



REGULATORY UPDATE

FEDERAL MINISTRY OF JUSTICE

HIGHLIGHTS OF THE GUIDELINES ISSUED BY THE FEDERAL MINISTRY OF JUSTICE IN RELATION TO ISSUANCE OF THE ATTORNEY GENERAL OF THE FEDERATION'S AUTHORITY FOR REGISTRATION OF COMPANIES LIMITED BY GUARANTEE

JANUARY 10, 2024

In compliance with the statutory obligation on Ministries, Departments and Agencies (“**MDAs**”) to publish the requirements, procedure and timeline for processing licenses and permits as prescribed by the Business Facilitation (Miscellaneous Provisions) Act 2022 (the “**BFA**”), the Federal Ministry of Justice (the “**Ministry**”) has issued guidelines covering issuance of the authority of the Attorney General of the Federation (“**AGF**”) for registration of companies limited by guarantee (the “**Authority**”).

The Guidelines for Issuance of the Attorney General of the Federation's Authority for the Registration of Companies Limited by Guarantee (the “**Guidelines**”) is made pursuant to Section 26 (4) of the Companies and Allied Matters Act, 2020 (“**CAMA 2020**”). The rationale for the introduction of the Guidelines is to: (i) ensure uniformity in the processing of applications for the Authority; (ii) ensure harmonious synergy with processes being undertaken by the Corporate Affairs Commission (the “**Commission**” or “**CAC**”) in relation

to the processing of such applications; and (iii) reduce the time it takes to process applications for the Authority. The Guidelines also ensure administrative efficiency and transparency, which are the fundamental pillars of ease of doing business in Nigeria as recognized by the provisions of Executive Order No. 1 of 18 May 2017, most of which have now been codified in the BFA.

A company limited by guarantee is a not-for-profit company incorporated with the liability of its members limited to such amount the members guarantee or contribute to the assets of the company in the event of the company being wound up. One notable procedural change in the incorporation process of such companies under the CAMA 2020 is the introduction of a specific time frame within which the AGF must issue an approval or object to an application for registration, once forwarded to the Ministry by the CAC. Specifically, Section 26 (5) provides for such applications to be determined within a period of thirty (30) days from the date such application is transmitted from the CAC to the office of the AGF.

This development has led to a more efficient and effective registration process for companies limited by guarantee.



FOCAL POINTS OF THE GUIDELINES

As previously noted, the Guidelines is a codification of a transparent and more efficient process available at the Ministry for determining applications for registration of companies limited by guarantee. Some of the focal points of the Guidelines are:

1. Incorporation of Companies Limited by Guarantee

By virtue of CAMA 2020, the Authority of the AGF



must be sought and obtained before applications for registration of companies limited by guarantee can be concluded by the Commission¹. The Guidelines stipulates that all correspondence by the Ministry with promoters of companies limited by guarantee shall be made through the Commission.

Upon receipt of an application for the registration of a company limited by guarantee and other duly completed incorporation documents, the CAC shall forward the application to the office of the AGF for approval and where the AGF is not satisfied with the application or the documents forwarded, or has reasons to believe that there are grounds to justify the withholding of the Authority, the AGF shall communicate this fact to the promoters through the CAC.

The Guidelines stipulate that applications forwarded by the Commission to the office of the AGF for consideration must be: (i) clear and free from ambiguity; (ii) precise, concise and complete; (iii) free from grammatical errors, cancellations, erasure, alterations, mutilations; and (iv) shall contain only

aims and objectives as prescribed by CAMA 2020.

Furthermore, the Guidelines highlight the necessary supporting documents required for submission by foreign non-profit companies desirous of being registered in Nigeria. It specifies that such companies shall provide evidence of incorporation in the foreign country and evidence of registration with the National Planning Commission of Nigeria or its successor (in this case, the Federal Ministry of Budget & National Planning). This requirement is in addition to other statutory documents prescribed under CAMA 2020 or the Companies Regulations of 2021.

Similarly, promoters of a company limited by guarantee seeking to operate outside Nigeria are required to submit, along with the application for registration, a declaration by such promoters affirming their commitment to comply with the laws of the country where the company intends to operate.

2. Grounds for the denial of an application for the incorporation of a Company Limited by Guarantee

The Guidelines state that the office of the AGF may deny the application for incorporation where the Memorandum and Articles of Association of the proposed company contain: (i) inconsistent objects; (ii) functions or powers of established MDAs; (iii) purports to regulate other bodies.

In addition to the foregoing, where the Memorandum of Association of the proposed company contain objects that authorise the company to: (i) participate in political campaigns; (ii) contribute or donate to campaign funds; (ii) sponsor candidates in elections; and (iv) liaise or arrange with any political party to carry on any of the foregoing activities, the AGF may reject such an application.

Furthermore, objects which seek to target national security, instigate crisis or promote disunity or hatred shall be denied by the AGF. Additionally, applications for registration of companies limited by guarantee

1. Provided that such consent or denial is received within thirty (30) days from the date the application is transmitted to the office of the AGF by the Commission in accordance with Section 26 (4) to (10) of CAMA.

shall be denied where the objects purport to professionalize a trade, or issue proficiency certificates, in respect of any formal trade.

The Guidelines emphasise that the objects of companies limited by guarantee shall align with the provisions of Section 26 (1) of CAMA which expressly stipulates that such objects shall be for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects.

3. Qualifications for Registration of Companies Limited by Guarantee

By virtue of Section 7 of the Guidelines, certain bodies may register as companies limited by guarantee and they include: (i) chambers of commerce; (ii) trade associations; (iii) membership organizations; (iv) sports club and associations; (v) religious bodies; (vi) academies of science; (vii) charitable foundations; (viii) agro-based associations; (ix) musical composers and artists; (x) literary associations; (xii) teaching hospitals; (xiii) research institutes and institutions; (xiv) cultural organizations; (xv) education support organizations; (xvi) schools: and (xvii) such other similar bodies.

However, with respect to registration of an academy, the Guidelines stipulate that promoters of a company with such an objective shall furnish the office of the AGF with a letter of No Objection issued by the MDA responsible for regulating the subject area covered by the academy. Additionally, the Guidelines provides that where an MDA seeks to promote the incorporation of a company limited by guarantee, evidence of approval from such MDA must be submitted to the office of the AGF, along with other prescribed documents. The Guidelines was silent on the form of such approval document.

For companies seeking to be registered as research institutes, promoters are required to obtain a letter of No Objection from a statutory research body, where

the subject of the research is either: (i) already covered by a statutory research body; or (ii) is ancillary to subjects covered by such research body. In cases where the subject of the research is not expressly covered by a research body, but is related to the functions of an MDA, promoters must obtain a letter of No Objection from such MDA.

Additionally, where the research body proposes to conduct trainings, the promoters shall, in addition to prescribed documents, furnish a letter of No Objection or approval from the statutory regulator of the subject matter of the training, as well as a letter of No Objection from the National Board for Technical Evaluation. If the training relates to security or data management, forensic science, or any form of cyber security, the promoters are required to furnish the Ministry with a copy of an approval from the Office of the National Security Adviser.

Also, where the research body is to be domiciled in any State or Local Government of the Federation, the relevant body must obtain approval from the requisite State or Local Government.

According to the Guidelines, the failure of promoters to provide any of the highlighted documents above will constitute grounds for the denial of the Authority to register the proposed company limited by guarantee.

4. Alteration of Memorandum and Articles of Association

As has been the practice, companies limited by guarantee may alter or modify the contents of their Memorandum and Articles of Association in accordance with the provisions of CAMA 2020, provided that the Authority of the AGF is obtained prior to the registration of such amendments by the CAC.

The issuance of the Guidelines by the Federal Ministry of Justice is a welcome development especially as it provides clarity on some of the documentary requirements for various categories of companies limited by guarantee. Furthermore, the codification of these requirements will ensure that both applicants and officials of the Ministry have a standardised and transparent framework to adhere to in the incorporation process.



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