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# LEGAL ANALYSIS OF THE COMPANIES AND ALLIED MATTERS ACT 2020

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Policy Briefing Paper 015



**SPACES FOR CHANGE | S4C**

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## INTRODUCTION

On August 7, 2020, President Muhammadu Buhari assented to the amendments to the Companies and Allied Matters Act (CAMA) recently passed by the National Assembly. The presidential assent repealed and replaced the extant Companies and Allied Matters Act, 1990, after 30 years, introducing new legal provisions geared toward strengthening corporate governance processes in Nigeria. Following its passage into law, numerous stakeholders, especially from the religious, non-profit and civil society communities have expressed deep concerns about the revisions, alleging that several provisions hold enormous potential to restrict the civic space and limit constitutionally-protected freedoms. This policy brief presents a detailed analysis of the new law, highlighting key concerns in the bill that affect non-profit entities, while proffering recommendations to inform future legislative reviews.

## MAJOR OBSERVATIONS

1. CAMA 2020 has positive and non-positive sides. On the positive side, certain provisions of the new law can help hold associations accountable and increase internal controls, boosting stakeholder confidence and investments in the non-profit sector.
2. On the other side, CAMA 2020 establishes a new form of eminent domain. The recently-added provisions appear to be fixated on enlarging governmental powers to suspend and remove the trustees of an association, thereby taking over the administration or management the association's property and bank credits. This is deeply worrying.
3. A number of the new CAMA provisions are punitive in nature. They confer excessive powers on the government to overly restrict or interfere with NPO operations.
4. The Commission's powers to unilaterally disrupt and displace the expressed intentions and aspirations of the members relegates the constitution or memorandum of an association, rendering it nugatory.
5. By interfering with the rights of associations to associate and self-govern freely, Sections 838, 839 and 842 of CAMA 2020 contradict constitutionally-protected freedoms, particularly the freedom of association.
6. The new functions of the Corporate Affairs Commission (the Commission) duplicates the roles of existing regulatory agencies charged with uncovering and punishing financial crimes such as the Special Control Unit Against Money Laundering (SCUML) and the Economic and Financial Crimes Commission ("EFCC").
7. Compliance with the new rules will be onerous, time-consuming and possibly ineffective.

## BETWEEN CAMA 1990 AND CAMA 2020: WHAT CHANGED?

1. **New parts:** The provisions of PART C of CAMA 1990 relating to the formation and governance of incorporated trustees are now contained in PART F of CAMA 2020.
2. **Number of trustees:** CAMA 1990 allows one or more trustees appointed by any community of persons bound together by custom, religion, kingship or nationality or by anybody or association of persons to apply to the Commission to register a corporate body to carry out any religious, educational literary, scientific, social, development, cultural, sporting or charitable purpose. CAMA 2020 requires two or more trustees to



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carry out this purpose. The implication is that one person can no longer act as the sole trustee of a non-profit entity.

3. **Classification of associations:** CAMA 1990 makes no provision for the classification of associations. CAMA 2020 (S. 824) authorises the Commission to determine the classification of associations to be registered. The classification requirement ostensibly appears to have stemmed from the longstanding advocacy for a proper classification of all the various types of non-profit organisations (NPOs) operating in Nigeria in relation to their risk exposure. SPACES FOR CHANGE has led the advocacy [disputing the official classification of NPOs as designated non-financial institutions \(DNFIs\)](#). As a result of this classification, regulators have not adopted a targeted approach in the regulation of NPOs as the same set of stringent rules and reporting requirements are applied to diverse organizations with different objectives, organizational structures, sizes, funding streams and risk exposure levels, just because they share a non-profit outlook in common.
4. **New grounds for the dissolution of associations:** CAMA 1990 (S.691(2)) lists four grounds for the dissolution of corporate bodies formed under Part C. They include: (a) the aims and objects for which it was established have been fully realised; (b) the body corporate is formed to exist for a specified period and that period has expired; (c) that all the aims and objects of the association have become illegal or contrary to public policy; and (d) that it is just and equitable in all the circumstances that the body corporate be dissolved. CAMA 2020 (S. 850) lists an additional ground for dissolution: where the certificate had been revoked, cancelled or withdrawn by the Commission. An association with dormant bank accounts or that cannot be located after the Commission had made reasonable enquiries may also be dissolved.
5. **Reporting obligations:** CAMA 1990 requires trustees to file annual returns to the Commission, not earlier than 30th June or later than 31st December each year, detailing 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. Under CAMA 2020, trustees are required to submit a bi-annual statement of affairs of the association, and keep accounting records that sufficiently explain their transactions and disclose their financial position. The accounting records are to be preserved for six years.

## CAMA 2020: WHAT'S NEW?

The amended CAMA law of 2020 introduced a number of legal provisions focusing on the governance of incorporated trustees formed pursuant to PART F. They include:

1. **Related associations:** The Commission may direct that an association be treated as a part of an already registered association. Any two or more associations having the same trustees may be treated as a single association. The Commission is empowered to merge two or more associations with similar aims and objects (S. 849)
2. **Suspension of trustees, appointment of interim manager** (S. 839): The new CAMA 2020 vests the Commission and the courts with the power to suspend the trustees of an association and appoint interim manager(s) to take over the administration of the body. There are three grounds for ordering the suspension of trustees:
  - where there are reasonable grounds to believe that there has been misconduct or mismanagement in the administration of the association. Misconduct extends to employment for remuneration or reward or persons acting in the affairs of the association, and other administrative purposes, of sums which are excessive in relation to the property of the association.
  - it is necessary, or in the public interest, to protect the property of the association
  - the affairs of the association are being run fraudulently



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Sequel to the above grounds, the trustees may be suspended by an order of court based on a petition brought by the Commission or one-fifth of members of the association. The petitioners are required to present reasonable evidence to back up their claims.

3. **Duties of an interim manager:** The court, upon hearing the petition, may appoint an interim manager, and with the assistance of the Commission, specify functions the managers may undertake which include:
  - taking on the powers and duties of the trustees of the association
  - carrying out a specified duty exercisable only by the interim managers to the exclusion of the trustees. The managers will be supervised by the Commission
  - The Commission is also authorised to make regulations in respect of the powers, functions and remuneration of the interim managers, including their reporting obligations
4. **Suspension of employees, officers, agents of the association:** In addition to the trustees of an association, the court, upon the petition of the Commission or members of the association, may also suspend any officer, agent or employee of an association from office, for a period not longer than 12 months.
5. **Orders the courts can make (S.839 (6)):** Acting on a petition brought by either the Commission or members of the association, a court of competent jurisdiction may make the following orders:
  - appoint additional trustees as it considers necessary for the proper administration of the association
  - vest the association's property in the hands of an official custodian
  - require persons to whom the property is vested to transfer it to the official custodian
  - order any person who holds the property of the association not to part with it, without the court's approval
  - order debtors to discharge their liabilities in an interest-yielding account held by the Commission for the benefit of the association
  - restrict the association's transactions or structure of payments that can be made into the accounts
  - appoint interim managers to act as receivers of the properties of the association
6. **Removal of trustees (S. 839(7)):** Following the establishment of guilt of any trustee(s) based on the petition brought either the Commission or members of the association, the court may order the removal of a trustee or establish a scheme for the administration of the association.
7. **Dormant bank accounts (S. 842):** Banks are required to report to the Commission of any dormant accounts of a registered association. Upon receiving the notice, the Commission may require the association to provide evidence of their activities. Where they fail to provide satisfactory information within 15 days, the Commission may dissolve the association. Where the association is so dissolved, the Commission may require the bank to transfer the amount standing to their credit to another or other associations as may be directed. The receiving association shall by a written memorandum, indicate its willingness to accept such transfers.
  - **Associations that cannot be located:** The sections relating to dormancy also applies to associations that cannot be traced after making reasonable enquiries.
  - Banks cannot reactivate the bank accounts without notifying the Commission.
8. **Powers of the minister:** The Commission can only exercise its powers to suspend or remove a trustee with the approval of the minister charged with responsibility for matters relating to trade. Ministerial approval is also required for dealing with the association's funds in a dormant bank account.



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9. **Administrative committees (S. 851):** The Commission is empowered to establish an administrative committee, comprising the Registrar-General and five representatives from the operational departments of the Commission not below the level of a director and a representative of the Federal Ministry of Industry, Trade and Investment, and other persons to undertake the following:
- provide persons alleged to have contravened the Act the opportunity of being heard
  - resolve dispute of grievances arising from the operations of the Act
  - impose penalties for the contravention of the Act. The sanctions that may be imposed by the administrative committee include the revocation or suspension of registration, recommendation for criminal prosecution, and so forth. Aggrieved parties dissatisfied with the decisions of the committee may appeal to the Federal High Court for legal redress.
10. **Change of name (S. 856):** The Commission reserves the right to direct an incorporated trustee to change its name if appears that misleading information has been given for the purpose for forming the association, or is misleading as to the nature of its activities.

## KEY CONCERNS IN THE REVISED CAMA 2020

**Excessive Focus on Properties Belonging to Associations:** The excessive fixation on sacking an association's trustees and taking over the administration or management of an association's property and bank credits is deeply worrying. The entirety of S. 839 (6) represents a new form of eminent domain. Empowering the Commission to vest the association's property in the hands of an official custodian, or order debtors to discharge their liabilities in an interest-yielding account held by the Commission for the benefit of the association, and to restrict the association's transactions, essentially take away property rights just as much as an eminent domain does. The only difference is that the CAMA provisions allow the government, through the Commission, to evade the just compensation requirement through the trick of appointing interim managers. Such an arrangement "would pervert the constitutional provision . . . and make it an authority for invasion of private right under the pretext of the public good" (Goldwater Institute 2016).

**Excessive Interference in the Activities of Associations:** A number of provisions in CAMA 2020 are punitive in nature and confer excessive powers on the government to overly restrict or interfere with NPO operations in the country. There are no provisions enabling associations to use their internal controls to take corrective actions when their activities go off track, denying registered associations the opportunity to use their internal mechanisms to self-correct or redress any perceived or actual wrongs. External intervention should only be initiated as a last resort where internal mechanisms have been inefficient in dealing with corporate governance issues. Also, most associations have a minimum of five trustees, three or four trustees can effectively administer the organization if one or more trustees(s) is removed, obviating the need to impose interim managers on an association.

Under the new CAMA, the Commission may dissolve an association with dormant bank accounts and transfer the amount standing to their credit to another or other associations. This provision interferes with the rights of members of an association to freely dispose of their assets upon dissolution. It also changes the rules that govern how owners can use or dispose of their property. In a long list of decided cases, Nigerian courts have frowned at such forceful takeovers of property, including the practice of taking over private property and handing it over to another. Accordingly, the courts have handed out various verdicts protecting property owners from such government takings. In *Lawson vs Ajibulu* ((1991) 6 NWLR (pt 195) 44), the Supreme Court held that compulsory acquisitions must primarily be made to fulfil the legitimate ends of government and not directly or indirectly for the sole and personal benefit of any individual or group of



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persons with certain vested interests which either by accident or design tally with the purpose of government. The Court further affirmed that the government's power of eminent domain for an overriding public interest does not allow for the revocation of an individual's interest in land and granting same to another for a private purpose.

**Relegation of the Association's Constitution:** The constitution of an association espouses the objects, rules, regulations and bye-laws for internal administration and management of the company. So important are the objects of the association that the 1990 CAMA (S.680) as well as the 2020 CAMA (S.832) require that any alteration to the objects of an association must be effected by special resolution. The Commission will have the power to override the terms and conditions espoused in the memorandum or constitution of an association, which represents the collective agreement of the members for the running of the association. These registered objects are toothless and relegated where the Commission can unilaterally discard them (in the public interest) and take over the affairs of an association, including imposing new trustees and managers, without the consent of the members of the association.

The latest regulatory arrangements under the new CAMA displaces the expressed intentions and aspirations of the members, and foists new governance structures on an association, thereby violating their constitutional rights to free association and assembly. S. 823 of CAMA 2020 clearly recognises that trustees are appointed by community of persons bound together by custom, religion, kingship or nationality or by association of persons established for any religious, educational literary, scientific, social, development, cultural, sporting or charitable purpose. Foisting interim managers and official custodians who do not share the same values and ideals with the members of an association, forces unlike minds to come together to run the affairs of the body amid glaring disparities in their vision, cultural perceptions, ideas, and common goals.

**Inconsistency with Constitutional Freedoms:** The freedom of association is an essential determinant of civic space as it guarantees the right of individuals to form, join and participate in associations, groups, movements and civil society organisations. The European Center for Non-profit Law (ECNL) has stated that **'any restriction that constitutes severe restriction of the freedom of association must be delivered by the court of law, to guarantee due process and level of decision-making that ensures fair and equal treatment including relevant procedural safeguards. CAMA 2020 Section 839(1) provisions do not meet the international obligations and standards of due process, as they infringe upon the freedom of association and restrict directly its operations by a discretion decision of the government body (the Commission). Any such decision should be a part of the judicial process because it constitutes a sanction, in its legal nature, towards the association and its governance and management structures. It also infringes on the independence of the association to choose their own governing and management affairs independently.**

By interfering with the rights of associations to associate and self-govern freely, Sections 838, 839 and 842 of CAMA 2020 contradict constitutionally-protected freedoms, especially the freedom of association. According to ECNL, **'these provisions restrict the freedom of association because they infringe on the ability of association to freely determine their self-governing and management structures and bodies. Such provisions do not fully comply with standards of fulfilling the legitimate aim nor standards of proportionality and necessity. Ambiguous formulations included in the provision, such as "reasonably believes", "deem it necessary or desirable", "public interest" cannot fall under determination of the legitimate aim as they are too vague and overbroad. How will the Commission members estimate if the trustee suspension is desirable for the purpose of public interest? Moreover, "any misconduct or mismanagement of association" by a**



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trustee does not constitute eligible legitimate aim to restrict freedom of association by suspending them.

Secondly, these provisions represent a sanction (suspension or removal of the trustees) for conduct of trustees that has not been proven by appropriate legal burden of proof but is privy to the discretion and estimate of the Commission members. Such provisions and effective sanctions of suspension or removal do not comply with the standards of proportionality nor necessity in a democratic society, as they represent very high level of repression towards the association's governance structure. A lengthy suspension—*of up to 12 months, and the imposition of total strangers as interim managers*—would effectively lead to a freezing of the operations of an association, resulting in an over-reaching sanction. There should be more proportionate action towards the trustees of the association before the (indefinite) suspension or removal from position, or a graduality that includes different actions for a different level of the gravity of the offence, which must include a legally supported burden of proof for the trustee conduct.

Furthermore, sections 838, 839 and 842 of CAMA 2020 are inconsistent with 43 and 44 of the 1999 Nigerian Constitution which guarantees the right to acquire and own property and to freely use and enjoy such property **without interference**. Section 44 in particular, provides that *'no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law that, among other things:*

- (a) Requires the prompt payment of compensation thereof and*
- (b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.*

The combined force of Sections 43 and 44 of the Nigerian Constitution ensure the sanctity of all property, both movable and immovable, by prohibiting the taking of such property without cover of law, compensation, and access to the courts. The protections offered by Section 44 of the Constitution are broad, covering all types of property and forms of interest. As such, these protections extend not only to land, but also to immovable property, such as cash in banks, housing, and to moveable property, including office furniture and other items. Consequently, forced takeovers envisaged in the new CAMA *prima facie* violate the constitutional right to property, regardless of whether or not there has been misconduct or mismanagement in the administration of the association.

**Duplication of Roles and Regulatory Overlap:** The Commission's power to investigate fraud, misconduct and mismanagement of an association, suspend the trustees of an association and appoint interim manager(s) to take over the administration of the body, are quasi-judicial responsibilities. These functions duplicate the roles of existing regulatory agencies charged with uncovering and punishing financial crimes such as the Special Control Unit Against Money Laundering and the Economic and Financial Crimes Commission ("EFCC"), established under the Economic and Financial Crimes Commission (Establishment) Act, 2004. The functions of the EFCC includes the investigation of all financial crimes including money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.; and to enforce any



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other law or regulations relating to economic and financial crimes, including the Criminal and Penal Codes.

Empowering the CAC to petition the courts to establish the guilt of any trustee(s) on account of fraud or misconduct, and order the removal of trustees on account of financial fraud, overlaps with the regulatory functions of the EFCC. More telling, all the new legal additions to the CAMA law create the potential for regulatory capture. When that happens, the Commission could hide under the cloak of omnibus clauses like 'public interest' to target particular organizations and divert their assets to other favored associations.

**Compliance Would be Onerous, Time-Consuming and Possibly Ineffective:** In addition to the regulatory overlap, the duplicity of regulatory functions shall result in multiple reporting obligations to different entities. Increased reporting to multiple agencies means a higher workload for registered associations and non-profits in particular, requiring additional resources to ensure daily operations match regulations correctly. For instance, NPOs currently file annual returns to the Commission where they submit financial statements detailing inflows and spending within a fiscal year, among other information. Under the new CAMA 2020, they are now required to also file bi-annual statement of affairs of the association, in addition to preserving their accounting records for six years.

More detailed particulars of the same set of transactions are filed with SCUML and the Nigerian Financial Intelligence Unit (NFIU) on a weekly or monthly basis depending on whether they are (cash transaction reports) CTRs, suspicious transaction reports (STRs) etc as the case may be. NPOs also pay and file personal income or withholding tax remittances to the state or Federal Inland Revenue Service on a monthly basis as the case may be. NPOs interface with commercial banks regularly where they are required to furnish regular information regarding inflows and outflows transacted on their accounts. SCUML conducts periodic onsite and offsite inspection of NPOs, and this responsibility is also shared with NFIU. For many entities, especially the smaller non-profits, compliance with the plethora of reporting obligations to multiple entities can be burdensome as considerable time and resources are expended on satisfying legal requirements than on their actual humanitarian work. SCUML requires entities under their supervision to appoint an AML/CFT Compliance Officer, another charge that many organizations are unable to meet due to the cost implications.

## CONCLUSION

SPACES FOR CHANGE lauds the efforts of the Commission to introduce legal reforms aimed at easing the processes for running the affairs of corporate bodies, and tackling corporate governance challenges internally and externally. However, the duplicity of roles and overlapping regulatory powers hampers the development of democratic processes by encouraging the





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waste of scarce public funds, weakening existing institutions and creating excessively complicated administrative procedures for law enforcement.

The recent revisions to CAMA are particularly reminiscent of the prescriptions of the rested 2016 NGO Bill sponsored by Umar Buba Jibril, which aimed to interfere with NGO assets. The 2016 Bill provided that assets owned by NPOs through purchase or acquisition with donor funds are the property of the people of Nigeria, and such assets shall be surrendered to the government as trustee for the people of Nigeria. upon discontinuance of operations.

It needs emphasising that the NPO sector operates within the country's legal system. Therefore, it is subject to laws which a wide range of federal and state statutes, common law, customary laws, as well as the judicial pronouncement by the courts. These laws also have dedicated entities statutorily mandated to enforce them such as the Nigeria Police, EFCC, SCUML, FIRS, SCUML, the Nigeria Immigration Service and the Nigeria Customs Service. The interaction of these laws and enforcement agencies and the effects they have on the NPO sectors counter the argument additional laws and regulations are needed to enhance transparency and accountability in the sector. In light of the above, an urgent review of the new CAMA provisions is strongly recommended.

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