**FOREIGN PARTICIPATION IN BUSINESSES IN NIGERIA**

Introduction

Despite the outbreak of COVID-19, Nigeria continues to attract an increasing number of foreign investments. In 2020, the United Nations reported that Nigeria’s inflow of Foreign Direct Investments (FDI) increased by 4.3%. As the market expands, the government continually issues policies aimed at creating a conducive business environment. As a result of the existence of multiple laws and policies, a prospective foreign investor will need some guidance in respect of establishing a business presence and navigating the Nigerian business environment.

The commission in charge of all business registration in Nigeria is the Corporate Affairs Commission (CAC), which was established by virtue of the **Companies and Allied Matters Act 2020 (CAMA)** to regulate the formations and operations of companies in Nigeria. There have been various developments with respect to business formation in Nigeria- one major innovation is the introduction of the electronic certificate of incorporation and other incorporation documents.

This article highlights the major requirements for an alien/foreign participation in businesses in Nigeria.

Company Registration

Who is an alien? **Section 650** of **CAMA** defines an alien as a person or association, whether corporate or incorporate, other than a Nigerian citizen or association. **Section 20 (4) of CAMA** provides that “Subject to the provisions of any enactment regulating the rights and capacity of aliens to participate or undertake in a trade or business, an alien or a foreign company may join in the formation of a company”.

Our focus in this article is foreign participation in businesses and in practice, the Corporate Affairs Commission generally prescribes the formation of a Private Company Limited by shares for foreign participation in business in Nigeria. This is because, an alien may register and form a Company in Nigeria without a work permit, immigration visa, TWP Visa and CERPAC. It will need to secure such permits and Visa’s later on and after incorporation to be present in Nigeria but not at the point of incorporation. This will not be the case for a Business name and or a registerable partnership under CAMA. Business names and Registerable partnerships such as the limited partnership and the limited liability partnerships are transparent enterprises for income tax purposes thus an alien is advised to adopt the private company limited by shares business structure to participate in business in Nigeria. A foreign company may not register a partnership or a business name as they do not possess separate legal personalities.

Section 78 of CAMA provides interalia that a foreign company intending to carry on business is obligated to incorporate a separate entity, in the form of a company, in Nigeria before participating in any such business in Nigeria. A foreign company may not participate in any business or have a place of business or an address for service until it has incorporated a separate entity in Nigeria. Addresses for the receipt of notices and other documents for the purposes of incorporating an entity in Nigeria are permissible.

**Exemption From Incorporation For Foreign Companies**

The provisions of Section 78 of CAMA do not apply to foreign companies who have been granted an exemption or granted exemption under any treaty to which Nigeria is party.

An application for exemption from incorporation may be made to the Minister of Trade, Industry and Investment if such a foreign company falls under any of the following categories:

1. foreign companies invited by or with the approval of the Federal Government to execute any individual project;
2. foreign companies in Nigeria to execute a specified individual loan project on behalf of a donor country or international organization;
3. foreign government owned companies engaged solely in export promotion activities; and
4. engineering consultants and technical experts executing any individual specialist project under contract with any of the governments in Nigeria or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.

An application for exemption is made in the prescribed format as enumerated in Section 80 (2) CAMA. Upon approval of the application, the Minister shall issue an instrument of exemption specifying a period of time for its duration.

Incorporation Requirements For Foreign Companies

Generally, any company registered outside Nigeria and having the intention of carrying on business in Nigeria must be registered at the Corporate Affairs Commission (“CAC”). The company is permitted to have 100% foreign shareholders except it operates in specific sectors such as oil and gas, aviation, domestic coastal carriage, etc., which all require at least 50% local ownership and control.

It is however, mandatory for a Company having foreign participation to have a minimum of two shareholders and two directors. At least one of the directors must be resident in Nigeria.

Nigerian Investment Promotion Commission (NIPC) Registration

The NIPC is empowered by the Federal Government to promote foreign investments in Nigeria. Every business with foreign participation is mandated to register with the commission and obtain a certificate of registration. To obtain a NIPC certificate the evidence of registration at the CAC is required. **Section 17 of Nigerian Investment Promotion Commission (NIPC)** further provides that:

A non-Nigerian whether company or individual may invest and participate in the operation of any enterprise in Nigeria except those in the negative list. The negative list includes arms and ammunition; narcotic drugs and psychotropic substance; para-military and military wears.

The implication of the above subject provision is that a foreigner is allowed to participate in business in Nigeria, however, this is subject to some enactments. An alien may choose to incorporate a company with other aliens or Nigerians, or he may wish to buy shares into an existing company. It is important to state that, every foreigner seeking to participate in Nigerian business by registering a company in Nigeria must register a company with the minimum of 10,000,000 authorized shares capital to be able to subsequently register with NIPC.

Nigerian Immigration Registration

Nigerian Immigration Service is one of the major government agency which is relevant to investors seeking to establish businesses in Nigeria. Foreigners seeking to do business in Nigeria must acquire the approval of the immigration authority in Nigeria. Nigerian Immigration Service, in conjunction with the Nigerian Ministry of Interior provide immigration requirements and grant approvals for entry, work and residence to foreigners seeking to do business in Nigeria.

As part of the regulatory requirements, foreigners doing business or looking to establish in Nigeria must obtain Expatriate Quota from the Minister of Interior. Immigrant workers are required to obtain residence permits that allow them to work in Nigeria and remit monies abroad if necessary. In addition, every company with foreign participation in Nigeria is required to apply and secure a business permit before commencing business activities. The process for application can be done through the One Stop Shop of the NIPC.

Available Incentives to Foreigners doing Business in Nigeria

A number of investment incentives to encourage private sector investment from within and outside the country has been put in place by the Nigeria Government. These include the following:

* Companies Income Tax: The Companies Income Tax Act has been amended in order to encourage potential and existing investors and entrepreneurs. The current rate is dependent on the company’s annual turn-over.
* Pioneer Status Incentive: The grant of Pioneer Status to an industry is aimed at enabling the industry concerned to make a reasonable level of profit within its formative years. The profit so made is expected to be ploughed back into the business
* Capital Importation and Repatriation: To fund their investments in Nigeria, foreigners are permitted, subject to money laundering restrictions, to bring in any recognized foreign currency into Nigeria. Such funds are allowed to be brought in through an authorized dealer. The bank through which the funds were imported will issue a certificate of capital importation (“CCI”) to the investor to show the inflow of such funds into Nigeria. Where capital is not imported in form of funds but is imported in form of equipment, machinery or raw materials, a CCI will also be required. The CCI is advantageous for the repatriation of dividends, profits and capital gains.
* Double Taxation Agreements: Over the years, the Nigerian Government has entered into double taxation agreements with a number of countries. The major reason for this agreement is to give relief from double taxation in relation to taxes imposed on profit taxable in Nigeria and any taxes of similar character imposed by the law of the other country concerned- this is by way of a “tax credit.

Conclusion

The Nigerian government has, to a large extent, taken steps to provide an enabling environment for foreign participation in businesses in Nigeria to thrive, although there are a lot more practicable processes to adopt to ease the process of doing business and remove bureaucratic constraints in Nigeria in order to fully attract investors into the country.

Any foreigner who wishes to establish business in Nigeria is advised to engage the services of a corporate lawyer who will offer guidance specifically tailored to the sector which it seeks to operate.