



S.O Oloruntimehin & Co.

# FOREIGN INVESTMENT IN NIGERIA

## ***BACKGROUND***

The history of foreign participation in Nigeria can be traced back to 1972 when the Nigerian Enterprises Promotion Decree (NEPD) was enacted. This law provided that certain enterprises were exclusively reserved for Nigerians while others had to have at least 40% Nigerian ownership. In 1977, the status quo continued with certain enterprises requiring 100% Nigerian participation while others required 60% and 40% ownership by Nigerians respectively. During this era, there was the nationalization, expropriation or indigenisation of foreign companies in Nigeria. However, this led to capital flight as foreign investors left the country and started investing in neighboring countries with favourable legal regimes for foreign investments. In 1989, the law was revisited and provided for partial deregulation of foreign participation.

## **CURRENT POSITION**

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In 1995, the Nigerian Investment Promotion Commission Decree was enacted. It liberalized and fully deregulated business ownership in Nigeria by foreigners. Section 17 of the current Nigerian Investment Promotion Commission Act Cap N117 LFN 2004 (NIPC Act) is instructive to note as it provides that non- Nigerians may invest and participate in the operation of any enterprise in Nigeria. Consequently, foreigners can invest and own companies in Nigeria without any participation by Nigerians.

Section 25 NIPC Act also provides that the Nigerian government shall not nationalize or expropriate any enterprise/company or capital investment of any person (including capital investment/securities of foreigners). Section 31 NIPC Act however prescribes the “Negative List” which states sectors/activities in which foreign and Nigerian investors are prohibited from engaging in.

The current company law in Nigeria makes useful provisions for the ease of foreign participation in the Nigerian business climate. Section 78 of the Companies and Allied Matters Act 2020 (CAMA 2020) is clear that foreign companies can carry on business in Nigeria provided they incorporate a separate entity in Nigeria. This is save for, foreign companies that are exempt from the incorporation of a Nigerian entity, see Section 80 (1) CAMA 2020. The incorporated Nigerian entity may mirror the board and shareholding structure of the foreign company. Premised on the extant company law, there are no restrictions to 100% foreign participation (shareholding) in a Nigerian company. This means that such company may be wholly owned by foreigners.

# **PROTECTION OF FOREIGN INVESTMENT IN NIGERIA**

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It is trite to note that under the extant laws governing foreign participation in Nigerian businesses, the following are provided for:

1. No enterprise shall be nationalized or expropriated by any Government of the Federation,
2. No one, including foreigners, shall be compelled to surrender their interest in the capital of any enterprise to any other person.
3. There shall be no acquisition of an enterprise by the Federal Government unless the acquisition is in the national interest/public purpose and under a law that makes adequate provision for fair, adequate and prompt compensation as well as access to courts. See Section 25 NIPC Act in this regard.
4. Execution and entry of bilateral or multilateral investment promotion and protection agreements.
5. Investment incentives and reliefs.
6. Effective alternative dispute resolution mechanisms which are not usually subject to local courts.

# ***STATUTORY RESTRICTIONS ON FOREIGN PARTICIPATION IN NIGERIA***

1. All foreign companies intending to do business in Nigeria are to register a separate Nigerian company. See Section 78 CAMA 2020 and Section 19 NIPC Act.
2. All companies with foreign participation must register with the NIPC. See Section 20 NIPC Act.
3. Foreigners can own businesses in any sector except businesses in the sectors stated in the Negative List which are:
  - i. Production of arms, ammunition etc,
  - ii. Production of, and dealing in, narcotic drugs and psychotropic substances,
  - iii. Production of military and paramilitary wears and accoutrement including those of the Police and the Customs, Immigration and Prison Service, and
  - iv. Such other items as the Federal Executive Council may, from time to time, determine.

See Section 31 of the NIPC Act in this regard.

# **MODES OF FOREIGN PARTICIPATION IN NIGERIAN BUSINESSES**

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1. Unregistered companies. These are for foreign companies exempted from registration of a separate Nigerian entity. Section 80 and 82 CAMA 2020.
2. Registered business name or Partnership. A foreigner may choose to register a business name as a sole proprietor or partnership (limited partnership or limited liability partnership). See Part C, D and E CAMA 2020.
3. Incorporation of a corporate entity. An alien may register a private or public company, company limited by shares, unlimited company or company limited by guarantee provided the requirements for registering such corporate entity has been met.
4. Foreign portfolio investors having shares/ securities in a Nigerian company. See Section 26 Foreign Exchange (Monitoring and Miscellaneous) Act Cap F34 LFN 2004.
5. Foreign direct investors who bring in foreign currencies to do business in Nigeria.

# **CONCLUSION**

In sum, it is important to note that every foreign company intending to carry on business in Nigeria must take all steps necessary to incorporate as a Nigerian company and until such incorporation, the foreign company must not have a place of business or address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents, as matters preliminary to incorporation.

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