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“LEGAL PERSPECTIVES TO BUSINESS STARTUPS IN NIGERIA”



By Onyekachi Umah, Esq. LLM. ACI Arb (UK)

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"LEGAL PERSPECTIVES TO BUSINESS STARTUPS, MANAGEMENT AND TRANSITION IN NIGERIA"

*Onyekachi Umah, Esq. ACI Arb(UK)**

2nd August 2017

1. Introduction

This work covers the nature of business entities; who can do business in Nigeria; types of business entities in Nigeria; steps for formation of business entities; business regulation and compliance in Nigeria; necessary business contracts; business finance; business sale/restructure/closure; and ends with answers to 6 questions from business owners in Nigeria.

2. Presentation

It is obvious we may not exhaust the topic within the allocated time, my full paper will be made available to all for further study. My presentation will cover an hour while another 30 minutes will be for questions and answers. Now my presentation begins!

A. WHAT IS BUSINESS?

It is an engagement that begets financial benefits to its participants. Like buying and selling (Trade), sports, music, performances, online exchanges and other professional practices, etc.

Not all businesses are legal and lawful. Some businesses have been banned, restricted or prohibited by the government because of their harmful nature to mankind, deceit, abuse and morals.

Some of the banned and prohibited businesses in Nigeria are Prostitution, Human trafficking, Slavery, trade of cocaine and other harmful substances. Businesses that are banned and prohibited cannot be allowed on any condition but Restricted/Controlled ones are allowed on certain conditions.

Some Restricted/Controlled businesses are; Arms, Prescribed Drugs, Army Uniforms, medical practice, legal practice, banking, insurance, advisement agencies, private security guards, money lending, engineering consultancy and Bureau De Change.

If a business is not Prohibited or Restricted then it should be legal and lawful. The list is endless. I advise you to always seek the advice of our lawyer when in doubt of the legality of a business.

B. WHO CAN DO BUSINESS IN NIGERIA?

Any person, a Nigerian or a foreigner that is above 18 years and of sound mind can do business in Nigeria. Although, such foreigners must obtain the first necessary permits. Sex, Colour, Tribe, Religion, Social Status and political affiliation does not affect or determine who does business in Nigeria.

You don't need to be from Enugu State before you can mine coal, or from Rivers State before you can invest in the oil business.

In explaining who can do business in Nigeria, I used the word "Person". A person here represents human beings (individuals), registered companies, business names, government corporations, foreign-registered companies, foreign unregistered companies and partnerships.

Due to the need to pull funds, separate business from owners, quote business on the stock exchange, beget integrity, sustain business and establish a reputable business institution, most often individuals and businesses carry out their businesses in different forms, capsules and legal creations known as COMPANIES, BUSINESS NAMES and PARTNERSHIPS.

C. TYPES OF BUSINESS ENTITIES ALLOWABLE IN NIGERIA

1. COMPANIES (registered formation of not less than 2 persons as shareholders and directors. All Directors must be adults but a minor can be a shareholder where there are two other shareholders. It can sue and be sued. A company is seen in law as different from its owners. Its liability is different from that of its owners. It ends with words like "Limited, Unlimited, G/ltd and PLC")
2. BUSINESS NAMES (Like its name it is a name for trading that does not create a legal personality. It never ends with words like "Limited, PLC" rather ends with words like "Enterprises, Sons, Ventures or any other thing". The liability of a business name is equally that of its owners.
3. PARTNERSHIPS (It may be an understanding of individuals, companies, business names to make a joint venture. The liability of a partnership is the same as the liability of each partner. A partnership MUST be written.)

To understand more about Business Entities (COMPANIES, BUSINESS NAMES and PARTNERSHIPS) in Nigeria, what they mean and how they are set up, kindly use the link below to my publication. <http://www.learnnigerianlaws.com/index.php/law-articles/commercial-and-corporate-law/11-how-to-register-a-business-a-partnership-and-a-company>

D. CREATION OF BUSINESS ENTITIES IN NIGERIA

The sub-topic is well discussed in the link above. Please note that the sole agency/ government body saddled with the responsibility of registration and approval of business entities in Nigeria is Corporate Affairs Commission. Its Head Office is in Abuja but it has offices in almost all states. Its website is below; <http://new.cac.gov.ng/home/services/>

Please note that no state government or local government body or agency has powers to register a business entity (COMPANY and BUSINESS NAME) in Nigeria. I am aware that some state agencies parade themselves as organs of government that can create and register business entities; this is wrong.

Now at this point, you know your business is lawful and legal. It is registerable able and you have gone on to register it in Corporate Affairs Commission through your lawyer or by yourself. Business is registered, so what's next?

E. BUSINESS REGULATIONS AND COMPLIANCE IN NIGERIA

There are several other government and professional agencies empowered by law to regulate businesses relating to them. Businesses are expected to comply with the Codes, Regulations and demands of such agencies for such businesses to remain in business. We shall comment on some of them.

Government and Professional Agencies that regulate businesses in Nigeria include; Federal Reporting Council of Nigeria (FRCN), National Office for Technology Acquisition and Promotion (NOTAP), Standard Organization of Nigeria (SON), Nigerian Electricity Regulatory Commission (NERC), Broadcasting Organizations of Nigeria (BON), Transmission Company of Nigeria, Nigerian Communication Commission, NEITI NAFDAC, PENCOM, COREN and CBN etc. FIRS (comes for tax), APCORN (comes for advertisements placed outside/public media,)

The above agencies affect and relate to businesses in Nigeria. Due to time constraints, I will not explain them. Now that you are done with government and professional agencies affecting and regulating your business, it is time to start the business itself.

In doing your business, there are necessary agreements to have and services to obtain too.

F. NECESSARY BUSINESS CONTRACTS FOR BUSINESSES IN NIGERIA. They are,

- ✓ Shareholders Agreement,
- ✓ Share sale Agreement,
- ✓ Technical Know-How Agreement,
- ✓ Profit-Sharing Agreement,
- ✓ Tenancy Agreement,
- ✓ Land Sale Agreement,
- ✓ Employment Agreement,
- ✓ Independent Contractor Agreement,
- ✓ Power Purchase Agreement,
- ✓ Ancillary Services Agreement,
- ✓ Anti-Corruption Agreement,
- ✓ Corporate Governance Code and Legal Services Agreement.

The list is endless but for the time I will not mention more or comment on the above.

Now that your business is running and basking, there may be a need for expansion or a quote on a stock exchange or more funds. Below is a way out!

G. BUSINESS FINANCING

There are few business support loans from the Nigerian government for some sectors of the economy. You may key in if your business falls therein. They are 5Billion Naira for Small Scale Miners, Bank of Industry Loan, YouWin support/loan, Electricity Sector CBN Stabilization Fund. Also, commercial banks do lend to businesses as well as other industry-specific banks. There are some private sector loans run by some non-government agencies too.

Lastly, let us assume your business has done well and you need to sell and move on or even acquire another business or you want to close your business, what can you do?

H. BUSINESS SALE/RESTRUCTURE/CLOSURE

There may need to sell or restructure and that can be done through a Share Sale Agreement and change of directors depending on the nature of business. It may also be by the reduction in shares strength/di-investment, Mergers and Acquisition etc.

Where a business entity is to be closed/terminated in Nigeria, it can be through Liquidation (this applies to companies) or Dissolution (this applies to business names). The procedures need the services of a lawyer.

My experience has shown that getting and retaining the services of a lawyer by a business helps the business stay out of trouble and comply adequately with regulations. I like to see startups grow and dreams come true. Thank you.

3. Questions and Answers

A. Question: I would like you to throw more light on restricted businesses

Answer: Restricted Businesses are businesses that one cannot start or operate without certain permission and certification from a government or relevant professional bodies. It is to avoid quackery, abuse, deceit and fraud. Like you cannot be allowed to run a hospital if you are not medical personnel, a law firm if you are not a lawyer certified by NBA, a bank without CBN.

B. Question: As a start-up with limited funds, at what point is one required to register his business

Answer: Startups with limited funds are expected to register their business from day one to protect their brands. It is in their best interest. Most law firms have special packages for a startup to register them with low prices. We do that and it is our way to support startups.

C. Question: You also talked about the federal government that has the sole right to register businesses. What of cooperatives?

Answer: A cooperative is not a business entity in that sense. It is not a company or business name. It is not registered in Corporate Affairs Commission. A cooperative society is a society of persons which has as its objects the promotion of the economic interests of its members following cooperative principles or a society established to facilitate the operations of other co-operative

societies, see Section 5 of the Co-operative Societies Act. It is an association, society and organisation of individuals set up for the primary aim of engaging in ventures that enhance the economic interests, profits and advancement of its members. Co-Operative Societies in Nigeria are established and regulated as provided in the Co-operative Societies Act.

D. Question: What are the regulations guiding online businesses in Nigeria

Answer: Online businesses are regulated by already existing laws regulating trade and businesses in Nigeria; like the Sale of Goods Act. If you sell a fake phone through the internet, it is still fraud and misrepresentation which are already in our law books. Also note that we also have Cybercrimes Act, 2015 to guide activities online.

E. Question: Please Sir, I want to have an idea of the amount it can cost one to register a business.

Answer: Business registration fees vary among lawyers and law firms.

F. Question: Sir, is it unlawful to produce a food product without a NAFDAC Number?

Answer: NAFDAC has the responsibility to regulate food and drug administration in Nigeria. You need their consent on such products else it will be unlawful.

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** Onyekachi Umah is an exceptional Legal Practitioner, Arbitrator, Notary Public and Legal Awareness Expert with over a decade of experience in civil law, criminal law and human rights. He holds a Master of Laws; a Master of Business Administration (mini) and he is a doctoral candidate. Mr Umah is the Managing Partner of the law firm of Bezaleel Chambers International (BCI), where he consults and provides legal services to several national and international organisations, including the United Nations. Aside from his very engaging legal practice, Mr Umah runs a legal awareness organisation (Sabi Law Foundation) and he diligently publishes free daily law tips, every day on www.LearnNigerianLaws.com since 2017. He has published over 820 legal articles in diverse areas of law, delivered over 35 public lectures, anchored over 67 law radio/tv shows and supported several legal and developmental projects across Africa. [Click to read more.](#)*

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