

Corporate Affairs Commission

1. Establishment of the Corporate Affairs Commission

(1) There is hereby established under this Act, a body to be known as the Corporate Affairs Commission (in this Act referred to as "the Commission").

(2) The Commission shall be-

(a) a body corporate with perpetual succession and a common seal;

(b) capable of suing and being sued in its corporate name; and

(c) capable of acquiring, holding or disposing of any property, movable or immovable, for the purpose of carrying out its functions.

(3) The headquarters of the Commission shall be situated in the Federal Capital Territory, Abuja, and there shall be established an office of the Commission in each State of the Federation.

7. Functions

(1) The functions of the Commission shall be to-

(a) subject to section 541 of this Act, administer this Act including the regulation and supervision of the formation, incorporation, registration, management, and winding up of companies under or pursuant to this Act;

(b) establish and maintain a company's registry and offices in all the States of the Federation suitably and adequately equipped to discharge its functions under this Act or any other law in respect of which it is charged with responsibility;

(c) arrange or conduct an investigation into the affairs of any company where the interests of the shareholders and the public so demand;

(d) perform such other functions as may be specified by any Act or enactment; and

(e) undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act.

(2) Nothing in this section shall affect the powers, duties or jurisdiction of the Securities and Exchange Commission under the Investments and Securities Act.

[Cap. 124.]

Formation of Company

18. Right to form a company

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.

19. Partnership, etc., of more than 20 members when permitted

(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.

(2) Nothing in this section shall apply to-

(a) any co-operative society registered under the provisions 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 practise as an accountant.

(3) If at any 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. Capacity of individual to form company

(1) Subject to subsection (2) of this section, an individual shall not 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 undischarged 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 a foreign company may join in forming a company.

21. Types of companies

(1) An incorporated company may be 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

(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. Private company

(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 authorised 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.

23. Consequences of default in complying with conditions constituting a private company

(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 relief, 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.

24. Public company

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

25. Unlimited company to have share capital

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.

26. Company limited by guarantee

(1) Where a company is to be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and t

he income and property of the company are to be applied solely towards the promotion of its objects 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 shares, but may be registered as a 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 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 the object of carrying on business for the purpose of making profits for distribution to members.

(5) The memorandum of a company limited by guarantee shall not be registered without the authority of the Attorney-General of the Federation.

[1990 No. 32.]

(6) If any company limited by guarantee carries on business for the purpose of distributing profits, all officers and members thereof who are cognisant of the fact that it is so carrying on business shall be jointly and severally liable for the payment and discharge of all the 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.

(7) 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.

(8) Subject to compliance with subsection (6) 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.

(9) If, in breach of subsection (6) 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 cognisant of the breach shall be liable to a fine of N50 for every day during which the default continues.

(10) 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 the members prior to the dissolution of the company.

Memorandum of association

27. Requirements with respect to the memorandum of a company

(1) The memorandum of every company shall state-

- (a) the name of the company;**
- (b) that the registered office of the company shall be situated in Nigeria;**
- (c) the nature of the business or businesses which the company is authorised to carry on, or, if the company is not formed for the purpose of carrying on business, the nature of the object or objects for which it is established;**
- (d) the restriction, if any, on the powers of the company;**
- (e) that the company is a private or public company, as the case may be;**
- (f) that the liability of its members is limited by shares or by guarantee or is unlimited, as the case may be.**

(2) If the company has a share capital-

(a) the memorandum shall also state the amount of authorised share capital, not being less than N10,000 in the case of a private company and N500,000 in the case of a public company, with which the company proposed to be registered, and the division thereof into shares of a fixed amount;

(b) the subscribers of the memorandum shall take among them a total number of shares of a value of not less than 25 per cent of the authorised share capital ; and

(c) each subscriber shall write opposite to his name the number of shares he takes.

(3) A subscriber of the memorandum who holds the whole or any part of the shares subscribed by him in trust for any other person shall disclose in the memorandum that fact and the name of the beneficiary.

(4) The memorandum of a company limited by guarantee shall also state that-

(a) the income and property of the company shall be applied solely towards the promotion of its objects, and that no portion thereof shall be paid or transferred directly or indirectly to the members of the company except as permitted by or under this Act; and

(b) each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member for payment of debts and liabilities of the company, and of the costs of winding up, such amount as may be required not exceeding a specified amount and the total of which shall not be less than N10,000,

(5) The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

(6) The memorandum shall be stamped as a deed.

28. Form of memorandum

Subject to the provisions of section 27 of this Act, the form of a memorandum of association of-

- (a) a company limited by shares;**
- (b) a company limited by guarantee; and**
- (c) an unlimited company,**

shall be as specified in Tables B, C and D respectively in the First Schedule to this Act, or as near that form as circumstances admit.

[First Schedule. Tables B, C and D.]

Name of company

29. Name as stated in the memorandum

- (1) The name of a private company limited by shares shall end with the word "Limited".**
- (2) The name of a public company limited by shares shall end with the words "Public Limited Company".**
- (3) The name of a company limited by guarantee shall end with the words "(Limited by Guarantee)" in brackets.**
- (4) The name of an unlimited company shall end with the word "Unlimited".**
- (5) A company may use the abbreviations "Ltd", "PLC" "(Ltd/Gte)" and "Uld" for the words "Limited", "Public Limited Company", "(Limited by Guarantee)" and "Unlimited" respectively in the name of the company.**

30. Prohibited and restricted names

- (1) No company shall be registered under this Act by a name which-**

(a) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Commission requires; or

(b) contains the words "Chamber of Commerce" unless it is a company limited by guarantee; or

(c) in the opinion of the Commission is capable of misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy; or

(d) in the opinion of the Commission would violate any existing trade mark or business name registered in Nigeria unless the consent of the owner of the trade mark or business name has been obtained.

(2) Except with the consent of the Commission, no company shall be registered by a name which-

(a) includes the word "Federal", "National", "Regional", "State", "Government", or any other word which in the opinion of the Commission suggests or is calculated to suggest that it enjoys the patronage of the Government of the Federation or the Government of a State in Nigeria, as the case may be, or any Ministry or Department of Government; or

(b) contains the word "Municipal" or "Chartered" or in the opinion of the Commission suggests, or is calculated to suggest, connection with any municipality or other local authority; or

(c) contains the word "Co-operative" or the words "Building Society"; or

(d) contains the word "Group" or "Holding".

Registration of companies

35. Documents of incorporation

(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 authorised 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.

36. Registration

(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 unlimited; and

(d) that the company is a private or public company, as the case may be.

(6) The certificate of incorporation 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 authorised to be registered and duly registered under this Act.

Capacity and powers of companies

38. Powers of companies

(1) Except to the extent that the company's memorandum or any enactment otherwise provides, every company shall, for the furtherance of its authorised business or objects, have all the powers of a natural person of full capacity.

(2) A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose; and if any company, in breach of this subsection makes any donation or gift of its property to a political party or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, the company and every such officer or member shall be guilty of an offence and liable to a fine equal to the amount or value of the donation or gift.

39. Effect of ultra vires acts

(1) A company shall not carry on any business not authorised by its memorandum and shall not exceed the powers conferred upon it by its memorandum or this Act.

(2) A breach of subsection (1) of this section, may be asserted in any proceedings under sections 300 to 313 of this Act or under subsection (4) of this section.

(3) Notwithstanding the provisions of subsection (1) of this section, no act of a company and no conveyance or transfer of property to or by a company shall be invalid by reason of the fact that such act, conveyance or transfer was not done

or made for the furtherance of any of the authorised business of the company or that the company was otherwise exceeding its objects or powers.

(4) On the application of-

(a) any member of the company; or

(b) the holder of any debenture secured by a floating charge over all or any of the company's property or by the trustee of the holders of any such debentures, the court may prohibit, by injunction, the doing of any act or the conveyance or transfer of any property in breach of subsection (1) of this section.

(5) If the transactions sought to be prohibited in any proceeding under subsection (4) of this section are being, or are to be performed or made pursuant to any contract to which the company is a party, the court may, if it deems the same to be equitable and if all the parties to the contract are parties to the proceedings, set aside and prohibit the performance of such contract, and may allow to the company or to the other parties to the contract compensation for any loss or damage sustained by them by reason of the setting aside or prohibition of the performance of such contract but no compensation shall be allowed for loss of anticipated profits to be derived from the performance of such contract.

Promoters

61. Persons promoting a company

Any person who undertakes to take part in forming a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose, or who, with regard to a proposed or newly formed company, undertakes a part in raising capital for it, shall prima facie be deemed a promoter of the company:

Provided that a person acting in a professional capacity for persons engaged in procuring the formation of the company shall not thereby be deemed to be a promoter.

62. Duties and liabilities of a promoter

(1) A promoter stands in a fiduciary relationship to the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf and shall compensate the company for any loss suffered by reason of his failure so to do.

(2) A promoter who acquired any property or information in circumstances in which it was his duty as a fiduciary to acquire it on behalf of the company shall account to the company for such property and for any profit which he may have made from the use of such property or information.

(3) Any transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, such transaction shall have been entered into or ratified on behalf of the company-

(a) by the company's board of directors independent of the promoter; or

(b) by all the members of the company; or

(c) by the company at a general meeting at which neither the promoter nor the holders of any shares in which he is beneficially interested shall vote on the resolution to enter into or ratify that transaction.

(4) No period of limitation shall apply to any proceedings brought by the company to enforce any of its rights under this section but in any such proceedings the court may relieve a promoter in whole or in part and on such terms as it thinks fit from liability here-

under if in all the circumstances, including lapse of time, the court thinks it equitable to do so.

Exercise of company's powers

63. Division of powers between general meeting and board of directors

(1) A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by, or under authority derived from, the members in general meeting or the board of directors.

(2) Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles.

(3) Except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.

(4) Unless the articles shall otherwise provide, the board of directors, when acting within the powers conferred upon them by this Act or the articles, shall not be bound to obey the directions or instructions of the members in general meeting:

Provided that the directors acted in good faith and with due diligence.

(5) Notwithstanding the provisions of subsection (3) of this section, the members in general meeting may-

(a) act in any matter if the members of the board of directors are disqualified or are unable to act because of a deadlock on the board or otherwise;

(b) institute legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so;

(c) ratify or confirm any action taken by the board of directors; or

(d) make recommendations to the board of directors regarding action to be taken by the board.

(6) No alteration of the articles shall invalidate any prior act of the board of directors which would have been valid if that alteration had not been made

72. Pre-incorporation contracts

(1) Any contract or other transaction purporting to be entered into by the company or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it has been in existence at the date of such contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company, the person who purported to act in the name of or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

155. Transmission of shares

(1) In case of the death of a member, the survivor or survivors where the deceased was a joint holder, or the legal personal representative of the deceased where he was a sole holder, shall be the only persons recognised by the

company as having any title to his interest in the shares; but nothing in this section shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

(2) Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may, from time to time, properly be required by the directors and subject as hereafter provided in this section, elect either to be registered himself as holder of the share, or to have some person nominated by him registered as the transferee of the share; but the company shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy, as the case may be.

(3) If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and if he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share.

(4) All the limitations, restrictions and provisions of this Act and the company's articles relating to the rights to transfer and the registration of transfers of share, shall be applicable to any such notice or transfer as mentioned in subsection (3) of this section as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

(5) A person becoming entitled to a share by reason of the death or bankruptcy of the holder, shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, unless the articles otherwise provide, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within 90 days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

254. Restraint of fraudulent persons

(1) Where-

(a) a person is convicted by a High Court of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person-

(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section 506 of this Act; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company, the court shall make an order that that person shall not be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a specified period not exceeding 10 years.

(2) In the foregoing subsection, the High Court and the court, where used in relation to the making of an order against any person by virtue of paragraph (a) of subsection (1) of this section, include the court before which he is

convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind-up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application, the last mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the court having jurisdiction to wind up a company, may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) An order may be made by virtue of paragraph (b) (ii) of subsection (1) of this section, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said paragraph (b) (ii) "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and in respect of each offence, be liable on conviction to a fine of N500 or to imprisonment for a term of not less than six months or more than two years, or both..

542. Act to over-ride memorandum, articles, etc.

(1) Except as otherwise expressly provided in this Act-

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed, by it, or in any resolution passed by the company in general meeting or by its board of directors whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum or articles, agreement or resolution as in paragraph (a) of this subsection shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

(2) Any provision of this Act overriding or interpreting a company's articles as if a re-

enacted provision of the Companies Act, 1968 shall, except as provided by this Act, apply in relation to articles in force at the

commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

[1968 No. 51.]