

CLIENT ALERT

March 19, 2021

Compliance Alert: Deadline to Allot Unissued Shares of Nigerian Companies

The Corporate Affairs Commission (CAC) has set **June 30, 2021** as the deadline for all Nigerian companies to allot all shares in a company that are yet to be allotted to shareholders of such company (“Unissued Shares”) or face a default penalty. This alert may be relevant to you, if your company has unissued shares, or if your company, in the course of its business activities, has previously established



special purpose vehicles (SPVs) as part of implementing corporate structures to develop projects, run service operations, participate in bids, etc. Such SPVs typically reserve unissued shares for future collaborations with technical or financing partners and other stakeholders relevant to delivering the project or transaction. Those unissued shares are the object of the new directive by the CAC, so your companies must make immediate arrangements to allot those shares, by either adopting a rights issue to the existing shareholders, warehousing them in an affiliate or nominee company, cancelling the unissued shares, or issuing to third parties i.e., new shareholder(s).

The provisions of the company’s existing articles of association and shareholders’ agreements (if applicable) will have a bearing on the strategy adopted in allotting these unissued shares. It will be prudent to seek legal advice to ensure your company’s compliance with this directive, avoids unintended consequences in contractual relationships between your company and its stakeholders, especially shareholders or lenders.

Background

CAMA 2020, which was enacted on August 7, 2020, and which updated the previous CAMA enacted 30 years ago, has introduced several reforms to Nigerian company law aimed at improving the ease of doing business in Nigeria. One of such reforms is the abolishment of the concept of the authorized share capital as different from the issued share capital of a company.¹ In practical terms, a company can no longer possess Unissued Shares. Thus, the company's share capital will be the same as the value of its issued shares at any point in time. This is a departure from the previous regime where promoters of a company were permitted to register a company with only 25% of its authorized share capital having been issued to members.² Under this new regime, there is no room for unissued shares as all shares are to be issued at incorporation and capitalization of a company is to be approached piecemeal.

The CAC has now issued new Regulations, the Companies Regulations 2021, to complement the CAMA 2020. Regulation 13 thereof directs companies who have not issued all their shares to do so no later than June 30, 2021 and states that a daily default penalty will be imposed on the company and every officer of the company for non-compliance. To incentivize compliance, the CAC has waived the filing fees for complying with this directive.

Practical Steps to Note in Complying with this New Directive

- CAMA 2020 vests the power to allot shares in a company to the shareholders in general meeting. The board of directors of a company only have powers to allot shares, where expressly authorized by the company's Articles of Association or via a resolution passed in the company's general meeting.³ Therefore, the first step will be to duly authorize the allotment of the Unissued Shares through a resolution of the shareholders or the board of directors (as applicable).
- The potential allottee must then signify interest in purchasing the shares in writing to the company before the company may make the allotment. The company must notify the applicant of the fact of the allotment and the number of shares allotted to him within 42 days of making the allotment.⁴
- The allotment will only be effective if 25% of the company's issued shares including the new allotment is paid up and the directors have issued a statutory declaration affirming this fact.⁵

¹ See Section 868 CAMA 2020, which defines "share capital" as the issued share capital a company at any given time.

² Section 27 (2) (b) CAMA 2004, Section 99 (1) CAMA 2004

³ Section 149 (3) CAMA 2020, Section 13 (3) Companies Regulation, 2021

⁴ Section 150 (1) CAMA 2020

⁵ Section 128(1) CAMA 2020

- After this allotment is made, the company must within a month after the allotment deliver to the CAC a return of the allotment in the prescribed form, stating:⁶
 - (i) the number and nominal value of the shares comprised in the allotment,
 - (ii) the name, address and description of the allottee(s), and
 - (iii) the amount, if any, paid or due and payable on each share, whether on account of the nominal value of the shares or by way of any premium payable in relation to such shares.

We hope you have found this client alert useful and are available to assist you on this subject if required.

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Disclaimer: This client alert is not a legal opinion neither is it legal advice. The purpose of this alert is merely to inform our clients on the changes in law and regulation.

⁶ Section 154 (1)(a) CAMA 2020