

# LexisNexis® Company and Foreign Investment Law Guide 2021

The fourth annual complimentary guide to understanding  
Company & Foreign Investment practices around  
the world with an Asia-Pacific focus

# **LexisNexis® Company and Foreign Investment Law Guide 2021**

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**Company Law**

**Jurisdictional Q&As**

# Jurisdiction: NIGERIA

Firm: **ALP (Africa Law Practice) NG & Co.**

Authors: **Olasupo Shasore SAN, Oyinkansola Badejo - Okusanya, Solagbade Sogbetun, Orji Uka and Teni Akeju**



## Introduction

On 7 August 2020, Nigeria's President Muhammadu Buhari signed the Companies and Allied Matters Bill 2020 ("CAMA 2020") into law, repealing the 1990 Companies and Allied Matters Act and ushering in the most important change to business legislation in Nigeria in three decades. This is a welcome development. Some of the provisions in the repealed Act had become understandably obsolete and unable to support the dynamic business climate in Africa's most populous nation and its largest economy. Often described as the giant of Africa, Nigeria has continued to sustain the interest of foreign investors, making the need for a modern and effective business legislation an imperative. This article highlights the key changes in the new Act and the implications for foreign investors seeking to do business in Nigeria.

## Company Registration

### *Right to form a Company*

The first major innovation is that one person can now incorporate a private company in Nigeria (section 18(2) of CAMA). Previously, the minimum number of persons required to form a company was two. This is a positive change. Sole entrepreneurs, including foreign investors, can now derive the benefits of incorporation without the need to enter into forced partnerships to form a company. Consequential amendments have also been made to the rest of the Act to reflect this change. For instance, a private company is no longer required to have a minimum of two directors.

### *Restrictions on Private Companies*

The CAMA 2020, s 22, introduces provisions on the acquisition of the shares and assets

of a private company. The Act now requires the prior approval of all the members of the company before the sale of assets worth 50% or more of the company's total assets. In addition, a "right of first offer" is now suggested as a restriction on the sale of shares to a non-member and a shareholder or group of shareholders of a private company is restricted from entering into any agreement to sell shares of the company of 50% and above to any investor unless the investor offers to purchase the other existing shareholders' interests on similar terms. These, like other similar provisions in the Act, will protect existing shareholders from hostile takeovers. They ensure that shareholders have an option to exit the company if they do not wish to go into business with the new majority shareholder. Companies may however omit these provisions from the Articles.

Although a similar provision in s 142 suggests that this pre-emptive right also applies to public companies, we believe that given the nature of public companies and their unrestricted right to offer existing or new shares to the general public, this may not be practical. Hopefully, some clarification will be provided or an amendment will be made in the near future.

### *Minimum issued share capital*

Notably, CAMA 2020 replaces the concept of "authorized share capital" under the 1990 Act with the requirement for a "minimum issued share capital". The new Act also dispenses with the requirement to issue at least 25% of the 'authorised share capital' in a company, and instead provides for minimum issued share capital thresholds of N100,000.00 for private companies and N2,000,000.00 for public companies. There is a consequential increase (from N10,000.00 to N100,000.00) of the total liability of the members of a

company limited by guarantee; i.e. the total amount of the money the members undertake to contribute in the event of the company being wound up. The pivot from a requirement for an authorized share capital to an issued share capital is an adaptation to the prevailing situation in Nigeria where the entire authorized share capital of the company was issued and often not paid-up.

### **Objects of a company**

Under CAMA 2020, a company's objects are unrestricted unless the company's articles state otherwise. This is a significant departure from the old regime where a company was bound to act within the objects specified in its Memorandum of Association. This previous position protected investors' investments in a company because the objects to which their investment would be applied was clear before they invested, and also ensured that the company's funds were not dissipated in the pursuit of unauthorised activities. CAMA 2020 has dispensed with this protection, but has introduced new protective measures such as the requirement for the approval of all members of the company before the sale over 50% of the company's assets (discussed above) and the provision on major assets transactions [s 342] discussed in more detail below.

### **Post Incorporation**

#### ***Exemption of foreign companies from the requirement for registration***

A foreign company seeking to do business in Nigeria is still required to be incorporated in Nigeria unless it qualifies for exemption under certain prescribed circumstances – these include, foreign government owed companies; foreign companies invited to Nigeria as technical experts, consultants or to execute specific projects for the Federal or State Governments or any of their agencies; or to execute projects on behalf of a donor country or organisation are all exempt. The good news for companies that qualify for exemption is that the application for exemption from registration can now be made to the Minister of Trade and Investment instead of directly to the President of Nigeria through the Federal Executive Council, as was the case

under the 1990 Act. This will undoubtedly reduce the bureaucratic bottlenecks previously associated with these applications.

### **Company Contracts and Transactions**

#### ***Common seal of the company and execution of deeds by the company***

Under the CAMA 2020 s 98, it is no longer mandatory for a company to have a seal. Company seals have historically been used to authenticate the company's resolutions, contracts and other similar documents. However, it has been the position under Nigerian law for some time that the absence of a company seal on a company's document does not invalidate it [see: S.P.D.C. (Nig.) Ltd v. Allaputa (2005) 9 NWLR (Pt. 931) 475 at 514 (CA)]. This new provision therefore merely brings the statute in line with existing case law.

CAMA 2020 provides that a document will be deemed validly executed if it is duly executed and delivered as a deed. Since a common seal is no longer mandatory, a company may execute a document as a deed without affixing its seal to it, once the document has been signed by either a director and the secretary of the company, or two directors of the company, or by a director of the company in the presence of a witness. Under the new Act, a document executed in this manner has the same effect as a document to which the seal of the company is affixed. The obvious implication of this is that it simplifies the process of executing company deeds.

#### ***Major asset transactions***

The CAMA 2020, s 342, introduces a new procedure for companies to follow in undertaking a "major asset transaction". A major asset transaction is a purchase or other acquisition outside the usual course of the company's business which total value amounts to 50% or more of the book value of the company's assets. Under the Act, major asset transactions must be approved by the members of the company in an annual or extra-ordinary general meeting. This provision is significant as it provides a protection for investors and assures them that the assets of the company will not be dissipated to any

significant extent on ventures outside the usual course of the company's business.

## **Shareholding and Shares**

### ***Disclosure of capacity by shareholder***

Under the 1990 Act, the obligation to disclose the capacity in which a person held shares in a company was on the company and this applied only to public companies. The 2020 Act, s 119(1) now expressly requires any person with significant control over a company; whether private or public, to disclose to the company in writing, the particulars of such control within seven (7) days of becoming such a person.

### ***Disclosure of substantial shareholding in a public company***

The CAMA 2020, s 120, requires any person who acquires a substantial shareholding in a public company to disclose this fact to the company in writing. This refers to holding shares (directly or indirectly) in the company which entitle him to exercise at least five per cent (5%) of the unrestricted voting rights at any general meeting of the company. The implication of this is that there is a comforting measure of protection for public companies against backdoor acquisitions or hostile takeovers.

## **Small Companies and Minority Shareholder Protection**

CAMA 2020 now provides greater recognition of the status of small companies and eases their corporate governance requirements. A small company is a private company with no foreign shareholders, that has an annual turnover of not more than N120,000,000.00 and net assets with a value of not more N60,000,000.00 [section 393]. The directors of a small company must hold at least 51% of the equity share capital of the company. Small companies are now no longer required to hold annual general meetings and may not appoint a company secretary unless they wish to. It is also no longer compulsory for small companies and companies with a single shareholder to hold their AGMs in Nigeria, as was the case under the 1990 Act. With these new provisions, SMEs, which constitute

the bulk of Nigeria's largely informal economy, can now heave a sigh of relief. Many of the barriers that were a disincentive to and discouraged SMEs from incorporation have been eliminated with the result that they can now venture into and take advantage of inclusion in the formal economy.

The Act has also added new provisions to protect the rights of minority shareholders by including a new omnibus ground in s 343. A minority shareholder may now approach the courts to protect his rights where he believes the affairs of the company are being run unfairly. In addition to the grant of injunctive reliefs under the old Act, which were limited and offered no compensation for the losses suffered by the minority shareholder in consequence of the oppressive or illegal conduct of the majority shareholders, aggrieved shareholders who commence personal or representative actions are now also entitled to damages. The Act also expands the conditions to be satisfied before a minority shareholder can commence an action in the name of and on behalf of a company.

## **Distributable Profits**

Under the 1990 Act, distributable dividends had to have accrued from profits out of a company's property, revenue reserves, and realized profit on assets sold. CAMA 2020 provides that dividends are only payable from the company's accumulated, realized profits (so far as not previously utilized by distribution or capitalization), less its accumulated, realized losses (so far as not previously written off in a lawfully made reduction or re-organization of capital).

## **Insolvency Provisions**

CAMA 2020 has now helpfully expanded the scope of options available to a struggling company by establishing an enhanced insolvency framework to include administration, voluntary arrangement, share transfer schemes, striking off and netting off provisions. In light of the prevailing COVID-19 pandemic for instance, this is particularly useful. Financially-distressed companies can now work through their difficulties and take advantage of the various business recovery solutions available under

CAMA before resorting to the extreme solution of winding up.

## **Partnerships**

### ***Limited Liability Partnerships and Limited Partnerships***

CAMA 2020 contains a new Part C which provides a statutory framework for new forms of business vehicles like Limited Liability Partnerships (LLP) and Limited Partnerships (LP). An LLP is a body corporate formed and incorporated with a separate legal entity from its partners, perpetual succession, and the ability to sue and be sued in its name, and an LP is a body corporate formed of no more than 20 persons consisting of a general partner(s) who will be liable for the debts and obligations of the firm and limited partners who do not generally take part in the management of the partnership business and will only be liable to the extent of their agreed contribution to the firm's capital. This is the first national statutory backing for limited liability for partnerships, previously only recognised under State laws in states where they exist e.g. Lagos State. Law firms, accounting firms and other similar entities established as partnerships can now take advantage of the limited liability regime under CAMA. Foreign LLPs wishing to operate in Nigeria must be incorporated in Nigeria and cannot carry out business unless incorporated. A foreign LLP may however be exempted from incorporation by the Minister under certain circumstances.

## **Conclusion**

Overall, the CAMA 2020 has been designed to enhance efficiency in the registration of corporate entities in Nigeria; easing the regulatory compliance requirements for small businesses; strengthening the minority protection provisions in the Act; introducing business recovery and insolvency provisions; increasing regulatory oversight functions over not-for-profit organisations; and generally fortify the investment climate and business environment in Nigeria by providing stronger legal support for commercial activity to thrive. To a large extent, we believe that the new Act will help to achieve these goals. It is

certainly a step in the right direction and how well it does will become apparent in the weeks and months ahead. Hopefully, it will not take another 30 years to make amendments if they become necessary.



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# Jurisdiction: NIGERIA

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## **1. What are the main reasons foreign investors invest in your jurisdiction?**

The major attraction for foreign investors is Nigeria's abundant human and natural resources. In addition to being one of the largest producers of oil in Africa, Nigeria is blessed with vast deposits of other natural resources including arable land, coal, gold, iron ore, columbite, limestone, natural gas, niobium, lead, tin and zinc. With the exception of oil, these resources remain largely unexplored.

The Nigerian National Bureau of Statistics estimates the country's population to be in the region of 193 million based on the last population census conducted in 2006. According to the United Nations Department of Economic and Social Affairs, Nigeria's population, which is currently the world's 7th largest, is projected to double to around 410 million by 2050, surpassing that of the United States of America to become the third-largest country in the world. Demographically, a large percentage of the Nigerian population (54.8%) is between the ages of 15 and 64 years.

The African Development Bank estimates Nigeria's core stock of infrastructure at 20-25% of GDP, compared with 70% for similar middle-income countries, leaving an infrastructure deficit of \$300 billion. Similarly, the Nigerian Infrastructure Concession and Regulatory Commission has stated that approximately \$100 billion is required in the next six years to bridge the country's infrastructure gap. All of these make Nigeria an attractive destination for foreign investment.

Other factors that attract investment include the free market, a relatively lenient tax system, and an increasingly diversified economy. Nigeria is strategically located for access to West

African markets because of the ECOWAS Treaty amongst 15 West African countries which has abolished customs duty on goods moving between member states.

## **2. What foreign investment legislation is in place in your jurisdiction (e.g. Foreign Investment Law or Foreign Investment Catalogue)? Please provide a brief overview of such legislation.**

There are several laws that are relevant to foreign participation in Nigeria. Some of these statutes are sectoral while others are of general application. The principal statute regulating foreign investment in Nigeria is the Nigerian Investment Promotion Commission Act of 1995 ("NIPC Act"). The NIPC Act establishes the Nigerian Investment Promotion Commission as the agency responsible for the promotion, coordination and administration of foreign participation in the Nigerian economy.

By the provisions of the NIPC Act, all businesses with foreign participation must be registered with the commission prior to the commencement of business. The NIPC Act permits persons who are not citizens of Nigeria to invest and participate in any enterprise in Nigeria except those enterprises that fall within the 'negative list' as discussed below.

The NIPC Act also provides that an enterprise in which there is to be foreign participation must be incorporated under the Companies and Allied Matters Act ("CAMA") Cap C20, LFN 2004, and registered with the NIPC before it may commence business operations in Nigeria. This legislation has recently been replaced by the Companies and Allied Matters Act 2020, signed into law on 7 August 2020.

Further, the NIPC Act provides that foreign nationals or companies may purchase the shares of any Nigerian companies in any convertible foreign currency and guarantees a foreign investor the unconditional transferability of his dividends and profits, repayments of foreign loans, and remittance of all proceeds in the event of the liquidation of the enterprise.

Other relevant legislation affecting foreign participation in Nigeria include the:

- (a) CAMA 2020, which, as stated above, requires foreign investors to incorporate a Nigerian entity to carry on business in Nigeria and sets out the various ways by which the Nigerian entity may be established.
- (b) Immigration Act, 2015, which provides that the consent of the Minister of Interior (in the form of a business permit) must be obtained by any foreigner who intends to carry on business in Nigeria.
- (c) Investments and Securities Act, 2007 Cap 124 LFN 2004 (“ISA 2007”) [please see 21(c) below for more on legislation relating to securities] which empowers the Securities and Exchange Commission to keep and maintain records of all Foreign Direct Investments and Foreign Portfolio Investments in Nigeria. It is instructive to note that there is an Investments and Securities Act (Amendment) Bill currently pending before the Nigerian National Assembly.
- (d) Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34 LFN 2004, which sets out the foreign exchange regulations that are applicable in Nigeria.
- (e) National Office for Technology Acquisition and Promotion Act, Cap. N62 LFN 2004 (“NOTAP 2004”), which regulates the transfer of foreign technology to Nigeria.
- (f) Industrial Inspectorate Act, Cap. 18 LFN 2004, which makes provision for the investigation and monitoring of the under-takings of industries in Nigeria, including investments.
- (g) Nigerian Oil & Gas Industry Content Development Act 2010 which requires all operators in the oil and gas industry in Nigeria (including international oil companies and their subsidiaries) to give

first consideration to “Nigerian Independent Operators” i.e. companies with 51% equity shares held by Nigerians, in the award of any project in the oil and gas industry.

### **3. What restrictions are placed on foreign investment? Does this differ at local levels of government?**

The Federal Government of Nigeria (“FGN”) is vested with exclusive jurisdiction over foreign investment in Nigeria. Consequently, the regulations established by the FGN are applicable across all the states of the Federation. The NIPC Act permits foreign nationals to invest and participate in any enterprise in Nigeria except those that fall within the ‘negative list’ in section 31 of the Act. The negative list prohibits the production of arms and ammunition; production and trade in narcotics and psychotropic substances; production of military and paramilitary apparel; and such other items as may be specified by the Federal Executive Council. These restrictions also apply to Nigerian nationals. In addition, there are certain restrictions on the level of foreign participation permitted in the following sectors:

#### **(i) Oil and Gas**

To be competitive in the award of oil and gas contracts, at least 51% of the shares of the company must be owned by Nigerians.

#### **(ii) Shipping**

The Coastal and Inland Shipping (Cabotage) Act No. 5 of 2003 states that no vessel other than one that is wholly owned and manned by a Nigerian citizen(s), and built and registered in Nigeria is permitted to engage in domestic coastal carriage of cargo and passengers within the coastal, territorial, inland waters, islands or any point within the exclusive economic zone of Nigeria. Vessels of any type or size are also prohibited from trading or engaging in any domestic trading in Nigeria’s inland waters unless such vessels are wholly owned by Nigerians. These restrictions notwithstanding, the law confers on the Minister in charge of shipping, the power to grant waivers and authorise a departure from this strict regime if the Minister is satisfied that no wholly owned Nigerian vessel is available or suitable to provide

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the required services or to perform the relevant activity.

#### (iii) Broadcasting

A company applying for a broadcasting license must demonstrate that it is not representing any foreign interests and that it is substantially owned and operated by Nigerians.

#### (iv) Advertising

Only a national advertising agency (i.e. an agency in which Nigerians own not less than 74.9% of the equity) can advertise to the Nigerian market.

#### (v) Private security

A foreign investor cannot acquire an equity interest in, or sit on the board of, a Nigerian private security guard company.

#### (vi) Engineering

A company engaged in engineering services must be registered with the Council for the Regulation of Engineering in Nigeria ("COREN"). One of the requirements for registration is that the company must have Nigerian directors who are members of COREN and hold at least 55% of the company's shares.

#### (vii) Aviation

To qualify for the grant of an aviation license or permits, the Nigerian Civil Aviation Authority must be satisfied that the applicant is a Nigerian citizen or a company registered in Nigeria and controlled by Nigerian nationals. This requirement does not apply to licenses or permits required by any person to operate an aircraft for private use only.

#### (viii) Pharmacy

The Pharmacists Council of Nigeria Act Cap P17 LFN 2004 provides for the registration of non-Nigerian citizens only if the applicant's home country grants reciprocal registration to Nigerians, and where the applicant has been resident in Nigeria for at least 12 months prior to the application.

### 4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

The registration and incorporation of business vehicles is conducted pursuant to the provisions of CAMA 2020, which replaced the 1990 Act.

CAMA recognises various business structures as follows:

- (a) Limited liability companies (public or private):
- (b) Companies with unlimited liability:
- (c) Companies limited by guarantee:
- (d) Incorporated trustees:
- (e) Registered business names:
- (f) Limited liability partnerships: and
- (g) Limited partnerships.

A foreign investor seeking to do business in Nigeria would be required to register a company in one of the above listed forms, depending on the nature of its operations, as CAMA, s 78 prohibits foreigners from conducting business in Nigeria except through a Nigerian company incorporated for that purpose.

The most common business vehicles used by foreign investors are either a private limited liability company or a public limited liability company. Due to Nigeria's enabling business environment reforms, a private limited liability company can be registered within three (3) business days. However, where regulatory approvals for companies in regulated sectors such as aviation or telecommunications are required, incorporation may take longer.

The requirements for registration of a private limited liability company are as follows:

- (i) Name reservation and approval by the Corporate Affairs Commission ("CAC");
- (ii) A registered address within Nigeria;
- (iii) At least one (1) shareholder;
- (iv) At least one (1) director;
- (v) Memorandum and Articles of Association;
- (vi) Statement of the share capital of the company;
- (vii) Statement of compliance with the requirements for registration as outlined in CAMA;
- (viii) Any other documents required by the applicable regulatory agencies for registration in regulated sectors; and
- (ix) Payment of filing fees and stamp duty.

### **5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?**

All businesses with foreign participation must

be registered with the NIPC prior to the commencement of business. Registration with the NIPC and the grant of a Business Permit takes between 2-3 months. Where the foreign investment results in a change of control of the target company, it will be necessary to notify and/or obtain the consent of the Federal Competition and Consumer Protection Commission.

Regulatory approvals are also required in certain commercial sectors, such as for a Communications License, a Banking License and the Department of Petroleum Resources (DPR) Permit. It takes about 3-6 months to obtain a Communications license, 9-12 months for a banking license and 72 hours to obtain a DPR Permit subject to the submission of all relevant documentation.

### **6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?**

The following sectors are heavily regulated in Nigeria:

- (a) Financial and Banking services
- (b) Oil and Gas
- (c) Food and Pharmaceuticals
- (d) Telecommunications
- (e) Insurance
- (f) Aviation
- (g) Mining
- (h) Maritime
- (i) Power

Some investment sectors with fewer regulatory barriers to entry in Nigeria are:

- (i) Real estate
- (ii) Construction
- (iii) Entertainment
- (iv) Agriculture
- (v) Information Technology
- (vi) Hospitality and Tourism
- (vii) Solid minerals
- (viii) Automobile
- (ix) Manufacturing

## **7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions)**

There are no restrictions to doing business with any countries or territories. However, although Nigeria maintains trade relations with Taiwan, the Federal Government of Nigeria recognizes a 'one China policy' and therefore does not have any diplomatic ties with the Republic of China (Taiwan).

## **8. What grants or incentives are on offer to foreign investors, if any?**

There are several investment incentives available to investors in Nigeria primarily aimed at reducing their tax liability. These include:

- (a) The Pioneer Status scheme, which grants companies operating in certain industries (usually industries where the government is trying to develop and attract investment) a non-renewable income tax holiday for a period of three years, which can be extended for two more years.
- (b) Purchasers of local plant and equipment are entitled to an investment allowance of 10%.
- (c) Capital gains tax ("CGT") is not levied on gains from the sale of shares, stocks and treasury bills.
- (d) Nigerian companies with up to 25% imported foreign equity are exempt from paying minimum tax which is the tax imposed on holding companies with minimal operations and therefore no taxable income
- (e) Interest earned by a foreign company on its deposits in domiciliary accounts in Nigeria is exempt from tax.
- (f) In the extractive industry, there are a number of incentives such as the taxing of profits from gas production at the Companies Income Tax Act rate (i.e. 30%), rather than at the considerably higher rate under the Petroleum Profits Tax Act; incentives for gas utilization (i.e. the marketing and distribution of natural gas for commercial purposes) including tax free holiday of an initial period of three (3) years, with the possibility of renewal for another period of two (2) years or in the alternative 35% investment allowance;

and investment allowance of 25% on plant and machinery; etc.

- (g) Machinery and equipment purchased for the use of gas in downstream operations are exempt from value-added tax ("VAT").
- (h) Interest on all types of bonds and debt securities issued by all tiers of government in Nigeria are exempt from tax until 1<sup>st</sup> January 2022.

## **9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are the requirements?**

There are 42 free trade zones in Nigeria, regulated by the Nigeria Export Processing Zones Authority ("NEPZA") and the Oil and Gas Free Zones Authority ("OGFZA"). Of the 42, only 22 free trade zones (listed below) are active –

- (1) Adamawa State
  - Sebore Farms Export Processing Zone
- (2) Akwa Ibom State
  - ALSCON Export Processing Zone
- (3) Cross River State
  - Calabar Free Trade Zone
- (4) Enugu State
  - Empower Free Trade Zone
- (5) The Federal Capital Territory, Abuja
  - Centenary Economic City
  - Abuja Tech. Village Free Zone
  - Newrest Airline Service & Logistic FTZ
- (6) Kano State
  - Kano Free Trade Zone (KFTZ)
- (7) Lagos State
  - Newrest Airline Services & Logistic EPZ
  - Dangote Industries Free Zone
  - Ladol Logistics Free Zone
  - Lagos Free Trade Zone
  - Lekki Free Zone
  - Nigeria Aviation Handling Company (NAHCO)
  - Nigeria International Commerce City (Eko Atlantic)
  - Snake Island Integrated Free Zone
  - Tomaro Industrial Park
  - Quits Aviation Services FZ
  - Pan African Catering Services FZ
  - NASCO FZ
  - Alaro City Lekki Free Zone



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She has worked on major complex arbitration in the utilities sector as well as in international investment arbitration. Much sought after resource on International Arbitration & ADR matters and expert on regulatory compliance.

### (8) Ogun State

- Ogun Guangdong Free Trade Zone

There are three major licences that may be granted to any person or company by NEPZA. The first is a **Free Zone Enterprise Licence** which is granted to any person or company that wishes to undertake activities such as manufacturing, trading or the provision of service) within the free trade zone. The second license is an **Export Processing Factory/Farm Licence** which is granted to an export-oriented manufacturing company or farm located within the free-zone customs territory, which has the capacity to export over 75% of its production. The third license is the **Free Zone Developers Licence** granted to a public or private entity or a combination public-private entity seeking the establishment, operation and management of a free zone in Nigeria. The application for any of these licences must be made in writing to NEPZA or the relevant zone management by completing the prescribed form and attaching all the documents required by NEPZA or the zone management as the case may be.

In determining eligibility for a Free Trade Zone Licence, NEPZA or the zone management may consider the following factors:

- (1) whether the activities which the applicant proposes to engage are in consonance with the free zone approved activities;
- (2) whether the proposed activities to be carried out will add value to and be consistent with, the development programme for the Free Zone;
- (3) the applicant’s technical, financial and managerial capabilities;
- (4) the applicant’s experience and track record; and
- (5) the level of foreign direct investment proposed by the applicant.
- (6) For free zone developers, evidence of title to a suitable land area free of encumbrances for the intended purpose is required and the applicant shall be expected to comply with the provisions of the Act and any rules and regulations that may be put in place by the Authority/Zone management from time to time.

The NEPZA Investment Procedures, Regulations and Operational Guidelines for Free Zones in Nigeria (2004) ("the NEPZA Regulations") require a successful applicant to secure a built-up factory from NEPZA or the Zone management within 6 months of the execution of the lease agreement, while a successful applicant that has secured a lease of land shall commence development within 18 months of the execution of the lease agreement. Failure to do this shall result in the licence being revoked by NEPZA. Furthermore, the successful applicant would be requested to pay ground rent and other zone management and marketing or promotion fees.

The Oil and Gas Free Zone is a specialized trade zone regulated by the OGFZA. There are only 4 Oil and Gas Export Free Zones ("OGEFZ") in Nigeria - Onne Oil and Gas Free Zone, Warri Oil and Gas Free Zone, Brass Oil and Gas Free Zone and Eko Support Services.

Persons or companies must register with the OGFZA to trade within the OGEFZ. The requirement for registration are as follows:

#### **Documents required for companies registered in Nigeria**

- (1) Profile of the company including the industry (sector) it is working in:
- (2) Certificate of Incorporation:
- (3) Memorandum and Articles of Association:
- (4) Company Profile:
- (5) Contact Person, designation, phone numbers and address of the company:
- (6) Report of the Feasibility Study (Business Plan) of the intended investment in the Zone
- (7) Financial Profile and Personnel Profile of the company:
- (8) Sources of funding (local and foreign):
- (9) Companies last 3 years Audited Accounts (not applicable to companies less than 1 year in operation): and
- (10) Department of Petroleum Resource Certificate (where the company is a non-oil producing or liquefied natural gas (LNG) producing company).

**For companies not registered in Nigeria (offshore companies), in addition to the above requirements, the following documents**

**are required for registration;**

- (1) Notarized Copy of overseas incorporation where Certificate of Incorporation is not available:
- (2) Affidavit issued by a Notary Public that the entity is an oil & gas related company: and
- (3) Official confirmation from the operator of the leased facilities.

#### **10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments)**

- (1) Companies Income Tax:

This tax is imposed on the profit of companies registered in Nigeria. Companies with more than an annual turnover of N100,000,000.00 (One Hundred Million Naira Only) are charged at the rate of 30% while companies with a turnover from N25,000,000.00 to N100,000,000 are charged at the rate of 20% annually. In accordance with the recently promulgated Finance Act 2020, companies with a turnover of less than N25,000,000 per annum are not required to pay company income tax. A foreign company with a fixed base or permanent establishment in Nigeria is also required to pay income tax on the profits earned from that base and file annual returns.

- (2) Personal Income Tax:

This tax is imposed on the income of individuals derived in Nigeria. Consequently, a foreign investor is required to pay personal income tax for income earned in Nigeria. The rate of personal income tax payable ranges from 7% to 24%, depending on the amount of chargeable income as follows:

Annual Income (N)	Personal Income Tax (%)
First 300,000.00	7
Next 300,000.00	11
Next 500,000.00	15
Next 500,000.00	19
Next 1,600,000.00	21
Above 3,200,000.00	24



(3) Withholding Tax:

This is an advance payment of invoice tax deducted at source from the invoices of a taxpayer in respect of specific transactions, and entitles the recipient to utilise the withheld tax credit against the final tax obligations. Some of the transactions includes dividends, hire of equipment, directors' fees, royalties, and management fees etc. Withholding tax rates are usually around 5% or 10% depending on the transaction. The collecting authority for this Tax is the Federal Inland Revenue Service and the various State Internal Revenue Services.

(4) Value Added Tax (VAT):

This tax is imposed on goods and services, except from exempted items, at a rate of 7.5%. Although VAT is payable by consumers who purchase goods and services, and not by the companies/businesses who offers these goods and services, all registered businesses are mandated by the government to collect VAT from consumers and remit the same to the relevant tax authority. Consequently, all registered businesses are required to register and have a VAT registration certificate.

(5) Stamp Duty:

This is a tax paid to the Federal or State government on certain prescribed documents such as conveyances on sale, bill of exchange, promissory notes and contracts etc. Stamp duty is chargeable in accordance with a scale fixed by the Joint Tax Board. Stamp duty on documents pertaining to transactions between a company and an individual or a group of individuals is paid to the Federal Government while the State Governments in Nigeria are responsible for imposing and collecting Stamp duty on documents executed between individuals.

(6) Capitals Gains Tax: This tax is imposed on the sale, exchange or other disposal of assets known as chargeable assets such as buildings, land, plant and machinery. It is taxed at a rate of 10%. Capital gains are the profits which an investor realises from the sale or other disposal of a chargeable asset and the relevant taxes are only triggered when the asset is sold for a price higher than the purchase price i.e. where the investor made a profit.

(7) Petroleum Profits Tax:

This tax is imposed on the profit of companies operating in the oil and gas sector. Petroleum profit tax is imposed pursuant to the Petroleum Profits Tax Act and varies from 50% to 85% depending on the activities of such companies.

(8) Tertiary Education Tax:

This is a compulsory contribution imposed on all resident companies in Nigeria into an Education Trust Fund at the rate of 2% of the profit of the assessable profit of the company for each year of assessment.

**11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?**

The applicable employment laws and regulations in Nigeria are as follows:

- (i) **The Labour Act** Cap L1, LFN 2004: This is the principal statute for the regulation of labour and employment relations in Nigeria. The Labour Act is however limited in scope as it applies only to employees who perform manual labour or clerical work. Employees who perform administrative, executive, technical, or professional functions do not come within the scope of the Labour Act, and instead are governed by the terms of the contracts of employment executed between the employer and the employee.
- (ii) **Trade Unions Act** Cap T14, LFN 2004: The Trade Unions Act, originally enacted in 1973, regulates the formation, registration and organisation of trade unions in Nigeria. Any union comprising a combination of workers or employers, whose purpose is to regulate the terms and conditions of employment of workers is mandated to be registered under this Act. The Act governs the registration of trade unions; prohibits the members of the Nigerian armed forces and other critical services from forming unions; and prohibits the use of trade unions funds for lending political support to elected officials. The Act also establishes a Central Labour Organisation with the function of educating and informing trade unions, representing their collective



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interests to the government and, if requested, may participate in collective bargaining.

- (iii) **Pension Reforms Act 2014:** The Pension Reform Act establishes a Contributory Pensions Scheme for payment of retirement benefits of employees to whom the Scheme applies. The scheme applies to all employees in the Public Service and the Private Sector (subject to a few exceptions). Every employer is also required to maintain group Life Insurance Policy in favour of each employee for a minimum of three (3) times the annual total emolument of the employee.
- (iv) **Personal Income Tax Act 2011:** This is the legislation that governs and provides the legal framework for the taxation of remuneration employees. The Act requires employees of businesses to pay their taxes and places the obligation to deduct the personal income tax liability of the employees at source and pay the employees their net salaries with the employer. The businesses are thereafter required to remit the tax to the State on a monthly basis and obtain a tax clearance that covers all employees of the company.
- (v) **National Health Insurance Scheme Act ("NHIS Act")** Cap N42, LFN 2004: Under

the NHIS Act, an employer with a minimum of ten (10) employees may, together with every person in his employment, pay contributions under the National Health Insurance Scheme ("the Scheme"). Contributions under the Scheme are optional and not mandatory.

- (vi) **National Housing Fund Act ("the NHF Act")** Cap N45, LFN 2004: The NHF Act mandates any Nigerian worker earning the national minimum wage and above per annum to contribute 2.5% of his basic monthly salary to the National Housing Fund ("the NHF"). Under the NHF Act, employers must deduct the 2.5% monthly contribution from their employees' monthly salaries and remit same to the NHF not less than one (1) month from the date of the deduction. Contributions under the NHF Act are mandatory and an employer who fails to make the required deduction or remittance is guilty of an offence and liable to a fine of N5,000,000 (Five Million Naira).
- (vii) **Employees' Compensation Act (ECA) 2010:** The ECA, is implemented by the Nigeria Social Insurance Trust Fund Board (NSITF Board). Under the ECA, every employer is to make a minimum monthly contribution of 1% of its total monthly payroll into the

Employee Compensation Fund. The ECA applies to all employers and employees in the public and private sectors in the country, except members of the armed forces. The Employee Compensation Scheme was established to guarantee adequate and prompt payment of compensation to employees and their dependants for injury, disability, disease or death associated with the employees' employment.

- (viii) **Industrial Training Fund Act:** Under the Industrial Training Fund Act, employers engaged in industry or commerce, having 5 or more employees or less than 5 employees but with an annual turnover of at least N50 million are liable to contribute a levy of 1% of the amount of the annual payroll of the employer to the industrial training fund. Contribution under the Industrial Training Fund Act is mandatory.
- (ix) **Immigration Act** Cap. 11 LFN, 2004: The Immigration Act sets up the Nigerian Immigration Service which is responsible for the entry of foreigners and conduct of business by foreigners in Nigeria. The Immigration Service is responsible for the grant of business permits, residence permits and approval of expatriate quota for companies who wish to employ foreign nationals.
- (x) **National Industrial Court of Nigeria Act** Cap. N115 LFN, 2004: This is a legislation that regulates the conduct of the National Industrial Court which is the court vested with exclusive jurisdiction in Nigeria to hear and determine labour related disputes.
- (xi) **Local Content Laws and Regulations:** These are laws enacted in the various sectors/ industries in Nigeria that ensure that local companies in Nigeria involve Nigerians in the industry in order to encourage Nigerian participation in all projects, operations and transactions in such industries, and improve the expertise of Nigerians in the industry. An example of a local content law is the Nigerian Oil and Gas Industry Content Development Act 2010 while an example of a local content regulation in Nigeria is the Regulations on National Content Development for the Power Sector, 2014 issued by the Nigerian Electricity Regulatory Commission.

### **Residency Permits or Work Visas**

A business permit is granted to allow foreign-owned business entities to operate in Nigeria, while an expatriate quota is an approval granted to business entities to enable such businesses to employ foreign employees, subject to a specified number (quota). Foreign employees of businesses registered in Nigeria must obtain a Subject to Regularisation Visa (STR Visa) and thereafter, a Combined Expatriate Residence Permit and Alien Card (CERPAC).

The STR Visa is granted for ninety (90) days during which an application must be made to the Comptroller-General of Immigration to regularise the stay of the prospective employee, and the person may assume his employment only when such application is approved and a CERPAC granted. An application for an STR Visa is to be made by the employer at the Nigerian embassy or consular office in the country where such employee resides requesting that the employee (and an accompanying spouse/child, where applicable) be granted an STR Visa upon arrival in Nigeria.

CERPAC is a work and residence permit granted to foreign citizens to live and work in Nigeria for a period of up to two (2) years subject to renewal and the validity of the employer's expatriate quota.

### **Residency permits or work visas for foreign nationals under investment**

Any foreigner intending to work in Nigeria must obtain residency permits and work visas. A foreigner would initially be granted visa to visit to Nigeria subject to regularization ("STR") which is valid for only three months. The foreigner must regularize his status from a visitor to a resident by applying for a Combined Expatriate Residence Permit and Aliens Card ("CERPAC").

## **12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?**

Under Nigerian law, matters relating to the acquisition of land are regulated by the Land

Use Act of 1978 ("the Act"). Under s 1 of the Act, land in the territory of each State (except land vested in the Federal government or its agencies) is vested in the Governor of the State, who holds it in trust for the use and benefit of all Nigerians. Currently, in Nigeria, aliens (i.e. non-Nigerians) cannot apply for and obtain a customary or statutory right of occupancy in any land within the territory of any state in Nigeria in their personal capacities. In the case of **Huebner v. A.I.E. & P.M. Co. Ltd (2017) 14 NWLR (pt. 1586) 397**, the Nigerian Supreme Court held that foreigners may only acquire leases for a term of 3 years or less, or yearly tenancies. However, a foreign investor may be able to acquire real property indirectly, through a company incorporated in Nigeria subject to the payment of stamp duty, registration and obtaining the consent of the Governor of the State where the land is situated.

In Lagos State, the Acquisition of Lands by Aliens Law of Lagos State 1971, Cap 2 Revised Law of Lagos State 2017, ("the Aliens Law") provides the framework within which aliens may acquire interests in or rights over any land within the territory of Lagos State. Under the Aliens Law, an alien may not acquire any interest or right in or over land in Lagos State unless the transaction under which the interest or right is acquired has been previously approved in writing by the Governor. In respect of corporate entities, a corporate entity is an alien where the majority of its shares are held by non-Nigerian citizens.

### **13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?**

Under the NIPC Act [ss 17 and 18], all business sectors are open to foreign participation except businesses contained in the negative list. The negative list refers to investment in industries considered crucial to national security, which is precluded to both Nigerian and foreign investors. The negative list limits foreign participation in the following:

- (i) Production of arms and ammunition;
- (ii) Production of and dealing in narcotic drugs and psychotropic substances;

- (iii) Manufacture of military/paramilitary wears and accoutrements; and
- (iv) Participation in coastal and inland shipping.

The NIPC Act allows for one hundred per cent (100%) foreign ownership of firms and companies in all sectors of the Nigerian economy.

Activities that seek to change the structure of control of a company are subject to review and approval by the relevant government agencies in Nigeria. For instance, mergers and acquisitions are subject to the approval of the Federal Competition and Consumer Protection Commission to ensure that there is healthy competition in the sector. The Companies Affairs Commission also requires notification and review of significant changes in the shareholding structure of companies in Nigeria.

### **14. What foreign currency or exchange controls should foreign investors be aware of?**

Foreign investors are free to import capital into Nigeria through an authorised dealer and by obtaining a Certificate of Capital Importation ("CCI") in accordance with the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act Cap F34 LFN 2004 ("FEMMP Act") and the NIPC Act. An authorised dealer is any Nigerian bank licensed by the Central Bank of Nigeria ("CBN") to deal in foreign exchange under the provisions of the FEMMP Act. Foreigners are also allowed to repatriate their remuneration without any restrictions once they have obtained a CCI.

The FEMMP Act [ss 15 and 16] permits any person to invest in the Nigerian economy with foreign currency or capital, regardless of the residence or nationality of the investor. It establishes an autonomous foreign exchange market where transactions in foreign exchange can be conducted. The FEMMP Act also provides for the monitoring and supervision of transactions conducted in the foreign exchange market. Under the FEMMP Act, any person may invest in any enterprise or security with foreign currency or capital imported into Nigeria through an authorised dealer.



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profile commercial and general civil disputes covering a broad range of causes including contractual disputes in the oil & gas industry, real estate and construction disputes, aviation disputes, company proceedings etc.

Repatriation of foreign capital is unconditional and is not subject to any further approval i.e. foreign currency imported into Nigeria and invested in any enterprise is guaranteed unconditional transferability of funds through an authorised dealer in freely convertible currency provided the capital was also brought into the country through an authorised dealer. This is in relation to dividends or profits attributable to the investment, payments in respect of loan servicing where a foreign loan has been obtained, and remittance of proceeds and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment. Applications for remittance of capital, profits and dividends are to be made to the authorised dealer. Naturally, unconditional repatriation of foreign currency is subject to payment of all relevant taxes to the Nigerian Government.

While repatriation is unconditional, it useful to point out that repatriation may be fettered by the foreign exchange market where there is a shortage of foreign exchange. The Central Bank of Nigeria has recently taken measures to defend the Naira, which measures have temporarily restricted the ease with which foreign capital may be repatriated from Nigeria.

### **15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?**

The only applicable approval requirements for foreign investors to withdraw their investment in Nigeria are the general approval requirements applicable in share or asset transfers. These include approvals by the Securities and Exchange Commission, ("SEC") and the Federal Consumer & Consumer Protection Commission ("FCCPC"). There are also sector-specific approval requirements such as approval by the Central Bank of Nigeria in the financial services sector, the Nigerian Communications Commission in the communications sector, and the requirement for consent in the oil and gas industry, maritime industry and free trade zones for certain divestitures.

### **16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?**

#### **Contract Enforcement Mechanisms**

Nigeria recognises a broad range of dispute resolution options for the enforcement of contracts. In the event that disputes arise in a contract, the parties to the contract have

recourse to alternative dispute resolution (“ADR”) mechanisms or the Nigerian courts to enforce the contract. Contractually specified dispute resolution mechanisms are recognised and enforced by Nigerian courts. The Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004, is the major law that governs arbitration and other forms of ADR in Nigeria. Where the parties are unable to settle their dispute by ADR, recourse may be had to the Nigerian Courts, some of which have dedicated fast-track procedures for commercial disputes above a certain amount. Foreign judicial judgments and awards given by foreign arbitral tribunals may also be recognized and enforced on application to the appropriate Nigerian court.

### **Investor Protection Mechanisms**

Some of the key guarantees and incentives available to foreign investors in Nigeria include free repatriation of capital and a guarantee against government expropriation of foreign investment. Investors are guaranteed that their assets will not be nationalised, expropriated or sequestered.

To promote foreign investments in Nigeria, there are several foreign investor protection mechanisms available under applicable laws. The NIPC Act for instance provides a guarantee against expropriation or nationalisation of any enterprise by any government in Nigeria, unless the acquisition is in the national interest or for a public purpose and under a law which makes provision for the payment of fair and adequate compensation. The Act also stipulates that no person shall be compelled by law to surrender his interest in the capital of any enterprise to any other person. Further, the Act accords a right of access to the courts for the determination of an investor’s interest or right and/or the amount of compensation to which such an investor is entitled.

As a further protection, any dispute arising between Nigeria and the foreign investor will be settled by a mechanism chosen by the foreign investor such as international arbitration under the International Centre for Settlement of Investment Disputes.

## **17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?**

Nigeria is a contracting party to the ICSID Convention. Having signed it on July 13 1965, the Convention entered into force in Nigeria on October 14 1966. Nigeria has thirty (30) Bilateral Investment Treaties (BITs) of which 15 BITs are currently in force. Nigeria has bilateral investment treaties with China (27 August 2001), the Republic of Korea (27 March 1998), and the Taiwan Province of China (7 July 1994). These treaties guard the rights of citizens in the contracting States against expropriation, repatriation of investment and returns, and compensation for losses caused by riots, wars and other conflicts to the same degree that the contracting states would compensate its citizens. In addition, the Federal Government of Nigeria is implementing a series of reforms of the country’s BITs to attract responsible, inclusive, balanced, and sustainable investment.

## **18. What intellectual property rights protection are available in your jurisdiction to foreign investors?**

Intellectual Property rights available to foreign investors in Nigeria can be found in the extant laws for IP protection. These include:

- (a) **The Copyrights Act Cap C28 LFN 2004**, under which copyright protection is conferred on every work from the time the work was made for a period of 50-70 years following the death of the author or from the year the work was published.
- (b) **The Patent and Designs Act Cap P2 LFN 2004**, which guarantees an exclusive right, secured for a period of 20 years from the date of the filing of the patent application upon registration of a patent. During the 20-year period, registration must be renewed annually by lodging the relevant application and paying the prescribed fee not later than the due date at the Trademarks, Patents and Designs Registry. The Patent and Designs Act also provides for “industrial design” which is described in the Act. An industrial design shall be

effective for five years from the date of the application for registration in the first instance and may be renewed for two further consecutive periods of five years each.

- (c) **Trade Marks Act Cap T13 LFN 2004:** This protects any mark, words, design, device, label, numerals or combinations of these for a period of 7 years from the date of registration. After this period, it may be renewed for a subsequent period of 14 years.

Nigeria is also a signatory to and has ratified several international intellectual property protection treaties such as the Paris Convention for the Protection of Industrial Property; the Berne Convention; the Rome Convention (Performers, Producers of Phonograms and Broadcasting Organisations); the Patent Law Treaty (ratified in April 2005) and the Patent Cooperation Treaty (ratified in May 2005).

### **19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?**

There are a number of environmental protection policies, legislations and regulations applicable in Nigeria including but not limited to:

- (i) The Environmental Impact Assessment ("EIA") Act 1992 Cap E12 LFN 2004, which outlines the general principles, procedures, and methods of environmental impact assessments to be carried out in various sectors. The Act mandates anyone that intends to undertake any activity that could affect the environment, to first take the environmental effect of those activities into account, and establishes the criterion and procedures to be used.
- (ii) The National Oil Spill Detection and Response Agency (NOSDRA) Act 2006, which established the National Oil Spill Detection and Response Agency ("NOSDRA") charged with the responsibility for preparedness, detection and response to all oil spillages in Nigeria and for executing the National Oil Spill Contingency Plan

(NOSCP). Its mandate is to prevent (and control the effects of) oil spillage in the country.

- (iii) The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2004, which established the National Environmental Standards and Regulations Enforcement Agency ("NESREA, responsible for protecting and developing the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general.
- (iv) Harmful Waste (Special Criminal Provisions etc) Act 1988 Cap H1 LFN 2004, which prohibits the carrying, depositing, and dumping of harmful waste on Nigeria's land and territorial waters, as well as all activities relating to the purchase, sale, importation, transportation, deposit, storage of harmful waste.
- (v) Endangered Species (Control of International Trade and Traffic) Act Cap E9 LFN 2004: This provides for the conservation and management of wildlife and the protection of endangered species, as required under certain international treaties.

Nigeria is also a signatory to the Paris Agreement on Climate Change and on 2 October 2020, the Nigerian President announced that he has signed Nigeria's ratification instrument of the Doha Amendment of the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

### **20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?**

The Nigerian Investment Promotion Commission (NIPC) is the principal government agency in Nigeria that coordinates and promotes investment in Nigeria. The NIPC has created a One-Stop Investment Centre which brings together all the relevant government agencies in one location to provide information and fast track services to potential investors. It aims to simplify the business entry processes for foreign investors by eliminating the administrative bottlenecks that are involved

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in dealing with the agencies one after the other. The agencies included under this umbrella are the Corporate Affairs Commission (CAC); which is Nigeria's company registry, Central Bank of Nigeria, Nigerian Immigration Service, Federal Inland Revenue Service and so on.

### **21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?**

There are several regulatory reforms that have taken place recently that will potentially impact foreign investment in Nigeria. These include the:

(a) **Companies and Allied Matters Act 2020:** was recently passed by the Nigerian Federal Government. CAMA 2020 makes significant changes to the extant legal framework on companies' issues and corporate governance matters and has addressed some of the obstacles that impeded the smooth registration and operation of companies in Nigeria. One major initiative under the 2020 Act is the recognition of the right of a single shareholder to incorporate a private company. This potentially enables

a foreign investor to own a company in Nigeria without seeking the assistance of a local partner. The Act has also changed the regime for the application for exemption from registration in certain instances. Under the repealed 1990 Act, such applications were required to be made directly to the President of Nigeria. The new Act has now vested the power of granting such exemption to the Minister of Trade and Investments. This would potentially make the application process much more seamless. Another change in the new Act is the introduction of virtual meetings for private companies, electronic signatures, and the recognition of electronic share transfers. The legislation also provides for the establishment of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) which combines the organisational flexibility and tax status of a partnership with the limited liability of members of a company.

(b) **Finance Act 2020:** has introduced Digital Tax and expands the scope of the Value Added Tax (VAT) regime to include the supply of goods and services in the digital economy, including intangible goods. The implication of this provision is that non-resident companies that supply digital



goods for the benefit of the Nigerian population must now also pay VAT in Nigeria.

- (c) **Federal Competition and Consumer Protection Act 2019:** was signed into law in 2019 and has repealed the Consumer Protection Act and some provisions of the Investment Securities Act covering the control of mergers. The Act establishes the Federal Competition and Consumer Protection Commission (“FCCPC”), which has the authority to regulate and approve mergers including Joint Ventures. The FCCPC issued guidelines for Foreign to Foreign Mergers with a Nigerian Component, that have an impact on Nigeria and prescribed a new payment regime for the processing fees payable in respect of such transactions. Upon payment of the prescribed fees, the guidelines also provide an accelerated process for foreign to foreign merger filings.
- (d) **Central Bank of Nigeria Foreign Exchange Manual 2018:** is a guide to authorised dealers, authorised buyers, and the public on processing foreign exchange transactions. The manual lays out the provisions for transactions that are eligible for obtaining foreign exchange from the Official Market as well as the documentation required to access the Official Market. The Manual also sets out the requirements for obtaining an electronic certificate of capital importation. The certificate of capital importation is required by foreign investors inflowing capital to Nigeria, to access the Official Market when repatriating principal, interest, dividends etc in relation to the capital invested in Nigeria.
- (e) **Presidential Ease of Business Enabling Business Environment Council:** established to remove critical bottlenecks and constraints to doing business in the country and make Nigeria a progressively easier place to do business, thrive and attract foreign investment. One of such reforms is the passing of the new Companies and Allied Matter Act 2020.
- (f) In the banking sector, the Nigerian National Assembly has recently passed a Bill for an Act to repeal the Banks and Other Financial Institutions Act, 2004 and re-enact the

Banks and other Financial Institutions Act, 2020. The Bill contains several novel provisions to regulate banking and businesses of other financial institutions and most notably, brings financial technology companies within its purview.

## **22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?**

No.

## **23. What changes in foreign investment law have been implemented in light of current events? Are there any “new normal” practical tips in your jurisdiction parties should be aware of when dealing with foreign investments?**

The Central Bank of Nigeria recently announced plans to implement a more unified and flexible foreign exchange rate regime. This was contained in a letter by the Governor of the Central Bank of the Nigeria and the Minister of Finance to the International Monetary Fund (IMF) while requesting the recently approved loan of \$3.4 billion via a Rapid Financial Instrument to Nigeria. The loan was sought to aid the country in its battle with the Covid-19 pandemic and the crash in crude oil prices. According to these officials, the plan will increase government revenue to 15% of GDP and ensure a move to cost-reflective electricity tariffs by 2021.

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ALP NG & Co is a merger and integration of existing practices, whose members have varied experience spanning all areas of our combined practice. With offices in Lagos and Abuja, and affiliations in several African jurisdictions, we are a Nigeria-based, Africa-focused firm with a dedicated and innovative corporate practice, providing the highest quality of legal, business advisory and related services to the local business community and a network of continental and international clients. Our alliances across Africa ensure that we are able to assist our clients with seamless services on the continent.

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# Company and Foreign Investment Law Guide 2021

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The LexisNexis® Company and Foreign Investment Law Guide 2021 provides you with a detailed review and analysis of the current legislation and regulations that governs company and foreign investment around the world with a focus on the Asia-Pacific region.

The guide helps you understand company and foreign investment practices in unfamiliar jurisdictions through Q&A style chapters that can be easily compared with other jurisdictions.

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