The Federal Government of Nigeria has continued to initiate policies, legislations and regulations that would attract foreign investment and usher in the much-anticipated upsurge of economic activities in country. Emphases have recently been placed on the agriculture, power, energy and communication sectors of the economy, with various incentives outlined for participation in those sectors. These measures have no doubt gradually yielding fruits and have attracted the attention of both local and international investors, leading to the multiplication of business enterprises of all forms, sizes and nomenclatures. These activities themselves often have their own impact on the society in diverse ways and plays an important role in defining the way people live and conduct their activities. Thus, the society is gradually being weaved around the activities of corporate bodies upon whom the society depends on for food, shelter, healthcare, water, technology and communication, amongst others.

An important feature of companies and corporations, be it state-owned or individual enterprise, is the “corporate personality” which confers that unique identity usually accorded living persons. Corporate personality is the status bestowed in law on registered companies and corporations which gives them an independent legal existence from that of its officers, directors, and shareholders. It encompasses the capacity of a corporation to have a name of its own, to sue and be sued, and to have the right to purchase, sell, lease, and mortgage its property in its own name.

The case of Salomon Vs. Salomon [1897] AC 22 is generally seen as the cornerstone of company law and that which established the now universally acknowledged principle that a Company is different and distinct from its shareholders and would be treated as an independent entity with perpetual succession and the right to sue and be sued. This case whilst establishing the independent status of companies, also buttressed the now recognized principle of company law that a company is responsible for its acts disregarding that those acts were done through human instrumentation. Indeed, the right to sue and be sued presupposes that a company may sue or be sued for both civil and criminal liabilities.

Corporate crime, also referred to as white collar crime, is a crime committed by a corporation or business entity or by individuals who are acting on behalf of a corporation or business entity. In most cases, such crime benefits the organization. Kramer R.C. in his much-publicized book “Corporate Criminality: The Development of an idea” noted that “By the concept of “corporate crime”, then, we wish to focus attention on criminal acts which are the result of deliberate decision making of those who occupy structural positions within the organization as corporate executives or managers. These decisions are organizationally based – made in accordance with the normative goals, standard operating procedure and cultural norms of the organization and are intended to benefit the corporation itself”.

Chinedu Ozor
Although corporate criminal liability has been accepted in many jurisdictions, the legal basis for its application varies from jurisdiction to jurisdiction. In Nigeria, laws that regulate the activities and duties of corporations specify various penalties for infractions and impose strict liability on such companies. Thus, companies may be fined or penalized for failing to render a return, perform an activity or for participating in a prohibited activity. In inputting criminal liability to companies registered in Nigeria, Section 70 of the Companies and Allied Matters Act 2004 stipulates that “were in accordance with section 65 to 69 of this Act, a company would be liable to a third party for the acts of any officer or agent, the company shall, except where there is collusion between the officer or agent and the third party, be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be seal or signed on behalf of the company”.

Apart from the Companies and Allied Matters Act, there are other laws and regulations that impose criminal liability on companies including the Food and Drug Act Cap 150 LFN 1990; the Investment and Securities Act, the Immigration Act 2015, Standards Organization of Nigerian Act Cap S9 LFN 2004; Federal Environmental Protection Agency Act Cap 131 LFN 1990; Oil in Navigable Waters Act Cap O6 LFN 2004.

Attempt at understanding the concept of corporate criminal liability in Nigerian is blurred by the agelong acquiescence that corporations on their own do not have the mental or physical capacity to perform an act or to refrain from one, and that corporations by their very nature, although placed in the capacity of living beings, must act through the instrumentality of human agency. Logical as this might seem, developments in Nigeria and other countries point to the contrary. Companies are being held accountable for corporate crimes regardless of internal processes and command structure that may have contributed to the criminal act or omission.

The notion of corporate personality presupposes that it is inconceivable that a corporation could be held liable as it is an artificial person without any physical existence and could therefore not be subjected to penalties and sanctions. Indeed, relying on the principle of corporate personality to exonerate a company from the actions its alter ego will only aggravate the incidences of regular corporate crimes such as tax evasion, securities fraud, money laundering and the like for which the company in most cases benefits from. Distancing the activities of the alter ego from that of the company will indeed provide a veritable ground for perfecting criminal violation as companies who stand to benefit from such acts would be deemed to be distinct and separate from those who acted on their behalf.

Also, Corporate crime inflicts far more damage on society than those committed by individuals. The imposition of a fine of $5.2 Billion (later reduced to $3.4 billion) on a telecoms firm in Nigeria following its failure to heed to the directive of the Nigerian Communication Commission on the deactivation of non-registered sim cards is a case in point. It was believed that apprehending the perpetrators of the insurgency was made difficult as they had access to un-registered mobile lines to coordinate acts of terror. It is estimated that about 13,508 people living in Nigeria and neighboring countries have lost their lives, with millions still displaced. Such is the magnitude and level of impact of corporate infractions.

The recent call for an amendment of the National Food and Drug Administration and Control Act 1993 to provide for stricter penalties for drug counterfeiters commensurate with the far reaching and devastating effect of drug counterfeiting on public health is also a case in point.

Another reason for the focus on corporate criminal liability in Nigeria is related to the often-complex structures of many multinational companies operating in Nigeria. Many large companies have
complex structures, which make it difficult to discern the channels of responsibility and identify those responsible for a particular act or omission. In this case imposing criminal penalties on the Company would certainly trigger the most appropriate institutional response as the company is in the best position to indemnify and discipline its employees. The internal re-structuring and resignations that occurred in the wake of the fine imposed on the telecoms company referenced above is instructive. Furthermore, in many cases, prosecuting the individuals might be inappropriate as this ignores the corporate pressure that might have been placed upon them. In the words of Clarkson C.M. “These pressures will often remain even after the individual has been sacrificed”.

Furthermore, the contention that corporate crime can be deterred by individual criminal liability is unfair as it suggests the expendability of individuals whilst the company continues in operation. Rogue corporations would thus sacrifice a string of employees on the altar of corporate misconduct.