

EASY READ: REGISTRATION OF BUSINESSES IN NIGERIA

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INTRODUCTION

In a Country with an estimated population of over 167 Million people¹, the *Nigerian situation*, notoriously known to most, is felt—albeit unevenly— by all and sundry. With the current downward trend in foreign trade and GDP; and a proportional hike in food and fuel prices, the means of most Nigerians have become striated hence an alternate solution outside the over-dependence in civil and public service employment has become urgently required.

The policies of the government have since been to encourage the establishment of SMEs² by citizens which is popularly believed to drive economy and improve income as well as quality of life of the populace through the sale of goods or delivery of services. For whichever one considered, a means or vehicle is required to house; brand; market and be responsible for commuting this business to the world.

Although a simplification of the numerous vehicles—or organisations as it is more commonly known—would be briefly discussed, the primary purpose of this write-up is to avail and arm any would-be business man or entrepreneur with basic information which will serve as a ‘do-it-yourself-guide’ in his quest to establish a business for himself in Nigeria.

Before we get started, it is important to note that organisations in Nigeria are generally regulated by the Corporate Affairs Commission (C.A.C.), a statutory body created by the Companies and Allied Matters Act, Cap. C20, LFN, 2004, Vol. 3, page C20-56 (C.A.M.A.) for the sole purpose of guiding the registration and management of such organisations whether of a Business or Non-Business nature. The only exception to this are statutory corporations created by promulgation of statutes—eg Corporate Affairs Commission; Nigeria Water Corporation, Nigerian Deposit Insurance Corporation et cetera. This is because the enacting statutes already make provisions for regulating the affairs of such statutory corporation.

¹ <http://www.population.gov.ng/index.php/84-news/latest/106-nigeria-over-167-million-population-implications-and-challenges>, last accessed 24/08/2016.

² Small and Medium Scale Enterprises; The Federal Ministry of Industries defines a medium scale enterprise as any business or enterprise with operating assets less than 200 million, and employing less than 300 persons. A small-scale enterprise, on the hand, is one that has total assets less than 50 million, with less than 100 employees (Annual turnover is not considered).

Organisations in Nigeria are classified into Business and Non business Organisations.

BUSINESS ORGANISATION

These are strictly profit oriented in nature and are formed for the purpose of conducting business activities for the sole aim of making profits to be shared to members.

Companies

They are more preferred because they are well structured and highly regulated by statutes. Upon incorporation, a company becomes an artificial being, separate from its promoter or the person that incorporated it³ and also makes provisions for liability of its members and shareholders in the event of its being wound up. It operates using a memorandum of association and article of association (the constitution and bye-laws of the company) as well as guidelines from particular sector regulators⁴ e.g. Central Bank of Nigeria: banks and other financial institution, Corporate Affairs Commission, et cetera, where necessary. Examples are:

1. Public liability company (PLC): This is a highly regulated company with unlimited membership and the ability to quote and sell shares directly to members of the public. Liability of members upon winding up is generally limited to the amount of shares bought but un-paid.
2. Limited liability Company (LTD): This is a less regulated company with limited number of shareholders. It is prohibited from having more than 50 members and from selling its shares directly to the public. Liability of members upon winding up is limited as in (PLC)
3. Unlimited liability company (ULTD): This has the same features as a Limited Liability Company but differs in that liability of members upon winding or dissolution is unlimited. This means that each member is personally liable to creditors and the company for all debts owed and payable.⁵

Business Name⁶

This refers to the name or style under which any business enterprise or venture is carried on whether in a partnership or as a sole business man. A business name can be registered as a sole proprietorship or partnership business; or not registered at all and still be recognised and operated conveniently under the law. Regulations are more limited than in companies but the liability of business owners and partners are generally unlimited. This type of business organisation is usually advised if one is considering

³ Obtains a separate legal personality—it can interact and be identified in its name as a human being would; and can operate independently of the shareholders. The liability of its members are generally restricted to the number of shares allotted. See section 37 of CAMA

⁴ These are government agencies that regulate certain sensitive sectors in the Nigerian Economy: National Insurance Commission: Insurance; Securities and Exchange Commission: securities, shares and stocks

⁵ See generally, section 21 of CAMA

⁶ Section 588(1) CAMA

starting small to expand later in the future. Sector Regulators sometimes determine what type of business organisation certain businesses can be registered under.

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|--------------------------|---|---|
| 1. Registered businesses | } | (Sole Proprietorship form) or (Partnership form) ⁷ |
| 2. Unregistered business | | |

NON –BUSINESS ORGANISATION

It must be noted that there are other registrable organisations that are in fact; deed; and action, non-profit organisations. These organisations are formed not for business or profit- making but with common—usually charitable and humanitarian—purposes in statutorily specified areas of interest which members seek to pursue as a corporate entity. As a result, certain tax exemptions⁸ are enjoyed by them.

1. **Limited liability Company/Guarantee (LTD/GTE):** This is a registrable company that is into business, for the sole purpose of using its profits and assets acquired to fund and promote non-profit objects⁹. Although it a company that is permitted to enter into business transactions just like a Limited Liability Company, the reason it is categorised as a non-business organisation is that, whatever gains or losses recorded in its business venture will not be available to members of the company but will be expended in whatever non-profit object or purpose the company was incorporated for. The permission of the Attorney General of the Federation is mandatory for its creation. E.g.
THE PETROLEUM CLUB LTD/GTE; AFRICAN RESEARCH ASSOCIATION LTD BYGUARANTEE
2. **Incorporated Associations:** These are a collection of people or communities with a common goal and under a lawfully recognised umbrella. They need not but only register with the CAC in order to enjoy corporate personality. They do not do business at all but get financed from grants, levies, dues and donations. E.g.: *REDEEMED CHRISTIAN CHURCH OF GOD; ASSOCIATION OF NINETEEN OJULARI STREET LEKKI, RESIDENT ASSOCIATION*

⁷ Firm/Partnership means an unincorporated body of two or more individuals or one or more individual and one or more corporations, who or which have entered into partnership with one another with a view to carrying on business for profit. See 588 of CAMA.

⁸ Section 23 of Company Income Tax, Act Cap C2 LFN 2004 (CITA); Schedule 3, Personal Income Tax, Act Cap. P8 L.F.N. 2004 Vol. 13

⁹ Section 26 of C.A.M.A.: promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects

While it is mandatory to engage the services of a legal practitioner¹⁰ when considering the registration of a company, in the case of business name, such requirement and the requirement of any other accredited professional might not be required if the *walk-through*¹¹ is followed religiously

REGISTRATION OF BUSINESS NAME

Who Can Register a Business Name?

- a. Individual
- b. Firm/Partnership
- c. Company
- d. Corporation
- e. combination of (a-d)

Some Factors to Consider In Choice of Business Organisations.

Suitability for particular types of business: The type of business to be done and the Clientele of the business you have in mind determines the particular vehicle that will be most appropriate to register or incorporate. Sector regulators wade in heavily here to restrict the use of a business name or a company for some type of businesses.

Eg: While a bank cannot be registered under a business name, a law firm cannot be incorporated as a company.

The cost of registration and expenses: Financial strength is very important—processing fee, endorsement fee, stamp duties and other taxes, sector-regulator fees, legal fees—tend to add up very quickly.

The speed of processing and completing of registration: Both general types of organisations are set at different periods of registration and commencement of business. Eg: A company cannot do business until incorporated but a registrable business name can lawfully commence business within 28 days before commencement of registration¹².

Documentation and legal compliances: tax clearance certificates, utility bill, excerpts of minutes of meetings, statutorily required Letters of consent, age and number of persons registrable are all important and can inform one's decision whichever way.

Post-registration compliances and regulatory supervision: The level of supervision and regulation required after registration is higher in one general type than the other. Examples such as annual returns, general meetings, statutory filings and documentations are to name a few.

Sphere/extent of operation: some businesses have unique operational requirements that are specific to either or both classifications. eg: establishing smaller outlets under a giant holding company; large amounts of capital intensive finance and projects; huge labour work force. Etc.

¹⁰ Only Chartered Accountants; Chartered Secretaries; or Legal Practitioners are professionals accredited to aid in the registration of business. It is however important to note that in all incorporation documents, a Legal Practitioner is required to sign a statutory declaration of compliance form. See Section 35 of C.A.M.A

¹¹ *Infra n15*; For more information on features, peculiarities and suitability of the different types of Companies available in Nigeria, kindly approach any qualified Legal Practitioner or avail yourself to any standard text on the subject.

¹² Section 574 of CAMA

These and a few more factors will have to be resolved in order to properly situate your business within any of the classifications discussed above.

Why Register???

Once these have been decided and a Business name has been resolved to be used, the next question to ask is, **WHY REGISTER?**

In answering this question, it is important to note that the law waives registration with the C.A.C if a prospective Proprietor of a business name uses any of the following names:

1. Use of full name or Initials and Surname or Surname without any addition.

E.g.: Ishola Isiaq Agboola or I. I. Agboola or AGBOOLA.

2. For firms: Full names or Initials and Surnames of parties without any additions or addition of 's' in two same surnames of partners

E.g.: Ishola Agboola & Steven Nwala or Agboola & Nwala or Agboola(s).

3. Corporation can use its incorporated name for business name without new registration the same way a human being can use his or her name e.g.

ETISALAT NIGERIA LIMITED uses just Etisalat as the name of its telecommunications business or TOTAL NIG PLC uses just Total to run its petrol businesses the same was a person uses his surname.

4. If the business is carried on by a Receiver/Manager appointed by Court¹³. It is necessary to indicate 'in receivership' after the name of the company. For example, if *ABC Ltd is under Receivership, just write "ABC Ltd (in receivership)" in all the businesses carried out.*

5. If the addition merely indicates that the business is carried on in succession to a former owner of the business. However, there is a need to indicate 'under new Management', after the name of the acquiring company.

For example, if ABC Ltd, the owners of a restaurant business named K.F.C., sold the said business to XYZ Ltd, XZY Ltd would not need to re-register the name and can continue using KFC provided '(under new management)' is added to inform the public of the change of ownership from ABC to XYZ Ltd. It thus moves from K.F.C. to K.F.C. (under new management)

Otherwise, Whatever Name Must Be Registered

¹³ "a person appointed by a Court for the purpose of preserving property of a debtor pending an action against him, or applying the property in satisfaction of a creditor's claim, whenever there is danger that, in the absence of such an appointment, the property will be lost, removed, or injured; see section 180 of C.A.M.A; Adetona & Ors V. Zenith Int'l Bank Limited CITATION: (2007) LPELR-8896(CA)

If you are wondering why you should register your business name, here are some reasons to consider:

1. Registration secures name style and maintains the integrity of the name.
2. Registration means proof of ownership of business which in turn makes opening a current account in the name of the said business possible (although the Central Bank of Nigeria might soon start permitting the payment of cheque into savings account).
3. It also makes your business outfit feel more grounded and trustworthy to potential clients.
4. Some business opportunities may require submission of proof of registration of business as a condition precedent.

It must be noted that when choosing a name for your business, the names considered must not conflict with already existing names; and must not include things like National, the name of a state or anything showing affiliation with the government or any other restricted name, unless proof of permission from the relevant authorities have been gotten; and a prohibited name—particularly one that offends public morals¹⁴.

STEPS TOWARDS REGISTRATION OF A BUSINESS NAME¹⁵

The following are basic steps that are necessary to comply with while registering a business Name in Nigeria.

1. Conduct a business name search at the Corporate Affairs Commission (CAC) office. Steps to conducting business name search¹⁶:
 - a. Go online by visiting www.remita.net/cac
 - b. Click on Pay a Remita/Customer/Biller
 - c. Fill the form in the following pattern:
 - i. Click on pay once
 - ii. Who do you want to pay: Corporate Affairs Commission
 - iii. Name of service/purpose: Name Search
 - iv. Amount to pay: #500
 - v. Description: Name search
 - vi. Name of principal: Type in the name of the Company/or business name
 - vii. Payer's full name: fill in your name
 - viii. Proceed to payment. You can either pay with (A.) Internet banking (B.) Pay at a bank branch (c.) Pay with cards or electronic wallets.
 - ix. If you are paying with B above, proceed with printing out the Remita Retrieval Reference (RRR) on that payment page and take it any listed bank

¹⁴ Section 30 and Section 579 of CAMA;

¹⁵ Supra n11. Please note that the modalities are subject to review at the discretion of the C.A.C

¹⁶ It would seem that an online method of name search is in the offing in the form of CAC-CPR, an online portal that enables registered account holders to access both pre and post registration services from the Corporate Affairs Commission. It can be accessed at <http://services.cac.gov.ng/>. For more information on the Corporate Registration Portal, kindly visit <http://services.cac.gov.ng/faqs.html>; or download its user guide at: <http://services.cac.gov.ng/bwres/images/crp-user-guide.pdf>. Last accessed 22/08/2016.

- branch to proceed with payment. Ensure you insert the name of the Company as the name of the sender on the bank slip.
- x. If A or C above fill in your details for payment and print out the payment slip.
- D. Take the printed form to the CAC office and obtain the necessary Forms.
- E. Upon filling the form, take the filled form to CAC and submit for the name search.¹⁷

Upon issuance of your name for purposes of registration below are the next steps to take.

2. Follow the steps in 1 A-E above

NB: The name of the service/purpose is Business Name Registration in step 2.

- A. Upon obtaining the Business Name Registration Form fill it accordingly, have it attested by the commissioner for oath.
- B. Return it to the CAC office, submit and get a return date for confirmation of registration and collection of the Business Name Certificate.

Upon completion of the registration process, a proprietor of a business name is given a Certificate of Registration of business name and certified true copies of the forms submitted for registration.

PARTNERSHIPS

Partnership business is a business name run by more than one person in common with the sole purpose of making a profit. A business is run in common when it is run for and on behalf of all partners involved such that acts undertaken by one partner is deemed to have been undertaken by all partners. It is also important to note that profit acquisition must be the sole aim of the partnership.

It usually operates under a partnership deed¹⁸. Depending on the structure of the partnership, there are:

Basic partnership: This is the general partnership agreement between partners with provision for personal liability of all partners.

Limited Partnership (LP): This structure allows some of the partners to limit their liability to the public for actions of the partnership to a certain amount of money. There must however be a member of the partners that will bare unlimited and full personal liability for the actions of the partnership.

Limited Liability Partnership (L.L.P): This is very similar to the L.P but only differs in that all partners can limit their liability to the public in respect of actions of the partnership thereby making the structure similar to that of a limited liability company. This mode of partnership is relatively new and currently operates in Lagos State and is

¹⁷ In considering the name to use while registering a company, visit <http://publicsearch.cac.gov.ng:8080/comsearch/test.php> to conduct a quick search of company names already in existence. Last accessed, 22/08/2016.

¹⁸ A document representing the contractual obligations amongst the partners. The document is not registerable at the C.A.C. See n 7 above

subject to numerous regulations such as government registration, periodic filings, insurance schemes etc.

Features of partnership:

1. There must be a business parties have agreed to undertake that is legal in nature.
2. The business should be carried on in common by the partners.
3. The business must be profit oriented and partners aim at sharing either a profit or a loss.
4. Each partner is deemed an agent of the co-partners.
5. Membership is limited to between 2 and 20 except for law and accountancy firms; and co- operative societies which may be more.¹⁹
6. It could be registered as business name, but the partnership Deed is not a registerable document by C.A.C.

INSTRUCTIONS TO TAKE IN PREPARATION OF PARTNERSHIP AGREEMENT

Although partnership can be inferred by conduct of parties thereby leaving the usual presumptions of law to apply, it is however advised to agree—more preferably in writing—on the following terms so as to be sure of exactly what you are getting into:

1. Contributions of each party
2. Profit and loss sharing of each party
3. Remuneration
4. Suspension and expulsion.
5. Admission of new partners.
6. Duration and dispute resolution

FOREIGN PARTICIPATION

If you are a Foreign investor or Foreign Securities-dealer intending to invest or participate in the Nigerian Capital Market, it is advised you familiarize yourself with the provisions of the following laws, etc.:-

- a. Investments and Securities Act, 2007.
- b. Companies and Allied Matters Act, 1990.
- c. Central Bank of Nigeria Act, No. 24 of 1991.
- d. Banking and other Financial Institutions Act, No. 25 of 1991.
- e. Nigerian Investment Promotion Commission Act, No. 16 of 1995.
- f. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, No. 17 of 1995.

The Nigerian law does not preclude you from carrying on business in Nigeria solo or in any area or field open to an ordinary citizen subject, of course, to a regulation issued by sector regulators in the business.

It is however required that such foreigner interested in doing business in Nigeria must have first applied and acquired the necessary permits and visa from the Nigerian

¹⁹ Section 19 of CAMA

Immigration Services before venturing into business and if the Foreigner is a corporate entity, a Nigerian version of such corporate entity must first be incorporated at the CAC before business can be conducted by it in Nigeria²⁰.

Also note that shares bought or acquired in any public company incorporated in Nigeria by a foreigner must be registered with the Securities and Exchange Commission.²¹

In conclusion, it is this writer's hope that armed with the information in this write-up, an individual can easily decide on the right business outfit that meets his specifications and properly register a business name whenever the need arises.

²⁰ Section 54 of CAMA

²¹ Rule 406, Securities Exchange Commission Regulation, 2013.