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Abstract

Title: New Legal Frameworks for Sudanese Businessmen

Companies play a major role in facilitating the performance of the economy and its development. This research examines the role of legal forms focusing on companies and partnerships and how the law regulates their establishment, organization, management and liquidation. The research has reviewed how the law defined companies and partnerships, its classification in comparison with laws of other countries. Moreover, it discusses the defects related to the company law and possible appropriate solutions. In conclusion, the research recommended a new legal form that combines between companies and partnership in a unified manner characterized by flexibility and practicality.

With the assistance of some available legal references, the research finds out that there are few available local references on this matter. Unfortunately, those references failed to criticize the existing laws relating to companies and partnerships.

Moreover, the research has noticed that the law is being only explained rather than being examined in details which made pointing out the deficiencies a difficult job.

Based on the research the following major recommendations were made:

- There is a need to review the eighty years old company law which no longer reflects the emerging needs in the country.
- The relationship between the 1984 civil transaction act 1984 law and the 1925 company Law needs careful review and revision to eliminate confusion and contradictions that may create chaos particularly in judicial practical application.
- Procedures, registration, and organization of administration, of establishing a company needs careful review to free it from rigid bureaucratic procedures.
- There is a need to consider reforms that will bring coherence to the company legal system and by finding solutions to the problems that hinder applying the law.

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1/ ابن منظور "لسان العرب" (القاهرة- دار المعارف) المجلد الرابع، ص2248.

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2/ نفس المرجع، الجزء السادس، ص 57.

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Gower ⁽¹⁾

Gower :(the term implies an association of number of people for some common object)

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1\ Gower Principles of Modern Company law –fifth edition – page 3

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1/ عبد العزيز الخياط "الشركات في الشريعة الإسلامية والقانون الوضعي" القسم الثاني، مرجع سابق، ص 15
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1/ مصطفى كمال طه " القانون التجاري " (دار الجامعة الجديدة للنشر - 1995م) . ص 170 - 171

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1/ د. جلال وفاء البديري "المبادئ العامة في القانون التجاري" مرجع سابق ص 161.

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¹/ اسامة فضل المولى ربيعة " الشراكة في القانون السوداني/ الانجليزي/الهندي " مرجع سابق،ص17 .

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DISCLOSURE

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Gower

(England has pinned its faith philosophy of disclosure rather than of supervision. Our rules are based upon the assumption, which indeed underlines the whole of our company law, that the best protection of public lies in publicity. It is assumed that if one gives the investor full information about the company affairs he will avail himself of it and make an intelligent appraisal of the security affairs)

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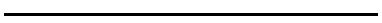
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1/ عوض حسن النور "حماية المساهمين في الشركات العامة" رسالة ماجستير، ص 104 .

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) **J.F Spray**⁽¹⁾

1 / justice J.F Spray 'company legislation ' in P.Thomas ,Private Enterprise and the African Company,supra note 23,p.59

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1/ .Dr. Abdalla Adriss Mohmmoed "Some Aspects of Promotion of Indigenous Business Organizations in the Sudan" ph.D unpulished thesis (1977)

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GOWER

GOWER(... in every country incorporation is an important factor in commercial development and it is especially important in a country like Ghana with a system of family ownership. Unless the business can be clearly distinguished from the family ,there is little chance of profits being ploughed back sufficiently to allow for expansion.....)

Gower ⁽¹⁾

1/ د. عبد الله إدريس محمد، مرجع سابق، ص 66.

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(DEPT Caption)

**Machangten in (FLOATING CHARGE)
the case of Illing worth V.Houlds worth As
(Aspcific charge, I think is one that without more fastens on
ascertained and definite property or property capable of being
ascertained and defined, floating charge on the other hand,is
ambulatory and shifting in its nature hovring over and so to
speake foating with the property which it is intended to effect,
until some event occurs or some act is done which causes it to
settle and fasten on the subject of the charge within its reach
and grasp)**

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1/ / د. عبد الله إدريس محمد، مرجع سابق، ص 68.

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**Section 66(c) of the ordinance for Example provide as:
Every company shall have its name mentioned in legible
English character in all bill-heads and letter paper and in all
bills of exchange, promissory notes, endorsements cheques
and orders for money goods purporting to be signed by or on
behalf of the company of in all bills of parcels,
invoices receipts and letters of credit of the company.**

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1 / In the united astate for exmple only one docment is required for registration.of Acorporation, namely,the Certificate of Incorporation.see H.Henn,supra note 2,p.194.

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¹/ Under the present English company Act the Board of Trade may, at any time, if it thinks there is good reason to do so, give directions to any company requiring it to produce to the Board or any of its authorized Officers any specified books or papers{ 1967 Act,S.109(1)}.

A like direction may be given to any person who appears to be in possession of those books or papers {S.109 (2)}. If the documents are not produced the person required to produce them must state where he believes them to be and a search warrant may be obtained to find them{ S.110}

The Board has also a number of overlapping powers to appoint an inspector to investigate and report on (the affairs of a company) for example the Board may appoint an inspector if it appears:

(1) That there are circumstances suggesting that its business is being or has been conducted with intent to defraud creditors or for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members, or That it was formed for any fraudulent or unlawful purpose ;or

(11) that person concerned with its formation or management have been guilty of fraud, misfeasance, or other misconduct toward it, or its members ; or

(111) that its members have not been given all the information with regard to its affairs which they might reasonably expect. 1948 act, s 165p.

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Statutory partnership Association

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partnership

(close corporation)

(1) It should be noted that the legislative purposes for the passage of the statutes in the four states were not exactly identical. At least one objective in creating the partnership association was sought by the Pennsylvania legislature, which does not seem to have motivated the other states. A majority of Pennsylvania legislators of the time felt that persons acquiring the full advantage of incorporation should be subject to a double liability, similar to that imposed upon shareholders in national banks. Accordingly, the Pennsylvania corporation act, passed in 1874, held shareholders liable both for the amount of their subscriptions, & again for the amount of stock held by each. On the other hand, there was a group of legislators who had felt that the prosperity of Pennsylvania would be enhanced by a corporation act under which shareholders had only a single liability. While unsuccessful, in convincing the legislature with respect to the corporation act, their purpose was achieved that same year in the form of the Pennsylvania partnership Association Act which limited the liability of members of the full amount of their subscription, in addition to the differences in liability under the two acts, the only other major distinction between the Pennsylvania Corporation Act of 1874 and the partnership association was the requirement under the latter that transferee or devisee of shares be acceptable to a majority of the remaining members see E, Schwartz, "The Limited Partnership Association-An Alternative to the Corporation for the Small Business With Control Problems?" , 2 Rutgers Law Review, 29atP. 32 (1965).

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Business
Incorporated Partner Ship Bill “apperdix3”

Business
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Frame

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⁽¹⁾ Originally I was thinking of suggesting the partnership association as the new legal entity for Sudanese indigenous enterprises. As previously noted, one of the main features of one of this business form is the simplicity and inexpensiveness of its formation. This will take care of one of the basic complaints of the African entrepreneurs against the present corporate form of business organization. Moreover, the fact that the partnership association enjoys the corporate advantage of having its property clearly distinguished from that of its members would enable African businessmen to achieve one of their basic objectives, namely, the separation of their private assets from that of their families and their other social obligations, the uncertainty surrounding the recognition of the partnership association outside its jurisdiction should not be of concern to Sudanese indigenous entrepreneurs.

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incorporate Partnership Bill

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New

Legal Entity

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1/ .Dr. Abdalla Adriss Mohmmoed "Some Aspects of Promotion of Indigenous Business Organizations in the Sudan" p.88.

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policy consideration (1)

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1/ د. عبد الله إدريس محمد، مرجع سابق، ص 91-93 .

polygamous system of marriage

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.	.	.	1984-
.	.	.	-22
.	.	.	1999-
.	.	.	-23
1962-	.	.	

-24

. 1988-

-25

26- Dr. Abdalla Adriss Mohmmoed "Some Aspects of Promotion of Indigenous Business Organizations in the Sudan,ph.D unpublsh the sis (1977)

27- Gower's Principles of modern company law-fifth Edition London -1992

.II

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" 1933 " - 2

.III

. 1933 -1

(1960-1926) 1933 -2

(1925 -1901) 1925 -3

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