

Legal Alert **Dormant Companies ? Legal & Tax Implications**

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Legal Alert for July 2009 ? Dormant Companies in Nigeria ? Legal & Tax Implications

There is no statutory description, in Nigeria, of what a dormant company is, or what a dormant company means. In practice however, a dormant company is one that is not carrying on business or trading, for whatever reason. In jurisdictions where legislative provision is made for regulating dormant companies, a dormant company is described as one that has not had any significant accounting transaction during the relevant financial year.

Shareholders of dormant companies in Nigeria have over the years being under the impression that there were no statutory reporting and compliance requirements for them under Nigerian Law. Efforts by the Corporate Affairs Commission ("CAC") to de-list some dormant companies in Nigeria have also not served as a deterrent for these companies to meet the minimum regulatory requirements.

This Alert reviews the minimum legal and tax compliance requirements for all incorporated companies in Nigeria, whether they are dormant or active.

Legal Compliance Requirements

All incorporated companies in Nigeria are regulated by the provisions of the Companies and Allied Matters Act, 1990 ("CAMA"). It is a mandatory provision of CAMA that every company in Nigeria must hold its first Annual General Meeting ("AGM") within eighteen months of its incorporation. Subsequent AGMs must be held at least once in a year by shareholders of each and every company in Nigeria.

The failure to hold any of these statutory shareholders meetings renders the incorporated company and every officer of it liable, on conviction, to a fine of N50 (Fifty Naira) for every day for which the offence continues unabated. In some instances, the failure to hold an AGM and file the appropriate Annual Returns ("AR") could be a ground for winding up a company. See Sections 211, 212 and 408 of CAMA.

A key item for consideration at every shareholders meeting is the review and approval of the audited accounts of the company. Once the audited accounts of a company are approved by its shareholders, the annual returns for the company with the accompanying audited accounts must be filed at the CAC within 42 days after the date of the holding of the AGM. The annual returns of

every Nigerian incorporated company must disclose the situation of the register of the members/shareholders of the company with the list of its debenture holders, the particulars of the current directors, shareholders and secretary of the company, its authorised issued and paid up capital, turnover and debts, etc.

Tax Compliance Requirements

Every company that is incorporated/registered in Nigeria is required to file a tax return, preferably a self-assessment tax return, at least once in a year. Accompanying the tax return must be the audited accounts of the company or a statement of its affairs indicating that it has not been engaged in material financial activity. A one percent bonus is usually credited to companies that file their tax returns and pay their taxes within the statutorily stipulated period.

A minimum tax is payable where a company declares that it has not made any profit in the relevant tax year. The minimum tax provision is however not applicable if at least 25% of the equity holding of the company is held by a foreign investor or the company is engaged in agricultural business or it is within the first four (4) years of its carrying on its business.

The penalty for late filing or non-filing of a tax return is N25,000 for the first month in which the failure occurred, and N5,000 for each subsequent month in which the failure continues. Where the offence of late filing or non-filing is established to have been committed with the knowledge or consent or connivance of a director or manager or secretary of the company, such a company official shall be liable on conviction to a fine of N10,000 or to imprisonment for a term of two years or to both the fine and the term of imprisonment. See Section 41 of the Companies Income Tax Act ("CITA").

Conclusion

Legal and tax commentators have criticised the lack of adequate regulation of dormant companies in Nigeria. In addition to their existence being a loss of revenue to the government, it is argued that they deprive other entrepreneurs the opportunity to utilise the business names of such dormant companies particularly where the shareholders of the dormant company have abandoned any intention of continuing to carry on business under such a name in the future.

The minimum legal and tax requirements for all corporations in Nigeria, whether dormant or not, are higher when compared to jurisdiction like the United Kingdom where the reporting requirements for a dormant company are enumerated in the UK Companies Act, and are minimal. Present attempts to amend the provisions of CAMA will do well to recognise the short-term benefits on the one hand or disadvantages on the other that a dormant company may have to the Nigerian economy, and regulate its practice accordingly.

Until CAMA and CITA legislations are amended, dormant companies in Nigerian will be advised

to comply with the existing statutory requirements.

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