

SETTING UP BUSINESS IN NIGERIA



General Aspects

Nigeria is a Federal Republic in West Africa which shares borders with the Republic of Benin, Chad, Cameroon and Niger. It consists of 36 States with its Federal Capital Territory situated at Abuja. Nigeria covers an area of about 923,768 square kilometers. Nigeria is multinational with over 300 ethnic groups of which the three largest are the Hausa, Igbo and Yoruba. The country's official language is English.

With a population of about 180 million people, Nigeria is often referred to as the "Giant of Africa", owing to its large population and GDP. In 2015, Nigeria had a real GDP of N69 Trillion (circa. \$500billion). The monetary unit is Naira (N).

Legal Forms of Business Entities

| Legal forms | Feature | Remarks |
|----------------------------|---|---|
| Sole Proprietorship | Set up by a single natural person, who is fully liable for the debts incurred by the business with his or her own present and future assets. A non-Nigerian operating a Sole Proprietorship will be subject to compliance with local immigration rules. | Suitable for small businesses and start-ups. Special formalities are not required. Save for compliance with local immigration rules, no formal registration is required where the sole proprietor trades with his surname without any addition thereto other than an initial. |
| Partnerships | Any partnership requires at least two partners with a personal commitment. Their liability for the partnership's debts and liabilities is generally unlimited and personal, including all private assets. | No minimum share capital is required. Accounting and reporting obligations are minimal as compared with incorporated companies. No formal registration is required except a partnership of more than 20 persons which is required to be registered at the Corporate Affairs Commission ("CAC") as a company in accordance with the Companies and Allied Matters Act ("CAMA"). |
| Companies | A company may be incorporated as any of the following: <ol style="list-style-type: none"> 1. Company limited by shares; 2. Company limited by guarantee 3. An unlimited company | Any of these companies can be either by a private company or a public company. For information concerning the incorporation formalities of a company, please see: http://ao2law.com/2017/06/09/guide-on-the-incorporation-of-companies-in-nigeria/#respond A minimum of two persons are required to form a company, whether public or private. While there is no maximum number for membership of the public company, the maximum number of members permitted for a private company is 50 members. |

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| Company Limited by Shares | Liability of its members is limited to the amount of unpaid shares. | The total number of members of a private company shall not exceed 50. The minimum authorised share capital for private company is N10,000 and N500,000 in the case of a public company. At least 25% of the authorized minimum share capital must be allotted to members of the company at incorporation. There is a restriction on the transfer of shares in a private company. |
| Company Limited by Guarantee | Liability of its members is limited to their undertaking to contribute to the assets of the company in the event of winding – up. A company limited by guarantee shall not be registered as a company limited by shares. A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits for distribution to members. | The memorandum of a company limited by guarantee shall not be registered without the authority of the Attorney-General of the Federation. |
| Unlimited company | Shall be registered with a share capital and the liability of members are unlimited. | A few companies are registered as unlimited companies. |
| Conversion from one company type to another | A private limited company can be converted into a public limited company and vice versa, or to an unlimited company. An unlimited company can be converted to a private limited company. An unlimited company cannot be re-registered as a public company or company limited by guarantee. | On re-registration the company keeps its original company number and remains the same corporate identity. Re-registration does not affect any existing rights or liabilities of the company |



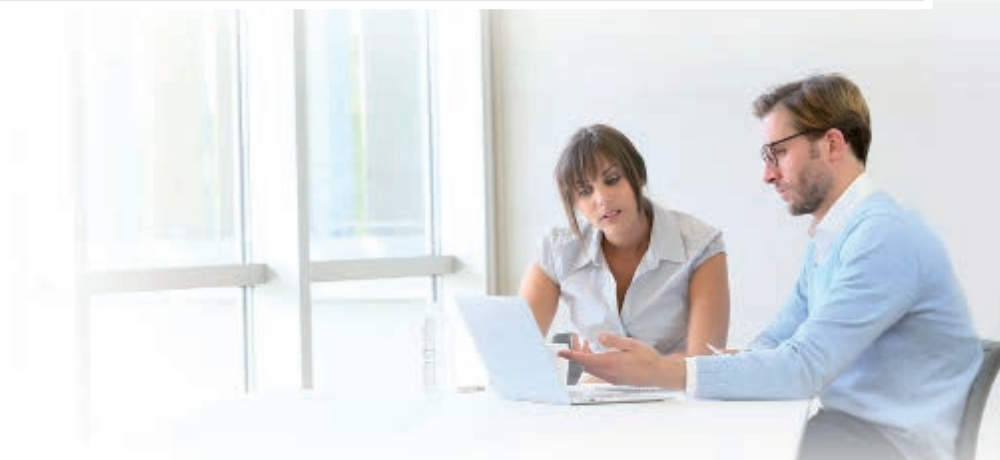
Organizational Questions

| Topic | Feature | Remarks |
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| Commercial Register | Registration of a company in Nigeria is carried out at the Corporate Affairs Commission ("CAC"). The database of the CAC has been recently integrated with the Federal Inland Revenue Service. | <p>The main functions of the CAC are to:</p> <ul style="list-style-type: none"> incorporate and dissolve companies; examine and store company information delivered pursuant to the Companies and Allied Matters Act; and generally regulate the affairs of companies in accordance with extant laws. |
| Bank Accounts | A company is not required to open a bank account upon incorporation, and is at liberty to open an account at any time in line with its business requirements. | <p>The Central Bank of Nigeria ("CBN") requires signatories to bank accounts (whether individual or corporate accounts) in Nigeria to register with their banks to obtain Bank Verification Numbers ("BVN"). Where any director of a company acts as a signatory to the account(s), such director is required to register and obtain a BVN.</p> <p>Some banks have made provision for BVN registration by their non-resident clients in some of their branches outside Nigeria.</p> |
| Transfer of Capital | <p>Nigerian law guarantees unconditional transferability and repatriation of funds with regards to both earnings and capital imported into Nigeria and invested in any enterprise.</p> <p>Where a company intends to repatriate funds from Nigeria, it must submit a Certificate of Capital Importation (CCI), which is a document evidencing capital inflow. The CCI can only be obtained from a local bank where a company has an account domiciled.</p> <p>A CCI must be issued by the bank within 24 hours of receipt of the capital in Nigeria.</p> | <p>Foreign exchange may be bought and sold through authorised dealers (that is, banks and some designated non-banking financial institutions) appointed by the Central Bank of Nigeria, without additional governmental approvals. As long as the investor has evidence of capital importation provided by a bank, future eligibility for profit remittances and capital repatriation is guaranteed.</p> |

| Topic | Feature |
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| Immigration Permits and Approvals | <p>Visa on Arrival is applicable for business and tourism.</p> <p>Foreigners need authorization (a business permit) from the Ministry of Interior to engage in any business in Nigeria prior to commencing business, in the form of a Business Permit. They also need authorization (expatriate-quota) to accept any form of employment in the country.</p> <p>A business permit will only be granted in respect of a company having an authorized share capital of at least N10,000,000.00 (Ten Million Naira).</p> <p>Expatriate Quota is the official permit to a company to employ individual expatriates to specifically approved job designations, and also specifying the permissible duration of such employment. Expatriate quota is granted for a period of 2 (two) years. These positions are owned by the company and not the expatriate; as such, upon the expatriate's disengagement from the company, the position reverts to the company and the company may place another expatriate on the same position in so far as the position remains valid.</p> <p>Where a Company intends to engage the services of expatriates for short-term assignments, it is expedient to obtain Temporary Work Permits ("TWP") for the expatriates. The TWP Visa is given for a period not exceeding 3 (three) months and is not renewable.</p> <p>Subject To Regularization Visa (STR) is applicable where a company intends to employ the expatriate on a permanent basis; for a period longer than 6 (six) months. The STR visa has a life span of 3 (three) months and is obtained from the Nigerian High Commission/Embassy of the expatriate's home country upon application by the expatriate. It is expected that the expatriate's status as a worker would be regularized within the validity period of the STR visa.</p> <p>In order to regularize an expatriate's stay in Nigeria, it is necessary to apply to the Nigeria Immigration Service for the issuance of a Combined Expatriate Residence Permit and Alien Card (CERPAC). This is a green coloured card that is essentially a work and residence permit given to the expatriate in connection with the expatriate's employment in Nigeria. CERPAC allows the Expatriate employee to live and work in Nigeria for 12 (twelve) months. If the Expatriate intends to stay for longer than 12 months the CERPAC can be renewed.</p> <p>In addition to the Green Card, non-commonwealth indigenes are issued with an Alien (Brown) Card. The Alien Card is processed after the green card has been issued and physical presence of the expatriate is required for purposes of interview and thumb printing.</p> |

Registration with Regulatory Authorities

| Topic | Feature |
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| National Office for Technology Acquisition and Promotion ("NOTAP") | Where a company has entered into technology transfer agreements/contracts such as technical, management or consultancy agreements it is required to register such agreements not later than 60 days from the execution of such contract at the NOTAP office. |
| Oil and Gas Sector | Companies that seek to render any service to the Oil and Gas sector must be registered with, and obtain a permit from the Department of Petroleum Resources (DPR). There are 3 (three) broad categories of permits issued by the DPR; These are, General, Major and Specialized categories. The fees payable will depend on the category of permit to be obtained. |
| Maritime Sector | Foreign-owned ships are eligible for registration in Nigeria, provided its owners comply with Nigerian Shipping Laws. |
| Health Equipment, Food and Medicine | Where a company intends to import, export, advertise, sell, manufacture or distribute food, drugs, cosmetics, medical devices, chemicals, detergents, packaged water and such other related products in Nigeria, such products must be registered with the National Agency for Food and Drug Administration and Control. |
| Nigerian Ports Authority Import and Export Procedures | A shipping company intending to import cargo into a Nigerian sea port is required to clear the ship by submitting information regarding the ship on the electronic Ship Entry Notice (eSEN) platform of the Nigerian Ports Authority (NPA), and obtaining a Ship Entry Notice Certificate from the platform. A few exportable items are controlled and monitored by the Federal Government of Nigeria. These include, among others: (i) Crude oil (ii) Works of art and artifacts (iii) Endangered species i.e. animals and plants. Among other things, exporters are expected to open a domiciliary account with any bank in Nigeria and ensure that the export proceeds are paid into the account. Pre-shipment inspection of the all goods including oil and non-oil goods exported from Nigeria is also mandatory. |



Taxation

| Tax | Feature | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|----------------------------|---------------------------|----------------------------|-------------------------------|----|----|---------------|---|----|-------------------|----|----|-----------|----|---|--|----|---|-----------------|----|---|---|---|---|--|---|---|
| Company Income Tax ("CIT") | <p>CIT is payable at the flat rate 30% on the taxable profits of both Nigerian and foreign companies. Taxable profits arise from, after deducting all tax deductible expenses, capital allowances and losses from previous years. All income that accrued in, or is derived from, or is brought into, or is received in Nigeria are liable to be taxed in Nigeria.</p> <p>A new company is required to file its first CIT Returns within 18 months of incorporation or 6 months after its first accounting year end, whichever is earlier. Other than a new company, all companies are required to file their CIT Returns within 6 months of their accounting year end.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Tertiary Education Tax ("TET") | <p>TET is payable on the assessable profits of Nigerian companies at the rate of 2%. Foreign companies are not liable to TET. Assessable profit is otherwise known as tax-adjusted profits and is arrived at before taxable profits.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Capital Gains Tax ("CGT") | <p>CGT is payable on chargeable gains arising from the sale or disposal of chargeable assets. Chargeable gain is arrived at from the deduction of allowable deductions, including the cost of sales, from sale proceeds. CGT is levied at 10% of chargeable gains. The proceeds from sale of shares, stocks and government securities are exempt from CGT.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Value Added Tax ("VAT") | <p>VAT is charged on the supply of vatiable goods or services at the rate of 5% of the value of the goods or services supplied.</p> <p>A supplier of goods and services is required to include VAT in its invoice to the customer or consumer. Failure to charge VAT is penalized with 150% of amount not collected plus 5% interest above the Central Bank of Nigeria's rediscount rate</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Withholding Tax ("WHT") | <p>WHT is a system for the advance collection of income tax. The income tax of a business may be withheld by its payers, especially customers, in respect of WHT-liable transactions. A business will similarly have the obligation to withhold tax from payments due to payees, especially vendors, in respect of WHT-liable transactions.</p> <p>WHT-liable transactions and the WHT rates applicable to them are set out in the table below:</p> <table border="1"> <thead> <tr> <th>WHT - Liable</th> <th>WHT Rate – Corporates (%)</th> <th>WHT Rate – Individuals (%)</th> </tr> </thead> <tbody> <tr> <td>Dividends, Interest and Rents</td> <td>10</td> <td>10</td> </tr> <tr> <td>Directors fee</td> <td>-</td> <td>10</td> </tr> <tr> <td>Hire of equipment</td> <td>10</td> <td>10</td> </tr> <tr> <td>Royalties</td> <td>10</td> <td>5</td> </tr> <tr> <td>Commission, consultancy, technical services fees</td> <td>10</td> <td>5</td> </tr> <tr> <td>Management fees</td> <td>10</td> <td>5</td> </tr> <tr> <td>Construction/building (excluding survey, design and deliveries)</td> <td>5</td> <td>5</td> </tr> <tr> <td>Agency and Contracts other than sales in the ordinary course of business</td> <td>5</td> <td>5</td> </tr> </tbody> </table> | WHT - Liable | WHT Rate – Corporates (%) | WHT Rate – Individuals (%) | Dividends, Interest and Rents | 10 | 10 | Directors fee | - | 10 | Hire of equipment | 10 | 10 | Royalties | 10 | 5 | Commission, consultancy, technical services fees | 10 | 5 | Management fees | 10 | 5 | Construction/building (excluding survey, design and deliveries) | 5 | 5 | Agency and Contracts other than sales in the ordinary course of business | 5 | 5 |
| WHT - Liable | WHT Rate – Corporates (%) | WHT Rate – Individuals (%) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Dividends, Interest and Rents | 10 | 10 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Directors fee | - | 10 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Hire of equipment | 10 | 10 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Royalties | 10 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Commission, consultancy, technical services fees | 10 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Management fees | 10 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Construction/building (excluding survey, design and deliveries) | 5 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Agency and Contracts other than sales in the ordinary course of business | 5 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | |

| Tax | Feature |
|------------------------------------|---|
| Stamp Duty | <p>Stamp duties is tax payable on dutiable documents. All documents that memorializes transactions between parties are dutiable, save they are expressly exempted by the relevant legislation.</p> <p>Stamp duties are charged at either <i>ad-valorem</i> or fixed rates.</p> |
| Personal Income Tax ("PIT") | <p>Employers have an obligation to deduct PIT from the taxable income component of the gross emoluments of their taxable employees under the pay-as-you-earn (PAYE) scheme.</p> <p>PIT is charged at the graduated rates of between 7% and 24% of taxable income, provided that the PIT payable will not be less than a minimum tax of 1% of gross emolument. The precise rates of tax are as follows:</p> <ul style="list-style-type: none"> 7% of the first N300,000; 11% of the next N300,000; 15% of the next N500,000; 19% of the next N500,000; 21% of the next N1,600,000; 24% of any amount above N3,200,000. |



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