

HIGHLIGHTS OF THE BILL FOR THE REPEAL AND RE-ENACTMENT OF THE COMPANIES AND ALLIED MATTERS ACT (“CAMA”)

The Companies and Allied Matters Act (Repeal and Re-enactment) Bill (the “CAMA Bill”) 2018¹, which seeks to repeal the Companies and Allied Matters Act, CAP C20, Laws of the Federation of Nigeria 2004, was passed by the 8th Senate after its third reading on 15 May 2018. The CAMA Bill is one of the most significant business reform bills in Nigeria in over 28 years. It was introduced to the Senate on 15 June 2017 and passed by the Senate within eleven months of its introduction.

The following are some of the major highlights of the CAMA Bill:

- 1) **Registration made easy** - The CAMA Bill dispenses with the rigorous process associated with registering a company through the proposed introduction of online registration of companies, business names and incorporated trustees on the Corporate Affairs Commission’s (“CAC” or the “Commission”) portal². Searches on existing registered companies, business names or incorporated trustees can also be conducted using the CAC portal.³ The CAMA Bill supports the e-registration of companies and post filing system implemented in 2017⁴, which recognizes technological advancement and empowers Nigerians to safely register their businesses remotely through the e-registration system. This facilitates the ease with which a company is registered by investors, both local and foreign, and possibly dispenses with the services of a lawyer for that purpose.⁵
- 2) **Sole Ownership of a Company** - The CAMA Bill dispenses with the requirement for private companies to have at least two shareholders. The concept of sole ownership of a company allows a single person to incorporate and own a company and operate the same as a legal entity. Such sole ownership will be without the risk of loss of personal assets⁶ and with limited personal liability to the sole owner in respect of the company’s business operations. This provision is a welcome development, subject, of course, to rules applying to different sectors that may require Nigerian shareholding in certain businesses.

¹ Draft Bill for the repeal of the Companies and Allied Matters Act, 2004 and the Enactment of a new Act.

² www.cac.gov.ng. We should mention that this process has already kicked off and registrations of companies, business names are now processed on the CAC online registration portal called Companies Registration Portal.

³ The search however only discloses the name of the company, registration number and the date of registration. Other information such as shareholding and director information are not disclosed.

⁴ The Presidential Enabling Business Environment Council set up by President Buhari.

⁵ The role of a lawyer at every stage of a business cannot be overemphasized.

⁶ Section 18(2) of the CAMA Bill

- 3) **Limited Liability Partnership (“LLP”)** - The creation of the LLP was extensively provided for in the CAMA Bill. It is intended to be a new form of legal identity for businesses in Nigeria and is mainly targeted at increasing foreign investment in the country.⁷ An LLP is a corporate partnership that possesses a legal identity which is separate from that of its partners and has perpetual succession. Any change in the partners of an LLP will not affect the existence, rights or liabilities of the LLP. Any individual or body corporate may be a partner in an LLP and every LLP is required to have at least two designated partners who are individuals, one of whom must be resident in Nigeria. The liability of the partners of an LLP is limited to the extent of their contribution to the partnership at the time of the dissolution of the partnership.
- 4) **Company Secretary and Annual General Meetings** – It is expected that the cost of running a small company will reduce considerably given the abolishment of the compulsory requirement for all companies to have a company secretary⁸ under the CAMA Bill. The requirement to have a company secretary is however retained for public companies. According to the CAMA Bill, a small company will no longer be required to hold Annual General Meetings⁹. A company will qualify as a small company¹⁰ under the CAMA Bill if among other conditions, it is a private company with a turnover of not more than ₦120,000,000, has a net asset value of not more than ₦65,000,000 and none of its members is an alien. Further, it is intended that companies with sole shareholders will be exempted from the requirement to hold Annual General Meetings.
- 5) **Company registration without lawyers** – It is intended under the CAMA Bill that the requirement for a statutory declaration of compliance with the requirements of CAMA by a legal practitioner at the point of incorporating a company will be dispensed with. This requirement will enable individuals to incorporate companies without requiring the services of a legal professional, thereby reducing the cost of registering a company. Currently, submission to the CAC by a company promoter of a statement of compliance indicating that the requirements of CAMA for registering a company have been complied with, is accepted as sufficient evidence of compliance. In our opinion, the requirement for a statutory declaration of compliance with the requirements of CAMA by a legal practitioner is redundant and should indeed be dispensed with.
- 6) **Disclosure of Beneficial Interest in Shares¹¹** – The CAMA Bill proposes that persons who hold more than five percent of a company’s shares on behalf of beneficial owners will be required to disclose the names of such beneficial owners in writing to the company for entry in the company’s register of members, following which the CAC should be notified of such disclosures in the company’s next annual return filings¹². This proposed provision

⁷ Part C, Chapter 1-11, Section 738 - 802 of the of the CAMA Bill.

⁸ Section 329 of the CAMA Bill.

⁹ Section 238 of the CAMA Bill

¹⁰ Section 329 (3) of the CAMA Bill

¹¹ Section 120 of the CAMA Bill

¹² Section 120 of the CAMA Bill - This provision is applicable to private companies while Section 121 of the CAMA Bill provides that substantial shareholders of public companies are to notify the company of their shareholding

of the CAMA Bill appears to be in line with the provision to disclose the identity of beneficiaries in the memorandum and articles of association as detailed in Paragraph 11 below. The purport of this requirement in our opinion, is mainly to ensure transparency and to discourage money laundering and hiding of assets.

- 7) ***Share Capital Requirements*** – The CAMA Bill proposes to substitute the requirement for a minimum authorised share capital with minimum issued share capital¹³. Under the proposed minimum issued share capital regime, companies will be required to have not less than their issued minimum share capital as their authorised share capital. The CAMA Bill proposes that where part of a company’s authorised share capital remains unissued prior to the passage of the CAMA Bill into law, the company will be required to allot all its unissued shares within six months from the date of the enactment of the CAMA Bill. A proposed requirement under the Bill is also that a minimum of twenty five percent of a company’s minimum issued share capital must be paid up.

If the CAMA Bill is enacted into law, the effect of the provision described above will be as follows: Marsh & Marsh Limited, a private company incorporated on 1st September 2017 with an authorized share capital of ₦200,000 divided into 200,000 ordinary shares of ₦1.00 each of which 100,000 ordinary shares have been issued. Marsh & Marsh Limited will have six months (from the date of the enactment of the CAMA Bill) to allot all the unissued 100,000 ordinary shares and at least 50,000 ordinary shares of Marsh & Marsh Limited must be paid up.

Additionally, the CAMA Bill proposes a minimum issued share capital of ₦100,000 for private companies and ₦2,000,000 for public companies¹⁴. These sums are more suited to current economic realities in comparison to the prescribed minimum authorised share capital of ₦10,000 and ₦500,000 for private and public companies respectively, currently required under CAMA.

- 8) ***Removal of Attorney General's Consent for Company Limited by Guarantee("Ltd/GTE")***¹⁵- The CAMA Bill proposes to dispense with the requirement under CAMA for promoters of Ltd/GTE companies to obtain the consent of the Attorney General of the Federation (the “AG Federation”) before such companies can be incorporated. Currently, many promoters of not-for-profit organisations register such organisations as Incorporated Trustees rather than go through the tedious and lengthy process of obtaining the consent of the AG Federation. If the CAMA Bill is passed into law in its current form, it is our view that the exclusion of this requirement will simplify the incorporation process for Ltd/GTE companies. The CAMA Bill also intends to modify the requirement for the incorporation of Ltd/GTEs by requiring the publication of the application for incorporation of a Ltd/GTE company in three national newspapers.

and within 14 days and the company shall within 14 days of receipt of the notification also inform the Corporate Affairs Commission.

¹³ Section 27(2) and section 125 of the CAMA Bill

¹⁴ Section 125 of the CAMA Bill

¹⁵ Section 26 of the CAMA Bill

- 9) ***Regulation on Corporate Insolvency to Revive Ailing Companies***¹⁶ - The CAMA Bill sets a proposed framework on corporate insolvency that is aimed at reviving ailing companies and achieving better results for its creditors. The main objective of an administrator in insolvency matters under the CAMA Bill is first to rescue the company and act in its interest. The CAMA Bill thus supports more flexible debt-settlement arrangements that allow a company to pay a portion of its debts and subsequently enter into an arrangement for the payment of the balance. The intention of this provision is to protect the interest of creditors and shareholders of such companies.
- 10) ***Removal of the Compulsory requirement for a Seal*** – The requirement for companies to have an official seal is made optional under the CAMA Bill, which affirms that a company may validly execute a document described or expressed as a deed without affixing a common seal on the document.¹⁷ The CAMA Bill states that a document executed on behalf of a company by either two directors or a director and the company secretary or a by a director in the presence of a witness, is validly executed¹⁸.
- 11) ***Memorandum of Association*** – Another development in the CAMA Bill is the proposed requirement for a subscriber to the memorandum of association of a company who holds the whole or any part of the shares subscribed to by him in trust for any other person, to disclose this fact and the name of the beneficiary in the memorandum¹⁹. Subscribers to the memorandum of association of a company are not currently required to make such disclosures under CAMA.
- 12) ***Acquisition by a company of its own shares*** – While CAMA prohibits a company from acquiring its own shares save in certain specified circumstances, it is intended under the CAMA Bill that a company may buy, deal or acquire its own shares²⁰, including its redeemable preference shares subject to certain conditions – and without the stringency previously attached. The proposed departure from the prohibition of a company from acquiring its own shares under CAMA, may if enacted into law, be beneficial to businesses as it will help to reduce cost of capital and undervaluation of a company's shares.
- 13) ***Reduction of Share Capital*** – The CAMA Bill intends to make less simple the process by which private companies reduce their share capital. Under the Bill, a private company may, if authorised by its articles, reduce its share capital by a special resolution.²¹ This is a much simpler process than the prevailing process under CAMA, which requires an application to be made to court for a confirmation of the reduction.

¹⁶ Section 442 of the CAMA Bill

¹⁷ Section 103 and 104 of the CAMA Bill

¹⁸ Section 103(2) of the CAMA Bill

¹⁹ Section 27 (3) of the CAMA Bill

²⁰ Section 185 of the CAMA Bill

²¹ Section 132 of the CAMA Bill

14) *De-criminalising offences under the CAMA* – Currently, there are numerous criminal offences under CAMA that are punishable by monetary penalties or imprisonment. In our view, the current monetary penalties are too little to be impactful or to constitute an effective deterrence. To address this, the CAMA Bill proposes fewer criminal offences in respect of which the courts will be responsible for determining appropriate penalties, while the power to administer appropriate fines in the case of administrative offences will be vested in the CAC.

15) *Protection of Minority Investors* - The CAMA Bill seeks to protect the interest of minority investors and shareholders by enabling aggrieved shareholders to not only bring an action against a company, but also the parent or subsidiary of such company. Under CAMA, aggrieved investors can only bring an action on behalf of a company to rectify any wrong done by the company. The provisions of the CAMA Bill in this regard will promote investor-confidence in the Nigerian business space.

Comment - The passage of the CAMA Bill will be a major and revolutionary legislative achievement for Nigeria; it will provide a framework that will promote investment, reduce regulatory hurdles and particularly impact the structuring and operation of Small and Medium Enterprises. The CAMA Bill is expected to improve Nigeria’s ranking in the World Bank’s ease of doing business index which currently ranks Nigeria 145 (out of 190 countries) due to the difficulties encountered by investors in establishing a business in Nigeria.²². In our view, the CAMA Bill will also significantly ease the bureaucracy at the CAC and enable it to carry out its statutory functions more effectively.

While there are several innovations in the CAMA Bill, other equally important matters such as board meetings by teleconference, electronic statutory registers, electronic signatures, the appointment of alternate directors etc., were not provided for. These matters should be considered by the National Assembly to ensure that the provisions of the CAMA Bill are reflective of current corporate practices.

In accordance with the Nigerian legislative process, the CAMA Bill has been forwarded to the House of Representatives (the lower house of the National Assembly) for concurrence after which, it will be presented to the President for his assent.

²² Nigeria was at the 169th spot in 2017 <http://www.doingbusiness.org/rankings> accessed on 23rd May 2018

Qualifications

The contents herein are meant for the general information of our clients and friends and do not amount to legal advice. Adepetun Caxton-Martins Agbor & Segun and Adcax Nominees Limited accept no responsibility for any loss or damage that may arise from reliance on information contained in this publication. All enquiries may be made to Felicia Mosuro at fmosuro@acas-law.com, Aderemi Adeleye at aadeleye@acas-law.com or Chikosolu Akunyili at cakunyili@acas-law.com.

*Adepetun Caxton-Martins Agbor & Segun by telephone (+234 1 462 2094), fax (+234 01 461 3140)
Adcax Nominees Limited by telephone (+234 1 460 5271-2), (+234 1 279 7035), fax (+234 01 461 3140)*

