

Doing Business In Nigeria-Investor Tool-Kit

What law regulates the setting up of a Company in Nigeria?

The principal legislation that regulates the formation of companies in Nigeria is the Companies and Allied Matters Act, 2004.

What body is responsible for the registration and administration of Companies in Nigeria?

The Body responsible for the registration and administration of Companies in Nigeria is the Corporate Affairs Commission (CAC).

Who can set up a business in Nigeria?

Any two or more persons or corporate bodies may form and incorporate a Company whether or not they are Nigerians

Who cannot join in the formation of a Company in Nigeria?

- A person less than 18 years of age
- A person who has been found to be of unsound mind by a court in Nigeria
- An undischarged bankrupt
- A person who has been convicted of an offence relating to fraud.
- A corporate body in liquidation

Can a foreign entity (individual or Company) set up a business in Nigeria?

A foreign entity may join in forming a company in Nigeria. Any foreign Company having the intention of carrying on business in Nigeria must take all steps necessary to obtain incorporation as a separate entity in Nigeria.

Does the requirement of incorporation apply to all foreign Companies?

A foreign company is required to incorporate a separate legal entity to participate in business in Nigeria. However, a foreign company may apply to the Federal Executive Council for exemption from the requirement to register a local entity if it falls under any of the following categories:

- Foreign companies invited to Nigeria by or with the approval of the Federal Government to execute any specified loan project;
- Foreign companies, which are in Nigeria for the execution of specified individual loan project on behalf of a donor country or international organization;
- Foreign government-owned companies engaged solely in export promotion activities; and
- Engineering consultants and technical experts engaged on any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other or person, where such contract has been approved by the Federal government.

Can a foreigner fully own a Company in Nigeria?

The Nigerian Investment Promotion Commission Act, 1995 permits foreigners to own up to 100% of any business enterprise with the exception of enterprises on the “negative list” of the Act. The negative list includes enterprises involved in the production of and dealing in arms, ammunition, narcotic drugs and psychotropic substances.

Apart from ownership restrictions relating to enterprise on the negative list, there are also ownership restrictions with respect to the Nigerian Oil and Gas sector and Architectural practice. The **Nigerian Oil & Gas Industry Content Development Act 2010** (aka the “Local Content Act”) provides that exclusive consideration shall be given to Nigerian indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute contracts on land and swamp operating areas of the Nigerian oil and gas industry. The Act defines a “Nigerian Company” as “a company formed and registered in Nigeria in accordance with the provisions of Companies and Allied Matters Act with not less than 51% equity shares by Nigerians”.

With respect to Architectural practice, the **Architect (Registration, etc.) Act 1969** provides that a person shall not prepare or take full responsibility for the erection or commissioning of architectural building plans or practice or carry on business (other than that having relevance to ship construction, or to landscape or golf-links) under any name, style or title containing the word "architect" unless he is a Nigerian citizen and registered under the Act. Similar restrictions exist with respect to certain professional practice areas.

What type of business enterprise can be set up in Nigeria?

- Private Limited Liability Company
- Public limited liability Company;
- Unlimited liability company;
- Company limited by Guarantee;
- Incorporated Trustees;
- Representative Office.

What is the procedure for incorporating a Company in Nigeria?

- Conduct of Name search at the CAC to ascertain the availability of the desired name of the new entity. Name is reserved for 60 days if available for use.
- Drafting and Preparation of Memorandum and Articles of Association using the approved name. The Memorandum and Articles of Association must be subscribed to by at least two persons, together holding at incorporation at least 25% of the company’s authorized share capital and should contain the following;
 - Name of the Company
 - Situation of registered office
 - Object/nature of business of the Company
 - Type of Company
 - Authorised share capital of the Company
 - Subscribers- For companies involved in specialized field such as Engineering, Architectural, Legal practice, Medical practice etc. the Directors or Subscribers

must possess technical expertise, and it may be required that certain proficiency certificates be submitted along with the incorporation documents

- The following documents are submitted along with the Memorandum and Articles of Association:
 - Particulars of the first directors of the company - . (Form CAC 7). Every company is required to have at least 2 directors at every point.
 - Particulars of the Company Secretary. (Form CAC 2.1)
 - A notice of the situation of the registered office of the company. (Form CAC 3)
 - Statement of Share capital and returns on allotment. (Form CAC2)
 - A declaration, sworn to by a Lawyer that all matters preliminary to the registration of the company have been complied with. (Form CAC 4)
- Payment of Stamp duties and stamping of Memorandum and Articles of Association and Form CAC at the Federal Inland Revenue Service
- Filing of documents at Corporate Affairs Commission and issuance of Certificate of Incorporation and certified true copies of registration documents.

What is the minimum number of Shareholders permitted by Nigerian Company law?

Nigerian company law requires all companies registered in Nigeria to have at least 2 shareholders at every point in time.

Who can be appointed Director of a Company in Nigeria?

- Any person, whether Nigerian or foreigner who is not under the age of 18 years.
- Any person, whether Nigerian or foreigner who is not a lunatic or of unsound mind.
- Any person, whether Nigerian or foreigner who is not an insolvent.
- Any person, whether Nigerian or foreigner who has not been convicted by a High Court of any offence relating to fraud.
- A representative of a corporation appointed to the Board for a given term.

Is it mandatory for a Company to have a Company Secretary?

Yes. Section 293 (1) of CAMA mandates every company to have a Company Secretary.

How long does it take to incorporate a Company in Nigeria?

Barring any queries and provided all required documents are made available timeously, it will take a period of Fifteen (15) working days from the date of compilation of the duly completed incorporation documents.

What are the investment authorizations and approvals required to do business in Nigeria?

- **Business Permit** –A Permit required by a company with foreign shareholding to do business in Nigeria. It is obtained from the Ministry of Interior
- **Expatriate Quota**-to be obtained by companies who intend to employ expatriates

- **National Office for Technology Acquisition and Promotion (NOTAP) Registration-** Where foreign technology, management or assistance is to be provided to the Nigerian company by a foreign company.
- **Nigerian Investment Promotion Commission (NIPC) Registration-**All companies with foreign participation are required to register with the NIPC. This helps the government keep tab on foreign investment.
- **Registration with the Department of Petroleum Resources-**Where a company intends to deal in petroleum product, or to render services to companies dealing in petroleum products.
- **Nigerian Petroleum Exchange (NIPEX) Registration-** It is not enough to register with the Department of Petroleum Resources, all companies intending to operate in the Oil and Gas sector must also register on the NIPEX portal. NIPEX is an electronic marketplace that facilitates end-to-end supplier selection, contract processing and approval processes between the International Oil Companies and the Nigerian National Petroleum Corporation.
- **Nigerian Social Insurance Trust fund (NSITF) Registration-** It is mandatory for all employees to register with the NSITF for the mandatory remittance of 1% of its total monthly payroll into the employee’s compensation fund.
- **Certificate of Capital Importation-**to be obtained from the bank through which capital is in flowed into Nigeria. This allows the company to remit dividend to non-resident shareholders or repatriate capital on disinvestments.

Where Should the Registered Office be Situate?

The registered office of a company incorporated in Nigeria must be located in Nigeria. Consequently, a Nigerian address will be required for the incorporation.

What is the Provision of Nigerian Law on Income Tax and VAT registration for Local Entities?

Nigerian law requires that upon incorporation, a company incorporated in Nigeria and carrying on business in Nigeria must be registered for Companies Income Tax and Value Added Tax (“VAT”) purposes.

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