

NEW DIRECTIVES FROM CORPORATE AFFAIRS COMMISSION AND ITS IMPLICATION

1. FOREIGN PARTICIPATION IN NIGERIA

In furtherance of its duty to enforce the Nigeria Immigrations Act, 2015, and the Immigration Regulations 2017 as it relates to employment of expatriates and foreign participation in businesses in Nigeria, the Ministry of Interior published a revised Handbook on Expatriate Quota Administration 2022 (“the Handbook”). One of the key provisions of the Handbook is the revision of the minimum paid up capital requirement for Companies with Foreign Participation, from N10,000,000 (Ten Million Naira) to N100,000,000 (One Hundred Million Naira).

Based on the foregoing, the Corporate Affairs Commission (CAC) has commenced the implementation of same and has mandated Companies that have foreign participation and a share capital below N100,000,000 (One Hundred Million Naira) to increase their share capital to the required minimum of N100,000,000 (One Hundred Million Naira). It is important to note that approval by the CAC of all post-incorporation filings for Companies with foreign participation is subject to compliance with the revised minimum share capital requirement.

Allotment of Shares

Following the increase in share capital, Companies are required to allot the additional shares to new or existing shareholders in compliance with Regulation 13 of the Companies Regulations 2021 and section 124 of CAMA 2020 which mandates every Company in Nigeria to fully issue its shares

Amendment of Memorandum & Articles of Association (MEMART)

Companies are also required to amend their MEMART to reflect the new share capital.

Capital Importation

The Handbook stipulates that Companies that have foreign participation must have a minimum capital of N100,000,000 (One Hundred Million Naira), which should be fully paid up. It however permits that in addition to cash consideration, the value of equipment or machinery imported into the country for the purpose of conducting business, can also form a portion of the paid-up capital to be invested in Nigeria.

2. PERSONS WITH SIGNIFICANT CONTROL (PSC)

In compliance with Section 119 of the Companies and Allied Matters Act (CAMA) 2020 and the Persons with Significant Control Regulations 2022 (PSC Regulations), a Person with Significant Control (PSC) in a Company is obligated to notify the Company of the particulars of such control within 7 days of becoming a PSC whilst the Company is obligated to disclose same to the CAC by filing information of its PSC within 30 days of receipt of such information.

A PSC under the regulations is defined as any person who:

- Holds at least 5% of the issued shares in a company or interest in a Limited Liability Partnership (LLP) either directly or indirectly.
- Exercises at least 5% of the voting rights in a company or LLP directly or indirectly.
- Holds a right, directly or indirectly, to appoint or remove majority of the Directors of the Company or Partners of the LLP.
- Exercises significant influence or control, directly or indirectly, over the Company or LLP.
- Has the right to exercise or actually exercises significant influence or control over the activities of a trust or firm, whether or not it is a legal entity, but would itself satisfy any of the first four conditions above, if it were an individual.

It is imperative to note that based on the provisions of Section 14 of the PSC Regulations, only natural persons can be registered as PSCs. Non-compliance with the disclosure obligation will result in daily administrative penalties against the Company, its officers and the PSC.

In practice, updating details of the PSC to reflect the accurate person(s) is a pre-requisite to filing Annual returns. The information required will typically include:

- Name
- NIN or International Passport Number
- Email Address:
- Nationality
- Date and Place of Birth
- Service and Residential Address
- PEP Status (where applicable)
- Occupation/ Profession
- Nature of Ownership or Control
- Date of becoming a PSC
- Date of Notifying the Commission
- Date of Ceasing to be a PSC
- Tax Identification Number
- Tax Residency

Companies are advised to comply with the Commission's directive on minimum share capital (If applicable) and the disclosure of PSC to avert penalty, or any form of disruption relating to its corporate information and to remain a fully compliant entity.

Kindly reach out to the Regulatory, Compliance and Corporate Governance team (**mariam.akinyemi@jee.africa** or **t.oliver-jude@jee.africa**) for additional information and Legal Advisory.