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A Legal Appraisal Of The Concepts Of Shares And Debentures As Company Securities In Nigeria

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ABSTRACT
This paper gives us a critical understanding and analysis of the concepts of *Shares* and *Debentures* as understood in the legal parlance. It deals with the usefulness of Shares and Debentures as company securities in Nigeria by highlighting their respective features and differences which really gives us a very clear and broader knowledge of the two concepts. The paper discussed the following sub-topics: the transfer of shares, classes of Shares, the Rights of Shareholders, the types of security that exists over Stocks and Shares. Obviously, in this paper, it is pointed out that there are some rights that are common to all Shareholders, irrespective of their class of Shares. When a company is in need of funds, it obviously advertises in the newspapers for the public to buy its Shares which funds it uses as its capital. It carries out its business and pays the profit in form of Dividend to the investors who are known as the Shareholders. The economic situation of the country in addition to the line of business the company engages in, goes a long way to determine if the company can thrive in a normal economy and during economic recession. Once the company is affected by recession, it suffers a lot of setbacks and loses its profits to a large extent. It equally becomes unable to pay the annual dividends to the Shareholders. Therefore, it is suggested in this paper that companies should be run by highly competent, well educated and honest people, if it wants to make good profits and minimize losses. A company that loses most of its profits will equally lose Public patronage as the existing Shareholders will never want to invest in its business again, and neither will new people want to come in as members. The fact that companies are requested by Law to make public their financial Statements, especially to Shareholders and Debenture Holders in s. 334 and ss. 343-344 CAMA, LFN 2004, is a good development to protect shareholders and the entire Populace, so that they will always know the financial status of a particular company before they invest in its Shares. I believe that no company wants to lose its profits or its Shareholders. It is therefore advisable that Company Executives and Board of Directors should sit down, map out intelligent strategies to grow the company once they have sourced their capital from the general Public through the issue/sale of their shares. The paper equally discussed the creation of Debentures, having defined what a Debenture is. It equally educates us on the contents of a Debenture Trust Deed which must be issued if the Debenture Holder wants to get back his money which he gave out as loan to the company (its debtor). Therefore, it is clear that a Debenture Trust Deed has to favour the Creditor. In the concluding part of this Paper, it was clearly stated that the Debenture Holder enjoys priority over the Shareholder where there is any eventuality, whether positive or negative, as the Debenture Holder through the Debenture Trust Deed gets paid in all cases, before the Shareholders are considered. When it comes to risk as well, I have the opinion in this paper that the Debenture Holder has lesser risk(s) to contend with in most cases than the Shareholders. Hence, the Banks will always prefer to involve themselves in Debenture transactions where they will have a charge over the company's assets in event of collapse of the company, than to take Share certificates as collaterals, when it is obvious that with recession, the value of the Share or Share certificates will likely fall, since recession generally affects the performance and profitability of most companies in Nigeria and all over the World.

Keywords: Company Shares, Debentures, Company & Allied Matters Act, Shareholder, Types of Shares, Charge, Debenture Trust Deed

INTRODUCTION

According to the Oxford Dictionary of Law[1], Securities is loosely defined as *Stocks, Shares, Debentures, Bonds or any other rights to receive dividends or interest. Strictly, the term should be used for some rights backed by some sort of security as in the case of debentures*[2].

SHARES[3]

In Nigeria and the entire World today, there is no project that does not require some form of capital for its take-off. Having some good capital is key to any successful business. In Nigeria, businesses are regulated in terms of registration by the Corporate Affairs Commission as specified under the Companies & Allied Matters Act[4].According to the CAMA, Shares are defined generally by Section 650 (1) as *the interest in a company's share capital of a member who is entitled to share in the capital or income of the Company, and except where a distinction between Stocks and Shares is expressed or implied, includes Stock*.[5] The real nature of Shares has been succinctly espoused by *Farwell J*, in *Borland's Trustee v. Steel*[6] where he said *a Share is the interest of a Shareholder in the Company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the Shareholders inter se ..... the contract contained in the Articles of Association is one of the original incidents of the Share. A Share is not a sum of money .... but is measured by a sum of money and made up of various rights contained in the contract including the right to a sum of money of a more or less amount*. While dealing with Shares, we talk of the Securities & Exchange Rules & Regulations 2009, Companies & Allied Matters Act, Investment & Securities Act 2007, Investment &Securities Tribunal (Procedure) Rules. S. 13 of the Investment and Securities Act 2007 says that *the Securities and Exchange Commission shall be the apex regulatory body for the Nigerian Capital Market, and shall carry out the functions and exercise all the powers subscribed in the Act, and in particular shall:*

a. Regulate investments and Securities business in Nigeria as defined by this Act
b. Register and Regulate Securities Exchanges, capital trade points, futures, options and derailed exchanges
c. Regulate all offers of Securities by Public Companies and Entities
d. Register Securities of Public Companies

The Market that deals on Shares is known as the Financial Market. Financial Markets are created as a means of providing financial resources for funding projects or businesses. It is a market where Securities like Corporate Stocks, Shares, Debentures and Bonds are traded. The Financial Market is therefore made up of three segments namely*: the Money Market, the Capital Market, the Insurance Industry*. Talking of the Capital Market, the following Instruments are usually traded- Shares, Debentures, Government and Public Securities e.g Bonds, Units in Collective Investment Scheme, Real Estate Investment, etc. The Capital market provides investment needed for efficient allocation of scarce resources, instruments for socio-economic development and avenue for mobilization of capital from less productive to productive sectors.

Who is a Shareholder?

A Shareholder is one who owns or holds a Share or Shares in a Company. A corporate person or company can also be a Shareholder. Ownership of Shares entitles the holder to partake to the extent allowed by the Articles of Association in the management of the Company and to receive a proportionate part of the

[1] 6th Edition (2006), Oxford University Press
[2] Oxford Dictionary of Law, 6th Edition @ p. 485
[3] See ***Mubak Legal Consult: Seminar Presentation on Shares, 7th August 2011*** - *www.mubaklegalconsult.blogspot.com/2011*
[4] Cap 59 LFN 1990, Cap C20 LFN 2004
[5] S. 315 Investments & Securities Act 2007 defines Shares as a proprietary interest in the share capital of a body corporate, and except where a distinction between Stocks and Shares is made, include Stocks. This is just what we have under the CAMA.
[6] (1901) 1 Ch 279 @ p. 288; See ***I.O Smith:*** *Nigerian Law of Secured Credit* (2001) Ecowatch Publications, Lagos @ p. 261

profit distributed by the Company. By virtue of section 115 CAMA[7], Shares shall be transferable as property in the manner provided by the Articles of Association, but while Shares in Public Companies are easily transferable, a Private Company is required by Law to restrict the transfer of its Shares by its Articles of Association[8]. Creditors generally should prefer Shares quoted on the Stock Exchange, because not only is the value of the Shares easily determinable for purposes of giving credit facility, it is also easier to find buyers for them in the event of enforcement of such Security.

1. The Controlling Shareholder – is a Shareholder who is in position to influence the Company's Activities because he/she either owns a majority of outstanding shares or owns a smaller percentage, but a significant number of the remaining Shares that are widely distributed among other Shareholders.
2. The Dummy Shareholder – is he/she who owns Stock in name only for the benefit of the true owner whose identity is usually concealed.
3. Majority Shareholder – is a Shareholder who owns or controls more than half of the Corporation's Stock.
4. Minority Shareholder – owns less than half of the total Shares outstanding and cannot control the Company's Management or single-handedly elect Directors[9].

SHARES AS SECURITY

Security over Shares and Stocks may be created for different purposes and under different circumstances: Business Concerns may give Stocks and Shares as Security to raise working capital to run the business[10]. Short term loans in the form of overdraft facility require a simple, cheap and easily realisable form of security, and the Banks have found in Shares and Stocks a convenient collateral for securing loans[11].

TRANSFER OF SHARES

Rights in Shares may be transferred to a third party by way of an assignment of same as collateral for loans and advances. Such an assignment may create a legal or equitable mortgage, so that the creditor becomes an assignee of the borrower's interest in the capital of the company concerned. Such a transaction is subject to the restrictions contained in the Articles of Association and provisions of other relevant Statutes. For example, Section 20 (1) (b) BOFIA says *a Bank shall not without approval in writing of the Central Bank of Nigeria grant any advances, loans or credit facilities against the Security of its own Shares or any unsecured advances, loans or credit facilities unless authorised in accordance with the Bank's Rules and Regulations, and where any such Rules and Regulations require adequate Security, such Security shall be provided or, as the case may require, deposited with the Bank.*
Where this provision is contravened, it means that there is no Security requirement that has been met.

[7] Cap C20 LFN 2004, ***I.O Smith:*** *Nigerian Law of Secured Credit* @p.261
[8] See S. 22 (2) CAMA LFN 2004
[9] See generally ***Mubak Legal Consult: Seminar Presentation on Shares***
[10] Nigerian Banks and some Multi-National Companies in Nigeria are very good at this.
[11] ***I.O Smith*** @ p. 262. However, this is no longer realistic as the value of Shares in the Nigerian Stock Exchange Market has terribly declined/fallen in the past few years, especially since late 2008/early 2009. Only a few Shares of Companies have appreciated since then.

The types of Security that may exist over Stocks and Shares[12]

These are –

a. A mortgage (either legal or equitable) may be created over interest in Shares and Stocks. This is an express Security[13].
b. Lien may arise over them or over documents relating to them[14]; or
c. A Charging Order may be made in respect to them in favour of a judgment Creditor by the Court[15].

NOTE that Share Capital covers all the assets of the company, including borrowed money which is sometimes referred to as *loan capital*. It includes fixed and circulation capital. For allotment of Shares, see ss. 124-129 CAMA 2004.

CLASS OF SHARES

Since a Share is a unit that measures the holder's interest in and liability to a company, when a limited Liability company is wound up, the Shareholders have rights to share in the assets after debts have been paid. If there are no such assets, Shareholders lose the amount of their investment, but are not liable for the company's debts. We have the following types of Shares:

a. **Preference Shares** – these usually carry a fixed percentage dividend (e.g 10% of nominal value), before Ordinary Shareholders receive anything. The holders also have the right to the return of the nominal value of their Shares before ordinary Shareholders. Participating Preference Shares have further rights to share surplus profits or assets with the ordinary Shareholders. Preference Shares are generally cumulative, i.e, if no dividend is declared in one year, holders are entitled to arrears when eventually one is paid. Usually, Preference Shareholders can vote only when their class rights are being varied[16].
b. **Ordinary Shares** – constitute the risk capital (also called equity capital0, as they carry no prior rights in relation to dividends or return of nominal value. However, they have unlimited rights to some extent – if the company is successful, the ordinary Shareholder is not restricted to a fixed dividend (unlike the Preference Shareholder), and the high yield upon their Shares will cause

[12] See ***I.O Smith*** @ p. 263

[13] A Creditor desirous of taking Shares or Stocks as Security must not rely solely on the face value of the Shares, but must evaluate the yield of the shares (interest or dividend rate) in relation to the earnings of the company and similar companies in the field. A legal mortgage is created by transferring legal title in the Shares to the Mortgagee as Security for an Advance subject to re-transfer of the Shares on redemption. To effect a legal mortgage, an agreement by deed is required stating the terms of the loan and a proviso for re-transfer of the Shares when the loan is repaid. In addition, a form of transfer is completed by the Mortgagor and together with the Share Certificate, handed over to the Mortgagee for registration by the Company. Where the Articles of Association of a company permits a transfer to be made by 'instrument in writing', it is not necessary that the transfer should be by deed. See *Ogunyemi v. John Holt* (1971) NCLR 115 @ p.134; ***I.O Smith*** @ p. 263. Here, the mortgagee enjoys the right to dividends, right to new issues, such as bonus shares declared by the company, and may hold same pending redemption by the mortgagor, right to vote at company meetings, right of transfer of the Security absolutely or by way of sub mortgage, with or without the concurrence of the mortgagor. See *Ogunyemei v. John Holt* supra (1971) @ p. 133

[14] A Share is and remains the property of the company until it is fully paid for by the Shareholder. It follows therefore that the company has a lien on any unpaid shares of the company, including any dividends accruing thereto. The lien arises by operation of Law and attaches to the proprietary interest in the Shares. A statutory lien arises in favour of the company under the CAMA with respect to unpaid Shares. See S. 139(1) Cap C20 LFN 2004. A lien can be enforced by sale under S. 139 (3) CAMA. Generally, a bank has a right to retain a customer's Share Certificate until any balance due to the Bank from the customer is paid. See *Robertson's Trustee v. Royal Bank of Scotland* (1890) 18 R. p.12; ***I.O Smith*** @ p.273.

[15] A Judgment Creditor may proceed by way of an Application in the High Court against the Shares or Stocks of the Judgment Debtor for the purpose of securing payment of the amount due under a judgment or Order of Court and interest thereon. However, I am not really keen on this because the truth is that the value of Shares of most conglomerates/banks in Nigeria has seriously depreciated over the years. Really gone are the days that one can depend on dividends from Shares as a means of sustenance.

[16] Oxford Dictionary of Law @ p. 496

these to increase in value. Similarly, if there are surplus assets, the ordinary Shareholders carry the risk of the enterprise, they generally have full voting rights in a general meeting[17].

c. **Redeemable Shares** – are issued subject to the proviso that they will or may be bought back (at the option of the Shareholder or the company) by the company. They cannot be bought back unless fully paid-up, and then, only out of profits[18].
d. **Golden Shares** – enables the holder, usually the Government to outvote all other Shareholders on certain types of company Resolutions[19].
e. **Deferred or Founder's Shares** – these are Shares in which the holder's rights to participate in dividend or in repayment of capital are deferred (or postponed) until the claims of other Shareholders are satisfied. Such Shares are usually held by vendors of a business sold to the company or by the company's promoters[20].

See generally ss.141-143 CAMA LFN 2004. Normally, a person ceases to be a member of a company if the person is of unsound mind, commits fraud, a lunatic, etc.

RIGHTS OF SHAREHOLDERS[21]

The following Rights as listed below that are common to Shareholders:

1. **Voting Power on major Issues** - this includes electing directors, making proposals for fundamental changes affecting the company, such as Mergers and Liquidation. Voting takes place at the company's Annual General Meeting. Where a Shareholder cannot attend the Annual General Meeting, he/she can do so by proxy and mail in his/her vote[22].
2. **Ownership in a portion of the Company** – Shareholders have claim on a portion of the assets owned by the company. As these assets generate profits, and as the profits are reinvested in additional assets, Shareholders see a return in the form of increased Share value as stock prices rise.
3. **The Right to transfer Ownership** – the Shareholders are allowed to trade their Stock on an Exchange.
4. **Entitlement to Dividends** – along with a claim on assets, Shareholders also receive a claim on any profit a company pays out in the form of a dividend[23].
5. **Opportunity to inspect Corporate Books and Records** – this opportunity is provided through a company's public filings, including its annual Report. Nowadays, this is no problem as public companies are required to make their financial statements public.
6. **The Right to sue for Wrongful acts** – this is important, especially in view of the fact that Minority Shareholders are sometimes oppressed by the decision of the majority[24].

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[17] Oxford Dictionary of Law @ p. 496
[18] Oxford Dictionary of Law @ p.496
[19] Oxford Dictionary of Law @ p.496. In Nigeria, the Federal Government no longer enjoys being the Golden Shareholder, but is rather more interested in privatising some major companies it had established over the years. Unfortunately, privatization of important companies by the FG has become the norm in the past few years. And I may just ask – If everything is privatized and entrusted in the hands of a few individuals/companies, what will be left for the Federal Government? Absolutely nothing!. Yet, those who buy over major companies will not provide the services previously rendered by the FGN at a subsidized rate as the FGN usually did. Life will be more difficult for Nigerians and other citizens living and working in Nigeria. It is a known fact that many Nigerians are corrupt as roguish Managers, and have killed several Federal owned companies that they have been assigned to manage. The Fg must always be ready to look for sincere hands who will bring a Team of like-minds to move the Corporations forward, rather than having everything sold out.
[20] ***Adesanya & Oloyede**: Business Law in Nigeria* (1972) Evans Brothers (Nigeria Publishers) Limited, Ibadan @ p. 233
[21] ***Knowing your Rights as a Shareholder*** *- www.investopedia.com. See also www.business.govt.nz; www.titan.gr; www.legalvision.com.au; www.corporations.uslegal.com*
[22] ***Jason Van Bergen**: **Proxy Voting gives Fund Shareholders a Say** – www.investopedia.com*
[23] ***How and Why do Companies pay Dividends?*** *– www.investopedia.com*
[24] See s. 300 CAMA, Cap C20 Laws of the Federation of Nigeria 2004

7. **Right to have their names registered in the Company's Register of Members** – Shareholders have a right to have their names registered in the company's register of members as a real proof that they are indeed members of the company[25].

DEBENTURES

The capital requirements of a big conglomerate or company may not be met for the purpose of carrying out its business by its Shareholders. The company may utilize its borrowing powers subject to its Articles of Association to meet its capital requirement, providing assurance by issuing debentures secured by a charge on the company's assets[26]. Section 166 CAMA[27] gives a registered *company the power to borrow money for the purpose of its business or objects, and may mortgage or charge its undertaking, property, and uncalled capital, or any part thereof, and to issue debentures, debenture Stock and other Securities whether outright or as security for any debt, liability or obligation of the company or of any third party.*

A Debenture is a document usually made under the company's seal, acknowledging the loan and providing for repayment of the capital at a specified date and rate, and it usually gives charge[28] on the company's assets as security. It has been defined by section 650 (1) CAMA[29] as *a written acknowledgment of indebtedness by the company, setting out the terms and conditions of the indebtedness, and includes debenture Stock, Bonds and any other Securities of a company, whether constituting a charge on the assets of the company or not*. The charge or security stipulated in the debenture may be *specific*, or it may be *floating*. A specific charge attaches to specific property. A floating charge on the other hand, is a charge in equity on the property for the time being in existence, and so, does not attach to any particular property. It may therefore, change from time to time according to the company's assets. It does not prevent the company from dealing with all or any of the assets in the normal cause of its business, but the charge becomes fixed when it crystallizes, e.g when the company winds up or when the loan is repayable and the debenture holders take steps to enforce the charge by appointing a Receiver. A floating Charge is defined by *Lord MacNaughten* in *Illingworth v. Houldsworth*[30] in these words *'... a floating charge, ...is ambulatory and shifting in nature, hovering with the property which it is intended to affect, until some event occurs or some act is done which cause it to settle and fasten on the subject of the charge within its reach and grasp'.*

The advantages of a floating charge[31] are that –

i. It is a valuable means whereby the company operating as a going concern can raise money on the security of its assets while preserving intact the company's power to deal with them in the ordinary course of business.
ii. It offers the most convenient way of creating security over company's assets where the company has little or no fixed assets, but carries a large and valuable stock in trade.
iii. It enables the stocks to be turned over in the ordinary course of the company's business and attaches to whatever it is converted into, and to whatever new stock is acquired without any difficulty
iv. It affords protection against an unsecured creditor upon crystallization

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[25] ***Dimeji Kuforiji*** : *Understanding Company Securities – Shares and Debentures in Nigeria, May 29th 2016 (www.lawyard.ng); **Osisanya v. Afribank Nigeria Plc** (2007) 6 NWLR PT 1031*

[26]***I.O Smith*** @ p. 291

[27] Cap C20 LFN 2004

[28] A document given *by way of a charge* is not one which absolutely transfers the property with a condition for re-conveyance, but is a document which only gives a right to payment out of a particular fund or particular property, without transferring that fund or property. See I.O Smith @ p. 38

[29] Cap 59 LFN 1990

[30] (1904) AC 355 @ p. 358

[31]***I.O Smith*** @ p.303

v. It gives the floating charge a measure of control over the company, for not only would the company report regularly to the charge if the company gets into financial difficulties, the Chargee may be privy to Management Decisions
vi. The floating charge is also an incentive to the Creditor to give larger credit to a going concern as it expands with the consequent accrued profits from the interests to the creditor
vii. The fact that the company can deal with the charged property in the ordinary course of business makes it possible to create a later fixed legal or equitable charge over the floating charge unless the latter provides otherwise.

LEGAL CONSEQUENCES OF CREATING A FLOATING CHARGE

The floating charge covers the whole undertaking or assets of the company when created by sufficient and adequate words. Secondly, it covers all the company's assets, whether present or future and affects the assets to the extent that any person purporting to acquire it takes it encumbered with the charge. Thirdly, the floating Chargee remains free to deal with such assets in the ordinary course of business. Fourthly, when created, the floating charge gives an immediate charge over the assets, but also not attached to any of them until crystallization. Fifthly, the Chargor company can sell its property and pass a good title to the purchaser[32]. The purchaser takes the property free from the charge, but the money paid becomes subject to the charge. Where the money is used to acquire an asset, the asset becomes subject to the charge, but the vendor of the asset receives the purchase money free from the charge.

According to *I.O Smith*[33], the charger company may grant a fixed charge over property comprised in the floating charge in the ordinary course of business, and the fixed charge will have priority as to the assets on which it is fixed over the floating charge, except there is a *Restriction Clause* prohibiting the company from creating any fixed charge over property comprised in the floating charge ranking either in priority to or *parri passu* with the floating charge[34]. This type of restriction is known as the *Negative Pledge Clause.*

The application of the Negative Pledge Clause is found in s. 179 CAMA[35] which says that '*a fixed charge on any property shall have priority over a floating charge affecting that property unless the terms on which the floating charge was granted prohibited the company from granting any later charge having priority over the floating charge, and the person in whose favour such later charge was granted had actual notice of that prohibition at the time when the charge was granted to him'.*

We can see from the above stated section that the Negative Pledge Clause contained in a floating charge does not protect the charge against a later fixed charge, unless the later fixed charge had actual notice of such prohibition at the time when the charge was created.

CREATION OF DEBENTURES

A Debenture may be created by an Instrument or by such Instrument covered by a Trust Deed in the case of a Debenture Stock. Section 168 CAMA lays down the terms of a Debenture by stating that every debenture shall include a statement on the following matters, that is,

a. The principal amount borrowed;
b. The maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;
c. The rate of and the date on which the interest on the debentures issued shall be paid and the manner in which payment shall be made;
d. The date on which the principal amount shall be repaid or the manner in which the redemption shall be effected, whether by the payment of instalments of principal or otherwise;

[32] *Hamer v. London City & Midland Bank Ltd* (1918) 87 LJ KB 973; ***I.O Smith*** @ p. 304
[33] ***Nigerian Law of Secured Credit*** (2001) Ecowatch Publications (Nigeria) Limited, Lagos, Nigeria, p. 304
[34] *Re Connolly Bros Ltd* (1912) 2 Ch.d 25; ***I.O Smith*** @ p. 304
[35] Cap C20 LFN 2004

e. In the case of convertible debentures, the date and terms on which the debenture may be converted into shares and the amounts which may be credited as paid up on those shares, the dates and terms on which the Holders may exercise any right to subscribe for shares in respect of the debentures held by them; and
f. The charges securing the debenture and the conditions subject to which the debenture shall take effect.

Statements made in a Debenture or Debenture Stock Certificate shall be prima facie evidence of the Title to the debentures of the person named therein as the registered holder and of the amounts secured under it[36].

S. 169 (2) says that '*if any person in good faith relies on the continued accuracy of any statement(s) made in the Debenture or Debenture Stock Certificate, changes his/her position to his detriment, the company shall be stopped from denying the continued accuracy of such statements in favour of such person, and shall compensate such person for any loss suffered by him in reliance thereon, and which he would not have suffered had the statement been or continued to be accurate'*.

Contents of a Debenture Trust Deed

According to S. 184(1) CAMA, every Debenture Trust Deed, whether required by s. 183 of this Act or not, shall state the maximum sum which the company may raise by issuing debentures of the same class, the maximum discount payable, the nature of the assets involved, the date of payment of principal and interest, the circumstances in which the mortgage or charge may be realised, power to call or alter the rights of debenture holders, the rate and amount of remuneration[37].

Registration of Debentures is found in s. 197 CAMA. Remedies available to a Debenture Holder is found in s. 208 (1) (a)-(d) CAMA.

Types of Debentures

Debentures are of different types namely:

a. **Perpetual Debentures** – this is one redeemable only at the expiration of the fixed date, except in the happening of a contingency. See s. 171 CAMA
b. **Convertible Debenture** – this can be converted into shares of a company upon such terms as may be stated in the debentures, thereby making such a debenture holder a Shareholder and member of the company. See s. 172 CAMA.
c. **Secured or Naked Debenture** – debenture may be secured by a charge over the company's specific property or may be unsecured by any charge. See s. 173 (1) CAMA. Debentures may be secured by a fixed charge on certain of the company's property or a floating charge over the whole or specified part of the company's undertaking and assets, or by both a fixed charge on certain property and a floating charge. See s. 173 (2) CAMA.
d. **Redeemable Debentures** – are debentures that are liable to be redeemed at the option of the company[38]. See s. 174 CAMA.

DIFFERENCES BETWEEN DEBENTURES AND SHARES[39]

This is being discussed for understanding on their basis for comparison which are being listed below:

i. **Meaning** – the Shares are the owned funds of the company. They represent the capital of the company, while the Debentures are the borrowed funds of the company and represent the company's debt;

[36] S. 169 (1) CAMA, Cap C20 LFN 2004
[37] See also I.O Smith @ p. 296
[38] See also ***Dimeji Kuforiji*** : *Understanding Company Securities – Shares & Debentures in Nigeria, May 29th 2016 www.lawyard.ng*
[39] ***S. Surbhi: Difference between Shares and Debentures*** *(March 26th 2015) – www.keydifferencies.com*

ii. **Holder** – the Holder of Shares is known as a Shareholder. The Holder of Debenture(s) is known as Debenture Holder;
iii. **Status of Holders** – Shareholders are *owners*. Debenture Holders are *creditors*;
iv. **Form of Returns** – Shareholders get the *Dividend*. Debenture Holders get the *Interest;*
v. **Security for Payment** – the Shareholders have no security. The Debenture Holders have security;
vi. **Voting Rights** – Shareholders have Voting Rights. The Debenture Holder has no Voting Rights;
vii. **Conversion** – Shares can never be converted into Debentures. Debentures can be converted into shares;
viii. **Repayment in the Event of Winding Up** – Shares are repaid after the repayment of all the liabilities of the company. Debentures get priority over shares, and are repaid before shares;
ix. **Quantum** – Dividend on Shares is on appropriation of profit. Interest on Debentures is a charge against profit; and
x. **Trust Deed** – No Trust Deed is executed in the case of Shares. When Debentures are issued, a Trust Deed must be executed.

CONCLUSION

I can safely say that in Nigeria, the value of Shares in most companies quoted on the Nigeria Stock Exchange have depleted seriously, thereby making investment in Shares unattractive compared to what was obtainable in the last ten to fifteen years. Just a few companies have kept on posting great profits and increase in the Dividends of Shareholders. Shares is a good form of security only when the value is very good and almost at par with the amount of loan a Shareholder is requesting from his/her Bankers. If not, the Banks will compel the borrower Customer to get additional collateral(s) before accessing the loan or forget completely about the loan. Business is mostly about profit making. The socio-economic situation in Nigeria is currently not impressive because most businesses are facing challenges, including the banks, especially now that the country is undergoing some form of recession, which I am hopeful it will recover from very soon.

We can link the value of shares to the economic situation in any country at a given point in time. When a company suffers almost constant losses, it has next to nothing to pay to its Shareholders. This affects the company in future when it wants to sell shares to the public to raise more funds, as no person wants to keep investing in a company they are not sure of its profitability. In addition, the value of shares decline, making it very unattractive for Financial Institutions, especially the Banks to accept it as sufficient collateral. Shares stand the risk of losing their value in cash and even as collateral, depending on the socio-economic situation of the particular country. It is mainly in thriving economies that Shares have much value. I must say that right now, it cannot in any way constitute a very important form of Security going by the current economic situation in Nigeria, and even many other countries. Some great countries of the World have also experienced some form of economic recession in one way or the other.

A debenture Instrument, if well drafted by the creditor, is a more realisable form of security to Financial Institutions like the Banks. I would gladly suggest however that most companies should be managed by competent and honest hands, so that they can effectively manage Shareholders Funds without resorting to borrowing with a charge on the company asset(s). When a company is effectively managed for many years, it lacks interest in going for any form of loan. Therefore, when it collapses or goes into liquidation, its assets are sold to pay back the Shareholders, even though they may not get exactly what they initially invested. However, their losses will be minimal. If the Shareholders do not agree to sell off the company or its assets, the company can still be merged with a bigger company which will provide its capital needs and then take most of its Shares, while it begins to pay shareholders something much lower than before, but the Shareholders will never go completely empty-handed. Where a company goes for a loan with a charge on the company's assets, if the company runs into trouble, the Debenture Holder takes the assets of the company, and little or nothing may be left to pay Shareholders. That would be an extreme case of total collapse or failure of a company. Shareholders are likely to forfeit all their entire shares, as a matter

of fact. Here, Merger with another company or even Take Over by a bigger company will not be possible for any reason. Banks definitely prefer a charge on the company's assets as collateral than collecting share certificates in place of such, because they are surer of getting back their monies through a charge on the properties assets than from Shares which are more bound to lose value than property. The Debenture Holder has lesser risk to contend with in its relationship with the company (its Debtor) than the Shareholder who loses everything completely once the company collapses. The fact that Debentures can be converted into Shares, while Shares cannot be converted into Debentures shows that priority would always be given to the Debenture Holder over the Shareholder by the company. So, if I am asked who would feel safer in the business of incurring risks with a company in business, I will say it is the Debenture Holder in most cases.

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