Journal of African Law, 64, 2 (2020), 245–266 © SOAS, University of London, 2020.
doi:10.1017/S0021855320000054 First published online 4 March 2020

A Critical Analysis of the Legal and Regulatory Principles for the Declaration and Payment of Company Dividends in Nigeria

Simon Viashima Akaayar*
University of Lagos
vakaayar@unilag.edu.ng; viashimas@gmail.com

Abstract

In Nigeria, corporate law and practice are still evolving. Consequently, there is scant literature on some major aspects of corporate law. The focus of this study is on one such area covering dividends and other forms of corporate distribution. In addition to the lack of constructive legal literature on company dividends and other forms of corporate distribution in Nigeria, most of Nigeria's corporate participants and policy-makers are still largely uninformed of the fundamental rules and principles on company dividends. Motivated by the foregoing, this research critically examines the theoretical rationale and extant legal principles on company dividends. Its main objectives are to close the gap in the literature and to provoke scholarly discourse that may further enrich policy reform measures in the area of company dividends in Nigeria.

Keywords
Company, dividends, legal, declaration and payment, Nigeria

INTRODUCTION

Company dividends remain one of the most important profit distribution mechanisms in the scheme of corporate investment.[1] Dividends both reinforce the loyalty of corporate managers in generating income for shareholders[2] and signal private information about the fortunes of a company to

* Senior lecturer, Department of Commercial and Industrial Law, Faculty of Law, University of Lagos, Lagos, Nigeria. Solicitor and advocate of the Supreme Court of the Federal Republic of Nigeria.

1 Many legal and non-legal scholars have contributed to the general literature on company dividends, but see PL Davis and S Worthington *Gower: Principles of Modern Company Law* (10th ed, 2016, Sweet and Maxwell) chap 12; J Abugu *Principles of Corporate Law in Nigeria* (2014, MIJ Professional Publishers Ltd) at 735–738; C Wild and S Weinstein *Smith and Keenan's Company Law* (15th ed, 2011, Pearson Education Ltd) at 195; RS Edwards "A note on the law relating to company dividends" (1939) 6/22 *Economica* 170.

2 For further details, see J Lintner "Distribution of incomes of corporations among dividends, retained earnings and taxes" (1956) 46/2 *The American Economic Review* 97; T Mitton "Corporate governance and dividend policy in emerging markets" (2004) 5 *Emerging Market Review* 409.

prospective investors.[3] Nevertheless, the fact that a company makes a profit is not in itself a guarantee that dividends will be paid. In other words, a company that makes a profit from its operations may choose to pay dividends to its members, re-invest the profit in the business, transfer it to a reserve account or use it for other reasonable purposes such as the discharging of existing debts and liabilities.[4] The decision on whether to pay dividends, capitalize profit, set it aside as reserve or apply it in discharging liabilities resides solely with the board of directors. In that regard, it is important to implement standard rules for measuring corporate decisions on dividend payouts. This is informed by the need to safeguard the rights of investors to receive returns on investments in the form of dividends on the one hand, and to control opportunistic behaviour by directors in applying company profits to competing interests on the other. Consequently, many nations have enacted legal and policy rules for the purpose of measuring the decisions of directors regarding dividend payouts or other forms of corporate distribution. While the nature of the legal regime and policy measures on dividend payouts may vary from one nation to another, the fundamental concern is to provide acceptable boundaries under which a company may declare a payment of dividends or otherwise distribute its assets.

The present work focuses on the extant rules and regulations for the declaration and payment of company dividends in Nigeria. In particular, it examines the legal nature and fundamental rules on company dividends and other forms of distributable assets in Nigeria. The motivation for the examination of the legal architecture on dividend payouts is the reality that while the area of dividends is undoubtedly germane to corporate law and practices, it has received scant scholarly attention from a Nigerian perspective. Besides, the area of corporate law and practice is still evolving in Nigeria and most shareholders are uninformed about the legal dynamics of company dividends and other forms of corporate distribution. Consequently, this work is designed to close the gap in the literature on company dividends in the country. It must be pointed out that it is practically impossible to cover all the parts of company dividends and so analysis in this research is, therefore, limited to some legal aspects of dividend payouts and other forms of corporate distribution in Nigeria.

The work is divided into seven main parts. Following the introduction, Part 2 examines the nature of company dividends and distributions. Part 3 analyses theoretical rationales for the payment of company dividends in Nigeria. Part 4 deals with the legal architecture for the distribution of company dividends. Part 5 carries out an overview of the vagaries of dividends and corporate

3 SA Ross "The determination of financial structure: the incentive-signalling approach" (1997) 8/1 *The Bell Journal of Economics* 23 at 40.

4 For instance, see the Companies and Allied Matters Act (CAMA) 1990, now in cap C20, Laws of the Federation of Nigeria (LFN) 2004, sec 381 (hereafter "CAMA").

https://doi.org/10.1017/S0021855320000054 Published online by Cambridge University Press

distributable forms. Part 6 evaluates the fundamental rules on payment of company dividends. Part 7 is the conclusion.

THE LEGAL NATURE OF COMPANY DIVIDENDS AND DISTRIBUTIONS

Both in law and financial accounting, the concepts of company dividends and distribution encompass several different meanings. In the particular context of law, which is the focus of the present article, there is a plethora of definitions of "dividends" and "distribution". The *Black's Law Dictionary* defines company dividends as "a portion of a company's earnings or profits distributed *pro rata* to its shareholders, usually in the form of cash or additional shares".[5] With respect to corporate distribution, the same *Black's Law Dictionary* defines it to mean "direct or indirect transfer of money or other property, or incurring of indebtedness to or for the benefits of its shareholders, such as dividend payment out of current or past earnings".[6] Similarly, the Companies and Allied Matters Act (CAMA) 1990 defines dividends as "a proportion of the distributed profits of the company which may be a fixed annual percentage, as in the case of preference shares, or it may be variable according to the prosperity or other circumstances of the company, as in the case of equity shares".[7]

CAMA goes on to define distribution in the context of "distributed profits". That is, "profit arising from the use of the company's property; revenue reserves; and realized profit on a fixed asset sold".[8] Legal scholars have further added that "dividend is distribution on a share of equity of a corporation, which is derived from the property right of a shareholder in the company".[9]

The definitions above may not be exhaustive but they all contain core features that are helpful in determining the legal nature of dividends and distributable profits. Foremost, dividends and distribution are property rights accruing to a corporate investor. Under corporate law, this right may be severed and assigned separately from the underlying investment. This is largely because a company is a separate entity from the shareholders. The entitlement to dividends and distribution thus arises from the ownership of a share in the corporate entity.[10] Also, what may amount to dividends and distributable profit in law may not necessarily be the profit which is made as a result of corporate trading or business. In other words, profit distributed to shareholders

5 BA Garner (ed.) *Black's Law Dictionary* (8th ed, 2004, Thomson West Publishers) at 512.

6 Id at 508.

7 CAMA, sec 567.

8 Id, sec 380.

9 PH Blessings "Domestic and treaty anti-abuse rules as applied to dividends" in G Maisto (ed) *Taxation of Intercompany Dividends under Tax Treaties and European Law* (2012, EC and International Tax Law Series) 109; Wild and Weinstein *Smith and Keenan's Company Law* above at note 1.

10 Blessings "Domestic and treaty anti-abuse rules", above at note 9.

https://doi.org/10.1017/S0021855320000054 Published online by Cambridge University Press

in the form of dividends is legally different from profit in a business sense. Thus, distributable profit is wider than dividends, although this difference is insignificant in practice. The former represents an accumulation of legal profits from which the latter is derived. Finally, the extent to which shareholders may participate in the payout of dividends varies between preference shareholders and equity shareholders. As indicated in the above definition under 567 of CAMA, the percentage of dividend in the case of preference shares may be fixed, while in the case of equity shares it may be varied in accordance with the circumstances of each company. Thus, it is usual for each company to have in place a dividend policy for distributing accumulated profit to its members.

WHY DO COMPANIES PAY DIVIDENDS?

In the law and financial literature, the question of "why do companies pay dividends" has generated a controversial response, which has been described as a "dividends puzzle".[11] The fundamental question is whether or not the payment of dividends by corporate managers affects a shareholder's wealth. The starting point for some of these arguments can be traced back to the celebrated article by Merton Miller and Franco Modigliani in which the authors demonstrate that payment of company dividends is irrelevant (MM Irrelevance Theory).[12] The theory assumes that the fundamental objective of corporate management is to maximize the value of the firm. In that regard, whether companies pay dividends or not will not affect their value. This is largely because where a company does not pay dividends, the profit will be retained for new investments and the price of the equity will rise proportionally. With the rise in the prices of equity, any shareholders desiring dividends can then sell a fraction of their shares on the market and realize their capital gains.[13] On the other hand, where a company pays dividends and raises new funds in the capital market to finance new investments, the value of its equity will decline in proportion to the dividends paid out. However, since the raising of new funds in the market is not without costs, prudent management should not pay dividends.[14] Consequently, the MM Irrelevance Theory assumes that whether or not corporate managers pay dividends, the shareholders possess the same amount of wealth.[15]

Despite the assumptions of the MM Irrelevance Theory, the reality is that corporate managers usually pay dividends. This results in a conflict between theory and practice. Several scholars have made attempts to investigate the

11 F Black "The dividend puzzle" (1976) 2 *Journal of Portfolio Management* 634.

12 MH Miller and F Modigliani "Dividend policy, growth and the valuation of shares" (1961) 34 *Journal of Business* 411.

13 Ibid.

14 Ibid.

15 For further comments on MM Irrelevance Theory, see FH Easterbrook "Two agency-cost explanations of dividends" (1984) 74/4 *The American Economic Review* 650.

causes of this conflict in order to provide answers to the question of why companies pay dividends. Without revisiting all of these debates, it suffices to say that some literature indicates that one of the main rationales for the payment of company dividends is the desire by corporate managers to demonstrate a loyalty to shareholders. This is evident in the work of Lintner, which shows that corporate managers are compelled to pay dividends because of "their fiduciary responsibility and standard of fairness to return *fair share* of corporate earnings to investors".[16] This "fair share approach" requires corporate managers "to distribute part of any substantial increase in earnings to the shareholders in form of dividends". It also assumes that corporate managers are perfect agents of investors and would do their best to plan for the return of earnings to investors in the form of dividends. While the rate of distributed dividends may not be the same in all financial years, any substantial or continued decline in the rate of dividend payouts, the shareholders could understand by accepting the declared dividends as a fair share. In addition, the fair share approach assumes that the corporate managers are usually mindful of the shareholders' ability to withdraw their investment or to seek a change of management. The fear of shareholder action, according to Lintner, is enough "burr under the saddle" for all corporate managers to be prudent and to plan ahead in all aspects of dividends policy in the interest of shareholders.[17]

Nevertheless, other scholars do not subscribe to the fair share approach as the financial reason why companies pay dividends. Some scholars have argued that corporate managers pay dividends in order to signal information about the well-being of the company to existing shareholders and its future prospects to potential investors.[18] This is informed by the contention that corporate practice by its very nature separates owners from the management, which leads to the problem of information asymmetry. That is, the shareholders, particularly outside shareholders, and managers may not possess the same depth of information about a company's growth, real income and future prospects. It may also be costly for shareholders to obtain detailed and accurate financial information about the well-being of a company from the managers. Besides, accounting reports, which could be relied upon by shareholders, are also inadequate in providing information about the current income and future prospects of a company. The payment of company dividends is therefore adjudged to be one of the ways to overcome the problem of information asymmetry and thus "communicate the level and growth of real income" to shareholders.[19] This "signal approach" seems to be reinforced by the long standing

16 Lintner "Distribution of incomes of corporations", above at note 2.

17 Ibid.

18 For instance, see Ross "The determination of financial structure", above at note 3; Edwards "A note on the law", above at note 1.

19 M Feldstein and J Green "Why do companies pay dividends?" (1983) 73 *The American Economic Review* 17. Also see Ross "The determination of financial structure", above at note 3.

decision of the House of Lords in *Burnes v Pennell*,[20] where Lord Campbell stated that "when directors order a dividend, to any given amount, without expressly saying so, they impliedly declare to the world that company has made profit".

Similarly, other studies have based their reason for the payment of company dividends on the logic that "a bird in the hand is worth two in the bush". Under the "bird in hand" theory, it is proposed that shareholders see the retention of corporate earnings for reinvestment by management as risky.[21] In order words, shareholders may not trust corporate managers and may be apprehensive that managers will waste retained earnings on poor investments or on high management compensation. Consequently, shareholders would prefer to realize any available profit rather than risk any future reinvestment by management in a bid to gain higher earnings. The shareholders' preference for immediate dividends over retained earnings is assumed to be strong enough to persuade the management to pay dividends. However, Jensen's study indicates that shareholders' preference for payment of dividends is as a result of agency cost.[22] That is, where corporate managers are allowed to reinvest the present earnings in future business, it will be too costly for the shareholders to monitor the managers. Also, managers will not resort to the capital markets for the financing of future operations. However, where shareholders insist on dividend payouts, managers will be compelled to visit the capital markets, which have better structures and can afford the cost of supervising the conduct of managers.

The above discussion reveals that there are many plausible justifications for why companies pay dividends. While the theoretical explanations may admit some limitations,[23] it is clear that there are many reasons for the payment of company dividends, discussion of which is not permitted in the current article. In any case, government intervention, through the instrument of law and regulation, is necessary to provide measurable standards for dividend payouts or other forms of corporate distribution. Laws and regulations on dividends may vary from one economy to another; however, the fundamental desire is to protect the assets of the company and safeguard the rights of the shareholders and creditors, among others.

20 [1849] 2 HL Ca 497.

21 Feldstein and Green "Why do companies pay", above at note 19.

22 MC Jensen "Agency-cost of free cash flow, corporate finance, and takeovers" (1986) 76 *The American Economic Review* 323. Also see Easterbrook "Two agency-cost explanations", above at note 15.

23 The detail on the limitations of each of the theories on why companies pay dividends is beyond the scope of the present work. For further readings, see Easterbrook "Two agency-cost explanations", above at note 15; Black "The dividend puzzle", above at note 11.

https://doi.org/10.1017/S0021855320000054 Published online by Cambridge University Press

LEGAL ARCHITECTURE FOR THE DISTRIBUTION OF DIVIDENDS

The legal architecture for company dividends and other forms of distribution is composed of a mixture of law and accounting principles. As noted in the introduction, these rules and regulations may vary from one jurisdiction to another. In Nigeria, for instance, the area of company dividends is regulated by a combination of express and implied provisions of CAMA, the Investment and Securities Act (ISA) 2007, the Companies Income Tax Act (CITA) 2007, regulatory guidelines from the Corporate Affairs Commission (CAC) and the Securities and Exchange Commission (SEC), the memorandum of association and articles of association of a company, and from the common law principles and doctrines of equity among other related rules.

CAMA is the principal statute for the regulation of the general operation of companies in Nigeria. In the particular context of company dividends, Part XIII of CAMA is dedicated to the regulation of company dividends and other forms of distributable assets.[24] A detailed examination of the implications of these provisions is carried out below. For the present purpose, it is important to reiterate that CAMA provides a mandatory procedure for the payment of company dividends. Most of these rules can be traced back to the common law position on maintenance of company capital.

The ISA is another important piece of legislation that affects the payment of company dividends and other forms of distributable assets. This is largely because section 312(1) of the ISA states that "the relevant provisions of all existing enactment, including CAMA, shall be read with modification as to bring them into conformity with its provisions in relation to capital market matters". In relation to company dividends, section 313 (1) (n) of the ISA adds that the SEC may, from time to time, make rules and regulations "prescribing as it deems appropriate, necessary rules for dealing with unclaimed dividends and unclaimed certificates by public companies and their agents". As will be seen below, in 2015 the SEC introduced rules on e-dividends.[25] It is reported that the e-dividend regime has resulted in the reduction of over ₦30 billion of unpaid dividends from ₦80 billion as of 2015.

Also relevant for the regulation of company dividends is CITA, which generally provides the necessary criteria for assessing and charging taxes on corporate income in Nigeria. For instance, one of prerequisites for charging corporate tax is that the company must be resident in Nigeria. The requirement of corporate residence is important in enforcing tax treaties between Nigeria and other countries. In that regard, Nigeria's companies and foreign companies are treated differently for the purposes of corporate tax. In any case, the fundamental feature of corporate tax is that company profit is taxed twice. That is, a company is liable to pay income tax on its profits and

24 CAMA, sec 379 to 386.

25 See the official website of the SEC at <https//www.sec.gov.ng> (last accessed on 2 February 2018).

https://doi.org/10.1017/S0021855320000054 Published online by Cambridge University Press

shareholders are liable to pay income tax in respect of dividends or other distributable assets received.[26] As will be seen below, the practice of taxing a company's earned profits and separately charging shareholders on dividends received creates a lot of burdens on the company.[27] This in return discourages most companies from frequent dividend payouts or other forms of distribution.

Furthermore, the statutes discussed above are complemented by regulations in a company's memorandum and articles of association. The trite rule is that the memorandum and articles when registered create a binding contract under deed between the company and its members.[28] For instance, the memorandum normally contains the authorized minimum capital of the company, which is a fundamental benchmark in determining whether or not a company has turned a profit in a particular financial year. Similarly, CAMA empowers the directors or shareholders, through default and enabling provisions, to carry out some action in respect of dividend payments. For instance, some aspects of company dividends, such as the proportion of dividends and the classes of rights to dividends, are normally stipulated in the articles of the company.

In addition, there are other regulatory requirements that provide separate guidance with respect to the payment of dividends by some categories of companies in Nigeria. For instance, in the banking section, section 17(1) of the Banks and Other Financial Institutions Act (BOFIA) 1991[29] stipulates that:

"No bank shall pay dividend on its shares until:

(a) all preliminary expenses, organizational expenses, shares, selling commission, brokerage, amount of losses incurred, and other capitalized expenses not represented by tangible assets have been completely written off;

(b) and adequate provisions have been made to the satisfaction of the bank for actual and contingency losses on the risk assets, liabilities, off balance sheet commitments and such unearned incomes as are derivable therefrom."

It would appear that in order to ensure compliance with BOFIA requirements, the Central Bank of Nigeria (CBN) issued directives to all banks in 2014 regarding internal capital generation and dividend payout ratio.[30] The 2014 CBN directives contain six parameters on risks rating and capital

26 For further reading, see DC John "Corporate taxation laws in Nigeria: a review" (2011) 2 *International Journal of Advanced Legal Studies and Governance* 236.

27 Particularly in Part 6. For further reading regarding taxation of insurance companies, see CK Agomo and VS Akaayar "Insurance law – Nigeria" in H Cousy (ed) *International Encyclopedia of Laws: Insurance Law* (2018, Kluwer Law International) Suppl 62 at 117.

28 CAMA, sec 41.

29 Now in Cap B3, LFN 2004.

30 See Central Bank of Nigeria letter Ref: BSD/DIR/GEN/LAB/07/033, dated 8th October 2014.

adequacy ratio, which all banks in Nigeria must comply with before any dividend is paid.[31] Similarly, section 313 (1) of the ISA empowers the SEC to make rules and regulations dealing with unclaimed dividends by public companies and their agents. Thus, in 2015, the SEC introduced the requirement for e-dividends for all public companies listed on the Nigerian capital market. This obliges these companies to pay dividends electronically to the bank accounts of their shareholders.[32] The above analysis shows that the regime for the payment of company dividends in Nigeria is closely guided by rules and regulations, some of which are examined in detail below.

FORMS OF COMPANY DIVIDENDS AND DISTRIBUTIONS

There are many types of company dividends and distributions including preference dividends, final and interim dividends, and cash and kind dividends. In whatever form dividends may take, the procedures that a company may follow for payment is usually set out either in its articles of association or in the dividend policy of the company. The detailed explanation of these forms of dividends and distributions follows.

Preference dividends

Preference dividends are used by companies with different classes of shares and/or special rights attached to the shares either by the memorandum or articles of association.[33] A company is permitted to issue classes of shares when its articles allow for this.[34] A preference share is one of the most common classes of shares. Under this class of shares, the holder may be accorded the right of preference regarding dividends, return of capital or otherwise.[35] A preference dividend is, therefore, available to preference shareholders before ordinary shareholders are paid dividends. The holder of a preference share is often entitled to priority of payment at a fixed amount, usually expressed as a percentage of the nominal value of the shares. However, no dividends are payable unless the company has earned the profit and made a resolution to declare a percentage of the profit as dividends.[36]

There are many categories of preference dividend rights but it is common to specify preference dividends as fixed or cumulative. Fixed dividends are payable on a specified date, while cumulative dividends are granted on the undertaking that if dividends are not paid on the due date, for any reason, the right of the holder subsists and accumulates as a debt owed by the company until it

31 Id at art 4.0.
32 A detailed examination of the area of e-dividends is carried out in Part 6 below.
33 CAMA, sec 114(b).
34 Id, sec 118(1).
35 Id, sec 119.
36 Id, sec 144.

is paid. Notwithstanding the special right of a holder of preference shares, the usual procedure on payment of dividends applies.

Interim and final dividends

The decision to pay interim and final dividends is at the sole discretion of a company's directors. According to section 379(2) of CAMA, a company may from time to time pay its shareholders interim dividends, provided it is justified by the profit of the company. Although CAMA does not define "interim" or "final" dividends, the practice is that when the managers of a company are of the honest opinion that the company is going to make a sufficient profit by the end of its financial year, they may declare dividends before or at the end of the financial year. When dividends are declared before the end of the financial year, they are known as interim dividends. If they are declared after the end of the financial year, they are known as final dividends.

The distinction between interim and final dividends is important. For instance, unlike final dividends, interim dividends may be paid at any time of the financial year. Interim dividends are usually calculated before a company's annual earnings are ascertained. Also, an interim dividend may not require the approval of a general meeting of the members unless otherwise stated by the company's articles. Similarly, interim dividends by their nature are not a debt due from the company. Accordingly, in *Lagunas Nitrate Co v Schroeder*,[37] it was held to the effect that if a company did not pay interim dividends, it cannot be sued, and there is nothing to prevent the directors subsequently rescinding or varying the interim dividends. Similarly, before any declaration of interim dividends, the directors must satisfy themselves that the financial position of the company warrants the payment of such dividends out of the divisible profit. However, in *Lucas v Fitzgerald*,[38] Lord Alverstone, CJ, rightly observed that "the declaration of interim dividends depends much more upon estimate and opinions than the declaration of the final dividend, which is made upon the information contained in a balance sheet".

Cash and stock dividends

The articles of a company usually stipulate whether dividends should be paid in cash or in kind. A cash dividend is paid to members of a company in the form of money. Cash dividends are distributed by a dividend warrant, which is usually posted to the address of the member. That is, dividend warrants are prepared in favour of members whose names appear in the register of members. The date of posting the dividends warrant shall be deemed to be the date of payment.[39] A dividend warrant normally contains the particulars of payment and an instruction to the company's bank to pay the shareholder to whom it is addressed. When a posted dividend warrant is returned to the

37 [1901] 85 LT 22.
38 [1903] 20 TLR 16.
39 CAMA, sec 382(4).

company unclaimed, it is the responsibility of the company to prepare a list of the names of the persons involved and bring the list to the notice of the members at the next general meeting.[40] Upon receipt of the notice, the members are expected to claim the dividends. If they fail to do so, the company is permitted to invest the unclaimed dividends for its own use.[41] However, if the failure to receive dividends is the fault of the company, the affected members will receive dividends with accrued interest at the current bank rate. If it is the fault of the member, no interest accrues.

It appears that these rules on the posting of dividend warrants no longer apply to public companies listed on the Nigerian capital market. This is largely because in 2015, the SEC introduced the e-dividend regime.[42] Under this regime all investors in Nigerian public companies are obliged to enroll for e-dividends with their banks or registrars. This ensures that shareholders in public companies collect dividends electronically and that all accrued dividends are credited to their bank account. The e-dividends regime was informed by the volume of unpaid dividends, which before 2015 was estimated to be ₦80 billion. The SEC reported that with the introduction of e-dividends, 48 per cent of investors had enrolled, resulting in the payment of more than ₦30 billion of unclaimed dividends to investors.[43]

However laudable the e-dividends regime may appear to be, it is limited to public companies listed on the Nigerian capital market. Therefore, unlisted companies in Nigeria may still use dividend warrants. In both cases, they are still cash dividends and shareholders must pay tax on the value of the distribution.[44] In view of this tax burden, companies prefer to pay low or no cash dividends, provided they have investment opportunities with the potential for higher earnings.

An alternative is stock dividends, which involves an increase in the number of shares issued by a company, with the new shares being given to shareholders. The major benefit of stock dividends is that the shareholders can either keep the shares or sell some of the new shares to generate cash. Stock dividends do not require the shareholders to pay tax on the value received, unless stock dividends have a cash-dividend option. The actual distribution of the stock dividends among the various classes of shareholders will be based on their right to receive dividends, unless the articles provide otherwise.

It must be noted that, notwithstanding the form that company dividends may take, the fundamental rule is that the solvency requirements, such as those set out under section 381 of CAMA, must be complied with. For

40 Id, sec 382(1).

41 Id, sec 382(2).

42 Available on the official website of the Securities and Exchange Commission (SEC) at <https//www.sec.gov.ng> (last accessed on 2 February 2018).

43 Ibid.

44 For further readings, see HM Shefrin and M Statman "Explaining investor preference for cash dividends" (1984)13 *Journal of Financial Economics* 253.

https://doi.org/10.1017/S0021855320000054 Published online by Cambridge University Press

instance, a company must not declare or pay dividends if there are reasonable grounds for believing that it would be unable to pay its liabilities as they become due. Similarly, a company may with the consent of all members revoke the declaration of dividends before the time set for payment. The circumstances that may trigger revocation of a declaration of dividends include situations where the dividend has been illegally declared, where there is depletion of assets after the declaration of dividends or where there are other intervening events such as the imposition of a heavy tax burden or outbreak of war.[45] Above all, once dividends are declared, they become actionable as "special debts due to, and recoverable by, shareholders within 12 years".[46]

FUNDAMENTAL RULES ON PAYMENT AND DISTRIBUTION OF DIVIDENDS

Just as the area of company dividends remains a puzzle, so are the rules for dividend payments and distribution. It is not for this study to examine all the legal dynamics for the distribution of company profit. Instead, this study examines those rules which this writer considers as fundamental in dividend payouts, starting with capital maintenance as the premise of the extant rules.

The premise of dividend payouts: maintenance of corporate capital

Corporate capital is the most essential aspect of a company. It represents the net worth of a company's assets, that is, the resources available to the corporate managers for carrying out the objectives of the company. Creditors also view capital as the available resources to repay debts. It is, therefore, a fundamental rule of corporate practice that the capital contributed by the members of a company must be maintained and not reduced except in the normal course of business. In *Trevor v Whitworth*,[47] Lord Mansfield stated that the essence of the corporate rule on capital maintenance is to provide assurance "to those dealing with the company that the whole of the subscribed capital, unless diminished by the expenditure upon the object defined by the memorandum, shall remain available for the *discharge of its liabilities*".

The implication of the above is that the desire to discharge the future liabilities of the company underpins the need to maintain its capital. While corporate liabilities may take different forms, the most common type is creditor's liability. As Lord Watson observed in *Trevor v Whitworth*,[48] one of the main objectives of restricting the powers of a limited liability company in reducing its capital is the need to protect the interests of the members of the public such as their creditors. Similarly, section 381 of CAMA states that a "company

45 JO Orojo *Company Law and Practice in Nigeria* (5th ed, 2008, LexisNexis, London) at 327.
46 CAMA, sec 385.
47 [1887]12 App Cas 409. Emphasis added.
48 Ibid.

https://doi.org/10.1017/S0021855320000054 Published online by Cambridge University Press

shall not declare or pay dividends if there are reasonable grounds for believing that the company is or would be, after the payment, unable to pay its liabilities as they become due". While CAMA did not explain what these liabilities are or in whose interest, it is not in dispute that corporate capital must be maintained unless distributed in line with the provisions of the extant statutes and articles of association of a company. For instance, it is usual for corporate statutes to set out the conditions upon which a company's capital may be reduced or returned. In Nigeria, for instance, the reduction of company capital cannot be effective unless section 105 of CAMA is complied with. In addition, the reduction of company capital must be sanctioned by a court in accordance with sections 107 and 108 of CAMA. Besides, the memorandum of association normally limits what a company's assets may be spent on, while the articles set out the conditions of distribution of profit or return of earnings.

One of the most important rules regarding capital maintenance is the payment of dividends out of capital.[49] The trite law is that a company cannot pay dividends out of its capital.[50] This is largely because payment of dividends out of capital will amount to returning or a diminishing of capital through the backdoor, which is detrimental to the interests of the members of the public to whom the company may have liabilities. It is, therefore, submitted that the rule that a company cannot pay dividends out of its capital is in itself premised on the rule of capital maintenance. As Gower rightly points out, "the rules on legal capital have their main impact as a control on the amount a company may pay by way of dividends or other forms of distribution to its shareholders".[51] In fact, the payment of dividends out of capital does not only violate capital maintenance rules but is also fraudulent and punishable. Thus, in 1849 in the House of Lords in the case *Burnes v Pennell*,[52] Lord Mansfield held that dividends "are supposed to be paid out of profits only. If no such profits have been made and dividend is to be paid out of capital of the concern, a gross fraud has been practised and the directors are not only civilly liable to those whom they have deceived and injured but, in my opinion, they are guilty of a conspiracy, for which they are liable to be prosecuted and punished".

In the same case, Lord Brougham added that payment of dividends out of capital is "a most vicious fraudulent course of conduct".[53]

The common law decision in *Burnes v Pennell* has received statutory confirmation in Nigeria.[54] For instance, section 386 (1) of CAMA states that "all

49 KD Barnes "Company capital and securities" in EO Akanki (ed) *Essays on Company Law* (1992, University of Lagos Press) 220.

50 CAMA, sec 379 (5).

51 Davies and Worthington *Gower: Principles of Modern Company Law*, above at note 1.

52 *Burnes v Pennell*, above at note 20.

53 For further reading, see Edwards "A note", above at note 1.

54 *Burnes v Pennell*, above at note 20.

directors who knowingly pay, or are party to the payment of dividends out of capital, shall be liable personally, jointly and severally to refund any amount so paid". It is therefore submitted that before directors can declare dividends in Nigeria, they should be mindful of the capital maintenance rules. As earlier indicated, the capital maintenance rules are the foundation upon which dividend rules are built. This is important because the law allows the court to second guess the business judgment of corporate officers where there is a suspicion of abuse of discretion in declaring dividends.

Declaration of dividends or other forms of distributable assets

One of the areas that has to a large extent been influenced by the rules of capital maintenance is the legal procedure for the declaration of dividends or other forms of distributable assets. It is the settled principle of law that all the assets of a company belong to itself and not to its members. In that regard, the fact that a company made profit in a particular financial year does not automatically pave the way for the payment of dividends to members. Certain rules have been designed over the years on how a company can declare or pay dividends or other forms of distributable assets.

As a starting point, the rule is that a company cannot declare dividends unless there is a prior recommendation to do so by the directors. Accordingly, section 379 (1) of CAMA stipulates that, "[a] *company* may, in a *general meeting*, declare dividends in respect of any year or other period only on *recommendation of the directors*".[55] The implications of the provisions of section 379 (1) are twofold. First, the expression "a company" is an indication that section 379(1) is applicable to all companies whose articles authorize dividend payments or other forms of distribution.[56] Second, "general meeting" and the "board of directors" are the main organs of a company responsible for taking these decisions. While the "board of directors" is responsible for the recommendation to pay dividends, the members in a general meeting are responsible for the actual declaration of the payment. In addition, the members in a general meeting have the powers to decrease the amount of dividends recommended by the directors, but they cannot increase the amount.[57] It appears that the rationale for the share of these responsibilities between "board of directors" and "members in a general meeting" is to provide some level of opportunity for the respective organs to supervise each other in their decisions regarding the payout of dividends.

On the basis of the foregoing, it may be unlawful for the board of directors, for instance, to recommend the payment of dividends and to declare the payment at the same time. This may be the case even in closely held companies where the members may also be the directors. The available option in an instance of closely held companies is for a company to hold separate meetings

55 Emphasis added.

56 For categories of companies in Nigeria, see CAMA, sec 21.

57 Id, sec 379(3).

https://doi.org/10.1017/S0021855320000054 Published online by Cambridge University Press

of directors and members within the limit of the obligations assigned to each of them under section 379 (3) of CAMA.

In order to guide the judgment of the directors in making recommendations regarding dividend payouts, section 379 (5) of CAMA adds that subject "to the provisions of this Act, dividends shall be payable to the *shareholders* only out of the *distributable profit* of the company".[58] In a number of ways, section 379(5) has implications for the valid declaration and payment of dividends or other forms of distributable assets. Foremost, dividends are payable only to shareholders of the company in their capacity as shareholders. For that reason, where a company has paid part of its profit or distributed its assets to shareholders not because they were members of the company but because they were creditors, suppliers or employees, it will not amount to a dividends payment. This distinction is important because of the need to comply with the rules and conditions on dividend payments as prescribed by law.

Another of implication of section 379(5) of CAMA is that dividends are only paid out of the distributable profit of the company. In that context, section 380 of CAMA states:

"Subject to the company being able to pay its debts as they fall due, the company may pay dividends out of the following:

(a) profit arising from the use of the company's property although it is a wasting asset;
(b) revenue reserves;
(c) realized profit on a fixed asset sold, but where more than one asset is sold, the net realized profit on the assets sold."

In many aspects, the above quoted section 380 is relevant for the declaration and payment of dividends or distribution of other forms of distributable assets. First, dividends presuppose divisible profits of some kind, and not necessarily profit from trading or business. That is, it is possible for a company to distribute dividends out of assets sold, which do not represent profit made as a result of trading or business. As indicated above, a company may not make a profit within the financial year of the dividends payout but can distribute profit already reserved or realized from the sale of fixed assets. Second, a company that is unable to pay its debts as they fall due may not contemplate the payment of dividends. This seems to be an upshot of the extant rules on capital maintenance, which are designed for the protection of the interests of a company's creditors. This is reinforced by section 381 of CAMA, which states that a "company shall not declare or pay dividends if there are reasonable grounds for believing that the company is or would be, after the payment, unable to pay liabilities as they become due". This is informed by the need to protect the solvency of a company and to prevent a situation where all of a company's capital is diverted to the payment of dividends and nothing is left for meeting its obligations and liabilities.

58 Emphasis added.

Third, section 380 of CAMA creates a dichotomy between business profit and legal profit for the purpose of dividends. The former is defined in *Re Spanish Prospecting Co Ltd*[59] as gain realized in the value of the assets of a company at two different financial periods,[60] while the latter is a combination of profit arising from the use of a company's assets, revenue reserve or profit realized from assets sold.[61] It is important to point out that where a statute prescribes a procedure for the declaration and payment of dividends, a company cannot vary this in its articles of association. In *Precision Dippings Ltd v Precision Dippings Marketing Ltd*,[62] it was held that the statutory procedure prescribed for the declaration of dividends is mandatory and a subsequent resolution of the shareholders cannot alter the statutory procedure.

The articles of association usually determine the proportion of the dividends available to members. However, in a case where the articles are silent on the proportion of dividends, the general rule is that dividends have to be paid in proportion to the nominal amount of the shares. This is largely because in *Oakbank Oil Co v Crum*,[63] it was held to the effect that members are *prima facie* entitled to participate in the profits of a company in proportion to their respective interests therein, and the nominal amount of capital held by each is the measure of such interest.

Dividend payment and business judgment rule

The doctrine of business judgment rule (BJR) is that in making corporate decisions, directors are assumed to be acting on an informed basis, in good faith, in an honest belief that their actions are in the firm's best interest and without self-dealing.[64] The fundamental objective of the BJR is to protect corporate managers against suspicion of managerial opportunism and abuse. It is a discretionary power of the board of directors, derived in response to the exigencies of business, and is largely unregulated.[65] Consequently, when a court invokes the presumption of BJR, it assesses a director's conduct not by looking at a given decision but by examining the process of arriving at such decision. This rule is designed to shield a director from liability for unprofitable

59 [1911] 1 Ch 92.

60 Note that "gain" in this context is economic or monetary gain and not moral or personal development.

61 CAMA, sec 380.

62 [1986] Ch 447.

63 [1882] 8 App Cas 65.

64 VS Akaayar "Reconstructing the interests of 'other corporate constituents' in Nigeria: perspective from the stakeholder theory of the firm" (2016) 2 *The Commercial and Industrial Law Review* 98 at 115.

65 IO Bolodeoku "Contractarianism and corporate law: alternative explanations to the law's mandatory and enabling/default contents" (2005) 13/2 *Cardozo Journal of International and Comparative Law* 433 at 461.

corporate transactions, except where decisions are not made in good faith, with due care and within the director's authority.[66]

The BJR was interpreted in the case of *Re City Equitable Fire Insurance Co Ltd*[67] to the effect that where a director acts honestly, with care, skill and diligence, he cannot be held liable for poor transactions unless he is guilty of gross and culpable negligence in a business sense. This aged doctrine of BJR is retained by section 279 (3) of CAMA, which states that a "director shall act at all times in what he believes to be the best interest of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinary skillful director would act in the circumstances".

The general implication is that a director's judgment on company decisions is assumed to be always in the best interests of the company unless there is proof of abuse, fraud or gross mismanagement. The BJR looks at the process of decision making by the directors and not at the outcome of the decision. That is, once it is established that the directors exercised honest business judgment, they will not be liable for any loss or liability incurred. In *Kelly v Bell*,[68] the Delaware Supreme Court, in affirming the decision of the Chancery Court, held that directors or officers were not necessarily liable to the corporation because they honoured managerial commitments – provided they exercised honest business judgment.[69]

In the context of the payment of company dividends, the trite law is that a company cannot declare dividends unless it is recommended by the directors.[70] In order words, the decision on whether or not a company should pay dividends and the quality of such dividends resides with the directors. In any case, where dividends are not paid, BJR allows managers to retain the profit and use it for any other purpose that is in the interests of the company. However, retained earnings have attracted different conceptions. For instance, some studies have shown that inefficient managers seek to retain profit so that they will have resources available to operate the company. The assumption is that inefficient managers try to escape market inspection of their performance by adopting a low-payout dividends policy and avoiding competitive external markets for financing.[71] Thus, the BJR ensures that in the absence of the abuse of managerial discretion, the law will not second-guess the judgment of directors regarding the payment of dividends.

It is the contention of this writer that while BJR may appear to be a valuable rule in measuring the decisions of managers regarding dividend payouts, it is

66 Akaayar "Reconstructing the interests", above at note 64.

67 [1925] Ch 407.

68 266 A 2d 878 [Del 1970].

69 Note that some scholars argue that the BJR is limited only to directors and not officers of the firm. See LPQ Johnson "Corporate officers and the business judgment rule" (2005) 60 *The Business Lawyer* 439.

70 CAMA, sec 379.

71 Feldstein and Green "Why do companies pay", above at note 19.

https://doi.org/10.1017/S0021855320000054 Published online by Cambridge University Press

grossly inadequate at protecting the interests of the shareholders in the quality and timing of dividend payments. This is because the law places a heavy burden on shareholders who wish to challenge the management's dividend policy decisions. To the best of the knowledge of this writer, there is no reported case where the courts have ordered a management-controlled public traded company to increase or even to pay dividends. In fact, section 379 (3) of CAMA clearly states that the general meeting shall have no power to increase the recommended amount of dividends paid out. It is submitted that if indeed dividends represent the interests of the shareholders, it is unfair for the same shareholders not to have control over the amount to be distributed to them.

Unlawful distribution of dividends and other assets

As demonstrated above,[72] the fundamental principle of corporate law is that where a statutory procedure for the declaration of dividends or other forms of distributable assets is mandatory, a company is bound by this.[73] In the particular context of this study, the trite rule is that dividend payouts or other forms of distributable assets must not be in contravention of statutory provisions. This is largely because section 386 (1) of CAMA states that "[a]ll directors who knowingly pay, or are party to the payment of dividend out of capital or in contravention of this Part of this Act, shall be personally liable jointly and severally to refund to the company any amount so paid".

It is submitted that section 386(1) quoted above is rooted in the fiduciary duty of a director, which prohibits misapplication of the company's property. In fact, section 283(1) of CAMA states that directors "are trustees of the company's money, properties and their powers and as such must account for all the moneys over which they exercise control and shall refund any moneys improperly paid away".

As earlier noted, the powers and discretion to recommend a payment of dividends or other form of distributable assets reside with directors.[74] It will, therefore, be an aberration of fiduciary duty for directors to pay dividends in contravention of the provisions of the law. In such a situation, the director or directors involved would be called upon to repay the amount of dividends or other forms of distributable assets unlawfully paid to the shareholders. The above rule appears to be reinforced by the common law decision in *Re Exchange Banking Co (Flitcroft's case)*,[75] where it was held that directors who pay dividends improperly may in certain circumstances be liable to compensate the company for the loss thereby caused. More recently, in *Allied Carpets Group plc v Nethercott*,[76] a former managing director who had received

72 See above at note 64.
73 *Precision Dippings Ltd*, above at note 62.
74 CAMA, sec 379 (1).
75 [1882] 21 Ch D 519.
76 [2001] BCC 81.

dividends that he knew were paid on the basis of inadequate accounts was deemed to have held the dividends in a constructive trust for the company and would be required to repay them to the company. Similarly, in *Bairstow v Queens Moat Houses plc*,[77] it was held that the directors who had authorized the payment of dividends other than out of distributable profit were personally liable to repay them to the company, regardless of whether they themselves were the recipients of the dividends.

Nevertheless, section 386(2) of CAMA confers the directors with the right of indemnity against shareholders who received dividends with the knowledge that the company had no power to pay. The required knowledge of the shareholder is constructive in nature. That is, a shareholder who has received the annual report would be treated as knowing if the company had no distributable profits. It appears that at common law, a director's right of indemnity against a shareholder who received unlawful dividends is wider than is the case under CAMA. This is largely because in *Moxham v Grant*,[78] it was held that directors who have repaid dividends to the company have a right of indemnity against each shareholder who received the dividends. The right of indemnity is to the extent of the dividend received by each shareholder, and it does not matter whether the shareholder concerned knew or not that dividends were paid out of the capital of the company. Also, in *It's a Wrap (UK) Ltd v Gula*,[79] the liquidator sought repayment of dividends paid to the defendants where the financial accounts of the company showed that there was no profit available for distribution. The English Court of Appeal in reversing the decision of the trial court held that: "section 277(1) UK Companies Act 1985 (now section 847 UK Companies Act 2006) must be interpreted as meaning that the shareholder cannot claim that he is not liable to return a distribution because he did not know of the restrictions in the Act on the making of distributions. He will be liable if he knew or ought reasonably to have known of the facts which mean that the distribution contravened the requirements of the Act".

While the above decision was based on the UK Companies Act, it is submitted that it is not unlikely that the Nigerian courts will follow similar interpretations. This is largely because section 277(1) of the UK Companies Act 1985 is similar to section 386(2) of CAMA. In that regard, the word "knowledge" in subsection (2) of section 386 CAMA will be interpreted widely and may include a situation where a shareholder received the financial report of a company which showed that there was no profit available for distribution. Besides a claim against the shareholders, it was held in *Re Duomatic Ltd*[80] that it is not unlikely that directors who acted honestly and in reliance on an auditor's

77 [2001] 2 BCLC 531.
78 [1900] 1 QB 88.
79 [2006] BCLC 634.
80 [1969] 1 All ER 161.

report may claim relief against a negligent auditor for an unlawful dividend payout.

Failure to declare dividends

Generally, directors are expected to declare dividends for the benefit of the shareholders of the company. As noted above, a declaration of dividends may signal to existing and potential investors that a company is doing well. Nevertheless, directors of a company may refuse to pay dividends. Several factors may account for the refusal of directors to pay dividends or other forms of distributable assets. On the other hand, the refusal may be positive. That is, the action of the directors may be justified if their decision not to pay dividends is honest and in the best interests of the company and its shareholders. For instance, section 379(2) of CAMA prescribes that a declaration of dividends should be "justified by the profits of the company". Similarly, where contracts of service provide profit sharing for employees, the directors may decide to share company profits with the employees as an incentive irrespective of whether or not dividends are declared.[81] Besides, the directors may in their honest judgment apply a company's profit to discharge outstanding debts and other liabilities as an alternative to paying out dividends to members. Above all, directors may adopt a restrictive dividend policy, which may prevent shareholders from receiving dividends on their investment. In view of these instances, the fundamental issue is whether or not there are remedies available to shareholders when directors fail to declare dividends. This issue is most relevant to minority shareholders who may find it difficult to change the articles of the company.

It is submitted that a failure to pay dividends may in some circumstances provide reasonable grounds for the court to order the winding-up of a company on "just and equitable grounds". In *Re a Company*,[82] it was held that shareholders are reasonably entitled to expect returns on their investments. Thus, if the directors pursued a restrictive dividend policy and prevented shareholders from receiving returns on their investment, it may be just and reasonable grounds for the court to order the winding-up of a company. Similarly, in *Re Sam Weller and Sons Ltd*,[83] it was held that a restrictive dividends policy may justify relief on the grounds of unfairly prejudicial and oppressive conduct. Under CAMA, section 311 (2) (a) (i) states that a member of a company may petition the court on the grounds that "the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is in disregard of the interests of a member or members as a whole".

81 CAMA, sec 384.

82 [1988] 4 BCLC 506. Also see Wild and Weinstein *Smith and Keenan's Company Law*, above at note 1 at 204–05.

83 [1990] Ch 682.

It is the contention of this writer that although relief on the grounds of unfairly prejudicial and oppressive conduct is not designed specifically for dividends, it can be useful to minority shareholders. This is largely because section 312(1) of CAMA states that "if the court is satisfied that a petition under section 311 of the Act is well founded, it may make such order or orders as it thinks fit". Thus, while it is unlikely that the court would make an order declaring the dividends, it would not foreclose a dividends declaration either. Above all, the court may make an order for the majority, or the company, to purchase the shares of the minority at fair market value.

Capitalizing profits and making reserves

Subject to any restrictions that may be imposed by its articles or memorandum, every company has implied powers to apply its profits to the distribution of dividends among its members.[84] Nevertheless, declaration and payment of dividends is not absolute and not all profits may be declared as dividends. Thus, a company may, as an alternative to paying dividends, capitalize its profits or set aside its profit as reserves. This is acknowledged at common law in *Long Acre Press Ltd v Odhams Press Ltd*,[85] where it was held that in the absence of a dividend-payout provision in the articles, it is at the discretion of the directors to decide what part of the profit shall be distributed as profit or set aside as reserve funds. Similarly, section 383(1) of CAMA states that "the directors may, before recommending dividends, set aside out of the profits of the company such sum as they think proper as reserves, which shall, at discretion of directors employ the sum in the business of the company or invest in such investment as directors may think fit". As is the situation with a declaration of dividends, a company cannot set aside any part of its profit as reserve and capitalization unless this is recommended by the directors.

While a company is not bound to capitalize or set aside its profits as reserves, there may be some corporate arrangement that may necessitate capitalization or reserves. For instance, a company may be bound under a contract with a debenture holder to set aside a certain sum by way of reserve in order to redeem the debentures. Also, in the case of redemption or purchase of shares, a company may be required to set up capital redemption reserves. Above all, capitalization and reserves may be for the purpose of meeting the future liabilities of a company. In any case, it is not good practice to set aside all profit as reserves and capitalization without paying dividends. This is largely because minority shareholders may consider it oppressive conduct and may petition the court on the grounds of unfairly prejudicial conduct.[86] Thus, the inherent powers of dividing its profit among its members, which a company normally possesses, reflect the fact that a company is conceived as a form of organization of private enterprise and as such is motivated by profit

84 C M Schmitthoff (ed) *Palmer's Company Law* (22nd ed, 1979, Stevens and Sons Ltd) 780.
85 [1930]2 Ch 196.
86 CAMA, sec 311.

sharing.[87] In any case, the interest of the company is paramount. As Dignam and Lowry rightly note, a "profitable company may want either to pay dividends to its shareholders or to re-invest the profit in the business or transfer it to a reserve account or apply it for any other reasonable purpose. The capital maintenance doctrine requires that the overall position (interest) must be assessed by the company directors in deciding whether profits will be made available for dividends or for other purposes".[88]

While Dignam and Lowry do not address the Nigerian context, it is submitted here that their findings apply with equal force in Nigeria. This is largely because of the provisions of section 383 (1) of CAMA, which empower the directors to capitalize or set aside a company's profit as reserve.

CONCLUSION

The purchase of shares in a company is the purchase of a bundle of rights. One of the rights purchased is the right to participate in company's dividends and other forms of distributable assets. This work has shown that while shareholders do not own the assets of a company, they trade their shares in exchange for an interest in a company's capital, which may grow in value or provide them with income (through the payment of dividends) or both.[89] However, the right to participate in the assets of a company in the form of dividends is not absolute but subject to the discretion of a board of directors. The discretion of the directors is in turn subject to extant corporate rules and regulations regarding the declaration and payment of dividends or other forms of distributable assets. This work examines some of these rules in a Nigerian context. In particular, it analyses the legal nature of company dividends and the rationale behind their payment. Also, it demonstrates the important legal instruments for dividend payouts as well as the forms of company dividends. It concludes with a critique of the fundamental rules on company dividends and policy measures, which may assist Nigeria's policymakers in strengthening the area of company dividends and other forms of distributable assets in Nigeria.

CONFLICT OF INTEREST

None.

87 Schmitthoff *Palmer's Company Law*, above at note 84.

88 A Dignam and J Lowry *Company Law* (5th ed, 2009, Oxford University Press) 117 at 118.

89 Id at 27.