



President Buhari Signs Amended Companies and Allied Matters Bill into Law on 7 August 2020.



President Muhammadu Buhari, on Friday, August 7, 2020, gave his assent to the Amended Companies and Allied Matters Bill. This event took place in Abuja, Nigeria. The Bill, passed by the National Assembly in March 2020, extensively reforms company and business regulations in Nigeria and is considered as Nigeria's most significant business legislation in three decades. The President's official approval signals the repeal and replacement of the Companies and Allied Matters Act 1990 which was enacted 30 years ago.

The new Act, Companies and Allied Matters Act 2020 (CAMA 2020 or Act) introduces several corporate and business innovations with the aim of enhancing the ease of doing business in Nigeria and ensuring that the business regulations provide relevant guidance in line with current realities.

Such innovations, as stated by the Special Adviser to the President (Media and Publicity), Mr. Femi Adesina, include:

1. Filing fee reductions and other reforms to make it easier and cheaper for small and medium-sized enterprises to register and reform their businesses in Nigeria.
2. Allowing corporate promoters of companies to establish private companies with a single member or shareholder and creating limited liability partnerships and limited partnerships to give investors and business people alternative forms of carrying out their business in an efficient and flexible way.
3. Innovating processes and procedures to ease the operations of companies, such as introducing Statements of Compliance; replacing “authorised share capital” with minimum share capital to reduce costs of incorporating companies; and providing for electronic filing, electronic share transfers, e-meetings as well as remote general meetings for private companies in response to the disruptions to close contact physical meetings due to the COVID-19 pandemic.
4. Requiring the disclosure of persons with significant control of companies in a register of beneficial owners to enhance corporate accountability and transparency.
5. Enhancing the minority shareholder protection and engagement; introducing enhanced business rescue reforms for insolvent companies; and permitting the merger of Incorporated Trustees for associations that share similar aims and objectives.

## Highlights of significant provisions under the CAMA 2020:

### 1. Registration of single member/ shareholder companies –

Section 18(2) of the new CAMA 2020 now makes it possible to establish a private company with only one (1) member or shareholder.

### 3. Statement of Compliance signed by Applicant/agent –

Section 40 (1) of the new Act enables an applicant or his agent to sign a Statement of Compliance which confirms that the requirements of the Act as to registration have been complied with. This serves as an alternative to the requirement to submit a Declaration of Compliance, which must be signed by a lawyer and attested to before the commissioner for oaths or notary public. In this new Act, a Statement of Compliance need not be signed by a lawyer.

### 2. Replacement of Authorized Share Capital with Minimum Share Capital –

The concept of “authorised share capital” has now been replaced in Section 27(2) of the Act with the principle of “minimum share capital”. The introduction of the minimum share capital requirement means that promoter(s) of a business need not pay for shares that are not needed at a specific time.

### 4. Common Seal no longer a mandatory requirement –

A common seal is no longer a mandatory requirement according to Section 98 of the new CAMA. Under the old Act, every company was required to have a common seal. The removal of the need for a common seal is in line with international best practices as most jurisdictions around the world have expunged the requirement of a common seal from their laws.

## **5. Disclosure by persons with significant control in companies –**

Section 119 of the Act introduces new disclosure obligations for entities with significant control over a company to disclose, within 7 days, the particulars of such control including the capacity in which shares are held, either as beneficial owner or as a nominee of an interested person.

## **6. Electronic filing and electronic share transfer –**

The new CAMA 2020 makes provisions for electronic filing and electronic share transfer. Section 176(1) of the Act provides that register of share transfers includes electronic register of transfer. Section 861 of the new Act also provides that certified true copies of electronically filed documents with the Corporate Affairs Commission (CAC) are admissible in evidence as of equal validity with the original documents.

## **7. Electronic (Virtual) General Meetings –**

The new CAMA also provides in Section 240 (2) that private companies may hold its general meetings electronically, provided that such meetings are conducted in accordance with the Articles of Association of the company. This will facilitate participation at such meetings from any location, at minimal costs. This is especially relevant today given the travel restrictions and social distancing advisory implicated by the COVID-19 pandemic.

## **8. Exemption from appointment of company secretary (Small companies) –**

Small companies are exempted from the requirement to appoint a company secretary. This is pursuant to Section 330 (1) of CAMA 2020.

## **9. Exemption from audit (Small companies)**

– Section 402 (1) of the new Act provides that small companies or any company that has not carried on any business since incorporation is exempted from the requirement to audit its financial statements in respect of the relevant financial year. In the same vein, a small company is also exempted from preparing or filing its auditors report along with its annual return pursuant to Section 424(2) of the new Act, provided the small company qualifies as such under the requirements of Section 394 of the Act.

## **11. Introduction of Limited Liability**

**Partnerships (LLPs) and Limited Partnerships (LPs)** – The new CAMA 2020 introduces and makes regulations for the Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) in Part C and Part D of the Act respectively. This provides organisational flexibility and tax liability benefits while also allowing limited liability for members of the partnership.

## **10. Requirements of a Small Company –**

The new Act introduces thresholds and requirements for small companies. A company qualifies as a “small company”: if it is a private company; its turnover is not more than N120,000,000 (or other amount prescribed by CAC); its net assets value is not more than N60,000,000 (or other amount prescribed by CAC); none of its members is an alien, government, government corporation, agency or nominee; and the directors of the company hold at least 51% of its equity share capital.

## **12. Reduction of statutory fees for registration of charges –**

The total fees payable to the CAC in connection with filing, registration or release of a charge has been reduced to a maximum of 0.35% of the value of the charge. This is pursuant to Section 223 (12) of the Act and is expected to yield about 65% reduction of the associated costs under the previous regime.

### **13. Merger of Incorporated Trustees (NGOs)**

– The new Act, under Section 849, allows for the merger of two or more associations with similar aims and objects under the terms and conditions as may be prescribed by the CAC.

### **14. Restriction on Multiple Directorship (Public Companies) –**

The Act prohibits a person from being a director in more than five (5) public companies at a time pursuant to Section 307 (2). Section 270 (1) of the Act clarifies that director in this regard under Section 307 also includes shadow directors which are persons on whose instructions and directions the directors are accustomed to act.

### **15. Corporate Governance –**

In line with international best practices on corporate governance, Section 265 (6) of the new Act prohibits a public company from appointing a director to hold the dual office of Chairman and Chief Executive Officer.

### **16. Rescue provisions for Insolvent Companies –**

The new Act introduces an extensive framework for rescuing a company in distress. Diverse options such as Company Voluntary Arrangements (Sections 434 to 442), Administration (Sections 443 to 549) and Netting (Sections 718 to 721) are now available for such companies.

The new Act is set to enhance the business environment in Nigeria and make it competitive within the global community.