CAMA 2020 Highlights, Impacts and Drawbacks

This newsletter provides insights into how the provisions of the newly amended Companies and Allied Matters Act (CAMA) 2020 will affect existing and potential companies in Nigeria going forward, pinpointing the associated benefits and drawbacks. Some of these highlights are also evaluated alongside the provisions of the Finance Act of 2020 and the existing corporate governance codes in Nigeria.

S/N	Highlights	Benefits	Potential setbacks that may need to be addressed
1.	**Revised minimum issued share capital.** Authorized share capital has now been replaced in S.27 of the new bill with the concept of 'Minimum share capital' The minimum issued share capital for private and public companies has been revised upward to N100,000 and N2,000,000 respectively, as opposed to the N10,000 and N500,000 obtainable under the existing CAMA 1990.	• This now means that companies don't have to allocate or pay for shares that are not needed when they are incorporated.	The provisions of this section still do not materially change the statutory cost of registering a Company due to the fact that the minimum registration cost valued at N10,000 is still required for the registration of private companies with a share capital of One million or less.
2.	**Provision of a single member/ Shareholder company.** The minimum number of people that can form a company has been reduced to one.	• The permanence of companies is now better guaranteed. • This will accelerate the resolution mechanism for board of di- rectors' and shareholders' meetings.	Law makers might want to raise the bar higher for compliance to corporate governance codes in order to curb potential excesses of Single member companies.
3.	**Creation of a Limited Liability Partnership (LLP).** The Bill proposes a new form of legal entity known as a Limited Liability Partnership ("LLP") in section 746. LLPs are re quired to file annual returns with the commission within 60 days following their financial year end.	• By this provisions, two or more persons desirous of carrying on a legal business in Nigeria can now form a legal entity that can sue and be sued in its name. • Partnership businesses can now exist in perpetual succession. • The liability of partners is now limited to the amount of capital contribution unpaid by them. • The bill also excludes one partner from liability for the wrongful act of	There are no foreseeable limitations.

		another. • A limited liability partnership that falls under the "small company" category will enjoy the tax incentives under the finance Act, 2020.	
4.	**Definition of small companies** The new provision amended the definition of a small company to be that which earns: **A)** An annual revenue of not more than N120 million or such amount as may be fixed by the Commission from time to time; or whose **B)** Net assets value is not more than N60 million or such amount as may be fixed by the Commission from time to time.	• The time value of money will now most likely be considered in setting similar thresholds going forward.	The definition of small company is inconsistent with the provisions of the finance act 2020, which defines small company as those earning not more than N100 million annually. By implication, two different companies defined as "small" by both Acts may not enjoy the same tax incentives.
5.	**Small companies are now exempted from appointing auditors.** Small companies or any company having a single shareholder are no longer mandated to appoint auditors at the annual general meeting to audit their financial records. The Bill also provides that companies that have not carried on any business since incorporation or whose revenue in a financial year is not more than N 10,000,000 and the Balance sheet total does not exceed N 5,000,000 need not audit their accounts for that financial year. However, within the said financial year, the company must not at any time have carried on business as an insurance company, a bank or such other company as may be prescribed by the Commission.	• This will reduce the burden of cost on small companies.	By implication of this section, a single member company with significant business operations will also not have to appoint auditors, thus bringing it to the same cate- gory of smaller companies with low business operations. It is worthy to note that a single member company may also have stakeholders with significant interests, whose needs can only be protected by means of an independent audit of underlying financial records.

6.	**Small companies are now exempted from the appointment of company secretary.** The appointment of a Company Secretary is now optional for private companies. According to S.330 (1) of the new CAMA, the appointment of a company secretary is now only mandatory for public companies.	• This will reduce the burden of cost on small companies.	There are no foreseeable limitations.
7.	**Restriction on multiple director- ships in public companies** Section 307 of the new bill prohibits a person being a director in more than five public companies at a time.	• This will better foster accountability and responsibility on the part of Directors.	There are no foreseeable limitations.
8.	**Introduction of statement of compliance** Section 40 of the bill introduces that Statement of Compliance be signed by an applicant or his agent confirming that the requirements of law with respect to registration has been com- plied with. This serves as an alternative to the requirement to submit a Declaration of Compliance signed by a lawyer.	• Further eases the burden associated with company registration.	There are no foreseeable limitations.
9.	**E-registration of companies.** Electronic registration of companies will now be possible by virtue of the provisions of the Bill.	• This will reduce the burden of cost associated with mobility. • It also further reduces the bur- den associated with company registration.	There are no foreseeable limitations.
10.	**The Chairman and The Chief Executive Officer can no longer be the same person.** The bill also provides that a Chairman of a public company shall not act as the Chief Executive Officer of same company.	• This will encourage minority protection and encourage good corporate governance practice. • This could also reduce potential business risks as both the CEO and chairman would now have their respective oversight functions which would help facilitate better control.	

11.	**Provision of Electronic meetings for private companies.** The Bill makes provision for Electronic Meetings for private companies provided that same is held in line with the provisions of the companies' articles.	• This will cut down cost and would be permanently relevant seeing as the world is constantly advancing technologically. Distance and cost would no longer serve as a barrier for holding meetings.	
12.	**Pre-action Notice and Restriction on Levy of Execution**. The new bill requires that before a suit can be commenced against the Corporate Affairs Commission, a pre-action notice must be issued and served on it. The bill further highlight- ed in subsequent sections the details which the notice must contain.	• This will most likely be an at- tempt to resolve potential conflicts out of court.	
13.	**Additional qualification of auditors**. The new bill added to the list of per- sons disqualified for appointment as auditors of a company to include: **A)** A debtor to the company or to a company that is deemed to be related to the company by virtue of interest in shares, in an amount exceeding N500,000 **B)** A shareholder or spouse of a shareholder of a company whose employee is an officer of the company; **C)** A person who is or whose partner, employee or employer is responsible for the keeping of the records or preparation of any register of holders of debentures of the company; **D)** An employee of or consultant to the company who has been engaged for more than one year in the maintenance of any of the	• This provision would further reduce potential audit threats. • It will also further ensure that only persons independent of a company's influence is appoint- ed as auditor.	

	company's financials.		
14.	**Authentication of documents.** The new bill now permits the use of electronic signatures as a means of authenticating company documents.	• This provision will further speed up the decision-making process of companies.	Companies would have to exercise due care in protecting such e-signatures from unauthorize use. This may include making use of protected file formats while transmitting electronic documents.
15.	**Abolishment of the existing pre- scribed format for Articles of As- sociation of companies.** The Bill seeks to abolish the mandatory prescription of the format of Articles by the Commission and instead gives the Commission powers to pre- scribe model articles which will only apply where a company is unable to provide its Articles of Association to the Commission.	• This will give companies the flexibility to create their own Articles as against the current practice of the Commission insisting on the adoption of the model Articles in CAMA.	There are no foreseeable limitations.
16.	**Revocation of an initially ap- proved business name.** The Corporate Affairs Commission now has the power to cancel, with- draw or revoke certificate of registration of any company, where it is discovered that the certificate was fraudulently, unlawfully or otherwise improperly procured. Before now, this would have involved some elements of court proceedings.	• This provision will ensure that conflicts arising from use of business names are resolved speedily.	The commission might want to put in place some internal procedures or systems aimed at dealing with such issues, in order to prevent misinformed judgement.

17.	**Protection of Directors information** The Bill, now introduces certain measures to protect directors' information particularly as contained in the Register of directors. The Bill classifies some of the information contained in the Register as protected information. The Bill forbids a company from disclosing protected information except for the purpose of communicating with the director concerned, in order to comply with any requirement of the Bill. Any other disclosure has to be with the consent of the director concerned. The Court however would have the power to make an order directing either a company or the Commission to disclose said protected information if necessary	• This is to ensure compliance to the international standards on data protection, including the Nigeria Data Protection regulation 2019.	There are no foreseeable limitations.
18.	**Common seal of companies.** The requirement to have a common seal will now be made optional for companies, the use and design of which would be regulated by their Articles.	• This will facilitate ease of decision making and processing of documents.	There are no foreseeable limitations.
19.	**Financial Assistance to existing and potential shareholders.** The new Bill proposes amendments to the financial assistance provisions of CAMA 1990 by including a provision that allows a company to provide financial assistance to its members for the purpose of acquiring it shares with the approval of other shareholders.	• This will improve companies' chances of attracting potential investment since there are now provisions in the Bill that enable shareholders and potential shareholders to access funds.	There are no foreseeable limitations.
20.	**Disclosure of Persons with significant control/Beneficial Ownership.** The new bill now requires private companies to disclose the particulars of any shareholder holding at least 5% of the voting rights in the company.	• This will foster transparency and reduce asset shielding.	There are no foreseeable limitations.

	This disclosure was initially required for public companies with a threshold of 10%.		
21.	**Ease of the process of Reduction of Share Capital** The bill allows private companies to effect a reduction in their share capital by means of passing a special resolution and filing a copy of the minutes of the meeting of the Board of Directors showing the stipulated details of the reduction, without no longer having to apply for a court confirmation as currently obtainable.	• Reduces burden associated with unduly longer court approvals.	Under the CAMA 1990, the treatment for private and public companies with respect to the process by which they may reduce their share capital is the same. Current global best practice is to make a distinction between private and public companies.
22.	**Acquisition by a Company of its own shares.** The bill now permits both public and private companies limited by liability to acquire its own shares, subject to the satisfaction of the conditions stat- ed under Section 185 to 187 of the bill.	• This accords to companies an option of reducing cost of capital. • Companies can consolidate ownership by leaving shares in the hands of a few shareholders.	There are no foreseeable limitations.
23.	**Private Companies may no longer need to keep Register of Secretaries.** The Bill proposes that Every public company should maintain a register of secretaries. The need to include this in the new bill may suggest an exemption for private companies.	• This provision will reduce the amount of paper work for private companies.	There are no foreseeable limitations.
24.	**Public Companies are required to keep and display their audited accounts.** The Bill provides that Public companies are to display their audited ac- counts on their websites so that the public is kept informed of their activities.	• This requirement is in line with the Securities and Exchange Commission Consolidated Rules 2013 which requires a public company to publish its accounting policies, notes and other relevant information on its website which address should be dis- closed in a newspaper publication	There are no foreseeable limitations.

25.	**Company insolvency** The Bill expands the scope of options available to a company in distress to now include "Administration". Administration serves as a rescue mechanism for insolvent entities and allows such entities to carry on running their businesses. The existing laws on insolvency enables a company in distress to explore options such as winding-up, merger, acquisition, and compromise. On the hand, the "Administration" option focuses on rescuing the company in distress.	• There is now a likelihood that more businesses may survive through their insolvency phase.	There are no foreseeable limitations.
26.	**Electronic Notice** In addition to the notice given personally or by post, notice may now also be given by electronic mail to any member that has provided an electronic mail address.	• This will further facilitate ease of communication for businesses.	There are no foreseeable limitations.
27.	**Power to Consolidate Incorporated Trustees** Section 823 of the Bill empowers the Commission to direct that an association be treated as forming part of an already registered association, or that any two or more associations having the same trustees be treated as a single association.	• The main reason for this is the curbing of multiple incorporations of Incorporated Trustees by the same group of people un- der the guise of different incorporated names. Incorporated Trustees may, on their own, merge under such terms and conditions as may be prescribed by the Commission. • This is will enable NGOs engaged in the same or similar area of activities to reduce their cost by consolidation.	There are no foreseeable limitations.
28.	**Review of Fines and penalties.** The bill has left a number of fines open ended. While some have been reviewed upwards.	• This will most likely empower the Commission to periodically review the applicable fines to ensure that it is in compliance with current value of money.	There are no foreseeable limitations.

29.	**Suspension of Trustees and Appointment of an Interim Manager.** The Bill now empowers the Commission to suspend trustees of an association and appoint interim managers to manage the affairs of the association where the Commission reasonably believes that there is a misconduct or mismanagement in the administration of the association; the affairs of the association are being run fraudulently, among others.	• This is to further put a check on the activities of NGOs and to ensure that their operations are being run in compliance with best practices.	There may be a need for the commission to have proceedings aimed at allowing for fair hearings of aggrieved parties.
30.	**Bi-Annual Statement of Affairs and Accounting Records of Incorporated Trustees.** The Bill brings about a new requirement for the trustees of an association to submit a bi-annual statement of affairs of the association to the Commission.	• This will better foster accountability and stewardship.	There are no foreseeable limitations.
31.	**Modified financial statements of companies qualifying as small companies.** Companies qualifying as small companies are now only required to deliver modified balance sheet of their affairs to the commission and not necessarily a full balance sheet. Profit or loss ac- count also need not be filed with the commission.	• This will reduce administrative work and cost associated with providing a full fledge financial statements for filing with the com- mission.	There are no foreseeable limitations.
32.	**Appointment of independent Directors for public companies.** Section 275 of the bill requires public companies to have at least three independent directors. Subsection 3 further defined who an independent director is, this including, among others, any person, not owning more than 30% of any type of shares in the company.	• This will further foster steward- ship and accountability in public companies. • It will also consolidate existing codes of corporate governance for public companies.	There are no foreseeable limitations.

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