The Companies and Allied Matters Act 2020 - Key Highlights

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On August 7, 2020, the Special Adviser to the President on Media and Publicity, Chief Femi Adesina, announced that President Muhammadu Buhari had signed the Companies and Allied Matters Act 2020 ("CAMA 2020") into law. Prior to the signing of CAMA 2020, the extant law that regulated the operation of companies and other forms of business associations was the Companies and Allied Matters Act 1990 and its amendments ("the Old CAMA").

CAMA 2020 ushers in welcome developments that will not only ease the administration and management of corporate entities but also embrace the technological advancements and realities that have rendered provisions in the Old CAMA obsolete.

We have set out below summaries of the key changes and introductions ushered in by CAMA 2020.

1. **Single Shareholder for Private Companies**. Unlike under the Old CAMA that required a minimum of 2 (two) shareholders for the formation of a company, CAMA 2020 allows private companies to be incorporated with a minimum of 1(one) shareholder.

2. **Restrictions on Transfers of Shares and Assets for Private Companies.** CAMA 2020 has introduced pre-emptive rights in favour existing shareholders of a private company where a shareholder intends to transfer its shares to a third party. The shares are required to be first offered to the existing shareholders. Also, a private company may not transfer assets with a value of 50% of the total assets of that company without the consent of all its shareholders. These restrictions are, however, not compulsory and ultimately subject to the provision of the articles of that company.

3. **Consent of the Attorney-General of the Federation for Ltd/Gte.** Though the consent of the Attorney General of the Federation (the "**AG**") is still required to register a Ltd/Gte, CAMA 2020 provides that where all valid documents are furnished and no decision has been made by the AG within a 30 day period, the promoters of the Ltd/Gte shall: (a) place an advertisement in 3 national daily newspapers, and (b) invite objections, if any, after which the Corporate Affairs Commission (the "**CAC**") shall having regard to all the circumstances assent, register and issue a certificate of incorporation to the Ltd/Gte without the AG's consent.

4. **Abolition of Authorised Share Capital and Introduction of Minimum Issued Share Capital**. Companies are no longer required to have an authorised share capital which accommodates an unissued share capital. Companies are now only required to have a minimum issued share capital without room for any unissued share capital. The minimum issued share capital shall not be less than ₦100,000 in the case of a private company and ₦2,000,000 in the case of a public company.

5. **Increase of Share Capital.** A company's issued share capital is increased where the company in general meeting through an ordinary resolution allots additional shares to its shareholders. At least 25% of the issued share capital is now required to be paid up.

6. **Objects of a Company.** CAMA 2020 provides that the objects of a company shall be unrestricted unless specifically restricted by that company in its articles.

7. **Declaration of Compliance**. The declaration of compliance required when a company is registered may now be merely signed by an applicant or its agent. Prior to this change, a declaration of compliance was required to be signed by a legal practitioner and attested before a commissioner for oaths or notary public.

8. **Common Seal Requirement**. The previous requirement for a company to have a common seal is no longer mandatory.

9. **Recognition of Electronic Signatures.** Electronic signatures are now recognized as a valid means of authentication of a document by an authorized signatory of a company.

10. **Execution of Deeds by Companies**. A company may now execute a deed without affixing its common seal so long as it is executed on behalf of the company by at least two directors, or a director and a secretary, or one director whose signature shall be attested to by at least one witness.

11. **Significant Control**. Persons with significant control over a company are required to disclose their interest to the company. Persons with significant control are persons that hold at least 5% of the voting rights, shares or interest in a company or limited liability partnership; have the power to appoint or remove a majority of the board or partners of a limited liability partnership; or exercise significant influence over a company or limited liability partnership. Companies are also required to disclose these persons in their annual return filings.

12. **Issue of Shares at a Discount**. Companies are now absolutely prohibited from issuing shares at a discount.

13. **Irredeemable Preference Shares**. Companies limited by shares are prohibited from issuing irredeemable preference shares.

14. **Valuation of Consideration other than Cash for Shares**. The requirement for an independent valuer to value consideration other than cash is now restricted to public companies.

15. **Share Buyback and Treasury Shares**. A company may now, with the satisfaction of certain conditions, buyback its own shares. Also, CAMA 2020 introduces the concept

of treasury shares which refers to shares in a company's share capital which the company holds in proprietary capacity and enjoys legal, beneficial and economic interest of. A company may only hold a maximum of 15% if its shares as treasury shares.

16. **Reduction of Registration Cost for Registration of Charges**. The fees payable to the Corporate Affairs Commission ("**the Commission**") for the registration or release of a charge shall not exceed 0.35% of the value of the charge.

17. **Annual General Meetings**. Companies with a single shareholder and small companies are not required to have annual general meetings.

18. **Virtual meetings**. Shareholders of private companies are allowed to convene general meetings electronically where their articles so permit.

19. **Service of Notices Electronically**. Notice of general meetings may now be sent to e-mail addresses provided by shareholders.

20. **Compensation of Managers**. The compensation of managers of a company is now required to be disclosed the shareholders of a company in general meeting.

21. **Minutes of Meetings**. Companies with single members are not required to keep minutes of meetings. Also, in the case of a company that has only one member, where such member takes any decision that may be taken by the company in general meetings and has effect as if agreed by the company in general meeting, the single shareholder shall provide the details of the decision to the board of directors.

22. **Minimum Number of Directors**. Small companies are permitted to have less than two directors.

23. **Second/Casting Vote**. The requirement for the chairman of a company to have a second or casting vote may now be varied by the articles of a company.

24. **Independent Directors**. Public companies are now required to have at least three independent directors. An independent director is a director who, or whose relatives either separately or together with him or each other, during the two years preceding the time in question was not an employee of the company, did not own directly or indirectly more than 30% of the shares of any type or class of the company.

25. **Register of Directors Residential Addresses**. Companies are now required to keep registers of residential addresses of directors.

26. **Company Secretary**. Small companies are not required to appoint company secretaries.

27. **Investigation of a Company by the Commission**. An investigation may only be conducted on the application of members holding at least one-tenth of the company's issued shares and in the case of a company not having a share capital, on the application of at least one-tenth in the number of persons on the company's register of members.

28. **Publication of Accounts on Website**. Public companies are required to publish their audited financial statements on their websites.

29. **Introduction of the Financial Reporting Council of Nigeria**. CAMA 2020 replaces (a) Nigerian Accounting Standards Board with "*Financial Reporting Council of Nigeria"* and (b) Institute of Chartered Accountant of Nigeria Act with "*any Act establishing a body of Accountants*".

30. **Definition of a Small Company.** The new turnover amount and net assets value for a small company is "*not more than ₦120,000,000 and ₦60,000,000*" respectively.

31. **Composition of Audit Committee**. CAMA 2020 has changed the erstwhile composition of the audit committee of a public company. The members of the audit committee of a public company shall now be 5(five) with 3 (three) shareholders and 2(two) non-executive directors. At least one of the members is required to be a member of a professional accounting body in Nigeria established by an Act of the National Assembly.

32. **Certification of the Audited Financial Statements**. The audited financial statements of a small company are not required to be certified by its chief executive officer and chief financial officer.

33. **Filing of Returns**. CAMA 2020 introduces an application by a company for an extension of time to file its annual returns after the prescribed 42days. However, this does not apply to companies with only one member. Also, documents required to be annexed to an annual return can be delivered in either hard copies or via electronic communications.

34. **Certification by Small Companies**. A small company is required to annex with its annual returns a certificate stating that annual turnover is not more than ₦120,000,000 (One Twenty Million Naira) and its net assets value is not more than ₦60,000,000 or as may be fixed by the Commission.

35. **Defunct Companies**. Failure to file annual returns for a consecutive period of 10 years is a ground for striking the name off the companies register.

36. **Unclaimed Dividends**. CAMA 2020 requires a company to publish in two national newspapers a list of the names of the persons entitled to unclaimed dividends and attach same to the notice of its next AGM. Dividends that are unclaimed after 12 years should be included in the profits that should be distributed to other shareholders of the company.

37. **Voluntary Arrangements**. CAMA introduces a proposal for voluntary arrangement to be made by the directors of a company to its creditors for a scheme or arrangement of its affairs or composition in satisfaction of its debts. The proposal may only be made where (i) an administration order is in force in relation to the company, and (ii) the company is being wound up by a liquidator.

38. **Appointment of Administrators**. An administrator may be appointed over the affairs of company by (i) an administration order of the court, (ii) a holder of a floating charge, or (iii) the company or its directors. The administrator shall manage the affairs, business and property of the company for the purpose of rescuing the company, achieving the best result for the company's creditors and realizing property to distribute to the company's creditors or preferential creditors. An application for an administrative order may be made by; (i) the company; (ii) the directors; (iii) one or more creditors of the company; (iv) a designated officer of the Federal High Court to act as a receiver; (v) a combination of the persons listed in (i)- (iv). An administrative order is only one of the ways through which an administrator may be appointed. Generally, upon the making of an administration order by the court, any petition to wind-up the concerned company shall be dismissed.

39. **Powers of Administrators**. The administrator has all-encompassing powers to do anything expedient for the management of the affairs business and property of the company such as removing or appointing a director whether or not a vacancy exists and taking custody and control of the property of the company. In furtherance of the administrator's powers, officers of companies in administration require the consent of the administrator prior to exercising any management power. An administrator may, by the order of the court, dispose of property that is the subject of security (other than a floating charge which does not require the order of the court) and dispose of property that is subject to a hire-purchase arrangement. The powers of the administrator may be subject to scrutiny where a creditor applies to court for an examination of the conduct of the administrator.

40. **Tenure of Office of An Administrator**. The tenure of office of an administrator shall cease automatically within a year of his/her appointment except extended by an order of court or the creditors of the company.

41. **Fraudulent Preference**. The definition of what constitutes fraudulent preference is now more detailed. It has also been extended to include circumstances where a company is in administration and not just when it is being wound up.

42. **Liability of Directors on Insolvent Winding Up**. Past and current directors of companies undergoing insolvent winding up are liable to make contributions in the event that such directors knew or ought to have concluded at some time before the commencement of the winding up of that company, that there was reasonable prospect that the company would avoid going into insolvent liquidation.

43. **Schemes**. Schemes, whether for mergers, arrangements, reconstruction or compromise, may now be between two or more companies. These provisions have now created a structure for companies to undergo merger schemes after the repeal of sections 118 to 128 of the Investments and Securities Act 2007 by the Federal Competition and Consumer Protection Act 2018.

44. **Netting Provisions**. CAMA 2020 has introduced provisions applicable to netting transactions, the classification of qualified contracts to be which netting agreements may be based upon and the enforceability of a netting agreement in insolvency proceedings.

45. **Limited Liability Partnerships**. CAMA 2020 has introduced limited liability partnerships ("**LLP**"). An LLP is a corporate body capable of suing and being sued in its own name and to be registered with at least two partners. An LLP is a legal entity separate from its partners. LLPs are required to have at least two designated partners who shall be responsible for the acts, matters and things required of the LLP. Foreign limited liability partnerships are required to be registered in Nigeria prior to carrying on any business in Nigeria. LLPs may be wound up voluntarily by the partners or by the court and thereafter dissolved. Persons with significant control of an LLP are required to disclose their interest to the Commission and the LLP is required to maintain a register of such persons.

46. **Limited Partnerships**. CAMA 2020 allows the formation of limited partnerships ("**LPs**"). The partners of an LP shall not exceed 20. An LP is required to have a general partner who shall be liable for the debts and obligations of the partnership and at least one or more persons who shall be the limited partners. A partnership that carries on business as a limited partnership is required to be registered with the Commission. Where a limited partnership is not registered with the Commission, it is deemed to be a general partnership and all the partners shall be deemed to be general partners. Therefore, any limited partnership registered under any statute is required to be re-registered with the Commission. Unlike a limited liability partnership, a limited partnership does not have a separate legal personality from its partners.

47. **Mergers of Associations**. Associations registered as incorporate trustees may now be merged subject to the provisions of CAMA 2020.

48. **Administrative Proceedings Committee**. CAMA 2020 establishes an Administrative Proceeding Committee charged with the duty to resolve disputes arising from the operation of CAMA 2020.

49. **Electronic Filings.** CAMA 2020 allows any documents required to be filed with the Commission to be filed electronically and further allows certified true copies of documents filed electronically to be admissible in evidence as of equal validity with the original documents.

50. **Prescription of Fines by the Commission**. Generally, under CAMA 2020, the CAC is now required to prescribes penalties and fines for non-compliance with the provisions of CAMA 2020 by regulations.

In the coming weeks, we will release a series of publications to be dubbed "The CAMA 2020 Series" which will expand on the most significant changes and introductions under CAMA 2020. These series will be available on our website at https://www.gelias.com.

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