

**AFRICAN SOCIAL ENTERPRISE WORKSHOP (ASEW) SEPTEMBER
SPINOFF WORKSHOP**

LEGAL FRAMEWORKS FOR SOCIAL ENTERPRISES





WHAT, WHY & HOW

The first step is to determine what exactly we want to do. Charity? Development? Career? Profit?

When we have been able to clarify our intentions and the reasons behind them, it's easier to chart a course of action from the choices available to us.

Why should we incorporate our company/organization?



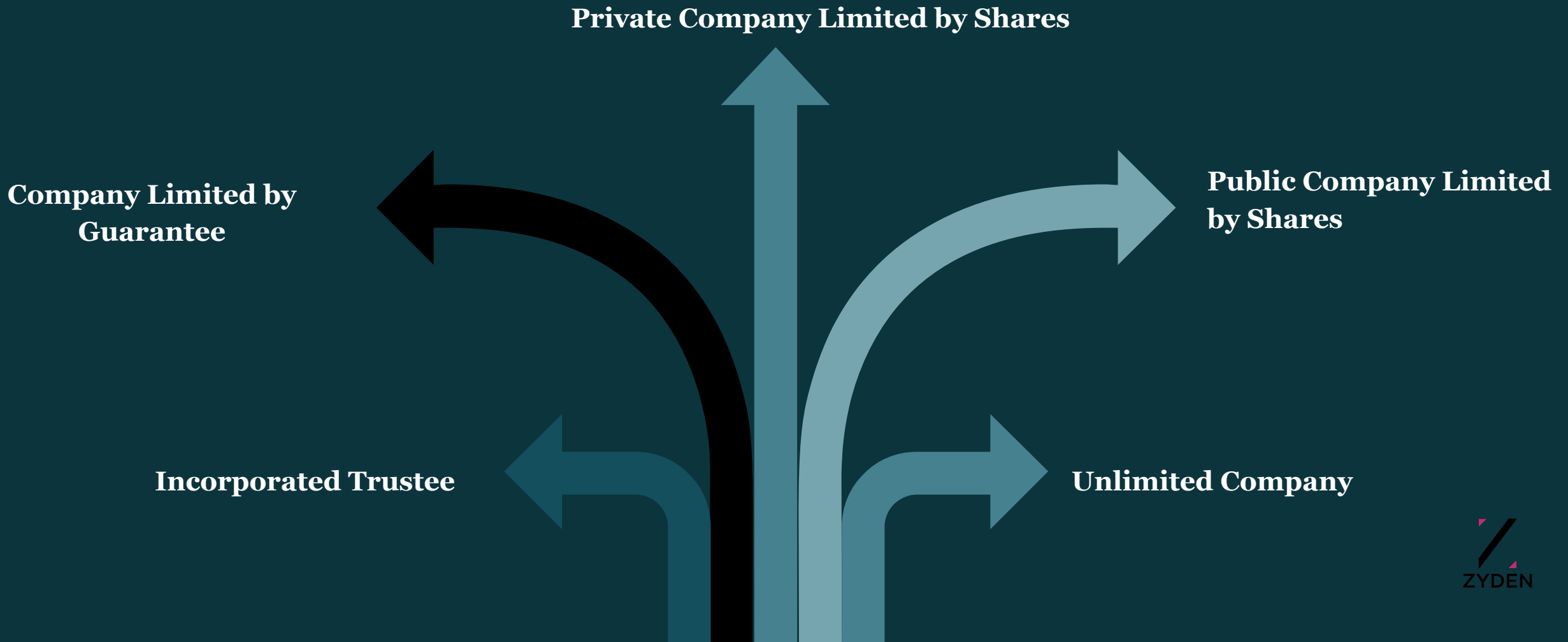
THE CONCEPT OF A SEPARATE LEGAL ENTITY AND LIMITED LIABILITY

A company is treated as a separate legal entity that has its own rights and liabilities and enters into contracts in its own name. It can declare bankruptcy, amass debt, and hire employees. This does not impute legal liability to the corporation's shareholders for any debts or actions taken by the company.

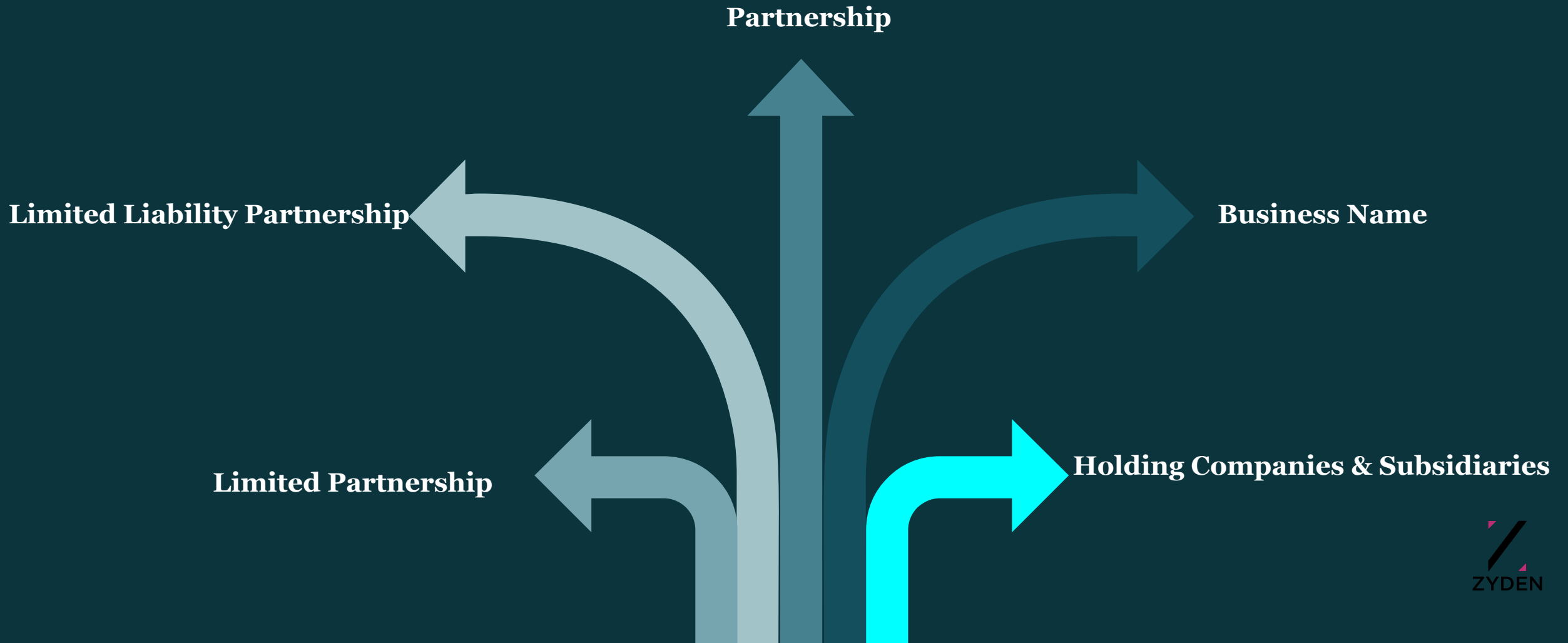
A separate legal entity is a company that is created under law to have its own existence from the person who has created it.

A “separate legal entity” is a legal form that shields an individual from liability. When a business is deemed separate from its owner, the owner has limited liability for business debts and obligations.

TYPES OF COMPANIES



OTHER BUSINESS ORGANIZATIONS






An Incorporated Trusteeship, which is formed by more than one trustee, is an association of persons acting as a single entity for a common endeavour or purpose.

The incorporated trustee is a business organization. It is responsible for the day-to-day administration of an educational, religious, literary or other charitable trust. An incorporated trustee usually comprises a board of trustees who are appointed into the trust in order to promote its object.

An incorporated trustee differs from a company in that it is not created to carry on business, to make profit, or to earn income. It must be an authorized trust by its governing law.

It is a legal body created to carry out a public purpose. Almost every community and organization will have an incorporated trustee at its disposal.

INCORPORATED TRUSTEES

A stack of Nigerian N100 banknotes is shown on a wooden surface. The top note is clearly visible, showing the number 100 and the word 'ONE HUNDRED'. The stack is slightly fanned out, and the wooden surface has a natural grain pattern.

A company limited by guarantee is a legal structure under which the members are not liable for the debts of the company beyond the amount they have respectively undertaken in the Memorandum of association to contribute to the assets of the company in case it gets wound up.

This means that its members are not liable for its debts. Instead, they have a responsibility to contribute a certain amount towards the assets of the company in the event it gets wound up.

A private company limited by guarantee (also known as a voluntary association or incorporated association) is a corporate body of persons which exists solely for purposes other than trading profitably. The company is not focused on profit making. It has no share capital, but each member must undertake to pay an amount not exceeding N100,000 in the event of its being wound up. It cannot carry on business for the purpose of distributing same to its members but rather must be applied towards the success of its objects which could be promotion of education, research, commerce, charity or other similar objectives.

COMPANY LIMITED BY GUARANTEE



SO HOW EXACTLY ARE THEY DIFFERENT?

- An incorporated trustee does not have director but trustee(s).
- A company limited by guarantee being a company must hold annual general meeting. An incorporated trustee is not mandated to hold an annual general meeting although its constitution can provide for annual general meeting.
- A company limited by guarantee can do business although the profit is used for its object. An incorporated trustee is not allowed to do business at all.
- NGO uses constitution as guiding rules but a company limited by guarantee uses a memorandum and articles of association as guiding rules
- The corporate personality conferred by CAMA is on the trustee or trustees and not on the association. In a company limited by guarantee, it is the company made up by its members that has corporate personality.

Uganda

- sole proprietorships,
- private companies limited by shares or guarantee,
- public limited companies, unlimited companies,
- statutory corporations,
- branches of foreign legal entities and partnerships

Ghana

- Company limited shares
- Company limited by guarantee
- Company unlimited shares
- Sole proprietorship
- External company
- Incorporated partnership

Nigeria

- Company limited shares
- Company limited by guarantee
- Unlimited Company
- Sole proprietorship
- Partnership
- Limited Liability partnership
- Incorporated Trustees

Kenya

- Business name/Sole Proprietorship
- Partnership Business
- Private limited Company
- Company Limited by Guarantee
- Public Limited Company Limited
- Foreign Company – Local Office
- Unlimited Company

South Africa

- private companies,
- personal liability companies, public companies,
- non-profit companies and
- state-owned companies

INCORPORATION CHECKLIST



1. Proposed Name(s) of the company.
2. Names, email addresses, phone numbers and residential addresses of members/trustees
3. Object of the Company/Organization
4. Name, email address, phone number and residential address of the Secretary .
5. Registered address of the Company .
6. Approval of Attorney General/Registrar General .
7. Proof of Identity.
8. Signatures
9. Newspaper Notice
10. For IT , organization's official Seal

GROUP EXERCISE :SPOT THE DIFFERENCE

Identify the incorporation checklist for social enterprises in Uganda, Kenya, Ghana and South Africa. Compare with the checklist in Nigeria

QUESTIONS



ANSWERS



FACILITATOR

Mojolaoluwa Olaifa, founder and lead consultant of Zyden Legal, has carved a niche for herself in providing legal support in subject matters such as Corporate Governance & Strategy, Cross-border banking services and tripartite banking structures, Finance, Capital Market Investment, Private Equity and Debt Management to her clients, who are spread across over Africa, Asia, Europe and the United States of America. She is currently focused on helping Start-ups and Corporations in Africa build board structures that reflect global best practice and equipping senior executives with insights on ESG and application of these in Governance.

Mojolaoluwa is the Director, Regulatory and Compliance Affairs at Outpost Healthcare, a Canadian based multinational Health-Tech company. Mojolaoluwa is a recipient of the prestigious Top 100 Global Modern Governance Practitioners for the year 2020, USGEEA Alumnae, Associate Fellow of the Royal Commonwealth Society, alumna of the USAID Young African Leaders Initiative (YALI) Accra Regional Leadership Centre and she now stands as a fellow, an Ebedi International Writers' Residency Fellow and the Legal Strategist of Ola Up Foundation for African Development.

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