

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

On August 7, 2020, President Muhammadu Buhari assented to the Companies and Allied Matters Act, 2020 (“**CAMA 2020**”), which repeals and replaces the Companies and Allied Matters Act, 1990¹ (the “**Repealed Act**”).

As noted in [our earlier Newsletter](#)² which highlighted critical changes sought to be introduced by the new regime, shortly after the repeal and re-enactment bill was first passed by the National Assembly, this CAMA 2020 is undeniably a progressive development in the Nigerian business and economic landscape and a big boost to the Ease-of-Doing-Business (EoDB) campaign of the Government.

CAMA 2020 provides a robust framework for reforming identified onerous legal, regulatory and administrative bottlenecks which, for three decades, have made doing business in Nigeria substantially difficult (particularly for Micro, Small and Medium Enterprises (MSMEs)), and impeded investments into Nigeria.

In this article, we highlight key provisions in CAMA 2020 and their impact on current and future commercial transactions as well as business entities, generally.

1. **MERGERS, ACQUISITIONS AND BUSINESS COMBINATIONS**



(A) **ACQUISITIONS**

(i) **Right of first offer and other restrictions**

CAMA 2020 introduces in Section 22, a statutory “*right of first offer*”. In essence, subject to the provisions of the articles of association of a company, it is now prohibited for a member of a private company to transfer shares in said company to a non-member, without first offering the said shares to existing members.

Furthermore, a company cannot, without the approval of **all** its shareholders, sell assets having a value of more than 50% of the total assets of the company. Also, a shareholder or a group of shareholders, acting in concert, cannot agree to sell more than 50% of the shares of the company to a non-shareholder without such non-shareholder agreeing to buy the shares of the other existing shareholders on the same terms.

1. Cap C20, Laws of the Federation of Nigeria 2004

2. Follow the link to see our previous publication on CAMA 2020

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

(ii) Provisions on Financial Assistance by Company for acquisition of its shares

The definition of financial assistance as it relates to a company's acquisition of its own shares has been updated in CAMA 2020 to include **any other financial assistance given by a company, the net assets of which are thereby reduced by up to 50%, or which has no "net assets"**.

Whilst "net assets" was not defined in the Repealed Act, the term has now been expressly defined in section 183 (3) of CAMA 2020 to mean the "aggregate of the company's assets less the aggregate of its liabilities"; and these liabilities include any charges or provision for liabilities in accordance with the applicable accounting standards applied by the company in relation to its accounts.



Additionally, the exemptions to the financial assistance rule have now been expanded under section 183 (3) (a) – (f) of CAMA 2020 such that a company shall not be prevented from rendering financial assistance where:

- (i) "it is done in pursuance of an order of the court under a scheme of arrangement; a scheme of merger or any other scheme or restructuring of

a company done with the sanction of the Court";

- (ii) "its principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability, but an incidental part of some larger purpose of the company, and the assistance is given in good faith in the interests of the company".

(iii) Acquisition by a company of its own shares (Share Buyback)

Section 184 (1) provides for the procedure for the acquisition by a company of its shares and Section 186 outlines the persons from whom a company may buy back its own shares which are: (a) the existing shareholders or security holders on a proportionate basis; (b) the existing shareholders in a manner permitted pursuant to a scheme of arrangement sanctioned by the court; (c) the open market; and (d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or any other similar scheme.

Where a company buys back its shares, payment for the share buyback shall be made from the distributable profits of the company.

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

(B) MERGERS

(i) Hierarchical jurisdiction between the Federal Competition and Consumer Protection Commission and the Corporate Affairs Commission (“CAC” or “Commission”)

Section 849 of CAMA 2020 provides for the merger of associations, and states that two or more associations with similar aims and objects may merge under terms and conditions as the CAC may prescribe by regulation.

It is important to note that Section 105 of the Federal Competition and Consumer Protection (“FCCP”) Act of 2018 establishes a hierarchical jurisdiction between the Federal Competition and Consumer Protection Commission (“FCCPC”) and any relevant government agency in a regulated industry, whereby the FCCPC takes precedence over and above such relevant government agency in matters of mergers/business combination. In addition to this, any regulation by the CAC on mergers will also be subject to Guidelines jointly issued by the FCCPC and the Securities and Exchange Commission (“SEC”) on the subject.

However, it is currently unclear, if the merger of associations “properly so called and/or structured”, would be subject to the jurisdiction of the FCCPC. Indeed, the definitions attaching to the terms such as “associations”, “undertakings” or “business enterprises” will be key in settling the FCCPC’s jurisdiction in this regard.

(ii) Arrangement or compromise between two or more companies



Section 711 of CAMA 2020 provides for the power of the Court to order separate meetings of companies on the application in summary of any of the companies to be affected, where under a scheme proposed for a compromise, arrangement or reconstruction between two or more companies or the merger of any two or more companies, the whole or any part of the undertaking or the property of any company concerned in the scheme is to be transferred to another company.

Members of the companies representing at least three quarter in value of the share of members being present and voting either in person or by proxy at each of the separate meetings must agree to the scheme before the Court can sanction same.

The repeal by the FCCP Act of Sections 118 - 128 of the Investments and Securities Act (“ISA”), (which are the sections which

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

hitherto provided a legal framework for conducting mergers) created a gap in the procedure for conducting same. This gap has now been plugged with Section 711 of CAMA 2020 which provides a legal framework for mergers.

(iii) Provisions applicable to scheme or contract involving transfer of shares in a company

By virtue of Section 712 of CAMA 2020, where a scheme or contract, not being a take-over bid under the ISA involving the transfer of shares or any class of shares in a company to another company, has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of at least nine-tenth in value of the shares of the company (other than shares already held at the date of the offer by a nominee for the transferee company, or its subsidiary), the transferee company may at any time within two months after the expiration of the said four months give notice in the prescribed manner to any dissenting shareholder that it desires to acquire its shares.

This section, which was hitherto absent in the Repealed Act, replicates the existing provisions of Section 129 of the ISA.

(iv) Moratorium on creditors voluntary winding up in a scheme of arrangement .

Under Section 717 of CAMA 2020, no winding up petition or enforcement action by a creditor (secured or unsecured) shall be entertained against any company or its assets that has commenced a process of arrangement and compromise with its creditors for six months, from the time that the relevant company, by way of affidavit, provides all the requisite documents³ for such arrangement or compromise, to the Court

However, a secured creditor may, by application to the court, filed within 30 days of notice of the arrangement and compromise, discharge the six months' moratorium period if certain conditions set out in section 717 (2) of CAMA 2020⁴ are met; and provided that the company, upon the approval or consent shall file a further affidavit updating the court of the dissipation of the said asset.

(v) Netting

CAMA 2020 under Sections 718 - 721 introduces the concept of "**Netting**". Specifically, Section 721 of CAMA 2020 states that the provisions of a netting

3 (a) a document setting out the terms intended to be proposed to the creditors in an arrangement or compromise;

(b) a statement of the company's affairs containing the particulars of the company's creditors and its debts and other liabilities and of its assets;

(c) such other information as the Court may require; and

(d) a statement that the company desires a protection from a winding up process pending the completion of the arrangement or compromise.

4. (a) the asset of the company sought to be enforced by the creditor does not form part of the company's pool of assets to be considered under the arrangement and compromise proceeding;

(b) the asset sought to be enforced by the creditor is a perishable good or commodity which may depreciate or dissipate before expiration of the six months' moratorium period;

(c) the secured creditor enforces its security over the assets before receiving notice of the company's proposed arrangement and compromise; or

(d) the company consents in writing for a secured creditor to enforce its right over the company's asset within the six months' moratorium period:

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

agreement are enforceable in accordance with their terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for a party and shall not be stayed, avoided or otherwise limited by: (a) the action of a liquidator; (b) any other provision of law relating to bankruptcy, reorganisation, composition with creditors, receivership or any other insolvency proceeding an insolvent party may be subject to; or (c) any other provision of law that may be applicable to an insolvent party, subject to the conditions contained in the applicable netting agreement.

(vi) Disclosure of significant control and beneficial ownership

Whilst under the Repealed Act, the obligations to disclose beneficial interest was limited to where such interest was acquired in a public company, CAMA 2020 does not make a distinction between disclosure required by a public company and a private company.

Specifically, Sections 119 and 120 of CAMA 2020, provide that persons who hold significant control in **any type of company** are required to disclose particulars of such control to the relevant companies within seven days of acquiring such significant control. All affected companies must inform the Commission within one month of receipt of the information, disclose the information in their annual returns to the Commission and update their registers of members with the appropriate details.

These amendments are targeted at increasing transparency and combatting asset shielding, and are particularly significant because they may mandate the disclosure of beneficial interests in a

company, even where such interests are held through nominal holders or in trust. Accordingly, it would appear that holding of shares by way of trust arrangements is now permissible under CAMA 2020 and the Commission may be notified of such trusts.

(vii) Threshold of substantial interest

Section 120 (2) of CAMA 2020 now provides that a person is deemed a substantial shareholder in a public company if he holds under his name or by his nominee, shares in the company which entitle him to exercise at **least 5%** of the unrestricted voting rights at any general meeting of the company.

The relevant company is mandatorily obligated to give notice to the Commission, where (i) any person becomes a substantial shareholder, within 14 days of receipt of the notice from the substantial shareholder or upon becoming aware that a person is a substantial holder; and (ii) any person ceases to be a substantial shareholder, within 14 days of becoming aware of such cessation.

2. FINANCING TRANSACTIONS AND CREATION OF SECURITY



(a) Floating Charges

Under Section 204 of CAMA 2020, a person is deemed to have notice of a prohibition in a floating charge where a notice indicating its

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

existence is registered with the Commission. Furthermore, Section 207 of CAMA 2020 provides that, notwithstanding any provision in the CAMA 2020 or any other law to the contrary, the holder of a fixed charge shall have priority over other debts of the company including preferential debts.

(b) Trust Deeds

Notably, the provision of the Repealed Act, which disqualifies a substantial shareholder of a company from acting as trustee of a debenture trust deed has not been replicated in CAMA 2020. Accordingly, it would appear that substantial shareholders are no longer restricted from acting as trustees in a debenture trust deed to which the company is a party.

(c) Registration of Charges created by Companies

Section 222 of CAMA 2020 stipulates that the total fees payable to the Commission in connection with the filing, registration or release of a charge ***shall not exceed 0.35%*** of the value of the charge or such other amount as the Minister may specify. **This provision introduces a significant reduction in the fees payable for the registration of charges as same previously cost ₦10,000 for every ₦1,000,000 or part thereof for private companies and ₦20,000 for every ₦1,000,000 or part thereof for public companies.**

Further, Section of 223 of CAMA 2020 now imposes an obligation on the Commission to enter in the register of charges, a notice indicating the existence of any provisions in a

floating charge that prohibit or restrict the company from granting any further charge ranking in priority to, or *pari passu* with, the floating charge.

(d) Avoidance or Attachments etc.

Section 577 of CAMA 2020 now includes a proviso, which contemplates that where a company is being wound up, only a fixed charge holder (or any other validly created and perfected security interest other than a floating charge holder) will now be able to enforce security, sequester, attach or levy execution on the assets of the company.

(e) Application of bankruptcy rules in certain cases

Section 656 of CAMA 2020 introduces a proviso that states that nothing shall affect the power of any secured creditor to realise or otherwise deal with his security during the winding up of an insolvent company registered in Nigeria.

3. COMPANY RESTRUCTURING - RESTRICTIONS ON DISTRIBUTABLE PROFITS

Section 427 of CAMA 2020 restricts the profits of a company available for payment of dividends only to, the company's accumulated, realised profits (so far as not previously utilised by distribution or capitalisation) less the company's accumulated, realised losses (so far as not previously written off in a lawfully made reduction or reorganisation of capital).

In essence, any part of a company's profits

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

utilised for purpose of capitalisation shall not count in determining the amount of profits available for dividend payment in a financial year. In the same vein, losses incurred by a company as a result of a legally valid share capital reduction or business reorganisation, shall not impair the amount of profits available for dividend payment in a financial year.

4. GENERAL COMPANY OPERATIONS



(a) Common Seal

By virtue of Section 98 of CAMA 2020, it is no longer mandatory for a company to have a company seal and companies now have the sole discretion to choose whether or not to have one.

(b) Authentication via Electronic Signature

In compliance with modern technological capabilities and developments, as well as the provisions of the Evidence Act, 2011, CAMA 2020 now provides that **an electronic signature is deemed to satisfy the requirement for signing** and that the register of transfers shall include electronic registers.

Additionally, a document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be signed as a deed unless otherwise specifically required by CAMA 2020.

(c) Validity of Improperly Issued Shares

Under the Repealed Act, where shares were improperly issued or allotted, the court could upon being satisfied that in all the circumstances specified in the Repealed Act that it is just and equitable to do so, validate the issuance/allotment.

However, Section 148 of CAMA 2020 now authorises the company itself to validate the issuance/allotment of such shares by way of a special resolution.

Only where the company refuses to do the above, will the affected party need to apply to court.

(d) Authority to Allot Shares

The power to allot shares remains vested in the shareholders of the company, whether private or public. However, Section 149 of CAMA 2020 now restricts the authority to delegate to directors, the powers to allot, to only shareholders of private companies, subject of course, to any condition or direction that may be imposed in the articles or by the company in general meeting. For the avoidance of doubt, the power to allot shares cannot be exercised by directors, without more unless expressly authorised by the shareholders at a general meeting or by the company's articles.

Consequently, the authority to delegate the power to allot shares can no longer be

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

exercised by shareholders in public companies; and the power to allot shares in public companies remains subject to the ISA.

(e) Power to Vary Rights

The Repealed Act already provides that the rights of a class of shares may be varied with the consent, in writing, of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.

However, CAMA 2020 seeks to create a distinction by providing that the rights may only be varied with the consent, in writing, of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class *where the articles of the company do not provide for the variation of those rights*.

Furthermore, Section 166 of CAMA 2020 states that any proposed amendment or inclusion of a provision in a company's Articles relating to the (variation of) rights attached to a class of shares, shall require the written consent of the holders of $\frac{3}{4}$ of the issued shares of that class.

(f) Share certificate

Due to the amendment in Section 98 of CAMA 2020 which makes a common seal optional, CAMA 2020 now provides that a share certificate may either be (a) issued under the company's seal (where the company has a common seal or (b) **signed as a deed by the company**.

(g) Exemption from audit requirement

Every company, without qualification, was

required under the Repealed Act to appoint an auditor or auditors at its AGM to audit the financial records of the company. However, Section 402 of CAMA 2020 **exempts small companies and companies that have not carried out business since incorporation** (other than an insurance company or a bank or any other company as may be prescribed by the CAC) from the requirements of the law relating to the audit of accounts in respect of a financial year.

(h) Public companies to display their audited accounts on websites

In sync with an existing requirement of the Nigerian Stock Exchange and the SEC, CAMA 2020 in Section 374(6) now requires every public company to keep its audited accounts displayed on its website.

5. SHAREHOLDER/BOARD MEETINGS AND COMPANY SECRETARIAL MATTERS



(a) New Ordinary Business to be transacted at an Annual General Meeting (AGM)

Under Section 238 of CAMA 2020, **disclosure of remuneration of managers of a company** has been added as part of the business transacted at an Annual General

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

Meeting (“AGM”), which shall be deemed ordinary business. Additionally, Section 257 of CAMA 2020 also provides that the compensation of managers of a company shall be disclosed to members of the company at the AGM.

However, Section 242 of CAMA 2020 appears to create a conflict with Section 238 of CAMA 2020, as it doesn’t include the “disclosure of remuneration of managers of a company” as part of the business to be transacted as ordinary business at an AGM where the notice of such an AGM indicates that a statement that the purpose is to transact the ordinary business of an annual general meeting.

(b) Place of meetings

Further to Section 240 (2) of CAMA, **private companies** are now permitted to hold general meetings virtually. However, this amendment does not extend to public companies. Consequently, public companies are still required to hold general meetings, physically.

(c) Persons entitled to receive Notice of a General Meeting of Public Companies

In furtherance of the Commission's mandate to regulate the management of companies, Section 243 of CAMA 2020 includes the Commission as a party entitled to receive notice of general meetings of public companies. Previously, this requirement only applied to incorporated trustees.

6. DIRECTORS AND COMPANY SECRETARY



(a) Powers and Duties of the Chairman

CAMA 2020 in Section 265(6) explicitly prohibits the office of Chief Executive Officer and Chairman of a public company to be held by the same person. The separation of these two (2) roles is in line with international best practices and the Nigerian Code of Corporate Governance, 2018 (“NCCG”).

(b) Minimum Directors

Section 271 of CAMA 2020 excludes small companies from the requirement of having a minimum of two (2) directors. To this end, a small company is permitted to have one (1) director.

(c) Independent directors in public company

Section 275 of CAMA 2020 stipulates that every public company must now have at least three independent directors. Currently, the SEC Code of Corporate Governance (for public companies) and the NCCG provides that companies should have a minimum of one independent director. This provision of

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

CAMA 2020 creates a higher threshold for this requirement and companies will be mandated to meet this higher requirement of three independent directors regardless of the requirement of the SEC Rules and the NCCG.

Furthermore, the definition of an independent director must also be read in tandem with the NCCG which provides even more stringent criteria that must be met, in order to attain best corporate governance practices.

(d) Duty of Directors to disclose age and multiple directorship

CAMA 2020, in Section 278, makes provisions for the disclosure of multiple directorships held by any person to be appointed as a director of a public company.

This amendment is in tandem with the provision of the NCCG and pertains mainly to the ability of a director to discharge his functions given his multiple responsibilities/commitments and also to inform the company of any potential or existing conflicts of interest in respect of the multiple directorships. Additionally, subject to subsection (3) of Section 307, a person shall not be a director in more than five public companies.

(e) Appointment of Company Secretary

Under the Repealed Act, every company was mandatorily required to have a secretary. However, by virtue of Section 330 of CAMA 2020, the appointment of a company secretary is not mandatory but optional for small companies.

Whilst the purpose of this amendment is undoubtedly to reduce cost and boost the

ease of doing business in Nigeria, it is important to strategically select a reputable firm for the provision of company secretarial services, as this is pivotal to the overall success of every business.

(f) Register of Secretaries

Whilst the Repealed Act required all companies to have a register of secretaries, CAMA 2020 in Section 336 requires **only public companies** to maintain a register of secretaries and Sections 337 & 338 provides for the required particulars. This is expected to reduce the operational requirements for private companies in furtherance of the ease of doing business.

7. MSMEs, NGOs, INCORPORATED TRUSTEES

(a) Merger of Associations

Section 849 of CAMA 2020 provides for the merger of associations. Two or more associations with similar aims and objects may merge under terms and conditions as the Commission may prescribe by regulation.

Also, CAMA 2020 in Section 831(ii) provides for the treatment of any two or more associations having the same trustees to be treated as a single association. This is without prejudice to the provisions of section 849 of CAMA 2020.

This provision is expected to facilitate effective supervision and regulation of registered association with related operations. It is equally expected to promote accountability and enforcement of compliance, as well as establish nexus between associations for the purpose of determining control and ultimate ownership of property.

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

Additionally, it is noteworthy that regulation made by the CAC pursuant to Section 849 of CAMA 2020, for the purpose of regulating the mergers of associations registered under CAMA 2020, shall be subject to such other regulation made by the FCCPC. This is in compliance with the provisions of Section 164 of the FCCP Act, which state that the provisions of any other enactments (including the *ISA and the CAMA*), regulations or subsidiary laws relating to or connected with matters of competition and consumer protection; are to be read with such modifications as are necessary to bring them in conformity with the FCCP Act.

(b) Introduction of Alternative to AG's Consent

The Repealed Act required all companies limited by guarantee ***not to be*** registered with a share capital. This provision has been deleted from CAMA 2020. However, it is unclear whether the intention is for companies limited by guarantee to now be registered with share capital, and the applicable authorised share capital, under the new regime.

Also, Section 26 of CAMA 2020 maintains that the Consent of the Attorney General of the Federation (“AG”) shall remain the primary pre-requisite for the grant of registration of a company limited by guarantee.

However, an alternative to the AG's Consent has been introduced in the event that the AG does not grant authority to the promoters within thirty (30) days (where there are no objections or other cogent reasons for refusal). The alternative method allows promoters to place an advert in three (3) national dailies and invite objections within

twenty-eight (28) days. Where there are no objections, CAMA 2020 empowers the CAC to assent to the application and register the company ***without the AG's Consent***, after advertising the application in three national dailies.

8. COMPANY INCORPORATION AND INCIDENTAL MATTERS



(a) Introduction of a Single Individual's Right to Form a Company

By virtue of Section 18 of CAMA 2020, **one person may form and incorporate a private company** by complying with the requirements of CAMA 2020 in respect of private companies. This amendment will enable small scale entrepreneurs to exercise absolute control and authority over the operation and management of their businesses.

(b) Minimum Issued Share Capital (“MISC”)

Under CAMA 2020, the minimum authorised share capital’ (“ASC”) has been replaced with a requirement for companies to maintain a minimum issued share capital, stated in its memorandum of association.

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

In the Repealed Act, the ASC requirement was no less than ₦10,000 for private companies and no less than ₦500,000 for public companies. CAMA 2020 has increased the MISC to a minimum of **₦100,000.00** in the case of a private company and **₦2,000,000.00** in the case of a public company.

In relation to the minimum contribution of members of a company limited by guarantee, it is now a minimum of ₦100,000 as opposed to ₦10,000 in the Repealed Act. **In addition to this, Section 27 of CAMA 2020 has made a significant exclusion of the provision requiring subscribers to the memorandum to subscribe to a minimum of 25% of the ASC.**

(c) **Withdrawal/Revocation of Certificate of Incorporation**

Under CAMA 2020, Section 41 empowers the Commission to withdraw or revoke any Certificate of Incorporation issued where it is discovered that the certificate was obtained fraudulently, unlawfully or improperly. The Commission can also publish such information in the Federal Government Gazette.

(d) **Re-registration of Companies**

The key addition to the provisions on the re-registration of companies is the **introduction of the option of re-registration of a public company as an unlimited company**, provided that certain conditions are fulfilled as stipulated under section 75 of CAMA 2020.

(e) **Exemption for Foreign Companies**

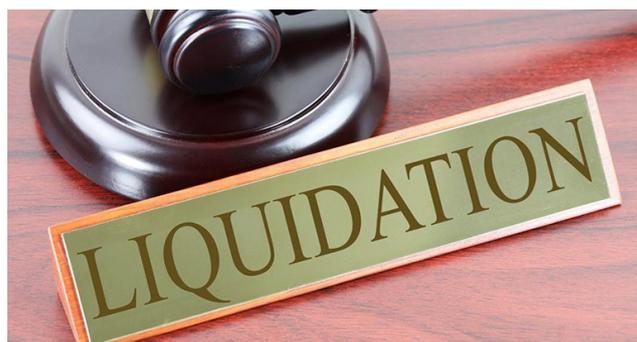
Under the Repealed Act, a foreign company intending to carry on business in Nigeria

without fulfilling the requirement of the law regarding incorporation in-country, had to apply to the President through the National Council of Ministers, for exemption from the requirement to incorporate a separate entity in Nigeria.

Under section 80 of CAMA 2020, **a foreign company can now file an application for exemption directly to the Minister of Trade.** After obtaining the exemption, the foreign company is obligated to notify the Commission within thirty (30) days failing which the foreign company will be liable to a fine.

Additionally, where an exempted foreign company fails to provide an annual report to the Commission, the company will be liable to a penalty for every year of default where currently no penalty is stipulated.

9. **WINDING UP AND LIQUIDATION**



(a) **Preferential Payments**

Under Section 657 of CAMA 2020, where a company is being wound up, priority must now be given to deductions made from the remuneration of employees and contributions of the company under the Pension Reform Act, and contributions and obligations of the company under the Employees' Compensation Act.

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

Furthermore, a company's debts shall rank equally among themselves after the expenses of the winding up have been settled and the debts shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

(b) Fraudulent Preference

Section 658 of CAMA 2020 expands the provisions on fraudulent preference under the Repealed Act. Where a company at any time within the period of years ending with the onset of insolvency (i.e. the time of presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court or, the passing of a resolution for winding up in the case of a voluntary winding up) or the period of three months ending with the onset of insolvency does anything or procures anything to be done which has the effect of putting a person, being one of the company's creditors or a surety or guarantor undue advantage shall be deemed a preference of that person, and be invalid accordingly.

However, a preference given to any person is not invalid unless the company, which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the aforementioned effect. Furthermore, the fact that something has been done in pursuance of the order of a Court does not, without more, prevent the doing or procuring of that thing from constituting the giving of a preference.

(c) Supplies of gas, water, electricity, etc.

Section 665 of CAMA 2020 provides some form of protection for providers of essential services such as gas, electricity or communication services to companies undergoing liquidation by providing that the office holders guarantee, the payment of charges in respect of such supply. However, such service provider cannot make the payment of charges outstanding prior to the effective date⁵ a condition for the supply of the services.

10. LIMITED LIABILITY PARTNERSHIPS (LLPs)

Limited Liability Partnership



CAMA 2020 acknowledges LLPs as a business structure in Sections 746 – 810. This new provisions develop our legal framework in line with that of other jurisdictions, such as the United Kingdom and the United States of America. Under the Repealed Act, partnerships were not considered a body corporate with separate legal entity, and thus the liability of such partnerships were not recognised under Nigerian law. However, CAMA 2020 rectifies this by including extensive provisions governing and regulating LLPs.

5. Effective Date means the Date on which the company entered administration; voluntary arrangement took effect;

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

11. GRANDFATHERED/SAVINGS PROVISIONS - STATUS OF COMPLETED TRANSACTIONS & OUTSTANDING OBLIGATIONS.

Section 869 (2) of CAMA 2020 contains saving provisions validating all matters either completed or on-going under the Repealed Act. To this extent, all orders, rules, regulations, appointments, conveyances, mortgages, deed or agreements made, as well as resolutions passed, directions given, proceedings taken, instruments issued, and anything done under the old regime which was in force immediately before the commencement of the CAMA 2020; shall continue to have effect as if made, passed, given, taken, issued or done under the new regime.

Whilst, the CAMA 2020 does not contain express provisions on ongoing transactions or outstanding obligations, it could be argued that the logical sequence would be for such transactions, which have been commenced but not completed, to be continued and indeed completed, in strict compliance with the provisions of the Repealed Act, to the extent none of the required actions are not ultra vires CAMA 2020. Nonetheless, in order to prevent any bottlenecks at the point of closing any transaction which will require seeking approvals and/or filing relevant transaction documents at the Commission, it will be prudent for advisers on ongoing transactions to transition such on-going transactions such that they come within the purview of CAMA 2020 to assure that same is not red flagged at the point of filing the transactional documents with the Commission.

Finally, Section 869 (7) of the CAMA 2020 provides that any individual, firm or company registered under the Repealed Act, immediately before the coming into operation of the new legislation, shall be deemed to be registered under and in accordance with the Repealed Act.

The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo.

DISCLAIMER: This article is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and our Law Firm or serve as legal advice. We are available to provide specialist legal advice on the readers' specific circumstances when they arise.

COMPANIES AND ALLIED MATTERS ACT 2020: REFORMING PROVISIONS THAT IMPACT THE NIGERIAN BUSINESS COMMUNITY

AUGUST 10, 2020

Contact Persons:



Stella Duru

Partner

E: sduru@banwo-ighodalo.com



Toyin Bashir

Partner

E: tbashir@banwo-ighodalo.com



Oluwatoba Oguntuase

Practice Support Lawyer

E: ooguntuase@banwo-ighodalo.com



Tosin Oyebanjo

Associate

E: toyebanjo@banwo-ighodalo.com



Ezomime Onimiya

Associate

E: eonimiya@banwo-ighodalo.com