HOW TO SET UP A TECH ORGANISATION FOR SOCIAL IMPACT IN NIGERIA

INTRODUCTION

In Nigeria, technology plays a prominent role in driving the growth and development of the society. In recent times, several tech startups/tech hubs have been established to solve social, cultural, environmental, and even religious issues ("Social Impact Startups"). It is, however, important for these Social Impact Startups to understand what legal structures are most suitable for their operations under Nigerian law.

In this article, we have highlighted the legal structures provided under the Companies and Allied Matters Act 2020 ("CAMA") and other legal issues to be considered by a Social Impact Startup.

LEGAL STRUCTURES UNDER CAMA

A Social Impact Startup can acquire legal status in Nigeria by registering either as a company limited by guarantee or an incorporated trustee. In determining the most suitable structure, it is important to consider the differences between both structures, as set out below.

S/N	CRITERIA	COMPANY LIMITED BY GUARANTEE	INCORPORATED TRUSTEE
1.	Profit-making	A company limited by guarantee is permitted to make profit. Such profit must however be applied solely towards the objects of the company.	An organisation registered as an incorporated trustee is not permitted to make profit in any way. It is to depend on grants and donations.
2.	Tax Liability	A company limited by guarantee would be required to pay tax on its profits.	As organisation is not expected to make profit, it is exempted from paying tax.
3.	Registration process	The registration process takes at least 3 (three) months as a result of the requirement to obtain the consent of the Attorney General of the Federation ("AG"). CAMA has now provided an alternative which involves the publication of the application for registration in 3 (three) daily newspaper by the Corporate Affairs Commission ("CAC"), where the AG's consent is not obtained after 30 days.	This typically takes a shorter period as only the consent of the Registrar General of the CAC is required.
4.	Liability of members in the event of winding up/dissolution	In the event of winding up of a company limited by guarantee, the members are required to contribute to the outstanding liabilities of the company.	The members of the organisation are not required to make any contributions in the event of its dissolution.

In addition, the type of structure to be adopted by the Social Impact Startup is largely dependent on its goals or objects. For instance, where the Social Impact Startup would be making profit through the sale of its products or offering services for a fee, a company limited by guarantee is the most suitable structure.

OTHER LEGAL CONSIDERATIONS

Upon incorporation, there are certain issues to be considered by the Social Impact Startup. Below are some of the issues.

a. ***Protection of Intellectual Property Rights***

In Nigeria, where a software is developed, the copyright in a software automatically vests in the developer. If a Social Impact Startup would prefer that the copyright be vested in them, an agreement that assigns the copyright to the Social Impact Startup would have to be entered into with the developer. This assignment can be done through an employment agreement or a separate copyright assignment agreement. Additionally, it is important that the name and logo of a Social Impact Startup be registered at the trademarks registry.

b. ***Agreements with Employees, Software Developers etc.***

A Social Impact Startup may choose to have both paid and voluntary staff. It is therefore advisable for them to enter into suitable agreements with each staff, such as employment agreements, software development/license agreements, independent contractor agreements etc. As earlier stated, where the Social Impact Startup requires ownership of intellectual property rights, the agreements must expressly provide for the assignment of these rights to the Social Impact Startup.

c. ***Data Protection Audit***

Where the operations of the Social Impact Startup would involve the collection of personal information of members of the public either for training purposes or for grant of access to their technological products, an annual audit must be conducted on their data processing activities by a licensed Data Protection Compliance Organisation (DPCO). Such an organisation is also required to employ a Data Protection Officer (DPO) to ensure compliance with Nigerian data protection laws.

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