

BUSINESS NAME REGISTRATION

A GUIDE FOR BEGINNERS

UPSCALE BUSINESS RESOURCES

Suite J179, Road 5, Ikota Shopping Complex, VGC, Lagos
+2348036258312, +2348188474167; upscale@upscale.com.ng

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Please contact the publisher with any queries at the address stated below.

Upscale Business Resources

Suite J179, Road 5, Ikota Business Complex, VGC, Lekki, Lagos

Email; upscale@upscale.com.ng

Web: www.upscale.com.ng

WHY YOU NEED TO REGISTER YOUR BUSINESS

Business entities are usually formed and administered by one or more persons in order to engage in business activities. This usually involves the sale of raw materials, manufactured goods or services.

In Nigeria every citizen is free to carry on business as an individual or as a member of a group, subject to any relevant laws. In theory, non-Nigerians are required to obtain a business permit from the minister of internal affairs before establishing or taking over a company or practicing a profession in Nigeria.

Individuals and partners often carry on business under names other than their own names. In order to protect such business from infringement by third parties and also to protect the public from the misleading or fraudulent use of such names, certain business names are required to be registered under the Companies and Allied Matters Act.

A business name may be registered by a single person. However, where more than 20 people desire to form a partnership or carry on business in common, they are required to incorporate a limited liability company. Exceptions to this rule are co-operative societies registered under the provisions of any law and partnerships formed for the purpose of carrying on practice as legal practitioners or as accountants by duly qualified persons.

In reality, the foreign investment drive undertaken by the government has led to the relaxation of several rules, especially in respect of foreign participation in business. As a consequence, foreigners are now permitted to own and manage businesses in Nigeria. However, foreigners are prohibited from participating in certain business areas. This is important to protect the country and its economy.

Most often, business entities such as Registered Business names and Public and Private companies limited by shares are formed to sell a product or a service. For people who wish to engage in charitable, health, sport, or social activities; it is preferable to structure their businesses either as Companies Limited by Guarantee (Ltd/Gte) or as incorporated Trustees

WHICH BUSINESS STRUCTURE IS BEST FOR YOU?

In determining the best business structure for you, we will discuss each structure using the following features of:

- Formalities
- Number of members
- Legal Personality
- Perpetual Succession
- Borrowing Powers and Procedure
- Transferability of Interest
- Management
- Taxation

Individual Business Name/Sole proprietorship

This is the oldest and most common form of business in Nigeria. It has the benefits of being the cheapest to register and tax effective to administer, as the owners are not required to pay companies income tax.

Proprietors of a business name or partnership are only required to pay personal income tax for themselves and their staff. They are also obliged to pay state taxes as may be stipulated from time to time.

It is relatively simple for the proprietor of a business name to transfer their interest to third parties. All they have to do is to execute an instrument of transfer of their interest, and file an application with the Corporate Affairs Commission to update the records of the company.

However, the incoming proprietor will also be liable for any debts or obligations undertaken by the initial proprietor. As a consequence, it is essential that the acquirer of the business conducts deep due diligence prior to consummation of the transaction.

When should your business name be registered?

Section 656 (1) of the CAMA provides that a business name must be registered in the following circumstances:

- In the case of a firm, if the name does not consist of the true surnames of all partners, without any addition other than the true forenames of the individual partner or the initials of such forenames. This means that a firm established by Mr Olamide Olunloyo and Ms Ogeche Okeke and carrying business as Olunloyo & Okeke does not need to be registered. However, if they carry on business as Olunloyo & Okeke Ventures, they are required to register their business name
- In the case of an individual, if the name does not consist of his true surname without any addition other than his true forenames or initials.
- In the case of a corporation, if the name does not consist of its corporate name without any addition. As a result, an individual may carry on business under its trade name e.g Google without registering same as a business name

Risk Profile

The downside of this form of organization is that it lacks assured continuity because the business is deemed dissolved upon the death of the proprietor. This risk may be managed if the business is converted and re-registered as a partnership or a limited liability company. This can be easily done on the company registration portal or by filing the relevant documentation at the closest CAC office.

Another downside of this business structure lies in the fact that there is no limit to the liability the proprietor may incur. Sole proprietorships and partnerships are usually limited to raising external funding by mortgaging the personal assets of the proprietors/partners.

Consequently, if the business fails, the proprietor can easily be ruined, as creditors of the business are legally permitted to seize and sell the proprietor's personal assets to satisfy any business debts. There is no separation between the personal assets of the proprietor or his business assets.

This form of organization is ideal for professional service providers with relatively low debt exposure such as lawyers, accountants, surveyors and estate managers. It is also great for owners of micro businesses or traders that need a registered name to open a bank account. However it does not easily attract capital, as many banks are not keen upon providing loans to sole proprietors.

Multiple Proprietors Business Name/Partnership

A partnership is the relationship which exists between two or more persons carrying on business in common, with a view to profit. A partnership may be registered as a Business name under Part B of the Companies and Allied Matters Act. Partnerships are regulated by the Partnership Act and the Partnership laws of the various states.

The Partnership structure shares most of the strengths and weaknesses of the sole proprietorship, with the exclusion that a partnership registered as a business name may validly carry on business after the exit or death of a partner. This differs from an unregistered partnership, which dissolves upon the death or departure of a partner.

Where more than 20 people desire to form a partnership or carry on business in common, they are required to incorporate a limited liability company. Exceptions to this rule are co-operative societies registered under the provisions of any law and partnerships formed for the purpose of carrying on practice as legal practitioners or as accountants by duly qualified persons.

Where a registrable partnership is not registered, the partnership is illegal and any contract entered into by the defaulters in pursuance of the business is deemed unenforceable.

The liability of partners are generally equal and unlimited, unless an agreement is executed between the parties to limit their respective liabilities or the partnership is registered as a limited liability partnership under the relevant Partnership Law.

The procedure for taxation and transfer of interest in a partnership is similar to the procedure required for a registered business name.

HOW TO REGISTER A BUSINESS NAME ON THE CORPORATE AFFAIRS COMMISSION PORTAL

Step 1: Select 2 alternative names for the business. These names should be connected to the brand identity the company seeks to portray.

Step 2: Check if these names are available for registration. This can be easily done by running a public search of the name at www.publicsearch.cac.gov.ng. Please note, the fact that a name is available does not mean that CAC would approve the name for registration! Some names may be rejected if in the opinion of the officer concerned, it conflicts with an existing registered name or trademark or if the name may confuse the public as to the object or nature of the business. Unfortunately, their discretion is absolute in these matters, whether they exercise it properly or not.

Step 3: Go to www.services.cac.gov.ng and set up an account on the Company Registration Portal. Once this is completed, CAC will forward a username and password to you. This will be used to log into the portal.

Step 4: Log into the platform and file a request for reservation of name. Fill in the name and the nature of business. Be careful and cross check to ensure you make no mistakes in typing the name.

Step 5: Pay the N500 fee for the search by clicking on the button which will take you to the Remita Payment portal. You can easily pay using your ATM card, e-wallet, or online transfer. Cash payment is no longer permitted on the portal, probably due to logistical issues. Most banks have set up an OTP protocol, whereby a code comes into your phone, which you are to type into the designated box. Once your payment is verified, your application will be submitted and you wait for the report. We advise that you download the CAC receipt, which you will find on the portal and save in a folder on your computer system for easy retrieval at the upload stage.

Step 5: The report usually arrives as a PDF attachment in your e-mail box within 24 hours. If it approved, go to the company registrations tab, select 'new registration' and input the availability code in the Notice of Approval to commence your registration.

Step 6: Fill the online form with accurate information. Limit the objects and nature of your business to one apiece. This reduces the risk of receiving a query on your application. Once this is completed, pay the prescribed fee using the Remita payment portal. Download your CAC receipt and save in your folder.

Step 7: A copy of the duly filled BN 1 form will be made available for download. Sign the form at the designated points and scan a copy of the form. To convert the two pages of the scanned form, which is usually in JPEG or PNG format, into a single pdf document, either use a pdf creator, or copy the documents and paste on a word document, which you then save as pdf. Scan all supporting documents including the ID card and, any qualifying certificates and save into your computer folder.

Step 8: Go to the document upload tool for the portal, enter the availability code and click on the recaptcha box. You will then be permitted to upload your documents to the

portal. Once all your documents are uploaded, click submit and your application will be submitted.

Step 9: If your application is approved by CAC, you will receive a notice of approval within 72 hours of filing your application. If it is not approved you will receive a notice of query detailing the issues with the application. Resolve the queries and upload the amended document if necessary.

Step 10: After 2 weeks, you can go to your selected CAC office to pick your certificate and other documents. Take along the original form and copies of all other documentation filed in the application.

Restricted Names

CAC restricts the registration of Business Names that contain any of the following words:

- Federal, National, Regional or State Government or suggest patronage of Federal or State Government, Ministry or Department
- Municipal or Chartered or suggest connection with any municipality or other local authority
- Co-operative or Building Society
- Group or Holding
- any word suggesting temporary business arrangement, e.g. consortium

Note: Application for Consent for restricted name will be addressed to the Registrar-General and submitted at the Head office or through any of the State offices.

ERRORS BUSINESS OWNERS MAKE

As at 2007, 3 million companies were deemed dead by CAC and struck off the register of companies based on non-filing of the required returns. I wonder how many companies are still going concerns today.

In treating this topic I shall draw from my experience in law, branding, taxation, and management. At the end of this session, you will know the errors many Nigerian business owners make which have hampered some businesses, while effectively killing many others. I will also outline strategies which can be applied if you want your business to succeed.

PICKING THE WRONG NAME

The wrong choice of name can affect the fortunes of the company.

- Personalised names suggest a one man business, which may limit the growth of the company.
- Restrictive names e.g ABC Pharmaceuticals limit the growth of the company
- Names should be versatile
- Names should be easy to pronounce, remember and brand especially in this era of social media

POOR UNDERSTANDING OF NOMINAL SHARE CAPITAL

- Nominal Share Capital does not equate to the wealth of the company
- 1 million shares are only useful to the owner if they are paid up
- Lower capital is best to reduce stamp duties payable, unless the risk of the business dictates otherwise.
- Shares may be issued at a premium and savings used to beef up working capital
- Note situations where government sets minimum share capital e.g N25 bn for banks.

OFF THE SHELF MEMORANDUM AND ARTICLES

- Many Company owners have never read their Memorandum & Articles
- Memorandum & Articles should be tailored to the needs and vision of the company
- Memorandum & Articles supercede the CAMA and other legislation

NON EXECUTION OF SHAREHOLDER AGREEMENT

- Essential for Joint Ventures
- The Shareholders Agreement should capture the basis of the entire relationship.
- The Shareholders Agreement deals with profit sharing, termination, conflicting business, ethics etc. It helps in resolving any disputes.

NO BUSINESS PLAN

- A written narrative that describes what a new business plans to accomplish.
- For most new ventures, the business plan is a dual-purpose document used both inside and outside the firm.
- Inside the firm, the plan helps the company develop a “road map” to follow in executing its strategies and plans.
- Outside the firm, it introduces potential investors and other stakeholders with the business opportunity the firm is pursuing and how it plans to pursue it.

NON FILING OF ANNUAL RETURNS

- ▶ Many company owners don't file annual returns every year for the company.
- ▶ Non filing leads to penalties
- ▶ Yearly penalties can accumulate over the years into a tidy sum.
1 Year annual returns = N2,000
Year 2 annual returns = N3,000 per year
After 3 years =N 5000 per year

NO BOARD OF DIRECTORS

- ▶ Many Companies are run without a functional Board of directors
- ▶ Non existence of a Board can scare away potential investors and customers
- ▶ A director need not be a shareholder!!!!

- ▶ Board meetings provide a pool of ideas and contacts which will be beneficial for the company.

TAKING DIVERSE BUSINESS RISKS WITH ONE COMPANY

- ▶ Don't put all your eggs in one basket
- ▶ Transactional liabilities for different business lines should be kept separate
- ▶ Incorporate a separate company for each distinct business line
- ▶ It also helps with reducing your tax liability

BUYING COMPANY PROPERTY IN THE NAME OF THE MD/CEO

- ▶ A company's value is based on its assets
- ▶ No assets, useless shares!
- ▶ Assets bought in MD's name can't be listed as Company assets.
- ▶ Many Companies fail to meet minimum asset base requirements for bank loans because company property is in MD's name

NO COMPANY SECRETARY

- ▶ S. 293 CAMA requires every company to have a Company Secretary.
- ▶ Company Secretary is chief adviser to the Board on company procedure
- ▶ Appointment is now a pre incorporation requirement enforced by CAC and required for filing any document at CAC.
- ▶ Advantages of appointing a company secretary include quality advice, continuity of documentation,

Conclusion

Business name registration is the cheapest and fastest route to launching a credible business within Nigeria. It gives the startup owner an opportunity to build out their idea in a structured manner at low cost, whilst providing the chance for an upgrade when the viability of the idea is confirmed.

However, the business name structure does not lend itself to every type of business. Businesses which are high risk in nature are best carried on under the limited liability umbrella, thereby allowing the business owners limit their exposure to business risk and any liability that may arise from such risks.

For those who are yet to register their business, we have the *Upscale Startup Playbook*, which helps you define your idea and plan your business in a clear and concise manner.

For more information, we may be contacted by email at upscale@upscale.com.ng. For urgent enquiries, you can contact us on +2348188474167.