



**BANWO & IGHODALO**

# **Doing Business In Nigeria**

A nighttime photograph of a city skyline, likely Lagos, Nigeria, with several prominent skyscrapers illuminated with blue and white lights. The lights are reflected in the water in the foreground. The sky is dark, and the overall scene is vibrant and modern.

**GREY MATTER**



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With a nominal GDP of over \$492 billion (2016) and a more than 180-million strong youthful population, Nigeria, is both Africa's biggest economy and the most populous black nation on earth. Whilst available demographic data presents the country as the preferred investment destination on the continent, ongoing economic reform continues to make Nigeria a progressively easier place to do business, with attendant inflow of significant foreign investments in recent years.

This document highlights the basic legal and regulatory framework for doing business in Nigeria. Analyzed in simple language understandable to all classes of persons and businesses, domestic and foreign investors from diverse places around the globe will find this compilation a useful guide to learning the basic requirements of doing business, in Africa's largest consumer market and economic hub.

Banwo & Ighodaro

# 1

## OVERVIEW ON DOING BUSINESS IN NIGERIA



## INTRODUCTION

Under Nigerian Law, business activities may be undertaken in Nigeria through any of the following entities:

- a) private or public limited liability company;
- b) unlimited liability company;
- c) company limited by guarantee;
- d) partnership/firm;
- e) sole proprietorship; and
- f) incorporated trustees.

Specifically, the Companies and Allied Matters Act, Cap C20, Laws of the Federation of Nigeria (“LFN”) 2004 (“CAMA”) regulates the formation of business organizations, save for partnership/firm and sole proprietorship.

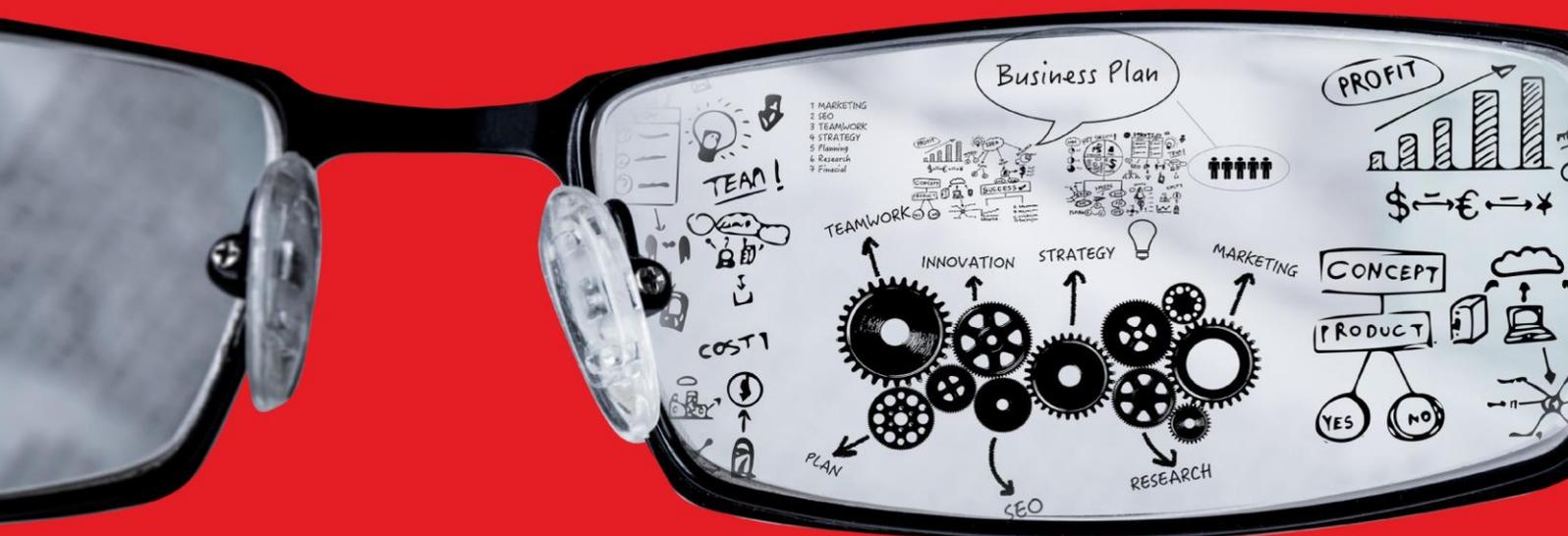
Section 54 of CAMA provides that in order to ‘carry on business’ in Nigeria, a foreign company must be incorporated in Nigeria as an entity under the provisions of CAMA. The Nigerian company upon incorporation is a separate legal entity from its overseas parent. However, a foreign company may apply to the Federal Executive Council for exemption from the requirement to register in Nigeria if it belongs to one of the categories listed in Section 56 (1) of CAMA. The categories are as follows:

- a) Foreign companies invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project;
- b) Foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation;
- c) Foreign Government-owned companies engaged solely in export promotion activities; and
- d) Engineering consultants and technical experts engaged in any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.

Under Nigerian company law, a company having a share capital may either be registered as a **private limited liability company**, a **public limited liability company** or an **unlimited company**. Most non-Nigerians desirous of setting up entities in Nigeria usually establish private limited liability companies, at inception and may then, based on their business models, convert these to public limited liability entities at a later date.

# 2

## SETTING UP A COMPANY IN NIGERIA



**(A) NAME OF THE PROPOSED COMPANY**

The first step towards incorporating a company in Nigeria is to conduct an “**availability search**” at the Corporate Affairs Commission (“**CAC**”), which is the companies’ registry, to confirm that the desired name for the company is available for use, i.e., that the said name is not identical or similar to the name of an existing company or any existing trademark or trade name or otherwise unacceptable to the CAC.

Usually, two (2) or three (3) alternative names are submitted for the availability search and where available, same will be reserved for an initial period of sixty (60) days which can be renewed for further sixty (60) day periods. During the reservation period, no other company can be registered with the reserved name or any other name which, in the opinion of the CAC, is identical or similar to the said reserved name.

**(B) BUSINESS OF THE COMPANY**

Generally, a non-Nigerian individual or entity may engage in any business in Nigeria except for enterprises involved in the production of arms and ammunitions; production and dealing in narcotic drugs and psychotropic substances; and the production of military and para-military wears and accouterment. Where the proposed business of the company includes rendering professional services, the CAC usually requires a proficiency certificate of one of the directors of the proposed company before such an object is registered.

**(C) REQUIRED DOCUMENTS**

Upon confirmation that a name is available, the following documents will be completed and filed at the CAC<sup>1</sup>:

**(i) Memorandum and Articles of Association (“MemArts”)**

These are the constitutional documents of the Company. The Memorandum sets out the main objects of the company whilst the Articles regulate its internal governance and administrative procedures. This is usually a standard form which essentially adopts the specimen MemArts contained in the schedule to CAMA. Promoters of companies are however allowed to add an extra page to the Articles, which will set out any particular provisions considered imperative for the Company. Extensive additions are also allowed with the prior consent of the Registrar General

The MemArts must be subscribed to by **at least two (2) persons** (individuals and or companies), both of whom/which can be non- Nigerians and whom/which must jointly take up a minimum of twenty-five percent (25%) of the Company’s authorised share capital. Each individual subscriber must submit a recognised form of identification such as a copy of the data page of his/her international passport, national driver’s license or the national identity card or a certificate of incorporation in the case of a corporate subscriber.

Please note that where any of the proposed promoters of a new company is an incorporated entity, the CAC requires that such promoter must be represented by an

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<sup>1</sup> Section 35 of CAMA

individual, who will sign the incorporation documents, in addition to affixing that promoter's common seal thereto. A resolution of the board of directors of such promoter authorizing it to become a member of the proposed company and nominating the individual who will sign the incorporation documents and or represent it on the board of directors of the proposed company, is also required to be filed together with the incorporation documents with the CAC. The resolution must be printed on the promoter's stationery, signed by its directors, and have its common seal affixed thereon.

(ii) **Form CAC 1.1 Application for Registration of Company**

This form will contain details of the type of company to be formed. Three (3) types of companies are set out in the form namely: company limited by shares, company limited by guarantee and an unlimited liability company. The type of company to be formed must be indicated the form.

The reserved company name to also required to be indicated in the form.

In addition, the form will contain the following information:

➤ **Section A: Company Address**

Every company is required to have a registered office address in Nigeria at the time of its incorporation which should be a location in Nigeria and not a postal address. Where the head office address is different from the registered office address, this will need to be indicated in this section.

➤ **Section B: The Authorized Share Capital of the Company**

This section will contain the details of the company's authorized share capital (please see our advice in Section D below regarding the statutory requirements on share capital). This section also requires the signature of a director of the company.

➤ **Section C: Particulars of First Directors and their Consent to Act**

The names, date of birth, addresses, nationality and country of residence of the directors of the company, who must be **at least two (2) individuals<sup>2</sup>**, are set out in this section. The directors need not be Nigerians but must be at least eighteen (18) years old<sup>3</sup>. This must be submitted with a recognised form of identification. A copy of the data page of an international passport or national driver's license or national identity card of each director will suffice.

Where any of the directors is a foreigner resident in Nigeria, evidence of residence permit must also be submitted to the CAC.

➤ **Section D: Particulars of Company Secretary (Individual)**

Every company incorporated in Nigeria is required to have a Company Secretary.<sup>4</sup> Where the Company Secretary is an individual, the name and address must be set out in this section. The signature of the individual must also be affixed in this section. This must also be supported with a recognized form of identification.

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<sup>2</sup> Section 246(1) of CAMA

<sup>3</sup> Section 257(1) of CAMA

<sup>4</sup> Section 293 of CAMA

➤ **Section D1: Particulars of Company Secretary (Firm/Corporation)**

Where the Company Secretary is a firm or corporation, the name, address and registration number (BN/RC Number) must be set out in this section. The common seal of the firm or corporation must also be affixed in this section.

➤ **Section E: Statutory Declaration of Compliance with the Requirements of CAMA by a Legal Practitioner**

This section includes a statutory declaration, (which will be made by counsel in our firm) attesting that the statutory requirements for the registration of the Nigerian company have been duly complied with.

**(D) SHARE CAPITAL**

**(i) Authorised Share Capital**

Pursuant to CAMA, the minimum authorised share capital for a private company is ₦10,000 (Ten Thousand Naira) whilst a public company must have a minimum authorised share capital of ₦500,000 (Five Hundred Thousand Naira).<sup>5</sup>

However, where any of the subscribers to the company's MemArts is a foreign entity or individual, the company's authorised share capital must be a minimum of ₦10,000,000 (Ten Million Naira) as prescribed by the Nigerian Investments Promotion Commission ("NIPC") (please see our advice in H below).

**(ii) Issued Share Capital**

At incorporation and at every point in time during its existence, a company's issued share capital must not be less than 25% of its authorised share capital<sup>6</sup>. In other words, at least 25% of the company's authorised share capital must be taken up by its shareholders. Please note these share need not be fully paid up.

Generally, there are no restrictions under Nigerian law, preventing a foreign entity from "wholly-owning" a Nigerian company.<sup>7</sup> It is important to note that Section 18 of CAMA requires every Nigerian company to have a minimum of two shareholders (who need not be Nigerians). Foreign nationals are however required to obtain a business registration certificate and a business permit before undertaking any form of business in Nigeria (please see our advice in H below).

**(iii) Paid-Up Share Capital**

There is no statutory requirement that any minimum amount of a company's issued share capital must be paid up.

**(E) OFFICIAL FEES**

The statutory fees payable upon incorporation of a company limited by shares is assessed based on its authorized share capital. We have listed hereunder, the applicable statutory fees:

<sup>5</sup> Section 27(2) of CAMA

<sup>6</sup> Section 27(2)(b) and section 99(1) of CAMA

<sup>7</sup> Note that there are certain industry-specific restrictions which preclude some categories of Nigerian companies from being "wholly-owned" by foreigners. For example, any company seeking to register a vessel under the Coastal and Inland Shipping (Cabotage) Act, Cap C51 LFN 2004, must be 60% owned by Nigerians.

- (i) Stamp duties – 0.75% of the authorised share capital which is payable to the Federal Inland Revenue Service.
- (ii) CAC filing fees – 1%<sup>8</sup> of the authorised share capital which is payable to the CAC.
- (iii) Approximately N5,000 (Five Thousand Naira) which is payable for obtaining certified true copies of the MemArts and Form CAC 1.1 from the CAC.

#### (F) MANAGEMENT

Every Nigerian company acts through its members in general meeting or its Board of Directors (which are the two main organs of the company) or through officers, managers or agents appointed by, or under the authority derived from, the members in general meeting or the Board of Directors. It is common practice for the Articles of Association (“Articles”) of companies to permit the Board of Directors to delegate functions to a Managing Director and other executive directors or to committees of the Board of Directors. **Unless the constitutional document otherwise provides, there is no maximum number of directors a company must have but there is a statutory minimum of 2.**

There are no restrictions, under Nigerian law, on the nationality or residence of the directors of a Nigerian company. However, Nigerian companies desirous of employing expatriate personnel are required to obtain Expatriate Quota Approval (further details in Section H below) (non-executive directors who come into Nigeria for Board Meetings and functions would not be deemed to be employees). Unless the Articles otherwise provide, there is no requirement that a director holds shares in the company.

#### (G) TIMING

The incorporation process can typically be concluded within twenty- four (24) hours from submission of relevant documents at the CAC and the payment of official fees.

#### (H) OTHER PERMITS REQUIRED (INVESTMENT APPROVALS)

##### (i) **Certificate of Capital Importation (“CCI”)**

A CCI is a certificate issued by an Authorized Dealer (usually a bank licensed to deal in foreign exchange) as evidence of the importation of foreign currency into Nigeria for investment purposes, in accordance with the provisions of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, LFN 2004 (“FEMMA”). FEMMA permits investment in a Nigerian enterprise with foreign currency imported into Nigeria through an authorised dealer (usually a bank licensed to deal in foreign exchange) and converted into Naira. At the point of exporting investment capital to Nigeria, a foreign investor is required to specify the Nigerian beneficiary of the investment funds and the purpose therefor. The Foreign currency so imported is guaranteed unconditional transferability through an Authorized Dealer in freely convertible currency. Unconditional convertibility and repatriation also applies to yields on such investment funds (e.g. dividends, profits, loan repayments and interest), and the investment capital, in the event of divestment.

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<sup>8</sup> Please note that this fee is assessed at 2% for public companies

Thus, a CCI assures the unhindered remittance of investment capital and any accretion thereon, in any convertible currency. Remittance of these monies is usually at the prevailing official exchange rate of the Naira on the relevant date. The FEMM Act also permits the operation and maintenance of domiciliary accounts. An Authorized Dealer is required to issue a CCI within 24 (twenty-four) hours of receipt of imported funds. In practice, a CCI is issued within 24 (twenty-four) to 72 (seventy-four) hours of funds inflow. The authorised dealer will typically charge commission and administrative fees for their services and the amount varies from bank to bank.

(ii) **Certificate of Business Registration**

By virtue of the Nigerian Investment Promotion Commission Act Cap N117 LFN 2004 (**NIPC Act**), a Nigerian company with foreign equity participation must register with the NIPC and obtain a Certificate of Business Registration before carrying on business.<sup>9</sup> Until such a company is registered with the NIPC, it is not entitled to commence business in Nigeria

(iii) **Business Permit**

Section 36(1)(b) of the Immigration Act, 2015 prohibits a non- citizen of Nigeria from establishing a business or registering a company for that purpose without the consent of the Minister responsible for immigration matters. In practice, the consent is obtained after the incorporation of the company has been concluded in the form of a “**Business Permit**” issued by the department of citizenship of the Federal Ministry of Interior (“**FMI**”).

Application Form is N30,000, Automation Fees is N51,000 and Registration Fee is N100,000. The timeline for processing business permit certificate ranges from 4 to 6 weeks.

(iv) **Expatriate Quota Approvals**

The employment of foreign nationals is prohibited unless the permission of the Comptroller-General of Immigration is obtained under section 38(1) of the Immigration Act 2015. This permission is usually granted in the form of Expatriate Quota Approvals. A company seeking to employ foreign nationals in Nigeria is required to obtain Expatriate Quota Approval in respect of such position and it must justify the requirement for employing expatriates for the specified positions. Otherwise, the application could be refused on the ground that there exists competent Nigerians to fill the relevant positions. In addition, there is a requirement to disclose plans for the employment and training of Nigerians who will understudy the foreign experts for the purpose of the eventual take-over of the expatriate quota positions. The application for Expatriate Quota Approval can be made along with that for the Business Permit

There are two types of expatriate quota approvals namely:

- (a) Permanent Until Reviewed (“**PUR**”) quotas, which are usually reserved for Chief Executive Officers; and
- (b) Ordinary quotas, which are issued to expatriate employees of the company as well

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<sup>9</sup> Section 20 of the NIPC Act

as directors.

Ordinary expatriate quota approvals (suitable for all categories of expatriate employees) are valid for an initial period of three (3) years and renewable every two (2) years thereafter. On the other hand, PUR quota approvals (suitable for Managing Director/Chief Executive Officers, top management staff and business owners) are valid for a period of ten (10) years and renewable every ten (10) years thereafter.

Application forms can be obtained for an application fee of N25, 000 (Twenty Five Thousand Naira). A non-refundable filing fee of N50,000 (Fifty Thousand Naira) and processing fee of N10,000 (Ten Thousand Naira) per slot/position that is granted are also payable.<sup>10</sup> It usually takes between two (2) to three (3) months in the case of ordinary quota and three (3) to four (4) months in the case of PUR to procure relevant Expatriate Quota Approvals

Following the grant of expatriate quotas to a company, such company will be required to file monthly returns in respect of such expatriate quota positions indicating the names of the employees currently holding the positions and the details of the Nigerians understudying the expatriate holding the position.

**(v) Combined Expatriate Residence Permit and Alien Card (“CERPAC”)**

Upon securing Expatriate Quota Approvals, each expatriate employee must obtain a CERPAC, which permits him/her to reside and work in Nigeria. The CERPAC is issued by the Immigration Office to the non- Nigerian employees upon their arrival in Nigeria.

Prior to arriving in Nigeria, expatriates are required to obtain a “Subject To Regularization” (“STR”) Visa from the Nigerian Embassy/High Commission in their home countries, which enables them to lawfully take up employment during the period in which applications for the issuance of CERPAC are being processed.

An application for CERPAC is made on a CERPAC form addressed to the Minister of Interior and the form is valid for three (3) months from date of purchase. The CERPAC is usually issued within six (6) to eight (8) weeks from the date of application and is valid for a period of two (2) years.

**(vi) Post-Incorporation Tax Registration**

Companies Income Tax:

The Companies Income Tax Act provides for the taxation of profits of companies (other than oil companies) in Nigeria. Accordingly, all companies assessable to tax under the Companies Income Tax Act must register with the Federal Inland Revenue Services (“FIRS”) and obtain a Tax Identification Number (“TIN”). The TIN must be shown on all returns filed or correspondence exchanged with the FIRS. This registration is done immediately after the incorporation process.

<sup>10</sup> These fees are subject to changes by the Nigerian Immigration Authority at the direction of the Federal Ministry of Interior.

Personal Income Tax:

The Personal Income Tax Act establishes a “Pay-As-You-Earn” (PAYE) scheme whereby employers are required to act as agents of the tax authorities for the purpose of collecting and remitting taxes on salaries due to their employees. For this purpose, every employer is required to register with the zonal office of the tax authority in the State where its place of business is located. This registration is done after the incorporation of the company and upon employment of staff.

Value Added Tax:

Value Added Tax (“VAT”) is imposed under the VAT Act. Under the VAT Act, all companies involved in business or trade are required to register with the FIRS within 6 (six) months of commencement of business.

(vii) **National Office for Transfer Technology Acquisition and Promotion (“NOTAP”) Certificate**

Every contract between a Nigerian company and a foreign company involving the transfer of foreign technology to the Nigerian company must be registered with NOTAP within sixty (60) days from the date of execution of such contract. Relevant contracts in this regard include:

- (a) use of technology; right to use patented inventions;
- (b) supply of technical expertise in the form of the preparation of plans, operating manuals or any other form of technical assistance;
- (c) supply of basic or detailed engineering;
- (d) supply of machinery and plant; and
- (e) provision of operating or managerial staff.

Thus, agreements between a Nigerian company and its overseas parent or affiliate for any of the above-listed purposes must be registered with NOTAP.

Upon the registration of an agreement, NOTAP will issue a Certificate of Registration which subsists for a period not exceeding three (3) years and in practice, such Certificate is usually renewable from time to time depending on the nature of the technology transfer involved. **The registration of an agreement with NOTAP assures the unimpeded remittance of royalties, management fees or technical support fees to beneficiaries resident outside Nigeria, through authorised banking channels.**

Barring any bureaucratic delays, the registration process can be concluded within five (5) weeks from the date all the documents required in support of an application are submitted to NOTAP.

# 3



# INCENTIVES



As part of its efforts to make the Nigerian business climate investment-friendly, the government has introduced various incentives and reliefs to promote both local and foreign investments. We have itemised hereunder, in outline, some of such incentives:

#### (A) PIONEER STATUS

Pioneer status confers a tax holiday that affords relief from income tax for a period of up to five (5) years (three (3) years in the first instance, which may be extended to a further period of two (2) years), for companies producing for export, establishing new industries or expanding existing facilities in sectors deemed vital to the economy.

Pioneer status is provided for under the **Industrial Development (Income Tax Relief) Act**, Cap 17 LFN 2004 (“**Act**”). Pursuant to the Act, the Federal Executive Council may declare an industry to be a pioneer industry and any product of the industry to be a pioneer product if the government is satisfied that:

- (i) the industry is not being carried on in Nigeria; or
- (ii) the industry is not being carried on a scale suitable to the economic requirements of Nigeria; or
- (iii) there are favourable prospects of further development in Nigeria of the industry; or
- (iv) it is expedient in the public interest to encourage the development or establishment of any industry by declaring it to be a pioneer industry.

Companies which have pioneer status are granted a tax holiday for an initial period of three (3) years beginning from their date of first production. The tax holiday period may however be extended for one (1) year or two (2) years by the Federal Executive Council, upon application by a pioneer company.

Any further extension of the period of tax relief depends on the rate and the need for expansion of the company, local raw materials input, training of local personnel, economic importance of the enterprise, and location of the business/enterprise.

#### (B) SECTORAL OR INDUSTRY SPECIFIC INCENTIVES

The government has also granted extensive incentives in certain sectors of the economy, including the oil & gas, power and telecommunications sectors.

#### (C) RESEARCH AND DEVELOPMENT EXPENSES

By virtue of section 22 of the **Companies Income Tax Act** Cap C21 LFN 2004 (“**CITA**”), expenses incurred on research and development (including the amount of the levy paid to the National Science and Technology Fund) are tax deductible from income tax, if the Research & Development (R&D) activities are conducted in Nigeria and connected with the business from which the income or profit is derived. Reserves made out of a company’s profits for research and development are also deductible. This must however not exceed 10% of the total profits of the company for the year as ascertained before any deduction for donation or research and development.

**(D) INVESTMENTS IN ECONOMICALLY DISADVANTAGED AREAS**

As part of Government's policy to foster inclusive development and encourage the spread of enterprises in rural areas, the Federal Executive Council (FEC) once approved special tax incentives for investments made in certain localities classified as economically disadvantaged areas. These include a 100% tax holiday for seven (7) years together with an additional 5% depreciation allowance over and above the initial capital depreciation. It should be noted that whilst these incentives are yet to fully become operational, efforts are being made by relevant government agencies in this regard.

**(E) INTEREST ON FOREIGN LOANS**

There are no thin capitalisation rules under Nigerian law, provided that minimum statutory share capital requirement (i.e. ₦10,000,000) is complied with. Thus, Nigerian companies can obtain shareholders' loans, borrow from banks including foreign banks and can obtain finance through intergroup lending. **Note however that recently, the Federal Inland Revenue Services ("FIRS") issued Transfer Pricing Regulations which seeks to regulate pricing, interest payment and other intercompany payments and payments amongst connected persons other than dividends.**

It is also important to mention that, by the provisions of CITA, **interest on foreign loans are entitled to certain tax exemptions**, depending on the tenor of the loan (such tenor not being less than two years), and the moratorium period on the loan. Table 1 in the Third Schedule to CITA (reproduced hereunder), specifies the applicable bands of tax exemptions.

Repayment Period including Moratorium	Grace Period	Tax Exemption Allowed
Above 7 years	Not less than 2yrs	100%
5-7 years	Not less than 18 months	70%
2-4 years	Not less than 12 months	40%
Below 2 years	Nil	Nil

In practice, the grace period referred to in the table above has been interpreted to mean moratorium period on both principal and interest payments.

Also, section 24 (a) of the CITA allows companies in computing their tax assessment to deduct any interest paid on any money borrowed and employed as capital for the acquisition of the item through which the profit sought to be taxed is generated. The CITA does not provide for the deduction of dividend paid as return on equity investments.

**(F) LOCAL VALUE ADDED**

A 10% tax concession of five (5) years for local value added is also given. This applies essentially to engineering industries, where some finished imported products serve as inputs. This is aimed at encouraging local fabrication rather than the mere assembly of completely knocked down parts.

**(G) INVESTMENT TAX ALLOWANCE**

Under this scheme, a company would enjoy generous tax allowances in respect of qualifying capital expenditure incurred within five (5) years from the date of the approval of the project.

(H) INCENTIVES IN FORM OF TAX EXEMPTION IN RESPECT OF THE FOLLOWING

- (i) Dividends;
- (ii) Interest on foreign currency domiciliary accounts;
- (iii) Interest earned on deposits in Nigeria by non-residents; and
- (iv) Income earned abroad repatriated to Nigeria.

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# 4.

## INTELLECTUAL PROPERTY



In Nigeria, registration of trademarks is governed by the Trade Marks Act. Pursuant to Section 5 of the Trade Marks Act, a registered proprietor / owner of a trademark enjoys exclusive use of the trademark and therefore has the right to exclude others from using that trademark. This exclusive right shall be deemed to be infringed by any person who tries to use the registered trademark or one confusingly similar to it without the proprietor's consent.

#### (A) REGISTRATION OF TRADE MARKS

All that is required in order to register a trademark is an intention to use (as opposed to actual use). Further, a trade mark registrable if it contains or consists of at least one of the following essential particulars –

- (a) *the name of a company, individual, or firm, represented in a special or particular manner;*
- (b) *the signature of the applicant for registration or some predecessor in his business;*
- (c) *an invented word or invented words;*
- (d) *a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;*
- (e) *any other distinctive mark*

*In addition, the proposed mark must be capable of distinguishing the goods/services of the applicant from those of another, involved in the same trade.*

Following the filing of an application for registration of a trademark, the application will be examined and where it is found that the trademark is not in conflict with any registered trademark or a prior pending application, an acceptance notification is issued (usually within one (1) to three (3) weeks of the filing of the application). The mark is then forwarded for publication in the Trade Marks Journal. If there is no objection raised to the registration of the mark within a period of two (2) months from the date of its advertisement in the journal, a Certificate of Registration is issued by the Registrar of Trade Marks. An official fee is also payable for the registration of a trademark.

Registration subsists for an initial period of seven (7) years and is renewable thereafter for consecutive fourteen (14) year terms.

#### (B) REGISTRATION OF PATENTS

The Patents and Designs Act Cap P2 LFN 2004 (the "PDA") governs the law of patents in Nigeria. A patent gives monopoly rights in respect of an invention and by virtue of Section 1 of the PDA, an invention is patentable if:

- (i) it is new;
- (ii) results from inventive activity; and
- (iii) is capable of industrial application.

Patent are granted at the patentee's risk as to the existence of a prior patent, as patent examinations are conducted for formal correctness only. After the patent is granted, the Registrar publishes notification of such grant, including a description of the patent in the government gazette. An official fee is also payable for the registration of a patent and the entire registration process generally takes a period of between two (2) to four (4) months. Duration of registration is 20 years from filing date provided annual renewal fees are paid

(C) REGISTRATION OF INDUSTRIAL DESIGNS

Section 12 of the PDA defines a design as an industrial design, which is then further defined as any combination of lines or colours or both, and any three- dimensional form, whether or not associated with colours; and which is intended by the creator to be used as a model or pattern to be multiplied by industrial process.

An industrial design is registrable if it is new and is not contrary to public order or morality. Duration of registration is 5 years and is renewable only for two (2) consecutive periods of five (5) years each

(D) COPYRIGHT

The Copyright Act Cap C28 LFN 2004 governs the law of copyright in Nigeria. The Act provides for the protection, transfer, infringement, remedy and penalty thereof of the copyright in literary works, musical works, artistic works, cinematograph films, sound recordings, broadcast and other ancillary matters.

The protection afforded by copyright is different from the other protection of intellectual or industrial property, in that copyright protection is automatic and does not require registration, provided the work satisfies the criteria laid down by law.

The Nigerian Copyright Commission ("**Commission**") runs a Copyright Notification scheme to enable creators of certain copyright works or persons who have acquired rights in these works to give notice of their copyright to the Commission or notice of any transfer of such right. Such facts as are disclosed in the notification will form part of the database of the Commission mandated to be kept under the Act, and has evidentiary value in proof of the possible date of creation of the work and other facts stated in the notification form.

# 5.



## OVERVIEW OF EMPLOYMENT RELATED LAWS IN NIGERIA



## (A) LABOUR ACT

The principal legislation governing employment issues in Nigeria is the Labour Act Cap L1 LFN 2004 (the “**Labour Act**”). Other sources of law are the received common law and case-law. Under the Labour Act, a ‘worker’ is defined in Section 91 as:

*“any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour ....”*

The Section goes further to exclude certain categories of persons from the above definition. For your purposes, it may be pertinent to note the exclusion of “**persons exercising administrative, executive, technical or professional functions as public officers or otherwise**”, among others, from the ambit of the Labour Act. These categories of persons are not covered by the Labour Act, and thus have their relationships with their employers governed by the terms and conditions of their individual contracts of employment.

With regard to workers subject to the Labour Act, Section 7 thereof provides that the employer must, not later than three (3) months after the beginning of employment provide the workers with a written statement specifying *inter alia*, the nature of the employment, rates of wages, termination notice, and terms and conditions of service i.e. work hours, holidays etc.

Examined hereunder are some salient provisions of the Labour Act, of which a prospective employer of clerical/manual workers must be mindful:

### **Hours of work and work week**

Section 13 of the Labour Act provides that the hours of work shall be as fixed either by mutual agreement (i.e. of the employee and employer), collective bargaining within the industry/organization concerned or by an industrial wages board. Hours in excess of those agreed in any of the aforementioned manners constitute overtime and attract extra wages. This Section also makes provisions for breaks/intervals during working hours.

Regarding work week requirements, Sub-Section 13(7) provides that in every period of seven (7) days, a worker shall be entitled to one day of rest, which shall not be less than twenty four (24) consecutive hours.

### **Wages**

A combination of Section 1 and 15 of the Labour Act provide that wages must be paid in legal tender and any other mode of payment renders the contract illegal. Wages shall become due and payable at the end of each period for which the contract is expressed to subsist (i.e. daily, weekly or monthly).

Regarding minimum wage requirements, the National Minimum Wage Act provides that it shall be the duty of every employer to pay a wage not less than the national minimum wage as may be prescribed from time to time to every worker under its establishment and any agreement to do otherwise shall be void and of no effect. There is no requirement for payment of bonuses to employees under the Act.

Like the Labour Act, the National Minimum Wage Act also exempts persons performing executive and professional functions (whether in the private or public sector) from its purview. As already stated above, these categories will have the terms of their employment dictated by their contracts

### Sick Leave

Section 16 of the Labour Act provides that a worker shall be entitled to wages of up to twelve (12) working days in any one (1) calendar year during absence from work caused by temporary illness certified by a registered medical practitioner.

### Annual Holiday

By Section 18 of the Labour Act, every worker shall be entitled after twelve (12) months continuous service to a holiday with full pay, of at least six (6) working days. This holiday may however be deferred by agreement between the employer and the worker.

### Notice

The periods of notice to be given by either the employer or worker, to terminate the contract of employment will depend on the contract period. In this regard, the Labour Act provides as follows:

S/N	Contract Period	Notice
(a)	3 months or less	1 day
(b)	Above 3 months but less than 2 years	1 week
(c)	2 years but less than 5 years	2 weeks
(d)	5 years or more	1 month

The Act also provides that any notice for a period of one (1) week or more shall be in writing.

It would be useful to note that for the purposes of recruiting staff locally, it may be easier for the company to utilise the services of a human resources recruitment firm to do a short list of candidates to fill vacant positions.

## (B) PENSION

The Pension Reform Act, 2014 ("the PRA") was enacted to consolidate and regulate pensions in both the Public and Private Sectors ("the Sectors") in Nigeria.

The Act establishes a Contributory Pension Scheme for employment in Nigeria for the payment of retirement benefit of employees to whom the Act applies. The provisions of the Act are stated in Section 2 thereof to be applicable to employees in the public sector and employees of private organisations in which there are 15 or more employees. The Act also provides that in the case of private organisations with less than 3 employees participation in the Scheme would be governed by guidelines issued by the National Pension Commission (PenCom).

Section 4 of the PRA provides for the rates of contribution to the Scheme. Both employer and employee are required to make a minimum of 10% and 8% respectively of the employee's monthly emoluments. 'Monthly emoluments' is defined by the Act to mean the total emolument as defined in the employee's contract of employment provided it is not less than the total of the employee's basic salary, housing and transport allowance.

However, the mandatory rates do not preclude an employer from bearing the total burden of contribution to the Scheme, provided the employer's contribution is not less than 20% of the employee's monthly emolument. In addition, a Group Life Insurance Policy must be maintained in favour of the employee for a minimum of thrice the employee's annual total emoluments

An employer is duty bound to deduct at source, the employee's contribution and within seven (7) days from the date of payment of salary, remit the employee and employer's contributions to a Pension Fund Custodian.

### (C) EMPLOYEES' COMPENSATION

The Employees Compensation Act 2010 ("ECA") provides the framework for employee compensation issues in Nigeria. The Act applies to all workers employed in private and public sector and provides for compensation for injuries sustained in the work place or occupational diseases picked up in the course of employment whether at the usual place of employment or outside it. The ECA establishes an Employees' Compensation Fund to be administered by the Nigerian Social Insurance Trust Fund Management Board which is the authority responsible for implementing the provisions of the ECA. Employers are now obligated to make a minimum contribution to the fund for the compensation of injured employees. The ECA also seeks to provide for the rehabilitation of injured employees, and expands the scope of injury to workers by including for example compensation for mental stress.

Every employer is required to pay a minimum of 1% of its annual payroll to the Fund in the first two (2) years of the enactment of the ECA. Subsequently, the applicable rate is determined by the Nigerian Social Insurance Trust Fund Management Board.

### (D) TRADE UNIONISM

Section 1 of the Trade Unions Act Cap T14 LFN 2004 defines a trade union as

*"any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether its purposes do or do not include the provision of benefits for its members".*

The list of registered and recognised trade unions in Nigeria is contained in Part A of the Third Schedule to the Trade Unions Act. The Trade Union (Amendment) Act in PART B of the Third Schedule specifies the "area of jurisdiction" of each registered union.

Under Nigerian law, one of the fundamental human rights entrenched in and protected by the Constitution is the right to peaceful assembly and association. Specifically, Section 40 of the Constitution provides *inter alia* that ***"every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interests..."***

Nigerian courts have upheld this right to freedom of association by holding that the right to form or join any political party or trade union is exclusively that of the individual citizen and not that of his employer.

Accordingly, every worker or employee in Nigeria has the right to, in conjunction with others form a trade union or join an existing one. The decision whether or not to exercise this right rests solely with such an employee, and he can neither be compelled to form or join a trade union nor can he be prevented by his employers from so doing, at least not overtly.

(E) DISPUTES

The Trade Disputes Act makes provisions for the settlement of trade disputes and other matters ancillary thereto.

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# 6.



## **OVERVIEW OF GENERAL COMMERCIAL LAWS IN NIGERIA**



**(A) SOURCES OF NIGERIAN COMMERCIAL LAW**

Nigerian law is derived from four (4) main sources. These are English law, Nigerian legislation, Nigerian case law and customary law; however only the first three sources are relevant to the subject of Commercial law.

**(i) English Law**

English law has been introduced into Nigeria through general and special legislation either of the local or imperial legislature, but by far the most important mode of reception of English law is through local statutes introducing English law. In this way, not only the whole system of English common law and equity but also (except in a few States in the country) statutes of general application in England as at January 1, 1900 have been received into the legal system.

In addition to the English law received in this general manner, there are also rules of law which are specifically received into our legal system.

English law is divided into common law and equity of England and English Statutes. Common law and equity account for a very considerable part of the Nigerian Commercial law especially the areas of contract, agency, employment, hire purchase, insurance and bailment.

**(ii) Nigerian Statutes / Legislation**

For the purpose of Commercial law, some of the items on the Exclusive Legislative List in Part 1 of the Second Schedule of the 1999 Constitution of the Federal Republic of Nigeria are Aviation, Banks, Banking, Bills of Exchange and promissory notes, commercial and industrial monopolies, control of capital issues, copyrights, currency, insurance, incorporation, labour, trade or business names, industrial design and merchandise marks, Stamp Duties, Taxation, Trade and Commerce as specified and so on.

**(iii) Nigerian Case Law**

The Courts, through interpretation, have created a body of legal principles which show the application of English law and concepts to Nigerian circumstances as well as the limitations of various Nigerian legislation.

The branches of Commercial law in Nigeria are mainly contractual and include such commercial contracts as agency bailments, bills of exchange and other negotiable instruments, bills of sale, carriers, employment, hire purchase, insurance, money-lending, partnership, sale of goods and international commercial transactions. Other branches of Commercial law concerning the protection of industrial and commercial property include trademarks, patents, designs and copyright.

**(B) INTERNATIONAL COMMERCIAL TRANSACTIONS**

Most of the commercial transactions entered into in Nigeria are necessarily governed by Nigerian law which, as earlier stated, may be derived from the received English law, local statutes and cases. However, with the growth of foreign trade, a substantial part of commercial contracts now have a foreign element. In a situation where there occurs a conflict of laws and the question whether or not Nigerian courts have jurisdiction to hear an action brought under a contract arises, the law will

consider three factors in deciding, these factors are:

- (i) The system of law to be applied in determining the issues in the transaction:

Reference is usually made to the law by which the contract in question was made or that with which the transaction has the most connection.

- (ii) The jurisdiction of the Nigerian courts to hear an action brought on or arising from the transactions.

The general rule is that a Nigerian court has jurisdiction to hear a case against a person if he can be served with the writ of summons. The most important exception to this general rule is that an action cannot be brought nor execution levied against a foreign sovereign or diplomat unless his diplomatic immunity is waived.

- (iii) How a judgment obtained in a foreign Court may be enforced in Nigeria:

A judgment obtained in one country does not automatically become enforceable in another. Indeed, in Nigeria, the judgment of a court in one state is not automatically enforceable in another state. In the case of foreign judgments (that is judgments of courts outside Nigeria), in certain cases they may be recognised as enforceable in Nigeria and in other cases they may be regarded as unenforceable.

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# 7



## LEVIES AND TAXES



### COMPANIES INCOME TAX

Under the Companies Income Tax Act (“CITA”), Cap C21, LFN 2004, (as amended by the Companies Income Tax Amendment Act No. 11 of 2007), a tax at the rate of thirty percent (30%) is imposed on the income of a company incorporated in Nigeria, after the deduction of all allowable expenses, losses and capital allowances.

Every company assessable to tax under the CITA must prepare and file on a self- assessment basis, with the FIRS, audited accounts and income tax computations within 6 months after the end of the accounting period. However, in the case of new companies, the returns are to be filed within 18 months, from the date of incorporation, or 6 months after its first accounting period, whichever occurs first.

### EDUCATION TAX

Pursuant to the Education Tax Act Cap E4 LFN 2004, every company incorporated in Nigeria is obliged to pay 2% of its assessable profit as Education Tax.

### INDUSTRIAL TRAINING FUND (ITF)

The Industrial Training Fund Act CAP 19, LFN 2004 (the “IDTF Act”) (as amended by the Industrial Training Fund Amendment Act, 2011) establishes the Industrial Training Fund (the “Fund”). The purpose of the Fund is to promote the acquisition of relevant skills in industry or commerce with a view to generating a pool of indigenous manpower to satisfy the needs of the economy. Every employer that is liable under the ITF Act must contribute one (1) percent of the amount of its annual payroll to the Fund. Employers that are liable to make contributions under the Fund are:

- (i) Employers having five (5) or more employees in their establishment;
- (ii) Employers who have less than five (5) employees but having a turnover of fifty ₦50 million and above per annum;
- (iii) Suppliers, Contractors or Consultants who bid for contracts from any federal government agency or parastatals or private companies; and
- (iv) Companies operating in the free trade zone which seeks for approval for Expatriate Quota or makes use of any custom services.

In the determination of the contributions to be made to the Fund, all employees including those who work part time and temporary employees are included in the assessment. Further, all the allowances and entitlements paid to such employees within or outside Nigeria are calculated when considering the total payroll of an employer.

The IDTF Act further imposes a duty on employers to provide training for their indigenous staff with a view to improving their job related skills. Furthermore, the IDTF Act provides that the Fund’s Council may make a refund of up to 50% of the amount paid by an employer where it is satisfied that its training program is adequate.

Failure to make contributions within the stipulated period in a calendar year attracts a penalty of five per cent (5%) of the amount unpaid for each month or part of a month after the date on which payments should have been made.

### INFORMATION TECHNOLOGY TAX

Pursuant to the National Information Technology Development Agency Act No. 31 of 2007 a tax of 1% of

profits before tax is chargeable on the income of the underlisted companies with a turnover of N100 million and above:

- (i) GSM service providers and all telecommunications companies;
- (ii) Cyber companies and internet providers;
- (iii) Pension managers and pension related companies;
- (iv) Banks and other financial institutions, and
- (v) Insurance companies.

### PERSONAL INCOME TAX

The income of employees is subject to tax levied at progressive rates as detailed in the table below. The Personal Income Tax Act (“PITA”) Cap P8, LFN 2004 establishes a Pay-As-You-Earn (PAYE) system whereby employers are required to act as agents of the tax authorities for the purpose of collecting and remitting taxes on salaries due to their employees. PAYE taxes are required to be remitted within fourteen (14) days after the month of deduction. At the end of every year, the employer is required to submit all the tax deduction cards and employer's remittance card (Form G).

First N300,000	7%
Next N300,000	11%
Next N500,000	15%
Next N500,000	19%
Next N1,600,000	21%
Above N3,200,000	24%

The summary of the tax deducted from each employee would be shown on the employer's annual Declaration Form (Form H1) and submitted to the tax authority. This should be done on or before January 30 of the following year.

### WITHHOLDING TAX

The Nigerian tax laws (CITA and PITA) provide that where any payment on which withholding tax should be deducted is due from one person to another, the person making the payment is expected to deduct tax at the applicable rate and remit the tax deducted to the relevant tax authority within a reasonable period, not later than 30 days after deduction. Some of the activities and services on which withholding taxes are deductible and the current applicable rates are as follows:

Transactions	Companies	Individuals
Dividend, interest & rent	10%	10%
Royalties	10%	5%
Hire of equipment, motor vehicles, plants, and machinery	10%	10%
Commission, consultancy, technical and management fees, legal fees, audit fees, and other professional fees	10%	5%
Construction	5%	5%
All types of contracts and agency arrangements, other than sales in the ordinary course of business	5%	5%
Directors' fees	N/A	10%

The rate of withholding tax on dividend, interest and royalty is reduced to 7.5% when paid to a recipient resident in a country with which Nigeria has a double taxation treaty.

### CAPITAL GAINS TAX

Capital gains tax is levied on capital gains accruing to a taxable person upon disposal of assets, irrespective of whether the asset is situated in Nigeria or not. The tax is applicable to all companies, including pioneer companies and all individuals and non- corporate bodies. The rate of tax is currently 10%.

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# 8



# OTHER MATTERS



**(A) ACQUISITION OF REAL PROPERTY**

The **Land Use Act Cap. L5 LFN 2004 ("LUA")**, an act passed in 1978, governs the regime of real property acquisition and or ownership. Under the LUA, legal title to all land in a State vests in the State Governor, who holds same in trust for the people of the State. Accordingly, there no longer exists ownership in fee simple and the highest title available under the LUA is a right of occupancy for a maximum period of ninety nine (99) years. Rights of occupancy are evidenced by Certificates of Occupancy issued by the Governor. Further, alienation of interest in land either by way of assignment, lease etc without the prior written consent of the Governor is prohibited.

Foreign entities seeking to do business in Nigeria can legally acquire real property; but there are varying local constraints on the type of lease they may hold. A case in point is Lagos State, where, by virtue of the **Acquisition of Lands by Aliens Law Cap 2 Laws of Lagos State 1994 [Section 1(i)(a) and 2(1) thereof]**, the State government allocates lands to foreign companies and individuals for a maximum tenor of twenty five (25) years. In practice however, this stipulation is not strictly enforced and is often breached (even by the State government itself). Of particular importance to foreign investors is the fact that banks and other financial institutions usually require real property as security for loans. This becomes very relevant when one considers the tedious process, of obtaining a Certificate of Occupancy, occasioned primarily by bureaucracy in the civil service. The Certificate must be produced before the mandatory "Governor's Consent" will be granted in respect of any transaction for the transfer of interest in real property.

It is thus of utmost importance that proper arrangements be made for obtaining Governor's consent and any other requisite permit or license to ensure that ease and transparency in all dealings in real property is achieved and maintained.

**(B) ENVIRONMENT IMPACT ASSESSMENT**

Section 2 of the Environmental Impact Assessment Act ("**EIAA**") precludes anyone from undertaking certain projects or activities without prior consideration, at an early stage, of its environmental effects. Specifically, the EIAA provides that where the proposed project activity is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of the EIAA. In determining the environmental effect of any activity, the EIAA provides that the relevant significant environmental issues should be identified and considered. The environmental impact assessment report must be submitted to the Nigerian Environmental Impact Assessment Agency for review.

**(C) PROFESSIONAL ADVISERS**

The company would need to appoint professional advisers including lawyers, accountants and estate agents who will provide expert advice on matters related to the establishment and management of the company in Nigeria.

We trust that the foregoing will give you an insight on doing business in Nigeria and remain available for further clarification where required.

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