

TEMPLARS

www.templars-law.com

MAY 2018

NEWSLETTER



The Repeal and Re-Enactment of The Companies and Allied Matters Act- A Bold Step Towards Business Reform

On 15 May 2018, the 8th Senate of the Federal Republic of Nigeria at its plenary session, passed the Bill for an Act to Repeal the Companies and Allied Matters Act 1990 and enact the Companies and Allied Matters Act 2018 (the “Bill”). The Senate’s passage of the Bill has heralded a new dawn in business reform in Nigeria.

This reform is a welcome development particularly as it has been over 20 years since the promulgation of CAMA with minimal amendments during the period. The Bill, seeks to amend the Companies and Allied Matters Act (CAMA), 1990 in line with global best practices. It also seeks to address existing shortcomings experienced in the course of implementing the extant law.

Prior to the passage of the Bill, the Senate Committee on Trade and Investment, reviewed the proposed amendments in line with recommendations received via

memoranda from various institutions and organizations including the FMDQ OTC Securities Exchange; The Nigeria Bar Association – Section on Business Law, Ecobank Transnational Incorporated; and the Nigerian Network of Non-Governmental Organisations (“NNNGO”).

The Bill, if and when it does receive presidential assent, is expected to boost Nigeria’s ranking in the World Bank Ease of Doing Business index and ensure that the Nigerian system of company law and corporate governance is one which would enhance shareholder engagement, promote long term investments and establish Nigeria as the African hub for the set up and operation of businesses.

CHANGES AND INNOVATIONS UNDER THE BILL

A comparison of the Bill and the CAMA reveals several significant changes to the legal framework for company law in Nigeria which is expected to promote productivity and enhance investor confidence.

Annual General Meeting

CAMA requires every company to hold Annual General Meetings on a yearly basis but not more than 15 months must lapse between the date of one AGM and the next. By virtue of the provisions of the Bill, small companies will no longer be mandatorily required to convene and hold Annual General Meetings. Under CAMA, a company qualifies as a small company if:

1. it is a private company;
2. the amount of its turnover is not more than 2 million Naira;
3. its net assets is not more than 1 million Naira;
4. none of its members is an alien or a government agency; and
5. the directors between themselves hold not less than 51% of the equity share capital of the company.

Minimum Issued Share Capital

The Bill has replaced the requirement for companies to have an authorised share capital with a requirement to have a minimum issued share capital. The idea behind this amendment is to extinguish the ‘front loading of costs’ in the form of payment of stamp duties on the authorized share capital or upon increase in the authorized share capital of a company. The Bill proposes to establish a minimum issued share capital applicable to public and private companies respectively, thus enabling the payment of stamp duties only on the issued share capital as opposed to the current regime of payment of stamp duties on the entire authorized share capital of the company at incorporation. Where a company seeks to issue more shares, it may

then pass a resolution approving the issuance and pay the applicable stamp duties and filing fees in respect of the additional shares issued.

Single Member Companies

Under the CAMA, a minimum of two persons must constitute the membership of a company; whether public or private. However, the Bill extinguishes this requirement and enables a single individual to establish a private company. In addition, the Bill removes the requirement for a company to have at least 2 directors and allows for single directorship for small companies. These provisions mirror similar provisions in the United Kingdom, India and Singapore.

Use of Common Seal

The Bill has abolished the mandatory requirement for each company to have a common seal. Each company may opt to obtain a common seal and regulate its use and design through its articles of association.

Reduction in Share Capital

Under the CAMA, companies (whether private or public) are required to pass a special resolution approving a reduction in its share capital and subsequently make an application to the Federal High Court for an order confirming the reduction. The provisions of the Bill enable private companies to reduce their share capital if a special resolution to that effect is passed without the requirement to obtain an order of court to that effect.

Paid Up Capital

There is currently no provision under CAMA for a timeline within which the shareholders of a company should pay for shares allotted to them. However, the Bill stipulates that 25% of the issued share capital of a company must be paid up at all times.

Company Secretary

As part of realizing its objective of easing the regulatory burden on small companies, the Bill limits the requirement to appoint company secretaries to public companies. Thus, small companies and companies with one shareholder may only opt to appoint a company secretary.

Beneficial Ownership

In several provisions of the Bill, persons who hold nominal interest in a company on behalf of another are required to disclose the beneficial interests to the company in question. The Bill further prescribes punitive measures for failing to disclose such interests.

Exemption from Audit

The Bill exempts small companies from appointing auditors. Specifically, the Bill provides that a company is exempted from appointing auditors if:

1. it has not carried on business since its incorporation; or in a particular financial year; or
2. the company's turnover is not more than N10m and its balance sheet total is not more than N5m.

POSITIVE IMPACT OF THE PROPOSED AMENDMENTS

Boost to the Ease of Doing Business Campaign

Recently, Nigeria ranked 145th in the Ease of Doing Business Index from its previous 169th rating according to the World Bank

annual ratings. The Bill is guaranteed to positively enhance the business environment and further boost investors' confidence in doing business in Nigeria.

Less Stringent Reporting Obligations for Small Companies

Most of the amendment proposed reduces reporting obligations. Also certain statutory approvals and requirement for private and small companies have been eliminated. Ultimately, the implication is that there will be a reduced cost for running companies which fall into this category.

Growth of SMEs

The Bill makes friendlier provisions which seek to expand the frontiers of SME operations and growth in Nigeria. We expect to see an uptick in the activities of SMEs within the country which will inevitably lead to an increased diversification of the Nigerian economy.

CONCLUSION

The passage of the Bill is a welcome development for the regulatory framework governing companies in Nigeria, as it reflects modern business realities. We reckon that certain loopholes in the Bill, particularly, with regards to practical enforcement of the provisions have the propensity to impede the effectiveness of the Bill. Nonetheless, such challenges are not in themselves concrete enough to negate the positive impact of the Bill in easing the establishment and operations of businesses in Nigeria.

Contacts:

Ijeoma Uju

Partner

ijeoma.uju@templars-law.com

Oghomwen Akpaibor

Senior Associate

oghomwen.akpaibor@templars-law.com

Dise Otrofanowei

Associate

dise.otrofanowei@templars-law.com

OFFICE LOCATIONS

Lagos

5th Floor, The Octagon
13A, AJ Marinho Drive
Victoria Island
Lagos Nigeria

Tel: +234 1 461 1294, +234 1 270 3982
+234 1 279 9396, +234 1 461 1889-90

Fax: +234 1 271 2810

Email: info@templars-law.com

Abuja


3rd Floor, Metro Plaza
Plot 991/2, Zakaria Maimalari Street
Central Business District
Abuja Nigeria


Tel: +234 9 273 1898, +234 9 273 1877

TEMPLARS

www.templars-law.com



 [templars](https://www.linkedin.com/company/templars)

 [@templars_law](https://twitter.com/templars_law)