



# HIGHLIGHTS OF THE NEW COMPANIES AND ALLIED MATTERS ACT

ARTICLE SERIES 

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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 Although it was an improvement of the repealed Companies Act 1968, it was considered as being obsolete almost thirty years after it came into force. There were cries from many quarters for CAMA to be amended so that investors and business owners can operate under favourable business conditions.

Consequently, on 7th August 2020, President Muhammadu Buhari signed the Companies and Allied Matters Act 2020 (CAMA 2.0/the Act) into law which effectively repeals CAMA. Although no commencement date was provided in the New Act, it is presumed that, on the basis of Section 2 of the Interpretation Act, it is deemed to have come into force on the day it was signed into law.

Clearly, most of the provisions of the Act attended to some of the perceived shortcomings CAMA and brought it in line with global best practices.

The major substantive amendments are highlighted below, in comparison with the old provisions of CAMA.



S/N	Provisions	CAMA	CAMA 2.0
1	Single member company	There must be a minimum of 2 shareholders/members of a company at all times <sup>1</sup>	One shareholder/member can form a company <sup>2</sup>
2	<b>Substitution of Authorised Share Capital with Issued Share Capital</b>	<p>Under Section 99 of CAMA, there was 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.</p> <p>The minimum authorised share capital for a private Company was Ten Thousand Naira while that of a public company was Five Hundred Thousand Naira.</p>	<p>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 Act. Stamp duties are only paid on shares which have been issued.</p> <p>The minimum issued share capital for a private company is One Hundred Thousand Naira while that of a public company is Two Million Naira.</p>

3	<b>Paid-Up Capital</b>	CAMA did not provide for any percentage of the share capital of a company to be paid up.	The Act provides that twenty five percent of the issued share capital of a company to be paid up at all times.
4	<b>Reduction in Share Capital</b>	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 reduction. <sup>4</sup>	CAMA 2.0 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.
5	<b>Submission of of Incorporation Documents</b>	Currently, physical copies of incorporation documents must be delivered to the Corporate Affairs Commission (CAC) before a company is registered. <sup>5</sup>	The Act provides for electronic submission/filing of incorporation and other documents. This gives full effect to the current online registration regime by the CAC.

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6	<b>Limited Liability Partnerships and Limited Partnerships</b>	There is no provision for this under the current CAMA.	CAMA 2.0 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 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.
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			<p>The Act 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 Act. In addition, where there are inconsistencies between the provisions of the Act and the provisions of the Partnership Act, the provisions of the Act will prevail.</p>
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7	<b>Redefinition of Small Companies and Concessions</b>	<p>Under Section 351 of CAMA, a small company is a private company which:</p> <ol style="list-style-type: none"><li>1. Has a turnover of not more than Two Million Naira.</li><li>2. Has net assets of not more than One Million Naira.</li><li>3. None of its members is an alien or government agency.</li><li>4. The directors between themselves hold not less than fifty-one percent of the share capital of the company.</li></ol>	<p>The Act has included most SMEs under the small company category by increasing the turnover and net asset threshold for a small company.</p> <p>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.</p> <p>The Act also accords certain privileges to small companies including:</p>
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- a. Exemption from external audit if 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.

Exemption from the requirement to have at least two directors.

8	<b>Companies Limited by Guarantee</b>	<p>Currently, the permission of the Attorney General of the Federation is required before the incorporation of a company limited by guarantee.<sup>6</sup></p> <p>The minimum total liability to be guaranteed by members in the event of the company being wound up is Ten Thousand Naira.<sup>7</sup></p>	<p>While the consent of the Attorney General is needed in order to register a Company limited by guarantee, this may be dispensed with where the Attorney General's consent is not given within 30 days of furnishing the Attorney General's office with the requested documents.</p> <p>There is also the requirement to include publication of the application for registration in three national newspapers and subsequent registration by the Commission where there is no objection.</p>
	<b>Reduction of Filing Fees for Registration of Charges</b>	Section 197 of CAMA provides for registration of charges and pursuant to this provision, CAC charges N10,000 and N20,000 for every N1million or part thereof for private and public companies respectively	<b>The</b> total fees payable to the CAC for filing has been reduced to 0.35% of the value of the charge. <sup>8</sup>

9	<b>Disclosure of Beneficial Ownership of Shares</b>	There is no obligation under the current CAMA to disclose beneficial ownership of 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. Punitive measures apply where such disclosures are not made.
10	<b>Disclosure of Significant Control</b>	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.
11	<b>Irredeemable Preference Shares</b>	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.

12	<b>Issue of Shares at a Discount</b>	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.
	<b>Merger of Incorporated Trustees</b>		<b>CAMA 2.0</b> provides for the merger of two or more Part C entities with similar aims and objects under such terms and conditions as may be prescribed by the CAC.
13	<b>Company Rescue Regime</b>	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 of its debts.
14	<b>Notice of Meetings</b>	Provides that.... Shall receive notice of meetings	<b>For public companies, the CAC</b> will now be entitled to receive notice of their meetings
15	<b>Electronic Meetings, Voting, and Notices</b>	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.	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 CAC. The Act also provides for electronic service of notice of meetings and electronic voting at meetings.

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16	<b>Ordinary Business at AGM</b>	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 of those retiring, the appointment, and the fixing of the remuneration of the auditors and appointment of the members of the audit committee <sup>9</sup> . – Section 214 of CAMA.	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 CAC. The Bill also provides for electronic service of notice of meetings and electronic voting at meetings.
17	<b>Common Seal</b>	Currently, Section 74 of CAMA mandates every company to have a common seal.	Ownership of a common seal under the new Act is optional.
	<b>Exemption from appointing Auditors for certain companies</b>	All companies are required to appoint an auditor	Small companies or any company having a single shareholder are not required to appoint auditors at the annual general meeting to audit the financial records of the company.

18	<b>Membership and Composition of the Governing Board of the Commission</b>	CAMA provides for the membership of the Governing Board of CAC and states that one of the members will be a representative of the accountancy profession, appointed by the Minister on the recommendation of the Institute of Chartered Accountants of Nigeria	<p>CAMA 2.0 provides that the membership of the Governing Board of CAC shall include a representative of the accountancy profession, appointed by the Minister after consultation with the professional bodies of accountants as opposed to basing it on the recommendation of just the Institute of Chartered Accountants of Nigeria.</p> <p>There is also the provision for additional members which include:</p> <ul style="list-style-type: none"> <li>i) one representative of the Institute of Chartered Secretaries and Administrators of Nigeria, appointed by the Minister on the recommendation of the Institute and</li> </ul>
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			ii) one representative of the Nigerian Association of Small and Medium Enterprises, appointed by the Minister on the recommendation of the Association.
19	Exemption from the appointment of a Company Secretary for a private company	All companies, private and public, are required to have	The appointment of a Company Secretary is now optional for private companies but remains mandatory for public companies.
20	<b>Disclosure of Multiple Directorships in public companies</b>	There is no provision for the disclosure of multiple directorships in public companies	S 27 8(2) of CAMA 2.0 provides that "any person who is proposed to be appointed a director of a public company shall disclose any position he holds as a director in any other public company at the meeting in which he is proposed for appointment as a director.

21	Statement of compliance replaces statutory declaration	No provision for a statement of compliance, however, there is a provision for a legal practitioner to depose to a statutory declaration in the prescribed form, stating that he has complied with the requirements of CAMA for the registration of a company	CAMA 2.0 introduces the Statement of Compliance which can be signed by an applicant or his agent, confirming that the requirements of law as to registration have been complied with. A Statement of Compliance need not be signed by a lawyer. <sup>10</sup>
22	Restrictions on the role of Chairman and Chief Executive Officer of a private company	No restriction	CAMA 2.0 introduces a restriction on private companies from appointing a director to hold the office of the Chairman and Chief Executive Officer <sup>11</sup> of
23	Restriction on multiple directorship in public companies	No such restriction	There is a restriction on any person from being a director in more than 5 public companies at a time

The provisions of the Act are a good step in the right direction. Companies can now hold virtual meetings which is very relevant, especially in light of the COVID-19 pandemic. Furthermore, the introduction of limited liability partnerships, business rescue and the possibility of companies having single shareholders may have far reaching implications for the business climate in Nigeria.

It will now remain to be seen how CAC and the business community will proceed to implement most of the provisions of the CAMA 2.0.



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