



# Sebastian Essien & Associates

Company Secretaries

Corporate Governance Advisory

## QUARTERLY NEWSLETTER – MARCH, 2023.

Welcome! And thank you for taking the time to review the  
March Edition of our Quarterly Newsletter



## **Executive Summary**

On the 10th of February, 2023, the Nigerian President signed into law the Business Facilitation (Miscellaneous Provisions) Bill, 2022 (also known as the “Omnibus Bill”) (the “Act”). Several business-related laws were amended by the Act, including the Companies and Allied Matters Act (CAMA), 2020. The objective of the Act is to amend the relevant legislation, eliminate bottlenecks and promote the ease of doing business in Nigeria.

A hand with the index finger pointing upwards towards the word 'COMPANY' which is written in a bold, italicized, black font on a grey rectangular sign. The sign is set against a background of a blue sky with white clouds.

***COMPANY***

## **INTRODUCTION**

In this newsletter, we highlighted some of these amendments to the CAMA and their possible impact on the Nigerian business environment.

# 1- Company Shares - (a)

Section 127(1) of CAMA has been amended. The Act provides that a company may increase its issued share capital by the allotment of new shares, either in a general meeting or by a resolution of the board of directors, subject to the condition or direction that may be imposed in the Articles or the Company in general meeting. The existing provisions of Section 127(1) of CAMA states that a company may increase its share capital only by the members in general meeting, and not otherwise.

## Company Shares (b)

Consequently, a company may have to amend its articles to empower the directors to increase its share capital where this is not already provided in its articles. The company may in the alternative have its members sign a resolution empowering the directors to do so and setting the limits for the exercise of this authority.

An amendment to Section 142(1) of CAMA provides that only existing shareholders of a private company shall enjoy pre-emptive rights.

## Company Shares (c)

In addition, Section 142(2)(c) was amended to the effect that existing shareholders in a private company have 21 days to act on their pre-emptive rights under the CAMA, after which the offer made pursuant to the pre-emptive rights shall be deemed declined.

## 2. Allotment of Shares

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Section 154 (1) of CAMA was amended to shorten the period within which to make a return on allotment of shares to the Corporate Affairs Commission (CAC) from one (1) month to fifteen (15) days.

### **3. Accounting standards for a company's financial statement**

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An amendment to section 378(1) of CAMA provides that a company's financial statement must comply only with the requirements of the accounting standards as prescribed by the Financial Reporting Council of Nigeria (FRCN). The previous requirement to comply with the First Schedule of CAMA was deleted.

## 4. Foreign Participation

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A new section 78 (3)(c) was introduced to the Act. The new section exempts foreign companies seeking to do business in Nigeria and exempted under any extant act of the National Assembly in effect from the requirement of incorporation as a separate entity in Nigeria under sub-section (1).

## 5. Charge

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Section 207(4) of CAMA was amended to make the priority of a fixed charge over a floating charge and other debts without prejudice to the provisions of Section 204. Also, Section 222(13) was amended by the inclusion of definitions of terms such as cash, financial instruments, security interest and financial collateral.

## **6. Meetings and Notices**

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Section 240(2) of CAMA was amended to allow public companies to hold their general meetings electronically. In addition, Section 244 of CAMA was amended to allow companies, as an alternative to other means, send notices to their members via electronic mail, while Section 248 was amended to include 'electronic voting' as an alternative to 'show of hands'.

## 7. Board of Directors

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An amendment was made to the requirement under Section 275 of CAMA for at least three independent directors in a public company to at least one-third of the company's directors. Also, a person who nominates a majority of the candidates for the board of directors must now nominate at least one-third of them as independent directors. In addition, Section 307 of CAMA was amended to clarify the previous provision by stating that a person can only serve as a director of five public companies at the same time.

## **8. Winding up by the Court**

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To determine whether a company is unable to pay its debt, Section 572 of CAMA was amended to change the threshold of debt to a creditor from N200,000 to a sum to be determined by a regulation issued by the CAC.

## 9. Insolvency and Bankruptcy

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The designations of Legal Practitioners and Chartered Accountants as Insolvency Practitioners under Section 868 of CAMA has been deleted. It is expected that the Corporate Affairs Commission will issue guidelines to clarify who can act as insolvency practitioners.

# Conclusion

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It is yet unclear when the Act shall become effective. It is expected that the CAC will issue guidelines and directives regarding the amendments made by the Act and their implementation.

## **Ways I can help you..**

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As an ICSAN Licensed Corporate Governance Practitioner, Chartered Secretary and Administrator and a Certified Corporate Governance Evaluator, I undertake a range of corporate services for individuals and companies ranging from:

1. Company incorporation and post incorporation filings
2. Change/appointment of directors and secretary
3. Alteration of Memart, increase in share capital, surrender of shares and allotment

## Ways I can help you ..contd.

4. Preparing and executing general, board and committee meetings
5. Advice on conduct of corporate governance evaluation/audit
6. Annual returns filings



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## Qualification

**The contents herein are meant for the general information of our clients, associates and members of the public and do not amount to governance, company secretarial and or legal advice.**

**Sebastian Essien & Associates accept no responsibility for any loss or damage that may arise from reliance on information contained in this publication.**

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