

Key Highlights of the Guidelines for the Issuance of the Attorney General of the Federation's Authority for the Registration of Companies Limited by Guarantee

Introduction

A company limited by guarantee ("Ltd/Gte") is typically set up to promote charitable causes or purposes. One of the challenges of setting up a Ltd/Gte under the repealed Companies and Allied Matters Act ("CAMA") 1990 was the requirement to first obtain the consent of the Attorney General of the Federation ("AGF") before the incorporation is approved by the Corporate Affairs Commission ("CAC"). Even though CAMA 2020 did not repeal this requirement; it introduced a provision which allows the CAC to proceed with registering a Ltd/Gte if the consent of the AGF is not obtained within 30 days and the promoters of the Gte have satisfied the conditions stipulated in section 26(7) of CAMA 2020.

In line with the Business Facilitation Act 2022 which directed Government Agencies to publish the requirements on the procedure for processing licences and permits, the Federal Minister of Justice recently published the 'Guidelines for the Issuance of the AGF's Authority for the Registration of Companies Ltd by Guarantee' (the "Guidelines") on its website.

This publication highlights the key provisions of the Guidelines.

2. Foreign International Gte

The promoters of a Ltd/Gte seeking to operate outside Nigeria must submit (alongside other documents), a declaration that the Company will comply with the laws of the country where it is proposed to operate.

Where a Ltd/Gte incorporated in a foreign country applies to be incorporated in Nigeria, the application for the AGF's consent must be accompanied with evidence of incorporation in that country and evidence of registration with the National Planning Commission of Nigeria.

3. Research Institutes

A promoter seeking to establish a research institute as a Ltd/Gte must obtain a letter of No Objection from a statutory research body or the relevant MDA (where the subject of the research is not expressly covered by a statutory body but is connected with the functions of an MDA).

Where the Institute will be domiciled in any State or Local Government, the promoters must provide evidence of approval from the Government of the host State or Local Government.

4. Alteration of Memorandum and Articles of Association

A Gte may alter its MoA and Articles of Association only with the prior authorisation of the AG.

Take Away

Publishing the Guidelines is a step in the right direction, as it provides clarity to both the promoters and the CAC. It is expected that the Guidelines will have a positive impact on the timelines for incorporating a Ltd/Gte.

How PwC can help

PwC's Regulatory Business Solutions team help businesses navigate the Nigerian regulatory terrain. Our services include Entity Set-up, Company Secretarial and Compliance Services.



Key Highlights of the Guidelines

1. Grounds for denying or refusing an application to incorporate a Gte

The objects of a Ltd/Gte are limited to objects specified in section 26 CAMA 2020. These are: commerce, art, science, religion, sports, culture, education, research, charity and other similar objects.

The objects of a Ltd/Gte must specifically relate to the particular activities the promoters wish to promote. If the Memorandum of Association ("MoA") contains inconsistent objects, seeks to exercise the functions or powers of a Government Ministries, Department and Agencies ("MDA") or purports to regulate other bodies, the application for incorporation will be denied.

In addition to the above, the MoA cannot have the following objects:

1. participate in political campaigns
2. contribute or donate to campaign funds
3. sponsor candidates in elections; and
4. liaise or arrange with any political party to carry on any activity listed in a-c above.



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