

# KEY HIGHLIGHTS OF THE PART F OF COMPANIES AND ALLIED MATTERS ACT (Repeal and Re-Enactment) Bill, 2018

**O**n Tuesday 15 May 2018, the Senate of the Federal Republic of Nigeria passed the Companies and Allied Matters Act, 1990 (CAP C20, LFN 2004) Repeal and Re-enactment Bill, 2018 (“the bill”). The Bill consolidates the proposed amendments from two related bills: Companies and Allied Matters Act CAP C20 LFN 2004(Amendment) Bill, 2016 and the Companies and Allied Matters Act CAP C20 LFN 2004(Amendment) Bill, 2017.

The Bill aims to establish an efficient way of registering organisations with ease, minimize the compliance burden of small

and medium enterprises (SMEs) with the intention of bringing the country’s company regulatory laws in line with international standards and best practices. The Bill (Part F) also included a review of the laws guiding the operational environment of incorporated trustees such as nonprofits and associations amongst others. Key amendments in the Bill relating to the nonprofit sector as passed by the Senate are highlighted below. Please note that the Bill has now been sent to the House of Representatives for adoption. We however caution that the highlights below may vary once the harmonized version of the Bill is finally assented to by the President.

## **1. CONSOLIDATION OF INCORPORATED TRUSTEES**

**1.1 Classification of Association:** The corporate Affairs Commission (CAC) will be empowered to prescribe through its regulations, the classification of associations to be registered under the Part F of this Bill.

**1.2 Merger of Association:** The Bill proposed that any two or more association having the same trustees be treated as a single association. This will result in curbing multi incorporation of incorporated trustees (nonprofit organisations) by same group of people under the guise of different incorporated names.

## **2. Suspension of Trustee and Appointment of Interim Manager**

The Bill propose to empower the commission by an order of court upon petition to suspend trustees of an association and appoint an interim manager to manage the affairs of an organisation when there is a perceived fraudulent activity, misconduct or mismanagement of the affairs of the association. This will serve as a check on the leadership of various organisations in curbing fraudulent activities and protect the property of the association.

### **3. DORMANT ACCOUNTS**

**3.1 Dormant Bank Accounts of Dissolved Incorporated Trustees:** As contained in the Bill, where an association holds one or more dormant account and such notice gets to the commission; it is expected that the will association provide evidence of its activities within 15 days, failure to comply may lead to dissolving of such association and transfer of credits in the dormant account to another association as specified in the directive. This seeks to promote transparency and accountability in corporate governance amongst nonprofits operating in the country.

**3.2 Notification of account which cease to be dormant:** The Bill states that banks must notify (notice may also be given by electronic mail) the Commission before reactivating any dormant association's account.

**3.3 Supplementary Dormant Account:** The Bill included provisions permitting a relevant bank to disclose information on the status of dormant bank account to the Commission.

### **4. BI-ANNUAL STATEMENT OF AFFAIRS**

To enhance accountability and transparency in the operations of nonprofits in Nigeria, the Bill now include provisions requiring trustees of an association to submit a bi-annual statement of affairs to the commission; failure to comply attracts an everyday penalty till the defaulter is able to pay the amount specified by the Commission in its regulations. This is to ensure judicious use of resources by nonprofits and to keep track of assets and liabilities owned by an association in case of bankruptcy. This further strengthens the sectors accountability and transparency in the use of resources.

### **5. ACCOUNTING RECORDS OF INCORPORATED TRUSTEES**

**3.1 Disclosure of detailed accounting records:** As contained in the Bill, all trustees of an association will now be required to keep a detailed accounting record showing all day to day transactions (income and expenditure) of the association.

**3.2 Statement of Account:** Likewise, a statement of account must also be presented on request by the Commission stating day to day transactions of an association.

### **6. PRESERVATION OF ACCOUNTING RECORDS**

The Bill provides that accounting records must be kept for at least a period of six(6) years from the inception of the association. This is again to promote transparency and accountability among Nigerian nonprofits and to ensure that records are properly kept

### **7. PENALTY FOR FALSE STATEMENTS OR INFORMATION**

In order to curb organisation from giving false information; the proposed Bill provides that defaulters will be liable on conviction to imprisonment for a term of one (1) year in the case of an individual or in the case of an association to a fine as the court deems fit.

## **8. COMMON SEAL**

The Bill now makes the use of common seal optional. For instance clause 841 states that the “common seal of the body corporate (if there is one)” and clause 831 also state that the trustees shall become a body corporate by the name described in the certificate and shall have a common seal if they so wish”.

## **9. UPWARD REVIEW OF FINES**

Throughout the Bill, provisions relating to fines in the 1990 version of CAMA has either been upwardly reviewed or left open-ended “as the commission shall specify in its regulations”. This gives the Commission the right to periodically review the applicable fines to ensure that it is commensurate with the offense and monetary value. While it is un-debatable that the fines imposed in the 1990 CAMA no longer serve its punitive purpose, it is hoped that the discretion given to Commission to from time-to-time fix the applicable fines will not be abused.

## **10. ANNUAL RETURNS**

The Bill included the submission of audited statement of accounts for the year of return along with the annual returns to be filed.

In conclusion, the introduction of the new provisions highlighted above and as contained in the Part F of CAMA, in our opinion and in line with realities of the nonprofit sector, lessons from our work, global trends, international laws, best practices, standards and norms would greatly improve the operational environment for the nonprofit sector and further strengthens the accountability and transparency sector-wide. It is hoped that the House of Representatives will conclude work on the Bill for the Presidents assent before the 8th Assembly expires in May 2019.



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