



# Investment in Nigeria

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## Preface

This publication sets out the basic information on tax and business regulatory issues that new investors need to know when investing in Nigeria. It also provides information about the country, its institutions and infrastructure.

We have updated the publication with changes in the tax and business regulatory environment since May 2008 when the last edition was published.

The information contained in this publication is intended to be of general interest to the reader and it does not address the circumstances of any individual or entity. Although the contents of the publication are correct to the best of our knowledge and belief at the time of going to press, readers are encouraged to seek specific professional advice before taking any action on the basis of opinions expressed.

We disclaim any responsibility whatsoever for any loss or damage suffered by any person on account of reliance on this publication.



Lagos, Nigeria  
November 2016



# Chapter One



# 1. The Country and Its Institutions

## 1.1 Area, Population and Climate

Nigeria became an independent State in 1960, having been under British colonial rule since 1861. The country, which is situated on the West Coast of Africa, some 649km north of the Equator, has a total land area of approximately 923,768 sq.km<sup>1</sup>. It is bordered to the north by Niger, to the east by Chad and Cameroon, to the south by the Gulf of Guinea and to the west by the Republic of Benin.

The last census, which was conducted in March 2006, estimated the country's population to be One Hundred and Forty Million, Three Thousand, Five Hundred and Forty Two (140,003,542)<sup>2</sup>. The population of Nigeria is growing at about 2.45% per annum, and was estimated to have reached One Hundred and Eighty One Million, Five Hundred and Sixty Two Thousand, and Fifty Six (181,562,056) as at July 2015<sup>3</sup>.

Nigeria's climate is tropical, although there are appreciable differences between the North bordering the Sahara and the South bordering the Gulf of Guinea. There are basically two seasons: the dry season and the rainy season. In the North, the dry season commences in November and extends through April. In the South, the dry season is shorter and runs from December through February. Mean minimum temperature varies from 21°C (70°F) in the South to 31°C (88°F) in the North and mean maximum temperature varies from 31°C (88°F) in the South to 41°C (106°F) in the North. In Lagos, the hub of business activities, the dry season reaches its peak in December with an average monthly rainfall of 25mm (1 inch) while the rainy season peaks in June with an average monthly rainfall of 460mm (18 inches).

## 1.2 International Affiliations

Nigeria is affiliated to the following international organisations:

### 1.2.1 African Union

Nigeria is one of the founding members of the African Union (AU), formerly Organisation of African Unity (OAU), which was established in May 1963. Nigeria supports the AU, and takes its membership seriously in this primary African political group. The creation of the AU brings the dream of a common African currency, foreign policy, defence structure and economic programme closer to reality. The AU has a number of official bodies, some of which are not yet fully functional. These bodies include a Pan-African Parliament, an Assembly of the African Union, an Executive Council, an African Central Bank, Regional Economic Communities (RECs), and an African Court of Justice.

<sup>1</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>

<sup>2</sup> <http://www.nigerianstat.gov.ng/>

<sup>3</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>

### **1.2.2 *Economic Community of West African States (ECOWAS)***

Nigeria is one of the founding members of ECOWAS, an economic grouping of 15 West African States established in May 1975 to facilitate trade between the States in the region and to promote regional joint development efforts. ECOWAS is one of the eight RECs of the AU. In January 1990, ECOWAS commenced a Trade Liberalisation Scheme (TLS) aimed at the total elimination of customs duties and taxes of equivalent effect, removal of non-tariff barriers and the establishment of a common Customs External Tariff (CET) to protect goods produced in Member States. Nigeria and other ECOWAS Member States adopted the CET in 2015.

Aside from the TLS, five ECOWAS Member States (The Gambia, Ghana, Guinea, Nigeria and Sierra Leone) intend to adopt a common currency called the ECO, proposed to be launched in 2020. The five countries have undertaken to reform their economies to meet this deadline.

### **1.2.3 *New Partnership for Africa's Development (NEPAD)***

Nigeria is an active member of NEPAD (established by the AU) whose main objective is to give impetus to Africa's development, by bridging existing gaps between Africa and the developed world.

The main organs of the NEPAD are the Heads of State and Government Implementation Committee (HSIC) and the Steering Committee of NEPAD. The HSIC comprises 3 States per AU region, while the Steering Committee comprises the Personal Representatives of the NEPAD Heads of State and Government.

NEPAD is structured into various task teams with responsibility for investigating priority areas such as: conflict prevention, management and resolution; political and economic governance; market access (i.e., promotion of intra-African Trade and increased access to markets of industrialized countries); development of agriculture; development of human resources; and provision of key infrastructure to facilitate sub-regional and continental integration (e.g., information communication technology, energy, transport and water).

### **1.2.4 *The Commonwealth***

Nigeria is a member of The Commonwealth together with the vast majority of other nations that once constituted the British Empire.

### **1.2.5 *Organisation of Petroleum Exporting Countries (OPEC)***

OPEC is a permanent, inter-governmental organisation created at the Baghdad Conference on 10–14 September 1960 by Iran, Iraq, Kuwait, Saudi Arabia and Venezuela. The five founding members were later joined by nine other Members: Qatar (1961), Indonesia (1962–2008), Libya (1962), United Arab Emirates (1967), Algeria (1969), Nigeria (1971), Ecuador (1973), Gabon (1975–1994) and Angola (2007).

OPEC's mission is to co-ordinate and unify the petroleum policies of Member Countries, ensure the stabilisation of oil prices in order to secure efficient, economic and regular supply of petroleum to consumers, a steady income to producers and a fair return on capital to investors in the petroleum industry.

Nigeria has remained a very active member of the oil cartel, since joining the organisation in 1971. Nigeria is the 13th largest producer of petroleum in the world, the 5th largest exporter and has the 10th largest proven reserves<sup>4</sup>.

#### **1.2.6 Other International Associations**

Nigeria is a member of the World Trade Organisation (WTO), which focuses on promoting free trade among nations. Nigeria is also a member of the United Nations (UN) and plays an active role in its peace-keeping activities globally.

### **1.3 The Government**

At independence in 1960, Nigeria consisted of three regions: the Western, Eastern and Northern Regions. In 1963, the Western Region was split into two regions, namely: the Western and Mid-Western Regions. In 1967, the four regions were split into 12 States, after which there was a civil war, arising from a sectional coup and counter coup. In 1976, 7 additional States were created, resulting in a total of 19 States. The number of States was increased to 21 on 23 September 1987, and 9 more States were created in September 1991, to make the country a federation of 30 States. Currently, there are 36 States in Nigeria following the creation of 6 additional States on 1 October 1996.

Nigeria was under military rule from 1966 to October 1979, when the military government handed over power to a civilian administration. The civilian administration governed for four years, based on a US-type Presidential System of government, before it was toppled by a military coup on 31 December 1983. The army ruled the country from then until 29 May 1999 when they voluntarily handed over power to a democratically elected civilian government. This has been followed by elections in 2003, 2007, 2011 and 2015. The current Head of State is President Muhammadu Buhari who was sworn in on 29 May, 2015.

#### **1.3.1 The Presidency**

The President is the Head of State and Commander-in-Chief of the Armed Forces. He is elected for a four-year term, subject to a maximum of 2 terms. There is a Vice President, who is elected alongside the President. The Vice President may be empowered to act on behalf of the President, if and when he is unable to act.

#### **1.3.2 National Assembly**

The National Assembly is the legislative arm of the Federal Government. It comprises the Senate (Upper House) and the House of Representatives (Lower House). The Senate is headed by a Senate President, who is elected from among the Senators. The Senate is made up of 3 members each from the 36 States of the Federation, plus 1 member representing the Federal Capital Territory, Abuja. Apart from making laws, the Senate is empowered to approve certain political appointments proposed by the President. The House of Representatives comprises members elected from the Federal Constituencies in each State of the Federation. The House is headed by a Speaker, who is elected from among the members.

#### **1.3.3 Legal System**

The Nigerian legal system is modelled after the English Common Law, modified by

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<sup>4</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>.

statutes to meet local demands and conditions. Nigerian laws in areas such as patents, trademarks, copyrights and business associations, considerably reflect corresponding British statutes in these areas as at the dates of their first enactment. At the apex of the Nigerian judicial system is the Supreme Court, which presently consists of 15 Justices including the Chief Justice. The Supreme Court of Nigeria has original and appellate jurisdiction in certain constitutional, civil and criminal matters prescribed in the Constitution. There is also a Court of Appeal which hears appeals from the Federal High Court, High Court of a State, Sharia Court of Appeal of a State and Customary Court of Appeal of a State.

Under the Constitution, the Federal High Court has jurisdiction in matters connected with the revenue of the Government of the Federation, admiralty, banking, foreign exchange and other currency and monetary or fiscal matters. At the State level, there is the High Court that has jurisdiction to hear and determine both civil and criminal proceedings. A Customary Court of Appeal of a State exercises jurisdiction in civil proceedings involving questions of customary law. A Sharia Court of Appeal has jurisdiction in cases involving questions of Islamic law.

There are Magistrates' Courts in the States, which have original, as opposed to appellate, jurisdiction in civil and criminal matters specified in the appropriate legislation.

## **1.4 Federal Ministries, Departments and Statutory Corporations**

The Federal Government functions through a network of ministries, departments, statutory corporations (parastatals), authorities, boards and agencies, some of which are listed below.

### **1.4.1 Federal Ministry of Industry, Trade and Investment**

This Ministry has general responsibility for commercial, industrial, and investment-related affairs of the Federal Government, such as trade relations with foreign countries, internal and regional trade, industrial policies, investment incentives, and registration of trademarks and patents.

The activities of the Ministry are complemented by the Nigerian Investment Promotion Commission (NIPC) through which a number of investment incentives, such as pioneer status, are administered.

### **1.4.2 Federal Ministry of Mines and Steel Development**

The Mines Department of the Federal Ministry of Mines & Steel Development is charged with the supervision of the prospecting, mining, exploitation and development of, and trade in, Nigeria's mineral resources other than oil and natural gas. Its mandate also includes research, exploration and development of solid minerals in the country. Due to heavy dependence on petroleum, the Government has expressed its commitment to developing the solid minerals sector as a means of diversifying the economy.

The Steel Department of the Ministry is responsible for the enhancement and development of the steel industry in Nigeria. The Government is encouraging private investment in the sector, in line with its economic policies and the Nigeria Industrial Revolution Plan.

#### **1.4.3 Federal Ministry of Petroleum Resources**

The Federal Ministry of Petroleum Resources is responsible for the formulation, determination and monitoring of Government policy for the petroleum industry in Nigeria. The Ministry also regulates the industry through parastatals like the Nigerian National Petroleum Corporation (NNPC), the Department of Petroleum Resources (DPR) and the Petroleum Products Pricing Regulatory Agency (PPPRA).

The NNPC is the statutory corporation through which the Federal Government participates in the Nigerian oil and gas industry. It oversees the Federal Government's investments and interests in the joint ventures and production sharing contracts. The NNPC owns and manages processing, storage and distribution infrastructure, marketing outlets and associated infrastructure in the country.

It is expected that the Ministry of Petroleum Resources, agencies and parastatals and, in fact, the entire Nigerian petroleum industry will undergo significant reform under the Petroleum Industry Bill when it is enacted.

#### **1.4.4 Federal Ministry of Works, Power and Housing (FMWPH)**

The FMWPH and its parastatals formulate and administer policies relating to:

- i. Planning, engineering design, construction and rehabilitation, monitoring and maintenance of Federal roads, highways and bridges, and surveying and mapping Nigeria's internal and international boundaries.
- ii. Generation, transmission, distribution and marketing of electricity in Nigeria.
- iii. National lands and housing, urban development programmes and plans, and the supervision of the Federal Housing Authority and Federal Mortgage Bank of Nigeria.

#### **1.4.5 Federal Ministry of Finance**

The Federal Ministry of Finance (FMF) formulates economic and fiscal policies and co-ordinates the financial affairs of the Government, including annual budgets.

Until June 2007, when the Federal Inland Revenue Service (Establishment) Act was enacted, the FMF oversaw the fiscal affairs of the Federation through the Federal Board of Inland Revenue (FBIR).

#### **1.4.6 Federal Inland Revenue Service (FIRS)**

The FIRS, established by the Federal Inland Revenue Service (Establishment) Act, 2007 (FIRSEA), is the apex tax authority in Nigeria. The FIRS is, among other things, empowered to assess, collect and account for the tax revenue accruable to the Federal Government of Nigeria and refund excess tax paid to affected taxpayers.

Until its reconstitution under the FIRSEA, the FIRS functioned as the operating arm of the defunct FBIR. The FIRSEA confers operational and financial autonomy on the FIRS to enhance its overall effectiveness and efficiency.

The taxes, levies and duties which the FIRS administers are as follows:

- i. Companies Income Tax
- ii. Tertiary Education Tax
- iii. Petroleum Profits Tax
- iv. National Information Technology Development Agency Levy
- v. Value Added Tax
- vi. Personal Income Tax<sup>5</sup>
- vii. Withholding Tax<sup>6</sup>
- viii. Capital Gains Tax<sup>7</sup>
- ix. Stamp Duties<sup>7</sup>

The FIRS is empowered to conduct a periodic review of taxpayers' records with a view to ascertaining their extent of compliance with any or all of the above taxes. The FIRS also has the power to sanction erring taxpayers.

#### **1.4.7 *Central Bank of Nigeria (CBN)***

The CBN is another autonomous agency of the Federal Government. Its mandate includes: formulation and implementation of the trade, exchange, monetary and credit policies of the Government; regulation of the foreign exchange market; control of Government expenditure; formulation of currency and banking policies; provision of funds for public services and institutions; and acting as a general watchdog over the nation's monetary matters.

#### **1.4.8 *Nigeria Customs Service (NCS)***

The NCS administers customs and excise duties in Nigeria. It is also responsible for the enforcement of the country's importation and exportation regulations.

#### **1.4.9 *Federal Ministry of Transport (FMT)***

The FMT oversees and administers the country's transport sector comprising aviation, marine, railways and federal highways.

#### **1.4.10 *Federal Ministry of Labour and Employment (FMLE)***

The FMLE is responsible for industrial relations in general, including conciliation in labour disputes, technical training (through the Industrial Training Fund), manpower development, safety and welfare in the workplace, and supervision of trade union activities. It also oversees the activities of the Nigeria Social Insurance Trust Fund.

#### **1.4.11 *Federal Ministry of Interior (FMI)***

The FMI is generally responsible for maintenance of law and order. It has oversight of the prisons, fire service, civil defence, public safety, citizenship, immigration, emigration, the control and registration of aliens, including the issuance of visitors' visas and residence permits.

In particular, the Business and Citizenship Section of the Ministry is charged with the responsibility of processing and granting applications for business permit and expatriate quota, which allow foreigners to establish business and take up employment in Nigeria.

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<sup>5</sup> For persons employed by the Nigerian Army, Navy, Air Force, Police Force, officers of the Nigerian Foreign Service and any person resident outside Nigeria but who derives income or profit from Nigeria. Under the establishment of the Federal Capital Territory Internal Revenue Service (FCTIRS) in 2015, the FIRS was empowered by law to administer income tax on residents of the FCT, Abuja.

<sup>6</sup> Withholding taxes deducted on payments made to limited liability companies are payable to the FIRS.

<sup>7</sup> This relates to capital gains tax and stamp duties payable by bodies corporate.

#### **1.4.12 Federal Ministry of Justice (FMJ)**

The FMJ is the legal arm of the Federal Government of Nigeria. The Ministry is primarily responsible for bringing cases before the courts on behalf of the Federal Government. The Ministry is headed by the Minister of Justice who is also the Attorney General of the Federation.

#### **1.4.13 Federal Ministry of Communications Technology (FMCT)**

The FMCT was established in 2011. The main objective of the Ministry are as follows:

- i. To develop policies that will enhance the build-up of an accessible, reliable and cost-effective telecommunications infrastructure across the country;
- ii. To drive, support and encourage the utilisation of the telecommunications infrastructure through widespread ownership of Information Communications Technology (ICT) devices; and
- iii. To leverage ICT in driving the effectiveness and efficiency of the public service.

The Ministry through one of its agencies, the Nigerian Communications Commission, regulates the telecommunications sector in Nigeria.

#### **1.4.14 Federal Ministry of Agriculture and Rural Development (FMARD)**

The vision of the FMARD is to grow Nigeria's agricultural sector. The Ministry's key objectives include: executing an agricultural transformation agenda to support the Federal Government's intention to diversify the economy; utilising the transformation of the agricultural sector to create jobs, create wealth and ensure food security; focusing on value chains where Nigeria has comparative advantage; and developing strategic partnerships to stimulate investments to drive a market-led agricultural transformation<sup>8</sup>.

#### **1.4.15 Budget Monitoring and Price Intelligence Unit (Due Process Office)**

The Due Process Office was established in 2003 under the Presidency to run as an operationally independent body which would act as the clearing-house for all Government contracts and procurement of goods and services. The Office was set up to ensure full compliance with laid down guidelines and procedures for procurement of capital and minor capital projects as well as associated goods and services.

Please refer to **Appendix 1** for contact information of the above Federal ministries, departments and statutory corporations.

### **1.5 Economic Overview**

Nigeria is a mono-cultural economy, which is largely dependent on oil. The oil and gas sector accounts for about 90% of the country's foreign exchange earnings, about 22% of its budgetary revenue, and about 10.29% of its real GDP<sup>9</sup>. In terms of contribution to GDP, Nigeria's economy is composed of three sectors, namely Agriculture, Industries and Services.

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<sup>8</sup> <http://www.fmard.gov.ng/>

<sup>9</sup> Nigerian Gross Domestic Product Report Quarter One 2016

The sectors contributed 24.18%, 21.52% and 54.30%, respectively, to the country's GDP in 2015; and 20.48%, 24.33% and 55.20%, respectively, at the end of Quarter 1 (Q1) 2016<sup>10</sup>.

The Nigerian banking and telecommunications industries (part of the Services sector) have burgeoned over the last decade due to successful reforms of the sectors. The country's agricultural sector has also witnessed increased growth in recent years due to bold reforms being implemented by the FMARD. However, the Industries sector continues to struggle largely due to the infrastructural challenges, regulatory constraints and the high cost of capital in the country.

In 2015, headline inflation<sup>11</sup> was in the single-digit region throughout the year, ending the year at 9.6%<sup>12</sup>. Headline inflation and core inflation<sup>13</sup> rates were 15.58% and 15.05%, respectively, as at May 2016.

The CBN operates a tight monetary policy to control inflation in Nigeria. The "Monetary Policy Rate (MPR)" was introduced in December 2006 to replace the Minimum Rediscount Rate. The MPR was set at 10 per cent, using the prevailing rate of inflation and the expected inflation rate outcome of 9.0 per cent at that time as a guide, to ensure that interest rates remained positive in real terms. This translated into an upper limit of 13 per cent, which was the Repo rate, and a lower limit of 7 per cent, which was the rate at which the CBN took deposits from banks at the time.

Since the introduction of the MPR, a number of changes have been made to the monetary policy process, and the MPR has been varied several times by the Monetary Policy Committee of the CBN in response to developments in the economy – especially as indicated by inflation rate and exchange rate trends. The MPR was 12% at the end of June 2016.

## 1.6 Infrastructure

Since independence in 1960, the infrastructural facilities in the country have suffered neglect from successive governments. For instance, the rail transport system is outmoded and the road network is limited and largely decrepit. To reverse the trend, the country needs to modernise its rail system, and rehabilitate and expand the road network.

Flight connections to and within Nigeria by international and domestic airlines are efficient and readily available. There are a few domestic airlines with scheduled flights operating to international standards within the country, in addition to chartered flight operators.

The Federal Government commenced electric power sector reform in 2000 resulting in the enactment of the Electric Power Sector Reform Act in 2005 and establishment of the Nigerian Electricity Regulatory Commission as the independent industry regulator. The industry is open to participation by the private sector through investment in the generation and distribution segments of the industry. The defunct monopoly, the National Electric Power Authority (NEPA), was replaced by the Power Holding Company Nigeria Limited (PHCN) as the successor to its assets and liabilities. PHCN was subsequently unbundled into eighteen successor companies (1 transmission company, 6 generation companies and 11 distribution companies) which were later privatised and handed over to their core investors on 1 October 2013.

In 2001, the Government awarded licences for the Global System for Mobile Telecommunications (GSM) to three companies. The auction process was widely acclaimed

<sup>10</sup> Nigerian Gross Domestic Product Report Quarter One 2016

<sup>11</sup> Headline inflation refers to the rate of change in the consumer price index (CPI)

<sup>12</sup> <http://www.cbn.gov.ng/rates/inflrates.asp>

<sup>13</sup> Core inflation is a measure of inflation which excludes certain items that face volatile price movements.

as very transparent and successful. The launching of GSM in the country has significantly improved the country's domestic and international telecommunication services. A second national carrier licence was awarded in 2002, which increased the number of GSM operators to four. The fifth operator was licensed in 2007.

Under the current unified licensing regime, which was introduced by the Nigerian Communications Commission in 2006, there is no more segmentation of wireless licences into mobile and fixed service categories. On allocation of a spectrum, all licensees are free to offer voice, data or multimedia services as they deem fit. Subject to any geographical or regional limitation contained in their licences, fixed wireless and mobile operators are now able to operate on a level playing field. This harmonised platform has led to increased competition from all the telecommunication service operators in the country.

# Chapter Two



# 2. Business Organisation and Regulation

Business can be carried on in Nigeria through any of the following vehicles:

- (i) Sole proprietorship or sole trader;
- (ii) Partnership; and
- (iii) Incorporated company.

## 2.1 Sole Proprietorship

The sole proprietorship form of doing business is typically used by an individual intending to do business on his account. In general, this form of business is open to anyone in Nigeria wishing to engage in any kind of lawful business activity. The statutory requirements for this form of business are very limited, the major one being the requirement for registration of a business name, where a name other than the true name of the sole proprietor is to be used as the trade name.

Every sole trader having a place of business in Nigeria is required to register under Part B of the Companies and Allied Matters Act (CAMA), Cap C20, Laws of the Federation of Nigeria (LFN), 2004, if the business is carried on under a name that is not the true name of the proprietor. Details of the names and addresses of the proprietor registered under CAMA are available on request to the public at the Corporate Affairs Commission (CAC) on payment of a prescribed fee.

## 2.2 Partnerships

In most parts of Nigeria, the laws governing partnerships are based on the English Partnership Act, 1890 applicable to general partnerships. Section 1 of the Act defines a partnership as "the relationship which subsists between persons carrying on a business in common with a view to profit." Lagos State is the only exception where limited partnerships and limited liability partnerships can be registered, in addition to general partnerships.

The rights and duties of partners are generally governed by the English Partnership Act, 1890, and the provisions of the specific partnership laws of some States (largely States within the former Western Region and Lagos) that have enacted their own laws in that regard. The provisions of the Act or Laws are, however, subject to any contrary agreement by the partners. The surname and initials of all the partners must be disclosed on the firm's letterhead and trade circulars.

In a general partnership, the partners are the joint owners of the partnership property and are personally liable (both jointly and severally) for the debts and obligations of the firm. The

liability of each partner is unlimited. The transfer of a partnership interest is permitted, if agreed between the partners. Each partner is an agent of the other and may enter into contracts, undertake obligations, and dispose of the partnership property in the ordinary course of business on behalf of the partnership.

In a limited partnership, there must be at least one general partner who will have unlimited liability with respect to all the debts and obligations of the firm. The limited partners contribute capital or property to the business but have no liability for the debts or obligations of the business beyond their actual contributions thereto. This is much like the limited liability of shareholders in a limited liability company. All limited partnerships have to be registered at the Limited Partnership Registry of Lagos State, which became operational with the appointment of a Registrar of Limited Partnerships by the Lagos State Government in June 2002.

In a limited liability partnership, all the partners are legally capable of limiting their liability in the event of the winding up of the partnership. Unlike a limited partnership, there is no requirement for the limited liability partnership to have a general partner. However, to ensure the protection of members of the public, all the partners are required to take out indemnity bonds and maintain professional liability insurance. The limited liability partnership was introduced in Lagos State in 2009 by the Partnership (Amendment) Law of Lagos State<sup>14</sup>.

A corporation may be a partner with other corporations or with individuals. The maximum number of partners in every partnership is twenty (20), except partnerships of legal practitioners or accountants. A partnership is terminated on the death or resignation of a partner, to the extent of the liability of the deceased or resigning partner, or on the admission of a new partner. However, in practice, the partnership continues with the new partner becoming subject to the same or any newly agreed terms and conditions of the partnership. Non-resident foreigners may not be able to use a partnership as a vehicle for running a business in Nigeria.

### **2.3 Incorporated Companies**

In Nigeria, the word “company” is used to describe a company incorporated with limited or unlimited liability and registered under CAMA. Subject to certain exceptions, CAMA provides that no foreign company shall carry on business in Nigeria unless it is incorporated in Nigeria as a separate entity. Foreign companies have a choice to set up wholly owned or partially owned subsidiaries or affiliates in Nigeria.

CAMA generally regulates the affairs of companies in Nigeria and has ample provisions dealing with such matters as formation, shareholding, directorships, borrowing, book keeping, auditing, management, meetings of the board of directors and shareholders, administration and liquidation.

There are three primary types of incorporated companies – an unlimited liability company, a company limited by guarantee and a company limited by shares. An unlimited liability company has no limit on the liability of its members and, therefore, has little attraction for investors. A company limited by guarantee limits its members' liability to the amount of their respective guarantees. This type of company is generally incorporated as a not-for-profit organisation for charitable purposes.

By far the most common type of company is a company limited by shares. The liability of

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<sup>14</sup>Until the suspension of implementation of this Law is lifted, only limited partnerships can be registered in Lagos State. General partnership is the only option available in States that have not enacted a limited partnership law.

the members of such a company is limited to the amount, if any, unpaid on the shares respectively held by them.

A limited liability company may be either privately or publicly owned. A private company must have a minimum of two (2), and a maximum of fifty (50), members, excluding present and ex-employees. Furthermore, the right of a private company to transfer its shares is restricted and the company is prohibited from inviting the public to subscribe to any of its shares or debentures.

Private companies limited by shares are the most common form of business organisation utilised by foreign investors in Nigeria.

A public company must also have a minimum of two (2) members but there is no restriction on the maximum number of members or their right to transfer shares freely. The public may be invited to subscribe to its capital and the shares may be traded on the Stock Exchange. A public company becomes publicly quoted when it is listed on the Stock Exchange.

## **2.4 Incorporation**

Incorporation of companies is generally handled by lawyers, although this may also be undertaken by accountants and chartered secretaries. The documents required to be filed with the CAC include the following:

- Memorandum of Association;
- Articles of Association;
- Statement of Share Capital;
- Declaration of Compliance with CAMA;
- Notice of Situation of the Registered Office of the Company;
- Return of Allotment of Shares; and
- Particulars of First Directors.

Stamp duty is payable on the authorised share capital at the rate of 0.75% of the authorised share capital. Filing fees are also applicable.

The Memorandum of Association of a private limited liability company must contain the following:

- (i) The name of the company with the word "Limited" or "Ltd." as the last word, if it is a company limited by shares. The name must have the prior approval of CAC and must not conflict with that of any other company;
- (ii) The location of the registered office, which must be situated in Nigeria (specification of a State in Nigeria will be sufficient for this purpose);
- (iii) The objects or businesses of the company and the restrictions, if any, on its powers;
- (iv) The amount of the authorised share capital (or the par value of the authorised capital), the number of shares into which it is to be divided and the nominal or par value of each share. There is a minimum capital requirement of ₦10,000<sup>15</sup> and ₦500,000 for private and public companies, respectively;

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<sup>15</sup> In reality, foreign investors require a minimum share capital of ₦10,000,000 as a pre-condition for registering as a foreign enterprise with the Nigerian Investment Promotion Commission and obtaining expatriate quota approval from the Federal Ministry of Interior.

- (v) A statement confirming whether the company is a private or public company; and
- (vi) A statement on whether the liability of members is limited (either by shares or guarantee) or unlimited.

There is no restriction under CAMA on the number of classes into which shares may be divided or on the rights or privileges of any particular class of shares. The usual classes of shares are ordinary and preference shares. CAMA, however, stipulates that each share shall carry one vote and entitle the shareholder to attend and vote at general meetings of the company.

The memorandum and articles of association must be printed, signed by the subscribers and duly witnessed by at least one person. It is also required to be stamped as a deed. Alteration of the memorandum and articles of association is subject to approval by a special resolution of the company. Reduction of capital is also allowed subject to a special resolution of the company and sanction of the court.

Every company limited by shares is required to issue at least 25% of its share capital among the subscribers or shareholders at all times. The Registrar General of the CAC issues a Certificate of Incorporation to a company if satisfied that the conditions for incorporation have been fulfilled.

#### **2.4.1 Foreign Enterprises**

Any Nigerian company with foreign participation is required to register as a foreign enterprise with the Nigerian Investment Promotion Commission (NIPC) established under the NIPC Act, No. 16 of 1995 (now Cap N117, LFN, 2004). The NIPC facilitates liaison by investors with other government agencies for the purpose of obtaining of their start-up approvals.

The NIPC now houses the One Stop Investment Centre (OSIC) through which new investors can process all their start-up statutory registrations and approvals, especially company incorporation, tax registration and expatriate quota.

Further to its mandate for investment promotion, the NIPC currently administers the Industrial Development (Income Tax Relief) Act, Cap 17, LFN, 2004, under which eligible investors can obtain pioneer status and enjoy income tax holiday for three (3) years, in the first instance, which can be renewed for additional one (1) or two (2) years.

#### **2.4.2 Expatriate Employment**

Where foreigners will be engaged in the actual running of a company's operations, an application will have to be made to the FMI for the grant of expatriate quota approval. In addition, companies operating in the Nigerian oil and gas industry are required under the Nigerian Oil and Gas Industry Content Development Act, 2010, to obtain prior approval of their expatriate quota requirement from the Nigerian Content Development and Monitoring Board, before applying to the FMI.

The Nigeria Immigration Service (NIS) issues temporary work permits (TWPs) for expatriates intending to work in Nigeria on short term basis, to enable them to undertake work of a temporary nature, such as plant installation and commissioning.

A TWP visa is typically granted for less than three (3) months in the first instance. However, it may be extended (while in-country) to a maximum duration of 365 days, subject to approval of the NIS and payment of the associated statutory fees.

#### **2.4.3 *Prospectuses***

A public company wishing to raise funds from the public must generally prepare a prospectus. CAMA defines a prospectus as “any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase of any shares or debentures of a company.”

Every prospectus issued by or on behalf of a company or company promoter must include certain information unless the company obtains a certificate of exemption from the Nigerian Stock Exchange.

#### **2.4.4 *Publication of Name***

In addition to stating a company’s name in its memorandum and articles of association, there is the additional requirement to display the name of the company conspicuously outside its office or place of business.

A company’s name must also be engraved in legible characters on its common seal and must appear on all notices, advertisements and other publications, bills of exchange, invoices, receipts and similar documents. In addition, all trade circulars and business letters in which the company’s name appears must bear the incorporation number of the company, and the forenames (initials) and surnames of the directors (together with their nationality, in the case of non-Nigerians).

#### **2.4.5 *Statutory Report and Meeting***

Public companies are required to hold a general meeting of the company (otherwise called “statutory meeting”) within six (6) months from the date of incorporation or the end of the financial year, as appropriate. A statutory report is presented at this meeting setting out certain significant facts about the company, such as capital structure, formation, expenses, and the names and addresses of the directors.

### **2.5 Members, Shareholders and Types of Shares**

For companies limited by shares, the terms “shareholder” and “member” are synonymous to all intents and purposes.

A company must maintain a Register of Members showing names and addresses of all shareholders, the number of shares and other particulars. Transfer of ownership of shares is not accomplished by simple delivery of a share certificate. The company secretary must enter a notation of the transfer in the Register of Members and this entry is conclusive evidence of the legal ownership of the shares and of membership. Upon transfer, the old share certificate (of the transferor) is cancelled and a new one is issued to the transferee.

Transfer of shares in publicly quoted companies is subject to the requirements of the Nigerian Stock Exchange and the Securities and Exchange Commission. Besides redeemable preference shares, a Nigerian company may not, except as authorised by CAMA and the

Securities and Exchange Commission Rules and Regulations, purchase its own shares or those of its parent company, notwithstanding anything to the contrary in its memorandum and articles of association.

Furthermore, a company may not, in any way, give financial assistance to anyone to enable such person to purchase its shares or the shares of its parent company. However, the company may provide money to trustees under an organised employee share purchase plan, and the company may lend money to bona fide employees and salaried directors through the trust to enable them to purchase such shares. Other exceptions are listed in CAMA.

### **2.5.1 Share Premiums and Discounts**

When a company issues shares at a premium, the premium must be transferred to a share premium account that may be used only for the following limited purposes, namely, to:

- pay up unissued shares of the company to be issued to members of the company as fully paid bonus shares;
- write off pre-operational expenses of the company;
- write off the expenses of, or the commission paid, or discount allowed on, any issue of shares; or
- provide for any premium payable on the redemption of redeemable preference shares.

The account may not be used for payment of cash dividends, and can be extinguished only by a reduction of capital.

A company may issue shares at a discount only with the permission of the court.

### **2.5.2 Ordinary Shares**

Ordinary shares carry a right to a share in the profits of a company after shareholders with preference rights have been satisfied. Similarly, after all the creditors and preferred stockholders have been satisfied on liquidation, the remaining assets are distributable to the holders of ordinary shares.

### **2.5.3 Preference Shares**

Preference shares may be issued in several classes, such as cumulative or non-cumulative as to dividend, participating or non-participating as to surplus profits, preferential as to income or capital, or convertible or non-convertible as to ordinary shares. Redeemable preference shares may be redeemed only if they are fully paid-up and must be redeemed only out of accumulated earnings or out of the proceeds of a new issue of shares.

### **2.5.4 Deferred Ordinary Shares**

The claims of the holders of deferred ordinary shares rank after preference shares and ordinary shares. Such shares may, however, be entitled to a larger portion of distributable profits than the ordinary shares after a certain amount of dividend has been paid on the ordinary shares. In practice, deferred ordinary shares are hardly ever created or issued.

### **2.5.5 Debentures and Bonds**

The term “bond” is not used in CAMA. The closest term to it used in CAMA is “debentures,” which denotes instruments issued by a company acknowledging a loan or other indebtedness and providing for payment of a specified sum by a given date at a specified rate of interest. A debenture, if secured, would typically create a charge, either fixed or floating, on the company’s assets. The charge may be contained in the main body of the debenture or in a separate trust deed. Provision may be made for the redemption of debentures by means of an invested sinking fund, annual drawings or by purchase in the open market.

## **2.6 Shareholders’ Meetings**

The first annual general meeting of a company must be held within 18 months of incorporation. Subsequent annual general meetings must be held each calendar year, provided that not more than 15 months shall elapse between one annual general meeting and another. Twenty-one days’ written notice to all shareholders is required for an annual general meeting, although this requirement may be waived by agreement of all the shareholders. A copy of the audited financial statements, the directors’ report and the auditor’s report must be sent to every shareholder at least 21 days before the annual general meeting.

At the request of shareholders holding at least 10% of a company’s paid-up share capital, the directors must convene a general meeting known as an extraordinary general meeting. Twenty-one days’ written notice of every extraordinary general meeting is required, unless shareholders holding not less than 95% of the issued share capital waive this requirement.

## **2.7 Annual Returns**

Every company must file its annual returns with the CAC within 42 days of its annual general meeting. The annual return is made by completing and filing Form CAC 10 at the CAC. Documents to be attached to the annual returns form include a copy of the balance sheet and profit and loss accounts presented to the annual general meeting, together with a copy each of the auditor’s report and directors’ report.

## **2.8 Directors and Officers**

Every company must have a minimum of two directors. A company must also have a secretary. Unless required by the articles of association, a director need not own any shares. There is no restriction on the nationality of directors of Nigerian companies under CAMA. Although corporations are prohibited from acting as directors, a corporation may nominate a person as a director to represent its interest on the board. The appointment of directors is governed by the provisions of the articles of association of a company.

Generally, the articles provide for appointment of the first directors by the subscribers to the memorandum of association.

The names of all directors (and their nationalities, if they are non-Nigerians) must be listed in the Register of Directors kept in the company’s registered office and disclosed on its trade

catalogues, trade circulars, show cards and business letters.

The remuneration of directors is determined by the company in a general meeting. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in the course of their duties.

With certain exceptions, a company may not make a loan, directly or indirectly, to a director unless with the permission of its shareholders. Similarly, companies may not compensate a director for loss of office without shareholders' approval.

Directors are officers of the company. The secretary of the company and other officers are appointed by the board of directors. The title of "chairman" is used in Nigeria much in the same way as it is used in the United Kingdom and the United States. However, instead of "president" as is used in the United States, a Nigerian company generally uses the title of "managing director" for its Chief Executive. There may also be a "vice-chairman" and/or "deputy managing director". The chief financial officer is usually called chief accountant or finance director (or, occasionally, controller) and, in most cases, will also carry out the duties of a treasurer.

## **2.9 Dividends**

The payment of dividends is not subject to statutory limits in Nigeria, to the extent that it is supported by profits. Therefore, a company may declare its entire profit after tax as dividends if it decides not to keep it in retained earnings<sup>16</sup>. Dividend payments are subject to 10% withholding tax (7.5% for bona fide beneficiaries based in a country with which Nigeria has a double taxation agreement (DTA), subject to the satisfaction of the conditions specified in the DTA).

At the annual general meeting, the shareholders cannot approve any amount exceeding the amount recommended by the directors, as dividend. In general, and as may be provided in the articles of association, the directors may declare and pay interim dividends between one annual general meeting and another.

## **2.10 Bonus (Scrip) Issue**

A company having accumulated earnings or reserves may distribute stock dividends (bonus shares) out of those earnings. The earnings are thereby capitalised and share certificates will be issued proportionally to existing shareholders.

## **2.11 Statutory Books of Account**

The CAMA requires every Nigerian company to keep proper books of account that give a true and fair view of the state of the company's affairs and are sufficient to explain its transactions. Such books must be kept at the company's registered office or such other place in Nigeria as the directors think fit, and shall at all times be open to inspection by the officers of the company.

In addition, a company must keep the following statutory books:

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<sup>16</sup> However, care must be taken as this may trigger additional corporate tax liability under certain circumstances.

- Register of members;
- Minutes book (to record proceedings at meetings of shareholders and directors and committee meetings, if any);
- Register of directors and secretaries;
- Register of charges (to record every charge created by the company, for example, a mortgage of the company's real estate, a floating charge on all assets from time to time or a charge relating to debenture issue);
- Register of shares or stock transfers;
- Register of directors' interests in shares and debentures; and
- Register of debenture holders.

## 2.12 Key Regulatory Agencies

### 2.12.1 *The Corporate Affairs Commission (CAC)*

The CAC was established pursuant to the CAMA, and is responsible for administering the CAMA, including the regulation and supervision of the formation, incorporation, registration, management and winding-up of companies. It also has powers to arrange and conduct investigation into the affairs of any Nigerian company if and when the interests of the shareholders and the public demand.

### 2.12.2 *The Nigerian Communications Commission (NCC)*

The NCC was established by the NCC Act, No. 75 of 1992 to regulate the Nigerian telecommunications industry. In 2003, the Act was repealed and replaced with the Nigerian Communications Act (NCA), No.19 of 2003 (now Cap N97, LFN, 2004).

Based on the NCA, the functions of the NCC include:

- the facilitation of investments in and entry into the Nigerian market for provision and supply of communications services, equipment and facilities;
- the protection and promotion of the interests of consumers against unfair practices, including matters relating to tariffs and charges for, and the availability and quality of, communications services, equipment and facilities;
- ensuring that licensees implement and operate at all times the most efficient and accurate billing system;
- the promotion of fair competition in the communications industry, and protection of communications services and facilities providers from misuse of market power or anti-competitive and unfair practices by other service or facilities providers or equipment suppliers;
- granting and renewing communications licences whether or not the licences themselves provide for renewal in accordance with the provisions of the NCA

and monitoring and enforcing compliance with licence terms and conditions by licensees;

- proposing and effecting amendments to licence conditions in accordance with the objectives and provisions of the NCA;
- fixing and collection of fees for grant of communications licences and other regulatory services provided by the NCC;
- the development and monitoring of performance standards and indices relating to the quality of telephone and other telecommunications services and facilities supplied to consumers in Nigeria having regard to the best international performance indicators; and
- making and enforcement of regulations made pursuant to the NCA.

### **2.12.3 The National Broadcasting Commission (NBC)**

The NBC was established by the NBC Act, No. 38 of 1992<sup>17</sup> (now Cap N11, LFN, 2004) as the regulatory authority of the Nigerian broadcasting industry. Under the NBC Act (as amended), the powers of the NBC include:

- receiving, processing and considering applications for the establishment, ownership or operation of radio and television stations, including cable television services, direct satellite broadcast and any other medium of broadcasting; and radio and television stations owned, established or operated by the Federal, State or Local Government;
- recommending applications, through the Minister of Communication Technology, to the President for the grant of radio and television licences;
- regulating and controlling the Nigerian broadcasting industry;
- receiving, considering and investigating complaints from individuals and corporate bodies regarding the contents of a broadcast and the conduct of a broadcasting station;
- establishing and disseminating national broadcasting code and setting standards with regard to the contents and the quality of materials for broadcast;
- regulating ethical standards and technical excellence in public, private and commercial broadcast stations in Nigeria;
- approving the transmitter power, the location of stations, areas of coverage as well as regulating types of broadcast equipment to be used; and
- ensuring strict adherence to the national laws, rules and regulations relating to the participation of foreign capital in relation to local capital in broadcasting.

Based on the final draft version of the National Information and Communications Technology Policy (NICTP) that was published in August 2012, there are indications that the NCC will become a converged ICT regulator by assuming the communications technology regulatory functions of the NBC on the one hand, and

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<sup>17</sup> The NBC Act No. 38 of 1992 was amended by the NBC (Amendment) Act No. 55 of 1999.

the regulatory functions of the National Information Technology Development Agency and the Nigerian Postal Service on the other.

#### **2.12.4 The Central Bank of Nigeria (CBN)**

The CBN was established by the CBN Act of 1959. The Act was repealed and replaced by the CBN Act of 1991, which was also repealed and replaced by the CBN Act, No. 7 of 2007.

The Federal Government of Nigeria is the sole subscriber to the share capital of the CBN. The principal functions of the CBN, as stated in the CBN Act and the Banks and Other Financial Institutions Act (BOFIA), 1991 (now Cap B3, LFN, 2004), are to:

- serve as banker and financial adviser to the Federal Government of Nigeria;
- ensure monetary and price stability;
- issue legal tender currency in Nigeria;
- maintain external reserves;
- safeguard the international value of the legal tender currency;
- promote a sound financial system in Nigeria; and
- license, supervise and regulate the activities of banks and other financial institutions such as microfinance banks, finance companies, leasing companies, primary mortgage financial institutions and bureaux de change .

#### **2.12.5 Nigeria Deposit Insurance Corporation (NDIC)**

The NDIC was established by the NDIC Act, 1988. The Act was repealed and replaced by the NDIC Act, No. 16 of 2006 under which the NDIC has responsibility to:

- insure all deposit liabilities of licenced banks and such other deposit taking financial institutions operating in Nigeria so as to engender confidence in the Nigerian banking system;
- provide assistance to insured institutions in the interest of depositors in case of imminent or actual financial difficulties particularly where suspension of payments is threatened, to avoid damage to public confidence in the banking system;
- guarantee payments to depositors, in case of imminent or actual suspension of payments by insured institutions up to the maximum amount specified in the Act<sup>18</sup>;
- assist monetary authorities in the formulation and implementation of banking policy so as to ensure sound banking practice and fair competition among insured institutions in the country; and
- pursue any other measure necessary to achieve the function of the NDIC provided that such measures and actions are not repugnant to the objects of the Corporation.

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<sup>18</sup> Based on Section 20(1) of the NDIC Act, this amount is N200,000 for depositors of licensed banks and N100,000 for depositors of other licensed deposit-taking financial institutions. The NDIC is empowered to revise these amounts upwards from time to time.

The NDIC, which is independent of the CBN, has the general responsibility of instilling and maintaining public confidence in the Nigerian banking industry.

The NDIC is empowered to, in consultation with the CBN, acquire, manage and dispose of impaired assets of a failing insured institution, either directly or through an Assets Management Company. The NDIC, in consultation with the CBN, may also set up bridge banks to assume the assets and liabilities of failing insured institutions. The NDIC exercised these powers in 2011, when it transferred the assets and liabilities of three Nigerian banks to newly incorporated bridge banks, namely, Mainstreet Bank Limited, Keystone Bank Limited and Enterprise Bank Limited.

Furthermore, the NDIC may terminate the insured status of an insured institution where such an institution violates the provisions of the NDIC Act. The CBN may revoke the licence of such an insured institution, in which case the NDIC shall act as liquidator of the failed insured institution with powers conferred on a liquidator by CAMA. The NDIC is supervised by the Federal Ministry of Finance.

#### **2.12.6 Department of Petroleum Resources (DPR)**

The DPR is responsible for ensuring compliance with the terms governing the award of oil licences to companies engaged in petroleum operations. It monitors oil companies' operations to ensure consistency with international industry standards and practices.

Its other functions include:

- enforcing safety and environmental regulations;
- keeping and updating records on petroleum industry operations, particularly on matters relating to petroleum reserves;
- advising government and relevant agencies on technical matters and public policies, which may affect the administration and control of petroleum; processing all applications for licences to ensure compliance with laid down guidelines; and
- ensuring timely and adequate payments of all rents and royalties as and when due.

Any company wishing to render any service to the oil industry in Nigeria is required to register with, and obtain a permit from, the DPR.

#### **2.12.7 National Petroleum Investment Management Services (NAPIMS)**

NAPIMS is the arm of the Nigerian National Petroleum Corporation that oversees the Federal Government's investments in the Joint Ventures with international oil companies (IOCs) and interests in Production Sharing Contracts (PSCs) and Service Contracts.

The functions of NAPIMS are to:

- maximise Petroleum Profits Tax and guarantee a high rate of return through

efficient cost reduction mechanisms;

- ensure that a reserve base is maintained and that reserve targets are met;
- ensure that production targets are also met;
- encourage gas utilisation and commercialisation;
- promote transfer of managerial skills and technology;
- diversify the country's revenue base in the hydrocarbon sector through development of gas initiatives;
- ensure zero gas flare-out;
- negotiate and manage all third-party operating agreements; and
- promote maximum co-operation in communities of oil and gas producing areas and ensure that environmental protection standards are strictly maintained.

#### **2.12.8 Nigerian Export Promotion Council (NEPC)**

The NEPC was established by the NEPC Act, Cap N108, LFN, 2004 to:

- promote the development and diversification of Nigeria's export trade;
- co-ordinate, monitor and promote the development of export-oriented industries in Nigeria;
- collect and disseminate information on products available for export;
- maintain adequate and effective representation to other countries and provide services to trade delegations in export-related matters; and
- administer grants and other benefits related to export promotion and development.

All companies engaged in export-related activities are required to register with the NEPC prior to exporting goods out of Nigeria.

#### **2.12.9 National Agency for Food and Drug Administration and Control (NAFDAC)**

NAFDAC, established by the NAFDAC Act of 1993 (now Cap N1, LFN, 2004), has wide-ranging responsibilities in the area of food, drug administration and control.

It formulates policies and issues guidelines on product specification and quality control for all foods, drugs, cosmetics, medical devices, bottled water, raw materials used in production processes, manufactured in, exported out of, or imported into, Nigeria.

The NAFDAC also carries out inspections and tests on these products (to ensure compliance with its stipulated standards and guidelines) and the raw materials and the production processes in factories and other establishments.

All foods, drugs, cosmetics, etc. produced, distributed or to be imported into Nigeria must be registered with the NAFDAC, which in turn issues out licences to evidence such registration. The NAFDAC also issues quality certification of foods, drugs, cosmetics, etc. intended for export.

#### **2.12.10 Nigeria Customs Service Board (NCSB)**

The NCSB, originally named the Board of Customs and Excise, was established by the Nigerian Customs Service Board Act, No. 45 of 1992 (now Cap N100, LFN, 2004).

The NCSB is controlled by the Federal Ministry of Finance and is responsible for the:

- administration of the Customs and Excise Management Act, Cap C45, LFN, 2004. In practice, this is carried out through the Nigeria Customs Service (NCS);
- formulation of general policy guidelines for the NCS; and
- collection of the customs and excise revenue in Nigeria;
- control and management of the administration of all areas designated as customs ports, airports, borders and customs stations; and
- inspection of all exports and imports passing through the above areas and, in the case of imports, assess and collect import duty payable thereon.

#### **2.12.11 Nigerian Maritime Administration and Safety Agency (NIMASA)**

NIMASA was established on 1 August 2006 from the merger of the National Maritime Authority and Joint Maritime Labour Industrial Council, both of which were former parastatals of the Federal Ministry of Transport.

One important objective behind the establishment of NIMASA is to improve Nigeria's potential to earn foreign exchange through the development of its shipping industry, and accelerate the rate of growth of the national economy.

The NIMASA Act, which was enacted in 2007, repealed the following pieces of legislation:

- Nigerian Shipping Policy Act Cap. 279, LFN, 1990;
- Nigerian Maritime Labour Act, 2003;
- Section 288 of the Merchant Shipping Act, Cap. 224, LFN, 1990<sup>19</sup> ; and
- Merchant Shipping (Delegation of Powers) Notice under section 395 of the Merchant Shipping Act, Cap. 224, LFN, 1990.

Based on the NIMASA Act, the Merchant Shipping Act, 2007, and the Coastal and Inland Shipping (Cabotage) Act, 2003, NIMASA has the mandate to perform the following functions among others:

- pursue the development of shipping and regulate matters relating to merchant shipping and seafarers;

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<sup>19</sup> The Merchant Shipping Act, Cap. 224, LFN, 1990 itself was repealed in its entirety and replaced by the Merchant Shipping Act, No. 27 of 2007.

- administer the registration and licensing of ships;
- regulate and administer the certification of seafarers;
- establish maritime training and safety standards;
- regulate the safety of shipping as regards the construction of ships and navigation;
- provide directions and ensure compliance with vessel security measures;
- provide maritime security;
- control and prevent maritime pollution;
- provide direction on qualification, certification, employment and welfare of maritime labour;
- develop and implement policies and programmes which will facilitate the growth of local capacity in ownership, manning and construction of ships and other maritime infrastructure; and
- enforce and administer the provisions of the Cabotage Act, 2003.

In addition to the above, NIMASA is empowered to make recommendations to the Minister of Transport on the grant of national carrier status to indigenous shipping companies. It also monitors the activities of vessels of such companies following the grant of national carrier status; and is expected to assist indigenous companies in the areas of fleet expansion and ship ownership.

Upon being granted national carrier status, NIMASA ensures that indigenous shipping companies exercise Nigeria's carrying rights, such as the exclusive right to carriage of export and import cargo belonging to the Federal, State and Local Governments, and the right to carry at least 50% of bulk dry and liquid cargo, etc.

#### **2.12.12 The National Insurance Commission (NAICOM)**

NAICOM was established by the NAICOM Act, No. 1 of 1997 (now Cap N53, LFN, 2004) as the regulator of the Nigerian insurance industry.

The functions of NAICOM listed in the NAICOM Act and the Insurance Act, Cap I17, LFN, 2004, include:

- the establishment of standards for the conduct of insurance business in Nigeria;
- the regulation of transactions between insurers and re-insurers within and outside Nigeria;
- the approval of standards, conditions and warranties applicable to all classes of insurance business;
- acting as adviser to the Government on all insurance-related matters;
- the approval of rates of insurance premiums to be paid in respect of all classes of insurance business;

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<sup>19</sup> The Merchant Shipping Act, Cap. 224, LFN, 1990 itself was repealed in its entirety and replaced by the Merchant Shipping Act, No. 27 of 2007.

- the protection of insurance policy holders and beneficiaries and third parties to insurance contracts; and
- contribution to the educational programmes of the Chartered Insurance Institute of Nigeria and the West African Insurance Institute.

NAICOM is supervised by the Federal Ministry of Finance.

#### **2.12.13 Securities and Exchange Commission (SEC)**

The SEC was established in 1979 to regulate capital market activities in Nigeria. The enabling legislation of the SEC has undergone a number of revisions over the years, the latest being the enactment of the Investments and Securities Act (ISA), No. 29 of 2007 (which repealed and replaced the ISA No. 45 of 1999 (Cap I24, LFN, 2004)).

The SEC is the apex regulatory organisation for the Nigerian capital market. Its functions include the:

- regulation of investments and securities business in Nigeria as defined in the ISA;
- registration and regulation of securities exchanges, capital trade points, futures, options and derivatives exchanges, commodity exchanges and any other recognised investment exchange;
- regulation of all offers of securities by public companies and entities;
- registration of securities of public companies;
- provision of assistance as may be deemed necessary to promoters and investors wishing to establish securities exchanges and capital trade points;
- registration and regulation of the workings of venture capital funds and collective investment schemes in whatever form;
- facilitation of the establishment of a nationwide system for securities trading in the Nigerian capital market in order to protect investors and maintain fair and orderly markets;
- registration and regulation of securities depository companies, clearing and settlement companies, custodians of assets and securities, credit rating agencies and such other agencies and intermediaries;
- promotion and registration of self-regulatory organisations, including securities exchanges, capital trade points and capital market trade associations to which it may delegate its powers;
- review, approval and regulation of mergers, acquisitions and all forms of business combinations and affected transactions of all companies registered under the CAMA;
- calling for information from and inspection, conducting of inquiries and audits of securities exchanges, capital market operators, collective investment schemes and all other regulated entities;

- levying fees, penalties and administrative costs of proceedings or other charges on any person in relation to investments and securities business in Nigeria in accordance with the provisions of the ISA;
- intervention in the management and control of capital market operators which it considers failed, is failing or in crisis, including entering into the premises and doing whatsoever it deems necessary for the protection of investors;
- seeking of judicial order to freeze the assets (including bank accounts) of any person whose assets were derived from the violation of the ISA, or any securities law or regulation in Nigeria or other jurisdictions; and
- relating effectively with domestic and foreign regulators and supervisors of other financial institutions, including entering into co-operative agreement on matters of common interest.

#### **2.12.14 Nigerian Stock Exchange (NSE)**

The NSE is the organised market for the sale of stocks, shares and debentures of companies, unit trusts and stocks/bonds issued by the Government. It provides essential facilities for companies and Government to raise funds for business expansion and development projects. It is governed by rules formulated by its National Council for the operation of the Exchange. Dealings on the floor of the Exchange are conducted through licensed stockbrokers. The Exchange has trading floors in Lagos, which is its headquarters, and thirteen other cities in the six geopolitical zones in Nigeria, including Abuja, Ibadan, Onitsha, Kano, Ilorin, Port Harcourt, Kaduna, Benin and Yola. Stocks can be traded physically by licensed stockbrokers on the trading floors, and remotely by licensed stockbrokers that are registered on the NSE's Automated Trading System.

#### **2.12.15 Abuja Securities & Commodities Exchange (ASCE)**

The ASCE was set up in 1998 as a parallel stock exchange to the NSE and commenced trading in 2001. However, soon after its take-off, it was converted to a commodity trading exchange.

There are indications that the Federal Government (through the combined efforts of the SEC, Ministries of Finance, Agriculture, and Industry Trade and Investment) may restructure the ASCE, to align its structure and operations with Government's agenda for agriculture and small and medium enterprises. It is envisaged that this measure will provide the much needed fillip to non-oil export promotion in the country.

#### **2.12.16 Nigerian Investment Promotion Commission (NIPC)**

The NIPC was established in 1995 by the NIPC Act (now Cap. N115, LFN, 2004), to serve as an investment promotion agency of the Federal Government with powers to:

- co-ordinate and monitor investment promotion activities, initiate and support measures aimed at improving the investment climate in Nigeria;
- register and keep records of foreign investments;
- maintain liaison between investors and ministries, Government departments and

agencies, institutional lenders and other authorities concerned with investments;

- provide and disseminate up-to-date information on incentives available to investors; and
- assist incoming and existing investors by providing support services.

Every Nigerian company with foreign participation is required to register with the NIPC before commencing business.

The NIPC operates a One-Stop Investment Centre with desk officers from key government agencies that new investors have to register with, or obtain approval from, during their start-up.

#### **2.12.16 Standards Organisation of Nigeria (SON)**

The SON was established in 1970 by the SON Act (now Cap. S9, LFN, 2004). The organisation establishes standards for, and monitors the quality of, products manufactured in Nigeria to ensure that such products meet international standards.

The organisation prescribes the Nigerian Industrial Standards (NIS) issued to companies engaged in manufacturing activities in Nigeria. The NIS stipulates the minimum compliance requirements for different types of manufactured products. In enforcing the standards, the organisation is empowered to seal up the premises of any defaulting manufacturer. The SON issues NIS certificate to qualifying manufacturing companies as evidence of compliance with the prescribed NIS.

#### **2.12.17 National Office for Technology Acquisition and Promotion (NOTAP)**

NOTAP is responsible for regulating and monitoring the transfer of foreign technology to Nigeria. All agreements involving technology transfer into Nigeria are required to be submitted to NOTAP for approval and registration. Examples of such contracts are software licensing agreements<sup>20</sup>, trademarks and patents licensing agreements, technical and management services and consultancy services agreements. Without NOTAP's certificate of registration, the fees payable under the related agreement will not qualify as an eligible transaction for foreign exchange remittance to the beneficiary.

#### **2.12.18 National Pension Commission (PENCOM)**

PENCOM was established by the Pension Reform Act, 2004 (which was repealed and replaced by the Pension Reform Act, 2014) to regulate, supervise and ensure the effective administration of pension matters in Nigeria.

The PENCOM has powers to:

- request or call for information from any employer or Pension Fund Administrator (PFA) or Pension Fund Custodian (PFC) or any other person or institution on matters relating to retirement benefits;
- formulate, direct and oversee the overall policy on pension matters in Nigeria;

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<sup>20</sup> Software licensing agreements in the telecommunications industry are equally required to be approved by the NCC as a condition for foreign exchange remittance.

- impose administrative sanctions or fines on erring employers or pension fund administrators or custodians; and
- order the transfer of management or custody of all pension funds or assets being managed by a PFA or held by a PFC whose licence has been revoked under the Pension Reform Act or subject to insolvency proceedings to another PFA or PFC, as the case may be.

#### **2.12.19 Nigerian Content Development and Monitoring Board (NCDMB)**

The NCDMB was established by the Nigerian Oil and Gas Industry Content Development Act (NOGICDA), 2010, to supervise, co-ordinate, monitor and implement the provisions of the Act, with a view to improving indigenous participation in the Nigerian oil and gas industry.

In this regard, NCDMB is charged by NOGICDA to:

- implement the regulations made by the Minister of Petroleum Resources in relation to any aspect of the Act;
- supervise, co-ordinate, administer and monitor the development of Nigerian content in the Nigerian oil and gas industry;
- appraise, evaluate and approve the Nigerian content plans and reports submitted to the Board in compliance with the provisions of the Act;
- administer and operate the e-market place and Joint Qualification Systems set up in accordance with the provisions of the Act;
- assist local contractors and Nigerian companies to develop their capabilities and capacities to further the attainment of the goal of developing Nigerian content in the Nigerian oil and gas industry; and
- make procedures to guide the implementation of the Act and ensure compliance.

### **2.13 Patents, Designs, Trademarks and Copyrights**

There are detailed pieces of legislation for the protection of proprietors of registered patents, designs, trademarks and copyright. Of particular importance are:

- Patents and Designs Act, Cap P2, LFN, 2004;
- Trade Marks Act, Cap T13, LFN, 2004; and
- Copyright Act, Cap C28, LFN, 2004.

A trademark is any mark used or proposed to be used in relation to goods to indicate a connection in the course of trade between the goods and some persons having the right either as a proprietor or as a registered user of the mark. Trademarks are registrable at the Trade Marks Registry, Abuja. Registration of a trademark confers on the person registering it,

a right to the exclusive use of that trademark for a period of seven (7) years, which may be renewed from time to time.

Patents and designs, on the other hand, relate only to inventions. An invention can be patented if it is new, results from inventive activity and is capable of industrial application, or if it constitutes an improvement upon a patented invention. This must also be registered to be protected. The right to patent and design in respect of an invention is vested on the statutory inventor, that is, the person, whether or not the inventor, who is the first to file or validly claim priority for a patent or design application in respect of an invention. A patent expires after twenty (20) years from the date of registration, while a design is effective in the first instance for five (5) years but renewable for two (2) consecutive periods of five (5) years each.

Unlike the other intellectual property rights discussed above, copyright does not require registration since it automatically applies to creative works as soon as they are created. The works eligible for copyright protection include literary, musical and artistic works, cinematograph films, sound recordings and broadcasts. To be eligible, however, such work must be original.

A copyright is valid for fifty (50) years in the case of broadcasts, sound recordings and cinematograph, and seventy (70) years for literary and musical works.

## **2.14 Coastal and Inland Shipping (Maritime Cabotage)**

The Coastal and Inland Shipping (Cabotage) Act, No. 5 of 2003, was enacted in April 2003. The main thrust of the Act is to restrict the use of foreign vessels in domestic trade, in order to encourage the indigenisation of domestic coastal trade. "Coastal trade" is defined as carriage of goods by vessels or other mode of transportation from one place in Nigeria, or above Nigerian waters, to any other place in Nigeria or above Nigerian waters, either directly or via a place outside Nigeria. "Carriage of goods" is defined to include the carriage of goods in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in Nigeria.

Under the Cabotage Act, the Minister of Transport has power to grant approvals and waivers, and to issue guidelines on the administration of the Act. He may grant a waiver to a duly registered foreign vessel, if he is satisfied that there are no credible Nigerian alternatives.

# Chapter Three



# 3. Labour and Social Security Regulations

## 3.1 Legislation

Labour matters are overseen by the Ministry of Labour and Employment. Labour relations are regulated by the following pieces of Federal legislation:

- The Factories Act, Cap F1, LFN, 2004;
- Industrial Training Fund (ITF) Act, Cap I9, LFN, 2004 [as amended by the ITF (Amendment) Act, 2011];
- Labour Act, Cap L1, LFN, 2004;
- National Health Insurance Scheme (NHIS) Act, Cap N42, LFN, 2004;
- National Salaries, Incomes and Wages Commission Act Cap N72, LFN, 2004;
- Trade Disputes Act, Cap T8, LFN, 2004;
- Trade Disputes (Essential Services) Act, Cap T9, LFN, 2004;
- Trade Unions Act, Cap T14, LFN, 2004;
- Trade Unions (International Affiliation) Act, Cap T15, LFN, 2004;
- National Housing Fund Act, Cap N95, LFN, 2004;
- Employee's Compensation Act, 2010<sup>21</sup>;
- Pension Reform Act, 2014; and
- Immigration Act, 2015.

## 3.2 Labour Unions

The Trade Unions Act (TUA) Cap T14, LFN, 2004, requires a trade union to be registered before it commences operation. The minimum number of members of a trade union of workers is 50, except as authorised by the Minister of Labour and Employment. The Act prohibits any staff within the management structure of any organisation from being a member of, or holding office in, a trade union.

Under the TUA, membership of trade unions is strictly voluntary. Consequently, an employee is entitled to refrain from joining a trade union and is guaranteed protection from victimisation for refusing to join the union.

The Nigerian Labour Congress (NLC) was founded in 1975, as an umbrella organisation for trade unions, to add impetus to trade unionism in Nigeria. It was the sole central trade

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<sup>21</sup> The Employee's Compensation Act repealed the Workmen's Compensation Act, Cap W6, LFN, 2004

union organisation in Nigeria until the 1990s when the Trade Union Congress (TUC) was registered.

The Trade Unions (International Affiliation) Act, Cap T15, LFN, 2004 regulates the capacity of the Nigeria Labour Congress and other trade unions to affiliate with related bodies outside Nigeria.

### **3.3 Employers' Organisations**

The Nigeria Employers' Consultative Association (NECA) serves the interest of its members (employers of labour) in labour and industrial matters. It represents the members' interests in dealings with Government agencies, and advises members on industrial matters affecting them. Apart from the NECA, there are other sector-based employer organisations, such as the Association of Food, Beverages and Tobacco Employers.

### **3.4 Trade Disputes**

The Trade Disputes Act (TDA), Cap T8, LFN, 2004, requires trade disputes to be settled first, at the company level, then by the Ministry, after which resolution of disputes lies with the Industrial Arbitration Panel and, lastly, the National Industrial Court (NIC), whose decision is final. The TDA confers exclusive jurisdiction over intra-and inter-union disputes on the NIC and limits appeals from its decisions to the Court of Appeal to only matters affecting fundamental human rights.

The Trade Disputes (Essential Services) Act, Cap T9, LFN, 2004, makes it an offence for anyone to engage in acts calculated to disrupt the economy or obstruct the smooth running of any essential services, or for anyone to wilfully fail to comply with the procedure laid down in the TDA which, among other things, prohibits strike actions or lockouts whilst trade disputes are being resolved.

### **3.5 Termination of Employment/Suspension of Employees**

An employment may be terminated if the parties to the contract jointly agree to do so. Generally, however, for an employment to be unilaterally terminated, a notice of termination (the period of which would depend on the terms of the contract of employment and/or the circumstances surrounding the employment) must be given or payment of salary must be made in lieu of such notice.

An employer may dismiss an employee when he has committed an act of misconduct e.g., fraud, insubordination or any other wrong doing.

In justifiable circumstances, e.g., pending investigation of a crime, an employer may place an employee on suspension. However, unless it is clearly stipulated that suspension shall be without pay, an employee on suspension is entitled to be paid his salaries and emoluments during the period of suspension.

Nonetheless, the law implies a right to suspend an employee without pay in favour of an employer, during the period of such employee's trial for an offence that leads to his conviction and subsequent dismissal.

### **3.6 Minimum Wage**

The National Minimum Wage Act, Cap N61, LFN, 2004, as amended by the National Minimum Wage (Amendment) Act, 2011, places a statutory obligation on every employer (except as provided for under the Act) to pay a wage not less than the National Minimum Wage of ₦18,000 per month to every worker in his employment. The stipulated amount is clear of all deductions, except deductions required by law or in respect of contributions to provident or pension funds or schemes agreed to by the workers and approved by the Minister of Labour and Employment (the Minister).

The minimum wage provisions do not apply to the following:

- an establishment in which less than fifty (50) workers are employed;
- an establishment in which workers are employed on part-time basis (i.e. less than forty hours per week);
- an establishment in which workers are paid on commission or piece-rate basis;
- workers in seasonal employment, such as agriculture;
- any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply; and
- other exemptions granted by the Minister in the interest of national economy, after taking into consideration reports from National Salaries Income and Wages Commission or such other body as might make representation for exemption.

An employer is mandated to keep proper records of the wages and conditions of employment of its employees and to retain such records for a period of three (3) years. Failure to do this is an offence under the Act, and attracts a fine of ₦20,000, and a penalty of ₦1,000 for each day during which the offence continues.

Civil service officers, so authorised by the Minister, are empowered to enter an employer's premises for the purpose of examining such records. The authorised officers may order an employer found contravening the provisions of the Act to remedy the situation within a specified time. Criminal proceedings may also be instituted against such an employer.

Any agreement for payment of wages less than the prescribed national minimum wage is void. Contravention of the minimum wage provision of the Act by an employer is an offence that attracts, on conviction, a fine of ₦20,000 and ₦1,000 for each day during which the offence continues. Contravention of other provisions of the Act, through falsification of records, refusal to provide information requested by an authorised officer, etc. also qualifies as an offence under the Act. The offence, on conviction, attracts a fine not exceeding N500 or imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

### **3.7 Industrial Training Fund (ITF)**

The ITF Act, Cap I9 LFN, 2004 [as amended by the ITF (Amendment) Act, 2011] established the ITF to:

- promote and encourage the acquisition of skills in industry or commerce with a view to generating a pool of indigenous trained manpower sufficient to meet the needs of the economy;
- provide training for skills in management for entrepreneurial development of the economy;
- set training standards in all sectors of the economy; and evaluate and certify vocational skills acquired by apprentices, craftsmen and technicians in collaboration with relevant organisations.

The ITF Governing Council is charged with the responsibility of administering the Fund in accordance with the provisions of the Act.

Based on the ITF Act (as amended), an employer shall be liable to contribute 1% of his annual payroll costs to the ITF, not later than 1 April of the following year, if it:

- (a) has 5 or more employees or an annual turnover of ₦50million and above;
- (b) bids for or solicits contracts, businesses, goods and services from public and private establishment;
- (c) requires approval for Expatriate Quota; or
- (d) utilises Customs services for import and export.

Employees, as defined under this Act, means all persons, whether or not they are Nigerians, employed to work for any establishment in return for a salary, wage or other consideration, and whether employed on full-time or part-time, and includes temporary employees who work for periods of not less than thirty days.

If any contribution is not paid within the statutory timeline, a sum equal to 5% of the amount unpaid shall be added for each month or part of a month after the date on which payment should have been made.

The ITF Governing Council may make a refund of up to fifty per cent of the contributions made by an employer, upon satisfaction that the employer's training programmes are in accordance with the ITF's reimbursement schemes.

### **3.8 Factories Act**

Every person who occupies or intends to occupy a factory is mandated to apply to the Director of Factories for registration of the factory. The Director shall, on receipt of the application, cause the factory to be registered and issue a certificate of registration if satisfied that the factory is suitable. Employers are compelled under the Factories Act to protect factory workers against factory and industrial hazards. All factories must display an extract of the Factories Act in their factory premises.

### **3.9 Employee's Compensation Act (ECA)**

The ECA 2010, which repealed the Workmen's Compensation Act, is designed to provide an open and fair system of guaranteed and adequate compensation for employees or their dependents in the event of death, injury, disease or disability arising out of or in the course of, employment. The Act is also intended to provide for safer working conditions for employees, by ensuring that all relevant stakeholders contribute to the prevention of occupational hazards and disabilities.

The provisions of the Act apply to all employers and employees in the public and private sectors of the economy, except members of the armed forces of the Federal Republic of Nigeria.

The ECA saddles the Nigeria Social Insurance Trust Fund Management Board (the Board) with the responsibility of coordinating and implementing the provisions of the Act, managing the Fund and compensating employees (or their dependants) out of the Fund, in the event of injury, disability or death.

Under the ECA, every employer is required, within two years of commencement of the Act, to make a minimum monthly contribution of 1% of its total payroll into the Employee's Compensation Fund. However, the Board may by regulations determine the actual contribution or rate of contribution to be made by each employer, which will vary based on the categorization of the risk factors of the particular class or sub-class of industry to which the employer belongs.

In practice, employers are still generally required to pay 1% of their total payroll, as the Board has yet to make regulations regarding the risk-based contribution model provided for in the Act. Contributions can be made monthly in arrears, or quarterly, half-yearly or annually in advance.

An employer who fails to comply with the provisions of the Act will be liable to the following penalties, among others:

- i. provisional or best of judgement assessment to be levied by the Board and a penalty calculated as a percentage of the assessment to be determined by the Board;
- ii. on conviction, imprisonment for a term of one year or a fine of ₦1 million in the case of a body corporate or ₦100,000 for an individual employer or both; and
- iii. a penalty of 10% of the unpaid assessment or the value of the security required, for non-payment of an assessment, or non-provision of a security against an assessment required by the Board.

### **3.10 National Salaries, Incomes and Wages Commission**

This Commission was set up in 1993 to replace the Board established under the defunct Productivity, Prices and Incomes Board Act, Cap 372, LFN, 1990. Its functions include advising the Federal Government on general policies and guidelines on pricing, productivity, wages and hoarding control. The Commission issues guidelines, which have the force of law after having been approved by the Federal Government.

### **3.11 Employment of Expatriates**

The Immigration Act, 2015 precludes any person other than a Nigerian citizen from accepting employment (not being employment by the Federal or State Government) without the consent in writing of the Minister of Interior. This provision ensures that the Minister's consent, in the form of Expatriate Quota (EQ) approval, is obtained before a foreigner is employed in Nigeria. The validity of the EQ ranges from two to three years [renewable for a maximum period of ten (10) years]<sup>22</sup>. Limited quota positions are granted as Permanent until Reviewed (PUR). This is usually for senior executive positions, such as the Chief Executive, Managing Director, or General Manager.

Once the EQ approval is granted, the expatriate concerned must apply for and obtain a Subject to Regularisation (STR) visa from the Nigerian Mission in his country of residence. Upon arrival in Nigeria, the STR visa would be regularised into a Work/ Residence Permit pursuant to an application by the company employing the expatriate. For expatriates wishing to work in Nigeria for a short period, i.e., for less than three months, a Temporary Work Permit (TWP) is obtainable from the Nigeria Immigration Service (NIS). Issuance of a TWP visa is subject to prior approval of the Comptroller General of the Nigerian Immigration Service (CGNIS). Upon the approval of the CGNIS, a TWP Cable is issued to facilitate the visa application at the relevant Nigerian Mission abroad where the expatriate is a citizen or has residence status.

Typically, a TWP visa is issued for highly technical and short- term engagement-specific assignments, such as installation and repair of equipment, commissioning, conducting specialized training, etc. A TWP visa is granted for less than three (3) months in the first instance. However, it may be extended (while in-country) to a maximum duration of 365 days, subject to approval of the NIS and payment of the associated statutory fee.

### **3.12 Contributory Pension Scheme**

The Pension Reform Act (PRA), 2004 was amended in 2011, by the PRA (Amendment) Act, 2011. It was repealed and re-enacted as the PRA, 2014, on 1 July 2014.

The PRA introduced mandatory contributory pension schemes with Pension Fund Administrators (PFA) and Pension Fund Custodians (PFCs) operating as pension fund managers and custodians of pension fund assets, respectively. The Act requires every employee (except those exempted from the Scheme) to maintain a Retirement Savings Account (RSA) with a PFA of his choice. The rates of contribution for the employee and employer in the private sector are a minimum of 8% and 10%, respectively. The rates are applicable to the employee's monthly emoluments (the total emoluments as may be defined in the employee's contract of employment but which shall not be less than a total sum of basic salary, housing allowance and transportation allowance). However, where an employer chooses to contribute 18% of the employee's monthly emoluments, the employee may not be required to make any contribution.

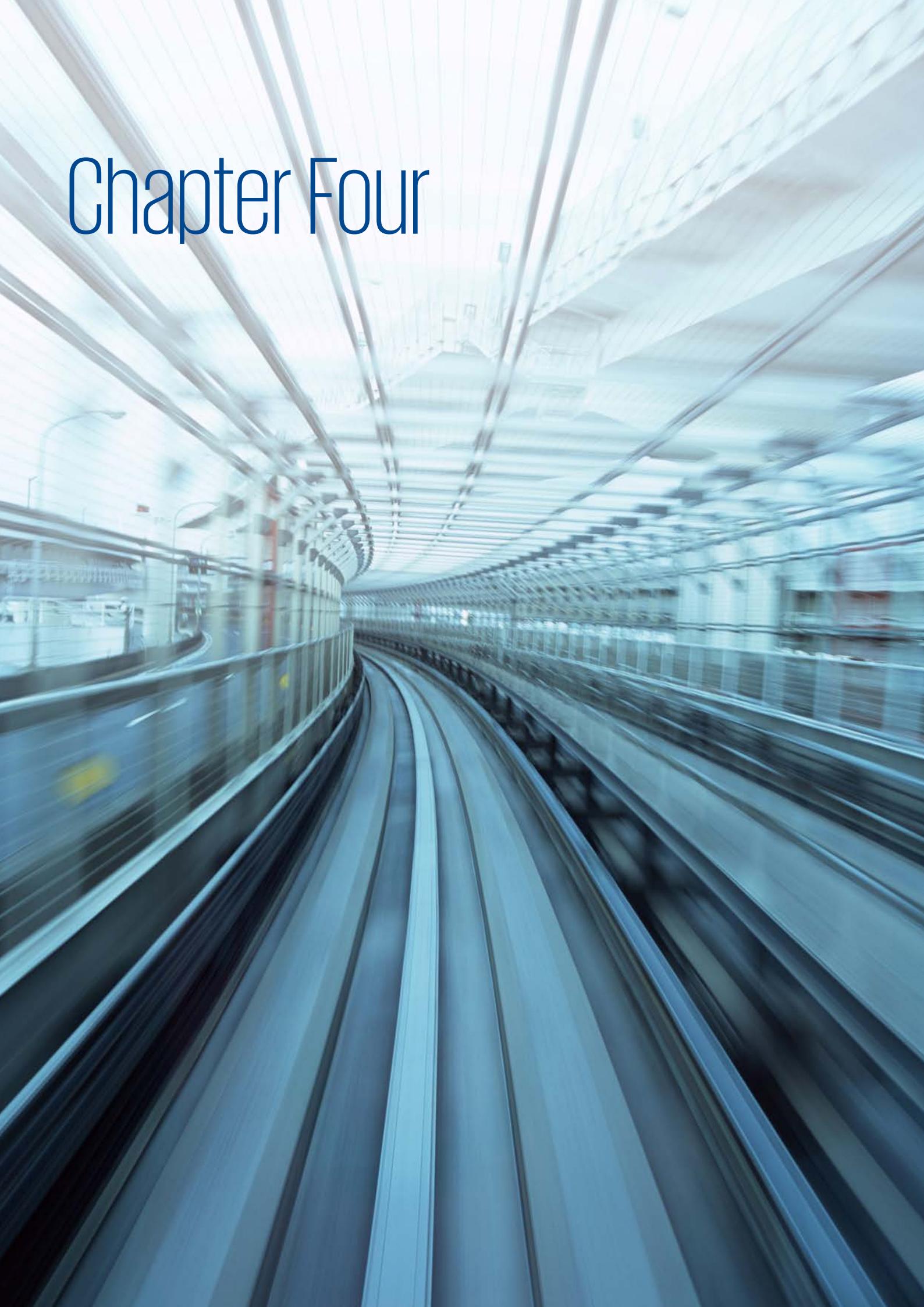
In addition to making monthly pension contributions, an employer is also required to maintain a group life insurance policy for each of its employees for a minimum of three times the annual total emolument of the employee.

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<sup>22</sup> Three (3) years in the first instance and subsequent renewals of two (2) years each, subject to an aggregate of ten (10) years maximum.

Specific provisions are made for permissible forms of withdrawal from the RSA under the PRA. From the age of 50 years, withdrawals can be made by way of programmed monthly or quarterly withdrawals, annuity purchased from a life insurance company, or a lump sum withdrawal (provided that the balance left after the lump sum withdrawal is enough to finance a programmed fund withdrawal or annuity for life).

# Chapter Four



# 4. The Nigerian Financial Services Industry

The Nigerian financial services industry (FSI) is one the major sectors of the Nigerian economy. The structural transformation of the industry over the last decade is symbolised by:

- the full autonomy of the Central Bank of Nigeria (CBN) under the CBN Act of 2007;
- mandatory recapitalisation of banks;
- emergence of microfinance banks;
- reversal of universal banking, giving way to divestment of banks from non-core banking businesses and emergence of bank holding companies
- industry stratification into national and regional banks, commercial and merchant banks; and the evolution of electronic banking. Besides, international banks are investing in Nigeria through acquisitions and start-ups just as Nigerian banks are making cross-border investments in representative offices, branches and full-fledged subsidiaries on the continent and international financial centres.

The recapitalisation in the insurance sector, effective February 2007, led to industry consolidation and entry of foreign investors with the expectation that stronger operators will emerge in the industry.

## 4.1 Money Market

Money market is based on the issuance of short-term securities by the CBN. These securities are taken up by banks and other financial institutions for further placement with individuals and businesses. The market is made up of:

- Regulators comprising CBN, Nigeria Deposit Insurance Commission (NDIC) and National Insurance Commission (NAICOM)
- Banks and non-bank financial institutions

As at July 2015, the money market comprised 21 commercial banks, 2 merchant banks, 1 non-interest bank, 793 micro-finance banks, 5 development finance institutions, 1 stock exchange, 1 commodity exchange, 3 discount houses, 40 primary mortgage institutions, 64 finance companies, 2,991 bureaux de change<sup>23</sup>, 15 life insurance companies, 29 general insurance companies, 12 composite insurance companies, and 2 re-insurance companies<sup>24</sup>.

<sup>23</sup> [www.cbn.gov.ng/Supervision/institutions.asp](http://www.cbn.gov.ng/Supervision/institutions.asp)

<sup>24</sup> [www.naicom.gov.ng](http://www.naicom.gov.ng)

#### **4.1.1 Regulatory environment in the money market**

The market regulators are saddled with varying responsibilities to ensure a sound and efficient system. The responsibilities of the various regulatory agencies are summarised below:

- The CBN is responsible for maintaining a sound and stable financial system;
- The NDIC is responsible for insuring deposit liabilities of licensed banks and providing assistance to depositors in the event of financial difficulties on the part of the banks; and
- The NAICOM is responsible for regulating the insurance practice in the country.

#### **4.1.2 Major statutes and regulations**

The main statutes and regulations applicable to the operators are:

- CBN Act, 2007;
- Banks and Other Financial Institution Act (BOFIA), Cap B3, LFN, 2004;
- CBN Regulation on the Scope of Banking Activities and Ancillary Activities, No. 3 of 2010
- NDIC Act, 2006;
- Investment and Securities Act (ISA), 2007;
- Insurance Act, Cap I17, LFN, 2004;
- Revised Operating Guidelines for Discount Houses (CBN 2003);
- Nigerian Investment Promotion Commission (NIPC) Act, Cap N117, LFN, 2004;
- Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap F34, LFN, 2004; and
- Money Laundering (Prohibition) Act No.3 of 1995 (now Cap M18, LFN, 2004).
- Securities and Exchange Commission (SEC) Rules and Regulations 2011
- Pension Reform Act (PRA), 2014

The CBN Act sets out the functions of the CBN, while BOFIA vests it with the primary responsibility for a sound and stable financial system in Nigeria. The CBN is empowered by BOFIA to license banks and discount houses, supervise and examine their operations and apply sanctions against erring operators under the Act.

The NDIC Act was enacted in the wake of imminent bank failures following the deregulation of the banking industry in the mid-eighties. All deposits of licensed banks, with few exceptions, are required to be insured with the NDIC. Banks are required to pay a premium based on their total deposits as at the end of the government fiscal year (December). Based on the Act, the maximum guaranteed payment to depositors in the event of bank failure (i.e., the insured deposit) is ₦200,000<sup>25</sup>. However, after the initial payment, depositors who have deposits in excess of the guaranteed amount may be able to recover all or part of their uninsured deposits upon distribution of the liquidation dividends of the failed bank by the NDIC.

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<sup>25</sup> The NDIC is empowered under the Act to revise the minimum guaranteed payment upwards from time to time.

#### **4.1.3 Profile of the Nigerian FSI**

##### **4.1.3.1 Banking sector**

In the aftermath of the global financial crisis, the CBN made significant reforms to the FSI to enhance the quality of banks, ensure financial system stability, evolve a healthy financial sector and ensure that the financial sector contributes to the real economy.

One of such reforms was the conduct of special audits by the CBN on banks. The audits focused on three major areas, namely, liquidity, capital adequacy and corporate governance. Based on the results of the audit, the CBN dismissed some bank executives and injected a total of ₦620 billion into troubled banks in 2009 to save the banking system from collapse.

Following the CBN special audit, the Asset Management Corporation of Nigeria (AMCON) Act was enacted in 2010. AMCON's main purpose was to efficiently resolve the non-performing loan assets of banks in Nigeria.

In 2011, AMCON purchased non-performing loans with an aggregate face value of about ₦3.2 trillion from banks in the Nigerian FSI at a negotiated price of about ₦1.6 trillion, and thus injected liquidity into the banking system in the form of tradable securities. The CBN also requested banks that failed the audit to shore up their shareholders' funds – which had been significantly eroded – before the end of the year. This measure led to another round of consolidation by way of mergers and acquisitions that resulted in the emergence of 20 licenced and operational banks at the end of September 2011, including three bridge banks created through the synergistic efforts of the CBN, NDIC and AMCON.

Another notable reform in the banking sector, is the revocation of universal banking licences, and the introduction of a new banking licence regime by the CBN in November 2010 via its Regulation on the Scope of Banking Activities and Ancillary Matters. The banking licences available under the new regime are:

- commercial banking licence (with international, national or regional authorisations)
- merchant banking licence; and
- specialised banking licences (for non-interest banks, microfinance banks, mortgage banks and development banks).

Based on the Regulation, CBN directed banks to divest from non-banking business before the effective date of 14 May 2012.

##### **4.1.3.2 Insurance Sector**

The insurance sector has also undergone significant transformation in recent years, although at a slower pace than the banking industry. The industry is regulated by the Insurance Act and supervised by NAICOM.

In 2005, the Federal Government announced the new minimum paid-up share capital

for insurance companies, effective end of February 2007.

The share capital requirements are as follows:

-	Life insurance business	₦2 billion
-	General insurance business	₦3 billion
-	Re-insurance	₦10 billion

The recapitalisation exercise led to industry consolidation, increased public confidence in the industry, and the emergence of stronger insurance companies with enhanced capacity to insure risks – especially in the oil and gas industry where local insurance is now mandatory in accordance with Nigeria Oil and Gas Industry Contract Development Act (NOGICDA).

In recent years, NAICOM has been making moves to enforce the following compulsory insurance policies in Nigeria with a view to deepening market penetration and enhancing the premium income of insurance companies:

- Group Life Insurance required under the Pension Reform Act, 2014.
- Employee's Compensation Fund contributions required under the Employee's Compensation Act, 2010.
- Occupier's Liability Insurance required by Section 65 of the Insurance Act, 2003.
- Motor Third Party Insurance as required by Section 68 of the Insurance Act, 2003.
- Builder's Liability Insurance as required by Section 64 of the Insurance Act.
- Health Care Professional Indemnity Insurance as required by Section 45 of the NHIS Act.

## 4.2 Capital Market

The capital market is regulated by the Securities and Exchange Commission (SEC) and the Nigerian Stock Exchange (NSE) as the self-regulatory agency in charge of listing of securities and operation of the trading floor.

In 1995, the Federal Government of Nigeria liberalised the capital market to pave the way for foreign portfolio investments on the stock exchange. As a result of abrogation of the Exchange Control Act 1962 and Nigerian Enterprises Promotion Act 1989, and enactment of the NIPC Act and the Foreign Exchange (Miscellaneous and Monitoring) Provisions Act, foreigners now participate as operators and investors in the Nigerian capital market.

The NSE is the only Exchange currently operating in the country with trading floors in the major cities in Nigeria. The Exchange has undergone significant transformation through the operation of the Central Securities Clearing System. Transactions are completed in T+1 day, which conforms to global standards.

# Chapter Five



# 5. Tax System

There are three levels of taxation in Nigeria based on the three-tiers of government in the country:

- Federal Government
- State Government
- Local Government

The Federal Government has jurisdiction over Companies Income Tax, Tertiary Education Tax, Personal Income Tax, Capital Gains Tax (on capital gains made by companies), Value Added Tax, Petroleum Profits Tax, Custom Duties (comprising import, export and excise duties) and Stamp Duties payable on transactions involving bodies corporate. In respect of Personal Income Tax, the authority of the Federal Government is restricted to the following:

- persons employed in the Nigeria Army, Navy, Air Force, Police other than in a civilian capacity;
- officers of the Nigerian Foreign Service;
- any other non-resident who derives income or profit from Nigeria.

The States and the Federal Capital Territory Internal Revenue Service, respectively, have responsibility for the assessment and collection of Personal Income Tax payable on the income of individuals resident within their State and territory. They also collect Capital Gains Tax on capital gains derived by individuals from disposal of assets located in their jurisdiction, and Stamp Duties on instruments executed by individuals.

The Local Governments are responsible for miscellaneous taxes, levies and rates, such as tenement rates.

In 1998, the Federal Government enacted the Taxes and Levies (Approved List for Collection) Act, which defines the taxes and levies collectible by the three tiers of Government, to avoid multiple taxation and conflict among the three levels of Government. However, in practice, the Act is not always respected by State and Local Governments, thereby making multiple taxation a common practice. The Taxes and Levies (Approved List for Collection) Amendment Order 2015, issued by the Minister of Finance pursuant to the Act does not appear to have solved this problem.

The applicable taxes in Nigeria can be classified as follows:

- **Direct taxes**
  - companies income tax
  - tertiary education tax
  - personal income tax
  - capital gains tax

- petroleum profits tax
- miscellaneous taxes
- **Indirect taxes**
  - value added tax
  - custom duties on imports and exports
  - excise duties
  - stamp duties

## 5.1 Companies Income Tax (CIT)

The CIT Act (CITA), Cap C21, LFN, 2004 (as amended by the CIT (Amendment) Act, 2007), is the enabling legislation on taxation of profits of any company (other than profits derived by oil exploration and production companies from petroleum operations<sup>26</sup>) accruing in, derived from, brought into, or received in, Nigeria.

Any company incorporated in Nigeria is liable to tax on its worldwide income. A non-Nigerian company, however, is subject to tax on profits accruing to it in, or derived by it from, Nigeria, to the extent that the profit is not attributable to operations outside Nigeria.

The profit of a non-Nigerian company from trade or business is deemed to be derived from Nigeria for tax purposes under the following circumstances:

- if the company has a fixed base<sup>27</sup> of business in Nigeria, to the extent that the profit is attributable to the fixed place;
- if it does not have such a fixed place of business in Nigeria, but habitually operates a trade or business through a dependent agent;
- if that trade or business or activity involves a single contract for surveys, deliveries, installation or construction; or
- where the trade or business or activity is between the company and another person (or company) controlled by it or which has controlling interest in it such that the transactions between them are deemed to be artificial or fictitious.

### 5.1.1 ***Income Liable to Tax***

Under CITA, the profits of any company accruing in, derived from, brought into, or received in, Nigeria in respect of items stated below are liable to tax:

- any trade or business for whatever period of time such trade or business may have been carried on;
- rent or any premium arising from a right granted to any other person/ company for the use or occupation of any property;
- dividends, interest, royalties, discounts, charges or annuities;
- fees, dues and allowance for service rendered;
- any amount of profits or gains arising from acquisition and disposal of short-

<sup>26</sup> Profits derived by a company from petroleum operations are currently exempt from CIT, but liable to Petroleum Profits Tax (PPT). However, based on the provisions of the Petroleum Industry Bill presently before the National Assembly, the profits may become liable to both CIT and Nigerian Hydrocarbon Tax (which will replace PPT), when the Bill is enacted.

<sup>27</sup> A fixed place of business does not include facilities held solely for the storage or display of goods and merchandise and for the collection of information.

term monetary instruments; and

- any source of annual profits or gains not falling within the above categories.

### **5.1.2 *Allowable Expenses***

For any expense or outgoing to be allowed as a deduction from the income of a business in any period, that expense must be wholly, exclusively, necessarily and reasonably incurred during that period for the purpose of earning that income, and ultimately borne by the business.

The following expenses, if incurred for the purpose of acquiring profits, are allowable:

- interest on money borrowed and employed as capital in acquiring the profit;
- rent and any premium paid in respect of land or building, including rent on residential buildings. In the case of residential building, allowable rent is restricted to the basic salary of employees for the relevant period;
- repairs and renewal costs relating to the premises, plant, fixtures etc., used in the business;
- bad and doubtful debts to the extent that they are estimated to the satisfaction of the FIRS to have become bad or doubtful of collection, respectively. In practice, general provisions for doubtful debts are not deductible;
- contributions to approved pension, provident or other retirement benefit funds, society or scheme;
- expenses incurred on research and development; and
- donations to approved bodies listed in the Fifth Schedule to the CITA, as may be amended from time to time by the Minister of Finance. In December 2011, the list of approved bodies was expanded to include public institutions established for the promotion of the defence of human rights, women empowerment, accident prevention, transparency in governance and electoral processes, sports, art and culture, etc.

### **5.1.3 *Disallowable Expenses***

The following expenses are specifically disallowed under the Act:

- capital repaid or withdrawn or any expenditure of a capital nature;
- any sum recoverable under an insurance or contract of indemnity;
- taxes on income or profits levied in Nigeria or elsewhere. Where foreign tax is levied on profits chargeable to tax in Nigeria and there is no double taxation relief for such tax, the tax would be allowed as a deduction;
- payments to unapproved pensions, provident, savings, widows and orphan society, funds or schemes;

- depreciation;
- appropriation of profits;
- management fees incurred without ministerial approval [which, in practice, is considered satisfied by the approval of the FIRS or the National Office for Technology Acquisition and Promotion (NOTAP)];
- any expenses incurred within or outside Nigeria for the purpose of earning management fees unless the prior approval of an agreement giving rise to such management fees has been obtained from the Minister of Finance (which is also considered satisfied by FIRS or NOTAP approval); and
- expenses incurred outside Nigeria for, and on behalf of, any company except of a nature and to the extent as the FIRS may consider allowable.

#### **5.1.4 *Capital Allowances***

Depreciation does not qualify as an allowable deduction for tax purposes. However, capital allowances are granted to companies on their qualifying capital expenditure.

These allowances comprise:

- Investment Allowance - this is a 10% allowance granted only in the first year that an item of plant and equipment is put to use.
- Initial Allowance - this is also a once-and-for-all allowance granted only in the first year based on prescribed rates. It applies to all items of qualifying expenditure.
- Annual Allowance - this is granted every year based on prescribed rates. It is computed on the residue of qualifying expenditure, after deduction of initial allowance on a straight line basis. An amount of N10 per item is retained in the books for tax purpose until the asset is disposed of.
- Balancing Adjustment - this arises on the disposal of an asset. It represents the difference between the consideration received on the disposal of an asset and the tax written down value (TWDV) of the asset (cost of the asset less the total initial and annual allowances claimed to date on the asset). If the consideration is higher than the TWDV, there is a balancing charge, which represents additional income liable to tax. However, the amount taxable will be restricted to the actual capital allowances (initial and annual allowances only) claimed to date on the asset. On the other hand, if the consideration is less, there will be a balancing allowance, which qualifies for tax deduction.

The amount of capital allowances claimable in any year is restricted to 66 $\frac{2}{3}$ % of assessable profits (accounting profits after adjustment for tax items) for companies, other than those involved in agricultural and manufacturing businesses.

The current rates of capital allowance are as follows:

<b>Qualifying Expenditure</b>	<b>Initial Allowance %</b>	<b>Annual Allowance %</b>	<b>Effective Period of Claim (Years)</b>
Building (Industrial and non-Industrial)	15	10	10
Plant and Machinery:			
- Agricultural Production	95	Nil	1
- Others	50	25	4
Motor Vehicles:			
- Public Transportation	95	Nil	1
- Others	50	25	4
Housing Estate	50	25	4
Ranching and Plantations	30	50	2
Mining	95	Nil	1
Plantation Equipment	95	Nil	1
Furniture & Fittings	25	20	5
Research and Development	95	Nil	1

#### **5.1.5 Income Tax Rates**

The current CIT rate is 30%. This rate is applied to taxable profit to determine the CIT liability for the relevant year. Taxable profit is based on the profit reported in the financial statements adjusted in accordance with tax law provisions (i.e. actual profit basis).

Historically, the taxable profit of non-Nigerian companies was determined, in practice, on deemed profit basis by multiplying the company's gross revenue from Nigeria by 20% deemed profit rate. The effective CIT rate of non-Nigerian companies was, therefore, 6% of their Nigerian revenue. However, the FIRS recently discontinued the practice, and now requires the companies to file their tax returns on actual profit basis.

For companies with annual turnover of less than N1 million, and engaged in manufacturing, agricultural production, mining of solid minerals or wholly export trade, the applicable CIT rate is 20% for the first five tax years of operations. This incentive may be extended for two additional years where the company shows evidence of good records and management, and continues to carry on the business.

#### **5.1.6 Income Tax Returns**

Every company (including non-resident companies doing business in Nigeria) assessable to tax under the CITA, must prepare and file on self-assessment basis with the Federal Inland Revenue Service (FIRS), an income tax return 6 months of the

end of its accounting period. However, in the case of a new company, the returns are to be filed within 18 months from the date of incorporation, or 6 months after its first accounting period, whichever occurs first.

The returns include audited accounts, income tax and capital allowances computations and duly completed self-assessment forms.

Any company which fails to file its tax returns within the stipulated time frame is liable to a penalty of ₦25,000 for the first month of default and N5,000 for each subsequent month of default.

#### **5.1.7 *Payment of Tax***

Tax computed on self-assessment basis is payable either in a lump sum or by instalments. Based on the provisions of CITA, the lump sum is due within two months from the due date of filing the self-assessment returns, while instalment payments can be made in not more than six instalments up to 30 November of the relevant tax year, subject to the approval of the FIRS. The CITA does not preclude a company from applying for instalment payment at the time of filing its CIT return.

However, the FIRS in 2011 issued Tax Administration (Self-assessment) Regulations which appear to contradict the provisions of CITA. Based on the Regulations, taxpayers wishing to make instalment payments are required to commence payment of the tax due in the relevant year of assessment in such a manner that the final instalment payment is made not later than the due date of filing the related tax returns (or the actual date of filing, where this precedes the due date).

Where an assessment is raised by the FIRS on a company, the assessed tax, if not disputed, is payable in a lump sum within two months from the date of service of the assessment. However, where an objection or appeal is raised by the company in respect of the assessment, collection of the assessed tax will remain in abeyance until the objection/appeal is determined. Upon determination of the assessment, the FIRS is required to serve a notice of the tax payable upon the company, and the company is obliged to pay the liability (if any) within one month from the date of service of the notice.

For both self-assessed and FIRS-assessed CIT liabilities, failure to pay the assessed tax within the statutory period attracts a penalty of 10% of the tax due and interest at the prevailing monetary policy rate of the Central Bank of Nigeria plus a spread to be determined by the Minister of Finance. The interest rate published by the FIRS for the year 2015 was 15%.

#### **5.1.8 *Incomes Exempted from Tax***

The profits of the following companies and organisations engaged in specified activities are exempt from taxation under the CITA:

- statutory or registered friendly societies;
- co-operative societies registered under any enactment or law relating to co-operative societies;

- ecclesiastical, charitable or education establishments of a public character;
- companies formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purposes;
- companies engaged in petroleum operations, in so far as their profits are derived from operations liable to tax under the Petroleum Profits Tax Act, Cap P13, LFN, 2004;
- body corporate established by or under any local government law or edict in force in any State in Nigeria; and
- any body corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria for the purchase and sale of that commodity.

However, profits derived by such companies/organisations from a trade or business (other than their core activities) are not entitled to such exemptions.

In December 2011, the Federal Government issued an Order which essentially exempts from CIT, bonds issued by the Federal, State and Local Governments and their agencies, and bonds issued by corporate and supra-national entities. The Order also exempts interest earned by holders of the bonds and short-term securities from CIT. The exemption was effective from 2 January 2012 and is, generally, for a period of 10 years. However, bonds issued by the Federal Government will continue to enjoy the exemption after the 10-year term.

#### **5.1.9 *Tax Losses***

Under Nigerian tax laws, a company can carry forward its tax losses for offset against its future assessable profits indefinitely. However, unutilised losses of a company during its first four tax years cannot be deducted from its assessable profits after the fourth year from the year of commencement of business<sup>28</sup>. In addition, the loss from one trade/business cannot be offset by a company against the income from another trade or business.

#### **5.1.10 *Minimum Tax***

There is a provision for minimum tax payable under CITA. It applies when there is either a loss, or the tax computed is less than the minimum tax. The minimum tax is computed as follows:

- For a company with an annual turnover of ₦500,000 and below, the highest of:
  - 0.5% of gross profit; or
  - 0.5% of net assets; or
  - 0.25% of paid-up capital; or
  - 0.25% of the turnover of the company
- For a company with an annual turnover in excess of ₦500,000, the minimum tax computed as in the foregoing paragraph plus 0.125% of turnover in excess of ₦500,000.

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<sup>28</sup> The rationale for this distinction is not quite clear and it may well be due to a referencing error in the amendment legislation.

However, the minimum tax provision will not apply to the following companies:

- a company with at least 25% of imported equity capital. In practice, this is typically supported by a certificate of capital importation issued by a bank;
- a company carrying on agricultural trade or business; and
- a company that is in its first four (4) calendar years of business.

#### **5.1.11 Basis of Assessment**

Generally, tax is assessed on profit from the accounting period ended in the preceding fiscal year (i.e. 1 January – 31 December) based on returns due to be filed by the company within six months of the end of its accounting period. However, in the first three years of operations, the basis period for assessment is determined by the “commencement rule”. In this regard, the assessment for the first year of trading/business is based on the actual profits made in that calendar year. The assessment for the second year is made on the profits of the first twelve months of trading/business. The assessment for the third and subsequent years is made on the normal prior year basis.

Illustration

If a company with a 31 May accounting year-end commences trading on 1 June 2004, the tax years and basis periods will be as follows:

Tax year	Basis period
First year – 2004	1 June 2004 – 31 December 2004
Second year – 2005	1 June 2004 – 31 May 2005
Third year – 2006	1 June 2004 – 31 May 2005

The rules for the last two years before cessation of business are also different from the general rule, although the option of selecting the actual basis of assessment for the penultimate year lies with the tax authorities in this instance.

Income of the fiscal year in which trading ceases is always computed on actual year basis.

### **5.1.12 Tax Clearance Certificates**

A Tax Clearance Certificate (TCC) is a document that certifies that a company has settled the income taxes due for the three immediately preceding years of assessment. However, issuance of a TCC to a company does not preclude the FIRS from subsequently assessing the company to additional tax based on a tax query, audit or investigation.

Based on the CITA, a company is required to demonstrate compliance in respect of CIT and withholding tax only, in order to be eligible to obtain a TCC from the FIRS. In practice, however, the FIRS has extended this requirement to include compliance with tertiary education tax, value added tax, etc. In some FIRS offices, companies are also required to submit copies of the TCCs of their directors or promoters before the corporate TCC is issued.

A TCC is a prerequisite for practically all official transactions conducted by a company in the public sector, such as when tendering for government contracts, or when remitting foreign exchange through the banks, etc.

### **5.1.13 Head Office Expenses**

Generally, expenses incurred outside Nigeria for and on behalf of a company (e.g. head office expenses attributable to Nigerian subsidiaries) are deductible only to the extent that they are wholly, reasonably, necessarily and exclusively incurred by the company for the purpose of generating its profits.

### **5.1.14 Pioneer Companies**

Except otherwise stated, eligible companies operating in designated pioneer industries and/or producing pioneer products, which apply for and are granted pioneer status, are entitled to income tax holiday under the Industrial Development (Income Tax Relief) Act, Cap I7, LFN, 2004, for up to five (5) years – three (3) years in the first instance, but renewable for an additional maximum period of two (2) years. In addition to income tax holiday, dividends paid out of pioneer profits are not subject to withholding tax.

Where capital expenditure on qualifying assets has been incurred during the tax relief period, and the assets are available for use after the period, the expenditure is treated as having been incurred on the first day following the tax relief period. In addition, any aggregate loss (losses less profits) incurred during the tax relief period is deemed to have been incurred on the first day following the tax relief period and is available for carry by the company.

### **5.1.15 Transfer Pricing Regulations**

The FIRS issued The Income Tax (Transfer Pricing) Regulations No. 1 of 2012 on 21 September 2012. The Regulations are based on both the Organisation for the Economic Cooperation and Development (OECD) and UN models.

The Regulations apply to transactions between “connected taxable persons”, which is defined to include persons, individuals, companies, partnerships, joint ventures, and trusts or associations. Some of the transactions (referred to as ‘controlled

transactions') affected are: sale and purchase of goods and services; sale, purchase or lease of tangible assets; provision of services; lending and borrowing of money; and manufacturing arrangements.

The Regulations require connected taxable persons that have controlled transactions to do the following for each year of assessment:

- independently review and identify transactions carried out with related parties;
- ensure that terms and conditions of the transactions are at arm's length using the specified methodologies;
- maintain documentation to demonstrate that the pricing of controlled transactions is consistent with the arm's length principle;
- complete Transfer Pricing Declaration Form and file same with the FIRS when filing their income tax returns, and
- on FIRS's request, submit the Transfer Pricing documents within 21 days (additional 7 days may be granted)

#### **5.1.16 *Tertiary Education Tax (TET)***

The Tertiary Education Trust Fund (Establishment) Act, 2011 requires every company incorporated in Nigeria to pay 2% of its assessable profit as TET. In the case of oil companies, the tax is deductible for the purpose of computing Petroleum Profits Tax (PPT). The TET return is filed along with the relevant tax return (PPT or CIT).

Non-resident companies are not subject to TET in Nigeria.

#### **5.1.17 *Double Taxation Agreements***

Nigeria currently has double taxation agreements (DTAs) with the United Kingdom, Belgium, Pakistan, Romania, France, the Netherlands, Canada, Philippines, Italy (Air and Shipping only), Czech Republic, Slovakia, China and South Africa<sup>29</sup>. In addition, Nigeria has signed DTAs with Mauritius, South Korea, the United Arab Emirates and Qatar. However, these treaties have yet to be ratified by the National Assembly as required under the Constitution.

The Nigerian taxes to which the treaties apply are the CIT, Personal Income Tax, Capital Gains Tax and Petroleum Profits Tax. The DTAs are largely based on the OECD model.

## **5.2 *Personal Income Tax (PIT)***

The legal basis for the imposition of PIT is the PIT Act (PITA), Cap P8, LFN, 2004, as amended by the PIT (Amendment) Act, 2011. The Operation of Pay-As-You-Earn (PAYE) Scheme Regulations 2002, issued pursuant to the PITA, forms the basis for the administration of PIT on employment income.

The PAYE scheme is a system whereby employers of labour are deemed to be the agent

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<sup>29</sup> [www.firs.gov.ng/Tax-Management/Pages/Tax-Treaties.aspx](http://www.firs.gov.ng/Tax-Management/Pages/Tax-Treaties.aspx)

of the tax authority for the purpose of remitting the taxes deducted from the salaries, allowances and other benefits (including benefits-in-kind) due to their employees. For this purpose, the employer is required to register with the zonal office of the tax authority(ies) in the State(s) to which its employees' taxes are payable.

The Joint Tax Board (JTB) is vested with the responsibility for the general administration of PIT in Nigeria. Each State and the Federal Capital Territory, has a State Internal Revenue Service (SIRS) which is responsible for the assessment and collection of PIT/PAYE tax from persons resident (or whose employees are resident) in that State or territory. The FIRS is responsible for the assessment and collection of PIT/PAYE tax from personnel of the Nigerian Armed Forces and the Nigerian Police Force (other than civilian employees), officers of the Nigerian Foreign Service, and non-residents who derive income or profit from Nigeria.

### **5.2.1 *Residence***

The concept of residence is important in determining the extent of a taxpayer's liability to tax in Nigeria. It is also critical in determining the relevant tax authority (RTA) for the purpose of assessing and collecting taxes.

Under the PITA (as amended), a person's place of residence (POR) is defined as a place available for his domestic use in Nigeria on a relevant day. This excludes a hotel, rest house or other place at which he is temporarily lodging unless no more permanent place is available for his use on that day. However, where an individual has two or more PORs in different States of the Federation, his residency in Nigeria will be determined based on his principal place of residence (PPOR). PROR is defined to include a branch office or operational site (oil terminals, oil platforms, flow stations, factories, quarries, construction site) with a minimum of 50 workers.

Once a POR or PPOR is determined, the RTA is the tax authority of the territory in which the taxpayer has his POR or PPOR, as the case may be.

### **5.2.2 *Taxable Income***

Though the employer is statutorily required to make PAYE tax deduction from the emoluments paid to an employee, not all the income is liable to tax. Under the PITA (as amended), any salary, wages, fees, allowances or other gains or profits from an employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted to an employee (temporary or permanent) are chargeable to tax. However, the following are tax-exempt/tax-deductible:

- reimbursement of expenses incurred by the employee in the performance of his duties, and from which the employee is not expected to make any profit;
- relocation allowance paid an employee by reason of a change of the employee's employment which requires the employee to change his POR;
- retirement gratuities and compensation for loss of office
- interest on loans for developing an owner-occupied residential house;
- contribution to any pension, provident or other retirement benefits fund approved by the JTB;

- expenses proved to the satisfaction of the RTA to have been incurred by the individual on research for the period, including the amount of levy paid by him under the National Agency for Science and Engineering Infrastructure Act;
- National Housing Fund contributions; and
- National Health Insurance Scheme contributions.

Employment income earned by an individual whose employer is in Nigeria, or has a fixed base in Nigeria, is deemed to be derived from Nigeria, and is liable to tax in Nigeria. Please refer to **5.2.7** below for specific comments on the taxation of expatriates.

Aside from employment income, incomes earned by an employee from other sources (e.g., trade, business, rental income, etc.) are liable to PIT. Furthermore, incomes/profits earned by other categories of individuals other than employees (e.g., sole proprietors and self-employed individuals, such as partners in a firm) from trade, business, profession, vocation or investments are chargeable to PIT.

### **5.2.3 *Statutory Reliefs***

These are granted to a taxpayer, depending on his circumstances, to reduce his tax liability. These reliefs, except the Consolidated Relief Allowance (CRA), can only be granted if claimed by the taxpayer on his/her Income Tax Form for Return of Income and Claims for Allowances and Relief (Form A). The RTA may also require documentary evidence in support of any claim made by the taxpayer.

The various types of tax reliefs are as follows:

- CRA: This is computed as the higher of ₦200,000 or 1% of gross income, plus 20% of gross income.
- Children Allowance: The amount allowed is ₦2,500 per annum per child subject to the following conditions:
  - i. the child must be unmarried and less than 16 years of age;
  - ii. if more than 16 years, the child must be receiving full time instruction in a recognised educational establishment or under articles or indentures in a trade or profession; and
  - iii. the allowance is only claimable for up to 4 children.
- Dependent Relative Allowance: The maximum allowed is ₦2,000 per dependent relative, subject to a maximum of two relatives. Where the dependant is earning income more than ₦2,000, the allowance is not claimable. Furthermore, the allowance would be prorated if the dependant is being cared for by more than one chargeable person.
- Life Assurance Relief: Premiums paid by the employee during the year preceding the year of assessment to an insurance company in respect of insurance or a

contract for a deferred annuity, on his life or the life of his spouse can be enjoyed as a statutory relief in the current year of assessment.

- Disability Allowance: An amount of ₦3,000 per annum or 20% of earned income, whichever is higher, would be granted an employee who uses special equipment and the services of an attendant in the course of performing his duties.

#### **5.2.4 Tax Rates**

Income tax is levied at progressive rates as shown below:

**Tax Table (from 14 June 2011)**

<b>Taxable Income</b>	<b>Tax Rate</b>
1st ₦300,000	7%
Next ₦300,000	11%
Next ₦500,000	15%
Next ₦500,000	19%
Next ₦1,600,000	21%
Above ₦3,200,000	24%

Where an individual does not have any chargeable income, or his chargeable income results in a tax payable lower than 1% of his total/gross income, the individual is only liable to a minimum tax of 1% of his total/gross income.

#### **5.2.5 Returns and Payment of Tax**

PAYE taxes must be remitted within 10 days after the end of the month of deduction. Where the RTA has raised an assessment for the tax due, the assessment must be paid within 2 months from the date the assessment is received, if the assessment is not in dispute. If the assessment is disputed by means of a valid objection letter, it stays in abeyance until the dispute is determined. The RTA would typically raise an assessment when the employer has failed to submit monthly PAYE tax returns as and when due. The RTA can also levy a penalty of 10% per annum plus interest at the prevailing commercial rate, if and when taxes are not remitted.

At the end of every year, the employer is required to submit its employees' tax deduction cards together with the employer's remittance card (Form G). The summary of the tax deducted from each employee would be shown on the Employer's Annual Declaration Form (Form H1) and submitted to the RTA by 31 January of the following year. Failure to submit the Form H1 attracts a penalty of ₦500,000 and ₦50,000, for companies and individuals, respectively.

Aside from PAYE scheme-related returns, all taxable persons (including employees) are required under Section 41 of the PITA (as amended) to file annual returns of income (Form A) not later than 90 days from the commencement of every year of assessment. The return to be filed by each taxpayer is required to state his/her income from all sources in the preceding year of assessment.

However, given that employment income is assessed to tax on actual year basis and administered via the PAYE scheme, in practice, employers generally file annual returns on behalf of their employees, which show the estimated employment income to be earned by each employee in the relevant tax year.

#### **5.2.6 TCCs**

A TCC is issued on application by the taxpayer, which is processed by their employers. It contains the following information in respect of the last three years of assessment:

- chargeable income;
- tax payable;
- tax paid; and
- tax outstanding, or, alternatively, a statement to the effect that no tax is due.

TCCs are required to be produced in respect of various transactions, such as application for foreign exchange or application for remittance of funds, application for registration as a contractor, application for Government loan for industry or business, etc.

#### **5.2.7 Taxation of Expatriates**

Income earned by expatriates working in Nigeria or by expatriates outside Nigeria for work performed in Nigeria, is liable to PIT in Nigeria under the PITA (as amended). The Act stipulates that income from paid employment shall be deemed to be derived from, and taxable in, Nigeria where the employer is in Nigeria or has a fixed base in Nigeria; or where the duties of employment are wholly or partly performed in Nigeria, unless the:

- duties are performed on behalf of an employer who is in a country other than Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria; and
- 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) or more in any twelve month period; and
- remuneration of the employee is liable to tax in the other country under the provisions of the DTA between Nigeria and the other country.

In practice, where an expatriate fails to declare his actual income, or where the RTA considers the actual income declared to be grossly inadequate, the RTA may assess the expatriate to tax on deemed income basis, either based on deemed income levels published by the RTA for general application, or deemed income levels specifically determined by the RTA for the company. Deemed income levels are usually based on the nationality, job classification and industry where the expatriate employee works.

## 5.3 Petroleum Profits Tax (PPT)

Profits derived by a company from petroleum operations, defined as the winning or obtaining and transportation of petroleum, are subject to tax under the PPT Act. Generally, the chargeable profit of a petroleum company is subject to tax at 85%. However, the applicable rate for companies that are yet to fully amortise their pre-production capitalised expenditure (in practice, companies within the first five years of operation) is 65.75%. The PPT rate for companies involved in a production sharing contract (PSC) is 50%.

A PSC is defined as an agreement between the holder of an oil licence and any other petroleum exploration and production company for the purpose of exploration and production of oil in the Deep Offshore (any water depth beyond 200 meters) and Inland Basin. Income generated by a petroleum company not related to its petroleum operations is subject to CIT rather than PPT.

The Petroleum Industry Bill (PIB) pending before the National Assembly has been proposed to replace the PPT Act and several other legislation/regulations in the Nigerian oil and gas industry. The PIB is expected to significantly change the fiscal and regulatory landscape in the Nigerian petroleum industry when it is finally enacted.

### 5.3.1 ***Taxable Income***

Taxable income of a petroleum company comprises the proceeds from the sale of oil and related substances extracted by the company, plus the value, determined for royalty purposes, of the oil and related substances used by the company in its own refineries, plus any other income of the company incidental to, and arising from, its petroleum operations. All expenses incurred whether within and outside Nigeria for petroleum operations are deductible under the PPT Act, provided they are wholly, exclusively and necessarily incurred.

### 5.3.2 ***Capital Allowances***

Depreciation does not qualify as an allowable deduction for PPT purpose. Capital allowances (annual allowances) are deductible in respect of qualifying expenditure, in arriving at taxable income. The current rates for capital allowances are 20% in the 1st four years and 19% in the fifth year.

Qualifying expenditure comprises machinery and equipment, pipelines and storage facilities, buildings and drilling costs. The deduction for capital allowances is restricted so that for any accounting period, the tax on the company should not be less than 15% of the tax which would have been assessable had no capital allowances been granted to the company. Capital allowances not utilised because of this restriction are available to be carried forward indefinitely – just like unrelieved losses – until relieved.

The PPT Act makes provision for petroleum investment allowance (PIA) on qualifying capital expenditure. The allowance, which is added to capital allowance, is granted only in the accounting period in which the related asset was first used for petroleum operations. The rates of PIA, which are based on the location of the relevant qualifying capital expenditure, are as follows:

Land operations	5%
Offshore operations in up to 100 metres of water	10%
Offshore operations in between 100 and 200 metres of water	15%
Offshore operations in more than 200 metres of water	20%

However, PSC operators are entitled to either investment tax allowance (ITA) or investment tax credit (ITC), depending on when the relevant PSC was signed, at the rate of 50% of qualifying capital expenditure.

Operators of PSCs signed before 1 July 1998 are entitled to claim ITC, which is treated as a deduction from the assessable tax payable. On the other hand, operators of PSCs signed after 1 July 1998 are entitled to ITA, which is deducted in the same manner as capital allowance to determine the chargeable profit.

### 5.3.3 **PPT Returns**

Every company engaged in petroleum operations is required to prepare and submit an estimated tax return within 2 months of the commencement of an accounting period. Revised estimates can be submitted if, at any time during the accounting period, the company becomes aware that the initial estimate submitted requires revision.

Annual year-end returns are due within 5 months of the end of the accounting period (i.e., 31 May of the following calendar year for a typical company).

### 5.3.4 **PPT Payment**

PPT liability is payable by 12 monthly instalments, starting from the end of March of each accounting period. The amount payable is based on the estimated tax liability as shown in the estimated returns submitted.

Where a company's year-end PPT return indicates a higher tax liability than its (revised) estimated tax, the balance must be paid within 21 days of the receipt of a notice of assessment from the FIRS. However, where the estimated tax is higher, the over-payment can only be deducted from the next monthly instalment.

## 5.4 **Value Added Tax (VAT)**

VAT was introduced by the VAT Act, No. 102 of 1993, (now Cap V1, LFN, 2004) to replace the Sales Tax applicable in the States. The VAT Act was amended in 2007 by the VAT (Amendment) Act, 2007.

### 5.4.1 **Operation of VAT**

VAT is a consumption tax, which is levied at each stage of the consumption chain and is borne by the final consumer. Allowable VAT paid by businesses on purchases, known as input tax, is recoverable from VAT charged on the company's sales, known

as output tax. The excess of a company's output tax over its allowable input tax is payable to the FIRS through designated banks. The taxpayer is, however, entitled to a refund from the FIRS, if the reverse is the case.

Allowable input VAT is limited to VAT on goods purchased or imported directly for resale and goods which form stock-in-trade used for the direct production of any new product on which output tax is charged. The input VAT on fixed assets is to be capitalised with the cost of the assets, while input VAT on overheads, general administrative expenses and services is to be expensed in the profit and loss account. In essence, the input VAT on these categories of expenses is not allowable as a deduction from output VAT.

In 2007, the FIRS through its Information Circular on the operation of VAT, mandated every company operating in the oil and gas industry to deduct VAT due from payments to its suppliers or service providers and remit same to the FIRS. The Circular was issued pursuant to the provisions of Section 5 of the VAT (Amendment) Act, 2007. Prior to the issuance of the Circular, only ministries, statutory bodies and agencies of the Federal, State and Local Governments, and Nigerian companies dealing with foreign vendors, were required to deduct VAT at source from their suppliers/service providers.

#### **5.4.2 Rate of Tax**

VAT is charged at a flat rate of 5%, except when it is charged on "zero-rated" goods or services at 0%.

#### **5.4.3 Taxable Persons**

A taxable person is defined as a manufacturer, wholesaler, importer or a supplier of VATable goods or services for a consideration. A taxable person is required to register for VAT within six months of commencement of business.

#### **5.4.4 Tax Exempt Goods and Services**

The VAT Act covers the supply of goods and services (i.e., almost all business transactions) except goods and services specifically exempted in the Schedule to the Act. Such exempted goods and services include:

- All medical and pharmaceutical products;
- Basic food items;
- Books and educational materials;
- Baby products;
- Plant and machinery imported for use in the Export Processing Zone;
- Plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations;
- Medical services;
- Services rendered by Community Banks, People's Bank and Mortgage

Institutions;

- All exported services;
- Oil exports; and
- Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.

In December 2011, the Federal Government issued an Order which exempts the following items from VAT effective from 2 January 2012:

- (a) proceeds from the disposal of short-term Federal Government of Nigeria securities and bonds; and
- (b) proceeds from the disposal of short-term State, Local Government and corporate bonds (including supra-national bonds).

The VAT exemption for the proceeds of bonds in (b) above will cease to apply after a term of 10 years. However, there is no such restriction on the proceeds of short-term Federal Government securities and bonds.

#### **5.4.5 *Zero-rated Goods and Services***

The following goods and services are zero-rated:

- Non-oil exports.
- Goods and services purchased by diplomats.
- Goods purchased for use in humanitarian donor funded projects.

#### **5.4.6 *Tax Returns and Payment of Tax***

A taxable person is required to render monthly VAT returns within 21 days of the month following the month of the VATable transaction. The returns are to be filed using the VAT returns Form 002 which can be obtained from the tax office nearest to the taxpayer. Failure to file returns attracts a penalty of ₦5,000 for every month in which the failure continues. Non-remittance of VAT payable to the FIRS attracts a penalty of 5% per annum and interest charged at the prevailing commercial rate on the amount of tax in default.

### **5.5 Withholding Tax (WHT)**

The Nigerian tax laws provide that where any payment on which WHT should be deducted is due from one person to another, the person making the payment is to deduct tax at the applicable rate and remit the tax deducted to the RTA not later than 30 days (CITA specifies 21 days) from the date of deduction or the time the duty to deduct arose. The above provision is contained in sections 69 to 74 of the PITA (as amended), sections 78 to 82 of the CITA (as amended), section 56 of the PPT Act and section 40 of the FIRSEA.

The activities and services on which WHT is deductible and the current applicable rates are as follows:

<b>Payment</b>	<b>RATES</b>	
	<b>Corporate %</b>	<b>Individual/Partnership %</b>
Rent	10	10
Dividend	10	10
Interest	10	10
Royalty	10	5
Director's fees	-	10
Commission	10	5
Professional fees	10	5
Management fees	10	5
Consultancy fees	10	5
Technical fees	10	5
Construction	2.5 <sup>30</sup>	5
Contract supplies	5	5
Other contracts	5	5

WHT deducted at source from non-resident companies in respect of interest, rent, dividend and royalty is the final tax liability due from the companies.

It is an offence not to withhold tax, or not to remit the tax deducted. Failure to deduct or remit WHT attracts a penalty of 10% of the amount in default plus interest at the prevailing Central Bank of Nigeria monetary policy rate.

WHT payments must be made in the currency of the transaction (i.e. currency of payment). Taxes in Naira withheld from payments to limited liability companies are to be remitted to the FIRS by bank draft payable to "FGN-FIRS-WHT Account" or via the FIRS's online payment platforms. Payments relating to individuals/partnerships are remitted to the SIRS of the State/territory where the individual/partnership is tax-resident. Foreign currency payments are to be made by wire transfer to the offshore account of banks designated by the FIRS for this purpose.

## 5.6 Capital Gains Tax (CGT)

CGT is chargeable under the CGT Act, Cap C1, LFN, 2004, with effect from 1 April 1967. The tax is applicable to all companies, including pioneer companies, and all individuals and non-corporate bodies. The rate of tax is currently 10% and is chargeable on actual year basis. The tax is levied on capital gains accruing on disposal of assets, irrespective of whether the asset is situated in Nigeria or not. For the purpose of the Act, a "disposal of assets" will arise where any capital sum is derived from a sale, lease, transfer, assignment or any other disposal of assets, notwithstanding that the person making the capital sum acquires no asset.

<sup>30</sup> This WHT rate was reduced from 5% to 2.5% in 2015 by the CIT (Rates etc., of Tax Deducted at Source (WHT)) Amendment Regulations, 2015. However, there are indications that the rate will soon be changed back to 5%. The FIRS has already directed many companies (especially oil majors) via specific letters, to start applying a 5% rate, pending when the relevant amendment regulations will be issued by the Minister of Finance.

However, capital gains accruing outside Nigeria to a non-resident company or individual, are subject to CGT only on the amount received or brought into Nigeria.

Capital gains are calculated on the basis of the difference between the sales price (net of any incidental expenses of sale) and the historical cost together with any expense incurred in enhancing the value of the asset. The Nigerian tax rules do not recognise indexation allowance. Expenses which are deductible from income for income tax purposes are not deductible for the purpose of computing CGT.

There are provisions defining "chargeable assets", "disposal of assets", "market value", "location of assets", etc. There are also rules governing part disposal of assets, lost assets, bargains comprising two or more transactions, connected persons, etc. The FIRS is empowered to adjust the CGT liability that may be due on disposal of any asset where it is of the opinion that the disposal is artificial or fictitious and the transaction is designed to reduce the amount of the tax payable.

#### **5.6.1 *Capital Losses***

A capital loss arising from disposal of one asset cannot be set off against a gain from the disposal of another asset even where both disposals occur in the same year of assessment. However, under certain circumstances, a set-off may be achieved where assets are sold together as a single bargain without ascribing sale values to the individual items. In this situation, only the net gain may be chargeable to the tax.

#### **5.6.2 *Exempted Bodies***

Certain charitable institutions, statutory bodies, pension funds, etc. are exempted from CGT to the extent that the gain is not derived from the disposal of an asset used for a trade or business and the gain is applied purely for the purposes of the institution.

#### **5.6.3 *Disposals not Chargeable to Tax***

Under the CGT Act, gains accruing to a person on the disposal of certain assets are not considered as chargeable gains. Examples include: gains from disposal of Nigerian government securities, shares and stocks; sums obtained by way of compensation or damages for private or professional wrong or injury; and sums obtained from disposal of a life assurance policy or contract for deferred annuity by its original beneficial owner.

#### **5.6.4 *Reliefs***

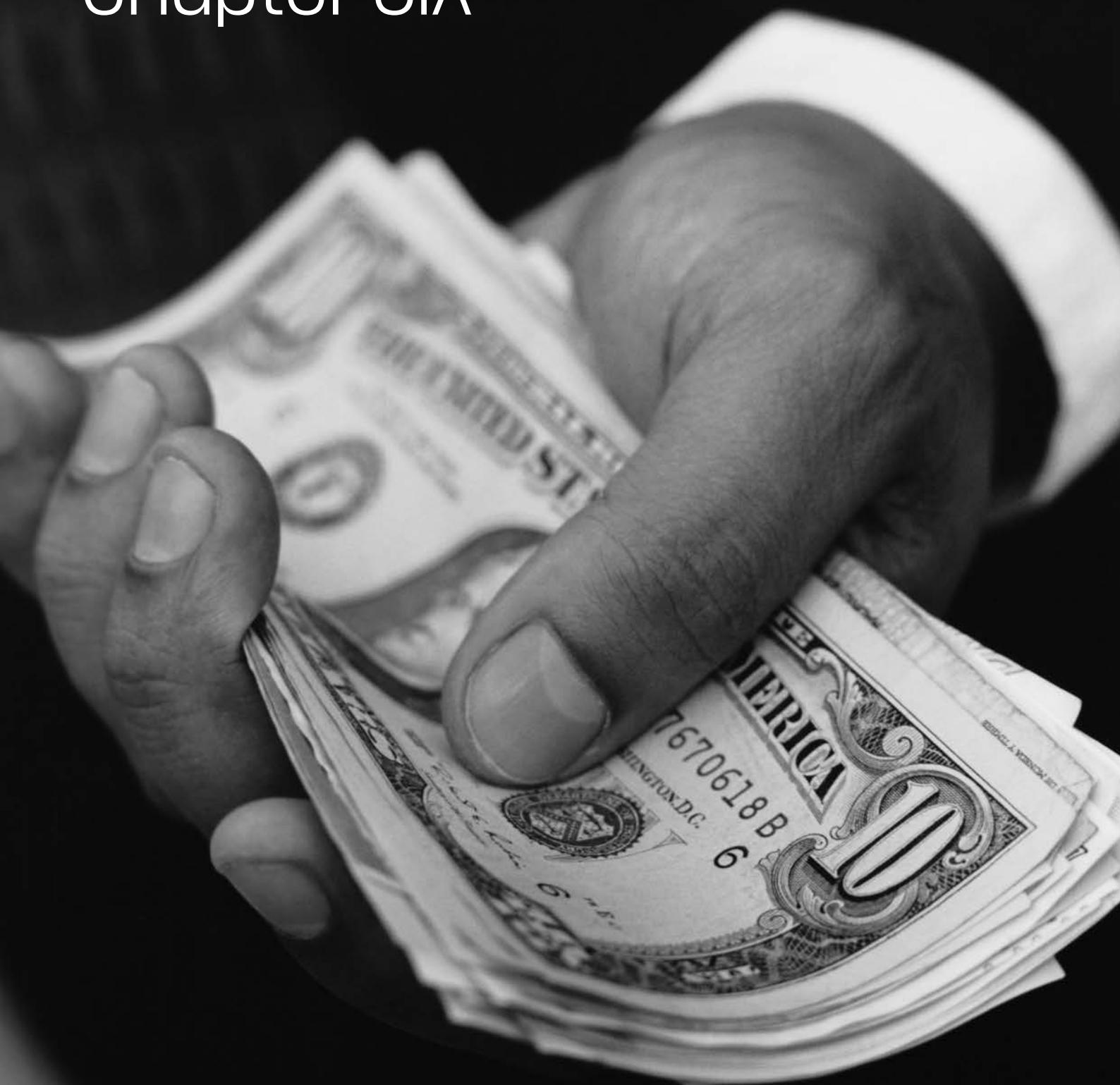
Tangible moveable property sold for ₦1,000 or less in any year of assessment is not chargeable to CGT. Where the consideration exceeds ₦1,000 the tax is limited to 50% of the difference between the consideration and ₦1,000. There are anti-avoidance provisions directed at arrangements to split up assets for separate disposal to the same person or to persons acting together or who are connected persons.

There are roll-over provisions to defer the tax where business assets are disposed of, and the proceeds are applied in acquiring replacement assets. The assets covered by the roll-over relief are plant and machinery, buildings, land, ships, aircraft and goodwill.

## 5.7 Luxury Tax

In 2015, the Federal Ministry of Finance issued a Circular titled Implementation of the 2015 Fiscal Policy Measures on Luxury Surcharge. The Circular imposes a surcharge of ₦3,200 per kilogramme (based on the weight of each aircraft) on all registered local and foreign private jets operating in Nigeria, and a levy of ₦15,000 on first class and business class international air travel tickets. Although 11 February 2015 was fixed for commencement of the tax, it is not yet operational.

# Chapter Six



# 6. Foreign Exchange Transactions

The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995 (FEMMP Act) replaced the Exchange Control Act (1962), the Exchange Control (Anti-Sabotage) Act (1984), the Foreign Currency (Domiciliary Accounts) Act 1985 and the Second-tier Foreign Exchange Market Act (1986), which hitherto restricted dealings in foreign exchange.

The FEMMP Act liberalised dealings in foreign exchange at the Autonomous Foreign Exchange Market (AFEM) in 1995. The foreign exchange market was further liberalised in October 1999 with the introduction of the Inter-Bank Foreign Exchange Market (IFEM). The FEMMP Act provides that, except where a transaction is prohibited by law, any transaction adequately supported by appropriate documentation shall be an eligible transaction for the purchase of foreign exchange in AFEM/IFEM. The major highlights of the FEMMP Act are:

- retention of foreign currency in domiciliary accounts;
- permission of payment for foreign equity investment with cash or equipment, machinery, spare parts, raw materials and other business assets;
- relaxation of controls on dividend remittance and equity capital repatriation; and
- procurement and repayment of foreign loans and interest thereon without prior ministerial approval.

## 6.1 Inter-bank Foreign Exchange Market (IFEM)

The participants at IFEM include authorised dealers, authorised buyers, oil companies, oil service companies, exporters, end-users and any other entity that the CBN may designate from time to time.

The permissible instruments for dealing in the market are convertible foreign currencies, foreign bank notes, foreign coins, travellers' cheques, bank drafts, mail or telegraphic transfers and other money market instruments approved by the CBN.

Based on the flexible exchange rate policy launched by the CBN on 15 June 2016, exchange rates at the IFEM are to be determined by market forces. All eligible foreign exchange transactions supported by appropriate documentation, are allowed to be carried out through the IFEM, with the exception of those listed as "Not Valid for Foreign Exchange" in the CBN Circular of 23 June 2015.

## 6.2 Foreign Currency Domiciliary Accounts

Corporate bodies, individuals and firms can maintain and operate domiciliary accounts in any internationally convertible currency in any bank in Nigeria.

Exporters of goods are specifically required to open domiciliary accounts where their entire export proceeds are to be lodged. Holders of the account are given the discretion to retain foreign currencies in the account or have the funds converted to Naira.

Generally, foreign currency domiciliary account holders have unfettered access to funds in their accounts with minimum documentation.

The CBN issued two Circulars on 17 April 2015 and 21 May 2015, on Currency Substitution and Dollarisation of the Nigerian Economy. The Circulars essentially stipulate that it is an offence for any person or body corporate to refuse to accept the Naira as the legal tender currency for the payment of goods and services in Nigeria. The Circulars, however, exempt the following revenue generating agencies of government and operators permitted by law (and any other agency that may be prescribed by the CBN from time to time):

- The Federal Inland Revenue Service
- Nigerian Ports Authority
- Nigerian Maritime Administration and Safety Agency
- Federal Airport Authority of Nigeria
- Nigerian Airspace Management Agency
- Nigerian Shippers' Council
- Operators in the oil and gas industry including oil service companies
- Operators in the maritime and aviation industries, and
- Licensed operators in the Export Processing and Free Trade Zones.

## 6.3 Remittance of Profits and Repatriation of Capital

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. Dividend payments are subject to withholding tax at 10% as final tax (7.5% for qualifying recipients in a treaty country).

There is currently no ceiling on profits distributable as dividends, provided such distributions are from profits and not capital, and there are no reasonable grounds for believing that the company is or would be insolvent after the payment. However, remittance of dividends and interest on foreign loans, or repatriation of equity or loan capital is subject to foreign exchange inflow at the time of the investment, evidenced by a certificate of capital importation issued by the receiving bank.

## **6.4 Remittance of Management and Technical Services Fees**

Management or Technical Services Contracts have to be registered with the NOTAP to qualify for foreign exchange remittance. NOTAP typically disaggregates Technical Services (TS) / Assistance and, generally, does not approve payment of compensation on net sales basis. Payment for training, installation, etc. is approved by reference to man-day or hourly rates for short term assignments or Personal Home Remittance, whilst payment for TS in form of R&D-related support is limited to 1% of net sales.

Management fees for management services approved by NOTAP (other than management of hotels by international hotel chains) range from 2% to 5% of profit before tax.

Negotiation for lump sum annual payments continues to apply in situations where no sales or profits are anticipated, e.g., in the initial years of an agricultural enterprise.

Payment of technical service fees and management fees to corporate beneficiaries is subject to withholding tax at 10%.

## **6.5 Royalty Payments**

A maximum fee of 5% of net sales has been fixed for royalties by the NOTAP. These payments are permissible only where the royalty agreement has been registered with NOTAP. However, royalty payments may be disallowed (for foreign exchange remittance purpose) where the licensor holds more than 75% of the equity of the Nigerian company.

Royalty payment is subject to withholding tax at 10% for corporate beneficiaries (7.5% for qualifying recipients in a treaty country).

## **6.6 Consultancy Fees**

Consultancy fees are eligible for direct payment abroad up to a maximum of 5% of the project cost. However, effective 13 October, 2011, foreign exchange for consultancy fee remittance is to be sourced from autonomous funds (i.e., foreign exchange cannot be sourced from the CBN).

Consultancy fees are paid through man day/man month rates taking account of the complexity and the sophistication of the services to be provided. The payment is for projects with very high technology content for which indigenous expertise is not available. Consultancy fees in respect of pre-feasibility and feasibility studies are not allowed since these can be done locally.

Payment of consultancy fees is subject to withholding tax at 10% for corporate beneficiaries.

## **6.7 Personal Home Remittance by Expatriates**

Expatriates working in Nigeria can remit 100% of their income net of tax as Personal Home Remittance. All foreign nationals wishing to remit income out of Nigeria are expected to

obtain a Tax Clearance Certificate (TCC) covering the amount to be remitted. The TCC will show that the relevant tax has been paid on the amount or that the amount is not liable to tax.

## **6.8 Demurrage**

Demurrage collected by a local shipping agent on behalf of its foreign principal and deposited in a dedicated account, may be repatriated. This is, however, subject to payment of the appropriate tax on the amount to be remitted and compliance with other documentation requirements. In addition, there must be an underlying agreement between the local shipping agent and the principal, and the vessel must be duly certified by the Nigerian Ports Authority as having arrived in the country.

## **6.9 Foreign Mortgages**

The Nigerian foreign exchange regulations permit the remittance of foreign exchange for payments in respect of foreign mortgages. The critical documentation requirements include the mortgage deed and a letter from the foreign bank confirming that a mortgage had been granted and stating the terms and conditions of the mortgage.

# Chapter Seven



# 7. Investment in Nigeria

Foreign investment capital, both in cash and in kind (e.g., by way of machinery and equipment, technical expertise and services), plays a vital role in the development of Nigeria.

In theory, there are different kinds of investment vehicles used for carrying on business in Nigeria. These include partnerships, unincorporated joint ventures and corporate entities. In practice, investment by foreign investors is made through a limited liability company.

## 7.1 Exemption from Incorporation

Under Section 54 of Companies and Allied Matters Act (CAMA), no foreign company may carry on business in Nigeria unless it incorporates a local company in Nigeria. However, the Federal Executive Council (FEC) is empowered by Section 56 of the Act to grant exemption from this mandatory requirement. The categories of foreign companies that are eligible for exemption are:

- Foreign companies invited by or with the approval of the Federal Government to execute special projects;
- Foreign companies which are in Nigeria for the execution of specific loan projects on behalf of donor countries or international organisations;
- Foreign government-owned companies engaged solely in export promotion activities; and
- Engineering consultants and technical experts engaged in specialist projects under contracts with any of the Governments of the Federation or any of their agencies or under contracts with any person where such contracts have been approved by the Federal Government.

Exemption from the local incorporation requirement may confer tax-free status on the beneficiary for the duration of the exemption. However, it does not confer automatic tax-exempt status in the absence of a certificate to that effect. The grant of exemption status has become increasingly rare, and entities previously granted this status have, generally, been unable to renew their status on expiration of the initial period. The ability to perform as a local entity is an important factor in contract awards as bid requirements usually include certificate of incorporation of the bidders in Nigeria.

## 7.2 Investment and Securities Act (ISA)

The ISA contains comprehensive provisions on matters relating to securities and investments in Nigeria. Before its enactment in 1999, laws relating to securities and investments could be found in the following:

- Securities and Exchange Commission Act, which has now been repealed;

- Nigerian Investment Promotion Commission Act, section 21(2) of which has now been repealed;
- Companies and Allied Matters Act; and
- the Lagos Stock Exchange Act, which has now been repealed.

Amongst other things, ISA regulates mergers, acquisitions and other forms of business combination, securities transactions, including electronic transfer of registered shares, capital market operations in all their ramifications, borrowing by States, Local Government and other Government agencies, etc.

ISA provides for the establishment of:

- an Investor Protection Fund for compensation of investors who suffer pecuniary loss from any defalcation committed by a member of a stock exchange and any directors/employees of capital market operators; and
- an Investment and Securities Tribunal to settle any dispute arising from the operators of capital trade points and exchanges in Nigeria.

### **7.3 Nigerian Investment Promotion Commission (NIPC) Act**

This Act repealed the Industrial Development Co-ordination Act, 1988 and established the NIPC as an investment promotion agency of the Government. The agency is responsible for registering foreign investments in Nigeria. It is also responsible for liaison between investors and ministries, government departments, institutional lenders and other institutions concerned with investments.

Combined with the repeal of the Nigerian Enterprises Promotion Act, 1990, the Act has removed the ceiling on foreign investment in Nigerian companies. The only restrictions that remain relate to enterprises on the “negative list” which are reserved exclusively for the Government. The negative list includes enterprises engaged in:

- i. the production of arms and ammunition;
- ii. narcotics and psychotropic substances; and
- iii. military, para-military, police, customs, immigration and prison service uniforms and accoutrements.

Notable among the positive changes introduced by the NIPC Act are:

- foreign portfolio investment in Nigerian-quoted companies through the NSE;
- enlargement of the modes of payment for foreign equity to include spare parts, raw materials and other business assets acquired without initial disbursement of foreign exchange from Nigeria;
- remittance of dividends and interest by guaranteeing to foreigners the unrestricted transferability of dividends or profits (net of taxes) attributable to foreign investment

in Nigeria, and capital repatriation in the event of liquidation. In effect, prior ministerial approval of such transactions is no longer required. All that a foreign investor needs to do is to instruct an authorised dealer in foreign exchange to transfer the related funds in a defined currency on submission of the prescribed documents; and

- procurement and repayment of foreign loans and interest thereon by Nigerian companies without prior ministerial approval.

The requirement for registration of foreign enterprises in Nigeria by the NIPC should normally dispense with the requirement for business permit from the FMI. However, in view of the provisions of the Immigration Act and Immigration Regulations, FMI still requires foreign investors to obtain business permit<sup>30</sup> as a pre-condition for obtaining expatriate quota approval.

## **7.4 Investment Incentives**

The various investment incentives in Nigeria are as follows:

### **7.4.1 Pioneer Status**

Pioneer status is granted only upon application to the NIPC, to eligible companies operating in industries or producing products or services categorised as pioneer industries and products or services<sup>31</sup>. The incentive is granted by NIPC as part of its investment promotion mandate.

After NIPC has granted the approval-in-principle, the Industrial Inspectorate Department (IID) of the Federal Ministry of Industry, Trade and Investment will, on application by the beneficiary, inspect its operations and certify its commercial production date for the purpose of commencement of the incentive.

The NIPC will issue the pioneer status certificate and publish the grant of the incentive in the Gazette after the IID has issued the production day certificate.

Some of the benefits available to companies enjoying pioneer status are as follows:

- (i) the profits derived by the pioneer company from its pioneer products are exempted from Companies Income Tax (CIT);
- (ii) capital expenditure on qualifying assets incurred during the tax relief period and available for use after the period, is treated as having been incurred on the first day following the tax relief period. Pioneer companies are therefore able to fully claim capital allowances on such assets;
- (iii) dividends paid out of pioneer profits are not taxable in the hands of the shareholders of the company; and
- (iv) the net loss incurred during the tax relief period is deemed to be incurred on the first day following the tax relief period, and can be set off against the assessable profits of the company in subsequent tax years.

<sup>30</sup> Required for both wholly foreign owned and joint venture entities

<sup>31</sup> See Appendix 2 for the current list of pioneer industries and products/services

## **7.4.2 Export Incentives**

The Nigerian Export Promotion Council (NEPC) is the agency vested with the responsibility of administering non-oil export incentives in Nigeria. Among other things, the NEPC was established to:

- promote the development and diversification of Nigeria's export trade;
- assist in the promotion of export-oriented industries in Nigeria;
- advise government on new export incentives;
- actively promote the implementation of export policies and programmes;
- co-ordinate and monitor export promotion activities in the country;
- collect and disseminate information on products available for export;
- provide technical assistance to local exporters in such areas as export procedure and documentation, transportation, financing, marketing techniques, quality control, export packaging, costing, pricing and publicity;
- administer grants and other benefits related to export promotion and development; and
- co-operate with other institutions on matters relating to export financing, export incentives and specialised service to exporters.

Every non-oil exporter is required to register with the NEPC. This will entitle the exporter to qualify for the available incentives upon satisfying the prescribed requirements.

The existing incentives are as follows:

### **7.4.2.1 Duty Drawback/Suspension Scheme (DDSS)**

This incentive enables an exporter to:

- claim a refund of import duty paid on raw materials and intermediate products imported for use in the production of finished goods for export; and
- apply for exemption from, or suspension of, import duty prior to actual importation. When this is done, the exporter is conferred with the status of a manufacturer-in-bond.

DDSS is administered by the Duty Drawback Committee of the NEPC.

### **7.4.2.2 Manufacture-in-bond Scheme**

This incentive provides for duty-free importation of raw materials for 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.

#### **7.4.2.3 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.

#### **7.4.2.4 Export Expansion Grant (EEG)**

The EEG incentive scheme was introduced to facilitate an increase in export volume and enable exporters to diversify export products and market coverage. Under the scheme, eligible exporters are issued with Negotiable Duty Credit Certificates, which can either be used for the payment of import and excise duties or sold at a discount for cash.

In order to qualify for the EEG scheme, the exporter must:

1. Be registered with the NEPC;
2. Be a manufacturer, producer or merchant of Nigerian-made products for the export market; and
3. Have a minimum annual export turnover of N5,000,000 and evidence of repatriation of export proceeds.

#### **7.4.2.5 Export Development Fund (EDF)**

The EDF which is also administered by NEPC is a special fund set up by the Federal Government to provide financial assistance to exporters to cover a part of their initial expenses on export promotion activities, such as participation in export-related training courses, seminars, workshops, export market research, advertising and publicity campaigns in foreign markets, participation in overseas trade missions, trade fairs, exhibitions, trade information gathering, organisation of joint export groups and mutual export guarantee associations.

#### **7.4.2.6 Currency Retention Scheme**

Section 19 of the FEMPP 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.

#### **7.4.2.7 Rediscounting of Short term Bills**

This incentive entitles an exporter to discount bills of exchange and promissory notes with his bank to increase his liquidity and minimise cash

flow problems before export proceeds are realised from overseas buyers.

#### **7.4.2.8 Tax Incentives**

The profits derived from the following activities are tax-exempt:

- profits derived from exports, provided that the proceeds from the export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and 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. The exemption will apply as prescribed in the Third Schedule to the CIT Act, where the bank is able to present the certificate issued by the NEPC stating that the level of export specified has been achieved by the manufacturing company (the borrower).

### **7.4.3 Gas Industry Incentives**

#### **7.4.3.1 Gas Utilisation (Downstream Operations)**

- 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;
- An annual allowance of 90% plus an additional investment allowance of 15% after the tax-free period. Where a gas company opts for the enhanced allowance, it will not be entitled to the 15% investment allowance;
- Tax free dividends during the tax holiday, provided that the investment for the business was in foreign currency or the value of imported plant/ machinery introduced is not less than 30% of the equity share capital of the company;
- Plant, machinery and equipment purchased for gas utilisation are exempt from VAT; and
- Profit from gas utilisation operations is subject to tax under the CITA.

#### **7.4.3.2 Gas Utilisation (Upstream Operations)**

- Gas income is subject to tax under CITA at the rate of 30%;
- Capital investment on facilities and equipment required to deliver

associated gas in usable form at utilisation or designated custody transfer points is treated as part of the capital investment for oil development;

- Investment required to separate crude oil and gas from the reservoir into usable products is also considered as part of oil field development; and
- Gas transferred from a Natural Gas Liquid facility to the gas-to-liquids facilities is subject to 0% Petroleum Profits Tax and 0% royalty.

#### **7.4.4 Other Tax Incentives**

- Dividends distributed by unit trusts are tax-exempt in the hands of the unit holders;
- Accelerated capital allowance of 95% in the first year in respect of replacement of industrial plant and machinery.
- Tax-free interest on loans to companies engaged in agricultural trade or business, or the fabrication of local plant and machinery, provided that the moratorium is not less than 18 months and the interest rate of the loan at the time it is granted is not higher than the prevailing base lending rate;
- Interest payable on foreign loans granted to Nigerian companies (in any industry) may be fully or partially exempted from tax, where the loan arrangement meets the prescribed criteria;
- Interest earned on foreign currency domiciliary account in Nigeria is fully exempted from tax;
- 5-year tax holiday for companies involved in the mining of solid minerals;
- Exemption of stocks, shares and Nigerian government securities<sup>32</sup> from capital gains tax;
- Investment (dividend, rent, interest and royalty) income derived by the beneficiary from outside Nigeria and brought into Nigeria through government-approved channels are tax-exempt;
- Companies engaged in research and development activities for commercialisation are entitled to 20% investment tax credit on their qualifying capital expenditure; and
- Withholding tax on dividend, interest, rent and royalty due to residents from a Double Taxation Agreement (DTA) country is 7.5% (subject to satisfaction of the conditions specified in the DTA).

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<sup>32</sup> "Nigerian government securities" is defined to include Nigerian treasury bonds, savings certificates and premium bonds issued under the Savings Bonds and Certificates Act.

# Chapter Eight



# 8. Accounting and Auditing Requirements

The Companies and Allied Matters Act (CAMA) is the enabling law on administration of companies in the country. It regulates how the affairs of any company in Nigeria will be run in many respects, including the following.

## 8.1 Accounting Records

CAMA requires every company to keep proper accounting records at its registered office or such other place in Nigeria as the directors may think fit. The records should be sufficient to show and explain the transactions of the company with reasonable accuracy at any time, and facilitate the preparation of the financial statements.

CAMA provides that the accounting records should contain:

- entries from day to day of all sums of money received and expended by the company, and the matters in respect of which receipt and expenditure take place;
- a record of the assets and liabilities of the company;
- statements of stocks held by the company at the end of the financial year; and
- all statements of stocktaking from which the statements of stock have been prepared.

Every officer of a company who fails to comply with the above provision will be guilty of an offence, unless he can prove that he acted honestly, and that the default was excusable in the circumstances in which the business of the company was carried on.

## 8.2 Financial Statements

The directors are obliged, at the first meeting after incorporation of the company, to determine the financial year of the company. They are also responsible for the preparation of the company's financial statements for each year. The law defines what constitutes financial statements, and these include:

- statement of the accounting policies;
- the balance sheet as at the last day of the financial year;
- a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the year;
- notes to the accounts;
- the directors' report;
- a statement of cash flows;
- a value added statement for the year;
- a five-year financial summary; and
- the group financial statements, where the company is a holding company.

The financial statements must comply with the requirements of CAMA with respect to their form and content, and must also be prepared in accordance with the prevailing accounting standards in Nigeria.

In July 2010, the Executive Council of the Federation (ECF) approved January 2012 as the effective date for transition from Statements of Accounting Standards (SAS) issued by the defunct Nigerian Accounting Standards Board (NASB) to International Financial Reporting Standards (IFRS). The ECF also directed the NASB to take further necessary actions to give effect to the decision.

In September 2010, the NASB released a road map for the adoption of IFRS in Nigeria. The road map, specified the following three phases of transition:

- Public Listed Entities and Significant Public Interest Entities 2012 transition date;
- Other Public Interest Entities 2013 transition date; and
- Small and Medium-sized Entities 2014 transition date.

In June 2011, the Financial Reporting Council of Nigeria (FRCN) Act was enacted to repeal the NASB Act of 2003 and establish the FRCN. The FRCN is charged with the responsibility for, among other things, developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statements in Nigeria.

### **8.3 Audit Requirements**

Every company is required, at each annual general meeting, to appoint an auditor or auditors to audit the financial statements prepared by its directors. The auditor(s) have the statutory responsibility of carrying out such investigations that will enable them to form an opinion on whether:

- (a) proper accounting records have been kept by the company and proper returns, adequate for their audit, were received from branches not visited by them; and

- (b) the company's balance sheet and (if not consolidated) its profit and loss account are in agreement with the accounting records and returns and have been properly prepared in accordance with CAMA.

A company's auditor is obliged, in the performance of his duties, to exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance. Consequently, where a company suffers loss or damage as a result of negligence, the directors can institute an action for negligence against the auditor in the court.

# Chapter Nine

A close-up, slightly grainy photograph showing a person's hands pouring white rice from a large, woven sack into another. The rice is falling in a fine, granular stream. The sacks are made of a dark, textured material, possibly jute or burlap. The lighting is warm and focused on the hands and the rice, creating a sense of texture and movement.

# 9. Importation of Goods

## 9.1 Import Prohibition List

The Import Prohibition List maintained by the Nigeria Customs Service (NCS) as an agency of the Federal Ministry of Finance is updated from time to time and should be consulted by importers before they ship any cargo to Nigeria.

## 9.2 Destination Inspection (DI)

In January 2006, the NCS commenced the implementation of DI to replace the defunct pre-shipment inspection scheme after previous failed attempts due to incessant port congestion.

The decision to abolish the pre-shipment inspection scheme was driven by the reported loss of revenue due to inaccurate import duty assessment on goods by the pre-shipment inspection agents and their inability to prevent shipment of contrabands and expired goods into the country.

Under the DI scheme, goods are inspected on arrival in Nigeria, as the destination/importing country, as opposed to the erstwhile pre-shipment inspection scheme where goods were inspected in the country of procurement or origin before shipment to Nigeria.

The following destination inspection agents (DIAs) were contracted by the Federal Government for DI (their designated zones are stated below):

- **Cotecna Destination Inspection Limited:** Apapa and Tin-Can seaports, Kano and Abuja airports, Jibiya and Banki posts;
- **Societe Generale Du Surveillance:** Onne and Port Harcourt seaports, Port Harcourt airport and Idiroko Border post; and
- **Globalscan Systems Limited:** Warri and Calabar seaports, Ikeja airport and Seme Border post.

Following the expiration of their (extended) contracts in December 2013, the DIAs have handed over the operation of the scheme to the NCS.

## 9.3 Payment Procedures

The importer pays for imports through the banks. Payment for imports can be made through documentary letter of credit or bills for collection.

## 9.4 Current Guidelines for Imports into Nigeria

The provisions of the current guidelines on imports and payment of import duties are summarised as follows:

- (a) Importers are required to process Form "M" (application for importation of physical goods) through any authorised dealer bank irrespective of the value or whether or not payment is involved;
  - (b) Depending on whether or not foreign exchange remittance would be involved, supporting documents should be marked "VALID FOR FOREIGN EXCHANGE" or NOT VALID FOR FOREIGN EXCHANGE", as the case may be.
- The initial validity periods of the Form "M" for general goods and plant & machinery are 6 months and 1 year, respectively. These periods may be extended for another 6 months or 1 year, respectively. However, any subsequent request for revalidation of the Form "M" shall be forwarded to the Director Trade and Exchange Department of the Central Bank of Nigeria (CBN), for consideration;
- (c) The prefix of the numbering system of the Form "M" will be coded depending on whether or not the goods are subject to DI. Goods subject to DI shall carry the "BA" code, whilst goods exempted by the Minister of Finance shall bear the "CB" code in the prefix of the numbering system of the Form "M";
  - (d) To facilitate price verification, the following pieces of information are to be included on the Form "M" and pro-forma invoice (which should have a validity period of 3 months):
    - the generic product name i.e., product type and category;
    - mark or brand name of the product where applicable;
    - model name and or model or reference number, where applicable;
    - description of the quality, grade, specification, capacity, size, performance etc.; and
    - quantity and packaging and or packing.
  - (e) The import transaction documents must include the name of the product, country of origin, specifications, date of manufacture, batch or lot number and applicable standards to which the goods have been produced (e.g., Nigeria Standards (NIS), British Standard, ISO, etc.).
  - (f) Import items regulated for health and environmental reasons, such as food, drinks, cosmetics, etc., must bear expiry dates or the shelf life and specify the active ingredients, where applicable.
  - (g) Electrical appliances must have information on life performance, whilst items, such as cables, must carry information on their ratings.
  - (h) All electronic equipment must include an instruction manual, safety information and a guarantee or warranty of at least six months.

- (i) All computer hardware, software, operating and embedded system shall continue to be Year 2000 compliant.
- (j) Goods imported without a valid Form 'M' and blank products automatically qualify for seizure and destruction without warning.
- (k) Form 'M' shall be valid for importation after acceptance by the NCS.
- (l) All goods imported into Nigeria must be labeled in English (in addition to any other language of the transaction) to avoid confiscation.
- (m) All imports shall be accompanied by the following documents:
  - Final invoice and Combined Certificate of Value and Origin attested by the Chamber of Commerce of the exporting country and, where not available, notarised by a Notary Public who must indicate his official address and registration number. It must also contain the Form 'M' number, adequate description of the goods, port of entry into Nigeria, shipment identification, date of shipment, country of origin, and country of supply.
  - Packing list.
  - Shipped/Clean on Board Bill of Lading/Airway Bill/Way Bill/Road Way Bill.
  - Manufacturer's certificate of production which shall state standards. Where the manufacturer's certificate is not available, the Phytosanitary Certificate or Chemical Analysis Report should be provided.
  - Laboratory test certificates of chemicals, foods, beverages, pharmaceuticals and other regulated products.
- (n) For transactions with post-landing charges, a retention fee of 5%-15% of the project cost as agreed between the exporter and importer shall be indicated on the contract and the pro-forma invoice. This shall form part of the supporting documents for registration of the Form "M". Other requirements are:
  - the retained fee shall not be remitted until a satisfactory evaluation of the project has been undertaken by the Industrial Inspectorate Department (IID) of the Federal Ministry of Industry, Trade and Investment.
  - the NCS shall forward copies of the contract and pro-forma invoice of such projects, to the IID.
  - during DI, the NCS shall take cognizance of the value of shipment and post landing charges indicated on the Risk Assessment Report (RAR).
  - thereafter, the IID will carry out an evaluation of the project and advise the CBN accordingly.
  - on receipt of the report of evaluation from the IID, the CBN shall advise
    - (a) the NCS on the issuance of the RAR for the retained value; and
    - (b) the authorised dealer to remit the funds to the beneficiary.

## 9.5 Marine Insurance

Marine insurance of all goods imported into Nigeria must be undertaken by a Nigeria-based insurance company. Premiums to be paid in Nigerian currency range from 2% to 3% of the cost and freight value of such goods.

## 9.6 Import Duties

In line with an agreement reached in October 2013, Nigeria and other members of the Economic Community of West African States (ECOWAS) have adopted a Common External Tariff (CET) with effect from 1 January 2015.

CET is a uniform tariff structure applicable to all goods imported into any ECOWAS member country from a jurisdiction outside the sub-region. The import tariffs under the ECOWAS CET are aimed at trade harmonisation to ensure all ECOWAS member countries apply a single tariff structure.

The CET has five tariff bands into which goods are categorised and taxed as follows:

- Category 0 comprises essential social goods (medicine), which are subject to 0 percent duty
- Category 1 covers essential commodities, basic raw materials, capital goods and specific inputs which are taxed at 5 percent.
- Category 2 is made up of inputs and intermediate products which are taxed at 10 percent.
- Category 3 covers final consumer goods which are subject to 20% duty.
- The final category (Category 4) comprises specific goods for economic development which will be taxed at 35 percent.

The new ECOWAS CET 2015 – 2019 and the accompanying Supplementary Protection Measures (SPM) were approved for implementation in the country by the President of the Federal Republic of Nigeria for a period of 5 years.

The SPM comprises the following:

- (a) An Import Adjustment Tax (IAT) list which involves additional taxes on 177 Tariff Lines of the CET 2015 – 2019. The IAT is imposed to effectively increase the import duty payable on the specified tariff lines beyond the uniform duty rate applicable, in order to discourage importation of the goods into the country, for instance, because there is excess local capacity.
- (b) A National List consisting of items whose import duty rates have been reviewed to encourage more development in strategic sectors of the economy.
- (c) An Import Prohibition List (Trade) applicable only to certain goods originating from third countries.

A Comprehensive Import Supervision Scheme (CISS) administrative charge of 1% is payable on imported goods. The 1% CISS is on the F.O.B. value of all imports assessed and is

additional to the import duty on the product/good imported.

The assessed duty stated on the imported goods, together with the 1% CISS administrative charge, is payable to the designated bank. Despite this, it is possible to obtain import duty exemption for special government projects if it was negotiated as part of the contractual terms.

The following additional charges/levies are also payable in respect of imports:

- 7% surcharge calculated on the customs duty;
- 0.5% trade liberalisation scheme levy, calculated on customs duty (where import is from countries outside the ECOWAS region);
- VAT calculated at 5% on the CIF value of the imports, customs duty and the charges stated above; and
- Other levies – typically port surcharges.

## **9.7 Temporary Importation (TI)**

The NCS is responsible for granting TI status for importation of the underlisted machinery and equipment that are to be re-exported within a period of two years or on completion of specialised government-approved projects:

- ships/vessels and boats;
- barges/pontoons, tugs for oil exportation or approved projects;
- dredger for soil erosion projects or oil drilling operations, etc.;
- oil rigs and accessories; and
- super cranes used for petrochemical construction/oil exploration-related projects.

# Chapter Ten



# 10. Exportation of Goods

Generally, all goods (raw material or finished) are exportable from Nigeria except the following:

- raw hides and skin (including Wet Blue and all unfinished leather);
- timber (whether processed or not) and wood in the rough, excluding furniture component;
- melina, railway slippers, floor and ceiling tiles, doors, windows and pallets;
- raw palm kernels;
- unprocessed rubber and rubber lumps;
- artefacts and antiquities;
- wildlife animals classified as endangered species and their products e.g. crocodile;
- elephant, lizard, eagle, monkey, zebra, lion etc.;
- maize; and
- all goods imported.

## 10.1 Registration of Exporters

Any individual or company doing business in Nigeria may export goods from Nigeria if duly registered with the Nigerian Export Promotion Council (NEPC). Among other things, NEPC is responsible for the development of traditional exports, promotion of export markets, provision of advice to government on export financing and incentives, provision of trade information services, facilitation of existing export procedures and documentation, the organisation of training programmes in export management and international marketing, and assistance in securing prompt payment for exports. The NEPC is the sole agency responsible for administration of export incentives.

## 10.2 Export Procedures and Documentation

All goods (oil and non-oil inclusive) exported from Nigeria are subject to inspection by Government-appointed pre-shipment inspection agents (PIAs) with respect to the quality, quantity and value of such goods. The goods are typically inspected at seaports, airports, terminals or other points of dispatch subject to the PIAs' right to request inspection at production or storage points. Expenses incurred in the course of inspection, sampling and

testing are borne by the exporter, including provision of necessary facilities for inspection.

Below is a summary of export procedures contained in the guideline issued by the Honourable Minister of Finance:

- Completion by the exporter (at least 10 days before shipment) of six copies of Form NXP (Nigerian Export Proceeds) to which a copy of the contract of sale or proforma invoice is required to be attached. The exporter is to submit the completed forms to his banker with payment of Nigerian Export Supervision Scheme (NESS) charge of 0.5% and 0.15% of FOB value of the intended non-oil and oil/gas exports, respectively. The designated bank shall remit this to the NESS fee account in the Central Bank of Nigeria (CBN). If after inspection, the FOB value is found to be higher than that declared, then additional NESS fee shall be paid by the exporter accordingly;
- Collection of RFI Form (Request for Information) by the exporter from the inspection agent with a view to arranging a suitable time and place for the physical inspection of the consignments;
- Pre-shipment inspection of all exports by inspection agents who shall issue a Clean Certificate of Inspection (CCI) certifying the quality, quantity and value of the goods to the consignee, within 72 hours after the inspection of the goods. However, where a written complaint or protest has been lodged by the consignee or his agent on oil and gas exports, the relevant CCI shall be issued within a maximum period of 30 days;
- Submission by the exporter to the inspection agent of copies of the bill of lading and the final invoice to the buyer after loading;
- Commencement of loading to export vessel or shipping container by the exporter upon receiving assurance from the PIA that a CCI will be issued on completion of loading. Where discrepancies are noted, the PIA will issue a non-negotiable Certificate of Inspection which will remain valid until a CCI is issued after the discrepancies are resolved; and
- Delivery of the original CCI by the inspection agent to the exporter. On completion of loading, four copies of the form NXP are to be completed by the inspection agent and Customs and returned by the exporter to his bankers for reconciliation of the foreign currency received against the sale with the other documentation.

# Appendix 1

## Useful addresses

### **Bureau of Public Enterprises/National Council on Privatisation**

Street: 11 Osun Crescent, Off Ibrahim Babangida Way, Maitama District  
 Postal: PMB 442, Garki, Abuja, Nigeria  
 Tel: +234 9 4134636-8, 4134640-6  
 Fax: +234 9 4134655, 4134657, 4134671-2  
 E-mail: bpe@bpeng.org  
 Website: [www.bpeng.org](http://www.bpeng.org)

### **Central Bank of Nigeria**

Street: Plot 33, Abubakar Tafawa Balewa Way, Central Business District,  
 Cadastral Zone, FCT Abuja  
 Postal: PMB 0187, Garki, Abuja, Nigeria  
 Tel: +234 9 2342132-6, 2342516, 2343191  
 E-mail: info@cenbank.org  
 Website: [www.cenbank.org/www.cbn.gov.ng](http://www.cenbank.org/www.cbn.gov.ng)

### **Corporate Affairs Commission**

Street: Plot 420, Tigris Crescent, Off Aguiyi Ironsi Street, Maitama Abuja.  
 Postal: PMB 198, Garki, Abuja, Nigeria  
 Tel: +234 9 4618800-19  
 Fax: +234 9 3142669  
 E-mail: cservice@cac.gov.ng  
 Website: [www.cac.gov.ng](http://www.cac.gov.ng),

### **Department of Petroleum Resources**

Street: 7 Kofo Abayomi Street, Victoria Island  
 Postal: PMB 12650, Lagos, Nigeria  
 Tel: +234 1 2612320, 2618228, 2622398, 2616869, 2622205  
 Fax: +234 1 2622529  
 E-mail: publicaffairs@dprnigeria.com  
 Website: [www.dprnigeria.com](http://www.dprnigeria.com)

### **Federal Inland Revenue Service**

Street: Revenue House, Plot 522, Sokode Crescent, Off Dalaba Street  
 Off Michael Okpara Street, Wuse Zone 5  
 Postal: PMB 33, Garki, Abuja, Nigeria  
 Tel: +234 9 5236611, 5236598  
 Fax: +234 9 5236612  
 Website: [www.firs.gov.ng](http://www.firs.gov.ng)

### **Federal Ministry of Interior**

Street: Block F, Old Federal Secretariat, Garki Area 1  
 Postal: PO Box 16, Garki, Abuja, Nigeria  
 Tel: +234 9-6713526  
 Website: [www.interior.gov.ng](http://www.interior.gov.ng)

### **Industrial Training Fund**

Street: No. 1 Kufang Village, Miango Road, Jos  
 Postal: PMB 2199, Jos, Nigeira  
 Tel: +234 73 465297, 465437, 462738, 463633  
 E-mail: dg-itf@nova.net, lib-itf@nova.net.ng  
 Website: [www.itf-ng.com](http://www.itf-ng.com)

### **Industrial Inspectorate Department, Federal Ministry of Industry, Trade and Investment**

Street: Block C, Old Federal Secretariat, Area 1 Garki

Postal: PMB 85, Garki, Abuja Nigeria  
Tel: +234 9 2341367, 2341721, 2341570  
Fax: +234 9 2341919.

#### **Joint Tax Board**

Street: Plot 1863, Lee Kuan Yew Street, (Off Mohammed Mahathir Street) Asokoro, FCT.  
Postal: PMB 33, Garki Abuja, Nigeria  
Tel: +234 9 5238827, 5236593-4, 5236598  
Website: [www.jtb.gov.ng](http://www.jtb.gov.ng)

#### **National Housing Fund (Federal Mortgage Bank of Nigeria)**

Street: Plot 266 Cadastral AO Central Business District  
Postal: PMB 2273, Garki, Abuja, Nigeria  
Tel/Fax: +234 9 44601992, 4602102, 4602199  
Email: [info@fmbn.gov.ng](mailto:info@fmbn.gov.ng)  
Website: [www.fmbn.gov.ng](http://www.fmbn.gov.ng)

#### **National Insurance Commission**

Street: NAICOM National Office, Plot 1239 Ladoke Akintola Boulevard, Garki II  
Postal: PMB 457, Garki, Abuja, Nigeria  
Tel/Fax: +234-9-8752061,, +234 9 5238260  
Website: [www.naicom.gov.ng/](http://www.naicom.gov.ng/)

#### **National Office for Technology Acquisition and Promotion**

Street: 4 Blantyre Street Wuse II, off Adetokunbo Ademola Crescent, Wuse II, Abuja  
Postal: +234 9 5239775, 5239823  
Fax: +234 9 5239823

#### **Nigeria Customs Service**

Street: 3-7 Abidjan Street, off Sultan Abubakar Way, Wuse Zone 3  
Postal: PMB 26 Garki, Abuja, Nigeria  
Tel: +234 9 5236394, 5234680  
Fax: +234 9 5236394, 5234690

#### **Nigeria Deposit Insurance Corporation**

Street: NDIC Building, Plot 447/448, Constitution Avenue, Central Business District  
Postal: PMB 284, Garki, Abuja, Nigeria  
Tel: +234 9 5236007, 5236009, 5236359, 5236369, 5237002-26, 5237395  
Fax: +234 9 5236667, 5237718  
E-mail: [info@ndic.org.ng](mailto:info@ndic.org.ng)  
Website: [www.ndic-ng.com](http://www.ndic-ng.com)

#### **Nigeria Export Processing Zones Authority**

Street: No. 2 Zambezi Crescent, Cadastral Zone A6, Off Aguiyi Ironsi Street Maitama, Abuja  
Postal: PMB 037, Garki, Abuja, Nigeria  
Tel: +234 9 413 1598, 780 4077  
Fax: +234 9 413 1550  
E-mail: [info@nepza.com](mailto:info@nepza.com), [nepza@nigol.net.org](mailto:nepza@nigol.net.org)  
Website: [www.nepza.com](http://www.nepza.com)

#### **Nigeria Immigration Service**

Street: Block E, Old Federal Secretariat Complex, Area 1, Garki Abuja  
Postal: PMB 38, Garki, Abuja, Nigeria  
Tel: +234 9 2341550, 2341594, 2347232  
Fax: +234 9 2341594, 2341550  
E-mail: [info@immigration.gov.ng](mailto:info@immigration.gov.ng)  
Website: [www.immigration.gov.ng](http://www.immigration.gov.ng)

**Nigeria Social Insurance Trust Fund**

Street: Plot 794, Muhammadu Buhari Way, behind National War College, Central Area  
 Postal: PMB 446, Garki, Abuja, Nigeria  
 Tel: +234 9 2340121-3  
 Fax: +234 9 2340112  
 E-mail: nsitf@infoweb.abs.net  
 Website: [www.nsitf.com](http://www.nsitf.com)

**Nigeria Communications Commission**

Street: Plot 423, Aguiyi Ironsi Street, Maitama, Abuja  
 Postal: PMB 326 Garki, Abuja, Nigeria  
 Tel: +234 9 4617000, 2344589  
 Fax: +234 9 2344593, 4617514  
 E-mail: ncc@cyberspace.net.ng  
 Website: [www.ncc.gov.ng](http://www.ncc.gov.ng)

**Nigerian Export Promotion Council**

Street: Plot 424, Aguiyi Ironsi Street, Maitama, Abuja, Nigeria  
 Postal: PMB 133, Garki, Abuja  
 Tel: +234 9 2910966, +234 8099EXPORTS  
 Fax: +234 9 5230931, 5233384  
 E-mail: ceo@nepc.gov.ng; info@nepc.gov.ng;  
 Website: [www.nepc.gov.ng](http://www.nepc.gov.ng)

**Nigeria Investment Promotion Commission**

Street: Plot 1181 Aguiyi Ironsi Street, Maitama District  
 Postal: PMB 381 Garki, Abuja, Nigeria  
 Tel: +234 9 4134380, 4134317, 4131403, 4134112, 4130581-2  
 Fax: +234 9 4134112, 4134306  
 E-mail: nipc@nipc-nigeria.org, infodesk@nipc-nigeria.org  
 Website: [www.nipc-nigeria.org](http://www.nipc-nigeria.org)

**Nigeria National Petroleum Corporation**

Street: NNPC Towers, Herbert Macaulay Way, Central District  
 Postal: PMB 190, Garki, Abuja, Nigeria  
 Tel: +234 9 5239141, 5234760, 5232717  
 Tel/Fax: +234 9 2340029  
 E-mail: gm@nnpc-publicaffairs.com  
 Website: [www.nnpc-publicaffairs.com](http://www.nnpc-publicaffairs.com)

**Nigerian Stock Exchange**

Street: Stock Exchange House (8th, 9th & 11th Floors), 2-4 Customs Street  
 Postal: PO Box 2457, Lagos, Nigeria  
 Tel: +234 1 266 0287, 2660305  
 Fax: +234 1 2668724

**Securities and Exchange Commission**

Street: SEC TOWERS, Plot 272, Samuel Adesujo Ademulegun Street  
 Central Business District  
 Postal: PMB 315, Garki, Abuja  
 Tel: +234 9 6330000, 6330399, 2344902-5  
 Fax: +234 9 2346276

## Appendix 2

### Schedule of Pioneer Industries & Products

S/N	INDUSTRIES	PRODUCTS
1.	Cultivation, processing and preservation of food crops and fruits.	Preserved canned foodstuff and fruits, tea, coffee, refined sugar, tomato puree/juice etc.
2.	Integrated dairy production	Butter, cheese, fluid milk and powder, ice cream (by products, livestock, minor edible products).
3.	(a) Deep sea trawling and processing (b) Coastal fishing and shrimping	Preserved sea foods, fish and shrimps, fishmeal
4.	Mining lead, zinc, and iron and steel from iron ore	Iron and steel products
5.	Manufacture of iron and steel from Iron ore	Iron and steel products
6.	The smelting and refining of non-ferrous base metal and the manufacture of their alloys	Refined non-ferrous base metal and their alloys
7.	Mining and processing of barytes, bentonites and associated minerals	Barytes, bentonites and associated minerals
8.	Manufacture of oil well drilling materials containing a predominant proportion of Nigerian raw materials	Barytes, bentonites and associated minerals
9.	The manufacture of cement	Cement, clinker
10.	Manufacture of glass and glassware	Sheet glass, pharmaceuticals and laboratory glasswares
11.	Manufacture of lime from local limestone	Lime
12.	Quarrying and processing of marbles	Marbles and processed marbles
13.	Manufacture of ceramic products	Refractory and heat insulating constructional products, laboratory ware
14.	Manufacture of basic and intermediate Industrial chemicals from predominantly Nigerian raw materials	(a) Basic and intermediate organic chemical; (b) Basic and intermediate in-organic chemical (c) Fertilizers (d) Petro-chemical (e) Caustic soda and chlorine (f) Pesticide and insecticide
15.	Formulation and manufacture of pharmaceuticals	Pharmaceuticals, health vitamins
16.	Manufacture of yeast, alcohol and related products	Yeast, industrial alcohol and related products
17.	Manufacture of paper pulp	Paper pulp
18.	Manufacture of yarn and man-made fibres	Yarn and synthetic fibres
19.	Manufacture of machinery involving the local manufacture of substantial proportion of components thereof	Office and industrial machinery, equipment and apparatus (whether or not electrical)
20.	Manufacture of products made wholly or mainly of metal	Pipes and tubes structure metal products
21.	Manufacture of nets from local raw materials	Fishing nets, mosquito nets and related products
22.	Manufacture of gas cylinders	Gas cylinders
23.	The processing of local wheat flour materials	Flour and Offal
24.	Rubber plantation and processing	Rubber
25.	Gum Arabic plantation and processing	Gum Arabic
26.	Manufacture of fertilizers Ammonia, Urea	Superphosphate and nitrogenous fertilizers
27.	Vehicle Manufacture	Motor Vehicles and Motor-cycles, Tri-cycles and Automotive components

28.	Oil palm plantation and processing	Palm Oil, palm kernel and Offal
29.	Manufacture of automotive and other components	Automotive, automotive spare parts and other components.
30.	Book printing	Books
31	Large scale mechanized farming	Wheat, Maize, Rice and Sorghum
32.	Cattle ranching and piggery of not less than 500 herds	Cattle and pigs of not less than 500 herds
33.	Manufacture of Gypsum	Gypsum
34.	Re-refining or re-cycling of waste oil	Low power oil
35.	Manufacture of electrical appliances/equipment/components and parts	Generators, transformers, meter, control, pressing irons, switchgears, test equipment, balets/starters/lighters, discreet components, resistor/capacitors/coils/semi-conductors/conductors.
36.	Ship building, repairs and maintenance of ocean going vessels	Ships, boats and barges.
37.	Manufacture of computer and computer chips	Computer hard and soft ware chips
38.	Manufacture of cameras, photographic equipment and other materials	Cameras, photographic equipment or any component thereof
39.	Diving and underwater engineering	Underwater engineering services.
40.	Local fabrications of machinery, equipment	Machinery
41.	Manufacture of tools	Machines and hand tools
42.	Installation of facilities for aircraft manufacture and maintenance of aircraft	Aircraft maintenance and manufacture
43.	Installation of scientific instruments and communication equipment	Scientific instruments, radio, audio play-back/recorders, loudspeaker units, amplifying systems, microphones, video playbacks/recorders, PBX, telephone handset, tele-printers, trans-receivers, autophones/aerials.
44.	Manufacture of gas and gas distribution	Gas and gas distribution
45.	Manufacture of Solar energy powered equipment and gadgets	Solar panels, refrigerators, water pumps, calculators, etc.
46.	Large-scale inland fishing farms	Fish and shrimps
47.	Bitumen mining and processing	Bitumen
48.	Salt production	Salt
49.	Manufacture of firefighting equipment and detection systems	Firefighting equipment and detection systems
50.	Manufacture of cables	Electrical, telephone and other cables
51.	Manufacture of medical and dental equipment	X-ray, oxygen equipment, etc.
52.	Mineral oil prospecting and production	Petroleum
53.	Manufacture of lubricants	Grease, hydraulic/engine oil, gear oil, etc.
54.	Manufacture of flat sheets	Flat sheets
55.	Manufacture of oven, cookers, cold rooms, refrigerators, fridges, freezers, air conditioner	Oven, cookers, cold rooms, refrigerators, fridges, freezers, air conditioner
56.	Manufacture of agricultural machinery and equipment	Ploughs, harvesters, threshers, planters etc.
57.	Manufacture of materials handling and equipment	Cranes, forklifts etc.
58.	Establishment of foundries	Moulds, casting, etc.

59.	Manufacture of alum	Alum
60.	Manufacture of enzymes	Enzymes
61.	Manufacture of concentrates	Food/fruits concentrates
62.	Manufacture of welding electrodes	Welding electrodes
63.	Manufacture of nails	Nails, related items
64.	Manufacture of iron rods	Rods from billets
65.	Manufacture of hops	Brewing hops
66.	Information and communication technology (ICT)	Manufacture/production of ICT equipment, hardware and software
67.	Tourism	Development of holiday resorts, hotels, sporting and recreational facilities
68.	Real estate development	(a) Rental income from residential and commercial premises; (b) Capital gains from real estate disposed of within a specified period
69.	Utility services	(a) Independent power generation utilizing gas, coal and renewable energy sources. (b) All aspects of transportation such as rail, road and waterways (c) Indigenous telecommunications companies other than GSM operations
70.	Textile industry	Production of textiles
71	Furniture industry	Manufacture of furniture and furniture components
72	Manufacture of cocoa products	Cocoa
73	Processing of oilseeds	Oilseeds
74	Bone crushing	Bone products
75	Inland lake fishing and processing	Seafood
76	Manufacture of surgical dressings	Surgical materials
77	Manufacture of starch from plantain crop	Starch products
78	Manufacture of animals foodstuff	Feed materials
79	Manufacture of articles of paper pulp, paper and paperboard	Paper pulp articles
80	Manufacture of leather	Leather goods
81	Manufacture of textile fabrics and man-made fibres	Textile and man-made materials
82	Manufacture of educational and science equipment	Educational and science materials
83	Manufacture of office and school stationery	Office and school stationery
84	Manufacture of building and home furnishing materials	Building and home furnishing materials
85	Manufacture of goods made wholly or partly of rubber	Rubber products
86	Manufacture of telecommunication equipment and cables	Telecommunication equipment and cables

## Appendix 3

### List of Acronyms/Initialisms

<b>A</b>	
AFEM	Autonomous Foreign Exchange Market
AMCON	Asset Management Corporation of Nigeria
ASCE	Abuja Securities & Commodities Exchange
AU	African Union
<b>B</b>	
BOFIA	Banks and Other Financial Institutions Act
<b>C</b>	
CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act
CBN	Central Bank of Nigeria
CCI	Clean Certificate of Inspection
CET	Common External Tariff
CGNIS	Comptroller General of the Nigerian Immigration Service
CGT	Capital Gains Tax
CISS	Comprehensive Import Supervision Scheme
CIT	Companies Income Tax
CPI	Consumer price index
CRA	Consolidated Relief Allowance
CSCS	Central Securities Clearing System
<b>D</b>	
DDSS	Duty Drawback/Suspension Scheme
DIAs	Destination inspection agents
DI	Destination Inspection
DPR	Department of Petroleum Resources
DTAs	Double taxation agreements
<b>E</b>	
ECA	Employee's Compensation Act
ECF	Executive Council of the Federation
ECOWAS	Economic Community of West African States
EDF	Export Development Fund
EEG	Export Expansion Grant
<b>F</b>	
FBIR	Federal Board of Inland Revenue
FCT IRS	Federal Capital Territory Internal Revenue Service
FEC	Federal Executive Council
FEMMP	Foreign Exchange Monitoring and Miscellaneous Provisions
FIRS	Federal Inland Revenue Service
FMARD	Federal Ministry of Agriculture and Rural Development
FMCT	Federal Ministry of Communications Technology
FMF	Federal Ministry of Finance

FMI	Federal Ministry of Interior
FMJ	Federal Ministry of Justice
FMLE	Federal Ministry of Labour and Employment
FMT	Federal Ministry of Transport
FMWPH	Federal Ministry of Works, Power and Housing
FRCN	Financial Reporting Council of Nigeria
FSI	Financial services industry
FTZ	Free Trade Zone
<b>G</b>	
GSM	Global System for Mobile Telecommunications
<b>H</b>	
HSIC	Heads of State and Government Implementation Committee
<b>I</b>	
IAT	Import Adjustment Tax
ICT	Information Communications Technology
IFEM	Inter-Bank Foreign Exchange Market
IFRS	International Financial Reporting Standards
IID	Industrial Inspectorate Department
IOCs	International oil companies
ISA	Investment and Securities Act
ITA	Investment tax allowance
ITC	Investment tax credit
ITF	Industrial Training Fund
<b>J</b>	
JTB	Joint Tax Board
<b>L</b>	
LFN	Laws of the Federation of Nigeria
<b>M</b>	
MPR	Monetary Policy Rate
<b>N</b>	
NAFDAC	National Agency for Food and Drug Administration and Control
NAICOM	National Insurance Commission
NAPIMS	National Petroleum Investment Management Services
NASB	Nigerian Accounting Standards Board
NBC	National Broadcasting Commission
NCA	Nigerian Communications Act
NCC	Nigerian Communications Commission
NCDMB	Nigerian Content Development and Monitoring Board
NCSB	Nigeria Customs Service Board
NCS	Nigeria Customs Service
NDIC	Nigeria Deposit Insurance Corporation

NECA	Nigeria Employers' Consultative Association
NEPAD	New Partnership for Africa's Development
NEPA	National Electric Power Authority
NEPC	Nigerian Export Promotion Council
NESS	Nigerian Export Supervision Scheme
NGL	Natural Gas Liquid
NHIS	National Health Insurance Scheme
NIC	National Industrial Court
NICTP	National Information and Communications Technology Policy
NIMASA	Nigerian Maritime Administration and Safety Agency
NIPC	Nigerian Investment Promotion Commission
NIS	Nigeria Immigration Service
NIS	Nigeria standards
NLC	Nigerian Labour Congress
NNPC	Nigerian National Petroleum Corporation
NOGICDA	Nigerian Oil and Gas Industry Content Development Act
NOTAP	National Office for Technology Acquisition and Promotion
NSE	Nigerian Stock Exchange
NXP	Nigerian Export Proceeds
<b>O</b>	
OAU	Organisation of African Unity
OECD	Organisation for the Economic Cooperation and Development
OPEC	Organisation of Petroleum Exporting Countries
OSIC	One Stop Investment Centre
<b>P</b>	
PAYE	Pay As You Earn
PENCOM	National Pension Commission
PFA	Pension Fund Administrator
PFC	Pension Fund Custodian
PHCN	Power Holding Company Nigeria Limited
PIB	Petroleum Industry Bill
PIT	Personal Income Tax
POR	Place of residence
PPOR	Principal place of residence
PPPRA	Petroleum Products Pricing Regulatory Agency
PPT	Petroleum Profits Tax
PRA	Pension Reform Act
PSCs	Production Sharing Contracts
PUR	Permanent until Reviewed
<b>R</b>	
RAR	Risk Assessment Report

RECs	Regional Economic Communities
RFI	Request for Information
RSA	Retirement Savings Account
RTA	Relevant tax authority
<b>S</b>	
SAS	Statements of Accounting Standards
SEC	Securities and Exchange Commission
SIRS	State Internal Revenue Service
SON	Standards Organisation of Nigeria
SPM	Supplementary Protection Measures
STR	Subject to Regularisation
<b>T</b>	
TCC	Tax Clearance Certificate
TDA	Trade Disputes Act
TET	Tertiary Education Tax
TLS	Trade Liberalisation Scheme
TS	Technical Services
TUA	Trade Unions Act
TUC	Trade Union Congress
TWDV	Tax written down value
TWPs	Temporary work permits
<b>U</b>	
UN	United Nations
<b>V</b>	
VAT	Value Added Tax
<b>W</b>	
WHT	Withholding Tax
WTO	World Trade Organisation

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