



**THE
COMPANIES
AND
ALLIED
MATTERS
(REPEAL & RE-ENACTMENT)
ACT
2020**

INTRODUCTION

The Companies and Allied Matters Act (CAMA) Cap C20 Laws of the Federation 2004 was the principal business and non-business legislation in Nigeria for three (3) decades since its enactment in 1990.

Global developments in business regulation and changes to the Nigerian business environment led to the need for a reform of the existing Act..

This need resulted in the bill for the repeal and re-enactment of the CAMA. The Bill was passed by the Senate on 10th March 2020 and assented to by President Muhammadu Buhari on 7th August 2020. The Act introduces several novel and commendable provisions.

HIGHLIGHTS OF THE ACT

The highlights of the Act are as follows:

I. Introduction of Limited Partnerships (LPs) & Limited Liability Partnerships (LLPs) as new business vehicles:

In line with global standards, the Act introduces LPs¹ and LLPs² as new corporate business vehicles.

While the LPs mandate that at least one partner have unlimited liability (general partner) and at least one partner have unlimited liability (limited partner), LLPs allow all partners limit their liability in the same manner as shareholders in a company. LLPs are vested with a legal personality possessing the capacity to sue and be sued in their corporate name, acquire properties and perform all acts corporate bodies may perform

The development allows partners combine the organizational flexibility of partnerships and limited liability of companies to limit business risks and fuel business development.

The absence of these innovations has seen the country lose out significantly in foreign direct investment to other African jurisdictions, in respect of private equity funds and other entities which typically operate LPs and LLPs as opposed to companies.

Although these vehicles were available under the Partnership Law of Lagos State 2009, debates have arisen as to the constitutionality of the state legislation on the formation of limited liability entities.

¹ PART D of CAMA

² Part C of CAMA

ii. Introduction of One Person Companies (“OPC”) & Single Directorship:

Remarkably, one of the most significant proposed changes is the introduction of single-member companies. As opposed to the requirement of a minimum of two members, a single person is now able to incorporate a company¹.

Also, the Act permits small companies to appoint a sole director as opposed to the previous requirement of a minimum of two directors².

This is consistent with the position in several jurisdictions of the world, most notably, the United Kingdom and India under the Companies Act 2006 and Companies Act 2013 respectively.

However, while these jurisdictions limit the number of OPCs a single person can incorporate, a similar provision is missing from the Act.

This innovation is expected to drive the participation of Micro, Small and Medium-Scale Enterprises in the country’s business space as, in addition to the fact that most businesses are owned and managed by individuals, the limited liability status conferred on these persons will help spur on more courageous business transactions.

iii. Abolition of the Requirement of Company Secretaries for Private Companies:

The previous Act mandated every company to have a secretary.

The 2020 Act solely retains the mandatory requirement of company secretary in relation to public companies.³

Due to the often closely-held nature of private companies, the Act appears to recognize that the requirement of a company secretary for private companies represents an operational burden for these companies.

Also, the Act creates a separate register of secretaries⁴ Formerly, the Register of secretaries was merged into the register of directors and secretaries.

¹ Section 18(2)

² Section 271(1)

³ Section 336

⁴ Section 39(2)

iv. Abolition of the Requirement of Annual General Meetings for Small Companies under the Act:

Pursuant to **Section 237** of the Act, small companies are no longer required to hold Annual General Meetings.

This lessens the regulatory burden on MSMEs operated as registered companies formerly required to hold AGMs in each year.

v. Improved Company Rescue & Insolvency Regime¹:

The Act introduces an insolvency regime which has a dual aim to, on the one hand, rescue viable businesses and on the other hand, ensure that non-viable businesses can exit the market in good time.

¹ Chapter 17 and 18

² Section 176(1)

³ Section 101

⁴ Section 240(2)

⁵ Section 374(6)

⁶ Section 41 and 42

⁷ Section 99, 171, 172, 192(1) and 840

In furtherance of this objective, the Act seeks to introduce insolvency models on:

- Administration;
- Netting; and
- Company Voluntary Arrangement

vi. Recognition of Electronic Processes

In a bid to reflect technological advancements and aid the ease of business and compliance with the provisions of the Act, the Act expands the definition of certain terms to include the electronic versions such as the inclusion of electronic registers², signatures³, venue of meetings⁴ and publication of accounts electronically⁵.

Also, the Act provides for the electronic incorporation and registration of business and non-business organisations⁶.

vii. Exclusion of the mandatory requirement of common seal:

Several provisions of the Act⁷ portray that a company need not possess a common seal.

The implication of the non-mandatory requirement of common seal is that documents can be validly executed by a company without affixing the company's seal.

Further, **Section 102** provides that signature by two directors/ a director and a secretary in the presence of an attesting witness suffices as a means of valid execution of company documents.

viii. The establishment of Administrative Proceedings Committee(APC):

The Act establishes the APC to serve as a dispute resolution platform for disputes arising from the operation of the Act and fair hearing of persons alleged to have contravened the provisions of the Act¹.

The decisions of the APC are subject to confirmation by the Commission's Governing Board and its decisions are appealable to the Federal High Court.

This is commendable as it would aid in the reduction of actions emanating from the Act filed at the Federal High Court. Also, in effect, it will help guarantee expeditious disposal of disputes arising under the Act.

ix. Introduction of minimum issued share capital:

Section 27 introduces the concept of minimum issued share capital as a replacement for authorised share capital.

The minimum issue share capital is N100,000 and N2,000,000 for private and public companies respectively as opposed to N10,000 and N500,000 in the previous Act.²

In the case of a company not having share capital (company limited by guarantee), the total liability of a member to contribute to the assets and liability of the Company in the event of its being wound up shall not be less than N 100,000³.

The increase is a step in the right direction as the monetary value of over 30 years ago is a wide margin from its current value. In light of current economic realities, the new figures are more appropriate.

x. The introduction of an additional duty of directors:

The Act mandates directors to consider the potential effects of the activities of the company on the environment in the company's immediate community⁴.

The inclusion of this provision is an attempt to respond to the constant outcry against the pollution of the environment by companies.

xi. The limitation of number of multiple directorships:

The Act seeks to limit the number of directorships an individual can hold in public companies.

The Act criminalizes the act of being a director in more than 5 public companies by any given individual⁵.

¹ Section 851

² Section 27(2)

³ Section 27 (4)

⁴ Section 305(3)

⁵ Section 307(3) & (4)

This seeks to minimize the degree of conflict of interest which may result where a director has access to information obtained in course of one directorship in the management of the affairs of another public company.

More importantly, it aims to ensure that directors are able to maximise and dedicate full attention and support to companies under their care.

xii. Requirement of a pre-action notice:

Thirty(30) days prior to the commencement of any suit against the Commission, a party is to serve a pre-action notice on the Commission¹.

The effect of this provision would reflect in the reduction of litigations suits against the

Commission due to the fact that the notice provides an opportunity for the Commission to take adequate measures for the resolution of the dispute.

xiii. A more inclusive membership of the Governing Board of the Commission²:

The Act provides for the inclusion of a representative of the Institute of Chartered Secretaries and Administrators of Nigeria(ICSAN), Nigerian Association of Small and Medium Enterprises(NASME) and the accounting profession.

The accounting representative is to be appointed by the minister on the recommendation of other professional accounting bodies as opposed to the sole consultation with ICAN as provided in the repealed law.

xiv. Provision of alternative to Attorney General's consent:

Section 26 (4) retains the consent of the Attorney General of the Federation ("AG") as a pre-requisite for the registration of a company limited by guarantee.

However, where the procedure for the application has been complied with and no decision has been made within 30 days of the application, the Act introduces a dual publication process as an alternative to the requirement of the AG's consent. This entails a publication in three (3) national dailies (by promoters and CAC) and consideration of the objections (if any) by CAC. CAC will then proceed to register the company.

The provision is commendable as it is an attempt to minimize the unchecked power of the AG.

¹ Section 17 of CAMA 2020

² Section 2 of CAMA 2020

However, the Act does not provide for any mechanism to challenge the AG's refusal as the alternative applies solely where the AG fails to make any decision.

The use of the word 'shall' in section 26(5) should be interpreted by the courts to mean the AG's power to grant the application is mandatory and may only be validly refused where there are objections to the memorandum or cogent reasons for the refusal.

Some other innovations of the Act are as follows:

- ✓ Introduction of a Form for Statement of Compliance¹ (which can be signed by the business owner/his agent) to eliminate the current Declaration of Compliance Form;
- ✓ Enhancement of Minority Shareholder Protection;

- ✓ Extension of Obligation to Disclose Persons with Substantial Interest to Private Companies².
- ✓ The inclusion of mandatory service of notice of meeting to the Commission as a party entitled to receive notices of meetings of a public company.³
- ✓ Abolition of Prohibition of Share Buyback by Issuing Companies⁴;
- ✓ Mandatory publication of Company Audited Accounts on Websites⁵;
- ✓ Inclusion of disclosure of remuneration of managers of a company in the ordinary business in AGM.⁶

¹ Section 40

² Section 121

³ Section 243

⁴ Section 185

⁵ Section 374(6)

⁶ Section 238

CONCLUSION

The Act represents a momentous effort to improve the ease of doing business in Nigeria and encourage investments in the country's business environment.

Most of the innovations of the Act are geared towards lessening the regulatory burden on businesses – particularly MSMEs. This, we believe will greatly aid business activities in the country.

The CAMA 2020 evidences a progressive evolution of the law through the inclusion of novel provisions and amendments to adapt to modern changes in the incorporation, governance and management of business and non-business organisations.

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