

Formation of Companies for National Security and Tertiary Institution

By

Abbas Sada Abdullahi Esq

Department of Public and Private Law,
Dr. Yusuf Bala Usman, College Daura,
Katsina, Katsina State
08035945034

Abstract

Nigeria is a Federal Republic in West Africa, bordering Benin in the west, Chad and Cameroon in the east, and Niger in the north. As of 2015, Nigeria is the world's 20th largest economy, worth more than \$500 billion and \$1 trillion in terms of nominal GDP and purchasing power parity respectively. It overtook South Africa to become Africa's largest economy in 2014. The 2013 debt-to-GDP ratio was 11 percent. Nigeria is considered to be an emerging market by the World Bank ; it has been identified as a regional power on the African continent,] a middle power in international affairs, and has also been identified as an emerging global power . Nigeria is a member of the MINT group of countries, which are widely seen as the globe's next "BRIC -like " economies. It is also listed among the N" ext Eleven economies set to become among the biggest in the world. Nigeria is a founding member of the African Union and a member of many other international organizations, including the United Nations, the Commonwealth of Nations and OPEC. With this progress certain starts to emanate this are companies and these companies are divided into types depending on the nature of its formation. This paper will focus on the analysis the types of companies in Nigeria as well as corporation

1.0 Introduction

The first Companies Ordinance was introduced in Southern Nigeria - Lagos in 1912. This was then amended in 1917 to cover the whole country (Companies Amendment and Extension Act of 1917). Both acts were then repealed and replaced in 1922 by the Companies Act of 1922.

The 1968

Companies Decree replaced the 1922 Act. Currently, the Companies and Allied Matters Decree of 1990 regulates companies in Nigeria. The Company and Allied Matters Decree of 1990 is

regulated by the Corporate Affairs Commission (the commission); the commission is itself a body corporate with perpetual succession and common seal. Its main function 7 (1) is to administer advice including the regulation and supervision of the formation, incorporation, registration, management and winding up of companies registry and offices in all the state of the federation; arrange or conduct an investigation into the affairs of any company where the interest of the share holders and the public so demand, etc. Characteristics of a Company. The death of or transfer of a share holder does not affect the corporate existence. It enjoys perpetual succession. It is managed by its duly elected Board of Directors or/and officers. Individual share holders cannot bind the company by their act. Enjoys limited liability - the debts of the company are its debts. Members are not liable personally for its debts. A company cannot be constituted by mere agreement of the parties; it can only be created by or under legislative enactment (decree).

Formation of Company

Any two or more persons may form and incorporate a company. No company association or partnership consisting of more than 20 persons can be formed for the purpose of carrying on any business for profit or gain unless it is registered as a company (co-operatives and professional bodies, legal practitioners, Accountants etc. are exempt from this rule). Capacity of individuals to form a company: (Section 20, 1)

An individual shall not join in the formation of a company if he/she:

- * is less than 18 years of age (unless two other persons not disqualified by this section have subscribed to the memorandum) * is of unsound mind.
- * is an undercharged bankrupt.
- * is disqualified under section 254 of the decree from being a director of the company. (Section 254): if a person is convicted by a high court of any offence in connection with the promotion, formation or management of a company, or has been guilty while an officer of the of the company of any fraud in relation to the company or of any breach of his duty to the company)

A corporate body in liquidation cannot join in the formation of a company. An alien or a foreign company may join in forming a company subject to the capacity of aliens to undertake or participate in trade or business.

Classification of Companies

(Public or Private) Company Limited by Shares: the liability of its members is limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. Company Limited by Guarantee: the liability of its members is limited by such amounts as the members may thereby undertake to contribute to the assets of the company in the event of its being wound up. It may not be incorporated with the object of carrying on business for the purpose of making profits for distribution to its members. When a company is formed for the purpose of promoting arts, science, religion, sports, culture, education, research, charity etc and the income and property of the company are to be applied solely towards the promotion of its objects and no portion is to be paid directly or indirectly to its members except as permitted by the decree, the company shall not be registered as a company limited by shares but as a company limited by guarantee. Unlimited Company: no limit on the liability of its members. All unlimited companies shall be registered with a share capital from the date of the Decree of 1990. If an existing company is not registered with a share capital then the memorandum must be altered so that it becomes an unlimited company having a share capital not below the minimum share capital permitted under section 99 of the decree. (Section 99, 1) If a memorandum states that the company is to be registered with shares and it is delivered after the commencement of the Decree, the amount stated in the memorandum to be registered shall not be less than the authorized minimum share capital and not less than 25 per cent of that capital shall be taken by subscribers of the memorandum.

Types of Companies

(Section 22, 1)

Private company:

A company that has been stated in its article of memorandum to be private. The transfer of its shares is restricted. The total number of members shall not exceed 50, excluding bona fide employees of the company. It shall not allow the public to buy shares or debentures or deposit money for fixed periods or payable at call whether or not interest bearing. If a company defaults on the provisions of section 22 of the decree, the company shall cease to be entitled to the

privileges and exemptions conferred on private companies by or under the decree. The Decree shall then apply to the company as if it is not a private company.

Public Company:

Any company that is not a private company shall be a public company and its memorandum shall state so. Every public company shall have capital except those limited by guarantee-those formed for promoting commerce, arts, science, religion, culture, education, research, charity etc. The total liability of a company limited by guarantee shall not be less than N10,000.

2.0 Corporate Affairs Commission Requirement: Analysis on National Security In Tertiary Institution

The Corporate Affairs Commission (CAC) of Nigeria was established in 1990 vide Companies and Allied Matters Decree no 1 (CAMD) 1990 as amended, now on Act cap C20 Laws of federation of Nigeria. It is an autonomous body charged with the responsibility to regulate the formation and management of companies in Nigeria. It carry out its functions through accredited members of Association of National Accountants of Nigeria , Institute of Chartered Accountants of Nigeria

,Institute of Chartered Secretaries and Administrators of Nigeria (ICSAN) and the Nigerian Bar Association (NBA). It is headed by a Registrar-General. Prior to the enactment of CAMA, these activities were carried on under the Companies Act 1968.(CA 1948) Membership

The commission is made up of 10 members each representing the respective stakeholders, like the accountancy profession, the legal profession and the business community. Services Corporate Affairs Commission (CAC) Services are categorized in parts: PART A - Registry

PART B - Registration of Business Names

PART C - Registration of Incorporated Trustees (NGO's)

These categories covers the following services:

- I. Incorporation of Companies (Private or Public Company, Limited by guarantee)
2. Registration of Business Name

3. Registration of Incorporated Trustees

Same Day Incorporation Services under which companies are registered within one day
Conducting searches Issuance of Certified True Copies of filed documents Registration of share capital increases, mortgages, etc. Processing the statutory filings of Annual Returns, increase, changes in the memo and articles, addresses, etc.

Arrange or conduct investigations into the affairs of any company where the interests of the shareholders and the public so demand. Management and winding-up of companies.

Monitoring the Compliance with the CAMA by companies. Sale of all statutory forms and publications of the Commission.

Responding to enquiries and complaints in respect of the services of the Commission.

Handling preliminary process of accreditation of Lawyers, Chartered Accountants and Chartered Secretaries who are the recognized professionals and direct users of the Companies Registry.

Types of Services

Four (4) types of companies are recognized for business ventures in Nigeria, namely:

1. Private Limited Company (LTD)
2. Public Limited Company (PLC)
3. Companies limited by guarantee and
4. Unlimited Companies.

The minimum membership for each of these companies is two and the maximum for private companies is fifty members while there is no upper limit for public companies. A minimum share capital of ten thousand Naira is prescribed for private companies and five hundred thousand Naira for public companies with a minimum subscription of 25% of the shares.

Legal Requirements for Using the Services of Corporate Affairs Commission for Tertiary Security

The Corporate Affairs Commission was established through the promulgation of the Companies and Allied Matters Act 1990. The Commission is the only Agency of Government charged with the responsibility of registration of Companies, Business names and Incorporated Trustees.

Statutory filings required by the Companies and Allied Matters Act (CAMA) are processed and subsequently transferred to headquarters for final treatment and input into computer.

Verification and assessment of applications for company incorporation are assessed and verified and sent for final approval and issuance of Certificate by the head office.

Sale of all statutory forms and publications of the Commission responding to enquiries and complaints in respect of the services of the Commission. Handling preliminary process of accreditation of Lawyers, Chartered Accountants and Chartered Secretaries who are the recognized professionals and direct users of the Companies Registry. The purpose of the following notes is to enable customers to understand the legal requirements for using the services of the Commission, it will serve as a handbook for every one in the legal, accounting and company secretarial professions who would wish to use the services of Commission at any time. It will also be of immense interest to members of the public who may wish to be sure of the legal and administrative requirements for the services of the Commission.

We have stated the various processes that have to be carried out and all the requirements needed for each. You will also find a list of statutory fees required for the different transactions. services parts

Types of Companies

Basically, four types of companies are recognized for business ventures in Nigeria, namely:

1. Private Limited Company (LTD)
2. Public Limited Company (PLC)
3. Companies limited by guarantee and

4. Unlimited Companies.

The minimum membership for each of these companies is two and the maximum for private companies is fifty members while there is no upper limit for public companies. A minimum share capital of Ten Thousand Naira is prescribed for private companies and Five Hundred Thousand Naira for public companies with a minimum subscription of 25% of the shares.

Foreign Nationals

Foreign nationals may undertake any type of business and own 100 percent equity and undertake any type of business in Nigeria except those in the negative list, that is, production of arms, narcotics and related substances which are prohibited to Nigerians and Foreign Investors alike.

In the spirit of the liberalization, foreign nationals not resident in Nigeria do not require permits before establishing business or investing in Nigeria. However, foreign nationals resident in the country need residence permit before forming a company while business permit is required for the business to commence.

Residence permits are obtained from the Nigerian Immigration Service while business permits are obtained from the Federal Ministry of Internal Affairs. Companies intending to use the services of foreign workers need to obtain expatriate quota from the Nigerian Investment Promotion Council.

Exemption from Registration

Foreign companies intending to do business in Nigeria may apply for exemption from registration especially those undertaking special projects. Companies seeking exemption are to forward their applications to the Secretary to the Federal Government of Nigeria.

3.0 Classification and Types of Companies in Nigeria – Analysis

Private, Public, Nongovernmental Organization Ngo's

Company Limited by Shares: A company where the liability of its members is limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

Company Limited by Guarantee: The liability of its members is limited by such amounts as the members may thereby undertake to contribute to the assets of the company in the event of its being wound up. It may not be incorporated with the objective of carrying on business for the purpose of making profits for distribution to its members. When a company is formed for the purpose of promoting the arts, science, religion, sports, culture, education, research, charity etc., and the income and property of the company are to be applied solely towards the promotion of its objects and no portion is to be paid directly or indirectly to its members except as permitted by the decree, the company shall not be registered as a company limited by shares but as a company limited by guarantee.

Unlimited Company: no limit on the liability of its members. All unlimited companies shall be registered with a share capital from the date of the Decree of 1990. If an existing company is not registered with a share capital then the memorandum must be altered so that it becomes an unlimited company having a share capital not below the minimum share capital permitted under section 99 of the decree. (Section 99, 1) If a memorandum states that the company is to be registered with shares and it is delivered after the commencement of the Decree, the amount stated in the memorandum to be registered shall not be less than the authorized minimum share capital and not less than 25 per cent of that capital shall be taken by subscribers of the memorandum.

Types of Companies in Nigeria

Private Company: A company that has been stated in its article of memorandum to be private. The transfer of its shares is restricted. The total number of members shall not exceed 50, excluding bona fide employees of the company. It shall not allow the public to buy shares or debentures or deposit money for fixed periods or payable at call whether or not interest bearing. If a company defaults on the provisions of section 22 of the decree, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under the decree. The Decree shall then apply to the company as if it is not a private company.

Public Company: Any company that is not a private company shall be a public company and its memorandum shall state so. Every public company shall have capital except those limited by guarantee-those formed for promoting commerce, arts, science, religion, culture, education,

research, charity etc. The total liability of a company limited by guarantee shall not be less than N10,000.

4.0 Registering a Business in Nigeria: Preliminary Considerations: Analysis

When registering a business in Nigeria it is very important to consider the appropriate business structure for your business. The following are some of the types of business structures in Nigeria.

Sole Proprietorship

A sole proprietorship is a business that is owned and controlled by a single individual. The business owner alone enjoys and suffers all the profits and loss of the business. Sole proprietorships may choose to operate under a registered business name. However, where the business name consists of words other than the surname and forenames (or their initials) of the business owner, it must be registered with the Corporate Affairs Commission (CAC).

The business owner only pays personal income tax in his/her state of residence. Key features of a sole proprietorship include personal liability of the business owner for the business debts, cheap and easy formation/registration, and informal administration.

Sole Proprietorships are suitable for micro-small, small businesses and professional businesses (law, accountancy, photography, etc) owned by one person.

Partnerships

Generally speaking, a partnership is the relationship between two or more (not more than 20) people who carry on a lawful business in common with the aim of making profit. The members, who may be individuals and or companies, are individually called partners and collectively called a firm. As with sole proprietorships, where the firm does business under a name consisting of words other than their true surnames and forenames (or the initials thereof) then the business name must be registered with CAC.

The partners pay personal income tax on their individual share of the partnership profits as a partnership is not a legal entity.

Members of a partnership enjoy the advantages that come with pulling resources together.

General/ordinary partnership:

The key features here are: mutual agency of the partners, unlimited and joint liability of the partners for the partnership debts, ease and inexpensiveness of formation, informal and flexible decision making process, restriction on transfer of partnership interest, etc.

Unless it is otherwise agreed to by the partners, all the members are equal partners and are entitled to share equally in the partnership capital, profits, have equal management rights, and contribute equally to its losses.

It is strongly advisable, though not compulsory, to have a written partnership agreement governing the partnership and to speak with a lawyer when forming a partnership. The partnership agreement though not a registration document is binding on all the partners.

General Partnerships are suitable for micro-small, small and medium sized businesses and where professional and business colleagues, friends and family want to leverage on their collective strengths and resources for business purposes without having to incorporate a company.

The Limited Partnership

As the name suggests, a limited partnership is a partnership in which the liability of some of its members for partnership debts and obligations is limited. In a limited partnership, one or more of its members are general partners and one or more of its members are limited partners. The general partner(s) have unlimited liability as to the debts and obligations of the firm and have managerial powers.

Limited partners do not have any managerial powers, cannot bind the partnership and are liable for the firm's debts and obligations only to the extent of their financial contribution to the

partnership. It is for this reason that limited partnerships are described as essentially investment devices with the limited partners being the investors (silent partners).

Asides from the registration of the business name at the CAC, limited partnerships are basically formed by submitting to the Registrar of Limited Partnership in the partnership registry of the state where the partnership is located, a statement signed by all the partners containing the required particulars of the partnership. At present, it seems only Lagos State has a partnership registry.

Limited Partnerships allow businesses to raise additional capital without being incorporated and are essentially suitable for sole proprietors and general partners seeking to raise additional capital without the liabilities and interest rates of a business loan while still retaining full control of their businesses. Big corporations and medium scale enterprises can also use Limited Partnerships to raise additional capital.

It is also suitable for investors seeking to invest in profitable and growing businesses without expending time on the managerial aspects of the business.

It is also advisable to have a written partnership agreement when forming a limited partnership. All registered limited partnerships must use the abbreviation —LP| after their partnership name.

Limited Liability Partnership

In a limited liability partnership (LLP), all of the partners have some measure of limited liability, can take part in the management of the partnership and are only personally liable for acts of the partnership in the following circumstances:

—Cases of fraud, misrepresentation, and other improper conduct alleged to have been committed by the limited liability partner, and With the written consent of the Commissioner (for justice) where it is established that it is in the reasonable interest of the public for an action to be maintained against an individual limited liability partner. |

Other than this, a limited liability partner is liable for the debts or action or inaction of the LLP and also upon its dissolution —only to the extent subscribed by such limited liability partner under the current registration document and/or partnership agreement.¶

These features of an LLP make it similar to an incorporated company and distinguishable from a general partnership where the partners are not only agents of the partnership but are also agents and principals of each other. In an LLP, the limited liability partners are only agents of the LLP and, except as stated above, are only responsible for the debts, acts and inactions of the LLP to the extent of their subscription.

At present, it seems only Lagos State, by virtue of its Partnership Law (Amended), 2009, has a registry of Limited liability Partnership.

Limited Liability Partnerships are formed by submitting to the Registrar of Limited Liability Partnership the following: evidence of payment of initial registration fees, the completed registration document along with a copy of the partnership agreement where there is one. This is in addition to registering the business name at CAC where applicable.

Limited Liability Partnerships must use the abbreviation —LLP¶ after their partnership name.

LLPs which are considered a hybrid form of incorporated companies and partnerships are suitable for professional firms which are prohibited by law from operating as companies. It is also suitable for small and medium scale businesses where the owners would like to limit their liabilities without going through the process of incorporation.

Registered Company Limited by Shares

A registered company limited by shares is a type of business enterprise which is a legal entity separate from its members or owners and in which the liability of its owners for its debts and obligations are restricted only to the unpaid amount of share capital they have subscribed to.

The process of setting up a company is referred to as registering or incorporating a company. Registration or incorporation of companies is usually costlier and involves more time and documentation than other types of business structures. Although recently, the Corporate Affairs Commission consolidated all the forms necessary for registration into one as part of its commitment to facilitate the ease of doing business in Nigeria. Registration or Incorporation is under taken at the Commission and is typically handled by lawyers and other accredited professionals, chartered secretaries or accountants.

The process of registration is by payment of the requisite incorporation fees, submitting duly stamped copies of the Memorandum and Articles of Association along with other completed incorporation documents at CAC. Key features of an incorporated company limited by shares include:

Separate legal personality from that of its members, capability of perpetual succession, management by the board of directors, formal meeting and administrative procedures, regulatory oversight, larger membership than other forms of business association and separate incidents of taxation due to companies income tax.

There are two types of registered companies limited by shares in Nigeria: private companies and public companies.

Private Company

According to S. 22 of CAMA, a private company is one which is stated in its memorandum of association to be a private company.

Features of a private company limited by shares

- a) Its name must end with the word —Limited or its abbreviation, —Ltd.
- b) It must by its articles of association restrict the transfer of its shares.
- c) Its authorized minimum share capital is N10,000 of which 25% of it must be subscribed to by its founding members at the stage of incorporating the company.

- d) Its total number of members cannot exceed 50 persons (either individuals or companies) excluding bona fide employees of the company or former employees who have after their employment continued to be members of the company.
- e) It is prohibited (unless authorized by law) from offering its shares or debentures to the general public and from inviting the public to deposit money for fixed periods or payable at call, whether or not bearing interest.
- f) It has no formal requirements for the position of a company secretary. However, it is the duty of its directors to ensure that a person(s) appointed as company secretary is one who in their opinion has the requisite knowledge and experience.
- g) There is also no restriction on appointment of persons over the age of 70 as directors of the company.

Suitability of a private company limited by shares

A private company limited by shares is generally suitable as a business structure in the following instances:

Capital: when a small or average amount of capital is required or available for doing business. The minimum share capital is N10,000 and the fees required for its registration are relatively inexpensive. However, this does not preclude the structure from being used when a rather large amount of capital is available for doing business. Many big companies (by size of capital) are organized as private companies.

Control: when a greater degree of control over the affairs of a company is sought, it is generally advisable to incorporate a private company as it is subject to lesser regulatory supervision than a public company and also has less strict guidelines for its operations.

Membership: when the membership of a company is intended to be comprised of only family members, close friends or business associates, then a private company is advisable as it has a stipulated maximum number of members and must by its articles of association restrict the transfer of its shares.

Additionally, for reasons of membership and greater degrees of control, the private company is the preferred means of doing business in Nigeria by foreign companies.

Small and Medium Scale Enterprises (SMEs) : A private company is the generally preferred form of business structure for SMEs as it makes for easier access to capital and allows its members enjoy the benefits of incorporation.

Public Company

A public company is a company other than a private company and whose memorandum of association states that it is a public company: see S. 24 CAMA.

Features of a public company limited by shares

- a) Its name must end with the words, —Public Limited Company‖ or its abbreviation —PLC.‖
- b) There is no restriction on transfer of its shares and it can offer its shares and debentures to the general public.
- c) Its minimum authorized share capital is N500,000 of which 25% of it must be subscribed to by its founding members at the stage of incorporating the company, that is, by the subscribers to the memorandum of association.
- d) Its articles of association must also be in conformity with the regulations of the Nigerian Stock Exchange where it is expected that the company will be listed on the Nigerian Stock Exchange. e) There is no stipulated maximum number of members.
- f) Only persons with the requisite professional certification; ICAN, ANAN, ICSAN, B.L (Legal practitioners) or experience may be appointed as its company secretary.
- g) Persons who are over 70 years of age may only be appointed as its directors subject to the fulfillment of certain statutory conditions.
- h) By virtue of S.211 (1) CAMA, it must hold the statutory meeting within 6 months of its incorporation.

Suitability of a public company limited by shares

A public company limited by shares is generally suitable as a means of doing business in the following circumstances:

Law: Where extant laws and industry regulations stipulate that a business be registered as a public company limited by shares.

Capital: By virtue of its larger authorized minimum share capital and due to its ability to access funds from the public, a public limited liability company maybe suitable for doing business in the following circumstances:

- i. where a rather large amount of capital is available for doing business; or
- ii. where a large amount of capital will be required to set up the business, either by virtue of industry regulations which specify the minimum share capital for certain business operations or basically because a large amount of capital is needed to start the business.

Stock Exchange: Where it is expected or desired that the stock of the company will be quoted on the Nigerian Stock Exchange.

Membership : where membership of the company is envisaged to be comprised of a large number of persons who are likely to be unrelated to each other.

General factors to consider before choosing a business structure

The features and suitability of the above business structures should help in determining which business structure should be used. Below are simply general guidelines.

Name: Except as mandated by law, sole proprietorships and partnerships need not register their business names while names of incorporated companies must be registered and must end with the words, —Limited, —Ltd or —Public Limited Company, —PLC as the case may be.

Purpose/object: This is a very important and determining factor. More so, as by law certain businesses can only be operated using a particular structure(s) .

Limited partnerships are generally suitable as an alternative investment option and as a means of raising additional capital.

Limited liability partnerships are suitable for professional firms where incorporation as a company is prohibited.

In addition, a combination of structures may be appropriate in certain circumstances. For example, a registered company may register a business name for the operation of a franchise business operation or school.

Regulatory/Compliance issues: Sole proprietorships and partnerships are largely free from regulatory interference except where the business activity itself is a regulated one. In contrast, regulatory oversight and compliance are basic features of incorporated companies, and PLCs in particular. Additionally, by virtue of extant laws, foreign companies, except in select instances, can only do business in Nigeria as a registered company.

Time and documentation involved in registration/formation: Where time is of the essence, it should be noted that certain structures involve more time and documentation than others. Sole proprietorships and partnerships are quite easily and quickly formed with little or no documentation involved.

In contrast, incorporated companies take a longer time and require additional documentation.

In addition, by law, certain companies must, before or after registration with the Corporate Affairs Commission, be registered with the relevant regulatory body before commencement of business activities. Such preliminary and subsequent registrations naturally mean more time and documentation.

Ease of administration: Sole proprietorships and partnerships by their natures enjoy flexibility and simplicity of administration while incorporated companies with their formal meeting requirements have more formal administrative processes.

Additionally, unlike sole proprietorships, partnerships and incorporated businesses may be able to take advantage of the collective expertise and experience of partners and directors respectively to bring about an effective and efficient sharing of management responsibilities.

Membership: Partnerships and private companies limited by shares are great for businesses with a small number of members or where the membership is to be comprised of family members, close friends or close business associates. Public companies limited by shares are suitable for businesses that intend to have really large and very diverse membership. Sole proprietorships are essentially one-man businesses.

Taxation: Tax incidences vary depending on the choice of business structure. Sole proprietorships and partnerships are subject to personal income tax, while incorporated companies are generally subject to companies income tax.

Cost of registration and Capital requirements: These are determined by the scale of business activity intended to be undertaken and industry regulations pertaining to the proposed business. Generally speaking, registration of business names and limited and limited liability partnerships are inexpensive compared to the cost of registration for incorporated companies which may vary depending on the required authorized minimum share capital and other factors.

Capacity: Individuals, firms, and companies may freely register business names except minors and persons who have previously been involved in fraudulent trade malpractices locally or internationally. Minors may only take part in the registration of a business name subject to the discretion of the Registrar of the Commission and even then, the minor's signature must be accompanied by a Magistrate, Legal practitioner or Police officer not less than the rank of an Assistant Superintendent of Police.

Persons that may take part in the formation of a company include both natural persons and corporate bodies except in the following instances:

Conclusion/ Suggestion

1. Where the individual is less than 18 years of age, unless there are two other members who are not legally disqualified from being members of a company;

2. Where the individual is of unsound mind and has been so found by a court of law in Nigeria or elsewhere;
3. Where the individual is an un-discharged bankrupt;
4. Where the individual is disqualified under S.254 of the Companies and Allied Matters Act (CAMA), 2004 from being a Director of a company. S.254 deals with the restraint of persons guilty of an offence connected with the promotion, formation, and management of a company.

Bodies corporate:

5. Where it is a body corporate in liquidation;
6. Where the Memorandum of Association of the company restricts it from being a member of a company.
7. Note also that a foreign company or an alien (a foreign citizen) may take part in the formation of a Nigerian company provided it or he/she has complied with the existing applicable laws.

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