

# **SPECIAL NOTICE UNDER THE COMPANIES AND ALLIED MATTERS ACT 2020: *PROCEDURAL SAFEGUARD OR STRATEGIC GOVERNANCE TOOL?***



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## INTRODUCTION

The Companies and Allied Matters Act 2020 (“CAMA 2020”) significantly recalibrated Nigeria’s corporate governance framework. Among its often-overlooked—but strategically significant—provisions is the requirement for Special Notice for certain resolutions.

In high-stakes corporate environments, timing is power. While frequently treated as a procedural formality, Special Notice is in fact a substantive governance safeguard and strategic lever. It protects shareholder rights, ensures due process for directors and auditors, and mitigates the risk of ambush resolutions capable of destabilising corporate leadership.

This article examines the statutory framework, compliance obligations, and practical implications of Special Notice under CAMA 2020.

### 1. THE LEGAL FRAMEWORK AND GOVERNANCE RATIONALE

Section 261 of CAMA 2020 provides that where special notice is required for a resolution, the resolution shall not be effective unless notice of the intention to move it has been duly given to the company.

It is important to distinguish Special Notice from a Special Resolution. The former relates to the requirement of advance notice by a member proposing certain resolutions. It does not alter the voting threshold applicable to the resolution itself. A resolution requiring Special Notice may still be passed as an ordinary resolution, provided the statutory notice requirement has been satisfied.

The statute mandates that such notice must be delivered at least 28 days before the general meeting at which the resolution is to be considered.

The resolutions subject to Special Notice are not routine administrative matters. They typically concern issues that directly affect corporate control, board composition, or audit matters.

### 2. WHO ISSUES A SPECIAL NOTICE?

A critical point of clarification is that a Special Notice is **not issued by the company**.

It is issued by a member (shareholder) proposing the resolution. The shareholder must submit the notice to the company (or the company secretary) not less than 28 days before the meeting.



The company's role is reactive, not initiatory. Upon receipt, it must comply with statutory obligations relating to convening the meeting and notifying members. In practice, this structure positions Special Notice at the intersection of shareholder activism and board governance. While it empowers members to initiate significant corporate action, it simultaneously ensures that such action is subject to disciplined procedural safeguards.

### **3. RESOLUTIONS REQUIRING SPECIAL NOTICE**

Under CAMA 2020, a Special Notice is required in the following instances:

#### **(a) Removal of a Director – Section 288**

- Removal of a director before expiration of tenure; and
- Appointment of another person in place of the removed director.

The removal of a director is one of the most consequential shareholder actions. The Special Notice mechanism ensures procedural fairness and guards against surprise removal.

#### **(b) Appointment of Director Aged 70 or Above – Section 282 (Public Companies)**

In the case of a public company, the appointment of a person who has attained the age of 70 years requires Special Notice.

This reflects heightened governance scrutiny applicable to public interest entities.

#### **(c) Auditor-Related Resolutions – Section 411**

Special Notice is required for:

- Appointing a person other than a retiring auditor;
- Filling a casual vacancy in the office of auditor;
- Reappointing a retiring auditor originally appointed by directors to fill a casual vacancy; and
- Removing an auditor before expiration of term.

Given the auditor's independence and oversight function, these additional safeguards reinforce transparency and accountability.



#### 4. CONTENTS OF A VALID SPECIAL NOTICE

Although CAMA does not prescribe a rigid template, best practice dictates that a Special Notice should include:

- Date of the notice;
- Full details of the requisitioning member;
- The exact wording of the proposed resolution;
- Proposed meeting date (at least 28 days away);
- Age of any director proposed for appointment (where applicable); and
- Relevant supporting documentation.

Ambiguity in drafting may expose the resolution to procedural challenge.

#### 5. COMPANY'S OBLIGATIONS UPON RECEIPT

Upon receipt of a valid Special Notice, the company must:

##### (a) Convene the General Meeting

The meeting must be called in the same manner as general meetings are ordinarily convened.

##### (b) Notify Members of the Resolution

Notice of the proposed resolution must be given to members at the same time and in the same manner as notice of the meeting.

Where impracticable, notice may be given:

- By advertisement in a newspaper of appropriate circulation; or
- In any other manner permitted by the company's articles,

provided such notice is given at least **21 days before the meeting**.

Non-compliance may expose the company to litigation risk or invalidate corporate actions.



## **6. RIGHTS OF DIRECTORS AND AUDITORS FACING REMOVAL**

Where the Special Notice concerns removal of a director or auditor, the company must immediately notify the affected individual.

The affected director or auditor has the statutory right to:

- Make written representations (of reasonable length); and
- Request circulation of such representations to members.

If received in time, the company must:

- State in the meeting notice that representations have been made; and
- Send a copy to every member entitled to receive notice of the meeting.

If circulation is not feasible due to late receipt or company default, the affected individual may require that the representations be read out at the meeting, without prejudice to the right to be heard orally.

## **7. JUDICIAL OVERSIGHT: PROTECTION AGAINST ABUSE**

CAMA 2020 (see section 288) recognises that representation rights may be abused to secure defamatory publicity.

Accordingly, the company may apply to the courts for an order preventing the circulation or reading of representations where it can demonstrate that the rights are being used improperly.

This judicial safeguard preserves the balance between procedural fairness and reputational protection.

## **8. EFFECT OF DELAY IN CONVENING MEETING**

Failure of the company to call the meeting within 28 days of receiving the Special Notice does not invalidate the meeting subsequently held.

However, undue delay may raise governance concerns and potentially expose directors to allegations of breach of fiduciary or statutory duties.

## **9. PRACTICAL CONSIDERATIONS FOR BOARDS AND COMPANY SECRETARIES**

For boards and governance professionals, Special Notice demands:



- Immediate internal escalation upon receipt;
- Careful validation of statutory timelines;
- Strict adherence to notice requirements;
- Prompt notification of affected directors or auditors; and
- Legal review of representations prior to circulation.

From a risk management perspective, documentation and procedural compliance are critical in mitigating post-meeting disputes.

## **CONCLUSION**

Special Notice under CAMA 2020 is far more than a procedural formality. It is a calibrated governance mechanism designed to balance shareholder power with institutional stability.

For shareholders, it represents a legitimate and strategic tool for influencing corporate direction. For boards and governance professionals, strict procedural compliance is essential to preserve the validity of resolutions and mitigate litigation exposure.

In contested and high-stakes environment, Special Notice often becomes the first procedural checkpoint, and sometimes the decisive one. Mastery of its requirements is therefore indispensable in Nigeria's increasingly sophisticated corporate governance landscape.