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Organizational Structures in Nigeria *(Business and Not-for-Profit Organizations)*

Are you desirous of registering a business, corporate entity or not-for-profit organization in Nigeria? In this article, we shall explore the different types of organizational structures available in Nigeria for businesses and other not-for-profit organizations.

The repeal of the Companies and Allied Matters Act, 1990 Cap C20, LFN 2004 and enactment of the Companies and Allied Matters Act 2020 (“the Act or CAMA 2020”) introduced the registration and regulation of other types of business organizations in Nigeria. Pursuant to the Act, the Corporate Affairs Commission (the Commission) is charged with the responsibility of registering and regulating profit and not-for-profit organizations in Nigeria.

The types of formation structure available to businesses and organizations in Nigeria include:

1. Business Name/Sole Proprietorship
2. Limited Liability Partnerships (LLPs)
3. Limited Partnerships (LPs)
4. Corporate Entities (Companies)
 - 4.1 Limited Liability Company – Private Limited Company (LTD)
 - 4.2 Limited Liability Company – Public Limited Company (PLC)
 - 4.3 Unlimited Companies
 - 4.4 Companies Limited by Guarantee
5. Incorporated Trustees (NGOs)

1. Business Name/Sole Proprietorship

A sole proprietorship is the simplest form of enterprise/business in Nigeria. Sole proprietors/traders need not register their business if they carry on their business under their surname, surname and the initials of forename or full name. Where a sole proprietor desires to carry on business with a different name other than those aforementioned; the proprietor will need to register such business name with the Commission. The liability implication of registering a business name is that the sole trader is personally liable for the acts and omission of the business and bears all the risks there to while being entitled to the profits emanating therefrom.

The tax liability of the business serves as the tax payment of the business owner as well. In sum, the registered business name and the business owner/proprietor are deemed to be one and the same legal/juristic person. The death of the sole proprietor may also result in the termination of the business. However, a registered business name may have more than 1 proprietor or partner who would then be jointly and severally liable for the debts and obligations of the registered business.

2. Limited Liability Partnerships (LLPs)

The recent Companies and Allied Matters Act 2020 makes provisions for an incorporation status to partnerships registered as LLPs with perpetual succession and power to acquire, own and dispose of property as well as power to sue and be sued in its name. Pursuant to Part C of the Act, LLPs are required to have at least two designated partners who are individuals and at least one of them must be resident in Nigeria. These designated partners serve as regulatory compliance officers for the LLP and are liable for penalties imposed on the LLP for non-compliance.

The attraction of this newly introduced organizational structure for businesses is that even though LLPs are a form of partnership, they enjoy the benefits of organizational flexibility, tax liability benefits and limited liability status for members of the partnership. Importantly, the death or change in the partners of the LLP does not affect the existence, rights or liabilities of the LLP. The nature and registration of LLPs, liability status of partners, financial disclosures of LLPs, assignment and transfer of partnership rights, investigation, winding up and dissolution of LLPs are catered for in Part C of the Act. The name of the LLP must end with "limited liability partnership" or "LLP".

3. Limited Partners (LPs)

Limited Partners are provided for in Part D of the Act and limits the number of partners to 20 persons. LPs must consist of at least 1 general partner and 1 limited partner. The general partner(s) will be liable for the debts and obligations of the LP while the limited partner(s) shall not be liable for the debts and obligations of the LP, save for, the amount contributed or agreed to be contributed by such limited partner(s).

However, limited partners are not under an obligation to contribute capital or property where the partners have agreed to this in writing. LPs enjoy the same benefits of organizational flexibility, tax liability benefits and limited liability status for members of the partnership (limited partners) as is obtainable for LLPs. The name of the LP must end with "limited partnership" or "LP".

4. Companies

As a preliminary note, a corporate entity (company) can be either a private or public company and these types of companies are further divided based on the liability of its members. Therefore, a company can also be limited by shares, unlimited or limited by guarantee

4.1 Private Limited Company (LTD)

A private limited liability company restricts the transfer of its shares to the public. In Nigeria, the name of a private limited liability company ends with the word "Limited" or the abbreviated version of "LTD".

A private limited company is recommended when the capital available to start off the business is relatively small, where a restriction to membership of the company is desired or if it is a family-owned company.

Therefore, when a micro, small or medium sized business/enterprise (MSMEs) wants to acquire incorporated status, it is usually advisable to be registered as a private limited liability company as this organizational structure does not attract stringent regulatory compliance requirements found in public limited liability companies. According to the new Act, one (1) person can register a private limited company and a private limited company has a maximum of 50 members. The Act also introduced a concept of a "small company" which has reduced regulatory requirements and financial disclosures.

4.2 Public Limited Company (PLC)

A public limited liability company is a company that can offer its shares to the public pursuant to the fulfillment of certain regulatory requirements. A public limited company is otherwise called a 'PLC', as such, the name of such companies ends with "PLC". Public companies can invite members of the public to subscribe to its shares and debentures. It also has the tendency of being larger, having more funds than many private companies due the greater probability of more members and increased authorized share capital.

Public companies do not have a limit to the number of shareholders/ members they can have. This becomes one of the major differences between a private limited company and a public limited company as the numbers of shareholders in a private company is limited to 50 while the number of shareholders is not limited or capped for public companies. Public companies are however subject to a myriad of regulatory requirements and financial disclosures. An important similarity between private and public limited liability companies is that the liability of shareholders is limited to the amount of share capital the shareholders have contributed or agreed to contribute.

4.3 Unlimited Companies

In an unlimited liability company, the liability of shareholders/members is not limited to the value of issued, but unpaid, shares allotted/ transferred to shareholders. This becomes important where the debts and obligations of the company exceed the authorized share capital of the company. This however does not take from the fact that an unlimited company is registered with a share capital even though the liability of members/shareholders are unlimited.

This type of company is suitable for enlarged partnerships, professional service companies with core values of honesty and integrity. Also, this organizational structure may be imposed by law for organizations involved in the management of public funds.

4.4 Companies Limited by Guarantee

This type of corporate entity is usually registered for companies that do not intend to distribute profits but are incorporated for the furtherance of a specific purpose, for instance, health care provision. Companies limited by guarantee do not have an authorized share capital because their profits and earnings are directed towards attaining their objectives. Instead, these companies are registered with their members acting as guarantors in the event of the winding up of the company.

This organizational structure is different from an incorporated trustee because as the name connotes it is a company which carries on business, albeit not a profit-sharing company. A company limited by guarantee requires that approval of the Attorney General of the Federation before registration and it is governed by its Memorandum and Articles of Association.

5. Incorporated Trustees (NGOs)

The fundamental similarities of this organizational structure and a company limited by guarantee are that their objects are usually for a charitable cause and the promotion of a social agenda or religious group and they do not distribute profit while in operation or assets upon winding up. While a company limited by guarantee is allowed to venture into business or a profit-making agenda, albeit with no profit sharing, an incorporated trustee is not allowed to venture into profit-making business activities.

Incorporated trustees are registered with a Constitution which governs the activities of the incorporated trustees and relationships of the trustees. This organization structure is usually registered for not-for-profit organizations like non-governmental organizations (NGOs) and religious houses. The registration and other regulatory matters for incorporated trustees is governed by Part F of the Act.