African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 1-10)
www.abjournals.org

THE IMPACT OF COMPANIES AND ALLIED MATTERS ACT (CAMA) 2020 ON CORPORATE GOVERNANCE IN NIGERIA

Obagboye T. G. and James S. T.

Department of Corporate Law, Nigerian Law School.

Corresponding Author's Email: motilayo_dunni@yahoo.com

Cite this article:

Obagboye, T. G., James, S. T. (2024), The Impact of Companies and Allied Matters Act (Cama) 2020 on Corporate Governance in Nigeria. African Journal of Law, Political Research and Administration 7(3), 1-10. DOI: 10.52589/AJLPRA-XX30ENM6

Manuscript History

Received: 12 Jul 2024

Accepted: 6 Sep 2024

Published: 20 Sep 2024

ABSTRACT: *President Muhammadu Buhari 2020 signed the Companies and Allied Matters Act, 2020 (CAMA 2020), and the CAMA 2020 is expected to be a step in the right direction towards reforming and improving Nigeria's business environment and reducing regulatory hurdles. The CAMA 2020 which repealed and replaced the Companies and Allied Matters Act, of 1990 is also projected to impact positively on corporate governance practices and procedures in Nigeria and this has received increased attention in the new CAMA. This is due to the concerted efforts aimed at inculcating the principles of transparency, accountability, and fairness in running the affairs of public and private companies and also to curb the high-profile scandals involving abuse of corporate powers by key corporate stakeholders using corporate entities. This paper highlights the impact of CAMA 2020 on corporate governance in Nigeria.*

KEYWORDS: Impact, CAMA, Corporate Governance, Nigeria

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6

INTRODUCTION

Corporate governance is the system of rules, practices, and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of a company's many stakeholders, which can include shareholders, senior management, customers, suppliers, lenders, the government, and the community. As such, corporate governance encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure.[1]

Gabrielle O'Donovan defined corporate governance as, "an internal system encompassing policies, processes and people, which serves the need of shareholders and other stakeholders, by directing and controlling management activities with good business savvy, objectivity accountability and integrity: sound corporate governance reliant on external market place commitment and legislation, plus a healthy broad culture which safeguard policies and process".[2]

Generally, corporate governance is the means and structure put in place to manage the activities of a company. It ensures accountability and transparency in the affairs of a company.

Good corporate governance can benefit investors and other stakeholders, while bad governance can lead to scandal and ruin. Good corporate governance creates transparent rules and controls, guides leadership, and aligns the interests of shareholders, directors, management, and employees. It helps build trust with investors, the community, and public officials.[3]

Corporate governance can give investors and stakeholders a clear idea of a company's direction and business integrity. It promotes long-term financial viability, opportunity, and returns. It can facilitate the raising of capital. Good corporate governance can translate to rising share prices. It can reduce the potential for financial loss, waste, risks, and corruption. It is a game plan for resilience and long-term success.

Corporate governance makes companies more accountable and transparent to investors and gives them the tools to respond to legitimate stakeholder concerns such as sustainable environmental and social development. It contributes to development and increased access to

[1]Roy, R.C. 'Child Marriage in India', *The North American Review* [1988] Vol.147, No.383415-423. Corporate Governance <https://www.investopedia.com/terms/c/corporategovernance.asp#:~:text=Benefits%20of%20Corporate%20Governance> Accessed 1 January, 2024.

[2] Ayara, J. 'Corporate Governance Under CAMA 2020' <https://simplylaw.com.ng/corporate-governance-under-cama-2020/ > Accessed 30 December 2023.

[3] J Chen, 'Corporate Governance: Definition, Principles, Models, and Examples' <https://www.investopedia.com/terms/c/corporategovernance.asp#:~:text=Benefits%20of%20Corporate%20Governance> Accessed 1 January, 2024.

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6

capital encourages new investments, boosts economic growth, and provides employment opportunities.[4]

Poor corporate governance can create potential conflicts of interest, expropriation and unfair of minority shareholders. It only benefits the parties involved but does not affect value to other stakeholders, small shareholders with little impact on the stock price are brushed aside to make way for the interests of majority shareholders and the executive board. It can greatly erode public confidence and tarnish society, or worldwide as a whole.

President Muhammadu Buhari recently signed the Companies and Allied Matters Act, 2020 (CAMA 2020), and the CAMA 2020 is expected to be a step in the right direction towards reforming and improving Nigeria's business environment and reducing regulatory hurdles. This is due to the concerted efforts aimed at inculcating the principles of transparency, accountability, and fairness in running the affairs of public and private companies and also to curb the high-profile scandals involving abuse of corporate powers by key corporate stakeholders using corporate entities.[5]

INNOVATIONS OF CAMA 2020 ON CORPORATE GOVERNANCE IN NIGERIA.

Previously, CAMA 1990 regulated corporate affairs in the country prior to its repeal. It established the Corporate Affairs Commission (CAC) and made provision for the incorporation of companies, registration of business names and the incorporation of trustees of certain communities, bodies and associations. However, it soon became ineffective and created room for some corporate malpractices. This was as a result of the inevitable change of corporate law horizon in Nigeria.[6]

The agitation by stakeholders for an improved piece of legislation led to the enactment of CAMA 2020. This development has been classified as a timely step in the right direction. This is because it repealed the previous 30-year-old Act which was essentially fashioned after British laws and had become obsolete. In addition, CAMA 2020 took into cognisance the current corporate realities and advancements and made improved provisions in line with global best practices. It is noteworthy that CAMA 2020 has earned Nigeria global recognition as one of the 20 places with ease of doing business among others like Saudi Arabia, Kuwait, China and India.

The CAMA 2020 has introduced several innovations that optimise corporate governance in Nigeria. These innovations shall be examined seriatim:

[4] Tsoi, P. 'The Importance of Corporate Governance ' <https://www.linkedin.com/pulse/importance-corporate-governance-paul-tsoi> Accessed 1 January, 2024.

[5] Ogunbodede, S.T. 'The Companies And Allied Matters Act, 2020: Innovating Towards A Better Corporate Governance Practice in Nigeria' < https://www.linkedin.com/pulse/companies-allied-matters-act-2020-innovating-towards-ogunbodede#:~:> Accessed on 30 December, 2023.

[6] Ayotebi, O. M.'CAMA 2020: A Look at Nigeria's New Corporate Governance Regime' <Cama%202020_%20A%20Look%20at%20Nigeria's%20New%20Corporate%20Governance%20Regime.html > Accessed 1 January, 2024.

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6

CEO/ Chairman

To guarantee the protection of the interest of shareholders, the Act prohibits the CEO from serving as the Chairman of the same company. In addition, the Chairman is prohibited from the day-to-day running of the company. By the provisions of Section 265(6) of the CAMA 2020, the chairman of a public company is not permitted to act as the Chief Executive Officer/Managing Director of that same company. By the foregoing provision, the Boards of public companies have been separated from the management team to ensure an effective oversight function by the Board. This will positively impact corporate governance practice in Nigeria by ensuring that no single individual can dominate a company as the Chairman and CEO/MD as this may affect the Board's duty and capacity to carry out checks and balances of the management team in the discharge of its duties. Though pragmatic, it is not yet clear how this innovation will affect small companies under the Act since it is now possible to have a single shareholder and a single director running the affairs of all small companies. This is aimed at making it possible for business owners and entrepreneurs who currently trade as sole proprietors to register and run the affairs of their business alone whilst enjoying the advantages of incorporating a limited liability company

Directors

In accordance with the corporate governance code, directors of public companies are now required to disclose not only their age at appointment but also previous directorships in other public companies before taking up new appointments. Also, the CAMA[7] provides that a person, cannot be a director of more than five public companies at the same time. Upon nomination as a director, such persons must disclose their existing positions on the board of other public companies before taking on new appointments and anybody who before the enactment of this act was a director in more than five companies has two years to comply with this provision. Additionally, CAMA 2020[8] now requires public companies to maintain a minimum of three (3) independent directors at all times. While the foregoing is limited to public companies, small companies are now permitted to have a minimum of one director. A small company is a private company that has an annual turnover of N120,000,000 and net asset value of not more than N60,000,000, with no foreigner as its member the directors shall own 51% share capital in the company. Also, any person, (shareholder) who nominates a candidate for the board who would comprise a majority of the members of the board shall nominate at least three persons who would be independent directors.

Just recently, the Business Facilitation Act (BFA) 2023 amended the above requirement. By the provisions of the BFA,[9] the minimum number of independent directors of a public company would no longer be three but one-third of the Board of Directors. The BFA amended sub-section 3 of Section 307 of the CAMA (which provides for multiple directorships) by introducing an entirely new sub-section 3. In effect, the BFA provides that a person can be a director in not more than 5 public companies and any person who before the commencement of the Act was already a director in more than 5 public companies is

[7] Sec 307(2) CAMA 2020.
[8] Sec 275 CAMA 2020.

[9] Section 14 BFA 2023.

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6

required to resign as a director of all the additional companies before the next annual general meeting of the companies, following two years from the commencement of the Act.[10]

The restrictions on multiple directorships under Section 307 of the CAMA 2020 are quite revolutionary in the corporate governance sphere and if implemented properly, will ensure the smooth running of companies, and avoid conflict of interest, breach of confidentiality, and mismanagement of corporate opportunity. Under the new Act, no individual can be a director in more than five (5) public companies, and any person who is currently a director in more than 5 public companies is required to resign within two (2) years from the date of the Act.

The introduction of this bar and restriction in multiple directorships of public companies will ensure that prospective nominee discloses memberships of other Boards and the Board will be able to consider the possible impact of this membership before deciding to nominate such director as this may also impact his overall performance on the Board.[11]

Since it is the Board's responsibility to ensure that the rights of shareholders are protected, the innovations in the CAMA 2020 are laudable as only the independence and optimal performance of a company's board can guarantee the various statutory and general rights accruing to members of a company by virtue of being shareholders of that company.[12]

Single Shareholder/ Single Director Companies

It is now possible to have single shareholder/single director companies. This is available to small companies.[13] Single member and director companies will make it possible for business owners who currently trade as sole proprietors to register a company without the need to bring in new owners/directors at the initial stage, and continue to run their business as before but with the added benefits of limited liability and access to credit. Private companies that do not qualify as small companies are permitted to have a single shareholder; however, such private companies must have at least two directors.[14]

Significant Control and Substantial Interest

The principle of disclosure and transparency which is one of the major codes on which corporate governance is hinged has been further entrenched by the Companies and Allied Matters Act, 2020. Section 119 of the CAMA 2020 now mandatorily requires disclosures by persons with a substantial interest in shares of private companies, public companies, and limited liability partnerships to make such public disclosure timeously.[15] The Act extended the requirement to notify the company in writing of significant control or divestment of shares. Previously, this obligation applied only to public companies. This is no longer the

[10] Section 16 BFA 2023,
[11] Ogunbodede, S.T. (n 5).
[12] *Ibid*.
[13] Section 18 (2) and Section 271(1).
[14] Section 271(1).
[15] Ogunbodede S. T. (n 5).

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6

case, as shareholders with a majority stake in any type of company are now required to make such disclosures. [16]

This is critical because both private and public companies are required to disclose significant controlling interests. The term “significant shareholder” as defined in Section 120 (2) of CAMA, 2020, applies only to public companies. Regardless, it is reasonable to assume that the same should apply to private businesses. Additionally, CAMA 2020 redefines a shareholder’s percentage interest in order to qualify as a substantial shareholder if the shareholder holds at least 5% of total voting rights. This is in contrast to the 10% cap imposed by the now-defunct CAMA 2004.[17]

Meetings

In keeping with contemporary realities imposed by the outbreak of the global pandemic, COVID-19, CAMA 2020 now permits the use of electronic means for meeting purposes so far such meetings are conducted in accordance with the articles of the company. This is to facilitate the attendance of members in a meeting at a minimal cost. However, this concession is limited to private companies, as all public companies are still required to hold meetings physically. Also, statutory and annual general meetings must be held in Nigeria.[18]

Electronic Innovations

CAMA 2020 contains several innovations that reflect the realities of conducting business in this digital age. They include:[19]

a) An electronic signature is deemed to satisfy the requirement for signing.[20]

b) Electronic share transfer forms will be accepted by all companies.[21]

c) With the exception of small companies and companies having a single shareholder, all statutory and annual general meetings shall be held in Nigeria.[22]

d) Private companies may conduct its meetings virtually so long as it is conducted in accordance with the Articles of Association of the company.[23]

[16] Suleiman, A. O. ‘Critical Analysis of Corporate Governance and Accountability under the Companies and Allied Matters Act 2020’ < https://diverselaw.org.ng/critical-analysis-of-corporate-goverance-and-accountability-under-companies-and-allied-matters-act-2020/ > Accessed 1 January, 2024.
[17] Ayara, J. ‘Corporate Governance Under CAMA 2020’ <Corporate%20Governance%20under%20CAMA%202020%20–%20Simply%20Law.html> Accessed 17 January, 2024.
[18] Ibid.
[19] Adefeso, E. ‘Highlights of the Innovative Provisions in the Companies and Allied Matters Act, 2020’ <https://asalawpractice.org/highlight-of-the-innovative-provisions-in-the-companies-and-allied-matters-act-2020/> Accessed 23 January, 2024.
[20] Section 101 CAMA 2020.
[21] Section 175 (1) Ibid.
[22] Section 240(1) Ibid.
[23] Section 240(2) Ibid.

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6

e) In addition to the notice of meetings to be given personally or by post, notice may also be given by electronic mail to any member who has provided the company with an electronic mail address. [24]

f) Each public company shall keep its audited accounts displayed on its website.[25]

g) Any document required to be annexed to the annual return may be delivered to the Corporate Affairs Commission ("CAC") either in hard or soft copy.[26]

h) Company records can be maintained in electronic format.[27]

i) Certified true copies of electronically filed documents to be admissible in evidence as same will have equal validity as the original documents.[28]

Authorized Share Capital Replaced with Minimum Share Capital.

The capital requirement for companies is referred to as "authorized share capital". The concept of "authorised share capital" has now been replaced with "minimum share capital".[29] With minimum share capital, the promoter(s) of a company need not pay for shares that are not needed at a specific time. In line with charges made in other jurisdictions such as England, a company is no longer required to have an authorised capital that specifies the limit on the maximum amount of shares a company can allot. The rationale behind this is that the requirement of paying stamp duty and CAC filing fees whenever it increases its authorized share capital notwithstanding that all the shares might not have been allotted, amounts to a front-loading of costs.[30] Presently, the concept of minimum issued capital implies that if a company has met the minimum share capital requirement, it will be required to only pay the stamp duty and CAC filing fees with respect to the minimum issued share capital only.[31] If the minimum issued share capital is increased in future, stamp duty and filing fees will only be paid in respect of the additional shares issued. The minimum issued share capital requirement was increased from N10,000 (Ten Thousand Naira) to N100,000.00 (Hundred Thousand Naira) for private companies and from N500,000.00 (Five Hundred Thousand Naira) to N2,000,000.00 (Two Million Naira) for Public Companies. In addition to the above, the exclusion of the provision requiring subscribers to the Memorandum to subscribe to a minimum of 25% of the authorized share capital in the erstwhile CAMA was made. Henceforth, subscribers to the memorandum of association are not required to subscribe to 25% of now the minimum share capital.

[24] Section 244(3) Ibid.
[25] Section 374 (6) Ibid.
[26] Section 422(3).
[27] Section 731(2).
[28] (Section 860(1)(2) of CAMA 2020).
[29] Section 27(2)
[30] Nkum, K. J. & Onivehu, J. B. 'An Appraisal of the Impact of Companies and Allied Matters Act 2020 on the Nigerian Business Community' *NAU.JCPL* [2022] (9) (1) 132-143.
[31] Section 27(2) a CAMA 2020.

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6

African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 1-10)
www.abjournals.org

Recognition of Limited Partnerships and Limited Liability Partnerships

Under CAMA 2020, new entities such as Limited Partnerships[32] and Limited Liability Partnerships[33] have been introduced as registrable forms of partnership.

In this form of partnership, the liability of the partners and the partnership are limited according to the provisions of the Act. It allows a partnership arrangement to consist of both general and limited Partners, with the general Partners bearing all the liabilities of the partnership while the liabilities of the limited Partners are limited to their contributed capital. This arrangement has been practised in countries like the USA but is relatively new in Nigeria and it has been introduced by the provisions of the CAMA 2020.[34] These new legal entities will provide more options for investors seeking to structure their holdings in Nigerian businesses as well as venture capital and private equity fund managers who adopt such structures for their investment funds.

Company Secretaries

The role of company secretaries has evolved over the years.[35] The repealed CAMA made it compulsory for every company–public or private to have a company secretary. Basically, a company secretary owes a duty to the management, board of directors, shareholders, and the company in general. However, the CAMA 2020,[36] exempts all small companies from the requirement to have a company secretary and restricts it to public companies. Additionally, private companies do not need to keep a register of secretaries as required under the repealed CAMA. CAMA 2020, however, includes a provision which requires all companies, including small companies, to file annual returns which are to be filed along with a certificate signed by a director and a company secretary. This exemption of company secretary for small companies will go a long way to help reduce the cost of running a business in Nigeria, as a business owner/shareholder can also carry out the duties of a company secretary. It is pertinent to note that the statutory requirements of the class of persons who can be appointed the secretary of a public company still remain.[37]

Common Seal Optional

The procurement of a common seal is no longer a mandatory requirement.[38] Although the requirement of a company seal is no longer mandatory for companies, it would be desirable for companies to have one, as it authenticates documents emanating from the company. However, a company is free to adopt an alternative mode of authorization. In some other jurisdictions, a company seal is optional too. For example, section 9 of the Companies and

[32] (Part C, sections 746 – 794) Ibid.

[33] (Part D, sections 795 – 810) Ibid.

[34] Kasunmu, A. B. 'A Summary of Changes Under the New Companies and Allied Matters Act, 2020' <https://www.kasunmuschambers.com.ng/a-summary-of-changes-under-the-new-companies-and-allied-matters-act-cama-2020/> Accessed 23 January, 2024.

[35] Oluwayansola J. & Tobiloba, T. 'Review of the Company and Allied Matters Act, 2020 and Emerging Issues.' *UNILAG Law Review* [2021] (4)(2) 228-240.

[36] 330(1) CAMA 2020.

[37] Section 295.

[38] Section 98 CAMA 2020.

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6

(Amendment) Act 2015 of India, made common seal optional, it went further to provide an alternative mode of authorization for Companies who do not wish to have a common seal. According to this amendment, if a company does not have a common seal, then the authorisation shall be done by: two directors or one director and the company secretary.[39]

Treasury Shares

Treasury shares are now formally recognized and defined as the Act prescribes what a company can do with such shares after they are acquired.[40] In the repealed CAMA issued shares of the company that it acquired from its shareholders, were referred to in its schedule but there were no provisions regulating it. Now, the CAMA 2020 permits Companies to sell their treasury shares or transfer them into an employee share scheme.

CONCLUSION

From the foregone, we have considered the innovations of CAMA 2020 on corporate governance in Nigeria. Essentially, the Act separated the role of the Chairman from the Managing Director/Chief Executive Officer to ensure transparency and accountability and created a new category of legal identity for Nigerian businesses, empowered one person to open and run a company, removed all the unnecessary regulatory provisions for small companies, promotes the use of technology in the registration of businesses with a view to making Nigeria's business environment as competitive as its counterparts around the world. Undoubtedly, the CAMA 2020 will significantly enhance the ease of doing business in Nigeria and improve the quality of corporate governance in Nigeria in line with global best practices.

REFERENCES

1. Roy, R.C. 'Child Marriage in India', *The North American Review* [1988] Vol.147, No.383415-423. Corporate Governance <https://www.investopedia.com/terms/c/corporategovernance.asp#:~:text=Benefits%20 of%20 Corporate%20Governance> Accessed 1 January, 2024.
2. Ayara, J. 'Corporate Governance Under CAMA 2020' <https://simplylaw.com.ng/corporate-governance-under-cama-2020/ > Accessed 30 December 2023.
3. J Chen, 'Corporate Governance: Definition, Principles, Models, and Examples' <https://www.investopedia.com/terms/c/corporategovernance.asp#:~:text=Benefits%20 of%20Corporate%20Governance> Accessed 1 January, 2024.
4. Tsoi, P. 'The Importance of Corporate Governance ' <https://www.linkedin.com/pulse/importance-corporate-governance-paul-tsoi> Accessed 1 January, 2024.
5. Ogunbodede, S.T. 'The Companies And Allied Matters Act, 2020: Innovating Towards A Better Corporate Governance Practice in Nigeria' <

[39] Nkum, K.J. & Onivehu, J.B. (n.30)
[40] Section 868 Ibid.

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6

https://www.linkedin.com/pulse/companies-allied-matters-act-2020-innovating-towards-ogunbodede#:~:> Accessed on 30 December, 2023.
6. Ayotebi, O. M.'CAMA 2020: A Look at Nigeria's New Corporate Governance Regime' <Cama%202020_%20A%20Look%20at%20Nigeria's%20New%20Corporate%20Governance%20Regime.html> Accessed 1 January, 2024.
7. Sec 307(2) CAMA 2020.
8. Sec 275 CAMA 2020.
9. Section 14 BFA 2023.
10. Section 16 BFA 2023,
11. Ogunbodede, S.T. (n 5).
12. Section 18 (2) and Section 271(1) BFA
13. Section 271(1).
14. Suleiman, A. O. 'Critical Analysis of Corporate Governance and Accountability under the Companies and Allied Matters Act 2020' < https://diverselaw.org.ng/critical-analysis-of-corporate-goverance-and-accountability-under-companies-and-allied-matters-act-2020/ > Accessed 1 January, 2024.
15. Adefeso, E. 'Highlights of the Innovative Provisions in the Companies and Allied Matters Act, 2020' <https://asalawpractice.org/highlight-of-the-innovative-provisions-in-the-companies-and-allied-matters-act-2020/> Accessed 23 January, 2024.
16. Section 101 CAMA 2020.
17. Section 175 (1) CAMA 2020.
18. Nkum, K. J. & Onivehu, J. B. 'An Appraisal of the Impact of Companies and Allied Matters Act 2020 on the Nigerian Business Community' *NAU.JCPL* [2022] (9) (1) 132-143.
19. Kasunmu, A. B. 'A Summary of Changes Under the New Companies and Allied Matters Act, 2020' <https://www.kasunmuschambers.com.ng/a-summary-of-changes-under-the-new-companies-and-allied-matters-act-cama-2020/> Accessed 23 January, 2024.
20. Oluwayansola J. & Tobiloba, T. 'Review of the Company and Allied Matters Act, 2020 and Emerging Issues.' *UNILAG Law Review* [2021] (4)(2) 228-240.

Article DOI: 10.52589/AJLPRA-XX30ENM6
DOI URL: https://doi.org/10.52589/AJLPRA-XX30ENM6