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# Companies Act 2020 and the Challenges of Company Law Reform in Nigeria

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## ABSTRACT

*Most literature that has examined the Nigerian Companies Act 2020 (CA 2020) praised it for representing a fundamental reform of company law. In this article, we examine some of the notable provisions of the CA 2020 that have the potential to ensure a conducive environment for the growth of entrepreneurship and small businesses. However, we identify some challenges that may frustrate the effectiveness of the CA 2020 in practice. These challenges are in the contexts of the prevailing legal, social, and economic factors of public infrastructure and utility services, access to finance, international trade, and tax system. These factors need to be favourable to the Nigerian business environment for the CA 2020 to effectively exert its functional impact. Otherwise, this article argues that contrary to the position in existing literature the CA 2020 may turn out to be a mere incremental than fundamental company law reform.*

**Keywords:** Companies Act 2020, company law reform, entrepreneurs and small businesses, business environment.

## I. INTRODUCTION

The first report of the World Bank's *Business Ready* project expected in the first quarter of 2024 may give an indication of how the Nigerian Companies Act 2020 (CA 2020) has facilitated business activities, promoted private investment, generated employment, and improved productivity in the country after three years of its enactment. The last report on *Doing Business* published by the World Bank in the same year 2020 ranked Nigeria 131 out of 190 countries and with a score of 56.9 over 100<sup>2</sup>. The *Doing Business* ranking and score showed how much the business environment for small businesses and entrepreneurs in an economy had changed over time with respect to benchmarks for regulatory best practices in the formation, operation, and investment of business and corporate entities.

The *Business Ready* report, which will be a substitute for the *Doing Business* report, promises a new approach to assessing the business and investment climates of countries of the world.

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<sup>2</sup> World Bank Group, (2023). *Ease of Doing Business 2020* report. Available at: [https://archive.doingbusiness.org/content/Doing-Business-2020\\_rankings.pdf](https://archive.doingbusiness.org/content/Doing-Business-2020_rankings.pdf)

This new approach of the World Bank aims at establishing a better balance between the ease of doing business and the broader implications for society, and includes obtaining direct information from entrepreneurs, managers, and directors on their experience in navigating a country's business environment<sup>3</sup>. The central focus of the World Bank in both the erstwhile *Doing Business* and the forthcoming *Business Ready* reports is the regulatory framework for the formation and operation of business and corporate entities as constituted in the Companies Acts of the nations of the world.

In the case of Nigeria, the CA 2020 was enacted as company law reform to address and reflect the constant developments in the business landscape of the country in the past 30 years of operation of the repealed Companies Act 1990. The CA 2020 followed far behind the reforms of company law and practices in major common law jurisdictions such as the United Kingdom<sup>4</sup>, Australia<sup>5</sup>, and Canada<sup>6</sup>, including India<sup>7</sup> and South Africa<sup>8</sup>. The CA 2020 therefore had a robust statutory precedent to adopt and adapt according to the peculiar local context of Nigeria. There can hardly be any remarkable ingenuity in any of the provisions of CA 2020 that evidently reflects the statutory positions in those common law jurisdictions except where such provisions cover the field of play for Nigerian businesses in exceptional and peculiar circumstances.

For instance, a plethora of literature has been churned out since the enactment of the CA 2020 with a common objective of identifying the “innovations” or new provisions that represent significant improvements on the repealed Companies Act 1990<sup>9</sup>. In particular, the CA 2020 has been praised for introducing “several provisions which are expected to massively improve the ease of doing business in Nigeria”<sup>10</sup>. While identifying the new provisions, the consensus in most of the literature is that the CA 2020 represents a fundamental reform of company law in Nigeria.

In the first part of this article, we examine the notable provisions of the CA 2020 that are new

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<sup>3</sup> World Bank Group, (2023). Business Ready Project. Available at: <https://www.worldbank.org/en/news/press-release/2023/04/28/World-Bank-Group-Launches-Business-Ready-Project>

<sup>4</sup> Companies Act 2006

<sup>5</sup> Corporation Act 2001

<sup>6</sup> Canada Business Corporation Act 1985

<sup>7</sup> Companies Act 2013

<sup>8</sup> Companies Act 2008

<sup>9</sup> Ogwemoh, Sylva and Folarin, Akorede, (2020). The Companies and Allied Matters Act 2020 - Highlights of the Reforming Provisions and their Implications for Businesses and Investors in Nigeria. Available at SSRN: <https://ssrn.com/abstract=3720259> or <http://dx.doi.org/10.2139/ssrn.3720259>; NC Uzoka, (2020). An Overview of the Companies and Allied Matters Act 2020: Prospects and Challenges. Nnamdi Azikiwe University Journal of Commercial and Property Law Vol.7(2): 72; Adetona, et al. (2020). CAMA 2020: A Breath of Fresh Air or a Replica of the Past. Available at SSRN: <https://ssrn.com/abstract=3738441> or <http://dx.doi.org/10.2139/ssrn.3738441>

<sup>10</sup> Ogwemoh, Sylva and Folarin, Akorede, (2020). The Companies And Allied Matters Act 2020 - Highlights of the Reforming Provisions and their Implications for Businesses and Investors in Nigeria, *ibid*, p. 2

and with potential to promote an enabling environment for small businesses and the entry, operation, management, and re-organization of different corporate structures in Nigeria. However, unlike the existing literature, the second part of this article presents a different approach to determining the extent to which the CA 2020 is a fundamental reform of Nigerian company law, to the extent of fulfilling its commendable objective of promoting the growth of entrepreneurship and small businesses.

Therefore, the approach of this article goes beyond merely identifying the changes introduced by the CA 2020 but examining the challenges of the company law reform to achieving a favourable corporate legal environment for private sector development. This includes the promotion of economic growth through innovation and entrepreneurship, equality of opportunities among small businesses, and long-term economic sustainability<sup>11</sup>. The basis of this approach is that private sector development is driven by the ingenuity of entrepreneurs and the efforts of small businesses, but their success in that regard is largely dependent on the regulatory framework for a conducive business environment.

## **II. NOTABLE PROVISIONS OF THE CA 2020**

Without doubt, the company law reform contained in the CA 2020 marks a significant departure from some of the archaic and retrogressive provisions provided in the repealed Companies Act 1990. Such provisions that imposed unnecessary cost, burdensome delays, and avoidable bureaucracy, including restrictions on entry and formation of business structures have either been modified or omitted in the CA 2020. Those previous provisions that were exclusionary and impeded the growth of small businesses and investment inflow in the economy contributed to an unfavourable business environment.

The business environment has significant impact on how businesses behave throughout their life cycle because it constitutes a set of conditions that are outside the control of a business entity. A favourable business environment should offer easy access to formation of different forms of business structures, allows minimum interference with business operations or management, and provide appropriate protection for business investors or creditors<sup>12</sup>. In particular, it has been argued that the extent of legal protection of investors in a country is an important determinant of the development of its financial markets and business environment<sup>13</sup>.

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<sup>11</sup> World Bank Group, (2022). Pre-Concept Note: Business Enabling Environment. Available at: <https://www.worldbank.org/content/dam/doingBusiness/pdf/BEE-Pre-Concept-Note-pdf/>

<sup>12</sup> Klapper, et al. (2011). The Impact of Business Environment Reforms on New Firm Registration. Policy Research Working Paper 5493, World Bank, Washington, DC. p. 5

<sup>13</sup> See, R La Porta, et al. (1999). Investor Protection and Corporate Valuation. Harvard Institute of Economics Research Paper No. 1882. Available at: <http://ssrn.com/abstract=192549>

This is because when investors' rights are effectively protected by national law, foreign investors are willing to invest more in financial assets such as equity and debt. Such investors recognise that with effective legal protection the returns on their investments would get to them, as opposed to being expropriated by local entrepreneur who controls the business. Thus, an effective regulatory framework for a favourable business environment needs to pass the triple-test of easy access to business structure, minimum interference with operations, and appropriate investor protection.

Accordingly, the notable provisions of the CA 2020 examined below are those that satisfy these tests and are likely to promote small businesses and private sector development. The provisions are examined with a view to determining how the reform of the Nigerian company law seeks to promote the ease of doing business in Nigeria through an efficient and cost-effective legal framework for carrying out business activities which permit adequate flexibility to those incorporating and managing businesses; protect the interests of those involved with the business such as shareholders, creditors and employees; and enhance future or long term economic sustainability.

Therefore, the notable provisions of the CA 2020 are examined under three broad categories of: a) business formation and incorporation; b) business operation and management; c) and protection of company's share capital and stakeholders' interests. The focus of the following discussions is more on how each of these categories relates to small businesses as the engine of economic growth and development of any nation. Accordingly, emphasis is more on the provisions of the CA 2020 relating to new business and corporate structures that are expected to favour, attract, or incentivize entrepreneurial, small, and medium scale businesses.

#### **a. Business Formation and Incorporation Process**

Businesses need corporate vehicles or formal legal structures to carry out their objective of producing goods and services for profit, which in turn generates employment, increases productivity, and contributes to the gross domestic product of the country. The effectiveness of a regulatory framework aimed at promoting enterprise and ease of doing business such as the CA 2020 can be measured by its provisions relating to the process and procedure for the formation and organization of a business structure, including the permissible types of business structures and who may form what business structure.

Notably, the CA 2020 provides for additional types of business structures such as limited liability partnerships and limited partnerships<sup>14</sup>. Under the repealed Companies Act 1990 the

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<sup>14</sup> See Parts C and D of the CA 2020 respectively.

liability of business owners could only be limited in a body corporate either as a private limited company or a public limited company, including companies limited by guaranty. But the CA 2020 provides for the formation of a limited liability partnership and a limited partnership as a body corporate and a legal entity separate from the partners and capable of having perpetual succession<sup>15</sup>. These provisions allow small businesses to choose a corporate form that has the beneficial attributes of an incorporated company but with less formalities, statutory requirements, and cost implications like such company.

Prior to the CA 2020, business partners could only form a business structure under a Business Name, which is restricted in capacity to source for funds from institutional lenders because there is no legal difference between the individual owner and the business itself. To further enhance the capacity of small businesses to form or expand into incorporated companies the CA 2020 provides for single member or single shareholder private company<sup>16</sup>. This now makes it possible to establish in Nigeria a private limited company with just one member or shareholder. For this purpose, the CA 2020 creates the class of a “small company” as a private company with a turnover of not more than N120,000,000.00 and net assets of not more than N65,000,000.00.

The CA 2020 further exempts the category of small companies from the major strictures to investments in small businesses such as the requirements for a private company to have at least two directors and a company secretary<sup>17</sup>. The exemption of small companies from having a legal practitioner as the company secretary underscores the provision of the CA 2020 which allows a single member or any member of a small company, including their agent, to endorse a Statement of Compliance confirming due compliance with the statutory requirements for incorporation of the company<sup>18</sup>. Under the repealed Companies Act 1990, a Statutory Declaration of Compliance must be endorsed by a legal practitioner as the company secretary.

Another aspect where the CA 2020 avoids the necessity of having a legal practitioner and the attendant cost for small businesses interested in the formation of a small company is in the preparation and registration of articles of association. A company may decide whether to register any articles of association or not because the CA 2020 prescribes a model of articles of association which a company without registered articles is deemed to have adopted and be bound. Therefore, the CA 2020 does not only expand the eligibility for the formation of corporate structures to allow small businesses, but it has also sought to make the process and

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<sup>15</sup> Sections 746 and 795 of the CA 2020 respectively.

<sup>16</sup> See section 18 of the CA 2020

<sup>17</sup> See sections 330 of the CA 2020

<sup>18</sup> Section 40 of the CA 2020

procedure of incorporation cost-effective and less cumbersome.

For example, the CA 2020 simplifies the process and procedure for the incorporation of small companies by providing for online submission and filing of incorporation documents and reducing filing fees for registration of charges<sup>19</sup>. The provisions of the CA 2020 relating to business formation and organization seek to promote easy entry to doing business in Nigeria. This includes the provision allowing foreign companies to carry on business in Nigeria without the incorporation of a company but by simple application to the Minister of Trade<sup>20</sup>. Besides the formation of corporate structures and cost-effective process and procedure of incorporation, there are provisions of the CA 2020 that improve the operation and management of small businesses more than the repealed Companies Act 1990.

### **b. Business Operation and Management**

The availability of capital at the commencement and during operation of a business is vital to the survival and long-term sustainability of the business. The CA 2020 makes provisions for adequate capital at the stage of incorporation of a company and when the company starts to operate its business under a management. Unlike the repealed Companies Act 1990 which provided for authorized share capital, the CA 2020 only provides for minimum share capital of N100,000.00 for small and private companies<sup>21</sup>.

This provision has the twin advantage of ensuring that the promoters of a company are not bound to pay for or allocate shares that are not needed at the time of incorporation and companies can now simply increase their share capital by issuing shares as they become needed<sup>22</sup>. Ogwemoh and Folarin argued that this provision would remove the extra frontloaded cost in the form of payment of stamp duties under the former regime of authorized share capital, and that stamp duties will now be paid only on the issued share capital and any additional shares issued after commencement of business operations<sup>23</sup>.

In order to ensure the transparency of management of corporate businesses the CA 2020 requires that persons with significant control in a company should disclose their shareholding to other shareholders<sup>24</sup>. This requirement applies to persons holding shares on their behalf as trustees or proxies while being shareholders themselves in the same company. Transparency in

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<sup>19</sup> See section 223 of the CA 2020

<sup>20</sup> Section 80 of the CA 2020

<sup>21</sup> Section 27 of the CA 2020

<sup>22</sup> Ogwemoh, Sylva and Folarin, Akorede, (2020). *The Companies And Allied Matters Act 2020 - Highlights of the Reforming Provisions and their Implications for Businesses and Investors in Nigeria*, *ibid*, p. 11

<sup>23</sup> *Ibid*, at p. 11

<sup>24</sup> Section 119 of the CA 2020

the operation and management of companies is essential as a confidence building practice that can attract investors into committing their resources to business enterprises. The CA 2020 makes it easy for investors such as shareholders to receive notice of annual general meetings of private companies and to participate virtually, and also to be able to transfer their shares electronically<sup>25</sup>.

In operation and management, small companies have been saved from the requirements of appointing auditors at annual general meetings to audit their financial records<sup>26</sup>, including exemption from compliance with the statutory period within which to file annual returns<sup>27</sup>. Under the provisions of the CA 2020 documents of companies requiring authentication may be validly signed electronically by the authorized officers of the company<sup>28</sup>. And companies may keep electronic copies or registers of any mandatory documents<sup>29</sup>. The reason is that it is no longer mandatory for a company to have a common seal<sup>30</sup>.

Pursuant to the provisions of the CA 2020 a company can now execute a document it describes as a deed without the need to affix its common seal and such document will have the same effect as though it were duly executed under the common seal of the company. All of these foregoing formalities that were required under the Companies Act 1990 occasioned delays and financial costs in solicitors and administrative fees. Their absence in the CA 2020 therefore enhances the swiftness of operations and the cost-effectiveness of management of small and private companies. This is in addition to the protection of the company's share capital and the interest of stakeholders as discussed below.

### **c. Protection of Share Capital and Stakeholders' Interests**

The interests of stakeholders of a company such as members, investors, and creditors are represented by the monetary value of their shares in the company's total share capital. The opportunity provided by the applicable regulatory framework for companies to raise capital through issuing of shares has direct impact on ease of doing business and the conduciveness of the business environment. This also includes the level of protection available for securing the company's share capital and shareholders' dividends under the prevailing legal regime. The CA 2020 makes notable provisions relating to a company's share capital, allotment of shares, and distributable profits and dividends.

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<sup>25</sup> Section 240 of the CA 2020

<sup>26</sup> Section 402 of the CA 2020

<sup>27</sup> Section 42(1) of the CA 2020

<sup>28</sup> Section 101 of the CA 2020

<sup>29</sup> Section 375(3) of the CA 2020

<sup>30</sup> Section 98 of the CA 2020



For instance, in order to ensure that there is always a reasonable amount of operating capital, the CA 2020 provides that 25% of the issued share capital of a company must be paid up at all times, even when the company increases its share capital<sup>31</sup>. This implies that the law now always requires and protects the availability of a minimum of 25% of the share capital of a company. If a company decides to reduce its share capital, the CA 2020 now simplifies the process for small and private companies by eliminating the requirement for a court order of confirmation of the reduction; a company may now reduce its share capital by merely passing a special resolution to that effect. However, a 25% of the remaining share capital must be available.

Unlike the Companies Act 1990 which prohibited improperly issued or allotted shares unless validated by the court, the CA 2020 now allows such allotment to be validated by the company through a special resolution<sup>32</sup>. This obviates the process of applying to court and thereby saves the shareholder financial cost in legal fees. Another provision which also offers a shareholder the opportunity to avoid legal fees is the provision of the CA 2020 which permits a company to buy back its allotted shares not only through a scheme ordered by the court but also in the open market or from the company's employee stock option pool<sup>33</sup>.

This provision has annulled the position of the Companies Act 1990 which prohibited share buy-back except in circumstances restricted only to settle debt, redeem preference shares, and eliminate fractional shares. However, this provision that has the potential to give a company the flexibility of managing its share capital without looking over its shoulders for judicial scrutiny is circumscribed by some stipulated conditions which include the requirements that a declaration of solvency must be made by the directors of the company, and that the acquisition must be published in two national newspapers<sup>34</sup>. With compliance with these conditions, a company may now effectively trade on its shares according to business exigencies.

In similar terms, a company may now offer financial assistance to a shareholder for the acquisition or proposed acquisition of its shares. But this is subject to the financial assistance being approved by a special resolution and provided it does not reduce the capital base of the company except the assistance is provided from the company's distributable profits, including a prior statutory declaration by a director of the company<sup>35</sup>. It is required that the main purpose of the acquisition should not be to reduce or discharge any liability incurred by the person making the acquisition but may be merely incidental to a larger purpose of the company, and

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<sup>31</sup> See section 128 of the CA 2020

<sup>32</sup> Section 148 of the CA 2020

<sup>33</sup> See the provisions of sections 184(1) of the CA 2020

<sup>34</sup> Section 184(1)(d) and (e) of the CA 2020

<sup>35</sup> Section 183(4) of the CA 2020

the assistance is given in good faith and in the interest of the company<sup>36</sup>.

Despite the conditions attached to share buy-back and share acquisition through financial assistance, the provisions are significant and aimed at maintaining and protecting the share capital of a company and the interest of shareholders. For instance, the CA 2020 provides against vulnerable transactions conducted on behalf of the company which can dissipate the share capital of the company and the share value of members, particularly when the company is to be liquidated or put under administration. The CA 2020 provides that if the company had entered a transaction with any person at an undervalue, the liquidator or administrator may apply to the court to restore the position to what it would have been if the company had not entered that transaction<sup>37</sup>.

In recognition that vulnerable transactions on behalf of the company are likely to be entered by dishonest and fraudulent directors, the CA 2020 modified the erstwhile provisions on the removal of directors by including that directors who are removed for such conduct will be disqualified from holding directorial positions in other companies<sup>38</sup>. The credibility of directors is essential to a culture of corporate transparency in the business environment of a country that desires investors' confidence and foreign direct investments. The CA 2020 makes commendable effort at ensuring that investors and shareholders are not deprived of dividends or returns on their investments.

This is evident in the provisions on pre-emptive rights of shareholders in the transfer of shares by a member of the company, prohibition of issuance of irredeemable preference shares, and prohibition of issuance of a company's shares at a discount<sup>39</sup>. These provisions are intended to protect existing shareholders from unnecessary dilution of the company's share capital and forceful acquisition of its shares through third party arrangements in mergers and acquisition, private equity, and venture capital<sup>40</sup>. Accordingly, a company may pay dividends only out of its distributable profits or the profits available to the company through accumulated earnings<sup>41</sup>. There is also more protection for unclaimed dividends paid by a company.

The CA 2020 provides that where dividends are unclaimed the company must publish a list of

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<sup>36</sup> Section 183(3)(e) and (f) of the CA 2020

<sup>37</sup> Section 659 of the CA 2020

<sup>38</sup> Section 288(c) of the CA 2020

<sup>39</sup> For an in-depth discussion on discriminatory issuance of shares by a company under the provisions of the CA 2020, see Babajide S. Shoroye and Rufus O. Olaoluwa, (2023). A Case for Rethinking the Prohibition of Issue of Shares at a Discount under the Companies and Allied Matters Act 2020. *International Journal of Academic Research and Development*, 8:5, pp. 47-52

<sup>40</sup> Ogwemoh, Sylva and Folarin, Akorede, (2020). *The Companies and Allied Matters Act 2020 - Highlights of the Reforming Provisions and their Implications for Businesses and Investors in Nigeria*, *ibid*, p. 22

<sup>41</sup> Section 427 of the CA 2020

the unclaimed dividends and names of the entitled shareholders in two national newspapers, and such published list must be attached to the notice of annual general meeting to be sent out to members of the companies. The requirement for publication which was not in the repealed Act will ensure that there is wide publicity of unclaimed dividends and high probability that those entitled are likely to become aware of the notice. Other stakeholders of a company such as secured creditors are also provided more opportunity to realize their security in any case.

The CA 2020 empowers secured creditors to realise or otherwise deal with their security during the winding up of an insolvent company<sup>42</sup>. Under the repealed Act any attachment, sequestration, distress, or execution initiated against the assets of a company being wound up was void. The assurance that any secured credit can be enforced and realized even when the company is being wound up is another confidence building mechanism which the CA 2020 has deployed towards attracting investors and creditors into the Nigerian business sector.

Notably, the CA 2020 introduced provisions for corporate rescue with the objective of saving a company under distress instead of killing it. The provisions seek to allow corporate rescue efforts through voluntary arrangement<sup>43</sup>, administration<sup>44</sup>, and netting<sup>45</sup>. These provisions make the liquidation of a distressed company a last resort rather than the first port of call. Administration and netting are novel introductions by the CA 2020 which constitute corporate rescue mechanisms for insolvent companies. The death of a company has consequences for the company and all stakeholders, and the CA 2020 has tried to avoid such situation unless it is unavoidable.

The provision on voluntary arrangement allows a company to make a proposal of settlement to its creditors for a proportional payment in satisfaction of its debts or a scheme of arrangement of its affairs. In netting, the company engages in a process of negotiating and setting off two or more of its financial obligations in order to achieve a reduced net obligation. Netting and voluntary arrangement have a similar objective of renegotiating the financial obligations of a distressed company to afford it the opportunity to be able to discharge such obligations, rather than being liquidated or wound up.

The introduction of administration under the CA 2020 is a significant development in the sense that it reflects the 21st century standard in corporate law and practice which favours the rescue and resuscitation of insolvent company more than its summary liquidation or winding up. Aside

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<sup>42</sup> Section 656 of the CA 2020

<sup>43</sup> Section 434 of the CA 2020

<sup>44</sup> Section 443 of the CA 2020

<sup>45</sup> Sections 718 of the CA 2020

creditors, modern understanding of a corporate failure recognizes the hurtful impact it could have on other stakeholders such as dependent small businesses and the local community of its operational base<sup>46</sup>. Therefore, the provisions of the CA 2020 which seek to rescue financially distressed companies from outright liquidation or winding up are effectively for the protection of small private companies that may easily fall on hard times due to economic fluctuations.

### **III. CHALLENGES OF CA 2020 COMPANY LAW REFORM**

With respect to business formation and incorporation, business operation and management, including the protection of share capital and stakeholders of small private companies, the CA 2020 contains provisions that reflect a reform of Nigerian company law in significant ways. However, the effectiveness of the CA 2020 to achieve its objective of creating a conducive environment for entrepreneurship and small businesses depends on other factors.

For example, the CA 2020 needs to be supported or complimented by the prevailing legal, social, and economic frameworks that can impact on a safe and enabling business environment. In the following discussions, we identified the challenges of company law reform under the CA 2020 in the contexts of current state of public infrastructure and utility services, access to finance, international trade, and tax system, including their impact on the efficacy of the statutory provisions<sup>47</sup>.

#### **a. Public Infrastructure and Utility Services**

In practice, challenges of company law reform that produced a legal framework such as the CA 2020 may be identified in available infrastructure that can give full teeth to the statutory provisions. For instance, digital public services and transparency of information for business formation and incorporation involve the availability of online services for business incorporation and post-incorporation formalities or documentation, including online availability of corporate information and transparency of information. In this regard, it has been found that e-government services can enhance the quality of interactions with businesses and citizens, such as facilitating more transparent processes, and reducing time for business registration and minimizing asymmetries of information<sup>48</sup>.

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<sup>46</sup> For an analytical discussion on the CA 2020 provisions on Administration of a company and the duties and powers of a company Administrator, see Babajide S. Shoroye, (2023). *Delimiting the Duties and Powers of Company Administrator under the Companies and Allied Matters Act 2020*. *International Journal of Law, Policy and Social Review*, 5:3, p. 137

<sup>47</sup> The following discussions on the challenges to the CA 2020 company law reform is from the approach of the World Bank's Objective and Principles of the Business Enabling Environment Project. See World Bank, (2022). *Pre-Concept Note: Business Enabling Environment*. Available at:

<https://www.worldbank.org/content/dam/doingBusiness/pdf/BEE-Pre-Concept-Note-pdf/>

<sup>48</sup> *ibid*

Therefore, it matters that the degree of transparency and accessibility of online information at the business registry such as the Nigerian Corporate Affairs Commission provides the required fees and documentation needed to form or incorporate any business structure. This increases transparency, reduces information asymmetry, and enhances sound business decisions by potential investors. As noted by the World Bank, transparent and accurate information for businesses is an important building block of a conducive business environment because they offer governments the tools to produce business statistics and design relevant policies<sup>49</sup>, which give investors the information they need to assess their risks in investing or entering a business. While we await empirical studies to determine the practical impact of the provisions of CA 2020 relating to cost-effective business registration and incorporation processes, including accessibility to official information and corporate disclosures, other challenges of company law reform in Nigeria needs to be pointed out. For instance, access to affordable and reliable internet service is critical in today's increasingly digitalized world, where the use of digital technologies can help small businesses to grow and increase in productivity.

The World Bank noted that as of 2020 the number of fixed broadband subscriptions per 100 people worldwide was still below 20 in developing economies such as Nigeria<sup>50</sup>. Small businesses are unable to adopt digital technology where broadband connection is expensive and the networks unreliable. Small businesses may also face a big challenge in operations when utility services are unreliable, inefficient, and costly. A survey of business enterprises by the World Bank found that over 30% of small businesses globally identified electricity supply as a major constraint to their operations<sup>51</sup>. Studies have found that disruptions in electricity supply negatively impact business productivity, revenues, and economic growth<sup>52</sup>.

Similarly, it has been found that inadequate water supply such as ageing infrastructure, poor water quality and changes in water pressure may also lead to decreased productivity, deterioration of machinery, and reduction in profits of small and medium-size enterprises<sup>53</sup>.

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<sup>49</sup>ibid

<sup>50</sup> World Bank Group. 2016. World Development Report 2016: Digital Dividends. Washington DC: World Bank Group

<sup>51</sup> World Bank. (2022). Enterprise Surveys database. <http://www.enterprisesurveys.org>.

<sup>52</sup> See Moyo, Busani, (2013). Power Infrastructure Quality and Manufacturing Productivity in Africa: A Firm Level Analysis. *Energy Policy* 61: 1063–1070; Allcott, Hunt, Allan Collard-Wexler, and Stephen O'Connell, (2016). How Do Electricity Shortages Affect Industry? Evidence from India. *American Economic Review* 106 (3): 587–624; Andersen, Thomas Barnebeck, and Carl-Johan Dalgaard, (2013). Power Outages and Economic Growth in Africa. *Energy Economics* 38: 19–23; Chen Rong, (2019). Policy and Regulatory Issues with Digital Businesses. Policy Research Working Paper 8948. Washington, DC: World Bank

<sup>53</sup> World Bank, (2017). Connecting to Water and Sewerage in Mexico. Washington, DC: World Bank; Selelo, L. R., and Patricia Kefilwe Mogomotsi, (2017). The Effects of Extended Water Supply Disruptions on the Operations of SMEs. *Southern African Business Review* 21: 480–500. 39 World Bank. Enterprise Surveys database. <http://www.enterprisesurveys.org>.

According to the World Bank, this is particularly the case in Sub-Saharan Africa where around 22% of businesses experience water insufficiencies<sup>54</sup>. It is estimated that the overall losses of businesses due to power and water outages in developing economies reach \$82 billion every year<sup>55</sup>. The commendable objective of the CA 2020 to promote the growth of small businesses would therefore be impacted by available public infrastructure and utility services.

#### **b. Access to Finance**

Apart from inadequate complementary public infrastructure and utility services, access to finance remains a major challenge to the effectiveness of company law reform of business environment because it is noted to be the case for almost a quarter of small businesses across the world despite being essential to their operations, stability, and profitability<sup>56</sup>. Access to finance depends on several factors such as the macroeconomic conditions and the level of development of the financial markets. For instance, available regulatory framework affects the operation of credit markets and the likelihood that small businesses will obtain financing. However, access to finance for small businesses may be restrictive when only immovable assets such as land can be offered as collateral<sup>57</sup>.

Nigeria has a legal framework for secured transactions system which provides for the creation of security interests in movable assets, the rights and obligations of parties to registered security agreements, mechanisms for perfecting security interests in movable assets, the creation of a national collateral registry and the determination of priority of competing interests in secured movable assets<sup>58</sup>. The quality of this regulatory framework would depend on the effectiveness of its provisions relating to the possibility for small businesses to offer movable assets as collateral without giving up possession of the assets, and the enforcement of security interests in such assets.

The operationalization of credit bureaus and collateral registries is key to the functionality of the legal framework on secured transactions in movable assets by small businesses. Credit bureaus collect data on the credit history of entrepreneurial individuals and small businesses and share it in the form of credit reports. By accessing borrowers' credit information, lenders

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<sup>54</sup> *ibid*

<sup>55</sup> Rentschler, Jun, Martin Kornejew, Stéphane Hallegatte, and Johannes Braese, (2019). *Underutilized Potential: The Business Costs of Unreliable Infrastructure in Developing Countries*. Policy Research Working Paper 8899. Washington, DC: World Bank.

<sup>56</sup> Wellalage, Nirosha Hewa, and Viviana Fernandez, (2019). *Innovation and SME Finance: Evidence from Developing Countries*. *International Review of Financial Analysis* 66: 101370

<sup>57</sup> Meghana, et al. (2021). *Access to Finance and Job Growth: Firm-Level Evidence across Developing Countries*. *Review of Finance* 25 (5): 1473-1496

<sup>58</sup> See the Secured Transactions in Movable Assets Act 2017

can better understand lending risks associated with each potential borrower. The World Bank noted that the quality of the credit reporting framework measures the availability of credit reporting service providers and the scope of the data and services they offer<sup>59</sup>.

Collateral registries, on the other hand, are publicly available databases of interests in movable assets by incorporated and non-incorporated entities. They support the legal framework of security rights in movable assets by facilitating awareness of both their existence and establishing priority based on the time of registration. Functioning collateral registries further enable lenders to assess risks when the borrower desires to secure the credit with movable collateral assets<sup>60</sup>. The challenge of the CA 2020 would be whether it is supported with a modern and operational credit bureau and credit registry which are the driving forces of secured transactions in movable assets.

### **c. International Trade**

The reform of Nigerian company law as contained in CA 2020 is also challenged by the existing framework on international trade, which is a key driver of economic growth and plays a decisive role in the promotion of private sector development. The private sector is impacted by an economy's openness to international trade through certain channels. Melitz noted that the first of these channels lies at the origin of trade theory, as engaging with the global market brings about increased competition with foreign businesses, both domestically and abroad, which leads to domestic business specialization in areas of comparative advantage and the reallocation of resources to the most productive area<sup>61</sup>.

In addition, international trade flows enable domestic businesses to take advantage of knowledge and technology transfers as they interact in the global market<sup>62</sup>. And studies have shown that businesses that participate in international trade tend to be larger and more productive<sup>63</sup>. Therefore, an enabling environment for the private sector must be conducive for small businesses to actively compete in the global economy by minimizing trade related costs. According to the World Bank, in the complex context of international trade there are several aspects of the business environment that may affect business participation and performance in the global market<sup>64</sup>.

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<sup>59</sup> World Bank Group. 2015. Credit Reporting: Knowledge Guide (English). Washington, DC: World Bank Group

<sup>60</sup> *ibid*

<sup>61</sup> Melitz, M. J. (2003). The Impact of Trade on Intra-Industry Reallocations and Aggregate Industry Productivity. *Econometrica*, 71 (6): 1695–1725

<sup>62</sup> Madsen, J. B. (2007). Technology Spillover through Trade and TFP Convergence: 135 Years of Evidence for the OECD Countries. *Journal of International Economics*, 72 (2): 464–480

<sup>63</sup> Bernard, et al. (2007). Firms in International Trade. *The Journal of Economic Perspectives*, 21 (3): 105–130

<sup>64</sup> World Bank, (2022). Pre-Concept Note: Business Enabling Environment, op.ct

For example, in the era of the global economy, and especially after the digital acceleration caused by the COVID-19 pandemic, the competitiveness of small businesses depends on whether the regulatory framework can adapt to the evolving context and establish a transparent, predictable, and a conducive environment for the potential of trade, including e-commerce, to be harnessed. On the flip side, restrictive regulations create market distortions, such as those imposed by stringent non-tariff measures, fees, or redundant processes, and have a negative impact on trade<sup>65</sup>. Also, the time and costs borne by small businesses when complying with trade related regulations may hinder their ability to access the global market, which therefore constitutes a substantial challenge to their growth and sustainability<sup>66</sup>.

According to Handley, poor quality of regulatory framework for international trade in goods and e-commerce creates uncertainty about trade procedures, future conditions, and application of existing regulations to generates increased risk, aggravates transaction costs, and delays investments<sup>67</sup>. Best practices in the regulatory framework for international trade are fundamental to creating a stable and predictable trading environment. And with respect to the rising area of e-commerce, effective regulations are also required in addition to the CA 2020 to remove obstacles to cross-border online trade, which can foster inclusive growth and profitability of small businesses.

#### **d. Tax System**

The extant tax system may also constitute a challenge to the CA 2020 reform of company law. Taxation is a powerful policy tool that governments use to generate revenues to finance their operations and provide public goods and services. Taxation affects the development of the private sector through a variety of inter-related channels. On the one hand, it creates enabling conditions for growth and development of the private sector by financing physical infrastructure, human capital investments, law enforcement and other public services. On the other hand, excessive taxation can distort markets, alter investment decisions, and foster tax evasion<sup>68</sup>.

Similarly, Alm et al noted that cumbersome regulations, complex tax reporting requirements, and the need to frequently interact with tax officials pose a considerable compliance cost on

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<sup>65</sup> Fernandes, A. M., Ferro, E., and Wilson, J. S. (2019). Product Standards and Firms' Export Decisions. *World Bank Economic Review*, 33 (2): 353–374

<sup>66</sup> See Fontagné, L., Orefice, G., and Piermartini, R. (2020). Making Small Firms Happy? The Heterogeneous Effect of Trade Facilitation Measures. *Review of International Economics* 28 (2020): 565–598

<sup>67</sup> Handley, K. (2014). Exporting under Trade Policy Uncertainty: Theory and Evidence. *Journal of International Economics*, 94 (1): 50–66

<sup>68</sup> World Bank, (2022). Pre-Concept Note: Business Enabling Environment, op.ct



small businesses<sup>69</sup>. Four significant drivers of tax systems deficiencies that affect economic outcomes, and negatively influence investment decisions for small businesses are: tax burden; complexity of tax systems; efficiency of tax administration systems; and the cost of compliance with tax regulations<sup>70</sup>. Also, complexity and uncertainty, in the sense of multiple tax rates, indeterminate language in the tax law and inconsistent changes in the tax laws, have a significant negative effect on business investments and growth of small businesses.

An understanding of how Nigerian tax regime mitigates the negative effects of tax complexity is critical, though it is difficult to quantify the level of complexity and ambiguity in the tax legislation. What can be quantified however, includes: whether there are systems in place to routinely address complexities and ambiguity in regulations; whether there is long-term stability in tax regulations; whether the requirement for keeping and filing tax records are cumbersome; and whether the process for introducing new tax regulations is transparent.

Studies have revealed that economies with tax administration procedures that provide easy access to information, build e-tax systems, employ effective risk management strategies, and ensure transparency of operations benefit from increased business productivity and economic growth<sup>71</sup>. Except the current tax legal framework can address the foregoing consequences of complexity of tax system, it would be difficult to reap the fruits of the CA 2020 company law reform.

#### **IV. CONCLUSION**

Like Reisberg noted of the United Kingdom company law regime prior to the reform leading to the enactment of the Companies Act 2006, it can be argued that the Nigerian repealed Companies Act 1990 “was notoriously and indefensibly complex hitting most brutally on small businesses”<sup>72</sup>. Most of the obsolete and obscure provisions created costs for business and impeded the growth of small businesses. Aspiring entrepreneurs encountered barriers to entry into the formal economy. Where the relevant regulatory framework is financially burdensome, resource-constrained entrepreneurs and small businesses may not be able to turn their ideas into

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<sup>69</sup> Alm, et al. (2010). Taxpayer Information Assistance Services and Tax Compliance Behavior. *Journal of Economic Psychology* 31:577–86

<sup>70</sup> See Eichfelder, S., and Hechtner, F. (2018). Tax compliance costs: Cost burden and cost reliability. *Public Finance Review*, 46(5), 764–792

<sup>71</sup> See Dabla-Norris, et al. (2017). Tax Administration and Firm Performance: New Data and Evidence for Emerging Market and Developing Economies. IMF; Evans, C., and Tran-Nam, B. (2010). Controlling tax complexity: Rhetoric or reality? In C. Evans, R. Krever, & P. Mellor (Eds.), *Australia’s future tax system: The prospects after Henry* (pp. 439–463). Thomson Reuters

<sup>72</sup> Arad Reisberg, (2010). *Corporate Law in the UK after Recent Reforms: The Good, the Bad and the Ugly* (July 1, 2010). *Current Legal Problems*, Vol. 63, pp 315-374, Oxford University Press. Available at SSRN: <https://ssrn.com/abstract=1635732>

business ventures that would create employment and drive economic growth.

The CA 2020 company law reform makes a bold and commendable efforts at turning the tides in favour of small, medium, and large-scale enterprises. Its provisions now allow entrepreneurs and small businesses to incorporate “small companies” that have the beneficial attributes of private limited companies but with relatively less requirements, formalities, and cost implications. In operation and management, this type of small companies has been saved from processes and procedures that are fraught with financial costs. The CA 2020 also offers cost-effective protection of the share capital and the interests of stakeholders of small and private companies.

However, we have identified some challenges that may frustrate the CA 2020 company law reform from achieving its laudable objective of promoting the growth of entrepreneurs and small businesses in Nigeria. These challenges are in the contexts of the prevailing legal, social, and economic factors of public infrastructure and utility services, access to finance, international trade, and tax system. These factors need to be favourable to the business environment for the CA 2020 to exert its functional impact. Otherwise, and contrary to existing literature, the CA 2020 may turn out to be a mere incremental than fundamental company law reform.

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