



CAMA 2020'S NEW PROVISIONS ON INCORPORATED TRUSTEES

Briefing Note: CAMA 2020's New Provisions on Incorporated Trustees

Background:

In this Briefing Note, we highlight, summarize and make relevant observations on the new provisions of the Companies and Allied Matters Act, 2020 (the **Act**) on Incorporated Trustees.

The Act:

A. Highlights + Features:

Title:	Companies and Allied Matters Act, 2020.
Application	All companies, limited liability partnerships, limited partnerships, business names and incorporated trustees registered under the Act, in Nigeria.
Relevant Sections:	823 to 850
Regulator:	Nigeria's Corporate Affairs Commission (CAC)

B. Summary of Relevant Provisions on Incorporated Trustees:

S/N	Heading	Synopsis of the Provision	Reference
1.	Related Associations	An Association may be treated as part of an already registered Association(s). Associations with similar Trustees may also be treated as a single Association.	831 (i) and (ii)
2.	Suspension or Removal of Trustees	<p>CAC may with the approval of the Minister of Trade, through an order of Court, suspend or remove the Trustees of an Association and appoint Interim Managers in the following instances:</p> <ul style="list-style-type: none"> a) where there is misconduct or mismanagement in the affairs of the Association; b) to protect the property of the Association; c) in the interest of the public; and d) in the instance where fraud is committed in the running of the affairs of the Association. 	839 (1), (7)(a) and (11)
3.	Procedure for Suspension of Trustees	<p>The procedure for the suspension or removal of Trustees is as follows:</p> <ul style="list-style-type: none"> a) A petition to the relevant court by either of CAC or one-fifth of the Members of the Association supported with reasonable evidence. b) Upon receipt of the petition with evidence, the Court may give the following orders: <ul style="list-style-type: none"> i. suspend any Member of the Association from office or employment for a period which will not exceed 12 months from the date of the order; 	839 (2), (3), (4), (6), (7)(b) and (8)

- ii. replace removed Trustees or appoint additional Trustees for the proper administration of the Association;
 - iii. vest any property held by or in trust for the Association in the Official Custodian to be designated by the Court from time to time;
 - iv. require a person vested with the property of the Association to transfer same to the Official Custodian designated by the Court;
 - v. appoint any person to transfer the Association's property to the Official Custodian;
 - vi. order any person or Trustee who holds property for the Association not to part with it without the Court's approval;
 - vii. order a debtor of the Association not to discharge its liability directly to the Association but to pay such debt into an interest yielding account held by CAC for the benefit of the Association;
 - viii. restrict the transactions which may be entered into or the nature or amount of payments to be made in the Association's administration without the Court's approval; or
 - ix. appoint an Interim Manager as Receiver and Manager of the Association's property and affairs.
- c) The Court shall stipulate the functions, powers and duties of the Interim Manager which shall be performed to the exclusion of the Trustees, and under CAC's supervision.

4.	Notification of Dormant Bank Accounts	<p>A bank is required to immediately notify CAC of any dormant accounts held by or on behalf of an Association.</p> <p>Upon receipt of a notice, CAC may, with the approval of the Minister of Trade, request the Association to provide evidence of its activities.</p> <p>Where there is: (a) a failure of the Association to respond satisfactorily within 15 days of the request; or (b) CAC is unable to locate the Association or any of its Trustees, CAC may dissolve the Association.</p> <p>CAC may further give direction to the bank to transfer the aggregate amount, standing to the credit of the Association, to other specified Association(s) after a written acceptance of such amount by that other specified Association.</p> <p>Any amount received by the Association must be received on the terms that:</p> <ul style="list-style-type: none"> a) it will be held and applied by the Association for the purposes of the Association; b) it will not be subject to any restrictions on expenditure; the receipt of any amount by the Trustee of an Association is a complete discharge of the bank in respect of that amount. 	842 (1) to (6)
5.	Re-activation of Dormant Accounts	<p>A bank is prohibited from re-activating a dormant account without first notifying CAC if:</p> <ul style="list-style-type: none"> a) the account ceases to be dormant before any transfer is made to other specified Association(s); b) where CAC receives satisfactory account of the activities of the Association. 	844 (1) and (2)

6.	Bi-annual Statement of Affairs	The Trustees of an Association are required to submit a bi-annual statement of affairs to CAC in prescribed forms. Upon failure to do so, every Trustee shall pay a penalty to be specified by CAC, for every day in which the default continues.	845 (1) and (2)
7.	Accounting Records	The trustees of an Association are to keep accounting records which must show: <ul style="list-style-type: none"> a) the transactions of the Association; b) the financial position of the Association; c) assets and liabilities of the Association; and d) compliance with any of CAC's regulations on keeping accounts. 	846 (1) to (3)
8.	Preservation of Accounting Records	Accounting records of an Association are to be preserved for 6 (six) years from the date they are made.	847
9.	Filing of Annual Returns	Annual returns to be filed by an Association are to be accompanied by audited financial statements.	848 (2)
10.	Merger of Associations	Two or more Associations with similar aims and objects may form a merger.	849

For further information on the foregoing (none of which should be taken as legal advice), please contact:



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with the subject: “CAMA 2020’s New Provisions on Incorporated Trustees.”