

## **Doing Business In Nigeria: What Every Investor Needs To Know.**

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With a population of over 200 million, Nigeria is said to be the most populous nation in Africa and thus presents a myriad of investment opportunities for international businesses seeking to harness Nigeria's positioning in Africa.

Foreign entities seeking business opportunities may wish to venture into Nigeria's emerging markets in the Fintech, ICT, digital commerce, FMCG, sports and entertaining industries. However, there are many questions investors ask when considering doing business in Nigeria. Some common questions bother on forms of business association, foreign exchange laws, transfer of Technology amongst others.

This exposition gives an overview of the Nigerian business landscape addressing issues relating to foreign investment, forms of business vehicles and their relevant restrictions and liabilities. The article also summarizes the laws regulating employment relationships, and provides short overview on competition law, privacy and data protection regulations. In addition, there are comprehensive summaries on taxation as well as intellectual property rights rules.

### **Foreign investment and foreign exchange regulation**

a) Please advise the key legislations regulating foreign investment.

- The Nigerian Investment Promotion Commission Act of 1995 provides that foreign investors can own 100 percent equity in a Nigerian company and undertake any type of business in Nigeria, except businesses contained in the negative list. Business activities on the "negative list" include production of arms, military and para-military uniforms, drugs and narcotic. There are other industry specific restrictions on foreign participation especially in petroleum industry, banking, private security companies, shipping etc.

Section 20 of the Act provides that an enterprise with foreign participation shall apply to the Investment Promotion Commission for registration before commencing business. Section 25. Guarantees protection of foreign investment against nationalization and expropriation.

- Foreign Exchange (Monitoring and Miscellaneous) provision Act makes provisions for importation of foreign capital to Nigerian business through authorized dealers and issuance of certificate of capital importation (CCI) within 24 hours.
- Other legislations are the Federal Competition and consumer protection Commission Act which regulates mergers and acquisition of Nigerian equities by foreign investors. The National Office for Technology Acquisition and Promotion Act (the "NOTAP Act") and the Investment and Securities Act also applies to foreign investment involving transfer of technology and public quoted companies respectively.

b) Please advise the major governmental departments or other organizations regulating foreign investment.

- Nigerian Investment Promotion Commission is the government agency saddled with the responsibility of registering business enterprise with foreign participation.
- Federal Competition and consumer protection Commission: Federal government agency that promotes market competition, prevent/eliminate monopolies and restrictive trade, supervises, monitors and approves Mergers
- Corporate Affairs Commission regulates registration and monitoring of Companies and statutory filings in Nigeria.
- Central Bank of Nigeria: is the apex bank and regulatory body which regulates capital importation through its authorized dealer banks.
- National Office for Technology Acquisition and Promotion (NOTAP) is a government agency with the Federal Ministry of Science and Technology charged with the responsibility of implementing the acquisition, development, and transfer of foreign technology into Nigeria. One of the duties of NOTAP is the registration of all technology transfer agreements and contracts entered into which seeks to transfer technology to Nigerian parties.

c) Please advise whether there is restricted industry for foreign investment, either by legislation or in practice.

- Foreign entities are restricted with respect to shareholding in the businesses operating in the petroleum industry, shipping, and prohibited from engaging in private security business or any businesses contained in the negative list. Business activities on the “negative list” include production of arms, production and sale of military and para-military uniforms, drugs and narcotic.

In particular,

i. Whether any permits or filings are necessary for foreign investors to conduct copyright transaction (mainly acquisition)?

- There is no specific permit necessary before copyright acquisition, however, the foreign investor is required to register its interest with the Nigerian Copyright Commission after acquisition i.e. the NCC will be notified of the acquisition contract.

ii. Whether any permits or filings are necessary for foreign investors to produce and distribute music?

- Apart from the general business permits/filings, there is no specific permit required by foreign investors seeking to do business in the music industry.

d) Please advise polices directing at foreign investment? In particular, free trade

zone or equivalent arrangement, tax concessions or other favorable treatment, etc.

- Pioneer status tax incentive (PSI) is granted to qualified entities operating in designated industries. It is a tax holiday granting relief from the payment of corporate income tax for an initial period of 3 (three) years, renewable for 2 (two) additional years. Music Industrial Development – Income Tax Relief Act (IDITRA) provides that, an industry or product is designated “Pioneer” if it is not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or at all, or there are favourable prospects of further development in Nigeria
  - PSI is applicable to a wide range of activities in the creative industry including video and television programme production, distribution, commercials, exhibition and photography, music production, publishing and distribution.
  - Interest earned by a foreign company on its deposits in domiciliary accounts in Nigeria is exempt from tax.
  - In certain circumstances, interest on loans granted to Nigerian companies by foreign companies are entitled to tax exemptions.
  - Buyers of local plant and equipment are entitled to an investment allowance of 10%.
  - Capital gains tax (CGT) is not levied on gains from the sale of shares, stock, and treasury bills.
  - Free trade zones in Nigeria are special economic zones where foreign companies can engage in the business of importation, manufacturing, trading, processing or exporting of goods. The FZ is administered under the Nigeria Export Processing Zone Authority (NEPZA). Entities are registered and given a special company status by issuance of a registration license by NEPZA. Registered entities are exempted from tax liabilities, custom and excise duties.
- e) The process for foreign entities/nationals to invest in Nigeria, i.e. the steps that an investor must go through. In particular,
- i. A high-level overview of the general process is necessary, as the process may vary across different types of investment.
    - An investor may invest in Nigeria by incorporating or acquiring a company in Nigeria (foreign direct investment) or by buying equities of existing companies (foreign portfolio investment ).
  - ii. The specific steps relating to our plan of business, if different from the general process, including:
    - licenses or formal registration that needs to be obtained,
    - notification mechanisms, and
    - the average time taken for each step of the process.

- There is no formal licenses required for copyright acquisition in Nigeria except for general corporate registration, see below.

### **General Corporate**

a) Is branch office of foreign company allowed to conduct business directly in Nigeria?

- Yes. Provided the branch/subsidiary of the foreign company is registered in Nigeria. The Companies and Allied Matters Act 2020 states that all foreign companies seeking to do business in Nigeria must register except the company is exempted from registration. (usually foreign companies invited by the Government to carry out a special project are exempted)

b) The different categories of legal forms that foreign investor may incorporate? E.g. France allows SA, SARL, SAS, etc. Please also advise the pros and cons of each form.

The CAMA allows for different forms of incorporation namely:

- Limited liability Company (public or private).
- Unlimited liability Company (public or private)
- Company limited by guarantee. (public or private): A company limited by guarantee is incorporated for the purpose of using its profits for charitable purposes and not to distribute profits to members. (Social enterprise).
- Limited liability partnership.
- Limited partnership.
- Incorporated trustee: They are not for profit organizations (NGO) and not suitable if the foreign investor is seeking to make profit from business.
- Registered business name: is a form of sole proprietorship and does not have separate legal personality from the owner.

The company limited by shares or by guarantee or unlimited liability company may be a private or public company. A private company is one that transfer and acquisition of shares is restricted to certain persons while a public company shares are available to the public on the capital market.

The most common incorporation form used by foreign companies seeking to do business locally is the private limited liability company. Advantages include the following:

- It is quick to register.
- Profits can be shared amongst shareholders.
- The shareholders have limited liability.
- The company can enter into contracts, acquire properties in its corporate name and can sue and be sued.

c) Whether the local company laws recognize limited liability? In particular, how may the limited liability be revoked, namely pierce the veil of corporate?

- The companies Act, other legislations and case law recognizes limited liability of incorporated companies. The veil of incorporation can be lifted in the event that the directors use the company to commit fraudulent activities.

- d) What are the special requirements/considerations (if any) for foreign investor planning to incorporate local operating company? In particular,
- i. Necessity of local operating company ?  
It is necessary to register a company if the foreign company wants to do business in Nigeria because it is a statutory requirement.
  - ii. Minimum requirement of the registered capital, and payment requirements ?  
A company with foreign participation is required to have a minimum share capital of N 10 million naira (17, 000 USD). The registration cost is USD 450.
  - iii. Whether foreign parent company may extend loans to the local operating company?  
The foreign parent company may give loan to the local operating company or may guarantee a loan given by any financial institution.
  - iv. Whether notarization or any other legal document is required for any documents?  
Notarization may be required by financial institutions, regulatory agencies or government department for letters, affidavits, contracts, and other legal documents.
- e) What is the general process for foreign investor to incorporate local operating company? And, how long it may take?
- Company incorporation is done online on the Corporate Affairs Commission (CAC) website by accredited agents. The first step is to submit 2 names for search and Approval. Approval take 24 to 48 Hours. After name Approval, the objects of the Company and the details of the Directors, shareholders and secretary will be entered on the portal and their identification documents will be uploaded and registration is submitted for Approval. The registration is approved within 3 to 5 days. If Approved, Certificate of incorporation will be issued and can be printed online. The entire process from start to finish can take 5 to 7 days.
- f) What is corporate governance requirement under local laws? In particular,
- i. Composition of director and senior management. In particular, number of directors, supervisors, nationality of the directors/supervisor, residence/domicile of the directors/supervisor.
- Generally, there is no provision in the Companies Act on nationality or Composition of the board of Directors of private owned companies except in some highly regulated industries like banking and petroleum. The Companies Act provides that every company other than a small company must have at least 2 directors. Section 285 provides for rotation of directors. Generally, appointment, remuneration and shareholding qualifications of directors is to be decided by the members in general meeting.
  - A foreigner can be a Director in a Nigerian Company and it is not compulsory to have a Nigerian as Director. However, a foreign Director will be required to maintain an address in Nigeria since the CAMA provides that he will direct and manage the business of the Company

(Section 269 (1))

- The requirement of local address is also necessary for Tax Registration, Tax filing, opening and operating a bank account in Nigeria if the director is a signatory to the Company account.
- ii. Whether the directors, supervisors or senior management must designate/appoint proxy or substitute, if they left the country for certain days?
  - not expressly provided but can be inferred from Section 269 (1))
- iii. Fiduciary duty, as well as liabilities.
  - Directors' fiduciary duties is imposed by common law, statues and case law. This includes the duty of utmost good faith, the duty of disclosure of directors' interests in shares, Debentures and contracts, duty of care and skill, duty to account for company funds in their control.
  - Directors are personally liable for fraud committed by the company or loans received by the company where the Company fails to apply it for the purpose it was given.
  - The company is to keep a register containing the detailed information of all directors and file same with the CAC.

## **Copyright**

- a) Major laws and regulations
  - i. Major laws and regulations regulating copyright, and summary of said legislation.
    - The major law which governs Copyrights in Nigeria is the Copyrights Act LFN 2004. The Act makes provisions for the protection, transfer/Assignment, and enforcement of copyrights as well as remedies for infringement of copyrights in Nigeria.
    - Under the Act, the six (6) categories of works which qualify for Copyright are Literary works, Musical work, Artistic works, Cinematograph films, Sound recordings and broadcast. (Section 1 (1))
  - ii. Major governmental authorities, departments or other regulatory bodies that administrate intellectual property, particularly the registration of music copyright.
    - The government agency that registers, monitors and enforce copyrights is the Nigerian Copyrights Commission (NCC). Copyright can be registered under the Nigerian Copyright e-Registration System upon payment of the prescribed fee. Upon registration, a certificate will be issued which shows the prima facie

evidence of ownership and registration of the copyright.

- iii. Whether the local laws and regulations provide for statutory licenses, e.g. mechanical license, or any other mandatory requirements regarding commercialization of the copyright? If so, please elaborate the regime, in particularly (a) the payment to copyright owners, (b) the waiver or other circumvention, if any, and (c) the applicable use scenario.

- The copyright Act provides for exclusive and non-exclusive licenses. However, there are other forms of licenses applicable in practices such as master License and Mechanical License, synchronization License, print license, broadcast license. Royalties are paid for commercial exploitation and use of the authors work for reproduction, distribution, broadcasting, synchronization or adaptation of the Works. The royalties are agreed between the parties or negotiated by CMOs on behalf of the author.

b) Music compositions

- i. Exclusive rights embedded in such copyright

Exclusive rights in musical works include the production in any form; publication; public performance of the work or of any translation of the work; the making of any cinematograph film or a record in respect of the work; distribution of copies for commercial purposes; broadcasting or dissemination the work to the public by a loudspeaker or any other similar device; adaptation of the work; and the carrying out of any of these acts (save for adaptation) in relation to a translation or adaptation of the work.

- ii. The duration of copyright protection.

Musical, and artistic copyright protection operates for the duration of the lifetime of the author and 70 years after the death of the author.

- iii. Whether the abovesaid exclusive rights can be disposed, e.g. licensed or transferred? Please further elaborate regulatory regime re “convey, assignment and transfer” per following section.

- Music copyright holders can transfer their copyright by way of an Assignment or License in consideration for a fee or royalty.
- Assignment is the transfer of ownership rights in the work produced, while licensing is the permission given to others to use one's work, while still retaining the ownership rights in the work. Thus, where the creator of a musical work or producer of a sound recording assigns or license their copyright in the work to a record label or a third parties, the exclusive rights of the owner is transferred to the Assignee/Licensee. The assignee/licensee has the right to reproduce, distribute, publish, perform, make adaptation/translation, disseminate or broadcast the work and can enforce the rights of the original owner or restrain any other person from exercising such rights. An assignment could be total or partial for a limited period of time and must be in writing to be legally binding. Section 10 of the Copyright Act

provides that an exclusive license and an assignment of copyright must be in writing. The assignee of a copyright may also protect his interest by providing for an exclusivity clause in the Agreement.

- Where the copyright is owned by two (2) or more persons, an assignment granted by one copyright owner shall have effect as if granted by his co-owner, and fees received by the grantors shall be divided equitably.
- iv. Whether the **foreign** copyright holders receive national treatment, including copyright protection, economic rights and commercialization? Please advise (a) local content and (b) foreign content, respectively.

See answer to c) (iv) below

c) Sound recordings

i. Exclusive rights embedded in such copyright or related/neighborhood right

- Exclusive rights in sound recordings include direct or indirect reproduction, broadcasting/communication to the public of the whole or a substantial part of the recording in its original form or in any form recognizably derived from the original; and the distribution to the public, for commercial purposes, of copies of the work by way of rental, hire, lease, loan or similar arrangement.
- Other ancillary rights that are attached to copyright under Nigerian law are moral and neighboring rights.
- Moral Rights is the rights of the copyright holder to claim authorship of the work, to object to or seek any relief in connection with any distortion, mutilation or other modification of his work or any other derogatory action in relation to the work which would be or is prejudicial to the author's reputation. Moral Rights are "inalienable, perpetual and transmissible upon the death of the author.
- Neighboring Rights is the exclusive right of performers of musical, dramatic or literary works to perform or record a performance of the work, broadcast the performance live; reproduce the performance in any material form; and make an adaptation of the performance. These Rights may be licensed or assigned by the performer.

ii. The duration of copyright protection.

- Copyright protection for sound recordings, Cinematograph films and photographs lasts for 50 years after the end of the year it was first published.

iii. Whether the abovesaid exclusive rights can be disposed, e.g. licensed or transferred? Please further elaborate regulatory regime re "convey, assignment and transfer" per following section.



- See answer to b (iii) above
- iv. Whether the foreign copyright holders receive national treatment, including copyright protection, economic rights and commercialization? Please advise (a) local content and (b) foreign content, respectively
- Copyright protection is territorial in Nigeria and protection is available if the work was published in Nigeria or the author is domiciled in Nigeria, however, global protection is available only through international instruments.
  - Nigeria is a signatory several international copyright treaties which require each State party to accord protection to authors who are nationals of all the other State parties on the same terms as they do to their nationals such as the Berne Convention for the Protection of Literary and Artistic Works 1988, the Universal Copyright Convention (UCC) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1995. As party to these treaties, Nigeria has committed to extend copyright protection to works of citizens of and works first published in countries that are Signatories to these treaties.
  - Therefore, a foreign national may rely on global copyright protection based on the principle of reciprocity and national treatment to enforce his copyright in Nigeria provided that on the day the work was first published, the author was a citizen or the company was established under the laws of the foreign country who is party to these treaties.
  - However, it is important to note that while these obligations exist in international law, these treaties have no force of law in domestic courts except it is enacted into law by the National Assembly and this is subject to the interpretation by the courts.
- d) Convey, assignment and transfer
- i. Whether the copyrights or neighboring rights can be freely assigned or transferred? In particular, can such assignment or transfer be made to foreign individual or entity?
    - See answer to b (iii) above. There is no provision or restriction on nationality of assignee of copyrights in Nigeria
  - ii. Is there a work-for-hire or equivalent doctrine?
    - There is no automatic work for hire doctrine under Nigerian law. Except the parties expressly agree by Contract. Section 9 of the copyright Act stipulates that where a work is commissioned by a person under a contract of service or made in course of employment, the copyright belongs to the author except otherwise stated in writing. To ensure that an employer owns the copyright to works created by its employees, it is advisable for the employer to include in the contracts of employment.
  - iii. Automatic termination or reversion of the transferred copyright? Availability of any form of waiver or automatic renewal ?
  - iv. Whether there is any ground, per legislation or customary practice, that

allows original owner to reclaim transferred copyrights, e.g. non-use?  
Availability of any form of waiver ?

- Termination, reversion, waiver and transfer of copyright is contractual. The terms can be negotiated and decided by parties to the contract.

#### CMOs

- i. Please advise the societies, collective management organizations and/or performing rights organizations (each, a “Society”) that music creators in Nigeria generally join. **Note:** Music creators means all music industry participants, including writer/composer, lyricist, musician/performing artists), producer (i.e. label) and publisher.

- The Copyright Society of Nigeria (COSON) is one of the two CMOs in Nigeria.
- The Musical Copyright Society of Nigeria (MCSN) is also one of the CMOs in Nigeria.
- Society for the Performing Arts in Nigeria (SPAN)

- Please note that there is currently a dispute between COSON and MCSN arising from the suspension of the registration and operating license of COSON by the NCC and Federal High Court in 2020. While the issue is currently on appeal at the Court of Appeal, it is better and safer for copyright owners to deal with MCSN until the Appeal is determined.

- ii. With respect to each Society identified in Query i, please advise the rights and use scenario that each of them represents?

- MCSN act as agent of copyright owners, they engage with licensed and unlicensed users and collect license fees and royalties on behalf of copyright holder.

- The CMOs powers to represent the artist an act on his behalf is granted by registration with the CMO. They help administer copyright of the artists by granting licenses and ensuring payment is made for copyright usage and such payments are remitted to the artists.

- For example, it will be practically impossible for all music artists, writer/composer, lyricist, musician/performing artists, producer (i.e. label) or publisher listed in the repertoire of the CMOs to visit every show, malls, radio stations, hotels or streaming platforms where their music is being played to enforce their right and demand royalty for playing their songs. The MCSN agents go to these places to represent the interests of musical artistes, producers, publishers, record-labels, authors and performers and ensure the users pay for copyright usage.

- i. With respect to each Society identified in Query i, please describe their members, including (a) eligibility of membership, in particular whether foreign entity (or such foreign entity’s representative) can become a member, (b) the sector of music industry that such member participate in,

and the influence/scale/size of such member, (c) the time needed to become a member of such society.

- Membership of the CMOs is voluntary and optional. Artists, songwriters, and other Copyright holders may or may not join any of the CMOs. There is no restriction on eligibility for membership. Membership form can be downloaded and submitted online.
- ii. With respect to each Society identified in Query i, please advise its functions and responsibilities, e.g. collection and distribution of royalty fees, advocacy and lobbying, etc.
- MCSN functions include effectively administer the intellectual property rights of members and affiliates, protect their rights adequately, collection and distribution of fees and other economic benefits derivable to them on a regular basis, enforcement of the copyrights of members, reporting infringers to appropriate authorities.
- iii. With respect to each Society identified in Query i, please advise its typical licensing arrangements to users, if applicable. In particular, whether it is based on number of audience, number of stream/view, flat rates or revenue sharing, and the main differences in licensing when dealing with different types of use scenarios (e.g. broadcasters, audiovisual platforms, music streaming services, etc.).
- They have a schedule of fees which contains the details of the payments to be made by licensees or users depending on the extent of use of the work, contents to be used and the period of time.
- iv. With respect to each Society identified in Query i, please advise its website and contact, if available.
- Website : [www.mcsnnigeria.org](http://www.mcsnnigeria.org)
  - Phone numbers: +2349060006276,+2348023236706
  - Email:info@mcsnnigeria.org

## **Employment and labor**

### a) Summary of employment and labor law.

- The principal Legislation is the Labour Act and the Constitution (as Amended). The Labour act provides that employment may be for a fixed-term or for an indefinite-term and employment contract should be in writing. Employees must receive their contract within three months from the start date. The contract must include the place of work, schedule of duties, hours of work, and holidays. It is also important to state clearly the payment terms, compensation, benefits, termination, entitlements, and more. The notice required for Termination is statutory and may also be contractual. Section 11 of the Labour Act stipulates one day notice for a three months contract or less, one week notice for a contract more than three months but less than two years; two weeks notice, where the contract is up to two years but less than five years and one month notice for a contract of five years and above.

- The Labour act also provides that the employer shall medically examine the employee to ascertain they are medically fit to take up the position, the employer is to exercise reasonable duty of care for the employee.
  - The constitution prohibits any form of discrimination at the workplace. An employee may sue and be awarded damages by the national industrial Court where discrimination is established. The Court also applies international treaties and global labour standards in deciding cases.
  - Pension reform Act 2014: provides for contribution of 8 percent and 10% of the monthly emoluments by the employee and employer respectively to a pension retirement savings account for the employee.
  - Employee compensation Act 2010: provides for payment of compensation to employees who suffer occupational hazards, death or injuries from accidents at the workplace or in the course of employment. Employers are required to contribute 1% of employee's monthly emolument into an employee compensation fund administered by the Nigeria social insurance Trust fund (NSITF) management board.
  - Other employment terms are contractual and may be negotiated and agreed between the parties.
- a) Tax-saving arrangements, including re cash salary and appreciation in option value
- b) How foreign companies generally handle employment of local personnel. E.g. freelancer arrangement, or through local agencies (labor dispatchment/loan-out)?
- Recruitment of local personnel is usually outsourced to a recruitment agency which will handle the logistics of interviewing and meeting with employees. . The Company is at liberty to choose whichever work arrangement works best for it provided it is in compliance with the Labour Act.
  - Most foreign companies use their subsidiary incorporated in Nigeria to sign employment contracts with the employees in order to save cost and possible liability to the parent company.

### **Competition and Antitrust**

- a) Merger, pre-merger notification obligation and potential ways to circumvent.
- The Legal framework for regulating mergers and competition in Nigeria is the Federal Competition and Consumer Protection Commission Act under the regulatory supervision of the Federal Competition and Consumer Protection Commission (“FCCPC”). The Commission is the agency empowered to prevent and punish anti-competitive practices, regulate mergers, acquisitions and takeovers and protect regulated industries in Nigeria.
  - The Act divides types of mergers into small and large mergers and gives the

FCCPC the power to make regulations to determine the threshold of annual turnover which will constitute a small and large merger. Pursuant to this, the FCCPA has issued various regulations and guidelines for mergers in Nigeria.

- The Notice of Threshold for Merger Notification prescribes that pre-merger notification for large mergers is compulsory and shall be given to FCCPC, if, in the preceding financial year, the entities involved had a combined annual turnover of 1 billion naira 1.7 million USD or more. Alternatively, the FCCPC must be notified if the annual turnover of the target entity in the preceding financial year was 500 million naira or more.
- Pre-merger notification for small mergers is not compulsory and FCCPC need not be notified if the combined annual turnover of the entities involved in the preceding financial year was below 500 million naira (835, 000 USD). However, the FCCPC may direct the parties to the merger to notify it.
- The Merger Review Regulation, 2020 and Merger Review (Amended) Regulations, 2021 prescribes the substantive and procedural requirements for the monitoring, pre-merger notification and implementation of merger transactions and merger processing fees.
- The Act also creates a Competition Tribunal to deal with any disputes and issues which may arise between parties involving M & As and trade Competition.
- Mergers involving organizations in regulated industries are also subject to the specific merger laws and rules applicable in the industry. There is no specific merger law applicable to companies operating in the creative industry, therefore, they are subject to the FCCPCA and regulations.

b) Others.

- Other important laws which impacts on M&A transactions include the Companies and Allied Matters Act which deals with share acquisitions, schemes of arrangements, mergers, share buybacks by companies, pre-emptive rights of shareholders, etc.

**Taxation**

a) Summary of applicable tax laws and rules. In particular, please describe the tax treatment of (i) Company profits and (ii) distribution and repatriation.

- If the foreign company subsidiary is registered in Nigeria, the company's profit will be treated as a Nigeria company and subject to the following taxes :
- Companies Income Tax at the rate of 30% for companies having more than N100 Million Naira (170, 000 USD) annual turnover or 20% for companies with a turnover below N100 Million. Companies having less than N25 Million turnover are not liable to pay company income tax. Allowable Expenses are deductible for CIT calculations if they are wholly, reasonably, exclusively,

- and necessarily incurred for the business or trade.
  - A foreign company not registered in Nigeria is taxable in Nigeria if it derives income or profit from Nigeria through any source or if it has a fixed base of business or permanent establishment (PE) in Nigeria, habitually operates a trade or business through other person(s) in Nigeria, if it has significant economic presence in Nigeria.(Finance Act 2020). The profits chargeable to tax is limited to the amount of profits attributable to the Nigerian fixed base or PE.
  - The tax regime in Nigeria is a multi-level tax system, i.e. taxation is administered by the federal state and local government. Companies tax is administered by the Federal Inland Revenue Service and personal income tax is administered by and paid to the state Revenue Service.
  - Other taxes are Capital gains tax at 10% of chargeable gains where the company intend to acquire or dispose assets,
  - Value Added Tax at 7.5% on goods and services,
  - Education tax at 2.5% of company income,
  - Personal income tax from employee deductions from 7 to 24% of taxable income and withholding tax.
- b) Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?
- The basis of Taxation of Nigerian companies is local and global. Income made from local and foreign business activities are taxable in Nigeria.
  - Taxation of foreign companies doing business in Nigeria is limited to the profits accrued locally. Foreign tax payable in respect of income in a country with which Nigeria has a Double Taxation Treaty (DTT) is allowed as a tax credit against tax payable in respect of that income in Nigeria. Nigeria has a DTT with many countries including UK, Canada, South Africa, Singapore, China and France.
- c) Where can an investor find more information about the tax treatment of foreign nationals and firms?

Visit the Federal Inland Revenue Service at [www.firs.gov.ng](http://www.firs.gov.ng)

Please provide sources of additional information and website addresses, if relevant.

Visit the Federal Inland Revenue Service at [www.firs.gov.ng](http://www.firs.gov.ng)

### **Foreign Exchange**

- a) Summary of foreign exchange control/legislation
- b) Restriction and regulation on inbound and outbound transfer of funds.
  - There is no restriction on importation of capital and repatriation of profits. **Section 15** of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act provides that *"any person may invest in any enterprise or security, with foreign currency or capital imported into Nigeria*

*through an authorized dealer either by telegraphic transfer, cheques or other negotiable instruments and converted into the naira in accordance with the provisions of the Act".*

- Importation and repatriation of profits is done through the commercial banks under the regulatory supervision of the central Bank of Nigeria. The Bank will issue a certificate of capital importation (CCI).
- Capital Importation and repatriation is subject to tax laws and must be in compliance with anti-money laundering regulations. The commercial banks are statutorily obligated to report any suspicious banking activities to the CBN for investigation.

### **Privacy and Data Protection laws**

a) Summary of applicable privacy and data protection laws. In particular, please describe the main legislations, subsidiary legislations and rules on the treatment of sensitive data and data subject rights.

b) How is international data transfer treated? Does Nigeria have membership of international data protection treaty or bi-lateral agreement with any country?

- Section 37 of the Constitution of the Federal Republic of Nigeria provides and guarantees the protection of privacy citizens in their homes, correspondence, telephone conversations, and telegraphic communications.
- However, the main Legislation which makes comprehensive provisions for data protection rights in Nigeria is the Nigerian Data Protection Act 2023 and Nigerian Data Protection Regulation, 2019. The NDPA was enacted after the NDPR, nevertheless, the former does not pre-empt the later, rather it preserves the NDPR and other rules, decisions, and regulation made by the National Information Technology Development Agency pursuant to the NDPR. The Act operates together with the Nigerian Data Protection Regulation, 2019.
- The NDPA, among other things, established the Nigeria Data Protection Commission (NDPC or 'the Commission') as the principal regulator for data protection in Nigeria. The Commission registers data controllers and data processors and regulates the deployment of technological and organisational measures which facilitate data protection and promote awareness of the obligation of data controllers, data processors and subject rights.
- Section 2 of the NDPA applies to data controller or data processor domiciled or operating in Nigeria, processing personal data in Nigeria and processing personal data of a data subjects in Nigeria. This means that where a foreign company though not domiciled or operating in Nigeria but whose business involves collection and processing of personal data subject who are Nigerians or based in Nigeria, such foreign company will be subject to the NDPA
- The NDPA provides that a data processor or data controller must ensure the principles of fairness, lawfulness and transparency in collecting and processing sensitive and personal data. Also, such sensitive data must be collected for legitimate purposes, retained for no longer than is needed to achieve the basis for which it was obtained, the data must be accurate and not misleading and processed in a manner that ensures appropriate security of personal data.



- Every organization which processes or collects data are required to have a privacy policy, which should be made available to data subjects before personal data is collected.
- Data controllers of major importance are required to designate a data protection officer (DPO) to advise on data protection obligations, monitor compliance and act as a contact point for the Commission.
- The act prescribes penalties for non-compliance or violation of any of its provisions in Sections 48 (4) and (5). Such violator company is liable to a penalty or remedial fee between 2 million naira and 10 million naira or 2 per cent of the company's annual gross revenue in the preceding financial year whichever is higher.

### **Data subject rights**

The NDPA and the NDPR recognise the rights of data subjects as follows.

- Right of information regarding the processing and storage of their data, right to data portability, right to erasure and rectification, right to withdrawal of consent, right to object to processing personal data and profiling, rights of exclusion from automated decision making and right to seek redress and enforcement of privacy and data rights
  - Notwithstanding the NDPA, there are other laws which contain sector-specific provisions on data privacy such as the Child Rights Act 2003, Consumer Protection Act, Part IV of Consumer Code of Practice Regulations (Nigerian Communications Commission), Consumer Protection Regulation (Central Bank of Nigeria) and Nigeria Biometrics Standards Regulations, 2017, the National Health Act, Data Protection (Communication Services) Regulations 2023 amongst others.
- b. The NDPA provides that personal data must only be transferred to another country if the recipient of the data has an effective data protection regime through its laws, binding corporate rules, contractual clauses, codes of conduct, or certification mechanisms. Where there is no adequate protection in the receiving country, the data can only be transferred where the data subject has been informed of the risks associated with the transfer and the data subject has not withdrawn consent or the transfer is necessary for the performance of a contract.
- The NDPR provides that the transfer of personal data to a foreign country for processing must be subject to its provisions and the supervision of the attorney general. However, where the attorney general makes no decision, the transfer may still take place subject to the same exceptions above.
  - Nigeria is not a member of any international data protection treaty. Though Nigeria is a member of the African Union, the country is yet to sign or ratify the Malabo Convention on cybersecurity and data protection.



## **Other applicable regulations**

### Proposals for reform of laws relating to copyright in Nigeria

- A draft Copyright Bill aimed at ensuring better protection of works and the provision of stiffer penalty for piracy is presently being considered at the National Assembly. If passed into law, the Bill will change a substantial part of the Copyright legal regime in Nigeria.

In conclusion, recent trends have indicated that Nigeria is and will continue to be a popular destination for international businesses seeking business opportunities in emerging markets in the Country.

Every individual or corporate investor should be well equipped with accurate information before making the decision to set up shop in Nigeria,

It is hoped that the foregoing exposé of the Nigerian business regime will help all prospective investors make informed decisions before undertaking business venture in Nigeria.

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