

# JCS Client Services

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## *IP Renewal & Corporate Services*

*Newsletter from JCS Client Services - Highlights of CAMA 2020*



## **KEY HIGHLIGHTS OF THE COMPANIES AND ALLIED MATTERS ACT (CAMA) 2020**

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The Companies and Allied Matters Act, 2020 (“the Act”), repeals and replaces the present Companies and Allied Matters Act of 1990.

The Bill is one of the most critical pieces of legislation which impacts the Nigerian business climate and the Micro, Small and Medium Scale Enterprises (MSMEs). It is the biggest business reform bill in Nigeria in three decades. It tends to show the need for Nigerian Businesses to move into a new era of success and development; by reducing regulatory hassles and encouraging the use of technology.

This is expected to ultimately promote investment friendly business environment, create more jobs, and promote the ease of doing business in Nigeria

### ***Provision of single-member/shareholder companies***

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

The implication of this is that an individual can incorporate a company and be the sole shareholder.

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### *Replacement of Authorized Share Capital with Minimum Share Capital*

**Section 27(2)(a):** This section replaces 'Authorized Share Capital' with 'Minimum Share Capital'. This implies that the promoter of a business is not required to pay for or allocate shares that are not needed at the specific time of incorporation.

### *Introduction of Model Articles*

**Sections 33** and **Section 34** of the Act provides that different model articles may be prescribed for different types of companies. A company can adopt the relevant model articles prescribed by the commission at the time of registration.

### *Introduction of Statement of Compliance*

**Section 40 (1):** of the new Act introduces the Statement of Compliance which can be signed by an applicant or his agent, confirming therein that the requirements of the law 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 or attested to before a notary public.

A Statement of Compliance need not be signed by a lawyer.



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## *Procurement of a Common Seal is no longer a mandatory requirement*

**Section 98:** The procurement of a Common Seal is no longer a mandatory requirement.

The new CAMA provides that a company may now execute a deed without affixing a common seal.

This amendment is in line with international best practices as most jurisdictions around the world have expunged the requirement from their respective laws.

## *Disclosure of persons with significant control in companies*

**Section 119** emphasizes transparency in terms of control in a company. It requires that persons with significant control in a company disclose its shareholding to other shareholders.

### *Exemptions*

The new Act has introduced various exemptions for companies especially small private companies.

## *Exemption from Holding Dual Position as Chairman and CEO of a Private Company*

**Section 265(6)** of the new Act restricts a Chairman of a public company from acting as both Chairman and CEO simultaneously of the company.

## *Exemption from the appointment of company secretary*

The appointment of a Company Secretary is now optional for private companies. According to **Section 330(1)** of the new CAMA, the appointment of a company secretary is only mandatory for public companies.

## *Exemption from appointing Auditors*

**Section 402:** provides that small companies and companies that have not carried on any business since incorporation are exempted from auditing their accounts in respect of a financial year.



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### **Directors**

A private company can now have its affairs managed by a single director.

### **Reduction of Filing Fees for Registration of Charges**

Under **Section 223 (12)** of the new Act, filing fees for Registration of Charges payable to the CAC (Corporate Affairs Commission) has been reduced to 0.35% of the value of the charge.

### **Independent Directors**

**Section 275** of the new Act provides for the inclusion of Independent Directors for Public Companies.

Public Companies are required to have a minimum of 3 Independent Non-executive Directors who should not have been;

- An employee of the company.
- Received up to N20m from the company.
- An auditor of the company.
- A shareholder having up to 30% shares or other ownership interest directly or indirectly

within the last 2 years preceding his appointment as such.

This is expected to lead to up to 65% reduction in the associated cost payable under the regime.

### **Restriction on Multiple Directorship in Public Companies**

**Section 307 (1)** of the Act prohibits a person from being a director in more than five (5) public companies at a time.

### **Introduction of a Small Company**

The new Act in **Section 394** has introduced the qualifications of what is considered as a small company.

A company is qualified as a small company if it meets the following requirements;

- It is a private company
- Its turnover is not more than N120m or such amount as may be fixed by the commission. (in this regard, the commission has the power to determine the amount of the turnover, hence this amount might not be the final. It might be reduced by the commission).



- Its net asset value is not more than N60m (the commission also has the power to vary this amount)
- None of its members is a government, government corporation or agency or its nominee.
- A company limited by shares, which the directors must hold at least 51% of its equity share capital.

### ***Provision for electronic filing, electronic share transfer and e-meetings for private companies***

The new CAMA makes provision for electronic filing, electronic share transfer and e-meetings for private companies.

You can now register your business from anywhere in the country via the e-registration portal.

The new CAMA also provides for remote or virtual general meetings, 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 within and outside the shores of the country, at minimal costs.

### ***Creation of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs)***

**Section 746** of the new Act, introduces Limited Liability Partnerships and Limited Partnerships, which combines flexibility and tax status of a partnership with the status of limited liability for members of a company.

This implies that Startups are not stuck with the option of setting up a Company, but also enjoy the benefits of partnership with a partnership agreement (including vesting agreement, and founders agreements) beyond the regular Articles and Memorandum of Association, whilst still protecting their personal assets from being sold in claims for debts, liability, or creditors.



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### ***CAC's Oversight Functions on Incorporated Trustees***

The new CAMA in **section 839**, now provides that the Corporate Affairs Commission may by order of Court suspend the trustees of charitable organisations registered as Incorporated Trustees and appoint an interim manager to coordinate its affairs, where it reasonably believes that there has been any mismanagement or where the management of the organisation is being run fraudulently or where it is necessary or desirable to protect the property of the organisation or in the interest of the public.

### ***Merger of Incorporated Trustees***

The new Act extends merger beyond LLCs to Incorporated Trustees. **Section 849** implies that two or more NGOs, social entrepreneurs with different registered organizations, with similar goals can merge to form one (1) single organization.

### ***Business Rescue provisions for Insolvent Companies***

The new Act introduces a framework for rescuing a company in distress and to keep it alive as against allowing such entity to become insolvent.

### ***CONCLUSION***

The Act certainly, is one of the biggest business reform bills which impacts the Nigerian business sphere. The amendments to the Act would have the overall effect of making Nigeria's metrics of doing business more fit for today's technological realities, encourage young investors to register companies, increase the influx of foreign investment and re-energize the private sector as the engine of growth in Nigeria.



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