

Alsec Nominees Limited

MEMORANDUM

WHAT YOU NEED TO KNOW ABOUT ISSUED SHARE CAPITAL IN THE CAMA 2020

5TH FEBRUARY 2021



You may recall that in a previous correspondence, we had informed you that the President of the Federal Republic of Nigeria signed into law the Companies and Allied Matters Act 2020 (“CAMA 2020”) on Friday, 7th August 2020. The Corporate Affairs Commission (the “CAC” or the “Commission”) has also issued the Companies Regulations 2021 (the “CR”) to guide the conduct and regulation of registrations under the CAMA 2020. The CR took effect on 1st January 2021, following its approval by the Honourable Minister of Industry, Trade, and Investment.

The CAMA 2020 introduced some significant business legislations, including changes to the concept of share capital as it existed under the old law. Below are highlights of some of the new introductions in relation to share capital:

1 ISSUED SHARE CAPITAL

- a) The CAMA 2020 revoked the concept of “authorised share capital” and replaced it with the concept of “issued share capital”. Under the old law, companies could have an amount of authorised share capital and issue only 25% of that amount as their issued share capital. Under the CAMA 2020, the replacement of the concept of authorised share capital with “issued share capital” means that companies must at all times issue all of their share capital.

b) **Compliance**

Companies that have unissued shares should ensure that those unissued shares are fully issued in compliance with the provisions of the CAMA 2020 which abolishes the concept of authorised share capital. Such companies must also ensure that after the issuance of the unissued shares, at least 25% of the new issued share capital is paid up, as required under the CAMA 2020.

2 MINIMUM ISSUED SHARE CAPITAL

- a) The CAMA 2020 increased the minimum share capital of the different types of companies. The table below shows the comparative minimum share capital under the CAMA 2020 and the old law:

S/N	Type of Company	Minimum authorised share capital under the old law	Minimum issued share capital under the CAMA 2020
1	Private Companies	₦10,000	₦100,000
2	Public Companies	₦500,000.00	₦2,000,000

b) **Compliance**

Companies that currently have authorised share capital of less than the minimum issued share capital prescribed for their category must increase their share capital by issuing new shares to reach the required minimum. Section 124 of the CAMA



2020 prescribes a timeline of six months after the commencement of the Act, for such companies to issue shares to an amount not less than the minimum issued share capital. Such companies must also ensure that after the issuance of the new shares, at least 25% of the new issued share capital is paid up, as required under the CAMA 2020.

c) **Penalty**

The CAMA 2020 provides that any company that fails to comply with the above provisions would be liable to such fine as the Commission may prescribe by regulation and in addition to a daily default fine as the Commission shall specify by regulation for every day during which the default continues.

3 PAID-UP SHARE CAPITAL

Under the old law, companies were not obligated to have any paid-up share capital. However, as mentioned in paragraphs 1 and 2 above, the CAMA 2020 requires that at least 25% of a company's issued share capital must be paid up.

4 PROVISIONS OF THE CR IN RELATION TO ISSUED SHARE CAPITAL

a) Section 13 of the CR provides that any company that has unissued shares in its capital, should not later than **30th June 2021** fully issue such shares and that the notice of issue delivered to the CAC for registration shall be exempted from the payment of filing fees. The CR prescribes a daily penalty for the Company and its officers for every day that the default continues, until the default is rectified.¹

b) **Inconsistency in the provisions of the CR**

The heading of Section 13 of the CR relates to “minimum issued share capital” and makes reference to section 124 of the CAMA which provides for “minimum issued share capital” as set out in paragraph 2 above. However, the provisions set out in section 13 of the CR prescribed a timeline for the issuance of unissued shares of a company rather than a timeline for the issuance of new shares to meet the required minimum share capital.

Furthermore, the CAMA provides a timeline and penalty for companies that do not meet the minimum share capital requirement² but does not stipulate any timeline and penalty for companies who default in issuing their unissued shares.

c) **Conclusion**

While there may not be a basis for the CAC to prescribe a timeline and penalty in respect of unissued shares of companies, we would recommend that:

¹ The new schedule of fees issued by the CAC stipulates a daily penalty of ₦250 for small companies, ₦500 for companies other than small companies and ₦1000 for public companies.

² Please refer to 2b above



- i. companies that have unissued shares should ensure that those unissued shares are fully issued in compliance with the provisions of the CAMA 2020 which abolishes the concept of authorised share capital; and
- ii. companies that currently have authorised share capital of less than the minimum issued share capital prescribed for their category should increase their share capital by issuing new shares to meet the required minimum.

5 OPTIONS FOR ISSUING NEW SHARES

Companies may issue their unissued shares through various means such as offer for subscription, rights issue, bonus issue and private placement. The most suitable of these options for any company would depend on the circumstances of such company.

Companies that are unwilling to issue shares may choose to reduce their share capital by extinguishing unissued shares.

We have set out as an appendix to this memo, the procedure, cost and timeline for the issuance of unissued shares, in compliance with the requirements of the CAMA 2020.

We hope that you find the above information helpful. Please do not hesitate to let us know if there is any aspect of our memo that you require clarification on, or if you require any further assistance in relation to this matter.

Yours faithfully,

ALSEC NOMINEES LIMITED



APPENDIX

ISSUANCE OF UNISSUED SHARES

- a. The Company receives applications for the acquisition of unissued shares from existing shareholders, or from other interested investors, where the existing shareholders have waived their pre-emptive rights.³
- b. The Company Secretary ("CS") issues a notice of general meeting, giving the required 21 days' notice. The shareholders, in the case of a private company, could waive the notice period to save time.
- c. The Shareholders will consider and approve the issuance of the unissued shares and approve the allotment of the issued shares and define the new shareholding structure of the Company, except where the Articles of Association delegate the power to allot shares to the directors. Alternatively, the Shareholders could approve the acquisitions and the new shareholding structure by way of a written resolution.
- d. The Company Secretary ("the CS") prepares the required documentation i.e the Form CAC 2A (Return of Allotment post incorporation), the extract of the resolution passed at the general meeting or the written resolution approving the allotment of the unissued shares and files the documents at the CAC within one month of the passing of the resolution, along with other supporting documents such as Identification cards of individual shareholders, and Certificate of Incorporation for corporate shareholders as well as a board resolution approving the acquisition of the shares in the company.
- e. On receipt of the application, the CAC verifies the requisite documents and if found acceptable, registers them as part of the Company's records.
- f. The CS obtains a Certified True Copy of the Form CAC 2A showing that the shares have been fully allotted, and the new shareholding structure of the company.

3. COST

The official fee for filing and obtaining certified true copy of relevant documents at the CAC is the sum of ₦10,000.00. The fee is exclusive of professional fees (for non-retainer clients), other admin expenses and any official penalty prescribed by the CAC (where applicable).

4. TIMING

We estimate that the filing of the Form CAC 2A at the CAC would take at least 6-weeks based on recent experiences of the turnaround time for filings at the CAC. This protracted timeline is due to the restrictions arising from the COVID-19 pandemic.

³ The power to approve the allotment of shares is vested in companies and cannot be exercised by the Directors except where express authority is vested in the Directors by the Articles.