

# A Critical Analysis of the Administrative Powers of Investigation into Companies Affairs by Company Inspectors

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## Abstract

This article evaluates the extent, scope, and implications of the administrative powers conferred on company inspectors in investigating companies pursuant to the Companies and Allied Matters Act, 2020 and related legislations. The administrative powers of investigation into company affairs by company administrators play an essential role to promote and guarantee corporate transparency, regulatory compliance, and accountability. This paper critically analyzed the scope, effectiveness, and limitations of these investigative powers within corporate governance frameworks. It examined the legal, socio-political, institutional and regulatory basis for such powers, their practical implications, and the factors that impedes exercise of such power. Furthermore, the research discussed the balance between corporate autonomy and regulatory oversight, considering the potential for abuse or overreach. By evaluating case studies and recent legal developments, this paper further highlighted emerging trends and offers recommendations for enhancing the efficiency and fairness of company investigations. In conclusion, recommendations were made including that the legislature should extend the law to confer more stakeholders with the right to apply for investigation of a company, provide for compulsory and periodic investigation and impose stiff penalty/sanction on collusive company inspectors.

**Keywords:** Companies, Investigative Power, Competent Inspector, Corporate Affairs Commission, Codes of Corporate Governance.

## 1.0 Introduction

Once a company is duly incorporated, it automatically assumes the status of a legal person.<sup>1</sup> Although it is a legal person distinct from the members, the company carries its activities through the instrumentality of its directors.<sup>2</sup> The director of a company has been defined as-

*A person duly appointed by the company to direct and manage the business of the company. A director is an agent of the company but does not, by that fact alone, become the servant of the company or an employee. The Company acts through its directors, who control and manage its business affairs.*<sup>3</sup>

Since directors are charged with the roles of managing the affairs of the company, it is important to observe that the directors are not impervious to the natural human propensity to err. The Companies and Allied Matters Act, 2020 (CAMA) as well as various Codes of Corporate Governance<sup>4</sup> have, as a matter of remedial measures, stipulated various compliance ethics and *modus operandi* for companies in Nigeria. The CAMA vests on the Corporate Affairs Commission (“the Commission”) the power to appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as it directs, if the Court, by order declares that its affairs ought to be investigated.<sup>5</sup>

The power of investigation is a fundamental tool in corporate governance, ensuring compliance, transparency, and accountability in business operations. Company administrators, including regulatory bodies and insolvency practitioners, are vested with administrative powers to investigate companies suspected of misconduct, financial mismanagement, or regulatory breaches.

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<sup>1</sup> *Salomon v Salomon (1879) A.C. 22*; Section 42 Companies and Allied Matters Act 2020.

<sup>2</sup> See the case of *FIRS V. Halliburton (WA) Ltd (2014) 7 NWLR (PT.1407)1*. The Court of Appeal held that since a company lacks a physical body and mind, it can only function through its directors and officers.

<sup>3</sup> *Longe v. First Bank of Nigeria PLC (2010) 6 NWLR (pt.1189)1 (SC)*.

<sup>4</sup> For instance: The Code of Corporate Governance for Public Companies 2011; The Code of Corporate Governance for Banks and Discount Houses 2014; The Nigerian Code of Corporate Governance 2018

<sup>5</sup> Companies and Allied Matters Act 2020, section 358(1).

These powers are essential for maintaining market integrity and protecting stakeholders, including members of the company; a director or officer, former director or officer of the company; a creditor; the Commission; or any other person who, in the discretion of the court, is the proper person to make an application<sup>6</sup>.

It is noteworthy to state that while these investigative powers are necessary for corporate oversight, they also raise concerns regarding due process, corporate autonomy, and potential misuse. Striking a balance between regulatory authority and business freedoms is crucial to ensuring that investigations are conducted fairly and effectively. Furthering this study, we shall explore case laws, statutory provisions, and comparative perspectives from different jurisdictions, to provide insights into the evolving nature of corporate investigations. We shall also beam our searchlights on the recent trends and reforms aimed at strengthening or constraining these powers.

## **2.0. Conceptual Definition**

### **2.1 Meaning of a Company**

The Companies and Allied Matters Act, 2020 is the principal law regulating registration and operation of companies in Nigeria. The term company has been defined by the Act as follows:

*company" or "existing company" means a company formed and registered under this Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act<sup>7</sup>.*

This statutory definition of company is somehow unhelpful. This is because it is a circular definition. Circular in that one needs to refer to another section to understand the concept. It therefore appears that *section 18* of the Act will be helpful. It states:

*18.(1) As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of the company.*

*(2) Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies.*

*(3) A company may not be formed or incorporated for an unlawful purpose.*

From the foregoing provisions, a company is any entity stated to be a company within the provisions of the CAMA, formed with defined objectives which must not be for any unlawful purpose by one or two persons who are willing to and comply with the Act.

Once duly incorporated, a company becomes separate person distinct from the owners<sup>8</sup>.

### **2.2 Meaning of Administrative Power of Investigation into a Company**

Administrative power of investigation into a company's affair refers to the statutory authority given to regulatory bodies, government agencies, or other competent authorities to examine a company's affairs, financial records, and operations to ensure compliance with laws and regulations. This power is typically exercised to detect fraud, mismanagement, insider dealings, or other unlawful practices within a company. In the context of our research, this power is statutorily

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<sup>6</sup> Ibid, section 353(1).

<sup>7</sup> Ibid, Section 868, the Interpretation section

<sup>8</sup> *Salomon v. Salomon & Co Ltd (1897) AC 22 (HL)*. See also Section 42 of CAMA, 2020.



provided under *section 358 of CAMA, 2020*. In *EFCC v. Olam Nigeria Ltd*<sup>9</sup>, the Court of Appeal upheld the power of regulatory agencies to investigate financial transactions of companies suspected of economic crimes.

### 2.3 Who is a Company Inspector?

A company inspector is a person appointed by a regulatory authority, for example Corporate Affairs Commission (CAC), to investigate the affairs of a company. The inspector has statutory powers to examine company records, interrogate officers, and report findings on issues like fraud, mismanagement, or legal violations. Judicially, an inspector appointed under company law has been held to have quasi-judicial powers, meaning their role is investigative but can lead to legal actions.<sup>10</sup>

In *Regina v. Board of Trade, Ex parte St. Martin Preserving Co. Ltd*<sup>11</sup>, the UK court explained that a company inspector is not a prosecutor but rather a fact-finder who collects evidence that may lead to legal proceedings.

### 3.0 The Essence of Company Investigations in Maintaining Corporate Accountability and Governance.

As already posited, a company by virtue of its registration has become a *personal ficta*, that is to say, a juristic personality that can only act through an *alter ego*<sup>12</sup> such as its agents, or servants, directors or managers.<sup>13</sup> The foregoing necessitated the provision for investigation of companies. The foremost agency responsible for investigation of companies in Nigeria is the Corporate Affairs Commission (CAC)<sup>14</sup>. Besides the CAC, agencies such as Asset Management Corporation of Nigeria (AMCON), Economic and Financial Crimes Commission (EFCC), Central Bank of Nigeria (CBN), Nigeria Deposit Insurance Commission (NDIC), Securities and Exchange Commission (SEC), Nigerian Financial Intelligence Unit (NFIU), etc are saddled with the responsibility of intervening in the affairs of companies in one way or the other<sup>15</sup>.

The need to investigate the affairs of a company is not farfetched. In the case of *Northwest Halst v Secretary of State for Trade*<sup>16</sup>, Lord Denning observed as follows:

*Public companies are conducted in a way which is beyond the control of ordinary shareholders. The majority of the shares are in the hands of two or three individuals. They have control of the company's affairs. The other shareholders know little and are told little. They receive glossy annual reports. Most of them throw them into waste paper basket. There is an annual general meeting but few of the shareholders attend. The whole management and control is*

<sup>9</sup> (2021) LPELR-54578(CA)

<sup>10</sup> *Eboh v. Akpotu* (1968) 1 All NLR 220

<sup>11</sup> (1963) 1 WLR 1162

<sup>12</sup> See the meaning of the term “*alter ego*” in the Nigerian case of *Orji Uzor Kalu v. FRN* (2019) LPELR-47480 (CA) where the Court of Appeal held that the defendant, a prominent individual, was considered an “*alter ego*” of a company (Slok Nigeria Limited) due to his substantial control and influence over its operation.

<sup>13</sup> *Okolo v. FRN* (2019) 7 N.W.L.R. (Pt. 1671) p. 348 at 352.

<sup>14</sup> See the general functions of the Commission under Section 8 of the Companies and Allied Matters Act, 2020.

<sup>15</sup> Okongwu *et al*, “Investigation of Companies’ Affairs and Ownership in Nigeria”, in *African Journal of Law and Human Rights (AJLHR)*, Vol. 6. No. 2, 2022, p 79.

<sup>16</sup> (1781) 3 All E.R. 280.

*in the hands of the directors. They are a self-perpetrating oligarchy; and are virtually unaccountable. Seeing that the directors are the guardians of the company, the question is asked: Quis custodient ipsos custodias? Who will guard the guards themselves?*

The activities of companies no doubt affects the life and economic sphere of a particular nation. It follows that companies form an integral part of the economic base of a nation. The business of a company is legally permitted by the law since it serves the society at large. Therefore, in the event that the operations or objects of companies are at variance with the laws of that land or against the norms of the society, such cannot be accepted by any responsible democratic government.<sup>17</sup> And there is the need to protect both the interest of the general public by the government of the day and also the interest of individuals who invest in the companies.<sup>18</sup> The myriads of scandals that actually threaten the corporate world as it affects the investors can never in anyway be overemphasized.<sup>19</sup>

#### **4.0 Scope of Administrative Powers Granted to Inspectors**

As we already pointed out in this paper, the legislative foundation of company inspectors in Nigeria is the Company and Allied Matters Act, 2020. *Section 358* expressly provides thus:

358.(1) The Commission shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as it directs, if the Court, by order declares that its affairs ought to be investigated.

(2) Notwithstanding the provisions of sections 357 and subsection (1) of this section, the Commission may appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as it directs, if it appears to it that there are circumstances suggesting that-

(a) the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some part of its members;

(b) any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose;

(c) persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or

(d) the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

(3) Subsections (1) and (2) are without prejudice to the powers of the commission under section 366, and the power conferred by subsection (2) is exercisable with

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<sup>17</sup> M E Dodd, 'For Whom are Corporate Managers Trustee?' 45 H.L.R. 1145 @1149 (1932), cited in Okongwu *et al*, "Investigation of Companies' Affairs and Ownership in Nigeria", in *African Journal of Law and Human Rights (AJLHR)*, Vol 6. No. 2, 2022, p 78.

<sup>18</sup> C Uche, 'The Theory of Regulation: A Review Article' (2000) *Journal of Financial Regulation and Compliance* 2000, 68, cited in Okongwu *et al*, "Investigation of Companies' Affairs and Ownership in Nigeria", in *African Journal of Law and Human Rights (AJLHR)*, Vol 6. No. 2, 2022, p 78.

<sup>19</sup> A A Adekoya, 'Corporate Governance Reforms in Nigeria: Challenges and Suggested Solutions' *Journal of Business Systems, Governance and Ethics* 6(1) 2001, 42.



respect to a body corporate, notwithstanding that it is in a course of being voluntarily wound up.

(4) Reference in subsection (2) to company's member, includes, —

(a) any of the personal representatives of a deceased member; and

(b) any person to whom shares have been transferred or transmitted by operation of law.

From the foregoing provisions, two factors are derivable. First, the Commission may appoint competent inspectors to investigate a company by the order of the Court declaring that the affairs of the company ought to be investigated. Such order of a court must be precipitated by an application for same. Secondly, the Commission may appoint a competent inspector *suo moto* if it is satisfied with the conditions stated therein. In either case, the Commission, in practical terms seems to exercise its power to investigate only when it is activated to do so upon the application of any of the persons under subsection 2 above. This is not because the commission lacks the *locus standi* to initiate an investigation on its own motion (as it has general power under section 8 of CAMA, 2020<sup>20</sup>) However, once the Commission's power of investigation is activated by the second catalyst in line with *section 357 of CAMA, 2020*<sup>21</sup>, it needs no further order of Court to exercise its statutory function. See the case of *Corporate Affairs Commission v United Bank for Africa & 5 Ors*<sup>22</sup> where the Supreme Court on whether the CAC is required to seek court's order when it satisfies itself that a company ought to be investigated stated as follows:

*Whilst the concerns raised by the Respondents and Trial Judge are considered logical to an extent, the ruling of the Court of Appeal is very solid as it expressly seeks out the intention of the legislature in the creation of the law and it further draws our attention to the mischief the legislature was looking to override in the creation of the law.*

The Court of Appeal ruling validates the power vested in the CAC by virtue of CAMA. Requiring CAC to seek an order from the court before inspecting the corporate affairs of any company essentially limits the power of the commission. The existence of the commission should serve the purpose of lessening the burden on the courts in regards to the regulation of the affairs of companies, thus preserving the intervention of the courts for graver concerns that arise in the course of their duty. Requiring direct permission from the court for every inspection would be strenuous, lengthy and certainly contrary to the intention of the legislature, hence making the ultimate decision of the court laudable.

Having established that the Commission, though does not require the requisite leave of court to appoint inspector when the investigation is by the company or its members' application, it is

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<sup>20</sup>See also *Ezeugo v. Corporate Affairs Commission (2014) LPELR-23258(CA)*

<sup>21</sup>This section provides for investigation of a company on the application of its own or that of its members. It requires application to CAC to be supported, in the case of a company having share capital, by members holding at least one-tenth of the class of share issued; in the case of a company not having share capital, by at least one-tenth of persons in the register of members; and in any other case, on the application of the company.

<sup>22</sup>(2017)2 N.W.L.R

however imperative to point out that the Commission is expected to comply with section 357 (2)<sup>23</sup>. The powers of company inspectors during investigation are summarized in *section 359* as follows:

*359 (1) If an Inspector appointed, under section 357 or 358, to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate the affairs of another body corporate which is or at any time been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, he shall report on the affairs of the other body corporate so far as he thinks that the results of his investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.*

*(2) An inspector appointed under either section 357 or 358 may at any time in the course of his investigation, without the necessity of making an interim report, inform the Commission of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.*

The scope of the power of an inspector covers the right to demand all books of a company for inspection be investigated.<sup>24</sup> It may also examine on oath the officer or agent of the company or any other body corporate.<sup>25</sup>

## **5.0 The Role of Company Inspectors in Enforcing Regulatory Compliance.**

(1) Investigate a company's affairs. (2) Make any necessary interim reports in the course of the investigation<sup>26</sup>. (3) Report on their findings to the CAC<sup>27</sup>. (4) Inform the CAC of any matters that indicate an offense has been committed<sup>28</sup>. (5) Investigate a company's financial statements. (6) Investigate a company's directors and past directors<sup>29</sup>. (7) Investigate the ownership of a company<sup>30</sup>. (8) Investigate the affairs of another company which is or at any time was the subsidiary or holding company he is appointed to investigate<sup>31</sup>.

## **6.0 Comparative Analysis of the Investigative Powers of Company Inspectors: Nigeria, UK, US, China, South Africa, and Others.**

### **6.1 Nigeria**

The legal basis for investigation of the affairs of a company is enshrined in the Companies and Allied Matters Act (CAMA) 2020. Appointment of inspector is by the Corporate Affairs Commission (CAC). Thus, a company may be investigated if the shareholders holding at least one-tenth of the issued shares/one-tenth membership request it or the CAC suspects fraudulent or illegal activities or court orders an investigation. Inspectors can compel document production, interview directors, and examine financial records. Findings may lead to criminal prosecution, company dissolution, or regulatory sanctions.

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<sup>23</sup> See *Corporate Affairs Commission v United Bank for Africa & 5 OR's* (2017)2 N.W.L.R

<sup>24</sup> Companies and Allied Matters Act 2020, Section 360(1).

<sup>25</sup> *Ibid*, Section 360(3).

<sup>26</sup> Companies and Allied Matters Act 2020, Section 359(2)

<sup>27</sup> *Ibid*, Section 363.

<sup>28</sup> *Ibid*, Section 365. In *Attorney-General v. Great Eastern Railway Co. (1880) 5 App. Cas. 473* The court recognized that a company inspector's findings can influence government intervention, such as dissolution or criminal charges against directors.

<sup>29</sup> *Ibid*, Section 361.

<sup>30</sup> *Ibid*, Section 369.

<sup>31</sup> *Ibid*, Section 359 (1).



## 6.2 United Kingdom (UK)

The basis for investigation in the affairs of companies in the UK is the Companies Act 2006.<sup>32</sup> The Secretary of State for Business, Energy, and Industrial Strategy appoints inspectors on suspicion that a company engages in fraudulent or oppressive conduct or insolvency cases involving public interest concerns. Inspectors have extensive powers to summon witnesses and seize documents. Findings can lead to civil liability, criminal charges, or director disqualification. In the UK, there is a strong regulatory framework with judicial oversight. Investigations balance public interest with corporate rights. The weaknesses, however are that investigations can be politically influenced and there may be lengthy process due to bureaucratic procedures.

## 6.3 United States (US)

The legal frameworks in the US are the Securities Exchange Act of 1934<sup>33</sup> and the Sarbanes-Oxley Act of 2002<sup>34</sup>. The Securities and Exchange Commission (SEC) and Department of Justice (DOJ) lead investigations. This is done when market manipulation, fraud, or securities violations are suspected. SEC can subpoena records and compel testimony. Investigations often lead to settlements, fines, or criminal prosecution. In the US, investigation is highly effective in uncovering corporate fraud. There is strong collaboration with law enforcement agencies. It may, however, lead to costly and time-consuming litigation; heavy regulatory burden on companies.

## 6.4 China

In China, the Company Law of the People's Republic of China, Securities Law<sup>35</sup> regulates company investigation. Appointment is done by the China Securities Regulatory Commission (CSRC) to investigate corporate fraud and misconduct.<sup>36</sup>

The triggers include insider trading, financial misstatements, or public complaints. Investigators have broad powers to access bank records, freeze assets, and detain suspects. Severe penalties, including company dissolution and imprisonment. Strengths include quick enforcement and severe penalties deter corporate malpractice. On the flipside, it may be flawed by limited transparency and risk of political influence as well as subject to lack of judicial independence which may affect fairness.

## 6.5 South Africa

The Companies Act 2008 and the Financial Sector Regulation Act 2017<sup>37</sup> are the legal basis for the regulation of companies in South Africa. Appointment is done by the Companies and Intellectual Property Commission (CIPC) or Financial Sector Conduct Authority (FSCA). Investigation is triggered by irregularities in corporate governance and financial fraud. In conducting investigation, inspectors can demand records, suspend executives, and impose administrative penalties.

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<sup>32</sup> Section 432-457

<sup>33</sup> Securities Exchange Act of 1934 (US), 15 U.S.C. § 78a

<sup>34</sup> Sarbanes-Oxley Act of 2002 (US), Pub. L. No. 107-204, 116 Stat. 745.

<sup>35</sup> Company Law of the People's Republic of China 2018, arts 151-153

<sup>36</sup> Ibid

<sup>37</sup> Companies Act 71 of 2008 (South Africa), Section 168-170

## **7.0 The Balance between Investigative Right and Protecting Companies' Confidentiality.**

Balancing the investigative rights of company inspectors with the need to protect companies' confidentiality is a key issue in corporate governance, regulatory compliance, and business ethics. Here are some key aspects of this balance:

### **7.1. The Investigative Rights of Inspectors**

Company inspectors—whether government regulators, auditors, or internal compliance officers—are tasked with ensuring transparency, legal compliance, and ethical business conduct. Their rights typically include:

- Access to company records: Financial statements, contracts, and internal reports<sup>38</sup>.
- Interviews with executives and employees: To gather information on compliance and misconduct including calling for directors' bank accounts<sup>39</sup>.
- On-site inspections: Reviewing operations, facilities, and digital records.
- Legal authority: In some cases, they can impose penalties or take legal action for non-compliance. This right is found in sections 362, 364 and 365 of the CAMA, which include contempt proceeding and report to the Commission recommending either civil or criminal proceedings against the directors or agents of the company in deserving cases.

### **7.2. The Need to Protect Confidentiality**

Confidential business information is important information about a company that should not be public. If this type of information is disclosed, it could be harmful to the company's success. Confidential business information covers a wide array of subjects that have to do with the workings of a business. Companies have legitimate concerns about protecting sensitive information, including: Trade secrets, Purchases, Production processes, Shipments, Customer IDs, Inventory, Sources of income, Profits and expenditures, Partnerships<sup>40</sup>.

Improper divulgence of confidential information may ground to the following consequences:

- Trade secrets and intellectual property exposure which could harm competitive advantage.
- Client and supplier data disclosure which might breach confidentiality agreements.
- Reputation and market confidence: premature disclosure of investigations could damage business relationships and stock prices.

In view of the foregoing juxtaposition, it is imperative to ensure that while it is a desideratum to equip the inspector with all necessary information and full disclosures, there is also a concomitant need to ensure a non-misuse of such power.

## **8.0 Limitations to the Powers of Investigation and Safeguards within the Framework.**

It is understandable from the CAMA, 2020 that the power of the Commission to investigate a company, on one hand, is dependent on the order of the court and, on the other hand, upon a complaint of any member(s) holding one-tenth stake in the share capital or membership of the company. We took this stand because from the tenor of the Act, it appears that all the provision seeks to protect is the interest of the members, although members of the company was given

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<sup>38</sup> CAMA, 2020 Section 360.

<sup>39</sup> Ibid, Section 360.

<sup>40</sup> <https://study.com/academy/lesson/confidential-business-information-definition-laws.htm>> accessed on February 4, 2025.



expanded definition in section 258(3) of the CAMA 2020<sup>41</sup>. The import of the whole issue is that the Commission seems to practically exercise its power of investigation when activated to do so. We consider this a limitation and recommend that the law should expressly provide for public rights to demand investigation without necessarily having shareholding in the company. this provision is obtainable in the *Company Law of the People's Republic of China* where public complaint is expressly provided for.

At all times, the mandate of a company inspector is to unravel any misconduct going on in a company. Section 360 of the Act obligates the officers or agents of the company to disclose and make available documents of the company to aid the inspector's investigation. It is our considered opinion that the reliance of the inspector on the documents to be furnished by the officers of the investigated company is a limitation to the exercise of its role. The law does not provide for a more comprehensive procedure to achieve an unfoiled investigation. Going further, the Act provides that any obstruction of the inspector's investigation by way of refusal to furnish relevant documents shall be treated as a Court contempt upon the inspector certifying such refusal in writing<sup>42</sup>. A careful understanding shows there seems not to be a remedy for refusal to act candidly with the inspector on the side of the company's officers or agent. All the inspector need do is to establish court contempt against the non-compliant officer. This leaves two possibilities-the officer may willfully refuse to furnish documents, only to face contempt proceeding after all. Second, the non-decisive provision on how to treat a non-correspondent officer may give leeway for inspector's complicity to frustrate the investigation by deviating from the main assignment only to pursue contempt proceeding against the defaulting officer. Thus, we submit that there is a lacuna in the law in this respect.

## 9.0 Recent Trends Concerning Improved Investigation of Companies

### 9.1 Nigeria

**Private Investigators Bill (2024):** In October 2024, the Nigerian Senate stepped down a bill aimed at regulating private investigators.<sup>43</sup> Senators expressed concerns that private investigators might intrude on privacy and be misused for political purposes<sup>44</sup>. This decision reflects apprehension about expanding investigative powers without robust oversight mechanisms.

### 9.2 United Kingdom

#### a. Expansion of Serious Fraud Office (SFO) Powers

The UK *Economic Crime and Corporate Transparency Act 2023* broadens the SFO's authority. Previously, under *Section 2A of the Criminal Justice Act 1987*, the SFO could compel individuals and companies to provide information during the pre-investigation stage solely in international bribery and corruption cases. However, interestingly, the 2023 Act extends this power to all cases

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<sup>41</sup> The sub-section states: "Reference to sub-section (2) to a company's member, includes-(a) any of the personal representative of a deceased member; and (b) any person to whom shares have been transferred or transmitted by operation of law.

<sup>42</sup> Companies and Allied Matters Act 2020, Section 362.

<sup>43</sup> Nigeria: Senate Steps Down Private Investigators Bill," AllAfrica News (2 October 2024) <<https://allafrica.com/stories/202410020692.html>> accessed 21 March 2025.

<sup>44</sup> Senator Adams Oshiomhole highlighted the potential for these investigators to become tools for political adversaries, leading to the bill's withdrawal for further consultation.

under the SFO's jurisdiction, including domestic fraud and corruption.<sup>45</sup> This change enables the SFO to gather information earlier, potentially increasing the efficiency of investigations.

### **b. Companies House Reforms**

The Economic Crime and Corporate Transparency Act 2023 also transforms Companies House from a passive repository to a proactive regulator<sup>46</sup>.<sup>2</sup> New measures include identity verification for directors and persons with significant control, restrictions on corporate directors, and enhanced powers to remove or decline inaccurate information. These reforms aim to improve corporate transparency and accountability.

### **c. Case Law Developments in the UK**

#### **Eurasian Natural Resources Corporation (ENRC) Case (2024)**

In September 2024, the UK's Serious Fraud Office (SFO) concluded its investigation into Eurasian Natural Resources Corporation (ENRC), citing insufficient admissible evidence.<sup>475</sup> ENRC had engaged in extensive litigation against the SFO, alleging misconduct. This outcome highlights challenges faced by regulatory bodies when investigating well-resourced corporations capable of mounting significant legal defenses.

These developments reflect a global trend of recalibrating the investigative powers of company inspectors, aiming to balance robust corporate oversight with concerns about privacy, potential misuse of power, and the challenges posed by influential corporate entities.

## **10.0 Findings, Conclusion and Recommendations**

### **10.1 Findings**

To strengthen the legitimacy and effectiveness of such investigations, there is a need for clearer statutory guidelines, enhanced judicial oversight, and safeguards against politically motivated or arbitrary investigations. Future legal developments should aim to strike a balance between corporate self-governance and regulatory intervention, ensuring that company inspections serve their intended purpose without undermining business confidence. Ultimately, refining the investigative powers of company inspectors is essential to fostering a robust corporate regulatory environment that promotes integrity, investor confidence, and economic stability.

### **10.2 Conclusion**

In conclusion, the administrative power of investigation granted to company inspectors plays a crucial role in ensuring corporate accountability, transparency, and compliance with legal frameworks. While this power serves as a vital tool in uncovering corporate misconduct, its exercise must balance efficiency with due process to prevent potential abuse or overreach. The critical analysis of this power highlights key challenges, such as the scope of inspectors' authority, procedural fairness, and the potential for conflicts with principles of natural justice.

### **10.3 Recommendations**

1. There should be provided legal and ethical safeguards to ensure balancing. The Nigerian Senate jettisoned the proposed Private Investigators Bill due to apparent apprehension of it

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<sup>45</sup> See the Economic Crime and Corporate Transparency Act 2023 (UK), Section 2A.

<sup>46</sup> Economic Crime and Corporate Transparency Act 2023 (UK), Part 2.

<sup>47</sup> David Pegg & Harry Davies, "ENRC Oligarchs Took on Serious Fraud Office – and Won," *The Guardian* (12 September 2024) <<https://www.theguardian.com/news/2024/sep/12/enrc-oligarchs-took-on-serious-fraud-office-and-won>> accessed on 21 March 2025.



being used as an instrument of victimization. It is recommended that while private investigators may not serve the purpose of balanced investigation, the CAC should be reinforced further to ensure robust, frequent, accurate and balanced investigation. This can be achieved by creating a permanent department charged with company investigation in the Commission.

2. The laws should in clear terms, define what inspectors can access and under what conditions. This measure will ensure balancing in the role of the investigator and corporate confidentiality.
3. The law should bound Inspectors to execute a confidentiality agreement prior to investigating a company to ensure non-disclosure rules and prevent leaks of sensitive information, provided that such will not impede the role of the inspector.
4. Proportionality Principle: Inspections should only request information relevant to the investigation, avoiding excessive or irrelevant data collection.
5. Best Practices for Companies and Inspectors: company inspectors should be trained to meet international best practices.
6. There is need to address gaps or ambiguities in the law. Reliance on information to be provided by the officers of a company under investigation is inadequate. Nigeria should draw insight from the UK *Economic Crime and Corporate Transparency Act 2023* and come up with measures to able the CAC already have all details that will enhance fruitful investigation even before commencement.
7. There should be periodic and more frequent investigation of companies to entrench corporate sanity.
8. On their side, companies are recommended to maintain clear internal policies on handling inspections, use legal counsel to review information requests, cooperate while safeguarding critical data and seek Court's intervention if an inspection request is seen as overly intrusive.