

## **Key Changes/Improvements In The New Company's Act, 2019**

**“The golden thread running through the new provisions is “easing the doing of business”**

### **Change from Regulations to Constitution**

Companies can be registered without filing any regulation/constitution except unlimited companies.

### **Suffixes to Company Names**

All registered companies now have suffixes added to their names,

The last word of the name of a) a private company limited by shares shall be “Limited Company” or LTD;

b) a public company limited by shares shall be “Public Limited Company” or PLC;

c) company limited by guarantee shall be “Limited by Guarantee” or LBG;

d) private company unlimited by shares shall be “Private Unlimited Company” or PRUC;

d) public company unlimited by shares shall be “Public Unlimited Company” or PUC.

Significance – for easily identification of business types and to helps the public to know who they are dealing with

### **Major Transactions**

Under the new law, shareholders now have increased influence in major transactions of companies. A resolution of shareholders are required in situations of acquisitions (buying purchases), dispositions (gifting, transfer or selling) and in cases where the transaction will affect the company's rights and interest.

The effect of the provisions is to remove from the board of directors the authority to enter into such major transactions without the authorization of the majority of shareholders. It therefore strengthens shareholder democracy

### **Buy-out for Dissenting Shareholders - ENHANCED PROTECTION OF MINORITIES**

The new Company's law enhances protection of minority shareholders. For example shareholders who oppose a particular transaction of a company and have been outvoted, have the opportunity to have their shares bought out. This innovation minimizing dissent in a company and provides relief against oppression of minority shareholders.

### **Office of the Registrar of Companies (Process Simplification)**

The new company's law creates a new independent office called the Office of the Registrar of Companies which is responsible for the registration and regulation of all businesses. Company registration, filing of particulars, reservation of names and conversion of companies will all

eventually be done online. Certificates to commence business is abolished and only certificates of incorporation will now be issued.

This new office should be in place within 2 years after the passage of the Act.

No Regulations and Guidelines yet in place hence old Forms, Regulations and electronic software still being used until Registrar informs the Business Community by a Press Release when the new Forms now to be developed should be used.

### **Derivative Actions/3<sup>rd</sup> Party Action**

Shareholders are empowered to enforce the rights of their companies through derivative actions. Under this procedure, shareholders are allowed to apply to the court for leave to bring an action in the name, and on behalf, of the company.

### **Beneficial Ownership Provisions**

In line with Ghana's commitment to use transparency as a tool for fighting corruption, the new law allows for the identification of the true owners of all companies. The ORG will keep a central register of the true and actual owners of all companies in manual and electronic format.

### **Certificate To Commence Business Is Abolished**

The requirement for registered businesses to obtain a certificate to commence business has been abolished. Once resisted, a company can proceed to do business. This is to simplify the registration process. Therefore, there would be no minimum capital requirement before commencement of operations

- Companies with foreign participation would still have to comply with the GIPC rules on minimum equity requirements

### **Age limit for subscribers and shareholder**

A person who is 18 years and above may apply for the incorporation of a company

A person below the age of 18 who is a shareholder of a company must have those shares held in trust for them and must produce a deed of trust as supporting evidence for either share transfer or incorporation.

### **Statutory declaration by Directors**

Application for incorporation shall include a statutory declaration by each proposed director indicating that within the preceding 5 years they have not been charged with or convicted of a criminal offence involving fraud or dishonesty, or relating to the promotion, incorporation or management of a company or declared insolvent or if they have, the date and particulars of the insolvency

### **Business Name reservation**

There is now a statutory time period of two months for which the name of a proposed business may be reserved. This may be renewed for a further period of two months

## **Provision of Companies Bulletin**

The purpose is to publish matters relating to the operation and regulation of companies  
The Bulletin would contain notifications in respect of companies such as;

- Publication of fees for the Registrar of Companies
- Change of name
- Court orders in respect of stay of proceedings in insolvency proceedings
- Notices striking company names off the register of companies etc This is basically for information sharing

## **Qualifications of Company Secretary**

Companies are now required to appoint a Company Secretary duly qualified under the Act to perform the duties of a company secretary.

The directors of a Company shall not appoint a Company Secretary unless that person;

Has obtained a professional qualification or tertiary level qualification with an offering in company law practice and administration that enables the person to have the knowledge and perform the functions of a company secretary;

- Has been appointed a Company secretary trainee or has held office under a qualified company secretary for at least three (3) years; or
- is a member in good standing of the Institute of Chartered Secretaries and Administrators or the Institute of Chartered Accountants Ghana
- Having been enrolled to practice, is in good standing as a barrister or solicitor in the Republic
- By virtue of an academic qualification, or as a member of a professional body, appears to the directors as capable of performing the functions of a secretary of the Company.

## **Mandatory rotation of auditors of companies**

An Auditor shall hold office for a term of not more than six years and is eligible for appointment after a period of not less than six years

Change from Regulations to Constitution

Full Abolition of the Doctrine of Ultra Vires (RULES governing approval or non-approval of Names in relation to the nature of business in relation to the name of the Company still applies

Business Name Reservation

Mandatory rotation of Auditors of Companies