**PUBLIC HEARING ON A BILL FOR AN ACT TO AMEND THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA ACT 1965 AND RELATED MATTERS (HB 1178)**

**MEMORANDUM SUBMISSION BY CHARTERED INSTITUTE OF TREASURY MANAGEMENT**

**Response to the Bill Proposing Amendment to ICAN Act 1965**

The Chairman, Rt Hon James Abiodun Faleke, Hon Members of the Finance Committee, the Committee Clerk, Members of other Professional Bodies, Distinguished Attendees, Ladies and Gentlemen.

It is indeed a privilege to be among very distinguished and concerned individuals of all financial management related discipline and practice.

**Introduction**

The introduction of A BILL FOR AN ACT TO AMEND THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA ACT 1965 AND FOR RELATED MATTERS, *Sponsored by Hon. Abubakar Yunusa Ahmad* is an innovative and a welcome action from the Institute of Chartered Accountant of Nigeria (ICAN) at this time based on the fact of the popular saying that “change is only the permanent occurrence in the world”. This is more glaring considering the period of 57 years which has lapsed between the enactment of the 1965 Act and this 2022 assuming the Bill scale through to become ICAN Amendment Act 2022.

It is therefore not the move to amend the 1965 Act that is of a major concern but the content of such proposed Amendments. As at today February 2, 2022, Nigeria is believed to have hit a population scale of 200 million of which the total population of the professional and Student members of ICAN is yet to reach half of a million (500,000). In the Explanatory Memorandum to the Bill, it is stated that the “Bill seeks to amend the Institute of Chartered Accountants of Nigeria Act 1965 to amongst other things make the Act more responsive to the changing needs of the Institute's members and address the emerging trends in the Nigerian Economic Environment.” Considering the beneficial effect of the members of the Institute overs and above the lot of more than 99% in population other non-ICAN members in Nigeria appear to be at variance with “integrity”, an integral part of the Motto of ICAN.

Secondly, **Amendment of section 3** which is proposed to replace Section 3 of the Principal Act provides a governing body of the Institute to be known as the Council made up of 30 members. Six of these Council members are to be appointed by the Minister provided each appointee is a Chartered Accountants. The remaining 24 members which are to be chosen via election is expected to consist of 19 members of the Institute in practice as Accountants and eleven not in practice. For the sake of “accuracy” another Motto of ICAN, the sum of 19 and 11 is 30 (19 + 11 = 30) not 24 as expressly stated in the Bill. How would the extra 6 members be accommodated in a Council whose membership must not exceed thirty.

Thirdly and of greater significance is the new **Section 15 to be inserted titled: Areas of Practice of a Chartered Accountant, and creation of a New Section 15**

Taking together the new Section has made an Accountant who has passed the examination of the Institute (ICAN) and earned the title “Chartered Accountants” to be qualified to offer the following services:

1. Auditor,
2. Reporting Accountant,
3. Financial Accounting and Corporate Reporting Services Practitioner,
4. Financial Management Practitioner,
5. Corporate Services Practitioner,
6. Governance Risk and Compliance Services Practitioner,
7. Tax Practitioner,
8. Investigations and Forensic Accounting Practitioner,
9. Accounting Information Systems Practitioner,
10. Insolvency Practitioner,
11. Public Finance Practitioner,
12. Management Consultant,
13. Financial Advisory Services Practitioner

There is nothing wrong for a Chartered Accountant to be regarded as expertise in these 13 distinctive areas of services and even much more captured by the Amendment Bill as “other ancillary areas of Practice which may by Regulations made by the Council subject to the approval of the Minister be designated as services constituting the practice of a Chartered Accountant.” It should however be recognized that Accounting and Accountancy (the practice of the knowledge of Accounting) is a profession of **3 Rs** viz: Recording, Reviewing (Audit and Assurance services) and Reporting. Any discipline or practice which does not in its entirety belong to this exclusive preserves of the Accountant is ancillary services to the practice of the profession of Accounting.

Little is publicly known about the complexities and intricacies of the rendering of accounting services every day in the operation of entities across each national economy worldwide. Many of us here today who are not tutored in the culture, knowledge and understanding of a Professional Accountant would not be able to visualize the reason why for each transaction that takes place in every economic entity worldwide, the resident Accountant performs three non-mutually exclusive but dependent actions namely **recognition, measurement and disclosure.** When any Accountant looks away from these onerous task, problem ensues, fraud is given a free space to perpetrate itself, misappropriation and misallocation occurs and financial statement become an “unfair representation” of the underlying transactions in the books of the affected entity thus making the report published thereon unreliable and the work of the concerned accountant defective and a colossal waste.

It is with this understanding that we re-examine each of the above 13 areas identified in the Bill as the confine of the practice of Chartered Accountants members of ICAN:

Auditing (Internal Auditing and Assurance Services). Reporting Accountant (for valuation in the issue of shares, mergers, acquisitions or takeover; Financial Accounting are all exclusive preserves of Accountants. But Corporate Reporting Services are not entirely areas of the display of the knowledge and skill of Accountants. Governance monitoring, Environmental Impact Assessment; Corporate Social Responsibility (CSR) are outside the core function of Accountants.

**Financial Management Practitioner,**

Financial Management is a subject among the subjects examined by ICAN. The problem of making a profession out of one subject when there is a globally recognized professional Institute – The Chartered Financial Analyst (CFA) Institute whose expertise is investment-cum-financial management. Many young Nigerians still go for the CFA exam even with their ICAN and or other professional qualifications. How would the financial management expertise of ICAN members as proposed in the Bill have the required skill in the management of finance that can compete globally with a holder of CFA qualification?

**Corporate Services Practitioner**

The Chartered Institute of Secretaries and Administrators (ICSA) is a professional Institute with exclusive preserve to offer Corporate Services. ICSA was founded in UK in 1891, is now known as The Governance Institute to underscore the expertise of its members in Corporate Services amongst which is Governance Monitoring and Assessment. ICSA: The Governance Institute has an affiliated body in Nigeria which is the ICSAN (Institute of Chartered Secretaries and Administrators in Nigeria). Although lawyers often offer corporate services and often take up the position of Company Secretary where ICSA professionals are not available. Does ICAN seek to replace these professionals by the inclusion of their core expertise functions in its newly sought mandate?

**Governance Risk and Compliance Services Practitioner**

Governance, Risk and Compliance (GRC) was the brainchild of Open Compliance and Ethics Group (now OECG), a non-profit oriented organization founded in 2002 in the wake of the “dot com bust” and notable corporate failures such as Enron, Worldcom, and Healthsouth which initial mission was to improve corporate compliance and ethics. GRC was invented by OECG as a shorthand reference to the critical capabilities that must work together to achieve Principled Performance which the organization referred to as “the capabilities that integrate the governance, management and assurance of performance, risk, and compliance activities”. Within these capabilities are people that come from several disciplines/professions and who have specific skills that address at least one dimension of GRC the "Critical Six" and subsumed under the acronym **GRACE-IT** to assist stress free remembrance and recalling:

**G -** Governance & Strategy

**R -** Risk Management

**A -** Internal Audit

**C -** Compliance Management

**E -** Ethics & Culture

**IT -** IT & Security

These are the diverse skills integrating different professions of which Accounting profession is not a contribution, yet ICAN is seeking the legal backing of the National Assembly as one of its core area of expertise. OECG has recognition worldwide, therefore the legal implication of giving approval for ICAN to take over the outcome of research and development work of more than 18 years is better imagined than experienced.

It should be noted that as far back as 1972 an article published by Africa Technical Review, a defunct bi-monthly research based magazine reveal that a good Internal Audit Department should be staffed by people of diverse professional callings of which accounting should not be prominent. Thus Internal Audit is more than the restricted area in which only Accounting professional can function.

**Tax Practitioner**

In Nigeria today, there is an Act of National Assembly that domicile the task and services of taxation with the Chartered Institute of Taxation of Nigeria. The exclusive right and power given to CITN accord its members the privilege of offering tax practices in all its form and varieties which is the main reason why they have the sole right to be called and referred to as Tax Practitioners.

It is a known and incontrovertible fact of ceaseless contention between ICAN and CITN on the issue of which profession has the exclusive right to regulate and license its members to practice taxation professional services in Nigeria. Despite the fact that judgements at both High Court and the Court of Appeal in Nigeria has ruled in favour of CITN according to the intent of CITN Act, ICAN went ahead to file a suit at the Supreme Court on issue that has been settled at the two lower courts. This suit has however been withdrawn and the case formally closed as a result of an out of court settlement brokered between the two professional Institutes by the Association of Professional Bodies of Nigeria (APBN). The peaceful settlement led to the signing of Term of Settlement between ICAN and CITN. It is pertinent to note the concluding wordings of the Significance of the Settlement which states that “ICAN members who so desire can practice taxation, but they should get a practice licence from CITN without writing any examination.”.

This information is still hosted on ICAN webpage [https://icanig.org/members/ICAN-CITN-settlement as 04:30](https://icanig.org/members/ICAN-CITN-settlement%20as%2004%3A30) Hr. (4:30 am Nigerian Time which is 03:30Hr WAT – West Africa Time) of Wednesday 2nd day of February, 2022.

The inclusion of Tax Practitioners in the Areas of Practice of a Chartered Accountant, under the proposed of a New Section 15 of amended ICAN Act sought in the Bill is a direct violation of this notice on the “Significance of Settlement” between ICAN and CITN. The Terms of Settlement according to the information on ICAN webpage “has already been entered as the Judgment of the Supreme Court in the Suit (No. SC/492/2013) and the case now formally closed at the apex Court”.

The Term of Settlement has deprived ICAN and its members of holding themselves out individually or collectively as Tax Practitioners without fulfilling the condition of becoming a member of CITN and obtain practice Licence from CITN.

Notice however should be taken of the ruling on July 2nd, 2020 of Justice S. A. Onigbanjo of the High Court of Lagos State that members of the Institute of Chartered Accountants of Nigeria (ICAN) do not need to be licensed by the Chartered Institute of Taxation of Nigeria (CITN) before they can file tax returns. It is left to the National Assembly to exercise caution and take prudent decision for the future of young Nigerians on the issue of Tax practice based on providing reasoned answer to the following questions:

Does taking examination on one, two or three course in law by an accounting student make them qualified to be awarded LLB and admitted to Law School for BL which empower them to become legl practitioners?

What becomes of the practice of Taxation in Nigeria if two professional Institutes now regulate it differently? Would such not lead to avoidable problems which would never have surfaced if it has been left to a single professional body empowered to do so by the Act of National Assembly?

 What becomes of CITN Act if about 19 years after the existence, members of the National Assembly allowed themselves to enact a conflicting clause in another Act?

Why should the issue not in the original provisions of ICAN Act 1965 become an unresolvable problem to the extent to make it legal an amendment to the original Act is being sought after a professional body with specialization on the practice of Taxation has been so empowered by the Act of National Assembly?

 **Other areas under the new Section 15 of the Bill**

The following other seven areas identified to fall within the purview of the practice of Chartered Accountant suffered the same demerit as discussed above under different specializations. These areas of specialization and/or expertise are:

1. Investigations and Forensic Accounting Practitioner,
2. Accounting Information Systems Practitioner,
3. Insolvency Practitioner,
4. Public Finance Practitioner,
5. Management Consultant,
6. Financial Advisory Services Practitioner
7. Other ancillary areas of Practice which may by Regulations made by the Council subject to the approval of the Minister be designated as services constituting the practice of a Chartered Accountant.

It must be understood to be an expertise in a field requires more than a brief study or sitting for examination on part of the core knowledge which make up that field of specialization. Two students on two different courses of Economics and Accounting will enroll for and take Microeconomics and Macroeconomics at their first two years in University the same. The one enrolled for economics continued thereafter to study for different aspect of Economics while the Accounting student continues with courses in Accounting. But before completion of their respective study they are likely to meet on Business Economic or Managerial Economics. Yet at graduation each will receive degree award in the field where he has taken more specialized course for two or three years of his undergraduate course in the university. The same is true for two subjects on Taxation amidst about 16 subjects in ICAN syllabus does not make them of equal understanding and expertise as student of CITN who has to undergo up to 8 - 10 or more tax concentrated subjects in taxation and tax practices.

**Other amendment sought in the Bill**

**Paragraph 18 on Penalties:**

The Bill seek an amendment to: (1) Section 18(5) (a) of the Principal Act by increasing a fine of One Hundred Naira to five Hundred thousand naira; and Section 18(5) (b) by increasing the fine of one thousand naira to one million naira. The question is that what is the basis of such whooping increase? Is One Hundred Naira (Fifty Pounds) in 1965 equivalent to five Hundred thousand naira in 2022 Nigerian economy a depreciation of 1000 times for subsection 18(5) (a) and same for offences in subsection18(5) (a) which increase one thousand naira to one million naira?

**Paragraph 21 - Establishment of accounting technicians scheme**

 (1) The Institute shall establish a scheme for the training and qualification of Accounting Technicians.

(2) Persons qualified as Associates of the Scheme shall be authorized to use the designatory letters "AAT" for Associates of the Accounting Technicians Scheme or such other letters as the Institute may adopt.

ICAN has established and set examination annually for the Accounting Technicians Scheme for the past over 25 years. If nobody or Institution has questioned or raised eyebrow on the Scheme, why is ICAN seeking the insertion of the Scheme in the amendment proposed in the Bill? Is it a tacit admission of illegal act for the period during which ICAN has set examination for students under the Scheme?

**Paragraph 22 –** of the Bill provided that – “This Act supersedes the provisions of any other Act, which purports to diminish, undermine, subjugate or otherwise superintend over the provisions of this Act.” This is in form of exclusion cause and affirmation of supreme authority of the provisions in the amended Act. How does it align with provisions of Financial Reporting (FRC) Act 2011 which gave FRC overriding power and supreme authority in financial reporting in Nigeria?

**Paragraph 28.** in the Bill, amended Section 19 of the Principal Act and proposed to renumber it as Section 23 substituting the existing interpretations with the new interpretations that identified key areas which should be included as Accountancy practice and the reservation of the term "Chartered Accountant" for an accountant enrolled as a fellow or associate member of the Institute, who practices as an auditor, Reporting Accountant, Accounting information systems practitioner, Tax Practitioner, insolvency practitioner; corporate and public finance Practitioner, a management consultant.

Nothing is wrong with the intended provisions of this Paragraph except that everything that nullifies the new Section15 has similar effect on the acceptability and operation of the provisions of the paragraph.

Similarly, all the Faculties stated under the provisions of Pursuant to Section 20 of this Act cannot stand except Auditing. It is surprising that financial reporting which is the core area of specialization of Accounting Profession is omitted despite the fact that it is included as Corporate Financial Reporting Services under the proposed new Section 15. The wisdom in abandoning one area of core competence in preference to incurring to activities outside one’s core competence as exhibited here is only understood and can only be explained by ICAN. The Faculties of the Institute as intended to be constituted are:

(1) Auditing, investigations and forensic accounting;

(2) Taxation and fiscal policy management;

(3) Consultancy and information Communications Technology;

(4) Insolvency and corporate re-engineering;

(5) Public Finance Management; and

(6) Corporate Finance Management.

**Conclusion**

 A cursory review of few areas raised in this paper which point to some critical flaw in the Bill proposing Amendment to ICAN Act 1965, there are many questions seeking for answer which well-meaning and progress seeking Nigerians and our honourable men and women in the National Assembly should ponder upon. Some of these intriguing but yet unanswered questions are:

1. Has ICAN lost focus on its original mandate in ICAN Act 1965?
2. What major development and advancement in the core mandate of financial reporting emphasizing the tripartite activities of recognition, measurement and disclosure which are embedded in day-to-day professional calling of Accountants has ICAN achieve or give to the country?
3. Has ICAN not discovered the inexhaustible opportunities and service areas in its core mandate that could be developed and offer to the nation than seeking to venture into area of core competence of other professional and expertise?
4. Why seeking up to more than 10 exclusive power over up to 10 or more areas of practice outside the core competence and original mandate in the ICAN Act 1965?
5. What consideration does ICAN gives to the development of other allied professions when their area of core competences is being required by ICAN to exercise exclusive rights of practice?

 The present world operates on knowledge economy where innovations in core competence area delivers premium performance of excellence but overspread activities needed to be streamlined to achieve better performance. The case of the decision to stop the production of Boeing 747 the first commercial jumbo jet which ruled the airline industry for more than 40 years before the arrival of A380 the largest commercial plane ever built and operated, and remain the “Queen of the Air” until now after years of the operation of A380 should prick our understanding against ballooned activities and functions because small has usually been beautiful as precursor to innovative discoveries and invention; which make occasional downsizing when situation demand the wisest choice in all ages.

Let us thread with care.

We so submit.