

# COMPANIES & MARKETS



**UDO UDOMA & BELO-OSAGIE**

## **THE COMPANIES AND ALLIED MATTERS ACT (REPEAL AND RE-ENACTMENT) BILL 2019 – WHAT YOU NEED TO KNOW**

### **Background**

The Companies and Allied Matters Act (Chapter C20) Laws of the Federation of Nigeria 2004 (CAMA) was enacted in Nigeria as a decree of the military government in 1990, and in the past 28 years, there have been no significant amendments to the CAMA. This is, however, all set to change if the Companies and Allied Matters Act (Repeal and Re-enactment) Bill 2019 (CAMA Bill), which was passed by the Nigerian Senate on 15th May 2018 and by the House of Representatives on 17th January 2019, is passed into law.

Udo Udoma & Belo-Osagie actively participated in the drafting of the CAMA Bill. Corporate Partner, Ozofu 'Latunde Ogiemudia was the chairperson and Managing Associate, Christine Sijuwade was a member of the Technical Advisory Committee set up by the office of the Senate President to advise on the CAMA Bill and the bill to amend the Investments and Securities Act 2007. In this series, which is scheduled to run for 12 weeks, Udo Udoma & Belo-Osagie will provide insights and digestible excerpts on the effect of key changes proposed by the CAMA Bill. For questions or comments, please send an email to [uubo@uubo.org](mailto:uubo@uubo.org)

### **PART 5**

### **SHARE CAPITAL**

#### **SHARE CAPITAL REDEFINED**

Under the CAMA, companies are required to have a prescribed minimum authorised share capital. The authorised share capital specifies the limit on the minimum amount of shares a company can allot. The shareholders may, however, agree to raise this limit. In practice, the authorised share capital could be set at a level that is much higher than the company needs.

The concept of the “authorised share capital” has been abolished in the CAMA Bill and has been replaced with “minimum issued share capital”. While under CAMA, the minimum authorised share capital for a private company is N10,000 and for a public company, N500,000, under the CAMA Bill, the minimum issued share capital for a private company is N100,000 and for a public company, N2 million.

One effect of the change made by the CAMA Bill is that companies will no longer be required to have issued at least 25% of their authorised share capital since, by implication, the entire share capital of a company will always be fully issued. In addition, under the CAMA Bill, where a company increases its issued share capital, the increase will only take effect if 25% of its issued share capital (including the increase) is paid up.

#### **EFFECT ON EXISTING COMPANIES AND IMPLICATIONS FOR EXISTING REGULATIONS**

From a regulatory perspective, any regulator that currently relies on the authorised share capital as a benchmark for various compliance thresholds, will need to make consequential amendments to their rules and regulations, such that the relevant thresholds would be based on a company's issued or paid-up share capital, both of which are more reflective of the equity capital of a company. It is also expected that the CAC forms will be amended to delete references to authorised share capital.

With respect to existing companies that may not have issued all of their authorised share capital when the CAMA Bill comes into effect, it is not expected that they will be required to fully issue all of their shares in order to comply with the CAMA Bill. Once their existing unissued shares have been fully issued, however, any increase in share capital will need to be implemented in accordance with the new process set out in the CAMA Bill. The CAC will have to provide appropriate clarification and guidance on this.

#### **RATIONALE**

A company is required to pay stamp duty and CAC filing fees whenever it creates or increases its authorised share capital, notwithstanding that all of the shares might not be allotted. This amounts to a front-loading of costs. The removal of the concept of authorised share capital therefore means that, at incorporation, a company will only incur these costs in relation to the actual share capital that it issues. Thereafter, whenever the company wishes to issue more shares, it will simply pass the appropriate resolution to do so, issue the relevant shares, and pay the applicable stamp duty and CAC filing fees in respect of the additional shares issued.

#### **NEW PROCESS FOR INCREASING SHARE CAPITAL**

The CAMA Bill prescribes a new process for increasing issued share capital. Under the CAMA Bill, a company that wishes to increase its issued share capital simply passes a resolution approving the allotment of new shares to named persons. The CAC must be notified of the increase and allotment within 15 days of the relevant general meeting and it is at this point that stamp duty and CAC filing fees are paid on the amount of the increase, and a return of allotment filed.

The CAMA Bill also sets out the mechanics for dealing with circumstances where a company is unable to notify the CAC within the above-mentioned 15-day period, because the proposed increase/ allotment requires the prior approval of another regulator. In such circumstances, the company is required to notify CAC of this fact within 15 days and upon such notification being filed, the 15-day period shall be deemed to be extended to a period terminating 15 days after the approval of the other regulator is obtained. If, however, the relevant approval is not obtained from that other regulator within 48 days of the date on which the company first notified the CAC, the company must file another notice and affidavit with the CAC - and must continue to do so for every successive period of 48 days until the relevant approval is obtained. If the relevant approval is not obtained within 9 months from the date that the CAC was first notified, the increase will be deemed to be null and void.