

STREAMLINING BUSINESS PROCESSES AND REPOSITIONING THE NATION FOR INCLUSIVE ECONOMY PARTICIPATION - HIGHLIGHTS OF AMMENDMENTS TO THE COMPANIES & ALLIED MATTERS ACT

Nigeria currently ranks 121 out of 190 in the World Bank's ease of doing business index, a position which reflects amongst other parameters, the strain encountered by business owners, investors and others whilst navigating through the Nigerian economic value chain. This position is also a reflection of somewhat difficult procedures encountered by business owners in setting up businesses in Nigeria, operating already established businesses, obtaining permits, getting credits and effectively navigating through the tax system and is often responsible for the low inflow of investment, capital flight and other anti-progressive trends. Riding on the heels of this abysmal position and the need to re-position Nigeria to assume its rightful place in global economic landscape, the current administration established the President Enabling Business Environment Council (PEBEC), with the mandate to, amongst others, remove all administrative hurdles and encumbrances that hinder the smooth and efficient conduct of business in Nigeria. However, by far and perhaps the most important step taken towards actualizing the objectives of PEBEC is the recent bold initiative of the Senate of the Federal Republic of Nigeria in repealing the Companies and Allied Matters Act, Cap C20, LFN 2004 (CAMA) and re-enacting a business -friendly Act.

The new Bill enacted by the Senate is seen as a demonstration of government's desire to stimulate economic prosperity.

Key highlights of the Bill are as follows:

ONE-PERSON COMPANIES

Arguably one of the most important innovations introduced by the Bill, is the provision for one-person private companies. This provision is an express amendment of the provisions of Section 18(2) of the principal Act which stipulates a minimum of two persons in the formation of a Company. It is expected to boost small and medium scale businesses.

APPOINTMENT OF COMPANY SECRETARY

Contrary to the provisions of Section 293(1) of the principal Act which mandates every company to appoint a Company Secretary, the Bill exempts small companies from appointing a company Secretary. It also provides that where at the commencement of the Act a public has not appointed a Secretary, the Company shall not later than six months thereafter appoint a Secretary.

EXEMPTION FROM AUDIT REQUIREMENT

Unlike the principal Act which requires every Company to appoint an Auditor at each Annual General Meeting, the new Bill exempts small companies (defined in Section 395) or companies that are yet to carry on any business since incorporation, from compulsory audit of their financial statements. However, this exemption shall not apply to an insurance company, a bank or any other company as may be prescribed by the Commission. It is worthy to note that the Bill increased the threshold turnover qualifying an entity as Small Company from N2million as provided in the principal Act to N120million. Furthermore, Section 395 (c), provides that the net asset of such company shall not exceed N60 million naira, up from N1m in the principal Act.

Quote

"If you have ten thousand regulations
you destroy all respect for the law".
- Winston Churchill.

ANNUAL GENERAL MEETING (AGM) AND CONVENING OF MEETINGS VIA ELECTRONIC MEANS.

Unlike the provisions of Section 213 of the principal Act which mandates every Company to hold an AGM, the wordings of Section 238 of the Bill exempt small companies and/or a company having a single shareholder from the mandatory requirement of holding an AGM. Furthermore, Section 241(2) of the Bill allows a private company to hold its general meetings electronically provided that such meetings are conducted in accordance with regulations made by the Commission from time to time.

COMMON SEAL

By the provision of Section 74 of the principal Act, every Company is required to have a common seal. However, Section 98 of the new Bill makes the procurement of a common seal optional by providing that a company may have a common seal but need not have one. It however retains the provisions on the use of the Common Seal for business transactions outside Nigeria.

SERVICE OF NOTICE OF MEETINGS

Section 220 of the Principal Act provides that Notices required to be served under the Act shall be effected by delivering the Notice personally or by post. However, Section 245(3) of the new Bill expanded the medium for the forwarding of notices by providing that notice may be served electronically to any member who has provided the company an electronic mail address.

MINIMUM NUMBER OF DIRECTORS

Whilst Section 246(1) of the Principal Act stipulates a minimum of 2 Directors for every Company, the new Bill exempts small companies from the mandatory requirement of having two Directors.

ELECTRONIC FILING OF DOCUMENTS

In sync with modern realities and to eliminate hurdles often encountered by business owners whilst rendering returns to the Corporate Affairs, the new Bill provides that any document required to be filed with the Commission for registration may be filed electronically and shall be admissible in court if certified by the Commission.

RESUBMISSION OF LOST OR DESTROYED REGISTERED DOCUMENT

To address the incidence of missing registered documents the Bill provides that where the Commission does not have in its file a document which was filed with respect to a business, the business may apply to the RG for leave to file a copy of the document as originally filed at no cost.

LIMITED LIABILITY PARTNERSHIP

One of the most important provisions of the Bill is that providing for the formation of Limited Liability Partnerships. A limited liability partnership is a body corporate separate from its partners with perpetual succession. An individual or corporate body can be a partner except a person of unsound mind or bankrupt person. Every limited liability partnership must have at least two partners.

Quote

"We must never lose sight of the fact that the law has a moral foundation, and we must never fail to ask ourselves not only what the law is, but what the law should be".
- Anthony Kennedy.

CONSENT OF THE ATTORNEY GENERAL OF THE FEDERATION

Contrary to the provisions of Section 26(5) of the Principal Act which require the mandatory consent of the Attorney General of the Federation for the registration of Companies Limited by Guarantee, the new Bill only requires the publication of the Memorandum and Articles of the prospective Guarantee company in three national daily newspapers. The dispensation with the consent of the Attorney General of the Federal effectively removes the bureaucratic red tapes associated with the registration of Guarantee companies, which often take several months to resolve.

MINIMUM AUTHORIZED SHARE CAPITAL

The new Bill has set realistic minimum Authorised Share Capital for companies seeking registration in Nigeria by stipulating a minimum of N100,000 and N2,000,000 for private and public companies respectively, up from the N10,000 and N500,000 provided in Section 27(2) of the principal Act.

MULTIPLE DIRECTORSHIPS IN PUBLIC COMPANIES

Taking a clue from Codes of Corporate Governance, the new Bill has places a cap of five as the maximum number of Directorships an individual can hold in public companies per time after two years of the coming into effect of the Bill.

Quote

"The life of the law has not been logic; it has been reason".
- Oliver Wendell Holmes.

CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS

The Bill mandates the Chief Executive Officer and Chief Financial Officer of a company (other than a small company) or persons performing similar functions to certify that the officer who signed the audited financial statements has reviewed them, and based on the officer's knowledge, the audited financial statements do not contain any untrue statements and that the financial statements fairly present the financial condition and results of the operations of the Company as of and for the periods covered by the audited financial statements.

INDEPENDENT DIRECTOR

The Bill introduces a new Section 276 which provides that a public company shall have at least three independent Directors and defines an independent director as a director of the company who, or whose relatives either separately or together with him or each other, during the two years preceding the time in question was not an employee of the company; and did not make or receive from the company payment more than N20m; own more than thirty percent share or other ownership interest in any entity that made to or received from the company payments of more than the amount stated above.

LIABILITY OF MEMBERS OF A COMPANY LIMITED BY GUARANTEE

Section 27(7) of the principal Act provides that the liability of members of a company limited by guarantee shall be N10,000. However, the new Bill amended this provision by increasing the total liability of a member of a company limited by guarantee to contribute to the assets of the company in the event of it being wound up to a minimum of N100,000.

PENALTIES FOR INFRACTION

Whilst there are instances where specific penalties for violating the provisions of the Bill are specifically provided, the Bill, to a large extent, empowers the Corporate Affairs Commission to determine appropriate penalties or sanctions for default in complying with the provisions of the Act.

CONCLUSION

Whilst the Business Community awaits the consideration and eventual passage of the new Bill by the House of Representative and its assent by the President, it is important that appropriate measures that will ensure implementation of the Bill are consciously articulated. Worthy of note is the requirement for the setting up of an Administrative Proceedings Commission which will be responsible for hearing matters relating to the contravention of the provisions of the Act, resolving disputes and grievances and imposing penalties.



CHINEDU OZOR
LLB, BL, MBA
Head, Immigration, Business & Regulatory Advisory.



YINKA AKINYEMI
LLB, BL
Associate Consultant,
Company Secretarial Unit.

Witty Corner

A doctor and a lawyer are talking at a party.

Their conversation

is constantly interrupted

by people describing their

ailments and asking the doctor for free medical advice.

After an hour of this, the exasperated doctor asks the lawyer,

"What do you do to stop people from asking you for legal advice when you're out of the office?"

"I give it to them," replies the lawyer,

"and then I send them a bill." The doctor is shocked, but agrees to give it a try. The next day, still feeling slightly

guilty, the doctor prepares

the bills. When he goes to

place them in his mailbox,

he finds a bill from the lawyer.

DCSL

DCSL Corporate Services Limited

Lagos: 235, Ikorodu Road, Ilupeju Lagos; Tel: +234 8090381864

Abuja: 1st Floor, The Statement Hotel Plot 1002, 1st Avenue, Off Shehu Shagari Way Central Business District, by Abia House & Federal High Court

Abuja; Tel: +234 8090381864

Email: digest@dcsl.com.ng
info@dcsl.com.ng

Website: www.dcsl.com.ng

Facebook: DCSL Corporate Services Limited

Twitter: DCSL Nigeria

LinkedIn: DCSL Corporate Services Limited

Copyright: All rights reserved. No part of the publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means without the prior permission in writing of DCSL Corporate Services Limited or as expressly permitted by law.

Disclaimer: We invite you to note that the content of this Newsletter is solely for general information purposes only and should in no way be construed or relied on as legal opinion.

Please contact us should you require specific legal advice on any of the topics treated in this publication.