

COMPANIES & MARKETS

The Companies and Allied Matters Act (repeal and re-enactment) Bill 2019 – What you need to know

Part 7 – Private Companies

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 Act (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.

RESTRICTIONS ON TRANSFERS OF SHARES AND ASSETS OF PRIVATE COMPANIES

Under the CAMA, a private company is required, in its Articles, to restrict the transfer of its shares. The CAMA imposes this requirement without specifying how private companies should do so, thereby giving companies the flexibility to determine how they restrict the transfer of their shares. This is usually done in the form of a discretion given to directors to approve or reject a proposed transfer – this discretion could be absolute or applicable in certain circumstances. Some private companies go further by conferring a right of first refusal on shareholders in respect of any shares that any shareholder wishes to transfer to any person or to non-shareholders.

The CAMA Bill attempts to go further than the CAMA in relation to the restrictions

that should be imposed on the transfer of shares and assets of private companies. It provides that “subject to the provisions of the articles, a private company may restrict the transfer of its shares and also provide that:

(a) the company shall not without the consent of all its members sell assets having a value of more than fifty percent (50%) of the total value of the company’s assets;

(b) a member shall not sell that member’s shares in the company to a non-member, without first offering those shares to existing members;

(c) a member, or a group of members acting together, shall not sell or agree to sell more than fifty per cent (50%) of the shares in the company to a person who is not then a member, unless that non-member has offered to buy all of the existing members’ interests on the same terms.”

The restriction in (a) is new and relates to a proposed disposal of assets of a private company. The restriction in (b) is a right of first refusal in respect of any shares that any shareholder wishes to transfer non-shareholders, and (c) is essentially a mandatory takeover bid requirement that is triggered where a non-member acquires 50% of a private company. The wording of the CAMA Bill, however, provides companies with enough flexibility to determine whether to include these provisions in their articles, and to indicate, in the articles, whether these restrictions would apply. Without this flexibility, these restrictions will create concerns for investors, such as private equity investors, that require clarity and assurances regarding their ability to exit their investment as required by the terms of their funds.

ELECTRONIC GENERAL MEETINGS

In recognition of evolving business dynam-

ics, the CAMA Bill provides that a private company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company.

COMPANY LIMITED BY GUARANTEE

Under the CAMA, the approval of the Attorney-General of the Federation (“AG Fed”) is required in order to register the memorandum and articles of association of a company limited by guarantee (“Ltd/Gte”). This approval is a pre-requisite to the registration of such companies at the Corporate Affairs Commission (“CAC”), and in practice, has resulted in significant delays in the process of registration, usually dragging out the registration process for months.

The requirement for the AG Fed’s approval has been removed in the CAMA Bill. The main reason for this is to ease the process of registration of this type of company, which is usually set up to promote art, science, religion, sports, culture, education, research, charity or other similar non-profit purposes. The only other structure available for such purposes is Incorporated Trustees and the AG Fed’s consent is not required for setting up Incorporated Trustees. This strengthens the argument for the removal of the AG Fed’s approval which is yet another roadblock in the process of establishing an entity in Nigeria, and is a problem usually confronted by international and local non-profits seeking to establish a platform through which they can provide much-needed support to the underserved sectors of the society.

The CAMA Bill seeks to align more closely the process for registering Ltd/Gte with the process for Incorporated Trustees by requiring that an application to register a Ltd/Gte should be advertised in three newspapers.

One final point. The total amount guaranteed by the members of a Ltd/Gte under the CAMA is a minimum of N10,000.00 but under the CAMA Bill, this is to be increased to a minimum of N100,000.00.

ENTRY OF TRUSTS OVER SHARES

Section 86 of the CAMA provides that “no notice of any trust, express, implied or constructive, shall be entered on the register of members or be receivable by the Commission.” This provision is not contained in the CAMA Bill.

Another innovation of the CAMA Bill is the reduction of the threshold for disclosures of significant shareholding (currently ss. 94 and 95 of the CAMA). In the CAMA, this disclosure is required by persons holding shares amounting to 10% or more of a public company. In the CAMA Bill, this threshold has been reduced to 5%.

S. 119 of the CAMA Bill introduces a new statutory register to be maintained by Nigerian companies - a register of persons with significant control. Every person with “significant control” over a company must notify the company within 7 days of becoming such a person and state the particulars of such control.

These innovations of the CAMA Bill are to promote transparency and strengthen the ability of companies and the government to combat asset shielding.

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.

FOOD

TGI Distri hits seasoning market with Terra Seasoning Cubes

CHINYERE OKEKE

TGI Distri Limited has launched Terra Seasoning Cubes in all markets across Nigeria. This was announced on Monday at a press briefing at its head office in Lagos.

Speaking during the press briefing, Sunil Sawhney, TGI group executive director (Foods and Dist.) and managing director of TGI Distri, said Terra Seasoning Cubes are a true cooking sensation, allowing everybody to enjoy great taste.

“We are now releasing two variants: Beef and Chicken into the market. Both variants come in single cubes of 4gm. Terra Cubes have particularly been designed to meet the palate requirements of all Ni-

gerians especially in terms of aroma and flavour. They are also designed to preserve the aroma of meals during and after cooking,” he said.

He explained that the response from product testers and early adopters has been encouraging, adding that the company could not be more enthusiastic about releasing the seasoning revolution to the market.

Also speaking at the product unveiling event, Onyekachi Onubogu, executive director – commercial of TGI Distri, said: “Terra seasoning is launching with two SKUs to address different pocket power: 50-cube pack and a 25-cube pack. We are also launching with 5 free cubes in the 50-cube pack and 2 free cubes in the 25-cube

pack as a consumer promo.”

Giving reasons for the choice of the brand’s pay-off line ‘Locks the aroma in; Gets the taste out’, Onubogu stated that Terra Seasoning Cube has been formulated and manufactured to preserve the aroma of meals during and after cooking.

Responding to a question on why he believes the new brand wouldn’t have side effects to its users accepted by the market, Sawhney said, “We have conducted an intense research and we have been able to discern the needs of our customers. Our cube contains lesser salts in comparison to other brands. This will therefore improve healthy eating. We believe in studying the needs of our consumers and acquiring genuine insights

into their requirements and demands. We respond to these requirements with better products and services that enhance the quality of life. We support our product offerings with strategic marketing and sales initiatives.”

Sawhney continued, “We’re excited to be launching these new variants of seasoning cube into the market and we have no doubt that in a short period of time Terra Seasoning will gain competitive edge over other brands and control a large chunk of the market”.

“Terra Seasoning Cube is an outcome of painstaking research. It is many steps ahead of other brands in the market in terms of taste and aroma. I enjoin everyone to try it,” he added.