



# Summary of Key Provisions of the Companies and Allied Matters Act 2020 and their Implications



The Companies and Allied Matters Act (CAMA), which is Nigeria's major business legislation was first introduced in 1990 and provides for the nature of business organisations allowed in Nigeria, incorporation/ registration of companies and other business types, filing of statutory returns and general corporate governance, amongst other things.

On 7th August, 2020, President Muhammadu Buhari assented to the new CAMA 2020, which is the first amendment to the CAMA in three decades and is viewed as a significant development in Nigeria's business legislation regime. The focus of the legislation is to, amongst others, modernize Nigeria's business commencement and organization processes, promote ease of doing business, reduce regulatory obstacles and introduce new provisions that are in line with contemporary business operations. There are, however, some provisions that have attracted scrutiny and critical commentaries from stakeholders.

This newsletter highlights some major changes introduced by the CAMA 2020 and their potential implications for businesses.

## Implications of Major Changes to the Companies and Allied Matters Act

S/N	Notable Sections	Highlights	Comments
1.	<b>Provision for Single Shareholder</b> - Section 18(2)	Private companies can now be formed and incorporated with one shareholder.	This allows business owners to retain absolute control and authority over the operation and management of their businesses especially for small and medium scale enterprises.
2.	<b>Minimum Number of Directors</b> – Section 271	The provision excludes small companies from the requirement to have a minimum of two directors.	This seeks to minimise the governance structure and cost for small companies as they can operate with at least one director.
3.	<b>Statement of Compliance</b> - Section 40	Introduction of statement of compliance which can be signed by an applicant or his agent, confirming that the legal requirements with respect to registration have been complied with.	The registration process has been simplified as the statement of compliance can be used as an alternative to the requirement to submit a formal Declaration of Compliance, which previously required the signature of a lawyer or attestation before a notary public.
4.	<b>Replacement of Authorized Share Capital with Minimum Share Capital</b> – Section 27	The CAMA 2020 replaces the concept of "Authorised Share Capital" of a Company with "Minimum Issued Share Capital".	With this provision, the share capital of a company will now be determined by the amount of shares already issued by a company.
5.	<b>Increase in Minimum Contribution</b> – Section 27	The minimum contribution for members of a company limited by guarantee has been increased from ₦10,000 to ₦100,000.	This is to ensure that the liability of members reflects current economic realities.
6.	<b>Minimum Issued Share Capital</b> – Section 27	The Section increases the required minimum issued share capital from ₦10,000 to ₦100,000 and ₦500,000 to ₦2,000,000, for private and public companies, respectively.	This is to bring the minimum share capital requirement of companies in line with current economic realities.



7.	<b>Alternative to Attorney General's (AG) Consent</b> – Section 26	In registering a company limited by guarantee, promoters can now place advertisements in three national dailies and invite objections within 28 days of the last publication where all valid documents are provided and the Attorney General has not reached a decision within 30 days. If no objection is received, the Corporate Affairs Commission (the "CAC" or the "Commission") has the power to assent to the application and register the company without the AG's consent.	This introduces flexibility into and fast-tracks the process for registration of companies limited by guarantee, as the CAC can grant assent without the AG's consent once all necessary documents have been provided and the required timeline for objections has elapsed.
8.	<b>Reduction of Filing Fees for Registration of a Charge</b> – Section 222 (12)	The fees payable to CAC for the filing, registration or release of a charge is capped at 0.35% of the value of the charge or an amount determined by the Minister.	Prior to the CAMA 2020, the fee for filing and registration of charges for private and public companies were ₦10,000 on every ₦1,00,000 (1%) and ₦20,000 on every ₦1,000,000 (2%) respectively. This reduction significantly reduces the associated costs for companies.
9.	<b>Voluntary Procurement of Common Seal</b> – Section 98	The use of common seal by companies is now discretionary, as its use is now subjected to the provisions of the Articles of Association of the Company.	This allows companies determine the most efficient mode for execution of documents rather than the previous requirement for a physical seal.

### New Provisions on Resolving Insolvency

10.	<b>Business Rescue Provisions (Administration and Voluntary Compromise)</b> – Sections 434-549	<p>The Act introduces Administration and Voluntary Compromise as mechanisms for rescuing companies in distress.</p> <p>In respect of Administration of companies, the primary function of an Administrator appointed under the Act is to manage the affairs, business and property of the company with the objective of maintaining the company as a going concern except it is not reasonably practicable to do so.</p> <p>In the case of Voluntary Compromise, the Act allows a company to reach a compromise with its creditors over the payment of debts.</p>	These provisions enable a distressed company to properly manage its business assets while it remains a going concern.
11.	<b>Netting</b> – Section 718-721	The Act introduces provisions relating to netting agreements in respect of financial contracts. The Act provides that the terms of a netting agreement are enforceable against an insolvent party, a guarantor or any other person providing security.	Netting agreements are usually used by parties to financial contracts to consolidate present or future payment obligations. Netting agreements were not recognised under the old CAMA. However, with this provision, netting agreements now have the backing of the law and are now enforceable by and against the parties to the agreement. Going by the provisions of the Act, it would appear that the netting provisions would be activated by insolvency proceedings against a company.

12.	<b>Qualification of Insolvency Practitioners – Section 705</b>	<p>The Act prescribes conditions for qualification as an insolvency practitioner. Specifically, the Act provides that a person is only qualified to act as an insolvency practitioner where such a person:</p> <ul style="list-style-type: none"> <li>• has obtained a degree in law, accountancy or such other relevant discipline from any recognised university or polytechnic;</li> <li>• has a minimum of five years post qualification experience in matters relating to insolvency;</li> <li>• is authorised to so act by virtue of a certificate of membership issued by Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), or his membership of any other professional body recognised by the Commission, being permitted to act by or under the rules of that body; and</li> <li>• holds an authorisation granted by the Commission.</li> </ul>	<p>Based on these introductions, insolvency practice in Nigeria is now regulated by the CAMA. However, going by the wordings of the Act, it would appear that the conditions for acting as an insolvency practitioner are conjunctive such that if one condition is not satisfied a person cannot act as an insolvency practitioner.</p> <p>If this is the case, qualification or entry into the insolvency practice is likely to be cumbersome and onerous.</p> <p>Another concern is the introduction of membership of BRIPAN as a condition for qualification to act as an insolvency practitioner. While this seeks to achieve a certain level of professionalism amongst insolvency practitioners and ensure a minimum standard of practice, it could create a bar to entry into insolvency practice.</p> <p>A flexible interpretation would be a disjunctive reading of the section such that where either of the conditions are fulfilled, a person would be allowed to practice as an insolvency practitioner.</p>
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## Electronic Initiatives

13.	<b>Electronic Filing with the Commission – Section 860</b>	The Section provides for the electronic filing of companies' documents with the Commission.	This provision is coming at a time when it is most required, as the outbreak of the COVID-19 Pandemic has seen changes in administrative, organizational and economic activities towards the use of electronic platforms. This is therefore expected to improve the regulatory compliance process with the commission and improve ease of doing business in Nigeria.
14.	<b>Electronic Signatures – Section 101</b>	The provision has validated the use of electronic signature on a document as due execution.	Prior to this provision, the commission has pushed back on the use of electronic signatures by companies on documents filed with it. This provision is therefore commendable as it aligns with the introduction of modern technology and other legislation such as the Evidence Act. It is also expected to ease the process for execution of company documents.
15.	<b>Electronic Instrument of Transfer – Section 175</b>	The provision has included electronic instrument of share transfer as a valid instrument of share transfer.	Given that instruments for the transfer of shares are exempt from stamp duties under the Stamp Duties Act, the provision for transfer of shares electronically also aligns with modern realities and enhances the ease of business and transactions relating to transfer of shares.
16.	<b>Annual General Meetings – Section 240</b>	Annual General Meetings (AGM) which are conducted in accordance with the articles of the private company may be held electronically.	This also reflects the realities of a post-COVID economy and the increasing use of technology to facilitate meetings. It should make AGMs easier and more convenient to hold.

## Other Provisions

17.	<b>Exemption from Appointment of Company Secretary</b> – Section 330	The requirement to appoint a Company Secretary is now optional for small companies.	This provision reduces the compliance burden and operational costs for small companies in Nigeria.
18.	<b>Share Buyback</b> – Section 184 (1) & 186	<p>CAMA 2020 provides specific procedures by which a company may buy back its shares.</p> <p>Companies can buy back their shares from:</p> <ol style="list-style-type: none"> <li>existing shareholders on a proportionate basis;</li> <li>existing shareholders in a manner permitted in a scheme of arrangement sanctioned by the court;</li> <li>the open market; and</li> <li>purchasing the securities issued to employees through a stock option.</li> </ol>	These provisions have provided additional clarification for the procedure for share buyback by a company.
19.	<b>Treasury Shares</b> – Section 187 & 189	In this new Act, recognition is given to treasury shares with emphasis that companies are not permitted to hold more than 15% of issued share capital as treasury shares. Companies also have the power to sell these shares for cash or transfer them in an employee share scheme.	The amount of treasury shares to be held by companies is limited, but they are now able to transfer treasury shares to their employees.
20.	<b>Disclosure of Shareholders with Significant Control over a Company</b> – Section 119	The Act requires persons with significant control in a company to notify the company within 7 days of attaining such control and the company is required to notify CAC within 1 month of receipt of this information.	Prior to the CAMA 2020, this requirement for disclosure only applied to public companies. However, under the CAMA 2020 both private and public companies are required to make such disclosures. This enhances transparency in ownership and control of companies, especially with the provision for single shareholders.
21.	<b>Withdrawal/ Revocation of Certificate of Incorporation</b> – Section 41	The CAC has the power, under the Act, to withdraw any certificate of incorporation issued where the certificate was revealed to be obtained fraudulently, unlawfully or improperly.	Under this Act, CAC's powers have been extended. The CAC can now determine, with proof, if a company's Certificate of Incorporation was not properly obtained and withdraw same.
22.	<b>Mergers of Associations/ Incorporated Trustees</b> – Section 849	The CAMA 2020 permits the merger of associations with similar aims and objects under such terms and conditions as may be prescribed by the CAC.	This provision affords associations seeking to expand or enhance their operations the window to do so via merger. However, Regulations made by the CAC for the purpose of regulating the merger of associations may be subject to the overriding provisions of the Federal Competition and Consumer Protection Act which subjects and seeks to bring into conformity such other laws or regulations relating to competition and consumer protection.



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23.	<b>Restriction on Multiple Directorship in Public Companies-</b> Section 307(3)	The CAMA 2020 prohibits a person from being a director in more than five public companies at the same time.	This introduction is expected to enhance transparency in the operations of public companies.
24.	<b>Restriction on the Role of Chairman/ CEO of a Private Company-</b> Section 265 (6)	The CAMA 2020 restricts private companies from appointing a director to hold the office of the Chairman and Chief Executive Officer.	These provisions enhance the protection of minority shareholders in a company as a director cannot also act as the CEO of a private company.
25.	<b>Penalties</b>	<p>The CAMA 2020 contains revised and new provisions for penalties. A number of these revised and new provisions do not specify penalties to offences but refer to the application of penalties to be provided under Regulations to be issued by the CAC. The CAMA 2020 also contains omnibus provisions for fines and penalties which could be a daily fine of ₦5000 or a flat fine of not less than ₦200,000 upon conviction.</p> <p>The CAMA 2020 also prescribes penalties to offences such as carrying on business without registration. In this regard, defaulting companies and individuals are liable to a fine to be prescribed under Regulations to be issued by the CAC in addition to a fine of ₦200 for every continued day of default.</p>	<p>The new penalty provisions of the CAMA have addressed the issue of the obsolete penalty provisions of the old CAMA in order to bring penalties for default in line with current economic realities. The expectation is that the provisions of the Regulations will be revised from time to time where the need arises.</p> <p>It is also expected that the CAC will exercise the powers to prescribe penalties in a fair and judicious manner.</p>

### Key Tax Implications

26.	<b>Exemption from Appointment of Auditors –</b> Section 402	This provision exempts small companies and companies that are yet to commence business from appointing auditors.	<p>This provision could reduce the compliance burden and cost for a small company operating in Nigeria. However, it is important to note that although a small company is exempt from tax under the Companies Income Tax Act (CITA), there remains an obligation to file returns including its audited account.</p> <p>Additionally, since CAMA only exempts small companies from appointing auditors, it has not precluded such companies from preparing and submitting audited accounts which is a critical requirement under the CITA.</p>
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27.	<b>Qualification as a small company – Section 394</b>	Under the CAMA 2020, a company qualifies as small if as a private company, it has a turnover which is less than or equal to ₦120,000,000 or net assets value less than ₦60,000,000 in any given year.	This definition does not align with the definition of a small company under the CITA. Under the CITA, the qualification for a small company refers to companies with gross turnover less than ₦25,000,000.  It may be necessary to harmonized the provisions of the two laws, although one is simply regulatory and the other covers tax obligations.
28.	<b>Limited Liability Partnerships (LLPs) and Limited Partnership (LPs) – section 746-810</b>	The Act introduces the concept of limited liability partnerships (LLPs) and limited partnerships (LPs).  An LLP is a body corporate and a separate legal entity from its partners, having the power to sue and be sued. All LLPs must have at least two designated partners who would run the affairs of the partnership. LLPs are also permitted to have an unlimited number of partners  LPs, on the other hand, must have at least one limited partner and one general partner and they can only have a maximum of 20 partners.	With the introduction of LLPs, partnerships can register as an entity that has a separate legal identity from the partners. This provision gives additional options and flexibility to investors and persons seeking to set up or restructure businesses. Regardless of their corporate status, LLPs will still be taxed as partnerships under the Personal Income Tax Act (PITA).

## Conclusion

The CAMA being the principal business registration and governance legislation in Nigeria, is without doubt, a critical legislation that directly impacts the Nigerian business climate and the inflow of both foreign and local investments into the Nigerian economy. In this regard, the signing of the CAMA 2020 into law is a commendable development as it is expected to improve the ease of registration, commencement and operation of businesses in Nigeria by facilitating simpler processes and procedures and reducing the regulatory compliance burden.

Given the importance of this legislation and its wide coverage, it is important to properly track its implementation and where required harmonize its provisions with other relevant laws. Regulations should also be provided, where required to clarify any unclear provisions and necessary further amendments should be made where the provision are unworkable or are not fit for purpose.

## COVID-19 Notice:

*At Andersen Tax, our staff and clients are our most valued assets, regardless of any prevailing circumstances. Thus, we are fully committed to providing services to our clients at the same high standard as before, whilst taking all necessary precautions.*

*Given the regulatory issues around COVID-19, our teams are working remotely but we have implemented measures to ensure that we are able to communicate with you effectively, whether this be through video/tele-conferencing or other alternative means.*

*Thus, as we keep hope alive and trust that business gradually stabilizes in no distant time, we encourage you to contact us and lean upon our professionals for assistance in connection with the ongoing changes in laws and regulations, particularly those introduced in response to the Pandemic.*

**For further information, please contact;**

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