



Grant Thornton

Companies and Allied Matters Act, 2020

- Highlights of Changes and New Enactments





Introduction

President Muhammadu Buhari on Friday, 07 August 2020 in Abuja assented to the Companies and Allied Matters (CAMA) Bill, 2020 recently passed by the National Assembly.

The Companies and Allied Matters Act, 2020 repeals the Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004 to provide for the incorporation of companies, limited liability partnerships, limited partnerships, registration of business names together with incorporation of trustees of certain communities, bodies, associations.

In a bid to promote investments, create more jobs and boost investors' confidence, The CAMA 2020 is more regulatory friendly as it reduces regulatory hurdles, eases business environment and minimizes the compliance obligation of small and medium scale enterprises (SMEs). All these are expected to ameliorate the economy and increase gross domestic product (GDP).

Small To Medium Enterprises



Main Highlights

1. Pre-action notice and restriction on levy of execution (Section 17)

This was not included in the previous act. This was introduced in order to give the Commission (the defendant) a breathing time to meet the plaintiff either to think of reparation or negotiate an out of court settlement. Section 17(1) gives a minimum period of 30 thirty days before a plaintiff or its agent could file a suit against the commission, after a written notice to file such suit is served upon the commission. Subsection 2 of section 17 also specifically stipulates the requirements of the notice.



2. Right to form a Company (Section 18)

Subsection 1 of this section maintains that any two or more persons may form a company provided that the requirements of this Act are met. **However, one person may now form a private company in accordance with the provision of S.18 (2). The act further stresses that no company shall be incorporated or formed for an unlawful purpose.**



3. Private Company - Transfer of shares restriction (Section 22)

The new Act now suppresses the rigidity faced by private firms regarding the restriction on the transfer of shares. It now places discretion on private companies to restrict the transfer of shares subject to the provision of the article.

In order to promote transparency and protect the shareholder, Paragraph “a” of subsection 2 stipulates that the company shall not sell over 50% of the total assets of the company without the consent of its members. Paragraph “b” also states that a member shall not sell its shares to a non-member without first offering it to an existing member. In conclusion to subsection 2, paragraph “a” states that a member or group members shall not agree to sell over 50% of the shares in the company to a non-member except that he (non-member) has offered to buy all the existing members interest on a uniform terms.

4. Companies limited by Guarantee (Section 26).

Under the previous Act, section 26 gives the

Attorney-General the authority to register a company limited by guarantee. In order to drive business activities, the new Act now gives a time frame of 30 days in which the Attorney-General is expected to grant authority to the promoters of the company (limited by guarantee) where there are no objections to the memorandum or cogent reasons to deny the approval to register the company. Subsection 6 of this section further stresses that where further information is required from the promoter, the 30 days period shall begin on the receipt of such information. Subsection 7 states the procedures to be followed peradventure all necessary documents have been submitted and no decision has been made by the attorney.

5. The concept of minimum Issued Share Capital (Section 27)

The concept of minimum issued share capital replaces the old concept of authorized share capital. Subsection 2 of section 27 states clearly that the memorandum of association



shall state the minimum issued share capital of private companies and public companies. The new minimum issued share capital for private and public companies shall not be less than Hundred Thousand Naira and Two Million Naira respectively.

6. Statement of Compliance (Section 40)

This replaces the old section 40 (effects of reliance of restrictions in the memorandum) which is now section 45 of the new act. According to the new act, the applicant or his agent shall deliver a statement of compliance to the Commission. This statement of compliance shall state that the requirements of this act as to registration have been complied with and nothing in the act prevents the Commission from accepting the declaration which is signed by a legal practitioner and attested before the commissioner for oath or Notary Public.

7. Common Seal of the Company (Section 98)

The new act places an option on companies to acquire a common seal. Where a company decides to acquire a common seal, the common seal shall be regulated by the company's articles and it shall have its name carved in legible characters on the seal. The

section reduces the rigidity posed by section 78 and 604 of the previous act on common seal; it used to be a compulsory requirement.

8. Registration of Charges (Section 222)

The new act specifically states that the total fees payable to the Commission in connection to filing, registration and release of charge with the commission shall not exceed 0.35% of the value of the charge or such other amount that the minister may specify in the federal government gazette.

9. Annual General Meetings (Section 240)

Small companies or companies having a single shareholder are not obligated to hold AGMs. According to the new Act, the meeting can now hold electronically for private



companies, provided that it does not contravene with the provisions of the article. This was specifically stated in subsection 2 of the Act. Small companies and companies



with single shareholders have the privilege of not holding all statutory meetings and AGMs in Nigeria.

10. Powers and duties of the Chairman of the General Meeting (Section 265)

In order to uphold good corporate governance practice, subsection 6 of this section specifically states that the chairman of a public company shall not also act as the chief executive officer of that company.

11. Multiple Directorship (Section 307)

The previous Act under section 281 did not give a maximum number of multiple directorships. It accommodated multiple directorships, as long as this does not derogate from the fiduciary duties to each company. The new act specifically states that a director shall not be a director of more than five public companies. If anybody holds a position of a director in more than five public companies, this shall be made known at the annual general meeting after the expiration of two years from the commencement of this act. The person shall resign from all but five of these companies. This can be seen in subsection 2 and 3 of this section.



12. Appointment of a Company Secretary (Section 330)

The appointment of a company secretary mandated by the previous act, in line with the provision of section 293 of the previous act has been made more flexible for small companies in the new Act. **Small companies are no more mandated to appoint a secretary.** Subsection 2 of this act also gives all public companies that are yet to appoint a secretary the grace of 6 months to appoint a secretary after the commencement of the new act.

13. Qualification of a Small Company (Section 394)

There are some significant amendments to the previous section 351 (qualifications of a small company). The most significant among all is the modification of the maximum amount of turnover and net assets. The new act states that a Company shall be qualified as a small company if its turnover and net assets are not more than N120,000,000 and N60,000,000 respectively, or such amount as may be fixed by the Commission. **The Commission may be issuing a regulation to harmonize these requirements to those stated in the Finance Act 2019.**

14. Exemption from Audit requirement

(Section 402)

The new Act exempts all small companies as defined by section 394 and companies incorporated but yet to commence business from any audit of account in respect of a financial year.

15. Limited Liability Partnership (Section 746-794)

This is a distinctive feature of the new Act. The act states that any two individuals or a body corporate can form a limited liability partnership provided that the person is of a sound mind and such individuals or body corporate is not an undeclared bankrupt. The limited liability partnership shall be an artificial person distinct from the owners, have a perpetual succession and any change in its partnership shall not affect the existence, right or liability of the business.

A foreign limited partnership incorporated outside Nigeria but having the intention to carry on business in Nigeria before the commencement of this act shall not have powers of a body corporate except necessary steps to be incorporated as a separate entity in Nigeria. Section 746-794 strictly emphasized on the modalities of a



limited liability partnership. The limited liability partnership shall have the word “limited liability partnership” or “LLP” as the last words of its name.

16. Limited Partnership (Sections 795-810)

This is also a distinctive feature of the new Act. A limited partnership shall not consist of more than 20 persons. A limited partnership elicits the difference between a general partner and a limited partner. A general partner shall be liable for all the debts and obligations of the firm while a limited partner shall contribute or agree to contribute to the capital of the firm, and shall not be liable for the debts or obligations of the firm beyond the amount they've contributed.



Conclusion

All the new features and amendments are meant to promote transparency, protect owners of businesses (majority and minority), protect the Commission, encourage small businesses and improve good corporate governance practice in Nigeria. All these are expected to increase the amount of tax revenue generated by the government from corporations.



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