

NEW REGULATIONS FOR THE REGISTRATION OF CHARGES OVER MOVABLE ASSETS AND APPOINTMENT OF CORPORATE REPRESENTATIVES

The Corporate Affairs Commission (the “Commission”), in line with its statutory mandate and ongoing reform initiatives to improve the ease of doing business and the standard of economic activities in Nigeria, has issued new guidelines. The new guidelines relate to the registration of charges over movable assets and the appointment of corporate representatives. The new guidelines took effect in April 2018.

A synopsis of the new guidelines particularly as they relate to individuals and companies in Nigeria is as follows:

1. **Registration of Charges Over Movable Assets Pursuant to the Secured Transaction in Movable Assets Act, 2017**

The National Assembly of the Federal Republic of Nigeria last year enacted the Secured Transaction in Movable Assets Act, 2017 (the “STMA Act”) which took effect on the 30th day of May 2017. The objectives of the STMA Act are to:

- a. enhance financial inclusion in Nigeria;
- b. stimulate responsible lending to micro, small and medium enterprises;
- c. facilitate access to credit, secured with movable assets;
- d. facilitate perfection of security interests in movable assets;
- e. facilitate realization of security interests in movable assets; and
- f. establish a collateral registry and provide for its operations.

Further to the enactment of the STMA Act, the Commission has now issued guidelines relating to the registration of charges over moveable assets. The new guidelines require persons who wish to register charges over moveable assets with the Commission to provide in support of the Form CAC 8 (statutory form for the registration of charges), the following information:

- a. Serial number or chassis number of the collateral (e.g. motor vehicles, planes, boats, plant and machinery);
- b. Bank Verification Numbers (“BVN”)¹ of the business owners /members of the board of directors;
- c. The moveable asset used; and

¹The additional requirement for the provision of the BVN of business owners /members of boards of directors may not be unconnected with the need to ensure quick access to the accounts of defaulting parties, particularly for business proprietors and directors who have provided personal guarantees.

d. High level of description of the moveable asset used.

Prior to the enactment of the STMA Act - It is instructive to note that prior to the enactment of the STMA Act, the Commission had no requirements specifically dealing with the registration of charges in respect of moveable assets. The general requirements for the registration of all charges, whether in respect of moveable or immovable assets, were as stated in Section 34 of the Companies Regulations 2012². However, with the issuance of these new guidelines in respect of moveable assets, lenders who wish to register charges over movable assets must comply with the provisions of Section 34 of the Companies Regulations 2012, as well as the requirements of the Commission's new guidelines as stated above. Persons who wish to register charges over immovable assets with the Commission will only need to comply with the requirements as stated in Section 34 of the Companies Regulations 2012.

National Collateral Registry - It is also important to note that with the establishment of the National Collateral Registry³, every public registry established by any Act of the National Assembly to coordinate or warehouse or oversee transactions in respect of movable assets in Nigeria must be operated in a manner that creates an automated interface between such registry and the National Collateral Registry. Such interface is intended to ensure and guarantee that the registry is made accessible through, by and from the National Collateral Registry⁴. This means that all information available in different public registries in relation to registered charges over movable assets can all be accessed and obtained from one source, the National Collateral Registry.

Repossession of collateral simplified - Also worthy of mention is the fact that the repossession of collateral has been simplified by the STMA Act which now allows a creditor - in case of default by a Borrower - to repossess collateral under the STMA Act pursuant to judicial process or without judicial process, where the Grantor has consented to relinquishing possession of such collateral without a court order in the Security Agreement, and upon the giving of adequate notice to the Borrower and the Grantor. Once the stipulated notice period has expired in the case of repossession without judicial process, a creditor may request for the assistance of the Nigerian Police Force and proceed to recover the collateral where the Security Agreement so provides.⁵

2. Appointment of Corporate Representatives

The Commission also introduced in the new guidelines, two new directives in relation to the appointment of corporate representatives. The first directive relates to the

²The requirements include the following: (a) duly stamped and sealed deed with counterpart copy; (b) court order where applicable; (c) photocopy of previous registered deed in case of deed of up-stamping; (d) payment of fees.

³ Please see Section 10 of the STMA Act

⁴ Section 2(1)(c) of the STMA Act

⁵ Section 40 of the STMA Act

appointment of corporate representatives of shareholders while the second relates to the appointment of corporate bodies as directors.

a. Appointment of Corporate Representatives of Shareholders

- i. The new directive in respect of the appointment of corporate representatives of shareholders is as follows:

“the concept of corporate representatives is alien to the Companies and Allied Matters Act⁶ (“CAMA”) and will no longer be accepted. Consequently, any written resolution signed on behalf of either a Nigerian or foreign company will be accepted by the Commission notwithstanding the fact that the signature of the shareholder representative is not in our records and the document need not be under the common seal of the company.”

It is important to note that before the issuance of this directive, the Commission had itself insisted on the prior registration of the details of at least one corporate representative as a pre-condition to accepting any shareholder resolution signed by such corporate representative. Following the issuance of this new directive however, the appointment of representatives to act on behalf of a corporate shareholder is now essentially an internal matter for companies, the notification of which is no longer required to be registered at the Commission. The Commission will now accept any written resolution purported to be signed on behalf of a corporate shareholder. In addition, the common seal of the company is no longer required to be affixed on a document that is signed on behalf of a corporate shareholder.

- ii. **Expansion of Section 231 of CAMA** - This directive appears to expand the provisions of Section 231 of CAMA to allow persons other than authorized representatives on record to sign documents on behalf of a corporate shareholder. Section 231 allows a corporation, if it is a member of another corporation, to authorize any person as it thinks fit by a resolution of its director or other governing body, to act as its representative at any meeting of the corporation or at any meeting of any class of members of the company. Section 231 (2) also states that the corporate representative shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation might exercise if it were an individual shareholder, creditor or holder of debentures of that other company.
- iii. **Risk of fraudulent activities** - While this may appear to be a welcome development in terms of eliminating administrative bottlenecks, it is worrisome that the Commission’s long-standing extra check on the due authorization of persons represented as being able to sign documents on behalf of a company has been removed. Some of the pertinent questions to be asked are: (i) How will the Commission confirm that the person signing a document (particularly for foreign shareholders) is signing the same on the company’s authority? (ii) Who will be liable if the Commission accepts a document signed by an unauthorized representative

⁶ Cap C20 Laws of the Federation 2004

with fraudulent intent? Until these questions are answered, we believe that permitting anyone whose details are not in the records of the Commission to sign a document on behalf of a corporate shareholder, may give room for fraud and unending litigation.

- iv. **Recommendation to manage risk** - In light of the risk of the occurrence of potential fraudulent activities, we recommend that the Commission should give further consideration to the change to the filing of the appointment of corporate representatives for shareholders. In the interim, we advise that in accordance with section 231 of CAMA, corporate shareholders (both foreign and Nigerian) should continue to pass resolutions for the appointment of corporate representatives. While this resolution is no longer required to be filed at the Commission, it is important that companies notify their Company Secretary/Legal Counsel of the appointment of such representatives. This will ensure that in the event that a written resolution is signed by a person other than the appointed representative(s) and is filed at the Commission, there will be evidence that he was not authorized to sign the document by the company – even if it does not cure the issue of liability to innocent third parties.
- v. **No sealing of members’ resolution** - This directive also obviates the need to have a members’ written resolution sealed. This is a welcome development as sealing is not a mandatory requirement under Section 77 of CAMA⁷. This also cures the hardship that lawyers experience when filing resolutions of shareholders from jurisdictions where sealing of documents is either optional or not required. Previously, such documents were queried and rejected by verification officers of the Commission who insisted that resolutions must be sealed or in the alternative, requested for an affidavit attesting to the fact that sealing is not a requirement in the corporate shareholder’s jurisdiction

b. Appointment of Corporate Bodies as Directors

- i. The new directive in respect of the appointment of corporate bodies as directors is as follows:

“the practice of including corporate bodies as directors in incorporation documents and Forms CAC 7A describing them as directors will no longer be allowed. Where an individual is appointed to represent a corporate body on the board of a company, the name of the individual must appear first, followed by an indication of the company the individual is representing”

- ii. This means that the name of a corporate entity can no longer be stated on a Form CAC 7A⁸ as a substantive director. The corporate entity must appoint an individual

⁷Section 77 provides that a document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal unless otherwise so required in this Part of this Act.

⁸ Statutory form for filing a Notice of Change of Directors.

to represent it on the board of a company. Following the appointment of a suitable individual to represent the corporate entity, the correct way to reflect the same on the Form CAC 7A will be “Bode Yaro Emenike (Representing XYZ Limited)”.

- iii. This clarification effectively implements the provisions of section 257 of CAMA which disqualifies a corporation (other than its representative appointed to the board for a given term) from being appointed as a director of a company.

Conclusion

Despite the risk highlighted in connection with the removal of the requirement to file appointments of corporate representatives of shareholders at the Commission, we commend the Commission’s commitment to the ongoing reforms and hope that the implementation of these guidelines will further enhance the Nigerian business environment.

Qualifications

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