



AN INSIGHT TO THE CORPORATE GOVERNANCE IMPLICATIONS OF CHANGES TO THE COMPANIES AND ALLIED MATTERS ACT 2020

1.0 INTRODUCTION

The Companies and Allied Matters Act (CAMA) can be accurately described as the bible or grundnorm of corporate dealings and governance in Nigeria, which should account, in part, for the pomp and pageantry ensuing the August 7th, 2020 presidential assent of the CAMA 2020 Bill¹ into law. As it signifies the first major overhaul of the CAMA 1990 (its predecessor) which was crafted in line with the English Companies Act of 1985 and although its English compadre has undergone numerous amendments since its inception, the CAMA 1990² continued its reign, which accounts for the overwhelming buzz following its repeal.

The other reason can be cited from the innovations embedded in the Seven (7) Part, Eight Hundred and Seventy (870) sections of the CAMA 2020³, with about 167 new sections, some of which could not have come at a better time. This is so, seeing as boards and management alike have been thrown into unique perplexing positions as they continue to navigate their corporations through the unusual normal brought about by the COVID 19 pandemic and efforts to flatten the curve of infected cases. For instance, one of the unique perplexing positions for corporates was, could companies hold AGMs virtually in Nigeria? To which, the CAMA 1990 did not clearly prescribe the mode of conducting such meetings. Hence, leaving eager companies, at the time, to fall to the cardinal principle of law, that what is not expressly forbidden is permitted. CAMA 2020 remedies this as it provides for remote or virtual general meetings. This is just one of several innovations inserted into the new Act. This explains the thrill surrounding its presidential assent and reasons as to the expectations of these new sections as well as the amendments to our body of corporate law.

This paper provides an insight and analysis of relevant introductions of the CAMA 2020 as it relates to governance and postulates how these provisions will affect corporate governance going forward.

2.0 CORPORATE GOVERNANCE INTRODUCTIONS OF THE CAMA 2020

2.1 Membership of the Board of the Corporate Affairs Commission

¹ Full citation is Companies and Allied Matters Act, 2004 (Repeal and Re-enactment) Bill, 2020

² The Companies and Allied Matters Act (Chapter C20) Laws of the Federation of Nigeria 2004 (CAMA) was enacted in Nigeria as a decree of the military government in 1990.

³ Full citation is the Companies and Allied Matters Act, 2020

The board composition of the CAC, just as any government agency, is essential. As board members of government agencies help ensure the agency is appropriately governed and fulfills its mandate. As regards, the CAC, to administer the CAMA. Therefore, the membership increment of the CAC's governing board is highly commendable. This is because, the drafters of the new Act, (it can be deduced) attempted and succeeded, in ensuring that the 'voice of the private sector' was included in the mix of board members, through the addition of a member of the Nigerian Association of Small and Medium Enterprises,⁴ representing small and medium enterprises, for whom, novel provisions were included and geared towards their ease of doing business; a member of the Institute of Chartered Secretaries and Administrators of Nigeria,⁵ representing company secretaries who are one of the leading customers of the Commission's services. These new additions will undoubtedly allow for accountability and enhance board diversity and knowledge specialization, thereby increasing the Commission's effectiveness in carrying out its functions.

2.2 Number of Directors and Single Member Companies

Addressing the topic on the minimum number of directors in a company, the CAMA 2020 retains its predecessor's provisions by stipulating a required minimum of two directors.⁶ However, it vies against the former minimum requirement of members needed to incorporate a company by reducing the previous requirement of two people to one individual.⁷

Also important is that is in line with one of the implied drivers of the Act, to wit, to promote and support small and medium scale enterprises, the Act makes it possible for the creation of single-member and single director companies⁸, provided the company falls within its description of a small company.⁹

2.3 Company Secretary

As in the case of the number of minimum directors, the CAMA 2020¹⁰ makes an exception for small companies, as while all companies must have company secretaries, small companies are exempted.

2.4 Annual General Meetings

The CAMA 2020 exempts small companies and companies with a single shareholder from holding an Annual General Meeting.¹¹

⁴ Appointed by the Minister on the recommendation of the Association – Section 2 paragraph (v) CAMA 2020

⁵ Appointed by the Minister on the recommendation of the Institute – Section 2 paragraph (iv) CAMA 2020

⁶ Section 271 CAMA 2020

⁷ Section 18(2) CAMA 2020

⁸ Ibid

⁹ A small company under the law is among other things, a private company with a turnover of not more than N120 million naira and the net value of not over N 60 million naira – Section 394 CAMA 2020

¹⁰ Section 330 CAMA 2020

¹¹ Section 237(1) CAMA 2020

2.5 Virtual Meetings

As mentioned in the introduction, the new Companies Act makes provision of virtual meetings for private companies so long as it is conducted in accordance with the Articles of Association of the Company.¹²

2.6 Disclosure of Significant Control

In line with global best practices, there is an introduction of a requirement to disclose persons with significant control. This is another laudable inclusion, as hitherto, this obligation was only placed on public companies but Section 119(1) of CAMA 2020 brings its application to all companies. Also, it will go a long way to ensure that companies are not used as Special Purpose Vehicles for fraudulent activities.

It is also worthy of note, that the CAC is mandated to keep a register of persons disclosed as having significant control¹³ which is an addition to the prior status quo, which placed the obligation only on companies.

2.7 Independent Directors in Public Companies

The trend of appointing independent directors can be traced to the need, for the avoidance of possible conflicts of interest on the board. Hence, the introduction of independent directors by the CAMA 2020 which was not mentioned in the repealed Act. The 2020 Act doesn't just introduce the concept of independent directors by stating out requirements for an independent director¹⁴ which is in tandem with international best practices, but it mandates all public companies to have at least three independent directors.¹⁵

2.8 Separation of the Chairman from CEO

Following the avoidance of possible conflicts of interests on the board, international best practices dictate that the CEO should be distinct from the Chairman. This provision has been introduced into our jurisdiction by the codes of corporate governance of regulatory agencies, due to its omission in the erstwhile companies Act, which has been remedied by Section 265(6) of CAMA 2020. As it expressly provides that the Chairman of a public company cannot act as the chief executive officer of such company.

2.9 Multiple Directorship and its Disclosure

The issue of multiple directorships is another area of the possible conflict of interests on corporate boards as well as poses the question of to the availability and attention of a director in such a category. The provisions in the CAMA 1990 did not assuage the issue, providing for no limit on multiple directorships as it allows same provided that it does not derogate from the directors'

¹² Section 240(2) CAMA 2020

¹³ Section 119 (3) CAMA 2020

¹⁴ Section 275 (3) CAMA 2020

¹⁵ Section 275 (1) CAMA 2020

fiduciary duties to each company it serves. However, Section 307¹⁶ restricts the number of multiple directorships to five for public companies and provides that any person currently a director in more than five public companies should, within two years, come into compliance with the section.

Furthermore, the CAMA 2020 imposes a duty on prospective directors to disclose any position held as a director in another public company¹⁷. While the CAMA 1990 recognized multiple directorships, there was no specific duty imposed on directors to disclose their positions.

2.10 Disclosing Remuneration of Managers

The disclosure to members as to the compensation of managers of the company¹⁸ is yet another introduction of the new corporate law, which, together with the disclosure of director's remuneration, would consolidate in the minds of the shareholders, the company's remuneration policy vis-à-vis its implementation.

2.11. Disclosure of Substantial Shareholding in Public Companies

The 2020 Act redefines the definition of a substantial shareholder as it changes the shareholding percentage required to fall under the definition of a substantial shareholder from 10% to 5%.¹⁹

2.12. Disclosure Capacity by Shareholder

Whilst the 1990 CAMA made no specific provisions for disclosures in this regard, the 2020 Act provides that every person with significant control over the company shall within seven days of becoming so indicate to the company in writing, the particulars of such control.²⁰ The Act further provides a number of definitions for who is considered to be in significant control.

3.0 REFLECTIONS

As the new companies Act brings forth a new era, companies can exist with a sole director as its board, which will usher in limited liability for such directors, ease of doing business and enlarge access to finance and credit for such companies. On the flip side, this may call for amplified checks and balances regarding the distribution of power among the directors, management, and investors to protect the company by ensuring that it remains an efficient organisation. There is also, the matter of succession and continuity, in the event of death of the sole director.

Also, the further concession given to small companies concerning appointing a company secretary could be viewed from two sides. One, whilst, the law's drafters attempt to ensure that its provisions amplify ease of doing business, the company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The Chairman and the board also look to the

¹⁶ CAMA 2020

¹⁷ Such disclosure must be carried out at the annual general meeting convened to consider his appointment as a director.

¹⁸ Section 257 CAMA 2020

¹⁹ Section 120 CAMA 2020

²⁰ Section 119 CAMA 2020

company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and how these responsibilities should be discharged.²¹

Therefore, the wiggle room as to whether or not to appoint a company secretary might defeat the prime and evolved roles of the company secretary in the corporate governance framework.

4.0 CONCLUSION

In conclusion, the CAMA 2020 is laudable as it provides statutory backing to erstwhile corporate governance practices.

Also, as it shows the international community that the nation is geared up in acclimatizing to its role as the largest market in Africa.

Furthermore, the introduction of novel provisions, especially those championing the concept of transparency and the need for full disclosure.

Borrowing the words of J.O. Irukwu²², the element of full disclosure, apart from the fact that it promotes the concept of transparency, has a positive effect in promoting public confidence in the corporate governance practices of Nigerian companies.

Lastly, it is hoped that as business and corporate governance practices continue to evolve, that the CAC through its governing board would utilize its powers to ensure that the provisions of CAMA keep with the times so as to avoid another stagnant lengthy corporate legislation.

²¹ Society for Corporate Governance Nigeria, “*Company Secretary’s Guide*”, CLDS Publishing Ltd, 2015.

²² J.O. Irukwu “*Corporate Governance in Modern Africa*” Safari Books Ltd, 2010.