

Companies and Allied Matters Act (Repeal and Re-enactment) Bill 2019: Its Role in the Development of MSMEs in Nigeria

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Abstract

Micro, small and medium enterprises (MSMEs) have been adjudged as the largest employers of labour, seedbeds of large companies, and indispensable mechanisms for economic growth and social development across the world. This is even so with regards to the Nigerian economy. However, the Nigerian MSME sector faces many challenges including that of legal status that hamstringing their ability to reach their potential and grow the Nigerian economy. The Companies and Allied Matters Act (Repeal and Re-enactment) Bill, which seek to replace the subsisting company law in Nigeria (the Companies and Allied Matters Act Cap. C20, LFN 2004), is set to change all that. In this paper, the author highlights the significant fillip that MSMEs in Nigeria will receive when the CAMA Bill is passed into law.

Keywords: Companies and Allied Matters Act, Company Law, MSMEs, CAMA Bill, Nigeria

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Introduction

The Companies and Allied Matters Act (Cap. C20), LFN 2004, as the is the subsisting company law in Nigeria, has an impressive array of forebears, including the Companies Ordinance (Amendment and Extension) Ordinance 1917, the Companies Ordinance 1922, the Companies Act of 1968, and the Companies and Allied Matters Decree, 1990. However, CAMA (Cap. C20) LFN 2004 will soon be repealed and replaced by a new company statute. The Bill for the new legislation, the Companies and Allied Matters Act (Repeal and Re-enactment) Bill [hereinafter CAMA Bill]^[1], was passed by the lower and upper chambers of the National Assembly of the Federal Republic of Nigeria on the May 15 2018 and January 17 2019, respectively^[2]. The CAMA Bill now awaits presidential assent to become the new company law in Nigeria.

The CAMA Bill is a boon for Nigerian micro, small and medium enterprises (MSMEs). At present, the MSME sector faces many challenges, including that of legal status that hamstringing their ability to reach their potential and grow the Nigerian economy. Other problems of the MSME sector includes as "low market access to credit, poor information flow, inadequate technologies, *unfavourable legislation*, inadequate access to land, weak linkages among the sectors, weak operating capabilities in terms of managerial skills, lack of knowledge and attitudes" [emphasis added]^[3]. Indeed, as Mwantok^[4] remarked, "Experts have argued that the MSME sector is the most neglected in Nigeria, with little or no support from the government or financial institutions." The CAMA Bill was crafted to address some of these MSME challenges. According to Obayomi^[5], the CAMA Bill "seeks to establish an efficient means of regulating businesses, minimise the compliance burden of small and medium enterprises (SMEs), enhance transparency and shareholder engagement and promote a friendly business climate in Nigeria." In fact, the word *small* appeared 44 times and *smallness* once in the CAMA Bill^[1] all referring to MSMEs. Also, the CAMA Bill is meant to uplift the image of Nigeria in the eyes of

the global business community. Although the rank of Nigeria has improved over the years on the World Bank's global ease of doing business scale, thanks to the uncompromising stance on corruption of the Muhammadu Buhari's government, yet Nigeria's ease of doing business score is barely average (56.9), the country coming 131 out of 190 countries^[6]. The CAMA Bill will help reverse this status.

Clearly, one of the objectives the framers of the CAMA Bill seek to facilitate through the Nigerian company law is to make the business environment supportive to Nigerian MSMEs and their foreign counterparts willing to invest in the country. It is, therefore, the objective of this paper to highlight some of the significant changes contained in the CAMA Bill that promise a new lease of vitality to MSMEs in Nigeria.

Structure of CAMA (Cap. C20) LFN 2004 and the CAMA Bill

The subsisting CAMA (Cap. C20) LFN 2004 consist of three parts: Part A deals with companies, Part B with business names and Part C with incorporated trustees^[7]. However, the new CAMA Bill has eight parts: Part A deals with the administrative aspect of the Corporate Affairs Commission; Part B deals with the incorporation of companies in Nigeria and incidental matters; Part C deals with Limited Liability Partnership; Part D deals with Limited Partnership; Part E deals with Business Names; Part F deals with Incorporated Trustees (non-profit organisations); Part G deals with establishment of Administrative Proceedings Committee; and Part H provides the Short Title of the Bill.

Which Enterprise is an MSME?

There are several for defining MSMEs, each criterion most suited to its intended purpose. The criteria include the number of employees, turnover, and balance sheet total, ownership, partnerships and linkages^[8-10]. However, most extant conceptions of MSMEs excluded the M (microenterprises) and focused on small and medium enterprises

only. However, the conceptualisation used by the Saudi Ministry of Commerce and Investments^[11] include the M, and defines SMEs to cover microenterprises employing 1-5 workers and having yearly incomes of SAR 0-3 million; small enterprises employing 6-49 workers and having yearly incomes between SAR 3-40 million; and medium enterprises employing 50-249 workers and having yearly incomes between SAR 40-200 million. In Nigeria, the definition of SMEs given by the Bankers' Committee excludes viable MSMEs. The Committee defined SME as a business "with a maximum asset base of ₦200 million excluding land and working capital; and with the number of staff employed by the enterprise not less than 100 and not more than 300" (Bankers' Committee, 2001). Millions of MSMEs in Nigeria do possess such asset base or workforce strength. Thus, whenever such conceptualisation is used in determining an MSME for support, many viable and promising businesses are shut. The prevailing characteristics of MSMEs in Nigeria should, therefore, be reflected in any definition that may be employed for public policy purposes. For instance, Ajani *et al.*^[12] listed about 20 characteristics of Nigerian MSMEs including labour-intensive production processes, the concentration of management on a key man, limited access to long term funds and low capitalisation^[12]. Of particular concern are the microenterprises constituting almost all the businesses in the MSME sector. Most of the 36,994,578 microenterprises in Nigeria^[13] are owned and operated by single persons, and as such, hardly benefit from formal sources of funds and regulated business opportunities. It is interesting to know that some of the changes introduced in the CAMA Bill address these peculiar challenges of MSMEs.

In view of the above, it is the considered view of this author that Section 349 of the CAMA Bill^[1] should be the default characterisation of MSMEs in Nigeria, and should, therefore, be employed for policy purposes, and decisions by both public institutions and private bodies. The uniformity this approach will gestate in dealing with MSMEs throughout the Nigerian economy will facilitate a common language currency in the Nigerian business community and thereby confer immense benefits. Thus, according to the CAMA Bill^[1], an MSME is it is a private company having a minimum paid-up share capital of ₦100,000 and annual turnover of not more than ₦10 million or some amount subsequently fixed by Corporate Affairs Commission (CAC), whose net assets value is not more than ₦5 million or some amount subsequently fixed by CAC. Thus, it is hoped that once the CAMA Bill becomes law and goes into operation, the Nigerian economy will receive renewed contributions from the MSME sector.

MSMEs and the Nigerian Economy

The contributions of Nigerian MSMEs to the development of various economic indicators have long been recognised. However, the magnitude of this contribution in comparison to what is obtainable in other economies is disappointingly modest^[14]. Nevertheless, the potential is enormous and can be developed to the full, given the proper policy environment and incentives. The statistics on the contributions of the MSME sector is generally not systematised and comes from various source, thus showing some discrepancies. For instance, a survey conducted by PriceWaterhouseCoopers^[15] reports that Nigerian MSMEs "contribute 48% of national GDP, account for 96% of businesses and 84% of employment." However, the announcement made by the Ministry of Industry, Trade and Investment shows that MSMEs account for about 48.5% GDP, as well as about 7.27% of goods and services exported out of Nigeria. Whatever the case, Nigerian MSMEs are the backbone of the Nigerian economy and sources of livelihood to millions of families. The health of the MSME sector reflects the health of the family in Nigeria.

Reporting on the statistics given by the Ministry of Industry, Trade and Investment, Udo^[13] stated that there are 37,067,416 micro, small and medium-scale enterprises in Nigeria. Microenterprises make up 99.97% of the MSMEs in Nigeria (with 36,994,578 enterprises), while small enterprises took 68,168 and medium enterprises 4,670^[13]. The distribution of these MSMEs across the 36 states of the Federation and the Federal Capital Territory (Abuja) is as uneven as it is among the

three subsectors of the MSME sector. For example, Lagos, Oyo and Kano states host 8.70%, 5.01%, and 4.84% of the 37.7 million MSMEs, respectively, but Nasarawa state host only 226 MSMEs. This is notwithstanding the fact that Nasarawa state is at the forefront of rice production boom in recent times^[16]. This suggests the need to contextualise the incentives given to MSMEs to reflect the geographic and business peculiarities of the local entrepreneurs. However, the CAMA Bill promises a common umbrella under which all MSMEs in Nigeria can thrive and grow.

CAMA Bill and MSMEs in Nigeria

As mentioned elsewhere in this writeup, the CAMA Bill will soon receive President Muhammadu Buhari's assent and become the new company statute in Nigeria. However, legal experts^[2, 5] have already written extensively about the novelties in the CAMA Bill and the implications of these on company formation and administration in Nigeria. In this following section, the author highlights a few of such novelties as they appertain to MSMEs.

Single Member Companies

Most of the 36,994,578 microenterprises in Nigeria^[13] are owned and operated by single persons. Under the subsisting company law, a company can be formed by at least two persons. Thus, most of the over 99% of businesses making up the Nigerian MSME sector cannot be turned into companies as they are presently constituted. However, Section 18(2) of the CAMA Bill^[1] now can make it possible for a single person to form a company. The said section provides that "one person may form and incorporate a private company by complying with the requirements of this Act in respect of a private company." This provision opens a window of opportunity for both new (assuming the signing of the Bill is concluded) and old MSMEs to get registered with CAC and gain the legal status the lack of which had hitherto closed millions of business opportunities for them. Further, the CAMA Bill also provides for a single director.

New Form of Business Organisation: The Limited Liability Partnership (LLP)

MSMEs can quickly become corporates by choosing a flexible and straightforward business form called the Limited Liability Partnership (LLP). This form of business organisation, though novel to the Nigerian business climate, is common in other jurisdictions such as the UK and the US. According to Balouziyeh^[17], an LLP is "a partnership in which none of the partners is liable for the negligent acts of any other partner or any employee not under his direct supervision"^[17]. However, the CAMA Bill in Udoma and Belo-Osagie^[2] characterises an LLP as a corporate personality with limited liability and perpetual succession, transferable interests of partners, and one of whose members must be a general partner to absorb all the businesses' liabilities. However, Balouziyeh^[17] defines limited partnership as "a business venture composed of at least one general partner who manages the affairs of the business and at least one limited partner who contributes capital and shares profits, but who may not manage the business"^[17].

Company Secretary and Company Seal

The CAMA Bill provides that it is optional for small companies and companies with one shareholder to appoint a company secretary or have a seal. In making appointment of a secretary and having a seal optional, the CAMA Bill reflects the recent practice of Singapore which does away with these requirements in the process of company formation, thereby making it easier to do business^[6]. Appointment of a company secretary is not mandatory but optional for private companies. Also, the Bill has abolished the mandatory requirement for each company to have a common seal. Each company may opt to obtain a common seal and regulate its use and design through its articles of association.



Conclusion

The CAMA Bill marks a defining moment in the evolution of the Nigerian company law. The repeal and replacement of the CAMA Cap C20, LFN 2004, when concluded, will address some of the legal, regulatory and administrative challenges that bedevil the Nigerian corporate world. Specifically, the CAMA Bill will revitalise the Nigerian MSME sector and reposition it as a critical driver of economic growth and development.

References

- [1] FGN, *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, 2016*. 2016: Nigeria.
- [2] Udoma, U.M. and Belo-Osagie, M. *Companies and allied matters act (repeal and re-enactment) bill 2019 - what you need to know (part 2)*. 2019.
- [3] Eziashi, J.U., *Manufacturing strategy of firms in emerging economy: The study of nigerian manufacturing SMEs*. 2017, University of Northumbria at Newcastle.
- [4] Mwantok, M., *How MSMEs contribute 54 per cent of nigeria's GDP*, in *The Guardian*. 2018.
- [5] Obayomi, W. *Key highlights of the companies and allied matters act (repeal and re-enactment) bill, 2018*. KPMG Insights 2018; Available from: <https://home.kpmg/ng/en/home/insights/2018/11/Key-highlights-of-the-Companies-and-Allied-Matters-Act-Bill-2018.html>.
- [6] World Bank, *Doing business 2020: Comparing business regulation in 190 economies*. 2020, Washington, DC: International Bank for Reconstruction and Development / The World Bank.
- [7] FGN, *Companies and allied matters act, cap. C20, LFN 2004*, in *Chapter C20, LFN 2004* 2004: Nigeria.
- [8] European Union, *User guide to the SME definition*. 2015, Brussels: Publications Office, European Union.
- [9] Anastasia, C., Exploring definitions of small business and why it is so difficult. *Journal of Management Policy and Practice*, 2015. **16**(4): p. 88-99.
- [10] Salisu, B., Strategic planning in small and medium scale enterprises (SMEs). *North-East Journal of Management*, 2005. **1**(2): p. 42-47.
- [11] MCI. *The board of directors of the general authority for small & medium enterprises specifies the definition of micro, small and medium enterprises*. 2016 26 December 2018 [cited 2019 17/1/2019]; Available from: <https://mci.gov.sa/en/mediacenter/news/pages/13-12-16-03.aspx>.
- [12] Ajani, A.O., A.E. Odesanya, G.O. Balogun and M.A. Ishola, Framework of entrepreneurship theories in restructuring small and medium enterprises (SMEs) in Nigeria. *IOSR Journal of Business and Management*, 2018. **20**(7): p. 57-62.
- [13] Udo, B., *Small, medium enterprises account for 84 per cent of jobs in Nigeria*, in *Premium Times*. 2019, Premium Times: Nigeria.
- [14] Azubuike, O.I., J.A. Oladimeji and A.E. Olufunmilayo, The growth impact of SMEs in Nigeria. *Journal of Emerging Trends in Economics and Management Sciences*, 2018. **9**(4): p. 234-242.
- [15] PWC. *Nigeria SME survey: Assessing current market conditions and business growth prospects*. 2019 [cited 2019 9 August 2019]; Available from: <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html>.
- [16] Amolegbe, K.B. and M.O. Adewumi, Value-chain analysis of rice industry in nasarawa state, Nigeria. *Gashua Journal of Irrigation and Desertification Studies*, 2016. **2**(1): p. 1-20.
- [17] Balouziyeh, J.M.B., *A legal guide to united states business organizations: The law of partnerships, corporations, and limited liability companies*. Second ed. 2013, Berlin: Springer.