

Highlights of the Companies and Allied Matters Act 2020

August 2020

On Friday, 7th August 2020, President Muhammadu Buhari assented to the Companies and Allied Matters Bill passed by the National Assembly. The Companies and Allied Matters Act, 2020 (the "Act") repealed the Companies and Allied Matters Act, Cap. C20 LFN 2004, and contains major amendments that have brought the Act in line with global best practices.

Below highlights the major provisions introduced by the Act:

S/N	Notable Sections	Highlights
1	Single Member Companies - Section 18(2)	<ul style="list-style-type: none"> The Act now permits the incorporation of a private company with one (1) shareholder.
2	Restriction on the Shares of Private Companies - Section 22	<ul style="list-style-type: none"> Any restriction on the transfer of shares in a company is now subject to the provisions of the company's articles.
3	Company Limited by Guarantee - Section 26	<ul style="list-style-type: none"> The Corporate Affairs Commission ("CAC") can approve the registration of a company limited by guarantee where the promoters have furnished the Attorney General of the Federation with all the valid documents required and after thirty (30) days, no decision has been made by the Attorney General. The promoters will have to place an advertisement in three (3) national daily newspapers and invite objections if any to the incorporation of the company. Objections shall be forwarded to the Commission within 28 days of the date of the last publications.
4	Minimum Issued Share Capital of a Company - Section 27	<ul style="list-style-type: none"> The "authorised" share capital has been replaced with a "minimum issued" share capital. This section increases the minimum issued share capital of private and public companies from ₦10, 000.00 and ₦500, 000.00 to ₦100, 000.00 and ₦2, 000, 000.00 respectively. As a result of this, the amount of the share capital stated in the memorandum to be registered shall not be less than the minimum issued share capital (Section 124).
5	Disclosure of Shares Held in Trust - Section 27 (3)	<ul style="list-style-type: none"> A subscriber of the memorandum of association of a company, who holds all or any part of the shares subscribed to in trust for a third party is now required to disclose this, along with the name of the beneficial owner in the memorandum of association.
6	Company Seal - Section 98	<ul style="list-style-type: none"> It is no longer mandatory for a company to have a common seal. This is now considered a discretionary matter for the company.
7	Electronic Signatures - Section 101	<ul style="list-style-type: none"> By virtue of this section, a document is recognised as duly executed by a company notwithstanding whether the same bears the physical or electronic signatures of the company's authorised officers.
8	Disclosure of Shareholders with Significant Control over a Company - Section 119	<ul style="list-style-type: none"> This section requires every shareholder with significant control over a company to disclose the particulars of its control within seven (7) days of becoming a shareholder. Previously, only shareholders of public companies were required to disclose this information. The company is also expected to notify the Corporate Affairs Commission ("CAC") not later than one (1) month from its receipt of this disclosure.
9	Increase of Issued Share Capital - Section 128	<ul style="list-style-type: none"> Where a company increases its share capital by issuing new shares, thereby increasing its issued share capital, the increase will not take effect unless at least 25% of the share capital including the increase has been paid up and all the directors have delivered to the CAC a statutory declaration verifying that fact.
10	Issuance of Shares at a Discount - Section 146	<ul style="list-style-type: none"> Issue of shares at a discount is now expressly prohibited by the Act, with no exceptions.
11	Electronic Instrument of transfer of shares - Section 175(1)	<ul style="list-style-type: none"> The Act now recognises electronic instruments of transfer of shares of a company.
12	Reduction of Filing Fees for Registration of Charges - Section 222 (12)	<ul style="list-style-type: none"> The cost of registering charges at the CAC has been revised downwards to 0.35% of the value of the charge.

13	Annual General Meetings – Section 237 (1)	<ul style="list-style-type: none"> Small companies or any company having a single shareholder are now been exempted from holding a general meeting.
14	Businesses Transacted at Annual General Meetings – Section 238	<ul style="list-style-type: none"> Companies are now required to disclose at their annual general meetings, information on the remuneration of their managers.
15	General meetings can be held electronically - Section 240	<ul style="list-style-type: none"> Private companies are now allowed to hold their general meetings electronically provided that the meetings are held in accordance with the Articles of the company. In addition, small companies and private companies with a single shareholder can hold their statutory and general meetings outside of Nigeria. However, all other categories of companies are still required to hold theirs in Nigeria.
16	Persons entitled to notice of meetings - Section 243	<ul style="list-style-type: none"> The Act now entitles the CAC to receive notice of the general meetings of public companies.
17	Dual Appointment - Section 265 (6)	<ul style="list-style-type: none"> The Act prohibits the Chairman of a public company from also acting as the Chief Executive Officer of the same company.
18	Number of Directors - Section 271	<ul style="list-style-type: none"> Small companies are permitted to have a single director.
19	Independent Directors - Section 275	<ul style="list-style-type: none"> Every public company is now required to have at least three (3) independent directors.
20	Disclosure of multiple directorships in a public company - Section 278 (2)	<ul style="list-style-type: none"> This section mandates any person proposed to be appointed as a director of a public company to disclose his directorship in any other public company at the meeting where his appointment is proposed.
21	Period of disqualification of a person from being a director of a company - Section 280	<ul style="list-style-type: none"> The Act has clarified that the 10-year disqualification period – of a person convicted of an offence in connection with the promotion, formation, management or winding up of a company – will commence after serving the sentence or paying the fine stipulated for the offence.
22	Appointment of Company Secretary - Section 330	<ul style="list-style-type: none"> The Act now makes it optional for small companies to appoint a company secretary. In addition, Section 332(c) of the Act provides that a public company can now appoint a member of any professional body of accountants as its company secretary.
23	Qualification as a small company - Section 394	<ul style="list-style-type: none"> In order to qualify as a small company, a company must either have an annual turnover not exceeding ₦120, 000, 000.00 or a net asset value not exceeding ₦60, 000, 000.00 (Sixty Million Naira), in any given year.
24	Exemption of certain companies from audit requirements - Section 402	<ul style="list-style-type: none"> A company that has not carried on business since incorporation or that is a small company is exempted from auditing its account for any financial year. This exemption does not however apply to banks, insurance companies or any other company prescribed by the CAC.
25	Qualification of Auditors - Section 403	<ul style="list-style-type: none"> The Act has expanded the scope of persons that are disqualified from being appointed as auditors of a company. These include: a person indebted to the company or to a company related to that company (by virtue of interest in shares) in an amount exceeding ₦500, 000.00 (Five Hundred Thousand Naira); a shareholder or a spouse of a shareholder of a company whose employee is an officer of the company; a person who is or whose partner, employee or employer is responsible for keeping the register of holders of debentures of the company; and an employee of or a consultant to the company who has been engaged for more than one year in the maintenance of any of the company's financial records or preparation of any of its financial statements.
26	Composition of Audit Committee - Section 404(3)	<ul style="list-style-type: none"> This section requires the Audit Committee of a public company to be have five (5) members comprising of three (3) members and two (2) non-executive directors. The members of the Audit Committee are not entitled to remuneration and are subject to election in each year.
27	Prohibition of Improper Influence on Conduct of Audit - Section 406 (1)	<ul style="list-style-type: none"> The Act makes it an offence for an officer, director or any person acting under their direction to influence an external auditor in any form in the course of audit of the company's financial statements.
28	Unclaimed Dividends - Section 429	<ul style="list-style-type: none"> Where dividends paid by a company remain unclaimed, the company must publish a list of such unclaimed dividends and the names of persons entitled to these dividends in two (2) national newspapers. This list is also required to be attached to the notice of the next Annual General Meeting and sent to shareholders.
29	Right of the Shareholders to sue for Dividends - Section 432	<ul style="list-style-type: none"> Shareholders of a company can sue to recover their dividends from the company at any time within 12 years from the date such dividend was declared. In addition, dividends which have remained unclaimed for more than 12 years shall be included in the profit of the company which would be distributed to its shareholders.

30	Administration of companies - Sections 443 to 549	<ul style="list-style-type: none"> The Act introduced Administration as an additional insolvency mechanism available to companies. The key function of an appointed Administrator is to rescue the company, maintain it as a going concern, and ultimately achieve a better result for creditors than would have been likely if the company was wound up. 	36	Banks' obligation to notify the CAC of funds in dormant accounts of dissolved associations - Section 842	<ul style="list-style-type: none"> Banks are now obligated to notify the CAC of any dormant account previously maintained by an association and the CAC may order the transfer of funds in that account to another association.
31	Threshold for determining inability to pay debt - Section 572	<ul style="list-style-type: none"> The threshold for determining a company's inability to pay its debt to a creditor has been revised from ₦2, 000.00 (Two Thousand Naira) to ₦200, 000.00 (Two Hundred Thousand Naira). 	37	Merger of Association - Section 849	<ul style="list-style-type: none"> The merger of associations with similar objects is now permissible under the Act.
32	Power of the Commission to strike off company from Register of Companies - Section 692	<ul style="list-style-type: none"> The Act now recognises the right of companies (by special resolution) to apply for their names to be struck off the register of companies 	38	Establishment of Administrative Proceedings Committee - Section 851	<ul style="list-style-type: none"> The Act mandates the CAC to establish an Administrative Proceedings Committee (APC) with power to impose administrative penalties for contravention of the provisions of the Act or its regulations. Decisions of the APC are subject to confirmation by the Board of the CAC and may be appealed to the Federal High Court.
33	Qualification of an insolvency practitioner - Section 705	<ul style="list-style-type: none"> A person will only be qualified to act as an insolvency practitioner where he is has obtained a degree in law, accountancy or any other relevant discipline from a recognized University or Polytechnic. Such a professional must have at least 5 years' post qualification experience in insolvency matters and must be registered with BRIPAN (Business Recovery and Insolvency Practitioners Association of Nigeria) or any other professional body recognised by the CAC. 	39	Electronic Filing - Section 860(1)	<ul style="list-style-type: none"> The Act now makes provisions for electronic filing of documents at the CAC
34	Limited Liability Partnership - Section 753 to 760	<ul style="list-style-type: none"> The Act now recognises and permits the incorporation of limited liability partnerships ("LLP"). An LLP is recognised as a corporate entity and can sue and be sued. 	40	Prohibition of doing business without registration - Section 863	<ul style="list-style-type: none"> It is unlawful for a person or group of persons to carry on business in Nigeria as a company, limited liability partnership, limited partnership or under a business name without being registered under the Act.
35	Power of the CAC to merge related associations - Section 831	<ul style="list-style-type: none"> The CAC now has the power to direct that two or more associations with the same trustees be treated as a single association. 	41	Retention of records in soft copies- Section 864	<ul style="list-style-type: none"> All companies, firms and corporate bodies registered under the Act are expected to retain soft copies of all documents stored in pursuance of the provisions of the Act for a period of six (6) years from the date of storage.
			42	Power of the CAC to compound offences - Section 866	<ul style="list-style-type: none"> This section allows the CAC to compound administrative offences and accept a lump sum for these offences

It is important to state that most of the monetary fines contained in the previous CAMA have been amended in the new Act to reflect today's realities. In addition, every director and or officer of a company may now be liable for non-compliance with certain provisions of the Act.

This places an extra duty on the directors to ensure that the company complies with the provisions of the Act as they will be held liable whether or not such director or officer is actually in default of such provisions.

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