

CHAPTER THREE



Categories Of Business And Non-business Organisations



3.1 BUSINESS ORGANISATIONS

Business organisations are profit-oriented enterprises, primarily formed for doing business and making profits or returns on investments. As a requirement of the law, business organisations must define their area of business in their “Object Clause”.

The following types of enterprises are classified as business organizations in Nigeria:

3.1.1 Sole Proprietorship:

Sole proprietorship is a form of business that is owned and run by a single person who makes all the investments, goes through all the risks, keeps the profits or bears the losses. Under this form of business enterprise, it is always difficult to dissociate the proprietor from the business. This form of business is often employed by individuals who have limited capital and small business operations. A foreigner who intends to run this kind of business enterprise must first obtain the necessary permits.

It is important to note that there are limited statutory requirements for starting up sole proprietorship unless such proprietor wants to register a business name. A business name is a convenient and better way of doing business as a sole proprietor so as to enjoy some form of protection from the law and to gain public trust. A business name is the name or style under which a business carries on whether in partnership or otherwise. The essence of registering a business name is to secure the “name” or “style”, which will make it special and unique from any other type of business. A business name can be registered where the sole proprietor wishes to use a name or style that does not contain his true name, surname or initials¹¹.

3.1.2 Partnership/ Limited Partnership:

Under the Nigerian law, a group of people may come together to form a business where they will all be jointly liable for the debts and obligations the business may incur. In addition, the partners will also be jointly entitled to the profits or returns on investment. However, except for the Partnership formed by Lawyers and Accountants, the law limits the number of partners to 20 people¹². Again, the Law permits the formation of Limited Partnerships, but restricts the number of limited partnerships to 20 persons. Under this form of partnership, one or more persons are usually called general partners and one more other persons are called limited partners. At the point of entering into a Limited Partnership, a limited partner agrees to contribute certain sum as capital or property valued at a stated

¹¹ See Section 814 (1) of Companies and Allied Matters Act

¹² Section 19 of CAMA

amount and will not be liable for the debts of obligations of the firm, beyond the amount so contributed or agreed to be contributed while the general partners will be liable for all debts and obligations of the firm ¹³. Thus, the extent of liability and obligation depends on whether or not the partnership is a limited partnership, otherwise the terms will be contained in the Partnership Agreement created by the partners at the point of establishing the business.

The requirement for registering a Partnership as a “Business Name” is if the name or style intended by the partners does not contain their true full names, true names or surnames, or individual initials. ¹⁴

3.1.3 Incorporated Companies:

The most widely used form of business organisations in Nigeria are incorporated companies. This form of business organisation is preferred mostly by individuals who wish to do business in Nigeria because of the statutory regulation and well established structure of administration. People with large sums of money or who wish to engage in a big business venture and maximize profits, readily incorporate a company for this purpose. A company obtains legal personality after incorporation which makes it distinct from the promoters, shareholders or investors.

Incorporated companies are classified according to their liability status which could be limited by shares or unlimited, and limited by membership which could be either private or public. Hence, the types of companies that can be incorporated in Nigeria are;

- i. Private Company Limited by shares (LTD) which is usually incorporated by private individuals and having not more than 50 members. This kind of company is prohibited from offering its shares or debentures to the public.
- ii. Public Company Limited by shares (PLC) which is the largest of all types of business organizations because it has no limitation to membership. A public company in Nigeria can offer its shares and debentures to the public and can be quoted on the Nigerian Stock Exchange. Individuals with large capital and large-sized business enterprises often incorporate their companies as public companies.
- iii. Unlimited Company (ULTD) whose members' liabilities are unlimited at winding up. And
- iv. Company Limited by Guarantee (LTD/GTE) ¹⁵ which is not a form of business organization.

¹³ See Section 795(3) (4) CAMA

¹⁴ section 814 (1) and (2) CAMA

¹⁵ See Sections 21-26 of CAMA

3.2 NON-BUSINESS ORGANIZATIONS

Non-business organizations are not formed for business purposes and are not profit-oriented. Even though the law stipulates that non-business organizations cannot conduct business, non-business organizations can still conduct small business, but their profits are not to be shared among members. Business organizations of this form are mostly set up for charitable purposes or set up by members in realization of a common purpose of a selected area of interest.

Hence, non-business organizations could either be:

3.2.1 Incorporated Trustees - which is usually set up by people who are bound by religion, custom, sociology, or nationality who desire to gain an incorporation status. This form of business organization can be registered under Part F of the CAMA. Upon being so registered, the Trustees shall obtain legal personality and become a body corporate not the members¹⁶.

3.2.2 Company Limited by Guarantee - which is an alternative type of corporation used primarily for non-profit organizations/ NGOs that require legal personality. A company limited by guarantee does not usually have a share capital or shareholders, but instead has members who act as guarantors. The guarantors give an undertaking to contribute a nominal amount (typically very small) in the event of winding up of the company.

Where a company is to be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company is to be applied solely towards the promotion of its objects, the company may be registered as a Company Limited by Guarantee.

3.3 REGISTRATION WITH THE CORPORATE AFFAIRS COMMISSION (CAC)

The Companies and Allied Matters Act (CAMA), 2020 is the regulatory framework of corporate law practice and business activities of companies in Nigeria. The CAMA establishes the CAC as the regulatory agency in charge of registration, administration, and regulation of operations of business and non-business organizations in Nigeria.

¹⁶ See Section 823(2) CAMA

Benefits of Registering Your Business with CAC

1. The entity will be able to open a business account and obtain loans.
2. A registered business enjoys perpetual succession.
3. A registered business enjoys the right to certificate of incorporation and the right to use the registered name over any other business.
4. A registered company has a good reputation and confidence of the customer and will enjoy patronage over an unregistered business entity.

Documents Required by CAC for Business Incorporation

- Form CAC 1.1. Application for Registration.
- Memorandum and Articles of Association.
- Proficiency certificate (where applicable).
- Recognized form of identification (passport bio-data page, drivers' license or National Identity Card) for Director(s)/Shareholder(s) and Secretary.
- Foreign Certificate of Incorporation and Board resolution for subscription to Nigerian company (where applicable).
- Residence permit of resident foreigners (where applicable).
- Stamp duty evidence of payment.
- Evidence of payment to CAC (the fees to be paid for incorporation of a company is dependent on the volume of shares to be registered).