

ACT – CIVIL SOCIETY ORGANISATION (CSO)

ORGANISATIONAL DEVELOPMENT (OD) INFORMATION SHEET

COMPLIANCE OF CSOs WITH STATUTORY REGULATIONS

The **purpose** of this OD Information Sheet is for the ACT Programme to introduce to CSOs information about four major compliance regulations in Nigeria (CAMA, Taxation, Anti-Terrorism and Money Laundering, and Pension). They each impact on the activities of CSOs registered under the Corporate Affairs Commission. This guide is to assist CSOs to comply with these regulatory and registration requirements, as compliance is paramount to sustaining the work of CSOs in Nigeria. The presentation explores the detail of the compliance requirements, the process of compliance, consequences of non-compliance, etc.

Section A: COMPLIANCE WITH CAMA 2020

The primary law which defines rules for the establishment and regulation of companies and businesses in Nigeria is the Companies and Allied Matters Act 2020 (CAMA). CAMA is administered by the Corporate Affairs Commission (CAC).

CSOs may be established in their simplest form by:

- (a) Mere association of persons, as is the case with Aged Group/Professional Interest Groups/Clubs and Societies, Community Based Organisations (CBOs) etc; or
- (b) by incorporation under relevant statutes such as CAMA 2020, where CSOs can register as either: (i) incorporated trustees under Part F of CAMA, or (ii) Limited by Guarantee Company under section 26 CAMA 2020. The major difference between the two is that a company limited by guarantee is itself the one incorporated and can sue and be sued **in its corporate name**, enter into contracts/hold titles in its own name and liabilities to its members in the case of winding up, is limited to the amount guaranteed by members in its governing document; whereas for Incorporated trustees, it is the trustees that are incorporated and not the association itself and therefore the association itself cannot sue and be sued, enter into contracts, hold titles in its own name, and the liabilities of members is not limited.

The memorandum of a company limited by guarantee shall not be registered without the **consent and** authority of the Attorney General of the Federation.

Registration requirements for Company limited by Guarantee

Registration is effected by delivering to the CAC documents, ie: the Memorandum and Articles of Association, the notice of the address of the registered office of the company and the head office (if different from the registered office), 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, etc. The Commission may refuse to register an NGO in some circumstances, for example, when the office of the Attorney General of the Federation does **not give consent or** authorise registration.

Key Compliance Obligations

1. **Governance:** Every company must keep a register of directors reflecting details such as the directors' present forenames and surnames, his/her usual residential address, his/her nationality, etc (s. 318). Companies must file returns in prescribed forms, changes in directorships within 14 days of the change (s. 321) and, except in the case of a small company, must have a Secretary with qualifications prescribed in s.295 CAMA. Changes in the appointment of the Secretary must be filed with CAC as a return just like that of directors.
2. **Annual Returns:** Every company shall, at least once in every year, make and deliver to the Commission an annual return in the specified form, not later than 42 days after the Annual General Meeting for the year **under consideration**. Annexures should include: a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under CAMA; a written copy, certified both by a director and the Secretary of the company to be a true copy of every balance sheet and profit and loss account laid before the company in a general meeting, etc.
3. **Special Resolutions:** Special resolutions are resolutions passed by not less than three fourths (3/4) of the votes of members of the company at a general meeting of which 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given. CAMA stipulates the circumstances when a special resolution is necessary. In particular, the provisions of the Memorandum or Articles of Association are alterable by Special Resolution **and also for change of name of the company**.
4. **Financial Statements:** A company limited by Guarantee is required to keep accounting records at its registered office or other suitable place. Such records shall reflect the true financial position of the Company and be sufficient to show and explain the transactions of the company at any period of time. The financial statements shall comprise of; the balance sheet as at the last day of the year; a five-year financial summary, etc. Delivery of financial statements (including auditor's reports) that have been considered and approved by a General meeting of the company is required to be made to the commission not later than 18 months after registration of the company and subsequently once at least in every year.

Note that small companies are exempted from some compliance obligations. For example, it is not compulsory for a small company to formally appoint a Company Secretary **and holding Annual General Meetings**.

Registration requirements for Incorporated Trustees

To register an NGO or CSO as an Incorporated Trusteeship under Part F of CAMA, the proposed organisation must first of all apply to the Registrar-General of the Corporate Affairs Commission for consent to get the association registered. Some of the information that must be included in the

application are: i) The proposed name of the corporate body which must contain the words "Incorporated Trustees of". ii) The aims and objectives of the association. iii) The names, addresses and occupation, means of identification and all valid details of the secretary of the association, etc.

Key Compliance Obligations

- 1. Qualifications of Trustees:** CSOs are required to appoint only persons qualified by the law as its trustees, hence it is unlawful to appoint an undischarged bankrupt person, an infant, a person convicted of a crime involving dishonesty or fraud within the last five years preceding the appointment or persons who have been found to be of unsound mind by a court.
- 2. Statement of Affairs:** The trustees of the organisation shall also submit to the Commission a bi-annual statement of affairs of the association in January and July of each year.
- 3. Annual Returns and Alterations:** CSOs are mandated to file annual returns disclosing the activities of the organisation such as its corporate name, addresses and occupation of the principal officers of the NGO/CSO not later than the 31st of December of every Calendar year. The NGO/CSO must also notify the Commission of any changes made in its name, constitution, address and any other relevant information whilst filing this Annual Returns. Failure to file these annual returns within the specified period will attract pecuniary penalties as punishment. See section 848 CAMA 2020.
- 4. Constitution and Mandatory provisions:** CSOs are required under CAMA to have a constitution. Mandatory provisions include; name and title of the NGO, aims and objectives, appointment, duties and powers of the trustees, tenure of office and replacement of the trustees, how and when the will hold its meetings, members of its governing body if the has any, the procedure for their appointment, removal and powers etc.
- 5. Alterations and Modifications of Objects (Objectives):** CSO can only alter its constitution through a resolution passed by simple majority of its members and approved by the Commission. **See section 833 CAMA 2020.** Any alteration made which does not follow this pattern set above is void. See section 835 CAMA 2020.
- 6. Notification to Commission where Objects (Objectives) are Altered:** CSOs are mandated to notify the Commission of any alteration in its name or objects or both. This notification must be made as an application to the CAC, accompanied by a copy of the resolution authorizing this change. **See section 832 CAMA 2020.**
- 7. Trustee or Member of Governing Council not to be an Employee:** Reasonable and proper remuneration may be made to an officer or servant of the association for any service rendered to the association. Apart from ex-officio members of the governing council, no member of the council or the governing body of an NGO/CSO shall take up any paid employment of any sort with the NGO/CSO. A member of the council or governing body is however entitled to repayment of out-of-pocket expenses, reasonable rent for premises demised or let to the association and reasonable fee for services rendered. **See section 838 (2) and (3) CAMA 2020.**

Section B: TAX LAW COMPLIANCE

CSOs are required to comply with the extant tax laws in Nigeria. Applicable tax laws and rules impacting CSOs include: Companies Income Tax Act (CITA) 2004 (as amended); Personal Income Tax Act (PITA) 2004 (as amended); Value Added Tax Act (VATA) 2004 (as amended); Capital Gains Tax Act (CGTA) 2004 (as amended)

Relevant Tax Authorities

The Federal Inland Revenue Service (FIRS) and the various States' Internal Revenue Service (SIRS)

Key TAX Compliance Processes/Requirements for CSOs

(a) Registration

All CSOs are required to register with the FIRS for tax purposes and obtain a Taxpayer Identification Number (TIN). Documents required for tax registration are:

- A copy of the CAC registration certificate or other instruments of incorporation issued to the NGO;
- Certified True Copy (CTC) of Memorandum and Articles of Association or Constitution;
- List and Profiles of the nominated Trustees/Board Members, and any other relevant document requested during registration.

(b) Annual returns

CSOs are mandated to file annual tax returns. A tax return consists of the audited accounts, the tax and capital allowances computations, a true and correct written statement of the amounts of surplus from every source, etc. The returns must be filed on or before the due date, being within 6 months after the accounting year end for old CSOs, and, within 18 months from incorporation for new CSOs.

(c) Pay Taxes (as applicable) on or before due dates

(d) Record Keeping: To ensure accountability for tax purposes, CSOs are statutorily required to maintain books or records of accounts, containing sufficient information or data of all transactions as well as the accurate record of employees for a minimum period of six years after the year of assessment in which they relate.

Categories of Tax payable:

1. Companies Income Tax : Companies Income Tax (CIT) is a tax imposed on profit of a company from all sources. CSOs are generally exempted from paying CIT on income derived from approved activities such as grants, donations, members' subscription fees, etc, provided such profits are not derived from any trade, business or investment.

2. Personal Income Tax (P.A.Y.E deductions): CSOs have a duty to deduct tax from the income of their individual promoters and employees. CSOs are required to: i) register under the Pay As You Earn (P.A.Y.E) scheme with the relevant tax authority for the purposes of deducting monthly income

tax from employees' salaries/emoluments within six months of commencement of business; ii) deduct and remit same to the relevant tax authorities; iii) file returns with the relevant tax authority of all emoluments paid to their employees in the preceding year, not later than 31st January of every year.

3. Value Added Tax Act: Value Added Tax (VAT) is a tax levied on consumption of goods and services. CSOs have a duty to: i) Pay 7.5% VAT on goods and services consumed, except for goods purchased for humanitarian donor-funded projects which is defined to include projects undertaken by CSOs whose activity is in the public interest; ii) Charge VAT on all taxable goods and services supplied and remit same to the FIRS as and when due; iii.) Self-account for the VAT and remit same to FIRS; iii) File VAT Returns on or before the 21st day of the month after the month of purchase or procurement.

4. Capital Gains Tax (CGT): Capital gains are profits derived from the disposal or sale of an asset. CSOs have a duty to: i) Pay CGT where applicable: CSOs are generally not liable to CGT, however where the assets were acquired in connection with any trade or business carried on by an NGO and the gains from the disposal are not applied purely for fostering the objectives of the NGO, the NGO would be mandated to pay a 10% CGT; ii) File Self-Assessment Returns: where an NGO's chargeable asset was disposed within 1st December in a year to 31st May of the following year, the NGO must file CGT Returns as well as pay the CGT on or before 30th June of that year. Where the asset was disposed within 1st June to 31st December in a given year, the due date for filing returns and making payment is 31st December of that year latest.

5. Collection/Remittance of Withholding Tax (WHT)

Withholding Tax (WHT) is a method used to collect Income Tax in advance. CSOs have a duty to: i) Deduct WHT at source from payments they make to service providers and remit the withheld sum to the FIRS (where the service provider is a corporate body, a resident of the FCT or a foreign company/individual), or the relevant State Inland Revenue Service (SIRS) of the state where the service provider is resident within 21 days from the deduction date; ii) File WHT Returns and issue receipts of tax deductions to the service provider (tax payer).

6. Stamp Duties

CSOs are required to comply with the provisions of the Stamp Duties Act, by presenting dutiable instruments for stamping. Please note that FIRS is the only competent authority to impose, charge and collect duties upon instruments relating to matters executed between a company and an individual or body of individuals, while the relevant tax authority in a State shall impose and collect duties relating to instruments executed between individuals and body of individuals.

Main Penalties for Non-Compliance

- **CIT:** The Penalty for late filing of returns is N25,000.00 for the first month it occurs and N5,000.00 for each subsequent month the failure continues.
- **WHT:** Failure to deduct or remit WHT within 30 days from the day the deduction ought to have been made attracts a penalty of 10% of the tax not deducted or remitted in addition to

the amount of tax itself plus interest at the prevailing monetary policy rate of the Central Bank of Nigeria.

- **PAYE:** Failure to register for PAYE with the relevant tax authority within the time specified is an offence that attracts a penalty of N25,000 in addition to payment of arrears of the due tax. Failure to make PAYE deductions or properly account for deducted tax attracts liability to pay both the amount deducted and a penalty of ten per cent (10%) per annum of the amount, plus interest at the prevailing commercial rate, recoverable as a debt from the NGO by the relevant tax authority.
- **VAT:** Failure to render VAT returns, or where incomplete/inaccurate returns are rendered, the tax authority shall issue a best of judgment assessment on the amount of tax due on the taxable goods and services purchased or supplied. Also, failure to remit VAT attracts payment of a five per cent (5%) fine of the unremitted sum per annum, plus interest at the commercial rate, as well as the unremitted tax.

Section C: COUNTERING THE FINANCING OF TERRORISM (CFT)

Countering Financing of Terrorism (CFT) laws and regulations in Nigeria impose certain compliance obligations on National and International NGOs operating in the country, to implement policies and programmes to counter terrorism financing.

Applicable laws

The relevant laws and regulations that govern compliance with the CFT in Nigeria include:

- Terrorism (Prevention and Prohibition) Act, 2022
- Economic and Financial Crimes Control (EFCC) (Special Control Unit against Money Laundering (SCUML) Supervision of Not-for-Profit Organisations (NPOs) that are at risk of Terrorism Financing Abuse) Regulations 2023
- Regulation for the Implementation of Targeted Financial Sanction on Terrorism, Terrorism Financing and other Related Measures, 2022

Relevant Government Agencies

The SCUML is a department in the that is charged with the EFCC responsibility of monitoring, supervising and regulating 'Designated Non-Financial Businesses and Professions' (DNFBPs). The EFCC Regulation 2023 (section 3(1)b gives SCUML the mandate to register and keep a database of NPOs operating in Nigeria. In addition, section 56 and 57 of the Terrorism (Prevention and Prohibition) Act, 2022, grants SCUML power to revoke registration of any NPO found to be making, or is likely to make available any resources, directly or indirectly, to a terrorist, terrorist group or terrorist entity. While the Nigerian Financial Intelligence Unit domiciled with the Central Bank of Nigeria is charged with receiving and analysing reports from DNFBPs.

Key Compliance requirements

a) **Registration:** A DNFBP is mandated to register (online) with the SCUML before commencement of business where newly incorporated, or within 3 months from the commencement of the Act for existing businesses.

NGOs/CSOs are required to:

- Identify donors/beneficiaries/partners using valid Identification documents.
- Verify the identity of donors/beneficiaries from reliable independent sources.
- Identify and verify the identity of the beneficial owner of vendors/contractors if applicable.

- Implement Targeted Financial Sanction: Ensure that the donor, beneficiary or other party is not Designated under the UN Consolidated or Nigeria List referred to under sections 50 and 54 of the Terrorism (Prevention and Prohibition) Act, 2022.
- Develop Counter Financing of Terrorism Programmes and Policies.
- Determine their risk exposure in a given transaction by conducting risk-based assessments, etc.

b) Reporting

- **Currency Transactions Reports (CTRs):** NGOs are mandated to make CTR when a transaction with an individual exceeds N5,000,000 (Five Million Naira) and/or a transaction with a corporate body exceeds N10,000,000 (Ten Million Naira) within 30 days of the transaction. Where no transactions occur above the threshold, a Nil report shall be filed on a monthly basis instead.
- **Cash Based Transactions Reports (CBTRs):** NGOs are mandated to make CBTRs when presented with cash above \$1,000 within 30 days of the transaction, or a Nil report in the absence of any transaction.
- **Suspicious Transactions Reports (STRs):** Where an NPO observed a positive match between the names of a vendor, contractor, donor or beneficiary, and any name of the Sanction list (Nigeria List and UN Consolidated List), it shall file a STR to the Nigerian Sanction Committee without delay.

c) **Record Keeping:** NGOs have an obligation to keep records of clients/donors for a minimum period of 5 years after the transaction or investigation has been concluded.

Consequences of Breach

Failure to comply with reporting and compliance obligations under the laws and regulations is an offence which attracts a fine, and could also attract a suspension, revocation or withdrawal of licenses. Failure to adopt internal Anti-Money Laundering (AML)/Combating the Finance of Terrorism (CFT) measures also has penalties.

Section D: COMPLIANCE WITH PENSION REFORM ACT

The Pensions Reform Act (PRA) 2014 established the Contributory Pension Scheme (CPS). The PRA 2014 applies to, amongst others, private sector organisations with three (3) or more employees. Therefore, NGOs/CSOs with three or more employees are mandatorily required to comply with the provisions of the PRA 2014. However, the employees of private sector organisations with less than three workers can participate in the Micro Pension Plan, which is a voluntary scheme.

The PRA 2014 established the National Pension Commission (PENCOM) as the Regulator and Supervisor of pension and related matters in Nigeria. It also created pension operators like the Pension Fund Administrators (PFAs) and the Pension Fund Custodians for the management and custody of pension assets.

Compliance Obligations

- **Retirement Savings Account (RSA):** Employees are required to open a Retirement Savings Account (RSA) with any pension fund Administrator of choice. Where an employee fails to open an RSA after 6 months of assumption of duty, the employer should open a temporary RSA where the employer and employee portion of monthly pension contributions shall be remitted.

- Minimum Rates of pension contributions: The employer shall contribute a minimum of 10% of the employee's monthly emolument while the employee shall contribute a minimum of 8% of his/her monthly emolument (pay).
- **Deduction and remittance of Pension Deductions:** An employer must deduct and remit both the employer and employee monthly contributions into the RSA of the employee within 7 working days after the salary payment. The remittance must be accompanied by the pension remittance schedule. Note that without the schedule of remittance, the PFAs would not be able to credit the RSAs of the beneficiaries.
- **Group Life Assurance:** Private Sector organisations are required to provide a Group Life Insurance Policy for their employees (A minimum of three times the Annual Total Emolument of the employees i.e., Gross emolument)

Pension Clearance Certificate (PCC): The PCC is usually issued by PenCom to employers who have fulfilled their pension obligations towards their employees. The PCC is issued annually and upon the submission of an application by the employer.

Penalty For Non-Compliance

- Where an employer fails to deduct and remit the employee and employer contributions to the RSAs of its employees within seven working days after the payment of salary, the employer shall be liable to pay a penalty which is a minimum of two percent (2%) of the amount that remains unpaid for that month or part of that month that the default continues.
- An employer reported to the National Pension Commission for non-remittance of pension contributions will be engaged in line with the Commission's approved regime of sanctions (Letter of Advice, Warning Letter, Administrative Sanction, and Legal Action). Such a defaulting employer could also be assigned to the Commission's appointed Recovery Agents to enforce the recovery of all outstanding pension contributions and penalties.
- Non-institution of Group Life Insurance Policy: Where an employer fails or refuses to procure a Group Life Insurance Policy for its employees and death occurs, the employer shall be prepared to pay the Group Life proceeds which accrues to the deceased employee to his named beneficiaries.

Finally, please note...

This information was gathered by the ACT Programme in 2023 and based on information provided by the relevant regulatory bodies. The accuracy of the contents of details provided are likely to change over time - based on reviews of compliance requirements by the regulators. CSOs are advised to visit the website of the regulatory agencies frequently for further information. CSOs can also make further reference to the compliance compendium that's available on www.csocompliance.org.ng

Find out more

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