

Beware of Key Compliance Obligations Under CAMA 2020 and Companies Regulations 2021

Background

The Companies and Allied Matters Act 2020 (CAMA 2020 or the Act) was signed into law and gazetted with a commencement date of 7 August 2020. The Act, which repeals the 1990 Company Act, introduces wide-range of changes to Nigeria's business environment. It is important that business owners and management are well aware of these changes.

The Corporate Affairs Commission (CAC) has also issued the Companies Regulations 2021 (the Regulations) to serve as the implementation framework for CAMA 2020.

Key Compliance Obligations Under CAMA 2020

Some of the key compliance obligations for companies, partnerships, and other business entities under CAMA 2020 and the Regulations are outlined below.

1. Notification by persons with significant control and substantial shareholder (Sections 119 & 120)

A person with significant control (PSC), i.e., with 5% interest or more, is required to notify the company of its status within 7 days of becoming aware, and the company must notify CAC within one month of receiving the PSC notice.

Notwithstanding that a shareholder has given the PSC notice, the shareholder will be required to give additional notice of being a substantial shareholder (5% interest) if the shares are held in a public company. The shareholder and the company each have 14 days within which to give notice to the company and CAC, respectively.

The notice period for each notification depends on the type of notice (PSC or substantial shareholder) and not the type of company (private or public).

2. Minimum share capital (Section 124, Reg. 13)

Based on section 124 CAMA 2020, CAC has directed companies to issue all unissued/unallotted shares not later than 31 December 2021. The consequence of non-compliance is that any unissued share capital at the relevant date will not be recognized as forming part of the share capital of the company until it is issued or reduced through the share capital reduction process.

Even though CAC has interpreted this section to mean that companies can no longer have unallotted shares, the section seems to suggest that companies cannot issue less than the minimum issued share capital (which is defined as N100,000 for private companies and N2,000,000 for public companies). The provision appears to be targeted at companies that still have N10,000 or N500,000 as authorized share capital (based on CAMA 1990). The implication would be for such companies to increase the share capital and allot up to the current statutory minimum.

3. Disclosure of remuneration of managers (section 257)

Disclosure of the remuneration of managers is how part of the ordinary business of the AGM. The Regulations define "manager" to include any person by whatever name called occupying a position in senior management and who is vested with significant autonomy, discretion, and authority in the administration and management of the affairs of a company.

4. Independent Directors for Plc (Section 275)

Public companies are to appoint a minimum of three independent directors. An independent director is a director who or whose relatives, during the two years preceding the time in question:

- a. was not an employee of the company;
- b. did not:

- make or receive payment of more than N20 million from the company, or

- own over 30% share or other ownership interest, in an entity that made or received more than the amount stated above from the company or act as a partner, director, or officer of an entity that made or received such amount from the company.

- c. did not own directly or indirectly over 30% of the shares of the company, and

- d. was not engaged directly or indirectly as an auditor for the company.

5. Register of Directors' Residential Addresses (Section 320)

Every company is required to keep a register of directors' residential addresses.

6. Filing of Annual return for companies (section 417-419)

Except for a single shareholder company, all companies are required to file annual returns, alongside the audited accounts within 42 days after the Annual General Meeting (AGM).

7. Accounting Reference Period (Section 377(4))

Companies are required to file notice of change of accounting reference period or financial year-end date.

8. Certification of financial statements by CEO/CFO (Section 405)

The CEO or CFO must certify that the officer who signed the financial statements:

- a. confirmed that the Financial Statement does not contain any untrue statement or concealed a material fact;
- b. confirmed the effectiveness of the internal controls;
- c. has disclosed significant deficiencies in the internal controls, which could adversely affect the company's ability to record and process financial data.
- d. has disclosed whether there is any fraud that involves management or other employees who have significant roles in the company's internal control.

9. Filing of statement of accounts and solvency statement by an LLP or LP (Sections 772 & 807)

A Limited Liability Partnership (LLP) or Limited Partnership (LP) is required to prepare a Statement of Account and Solvency within 6 months from its financial year-end.

10. Audit accounts by LLP/LPs (Sections 772 (4), 773 & 807)

A Limited Liability Partnership (LLP) or Limited Partnership (LP) is required to prepare a Statement of Account and Solvency within 6 months from its financial year-end.

11. Filing of annual returns for Incorporated Trustees (section 848; Regs 32 & 33)

The financial year for Incorporated Trustees has been fixed from 1 January to 31 December. The Trustees are required to file a

bi-annual return made up to 30 June and 31 December each year, to not later than 15 July and 15 January respectively. Besides the above, the Trustees are required to file an annual return (not earlier than 30 June or later than 31 December); the annual return must be accompanied by audited financial statements.

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12. Filing of financial statements by a Business name (section 822)

A business name must file its annual return alongside the financial statements not later than 30 June every year.



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Commentary

Companies and businesses are advised to review and update their compliance obligations to reflect the changes in CAMA 2020 and Companies Regulations 2021.