

Objectives

At the end of this chapter, students should be able to:

- State the requirement of Companies and Allied Matters Act 2004 as regards formation of company;
- Explain terms relevant to the formation of company.

17.1 Introduction

A limited liability company has been defined by the Companies and Allied Matters Act 2004 as one in which the shareholders are not liable to pay more than the sums of money they have invested in the event of its being wound-up or liquidated. The procedure used in the formation of a company is different from the procedures used in the formation of other business organisations like; sole proprietorship or partnership and the share of profit also differs.

17.1 Requirements of Companies and Allied Matters Act 2004 as it Relates to Formation of Company

A company can be formed in any of the following ways;

- (i) Through floating of a new company
- (ii) Through conversion of an existing business into a Limited Liability Company.

Limited liability companies are formed and registered under the provisions or guidelines of Companies and Allied Matters Acts (2004). This act makes provision for a minimum of seven persons and no limitation to the number of those that can be members of public company while a minimum of two and maximum of fifty are to form a private company by subscribing their names to a Memorandum and Article of Association and complying with other requirements of the decree in respect of registration. For the purpose of registration, the memorandum and the Article of Association shall be delivered to the Corporate Affairs Commission(CAC). When the documents are examined by the Corporate Affairs Commission and all information therein are in order, the Corporate Affairs Commission shall certify that the company should be incorporated as a Limited Liability Company and will issue a Certificate of Incorporation to the new company. This certificate is an evidence that all the requirements of CAMA 2004 in respect of registration and other matters have been complied with.

17.3 Terms Relevant to the Formation of Company

Memorandum of Association

Memorandum of Association sets out relevant particulars of the company. It defines and limits the company's field of operation. This is the documents which specifies the powers of the company in relation to the outside world (i.e. external relationship of the company with public). The Companies and Allied Matters Act of 2004 stipulates that a company's memorandum of association should contain the following major information:

- (i) Name of the company with the word "Limited" as the last word of its name.
- (ii) The objects of the company.
- (iii) A statement showing that the liability is not limited to the shares purchase.
- (iv) The amount of share capital with which the company propose to register and the division thereof into shares of a fixed amount.
- (v) Each subscriber shall write opposite to his name the numbers of shares he receives.
- (vi) Registered office.

Another important document to the company is the memorandum of association in the formation of company it is called the article of association. This is a document which sets out the internal arrangements for the efficient and effective management of the company. It contains the rules and regulations which bind both the members and the management staff of the company, The Articles of Association must be signed by the subscriber to the Memorandum of Association.

The Articles of Association contains the following:

- (i) Share capital and rights of shareholders.
- (ii) Conduct of annual General Meeting and other, matters relating to forfeiture of shares.
- (iii) Appointment of directors/secretary.
- (iv) Powers and duties of directors including disqualification of directors.
- (v) Preparation of company's accounting reports or financial statement and auditing of accounts.
- (vi) Conversion of shares into stocks and alteration of capital

Prospectus

A prospectus is an invitation to the public to buy shares on the terms stated. It states the nature of the company, the types of stocks to be issued and the selling price, etc. It is only issued by a public company and not a private company limited. When a limited liability company is fully registered by the promoter of the company and a certificate of incorporation is issued, it is then free to issue prospectus inviting the public to subscribe for shares.

Subscription

It is an arrangement by which a member of the public applies for and buys shares in a company.

Shares

A share can be defined as a unit of capital in a limited liability company. Usually the capital of a company is divided into units and each of these unit is known as shares. A person who buys a share in a company is called shareholder.

Share Capital

The capital of a company is called share capital, which may be of the following types:

I. Authorised capital:

This is the number of shares that can be issued legally as specified in the Memorandum of Association. It is also called Nominal Capital.

II. Issued capital: This is the portion of the authorised capital that has been issued to the public (i.e. shareholders) for subscription.

III. Unissued capital: This is the portion of authorised capital that has not been issued for subscription.

IV. Called-up capital: This is the portion of issued capital that is required for payment at a particular time.

V. Uncalled capital: This refers to the portion of issued capital that has not been demanded for payment.

VI. Paid up capital: This is the total amount of shares paid up or made payable on the shares by the shareholders up to date.

Allotment

This is the process by which shares subscribed for are allocated to persons who have put in application. For instance, a person may apply 2,000 shares but may be allotted 50% of this owing to availability of share, in this case, he is given a refund.

Preliminary

This is the initial cost of floating a company. Such expenses have to do with preparation of legal documents and related formalities.

Activity

1. State five names of some companies limited by shares in your state.
2. List five limited liability companies in Nigeria excluding those of your state.
3. Visit a limited liability company and make efforts to examine copies of a memorandum of association, article of association and a prospectus of the company.

17.4 Summary

In this chapter, students have learnt that:

1. Limited Liability Companies are formed and registered under the provisions of Companies and Allied Matters Act (2004).
2. A minimum of seven persons are required to form a public company while in a private company, a minimum of two and a maximum of fifty persons are required.
3. The Registrar of Corporate Affairs Commission issues a Certificate of incorporation as an evidence of compliance with the requirements of Companies Act 2004 on registration of a company.
4. The liability of shareholders is limited to the number of shares acquired in the company.
5. The effect of incorporation makes a company different from its members because it can sue and be sued.
6. The memorandum of association defines and limits the company's field of operation and contains major documents like name of company, etc.
7. The article of association set out the internal arrangement for the efficient and effective management and it contains share capital apportion director.

17.5 Revision Questions

- 1(a) What is an incorporated company?
- (b) State four documents that must be contained in each of Memorandum of Association and Articles of Association.
2. Explain the following terms:
 - (a) Prospectus
 - (b) Allotment
 - (c) Authorised capital
 - (d) Called up capital
3. Distinguish between:
 - (a) Memorandum and article of association.
 - (b) Private and public companies.
4. The document used to invite the public for the subscription of shares of a quoted company is the _____.
 - A call paper
 - B memorandum
 - C prospectus
 - D share certificate
5. The document making a public offer for sale of a company's share is _____.
 - A memorandum of association
 - B articles of association
 - C prospectus
 - D certificate of Registrar
6. A stock as a form of capital of a company comprises _____.
 - A. tons of merchandise
 - B. units of goods
 - C. units of shares
 - D. bundles of wares
7. Which of the following term is NOT used to describe the total amount stated in the Memorandum of Association approved by the registrar of companies?
 - A. Nominal capital
 - B. Issued capital
 - C. Authorised capital

D. Registered capital

8. Which of the following brings a company into legal existence?

A. Certificate of incorporation

B. Company law

C. Memorandum of association

D. Articles of Association

9. Expenses incurred when incorporating a company are _____.

A. preliminary expenses

B. selling expenses