



Jackson, Etti & Edu



# **COMPANIED AND ALLIED MATTERS ACT 2020: WHAT YOU NEED TO KNOW**

*SEPTEMBER 2020*



# **A. EASE OF DOING BUSINESS**

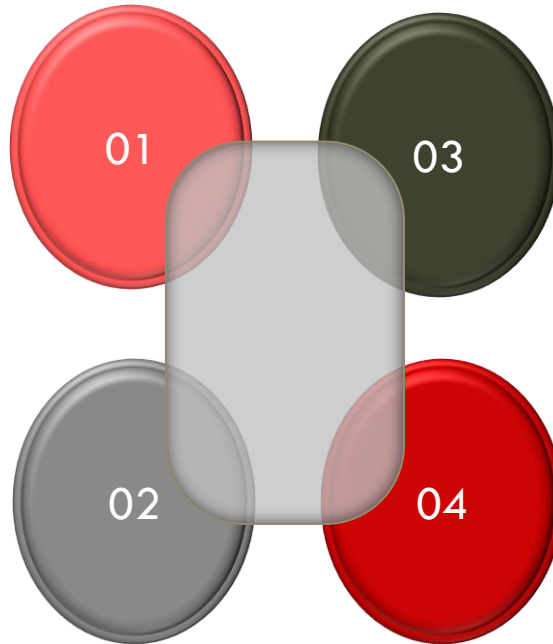
## INCORPORATION

### Minimum number of shareholder(s)

One person can now form and incorporate a private company by complying with the requirement of CAMA regarding private companies. **Section 18 (2)**

### Objects of a Company

By the provision of the CAMA 2020, the objects of a company are unrestricted, unless the Memorandum and Articles of Association specifically restrict same. **Section 35 (1)**



### Introduction of Alternative to AG's Consent

The CAMA 2020 provides a time limit of 30 days for the Attorney-General of the Federation ('**AGF**') to grant authority for the registration of a company LTD/GTE, where no objection to the memorandum of other cogent reasons to decline grant of approval **Section 26 (5)**.

An alternative to the AGF's Consent has been introduced in the event that the AGF does not grant authority to the promoters within thirty (30) days (where all valid documentation are furnish and no decision is made by the Attorney General). The alternative method allows promoters to place an advert in three (3) national dailies and invite objections within twenty-eight (28) days. **Section 26 (7)**

### Dispense of declaration of compliance by a legal practitioner

Under the repealed CAMA, it was mandatory for a lawyer to provide a declaration of compliance that pre-incorporated documents are in compliance with the provisions of CAMA. This provision has now been dispensed with. Only a statement of compliance can now be provided by the applicant or his agent. **Section 40**

## DOCUMENTATION REQUIREMENTS

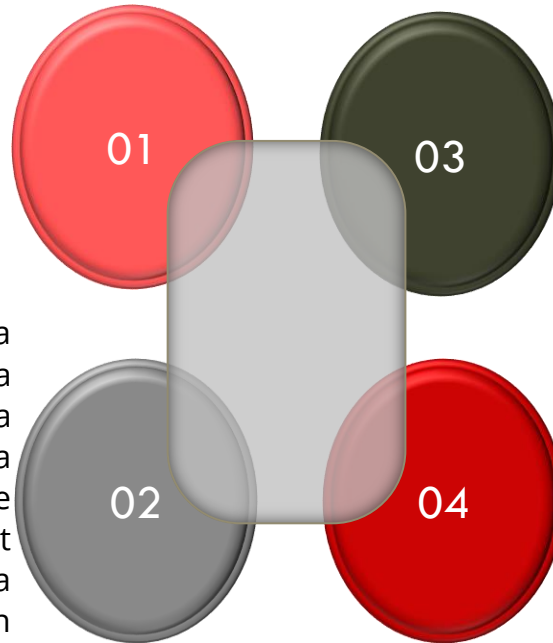
### Authentication document by electronic signature

The electronic signature of an officer of a company is now deemed to satisfy the requirement of signing a company's document or proceeding.

#### Section 101

### Execution of document

In addition to the execution of a document by at least 2 directors or a director by the company secretary, a document can now be executed by a director of the company in the presence of at least one witness who shall attest the signature. **Section 102 (2)** - Where a document is to be signed by a person on behalf of more than one company, the document shall not be considered to be signed by authorized person(s), unless the person(s) signs the document separately in each capacity. **Section 102 (4)**



### Alternative to Sealing

Where any written law or rule of law required any document to be executed under the common seal of a company, or provides for consequences for not sealing, the document will be deemed to have satisfied the provision of the written law or rule of law if the document is signed as provided under CAMA. **Section 103**

### Company Seal

The use of company seal on official documents is no longer mandatory. Where companies decide to have a company the use and design of same shall be regulated by the Articles of Association. **Section 98**



## MEETINGS & APPOINTMENT OF OFFICERS

### Virtual Annual General Meetings (AGMs)

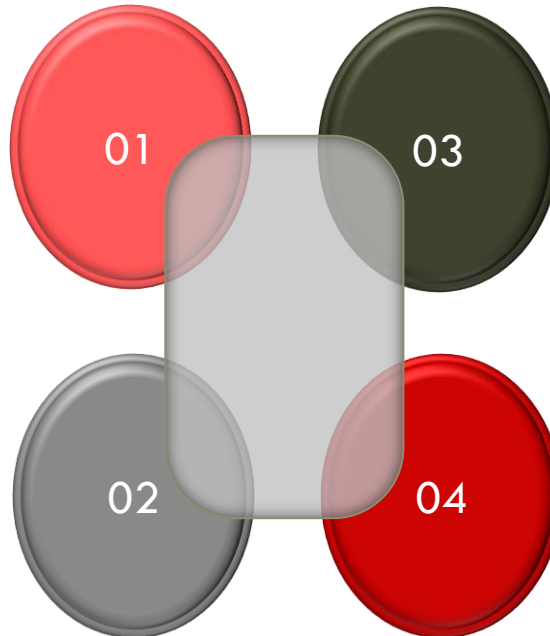
Private companies can now hold AGMs electronically, provided that such meetings are conducted in accordance with the provisions of its Articles of Association.

#### Section 240 (2)

### Minimum Number of Directors

Every company is expected to have a minimum number of two directors. However, this section has provided that a small company can now have a minimum of one director.

#### Section 271



### Definition of a small company

The threshold of small companies has been increased. Under the new CAMA, a small is described as a private a company with a turnover of not more than ₦120,000,00.00 or such amount as may be fixed by the Commission from time to time, and net assets value of not more than ₦60,000,00.00 or such amount as may be fixed by the Commission from time to time.

#### Section 394 (3)

### Appointment of Company Secretary/Register of Secretaries

The appointment of a company secretary for small companies is now optional. **Section 330**

Also, only public companies are now required to maintain a register of secretaries. **section 337 & 338**



## **B. STRUCTURE OF BUSINESS ORGANISATION**

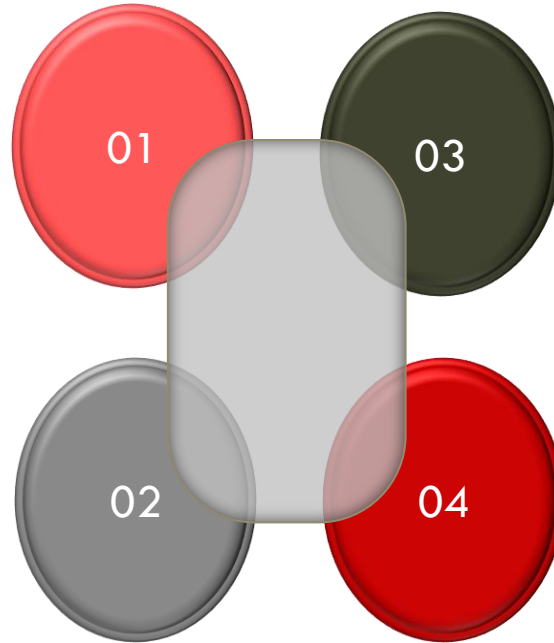
## STRUCTURE OF BUSINESS ORGANISATION

### Creation of Limited Liability Partnerships (LLPs)

The CAMA 2020 introduced Limited Liability Partnerships and Limited Partnerships. A Limited Liability Partnership enjoys a separate legal personality from its partners while a Limited Partnership does not. These two (2) Business structures are pass through entities that allow for pass through of profit and losses and eliminates entity-level tax. **Section 746-810**

### Re-registration of Companies

Public Companies limited by shares may now be re-registered as unlimited companies with share capital upon fulfilment of all the requirements provided in the section. **Section 75(1)**



### Council and Governing Bodies for Incorporated Trustees

The Act allows associations and non-governmental organisations established as Incorporated Trustees to appoint a council or governing body, which may include trustees, and may assign to such council or governing Body such administrative or management function as may be deemed fit. However, no member of the council or governing body (with the exception of ex-officio members) shall be appointed to any salaried office or office of the body paid by fees. **Sections 836, 838 (2)**

### Exemption of Certain Foreign Companies from Incorporation

Exemption of certain foreign companies from incorporation is not required to be made to the Minister with responsibility for trade and will no longer be made to the President of the Federal Republic of Nigeria. The category of exempted companies remain the same under the CAMA 1990.

The Act in addition prescribes that such foreign companies shall deliver to the Commission a notice of its exemption within 30 days of grant of such exemption by the Minister as well as payment of any prescribed fee as may be required by the



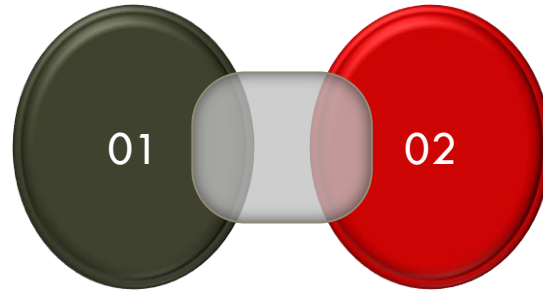
# **C. COMPANY MANAGEMENT & GOVERNANCE**



## NOTICE & MEETINGS

### Notice of General Meeting to CAC

The Corporate Affairs Commission (CAC) is now to receive notice of general meetings of public companies. This implies that in the case of a public company, the Commission may be able to enforce its right to receive the notice similar to that of other stakeholders of the Company. **Section 243 (1) (e)**



### Electronic Notices

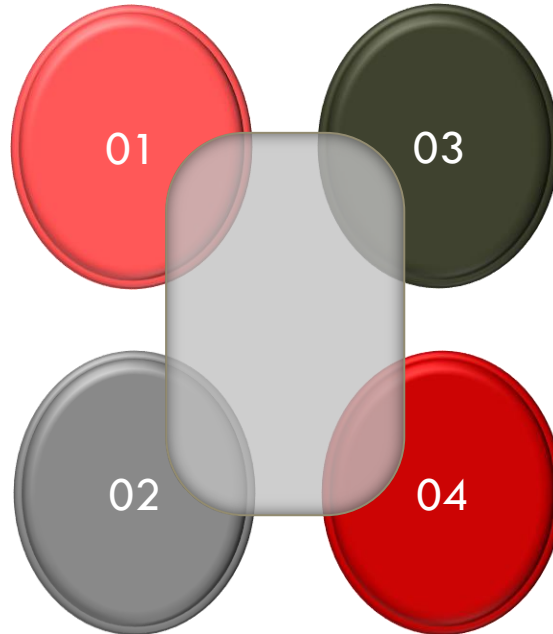
In addition to the notice given personally or by post, notice may also be given by electronic mail to any member who has provided the company with an electronic email address.

### **Section 244(3)**

## DIRECTORS AND MANAGEMENT

### Multiple Directorship

CAMA 2020 restricts a person from being a director in more than five public companies. Also, where a person is a director in more than one public company, he owes a duty of disclosure to any public company seeking to appoint him as a director. **Section 307 (1) & (2)**



### Minimum Number of Directors

Every company is expected to have a minimum number of two directors. However, this section has provided that a small company can now have a minimum of one director. **Section 271**

### Disclosure of Compensation of Managers

The compensation of managers of a company shall be disclosed to members at the annual general meetings. It is however not clear whether shareholders will have a say on the remuneration earned by managers of a Company. **Section 257**

### Prohibition of same person acting as the Chairman and Chief Executive Officer of a Public Company

In alignment with Codes of Corporate Governance, CAMA now explicitly prohibits one person from acting in a capacity as Chairman and Chief Executive Officer of a public company. **Section 265 (6)**

## COMPANY ACCOUNTS

### Filing of Modified Financial Statement (MFS) by small companies

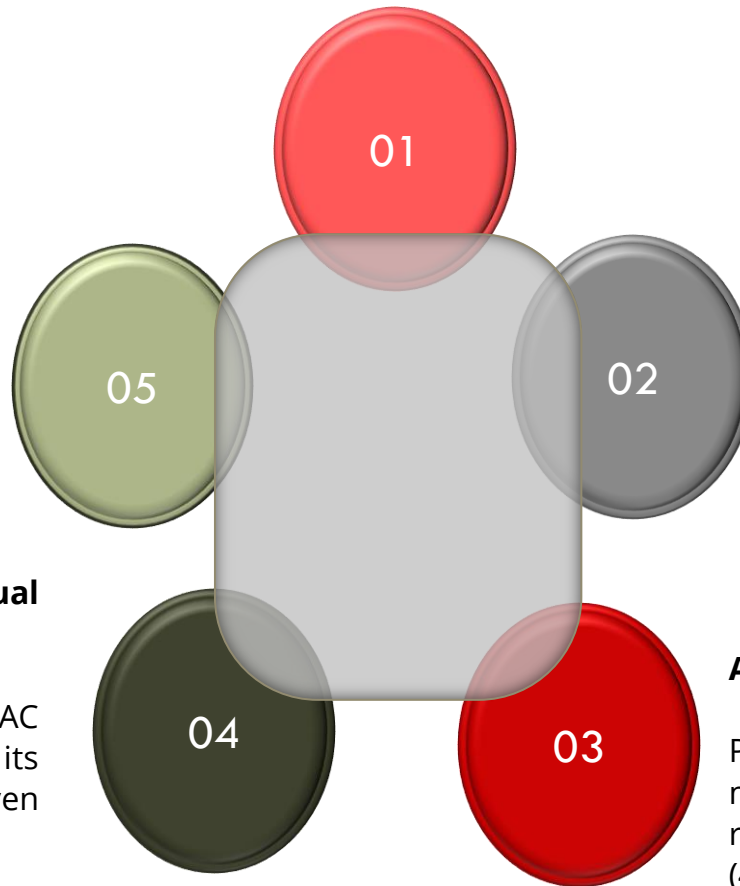
Directors of small companies are required to deliver MFS in respect of a year to the Commission, in accordance with part 1 of the Sixth Schedule to the Act. **Section 393**

### Annexures of Annual Returns

Any document required to be annexed to the annual return may be delivered to CAC either in hard copy or through electronic communications. **Section 422 (3)**

### Extension of time to file Annual Returns

Companies may now apply to CAC for extension of time to file its annual return for any given calendar year. **Section 421**



### Publication of audited accounts by public companies

Public companies are now expected to publish their audited accounts on their website in line with the existing requirement of the Nigerian Stock and the Securities and Exchange Commission. **Section 374(6)**

### Annual Returns

Private companies with only one member are not expected to file annual returns within the specified timeframe (42 days after AGM). **Section 421 (2)**



# **D. COMPANY MANAGEMENT & GOVERNANCE**

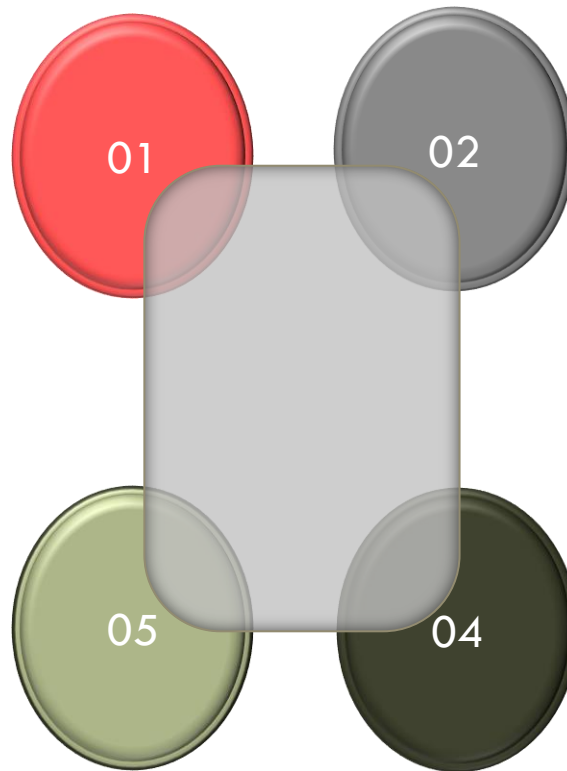
## TRANSFER & ALLOTMENT OF SHARES

### Electronic transfer of Shares

CAMA now provides for electronic instruments of transfer of shares. **Section 176**

### Improperly Issued Shares - Validation

By the provisions of this section, a company can now by itself validate the issuance/allotment of improperly issued or allotted shares by way of special resolution. **Section 148**



### Authority to allot shares

CAMA now restricts the authority to delegate to directors, the power to allot, to only shareholders of private companies, subject to any conditions or direction that may be imposed in the articles or by the company in general meeting. **Section 149**

### Issue of shares at a discount

It is now totally unlawful to issue shares at a discount. **Section 146**

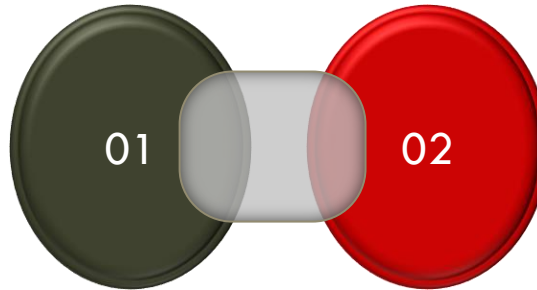
## SHARES - GENERAL

### Increase of issued share capital

Where a company allots new shares, thereby increasing its share capital, the increase shall not take effect unless-

- a) at least 25% of the share capital including the increase has been paid up; and
- b) the directors have delivered to the Commission a statutory declaration verifying that fact

#### **Section 128**



### Irredeemable Preference Shares

No company limited by shares shall issue any preference shares which are irredeemable, after the commencement of CAMA 2020. **Section 147**

## COMPANY DEALING IN ITS SHARES

### Financial Assistance and Net Asset

The Act made two significant changes on financial assistance:

50% materiality threshold for net asset reduction has been introduced to the definition of financial assistance. This will clear all doubts about materiality issue under the current Act.

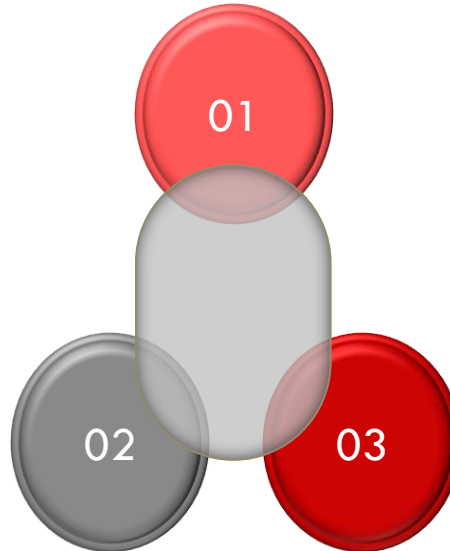
Expansion of Exemptions to include:

- Act or transaction authorised by law – (i) distribution (dividend and winding up), (ii) bonus shares, (iii) a reduction of capital, and (iv) a redemption or purchase of shares.
- Schemes/restructuring. **Section 183 (1)**

### Share buyback by the Company

- Companies can buy-back shares and payment shall be made from distributable profits
- Buy-back shall be authorised by the articles, by a special resolution, shall related to only fully paid shares, shall be published within 7 days of passing of resolution
- Company required to file statutory declaration of solvency with CAC
- A company shall not hold more than 15% of the nominal value of the issued share capital of any class of its shares as treasury shares.

**Section 184 - 187**



### Unclaimed Dividends

Any company having unclaimed dividends must publish the list of unclaimed dividends and the names of persons entitled to the dividends in 2 national newspaper as well as the notice sent to members of the company for each subsequent AGMs. After the expiration of 3 months of the publication and notice, the company may invest the unclaimed dividend for its own benefit in investments outside the company and no interest shall accrue on the dividends against the company. However, where the company fails or omits to send the notice to some shareholders, the dividend will earn interest at the current bank rate from 3 months after the date on which the notice ought to be sent. **Section 429**



# **E. MERGERS & ACQUISITIONS/ INSOLVENCY MATTERS**



## MERGERS & ACQUISITIONS

### Sale of Assets

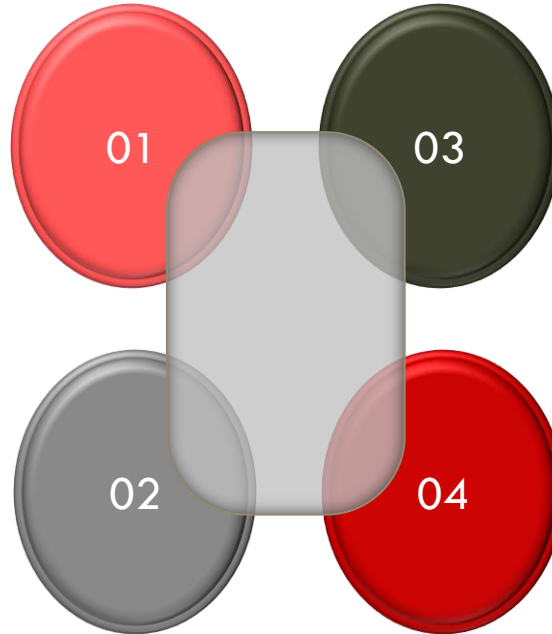
Private companies shall not, without the consent of all its members, sell assets having the value of more than 50% of the total value of the company's assets.

#### Section 22 (2) (a)

### Major Asset Transaction

CAMA 2020 provides that in undertaking a major asset transaction, the board of directors of the company shall recommend the transaction and direct that it be submitted for approval to an annual or extraordinary general meeting of members. At the meeting, the members shall approve the transaction by a special resolution unless the company's memorandum of association provides for its approval by an ordinary resolution, in which case it is approved by an ordinary resolution.

#### Section 849 (1)



### Merger of Associations

CAMA introduces merger of associations. Two or more associations with similar aims and objectives may merge under terms and conditions as the Commission may prescribe by regulation.

#### Section 342 (1) and (2)

### Mergers, Acquisitions, Arrangement and Restructurings

The repeal of Sections 118 – 128 of the Investment and Securities Act by the Federal Competition and Consumer Protection Act created a lacunae in undertaking mergers in Nigeria. CAMA 2020 fills this lacuna, it provides the where a scheme is proposed for the merger of two or more companies, the court may upon the application of any of the companies order a separate meeting of any of the companies to be summoned. Where the parties pass the resolution approving the scheme, an application may be made to the court for sanction the scheme. The application for an order to hold separate meeting and sanction of court may be applied in a scheme proposed for compromise, arrangement or reconstruction.

#### Section 710 – 711



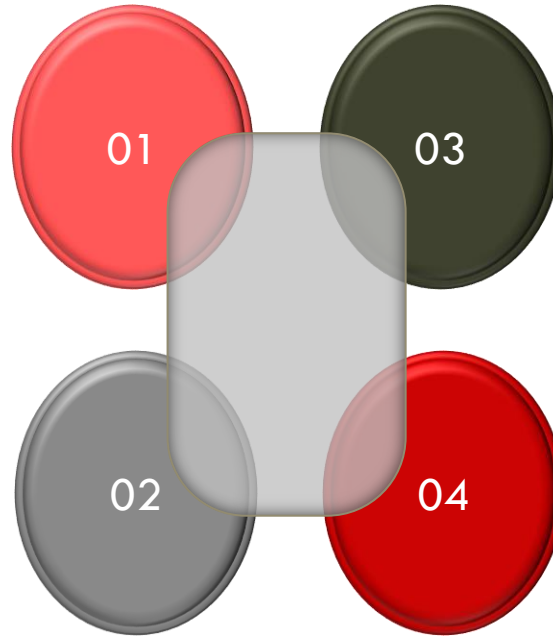
## ADMINISTRATION OF COMPANIES

### Purpose of Administration

CAMA 2020 introduces Administration as a corporate rescue mechanism with the objective of (a.) rescuing the company, the whole or any part of its undertaking as a going concern; (b.) achieving a better result for the company's creditors than if the company were wound up; (c.) realizing property in order to make distribution to one or more secured or preferential creditors. **Section 444**

### Appointment of Administrator

A person may be appointed as an Administrator of a Company by (a.) Administration order of the Federal High Court; (b.) the holder of a floating charge; (c) the company or its directors. **Section 443**



### Status of an Administrator

An Administrator is an officer of the court, whether or not he is appointed by the court. **Section 443**

### Company in Administration

Where a company is in administration, (a.) no resolution shall be passed for winding up of the company; and (b.) no order shall be made for winding up of the company. Except in an order made on a petition presented on grounds of public interest prescribed by the Chief Judge and special banking financial provisions of BOFIA and NDIC Act. **Section 479**