Special publication on the Companies and Allied Matters Bill

Following the passage of the CAM Bill by both legislative houses, Business Day has collaborated with leading legal firm, Udo Udoma and Belo-Osagie on a 12-part series highlighting key changes that the CAM Bill will introduce. The proposed series will focus on select areas of change in detail, and will be set out in easily digestible excerpts.

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. The CAMA was broadly modelled on the UK Companies Act 1985. Since its inception, there have been no significant amendments to the CAMA, notwithstanding three decades of amendments and replacements of the UK Companies Act. The 28-year old CAMA currently governs the way that companies and businesses operate in the dynamic Nigerian market, notwithstanding its increasingly global outlook. This is all set to change if the Companies and Allied Matters Act (Repeal and Re-enactment) Bill (CAM 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.

Lawyers from Udo Udoma & Belo-Osagie actively participated in the drafting of, and deliberations regarding, the CAM Bill. Corporate Partner, Ozofu 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 CAM Bill and the bill to amend the Investments and Securities Act 2007.

In this series, which will run for 12 weeks, Udo Udoma & Belo-Osagie will provide insights in digestible excerpts on the effect of key changes proposed by the CAM Bill.

PART 1

SMALL COMPANIES, SINGLE DIRECTOR AND SINGLE-MEMBER COMPANIES

MORE COMPANIES WILL QUALIFY AS SMALL COMPANIES AND WILL BENEFIT FROM THE AVAILABLE INCENTIVES

Under the CAMA 1990, a company is regarded as a small company if it:

- is a private company limited by shares;
- has no foreign shareholders;
- its directors hold not less than 51% of its shares;
- none of its members is a government, a government agent or nominee;
- has a turnover of not more than N 2 million;
- has a net asset value of not more than N 1 million.

Under the CAM Bill, the above criteria are retained with two significant amendments:

- the turnover of a small company should not not exceed N 120 million;
- its net asset value should not be more than N 65 million.

What this means is that many companies that previously could not qualify as small companies will be able to qualify under the CAM Bill, and thereby enjoy the concessions granted to small companies under the Bill.

SINGLE-MEMBER COMPANIES

Under the CAM Bill, it will be possible for one person to form a private company. Such companies will be exempt from the provisions of the Bill that relate to quorum for meetings and adjournment of meetings.

With this innovation, Nigerian company law will, like other jurisdictions such as England, make it possible for entrepreneurs operating as sole proprietors to register a limited liability company for their business rather than being limited to registering a business name, which is currently the only option available for sole proprietors under the CAMA who do not want to bring on additional persons for the purpose of complying with the CAMA 1990 requirement that all companies must have at least two directors and two shareholders.

INCENTIVES AND CONCESSIONS FOR SMALL COMPANIES

Under the CAMA 1990, one of the benefits of being a small company is that there is a reduced penalty for failure to lay and deliver financial statements as required by the Act. In addition, small companies are entitled to deliver a modified form of financial statements to the Corporate Affairs Commission. That is about it!

Under the CAM Bill, however, small companies continue to enjoy these benefits but are now entitled to several more benefits and concessions that are aimed at easing the administrative burden imposed on micro, small and medium enterprises (MSMEs), and reducing the costs associated with complying with their statutory obligations under the Act. These additional benefits are:

1. Small companies and single shareholder companies do not have to hold annual general meetings.
2. small companies can have a single director.
3. small companies do not have to have a company secretary.
4. a company seal will be optional (this will apply to all Nigerian companies).
5. small companies do not have to file audited financial statements annually (this will also apply to companies that have not commenced business since incorporation even if they are not small companies).

SINGLE-DIRECTOR COMPANIES

Small companies will be permitted under the CAM Bill to have a single director. This welcome development will ease the administrative burden and cost of running MSMEs as the entrepreneur who sets up the business can serve as its sole director.

As the company grows, however, and when it ceases to be a small company, it will have to appoint additional director(s) because only small companies will be permitted to have just one director.