Cancellation of Unissued Share Capital of Companies

March 2022

Introduction

Pursuant to the Companies and Allied Matters Act ("CAMA") 2020, the requirement for companies to have an 'authorized share capital' has been replaced with '*minimum issued share capital*' principle.

Section 124 of CAMA 2020 which replaces section 99 of CAMA 2004 provides that no company shall have a share capital which is less than its minimum issued share capital and requires that every company with unissued shares, must not later than six (6) months from the commencement of CAMA 2020, issue shares up to an amount not below its minimum issued share capital

The Corporate Affairs Commission ("CAC") has interpreted the provisions of section 124 to mean that all companies (new and existing) can only have issued share capital; and mandated all companies to issue all their unissued shares not later than 31 December 2022.

Following the CAC's directive, the options available to existing companies to ensure compliance with the directive to issue all unissued shares before the deadline are as follows:

I. Bonus issue or rights issue to existing shareholders

II. Issuance of the unissued shares to new shareholder; and/or

III. Cancellation of the unissued shares.

In the event the unissued shares will not be issued and allotted to existing or new shareholders it is advisable for companies to cancel the unissued shares. The CAMA 2020 does not specify a process for the cancellation of unissued shares. The CAC in 2021 provided guidance via a public notice dated 16 April 2021, where it advised that companies may comply with the minimum issued share capital requirement by reducing their share capital to the amount of their unissued shares.

Based on this, we note that the general market understanding was that share capital reduction to cancel unissued shares was one of the options considered by companies to comply with the CAMA 2020 requirement.

In a recent CAC stakeholder meeting with the banking sector, the CAC has now clarified its position further, and has said that the reduction of share capital will not be a suitable solution for companies to adopt to comply with the requirement of CAMA 2020 on unissued shares as the unissued shares have no effect on the proprietary rights of the existing shareholders of the Company. The CAC has now formally confirmed to us that companies may cancel their unissued shares by ordinary or special resolution of their shareholders at a general meeting without the need for a court order. The resolution to be adopted for the cancellation of the unissued shares will depend on the type of resolution used to effect the increase of the share capital.

We note that the procedure for reduction of share capital as provided under section 131(1) of CAMA is with respect to "*issued share capital*" which clearly does not apply to "unissued shares". Thus, the procedure for share capital reduction should not be adopted for the cancellation of unissued shares under the CAMA 2020 regime. We understand the CAC position to mean that to the extent that the shares have not been issued or allotted and paid up, there is no ownership or proprietary interest in the shares and same can be cancelled by resolution of members. No court order or special resolution (as in the case for reduction of share capital) is required.

Hence, companies (both private and public) intending to cancel their unissued shares, in compliance with the CAC directive, may do so by passing an ordinary or special resolution (as the case may be) approving the cancellation of the same.

For further information click here

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