COMPLIANCE MANUAL
A manual for complying with NGO Regulatory Requirements
Compliance Manual - A manual for complying with NGO Regulatory Requirements
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OVERVIEW OF THE COMPLIANCE MANUAL

This manual was designed to support Non-Governmental Organisation (NGO) managers and civil society actors to comply with statutory regulatory requirement for Nigerian NGOs as set out in the Company and Allied Matters Act (CAMA), Companies Income Tax Act (CITA), and the Money Laundering Prohibition Act 2011. It provides a framework of principles, policies, procedures, guidelines, tools, and templates to serve as a practical guide for non-state actors working in Nigeria.

WHO IS THIS MANUAL FOR?

This Compliance Manual is primarily for Non-Governmental Organisations in Nigeria. It is relevant to all organisations registered under Part C of the Company and Allied Matters Act, whether working at the state, local or federal level.

In relation to the Compliance Manual, the term NGO is taken to refer to organised civil society including voluntary groups, non-profit organisations, associations, foundations, charities, as well as geographic or interest-based community and advocacy groups.

The manual is structured into two main areas:

i. The introductory section focuses on use of this Compliance Manual and the laws guiding the work of Nigerian NGOs

ii. The second section looks at processes involved in complying with the statutory laws guiding the work of NGOs in Nigeria.

WHY USE THIS MANUAL?

Past experience in the operations of Nigerian NGOs confirms the importance of setting up a good foundation of compliance systems, policies and procedures early on, in order to build public confidence and to affirm the NGO sectors legitimacy, transparency and accountability. Ensuring this will provide all NGOs with the adequate support and guidance to enable them to deliver the required services to the constituency they serve. Users of this manual should use the information provided according to the needs and requirements in their particular organisation, and to the legal framework of our operations in Nigeria.
1.2 LAWS GUIDING THE WORK OF NIGERIAN NGOs

Statutorily, the main legal instrument governing the formation of Civil Society Organisations (CSO) in Nigeria is the 1990 Companies and Allied Matters Act (CAMA), Cap. C20, Laws of the Federal Republic of Nigeria 2004. Additionally, the following laws also govern the operation of CSOs in Nigeria:

- Companies Income Tax Act (CITA) 2007
- Value Added Tax Act (1993) and VAT Amendment Act (2007)
- Federal Inland Revenue Service (Establishment) Act 2007 and
- Money Laundering
- Prohibition Act, 2004
- Value Added Tax Act (1993) and VAT Amendment Act (2007)
- Federal Inland Revenue Service (Establishment) Act 2007 and
- Money Laundering

The operation of NGOs and other institutions within the civil society umbrella remains guided by the Companies and Allied Matter Act (CAMA) 1990 and the Companies Income Tax Act (CITA) 2007. Governance matters relating to the work of CSOs are set out in CAMA while issues around financial management operations and reporting are dealt with by CITA.

Although not every group or association must register, organisations wishing to enjoy the benefits of receiving donor funding and accessing tax benefits and exemptions must register or be incorporated under CAMA. The Corporate Affairs Commission (CAC) is the agency of Government statutorily established under CAMA to register CSOs. More specifically, Part C (also called incorporated trustees) of the CAMA guides the registration of incorporated trustees with the Corporate Affairs Commission (CAC) in Nigeria.

**CAMA Part C, 590 (1):** Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorised by the community, body or association (hereinafter in this PART of this act referred to as "the association") apply to the commission in the manner hereafter provided for registration under this Act as a corporate body.

For the operation of CSOs, the Companies and Allied Matter Act (CAMA) and Companies Income Tax Act (CITA) provide an overarching guideline on some operations of CSOs. CAMA provides CSOs with information on the characteristics of a Trustee; details of what should be included in the constitution of a CSO, use of funds and remuneration for Trustee and staff members and procedures for dissolution of the CSO. CITA governs the financial operations (especially tax issues) of CSOs and guides them in the filing of annual financial returns and performance activity report to the Federal Inland Revenue Service (FIRS) the agency of Government responsible for tax administration. Under CITA, CSOs can apply to the President of Nigeria for an order to exempt them from taxation on their income or profit, no matter the source of the income.
Further to this, the Special Control Unit on Money Laundering (SCUML) of the Economic and Financial Crimes Commission (an agency of the government leading the fight against money laundering and terrorism financing through the Money Laundering Prohibition Act, 2004) also mandates designated non-financial institutions such as CSOs to report funding support received in the excess of $1000.

Periodic reports are to be submitted to both the CAC and FIRS. CSOs are expected to not earlier than 30 June or later than 31 December each year, (other than the year in which it was incorporated) submit to the CAC a return showing, among other things, the name of the corporation, the names, addresses and occupation of the Trustees, and members of the council or governing body, particulars of any land held by the corporate body during the year and of any changes which have taken place in the constitution of the association during the preceding year”.¹ Section 607(1) of CAMA

For FIRS, CSOs are required to file annual financial returns 18 months from the date of incorporation or not later than 6 months after the year end of its accounting period (whichever is earlier in time) and 6 months after the year end for established organisations. CSOs are also to file their performance activity reports as detailed in Section 55 (1) & (2) of CITA.

Aside the above, there is no other known periodic reports to be submitted to public authorities. CSOs can however be subjected to audits and inspections if it is suspected by the authorities that the CSO is involved in business activities that are against the objects or the purpose for which the organisation was established. CSOs are allowed to develop economic activities that provide extra income however such profits derived from economic activities are subject to income tax.

The Corporate Affairs Commission (CAC) was established under the Companies and Allied Matters Act (CAMA), 1990. The Commission is the Agency of Government charged with, amongst other responsibilities, the regulation and supervision of the formation, incorporation, registration and management of Companies, Business Names and Incorporated Trustees. The Commission also regulates and supervises the striking off and winding up of Companies, removal of Business Names from the register and dissolution of Incorporated Trustees.

²Section 607 (1) of CAMA
Relevant Services to the work of NGOs offered by CAC

- Regulation and supervision of the formation, incorporation, registration and management of companies.
- Incorporation of Companies, Business Names and Incorporated Trustees
- Registration of changes, amendments and alterations in particulars of Companies, Business Names and Incorporated Trustees
- Repository for statutory records of Companies, Business Names and Incorporated Trustees
- Including annual reports of exempted foreign companies and annual returns of Companies.
- Business Names and Incorporated Trustees Searches
- Issuance of certified true copies of certificates and extracts of filed documents
- Enforcement of compliance of Companies, Business Names and Incorporated Trustees with the provisions of CAMA
- Conducting investigations into the affairs of Companies, Business Names or Incorporated Trustees
- Regulation and supervision of the striking off and winding up of Companies, removal of Business Names from register and dissolution of Incorporated Trustees

2.2 REQUIREMENTS FOR REGISTERING AN NGO

The following is required to register an NGO with the CAC:


Note the following names are prohibited:

1. Names similar to an existing or reserved name
2. Names that are similar to any registered trade mark or business name except with the consent of the owner of the trade mark or business name
3. Names that are offensive, undesirable or misleading
4. Names that are contrary to public policy

- Formal application for registration signed by the Chairman or Secretary or the Solicitor
- Extracts of minutes of general meeting signed by the Chairman and Secretary appointing trustees and adopting Special Clause in Constitution. (The extracts of meeting should list member’s present and voting pattern)
- Two printed copies of the constitution
• Trustees declaration form duly deposed to in the High Court by each trustee (Illiterate jurat should accompany thumb prints by an illiterate trustee or officer)

• Cuttings (or National Library certified copy) of publication page of 3” x 2 notice of application for registration in two newspapers (1 local and 1 national newspaper)- The notice of application published in the newspapers should state the name and principal objects of the association, the full names of the proposed trustees and invite objections to the application within 28 days of the publication

• Photocopy of information page of international passport or national identity card for each trustee

• Impression of common seal of the association on the application form

• Address of the association

• Payment of fees (see http://new.cac.gov.ng/home/summary-of-fees-and-forms/ for Incorporated Trustees Schedule of fees) - Fees payable for registration of incorporated trustees should include payment for certified true copies of the association’s constitution and application form

### Note

An association whose trustees are incorporated under the Act shall in each year (other than the year in which it is incorporated) hold a general meeting of its members as its annual general meeting in addition to other meetings it may hold in that year.

Notice of the meeting shall be given to all its members and the Commission

An association whose trustees are incorporated under the Act shall keep and maintain the following books

1. Books of account (showing income and expenditure, sources of income, assets and liabilities of the association)
2. Minutes book
3. Register of members
4. Register of trustees

### 2.3 HOW TO FILE ANNUAL RETURNS WITH CAC

A Non-Governmental Organisations annual return is to be filed by their trustees and must disclose the following:

1. The name of the association
2. The names, addresses and occupations of the trustees
3. The members of the council or governing body
4. Particulars of any land held by the association during the year
5. Any changes in the constitution of the association during the year
6. An annual returns form CAC/IT 4 is to be completed (See http://new.cac.gov.ng/home/wp-content/uploads/2013/11/cac_it_no.pdf for a copy)
Note

The annual return shall be filed not earlier than 30th June or later than 31st December each year (except the year in which it was incorporated). The annual return shall be accompanied by the audited account of the association signed by 2 directors and duly certified by a chartered accountant along with payment of fees. Annual returns must be filed with the Commission (CAC) immediately after 42 days of the holding of the annual general meeting for the year. Section 607(2) provides a penalty of #5 for each day the trustees fail to comply; in addition, the commission’s companies’ regulation 2012 made pursuance to section 609 of CAMA provides that the assessment of annual returns shall be at a flat rate of #5000.

Further reading:
- Companies Regulation 2012
- Corporate Affairs Customer Guide
- http://new.cac.gov.ng/

SECTION THREE

Tax

3.1 FEDERAL INLAND REVENUE SERVICE AND NIGERIAN NGOs

Federal Inland Revenue Service (Establishment) Act No. 13 of 2007 formally established the Federal Inland Revenue Service (FIRS) to control and administer and manage taxes of corporate entities such as NGOs, Corporate Income Tax, Education Tax, Value Added Tax, Capital Drain Tax as well as the Personal Income Tax and laws specified in the First Schedule or other laws made from time to time by the National Assembly or other regulations made there under by the Government of the Federation and to account for all taxes collected.

FIRS in its INFORMATION No. 2010/03 defines NGOs as “an association of persons registered under Section 590 of the Companies and Allied Matters Act (CAMA) 1990 for the advancement of any religious, educational, literary, scientific, social development, cultural, sporting and charitable purpose. They are non-profit making organizations”. For the purpose of uniformity, the medium tax office, situated at the Federal Capital Territory, Abuja has been mandated to take total charge of all NGOs tax affairs.

It further noted that “by virtue of the provisions of Section 23 of CITs any organization registered under any law within the Federation or any part thereof as a co-operative society shall also be treated as a Non-governmental organization”.
Section 23(1) of the Companies Income Tax Act (CITA) Cap C21, LFN 2004 states that the profit of any statutory, charitable, ecclesiastical, educational or other similar associations are exempted from companies income tax obligation provided such profits are not derived from any trade or business carried on by such an organization or association.

By virtue of Section 23(c) of CITA and Section 19, Para 13 Third Schedule of PITA, profits of any company/institution engaged in ecclesiastical, charitable, benevolent or educational activities of a public character are exempt from income tax provided such profits are not derived from a trade or business carried on by the company. Where an NGO engages in any trade or business, the profit derived there from will be subjected to income tax as provided for in the Act. Also, where the NGO invests its assets in any institution, the income derived from such investment shall be subjected to tax. It should be noted that Capital Gains Tax (CGT) shall arise where assets are disposed of by the NGOs at a gain.

**Note**

FIRS explains trade to mean "the business of buying and selling or bartering goods and services. The Service relies on certain indicators that may be used in determining the factual question as whether an activity is trade or not. This indicator is called Badges of trade and they are:

- Profit seeking motive. An intention to make a profit supports trading, but by itself is not conclusive.
  - The number of transaction. Systematic and repeated transactions will support 'trade'. An isolated transaction may also constitute a trade. **Note:** the one-off nature of an activity in no way invalidates that activity as constituting a trade.
- The nature of the asset. Is the asset of such a type or amount that it can only be turned to advantage by a sale? Or did it yield an income or give 'pride of possession', for example, a picture for personal enjoyment?
- Existence of similar trading transactions or interests. Transactions that are similar to those of an existing trade may themselves be trading.
- Changes to the asset. Was the asset repaired, modified or improved to make it more easily saleable or saleable at a greater profit?
- The way the sale was carried out. Was the asset sold in a way that was typical of trading organisations? Alternatively, did it have to be sold to raise cash for an emergency?
- The source of finance. Was money borrowed to buy the asset? Could the funds only be repaid by selling the asset?
- Interval of time between purchase and sale. Assets that are the subject of trade will normally, but not always, be sold quickly. Therefore, an intention to resell an asset shortly after purchase will support trading. However, an asset, which is to be held indefinitely, is much less likely to be a subject of trade.
- Method of acquisition. An asset that is acquired by inheritance, or as gift, is less likely to be the subject of trade.
### 3.2 TAX RELIEF AVAILABLE TO NGOs

In addition to the income tax exemption granted to NGOs, Section 25(3) of CITA provides that **any company making donations to such an organization listed under the 5th schedule to CITA shall enjoy tax deductible donation not exceeding 10%** of the total profits of that company for that year as ascertained before any deduction of such donations is made and must not be of capital nature. **Goods purchased for use in humanitarian donor funded projects** are zero rated under the Value Added Tax Act Cap V1 LFN 2004 as amended.

### 3.3 OBLIGATIONS OF NGOs TO FIRS

1. Register with FIRS.
2. File annual returns every year.
3. Maintain accurate record of employees;
4. File tax returns annually or risk the payment of a fine of twenty-five thousand (#25,000) as penalty.
5. Maintain proper records of accounts and transactions carried out by their organisation.
6. Deduct Pay as You Earn (PAYE) from employees’ salary and remit same to the appropriate tax authority.
7. Pay Value Added Tax (VAT) on goods and services consumed except those purchased exclusively for its humanitarian projects or activities;
8. Deduct withholding tax (WHT) on payments made to its contractors/suppliers and remit same to appropriate tax authority in accordance with the laws; such remittance is to be accompanied with a schedule including names and addresses of vendors/contractors, their tax payer identification number (TIN), the nature of the activity, the gross amount involved, the withholding tax rate applied, withholding tax deducted and the period covered.
9. Pay tax as when due on non-exempt activities.
10. Obtain a tax-payer’s identification number (TIN) after registering with the relevant tax authorities.
11. Individuals who establish and run NGOs must pay personal income tax in the state in which they are resident.
3.4 HOW TO REGISTER WITH FIRS

Fulfilling obligations to FIRS
All NGOs are expected to register with the nearest Integrated Tax Office (ITO) of FIRS with the following documents:

- A copy of registration certificate issued by Corporate Affairs Commission (CAC);
- Certified copy of Memorandum or Constitution, Rules and Regulations governing the NGO;
- List and Profiles of the Trustees/Board Members nominated; one of the Trustees/Board member must be a serving government official from relevant MDA responsible for the activity of the NGO;
- Copy of the current Tax Clearance Certificate (TCC) of each of the Trustees

Note
Use the FIRS office locator at http://www.firs.gov.ng/contactus/Pages/FIRS-Locator.aspx to find an Integrated Tax Office closer to you

3.6 HOW TO FILE TAX RETURNS

In line with section 55 of CITA, it is mandatory for every NGO to file a tax return every year. The following are the requirements:

- Audited accounts
- Income tax computations
- Capital allowance computations
- Schedules of fixed assets, trade debtors and trade creditors and
- Evidence of payment (whole or part) of tax being assessed
- Declaration signed by a director or secretary of the organization that the information contained in the return is true and correct.

Returns must be filled not later than six (6) months after the organisations accounting date. That an NGO is exempted from payment of income tax does not remove the obligation to file returns regularly.
Obtaining TIN is FREE

3.6 REMITTANCE OF PAY AS YOU EARN (P.A.Y.E)

Every taxpayer in Nigeria is liable to pay tax on the aggregate amount of his income whether derived from within or outside Nigeria, salaries, wages, fees, allowances, and other gains or benefits, given or granted to an employee are chargeable to tax. The residence of the taxpayer determines the extent of a taxpayer’s liability in Nigeria.

Section 81 of the Personal Income Tax Act Cap P8 LFN 2004 as amended states the obligation of the employer to deduct income tax from the emoluments of employee under the PAYE scheme. A key element of the PAYE process is the unique Taxpayer Identification Number (TIN) for both the NGO and the employee. TIN is readily generated at relevant tax offices of FIRS all over the country subject to submission of appropriate information.

Note Relevant Information Needed for Processing TIN

**NGO**
- Duly completed application form for TIN
- Certificate of Incorporation showing clearly the registration number
- Documents containing the following: Organisation address, principal location of organisation and date of commencement of business.

**INDIVIDUAL**
- Duly completed application form for TIN
- Any of the following valid (current) identification documents (ID), (Staff ID, National ID, Drivers Licence or International Passport).

Note Application for Tax Clearance Certificate

A NGO shall direct its application for Tax Clearance Certificate (TCC) to the Integrated Tax Office (ITO) where it was registered and files its tax returns. The relevant ITO shall process the application and issue TCC if the NGO is found qualified and if unqualified be given reasons in writing within two weeks of the application.
Submission of returns for amounts deducted from emoluments of employees should be made to the Relevant Tax Authority. Returns of PAYE paid to relevant tax authorities should be made not later than the 30th day of the month following the month of payment. The tax return should be reported with a cover note addressed to the Chairman, relevant State Internal Revenue Service with the following particulars disclosed:

**NGO**
- Duly completed application form for TIN
- Certificate of Incorporation showing clearly the registration number
- Documents containing the following:
  - Organisation address, principal location of organisation and date of commencement of business.

  1. Name of Organisation
  2. Type of Tax: PAYE
  3. Total Amount Remitted
  4. Month and Year of Remittance

Attached to the note is a PAYE schedule *(See annex 1 for a copy of FIRS PAYE Schedule)*

### 3.7 FILLING WITHHOLDING TAX (WHT)

Nigerian law subjects certain activities and services to Withholding Tax. This basically means that where during transactions in any of the specified activities or services, a payment is due from one person to another, the person making the payment is expected to deduct tax at the applicable rate and remit it to the relevant tax authority. This should be done not later than 30 days after the deduction.

Sections 69, 73 and 74 of the Personal Income Tax Act Cap. P8 LFN 2004 (as amended), imposes obligation to deduct and remit WHT from payments made to persons covered by the Act (individuals, enterprises, partners in a partnership). Some of these activities and Services and their current applicable rates include:

<table>
<thead>
<tr>
<th>Payment</th>
<th>% Corporate</th>
<th>% Individual/Partnership</th>
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<tbody>
<tr>
<td>Rent, Interests and Dividends</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Building and Construction</td>
<td>5</td>
<td>5</td>
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<tr>
<td>Royalties</td>
<td>10</td>
<td>5</td>
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<tr>
<td>Commission</td>
<td>10</td>
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<tr>
<td>All types of contracts and agency arrangement, other than sales in the ordinary course of business.</td>
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</table>
A key element of the PAYE process is the unique Taxpayer Identification Number (TIN) for both the NGO and the employee. The tax return should be reported with a cover note addressed to the Chairman, relevant State Internal Revenue Service with the following particulars disclosed:

1. Name of Organisation
2. Type of Tax: PAYE
3. Total Amount Remitted
4. Month and Year of Remittance

Payments are to be accompanied with the withholding tax schedule (See annex 2 for a copy)

Further reading:
- FIRS (Establishment) Act 2007
- http://firs.gov.ng/

SECTION FOUR
ANTI-MONEY LAUNDERING/COMBATING THE FINANCING OF TERRORISM

4.1 SPECIAL CONTROL UNIT AGAINST MONEY LAUNDERING (SCUML) AND THE WORK OF NIGERIAN NGOs

In an effort to sanitize the society of economic and financial crimes and to provide an enabling environment for investors to operate, the Government has put an appropriate legal framework including the Money Laundering (Prohibition) Act (ML(P)A) 2011 (as amended), the creation of institutions like the EFCC to enforce the law in collaboration with the regulatory / supervisory authorities like CBN, SEC, NAICOM and SCUML.

The Special Control Unit against Money Laundering (SCUML) was established as a specialized unit of the Federal Ministry of Industry, Trade and Investment by the Federal Executive Council of Nigeria [Decision No. EC 286 (2005)] in September 2005.
SCUML has the responsibility to carry out the statutory role of the Ministry under the provisions of the Money Laundering (Prohibition) Act 2011 (as amended), to monitor and supervise the activities of Designated Non-Financial Institutions (DNFIs) across the country as regards to AML/CFT regime. Although SCUML is administratively a unit under the Federal Ministry of Industry, Trade and Investment it is operationally domiciled within the EFCC.

All NGOs are to register with SCUML. The following documents are needed:

- Certificate of Incorporation.
- Article and Memorandum of Association.
- Company/Organization Profile.
- Constitution

Registration is done on the SCUML website at http://scuml.org/registration2/ and is FREE

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### How to Register with SCUML

#### REGISTRATION REQUIREMENTS WITH SCUML

All domestic NGOs/NPOs are required to provide their full incorporation papers for registration

1. Certificate of Incorporation
2. Incorporation of Trustees
3. CAC Approved Constitution

#### State Registered NGOs

are required to provide their full incorporation papers for registration

1. Registration Certificate obtained from agency
2. Constitution
3. Copies of valid identity cards of at least three (3) trustees or promoters of the organization

#### REQUIREMENT FOR CERTIFICATE COLLECTION

1. **a)** Letter of Authorization written on a letter headed paper of the company introducing person(s) collecting the SCUML certificate on their behalf.

2. **b)** A valid identity card (Drivers license, International Passport, Permanent Voters Card, National Identity Card, NIMC)
3.7 HOW TO FILE REPORT

SCUML expects weekly cash based transaction reports from NGO’s. These reports should be done electronically using an Excel template (Copy can be downloaded at [http://bit.ly/1Npuz7](http://bit.ly/1Npuz7)) already developed by SCUML and sent to info@scuml.org and lagos@scuml.org.

Further reading:
- Money Laundering (Prohibition) Act (ML(P)A) 2011
- [http://scuml.org](http://scuml.org)
**ANNEX ONE**

**PAYEE SCHEDULE**

TAXPAYER/AGENT NAME: ____________________________________________

ADDRESS: _______________________________________________________

TAXPAYER/AGENT TIN: ____________________________________________

TRANSACTION AMOUNT: ___________________________________________

TRANSACTION DATE: ______________________________________________

<table>
<thead>
<tr>
<th>Staff TIN</th>
<th>Staff Name</th>
<th>Basic Salary</th>
<th>Allowances</th>
<th>Transaction Date (DD/MM/YY)</th>
<th>Tax Amount</th>
<th>Period Covered</th>
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**PAYEE SCHEDULE**

ANNEX ONE
# WITHHOLDING TAX SCHEDULE

TAXPAYER/AGENT NAME: ____________________________________________
ADDRESS: ________________________________________________
TAXPAYER/AGENT TIN: _______________________________________
TRANSACTION DATE: _______________________________________

<table>
<thead>
<tr>
<th>Beneficiary TIN</th>
<th>Beneficiary Name</th>
<th>Beneficiary Address</th>
<th>Invoice No</th>
<th>Contract Date (DD/MM/YY)</th>
<th>Contract Description</th>
<th>Contract Amount</th>
<th>Contract Type</th>
<th>WHT Rate</th>
<th>WHT Amount</th>
<th>Period Covered</th>
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