

## Entrepreneurship in Nigeria: An Appraisal of Selected Issues and the Applicable Legal Framework

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### **Abstract:**

Legal matters are critical issues in entrepreneurship. As an entrepreneur, the complex landscape of regulations and laws that ensure compliance and protect business interests must be navigated with caution. These and many other issues in entrepreneurship demand care, attention, and expertise to address potential risks and ensure that new businesses operate within the bounds of the law. Entrepreneurship essentially involves innovating unique ideas and products. However, failure to safeguard these innovative ideas may sometimes result in disruption and damage to the business reputation. Therefore, this study appraised the fundamental legal issues an entrepreneur must prioritize such as the type of business and the requirements for incorporation under the law; intellectual property rights, trademark protection, copyrights and patents. This qualitative study achieved this aim by examining existing literature and relevant laws applicable to entrepreneurship and contractual relationships with employees, vendors, and clients in Nigeria. It also analyzes employment law which is critical to entrepreneurship. In preparation for the sustainability of entrepreneurial innovations and ideas, understanding and proactively addressing legal issues remains pivotal. The study therefore made recommendations particularly, the need for entrepreneurs to stay informed on how to protect, ensure compliance with regulations, and avoid potential legal pitfalls.

**Keywords:** Business, employment, entrepreneur, innovation, laws, start up.

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## **1. INTRODUCTION**

With thousands of new job seekers entering the labour market every year, there has been an alarming increase in the unemployment rate in Nigeria. This is worrisome because most of these unemployed persons are young school graduates who lack the entrepreneurial skills to own and sustain a business. More than 70% of those gainfully employed in Nigeria are engaged in different works requiring manual skills and technical know-how. However, many graduates complete their studies without acquiring skills, and this has been projected as one of the major reasons for which many graduates are unemployed or considered to be unemployable.<sup>1</sup> This study is imperative to redefine potential employees' perspectives on the significance of entrepreneurship and how it can resolve the challenge of unemployment globally, particularly in Nigeria.

Young graduates should consider this alternative employment rather than trying to take up white-collar jobs which are fast declining or unavailable to cater to the number of job seekers due to advancements in technology such as the development of artificial intelligence. One of the downsides of Artificial Intelligence is the reality of machines taking over jobs traditionally performed by human beings. To avoid redundancy and the eventual loss of employment, working-age people should acquire entrepreneurial skills that will make them self-employable where government jobs are non-existent.

Entrepreneurship is the key factor in economic development.<sup>2</sup> It determines how quickly and efficiently an economic system identifies and responds to the investment opportunities available in society. Therefore, entrepreneurship generates great coordination of financial activities and also increases the growth rate of the economy.<sup>3</sup> The idea of self-reliance being promoted globally to reduce the economic burden on governments to provide jobs and ensure adequate living standards comes with significant legal issues for the entrepreneur which failure to recognize may result in costly legal battles, damage to business reputation, and eventual loss of business ideas.

Therefore, the study will explore a conceptual review, discussing the challenges, typologies, and methodologies relating to entrepreneurship in Nigeria. The crux of the paper is to identify and discuss some of the legal issues on entrepreneurship in Nigeria *vis-à-vis* the applicable legal framework and the role of the courts in entrepreneurship issues. Based on the findings, the study will make appropriate recommendations to resolve these legal issues when an entrepreneur encounters them.

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<sup>1</sup> R. Famiwole and F.A Adebayo, 'Graduate Unemployment and Unemployability Issues: Intervention Through Entrepreneurial Skill Development Process' in A.A Awe and R.k Ayeni and S. Ogunsakin (eds), *Introduction to Entrepreneurship* (GreenLine Publishers 2015).

<sup>2</sup> H. Barot, 'Entrepreneurship - A key Success' (2015) 1 (3) *The International Journal of Business and Management* 163.

<sup>3</sup> A.A Awe and O.O Idowu, 'Qualities, Features and Roles of Successful Entrepreneurs' in A.A Awe and R.k Ayeni and S. Ogunsakin (eds), *Introduction to Entrepreneurship* (GreenLine Publishers, 2015).

## **2. THE NATURE OF THE PROBLEM**

Entrepreneurship plays a pivotal role in social and economic development. The idea of entrepreneurship creates economic activities that not only increase economic growth but also make individuals self-reliant contributors to national development. In Nigeria, entrepreneurship has over the years mitigated the harshness of unemployment by providing job opportunities in the formal and informal employment sectors. In the informal sector, agriculture has been the major entrepreneurship opportunity given its potential to transform the traditional agriculture sector into a more profitable and sustainable enterprise.

Agricultural entrepreneurship creates innovative and profitable business ventures that involve the production, processing, marketing, and distribution of farm products and services. It provides farmers with adequate opportunity to add value to their communities and agribusinesses by packaging agricultural products to enhance their market value and commercial visibility.<sup>4</sup> Therefore, with a population of over 250 million citizens in Nigeria, entrepreneurship provides agricultural opportunities for farmers to produce farm products on a large scale for national and international markets.

Additionally, the study identifies manufacturing as another entrepreneurship opportunity in Nigeria. Apart from the fact that Nigeria has large deposits of raw materials for manufacturing products, it provides opportunities for foreign investors to establish businesses that utilize these raw materials. Manufacturing entrepreneurship improves the economy and supplies temporary or permanent job opportunities for job seekers. Manufacturing businesses make use of raw materials to create finished goods either for domestic consumption or for export. This opportunity usually projects the industrial image and economic viability of the country before the international community. Manufacturing helps to introduce new products within the market and create economic value in existing goods that are useful to consumers.

The importance of entrepreneurship to economic development cannot be over-emphasized. However, it should be noted that entrepreneurship is sometimes faced with challenges such as lack of electricity, high taxes, high transport and freight charges, poverty, illiteracy, insecurity, lack of access to funds, high interest rates, inflation, and exchange rate volatility particularly, in developing countries like Nigeria.<sup>5</sup> These

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<sup>4</sup> G. Pallavi and D.T Santosh and N. Ashoka 'Agricultural Entrepreneurship: Exploring Opportunities, Challenges, and Impacts in N. Biradar and R.A. Shah and A. Ahmad (eds), *Recent Advances in Agricultural Science and Technology* (Dilpreet Publishing House 2023).

<sup>5</sup> B.B. Balogun and F. Olaturo, 'Challenges Facing Entrepreneurship Development in Nigeria: An Empirical Review (2020) 19 (2) African Scholar Journal of African Sustainable Development 75; C. Harrison, 'Challenges Faced by Entrepreneurs in Nigeria: A Case Study of the Retail Pharmacy Sector' in K.O. Omeihe and C. Harrison (eds), *The African Context of Business and Society* (Emerald Publishing Limited 2022); G.K. Baba, 'The Challenges of Entrepreneurship Development in Nigeria and Way Forward' (2013) 5 (1)

challenges are further exacerbated by the failure of the government to provide the infrastructure for businesses to thrive. Recently in Nigeria, there was a mass exodus of companies<sup>6</sup> from different sectors of the economy into neighbouring countries like Ghana and South Africa due to the government's financial policies and high taxes.<sup>7</sup> Invariably, this has adversely affected the influx of foreign companies and investors coming into Nigeria to do business, thereby hurting the economy.

### **3. CONCEPTUAL REVIEW**

Entrepreneurship is the process of starting a business.<sup>8</sup> It is the capacity and willingness to develop, organize, and manage a business venture along with any of its risks to make a profit. The entrepreneur develops a business model, acquires the human capital and other required resources, takes risks, and is fully responsible for its success or failure.<sup>9</sup> One important element of entrepreneurship is the entrepreneurial spirit characterized by innovation and risk-taking, an essential part of the ability of a nation to succeed in an ever-changing and competitive environment.<sup>10</sup> Entrepreneurship is an important part of the business and economic activities of a nation as it provides a fundamental role by identifying, assessing, and exploiting business opportunities, and driving the economy towards an improved well-being of the society.<sup>11</sup>

It involves risk-taking sometimes which could be quite scary and challenging as the entrepreneur is uncertain of the success rate of the business. Entrepreneurship is fast emerging as a transformational megatrend of the present day given its capacity to reshape economies and industries throughout the globe. As a key driver of economic expansion, entrepreneurship is the bedrock of any expanding economy, generating jobs, introducing new products and services, and promoting greater upstream and downstream value-chain activities.<sup>12</sup>

Entrepreneurship originated from the word “entreprendre,” which means “to undertake.” According to Black’s Law Dictionary<sup>13</sup> an entrepreneur is a person who takes advantage of an opportunity, real or perceived in making a business decision. As the

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Journal of Business and Organizational Development 54; O.U. Ofili, ‘Challenges Facing Entrepreneurship in Nigeria (2014) 9 (12) International Journal of Business and Management 258.

<sup>6</sup>Lazerpay; GlaxoSmithKline Consumer Nigeria; Mabisco Biscuit; Sanofi-Aventis Nigeria Ltd; Jumia Foods; Equinor Nigeria Energy Company.

<sup>7</sup> A. Udi, ‘Recap: Companies that Existed Nigeria in 2023’ (Nairametrics, 28 December 2023) <<https://nairametrics.com/2023/12/28>> accessed 19 July 2024

<sup>8</sup> H. Barot, (n2) *Op.cit.*

<sup>9</sup> B. Reveendran and D. Gokulnath, ‘Meaning of Entrepreneurship’ (2019) <<https://www.byjus.com>> accessed 7 June 2024.

<sup>10</sup>*Ibid.*

<sup>11</sup> A.A Awe, and O.O Idowu, (n3) *Op.cit.*

<sup>12</sup> W. Barkawi, ‘Dynamic New Trend in Entrepreneurship’ (2015) <<http://www.entrepreneur.com>> accessed 6 June 2024.

<sup>13</sup>B.A. Garner, *Black’s Law Dictionary* (12<sup>th</sup> edn, Thomson Reuters Corporation 2024).

decision maker, an entrepreneur decides everything from how much of a good service will be provided to planning, and overseeing taking on the risks of a business or enterprise.<sup>14</sup> He possesses the will, courage, expertise, and willingness to take significant risks to accomplish what is necessary to bring an idea to life, in the form of a product or service.<sup>15</sup> An entrepreneur looks for windows of opportunity in an environment, locates the business in a viable atmosphere; measures the window of opportunity, then opens the window of new ideas in the market by replacing old with new inventions and subsequently closes it.<sup>16</sup>

#### **4. TYPOLOGIES OF ENTREPRENEURSHIP**

Entrepreneurship is classified from small or home businesses to multinational companies.<sup>17</sup> It comprises small business entrepreneurship, scalable start-up entrepreneurship, and large company entrepreneurship. The first category of innovators run or own their businesses and hire family members or locals as employees to carry out the business without merging or acquiring other industries. These inventors practically fund their businesses by taking small loans from financial institutions or family members and friends.<sup>18</sup> They set up their businesses primarily to make a profit to cater for family expenses. The entrepreneur perceives business opportunities and develops the same into a career.<sup>19</sup>

Opportunity-based entrepreneurship focuses on producing services that resolve social needs and problems, and include services such as hair-dressing, carpentry, plumbing, welding, and other artisan jobs. The second category which is start-up entrepreneurship starts a business with the mindset and vision to change the world. They attract investors who think and encourage others to think outside the box. Their innovations focus on scalable business and experimental models and as such, employ the best and brightest. They acquire more venture capital to back up their project or venture.<sup>20</sup> Large-scale company entrepreneurship, which is the third category, according to a study,<sup>21</sup> involves huge companies that have a defined life circle.

Most of these companies grow and are sustained by offering new and innovative products that revolve around their main products. Innovation-driven entrepreneurship is a form of entrepreneurship that focuses on technology, business, and growth to enable

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<sup>14</sup> G. Merriam and C. Merriam, *The Merriam-Webster Dictionary* (11<sup>th</sup> edn, Merriam-Webster Publishing Co 2022)

<sup>15</sup> M.J. Gottlieb 'Meaning of Entrepreneur' (2010) <<https://www.businessnewsdaily.com>> accessed 5 June 2024

<sup>16</sup> B. Reveendran and D. Gokulnath, (n9) *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> D. Diandra and A. Azmy, 'Understanding Definition of Entrepreneurship' (2020) 7 (5) *International Journal of Management, Accounting and Economics* 235

<sup>20</sup> B. Reveendran and D. Gokulnath, (n9) *Op.cit.*

<sup>21</sup> *Ibid.*

the owner to create jobs and provide goods and services in a wide range at the right time.<sup>22</sup> The change in technology, customers' preference, and new competition build pressure on large companies to create innovative products such as Yahoo, Google, Apple, Amazon, X, TikTok, and Artificial Intelligence (AI) which are introduced into the market.<sup>23</sup>

## **5. ENTREPRENEURSHIP METHODOLOGIES IN NIGERIA**

Before discussing the legal issues in entrepreneurship, it is important to discuss the business approaches recognized by law. Every entrepreneur is expected to have first-hand knowledge of the basics of businesses and what business is to be established. The Company and Allied Matters Act, 2020 provides for the types of businesses that can be registered in Nigeria. To actualize the aim of this study, it is essential to examine the various business approaches.

### **5.1 Registered companies**

According to the Companies Act,<sup>24</sup> a company is an existing company formed and registered under any of the previous companies' laws. A company can be defined as an association of persons united for economic purposes that is, to carry on business for gain. Upon registration, a company becomes a body- corporate with perpetual succession, a common seal, capable of suing and being sued in its corporate name.<sup>25</sup> A company may either be private or public with the liability of the company and its members depending on the type of company formed. The major considerations in creating a company are the name of the business, the nature of the business venture, the amount of capital, and the size of members. An entrepreneur intending to float a company may form any of these three types of company: incorporated companies; companies limited by shares, companies limited by guarantee, and unlimited liability companies.

#### **a) Companies limited by shares**

Companies limited by shares may either be private or public companies.<sup>26</sup> As the name implies, the liability of company members is limited by shares. In other words, the liability of its members is limited by the memorandum to the amount if any, remaining unpaid on the shares held respectively by the members. This means that during the existence of the company or in the event of winding up, a member can be called upon to pay the amount which remains unpaid on the shares subscribed by him.<sup>27</sup> This is based on

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<sup>22</sup> W. Aulet and F. Murray, 'A Tale of Two Entrepreneurs: Understanding Differences in the Type of Entrepreneurship in the Economy (2013) <<https://www.ssrn.com>> accessed 6 June 2024.

<sup>23</sup> D. Diandra and A. Azmy, (n19) *Ibid*.

<sup>24</sup> Companies Act 1956, s 3(1).

<sup>25</sup> *Salomon v. Salomon & Co Ltd* [1897] AC 22,

<sup>26</sup> Company and Allied Matters Act 2020 (CAMA 2020) s 21(2).

<sup>27</sup> Study Material <<http://www.ddegjust.ac.in>> accessed 6 June 2024.



the company having a share capital and the member taking shares issued to them by the company.<sup>28</sup> The limitation of the liability of members enables shareholders to determine beforehand, the extent of their liability in the event of the failure of the business. The liability of members cannot be extended beyond the unpaid shares remaining in the company except in exceptional cases when the veil of incorporation is lifted to determine the liability of directors.<sup>29</sup> The share capital and the membership of the company vary, depending on whether the company to be formed is private or public. Both private and public companies can transfer shares but the transfer of shares in private company is restricted.

### **b) Company limited by guarantee**

This company may or may not have share capital. The liability of its members is limited by the constitution of the company to such amount as they undertake to contribute to the asset of the company in the event of it being wound up.<sup>30</sup> Each member promises to pay a fixed amount of money specified in the Memorandum in the event of liquidation of the company for payment of the debts and liabilities of the company.<sup>31</sup> Such a company is called a company limited by guarantee. Such a company's existence is based on entrance and subscription fees. They may or may not have a share capital. The liabilities of the members are limited to the extent of the guarantee and the value of the shares subscribed to if the company has a share capital. If it has a share capital, it may be a public company or a private company.<sup>32</sup> A company limited by guarantee is not formed for profit-making as its assets and income are not distributed to its members; no money is contributed by members of a company limited by guarantee during its lifetime.<sup>33</sup> Members only contribute a minimum of 100,000 in the event of the company being wound up.<sup>34</sup> This type of company is common to non-governmental organizations, sports, and religious organizations provided it is not for profit making.

### **c) Unlimited company**

By the provisions of Section 25 of the Companies and Allied Matters Act,<sup>35</sup> an unlimited company is a company with no limit to the liability of its members. It is a company with unlimited liability and must be registered. This is a separate legal entity that possesses the characteristics of a corporate entity save for the fact that its members

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<sup>28</sup> D. French, S. Mayson and C. Ryan, *Mayson French and Ryan on Company Law* (25<sup>th</sup> edn, Oxford University Press 2008).

<sup>29</sup> T.I Akomolede, 'Legal Issues in Entrepreneurship' in P.O Oladele (ed), *Introduction to Entrepreneurial Skills* (2<sup>nd</sup> edn, Ekiti State University Press 2015).

<sup>30</sup> D. French, S. Mayson and C. Ryan, (n28) *Ibid*.

<sup>31</sup> CAMA 2020, s 26; Study Material <<http://www.ddegjust.ac.in>> accessed 6 June 2024.

<sup>32</sup> *Ibid*.

<sup>33</sup> T.I. Akomolede, (n29) *Ibid*.

<sup>34</sup> The company takes a promise from each member to contribute a fixed amount (not less than 100,000) to pay the company's debt when it is being wound up.

<sup>35</sup> CAMA, 2020.

do not have the advantage of limited liability.<sup>36</sup> It may either be a private or public company. Although the liability of members is unlimited, they are not directly liable to creditors like a partnership business because they have an independent corporate existence; members are fully liable for the indebtedness of the company no matter the amount involved.<sup>37</sup> This type of company is exempted from the obligation to deliver an annual audited account to the Corporate Affairs Commission. There is no restriction on the alteration of capital.

## **5.2 Sole proprietorship**

The sole proprietorship business is carried out by an individual solely to make a profit. Sole trading is a business venture where an individual engages in commercial trading alone to make a profit. This form of business has been in existence from time immemorial. It is the oldest, simplest, and most common form of business in Nigeria.<sup>38</sup> Relatively, this type of business does not require a high start-up capital; and it is carried out with only minimal legal formalities. There is no payment of corporate tax, and because it is managed by an individual, it encourages quick decision-making and promotes direct personal relationships with customers and employees. The proprietor makes all the decisions of the business and the question of sharing profit or loss does not arise because as the sole trader, he takes the profit and loss alone. However, there is no assurance of continuity as the death of the sole trader leads to the death of the business. Sometimes decisions made may be faulty as there is no wide consultation and proper evaluation of business prospects before decisions are taken.<sup>39</sup> Due to the limited capital committed to the business, the prospect for expansion is often limited. The sole proprietor usually relies on loans and personal assets to finance the business.

The effect of section 863 (1) of the Companies and Allied Matters Act (CAMA) is that every individual, firm, or corporation having a place of business in Nigeria and carrying on business under a business name, shall be registered in the manner provided in Part B of the Act. The business must be registered within twenty-eight days of commencement of business in respect of which registration is required.<sup>40</sup> It must furnish to the registrar at the registered office of the state in which the principal place of business of the firm or business is situated, a statement in writing in the prescribed form and containing the name of the business; general nature of the business; full postal address of the principal place of business; full postal address of every other place of business.<sup>41</sup> A sole trader must satisfy these requirements before his business can be registered.<sup>42</sup> Where

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<sup>36</sup> S. Griffin, *Company Law Fundamental Principles* (Pitman Publishing 1994).

<sup>37</sup> T.I. Akomolede, (n29) *Op.cit.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> CAMA 2020, s 815(1).

<sup>41</sup> *Ibid*, s 815(1)(a)-(d).

<sup>42</sup> T.I. Akomolede, (n29), 146.



an individual defaults or fails to fulfill the requirements of the provisions of CAMA, any contract made or entered on his behalf while in default shall not be enforceable by action or other legal proceedings.<sup>43</sup>

### **5.3 Partnership**

The re-enactment of the Company and Allied Matters Act Cap C20 Laws of the Federation (LFN), 2004 introduced a new concept of partnership in Nigeria. The Act,<sup>44</sup> made provision for Limited Liability Partnership (LLPs), Limited Partnership (LP), and Foreign Limited Liability Partnership. For this study, these categories will be examined together. A partnership is a relationship between persons carrying on a business in common with a view of making a profit.<sup>45</sup> In limited liability partnerships under Part C of CAMA, each member is an agent of the partnership, and as such parties are jointly and severally liable for the action of any of their members.<sup>46</sup> The cardinal principle of partnership is that the agreement must be based on mutual trust and confidence. Recently, this relationship has enjoyed tremendous acceptability amongst the business communities in Nigeria.

The limited liability partnership consists of two or more members who are called partners, but with a legal entity separate from the partners.<sup>47</sup> The number of persons that can form LLPs and LPs businesses is at least two,<sup>48</sup> but not more than twenty.<sup>49</sup> Where there are at least two designated partners who are individuals, at least one of them shall be resident in Nigeria.<sup>50</sup> Limited liability partners must be competent to enter into a partnership contract; thus, lunatics and undischarged bankrupts are not eligible to become partners.<sup>51</sup> In the absence of any agreement on profit sharing, the sharing of profit shall be determined by the provisions relating to that matter as are set out in the Schedule to the Act.<sup>52</sup>

It should be noted that designated partners in limited liability partnerships are responsible for the doing of all acts; that is, they all have mutual rights and duties to participate in the management.<sup>53</sup> Thus, no partner shall cease to be a partner without the consent of other partners.<sup>54</sup> Just like every other business, registration of a limited liability partnership is compulsory,<sup>55</sup> and it is not circumscribed by *ultra vires* doctrine as partners are empowered to undertake any kind of legitimate business of their choice.

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<sup>44</sup> CAMA, 2020.

<sup>45</sup>Partnership Act 1890, s 1; See CAMA 2020, s 753(1)(a).

<sup>46</sup>CAMA 2020, s 765.

<sup>47</sup>*Ibid*, s 746(1).

<sup>48</sup>*Ibid*, s 748(1), and s 795(2).

<sup>49</sup>*Ibid*, s 19(1).

<sup>50</sup>*Ibid*, s 749(1).

<sup>51</sup>*Ibid*, s 747(a)(b).

<sup>52</sup>*Ibid*, s 762(4).

<sup>53</sup>*Ibid*, s 762(1).

<sup>54</sup>*Ibid*, s 763(1).

<sup>55</sup>*Ibid*, s 797(1).

Unlike the previous provisions of CAMA Cap C20 LFN, 2004, the LLPs and LPs combine organizational flexibility and the tax status of a partnership with the limited liability of a company. The implication of this concerning liabilities of designated partners in LLPs is that partners' liabilities are limited to their subscription specified in the LLPs Agreement which is *pari-material* to liabilities of members of an incorporated company. These concepts enjoy perpetual succession like incorporated companies.<sup>56</sup> Every partner is jointly and severally liable for the liability of the partnership business and cannot borrow because the partnership asset belongs to the partnership in its legal capacities.<sup>57</sup> An LLP's business is expected to be concluded with a written document called Articles of Partnership or by a Deed containing the partnership agreement because its existence is a question of law that requires a written agreement to avoid future disputes, which are common with partnerships.

Foreign limited liability partnership (FLLPs), although not newly introduced by CAMA, 2020 is another type of partnership business in Nigeria. It is a partnership that was incorporated outside Nigeria before or after the commencement of the Act<sup>58</sup> that has the intention of carrying on business in Nigeria. For such a partnership to engage in business, the partners must take all necessary steps to incorporate the partnership as a separate entity in Nigeria.<sup>59</sup> However, until such business is incorporated, the foreign limited liability partnership shall not carry on business in Nigeria or exercise any power of a corporate body.

Limited partnership (LP) on the other hand is not specifically different from a Limited Liability Partnership (LLP) under CAMA, although, there are slight variations. The LPs unlike the limited liability partnership with designated partners has persons called general partners who shall be liable for the debt and obligation of the firm, and the ones called limited partners.<sup>60</sup> This limited partner may be an individual or a corporate entity, provided that an individual shall not become a partner if he is of unsound mind or an undischarged bankrupt.<sup>61</sup> Like every other business that requires registration, a limited partnership shall be registered as such by the provision of Part D of CAMA.<sup>62</sup> A limited partnership is quite flexible as it allows for changes to be made during the continuance of the partnership. All that is required is that a statement signed by the firm specifying the nature of the change shall within seven days be delivered to the Commission.<sup>63</sup>

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<sup>56</sup>*Ibid*, s 746(2); *Ibid*, s 807.

<sup>57</sup>T.I. Akomolede, (n29), 147

<sup>58</sup> CAMA, 2020

<sup>59</sup> *Ibid*, s 788(1).

<sup>60</sup> *Ibid*, s 795(2)(3).

<sup>61</sup> *Ibid*, s 796.

<sup>62</sup> *Ibid*, s 797(1).

<sup>63</sup> *Ibid*, s 800(1).

The obvious difference when comparing these forms of partnerships is the involvement of specific partners in the partnership business. By the provision of Section 749 (1) CAMA, 2020, limited liability partnership may involve foreigners as designated partners, and for such partnership to carry on business in Nigeria, one of the designated partners must reside in Nigeria. Where the foreigner resides outside Nigeria but intends to carry on business in Nigeria as a designated partner, the registration of a limited liability partnership may be required under Part C of CAMA. For a limited partnership, where partners are non-foreigners and intend to register a flexible partnership business with no liabilities, such business may be registered as a limited partnership under Part D of CAMA.

In a foreign limited partnership, the business relationship exists between foreign partners who have incorporated the limited partnership outside Nigeria before or after the commencement of CAMA but intend to carry on business in Nigeria. Where such intention exists, the foreign limited partnership is expected to be registered in Nigeria before carrying on business unless exempted by the Minister.<sup>64</sup> This form of partnership may not require the involvement of a Nigerian to be registered or carry on business.

#### **5.4 Alien Participation**

The provision of Section 20(4) of the CAMA, 2020 empowers aliens to participate in forming a company in Nigeria subject to any enactment regulating the rights and capacity of an alien to participate in trade or business. A foreign company not registered in Nigeria cannot carry out any form of business in Nigeria unless registered in Nigeria, otherwise, such business transaction would be illegal and unlawful. Although, an unregistered foreign company in Nigeria can sue and be sued for goods and services delivered, however, if such a company enters into a contract in Nigeria and there is a breach, the company cannot enforce any rights and duties arising from the agreement.

For an alien or expatriate entrepreneur to establish a business in Nigeria, the investor must have executed a Joint Venture Agreement (JVA) and any other necessary incorporation agreement if the company is to be jointly floated. The expatriate must apply to the National Investment Promotion Commission for registration, the Security and Exchange Commission for registration of the security, and also apply for the necessary permit and approval which must include a business permit, expatriate quota, residence permit, and fiscal approvals in respect of fees for management, technical, consultancy agreement. If the business involves technology transfer, it must be registered with the National Office of Technology Acquisition and Promotion.

### **6. LEGAL ISSUES IN ENTREPRENEURSHIP**

The legal issues in entrepreneurship focus on legal actions emanating from entrepreneurship. The legal aspect of entrepreneurship is designed to equip

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<sup>64</sup> *Ibid*, s 778(1)(2).

entrepreneurs with the managerial capability of legal astuteness to work effectively with legal officers to solve complex problems and protect the firm's resources. The legal aspect of business should not be treated as an afterthought to the business development process. Entrepreneurs should be armed with some knowledge of law and the legal principles that are relevant to their businesses. This requires value-laden attitudes, a proactive approach, an exercise of informed know-how of the law, and appropriate application of legal tools. Legal principles are not only for the incorporation of companies but must be integrated into entrepreneurship for businesses to operate effectively.

## **6.1 Business Registration**

One of the major concerns of an intending entrepreneur is the registration of the company or business name. Section 852 (1) of CAMA states expressly that except with the consent of the Commission, no company shall be registered with a name that contains the words, chambers of commerce, municipal, federal, national, state, regional, government, chartered, group, and holding.<sup>65</sup> A prospective entrepreneur is statutorily obligated to register a name for his business.<sup>66</sup> The registration of a business name does not require legal expertise. However, the entrepreneur may not be familiar with the rules on the availability of names, or registrable names; that is the prohibited or already taken names. According to Section 852(1) CAMA, 2020, no company, LLPs, LPs, business name or incorporated trustees shall be registered if the name or trademark is identical to the name of a company, limited liability partnership, limited partnership business name, incorporated trustees already registered or so closely resembles that name as to be calculated to deceive.<sup>67</sup> Using names that closely resemble the names of existing companies may render the entrepreneur liable for the tort of passing off. Names that are misleading, undesirable, offensive, and contrary to public policy are also prohibited.<sup>68</sup>

Another issue that may arise is where a registered company intends to carry on business under a subsidiary business name. The fundamental question is which name is recognized for the business, is it the registered company's incorporated name or the subsidiary business name? It should be noted that by the provision of the Act, a registered company can carry on business under a subsidiary business name.<sup>69</sup> Where this occurs, it is inferred from the Act that such a subsidiary business name without any addition of the company's registered name shall be registered.<sup>70</sup> and recognized and not the company's

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<sup>65</sup> CAMA, 2004.

<sup>66</sup> *Ibid*, s 814.

<sup>67</sup> *Niger Chemist v. Nigerian Chemist* [1961] ALL NLR 180.

<sup>68</sup> CAMA 2020, s 852(1)(c).

<sup>69</sup> *Ibid*, s 814(c).

<sup>70</sup> *Ibid*; See O.W. Duru, 'Law Relating to Registration of Business Name (Enterprises) under Part B of the Nigerian CAMA' (2016) <<https://www.linkedin.com>> accessed 6 June 2024

incorporated name. This issue is further exacerbated by the fact that a business name does not acquire legal personality upon registration.<sup>71</sup> Therefore, where a company carries on business in a subsidiary business name and the business name commits or intends to challenge a breach, such business cannot sue or be sued in the subsidiary business name except in the name of the owner of the business, that is company's incorporated name because of its legal personality.<sup>72</sup> With this wide range of challenges, entrepreneurs in and outside Nigeria who intend to do business in Nigeria must be aware of all these intricacies to avoid business pitfalls that mar their interests and those of investors.

## **6.2. Trademark Infringement**

This is a unique sign identifying certain goods or services produced or provided by an individual or a company. A mark is different if it is fanciful, arbitrary, suggestive, and descriptive. Its origin dates back to ancient times when craftsmen reproduced their signatures, or "marks", on their artistic works or products of a functional or practical nature. Avoiding generic or descriptive marks, an entrepreneur should create fanciful marks or choose arbitrary marks, which have the best capability of surviving the registration process.<sup>73</sup> Over the years, these marks have evolved into today's system of trademark registration and protection.

The system helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality as indicated by its unique trademark meet their needs.<sup>74</sup> Trademark protection ensures that the owners of marks have the exclusive right to use them to identify goods or services,<sup>75</sup> or to authorize others to use them in return for payment. The period of protection varies, but a trademark can be renewed. Trademarks may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, or three-dimensional signs, such as the shape and packaging of goods.<sup>76</sup>

An entrepreneur as an innovator must ensure he has the freedom to use the specific mark to reduce the likelihood of any difficulty in the process of a trademark application for registration. For the right on the trademark to be enforced in a court of law, it must be registered. This implies that where an entrepreneur fails to register a trademark and there is an infringement on the trademark, the entrepreneur shall not be entitled to institute any proceeding to prevent, or to recover damages for the infringement.<sup>77</sup> The registration

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<sup>71</sup> O.W Duru, (n70) *Ibid.*

<sup>72</sup>Resolution Law Firm, 'The Difference Between a Business Name and Company Limited by Shares' (2021) <<https://www.resolutionlawng.com>> accessed 6 June 2024

<sup>73</sup> A. R. Singleton, 'Legal Issues in Entrepreneurship' (2001) <<http://www.researchpark.illinois.edu>> accessed 7 June 2024

<sup>74</sup> *Ibid.*

<sup>75</sup> Trade Marks Act Cap T13 LFN 2004 (TMA 2004) s 5(1).

<sup>76</sup>A. R. Singleton, (n73) *Ibid.*

<sup>77</sup>TMA 2004, s 3.

of trademarks puts the world on notice that the entrepreneur is the owner, and therefore, enjoys the right to stop others from using confusingly similar marks in commerce.<sup>78</sup>

In *Lidl v. Tesco*,<sup>79</sup> Lidl a Garman Supermarket successfully sued Tesco for trademark infringement, passing off, and copyright infringement. Lidl is the inventor of UK trademark registrations for a tallow circle outlined in red and on a blue square background. Lidl complained of Tesco's use of a sign depicting a yellow circle on a blue square background to indicate its Clubcard prices promotion. According to Lidl, Tesco infringed its trademark under Section 10(3) of the Trade Marks Act. The court held that the mark with the text was an original artistic work subject to copyright protection.

Trademark infringement is an aspect of entrepreneurship that every entrepreneur must avoid, because creating a mark or sign that has not been used before by any other business may be a difficult task to achieve. Additionally, differentiating trademarks from patents or copyrights may be another challenging issue for an entrepreneur who is not familiar with these concepts. Therefore, not to be caught in the web of endless legal battles, an entrepreneur must be abreast of legal and corporate requirements regarding the creation, registration, and use of trademarks.

### **6.3 Patents and Copyright Protection**

This is an exclusive right granted for an invention, product, or process that provides a new way of doing something,<sup>80</sup> or that offers a new technical solution to a problem. A patent provides patent owners with protection for their inventions.<sup>81</sup> Protection is granted for a limited period, generally 20 years.<sup>82</sup> Registration of a patent protects an entrepreneur's invention from being commercialized without his consent, and this right is usually enforced in a court of law.<sup>83</sup> For him to enforce his legal right, he has to apply for the patent to be granted on his invention and such invention or innovation must have an element of novelty.<sup>84</sup> Anything man-made that is useful, new (the invention must not be known by the public or in public use), and non-obvious (the invention must not be obvious given the prior art and knowledge of a person having ordinary skill in the art) may be patented. If patent protection has not been obtained or where a patent is not available, the only protection is to maintain innovations as a trade secret. An entrepreneur must take reasonable legal steps to keep its secret from competitors. Before disclosing its trade secret, it is wise to require a confidentiality clause in the copyright contract<sup>85</sup> or a

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<sup>78</sup> *Ibid*, s 13(1).

<sup>79</sup>[2023] EWHC 873; *Lifestyle Equities CV v. Royal County of Berkshire Polo Club* [2023] EWHC 1839

<sup>80</sup>I. Uford, 'Legal Issues in Entrepreneurship' in *Basics of Entrepreneurship in Tertiary Institutions* (1<sup>st</sup> edn, Robertminder International Limited 2020)

<sup>81</sup>Patent and Design Act Cap P2 LFN 2004 (PDA 2004), s 1.

<sup>82</sup> *Ibid*, s 7(1).

<sup>83</sup>National Office for Technology Acquisition and Promotion (NOTAP) Cap N62 LFN 2004, s 4(d)(i)(ii).

<sup>84</sup> PDA 2004

<sup>85</sup> A.O. Oyewunmi, *Nigerian Law of Intellectual Property* (1<sup>st</sup> edn, University of Lagos Press and Bookshop Limited 2015).



non-disclosure agreement is signed. It need not be elaborate but must state that they agree not to use or disclose them without prior notice or permission from the owner.

The Copyright Law<sup>86</sup> grant authors, artists, and creators, protection for their literary and artistic creations, generally called "works". The copyrighted work must be fixed in a tangible medium of expression and original.<sup>87</sup> A closely associated field is "related rights" or rights related to copyright that encompasses rights similar or identical to those of copyright, although sometimes limited and of shorter duration. Works covered by copyright include, but are not limited to: novels, poems, plays, reference works, newspapers, advertisements, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, maps, and technical drawings.<sup>88</sup>

The major setback in the protection of patents and copyrights in Nigeria has been the constant increase in piracy. This is further exacerbated by digital technology which has eased the reproduction, dissemination, or sharing of media contents, expansion of storage capability of digital devices, and the inexpensive process of duplicating copyright works.<sup>89</sup> The internet makes it easier to reproduce and distribute digital works, leading to an unprecedented widespread infringement of intellectual property rights. Copyrighted material can be shared and uploaded without restriction over the Internet as long as the source is cited. This has the legal consequence of making it nearly impossible for the original copyright owner to challenge the infringement against an unidentified party when there is an internet copyright infringement and the source cannot be located.

Although the protection of authored works is provided for in the Copyright Act, 2022 (as amended), in addition to making it illegal to replicate inventors' works without prior consent, it has however been observed that patent and copyright infringement has continued unabatedly despite this safeguard. Entrepreneurs are therefore continuously faced with the issue of safeguarding their products from pirates in the black market, in addition to the hassles of registering their copyright with the relevant organizations.

#### **6.4 Tax Regime**

Upon the registration of a company, it is an obligation to file an annual return within 18 months of incorporation to the Corporate Affairs Commission (CAC) and subsequently, once a year. Incorporated companies are mandated to remit their taxes every year. This is provided for and governed by the Company Income Tax Act (CITA).<sup>90</sup> A company or an entrepreneur carrying on business to make a profit in Nigeria is expected

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<sup>86</sup> Copyright Act 2022, s 10 (As amended)

<sup>87</sup> *Ibid*, s 8.

<sup>88</sup> *Ibid*, s 51(1)(a)-(f).

<sup>89</sup> O.A. Adetunji and N. Okuonghae, 'Challenges of Copyright Protection in the Digital Age: The Nigerian Perspective (2022) 6 *Library Philosophy and Practice* 1 <<https://www.digitalcommons.uni.edu>> accessed 10 June 2024.

<sup>90</sup> Capital Income Tax Act Cap C21 LFN 2004 (CITA 2004)

to comply with the tax regime in place. It is worth noting that the Federal Inland Revenue Service (FIRS) is saddled with the responsibility of collecting taxes at the federal level while the State Internal Revenue Service (SIRS) collects taxes at the state level. An entrepreneur who intends to start up a business should of necessity know where to remit his tax to avoid double taxation, non-payment, or underpayment.<sup>91</sup> The Company and Allied Matter Act provides that a company registered in Nigeria shall file Annual Returns to the Corporate Affairs Commission (CAC) and this return shall state the tax paid or payable for that financial year.<sup>92</sup> The tax regime or structure depends on the type of company that is incorporated and non-compliance with the CITA attracts penalties.

### **6.5 Non-Disclosure Agreement**

If patent protection has not been obtained or where a patent is not available, the only protection is to execute a non-disclosure agreement. Not everyone is aware that important business information should not be divulged. This may however be inevitable where there is the need to engage the services of contractors or bring in investors for financing, because there may be a need to be granted access to confidential information concerning the business. In this event, an entrepreneur must take reasonable steps to keep it secret from competitors, and before disclosing, ensure that a non-disclosure agreement is signed.<sup>93</sup> It need not be elaborate but it must state that the party agrees not to use or disclose them without prior notice or permission from the owner.

### **6.6 Trade Secrets**

Trade secrets are commercially valuable information generally known or readily ascertainable if reasonable efforts are used to keep them secret. It is any formula, pattern, device, or compilation of information used in a business that allows the trade secret owner to obtain an advantage over competitors who do not know it.<sup>94</sup> The laws of competitive business practices often deal with the protection of a company's trade secrets. A trade secret is confidential knowledge or proprietary that enables information to obtain a competitive advantage over another.<sup>95</sup> Trade secrets must be kept secret from the knowledge of the public. If information is secret and reasonable measures are taken to keep it secret, it will be protected by law; there is no registration process. The law does not create a monopoly for the use of the secret like other protections of intellectual

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<sup>91</sup>CITA 2004, ss 44 and 45.

<sup>92</sup>CAMA 2020, s 417.

<sup>93</sup> I.C. Uka, 'Entrepreneurship in Nigeria: Legal Issues to Consider' (2022) <<https://www.solapeadesuyiassociatelaw.com>> accessed 10 June 2024

<sup>94</sup> A.R. Singleton, (n73) *Op.cit.*

<sup>95</sup> M. Skaist, 'Legal Issues for the Entrepreneur' (2015) <<http://www.breitlinks.com>> accessed 23<sup>rd</sup> June 2024

property; it only protects the secret from being improperly appropriated.<sup>96</sup> An entrepreneur must take proper steps to ensure the security of their trade secret by entering into a confidentiality agreement with their employees and also ensuring maximum security of their trade secrets. He has the right to sue any individual for breach of confidentiality agreement and misappropriation of trade secrets.<sup>97</sup>

## **6.7 Merger and Acquisition**

This is also an important legal issue for an entrepreneur. There may come a time in his business that there would be the need for him to merge with another business or take over or be taken over by another business, this may be as a result of non-expansion of the business or a bid to acquire a subsidiary. A merger (also called an amalgamation) is a transaction whereby two or more companies are combined in some way in united ownership.<sup>98</sup> The merger scheme is referred to the court and the Securities and Exchange Commission (SEC) for approval. SEC will refuse to sanction or approve a merger that will lead to a monopoly or create restraint of competition. Acquisition on the other hand also referred to as 'a take-over' is a process where a company acquires shares in a targeted company to take over control of that company. Before a company can be taken over, the acquiring company must obtain the authority to proceed with the take-over bid by the SEC.<sup>99</sup> However, a take-over bid shall not be made:

- i. To fewer than 20 shareholders representing 60% of the members of the target company or such other numbers as may be prescribed by the commission from time to time or,
- ii. Where the shares to be acquired under the bid are shares in a private company<sup>100</sup>,
- iii. But it can be made to such numbers of shareholders holding in the aggregate a total of 51% of the issued and paid-up shares of the company.

The Company and Allied Matters Act, 2020 (as amended) expressly makes provision for the merger of companies.<sup>101</sup> The pre-requisite for the merger is that the merging companies must have similar aims and objectives. An entrepreneur who intends to merge with another must carry on a similar business, if not, such an intended merger will be contrary to the provision of the Act. Where companies intending to merge carry on different objects, the acquired company may alter its object in line with the acquiring company before both companies can merge.<sup>102</sup>

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<sup>96</sup>A.R. Singleton, (n73) *Op.cit.*

<sup>97</sup> *Ibid.*

<sup>98</sup>Investment and Securities Act 2007 (ISA 2007), s 119.

<sup>99</sup>ISA 2007, s 134.

<sup>100</sup>*Ibid*, s 133(3).

<sup>101</sup> CAMA 2020, s 849.

<sup>102</sup> *Ibid*, s 51.

## **6.8 Insurance Policies**

Insurance is a cover against unexpected events. An entrepreneur is expected to insure his business against any unexpected happening or mishap. It specifically deals with risk management. It is concerned with appraising and controlling risk. It is an intricate legal, economic, and social device for the handling of risks to life and property.<sup>103</sup> It is an intricate legal, economic, and social device for the handling of risks to life and property.<sup>104</sup> An insurance company differs in nature from other business concerns. It commences without liabilities and involves the payment of periodic sums known as premiums to the insurer and by the exchange agrees to cover risks that may occur in the future.<sup>105</sup> Dependence on the happening of a specified event must be uncertain or fortuitous, there must be an insurable interest in the subject matter of the insurance, and there must be a legal duty or obligation to pay an agreed sum on the happening of the contingency or specified event.<sup>106</sup> An entrepreneur may take fire insurance (to indemnify him against loss of property due to a fire outbreak) or credit insurance (to provide payment for some or all loans back where he is unable to pay).

## **6.9 Independent Contractor/Employee Classification**

An entrepreneur must know the legal differences between an employee and an independent contractor. An employee is a person who is employed by another and who takes instruction on what to do and how to do it in underpaid employment. An independent contractor is a skilled person who offers his services to another without taking instructions on how to do the job. An entrepreneur only tells the independent contractor the service required but not how to do it. An entrepreneur must be able to distinguish between an independent contractor and an employer as both have separate legal and financial implications.

## **6.10 Employment Law**

An entrepreneur must have a plan to employ staff to work with him in the short or long run, as it is often difficult to work alone sometimes. Every organization which hires employees must adhere to labour laws. It is very unlikely that an entrepreneur will be able to start a business without a single employee, hence, he must be aware of the labour laws relating to the hiring of employees from within and outside Nigeria. Employing workers from within Nigeria may not be challenging, unlike recruiting employees from outside Nigeria. The Labour Act,<sup>107</sup> concerning the recruitment of employees in Nigeria makes it mandatory for the medical examination of recruited employees and certification by a Labour officer.<sup>108</sup>

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<sup>103</sup>V. Aigbokhaevbo, 'Law of Banking and Insurance' (Lecture Note, National Open University of Nigeria 2015) <<https://nouedu.net>> accessed 10 June 2024

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

<sup>107</sup>Cap L1 LFN, 2004

<sup>108</sup>*Ibid.*, s 33.

Furthermore, an entrepreneur must be aware of the right to be accompanied by family members of foreign employees to Nigeria, if he or she wishes to be accompanied.<sup>109</sup> Furthermore, an entrepreneur must be conversant with labour laws because industrial labour disputes can occur since almost every working person can potentially raise a dispute.<sup>110</sup> Although the Labour Act is the principal legislation governing employment relations in Nigeria, its application is limited to employees engaged under a contract of manual labour or clerical work in the private and public sectors. Conversely, employees exercising administrative, executive, technical, or professional functions are governed by their respective contracts of employment.<sup>111</sup>

### **6.11 Business/Work Permits**

The nationality, class of employees and nature of a business usually explain the type of business or work permit an entrepreneur must obtain. The business characters therefore determine whether or not an entrepreneur requires a business or work permit before commencing business. In an Alien Participation or Foreign Limited Liability Partnership, where a person intends to carry on business in Nigeria, such an entrepreneur is required to obtain the necessary documentation to carry on such business.<sup>112</sup> Where an alien or foreigner, for example, focuses on transferring foreign technology into Nigeria, such an entrepreneur is expected to register a Technology Transfer Agreement (TTA) with and obtain a permit from the National Office for Technology Acquisition and Promotion. (NOTAP).<sup>113</sup> Apart from the registration of the TTA, the NOTAP is also responsible for the registration of agreements connected with, the use of Trade Marks,<sup>114</sup> Patented Inventions,<sup>115</sup> Supply of Technical Expertise and Machinery and Plant.

In Nigeria, there are various agencies saddled with the responsibility of regulating businesses that fall within their sectors. For instance, where a pharmaceutical company intends to start a business in Nigeria or import pharmaceutical products, such a company is required to register with NAFDAC and obtain its necessary license. Any entrepreneur who refuses to obtain such a permit shall be liable to penalties prescribed by law.<sup>116</sup> The essence of a business or work permit as a legal requirement for entrepreneurs both local and foreign, is to ensure that start-up businesses are recognized and permitted in Nigeria. It is important for entrepreneurs to abreast themselves with the types of businesses, and the legal consequences of not obtaining such permit or license before carrying on business.

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<sup>109</sup>*Ibid*, s 34.

<sup>110</sup> A.M. Atre, 'Legal Aspect of Entrepreneurship' (Lecture Note, National University of Juridical Sciences 2014) [http://www.klectie.com/docs/AtulAtre%20Legal\\_Aspects\\_of\\_Entrepreneurship.pdf](http://www.klectie.com/docs/AtulAtre%20Legal_Aspects_of_Entrepreneurship.pdf) accessed 8 December 2017

<sup>111</sup> T. Adeshina and A. Akande and O. Aiyepola, 'Labour and Employment Law in Nigeria' (2015) <<http://jacksonettiandedu.com/lawfirm/wp-content/uploads/2017/02/LABOUR-AND-EMPLOYMENT-LAW-IN-NIGERIA.pdf>> accessed 8 December 2024

<sup>112</sup> National Office for Technology Acquisition and Promotion Cap N62 LFN 2004, s 6(1).

<sup>113</sup> *Ibid*, s 4(a)-(c).

<sup>114</sup> *Ibid*, s 4(d)(i).

<sup>115</sup> *Ibid*, s 4(d)(ii).

<sup>116</sup> I.C. Uka, (n93) *Op.cit.*

## **7. LEGAL REGIME FOR ENTREPRENEURSHIP IN NIGERIA**

No matter what stage a firm is at, it is unquestionably advantageous and safer for the entrepreneur to adhere to the relevant legal framework. In addition to protecting the company from outsiders who could try to take advantage of it, adherence to these regulations regarding the registration of new and existing businesses is necessary, to avoid legal issues. Thus, a review of Nigeria's relevant entrepreneurship laws is conducted.

### **7.1 Company and Allied Matters Act (CAMA), 2020**

The Company and Allied Matters Act, 2020 (as amended) is the primary business law that governs the formation, registration, and business name of companies (private, public, unlimited, and limited by guarantee) in Nigeria. The Corporate Affairs Commission (CAC), which is tasked with incorporating and regulating firms, including start-ups, was established by the Act. It states that two or more people may incorporate or form a business by meeting the Act's requirements for the company's registration. According to the Act, a business that commences operations before or after its commencement must be registered with the Commission unless it violates any of the Act's requirements or is otherwise prohibited. Where the Commission finds the incorporation application satisfactory, a certificate proving compliance with all Act requirements about registration and incidental matters will be issued.

As a result, following registration, the company will become a body corporate with all the authority to exercise and carry out the duties of an incorporated company, including the ability to hold assets and have perpetual succession.<sup>117</sup> For foreign companies and partnerships carrying on business outside Nigeria but who intend to carry on business in Nigeria, the Act provides that such companies or partners shall take all necessary steps to obtain incorporation as a separate entity in Nigeria for that purpose, but until such incorporation, the foreign company or partnership shall not carry on business in Nigeria or exercise any power of a registered company.<sup>118</sup> Thus, if a foreign company or partnership fails to comply with the requirement of the Act, the company commits an offence liable to prosecution and or penalty as may be specified by the commission.<sup>119</sup>

Moreover, it should be noted that in certain instances, a foreign company or partnership may be exempted from registration, where the foreign company or partnership belongs to the categories of companies invited into Nigeria with approval of the Federal government, foreign government-owned companies and engineering consultant and technical experts engaged in special projects. The implication of this is that such a foreign company or partnership exempted from registration shall have the status of an unregistered company that is, not having a legal personality.<sup>120</sup> However, it

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<sup>117</sup> CAMA 2020, s 42.

<sup>118</sup> *Ibid*, s 78.

<sup>119</sup> *Ibid*, s 79.

<sup>120</sup> *Ibid*, s 82.



should be noted that apart from exempted foreign companies, every other foreign company shall be registered, and have rights and liabilities of a foreign to sue or be sued.<sup>121</sup>

## **7.2 Labour Act, 2004**

Entrepreneurship by its nature demands engaging the services of employees for the smooth operation of the business. This employment relationship is established by a definite and written contractual agreement, stating the terms and conditions of employment such as the duration of employment, the status (contract or permanent) of the employee, hours of work, duty to provide work, scope of work, salaries and remuneration. The contractual agreement, although regulates the employer/employee relationship in Nigeria, the agreement must comply with the law regulating employment relations in Nigeria, that is, the Labour Act. The Labour Act's,<sup>122</sup> fundamental objective is to ensure that the relationship between an employer and an employee is protected. To guarantee the protection of employees in Nigeria, the Act provides that no person or company shall recruit any citizen for employment as a worker in Nigeria or elsewhere except in pursuance of an employer's permit or license.<sup>123</sup>

Obtaining an employer's recruiting permit or license is a prerequisite for entrepreneurs who are desirous of recruiting for themselves, company, or a public authority the services of a citizen as a worker in Nigeria. Application for this permit or license shall be in writing to the Minister stating the nature, wages to be paid, number of workers, and the duration of the proposed contract.<sup>124</sup> Also, according to the Act, when a person is certified fit and proper to recruit citizens in Nigeria for employment as workers in Nigeria, a license shall be issued by the Minister of Labour to the recruiter. Such license shall remain valid for 12 months from the date of issue, and unless a recruiter has a valid permit, he or she shall not recruit workers for service.<sup>125</sup>

Additionally, the Act provides for the recruitment of employees within and outside Nigeria. By this provision of the Act, a person or a company is permitted to recruit any citizen for service in Nigeria, and where recruited, the employee shall be permitted to be accompanied by his or her family to his or her place of employment and attended during his or her employment there.<sup>126</sup> The Act in Part III makes provision for the employment of special classes of workers (women, apprentices, young people). In Section 54,<sup>127</sup> the Act provides that women shall have the right to leave work on maternity grounds once a medical certificate given by a registered medical practitioner is tendered stating the reason for her confinement. Furthermore, the Act stipulates that where a woman is absent from her work on maternity grounds and had been employed for a continuous period of

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<sup>121</sup> *Ibid*, s 84(b).

<sup>122</sup> Labour Act Cap L1 LFN 2004.

<sup>123</sup> *Ibid*, s 23(1).

<sup>124</sup> *Ibid*, s 24(1)(2).

<sup>125</sup> *Ibid*, s 26(1)(2).

<sup>126</sup> *Ibid*, s 34.

<sup>127</sup> Labour Act Cap L1 LFN 2004,

six months or more before her absence, she shall be entitled to be paid 50% of the wages she would have earned if she had not been absent.<sup>128</sup> The terms and conditions of employment are provided for by the Act to protect employees in a contract of employment. Entrepreneurship involves recruiting employees to carry out day-to-day activities of the company and to ensure that the interests of parties under the contract of employment are protected, parties must comply with the provisions of the Labour Act.

### **7.3 Copyright Act, 2022**

Infringement on copyright over the years has remained a fundamental challenge to the protection of original works. Entrepreneurs are usually worried about their innovations and intellectual efforts not being stolen or imitated, and as such strive continually to ensure that their businesses and innovations are protected. Protecting the rights of authors and business owners is one of the fundamental objectives of the Copyright Act, of 2022. The Act ensures that the rights of authors are protected so that they can enjoy the reward and recognition of their innovative efforts.<sup>129</sup> The Act establishes the Copyright Commission for the effective regulations, administration, and enforcement of provisions on copyright in Nigeria.

Although the Act regulates the registration of eligible innovative works, it has been discovered that not all works are eligible for copyright protection under the Act. The Act provides that literary, musical, or artistic work shall not be eligible for copyright except if some effort has been expended on making the work, to give it an original character and has been stored in a medium from which it can be perceived, reproduced or otherwise communicated directly or with the assistance of a device or machine.<sup>130</sup> Where an innovation meets the requirement set out in the Act, such work shall be eligible for copyright registration and protection notwithstanding the quality of the work or the purpose for its invention. The registration of copyright in a collective work under the Act except otherwise provided in an agreement shall initially vest in the author in whose initiative the work was created, and the other authors incorporated in the collective work shall have the right to exploit their works independently of other rights in the collective work.<sup>131</sup>

Furthermore, the importance of registration of innovative works under the Copyrights Act is to vest ownership in the author. This right implies that invented works assume the nature of a moveable property<sup>132</sup> and shall be transferrable by way of assignment, gift *inter vivos*, disposition, or operation of law.<sup>133</sup> This transferable right, however, is limited to only some of the acts which the author has the exclusive right to

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<sup>128</sup> *Ibid*, s 54(b).

<sup>129</sup> Copyright Act 2022, s 1.

<sup>130</sup> *Ibid*, s 2(2)(b)(c).

<sup>131</sup> *Ibid*, s 29.

<sup>132</sup> Constitution of the Federal Republic of Nigeria 1999, s 40. (As amended)

<sup>133</sup> Copyright Act 2022, s 30.

control.<sup>134</sup> By the provision of the Act, the right to invented works is recognized as a fundamental human right. Compared with other justiciable rights under the provision of the 1999 Constitution, copyright infringement is justiciable and enforceable under the Fundamental Right (Enforcement Procedure) Rules, 2009.

#### **7.4 Trade Marks Act**

In Nigeria, the Trade Marks Act<sup>135</sup> is the major legislation that regulates the registration of business trademarks. Section 67 (1) of the Act, defines marks to include a device, brand, heading, label, ticket, name, signature, word, letter or numeral, or any combination thereof. This mark is inscribed on a product to distinguish it from another and give it a distinct feature. This distinct feature identified with a particular business is regarded as a trademark. Thus, a trademark is a mark used or proposed to be used for goods to indicate a connection in the course of trade between the goods and some people having the right either as proprietors or as registered users. As a business owner or entrepreneur, a trademark must be registered for a particular good or class of goods before such trademarks can be used or assigned.<sup>136</sup>

The registration of trademarks in Nigeria is limited only to registerable marks that are not deceptive or scandalous designs. This restriction also covers goods with trademarks identical to an existing and registered trademark belonging to a different proprietor concerning the same goods or description of goods as to be likely to deceive or cause confusion. However, in the case of honest concurrent use which in the opinion of the registrar or court makes it proper to use such trademark, the registrar or the court may permit the registration of such trademarks that are identical in respect of the same good subject to conditions and limitations as the registrar or court may deem fit to make in the circumstance.<sup>137</sup> In a situation where there are separate trademark applications by different proprietors to be registered in the same good that are identical, the registrar may refuse to register any of their trademarks pending their rights have been determined by the court. The implication is that, when the matter is *lis-pendens*, parties cannot use, or transfer the trademark to another person until the matter has been determined by the court.

The essence of registration of a trade trademark is to assign to the person registering the mark the exclusive right to use the trademark concerning those goods. It should be noted that the exclusive right to use a trademark is deemed infringed by any person who is not the proprietor of the trademark or a registered user, using it or a trademark identical to it that is likely to confuse the course of business.<sup>138</sup> This infringement, however, can only be challenged by the author depending on whether the

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<sup>134</sup> *Ibid*, s 30(2).

<sup>135</sup> Trade Marks Act Cap T13 LFN 2004.

<sup>136</sup> *Ibid*, s 4.

<sup>137</sup> *Ibid*, s 13(2).

<sup>138</sup> *Ibid*, s 5(1)(2).

trademark is registered or not registered. Where the trademark is not registered, the Act provides that no person shall be entitled to institute any proceeding to prevent or recover damages for the infringement of such trademark. However, this provision shall not affect the rights of action against any person for passing off goods as the goods of another person.<sup>139</sup>

## **7.5 Patent and Design Act**

Patent and copyrights are types of intellectual property in Nigeria. Though similar, they differ in what they intend to protect. A patent protects inventions such as the light bulb, steam engine, the wheel, printing press, penicillin, and the compass, and prevents others from making or selling an invention such as electricity, vehicles, airplanes, and others, while copyright protects original artistic works in tangible forms such as literature, art, architecture, and software. Like every copyright owner, a patent holder has exclusive rights over his or her inventions, and this right includes the right to reproduce, distribute copies, and display inventions in public. The right to patent in Nigeria is registerable under the Patent and Design Act,<sup>140</sup> According to the Act, an invention is patentable if it is new and results from inventive activities capable of industrial application. The grant of this right confers upon the patentee the right to preclude any other person from making, importing, selling, or using the product.<sup>141</sup> However, this right shall only extend to acts done for industrial and commercial purposes, and not to act for non-commercial purposes.<sup>142</sup>

Additionally, concerning industrial design, the Act provides that an industrial design is registrable if the design is new and not contrary to public policy or morality. Thus, where the design is not new, that is, it has been made available to the public by means of description or use, such may not be registered, unless it is shown to the satisfaction of the register that the creator of the design could not have known that it had been made so available.<sup>143</sup> An industrial design registered vest right in the statutory creator, whether or not he or she is the true creator as long as he or she is the first to file an application for registration of the design.<sup>144</sup> It then implies that, where the right to a design is registered to a statutory creator, it precludes any other person including the true owner from doing any act contrary to the right of the registered owner.<sup>145</sup>

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<sup>139</sup>*Ibid*, s 3.

<sup>140</sup> Patent and Design Act Cap P2 LFN 2004.

<sup>141</sup> *Ibid*, s 6(1).

<sup>142</sup> *Ibid*, s 6(3)(a)(b).

<sup>143</sup> *Ibid*, s 13(1)(3).

<sup>144</sup> *Ibid*, s 14(1).

<sup>145</sup> *Ibid*, 19(1).

## **8. ROLE OF COURTS IN ENTREPRENEURSHIP ISSUES**

Some existing literature on entrepreneurship has been able to identify lots of challenges encountered by entrepreneurs in Nigeria. However, only a few of them succeeded in addressing these challenges and providing possible solutions. Several works<sup>146</sup> suggested that Nigeria like every other developing country around the world faces a myriad of entrepreneurial challenges such as lack of business capital, infrastructural lapses, multiple taxation, unfavorable government policy, market monopoly, economic recessions, and nescience of entrepreneurship legal issues. While other studies examined the challenges of entrepreneurship generally, this study focuses on a more specific aspect (legal issues in entrepreneurship in Nigeria). Having examined legal issues in entrepreneurship earlier, it is therefore apt at this juncture to discuss the role of the courts in entrepreneurship.

The adaptability of the Court in resolving entrepreneurship legal issues is conceived along interpretation of laws relating to entrepreneurship. Interpretation of laws is central to the role of the Court and as such, adaptability is about keeping up with contemporary changes in entrepreneurship.<sup>147</sup> Statutory provisions on entrepreneurship are required to be interpreted by the Court when legal issues arise. This role comes to play when entrepreneurship matters like patent, copyright, trademark infringement, and contractual issues eventually find their way to the Courtroom, and whether acting as an interpreter of these intellectual properties or as arbiters in contractual agreements, the courts play an important role in influencing the development and sustainability of entrepreneurship in Nigeria.<sup>148</sup>

The Court, as an umpire is expected to analyze entrepreneurship claims based on the provisions of applicable laws thereby facilitating the evolution of legal rules to address novel issues in entrepreneurship. New inventions are being discovered every now and then, and they present novel opportunities and challenges, which may require judicial intervention to resolve.<sup>149</sup> When these matters are resolved, the Courts simultaneously create a new set of legal rules and principles for resolving other entrepreneurship issues. The creation of these new set of rules and principles by the Court invariably establishes

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<sup>146</sup>J. Wangare and A. Simwa, 'Challenges of Entrepreneurship in Nigeria and Potential Solutions' (2022) <<http://www.legit.ng>> accessed 1 July 2024; T. Omodehin, '6 Challenges Faced by Entrepreneurs in Nigeria' (2021) <<http://www.catalstbusinessconsult.com>> accessed 1 July 2024; B.B. Balogun and F. Oloroto, 'Challenges Facing Entrepreneurship Development in Nigeria: An Empirical Review' (2020) 19 (2) African Scholar Journal of African Sustainable Development 75; SkillConnect, 'Challenges and Opportunities for Entrepreneurs in Nigeria (2023)' <<http://www.linkedin.com>> accessed 1 July 2024; E. Afolabi, '7 Challenges an Entrepreneur is Likely to Face in 2024' (2024) <<http://www.gabimag.com>> accessed 1 July 2024.; M.I. Okeke and I. Eme-Okechukwu, 'Challenges Facing Entrepreneurs in Nigeria' (2014) 3 (5) Singaporean Journal of Business Economics and Management Studies 18

<sup>147</sup> D. Gordon Smith and M. Ueda, 'Law and Entrepreneurship: Do Court Matter?' (2006) 1 (2) Entrepreneurial Business Law Journal 353 <<http://www.digitalcommons.law.byu.edu>> accessed 1 July 2024

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

new legal rights and obligations different from the textual interpretation of applicable legislations on entrepreneurship. This departure, therefore, asserts the role of the court in shaping the enactment of laws which are compatible with business exigencies.<sup>150</sup>

## **9. CONCLUSION AND RECOMMENDATION**

Entrepreneurs through ground-breaking inventions and business development create new fortune that translates into greater economic growth. However, venturing into a business is challenging for an entrepreneur. In start-up businesses, apart from issues relating to capital, infrastructure, government policies, and economic recession, addressing the legal aspects of entrepreneurship is important before launching into the venture. Therefore, addressing these issues helps in increasing the realizable value of the business and limiting the risk that may be encountered by the entrepreneur. For entrepreneurs, legal formalities should be a top priority and not an afterthought in business whether new or existing because every business has an unbreakable nexus with the law, as it is the foundation upon which every business is built. As such, this foundational aspect of every start-up business must be complied with by an entrepreneur to ensure a seamless set-up.

Given that legal issues in entrepreneurship are restrictive, they should be handled with dexterity and professionalism to avoid legal conflicts and hassles. The study, therefore, recommend that the legal aspect of entrepreneurship starting from documentation, registrations, and employment to obtaining necessary licenses and permits or exemptions should be handled by qualified legal personnel who are experienced in that field. By the provision of CAMA, anyone including companies can register a business with or without the help of a professional, however, not everyone is familiar with the procedure for setting up a business free of any impending legal issue. Apart from the stanch need to engage the services of a lawyer to handle legal challenges in entrepreneurship, it is also recommended that the bottleneck administrative bureaucracy that discourages business owners while setting up a business should be reduced to the barest minimum. The government should put measures in place to reduce the cost of business registration and give incentives to encourage start-up businesses. Also, the government should ensure that existing legislations on entrepreneurship in Nigeria are amended where necessary to address contemporary issues and be at par with foreign laws and international standards on entrepreneurship.

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<sup>150</sup> *Ibid.*