




THE MANDATE OF THE OFFICE OF THE REGISTRAR OF COMPANIES (ORC) AND THE BENEFICIAL OWNERSHIP REGIME

MANDATORY COMPLIANCE SERIES

Presented by
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Registrar of Companies
March 2, 2023



Outline

- The Office of the Registrar of Companies (ORC)
- The Objects and Mandate of the ORC
- Key Updates relating to the ORC
- The Beneficial Ownership (BO) Regime
- Brief introduction to the Corporate Insolvency & Restructuring Act (CIRA)
- Conclusion

The Office of the Registrar of Companies (ORC)

The separation of ORC from the Registrar-General's Department (RGD) was to focus and concentrate solely on entity registrations and administration, as well as to advance sound corporate governance principles, transparency, and ease of doing business.

- There is established by the Companies Act 2019 (Act 992), the Office of the Registrar of Companies as a body corporate with perpetual succession and headed by the Registrar of Companies with the assistance of Two Deputy Registrars
- RGD will then constitute the Industrial Property Office, Administration of Estates, and the Marriages Unit.
- The President has now appointed a Registrar-General in the person of Mrs Grace Issahaque to oversee the units under the Registrar-General's Department

The Office of the Registrar of Companies –cont'd

- The ORC may acquire and hold property and enter into a contract or any other transaction.
- Where there is a hindrance to the acquisition of immovable property, the property may be acquired for the Office of the Registrar of Companies under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Office of the Registrar of Companies.
- The Registrar shall have a seal that shall bear the words “Registrar of Companies, Ghana”.
- The Office of the Registrar of Companies has financial autonomy under s.352 and subject to the provisions of this Act.

The Office of the Registrar of Companies (ORC)

- (a) The Office is overseen by an 11 Member Governing Board consisting of a Chairperson in the person of Mr Seth Asante;
- (b) A Principal State Attorney representing the Office of the Attorney-General & Minister of Justice;
- (c) A Director representing the Ministry of Trade and Industries;
- (d) A Lawyer representing the Securities and Exchange Commission;
- (e) A Representative from the Private Enterprise Federation;
- (f) A Lawyer with over 10 years experience in corporate law practice representing the Ghana Bar Association;

The Office of the Registrar of Companies –cont'd

(g) Two Female Lawyers with expertise in corporate Law practice nominated by the President;

(h) one representative from the Institute of Chartered Accountants, Ghana

(i) one representative from Ghana Association of Restructuring and Insolvency Advisors and

(j) the Registrar of Companies

- The Board is to ensure the proper and effective performance of the functions of the Office of the Registrar.

Objects and Mandate of the ORC

- The object of the Office of the Registrar of Companies is to register and regulate all types of businesses in conformity with this Act and any other relevant enactments.
 - (i) Business Names in accordance with the Registration of Business Names Act, 1962 (Act 151),
 - (ii) Companies in accordance with the Companies Act, 2019 (Act 992)
 - (iii) Partnerships in accordance with the Incorporated Private Partnerships Act, 1962 (Act 152), and
 - (iv) Professional Bodies pursuant to the Professional Bodies Registration Act, 1973 (N.R.C.D. 147), other than Professional Bodies established by an Act of Parliament;

Objects and Functions of the ORC –cont'd

- Appoint Inspectors, Receivers or Managers to ensure the effective compliance with the Act in accordance with subsection (2) of section 261;
- Discharge duties and perform functions of the Office as the Official Liquidator and Regulator of Insolvency Practitioners under the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) with its Amendment (Act 1031)
- Manage the finances and fixed assets of the Office of the Registrar.
- Has the duty to undertake public education programmes to educate the general public engaged in business activities on the operation of Companies, Partnerships ,Business Names and Professional Bodies.

Corporate Insolvency & Restructuring Act, 2020 (Act 1015) and its Amendment (Act 1031)

- ❑ The Corporate Insolvency and Restructuring Act was passed in 2020 to replace the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180).
- ❑ It governs involuntary or official liquidations and goes further to provide for avenues by which a company may be rescued or saved from being completely closed down.
- ❑ The administration of the business, property and affairs of a distressed company in a manner that provides an opportunity for the company to as much as possible continue in existence as a going concern.
- ❑ The temporary management of the affairs, business and property of a distressed company.
- ❑ The passage of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) and its Amendment (Act 1031) (CIRA) is aimed at promoting a rescue culture to protect investments.

Objects and Functions of the ORC cont'd

- **As a result of the CIRA, a new Insolvency Services Division (ISD) will therefore be established at the ORC to regulate Insolvency Practitioners and Services after the implementation of the strategy documents of the ORC currently being prepared by Consultants**
- The ISD would oversee the Administration, Restructuring, and Insolvency proceedings of Companies and other corporate bodies in the country
- receive Reports from Liquidators and Insolvency Practitioners on the Administration of Insolvencies;
- receive Reports from Agents for Debenture Holders, Trustees for security holders and Auditors for companies in distress or insolvent situations to enable corrective measures to be taken;

Corporate Insolvency & Restructuring Act, 2020 (Act 1015) cont'd

- ❑ Place a temporary freeze on the rights of creditors and other claimants against a distressed company.
- ❑ Provide for the development and implementation of a restructuring plan which results in a better return for the creditors and shareholders of the company than would result from the immediate winding-up of a distressed company.
- The Insolvency Services Unit would also carry out research, commission studies, disseminate information and provide public education in the area of Insolvency Administration;
- Establish and maintain communication and liaison with International Agencies, including (INSOL) as well as the the International Commission on Trade Law, in the area of international Insolvency Administration

KEY UPDATES

**Promotion of Ease of Doing Business & Good Corporate Governance

- The Regulations (Articles of Association and Memorandum of Association) are now referred to as the Constitution.
- Companies are given the option to file a Registered Constitution or opt for one of the Three Schedules in the Act which are prototypes of the six (6) types of Constitutions under the Act as their Constitution
- The Object Clause is no more mandatory (sectors required, however)
- Objects would however be required by Companies regulated in a specialized sector such as Banks and Companies with Foreign Participation
- The rules governing approval of the names by the Registrar of Companies would still apply with regard to the name of a business and how it can restrict a company to only specific objects to operate in.

KEY Updates cont'd

- New suffixes have been introduced-S.21 ('Limited Company' (LTD), PLC,LBG,PLBG,PRUC,PUC etc.)
- Age 18, not 21 anymore
- No required minimum capital
- No Certificate to Commence Business
- Electronic Transactions to promote digitization
- There is established an Official Bulletin known as the Companies Bulletin to contain notifications in respect of companies
- Unclaimed Dividends are to be transferred to the ORC under sections 73 and 74 of Act 992 and managed for 7 years after which if dividend is still unclaimed, 50% would be transferred to the Consolidated Fund and 50% lodged in the ORC's interest bearing Account to be used for investor education, research, entrepreneurial development and advancement in Company Law.

KEY HIGHLIGHTS OF ACT 992

SUFFIXES sec. 21

TYPES OF COMPANY	SUFFIXES	NAME OF FORM	TYPES OF STANDARD CONSTITUTION
Private Limited Company	LTD or Limited Company	Form 3	Second Schedule
Private Unlimited Company	PRUC or Private Unlimited Company	Form 3A	Second Schedule
Private Limited by Guarantee	LBG or Limited by Guarantee	Form 3B	Fourth Schedule

Suffixes - cont'd

TYPES OF COMPANY	SUFFIXES	NAME OF FORM	TYPES OF STANDARD CONSTITUTION
Public Limited Company	PLC or Public Limited Company	Form 3C	Third Schedule
Public Unlimited Company	PUC or Public Unlimited Company	Form 3D	Third Schedule
Public Limited by Guarantee	PLBG or Public Limited by Guarantee	Form 3E	Fourth Schedule

KEY Updates-cont'd

- Accounting terms modified to conform to IFRS Standards as adopted by the Institute of Chartered Accountants Ghana (ICAG)
- Eg. Financial Statements, not Accounts /Income statement, not Profit and Loss Account/Equity shares instead ordinary shares
- Auditor rotation/cooling off period (6 years for each Auditor and a cooling period of 6 years (s.139(11))*

IN THE MATTER OF THE COMPANIES ACT, 2019 (ACT 992) DIRECTIVE # 2: ROTATION OF AUDITORS, SECTION 139(11)

FOR IMMEDIATE RELEASE

1. With the coming into force of the Companies Act, 2019 (Act 992) on August 2, 2019, it has become mandatory for all companies to rotate their Auditors who have served for more than six years for a mandatory cooling-off period of not less than six years (Section 139 (11)).
2. Companies are hereby advised that with the exception of companies formed for special purposes such as Banking and Insurance or any other business which are subject to special legislation such as the Securities Industry Act, 2016 (Act 929) and where Auditor rotation is specifically provided for, all companies shall comply with this law immediately (Section 4 of Act 992).
3. Pending the introduction of Regulations and Guidelines as provided for under Sections 381 and 382 of Act 992, and to allow for a smooth transition of the changeover of Auditors, all affected companies who have not yet complied with this law are hereby required to effect the changeover of Auditors at their next scheduled Annual General Meeting (AGM), but no later than August 1, 2022 in order to accommodate various AGM calendars.

**For questions and clarifications, call Ms Domtie Sarpong at mobile number +233547599662 and email @
domtie.sarpong@rgd.gov.gh or domtie2000@yahoo.com**

Issued at the Office of the Registrar of Companies, Accra

November 20, 2020

KEY UPDATES-cont'd

Improved Corporate Governance and Professionalism

Qualification of Company Secretary (s.211 (3)(a) to (e))

- 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 person as 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;

KEY UPDATES- cont'd

- 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, or
- 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.

KEY UPDATES - cont'd

Duties of Company Secretary s. 212

- It includes but is not limited to:
- Assisting the Board to comply with the Constitution of the company and with any relevant enactment;
- Keeping and maintaining the Statutory Registers, Books and records of the company;
- Ensuring that all the statutory Forms and Returns are duly filed with the Registrar.

KEY UPDATES- cont'd

Directors

- A person shall not be appointed a director unless the person before the appointment:
- Makes a statutory declaration (S. 13 (2)(h)) to the company to the effect that the person has not within the preceding five years of the application for incorporation been:
- Charged with or convicted of a criminal offence involving fraud or dishonesty

KEY UPDATES- cont'd

Directors

- Charged with or convicted of a criminal offence relating to the promotion, incorporation or management of a company
- Has been a Director or senior Manager of a company that has become insolvent and if the person has been, the date of insolvency and that particular company
- He should have consented to be a Director and filed the consent within 28 days.



KEEPING COMPANY REGISTERS

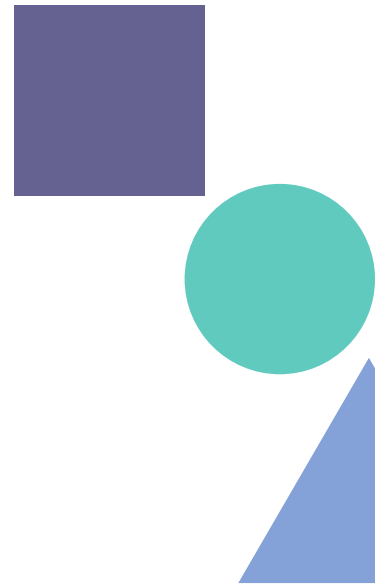
- Register of Members S. 35

Shall contain names, addresses, shares held paid for and remaining due), nature of interest held, date of ceasing to be a member, BO info etc

*A Company may arrange for a Registration Officer to undertake these duties externally.

- Register of Debentures S. 99

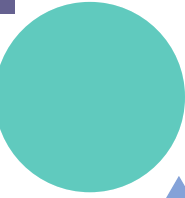
Shall be kept at the address at which the Register of Members is kept and similar rules shall apply



KEEPING COMPANY REGISTERS cont'd

Branch Register S. 106

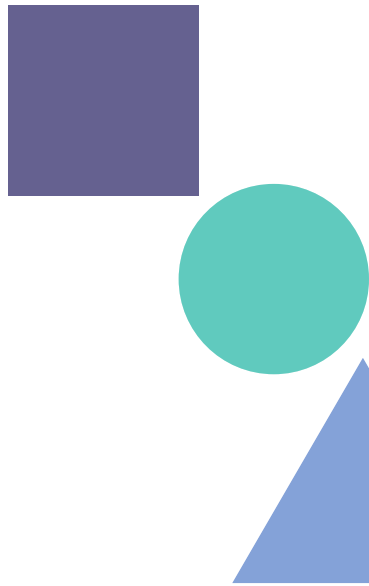
- A company may keep a Branch Register of all its shareholders, Debenture Holders and Beneficial Owners residing in a particular country outside the Republic and a duplicate kept at the place where the Principal Register is kept
- Copies of charges S. 120
- Copies must be kept at the Registered Office and at any other office where the Register of Debenture holders is kept



KEEPING COMPANY REGISTERS cont'd

Interest Registers S. 196

- A **director's** interests in a proposed contract must be disclosed to the directors in a meeting or in writing and be entered in the Interests Register
- The Register shall state where any documents containing details of the interest may be inspected
- Must be open for inspection at the Registered Office and during a general meeting



KEEPING COMPANY REGISTERS - cont'd

Register of holdings of directors S. 210

- Must contain the shares held by the director in the company or an associated company
- Number and description of shares
- Amount of debentures of the company or an associated company that the director ultimately benefits from
- Register of particulars of directors and company secretaries S.215 (includes substitute directors)

Resultant reforms to Company Registration

- New Forms have been designed as a result of the new requirements under Act 992
- Statutory declarations from directors
- Consent letters from directors and secretary required
- Confirmation that secretary meets any one of the legal qualifications
- Completion of BO Forms (BO 1,BO 2,BO 3 and BO 4)
- Two directors and a secretary may sign in place of company seal etc
- All these Forms have been uploaded unto the website of the Office and can be downloaded freely at www.rgd.gov.gh. The website of the ORC is currently under development. These Forms would be moved to www.orc.gov.gh when completed.

Other Requirements by the ORC



- All Companies registered before 2012 must update their information through a re-registration exercise.
- All existing Companies must declare their Beneficial Owners by filing BO forms.
- New Companies registering must present copies of their NIA cards.
- Filing of Annual Returns and Audited Financial Statements required.
- File all changes to Businesses within 28 days
- Provide accurate and updated data on a timely basis

THE BENEFICIAL OWNERSHIP REGIME



A Beneficial Owner is

defined in First Schedule as an Individual:

- ❖ Who directly or indirectly ultimately owns or exercises substantial control over a person or company
- ❖ Who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons
- ❖ On whose behalf a transaction is conducted; or
- ❖ Who exercises significant control or influence over a legal person or arrangement through a formal or informal arrangement
- ❖ This regime introduces Business Transparency and provides a level playing field for one to know who they are actually doing business with

CENTRAL REGISTER

- The Registrar under the Companies Act 2019 (Act 992) is mandated to keep a register known as a Central Register to capture beneficial ownership of legal persons and arrangements.
- It is to be maintained in both a **manual** and **electronic** format.
- The Registrar shall enter particulars of BO received from the company provided at the **time of incorporation, during amendment, annual returns and any information that the Registrar may require including information on the beneficial ownership.**

REGISTER OF MEMBERS sec. 35

- All companies are required to keep a Register of Members in the country.
- In addition to particulars of members and their shareholding details , companies are required to also enter information of their **beneficial owners in their Register of Members.**
- Companies shall within **28 days** of making the entries submit to the Registrar for registration.
- The register of members is **open for inspection** by members and any other person on payment of a reasonable fee.



ENTITIES REQUIRED TO PROVIDE BO INFORMATION

Section 7(1) of ACT 992, mentions all the types of companies (required to submit their BO information to the Registrar);

These are;

- Companies Limited by Shares
- Companies Limited by Guarantee
- Unlimited Liability Companies
- External Companies

SUBMISSION OF BO INFORMATION

When are Companies required to submit BO data to the Registrar?

- At Incorporation- Sec.13(2)(m) of Act 992
- 28 days after being entered in the Register of Members
- At the time of registration by External Companies
- Filing of Annual Returns (Sec126(1))
- Whenever there are changes to the BO information
- Upon request by the Registrar



PARTICULARS TO BE SUBMITTED:Sec.13 (2)(m)

- Full name and any former names or other names
- Date and place of birth
- Telephone number
- Nationality, National Identity Card Number, passport number or other appropriate ID and proof of Identity
- Residential Address, postal and email (Including Digital Address)
- Place of work and position held
- Nature of interest including the details of the legal, financial, security, debenture or informal arrangements giving rise to the BO
- Declaration as to whether the BO is a Politically Exposed Person (PEP)

THRESHOLD

Reporting Thresholds – Threshold only applies to companies registered with shares. *Informed by NRA

- Companies in the high risk sectors - 5% - (Extractive sector, Real Estates, Used car dealerships, Financial sector, Gambling)
- Politically Exposed Person (PEP) – 0%.
- Foreign PEP - 5%
- All other companies – 20%
- For a BO established through control or influence over a company, there is no threshold.

POLITICALLY EXPOSED PERSONS (PEP)



Politically Exposed Person (PEP) as defined under the First schedule of Act 992 includes;

- a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organization including a senior political party official, government, judicial or military official, a person who is or has been an executive of a State owned company, a senior political party official in a foreign country and
- an immediate family member or close associate of a person referred to in paragraph (a).
- Immediate family member or close associate could include spouses, siblings, children, grand parents, grand children and business associates

NON COMPLIANCE AND SANCTIONS



A person who fails to provide the information required or provides false or misleading information to the Registrar commits an offence and is liable on **summary conviction to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty units or to a term of imprisonment not less than one year and not more than two years or both.**

Section 35(14)

NON-COMPLIANCE cont'd

Where a company defaults in complying with this section, the company and every officer of the company that is in defaults is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the defaults continues.

Section 35(15)

REGULATIONS/GUIDELINES/PROCEDURES

- The law mandates the Office of the Registrar of Companies to formulate Regulations, Guidelines and procedures for the effective implementation of the Beneficial Ownership Regime
- S.381(2)(d) - Templates for BO info collection
- S.381 (2)(f) – To prescribe thresholds
- S. 382 – The Registrar may issue Directives and Guidelines to give full effect to the Act.

Update on Implementation of ORC – Cont'd

- Under the Ghana Economic Transformation Project, being funded by the World Bank, the RGD procured a consultant to help the new ORC develop its Corporate Strategic Document and Organizational Manual and facilitate the decoupling from the RGD. These Documents would be ready by April, 2023.
- ORC is operational from the current premises and will relocate after its new building is constructed.
- Has a new and distinct Logo.



OFFICE OF
THE REGISTRAR
OF COMPANIES

Measures to promote Ease of Doing Business

New software with efficient functionalities is being procured through the World Bank. The application is going to be an online system with fewer walk-ins and this will have the following which will enhance the ease of use and reduce turnaround time for our services

- Ability to ensure effective data exchanges between the solution and other systems to facilitate the business registration process and data sharing. This data exchange and sharing will be done electronically. Bulk data can also be subscribed for at a fee. Standard API will be provided for data-sharing purposes and real-time information access
- Applicants will be given the opportunity to select the bank of their choice during the registration process and the data will be sent to that particular bank for account opening for the client at a fee. This will bring seamless information flow and real-time information access.
- The solution will have AI Chatting capabilities which will enhance the registration process for online users. The chat robot(voice and text) would be able to assist clients throughout the process to the point of generating certificates, in our local dialect. This will help to do away with the “goroism”



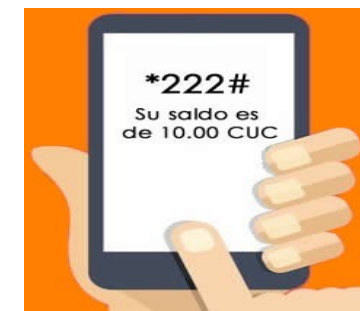
Measures to promote Ease of Doing Business

- Ability to flag Companies with issues that needs further attention
- The solution shall include Mobile App for an applicant to access the application offline when the need be to provide a higher customer engagement level registration, filings and searches can be done using phones
- The solution shall provide for an eXtensible Business Reporting Language (XBRL) format for filing Financial Statements in filing Annual Returns
- The solution shall include the use of Unstructured Supplementary Service Data (USSD) for some services where applicable



Print Document View Excel Document

Financial Statements	Consolidated Balance Sheets (USD \$) In Thousands	Dec. 31, 2009	Dec. 31, 2008
Notes to Financial Statements	Current assets:		
All Reports	Cash and cash equivalents	\$ 10,197,588	\$ 8,656,672
	Marketable securities	14,287,167	7,189,089
	Accounts receivable, net of allowance of \$80,098 and \$78,884	3,178,471	2,642,192
	Deferred income taxes, net	844,406	286,105
	Income taxes receivable, net	23,244	0
	Prepaid revenue share, expenses and other assets	836,062	1,424,114
	Total current assets	29,166,858	20,178,152
	Prepaid revenue share, expenses and other assets, non-current	416,119	433,846
	Deferred income taxes, net, non-current	262,611	0
	Non-marketable equity securities	128,977	85,160
	Property and equipment, net	4,844,910	5,233,843
	Intangible assets, net	774,938	966,690
	Goodwill	4,902,565	4,839,854
	Total assets	40,496,778	31,767,575
	Liabilities:		
	Accounts payable	215,967	176,094
	Financial instruments and derivatives	862,185	811,643



Measures to promote Ease of Doing Business

- Integrations with ORC email system, with the facility to automatically generate and send standard system and user-defined messages to our client at every process stage
- The solution shall support Short Messaging System (SMS) text notifications to mobile phones, the system shall be able to interface with the most common GSM modems and/or mobile phones for this feature for transaction alerts
- The solution shall have the capability to integrate with GHANA.GOV payment platform to allow online payments by mobile money and card payments etc
- The solution will integrate with systems that are involved in the business registration process i.e. the Intellectual Property Office (IPO), National Identification Authority, Metropolitan & Municipal District Assemblies, Ghana Revenue Authority, Ghana Post and Court Application system



Measures to promote Ease of Doing Business

- A VVIP unit will be established in the ORC located at the RGD before the middle of this year to provide swift services and cut out the operation of 'GORO Boys'. Approval has been given by Parliament to charge higher fees for this expedited service
- A call center is to be established to promote quality customer service.
- These facilities would be put in place to ease the way of doing business currently in our offices until the new software is deployed

Conclusion

- The ORC is geared towards optimising the effect of the new legal provisions within the Companies Act, Act 992 for the benefit of the Business Community.
- The decoupling of the Office of the Registrar of Companies will ensure the needed delivery of quality service for the good of the business community.

Thank you

