



Investment Guide Nigeria

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ONE VISION
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About ALN Nigeria

ALN Nigeria | Aluko & Oyebode, Nigeria's largest full-service commercial law firm, is committed to delivering world-class legal services with unwavering ethical standards. Whether they are multinational companies, local entrepreneurs, or pro bono clients, we strive for excellence in every aspect of our work.

The firm's reputation is built on our profound understanding of Nigerian law and our extensive international expertise, gained through direct experience in our clients' industries.

Established in 1993, Aluko & Oyebode operates with a team of over 120 lawyers across Nigeria's major commercial centers - Lagos, Abuja, and Port Harcourt. We take pride in our comprehensive knowledge and experience in key industry sectors, including consumer goods, manufacturing, construction, infrastructure, energy, natural resources, financial institutions, insurance, public sector, real estate, transportation, telecommunications, media, entertainment, and technology.

About ALN

ALN is an integrated alliance of the preeminent full-service corporate law firms in 14 African countries and has a regional office in UAE. Together, ALN firms provide clients with seamless practical and business-focused legal, advisory and transactional services across Africa.

The alliance specialises in blending deep local knowledge and reach with sector-specific expertise, to successfully guide clients in navigating locally and across borders.



Introductory Note

Nigeria, with a population of over 216 million people, is the most populous country in Africa and the seventh most populous country in the world. These factors contribute to its attractiveness as an investment destination for businesses seeking expansion into Africa.

With a median age of 18.1 years, Nigeria boasts a young and rapidly growing population, presenting a substantial consumer and workforce base.

The country is abundant in natural resources, including significant reserves of oil, gas, coal, tin, and columbite-tantalite, which can drive economic growth and job creation. Nigeria benefits from its strategic location as a trade and commerce hub on the Gulf of Guinea, a major shipping route, providing access to markets in Europe, Asia, and the Americas. As a member of the Economic Community of West African States (ECOWAS), Nigerian businesses enjoy access to the large and expanding regional market (ECOWAS), which has an estimated population of over 400 million people.

Recognising the importance of boosting investment for investors and the country's development, the Nigerian government has prioritised efforts to enhance the investment climate of the country. Steps have been taken to streamline business processes, improve the tax and fiscal system, and offer incentives for foreign investment. Although progress has been made in curbing corruption and revitalising press freedom and political party activities, challenges still need to be addressed, as Nigeria still faces concerns regarding corruption and restrictions on certain freedoms.

The government's commitment to creating an investor-friendly environment is reflected in efforts to harmonise investment laws and policies, facilitating market entry and expansion. These measures have instilled increasing investor confidence, leading to a surge in large-scale investments across sectors and the return of major mining and oil and gas players to the negotiation table.

Reports from the Nigerian Investment Promotion Commission (NIPC) indicate a notable increase in investment in Nigeria, with 2023 seeing a 6.78% increase in capital importation from the USD 1.06 billion recorded in Q4 2022.

However, the volatility of FDI flows, and the impact of external factors require cautious consideration. Notably, foreign direct investment (FDI) inflows into Nigeria turned negative in

2022, as reported by the World Investment Report by United Nations Conferences on Trade and Development (UNCTAD) that, showed that Nigeria's FDI flows came in at USD 187 million in 2022, compared to USD 3.31 billion in 2021.

In conclusion, Nigeria's investment potential remains substantial. This investment guide aims to provide valuable insights for exploring opportunities in the country while acknowledging the nuanced local landscape.

For further information, feel free to contact us at info@aln.africa or ao@aluko-oyebode.com



Overview

Nigeria

President

Bola Ahmed Tinubu

Type of Government

Federal Republic with
Multi-Party Democracy

Timezone

GMT +1

Currency

Nigerian Naira (NGN)

GDP

USD 440 billion

Area

923,768 Sq/Km

**Local Currency to
USD**

*760 NGN ^1^

Major Languages

English, Hausa, Yoruba,
Igbo

Drives On

Left Side

Calling Code

+234

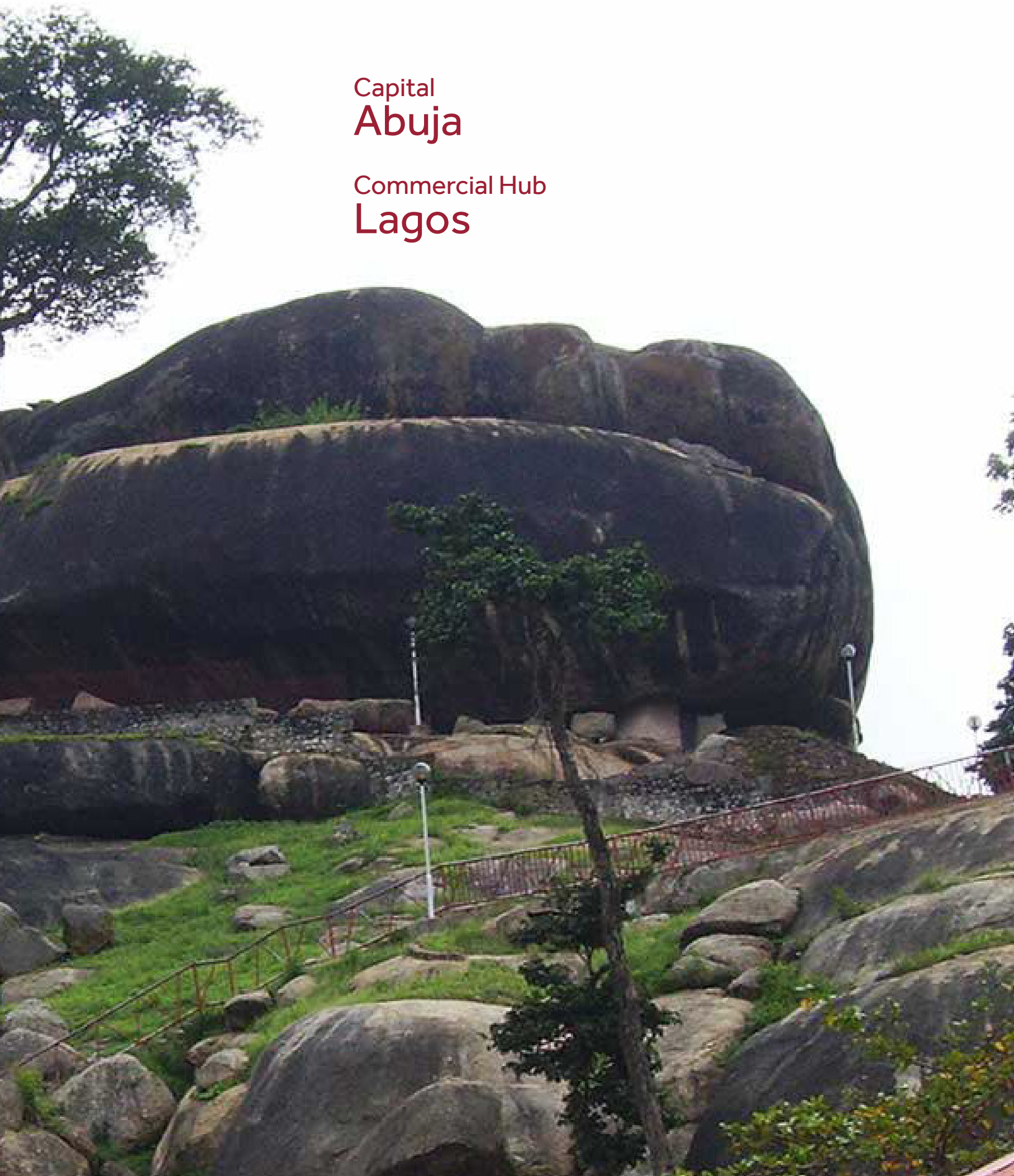
Top Level Domain

.ng

^1^ Exchange rate subject to volatility.

Capital
Abuja

Commercial Hub
Lagos



Why Invest in Nigeria

Nigeria, a country with vast potential and opportunities, offers a compelling investment landscape for various sectors. With its strategic geographic location, abundant natural resources, and diverse economy, Nigeria attracts investors looking to tap into its immense market.

Nigeria is located in West Africa, and it is the most populous country in Africa. It has a strategic geographic location, bordering several other countries, including Benin, Cameroon, Chad, Niger, and the Republic of the Congo. This gives Nigeria access to a large and growing market.

Nigeria's strategic advantages, including its geographic location, large population, extensive coastline, regional bloc memberships, abundant natural resources, improving safety/security, infrastructure development, political stability, and affiliation with international and trade insurance agencies, make it an attractive destination for investment. With the right strategies and due diligence, investing in Nigeria offers significant growth potential across various.



In terms of investment, Nigeria has a liberalised investment regime and has taken steps to ease the process of doing business in the country. The government has also created several free trade zones and special economic zones to attract foreign investment. Overall, Nigeria offers a stable economic and political environment and several investment opportunities.

- **Regional Blocs:** Nigeria is a member of the Economic Community of West African States (ECOWAS), the African Union (AU), and the Commonwealth of Nations.
- **DTAs:** Nigeria has double taxation agreements (DTAs) with 15 countries, including the United Kingdom, Canada, and China.
- **BITs:** Nigeria has bilateral investment treaties (BITs) with 31 countries (only 15 of which are in force), including the United States, the United Kingdom, Canada, and China.
- **ICSID:** Nigeria is a member of the International Centre for Settlement of Investment Disputes (ICSID) and has ratified the convention.
- **MIGA:** Nigeria is a member of the Multilateral Investment Guarantee Agency (MIGA).
- **ATIA:** Nigeria is a member of the African Trade Insurance Agency (ATIA).
- **Tourism:** Nigeria is a growing tourist destination, with attractions such as the Yankari National Park, Obudu Mountain Resort, the Lekki Conservation Centre, and the Osun-Osogbo Sacred Grove.
- **Natural Resources:** Nigeria is rich in natural resources, including oil, natural gas, coal, iron ore, gold, and columbite. The country also has a large agricultural sector, and it is a major producer of cocoa, rubber, and palm oil.
- **Political Stability:** Nigeria has been relatively stable in recent years. The current government is committed to economic development and has created several favourable policies for foreign investors.
- **Safety/Security:** The government is taking steps to improve security, and the country is generally considered to be safe for foreign investors.
- **Infrastructure:** Nigeria is making great strides in developing its infrastructure. With the government investing heavily in infrastructure, the situation is improving.



Nigeria has bilateral investment treaties (BITs) with 31 countries, of which only 15 are in force.

Political and Economic Overview

Nigeria, located in West Africa, offers an enticing investment landscape for discerning investors. With a population exceeding 200 million and the largest economy in Africa, boasting a GDP of USD 440 billion, Nigeria presents a myriad of opportunities across various sectors.

While the country's economy is heavily reliant on oil and gas, efforts to diversify into agriculture, manufacturing, and services are underway, creating avenues for growth and innovation.

Politically, Nigeria operates as a federal republic, with a President serving as both the head of state and government. The country upholds a multi-party system, with President Bola Ahmed Tinubu elected in February 2023. President Tinubu's economic plans, as outlined on his campaign website, include a range of proposals aimed at boosting Nigeria's development. It entails a massive USD 1 trillion investment over 10 years for infrastructure development, focusing on the construction of roads, railways, airports, and power plants.

A few weeks after his inauguration, President Tinubu set up a national economy sub-committee of Policy Advisory Council to prepare his administration's blueprint for the economy.

The Policy Advisory Council's report on Nigeria's economy outlined strategies to drive sustainable growth and attract investments. Key recommendations include implementing high-impact initiatives to double the size of Nigeria's economy, improving the ease of doing business, prioritising infrastructure development, providing incentives and tariffs to boost key sectors, promoting exports, and attracting quality investments through targeted roadshows and investment agreements. These measures aim to create a conducive environment for investment, boost economic growth, and position Nigeria as an attractive destination for both domestic and foreign investments.

Since May 29, 2023, President Tinubu's diplomatic efforts have attracted foreign investors. Removing subsidies and making exchange reforms helped. In Q1 2023, trade increased a bit, with exports at NGN 6.5 trillion and imports at NGN 5.6 trillion, making a positive balance. Greenfield projects also boosted foreign investment by 24% for infrastructure.

2023

President Bola Ahmed Tinubu was elected as the 16th President of Nigeria on February 25.



Investment Guide Scope

Nigeria is a federal republic comprising 36 states and the Federal Capital Territory, Abuja.



The federal government handles defense, foreign affairs, and currency, while state governments oversee education, healthcare, and agriculture.

Local government areas manage waste management, sanitation, and transportation.

With 18 registered political parties, the All Progressives Congress (APC) and the People's Democratic Party (PDP) are the main political forces in Nigeria. The APC is currently in power, while the PDP serves as the primary opposition. Additionally, the Labour Party emerged as a significant opposition party in the last election, working alongside the PDP to influence political dynamics.

Nigeria also benefits from the presence of the National Economic Council (NEC), which plays a pivotal role in driving the country's economic development. This council brings together the President, Vice President, state governors, and other key stakeholders to discuss and coordinate economic policies. Moreover, institutions like the Nigerian Investment Promotion Commission (NIPC) provide valuable insights and guidance to investors, offering a comprehensive understanding of the economic landscape, policy priorities, and investment opportunities in Nigeria.

This investment guide is not an exhaustive summary of all the information and regulations relevant to investing in Nigeria. It is intended to provide a general overview of the investment climate in Nigeria and to highlight some of the key considerations for investors. It is not intended to be a substitute for obtaining legal, financial, or other professional advice.

Investors are strongly encouraged to seek out specialised advice and to do their own due diligence when making investment decisions in Nigeria.

The information provided in the Nigeria Investment Guide should not be relied upon as a substitute for such advice.

Regulatory Landscape

Nigeria's legal and regulatory landscape plays a significant role in shaping the country's investment environment.



Depending on the sector, local and foreign investors must navigate a complex web of laws, regulations, and guidelines to understand the legal and regulatory framework governing investments in Nigeria.

However, the government has been making concerted efforts to promote investment by enacting business friendly legislation, promoting strategic regulatory reforms, establishing investment incentives, and facilitating business entry processes. Some of the key efforts include:

The Ease of Doing Business Reforms of the Presidential Enabling Business Environment Council (PEBEC)

The PEBEC, launched in 2016, is an inter-Governmental and inter-Ministerial council chaired by the Vice-President to improve the ease of doing business in Nigeria. The focus areas of the PEBEC include business registration, access to finance, property registration, regulatory permits, payment of taxes, immigration, insolvency and enforcement of contracts.

The council has successfully implemented reforms aimed at reducing bureaucratic bottlenecks, streamlining procedures, and enhancing the overall business environment. Some of the major highlights of the reforms include the introduction of 'deemed approvals' for applications to Ministries,

Departments and Agencies ("MDAs") that are not processed within the prescribed timelines; codification of the idea of 'one government', to ensure collaboration between MDAs to process and deliver their products and services to the public;

The reforms of PEBEC have been codified by the enactment of the Business Facilitation (Miscellaneous Provisions) Act 2023 ("BFA"). The BFA serves as the legislative vehicle to transition the reforms from mere administrative policies to law.

Enactment of a new Companies Legislation after 30 years

To improve the legal framework for investment in Nigeria, the Nigerian government has enacted a new Companies and Allied Matters Act (CAMA) in 2020 to replace the old companies legislation that was enacted as far back as 1990. The CAMA simplifies the process of registering businesses, enhances the protection of minority shareholders, and allows the automation of pre-incorporation and post-incorporation application processes for companies registered in Nigeria.

Investors can expect to see the trend of increased stakeholder engagement and access to government to continue, enabling the private sector to operate in a more conducive environment.

Investment incentives

The Nigerian government has implemented several investment incentives to attract foreign investment into the country. These include tax holidays, import duty exemptions, and investment guarantees. Such measures encourage investment across sectors, including agriculture, oil and gas, mining, power, manufacturing, telecommunications, and infrastructure. Some of the laws providing for these various incentives include amendments to the Companies Income Tax Act, Industrial Development (Income Tax Relief) Act, Nigerian Export Processing Zones Authority Act, Nigerian Oil and Gas Industry Content Development Act, etc, through various Finance Acts enacted in 2019 to 2023.

Privatisation and Public-Private Partnerships (PPP)

The government's privatisation and PPP programs have been instrumental in encouraging private sector investment in infrastructure and key sectors. State-owned enterprises, such as electricity generation and distribution companies, have been privatised, and PPP projects in airports, seaports, healthcare, and education have been established. These initiatives create opportunities for investors to participate in the development and operation of critical infrastructure projects.

Infrastructure Development

The Nigerian government recognises the importance of infrastructure in facilitating business activities. The Constitution was recently amended to allow the 36 states of the Federation to regulate intra-state railway infrastructure and establish electricity markets within the states. As such, significant investments are expected in roads and railway infrastructure.

Regulatory Challenges

Despite the progress made, some regulatory and policy challenges persist. One significant challenge is the gap between the law/regulatory reforms and implementation.

Importance of Due Diligence and Local Advisors

To mitigate the legal and regulatory risks, it is important that investors engage experienced advisors to conduct thorough due diligence. By doing so, they can better understand the regulatory landscape, anticipate potential challenges, and optimise their investment structures. This proactive approach enables investors to make informed decisions and navigate the complexities of the Nigerian market.



Investment Promotion and Facilitation

Nigeria has the largest economy in Africa, with a population of over 200 million people and abundant natural resources. The country offers numerous investment opportunities in sectors such as agriculture, oil and gas, mining, manufacturing, telecommunications, and infrastructure.

In respect of investment promotion and facilitation, the Nigerian government acts primarily through the Nigerian Investment Promotion Commission (NIPC) to promote and encourage local and foreign investment. The NIPC operates the One-Stop Investment Centre ("OSIC"), which serves as a one-stop-shop for investors, providing information on investment opportunities, procedures, and incentives, and bringing the relevant government agencies to a single platform, to simplify and fast-track business entry processes for investors. At OSIC, investors may apply for licences and approvals from the relevant regulatory agencies.

Other relevant bodies that promote investment in Nigeria include:

- **Corporate Affairs Commission (CAC):** The Companies and Allied Matters Act establishes the CAC as an autonomous body to regulate the formation and management of all types of companies in Nigeria. The functions of the CAC include the regulation and supervision of the formation, incorporation, management and winding up of companies.
- **Securities and Exchange Commission (SEC):** The SEC oversees the securities and commodities market in Nigeria, ensures the protection of investors and maintains the integrity of the market.
- **Central Bank of Nigeria (CBN):** The CBN is tasked with creating and executing monetary policies and managing the foreign exchange rate. The CBN licences and supervises the operations of banks and other financial institutions.
- **Nigerian Exchange Limited (NGX):** The NGX is the principal securities exchange in Nigeria, responsible for providing a platform for the trading of financial securities such as stocks, bonds, and other investment products. The exchange is regulated by the Securities and Exchange Commission (SEC) and operates under the oversight of the Financial Services Regulatory Coordinating Committee (FSRCC).
- **Taxation:** Nigeria has a relatively complex tax system that investors must navigate. There are several types of taxes, including company income tax, withholding tax, capital gains tax, value-added tax, and personal income tax, among others.

Investment in Nigeria

Nigeria's economic system allows for free enterprise, which permits 100% foreign ownership of companies, except in industries where local content is mandated. Nigerian companies, whether fully or partially foreign owned, are required to obtain a Business Permit from the Ministry of Interior before commencing business. The minimum issued share capital for companies with foreign ownership is a minimum of NGN 100 million.

Additionally, non-resident companies may invest in the shares of a Nigerian company using any convertible foreign currency, and they will be guaranteed the repatriation of any dividends through the utilisation of a Certificate of Capital Importation (CCI). The CCI is the only acceptable evidence of foreign currency inflow to Nigeria by foreign shareholders, and it facilitates foreign currency repatriation of dividends and capital proceeds from Nigeria.

Investors are guaranteed unrestricted transferability of funds and capital repatriation in the event of a liquidation, provided the funds were brought into Nigeria through an authorised dealer in foreign exchange. They also enjoy protection against expropriation or nationalisation. No person can be compelled to surrender their interest to another person. Where the Federal Government acquires an enterprise for national interest or public purpose, adequate and fair compensation must be provided, and without any undue delays. The Nigerian government has established laws and regulations to protect investors and their investments. The country has a legal system that is based on common law and offers mechanisms for dispute resolution.



Nigerian Investment Promotion Commission (NIPC)

Overview

Main Body: The Nigerian Investment Promotion Commission (NIPC) is responsible for promoting, monitoring and coordinating investments in Nigeria. The NIPC registers and keeps records of all companies with foreign equity participation and processes the Pioneer Status Incentive, which grants company income tax holidays and tax-free dividends to eligible investors for up to 5 years.

Supervising Ministry: The NIPC is under the Federal Ministry of Industry, Trade and Investment.

Purpose: The NIPC houses the One Stop Investment Centre (OSIC) through which foreign investors can process company incorporation and all post-incorporation registrations and approvals such as tax registration, business permits, expatriate quota and other immigration permits. In addition to its investment promotion mandate, the NIPC administers the Industrial Development (Income Tax Relief) Act 2004, which allows eligible investors to obtain Pioneer Status Incentive, which grants income tax holiday for an initial period of 3 years in the first instance, which can be renewed for an additional 1 or 2 years and have their dividends tax-free.

The NIPC mandates all enterprises in Nigeria with any form of foreign participation to apply to the NIPC for a business registration certificate. Also, companies that subsequently acquire foreign participation after the commencement of business are required to register with the NIPC within 3 months of such acquisition. Any company with foreign participation must meet the minimum shareholding requirements prescribed by the Federal Ministry of Interior.

The NIPC Act guarantees foreign investors the unrestricted transferability of dividends or profits (net of tax) attributable to foreign investment in Nigeria and capital repatriation in the event of liquidation.



Investment Incentives

The Federal Government of Nigeria offers various incentives to encourage investment in the country. These include tax holidays, capital allowances, and import duty exemptions for certain industries and activities.



There are also established free zones / special economic zones (SEZs) in various parts of the country to attract investment and promote exports. The SEZs offer incentives such as tax holidays, simplified customs procedures, exemption from expatriate quota, and access to infrastructure.

- Pioneer Status Incentive:** The Pioneer Status Incentive (PSI) is a tax holiday granted by the Nigerian government to eligible companies operating in certain sectors designated as pioneer industries. Companies that are granted pioneer status are exempt from paying corporate income tax for an initial period of 3 years, which may be extended for no more than 2 years. A pioneer industry is one where business activities in Nigeria are currently not being conducted on a scale that is suitable to the economic requirements of Nigeria or where there are favourable prospects of further development which is desirable for the country. The PSI is designed to promote investment in critical sectors of the Nigerian economy and encourage economic growth.

- Export Incentives:** The Nigerian Export Promotion Council (NEPC) is an agency of the Federal Government vested with the responsibility of administering non-oil export incentives in Nigeria. Among other things, the NEPC was established to coordinate and monitor export promotion activities by the country authorities.

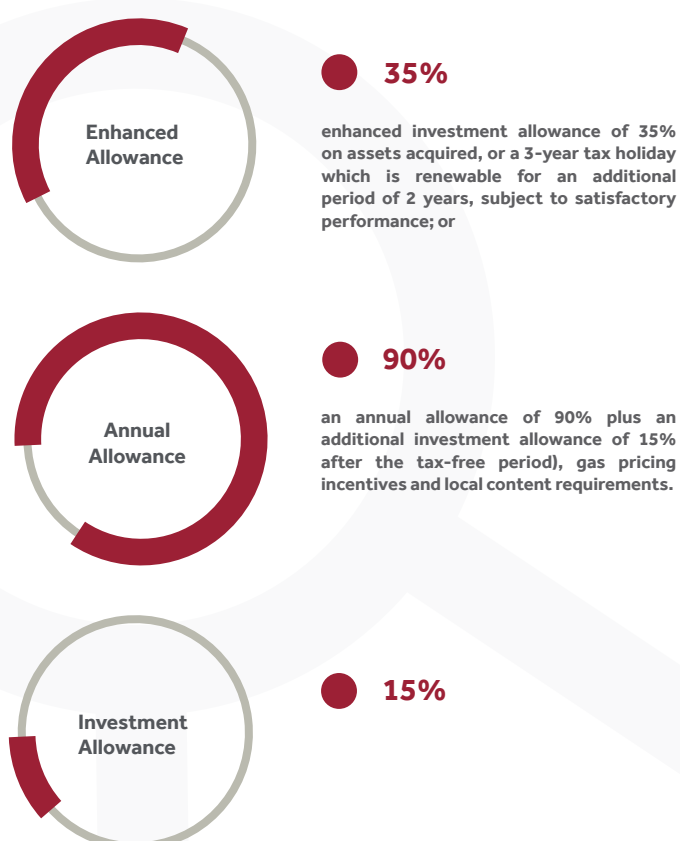
The Pioneer Status Incentive (PSI) is a tax holiday granted by the Nigerian government to eligible companies operating in certain sectors designated as pioneer industries.

Some of the export incentives available in Nigeria include:

- **Duty Drawback/Suspension Scheme (DDSS):** This incentive enables an exporter to receive a refund of import duties paid on inputs used in the production of export goods. The scheme is aimed at reducing the cost of production for exporters and increasing their competitiveness in international markets.
- **Manufacture-in-bond Scheme:** This incentive provides for duty-free importation of raw materials for the production of export goods. To access the incentive, a prospective exporter is required to enter into a bond with an approved bank, insurance company or Nigerian Export-Import Bank, guaranteeing that all the end products manufactured by the company will be exported. The bond will be discharged after evidence of exportation and repatriation of foreign proceeds has been produced.
- **Location within a Free Trade Zone (FTZ):** The benefit of import duty relief can also be obtained if an exporter is located within an FTZ. Exporters located within an FTZ are entitled to import thereto, free of customs duty, "any capital goods, consumer goods, raw materials, components or articles" intended to be used in relation to an approved activity. Companies carrying on approved activities in an FTZ are exempt from Federal, State and Local Government taxes, levies and rates.
- **Export Expansion Grant (EEG):** This is a cash grant offered by the Nigerian government to exporters to promote non-oil exports. The grant is usually a percentage of the total value of the exports and can be used to finance pre-shipment activities such as packaging, transportation, and quality control.
- **Export Development Fund (EDF):** The EDF is a fund established by the Nigerian government to provide financial support to exporters. The fund can be used to finance export-related activities such as market research, trade fairs, and product development.
- **Currency Retention Scheme:** Section 19 of the Foreign Exchange Monitoring & Miscellaneous Provisions Act enables exporters to open and maintain foreign currency domiciliary accounts into which export proceeds can be paid and retained. Exporters have unfettered access to funds in their export proceeds domiciliary accounts with minimal documentation.
- **Tax Incentives:** The profits derived from the following activities are tax-exempt: profits derived from exports, provided that the proceeds from the export are used for the purchase of;
 - i. raw materials
 - ii. plant
 - iii. equipment and
 - iv. spare parts

profits of a company whose supplies are exclusively imported for the manufacturing of products for export, where the company has obtained a certificate of purchase of the inputs of the exportable goods from the exporter; profits/gains of export-oriented undertakings established within an export processing zone; and Interest income earned by banks on loans to companies manufacturing for export.

- **Gas Industry Incentives:** The Nigerian government provides various incentives to investors in the gas industry to promote investment and boost the development of the sector. Some of the incentives available to investors in the gas industry in Nigeria include tax incentives, capital allowances (e.g., enhanced investment allowance of 35% on assets acquired, or a 3-year tax holiday which is renewable for an additional period of 2 years, subject to satisfactory performance; or an annual allowance of 90% plus an additional investment allowance of 15% after the tax-free period), gas pricing incentives and local content requirements.



- Other tax Incentives include the exemption of dividends distributed by unit trusts from tax in the hands of the unit holders and accelerated capital allowance of 95% in the first year in respect of replacement of industrial plant and machinery etc.

Doing Business

Legal Forms of Incorporation

The principal law for the regulation of companies and businesses in Nigeria is the Companies and Allied Matters Act (CAMA) 2020. CAMA establishes the Corporate Affairs Commission (CAC) and gives it the mandate of regulating the incorporation, management and winding up of companies and other business entities in Nigeria.



CAMA recognises different corporate entities: limited partnership, limited liability partnership, a public company limited by shares, a private company limited by shares, a company limited by guarantee and an unlimited company.

Foreign companies desirous of carrying on business in Nigeria are required to set up a local company in Nigeria. The following categories of foreign companies are, however, eligible for exemption from incorporation upon application to the Minister of Industry, Trade, and Investment:

- Foreign companies invited by or with the approval of the Federal Government to carry out special projects.
- Foreign companies in Nigeria to execute specific loan projects on behalf of donor countries or international organisations.
- Foreign government-owned companies exclusively engaged in export promotion activities.
- Engineering consultants and technical experts involved in specialist projects under contracts with any of the Governments of the Federation, their agencies, or approved contracts with individuals by the Federal Government.



Upon incorporation, the company will be required to fulfil certain requirements and obtain permits from various regulatory bodies in Nigeria to legally operate its business. These include registration with the NIPC, obtaining business permit from the Ministry of Interior and relevant sector-specific licences, securing expatriate quotas, visas and work permits where it intends to employ foreign personnel etc.

Additionally, when shares in Nigerian entities are purchased by foreign investors, they are required to obtain a Certificate of Capital Importation (CCI) upon the importation of foreign currency, raw materials or equipment into Nigeria. This CCI serves as a means to access the official Foreign Exchange (FX) Market for the purpose of repatriating dividends, profits, and capital or other investments by foreign investors.

The repatriation process is conducted through an authorised dealer, which refers to any bank licenced by the Central Bank of Nigeria (CBN) to operate in the foreign exchange market. The CCI is an essential document to facilitate the repatriation of funds for foreign investors in Nigeria.

CAMA does not expressly prohibit the establishment of a representative office. A representative office can be established as a distinct legal entity, albeit with limited objectives focused on activities such as promotional endeavours, market research and analysis, and the storage and display of goods and merchandise.

The repatriation process is conducted through an authorised dealer, which refers to any bank licenced by the Central Bank of Nigeria (CBN) to operate in the foreign exchange market.

Private Company Limited by Shares

- **Companies Registry:** The Corporate Affairs Commission ("CAC").
- **Number of shareholders:** Minimum of 1 for private companies
- **Number of directors:** Minimum of 2.
- **Local Shareholding or Directorship Requirement:** there are no general restrictions on local ownership or local directorship to register a company with the CAC, however, certain sector-specific frameworks may require local participation.
- **Company Secretary:** appointment of a Company Secretary is mandatory for all companies with foreign participation.
- **Share capital:** Companies with foreign participation are required to have a minimum issued share capital of NGN 100 million.
- **Beneficial Ownership:** persons with significant control, that is, holding directly or indirectly 5% of shares or interest in a company, are required to notify the company of the particulars of such control, and the company or partnership is in turn required to maintain a record in its register as well as notify the CAC of the particulars of such persons. Beyond these general disclosure requirements, certain sectors in Nigeria have also introduced some level of sector-specific disclosure rules e.g. financial services, oil, gas and extractive industries etc.

A company may be wholly foreign owned except in industries requiring local content.

- **Registration/ Licensing Requirements:** in order to operate a business in Nigeria, the minimum requirements, subject to sector specific legislation, typically include:
 - i. Certificate of incorporation
 - ii. Tax Identification Number
 - iii. Sector specific licences from relevant regulatory agencies

For foreign companies

- NIPC Registration Certificate
- Business permit
- Certificate of Capital importation
- Expatriate Quotas & Work Visas.
- **Reporting Requirements:** Companies are required to file the following with the CAC:
 - i. Annual returns: within 42 days after the Annual General Meeting for the year. Annual General Meetings are to be held within 18 months of incorporation and not more than 18 months after the Annual General Meeting so held.
 - ii. Companies income tax returns: filed with the Federal Inland Revenue Service not later than 30 June of the relevant year of assessment.
 - iii. Post-incorporation changes e.g. alteration of share capital, alteration of memorandum and articles of association, change of registered address, change of name, change of directors, etc.



Nigeria have also introduced some level of sector-specific disclosure rules e.g. financial services, oil, gas and extractive industries etc.

Non-profit Organisations

Non-profit organisations in Nigeria, also known as Non-Governmental Organisations (NGOs) are primarily governed by the Companies and Allied Matters Act (CAMA) of 2020, which provides guidelines for the registration, operations, and governance of NGOs. Non-profit organisations may be registered as a company limited by guarantee or as Incorporated Trustees (IT).

Registered non-profit organisations may be eligible for tax exemptions on their income and donations. However, they are still required to file annual tax returns with the Federal Inland Revenue Service (FIRS) to maintain their tax-exempt status.

They are also required to maintain proper governance structures, including a board of directors or a board of trustees. They must also adhere to financial reporting standards and submit annual financial statements to the CAC and other regulatory bodies.

Non-profit organisations in Nigeria are subject to regulatory oversight by government agencies such as the CAC, Federal Inland Revenue Service (FIRS), National Planning Commission (NPC) and the Nigerian Financial Intelligence Unit (NFIU).

These agencies monitor compliance, financial transparency, and anti-money laundering measures.

Non-profit organisations may be registered as a company limited by guarantee or as Incorporated Trustees (IT).



PPPs and Public Procurement

Public Private Partnerships (PPPs) in Nigeria are regulated by the Infrastructure Concession Regulatory Commission (Establishment, etc) Act ("ICRCA") and the PPP laws of various states in the country.



The ICRCA empowers Federal Government ministries, departments and agencies to grant concession to pre-qualified proponents in the private sector to carry out the financing, construction, operation or maintenance of any infrastructure designated by the federal government. The ICRCA requires that there is a competitive public bidding process for infrastructure or development projects so approved, except in instances deemed under the ICRCA to be unnecessary.

The ICRCA also includes provisions for project contractors or proponents to recover their investments subject to certain conditions on insurance and maintenance and repairs.

Federal Government ministries, agencies and corporations are entitled to supervise the project subject to the Infrastructure Concession Regulatory Commission (ICRC) taking custody of the concession agreements entered into and ensuring compliance with its terms.

There has been an increase in PPP projects across sectors in Nigeria and recent constitutional amendments to the legislative powers of states over railways and electricity supply suggest that there may be an increase in infrastructure projects in these sectors. Despite these, there are still a number of operational, commercial and regulatory issues facing investment in PPP projects to ensure bankability.

Local Content

The local content in Nigeria is developed towards ensuring that, in certain sectors of the economy, local companies in Nigeria can access and exploit local opportunities in Nigeria while remaining globally competitive.



The local content policies are targeted towards domiciliation and domestication of value adding activities in Nigeria. Foreign investors seeking to exploit investment opportunities in Nigeria are encouraged to take cognisance of local content legislations in Nigeria as there are penalties for non-compliance.

Local content requirements include

Expertise and Specialised Skills: In 2018, a Presidential Executive Order No. 5 was signed for “planning and execution of projects, promotion of Nigerian content in contracts and science, engineering and technology”. The executive order mandates procuring authorities to give preference to Nigerian companies in the award of contracts in line with the Public Procurement Act, 2007.

By implementing this executive order, the Nigerian government aims to encourage local capacity development, create employment opportunities, and enhance the transfer of technology and skills within the country.

The Executive Order No. 5 also prohibits the Ministry of Interior from issuing visas to foreigners whose skills are readily available in Nigeria. By this Order, the Ministry of interior will only grant permits and visas to expertise they possess is not available in Nigeria at the time of granting the visa.

Oil and Gas: Under the Nigerian Oil and Gas Industry Content Development Act (NOGICDA) 2010, Nigerian independent operators are to be given first consideration in the award of oil blocks, licences and contracts in the oil and gas sector. The Act defines a Nigerian independent operator to mean a Nigerian company. A Nigerian company within meaning of the Act is a company with at least 51% shares owned by Nigerians.

Banking Sector: The relevant banking laws in Nigeria prohibit a person or foreign entity from conducting banking business in Nigeria except where it has been incorporated as a Nigerian entity and has holds a valid banking licence. In special circumstances, the Central Bank of Nigeria, the apex bank in Nigeria, may grant a licence to a Nigerian bank to engage in off-shore banking business.

Telecommunication: The Guidelines for Nigerian Content Development in Information and Communication Technology issued by National Information Technology Department Agency (NITDA) provides that only telecommunications companies (telcos) licenced by the Nigerian Communication Commission shall operate in Nigeria and they are mandated to provide a local content development plan for the creation of jobs, human capital development, recruitment of Nigeria and use of indigenous ICT products and services for value creation.

Registered telcos are required to use the following:

- locally developed or manufactured software components, equipment's etc, for the provision of communications in Nigeria.
- Indigenous companies for the provision of at least 80% of all Value-Added Services and network services on the networks.
- Demonstrate verifiable evidence of Investment of at least 1% of annual turnover in ICT Research and Development in Nigeria in accordance with the Companies Income Tax Act (CITA) 2004.

ICT: The Guidelines for Nigerian Content Development in Information and Communication Technology provides that all information technology, online service provisioning and internet content multinational companies in Nigeria shall demonstrate evidence of operations and projects of Research and Development (R&D) departments or divisions that carry out value added services in-country, employing Nigerians in R&D to contribute to job creation and empowerment of Nigerians. The guidelines require Indigenous Original Equipment Manufacturers (OEM) and Indigenous Design

Manufacturers (ODM) to obtain a licence from NITDA. The licence is renewable every 2 years.

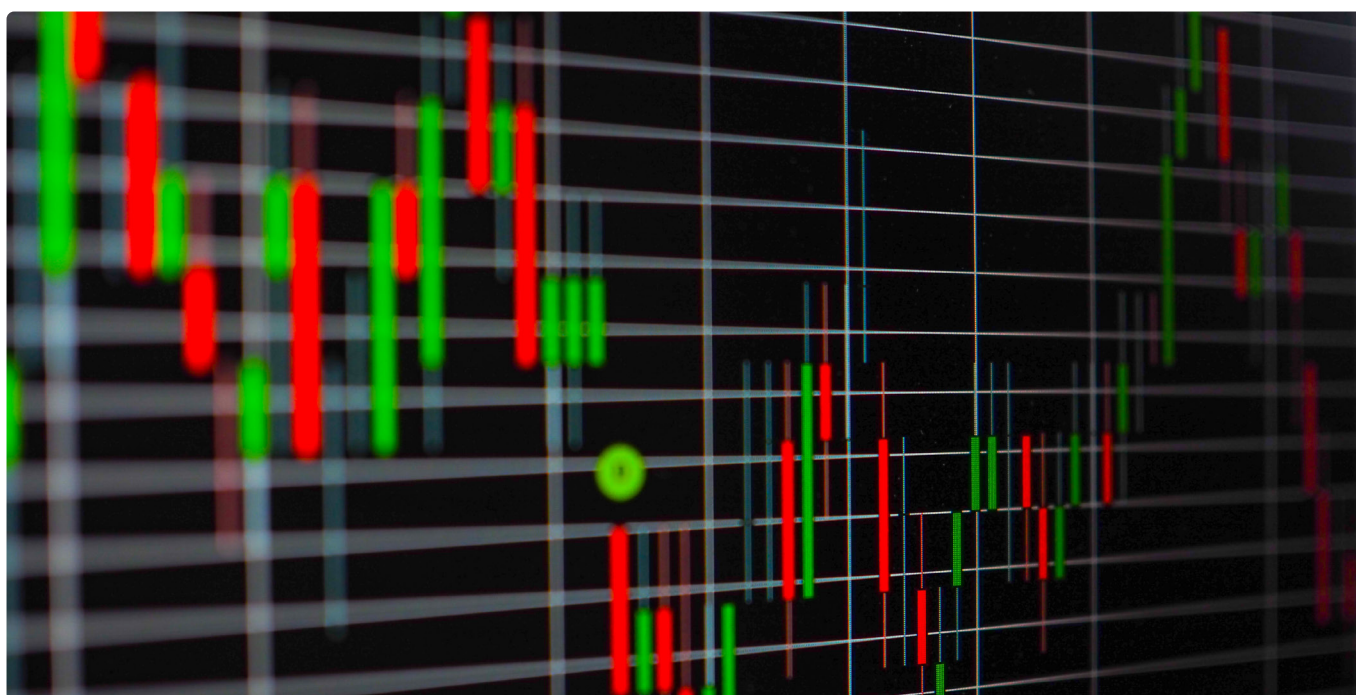
Data: The Guidelines for Nigerian Content Development in Information and Communication Technology requires data and information management companies to register their product, capabilities and organisation on the NITDA portal. They are also prohibited from hosting any sovereign data outside Nigeria without express approval from NITDA.

Technology Transfer: The National Office for Technology Acquisition and Promotion Act provides that contracts or agreements entered into with any person in Nigeria for the transfer of any technology not available in Nigeria shall be registered with NITDA not later than 60 days from the execution of such contract or agreement. Where the technology is readily available in Nigeria, such agreement may be refused registration.

Shipping: The Coastal and Inland Shipping Act also known as the Cabotage Act mandates all vessels engaged in the domestic coastal carriage of cargo and passengers within the coastal territorial inland waters or the exclusive economic zone in Nigeria, to be owned by Nigerians, manned by Nigerians, built and maintained in Nigeria.

Insurance: The Insurance Act requires foreign insurers seeking to operate in Nigeria to establish a local presence by incorporating a Nigerian subsidiary or forming a partnership with a Nigerian company.

Other industries include mining, broadcasting, advertising etc.



Employment

The Labour Act is the primary employment legislation in Nigeria. It defines “workers” as those employees engaged under a contract of manual labour or clerical work in private or public sector. The employment terms of other employees working in administrative, executive, technical or professional roles (“Non-Labour Act Employees”) are governed by their respective contracts of employment.

Employment of Expatriates

For expatriates working on a short-term basis, they will be required to obtain a temporary work permit (TWP). The TWP is issued for 3 months and is renewable once. It gives a single-entry visa into Nigeria for the expatriate to undertake the specified services.

Expatriates may also be employed to work in Nigeria for longer periods and the employer will require approved expatriate quota approvals issued by the Comptroller General of Immigration for the specific work roles/skills. Subject to approved quotas, an employer can employ expatriates to the approved roles. The expatriate will procure a subject to regularisation (STR) visa in their country of residence or origin which allows them to enter Nigeria to take up the position approved. A Combined Expatriate Residence Permit and Aliens Card)/Green Card (CERPAC) (a work and residence permit) will be issued to the expatriate upon arrival in Nigeria. Generally, work visas will not be issued where the job role or skill is readily available in-country, and the service can be provided by Nigerians. Each work permit must be justified by the employer and there must be at least two Nigerian understudies for each expatriate on a work permit.

To facilitate the ease of doing business, the Nigerian Immigration Service (NIS) introduced an electronic application process for visa-on-arrival (VOA). The VOA approval is typically granted within 48 hours after the applicant submits the required documents. Additionally, all expatriates residing in Nigeria are now required to register their National Identity Number (NIN) for SIM registration in order to renew their resident permits, in line with the Federal Government's initiative to link identity verification and residency permits. These processes and requirements aim to regulate and facilitate the employment of expatriates in Nigeria, ensuring compliance with immigration laws and promoting ease of doing business in the country.

Tax Considerations The residency rule applies in taxation in Nigeria. An employee is deemed to be resident in Nigeria where such person has been resident in Nigeria for an aggregate period of 183 days within a 12-month period. An expatriate is deemed to derive his income in Nigeria and will be liable to tax in Nigeria where his duties are wholly/partly

performed in Nigeria and has stayed for not less than 183 days or where his employer is Nigerian or has a fixed base in Nigeria. The tax payable by the expatriate will be deducted by the employer at source and the employer will file a return of all emoluments paid to the employee at the end of the financial year.

However, expatriates under an STR visa or in possession of a CERPAC are deemed to be tax resident in Nigeria. Regardless of the length of their stay, their income will be liable to tax in Nigeria whether such income was received in Nigeria or not.



Types of Employment Contracts in Nigeria

Employment contracts may be for a fixed or indefinite term. The duration of the employment will be determined mutually by the employer and employee. If the employment relationship continues beyond the fixed term without a formal renewal contract, it may be interpreted as an indefinite term.

The employment can be terminated by either party during the term upon giving notice to the other party.

Work Hours, Social Security and Leave

Work Hours: The market practice is 8-9 hours per day or 40-45 hours per week excluding rest and meal breaks. The usual practice for rest and meal breaks is 1 hour. There is no statutory provision for overtime in Nigeria.

Sick Leave: Under the Labour Act, this is up to twelve 12 days paid sick leave per year. For Non-Labour Act Employees, paid sick leave and the duration is usually determined by the company HR policy.

Annual Leave: Under the Labour Act, the minimum annual leave entitlement is 6 working days with full pay. For Non-Labour Act Employees, leave entitlement is subject to the contract of employment and/or company HR policy.

Paternity Leave: No provision under local law regarding parental/paternity leave. The Federal Government has however approved a 14-day paternity leave in the federal civil service. Some state governments also grant paternity leave in the states' civil service.

Maternity leave: Market practice is 12 weeks of paid maternity leave in the private and public sector.

Retirement age: No fixed age of retirement.

Training: Employers with up to 25 employees are required to make an annual contribution of 1% of their total payroll to the Industrial Training Fund.

Medical insurance: Employers with up to 5 employees are required to provide health insurance to their employees either through the state health insurance schemes or with an accredited HMO.

Pension: Pursuant to the provisions of the Pension Reform Act 2014, all employers with up to 3 employees must pay at least 10% of each employee's salary (basic, housing and transport allowances) and deduct 8% of the employee's salary and remit the cumulative 18% every month to the retirement savings account of each employee with a licenced Pensions Fund Administrator.

Employers are required to register with the National Pension Commission (PenCom) and provide regular reports and updates on the pension scheme, including employee details, contributions, and other relevant information. Employers are also obligated to provide a life insurance policy for their employees, covering a minimum of three times the annual total emolument of each employee. This insurance policy should be in place to protect the employee's beneficiaries in the event of death during employment.

The pension obligations of an employer however do not extend to expatriate employees working in Nigeria. However, such expatriate employees are entitled to make voluntary contributions under the Contributory Pension Scheme and enjoy applicable tax reliefs where they do so.



Severance payment: Not provided for under local law. An employer is not obliged by the law to make any severance payment on termination of employment. However, severance pay may be specified in HR policy or collective agreement or negotiated contractually.

Protection of Fundamental Human Rights

Data protection: Employers are required to ensure the protection of their employees' personal data and shall prevent such disclosure to a third party without the consent of the employee except in circumstances specified by law. The employee is entitled obtain an injunction restraining the employer from using or disclosing their personal data or to sue the employer for breach of right of privacy.

Discrimination and Harassment: The constitution of Nigeria prohibits discrimination on the basis of sex, race, ethnicity and political affiliations.

Termination of Employment

An employment contract may be terminated on expiry of the period for which it was made; or on serious illness or death of the worker before the expiry of that period; or by notice or as agreed in a contract. The applicable notice period varies from 1 day to 1 month depending on the duration of the employment relationship. For Non-Labour Act employees, where the employment contract is silent on notice period, reasonable notice is implied. Right to notice may be waived by either party and payment in lieu of notice is generally acceptable practice.



Wrongful Termination of Employment

The entitlements for wrongful termination of employment may vary based on specific circumstances. An employee may be entitled to one or more of the following benefits;

- Damages in the form of compensation
- Reinstatement for statutory employees or compensation in lieu of reinstatement
- Right to unpaid salaries, debts, gratuities
- Severance payment.

Redundancy This is an involuntary and permanent loss of employment caused by an excess of manpower within an organisation. It could also be caused by a change in company policy or direction of business in practice.

- The Labour Act provides broad principles which the employer must comply with as follows:
- Inform the affected employees of the reasons and the extent of the anticipated redundancy;
- Inform the trade union or workers' representative (if any);
- Adopt the principle of "last in, first out" when determining which workers are to be made redundant, subject to factors of relative merit including skill, ability and reliability;
- Terminate such employment and settle all statutory and contractual obligations; and
- Use its best endeavours to negotiate redundancy payments to be paid to affected workers.

The above is usually adapted by employers where there are no redundancy provisions in the employee handbook/manual. Where there are, redundancies are implemented based on such handbook/manuals or any applicable company policies, and the provisions of any CBA, entered into between the company and a trade union its employees belong to (if any).

Dispute Resolution

The National Industrial Court of Nigeria has exclusive jurisdiction with respect to matters relating to or connected with any labour, employment, trade union or industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and incidental matters.

Employee Dues

On termination by the employer, an employee is entitled to be paid unpaid salary for the work done, accrued leave, due annual leave, severance pay (unless the employee is terminated on the grounds of misconduct), salary payment in lieu of a notice (if applicable), repatriation allowance (where applicable) and any other claims that the employee had in the course of his employment.

Land Ownership

The Land Use Act (LUA) of 1978 is the principal land legislation in Nigeria. All lands comprised in the territory of each state is vested in the Governor of that state and is held in trust and administered for the common use and benefit of the people.

The Governor's consent is needed for the assignment of title to use, occupy and improve land and this usually comes in the form of a statutory certificate.

Land Tenure System in Nigeria

- **Leasehold tenure:** This is provided for under the LUA whereby an individual holds interest in the land under a right of occupancy obtained from the State Governor. Holders of a right of occupancy are prohibited from wholly or partly alienating their interest in the land without the consent of the Governor with a few exceptions where the Governor's consent is not required.
- **Freehold tenure:** under this system, the holder of such land has perpetual title to the land and there is no reversion. The LUA does not grant individuals freehold interests in land.

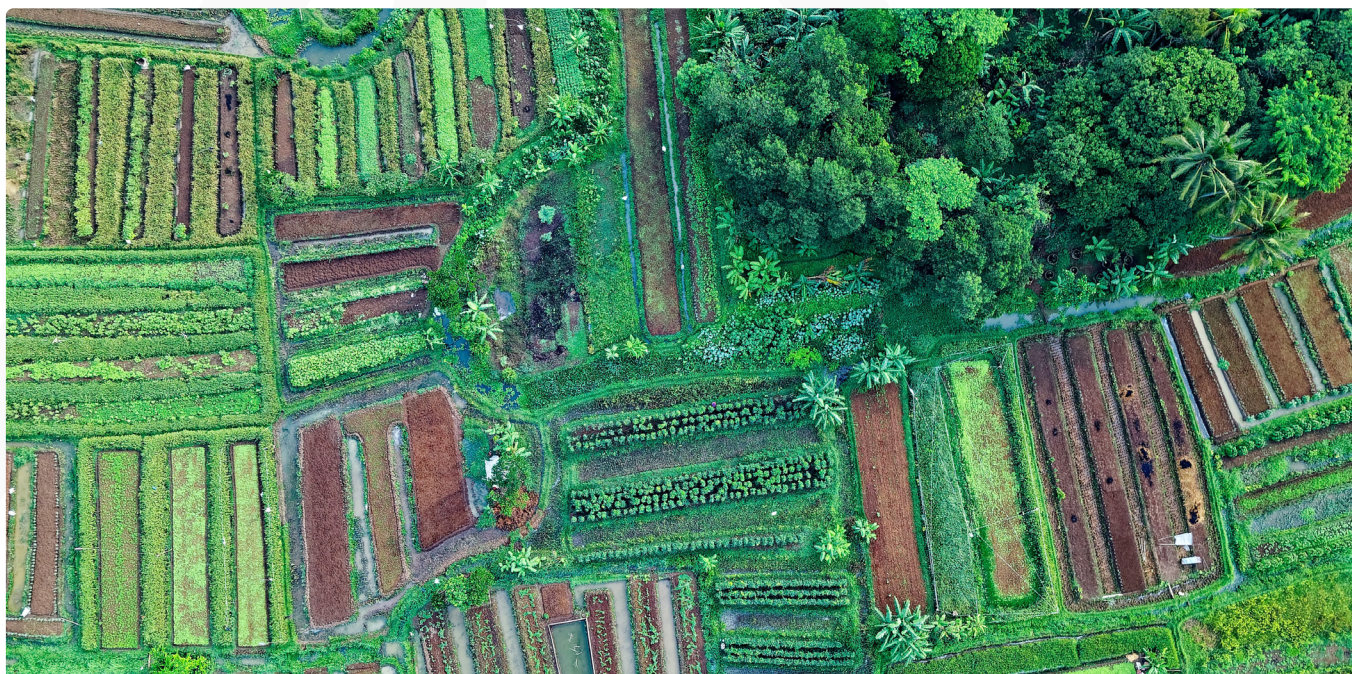
Land Titles in Nigeria

- **Statutory Right of occupancy:** The holder of such interest will be granted a certificate of occupancy as evidence of his interest in the land. The holder has fixed tenure and is liable to pay rents and other charges on the land.
- **Customary Right of Occupancy:** This title is granted by the local government in respect of land not in urban areas for the use of land for agricultural, residential and other purposes.

In commercial lending transactions, different types of security interests may be created on land, with mortgages being the most common. Mortgages play a vital role in facilitating business financing. For businesses seeking capital to expand operations, invest in real estate, or acquire assets and mortgages provide avenues to secure loans and attract investment.

By offering land or property as collateral through a mortgage, companies can access substantial funds from lenders, thus allowing them to pursue growth opportunities and achieve their strategic objectives. Also, collateral enable companies to secure financing without transferring ownership of their assets, offering flexibility and preserving their operational control. These financing mechanisms not only benefit the companies by securing access to capital but also provide lenders with a reliable means of mitigating risk and recovering their investments in the event of default.

Foreign Ownership of Nigerian land: Nigerian law restricts foreign ownership of land in Nigeria. Judicial precedents suggest that the Land Use Act specifically limits the ownership of land in Nigeria to Nigerians but foreigner can obtain a statutory right of occupancy in accordance with state laws e.g. Acquisition of Lands by Aliens Law of Lagos State.



Intellectual Property

Nigeria's Intellectual Property Regulatory Landscape

According to the World Intellectual Property Organization (WIPO) Global Innovation Index 2022, Nigeria ranked 13th in the Sub-Saharan African Region statistics on intellectual property.¹ Nigeria is one of the world's largest hubs of innovation and creativity, as Nigerians are steadily bringing new inventions worthy of IP protection into the market.²

Nigeria has several laws providing for IP protection. Nigeria's main sources of intellectual property rights protection are the Copyright Act 2022, the Trademarks Act 1965, the Patent and Designs Act 1970 and the Plant Variety Act 2021.

Copyright

The Copyright Act is regulated by the Nigeria Copyright Commission (NCC).³ The law gives the author the right to allow or restrict certain uses of his work. Copyright means the right to copy. Section 1(1) of the Copyright Act states certain works that are eligible for copyright protection, which include

- literary works
- artistic works
- musical works
- cinematographic works now referred to as audiovisual works in the Copyright Act of 2022
- sound recordings, and
- broadcasts.

These rights are acquired automatically; hence, there is no need to register a copyright in Nigeria. However, the Nigerian Copyright Commission has provided a notification scheme whereby Authors may elect to notify the Commission about the existence of their works.⁴

Nigeria passed into law a new Copyright Act on 17th of March 2023.⁵ The new Act introduces several provisions to adequately protect rights associated with works in Nigeria.⁶

A major and celebrated highlight of the Act is the expansion of exclusive rights for a copyright holder to include the right of making their work available to the public via wire, wireless or online in such a way that members of the public can access the work from any place and time individually chosen by them.⁷

Accordingly, the Act protects works in digitised format. It provides for the protection of works online by expressly criminalising acts of circumvention by avoiding, bypassing, removing, deactivating, decrypting or otherwise impairing a technological protection measure that effectively protects a copyrighted work. The Act mandates Online Service Providers (OSP) to take down infringing content upon the request of an author, failure of which will make the OSP liable.⁸

Another major highlight is the incorporation of the Marrakesh Treaty to provide access to works published for persons who are blind or visually impaired.

The Act undoubtedly seeks to make the Nigerian creative economy globally competitive and to meet up with the nuances in today's digital world. Hence, the protection of online content, especially with the introduction of a takedown notice.⁹



Trademarks

The Trademarks Registry regulates the Trademarks Act, and the Registrar of Trademarks manages the Register of Trademarks.¹⁰ Trademarks are symbols, signs, slogans, names, and devices used or proposed to be used to differentiate a brand's goods and services from that of another brand.

Trademarks are crucial to a brand's existence as they build the reputation of the brand by giving it a sense of popularity. Some brands have become household names because consumers have, over time, associated and identified products with the "mark/logo" of a particular brand. Notably, the rights conferred on the Proprietor of a trademark are not automatic as there is a pre-requisite to register the trademarks before they are eligible for protection under the extant Trademark Law.

Patents and Industrial Design

The Patent and Design Registry regulates the provisions of the Patent and Design Act, and the Registrar of Patent and Design manages the Register of Patent and Design.¹¹

A patent is an exclusive right that is granted for an invention of a product or process. Essentially, the law protects the owner against the independent development of the patented subject matter. It is a grant from a government that confers upon an inventor the right to exclude others from making, using, selling, importing or offering an invention for sale for a fixed period. The patent's lifespan lasts for 20 years, provided the annual renewal fees are paid for the duration of its potential life. Also, the rights conferred on a patentee are not automatic. It requires statutory registration of the invention.

Industrial designs are those elements incorporated into mass-produced items that tend to enhance attractiveness by their appearance. Industrial design protection covers designs that are original and novel. For an article to qualify for protection as an industrial design, it must be capable of application for mass or industrial reproduction. According to section 12 of the Patents & Designs Act, industrial designs are created as models or patterns to be multiplied by an industrial process.

They are not intended to achieve a technical function. The net effect of this section is that a design need not be functional nor add value to the ability or substance of the article. It suffices if all the design does is to attract attention or if it is eye-catching to influence consumers.



The patent's lifespan lasts for 20 years, provided the annual renewal fees are paid for the duration of its potential life.

Plant Varieties

Nigeria also passed the Plant Variety Protection Act 2021 in accordance with the International Convention for the Protection of New Plant Varieties (UPOV), which was established in 1991.

The law attempts to increase crop productivity, protect plant breeders, and promote investment in crop variety development. Plant variety protection was not covered by any laws or regulations before the enactment of this Act. New plant varieties require years to breed. Hence, it is essential that their protection under IP rules act as a motivator for breeders and investors in the agricultural sector.

New developments such as these in the Intellectual Property sphere of Nigeria guarantee investors that their IP investments in the country will be protected. Also, the enactment of the

Plant Variety Protection Act 2021 will usher in new innovations and discoveries as regards nature, plants, herbs, etc., making more people gain interest in investing as they are assured that their projects, inventions, and discoveries are protected.

In addition to the Intellectual Property laws cited above, Nigeria has ratified various international treaties as a steppingstone to developing its outdated IP regimes. The WIPO Copyright Treaty (WCT), WIPO Performances and Phonograms Treaty (WPPT) and WIPO Beijing Treaty for the Protection of Audiovisual Performances (BTAP).

These agreements establish global norms for copyright protection in line with technological advancements in our world today. WCT protects authors of literary and creative works, WPPT protects phonogram performers and producers, and actors and performers in audiovisual performances are protected by BTAP.



Capital Markets and Securities

The Nigerian Exchange Limited (the “NGX”) (formerly the Nigerian Stock Exchange) became operational in September 1960.

The NGX is a new wholly-owned subsidiary of the Nigerian Exchange Group Plc (the company resulting from the demutualisation and restructuring of the former Nigerian Stock Exchange in 2021, which now operates the group's securities exchange business). The NGX is registered by the Securities and Exchange Commission (“SEC”) as a securities exchange.

The NGX lists equity instruments, as well as fixed income instruments, exchange traded funds (ETF), mutual funds and other collective investment schemes. There are approximately 156 companies listed on the NGX as of June 2023.

There is no restriction on the amount of equity that a foreign company may hold in a listed company.

A Nigerian company may be listed on either the:

Premium Board: Equities listed on the Premium Board are issued by an elite group of companies required to discharge stringent corporate governance obligations, meet a market capitalisation criterion of at least NGN 200 billion and meet specific liquidity criteria prescribed by the NGX.

Main Board: This contains equities issued by larger companies admitted to NGX based on profitability, with a market capitalisation of at least NGN 4 billion or shareholders' equity of at least NGN 3 billion.

Alternative Securities Market Board: The ASeM lists equities of smaller, high-growth emerging businesses.

Growth Board: The NGX created the Growth Board in January 2020 to encourage the listing of high-growth start-ups, small and medium-sized enterprises and small-cap entities in a bid to encourage these companies to leverage the capital market for long-term capital, stimulate growth and to promote liquidity.

Tech Board: The tech board was introduced in December 2022 and is a specialised platform for technology-based companies to list and raise capital on the NGX.

The SEC is the primary regulatory body mandated to oversee capital markets and securities related matters in Nigeria.

Mandatory Listing Requirements

The NGX provides a schedule of listing requirements on its website. Depending on the relevant Board, the NGX requires that a minimum of 10 - 20% of the issued shares of a publicly listed company are held by the public.

Exchanges

In addition to the NGX which lists both equity and debt securities, other Exchanges within the Nigerian capital markets include: FMDQ Securities Exchange Limited, NASD PLC, AFEX Commodities Exchange Limited, Lagos Commodities and Futures Exchange, and the NCX Commodity Exchange.



Anti-Bribery and Anti-Corruption

The Corrupt Practices and Other Related Offences Act (the “Act”) 2000 was enacted to prevent, prohibit, and prescribe penalties for corrupt practices and related offenses in both the public and private sectors.

The Act covers a wide range of offenses, including bribery, embezzlement, abuse of office, money laundering, fraudulent acquisition of property, diversion of public funds, and illicit enrichment, among others.

The Act establishes the Independent Corrupt Practices and Other Related Offences Commission (the “Commission”) which is charged with the responsibility of investigation and prosecution of corrupt practices under the Act.

The Act imposes severe penalties for offenses related to corruption. It provides for fines, imprisonment, or both, depending on the gravity of the offense.

The Act also allows for the forfeiture of assets acquired through corrupt practices. The Act plays a crucial role in Nigeria's efforts to combat corruption and promote transparency and accountability in both public and private sectors.

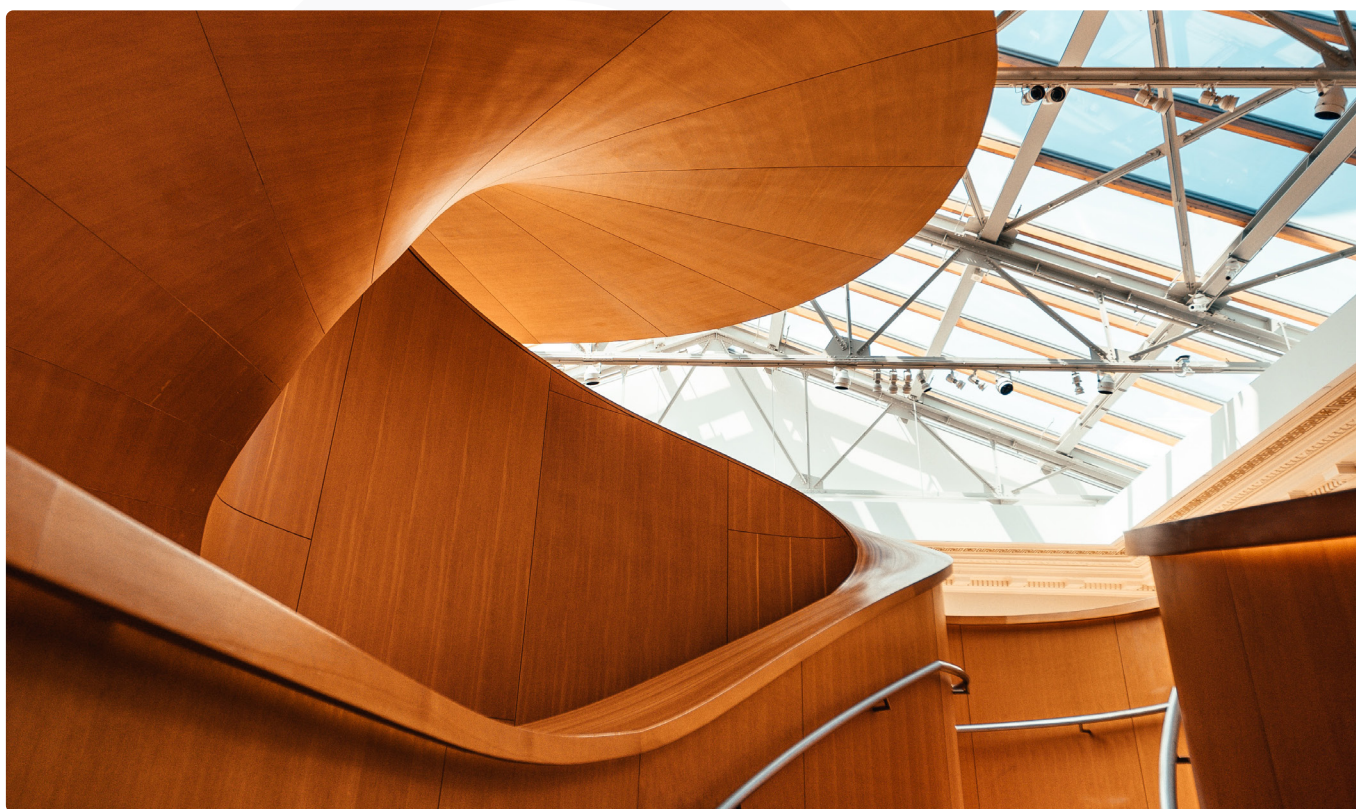
The Corrupt Practices and Other Related Offences Act serves as a legal framework for investigating, prosecuting, and punishing individuals involved in corrupt practices and related offenses.



Anti-trust

Domestic Merger Control Regimes

Nigeria is an emerging competition enforcement jurisdiction. This is attributed to the enactment of the Federal Competition and Consumer Protection Act (the “FCCPA”) in 2019 and the relevant regulations and guidelines, which among other things, safeguard the Nigerian economy against monopolistic ventures.



Prior to the enactment of the FCCPA, mergers and acquisition transactions were primarily regulated by the Securities and Exchange Commission (“SEC”) in accordance with the provisions of the Investments and Securities Act, No 29 of 2007 (“ISA”) and the Securities and Exchange Commission Rules & Regulations, 2013 made pursuant to the ISA (the “SEC Rules”).

The FCCPA repeals Sections 118 -128 of the ISA (the sections that previously regulated mergers and acquisitions in Nigeria). Consequently, the provisions of the SEC Rules made in connection with the repealed portions of the ISA are no longer applicable.

The Federal Competition and Consumer Protection Commission (“FCCPC”) established under the FCCP Act is empowered to review and approve mergers in Nigeria.

Generally, a merger will be notifiable to the FCCPC where the merger meets with or exceeds the thresholds for merger notification as provided under the FCCPA Notice of Threshold for Merger Notification; and where the merger results in a change of control in the target entity.

Threshold Test

A merger meets the threshold test if in the preceding financial year, the combined annual turnover of an acquiring undertaking and a target undertaking in, into or from Nigeria equals or exceeds NGN 1 billion or the annual turnover of the target undertaking in, into or from Nigeria equals or exceeds NGN 500 million.

Control Test

There are 3 levels of interest referred to as 'control':

- beneficially owning 51% or more of the issued shares of the company;
- acquiring the ability to control the policy of another undertaking in certain circumstances, albeit whilst holding less than the majority of voting rights; or
- materially influencing the policy of another undertaking in a manner comparable to a person who can exercise an element of control referred to in the above scenarios.

The FCCPC undertakes the first detailed review in the case of large mergers after receiving a complete and satisfactory notification, including all relevant supporting documents within a maximum of 60 business days of satisfactory notification.

Fees

The fees payable to the FCCPC for filing an application for a merger approval are calculated based on the formula in the table below:

S/N	Threshold	Fees (last combined annual turnover)	Fees (last combined annual turnover)
1.	First 500 Million	0.45%	0.45%
2.	Next 500 Million	0.40%	0.45%
3.	Any sum thereafter	0.35%	0.35%

The applicable fees for the merger notifications shall be the higher of a sum of either the percentages of the consideration sum payable for the transaction as specified in the fee table above or the percentages of the last annual turnover as specified in the fee table above.

The relevant turnover for the purpose of calculating the applicable fees in respect of mergers involving foreign entities with a local component is the turnover attributable to the business of the local component(s) in Nigeria.

All merger applications shall be subject to the payment of an application fee in the sum of NGN 50,000 per undertaking.

Where parties opt for an expedited review, a fee of NGN 10 million will be payable in addition to the applicable application fee for the negative clearance procedure which is NGN 2.5 million.

The timeline for obtaining the approval of the FCCPC is dependent on whether the proposed transaction solely undergoes a first phase review or undergoes a first phase review and subsequently requires a second phase review.

Timelines

The FCCPC undertakes the first detailed review in the case of large mergers after receiving a complete and satisfactory notification, including all relevant supporting documents within a maximum of 60 business days of satisfactory notification, which may be extended by up to a further 30 business days where the merger raises initial competition concerns and parties propose acceptable remedies, but where the need for a second phase review is not expected.

Where the FCCPC commences a second detailed review, the overall timeframe will be extended by 60 business days, with such timeframe inclusive of the period within which the undertakings may propose acceptable remedies.

For the majority of cases where no material competition concerns arise, the FCCPC typically completes the first detailed review within 30 - 45 business days.

Please note that parties can opt for the expedited review procedure, upon payment of the statutory fee. The expedited review procedure reduces the timeframe for the first phase review by 40%. It is advised that parties engage in pre-merger consultations with the FCCPC in this regard to determine suitability before paying the statutory fee.

Sanctions for non-compliance with domestic merger control regimes

The FCCPC has the power to impose administrative sanctions and penalties on businesses that violate the FCCPA. Some of these sanctions and penalties include:

- The imposition of fines, which can be up to 10% of the annual turnover of the offending business;
- The revocation or suspension of licences or permits;
- The divestment of assets or shares;
- The imposition of restrictions on business activities

Anti-Competitive Practices

Anti-competitive practices are actions that businesses take to reduce or eliminate competition in the market, often resulting in higher prices, reduced quality, and less choice for consumers. In Nigeria, the following are common types of anti-competitive practices:

- Price-fixing;
- Conspiracy;
- Collective boycotting;
- Bid-rigging;
- Market allocation;
- Tying and bundling; and

Consumer Protection

Consumer protection legislation in Nigeria is contained primarily in the Federal Competition and Consumer Protection Act (the "FCCPA").



Prior to the enactment of the FCCPA, the principal legislation that protected the rights of consumers in Nigeria was the Consumer Protection Council Act, 2004 ("CPA"), which established the Consumer Protection Council ("CPC"); however, the FCCPA repealed the CPA and the FCCPC assumed all rights, interests, obligations, assets and liabilities of the CPC..

The FCCPA applies to and binds all undertakings (that is, any person involved in the production of or the trade in goods, or the provision of service) and all commercial activities within, or having effect within Nigeria, including:

- a body corporate or agency of the Government of the Federation or of a sub-division of the Federation, if the body corporate or agency engages in commercial activities;
- a body corporate or agency in which the Government of the Federation or Government of a State, or a body corporate or agency of the Government of the Federation or any State or Local Government, has a controlling interest, where such a body corporate engages in economic activities; and
- all commercial activities aimed at making profit and geared towards the satisfaction of demand from the public.

The FCCPA provides that the consumer has a right to services performed in a manner and quality that “reasonable persons” are generally entitled to expect.

As it pertains to the quality of goods, the FCCPA stipulates, amongst others, that every consumer has a right to goods that are of good quality, in good working order, free from defects, and that comply with any applicable standards set by the industry sector regulator. Also, there is an implied warranty in any transaction that the goods comply with good quality and applicable standards outlined in the FCCPA, failing which the customer may exercise the right to return the goods within a prescribed period.

The Government has imposed consumer protection provisions in various pieces of legislation to protect consumers and the general public against health hazards and counterfeit products, among others.

The FCCPA provides that the consumer has the right to receive goods that are “reasonably suitable” for the intended purpose, whilst the quality of service must be such that a reasonable person is generally entitled to receive. Further, where the consumer has specifically informed the seller of the particular purpose for which the consumer intends to use the product and the supplier ordinarily offers such goods or acts in a manner that suggests that he has knowledge, the consumer has a right to expect that the goods are reasonably suitable for the specific purpose he has indicated. Where there is an allegation of defective goods or service, the onus of proof is on the undertaking that supplied the goods or service.

In addition, the FCCPC has the power to order quality tests to be conducted on consumer goods as it deems necessary and seal up any premises on reasonable suspicion that such premises contain, harbour or are being used to produce or disseminate goods or services that are fake, substandard or inimical to consumers' welfare, in collaboration with relevant sector regulations.

The Government has imposed consumer protection provisions in various pieces of legislation to protect consumers and the general public against health hazards and counterfeit products, among others.

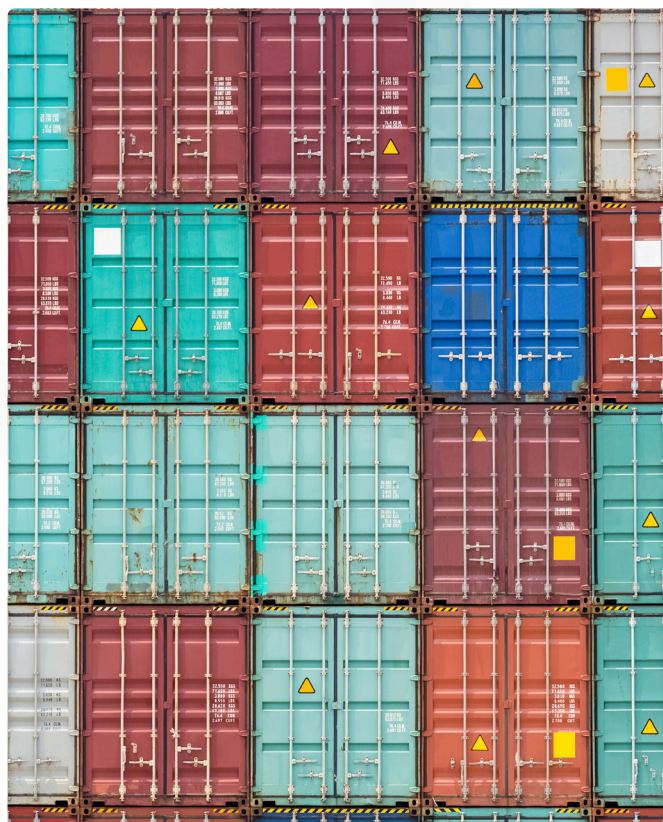
The available remedies include penalties/fines, monetary restitution or compensation (for an aggrieved consumer) and/or term of imprisonment. More specifically, the consumer has a right to return defective goods within 3 months, and the undertaking is expected to repair or replace such goods or return a portion of the purchase price. A consumer can also file a complaint in accordance with the provisions of the FCCPA.

In addition, where a damage is caused wholly or partly by defective goods or the supply of a service, the undertaking that supplied the goods or service is liable for the damage. Such damage may include personal injury and damage to the consumer's property.

Separately, the FCCPA indicates that other sector regulators with consumer protection oversight have a concurrent jurisdiction with the FCCPC. However, in the event of a conflict between the FCCPC and a sector regulator, the FCCPC will have precedence over the said sector regulator.

Some sector regulators include:

- The Central Bank of Nigeria (“CBN”)
- National Agency for Food and Drug Administration and Control (“NAFDAC”)
- Nigerian Electricity Regulatory Commission (“NERC”)
- Nigerian Communications Commission (“NCC”)
- Standards Organisation of Nigeria (“SON”)



Banking and Finance

Regulatory Overview of Banking and Finance in Nigeria

The banking sector in Nigeria is primarily regulated by the Central Bank of Nigeria (CBN) which is established under the Central Bank (Establishment) Act 2007 ("CBN Act").



The CBN also derives its authority from the Banks and Other Financial Institutions Act, 2020 ("BOFIA") which provides for its regulatory and supervisory powers over the Nigerian banking and financial system.

Other relevant legislation includes Nigerian Deposit Insurance Corporation Act (NDIC Act), Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995 (FEMM Act), Companies and Allied Matters Act, 2020 (CAMA), among others.

Banking licences

Under the BOFIA, an entity is not permitted to carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence issued by the CBN.

BOFIA defines banking business as the business of receiving deposits on current accounts, savings deposit account or other similar account, paying or collecting cheque drawn by or paid in by customers; provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person whether such businesses are conducted digitally, virtually or electronically only or such other business as the Governor of the CBN may by order, published in the Gazette, designate as banking business.

The Nigerian banking statutory and regulatory regime contemplates multiple licensing regimes. In this regard, the CBN issues different licences depending on the nature and scope of banking business to be undertaken by the relevant entity.

These include:

- **Commercial Banking Licence:** The commercial banking licence is issued for banking operations on regional, national, or international basis. The share capital requirement for each category of commercial banking licence is NGN 10 million, NGN 25 billion and NGN 50 billion respectively or such other amount as may be prescribed by the CBN. A commercial banking licence entitles the licensee to inter alia take deposits and maintain current and saving accounts; provide retail banking services, including mortgage products; provide finance and credit facilities; deal in foreign exchange; provide custodial services; and provide financial advisory services incidental to commercial banking business. A commercial banking licence holder is allowed to engage in taking of deposits and maintaining current and saving accounts; providing retail banking services, including mortgage products; providing finance and credit facilities; dealing in foreign exchange; providing custodial services; and providing financial advisory services incidental to commercial banking business.
- **Merchant Banking Licence:** A merchant banking licence allows the holder to provide specialist services including wholesale banking services and investment banking services. A merchant banking licence permits taking of deposits (not below NGN 100 million or any other minimum amount that may be prescribed by the CBN, per tranche); providing finance and credit facilities to non-retail customers; dealing in foreign exchange; providing underwriting services; and providing debt factoring services. The share capital requirement for a merchant banking licence is NGN 15 billion.
- **Specialised Banking Licences:** A specialised banking licence is issued to specialised banks. These include non-interest banks, microfinance banks, development banks, mortgage banks and any other banks the CBN designates from time to time.
- **Payment Service Bank (PSB) Licence:** This is a banking licence introduced by the CBN to promote financial inclusion within rural areas and unbanked locations. A licensee is permitted to accept deposits from individuals and small businesses, carry out of payment and remittance services, sell foreign exchange realised from inbound cross-border personal remittances to authorised foreign exchange dealers, etc. The share capital requirement for a PSB licence is NGN 5 billion.
- **Payment System Licences:** There are four major payment licences in Nigeria, with different categories of permissible activities. These include, switching and processing licence, mobile money operation licence, payment solutions services licence (which includes the super-agent, payment terminal service provider, and payment solutions service provider), and regulatory sandbox.

Setting up a Bank/Financial Institution in Nigeria

The application process and timing for obtaining banking licences in Nigeria will depend on the type of bank licence. In any case, the application process is usually in two phases – application for an Approval-in-Principle ("AIP") to set up the bank/financial institution and application for final licence.

- An AIP application must be in writing to the Governor of the CBN through the Director of Banking Supervision Department (DBS). The application must be accompanied by the prescribed non-refundable application fee (NGN 0.5 million) documents such as: feasibility report of the proposed bank; draft copies of the constitutional documents; particulars of the proposed shareholders, directors and principal officers; deposit of the required minimum paid-up share capital of the bank; where the application is in relation to non-interest banking, a list of experts on non-interest banking or finance that will serve as its advisory committee of experts; and such other information as the CBN may require. Upon receiving AIP from the CBN, the promoters can proceed to incorporate the proposed bank as a company with the Nigerian companies' registry.
- Not later than 6 months after the grant of the AIP, the promoters of the proposed bank will submit an application for the grant of a final banking licence to the CBN together with payment of the non-refundable licensing fee prescribed by CBN NGN 5 million accompanied by the requisite documents. Under BOFIA, the CBN reserves the right to issue a licence with or without conditions or to refuse to issue a licence, without giving any reason for such refusal. Upon the grant of a final licence but before the commencement of banking operations, the bank is required to forward a letter to the CBN stating its capability and readiness to commence operations. The BOFIA does not contain any provisions on the timeline for the grant of the licence. However, depending on the type of banking licence and whether the CBN has little or no queries in respect of the documentation or information provided in support of the application, the application process may be concluded within a period of 6 to 24 months.

Representative Offices of Foreign Banks

Under the BOFIA, a foreign bank is required to be incorporated in Nigeria with a valid banking licence to undertake banking services in Nigeria. However, foreign banks can open representative offices in Nigeria. Representative offices were statutorily recognised under the BOFIA. The representative office must be incorporated in Nigeria and the prior approval of the CBN must be sought before it can be incorporated.

The CBN Guidelines for the Regulation of Representative Offices of Foreign Banks in Nigeria, 2023, prescribes the permissible and non-permissible activities of such representative offices.

Permissible activities include marketing the products and services of its foreign parent or affiliate; carrying out research activities in Nigeria; serving as a liaison between the foreign parent and local banks and other customers of the foreign parent in Nigeria; pursuing business opportunities for the foreign parent or affiliates on foreign regarding currency denominated loans, etc. A representative office cannot provide banking services in Nigeria, provide any commercial or trading activity that may lead to the issuance of invoices for services rendered, or engage directly in any financial transaction except it is permitted.

Foreign Exchange Considerations

One of the privileges banks enjoy in Nigeria is the licence to deal in foreign currency. Pursuant to the FEMM Act, the CBN has the power to appoint any bank as an Authorised Dealer of foreign currency. Authorised Dealer is defined in the FEMM Act as well as the CBN Foreign Exchange Manual 2018 to mean any bank licenced under BOFIA and such other specialised bank and issued with licence to deal in foreign exchange.

Where a foreign entity or investor intends to establish a bank in Nigeria, one of the requirements is to import foreign capital through an authorised dealer. The capital may be converted to Naira, in which case, a certificate of capital importation (CCI) must be obtained from the Authorised Dealer as evidence of importation of capital. The main purpose of a CCI is to allow investors to repatriate their funds through the official foreign exchange market, which before now, offered more stable and favourable exchange rates. However, the significance of a CCI has been brought into question due to the recent changes made by the CBN in the foreign exchange market.

These changes include the consolidation of all foreign exchange segments into one (the Investors and Exporters (I&E) Window Rate) and the introduction of the Willing Buyer - Willing Seller concept.

Despite these changes, obtaining a CCI is still important because dividends are still eligible for foreign exchange, and having a CCI is one of the required documents for Authorised Dealers to facilitate the availability of foreign exchange for the repatriation of profits.

Mergers and acquisitions in the banking and finance industry in Nigeria

Mergers and acquisitions have been an effective tool in the banking and finance industry in Nigeria in achieving a number of objectives, which include consolidation of capital, business expansion, among others. During the banking capital consolidation exercise in 2008, which was an action taken by the CBN following the global financial crisis in 2008, the banking system was transformed from 89 banks to 25 banks through regulatory merger and acquisition. This action enabled some banks to gain market participation. For example, United Bank of Africa had its total asset grow from NGN 884.1 million in September 2006 to NGN 1.7 billion in 2008 (~90% growth) after the merger between United Bank

for Africa, Standard Trust bank and continental trust bank. Similarly, Stanbic Bank Nigeria Limited's acquisition of Chartered Bank & IBTC resulted in the emergence of a new entity, Stanbic IBTC bank, that has gone on to create a strong reputation in banking, asset management and pension fund management (where it holds ~37% of Nigeria's total pension assets).

These examples illustrate the evolving landscape of mergers and acquisitions in the Nigerian banking and finance industry. M&A activity in the sector is driven by various factors, including market dynamics, regulatory reforms, technological advancements, and the pursuit of increased market share and competitiveness.

One of the biggest M&A transactions in Nigeria is the Merger between Access Bank and Diamond Bank. The deal was strategic as it consolidated Access bank's position as a tier one bank with a strong capital base. The merger has contributed to a healthy competition between the new entity and other existing banks and helped strengthen the Nigeria Banking system.

The relevant laws relating to mergers and acquisitions in the Nigerian banking and finance industry are the Companies and Allied Matters Act, the Banks and Other Financial Institutions Act, the Federal Competition and Consumer Protection Act.



Under BOFIA, any form of merger or acquisition involving a bank must be subject to the written approval of the CBN.

Section 7(1) of BOFIA provides that:

“Except with the prior written consent of the Governor, no bank shall enter into an agreement or arrangement: which results in

- a. a change in the control of the bank; or
 - b. the transfer of a significant shareholding in the bank;
- for the sale, disposal, or merger of the bank with any other person;
 - for the amalgamation or merger of the bank with any other person;
 - for the restructuring, reconstruction, or re-organisation of the bank; or
 - to transfer the whole or any part of the business of the bank to any agent”

Thus, BOFIA requires that the approval of the CBN must be obtained concerning M&A transactions by banks. The CBN considers several factors in reviewing M&A transactions before granting its approval. These factors include:

- such agreement or arrangement is not likely to cause a restraint of competition or tend to create a monopoly in the banking industry;
- the significant shareholders or directors of the bank that results from the agreement or arrangement are not disqualified under section 47 of BOFIA;
- the agreement or arrangement is consistent with the public interest; and
- the bank that results from the agreement or arrangement meets the capital requirements prescribed under sections 9 and 13 of BOFIA.

It is important to note that the activities of banks or financial institutions which are licenced by the CBN are not regulated by the Federal Competition and Consumer Protection Commission (FCCPC) in relation to mergers and acquisitions.

BOFIA provides that the provisions of the FCCPA shall not apply to (a) any function, act, financial product, or financial services issued or undertaking and transaction howsoever described by a bank or other financial institution licenced by the CBN; and (b) the CBN, the Governor, or other executive officer or staff of the CBN.

In addition, section 65 (2) and (3) of BOFIA provides that:

- Notwithstanding anything contrary in BOFIA but subject to subsection (3) of this section, sections 92(1), (2) (3), 94 and 98 of the FCCPA shall apply to a merger, acquisition or other form of business combination which involves a CBN licensee.
- All references to the FCCPC in sections 92(1), (2) and (3), 94 and 98 of the FCCPA shall be deemed and construed as a reference to the CBN.

Specifically, BOFIA states that its provisions shall apply notwithstanding the provisions of the FCCPA in so far as they relate to CBN licensees and where any provision of the FCCPA is inconsistent with the provisions of BOFIA, the provisions of BOFIA shall prevail.

It is important to note that the CBN will have regulatory powers over a merger that involves a CBN licensee and a non-CBN licensee. Section 7(1)(c) of BOFIA provides that “except with the prior written consent of the Governor [of the CBN], no bank shall enter into an agreement or arrangement for the amalgamation or merger of the bank with any other person.”

While the definition of “person” as used in the subsection was not defined under section 7 of BOFIA nor defined in the interpretation section of BOFIA, the Interpretation

Act provides that “person” “includes any body of persons corporate or un-incorporate”; This would mean that where the amalgamation or merger by a CBN licensee and a non-CBN licensee will cause a restraint of competition or tend to create a monopoly in the banking industry, the approval of the CBN will be required.

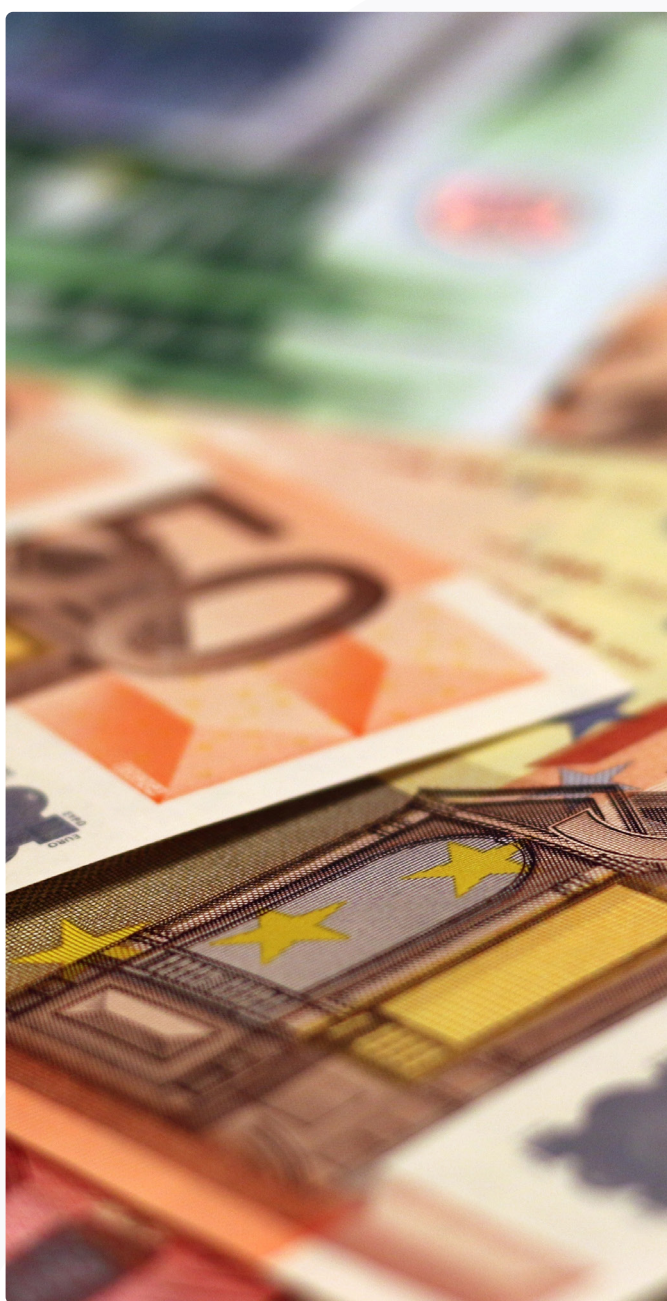
Recent trends and practices

The most significant regulatory development in the Nigerian banking industry is the recent operational changes to the foreign exchange market introduced by the CBN, which was contained in the CBN Press Release titled “Operational Changes to the Foreign Exchange Market” (the “Press Release”).

The notable change is that Nigeria has now adopted a ‘floating’ or ‘market determined’ exchange rate as opposed to the CBN rate which over the year, did not reflect the economic realities of the market. Hence, the wide gap between what was the official ‘CBN rate’ and the ‘parallel market’ rate. The key highlights of the changes are broken down as follows:

Abolishment of Segmentation: All segments have been collapsed into the Investor and Exporters (“I&E”) window. The I&E window was set up by the CBN in April 2017 to boost liquidity in the Nigerian foreign exchange market and ensure timely execution and settlement of eligible transactions.

Market Determined Exchange Rates: The Press Release emphasised the re-introduction of the “Willing Buyer, Willing Seller” model which was first introduced in 2017 by the I&E Window Circular. The implication of this is that the exchange rates for the transactions completed in the I&E Window will be as agreed between Authorised Dealers and their counterparts.



Government Related Transactions: All government related transactions such as oil exports are now settled using the exchange rates from the I&E Window from the previous day weighted average rate.

Other Notable Changes: Based on the Press Release, all transactions are to be cleared by a Central Counter Party (CCP). A CCP is a financial risk management institution that interposes itself between counterparties to contracts traded in financial markets and takes on counterparty credit risk between parties to a transaction. CCPs provide clearing and settlement services for trades in foreign exchange, securities, options and derivative contracts. CCPs have become even more critical in financial markets with clearing now globally accepted as an effective risk management mechanism. Other recent trends include the following:

Bank Restructuring: Several banks are transitioning into the holding company structure. While the holding company structure is not a new structure, the current increase in the adoption of the structure by banks is partly driven by the drive to diversify into insurance, Fintech and payment service-related businesses. The major advantage of the holding company structure is that it allows banks to separate their core banking operations from their non-core businesses such as insurance, asset management, pension management and other financial services. Notable examples of banks that have adopted the holding company structure in Nigeria include FBN Holdings Plc, Stanbic IBTC Holdings, Guaranty Trust Bank, Access Holdings, among others.

Increased Regulation of Fintech: Over the last few years, there has been an increase in the regulation of Fintech companies in Nigeria. The CBN issued a number of regulations which have played a crucial role in defining the Fintech space in Nigeria. In particular, the CBN recently granted PSB licences to three telecommunication companies. The PSB licence will enable them offer an array of mobile financial services.

In addition to the above, one trend which has been very common in the industry is the increased collaboration between traditional banking companies and fintech companies. This collaboration has played a significant role in promoting financial inclusion in Nigeria. For instance, a notable collaboration between traditional banks and fintech companies in Nigeria is the partnership between Access Bank and PayWithCapture.

Access Bank, one of Nigeria's leading commercial banks, teamed up with PayWithCapture, a fintech platform, to introduce a mobile payment solution that allows customers to make payments and carry out financial transactions conveniently using their smartphones. This collaboration has facilitated access to financial services for millions of previously unbanked Nigerians, empowering them to participate in the formal economy.

Opportunities in the industry

Banks play a crucial role in propelling the entire economy of any nation. There are opportunities for new entrants looking to operate in the banking sector in Nigeria. Based on a recent report by the World Bank, Nigeria is among the seven countries in the world with more than half of its population still unbanked. The report revealed that 64 million of its nearly 200 million people still do not have an account with a financial institution or mobile money platform.

Foreign banks coming into Nigeria, are not coming to a saturated market, but one which is filled with a great potential and opportunities for growth and diversification.

There are also opportunities in the Nigerian digital banking and fintech eco system, which has evolved over the years to emerge as one of the top ecosystems in Africa alongside South Africa and Kenya. There are presently over 100 fintech companies in Nigeria engaged in a broad range of products offerings spanning payment solutions, investment, online banking etc.

Recently, the Nigerian Exchange Limited (NGX) announced that the Securities and Exchange Commission approved the Rules for Listing on NGX Technology Board. The NGX Technology Board is a specialised platform for technology-based companies to list and raise capital on the Exchange. This is a wonderful opportunity for fintech companies in Nigeria to raise capital for business expansion.

Conclusion

Nigeria's banking and investment landscape provides an array of opportunities for international investors seeking to tap into Africa's largest economy. While challenges and risks exist, prudent planning, thorough research, and understanding the local business environment can unlock significant rewards.

As Nigeria continues to implement reforms and attract foreign investment, now is the opportune time for global investors to explore and capitalise on the potential of this dynamic market.

Foreign banks coming into Nigeria, are not coming to a saturated market, but one which is filled with a great potential and opportunities for growth and diversification.



Nigeria's Fintech Payment Systems and Infrastructure

Nigeria has an active startup and tech scene and is a leading destination for investment deals on the continent. With a young and growing population and projected to become the third most populous country in the world by 2050, the country's status as a target for startup capital is likely to remain intact in the short to medium term.

The Nigeria Startup Act 2022 (the "NSA") is the overarching legislation relating to startup/fintech activity in Nigeria.

Nigerian startups face various obstacles such as high business costs, regulatory hurdles, inadequate physical and digital infrastructure, etc. To address some of these challenges, the President signed the Nigeria Startup Act (the "NSA") 2022 into law on 19 October 2022.



The NSA is the outcome of a collaborative effort of between stakeholders in the Nigerian tech startup ecosystem and the government. Its primary objective is to establish and foster a conducive environment for technology-enabled startups in Nigeria, with the goal of positioning Nigeria's startup ecosystem as the leading digital technology hub in Africa.

The NSA introduces a labelling concept for eligible startups and provides for several tax incentives for these labelled startups.

Incentives include pioneer status incentives; exemption from contributions to the Industrial Training Fund; import incentives

and access to export facilities; and access to government grants, loans and facilities. Additionally, the NSA introduced a Startup Investment Seed Fund which will be managed by the Nigeria Sovereign Investment Authority. The primary purpose of this fund is to provide financial assistance to designated startups and offer relief to technology laboratories, accelerators, incubators, and hubs.

A lot of startup activity in the country is focused on fintech offerings and financial services infrastructure, but there is growing interest in other sectors, particularly renewable energy, healthtech, edtech, and logistics.

Payment Solutions Providers

The Central Bank of Nigeria (CBN) has primary jurisdiction over Payment Solutions Providers (PSPs). Licences under this function are broadly categorised as follows:

- Switching and Processing
- Mobile Money Operator;
- Payment Solutions Services; and
- Regulatory sandbox

Permissible activities under the licences range from agent banking to transaction processing and settlement. A core participant in the payments system is the NIBSS Plc (Nigerian Interbank Settlement System PLC) which acts as the central switch, and houses a central fraud desk, among other functions.

The regulatory framework is derived from the Banks and Other Financial Institutions Act 2020 (the "BOFIA") and circulars and guidelines issued by the CBN, in addition to other ancillary regulations. Recent developments include the launch of AfriGo which is a national domestic card scheme, issuance of guidelines for open banking, regulatory focus on contactless payments, establishment of a regulatory sandbox programme by the CBN, and the introduction of payment service banks.

Lending Services

Credit propositions are popular with fintechs in Nigeria. Lending services, like PSPs, are principally regulated by the CBN at the federal level. Licences which are typically leveraged at this level are the finance company licences and microfinance banking licences.

At the state level, fintechs can obtain a moneylending licence to operate within relevant states. The relaxed regulatory oversight applicable to moneylending licences made them popular among digital lenders, but this has come with a corresponding increase in unethical lending and debt recovery practices. As a means of protecting lending customers, the Federal Competition and Consumer Protection Commission (the "FCCPC"), which is the core consumer protection agency in the country, now requires digital lenders to obtain its approval for operations.

Crowdfunding

Crowdfunding is regulated by the Securities and Exchange Commission (the "SEC"). Under the SEC's Crowdfunding Rules, micro, medium and small-scale (MSMEs) businesses can raise seed capital through crowdfunding platforms but retail investors cannot invest more than 10% of their net annual income in crowdfunded investment, each calendar year.

Only the following entities are eligible to raise funds through a crowdfunding portal which must be operated by a registered crowdfunding intermediary:

- MSMEs incorporated as a company in Nigeria with a minimum of 2 years of operations;
- MSMEs incorporated as a company in Nigeria with less than 2 years of operations but with a strong technical partner having at least 2 years of operations or a core investor;

A crowdfunding intermediary is an entity that facilitates crowdfunding transactions through a crowdfunding portal.

A crowdfunding portal is a website, portal or platform used to facilitate interactions between fundraisers and the investing public. Crowdfunding intermediaries that facilitate interactions between fundraisers and the investing public for investment-based crowdfunding are required to register with the SEC.

A crowdfunding intermediary would be deemed to be operating a crowdfunding platform in Nigeria where, the crowdfunding portal is operated in Nigeria, or where it targets Nigerian investors. A crowdfunding portal located outside Nigeria would be deemed to be targeting Nigerian investors where the crowdfunding intermediary promotes the crowdfunding portal in Nigeria.

Personal Finance

Several startups offer wealth management and personal finance solutions. Generally, most of these services fall within the SEC's regulatory oversight and may require registration with the SEC.

The regulatory dynamic in this sector is likely to rapidly evolve, as the SEC has established a regulatory sandbox programme which may give rise to the establishment of new licence categories. In the interim, several startups have explored partnerships with SEC-licensed operators as a means of not falling foul of extant regulations.

Cryptocurrencies/Digital Assets

The CBN prohibits its regulatees from dealing in or facilitating payments for cryptocurrency transactions. This has limited the wholesale adoption of cryptocurrency in Nigeria. Nevertheless, Nigerians continue to show interest in cryptocurrencies. In a bid to regulate investment-based cryptocurrency transactions in Nigeria, the SEC issued rules on Issuance, Offering Platforms, and Custody of Digital Assets (the "Rules") in May 2022 to regulate digital and virtual assets.



The Rules provide for regulation of digital assets as securities, and registration requirements for platforms, custodians and exchanges. However, utilisation of these Rules as a basis for registration by market participants has been affected by the CBN's current stance on cryptocurrencies.

The recent publication of a national blockchain policy and the inclusion of digital assets as chargeable assets for the purpose of capital gains tax in the 2023 Finance Act may be signs of more policy accommodation for cryptocurrencies by the government.

Fintechs/Startups Investment Incentives

Certain incentives are applicable to startups and other ecosystem stakeholders such as investors, venture capitalists, private equity funds, accelerators, or incubators that invest in labelled startups. Some of these incentives include:

- **Investment Tax Credit:** Stakeholders who invest in labelled startups pursuant to the NSA, may be entitled to an investment tax credit worth 30% of the value of their investment, provided that such credit is applied to returns on the investment. **Repatriation of Capital and Profits:** The law provides that foreign investor can repatriate proceeds of their investments in labelled startups in freely convertible currency. Repatriation shall be at the CBN's official exchange rate and subject to presentation of a Certificate of Capital Importation. Repatriable funds include: Dividends or profits, net of all taxes attributable to the foreign investment; Proceeds obtained in the event of a sale or liquidation of the startup or any interest arising from the foreign investment, net of all taxes and other obligations.
- **Exemption from Capital Gains Tax:** Gains made from the disposal of labelled startup assets that have been held in Nigeria by an angel investor (or other eligible investor) for at least 24 months are exempt from capital gains tax.
- **Incentives for Accelerators and Incubators:** Registered accelerators and Incubators may be entitled to grants and aids for research, development, training, and expansion.

Applicability of Incentives under the Nigeria Export Processing Zones Act

The NSA extends existing incentives under the Nigeria Export Processing Zones Act 1992 ("NEPZA Act") to any accelerator or incubator carrying out an approved activity in a technology development zone. Such zones are to be established in collaboration with the Nigerian Export Processing Zones Authority.

Consequently, accelerators or incubators operating from a technology development zone would be exempt from all federal, state, and local government taxes, levies, and rates in line with the NEPZA Act.

The tax and fiscal incentives provided for Labelled Startups and investors under the Act demonstrate the deliberate intervention of the Federal Government in creating an enabling environment for foreign direct investment needed to sustain the growth and development of the Nigeria Startup ecosystem and position Nigeria as the leading Startup hub in Africa.



Tax

Over the years, Nigeria has been able to build a highly structured tax system backed up by various Acts of the National Assembly and Laws of the respective states. Each level of government administers the tax within its jurisdiction.

Thus, the three tax authorities in Nigeria are the Federal Inland Revenue Service ("FIRS"), the Internal Revenue Services of various states in the Federation ("SIRS") and the Local Government Councils.

This guide will examine the following:

- Companies Income Tax
- Personal Income Tax
- Withholding Tax
- Value Added Tax
- Stamp Duties
- Capital Gains Tax
- Hydrocarbon Tax
- Transfer pricing
- Thin Capitalisation Rules
- Tertiary Education Tax
- Custom and Excise Duties
- Payroll Tax and Social Security
- Double Tax treaties and Bilateral investment agreements
- Tax Disputes' resolution mechanisms.

The Government also continues to focus on promoting investments in the key economic sectors which are agriculture, manufacturing, mining, tourism, oil and gas and economic infrastructure.

Companies Income Tax

The Companies Income Tax Act Cap C21 LFN 2004 (CITA), as amended, provides for the imposition and administration of companies income tax in Nigeria. According to the CITA, The profits of any company accruing in, derived from, brought into, or received in Nigeria are liable to tax at the relevant rates specified under the CITA. The rate of companies income tax payable by a company on its total profits is determined based on the following thresholds:

- a. Small companies (i.e., companies with an annual turnover below NGN 25 million) are completely exempt from payment of companies income tax. Such a company is, however, required to register for CIT and file the necessary returns required under the CITA

- b. Medium-sized companies (i.e., companies with an annual turnover of over NGN 25 million but less than NGN 100 million) are subject to Company Income Tax at the rate of 20%.

- c. Large-sized companies with an annual turnover of over NGN 100 million will be taxed at the rate of 30%.

Non-resident entities are also taxable if they create a Significant Economic Presence in Nigeria during their business operations by:

- deriving an annual turnover or income of more than NGN 25 million (or its equivalent in other currencies), through the provision of certain e-commerce or digital services.
- using a Nigerian domain name (.ng) or registers a website in Nigeria.
- having a purposeful and sustained interaction with persons in Nigeria by customising its platform to target persons in Nigeria (e.g., by reflecting prices of products / services in Naira, providing options for billing or payment in Naira etc.); or
- providing technical, professional, management or consultancy services, and earning income there from a Nigerian resident or a fixed base or agent of a non-Nigerian company in Nigeria. In this case, withholding tax deducted at 10% by the Nigerian recipient will be the final tax payable by the entity.

For companies income tax purposes, the following types of income or profit are exempt:

- profits of statutory or registered friendly societies which were not derived from trade or business.
- profits of duly registered co-operative societies, which were not derived from trade or business carried on by the entity
- Profits of any company formed for the promotion of sports.
- profits of any ecclesiastical or charitable establishments of a public character, which were not derived from trade or business.
- The dividend and rental income received by real estate investment companies provided that at least 75% of dividend and rental income is distributed within 12 months of earning the dividend and rental income.
- Profit of a company established within an Export Processing Zone or Free Trade Zone.

- Profit of a registered trade union.
- Export profits if proceeds are invested in raw materials, spare parts, and plant and machinery.
- The profits of small companies etc.

Personal Income Tax

Personal income tax is regulated by the Personal Income Tax Act Cap P8 LFN 2004 (as amended). The tax is imposed on the income of individuals including employees, partners in a partnership, unincorporated trust, joint ventures, families and communities.

Personal income tax is administered by state Internal Revenue Service (IRS) on the basis of residency. However, in cases of non-residents, members of the Armed Forces, Police, Officers of Nigerian Foreign Service, the tax is administered by FIRS. Corporate employers are required to deduct Personal Income Tax from the income of their employees, (in line with the graduated scale below), and remit to the tax authority where the employee resides. Remittance is expected to be made within 10 days following the end of every month. The graduated scale is set out below:

- First NGN 300,000 taxed at 7%
- Next NGN 300,000 taxed at 11%
- Next NGN 500,000 taxed at 15%
- Next NGN 500,000 taxed at 19%
- Next NGN 1,600,000 taxed at 21%
- Above NGN 3,200,000 taxed at 24%

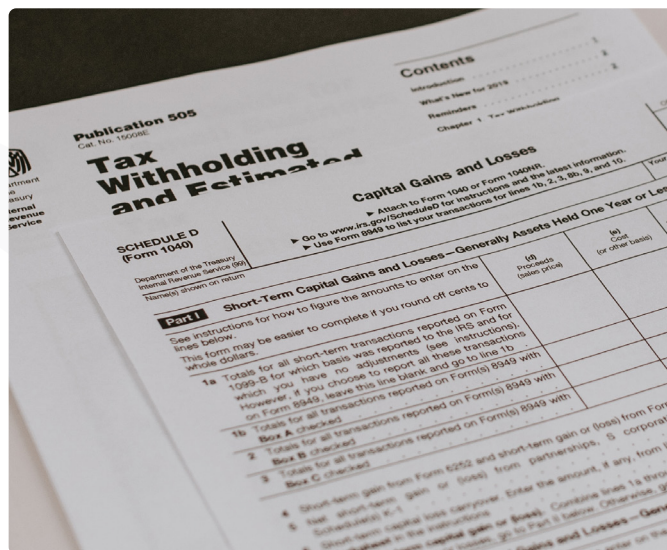
Where an employee is not in Nigeria for a period or periods amounting to an aggregate of 183 days (inclusive of annual leave or temporary period of absence) in any 12-month period commencing in a calendar year and ending either within the same year or the following year, such employee will be regarded as non-resident and will not be required to pay personal income tax.

It is important to note that the Finance Act 2020 has amended the Personal Income Tax Act to provide that income earned by non-resident individuals, executors, and trustees from technical, professional, management, or consultancy services remotely provided to a person resident in Nigeria shall be subject to a final withholding tax in Nigeria at a rate of 10%, if the non-resident individual has a significant economic presence (SEP) in Nigeria.

Withholding Tax

Withholding tax is an advance payment of income tax deductible at source on specified transactions which is to be applied as tax credit in the settlement of income tax liability. It is the deduction at source from payment made to a taxable person from the supply of goods and services.

The persons required to deduct withholding taxes include a body corporate or unincorporate, a Ministry, Department or Agency of government, a firm, any statutory body, a public authority or any other institution, organisation, and establishment or enterprise.. Where an individual is making interest payments to a non-resident company, the individual will be required to deduct WHT.



Withholding taxes are due to be remitted to the FIRS or the State Internal Revenue Services depending on the nature of the beneficiary (i.e., corporate entities or individuals / partnerships) via the collecting banks within 21 days (where the beneficiary is a corporate entity) or 30 days (where the beneficiary is an individual or partnership) after the duty to deduct arose. The Finance Act reduced the percentage of withholding tax exemptions on interest on foreign loans. The highest exemption is 70% for loans with a repayment period including moratorium of more than 7 years and a grace period of not less than 2 years. The applicable withholding tax rate ranges from 2.5% to 10% and is determined by the nature of the transaction.

Value Added Tax

Value Added Tax (VAT) is a consumption tax borne by the final consumer of taxable products or services and typically levied at multiple stages. VAT is charged at the rate of 7.5%.

New businesses are to register for VAT upon commencement of such business. VAT is chargeable on the supply of taxable goods and services except items specifically stated in the schedule to the Act as exempt or zero-rated.

Under the VAT Act, taxable goods have been defined to include all forms of tangible properties excluding - land, building, money or securities. However, the Finance Act 2023 has clarified that a building will not include where fixtures or structures can be easily removed from land (e.g., radio and television masts, cell towers, caravans, mobile homes etc).

Therefore, VAT will be charged on the sale of such property. By Section 10 of the VAT Act (as amended) and the Guidelines for Simplified Compliance Regime for Value Added Tax for Non-Resident Suppliers No. 2021/19 dated 11 October 2021, any non-resident supplier ("NRS") which makes a taxable supply to Nigeria is required to register for tax with the FIRS and obtain a Tax Identification Number. Accordingly, the NRS is obligated to include VAT on its invoice for all taxable supplies, collect and remit VAT to the FIRS. Importantly, the Finance Act 2023 requires that persons so appointed by the FIRS shall on or before the 14th of the following month, remit the tax so withheld or collected to the FIRS in the currency of the transaction.

Stamp Duties

Stamp Duties is a tax paid on documents evidencing transactions specified by the Stamp Duties Act (SDA) on documents executed in Nigeria or where not executed in Nigeria, where it relates to a thing to be done in Nigeria or where it is "brought into" Nigeria.

In relation to timing for stamping, a document which is liable to be stamped must be stamped within 40 days of its execution. However, where it is a document that is liable to stamp duties at an ad valorem rate, such document must be stamped within 30 days of its execution in Nigeria or after it has been "first received in Nigeria", where it is executed outside Nigeria.

By the combined effect of the Finance Act, 2019 and the clarification provided by the FIRS, any document executed outside Nigeria will be "deemed to be received in Nigeria" and consequently, liable to stamp duty if:

- such document is retrieved or accessed electronically in or from Nigeria.
- such document (or an electronic copy of it) is stored on a device (including a computer or magnetic storage) and brought into Nigeria; or
- such document (or an electronic copy of it) is stored on a device or computer in Nigeria.



The SDA outlines various types of instruments/documents and provides for the applicable rate for them.

Whilst some types of instruments in the schedule may be stamped at ad valorem rates, the Schedule to the SDA also provides for a catch-all regime for stamping at a nominal rate, agreements that are not specifically charged with any duty. For electronic Money Transfer Levy under the Stamp Duties, a singular and one-off charge of NGN 50 is charged on electronic receipts or electronic transfers of money in the sum of NGN 10,000 or more.

Parties may contractually agree the party who shall bear the applicable stamp duties. However, practice dictates that the entity that bears the responsibility for stamp duties is the one who will typically suffer the penalty for non-compliance under the Stamp Duties Act.

Capital Gains Tax

Capital Gains Tax (CGT) is a tax payable on capital gains arising from the disposal of assets. The disposal could be by way of sale, lease, transfer, assignment, or any other disposition. The Finance Act, 2021 amended the CGT Act by imposing CGT on the disposal of shares, subject to certain conditions.

CGT accrues on an actual year basis and pertains to all gains accruing to a taxpayer from the sale, lease, or other transfer of proprietary rights in a chargeable interest which may be corporeal or incorporeal whether in or outside Nigeria. The applicable rate of capital gains tax is 10% of the total amount of chargeable gains accruing to a person in a year of assessment.

In Nigeria, CGT is not payable upon devolution of assets to personal representatives or beneficiaries following the death of the owner of the asset. Also, CGT is not payable for disposal of assets that is a consequence of business re-organisation provided that if the acquiring entity makes a subsequent disposal of the assets within 365 days after the transaction, CGT becomes immediately payable as at the date of the re-organisation.

Pertinently, the Finance Act, 2023 made some changes to the Capital Gains Tax Act. For example, in a bid to further emphasise that digital assets are subject to capital gains tax, it clarified that chargeable assets shall include "digital assets."

Furthermore, the Finance Act 2023 provides that, in the computation of chargeable gains, the loss accruing to a person on an asset disposal can now be deducted from gains accruing to such person on the disposal of such asset. Similarly, an aggregate capital loss (exceeding aggregate chargeable gain) will be carried forward and deducted from the chargeable gains from the disposal of the same kind of asset in the subsequent year(s). However, the loss shall not be carried forward for more than 5 years. Also, the qualifying assets for roll over relief have been enlarged to include stocks and shares. It is however important to note that the proceeds must be reinvested within the same year in acquiring shares in the same or other Nigerian companies.

Hydrocarbon Tax

Taxation of companies in the oil & gas sector is primarily governed by the Petroleum Industry Act, 2021. This Act repealed the Petroleum Profit Tax Act and, instead, imposed Hydrocarbon Tax, Companies Income Tax and Tertiary Education Tax. The Hydrocarbon Tax is only applicable to upstream petroleum operations (except for deep offshore operations) in relation to crude oil, condensate and natural gas liquids produced from associated gas.

Accordingly, the FIRS is empowered to collect:

- Hydrocarbon tax of 15%- 30% on profits from crude oil production.
- Companies Income Tax at 30%; and
- Tertiary Education tax at 3%.

However, it is important to note that holders of Oil Mining Licence and Oil Prospecting Licence will continue to be taxed under the old law (i.e., the Petroleum Profit Tax Act) except in cases where a conversion contract is executed as specified by the Petroleum Industry Act, 2021.

Transfer Pricing

The Transfer Pricing regime in Nigeria is regulated in accordance with the Income Tax (Transfer Pricing) Regulations, 2018. The Companies Income Tax Act also contains provisions granting the FIRS the power to adjust transactions deemed to be "fictitious" or "non-arm's length". The Transfer Pricing Regulations apply to transactions between connected taxable persons not carried out in accordance with the arm's length principle.

It is a requirement of Regulation 4(1) that connected taxable persons follow the arm's length principle when engaging in transactions. Where a connected taxable person fails to comply with the provisions of the Regulation, the FIRS is empowered to make adjustments where necessary to make a controlled transaction consistent with the arm's length principle.



In determining whether the result of a transaction or series of transactions are consistent with the arm's length principle, one of the following transfer pricing methods is applied:

- the Comparable Uncontrolled Price method.
- the Resale Price method.
- the Cost-Plus method.
- the Transactional Net Margin method.
- the Transactional Profit Split method; or
- any other method which may be prescribed by regulations made by the FIRS from time to time.

Thin Capitalisation Rules

The Finance Act, 2019 introduced a new schedule which contains provisions disallowing "excess interest" (more than 30% of EBITDA of the Nigerian company) payable on a foreign loan with a connected person (other than a company engaged in banking or insurance business). The interest expense shall not be carried forward for a period exceeding 5 years from the year the excess interest was first incurred.

The interest deductibility rule complements and does not replace the transfer pricing rule. Therefore, taxpayers are to make sure that interest expenses comply with the Income Tax (Transfer Pricing) Regulations 2018 before applying the interest deductibility rule. A violation of the provisions of the Schedule shall be punishable by 10% penalty and interest at the Central Bank of Nigeria's monetary policy rate and a spread to be determined by the Minister of Finance computed on any adjustment made by the FIRS on the excess interest.

Tertiary Education Tax

All Nigerian companies are expected to pay the Tertiary Education Tax. Small companies, Non-Resident Companies (NRCs) and all unincorporated entities are however exempted from this tax. As provided by S.1(2) of the Tertiary Education Trust Fund (Establishment etc) Act (as amended by the Finance Act, 2023), the applicable rate is 3% of assessable profits. Funds derived from the tax are used for rehabilitation, restoration, and consolidation of tertiary education in Nigeria by the Tertiary Education Trust Fund (TETFUND).

A First offence against the Act is liable on conviction to a fine of NGN 1 million or a term of 6 months imprisonment or both. Any second and subsequent offences attract a fine of NGN 2 million or a term of 12 months or both.

Custom and Excise Duties

Import duties are charged in line with the classification of the goods under the Harmonised System (HS) Codes. On the other hand, excise Duties are charged on applicable products either on ad valorem basis, fixed charge per unit, or both. The Customs and Excise Tariff, Etc (Consolidation) Act* provides that excess duty will be repaid if the amount paid as duty on any goods (under the Act or any other enactment, together with any additional amount paid under section 14), exceeds the duty payable on such goods immediately after the expiration of such provision.

The Finance Act, 2020 amended the CETA by extending the applicability of excise duties to imported goods listed on the Fifth schedule of the Act. Additionally, section 17 of Finance Act, 2021 (which amends Section 21 of the Customs, Excise Tariffs Act) now imposes excise duty at NGN 10 per litre on non-alcoholic, carbonated, and sweetened beverages. It is believed that this is geared towards discouraging such products because of the perceived health problems that they are likely to cause. Furthermore, telecommunication services are now subject to excise duties at the rate of 5%.

The Finance Act 2020 introduced a reduction of import duty on tractors from 35% - 5%. Trucks and mass transit vehicles conveying more than 10 persons from 35% to 10% while the import duty on cars has been reduced from 30% - 5%. Similarly, commercial airlines in the country are now entitled to duty-free importation of their aircrafts, engines, spare parts, and components whether purchased or leased.

By virtue of the Finance Act 2023, a levy of 0.5% has been imposed on all eligible goods imported into Nigeria from outside Africa to finance capital contributions, subscriptions and other financial obligations to the African Union, African Development Bank, African Export- Import Bank, ECOWAS Bank for Investment and Development, Islamic Development Bank, United Nations, and other multilateral institutions as may be designated. Additionally, all services including telecommunications services provided in Nigeria are to be charged with excise duties at the specified rate.

Pensions and Social Security

Under the Pension Reform Act, 2014, a contributory pension reform scheme for the payment of retirement benefits of employees of the Public Service, the Federal Capital Territory and the Private Sector in the Federal Republic of Nigeria has been established.

The pension scheme applies to all employees in the case of the private sector, who are employed in an organisation which has a minimum of 3 employees. Employers are required to make a compulsory monthly pension contribution of 10% of an employee's basic salary, transport, and accommodation allowances. An employee also contributes a minimum of 8% of earnings. The minimum total contribution is 18%, however, there is no maximum contribution limit.

Double Tax treaties and Bilateral investment agreements

Nigeria has Double Tax treaties (DTT) with the United Kingdom, France, South Africa, Canada, China, Belgium, Czech Republic, the Netherlands, Pakistan, Philippines, Romania, Singapore, Slovakia, Sweden, and Spain. It also has bilateral investment agreements with about 31 countries, although only 15 of these Bilateral Trade Agreements are in force. Furthermore, Nigeria is a member of the World Trade Organisation (WTO), General Agreement on Tariffs and Trade (GATT), ECOWAS Protocol of Free Movement, ECOWAS Trade Liberalisation Scheme (ETLS) and Africa Continental Free Trade Area (AfCFTA).

By the Information Circular 2022/15, the FIRS approved the discontinuation of the preferential WHT rate of 7.5% on dividend, interest and royalty payments to treaty beneficiaries. The revision to the treaty regime implies that the WHT rate in Nigeria's tax laws would apply to dividend, interest and royalties paid to residents of treaty countries, except where the rates in Nigerian tax laws exceed the maximum rate in the treaty, in that instance, the maximum rate cap specified in the treaty shall apply.

Tax Disputes' Resolution Mechanisms

In Nigeria, the Federal High Court, State High Courts, the Tax Appeal Tribunal, and the Revenue Courts of local governments are vested with the jurisdiction to hear and determine disputes that relate to taxation.

The relevant Tax Acts and Laws provide for the filing of tax returns by various persons and corporate bodies. The tax authorities review each taxpayer's return. If, according to the tax authority, the taxpayer has not declared or remitted the right amount of tax, the tax authority has the power to impose an assessment on such taxpayer. However, in the event of complete failure to file their returns, the tax authorities are empowered to impose assessments based on their "best of judgment."



A taxpayer who is dissatisfied by this assessment has the right to object against it within a stipulated timeline. Upon receipt of such objection, the tax authority may choose to amend or refuse to amend the assessment by issuing a Notice of

Refusal to Amend (NORA). A taxpayer who is aggrieved by this decision may decide to address it by filing a notice of appeal at the relevant Tax Appeal Tribunal (TAT).

Under the Rules of the TAT, the tax authority has 30 days to file its response to the Notice of appeal after which the taxpayer can file a response to any new factual matters contained in the tax authority's response. Once the filings are completed, the

TAT will set a date for the hearing of the appeal. Witnesses for both sides will be examined in chief, cross examined and re-examined (where necessary).

Thereafter, parties will have to file final addresses in which they will make legal and factual submissions in support of their respective cases. The TAT will set a date for the adoption of final addresses after which the matter will be adjourned for judgment. Appeals from the Tax Appeal Tribunal go to the Federal High Court and then to the Court of Appeal and afterwards to the Supreme Court.



Endnotes

1 [Global Innovation Index 2022: What is the future of innovation-driven growth? \(wipo.int\)](https://wipo.int)

2 [Intellectual property, SMEs and economic recovery in Nigeria \(wipo.int\)](https://wipo.int)

3 Section 77 and 78 of the Nigerian Copyright Act 2022

4 Section 87 of the Nigerian Copyright Act 2022

5 The Nigerian Copyright Act 2022

6 Ibid

7 11(f) Nigerian Copyright Act 2022

8 Part VII of the Nigerian Copyright Act 2022

9 Ibid

10 Section 1 Trademarks Act

11 Patent and Designs Act 1970



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