CAMA 2020

It's Effect On Public Limited Companies

CAMA and its effect on Public Limited Liability Companies.

On 7th August 2020, President Muhammadu Buhari signed the Companies and Allied Matters Act, 2020 (the **Act**) into law. The Act repealed the Companies and Allied Matters Act Cap C20 LFN 2004. The Act largely retained the provisions of the repealed law with some modifications and made several novel provisions for the regulation of companies and other business and non-business entities.

This Alert is focused on the modifications and the novel provisions introduced in the Act and how they apply to public limited companies.

Execution of corporate documents

The Act permits the use of electronic signatures and makes it optional for companies to own and execute deeds with a common seal.[1] Execution of a deed by a single director and one witness is now sufficient to bind a company. Also, companies may issue a power of attorney any person to execute deeds on its behalf.[2]

Additional Disclosures

The Act has put in additional requirements for the disclosure interests in public companies.

The Act requires persons who have significant control over a company to disclose that fact to the company within 7 days of becoming such a person.[3] The Company is required to give notice of the fact to the Commission within 1 month, identify the said persons in its register of members and to disclose their names in every annual returns of the Company.

The threshold for significant control is 5% holding whether direct or indirect of the shares or interest or voting rights in a company. it also includes any person who directly or indirectly holds the right to appoint or remove a majority of the directors or exercise or actually exercising significant influence or control over a company, can be said to exercise significant control.

The Act preserved the disclosure of substantial shareholding in a public company but reduced the threshold to the holder, whether directly or indirectly of 5% of the unrestricted voting rights at any general meeting of the company.[4] The disclosure is to be made by the person to the company within 14 days. The Company in turn is required to

[1] Section 98 - 102

[2] Section 100

[3] Section 119

[4] Section 120

notify the Commission within 14 days of receiving the notification from the substantial shareholder and keep the information in its Register of Interest in Shares.

In both cases of disclosures, failure to make the disclosure makes the defaulter liable to fines as the Commission may prescribe.

Issuing Shares

The Act has given backing to the pre-emptive rights of existing shareholders by requiring that all companies offer newly issued shares in the first instance to all existing shareholders of the class of shares being issued in proportion as nearly as may be to their existing holdings before offering them to the public.[5]

Also, companies are now prohibited from issuing irredeemable preference shares.[6]

Additional requirements in respect of notice of meetings

In addition to the person traditionally entitled to notice of general meetings (i.e., members or their legal representative, directors, auditors, the company secretary), public companies are required under the Act to give notice of their general meetings to the Commission.[7] Public companies are still required to publish the notice of their general meetings in two newspapers at least 21 days before the general meeting.

The Act recognises electronic mail as a means of issuing notices of meetings to the person entitled to notice.[8]

Renumeration of managers

The companies are now required to disclose the renumeration of managers at the general meeting of the company.[9] This disclosure is ordinary business of the company at general meeting.[10]

Independent directors

Public companies are now required to have at least 3 independent directors. The Act also requires the person who has the power to nominate a majority of the candidates for the board to nominate at least three persons who would be independent directors.[11]

An independent director nominee should not, within the preceding two years before the proposed appointment, be or have a relative who was an employee or auditor of the company or a holder (directly or indirectly) of more than 30% of the shares the company, or had paid to or received from the company payments of more than ₦20,000,000.

Also, the nominee or his relatives should not have acted as a director, partner of officer or owned more than a 30% share or ownership interest, directly or indirectly, in an entity that paid to or received from the company payments of more than ₦20,000,000 within the preceding two years.

[5] Section 142
[6] Section 147
[7] Section 243 (1)(e)
[8] Section 244 (3)
[9] Section 257
[10] Section 238
[11] Section 275

Life Directors

A person may be appointed as a life director of a company.[12] However, the fact of appointment as a life director, does not preclude the removal of such person from the office of director.[13] This is notwithstanding anything to the contrary in the Articles of Incorporation or in an agreement between the said director and the company.

Multiple Directorship

The Act permits multiple directorships in public companies but caps it at not more than five directorship positions.[14] Thus, a person cannot simultaneously act as a director in more than five public companies. Also, any person so acting at the commencement of the ACT is required to resign from such number of directorship positions in public companies to meet the new requirement. Noncompliance attracts such daily penalties as may be prescribed by the Commission including the refund of every remuneration paid to the director by each of the companies.

Unlimited Liability of Directors

The Act permits companies to appoint directors and mangers whose liability is unlimited. Limited liability companies may alter their Articles of Association to allow for this type of appointment. Where this is the done, if a person is proposed to fill any of the said offices, the proposal shall include a statement that the liability of the person holding that office is unlimited and notice of this fact shall be given to the person by the company before he accepts the appointment.[15]

Register of Directors' Residential Address

In addition to the Register of Directors and the Register of Directors' Shareholding, the Act requires companies to keep a Register of Directors' Residential Addresses which shall state the usual residential address of each of the company's directors. The address must not be the company's registered office. Notice of a director's residential address or a change in the information thereof shall be given to the Commission within 14 days.

It must be noted that the Act regards the residential addresses of directors as protected information which may only be disclosed by the company or the Commission in line with the provisions of the Act.[16]

Public companies are also required to keep a Register of Secretaries.[17]

Major Asset Transactions

The Act requires that before the directors of a company undertake major assets transactions, the approval of the shareholders at a general meeting of the company is obtained by special or by way of ordinary resolution if permitted by the Company's Memorandum of Associations.[18]

Major assets transactions are transactions which involve either the

[12] Section 281
[13] Section 288
[14] Section 307
[15] Section 314
[16] Sections 323 - 329
[17] Section 336
[18] Section 342

purchase or acquisition of property outside the company's usual cause of business or, a sale or transfer of the company's property or other rights outside the usual course of the company's business, the value of which is 50% or more of the company's assets as of the date of the transaction.

Voluntary Arrangement By Companies

The Act permits the directors of a company to make proposals to the company's creditors for the satisfaction of the company's debt or a scheme of arrangement of the company's affairs.[19] In doing this, the company is required to appoint a nominee who is a qualified insolvency practitioner, to supervise the implementation of the arrangement. The nominee may also be the administrator or the liquidator of the company where the company is already subject to an order of administration or is being wound up.

A nominee who is neither the administrator or liquidator is required to apply to the court for directions and may subject to the sanction of the court, summon the meeting of the members of the company and the meeting of the creditors to consider and possibly approve the proposal with or without modifications.[20]

The court may sanction the decision reached at the summoned meetings whether or not it is challenged or, the court may make such orders for directions as it deems fit in the circumstance.

Administration of Companies

The Act has introduced the office of the Administrator appointed to manage the affairs, business, or property of companies which may be unlikely to pay their debts.[21] The Administrator may be appointed either by the company or its directors, the holder of at least one floating charge over the company's assets (if authorised by the instrument) and the court (upon the application of the company, its directors, one or more creditors, or a designated officer of the court).

Upon appointment, the Administrator shall act as an officer of the court whether or not appointed by the court.[22] All Administrators appointed outside the court or of companies with cross border activities, are required to notify the court of their appointment and may apply ex parte for a formal order of court.[23] The notice of appointment of the Administrator is also to be forwarded to the Commission.

The Act also lists out the purpose of the administration and identifies the rescue of the company as the primary purpose of administration.[24] It is only when that primary objective is not reasonably practicable that the Administrator may pursue the other purposes such as achieving a better result for the company's creditors as a whole, or realising property in order to make a distribution to one or more secured or preferential creditors of the company.

It should be noted that the Administrator is different from the Receiver or Manager[25] who may be

[19] Section 434
[20] Section 435
[21] Section 443
[22] Section 446
[23] Section 443 (2) & (3)
[24] Section 444
[25] Section 550

appointed by the Court or a debenture holder where the principal borrowed by the company or the interest thereof is in arrears or where the security or property of the company is in jeopardy. Also, the Act prohibits the appointment of an Administrator where a Receiver or Manager of the company has already been appointed.[26]

Netting Agreement

The Act now recognises netting agreements and makes provision for their enforcement in Nigeria. It recognises the right of persons or entities to offset their payments or delivery obligations or entitlements whether present or future, in connection with one or more qualified financial contracts.[27]

Netting agreements consolidate large numbers of individual positions or obligations arising from one or more qualified financial contracts into a reduced number of positions or obligations in a master agreement, thus, enabling the parties to easily settle their outstanding obligations to one another.

Conclusion

From the above analysis, it is clear that the modifications and novel provisions introduced by the Act triggers changes in the management of companies in Nigeria. It is important that public limited companies take note of these provisions and review their internal processes to ensure compliance with the Act particularly as some of these provisions carry sanctions for non-compliance.

[26] Section 454 & 462

[27] Section 718

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