

INADEQUACIES IN THE LEGAL FRAMEWORK REGULATING INCORPORATED TRUSTEES IN NIGERIA*

Abstract

The sweeping reforms enshrined in the amended CAMA, 2020 have been widely applauded on the premise that it will undoubtedly accelerate economic growth and rapidly promote the ease of doing business in Nigeria. Though this new legislation has been touted due to the many reforms that will boost the ease of doing business in Nigeria, however, many people have heavily condemned some provisions in this extant Act, especially Part F that deals with operations of Incorporated Trustees and in fact have continued to question the adequacy of the legal framework regulating incorporated trustees in Nigeria. This paper which adopted the doctrinal research methodology analyzed the existing legal framework regulating Incorporated Trustees in Nigeria in order to determine the adequacy of its provisions. The paper found out that there are a number of inadequacies in the law in relation to Incorporated Trustees in Nigeria. The inadequacies revolve around the lack of clarity as to what amounts to misconduct or mismanagement. It was also the finding of this paper that while the Act made provision for the appointment of interim managers, it made no attempt to specify the qualifications and the procedure for such appointment by the Corporate Affairs Commission to avoid appointing one who may not have anything in common with the association to manage the affairs of the association. The writer recommended among other things that the issues of Incorporated Trustees should be completely expunged from the CAMA 2020 and place in a distinct legislation that will address the full range of issues affecting Incorporated Trustees in Nigeria. Also, an independent body different from Corporate Affairs Commission should be established for the regulation of Incorporated Trustees in Nigeria because Corporate Affairs Commission as an enforcement mechanism is inadequate having been entrusted with the enforcement of the provisions of the CAMA 2020.

Keywords: Corporate Affairs Commission, CAMA 2020, Inadequacies, Incorporated trustees, Legal Framework, Nigeria.

1. Introduction

Companies and Allied Matters Act, 1990, recently was immensely amended and altered into a new legislation, more suitable for the present –day corporate practice. Several sections and relevant innovations geared towards promoting the ease of doing business in Nigeria were added which did not exist in the repealed Act. Thus, the enactment of Companies and Allied Matters Act, 2020¹ was broadly received with cheers from industry players due to the many reforms that will boost the ease of doing business in Nigeria. The new CAMA was greeted with a lot of accolades by businessmen, legal experts and many top government officials. The rationale for this overwhelming encomium on CAMA 2020 is attributed to the expectation that this new Act will accelerate economic growth and radically advance the ease of doing business in Nigeria.² However, for organizations operating as Incorporated Trustees, such as non-governmental organizations, civil society organizations, community and faith-based groups, more stringent conditions were introduced. The law therefore expanded the powers of the Corporate Affairs Commission³ from registering Incorporated Trustees to include conducting investigations into the affairs of Incorporated Trustees, suspension of trustees, appointment of interim managers and restriction on their financial transactions.⁴ Notwithstanding, the existence of the above legal provisions, the public have continued to question the adequacy of the legal framework regulating Incorporated Trustees in Nigeria. It is against this backdrop that this paper analyses the existing legal framework regulating Incorporated Trustees in Nigeria with a view to determine the adequacy of its provisions and therefore prefer specific reforms that will foster good governance.

2. Nature of Incorporated Trustees

Incorporated Trustees are persons appointed by members of an association as representatives of the association and registered with CAC so that the association will have the protection of the law and be able to enjoy the

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¹ Hereinafter referred to as 'CAMA'.

² J O Akinselure, 'Legal Consequences of the Companies and Allied Matters Act, 2020 on Incorporated Trustees in Nigeria', <<https://aculj.acu.edu.ng/index.php/lj/article/view/45/43>> accessed 22 May, 2023.

³ Hereinafter referred to as 'CAC'.

⁴ Legal Constraints to Operations of Non-Profits in Nigeria under 2020 Companies and Allied Matter Act (CAMA)', <<https://placbeam.com/2021/07/15/legal-constraints-to-operations-of-non-profits-in-nigeria-under-2020-companies-and-allied-matters-act-cama/>> accessed 22 May 2023.

benefits accruing from such registration.⁵ Thus, a party applying for registration of Incorporated Trustees must be made up of one or more trustees appointed by a community of persons bound together by custom, religion, kingship or nationality. Such an application must also be made by association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purposes.⁶ Incorporated Trustees like Companies Limited by Guarantee must not pay or transfer its assets to members save as permitted by CAMA. It is an organization registered under part F of CAMA⁷ and can however, operate without registration but cannot take advantage of corporate identity of the trustees. Moreover, the CAC, by virtue of section 824 of CAMA is empowered to determine the classification of associations to be registered under part F of the CAMA 2020 in accordance with the aims and objects of the association. This is unlike in UK where any institution established for charitable purposes could be registered as Incorporated Trustees.⁸ The income must be applied solely towards the promotion of its objects and not distributable.⁹ In essence, any income it generates must be used to further the objects for which it is set up. Notwithstanding the above, it does not prevent the payment in good faith of reasonable and proper remuneration to an officer or servant of the association in return for any service actually rendered to the association.¹⁰ Incorporated trustees don't pay tax.¹¹ However, profits that are derived from a trade or business carried on by Incorporated Trustees are not exempted from income tax.¹²

3. Effect of Registration of Incorporated Trustees

Incorporated Trustees upon registration, becomes a corporate body by the name described in the certificate and shall have perpetual succession, can sue and be sued, hold and be able to act on any property/interest belonging to the association.¹³ Indeed, the trustees upon registration received a certificate of incorporation which confers upon them a corporate personality. Hence, Incorporated Trustees cannot be personally liable for acts done or omissions made in their capacity as trustees. Registration vests all properties of the association in the trustees even if such was held by another in trust for them and no document has been executed to transfer title to the trustees.¹⁴ Another thing conferred on the trustees by registration is perpetual succession. This means that the death of one or more of the trustees do not affect the validity of any interest or liability held in the offices of the trustees. Incorporated Trustees are therefore different legal entity from its governing body or management.¹⁵ Perhaps, it is only on being registered by the CAC that Incorporated Trustees become a corporate body with the status of a juristic personality capable of suing or being sued. As such, the best evidence in proof of juristic personality is the production of certificate of incorporation issued by the CAC.¹⁶ In essence, it is the name described on the certificate of incorporation that is clothed with juristic personality with power, inter alia to sue and be sued. Thus, it is safe to conclude that it is the trustees of an association that are registered and not the whole association.

⁵P A Ahiaramunnah, *Incorporated Trustees under the Companies and Allied Matters Act, 2020* (Lagos: Princeton & Associate Publishing Co. Ltd, 2022) p 724; 823 (1) CAMA.

⁶*Amasike v Registra General CAC & Anor* (2010) LPELR-456 (SC).

⁷ CAMA 2020.

⁸UK Charities Act 2011, ss 1&2, J Dukeminier and S M Johanson, *Wills, Trusts and Estates* (6th edn, New York: Aspen law & business, 2000) p 894; J O A Akintayo and A A Adewumi, 'Charity Law in Nigeria-Need for a New Paradigm' (2015-2016) 9 *Journal of Private and Business Law*, 71-74.

⁹ CAMA, s 838.

¹⁰*Ibid*, Out of pockets expenses can be paid to members especially for a member going to promote the organization; C E Halliday & G C Okara, Regulation of Incorporated Trustees in Nigeria: The Jurisprudential Arguments, <https://www.researchgate.net/publication/360850038_REGULATION_OF_INCORPORATED_TRUSTEES_IN_NIGERIA_THE_JURISPRUDENTIAL_ARGUMENTS/link/628e6bc3c660ab61f8445981/download> accessed 27 May, 2023.

¹¹ S 19(1) and Paragraph 13 of the Third Schedule of Personal Income Tax Act, Cap P8 LFN 2004 (as amended)

¹²*Ibid*; In *Rev Shodipe & Ors v Federal Board of Inland Revenue Court* (now Federal High Court) (1974) FRCR 35, the Court held that where a charitable institution carries on a profit making business, profits made from such business are taxable.

¹³ CAMA, s 830; *Registered Trustees of the Church of the Lord v Sherriff* (2000) 6933 CCA

¹⁴ CAMA, s 836.

¹⁵*Okatta v Registered trustees* (2007) LPELR-8347 (CA), the Court stated that the law in recognizing its separate and distinct entity vests in it a legal personality which can sue or be sued in that name; see also *Alhaji Mai Ianya Trading and Transport Co Ltd v Veritas Insurance Co Ltd* (1986) 4 NWLR (pt 38) 802; *Fawehinmi vs NBA & Ors (No.2)* (1989) 2 NWLR (pt 105) 558; *Inc'd Trustees of Holy Apostles Church, Ayetoro & Ors v Inc'd Trustees of Oneness Faith of Christ Ministry, Ayetoro & Ors* (2016) LPELR-41368 (CA) (35-41 para.F-E).

¹⁶*Ifedapo Community Bank Ltd v Eternal Order of C & S Church, Saki Branch* (2001) 7 NWLR (Pt 712) 508 &514 para G-H;

¹⁶T Akintoye, 'Incapacitation of Incorporated Trustees and Governance of Churches and NGOs in Nigeria: A Commentary of *Omomobi v. Adeoye*', (2018) 9(2) *The Gravitas Review of Business & Property Law*, 6.

4. Incorporated Trustees under CAMA 2020

CAMA 2020 is the principal legislation regulating Incorporated Trustees in Nigeria. The Act retains most of the provisions of the repealed Act with respect to Incorporated Trustees; however, it gives the CAC greater oversight over Incorporated Trustees, including the power to suspend or remove trustees. Some of the provisions of CAMA 2020 on Incorporated Trustees are:

Suspension of Trustees and Appointment of Interim Managers

Section 839(1) CAMA 2020 provides that the CAC 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 there is or has been any misconduct or mismanagement in the administration of the association; it is necessary or desirable for the purpose of protecting the property of the association; 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 the property coming to the association; public interest; or the affairs of the association are being run fraudulently. This is unlike the repealed CAMA 1990, where the procedure for appointment and removal of trustees of an association must be stated in the constitution¹⁷ and the CAC is only empowered under the repealed CAMA 1990, to bring a petition for the dissolution of an Incorporated Trustees upon the grounds set out in section 608 (2) of the repealed CAMA. There are no explicit or implied provisions in the repealed CAMA 1990 on suspension of trustees and appointment of interim managers by the CAC. However, in the light of the provisions of section 839(1) of the CAMA 2020, the CAC may suspend the trustees of an association and appoint interim managers. The implication is that the CAC can on its own accord suspend the trustees of Incorporated Trustees.

Furthermore, the trustees can be suspended by an order of court upon the petition of the CAC or members consisting one-fifth of the association and the petitioners must present all reasonable evidence as requested by the court in respect of the petition.¹⁸ Upon the hearing of the petition and the appointment of the interim manager, the court with the assistance of the CAC, may make provisions with respect to the functions to be performed by the interim manager or managers appointed by the order.¹⁹ In a similar vein, a court of competent jurisdiction may, upon the petition of the CAC or members of the association order or suspend any person, officer, agent or employee of the association from office or employment, provided that such suspension does not exceed 12 months from the date of the order or suspension.²⁰ The provisions of section 839 (1) have led to some misgivings as to the purport of the law. It has been contended that a comparative reading and scrutiny of subsections 839(1) and 839(2) of CAMA will disclose that the power of suspension is not unilaterally exercisable by the CAC. This line of thinking is based on the provision under subsection (2) of section 839 to the effect that trustees 'shall' only be suspended under an order of court made after a petition by the CAC itself or members of the association amounting to one fifth of its membership. While this has consequently led to the assumption in a lot of quarters that a court order will be required in all circumstances whereby the powers of suspension, removal and replacement as given under the Act are sought to be exercised, the writer is therefore of the view that a closer look at the actual wordings of section 839 of CAMA connotes that this is not definitely the case and that CAC is also empowered to suspend or remove trustees unilateral and without recourse to the court under section 839(7) CAMA.²¹

Thus, the provision of section 839 (7) empowered the CAC to unilaterally suspend or remove any trustee found to have been compliant in misconduct or mismanagement. In essence, CAC by virtue of section 839(7) of CAMA, 2020 may suspend or remove trustee singly based upon enquiry into the affairs of the association alone without recourse to any court order. Perhaps, the court is empowered by law to order the replacement of a trustee removed by the CAC and the entirety of section 839 CAMA can only be exercised with the approval of the Minister of trade.²² Notwithstanding the above, the power could make the CAC extremely powerful and could lead to abuse of power by removing or suspending trustees abruptly and arbitrarily. This therefore does

¹⁷ 1990 CAMA, s 593.

¹⁸ CAMA, s 839(2).

¹⁹ *Ibid*, s 839 (3) ; such as 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 any power or duty specified to be exercisable or discharged by the interim manager or managers to the exclusion of trustees.

²⁰ *Ibid*, s 839 (6) (a).

²¹ Subsection 839 (7) CAMA provides to the effect that where at any time after the CAC 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 any trustee who has been responsible for or privy to the misconduct or mismanagement or whose conduct contributed to or facilitated it; or by order of the court, establish a scheme for the administration of the association.

²² CAMA, s 839 (11).

not augur well for security of trustees' tenures. ²³Corollary to the foregoing consequences of section 839 of CAMA, 2020 is that it could breed room for unknown persons to pollute the doctrine and core values of an association. The writer is therefore of the view that the section is the most concerning because it could be seen as providing an avenue for government interference in the activities of association as well as, interference with the constitutional right of freedom of association.

Notification on Dormant Accounts

Section 842(1) of CAMA 2020, requires banks to notify CAC about the existence of dormant accounts belonging to Incorporated Trustees of a particular association irrespective of any duty of restriction on disclosure of information by the Bank ²⁴ By virtue of this provision, commercial banks are now mandated to notify the CAC where an account held by Incorporated Trustees with its institution becomes dormant. Upon notification, CAC may request the association to provide evidence of its activities and if the association fails to respond satisfactorily within 15 days, the CAC may dissolve the association and direct the bank to transfer the amount standing to the credit of the relevant association to such other association as may be specified by the CAC.²⁵ Moreover, after the bank has given notice to the CAC under section 842, the dormant account shall not be reactivated without first notifying the CAC.²⁶

Thus, it is the duty and responsibility of the bank to classify an account as dormant and not CAC by virtue of the provisions of section 842 of the CAMA 2020. Where the account(s) of an association is dormant, the bank has to notify the CAC in accordance with the provision of the CAMA 2020 and it is only after reasonable inquiry has been made by the CAC that it can take the necessary action as stated in the Act. Furthermore, by virtue of Section 843(a) and (b) of CAMA, where before the transfer is made, it appears to the bank that the account in question is no longer dormant, it has a duty to immediately notify the CAC that the account has ceased to be dormant and where CAC is satisfied that the account of the Incorporated Trustees is not dormant, it shall revoke any direction so made and for this purpose, an account is deemed to be dormant if no transaction other than a transaction consisting of a payment into the account or a transaction initiated by the bank for a period of five years immediately preceding the date a report is made to CAC concerning the account.²⁷ Also, a bank for purposes of dormant accounts of an association means a deposit bank of Nigeria or such other persons or organizations who may lawfully accept deposit and who has been so designated for purposes of this section by the minister.²⁸ The writer is therefore of the view that the provisions on dormancy as it affects Incorporated Trustees appear slightly different as defined under the relevant banking regulation in that it includes accounts that receive payments where traditionally it only included accounts without transactions of any kind and thus, appears to clamp down on the use of associations for money laundering or stashing of cash.

Perhaps, for this power of CAC to be triggered, the consent of the Minister of Trade and Investment must first be obtained and the Incorporated Trustees must have also been dissolved in accordance with section 850 CAMA. Section 850(3) of CAMA therefore provides that at the hearing of the petition for dissolution, all persons whose interests or rights may, in the opinion of the Court, be affected by the dissolution shall be put on notice. As such, the Incorporated Trustees have ample time to enter appearance in Court and challenge the petition for its dissolution. Be that as it may, the provision of section 842 CAMA has been criticized on the ground that it is a roundabout way of mandating funds disclosure as sought under clauses 25(c) and 29(1) of the NGO Regulation Bill and has also been argued that the provision is adopted to respond to the allegation that accounts of associations have been used to finance terrorist activities and has therefore been reinforced by the definition of dormancy in that part of the Act, which says a dormant account is one that only receives payment, when the traditional understanding is that an account is dormant when there is no transaction on the account. It has also be argued that this provision serves as a means of clamping down on the use of associations for money laundering or stashing of cash.²⁹ The provisions of section 842 CAMA 2020 is similar to the UK Charities Act 2011 where the Charities Commission can order the transfer of funds from a dormant account to another charity

²³ Akinselure, (n2).

²⁴Dormancy, as defined under relevant banking regulations and includes cases where no transactions other than payments into the account or bank charges have been made within 5 years; s 844 (1) also provides to the effect that 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 the Act.

²⁵ CAMA, s 842.

²⁶ Ibid, s 843.

²⁷ CAMA, s 844 (2).

²⁸ Ibid, s 844.

²⁹Policy and Legal Advocacy Centre, *Analysing the Regulation of Non-Profits, Registered as Incorporated Trustees under Part F of the New CAMA*, <<https://placng.org/i/wp-content/uploads/2020/09/CAMA-Analysis.pdf>> accessed 28/7/23

and has also extended institutions who have an onus to report to include persons who have permission to accept deposits under the Financial Services and Markets Act 2000 or a European Economic Area (EEA) firm with the ability to accept deposits.³⁰ It equally provided that where an account ceases to be dormant before the transfer, the institution must notify the Commission of the circumstances.³¹

Dissolution of Incorporated Trustees

Section 850 of the Act provides for the dissolution of an Incorporated Trustees by the Court upon the application of the governing board, one or more trustees, the members of the association constituting at least fifty percent of the total membership of the association or the CAC itself. Hence, any of the four aforementioned categories can validly apply for the dissolution of Incorporated Trustees. Furthermore, the grounds for the dissolution stipulated in the Act include- where the aims and objectives of the association have been fully realized or where such aims and objectives have turned illegal; where the association's period of existence has expired; where it is just and equitable to do so; or where the certificate of incorporation has been withdrawn, cancelled or revoked by the CAC. There shall, in addition, be a notice to members who may be affected by such dissolution. Also, the extra property remaining after the satisfaction of assets and liabilities shall either be transferred to associations with similar objects and not to any trustee or member.³² From the above, one of the grounds for the dissolution of Incorporated Trustees include where the certificate of its incorporation has been withdrawn, cancelled or revoked by CAC. However, there are no clearly stated grounds for the withdrawal, cancellation or revocation of the certificate of incorporation in the first place to warrant dissolution. This is unlike the case of a company where section 41 (7) of CAMA gives the CAC the power to withdraw, cancel or revoke its certificate of incorporation. According to the Act, a withdrawal, cancellation or revocation of a certificate of incorporation of a company may be carried out if it is discovered that such certificate was procured fraudulently, improperly or unlawfully. Moreover, a better provision can be seen in the Kenya Public Benefits Organizations Act of 2013 which provides that the Public Benefit Organizations Regulatory Authority may cancel a certificate of registration where the Public Benefit Organization has violated the provisions of the Act; is carrying out activities contrary to the Constitution and where there is substantial and credible evidence that the organization has ceased to exist.³³ The Act also set out the procedure for such cancellation which involves the issuance of a default notice to the Public Benefit Organization and upon the receipt of the default notice, the organization may make representations in writing to the Authority regarding remedy or rectification of the default or violation of the Act. The organization is given not less than 15 days to comply, where the organization fails to remedy or rectify the violation, the Authority may proceed to fine, suspend or cancel the certificate of registration. The organization can within 60 days apply for review of the decision.³⁴ In addition, the Act further stipulates that members of an association are to identify an institution for transfer of its property upon dissolution or winding up³⁵ and if the receiving institution is not identified, the property would be transferred to some charitable object.³⁶ However, the Kenyan Public Benefit Organizations Act did not define 'charitable object'. Guidance can therefore be taken from legislation from other jurisdictions like Australian where the law defines charitable purpose as covering any purpose that advances health, education, social or public welfare, religion, culture, human rights and many more.³⁷

Annual Returns

Section 845 of CAMA 2020 mandates the submission of bi-annual statement of affairs to CAC, failure to do so attract a daily penalty for each trustee. Aside from the trustees' duty to submit bi-annual statement of affairs, the trustees are also required to ensure that accounting records and statement of accounts are properly kept.³⁸ In essence, the trustees of the association shall ensure that the records of daily activities of the Incorporated Trustees detailing the daily expenditures and receipts are kept such that the accurate financial position can be discerned at an instant showing assets and liabilities. These accounting records of the association must be preserved by the association for six years from the date on which they were made.³⁹ The writer is of the view that this provision will promote accountability and probity of trustees in any association. Thus, CAMA 2020 therefore provides for accountability of Incorporated Trustees in the form of annual returns. It specifically

³⁰ UK Charities Act 2011, s 109(3).

³¹ *Ibid*, s 108.

³² CAMA, s 850 (4).

³³ Kenya Public Benefits Organizations Act No 18 of 2013, s 19.

³⁴ Kenya Public Benefits Organizations Act No 18 of 2013, s 18.

³⁵ CAMA, s 850(4)

³⁶ *Ibid*, s 850(5).

³⁷ S 592 (2) of the repealed 1990 CAMA.

³⁸ CAMA, s 846.

³⁹ *Ibid*; S. 847

provides who exactly is expected to submit a bi-annual statement of affairs of the association to CAC.⁴⁰ Indeed, the mandate of submission of bi-annual statement of affairs of an association is placed upon the trustees. CAMA 2020 therefore explicitly provided for the persons to be held accountable for the reporting obligation without leaving it up to the association own internal mechanisms to allocate this responsibility. The writer is therefore of the view that the provision on specificity with respect to allocation of responsibility on the submission of bi-annual statement will aid in holding an individual responsible for non-accountability.

5. Inadequacies of CAMA, 2020 with Respect to Incorporated Trustees

The suspension of trustees provided under CAMA 2020 is predicated upon reasonable belief without any means of given the trustees in question the opportunity to be fairly heard.⁴¹ CAC is not a court of law and has no power to determine whether an association is guilty of the said allegation which the commission has suo motu raised. This also defeats the presumption of innocence as provided in section 36(5) of the 1999 constitution and the very tenet of fair hearing. In Australian for instance, although the Charities and Not-for-Profits Commission Act 2012 provides for the suspension of Incorporated Trustees, the law provides for the Commissioner to issue a 'show cause' reasonable notice to the trustees to be suspended, giving them an opportunity to make representations stating or showing why they should not be suspended accordingly. The law provides in Division 100, particularly in 100-10 (4) that before a responsible entity (trustee) can be suspended, the Commissioner must give a written notice⁴² to the registered entity and the show cause notice must (a) state the grounds on which the Commissioner proposes to suspend the responsible entity; and (b) invite the registered entity to give the Commissioner, within 28 days after the day the notice is given, a written statement showing cause why the Commissioner should not suspend the responsible entity. This is also similar in UK where the Charities Commission may issue a warning to a charity trustee or trustee for a charity who it considers has committed a breach of trust or duty or other misconduct or mismanagement in that capacity, or to a charity in connection with which it considers a breach of trust or duty or other misconduct or mismanagement has been committed.⁴³ However, before the Charities Commission can issue a warning, the Commission must give notice of its intention to do so to the charity and to each charity trustee or trustee for the charity.⁴⁴ Thus, in cases where the commission has concluded that there has been a breach or mismanagement and as a result intends to issue a warning, it must give statutory notice of its intention and give each of the trustees in the UK and the charity the opportunity to make representations first. Indeed, the charity trustee or trustee need to be aware of the commission's concerns and will have the opportunity to respond before the Commission decides to proceed with issuing or publishing the official warning.

Moreover, section, 839 (7) CAMA 2020 provides for the suspension or removal of the trustees based upon enquiry into the affairs of the said association but there is no yardstick as to the nature of the enquiry which may lead to the suspension or removal of the trustees, in order to determine whether such enquiry may suffice as fair hearing. Again, section 839(1) recognizes the appointment of interim manager. However, as expected, the CAMA 2020 is silent as to the qualification and procedure for such appointment by the CAC to avoid appointing one who may not have anything in common with the association to manage the affairs of the association. Thus, the provision of section 839 does not provide for the institution of an inquiry; the issuance of warning or notification of intention to suspend trustees by the CAC before exercising the power to suspend trustees of association and appoint interim manager. As such, the power to suspend trustees vested on the CAC was made without provision of enough safeguard in the Act to prevent arbitrary exercise of such powers. The writer is of the view that though the exercise of the power by the CAC is subject to that of the Minister, the basis on which the Minister may approve or reject such exercise of power is clearly absent in the Act.

In addition, section 839(1) confers the power to suspend trustees on the CAC; subsection (2) of section 839 CAMA equally confers the same power of suspension on the court. The provision of section 839(1) creates problems in itself when juxtaposed with the provisions of section 839 (2) & (6) (a) to the effect that trustees shall only be suspended upon order of court upon the petition of the CAC or members of the association. The writer is therefore of the view that the Act should have been clearer on whether a court order is needed to suspend or remove the trustees in all circumstances or is the CAC also allowed to unilaterally do so in cases involving misconduct or mismanagement of the association. It is therefore confusing what the intention of the Act regarding suspension of trustees is in this section, and therefore it is unclear on whose authority the suspension will be done. There is also absence of the duration of suspension aside the seemingly duplicity of the powers of suspension conferred on both the CAC and the Court, subsection (1) and (7) which jointly provided

⁴⁰ CAMA, 2020, S. 845(1)

⁴¹ *audi alteram partem*.

⁴² Show cause notice.

⁴³ UK Charities Act, 2011, s 75A.

⁴⁴ *Ibid*, s 75A(3).

for the suspension or removal of a trustee, never made any provision for the duration of the suspension period. Perhaps, the duration on which the suspension order of the Charities Commission in UK is to last is limited to 12 months while that of the CAC has no time duration. It therefore presupposes that the suspension order by the CAC, may be indefinite, either shorter or longer than 12 months than may be imposed by the Court. The writer therefore argued that stating the suspension period or process that will determine the duration of suspension is necessary. For instance, section 839 (6) (a) of the Act provides to the effect that a Court of competent jurisdiction may, upon the petition of the CAC or members of the association order or suspend any person, officer, agent or employee of the association from office or employment, provided that such suspension does not exceed 12 months from the date of the order or suspension. It is therefore noteworthy that without a specific period of suspension provided by the Act, abuse and arbitrariness is inevitable as CAC can suspend the trustees of an association indefinitely. Indeed, where a trustee is removed pursuant to subsection (7), subsection (8) provides for a replacement of the trustee so removed by an order of the court. It is again unfortunate that no duration is provided for within which such a replacement is made or the period within which to commence the process of replacement.

Again, although the provisions of section 842 (2) specified a period of fifteen (15) days for the Association to provide evidence of its activities with respect to notification on dormant account of Incorporated Trustees of a particular association, the Act does not specify the medium through which the Association will be notified. Perhaps, given peculiarities of efficiencies of working of institutions, the 15days period provided in section 842(2) CAMA is rather slim and should be extended to 30 or 45 days. Furthermore, by virtue of Section 843(a) and (b) of the Act, where before the transfer is made, it appears to the bank that the account in question is no longer dormant, it has a duty to immediately notify the CAC that the account has ceased to be dormant. Also, where the CAC is satisfied that the account of Incorporated Trustees is not dormant, it shall revoke any direction so made. The pertinent question is what happens in the event that the funds have already been transferred and it appears that CAC had erroneously made the order? Or where the bank fails to notify the CAC that the account is no longer dormant and the transfer is effected in accordance with the direction? The Act therefore did not envisage any of the above scenarios or provide for a solution where any such cases arise. As such, there are no provisions relating to a reversal of the transfer where same was made in error or prematurely done.

Moreover, CAMA 2020 added a new ground for dissolution of an association by the Court to include withdrawal, cancellation or revocation of certificate of registration by the CAC⁴⁵ however, there is no provision that details how or why the CAC would withdraw, cancel or revoke a certificate of registration of an association in the first place to warrant a dissolution. Lastly, this measure could be subject to abuse of power by persons who do not want certain associations to continue operations and could become politicised. Guidance can therefore be taken from legislation from other jurisdictions like Kenya where the Kenya Public Benefits Organizations Act of 2013 made provisions on the grounds upon which a certificate of registration of Public Benefit Organization may be cancelled.⁴⁶ In addition, the new law stipulates that members of an association are to identify an institution for transfer of its property upon dissolution or winding up⁴⁷ and if the receiving institution is not identified, the property would be transferred to some 'charitable object'.⁴⁸ However, a definition of charitable object is not provided in the CAMA. Guidance can also be taken from legislation from other jurisdictions like Australia where the law defines charitable purpose as covering any purpose that advances health, education, social or public welfare, religion, culture, human rights and many more.⁴⁹

6. Conclusion and Recommendations

CAMA 2020 have expanded the powers of the CAC from registering Incorporated Trustees to now include conducting investigations into their affairs, suspension of trustees, appointment of interim managers and restriction on their financial transactions. However, the positive objectives intended by the Act are defeated by the inadequate provisions of the Act with respect to the regulation of Incorporated Trustees in Nigeria. To promote a consistent regulatory approach, the issue of Incorporated Trustees should be completely expunged from the CAMA 2020 and placed in a distinct legislation that will address the full range of issues affecting Incorporated Trustees in Nigeria. Also, an independent body different from CAC should be established for the regulation of Incorporated Trustees in Nigeria because CAC as an enforcement mechanism is inadequate having been entrusted with the enforcement of the provisions of the CAMA 2020. There is also the need to amend

⁴⁵ CAMA, s 850(1)(e).

⁴⁶Section 19 Kenya Public Benefits Organizations Act No 18 of 2013 provides that the Commissioner may cancel a certificate of registration where the PBO has violated the provisions of the Act, is carrying out activities contrary to the Constitution and where there is substantial and credible evidence that the organization has ceased to exist.

⁴⁷ Ibid, s 850(4).

⁴⁸ Ibid, s 850 (5).

⁴⁹ Australian Charities and Not-for-profits Commission Act 2012.

section 839 (1) and (7) of the Act to remove the power of the CAC to suspend or remove the trustees of an association and place such powers solely on the Court. This will remove the likely conflict in the powers of suspension. Moreover, in order to retain and sustain the freedom of association guaranteed in the Nigeria's Constitution, it is also necessary that petition for suspension or removal of trustees should only be made by one-fifth of the members of an association.