

**LEAD DEBATE FOR THE SECOND READING OF  
A BILL FOR AN ACT TO AMEND THE COMPANY AND ALLIED  
MATTERS ACT CAP C20 LAWS OF THE FEDERATION OF NIGERIA  
2004 AND FOR THE ESTABLISHMENT OF STATE CORPORATE  
AFFAIRS COMMISSION FOR REGISTRATION OF BUSINESS NAMES  
AND FOR OTHER MATTERS CONNECTED THEREWITH, 2016**

Sponsor: **SENATOR OVIE OMO-AGEGE** (*Delta Central*)

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1. Mr. President; Distinguished Colleagues, Confident about this Senate's constitutional powers to chart viable fronts for our Nation through legislative creativity and industry, I stand with humility to present this lead debate for the **Second Reading** of the Bill to amend the Company and Allied Matters Act and for the establishment of State Corporate Affairs Commission, 2016.
2. The Companies and Allied Matters Act ("the Act") has not witnessed major amendments since coming into force in 1990. Even the Corporate Affairs Commission ("CAC") recognises that the Act is long overdue for amendment. In a report presented at the 2015 Annual General Conference of the Nigerian Bar Association (NBA), the CAC noted that, "***The passage of time and developments in both the Nigerian and global economies have made some of the provisions of the Act impracticable and inadequate ...***"
3. This amendment Bill is focused, in the main, on strengthening regulatory capacity of the CAC and accountability and transparency within it; improving the nation's business environment by integrating the informal sector into the formal sector; and empowering States to play key roles in the development of small businesses.

## **TRANSPARENCY AND ACCOUNTABILITY OF CAC**

4. This Bill mandates the CAC to publish its audited statements of accounts and prescribes penalties for failure to do so. This transparent and accountable public disclosure will check and limit corruption.
5. Mr. President; Distinguished Colleagues, it is necessary for the CAC to lead by example in terms of corporate governance. Indeed, how can we have a system whereby Public Companies under the CAC are mandated to publish their annual accounts but the CAC itself operates opaquely on its revenues, as the CAC is not mandated to publicly publish its account for public scrutiny? The CAC simply prepares its statements of account as may be directed by the Federal Executive Council ("FEC"). Beyond the FEC, CAC owes Nigerians a sacrosanct duty to be publicly transparent and accountable with public revenues in its custody.
6. It may be argued that yes, the Fiscal Responsibility Commission (FRC) has statutory powers to compel the CAC to make disclosures regarding its revenues. But where the FRC fails to act, the CAC is left to act discretionarily with public revenues. This opacity is an aberration that is surely inconsistent with global best practices.

## **REMUNERATION OF MEMBERS OF THE BOARD OF CAC**

7. Mr. President; Distinguished Colleagues, this Bill also seeks to introduce a new provision in the Act for the remuneration of members of the CAC's Board to be determined by the **National Salaries, Income and Wages Commission (NSIWC)**.
8. Currently, the President of the Federal Republic has sole discretion to determine the remuneration of members of the Board. This leaves room for potential arbitrariness. The method of determining the remuneration of the

members of the board should no longer be left to a President, with the **NSIWC** in existence and functional. In my humble opinion, a President ought to be too busy to be burdened with determining salaries in the CAC!

### **INVESTIGATIVE POWERS OF CAC**

9. Mr. President, this Bill also seeks to remove undue protectionist hurdles from the path of the CAC by enabling it to carry out independent investigations into the affairs of public companies where the interests of the investing or general public are under credible threats.
10. In the United Kingdom, both Parliament and the Courts have taken steps to ensure that the UK company regulator is adequately empowered to conduct investigations into public companies in the interest of both shareholders and other stakeholders in the general public. In the case of ***NORTHWEST HOLST v. SECRETARY OF STATE FOR TRADE* [(1978) 3 ALL ER 280]**, while analysing the basis for statutorily empowering the Secretary of Trade to initiate investigations into the affairs of a company, **LORD DENNING**, noted as follows:

***"It sometimes happens that public companies are conducted in a way which is beyond the control of ordinary shareholders. The majority of the shares are in the hands of two or three shareholders. These have control of the company's affairs. The other shareholders know little and are told little. They receive the glossy annual reports. Most of them throw them into wastepaper basket(s). There is an annual general meeting but few of the shareholders attend. The whole management and control is in the hands of the directors. They are a self-perpetuating oligarchy and are virtually unaccountable. Seeing that the directors are the guardians of the company, the question is asked: who will guard***

*the guards themselves? ... It is because companies are beyond the reach of ordinary individuals that this legislation has been passed so as to enable the Department of Trade to appoint inspectors to investigate the affairs of the company."*

11. The Institute of Directors (IoD) and several other credible bodies have consistently noted that to the detriment of minority shareholders, many public companies operate in brazen breach of corporate governance principles enshrined in the Act. This impacts negatively on the national economy, as international investors tend to perceive our national investment climate as lacking the essentials of global best practices.
12. The Act does not clearly empower the CAC to initiate investigations into the affairs of public companies whose operations often carry huge public ramifications unlike private ones. Rather, there are unnecessary obstacles working against small shareholders and stakeholders. The resultant effect is that the exercise of the investigative powers of the CAC is very rare. This will now change if this Bill is passed into law.

#### **EXTENDING FIDUCIARY DUTIES OF DIRECTORS TO THE ENVIRONMENT**

13. Mr. President, this Bill further proposes an extension of the fiduciary duties of Directors of companies with respect to the environment. It is elementary corporate law that the Directors of a company constitute the mind, eyes, and limbs of a company (being a fictitious personality). **Section 172 of the UK Companies Act 2006** specifically requires a Director to promote the success of a company for the benefit of its members having regards to the "**community and environment**" where the company operates.
14. This important statutory focus in the UK and several other national jurisdictions on a Director's fiduciary responsibility for the environment of his or her company is missing in our law. This Bill offers an opportunity to

close that lacuna. And, this has become necessary because of the adverse effects of the operations of some companies on their communities and environments, which in some instances have led to breach of the peace.

**ESTABLISHMENT OF STATE CORPORATE AFFAIRS  
COMMISSION FOR REGISTRATION OF BUSINESS NAMES**

15. Mr. President; Distinguished Colleagues, this Bill also proposes to establish State Corporate Affairs Commissions ("State Commissions") to take charge of the registration of Business Names based on a uniform registration and regulatory legal framework and standards. This is intended to stimulate healthy competition and business climate innovations in our various States vis-à-vis their natural endowments and strategic competencies.
16. For planning, security and other demands of our federal system, this Bill imposes an obligation on the proposed State Commissions to share information with the CAC. Businesses registered by State Commissions are to be regulated by Federal Government agencies where their operations require federal regulation.
17. Mr. President; Distinguished Colleagues, virtually all States in the United States of America (USA) operate as thriving business units. The State of California stands out today as the 6<sup>th</sup> largest global economy. There is a strong correlation between America's robust legal framework (that allows its States to undertake registration of companies) and the economic health of her States.
18. We are all aware of the economic challenges faced by many of our States. We are where we are today partly because the Act as the major corporate law in our Nation – does not recognise the States at all. In the absence of a clear legal framework to stimulate competition and innovation, most States rely heavily on monthly federal allocations to thrive. That is

unsustainable. This Bill offers an opportunity to construct a solid legal architecture to encourage aggressive innovations by the States. Those who wish to succeed will succeed.

19. In this regard, this Bill offers us an opportunity to rethink and modernise our informal sector by evolving a smart, intelligent, and innovative legal framework for integrating economic activities and incomes of the informal sector (that are largely outside of government regulation and revenue generation) into the formal sector. The inherent lack of structure; low and unsecure income labour environment; zero employment benefits, and lack of social protection of the informal sector are compelling reasons to integrate it into the organised sector.
20. With the opportunities inherent in this Bill, our States will benefit hugely from a more competitive and aggressive formalisation of the informal sector and businesses. The States are best suited to pursue that competitive and aggressive formalisation because their prosperity depends on it. CAC has not done that over the years. There is no reason to believe it can do it better than the States whose survival and sustainability depends on it.
21. The registration, regulation, and growth of small businesses in the various States are very important for our local State economies and the national economy. Current Government revenues derived from levies and taxes are relatively low when compared to the size of the informal sector which is made up largely of small unregistered business enterprises. The decentralization of registration and regulation of small businesses will put our States in a better position. By passing this Bill, we would be tasking the States to be creative, innovative and to operate as sustainable businesses.

## **CONCLUSION**

22. Mr. President; Distinguished Colleagues, while this Bill is not proposed as a silver-bullet solution to our economic challenges, it is a right step in the right direction. This Bill is important for the economy of all our 36 States. A nation that is determined to have a sound economy and increase its public revenue profile must first construct a good legal framework for that purpose. This is the very purpose of this Bill.
23. The amendments suggested in this Bill are within the legislative competence of the National Assembly. The National Assembly is not by this Bill empowering the State Houses of Assembly to make laws for the registration of Business Names. Therefore, the Bill does not contravene ***Item 62(f) of the Exclusive List*** in the 1999 Constitution. When passed into law, the Bill shall be applicable to all parts of the Federation and empower the Governor of a State to establish a State Commission to perform functions stipulated in this Bill. This Bill is intended to stimulate economic activities in our various States and ensure transparency, accountability, and good governance in the corporate sector.
24. Mr. President; Distinguished Colleagues, in compliance with **Order 77(3)** of our **Standing Rules**, I state that this Bill has no financial implications for the Federal Government. Accordingly, there is no accompanying financial compendium with respect to cost to the Government.
25. For the greater good of our Republic, I hereby humbly move for the Second Reading of this Bill to be taken. I so move, Mr. President.