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Companies And Allied Matters Act (CAMA) 2020: Individuals Can Own And Operate Businesses In Nigeria Without Registration

Introduction

There has been a lot of debate about the recently amended CAMA criminalising the act of non-registration of business names by small business owners. Several analysts and authors take this view, but upon closer examination it is apparent that CAMA does not strictly prohibit doing business without registration. No surprise as it would be rather ominous if the Nigerian informal sector, which accounts for up to sixty-five percent of Nigeria's economic activity,¹ were criminalised for simply carrying on with their daily business. However, it is the submission of the author that the majority of such businesses can remain in business without formal registration under CAMA, and would not contravene the law, provided they operate within the exempted framework in the new law.

Section 863 of CAMA is not a blanket provision against doing business without registration, nor is it new to law as there was a similar provision in the repealed version of CAMA i.e. Section 559 and 584.

¹ <<https://businessday.ng/editorial/article/support-nigerias-informal-sector-to-spur-development/>> accessed 28th August 2020

Can Individuals Own and Operate Business(es) in Nigeria Without Registration?

One of the topical issues following the passing of CAMA 2020 is the penalty prescribed by Section 863 for doing business in Nigeria without registration.² Section 559 and 584 of the repealed CAMA stipulated that it was an offence to do business in a registrable business structure or framework without taking the steps to formally register. Section 559 made it an offence to do business as a company without incorporation and section 584 criminalised doing business as a registrable business name without registration. Although these legal positions were rarely enforced under the old regime, there is no significant difference in CAMA 2020 on these issues. Section 863 of CAMA 2020 specifically provides as follows:

(1) A person or association of persons shall not carry on business in Nigeria as a company, limited liability partnership, limited partnership or under a business name without being registered under this Act.

(2) If an individual, corporation or association of persons required under this Act to be registered carries on business without

registration or under a name registration of which has been refused or cancelled under this Act, the individual, corporation or every partner in the firm commits an offence and is liable on conviction to a fine prescribed in the Commission's regulations from time to time, of ₦200.00 for every day during which the default continues, and the Court shall order a statement of the required particulars for the registration of the business to be furnished to the Commission for registration within such time as may be specified in the order.

The implication of that provision is that no person shall carry on business under any of the registrable structure or framework for the types of business organisations listed in section 863 (1).

However, the law gives room for other types of businesses which can operate without registration. This category of business are those in which the business name is the true name or surname of the individual or partners. Section 814 (1) of CAMA 2020 provides as follows:

(1) Every individual, firm or Corporation having a place of business in Nigeria and carrying on business under a business name

² Section 863 of the Companies and Allied Matters Act, (CAMA) 2020

shall be registered in the manner provided in this Part if —

(a) in the case of a firm, **the name does not consist of the true surname of all partners** without any addition other than the true forenames of the individual partners or the initials of such forenames;

(b) in the case of an individual, the name does not consist of his true surname without any addition other than his true forenames or the initials thereof; or

(c) in the case of a company, whether or not registered under this Act, the name does not consist of its corporate name without any addition.

These provisions make it compulsory to register a business name only when the name does not fall within any of the categories in subsection 1 (a) – (c). By this framework, the informal sector of the economy which accounts for the greater percentage of our GDP is not affected by the mandatory requirement for registration as long as such unregistered entities operate under the true name of their main sponsor. Non registration of the above-listed categories of business names does not constitute an offence.

Furthermore, section 868 CAMA 2020 makes the definition of forename here more flexible by providing as follows: "forename" includes a Christian name and a personal name and when used with a surname includes any first name, and "surname" includes a patronymic".

It must be noted that the requirement for registration is designed to protect unsuspecting members of the public from fraud where an individual enters a business relationship with a name other than his/her true name. This provision is quite important in this age of social media marketing where anonymous individuals flood the Internet with offers of services and goods. Where these names are allowed to be used without registration, unsuspecting members of the public will find it difficult to trace the person being dealt with online in the event of breach of a contract or fraud.



Conclusion

So much ado about CAMA 2020 instantly criminalising micro and small businesses. A calm analysis of the law reveals that it certainly does no such thing. A combined reading of sections 863 (1) and section 814 of CAMA 2020 reveals that if your business is done in your true name it does not require registration. The law has defined what it means by your “true name” in this context. Thus, it is incorrect to say that everyone single Nigerian business must embark on registration before everyone can carry out any business in Nigeria. Perhaps that situation may exist in a future utopia, but as things stand today small business owners need not be too concerned about non-registration, but may wish to consider the benefits they give up by registering such as priority in the use of the name, client confidence, operating a corporate bank account, corporate personality and limited liability, where applicable, amongst others.



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