



CORPORATE AFFAIRS COMMISSION: REGULATORY UPDATE

INTRODUCTION

The Corporate Affairs Commission (CAC) is the regulatory authority responsible for the administration, monitoring and enforcement of the provisions of the Companies and Allied Matters Act 2020 (“the Act”). The Act was enacted with various provisions that were hitherto obsolete but revised to meet contemporary standards. Many of these new provisions have taken about 3 years for its full implementation by the CAC.

In collaborating with other relevant statutory agencies like the Nigerian Immigration Service and Ministry of Interior, the CAC has recently updated its regulations through periodic circulars to complement the activities and regulations of other agencies. Below are 2 major recent regulatory updates from the CAC.

1. MINIMUM PAID-UP CAPITAL FOR COMPANIES WITH FOREIGN PARTICIPATION

The Federal Government in a bid to enhance foreign participation in economic activities in Nigeria revised the Handbook on Expatriate Quota Administration in 2022. In Rule 3.0, it was expressly provided that:

“Business Permit is granted to only wholly foreign owned or joint venture companies with foreign participation, with a minimum paid-up capital of N100,000,000 (One Million Naira) to enable them to commence business in the Federal Republic of Nigeria. The value of equipment or machinery imported into the country for the purpose of conducting business could also form a portion of the paid-up capital to be invested in the country.”

In ensuring compliance with the provisions of the regulation quoted above, the CAC through a circular dated December 5, 2023 informed the public on the Commission’s implementation of the requirement of N100,000,000.00 (One Hundred Million Naira) minimum paid up capital for Companies with foreign participation.

In view of this notice, any application for incorporation of a Company having foreign participation shall not be processed unless it complies with the above requirement of N100,000,000 (One Hundred Million Naira) Minimum paid-up Capital. Meanwhile, existing Companies with foreign participation with less

than N100,000,000 (One Hundred Million Naira) paid-up capital have been given 6 months ultimatum to comply with the above requirement, failing which the Commission shall commence proceedings for compulsory winding-up of such companies in accordance with the provisions of section 571 (e) of the Companies and Allied Matters Act, 2020.

2. CAC SET TO SANCTION DIRECTORS AND MEMBERS OF COMPANY FOR LATE FILING OF ANNUAL RETURNS FROM 1ST JANUARY 2024

One of the main obligations imposed on corporate entities/business names/Incorporated Trustees is the filing of annual returns on the activities of the entity in the previous year.

Section 822 (1)-(2) of the Act provides that:

“Every individual, firm or corporation carrying on business under a registered business name shall, not later than the 30th day of June in each year, except the calendar year in which the business name is registered, deliver to the Commission a return in a prescribed form showing the particulars of the individual, firm or corporation and the nature of the business carried on. (2) The returns shall be accompanied by the financial statement of the individual, firm or corporation in the business during the preceding period of January 1 to December 31.”

The Act went further to provide what the penalty for non-compliance with the filing of the annual returns will be. Section 822 (4) provides that every individual, firm or corporation that fails to comply with any of the provisions of this section is liable to a penalty and a daily default penalty prescribed in the Commission’s regulations. Furthermore, section 425 of the Act provides that where an entity fails to file annual returns as mandated by CAMA;

a. The Company and every director or officer are liable to a penalty that is at the discretion of the Commission

b. A Company’s name may be struck off the Register for failing to file its yearly returns for a period of ten (10) years in a row.

To enforce the implementation of the provisions of the above-referred section of the Act, the CAC in a circular dated November 2, 2023 informed the general public of the Commission’s intention to commence the enforcement of the provision of Companies Regulations 2021 on non-compliance with the filing of annual returns as mandated by CAMA 2020. By this, default fees shall be calculated and paid by the directors and officers of the company in addition to penalties to be paid by the Company.

In conclusion, Companies are strongly encouraged to comply with these regulatory updates from the CAC and adhere to the provisions of CAMA 2020 to avoid sanctions being imposed for non-compliance.

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