

CORPORATE
REPORT

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DOING
BUSINESS
IN NIGERIA

- ❖ Forms of Businesses
- ❖ Post-Incorporation Statutory Registrations
- ❖ Immigration Guidelines
- ❖ Understanding the tax regime: Business Names
- ❖ Understanding the tax regime: Incorporated Companies
- ❖ General Information

FORMS OF BUSINESSES

An investor who intends to commence any business must first make a decision on the form of business in which to operate.

In Nigeria, there are two main forms a business can take. The business could either take the form of a registered business name or an incorporated company.

The Companies and Allied Matters Act 1990 ("CAMA") provides for the processes and procedures for registration of these forms of business.

1. A REGISTERED BUSINESS NAME

A Business Name is registered under Part B of CAMA. Businesses registered under this Part are normally Sole Proprietorships and ordinary Partnerships.

REGISTRATION PROCEDURE FOR A BUSINESS NAME

Step A: Reservation of Name

This is the first step prior to the registration of a Business Name in Nigeria.

An investor is required to supply proposed alternative name options for the Business Name in the prescribed form to the Corporate Affairs Commission ('CAC'). The CAC will then determine whether or not any of the proposed names are available for use. Where any are deemed available and approved by the CAC, one of the options will be reserved for that particular investor for a period of sixty days to allow for registration.

Step B: Submission of the following documents to the CAC:

- The approved reservation of name form
- Duly completed Business Name registration form.
- 2 (Two) passport size photographs of each investor
- Certificates of professional qualification where necessary

Step C: Payment of the prescribed fees and stamp duties at the bank desk at the CAC

Step D: Registration and provision of Certificate

2. AN INCORPORATED COMPANY

There are different types of incorporated companies in Nigeria.

We have the limited liability Companies which can either be private or public company; the companies limited by Guarantee and the unlimited liability Companies. There are also Incorporated Trustees which are incorporated companies for non-profit organizations such as Religious Bodies, Associations, and Non-Governmental Organizations

PROCEDURE FOR INCORPORATION OF A COMPANY

CAMA provides under Part A for the procedure of incorporation for limited and unlimited liability companies, and also for companies limited by guarantee. The procedure is as follows:

Step A: Reservation of Name

This is the first step prior to the incorporation of any company in Nigeria.

An investor is required to supply proposed alternative name options for the Company in the prescribed form to the CAC. The CAC will then determine whether or not any of the proposed names are available for use. Where any are deemed available and approved by the CAC, one of the options will be reserved for that particular investor for a period of sixty days to allow for incorporation.

Step B: Submission of the following documents to the CAC:

- The approved reservation of name form
- Duly Completed Incorporation Forms
- Duly stamped Memorandum and Article of Association (2 copies)
- Certification of proficiency where required.
- Copies of Means of Identification of the Directors

Step C: Payment of the prescribed fees and stamp duties at the Bank Desk at the CAC

Step D: Incorporation and provision of Certificate

PROCEDURE FOR INCORPORATION OF INCORPORATED TRUSTEES

CAMA provides under Part C for the procedure of incorporation for Incorporated Trustees and the procedure is as follows:

Step A: Reservation of Name

As stated previously, this is the first step prior to incorporation of any company in Nigeria.

An investor is required to supply proposed alternative name options for the Company in the prescribed form to the Corporate Affairs Commission ('CAC'). The CAC will then determine whether or not any of the proposed names are available for use. Where any are deemed available and approved by the CAC, one of the options will be reserved for that particular investor for a period of sixty days to allow for incorporation.

Step B: Submission of the following documents to the CAC:

- The approved reservation of name form
- Duly Completed Incorporation Forms
- Formal application for registration signed by the chairman and secretary
- Extracts of minutes of general meeting appointing trustees and adoption special clause in the constitution signed by the chairman and secretary
- Two printed copies of the constitution
- Trustees declaration form duly deposited to by each trustee in the high court
- Impression of the common seal of the association on the application form
- Notice of the situation of the address of the association or any change therein
- Payment of filing fee
- The extracts of minutes shall list members present and the voting pattern
- Cuttings(or National Library certified copy) of publication page of 3 " x 2 notice of application for registration in two daily newspapers one of which must circulate in the locality of the association and the other a national newspaper
- The notice of application published in the newspaper shall state the name and principal object of the association, the full names of the proposed trustees and invite objections to the name, objects or persons stated as trustees of the association within 28 days of publication

- Thumb prints by an illiterate trustees or officer shall be accompanied by an illiterate jurat.

Step C: Payment of the prescribed fees and stamp duties at the Bank Desk at the CAC

Step D: Incorporation and provision of Certificate

OTHER REQUIREMENTS FOR COMPANY REGISTRATION

CAMA requires a minimum of two directors and two shareholders to form a company. The directors and shareholders can be of any nationality, and need not be resident of Nigeria.

CAMA requires every foreign company who intends to do business in Nigeria to register a separate entity in Nigeria for that purpose. Notwithstanding this requirement, the law created instances where a foreign company can be exempted from the requirement of registration.

Please note that foreign investors may own up to 100% of any Nigerian business except in the Maritime sector as provided in the Cabotage Act.

Every company after registration is required to disclose on its letterhead papers, the following;

- Name of the company/Business Name
- Registered Address of the Company/Business Name
- RC Number/BN Number of the Company
- Names of Directors of the Company

POST-INCORPORATION STATUTORY REGISTRATIONS

NIGERIA INVESTMENT PROMOTION COMMISSION (NIPC)

The Nigeria Investment and Promotion Commission Act provides that any enterprise in which there is foreign participation must be registered with NIPC. The Act permits foreigners to own up to 100% of any business with the exception of businesses under the negative list. The negative list includes companies involved in the production of and dealing in arms, ammunition, narcotic drugs and psychotropic substances.

TRANSFER OF TECHNOLOGY AGREEMENT APPROVAL

Any agreement under which a foreigner is to provide foreign technology, management, or assistance, to a Nigerian company must be approved by the National Office for Technology Acquisition and Promotion (NOTAP). Fees to be paid for the provision of such technology or services must be approved by NOTAP.

DEPARTMENT OF PETROLEUM RESOURCES (DPR)

Companies are required to be licensed by DPR in order to operate in the Oil and Gas Industry.

Permits are issued upon application for particular operations to be carried out by a company and the fees payable depend on the category of operations for which a company applies.

REGISTRATION WITH NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL (NAFDAC)

NAFDAC registration is mandatory for the registration of foods, drugs, cosmetics and medical devices manufactured or imported into Nigeria.

REGISTRATION WITH STANDARD ORGANIZATION OF NIGERIA (SON)

All products other than those regulated by NAFDAC (as stated above) are required to be registered with SON.

REGISTRATION WITH SECURITIES AND EXCHANGE COMMISSION (SEC)

The Investment and Securities Act encourages merger or acquisition that reduces competition and regulate the placement of securities. Thus public companies who desire to place their securities either

as private placement or public offer must register such securities with the Securities and Exchange Commission.

NIGERIAN COMMUNICATIONS COMMISSION (NCC)

All intending private operators of telecommunications services are required to obtain the relevant licenses from the Nigerian Communications Commission (NCC) via the license application process and also comply with the stipulated requirements.

IMMIGRATION GUIDELINES

The Immigration Act provides that no person other than a citizen of Nigeria shall accept employment (not being employment with the Federal or State government) without the consent in writing of the Director of Immigration; or either alone or in partnership with any other person, practice a profession or establish or take over any trade or business or register or take over a limited liability company without the consent in writing of the Minister.

THE EXPATRIATE QUOTA:

The Expatriate Quota is the official permit given to business organizations operating in Nigeria to employ non-Nigerians into specifically approved job designations. It also specifies the duration of such employment as permitted.

General Requirements for grant of Expatriate Quota:

- Completed Immigration Form T/1
- Certificate of Incorporation
- Minimum Share Capital Requirement - N10million
- Memorandum and Article of Association
- Joint Ventures and Partnership Agreements(where necessary)
- Company's current Tax Clearance Certificate
- Evidence of imported machinery such as Form M, Proforma invoice, Shipping documents and Clean Certificate of Inspection issued by Government appointed Pre-shipping Inspection Agent.
- License or Permit or Certificate from relevant Government Agencies for the operation or execution of project for companies that are engaging in oil services, health care services, fishing, mining, constructions etc.
- Evidence of work at hand, its duration and value attached to the contract(s) if the company is engaged in building, civil engineering, construction etc. (originals are to be presented for sighting)
- Proposed annual salaries to be paid to the expatriates to be recruited. Names, designations, job descriptions and qualifications must also be indicated.

General Requirements for Renewal of Expatriate Quota:-

- Completed Immigration Form T/2
- Corporate Tax Clearance Certificate (original to be presented for sighting)
- Current Tax Clearance Certificate of the expatriates (originals are to be presented for sighting)
- Expatriate Quota Returns for the three months preceding the date of approval
- Detailed Training programmer for Nigerians
- List of Nigerians understudying expatriate on prescribed format showing date employed, qualifications etc.
- List of Nigerian Senior/Management staff showing names, designations, qualifications, salaries per annum,
- Certified Current Audited Accounts
- Annual Income Tax clearance Certificate of the Expatriate staff (original to be presented for sighting)

General Requirements for Additional Expatriate Quota: - Same document as for renewal of expatriate quota plus:-

- Evidence of acquired machinery or expansion if the company is engaged in manufacturing in the form of Clean Certificate of Inspection (CCI) issued by Government appointed Pre-shipping inspection Agents.
- Evidence of new contract for companies engaging in construction/engineering and oil (original to be presented for sighting)
- Evidence of acquired farm/factory where the company is engaged in agro-allied business (original to be presented for sighting)

General Requirements for Restoration of Quota: -

The Company must give the reason and proof for the reactivation and revitalization i.e. if there had been previously depressed economy, increased demand for the Company's product and acquisition of Inspection (CCI) issued by Government appointed Pre-shipment inspection Agents.

TYPES OF VISAS/ENTRY PERMITS

1. BUSINESS VISA/ENTRY PERMIT:

This is for non-Nigerian businessmen and investors entering Nigeria for business discussions. Validity of stay is 90 days but extendable and this visa is not authorized for employment. This visa is obtainable from Nigerian Missions abroad.

Requirements for grant of Business Permit:

- Evidence of sufficient funds
- A valid return ticket
- Acceptance of IR (Immigration Responsibilities)
- Evidence of sufficient funds to maintain one's self in the country

2. Subject to Regularization (STR) /Employment Visa:

This type of visa is for non-Nigerians employed by individuals, corporate bodies or Government in order to take up employment in Nigeria.

Requirements for Subject to Regularization (STR) /Employment Visa:

- Passport with at least 6 months validity
- Completed visa form in quadruplicate with four recent passport photographs
- Four copies of letter of Expatriate Quota Approval from Ministry of Interior
- Four copies of credentials, certificates and curriculum vitae, all vetted by a relevant official of Nigerian High Commission/Embassy (English Certified translated copy where applicable)
- Four copies of letter of offer of employment
- Extract of minutes of Board's Resolution (for Chief Executive Officers of corporate organizations)
- Four copies of letter of acceptance of offer by expatriate
- Receipt of on-line payment receipt of Visa fee

3. Temporary Work Permit Visa (TWP):

This type of visa is available to non-Nigerian experts invited by corporate bodies to provide specialized skilled services, such as after sales installation, maintenance, repairs of machines & equipment. It is

obtainable only from the office of the Comptroller General of Immigration in the Nigeria Immigration Service Headquarters, Abuja.

Requirements for Temporary Work Permit Visa (TWP):

- Passport with at least 6months validity
- Printed copy of completed application form for visitors pass
- 2 recent passport photographs
- A cabled copy of Comptroller General of Immigration Service's approval
- Confirmed Return ticket
- Acceptance of Immigration Responsibility (IR) by inviting organizations or individual.

It is pertinent to note that citizens of member States of the Economic Community of West African States (ECOWAS) do not require an entry visa into Nigeria.

THE COMBINED EXPATRIATE RESIDENCE PERMIT AND ALIEN CARD (CERPAC):

Every non-Nigerian who has entered Nigeria legally and who wishes to reside and/or work in Nigeria must make an application for a CERPAC which is valid for two years but renewable and is in two categories, a Green Card and a Brown card.

THE CERPAC GREEN CARD:

The CERPAC green card allows a non-Nigerian to reside in Nigeria and carry out an approved activity as specified in the permit, or to accompany a resident or citizen of Nigeria as a dependent. Possession of a valid CERPAC GREEN CARD does not exempt the holder from having a valid entry or re-entry permit/visa. Holders of resident status in Nigeria who are proceeding on leave or temporary duty outside Nigeria should apply for re-entry permit/visa prior to their departure from Nigeria.

THE CERPAC BROWN CARD:

Every non-Nigerian resident in Nigeria or visiting with the intention to remain in Nigeria in excess of 56 days and crew members leaving their ship and staying ashore in excess of 28 days are required by law to register. Unlike the CERPAC green card, the brown card is a movement chart.

Requirements for grant of CERPAC:

- The company seeking to regularize the non-Nigerian employee's stay in Nigeria would need to make an application to the Controller General requesting for the regularization. The application would also be accompanied with:

- Employee's International passport with Subject to Regularization (STR) visa,
- A duly filled CERPAC statutory form,
- Application letter from the employer requesting Regularization of stay and accepting Immigration Responsibility (IR) on behalf of the expatriate
- Letter of Appointment/Employment
- Acceptance of offer of Appointment/Employment
- Form IMM22 with three (3) Passport -size photograph
- Quota Approval
- Vetted Credentials

Requirements for CERPAC renewal.

- completed CERPAC Application Form
- copy of the expired CERPAC card must be submitted
- Application letter from the Employer requesting for renewal/replacement of Residence Card and accepting I.R.
- Quota approval
- Valid Passport and photocopies of relevant pages

APPEAL AGAINST IMMIGRATION DECISION

There is no appeal process against an immigration decision for foreigners wishing to come into Nigeria to invest because once an application is made to the relevant Diplomatic mission together with the requirements, it is granted as a matter of course, upon the fulfillment of the requirements and the submission of the necessary documents.

Accordingly, once an expatriate quota is granted and any other requirements fulfilled, then a Subject to Regularization (STR) visa will be granted.

Refusal of an application for business visa and expatriate quota or STR visa is only due to the non-fulfillment of the requirements and non-submission of the relevant documents. In which case, a re-application can be done to meet the requirements.

UNDERSTANDING THE TAX REGIME: BUSINESS NAMES

APPLICABLE LAW

Every Business Name owner who earns an income in Nigeria either from employment or from carrying on a business is subject to tax under the Personal Income Tax Act.

INCOME CHARGEABLE

A Business Name owner in Nigeria shall pay tax for each year of assessment on the aggregate amount from every source of income for the year. This includes the profits from trade or business, salaries, wages, fees, allowances or other gains or profits from employment including compensations, bonuses, premiums or benefits given or granted by an employer to an employee, profits and premiums arising from rights granted to another person for the use or occupation of property, dividend, interest, annuity.

THE TAX RATE STRUCTURE

The tax rate for every Business Name owner in Nigeria is charged as follows:

<u>Taxable income</u>	<u>Rates</u>
First N 300,000.00	7%
Next N 300,000.00	11%
Next N 500,000.00	15%
Next N 500,000.00	19%
Next N1, 600,000.00	21%
Above N 3,200,000.00	24%

The minimum tax rate has been increased from 0.5% of gross emolument to 1% if the income is below N 300,000.00.

THE TAX IDENTIFICATION NUMBER

A Business Name owner must register with and obtain a Tax Identification Number ('TIN') from the State Board Internal Revenue to enable the payment of taxes such as Personal Income Tax, Withholding Tax and also for VAT purposes.

A TIN is an identification number for the business which is used by the Internal Revenue Service in the administration of Tax. A TIN must be furnished on Returns, Statement and other Tax related documents.

FILING OF RETURNS

All taxable persons are required to prepare and submit annual self-assessment tax returns within 90 days from the commencement of every year and include the amount of tax payable.

For each year of assessment, you are required to file a return of income in the prescribed form and containing the following information, with the relevant Tax authority where the taxable person is deemed to be resident:

- the amount of income from every source of the year preceding the year of assessment,
- Such particulars as may be required for the purpose of the Act with respect to any such income, allowances, reliefs, deductions etc.
- A declaration by him or on his behalf that the return contains a true and correct statement of the income disclosed on the form, in accordance with the provisions of the Act.

PAYE

Persons on paid employment pay their personal income tax through the Pay As You Earn (PAYE) system. Under the system, employers deduct the prescribed tax from workers' salaries and pay directly to the FIRS through the designated banks on behalf of the employees on a monthly basis

THE RELEVANT TAX AUTHORITY

The State Boards of Internal Revenue collect the Personal Income Taxes of:

- Individuals in their various states of residence
- Body of individuals such as communities, families that run a business
- Business names
- Executors of estates of deceased persons and trustees of trusts.

The Federal Inland Revenue Service collects Personal Income Taxes of:

- Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force and the Nigerian Police other than in a civilian capacity;
- Officers of the Nigerian Foreign Service;
- Non-residents who derive income or profit from Nigeria

UNDERSTANDING THE TAX REGIME: INCORPORATED COMPANIES

APPLICABLE LAW

The Companies Income Tax Act is the applicable tax law for Companies in Nigeria.

INCOME CHARGEABLE

For a company doing business in Nigeria, tax shall be assessed on profits, rent, premiums, interest, royalties, discounts, charges, annuities, benefits, any fees, dues or allowances and shall be payable at a rate specified by the relevant tax authority.

THE TAX IDENTIFICATION NUMBER

A company must register with and obtain a Tax Identification Number ('TIN') from the Federal Inland Revenue Service ('FIRS') to enable the payment of taxes such as Companies Income Tax, Withholding Tax and also for VAT purposes.

A TIN is an identification number for the company which is used by FIRS in the administration of Tax. A TIN must be furnished on Returns, Statement and other Tax related documents.

TAX RATE

Every year of assessment, the company shall pay tax at the rate of 30k for every naira in respect of the total profit assessed plus a special levy of 15% on any excess profits of the company.

However, in an instance where the company's turnover is N500, 000.00 or below and the assessable profit results in a loss, the company's minimum would be:

-0.5% of the gross profit; or

-0.5% of the net assets; or

-0.25% of the paid up capital; or

-0.25% of the turnover of the company for that year.

PROFITS THAT ARE EXEMPT FROM TAX

- Profits of any company being a statutory or registered society in which the profits are not derived from a trade or business carried on by such society.
- Profits of company that are engaged in ecclesiastic, charitable or educational activities in which the profits are not derived from a trade or business carried out by such company.
- Profits of a company being a co-operative society registered under any law relating to co-operative societies, not being profits from any business or trade carried on by that company other than co-operative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority.
- Profits of a company formed for promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Board may prescribe.
- Profits of company being registered as a trade union which the profits are not derived from trade or business carried on by such trade union.
- Dividend distributed by a Unit Trust.
- Dividends derived by a company from another company incorporated in Nigeria.
- Profits of a company engaged in petroleum operations will be taxed under the Petroleum Profit Tax Act.
- Profits of any company being a body corporate established under any Local Government Law or Edicts in force in any state in Nigeria.
- Profits of any company established by the Law of a State for the purpose of fostering the economic development of that state.
- Dividends, rents, royalties or interest derived by a company from outside Nigeria and is being brought to Nigeria through Government approved channels.
- Dividends received from small companies in the manufacturing sector in the first five years of their operation.
- The interest on foreign currency domiciliary accounts in Nigeria accruing on or after 1st January, 1990
- The interest on deposit accounts of a foreign non-resident company provided that the deposits into the account are transfers wholly of foreign currencies to Nigeria on or after 1st of January 1990, through Government approved channels.

- Dividends received from investments in wholly exports oriented business.
- Profits of a company in respect of goods exported from Nigeria provided that the proceeds from such exports are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plants, equipment and spare parts.
- Profits of a company whose supplies are exclusively inputs to the manufacturing of products for exports provided that the exporter gives a certificate of purchase of the inputs of the exportable goods to the seller of the supplies.
- Profits of a company established within an export processing zone or a free trade zone.
- A new company going into the mining of solid minerals shall be exempt from tax for the first three years of its operation.

ANNUAL RETURNS

Every company must file a self-assessment tax return with FIRS at least once a year and the return must contain:

- The audited accounts, tax, capital allowances computation for that year of assessment and amounts of profits from each source computed.
- A duly completed self-assessment form as prescribed by the FIRS
- Evidence of payment of either the whole or part of the tax due into a bank designated for collection of the tax.

The Company's annual return must be filed with the FIRS as follows:

- In the case of a company that has been in business for more than 18 months, not more than 6 months after the end of its accounting year; and
- For a newly incorporated company, within 18 months from the date of the company's incorporation or not later than 6 months after the end of its accounting period, whichever is earlier.

Where a company defaults in filing their annual returns with the relevant authority within the prescribed period, a penalty of N25, 000.00 in the first month of the default and N5, 000.00 for each subsequent month in which the default continues shall be charged.

TAX DESIGNATE

The Companies Income Tax Act provides that the company shall designate a representative who shall answer all queries relating to tax matters of the company and such person must be knowledgeable in the field of taxation.

TAX CLEARANCE CERTIFICATE

A tax clearance certificate shall be issued by the FIRS to the company when the Board is satisfied that the tax assessed has been fully paid and no tax is due.

GENERAL INFORMATION

LAND ACQUISITION FOR BUSINESS PREMISES IN NIGERIA

The Land Use Act of 1978 abolished the land tenure system of freehold interest. Thus the only interest in Land that can be acquired in Nigeria is a leasehold interest not exceeding a period of 99years.

CONTRACTS OF EMPLOYMENT

Under the law employers are free to negotiate contracts of employment with employees. There are no standard terms of contract created by the law for employees, thus the contract between the employer and employee is based on power of negotiation between the employer and employee.

CERTIFICATE OF CAPITAL IMPORTATION

Investors who wish to remit capital must first obtain a Certificate of Capital Importation (CCI) from a Nigerian Bank in order for the payment to be transferred into Nigeria.

REPATRIATION OF CAPITAL AND PROFITS

Under the provisions of the Foreign Exchange (Monitoring & Miscellaneous Provision Act No. 17 of 1995), foreign investors are free to repatriate their profits and dividends net of taxes through an authorized dealer in freely convertible currency.