COMPANIES AND ALLIED MATTERS ACT 2020; ALL YOU NEED TO KNOW

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NEWSLETTER

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On the 7th of August 2020, President Muhammed Buhari gave assent to the Bill that repealed the Companies and Allied Matters Act (CAMA), Cap C20, LFN 2004 ("Old Act") and re-enacted the Companies and Allied Matters Act (CAMA), 2020 ("New Act"). The New Act has 870 sections, some of which were retained from the old Act, others modified and quite a number of sections were introduced.

The new Act seeks to boost the Ease of Doing Business in Nigeria, and a welcome progressive development from the old Act which had been in existence for 30 years. The new Act is divided into 7 parts; Part A covers the Corporate Affairs Commission (CAC), Part B- Incorporation of Companies and Incidental Matters, Part C- Limited Liability Partnership, Part D- Limited Partnership, Part E- Business Names, Part F- Incorporated Trustees, Part G- General Provisions.

Note: This review does not cover the provision of the Act on Incorporated Trustee's as it relates with the controversy on Churches.

Some of the notable changes and innovations are highlighted below;

1. **Pre-action Notice and Restriction on Levy of Execution**: Section 17 of the new Act now requires that no action shall be commenced against the Corporate Affairs Commission (CAC), before the expiration of 30 days after a written notice of intention to commence a suit against the Commission has been issued by the intending plaintiff. Subsection 2 outlines what the pre-action notice should contain. This was not contained in the old Act and a welcome innovation, as it encourages out of court settlements and unnecessary court actions.
2. **Right to Form A Company**: Under the old Act, Section 18 provides that two (2) or more persons may form or incorporate a Company. This position is different under the new CAMA, as there is an exception to this rule. Section 18 (2) of the new Act provides that one (1) person may form and incorporate a Private Company, as long as the provisions of the Act in section 20, as regards capacity to form a company is complied with.
3. **Private Company (Right of First Refusal)**: Section 22 of the new Act provides that subject to the articles of association of a private company, the company shall not sell assets having value of more than 50 % of the total value of the company assets. It further states that a member of the company cannot sell his shares to a non-member without first offering those shares to the existing members. Further to that, a group of members cannot sell more than 50% of the shares of the company to a non shareholder, except the non shareholder agrees to buy the shares of the other existing shareholders on the same terms.

4. **Consent of Attorney General (AG)**: Under the old Act, the consent of the AG must be obtained before incorporating a company Limited by Guarantee. This is still the position; however, Section 26 provides that the AG is expected to give his consent or objections within 30days from when he receives the application. Where there is no response, it is deemed that the AG does not object to the application. The new Act further states that where there is no response from the AG within the 30 day period, the promoters shall place an advert in three national dailies and invite objections within 28 days, where there is no objection, the commission will register the company without the AG's consent.

5. **Minimum Issued Share Capital (MISC)**: Section 27(2) of the new Act replaces the requirement of "Authorized Share Capital" under the old Act with "Minimum Share Capital". The MISC of a private company shall not be less than ₦100,000 and for a public company, not less than ₦2,000,000,000, this was increased from ₦10,000 and ₦500,000 respectively. For companies limited by Guarantee the minimum contribution is ₦100,000 as opposed to ₦10,000 under the old Act. This is to the effect that, the Act is no longer bothered by the shares capital a company has, but the shares issued. Stamp duties are paid on only the shares issued, and 25% of the company's issued share capital must be paid up at all times.

6. **Statement of Compliance**: Under the old act a "Declaration of Compliance" which must be signed by a Lawyer or attested to before a notary public is now replaced with "Statement of Compliance" (section 40), which can be signed by the applicant or his agent and not necessarily a lawyer or attested to before a commissioner for oaths or notary public.

7. **Withdrawal/Revocation of Certificate of Incorporation**: Section 41(7) empowers the Commission to withdraw or revoke any certificate of incorporation issued where it is discovered that the certificate was fraudulently, unlawfully or improperly procured.

8. **Re-registration of Public Company as Unlimited**: A notable addition is the option of re-registration of public company as an Unlimited Company (Section 75), provided that the conditions as stated in that section are fulfilled.

9. **Common Seal**: The old Act provides that all companies shall have a common seal. Section 98 of the new Act, no longer makes it a mandatory requirement. The design and use of a common seal by a company shall be regulated by its articles.

10. **Authentication of Documents**: Section 101 of the new Act provides for electronic signature, this is a welcome development and in line with international best practice. A document or proceeding requiring authentication by a company can be signed by the director, secretary or other authorized officer of the company and need not be signed as deed and an electronic signature is sufficient requirement for signing. Other additions worthy of note is Section 102 and 103 of the Act, which provides that a document is validly executed by company if it is delivered as a deed, and need not have a common seal affixed. Section 103 gives an alternative to sealing, which provides that a document is deemed to have satisfied the provisions of the law if the document is signed in a manner set out in the Act.

11. **Disclosure of Capacity by Shareholder**: Section 119 states that any person with significant control over a company shall within 7 days of becoming such indicate the particulars of such control in writing. This provides for transparency.

12. **Substantial Shareholder in Public Companies**: Under the old Act, a substantial shareholder holds by himself or through his nominees 10% of the unrestricted voting rights at general meetings. Section 120 of the new Act, reduces the percentage to 5%.

13. **Registration of Charges Created by Companies**: Section 222 of the new Act states that the total fees payable to the Commission as regards 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. Under the old Act charges applicable to both private and public companies were ₦10,000 on every 1,000,000 (1%) or part thereof and ₦20,000 on every 1,000,000 (2%) or part thereof respectively**.**

14. **General Meeting**: The old Act requires all companies to hold Annual General Meeting (AGM), the current position according to section 237 is that small companies or companies having a single shareholder are not obligated to hold AGMs. Section 238 of the new Act now provides for disclosure of remuneration of managers, to be included in the ordinary business transacted at the AGM.

15. **Place of Meeting**: Section 240(2) of the new Act now recognizes virtual meetings. However this does not apply to public companies. The former position states that all companies must hold their AGMs in Nigeria, but section 240 (1) of the new Act gives an exception to small companies and companies with single shareholders.

16. **Restriction on the Role of Chairman and CEO**: Section 265 (6) prevents the Chairman of a public company from acting as the Chief Executive Officer of such Company.

17. **Number of Directors**: Section 271 of the new Act states that every company, not being a small company, shall have at least 2 directors. This implies that a small company is permitted to have 1 director. For better clarity, a small company is defined under section 394 of the new Act to be;

    a. A private company
    b. Its turnover is not more than ₦120 million or such amunt as may be fixed by the commission from time to time
    c. Its net assets value is not more than ₦60 million or such amount as may be fixed by the Commission from time to time
    d. None of its members is an alien
    e. None of its members is a government, government corporation or agency or its nominee and
    f. In the case of a company having share capital, the directors between themselves hold at least 51% of its equity share capital.

    The above position is quite different under the old Act. The amount of turnover under the old Act is not more than ₦2 million, the net assets value is not more than ₦ 1 million.

18. **Independent directors in public company**: Section 275 of CAMA 2020 provides that public companies must have at least three (3) independent directors. The definition and criteria for being an

independent director was stipulated in the Act as; one who or whose relatives either separately or together with him or each other during the two years preceding the time in question-

a. Was not an employee of the company,

b. Did not make or receive from the company payments of more than ₦20 million or own more than a share of 30% or other ownership interest directly or indirectly, in an entity that made or received from the company payments of more than ₦20 million, or act as a partner, director or officer of a partnership or company that made or received from the company payments of more than ₦20 million,

c. Did not own directly or indirectly more than 30% of the shares of any type or class of the company,

d. Was not engaged directly or indirectly as an auditor for the company.

19. **Duty of Directors to disclose age and multiple Directorship to the Company**: Under the new Act, a director is required to disclose any position he holds as a director in any other public company. In addition, subject to section 307 (4) of the Act, any person who fails to disclose his age and multiple directorship shall be held liable. Further to that, section 307 of the new Act, states that a person shall not be a director in more than five (5) public companies.

20. **Appointment of Company Secretary**: The appointment of Company secretary is now optional for private companies, by virtue of section 330 of the new Act. Having a company secretary is only mandatory for public companies.

21. **Exemption from Appointing Auditors**: Section 402 exempts small companies and companies that have not carried out business since incorporation, excluding banks and insurance companies, from appointing an auditor to audit their financial records in respect of a financial year during AGM of such companies. Further to that, public companies are now obligated to upload their audited financial statement on their company’s website.

22. **Netting**: This is a new provision under the Act. Section 718-721 provides for netting, to the effect that, a netting agreement can now be concluded and enforced against an insolvent party, guarantor, or any person providing security. They are enforceable in accordance with the terms and conditions contained in the netting agreement.

23. **Limited Liability Partnership (LLP) and Limited Partnership (LP)**: Section 746-810 provides for this partnership. Under the old Act, partnerships were not considered a corporate body with separate

legal entity. This gives promoters the option of creating a company or a partnership, while still providing protection and guidelines for which ever they decide to incorporate.

24. **Merger of Incorporated Trustees**: The new Act in section 849 provides for merger of incorporated trustees. Two or more associations with similar aims and objectives may merge as a single association based on terms and conditions as prescribed by the Act.

The new Act also creates a structure to rescue a company in distress and help prevent it from becoming insolvent. This provision is called company voluntary agreement- section 434-442, Administration 443-549.

In Conclusion, the new Act is a welcome development and a huge step forward from the former Act, it definitely boosts the ease of doing business in Nigeria. However, an in depth study of each provision is recommended in other to have a better view and understand the Act better.

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