

COMPANIES AND ALLIED MATTERS ACT 1990 (excerpts)

PART 11

INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS

CHAPTER 1 – FORMATION OF COMPANY

18. As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of such company.

Right to form a company

19. (1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business for profit or gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other enactment in force in Nigeria.

Partnership, etc of more than 20 members when permitted

(2) Nothing in this section shall apply to –

(a) any cooperative society registered under the provision of any enactment in force in Nigeria; or

(b) any partnership for the purpose of carrying on practice –

(i) as legal practitioners, by persons each of whom is a legal practitioner; or

(ii) as accountants by persons each of whom is entitled by law to practice as an accountant.

(3) If any at time the number of members of a company, association or partnership exceeds 20 in contravention of this section and it carries on business for more than 14 days while the contravention continues, every person who is a member of the company, association or partnership during the time that it so carries on business after those 14 days shall be liable to a fine of N25 for every day during which the default continues.

20. (1) Subject to subsection (2) of this section, an individual shall join in the formation of a company under this Act if –

(a) he is less than 18 years of age; or

(b) he is of unsound mind and has been so found by a court in Nigeria or elsewhere; or

(c) he is an un-discharged bankrupt; or

(d) he is disqualified under section 254 of this Act from being a director of a company.

(2) A person shall not be disqualified under paragraph (a) of subsection (1) of this section, if two other persons not disqualified under that subsection have subscribed to the memorandum.

(3) A corporate body in liquidation shall not join in the formation of a company under this Act.

(4) Subject to the provisions of any enactment regulating the rights and capacity of aliens to undertake or participate in trade or business, an alien or foreign company may join in forming a company.

Capacity of individual to form company

21. (1) An incorporated company may be either a company -

(a) having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed “a company limited by shares”); or

Types of companies

- (b) having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed “a company limited by guarantee”) or
 - (c) not having any limit on the liability of its members (in this Act termed “an unlimited company”).
2. A company of any of the foregoing types may either be a private company or a public company.

22. (1) A private company is one which is stated in its memorandum to be a private company.
- (2) Every private company shall by its articles restrict the transfer of its shares.
 - (3) The total number of members of a private company shall not exceed 50, not including persons who are bona fide in the employment of the company, or were while in that employment and have continued after the determination of that employment to be, members of the company.
 - (4) Where two or more persons hold one or more shares in a company jointly, they shall for the purpose of subsection (3) of this section be treated as a single member.
 - (5) A private company shall not unless authorized by law invite the public to –
 - (a) subscribe for any shares or debentures of the company; or
 - (b) deposit money for fixed periods or payable at call, whether or not bearing interest.

Private company

23. (1) Subject to subsection (2) of this section, where default is made in complying with any of the provisions of section 22 of this Act in respect of a private company, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under this Act and this Act shall apply to the company as if it were not a private company.
- (2) If a court on the application of the company or any other person interested, is satisfied that the failure to comply with the provisions of section 22 of this Act was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relieve, the court may, on such terms and conditions as may seem to it to be just and expedient, order that the company be relieved from the consequences mentioned in subsection (1) of this section.

Consequences of default in complying with conditions constituting a private company

24. Any company other than a private company shall be a public company and its memorandum shall state that it is a public company.

Public company

25. As from the commencement of this Act, an unlimited company shall be registered with a share capital; and where an existing unlimited company is not registered with a share capital, it shall, not later than the appointed day, alter its memorandum so that it becomes an unlimited company having a share capital not below the minimum share capital permitted under section 99 of this Act.

Unlimited company to have share capital

26. (1) Where a company is to be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to be applied solely towards the promotion of its objectives and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by guarantee.

Company limited by guarantee

- (2) As from the commencement of this Act, a company limited by guarantee shall not be registered with a share capital; and every existing company limited by guarantee and having a share capital shall, not later than the appointed day, alter all its memorandum so that it becomes a company limited by guarantee and not having a share capital.
- (3) In the case of a company limited by guarantee, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member or purporting to divide the company's undertaking into shares or interests shall be void.
- (4) A company limited by guarantee shall not be incorporated with object of carrying on business for the purpose of making profits for distribution to members.
- (5) If any company limited by guarantee carries on business for the purpose of distributing profits, all efforts and members thereof who are cognizant of the fact that it is so carrying on business shall jointly and severally liable for the payment and discharge of all debts and liabilities of the company incurred in carrying on such business, and the company and every such officer and member shall be liable to a fine not exceeding N100 for every day during which it carries on such business.
- (6) The total liability of the members of a company limited by guarantee to contribute to the assets of the company in the event of its being wound up shall not at any time be less than N10,000.
- (7) Subject to compliance with subsection (5) of this section, the articles of association of a company limited by guarantee may provide that members can retire or be excluded from membership of the company.
- (8) If in breach of subsection (5) of this section, the total liability of the members of any company limited by guarantee shall at any time be less than N10,000, every director and member of the company who is cognizant of the breach shall be liable to a fee of N50 for every day during which the default continues.
- (9) If, upon the winding up of a company limited by guarantee, there remains after the discharge of all its debts and liabilities any property of the company, the same shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object and such other company or charity shall be determined by members prior to the dissolution of the company.

REGISTRATION OF COMPANIES

35. (1) As from the commencement of this Act, a company shall be formed in the manner set out in this section.
- (2) There shall be delivered to the Commission
- (a) the memorandum of association and articles of association complying with the provisions of this Part of this Act;
 - (b) the notice of the address of the registered office of the company and the head office if different from the registered office: provided that a postal box address or a private bag address shall not be accepted by the Commission as the registered office;
 - (c) a statement in the prescribed form containing the list and particulars together with the consent of the persons who are to be the first directors of the company;
 - (d) a statement of the authorized share capital signed by at least one director; and
 - (e) any other document required by the Commission to satisfy the requirements of any law relating to the formation of a company.
- (3) A statutory declaration in the prescribed form by a legal practitioner that those requirements of this Act for the registration of a company have been complied with shall be produced to the Commission, and it may accept such a declaration as sufficient evidence of compliance: Provided that where the Commission refuses a declaration, it shall within 30 days of the date of receipt of the declaration send to the declarant a notice of its refusal giving the grounds of such refusal.

Documents of
Incorporation

36. (1) The Commission shall register the memorandum and articles unless in its opinion –
- (a) they do not comply with the provisions of this Act; or
 - (b) the business which the company is to carry on; or the objects for which it is formed, or any of them, are illegal; or
 - (c) any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 20 of this Act; or
 - (d) there is non-compliance with the requirement of any other law as to registration and incorporation of a company; or
 - (e) the proposed name conflicts with or is likely to conflict with an existing trade mark or business name registered in Nigeria.
- (2) Any person aggrieved by the decision of the Commission under subsection (1) of this section, may give notice to the Commission requiring it to apply to the court for directions and the Commission shall within 21 days of the receipt of such notice apply to the court for the directions.
- (3) The Commission may in order to satisfy itself as provided in subsection (1) (c) of this section, by instrument in writing require a person subscribing to the memorandum to make and lodge with the Commission, a statutory declaration to the effect that he is not disqualified under section 20 of this Act from joining in forming a company.
- (4) Steps to be taken under this Act to Incorporate a company shall not include any invitation to subscribe for shares or otherwise howsoever on the basis of a prospectus.
- (5) Upon registration of the memorandum and articles, the Commission shall certify under its seal –
- (a) that the company is incorporated;
 - (b) in the case of a limited company, that the liability of the members is limited by shares or by guarantee; or
 - (c) in the case of an unlimited company, that the liability of the members is

Registration

unlimited; and

- (d) that the company is a private or public company, as the case may be
- (6) The certificate of incorporate shall be *prima facie* evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the association is a company authorized to be registered and duly registered under this Act.

37. As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Effect of registration

PART C – INCORPORATED TRUSTEES

- 673.(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 authorized by the community, body or association (hereinafter in 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.
- (2) Upon being so registered by the Commission, the trustee or trustees shall become a corporate body in accordance with the provisions of section 679 of this Part of this Act.

Incorporation of trustees of certain communities, bodies and associations

674. (1) Application under section 673 of this Act shall be in the form prescribed by the Commission and shall state -
- (a) the name of the proposed corporate body which must contain the words “Incorporated Trustees of _____
- (b) the aim and objects of the association which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, and must be lawful.
- (i) the names, addresses and occupations of the secretary of the association if any.
- (2) These 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 authorizing the application, showing the people present and the votes scored;
- (c) the impression or drawing of the proposed common seal
- (4) The commission may require such declaration or other evidence in verification of the statements and particulars in the application and such other particulars, information, and evidence, if any, as it may think fit.
- (5) If any person knowingly makes any false statement or gives any false information for the purpose of incorporating trustees under this Part of the Act, he shall be guilty of an offence and liable on conviction to imprisonment for one year or to fine of N100

Method of application

675. (1) A person shall not be qualified to be appointed as a trustee if –
- (a) he is an infant; or
- (b) he is a person of unsound mind having been so found by a court;
- (c) he is an un-discharged 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 paragraph (c) or (d) of subsection (1) of the section acts as a trustee, he shall be liable to a fine of N50 for every day during which he so acts.

Qualifications of trustees

676. The constitution of the association shall in addition to any other matter -
- (a) state the name or title of the association which shall not conflict with that of a company, or with a business name or trade mark registered in Nigeria;
- (b) 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;
- (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; and

Constitution

- (v) where 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.

677(1) If the Commission is satisfied that the application has complied with the provisions of section 674, 675 and 676 of this Act it shall cause the application to be published in a prescribed form in a daily newspaper circulating in the area where the corporation is to be situated and at least one of the newspaper 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 any objections are made, the Commission shall consider them and may require the objectors and applicants to furnish further information or explanation, and may uphold or reject the objections as it considers fit and inform the applicant accordingly.

678 (1) If, after the advertisement, no objection is received within the period specified in section 677 of this Act or, where any objection is received, 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.

Registration and certificate

679 (1) From the date of their registration, the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in its corporate name and as such trustee or trustees and subject to section 12 of this Part of this Act to hold and acquire, and transfer, assign or otherwise 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 provision as 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.

Effect of registration and certificate

680. (1) Where the association 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 2 daily newspapers in the manner specified in subsection (1) of the 677 of this Act; and

Charges of names or objects

(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 and or any at branch offices, or any such places where as 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 676 and subsection (1) of section 677 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 alteration shall be made and in the case of change of name, the Commission shall issue a new certificate in the new name in place of the former certificate.

681. Subject to section 676 and 677 of this Act, an association whose trustees are incorporated under this Act may alter its constitution by a resolution passed by a simple majority of its members and approved by the Commission.

Alteration of provisions of the constitution

682. (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 subsections (2) to (4) of section 679 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.

Replacement and appointment of additional trustees

683. Any change or alterations purported to be made in contravention of section 680, 681 or 682 of this Act shall be void.

Changes in contravention of certain provisions of this part of this Act

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

Council, committee or governing body

685. The powers vested in the trustees by or under this Act shall be exercised subject to the directions of the association, or of the council or governing body appointed under section 684 of this Act, as the case may be.

Exercise of powers of trustee

686. (1) The income and property of a body or association whose trustees are incorporated under this Act shall be applied solely towards the promotion of the objects of the body as set forth in its constitution and no portion thereof 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) of this section 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;

Application of income and property

Provided that –

(a) With the exception of *ex-officio* members of the governing council, no member of a council of management 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.
- (4) 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.
687. The common seal of the corporate body shall have such devices as may be approved by the Commission; and any instrument to which the common seal of the corporate body has affixed in apparent compliance with the regulations for the use of the common seal shall be binding on the corporate body, not withstanding any defect or circumstance affecting the execution of such instrument. Common seal
688. Subject to the provisions of this Act and of the constitution of the association, the corporate body, may contract in the same form and manner as an individual. Contract of corporate body
689. (1) The Commission shall preserve all documents delivered to it under this Act.
(2) Any person may on application to the Commission be permitted to inspect the documents kept under subsection (1) of this section on payment of a prescribed fee and may require a copy or extract of any such document to be certified by the Commission on payment of a prescribed fee. Documents and inspection
690. (1) The trustees of the corporation shall not earlier than 30th June or later than 31st of 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 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.
(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. Annual returns
691. (1) A corporate body formed under this Act may be dissolved by court on a petition brought for that purpose by -
(a) the governing body or council; or
(b) one or more trustees; or
(c) members of the association constituting not less than 50 per cent of the total membership; or
(d) the Commission
(2) The grounds on which the corporate body may be dissolved are –
(a) that 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) that the corporate body is formed to exist for a specified period has expired and it is not necessary for it to continue to exist;
(c) that all the aims and objectives of the association have become illegal or otherwise contrary to public policy; and
(d) that it is just and equitable in all the circumstances that the corporate body be dissolved.
(3) At the hearing of this petition, all persons whose interest or rights may, in Dissolution of a corporate body formed under this Act

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 to 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) of this section, the remaining property shall be transferred to some charitable object.

692. The Minister may, with the approval of the National Council of Ministers, make regulations generally for the purpose of this Act and, in particular, without prejudice to the generality of the foregoing provisions, make regulations -
- (a) prescribing the forms and returns and other information required under this Act;
 - (b) prescribing the procedure for obtaining any information required under this Act.
 - (c) requiring returns to be made within the period specified therein by any body corporate to which this Act applies;
 - (d) Prescribing any fees payable under this Part of this Act.

Regulations

693. In this part of this Act, unless the context otherwise requires –
“Commission” means the Corporate Affairs Commission established under section 1 of this Act.
“Court” means the Federal High Court;
“Gazette” means the Federal Government Official Gazette; and “Minister” means the Minister charged with responsibility for matters relating to trade.

Interpretation of words used in this Part

694. The Land (Perpetual Succession) Act is hereby repealed.

Repeal of Cap. 98

695. All trustees duly registered as corporate bodies under the Land (Perpetual Succession) Act shall as from the date of coming into operation of this Act, be deemed to be registered under and in accordance with this Act and the provisions of this Act shall apply in respect of such trustees accordingly.

Validity of previous registrations. Cap. 98

- 696 This Act may be cited as the Companies and Allied Matters Act 1990.

Citation

COMPANIES AND ALLIED MATTERS (AMENDMENT) ACT 1990 (excerpts)

The Companies and Allied Matters Act 1990 is hereby amended as follows:

section 26 thereof shall be amended as follows –

- (i) immediately after subsection (4) thereof shall be inserted the following provision, that is “(5) The memorandum of a company limited by guarantee shall not be registered without the authority of the Attorney General of the Federation.”