



A Guide To Foreigners Doing Business In Nigeria Part 1

GENERAL OVERVIEW

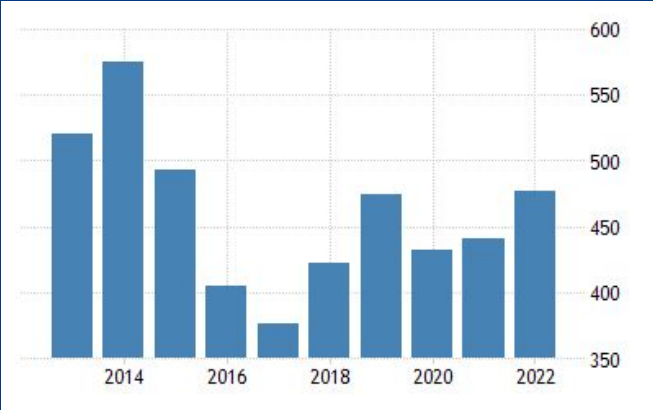
With immense growth in technology and globalization, cross border investments have taken prime positions in global economies. As a developing country with immeasurable growth potential, Nigeria ranks as the largest oil producer in Africa. In addition to available oil and gas reserves, Nigeria has enormous mineral resources such as iron ore, bitumen, gold, coal, bauxite, bronze etc. As of December 2022, the gross domestic product (GDP) of Nigeria was estimated at USD 477.39 billion according to the World Bank and the International Monetary Fund (IMF) retained its 3.2% forecast for Nigeria's economic growth in 2023.

Leveraging on its demographic advantage as the most populous country in Africa as well as the biggest economy according to the IMF, Nigeria sets its path as the most preferred investment destination for investors looking to onboard into Africa's largest emerging market. This is further accentuated by the ever developing economic and structural reform targeted at making the country a hive for ease of doing business.

Achieving holistic tax reform and creating a business-friendly environment is one of the key objectives of the present administration. This gave rise to the establishment of the Presidential Enabling Business Environment Council (PBEC) to address bottlenecks and compliance issues associated with the ease of doing business in Nigeria. The initiatives of the PBEC include simplifying the process of incorporation of companies in Nigeria and tax compliance. Very recently, the Startup Act 2022 and the Business Facilitation Act 2023 (BFA) were enacted with the objective of promoting the ease of doing business in Nigeria through transparency, efficiency, productivity, and elimination of unnecessary bureaucracy.

Similar, to other jurisdictions, there are certain legally established compliance requirements for embarking on certain business projects in Nigeria. Cross-border investment comes with certain challenges and uncertainties for investors. The government of Nigeria has however taken steps to allay this fear by introducing investment friendly policies that accord foreign investors certain privileges and incentives.

In this article we provide insights and relevant information on doing business in Nigeria that will assist investors in making informed investment decisions. In this series, we would discuss, the Nigerian business landscape, business/investment structures, regulatory framework, foreign exchange control considerations, applicable taxes, available business/tax incentives and future fiscal outlook for the Nigerian economy.



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BUSINESS STRUCTURES

Business can be carried out in Nigeria upon the registration of a business name (sole proprietorship), partnership, or company. A foreigner can participate in business in Nigeria either through foreign direct investment (FDI) or Foreign Portfolio Investment (FPI). If the aim is to invest or acquire shares in a Nigerian company, foreign investors need not register a Nigerian company to complete such investment/ share acquisition. However, for foreign investors looking to establish a business in Nigeria, such investor must incorporate its business as a Nigerian business as a preliminary step, except such company has been granted an exemption. To encourage foreign investment/participation, 100% foreign ownership of companies is allowed in Nigeria.

In certain circumstances, which are specified under applicable laws, a foreign entity may apply to the Minister for exemption from the mandatory requirement of registration. Any company that is exempted will operate in Nigeria as an unregistered company. Pursuant to the BFA, exemptions are also available to foreign companies where an Act of the National Assembly provides for the same.

The situations and industries in which a foreign company can be exempted are as follows:

- a. Foreign companies invited to Nigeria with the approval of the Federal Government to execute any specified individual project.
- a. Foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international Organization.
- a. Foreign government-owned companies engaged solely in export promotion activities.
- a. 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.

INCORPORATING A COMPANY IN NIGERIA

A company can be incorporated in Nigeria within a very short period, possibly in 24 hours. The incorporation process can also be carried out online or electronically and the incorporators are not required to be in-person in Nigeria. The incorporation process includes the following:

i. Name Availability Search for The Company Name

This entails conducting a name availability search at the Corporate Affairs Commission (CAC) to ensure that the name designated for the proposed company is not already in use by another company and is not similar to a company name/business name already in use. Any available name will be reserved for the proposed company for a period of 60 days, which is renewable for another period of 60 days.

ii. Filing Incorporation Documents at the CAC

Relevant incorporation documents to be filed at the CAC are briefly discussed below:



Nigeria's national flag



RC 123456789

CORPORATE AFFAIRS COMMISSION
FEDERAL REPUBLIC OF NIGERIA

Certificate of Incorporation

I hereby certify that

*is this day incorporated under the COMPANIES AND ALLIED
MATTERS ACT 1990 and that the Company is Limited By Shares.*

Given under my hand at Abuja this




BELLO MAHMUD

Memorandum and Articles of Association (MEMART)

The MEMART of a company documents its objects and corporate or internal governance procedures. The Memorandum and article of association must be subscribed to by the founding or initial members/shareholders of a company.

Application to the CAC

The application is in a standard form that contains detailed information on the proposed company such as:

Type of company to be incorporated.

- The reserved name obtained through the name availability application.
- The address of the proposed company.
- The minimum issued share capital of the company
- Particulars of the first directors and their consent to function as directors.
- Particulars of the shareholders/ members who subscribe to shares in the company
- Particulars of the Company Secretary (Individual)
- Statutory Declaration of compliance in the prescribed form.

iii. Payment of Statutory Fees

The statutory fees payable upon incorporation of a company limited by shares is assessed based on its authorized share capital. This includes stamp duties and filings fees. The payment of statutory fees can also be done online, or the evidence of payment can be uploaded to the application.

iv. **Approval: Certificate of Incorporation**

Upon the receipt of the application documents and payment of statutory fees, the CAC will issue a Certificate of incorporation and the attendant incorporation documents.

CONCLUSION

Nigeria is endowed with natural resources, human capital, sizeable market, and a conducive climate for foreign investment. In addition to this, Nigeria's position as the most populous country and biggest economy in Africa makes it an envious and reputable location for foreign investors. With favorable investment policies such as tax incentives, capital importation and repatriation arrangements, the Federal Government continuously creates a conducive environment for foreign investors in Nigeria.

In the next part of this series, we would discuss foreign exchange control considerations, capital importation and repatriation arrangements, applicable taxes, and available business/tax incentives.