



COMMERCIAL LAW DEVELOPMENT SERVICES

COMMERCIAL LAW NEWSLETTER

A quarterly publication of CLDS

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Dear Reader,

It is an absolute pleasure to welcome you to the first edition of our Commercial Law Newsletter for 2021.

We are grateful to everyone who contributed to it as these contributions are essential to the success of the newsletter.

Commercial Law Development Services has continued in its vision to equip professionals, particularly legal counsels (in-house and private practitioners) with the skills necessary to meet the legal demands of modern commerce and to acquaint managers, business owners and decision makers with the skills required to manage legal issues impacting their business decisions. This is demonstrated in the caliber of our publications and training programmes, which have garnered positive feedbacks from our participants all over Nigeria.

This edition focuses on the key highlights of The Companies and Allied Matters Act of 2020, which aims to ensure efficiency in the registration and regulation of corporate vehicles and promote a more friendly business climate.

Please check out our website to read articles and other publications, view events and webinar programme reviews.

We are delighted that you are joining us as readers and hope you will also join us as contributors. Enjoy reading CLDS Newsletter, we hope it will keep you greatly informed. Have a wonderful month!

Kind Regards,
Obianuju Ejiofor.

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PROFILE OF

Sylva Ogwemoh, SAN, FcI Arb (UK)



Sylva Ogwemoh is the principal partner/ head of chambers at Kevin Martin Ogwemoh Legal. He is an alumnus of the Said Business School, University of Oxford, England, and a member of the Oxford Business Association. He holds a Master's Degree in Corporate Management and Finance Law.

As a Commercial Law expert, Sylva's unmatched achievements are also recorded in the fields of Corporate and Commercial Law and Maritime Law wherein he has rendered a range of services to several investors/operators both in the financial and maritime sectors.



THE COMPANIES AND ALLIED MATTERS ACT 2020 - HIGHLIGHTS OF THE REFORMING PROVISIONS AND THEIR IMPLICATIONS FOR BUSINESSES AND INVESTORS IN NIGERIA

BY SYLVA OGWEMOH SAN, FCIArb(UK) AND AKOREDE FOLARIN

1.0 INTRODUCTION

The signing into law of the Companies and Allied Matters Act 2020 (“CAMA 2020”/“the new Act”) is indeed a vital piece of good news and a ray of hope for many in Nigeria and beyond, especially in the business world. The now-repealed Companies and Allied Matters Act 1990 (“CAMA 1990”/“the old Act”) which had been in operation for thirty years without any substantial improvement despite constant developments in the global corporate practice landscape had over time become outdated. This had inevitably presented obstacles to the seamless incorporation, operation, and the conduct of businesses and investments in the country especially when compared with what is obtainable globally, and thus, deprived the country of the ease of doing business, the inflow of investment, and economies of scale that a more modern and more resilient corporate practice regime could have engendered.

As a result, the signing into law of the new Act has been described as one of the most impactful business/economic upheavals in the country in the past three decades due to its brazen attempt at improving the country's ease of doing business and achieving global competitiveness in line with the Federal Government's Economic Recovery and Growth Plan (ERGP 2017 – 2020) which targets Nigeria ranking in the top 70 in the World Bank's Doing Business Index by 2023. It is believed that the enactment of the new Act will reduce regulatory hurdles, ease the business environment, and increase investor confidence in Nigeria as an investment destination.

2.0 RELEVANT PROVISIONS OF THE NEW ACT

2.1 Online Registration/Submission of Incorporation Documents

In the current regime, physical copies of incorporation documents must be delivered to the Corporate Affairs Commission (“CAC”/“Commission”) before a company is registered. The new Act now, however, provides for electronic submission/filing of incorporation and other documents. This will make registration easier for Small- and Medium-Scale Enterprises (SMEs) and bring more businesses into the formal sector.

2.2 Single Member/Shareholder/Director Companies

The new Act now makes it possible to incorporate a small company with only one shareholder and director as against the requirement of at least two under the old Act. This is in line with modern-day global corporate practice and will go a long way to encourage the growth of startups; micro, small and medium enterprises (MSMEs); and also attract investment by foreign companies that may be interested in sole ownership.



2.4 Limited Liability Partnerships and Limited Partnerships

The new Act introduces two new forms of business entities into Nigerian corporate law –the Limited Liability Partnerships (LLP) and the Limited Partnership (LP) which are, like a company, also meant to exist differently and separately from their members. These new forms of business combinations will enjoy the unique privilege of the organisational flexibility and tax benefit status of a partnership and the limited liability of companies.

2.5 Statement of Compliance

The new Act replaces requirement under the old Act of the Statutory Declaration of Compliance attested to by a Legal Practitioner with a Statement of Compliance which can be signed by an applicant himself or his agent, confirming therein that the legal requirements for registration have been duly complied with. As such, the newly introduced Statement of Compliance need not be signed by a lawyer. This is another provision aimed at making the incorporation of businesses in the country easier and cost-saving.

2.6 Model Articles of Association

Under the old Act, every company was required to register an Article of Association in line with the form and contents prescribed in the Act during incorporation. In the new Act, however, a company may elect not to register an Article of Association, in which case it will be deemed to have adopted the Model Articles prescribed in the Act for a company of its description. This will be of advantages to promoters during incorporation because there will be no need to stress over the draft of articles as same can be easily adopted depending on the type of company sought to be registered.

2.7 Exemption from Registration by Foreign Companies

Under the new Act, a foreign company intending to carry on business in Nigeria without registering as a company in Nigeria can now apply to the Minister of Trade for exemption rather than to the Council of Ministers as was the case under the old Act.

2.8 Common Seal No Longer Compulsory for Companies

In line with international best practices, the new Act makes ownership of common seal optional for companies. This will reduce the complexity of execution of deeds by companies. Companies may nevertheless still opt to obtain a common seal and regulate its use and design through its Articles of Association.

2.9 Execution of Documents/Electronic Signature

The new Act now allows a document or proceeding requiring authentication by a company to be signed by a director, secretary, or other authorised officers of a company, and need not be signed as a deed except expressly required under the Act and that an electronic signature is deemed to satisfy the requirement for signing under the section.



ARTICLE

BY SYLVA OGWEMOH SAN, FCIArb(UK) AND AKOREDE FOLARIN

Similarly, the Act provides that a document is now validly executed by a company as a deed if executed in the presence of a director of the company and the company secretary, or by at least two directors of the company, or by a director of the company in the presence of at least one witness and delivered as a deed, without the need to affix the common seal of the company on the document.

2.10 Electronic Documents/Share Transfer/Records

In recognition of the advancements in technology and its adoption in general corporate practice globally, the new Act makes provisions for electronic documents. It provides that any document required to be filed with the CAC for registration may be filed electronically. It also provides that certified true copies (CTC) of electronically filed documents are now admissible in evidence and same will have equal validity as original documents. The Act also defines instruments of transfer of shares to include electronic instruments of transfer.

The new Act goes further to provide that, in addition to original hard copies, companies may keep electronic copies or registers of any document it is obliged to keep under the Act in which case they must give sufficient consideration to the quality of hardware and software to be used, technical specifications such as protocols, security, and anti-virus protection.

2.11 Minimum Issued Share Capital/Paid-Up Share Capital

The new Act has replaced the concept of authorized share capital with minimum issued share capital. Companies with share capital are now required to have a minimum share capital which shall not be less than NGN100,000 in the case of a private company and NGN2,000,000 in the case of a public company. The effect of this is that the promoters of a company are not bound to pay for or allocate shares that are not needed at the time of incorporation and companies can now simply increase their share capital by issuing shares as they become needed. This will help to remove the extra (frontloaded) cost in the form of payment of stamp duties on the authorized share capital or upon an increase in the authorized share capital of a company.

Furthermore, unlike under the old regime where there was no provision for any particular percentage of the share capital of a company to be paid up, CAMA 2020 now provides that twenty-five percent (25%) of the issued share capital of a company must be paid up at all times, even upon an increment of the share capital. It is believed that this amendment will ensure that the company enjoys a fair amount of liquidity and injection of capital at incorporation and upon an increment of the share capital.

2.12 Reduction in Share Capital

Under the old Act, where a company (public or private) desires to reduce its share capital, it must pass a special resolution for the reduction and thereafter apply to the Federal High Court for an Order confirming the reduction. CAMA 2020 has now amended that provision to allow private companies to reduce their share capital by just passing a special resolution to that effect



without the added burden of applying to the Court for confirmation. However, public companies still need a court order to reduce their share capital.

2.13 Prohibition of Irredeemable Preference Shares and Discount Shares

A company can issue irredeemable preference shares under CAMA 1990. This is, however, no longer possible under the new Act which now prohibits the issuance of irredeemable preference shares.

Similarly, the regime under the old Act which permits a company to issue shares at a discount as long as certain conditions have been met is no longer the case as the new Act now prohibits the issuance of a company's shares at a discount.

2.14 Meetings of Companies

The new Act allows small companies and companies having a single shareholder to have their statutory and annual general meetings outside Nigeria. The Act also provides that notice may now be given by electronic mail to any member who has provided the company with an electronic mail address.

Private companies are also now permitted to hold their general meetings virtually/remotely, provided that such meetings are conducted in accordance with their Articles of Association. While the physical venue for an Annual General Meeting (AGM) is still required to be in Nigeria, private companies can hold AGMs through electronic means in accordance with regulations issued by CAC. This is expected to facilitate participation from any location at minimal costs. This privilege is, however, still not extended to public companies. The Act further provides for electronic service of notice of meetings and electronic voting at meetings.

2.15 Disclosure of Remuneration of Managers of a Company

The ordinary business conducted at the annual general meeting has been amended by the new Act to include the disclosure of the remuneration of managers of the company. This will add to the list of the ordinary business of an AGM.

2.16 Restriction on Multiple Directorship in Public Companies

The new Act prohibits a person from being a director in more than five public companies at a time. And any person who is presently a director or becomes a director in more than five public companies at any time is required to, at the next AGM of the companies after the expiration of two years from the commencement of the Act, resign from being a director from all but five of the companies.

2.17 Separation of the Offices of the Chairman and CEO of Public Companies

The new Act also prohibits a Chairman of a public company from doubling as its Chief Executive



Officer (CEO), thereby bringing this area of Nigerian corporate governance in line with international best practices and the existing corporate governance codes. This is a welcome development as it will serve to eliminate conflict of interest problems that may arise from having the same person performing those two important roles.

2.18 Independent Directors Now Compulsory for Public Companies

CAMA 2020 now mandates public companies to have at least three independent directors on their board, providing for strict qualification criteria for their appointment. It is believed that this will help compliant companies improve corporate credibility and governance standards by providing compliant companies with strong, credible, independent, and unfettered leadership; reasonable supervision; and vital risk management.

2.19 Reduction in Fee for Registration of Charges

The new Act reduces the filing fees for registration of charges to not more than 0.35% of the value of the charge or such other charge or such other amount as the Minister may specify in the Federal Government Gazette. This represents useful cost savings to businesses and will go a long way to make debt financing more attractive to companies.

2.20 Exemption from Audit and Appointment of Auditors

Unlike under the old Act where every company was required to appoint an auditor or auditors at its AGM to audit the financial records of the company, the new Act has modified this to exempt small companies and companies that have not carried out any business since incorporation, except for insurance companies, banks or any other company as may be prescribed by the CAC. This we expect will reduce the burden on SMEs.

2.21 Public Companies to display their Audited Accounts on their Websites

CAMA 2020 mandates each public company to keep its audited accounts displayed on its website. This will undoubtedly promote corporate transparency and accountability.

2.22 Re-registration of Companies

Another key addition in the new Act is the introduction of the option to re-register a public company as an unlimited company, provided that the specified conditions are fulfilled. This invariably adds to the list of options available to a company considering restructuring.

2.23 New Threshold for Insolvency/Winding Up

The new Act has also updated the threshold for declaring a company insolvent and winding it up. As against the provision that a company may be wound if it is unable to pay its debts of a sum exceeding a meagre N2,000 under the old Act, CAMA 2020 raises this threshold to N200,000. This development will no doubt forestall the proliferation of winding up proceedings on account of a company owing just N2,000 as was hitherto possible under the old Act.



2.24 Business Rescue Provisions

There are no provisions under CAMA 1990 for company rescue. Because of this, CAMA 2020 introduces a company rescue framework to rescue companies in distress and keep them alive as against allowing them to become insolvent and be wound up. The rescue provisions introduced include Company Voluntary Arrangements, Administration, and Netting.

3.0 CONCLUSION

Several developments in the modern and international business world made the repeal of the Companies and Allied Matters Act 1990 a necessity. The outdated legislation typified provisions that, among other things, were obsolete and acknowledged to be unfriendly to small and medium enterprises, constituted huge time and cost implications, and generally impeded the ease of doing business in Nigeria especially when compared with what is obtainable internationally.

The Companies and Allied Matters Act 2020 was, therefore, enacted to address the obvious shortcomings of the old CAMA 1990 and to bring Nigerian corporate practice in tune with modern and international best practices. The new Act is a massive improvement on the old Act in the way that it modernizes the Nigerian corporate practice landscape to reflect modern-day realities and international best practices.

Overall, the signing into law of the Companies and Allied Matters Act 2020 will help Nigeria reduce the extant regulatory hurdles and bureaucratic constraints to starting and growing a business in Nigeria, ease the business environment for Small and Medium Enterprises (SMEs), and increase investor confidence in Nigeria. It will also go a long way to improve Nigeria's ranking in the World Bank's Doing Business Index and help attract much-needed Foreign Direct Investment (FDI) into the country.

NEWS

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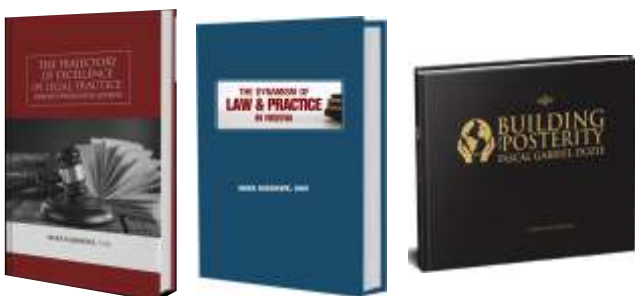
Commercial Law Development Services is pleased to announce that three of its publications (The Law & Practice of Private Equity, Corporate Governance in Nigeria: Law & Practice Second Edition and Fair Hearing Second Edition) published by Thomson Reuters are now available for purchase and can be delivered nationwide. They come with an exclusive access to the Proview E-book, downloadable to any Android device for convenience anytime and from anywhere.

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COMMERCIAL LAW DEVELOPMENT SERVICES

2021 PROFESSIONAL DEVELOPMENT TRAINING PROGRAMME

SN	TRAINING	TOPICS DATE	WHO TO ATTEND	OVER-VIEW
1	Risk Management and the Role of Advisors in Project Finance	Thursday, January 28, 2021	Legal Practitioners, Financial Risk Analysts, Bankers, SMEs, Portfolio Managers, Entrepreneur, Investors and Business Development Managers	This training is designed to equip participants with knowledge of techniques and market strategies necessary to anticipate and identify solutions that can be used to limit the impact of risks or eliminate it. During the training, emphasis would also be placed on the roles/functions of the host of advisors required for in project finance deals.
2	Data Protection: Privacy Law and Data Breaches	Thursday, March 11, 2021	Legal Practitioners, Tech companies, E-business departments of financial institutions, Business owners and anyone involved in online businesses	The aim of this training is to evaluate and equip participants with the laws which regulate and protects data in Nigeria and how they could impact her data privacy and data protection regime. The regulatory framework likewise, its compliance requirement would be expounded, and potential legal threats which might arise would be dealt with.
3	Virtual Court Proceedings: Effects on Pleadings, Written Addresses, Appellate Briefs and Legal Opinions	Thursday, April 15, 2021	Legal Practitioners	This programme will discuss in detail and analyze the laid down guidelines (by NJC) and implementation of virtual court proceedings currently in Nigeria, its effects on the court processes, comparison and contrast between virtual court proceedings and physical court proceedings and the underlying challenges encountered in the course of the virtual court proceedings; from the filing of processes to the enforcement of the judgement.
4	Understanding Data Sovereignty: Challenges of Cross Border Data Transfer	Thursday, June 17, 2021	Legal practitioners Tech companies Telecommunications firms Regulators Data protection specialists, anyone involved in online business	This training is designed to evaluate and equip participants with the laws and governance structure which regulates data in Nigeria; it would also answer the question of how to benefit a foreign company deals with data collected in Nigeria.

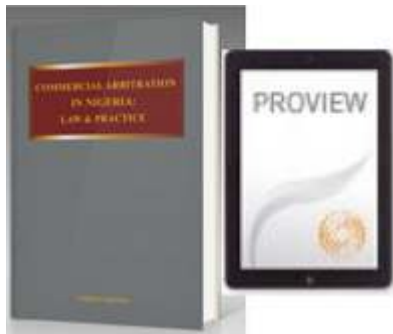
5	Evaluation of the Seaborne Trade and Transport System in Nigeria	Thursday, July 15, 2021	Legal Practitioners, Custom and Terminal Operators, Shipping Companies, Freight Forwarders, Financial Institutions and Investors.	This programme aim is to analysis the framework regulating the maritime sector, which would facilitate indigenous ship owners to trade in both Nigeria's territorial waters and globally as well as other key factors that negatively influence the development of the industry shall also be considered and possible ways forward.
6	Corporate Secretariat Practice: Compliance and Legal Aspects	Friday, August 20, 2021	Legal Practitioners, Executives Regulators SME's	This programme is designed to help participants understand the key contractual and statutory employment law concepts in corporate transactions, how to achieve organization records compliance & benefits and advising effectively in corporate transactions.
7	A Nigerian guide to Private Equity	Thursday, September 9, 2021	Legal Practitioners, Finance Professionals, Bankers Financial Institutions and Investors	This program is designed to aid participants to understand Private Equity from initiation to deal stage as well as understand the legal and regulatory pitfalls. It will also give participants an inside look into the necessary documentation in such transactions; important clauses in those documents as well as perform an autopsy on several major successful and unsuccessful private equity transactions.
8	Corporate Insolvency and Governance	Thursday October 7, 2021	Legal Practitioners, Accountants, Financial Risk Analysts, Bankers, SMEs,	This programme is designed to assist participants in understanding the legal and regulatory principles relating to corporate insolvency as well as the attendant corporate governance issues raised.
9	Understanding Project and Infrastructure Finance	Thursday, November 11, 2021	Legal Practitioners, Finance Professionals, Bankers Financial Institutions and Investors	This program is designed to aid participants to understand project and infrastructure finance from initiation to completion stage as well as understand the legal and regulatory pitfalls. It will also give participants an inside look into the necessary documentation in such transactions; important clauses in those documents as well as perform an autopsy on several major successful and unsuccessful project and infrastructure finance transactions.
10	Ship Financing: Mortgage Registration and Vessel Documentation	Friday, December 10, 2021	Legal Practitioners, Custom and Terminal Operators, Shipping Companies, Freight Forwarders, Financial Institutions and Investors.	This program is designed to assist participants in understanding Mortgage Registration and Vessel Documentation in Ship Financing as well as understand the legal and regulatory pitfalls. It will give participants an inside look into the necessary documentation in such transactions; as important clauses in those documents

Training cost - N75,000 per participant excluding all applicable taxes

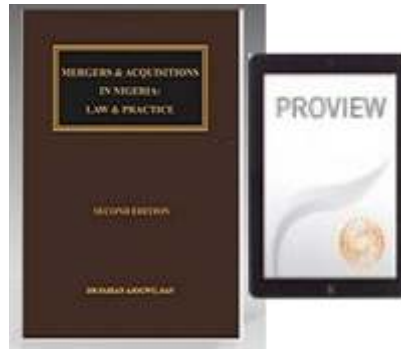
- Early Bird (3 weeks before training date) – 15%,
- Past participants – 10%,
- Group (4 participants and above)- 20%



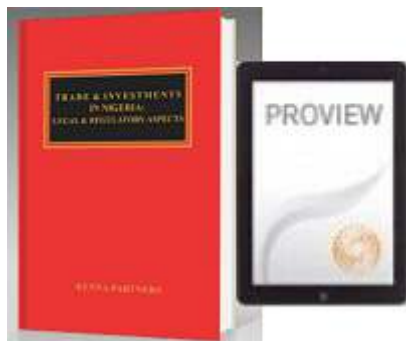
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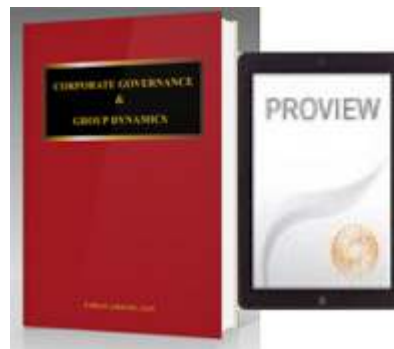
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The JCL welcomes submission of articles from potential contributors. These articles should be relevant to the scope and purpose of the JCL and should offer engaging and fundamental insights (critical or analytical).

We are pleased to invite you to take this opportunity to be part of the debate seeking to express diverse opinions on issues of commercial law, both locally and internationally.

For more details on submission of articles, please click [here](#).

To find out more about how we may be able to support you and your business, contact:

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