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Doing business in Nigeria

A comparative guide

July 2023

A guide to doing business in Nigeria

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.



No. Question

A. Legal system and landscape

1 Is the system of law in your jurisdiction based on civil law, common law or something else?

The Nigerian legal system is primarily based on statutes, (most which are a codification of English common law principles); common law, Customary law (laws developed through indigenous cultures and customs), Judicial precedents and Shariah Law (Islamic Law); and pre 1900 statutes of general application in place in England and Wales

B. Entity establishment

2 What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

The legal vehicles for carrying out business in Nigeria are basically companies and partnerships:

- Limited Liability Companies by Shares which could either be private or public: The company has its own legal personality, with the liability of its members only limited to the value of their unpaid shares.
- Companies Limited by Guarantee which could either be private or public: This type of company is usually set up for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects. Thus, its income can only be applied to the promotion of the objectives of the company – not for the benefit of members.
- Unlimited Companies which could either be private or public: Unlimited companies are companies where the members have unlimited liability and can be held personally liable for all the debts of the company.
- Limited Liability Partnership: Under this partnership structure, the partnership and the partners have separate legal personalities
- Limited Partnership: A limited partnership consists of both general partners who bear the liability of the partnership and limited partners who have limited liability.
- General Partnership/Business name registration: General partnerships have unlimited liability. Thus, all partners are liable personally for debts of the partnership.
- Sole proprietorship/business name registration: A registered business owned by one person and there is no separate personality from the owner of the business. The business does not have perpetual succession

3 Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

In Nigeria, foreign entities must be incorporated in Nigeria to carry out business unless they qualify as exempted companies. Exempted companies are:

- Foreign companies invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project
- Foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation
- Exemption under a law in Nigeria which is in effect
- Foreign government-owned companies engaged solely in export promotion activities
- 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 body or person, where such contract has been approved by the Federal Government

4

Are there any capital requirements to consider when establishing different entity types?

Yes, there are different capital requirements to consider when establishing different entities. The requirements are as follows:

- For private companies, the minimum capital requirement is ₦100,000 (circa \$217)¹
- For public companies, the minimum capital requirement is ₦2,000,000 (circa \$4,347).
- Please note that based on rules from the relevant government department, business permit (required for companies with foreign ownership to commence business in Nigeria) is granted to wholly foreign owned or joint venture companies with foreign participation and with a minimum paid-up capital of ₦100,000,000 (circa \$217,174) to enable them to commence business in Nigeria². The implication is that going forward, companies with foreign participation (that are yet to obtain business permit) may be required to comply with this increased capital requirement.
- For companies who require expatriates for their operations and hence expatriate quota, an eligible expatriate is required to possess relevant academic qualification(s). His/Her approval would be subject to confirmation of the N100 million investment (only when the company has foreign participation)
- For Partnership, there is no requirement for share capitalisation under the Companies Law. However, partners must contribute capital.

5

How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

All business vehicles are established through the Corporate Affairs Commission (CAC). The process commences with confirmation/reservation of name, to ensure the proposed name is distinct from existing names of other businesses.

This is followed by getting the relevant information/documentation which includes details of members, directors/partners objects and capital structure of the business). Also, there are specific fees and stamp duties payable by incorporated companies.

The most suitable and commonly used business vehicle is Limited Liability Companies.

¹ Official exchange rate of \$1:₦460

6 **How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?**

Companies in Nigeria are managed by directors who make decisions at board meetings or through written resolutions (for private companies only). Shareholder decisions may be passed by ordinary resolution (being approved by a simple majority) or by special resolution (being approved by over 75% of the shareholders) depending on the type of decision.

Partnerships are controlled by partners.

7 **Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?**

Yes, there are different requirements relating to the appointment of directors, shareholders, and secretaries. The requirements differ depending on the type of business structure the company establishes.

With respect to appointment of a director, an infant, a lunatic, a person of unsound mind, a corporation other than its representative; cannot be appointed as a director of a company.

Generally, with the exception of small companies, all companies must have a minimum of two directors. Such directors are not required to be residents or nationals of Nigeria.

All companies (except small companies) must have a company secretary. It is instructive to note that a company with foreign ownership cannot be a small company.

8 **Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?**

There is opportunity to work with agents, resellers, distributors etc. subject to relevant agreements.

There is need to ascertain that the foreign entity is **not** considered to be directly 'carrying on business' in Nigeria without incorporation. This is because based on the law, where a foreign company carries on business without incorporation, all activities of the foreign company are void.

Furthermore, the foreign companies need to ascertain the tax implications of carrying on business directly or through third party agents in Nigeria.

C. Entity operation

Please answer the following questions only for the most common entity / ies within your jurisdiction:

C1. Governance

9 **Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.**

Yes, there is the Nigerian Code of Corporate Governance 2018 issued by the Federal Reporting Council of Nigeria. The code applies to all companies (provided they file returns with agencies other than CAC and Federal Inland Revenue Service (FIRS)).

The key principles include;

- **Size of the Board:** board should be a sufficient size to effectively undertake and fulfill its business. The code recommends a mix of executive directors, non-executive directors and independent directors, although, the code is silent on the number of independent non-executive directors requires. Please note that public companies must have at least one-third of its directors as independent directors
- **Role of the Board:** The Chairman of the board is responsible for providing overall leadership to the company and accounting for the effectiveness of the board operations.
- **Company Secretary:** The company secretary plays a very important role, as the secretary is to provide independent guidance and support.
- **Audit Committee:** The code introduces the additional responsibility for the audit committee of the company. The audit committee is expected to ensure the development of thorough internal controls for the company.
- **Board evaluation:** An annual evaluation of the board assessing their performance by an external independent consultant. The summary report of this evaluation is to be included in the company's annual report.
- **Whistleblowing Framework:** The code mandates the board of directors to establish an effective whistleblowing framework.

C2. Capital

10 **What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.**

Additional equity/shares: Apart from the initial subscription made at the point of incorporation of a company, a company can further issue shares to the shareholders or new shareholders. Also, capital injection via share capital can be in the form of preference shares (i.e. gives the owner the right to fix dividends which are to be paid first before payment to the ordinary shareholders) or redeemable shares (i.e. issued on the option that the company would buy them back at a future date subject to the provisions of the law).

Loans/Debt: A company may also consider obtaining loan as a source of capital. This could be from the shareholders, another entity within the same company group or from a third party. NOTE: Nigeria

has thin capitalisation rules applicable to loan arrangement between related parties, where one of the parties is a foreign entity.

In addition to this the company may consider overdrafts, revolving credit facilities, debt factoring (or invoice finance), asset refinancing and merchant cash advances

C3. Return of proceeds

11

What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

Proceeds from entities can be returned to shareholders through the following:

Dividends

Dividends are usually paid to shareholders in proportion to their shareholding. It is recommended by directors and approved by shareholders. The company must, however, have sufficient distributable profit from which dividends can be declared. Additionally, there should be no reasonable grounds to doubt the settlement of the liabilities of the company.

For repatriation to foreign shareholders, certificate of capital importation (CCI) would be required to obtain foreign exchange from the official forex market. CCIs ensure unhindered repatriation of investment and applicable returns on such investment.

Bonus Issue

Bonus issue on shares occur when a company issues additional shares to shareholders (as fully paid up). If the shareholder does not want these shares, they may opt to sell the shares and receive cash in return.

Share Buy Back

A share buyback is the purchase by a company of its own shares from a shareholder. This is subject to some rules and additional requirement for public companies. Nonetheless, the shares buy back must be paid from the company's distributable profits.

Interest on Loans

The law permits the grant of loan to shareholders provided that it does not qualify as a prohibited "financial assistance" under the Companies and Allied Matters Act (CAMA) and not contrary to the articles of association of the company. The terms of such a loan should be closely examined to ensure they do not give rise to any tax or legal issues (e.g. disguised distributions, thin capitalisation and other transfer pricing considerations).

C4. Shareholder rights

12

Are specific voting requirements / percentages required for specific decisions?

Yes, in Nigeria, decisions are made by companies through resolutions. There are three different classes of resolutions:

- Ordinary resolution which requires above 50% of the votes
- Special resolution which requires 75% or more of the votes
- Unanimous resolutions which require 100% of the votes

Special resolutions are used for appointing a person over the age of 70 as a director in a public company, change of a company's name, alteration of the company's articles, winding up a company, reduction in share capital etc.

Ordinary resolutions are used for matters such as change of registered office address, increase in share capital etc.

Unanimous resolution is required for the conversion of a limited liability company to an unlimited liability company.

C5. Employment

14

What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

The principal employment law in Nigeria is the Labour Act. However, the Labour Act only regulates semi-skilled and non-skilled employment. Professional employments are largely regulated by contracts. Generally, Nigeria's constitution prohibits discrimination on the basis of sex, religion, ethnic group, political opinion etc. Nigeria also has the HIV and AIDS (Anti-Discrimination) Act 2014 which prohibits discrimination of employees on the basis of HIV status as well as the Discrimination against Persons with Disabilities (Prohibition) Act.

The International Labour Organisation has come up with a quite number of conventions aimed at upholding international best practices with respect to labour. Some of them include Employment Policy Convention, Collective Bargaining Convention etc. Nigeria is a signatory to about 40 of such conventions. Though most of the conventions have not been domesticated, the courts have often favoured some of the principles while addressing labour issues.

Right / Protection	Details
National Minimum Wage	₦30,000 (circa \$ 65)
Holiday	<p>Generally, there is no mandatory requirement regarding work holidays for skilled employees in Nigeria law. The Labour Act (LA) regulates the employment of unskilled, semiskilled and clerical workers in Nigeria. The employer/employee relationship for skilled workers is governed by the contract of employment.</p> <p>For unskilled/semi-skilled workers, the Annual leave is at least 6 working days after a 12 months' continuous service.</p> <p>The law however provides for public holidays which are declared by the Federal Government and applies to everyone.</p>
Working Hours	<p>Normal working hours for skilled labour & unskilled labour in Nigeria are fixed by the following:</p> <ul style="list-style-type: none"> • mutual agreement • collective bargaining with the organisation or industry concerned

	<ul style="list-style-type: none"> by an industrial wages board (established under the enactment providing for the establishment of such boards) where there is no such machinery for collective bargaining. <p>Excess of the normal working hours as stated above will constitute overtime.</p> <p>For unskilled workers under the labour act, where the worker works for six hours or more a day, he shall be entitled to not less than one hour break aggregate.</p>
Rest Periods	While there is no mandatory rest period for skilled employees under the law, in practice most organisations have a 5-day work week (subject to the contract between the employer and the employee)
Pension rights	<p>The Pension Reform Act governs pensions in Nigeria. The Act provides that both employees and employers must contribute towards the contributory pension scheme. The minimum contribution for an employer is 10% while the minimum for an employee is 8%.</p> <p>Where the employer undertakes to bear the full liability, the employer shall be liable to contribute a minimum of 20%.</p>
Discrimination	<p>The Constitution of the Federal Republic of Nigeria and Discrimination Against Persons with Disabilities Prohibition Act bans discrimination on the following grounds:</p> <ul style="list-style-type: none"> Religion Ethnic grounds Gender HIV status Political View Circumstances of Birth
Maternity Leave / Pay	<p>This is based on individual corporate policy for skilled employees.</p> <p>Under the Labour Act, a woman shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six weeks. She is to further stay from work during the six weeks following her confinement.</p> <p>A nursing mother shall be allowed half an hour twice a day during her working hours.</p> <p>A woman on maternity leave who has been continuously employed by her then employer for a period of six months or more immediately prior to her absence, shall be paid not less than fifty per cent of the wages she would have earned if she had not been absent.</p>
Paternity Leave	The Federal Executive Council grants a 14-day paternity leave for new fathers who work in the civil service
Shared Parental Leave	N/A

Statutory sick pay	For skilled employees, this is dependent on the employment contract. Unskilled employees on the other hand are entitled to 12 days of sick leave
Statutory Notice Periods	For skilled employees, this is usually provided in the employment contract while for unskilled or semi-skilled employees, the period ranges from one day to one month depending on the employment term.
Unfair dismissal	Approach the National Industrial Court for a redress.
Statutory Redundancy Payment	There is no statutory requirement to make redundancy payment. Although this is a standard practice across many sectors, it is usually based on either individual contracts or under collective agreements with a group or trade union.
Statement of particulars	Though there is no statutory requirement for employers to provide employees with a written statement of employment, most employer-employee relationships are based on written contractual arrangements.

15 On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

Dismissal of employees is usually in accordance with the terms agreed in their various contracts. It is expected that such provisions should be fair. The approaches adopted by the National Industrial Court of Nigeria in various cases have however encouraged entities to try and adopt international best practices in dismissing an employee.

Some of the grounds for dismissing an employee based in case law include fraud, negligence, absenteeism, and misconduct. It should be noted that if an employee is being dismissed on the grounds of misconduct, the employee must be given the opportunity to defend themselves.

16 Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

Nigerians have the right to join trade unions as established in the Trade Union Act and the Constitution of the Federal Republic of Nigeria.

C6. Anti-corruption / bribery / money laundering / supply chain

17 Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

Yes, there is a system governing anti-corruption and anti-bribery in Nigeria. The system consists of legal framework (laws) and some government agencies monitor and implement applicable laws.

Laws and Regulations

- The Economic and Financial Crimes Commission (Establishment) Act
- Money Laundering (Prevention and Prohibition) Act
- Corrupt Practices and Other Related Offences Act
- Criminal Code/Penal Laws of various state
- The Nigerian constitution
- Foreign Exchange (Monitoring and Miscellaneous Provisions) Act
- Relevant Central Bank of Nigeria's policies guidelines and regulations

Agencies

- Independent Corrupt Practices Commission (ICPC)
- Economic and Financial Crimes Commission
- Nigerian Financial Intelligence Unit

This is in addition to the general roles of security architectures like the Nigerian Police Force etc.

The commissions do not have extraterritorial reach but may liaise with relevant international bodies for the extradition of any person in breach.

18

What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

The laws relating to economic crime in Nigeria are:

- The Economic and Financial Crimes Commission (Establishment) Act
- Money Laundering (Prevention and Prohibition) Act
- Corrupt Practices and Other Related Offences Act
- Criminal Code/Penal Laws of various state
- The Nigerian constitution
- Foreign Exchange (Monitoring and Miscellaneous Provisions) Act
- Relevant Central Bank of Nigeria's policies guidelines and regulations

There are provisions in some of the laws stated above that contain some checks put in place to avoid or detect economic crimes. These include:

- The duty to report bribery to the relevant authorities.
- Financial transaction reporting and disclosure obligations by financial and certain designated non-financial institutions
- Obligation on non-financial institutions to obtain certificates while dealing with large amount of cash
- Filing of financial returns by financial and certain designated non-financial institutions

19

How is money laundering and terrorist financing regulated in your jurisdiction?

- In Nigeria, this is primarily governed by the Money Laundering (Prevention and Prohibition) Act and the Central Bank of Nigeria (Anti-Money Laundering/Combating the Finance of Terrorism in Banks and other Financial Institutions in Nigeria) Regulations 2013. The Regulations provide guidelines and internal controls on banks and other financial institutions to combat money laundering and financing of terrorism.

- The Economic and Financial Crimes Commission also monitors money laundering through the Special Control Unit Against Money Laundering (SCUML). This unit issues certificates to non-financial institutions which deal with large amounts of cash and deals with anti-money laundering reporting requirements
- The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act also provides for certain transactions like purchase of land properties and securities which can only be paid for by means of bank transfers or cheques drawn on banks in Nigeria only.
- The Nigerian Financial Intelligence Unit Act equally provides for the exchange of information between the Nigerian Financial Intelligence Unit and other financial intelligence institutions in matters relating to money laundering and terrorist financing.

20

Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

There are similar Provisions under Nigerian law such as the Trafficking in Persons (Prohibition) Enforcement Act 2015. The Criminal Code Laws of various states also prohibit slavery in Nigeria. Nigeria has also signed various International Treaties concerning slavery such as the Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

C7. Compliance

21

Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

All companies in Nigeria are required to appoint an auditor for the purpose of auditing the financial statements of the company. Small companies and companies that have not carried out business since incorporation are however exempted from this requirement. The exemption does not extend to insurance companies, banks or any other company as may be prescribed by the Corporate Affairs Commission. It is instructive to note that companies with foreign shareholding cannot be a small company.

22

Please detail any corporate / company secretarial annual compliance requirements?

Every company, except a small company is expected to have a company secretary.

The qualification to be a company secretary in a private company is having requisite knowledge and experience to discharge the functions of a secretary of a company. For public companies, the secretary should be a lawyer or an accountant.

A company is obliged to file annual returns within 42 days from holding its Annual General Meeting (AGM). The AGM should be held within the first 18 months of incorporation and subsequently annually and no later than 15 months apart.

23 **Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?**

CAMA makes provision for annual general meetings (AGM) to be held by Nigerian companies. AGMs are mandatory for both public and private companies. However, small companies and companies with a single shareholder do not need to hold AGMs.

Ordinary businesses include:

- Presentation of financial statements and the reports of directors and auditors
- Appointment and remuneration of auditors
- Declaration of dividend
- Election of Directors in place of those retiring
- Appointment of members of the audit committee

Any other business other than ordinary business is regarded as a special business.

24 **Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (“UBO”) of entities? If yes, please briefly describe these requirements.**

There are notification requirement to be made by persons with significant control and substantial interests in a Nigerian company;

- A person with significant control must indicate in writing to the company within 7 days of gaining such control. The Company must in turn notify CAC within one month from the receipt of such information. The company is also required to keep a register of persons with significant control.
- Substantial shareholders in public companies, who either by themselves or by their nominees, hold shares that entitle them to at least 5% of the unrestricted voting rights at any general meeting must notify such companies in writing within 14 days of becoming aware of their substantial shareholder status. A public company is required to notify the CAC of a substantial shareholder within 14 days of receiving notice of such shareholder

C8. Tax

25 **What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?**

The main taxes in Nigeria are:

Companies' income Tax (CIT): Charged at 30% - where a company's gross turnover is greater than ₦100 million (circa \$217,174), 20% where a company's gross turnover is between ₦25 million (circa \$54,460) and ₦100 million (circa \$217,174) and 0% where the gross turnover is less than ₦25million (circa \$54,460).

Value Added Tax (VAT): Tax imposed on the consumption on goods and services. The rate is 7.5%

Capital Gain Tax (CGT): Tax imposed on gains made from disposal of chargeable assets. The rate is 10%

Stamp Duties (SDA): The duty is imposed on eligible transactions. The rate varies depending on the underlying transactions. The rates may be flat or ad valorem depending on the provision of the law regarding the transaction.

Custom, Import and Excise Duties: These duties are imposed on eligible transactions. The rate varies depending on the underlying products. The rates may be flat or ad valorem depending on the provision of the law regarding the transaction.

Certain industry specific income taxes, levies, surcharges and rates are also applicable.

26

Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

Some of the tax incentives in Nigeria include:

- Pioneer status exemption for an initial period of three years which can be extended for 1 or 2 additional years.
- Exemption of tax for companies with less than ₦25 million gross (circa \$54,459) turnover
- Loss relief
- Tax exemption for start-ups in the Agricultural sector
- Exemption from VAT on certain goods and services such as medical products and services, pharmaceutical products, exported services etc.
- 3 years initial tax-free regime for gas utilization companies in downstream operations which may be renewed for an additional period of two years
- Qualifying research and development (R&D) expenses are tax deductible. In addition, companies and organisations engaged in R&D activities for commercialization are granted a 20% investment tax credit on qualifying expenditure
- Investment tax relief is available for each year of expenditure at the following rates to companies that provide basic infrastructure: paved roads (15%), water (30%), electricity (50%), and 100% for companies that provide all such basic facilities where they do not exist.

27

Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

Inflow:

- Equity (share capital) is subject to stamp duties and some filing fees
- Loan capital: Depending on the arrangement surrounding the loan, it may also be subject to stamp duties to avoid payment of liability for non-compliance and admissibility of the documentation in court.
- Plant & Equipment as capital: this is permissible subject to relevant documentation and obtaining CCI

For exchange control purposes, direct investment of capital should be supported by Certificate of Capital Importation issued by banks with 24 hours of the investment. This also guarantees unhindered repatriation.

Outflow:

- **Withholding Tax:** Investment incomes like Dividends, Royalties, Rent are subject to WHT which is deducted at source before the income is paid to the beneficiary.
- **Exchange Control**
 - With respect to repatriation of profits, Nigeria has exchange controls and in order to be able to obtain Forex at the official market value, intending investors should obtain certificates of capital importation (CCIs).
- Further, such transaction must qualify as eligible transaction under the law. Eligible transactions are those not prohibited and supported with relevant documentation. Dividends and interest (and return of underlying capital) on loans supported by CCIs are eligible transactions.
 - Also, in order to remit royalties and service fees, the underlying license and service agreement may have to be approved by the National Office for Technology, Acquisition and Promotion. Royalties and service fees with NOTAP approval are eligible transactions
 - In addition, for imports which required forex from the banks, banks are required to only issue documentation (Form M) where the payments are to be made directly to the ultimate supplier.
 - Other eligible transactions are set set out by the CBN in various documents.

28

Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Stamp duties: For equity inflows into Nigeria, there is a stamp duty of 0.75% on the nominal value of the shares. Certain forms of debt/mortgages are subject to stamp duties. There are also stamp duties on leases, and conveyance of property. Stamp duties also apply to other instruments/transaction except expressly exempted by the Stamp Duties Act. The rates vary, they could be flat or *ad-valorem*. There are no stamp duties on share transfers.

Withholding tax: Outflows in the form of dividend, royalties, rent are liable to WHT at the rate of 10% or 7.5% for certain jurisdictions based on double tax treaties with Nigeria.

Value Added Tax: VAT also applies to certain all supply/transfers of goods and services except as expressly provided in Value Added Tax Act.

Capital Gains Tax: Applies to transfer of capital assets at 10%. This is subject to some exceptions. Also, there may be capital gains tax on share transfers at 10% subject to certain exceptions.

C9. M&A

29

Are there any public takeover rules?

Yes, the following laws govern public takeovers in Nigeria:

- The Federal Competition and Consumer Protection Act: This act establishes the Federal Competition and Consumer Protection Commission. It regulates both private and public companies. The commission's primary objective is to ensure takeovers will not lead to anti-competitive practices such as the creation of monopolies. The functions of this commission include reviewing, approving and regulating takeovers.

- The Investment and Securities Act and Securities and Exchange Commission Rules: This is in addition to FCCPC rules. In respect of a public company, where a person (or persons) –
 - acquire individually or jointly shares amounting to 30% or more (higher or lower threshold may be prescribed) of the available shareholding in a company, the acquirer is obliged to make a bid to all other shareholders
 - acquires not less than 30% but not more than 50% (higher or lower threshold may be prescribed) of the voting rights and such acquires additional shares which increase his percentage of the voting rights, such person shall make a takeover offer

This is subject to certain rules of the SEC and Nigerian Stock Exchange

- Some sectors require further regulatory approvals/processes. These include the financial services, energy (power/oil& gas) and pension amongst others.

30

Is there a merger control regime and is it mandatory / how does it broadly work?

Rules dealing with mergers are overseen by the Federal Competition and Consumer Protection Commission (FCCPC).

The regulation provides that a merger is deemed to occur where there is direct or indirect acquisition or control of an entity by another. An amalgamation/other combination may also be regarded as a merger.

There are merger thresholds for small merger and large merger. In the case of a large merger, the FCCPC should be notified before the implementation of such merger.

For listed companies, the Securities and Exchange Commission and the Nigerian Exchange Group need to be notified in respect of any merger.

Additionally, the direction and clearance of the FIRS is required in respect of any merger.

Some sectors require further regulatory approvals/processes. These include the financial services, telecommunications, energy (power/oil& gas) and pension amongst others.

31

Is there an obligation to negotiate in good faith?

The relevant laws that govern mergers and acquisitions in Nigeria do not state that there is an explicit duty to negotiate in good faith.

However, section 169 of the Evidence Act and judicial precedent has been interpreted to imply a duty of honesty and good faith in Nigerian contracts. This duty may be extended to mergers and acquisitions contracts.

32

What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

The law requires that before a court sanctions any scheme of arrangement, the court must be satisfied that adequate provision by way of compensation or otherwise have been made with respect to the employees of the company to be dissolved.

The law also requires that a notification be made to the employees of the companies, notifying them of any merger arrangement.

Further, as part of the post approval documentation, the company is expected to submit an arrangement relating to employees of the dissolved companies.

C10. Foreign direct investment

33

Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

Companies with foreign ownership are required to register with Nigerian Investment Promotion Commission (NIPC). Also, to do business in Nigeria, a foreign entity would be required to obtain Business permit. The NIPC Act allows foreigners to own up to 100% equity investment in any business in Nigeria except those indicated on the negative list which is also limited to Nigerians alike. Items included in the negative list include:

- Production of firearms and ammunition
- Production of and dealing in narcotic drugs and psychotropic substances
- Production of military and para-military wears and accouterment, including those of the armed forces
- Such other items as the Federal Executive Council may from time to time, determine.

Also, there is a requirement for up to 51% shareholding to be held by Nigerians in Oil and gas operations as such companies would be given first consideration in the award of oil blocks, licenses and other projects in the oil & gas industry

34

Does your jurisdiction have any exchange control requirements?

There are exchange control requirements in Nigeria. The Central Bank of Nigeria is responsible for exchange control in Nigeria. There are laws, regulations, guidelines and manuals governing exchange control requirements in Nigeria some of which have been addressed under 11 and 27 above.

D. Entity closure

35

What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

There are 3 ways a company can be wound up in accordance with CAMA:

Order of Court: Winding up by Order of Court occurs when a petition for winding up is presented to the court for any of the following reasons as contained in CAMA: inability to pay its debts; failure to hold statutory meetings or deliver statutory reports to the Corporate Affairs Commission (CAC); number of members falling below the statutory minimum of two (2); or if the Court believes it is just and equitable that the company be wound up.

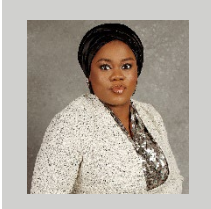
Voluntary winding up: Voluntary winding up can either be members' voluntary winding up or Creditors' voluntary winding up.

- *Members' voluntary winding up* - This occurs when a Company resolves unilaterally to wind up its affairs. Members' voluntary winding up procedure is adopted when the company decides to close down its business operations, dispose of its assets and distribute the proceeds amongst the shareholders. This is however, subject to the company's capacity to settle its debtors (if any) within 12 months from the commencement of winding up process.
- *Creditors' voluntary up* - Under this procedure, the company is closed down with a view to paying off its debtors with the proceeds realized from the sale of its assets. This requires approval (special resolution) of members and creditors.

Winding up by supervision of court: Under this procedure, a company passes a resolution to voluntarily wind up and petitions the Court to supervise the winding up. Upon the petition, the Court may order that the voluntary winding-up shall continue but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions, as the court deems fit.

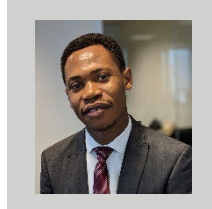
When a company passes a resolution for winding up by the court, the court can declare that the winding up must occur under the supervision of the court.

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