

DEALHQ PARTNERS: HOW TO SERIES NIGERIA

HOW TO REGISTER A NOT FOR PROFIT ORGANIZATION IN NIGERIA

A. What is a not for profit organization?

Simply, a not for profit organization (NFP) is one that is set up to promote a charitable or other non - profit cause. It could be a social, cultural, educational, religious or other cause underlined primarily by impact.

B. What are the possible options for registration of an NFP under Nigerian Law?

Under Nigerian laws, a Not for profit organization can be registered as either of the following:

- i. Incorporated Trusteeship under Section 590 of CAMA (Companies and Allied Matters Act): This involves the selection of Trustees as legal representatives of a body or community of people bound together by religion, custom, kinship or nationality or a body of people established to achieve religious, educational, scientific, social, development, cultural or charitable purpose. The Trustees are given the status of a legal corporation and granted legal personality making them custodians of the rights, duties and responsibilities of the body, community or association (which could be a church, a social club or an educational institution). The trustees have fiduciary powers and duties of trustees under common law. The name of the NFP will typically read like *“Incorporated Trustees of the Daily Progressive Association”*
- ii. Company Limited by Guarantee: Section 26 of CAMA provides for the registration of a category of companies referred to as limited by guarantee. This category of registration is suitable for a company set up to promote science, beauty, religion culture, education, research or charity. The income and property of such company can only be used towards the promotion of its objects, it is restricted from utilizing any part of its income or property for personal use of its members or stakeholders, it is also restricted from distributing profit. Like a typical Company, the Limited by Guarantee has its affairs led by its Board of Directors whilst the Company is owned by its shareholders whose liability are limited to the extent they have determined at inception (this means that the shareholders are responsible for the future debts or liabilities of the Company to the extent they pledged at the time of registration – this is usually quantified as a monetary limit)The name of the NFP will typically read like *“Excel Educational Resources LTD.GTE”*.

C. Should I register my Not for Profit as an Incorporated Trusteeship or as a Company Limited by Guarantee?

Either of the 2 processes will suffice. However entities who intend to be involved in some form of business seem to generally have a preference for being registered as a Company Limited by Guarantee as this is a more familiar arrangement in the business world – the company will be a legal entity, with a Board of Directors and can contract, sue or be sued in its name. The Incorporated Trusteeship on the other hand has its legal personality vested in its Trustees – it can only contract, sue and be sued in the joint name of its trustees.

In the case of the Company Limited by guarantee there is a requirement to procure the prior consent of the Attorney General of the Federation (AGF), this makes the registration process slow and often cumbersome. Where time is of the essence, an incorporated Trusteeship is often a preferred choice.

D. Is a Not for Profit Organization prohibited from doing business?

It is an erroneous assumption that a not for profit must be an association or a social club that primarily does no business. An NFP can do business provided that the intent is to utilize any profit generated from its operations toward promoting its cause without distribution of such profit to members or stakeholders.

E. What matters do I need to consider before commencing registration?

Typically, the registration of an entity is undertaken by the Promoter(s). The promoter is any one or more individuals that have conceived the idea of setting up the organization. They will have to answer a number of preliminary questions which will help determine the structure and approach to registering the entity.

- i. What are the objectives, beliefs, mission, and purpose of the organization?
- ii. How the organization will be funded?
- iii. What will the organization be called? (it is advised that a minimum of 2 possible names be selected as approval of names is usually subject to availability the name will only be approved where it is not statutorily restricted or close enough to the name of an existing entity such that it may confuse the public)
- iv. Who will run the affairs of the organization?
- v. To what extent do the promoters or the organization's leaders desire to be liable for the actions of the organization?
- vi. Does the organization intend to do business or distribute profit to its stakeholders?

F. What documents are required for registering an Incorporated Trusteeship?

- i. Two printed copies of the Constitution;
- ii. Duly signed copies of the Minutes of the Meeting appointing the Trustees and authorizing the application;
- iii. Identity Cards and Passport Photographs of each Trustee;
- iv. Duly completed Form CAC/IT/1 (Application Form);
(https://www.cac.gov.ng/wp-content/uploads/2019/12/cac_it_form_001-1.pdf)
- v. Duly completed CAC1.1 (Registration Form);
(<https://www.cac.gov.ng/wp-content/uploads/2019/12/CACform1.1.pdf>)

G. What documents are required for registering a Company Limited by Guarantee?

- i. Application Letter to the Registrar General of the Corporate Affairs Commission.
- ii. Memorandum and Articles of Association
- iii. Letter of Consent of Attorney General of the Federation (this can be procured by submission of an application letter and approval by the AGF)
- iv. Evidence of Payment of Stamp Duty Fee to the Federal Board of Inland Revenue.
- v. Evidence of Payment of Filing Fee, Consent Fee and the Name Search and Reservation Fees at the Corporate Affairs Commission
- vi. Notice of address of the registered office of the Company;
- vii. Identity Cards and Passport Photograph of the Directors;
- viii. Duly Completed Form CAC 1.1 (Registration Form)
(<https://www.cac.gov.ng/wp-content/uploads/2019/12/CACform1.1.pdf>)

H. What is the process of registering an incorporated trusteeship?

Step 1: Name Selection, Availability Check and Reservation:

The promoters of the Incorporated Trusteeship would choose a preferred name of and conduct an availability check on the CAC website. Where available same will be approved and reserved for the applicant for 60 days upon payment of the prescribed fees.¹

Step 2: Collation of Application documents and information

The Promoters will collate, fill and execute application documents for submission to the Corporate Affairs Commission.

Step 3: Application and Submission to the CAC.

The prescribed application fees will be paid to the Bank and the application documents together with evidence of payments will be submitted to the CAC.

Step4: Publication of Notice of Intention to register

Where the CAC is satisfied that the application requirements have been met, it shall advise the applicants to publish a notice of intention to register an Incorporated trusteeship in two daily newspapers. The purpose of this publication is to invite for objections from the members of the public on the registration of the body.

Step 5: Transmission of File and Issuance of Certificate

The application documents are transmitted to the office of the Registrar General of the CAC for Consent and approval. Upon approval, CAC will issue a Certificate of Incorporation.

¹ Section 32 of CAMA

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Step 2: Collation of Application documents and information

The Promoters will collate, fill and execute application documents for submission to the Corporate Affairs Commission

Step 3: Payment of Stamp Duties and Application Fees

The payment of Stamp Duties is made to the Federal Board of Internal Revenue Service while the payment of application fees (which covers Consent, Name Search and Reservation and Filing fees) would be paid to the Bank.

Step 4: Application and Submission to the CAC.

The application documents together with evidence of payments will be submitted to the CAC.

Step 5: Approval and Issuance of Certificate

The application documents are transmitted to the office of the Attorney General of the Federation for Consent and approval. Upon approval, CAC will issue a Certificate of Incorporation.

HOW TO GET STARTED

Are you interested in setting up a not for profit organization in Nigeria? Our corporate services team is available to provide registration and start up support to you. You may contact our team on:

Email: info@dealhqpartners.com **Telephone:** +234 1 4536427 or +234 9087107575

² Section 32 of CAMA