

THE ROLE OF THE CORPORATE AFFAIRS COMMISSION IN THE ESTABLISHMENT OF THE REGISTER OF BENEFICIAL OWNERS

- ❖ The functions of the Corporate Affairs Commission include among others the regulation and supervision of the formation, incorporation registration and management of companies. The subscribers of the memorandum automatically become members upon registration of companies. The company is empowered to require any member of the company to disclose the capacity in which he holds any shares in the company.
- ❖ Section 94 of the Companies and Allied Matters Act provides as follows:

“Notwithstanding the provisions of Section 95 of this Act, a public company may by notice in writing require any member of the company within such reasonable time as is specified in the notice.

 - a) To indicate in writing the capacity in which he holds any shares in the company.
 - b) If he holds them other than as beneficial owner, to indicate in writing the particulars of the identity of persons interested in the shares in question and whether persons interested in the same shares are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.
- ❖ 2. The register of beneficial ownership shall contain the list of the real people who actually own or control the business entity. The register is to be open to the public for inspection to ensure transparency of beneficial ownership.
- ❖ The Commission has proposed a bill to repeal the Companies and Allied Matters Act and enact the Companies and Allied Matters Act 2017. The proposed Act has adequately made provision for disclosure of beneficial interest in shares.
- ❖ Section 92 of the proposed bill provides as follows:
- ❖ **DISCLOSURE OF CAPACITY BY SHAREHOLDER**

92(1) Notwithstanding the provisions of Section 93 of this Act every member of the company shall within seven days of becoming a member indicate to the company in writing.

- a) The capacity in which he holds any shares in the company and
 - b) If he holds them other than as beneficial owner the particulars of the identity of persons interested in the shares in question and whether persons interested in the same shares are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.
- ❖ 2. A company shall not later than 14 days after receiving or coming into possession of the information required under subsection (1) of this Section notify the Commission of the information.
 - ❖ 3. The Commission shall maintain a register of beneficial owners of shares in which it shall enter the information received from every company under subsection (2) of the Section.
 - ❖ 4. The company shall inscribe against the name of every member in the register of members the information received in pursuance of the requirement of this section.
 - ❖ 5. If default is made by any member in complying with subsection (1) of this section or in purported compliance makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable to imprisonment for six months or to a fine of ₦50,000.00.
 - ❖ Disclosure of substantial ownership of shares in a public company has been provided under section 93 of the Proposed Bill.
S.93(1) provides that a person who is a substantial shareholder in a public company shall give notice in writing to the company stating his name and address giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.
 - ❖ (2) A person is a substantial shareholder in a public company if he holds himself or by his nominee shares in the company which entitle

him to exercise at least 5 percent of the unrestricted voting rights at any general meeting of the Company.

- ❖ (3) A person required to give a notice under subsection (1) of this section shall do so within 14 days after that person becomes aware that he is a substantial shareholder.
- ❖ (4) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (3) of this Section.
- ❖ (5) The Company shall within 14 days of receipt of the notice or of becoming aware the person is a substantial shareholder give notice in writing to the Commission of this fact.

- ❖ (6) If any person or company fails to comply with the provisions of this section the person or the company shall respectively be liable to a penalty of ₦200.00 and ₦500.00 for every day during which the default continues”.

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