

CORPORATE AFFAIRS COMMISSION

REGULATORY UPDATE

DECEMBER 7, 2023

The Corporate Affairs Commission (“**CAC**”) serves as the statutory authority entrusted with the registration and oversight of legal entities in Nigeria. In the wake of the enactment of the Companies and Allied Matters Act, 2020 (“**CAMA 2020**”), the CAC has proactively implemented numerous measures to foster adherence to the stipulations outlined in the new legislation. In this regard, our Firm is delighted to furnish two (2) significant updates pertaining to ongoing regulatory and compliance initiatives spearheaded by the CAC.

A. FULL APPLICATION OF PENALTIES FOR FAILURE TO FILE ANNUAL RETURNS BY COMPANIES AND RECOVERY OF PENALTIES AGAINST COMPANY DIRECTORS AND OFFICERS

In accordance with a Public Notice issued by the CAC on November 2, 2023 (the “**Notice**”), the CAC affirmed that numerous companies have neglected and/or failed to comply with the statutory obligation of filing annual returns. In response to this circumstance and in alignment with its statutory mandate, the CAC has formally communicated to the public its intention to enforce the complete application of penalties stipulated in the Companies Regulations 2021 (the “**Regulations**”) effective from **January 1, 2024**.



It is pertinent to highlight that, pursuant to the provisions of Section 417 of CAMA 2020, every company is required to submit annual returns in the prescribed form to the CAC. Section 425 of CAMA 2020 further specifies that in the event of non-compliance with Section 417, **the company** along with **every director or officer of the company** are liable to a penalty as may be prescribed by the CAC. Despite this legal framework, it is noteworthy that, as of the present, the CAC has exclusively enforced penalties for belated annual return filings against companies only. Consequently, the separate imposition of applicable penalty payments on individual directors or officers have not been enforced till date. It is crucial to acknowledge that the CAC has yet to furnish specific details regarding the applicable penalty amount in such instances. It is our reasonable expectation that the CAC will provide comprehensive details before the scheduled enforcement date of January 1, 2024.

In addition, the CAC also noted in its publication that it will rigorously enforce outstanding penalty amounts against directors and officers of companies that have either been liquidated or struck off the Companies Register. However, precise details outlining modalities for such enforcement remain undisclosed by the CAC at this juncture.

B. FILING OF NOTICE OF PERSONS WITH SIGNIFICANT CONTROL

The obligation for disclosure of details of Persons with Significant Control to the CAC was introduced by Section 119 of CAMA 2020. Section 868 of CAMA 2020 defines a Person with Significant Control to mean any person: (i) directly or indirectly holding at least 5% of the shares or interest in a company or limited liability partnership; (ii) directly or indirectly holding at least 5% of the voting rights in a company or limited liability partnership; (iii) directly or indirectly holding the right to appoint or remove a majority of the directors or partners in a company or limited liability partnership; (iv) otherwise having the right to exercise or actually exercising significant influence or control over a company or limited liability partnership; or (v) having the right to exercise, or actually exercising significant influence or control over the activities of a trust or firm whether or not it is a legal entity, but would itself satisfy any of the first four conditions if it were an individual.

A Person with Significant Control (“PSC”) is obligated to formally notify the company in writing within seven (7) days of assuming the status of a PSC, and the company is required to disclose this information to the CAC within one (1) month from the date of receipt of the information from the concerned individual. Furthermore, there exists a statutory obligation for the company to disclose similar information when filing annual returns for the relevant year.

In line with the foregoing, the CAC, in one of its public notices affirmed the mandatory nature of filing a Notice of PSC and has consistently enforced compliance with this statutory obligation. In order to strengthen adherence, the CAC has imposed restrictions on companies, limiting their ability to register changes to corporate information unless they have duly complied with filing any outstanding Notice of PSC. In addition, as outlined in the Regulations, where a PSC, or the company or officers of the company fail to comply with these requirements, such default may result in prescribed fines by the CAC, applicable for each day of default until such default is addressed.

In conclusion, Companies are strongly advised to diligently adhere to the statutory requirements stipulated in CAMA 2020 and the accompanying Regulations to preempt the imposition of sanctions associated with non-compliance.



Banwo & Ighodalo possesses the requisite expertise and competence to provide comprehensive legal guidance on the intricacies of entering the Nigerian business landscape, including the establishment of companies in Nigeria, post-establishment permits & licenses as well as ensuring meticulous compliance with post-registration obligations.

This newsletter is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and our Law Firm or serve as legal advice. We are available to provide specialist legal advice on the readers' specific circumstances when they arise.

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