

### **Incorporating companies in Nigeria is done pursuant to Part A of the Companies and Allied Matters Act Laws of the Federation 1990**

(hereinafter the 'Act'). The Act also regulates Business names under Part B and Incorporated Trustee under Part C. The former is used for small trading companies and the later mostly for non profit making organizations.

There are three main types of companies namely companies limited by shares, unlimited companies and companies limited by guarantee. Each of these companies may be either private companies or public companies. Here we look at the procedural requirements mainly for private and public companies limited by shares.

The Procedural requirements are stipulated in the Act and also through various regulations and guidelines issued by the Corporate Affairs Commission (CAC).

By virtue of the Nigerian Investment Promotion Commission Act (NIPC), foreigners can participate in the incorporation of a Nigerian company either through the initial incorporation, by acquiring shares in an existing

company or by joint venture in a Nigerian incorporated entity.

The procedural requirements whether a foreign individual is involved or solely

Nigerian individuals remains substantially the same.

It must be however noted that foreigners may not participate in certain industrial sectors for national security reasons.

#### **Procedural Steps made Simple.**

##### **1. Search for Availability and Reservation of Proposed Name.**

The first steps after initial instructions and determination of the corporate structure and entity to be used.

Every company must have a name. The act states that the name cannot be the same or similar to an existing name. As such, the first port of call is to ensure that your proposed name is available that is is not currently existing as a company on the register. An application is made CAC and the prescribed fee currently N200 paid.

Where the name is available CAC duly reserves the same for a sixty day period. After which failure to use the name will result in the expiration of the reservation. This will mean renewing the application and the payment of the same fee. A problem may arise however if due to delay at the expiration of the sixty day the same name is reserved by another person, resulting in you

losing the name. In the case, you have no right over the name.

If your name is unique, you are therefore advised to incorporate within the sixty days or alternatively ensure that immediately renew on expiration.

At this point a further thought on what name should be used should be given as it may cause issues later. Watch out ! Give thought to the name used. CAC guidelines means that the use of certain words will have implications on the factors such as the minimum share capital and in particular the directors qualifications.

Words to Watch Out For:

- ***Consult / Advisor***

Many people want the word 'consult' used. Such as Joe Bloggs Consults. Whilst there is no restriction in the use of 'consult' per se, CAC will require that at least one of the proposed director has a qualifying degree in a ***business or management related field***. Note that a HND or OND etc will not be regarded as a qualifying degree. At this point take instructions from the promoters to ensure that one of the proposed director is so qualified and that the certificate of qualification of available. Notification of Results is not acceptable especially if over 3 years old.

- ***Engineering***

Great name! but once again watch out as above names such as Joe Bloggs Engineering Limited. Sounds great but gain ensure that at least one of the proposed directors has a qualifying degree in an engineering related field issued by a professional body such as COREN.

- ***Training / Teaching***

Once again the same applies! Ensure at least one of the directors is so qualified as a teacher or trainer. Issued by a professional organization.

- ***Hospitals / Medical facilities / Pharmacy / Dental***

Once again the same applies! Ensure at least one of the directors is so qualified as a medical practitioner, pharmacist or dentist with the appropriate certificate duly issued by the professional organization.

Your lawyer should advise at this point and make the application for the search and the reservation. Your lawyer should also advise you on how to vary your name in order to ensure a greater likelihood of it being available. Hence *Joe Bloggs Consulting Limited* be rejected however *Joe Bloggs Premier Consulting Nigeria Limited* may be. Each application consists of searches for two names. The first being your first preference and the second just in case the first is not available!

Everyone thinks their name is somehow unique '*its never been used*', so says the client. Sometimes the lawyer knows best! You'd be surprised. It therefore advisable to think of at least two names so that if (in the unlikely!! event the first preference is not available the second may be. This will save time and abit of costs.

At this point note that the application process can take between 2 days and 1 week (ultimately depending on the CAC).



## Step 2. Drafting of the Memorandum of Association.

- **Object Clause –**

What do you want to use the company for? The Memorandum of Association must stipulate the business objects, purpose or put another way, what the company will be doing.

In the past the object clause ran into double alphabets or eve triple ie AAA and numerous pages. Perhaps recognizing the redundancy or impotency of the ultra vires concept, CAC has limited the number of objects that may be stipulated in the objects clause. As such, no need to stipulate everything under the sun

that you which the company to do but rather limited it to for or five main objects and one general wide object.

Watch Out! Again some pitfalls arises. Do not use words or descriptions such as 'consulting', 'hospital', 'engineering' etc as objects as above unless one of the directors is appropriately qualified.

- **Address**

The Act requires that the company has an address situated in Nigeria. At this point when drafting the Memorandum all that needs to be stated is that the Company is situate in Nigeria. However, part of the incorporating documents requires that the actual postal address of the company is stated in Form CAC 4 - Particulars of Registered Address'. This means that the house / plot number, street name, town / city and state in Nigeria must be available. See below.

Note that CAC will not accept addresses which are not complete and identifiable.

- **Share Capital**

An important aspect of the memorandum of association is the share capital clause. Members subscribe for the shares of the company and by the articles agree to comply with the regulation of the company.

On incorporation, the share capital is stated in the memorandum. By virtue of the Act the minimum share capital of a private company limited by shares is N10,000 and that of a public company is N500,000.

However, in practice, the share capital usually used for a private company limited by shares has become N1,000,000. Lawyers will therefore advise you to have a share capital of N1,000,000. Don't worry you don't need to pay N1,000,000. This is a nominal amount and given that in most cases the share will not be paid in full and given the cost implication is not much difference between N10,000 and N1,000,000 it may be advisable to use a N1,000,000 nominal share capital.

As always there are caveats. Note that some types of companies will have to have a different minimum share capital as follows:

- Banks - N25 billion
- Capital Market Operators - between N20 million and N5 Billion ( for example the former such as Capital Trade Point operators and the latter example Consultant Corporate).
- Private Security Guards  
N10 million
- Pension Fund administrators  
N150 million
- Bureau de Change – N10 million

The above list is not exhaustive and legal advice should be sought in order to determine whether or not there is a minimum share capital requirement for the particular company you wish to incorporate.

However note that if the company has foreign participation or will require an ex patriate quota then it is worth at this point consider having a nominal share capital of N5 million or N10 million.

The members / subscribers sign by their respective names and the shares which they are taking up.

### **Drafting of the Articles of Association.**

CAC has made it a lot easier to draft the Articles of association of the company. Gone are the days in which the whole of Table A of the Companies and Allied Matters Act were merely reproduced. Now all that is required is that the appropriate box is ticked in order to specify whether the company is a Private Company Limited by Shares or a Public Company or a Company Limited by Guarantee.

The Table A is then 'adopted'. Note however that this is the simple way. More complex structure and regulation for the company will require the modification of Table A. this is done by stipulating clauses in Table A which will either not apply or drafting and inserting clauses which you wish to be part of the Articles of the company.

It is of course important that a thorough knowledge of the standard Table A is

known as well as obtaining instructions from promoters to ensure that their requirements are fully stated in the articles. For example is there to be a life director, should directors have share qualifications, quorum for directors meetings etc.



### Step 3. Completion of the CAC Forms

There are 3 main forms to be completed as part of the incorporation documents. These are:

- CAC Form 2 – Particulars of Shareholding
- CAC Form 7 – Particulars of Directors
- CAC Form 3 – Notice of Registered Address
- CAC Form 4 – Declaration of Compliance
- **CAC Form 2 – Particulars of Shareholding**

Reflecting the memorandum of articles, this form states the share capital that the company is being incorporated with. The discussion above regarding the share capital in the memorandum applies here. Unlike with the memorandum where the subscribers sign by their respective

names and shares to be taken up, in Form CAC2 the prospective directors are required to sign the form.

Note under the act not all the shares need to be allotted. It is enough if only at least 25% of the total shares have been allotted. The form also states whether the shares are being paid in cash or in ‘consideration other than cash’. Under the Act it is possible that subscribers pay for their shares by virtue of means other than cash and so this may be reflected in the form.

The shares must stipulate what types of share they are. In most cases the shares are stipulated to be ‘ordinary’ shares. This basically means that the rights attached to the shares are one vote per share, no preference in payment of dividend and payment on winding up. Shares may be stipulated to be preferential, cumulative preference shares etc thereby stipulating their respective rights attached. Again, your lawyer will advise you on the appropriate share structure and type of shares.

- **CAC Form 7 – Particulars of Directors**

The Names and Addresses of the directors must be stated in the form. Where a qualifying / proficiency certificate is required it is essential that this is duly obtained from one of the directors and attached to the incorporation documents.

Every director must sign the form by his or her respective name and full address.

It must also be stipulated that the individual is being appointed as a director to the company.

Note that under the Act only person of 18 years or older may be directors of a company as such the form also requires that the age is stated. Don't worry about revealing such trade secrets as your age, it is sufficient to simply state 'adult!'

- **CAC Form 3 – Notice of Registered Address**

We have dealt with this above.

- **CAC Form 4 – Declaration of Compliance**

This is left for your lawyer to complete and states that all the legal requirements have been complied with

### **Joint Venture Companies**

Note that corporations / companies both foreign and local may participate in the incorporation of a company. This is particularly important where a joint venture is being contemplated. Essentially, the procedural steps do not differ however, at this point it would be necessary to ensure the correct signatories are used.

Whilst a company may take up shares and may also be a 'director' of another company, the company must act through or rather be represented by an individual.

Where the company subscribes to shares, the signing of the memorandum and articles of association the company must be done by either two directors or a director and company secretary of the company. The company must also append its seal to the memorandum and articles.

Where the company is a director of the proposed company its representative must sign the form CAC 7 and stipulate that he/she is 'representing the company'.

It is also essential that a copy of the certificate of incorporation of the director / shareholding company is attached to the forms as well as a Resolution to the effect that the company has been authorized to take up shares and the appointment of the persons to act on its behalf. Should the company be foreign then the above documents must be in the English language but need not be notarized.



### **Step 4. Payment of Stamp Duty**

Once all the incorporation documents have been complied with the next step is to submit the at least two copies each of the memorandum and articles of association and CAC Form 2 to the Federal Inland Revenue Services (FIRS).

These are duly stamped as a deed and stamp duty is paid.

Stamp Duty is paid pro rata on the total nominal share capital. The current rate is 8 per cent. As such for a N1,000,000 nominal share capital be expected to pay N8,000. In addition, the FIRS charges an additional N500 for extra copies that are stamped.



### **Step 5. Verification and Filing of Incorporation Documents**

The last and final step is for the payment of the filing fees and for your lawyer to submit the incorporation documents to the Corporate Affairs Commission for filing. Whilst the client waits for his company to be incorporated and the certificate of incorporation printed.

The whole processes may take between one to two weeks. Once incorporated the, CAC will delivered Certified True Copies of the incorporation documents and the original certificate o incorporation.

The company may now officially commence business.

## **Post Incorporation Requirements**

All companies are subject to the payment of taxes to the Federal Inland Revenue Services (FIRS) by virtue of the Companies Income Tax Act (CITA) and the Value Added Tax Act.

At present after incorporation it is the duty of the directors to ensure that the Company is duly registered to pay tax by obtaining a Tax Identification Number (TIN) and within 6 months of its incorporation to obtain a tax clearance certificate.

Failure to do this subjects the company to the payment of penalty fees.

## **Licences and Permits**

- NIPC Registration. Nigerian Investment Promotion Commission Registration
- Business Permit
- Ex Patriate Quota

Where there is foreign participation other factors must also be considered. Under NIPC Act a company with a foreign participation must be registered at the Nigerian Investment Promotion Commission and must obtain a Business Permit prior to commencing business.

Where the foreign director is to be residence in Nigeria or the company is to employ foreigners to work in Nigeria then the normal immigration rules for entry

- Tax Clearance and Tax Identification Number (TIN)

apply. However, the company will need to obtain an Ex Patriate Quota.

Both the Ex Patriate Quota, Business permit may be obtain by application to the NIPC.





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