the assets of the company among its creditors, have regard to directions given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection; so however that directions given by the creditors or contributories at any general meeting shall, in case of conflict, override directions given by the committee of inspection.	inelegant.	liquidator of a company being wound up by the court shall, in the administration and distribution of the assets of the company among its creditors, have regard to directions given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection; provided that directions given by the creditors or contributories at any general meeting shall, in case of conflict, override directions given by the committee of inspection.	the intention of the law is for directions by creditors and contributories to override those of the committee of inspection, then there should be a proviso such as "provided" to replace the phrase "so however".
90	**438 (5)**	If default is made in lodging a copy of an order made under this section with the Commission as required by subsection (4) of this section, every officer of the company or other person who authorises or permits the default shall be guilty of an offence punishable by a fine of a daily default penalty of N25.	See comment in 8 above.	If default is made in lodging a copy of an order made under this section with the Commission as required by subsection (4) of this section, every officer of the company or other person who authorises or permits the default shall be guilty of an offence punishable by a fine of N10,000 and a daily default penalty of N100.	The penalty sum is too low to have a deterrent effect in view of current realities, and should be reviewed upwards. Further, it is opined that it is unnecessary to impose criminal sanction for failure to file the order with the CAC.
91	**454 (3)**	If the liquidator makes default in complying with the requirements of this section, he shall be liable to a penalty of N25 for every day during which he is in default.	The section imposes a default penalty of N100 on the liquidator for any failure to comply with the requirement of the section that is to file a copy of the dissolution order with the CAC.	The penalty for default should be amended to reflect current economic realities.	This penalty is low in view of current realities, and sanctions should dis-incentivize non-compliance.
92	**462 (2)**	A declaration made as aforesaid shall have no effect for the purposes of this Act unless— a. it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Commission for registration before that date; and b. it embodies a statement of the company's assets and liabilities	The timing for registration of the statutory declaration is unclear and impractical in view of current realities, as the current provision requires delivery of the statutory declaration to the CAC.	We recommend that section 462(2)(a) should be amended as follows- after "and," on the second line, insert, "the statutory declaration and the resolution is delivered to the Commission for registration within 15 days after the passing of the resolution."	This is in line with the provisions of the UKIA.

		as at the latest practicable date before the making of the declaration.			
93	**462 (3)**	Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be guilty of an offence and liable on conviction to a fine of N1,500 or to imprisonment for a term of three months, or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed	The penalty is low considering the seriousness of the offence and the need to provide the appropriate deterrence from non-compliance.	We recommend that the penalty be reviewed to at least N50,000	The revision of this penalty will ensure it fulfills the purpose of deterrence or punishment for non-compliance.
94	**467 (1)**	Subject to the provisions of section 469 of this Act, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Commission may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.	The section does not require the liquidator to provide members with the liquidator's report, and members are entitled to a copy of the annual report and financial statements prior to general meetings.	It is recommended that a provision be included to require the accounts to be sent to the members of the company and such other persons as may be prescribed, prior to the holding of the meeting.	This is in accordance with best practices.
95	**468 (2)**	The meeting shall be called by notice published in the Gazette and in two newspapers printed in Nigeria and circulating in the locality where the meeting is being called, specifying the time, place and object thereof, and	The coverage of the notice is not adequate enough	The notice should include two national dailies and on the company's website.	This will enhance the dissemination of notice to as many shareholders as possible.

		published one month at least before the meeting.			
96	**472 (2)**	The company shall cause notice of the meeting of the creditors to be published once in the Gazette and once at least in two newspapers printed in Nigeria, and circulating in the district where the registered office or principal place of business of the company is situate.	The coverage is inadequate.	The notice should include two national dailies and on the company's website.	This will enhance the dissemination of notice to as many shareholders as possible.
97	**473**	The creditors and the company at their respective meetings mentioned in section 472 of this Act may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person if any, nominated by the company, shall be liquidator: Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the persons nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors. (2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no	This section provides for the appointment of the liquidator but stipulates no qualifications for appointment.	This provision should be amended to specify the qualification of the liquidator to be an accountant or legal practitioner.	To ensure that only professionals handle this sensitive assignment.

		such committee, the creditors, sanction the continuance thereof.			
98	**478(2)**	Each such meeting shall be called by notice published in the Gazette and in two newspapers printed in Nigeria and circulating in the locality where the meeting is being called, specifying the time, place and object thereof, and published one month at least before the meeting.	We find this notice provision inadequate. It requires the notice of a creditors' meeting at which the liquidator will table an account of the winding up of the company, prior to the company's dissolution, to be published in the Gazette and two newspapers circulating in the locality where the meeting is being called.	We are of the view that reference to the locality where the meeting will be called is inappropriate. In addition, we recommend that the notice be published in two national dailies and the company's website.	This will ensure adequate notice to the required attendees.
99	**480 (5) and (6)**	(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Commission an office copy of the order for registration, and if that persons fail so to do he shall be liable to a penalty of N25 for every day during which the default continues. (6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a penalty of N250.	This sub section requires the liquidator to deliver an "office copy" of the order of court deferring the effective date of a company's dissolution. It is unclear what constitutes an office copy of the Order.	It is recommended that this sub section should instead require the filing of a "copy of the account". Alternatively, the word "certified true copy" could be used.	This is to align with best practice and also make the penalty serve as a deterrent
100	**490 (2)**	2) A winding up subject to the supervision of the court shall not amount to a windin g-up by the court for the purpose of the provisions of this Act as specified in the T welfth Schedule to this Act (dealing with provisions which do not apply in the case of winding up subject to the supervision of the court) but, subject to this, an order for a winding up subject to supervision sh all for all purposes be an order for windin	There is hardly any matter which is referred for winding up subject to supervision of the Court under section 408.	The entire procedure is redundant. Compulsory winding up would take care of any item requiring winding up subject to supervision of the Court. The entire Chapter 4 should be deleted.	This will streamline the winding up process.

		g up by the court:			
101	**491 (2).**	If the liquidator fails to comply with the requirements of this section, he shall be guilty of an offence and liable to a fine of N25 for every day during which default continues.	The provision appears to penalize the liquidator for failure to submit a valuation report which may have to be prepared by a value appointed by the Commission.	The penalty should be reviewed to reflect current economic realities.	Enhancement of the penalty will serve as deterrence and ensure compliance.
102	**495**	(1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly. (2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void. (3) For the purposes of this section, the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.	The Act still retains the fraudulent preference provisions, which requires proof of intention to defraud. this was a legacy of the 1968 English Companies Act, and England has since moved away from the need to prove fraud, because in most cases, there is no intention to defraud, merely an intention to prefer. Fraud is no longer a requirement in England and this is now simply referred to as "voidable" or "unfair" preference and the only requirement is the intention to prefer one creditor to another. Also, we should try and reduce reference to the Bankruptcy Act as much as possible	We suggest this be incorporated in the Act and Section 495 be amended as follows: 495 (1) – Where a company at any time within the period defined in sub-section (6), does anything or suffers anything to be done which (in either case) has the effect of putting a person, being one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, into a position which, in the event of the company going into winding up, will be better than the position the person would have been in if that thing had not been done, that thing done or suffered to be done by the company shall be deemed a preference of that person, and be invalid accordingly. (2) Notwithstanding sub-section (1), a preference given to any person shall not be invalid unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in sub-section (1) of this section. (3) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (2). (4) The fact that something has been done in pursuance of the order of a court does not, without	This will accord with best practice.

				more, prevent the doing or suffering of that thing from constituting the giving of a preference. (5) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void. (6) In the case of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), the time is the period of 2 years ending with the onset of insolvency (which expression is defined below), and in any other case, the time is the period of 12 months ending with the onset of insolvency. (7) For the purposes of this section, the onset of insolvency is the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up.	
103	**502 (1d)**	(1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up- (c) within 12 months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of N100 or upwards, or conceals any debt due to or from the company;	The concealment of property threshold of from N100 should be revised to higher amount.	The value should be amended to reflect current economic realities.	An upward review will ensure deterrence.
104	**509**	1. The following persons shall not be competent to be appointed or to act as liquidator of a company, whether in	The Act provides for disqualification of a person from acting as a liquidator	There should be a provision in the section specifying the qualifications required from such persons to be appointed or act as liquidators as	Establishment of basic qualifications will ensure that persons acting as liquidators will possess the relevant skill set to act in

		a winding up by, or under the supervision of the court, or in a voluntary winding up- a. an infant; b. anyone found by the court to be of unsound mind; c. a body corporate; d. an undischarged bankrupt; e. any director of the company under liquidation; f. any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and in respect of whom there is a subsisting order under section 254 of this Act. 2. Any appointment made in contravention of the provisions of subsection (1) of this section shall be void and if any of the persons named in paragraphs (c), (d) (e), and (f) of that subsection shall act as a liquidator of the company, he shall be guilty of an offence and liable to a fine not exceeding N2,500 in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine not exceeding N500 or to both such imprisonment and fine.	without providing some basic qualification of who should be considered as a liquidator.	reflected in Section 473.	that capacity.
105	**524**	1. Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court may think fit, declaring the dissolution	Drafting language. The heading of this section should adopt the normal expression of what is intended	The word 'void should replace the word 'avoid'.	'This will correct the drafting language.

		to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. 2. It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the Commission for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine ofN25 for every day during which the default continues.			
106	**547 (3)**	If a company carries on business without complying with subsection (2) of this section, the company and everyofficer in default shall be guilty of an offence liable on conviction to a fine of N50 for every day during which the company so carries on business.	The fine of ₦50 is too minimal for the breach. Companies may prefer to breach same and pay the fine afterwards.	An upward review of the fine is recommended.	An upward review will ensure deterrence
107	**547 (2)**	Notice of any change in the address of the registered or head office of the company shall be given within 14 days of the change to the Commission which shall record the same: Provided that a postal box address or a private mailbag address shall not be accepted by the Commission as the registered or head office.	The notification to the Commission of a change in the registered office of a company may not be sufficient notice to the investing public of the company's change of address, thus it may be necessary to accord the public the grace of additional time after the stipulated 14 days in section 547 (2) within which communications could still be made to the company through the changed address. This would afford them an opportunity to still communicate with the firm	Additional time frame for communicating to the company through the changed address should be included in the section. The companies should also be mandated to publish the notice of change in address in at least two national dailies and the company's website. Similarly, the CAC should be obligated to publish on its website on a weekly basis any change in address of a company to keep investors aware.	This would accord the investing public sufficient notice of the change of address of the company. It is similar to the practice in the UK as contained in S.87 (2) of the Companies Act.

			and be informed of the change in address. Publication of the notices in at least two national dailies should be made mandatory.		
108	**548**	1. Every company, after incorporation, shall- a. paint or affix, and keep painted or affixed, its name and registration number on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible; b. have its name engraved in legible characters on its seals; and c. have its name and registration number mentioned in legible characters in all business letters of the company and in all notices, advertisements, and other official publications of the company, and in all bills of exchange, romissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills or parcels, invoices, receipts, and letters of credit of the company. 2. If a company fails to paint or affix, and keep painted or affixed its name in the manner directed by this Act…..	The provision does not take into consideration modern technology of information dissemination.	This provision should be amended to mandate all companies to publish their names and incorporation numbers on their websites.	To keep abreast with technological advancement of information dissemination.
109	**550 (2,3 &4)**	(2) Where any such register, record, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and for facilitating its discovery and where	Existence of different subsections in the Act on the subject matter.	Merger of S. 550 (2, 3 & 4)	In view of the fact that the subject matter and the contents of the subsections are similar, it is suggested that they be merged into one subsection for uniformity.

		default is made in complying with the provisions of this subsection, the company and every officer of the company who is in default shall be liable to a fine of N50 and where the offence is a continuing one, shall in addition be liable to a fine of N50 for every day during which the default continues. (3) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means including electronic means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery. (4) If default is made in complying with the provisions of subsection (3) of this section, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine of N50 and for continuing contravention, to a daily default fine of N5.			
110	**550 (1)**	Any person may, on payment of the fees prescribed in Part III of the Fifteenth Schedule to this Act, inspect documents or obtain certificates of incorporation or copies of or extracts from documents held by the Commission for the purposes of this Act.	Need to automate this process	A new provision should be inserted mandating the Commission to conduct this process electronically	To conform with current technological advancement.
111	**555 (1)**	If, on application made to a Judge of the Federal High Court in chambers by the **Attorney-General of the Federation**, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the	Reserving the power to make an application under the section to the Attorney General of the Federation (AGF) is too restrictive.	The power to make such an application should be given to both the Attorney General of the Federation (AGF) as well as any Legal Practitioner who has obtained fiat.	It may be difficult to secure the AGF who usually has a busy schedule.

		Commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made.			
112	**574 (2)**	Where the registration to be effected is that of an individual or a firm consisting only of individuals, there shall be submitted to the Registrar copies of the passport photographs of the individual certified in a manner required by the Registrar	Non inclusion of any valid means of identification to accompany the passport photograph	Inclusion of a government-approved valid means of identification	For proper identification of applicants and execution of proper KYC
113	**576 (2)**	On the registration of any change in the particulars registered in respect of any firm, company or individual, the Registrar may in his discretion either amend the certificate previously issued or issue a fresh certificate.	Grant of discretion to the Registrar of business name to either amend a certificate of registration or issue a new one upon registering the change of particulars of any firm, individual or company	An amendment to read thus: " On the registration of any change in the particulars registered in respect of any firm, company or individual, the Registrar shall issue a fresh certificate"	The power to amend a certificate or issue a fresh certificate should be at the instance of the company requesting same from the Registrar.
114	**585**	The Minister may with the approval of the President, make regulations- a. for the governance and guidance of the Registrar and Assistant Registrars and of all persons acting under them; b. prescribing the forms to be used for the purpose of this Part of this Act; c. prescribing the fees to be taken by the officers by or before whom the acts for which the fees are payable are done under this Part of this Act; d. generally for the conduct and regulation of registration under this Part of this Act and any matters incidental thereto.	This provisions vests regulation making power on the Minister Secondly, the Minister in charge of Trade and Investment is no longer the Minister with the responsibility of supervising the Commission, an amendment of this provision shall become necessary.	The Commission, should be empowered to make the rules with the approval of the minister. The provision should be worded to say 'the Minister in charge of trade and investment or any Minister with the responsibility to make regulations with the approval of the Commission.	The Commission stands in a better position to make regulations as it possesses first hand information on areas of the regulation that requires improvement. With the rule making power vested in the Commission, the Minister should be the approving authority.
114	**New**	Provision for electronic filing of documents	The Act did not provide for electronic filing of documents	A new provision should be inserted to accommodate electronic filing of documents	To align with technological advancement
115	**592 (1)**	A person shall not be qualified to be appointed as a trustee if- a. he is an infant; or b. he is a person of unsound mind having been so found by a court;	Inclusion of an additional ground for disqualification	A person convicted of an offence in connection with the promotion, formation of management of a body corporate should also be disqualified. On a general note, persons convicted of any	This amendment is suggested as an inclusion to the criteria for disqualification under S.592 to ensure that only credible persons emerge as trustees.

		c. he is an undischarged bankrupt; or d. he has been convicted of an offence involving fraud or dishonesty within five years of his proposed appointment.		criminal offence could also be disqualified from being trustees of a body corporate	
116	**593 (1)**	The constitution of the Association shall in addition to any other matter state the name or title of the Association which shall not conflict with that of a company, or with a business name or trade mark registered in Nigeria	Non inclusion of conflict with the name of another association	Inclusion of "**Association"** immediately after company	The current wording of the provision seems to permit for associations to be registered with names that are in conflict with those of other Associations.
117	**603**	The powers vested in the trustees by or under this Act shall be exercised subject to the directions of the association, or of the councilor governing body appointed under section 601 of this Part of this Act, as the case may be.	Absence of expressly spelt out duties of the trustees	Insertion of provisions In the Act which spell out the duties of the trustees	Inclusion of these duties in the Act would make a breach in this regard a contravention of the Act which would carry more stringent punishment than that which could be contained in the Association's constitution. This would deter trustees from defaulting in that regard.
118	**609**	The Minister may, with the approval of the President, make regulations generally for the purpose of this Part of this Act and, in particular, without prejudice to the generality of the foregoing provisions, make regulations	Empowering the minister to make regulations with the approval of the president is not realistic	The Commission should be empowered to make the rules with the approval of the minister	The Commission stands in a better position to make regulations as it possesses first hand information on areas of the regulation that requires improvement. With the rule making power vested in the Commission, the Minister should be the approving authority.
119	**607**	1. The trustees of the corporation shall not earlier than 30 June or later than 31 December each year (other than the year in which it is incorporated), submit to the Commission a return showing, among other things, the name of the corporation, the names, addresses and occupations of the trustees, and members of the councilor governing body, particulars of any land held by the corporate body during the year, and of any changes which have taken place in the constitution of the association during the preceding year. 2. If the trustees fail to comply with subsection (1) of this section they shall	There is need for a more stringent disclosure regime.	In addition to the information disclosed in the annual returns, the Commission should mandate incorporated trustees to include in their constitution and other governance documents relating to their establishment, that the entities should prepare and submit a financial report in line with the prevailing accounting standard which fully reflects the financial status of the Association.	This would improve the disclosure regime of the Association and infuse a level of corporate governance.

		be liable to a fine of N5 for each day during which the default continues. This section mandates trustees of the corporations to file annual returns with the Commission on a yearly basis			
120	**New**		Provision for restricted names	Insertion of a new provision to spell out prohibited and restricted names. Notwithstanding that these names may be considered prohibited and restricted, individuals should be granted permission by the Commission to use these names after satisfying certain conditions that the Commission shall prescribe.	To prevent the use of restricted or prohibited names by companies
121	**New**		The Act does not provide a general definition for meetings, save for the definition of statutory meeting.	Meeting shall include 'statutory meeting, annual general meeting, extraordinary general meeting or any other type of meeting, conducted physically or virtually, which shall be held in compliance with the provisions of this Act	There should be a general definition of meeting to state all meetings contemplated under the Act
122	653 "Establishment of Business Names, Registry in Each State"	"There shall be established in each State of the Federation, **a register office of business names**…."	The language use is misleading.	"There shall be established in each State of the Federation, **a business names registry**…."	The language proposed is clearer and unambiguous.
123	657 (2) "Procedure for Registration"	"Where the registration to be effected is that of an individual or a firm consisting only of individuals, there shall be submitted to the Registrar copies of the passport of the individual certified in a manner required by the Registrar."	As phrased, the clause suggests that the individuals who are partners in a firm which also has corporations as partners will not need to submit their passport photographs. This appears to defeat the purpose for such submissions.	To be amended to read thus: "Where the registration to be effected is that of an individual or a firm some or all of whose partners are individuals, there shall be submitted to the Registrar copies of the passport photographs of the individuals certified in a manner required by the Registrar."	This will enhance clarity.
124	657 (3) (b) "Procedure for Registration"	"b) the name of each firm or corporation **in** whose behalf the business is carried on."	The drafting language is Incorrect.	"b) the name of each firm or corporation **on** whose behalf the business is carried on."	Use of proper language.
125	657 (5) (c) "Procedure for Registration"	"(c) in the case of a **company,** be signed by a director or the secretary: ..."	Lack of consistency in defined/referenced terms.	"(c) in the case of a **corporation,** be signed by a director or the secretary: ..."	Consistency of language and defined terms.
126	661 (3) "Removal of Name from Register"	"Where the Registrar has reasonable cause to believe that any **firm, company or individual** registered under this Act is	Lack of consistency in defined/referenced terms.	"Where the Registrar has reasonable cause to believe that any **Registered Business Name** is not carrying on business, **he may send a notice by**	Consistency of language and defined terms. The introduction of **Registered Business**

		not carrying on business, **he may send to the firm, company or individual by registered post a notice that**, unless an answer is received to such notice within two months from the date thereof, the individual, firm or corporation, company or individual may be removed from the register"		**registered post to the Registered Business Name that,** unless an answer is received to such notice within two months from the date thereof, the **Registered Business Name** may be removed from the register."	**Name** ensures clarity in the reference being made, as the individual, firm or corporation will now be a registered business name.
127	665 (1) (a) and (b) "Publication of True Name"	"…(a) in the case of an individual, his present forenames or the initials thereof and present surname and any former forenames or surname and his nationality; and (b) in the case of a firm, the present forenames or the initials thereof and present surname, and any former forenames or surnames and the nationality of all the partners in the firm or in the case of a corporation being a partner, the corporate name; and…"	The provision for Publication of True Names does not take into account the practical constraints of doing so in the case of firms with several partners	"…(a) in the case of an individual, his present forenames or the initials thereof and present surname and any former forenames or surname and his nationality **(if not Nigerian)**; and (b) in the case of a firm, the present forenames or the initials thereof and present surname, and any former forenames or surnames and the nationality **(if not Nigerian)**; of all the partners in the firm or in the case of a corporation being a partner, the corporate name; and…" Insertion of the following sub-sections: "(2) The provisions of S. 661 (1) does not apply in relation to a document issued by firm with more than 20 partners if the following conditions are met: (a) the partnership maintains an electronic list on its website and at its principal place of business a list of the names of all the partners, (b) no partner's name appears in the document, except in the text or as a signatory, and (c) the document states in legible characters the address of the firm's principal place of business and that the list of the partners' names is open to inspection there and on the company's website. (3) Where a firm maintains a list of the partners' names for the purposes of this section, any person may inspect the list during ordinary business hours or on the company's website. (4) Where an inspection required by a person in accordance with this section is refused or restricted on the website, an offence is committed by any member of the firm concerned who without	The proposed amendment reflects the practical challenges which business trying to comply will face. Please note the English Company Act 2006 (as amended) does not impose this possibly strenuous requirement on its registered business names. section 1201 and 1202.

				reasonable excuse refused the inspection or permitted it to be refused	
128	673 (1) and (2). "Incorporation of Trustees of Certain Communities, Bodies, and Associations"	"Where **one or more trustees** are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, **he or they may**, if so authorised by the community, body or Association (in this Act referred to as "the association") apply to the Commission in the manner hereafter provided for registration under this Act as a corporate body. (2) Upon being so registered by the Commission, the trustee or trustees shall become a corporate body in accordance with the provisions of section 679 of this Part of this Act."	This provision suggests that an Association of persons can be incorporated under Part C of CAMA with one trustee. In practice, the minimum is two trustees, and not a single trustee.	"**Where two or more trustees** are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, **they may**, if so authorised by the community, body or association (in this Act referred to as "the association") apply to the Commission in the manner hereafter provided for registration under this Act as a corporate body. (2): Upon being so registered by the Commission, **the trustees** shall become a corporate body in accordance with the provisions of section 679 of this Part of this Act" This Part of the Act should be amended in line with above.	This amendment reflects the practice in the industry.
129	677 (1) Advertisement and objections	"If the Commission is satisfied that the application has complied with the provisions of sections 674,675, 676 of this Act, **it shall cause the** application to be published in a prescribed form in daily newspapers circulating in the area where the corporation is to be situated and at least one of the newspaper shall be a national newspaper."	The current language of this section indicates that the Commission will be one publishing the name and objectives of the proposed incorporated trustees on behalf of the applicant or trustees.	"If the Commission is satisfied that the application has complied with the provisions of sections 674,675, 676 of this Act, **it shall require the trustees to publish the application in** a prescribed form in two daily newspapers circulating in the area where the corporation is to be situated and at least one of the newspaper shall be a national newspaper."	To remove any potential conflict in interpreting the section.
130	692 "Regulations"	"The **Minister** may with the approval of the President, make regulations"	Placing the power to make regulation in the relation to the Act in the hands of the Minister directly conflicts with section 7 (1) (a) of the Act.	"The **Commission** may with the approval of the President, make regulations-"	This is amendment is in line with the rest of the Act and ensures regulations can be speedily made by a body that is most familiar with the incorporation, operations and regulations of trustees in Nigeria.

General Comments

	Issues/Areas	Comments
1.	**Penalty Regime**	- **The entire penalty regime needs to be reviewed. The law should be flexible such that the CAC can make proposals/regulations regarding penalties from time to time.** - **The Committee needs to look at the penalty regime as a subset of the review of the Act.** - **The penalty should not only be fit for the purpose, it should also fit the person.**
2.	**Electronic Communication**	**All matters in the Act requiring delivery of documentation to the Commission should be reviewed by the Committee in charge of technology and electronic related issues to include electronic communication channels.**
3	**Insolvency Framework- The insolvency framework under CAMA is predicated on the backdrop that the company is failing and the business cannot recover whilst modern insolvency law trend is towards business restructuring aimed at "saving" the business.**	It is recommended that the following should be introduced as part of the insolvency regime: -Administration -Corporate Voluntary Arrangement (CVA) Administration In the UK, one of the major reforms to their insolvency laws is the introduction of Administration, which was designed to help companies experiencing temporary financial difficulties but has a strong business model and also for companies experiencing financial difficulties but a receiver cannot be appointed. One of the main advantages of administration is that the administrator is appointed to act in the interests of the company as a whole and not in the interest of the person that appointed him, as in the case of receivership. This would go some way to relieving the "attack" on companies in trouble by their creditors where each secured creditor usually appoints its own receiver in order to strip the company of its assets and recover their monies. Under the present regime in CAMA, a receiver can continue to carry on the business of the company, but this is done with the ultimate goal of winding up and dissolution. Administration on the other hand, comes with the possibility that the company may survive. We recommend that the framework for Administration should have the following features: • Under English Law, a company can only enter into administration if the court is satisfied that the company is near insolvency. However, this is at odds with the recommendation of the Cork Committee 1986, which recommended that administration should be available at

		an earlier stage. We recommend that Administration should be available for companies that are not yet in insolvency. The period of the administration should be limited to 12 months. If the administrator is unable to turn around the company's fortunes within the 12-month period, it can be reasonably ascertained that the company is not viable. • Appointment of administrator- by the court on application of the company, its directors or creditors • Moratorium on debts • Once an administrator has been appointed, no creditor should be able to appoint an administrative receiver because to do so, would defeat the purpose of administration being in the interest of the company as a whole (see UK Enterprise Act (2002). CVA A CVA is a contractual agreement between a company and its creditors where the company reaches a compromise on its debts. We note that this is similar to the current CAMA provisions on arrangement and compromise. Therefore, the company should be prevented from disposing of any property or obtaining any new security unless the directors can make a declaration that in their reasonable opinion, to do so, would be for the benefit of the company.
4	**Powers of Liquidators**	Generally, in relation to the powers of liquidators, it is recommended that the Act expressly include the power to immediately dispose of perishable goods or assets of the company likely to diminish, or be lost, if not immediately sold or disposed of, upon the Liquidators appointment and once a determination is made that it is not necessary to continue the business of the company as far as is necessary for its beneficial winding up.
5	**Introduction of alternative insolvency procedures**	Introduction of alternative insolvency procedures utilized in other jurisdictions such as Administration and Company Voluntary Arrangements may also be considered. This would however depend on the policy underpinnings of the proposed changes to the statute.