



Alsec Nominees Limited

CAMA 2020 - HIGHLIGHTS OF CHANGES IN POST INCORPORATION MATTERS AND STATUTORY FILINGS

Alsec Nominees Limited (“Alsec”) is delighted to inform you of the signing into law of the Companies and Allied Matters Act 2020 (“CAMA”) by President Muhammadu Buhari on 7th August 2020. We are particularly proud because one of our partners in Udo Udoma & Belo-Osagie, Mrs. Ozofu ‘Latunde Ogiemudia, was the chairman of the technical advisory committee appointed to oversee the review of the CAMA and which prepared the first draft of the Act. The new CAMA has made monumental strides in advancing Nigerian corporate law and bringing it into the 21st century and is a major departure from the previous 30-year old CAMA. Mrs. Ogiemudia was also supported by another partner of UUBO, Mrs. Christine Sijuwade who led the drafting sub-committee. UUBO brought to bear its wealth of knowledge in commercial transaction which had been affected by the restrictions that the CAMA 1990 created and we now have a dynamic law that will enable all sizes of businesses, whether Nigerian owned, foreign owned or a combination of both to be registered and to do business in Nigeria.

Alsec in partnership with UUBO will continue to not only provide excellent services to our clients but to get involved in policy formulation and legislation review and drafting to ensure that we do not only understand our clients’ businesses and concerns but that we take steps by getting involved in the process of seeing them advocated into law.

We have highlighted below some of the provisions which relate to post incorporation matters that we believe will be of interest to you.

S/N	ITEM	CAMA 1990	CAMA 2020	APPLICABLE SECTION
		<p>(Section 102)</p> <ul style="list-style-type: none"> • The increase shall not take effect unless <ul style="list-style-type: none"> i. Within six months, 25% of the authorised share capital including the increase had been issued; ii. The directors had delivered to the CAC a statutory declaration verifying that fact. <p>(Section 103)</p> <p>No provision</p>	<ul style="list-style-type: none"> • The increase shall not take effect unless <ul style="list-style-type: none"> i. 25% of the share capital including the increase has been paid up; ii. The Directors have delivered to the CAC a statutory declaration verifying that fact. • Where a company fails to comply with the above requirements, it shall be liable to a daily default fine as the CAC may prescribe in the regulation 	<p>Section 128 (1)</p>
3.	<p>Notification of increase in Share Capital and application for extension of time within which to file</p>	<p>A company was required to file a notice of increase in share capital within 15 days. Where any approval was required to be obtained from any primary regulator before filing the notice at the CAC, the company was</p>	<p>A company is still required to file a notice of increase in share capital within 15 days. The new CAMA, however, make specific provisions on steps to take where the approval of a primary regulator is required prior to the increase.</p>	<p>Section 127 (2) to (5)</p>

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		<p>required to seek an extension of time within which to file from the CAC.</p> <p>(Section 102(2))</p>	<p>These include:</p> <ul style="list-style-type: none"> i. Giving notice to the CAC that the approval of a primary regulator is required before filing the notice of increase at the CAC; ii. This notice must be supported with an affidavit sworn to by a director of that company; iii. Upon receipt of the notice and affidavit, the 15 days filing period for the statutory return will be extended for an additional 10 days after the time limit within which an approval is required to be given by the primary regulator as provided for in the relevant law enactment. iv. If the company has not obtained the required approval after 48 days of the date on which it notified the CAC, the Company is required to file another notice and affidavit with the CAC and shall do so for every successive period of 	

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			<p>48 days that elapses.</p> <p>v. If the company fails to obtain the approval of its primary regulator within nine months from the date on which it first notified the CAC, the resolution increasing the company's issued share capital shall become null and void.</p>	
4.	Allotment of shares	<p>Power to allot shares is vested in the company which may delegate it to the directors subject to any conditions or directions that may be imposed in the articles or from time to time by the company in general meeting. (Section 124)</p> <p>No provision.</p>	<p>Power to allot shares is vested in the company and in relation to a private company, this power may be delegated to the directors.</p> <p>The power to allot shares of a public company is subject to the provisions of the Investments and Securities Act.</p>	<p>Section 149</p> <p>Section 149 (2)</p>
5.	Transfer of Shares	The transfer of a company's shares shall be by instrument of transfer and except as expressly	The transfer of a company's shares shall be by instrument of transfer and except as expressly	Section 175

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		provided in the articles, transfer of shares shall be without restrictions. (Section151(1))	provided in the articles, transfer of shares shall be without restrictions, and instruments of transfer shall include electronic instruments of transfer.	
6.	Pre-emptive rights of existing shareholders	No provision.	Company shall not in any event allot newly issued shares unless they are offered in the first instance to all existing shareholders of the class of shares being issued in the proportion of their existing holding.	Section 142
7.	Duty to notify the CAC of changes in register of Directors and residential addresses	No provision.	The company is required to notify the CAC of any change in the particulars contained in its register of directors or residential addresses.	Section 321
8.	Notice of change of secretaries	No provision.	The notice of change of secretary to be filed at the CAC shall contain a statement of the following particulars: i. Full name and any former name (for individuals), corporate or firm name (for a body corporate); ii. Address; and iii. Email address.	Section 339

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			The notice shall be accompanied by a consent, by that person, to act in that capacity.	
9.	Exemption from filing annual returns	No specific provision.	Companies with only one member are exempted from filing annual returns.	Section 421(2)
10.	Inspection of register and copies of instrument	Companies were mandated to make available copies of instruments creating any charge requiring registration and open the register of charges to inspection by any creditor or member of the company at o cost, and to make these documents available for inspection by any other person for a prescribed fee, for a minimum of two hours during business hours. (Section 192 (2))	In addition to access being given to creditors and members at no charge, and any other person at a prescribed fee, the CAC may request for and obtain copies of instruments creating any charge and the register of charges without any restriction or charge.	Section 217(1)
11	Constructive notice of charges	No provision.	Registration of a charge at the CAC shall represent a constructive notice of the matters stated in the particulars of the charge.	Section 221
12	Fees payable for registration of	No provision, but Companies Regulation 2012 prescribed that	The total fees payable to the CAC in connection with the filing,	Section 221 (12)

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	charges	the fee for registration of charges for private companies was 1% of the amount secured and 2% for public companies.	registration or release of a charge with the CAC shall not exceed 0.35% of the value of the charge or such amount as the Minister may specify in the Federal Government Gazette.	
13	Charges requiring registration	No provision	<p>The new CAMA clearly stated interest on which charges should be created and they include:</p> <ul style="list-style-type: none"> i. Mortgage; ii. Book debt; iii. Intellectual Property; iv. Trademark and licence under trademark, or any copyright or a licence under a copyright. <p>And it excludes security financial arrangement, or any charge created or otherwise arising under security financial collateral arrangements</p>	Sec 222 (13) & (14)

GENERAL COMMENTS

Penalties: The new CAMA did not replicate the amount of the penalties payable under the old CAMA but provides in all the

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relevant sections that the penalties shall be determined by the Commission.				
SOME NOTES FROM THE CAC OPERATIONS CHECKLIST JULY 2020				
1)	Only special resolutions or written resolutions of shareholders are required to be filed. Ordinary resolutions of companies and Board resolutions are not required for filing.			
2)	Resolutions may be either written resolutions, or special resolutions passed at annual general meeting or extra-ordinary general meeting.			
3)	Written resolutions of Members can only be passed by private companies.			
4)	Written resolutions of Members must be signed by all Shareholders entitled to attend and vote at a general meeting.			
5)	Resolutions must be duly dated and signed by Directors or Director(s) and the Secretary or any person authorised by a majority of the Directors. Where, however, there are only two Directors, a resolution must be signed by the two Directors.			
6)	Where an alien is a Director or Shareholder and discloses a local residential address, photocopy of residence permit must be furnished.			
7)	A corporate body cannot be a Director of a company but may be represented by an individual nominated for that purpose.			
8)	An approval-in-Principle must be obtained from primary regulators (where necessary) for entities under their respective regulations.			
9)	Returns of allotment shall relate only to an original issue of shares by the company, or shares issued by the company after a surrender of shares as a gift or forfeiture of shares to the company.			

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10)	Instruments of transfer of shares or transmission of shares shall not be accepted for registration. Registration in the company's register of members shall suffice and the information may be reflected in the company's next annual returns.			
11)	Annual return shall be filed within 14 days of the holding of the AGM, contrary to the 42 days provided for by both the old and new CAMA.			