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THE BILL FOR AMENDMENT OF THE COMPANIES AND ALLIED MATTERS ACT 1990: A PANORAMIC VIEW OF THE AMENDED PROVISIONS



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INTRODUCTION

The Companies and Allied Matters Act Chapter C20 Laws of the Federation of Nigeria 2004 (CAMA) was enacted in 1990. Although it was an improvement of the repealed Companies Act 1968, it can be considered as being obsolete almost thirty years after it came into force. There have been cries from many quarters for CAMA to be amended so that investors and business owners can operate under favourable business conditions.

Consequently, on 22 January 2019, the House of Representatives of the Federal Republic of Nigeria passed the Bill for an Act to Repeal the Companies and Allied Matters Act 1990 and enact the Companies and Allied Matters Act 2018 (the “Bill”). This is coming after the Senate had previously passed the Bill in May 2018.

The Bill seeks to cure the existing shortcomings of the existing CAMA and bring it in line with global best practices.

The major substantive amendments are highlighted below:

	CURRENT PROVISIONS	AMENDMENT
<i>Single Member Companies</i>	There must be a minimum of two members in a company at all times ¹ –	It is possible for a company to have only one member.
<i>Substitution of Authorised Share Capital with Issued Share Capital</i>	Under Section 99 of CAMA, there is a requirement for every company to have a minimum authorised share capital. A company cannot issue shares above the minimum authorised share capital. Stamp duties are therefore, paid on the minimum authorised share capital whether the shares are finally issued or not. The minimum authorised share capital for a private Company is	The requirement for minimum authorised share capital has been replaced with a minimum issued share capital. Once a company allots shares to the tune of the minimum issued share capital, it has complied with the provisions of the Bill. Stamp duties are only paid on shares which have been issued. The minimum issued share capital for a private company is One Hundred Thousand Naira while that

¹Section 18 CAMA

Ten Thousand Naira while that of a public company is Five Hundred Thousand Naira.

of a public company is Two Million Naira.

***Paid-Up
Capital***

CAMA currently does not provide for any percentage of the share capital of a company to be paid up.

The Bill mandates twenty-five percent of the issued share capital of a company to be paid up at all times.

***Reduction in
Share Capital***

A public or private company that wishes to reduce its share capital must pass a special resolution for the reduction and thereafter apply to the Federal High Court for an Order confirming the reduction².

The Bill allows a private company to reduce its share capital by passing a special resolution to that effect without the added burden of applying to court for confirmation. However, a public company still requires a court order to reduce its share capital.

***Submission of
Incorporation
Documents***

Currently, physical copies of incorporation documents must be delivered to the Corporate Affairs Commission (CAC) before a company is registered³.

The Bill provides for electronic submission/filing of incorporation and other documents. This gives full effect to the current online registration regime by the CAC.

***Limited
Liability
Partnerships
and Limited
Partnerships***

There is no provision for this under the current CAMA.

The Bill creates new forms of legal entities known as limited liability partnerships (LLP) and limited partnerships (LP). The LP and LLP must have a minimum number of two partners. A limited liability partnership must have at least two designated partners who would oversee the day-to-day activities of the partnership. In the case of a limited partnership, there must be at

²Sections 106 and 107 of CAMA

³-Section 35 CAMA

least one limited partner and one general partner; the general partner is tasked with the day-to-day management of the partnership. The maximum number of persons that can join a limited partnership is twenty while that of a limited liability partnership is unlimited.

The Bill also provides that the provisions of the Partnership Act 1890 shall govern limited partnerships; this is not applicable to limited liability partnerships as detailed provisions for its operations are specified under the Bill. In addition, where there are inconsistencies between the provisions of the Bill and the provisions of the Partnership Act, the provisions of the Bill will prevail.

Redefinition of Small Companies and Concessions

Under Section 351 of CAMA, a small company is a private company which:

1. Has a turnover of not more than Two Million Naira.
2. Has net assets of not more than One Million Naira.
3. None of its members is an alien or government agency.
4. The directors between themselves hold not less than fifty-one percent of the share capital of the company.

The Bill has included most SMEs under the small company category by increasing the turnover and net asset threshold for a small company.

Thus, a small company is a private company with a turnover of not more than One Hundred and Twenty Million Naira and net assets of not more than Sixty-Five Million Naira.

The Bill also accords certain privileges to small companies including:

- a. Exemption from external audit if

Companies Limited by Guarantee

Currently, the permission of the Attorney General of the Federation is required before the incorporation of a company limited by guarantee⁴.

The minimum total liability to be guaranteed by members in the event of the company being wound up is Ten Thousand Naira⁵.

Disclosure of Beneficial Ownership of Shares

There is no obligation under the current CAMA to disclose beneficial ownership of shares.

it has not carried on any business since its incorporation; or its turnover in that year is not more than Ten Million Naira and the balance sheet total is not more than Five Million Naira.

- b. Exemption from the requirement to hold Annual General Meetings (AGMs).
- c. Exemption from the requirement to appoint a Company Secretary.
- d. Exemption from the requirement to have at least two directors.

The Bill abolishes the need for approval of the Attorney General and instead places a duty on the CAC to cause the application for registration to be advertised in three national newspapers.

The minimum total liability to be guaranteed by members has been increased to One Hundred Thousand Naira.

In addition, the Bill stipulates a framework for conversion of a company limited by guarantee to a company limited by shares.

The Bill mandates persons holding nominal interest in shares on behalf of other persons to disclose the identity of the persons who hold the beneficial interest in those shares.

⁴ Section 26 (5) of CAMA

⁵ Section 26 (7) of CAMA

Punitive measures apply where such disclosures are not made.

Disclosure of Significant Control

Currently, Section 95 CAMA provides for disclosure to be made by a person who has acquired ten percent of the share capital of a public company.

Under the Bill, both private and public companies are to be notified of the acquisition or divestment of shares amounting to five percent of their share capital.

Irredeemable Preference Shares

Currently, under Section 122 of CAMA, a company can issue irredeemable preference shares.

The Bill places a ban on the issuance of irredeemable preference shares.

Issue of Shares at a Discount

Section 121 of CAMA currently permits a company to issue shares at a discount as long as certain conditions have been met.

The Bill places a ban on the issuance of a company's shares at a discount.

Company Rescue Regime

These provisions are not available under the current law.

The Bill introduces Company's Voluntary Arrangement and Administration in Nigerian corporate law.

Company Administration is meant to serve as a rescue mechanism for insolvent entities, allowing such entities to carry on the running of their businesses.

Corporate Voluntary Arrangement is a procedure that allows a company to settle its debts by paying only a proportion of the amount that it owes to creditors. It also allows a company to come to some other arrangement with its creditors over the payment

Electronic Meetings, Voting, and Notices.

Section 216 of CAMA currently provides that all Annual General Meetings (AGM's) of both public and private companies must be held physically in Nigeria.

There are no provisions accommodating electronic service of notices and electronic voting.

of its debts.

While the physical venue for an AGM is still required to be in Nigeria, private companies can hold AGMs through electronic means in accordance with regulations issued by the Corporate Affairs Commission (CAC). The Bill also provides for electronic service of notice of meetings and electronic voting at meetings.

CAC may at any time suspend, prevent, or stop the convening or holding of the AGM of a company if in its opinion any provisions of the Act relating to the convening or holding of such AGM has not been complied with. Where a public company fails to comply with any directive of CAC issued pursuant to this section, the CAC shall have the power to suspend or remove from office, the directors of such a company, and direct the shareholders to convene an extraordinary general meeting within a period of 90 days for the purpose of electing directors.

Ordinary Business at AGM

Ordinary business at an AGM includes declaring a dividend, the presentation of the financial statements and the reports of the directors and auditors, the election of directors in the place

In addition to the provisions of CAMA, the choice of venue of the next AGM has been included as an ordinary business at an AGM.

of those retiring, the appointment, and the fixing of the remuneration of the auditors and appointment of the members of the audit committee⁶. – Section 214 of CAMA.

Common Seal

Currently, Section 74 of CAMA mandates every company to have a common seal.

Ownership of a common seal under the Bill is optional.

CONCLUSION

The provisions of the Bill is a good step in the right direction are commendable and its passage into law would greatly increase the ease of doing business in Nigeria. It is hoped that the extant President will assent to it before the end of his present administration so it can usher in a new legislative regime.

⁶– Section 214 of CAMA

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