

CHANGES OCCASIONED BY THE COMPANIES AND ALLIED MATTERS ACT 2020

In order to promote the ease of doing business in Nigeria, the Nigerian Senate passed the Companies and Allied Matters Bill which was assented to by President Muhammed Buhari in August 2020. The new Companies and Allied Matter Act (CAMA) repeals the old Companies and Allied Matters Act of 2004. These are some of the changes occasioned by the new CAMA:

Changes Affecting Small/Private Companies

1. One person can now form and incorporate a private company. This change does not however apply to public companies.
2. The minimum issued share capital of a private company has been increased from ₦10,000 to ₦100,000.
3. Under the new CAMA, a company now qualifies as small if amongst other conditions, it is a private company and its turnover is not more than ₦120,000,000 and its net assets value is not more than ₦60,000,000
4. Small companies can now dispense with the requirements for a company secretary.
5. Small companies and companies having one shareholder are now exempted from compulsorily holding its general meetings in Nigeria and can now hold its general meetings electronically provided they are conducted in accordance with its articles.
6. The minimum number of directors in a small company is now one.
7. Small companies are exempted from the requirement to enter minutes of general meetings, meeting of directors and managers in the book provided for such records.
8. Where a company having a single member takes decision that may be taken by the company in general meetings, it will have the same effects as if agreed by a company at general meeting.
9. A company that has not commenced operations since incorporation or a small company is exempted from audit of financial accounts with the exception of insurance company, a bank or any other company as may be prescribed by the Commission.
10. By the provision of the new Act, as against the strict provision of the old CAMA that all private companies **shall** restrict the transfer of shares without more, the new provision of CAMA states that private companies **may** subject to the provision of their articles restrict the transfer of their shares.

Changes for Companies Limited by Guarantee

11. In order to ensure the quick registration of Companies limited by guarantee, the AG Fed shall now has 30 days to give consent or decline consent failure of which the promoters can advertise its application in 3 national dailies inviting objections if any after which the Commission will grant the application where there are no objections or valid objections.
12. The liability of members of a company limited by guarantee to contribute to the assets of the company in the event it is being wound up has been increased from ₦10,000 to ₦100,000.
13. The requirement for the number of members in a company limited by guarantee must not to fall below 2.

Changes Affecting Public Companies

14. The minimum issued share capital for public companies has been increased from ₦500,000 to ₦2,000,000 and the total share capital of the company shall not be less than the minimum share capital.
15. The requirement for the number of members in a public company must not to fall below 2.
16. All public companies must now have at least 3 independent directors who amongst other requirements must not have been employees of the company.
17. Public companies must maintain a register of secretaries containing particulars of the secretary.
18. Every public company is to keep its audited accounts displayed on its website. Electronic copies of registers should also be kept by public companies.
19. The register of charges kept by public companies is no longer needed to be kept open by the company to creditors and members for inspection.

Disqualification of Auditors

20. An auditor will be disqualified from appointment where he is a shareholder or spouse of a shareholder; is an employee of or consultant to the company who has been engaged for more than one year in the maintenance of any of the company's financial records or preparation of any of its financial statements.

Changes Affecting Directors of Public Companies

21. Where a director holds directorship in other public companies, he must disclose this at the meeting in which he is proposed for appointment as a director.

22. A person shall not be a director in more than five public companies and if he is, he shall at the next Annual General Meeting resign from companies in excess of 5 companies.

Changes Affecting Directors

23. The data of directors as to their usual residential address are now protected information and not to be disclosed except where the information is required for communicating with the director concerned, or in order to comply with any requirement of the Act as to particulars to be sent to the registrar. The commission shall also omit the protected information of directors on material available for inspection

Changes Affecting Companies Having Share Capital

24. The requirement for taking up 25% of the share capital of the company is now only applicable to increase in capital such that where new shares are allotted and there is an increase in share capital, if 25% of the total shares of the company is not taken up, the increase shall not take effect.
25. The new CAMA has done away with the concept of authorized share capital, and states that minimum issued share capital shall be as provided by the Act.
26. Conversion of all or any of a company's paid-up shares into stock, and re-conversion of that stock into paid-up shares of any denomination is no longer provided for by the new CAMA.
27. There are no longer conditions for issuing shares at a discount.
28. Electronic register of transfers in respect of registering shares that are transferred are now recognized by the CAMA.
29. Companies limited by shares no longer have an option to issue irredeemable preference shares.

Changes Affecting Shareholders

30. The CAMA has introduced the concept of persons with significant control which are shareholders and has mandated them to notify the company upon becoming such persons.

Changes Affecting all Companies

31. Applicants and agents of the applicant can now sign statements of declaration required during incorporation stating that the provisions of the CAMA have been complied with.
32. The new Act has introduced reservation of name through electronic means.



33. The requirement for a company to have a common seal is no longer compulsory. Where a company has a common seal, the design and use of that seal shall be regulated by the company's articles.
34. The requirement for company seal to be affixed on deeds has been dispensed with. A deed is duly executed if a director and secretary sign on behalf of the company, if at least 2 directors sign or if a director signs in the presence of one witness.
35. The compensation of managers of a company is now required to be disclosed to members of the company at the annual general meeting.
36. Persons suspended or removed according to the Act are now disqualified from appointment as directors.
37. A person is a controlling member of a company if that person, either alone or in an understanding with other persons, has more than 50% of the voting power to elect or remove directors of the company.
38. At trial in respect of minority rights, the plaintiffs now have the right to obtain any relevant documents from the defendant and the witnesses at trial, and may in pursuance of that right request categories of documents from such person without identifying specific documents.
39. Whistle blower employees who in compliance with an inspector's request, provides the inspector with any information concerning the company's affairs during investigation of a company by its application or application by its members are now protected and where such employee is relieved for the reason of his disclosure, he shall be entitled to compensation as though he were retiring.
40. False and deceitful impersonation of any member of a company to obtain any benefit due to any such member, in addition to attracting an imprisonment of 7 years or fine which the court may impose, now also attracts any fees prescribed by CAC and such person shall account to the aggrieved member for any benefit which he directly or indirectly derived as a result of his act of impersonation.
41. An administrator who is an insolvency practitioner can now be appointed by order of Court, where: (1) the company is or is likely to become unable to pay its debts; (2) by the holder of a floating charge; or (3) by the company or its directors for the sole purpose of rescuing the company and where a company is in administration no resolution shall be passed for the winding-up of the company, no order shall be made for the winding up of the company and the receiver where present shall vacate his office if required to do so by the administrator.

42. An action to recover a debt from a contributory who is liable to contribute to the assets of a company in the event of its being wound up can no longer be brought after the expiration of six years from the date on which the cause of action accrued
43. Through a process of “netting” a person can now enforce the termination, liquidation or acceleration of any payment or delivery obligation or entitlement under one or more qualified financial contracts entered into under a netting agreement which shall be enforceable in accordance with their terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for a party.
44. The new Act establishes an Administrative proceedings committee set up to: provide the opportunity of being heard for persons alleged to have contravened the provisions of the Act or its regulations, resolve disputes or grievances arising from the operations of the Act or its regulations and impose administrative penalties for contravention of the provisions of the Act

Changes Affecting Foreign Companies

45. Exempted foreign companies can now deliver to the CAC upon payment of fees, a notice of its exemption within 30 days of the grant of the exemption by the prescribed authority failure of which attracts a penalty.

Changes Affecting Partnerships

46. Limited Liability Partnerships (LLPs) can now be registered under the CAMA. LLPs shall have at least two partners whose partners may be an individual or body corporate one of whom shall be resident in Nigeria.
47. Foreign limited liability partnership which before or after the commencement of this Act was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria, shall take all steps necessary to be incorporated as a separate entity in Nigeria
48. Limited partnerships are now registrable under the CAMA and its members shall not be more than 20.

Changes Affecting Incorporated Trustees

49. Where there is or has been any misconduct or mismanagement in the administration of the association the CAC can now suspend the trustees of a registered incorporated trustees and appoint interim managers for the purpose of protecting the property of the association or for public interest.



50. Banks must now disclose to the CAC dormant accounts of Incorporated Trustees with the bank and the Commission may require the Incorporated Trustees to disclose its activities to it within 15 days failing which the Commission may dissolve the Incorporated Trustees and direct the bank to transfer the amount standing in the credit of the IT to two or more other associations.
51. Incorporated Trustees are now to submit to the Commission a bi-annual statement of affairs of the association, as the Commission shall specify in its regulation.
52. Two or more Associations with similar aims and objects can now merge under terms and conditions as the Commission may prescribe by regulation as provided for.

For more on this, kindly send an email to uchechi@tonbofa.com or atiyat@tonbofa.com

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