

# Insights and Commentary from Dentons

The combination of Dentons and Adepetun Caxton-Martins Agbor & Segun offers our clients access to 12000+ lawyers in 203 locations and 80 countries around the world.

This document was authored by representatives of Adepetun Caxton-Martins Agbor & Segun prior to our combination's launch and continues to be offered to provide clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

## MEMBERSHIP OF A COMPANY LIMITED BY GUARANTEE - KEY FEATURES

### Introduction

Among the different company types which can be incorporated in Nigeria pursuant to the provisions of the Companies and Allied Matters Act (“CAMA”)<sup>1</sup>, the company limited by guarantee appears to be the one with a less known and far less understood structure. Because it is called a “company”, many are quick to equate it with a company having share capital and shareholders. A company limited by guarantee (“**Company Ltd/Gte**”) has unique features which distinguish it from a company limited by shares, especially with regard to the liability of its members. The purpose of this article is to highlight these unique features of a company limited by guarantee and the provisions of Nigerian company law on its membership.

### What is a Company Limited by Guarantee?

Section 21(1)(b) of CAMA describes a Company Ltd/Gte. as a company in which the liability of its members is limited to such amount as the members respectively undertake to contribute to its assets in the event of its being wound up. The members’ undertaking is invariably contained in the Memorandum of Association of the company<sup>2</sup> and a Company Ltd/Gte is usually formed to promote commerce, art, science, religion, sports, culture, education, research, charity or other similar objects<sup>3</sup>.

Section 26(2) of CAMA expressly provides that a Company Ltd/Gte shall not be registered with a share capital. CAMA also states that the income and property of the Company Ltd/Gte are to be applied solely towards the promotion of its objects and no portion of it is to be paid or transferred directly or indirectly to the members of a Company Ltd/Gte<sup>4</sup>. Section 26(1) of CAMA outrightly prohibits the distribution of benefits to members of a Company Ltd/Gte and Section 26 (4) further provides as follows:

*“A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits for distribution to members.*

---

<sup>1</sup> Chapter C20, Laws of the Federation Nigeria 2004.

<sup>2</sup> Section 21(1) (b) CAMA.

<sup>3</sup> Section 26(1) CAMA.

<sup>4</sup> Ibid.

## Membership of a Company Ltd/Gte

A person is deemed to be a member of a Company Ltd/Gte when such person's name is included in the company's register of members and she/he undertakes to contribute to the assets of the company in the event of its being wound up. The total amount of money to be contributed by all the members must not at any time be less than ~~N~~10,000<sup>5</sup>.

Unlike in a company limited by shares, membership of a Company Ltd/Gte does not confer any interest(s) which can devolve to the estate of a member upon his/her death.

The title to the assets of a Company Ltd/Gte remains at all times in the company, and upon the company's dissolution, CAMA provides as follows:

*"if, upon the winding up of a company limited by guarantee, there remains, after the discharge of all the company's debts and liabilities, any property of the company, the same shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object and such other company or charity shall be determined by the members prior to the dissolution of the company"*<sup>6</sup>

## Liability of Members of A Company Ltd/Gte

Subscribing to the Articles of Association of a Company Ltd/Gte requires a member to undertake to contribute to the assets of the company in the event of it being wound up while he is a member or within one year after he ceases to be a member. The member's contribution is to be applied to the costs, charges, and expenses of the winding up of the company, as well as to the settlement of the company's liabilities which were contracted before he ceased to be a member<sup>7</sup>.

The liability of a member of a Company Ltd/Gte is therefore a contingent liability that crystalizes upon the commencement of the winding up of the company. This means that until a Company Ltd/Gte decides to wind up, the members will not be required to make good their undertaking to contribute money to the company<sup>8</sup>.

Section 402 of CAMA specifically provides that where a Company Ltd/Gte is to be wound up, every present member and past member shall be liable to contribute to the assets of the company. However, the members' liability to contribute is subject to the following qualifications:

- (a) a past member shall not be liable to contribute if he has ceased to be a member for a period of one year or upwards before the commencement of the winding up<sup>9</sup>;

---

<sup>5</sup>Section 26(7); First Schedule to CAMA, Table C, clause 7.

<sup>6</sup> Section 26 (10) CAMA

<sup>7</sup> First Schedule to CAMA, Table C, clause 7; Deji Sasegbon, Nigerian Companies and Allied Matters Law and Practice First edition (Vol. 1), page 43

<sup>8</sup> Deji Sasegbon, Nigerian Companies and Allied Matters Law and Practice First edition (Vol. 1), page 43

<sup>9</sup> Section 92 (4)(a); This is also stated in clause 7 of Table C, First Schedule to CAMA.

- (b) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section<sup>10</sup>;
- (c) no contribution shall be required from any member or past member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up<sup>11</sup>; and
- (d) the expression "past member" includes the estate of a deceased member and where any person dies after becoming liable as a member or past member, such liability shall be enforceable against his estate<sup>12</sup>.

### Cessation of Membership

With respect to the cessation of membership of a Company Ltd/Gte, CAMA provides that the Articles of Association of the company may provide that members can retire<sup>13</sup>. The Articles may also provide that certain persons be excluded from membership of the company<sup>14</sup>. This provision gives the board of directors' power to specify the categories of persons that may be admitted or excluded from the membership of a Company Ltd/Gte.

### What Happens When A Member Dies?

While CAMA specifically provides that in a company limited by shares, a shareholder's equity automatically transmits to his estate upon his death<sup>15</sup>, there are no clear provisions dealing with what becomes of the membership of a deceased member of a Company Ltd/Gte. However, the combined reading of the text from Sasegbon<sup>16</sup> and Section 92 (5) of CAMA suggests that the estate of a past member will be required to contribute to the assets of the company if the winding up of such company commences within one year after the member dies. This is similar to the provision of Article 2 of the UK Model Articles<sup>17</sup> ("**the Model Articles**") for companies limited by guarantee<sup>18</sup>. However, the Model Articles further provide that:

- (a) a member may withdraw from membership of the company by giving 7 days' notice to the company in writing<sup>19</sup>;
- (b) membership is not transferable<sup>20</sup>; and
- (c) a person's membership terminates when that person dies or ceases to exist(in the case of a legal entity)<sup>21</sup>.

---

<sup>10</sup> Section 92 (4)(b) CAMA

<sup>11</sup> Section 92 (4) (d) CAMA

<sup>12</sup> Section 92 (5) CAMA

<sup>13</sup> Section 26 (8) CAMA

<sup>14</sup> Ibid.

<sup>15</sup> Section 155 CAMA.

<sup>16</sup> Deji Sasegbon, *Nigerian Companies and Allied Matters Law and Practice* First edition (Vol. 1), page 43.

<sup>17</sup> <https://www.gov.uk/government/publications/model-articles-for-private-companies-limited-by-guarantee/model-articles-for-private-companies-limited-by-guarantee#contents> - Updated 18 September 2018.

<sup>18</sup> The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member.

<sup>19</sup> Clause 22 (1) of the UK Model Articles

<sup>20</sup> Clause (22) of the UK Model Articles

<sup>21</sup> Clause 22 (3) of the UK Model Articles

It would be advisable for the promoters/directors of a Company Ltd/Gte in Nigeria to specifically adopt the provisions of the UK Model Articles on the termination of membership to compensate for CAMA's silence on this issue. The incorporation of these explicit provisions in the Articles of Association of a Company Ltd/Gte will ensure certainty and clarity on the actions to be taken upon the demise of a member of the company.

---

#### *Qualifications*

*The contents herein are meant for the general information of our clients and friends and do not amount to legal advice. Adepetun Caxton-Martins Agbor & Segun and Adcax Nominees Limited accept no responsibility for any loss or damage that may arise from reliance on information contained in this publication. All enquiries may be made to Felicia Mosuro (Mrs.) at [fmosuro@adcaxnominees.com](mailto:fmosuro@adcaxnominees.com) and Obianuju Ibekwe at [oibekwe@adcaxnominees.com](mailto:oibekwe@adcaxnominees.com).*

*Adepetun Caxton-Martins Agbor & Segun by telephone (+234 1 462 2094), fax (+234 01 461 3140)  
Adcax Nominees Limited by telephone (+234 1 460 5271-2), (+234 1 279 7035), fax (+234 01 461 3140)*

