



## WHY CAN'T PRIVATE COMPANIES RAISE FUND PUBLICLY?

**Dear Valued Clients,**

We hope this newsletter finds you well. At AMOFIN SOLICITORS, we strive to keep our clients informed about crucial legal developments that impact their businesses and daily lives. In this edition, we shed light on the question of whether a private company can raise funds publicly and options available for private companies to raise capital.

### **1.0 Introduction**

To begin with, what is a private company? A private company is a business registered with a government agency (Corporate Affairs Commission) and is limited to a maximum of fifty (50) shareholders. Private companies can't ask the public for funds to run their business. They follow rules set in their operating manuals (Memorandum and Articles of Association) and these rules are decided upon during registration. The primary rules that govern the registration and operation of companies generally including private companies are the Companies and Allied Matters Act administered by the Corporate Affairs Commission (CAC) and the Investment and Security Act (ISA) administered by the Security and Exchange Commission.

### **2.0 Ways Companies can Raise Fund?**

Generally, Companies, whether private or public, can raise funds by issuing shares (ownership stakes) or debentures (loans). Shares give ownership rights and decision-making power, while debentures, on the other hand, are more or less like loans. Both private

and public companies can raise funds using these methods, but public companies have more freedom to raise funds publicly than private companies. Private companies are legally restricted from raising or soliciting funds directly from the public.

### **3.0 Why can't Private Companies raise fund Publicly?**

Private companies are restricted from asking the public to subscribe to or buy their shares or lend them money through debentures publicly. This restriction is set by the laws (CAMA and ISA) regulating the registration and operation of companies in Nigeria. Private companies in Nigeria must therefore restrict transfer of their share and limit their share among existing members. This rule prevents them from publicly offering their shares or debentures either to confer ownership stake or to make the subscribers creditors of the company.

### **4.0 What does it mean to raise funds publicly?**

What constitutes "publicly raising fund"? In other words, what is public fundraising in the context of a private company? To publicly raise fund means inviting or asking the public to buy shares or lend money to the private company (debenture). This includes using newspapers, broadcasting, or websites etc. to invite or reach the public. Any private company that does this will be violating the provisions of the applicable laws. Thus, a private company is expected to be circumspect in raising fund for its operation.

## **5.0 What if a Private Company Publicly Raises Fund?**

If a private company raises funds publicly either by inviting the public to buy its share or subscribe to its debenture in violation of the provisions of law, it can be fined/sanctioned. This fine/sanction can extend to the individual members of the company who aids or abets the company in violating the law. The company could face a fine of N500,000, and individuals involved could be fined up to N100,000 each.

## **6.0 Is there any alternative for Private Companies to Raise Funds?**

Private companies can raise funds through some alternative methods like converting from private to becoming public companies, obtaining (either interest/non-interest) loans from banks, private placement (selling securities to specific buyers), or finding angel investors or venture capitalists etc. each of these methods is discussed below;

### **6.1 Converting to a Public Company**

Private companies can convert their status from private to becoming public companies to be able to raise funds publicly without the usual legal restrictions. This, however, involves various steps and regulatory requirements that must be taken and complied with. These regulatory requirements are usually stipulated by the provisions of the Companies and Allied Matters Act (CAMA) and the Investment and Securities Act (ISA) where applicable.

### **6.2 Loans from Banks**

Private companies can get loans from banks or financial institutions to raise funds without necessarily breaking the law. There are different loans/financing options. Private companies can key into or explore interest-based loan/finance as well as non-interest-based loan/finance.

## **6.3 Private Placement**

Private placement involves selling securities to specific buyers. It can be used by both private and public companies but must follow different regulations. The process mostly takes place privately and does not have to go through the usual regulatory hurdles.

## **6.4 Increasing Shareholders**

Private companies can raise funds by allowing more people to become shareholders through buying shares in the company by private arrangement.

## **6.5 Angel Investors and Venture Capitalists**

Private companies can get funding from angel investors or venture capitalists in exchange for equity. This method is legal if done correctly.

## **7.0 Can a Cooperative be used by a Private Company to publicly Raise Funds?**

A cooperative is a separate legal entity that operates differently from a private company. It cannot raise funds publicly itself but can lend money to private companies or invest in them.

## **8.0 Can a private company use a Cooperative as a Subsidiary to public raise fund?**

A Cooperative Society, upon registration, acquires a distinct legal personality and as such cannot be registered as a subsidiary of a private company. They both must remain separate entities.

## **9.0 Cooperative Investing in Private Companies**

As a separate legal entity, a Cooperative can invest its funds in private companies, but it must follow the law and the Cooperative's rules. Similarly, a private company can borrow money from a Cooperative too.

## 10.0 Conclusion

A private company is a company registered with Corporate Affairs Commission (CAC) having its members/shareholders limited mostly to fifty (50) in line with the provisions of law. One striking feature of a private company is that it cannot publicly raise funds from the public for the purpose of running its business either by way of share or debenture. In short, a private company is guided by its Memorandum and Article of Associations which are like operating manuals that contain object clause as regards what such a company can do or what it cannot do. Both private companies and cooperatives serve different purposes. They can't raise funds for each other publicly. They can, however, work together to support each other in different ways.

**NB:** For any legal assistance or guidance regarding the contents of the above or in relation to incorporation, registration, or operation of companies generally, feel free to reach out to our team. We are committed to safeguarding your interests.

Stay tuned for more updates and insights from AMOFIN SOLICITORS!

***Best regards,***

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