



Tope Adebayo LLP
Legal Practitioners and Arbitrators



HIGHLIGHTS OF THE NEW COMPANIES AND ALLIED MATTERS ACT, 2020



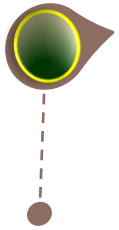
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INTRODUCTION

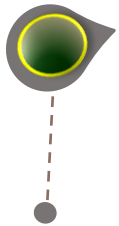
On August 7th, 2020, President Muhammadu Buhari assented to the Companies and Allied Matters Act 2020 (“the New Act”) which now repeals the Companies and Allied Matters Act, 1990 (“Old Act”). The New Act seeks to address the regulatory bottlenecks and onerous legal requirements found in the Old Act which has overtime hindered the ease of doing business in Nigeria, particularly for Micro Small and Medium Enterprises (MSMEs). This article seeks to highlight the key provisions of the New Act and its implications on companies’ operations.





1) FORMATION OF A COMPANY BY ONE PERSON. - SEC. 18 (2)

The New Act allows single membership of private companies. The implication of this is that one person can form a private company limited by shares as long as it is not for an unlawful purpose.



2) COMPANY LIMITED BY GUARANTEE - SEC. 26

The New Act maintains that the consent of the Attorney-General must be obtained for registration of a company limited by guarantee and stipulates a time frame of 30 days within which the Attorney-General may approve or refuse applications for registration.

Where no decision has been made by the Attorney-General within the 30 days period, the promoters of the company are expected to place an advertisement in three (3) national daily newspapers to invite objections, if any, to the incorporation of the company. An objection should be forwarded to the Commission within 28 days from the date of the last publication in the newspaper. If there are no objections, the Commission has the discretion to assent to the application and issue a certificate of incorporation.



3) INTRODUCTION OF MINIMUM SHARE CAPITAL - SEC. 27

The New Act replaced the provision for the minimum authorized share capital for the incorporation of companies with a requirement for a minimum share capital for incorporation. Whilst, the Old Act provided that the minimum authorized share capital for private and public companies limited by shares was ₦10,000 and ₦500,000 respectively, the new Act increased the minimum share capital of a private and public company limited by shares to ₦100,000 and ₦2,000,000 respectively.





4) STATEMENT OF COMPLIANCE - SEC.40

The New Act introduces a statement of compliance required to be submitted to the Commission. The statement can be signed by the applicant or his agent, as opposed to a declaration of compliance, which was to be certified by a lawyer under the Old Act.



6) USE OF COMPANY SEAL - SEC. 98

The New Act gives discretion to companies to have a common seal. Where a company chooses to use a seal, it must be regulated by the company's articles.



5) EXEMPTION FOR FOREIGN COMPANIES - SEC. 80

Under the Old Act, a foreign company intending to carry on business in Nigeria without incorporating a Nigerian company had to apply to the President through the National Council of Ministers, for exemption from the requirement to incorporate a separate entity in Nigeria.

The New Act, however, provides that a foreign company may file an application for exemption directly to the Minister of Trade, if it falls within any of the exempted categories. Once the exemption is granted, the company is obligated to notify the Commission within (30) days, failing which the foreign company would be liable to a fine. An exempted company would have the status of an unregistered company.



7) ELECTRONIC AUTHENTICATION OF DOCUMENTS -SEC. 101

It is also noteworthy that the New Act provides for the use of electronic signature by a director, secretary, or other authorized officer of the company as a means of authorizing documents on behalf of the company. This is in tandem with modern technologies as parties can confidently rely on electronic signatures to close urgent deals and transactions. The New Act also allows the use of electronic instrument of transfer as one of the instruments for the transfer of shares.

8) DISCLOSURE OF PERSONS WITH SIGNIFICANT CONTROL OF COMPANIES- SEC. 119

Whilst under the Old Act, the obligations to disclose beneficial interest was limited to where such interest was acquired in a public company, the New Act does not make a distinction between disclosure required by a public company and a private company rather, the Act makes it compulsory for every person with significant control over the company to indicate such in writing to the company. The company is thereafter mandated to notify the Commission within a month of the receipt of the information and disclose such information in its annual returns.

9) RESTRICTION OF TRANSFER AND SALE OF SHARES AND ASSETS IN PRIVATE COMPANIES - SEC.22

The New Act provides for statutory “right of first refusal” for members of private companies. Additionally, a private company cannot, without the approval of all its shareholders, sell the assets of the company having a value of more than 50% of the total value of the company’s assets.





10) REDUCTION OF FILING FEES FOR THE REGISTRATION OF CHARGES - SEC. 222(12)

The New Act provides for a maximum filing fees of 0.35% or such amounts as the minister may specify. This provision is a welcome development as it is a significant reduction in the fees payable for registration of charges which was formerly pegged at ₦10,000 for every ₦1,000,000 or part thereof for a private company and ₦20,000 for every ₦1,000,000 or part thereof for a public company.



12) VIRTUAL GENERAL MEETINGS -SEC. 240(2)

The New Act permits the holding of Virtual meetings by private companies. The Act permits companies to decide the modalities for their meetings.



11) EXEMPTION OF SMALL COMPANIES AND ONE MEMBER COMPANIES FROM HOLDING ANNUAL GENERAL MEETINGS- SEC 237

Under the Old Act, all companies were mandated to hold their Annual General Meetings in line with the provisions of the Act, however, under the New Act, small companies or companies with only one shareholder are exempted from holding AGMs. This provision is only natural considering the modalities of a one-member company.



13) ELECTRONIC NOTICE OF MEETING -SEC 244(3)

The New Act accepts the service of meeting notices via electronic mails in addition to personal service where necessary.





14) SINGLE DIRECTORSHIP -SEC. 271(1)

The New Act permits small companies to only have one director as opposed to the Old Act which provides for a minimum of 2 directors for all companies.



15) PROHIBITION OF CHAIRMAN OF THE BOARD OF A PUBLIC COMPANY FROM ACTING AS THE CEO- SEC. 265(6)

The New Act prohibits the Chairman of the Board of a public company from acting as the Chief Executive Officer of the Company. The New Act merely replicates the position of the Code on Good Governance for public companies on the issue. The idea behind the prohibition is minority protection, to ensure the independence of the board, and ensure checks and balances.



16) RESTRICTION ON MULTIPLE DIRECTORSHIP IN PUBLIC COMPANIES -SEC. 307(1)

The New Act prohibits a person from being a director in more than five public companies at a time.



17) REGISTER OF DIRECTORS' RESIDENTIAL ADDRESSES - SEC. 320

The New Act mandates every company to keep a register of directors' residential addresses. If there is a default, the company and each officer of the company would be liable to a penalty.



18) EXEMPTION OF SMALL COMPANIES FROM APPOINTING COMPANY SECRETARIES. - SEC. 330

The New Act exempts small companies from appointing company secretaries.

The Act also gives a period of grace of 6 months to public companies who have not appointed a company secretary at the commencement of the Act to do so.

20) ELECTRONIC COPIES OF ACCOUNTING REGISTERS - SEC. 375(3)

The New Act allows companies to keep electronic registers or copies of any document or record which it is obliged to keep under the Act.

It is worthy of note that the permission to keep electronic records is not an alternative to keeping hard copies of records as the Act provides that the electronic record be kept in addition to the hard copies.

19) COMPANIES ACCOUNTING RECORDS - SEC. 374

The New Act requires that a parent company dealing in goods, and has subsidiaries that do not deal in goods, must ensure that such subsidiary keeps proper accounting records to enable the directors of the parent company prepare its accounts as required under the Act. It also provides for all public companies to keep their audited accounts displayed on their websites.

21) QUALIFYING CONDITIONS FOR A SMALL COMPANY- SEC. 394

Under the Old Act, the qualifying condition for a small company is, a company with a turnover of not more than ~~₦~~2 million and net assets value of not more than ~~₦~~1 million.

The New Act, however, qualifies a small company as a company with a turnover of not more than ~~₦~~120 Million and net assets value of not more than ~~₦~~60 Million.





22) EXEMPTION FROM AUDIT REQUIREMENTS - SEC.402

The New Act exempts small companies and companies which have not carried out any business since its incorporation from the audit requirement under the Act. This exemption does not however extend to companies in the insurance and banking sectors.



23) COMPOSITION OF A PUBLIC COMPANY'S AUDIT COMMITTEE - SEC. 404(3), 404(5)

The New Act provides that a public company's audit committee should consist of five members. Three (3) members of the company and two (2) non- executive directors. The New Act also provides that at least one of the members must be a member of a professional accounting body in Nigeria established by an Act of the National Assembly.



24) DISTRIBUTABLE PROFITS - SEC.427

The Old Act defines distributable profits which may be distributed as dividends to its members to include profits arising from the use of the company's property although it is a wasting asset; revenue reserves and realized profit on a fixed asset sold, but where more than one asset is sold, the net realized profit on the assets sold.

Under the New Act, distributable profits include the company's accumulated realized profit which have not been previously utilized for capitalization or distribution less its accumulated, realized losses which have not been written off in a lawfully made reduction or reorganization of capital.





25) INTRODUCTION OF VOLUNTARY ARRANGEMENTS AND ADMINISTRATION OF COMPANIES - SEC.434, 443

Where a company is facing distress financially, the New Act permits the directors of the company to make a proposal to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs. This scheme or proposal is called Voluntary Arrangement.

A nominee would be appointed who would act as a trustee for the purpose of supervising the implementation of the proposal.

Administration is a process whereby an administrator is appointed for the company by either the court, the holder of a floating charge or the company/directors to manage the company's affairs, business and property.



26) QUALIFICATION TO ACT AS INSOLVENCY PRACTITIONER -SEC. 705(1)

The New Act provides that a person is only qualified to act as an insolvency practitioner where he has obtained a degree in law, accountancy or such other relevant discipline from any recognized University or Polytechnic; has a minimum of five years post qualification experience in matters relating to insolvency; and authorized to so act by virtue of a certificate of membership issued by Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), or his membership of any other professional body recognized by the Commission, being permitted to act by or under the rules of that body; and holds an authorization granted by the Commission.



27) SUBMISSION OF BI-ANNUAL STATEMENT OF AFFAIRS BY INCORPORATED TRUSTEES - SEC. 845(1)

The New Act provides that the trustees of an association shall submit to the Commission a bi-annual statement of affairs of the association, as the Commission shall specify in its regulations. Failure to comply will lead to a penalty for every day of default.





● **28) MERGER OF INCORPORATED TRUSTEES - SEC. 849**

The New Act permits two or more associations with similar aims and objects may merge under terms and conditions prescribed by the Commission.



● **29) PREFERENTIAL PAYMENTS DURING LIQUIDATION
SEC. 657**

In the event of winding up a company and priority payments, the New Act expressly provides that the company must give priority to deductions made from the remuneration of employees and contributions of the company under the Pension Reform Act, and contributions and obligations of the company under the Employees' Compensation Act.



● **30) ESTABLISHMENT OF THE ADMINISTRATIVE
PROCEEDINGS COMMITTEE -SEC. 851**

The New Act establishes an Administrative Proceedings Committee. The Administrative Committee is established to provide persons who have been alleged to have contravened the provisions of the New Act or its regulations an opportunity to be heard.

The Committee is also mandated to resolve disputes or grievances arising from the Act and impose administrative penalties for contravention of the Act or its regulations.

Decisions reached by the Administrative Committee are subject to confirmation by the Board of the Commission. Parties dissatisfied with decisions of the Administrative Committee may appeal to the Federal High Court for redress.





31) ESTABLISHMENT OF LIMITED LIABILITY PARTNERSHIPS (LLPs). SEC. 746

The New Act recognizes Limited Partnerships (LPs) and Limited Liability Partnerships (LLPs).

A limited liability partnership is a body corporate with perpetual succession, formed and incorporated under the Act.

Unlike ordinary partnerships, the change in partners will not affect the existence, rights, or liabilities of the limited liability partnership.

The minimum number of partners is two and anyone may be a partner in a limited liability partnership except he or she is of unsound mind and has been so found by the court or he is an undischarged bankrupt.

The New Act also provides for foreign limited liability partnerships (FLLPs) which though registered outside Nigeria, have intention of doing business in Nigeria.

Such partnerships would be required to be incorporated as a separate entity in Nigeria and would not be permitted to carry on business in Nigeria or exercise any of the powers of a corporate body under the Act until it is incorporated.

32) ESTABLISHMENT OF LIMITED PARTNERSHIP - SEC. 795

The New Act allows persons to register a Limited Partnerships (LPs). According to the Act, a limited partnership shall not consist of more than 20 partners.

The partners include general partners who will be liable for the debts and obligations of the firm and limited partners who will not be liable to the firm beyond the sum he or she has agreed to contribute to the firm.

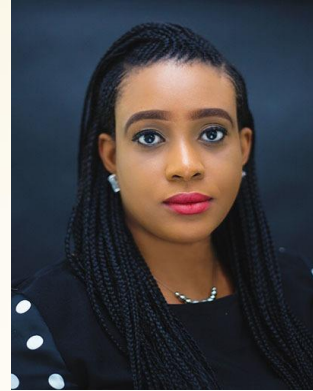
33) ELECTRONIC FILING - SEC. 860 (1) , (2)

The New Act provides for electronic filing of registration documents at the Commission. Also, Certified True Copies of electronically filed documents shall be admissible in evidence as same would have equal validity as the original documents.

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