

# A GUIDE TO DOING BUSINESS IN NIGERIA

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## **FORMS OF BUSINESS ENTERPRISE**

Business activities may be undertaken in Nigeria through any of the following vehicles; that is:

- (i) Private or Public limited liability Company;
- (ii) Unlimited liability company;
- (iii) Company limited by Guarantee;
- (iv) Foreign Company (branch or subsidiary of a foreign company);
- (v) Partnership/Firm;
- (vi) Sole Proprietorship;
- (vii) Incorporated Trustees;
- (viii) Representative Office.

All business enterprises, both local and foreign must be registered with the Registrar-General of the Corporate Affairs Commission ("Registrar of Companies"), and must comply with the internal regulations applicable to particular businesses. The law governing the formation and regulation of business enterprises in Nigeria is the Companies and Allied Matters Act, 1990 ("CAMA"), and under this law is the Corporate Affairs Commission, which is the body responsible for the registration and regulation of companies.

Foreigners may invest and participate in the operation of any enterprise in Nigeria. By virtue of the provisions of the CAMA, a foreign investor, wishing to set up business operations in Nigeria is obliged to take all steps necessary to obtain local incorporation of a Nigerian company, or branch or subsidiary of an existing company, which would be a separate and distinct entity from its parent company. Until so incorporated, a foreigner may not carry on business in Nigeria or exercise any of the powers of a registered company.

The CAMA, however, sets out exceptions to the general rule that all foreign investors doing business in Nigeria must incorporate in Nigeria. These exceptions include companies engaged by the Federal Government to execute specific projects, companies undertaking approved loan projects on behalf of donor countries or international organizations, and foreign government owned companies engaged wholly in export promotion activities.

These exemptions are granted for a fixed period of time (usually three years), are hardly ever renewed and may be revoked by the Federal Executive Council. Investors envisaging a long-term existence in Nigeria are therefore well advised to incorporate a local company.

Foreign companies may also set up Representative Offices in Nigeria. A Representative Office however, cannot engage in business, conclude contracts or open or negotiate any Letters of Credit. It can only serve as a promotional and/or liaison office. In this circumstance, its local operational expenses have to flow in from the foreign company. A Representative Office also must be registered with the CAC.

## **REGISTRATION OF A COMPANY AND APPLICATION FOR START-UP APPROVALS**

As stated earlier, under the Companies and Allied Matters Act, 1990 ("CAMA") the body responsible for the registration and regulation of companies is the Corporate Affairs Commission ("CAC"), which has its head office in Abuja, the Federal Capital Territory.

### **Procedure for Company Incorporation**

An application for incorporation is made to the Registrar-General of the CAC. Prior to the application being made, submitting a written application to the CAC, and paying a prescribed fee may reserve the name of the proposed company. Subsequently the application to the Registrar-General is submitted in the prescribed form along with the following documents:

- A copy of the Memorandum and Articles of Association of the Company (which must be subscribed to by at least two persons, together holding at least 25% of the company's authorized share capital together with evidence of payment of stamp duty.
- A statement of the authorized share capital of the company together with evidence that the stamp duty payable in respect of the amount of share capital has been paid.
- A statement of the particulars of the initial directors of the company, of which there must be at least two.
- A notice of the situation of the registered office of the company.
- A declaration, sworn to by a Lawyer that all matters preliminary to the registration of the company have been complied with.

Stamp duty and filing fees are payable to the Federal Commissioner for Stamp Duties and the Registrar - General of Companies respectively. If the application is approved, a Certificate of Incorporation will be issued and the company can commence business subject to its having obtained the necessary investment approvals.

## **Investment Authorizations and Approvals**

The principal laws regulating foreign investment in Nigeria are, the Nigerian Investment Promotion Commission ("NIPC") Act No. 16 of 1995, and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act No. 17 of 1995.

Once registration is completed, there are other approvals that the foreign Investor would require, to secure enhanced returns from an investment and remit the proceeds of such investment. Some of these approvals are mandatory, others are only required where the company wishes to employ expatriates or take advantage of certain incentive schemes. The non-mandatory approvals are asterisked (\*).

## **Registration with the NIPC**

The Nigerian Investment Promotion Commission ("NIPC") was established under the Nigerian Investment Promotion Commission Act, 1995, which provides that any enterprise in which there is foreign participation must be registered with the NIPC. The NIPC Act permits foreigners to own up to 100% of any business enterprise with the exception of enterprises on the "negative list" of the Act. The negative list includes enterprises involved in the production of and dealing in arms, ammunition, narcotic drugs and psychotropic substances.

### Procedure for obtaining NIPC Registration

- Application is made to the Nigerian Investment Promotion Commission
- Completed copies of the NIPC Form 1 (Original and 3 copies)
- Original copy of receipt of purchase of NIPC Form 1 (and three copies)
- A copy of COMPANYs' Certificate of Incorporation (and three copies)
- Evidence that COMPANY has a minimum share capital of =N=10million. (3 copies)
- COMPANYs' Allotment of shares and Particulars of Directors (3 copies)
  
- Details of the shareholding structure of COMPANY (3 copies)
  
- Joint Venture, Shareholders' or Partnership Agreement, where applicable (3 copies).

## **Business Permit**

In order for an enterprise in which there is foreign participation to undertake any business in Nigeria, it must obtain a business permit from the Ministry of Internal Affairs. A business permit will only be granted in respect of companies having an authorized share capital of at least =N=10,000,000.00 (approximately 80,000 US Dollars). One of the documents that a company applying for business permit is required to submit is a Certificate of Capital Importation to evidence the importation of the foreign investor's capital/equity contribution into Nigeria.

### Procedure for obtaining Business Permit

- Application is made to the Ministry of Internal Affairs
- Completed copies of the NIPC Form 1 (Original and 3 copies)
- Original copy of receipt of purchase of NIPC Form 1 (and three copies)
- A copy of COMPANYS' Certificate of Incorporation (and three copies)
- Evidence that COMPANY has a minimum share capital of =N=10million. (3 copies)
- COMPANYS' Allotment of shares and Particulars of Directors (3 copies)
- Details of the shareholding structure of COMPANY (3 copies)
- Joint Venture, Shareholders' or Partnership Agreement, where applicable (3 copies).

## **Certificate of Capital Importation**

Investors who wish to be able to remit dividends to non-resident shareholders or repatriate capital on disinvestments must ensure that they obtain a Certificate of Capital Importation from the Nigerian bank through which the payment is transferred into Nigeria.

### Procedure for Obtaining Certificate of Capital importation (CCI)

- Application will be made to COMPANY's bankers
- The foreign shareholders will instruct their bank ("the remitting bank") by telex to transfer the necessary funds either directly to COMPANY's bankers or to their foreign affiliate;

- The transfer must be accompanied by a telex stating that the money being remitted to the bank is for the account of COMPANY and that the money represents the foreign investors' capital contribution to the equity of COMPANY;
- Upon confirmation that the funds have been remitted to Nigeria, COMPANY is required to send a formal letter of application to the receiving bank to issue a CCI in respect of the equity contribution.
- The following documents must be submitted together with the letter of application:
  - A Board resolution of COMPANY authorizing the foreign investment;
  - A letter from COMPANY stating the purpose for which the money has been remitted;
  - A copy of the certificate of incorporation of COMPANY;
  - A copy of the swift message from the remitting bank.
- If satisfied with the documentation the receiving bank will issue a CCI in respect of the funds. The receiving bank is required to notify the CBN whenever it issues a CCI.

### **Expatriate Quota\***

A company wishing to employ expatriates must obtain an Expatriate Quota position for each expatriate it wishes to employ. The Expatriate Quota establishes the maximum number of expatriates that the enterprise may employ. A company having a paid-up share capital of not less than =N=10,000,000.0 (Ten million Naira only) (approximately 80,000 US Dollars) is entitled to one automatic quota positions, while a company capitalized at =N=20,000,000.00 (twenty million Naira only) (approximately 155,000 US Dollars) is entitled to four automatic quota positions.

#### Procedure for obtaining Expatriate Quota

- Application is made to the Ministry of Internal Affairs
- In addition to the requirements listed under Business Permit application, the following requirements have to be met for Expatriate Quota applications:
- Evidence of acquisition of operational machinery and equipment



- Management and Technical Services Agreement
- Minimum authorized share capital of =N=10million
- Tax Clearance Certificate
- Company applying for Permanent Until Reviewed (PUR) Quota slots must show evidence of payment of tax for minimum of =N=1 million.
- Names, addresses, qualifications and positions to be occupied by the expatriate
- Project Implementation Program
- Training Program for Nigerians and a Management Succession Schedule

### **Approval for Transfer of Technology and other Agreements\***

By virtue of the provisions of the National Office for Technology Acquisition and Promotion Act, 1992 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"). Fees payable for the provision of such technology or services must also be approved by the 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. Fees payable depend on the category of operations for which the company applies.

## **THE TAX SYSTEM**

### **The Tax Structure and Taxing Authorities**

The federal, state, and local governments levy taxes. The Federal Board of Inland Revenue ("FBIR") administers Federal Taxes through its operational arm called the Federal Inland Revenue Service ("FIRS"), State taxes are administered by the Internal Revenue Boards of respective States, while the various councils administer local Government taxes.

## **Principal Taxes**

### **Taxes on income and gains**

- Companies Income Tax
- Personal Income Tax
- Capital Gains Tax
- Petroleum Profits Tax

### **Taxes on transactions**

- Value Added Tax
- Stamp Duty
- Customs and Excise Duty

### **Other taxes**

- Sales Tax (Lagos State only)
- Local Government taxes

### **Double Taxation Relief**

Nigeria currently has seven comprehensive double tax treaties. Treaties on income and capital gains are currently in force with:

- United Kingdom and Northern Ireland
- Canada
- France
- Netherlands
- Belgium
- Romania
- Pakistan

### **CHECKLIST FOR ESTABLISHING A BUSINESS IN NIGERIA**

- ✓ Incorporate Local Company
- ✓ Register with Tax Authorities and Obtain First Tax Clearance Certificate

- ✓ Open Corporate Bank Account/s in the name of the Local Company and obtain a Certificate of Capital Importation from the Bank in respect of any imported capital sum
- ✓ Apply for Business Permit and Expatriate Quota
- ✓ Obtain Residence Permits for Expatriate Staff
- ✓ Register with Appropriate Regulatory Authorities Relevant to the Company's Business (such as NCC, DPR, NAFDAC, etc.)
- ✓ Secure Office Space/ residential accommodation for Expatriate Staff

These are the first steps to be taken by any person that wishes to establish business in Nigeria. At the end of the first financial year, the company would be required to file Tax and Annual Returns. In addition, the Company would be required to appoint External Auditors and a Company Secretary.

**For further information and help contact:**

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