Guide to Incorporation of Not for Profit Organisations in Nigeria

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This is a guide to creating a Not-for-Profit Organisation under the Nigerian government. It highlights legalities that need to be considered and follows the process through which such an organisation may eventually be created.

Introduction

The incorporation of non-profit bodies in Nigeria is governed by the Companies and Allied Matters Act, 2004 (‘the Act’). The Corporate Affairs Commission (CAC) is vested with responsibility for non-profit organisations. The CAC has branches in most State capitals of the Federation and its headquarters is based in Abuja, the Federal Capital Territory. Before applying to the CAC for incorporation of a non-profit body, one must check that the name of the new entity is not already in use. This can be done by purchasing an Availability Form, which costs very little. In Nigeria only legal practitioners, and to some extent accountants, are allowed to file applications at the CAC. Such persons should be accredited by the Commission to act on behalf of it. The organisation seeking to be established must have a constitution drafted by a legal practitioner.

The Act provides that, where one or more trustees are appointed and authorised by a ‘community of persons’, they may apply to the CAC under the Act (section 590(1)) for incorporation of the entity they represent (known as ‘incorporation of trustees’). This ‘community of persons’ may be bound together by custom, religion, kinship or nationality, or also by association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose.

Process of Applying

The application is expected to be in the Form prescribed by the CAC. The Form requires the following information:

- Name of the proposed corporate body, which must contain the words ‘Incorporated Trustees of’.
- The aims and objects of the association which must be for the advancement of any religious, educational, literary, scientific, social development, cultural, sporting or charitable purpose, and must be lawful.
- The name, address and occupation of the secretary of the association, if any (s.591(1)(a-c)).

The Applicant must attach the following to the application:

- Two printed copies of the Constitution of the association;
- Duly signed copies of the minutes of the meeting appointing the trustees and authorising the application, showing the people present and the votes scored;
- The impression or drawing of the proposed common seal (s.591(2)(a-c)). The application must be signed by the person making it (s.591(3)).

The CAC may require a supplementary declaration or other evidence in verification of the statements and particulars in the application, and other information and evidence as it may think fit (s.591(4)). If any person knowingly makes any false statement or gives any false information for the purpose of incorporating trustees under this law,
he/she shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of N100.

**Qualification of Trustees**

A person shall not be qualified to be appointed as a trustee if he/she:

- is an infant; or
- is a person of unsound mind having been so found by a court; or
- is an undischarged bankrupt; or
- has been convicted of an offence involving fraud or dishonesty within five years of his/her proposed appointment (s.592(a)-(d)).

If a person is disqualified for being an undischarged bankrupt or has been convicted of an offence involving fraud or dishonesty within five years of his/her proposed appointment, he/she shall be liable to a fine of N50 for every day during which he/she so acts (s.592(2)).

**The Constitution of the Association**

As mentioned, one of the requirements for establishing a non-profit organisation is creating a constitution that should be drafted by a legal practitioner. The Constitution of the Association must include the following, in addition to anything else that seems appropriate:

- The name or title of the association (which must not conflict with that of a company or with a business name or trade mark already registered in Nigeria);
- The aims and objects of the association;
- Provisions, in respect of the following:
  - appointment, power, duties, tenure of office and replacement of trustees;
  - the use and custody of the common seal;
  - the meetings of the association;
- The number of members of the governing body, if any, the procedure for their appointment and removal, and their powers; and
- Where subscriptions and other contributions are to be collected, the procedure for disbursement of the funds of the association, the keeping of accounts and the auditing of such accounts (s.253).

**Advertisement and Objections**

If the CAC is satisfied that the application has complied with the above provisions, it shall cause the application to be published in two daily newspapers circulating in the area where the corporation is to be situated, and at least one of the newspapers shall be a national newspaper (s.594(1)).

The advertisement shall invite objections, if any, to the registration of the body. The objection must state the grounds on which it is made, and should reach the CAC within 28 days of the date of the last of the publications in the newspapers. If any objections are made, the CAC shall consider them and may require the objectors and applicants to provide further information and explanation. It may uphold or reject the objections as it considers fit and inform the applicant accordingly (s.594(2)-(4)). The CAC has absolute discretion in this regard.
**Registration and Certificate**

If after the advertisement, no objection is received within the period specified above, or where any objection is received and is rejected, the CAC may assent to the application or withhold its assent. If it assents to the application, it will register the trustees and issue a certificate in the prescribed form (s.595(1)-(2)).

**Effect of Registration and Certificate**

From the date of registration, the trustee(s) become a body corporate with the name described in the certificate. It has perpetual succession and a common seal, and power to sue and be sued in its corporate name as such trustee or trustees. It has power to acquire and transfer property for the purpose of the community, body or association of persons (s.596(1)).

**Importance of Registration**

It is important for an organisation to register with the CAC before commencing its operations in Nigeria. The Act provides that (subject to sections 56-59 of the Act – see below) every foreign company intending to carry out business in Nigeria must obtain incorporation as a separate entity in Nigeria (s.54). Until it is incorporated, a foreign company may not carry out business in Nigeria.

The penalty for contravention is N2500 and company officers who knowingly and willfully authorise the contravention will also be fined at least N250. A further fine of N25 shall be levied each day during which the default continues (s.55).

**Exemption**

A foreign company may apply to the President for exemption from the provisions of section 54 of the Act if that foreign company:

- has been invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project; or
- is in Nigeria for the execution of a specific individual loan project on behalf of a donor country or international organisation (s.56(1)(a) and (b)).

**Other Legal Forms**

Instead of registering as a company, an organisation may operate as a trust or incorporated association in Nigeria. These also must be registered in the prescribed form as noted in the Act.

**Foreign NGOs**

If a branch of a foreign-based NGO is opened in Nigeria, it need not necessarily register with CAC in Nigeria, unlike an NGO established in Nigeria. The law takes its registration in its foreign home into consideration as a legal entity. However, to comply with the provision of s.607 on annual returns, it is advisable to register it with the CAC.

**Trustees**

The trustees of a Nigerian registered organisation may be a mixture of Nigerians and any other nationality. Because of the indigenisation policy, Nigerians must be significantly present on the board of trustees.

**Annual Returns**
NGOs are expected through their trustees to submit annual returns not earlier than 30th June and not later than 31st December each year (other than the year in which it is incorporated). They must submit to the CAC a return showing, among other things:

- the name of the corporation;
- the names, addresses and occupations of the trustees and members of the council or governing body;
- particulars of any land held by the corporate body during the year; and
- any changes which have taken place in the constitution of the association during the preceding year (s.607).

If the trustees fail to comply with the above, they shall be liable to a fine of N5 for each day during which the default continues (s. 607(2)).

Tax
An NGO may be exempt from some tax payments in Nigeria. If it is expecting the delivery of goods from abroad, it may apply for exemption from paying custom or any other duties.

Insurance
There are no insurance obligations except that it will be in the interest of the NGO to insure its insurable properties and staff members against foreseeable disaster.

Alteration of provisions of the constitution
An association whose trustees are incorporated under the Act may alter its constitution by a resolution passed by a simple majority of its members and approved by the CAC (s.598). Where a body or association intends to replace some or all its trustees or to appoint additional trustees, it may by resolution at a general meeting do so and apply in the prescribed form for the approval of the CAC (s.599(1)). If the alteration is considered lawful, a notice of the proposed change or alteration must be published in two daily newspapers for at least 28 days, and it must also be conspicuously mounted at the corporation’s headquarters or at any branch offices or any other places where a majority of the members is likely to see it (s. 597(2)). The publication shall call for objections, which – if any are raised – shall state the grounds of objection. They shall then be forwarded to reach the commission not later than 28 days after the last publication in the newspapers (s.597(3)).

Dissolution
A body corporate formed under the Act may be dissolved by the court on a petition brought for that purpose by:

- the governing body; or
- one or more trustees; or
- members of the association constituting not less than 50 per cent of the total membership; or
- the Commission. (s. 608(1))

The petition may be based on any of the following grounds:

- that the aims and objects for which it was established have been fully realised and no useful purpose would be served by keeping the corporation alive;
that the body corporate is formed to exist for a specified period and that period
has expired and it is not necessary for it to continue to exist;
that all the aims and objects of the association have become illegal or
otherwise contrary to public policy; and
that it is just and equitable in all the circumstances that the body corporate be
dissolved (s.608(2)).

At the hearing of the petition, all persons whose interests or rights may, in the opinion
of the court, be affected by the dissolution must be notified (s.602(3)). If, after
winding up and satisfying all its debts and liabilities, any property remains, it shall not
be paid to or distributed among the members of the association, but shall be given or
transferred to other institutions with similar objects. Such institutions or bodies shall
be determined by the members of the association at or before the time of dissolution
(s.608 (4)). If this cannot happen, the remaining property shall be transferred to some
charitable object (s.608(5)).

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