

COMPANIES & MARKETS

THE COMPANIES AND ALLIED MATTERS ACT (REPEAL AND RE-ENACTMENT) BILL 2019 – WHAT YOU NEED TO KNOW

PART 12 – THE STATUS OF THE BILL

By 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 (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. This is the final part of a 12-part series on the CAMA Bill that has been provided by Udo Udoma & Belo-Osagie to share insights and digestible excerpts on the effect of key changes proposed by the CAMA Bill.

OTHER CHANGES PROPOSED IN THE CAMA BILL

A more inclusive CAC board

Under the CAMA Bill, the board of the Corporate Affairs Commission (CAC) will include a representative of the Institute of Chartered Secretaries and Administrators of Nigeria. The Nigerian Association of Small and Medium Enterprises will also be represented on the Board, thereby ensuring that the interests of micro, small and medium scale enterprises are taken into consideration.

The Association of National Accountants of Nigeria (ANAN), in collaboration with the Institute of Chartered Accountants of Nigeria (ICAN), will also have a representative on the Board, thereby expanding the pool of financial experts represented on the Board.

Decriminalising offences

Under the CAMA, there are more than 100 criminal offences, all of which attract a nominal monetary penalty (some still as low as ₦5.00) or a term of imprisonment upon conviction. A different approach has been adopted in the CAMA Bill; only grave matters shall remain criminal offences. These include falsification of statutory books, providing false information for the purpose of incorporating trustees and when a person not duly appointed as a director acts or holds himself out as a director. Most offences (such as failure to file resolutions or the failure of a director to disclose his age to the company) will be regarded as administrative offences under the CAMA Bill and the CAC will be empowered to penalise such offences by imposing appropriate fines. Another novel development to be introduced by the CAMA Bill is that the quantum of fines would be prescribed by the CAC in regulations to be issued by the CAC, instead of having the quantum of fines specified in the legislation. This is a welcome initiative because it gives the CAC and the Minister for Trade, the flexibility change the quantum of various fines to reflect economic realities as required from time to time.

In relation to criminal offences, the courts are generally given the discretion to determine the quantum of fines and the duration of sentences except in certain specific circumstances

where the term of imprisonment is prescribed in the CAMA Bill. For example, where a person fraudulently holds himself out as a director, the penalty would be two years imprisonment or a fine as determined by the court.

These changes are laudable as they will make it easier to penalise breaches of the law, set penalties at a level where they act as a deterrent, and consequently, encourage compliance with the provisions of the CAMA Bill.

THE STATUS OF THE CAMA BILL

Despite its progressive provisions, the CAMA Bill has not yet been signed into law by the President of the Federal Republic of Nigeria. This delay has significant implications for Nigerian and foreign investors who are excited about the prospect of the passage of the CAMA Bill. The CAMA Bill draws on inspiration from selected jurisdictions, while at the same time proffering solutions in the context of our domestic market. It aims to reposition Nigeria and the way we do business so that Nigerian business are well positioned to compete with other leading African jurisdictions, and globally, in this fast-paced and ever-changing century.

The World Bank 2019 Doing Business Ranking Index ranks Nigeria 145th out of 190 countries – this ranking increased from 169th after the announcement that the CAMA Bill had been passed by the Senate. If the CAMA Bill is not passed as soon as possible, our current rankings might be difficult to sustain, given that we shall continue to carry on business in a legal and regulatory landscape relating to company law matters which would have remained largely unchanged for three decades.

PARTING WORDS

As we have outlined in the preceding 11 parts of this series, the CAMA Bill seeks to introduce several innovations into Nigerian company law. These include single member and single director companies, changes to the process of registering companies limited by guarantee, company administration, company voluntary arrangements, netting, greater disclosure of beneficial interests in companies, and the introduction of new entities such as limited partnerships and limited liability partnerships. These are all critical to the development of the Nigerian economy and, ultimately, the ease of doing business in Nigeria as they are designed to give Nigerian businesses and organisations the tools they need to operate and compete efficiently in modern times – the goal being to position Nigeria as a hub for entry into African markets. The CAMA Bill also seeks to address the various shortcomings of the CAMA and, if passed, has the potential to leapfrog our companies' law over three decades of stagnation. It is, therefore, imperative that the CAMA Bill should be passed into law without further delay.

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.