

COMPANIES & MARKETS

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

PART 8 – COMPANY REGISTERS, SEALS & TEMPLATE CONSTITUTIONAL DOCUMENTS

By Udo Udoma & Belo-Osagie

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 (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. 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.

TEMPLATE CONSTITUTIONAL DOCUMENTS

The CAMA currently contains templates of articles of association (“Articles”) for different types of companies. These are all set out in Table A of the First Schedule and contain provisions relating to classes of shares, meetings and voting. These templates have been deleted in the CAMA Bill and the Bill provides that the Minister of Finance may, by regulations, prescribe model Articles for companies. In practice, these regulations would be prepared by the CAC and issued to the public after they have been approved by the Minister. This change is progressive as it will ensure that the form of constitutional documents can be amended by the CAC and Minister as required without the need for an amendment of the Act through the formal legislative process.

Under the CAMA Bill, different models of Articles would be prescribed for different types of companies, and companies would be permitted to adopt all or any of the provisions of model Articles. In relation to existing companies, any amendment of model Articles by regulations will not affect companies that were incorporated before the amendment takes effect. For new companies that are incorporated after the CAMA Bill is signed into law, upon incorporation, the relevant model Articles in force as at the date of registration of the new company will form part of that company’s Articles (even where the company has registered Articles at incorporation), unless the relevant model Articles are specifically excluded or modified.

THE COMMON SEAL

Under the CAMA, every company is required to have a common seal, the use of which must be regulated by the company’s Articles. This seal, which is also usually referred to as the “Company Seal” is typically affixed to agreements, deeds and other official documents executed by companies. The requirement for every company to have a common seal has been deleted in the CAMA Bill. Thus, a company may choose to have a common seal but need not have one.

The CAMA Bill addresses situations where another law or regulation requires a document to be executed under the common seal of a company or prescribes consequences for not

sealing. In such circumstances, the Bill provides that the relevant document would be deemed to have satisfied the provisions of that law or regulation if the document is signed by (a) a director, secretary, or other authorised officer of the company; or (b) as a deed by (i) a director and the secretary of the company (ii) at least 2 directors of the company; or (iii) a director of the company in the presence of at least one witness who has attested the signature.

If a company chooses to have a common seal, the design and the use of the seal must be regulated by the company’s Articles. The CAMA Bill also requires that the name of the relevant company must be engraved in legible characters on the seal.

Other entities that are permitted, under the CAMA Bill, to have a common seal, if they so choose, are limited liability partnerships and incorporated trustee.

NEW STATUTORY REGISTERS

The CAMA Bill introduces a new statutory register that must be kept by companies. This register, called the Register of Directors’ Residential Addresses, is required to state the usual residential addresses of the company’s directors. This register differs from the Register of Directors that CAMA currently requires companies to maintain; the Register of Directors only contains information on the “service address” of a director which, in some cases, is the company’s registered office. If, however, a director’s usual residential address is the same as his service address (as indicated in the company’s Register of Directors), then the Register of Directors’ Residential Addresses only needs to contain an entry to that effect. If there is any change in the information contained in the Register of Directors or the Register of Directors’ Residential Addresses, the company must notify the CAC of such change within 14 days.

To address questions of security, the CAMA Bill provides that information relating to a director’s usual residential address is considered to be protected information and, this information does not cease to be protected information when the director resigns from the board of that company. What this means is that the company cannot use or disclose this information in relation to any director without the consent of the relevant director unless it is for the purpose of (i) communicating with the relevant director (ii) complying with the requirements of the CAMA Bill or (iii) complying with a court order. There are similar restrictions on the CAC’s ability to use or disclose such protected information. The CAC may, however disclose such information to a credit reference agency or to a public authority - subject to any regulations issued by the Minister prescribing conditions that must be satisfied before protected information relating to a director may be disclosed to any such public authority

Udo Udoma & Belo-Osagie actively participated in the drafting of the CAMA Bill. Corporate Partner, Ozofu 'Latunde Ogiemudia was the chairperson 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. Managing Associate, Christine Sijuwade was a member of that committee and led the drafting sub-committee on the CAMA Bill.