



# **Corporate Affairs Commission: The Past, Present And Future**

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## **ABSTRACT**

The paper seeks to examine the historical background of Corporate Affairs Commission to date, and to trace the relevant regulatory bodies with responsibilities in commercial engagement with the commission, as well to consider the statutory obligations of the commission. And the crux of the paper is to showcase the commission's mode with regards companies registration and dealings in the past, the considerable improvement made of recent and the future of the institution in line with the global changes and dynamic nature of the law.

**Keywords:** Corporate Affairs Commission, corporate transactions,

## **1.0 INTRODUCTION**

The corporate affairs commission is a body established by statute with perpetual succession and a common seal, capable of suing and being sued in its corporate name and capable of acquiring holding or disposing of any property movable or immovable for the purpose of carrying out its function.<sup>1</sup> The headquarters of the commission is located at Abuja with branch to be established in each state of the federation, so far branches have been established in many states including River state, Kano state, Delta state, Benue state, Lagos state, Edo state, Imo state, Cross river state, Sokoto state, Bauchi state, Kaduna state, Enugu State, Borno state, Kwara state, Ondo state.<sup>2</sup>

Tracing the past and flashing on the historical evolution of corporate affairs commission in Nigeria prior to the enactment of companies and Allied Matters Act, 1968. The administration and regulation of companies in Nigeria was carried out by the Registrar of companies in the Corporate Affairs Division of the Ministry of Trade.

In fact its organization and staffing were the Companies Registry Department was fraught with inadequacies and shortcomings as it was starved of funds and other necessary facilities. In other to correct this unimpressive registration regime, the Nigerian Law Reform Program in 1987, after several deliberations and consultations, the Law Reform Commission recommended the autonomous regulatory body to perform its functions adequately the report further recommended the establishment of the Corporate Affairs Commission and the repeal of the 1968 companies and allied matters act which led to the enactment of the companies and allied matters act 1990, the act has three major parts namely; 'A' which deals with incorporation of companies, part 'B' which deals with the procedure for the registration of business names and part 'C' which provides for incorporated trustees, improvement were made in the act, for instance, the law relating to registered documents, meetings, account, auditors directors, company secretary, the corporate affairs commission was established to administer the companies and Allied matters Act.<sup>3</sup>

<sup>1</sup> Section 1 (1) & (2) of CAMA LFN 2004.

<sup>2</sup> O. A. Onadeko, SAN, *Corporate Law Practice Private Handbook* (Panaf Press, Abuja). Page 35.

<sup>3</sup> B.Y. Bhadmus, *On Corporate Law Practice*, 4<sup>th</sup> Edition (2017) (Chenglo Limited, Enugu). Page 3.

The Nigerian company law and practice regime was given great transformation with the promulgation of the companies and Allied Matters ACT (CAMA). The establishment of the Corporate Affairs Commission as the sole regulatory agency brought some succor to the company law practice in Nigeria which continued ease to soften company dealings.

### **1.01 INSTITUTIONS REGULATING CORPORATE TRANSACTIONS.**

The institutions and agencies that regulate corporate transactions in the country's economy are enormous that one cannot ignore when considering the path of corporate affairs commission, these are;<sup>4</sup>

- a) Corporate Affairs Commission (CAC)
- b) Securities and Exchange Commission (SEC)
- c) Nigeria Investment Promotion Commission (NIPC)
- d) National office for technology acquisition and promotion (NOTAP)
- e) Abuja securities and commodities exchange (ASCE)
- f) Nigerian stock exchange(NSE)
- g) National council of privatization (NCP)
- h) Central bank of Nigeria (CBN)
- i) Bureau of public enterprise(BPE)
- j) Asset management corporation of Nigeria (AMCON)
- k) Federal inland revenue service(FIRS)
- l) Nigerian communication commission(NCC)
- m) Investments and securities tribunal (IST)

### **1.02 FUNCTIONS OF CORPORATE AFFAIRS COMMISSION.**

The functions of the commission are comprehensively stated under section 7 and 13 of the Act as follow;<sup>5</sup>

- a. to administer **CAMA** including the regulation and supervision of the formation, registration, management and winding up of companies under or pursuant to the act
- b. to establish and maintain company's registry and offices in all the states of the federation suitably and adequately equipped to discharge its functions under this Act or any other law in respect of which it is charged with responsibility
- c. to arrange or conduct investigation into the affairs of any company where the interest of shareholders and the public so demand
- d. to perform such other function as may be specified by any Act or Enactment
- e. to undertake such other activities as are necessary or expedient for giving full effect to the provision of this Act

It is submitted that powers of the commission and its regulatory roles are subsumed under this section. However it is imperative to state that mere enumeration of this section cannot adequately capture what the commission does.

But it is important to note that having these functions at the back of our minds will be helpful in discussing the current trend of company law practice.

### **1.03 STAGES OF INCORPORATION, SERVICES, PROCESSES AT CORPORATE AFFAIRS COMMISSION**

Pre-registration process of corporate affairs commission in Nigeria starts with;

- **Search and Reservation of Name:**

The only authority with the discretion to determine the name suitable for registration of company, Business Names and Incorporated Trustees in Nigeria is the Corporate Affairs Commission. The power as provided by the Act is discretionary and should not be curtailed even by court unless it is proved that

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<sup>4</sup> C. S. N., Ogbuanya, *Essentials of Corporate Law Practice in Nigeria*, 2<sup>nd</sup> Edition (2014) (Novena Publishers Limited, Lagaos) Page 3.

<sup>5</sup> *CAMA Ibid.*

there is abuse of the power. Section 32 **Companies and Allied Matters Act**<sup>6</sup> Provides that, the commission may on written application and on payment of the prescribed fee, reserve a name pending registration or change of name by a company.

The section empowers the Commission to reserve a name at its discretion, for a period not exceeding 60 days and during the period of reservation, no other company shall be registered under the reserved name or under any name which in the opinion of the Commission bears too close a resemblance to the reserved name. However where the name reserved was fraudulently done or in error, the commission has the power to cancel it.<sup>7</sup> Reservation of name just as all other pre-incorporation processes are now online from the start to conclusion of the incorporation process.

Some of the important things to note in respect of name reservation:

- a. Prohibited Names: names that are capable of misleading as to the nature and extent of its activities, undesirable offensive or contrary to public policy
- b. Restricted Names: any name that
  - Is identical with or similar to the name of a registered company unless the registered company is in the course of dissolution and consent in writing
  - Contains the words “chamber of commerce” unless it is a company limited by guarantee
  - Would violate any existing trade mark, business name or incorporated trustee unless with the consent of the owner
- C. Names that require consent of the commission are;
  - Federal, National, Regional or State Government or suggest patronage of Federal or State Government or Ministry or Department of Government
  - Municipal or chartered or suggests any affiliation with a Municipality or local authority
  - Co-operative or Building Society
  - Group or Holding
  - Any word suggesting temporary business arrangement, e.g. Consortium
  - Reservation of any name under limited by guarantee
  - Upgrade of registered Business Name to a limited liability company

At this point it is important to state some of the requirements for consent in respect of names containing some words;

- The use of the word **Group**:
  - Formal application for consent accompanied by the following:
    - Evidence of not less than 3 associate companies to form the group
    - Evidence of common membership of the associate companies
    - Resolution of the associate companies consenting to the group relationship
    - Statement by majority of the directors of the proposed group company that the share capital of the company shall not be less than the highest share capital amongst the associate companies
    - Evidence of updated annual returns of the associate companies
    - Updated section 533 CAMA filling of associate companies where applicable.<sup>8</sup>
- The use of the word **Holding**:
  - Formal application for consent accompanied by the following;
    - Evidence of not less than 2 subsidiary companies
    - Statement by the majority of the directors of the proposed Holding that they will require more than half of the nominal value of the shares capital of each of the subsidiary within 90 days of its incorporation
    - Updated annual returns of the subsidiary companies
    - Updated section 533 CAMA filing association company where applicable.<sup>9</sup>

<sup>6</sup> Ibid.

<sup>7</sup> Regulation 10 of Companies Regulation 2012.

<sup>8</sup> See Regulation 20 Companies Regulation 2012.

<sup>9</sup> See Regulation 21 Companies Regulation 2012.

- The use of the word **Consortium**:
  - Formal application for consent together with;
  - Evidence of not less than 3 companies to form the consortium
  - Evidence of registration in home country in case of a foreign company
  - Resolutions of each company in the consortium consenting to the arrangement and stating the object of the consortium
  - Statutory declaration to wind up the consortium in the memorandum of association of the consortium
  - Inclusion of a clause to wind up the consortium in the articles of association of the consortium
  - Updated section 553, CAMA filing by companies forming the consortium where applicable.<sup>10</sup>

It is worthy to note that any name that falls under a category that requires share capital cannot be registered under Business Name .Also in trustees names should be meaningfully couched and that unpopular abbreviations and acronyms should be avoided.

Having observed the above, it is equally necessary to consider, section 31 of the Act<sup>11</sup> which gives the Commission power to direct a company to change its name if it is found to be similar to any registered name. The power is exercisable at any point in time.

## **2.0 MANUAL MODE OF INCORPORATION AT CORPORATE AFFAIRS COMMISSION**

The corporate affairs commission provides several statutory forms/guides in use for various transactions at both pre-incorporation and post incorporation stages, it has redesigned the prescribed forms for corporate transactions in the new Companies Regulations,<sup>12</sup> some entirely new forms were created while some existing ones were redesigned and renumbered ,these forms are;

- CAC 1 Availability check and reservation of name
- CAC1A change of name availability check and reservation of name
- CAC2 Statement of share capital and return of allotment
- CAC 2A Return of allotment post incorporation
- CAC 2.1 Particulars of person who is the company secretary of a company or any change therein
- CAC2.4 Notice of change of authorized share capital
- CAC2.7 Application for the re-registration and conversion of company
- CAC 3 Notice of situation/change of registered address
- CAC4 Declaration of compliance with the requirements of CAMA
- CAC7 Particulars of persons who are first directors of the company
- CAC 7A Notice of directors or in the name residential address or postal address of directors
- CAC8 Particulars of change
- CAC9 Declaration verifying memorandum of satisfaction of change
- CAC 10 Annual return for a small company
- CAC10A Annual return for a company having shares other than a small company
- Cac10B Annual return for a small company limited by guarantee
- Cac10C Annual report of exempted foreign company
- CAC 11 Statement by liquidator as to pending liquidation and disposal of unclaimed assets
- CAC/BN/1 Application for registration of business name
- CAC /BN/2 Notice of change in business name
- CAC/BN/3 Notice of change in registered business name objects
- CAC/BN/4 Notice of change in registered business name address
- CAC/BN/5 Notice of change in registered business name proprietors
- CAC/BN/6 Notice of cessation of business
- CAC/BN/7 Annual returns for business name
- CAC/IT/1 Incorporated trustees application
- CAC/IT/2 Change of incorporated trustee name

<sup>10</sup> See Regulation 22 Companies Regulation 2012.

<sup>11</sup> CAMA *Ibid*.

<sup>12</sup> Companies Regulation *Ibid*.

- CAC/IT/3 Change of trustees
- CAC/IT/4 Annual return incorporated trustees.

It is important to note that forms CAC 2, 2.7, 3, 4, and 7 have been condensed into parts A, B, C, D, and E of the current form CAC 1.1 which is designated 'application for registration of company'. The implication of this current position is that only two (2) forms are now required for incorporation, namely; forms CAC 1 and 1.1.

Another point to note is the fact that the Commission has expressly stated on the form that the incorporation documents may be presented to the commission by the any of the subscribers or the first directors who need not be an accredited agent. These may not be as seamless as the instructions on the form tend to suggest, as the provisions of section 35,<sup>13</sup> which requires that section E of CAC 1.1 must be signed by a legal practitioner still prevails. Furthermore, the practice of engaging in house solicitors of the Commission who endorse the statutory declaration of compliance section of form CAC 1.1 has been deprecated and prohibited by the Federal High Court, Kano Division.<sup>14</sup>

## **2.01 THE PRESENT TRENDS IN PRE-INCORPORATION STAGE**

First is a visit to the website at <http://new.cac.gov.ng/home/registration> or [www.cac.gov.ng](http://www.cac.gov.ng) or [service@cac.gov.ng](mailto:service@cac.gov.ng)

For Name reservation:

- Creation of Account on the company's registration portal (CRP)
- Online payment of the prescribed fee for the name reservation
- Submission of the name for approval
- Expect result within 4 hours

For Registration of company:

- Complete pre-registration form 1.1 online using the Company Registration Portal (CRP)
- Pay the prescribed filing fee online
- Pay Stamp Duty online
- Download receipt of payment issued by CAC and the one issued by Federal Inland Revenue Service(FIRS)
- Download the filled form, sign where necessary, scan and upload alongside memorandum and Article of Association (MEMART), means of ID for directors, subscribers and secretary, filing fee receipt, stamp duty receipt
- Complete the registration process and expect the certificate within 24 hours.

One can notice that the requirement for proficiency certificate, pursuant to regulation 9,<sup>15</sup> is no longer required for registration of companies, business names and incorporated trustees. The corporate affairs commission has introduced a business incentives strategy to encourage small business registration and other services with the commission; the cost registration was reduced to 5000 thousand naira only which encourage registration of over 69,000 companies. <https://thenigerialawyer.com/cac/>

For Registration of Business Name;

- Complete the BN pre-registration form online using the CRP
- Pay the prescribed filing fee online
- Download receipt of payment issued by CAC
- Download the form as filled and sign where necessary
- Affix two passport photos where necessary
- Scan and upload together with photo copy of a valid means of ID for proprietor(s) and the payment receipt issued by CAC
- Complete the registration processes and await certificate within 24 hours

For registration of Incorporated Trustees;

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<sup>13</sup> CAMA

<sup>14</sup> Unreported Suit No. FHC/KN/86- *Nkwocha Ernest V Minister of Industry, Trade and Investment & 2 Ors.*

<sup>15</sup> *Companies Regulation 2012.*

- Complete pre-registration IT form online through the CRP
- Pay filing fee
- Download receipt of payment issued by CAC
- Download filled IT form and sign where necessary and affix passport where necessary
- Affix impression of the common seal as provided on form
- Fill the trustees declaration form to be deposited at the High court for each trustee
- Scan and upload the form with the following documents
  - Formal application for registration sign by the chairman or secretary or the solicitor
  - Extract of minutes of general meeting sign by the chairman and the secretary appointing trustees and adopting special clause in the constitution
  - Copies of the constitution
  - Duly disposed trustees declaration form
  - Publication in two national dailies
  - Means of ID for all trustees
  - Payment receipt issued by CAC
- Complete the registration processes and certificate will be ready within 24 hours

## **2.02 PRESENT TRENDS OF POST-INCORPORATION STAGE**

Post incorporation services of the commission are still not fully operational online but concerted efforts are being made to fully automate the post incorporation services of the commission.

Meanwhile, some of the basic requirements for all post incorporation processes are as follows:

- a) Name of the company must tally with the RC NO
- b) Relevant returns must be up to date
- c) Resolutions must be on company's letter head reflecting correct registered address
- d) Resolutions may be either ordinary, special, by the board directors, written resolution of the shareholders, or written resolution of the board of directors
- e) Cancellation, alteration and application of corrective fluid on the signature column or any part of the document not acceptable
- f) Names of directors must be written in full as initials are not allowed.
- g) Residential address must be traceable i.e numbered houses and streets must be clearly stated
- h) A corporation must be represented by natural person
- i) Where a director is a foreigner residing in Nigeria valid residents permit must be furnished
- j) Information supplied must tally with records

## **3.0 THE FUTURE OF CORPORATE AFFAIRS COMMISSION**

On 15 may 2018, the senate passed the Companies and Allied Matters Act (Repeal and Re-enactment) Bill 2018 (The Bill). The bill seeks to revise the Nigerian company law to reflect modern commercial realities as well as reduce compliance costs for businesses in Nigeria. The bill now awaits passage by the House of Representatives and the assent of the president before it becomes law.

The bill will repeal the Companies and Allied Matters Act (CAMA) 1990 AND 2004 AS AMENDED to Enact the COMPANIES AND ALLIED MATTERS ACT 2018. Amongst other provisions, the Bill seeks to introduce the following:

The concept of single member companies – the Bill proposes that one person should be able to form a private company and also proposes single directorship for small companies;

- Deletion of the requirement for consent of the Attorney General in the incorporation of a Company Limited by Guarantee;
- The requirement for a company to have a common seal is to be made optional;
- Companies that have not carried on any business since incorporation would not need to appoint auditors;
- Small businesses will no longer need Annual General Meeting or have company secretaries;
- Public companies will be required to display their audited accounts on their website;

- A new form of legal entity known as Limited Liability Partnership which will be a body corporate and exist separately from its members; and
- The Bill also proposes a legislative framework for Limited Partnerships and Limited Liability Partnerships in Nigeria.

**Implication**

The passage of the Bill is commendable as it seeks to improve the ease of starting and running a business in Nigeria by removing certain regulatory and administrative bottle necks. In addition, the introduction of the Limited Liability Partnership as a legal entity would potentially enable such entities combine the organizational flexibility and the tax status of a partnership with limited liability for its members.

**4.0 CONCLUSION/RECOMMENDATIONS.**

The corporate affairs commission saddled with the enormous responsibility of not only registration, regulation and management of companies, business names and incorporated trustees, its tasks of administrating the Companies Allied Matters Act is that unique. That is why even before the passage of the Bill to repeal CAMA, the Corporate Affairs Commission continued with the policies and programs that will advance Nigerian's economy, improve in its service delivery and promote service delivery culture.

Some of the policies are as follows:

- Full online registration
- 24 hours services delivery for new registration
- Removal of proficiency certificate for registration of certain categories of companies
- Removal of requirement for approval in principles before registration of certain categories of companies
- Online processing of post registration applications in state offices

We have no doubt that the above highlights of the new Act will, in no small measure; reposition the corporate affairs commission for greater efficiency. The positive expectations of the enhanced performance of the commission may however, be impaired by the deplorable state of the Nations infrastructural and technological challenges. It is our recommendation that serious attention be paid to the challenges that may be posed by the poor state of infrastructure and technology and their possible crippling effect on the overall performance and success rate of the new bill when eventually assented to by the president.