Key highlights of the Companies and Allied Matters Act (Repeal and Re-enactment) Bill, 2018

On Tuesday 15 May 2018, the Senate of the Federal Republic of Nigeria passed the Companies and Allied Matters Act, 1990 (CAP C20, LFN 2004) Repeal and Re-enactment Bill, 2018 (“the Bill”), following a recommendation of the Senate Committee on Trade and Investment (The Committee). The Bill consolidates the proposed amendments from two related bills: Companies and Allied Matters Act CAP C20 LFN 2004 (Amendment) Bill, 2016 and the Companies and Allied Matters Act CAP C20 LFN 2004 (Amendment) Bill, 2017.

The Bill seeks to establish an efficient means of regulating businesses, minimize the compliance burden of small and medium enterprises (SMEs), enhance transparency and shareholder engagement and promote a friendly business climate in Nigeria. The key amendments in the draft bill presented by the Committee to the Senate are highlighted below. Please note that the highlights below may vary once the harmonized version of the Bill is finalized by the National Assembly for the President’s assent:

1. **Business registration**

   1.1 **Online reservation** - To enhance ease of doing of business in Nigeria, the Bill provides for online reservation of business names. This will result in a significant improvement in turnaround time for potential promoters of companies in Nigeria and improve the ease of registering new businesses.

   1.2 **Provision of Model Articles** - The Corporate Affairs Commission (CAC) would also prescribe a model Articles of Association that would apply to companies, except where a company chooses to register its preferred Articles of Association.

   1.3 **Empowerment to amend the form of Memorandum of Association** - The CAC will likely be empowered to amend, through its Regulations, the form of the Memorandum of Association adopted by companies. The proposed amendments are to address the needs of Nigerian companies in a technology-driven century.

   1.4 **Removal of Attorney General’s Consent for Company Limited by Guarantee** - The Bill proposed to delete the requirement for companies limited by guarantee to obtain the Attorney General of the Federation’s consent for registration purpose. The application process has now been amended to include publication of the application for registration in three national newspapers. This change would make the registration process similar to what is currently obtainable for Incorporated Trustees, as an alternative legal vehicle for registration of not-for-profit organisations.

2. **Share capital**

   2.1 **Elimination of front-loaded fees** - The Bill replaces the concept of “authorized share capital” with “minimum issued share capital” in order to eliminate front loading stamp duty and CAC filing fees on the entire share capital which typically exceeds companies’ requirement at the point of incorporation. Companies will now pay applicable stamp duty and filing fees at the time of share issuance.

   2.2 **Elimination of court order as a condition precedent for share reduction** - To enhance the ease and flexibility of operating a private company, the Bill proposed to remove the requirement for obtaining a court order prior to reduction of share capital. Consequently, a special resolution passed by the shareholders of the company may be sufficient to reduce share capital. This modification may expose creditors and minority shareholders to higher risk of diminution of the value of their
investments and it is hoped that the harmonized version will contain mitigating provisions to protect these classes of shareholders and retain the necessity for an endorsing Court Order for publicly listed companies at least.

2.3 **Prohibition of issuance of irredeemable preference shares and discounted shares** - The Bill prohibits the issuance of irredeemable preference shares or shares at a discount. The prohibition of issuance of irredeemable preference shares settles the discordance between the legal and accounting interpretation of such shares.

2.4 **Inclusion of requirement for paid up shares** - In addition, all companies will now be required to have at least 25 percent of its issued share capital paid-up at all times.

2.5 **Inclusion of possibility of share repurchase** - The Bill also clearly provides for share repurchase subject to specified conditions and electronic transfer of shares.

3. **Company re-registration**

The Bill provides for a robust framework on re-registration of companies from private to public company; from limited to unlimited company or limited by guarantee or vice versa. Particularly, the provisions are aimed at providing flexibility and protecting shareholders’ rights during the conversion process.

4. **Formation of single-member companies**

In order to reduce the entry barriers for SMEs, the Bill provides that a private company can now be formed by one person. This is also to ensure that Nigerian business regulatory environment is competitive and consistent with other jurisdictions.

5. **Reduction of compliance requirements for small companies**

The Bill reduces certain compliance requirements for small companies such as:

- Provision for single directorships;
- Exemption from appointing statutory auditor if the company has not carried on any business activity;
- Exemption from convening annual general meetings
- Exemption from mandatory provision for appointment of company secretary.
- Discretionary use of common seal.

Whilst we understand the need to ease the reporting requirements for small companies, provisions for exemption from independent statutory audit may create an avenue for unsavory practices particularly for companies that may then have gap years in their financial history. We hope that the harmonized version will have safeguards in place to enable users of financial statements other than shareholders have access to relevant financial information of a company that apparently does not do business in a particular year. These stakeholders may include the tax authority, creditors and others.

6. **Disclosure of significant control and beneficial ownership**

6.1 **Disclosure of beneficial ownership for private companies** - As contained in the Bill, all companies will now be required to disclose in their annual returns and register of members, the details of all persons with significant control of over 5 percent. This includes beneficial owners.

6.2 **Disclosure of substantial shareholders and filing requirement for public companies** - Likewise, public companies are to notify and disclose substantial shareholders to the CAC. These amendments are targeted to increase transparency and combat asset shielding and are particularly significant, since they may mandate the disclosure of beneficial interests in a company where such are held through nominal holders or in trust.

7. **Establishment of a legal framework for the registration of Limited Partnerships (LPs) and Limited Liability Partnerships (LLPs)**

The Bill provides for a framework for the regulation of LPs and LLPS, including registration and other compliance requirements. This is a very commendable initiative that would provide investors with access to this business structure across the Federation. Currently, only businesses in Lagos State are capable of being registered as limited partnerships.

8. **Establishment of a framework for handling insolvency issues**

The Bill also creates a framework for resolving the prevailing issues of insolvency affecting businesses in Nigeria. The provisions on insolvency border on administration, credit risks, and flexible debt-settlement arrangements.

9. **Minority shareholders protection**

As contained in the Bill, shareholders would now be able to bring derivative action against a company and its affiliated entities. This proposed amendment further enhances minority shareholders’ rights and seeks to promote transparency in corporate governance in Nigeria.

10. **Financial Assistance**

The Bill included provisions permitting private companies to provide financial assistance for acquisition of its
own shares upon meeting certain conditions. The conditions include, non-reduction of net assets, or where reduced, such assistance should be financed out of distributable profits. A special resolution of the shareholders and a declaration of the directors in a form to be prescribed by the CAC are also required to accompany such transaction.

These provisions may be considered aggressive and it is hoped that the harmonized version will include safeguards to ensure that minority shareholders and creditors are not shortchanged by aggressive structuring of transactions on the basis of the removal of this prohibition. Most common law countries retain some kind of safeguard in this respect, especially for private companies.

The Bill appears to complement the key objective of the Presidential Enabling Business Environment Council in building an enabling business environment. It is expected that the Bill, which now awaits Presidential assent, would address the extant difficulties faced by businesses (administrative bottlenecks, high compliance costs etc.) and, hopefully, lead to a significant improvement in the country’s Ease of Doing Business rankings.

On the whole, the provisions of the Bill will help to generate more tax revenue for the government as business entities can now be better regulated efficiently. However, care must be taken to ensure that the potential of good governance is not eroded in SMEs due to the presence of only one shareholder or director that may choose to run a company arbitrarily.

We will keep you updated on further developments on the Bill, once the harmonized version becomes available and when the President assents thereto, whichever comes first.

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