



The concept of a company: A legal and commercial perspective on Nigeria's corporate framework under CAMA 2020

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Abstract

This paper critically examines the concept of corporate personality within the Nigerian legal framework, with a specific focus on public shareholding companies governed by the Companies and Allied Matters Act (CAMA) 2020. It explores the doctrinal underpinnings of incorporation, the legal separation between a company and its members, and the commercial advantages that arise from this structure, including limited liability and perpetual succession. The study adopts a doctrinal research methodology, analysing statutory provisions, case law, and comparative jurisprudence to trace the evolution and application of corporate legal personality in Nigeria. It further investigates practical challenges facing public companies in Nigeria, including regulatory enforcement gaps, abuse of the corporate veil, and declining investor confidence. The paper evaluates how CAMA 2020 introduces innovative reforms such as simplified incorporation procedures, enhanced corporate governance rules, and mechanisms for minority shareholder protection while acknowledging persistent systemic weaknesses in enforcement and compliance. Ultimately, the research offers actionable recommendations for strengthening Nigeria's corporate regime through regulatory synergy, judicial reforms, and investor protection strategies. By blending legal theory with commercial practice, the paper underscores the role of corporate law as a catalyst for economic development and institutional integrity.

Keywords: Corporate personality, CAMA 2020, public shareholding companies, investor protection, corporate governance, limited liability.

Introduction

A company is a legally recognized entity formed to conduct business, with various organizational forms such as corporations, partnerships, or trusts, depending on jurisdictional requirements and business needs. It is a distinct legal personality capable of owning property, entering contracts, and suing or being sued independently of its members.

The corporate form is a transformative institution, more impactful than many technological innovations. Companies structure capital, labour, and innovation, especially during events like the Industrial Revolution. They contribute to societal development by fostering employment, skill-building, and economic growth. The success of global corporations like Apple and Toyota demonstrates how corporate structures support innovation and wealth creation. In Nigeria, companies derive legal personality from incorporation under the Companies and Allied Matters Act (CAMA) 2020, granting them perpetual succession and shielding shareholders from personal liability. This principle, exemplified in *Salomon v Salomon* and reaffirmed in *Union Bank v. Orharhuge*, ensures that companies are distinct from their shareholders, encouraging investment through limited liability.

A public company in Nigeria differs from a private one in that it may invite public investment and must meet minimum capital and governance standards. Its memorandum must state its public status, and it is subject to stringent requirements such as appointing at least three directors (one independent), having a qualified company secretary, holding regular AGMs, and disclosing director interests. It must comply with pre-emptive rights (Section

142 CAMA 2020) and adhere to regulations governing public offerings.

While CAMA 2020 has reformed the legal framework to encourage transparency and governance, challenges persist. Enforcement remains weak due to underfunded regulatory bodies (e.g., CAC, SEC). Fraud, misuse of corporate veils, insider dealing, and minority shareholder suppression remain prevalent. High compliance costs deter smaller firms from listing, and Nigeria's capital market remains shallow with limited liquidity.

Despite these issues, public companies play a vital role in Nigeria's economy, contributing to GDP across key sectors like banking, telecoms, and oil & gas. The Nigerian Exchange Group (NGX) supports capital mobilization and governance, though it remains underutilized. Future growth requires stronger enforcement, technology adoption, and policies that promote investment and financial literacy.

The paper will critically analyze the theoretical underpinnings and practical application of corporate personality, with particular emphasis on public shareholding companies in Nigeria, examining their formation, governance, legal framework, and challenges under CAMA 2020.

Corporate Personality and Legal Principles

1. Doctrine of Corporate Personality

The doctrine of corporate legal personality is fundamental to corporate law, establishing that upon incorporation, a company becomes a separate legal entity distinct from its shareholders. This principle, affirmed in the landmark case *Salomon v. Salomon & Co. Ltd.*, allows companies to act independently—owning property, entering contracts, and

bearing liability in their own names. The doctrine is well-rooted in Nigerian law through the Companies and Allied Matters Act (CAMA) 2020, which recognizes companies as juristic persons with perpetual succession and the power to sue and be sued.

This legal separation underpins the concept of limited liability, where shareholders are only liable up to the value of their shares. This encourages investment and facilitates large-scale capital mobilization. Nigerian courts, including in cases like *Union Bank v. Orharhuge and Agbaje v. Fashola*, have consistently upheld this doctrine. Major Nigerian companies like Dangote Group, MTN Nigeria, and Seplat Energy rely on this legal framework to conduct independent business operations, raise capital, and enter large-scale contracts.

However, courts also recognize limits to this autonomy. The corporate veil can be pierced when the company is used for fraud or to avoid legal obligations. Section 316 of CAMA 2020 empowers courts to hold directors or officers personally liable in such cases. This maintains a balance between corporate autonomy and accountability—particularly crucial in governance-risk-prone environments. CAMA 2020 introduced reforms aligning Nigerian corporate law with international standards, including:

- Recognition of single-member companies
- Electronic filings
- Enhanced disclosure obligations
- Simplified incorporation procedures

These changes aim to improve the ease of doing business and attract foreign direct investment (FDI).

Once incorporated, a company enjoys full legal personality, including rights to own land, sue, contract, and exist independently of its members. Members' liabilities are limited to unpaid shares or agreed contributions. The company's perpetual succession ensures it survives membership changes, supports investor confidence, and enables complex commercial activities like joint ventures or public offerings.

While incorporation brings numerous benefits, it also creates some legal complexities:

- **Loss of insurable interest:** Shareholders, even sole owners, cannot insure company assets in their own names due to legal separation.
- **Ultra vires acts:** Though CAMA 2020 reduces the rigidity of this doctrine, actions beyond a company's objects clause can still lead to disputes.
- **Criminal misuse:** Courts reject the misuse of incorporation to evade legal consequences, as held in *R v. Philippou* and affirmed by Nigerian judgments.

Ultimately, the doctrine of corporate personality is a powerful legal tool that enables business growth and protects stakeholder interests. However, it must be carefully regulated to prevent misuse and ensure it serves the broader goals of economic development and legal accountability.

2. Piercing the Corporate Veil

Piercing the Corporate Veil in Nigerian Corporate Law

The doctrine of corporate personality, rooted in *Salomon v. Salomon*, grants companies distinct legal identities. However, this principle is not absolute. Nigerian courts and

the Companies and Allied Matters Act (CAMA) 2020 recognize exceptions to prevent fraud, injustice, or abuse of the corporate form.

Judicial Piercing of the Veil

Courts may lift or pierce the corporate veil to hold directors or shareholders personally liable when:

- The company is used as a sham, mask, or fraudulent device.
- There is fraudulent misrepresentation, asset diversion, or reckless business conduct.
- The corporate structure is used to defeat public policy or evade legal obligations.

Notable cases include:

- *FDB Financial Services Ltd v. Adesola*
- *PFS Ltd v. Jefia*
- *James Creeks Nigeria Ltd*
- *Vibelko (Nig.) Ltd v. NDIC*
- *Gilford Motor Co v. Horne*

These decisions affirm that courts will intervene where justice demands it.

Statutory Provisions in CAMA 2020:

CAMA codifies several veil-lifting grounds:

- **Section 118:** Personal liability for directors if a company operates below the legal minimum membership or director threshold for too long.
- **Section 316:** Imposes personal liability where directors misapply loans or advances with intent to defraud.
- Directors/officers must refund funds misused for unapproved purposes, and this liability is concurrent with that of the company.

Key Principles

- Intent to defraud includes prejudicing another party, not necessarily a specific individual (*Awobotu v. State*).
- Fraudulent or reckless business conduct removes the shield of limited liability.
- Both statutory and equitable grounds exist for veil-lifting in Nigeria.
- Courts remain cautious in criminal cases, requiring express statutory authority before applying equitable doctrines.

Corporate Legal Framework

1. Overview of CAMA 2020

The Companies and Allied Matters Act (CAMA) 2020 was signed into law on August 7, 2020, repealing the Companies and Allied Matters Act 1990. It represents a landmark overhaul of Nigeria's corporate legal framework, aimed at aligning with global best practices, improving corporate governance, promoting ease of doing business, and simplifying company administration processes ^[1].

1.1. Simplified Incorporation Processes

The Companies and Allied Matters Act (CAMA) 2020 introduced significant reforms to modernize corporate regulation in Nigeria and enhance the ease of doing business. One of the key changes is the recognition of single-member private companies, a departure from the

former requirement under CAMA 1990 that mandated at least two persons to form a company.

CAMA 2020 also replaces the concept of authorized share capital with minimum share capital, thereby reducing incorporation costs. The new minimum is ₦100,000 for private companies and ₦2,000,000 for public companies.

In line with global best practices, the Act permits and recognizes:

- Electronic signatures
- Electronic filing of documents
- Electronic share transfers
- Virtual meetings
- E-certified documents, which are now admissible in court

Further, the law removes the mandatory use of a common seal, allowing companies to validly execute share certificates and deeds without it. The Declaration of Compliance, formerly required to be signed by a legal practitioner, is now replaced by a Statement of Compliance, which can be signed by the applicant or their agent, easing the incorporation process.

These reforms collectively streamline corporate procedures, reduce costs, and align Nigerian corporate regulation with international standards, making it easier for entrepreneurs and investors to do business.

1.2. Enhanced Corporate Governance

The Companies and Allied Matters Act (CAMA) 2020 introduces comprehensive corporate governance reforms aimed at enhancing transparency, accountability, and board effectiveness in public companies.

Key provisions include:

- **Board Composition:** Public companies are mandated to appoint at least three independent directors. These directors must meet strict independence criteria related to shareholding, past employment, and financial dealings with the company, ensuring objective oversight.
- **Audit Committees:** CAMA stipulates a balanced audit committee structure comprising three shareholders and two non-executive directors. All members must be financially literate, with at least one being a member of a recognized professional accounting body, thereby enhancing financial scrutiny and governance.
- **Executive Accountability:** For the first time under Nigerian law, CEOs and CFOs are required to personally certify the accuracy of the company's financial statements, a measure that promotes personal responsibility and aligns with international best practices.
- **Virtual Meetings:** Private companies are now legally permitted to conduct virtual general and board meetings, provided this is in accordance with their Articles of Association—reflecting a shift toward digital corporate practices.
- **Multiple Directorship Restriction:** To reduce conflicts of interest and improve board efficiency, no individual may serve as a director in more than five

public companies simultaneously.

These provisions collectively strengthen the framework for corporate governance, improve investor confidence, and ensure public companies operate with a higher degree of integrity and accountability.

1.3. Improved Transparency and Compliance

Companies are now required to disclose individuals with significant control, enhancing transparency and aiding in the fight against corruption and money laundering e.g. (5% or more of voting rights) within seven days, and report to CAC within 30 days ^[2]. Small companies and those yet to commence business are exempt from mandatory audits, unless they're in sensitive sectors like banking or insurance ^[3]. Only non-small companies are mandated to appoint a company secretary as required under section 330 CAMA 2020. Criteria for small companies include turnover below One Hundred and Twenty Million Naira (₦120,000,000.00), net assets not exceeding Sixty Million Naira (₦60,000,000.00), and no foreign or government shareholders ^[4].

1.4. New Corporate Structures and Rescue Mechanisms

CAMA 2020 introduces Introduction of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs), providing more flexible business structures that combine the benefits of partnerships and limited liability companies ^[5]. These structures offer flexibility and legal personality (LLPs only), enabling hybrid organizational forms ^[6]. The Act also introduces rescue provisions such as Company Voluntary Arrangements and Administration, offering mechanisms for restructuring and business recovery ^[7]. These aim to restructure debt or rescue the company before liquidation. Netting Provisions for Financial Contracts, the law introduces the principle of netting to mitigate systemic risks in financial transactions, based on international financial models as provided for under Section 718 CAMA 2020.

1.5. Regulation and Oversight Enhancements

CAMA 2020 empowers the Corporate Affairs Commission CAC to establish a committee to hear disputes, impose penalties, and recommend prosecutions ^[8]. CAC is empowered to suspend trustees of an association for misconduct or mismanagement with court order and appoint interim managers, aiming to ensure proper administration and accountability of non-profit organizations ^[9]. Trustees are now required to file twice yearly statements of affairs with the CAC ^[10]. With coming into place and replacing CAMA 1990's rigidity the innovation-driven provisions of CAMA 2020 exemplify Nigeria's commitment to building a dynamic, competitive, and business-friendly economy. Its reforms echo the corporate philosophies of jurisdictions like Delaware (U.S.) and Rwanda, where agile legal frameworks underpin economic transformation. While challenges like implementation gaps persist, CAMA 2020 lays the groundwork for Nigeria to harness its entrepreneurial potential and emerge as Africa's leading corporate hub ^[11].

2. Provisions for Public Shareholding Companies

In Nigeria, public companies are primarily governed by the Companies and Allied Matters Act (CAMA) 2020 and regulated by the Securities and Exchange Commission

(SEC). These laws set out detailed provisions on capital requirements, shareholder structure, and disclosure obligations to promote transparency and investor protection.

Key regulatory highlights include:

- **Minimum Share Capital:** Under Section 27(2)(a) CAMA 2020, public companies must have a minimum issued share capital of ₦2,000,000, up from ₦500,000 under CAMA 1990. This change reflects economic realities and ensures financial robustness.
- **Company Classification:** According to Section 24, any company not classified as private is deemed a public company, and this must be explicitly stated in its memorandum of association. Public companies must have at least two shareholders, with no upper limit, enabling broad public ownership and access to capital through the issuance of shares or debentures.
- **Regulatory Oversight:** The SEC monitors public companies to ensure compliance with securities laws. Companies are required to submit quarterly and annual financial statements, and from January 2025, these must also be published on their websites to enhance accessibility and transparency.
- **Disclosure Obligations:** Public companies must disclose material changes that may impact investor decisions. These mandatory disclosures are essential to fostering transparency and market confidence.
- **Audit Committees:** Public companies are required to form audit committees in compliance with SEC and CAMA guidelines to oversee financial reporting and internal control systems.

3. Minority Shareholder Protections

CAMA 2020 includes several provisions aimed at the protection of minority shareholders. These provisions offer mechanisms for minority shareholders to address illegal, ultra vires, or oppressive conduct by the company or its management^[12].

3.1. Protection against action illegal and ultra vires acts:

The law empowers the Court, on the application of any member, to issue an injunction or declaration to restrain the company or its officers from "entering into any transaction which is illegal or ultra vires". This allows a minority shareholder to prevent the company from acting beyond its legal powers or engaging in unlawful activities^[13].

3.2. Restraining breaches requiring special resolutions:

Minority shareholders can also seek an injunction or declaration to prevent the company from purporting to do by ordinary resolution any act which by its articles or this Act required to be done by special resolution. This ensures that fundamental decisions requiring a higher level of member approval are not circumvented^[14].

3.3. Protection of individual rights: The law also allows a member to seek an injunction or declaration against any act or omission affecting the applicant's individual

rights as a member, it provides a remedy when the company's actions infringe upon a shareholder's specific rights^[15].

3.4. Personal and representative actions: CAMA 2020

permits a member to institute a personal action to enforce a right due to them personally, or a representative action on behalf of themselves and other affected members to enforce any right due to them^[16]. This can lead to damages for any loss incurred on account of the breach of that right or a declaration or injunction to restrain the company or the directors from doing a particular act.

3.5. Definition of member for protection:

For the purposes of sections 343-355, a member is defined broadly to include the personal representative of a deceased member and any person to whom shares have been transferred or transmitted by operation of law^[17].

3.6. Commencing derivative action:

Sections 346-351 outline the process for a member to apply to the Court for leave to bring a derivative action in the name or on behalf of the company or its subsidiary to remedy a wrong done to the company. This is crucial when the company itself, controlled by the alleged wrongdoers, fails to act, then the court has powers to make orders in such actions, including ordering the company to pay interim costs to the applicant^[18].

3.7. Application for cancellation of variation of class

rights: If the rights attached to a class of shares are varied, holders of at least 15% of the issued shares of that class who did not consent to or vote in favour of the variation can apply to the Court to have the variation cancelled. The variation will not take effect unless confirmed by the court^[19].

3.8. Objection to alteration of business or objects:

Holders of at least 15% in nominal value of the company's issued share capital or 15% of the company's members (if not limited by shares), or 15% of the company's debentures entitling them to object, can apply to the Court to cancel an alteration of the company's business or objects. This right is not available to those who consented to or voted for the alteration^[20].

3.9. Dissenting shareholders in schemes of arrangement

or take-overs: CAMA 2020 provides rights for dissenting shareholders in certain schemes or contracts involving the transfer of shares to another company, allowing the transferee company to acquire their shares under specified conditions, subject to potential court intervention^[21]. Similarly, in cases of a sale of the company's undertaking, dissenting members have rights to require the company to either abstain from the sale or purchase their shares^[22].

3.10. Power of the Court to grant relief:

Section 160 allows officers or persons who have reasonable apprehension of a claim against them for negligence, default, breach of duty or trust to apply to the Court for

relief. While not exclusively for minority protection, this can be relevant in situations where minority shareholders allege mismanagement^[23].

CAMA 2020 significantly strengthens minority shareholder protection in Nigeria through its provisions on unfair prejudice remedies (Sections 353–355) and derivative actions (Sections 346–352):

- **Unfair Prejudice (Sections 353–355):** These sections grant a wide range of persons the right to apply to court where company conduct is oppressive, discriminatory, or unfairly prejudicial to members or public interest. Courts are empowered to issue diverse remedies, including regulating company affairs, restraining certain actions, ordering share purchases, or even winding up the company.
- **Derivative Actions (Sections 346–352):** Minority shareholders may seek court leave to sue on behalf of the company if it is unwilling or unable to do so. Applicants must show good faith, prior notice to directors, and that the action serves the company's best interests. The court has broad powers to manage such proceedings and may authorize conduct, direct proceedings, award costs, or order compensation.

Importantly, prior shareholder approval of a wrongful act does not bar a derivative action, and applicants are not required to post security for costs.

Together, these provisions offer a comprehensive legal framework for holding directors accountable and protecting minority interests in Nigerian companies.

Challenges Facing Nigerian Public Companies

1. Regulatory and Governance Gaps

Despite the reforms introduced by the Companies and Allied Matters Act (CAMA) 2020, public companies in Nigeria continue to face significant regulatory and governance challenges. Key issues include:

- Weak enforcement by regulatory bodies such as CAC, SEC, and NGX, often due to overlapping mandates, bureaucratic inefficiencies, and limited capacity.
- Minimal or unenforced penalties for violations such as late filings or inadequate disclosures, eroding corporate discipline.
- Delays in regulatory approvals for mergers, acquisitions, and capital market transactions, which hinder operational agility and discourage investment.
- Rampant insider trading, facilitated by inadequate monitoring and weak whistleblower protections. Although prohibited, enforcement is rare, with few prosecutions or convictions.

These regulatory weaknesses undermine market transparency, investor confidence, and the credibility of Nigeria's capital market.

2. Investor Confidence Issues

Investor confidence in Nigerian public companies has been significantly eroded by fraud scandals, macroeconomic instability, and policy unpredictability. A notable example is the 2006 Cadbury Nigeria Plc scandal, where financial misstatements led to a collapse in share value, executive

resignations, and criminal probes—highlighting weak internal controls and ineffective audit systems in corporate governance.

In addition to corporate governance lapses, economic volatility poses systemic risks to investors:

- Naira devaluation and a dual exchange rate regime complicate profit repatriation and cost forecasting.
- Inflation, which exceeded 22% in 2023, erodes real investment returns and increases operational costs.
- Policy inconsistency, such as erratic fuel subsidy removals and unpredictable monetary decisions, further deters investment.

The lack of central bank autonomy, combined with speculative policy changes, fuels market uncertainty and capital flight, making Nigerian equities less attractive compared to lower-risk investment options.

3. Abuse of Corporate Veil

While the doctrine of separate legal personality, affirmed in *Salomon v. Salomon & Co Ltd*, remains a cornerstone of Nigerian corporate law, it has been frequently abused by directors of public companies. These abuses include asset diversion, financial misreporting, and tax evasion, using the corporate structure to evade personal liability.

Notable Nigerian cases such as:

- **Adeyemi v. Lan & Baker (Nig.) Ltd** – where the court pierced the corporate veil due to fraudulent misrepresentation, and
- **Edukugho v. CBN** – where directors were found to have used the company as a front to misappropriate funds, demonstrate the judiciary's willingness to set aside the corporate shield in cases of egregious misconduct.

However, the weak enforcement of fiduciary duties, and poor transparency in beneficial ownership, allow directors to exploit corporate identity through shell companies and asset layering. This undermines creditor rights, erodes investor confidence, and compromises the integrity of Nigeria's corporate governance framework.

Recommendations for Strengthening Nigeria's Framework

1. Enhanced Corporate Governance

To enhance corporate credibility and economic competitiveness, Nigeria must reinforce its corporate governance framework, with the Securities and Exchange Commission (SEC) taking a more assertive and preventive enforcement role. Currently, regulatory action is often reactive, resulting in significant compliance gaps.

Key recommendations include:

- Proactive monitoring, including routine inspections and surprise audits, to deter corporate misconduct.
- Mandatory independent audits for all publicly listed companies, overseen by an accredited regulatory panel, to detect financial manipulation early.
- Stronger auditor independence standards, especially critical in light of past scandals like Afribank and Intercontinental Bank, where auditor complicity was alleged.

Additionally, aligning corporate governance with International Standards on Auditing (ISA) and enforcing the Nigerian Code of Corporate Governance 2018—notably on whistleblower protection, board evaluation, and **succession planning**—will help restore investor trust and promote global best practices in Nigeria's corporate sector.

2. Investor Protection Mechanisms

Improving investor protection—both for retail and institutional investors—is a major reform priority in Nigeria's corporate environment:

- **Stricter Enforcement of Corporate Sanctions:** Existing penalties under CAMA and the SEC Act are either weak or poorly enforced, enabling corporate fraud and insider trading. Reforms should include harsher criminal sanctions, asset forfeiture, and non-political enforcement to deter misconduct.
- **Investor Education:** A large portion of Nigerian investors lack financial literacy, making them vulnerable to fraud, Ponzi schemes, and market manipulation. While the SEC's Capital Market Master Plan (2021–2025) emphasizes awareness, implementation has lagged. A robust, multilingual media campaign using radio, television, and workshops should be prioritized to promote informed investment decisions.
- **Grievance Resolution Mechanism:** Investors currently experience delayed and ineffective complaint handling. A centralized, digitized investor complaint portal, integrated with the SEC and NGX, would ensure faster and more transparent resolution, thereby enhancing investor trust and market participation.

3. Judicial and Regulatory Reforms

Nigeria's current legal framework for resolving corporate disputes is plagued by delays, high costs, and a lack of judicial expertise, undermining confidence in the business environment. To address these issues, there is an urgent need to establish specialized commercial courts staffed by technically trained judges. These courts should handle complex corporate matters such as securities disputes, director misconduct, shareholder rights, and insolvency—as seen in successful models from the UK and South Africa.

Additionally, the regulatory landscape is overly complex, with overlapping mandates from multiple agencies including SEC, CAC, NGX, FIRS, and EFCC. This creates duplicative reporting, increased compliance costs, and delays in decision-making. A solution would be the creation of a centralized compliance portal to integrate reporting requirements, improve transparency, and minimize the risk of corruption.

Furthermore, judicial reforms should prioritize the adoption of alternative dispute resolution (ADR) mechanisms such as arbitration and mediation, particularly for minority shareholder disputes and contract enforcement. ADR offers a faster, less adversarial, and more efficient route than traditional litigation, improving overall dispute resolution in the corporate sector.

Conclusion

The doctrine of corporate personality is a foundational legal innovation in modern commerce and a cornerstone of

Nigeria's economic framework, as codified in CAMA 2020. Incorporation grants companies a distinct legal identity, enabling efficient risk allocation, capital mobilization, and sustainable growth. Public companies, in particular, play a critical role in driving economic development, innovation, and wealth creation.

Despite the progressive reforms introduced by CAMA 2020, several institutional and operational challenges persist. These include:

- Regulatory inefficiencies
- Weak investor confidence
- Judicial inertia Such issues undermine the enforceability of corporate protections and the effectiveness of governance mechanisms.

The frequent abuse of corporate personality, especially through fraud and misuse of the corporate veil, reveals the need for stronger regulatory oversight and judicial accountability. This research emphasizes that CAMA's success depends not only on legal reform but on its implementation and enforcement.

Key recommendations include:

- Strengthening institutional capacity
- Enhancing investor education
- Promoting regulatory harmonization
- Establishing commercial courts

Ultimately, the future of corporate governance in Nigeria requires a multidisciplinary approach, combining legal, economic, and administrative strategies. Ongoing interdisciplinary research is vital to inform policy and support a transparent, resilient, and inclusive corporate sector.

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