

Is Nigeria's Corporate Affairs Commission (CAC) Serious about Online Company Registration?

ABSTRACT

Nigeria's Corporate Affairs Commission requires promoters of companies to submit hard copies of incorporation documents which must have been physically signed before the certificate of incorporation can be released. This article argues that such a requirement is an administrative bottleneck which defeats the objective of online company registration.

KEYWORDS: Company registration, Electronic signatures, Corporate Affairs Commission (CAC), Online registration.

Introduction

Nigeria recently introduced her e-registration system which allow company promoters register companies online.¹ The process is meant to be fully online and accepts electronic signatures of directors and subscribers at the registration stage. The dilemma however is that on completion of the registration, the Corporate Affairs Commission (hereinafter referred to as the Commission/CAC) requires promoters to submit hard copies of the incorporation documents which must have been physically signed. Electronic signatures on such documents are unacceptable.² This article argues that such requirements constitute a bureaucratic bottleneck in the company registration process, is a disincentive to doing business in Nigeria and defeats the entire purpose of the e-registration system.

Technology and Company Registration in Nigeria

In September 2014 the Commission set up the Company Registration Portal (CRP), an online registration portal aimed at easing the registration process.³ It was designed to deliver 100% online

¹ Abubakar Ismail, 'The Gradual Transformation in CAC', *Thisday* (online), 20 July 2017 <https://www.thisdaylive.com/index.php/2017/07/20/the-gradual-transformation-in-cac/>.

² Corporate Affairs Commission, CAC E-Signature Response, <https://drive.google.com/file/d/1tRnsRFPRaxqZj8X5CD0IVqJanfm6f4ym/view?usp=sharing>, accessed 9 January 2019.

³ Ahmadu Ibrahim, CAC's CRP and Ease of doing business in Nigeria, *Thisday* (Online), (7 February 2018) <https://www.thisdaylive.com/index.php/2017/06/15/cacs-crp-and-ease-of-doing-business-in-nigeria/>. See also, eSignature Industry, *Electronic Signatures vs Digital Signatures...What's the Difference?* AssureSign, (7 February 2018) <https://www.assuresign.com/electronic-signatures-vs-digital-signatures/> where it was noted that 'For most people, electronic signature is the best choice and the most viable option for saving time and money...

registration thereby creating an enabling environment for economic growth and easing the burden placed on directors and subscribers who prior to this had to manually sign documents.⁴

Regulations 5 and 11 of the Company Regulation provides the legal basis for the online portal. Regulation 5(2) states that 'the Commission may accept documents in electronic form, and may determine the requirements, including any requirements in respect of signature, that apply in respect of documents provided in electronic form.'⁵ Regulation 11 states that 'documents may be delivered to the Commission for filing by electronic means.'⁶ The combined effect of both regulations is the provision of the legal framework for the introduction of electronic signatures into the company registration process in Nigeria. This no doubt was laudable and would ease the cost and time of registering a business in Nigeria. The current challenge is an administrative one that appears to be based on the misinterpretation of regulation 11(2) which requires that original copies be submitted.

Reg 11(2) notes that

'where documents are delivered to the commission for filing by electronic means, evidence of payment of statutory fees must be disclosed by electronic means also and original copies of such documents shall be delivered to the Commission not later than 7 days of delivery of the electronic copy.'

When regulation 11(2) requires the submission of original copies, what exactly constitutes original copies in the online process? Is it the copy on the customers system, or the one on the Company Registration Portal, or is it a copy that is printed out in color? Although the Commission believes it has gone 100% online, it will not give out the certificate of registration to the customers if they do not hand over a hard copy of the incorporation documents which show the manual signatures of the directors and subscribers.⁷ This practice is against the spirit of the regulation as it does not ease the process of registering companies and doing business in Nigeria.

How can the Commission require submission of hard copies, when the process of filling, signing, stamping and submission is done online (electronically/digitally)? In the manual era, the documents would be printed out or typed out and signatures had to be signed physically. No provisions were made for electronically signed documents in the manual era so that process was understandable.

⁴ Abubakar, above n 1.

⁵ *Companies Regulation 2012* (Nigeria) Reg 5(2)

⁶ *Companies Regulation 2012* (Nigeria) Reg 5(2)

⁷ Corporate Affairs Commission, CAC E-Signature Response, <https://drive.google.com/file/d/1tRnsRFPRaxqZj8X5CD0lVqJanfm6f4ym/view?usp=sharing>, accessed 9 January 2019.

However, the online regime is hinged on electronic processes in which electronic signatures are intrinsically part and parcel of the registration process. How then can hard copies of the originals be required?

The combined effect of Reg 5 & 11(2) of the *Company Regulation*;⁸ Sections 3 & 4 of the *Electronic Transaction Bill 2015*⁹ as well as Sections 93, 84 and 34 of *Nigeria's Evidence Act*¹⁰ which provide for the admissibility of electronic signatures is not only legal justification for the use of electronic signatures in Nigeria but is also proof that electronic versions of documents are original copies.¹¹ The United Kingdom Law Society Company law and Financial Law Committees states that

“Unless there is a legal requirement to the contrary, it is possible to have originals of the same document in both hard copy and electronic form. Where a document has been executed electronically, there is no need for an additional wet ink version to be created. Where a document has been executed using a combination of electronic and wet ink versions, a composite version may be created, and this will be accepted by the English courts. If an original version of a document executed electronically is required to be produced in evidence, the court will accept an electronic version or a hard copy print out.”¹²

Interpreting Reg 11(2)¹³ which provides for the submission of original copies, as submission of physically signed copies, defeats the purpose, purport and the spirit of the regulation. Nigeria can learn from the UK where company registration applications can be done online or offline. The UK like Nigeria requires signature at the incorporation stage. The great thing about the online registration process in the United Kingdom is that physical signature is not a requirement. The UK system recognizes electronic signatures and provides alternative means for authentication. Instead of physical signature, three items of personal information can be provided for authentication purposes. The Act provides a list of seven personal information from which any three can be picked. The seven- personal information are as follows:

- i. Town of birth
- ii. Last three digits of telephone number
- iii. Last three digits of National Insurance number

⁸ *Companies Regulation 2012 (Nigeria) Reg 5(2)*

⁹ *Cybercrimes (Prohibitions, Prevention ETC) Act, 2015 (Nigeria)*

¹⁰ *Evidence Act 2011 (Nigeria)*

¹¹ Walker Morris, 'Law Society practice note on execution of a document using an electronic signature' <https://www.walkermorris.co.uk/publications/brief-walker-morris-legal-update-september-2016/law-society-practice-note-execution-document-using-electronic-signature/>.

¹² Ibid

¹³ *Companies Regulation 2012 (Nigeria)*

- iv. Last three digits of Passport number
- v. Mother's maiden name
- vi. Eye Colour
- vii. Fathers first name.¹⁴

Conclusion

There is no reason why the Corporate Affairs Commission cannot emulate the UK and adopt a 100% online company registration process where physical signature is no longer required. It is of course important that the technology or method for authentication must align with statutory prescriptions. But as the saying goes, where there's a will there's a way.¹⁵ The current challenge is not the inability to scrap off physical signature but rather the unwillingness to do so and the fact that bureaucrats have been caught in the web of the old model.¹⁶ The need to make the mental and model shift is well overdue.¹⁷

Nigeria in my view is already set for the online registration process and has indeed commenced it. What is required of CAC is to make the mental and model shift from the old physical signature model to the new electronically enabled model which already accepts electronic signatures. In doing this, CAC should no more interpret reg5(2)¹⁸ and reg 11¹⁹ as requiring hard copies of the incorporation documents with physical signature by directors and subscribers. Rather it should interpret reg 5²⁰ as providing for the use of electronic signatures.²¹ If CAC is concerned about authenticating ownership at the point of collection, it may choose to post the completed incorporation documents directly to the registered address indicated on the registration documents. This is what currently obtains in

¹⁴ Companies House, 'About the Web Incorporation Service', (7 February 2018) <https://ewf.companieshouse.gov.uk/help/en/stdwf/webIncHelp.html#aboutWebInc>. See 8.3 on What information do I need to supply for each subscriber.

¹⁵ Harrington Anna, 'Where there's a will, there's a way' (2012) 64(3) *Occupational Health* 27.

¹⁶ Felix Ritchie, Resistance to change in government: risk, inertia and incentives, <https://www2.uwe.ac.uk/faculties/BBS/BUS/Research/Economics%20Papers%202014/1412.pdf>, accessed 9 January 2019.

¹⁷ Brian Martin, Sharon Callaghan & Chris Fox, Challenging Bureaucratic Elites, http://www.bmartin.cc/dissent/documents/Schweik_cbe/, accessed 9 January 2019

¹⁸ *Companies Regulation 2012* (Nigeria)

¹⁹ *Companies Regulation 2012* (Nigeria)

²⁰ *Companies Regulation 2012* (Nigeria)

²¹ Broida Rick, 'Find digital copies of your user guides: why depend on hard-to-organize hard-to-find paper manuals when you can store a library of electronic versions on your PC or tablet? (HASSLE-FREE PC)' (2012) 30(6) *PC World* 92.

Australia and the United Kingdom.²² This will also reduce the bottleneck involved in collection of registered documents.

²² Australian Securities Investment Commission (ASIC), Steps to register a company, <http://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/#after-registered>.