



LEGISLATIVE REFORMS IN NIGERIA AND THE DEPLOYMENT OF NEW TECHNOLOGICAL SOLUTION FOR ALL REGISTRATION SERVICES

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OVERVIEW OF PRESENTATION

1. Introduction

2. Legislative reforms

3. Deployment of new technological solution for services



INTRODUCTION

The Corporate Affairs Commission (CAC) is the Agency of Government in Nigeria charged with the administration of the Companies and Allied Matters Act, including the registration, regulation and supervision of –

- (i) the formation, incorporation, management, striking-off and winding-up of companies and limited liability partnerships;
- (ii) registration, management, winding-up of limited partnerships and removal of business names from the register, and
- (iii) formation, incorporation, management and dissolution of incorporated trustees

The CAC was originally established by the Companies and Allied Matters Act, 1990. The Act was repealed and a new Companies and Allied Matters Act enacted in 2020. The new legislation saved all actions undertaken under the repealed legislation, including the establishment of the Commission.



LEGISLATIVE REFORMS: THE COMPANIES AND ALLIED MATTERS ACT 2020 (CAMA)

The Companies and Allied Matters Act 2020 (CAMA) redefined business practice and regulation in Nigeria, particularly in the areas of starting business, Micro, Small and Medium Enterprises (MSME) regulations, stakeholder engagements, ownership information as well as insolvency resolution. After three decades, it was clear that its precursor (the Companies and Allied Matters Act 1990) had become inadequate to deliver the required environment to foster business start-up and growth in Nigeria.

While the CAMA was signed into law on Friday, 7th August 2020, the implementation commenced on Friday, 1st January 2021.

Principal Objectives of CAMA

The principal objectives of CAMA is to promote business integrity and prosperity. It seeks to achieve this through the following measures, amongst others –

- Removal of burdensome pre and post entry requirements/regulations;
- Reduction of entry and governance costs;
- Introduction of flexibility and scalability to compliance prescriptions and regulations;
- Enhancement of minority investor participation and protection;
- Promotion of integrity and transparency in company proceedings.



Some Areas of Reforms in CAMA 2020

1. Single Shareholder Company - Sections 18, 118, 237, 266, 271, 330, 402

- Must be a private Company (Section 18 (2))
- Not applicable to Company limited by guarantee (Section 118)
- No obligation to hold general meeting (Section 237)
- No obligation to keep minute books (Section 266 (1))
- May have one Director if it is a small company (Section 271)
- No obligation to appoint Secretary if it is a small Company (Section 330)
- No obligation to appoint Auditors if it is a small Company (Section 402)

2. Company Limited by Guarantee - Sections 26 and 27

- Attorney-General of the Federation (AGF) now has 30 days to respond to an application for consent to register the memorandum of a Company Limited by Guarantee
- Failing the response of the AGF within the prescribed 30 days, application shall be advertised in three national newspapers and shall invite objections within 28 days of the last publication
- Objection may be upheld or rejected depending on the merits
- Total liability of members shall not at any time be less than N100,000



3. Share Capital - Sections 27, 124 and 868; Regulation 13

- Abolition of the concept of “Authorised Share Capital”
- Introduction of the concept of “Issued Share Capital”
- Minimum issued share capital for Private Company now N100,000
- Minimum issued share capital for Public Company now N2,000,000
- “share capital” now means *“the issued share capital of a company at any given time”*

4. Statement of Compliance in Place of Declaration of Compliance - Section 40

- Requirement for statutory declaration of compliance dispensed with
- A simple statement of compliance by a Director is sufficient

5. Shares - Sections 142, 146, 147, 162, 180, 182, 184, 187

- Pre-emptive rights of existing shareholders
- Prohibition of issue of shares at a discount
- Prohibition of irredeemable preference shares
- Restriction of valuation report for shares paid for other than by cash to Public Companies only
- Extension of a Company’s lien on shares to bonus shares issued in relation to such shares
- Preference shares now to be redeemable on terms of issue also
- Protection of interest of any person claiming interest in any share, dividend or interest thereon



- More elaborate provisions for share buyback –
 - only fully paid up shares
 - must be permitted by the articles
 - must be approved by special resolution
 - notice of proposed buyback must be published in two national newspapers
 - must be supported with statutory declaration of solvency
 - such buyback shall not result in the Company having only redeemable shares or treasury shares
 - no exercisable rights on treasury shares
 - no dividends to be paid or distribution made in respect of treasury shares

6. Persons with Significant Control (PSC) - Sections 119 and 791

- Obligation on PSC to notify the Company or Limited Liability Partnership
- Obligation on Company or Limited Liability Partnership to notify CAC
- Company or Limited Liability Partnership to maintain register of PSC
- PSC means any person –
 1. directly or indirectly holding at least 5% of the shares or interest in a Company or Limited Liability Partnership;
 2. directly or indirectly holding at least 5% of the voting rights in a Company or Limited Liability Partnership;



3. directly or indirectly holding the right to appoint or remove a majority of the directors or partners in a Company or Limited Liability Partnership;
 4. otherwise having the right to exercise or actually exercising significant influence or control over a Company or Limited Liability Partnership; or
 5. having the right to exercise, or actually exercising significant influence or control over the activities of a trust or firm whether or not it is a legal entity, but would itself satisfy any of the first four conditions if it were an individual
3. (*Section 868*)

7. Small Companies - Sections 237, 330, 394, 402; Regulation 19

Turnover and Net Assets thresholds increased to allow more companies qualify and enjoy the benefits and forbearances in the Act –

- No obligation to hold AGM (Section 237)
- No obligation to have a Secretary (Section 330)
- No obligation to appoint Auditors (Section 402)

8. Annual General Meeting (AGM) - Sections 237, 238, 240, 243, 257; Regulation 49

- No obligation on small and single shareholder Company (Section 237)
- Ordinary business of AGM now includes disclosure of remuneration of Managers (Sections 238 and 257)
- Manager in this context “includes any person by whatever name called occupying a position in senior management and who is vested with significant autonomy, discretion and authority in the administration and management of the affairs of a company (whether in whole or in part)” – Regulation 49 (1), Companies Regulations 2021
- Private Companies may hold electronic meetings (Section 240 (2))
- Electronic meeting must be permitted by and the rules provided for in the Company’s articles (Section 240 (2))
- Commission now included on list of persons entitled to receive notice of AGM in the case of Public Companies (Section 243 (1))

9. Public Companies - Sections 265, 275, 278, 307, 374

- Separation of the office of the Chairman from the office of the Chief Executive Officer (Section 265 (6))
- Obligation to have Independent Directors (Section 275)
- Obligation on any person proposed to be appointed as Director to disclose multiple directorship in any other Public Company (Section 278 (2))
- Restriction of directorship in public Companies to not more than five (Section 307 (7))
- Display of audited accounts on Company website (public companies)



10. Audit Committee (Public Companies) - Section 404

- Membership of Audit Committee to now comprise three (3) Members and two (2) non-executive Directors
- Financial literacy now a requirement for all Members
- At least one Member must be a Member of a professional accounting body in Nigeria established by an Act of the National Assembly

11. Protection of Minority Investor - Sections 22, 142, 238, 257, 265, 275, 303, 310, 344, 346

- Consent of all members before a Private Company may sell assets of a value of more than 50% of its total asset value (Section 22 (2))
- Newly issued shares must first be offered to existing shareholders (Section 142 (1))
- Disclosure of remuneration and compensation of Managers (Sections 238 and 257)
- Separation of the Office of the Chairman from the Office of the Chief Executive Officer in Public Companies (Section 265 (6))
- Independent Directors on Board of Public Companies (Section 275 (1))
- Disclosure in writing by Directors of direct or indirect interest in any transaction or proposed transaction with the Company with particulars of such interest specified (Section 303 (1))



- Prohibition of acquisition of non-cash assets of a value of more than 20% of the issued capital of a Company from or sale of same to a Company by a Director or Controlling Shareholder or persons connected to them without the approval by resolution of the Company in general meeting (Section 310; Companies Regulations)
- Personal liability of Directors in damages to shareholders arising from the formers' wrongdoing (Section 344 (1) (2))
- Right of Shareholder Plaintiff to request categories of documents without identifying specific documents (Section 366 (4))

12. Company Voluntary Arrangement - Sections 434 – 442

Company Voluntary Arrangement allows an insolvent Company to make a proposal to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs. The proposal involves the appointment of a Nominee and Supervisor to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation. Only a person qualified to act as an insolvency practitioner in relation to the Company may be appointed a Nominee/Supervisor.



13. Administration of Company - Sections 443 -549

- A business rescue mechanism that provides for the appointment of a person known as the “*Administrator*” to take over the control of an insolvent company with the primary objective of rescuing the Company, the whole or any part of its undertaking, as a going concern (Ss. 444 (2); 505).
- The Administrator must be a person qualified to act as an insolvency practitioner in relation to the Company (S. 447 (1))
- The following persons may appoint an Administrator by an Administration Order of the Court, –
 - The Company;
 - The Directors;
 - One or more Creditors of the Company;
 - The Designated officer of the Federal High Court (the Court) appointed to act as a Receiver;
 - Two or more of the persons afore-listed.
- The holder of a floating charge which empowers him to appoint an Administrator or a Receiver may appoint an Administrator.
- The Company and Directors of the Company may appoint an Administrator out of Court.



14. Administrative Proceedings Committee - Sections 851 – 858, Regulations 38 - 45

- Faster and cheaper resolution of non-criminal disputes/grievances arising from the operations of the Act or its regulations.
- To hear non-criminal disputes relating in particular to –
 - names of Companies, Limited Liability Partnership, Limited Partnerships, Business Names and Incorporated Trustees;
 - shares in Private Companies; and
 - appointment or removal of directors, partners or trustees.
- Parties may attend in person or be represented by Legal Practitioners.
- Determination of issues is by simple majority of Members present.
- Chairman or presiding Member has casting vote in case of equality of votes.
- Decisions of the Committee are subject to confirmation by the Board of the Commission.
- Parties may appeal decisions of the Committee to the Federal High Court.
- Administrative Proceedings Committee may impose any or all of the following sanctions –
 - Administrative penalties
 - Suspension or revocation of registration.
 - Recommendation for criminal prosecution if matter brought before it reveals any criminal act or conduct



LEGISLATIVE REFORMS: REGULATIONS

In order to complement the implementation of CAMA 2020, it was necessary to revise the existing regulations as well as make new regulations to accommodate the expanded and new provisions in the law.

Companies Regulations 2021

The Commission updated the Companies Regulations 2012 (CR) to complement the full application of the Act. The application of the CR 2021 commenced on 1st January 2021 alongside the implementation of the Act.

The CR contains procedural prescriptions for certain transactions, revised application forms, fees and penalties. It also exhibits relevant model articles for companies pursuant to Section 34, CAMA.

Through the Regulations, filing fees for registration of all entities under the CAMA were reduced by the elimination of fees hitherto payable by Customers to obtain certified true copies of documents at registration. Certified extracts of entities' information at registration are now issued by the Commission at no cost to Customers.



Insolvency Regulations 2022 (IR)

The Commission developed and published the Insolvency Regulations 2022 (IR) upon the approval of the Honourable Minister for Industry, Trade and Investment. The IR complements the copious provisions of CAMA by facilitating a framework for the regulation of insolvency proceedings, including –

- ✓ accreditation and re-accreditation of insolvency practitioners;
- ✓ prescription of additional qualifications to act as an insolvency practitioner;
- ✓ designation of a body as a recognised professional body for the purpose of insolvency practice.

In scope, the IR applies to the following proceedings–

1. Company Voluntary Arrangement
2. Administration of Companies
3. Receivership/Managership
4. Winding-up by the Court
5. Creditors' Voluntary Winding-up
6. Arrangements and Compromise
7. Netting
8. Dissolution of Incorporated Trustees



The IR does not apply to the Rules of Court relating to insolvency applications made by the Chief Judge of the Federal High Court or any Court designated by an Act of the National Assembly as being vested with jurisdiction to hear cases arising out of the CAMA.



DEPLOYMENT OF NEW TECHNOLOGICAL SOLUTIONS FOR ALL REGISTRATION SERVICES

Ahead of commencement of the implementation of CAMA, the Commission took steps to upgrade the Company Registration Portal (CRP) to a fully electronic registration solution in order to accommodate the expanded and new registration requirements of the Act. The upgraded CRP is an end-to-end electronic registration solution which allows accredited customers and the general public to initiate and complete registration and post registration applications electronically as well as generate outputs remotely. This digital solution has improved access to and reduced timelines for the Commission's services while shrinking processes and standardizing service requirements.

Notable features of the upgraded CRP include:

1. Generation and Printing of Tax Identification Number (TIN) on Certificate of Incorporation

The Commission collaborated with the Federal Inland Revenue Service (FIRS) to merge the process of obtaining Tax Identification Number (TIN) for Companies upon registration. The TIN is automatically generated and printed on the incorporation certificate upon completion of the incorporation process on the CRP. This reform eliminated the time that was hitherto associated with applying for and obtaining TIN from the FIRS by Companies after incorporation.



2. Integration of Data Submission and Document Upload

The CRP has integrated the interfaces for data submission and document upload to ensure more efficient, faster and seamless registration services

3. Submission of Signatures Electronically

Consistent with the provisions of CAMA, the CRP allows the submission of signatures electronically where they are required for applications. These signatures may be scanned and uploaded on the CRP.

4. E-Certificates

Incorporation and other certificates are electronically generated for customers. The certificates come with a Quick Response (QR) Code. The QR Code facilitates quick verification of the genuineness of the certificates.

5. E-certified Extracts

Except for memorandum and articles of association for companies, partnership agreements, incorporated trustees constitutions and financial statements generally, the Commission no longer issues certified true copies of documents containing personal information of promoters, officers, partners or trustees. Instead, e-certified extracts are issued with QR Code for instant verification.



6. Electronic Search and Certified Extracts

The electronic search service allows customers to view the information of the entity at a cost of N1,000.00. It affords the customer the same opportunity to make his own examination of the information on the entity and extract whatever information he needs as if it were a manual search. However, the customer may only view the information. Where he desires to have any of the information certified by the Commission, he proceeds to apply for certified extracts of the entity's information and this is promptly generated for the customer electronically.

7. Entity Electronic Account (EEA)

The EEA is the online account that allows registered entities to submit documents and statutory returns to the Commission on the Company Registration Portal. Any information, document or return submitted through the EEA is deemed duly authenticated.

The EEA affords the following benefits, amongst other:

- reduction in the cost of submitting documents and statutory returns to the Commission by making the use of accredited agents optional;
- reduction in service timelines through direct access to service; and
- elimination of signature for authentication of documents or returns submitted for filing.



CONCLUSION

Legislative reforms and the deployment of new technological solution for registration services in Nigeria has enhanced integrity and efficiency in the regulation of businesses by promoting the ease of starting and growing business; ensuring a more appropriate regulatory regime for MSMEs; facilitating transparency and stakeholder engagement; and aligning the regulatory framework with international best practice. While it is appreciated that a lot of reforms have been undertaken in company regulation and registration processes, it is also recognised that more reforms are desirable to attain the standard of a world class Corporate Register.

Thank you.

