

Doing business in Nigeria

An overview of the legal framework



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Nigeria is a dynamic, high octane growth market with an unpredictable but exciting terrain. With a population of 177 million and a rising middle class - estimated at 23% of the population, Nigeria remains a prime investment destination. Nigeria's investment framework seeks to promote ease of entry of foreign direct investment, with the added advantage of having English as its official language and a legal system based on common law.

There are no restrictions on foreign ownership of shares in Nigeria, and with the exception of the oil and gas, power, aviation, broadcasting, advertising, engineering, and private security companies, foreign investors are free to establish businesses without the need for a local partner or Nigerian directors. All investment capital brought into Nigeria can be repatriated provided that such capital was brought into the country under a certificate of capital importation obtained from an authorised dealer (usually a Nigerian commercial bank).

Private companies are regulated by the Corporate Affairs Commission (**CAC**) while Public companies are regulated by the CAC and the Securities Exchange Commission (the **SEC**). Foreign shareholders of listed companies must be registered with the SEC. The merger, acquisition, and/or takeover of private or listed companies must be approved by the SEC, which also acts as the cross-sector competition regulator.

Business and investment vehicles

The limited liability company is the most widely used vehicle for business in Nigeria. Although, alternative business vehicles and structures do exist, including representative offices, joint ventures, unlimited liability companies, collective investment schemes, partnerships (general and limited), and limited liability partnerships (recognised only in Lagos State), and are used for business in Nigeria.

The basic requirements for registering a limited liability company with a foreign shareholder are two shareholders, and two directors (who need not be

Nigerian), a company secretary, and a minimum share capital of ₦10,000,000. The incorporation process usually takes two to three weeks to complete with an approximate statutory cost of ₦150,000 (inclusive of ₦75,000 ad valorem stamp duty payable on the ₦10,000,000 registered share capital). The required minimum share capital for a wholly Nigerian private company is ₦10,000 and ₦500,000, if a public company.

Registrations and permits

There are certain other registrations and permits that a company must obtain after incorporation and before commencing full operations. Some

registrations are industry specific whilst other registrations apply broadly to all companies. The key broadly applicable registrations and permits are:

- Registration at the Federal Inland Revenue Service (the **FIRS**). The applicable tax rate for a company resident in Nigeria is 30%. A company whose business or product is listed on the government's "Pioneer List" is eligible to apply for pioneer status tax relief within its first year of commercial operations. Pioneer status is an exemption from paying companies income tax for up to a maximum of five years. The Pioneer List is a list of 71 industries that includes tourism and real estate i.e. the development of holiday resorts, hotels, sporting and recreational facilities, and commercial and residential properties.
- Registration at the Nigerian Investment Promotion Commission (the **NIPC**) and application to the Federal Ministry of Interior for a business permit and expatriate quota. In practice this application is submitted via the NIPC and not directly to the Federal Ministry of Interior. An expatriate quota is a fixed term renewable permit that states the maximum number of foreign employees that a Nigerian company can legally employ. Foreign employees are subject to entry-visa and work

permit requirements and will not be allowed entry into Nigeria without a valid entry visa.

- Registration of certain operational contracts with a foreign counterparty at the National Office for Technology Acquisition and Promotion (**NOTAP**). NOTAP registration is a practical necessity because the company must provide its bankers with a NOTAP certificate in respect of the relevant agreement before that company can remit payments to its counterparty abroad through the official Nigerian foreign exchange market. The requirement for NOTAP registration applies to contracts involving the transfer of technology which include management services agreements, software licence agreements, trademark licence agreements and consultancy service agreements. NOTAP registration should be carried out within 60 days of the effective date of the relevant contract otherwise a penalty fee of ₦100,000 will be payable to NOTAP in addition to the registration fees.

Company Taxation

Nigeria has a double tax treaty with the United Kingdom, Canada, France, Netherlands, Belgium, Romania, and Pakistan. There are also several tax incentives that exist which seek to make

Nigeria attractive to foreign direct investment. These include the pioneer status incentive, the duty drawback suspension scheme; and the existence of export processing and free trade zones.

Nigerian companies are taxed on worldwide income, and would typically be liable to pay the following taxes:

- a. **Companies Income Tax** at a rate of 30%, is payable on taxable profits. This tax does not apply to companies engaged in petroleum operations;
- b. **Value Added Tax (VAT)** at a flat rate of 5%, is payable on all invoiced amounts of vatable goods and services. VAT is borne by the final consumer;
- c. **Education Tax** at a rate of 2%, which is payable on assessable profits;
- d. **Withholding Tax** at a rate of 5% or 10% is deductible on income payments made to a company;
- e. **Petroleum Profit Tax** at a rate between 30% (downstream) and up to 85% (upstream), is payable by companies engaged in activities in the petroleum, oil and gas industry in compliance with the Petroleum Profit Tax Act;
- f. **Capital Gains Tax** at a rate of 10%, is payable on capital gains arising from the sale, exchange or other disposition of assets by a company;

- g. **Stamp Duty** (on an ad valorem basis) is payable on various agreements that a company may enter into; and

- h. **Customs Duties** ranging from 5% to 100% is payable on the importation of applicable goods and materials into Nigeria.

Acquisition of interest in Land

There is no absolute right of ownership over land in Nigeria: all legal persons hold land under a right of occupancy granted by the state in which the land is located. This right of occupancy operates as a 99-year lease from the state and is evidenced by a certificate of occupancy, which is a registered document. A certificate of occupancy is not conclusive proof of ownership. For this reason, it is important to establish the authenticity of all title documents in relation to a particular piece of land and get a thorough search report from a lawyer.

The legal documents usually used for transactions over land are a contract for sale of land coupled a deed of assignment, a deed of sub-lease, and a deed of mortgage or charge. It is also possible to have equitable transfers of, or equitable charges over, land in Nigeria.

Except in the case of land owned by the federal government, the effectiveness of an assignment, mortgage, transfer of possession, sub-lease or otherwise of any land in a state

is subject to the state governor's prior consent. Leases of less than three years are not subject to the governor's consent and are not registered.

Taking Security

If authorised to do so by its memorandum and articles of association, a company can grant security over its assets such as land, receivables, shares, cash or intellectual property. This is achieved by way of any of a fixed or floating charge, legal or equitable mortgage or assignment, or liens (as applicable).

There is no thin capitalisation rule in Nigeria but transfer pricing regulations, which were introduced in 2012, apply to loans and guarantees between related companies.

Fixed charges (including mortgage over land) and a floating charge over the undertaking or property of a company are subject to registration at the CAC within 90 days of creation. The consequence of non-registration is that the charge granted shall be void against the liquidator and other creditors of the company, and amounts secured by that charge shall immediately become payable without prejudice to the validity of the underlying loan.

Intellectual Property

There is statutory protection only for Nigerian companies in relation to all trademarks, patents, industrial designs and copyrights that the company registers as its own. Nigeria is signatory to

the Paris Convention to registration of patents and industrial designs.

Dispute Resolution

Foreign judgments and international arbitral awards are enforceable in Nigeria. Commercial and trade disputes are usually first brought before a State High Court or the Federal High Court. There is also a Court of Appeal, and a Supreme Court, which is the highest court in Nigeria. Historically inefficient, the procedural rules of the Nigerian courts have been updated in recent years creating greater ease and efficacy in the courts.

There is also increasing use of alternative dispute resolution mechanisms in Nigeria, particularly in Lagos State, which operates a multi-door courthouse where arbitration, mediation and conciliations meetings are held. There is also the Lagos Court of Arbitration, an international centre for arbitration situated in a state of the art building overlooking the Lagos Lagoon, where commercial arbitrations (both local and international) are held. The inclusion of arbitration clauses in Nigerian law governed contracts has become increasingly popular, as arbitration as a means of resolving disputes in Nigeria has been found to be faster and more efficient in comparison to the Nigerian courts.

About Kayode Sofola & Associates

Kayode Sofola & Associates (KS LEGAL) is a full service law firm that has provided commercially focused legal advice in Nigeria for over 60 years. We have six core practice areas of Banking & Finance, Corporate & Commercial, Dispute Resolution, Employment, Real Estate, and Tax by which we provide services to the banking, energy & infrastructure, funds & investment management, insurance, real estate, and telecommunications & technology sectors. Our client promise is consistency as we deliver accurate and practical advice.

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