



# MANDATORY REGULATORY COMPLIANCE FOR BUSINESSES IN GHANA

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## **The Companies Act 2019 (Act 992)**

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# OUTLINE

- **INTRODUCTION**
- **REGISTRAR-GENERAL'S DEPARTMENT (WHO WE ARE)**
- **HIGHLIGHTS OF ACT 992**
- **OTHER REQUIREMENTS TO KNOW**
- **CONCLUSION**



# INTRODUCTION

We are the first point of call for every business in this county

We are responsible for giving life and ensuring proper dissolution of all Companies in the Country upon payment of fees;

We are Partners to the business community

We are here to ensure that as businesses you succeed and there is ease of doing business

We serve as a One Stop Shop for Starting a business in the County



## REGISTRAR-GENERAL'S DEPARTMENT- who we are

- The Registrar-General is a Department under the Office of the Attorney-General and Ministry of Justice. It is the sole authorized institution with the responsibility for the initial registration and maintenance/custodian of Businesses/Companies/Professional Bodies' information, Administration of Estates, Registration of Marriages and Industrial Property Rights.
- We have been mandated to ensure efficient and effective administration of laws which govern our operations and to provide customer friendly registration services, the compilation of accurate and timely data for National Planning, for the Business Community and the Public at large.
- We have 5 offices - Accra, Kumasi, Sunyani, Takoradi and Tamale.



# REGISTRAR-GENERAL'S DEPARTMENT

## LAWS

Companies Act, 2019 (Act 992)

Incorporated Private Partnerships Act, 1962, (Act 152)

Registration of Business Names Act, 1962, (Act 151)

Corporate Insolvency and Restructuring Act, 2020, (Act 1015)

Corporate Insolvency and Restructuring (Amendment) Act, 2020 (Act 1031)

Registration of Trademarks Act, 2004 (Act 664) amended by Trademarks(Amendment)Act 2014 (Act 876)

Registration of Textile Designs under Industrial Designs Act, 2003, (Act 660)

Registration of Patents Act, 2003 (Act 657)

Administration of Estates Act, 1961 (Act 63)

Marriages Act , 1884-1985 Cap 127

Professional Bodies Registration Act, 1973, NRCD 143



## THE COMPANIES ACT, 2019 (ACT 992)

- This Act was passed on the 2<sup>nd</sup> May, 2019
- Received Presidential assent on 2<sup>nd</sup> August, 2019
- Replaces the Companies Act, 1963, Act 179 which was used for over 56 years
- The new Act is very forward-looking and introduces more robust laws on corporate governance, beneficial ownership and promotes ease of doing business.
- The REGULATIONS and GUIDELINES on ACT 992 are however yet to be drawn up and published. We are pushing for this to be in place before the end of 2021



# HIGHLIGHTS of ACT 992

- Establishment of the Registrar of Companies
- Suffixes to Names
- New Terminologies eg Constitution, IFRS terms,
- Enhanced Corporate Governance and Transparency and Interest Disclosures
- Beneficial Ownership Disclosure
- International Financial Reporting Standards (IFRS)
- Major Transactions
- Derivative action
- Mergers and Acquisitions
- Buyout for Dissenting Shareholders
- Registration, Communication and service by Electronic or Digital means
- Companies Bulletin
- Enhanced Sanctions



## ESTABLISHMENT OF THE OFFICE OF THE REGISTRAR OF COMPANIES.(ORC) Sec351

- This is a body corporate with perpetual succession
- Office may acquire and hold property and enter into contract or any other transactions
- It shall have financial autonomy subject to the provisions of the Act
- The Registrar shall have a seal to bear the words (“Registrar of Companies, Ghana”)
- The Office of the Registrar of Companies shall be decoupled from the current Registrar-General’s Department, have its own 11 Member Board of Directors and a Registrar of Companies different from the Registrar-General





## OBJECTS AND FUNCTIONS OF THE ORC Sec. 353

The Office of the Registrar of Companies shall be established within two years of the coming into force of the Act

- Function is to register and regulate all types of companies in conformity with Act and other relevant enactments i.e Business Names under Act 151, Partnerships under Act 152, Professional Bodies under N.R.C.D 147
- Appoint Inspectors, Receivers or Managers to ensure compliance
- Discharge and perform Official Liquidation functions under Act 1015
- Manage finances and fixed assets of the Office
- Undertake Public Education Programmes



- **Enquires by Registrar – Section 228 of Act 992**
- The Registrar may by written order call on Companies to produce for inspection all or any of the Books of the company.
- For investigation: To settle or deal with matters that would arise from the registration of businesses in the country be it from the Courts, Directors, Members or the Registrar suo motu.
- To ensure compliance in the business community with respect to the various registration Acts, a team of Company Inspectors from RGD would come around at periodic times to Registered Offices of Companies for inspection of its Books as required by law.



## CONSTITUTION Sec. 23

- Term "Regulations" replaced by "Constitution"
- Companies are given the option to file a Registered Constitution.
- This Constitution should be signed by one or more subscriber or the Company Secretary and may either be delivered to the Registrar before incorporation or filed after incorporation.
- Should a company fail to file a Constitution with the Registrar of Companies, the standard Constitution contained in the Schedules to the Act would be applied to that company
- Applicants would just need to fill any of the Prescribed Form 3's for each type of Company and indicate on the Form the Standard Constitution they would want to accept as their own Constitution



## 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 Company 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



## ULTRA VIRES RULE

- The Ultra vires rule has been relaxed. The Companies Act does not require Companies to file an object clause with the Registrar of Companies limiting its objects. However, a Company would have to indicate on the Form 3 which sectors they would be operating in through the International Standard Industrial Classification (ISIC) Codes for Statistical Reports
- A Company shall have the full capacity to carry out any business or activity unless specifically restricted by its Constitution
- Without an objects clause , the company has the capacity of a natural person
- However, 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



## EXCEPTIONS TO THE ULTRA VIRES RULE

- A Company shall have the full capacity to carry out any business or activity unless specifically restricted by its Constitution.
- Companies set up for special purposes or operating in regulated industries such as Banks, Security Companies etc, would be required to state the nature of the proposed business/es in a Constitution to be submitted by them at incorporation.
- Companies with foreign participation would still have to comply with the GIPC rules on minimum equity requirements and would therefore need to file a Registered Constitution together with Forms 20 & 21



## EXCEPTIONS ULTRA VIRES - Cont'd

- Despite the relaxation of the Ultra vires doctrine, The Registrar of Companies shall NOT register a Name which in the opinion of the Registrar is misleading or undesirable
- A Company shall not be registered with a name of a Company that has been dissolved within the preceding five years of the intended registration
- Where through inadvertence a name is registered that is misleading or undesirable, the Registrar within 6 months can direct a name change and this should be complied with within 6 weeks of the direction
- Where a company defaults in complying under the Act, the Registrar shall now have the powers to change the name in the Register pending the submission of the new name by the company





## ENTERPRISES ELIGIBLE FOR FOREIGN PARTICIPATION AND MINIMUM FOREIGN CAPITAL REQUIREMENTS UNDER GIPC ACT 865

- In the case of a joint enterprise with a Ghanaian Partner, there is investment by the non-Ghanaian of foreign capital of not less than US\$200,000.00 or its equivalent worth in capital goods by way of equity participation;
- Where the enterprise is wholly owned by a non-Ghanaian there is an investment of foreign capital of not less than US\$500,000.00 or its equivalent worth in capital goods by way of equity capital
- Notwithstanding above provisions, in the case of a trading enterprise involving ONLY the purchasing and selling of goods which is either wholly or partly owned by a non-Ghanaian, there shall be an investment of foreign capital or its equivalent in goods worth at least US\$1,000,000.00 by way of equity capital and the enterprise shall employ at least 20 Ghanaians



## QUALIFICATIONS OF COMPANY SECRETARY Sec. 211

- 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;



## QUALIFICATIONS OF COMPANY SECRETARY 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.



# DIRECTORS

- Every Proposed Director must meet the qualifications under S. 173(1)
- The Director must not be an infant, a person adjudged to be of unsound mind, a body corporate or an undischarged bankrupt.
- 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



## DIRECTORS - Cont'd

- Charged with or convicted of a criminal offence relating to the promotion, incorporation or management of a company
- 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.
- At least two (2) Directors are required for registration and one should be ordinarily resident in Ghana.



# AUDITORS

- An Auditor should be qualified and licensed in accordance with the Chartered Accountants Act, Act 170
- A consent letter is required from the Auditor to act
- An Auditor shall hold office for a term of not more than six years and is eligible for appointment after a cooling period of not less than six years ( S. 139 (11) )
- Existing Companies with Auditors of more than 6 years are to take steps and have them changed before August 2022 or risk paying sanctions for non compliance



Directors to maintain an Interests Register containing;

- Details of all actual and proposed contracts in which the director is personally interested
- Location / place where any document containing details of interests may be inspected
- Subject to inspection and subject to reasonable restrictions imposed by the company's Constitution but shall be open at least 2 hours in each working day
- During general meetings to a person attending the general meeting except where the members determine otherwise by ordinary resolution



## BENEFICIAL OWNERSHIP DISCLOSURE AND THE CENTRAL REGISTER

- The Act makes provision for the disclosure of Beneficial Owners of companies.
- The Registrar of Companies is to maintain a Central Register containing information on Beneficial Owners
- Each Company must set up a Register of Members, maintain and update a Beneficial Ownership Register in this Register and submit to the Registrar of Companies who keeps the Central Register
- Information on such Beneficial Owners is to be submitted to the Registrar of Companies for registration



# BENEFICIAL OWNERSHIP - Cont'd



- Time to submit BO information :-
  - Incorporation of Companies
  - Registration of External Companies
  - Filing of Annual Returns
  - Amendment of BO Information
- Entities required to submit BO information:- (Private and Public)
  - Company with Shares
  - Company Limited by Guarantee
  - External Company

Please take NOTE that as at 1<sup>st</sup> January 2021, every fresh registration should include the disclosure of BO information

All existing Companies registered before 01/10/2020 are to update the Register of Companies with their BO Data. This should be done by 30<sup>th</sup> of June, 2021.

Sanctions would be applied after this date if directive is not complied with.



# PARTICULARS OF BO TO BE FILED

- The full name and any former or other name
- The date and place of birth
- The telephone number, residential, postal, digital and email address,
- A TIN comprising the nationality, national identity number, passport number or other appropriate identification and proof of identity
- Place of work and position held
- The nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
- Confirmation as to whether the beneficial owner is a politically exposed person



- The Minister may by LI make Regulations for the procedure for companies to submit up to date and accurate records on Beneficial Ownership
- Registrar has set a Threshold Level for collection of BO data
- 5% or more direct ownership for High risk sectors like Extractives, Financial, Insurance, Real Estate, Gambling, Used Car dealership
- 20% or more for all other sectors
- 5% or more for Foreign PEPS
- 0% for Local PEPS



## BENEFICIAL OWNERSHIP cont'd

- 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 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.** Sec. 35(14)
- 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 Sec. 35(15)



- The Financial Statements and the audit are now to be carried out in accordance with the International Financial Reporting Standards adopted by the Institute of Chartered Accountants, Ghana.
- Examples of changes in the accounting terminology in conformity with IFRS terminologies
- “Income surplus” has been replaced with “retained earnings”
- “Surplus” has been replaced with “reserves”



The Act gives power to the Registrar of Companies to authorize the performance electronically, through an electronic system approved by the Registrar certain acts including:

- the incorporation or the registration of a company;
- the reservation of a company name;
- the filing of particulars;
- the conversion of a company;
- the filing of Annual Returns and Financial Statements;
- the keeping and maintenance of a Register of Companies,
- searches on a company Register;
- keeping of Books of Accounts;
- payment of fees; **etc**



## OTHER REFORMS Cont'

- A right to apply for incorporation is now 18 years – S. 12.
- No need for Commissioner of Oath – self declaration enough
- Company seal not obligatory (S. 150 (1)(d)(i) & (ii) ). The signature of a Director and Secretary in the alternative would be accepted
- The practice of issuing Commencement Certificates have been abolished.
- No minimum capital requirement before commencement of operations except to meet minimum capital requirement by foreign companies.
- Registration of particulars of charges created by companies is now 45days instead of 28days as stated in Section 110 of Act 992.
- Administrative Penalties to ensure compliance

All these reforms were to promote ease of doing business



## UNCLAIMED DIVIDENDS Sec. 73

- Where declared dividends of a company remain unclaimed for a period of three (3) months, the company must:
  - Open an interest bearing unclaimed dividend account
  - Credit the unclaimed dividend into that account
- Where payment of the dividends cannot be made for a further twelve (12) months after the transfer;
  - The Company shall pay the unpaid dividends plus interest accrued to the Office of the Registrar
  - The Registrar shall open an interest bearing account for such unclaimed dividends
  - The Registrar shall annually publish details of shareholders whose dividends have been transferred to the ORC in the *Companies Bulletin* and Dailies
  - Registrar shall keep unclaimed dividends for seven (7) years





## UNCLAIMED DIVIDENDS - cont'd

- After the seven (7) years the Registrar shall:
  - Transfer fifty ( 50) percent of the amount in the interest bearing account to the Consolidated Fund
  - Donate / Apply fifty (50) percent of the funds for investor education, research, entrepreneurial development and advancement in company law

Upon Commencement of the Act, all unclaimed dividends must be immediately transferred to the Registrar for application under this section –

Details on application of this would be communicated to the public when the framework to receive unclaimed dividends has been set up



## OTHER REFORMS TO NOTE

### RGD functions as a One Stop Shop for Starting a Business in Ghana

- ❖ Linked up with GRA through software that generates a TIN
- ❖ Through the digital address to provide a temporary Business Operating Permit(BOP) from your MMDA valid for 90 days.
- ❖ Deployment of data to SSNIT with the completion of each registration to ensure social security payment for employees



## OTHER REFORMS TO NOTE

Passage of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) to promote a rescue culture to protect investments.

- The purpose of this Act is to provide a legal regime for:
  - a) 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;
  - b) the temporary management of the affairs, business and property of a distressed company;
  - c) the placing of a temporary freeze on the rights of creditors and other claimants against a distressed company;
  - d) the development and implementation of a restructuring plan which results in a better return for the creditors and shareholders of the company that would result from the immediate winding-up of a distressed company

Insolvency Practitioners have now been introduced to carry out Official Liquidations which was initially the only preserve of the Official Liquidator. They would however be licenced by the OL in the yet to be set up Insolvency Division



# PROCEDURE FOR REGISTRATION

- Download the Appropriate Registration Forms from the website [www.rgd.gov.gh](http://www.rgd.gov.gh)
- Complete the Prescribed Form for each type of company and appropriate Beneficial Ownership Forms
- Attach the following: - Director's Statutory Declaration
  - - Auditor's Consent Letter - Director's Consent Letters
  - - Secretary's Consent Letter - Registered Constitution (if any)
- Each Officer of a Company should obtain a Taxpayer Identification Number (TIN)
- From 1<sup>st</sup> April, 2021, the unique identifier mandatorily would be a National Identification Number to replace the TIN
- Note: Select our standard types of Constitution if no Registered Constitution attached
- All supplementary forms should be uploaded and attached

# STEPS FOR IN HOUSE REGISTRATION



1. Download Forms based on the entity type at [www.rgd.gov.gh](http://www.rgd.gov.gh)
2. Follow the Queue Management System for ticketing
3. Conduct a Search on the entity name at the desk (Submit three names on a scale of preference)
4. Submit duly filled Registration Forms with Tax Identification Number,/(National Identification Number) Digital & Email Address to the Company Inspector for verification
5. Proceed to Data entry officer for data capturing
6. Pay statutory fees at the in-house bank
7. Documents to be processed in the back office
8. Applicant will be notified through SMS when Certificate and relevant documents are ready for collection.



## TYPE OF COMPANY

- Private Unlimited Company
- Private Limited by Guarantee

## DOCUMENTS TO BE RECEIVED

- Form 3A, Certificate of Incorporation and Registered Constitution .
- Form 3A, Certificate of Incorporation and Registered Constitution or Standard Constitution



## DOCUMENTS TO BE RECEIVED – Cont'd

### TYPE OF COMPANY

- Private Limited by Guarantee

Public Limited Company

### DOCUMENTS TO BE RECEIVED

- Form 3B, Certificate of Incorporation and Registered Constitution or Standard Constitution.
- Form 3C, Certificate of Incorporation and Registered Constitution or Standard Constitution



## DOCUMENTS TO BE RECEIVED – cont'd

### TYPE OF COMPANY

- **Public Unlimited Company**
- **Public Limited by Guarantee**
- **External Company**

### DOCUMENTS TO BE RECEIVED

- Form 3D, Certificate of Incorporation and Registered Constitution or Standard Constitution.
- Form 3E, Certificate of Incorporation and Registered Constitution or Standard Constitution
- Certificate of Registration and form 20 & 21





# APPROVED FEES

## Name Reservation

- - Limited Liability Company - Gh¢50.00
- - Company Limited by Guarantee - Gh¢50.00
- - Partnerships - Gh¢50.00
- - Sole Proprietor - Gh¢50.00
- - Subsidiary (SBN) - Gh¢25.00

## Business Registration

- - Limited Liability Company - Gh¢230.00 + Ghc50.00 Administrative Fee + Ghc50.00 for filing of Form 3 + Stamp Duty equivalent to 0.5% of Stated Capital
- - Company Limited by Guarantee - Gh¢270.00
- - External Company - \$1,200.00/Cedi Equivalent
- - Partnerships - Gh¢160.00
- - Sole Proprietor - Gh¢60.00
- - Subsidiary (SBN) - Gh¢60.00

## Annual Returns / Renewals

- - Limited Liability Company - Gh¢50.00
- - Company Limited by Guarantee - Gh¢50.00
- - External Company - \$600.00/Cedi Equivalent
- - Partnerships - Gh¢50.00
- - Sole Proprietor - Gh¢25.00
- - Subsidiary (SBN) - Gh¢25.00

## Filing For Change of Name Certificate

- - Limited Liability Company - Gh¢110.00
- - Company Limited by Guarantee - Gh¢110.00
- - Partnerships - Gh¢100.00
- - External Company - \$250.00/Cedi Equivalent
- - Business Names - Gh¢25.00
- - Subsidiary - Gh¢25.00
- PENALTY-One time payment for Non Filing currently GHC400.00. It goes up to GHC450.00 from next week

# ONLINE ACCESSIBILITY



- visit our portal on [www.rgdeservices.com./www.rgd.gov.gh](http://www.rgdeservices.com./www.rgd.gov.gh)
- Create a portal account with a valid email and TIN
- Log into the portal with your TIN as a user name and password that was sent into your email
- Proceed to register any of the six(6) entity types
- On completion of the process make payment with Visa Card, Master Card or Mobile money through [www.ghana.gov.gh](http://www.ghana.gov.gh) (payment platform)
- Sign up on the platform
- Upon approval of your entity you can print the Electronic Certificates with the digital signature of the Registrar-General on it and Profiles from the portal.



## REQUIREMENTS FOR EXISTING ENTITIES

- **All companies/business entities already registered before December, 2011 should update their Company details to conform with the Companies Act ,2019 (Act 992) and also be migrated into our E-Registrar Database,**
- **MANDATORY CHANGE OF NAME BY EXISTING COMPANIES**
- Every existing company must change its name and mandatorily adopt a Constitution by Special Resolution in accordance with Act 992.
- The company shall deliver to the Registrar a Special resolution indicating whether they would present a Registered Constitution or adopt a Standard Constitution as seen in Act 992.
- The amended Name in compliance with the new suffixes ending the name should be the name in the Adopted Constitution



## FILING OF RETURNS/GROUP ACCOUNTS & RENEWALS

A company shall, at least once in every year, deliver to the Registrar for registration an Annual Return including particulars of every member of the company after the first eighteen months (18months) with a Financial Statement attached and yearly thereafter.

### ❖ Existing Companies

Existing companies are to file their Annual Returns once in their calendar year with a Financial Statement.

### ❖ External Companies

Filing of a Group Account

### ❖ Partnership/Sole proprietorship/Business Name Subsidiary

Renewal is yearly



## CONCLUSION

- The duties and rights of companies have been enhanced for the strengthening of corporate governance practices and to further ease the processes of doing business in Ghana.
- The decoupling of the Office of the Registrar of Companies would ensure the needed delivery of quality service for the good of the business community.





THANK YOU

