

PART F INCORPORATED TRUSTEES

CHAPTER 1- INCORPORATED TRUSTEES

1. 823: Incorporation of Trustees of Certain Communities, Bodies and Associations.

(1) Where two or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by any body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, they may, if so authorised by the community, body or association (in this Act referred to as “the association”) apply to the Commission in the manner provided for registration under this Act as a corporate body.

(2) Upon being so registered by the Commission, the trustees shall become a corporate body in accordance with the provisions of section 830 of this Part.

2. 824: Classification of Associations.

The Commission shall determine the classification of associations to be registered under this Part in accordance with the aims and objects of the association.

3. 825: Method of Application.

(1) Application under section 823 shall be in the form of this Bill prescribed by the Commission and shall state the-

- (a) name of the proposed corporate body which must contain the words “**Incorporated Trustees of**”;
- (b) aims and objects of the association which shall be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, and shall be lawful; and
- (c) names, addresses and occupations of the secretary of the association, if any.

(2) There shall be attached to the application-

- (a) two printed copies of the constitution of the association;
- (b) duly signed copies of the minutes of the meeting appointing the trustees and authorising the application, showing the people present and the votes scored; and
- (c) the impression or drawing of the proposed common seal, if there is one.

(3) The application shall be signed by the person making it.

(4) The Commission may require such declaration or other evidence in verification of the statements and particulars in the application, and such other, information, and evidence, if any, as it may deem fit.

(5) If any person knowingly makes any false statement or gives any false information for the purpose of incorporating trustees under this Part, he commits an offence and is liable on conviction to imprisonment for one year or to a fine as the Court deems fit.

4. 826: Qualification of Trustees.

(1) A person shall not be qualified to be appointed or act as a trustee if—

- (a) he is an infant;
- (b) he is a person of unsound mind having been so found by a court;

- (c) he is an undischarged bankrupt; or
 - (d) he has been convicted of an offence involving fraud or dishonesty within five years of his proposed appointment.
- (2) If a person disqualified under subsection (1) (c) or (d) acts as a trustee, he shall be liable to a penalty for everyday during which he so acts, the penalty shall be determined in accordance with regulations made by the Commission from time to time.

5. 827: Constitution.

The constitution of the association shall in addition to any other matter –

- (a) state the name or title of the association;
- (b) the aims and objects of the association; and
- (c) make provisions, in respect of the following-
 - (i) appointment, powers, duties, tenure of office and replacement of the trustees;
 - (ii) the use and custody of the common seal, if there is one,
 - (iii) the meetings of the association,
 - (iv) the number of members of the governing body, if any, the procedure for their appointment and removal, and their powers; andwhere subscriptions and other contributions are to be collected, the procedure for disbursement of the funds of the association, the keeping of accounts and the auditing of such accounts.

6. 828: Advertisement and Objections.

- (1) If the Commission is satisfied that the application has complied with the provisions of sections 825 -827 of this Act, it shall cause the application to be published in a prescribed form in two daily newspapers circulating in the area where the association is to be situated and at least one of the newspapers shall be a national newspaper.
- (2) The advertisement shall invite objections, if any, to the registration of the body.
- (3) The objection shall state the grounds on which it is made and shall be forwarded to reach the Commission within 28 days of the date of the last of the publications in the newspapers.
- (4) If objections are made, the Commission shall consider them and may require the objections and applicants to furnish further information or explanation, and may uphold or reject the objections as it deems fit and inform the applicant accordingly.

7. 829: Registration and Certificate.

- (1) If, after the advertisement, no objection is received within the period specified in section 828 of this Act or, where any objection is received, and the same is rejected, the Commission, having regard to all the circumstances, may assent to the application or withhold its assent.
- (2) If the Commission assents to the application, it shall register the trustees and issue a certificate in the prescribed form.

8. 830: Effect of Registration and Certificate.

- (1) From the date of registration, the trustees shall become a body corporate by the name described in the certificate, and shall have:

- (a) perpetual succession;
- (b) a common seal if they so wish;
- (c) power to sue and be sued in its corporate name as such trustees; and
- (d) Subject to section 836 of this Part, power to hold and acquire, and transfer, assign or dispose of any property, or interests therein belonging to, or held for the benefit of such association, in such manner and subject to such restrictions and provisions as the trustees might without incorporation, hold or acquire, transfer, assign or otherwise dispose of the same for the purposes of such community, body or association of persons.

(2)The certificate of incorporation shall vest in the body corporate all property and interests of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons.

(3)A certificate of incorporation when granted shall be *prima facie* evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date on which incorporation has taken place.

9. 831: Related Associations.

Without prejudice to the provisions of section 849 of this Act, the Commission may direct that for all or any of the purposes of this Act -

- (a) an association be treated as forming part of an already registered association; and
- (b) any two or more association having the same trustees be treated as a single association.

CHAPTER 2

CHANGES IN REGISTERED PARTICULARS OF INCORPORATED TRUSTEES

10. 832: Changes of Names or Objects.

(1)Where the association is desirous of changing , altering its name, 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 section 828(1) 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 827 and of section 825(1) 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.

11. 833: Alteration of Provisions of the Constitution.

Subject to sections 827 and 828 of this Part, an association whose trustees are incorporated under this Part may alter its constitution by resolution passed by a simple majority of its members and approved by the Commission.

12. 834: 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 provisions of sections 832(2) - (4) 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 board or association and the appointment shall become valid as from the date of the resolution appointing the trustees.

13. 835: Changes in Contravention of Certain Provisions of this Part of this Act.

Any change or alterations purported to be made in contravention of section 832, 833 or 834 of this Part of this Act void.

CHAPTER 3- COUNCIL, POWERS, INCOME AND PROPERTY

14. 836: Council or Governing Body.

The association may appoint a council, or governing body, which shall include the trustees and may, subject to the provisions of this Part, assign to it such administrative and management functions as it deems expedient.

15. 837: Exercise of Powers of Trustee.

The powers vested in the trustees by or under this Act shall be exercised subject to the directions of the associations, or the council or governing body appointed under section 836 of this Part.

16. 838: Application of Income and Property.

(1) The income and property of a body or association whose trustees are incorporated under this Part of this Act shall be applied solely towards-

- (a) the promotion of the objects of the body as set forth in its constitution; and
- (b) no portion from it shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to any of the members of the association.

(2) Nothing in subsection (1)(b) shall prevent the payment, in good faith, of reasonable and proper remuneration to an officer or servant of the body in return for any service actually rendered to the body or association:

Provided that—

- (a) with the exception of ex-officio members of the governing council, no member of a council or governing body shall be appointed to any salaried office of the body, or any office of the body paid by fees; and
- (b) no remuneration or other benefit in money or money's worth shall be given by the body to any member of such council or governing body, except repayment of out-of-pocket expenses or reasonable and proper rent for premises demised, or let to the body or reasonable fee for services rendered.
- (3) If any person knowingly acts or joins in acting in contravention of this section, he shall be liable to refund such income or property so misapplied to the association.

CHAPTER 4
SUSPENSION OF TRUSTEES, APPOINTMENT OF INTERIM MANAGERS, etc.

17. 839: Suspension of Trustees, etc., Appointment of Interim Manager, etc.

- (1) The Commission may by order suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association where it reasonably believes that-
 - (a) there is or has been any misconduct or mismanagement in the administration of the association;
 - (b) it is necessary or desirable for the purpose of—
 - (i) protecting the property of the association,
 - (ii) securing a proper application for the property of the association towards achieving the objects of the association, the purposes of the association of that property or of property or of property coming to the association,
 - (iii) public interest; or
 - (c) the affairs of the association are being run fraudulently.
- (2) The trustees shall be suspended by an order of Court upon the petition of the Commission or members consisting one-fifth of the association and the petitioners shall present all reasonable evidence or such evidence as requested by the court in respect of the petition.
- (3) Upon the hearing of the petition and the appointment of the interim manager, the court, with the assistance of the Commission, may make provision with respect to the functions to be performed by the interim manager or managers appointed by the order:
 - (a) the powers and duties of the interim manager or managers which may include the powers and duties of the trustees of the association concerned; and
 - (b) any powers or duty specified under paragraph (a) to be exercisable or discharged by the interim manager or managers to the exclusion of the trustees.
- (4) The functions shall be performed by the interim manager or managers under the supervision of the commission.
- (5) The reference in subsection (1) to misconduct or mismanagement extends to the employment for-
 - (a) the remuneration or reward of persons acting in the affairs of the association, or
 - (b) other administrative purposes, of sums which are excessive in relation to the

property which is or is likely to be applied or applicable for the purposes of the association.

(6) A court of competent jurisdiction may, upon the petition of the Commission or members of the association.

- (a) order or suspend any person, officer, agent or employee of the association from office or employment, provided that such suspension shall not exceed 12 months from the date of the order or suspension;
- (b) by order appoint such number of additional trustees as it considers necessary for the proper administration of the association;
- (c) By order- (i) vest any property held by or in trust for the association in the official custodian, who shall be a person so designated by the court from time to time.
 - (ii) require the persons in whom any such property is vested to transfer it to the official custodian who be an individual as the court may, from time to time designate, or
 - (iii) appoint any person to transfer any such property to the official custodian;
- (d) order any person who holds any property on behalf of the association, or of any trustee for it, not to part with the property without the approval of the court;
- (e) order any debtor of the association not to make any payment in or towards the discharge of the debtor's directly liability to the association but to make such payment into an interest yielding account held by the Commission for the benefit of the association;
- (f) by order restrict (regardless of anything in the trusts of the association) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the association without the approval of the court;
- (g) by order appoint an interim manager to act as receiver and manager in respect of the property and affairs of the association.

(7) Where, at any time after the commission has made an enquiry into the affairs of the association, it is satisfied as to the matters mentioned in subsection (1), it may suspend or remove-

- (a) any trustee who has been responsible for or privy to the misconduct or mismanagement or whose conduct contributed to or facilitated it; or
- (b) by order of the Court, establish a scheme for the administration of the association.

(8) The court may by order replace a trustee removed under subsection (7).

(9) A person who contravenes an order under subsection (6), (d), (e) and (f) commits an offence and is liable on conviction to fine as the Court deems fit or imprisonment for a term of 6 months or to both.

(10) The Commission may make regulations in respect of –

- (a) the functions, powers and remuneration of the interim manager and the manner in which the interim manager shall make reports to the Commission; and

(b)making reports to the Commission and such other things as may be necessary for the effective administration of the association during the period of its interim administration.

(11) The commission shall only exercise its power under this section in respect of any association with the approval of the Minister.

CHAPTER 5 COMMON SEAL AND CONTRACT

18. 840: Common Seal.

The common seal, if any of the body corporate shall have such device as may be specified in the constitution; 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.

19. 841: Contract of Corporate Body.

Subject to the provisions of this Part of this Act and of the constitution of the association, the corporate body may contract in the same form and manner as an individual.

CHAPTER 6 ACCOUNTS AND ANNUAL RETURNS *Power to Direct Transfer of Credits in Dormant Bank*

20. 842: Accounts of Dissolved Incorporated Trustees.

(1) Where a bank holds one or more accounts in the name of or on behalf of the incorporated trustees of a particular association, and the account, or, if it holds two or more accounts, and each of the accounts is dormant(as defined under the relevant banking regulation), the bank shall without delay notify the Commission of these facts.

(2) Where the Commission receives a notice under subsection (1) , the Commission may request that the association provide evidence of its activities, and where the association fails to respond satisfactorily within 15 days of the request, the Commission may dissolve the association in accordance with section 850, and where an association is so dissolved, the Commission may give a direction to the bank concerned to transfer-

(a)the amount, or, as the case may be, the aggregate amount, standing to the credit of the relevant association in the account or accounts in question to such other association as is specified in the direction in accordance with subsection (3) of this section to the bank or;

(b)to each of two or more associations so specified in the direction, such part of that amount or aggregate amount as is there specified in relation to that association.

(3) The provisions of subsection (2) shall also apply where the Commission is unable, after making reasonable inquiries, to locate an association registered under this Act or any of its trustees.

(4) The Commission may specify in a direction under subsection (2) such other association or charity as it considers appropriate, having regard to the purposes of that association or charity. Provided that before any association may be so specified by the Commission, the trustees of such

an association shall, by a written memorandum to the Commission, indicate its willingness to accept such amount to be transferred to it.

(5) Any amount received by an association by virtue of this section is to be received by the association on terms that –

- (a) it is to be held and applied by association for the purposes of the association;
- (b) as property of the association, it is nevertheless subject to any restrictions on expenditure to which it was subject as property of the relevant association; and
- (c) the receipt of a trustee for an association in respect of any amount received from a relevant bank by virtue of this section is a complete discharge of the bank in respect of that amount.

(6) The Commission shall only exercise its power under this section in respect of any Association with the approval of the Minister.

21. 843: Accounts which Cease to be Dormant before Transfer.

(a) Where any bank has given notice to the Commission under section 842(1) of this Act, it shall, subject to any contrary provision under the relevant banking enactment, not re-activate the dormant accounts, without first notifying the Commission-

- (a) If before any transfer is made by the bank in pursuance of a direction under section 842(2) of this Act, the bank has cause to believe that the account or accounts held by it in the name of or on behalf of an association is no longer dormant, the bank shall without delay notify the Commission that the account or accounts have ceased to be dormant.
- (b) If it appears to the Commission that the account or accounts in question is or are no longer dormant, or where the Commission receives satisfactory account of the activities of the association pursuant to section 842(2), it shall revoke any direction made to the bank under section 842(2) of this Act with respect to any such account.

22. 844: Dormant Bank Accounts: Supplementary.

(1) No obligation as to secrecy or other restriction on disclosure, however imposed, shall preclude a relevant bank from disclosing any information on the status of dormant bank accounts to the Commission for the purpose of enabling the Commission to discharge its functions under sections 842 and 843 of this Act.

(2) For the purposes of this section and sections 842 and 843 of this Act and, an account is dormant if no transaction, other than –

- (a) a transaction consisting of a payment into the account, or
- (b) a transaction which the bank holding the account has itself caused to be effected, has been effected in relation to the account within the period of five years immediately preceding the date when the Commission is informed as mentioned in section 842(1) of this Act.

(3) For the purposes of sections 842 and 843 of this Act, the term, “bank and in this section, a “relevant bank” means-

- (a) any Central Bank of Nigeria designated money deposit institution; or
- (b) such other person or organisation who may lawfully accept deposits as may

be prescribed by the Minister.

- (4) For the purposes of section 842 and 843 of this Act, references to the transfer of any amount to an association are deemed to be references to any of its transfers made to-
- (a) the trustees of the association, or
 - (b) any trustee of the association, as the trustee of the association may determine, and any reference to any amount received by an association is to be read accordingly.

23. 845: Bi-annual Statement of Affairs

- (1) The trustees of an association shall submit to the Commission a bi-annual statement of affairs of the association, as the Commission shall specify in its regulations.
- (2) If the trustees fail to comply with subsection (1), each trustee shall be liable to a penalty for every day during which the default continues in such amount as the Commission shall specify in its regulations.

24. 846: Accounting Records and Statement of Accounts.

- (1) The trustees of an association shall ensure that accounting records are kept in respect of the association and such accounting records shall be sufficient to show and explain the transactions of the association, and-
- (a) disclose at any time, with reasonable accuracy, the financial position of the association at that time; and
 - (b) enable the trustees to ensure that statements of accounts prepared by them comply with subsection(3).
- (2) The accounting records shall, in particular contain—
- (a) entries showing from day to day all sums of money received and expended by the association, and the matters in respect of which the receipt and expenditure took place; and
 - (b) a record of the assets and liabilities of the association.
- (3) The Commission may make regulations generally for the purpose of this Part and, in particular, without prejudice to the generality of the foregoing provisions, make regulations-
- (a) prescribing the forms, returns and other information required under this Part;
 - (b) prescribing the procedure for obtaining any information required under this Part;
 - (c) requiring returns to be made within the period specified therein by anybody corporate to which this Part applies; and
 - (d)prescribing relevant accounting principles or standards to be adopted by the association.
- (4) Regulations under subsection (3) may in particular provide—
- (a) for the statement to be prepared in accordance with methods and principles as are specified or referred to in the regulations; and
 - (b) any information to be provided by way of notes to the accounts.
- (5) The financial year of an association shall be determined by the Commission through regulations issued under subsection (3) and the Commission may also make provision for determining the financial years of an association for the purposes of this Act and any regulations made under it.

25. 847: Preservation of Accounting Records.

The accounting records of an association shall be preserved by it for six years from the date on which they were made.

26. 848: Annual Returns.

(1) The trustees of the corporation shall, not earlier than 30th June or later than 31st December each year (other than the year in which it is incorporated), submit to the Commission a return showing the name of the association, the names, addresses and occupations 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 change which has taken place in the constitution of the association during the preceding year.

(2) The return referred to in subsection (1) shall be accompanied by the audited statement of accounts for the year of return.

(3) If default is made in complying with this section, the corporate body is liable to a penalty as may be prescribed by regulation.

CHAPTER 7- MERGER AND DISSOLUTION

27. 849: Merger of Associations.

Two or more associations with similar aims and objects may merge under terms and conditions as to Commission may prescribe by regulation.

28. 850: Dissolution of a Corporate Body Formed under this Act.

(1) A body corporate formed under this Part may be dissolved by the court on a petition brought for that purpose by—

- (a) the governing body or council;
- (b) one or more trustees;
- (c) members of the association constituting at least 50% of the total membership; or
- (d) the Commission.

(2) The grounds on which the body corporate may be dissolved are that—

- (a) the aims and objects for which it was established have been fully realised and no useful purpose would be served by keeping the corporation alive;
- (b) the body corporate is formed to exist for a specified period, that period has expired and it is not necessary for it to continue to exist;
- (c) all the aims and objects of the association have become illegal or otherwise contrary to public policy;
- (d) it is just and equitable in all the circumstances that the body corporate be dissolved; and
- (e) the certificate of registration of the association has been withdrawn, cancelled or revoked by the Commission.

(3) At the hearing of the petition, all persons whose interest or rights may, in the opinion of the court, be affected by the dissolution shall be put on notice.

(4) If in the event of a winding up or dissolution of the corporate body there remains,

after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the association: Provided that the institution shall be determined by the members of the association at or before the time of dissolution.

(5) If effect cannot be given to the provisions of subsection (4), the remaining property shall be transferred to some charitable object.