

DOING BUSINESS IN NIGERIA

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Applicable Legislations

- ❑ Companies and Allied Matters Act 1990
- ❑ Immigration Act
- ❑ Nigeria Investment and Promotion Act 1995
- ❑ Nigeria Export and Processing Zone Act 1992
- ❑ Personal Income Tax Act (as amended) 2007
- ❑ Companies Income Tax Act (as amended) 2007
- ❑ Valued Added Tax Act

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Registration of a Company

- ❖ Every foreign investor to Nigeria must comply with the relevant legislation regarding investing in Nigeria.
- The Corporate Affairs Commission (CAC) is the Company registry in Nigeria.

Who can register a company at CAC

- A Legal Practitioner is accredited to register a Company in Nigeria

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Types of Companies

- **Company Limited by Shares**

The liabilities of the shareholders are limited by the Memorandum of Association to the amount of unpaid shares held by the shareholders.

- **Company Limited by Guarantee**

The liabilities of the members are limited by the Memorandum to the amount such a member undertakes to contribute to the assets of the Company in event the company is being wound up.

- **Unlimited company**

The members have no limit on their liability.

These companies could either be private or public company. ALP

Ownership of a Private Company

- The minimum number of members is 2. In a private company the maximum number is 50 excluding the employees of the Company who hold shares.
- Section 17 of the NIPC Act provides that foreigners may hold **100% equity ownership** of a company. Therefore, if the company proposed to be registered is a local subsidiary of a foreign company, it is under no obligation to have Nigerian shareholders.

Share Capital

- The Share Capital of a private Company is a minimum of ₦ 10,000, of which **not less than 25% must be paid up.**
- The actual amount of share capital will be determined by the nature of business that the investor intend to undertake and the capital required for that purpose.
- However, note that the grant of some of the permits required for foreign investment in Nigeria is dependent on the registered share capital of the local subsidiary. Taking these factors into consideration, we advise client to register on an initial share capital of at least **₦10 million.**

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Procedure for registration of a Company

- Availability of name search. The Commission has the right to refuse name on certain grounds, e.g. the name is already in use by another entity, public policy, the name may be misleading e. t.c
- A Memorandum and Articles of Association (Memart) is prepared. The Memorandum of Association contains the nature of the company's business, while the Articles of Association is the Constitution of the Company. The Memorandum and Articles of Association must be signed by two subscribers. A Company can be a subscriber to the Memart. However, a Resolution of the Shareholder Company will be required and the seal of the Shareholder Company must be affixed on the Memart and the Resolution.

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Incorporation documents are completed- CAC 2 (Statement of Share Capital), CAC 7 (Particulars of Directors), CAC 3 (Details of Registered address).

A Company must have a registered address in Nigeria

Statutory Fees Payable

- 1% of the proposed Share Capital is payable to CAC as filing fees.
- 0.75% is payable to the Federal Inland Revenue as Stamp duties.

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Appointment of a Company Secretary

- CAC requires that every Company must appoint a Company Secretary. To this end we own a subsidiary company- 'ALP Nominees Limited' which provides company secretarial services.
- The duties of a Company Secretary are:
 - ❖ Attending Board and General Meeting : Recording the Minutes and rendering advise as may be required .
 - ❖ Maintaining the registers and other records of the required by the Company under the Act
 - ❖ Rendering proper returns and giving notification to the commission as statutorily required
 - ❖ Other administrative and secretarial duties.

Regulatory requirements and Permits required

- Council for the Regulation of Engineering in Nigeria (COREN): At least one director must be a member of COREN if the Company proposes to provide engineering services in Nigeria.
- National office for technology acquisition and Promotion (NOTAP): Any agreement under which a foreigner proposes to transfer technology into Nigeria must be approved by NOTAP.
- Department of Petroleum Resources (DPR): any investor engaged in Petroleum operations in Nigeria is required to obtain a permit from DPR.

Business Permits

- By virtue the Immigration Act of Section 8 of , foreign investors can hold shares in Nigerian companies. However the consent of the Minister of Interior must be obtained. Such a company is also required to obtain a business permit for the investor.
- For foreign-owned Company the foreign investor will need Business permit before the Company can be incorporated.
- The permits can be obtained either at the Ministry of Interior or at the Nigerian Investment Promotion Commission (NIPC). The minimum share capital required before Business Permit will be granted is N10 million.

Expatriate Quotas/ work Permit

- In addition a company intending to employ expatriate staff must obtain the Government's approval to fill specific positions in the company. The approval is called Expatriate Quota.
- Expatriate Quota implies two things. It sets out the *specific number of expatriates* which a company can employ and also the *job positions* which expatriates can occupy.
- The policy of the Expatriate Quota administration is to regulate the extent to which non-Nigerians can work in Nigeria and to ensure that Nigeria can acquire expertise in areas of deficiency. Accordingly part of the policy of the Expatriate Quota Administration is that there should be a Nigerian understudy for each position granted.
- There are two types of quotas: Permanent until reviewed (usually granted for Managing directors, technical directors and senior managerial/operations level; and ordinary quotas which are usually valid for a duration of 2 (two) years and are renewable for a further period of 2 years.

Capital Importation

- Investor who anticipate that they will remit profit to their parent company outside the country or repatriate capital, should apply for a Certificate of Capital Importation from the Nigerian Bank (through which start up capital is brought into Nigeria)at the initial stages of incorporation

Tax Implication

- Under the Nigerian Law, every company is required to pay Company Income Tax and every individual is required to pay Personal Income Tax. Other Taxes include:
 - Valued Added Tax
 - Withholding Tax
 - Capital Gain Tax
 - Education Tax

Company's Income Tax

- A Company doing business in Nigeria is liable to pay tax. Taxable income is the Company's income less allowances and deductibles.

Personal Income Tax Act

- A person's liability for tax in Nigeria is based on the concept of residency. The provisions of PITA relate to individuals who are deemed resident in Nigeria and apply to both local and expatriates employees in Nigeria.
- The interpretation to be given to the expression '*deemed to be resident in Nigeria*' is that an employee is deemed to be resident in Nigeria if he sojourns in Nigeria for a period or periods in all amounting to 183 days or more in a 12 month period. The recent amendment to the PITA now includes in the computation of the 183 days any periods of annual leave (spent outside Nigeria) or other temporary absences from Nigeria.

Taxable Income

The following are taxable in Nigeria:

- Income
- Allowance or other gain or profit from employment e.g compensation, bonuses ,premiums, benefits e.t.c.

However, the Act allows some allowances and deductions.

Importance of Compliance with the Tax Regime

- An entity that evades the payment of tax is at the risk of being shut down and prevented from continuing operations.
- Liable to pay fines upon conviction

Other Factors to consider in investing in Nigeria

- **Health, Safety and Environment:** In Nigeria, there various National and State laws and Regulations governing health and safety. It is advisable that every company have a health and safety procedure and a mechanism for its enforcement.

From experience, the failure to comply results in the foreign investors having to be involved in avoidable litigations. We have settled issues arises from accidents which have occurred at the Company's premises particularly at construction sites. However, the risk of accidents cannot be totally reduced, however if an investor takes adequate precautionary measures, it reduce its liability.

Other Factors

- Local Content: The Nigeria Government has created avenues for indigenous participation in certain industries. Examples: Local Content Act applies to the oil and Gas industry. A company enjoy certain first right to contracts and privilèges if it complies with the provisions of the Local Content Act in respect to indigenous companies; Cabotage Act applies in the maritime industry.
- Employment: The Nigerian government has also sought for avenues to ensure indigenous participation i.e. the use of local employees. It is advisable to employ skilled persons as employee. The advantage is that it reduces the liability of such an employee when in the event of an accident or improper rendering of services. Example, in Lagos State there is currently a requirement for all Truck drivers to undergo a training by the Lagos State Government institution. In the event of an accident during the course of his work , the Company can reduce its liability by showing compliance.
- Thus, it is imperative that an investor engages the services of a Legal Practitioner to draft a Proper employment Agreement in order to guard against arbitral exploitation of the employer.

Leasing a Building

- Lease of office Premises: The services of a Legal Practitioner should be engaged. The Legal Practitioner will assist in the investigation of title and drafting of a Lease Agreement . Some investors have run to difficulties of leasing or purchasing a bad title. Such situation could have been avoided by the use of a Legal Practitioner. One of our client had proposed to purchase a property in one of the choice areas of Lagos state. Upon proper investigation, we discovered that the proposed Vendor did not actually have the right to sell. Our client was saved from purchasing a bad title.

Key notes to Potential investors

- It is imperative that every person purporting to invest in Nigeria takes adequate precaution that they comply with the legislative and regulatory requirement.
- Proper guidance must be sought from a competent Legal Practitioner. We are currently involved in a Suit in court where our client had engaged an unknown Solicitor to incorporate a company on its behalf. Unfortunately, the Solicitor fraudulently incorporated the company in his own name and with his own Nominees.

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Our Services

- Company registration with CAC and as a.
- Immigration
- Liaising with relevant authorities to obtain all approvals and permits.
- General legal and advisory services particularly on Free Zones operations.
- Employment Matters
- Mergers and Acquisition
- Banking and Finance
- Intellectual Property
- Corporate Governance and secretarial services
- Construction and real Estate
- Taxation
- Energy
- Litigation and Arbitration e.t.c