

EXECUTIVE SUMMARY

TITLE: A BILL FOR AN ACT TO REPEAL
THE COMPANIES AND ALLIED
MATTERS ACT 1990 (CAP C20, LFN
2004) AND ENACT THE
COMPANIES AND ALLIED
MATTERS ACT 2018

JUSTIFICATION FOR MOVEMENT FROM AMENDMENT TO REPEAL AND RE-ENACTMENT

The Senate referred the Bill for an Act to Amend the Company and Allied Matters Act 1990 Cap C20 Laws of the Federation of Nigeria 2004 and for the Establishment of State Corporate Affairs Commissions for Registration of Business Names and for Other Matters Connected Therewith, 2016, ("**CAMA Amendment Bill**") presented by Senator Ovie Omo-Agege (*Delta Central Senatorial District*), to the Senate Committee on Trade and Investment for analysis. The Committee reviewed the CAMA Amendment Bill and noted that the Bill seeks to amend the CAMA by introducing the following provisions:

- a) amending Section 4 of CAMA so that the National Salaries, Income and Wages Commission pays the remuneration and allowances of Board Members of the Corporate Affairs Commission ("**CAC**" or "**Commission**");
- b) amending Section 14 of CAMA as it concerns the preparation and publication of the CAC's accounts;

- c) amending Section 279 of CAMA by introducing environmental standards to the duties of directors;
- d) amending Section 315 of CAMA by conferring powers on the CAC to investigate a public company where such investigation is in the overriding public interest; and
- e) introducing provisions for the establishment and operation of State CACs.

The Committee found that:

1. recommendations as to environmental standards and directors' duties conform to international standards and are a welcome introduction;
2. the introduction of State Corporate Affairs Commissions in a federal legislation raises constitutional questions, such as the propriety of the Federal Government imposing an additional financial burden on State Governments through Federal legislation; and
3. the CAMA Amendment Bill does not address, to a sufficient degree, the critical objectives that company law reform should address, especially in light of the fact that the CAMA 1990 has not benefitted from any significant amendments in its 28 years of existence. These reforms include:
 - a) making it easier to set up and run a company;
 - b) ensuring more appropriate regulation for micro, small and medium scale enterprises;
 - c) enhancing transparency and shareholder engagement;
 - d) aligning the Nigerian framework for regulation of companies and other business entities with international best practice such that

- Nigeria can position itself as a preferred destination for establishment of a corporate presence for pan-African investments; and
- e) enhancing the efficiency of the regulatory process.

Taken together, the Committee believes that these measures represent a significant step forward in ensuring that our law remains up to date, flexible, and accessible for all those who use it. The Committee will, therefore, be proposing a comprehensive repeal and re-enactment bill.

The Committee nevertheless accepted and incorporated portions of the CAMA Amendment Bill into the proposed repeal and re-enactment bill.

The attached report provides a thorough assessment of the changes that need to be made in the reform of CAMA, and provides the blueprint for the reforms that the Committee proposes.

MEMORANDA SUBMITTED BY STAKEHOLDER

The Committee received memoranda from the various institutions and organisations including:

- a) FMDQ OTC Securities Exchange;
- b) The Nigerian Bar Association – Section on Business Law (“NBA-SBL”);
- c) Ecobank Transnational Incorporated; and
- d) The Nigerian Network of Non-Governmental Organisations (“NNNGO”);

The underlying themes in the memoranda were of critical importance and informed the Committee’s review and recommendations concerning the Repeal and Re-enactment Bill. These include the need to ensure that the Nigerian system of company law and corporate governance is one which enhances shareholder

engagement and a long-term investment culture and establishes Nigeria as an attractive place to set up and run a business.

SUMMARY OF CHANGES PROPOSED BY CAMA REPEAL AND RE-ENACTMENT BILL:

NEW SECTIONS INTRODUCED:

SECTIONS DELETED:

TOTAL NUMBER OF SECTIONS IN CAMA 1990:

TOTAL NUMBER OF SECTIONS IN REPEAL AND RE-ENACTMENT BILL:

**SIGNIFICANT CLAUSES UNDERPINNING THE IMPORTANCE OF THE
REPEAL AND RE-ENACTMENT BILL**

No.	Proposed Change	Clause reference in repeal and re-enactment bill
1.	<p><i>Membership of the Commission</i></p> <p>1. Establishing a Governing Board for the Commission in place of ‘members’ which misrepresents the capacity in which these persons act.</p> <p>2. Deleting the requirement for a representative of the accounting profession to be appointed by the Minister on the recommendation of the Institute of Chartered Accountants of Nigeria (“ICAN”). Instead, for a representative of the accounting profession to be appointed by the Minister following consultation with the two main accounting bodies - ICAN and the Association of National Accountants of Nigeria.</p> <p>3. Introducing to the Board, a representative of the Institute of Chartered Secretaries and Administrators of Nigeria, to create a more inclusive Board that has input from company secretaries who deal with the Commission regularly in the discharge of their professional responsibilities.</p> <p>4. Introducing to the Board, a representative of the Nigerian Association of Small and Medium Enterprises, to create a more inclusive Board that has input from Micro, Small and Medium Enterprises (“MSME”), with a view to enhancing the regulatory environment for MSMEs.</p> <p>5. Deleting the references to the Ministry of Commerce and the Ministry of Industry and replacing them with a reference to the Ministry of Industry, Trade and Investment.</p>	Clause 2 of the Bill
2.	<i>Functions of the Board</i>	Clause 4 of the Bill

	<p>The Commission now has an additional function under this clause which is to review and provide policy guidelines for the discharge of the Commission's functions in accordance with international best practices. This, therefore, empowers the Board to perform a more strategic role rather than merely acting as the operator of a registry, given the enhanced membership of the Board as set out in clause 2 of the Repeal and Re-enactment Bill.</p>	
3.	<p><i>Financial Year for the Commission</i></p> <p>It was observed that the CAMA 1990 does not contain any provision for what constitutes the financial year of the Commission. A new clause has therefore been introduced to address this.</p>	<p>Clause 15(1) of the Bill</p>
4.	<p><i>Single-member Companies</i></p> <p>One person should be able to form a private company. This is consistent with several other jurisdictions such as England, India and Singapore, which provide that a company can be formed by one or more persons. This change will reduce the entry barriers for smaller enterprises, which are invariably managed by one owner.</p>	<p>Clause 18 of the Bill</p>
5.	<p><i>Consent of the Attorney General of the Federation for the memorandum of Companies Limited by Guarantee</i></p> <p>Section 26(5) of the CAMA 1990, which provides that the memorandum of a company limited by guarantee shall not be registered without the authority of the Attorney-General of the Federation, has been deleted. This has been replaced with a duty on the Commission to cause the application to be advertised in 3 (three) national newspapers. This is because there is no justification for requiring this for companies limited by guarantee, because the same associations could choose to register as incorporated trustees, and not be subject to this same requirement which protracts the process of registering non-profits seeking to provide much needed aid and empowered to the Nigerian people, and ultimately, frustrates the ease of doing business, even for non-profits.</p>	<p>Clause 26(5) of the Bill</p>

6.	<p><i>Form of Memorandum</i></p> <p>This section was amended to give the Commission power to amend the form of memoranda of association through its regulations, thereby enabling the Commission to respond more easily to the dynamic and evolving business environment.</p>	Clause 28 of the Bill
7.	<p><i>Change of Name of Company</i></p> <p>This section was amended to enhance the ease of doing business by giving the Commission the power to prescribe a daily penalty, and dispensing with the need for a change of name to be published in the Gazette.</p>	Clause 30 of the Bill
8.	<p><i>Reservation of Name</i></p> <p>This section provides for submission of applications for reservation of names through electronic means. This amendment brings the provision in line with the technological solutions of the 21st century, which are being introduced at the CAC.</p>	Clause 31 of the Bill
9.	<p><i>Articles of Association</i></p> <p>The Bill abolishes the prescription of Model Articles and instead, gives the Commission the powers to prescribe model articles which will apply unless a company registers its articles. This was amended to respond to the present day needs of Nigerian companies.</p>	Clause 32 of the Bill
10.	<p><i>Statement of Capital and Initial Shareholdings</i></p> <p>This new provision partially replaces section 35 of the CAMA 1990 and provides clearer and more detailed explanation of what the documents for statement of share capital and initial shareholding are required to contain in order to be registered at the CAC.</p>	Clause 37 of the Bill
11.	<p><i>Statement of Guarantee</i></p> <p>This new provision partially replaces section 35 of the CAMA 1990 and provides clearer and more detailed</p>	Clause 38 of the Bill

	<p>explanation of what the statement of guarantee (in the case of a company limited by guarantee) is required to contain in order to be registered at the CAC.</p>	
12.	<p><i>Statement of Proposed Directors</i></p> <p>This new provision partially replaces section 35 of the CAMA 1990 and provides clearer and more detailed explanation of what the statement of the company's proposed directors is required to contain in order to be registered at the CAC.</p>	<p>Clause 39 of the Bill</p>
13.	<p><i>Re-Registration of Private Company as Public</i></p> <p>Section 50 of the CAMA 1990 has been expanded in clauses 56 – 62 of the Repeal and Re-enactment Bill which provide more robust provisions for the conversion of private companies to public companies. These provisions include requirements as to share capital and net assets, and the treatment of a recent allotment of shares for non-cash consideration. These new provisions bolster the regulation of conversion of private companies to public companies, and ultimately serve to protect the investing public.</p>	<p>Clauses 56 to 62 of the Bill</p>
14.	<p><i>Re-Registration of Public Company as Private Limited Company</i></p> <p>Section 53 of the CAMA 1990 has been expanded in sections 63 - 67 of the Repeal and Re-enactment Bill which provide more robust provisions for the conversion of public companies to private companies. These provisions build upon the framework that already exists in the CAMA 1990, so for instance, retain the right of shareholders to challenge the conversion in court. The substance of the existing CAMA 1990 provisions have been retained, but expanded and clarified by the improved language of sections 61 – 65 of the Repeal and Re-enactment Bill.</p>	<p>Clauses 63 to 67 of the Bill</p>
15.	<p><i>Re-Registration of Private Limited Company as Unlimited</i></p> <p>One significant improvement in the Repeal and Re-enactment Bill is the change from the sub-title "Re-registration of company limited by shares as unlimited" (as</p>	<p>Clauses 68 to 70 of the Bill</p>

	<p>shown in the CAMA 1990) to the marginal note, "Re-Registration of Private Limited Company as Unlimited". The marginal note makes it clear that this form of conversion is only available to private companies, thereby dispensing with the need to provide for this explicitly in the Bill, thereby reducing verbosity. The provisions on this form of conversion have been set out in 3 clauses, rather than one long section as is the case with the CAMA. Overall, the substance of the existing CAMA 1990 provisions have been retained, but streamlined and clarified by the improved language of clauses 68 – 70 of the Repeal and Re-enactment Bill.</p>	
16.	<p><i>Re-Registration of Unlimited Company as Limited</i></p> <p>Significantly, these new provisions permit conversion to a company limited by shares or by guarantee. Conversion of an unlimited company to a company limited by guarantee is not permitted under the existing CAMA 1990. Another innovation is set out in clause 74, which requires a statement of capital to be filed with the Commission within 15 days of re-registration, where company that is re-registered under these provisions already has a share capital.</p>	<p>Clauses 71 to 74 of the Bill</p>
17.	<p><i>Re-Registration of Public Company as Private and Unlimited</i></p> <p>Under the existing CAMA 1990, a public company cannot be re-registered as a private unlimited company. Recognising that the decision to make such a re-registration should lie with the shareholders, the Repeal and Re-enactment Bill provides a framework for this, with stringent provisions that must be complied with. In order to protect shareholders, this form of re-registration can only be done if all the members of the company have assented to its being so re-registered.</p>	<p>Clauses 75 to 77 of the Bill</p>
18.	<p><i>Common Seal of the Company</i></p> <p>The requirement to have a common seal should be optional for a company to have a seal, the use and design of which would be regulated by the Company's Articles.</p>	<p>Clauses 98 and 99 of the Bill</p>

19.	<p><i>Register of Members</i></p> <p>Also, the penalty section was amended to give the Commission powers to determine sanctions in its regulations. The provisions of section 149 of the CAMA 1990 have also been deleted as a consequential amendment.</p>	Clause 109(1) of the Bill
20.	<p><i>Entry of Trust Prohibited</i></p> <p>Section 86 of the CAMA 1990 which deals with notices of any trust has been deleted. The effect of this deletion is that companies shall be entitled to recognise any trust in respect of shares, and such notice may also be filed at the Commission.</p>	Not applicable
21.	<p><i>Disclosure of Persons with Significant Control</i></p> <p>This section has been amended extensively and the requirement to notify the company is no longer limited to public companies, but now extend to all companies under the Act, thereby increasing transparency and combat asset shielding. A 5% threshold for the disclosure has been introduced, as well as a requirement for such disclosures to be noted in the register of members and annual returns of the company.</p>	Clause 119 of the Bill
22.	<p><i>Obligation of Disclosure by Substantial Shareholder in Public Company</i></p> <p>A new sub-clause (5) has been introduced to require the company to notify the Commission of a disclosure of a substantial shareholder in a public company.</p>	Clause 120 of the Bill
23.	<p><i>Minimum Issued Share Capital</i></p> <p>The concept of authorised share capital has been deleted and replaced with Minimum issued share capital. The authorised share capital specifies the limit on the maximum amount of shares a company can allot. The shareholders may agree to raise this limit. In practice, the authorised share capital could be set at a level that is much higher than that the company will need. It, therefore, serves no useful purpose. The</p>	Clause 124 of the Bill

	<p>requirement for a company to pay stamp duty and filing fees to the FIRS and the Commission, respectively, whenever it creates or increases its authorised share capital amounts to a front-loading of costs, thereby making it difficult for MSMEs. It is proposed that authorised share capital be replaced simply with issued share capital, with a minimum issued share capital applicable to private companies on one hand, and public companies on the other. Whenever a company wishes to issue more shares, it simply passes a resolution to do so, issues the shares, and pays the applicable stamp duty and CAC filing fees only in respect of the additional shares issued.</p>	
24.	<p><i>Increase of Issued Capital on Increase of Shares</i></p> <p>The Repeal and Re-enactment Bill now requires that 25% of issued share capital be paid up at all times.</p>	Clause 128 of the Bill
25.	<p><i>Reduction of Share Capital</i></p> <p>Under the CAMA 1990, the treatment for private and public companies with respect to the process by which they may reduce their share capital, is the same. Current global best practice is to make a distinction between private and public companies. In order to ease the process of doing business, amendments have been proposed to the process by which a company can reduce its share capital, by enabling private companies to reduce their share capital if they pass a special resolution to that effect, without the added burden of applying to court for a confirmation of the reduction.</p>	Clause 132 of the Bill
26.	<p><i>Issue of Shares at a Discount</i></p> <p>This clause of the Repeal and Re-enactment Bill now makes it unlawful to issue shares at a discount. The nominal value of the shares of most companies (usually ₦1 for private companies and 50 kobo for public companies) is so low that the provision for issuance of shares at a discount is almost redundant. In addition, the courts do not in practice go into a detailed analysis of the merits or demerits of an issuance in granting sanctions as anticipated by the CAMA 1990.</p>	Clause 147 of the Bill

27.	<p><i>Issue of Redeemable Preference Shares</i></p> <p>This clause of the Repeal and Re-enactment Bill now prohibits the issuance of irredeemable preference shares. This is to avoid the issuance of shares that have the character of equity shares but are called preference shares only by name.</p>	Clause 148 of the Bill
28.	<p><i>Transfer of Shares</i></p> <p>Electronic transfers are now expressly permitted in the Repeal and Re-enactment Bill.</p>	Clause 176(1) of the Bill
29.	<p><i>Financial Assistance</i></p> <p>The Repeal and Re-enactment Bill proposes amendments to the financial assistance provisions of the CAMA by including provisions that allow a company to provide financial assistance with the blessing of its shareholders. This is in line with the provisions under the English Companies Act 2006 which reflects a market-friendly advancement from the current position. It also improves companies' chances of attracting much-needed investment since there are now provisions in the Bill that enable shareholders and potential shareholders to access funds, within certain parameters, which in turn enable them invest in such companies.</p>	Clause 184 of the Bill
30.	<p><i>Acquisition by a Company of Its Own Shares</i></p> <p>The prohibitions on share buyback in the CAMA 1990 are outdated and, under the Repeal and Re-enactment Bill, companies, both private and public, are now permitted to buy back their shares subject to certain conditions, which are outlined in section 185 of the Repeal and Re-enactment Bill, being satisfied.</p>	Clauses 185 to 191 of the Bill
31.	<p><i>Priority of Fixed Charge over Floating Charge</i></p> <p>The term "actual notice" as used in the CAMA 1990 is not defined and does not prescribe the circumstances under which a person is deemed to have "actual notice" of a negative pledge given under a floating charge. For clarity,</p>	Clause 205 of the Bill

	clause 205 of the Repeal and Re-enactment Bill has been amended by the deletion of the word “actual”, and the expansion of the clause.	
32.	<p><i>Number of Directors</i></p> <p>To align with modern global practice, provisions for single directorship for small companies have been included in the Repeal and Re-enactment Bill.</p>	Clause 272 of the Bill
33.	<p><i>Exemption from Audit</i></p> <p>The Repeal and Re-enactment Bill has provisions which exempt small companies from appointing auditors. Specifically, the Bill exempts a company from appointing auditors:</p> <p>(a) if it has not carried on any business since its incorporation; or</p>	Clause 403 of the Bill.
34.	<p><i>Annual General Meeting</i></p> <p>Pursuant to the provisions of the Bill, small companies would no longer be mandatorily required to convene annual general meetings.</p>	Clause 238 of the Bill
35.	<p><i>Company Secretary</i></p> <p>The Repeal and Re-enactment Bill seeks to further ease the regulatory burden of companies by limiting the requirement to appoint a company secretary to public companies, thereby making it optional for small companies and companies with one shareholder.</p>	Clause 331 of the Bill
36.	<p><i>Minority Protection</i></p> <p>The Repeal and Re-enactment Bill enhances minority shareholder rights. It confers rights on shareholders to bring derivative action both in respect of a company and any of its subsidiary companies and other companies related to the parent company.</p>	Clause 342 - 347 of the Bill
37.	<p><i>Companies to Keep Accounting Records</i></p> <p>Public companies are now required to display their audited accounts on their website so that the public is kept informed. This amendment, therefore, brings the provision in line with the technological solutions of the 21st century, which are</p>	Clause 375 of the Bill

	<p>being introduced at the CAC.</p> <p>In addition, parent companies are obligated to ensure that their subsidiaries keep accounting records in a manner that would enable the directors of the parent company to ensure that any accounts required to be prepared under this Part comply with the requirements of this Bill.</p>	
38.	<p><i>Resolving Insolvency</i></p> <p>The Repeal and Re-enactment Bill introduces a company rescue and insolvency legal regime which is not focused on a company's demise, but on rescuing companies from insolvency through inclusion of an insolvency framework. An effective insolvency regime in Nigeria has a dual aim: to save viable businesses and ensure that non-viable businesses can quickly exit the market, allowing deployment of assets to more productive firms.</p> <p>The new insolvency provisions are:</p> <p>(a) <u>Administration</u> – which serves as a rescue mechanism for insolvent entities and allows such entities to carry on running their businesses. One of the main advantages of this model is that the administrator is appointed to act in the interest of the company and not, as in the case of receivership, in the interest of the person that appointed him.</p> <p>(b) <u>Netting provisions</u> – introduces netting provisions as a means of mitigating credit risks associated with over-the-counter derivatives, promotes financial stability and investor confidence in the Nigerian financial sector; and</p> <p>(c) <u>Company Voluntary Arrangements</u> – which is a procedure that allows a company to settle debts by paying only a portion of the amount that it owes to the creditors and also allows a company come to some other arrangement with its creditors over the payment of its debts.</p>	<p>Clause 435 -443 of the Bill;</p> <p>Clause 444 – 550) of the Bill;</p> <p>Clause 719 -722 of the Bill;</p>
39.	<p><i>Limited Liability Partnerships</i></p> <p>The Repeal and Re-enactment Bill proposes a new form of legal entity known as a limited liability partnership, which will be a body corporate and exist separately from its members. The essential feature of an LLP is that it combines</p>	<p>Part C (Clauses 747 - 795)</p>

	<p>the organisational flexibility and tax status of a partnership with limited liability for its members.</p> <p>In providing for LLPs, the Repeal and Re-enactment Bill provides powers to apply the provisions of company law and insolvency law, with appropriate modifications to LLPs. These powers will be used to put safeguards in place for those dealing with LLPs. It is intended that these safeguards will include provision for public disclosure of certain information, particularly their finances.</p>	of the Bill
40.	<p><i>Limited Partnerships</i></p> <p>A limited partnership (LP) is a form of partnership similar to a general partnership, except that a limited partnership must have at least one GP and at least one limited partner. A limited partnership venture is run by one or two partners known as general partner(s). Other contributors, known as limited or silent partners, provide capital but aren't allowed to make managerial decisions.</p> <p>This form of partnership is the most favoured structure for private equity funds and other funds that form a significant portion of the foreign investment that comes into the Nigerian economy. There has, to date, been no structure for LPs under the CAMA. This has meant that most of these funds have had to remain foreign entities, choosing other more attractive jurisdictions like Mauritius, to establish their presence on the African continent. The inclusion of LPs in our corporate framework will position Nigeria to compete for this business.</p> <p>To address the lacuna in the CAMA due to the absence of provisions regarding LPs and LLPs, states such as Lagos, that are actively seeking to attract investment and boost internally-generated revenues, have passed State Laws that provide a legal framework for the establishment of LPs and LLPs in the state. This has raised constitutional issues. While the legislative competence of the Lagos State legislature to enact a law regulating partnerships is not in question, there are serious questions about the legislative competence of States in Nigeria to enact rules for the formation of entities</p>	Part D (Clauses 796 - 811) of the Bill

	with limited liability. To address this fundamental issue, and provide every state in Nigeria with the same competitive advantage of being able to host LPs and LLPs, it is important that provisions be inserted into the CAMA to provide a legitimate framework for LPs and LLPs.	
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CONCLUSION

The Committee firmly believes that the measures recommended in the Repeal and Re-enactment Bill will make Nigerian company law more appropriate for today's realities, should improve the business environment and performance across the economy as whole, as well as reduce direct compliance costs for businesses in Nigeria.