

REVIEW OF THE RIGHTS OF SHAREHOLDERS TO TRANSFER SHARES UNDER THE COMPANIES AND ALLIED MATTERS ACTS, 2020

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Abstract

The Company's Article of Association reserves the rights to determine how the shares of a company registered under the Companies and Allied Matters Acts 2020 are allotted or distributed among the shareholders. Despite the rights to transfer shares as contained in section 139 of the CAMA, the right to do so is not absolute, according to the Court in Okoya v Santilli. Where the court stated that shares are in the nature of personal property and are transferable in the manner allowed by the company's Articles of Association and as contained in Section 22(2) of the CAMA 2020, where the company through its Article has the right to restrict and determine who shall be allotted despite meeting other qualifications and requirements. The question that must be asked at this juncture is what option is left for any stakeholder whose right to acquire shares has been denied? Though, restriction on the allocation of shares is not applicable under public companies but does it mean allocation or allotment of shares to members is automatic under public companies? This paper has however undertaken the review of the rights to transfer shares among the shareholders of companies and between the shareholders and different beneficiaries under wills.

Keywords:Rights, Shareholders, Transfer, Shares, CAMA 2020

1.0 Introduction

1.1 Overview of the provisions of CAMA 2020 on Transfer of Shares

The Companies and Allied Matters Act (CAMA) 2020 is the primary legislation that guides the activities and operations of companies in Nigeria. It lays down guidelines as to the incorporation, constitution and dissolution of a company. More specifically, it makes provisions as to the transfer and transmission of shares in a company.

Generally, the Companies and Allied Matters Act states that a company has the power to issue shares, but it limited by whatever is provided in their Articles of Association.

Section 117 of the Companies and Allied Matters Act 2020 states that "subject to any limitation in the articles of a company with respect to the number of shares which

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may be issued and any pre-preemptive rights prescribed in the articles in relation to the shares, a company shall have the power, at such times and for such consideration as it shall determine, to issue shares up to the total number authorized in the memorandum.”

Section 115 talks on shares as transferable property. It states that “the shares or other interests of a member in a company shall be property transferable in the manner provided in the Articles of Association of the company.”¹

Section 22 of CAMA 2020² provides that the shares of a private company may be restricted, by virtue of their Articles of Association, from being transferred to a third party. Sub-section 2 states that “every private company shall by its articles restricts the transfer of its shares”. Section 142 of the Act gives further explanation on the principle of share transfer and gives the shareholders pre-emptive rights. Pre-emptive rights are the privileges members of a company or corporation enjoy, to be able to purchase or reject to buy newly issued shares before they are offered to a third party or general public.³ According to section 142 of CAMA 2020, any share that is to be transferred will not be allotted, until it has firstly been presented to existing shareholders and members of the company.⁴ A notice is to be sent to the existing shareholders, informing them of the availability of the shares. Such notice is to specify the amount of shares that are available for purchase, the amount of shares a member is permitted to subscribe to, the amount for which the shareholder can purchase the shares and the duration for which the shares would be on offer. This duration is expected to be reasonable as it will allow the shareholder gain enough time and insight to make a decision. If there is no response after the duration for consideration of the offer has expired, it would be deemed that the offer has been declined. If there is notice that the shareholders have declined to purchase the shares, or that the duration for considering the offer has expired, the board of directors, subject to the terms stated for any resolution in the company, may then dispose of the shares. Such disposal is to be at a price that is not less than what was originally stated in the offer and must be done in such a way that would be beneficial to the company.

Transfer of shares takes different forms. A person transferring it selling his shares may choose to transfer all his shares to one person or may decide to sell them to more than one. The transfer may either be whole it in bits.

Where a shareholder decides to transfer his shares to a single purchaser, the shareholder is to present the purchaser with a share certificate and an instrument of transfer duly executed. The person purchasing the shares is to execute the transfer

¹ Companies Allied Matters Act 2020, Section 115

² CAMA 2020, section 22

³ Cornell law school, ‘Preemptive rights’

⁴ <https://www.law.cornell.edu/wex/preemptive_right#:~:text=A%20preemptive%20right%20is%20a,dilution%20in%20value%20or%20control> accessed 8 Dec 2024

⁴ CAMA 2020, section 142

and send both the transfer instrument and certificate to the company for registration. Once registered, a new share certificate would be issued to the individual and his name would be incorporated in the register of members.

Where a member sells a part or all of his shares to more than one purchaser, such a member is to execute the instrument of transfer with his share certificate and send them to the company with a request to recognize and register the instrument. After the request has been made, the company is to endorse the instrument with the words "Certificate Lodged" written on it. The endorsed instrument is to be given to the purchaser in exchange for the price for which the shares has been sold. The purchaser is then to execute and send the endorsed instrument of transfer to the Company for registration. Upon registration, the purchasers are given new share certificates in respect of the part of the shares they purchased in their names and are entered in the register of members.⁵

Shares may also be transmitted. Transmission of shares occurs when a shareholder dies and may have died intestate or had willed the shares to a beneficiary.

- (1) Section 154 of CAMA 2020 provides that a personal representative entitled to the shares of a deceased shareholder may himself validly transfer the shares of a deceased member although he is not a member himself. He also has an option to be registered as member himself or another person nominated by him as the transferee of the shares by executing a transfer deed. The section states that "a transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer."⁶ According to section 155 of the Act, "in case of the death of a member, the survivor or survivors where the deceased was a joint holder, or the legal personal representative of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing in this section shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons."⁷

A share transfer form can validly be used as an instrument of transfer of shares. Where there is no physical copy, an electronically signed copy is just as enforceable.

A company is prohibited from registering a transfer of shares where a share transfer instrument has not been delivered to the company by the person transferring the shares. This does not affect shares transmitted to another by operation of law,

⁵ E. Emmanuel, I. Ugochi, 'Procedure For Transfer And Transmission Of Shares In Nigeria' (Lagos, Fred-Young & Evans, 2017) Introductory aspect of the article.
<<https://www.mondaq.com/nigeria/shareholders/581514/procedure-for-transfer-and-transmission-of-shares-in-nigeria>> accessed 8 Dec 2024

⁶ CAMA 2020, section 154

⁷ CAMA 2020, section 155

through means such as a letter of probate, letter of administration or by order of court. This order includes those made in respect of bankruptcy or insolvency proceedings.⁸

2.0 Share Transfer Rights Under the CAMA 2020

Shares are a unit of ownership that reflects an equal amount of a company's capital. They provide the holder a *pro rata* claim on the company's profits and equal duty for the company's debts and losses. A share represents a company's ownership and is sold to raise funds. For a company with share capital, each member must be a shareholder and own at least one share. A corporation has the authority to issue shares up to the entire number authorized in its memorandum, subject to any limitations and preemptive rights set forth in the company's Articles of Association regarding the number of shares that may be issued.⁹

Furthermore, share transfer rights are therefore the laws that enable a member or shareholder of a company to transfer his or her rights to another individual or company under CAMA 2020.¹⁰ A shareholder may transfer his shares to anyone, regardless of whether he is a member of the firm or not. In other words, you can purchase shares from a shareholder even if you are not a member of the firm. In theory, share transfers are free, but these shares are usually worth a lot of money, thus they are rarely transferred for free. Because it involves a large sum of money, several regulations have been put in place to guarantee that no one abuses the process.

In Nigeria, share transfers are governed by the Companies and Allied Matters Act (CAMA) 2020 and a company's Articles of Association. Sections 175-181 of CAMA 2020 cover the transfer and transmission of a company's shares.¹¹

Section 175 allows for the transfer of shares. Subsection 1 states that shares in a company can be transferred via an instrument of transfer, which may be electronic, unless prohibited by the company's articles. Subsection 2 states that a company cannot record a share transfer unless a suitable document of transfer is given, save in

⁸'DEFINITIVE PROOF OF TRANSFER OF SHARES UNDER CAMA 2020' (2021)<<https://srjlegal.com/definitive-proof-of-transfer-of-shares-under-cama-2020/>> accessed 8 Dec 2024

⁹ Frank Okeke & Ayo Fadeyi 'Understanding share transfers in Nigeria' (Ikeja, F, Okeke & Ayo Fadeyi & Co.2024) <<https://lelawlegal.com/understanding-share-transfers-in-nigeria>> accessed 8 December 2024

¹⁰ Bees 'Procedure for share transfer and share surrender in Nigeria' <<https://www.618bees.com/article/1015-procedure-for-share-transfer-and-share-surrender-in-nigeria>> accessed 8 December 2024

¹¹Jocylene Eze 'Transfer and transmission of shares in Nigeria' <https://www.linkedin.com/posts/jocylene-eze-789a20196_transfer-and-transmission-of-shares-in-nigeria-activity-7171886677563490304-0_Md#:~:text=Sections%20175%20%2D%20181%20of%20CAMA,from%20one%20party%20to%20another.>> accessed 8 December 2024

circumstances where shares are transferred by operation of law (for example, inheritance). Subsection 175(3) states that both the transferor and the transferee must sign the instrument of transfer, and the transferor remains the legal holder until the transferee's name is included in the company's register of members. Subsection 4 states that, subject to any restrictions in the company's articles, shares can be transferred using any written instrument in a standard or approved format.¹²

Section 176 of the Companies and Allied Matters Act (CAMA) describes the regulations and processes for transferring shares in a company, with a focus on keeping accurate records in the register of members. It specifies company's duties, shareholder rights, and the conditions under which share transfers can be performed or rejected. To begin, the provision states that upon the transferor's application for any share or interest in a business, the firm must include the transferee's name in its register of members. This obligation applies whether the application is made by the transferor or the transferee.

The section acknowledges that the record of transfers may contain electronic registers, which ensures that new digital practices are accommodated. Until the transferee's name is officially recorded in the register of members, the transferor is still considered the legal holder of the shares by the firm. This clause ensures clarity and stability in corporate records, particularly when a transfer has been commenced but not completed.

However, companies are not required to approve all share transfers. They may refuse to register a share transfer under certain situations. For example, if the shares in question are not completely paid to, the firm may reject the transfer if the transferee does not meet its approval criteria. Similarly, a business may refuse to register a transfer if the shares are subject to a lien, which means that the firm has a legal right to the shares to secure a debt or obligation.

Furthermore, the law empowers businesses to specify the conditions for recognizing instruments of transfer. These restrictions include paying a fee specified by the firm, submitting the share certificate together with documentation of the transferor's authority to transfer, and ensuring that the transfer is limited to only one class of shares. These criteria are intended to protect the company's records and guarantee that share transfers are completed in an orderly and transparent way.¹³

Section 177 of the Companies and Allied Matters Act 2020 specifies the procedure a company must follow when refusing to register a share transfer. According to this

¹² Law Global hub 'Section 175 Companies and Allied Matters Act 2020
<[https://www.lawglobalhub.com/section-175-companies-and-allied-matters-act-2020/#:~:text=Section%20175%20CAMA%202020,Incidental%20Matters\)%20of%20the%20Act.](https://www.lawglobalhub.com/section-175-companies-and-allied-matters-act-2020/#:~:text=Section%20175%20CAMA%202020,Incidental%20Matters)%20of%20the%20Act.)> accessed 8 December 2024

¹³ Law Global Hub 'Section 176 Companies and Allied Matters Act 2020'
<https://www.lawglobalhub.com/section-176-companies-and-allied-matters-act-2020/#google_vignette> accessed 8 December 2024

provision, if a company decides not to register a share transfer, it must notify the transferee within two months of the transfer being submitted. This ensures transparency and provides the transferee with timely information about the status of their application. Failure to comply with this requirement attracts penalties. Both the corporation and its officers who fail to comply to the condition would be liable to fines as provided by the regulations of the Commission.¹⁴

Section 178 of the Companies and Allied Matters Act governs the transfer of shares or other interests in a business by the personal representative of a dead member. This clause ensures that a dead shareholder's rights and interests are successfully handled and transferred, even if the personal representative is not a member of the corporation. Under this clause, any transfer of shares or interests made by the personal representative is deemed lawful as if the representative were a company member at the time of the transaction. This removes potential hurdles to the administration of the deceased's estate and ensures that ownership of the company continues smoothly.¹⁵

Share transmission refers to the transfer of ownership of shares from one company member to another as a result of specified occurrences such as death or bankruptcy. Section 179 of the Companies and Allied Matters Act (CAMA) 2020 establishes the legal foundation for the process and the rights of parties concerned in such matters. When a shareholder dies, the law regards the surviving joint holder(s) or the deceased's lawful personal representative (if a lone holder) as the only parties entitled to the dead member's interest in the shares. It is crucial to note, however, that the deceased's estate remains accountable for any obligations arising from shares owned jointly with others.

A person entitled to shares as a result of a member's death or bankruptcy has two choices. They can either register themselves as the shareholders or nominate someone else as the transferee. This election is subject to the company's directors' requirements for evidence, as well as the company's right to deny or stop registration, as in the event of an ordinary share transfer. If the entitled individual wishes to register themselves, they must send a written notice to the company. Alternatively, if they want to nominate another individual, they must sign a transfer agreement in the specified manner.

Transmissions are subject to the same regulations and limitations as share transfers, as described in CAMA and the company's articles. These measures ensure that the transmission method adheres to the normal share transfer regulations.

More importantly, the entitled individual is registered as a member, they are entitled to dividends and other financial benefits from the shares. They cannot, however,

¹⁴Law Global Hub 'Section 177 Companies and Allied Matters Act 2020'
<<https://www.lawglobalhub.com/section-177-companies-and-allied-matters-act-2020/>>
accessed 8 December 2024

¹⁵ CAMA 2020, section 178

exercise membership privileges, such as voting at company meetings, unless the firm's articles explicitly state otherwise. Furthermore, the company's directors have the ability to issue a notice compelling the authorized person to register or transfer their shares. Failure to comply with this notification within 90 days authorizes the directors to delay payment of any dividends, bonuses, or other payments linked to the shares until the criteria are met.¹⁶

Section 180 of the Companies and Allied Matters Act 2020 protects persons who own shares, dividends, or other benefits in a firm. It ensures that the corporation acknowledges and protects their claims, prohibiting unlawful transfers or payments that could jeopardize their rights.

The clause permits anyone who claims an interest in a firm's stock or dividends to legally notify the corporation of their claim. When the company receives this notice, it must record it in the membership register. Furthermore, the corporation is barred from registering any transfer of shares or making payments in regard to them unless it gives the claimant 42 days' notice. This ensures that claimants have enough opportunity to address any issues before the intended transfer or payment takes effect.

Section 181 of the Companies and Allied Matters Act (CAMA) deals with the certification of share transfers within a corporation, describing the obligations and procedures for guaranteeing effective transfer of ownership rights. This section seeks to govern the mechanism by which shareholders can transfer their shares, particularly where only a portion of their shares are being transferred, and to provide protection for both the firm and third parties concerned.

Under this provision, if a shareholder chooses to transfer a portion of their shares, they must deliver the instrument of transfer, along with the necessary share certificates, to the firm. The corporation is then responsible for recognizing and registering the document of transfer. Once recognized, the corporation issues a certificate of transfer, which can be in electronic form. The corporation normally indicates recognition by approving the transfer document with the phrase "certificate lodged" or similar phrasing.

2.1 Significance of Share Transfer Rights

The significance of share transfer rights under the Companies and Allied Matters Act (CAMA) 2020 in Nigeria cannot be overstated, as these rights underpin the effective operation, flexibility, and governance of companies.

¹⁶ Law Global Hub 'Section 179 Companies and Allied Matters Act 2020' (2020)
<<https://www.lawglobalhub.com/section-179-companies-and-allied-matters-act-2020>>
accessed 8 December 2024

1. Facilitating Ownership Transfer

Share transfer rights enable shareholders to transfer their shares to others, providing liquidity and flexibility. Under CAMA 2020, this process is governed by clear provisions that protect both parties to the transaction, ensuring seamless ownership transitions.

2. Enhancing Business Continuity

The ability to transfer shares ensures that companies can attract new investors while maintaining business continuity, even in cases where founding shareholders or key stakeholders opt to exit the business.

3. Attracting Investors

Share transferability is crucial for attracting potential investors, as it provides a mechanism for them to exit the company if needed. CAMA 2020 reinforces this by balancing the rights of shareholders and protecting minority interests.

4. Corporate Governance and Compliance

The Act introduces mechanisms that prevent unauthorized transfers, ensuring proper documentation and compliance with company regulations. This promotes transparency and good corporate governance practices.

5. Protecting Shareholder Interests

CAMA 2020 empowers companies to include restrictions on share transfers in their Articles of Association, which can prevent hostile takeovers or transfers that could disrupt the company's objectives.¹⁷

6. Regulating Private and Public Companies

For private companies, the Act restricts share transfers, requiring compliance with pre-emption rights or other stipulated procedures. For public companies, share transfer rights are more flexible, fostering an open market for trading shares.

7. Resolving Disputes

The Act provides a framework for resolving disputes regarding share transfers, including provisions for seeking judicial intervention when necessary. This ensures fair treatment and minimizes conflicts.

8. Promoting Economic Growth

¹⁷ Ibid

By facilitating the efficient transfer of ownership, CAMA 2020 strengthens investor confidence and promotes economic growth through increased capital flows and investments in companies.

These provisions under CAMA 2020 highlight the critical role of share transfer rights in fostering a robust corporate environment while balancing the interests of companies, shareholders, and potential investors.

3.0 Restriction on Share Transfers

3.1 Restrictions imposed by CAMA 2020:

Share transfers is a fundamental concept in company law. It upholds the principle that provides that a man should be able to transfer and sell what he owns. Shares are properties hence, shareholders are allowed to buy, sell or transfer their shares to others. However, certain restrictions are placed to protect the best interests of the company because shareholding influences the ownership structure of the company. This is mostly done in private companies. This is because private companies have a lesser number of shareholders and there is more room for approvals because of the personal relationship between the shareholders. On the other hand, public companies are larger in membership hence, the restrictions may be impractical as it is impossible to closely monitor the company's shareholders. A company's shareholders have the right to transfer shares as they choose however some restrictions have been placed by Section 154 of the CAMA, 2020.

These restrictions can take various forms. It could come in form of pre-emptive rights, restrictions on the transfer of shares to non-members of the company, the need for approval before share transfers are made or any other restriction as provided for in the company's article of association.¹⁸ The Company's Constitution, shareholder agreements or statutory provisions usually house these restrictions.

3.2 Restrictions Imposed by Share Transfers

1. Restriction by article provisions: Section 22¹⁹ of the CAMA 2020 allows companies to provide in their articles of association that any transfer of shares must be subject to the approval of the board of directors or other designated authority within the company.²⁰ This particular provision allows the company to

¹⁸ Thought Leadership, Frank Okeke, Ayo Fadeyi, 'Understanding Share Transfers In Nigeria: Frequently Asked Questions (FAQs)' (Paper delivered by the Law Chambers NBA Conference September 2017), Le Law, <https://lelawlegal.com/add111pdfs/TL_understanding_shares.pdf> accessed 07 December 2024

¹⁹ Section 22(2) of the CAMA 2020 provides that 'Every private company shall by its articles restrict the transfer of its shares'.

²⁰ Johan LusangaLuntumbue, "Restrictions on the Transfer of Shares: Between Contractual Freedom and Mandatory Rules" (2024), Deminor News, <<https://deminornxt.com/en/article/restrictions-on-the-transfer-of-shares-between-contractual-freedom-and-mandatory->

monitor the number of shareholders and the people who become shareholders. The approval clause makes the transfer of shares subject to the approval of all or certain other shareholders, or, for example, one of the company's organs.

2. **Pre-emption Rights:** This is the most common restriction on share transfers. Under Section 124²¹ of the CAMA 2020, private companies are obligated to include pre-emption rights in their articles. One kind of clause known as pre-emption rights allows current shareholders of a business to buy new shares or existing shares that are being sold by other shareholders before they are made available to outside parties. Such shares must be presented to the company's shareholders before being made available to third parties in order for them to be transferred. This is referred to as the preemptive clause and must be present in a private company's articles of incorporation. However, this limitation is intended to protect current shareholders' interest in the business by guaranteeing that they have the first chance to buy shares. The selling shareholder is required by the pre-emption provision to offer the shares for sale to a designated beneficiary, typically another shareholder, first. The beneficiary is then entitled to exercise its "right of pre-emption".
3. **Unanimous Approval:** In cases where a company's articles provide that no share shall be transferred without the consent of the shareholders, Section 26(6)²² states that, if an agreement of transfer is not approved within a specific time-frame (often 30 days), the transfer can be deemed rejected. This creates a statutory framework for ensuring shareholder consensus on new entrants. The inalienability or non-transferability clause prevents the sale of shares during a certain period.
4. **Consequences for non-compliance:** CAMA 2020 outlines penalties for non-compliance where a shareholder attempts to transfer shares in violation of the articles. If the transfer is not approved according to the outlined processes, the company is not obliged to recognize the transfer, thus protecting the shareholding structure.
5. **Exit clauses:** As a type of restriction on share transfers, exit clauses are intended to make it easier for shareholders to sell their shares under specific situations. They are frequently used in shareholder agreements to safeguard certain shareholders' rights in the case of a sale by another shareholder or to give shareholders a way to leave the firm. Exit clauses include the resale obligation or

rules/#:~:text=The%20usual%20conventional%20restrictions,designated%20beneficiary%2C%20usually%20another%20shareholder>, accessed 8 December 2024.

²¹ Section 124 of CAMA provides thus, 'Subject to the provisions of the Investment and Securities Act, the power to allot shares shall be vested in the company, which may delegate it to the directors, subject to any conditions or directions that may be imposed in the articles or from time to time by the company in general meeting'.

²² CAMA 2020, S. 26(6)

the resale right, which allows certain shareholders to sell their shares to the same person and under the same circumstances as the transferring shareholder. When a major shareholder chooses to sell, a resale duty forces other shareholders—usually minority shareholders—to sell their shares. They must sell their shares in accordance with the same terms as the transferring shareholder. This clause can be used to ensure that a majority shareholder can sell their stake in the company without leaving behind a fragmented ownership structure.²³

3.3 Right of First Offer

The right of first offer refers to the right a shareholder holds to offer their shares first to existing shareholders of the business or the company before presenting or selling the same offer to outsiders or third-party buyers. This holds a pre-emptive clause which restricts transfer of shares by shareholders to third parties before existing shareholders in the company.

The right of first offer further prohibits third parties from acquiring a share from a shareholder when the share has not been presented or offered to the existing shareholders if that company. In essence, third party prospective buyers have not right to accept any offer until existing members are made aware of such and show interest, if any. It must be included in the Articles of private companies.²⁴

Pre-emptive rights are those rights provided to an existing shareholders to maintain their position and acquire shares before they are offered to the public or third parties. Shareholders are stricter by conditions contained in the articles of association of the company. In the case of *Jarvis Motors (Harrow) v Carabolt*, it was stated that the articles of a private company provided that no shares of the company shall be transferred to one that is not a member and where a member dies, his shares must be offered to the existing members at the company.²⁵ Shareholders are restricted by this right from transferring shares to outsiders, third party or persons other than existing shareholders without first offering such shares to existing members or shareholders of the company or business.²⁶

²³ Johan LusangaLuntumbue, "Restrictions on the Transfer of Shares: Between Contractual Freedom and Mandatory Rules" (2024), *Deminor News*, <<https://deminornxt.com/en/article/restrictions-on-the-transfer-of-shares-between-contractual-freedom-and-mandatory-rules/#:~:text=The%20usual%20conventional%20restrictions,designated%20beneficiary%2C%20usually%20another%20shareholder>>, accessed 8 December 2024.

²⁴ Frank Okeke, Ayo Fadeyi, ' Understanding Share Transfers in Nigeria: Frequently Asked Question (FAQs)' (2017) <https://lelawlegal.com/add111pdfs/TL_understanding_shares.pdf> accessed 6 December, 2024.

²⁵ *Jarvis Motors (Harrow) v Carabolt* [1964] ALL ER 89

²⁶ CAMA 2020, Section 142(1)

Furthermore, in restricting the transfer of shares, the articles of a private company may provide that the company shall not sell assets of the company with a value of more than 50% of the total value of the company's assets without the consent of its members. A group of shareholders are not to agree to sell more than 50% of the company's shares to a third party unless the threes party agrees to purchase shares of existing shareholders on the same terms of the sale.²⁷ The essence of this provision is to protect the right and position of shareholders and to ensure that shares are acquired in fairness and transparency to existing shareholders in the private company.

4.0 MECHANISMS FOR TRANSFER

4.1 Role of Company's Board in Facilitating Transfers

1. **Approving Share Transfers:** Under section 176(2) of the Companies and Allied Matters Act (CAMA) 2020, the Board of Directors has an arbitrary power not to register the transfer of shares if it is against the provisions of the articles of the company or any law applicable. This implies that the board has the oversight responsibility to ensure that in the event a transfer is sought, it is compliant with the provisions of the articles of association. For instance, the company's directors can deny a transfer of shares if such is considered harmful to the interest of the company or where there are restrictions on the transfer of shares in a private company.²⁸ Also, directors have the duty to honour shareholders' agreements and the provisions of the articles of the company on pre-emptive rights of shareholders which give existing shareholders an opportunity to buy shares whenever there is an intention to sell to another party.²⁹
2. **Validating Transfer Documents:** According to section 171(1) of the Companies and Allied Matters Act (CAMA) 2020, any transfer of shares would be null and void, unless paired with an accompanying transfer document. This document is evidence of the transaction made by a transferor (seller) and a transferee (buyer) of the share or shares in the case of more than one. Both parties then, make sure that all provisions of the law, including the payment of stamp duty are complied with.³⁰ The board also checks the profile and status of the transferee to safeguard the company's policies and laws. For example, a company may buy back its shares from the market and set limits for who may be eligible to get the shares from them identifying issues such as policy, antitrust, etc.
3. **Registering the Transfer:** After the transfer of shares has been sanctioned, the directors will be responsible for the amendment of the company's membership

²⁷CAMA 2020, Section 22(2)

²⁸ CAMA 2020, Section 176(2)

²⁹ CAMA 2020, Section 22

³⁰ CAMA 2020, Section 171(1)

registers in compliance with section 120(1) of CAMA 2020. This register states the name of the new registered member, the shares transferred and the date of the transfer. The amended register doubles up as a certificate of ownership and guarantees the recognition of the transferee's rights as a member including all voting rights and dividend entitlements.³¹ The board is also required to initiate amendments to the company's share certificate that the new member needs to prove ownership. If a transfer has not been registered legally, this exposes the company to the risk of prosecution.³²

4. **Oversight of Restrictions on Transfers:** Regarding privately owned companies, CAMA 2020 states that in order to preserve the closed nature of the company, the shares might be encumbered. Such measures are generally contained in the company's articles of association or in a shareholders' agreement and the board of directors also ensures that such measures are complied with.³³ Such restrictions may also include prohibiting the transfer of shares unless the transfer has been approved of by the board, or requiring that any share that is to be transferred must first be offered to the existing shareholders. Their relationship is that where the company is public the board of directors also has the responsibility to ensure compliance with the law or its provisions, for instance, the rules on the trading of securities and Securities and Exchange Commission (SEC) guidelines, especially if the company's shares are listed on a stock exchange.
5. **Dispute Resolution:** In case of conflict concerning the transfer of shares, the board of directors is of utmost importance in such dispute's resolution. For example, a dispute may arise if the transferor objects to the decision of the board of directors to refuse registering the transfer. In such instances, they can be adjudicated by arbitrators or courts as specified in the articles of association of the company or law in force. The concern of the board of directors in such cases helps to ensure that the rights of shareholders are not wrongly infringed and prevents the company from suffering the negative effects of improper transfers.
6. **Fiduciary Responsibility:** The members of the board of directors owe a fiduciary duty to the corporation and its shareholders in the course of their dealing with share transfers. They have a duty to ensure that the system is transparent, equitable and in accordance with the law so as to safeguard the soundness of the company's governance structure. For instance, the board should refrain from passing resolutions approving transfers which would endanger the company, such as letting a rival take a large interest, or refusing to lift restrictions on a potential hostile takeover. Such decisions in this respect must

³¹ CAMA 2020, Section 120(1)

³² CAMA 2020, Section 98

³³ CAMA 2020, Section 22

remain subordinate to the directors' primary responsibility of protecting the interests of shareholders and monitoring corporate governance behaviour.³⁴

Section 139 of CAMA 2020 provides that the shares of a member in a company are personal property transferrable in the manner provided in the articles of association of the company. The general right to transfer may be restricted by the articles or by statute.

Role of the Board in Facilitating Transfers

A company's board consists of individuals elected or appointed to manage the affairs of the company. The members of a company's board usually include: Chairman of the Board, Executive Directors, Non-Executive Directors, and Independent non-Executive Directors.

A company's board plays an extremely pertinent role in the facilitation of share transfer. The board is accountable for overseeing and facilitating the transfer of shares. The approval of the board is a crucial step in the transfer of shares process. The board of directors must formally assess and approve share transfer proposals, thereby, ensuring compliance with legal requirements and strategic objectives.³⁵ The responsibilities of the Board Directors include:

1. Approving share transfers: It is mandatory for the board to approve all share transfers. The board must ensure that they comply with the company's articles of association, as well as other applicable laws Section 142(1) of CAMA 2020 provides for the pre-emptive rights of the existing shareholders of a company. Thus, no share of the company can be transferred to a non-member unless no member can be found to purchase them at a fair price. Thus, the directors in approving transfer of shares must ensure that the due process of the articles of association and the CAMA have been complied with. Where a member does not comply with this provision, and attempts to transfer his shares without first offering the shares in question to the already existing members, the board of directors will not approve such transfer.³⁶ They will be well within their rights and duties to refuse such contravening transfer. Thus, the Board ensures that the transfer must comply with the applicable provisions of the relevant regulations, which is in this case, the Articles of Association of the Company and the CAMA 2020. The Board reviews and approves share transfer through meetings and resolutions.

³⁴AOC Solicitors, *Fiduciary Duties of Boards Of Directors In A Company; Need For Strict Adherence And Compliance*, 2024, accessed at <<https://aocsolicitors.com.ng/fiduciary-duties-of-boards-of-directors-in-a-company-need-for-strict-adherence-and-compliance/>>

³⁵ Olakunle Orojo, *Company Law and Practice in Nigeria* (Ikeja, Sweet & Maxwell, 2nd edition, 1984) Pp 68-75

³⁶Hammer v. Werner [1933] 239 App. Div. 38; Ocean Coal Co Ltd v Powell Duffryn Steam Coal Co Ltd [1932] 1 Ch 654.

2. **Maintaining the Company's Share Register:** The board is responsible for maintaining the company's share register, which records all share transfers and ownership changes. It is the duty of the board to see to it that the share register is updated to reflect any adjustments in ownership because of percentage transfers.
3. **Issuing New Share Certificates:** Upon approval of transfers, the Board is responsible for issuing new share certificates to the transferee and canceling the old ones. Section 171(1) of CAMA 2020 mandates that a company must within two months after the allotment of any of its shares and within three months after the date on which a transfer of any such shares is lodged with the company, complete and have ready for delivery the certificates of all shares allotted or transferred, unless the conditions of issue of the shares otherwise provide. The Act in explaining the importance of this certificate, further provides that the certificate is *prima facie* evidence of the title of the member to the shares.³⁷
4. **Safeguarding Company Interests:** The board of directors must at every point act in good faith and in the best interest of the company. They must ensure that share transfers do not jeopardise the company's operational stability and integrity.³⁸ Thus, where a share transfer will be against the interests of the company, the directors may rightfully disapprove of such transfer.
5. **Compliance with Regulatory Frameworks:** Companies must comply with other legislative requirements when transferring shares. It is the duty of the board of directors to ensure that in the transfer of shares process, there is the due compliance with regulations such as obtaining necessary approvals, filing forms with the Corporate Affairs Commission.

4.2 The Power of the Board of Directors to Refuse Transfer

In assessing the role of the board of directors in facilitating the transfer of shares, the power to refuse transfer becomes very relevant. Directors have a general discretion to refuse a share transfer.

The power of the board of directors of a company to restrict the transfer of shares may be exercised in appropriate cases. Section 176(3) of CAMA 2020 provides thus "...the company may refuse to register the transfer of a share (not being a fully paid share) to a person of whom they do not approve, and may also refuse to register the transfer of a share on which the company has a lien." The company may also refuse to recognise any instrument of transfer unless the appropriate fee is paid and the instrument is accompanied by sufficient evidence of title and the instrument is in

³⁷ CAMA 2020, Section 172(1)

³⁸ Re Bell Bros ex parte Hodgson [1891] 65 LT 245

respect of only one class of shares.³⁹ On the other hand, section 22(2) provides that “every private company shall by its articles restrict the transfer of its shares.”

Notwithstanding that the directors may have the discretion whether or not to register a transfer, they must act *bona fide*⁴⁰ and not oppressively or for any other *mala fide* reason.⁴¹ The implication of this is that where in the exercise of this discretion, the directors refuse to register a transfer, the Court will not interfere unless they did not act *bona fide*.⁴²

Section 177(1) mandates that where a company refuses to register a transfer of any share, it shall within two months after the date on which the transfer was lodged, send notice of the refusal to the transferee.

Instruments of transfer

By virtue of Section 175(1) of CAMA 2020 the transfer of a company’s shares shall be by instrument of transfer and except as expressly provided in the articles, transfer of shares shall be without restrictions, and instruments of transfer shall include electronic instrument of transfer. An Instrument of Transfer is simply a legal document used to formally transfer the ownership of shares or securities from one party to another. CAMA 2020 allows a company’s board of directors the discretion to determine the type of instrument to be used for transfer of shares provided that any such instruments for transfer will include an electronic instrument of transfer – this means that the board of directors cannot exclude an e-transfer instrument, under CAMA 2020.

5.0 Exceptions to Transfer Restrictions

Under the CAMA 2020, the restrictions to the transfer of shares are concerned majorly with private companies, section 22(2) a private company may or may not restrict transfer of its shares. However, when restricted certain exceptions come in.

1. Right of First Offer: The Articles of Association of private companies is to include a restriction clause and a pre-emption clause. A pre-emption clause is the right that members of a company to the transfer of shares, this means that the articles of association provides that no shares is to be transferred to a non-member unless no member of the company is willing to purchase the shares at a fair price. This means that any member who wants to sell his shares must first offer the shares to the already existing members. Section 22(2) establishes a statutory right of first offer. Similar to this section is section 142 CAMA 2020, which highlights the pre-emption clause. It states that a company shall not in any event

³⁹ CAMA 2020, Section 176(4)

⁴⁰Ferris George and Sons Ltd v Khoury [1965] 1 All NLR 9; Re Gresham Society [1872] LR 8 Ch 446; Re Smith Fawett Ltd [1942] Ch 304.

⁴¹ n1

⁴² Re Coalport China Co [1895] 2 Ch 404

allot newly issued shares unless they are offered in the first instance to all existing shareholders of the class being issued in proportion as nearly as may be to their existing holdings.

In *Berry and Stewart v Tottenham Hotspur FC Ltd*⁴³ the principle of first offer was reiterated when Beery wanted to transfer shares to Stewart and the directors refused to approve the transfer for no reason which the court approved of. If the shares have been offered to existing members and they refuse to buy them, then the shares may be sold to outside because the first offer has been refused.

2. Involuntary transfers or Transmission of shares: ⁴⁴Shares may be transferred to a deceased heirs or legal representatives in situations like death or bankruptcy without adhering to the standard transfer procedures. A smooth transfer of ownership is made possible by the legal representatives' ability to act on behalf of deceased shareholders. This transmission is a legal right only when the shares are validly transferred to those entitled under the will. It is the duty of the personal representatives to ensure the legal beneficiaries of the will are those who the shares get transferred to according to Section 179(3) CAMA 2020. Any person who claims an interest must serve the company an affidavit indicating his interest according to Section 180 of the CAMA.
3. Court Orders: Transfers mandated by the court (in bankruptcy or insolvency proceedings) are moreover excluded from commonplace restrictions. Such orders can uphold share transfers notwithstanding of preemptive rights or board endorsements. A court may mandate the sale of a shareholder's shares if they are unable to pay their debts or are embroiled in legal issues. This might assist in paying off debts or resolving disputes inside the business. See the case of *Timothy Adu v. United Bank for Africa Plc (2024)*⁴⁵

5.1 Impact of Restrictions on Shareholders Liquidity and Rights .

What does Shareholder's Liquidity mean?

Liquidity refers to the ease with which assets can be converted into cash without affecting the market value. It is an important characteristic and a risk to bear in mind as it affects an investor's ability to access their funds quickly and without any significant loss.

Shareholders Liquidity then refers to the ease with which shareholders buy or sell shares without any significant effect on the stock's price.

⁴³ [1935] CH.718

⁴⁴ CAMA 2020, SECTION 179(1)

⁴⁵ NICN/AK/12/2024

Under the Companies and Allied Matters Act, 2020, restrictions on shareholders liquidity can significantly affect decision making and investment behavior in the following way;

Comprehending CAMA 2020's Liquidity Restrictions

Private firms:

According to Section 22,⁴⁶ private firms' articles of association shall limit the transfer of shares. Although control over the ownership structure is guaranteed, shareholder liquidity is constrained.

Share sales may be delayed or prevented by lock-up periods, pre-emption rights, and the requirement for board or shareholder approval.

Public Companies:

Despite being less stringent, CAMA's insider control and corporate governance rules may nonetheless have an impact on liquidity

It is important to note at this juncture, though, share transfers are usually free, liquidity may be indirectly impacted by other variables (such as required disclosure laws and insider trading legislation).

Effect on the Decision-Making of Shareholders Liquidity constraints may affect how shareholders participate in company governance and approach investments

Long-Term Commitment: Because it might be challenging to sell an investment, shareholders may be compelled to take a long-term view. Although it might deter potential investors who value flexibility, this could result in a greater interest in the company's performance and governance. A greater number of lawsuits under provisions like Section 353⁴⁷ (remedies for oppressive or unfairly prejudicial acts) may result from restrictions that marginalise minority shareholders by making it more difficult for them to leave in the face of oppressive decisions or subpar management practices.

Corporate Action Decision-Making:

Shareholders may vote in support of corporate actions (such as mergers or acquisitions) even though they do not necessarily agree with them. Effect on Financial Assets Liquidity constraints have a direct impact on shareholder behaviour and the appeal of company investments:

⁴⁶ CAMA 2020, section 22

⁴⁷ CAMA 2020, section 353

a. Decreased Marketability of Shares: Private companies that are subject to rigorous Section 22⁴⁸ share transfer limitations may find it difficult to draw in outside investors, particularly institutional ones, because of the restricted exit alternatives. This could have an impact on the company's capacity to generate funds. Illiquid shares are frequently lowered in valuation exercises, which deters potential investors from purchasing them.

b. Investor Profile: Limitations discourage short-term, high-frequency traders but draw in investors who are more tolerant of illiquidity, such as venture capitalists or family-owned business owners.

Effect on Mergers and Acquisitions: Limited share transfers may make due diligence or discussions more difficult because new investors can ask for more guarantees or payment to make up for the lack of liquidity.

Legal Protections for Shareholders Under CAMA 2020 includes numerous strategies to alleviate the harmful consequences of liquidity restrictions:

Section 142⁴⁹ outlines Pre-emptive Rights, which provide existing shareholders with the first right of refusal when new shares are issued, preventing their holding from being diluted

Minority Protection Remedies: Sections 349-351⁵⁰ enable minority shareholders to take derivative proceeding against oppressive conduct, including unreasonable limits imposed by the majority.

Share Buy-Back Provisions (Section 184)⁵¹: Companies can repurchase their shares, giving shareholders an escape option in certain conditions.

Section 1028⁵² promotes alternative dispute resolution (ADR) to quickly address shareholder concerns, including those related to liquidity constraints.

Restrictions on shareholder liquidity and rights under CAMA aim to balance corporate stability with shareholder protection. While they can foster long-term commitment and protect the company's integrity, they can also limit flexibility, discourage investment, and marginalize minority shareholders. Legal remedies under CAMA, such as buy-back provisions and minority protection mechanisms, provide some recourse but require careful enforcement to maintain a fair balance.

⁴⁸ CAMA 2020, section 22

⁴⁹ CAMA 2020, section 142

⁵⁰ CAMA 2020, section 349-351

⁵¹ CAMA 2020, section 184

⁵² CAMA 2020, section 1028

6.0 Conclusion

The laws and procedures controlling the transfer of shares from one shareholder to another are referred to as share transfer rights under the Companies and Allied Matters Act (CAMA) 2020. Within the parameters of corporate governance, these rights and processes guarantee openness and adherence. Transfer of shares is the procedure by which ownership of shares is passed from one person to another. Transfers might be nominal (to a family member or one's own business entity) or for consideration (selling to an outsider for cash).⁵³ If a shareholder passes away, his titles pass to his legal agent, who will be entitled to the same rights as the shareholder.⁵⁴

Sections 175 - 181 of CAMA 2020 provides for the Transfer and Transmission of Shares of a company. Section 175 states that company's shares can be transferred without restrictions, including electronic instruments. However, a company must deliver a proper instrument of transfer to register a share transfer, unless otherwise stated.⁵⁵ The transferor and transferee execute the transfer instrument, and the transferor remains a holder until the transferee's name is entered in the member register.⁵⁶ Members can transfer shares in writing, subject to company articles' restrictions.⁵⁷

Section 176 says that the company must enter the name of the transferee in its register of members when transferring shares, including electronic registers. The transferor remains the holder until the transferee's name is entered. The company can refuse to register shares not fully paid to someone they don't approve or share with a lien. The company can refuse to recognize transfer instruments unless a fee is paid, the instrument is accompanied by a certificate, and it's for one class of shares.

Section 177 provides that a company must notify the transferee within two months of a refusal to register a share transfer. If a company fails to comply, it and its officers may face penalties specified by the Commission. A transfer of a deceased member's share or interest made by their personal representative is valid as if the representative was a member at the time of the transfer.⁵⁸

Section 179 addresses transmission of shares. In the event of a member's death or bankruptcy, the survivor or legal representative is the only recognized person with any interest in the shares. However, the estate of a deceased joint holder is not

⁵³ Jan Law Nnyeruka, Felix Amadi & Chidi Halliday, Shareholders' Rights & Obligations Under the Companies and Allied Matters Act (2019)
<https://www.researchgate.net/publication/332291667_SHAREHOLDERS'_RIGHTS_OBLIGATIONS_UNDER_THE_COMPANIES_AND_ALLIED_MATTERS_ACT> accessed 8 December 2024

⁵⁴ *ibid*

⁵⁵ CAMA 2020, Section 175 (1) and (2)

⁵⁶ CAMA 2020, Section 175 (3)

⁵⁷ CAMA 2020, Section 175 (4)

⁵⁸ CAMA 2020, Section 178

released from liability for jointly held shares. A person entitled to a share can elect to be registered as holder or have a nominated person registered as the transferee, but the company has the right to decline or suspend registration. They are entitled to the same dividends and advantages as registered holder, but not the right to attend company meetings. Directors may require compliance within 90 days.

Section 180 aims to protect the beneficiaries of a share in the sense that individuals interested in shares, dividends, or interest can protect their interests by serving a notice to the company. The company must register the notice on the member register and not register any shares contrary to the notice until 42 days' notice expires. If the company fails to comply, it must compensate any affected person.