



COMPLIANCE WITH THE COMPANIES ACT AND NEW CORPORATE GOVERNANCE REQUIREMENTS

APRIL 2021

On 22 February, 2021, the Registrar- General’s Department (“**RGD**”) issued a public notice advising that it had modified its systems and processes to align with the new requirements of the Companies Act, 2019 (Act 992) (the “**Act**”).

This Alert highlights some of the key changes under the Act (which became fully operational on 1st October 2020) and RGD’s new procedures and guidelines in connection therewith (the “**RGD Guidelines**”).

- **Additional Suffixes to Names of Companies**

Effective 1st October 2020, companies incorporated or registered in Ghana (including existing companies) are required to have new suffixes at the end of their names to enable easy identification of their legal form. An incorporation/ registration application will not pass muster if the proposed company name does not contain one of the suffixes below.

Similarly, an existing company whose registered name does not include the requisite suffix must take steps to change its name by passing, and filing at the RGD, a special resolution of members.

TYPE OF COMPANY	SUFFIX
Private Limited Company	“Limited Company” or “LTD”
Private Unlimited Company	“Private Unlimited Company” or “PRUC”
Private Company limited by Guarantee	“Limited by Guarantee” or “LBG”
Public Limited Company	“Public Limited Company” or “PLC”
Public Unlimited Company	“Public Unlimited Company” or “PUC”
Public Limited by Guarantee	“Public Limited by Guarantee” or “PLBG”
External Company	Same as the name of the body corporate registered outside the jurisdiction

- **Adoption of Constitution**

Another key change to the company incorporation/ registration requirements pertains to constitutional documents; that is, going forward the governing constitution of a Ghanaian company, previously referred to as “Regulations” has been replaced with a new document referred to as “Constitution”. Existing companies must therefore mandatorily adopt a “Constitution’ to replace their existing

“Regulations”. The adoption of such replacement Constitution must be by special resolution, with companies having the option of adopting the Standard Constitution annexed to the Act or filing their own tailored Constitution (referred to as a Registered Constitution).

- **Enhanced Corporate Governance Requirements for Directors**

As part of efforts to strengthen corporate governance, the Act requires that a person proposed for appointment as a director must provide a statutory declaration evidencing his or her eligibility to act as a director. The statutory declaration, which must be filed at the RGD, must confirm that the proposed director has not within the preceding five (5) years before the application been charged or

convicted of a criminal offence involving fraud or dishonesty, been charged with or convicted of a criminal offence relating to the promotion, incorporation or management of a company; or been a director or senior manager of a company that has become insolvent.

In addition, unless otherwise dispensed with by way of an ordinary resolution of shareholders, every company is required to keep an Interests Register which records the nature and extent of the directors’ interests in proposed contracts.

- **Qualification of the Company Secretary**

To further enhance corporate governance in Ghana, companies are now required to appoint a Company Secretary

duly qualified under the Act. This is in contrast to the old regime where any person above the age of majority could be appointed as a Company Secretary.

Under the Act, a Company Secretary must meet the following requirements:

- a. Professional qualification or tertiary level qualification offering Company Law Practice and administration.
- b. Has held office as a Company Secretary trainee for at least three (3) years.
- c. Is a member in good standing of the institute of Chartered Secretaries and Administrators; or the Institute of Chartered Accountants, Ghana or a member in good standing as a barrister or solicitor in Ghana.

- **Qualification and Rotation of Auditors**

Another new requirement under the Act, which is being monitored by the RGD, is the requirement to rotate auditors under section 139 of the Act. Currently, auditors can now only hold office in a particular company for a term of not more than six (6) years, and will be eligible for re-appointment only after a cooling-off period of at least six (6) years.

Consequently, auditors who, upon the coming into effect of the Act, have been at post for 6 years or more must be changed by shareholders at their next general meeting, and requisite documents filed at the RGD. A grace period has been given in respect of this requirement, until August 2022.

- **Beneficial Ownership and Central Register**

The Act requires that details of beneficial owners¹ (“BO”) of a company be entered in the Register of members (shareholders) of the company and provided to the Registrar of Companies within twenty-eight (28) days’ of making such entries.

In addition, the Company must indicate whether the BO is a politically exposed person².

The BO forms (evidencing the different types of BOs) that must be completed and filed at the RGD are as follows: (i) Form BO1 (Overarching BO Form) to be completed by all companies to enumerate the number and type of beneficial owners a company has; (ii) Form BO2 (Natural Person BO Form) to be completed by a BO which is a natural person; (iii) Form BO3 (Listed Company BO Form), to be completed by a BO that is a public company listed on a recognised stock exchange; and (iv) Form BO4 (Government BO Form), to be completed by a BO that is government or a government agency/ state-owned.

The beneficial ownership information must be provided to the RGD for recording in the RGD’s Central Register at various points including:

- On incorporation;
- When filing annual returns; and

- Upon a change in already submitted BO information.

This is a major step being taken to enable the country comply with the 2016 Extractive Industries Transparency Initiative (EITI) global conference resolution which makes beneficial ownership disclosure mandatory for all EITI implementing countries, of which Ghana is a member.

The current deadline for submission of Beneficial Ownership information to the RGD is 30th June 2021.

¹ “beneficial owner” means an individual (a) who directly or indirectly ultimately owns or exercises substantial control over a person or company; (b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons;(c) on whose behalf a transaction is conducted; or (d) who exercises significant control or influence over a legal person or legal arrangement through a formal or informal agreement.

² politically exposed person” includes: (a) a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organization including (i) senior political party official, government, judicial or military official; (ii) a person who is or has been an executive of a State owned company;(iii) a senior political party official in a foreign country; and (b) an immediate family member or close associate of a person referred to in footnote 2(a).

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