

# COMPANIES & MARKETS

## 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

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, Ozofo 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 2

### LIMITED PARTNERSHIPS AND LIMITED LIABILITY PARTNERSHIPS

#### NEW ENTITIES INTRODUCED

Prior to the CAM Bill, Limited Partnerships (“LPs”) and Limited Liability Partnerships (“LLPs”) were only recognised under the Partnership Law of Lagos State 2009.

While the legislative competence of the Lagos State legislature to enact a law regulating partnerships is not in doubt, there is an ongoing debate about the legislative competence of States in Nigeria to enact laws for the formation of corporate entities such as LLPs.

The LLP is a legal person that can sue and be sued, hold property in its own name and lawfully do all other acts as any other legal person. LPs do not have the same limited liability status, however, they are permitted to have a general partner who is liable for all debts and obligations of the partnership, while the limited partners enjoy limited liability.

Lps and LLPs that are already registered in Lagos State may have to re-register at the Corporate Affairs Commission in order to avoid any challenge to the validity of such structures under state law.

#### LIMITED LIABILITY PARTNERSHIPS

Features of LLPs:

- Corporate personality;
- Limited liability;
- Perpetual succession;
- Must have at least two designated partners (who are individuals). Where all the partners in the LLP are corporate entities, they may nominate individuals to act as designated partners.
- also required to keep proper books of account for each year.
- contributions of partners in an LLP may include cash or other forms of contribution including services or real property.
- the rights and interests of a partner are transferrable and, consequently, a change in the partnership will not affect the existence, rights or liabilities of the LLP.

#### LLPS COMPARED WITH COMPANIES

Similarities to companies:

- can choose to have a common seal
- the provisions of the CAM Bill relating to reservation of name and change of name also apply to LLPs
- will also be required to file statutory returns
- may be wound up voluntarily or by the Court (though it's a simpler process than for companies)

Advantages of LLPs (compared with companies)

- incorporation process is easier.
- no requirement for LLPs to have a share capital.
- flexibility – The operation of the partnership and distribution of profits is as set out in the Partnership Agreement. This may allow for greater flexibility in the management of the business.
- method of dissolution is less procedural (no need to appoint a liquidator etc).

#### LIMITED PARTNERSHIPS

Under the CAM Bill, the regulation of LPs is similar to the regulation of LLPs but with certain differences:

- maximum of 20 persons;
- must comprise at least one general partner and one limited partner;
- general partners are liable for all debts and obligations of the partnership;
- the liability of limited partners is restricted to the capital contributed or agreed to be contributed to the partnership under the limited partnership agreement;
- the limited partner does not have the power to bind the firm or participate in the management of the firm. Otherwise, he will be liable for all debts and obligations of the firm incurred for the relevant period he acted as a general partner of the firm.