

JUNE
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insight from
CIVIL SOCIETY
suggested amendments
to the part C of CAMA

INTRODUCTION



The Nigeria Network of NGOs (NNNGO) is the first generic membership body for civil society organizations in Nigeria that facilitates effective advocacy on issues of poverty and other developmental issues.

For 25 years, we have worked to give non-profits in the country the needed support to keep their doors open and to serve millions of communities, families, individuals and variety of causes that critically need their intervention. As of June 2017, we have a membership of over 2,400 organisations. In 2016 alone, 442 of these organisations had a combined budget estimate of over 1 billion Naira (N1, 033, 000,000)

This document concentrates on the amendments our membership is suggesting to the Part C of the Companies and Allied Matters Act (CAMA). These suggestions are informed by the NNNGO's specialist knowledge of the non-profit sector as well as by non-state actors who deliver development outcomes to communities throughout the Federation.

Evidence for this amendment is gathered from respondents to a national consultation within our membership, open for a period of one month during February 2017. The online (telephone) and face-to-face consultations with our members sought the opinions and experiences of non-profits regarding sections of the Part C of CAMA needing amendments. The amendments we have suggested in this document make reference to 777 comments generated by the consultation, made by 379 organisations from 34 States covering the 6 geo-political zones of the country¹.

Based on this evidence, the NNNGO has formulated the following amendments in relation to the Part C of CAMA.

CONTACT

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¹Insights from the civil society sector on the Part C of Companies and Allied Matters Act (CAMA) (2017), <http://nnngo.org/portfolio/insights-from-the-civil-society-sector/>



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**SECTION 590 OF THE PART C OF CAMA:
INCORPORATION OF TRUSTEES OF CERTAIN COMMUNITIES, BODIES AND ASSOCIATIONS**

SUGGESTIONS FOR CONSIDERATION

JUSTIFICATION

ARTICLES OF INCORPORATION

<p>(3) One or more Individuals or bodies corporate may incorporate a corporation by filing articles of incorporation and any other prescribed documents or information with the Commission in accordance with the regulations.</p>	<p>This is to give group of people or group of Individuals the opportunity to register with the Corporate Affairs Commission. To support freedom of association as guaranteed in the constitution.</p>
<p>(4) An individual cannot incorporate a corporation if he or she, (a) is under 18 years old; (b) has been found under relevant health laws to be incapable of managing property; (c) has been found to be incapable by any court in Nigeria or elsewhere; or (d) has the status of bankrupt.</p>	<p>To improve non-profit governance and ensure transparency within the civil society sector.</p>
<p>(5) Articles of incorporation must set out the name of the corporation, its purposes and any other information required by this Act or the regulations or by the Commission.</p>	<p>This is to ensure that non-profits vision and mission are clear at the point of incorporation and that it falls within lawful activities. This also helps from the outset to prevent the abuse of the sector by terrorists and money launderers.</p>

RULES RE NAME OF CORPORATION

<p>(6) A corporation may not have a name, (a) that contains a word or expression prohibited by the regulations; (b) that is the same as or similar to, (i) the name of a known body corporate, trust, association, partnership, sole proprietorship or individual, whether in existence or not, or (ii) the known name under which anybody corporate, trust, association, partnership, sole proprietorship or individual carries on business or activities or identifies themselves, if the use of that name would be likely to deceive; or (c) that does not meet the prescribed requirements.</p>	<p>This is to guide non-profits in naming their organisation and to reinforce the need for name search at the point of registration. Furthermore, it guides non-profits on the type of names that will be accepted by the commission. This in turn improves the ease of registration and prevents two corporations from having the same name</p>
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OTHER RESTRICTIONS

<p>(7) Only letters from the Roman alphabet or Arabic numerals, or a combination of them, together with punctuation marks and other marks that are permitted by regulation, may form part of the name of a corporation.</p>	<p>This set out in clear terms how names should be generated. From our consultation with members of the Nigeria Network of NGOs, the time and resources spent on name generation and search were enormous.</p>
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USE OF NAME

(8) Subject to this Act and the regulations, a corporation may use its name in the form and language permitted by its articles.

This helps to guarantee the freedom to choose a name within the ambits of the law and the organisations articles of association.

REGISTERED OFFICE

(9) A corporation shall at all times have a registered office in Nigeria at the location specified in its articles.

To ensure non-profits have a physical and traceable address. It helps to improve visibility for the organisation and also aids accountability and transparency.

PURPOSES OF A CORPORATION

(10) Subject to any restriction in the regulations, the purposes of a corporation may be any purposes within the legislative authority of Nigeria.

To ensure that the constitution of the corporation or its articles clearly articulate its purposes within lawful activities. It serves as a deterrent for engaging in unlawful activities.

(11) If any of the purposes of a corporation are of a commercial nature, the articles must state that the commercial purpose is intended only to advance or support one or more of the non-profit purposes of the corporation.

This is to ensure that non-profits can engage in social enterprises and businesses aimed at sustaining the activities of the non-profit.

PROVISIONS IN ARTICLES

(12) The articles may set out any provisions permitted by this Act or other law to be set out in the by-laws of the corporation.

This ensures that articles or constitution developed by non-profits captures the essence of regulations and laws governing non-profit activities in the country.

ARTICLES INCONSISTENT WITH ACT

(13) Subject to subsection (12), if provision in a corporation's articles is inconsistent with a provision in this Act or the regulations, the provision in this Act or the regulations prevails and the articles are deemed to be amended accordingly

This makes the provision for this act to be legally binding on a corporation and serves as a basis for compliance with regulations in this Act.

WHERE ARTICLES PREVAIL OVER ACT

(14) If a corporation's articles require a greater number of votes of directors or members of the corporation to effect any action than are required by this Act, the provisions of the articles prevail, but this subsection does not apply to a provision in the articles that requires a greater number of votes to remove a director than the number required by section 23.

This ensures that the corporation’s articles and laws are respected by this Act when it comes to its internal governance procedures especially those relating votes in order to effect regulatory change.

CERTIFICATE OF INCORPORATION

(15) Upon receipt of the articles of incorporation together with any prescribed or required documents and information and the required fee, the Commission shall issue a certificate of Incorporation by endorsing the articles in accordance with the regulations. The endorsed articles constitute the certificate of incorporation.

This is to ensure that there is proof of registration with the Commission.

(16) A certificate of incorporation is a conclusive proof that the corporation has been incorporated under this Act on the date set out in the certificate of incorporation, unless the certificate of incorporation is cancelled under section 169 as of the same date.

The corporation derives its legitimacy from the issuance of a certificate of incorporation bearing its name and that of its Trustees.

DIRECTORS TO MANAGE OR SUPERVISE MANAGEMENT OF CORPORATION

(17) Subject to this Act, the directors of a corporation shall manage or supervise the management of the activities and affairs of the corporation.

To ensure that there is a good management structure accountable for fulfilling the corporations purposes.

SUGGESTIONS FOR CONSIDERATION**JUSTIFICATION****MINIMUM AND MAXIMUM NUMBER OF DIRECTORS**

(18) If a corporation's articles provide for a minimum and maximum number of directors, the number of directors of the corporation and the number of directors to be elected at the annual meeting of the members must be the number determined from time to time by special resolution or, if a special resolution empowers the directors to determine the number, by resolution of the directors. A decrease in the number of directors does not shorten the term of an incumbent director.

This helps to improve internal governance and sets out basis for inclusion in the corporation's articles; the minimum and maximum number of directors it may have. Insight from our work revealed that many non-profits struggle with the number of directors that they may have.

(19) If a corporation's articles provide for a minimum and maximum number of directors and a special resolution as described in subsection 18 has not been passed, the number of directors of the corporation must be the number of directors named in its articles.

This ensures that there is no confusion as to the number of directors the corporation may have if resolutions for such is yet to be carried out. This ensures there is no vacuum in governance.

NO ALTERNATE DIRECTORS

(20) No person shall act for an absent director at a meeting of directors.

To ensure that the office of the directors is not delegated.

ELECTION AND TERM

(21) At the first meeting of the members and at each succeeding annual meeting at which an election of directors is required, the members shall, by ordinary resolution, elect directors to hold office for a term expiring not later than the close of the fourth annual meeting of the members after the election, as provided in the by-laws.

This is to ensure good governance by setting term limits and to prevent a sit-tight syndrome on the part of the corporation's directors. It also helps to breathe fresh air of ideas into the organisation.

CEASING TO HOLD OFFICE

(22) A director ceases to hold office when the director dies, resigns, is removed in accordance with section 23 or becomes disqualified under section 21.

This provides appropriate guide for the dissolution of a director's tenure or removal from office.

REMOVAL OF DIRECTORS

(23) The members of a corporation may, by ordinary resolution at a special meeting, remove from office any director or directors, except persons who are directors by virtue of their office.

Same as above. It further gives voice and power to members of the corporation in a way that guarantees democratic principles.

STATEMENT OF DIRECTOR

(24) Subject to the by-laws, a director is entitled to give the corporation a statement giving reasons, (a) for resigning; or (b) for opposing his or her removal as a director if a meeting is called for the purpose of removing him or her.

This ensures that the processes leading to the removal of a director are well documented. This strengthens dispute resolution mechanisms and improves transparency at the corporation's highest level of the decision making

FILLING VACANCY

(25) Except as provided in this section, a quorum of directors may fill a vacancy among directors.

This is to ensure there is no vacuum in the corporation's governance.

DEEMED DIRECTOR, IF ALL DIRECTORS RESIGN OR ARE REMOVED

(26) If all of the directors have resigned, inactive or have been removed without replacement, a person who manages the management of the activities or affairs of the corporation is deemed to be a director for the purposes of this Act.

To give room for continuity and smooth operations of the corporation. Experience from our work has shown that many non-profit directors are inactive. This clause helps to ensure that the activities of the organisations can continue to be implemented within a framework that guarantees fair governance.

CHANGE IN THE NUMBER OF DIRECTORS

(27) The members of a corporation may amend its articles to increase or decrease the number of directors, but a decrease shall not shorten the term of an incumbent director.

This gives room for corporation to determine its own governance structure based on its realities. It also sets out a guide on term limits for incumbent directors.

COURT REVIEW OF ELECTION OR APPOINTMENT OF DIRECTOR

(28) A corporation or a director or member of the corporation may apply to the court to determine any controversy with respect to an election or appointment of a director of the corporation.

This is to give corporations room to report to a higher authority on any controversial issue with respect to appointment or election of directors. This provision aids dispute resolution.

ORGANIZATIONAL MEETING

(29) After incorporation, a first meeting of the directors of the corporation must be held at which the directors may, (a) make by-laws; (b) adopt forms of corporate records; (c) authorize the issue of debt obligations; (d) appoint officers; (e) appoint one or more auditors to hold office until the first annual or special meeting of members; (f) make banking arrangement (g) issue memberships; and (h) transact any other business.

This is especially important as it sets out the role of the directors after incorporation, while also providing them with the governance mechanisms and tools they have to put in place, in order to ensure that corporation can hit the ground running within a structure that guarantees accountability and transparency in the use of resources. Furthermore, it sets a foundation for increased Board engagement in the corporation's activities.

DIRECTORS ENTITLED TO ATTEND MEMBERS' MEETINGS

(30) Unless the articles or by-laws provide otherwise, the directors may meet at any place and on any notice that the by-laws require.

This creates flexibility in terms of Board meetings and venues and also helps to manage conflicting schedules.

NOTICE

(31) A notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting, unless the meeting is intended to deal with a matter referred to in subsection 32 (2), in which case the notice must specify that matter.

For the purposes of confidentiality.

32 (2) directors may not delegate the following powers to a managing director or committee of directors:

1. To submit to the members any question or matter requiring the approval of the members.
2. To fill a vacancy among the directors or in the position of auditor or of a person appointed to conduct a review engagement of the corporation.
3. To appoint additional directors.
4. To issue debt obligations except as authorized by the directors.
5. To approve any financial statements.
6. To adopt, amend or repeal by-laws.
7. To establish contributions to be made, or dues to be paid, by members.

To ensure that directors are fully involved in the overall guidance and governance of the corporation.

RESOLUTIONS

(33) A resolution, signed by all the directors entitled to vote on that resolution at a meeting of directors or of a committee of directors is as valid as if it had been passed at a meeting of directors or of a committee of directors.

This gives room for electronic or paper resolutions in instances where physical meetings cannot be held owing to varying reasons.

DELEGATION BY DIRECTORS

(34) Directors may appoint from their number a chairman and may delegate to the chairman any of the powers of the directors.

To ensure that there is effective coordination and leadership at the Board level.

VALIDITY OF ACTS DESPITE IRREGULARITIES, ETC.

(35) An act of a director or an officer is valid despite an irregularity in his or her election or appointment or a defect in his or her qualification.

This is to ensure that the wish of the corporation's members is upheld in terms of whom they chose to be their director and that election disputes are reduced to the minimum.

EVIDENCE OF RESOLUTION

(36) Unless a ballot is demanded, an entry in the minutes of a meeting of the directors to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

Evidence of resolution is to indicate what is determined at meetings and to avoid dispute. It further strengthens the role of minutes and quality of note taking at the meeting while also justifying proper documentation and filing of such minutes.

DIRECTORS' LIABILITY FOR MONEY OR PROPERTY DISTRIBUTED OR PAID

(37) Directors who vote for or consent to a resolution authorizing either of the following are jointly and severally liable to restore to the corporation any money or property so paid or distributed and not otherwise recovered by the corporation:

1. A payment or distribution to a member, a director or an officer contrary to this Act.
2. A payment of an indemnity contrary to this Act.

This is to ensure the corporation's resources are used judiciously and not to enrich its members.

DIRECTORS' LIABILITY TO EMPLOYEES FOR WAGES, ETC.

3. The directors are jointly and severally liable to the employees of the corporation for all debts not exceeding, (a) six months' wages for services performed for the corporation that become payable while they are directors; and (b) the vacation pay for not more than 12 months or under any collective agreement entered into by the corporation accrued while they are directors.

This protects the corporation's employees from delayed salary payments and to ensure that they are properly remunerated. Since non-profit employees are not unionised this clause guarantees their right to decent wages paid at the appropriate time.

LIMITATION

(38) A director is liable under subsection 37 only if,
 (a) the corporation is sued in the action against the director and execution against the corporation is returned unsatisfied in whole or in part; or
 (b) before or after the action is commenced, the corporation goes into liquidation, is ordered to be wound up or a receiving order under that Act is made against it, and, in any such case, the claim for the debt has been proved.
 (c) If execution referred to in clause (38a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

To ensure that debts incurred by the corporation are fully recovered and to avoid the corporation from going into liquidation.

RIGHTS OF DIRECTOR WHO PAYS DEBT

(d) If a director pays a debt under subsection 38b that is proved in liquidation and dissolution or bankruptcy proceedings, the director is entitled to any preference that the employee would have been entitled to, and if a judgment has been obtained, the director is entitled to an assignment of the judgment.

This gives the director options in settling the debts owed by the corporation to its employees

(e) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Join ownership of the debt by directors. It further helps directors to take serious their role of providing oversight to the activities of the corporation while understanding that if the corporation fails all liabilities and debts will be paid by them.

DISCLOSURE: CONFLICT OF INTEREST

(39) A director or officer of a corporation who,
 (a) is a party to a material contract or transaction or proposed material contract or transaction with the corporation; or
 (b) is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation, shall disclose to the corporation or request to have entered in the minutes of meetings of the directors the nature and extent of his or her interest.

This helps to reduce undue interference by directors and officers in procurement and contract related matters. It improves the corporation's transparency in the execution of its business and serves as a good corporate governance tool in the corporation's dealings.

BY DIRECTOR

(c) The disclosure required by subsection (39) **must** be made, in the case of a director,
 (d) at the meeting at which a proposed contract or transaction is first considered;
 (e) if the director was not then interested in a proposed contract or transaction, at the first meeting after he or she becomes so interested;
 (f) if the director becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or
 (g) if a person who is interested in a contract or transaction later becomes a director, at the first meeting after he or she becomes a director

This helps to reduce undue interference by directors and officers in procurement and contract related matters. It improves the corporation's transparency in the execution of its business and serves as a good corporate governance tool in the corporation's dealings.

BY OFFICER

(h) The disclosure required by subsection (39) must be made, in the case of an officer who is not a director, (i) forthwith after the officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of directors; (j) if the officer becomes interested after a contract is made or a transaction is entered into, forthwith after he or she becomes so interested; or (k) if a person who is interested in a contract or transaction later becomes an officer, forthwith after he or she becomes an officer.

This helps to reduce undue interference by directors and officers in procurement and contract related matters. It improves the corporation's transparency in the execution of its business and serves as a good corporate governance tool in the corporation's dealings.

CONTRACT OR TRANSACTION DOES NOT REQUIRE APPROVAL

(1) Despite clause (c) and (h), if subsection (39) applies to a director or officer in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the corporation's business, would not require approval by the directors or members, the director or officer shall disclose to the corporation or request to have entered in the minutes of meetings of **the** directors, the nature and extent of his or her interest forthwith after the director or officer becomes aware of the contract or transaction or proposed contract or transaction.

This helps to reduce undue interference by directors and officers in procurement and contract related matters. It improves the corporation's transparency in the execution of its business and serves as a good corporate governance tool in the corporation's dealings.

DIRECTOR NOT TO ATTEND MEETING AND NOT TO VOTE

(m) A director referred to in subsection (40) shall not attend any part of a meeting of the directors during which the contract or transaction is discussed and shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is,

- (a) one relating primarily to his or her remuneration as a director of the corporation or an affiliate;
- (b) one for indemnity or insurance or
- © one with an affiliate.

This is to ensure other directors can debate the merits of the contract or transaction freely. It also ensures that the director signifying a conflict of interest does not have undue influence or advantage over others bidding on the contract.

REMAINING DIRECTORS DEEMED QUORUM

(n) If no quorum exists for the purpose of voting on a resolution to approve a contract or transaction only because a director is not permitted to be present at the meeting by reason of clause m, the remaining directors are deemed to constitute a quorum for the purposes of voting on the resolution.

This is to ensure decisions on contracts and transactions are made in a timely manner.

MEMBERS' APPROVAL

(o) If all of the directors are required to make disclosure under subsection (39), the contract or transaction may be approved only by the members unless the contract or transaction is one described in clause (a), (b) or (c).

This helps to address a very rare situation where all the directors have interest in a contract or transaction.

CONTINUING DISCLOSURE

(p) A general notice to the directors by a director or officer disclosing that he or she is a director or officer of or has a material interest in a person, or that there has been a material change in the director's or officer's interest in the person, and is to be regarded as interested in any contract made or any transaction entered into with that person is sufficient disclosure of interest in relation to any such contract or transaction for the purposes of this section.

To aid transparency in the contracting and transaction process.

EFFECT OF DISCLOSURE

(q) A contract or transaction for which disclosure is required under subsection (39) is not void or voidable, and the director or officer is not accountable to the corporation or its members for any profit or gain realized from the contract or transaction, because of the director's or officer's interest in the contract or transaction or because the director was present or was counted to determine whether a quorum existed at the meeting of directors or of the committee of directors that considered the contract or transaction, if,

- (a) disclosure of the interest was made in accordance with this section;
- (b) the directors approved the contract or transaction; and
- (c) the contract or transaction was reasonable and fair to the corporation when it was approved.

This shows that when a contract or transaction is awarded to an organisation a director has interest in, the director is not in anyway liable to give the corporation anything or account for the profits derived from the contract or transaction. It also sets out procedures for which the contract or transaction can be said to have been transparently carried out.

CONFIRMATION BY MEMBERS

(r) Despite anything in this section, a director or officer, acting honestly and in good faith, is not accountable to the corporation or to its members for any profit or gain realized from any contract or transaction by reason only of his or her holding the office of director or officer, and the contract or transaction, if it was reasonable and fair to the corporation at the time it was approved, is not by reason only of the director's or officer's interest in it void or voidable if,

- (a) the contract or transaction is confirmed or approved by special resolution at a meeting of the members duly called for that purpose; and
- (b) the nature and extent of the director's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting.

This sets out processes for member confirmation in cases where all directors have a conflict of interest.

COURT MAY SET ASIDE CONTRACT

(s) Subject to clause (q) and (r), if a director or officer of a corporation fails to disclose his or her interest in a material contract or transaction in accordance with this section or otherwise fails to comply with this section, the corporation or a member of the corporation may apply to the court for an order setting aside the contract or transaction and directing that the director or officer account to the corporation for any profit or gain realized and, upon such application, the court may so order or make such other order as it thinks fit.

This is necessary in instances where a director feels the contract or transaction was not properly awarded as a result of the processes of conflict of interest not being properly followed.

OFFICERS

(40) Subject to the articles or the by-laws,
 (a) the directors may designate the offices of the corporation, appoint officers, specify their duties and delegate to them powers to manage the activities and affairs of the corporation, except powers to do anything referred to in subsection 32 ;
 (b) a director may be appointed to any office of the corporation; and
 (c) two or more offices of the corporation may be held by the same person.

This confirms the powers of the directors to hire appropriate staff for the day-to-day and smooth operations of the corporation.

CHAIR

A director shall be appointed chair of the board of directors and shall carry out the duties of the chair in accordance with the by-laws.

This is to ensure that there is coordination and leadership at the Board level.

DUTIES OF DIRECTORS AND OFFICERS STANDARD OF CARE

(41) Every director and officer in exercising his or her powers and discharging his or her duties to the corporation shall,
 (a) Act honestly and in good faith with a view to the best interests of the corporation; and
 (b) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

This is to make directors responsible for their actions and alive to their duties.

DUTY TO COMPLY WITH ACT, ETC.

- (a) Every director and officer shall comply with,
- (b) This Act and the regulations; and
- (c) The corporation's articles and by-laws.

This is to make directors responsible for their actions and alive to their duties.

CANNOT CONTRACT OUT OF STATUTORY DUTY

(42) No provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves him or her from liability for a breach of this Act or the regulations.

This ensures that this Act is duly complied with.

REASONABLE DILIGENCE DEFENCE

(43) A director is not liable under subsection 37 and has complied with his or her duties under subsection 42,a,b if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on,

- (a) financial statements of the corporation represented to him or her by an officer of the corporation or in a report of the `-auditor of the corporation or of a person who conducted a review engagement of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;
- (b) an interim or other financial report of the corporation represented to him or her by an officer of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;
- (c) a report or advice of an officer or employee of the corporation, if it is reasonable in the circumstances to rely on the report or advice; or
- (d) a report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by them.

This strengthens the role of the directors in ensuring proper books of accounting are kept and that the audit processes of the corporation is done in line with acceptable accounting principles and that it shows a true reflection of its financial status.

CONSENT OF DIRECTOR AT MEETING

44. A director who is present at a meeting of the directors or of a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting, unless,

- (a) The director's dissent is entered in the minutes of the meeting;
- (b) The director requests that his or her dissent be entered in the minutes of the meeting;
- (c) The director gives his or her dissent to the secretary of the meeting before the meeting is terminated; or
- (d) The director submits his or her dissent immediately after the meeting is terminated to the corporation.

(e) A director who votes for or consents to a resolution is not entitled to dissent under subsection 44.

(f) A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless within seven days after becoming aware of the resolution, the director,

- (g) Causes his or her dissent to be placed with the minutes of the meeting; or
- (h) Submits his or her dissent to the corporation.

This section helps to ensure that decisions taken by the Board are supported by all and that the full Board takes responsibility for outcomes of such decisions. It also provides space for dissenting views to be captured and documented.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

45. A corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or an individual who acts or acted at the corporation's request as a director or officer, or in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved because of that association with the corporation or other entity.

Given the difficult terrain within which nonprofits work, indemnity of directors and critical staff of the corporation is important. However this is subject to the corporation having the means to implement this. This clause also reinforces the need for basic insurance covers as enshrined in the laws around insurance.

ADVANCE OF COSTS

(2) A corporation may advance money to a director, officer or other individual referred to in this subsection for the costs, charges and expenses of an action or proceeding referred to in that subsection, but the individual shall repay the money if the individual does not fulfil the conditions set out in clause 3.

This is to ensure that expenses incurred in the course of carrying out the corporation's activities are properly spent and accounted for. It reduces the unnecessary burden on directors having to spend their own money in running the organisation.

LIMITATION

(3) A corporation shall not indemnify an individual unless:

- (a) the individual acted honestly and in good faith with a view to the best interests of the corporation or other entity, as the case may be; and
- (b) if the matter is a criminal or administrative proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that his or her conduct was lawful.

Provides guidance on who cannot be indemnified by the corporation.

DERIVATIVE ACTIONS

(4) A corporation may, with the approval of the court, indemnify an individual referred to in this subsection or advance money under clause (2), in respect of an action by or on behalf of the corporation or other entity to obtain a judgment in its favour to which the individual is made a party because of the individual's association with the corporation or other entity as described in subsection 45, against all costs, charges and expenses reasonably incurred by the individual in connection with such action, if the individual fulfils the conditions set out in clause 3.

Approval of the court is to make sure that there is lawful justification for indemnity in such instances.

RIGHT TO INDEMNITY

(5) Despite subsection 45, an individual referred to in that subsection is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other action or proceeding to which the individual is subject because of the individual's association with the corporation or other entity as described in subsection 45, if the individual,

- (a) was not judged by any court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done; and
- (b) fulfils the conditions set out in clause 3.

Justifies the need to indemnify directors acting on behalf of the corporation in lawful instances.

INSURANCE

A corporation may purchase and maintain insurance for the benefit of an individual referred to in subsection 45 against any liability incurred by the individual,
 (a) in the individual's capacity as a director or officer of the corporation; or
 (b) in the individual's capacity as a director or officer, or a similar capacity, of another entity, if the individual acts or acted in that capacity at the corporation's request.

This supports the purchase of necessary insurance covers in line with the laws of Nigeria as it relates to insurance.

REMUNERATION OF OFFICERS AND EMPLOYEES

(c) Subject to the articles or the by-laws, the directors may fix the remuneration of officers and employees of the corporation.

This is to ensure that there is a fixed remuneration structure for the staffs of the corporation and that remunerations are not arbitrary.

SERVICES PERFORMED IN OTHER CAPACITY

(d) Subject to the by-laws, a director, an officer or a member of a corporation may receive reasonable remuneration and expenses for any services to the corporation that he or she performs in any other capacity.

Same as above.

**SECTION (597) OF THE PART C OF CAMA:
 CHANGES OF NAMES OR OBJECTS**

- (1) Where the association is desirous of changing or altering its name or objects or any of them, the trustees shall apply to the Commission in the prescribed form setting out the alterations desired and attaching a copy of the resolution approving the change and duly certified by the trustees.
- (2) The Commission on receipt of the application shall consider it and, if satisfied that the change or alteration is prima facie lawful shall:
 - (a) cause the application to be published in two daily newspapers in the manner specified in subsection (1) of section 593 of this Act; and
 - (b) direct the corporation to display for at least 28 days a notice of the proposed change or alteration conspicuously mounted at the corporation headquarters, or at any branch offices, or any such places where a majority of the members are likely to see it, as the Commission may require,
- (3) The publication and notices shall call for objections which, if any, shall state the grounds of objection and be forwarded to reach the Commission not later than 28 days after the last of the publications in the newspapers.
- (4) The provisions of section 593 and of subsection (1) of section 594 of this Part of this Act shall apply to this section as they apply to an application for registration.
- (5) If the Commission assents to the application, the alterations shall be made and in the case of a change of name, the Commission shall issue a new certificate in the new name in place of the former certificate.

CHANGE OF NAME PROHIBITED

6. (2) A corporation may not change its name by articles of amendment if,
 (a) the corporation is unable to pay its liabilities as they become due; or
 (b) the realizable value of the corporation's assets is less than the aggregate of its liabilities

This is to ensure that corporations not doing well financially do not hide under the guise of name change to continue operations and to abandon their liabilities under the old name.

**SECTION (599) OF THE PART C OF CAMA:
 REPLACEMENT AND APPOINTMENT OF ADDITIONAL TRUSTEES**

- (1) Where a body or association intends to replace some or all its trustees or to appoint additional trustees, it may by resolution at a general meeting do so and apply in the prescribed form for the approval of the Commission.
- (2) Upon such application the provision of subsections (2) to (4) of section 597 of this Act shall apply to this section as they apply to the change of name or object.
- (3) If the Commission assents to the application, it shall signify its assent in writing to the corporation and the appointment shall become valid as from the date of the resolution appointing the trustees.

APPOINTMENT OF ADDITIONAL DIRECTORS

(4) The directors may appoint one or more additional directors who shall hold office for a term expiring not later than the close of the next annual meeting of the members, but the total number of directors so appointed may not exceed one-third of the number of directors elected at the previous annual meeting of the members.

This is to serve as a guide in cases where more directors are needed.

**SECTION 604 OF THE PART C OF CAMA:
 COMMON SEAL**

- (1) The common seal of the body corporate shall have such device as may be approved by the Commission; and any instrument to which the common seal of the corporate body has been affixed in apparent compliance with the regulations for the use of the common seal shall be binding on the corporate body, notwithstanding any defect or circumstance affecting the execution of such instrument.

SUGGESTIONS FOR CONSIDERATION**JUSTIFICATION****CORPORATE SEAL**

(2) A corporation may have a corporate seal, but is not required to have one.

Based on the sectors realities, seals are no longer fashionable since most of the communications are done online via email. It is suggested that clause on seals should not be mandatory but voluntary.

**SECTION 607 OF THE PART C OF CAMA:
ANNUAL RETURNS**

(1) The trustees of the corporation shall not earlier than 30 June or later than 31 December each year (other than the year in which it is incorporated), submit to the Commission a return showing, among other things, the name of the corporation, the names, addresses and occupations of the trustees, and members of the councillor 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.

(2) If the trustees fail to comply with subsection (1) of this section they shall be liable to a fine of N5 for each day during which the default continues.

SUGGESTIONS FOR CONSIDERATION**JUSTIFICATION****APPOINTMENT OF AUDITOR**

3(1) At each annual meeting, members of a corporation shall by ordinary resolution appoint,
(2) An auditor to hold office until the close of the next annual meeting; or
(3) a person to conduct a review engagement of the corporation.

This section enforces the need for an external auditor appointed by members of the corporation. This improves the corporation's accountability and ensures that its finances are audited on a yearly basis by an independent audit firm.

QUALIFICATIONS

(4) In order to be an auditor of a corporation or to conduct a review engagement of a corporation, a person must be permitted to conduct an audit or review engagement of the corporation under the *Auditing and Accounting laws of Nigeria* and be independent of the corporation, any of its affiliates, and the directors and officers of the corporation and its affiliates.

To ensure that the auditor has the necessary qualifications to occupy such position.

AUDITOR, PERSON CONDUCTING REVIEW ENGAGEMENT CEASING TO HOLD POSITION

5. (1) An auditor of a corporation or a person appointed to conduct a review engagement of a corporation ceases to hold that position when the auditor or person,
 (a) dies or resigns;
 (b) is declared disqualified
 (c) is removed.

Justifies basis for removing an auditor.

REMOVAL OF AUDITOR, PERSON APPOINTED TO CONDUCT REVIEW ENGAGEMENT

(6) The members of a corporation may remove an auditor, other than an auditor appointed by a court or a person appointed to conduct a review engagement from their position by ordinary resolution at a special meeting.

Sets procedures for removing an auditor by members of the corporation.

FILLING VACANCY BY DIRECTORS

7. (1) Subject to subsection (3), the directors shall immediately fill a vacancy in the position of auditor or of a person appointed to conduct a review engagement.

A corporation cannot afford not to have an auditor, it is expected that once such position is vacant; it should be filled immediately.

AUDITOR'S RIGHT TO ATTEND MEETINGS

8. (1) An auditor is entitled to attend every meeting of the members at the expense of the corporation and to be heard on matters relating to the auditor's duties.

This ensures critical feedback on the corporation's activities and to provide information on how funds are managed including liabilities and assets of the corporation.

PUBLIC BENEFIT CORPORATIONS

9. (1) Members of a public benefit corporation may pass an extraordinary resolution,
 (a) to have a review engagement instead of an audit in respect of the corporation's financial year if the corporation had annual revenue in that financial year of more than 1,000,000 Naira or such other prescribed amount and less than 500,000 Naira or such other prescribed amount;
 or
 (b) to not appoint an auditor and to not have an audit or a review engagement in respect of the corporation's financial year if the corporation had annual revenue in that financial year of 500,000 Naira or less or such other prescribed amount.

This is to ensure small non-profits with limited resources don't have to incur unnecessary fees associated with performing a standard audit.

OTHER CORPORATIONS

- (c) Members of a corporation other than a public benefit corporation may pass an extraordinary resolution,
- (d) to have a review engagement instead of an audit in respect of the corporation's financial year if the corporation had annual revenue in that financial year of more than 500,000 Naira or such other prescribed amount; or
- (e) to not appoint an auditor and to not have an audit or a review engagement in respect of the corporation's financial year if the corporation had annual revenue in that financial year of 500,000 Naira or less or such other prescribed amount.

This is to ensure small non-profits with limited resources don't have to incur unnecessary fees associated with performing a standard audit.

VALIDITY OF RESOLUTION

- (f) An extraordinary resolution passed under this section is valid until the next annual meeting of the members

This is to ensure that resolution can come into force until the next annual meeting.

DEFINITIONS

- (g) In this section, "extraordinary resolution" means a resolution that is,
 - (a) Submitted to a special meeting of the members of a corporation duly called for the purpose of considering the resolution and passed at the meeting, with or without amendment, by at least 80 per cent of the votes cast, or
 - (b) Consented to by each member of the corporation entitled to vote at a meeting of the members or the member's attorney.

Ensures clarity of terms for purposes of administration.

ANNUAL FINANCIAL REVIEW

10. (1) An auditor of a corporation or a person appointed to conduct a review engagement of a corporation shall examine the financial statements that are required by section 84 to be placed before the members as is necessary to enable the auditor or other person to report on the financial statements.

This is to ensure that the corporation is able to account for all resources in its care.

APPROVAL OF ANNUAL FINANCIAL STATEMENTS

(2) The directors shall approve annual financial statements of the corporation that relate to the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting or, if the corporation has not completed a financial year, that began on the date the corporation came into existence and ended not more than six months before the annual meeting.

(3) The approval of the directors must be evidenced by the signature of one or more directors.

This guarantees the corporations transparency and accountability. It provides regulators with critical information necessary to monitor funding sources and use of funding especially in guarding against money laundering and terrorism financing.

DUTY OF COMMITTEE

(4) If the corporation has an audit committee, the audit committee shall review the financial statements of the corporation before they are approved by the directors.

(5) A corporation shall not issue, publish or circulate copies of the annual financial statements unless they are,
 (a) approved and signed in accordance with subsections (1) and (2); and
 (b) accompanied by the audit or review engagement report, if any.

This guarantees the corporations transparency and accountability. It provides regulators with critical information necessary to monitor funding sources and use of funding especially in guarding against money laundering and terrorism financing.

PRESENTATION OF ANNUAL FINANCIAL STATEMENTS TO MEMBERS

(6.) The directors of a corporation shall place before the members at every annual meeting,
 (a) The financial statements approved by the directors
 (b) The report of the auditor or of the person who conducted a review engagement, as the case may be; and
 (c) Any further information respecting the financial position of the corporation and the results of its operations required by the articles or the by-laws.

This ensures transparency and openness in the use of the corporation's resources including accountability to members and stakeholders.

COPY TO MEMBERS

(7) Not less than 21 days before each annual meeting of the members or before the signing of a resolution of the annual meeting, a corporation shall give a copy of the documents to all members who have informed the corporation that they wish to receive a copy of those documents.

(8) The auditor or other person shall report on the financial statements in accordance with the regulations and with generally accepted auditing or review engagement standards, as the case may be.

Subsection (8) guarantees the quality of audit in line with approved auditing standards and principles set out by the Financial Reporting Council of Nigeria

REPORT ON FINANCIAL STATEMENTS

11. (1) After conducting an audit or a review engagement, the auditor or other person shall report on the financial statements required to be placed before the members.

For Transparency and Accountability purposes.

HOLDING CORPORATION AUDITOR MAY RELY ON OTHER AUDITOR

(2) An auditor of a holding corporation or person appointed to conduct a review engagement of a holding corporation may reasonably rely on the audit or review engagement report of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the holding corporation.

This aids the review of previous financials and also ensures that when new auditors are engaged, they can work using past audits done by former auditors.

REASONABLENESS

(3) For the purpose of this Act, reasonableness is a question of fact.

Clear definition of term

APPLICATION

(4) whether or not the financial statements of the holding corporation reported on by the auditor or person who conducted a review engagement are in consolidated form.

Same as above

OBLIGATION OF DIRECTORS, TO GIVE INFORMATION

12. (1) The auditor of a corporation or other person who is conducting a review engagement may, if they are of the opinion that it is necessary in order to conduct the audit or review engagement of the corporation and to make the report and

- (a) Demand that the present or former directors, officers, employees or agents of the corporation give the auditor or other person any information and explanations and access to records, documents, books, accounts and vouchers of the corporation or of any of its subsidiaries; and
- (b) Demand that the directors of the corporation obtain from the former directors, officers, employees or agents of any subsidiary of the corporation information and explanations that they are reasonably able to give.

(2) A person to whom a demand is made under subsection (1) shall give the auditor or other person the requested information, explanations and access if they are reasonably able to do so.

Access to information in order to carry out an effective audit.

NO CIVIL LIABILITY

(3) A person who in good faith makes an oral, written or other form of communication under subsection (1) or (4) is not liable in any civil proceeding arising from having made the communication.

To ensure transparency and openness leading to quality audit.

AUDIT COMMITTEE

13. (1) A corporation may have an audit committee and, if it does, the majority of the committee must not be officers or employees of the corporation or of any of its affiliates.

To ensure fairness, openness and transparency.

AUDITOR'S ATTENDANCE

(2) The corporation shall give the auditor or person appointed to conduct a review engagement notice of the time and place of any meeting of the audit committee. The auditor or person appointed to conduct a review engagement is entitled to attend the meeting at the expense of the corporation and be heard, and shall attend every meeting of the committee if requested to do so by one of its members.

This guarantees the full engagement of the auditor in the work of the audit committee and the opportunity to provide useful information that may guide the work of the committee.

CALLING MEETING

(3) The auditor, the person appointed to conduct a review engagement or a member of the audit committee may call a meeting of the committee.

Powers of the auditor to call a meeting.

NOTICE OF ERRORS IN FINANCIAL STATEMENTS

14. (1) A director or an officer shall immediately notify the audit committee, if the corporation has one, and the auditor or person who conducted a review engagement of the corporation of any error or misstatement of which the director or officer becomes aware in a financial statement prepared as part of an audit or review engagement.

To ensure that errors noticed in the financial statements are corrected without further delay.

DIRECTORS TO BE INFORMED

(2) An auditor or former auditor of a corporation or another person who conducted a review engagement of a corporation who is notified or becomes aware of an error or misstatement in a financial statement prepared as part of an audit or review engagement shall, if in the opinion of the auditor, former auditor or other person, the error or misstatement is material, inform each director accordingly.

As above

DUTY OF DIRECTORS

When the auditor, former auditor or other person informs the directors of an error or misstatement in a financial statement, the directors shall prepare and issue revised financial statements or otherwise inform the members.

Guides the process for correcting the error.

QUALIFIED PRIVILEGE — DEFAMATION

15. Any statement or report made under this Act orally, in writing or in another format by the auditor or former auditor of a corporation has qualified privilege.

To ensure that both the director and auditor have equal privilege of reviewing reports of financial statements and that they are immune from statements made in the course of carrying out their duties.

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