

PRIVATE COMPANIES CONVERSION AND LISTING BILL, 2013

ARRANGEMENT OF CLAUSES

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A BILL

FOR

AN ACT TO PROVIDE FOR THE PRIVATE COMPANIES WHOSE SHAREHOLDERS FUNDS EXCEED FORTY BILLION NAIRA OR ITS ANNUAL TURNOVER EXCEEDS EIGHTY BILLION NAIRA OR ITS TOTAL ASSETS EXCEED EIGHTY BILLION, TO CONVERT TO PUBLIC LIABILITY COMPANY AND GET ITS SHARES LISTED IN THE STOCK EXCHANGE MARKET THEREBY PROMOTING GROWTH FOR BOTH THE COMPANY AND THE NIGERIAN CAPITAL MARKET AND FOR RELATED MATTERS

Sponsored by Hon. Chris Emeka Azubogu

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

- 1 1. -(1) A private liability company whose shareholders funds
2 exceed forty billion naira or its annual turnover exceeds eighty billion naira
3 or its total assets exceed eighty billion, shall convert to public liability
4 company.
5 (2) In this section, any reference to the:
6 (a) asset value of a company is based on the gross value of the
7 company's assets as recorded in its balance sheet at the end of the last audited
8 financial year; and
9 (b) annual turnover is based on the gross revenue of the company
10 from income in, into or from Nigeria, arising from the sale and rendering of
11 goods and services; and the use of the company's assets in a manner that
12 yields interest, royalties and dividends.
13 2. A private company that has obligation of conversion from
14 private liability company to public liability company must, within twelve
15 months from the date of conversion, take steps to list its shares in the stock
16 exchange market for brokerage.

Grounds for
conversion

Listing

Disclosure
requirements

1 3. -(1) A private liability company, which the provisions of this Bill
2 applies, must maintain or cause to be maintained proper accounts and records
3 to enable a true and fair view, to be formed, of its assets, liabilities, income and
4 expenditure.

5 (2) The company within six months from the commencement of this
6 Bill, in the case of existing companies, or six months from date of
7 incorporation, in the case of a newly incorporated company, present to the
8 Securities and Exchange Commission:

9 (a) memorandum and Article of Association of the company;

10 (b) current Statement of Return on Allotment of Shares in the
11 prescribed form of the Corporate Affairs Commission;

12 (c) total amount or percentage of its securities subject of public
13 holding;

14 (d) Directors' declaration on oath of compliance with the public
15 offering and listing requirements;

16 (e) an audited Financial Statement of the company for three years
17 preceding the commencement of the Bill in the case of an existing company;

18 (f) a comprehensive valuation report of the assets of the company; and

19 (g) a statement of the company's plan to comply with the listing
20 requirements of the Securities and Exchange Commission and relevant
21 statutory bodies, for examination and proper record.

Powers of the
Securities and
Exchange
Commission

22 4. The Securities and Exchange Commission, in addition to its powers
23 under the Investment and Securities Act, 2007 have powers to:

24 (a) administer the provision of this Bill;

25 (b) call for information from the Directors of the companies for the
26 purpose of ensuring compliance with provision of this Bill;

27 (c) appoint one or more persons to undertake the inspection of the
28 books of account, records and documents of a company;

29 (d) inquire into the complaints received from investors, other market
30 participants or any other persons on any matter having a bearing on the

1 operation of this Bill;

2 (e) inquire into affairs of any company in the interest of investor
3 protection;

4 (f) issue notice requiring any company which this Bill applies to
5 comply with any of the provisions of the Bill;

6 (g) review from time to time the threshold requirements prescribed
7 under this Bill generally or in relation to any specific industry or sector of the
8 economy;

9 (a) make regulations and give directives for the operation of this
10 Bill; and

11 (b) do all such things as may be necessary for giving effect to any of
12 the provisions of this Bill.

13 5. -(1) Before under taking any inspection of a company by the
14 Securities and Exchange Commission on matters relating to the
15 administration of this Bill, the Commission must give 30-days notice to the
16 company disclosing its intension to inspect the Company.

Duties of a
company under
inspection

17 (2) For the purpose of inspection under this Bill, the Securities and
18 Exchange Commission may appoint a qualified auditor to inspect the books
19 of account or inquire into the affairs of the company the auditor so
20 appointed must have the same powers of the Commission under this Bill.

21 (3) In carrying out the inspection by the Commission, the Directors
22 and employees of the Company must:

23 (a) produce to the Commission such books, accounts and other
24 documents in its custody or control and other information as the company
25 may be required to provide;

26 (b) allow the Commission to have access to the company premises
27 and extend facility for examining any books, records, documents and
28 computer data in the possession of the company which in the opinion of the
29 Commission are relevant for the purposes of the inspection; and

30 (c) give to the Commission all assistance in connection with the

	1	inspection of the Company.
	2	(4) The Commission in the course of inspection is entitled to examine
	3	or record statements of any principal officer, director, partner, proprietor and
	4	employee of the company.
Tax incentives	5	6. -(1) Notwithstanding the provisions of any enactment regulating
	6	the taxation of Companies, any Company that complies with the provisions of
	7	Clauses 1 and 2 of this Bill is eligible for the tax incentives as provided under
	8	sub clause 2 of this clause.
	9	(2) For a period of five years commencing immediately after the date
	10	of listing on a securities exchange, if the company lists at least:
	11	(a) 40% of its issued share capital, it shall be eligible for a tax
	12	incentive at a rate up to one-third of its applicable income tax;
	13	(b) 30% of its shares capital, it shall be eligible for a tax incentive of
	14	up to one-fourth of its applicable income tax; and
	15	(c) 20% of its issued share capital, it shall be eligible for a tax
	16	incentive at a rate up to one-eighth of its applicable income tax.
Tax deductible expenses	17	7. A company is entitled to tax deductible expenses on:
	18	(a) all expenditure incurred by a company subject to Clauses 1 and 2
	19	for the purposes of listing on any securities exchange;
	20	(b) stamp duty payable on increase in share capital for the purpose of
	21	conversion and listing under clauses 1 and 2 of this Bill; and
	22	(c) 60% of Securities and Exchange Commission related fees for
	23	listing.
Penalty	24	8. -(1) A person that contravenes any of the provision of this Bill
	25	commits an offence and shall be liable on conviction to imprisonment for a
	26	period not below 2 years.
	27	(2) Where the offence was committed by a body corporate, the body
	28	corporate is liable on conviction to a fine of 10% of its annual turnover for each
	29	year of default.
	30	(3) Where the offence was committed with the knowledge, consent or

1 connivance of a Director, Employee, or Secretary or both, of the body
2 corporate, all the Directors, employees, Secretary that have hand in the
3 committing of the offence, shall be liable on conviction to a fine of one
4 million naira (N1,000,000.00) for each month of default or imprisonment
5 for a period not below 2 years, or both.

6 9. In this Bill:

Interpretation

7 “Commission” means the Securities and Exchange Commission established
8 under the Investments and Securities Act 2007;

9 “Private company” has the meaning ascribed under the Companies and
10 Allied Matters Act and shall include any body corporate, firm or partnership
11 or any other entity that participates in the sectors contemplated in this Act;

12 “Director” has the meaning as it assigned to it in the companies and allied
13 Matters Act;

14 “Minister” means the minister responsible for matters relating to finance;

15 “Securities” include shares, debentures, stock, bond, notes or debt
16 instruments issued by a corporate body;

17 “Securities exchange” means a recognised exchange registered by the
18 Commission pursuant to the Investments and Securities Act which
19 constitutes, maintains or provides a market place for bringing together,
20 purchasers and sellers of securities or for otherwise performing with respect
21 to securities the functions commonly performed by an exchange;

22 “Share” means a proprietary interest in the share capital of a body corporate.

23 10. This Bill is cited as Private Companies Conversion and Listing
24 Bill, 2013.

Citation

EXPLANATORY MEMORANDUM

This Bill seeks to provide for the private companies whose shareholders funds exceed forty billion naira or its annual turnover exceeds eighty billion naira or its total assets exceed eighty billion, to convert to public liability company and get its shares listed in the stock exchange market thereby promoting growth for both the company and the Nigerian Capital Market.