Legal Alert – March 2013 – Companies, Other Legal Entities Formation and Taxation

1. Legal Alert – March 2013 – Companies, Other Legal Entities Formation and Taxation.
2. Disclaimer Notice.
3. Copyright Notice.

COMPANY FORMATION

In Nigeria, the most common form of business formation and registration is a registered company. Under Nigerian Law, a company is a voluntary association of a number of persons united to carry on a particular line of business for economic gain.

A company is recognised as a legal person, with distinct and separate personality from its members who are known as its shareholders. A company is either incorporated or unincorporated.

In Nigeria, there are three (3) types of registered entities, namely:-

(a) Registered Companies;
(b) Incorporated Trustees;
(c) Registered Business Names/ Partnership.

For a Registered Company, there are (3) distinct types namely:-

(a) Public or Private Company Limited by Shares;
(b) Public or Private Company Limited by Guarantee;
(c) Public or Private Unlimited Liability Company.

REGISTERED TRUSTEESHIP

An Incorporated Trustee is a person or group of persons appointed by a community of persons, bound together with the objective of promoting a common custom, religion, kingship, education, science, social, cultural, sporting or such other charitable purpose.

The following persons cannot however be appointed as a Trustee:-

(a) A Minor or infant;
(b) A person certified by the Court as having an unsound mind;
(c) An un-discharged Bankrupt; and
(d) A person convicted of fraud or dishonest conduct within five (5) years of the proposed appointment.

REGISTERED BUSINESS NAME

A Registered Business Name is the name or style under which any Business is carried on by Partners or by a single individual.

Partnerships on the other hand, must have three (3) characteristics before they can qualify as a partnership. The characteristics are:-

(a) There must be a business;
(b) The business must be carried on in common by two or more persons; and
(c) The intention must be to make profit.

ADVANTAGES AND DISADVANTAGES OF REGISTRATION

The Advantages of registering a company include:-

1. The properties of a registered company belong to and are vested in the company and not on its members. The company does have a personality of its own, separate and distinct from the personalities of its shareholders.

   For a registered Business Name or Partnership, the properties belong to the partners and are vested in the partners individually.

2. A registered company has perpetual succession; thus, unless and until it is wound up, it remains in existence and can out-live any or all its original shareholders.

   In a Partnership, the death of just one partner can result in the dissolution of the partnership; as will the death of a Sole Partner or Proprietor.

3. A registered company, being a separate legal person, with a seal, can enter into contracts with third parties and its members. A partner however, cannot enter into a contract with his or her firm as the personalities are the same.

The disadvantages of registering a company include:-

1. The application of the ultra vires doctrine restricts the capacity of a registered company to carry on any business not specifically mentioned or authorised in its Memorandum of Association.
2. A registered company is a different and distinct person from its shareholders; and as such, it is the company that carries on the business of the company, not its shareholders. Dissatisfied shareholders however, have the right to resort to the Courts for protection and judicial relief after they must have exhausted all internal dispute resolution machinery within the company.

REGISTRATION REQUIREMENTS FOR THE REGISTERED ENTITIES IN NIGERIA

The registration requirements for a registered company include the following:-

(a) The name of the company;
(b) The objects or nature of the business that the company will carry on or undertake;
(c) The authorised share capital;
(d) The particulars of the First Directors, Shareholders and Company Secretary of the company;
(e) Notice of the registered office of the company, etc.

For an Incorporated Trustee, the registration requirements include:-

(a) The proposed name of the incorporated trustee entity to be registered;
(b) Extracts of the Minutes of the Meeting appointing the Trustees;

(c) Copies of the Constitution or Bye-Laws of the Body of Trustees;
(d) Notice of the Address of the Body of the Trustees, etc.

The requirements for the registration of a Business Name include the following:-

(a) The proposed Name;
(b) The primary objects of the business venture;
(c) Two Passport sized photographs of the individual partners;
(d) Photocopy of the Certificate of Registration and Resolution where one partner is a registered corporate body.

AUDIT AND ACCOUNTING RECORDS

Every registered legal entity in Nigeria must maintain Financial Statements which contain among other things, the Balance Sheet and the Profit and Loss Account of the entity.

A registered business entity in Nigeria must keep accounting records which contain such information, sufficient to disclose with reasonable accuracy, the financial position of the entity. In particular, they must contain entries, from day-to-day, of all moneys received and expended by the entity, and a record of the assets and liabilities of the entity.

ANNUAL RETURNS

In Nigeria, all registered entities must send duly signed Annual Return forms to the Corporate Affairs Commission ("CAC"), the body established with the sole responsibility of incorporating Companies, registering incorporated Trustees, Associations, Bodies and Business Names.

The Annual Return Form gives vital information concerning particulars of the Company, Association or Firm, its Registered Address, Register of Members, nature of business, as well as the situation of its assets.

WINDING UP OR LIQUIDATION OF COMPANY

Winding up of a company is a process whereby the life of a company comes to an end and its unencumbered properties are administered for the benefit of its creditors and members.

Under Nigerian Law, there are three (3) common types of winding up. They are:-

(a) Winding Up by a Court of Law.
(b) Voluntary Winding Up.
(c) Winding Up subject to the supervision of the Court.

The grounds for the Winding Up of a registered corporate entity include the following:-

(a) The number of shareholders is reduced to one or no shareholder;
(b) The company is unable to pay its debts as at when due;
(c) The company by special resolution resolves that the company should be wound up by the Court;
(d) There is default in holding the statutory meeting or delivering the statutory report to the Corporate Affairs Commission ("CAC"),
(e) The Court is of the opinion that it is just and equitable that the company should be wound up.

In Nigeria, the following persons may bring a petition for the Winding Up of a company. They are:-

(a) The Company itself; or its members;
(b) The Creditors, an Official Receiver, a Trustee in bankruptcy;
(c) The Contributors or the Corporate Affairs Commission;
(d) A Receiver so authorised by a Legal instrument.

TAX REQUIREMENTS ON INCORPORATION

Every Nigerian registered entity is required to keep Accounting Records which disclose with reasonable accuracy, the financial position of the legal entity concerned. These Accounting Records are required to be audited by an independent and licensed firm of Auditors.

At least once in a year, every company shall deliver to the Corporate Affairs Commission ("CAC") an Annual Return, with a certified copy of the Audited Accounts of the company, for public information.

Every Nigerian company must in all its communication, especially where such communication is with the Tax Authorities, quote its incorporation number which shall serve as its identification number.

Every Nigerian company shall within eighteen (18) months from the date of its incorporation or not later than six (6) months after the end of its first accounting period, whichever is earlier, file a self-assessment tax return.

A Tax Clearance Certificate is usually issued once the tax authority is satisfied that the assessed tax has been fully paid.

There are stiff penalties for failure to adhere to the above statutory requirements.

Oserogho & Associates
Business Solicitors, Tax Advisers & Notary Public
NEC Centre, 1 Engineering Close
2nd Floor, Suite 206, Off Idowu Taylor Street
Victoria Island, Lagos, Nigeria
Phone/Fax: (+234-1) 463 7414
Office Phone: (+234-1) 765 5635
Mobile: (+234-1) 803 326 4753;
P. O. Box 56261 Falomo Ikoyi Lagos
Email: contactus@oseroghoassociates.com
Website: http://www.oseroghoassociates.com/