

Module 1

COMPANIES AND OTHER FORMS OF BUSINESS ORGANISATION

Outline

- The development of company law in Nigeria
- Commencement of a business
- Formation of partnerships
- Types of partners and liability
- Dissolution of partnerships and priority of debts on dissolution

The development of company law in Nigeria

➤ The history

Nigerian company law is part of Nigerian heritage from the English legal system imposed since colonial days. Before 1912, there was no local companies' statute in force in Nigeria but only foreign companies operated in the country and they were governed by the laws of their different countries.

The first local companies legislation was promulgated in 1912 as the Companies Ordinance 1912 which was based on the U. K. Companies Act 1908 which was then the current statute in England. This Ordinance applied only to the colony of Lagos, and in 1917, it was amended and extended to apply to the whole country. In 1922, the two Ordinances were repealed and replaced with the Companies Ordinance 1922 which was subsequently amended in 1929, 1941 and 1954.

Development Cont'd

In 1968, the Companies Act Cap. 37 of the 1958 Laws was repealed and replaced by the Companies Act 1968. The 1968 Act was a marked improvement on the previous law. For example, it made mandatory provisions for accounts and encouraged greater accountability of directors and more effective participation of shareholders in the affairs of the company. The most fundamental change made by the Act was the introduction of Part X, which required foreign companies intending to carry on business in Nigeria to be incorporated locally. This Act was however replaced by the Companies and Allied Matters Act, 1990 now redesigned to Companies and Allied Matters Act, 1990 and now 2004.

Commencement of business in Nigeria

Below is a detailed summary of the bureaucratic and legal hurdles faced by entrepreneurs wishing to incorporate and register a new firm in Nigeria. It examines the procedures, time and cost involved in launching a commercial or industrial firm with up to 50 employees and start-up capital of 10 times the economy's per-capita gross national income

This information was collected as part of the [Doing Business project](#), which measures and compares regulations relevant to the life cycle of a small- to medium-sized domestic business in 189 economies. The most recent round of data collection was completed in June 2013.

Commencement Cont'd

1. **Reserve a unique company name at the Corporate Affairs Commission**

The Corporate Affairs Commission (CAC) Online System was commissioned in June 2005. The system envisaged an online search of unique company names immediately upon the purchase of an e-payment card from an accredited bank. Although this service is widely advertised by CAC, until now the system is not fully operational either because of power fluctuation or because of lack of availability of the pre-paid cards necessary to conduct the online transaction. In most cases, the applicants have to go to the CAC branch office in Lagos (either in Yaba or Alausa) to complete this procedure, where they submit Form CAC 1: Availability Check and Reservation of Name.

Commencement Cont'd

2. Prepare the requisite incorporation documents and pay the stamp duty

To prepare the requisite incorporation documents, the incorporators must complete the requisite statutory forms, prepare and print the memorandum and articles of association, and have them stamped by the Federal Inland Revenue Service (FIRS)

Commencement Cont'd

- 3. Notarize the declaration of compliance with the requirements of CAMA (CAC**
The declaration by the barrister or solicitor engaged in the formation of the company may be sworn to before a Notary Public for a fee of NGN 4,000 – NGN 5,000, or at any of the recognized courts in the country (Magistrate Court, the State High Court, or the Federal High Court) before a Commissioner For Oaths for a small fee of NGN 500 usually chargeable by the respective courts

Commencement Cont'd

4. Register at the Corporate Affairs Commission and Pay the fees at the bank desk of CAC

To register the company with the Corporate Affairs Commission (CAC), the following incorporation documents are submitted:

- Form CAC 1: Availability Check and Reservation of Name.
- Memorandum and articles of association, stamped by the commissioner for stamp duties (2 copies).
- Form CAC 3: Notice of registered address.
- Form CAC 4: Declaration of compliance.
- Form CAC 7: Particulars of directors.
- Form CAC 2: Statement of share capital and return of allotment of shares.
- Form CAC 2.1: Particulars of the company secretary.

Commencement Cont'd

Incorporation fees are:

- NGN 10,000 for company whose nominal share capital does not exceed NGN 1,000,000, and NGN 10,000 for every NGN 1,000,000 thereafter. Incorporation fees for a company whose share capital exceeds N1,000,000.00 is N10,000.00 for the first NGN 1,000,000.00 and N10,000.00 for every additional NGN 1,000,000.00 or any part thereof.
- NGN 500 incorporation forms.
- NGN 500 for each additional copy of Memorandum and Articles of Association stamped.
- NGN 3,000 for certified true

copy of memorandum and articles of association.

- NGN 2,000 for certified true copy of particulars of directors.
- NGN 2,000 for certified true copy of particulars of shareholders. Moreover, NGN 60,000 is the approximate cost of company incorporation conducted by professionals (lawyers, chartered accountants and chartered secretaries) accredited by CAC.

The payment can be done at the bank desk at CAC.

Commencement Cont'd

5. **Make a company seal**

Section 74 of the Companies and Allied Matters Act (CAMA) requires every company to have a common seal. The company is thus mandated to have a company seal by the Companies and Allied Matters Act 1990 (2004) (CAMA) first schedule paragraph 15, which provides a standard memorandum of articles of companies and requires directors to provide a company seal. Such is also the common practice, especially because companies will generally have to register a deed and other official documents.

Commencement Cont'd

- **Register for income tax and VAT at the Federal Board of Inland Revenue Department of the Ministry of Finance**

The Federal Inland Revenue Service (FIRS) requires the applicant to complete tax registration forms for corporate income tax registration as well as VAT. The company submits an application letter to the tax authority for a tax clearance certificate and, for income tax purposes, registers at the integrated tax office.

The registration process requires submitting a completed tax office-issued application (taxpayer registration input form, TRIF/2006/001 COYS) and the following documents:

- Completed FIRS questionnaire.

- Memorandum and articles of association (copy).
- Certificate of incorporation (copy).
- Directors' names and addresses.
- Tax advisor's name and address.
- Letter of appointment of a tax adviser and corresponding letter of acceptance.
- The date the company commenced business;
- Names, addresses and mobile numbers of major promoters and the chairman of the company, including their email addresses;
- Other sources of income of the chairman and the promoters of the company;
- Name and addresses of the principal officers of the company including the chairman, managing director, legal adviser and accountant;

Commencement Cont'd

- To register, the company must submit the taxpayer registration input form in triplicate, and the original certificate of incorporation must be presented for review by the controller. Upon the completed taxpayer registration input form and all other documents being received, a tax reference number is allocated. An application must be filed for the tax clearance certificate; its issuance is not automatic.
- Fee schedule for tax clearance certificate:
 - Registration within 6 months of incorporation: no cost.
 - Registration after 6 months of incorporation (if the company has yet to start business operations):
 - A pre-operation levy of NGN 20,000 for first-year requests and NGN 25,000 for each subsequent year request, until the company files a notice of commencement of business as per amendment to section 29 of the Companies' Income Tax Act No. 11 of 2007.
- Companies that register after the start of operations must file a set of audited accounts. TCC is issued based on tax paid for 3 years. If the position is at a loss, the TCC will be issued to reflect the position.
- Companies required to register for VAT complete the VAT registration form (VAT Form 001, obtainable free of charge from all FIRS offices) and return it to the integrated tax office, which will issue a taxpayer identification number (TIN). Companies required to register for VAT must do so within 6 months from the date of company incorporation.
- Since the registration for corporate income tax and VAT are done in the same place; one Tax Identification Number (TIN) is issued to companies for all federal taxes.

Commencement Cont'd

7. Register for personal income tax PAYE at the State Tax Office

- All employers shall register with the relevant state tax authority for income tax withholding.

The PAYE Regulations, 2003 made pursuant to the Personal Income Tax Act provides that all employers are to register with the Lagos State Board of Internal Revenue Tax Office nearest to the registered company address for the purpose of remitting income tax deducted from their employees. The employer must within 6 months of commencing a business deduct tax from emoluments of employees and remit the amount deducted to any of the designated collecting banks.

- The registration requirements are as follows:

1. A copy of certificate of incorporation.

2. List of staff and their annual salaries.

3. The Directors' Tax Clearance Certificates (now Electronic Tax Clearance Certificate)

4. Letter of application for registration.

Upon completion of registration, an Employer's Identification Number will be issued.

- An employer who fails or refuses to register commits an offence and is liable on conviction to pay a NGN 25,000 fine in addition to the payment of arrears of the tax due.

Commencement Cont'd

8. Register business premises with the Lagos State Government and Pay the business premises levy at a designated bank

- To register the company premises with the Lagos State Government, the entrepreneur heads to any nationalized commercial bank with some evidence of the business premises (utility bills, etc.) and pays the business premise levy to the account of the Lagos Inland Revenue Services (LIRS). The bank then issues a receipt bearing the Lagos State Government logo.
- Business premises in an urban area of Nigeria are required to be registered on the payment of a NGN 10,000 registration fee in the first year of registration (NGN 5,000 per annum as renewal registration fees in the subsequent years).
For rural areas, the business premises registration fees is NGN 2,000 for the first year of registration (NGN 1,000 per annum as registration renewal fees for the subsequently years).

Formation of partnerships

- Partnership law in Nigeria is adapted from the English Partnership Act of 1890

- **What is a Partnership?**

A Partnership, is a voluntary association of two or more individuals carrying on a business for the intent of making profits. A person cannot be forced to be a partner (unless by conduct he holds himself out or allows himself to be held out as a partner) or to accept another person as a partner. In forming a partnership, no real formalities are required. A partnership can be formed orally, in writing or by conduct. A maximum of 20 people are allowed in a partnership.

A Partnership is defined to include every professional or commercial venture. Every partnership must have a profit motive even though the business does not actually have to make a profit. This excludes non-profit organizations (such as associations, clubs, societies, etc.) from being seen as partnerships.

The sharing of profits is prima facie evidence of a partnership

Formation Cont'd

▫ **The Article of Partnership**

It is good practice to prepare an Article of Partnership before proceeding with any business venture. The partners can agree to any term in their partnership agreement, except illegal terms. The article may be short and simple or long and complex. The following are some of the issues that should be agreed upon and properly articulated in the agreement.

- The name of the partnership
- The nature of business.
- The principal office of business and branches (If any).
- Nature and scope of the partnership
- Capital contribution of each partner and bankers.
- Division of profits and losses among the partners.

- Withdrawal of capital.
- Management of partnership - conduct and power and participation in management.
- Use and application of partnership property.
- Remuneration of partners.
- Unanimous consent cases, major decision.
- Retirement, expulsion bankruptcy, death and incapacity of a partner.
- Admission of new partners.
- Loan or credit to members.
- Termination or dissolution of the partnership.
- Any other provisions deemed relevant by the partners

Formation Cont'd

- **Characteristics of a Partnership**

- A Partnership is at will and not necessarily for life.
- Each partner is an agent of and principal to every other party.
- A partner cannot be expelled by another partner.
- Partners have unlimited liability.
- A deceased partner's rights in specific partnership property vests with the remaining partners upon his death (right of survivorship).
- Ownership interest may not be transferred without the consent of all the owners.
- A partnership exists by mutual agreement of all the parties.
- A partnership must have an intent to make profits. A partnership does not pay income tax in its own name.
- Partners pay tax on their individual share of the profits of a partnership.

Types of Partners and liability

- Active Partner: Participates in all activities of a partnership.
- Dormant or Sleeping Partner: A partner that does not take an active part in the operations of the partnership but share in the profit. This type of partner is typically not known by the public.
- Silent Partner: A partner who is known by the public as part of the partnership but he/she does not take an active part in the operations of the partnership.
- Nominal partner: A person who lends their name to a partnership without having any financial interest in it. The name is lent to the partnership for a consideration.
- Secret partner: A partner that takes active part in the affairs of the company but he is not known by the public as part of owners of the partnership

Types of partner cont'd

➤ **Rules that determine the existence of a Partnership:**

- An agreement to share in the losses of a business is strong evidence of a partnership
- Co-ownership of property by joint tenancy, tenancy in common, tenancy by the entirety, joint property, community property, or part ownership does not on itself establish a partnership.
- People who are not partners to each other are not partners to a third party/person (*unless a partnership by estoppel is created when a person who is not a partner either makes a representation or consents to a partner's representation that he is a partner*).
- Sharing of gross return of a business does not itself establish a partnership, whether or not the person sharing it has a joint or common right of interest in any property from which the returns are derived.
- Receipt of a share of the profits of a

business is prima facie evidence of a partnership.

- No inference of the existence of a partnership shall be drawn if such profits were received in payment;
- as wages of an employee or rent to a landlord,
- as annuity to a widow, widower or representative of a deceased partner,
- as debt owed to a creditor in installments or otherwise,
- as an interest in a loan
- as the consideration for the sale of the goodwill of a business or other property by installment or otherwise.

Types of partner cont'd

➤ **Limited Partnership:**

Generally, limited partnerships (a special form of partnerships that has both limited and general partners) do not exist in Nigeria. However, limited partnerships exist in Western Nigeria and Mid Western Nigeria. A limited partner cannot withdraw funds as long as the partnership is in existence. He/she is not personally liable for partnership debts beyond their capital contribution. He/she must not take active part in the management of the partnership. He/she must not bind the firm and not to be seen as agent. He/she can assign his shares with the approval of the general partners. He/she cannot dissolve the partnership.

Partnership Cont'd

➤ **Capacity of a Partner:**

- Every partner is an agent of the partnership for purposes of its business and an agent of every other partner concerning his/her own acts
- Each partner is also a principal of every other partner concerning their acts
- An infant can become a partner and is bound by partnership agreement.
- He/she can repudiate while still an infant.
- An infant that is a partner is not liable for trade debts of the partnership.
- A person found to be insane by a court of law cannot become a partner

Partnership cont'd

➤ **Liability of Partners**

- Every partner is liable jointly with all other partners for all the debts and obligations of the firm incurred while he is partner. If he dies, his estate is also held severally liable for debts unsatisfied. He can sue all or one of the partners (jointly or severally).
- A partnership can be sued in the business name. Each partner sued can apply to join other defendants.
- A partner can personally sue the firm or other partners for deceit, fraud or misrepresentation.
- The partnership is jointly and severally liable (*one or more of the partners can be sued separately*) for breach of trust or a tort (wrong) done to a third party in the course of business if it was authorized.
- The partnerships debts or liabilities are the personal debts and liabilities of each partner. Each is liable to the extent of his personal assets.
- A person admitted into an existing company does not thereby become liable to the creditors of the firm for anything before he became a partner. However, he can become by novation.

Partnership Cont'd

- · A partner who retires from the firm does not cease to be liable for partnership debts or obligations incurred before his retirement.
- · The acts of a partner bind the firm and his partners unless:
- · the partner has no authority to act for the firm in that matter; and
- · the external party with whom he/she is dealing either knows that he/she has no authority or does not know or believe him/her to be partner (e.g. expenses incurred by a partner in an unrelated business will not bind the other partners).
- The authority to act on behalf of a partnership may be vested in a partner by express or implied authorization of his co-partners or the partnership agreement, or by virtue of the usual authority associated to owners of such line of business, or by the conduct of the partners in ratifying the other partner's act

Partnership Cont'd

➤ **Indemnity of Partners**

- A partner is entitled to indemnification (i.e reimbursement) for losses, expenses and personal liabilities incurred in the discharge of the firm's business.
- Partners are expected to contribute and share equally in the capital and profits of the firm and must contribute equally towards the losses of capital and otherwise, unless the partners expressly vary the ratio of contribution.

Dissolution of Partnership and priority of debts on dissolution

- *A partner has the right to withdraw and dissolve a partnership at any time but he/she may not have the right to do so.*
 - A partnership may be dissolved by;
 - An agreement of the partners.
 - The death, or bankruptcy of any partner.
 - Any event which makes the carrying of the partnership illegal, dissolves the partnership.
 - Order of a court. Any of the partners could apply and obtain court ruling that a partnership be dissolved on specified grounds - insanity of a partner, criminal conviction, etc.
 - Expiration or notice.
- subject to any agreement between the partners, a partnership is dissolved;
- by the expiration of a stated term or purpose
 - if entered into for an undefined time, by any partner giving notice of dissolution to the others.
 - by misplaced trust and confidence

Dissolution of Partnership Cont'd

- *The partners owe to each other mutual trust and confidence. Willful or persistent breach of the partnership agreement, fraud, misrepresentation, keeping erroneous account, appropriation or stealing of partnership property, etc. can force the aggrieved partners to give notice of dissolution.*
- by the business ceasing to be profitable and the partners can no longer accommodate the losses dissolution is allowed

Dissolution of Partnership Cont'd

On dissolution each partner can give public notice and compel other partners to sign the notice papers. The dissolution of a partnership terminates the partners actual authority to enter into contracts or otherwise act on behalf of the partnership.

- After dissolution and proper liquidation (sale) of the assets the proceeds are used to satisfy the debts and obligations of the partnership. Partners can agree to take a distribution in kind rather than cash. If the partnership cannot satisfy its debts and obligations the partners are personally liable.

Review Questions

1. Highlight the procedures for registering a business in Nigeria.
2. Enumerate the types of partners.
3. Highlight the characteristics of a partner in a partnership business.
4. Highlight the ways of dissolving a partnership business.

References

- ANAN Study Pack
- Companies and Allied Matters Act (2004) as amended.