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*“The Corporation, the Counsel & the Cheese: Examining the Relationship,  
its Benefits & Challenges”*

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**Introduction**

Corporations have been in existence for centuries. History reports that the earliest corporation was established in 578 AD, over a thousand years ago. However, until the 17<sup>th</sup> century, corporations were mostly independent states, political constituents and private associations such as religious groups, cults, burial clubs and political groups, all of which were non-profit entities. Commercially-purposed corporations were a rarity as most businesses were comfortably being carried on under common law constructs; sole proprietorships and partnerships.

A millennium and a half after, corporations are the most common form of business organizations globally and with the plethora of laws governing corporate activity, the demand for legal services is at an all-time high, creating fee-earning opportunities for legal practitioners and further encouraging specialization.

The practice of law in relation to corporations, their formation, operation and regulation is what makes up Corporate Law. However, the term, “*Corporate Law*” has, in colloquial use, become synonymous with all forms of transactional or non-dispute related legal practice. This paper will discuss Corporate Law as it relates specifically to corporations, explore the historical legal background of corporations, the role of legal practitioners and identify summarily the fee-earning opportunities in the corporate law space.

## History of Corporations & Corporate Regulation

The history of modern corporations can be traced to the chartered companies which were created to lead the colonial ventures of European nations in the 17<sup>th</sup> century. The English East India Company stood out as an indication of the immense potential of the modern day company with a reported 150% return on shareholder investment. A more relatable example is the Royal Niger Company and its exploits in West Africa. The corporation was instrumental in the formation of Colonial Nigeria. It was in absolute control of territories which made up the Southern Protectorate, which was in turn merged with the Northern Protectorate to form the Colony and Protectorate of Nigeria in 1914. Prior to the amalgamation, the Royal Niger Company, in 1900, sold off its territories to the British Government for a reported sum of GBP 865,000. By the end of the 18<sup>th</sup> century, largely due to the rise of classic liberalism and the *laissez-faire* economic theory, corporations had transitioned from being government or guild affiliated entities to being public and private entities free of government direction.

Regardless of the intent of these Corporations at various points in time, common characteristics of these bodies were the right enter into contracts, to own property, to receive and donate gifts, to sue and be sued and the ability to exist perpetually.

The enormous activity on these fronts brought about a need for regulation, a development which brings to mind the teachings of Roscoe Pound and the sociological school of jurisprudence. Decades were dedicated to legislative and quasi-legislative activity and by mid-19<sup>th</sup> century, the foundations of modern corporate law were established with the enactment of the Companies Act 1862. This legislation consolidated on the success of its immediate predecessor, the Joint Stock Companies Act 1856, a landmark legislation which solidified incorporation by registration and limited liability for members of these companies. The Joint Stock Companies Act was preceded by more grueling legal frameworks including the British Bubble Act, the Joint Stock Companies Act 1844 and the Limited Liability Act 1855. It was under the operation of the Companies Act 1862 that the landmark decision in *Salomon v. Salomon* was delivered.

Centuries later, Corporate Law has continued to evolve and play an important role in not just business operation but also in national development through the strategic regulation of foreign direct and portfolio investments. In Nigeria, corporations have become an immutable feature of the business environment with advanced corporate transactions being carried out on a daily basis and thousands of corporations being registered by the Corporate Affairs Commission pursuant to the Companies and Allied Matters Act 1990 (“the Act”), the principal corporate legislation within our borders, and one heavily influenced by old English Law, particularly the UK Companies Act 1986.

### **The Legal Practitioner – the Role of Corporate Counsel**

Like corporations, legal practice has significantly evolved over the years. With the enactment of sector-specific laws and regulations to guide corporate transactions, the demand for legal services in these spheres arose. A century and a half after the inception of domestic legal practice, lawyers within our borders have embraced transactional practice and shown substantially improved competence.

Many indigenous law offices have fully-dedicated corporate-commercial practice groups with a select few going even further to focus their practices solely on transactional law practice. The era of courtroom practice as a lawyer’s main contribution to corporate law is now a past event. While the courtroom was a ‘club’ for ‘corporate lawyers’ in the 18<sup>th</sup> century with landmark cases like *Carlen v Drury*, *Foss v. Harbottle*, *St Lennard’s Carrying Co v. Asiatic Petroleum Company* and *Lee v. Lee* being decided, the 21<sup>st</sup> century has seen less corporate lawsuits and more transactional and advisory practice.

The relationship between legal practitioners and corporations can be best compared with the symbiotic biological model, mutualism – independent entities interrelating to the benefit of the other. Simply put, both entities surviving off each other – the corporation being sustained and kept in good health by services rendered by legal

practitioners and the legal practitioner being sustained by professional fees or remuneration earned in the course of rendering legal services.

The following paragraphs will explore the corporate life cycle and the role of a legal practitioner in the varying stages of the cycle for the practitioner and corporation's benefit.

### **The Role of the Legal Practitioner in the Life Cycle of Corporations**

- (i) **Business Establishment:** Prior to the innovations of the Presidential Enabling Business Council (PEBEC), the involvement of legal practitioners (other than in-house lawyers at CAC) was a certainty. However with the PEBEC innovations, business promoters are no longer required to engage legal practitioners in establishing a corporation or any business entity at all. However, corporations that intend to do business in highly regulated sectors or those which strive for quality in all spheres, still insist on hiring lawyers to drive their establishment process, ensuring that lawyers still have business on this front.

While most legal practitioners are familiar with the idea of earning fees for superintending the incorporation process at CAC, most lawyers ignore potential fee-earning business in business establishment. A couple of which are as follows:

- (a) **Preparation of Constitutional Documents:** Although the practice is for companies to adopt statutory forms of articles of association, the Act allows the modification of the forms to suit the corporation's internal regulation policies by taking advantage of the 'enabling' provisions of the Act to determine how the law applies to the company in certain situations. While this is no doubt billable work for the legal practitioner, it is also of great advantage to a company if its constitutional documents are tailored to its business model. Also, with bespoke articles of association, corporations can avoid the

'default provisions' of the Act which more often than not are less favourable. For partnerships and not-for-profit entities registered under Part C of the CAMA, lawyers can earn fees for preparing Partnership Agreements and Constitutions best suited to the operational model adopted by the client(s).

(b) **Pre-Incorporation Documentation:** Joint-Venture Agreements, Shareholders Agreements and Asset Transfer Agreements are some of the more popular documents required prior to the formation of a company. When desirable, lawyers can earn fees off preparing these agreements on behalf of business promoters.

(ii) **Regulation & Compliance (*Company Secretarial Services*):** The CAMA prescribes several requirements that corporations and related-entities are mandated to fulfil periodically during their lifetime. In addition to these requirements, businesses in specific sectors have compliance obligations imposed on them by sector-specific laws like the Nigerian Communications Commission Act, the Petroleum Act, the Nigerian Oil and Gas Content Development Act and the Banks and other financial institutions Act etc. Lawyers being the custodians of the law and possessing the ability to interpret the most complex of laws are in the best position to advice in this regard. Also, corporate governance issues such as convening meetings and advising as to board composition *inter alia* in line with corporate governance regulations is another key area on this front.

(iii) **Corporate Transactions (*Non-Evolutionary*):** Transactions are essentially the goldmine of corporate law practice. The bulk of corporate transactions are capital-raising projects. While loan facilities represent a large portion of these deals, corporations, particularly the larger ones, occasionally issue securities to raise capital. Opting for either of these capital-raising alternatives will almost automatically require the rendering of legal services either through preparation of facility agreements and security assignment or share transfer agreements, debenture deeds and prospectuses for the

issuance of securities. Lawyers will also be typically required to carry out due diligence in these transactions.

- (iv) **Disputes:** This is familiar territory for almost every lawyer within jurisdiction. The Nigerian legal education system is geared towards making advocates out of its students. Disputes remain a characteristic of our society and legal practitioners are exclusively conferred with the right of representation in courts, the most popular forum for the ventilation of disputes. However, with most businesses globally moving away from the traditional court system to alternative dispute resolution mechanisms, legal practitioners need to advise clients appropriately on the right dispute resolution mechanism to pursue in different circumstances. Competence needs to be built up in these areas to ensure best results, client satisfaction and maximum financial reward.
- (v) **Evolution & Dissolution (*Advanced Corporate Transactions*):** Perhaps the most exciting area of corporate law, business combinations represent a small percentage of the work being done in the Nigerian corporate law space. While most attribute blame the inactivity in this sphere to the Nigerian cultural construct, legal practitioners almost never advise their corporate clients to pursue a business combination option, a trend which can be attributed to a lack of desire to do the work or outright incompetence in the area. Dissolution of corporate entities is another area where legal practitioners can earn fees. Although this is a less common transaction, it could still fetch the legal practitioner tons of money depending on the capacity in which he/she participates.

Other important areas where legal advice will be needed are taxation, intellectual property and employment/labour relations etc.

### **The AFCTA, Legal Services and a Growing Market?**

In 2013, an African Continental Free Trade Agreement was proposed. The object of this proposal is to create an African Continental Free Trade Area to allow free access

to commodities, goods and services across the continent. The United Nations Economic Commission for Africa estimates that the agreement will boost intra-African trade by 52 percent by 2022. The Agreement has been signed by 44 of the 55 AU member states and will become operative once ratified by 22 of the signatory states.

Although, Nigeria is yet to sign this agreement reportedly due to dumping and domestic trade concerns, should Nigeria decide to accede to and ratify the agreement, once operational, a flurry of commercial activity can be expected, thus ensuring increased legal business opportunities. The *“free access to commodities, goods and services”* will include the provision of legal services and it is expected that domestic legal practitioners will seek to develop the competence to handle the demand for legal services to facilitate the increased intra-African trade activity and basically replicate the domestic opportunities across the African Continental Trade Free Area.

### **The Corporate Lawyer: An Endangered Species?**

Under the Legal Practitioners Act 2004, the principal legislation governing legal practice in Nigeria, the practice of law is exclusively reserved for persons called to the Nigerian Bar and enrolled at the Supreme Court. In addition, in-house counsel are prevented from acting in certain respects as the law sought to preserve opportunities for external counsel. However, while the law and subsidiary legislations made thereunder exclusively vest some practices in a qualified legal practitioner, most of what constitutes corporate law practice is not regarded as falling within the exclusive preserve of a legal practitioner.

While many blame this position on the narrow-mindedness of the legislature, others argue that legal practitioners are, in fact, the ones overreaching by making corporate practice a part of their services. This position has however been exploited in recent years as non-law offices have in recent years have rendered corporate legal services and put out advertisements offering to do so for a fee.

Also, with advanced technological developments and with reports suggesting that certain job roles will become extinct in the near future due to improving artificial

intelligence, the continued relevance of corporate counsel is questionable. Software like COIN/Contract Intelligence is changing the game and further endangering the business of corporate lawyers. This particular software reportedly reviews in seconds, contracts which it took lawyers 360,000 hours to review.

In the absence of regulations settling the exclusivity or otherwise of corporate practice, legal practitioners will need to improve competence, quality of services and ensure client satisfaction to battle competition and keep income streams flowing without interruption.

### **Conclusion**

As much as the practice of law is depicted as noble and upright, it remains a business venture which like all others must be managed effectively to ensure its optimal profitability. With increased competition, not just among lawyers, but also with big-name consulting firms who purport to offer corporate law services, steps need to be taken to ensure *“the business is not taken away from the lawyers”*.

To fulfil this objectives, some of my recommendations are as follows:

1. **Legal Educational Reforms:** As stated above, the legal educational system currently is not as focused on instilling the knowledge required for corporate law practice as it is focused on instilling knowledge and skill required for courtroom practice. The university and law school curriculums need to be modified in line with current realities to ensure graduates are properly equipped to practice in the corporate law space once called to the Nigerian Bar.
2. **Continuing Legal Education for Qualified Legal Practitioners:** It is extremely important for legal practitioners to consolidate on already acquired knowledge to ensure they stay up-to-date with the latest developments in law and in the client’s business. The Section on Business Law of the Nigerian Bar Association has done exceedingly well in this regard with several seminars and workshops being organized over the years.

3. **Offering Expansive & In-Depth Legal Services to Clients to ensure their Satisfaction:** While clients place requests before the lawyers, lawyers are saddled with the responsibility of delivering the best advice possible. Studies suggest that, in delivering advice, lawyers barely scratch the surface in terms of value that can be offered. A perfect example is the industry-wide neglect of the practice of modifying the statutory forms of articles of association to suit the business as identified above. Going the extra mile to invest your intellect in your client's business builds trust, a network and consequently, generates income.
4. **Increased marketing and business development activity:** Like all businesses, visibility is important. The Rules of Professional Conduct 2007 however prohibits legal practitioners from competitive advertising and limits marketing to publication in law lists and law journals etc. Although very limited, lawyers must maximize the marketing opportunities afforded to them under the law. An effective strategy is to author papers and articles on specific subject areas and ensure that these articles are visible online. Clients consider the internet their 'legal first aid kit' and encountering an article written by a legal practitioner on the subject matter of a client's problem could just bring in that brief.
5. **Law reforms to preserve the Legal Practitioner's role in Corporate Law Practice:** In the United States of America, the Endangered Species Act was enacted in 1973 to provide a framework for the identification and preservation of endangered species and this legislation has proven to be very effective. Although very unlikely, the Legal Practitioners Act should be amended to properly safeguard the role of corporate lawyers as much as possible.