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PREAMBLE

Transparency is one of the fundamental pillars of ease of doing business, as contained in the Executive Order No. 1 of 18th May 2017. Ministries, Departments and Agencies of Government (MDAs) publish the services they provide, as well as the requirements for accessing such services. Government businesses are conducted in a manner free from individualized diverse approaches to similar or identical issues. This perhaps explains the repeal and re-enactment of the Companies and Allied Matters Act, 2020, (CAMA) to open up the investment space in Nigeria by relaxing certain rules that have been considered rigid and unfriendly to the economic environment.

Section 26(4) of CAMA 2020, provides that the Memorandum of association of a company limited by guarantee shall not be registered without the Authority of the Honourable Attorney-General of the Federation. Section 26(5) imposes a timeframe within which the Authority should be granted, except further information or documents are required.

Meeting the above statutory requirements necessarily desiderates the cooperation amongst the stakeholders. At the Ministerial Level, cooperation in this regard manifests in publishing the information and documents required to secure the Attorney-General's Authority. The rationale behind the publication is to ensure uniformity in the processing of the application for the Authority, ensuring harmonious synergy with the Corporate Affairs Commission (Commission) and reducing the time it takes to process applications for the Authority.

These Guidelines, as indicated earlier are designed to achieve consistency in the processing of applications for the mandatory authority, reduce the time for processing same and give advance notice of requirements to all stakeholders, including members of the Nigerian Bar Association, Corporate Affairs Commission, Promoters of companies limited by guarantee, amongst others.

These Guidelines, the first of its kind in Nigeria have therefore been produced to cover a wide range of issues connected with the subject matter. Special care has been taken to address challenges and issues commonly associated with the processing of applications for the Attorney-General's authorization.

Let me finally acknowledge with profound gratitude the boldness and courage of the Ag. Solicitor-General of the Federation and Permanent Secretary, Mr. Mohammed Umar Etsu, for facilitating the realization of these Guidelines. I also commend the Director, Solicitors Department, Mrs. Gladys Odegbaro and her team for their steadfastness and resilience in ensuring that these Guidelines become a reality.

ABUBAKAR MALAMI, SAN
*Honourable Attorney General of the Federation
and Minister of Justice*

GUIDELINES FOR THE ISSUANCE OF THE ATTORNEY-GENERAL
OF THE FEDERATION'S AUTHORITY FOR THE REGISTRATION
OF COMPANIES LIMITED BY GUARANTEE



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S. I. No. 119 of 2022

**GUIDELINES FOR THE ISSUANCE OF THE ATTORNEY-GENERAL
OF THE FEDERATION'S AUTHORITY FOR THE REGISTRATION
OF COMPANIES LIMITED BY GUARANTEE**

[24th Day of October, 2021]

Commence-
ment.

In exercise of the powers conferred upon me by Sections 26(4) Companies and Allied Matters Act, 2020, and all other enabling powers in that behalf, I, ABUBAKAR MALAMI, SAN, the Honourable Attorney-General and Minister of Justice of the Federal Republic of Nigeria, make these Guidelines.

1. The objectives of these Guidelines are to—

Objectives.

(a) address challenges and issues associated with processing applications for the Attorney-General's Authority ("the Authority") for the registration of companies limited by guarantee under the Companies and Allied Matters Act, 2020, (in these Guidelines referred to as "the Act") ; and

(b) ensure uniformity in the procedures for processing the Authority.

2. These Guidelines shall apply to the processing of all applications for the Authority to register memoranda of association of companies limited by guarantee.

Scope.

3.—(1) A company limited by guarantee is a company incorporated with the liability of its members limited by guarantee to such an amount, as the members undertake to contribute to the assets of the company in the event of the company being wound up.

Incorporation
of a
Company
Limited by
Guarantee.

(2) A company limited by guarantee may be incorporated by lodging an application with the Corporate Affairs Commission (in these Guidelines referred to as "the Commission"), together with its memorandum and articles of association, and any other documents that may be required by the Commission.

(3) The application and other accompanying documents of the proposed company limited by guarantee shall—

(a) be clear and free from ambiguity ;

(b) be precise, concise and complete ;

(c) be free from grammatical and typographical errors ;

(d) be free from cancellations, erasures, alterations or mutilations ; and

(e) contain only the objects of the company, as prescribed by the Act.

(4) A company limited by guarantee seeking to operate outside Nigeria, shall submit an application together with a declaration by the promoters to comply with the laws of the country, where the company is to operate.

(5) Where a company limited by guarantee incorporated in a country other than Nigeria applies to be incorporated in Nigeria, as a company limited by guarantee, the application for the Authority to incorporate the company shall be accompanied by—

- (a) evidence of incorporation in that country ; and
- (b) evidence of its registration with the National Planning Commission of Nigeria or its successor.

(6) Failure to furnish the stated documents referred to in sub-paragraph (4) and (5) of this guideline may result in the withholding of the Authority.

Memorandum
of
Association.

4.—(1) The memorandum of association mentioned in this guideline shall contain information prescribed under sections 27(1) and (4) of the Act, or any amendments thereof.

(2) An application for incorporation shall be denied where the memorandum of association contains the following—

- (a) inconsistent objects ;
- (b) functions or powers of established Government Ministries, Department and Agencies (MDAs) ; or
- (c) purports to regulate other bodies.

(3) A memorandum of association shall not contain objects, which authorize the company to—

- (a) participate in political campaigns ;
- (b) contribute or donate to campaign funds ;
- (c) sponsor candidates to election ; and
- (d) liaise or arrange with any political party to carry on any activity listed in paragraphs (a)-(c) of this paragraph.

(4) A memorandum of association, which contains matters that, though not necessarily forming proper objects are inherently within the powers of a legal person, may not for the purpose aforesaid be queried.

Articles of
Association.

5. The articles of Association mentioned in these Guidelines shall be prepared in the form and manner, as provided for in Section 32 of the Act.

Objects of a
Company
Limited by
Guarantee.

6.—(1) The objects of a company limited by guarantee shall be specifically related to the particular activity the promoters wish to promote.

(2) A company limited by guarantee may only pursue such objects, as are provided for in Section 26 (1) of the Act, namely—

- (a) commerce ;
- (b) art ;
- (c) science ;

- (d) religion ;
- (e) sports ;
- (f) culture ;
- (g) education ;
- (h) research ;
- (i) charity ; and
- (j) such other similar objects.

(3) Any object, which targets national security, instigates crisis, or promotes disunity or hatred shall result in the denial of the application.

(4) A memorandum of association shall not contain any object, which purports to professionalize a trade, or issue proficiency certificates, in respect of any formal trade.

(5) Non-compliance with the provisions of this guideline may result in the withholding of the Authority or the declining the application.

7.—(1) Bodies that may register as companies limited by guarantee include—

Qualification
for
registration.

- (a) chambers of commerce ;
- (b) trade associations ;
- (c) membership organizations ;
- (d) sports clubs and associations ;
- (e) religious bodies ;
- (f) academies of science ;
- (g) charitable foundations ;
- (h) agro-based associations ;
- (i) musical composers and artists ;
- (j) literary associations ;
- (k) teaching hospitals ;
- (l) research institutes and institutions ;
- (m) cultural organizations ;
- (n) education support organizations ;
- (o) schools ; and
- (p) such other similar bodies.

(2) An academy seeking to register as a company limited by guarantee, shall furnish a letter of No Objection issued to it by the MDA charged with the regulation of the area covered by the academy.

8. Notwithstanding paragraph 4(2)(b) of these Guidelines, any MDA may establish a company limited by guarantee for the purpose of achieving any of its mandates.

Incorporation
of a Company
Limited by
Guarantee by
an MDA.

9.—(1) An MDA seeking to promote the incorporation of a company limited by guarantee, shall file an application for incorporation together with evidence of approval from the relevant MDA.

(2) For the purposes of this sub-paragraph (1) of this guideline, “relevant MDAs mean”—

- (a) the specific MDA promoting the company ;
- (b) the supervisory authority ; or
- (c) an MDA, other than the promoting MDA, whose mandate is directly affected by the objects of the company.

(3) An existing company may, either by itself or in conjunction with other persons, promote a company limited by guarantee, provided that the existing company furnishes evidence of its prior incorporation.

(4) A corporate entity involved in the promotion of a company limited by guarantee, shall be represented by a natural person.

(5) A promoter seeking to establish a research institute, as a company limited by guarantee shall obtain a letter of No Objection from—

- (a) a statutory research body, where the subject of the research is—
 - (i) already covered by a statutory research body, or
 - (ii) ancillary to subjects covered by such research institute ; or
- (b) an MDA, where though the subject of the research is not expressly covered by a statutory research body, but is related to or connected with the functions of an MDA.

(6) Where the research institute referred to in sub-paragraph (5) of this guideline proposes to conduct trainings, the promoter shall, in addition to the prescribed documents, furnish—

- (a) a letter of No Objection or Approval issued by the statutory regulator of the subject matter of the training ; and
- (b) a letter of No Objection issued by the National Board for Technical Education.

(7) Where the training referred to in sub-paragraph (6) of this guideline relates to security or data management, forensic science, or any form of cyber security, the promoter shall furnish evidence of approval from the Office of the National Security Adviser (ONSA).

(8) Where the institute referred to in sub-paragraph (5) of this guideline is to be domiciled in any State or Local Government of the Federation, the institute shall, in addition to the requirements prescribed in this guideline, furnish evidence of approval from the Government of the host State or Local Government.

(9) The failure of promoters to produce the relevant documents stated in this guideline shall constitute a ground for the denial of the Authority.

10.—(1) Upon the receipt of an application for registration of a company limited by guarantee and other duly completed incorporation documents, the Commission shall forward the application to the Office of the Attorney-General for the Attorney-General's Authority.

Application
for the
Attorney-
General's
Authority.

(2) An application forwarded by the Commission shall be accompanied with the documents prescribed in these Guidelines.

(3) Upon the receipt of the application from the Commission, the Attorney-General shall examine the application and its accompanying documents.

(4) The Attorney-General shall issue an instrument authorizing the registration of memorandum of association of a company, where satisfied that the—

(a) objects contained in the company's application are in compliance with the provisions of the Act, any other relevant legislation, and these Guidelines ; and

(b) promoters have paid the applicable processing fees.

(5) Where the Attorney-General is not satisfied with the application or documents forwarded or has reasons to believe that there are grounds to justify the withholding of the Authority, the Attorney-General shall communicate this fact to the promoter through the Commission and require the promoter to rectify the defect.

(6) The promoter may, upon complying with the queries raised by the Attorney-General, resubmit the amended copies of the memorandum of association to the Attorney-General, through the Commission for further processing.

(7) The Attorney-General—

(a) shall grant Authority, if satisfied that the queries raised under sub-paragraph (5) of this guideline has been rectified ; or

(b) may decline the application, if he has reasonable grounds to believe that the promoter has not complied with the provisions of the Act, these Guidelines, and any other extant legislation, or neglected to pay applicable fees.

(8) The decision of the Attorney-General declining the application for the incorporation of a company limited by guarantee in sub-paragraph (7)(b) of this guideline is final.

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Alteration of
Memorandum
and Articles
of
Association.

11. A company limited by guarantee may, at any time, alter its memorandum and articles of association, in accordance with the provisions of CAMA, provided that it shall not be altered without the prior authorization of the Attorney-General.

ISSUED this 24th day of October, 2021.

ABUBAKAR MALAMI, SAN

*Honourable Attorney-General of the federation
and Minister of Justice*