

# Legal Framework For Doing Business In Nigeria





# Foreword

The relationship borne from foreign direct investment is symbiotic in nature as it is beneficial to both the foreign company and the host country. As companies begin to evolve in the wake of the COVID-19 pandemic, they will begin to seek larger markets in order to maximise business potential, in turn, most countries are making a conscious effort to create an enabling environment for these companies due to their possible contribution in resuscitating economies.

The resultant effect of this is that individuals, companies and nations are regrouping and diversifying their business interests to take advantage of the attendant benefits associated with foreign direct investments in a bid to improve bottom line. It is expected that the need to stimulate the economy, develop human capital, increase employment and maximise profit will create a flurry of activities in different sectors of the African economy. Nigeria, with its vast natural resources, a growing population, huge infrastructure gaps and innumerable opportunities in agriculture, manufacturing, energy, telecommunications, aviation and transport among others is a haven of opportunity. The government and people of Nigeria

are not only aware, interested and willing to explore these opportunities together with the international community, but have also and are still taking measures to create a conducive climate and are now welcoming investment and collaboration in the diversification of all sectors of the Nigerian economy. It is with a view to assisting investors in this regard that this Guide is put together by Primera Africa Legal. This Guide provides a broad overview of the Nigerian business regime. It highlights the rudimentary steps to starting a business in Nigeria, the general practices regulating different sectors of the economy and how these affect businesses in Nigeria as well as a practical approach to running a business in Nigeria.

*This Guide is by no means an exhaustive discussion on how to build and run a business in Nigeria but merely an essential first step in appreciating the business climate. It is advised that every investor procures the services of other professionals in the sector of their proposed or operating business.*

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# ABOUT Nigeria

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The Federal Republic of Nigeria, is a federal constitutional republic comprising 36 states and its Federal Capital Territory, Abuja. The country is located in West Africa and is reported to have a total area of 923,768 km<sup>2</sup> (356,669 sq. mi) with a population of about 200 million persons. Nigeria shares land borders with the Republic of Benin in the west, Chad and Cameroon in the east, and Niger in the north.

Nigeria has an abundant supply of natural resources including natural gas, petroleum, tin, iron ore, coal, limestone, niobium, lead, zinc, and arable land. Nigeria is rated as the 11th largest producer of oil in the world by the CIA World Factbook and the world's 9th largest exporter of oil. Similarly, Nigeria's liquefied natural gas reserves are three times as substantial as the crude oil reserves. These resources make her a productive haven for investment in a wide range of industries.

Nigeria's economy is classified as a mixed economy emerging market with well-developed financial, legal, communications, transport sectors, and stock exchange (the Nigerian Stock Exchange). Nigeria has one of the fastest growing telecommunications markets in the world, with major emerging market operators (like MTN, 9Mobile, Airtel and Globacom) basing their largest and most profitable centres in the country.

Nigeria also has a manufacturing industry which includes leather and textiles (centred in Kano, Abeokuta, Onitsha, and Lagos), car manufacturing (for the French car manufacturer Peugeot as well as for the English truck manufacturer Bedford, now a subsidiary of General Motors), t-shirts, plastics and processed food.

***The official language of Nigeria is English.***

# 03 Forming a Company in Nigeria

## OUTLINE

### 1. Forms of Business Entities Recognized in Nigeria

The primary legislation that governs business activities in Nigeria is the Companies and Allied Matters Act, CAP C20, Laws of the Federation of Nigeria, 2004 (CAMA). Company registration processes in Nigeria are national and the same registration processes apply to all parts of the country. Other laws may apply depending on the field or nature of the business and persons participating in the business. Business activities in Nigeria may be undertaken using any of the structures depicted in the diagram and described below:

#### **Limited Liability Company:**

This is a company where the liability of its members is limited to the amount if any, unpaid on the shares they hold respectively. It may either be a private company or a public company.

#### **Unlimited Liability Company:**

This is a business entity in which there is no limit to the liability of its members. It can be a private or public company. Generally, such companies are only ever private as the Corporate Affairs Commission would not register an unlimited liability public company.

#### **Company Limited by Guarantee:**

This company is one in which the liability of its members is limited to the amount that members undertake to contribute in the event of it being wound up. It has no share capital and cannot be incorporated with the objective of making profits for distribution to its members. It may either be a private or a public company.

#### **Incorporated Trustees:**

This is a not-for-profit business structure wherein Trustees are appointed by anybody, an association or community of persons bound together by a common religion, culture, nationality or kinship for the promotion of a common cause. An incorporated trustee must be set up for the advancement of a religious, educational, literary, scientific, social, developmental, cultural, sporting or charitable purpose and must be lawful.

#### **Sole Proprietorship:**

This is a business owned by one individual and is registered as a Business Name.

**Partnership:**

This has the same format as a sole proprietorship but has a minimum of two persons who come together to do business. This type of business is also registered as a Business Name.

**Foreign Subsidiary:**

Foreign Companies are required to register a local company in order to do business in Nigeria except where they are statutorily exempted from registration. Exempted companies include companies invited by or with the approval of the Federal Government of Nigeria to execute specified individual project(s), foreign government

owned companies engaged solely in export promotion activities, such exemptions are usually granted for a fixed period of time.

**Representative Office:**

Foreign companies can set up representative offices, but such companies cannot engage in business or conclude contracts. They only serve as promotional or liaison offices but must be registered in Nigeria.

All business entities must be registered with the Corporate Affairs Commission (CAC), (the statutory body responsible for the registration and regulation of business entities in Nigeria). In an effort to ease the company registration process, the Presidential Enabling Business Environment Council (PEBEC) was constituted in July 2016 to remove bureaucratic constraints to doing business in Nigeria and make the country a progressively easier place to start and grow a business. One of the laudable developments derived from their recommendations was the introduction of the online company registration portal. Consequently, companies can be registered seamlessly within twenty-four (24) hours without any professional assistance.

## Incorporation of Business Entities & Timeline for Incorporation

| SN | STEP  | STATUTORY REQUIREMENTS  | ESTIMATED TIME FRAME   |
|----|---|---|--|
| 01 | Availability Check/Reservation of name.   | Electronic reservation of a unique company name.  | <ul style="list-style-type: none"> <li>- Less than 24 hours.</li> <li>- NB: Reserved business name lapses after 60 days. Subsequently an application for re-issuance may be made.</li> </ul> |
| 02 | Prepare the requisite incorporation documents for registering the company with the Corporate Affairs Commission.                  | <p>These includes:</p> <ul style="list-style-type: none"> <li>- Form CAC 1.1 – Application for the Registration of a Company (The incorporation documents have now been consolidated into a single form).</li> <li>- The Memorandum and Articles of Association.</li> <li>- Stamp duty (as assessed)</li> <li>- Statutory fees apply for obtaining forms and processing registration.</li> </ul>  | Time frame depends on availability of information but can be completed in less than 24 hours.  |
| 03 | Processing of Application at the CAC  | Submission of the application in the required form  | Less than twenty-four (24) hours.  |
| 04 | Register with the Federal Board of Inland Revenue Department of the Ministry of Finance for income tax and VAT which is now 7.5%. | <p>Copies of the company's incorporation documents are submitted alongside;</p> <ul style="list-style-type: none"> <li>- The letter appointing a tax adviser for the company;</li> <li>- Tax advisers name and address;</li> <li>- Date the company commenced business;</li> <li>- Names, addresses and mobile numbers of major promoters, principal officers and the chairman of the company.</li> </ul> <p>NB: This procedure does not attract any statutory costs.</p> | 1-2 Weeks  |

## **Registration of Business Names**

A Business Name is usually associated with sole proprietorships or partnerships. An individual, firm (of partners) or corporation may register a Business Name at the CAC. Business names must be registered where the name consists of an addition to a person's name. For example, Andrew Philips does not require registration, but Andrew Philips & Co requires registration.

### **Requirements for the Registration of Business Names**

The process for registration of Business Names essentially involves the submission of duly completed forms, which would contain information on the proposed business and the details of the individuals or corporations forming the business. The information would include (but may not be limited to the following):

The proposed name;

General nature of the business;

Full address of the principal place of business;

Where the registration to be effected is that of a firm; the present forenames and surnames, nationality, age, sex, occupation and usual address of each of the individuals who are the intended partners or in the case of a corporation which is an intended partner, the corporate name and registered address of the corporation;

The proposed date of commencement of business;

Certificate of professional qualification where the business is of a professional nature;

Passport photographs of the individuals; and

In the case of a non-Nigerian, evidence of the individual's immigration status.

## **Foreign Investors doing Business in Nigeria**

Foreigners are allowed to freely invest and participate in the operation of any business except those on the negative list including the production of arms, ammunition, production of and dealing in narcotic drugs and psychotropic substances, production of military and para-military wears and accoutrement including those of the Police, Customs, Immigration and Prison Services, and such other items as the Federal Executive Council may, from time to time determine.

## Approvals/Registrations Required for Foreign Participation

In addition to the above incorporation, foreign companies (or companies with foreign interest) that intend to do business in Nigeria may be required to carry out other registrations or secure other approvals as a condition for doing business in Nigeria. Some of the approvals are mandatory while some others are required only where the Company would employ expatriates.

### **Registration with the Nigerian Investment Promotion**

**Commission (NIPC):** It is a statutory requirement that any company in which there is foreign participation must be registered with the NIPC.

**Business Permit:** Every enterprise with foreign participation must obtain a business permit in order to conduct business in Nigeria. Note: only companies that have a minimum share capital of Ten Million Naira (N10, 000,000. 00) are eligible to apply.

**Expatriate Quota:** Any company that intends to employ expatriates must obtain an expatriate quota position for each expatriate employed. Note: only companies that have a minimum share capital of Ten Million Naira (N10, 000,000. 00) are eligible to apply.

**Residence Permit:** Expatriate employees who intend to reside in Nigeria must obtain a residence permit.

**Certificate of Capital Importation (CCI):** CCI's are Central Bank of Nigeria (CBN) certificates issued by banks for importation of cash (foreign currency Inflow) for investment as equity, loan, and also for importation of machinery and equipment for investment as Equity or Loan. The Certificate is obtained from the Nigerian bank through which the payment is transferred into Nigeria and is primarily aimed at providing statutory evidence of capital inflow/investment into a Nigerian Company.

**Approval for Transfer of Technology and other Agreements:** The National Office for Technology Acquisition and Promotion Act provides that any agreement under which a foreigner is to provide foreign technology, management, or assistance, to a Nigerian company must be approved by the National Office for Technology Acquisition and Promotion ("NOTAP").

### **Registration with the Department of Petroleum Resources:**

Companies that wish to engage in petroleum operations in Nigeria are required to register with the Department of Petroleum Resources ("DPR"). The DPR issues Permits, upon application, in respect of oil exploration and production activities, as well as oil service activities.

## Other Approvals

Other approvals that may be required include:

**National Agency for Food and Drugs Administration and Control (NAFDAC):** for the manufacturing of food and drugs.

**Nigerian Communications Commissions (NCC):** for activities in the telecommunications industry.

**Nigerian Electricity Regulatory Commission (NERC):** for the electricity power sector.

**National Tourism Development Commission (NTDC):** for the tourism industry.

**Standards Organization of Nigeria:** for general manufacturing of products.

## **Listing on the Nigerian Stocks Exchange**

Companies desiring to be admitted to the official list of the Nigerian Stock Exchange (NSE) must comply with the Exchange's rules governing listing, as well as the relevant provisions of the Companies and Allied Matters Act 2004, the Investment and Securities Act and other relevant statutory requirements. Listing of securities on the stock exchange may be carried out through an Offer for subscription, Offer for sale, placing, Rights offer/issue, Capitalization Issue, a tender, conversion, an introduction, options or any other method the NSE Council may prescribe.

### **Requirements for Listing on the Nigerian Stock Exchange**

The general requirements for listing are not exhaustive and the NSE Council may from time to time vary, add or subtract from the requirements as considered necessary subject to the approval of the Securities and Exchange Commission.

#### **Some of the general requirements are as follows:**

- Application for Listing will only be entertained if sponsored by a Dealing Member of the Exchange.
- The company must be a public company, which will issue or has issued an invitation to the public to subscribe for its shares or has satisfied the NSE Council that the public is sufficiently interested in the company's shares to warrant Listing.
- Have a minimum of three (3) years' operating track record, for companies whose securities are not already listed on the exchange and two (2) years if already listed.
- All securities for which listing is sought shall first be registered with the Securities and Exchange Commission.
- There must be no restriction on the transfer of shares of the company.
- The Council shall not grant an initial listing where the last audited accounts of a company is more than 9 months old.

# 04 Labour & Employment

## 01 Tax Structure

### OUTLINE

1. Tax Structure
2. Tax Registration
3. Tax Incentives
4. Tax Treaties

Taxation in Nigeria has been structured towards encouraging private sector involvement in the country's economy. It is mainly levied by the federal and state governments, although the local government is also legally mandated to collect certain levies and dues. The Federal Board of Inland Revenue (FBIR) administers federal taxes through its

operational arm called the Federal Inland Revenue Service (FIRS). States taxes are administered by the Inland Revenue Board of respective states, while the various councils administer local government taxes. It is also important to note the impact of digital taxation imposed by the recent Finance Act 2020 on foreign entities.

*NB: Individuals including employees, partnerships and unincorporated trusts are liable to Personal Income Tax. Every employer is required to file a return of all emoluments paid to its employees at the state Inland Revenue Board.*

## 02 Tax Registration

### Registration at the State Tax Office

Applicants are required by the Federal Inland Revenue Service (FIRS) to;

- Complete tax registration forms for corporate income tax registration as well as VAT;
- Submit an application letter to the tax authority for a tax clearance certificate; and
- Register at the integrated tax office for income tax purposes.

### Registration at the Federal Board of Inland Revenue

All employers shall register with the relevant state tax authority for income tax. Once the application is filed with a copy of the certificate of incorporation attached, a reference file is opened for the company.

## Tax Incentives

The following are some of the tax incentives available to investors in Nigeria:

### Pioneer Status

This incentive is issued by the Nigerian Investment Promotion Commission (NIPC). The benefit of a pioneer status certificate is that the company is exempted from paying tax for a specified number of years. The exemption is for a maximum of 5 years if the company is in an urban area while it is 7 years for companies in rural areas subject to the companies meeting specified requirements.

### Agricultural Sector

- Companies engaged in agricultural trade or businesses are not liable for minimum tax.
- Non – restriction of the capital allowance claimable by the companies to 66% of assessable profit.
- Tax exemption of the interest earned from agricultural loans, provided the moratorium is not less than 18 months and the rate of interest is not more than the base lending rate at the time of the loan.

### Oil & Gas Sector

The following fiscal incentives have been approved by the government in the gas production phase:

- Tax rate under Petroleum Profit Tax (PPT) Act to be at the same rate as company tax which is currently at 30%;
- Capital allowance at the rate of 20% per annum in the first 4 years, 19% in the 5th year and the remaining 1% in the books;
- Investment tax credit at the current rate of 5%; and
- Royalty at the rate of 7% on shore and 5% offshore.

### Solid Minerals

Companies engaged in the mining of solid minerals are entitled to enjoy tax – free holiday for the first 3 to 5 years of operation. They are also entitled to claim initial and annual allowance as follows:

### Export & Mining Enterprise

- A wholly export oriented company established outside an export processing zone (EPZ) is exempted from companies' income tax for its first 3 years, provided the export proceeds constitute at least 75% of its turnover and its repatriates at least 75% of the export earning to Nigeria.
- Plant, machinery, equipment and accessories imported exclusively for mining operations in Nigeria are exempted from customs and imports duties.
- A new company engaged in the mining of solid minerals will enjoy a tax holiday of 3 years.
- A new company engaged in the mining of solid minerals will enjoy a tax holiday of 3 years.
- Free Trade Zones (FTZs) and EPZs are designated from time to time and enterprises operating in such designated zones enjoy tax exemption and considerably relaxed exchange control measures.

### Telecommunications

Rebate and tax relief are provided for the local manufacture of telecommunications equipment and provision of telecommunication services.

### Abolition of Excise Duty

All excise duties were abolished by the federal government effective 1 January 1998 but excise duties were re – introduced from 1 January 1999 on the following products:

- Spirit and other spirit – based alcohol
- Cigarette, cigars, cheroots and cigarillos
- Other manufactured tobacco and tobacco – manufactured substitutes

# 04

## Tax Treaties

### Hoteliars & Tourism

25% of income derived from tourism by hotels in convertible currencies is tax-exempt. This exemption only applies where such income is put in a reserve fund to be utilised within 5 years for expansion or the construction of new hotels, conference centres and new facilities deemed useful for the development of tourism.

### Research & Development

- 120% tax deductible expenses for research and development carried out in Nigeria.
- 140% for research and development on local raw materials.

### Infrastructure

20% of the cost of providing basic infrastructure (roads, water, and electricity) in communities where they do not exist is tax deductible once and for all.

### Re-Investment Allowance

- Approved expansion of production capacity
- Modernisation of production facilities
- Diversification into related products

### Investment in Economiccally Disadvantaged Areas

- 100% tax holiday for 7 years
- 5% depreciation allowance over and above the initial capital depreciation

Nigeria has executed double tax treaty agreement (DTA) with some countries that could impact the tax liability of a foreign investor. Some of the countries with which Nigeria has DTAs include the United Kingdom, France, Belgium, China, the Netherlands, Pakistan, the Philippines, Romania, South Africa, Canada and Italy (Italy is with respect to shipping and air transport). Please note that this list is by no means exhaustive as new ones are being negotiated.

# 05 Financial Reporting/Auditing

## OUTLINE

1. *Financial Reporting System*
2. *TCompany Financial Books and Records*
3. *Auditing Company Financial Records*

## Financial Reporting System

Nigeria has adopted the International Financial Reporting Standards (IFRS), a global accounting standard, which took effect from January 1, 2012. While public entities are expected to have implemented this policy by January 1, 2013, the implementation timeline for small and medium sized entities was January 1, 2014.

The Financial Reporting Council of Nigeria (FRCN) established under Act No.6 of 2011 is the Federal Government agency under the supervision of the Federal Ministry of Trade and Investment charged with the primary responsibility of developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statements of public entities in Nigeria; and for related matters.

## Company Financial Books & Records

All corporate entities in Nigeria are required to maintain a certain minimum of financial records for the benefit of transparency in corporate governance and the assurance that the entity is a going concern. The Corporate Affairs Commission (the 'CAC') is the autonomous body charged with the responsibility to regulate the formation and management of companies in Nigeria. The records required by the Companies and Allied Matters Act (CAMA) include;

The Financial Reporting Council of Nigeria (FRCN) established under Act No.6 of 2011 is the Federal Government agency under the supervision of the Federal Ministry of Trade and Investment charged with the primary responsibility of developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statements of public entities in Nigeria; and for related matters.

## Accounting Records

Every company in Nigeria is expected to keep and maintain Accounting Records. Accounting records include all documentation to prove ownership of assets, creation of liabilities, and evidence of monetary and non-monetary transactions of a company. These records should be sufficient to explain the financial status of the company at any time. Accounting records form the basis of relevant information and data used in preparing the Financial Statements and audited accounts of the company. It is a mandatory requirement to maintain the Accounting Records of a company for a period of six (6) years from the date of the making after which the company may destroy them. The Financial Reporting Council of Nigeria (FRCN) established under Act No.6 of 2011 is the Federal Government agency under the supervision of the Federal Ministry of Trade and Investment charged with the primary responsibility of developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statements of public entities in Nigeria; and for related matters.

## Financial Statements

Directors of every company are required to prepare a financial statement of the company for each financial year. It is the major Accounting Record of a company and should include:

- statement of the accounting policy of the company (not necessary for a private company);
- the balance sheet as at the last day of the year;
- a profit and loss account , or, in the case of a company not trading for profit, an income and expenditure account for the year;
- notes on the account;
- the auditor's report;
- the directors' report;
- a statement of the source and application of funds (not necessary for a private company);
- a value-added statement for the year (not necessary for a private company);
- a five-year financial summary (not necessary for a private company), and
- the group financial statements, in the case of a holding company.

This record is to be compiled in compliance with the International Financial Reporting Standards (IFRS) and should be made available to the members of the company not less than twenty-one days before the date of the general meeting of the company at which the financial statement would be laid.

## Annual Returns

Every company is under an obligation to make and deliver to the Commission an Annual Return in prescribed form. Information to be provided on this statutory form includes; the authorised share capital of the company, the total number of share units in the company, number of issued shares, particulars of the company's indebtedness (if any), company's turnover, net assets, etc. Basically, such information that summarises the company's financial status at a glance is what is provided in the Annual Returns. This information assists the Commission in their assessment of whether the company is still a going concern.

Annual Returns should be filed eighteen months' post incorporation/registration or within forty-two (42) days after the annual general meeting for each year.

In the case of a foreign company exempted from the obligation to be incorporated in Nigeria, Annual report to be filed should disclose the following:

- Place/country of registration;
- Date of registration and certificate number;
- Principal place of business in place/country of registration;
- Share capital of the company (if any);
- Principal place of business in Nigeria;
- Date of exemption;
- Description of business in Nigeria
- Expected date of completion of business in Nigeria;
- Name and address of each director, partner or other principal officers of the company since date of exemption and any changes made since.

## Auditing Company Financial Records

It is statutorily required of every company to appoint an external auditor for every financial year. The main duty of the auditor is to examine the financial records of a company and make a report to the members of the company on these. The auditor's report is made available to the members of the company at the general meeting of the company during the tenure of the auditor.

In the case of a public company, the auditor's report is also made to the audit committee of the company. The Auditor's report further serves as a reference material for reviewing the company's system of accounting, reporting policies and internal control to ensure they are in accordance with legal requirements and ethical practices and such further functions as stipulated by statute.

# 06 Labour & Employment

## OUTLINE

1. *Governing Statutes*
2. *Eligibility*
3. *THolidays*
4. *Social Securities*

## Governing Statutes

The Labour Act sets minimum employment conditions mainly for manual and clerical workers. Employers may enter into contracts with these categories of workers but cannot contract outside the minimum standards set by the law.

Other applicable laws are below:

1. Factories Act , Cap F1 (LFN ) 2004;
2. Pension Reform Act , Cap P4 (LFN) 2004;
3. Trade Union Act, Cap T14 LFN 2004 as amended by the Trade Unions (Ammendment) Act 2005;
4. Trade Disputes Act, 1976, Cap T81 LFN 2004;
5. National Directorate of Employment Act 1989, Cap N28 LFN 2004;
6. Wages Boards and Industrial Councils Acts 1974, Cap W1 LFN 2004;
7. National Minimum Wage Act 1981, Cap N61 LFN 2004 as amended by National Minimum Wage (Ammendment) Act 2011;
8. Employee Compensation Act 2010.

## Eligibility

Any person may employ or be employed in Nigeria except; (i) children (where the employment is not one of apprenticeship); (ii) foreigners (where immigration formalities have not been complied with); and (ii) women in underground mines or at night for manual work.

## Employment of Expatriate Staff

The employer must first secure an expatriate quota from the Immigrations Department. While companies that have a minimum share capital of Ten Million Naira (N10, 000,000. 00) are eligible to apply for expatriate staff quotas, a company with Fifteen Million Naira (N 15,000,000.00) and above has an automatic quota of two (2) expatriate employees while companies with a Thirty Million Naira (N 30,000,000.00) capitalization and above have automatic quota of four (4) expatriate employees. A Work Permit is also granted to the expatriate employee in order for him/her to be able to fill the expatriate quota position.

### Procedure for Application for Expatriate Quota

Completed immigration forms should be submitted to the Immigrations Department with accompanying documents such as:

1. Certified True Copies of Incorporation Documentation of the employing business;
2. Evidence of non-availability of expertise in Nigeria;
3. Training programme incorporating management succession schedule for Nigerian employees;
4. Job title designations of expatriate quota positions required and the academic and working experience required for the occupants of such positions;
5. Tax Clearance.

Usually, the expatriate employee will be issued a Subject to Regularization Visa to enter the country at the Nigerian High Commission/Embassy in the country where he has been domiciled for at least six (6) months. The application for this visa must be accompanied by:

- Valid passport with minimum of 6 months validity;
  - Letter of Employment;
  - Expatriate Quota Approval;
  - Credentials of the Applicant;
  - Duly Completed FORM IMM 22;
  - Curriculum Vitae or Resume;
- For Chief Executive Officers (C.E.O) of corporate organizations, there is need for an extract of the minutes of the Board's Resolution.

Upon entry into Nigeria, an application is required to be made to the Director of Immigrations for a Combined Expatriate Residence Permit and Aliens Card (CERPAC) for the expatriate employee. With this, there is no need to apply for a separate work permit.

## **Holidays**

Clerical and manual workers are entitled to a minimum of 6 working days leave per annum. Apprentices and persons under 16 years are entitled to a minimum of 12 working days. Holidays for other classes of employees are entirely subject to contract. Women are entitled to maternity leave with pay six weeks before childbirth and six weeks afterwards.

## **Social Security**

### **Pensions**

All employers (who have more than five employees) and employees must contribute a minimum statutory percentage of the employee's monthly emoluments (comprising basic salary, housing allowance and transport allowance) into the Retirement Savings Account (RSA) of the employee. The employee is barred from making any withdrawal from the RSA until he/she has attained the age of 50. The contributions would be managed and administered by Professional Fund Administrators and held in custody by licensed Pension Fund Custodians. At retirement, the amount in the employees' Retirement Savings Account would be the total contributions plus income and capital gain earned on the contributions made.

Life Insurance Policy must also be taken on their behalf by their employers for an insured amount of not less than three (3) times their annual total emolument.

### **Pensions for Invalidity**

Every employer must make a contribution of a minimum of 1% of its total monthly payroll in the first 2 years to the National Social Insurance Trust Fund (NSITF) to cover injuries, disease, disability or death at the work place. The scheme is designed to relieve the employer of the heavy burden of solely taking care of the injured worker. Compensation is paid to the injured employee regardless of who is at fault.

### **Health Insurance**

An employer who has a minimum of ten (10) employees may together with his employees make contributions under the National Health Insurance Scheme (NHIS). The scheme is designed to relieve the employer of the heavy burden of solely taking care of the injured worker. Compensation is paid to the injured employee regardless of who is at fault.

# 07 International Trade

## OUTLINE

1. *Regulatory Agency / Role*
2. *Incentives*

## Regulatory Agency/ Role

Importation and exportation of goods into and outside Nigeria is a highly regulated sector of the Nigerian economy. The Federal Ministry of Industry, Trade and Investment is the agency of the Federal Government whose primary mission is to formulate and implement policies and programmes to attract investment, boost industrialization, increase trade and exports and develop enterprises in Nigeria. This agency has a Department of Trade which has statutory responsibilities for the promotion, formulation, execution and implementation of Domestic and External trade policies for Nigeria.

Traffic of goods to and fro across the Nigerian borders is monitored centrally by the Nigeria Customs Service (NCS) alongside the Nigerian Export Promotion Council (NEPC). The Customs and Excise Management Act (CEMA) Cap C45, Laws of the Federation of Nigeria, 2004 vests legal authority in the NCS to act on behalf of the Federal Government of Nigeria in all customs matters. In this regard the NCS performs inter-agency functions on behalf of other government agencies, namely;

- The Federal Ministry of Industry, Trade and Investment;
- The National Agency for Food and Drugs Administration and Control (NAFDAC) – prevents the illegal importation of food, food products, drugs and chemicals into the country,
- National Drug Law Enforcement Agency (NDLEA)- prevents the importation and exportation of hard drugs,
- Nigeria Police Force (NPF)- prevents illegal importation or exportation of firearms and ammunition
- Standards Organisation of Nigeria (SON) - ensures that all export products are certified as being up to standards as stipulated by SON.

## Incentives

In a bid to encourage trade across the nation's borders; the Nigerian government has in place several incentives aimed at encouraging indigenous and foreign investors to trade in the Nigerian market. Established across the country are export processing zones and export processing factories strategically designed by the Federal Government of Nigeria to create a business-friendly environment for the investor. Locating in any Free Zone in Nigeria automatically confers upon the investor certain advantages, benefits and incentives which include;

- Exemption of application of Nigerian taxes, levies, duties and foreign exchange regulations in the Free Zone;
- Repatriation of foreign capital investment in the Free Zone is permitted at any time with the capital appreciation of the investment;
- Profits and dividends earned by foreign investors in the Free Zone may be remitted overseas at any time;
- No import or export licenses are required;
- Up to 100% foreign ownership of the business in the Free Zone is permitted;
- Companies operating in the Free Zone may employ foreign management and other qualified personnel.

A wide range of industries may operate within the Free Zone. These include: electrical and electronic products, textile and garment products, leather products, cosmetics, rubber, petroleum, oil and gas logistics, pharmaceutical kits, medical kits, etc.

# 08 Competition Rules/ Consumer Protection

## OUTLINE

1. *Governing Statutes*
2. *Governing Bodies*
3. *Regulated Sectors;*
  - *The Securities Market*
  - *Communication*
  - *Electricity*
  - *Aviation*

## Governing Statutes

The principal legislation governing competition in Nigeria is the **Federal Competition and Consumer Protection Act (FCCPA)**, enacted in 2019. It is the first holistic law on competition and consumer protection in Nigeria, having repealed certain provisions of the **Investments and Securities Act** which had hitherto, governed competition in little detail. The FCCPA provides that its provisions would override the provisions of any other law in Nigeria on matters related to competition and consumer protection, with the exception of the Constitution.

## Governing Bodies

The FCCPA establishes the **Federal Competition and Consumer Protection Commission (The Commission)** to promote and maintain competitive markets in the Nigerian economy and ensure welfare of consumers by providing consumers with product choices at competitive prices, amongst other functions that are ancillary and incidental to consumer protection and competition. It also establishes the **Competition and Consumer Protection Tribunal** to review the decisions of the FCCPC whenever a person is aggrieved by them. Appeals from decisions of the Tribunal then lie to the Court of Appeal.

## Regulated Sectors

Hitherto, various sectors had been regulated by different enactments with regards to competition and consumer protection in those sectors. However, the advent of the FCCPA makes all prior existing provisions at the very least, subject to its provisions, if it does not outrightly repeal them. Furthermore, the FCCPA directs the Commission to negotiate agreements with all government agencies whose mandate includes enforcement of competition and consumer protection in order to harmonise the exercise of jurisdiction over competition and consumer protection matters within the relevant industry or sector. Some of the relevant sectors include: It also

establishes the Competition and Consumer Protection Tribunal to review the decisions of the FCCPC whenever a person is aggrieved by them. Appeals from decisions of the Tribunal then lie to the Court of Appeal.

### **- The Securities Market**

This was formerly regulated by the Securities and Exchange Commission under the Investments and Securities Act 2007. The FCCPA repealed the provisions of Sections 118 – 128 of the ISA which dealt with competition and consumer protection in mergers.

### **- Communication**

This is regulated by the Nigerian Communications Commission (“NCC”). It is empowered by the Nigerian Communications Commission Act 2003 which vests it with exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and regulations, whether of a general or specific nature, as it relates to the Nigerian communications market

### **- Power**

The Electricity Power Reform Act Cap E7, Laws of the Federation of Nigeria 2004 makes provisions for the development of healthy competition in the sector with the creation of the Nigerian Electricity Regulatory Commission (the “NERC”).

### **- Aviation**

The Civil Aviation Act 2006 Cap C13, Laws of the Federation 2004, creates a body known as the Nigerian Civil Aviation Authority. The Body is vested with the authority to investigate and determine upon its own initiative or upon receipt of a complaint by any air carrier, air travel agent, consumer of air transport service or other allied aviation service provider, whether any of the aforementioned has been or is being engaged in unfair or deceptive practices or unfair methods of competition and order a defaulter to desist from such practices.

All the existing regulators now have a duty to carry out their functions, in line with and under the supervision of the Federal Competition and Consumer Protection Commission.

# 09 Intellectual Property Protection

## OUTLINE

1. Copyrights
2. Governing Law/Regulatory Agency
3. Eligibility for Copyright Protection
4. Procedure for Registration
5. Duration of Copyright Protection
6. Trademark
7. Governing Law/Regulatory Agency
8. Eligibility for Registration
9. Procedure and Requirements  
for Registration
10. Patent
11. Governing Law/Regulatory Agency
12. Conditions for Patentability
13. Procedure for application
14. life Span of Patent
15. Rights Covered Under Patent

## Copyrights

### Governing Legislations/Regulatory Agency

Nigeria is part of the global race for the protection of IP rights. Copyright law and practice is governed in Nigeria by a number of legislations. The principal legislation governing Copyright in Nigeria is the Copyright Act, CAP C28 Laws of the Federation, 2004. The Act is regulated by the Nigerian Copyright Commission and a Licensing Panel. There are also several treaties and international agreements on Copyright to which Nigeria is a party or signatory such as:

- The Berne Convention 1886;
- The Universal Copyright Convention 1952;
- Rome Convention 1961;
- Trade Related Aspects Of Intellectual Property Rights [TRIPS];and
- The World Intellectual Property Organization (WIPO)

## Eligibility for Copyright Protection

Literary works, musical works, artistic works, cinematograph films, sound recordings, and television broadcasts are eligible for copyright protection in Nigeria. Protection may also be given to performers in respect of live performances and expression of Folklore. Every work eligible for copyright protection must have the following features:

Originality,

Fixation of work,

The author or one of the authors must be a citizen of Nigeria or a non-Nigerian who is domiciled in Nigeria or a body-corporate incorporated by or under the laws of Nigeria,

Other than a broadcast, must be work that was first published in Nigeria; or in the case of a sound recording, is made in Nigeria,

The work is made by or under the direction or control of the Government, a State authority and prescribed international body,

The author is a citizen or body-corporate domiciled in a country that is a party to an obligation in a treaty or other international agreement to which Nigeria is a party.

## Procedure for Registration

Under copyrights, no registration is required. This is because Nigeria does not operate a centralised system of registration of copyrights. However:

All work entitled to protection are ipso facto, vested with protection (e.g. literary works, Artistic works, Musical works, films, sound recording, etc.)

The Commission is empowered to maintain an effective data bank on authors and their works.

Copyright Notification is not a mandatory registration process, and therefore does not confer any right on a work other than the protection granted under the Copyright Act.

Therefore, publishers, printers, producers and manufacturers of works are required to keep a register of all works produced by them showing the following:

The name of the author;

The title;

The year of production;

The quantity of the work produced.

## Duration of Copyright Protection

Duration depends on the nature of work involved.

For Literary, musical or artistic works other than photographs, copyright in the work will expire seventy years after the end of the year in which the author dies. If the Author is a corporate body or Government copyright will expire seventy years after the end of the year in which the work was first published.

For Cinematograph films and photographs the copyright will expire fifty years after the end of the year in which the recording was first made.

Sound Recording is fifty years after the end of the year in which the recording was first made.

Broadcast copyright will expire fifty years after the end of the year in which the broadcast first took place.

# Trade Marks

## Governing Legislations/Regulatory Agency

The Trade Marks Act (TMA) 1965 Cap T13 LFN 2004 and Trade Marks Regulations of 1967 are the primary legislations governing Trademark administration in Nigeria. Nigeria is also a party to the Madrid Agreement on International Registration of Trademarks, and the Nice Agreement on the International Classification of Goods and Services also has specific laws governing trademark administration and the enforcement of accruing rights in Nigeria.

The Trademarks, Patents and Designs Registry under the Commercial Law Department of the Federal Ministry of Industry, Trade and Investment (FMITI), is the relevant trademark authority in Nigeria with a central registry in Abuja, Federal Capital Territory.

## Procedure and Requirements for Registration

### Who can Apply?

Application for trademark registration can be filed directly by the applicant or through its local agent. An applicant must provide an address for service within Nigeria where it chooses to file the application directly.

### Grounds for Refusal

A trademark may be refused registration on the grounds that:

- it is not distinctive, that it is deceptive or scandalous, contrary to law or morality or in any way disentitled to protection;
- that it contains some prohibited words and/or symbols such as the names of chemical substances, Coat of Arms, the words "patent", "patented", "registered", "registered design", "copyright", "to counterfeit this is a forgery", or words to the like effect and so on.

### Eligibility for Registration

A device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof all constitute marks which may be registered. Any person claiming to be the proprietor of a trade mark used or proposed to be used can apply for the registration of the trademark. Deceptive or scandalous matters or designs likely to cause confusion, chemical substance and geographical names in their ordinary signification are not eligible for registration in Nigeria as trademarks. Once registered, the trademark is assignable and transmissible either in connection with the goodwill of a business or not.

### Duration and Renewal

The initial registration is valid for 7 years and may be renewed for a period of fourteen years from the date of expiration of the original registration or of the last renewal of registration. Application for renewal may be filed at any time not more than three months before the expiration of the registration to the Registrar of Trademarks.

# Patent

The right to a patent is granted for an invention to an individual (the Patentee) for a limited period of a monopoly right in respect of that invention.

## Governing Legislations/Regulatory Agency

Grant of patents in Nigeria is regulated by the Patents and Designs Act (PDA) Cap P2 of Laws of the Federation of Nigeria 2004. The Trademarks, Patents and Designs Registry under the Commercial Law Department of the Federal Ministry of Industry, Trade and Investment (MITI), is also the relevant patent authority.

## Conditions for Patentability

Two conditions are primarily set for patentability. They are;

- that there is an invention or inventive step,
- and that such invention is capable of industrial application.

However, plants or animal varieties, or essentially biological processes for the production of plants or animals, inventions, the publication of which will be contrary to public order and morality, principles of a scientific nature are not patentable.

## Procedure for Application

### Life span of Patent

Under the Act, a patent may be granted either for a product or for a process. Whichever the case may be, subject to regular payment of the annual fees due, patents shall be valid for twenty years from the date of the filing of the relevant patent application.

### Rights Conferred by Patent

Under the PDA, the grant of a patent confers on the patentee the right to preclude all other persons from doing any of the following acts:

- where the patent has been granted in respect of a product, the act of making, importing, selling or using the product, or stocking it for the purpose of sale or use; and
- where the patent has been granted in respect of a process, the act of applying the process or doing, in respect of a product obtained directly by means of the process, any of the acts mentioned in paragraph (a) of this subsection.

Like trademark, a registered patent is assignable and transmissible either in connection with the goodwill of a business or not.

The Patentee, whose patent has been infringed, can make claims for remedies such as damages, injunction, and accounts. The Federal High Court has the exclusive jurisdiction for entertaining action brought under the Patents and Designs Act.

# 10 Investment Promotion & Protection

## **Investment Promotion**

- Regulatory Statute/Agency
- Investment Incentives and Guarantees

## **Investment Protection – Legal Framework**

- NIPC Act
- Bilateral Investment Treaties

## **Dispute resolution**

## **01**

### **Investment Promotion**

#### **Regulatory Statute/ Agency**

In order to encourage investments in Nigeria, the Federal Government has established a body known as the Nigerian Investment Promotion Commission (the “Commission”) under the Nigerian Investment Promotion Commission Act, Cap N117, Laws of the Federation of Nigeria 2004 (“NIPC Act”). The Commission is empowered to encourage, promote, and coordinate investments in Nigeria and provide services for the grant of business entry permits, licenses, authorizations and incentives in a One-Stop-Shop environment.

The One Stop Investment Centre (OSIC) commenced operations officially on the 20th March, 2006 and provides investors a coordinated, streamlined and efficient access to the registries of all relevant government agencies and ministries in one location. This is aimed at simplifying the procedural steps for obtaining business approvals and shortens delivery time of the services required by investors.

## **Investment Incentives and Guarantees**

A foreign investor engaged in any legitimate enterprise is guaranteed some incentives including the following:

1. Unconditional transferability of funds through an authorised dealer in free convertible currency of dividends or profits (net of taxes) attributable to the investment;
2. And remittance of proceeds (net of all taxes) and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment; and
3. Payments in respect of loan servicing where a foreign loan has been obtained;
4. Assistance and guidance by the Commission, or for the purpose of promoting identified strategic or major investments, specific incentive packages for the promotion of the investment as the Commission may specify.

## **02**

### **Investment Protection – Legal Framework**

#### **Nigerian Investment Promotion Commission Act**

The NIPC Act provides, that no enterprise shall be nationalised or expropriated by any government of the federation and no person who owns, wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other person unless such acquisition is in the national interest, or for a public purpose.

In the event that any acquisition is in the national interest or for a public purpose, this must be carried out:

Under a law that provides for the payment of fair and adequate compensation to the investor; and

Guaranteeing a right of access to the courts for the determination of the investor's interest or right and the amount of compensation to which he is entitled.

With an effective dispute resolution system in place, in accordance with international standards

## Bilateral Investment Treaties

The risks faced by foreign investors are not necessarily limited to those inherent in the particular business venture, but often extend largely to those relating to interference from local governments, import and export restrictions, political unrest and in some instances, even war. The object of BITs is to protect investments by providing an efficient framework for resolving disputes on the basis of international law.

Although BITs differ because they are concluded on the basis of negotiations with states, the standard recurring provisions relate to protection of investments by ensuring that there is:

- Fair and Equitable treatment;
- Full protection and security;
- No arbitrary or discriminatory measures impairing the investment;
- National treatment and most favoured nation treatment;
- Free transfer of funds relating to investments;
- No expropriation without compensation; and
- Compliance with specific investment undertakings.

Nigeria has in force bilateral treaties with China, Finland, France, Germany, Italy, Netherlands, Romania, Serbia, South Korea, Singapore, Spain, Sweden, Switzerland, Turkey; and the United Kingdom.

## Dispute Resolution

The Nigerian Government has committed under the NIPC Act to make all efforts through mutual discussion to reach an amicable settlement of any disputes that may arise between investors in an enterprise and any Government of the Federation. The Act provides that where there is a dispute between the Federal Government and an investor, relating to the investment, and the parties cannot agree to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Disputes (ICSID) Rules will apply.

In the event that the parties are unable to amicably settle the dispute, the parties may:

- Submit at the option of the aggrieved party to arbitration, in the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Federal Government and the country of which the investor is a national, are parties; or
- Resolve it in accordance with any other national or international dispute resolution mechanism for the settlement of investment disputes agreed to by the parties.

In addition, there is no restriction or hindrance to the right of an investor to approach the Nigerian courts for the resolution of any investment disputes. However, the courts in keeping with common law principles will often not interfere with any contract terms reached by parties relating to the operation of the investment and the method of dispute resolution.

# Public Private Partnerships & Infrastructure Development

## OUTLINE

1. *Governing Statutes*
2. *Governing Bodies*
3. *Regulated Sectors;*
  - *The Securities Market*
  - *Communication*
  - *Electricity*
  - *Aviation*

## Introduction

Public Private Partnership (PPP) is a model of public procurement based on long-term relationships between government or other public bodies and the private sector for the delivery of services. There is a heightened awareness on the part of the Nigerian Government, both at the Federal and State level, to engage the private sector via PPP's. The primary objective of PPP's in Nigeria is to improve infrastructure service levels and deliver efficient and cost effective services for public good. Indeed, PPP's have so far been successfully applied in several transport (road, rail and air), housing, and agro etc. projects across the country.

## Regulatory Statutes, Policies & Regulations

PPP procurement in Nigeria is generally operated at two levels of government i.e. the State and the Federal government. While PPP's on Federal Government projects are regulated by Acts of the National Assembly and other Federal enactments, PPP's for State government projects are regulated by State Laws and other enactments of the State's House of Assembly. These laws are put in place to guide PPP projects and ensure safeguards for the investments by private project partners in PPP arrangements. The following Statutes, Policies and Regulations regulate the PPP procurement and execution process:

- The Infrastructure Concession Regulatory Commission (ICRC) Act 2005;
- State Public Private Partnership Laws, for instance the Akwa-Ibom State Public Private Partnership Law, 2012 and the Ekiti State Public Private Partnership Law
- State Public Private Partnership Laws, for instance the Akwa-Ibom State Public Private Partnership Law, 2012 and the Ekiti State Public Private Partnership Law
- The Public Procurement Act 2007;
- The National Public Private Partnership Policy, 2009;
- Regulations issued by ICRC governing the PPP process;
- The National Integrated Infrastructure Master Plan (NIIMP).

Other Laws and policies may affect the PPP procurement process as dictated by specific industry requirements on the particular project, for instance, the Nigeria Oil and Gas Industry Content Development Act places certain minimum requirements for the recruitment and use of local experts in the oil and gas industry and contractors supplying services to companies within the industry.

## Regulatory Agencies

Several agencies have been established by Laws and Regulations to regulate PPP transactions in Nigeria. The primary role of these agencies range from deciphering necessary projects requiring PPP execution modules to monitoring the partnership procurement process and the eventual project execution. Agencies regulating the PPP procurement process include:

- The Infrastructure Concession Regulatory Commission (ICRC)
- The PPP Resource Centre
- The National Planning Commission (NPC)
- The National Council on Public Procurement (NCP)
- Ministries, Departments and Agencies (MDA)
- Federal Ministry of Finance (MoF)
- Debt Management Office (DMO)
- Bureau of Public Procurement (BPP)
- Bureau of Public Enterprise (BPE)

The Infrastructure Concession Regulatory Commission Act primarily allows for private sector participation in infrastructure development projects. Thus private corporate entities may enter into contracts with the Federal Government, ministries, agencies, corporations, or bodies involved in infrastructure development and financing for the development, financing and operation of

infrastructure. This is however subject to the financial capacity, relevant expertise and experience of the private entity in undertaking infrastructure development and maintenance. Selection of a private partner is usually made through an open bid competitive process. Projects which may be undertaken under a PPP arrangement are only those involving Federal or State government assets or projects undertaken by Federal or State Government bodies.

## PPP Models & Financing

PPP's may be structured by variant models. PPP models are primarily distinguished by two factors;

- the degree of risk allocation between the public and private sectors and associated investment levels
- length of the contract period.

The main types are:

- the degree of risk allocation between the public and private sectors and associated investment levels
- Service Contract PPPs
- Management Contract PPPs;
- Lease Contract PPPs;
- Concession Contract PPPs- Often called core PPPs because a substantial amount of risk is fully transferred to the private sector, and
- Build-Operate-Transfer (BOT) and similar arrangements PPPs - Often also called core PPPs because a substantial amount of risk is fully transferred to the private sector.

Typically, the responsibility for arranging the funds for a PPP project rests with the private partners. Corporate finance and project finance are two approaches a private partner may take to raise funds for the project. PPP projects may be financed through equity, debt, mezzanine funding/quasi equity, and government support.

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