


# *Alsec Nominees Limited*

## **MEMORANDUM**

### **WHAT YOU NEED TO KNOW ABOUT ISSUED SHARE CAPITAL IN THE CAMA 2020**

1<sup>ST</sup> MARCH 2021





You may recall that in a previous correspondence, we had informed you that the President of the Federal Republic of Nigeria signed into law the Companies and Allied Matters Act 2020 (“CAMA 2020”) on Friday, 7<sup>th</sup> August 2020. The Corporate Affairs Commission (the “CAC” or the “Commission”) has also issued the Companies Regulations 2021 (the “CR”) to guide the conduct and regulation of registrations under the CAMA 2020. The CR took effect on 1<sup>st</sup> January 2021, following its approval by the Honourable Minister of Industry, Trade, and Investment.

The CAMA 2020 introduced some significant business legislations, including changes to the concept of share capital as it existed under the old law. Below are highlights of some of the new introductions in relation to share capital:

## 1 ISSUED SHARE CAPITAL

- a) The CAMA 2020 revoked the concept of “authorised share capital” and replaced it with the concept of “issued share capital”. Under the old law, companies could have an amount of authorised share capital and issue only 25% of that amount as their issued share capital. Under the CAMA 2020, the replacement of the concept of authorised share capital with “issued share capital” means that companies must at all times issue all of their share capital.

b) **Compliance**

Companies that have unissued shares should ensure that those unissued shares are fully issued as the CAMA 2020 has abolished the concept of authorised share capital. Such companies must also ensure that after the issuance of the unissued shares, at least 25% of the company’s issued share capital is paid up, as required under the CAMA 2020.

## 2 MINIMUM ISSUED SHARE CAPITAL

- a) The CAMA 2020 increased the minimum share capital of the different types of companies. The table below shows the comparative minimum share capital under the CAMA 2020 and the old law:

S/N	Type of Company	Minimum authorised share capital under the old law	Minimum issued share capital under the CAMA 2020
1	Private Companies	₦10,000	₦100,000
2	Public Companies	₦500,000.00	₦2,000,000

b) **Compliance**

Companies that currently have authorised share capital of less than the minimum issued share capital prescribed for their category must increase their share capital by issuing new shares to reach the required minimum. Section 124 of the CAMA



2020 prescribes a timeline of six months after the commencement of the Act, for such companies to issue shares to an amount not less than the minimum issued share capital. Such companies must also ensure that after the issuance of the new shares, at least 25% of the issued share capital is paid up, as required under the CAMA 2020.

c) **Penalty**

The CAMA 2020 provides that any company that fails to comply with the above provisions would be liable to such fine as the Commission may prescribe by regulation and in addition to a daily default fine as the Commission shall specify by regulation for every day during which the default continues. The Commission has specified that the company and every officer of the company shall be liable to a daily default penalty of ₦500 for every day that the default continues.

### 3 PAID-UP SHARE CAPITAL

Under the old law, companies were not obligated to have any paid-up share capital. However, as mentioned in paragraphs 1 and 2 above, the CAMA 2020 requires that where a company increases its share capital, such company must ensure that at least 25% of the share capital, including the increase, has been paid up, for the increase in share capital to take effect..

### 4 PROVISIONS OF THE CR IN RELATION TO ISSUED SHARE CAPITAL

a) Section 13 of the CR provides that any company that has unissued shares in its capital, should not later than **30<sup>th</sup> June 2021** fully issue such shares and that the notice of issue delivered to the CAC for registration shall be exempted from the payment of filing fees. The CR prescribes a daily penalty for the Company and its officers for every day that the default continues, until the default is rectified.<sup>1</sup>

b) **Inconsistency in the provisions of the CR**

The heading of Section 13 of the CR relates to “minimum issued share capital” and makes reference to section 124 of the CAMA which provides for “minimum issued share capital” as set out in paragraph 2 above. However, the provisions set out in section 13 of the CR prescribed a timeline for the issuance of unissued shares of a company rather than a timeline for the issuance of new shares to meet the required minimum share capital.

Furthermore, the CAMA 2020 provides a timeline and penalty for companies that do not meet the minimum share capital requirement<sup>2</sup> but does not stipulate any timeline and penalty for companies who default in issuing their unissued shares. There is no express provision in the CAMA 2020 requiring companies to issue their unissued shares as set out in section 13 of the CR. This creates an inconsistency between the provision of the CR and the CAMA 2020.

<sup>1</sup> The new schedule of fees issued by the CAC stipulates a daily penalty of ₦250 for small companies, ₦500 for companies other than small companies and ₦1000 for public companies.

<sup>2</sup> Please refer to 2b above



At a forum organised by the Institute of Chartered Secretaries and Administrators of Nigeria (“ICSAN”) in collaboration with the CAC on 16<sup>th</sup> February 2021, stakeholders pointed out the inconsistency in the CR to the Registrar-General of the CAC (the “RG”). They expressed the view that there was no requirement in the CAMA 2020 for companies to issue their unissued shares and that there were strategic and contractual reasons why companies have unissued shares, such as settlement of contractual obligations to investors/shareholders, implementation of employee share option scheme etc.

In response to the comments by the stakeholders, the RG acknowledged that there were gaps in the CAMA 2020 and that amendments would be required to close the identified gaps. He, however, stated that the provisions of section 13 of the CR was meant to give effect to the intent of the law in defining minimum issued share capital under section 868 of the CAMA 2020 as “the issued share capital of a company at any given time.”

At the end of the discussions at the forum, the RG stated that the CAC had agreed that:

- Companies with unissued share capital who are unable to comply with the 30<sup>th</sup> June 2021 deadline for the issuance of their unissued shares as prescribed in section 13 of the CR, should apply to the CAC for extension of time to fully issue their unissued shares with reason and that the CAC would promptly grant the required extension without any penalty;
- A general moratorium of two (2) years would be granted to all companies to issue their unissued shares; and
- A publication of the above concessions would be made on the CAC website and in national newspapers.

**c) Conclusion**

- i. Pursuant to the advice of the RG, companies that have unissued shares should issue their unissued shares by 30<sup>th</sup> June 2021 or make an application to the CAC for a specific extension of time to issue their unissued shares but not later than the general moratorium period of two (2) years; and
- ii. companies that currently have authorised share capital of less than the minimum issued share capital prescribed for their category should increase their share capital by issuing new shares to meet the required minimum not later than 30<sup>th</sup> June 2021.

## **5 OPTIONS FOR ISSUING NEW SHARES**

Companies may issue their unissued shares through various means such as offer for subscription, rights issue, bonus issue and private placement. The most suitable of these options for any company would depend on the circumstances of such company.



Companies that are unwilling to issue their unissued shares may choose to reduce their share capital by extinguishing unissued shares.

We have set out as an appendix to this memo, the procedure, cost and timeline for the issuance of unissued shares, in compliance with the requirements of the CAMA 2020.

We hope that you find the above information helpful. Please do not hesitate to let us know if there is any aspect of our memo that you require clarification on, or if you require any further assistance in relation to this matter.

Yours faithfully,

*Alsec Nominees Limited*  
**ALSEC NOMINEES LIMITED**



## APPENDIX

### PROCEDURE FOR INCREASE IN SHARE CAPITAL AND ISSUANCE OF UNISSUED SHARES

- a. Companies whose share capital fall below the minimum issued share capital should convene a Board meeting to recommend to its shareholders that the company's share capital be increased through the creation of new shares sufficient to, at least, meet the minimum issued share capital requirement under the CAMA 2020.
- b. The Company receives applications for the acquisition of the unissued shares from existing shareholders, or from other interested investors, where the existing shareholders have waived their pre-emptive rights.<sup>3</sup>
- c. The Company Secretary ("CS") issues a notice of general meeting, giving the required 21 days' notice. The shareholders, in the case of a private company, may waive the notice period to save time.
- d. The Shareholders will consider and approve the increase in share capital by the issuance of new shares, approve the allotment of the new shares and define the new shareholding structure of the Company. For companies whose share capital already comply with the minimum issued share capital, the shareholders would only need to consider and approve the issuance of the unissued shares and the allotment of the shares. Where the Articles of Association delegate the power to allot shares to the directors, the shareholders may approve the increase in share capital or issuance of new shares while the allotment of shares would be approved by the Board of Directors.
- e. In the case of a private company, an alternative to steps c and d above is for the Shareholders to approve the issuance of shares and the new shareholding structure by way of a written resolution.
- f. The Company Secretary ("the CS") prepares the required documentation and files them at the CAC within 15 days of the passing of the resolution to increase the share capital, and one month from the date of passing of the resolution allotting the new shares.
- g. On receipt of the application, the CAC verifies the requisite documents and if found acceptable, registers them as part of the Company's records.
- h. The CAC will issue a Certificate of Increase in share capital to the company after the increase. The CS would obtain a Certified True Copy of the Form CAC 2A showing that the shares have been fully allotted, and the new shareholding structure of the company.

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<sup>3</sup> The power to approve the allotment of shares is vested in companies and cannot be exercised by the Directors except where express authority is vested in the Directors by the Articles.



### 3. COST

#### 3.1 Increase in share capital

The cost of registering an increase in share capital depends on the quantum of the increase in share capital. The company would pay stamp duty to the Federal Inland Revenue Service at the rate of 0.75% of the increase in share capital while the filing Fees at the CAC for a private company is ₦5,000 for every ₦1 Million share capital or any part thereof up to ₦500,000,000 and ₦7,500 for every subsequent ₦1,000,000 or any part thereof above ₦500,000,000. The filing fee for a public company is ₦10,000 for the first ₦1 Million share capital or any part thereof up to ₦500,000,000 and ₦15,000 for every ₦1,000,000 share capital or any part thereof above ₦500,000,000. The foregoing does not include the cost of filing the altered MEMART and the statutory declaration of compliance at the CAC. The fee is exclusive of professional fees, other admin expenses and any official penalty prescribed by the CAC (where applicable).

#### 3.2. Return of allotment of shares

The official fee for filing and obtaining certified true copy of relevant documents for an allotment of shares at the CAC is the sum of ₦10,000.00 for a private company and ₦15,000 for a public company. The fee is exclusive of professional fees (for non-retainer clients), other admin expenses and any official penalty prescribed by the CAC (where applicable).

### 4. TIMING

We estimate that the registration of an increase in share capital would take between 8-10 weeks while the filing of the Form CAC 2A at the CAC would take at least 6-weeks, based on recent experiences of the turnaround time for filings at the CAC. This protracted timeline is due to the restrictions arising from the COVID-19 pandemic.