

# INNOVATIONS OF THE COMPANIES AND ALLIED MATTERS ACT 2020: EXPANSIONS OR RESTRICTIONS?

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## ABSTRACT

The Companies and Allied Matters Act 2020 was recently signed into law by President Muhammadu Buhari. The new Act primarily repeals the Companies and Allied Matters Act of 1990. The Act is intended to bring Nigeria's corporate sector up to date and in line with global best practices. This paper looks at the Act's novelties and how it compares to the old Act to fulfill international standards. In addition, the paper examines and summarizes regulatory organizations' statutory obligations to develop and enforce a code of corporate governance in Nigeria and the role regulatory bodies play in enhancing Nigeria's business environment and the impact of their operations on Nigerian enterprises. This paper examines the Act's prospects and difficulties for implementation. The paper adopts the doctrinal method, drawing on both primary and secondary sources, and concludes that CAMA's innovation will improve the ease of doing business and allow her to compete with her peers around the world. The paper ends with recommendations on how to implement likely challenges the stakeholders of the new legislation may encounter in the course of enforcing the law. The paper agrees that there are expansions and restrictions in company administration under the new CAMA 2020.

**KEYWORDS:** Corporate, Ease of Doing Business, Innovation, Regulatory bodies,

## 1.0 INTRODUCTION

On Friday, August 7, 2020, the Companies and Allied Matters Act 2020 ("CAMA 2020") was signed into law by President Muhammadu Buhari. The Companies and Allied Matters Act of 1990 was repealed by this new Act which introduced various improvements and numerous innovations to increase productivity and make conducting business in Nigeria easier. The new CAMA addressed the inadequacies, shortfalls, and limitations of the previous CAMA, which had existed for a long time spanning over three decades. The Act introduces some novel measures into the Nigerian corporate and commercial system. The Act, founded on concepts of

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transparency, corporate governance, and innovation, is expected to transform Nigeria's economic and corporate landscape<sup>1</sup>.

As thorough and inventive as this new piece of law may be in changing Nigeria's corporate and business sector, the new CAMA 2020 raises some legal difficulties and questions. Now that CAMA 1990 was repealed, what happens to transactions, dealings, and activities carried out according to the old Act? When did the new CAMA 2020 regulations take effect? This article examines the transition to CAMA 2020 and the saving provisions for acts, transactions, dealings, and proceedings performed based on CAMA 1990<sup>2</sup>.

## **2.0 BRIEF EVOLUTION OF CORPORATE REGULATORY LEGISLATIONS IN NIGERIA**

The evolution of corporate governance emanated alongside the formation of company law which dated back to the English Company law. The English company law consists of common law principles, doctrines of equity, and statutes which became part of the Received English Law that was incorporated into the Nigerian Legal System<sup>3</sup>. Before the enactment of CAMA 2020, Nigeria has had four other principal company statutes- the Companies Ordinance 1912, the Companies Ordinance 1922, the Companies Act 1968, and the Companies and Allied Matters Act, 1990<sup>4</sup>.

The increasing consciousness of good corporate governance practice across the length and breadth of the world is extremely important. With effective corporate regulatory legislation, there is little or no doubt that corporate authorities will take decisions that will meet all stakeholders' interests. The essence of the regulatory body is to offer a framework of integrity, transparency, responsibility, accountability, checks, and balances.<sup>5</sup> In Nigeria, the regulatory changes were through the issuance of different corporate governance codes by major regulators such as Corporate Affairs Commission [CAC], Financial Reporting Council of Nigeria [FRCN], Securities and Exchange Commission [SEC], etc.

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<sup>1</sup> [https://www.detailsolicitors.com/key\\_highlights\\_of\\_the\\_companies\\_and\\_allied\\_matters\\_act\\_2020/](https://www.detailsolicitors.com/key_highlights_of_the_companies_and_allied_matters_act_2020/). Accessed 23 December, 2021

<sup>2</sup> Ikemefuna Stephen Nwoye, 2020 "Companies and Allied Matters Act 2020 and its Innovations: Implications for Corporate Finance and Securities Transactions" available on [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3836552](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3836552). Accessed on 20 December, 2021

<sup>3</sup> Orojo, J.O. "Company Law and Practice in Nigeria", LexisNexis 5th Edition at pg. 16.

<sup>4</sup> <https://www.nwoye-law.com/1/paper-series-companies-and-allied-matters-act-2020-and-its-innovations-implications-for-corporate-finance-and-securities-transactions>. 20 December, 2021

<sup>5</sup> Agyemang, Otuo Serebour and Aboagye, Emmanuel and Ahali, Aaron Yao Ofoe, 2013 "Prospects and Challenges of Corporate Governance in Ghana" available on <https://mpr.ub.uni-muenchen.de/47117/1/>

CAMA primarily regulates companies in Nigeria. The Act established a Commission concerned with issues relating to the regulation, control, and governance of corporate entities. At the same time, other regulatory bodies, through their various provisions, strengthen corporate governance practices in Nigeria. The Financial Reporting Council of Nigeria (FRCN) was the first regulatory body empowered to formulate code and ensure corporate governance in Nigeria. Corporate governance structure spell out the rules and procedures for making decisions on corporate affairs and provide the system through which the company objectives are set and the means of attaining and monitoring the performance of those objectives. It defines the accountability of those charged with the responsibility of steering the company's affairs.<sup>6</sup>

Good corporate governance means that the processes of disclosure and transparency are followed to provide regulators and shareholders as well as the general public with precise and accurate information about the financial, operational, and other aspects of the company<sup>7</sup>. Corporate Governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants of the corporation, such as the board, managers, shareholders, and other stakeholders. It spells out the rules and procedures for making decisions on corporate affairs. Doing this also provides the structure through which the company objectives are set and the means of attaining those objectives and monitoring performance<sup>8</sup>. However, the essence of corporate Regulatory Legislations in Nigeria is to have a corporate structure that conforms to international best practices<sup>9</sup>. Presently, corporate law in Nigeria comprises a body of laws that governs the rights, conduct, and relations of companies, organizations, and commercial businesses in Nigeria.

### **3.0 IMPLICATIONS AND CHALLENGES OF IMPLEMENTING CAMA 2020**

CAMA 2020 is enacted to repeal the old CAMA. This innovative Act aims to promote legislation for quality regulations and competence, enable efficient ease of doing business, especially for private companies, and attract foreign investors to invest in the country. While society applauds the federal government on this development, it is unfortunate that the beautiful

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<sup>6</sup> Junaidu Bello Marshall, "Corporate Governance Practices: An Overview of the Evolution of Corporate Governance Codes in Nigeria" International Journal of Business & Law Research [2015] 3(3):49-65 available on [www.seahipaj.org](http://www.seahipaj.org)

<sup>7</sup> <https://www.managementstudyguide.com/role-of-government-legislation-and-regulation.htm>

<sup>8</sup> "Organisation for Economic Co-Operation and Development Principles of Corporate Governance" (2004) Retrieved on 26/12/21 from [www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf](http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf)

<sup>9</sup> ibid

innovation has some challenges that affect some individuals. In contrast, some of these innovations, especially section 839, which empowers the commission to suspend trustees and appoint internal managers, did not go well with those in business communities such as civil society organisations and faith-based organisations. These set of people have alleged the provision in the section as unfair<sup>10</sup>.

- i. Loss of Income for Certain Specified Professionals:** The provision of Section 705(1)(c) of CAMA 2020 authorised any member with certification from the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN) to act as an insolvency practitioner. This provision has exposed everybody to practice, and the presence of a lawyer or an accountant is no longer needed. Therefore, it becomes a threat rather than a source of income to lawyers and accountants. Additionally, private companies need not appoint a company secretary anymore, and an individual can now incorporate his company without consulting a legal practitioner. This provision is seen as a weighty threat and an extensive loss of income for legal practitioners. The provisions of section 35 (3) of CAMA 1990 which provides that a legal practitioner should exclusively make Declaration of Compliance with respect to incorporation of companies has been abolished. The provisions of section 35 (3) of the CAMA 1990 has been replaced with section 40 of the new CAMA 2020 which allows the applicant, his agent or his legal practitioner to file the Statement of Compliance upon attestation before a Commissioner for Oath or a Notary Public.<sup>11</sup>
- ii. Composition of Adjudicatory Body by CAC:** The establishment of the Administrative Proceedings Committee by the Commission shows that Court activities in adjudicating company matters will be reduced as the Commission has made provisions to resolve disputes or grievances arising from the operations of the Act. The members of the Committee are practically employees of the Commission with just a representative of the Federal Ministry of Industry, Trade and Investment<sup>12</sup> and the Commission may co-opt persons who shall not count towards a quorum or have the right to vote in respect of any decision taken by the

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<sup>10</sup> CSO kicks, calls for amendment of controversial CAMA 2020 Act available on <https://www.vanguardngr.com/2021/04/cso-kicks-calls-for-amendment-of-controversial-cama-2020-act/>

<sup>11</sup> S. 40 CAMA 2020

<sup>12</sup> S851 (1) of Companies and Allied Matters Act, 2020.

Administrative Committee<sup>13</sup>. The Commission, being the body that incorporates, administers and ensures compliance by companies is now the body that serves as both complainant/defendant and a judge in its case. In a situation where is a dispute between CAC and its clients and CAC is presiding over the dispute, will there be a fair hearing? Aside from the above, the Act further stated the Committee would make a decision, and the Committee may impose sanctions. If parties are not satisfied with the decision after the Board has confirmed it, the aggrieved party may appeal to the Federal High Court under section 851 (1-13) of CAMA 2020. This provision requires further amendment which should empower the supervisory Minister or the Attorney General of the Federation to set up such Dispute Resolution Body and take away from the CAC the power to sit as a judge in its own case.

- iii. Regulation of Non-Profit Organisations:** The Act provides for the Commission to suspend any trustee of an association and appoint an interim manager or managers to manage the affairs of an association where there is a misconduct or mismanagement in the administration of the association amongst others. With this power granted to the Commission, the Commission can petition trustees, and an order of Court can suspend the trustee (s). This provision becomes worrisome in the sense that any member of an association may petition, and such order may be granted without due diligence by virtue of section 839 (1)-(11) of CAMA 2020.

With regard to Section 839 of CAMA 2020, the Christian Association of Nigeria dragged the Federal Government to Court to challenge some provisions in the just gazetted and seemingly controversial CAMA 2020.<sup>14</sup> In that case, it was reported that The Incorporated Trustees of Christian Association of Nigeria v The Corporate Affairs Commission & Anor. (FHC/ABJ/CS/244/2021) resolved to go to Court after all attempts to convince the Federal government why it should not intervene or interfere with the management of the Church in the country through any of its agencies failed.<sup>15</sup> The plaintiff, in an originating summons prayed the Court to determine “whether Section 839, subsections (1), (7) (a) and (10) of the Companies and Allied Matters Act (CAMA), 2020, is inconsistent with Sections 4(8), 6(6)(b) and 40 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) (as amended) which

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<sup>13</sup> S851 (1) of Companies and Allied Matters Act, 2020.

<sup>14</sup> The Incorporated Trustees of Christian Association of Nigeria v. The Corporate Affairs Commission & Anor. (FHC/ABJ/CS/244/2021)

<sup>15</sup> [https://punchng.com/breaking-cama-can-drags-fg-to-court/?utm\\_source=auto-read-also&utm\\_medium=web](https://punchng.com/breaking-cama-can-drags-fg-to-court/?utm_source=auto-read-also&utm_medium=web)

guarantees the plaintiff's right to freedom of association and the right to seek redress in Court. One of the issues for determination before the Court is:

“Whether the provision of Section 854 of the CAMA is inconsistent with Section 39 of the CFRN which guarantees the right to freedom of expression,” among others.

Part of the reliefs sought by the plaintiff include “a declaration that Section 839(1), (7) (a) and (10) of the CAMA are inconsistent with Section 40 of the Constitution and thus unconstitutional, null and void.

The Plaintiff is also praying the Court among others for:

- I. “A declaration that Section 839(1), (7) (a) and (10) of the CAMA are inconsistent with Section 4(8) of the CFRN and thus unconstitutional, null and void.
- II. “A declaration that Section 839(1) and (7) (a) of the new CAMA are inconsistent with Section 36(1) of the CFRN and thus unconstitutional, null and void.
- III. “A declaration that Section 839(1) and (7) (a) of the CAMA has a direct effect on the judicial power of the court under Section 6(6) (b) of the Constitution, and is therefore void.
- IV. “An order striking down Sections 839(1), (7) (a) & (10), 842(1) and (2), 843, 851 and 854 of the CAMA for being unconstitutional.
- V. “A declaration that Section 17(2) (a) & (d) of the new CAMA demand an impossible and impracticable action; thus, void.
- VI. “An Order striking down Section 17 (2) (a) & (d) of the new CAMA for being impracticable and unknown to Law.”

In this instant case, it was reported that the matter was dismissed over the failure of the plaintiff to comply with the law on the name used in filing its Originating Summons.<sup>16</sup> Though the matter was dismissed based on foundation of the case going by the defect in the name by which the plaintiff commenced the matter, yet the Court did not address the substantive matter brought before her. Not only that, top clerics in the country like the Presiding Bishop of the Living Faith Church Worldwide *aka* Winners' Chapel, David Oyedepo; as well as the CAN and the Pentecostal Fellowship of Nigeria, amongst others, rejected the law, especially the Section 839 (1) and (2) of the law which empowers the supervising minister “to suspend trustees of

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<sup>16</sup> <https://guardian.ng/news/court-dismisses-cans-suit-against-cac-minister-of-trade/>

an association (in this case, the church) and appoint the interim managers to manage the affairs of the association for some given reasons. This shows that while the Act was silent in mentioning church, mosque and even NGOs, yet this section does not go well with some bodies. Ideally, issues relating to legislations should be dealt with at the Public Hearing stage before the National Assembly.

**iv. Prescription of Fees and Penalties by CAC:** Primera Africa Legal identified power of the CAC to Prescribe Fees and Penalties as another challenge with CAMA 2020. It stated that the specific fees and penalties to be applied in a given case would be explicitly stated (and pegged) on the face of the substantive legislation under the former CAMA and many other laws. It stated further that by empowering the Commission, CAMA will no longer need to be revised regularly to keep up with inflation. However, it may provide it leeway to levy extravagant and arbitrary fees to boost the Commission's revenue. Nevertheless, preferable method would have been to set such fees at a fixed level or cap them in law, with the CAC having the authority to adjust them to reflect inflation and the time value of money. This method would have set the tone for the range of fees or penalties that would be imposed, and it could influence how quickly the CAC issues a rule to change the fees outlined in the substantive law.<sup>17</sup>

#### **4.0 SOME SALIENT INNOVATIONS OF CAMA 2020**

Some of the salient innovations of the new CAMA 2020 include the following as discussed below:

- i. **Expansion of the Functions of the Corporate Affairs Commission:** Section 8<sup>18</sup> empowers the Commission to register, regulate, supervise, manage the affairs of business names and also dissolve incorporated trustees. The Commission can also strike off, wind up companies, and even remove names from the register. The Act allows the Commission to arrange or conduct an investigation into the affairs of any company, incorporated trustees, or business names where the interest of shareholders, members, partners, or public so demands. The caution is here is that this power should not be abused. What is the interest of the public should be properly defined in the legislation.

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<sup>17</sup> <https://primeraal.com/news/key-innovations-of-the-companies-and-allied-matters-act2020/>. Accessed 24 December, 2021

<sup>18</sup> S. 8 CAMA, 2020

- ii. **Pre-Action Notice and Restriction on Levy of Execution:** Section 17(1)<sup>19</sup> of CAMA 2020 provides that before the commencement of an action against the CAC, the notice shall clearly state the (a) cause of action; (b) particulars of the claim; (c) name and place of abode of the intending plaintiff; and (d) relief sought and the action shall not commence against the Commission before the expiration of 30 days after written notice of intention to commence the suit is served upon the Commission. This will help to reduce litigation burden on the CAC and provide a preliminary dispute resolution window for parties to possibly resolve their differences without joining the long queue of litigating in Nigerian courts which discourages investors. This is a welcome development.
- iii. **Incorporation of a Private Company by a Single Member/Shareholder:** Section 18(2)<sup>20</sup> of CAMA 2020 creates an avenue for a single director that is an individual to incorporate a company. This is a welcoming development against the old provision of a minimum of two (2) directors' requirements in incorporating a company. With this, a business owner who currently trades as a sole proprietor can convert his business name to the company and maintain the single directorship status. It aids ease of doing business by sole investors and boosts quick decision making in corporate management.
- iv. **Transfer of Shares and Assets in a Private Company:** Generally, transfer of shares in private companies is restricted. To transfer shares in a private company, the requirements provided in CAMA 2020 must be followed. The requirements are (1) the company shall not, without the consent of all its members, sell assets having a value of more than 50% of the total value of the company's assets; (2) a member shall not sell that member's shares in the company to a non-member, without first offering those shares to existing members; and (3) a member, or a group of members acting together, shall not sell or agree to sell more than 50% of the shares in the company to a person who is not a member unless that non-member has offered to buy all the existing members' interests on the same terms. This means that for a shareholder to sell his shares, he must first offer the existing shareholders before inviting an outsider. However, these restrictions may affect the rights of an existing shareholder. At this juncture, parties should review their

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<sup>19</sup> Ibid. S. 17(1) CAMA, 2020

<sup>20</sup> Ibid. S. 18(2) CAMA, 2020

memorandum of association and amend their articles to expressly exclude these restrictions where necessary.<sup>21</sup>

- v. **Registration of Companies Limited by Guarantee:** Under the repealed CAMA 1990, Registration of a Company Limited by Guarantee (LTD/GTE) or a non-profit organisation needs the consent of the Attorney General of Federation (AGF) before its approval, and this has always been a major setback, especially if such consent is not granted within a stipulated time. However, in a situation where the promoter has met the necessary requirements and furnished all valid documents to the AGF, and the AGF made no decision within the period of 30 days, CAMA 2020 allows the Commission to approve an LTD/GE registration application under Section 26 of CAMA 2020.<sup>22</sup>
- vi. **Replacement of Authorized Share Capital with Minimum Share Capital:** As against the provisions of the repealed CAMA that requires an “authorized share capital,” CAMA 2020 thus replaced the old provision with “minimum share capital.”. The minimum share capital is the minimum number of shares a company can register and issue to its subscribers. Also, shares that are not needed at the time of incorporation can be retained for future allocation. For a private company, the minimum share capital is now N100,000.00, while that of a public company is now N2,000,000.00. Section 27(2) of CAMA 2020<sup>23</sup>. In an event where there is an increase of issued capital on increase of shares in a company, a quarter of such issued share capital at least 25% of the share capital must be paid up; hence, the increase shall not take effect.<sup>24</sup>
- vii. **Reservation of Name:** Before the issuance of Certificate of Incorporation by the Commission, the Commission may at any time before a certificate of incorporation is issued, withdraw or cancel a reserved name if it discovers that such name is identical with that by which a company in existence is already registered, or so nearly resembles it as to be likely to deceive, under section 31(3) of CAMA 2020<sup>25</sup>. Additionally, section 31(5)<sup>26</sup> of CAMA 2020 empowers the Commission to withdraw or cancel the approval for reservation of name where it is discovered that the approval was fraudulently, unlawfully, or improperly procured.

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<sup>21</sup> Ibid. S. 22 CAMA, 2020

<sup>22</sup> Ibid. S. 26 CAMA, 2020

<sup>23</sup> Ibid. S. 27(2) CAMA, 2020

<sup>24</sup> Ibid. S. 128(1) CAMA, 2020

<sup>25</sup> Ibid. S. 31(3) CAMA, 2020

<sup>26</sup> Ibid. S. 31(5) CAMA, 2020

- viii. **Authorization of Minister to Prescribe Model Articles:** Section 33 of the CAMA 2020<sup>27</sup> empowers the Minister to prescribe model articles, and since articles are not always the same, different model articles may be prescribed for different descriptions of companies; hence, a company may adopt all the provisions in the article and may alter any of the provisions. Therefore, any amendment of model articles made does not affect a company, provided the amendment takes effect before registration. It is our view that the Model Article of Association is a mere guide and be should be so accepted by the officials of the regulatory Commission.
- ix. **Statement of Compliance as an Alternative to the Requirement of Declaration of Compliance:** Section 40<sup>28</sup> of the new CAMA provides that an applicant or his agent can sign the Statement of Compliance during the registration of companies. This statement of compliance thus serves as a substitute to Statutory Declaration by a legal practitioner Commissioner for oaths or notary public.<sup>29</sup>
- x. **Introduction of Re-Registration of a Public Company as an Unlimited Company:** One of the innovations of the 2020 CAMA is the option of re-registration of a public company limited by shares to be re-registered as an unlimited company provided that all the members of the company have assented to it being registered and the company has also met other requisite conditions.<sup>30</sup> The implication of this provision is that it engenders right to business investment and freedom to diversify in the light of economic uncertainties and dynamism.
- xi. **Common Seal for Companies is no Longer Mandatory:** By virtue of section 98<sup>31</sup> of CAMA 2020, a company seal is no longer required. Where a company decides to have a common seal, the design and usage shall be regulated by the company's articles, and it shall have its name engraved in legible characters on the seal. With this amendment, a company can execute a document without affixing a common seal. The authorized signature of the company (manual or electronic) now serves as sufficient execution of any document signed by the company. This is in line with the technological realities of the current age.

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<sup>27</sup> Ibid. S. 33 CAMA, 2020

<sup>28</sup> Ibid. S. 40 CAMA, 2020

<sup>29</sup> Ibid. (n 11)

<sup>30</sup> Ibid S. 75 CAMA, 2020.

<sup>31</sup> Ibid S. 98 CAMA, 2020.

- xii. **Disclosure of Persons with Significant Control:** Shareholders with significant control in private companies and limited liability partnerships should disclose details of such control to the company within seven (7) days of assuming control, while those in public companies must declare it within fourteen (14) days of their awareness. This is a laudable development as the new provision strengthens corporate governance and transparency under the repealed Act, which made only public companies disclose significant control. In private companies and limited liability partnerships, a person with significant control holds at least 5% of the voting rights, while the shareholder of a public company is entitled to exercise at least 5% unrestricted voting rights at any general meeting of the company. This new development contradicts the repealed CAMA, which had 10%. With this, companies are thus required to notify the Commission upon receipt of such information, and the Commission shall maintain a register of persons with significant control based on section 119 and 120 of CAMA 2020<sup>32</sup>.
- xiii. **Technological Innovations:** The world is moving as fast as the speed of light, and the world is making the transaction of businesses seamless. All thanks to technological innovation and the nations adopting it for ease of business. As the world is moving and to make the act of conducting business continuous, the new CAMA 2020 introduces a quite number of hi-tech novelties such as:
- a.) Electronic signature for the authentication of companies' documents and proceedings by virtue of section 101.<sup>33</sup>
  - b.) All companies will accept electronic instruments of transfer without restriction by virtue of section 175(1).<sup>34</sup>
  - c.) Private companies may hold their general meetings virtually provided that such meetings are conducted following the company's articles as stated in section 240 (2) of CAMA 2020. However, this provision has an exception for small companies and companies with a single shareholder, which states that all statutory and annual general meetings shall be held in Nigeria by virtue of section 240(1).<sup>35</sup>

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<sup>32</sup> Ibid. S. 119, 120 CAMA, 2020

<sup>33</sup> Ibid. S. 110 CAMA, 2020

<sup>34</sup> Ibid. S. 175(1) CAMA, 2020.

<sup>35</sup> Ibid. S. 240(1) CAMA, 2020.

- d.) Electronic service of notice of meeting. Notice of general meeting may be given via electronic mail to any member who has provided the company an electronic mail address.<sup>36</sup>
  - e.) Each public company shall keep its audited accounts displayed on its website by virtue of section 374(6) of CAMA 2020.<sup>37</sup>
  - f.) Any document required to be annexed to the annual return may be delivered to the Commission either in hard copy or through electronic communications by virtue of section 422 (3) of CAMA.<sup>38</sup>
  - g.) Company records can be maintained in electronic format by virtue of section 731 (2) of CAMA 2020.<sup>39</sup>
  - h.) Electronic filing of documents: Any document required to be filed with the Commission for registration may be filed electronically under section 860(1) of CAMA 2020. Additionally, electronically filled Certified True Copies (CTC) of documents is admissible in evidence as equal validity with the original documents of section 860(1)(2) of CAMA 2020.<sup>40</sup>
- xiv. **Legalized Financial Assistance by Companies:** The new provision gives room for financial assistance, unlike the repealed Act. On this, both private and public companies can get financial aid under section 183 of CAMA 2020<sup>41</sup>.
- xv. **Second or Casting Vote:** This section permits the chairman of a meeting to have a second or casting vote in case of an equality of votes.<sup>42</sup> The implication is that this provision aids quick decision.
- xvi. **Exemption from the Appointment of Company Secretary by Small Companies:** Appointment of a Company Secretary in the new CAMA is now optional for private companies as against the repealed CAMA, which was compulsory. Nevertheless, the appointment of a company secretary is still mandatory for public companies by virtue of section 330 of the Act<sup>43</sup>.

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<sup>36</sup> Ibid. S. 244(3) CAMA, 2020

<sup>37</sup> Ibid. S. 374(6) CAMA, 2020

<sup>38</sup> Ibid. S. 422(3) CAMA, 2020

<sup>39</sup> Ibid. S. 731(2) CAMA, 2020

<sup>40</sup> Ibid. S. 860(1), (2) CAMA, 2020

<sup>41</sup> Ibid. S. 183 CAMA, 2020

<sup>42</sup> Ibid. S. 250 (3) CAMA, 2020

<sup>43</sup> Ibid. S. 330 CAMA, 2020

- xvii. **Creation of New Corporate Structures: Limited Liability Partnerships and Limited Partnerships: (Part C-Sections 746-794)<sup>44</sup> and (Part D - Sections 795-810)<sup>45</sup>:** The concept of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) are now recognised under the Act as a legal entity. Introducing these two entities into Nigeria's business will give room for organisational flexibility and provide more options for investors seeking to have their holdings in Nigeria. This new concept conforms with global standards on ease of doing business.
- xviii. Exclusion of a Chairman of a public company from acting as the Chief Executive Officer of the same company under section 265(6) of CAMA 2020<sup>46</sup>. The implication is a form of checks and balances in order not to arrogate the powers of the corporate entity to a single person.
- xix. **Restrictions on Multiple Directorships in Public Companies:** The new CAMA restricts multiple directorships of public companies, and no person can be a director in more than five (5) public companies. Subject to this provision, any person who is a director in more than five public companies shall, at the next annual general meeting of the companies after the expiration of two years, resign from being a director from all but five of the companies by virtue of section 307(3) of CAMA.<sup>47</sup>
- xx. **Exemption of Small Companies from Audit Requirement:** Section 402 (1)<sup>48</sup> of CAMA 2020 exempts small companies or any company having a single shareholder from appointing auditors at the annual general meeting to audit the financial records of the company.
- xxi. **Introduction of Companies Rescue Provisions for Insolvent Companies:** The new CAMA makes wide-range provisions for companies in distress to prevent companies from being insolvent. As a result of this new provision, winding up will no longer be the only available option; other rescue provisions are company voluntary arrangements (S.434 to S.442)<sup>49</sup>, administration of companies (S.443 to S.549<sup>50</sup>), and Netting (S.718 to S.721<sup>51</sup>) of CAMA 2020.

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<sup>44</sup> Ibid. S. 746-794 CAMA, 2020

<sup>45</sup> Ibid. S. 795-810 CAMA, 2020

<sup>46</sup> Ibid. S. 265(6) CAMA, 2020

<sup>47</sup> Ibid. S. 307(3) CAMA, 2020

<sup>48</sup> Ibid. S. 402(1) CAMA, 2020

<sup>49</sup> Ibid. S. 434 - 442 CAMA, 2020

<sup>50</sup> Ibid. S. 443-549 CAMA, 2020

<sup>51</sup> Ibid. S. 718 -721 CAMA, 2020

xxii. **Automatic Cessation of Administration:** This section provides that the tenure of an administrator ceases automatically within a year of his/her appointment. However, the term of his/her office may be extended by an order of court for a period not exceeding six months.<sup>52</sup>

## 5.0 RECOMMENDATIONS

In the course of appraising CAC for issuing the Regulations in response to the passing of the CAMA 2020, it is worth noting that there are still some ambiguities in CAMA 2020 that a legislative amendment can only answer. A very good example is a discrepancy between the Act and Regulations' turnover thresholds for small businesses. On this, implementing such conflicting sections of the Regulations could be difficult. The composition of CAC's Adjudicatory Body should also be investigated, as CAC cannot be a judge in its own case. Also, how are enterprises migrating from small businesses to large businesses in terms of their present regulatory requirements under CAMA 2020?<sup>53</sup>

In addition to this, parties and their counsel in any transaction or proceeding governed by the repealed CAMA must conduct a critical review of CAMA 2020, particularly its repeal and saving provisions, to evaluate its impact on a transaction or proceeding that has already been completed or is in the works.

## 6.0 CONCLUSION

The innovations and reforms in the CAMA 2020 are in tandem with global practices as it integrates several legal innovations geared towards improving the ease of doing business in Nigeria. The Act with the salient innovations introduced, seek to regulate the conduct of businesses of all classes and make an overhaul of the repealed CAMA. However, it should be noted that some of these salient provisions are not yet tested in the court of law in order to know their extent of applicability to contemporary live issues of corporate administration.

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<sup>52</sup> Ibid. S. 513(1),(2) CAMA, 2020.

<sup>53</sup> Commentaries on Companies Regulations, 2021 published by CAC available on <https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/commentaries-on-companies-regulations-2021-published-by-cac.pdf> assessed on 30 December, 2021

The opportunities in CAMA 2020 are ground-breaking in many respects especially with the ease of doing business in Nigeria and these will not only attract more investors, it will likewise encourage an individual to run a company and attracts Foreign Direct Investment (FDI) into the country. The technological innovation will as well make running of company continuous and equally increase Nigeria's rating in the World Bank Doing Business (WBDB) Ranking Index. No doubt, CAMA 2020 will greatly enhance the ease of doing business and also rub shoulders with her counterparts across the world.