

A BILL

FOR

AN ACT TO AMEND THE COMPANY AND ALLIED MATTERS ACT 1990 CAP C20 LAWS OF THE FEDERATION OF NIGERIA 2004 AND FOR THE ESTABLISHMENT OF STATE CORPORATE AFFAIRS COMMISSIONS FOR REGISTRATION OF BUSINESS NAMES AND FOR OTHER MATTERS CONNECTED THEREWITH, 2017

Sponsored by Senator Ovie Omo-Agege

[] Commencement

1 BE IT ENACTED by the National Assembly of the Federal
2 Republic of Nigeria as follows:

3 1. The Companies and Allied Matters Act 1990 CAP. C20 LFN
4 2004 (in this Act referred to as "the Principal Act") is hereby amended as set
5 out in this Act. Amendment of
the Principal Act

6 2. Part A of the Principal Act is amended as follows:

7 3. Section 4 of the Principal Act is amended by substituting the Amendment of
Section 4
8 existing section with the following new section:

9 New Section 4:

10 "4. Members of the Board of the Commission appointed under
11 section 2(a), (b), (c), (d), (e), (f), (g) and (h) shall be paid such remuneration
12 and allowances as the National Salaries, Income and Wages Commission
13 may determine from time to time."

14 4. Section 14 of the Principal Act is amended by substituting the Amendment of
Section 14
15 existing sub-sections (1) and (4) with new Sub-sections (1) and (4)
16 respectively as follows:

17 New Sub-section 14(1):

18 "(1) - The Commission shall keep proper accounts and proper
19 records in relation thereto and shall prepare and publish in respect of each
20 year its audited statement of accounts in 2 National Dailies within 3 months

1 after the end of each year.”

2 New Sub-section 14(4):

3 “(4) - The members of the Board of the Commission shall be jointly
4 and severally liable for an offence in the event of failure to publish the audited
5 statement of account of the Commission as required in subsection (1) of this
6 Section and shall be liable to a fine which shall be the equivalent of the amount
7 of remuneration they would have earned as members of the Commission for
8 the entire term of their appointment.”

Amendment of
Section 279

9 5. Subsection 279(3) of the Principal Act is amended by inserting the
10 following words after the word “circumstances” at end of the sub-section: “and
11 in doing so shall have regard to the impact of the Company’s operations on the
12 environment in the community where it carries on business operations”.

13 New Subsection 279(3):

14 The new Subsection 279(3) shall now read as follows:

15 “(3) A director shall act at all times in what he believes to be the best
16 interests of the company as a whole so as to preserve its assets, further its
17 business, and promote the purposes for which it was formed, and in such
18 manner as a faithful, diligent, careful and ordinarily skillful director would act
19 in the circumstances and in doing so shall have regard to the impact of the
20 Company’s operations on the environment in the community where it carries
21 on business operations.”

Amendment of
Section 315

22 6. Subsection 315(1) of the Principal Act is amended by inserting the
23 following words after the word “investigated” at end of the sub-section: “or in
24 the case of a public company, if the Commission deems it necessary to
25 investigate the affairs of the public company in overriding public interest.”

26 New Section 315(1):

27 The new Section 315(1) shall now read as follows:

28 “(1) The Commission shall appoint one or more competent inspectors
29 to investigate the affairs of a company and report on them in such manner as it
30 directs, if the court by order declares that its affairs ought be so investigated or

1 in the case of a public company, if the Commission deems it necessary to
2 investigate the affairs of the public Company in overriding public interest.”

3 7. Part B of the Principal Act is hereby amended as follows:

4 8. Section 569 of the Principal Act is amended by substituting the
5 existing section with the following new section:

Amendment of
Section 569

6 New Section 569:

7 “569. This Part B of this Act shall be administered in every State of
8 the Federation by a State Corporate Affairs Commission established in each
9 State in accordance with the provisions of this Act”.

10 9. Section 570 of the Principal Act is amended by substituting the
11 existing section with the following new section:

Amendment of
Section 570

12 New Section 570:

13 “(1) - There shall be established in each State of the Federation, a
14 State Corporate Affairs Commission (in this Act referred to as “State
15 Commission”) charged with the registration of Business Names in
16 accordance with the provisions of Part B of this Act.”

17 (2) - The State Commission shall be:

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

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

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

22 (3) - The headquarters of the State Commission shall be situated in
23 either the capital city of the State or in a major commercial or business city or
24 town in the State.

25 (4) - There shall be established by the State Commission in each
26 Local Government Area headquarters of a State a register office of the State
27 Commission to carry out the functions of the State Commission in the Local
28 Government Area and where there shall be kept a register in the prescribed
29 form in which shall be entered such matters as are required by this Act or any
30 regulation made thereunder to be entered in it.

1 (5) - The State Commission shall have a Board consisting of the
2 following members who shall be appointed by the Governor of the State,
3 subject to confirmation by a simple majority of all members of the State House
4 of Assembly:

5 (a) a Chairman who shall be a person who by reason of his ability,
6 resourcefulness, integrity, experience or specialised knowledge of corporate,
7 industrial, commercial, financial or economic matters or of business or
8 professional attainments would be capable of making outstanding
9 contributions to the work of the State Commission;

10 (b) one representative of the business community who shall have not
11 less than 10 years of consistent, unbroken and active experience in the
12 activities of the Nigerian Association of Chambers of Commerce, Industries,
13 Mines and Agriculture in the State;

14 (c) A qualified legal practitioner and active member of the Nigerian
15 Bar Association in good standing with not less than ten (10) years post-call
16 professional experience in the bar and who has active experience and interest in
17 business development;

18 (d) A qualified chartered accountant and active member of the
19 Institute of Chartered Accountants of Nigeria in good standing with not less
20 than ten (10) years post qualification experience as a chartered accountant;

21 (e) One representative of each of the following State Ministries, that
22 is:

23 (i) Finance; and

24 (ii) Justice;

25 (f) The Registrar of the State Commission who shall be the Chief
26 Executive Officer and Chief Accounting Officer of the State Commission and
27 shall be qualified to practice as a legal practitioner in Nigeria and has been so
28 qualified for not less than 15 years and in addition; shall have cognate
29 experience in company law practice or administration for not
30 less than eight (8) years; and shall be a person who by reason of his ability,

1 resourcefulness, integrity, experience, character and specialised knowledge
2 of corporate, industrial, commercial, financial or economic matters or of
3 business or professional attainments, would be capable of making
4 outstanding contributions to the work of the State Commission by creating,
5 nurturing and promoting good business policies, healthy business
6 competition environment and business opportunities in the State.

7 (6) - Each member of the Board of the State Commission stated in
8 sub-section (5) of this section shall hold office for a single term of four (4)
9 years and shall not be eligible for re-appointment thereafter.

10 (7) - All members of the Board of the State Commission except the
11 Registrar of the State Commission shall be part-time members of the
12 Commission.

13 (8) - Any member of the Board of the State Commission shall cease
14 to hold office if:

15 (a) He becomes of unsound mind or is incapable of carrying out his
16 duties;

17 (b) He becomes bankrupt or has made arrangement with his
18 creditors;

19 (c) He is convicted of felony or any offence involving dishonesty;

20 (d) He is guilty of serious misconduct relating to his duties; or

21 (e) In the case of a member appointed pursuant to section
22 S70(5)(c), (d) and (f), possessed of professional qualifications, he is
23 disqualified or suspended (other than at his own request) from practising his
24 profession in any part of Nigeria by the order of any competent authority
25 made in respect of him personally.

26 (9) - Each member of the Board of the State Commission shall be
27 paid such remuneration and allowances as the National Salaries, Income and
28 Wages Commission may determine from time to time.

29 (10) - The following rules shall guide the proceedings of meetings
30 of the State Commission:

1 (a) The Chairman shall preside at every meeting of the State
2 Commission but, in his absence, the members present shall elect any number
3 who is present to preside at the meeting;

4 (b) The quorum for meetings of the State Commission shall be three;

5 (c) The State Commission may appoint any of its members to act as
6 Secretary at any of its meetings;

7 (d) A member of the State Commission who is directly interested in
8 any business enterprise, the affairs of which are being deliberated upon by the
9 Commission, or is interested in any contract made or proposed to be made by
10 the State Commission shall, as soon as possible after the relevant facts have
11 come to his knowledge, disclose the nature of his interest at a meeting of the
12 Board of the State Commission;

13 (e) A disclosure, under sub-section (10)(d) of this section of this Act,
14 shall be recorded in the minutes of the meeting of the Board of the State
15 Commission, and the member shall not take part after such disclosure in any
16 deliberation or decision of the Board of the State Commission with regard to
17 the subject matter in respect of which his interest is thus disclosed and shall be
18 excluded for the purpose of constituting a quorum of the Board of the State
19 Commission for any such deliberation or decision.

20 (11)- The State Commission shall have powers to:

21 (a) keep and maintain at all times a Business Name Registry in any
22 form or format it deems fit in its register offices in the State suitably and
23 adequately equipped to discharge its functions under this Act or any other law
24 in respect of which it is charged with responsibility;

25 (b) keep and maintain at all times a Register of Business Names in the
26 State in the prescribed form in which it shall be entered such matters as are
27 required by this Act or any regulation made pursuant to this Part B to be entered
28 in it;

29 (c) prescribe fees payable for anything done pursuant to this Part B;

30 (d) arrange or conduct an investigation into the affairs of any business

1 enterprise registered as prescribed under this Act;

2 (c) perform such other functions as may be necessary for the
3 purpose of developing and promoting small businesses or as may specified
4 by any law or enactment;

5 (f) Undertake such other activities as are necessary or expedient for
6 giving full effect to the provisions of this Act;

7 (g) appoint or engage such other staff or employees as it may deem
8 necessary for the efficient performance of the functions of the State
9 Commission under this Act;

10 Provided that; service in the State Commission shall be approved
11 service for the purpose of the Pensions Act and accordingly, officers and
12 other persons employed in the State Commission shall in respect of their
13 service in the State Commission be entitled to pensions, gratuities and other
14 retirement benefits enjoyed by persons holding equivalent grades into the
15 public service of the State, so however that nothing in this Act shall prevent
16 the appointment of a person to any office on terms which preclude the grant
17 of a pension and gratuity in respect of that office;

18 (h) establish a fund which shall consist of such sums as may be
19 allocated to it by the State Government and such other funds as may accrue
20 to it in the discharge of its functions;

21 (i) apply the proceeds of the fund established in pursuance of sub-
22 section (11)(h) of this Section:

23 (i) to the cost of administration of the State Commission,

24 (ii) for reimbursing members of the State Commission or any
25 committee or body set up by the State Commission for such expenses as may
26 be authorised or approved by the State Commission, in accordance with the
27 rate approved in that behalf by the State Executive Council,

28 (iii) to the payment of salaries, fees or other remuneration or
29 allowances, pensions and gratuities payable to the employees of the State
30 Commission,

1 (iv) For the maintenance of any property acquired or vested in the
2 State Commission.

3 (12) - The State Commission shall keep proper accounts and proper
4 records and shall prepare and publish in respect of each year its audited
5 statement of accounts in two (2) national daily newspapers within three (3)
6 months after the end of each year.”

7 Section 570(13) - The members of the Board of the State Commission
8 shall be jointly and severally liable for an offence in the event of failure to
9 publish the audited statement of accounts of the State Commission as required
10 in subsection (12) of this Section and shall be liable to a fine which shall be the
11 equivalent of the amount of remuneration they would have earned as members
12 of the Board of the State Commission for the entire term of 4 years.

13 Section 570(12) - The State Commission shall prepare, not later than
14 30th day of September in each year, an estimate of the expenditure and income
15 of the Commission during the next succeeding year and, when prepared, they
16 shall be submitted through the Commissioner of Finance or any public official
17 in charge of Finance in the State for inclusion in the Budget of the State for that
18 year.

19 10. Section 571 of the Principal Act is hereby deleted.

20 11. Section 572 is hereby amended by inserting a new Section 572 as
21 follows:

22 New Section 572:

23 “572. Functions of Registrar of a State Commission and Designated
24 Officers of a State Commission:

25 (1) The Registrar of a State Commission shall cause business names
26 in his State to be registered in accordance with the provisions of this part of this
27 Act provided that the promoters of the Business Name shall comply with any
28 Act, law or regulation of federal or state agencies requiring any licence or
29 permit for the conduct of such business activities.

30 (2) For the purpose of the registration under this Part of this Act, of the

Amendment of
Section 572

1 business names of a firm, individual or corporation at any of the register
2 offices of business names under a State Commission, any designated officer
3 of a State Commission may, subject to any direction that a State
4 Commission may give, perform any act or discharge any duty which the
5 Registrar of a State Commission may lawfully perform or discharge or is
6 required by this Act to perform or discharge, and, subject to that, any
7 reference in this Part of this Act to the Registrar of the State Commission,
8 unless the context otherwise admits, shall accordingly be deemed to include
9 a reference to an officer so clearly designated by a State Commission.

10 (3) Without prejudice to the generality of the foregoing provisions
11 of Subsection (1) of this section, a designated officer of a State Commission
12 may be assigned to the registry of business names of a State Commission for
13 the purpose of registering business names and keeping a register of business
14 names.”

15 12. Section 585 of the Principal Act is hereby amended by
16 substituting the existing section with the following new section:

Amendment of
Section 585

17 New Section 585:

18 “(1) - the provisions of paragraphs 54, 55, 56, 57, 58, 59, 60, 61, 62,
19 63 and 64 of the Company Regulations 2012 or similar regulations, laws or
20 enactments applicable to business names shall at all times be adopted as
21 basic uniform rules for Business Name registration by all State
22 Commissions.

23 (2) - Subject to subsection (1) of this section, the Board of the State
24 Commission shall make additional regulations for the governance and
25 guidance of the Registrar and other Staff acting under him and shall
26 prescribe forms to be used for the purposes of this Part B and prescribing
27 fees payable for anything done pursuant to this Part B of this Act, and for the
28 conduct and regulation of registration of business names under this Part B of
29 this Act and any incidental matters thereto.”

Amendment of
Section 586

1 13. Section 586 of the Principal Act is hereby amended by substituting
2 the existing section with the following new section:

3 New Section 586:

4 “(1) - Any enterprise registered or deemed to have been registered as a
5 Business Name at the Corporate Affairs Commission established under Part A
6 of this Act prior to the establishment of the State Commission under Part B of
7 this Act shall be deemed to be registered in the State in which such enterprise
8 has its registered office and any statement, reports or documents submitted by
9 such registered enterprise at the Corporate Affairs Commission prior to the
10 establishment of the State Commission shall remain valid”

11 (2) - The Corporate Affairs Commission established under Part A of
12 this Act shall within (six) 6 months of the establishment of the State
13 Commission in each State of the Federation pursuant to this Part B, send
14 duplicates of all registration information, data, files, reports and documents of
15 enterprises previously registered as Business Names to the State Corporate
16 Affairs Commission in the State with the registered address of each
17 enterprise.”

18 (3) - Nothing in this Act shall prevent any enterprise registered as a
19 Business Name in a State of the Federation from relocating its principal place
20 of business to another State of the Federation provided that a notice of change
21 of principal place of business is filed at the Registry of both the State where the
22 principal place of business was previously located and the State where the new
23 principal place of business is to be located. Upon the filing of the notice, the
24 Registrar of the State Commission in the State where the new principal place of
25 business is to be located may amend the Certificate of Registration of the
26 enterprise or issue a fresh certificate of registration of Business Name to the
27 enterprise pursuant to section 576 of this Act.

28 (4) - Each State Commission established by the respective States
29 Governments shall do all things necessary including liaising with the
30 Commissioner to develop and implement policies and regulations that will

1 create conducive climate for business activities in the respective States.

2 (5) - The Corporate Affairs Commission and every State
3 Commission established shall share all information relating to registered
4 enterprises or registered Business Names with each other and among one
5 another.

6 (6) - A Registrar of the Corporate Affairs Commission established
7 under Part A of this Act or a Registrar of a State Commission established
8 under Part B of this Act who willfully fails to comply with Section 586(5) of
9 this Act is guilty of an offence and shall be liable on conviction to
10 imprisonment for 20 years.

11 (7) - The Corporate Affairs Commission shall continue to be
12 responsible for the registration of Business Names in the Federal Capital
13 Territory, Abuja, in accordance with the provisions of Part B of this Act. For
14 the purpose of the Federal Capital Territory, Abuja, the Corporate Affairs
15 Commission shall exercise all the functions and powers conferred on the
16 State Commission in respect of Part B of this Act.”

17 14. Subsection (1) of section 588 of the Principal Act is hereby
18 amended by:

Amendment of
Section 588

19 (a) Deleting the definition of "Assistant Registrar",

20 (b) Deleting the definition of "Minister", and

21 (c) Adding new definitions as follows:

22 "State Commission" means the State Corporate Affairs Commission
23 established by the Government of each State of the Federation pursuant to
24 this Part B of this Act;

25 "Commissioner" means the Commissioner in a State Executive Council or
26 State Government charged with responsibility for matters relating to
27 commerce and trade in a State of the Federation;

28 (d) Substituting the definition of "Registrar" with a new definition
29 as follows:

30 "Registrar", for the purpose of this Part B of this Act, means the Registrar of

1 the State Commission.

2 15. This Bill may be cited as the Companies and Allied Matters Act
3 1990 CAP. C20 LFN 2004 (Amendment) Bill, 2017.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Company and Allied Matters Act 1990 CAP. C20 Laws of the Federation of Nigeria 2004 and for the establishment of State Corporate Affairs Commissions for registration of business names.