

FILING OF ANNUAL RETURNS, A MANDATORY STATUTORY REQUIREMENT?

Introduction

An Annual Return is a yearly statement which provides essential information about an organization's composition, activities, and financial position, which must be filed by every active registered entity with the Corporate Affairs Commission (CAC or the Commission) in accordance with the provisions of the Companies and Allied Matters Act (CAMA).

In Nigeria, **Section 370 – 378 of CAMA (2004)** and Chapter 16 of the CAMA (2020) makes it a statutory prerequisite for every company in Nigeria to file its annual returns every year. The only exemption is found in the provisions of **Section 421 (2) of CAMA 2020 which exempts companies with one member** from filing annual returns.

For the new classes of entities created under CAMA 2020 namely, Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs), whilst it is clear pursuant to **Section 773 (Part C)** that LLPs have an obligation to file annual returns, it may be implied from **Section 807 (Part D)** that LPs also have an obligation. **Section 807** provides that all of the provisions of Part C (which includes the provisions on annual returns) are also applicable to LPs, as long as such provisions are not expressly inconsistent with the provisions of Part D, which regulates LPs.

The obligation to file annual returns is also imposed on business names and incorporated trustees under both the 2004 CAMA and the 2020 CAMA. See **Section 587** and **Section 607** of the 2004 CAMA in respect of business names and incorporated trustees respectively. The applicable provisions of the 2020 CAMA are **Section 822 and Section 848**.

Timeline for Filing Annual Returns

Depending on the nature of the registered entity, the duly completed annual return form, signed by a director and the company secretary, accompanied by the relevant documents prescribed by the CAMA shall be delivered to the Commission not later than 42 days after the annual general meeting for the year, whether or not that meeting is the first or the only general meeting of the company in that year.

However, the company may apply to the commission for extension of time within which to file its annual return for any given calendar year. **Note** that the CAC Operations Checklist, released in the month of July 2020 provides that annual return shall be filed within 14 days, contrary to the 42 days provided for by both the 1990 and 2020 CAMA..

LLPs and LPs are mandated to file their annual returns within 60 days of closure of their financial year.

Under both the old and new acts, business names are mandated to file annual returns not later than the 30th day of June each year, except for the year of registration and incorporated trustees are required to file their annual returns between 30th of June and 31st of December each year.

CAC Forms and Documents Required for Filing Annual Returns

The CAC forms and documents required to file Annual returns vary as it depends on the entity involved

Procedure for Filing Annual Returns

The procedures for filing annual returns for the various companies/entities are almost similar, however the procedures and requirements may differ as it relates to each individual entity. Essentially, in respect of companies, annual returns must be filed with the Commission within 42 days of the holding of the annual general meeting of the company for the year.

Note: A Penalty is fixed by the Commission and must be paid by erring entities for late filing of annual return.

Importance of Filing Annual Returns

1. It helps the company or entity give notice to the Commission of the entity's continued existence, further to which the entity's name is retained on the register kept by the commission. Failure to file annual returns is a signal that the company may not be in operation.

2. The annual cost of the filing fee is inexpensive but if not done within the stipulated period, the company or business will not only pay the filing fee, but will incur additional fees as penalty for late filing. This penalty is higher than the filing fee and calculated progressively in accordance with the number of years of default.
3. Filing of annual returns and that too promptly, saves time especially in the situation where a business or company require a post incorporation service and must obtain a document or process any other application at the CAC. The Commission will not process any application by a registered entity unless the entity's annual returns have been filed up to date and penalties, if any, paid up
4. It is noteworthy that an up-to-date annual return filing is usually one of the requirements for most contract bids in public or private establishments and an entity desirous of meeting this requirement must ensure that its records are updated as and when due.

The Processing Period

Ordinarily, an application for filing of annual return with the CAC could take up to 7-10 working days for processing. It is important to also consider the other factors that could sometimes hinder the process, these factors include the previous state of the company's records, operational issues of the Commission's service providers, logistics and so on.

Documents to Be Attached with Annual Returns

In the process of filing annual return to the CAC, by virtue of **Section 422(1) (a)(b), 422(2) 422(3) CAMA 2020** generally certain documents are to be annexed to the annual return filing in respect of companies including, a Certified True Copy (CTC) of the every balance sheet (Statement of Financial Position) and profit and loss account (Statement of Profit or Loss) laid before the company in general meeting, a CTC of the report of the Auditors on, and of the report of the directors accompanying each balance sheet.

Companies submit their annual returns at different dates of the year. Submission of this report is contingent and depending on the time it holds its Annual General Meeting. Under the 2004 CAMA, no company was exempted from this requirement unless otherwise, it's a newly incorporated company which is normally allowed a grace period of up to 18 months from the date of incorporation to hold its start-up or first annual general meeting. However under the 2020 CAMA, **Sec 237 (1)**, companies with single shareholders and small companies (i.e., whose turnover is not more than N120,000,000 (One Hundred and Twenty Million Naira) and whose net assets value is not more than N60,000,000 (Sixty Million Naira) none of its members are aliens or government entities and for companies having shares, the directors hold at least 51% of shareholdings) are exempted from holding Annual General Meetings.

The Penalty for Delay in Filing

As previously mentioned, the penalties for entities who fall under the category, or are required to file annual returns by the law but fail to do so, has been prescribed in **Section 425 of CAMA 2020**. The provision states that the company and every director or officer are liable to a penalty that is at the discretion of the Commission.

Failure to file annual returns for a consecutive period of 10 years is a ground for striking the name of a company off the companies' register.

The law empowers the Commission to strike off the name of a company or business from the Register of Companies, whereby there is reasonable basis to believe that a company is not in operation, after following the due process of investigating as to the status of the company. In most cases the commission relies on one major criterion which is that the failure to file annual returns is an indication of the company being dormant

What Happens When Your Company Has Been Delisted for Failure to File Annual Return?

When a company has been delisted for failure to file annual returns, anybody aggrieved by the striking off of the name of the company from the register, may apply to the court at any time before the expiration of 20 years from the publication of the notice of removal, for an order restoring the company to the register and if the court is satisfied that, at the time of the striking off, the company was carrying on business or in operation, or that otherwise it is just to restore it to the register, the court may order the name of the company to be restored to the record.

A formal application can also be written in form of a letter addressed to the Registrar General (RG) of the CAC, appealing as well as stating why the annual return was not filed as at when due.

In addition to the written application, receipt of all payable dues (total fees of years of unfiled annual return), updated records of the company or entity must be attached.

If the application is successful, a relisting certificate would be reissued to the company to that effect.

The content of this newsletter aims at providing a broad guide on the subject matter. For expert advice, reach us on....

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