

REGULATIONS

◇ Companies and Allied Matters Act (CAMA)

Formation of Companies and Businesses in Nigeria

Capacity to Form a Company

The major player in the formation of a company is the promoter; he conceives the idea and takes all necessary steps to accomplish it, and however he usually consults a solicitor for professional guidance.

Section 18 of C.A.M.A

Empowers any two or more persons to form and incorporate a company as long as they comply with the requirements of the Act in respect of companies. Also, an association of more than 20 persons formed for the purpose of carrying on any business for profit or gain must be registered under the Act as accompany.

The Act prohibits certain categories of persons from joining in the formation of a company; namely:

- a) persons that are less than 18 years of age, unless there are two other persons of full age and capacity who have already subscribed to the Memorandum of Association;*
- b) persons of unsound mind who have been so found by a court in Nigeria or elsewhere;*
- c) any person who is an undischarged bankrupt;*
- d) Who is disqualified under Section 254 of C.A.M.A from being a director of a company?*

The Act prohibits a corporate body in liquidation from joining in formation of a company. An alien or foreign company may join in forming a company provided they comply with the provisions of any enactment regulating their rights and capacity to do so.

Incorporation of Companies

Incorporated companies can generally be examined under two heads;

- a) Incorporation of local companies; and*
- b) Incorporation of companies with foreign participation*

Incorporation of Local Companies

The incorporation of local companies in Nigeria normally involve the following procedure:

- i) taking instruction from the promoters/ clients*
- ii) preparing the incorporation documents*
- iii) stamping incorporation documents*
- iv) Filing the incorporation documents with the Corporate Affairs Commission ("CAC" or the "Commission") and obtaining the certificate of incorporation.*

Taking instructions

The first step a legal practitioner takes when incorporating a company is to obtain necessary information from his client regarding the company to be incorporated. For instance, he must obtain the full names, addresses and occupation of the client as well as every other person connected with the promotion of the company. After this, he is to obtain, fill and deliver to the CAC, the Availability and Reservation of the Name form. Enabling him to conduct a search at the Registry of the CAC to ascertain whether or not the proposed name is available and does not fall within the prohibited and restricted names stipulated in the Act.

Prohibited Names

The Act prohibits the registration of any company whose name -

- a) is identical with that by which a company in existence is already registered or so nearly resembles such name as to be calculated to deceive;*
- b) contains the words "Chambers of Commerce" unless it is a company limited by guarantee;*
- c) is capable of misleading as to the true nature or extent of its activities or is undesirable, offensive, or otherwise contrary to public policy.*

d) would violate any existing trademark or business name unless the consent of the owner of the mark or business name has been obtained.

Restricted Names

The Act restricts the registration of any company with the following names except with the prior consent of the Commission:

- a) where such name include the work "Federal", "National" , "Regional", "State", "Government", or any other name suggesting the enjoyment of government patronage; or*
- b) where such name contains the "Municipal" or "Chartered" or connected with any municipality or local authority, or*
- c) if the name contains the word "Co-operative" or the words "Building Society", or*
- d) where such name contains the word "Group" or "Holding".*

Memorandum of Association

The Memorandum of Association regulates the affairs of a company particularly as it relates to doing business with the outside world. It is a primary document which must be registered on incorporation of a company.

Various types of memoranda could be prepared depending for instance on whether the company is limited by Shares, limited by guarantee or whether the company is an unlimited company.

Company Limited by Shares (Section 27 (1) (b) to (2) (a) of C.A.M.A)

Where the company the promoters intend to incorporate is a company limited by shares, the following clauses must be inserted in the Memorandum of Association:

- a) The name of the company. Where the company is a private company, the name must end with the words " Limited" "(Ltd.)". For public company, it must end with words " Public Limited Company" "(PLC)".*
- b) That the registered office of the company is situated in Nigeria;*
- c)The Memorandum must contain a clause stating the nature of the business(es), the company is authorised to carry on or object for which it is established,*

d) the Memorandum must state clearly where there is any restriction on the powers of the company,
e) The liability of the members of the company must be inserted. That is, whether the liability of its members is limited by shares or by guarantee or is unlimited; and
f) If the company has a share capital, the memorandum must state the amount of authorised share capital of the company. This should be less than N 10,000 in the case of a private company and N50, 000 in the case of a public company.

Company Limited by Guarantee

In case of the Memorandum of an Unlimited Company, its consent will be the same as that of a company limited by shares but with the following additions:

- a) The name of the company would end with the words : "Unlimited", "Unltd)", and
- b) The memorandum would also reflect that the liability of the members is unlimited

Articles of Association

(FOR DETAILS OF THIS ARTICLE SEE SECTIONS 152(3),22(3), 22(5) a & b,234,259, 211,213,215 & 232 of C.A.M.A)

The Articles of Association embodies the rules and regulations governing the internal management and administration of a company. To a large extent, it complements the Memorandum of Association to explain ambiguities in the memorandum; and supplements it (memorandum) on matters on which the memorandum is silent.

Other Incorporation Documents

After the preparation of the Memorandum and Articles of Association, the legal practitioner is equally expected to prepare and deliver the following documents to C.A.C:

- 1) Form CAC 2.2: Notice of address of the registered office of the proposed company and head office if different from the registered office.
- 2) Forms CAC2.3 and C.O.7: A statement in the prescribed form showing the list and particulars of the first directors of the company together with their consent to be directors.

- 3) *Form CAC2.4: A statement of the authorised share capital signed by at least one director.*
- 4) *Form C.0.1: A statutory declaration in a prescribe form of compliance with all requirements of the Act*
- 5) *Form CAC 1 (Reservation and Availability of Name).*
- 6) *Form CAC 2.5: This is the form of Return of Allotment. It is to be completed and delivered to CAC within one month of the allotment of the company's shares.*
- 7) *Other documents required to satisfy the requirements of any law relating to the formation of company.*

Stamping

(FOR DETAILS OF THIS ARTICLE SEE BLACK LAW DICTIONARY 6TH EDITION PG 1404, SEE SECTIONS 27 (6) & 34(4) OF C.A.M.A,SEE STAMP DUTIES ACT CAP 411 LFN 1990)

After the incorporated documents have been prepared, the next step is to get all the documents stamped. Stamps are printed and fixed on incorporation documents like most legal documents or instruments. The stamping gives the document the legal authority, evidential recognition and force of law.

Filing and Recognition

Once the incorporation documents have been prepared and duly stamped, the legal practitioner will deliver them to the Commission for filing and registration upon payment of appropriate filing and registration fees.

Companies with Foreign Participation

An alien or a foreign company may join in the formation of a company in Nigeria. However, such alien or foreign company must comply with all enactments regulating their rights and capacities to undertake or participate in trade or business in Nigeria. An alien or foreigners who intends to participate in the formation of companies or business in Nigeria must familiarize him/herself with the following laws:

- 1) *The Nigerian Investment Promotion Commission Decree No. 16 of 1995*
- 2) *The Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree No. 17 of 1995*

- 3) *Investment and securities Act No. 45 of 1999.*
- 4) *Immigration Act Cap 171 LFN 1990.*
- 5) *Industrial Inspectorate Act 180 LFN 1990*
- 6) *National Office of Technology Acquisition and Promotion Act Cap 268 LFN 1990.*
- 7) *The Companies and Allied matters Act cap 59 LFN 1990.*

Every foreign company intending to carry on business in Nigeria must take all steps necessary to obtain incorporation for the company as a separate entity in Nigeria and until so incorporated; such foreign company cannot have a place of business in Nigeria. However, such a foreign company may be allowed a place of business only for receipt of notices and other documents as matters preliminary to incorporation. Also, an alien may freely invest and participate in the operation of any enterprise in Nigeria except petroleum enterprises and enterprises in the “ Negative List”. The alien may operate alone or in joint venture with a Nigerian by means of a company which must be first of all registered by the CAC and thereafter registered with the Nigerian Investment Promotion Commission.

Procedure for Establishing Business between a Nigerian and an Alien

FOR DETAILS OF THIS ARTICLE SEE Sections 54(1), Arms & Ammunition, Drugs, etc, Section 17 NIPC Decree 1995, Section 20& 27of NIPC decree 1995,Sections 12 & 13 & 24, Foreign Exchange

(Monitoring & Miscellaneous Provisions)

Decree 17 of 1995

- a) *The first step for the legal practitioner for him to prepare a joint venture agreement (where necessary) along with any other pre-occupation agreement or documents between the Nigerian and the alien.*
- b) *After registering the company with the CAC, the legal practitioner should apply to the Nigerian Investment Promotion Commission for registration of the company.*
- c) *Application is also made for business/work permits including application to the Nigerian Embassy in the country of the alien for grant of “ Business Visa”.*

However an alien who does not intend to establish a business in Nigeria may prefer to buy shares into Nigerian company. Such investment must be effected with foreign currency imported into Nigeria through an Authorised Dealer and converted into the naira at the Autonomous Foreign Exchange market.

Registration

FOR MORE DETAILS OF THIS ARTICLE SEE Section 36 (1),(2) &(6) of C.A.M.A

After the relevant incorporation documents have been duly filed at the Corporate Affairs Commission and the necessary fees paid, the commission is enjoined by the CAMA to register the Memorandum and Articles of Association.

However, if the memorandum and articles are duly registered, the Commission must certify under its seal that the company is incorporated and a certificate of incorporation would be issued to the company by the commission.

Registrable Business Names, Restricted Names & Prohibited Names

FOR DETAILS OF THIS ARTICLE SEE Section 653,656 (1) ,662 (1), 662(1)(d),(2). (3),(4) of C.A.M.A SEE ALSO Ogunlade V Babafemi (1971) 11WLR (Part iv) 417

Procedure for Registration of Business Names

SEE Sections 657 (2),(3),(5) of C.A.M.A

(1) The firm, individual or corporation seeking to be registered, must within 28 days of commencement of business,) or within 3 months of the coming into operation of the Act, submit to the Register a statement in the prescribed form; containing the following particulars

- a) the business name*
- b) the general nature of the business*
- c) full postal address of the principal place of business;*
- d) if the registration is that of a firm it must state;*

i) the present forenames and surname, any former forenames or surnames, nationality of origin, age, sex, residence of the individuals who are partners; and

ii) the corporate name and registered office of such corporation which is a partner

Two (2) copies each of certified passport photograph of an individual/s in a firm. Where such registration is for a firm or individual carrying on business on behalf of another individual, the statement must include all particulars mentioned above.

(3) The statement must be signed by the individual or each partner and in the case of a company or corporation, by a director or the secretary. Where the statements is accompanied by a statutory declaration by any person to the effect that he is a partner in the firm or he is a director or secretary of a corporation which is a partner of the firm, the statement may be signed by that person alone. Where one of the persons furnishing the statement is a minor it must be additionally counter-signed by a magistrate, legal practitioner or Police Officer or above the rank of Assistant Superintendent of Police.

Other items to be submitted at the Registry includes:

4) Tax Clearance certificate of each individual or partners

5) Form CAC 1 (Availability of name form). This is to ensure that the name is available before the registration proper is commenced.

6) In case of Professional Partnership, copies of the qualifying certificates must be presented to the Commissioner.

7) The requisite fees must be paid

Registration

FOR DETAILS OF THIS ARTICLE SEE Section 659 (3) of C.A.M.A & Henshaw V Roberts (1966) NWLR 158

Unlike incorporated companies, registration of business names does not confer legal personality to the business; it merely informs the public of the true identity of the persons trading under the name, Also once a business name has been registered, the use of the name prohibited by others, including registered companies.

Post Registration Activities

FOR DETAILS OF THIS ARTICLE SEE Sections 659 (3) &(4),660(1) & (2) of C.A.M.A

Subsequent to the issue of registration and commencement of business, firms, individuals or companies are required to comply with certain requirements from time to time. Some of these requirements include (but are not limited to):

1) Exhibition of Certificate of Registration

The certificate of registration must be exhibited and maintained in a conspicuous position at the principal place of business, and certified copy of the certificate exhibited in other places of business.

2) Publication of True Names

The true names and nationality of all the operators of the company as well as the registration number of the company or business must be published in all trade catalogues, trade circulars and business letters in legible letters. This is aimed at identifying the true operators of the business.

3) Registration of Changes

Where there is a change in the particulars of the statement furnished to the Registrar (other than particulars of the age of an individual), a notice in writing, signed in the same manner as the statement required on registration, must be lodged at the CAC within 28 days from the date of such change on particulars. Companies and businesses are very useful to any nation's economic life. The enactment of the Companies and Allied Matters Act in 1990 paved the way for an effective and streamlined economic and commercial activities in Nigeria. With the post- registration requirements as contained in the Act, it is safe to state that the Act is aimed at protecting the public from misleading and fraudulent use of corporate and business names as well as boosting economic activities in the country.