

# CAMA 2020

WHAT STARTUPS, SMES AND OTHER  
BUSINESSES IN NIGERIA NEED TO KNOW



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In Nigeria, the Companies and Allied Matters Act (CAMA) is the legislation that governs the birth (Incorporation/registration), growth (Restructuring/reorganization), and demise (Winding-up) of businesses and companies.

The President of The Federal Republic of Nigeria, His Excellency Rt. Major Gen. Muhammadu Buhari on the 7th day of August 2020 accented to the new Companies and Allied Matters Act (CAMA) bill passed by the National Assembly which replaced the extant one of 2004. You can download the New CAMA 2020 [here](#).

Is this a welcome development, especially for startups, Small and Medium Scale Enterprises (SMEs) in Nigeria? Let's find out.

Before the passing into law of the new CAMA, businesses and companies were required to meet certain regulatory conditions before they can be registered to do business in Nigeria. Some of these conditions create unnecessary bottlenecks for some business owners, delaying registration of their businesses, or worst-case scenario unable to register the business. The 2017 National Bureau of Statistics (NBS) [report](#) showed that about 97.8% microenterprises were unregistered due to regulatory challenges and others. Larger companies also have their challenges as a result of lacunas in the repealed Act.

The good news is that some of these unfavorable conditions have been eased off to encourage SMEs to do business in Nigeria and also facilitate the smooth running of larger (private and public) companies in Nigeria. We will be discussing these improved provisions in this article.

*One person alone can now incorporate a company.*

Before the new CAMA, S. 18 Of the old CAMA provides for two(2) or more persons to form or incorporate a company. This means that before a company can be incorporated, it must have at least two (2) or more founding members and must not be less than the age of 18 years as provided for in S. 20 (1) (a) of the old CAMA.

The new CAMA under S. 18 (2) allows for a single member/ shareholder to form or incorporate a private company provided that such a company is not formed for illegal purpose S.18(3) and such an individual must not be less than 18 years S.20(1) (a).

This is surely good news for startups and young entrepreneurs who wish to commence their own business without having to look for a founding partner or a nominal shareholder.

**READ ALSO:** [How Many Founders Should A Startup Have?](#)

*A lawyer or notary public is no longer needed to sign or notarize a statutory declaration of compliance.*

S.35(3) of the old CAMA requires a statutory declaration of compliance form (also known as the Form CAC 4) be duly signed by a legal practitioner or a Notary Public, indicating that all requirements for registration have been complied with before a company can be incorporated. Under the new CAMA, this requirement is no longer necessary for the incorporation of a company. The entrepreneur, under S40 (1) ( the applicant) does not need the Form CAC 4 to be signed by a lawyer or Notary Public. Rather, the Statement of Compliance can be signed by the applicant or his agent, indicating that the regulatory requirements for registration of the said business/company have been complied with.

It should, however, be noted that S. 40(1) did not invalidate Declaration of Compliance forms duly attested to before Commissioner for Oaths or by a Notary Public as the Corporate Affairs Commission (also known as the Commission) under S.40(3) is duty-bound to accept same to register a business. This means that an applicant can elect that his lawyer attests to a declaration of compliance for incorporation.

S. 27 of the New CAMA replaces the word ‘ Authorized Share Capital’ with ‘Minimum Share Capital’. This means that promoter(s) of a business doesn’t need to allocate or pay for shares that are not needed at the time of incorporation. It should also be noted that the minimum share capital for private companies is N200,000 and N2,000,000 for public companies as against the authorized share capital of N10,000 for private companies and N500,000 for public companies under the old CAMA.

The common seal, just like a human signature, is the signature of the company which is usually affixed to authenticate contracts and transactions which the company enters into. Provision may be contained in the Articles of Association of a company that a particular subscriber may retain custody of the common seal to enable it to track the company’s transactions and contract. The procurement of a common seal is mandatory for the incorporation of companies under the old CAMA.

The mandatory requirement of common seal for companies has been expunged by S. 98 of the new CAMA. This simply implies that companies may or may not have a common seal and can still authenticate documents that would still be valid. S. 101 and 102 of the new CAMA provides that the electronic signature of the director, secretary, or authorized officer of the company will suffice. In essence, companies do not need to affix seals on documents anymore. This development is in line with international best practice as most jurisdictions have expunged this requirement from their legislation. Most companies around the world have gone digital, so seals are no longer mandatory for authentication of documents within the territory of Nigeria.

However, the provision does not stop any company in Nigeria having business outside the territory of Nigeria to not have a common seal if required. S. 99 provides for companies operating the object of their businesses outside the territory of Nigeria that may need a common seal, can have a common seal. The articles of the company shall regulate the use of the common seal. The company may by a deed authorize any person outside the territory of Nigeria to affix the seal on behalf of the company in any document outside the territory of Nigeria.

**READ ALSO:** [Business Name VS Limited Liability Company: How Should I Register My Business With CAC?](#)

The new CAMA also made provisions for electronic filing. That is, companies can be registered from anywhere in the country through the registration portal. A certified true copy of electronically filed documents is admissible in evidence and carries the same weight in evidence as to the original document. It should be noted that the official position of the certifying officer is unnecessary to prove the validity of the certified document S.861 (3).

Transfer of shares in private companies may be restricted by its articles S 22(2) and it also provides Right of First Offer (ROFO) for shareholders S.22 (2) (a) (b)(c) of the new CAMA, that is shares cannot be sold to third parties by a shareable without first offering to members of the company. The transfer of shares is done electronically under the new CAMA S.175. S.22(2) of the old CAMA provided that a private company can restrict the transfer of shares in its articles, but did not provide for ROFO as seen in S.22(2) (a) (b) (c) of the new CAMA. The new CAMA under S.176 (1) provides for electronic instruments of transfer of shares. This simply means that a transferor of shares transaction in a private company, the shareholder does not necessarily have to be physically present before he/she can initiate such transaction in favor of the transferee and the company, having been satisfied that all conditions as to the transfer have been met, shall also enter into her register of member the details of the transferee with the number of shares so transferred. This can also be done electronically.

The new CAMA under S. 240 (2) also provides for remote or virtual General Meetings for private companies, provided that such meetings are conducted following the Articles of Association of the company. This stems from the current disruption caused by the COVID-19 pandemic and a need for uninterrupted operations of companies. S.237 of the new CAMA says AGMs are not mandatory for Small companies.

S. 402 of the new CAMA provides that small companies or any company having a single shareholder are no longer mandated to appoint auditors at the Annual General Meeting (AGM) to audit their financial records. However, for a small company to be exempted, it must satisfy the conditions as provided for under S.394 which are summarised as follows:

1. It is a private company;
2. Its annual turnover is not more than ₦120,000,000 or such amount as may be fixed by the Commission from time to time;
3. Its net assets value is not more than ₦60,000,000 or such amount as may be fixed by the Commission from time to time;
4. None of its members is an alien (foreigner);
5. None of its members is a government, a government corporation or agency, or its nominee; and
6. In the case of a company having a share capital, the directors between themselves hold at least 51% of its equity share capital.

S.265 (6) expressly restricts companies from appointing an officer to simultaneously hold the office of the Chairman and Chief Executive Officer (CEO) of a public company. This would create a check and balance for officeholders.

S. 746 of the new CAMA introduces the business concept of Limited Liability Partnerships (LLPs). Under the Repealed Act, partnerships were not considered a body corporate. That is, they do not have a legal persona separate from their partners. S. 746(1) of the new CAMA now clothes LLPs with legal persona status, a distinct legal person separate from its partners.

For a Limited Liability Partnership (LLP), to be formed, it must have at least two (2) partners S 748(1) and S. 753(1) (a) of the new CAMA. If the number of partners falls below two (2) and the partnership business is carried on solely by a partner for six (6) months and beyond, such a partner will be personally liable for any liability incurred by the partnership within that period S. 748(2). Members of LLP must not exceed 20 S. 795 (2) and partnership interests under LLP are transferable S.774 of CAMA 2020.

The new Act under S. 849 provides for a merger between two or more associations with similar aims and objects under such terms and conditions as may be prescribed by the Corporate Affairs Commission (CAC) which was not contained in the previous Act.

Also, Section 831(ii) provides that without prejudice to S. 849, any two or more associations having the same trustees to be treated as a single association. This implies that registered associations having similar objects (business) or having the same trustees may be merged by the commission to facilitate effective regulation and supervision purposes.

The implication is that in the nearest future, the Commission may decide to merge churches as you have banks merging some years back. This may not be good for religious bodies. The Commission is further vested with the power to award fines (no specified amount) for default of any section of the new Act. These powers vested on the Commission may work adversely against the objectives of the new Act if it is not put in check.

222(12) of the new Act stipulates that the total fees payable to the CAC for Charges have been reduced to 0.35% of the value of the charge or such other amount as the Minister may specify. This section introduces a significant reduction of fees for charges at the Commission.

Under the repealed Act, every company was mandated under S 293 (1) CAMA 2004 to have a Company Secretary, whilst S.330(1) of the new CAMA makes the appointment of a Company Secretary optional for private companies and mandatory for public companies. This amendment would undoubtedly reduce costs for startups and small companies doing business in Nigeria. Also, the New Act under S. 336, requires only public companies to maintain a register of secretaries and S. 337 and 338 provides for the prescribed particulars of secretaries to be recorded in the register of secretaries. S. 339 (2)(b) of the new CAMA provides that a letter of consent by the person newly appointed to act as a secretary must accompany the notice of such an appointment sent to CAC.

The repealed Act did not provide a limit to multiple directorships in different public companies as long as the director does not derogate from their fiduciary duties to each company where they act as a director. This position, however, is different under the new CAMA as S.307 (1) of the Act prohibits a person from being a director in more than five (5) public companies at a time.

119 of the new CAMA provides for the obligation of disclosure of particulars of persons in significant control in a company (Public or Private). This provision mandates a company to disclose capacity in which shares are held either as a beneficial owner or nominee. This provision enhances corporate accountability and transparency.

120 defined a substantial shareholder in a public company as a person who holds by himself or through his nominee 5%, of unrestricted voting rights in a general meeting. Substantial shareholders are also obligated to disclose the capacity of their shareholding to the company the share is being held.

The new Act introduces a framework for the rescue of corporate insolvency by introducing Company Voluntary Arrangement (S.443 to S.549) and Administration. In a Company Voluntary Arrangement (CVA), the directors of a company may make proposals to its creditors for the best possible ways to settle the company's debts. The proposal will provide for a qualified insolvency practitioner to act either as a trustee or nominee for supervising its implementation. This process can also be initiated by a liquidator or an administrator where the company is in liquidation or administration.

1. 444 provides for the principal functions of administration:
2. To rescue the company, the whole or any part of its undertaking as a going concern;
3. Achieve a better result for the company's creditors as a whole than would be likely if the company were wound up without first being in administration; and
4. Realize property to make a distribution to one or more secured or preferential creditors.



Under administration procedure, control of the company is given to an insolvency practitioner who objectively reviews the profitable and non-profitable aspects of the distressed company and proposes a plan in line with the objectives of administration for the business rescue of the company.

To encourage the success of this business rescue procedure, the Act makes adequate provisions (amongst others) for suspension of enforcement actions by creditors during administration S.480.

The new Act contains some provisions that encourage the formation and operations of startups. That is for an entrepreneur who wishes to register his business at a small scale can do so without having to go through so many regulatory hurdles. He can initiate the incorporation of a private company from any part of the country because these processes can be done online and a certified true copy of these documents generated from these process are admissible in court. Annual General meetings of small or private companies can be done virtually. The promoter or founder does not need another member before he can register his private company. Those desirous of forming a partnership with corporate personality can do so because the new CAMA provides for the formation of limited liability partnership and accords it corporate personality. The interest of minority members in a company was also considered and provisions with frameworks geared towards saving companies from corporate insolvency.

It is our collective hope that these new provisions will improve Nigeria's ease of doing business and boost the nation's economy at the same time.

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The image features a stylized storefront with a red and white striped awning. The awning has three red stripes on a white background. Below the awning, the website name "FINTCONSULTING.COM" is written in a bold, blue, sans-serif font. The background of the storefront is a light blue color, and the entire scene is framed by a dark blue border.

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