

The President of the Federal Republic of Nigeria “President Muhammadu Buhari” signed into law the Companies and Allied Matters Act (CAMA) on August 7, 2020. The new CAMA is expected to promote ease of doing business and reduce regulatory hurdles. The new CAMA has 870 sections and 15 schedules. It is divided into 7 parts namely: Part A deals with the Composition of the Corporate Affairs Commission, Part B deals with the Incorporation of Companies, Part C deals with Limited Liability Partnership, Part D provides for Limited Partnership, Part E deals with the registration of Business Names, Part F covers guides on registration of Incorporated Trustees and Part G deals with general provisions and the establishment of Administrative Proceedings Committee. Our review of the new CAMA shall be under the highlights stated below.

## HIGHLIGHTS

1. **Corporate Affairs Commission (CAC) Right of Notification:** Section 17 provides that a pre-action notice, must be served on the Commission by an intending plaintiff or his agent. The pre-action notice is required to state the cause of action, particulars of the claim, name and place of abode of the intending plaintiff and reliefs.
2. **Single Member Company:** Section 18(2) provides that one person may form and incorporate a private company.
3. **Consent of the Attorney-General (AG) of the Federation:** The requirement of consent of the AG for memorandum of Companies Ltd by Guarantee is retained under Section 26(5). However, the consent shall be granted within 30 days where there are no objections to the memorandum or other cogent reasons for not granting to register the company as one limited guarantee. This will continue to be a matter of considerable difficulty often encountered by promoters of non-profit organizations because the AG still upholds absolute discretion to withhold such consent.
4. **Minimum Share Capital:** Section 27(2) provides for the “minimum share capital” as opposed to the old concept of “authorised share capital”. For private companies, the minimum share capital is ₦100,000 and for public companies, it is ₦2,000,000.
5. **Power to Withdrawal of Registration of Name:** Section 30(4) allows the Commission to request a company to change its name where it is discovered that such a name conflicts with an existing trademark or business name already registered. This is an improvement

- over the current practice where an aggrieved Party will need to apply to the court for an order directing the CAC to withdraw or cancel the name which was improperly registered.
6. **Introduction of Statement of Compliance** - S.40 (1) introduces the Statement of Compliance which can now be signed by an applicant or his agent, confirming that the requirements of law as to registration have been complied with. This removes the requirement to submit a Declaration of Compliance, which must be signed by a lawyer or attested to before a notary public.
  7. **Common Seal:** Section 98 provides that the procurement of common seal is no longer a mandatory requirement.
  8. **Provision for Electronic Filing:** Section 176 (1) provides that instruments of transfer of shares shall include electronic instruments of transfer. Furthermore, Section 860 makes provision for electronic filing, electronic share transfer, electronic member's register and e-meetings for private companies. In addition, Section 861 provides that certified true copies of electronically filed documents are admissible in evidence with equal validity with the original documents.
  9. **Reduction of Filing Fees for Registration of Charges:** Section 222 (12) provides that the total fees payable to the CAC for filing has been reduced to 0.35% of the value of the charge. This is expected to lead to up to 65% reduction in the associated cost payable under the old regime.
  10. **Virtual General Meetings:** The new CAMA now allows for virtual meetings. Section 237(1) provides that small companies and/or any company having a single shareholder are not mandated to hold an Annual General Meeting. Also, Section 240(2) provides that the meeting must be conducted in accordance with the Articles of Association of the Company. This will facilitate participation from any location at minimal costs. The new CAMA is consistent with the changes in business operations foisted by the Covid-19 pandemic.
  11. **Enhancement of minority shareholder protection and engagement:** Section 265 (6) restricts a director from simultaneously holding the office of Chairman and Chief Executive Officer of a public company. This enhances minority shareholder protection.
  12. **Limited Liability Partnership and Limited Partnership (Sections 746 and 795):** Limited Liability Partnership (LLP) is a corporate body formed and incorporated under the

Act which is a legal entity separate from the partners. The LLP shall have perpetual succession and any change in the particulars of the partners of a limited liability partnership does not affect the existence, rights or liabilities of the limited liability partnership. The LLP must be registered with minimum of two persons.

The Limited Partnership (LP) shall consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons called limited partners. The LP shall not consist of more than 20 persons. A limited partner is not under obligation to contribute any capital or property to the partnership where the partners have so agreed in writing. The concept of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) is introduced into the new CAMA.

13. **Insolvency Practitioner:** Section 705(1) of the new Act provides that a person is only qualified to act as an insolvency practitioner where he has obtained a degree in law, accountancy or such other relevant discipline from any recognised University or Polytechnic; has a minimum of five years post qualification experience in matters relating to insolvency; and authorised to so act by virtue of a certificate of membership issued by Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), or his membership of any other professional body recognised by the Commission, being permitted to act by or under the rules of that body; and holds an authorisation granted by the Commission.
14. **Business Recovery and Termination:** Sections 434 to 442 introduces a framework for rescuing a company in distress and to keep it alive as against allowing such entity to become insolvent through Voluntary arrangements, Administration and Netting.
15. **Exemption from Appointing Auditors:** Section 402 provides that small companies are exempted from appointing auditors where the company has a single shareholder.
16. **Exemption from the Appointment of Company Secretary:** Section 330 (1) provides that the appointment of a company secretary is only mandatory for public companies. The appointment of a Company Secretary is now optional for private companies.
17. **Restriction on Multiple Directorships:** Section 307 (1) prohibits a person from being a director in more than five (5) public companies at a time.
18. **Disclosure of Capacity:** The disclosure of capacity as shareholder is no longer restricted to public companies. Section 119 requires any person with significant control over a

company shall, within seven days of becoming such a person, indicate to the company in writing the particulars of such control. The disclosure of persons with significant control of companies in a register of beneficial owners to enhance corporate accountability and transparency.

19. **Merger of Incorporated Trustees:** There is a new provision. Section 849 provides for merger between two or more associations with similar aims and objects under such terms and conditions as may be prescribed by the CAC. The previous Act did not contain this provision.
20. **Power to Suspend Trustees and Appoint Interim Managers:** Section 839(1) provides that the Commission may by order, suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association where it reasonably believes that there has been any misconduct or mismanagement of the association, or where the affairs of the association are being run fraudulently or where it is necessary or desirable for the purpose of public interest. Section 839(2) also provides that the trustees can be suspended by an order of court upon a petition by the commission or one-fifth of the members of the association.
21. **Administrative Proceedings Committee (APC):** Section 851 of the CAMA establishes an APC. Parties dissatisfied with decisions of the APC, appeal may to the Federal High Court.

## CONCLUSION

The new CAMA reveals a modernized approach to the corporate regulatory system in Nigeria which promotes transparency and accountability. It is important for organisations to conduct a gap analysis on the governance composition of their organisation and embrace the Act. Nouvelle Legal is available to assist with this task and identify key compliance requirements.

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