DISTINGUISHING BETWEEN RESTRICTION AND TRANSFER OF SHARES AND PRE-EMPTIVE RIGHTS OF SHAREHOLDERS: TO WHAT EXTENT ARE THEY ALLOWED UNDER COMPANIES AND ALLIED MATTERS ACT (CAMA) 2020?*

Abstract

The CAMA 2020 introduces some specific regime for the transfer of shares and pre-emptive rights for the shareholders of Nigerian companies. This research work highlights some of these special provisions with the view to shedding light on the positive impact of these provisions on corporate law and governance of Nigerian companies. It is important to note that these provisions may equally have a negative side to them but the law in Nigeria with regards to companies is still evolving. The research work equally recommends that the Corporate Affairs Commission must equally do more as a regulator to scrutinize the transfer of shares inadvertently in companies.

Keywords: Shares, Shareholders, Dividends, Transfer, Restrictions.

1. Introduction: As a general rule, the CAMA 2020 allows for the free transfer of shares unless the company's articles of association[1] expressly seem to include reasonable restrictions specifically spelt out. These restrictions cannot completely prevent transfers but can establish procedures or obtain consent before a transfer occurs. Restrictions refer to limitations placed on a shareholder's ability to freely sell or transfer their shares to another party. Restrictions serve to maintain control within a group of shareholders, prevent unwanted investors or ensure specific qualifications for ownership. Transfer of shares refers to the act of selling or otherwise conveying ownership of shares from one shareholder to another. The process typically involves notifying the company and completing transfer documents. Pre-emptive rights might come into play during this process. Pre-emptive rights are the right of existing shareholders to be offered new shares or existing shares being transferred by another shareholder before they are offered to anyone else is known as the pre-emptive rights of shareholders. The purpose of pre-emptive rights is to protect existing shareholders' proportionate ownership and voting rights, however companies can include provisions for them in their articles of association. CAMA 2020 does not grant automatic pre-emptive rights. However, companies can include provisions for them in their articles of association.

2. Highlighting the Key Differences among Restrictions, Transfers and Pre-Emptive Rights

'Restrictions' refers /attempts to limit the ability to transfer altogether (with limitations under CAMA). 'Transfer(s) of shares' would imply the actual changing of ownership. 'Pre-emptive rights' refers to the right(s) of first refusal on new shares or existing share transfers. Additionally, any restrictions or pre-emptive rights must be clearly defined in the company's articles of association and restrictions cannot be so unreasonable as to prevent transfers entirely. Furthermore, shareholders have the right to inspect the company's register of members to see who owns shares. Both restrictions and pre-emptive rights rely on what's outlined in the articles. Shareholders have the right to equally inspect this document (the article of association). Pre-emptive rights are optional as companies may choose to include them in their articles or not. There are two main types of pre-emptive rights allowed under CAMA: the right of first offer as well as Tag-Along rights. The right of first offer[2] means that a shareholder must first offer their shares to existing shareholders before selling them to someone else. For 'tag-along' rights, if a shareholder sells a significant portion of their shares (typically over fifty percent[3]), other shareholders can require the buyer to purchase their shares on the same terms.

3. Conclusion and Recommendations

From the foregoing discussion, it is clear that (i) a shareholder of a private company who intends to transfer its shares to a third party is required to first offer the shares to the existing shareholders of the company[4]; and (ii) a shareholder or a group of shareholders of a private company acting together, shall not sell or agree to sell more than 50% of the shares in the company to a third party unless the third party has offered to buy all the shares of the existing shareholders on the same terms.[5] From the general overview, CAMA 2020 has introduced concepts that will help develop novel structures in business and corporate governance. These changes will especially (a) ease entrance and exit for private equity and venture capital investors into portfolio companies and (2) allow companies to explore schemes to address any structuring issues that may arise. Finally, it is recommended that the Corporate Affairs Commission must equally do more as a regulator to scrutinize the unscrupulous transfer of shares inadvertently in companies without adherence to the laid down procedure.

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[1] This is a document outlining the company's rules.

[2] Section 141 (1) CAMA 2020

[3] Section 22 (2) CAMA 2020

[4] Ibid n2

[5] Ibid n3