



# HIGHLIGHTS OF THE NEW COMPANIES AND ALLIED MATTERS ACT 2020

The signing of the Companies and Allied Matters Act, 2020 ("CAMA, 2020") into law by President Muhammadu Buhari on the 7<sup>th</sup> of August, 2020 rides on the successful enactment of the Finance Act which fundamentally repositions Nigeria tax legislations and the enactment of the Federal Competition and Consumer Protection Act of 2019 which represents Nigeria first general consumer protection and anti-competition law. Undoubtedly, the recent amendment of the CAMA changes the general outlook of doing business in Nigeria and hopefully, the practicability of its provisions will further ease the nature of doing business particularly for Micro, small and medium scale enterprises in Nigeria. While the new Act does not contain a commencement date, it is deemed, by the provisions of Section 2 of the Interpretation Act to come into force on the day it was signed into law.

This article seeks to examine the reforms made in the Companies and Allied Matters Act, 2020.

## CHANGES MADE BY THE CAMA 2020.

Following the repeal of CAMA 2004, by the CAMA 2020, salient changes were made on both the administration of the Corporate Affairs Commission ("CAC") and the administration of companies in Nigeria. From the manner of incorporation to post incorporation affairs of the companies. Notable changes as contained in the Act include the following:

- 1. ORGANISATIONS REGULATED BY CAC:** Hitherto, all companies registered under CAMA and with the CAC must either be a private company or a public company. The recent amendment has now introduced Limited liability partnerships and Limited Partnerships. Although Limited Partnerships is regulated by the Partnership Act of 1890, the provisions of the Partnership Act shall apply subject to the provisions of CAMA 2020. Limited Liability Partnership is also to be regulated by the CAC. In addition to this, CAMA 2020 also introduced what may be known as one person company (OPC). This simply means that such company may be owned by one person as against the old provision where a company can only be incorporated by two persons with capacity to form a company.

- 2. MINIMUM SHARE CAPITAL:** Significantly, CAMA 2020 made adjustments to what was obtainable under CAMA 2004 with respect to share capital. The old position was that companies must meet a minimum authorised share capital before incorporation which shall be N10, 000 for private companies and N500, 000 for public companies. This is no longer the position as CAMA 2020 now adopts what is known as minimum issued share capital as against the authorized share capital and also made changes to minimum issued share capital for both private companies and public companies. The new position of the law is that upon incorporation, private companies must have an initial issued share capital of at least N100,000 in nominal value from its share capital while for public companies, N2,000,000 in nominal value of its share capital must have been issued. That is, what is relevant is no longer the share capital of a company but the number of shares allotted. Stamp duties are only paid on shares which have been issued. In addition to this, 25% of the issued share capital of a company must be paid up at all times.
- 3. COMPANIES LIMITED BY GUARANTEE:** A major challenge with the formation of companies limited by guarantee is that the Attorney General of the Federation ("AGF")'s consent must be obtained before incorporation. The bureaucratic challenges attached to this has made persons adopt the incorporation of trustee in a bid to escape the rigorous process of incorporating companies limited by guarantee ("GTE"). Thus, the new position is that the AGF's consent is to be sought and the AGF is expected to give his consent or raise objections or reasons for withholding approval within thirty (30) days from when he receives the application for consent. Where the AGF does not respond within 30 days, it is deemed that the AGF does not object to the application. The implication of this new provision is that the challenge of AGF's delay in giving consent for GTE has now been resolved. Additional provisions include the advertisement of an application for Incorporation of a company limited by guarantee inviting objections to such incorporations.
- 4. ELECTRONIC MEANS OF APPLICATION AND FILING:** The CAMA 2020 provides for the electronic submission/filing of incorporation and other documents as well as the use of electronic signature. This provision is in line with the Evidence Act and the realities of technological advancement. It also gives full effect to the current online registration regime by the CAC.
- 5. WITHDRAWAL AND CANCELLATION OF RESERVED NAME:** CAMA 2020 makes express provisions for the CAC to withdraw and cancel a reserved name when such reserved name is identical to or nearly resembles a registered Company's name. CAMA 2020 further grants power to the CAC withdraw or cancel a reserved name where such name was improperly procured. CAC is also empowered to approve

a name for use when it becomes available as a result of a change of name by another company.

6. **MEETINGS:** In line with current realities, the new provision of CAMA, 2020 now recognizes the use of electronic means in holding meetings although this concession is restricted to just private companies as all public companies are still obligated to carry out their meetings physically.
7. **COMPANY SECRETARY:** Prior to the repealing of CAMA, 2004, the appointment of company's secretary was mandatory for all companies. This position has now been amended to exclude small companies from the statutory obligation to appoint a company secretary. Against this backdrop, the CAMA, 2020 only makes it optional for small companies and so it should be stated that the importance of company secretary cannot be downplayed as it ensures the effective administrative running of the company.
8. **DIRECTORS:** In compliance with the code of governance for companies, directors for public companies are now mandated to not only disclose their age at appointment but also disclose other directorship appointment in other public companies. Further to this, CAMA, 2020 now mandates companies to have at least three (3) independent directors at all times. While the aforesaid is restricted to just public companies, small companies are now allowed to have a minimum of one director as against the compulsory two (2) directors as contained in CAMA, 2004.
9. **RESTRICTION ON MULTIPLE DIRECTORSHIP:** The Act introduces a restriction on any person from being a director in more than 5 public companies at a time.
10. **RESTRICTION ON THE ROLE OF CHAIRMAN/CEO OF A PRIVATE COMPANY:** In order to enhance the protection of the minority shareholders of a company, the CAMA 2020 restricts private companies from appointing a director to hold the office of the Chairman and Chief Executive officer of the Company.
11. **ALLOTMENT OF SHARES AND SHARE CERTIFICATE:** The allotment of shares for public companies is regulated by the Investment and Securities Act, ("ISA"), provisions of CAMA and recently, the Federal Competition and Consumer Protection, Act ("FCCP, Act"). This is to protect the interest of the company with respect to sinister acquisition of company's control. On the other hand, CAMA 2020 now makes express provisions on the delegation of the power to allot shares for private companies. Power to allot shares is vested in the company in general meeting. CAMA 2020 now makes room for directors in private companies to allot shares. This power is however, limited to any restriction in the Articles of Association of the company and the company in general meeting delegating such powers to the

directors. The delegation of power to allot shares must be done during the general meeting of such company and may be given subject to conditions as prescribed by the company in a general meeting.

Further to the above, where shares are improperly issued, the company is no longer required to approach the Court to validate the shares upon satisfying all requirements. The process of validating improperly issued shares can now be carried out by the company by way of a special resolution to validate such shares. However, where the company has failed to do so, the affected shareholder can rightly approach the Court to ensure the validation is done.

Also, following the optional requirement of common seal, shares certificates may now be issued by way of a deed duly signed by the company in the absence of a common seal.

**12. AUDIT OBLIGATION:** Generally, every company is mandated to appoint auditor or auditors to audit their financial records and statement in respect of a financial year during the annual general meeting of such companies. This is no longer the case as small companies or companies that have not carried on business since incorporation (excluding insurance companies and banks) are now exempted from such obligation.

Additionally, public companies are now obligated to upload their audited financial statement on the company's website.

**13. ORDINARY BUSINESS OF AGM:** The ordinary business for annual general meeting (AGM) of a company has now been amended to include the remuneration of managers of the company. By the new provision, the ordinary business of a company include the following;

- consideration of financial statements
- declaration of dividends
- appointment and removal of directors
- appointment and remuneration of auditors(optional for small companies)
- elect member of audit committee (optional for small companies)
- disclosure of remuneration of managers of the company.

**14. REDISTRIBUTABLE PROFIT:** One of the benefits of being a shareholder of a company is that where profit is declared, shareholders are paid in form of dividends from profit realized in a financial year. Sometimes, profits declared are carried over into the following financial year. The CAMA 2020 further protects the dividends of shareholders by stating that, profit of a company shall be calculated on an accumulated basis. Thus, any undistributed profit is carried into the following year and shareholders are entitled to their dividend on the accumulated profit. However, where the undistributed profit is agreed to be used for recapitalization,

such profit are no longer accumulated and are not calculated as profit for the purpose of dividend sharing in the following year.

**15. REDUCTION OF FILING FEES ON CHARGES:** Prior to the repeal of CAMA, 2004, the fee for filing and registration of charges as applicable to both private and public companies were 10,000 on every 1,000,000 (1%) and 20,000 on every 1,000,000 (2%) respectively. This has now been amended to 0.35% of the value of the charge. Note however that this amount may be varied by the Minister of Finance. The CAC is also mandated to state in the register of charges any notice restricting or prohibiting the company from creating additional charge ranking with the charge already created. This addition will ensure that corporate search and due diligence reveal any such restriction and act accordingly.

**16. SIGNIFICANT CONTROL AND SUBSTANTIAL INTEREST:** To further ensure transparency in company administration, the CAMA 2020 has extend the obligation to disclose significant control or divestment of shares by way of writing to the company. Prior to now, this obligation only applied to public companies. This is no longer the case as shareholders with significant control in any type of company are now obligated to carry out such disclosure. Notably, CAMA 2020 does not define what significant control is. This is important because both private and public companies have the obligation to disclose any significant control. The idea of substantial shareholder as defined in Section 120 (2) of CAMA, 2020 only applies to public companies. Regardless, it may be reasonably inferred that same should apply to private companies. Nonetheless, such omissions should be noted.

Furthermore, CAMA 2020 redefines the percentage interest of a shareholder to qualify as being a substantial shareholder where the shareholder holds shares amounting to 5% of total voting rights. This is against the 10% as contained in the repealed CAMA 2004.

**17. PRE-EMPTIVE RIGHT OF SHAREHOLDERS:** With respect to the private companies, the transfer of shares is as restricted by the articles of association of such company. However, CAMA 2020 now places some restriction on the manner by which shares may be transferred with respect to existing shareholder's right. The term pre-emptive right of shareholders is not strange to Nigeria's corporate space but has often been left to the decision of a company. Progressively, CAMA 2020 now gives statutory protection to this right by amending the old position to reflect that a shareholder shall not sell the shares of the company without first offering those shares to existing members and also, a member or group of members of a private company shall not sell or agree to sell more than 50% of the total shares in a private company to a non- member unless such non-member has offered to buy all existing shares of all shareholders on the same terms.

The implication of the above is that, existing shareholders are protected from unnecessary dilution of their shares and are given preference over non-members of the company. Also, this protects the shareholders from sinister acquisition of the company through third party arrangement.

Further to the above, CAMA 2020 now mandates a private company to obtain the consent of all its members before proceeding with any sale amounting to more than 50% of total value of the company's asset.

Note that this provision may be varied by the articles of association.

**18. SHARE BUY BACK:** CAMA 2020 also provides the procedures by which a company may buy back its own shares. The right to buy back shares is ultimately left to the provisions of the articles of a company and the intention to buy back shares must be passed by way of a special resolution. It should be noted that a company is limited to 15% nominal value of total issued shares. That is, a company that intends to buy back its shares cannot exceed 15% of total shares issued.

**19. CREDITORS VOLUNTARY WINDING UP IN A SCHEME OF ARRANGEMENT:** The provisions of CAMA, 2020 now estops any petition for the voluntary winding up of a company by its creditors upon commencement of the process of arrangement and compromise. This restriction is for a time span of six months. Notwithstanding this, a secured creditor may by way of notice make an application to the Court in order to discharge the six month time span where the asset sought to be enforced against does not fall in the pool of company's asset considered under the arrangement and compromise or the asset is perishable or the commodity is easily depreciative and may depreciate before the expiration of six months.

**20. INTRODUCTION OF AN EXTENSIVE INSOLVENCY REGIME:** The CAMA 2020 introduces the concept of corporate voluntary arrangement. This procedure allows a company to settle its debts by paying only a proportion of the amount which it owes to its creditors. The Act also allows a company to come to an arrangement with its creditors on the payment of its debts. This rescue mechanism serves to allow an insolvent entity to continue to carry on its business.

**21. NETTING:** Significantly, the introduction of netting is one of the most remarkable additions made by CAMA 2020 with respect to financial contracts. The use of netting to help assess and reduce financial obligations was unknown under the repealed CAMA 2004. Thus, this new addition is a leap for Nigeria's corporate governance as it is in line with international best practices. By the provisions of the CAMA 2020, netting agreement can now be concluded and enforced against an insolvent party, guarantor or any person providing security.

**22. COMMON SEAL:** The use of common seal has now been made optional by the CAMA 2020. Thus, an authorized signature of a company is now sufficient execution of any contract undertaken by a company.

**23. INTRODUCTION OF STATEMENT OF COMPLIANCE:** The repealed CAMA 2004 provided to the effect that a legal practitioner shall depose to a statutory declaration stating that the requirements for the registration of a company have been complied with. This provision has been replaced with the statement of compliance which can be signed by an applicant or his/her agent confirming that the requirement of the law as to registration have been complied with. The statement of compliance must not be signed by a legal practitioner.

**24. MERGER OF INCORPORATED TRUSTEES:** Associations with similar aims and objects may now merge subject to terms and conditions as prescribed by CAC in regulation. This grants associations with the opportunity to redefine themselves to carry out operations more effectively and to collaborate more efficiently in achieving their objects.

## CONCLUSION

The amendments made to the Companies and Allied Matters Act will have a positive effect on the Nigerian landscape in terms of doing business both domestically and internationally. It is hoped that the practical administration of the CAMA, 2020 by the CAC will help ease the strain of doing business in Nigeria and further improve Nigeria's position in the global index.

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