

KEY CHANGES INTRODUCED BY THE COMPANIES AND ALLIED MATTERS ACT 2020

COMPANY FORMATION



**Single Member Company**

The Act now modifies the minimum number of members required to form a private company to one person. **Section 18**



**Number of Directors**

Small Companies<sup>1</sup> are now permitted to have one director. **Section 271**



**Company Secretary**

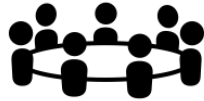
Small companies are now exempted from having a company secretary. **Section 330**



**Memorandum & Articles of Association**

- A company's objects are now unrestricted except expressly restricted by the Articles. **Section 44 (1)**
- Authorized Share Capital has now been removed and replaced with 'Minimum Issued Share Capital'. To this end, a company is now required to include a statement of Initial Issued Share Capital at the point of application for incorporation **Sections 36 (4) and 37 (1)**
- The minimum share capital for a private and public company is now ₦100,000 and ₦2,000,000 respectively.

<sup>1</sup> A small company has now been categorized as a private company with a turnover of not more than ₦120,000,000 and Net Assets of not more than ₦60,000,000 (Section 394)



### Annual General Meeting (AGM)

Small companies and companies having a single shareholder are now exempt from the mandatory requirement to hold an AGM. **Section 237**



### Venue of Meetings

- Small companies and companies with a single shareholder are now exempt from the mandatory requirement to hold their Annual General Meetings in Nigeria.
- Also, private companies are now empowered to hold their general meetings electronically, if permitted by their Articles of Association. **Section 240**



### Notice of Meetings

The Act now expressly provides for service of Notices of Meetings by electronic mail. **Section 244 (3)**



### Classification of Incorporated Trustees

Incorporated Trustees are now to be classified in accordance with their aims and objects. **Section 824**



### Suspension of Trustees & Appointment of Interim Managers

In certain instances, the Commission can now, upon obtaining an order of court to that effect, suspend the trustees of an association and appoint an interim manager to manage the affairs of an incorporated trustee. The court may also appoint additional trustees. **Section 839**



### Power of Commission in respect of the Bank Accounts of Certain Incorporated Trustees

- Banks are now mandated to notify the Commission of the dormant accounts of incorporated trustees, and where the bank has given such a notice, it shall not re-activate such an account without notice to the Commission.
- Upon receipt of such notice, the commission can demand for the evidence of its activities from the incorporated trustees, and if it does not receive a satisfactory response within 15 days, it may dissolve the association. This provision also applies where the Commission is unable to locate a registered association under the Act.
- The Commission may also have the funds standing to the credit of the said association transferred to another association or associations. **Section 842**



### Bi-annual Statement of Affairs by Incorporated Trustees

Incorporated Trustees are now mandated to submit a bi-annual statement of affairs to the Commission. **Section 845**



### Merger of Incorporated Trustees

Incorporated Trustees with same aims and objects may now merge. **Section 849**

## LIMITED PARTNERSHIPS & LIMITED LIABILITY PARTNERSHIPS



### Recognition of Limited Partnerships & Limited Liability Partnerships (LLPs)

The Act now recognizes Limited Partnerships & Limited Liability Partnerships. **Section 753**



### Effect of Registration

Upon incorporation, an LLP can:

- sue and be sued in its name
- acquire, own, hold and develop or dispose of property, whether movable or immovable, tangible or intangible;
- if it decides to have one, have a common seal, and
- do and suffer such other acts and things as bodies corporate may lawfully do and suffer. **Section 756**



### Accounts & Returns

The partnership is to file a Statement of Account and Solvency within 6 months of the end of its financial year, and an annual return within 60 days of the closure of its financial year. **Section 773**



### Foreign Limited Liability Partnerships

Foreign limited liability partnerships are recognized and are required to be incorporated in Nigeria except specifically exempted by the Minister. **Section 788**

## OTHER NEW INCLUSIONS



### Electronic Filings

The Act now puts in place a framework for electronic filings of documents with the Commission. **Section 860**



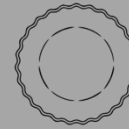
### Carrying on Business without Registration

It is now an offence to carry on business as a company, business name, limited partnership or limited liability partnership without being registered under the Act. **Section 863**



### Exemption from Auditing

A small company, and a company which has not carried on business since its incorporation (provided that the company is not a bank, insurance company, or any other company as may be specified by the commission) are now exempt from the obligation to audit. **Section 402**



### Common Seal for Incorporated Trustees

It is now optional for Incorporated Trustees to have a common seal. **Section 840**



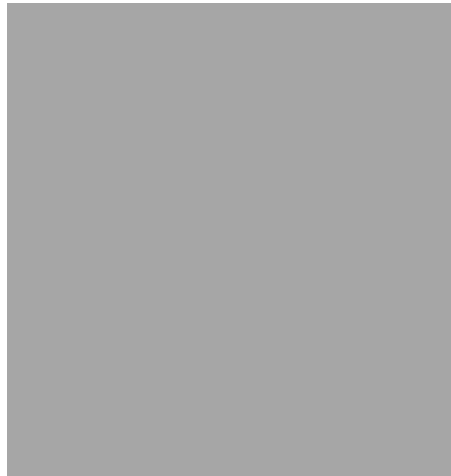
### Directorship

- A person cannot be a director in more than 5 public companies. **Section 307**
- Public Companies are now mandated to have a minimum of 3 independent directors. **Section 275**
- The personal information of directors is now identified as private and shall not be disclosed except with the director's consent, pursuant to an order of court, and other limited exceptions. **Section 323-329**



### New Procedure for Increase in Share Capital

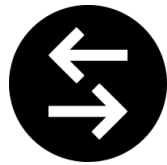
- Where a company intending to increase its share capital is required to obtain regulatory approvals under any other law than the Act, the company is required to notify the commission of such requirement within 15 days of passing the resolution to increase its share capital.
- Where the company has not obtained the approval within 48 days of notifying the Commission, the Company shall file another notice and affidavit to that effect with the Commission and shall



continue to do so for every successive period of 48 days.

- Provided that where such approval is not obtained within 9 months from the date on which the Commission was first notified, the resolution authorising such increase shall be deemed null and void.

## OTHER NEW INCLUSIONS



### Restriction on transfer of Shares and assets of a private company

The Act introduces provisions in the articles of a company that restrict the transfer of shares and assets. These include:



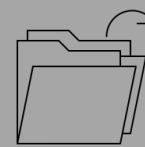
### Statement of Compliance

A statement of compliance which can be signed by an applicant or an agent is now required as an alternative to the Declaration of Compliance previously used in the process of incorporating a company. **Section 40**



### Execution of Deeds

A company seal is no longer a mandatory requirement under the Act. Where a company chooses to have a common seal, the design and use of the seal shall be regulated by the company's articles. **Section 95**



### Disclosure by Persons with Significant Control

- Persons with significant control in private companies and limited liability partnerships have an obligation to disclose details of such control to the



### Delivery of Notice of Exemption

The Act introduces a new requirement for a foreign company exempted from the requirement of registration to deliver to the Commission, a notice of exemption within 30 days of the grant of exemption.



### Incorporation of a Company Limited by Guarantee

The Attorney-General is now mandated to provide or decline consent to the registration of a company limited by guarantee within 30 days of receipt of the application for consent.

- Restriction on the disposal of company assets amounting to 50% or more of the company's value, without the consent of all members;
- A statutory right of first refusal in favour of existing members of a company where the member intends to sell its shares to a non-member; and
- Mandatory requirement for non-members acquiring 50% of the shares in a company to offer to buy the interest of all existing members. **Section 22(2)**

The Act also recognises the use of electronic signatures as due authentication of documents or proceedings by a company.

company within 7 days of assuming control.<sup>2</sup>

- For public companies, a substantial shareholder has an obligation to disclose its substantial shareholding to the company within 14 days of becoming aware of such substantial shareholding.<sup>3</sup>
- Public companies are now required to keep a Register of Interest in shares. **Section 119**

Where the Attorney General does not make a decision within 30 days, the company may still be registered if:

- The promoters put an advert in 3 national daily newspapers for 28 days,
- Invite objections to the registration, and
- There are no objections, or the objections are resolved in favour of the promoters. **Section 26(4)-(10)**

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<sup>2</sup> A person has significant control if he/she directly or indirectly holds at least 5% of the voting rights, or the right to appoint or remove majority of the directors, or the right to exercise or actual exercise of significant influence or control in a company or limited liability partnership.

<sup>3</sup> A person is a substantial shareholder if he is entitled to exercise at least 5% unrestricted voting rights at any general meeting of the company.