







# INVESTMENT GUIDE: DOING BUSINESS IN NIGERIA



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## A. GENERAL OVERVIEW

With immense growth in technology and globalization, cross-border investments have taken prime positions in global economies. As a developing country with immeasurable growth potential, Nigeria ranks as the largest oil producer in Africa and the 11th largest oil producer in the world. Aside from available oil and gas reserves, Nigeria has enormous mineral resources, such as iron ore, bitumen, gold, coal, bauxite, bronze etc. As at 2018, the gross domestic product (GDP) of Nigeria was estimated at USD 397 billion<sup>1</sup>.

Leveraging on its demographic advantage as most populous country in Africa as well as the biggest economy<sup>2</sup>, Nigeria sets its path as the most preferred investment destination for investors looking to onboard into Africa's largest emerging market. This is further accentuated by the ever-developing economic and structural reform targeted at making the country a hive for ease of doing business.

Achieving holistic tax reform and creating a business-friendly environment is one of the key objectives of the present administration. This gave rise to the establishment of the Presidential Enabling Business Environment Council (PEBEC) to address bottlenecks and compliance issues associated with the ease of doing business in Nigeria. PEBEC's initiatives include simplifying/ fast-tracking the process of incorporation of companies in Nigeria and tax compliance as well as the deployment of the Integrated Tax Administration System (ITAS). Very recently, the Startup Act 2022 and the Business Facilitation Act, 2023 were enacted with the objective of promoting the ease of doing business in Nigeria through transparency, efficiency, productivity and elimination of unnecessary bureaucracy.

Just like in other jurisdictions, there are certain legally established compliance requirements for embarking on certain business projects in Nigeria. Cross-border investment comes with certain challenges and uncertainties for investors, the government of Nigeria has taken steps to allay this fear by introducing investment-friendly policies that accord foreign investors certain privileges and incentives. In this guide we provide insights and relevant information on doing business in Nigeria that will assist investors in making informed investment decisions, encompassing the Nigerian business landscape, business/investment structures, regulatory framework, foreign exchange control considerations, applicable taxes, available business/tax incentives and an appraisal of the future fiscal outlook for the Nigerian economy.

1 Nigerian Bureau of Statistics <https://www.nigerianstat.gov.ng/>

2 James Emejo "IMF: Nigeria Remains Largest Economy in Africa, 26th in the World", This day: <https://www.thisdaylive.com/index.php/2020/12/29/imf-nigeria-remains-largest-economy-in-africa-26th-in-the-world/>



## B. BUSINESS STRUCTURES



Business can be carried out in Nigeria in form of a Sole Proprietorship, a Partnership or an incorporated company. A foreigner can participate in business in Nigeria either through foreign direct investment (FDI) or foreign portfolio investment (FPI). With regard to FDIs, every foreign investor must first incorporate his/her business as a Nigerian business as a preliminary step, except such a company has been granted an exemption. However, in certain circumstances, which are specified under applicable laws, a foreign entity may apply to the Minister for exemption from the mandatory requirement of registration. Any company that is exempted will operate in Nigeria as an unregistered company. Also, this exemption can now be enjoyed by foreign companies where an Act of the National Assembly provides for same<sup>3</sup>.

### ***Incorporating a Company in Nigeria***

A company can be incorporated in Nigeria within a very short period (twenty- four (24) hours or more) from the time of submission of relevant documents at the CAC and the payment of official filing fees. It involves the following steps:

- i. **Name Availability Search for the Company**  
This entails conducting a name availability search at the Corporate Affairs Commission (CAC), to ensure that the name designated for the proposed company is not already in use by another company and that the name is not similar to that of another company, or trade name. Any available name will be reserved for the proposed company for a period of 60 days which is renewable for another period of 60 days.
- ii. **Filing Incorporation Documents at the CAC**

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

- Memorandum and Articles of Association (MEMART)

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

- Application to the CAC

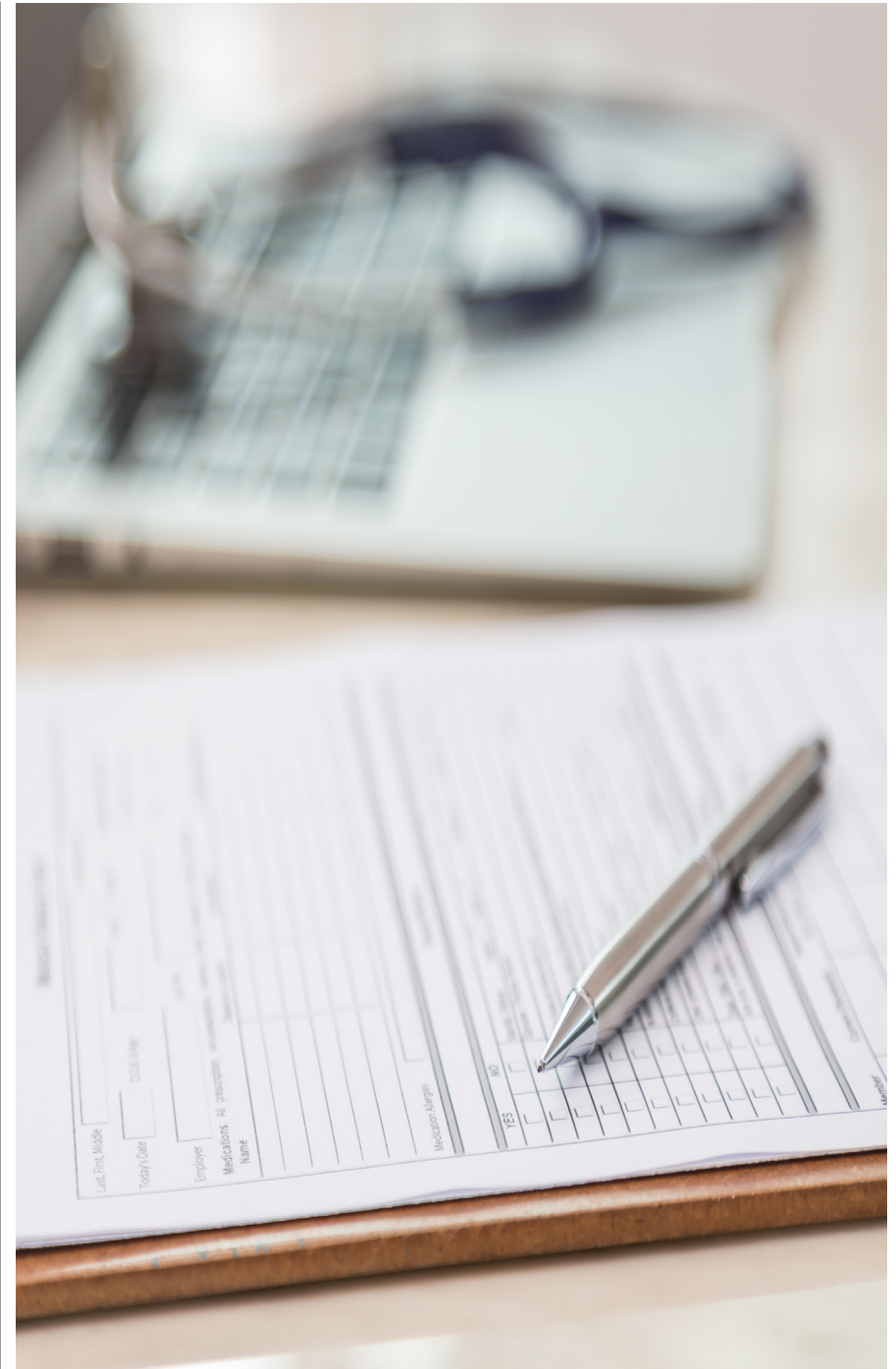
The application is in a standard form that contains detailed information on the proposed company such as:

- ✓ type of company to be incorporated;
- ✓ the reserved name obtained via the name availability search exercise;
- ✓ the address of the proposed company
- ✓ The minimum issued share capital of the company
- ✓ Particulars of first directors and their consent to function as directors
- ✓ Particulars of Company Secretary (Individual)
- ✓ Statutory Declaration of Compliance in the prescribed form.

- Evidence of Payment of Filing Fees

The statutory fees payable upon incorporation of a company limited by shares is assessed based on its authorized share capital. We have listed hereunder, the applicable statutory fees:

- ✓ Stamp duties – 0.75% of the minimum issued share capital.
- ✓ CAC filing fees – 1% of the minimum issued share capital which is payable to the CAC.
- ✓ Approximately N5,000 (Five Thousand Naira) which is payable for obtaining certified true copies of incorporation documents from the CAC.



## C. REGULATORY FRAMEWORK FOR DOING BUSINESS IN NIGERIA

### **Business Permits**

Business permit is an authority given to a foreigner to commence business activities in Nigeria. Consequently, no person other than a Nigeria Citizen shall accept employment or practice a profession either on his own or in partnership or take over any trade or business or take over any company without obtaining consent in writing from the Comptroller-General of Immigration<sup>4</sup>. The application for a business permit should be accompanied by tax clearance documentation, feasibility studies, and joint venture details amongst other documents.

### **Certificate of Business Registration**

By virtue of the Nigerian Investment Promotion Commission (NIPC) Act Cap N117 LFN 2004, registration with the NIPC is a mandatory requirement for the commencement of business for every company with foreign equity participation. A company applying for business permit must have a minimum share capital of NGN10,000,000 (Ten Million Naira). The Ministry of Interior has recently issued a revised Handbook on Expatriate Quota Administration 2022 which has increased the minimum share capital requirement to NGN100,000,000 (One Hundred Million Naira). However, this is not yet fully implemented. The value of assets imported for the trade, use and benefit of the company could be valued and designated as part of the paid-up capital of the company depending on the adopted investment structure.

In addition to the above, Nigerian companies that subsequently acquire foreign participation after the commencement of business operations are now equally obliged to register with the NIPC within three months of such acquisition<sup>5</sup>. The NIPC is under transparency obligations to, via its website, give guidance on compliance process(es) for companies in this category<sup>6</sup>. It is therefore expected that the NIPC will issue a press release to this effect. Investors can also take advantage of the One-Stop Investment Centre (OSIC) that is coordinated by the NIPC. The OSIC brings together relevant government agencies to one location to provide fast-tracked services to investors<sup>7</sup>.

4 Pursuant to the provisions of the Immigration Act, 2015

5 Section 54, Part XV of the Schedule to the BFA.

6 Section 3, BFA.

7 <https://www.nipc.gov.ng/iguide/getting-started/>



The objective of the OSIC is to simplify business entry processes by removing administrative and regulatory bottlenecks pertaining to doing business in Nigeria. The Centre presently has twenty-seven (27) participating agencies including the CAC, Nigeria Customs Service (NCS), Nigerian Export Promotion Council (NEPC), Federal Inland Revenue Service (FIRS), Nigerian Export Processing Zones Authority, Federal Ministry of Finance (FMF), Nigeria Immigration Service (NIS), Federal Ministry of Interior (FMI) Nigerian Maritime Administration and Safety Agency (NIMASA), Federal Ministry of Mines and Steel Development (MMSD), National Office for Technology Acquisition amongst others. The NIPC has also launched the Electronic One-Stop Investment Centre (e-OSIC) which will serve as a digital version of OSIC<sup>8</sup>.

### **Transfer of Foreign Technology**

The National Office for Technology Acquisition and Promotion (NOTAP) is the sector regulator that oversees the transfer of foreign technology to Nigerian companies. Agreements that entail the transfer or transmission of technology/technical know-how from a non-resident company to a Nigerian must be registered with NOTAP within 60 days from the date of execution of such agreement<sup>9</sup>, as a pre-condition for obtaining foreign currency. Fees payable under such agreements (such as royalties, management fees, software licenses, etc.) must not exceed limits prescribed by the NOTAP and the CBN. The agreement must clearly specify the services to be provided or the features of the process or product being licensed. However, while the 60-days timeline is still applicable to existing companies, a different time-limit applies to new companies. The newly enacted Business Facilitation (Miscellaneous Provision) Act, 2023 (“the BFA”) gives new companies a period of two years of business operation to register relevant technology transfer agreement with NOTAP<sup>10</sup>.

The registration of an agreement with NOTAP is associated with the benefit of easy remittance of intercompany payables to parent or affiliate entities resident outside Nigeria, through government-approved channels.

The time frame for processing an application for registration is typically five (5) weeks.

### **Capital Importation and Repatriation**

It is the desire of every foreign investor to freely enter and exit an economy with its foreign investments and revenue generated from the business it conducted. Nigeria has always maintained a liberal policy towards importation and repatriation of foreign investment. As a guaranteed unconditional and unrestricted transfer of their capital, investments and profits in any convertible currency through an authorized dealer either by telegraphic transfer, cheques or other negotiable instruments and converted into Naira in accordance with the provision of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act<sup>11</sup>. The imported currency, through an authorized dealer, is converted into Naira at an official foreign exchange market rate<sup>12</sup>. The authorized dealer through which the capital is imported must issue a Certificate of Capital Importation (CCI) to the investor within 24 hours of the said importation. Any foreign currency imported into Nigeria through an authorized dealer is guaranteed unconditional transferability of funds in a freely convertible currency payment of dividends, interest, profits and the remittance of proceeds in the event of liquidation (net of applicable taxes)<sup>13</sup>. A holder of a CCI is entitled to open a domiciliary account with the authorized dealer for the purpose of investments; open a special non-resident Naira account which all proceeds from capital inflows, proceeds from sale of securities, dividends and interest could be credited; make investments in securities in Nigeria; repatriate the capital, capital gains, dividends and interest incomes received through an authorized dealer at autonomous market rates in freely convertible currency - subject to deductions of all applicable taxes.

8 <https://www.nipc.gov.ng/iguide/getting-started/>

9 Section matter of fact, with the proper guidance and subject to applicable taxes, foreign investors are 5, NOTAP Act (as amended)

10 Section 48, Part XII to the Schedule of the BFA.

11 Section 15(1) Foreign Exchange (Monitoring and Miscellaneous Provisions) Act CAP F4, LFN, 2004

12 Section 12 Foreign Exchange (Monitoring and Miscellaneous Provisions) Act CAPF4 LFN 2004

13 Section 15(4) Foreign Exchange (Monitoring and Miscellaneous Provision) Act CapF4 LFN, 2004

**Employment/Labour Law Requirements**

The sources of law governing employment-related issues in Nigeria includes the Labour Act Cap L1 LFN 2004 (the “Labour Act”), common law and case-laws.

The Labour Act excludes certain categories of persons from the above definition including “persons exercising administrative, executive, technical or professional functions as public officers or otherwise” from the ambit of the Labour Act. Employment relationships that are not covered by the Labour Act are governed principally by the terms of employment contracts executed by the employer and the employee.

The employment of foreign nationals is prohibited unless the permission of the Comptroller-General of Immigration is obtain in accordance with the Immigration Act 2015 and the BFA.

Employers are required to pay or remit certain employee-related statutory deductions as specified under applicable laws. These include PAYE (pay-as-you-earn) tax, pension, Nigerian Social Insurance Trust Fund (NSITF) contribution, Industrial Training Fund (ITF) contribution, National Housing Fund contribution, etc.





## D. APPLICABLE TAXES IN NIGERIA

There are several taxes and levies imposed on individuals, businesses, goods and services in Nigeria. The major taxes are discussed below:

### **Companies Income Tax**

The Companies Income Tax Act (as amended) (CITA) provides the legal basis for the taxation of the profits of companies aside from companies engaged in the upstream oil and gas sector in Nigeria. CITA imposes tax upon the profits of any company accruing in, derived from, brought into, or received in Nigeria in respect of a trade or business. The applicable income tax rate is 30% for companies with a gross turnover that is more than N100 million. The rate is 0% for companies with a gross turnover of N25 million or less. The income tax rate is 20% for companies with a gross turnover that is more than NGN 25 million but less than NGN 100 million<sup>14</sup>.

Nigerian companies are liable to tax on their global or worldwide income while non-resident companies are liable to pay tax only on the income deemed to be derived from Nigeria. All companies assessable to tax under the Companies Income Tax Act are required to register with the Federal Inland Revenue Services (“FIRS”) and obtain a Tax Identification Number (“TIN”). The TIN must be displayed on all documents or correspondence filed with the FIRS. This registration should be done immediately after the company is incorporated.

### **Capital Allowance**

Capital allowance is claimable on qualifying capital expenditure in lieu of depreciation. Initial allowance is claimable only in the first year of acquisition, the annual allowance is claimable annually based on the rates stipulated under CITA. Investment allowance is claimable on capital expenditure on plant and equipment in the year of acquisition at the fixed rate of 10%. Agro companies and manufacturing companies are allowed to claim 100% capital allowances whereas other companies are restricted to claim a maximum of 2/3rd of assessable profits.

<sup>14</sup> The Companies Income Tax Act Cap C21, LFN 2004 as amended under the Finance Act 2019, Finance Act 2020 and Finance Act 2021



Prior to the enactment of the BFA, companies were required to obtain a Certificate of Acceptance from the Inspectorate Division of the Federal Ministry of Industries for each asset purchased within any given accounting period with a value of N500,000.00 and above. However, with the new amendments introduced under the BFA, the new threshold for obtaining CAFA in the instances of a new undertaking and equally for incurring additional capital expenditure is a minimum of five-million-naira valuation of the asset. The BFA further empowers the Minister of Industry, Trade and Investment to equally prescribe these thresholds by way of regulation. Hence, the benchmark is as stated under the BFA or as may be prescribed by the Minister.

### **Income Tax Liability of Non-Resident Companies**

Investment income paid by a person or corporate entity resident in Nigeria to a non-resident entity is subject to Withholding. Withholding tax deducted on such payments serves as the final tax. Aside from investment income, business income derived from Nigeria by non-resident companies are also liable to tax in Nigeria. Based on provisions of CITA, the income of a nonresident company is deemed to be derived from Nigeria in any of the following scenarios:

- ✓ If the company has a fixed base of business in Nigeria to the extent that profit is attributable to the fixed base.
- ✓ If the company habitually operates a trade or business through a person in Nigeria who is authorised to conclude contracts on its behalf or companies controlled by it.
- ✓ If the transactions between the foreign company and its related or affiliate company in Nigerian are not at arm's length.
- ✓ If the company carries on a trade or business which involves a single contract for deliveries, surveys, installations or construction.
- ✓ If the company has a significant economic presence (SEP) in Nigeria to the extent that the profit is attributable to the company's taxable presence in Nigeria.

### **The Concept of Significant Economic Presence (SEP)**

A foreign entity involved in digital transactions will be deemed to have created a SEP in Nigeria and is therefore liable to tax in Nigeria if<sup>15</sup>:

- i. it derives income of NGN 25 million or equivalent in other currencies from Nigeria in a year.

Income derived from Nigeria includes income generated from:

- ✓ streaming or downloading of books, music, movies, games or applications;
  - ✓ transmission of data collected about Nigerian users generated from the users' activities;
  - ✓ provision of goods and services through a digital platform to Nigeria;
  - ✓ provision of intermediation services through a digital platform, website or online application linking suppliers and customers in Nigeria, or
- ii. it uses a Nigerian domain name (.ng) or registers a website address in Nigeria, or
  - iii. it has purposeful and sustained interactions with persons in Nigeria by customising its digital platform to target persons in Nigeria (e.g. by stating the prices of its products or services in naira).

The law also provides that activities carried out by connected persons shall be aggregated to determine the N25 million threshold (where applicable). As an exception to the SEP rule, any company covered under any multilateral agreement to which Nigeria is a party will be taxed in accordance with those agreements. Non-resident companies that derive income by providing professional, consultancy, management, and technical services to Nigeria residents will be deemed to have SEP in Nigeria and subject to tax at 10%. This will be final tax payable by the nonresident company in Nigeria. Tertiary Education Tax

15 Section 13 of CITA (as amended); The Companies Income Tax (Significant Economic Presence) Order 2020

Companies registered in Nigeria (aside from unincorporated and nonresident companies) are obligated to pay tertiary education tax (TET) at the rate of 2.5% of the assessable profit for each year of assessment.

For upstream oil companies that are yet to convert to the Petroleum Industry Act regime and are still taxed under the Petroleum Profit Tax Act, tertiary education tax is an allowable deduction in computing income tax liability of the relevant year of assessment.

### **Personal Income Tax**

The principal basis of liability to tax under the PITA is residency. A person is considered resident if that person is physically in Nigeria for at least 183 days (including leave and temporary absence) in any 12-month period or serves as a diplomat or diplomatic agent of Nigeria abroad. Foreign persons earning business profits from Nigeria are liable to tax on income derived from Nigeria or by virtue of established SEP in Nigeria.

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

WHT is not a separate type of tax but rather an advance payment of income taxes by way of source deduction on qualifying transactions at specified rates. The remittance is made in the currency of transaction to the FIRS or the relevant State Internal Revenue Service within 21 days and 30 days respectively. Applicable WHT rates in Nigeria are highlighted below:

Companies are required to file monthly WHT returns with the federal and state tax authorities as the case may be.

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

Individuals and businesses (including nonresident companies) are required to collect VAT charged on their invoices from their clients or customers and remit same to the FIRS. Government agencies and oil and gas companies are required to deduct VAT at source (i.e. VAT charged on invoices issued by their vendors, suppliers etc.) and remit it to the FIRS. The Finance Act 2019 has also introduced a reverse-charge mechanism for services for which no tax invoice was issued. Returns on VAT remitted to the FIRS are to be filed on cash basis. The applicable VAT rate in Nigeria is 7.5%

<b>Nature of Payment/Transaction</b>	<b>Companies WHT Rate (%)</b>	<b>Individuals WHT Rate (%)</b>
Dividends, interest, and rents	10	10
Royalties	10	5
Commission, consultancy, technical, service fees	10	5
Management fees	10	5
Construction (roads, buildings, and bridges)	2.5	5
Directors fees		10
Hire of equipment	10	10
Contracts other than sales in the ordinary course of business	5	5

Some items are taxable at zero rate. Zero-rated items as stipulated in the VAT Act includes goods purchased for use in humanitarian donor-funded projects and goods/services purchased by diplomats. Exported services are exempted from VAT. Goods such as plants and machinery for use in export processing zones or free trade zones (FTZs), basic food items (as specified in the VAT Act), medical products/services, pharmaceutical products, books and educational material are exempted from VAT. Collection and remittance of VAT should be in the currency of the transaction.

### **Capital Gains Tax (CGT)**

Gains accruing to individuals and businesses on the disposal of chargeable assets are liable to CGT at the rate of 10% under the CGT Act. Chargeable assets includes foreign currency, options, debts, goodwill etc. other than those specifically exempted under the CGT Act.

Generally, gains on the disposal of shares in a Nigerian company are subject to CGT. However, CGT will not be applicable where:

- the value of aggregate disposal proceeds in any 12 consecutive months are less than NGN100 million, provided appropriate returns are rendered to the FIRS; or
- where the gains are reinvested in another Nigerian company within a 12-month period; or
- where the transaction is related to a regulated securities lending transaction.

Chargeable gains received or brought into Nigeria in respect of assets situated outside Nigeria are also liable to CGT at the rate of 10%. Currently, the following adjustments are not allowed in computation of CGT:

- Inflation adjustment to cost of the asset.
- Capital losses on the same class of assets.

Remittance of CGT is due on or before 30 June and 31 December of the year of disposal of chargeable asset.

### **Stamp duties**

Stamp duty is payable on any instrument executed in Nigeria or any instrument relating to any immovable property situated in Nigeria or to any transaction carried out in Nigeria. Dutiable instruments are to be stamped within 40 days of first execution.

Under the Stamp Duties Act (SDA), Stamp duties are chargeable either at fixed rates or ad valorem depending on the type of document being executed.

The Finance Act 2020 introduced an electronic money transfer levy of N50.00. The levy is payable on electronic receipts or electronic transfer for money (amounting to N10,000 or more) deposited in a financial institution.

### **Cabotage levy**

To encourage investment in domestic shipping, the Coastal and Inland Shipping (Cabotage) Act was passed into law in 2003 to restricts the use of foreign vessels in domestic coastal trade. Vessels registered with the Nigerian Maritime Administration and Safety Agency (NIMASA) will be required to pay a surcharge of 2% of the contract sum earned from coastal trade in Nigeria.

### **Nigerian Content Development (NCD) Levy**

The Nigerian Oil and Gas Content Development and Monitoring Board (NCDMB) is the sector regulator responsible for implementing the provisions of the Nigerian Oil and Gas Industry Content Development Act 2010. The Act imposes a levy of 1% of contract sum to be deducted at source from any contract awarded with respect to any project or transaction in the upstream sector of the oil and gas industry.

### **National Information Technology Development Agency Levy**

Pursuant to the National Information Technology Development Agency Act No. 31 of 2007 a levy of 1% of profits before tax is chargeable on the income of companies operating in specified sectors of the economy with a turnover of N100 million and above. The affected sectors are listed below:

- ii. GSM service providers and all telecommunications companies;
- iii. Cyber companies and internet providers;
- iv. Pension managers and pension-related companies;
- v. Banks and other financial institutions, and
- vi. Insurance companies.

#### **National Agency for Science and Engineering Infrastructure (NASENI) Levy**

NASENI was established in 1992 under the NASENI Act to ensure national growth and development in the area of science and technology in Nigeria. Based on the provisions of the Finance Act, the levy is computed at the rate of 0.25% of the profit before tax of commercial companies with a turnover of N100 million and above. The affected sectors are listed below:

- Banking
- Mobile communication
- ICT
- Aviation
- Maritime, and
- Oil and gas sectors

#### **Double Tax Agreement (DTA)**

Nigeria has Double Tax Agreement with the underlisted countries:

- Belgium
- Canada
- China
- Czech Republic
- France
- the Netherlands
- Pakistan
- Philippines
- Romania
- Singapore
- Slovakia
- South Africa
- Spain
- Sweden, and
- the United Kingdom.

#### **Transfer Pricing (TP)**

The Income Tax (Transfer Pricing) Regulations, 2018 (TP Regulations) provide for compliance with “arm’s length principle”. The TP Regulations provides that “where a connected person has entered into a transaction or series of transactions to which these regulations apply, the person shall ensure that the taxable profits resulting from the transaction or transactions are ascertained in a manner that is consistent with the arm’s length principle”. The regulation defines connected persons to include persons that are related, associated, or connected to one another, that has the ability to control or influence the other person in making financial, commercial or operational decisions, or a third party that has the ability to control or influence both persons in making financial, commercial, or operational decisions. The TP Regulations requires connected persons to record, in writing or on any other electronic device or medium, sufficient information or data to verify that the pricing of controlled transactions is consistent with the arm’s length principle (documentation). The documentation shall be made available to the tax authority upon written request. Connected entities are also required to file TP disclosure and declaration forms with the tax authority. The rules are applicable to both domestic and cross-border related-party transactions and are applied in a manner consistent with the arm’s-length principle in Article 9 of the United Nations (UN) and Organisation for Economic Co-operation and Development (OECD) Model Tax Conventions on Income and Capital and the OECD Transfer Pricing Guidelines for Multi-national Enterprises and Tax Administrations.

#### **Thin Capitalisation**

The Finance Act 2019 introduced a cap on tax deductibility of interest expense. This restricts deductibility of interest on loan to 30% of EBITDA. Excess interest expense can be carried forward for up to five years. The rules cover related or associate company loans, including third party debt guaranteed implicitly or explicitly by a related entity. Aside from the above, Nigeria does not have any specific thin capitalisation rules.

There are also no specific Controlled Foreign Companies rules in Nigeria.

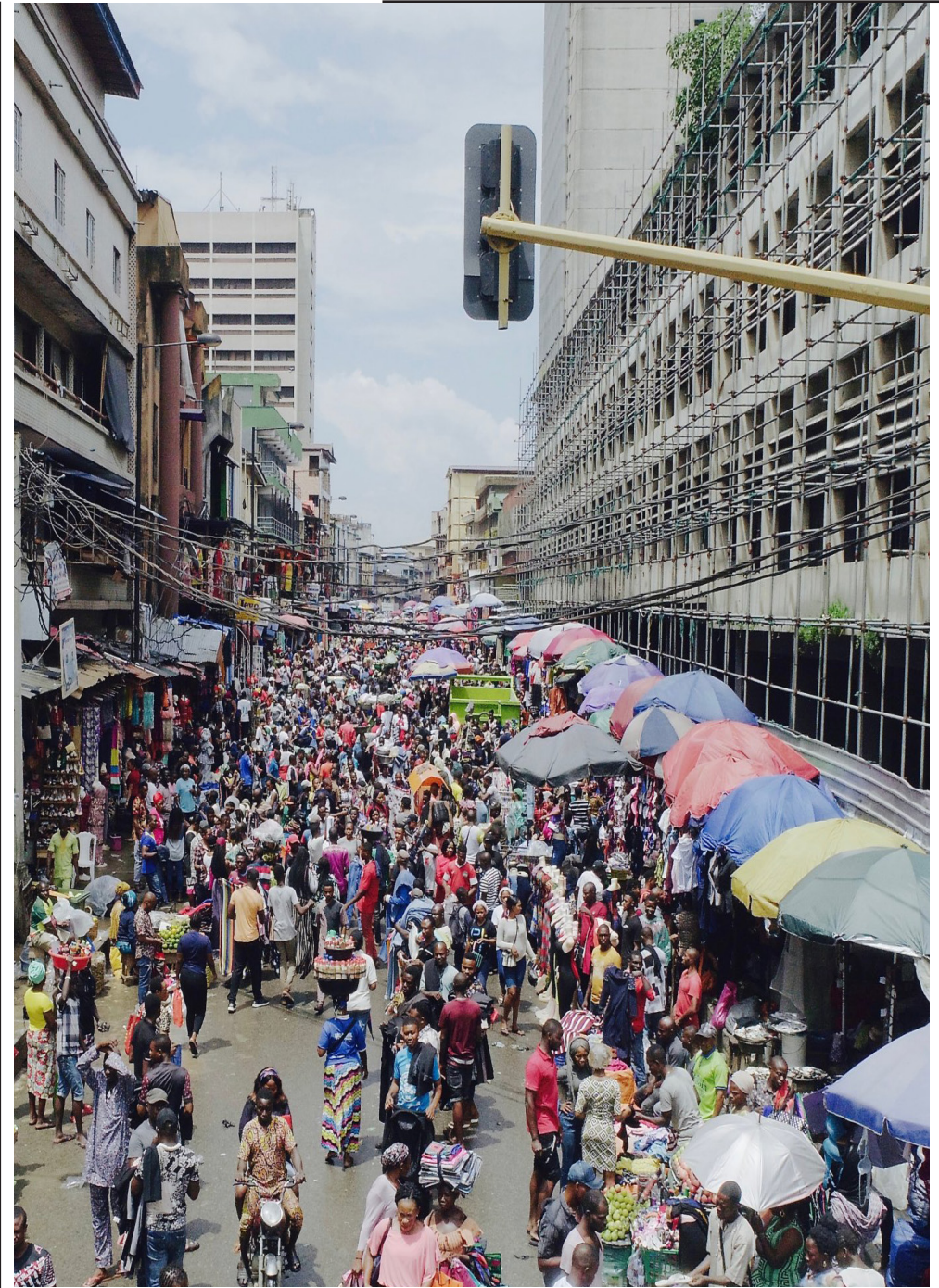
Customs & Excise Duties

In Nigeria, customs duties are levied only on imports. Custom duties are assessed at varied rates depending on the relevant Harmonized Commodity and Coding System (HS code) of the imported item.

Airlines registered in Nigeria and providing commercial air transport services are exempted from paying custom duties on imported aircraft, engines, spare parts, and component.

Excise duty is applicable on non-alcoholic beverages, cigarettes, tobacco, stout, wine, spirits, beer and also telecommunication services.

Excise duties rates has increased since 1 June 2022 based on provisions of applicable laws.



## E. BUSINESS, INVESTMENT AND TAX INCENTIVES

There are various tax incentives geared towards boosting investment in key sectors of the Nigerian economy. Some of these incentives include:

### ***Pioneer Status***

The Pioneer Status Incentive is provided under the Industrial Development (Income Tax Relief) Act. The incentive is essentially, a tax holiday which grants qualifying industries and products relief from payment of corporate income tax for an initial period of three years, extendable for one or two additional years. Some industries are specifically designated as pioneer industries in Nigeria. A new company that engages in the mining of solid minerals is exempt from tax for the first three years of its operation.

Small or medium sized companies engaged in primary agricultural production are eligible for an initial tax-free period of four years, which may be extended for an additional two-year period, subject to satisfactory performance.

The recently enacted Nigeria Start up Acts, 2022 grants pioneer status to labelled startups which falls under the list of pioneer status with Nigeria Investment Promotion Commission.

To qualify for pioneer status, an applicant must be a corporate body registered in Nigeria and must have incurred a capital expenditure of not less than NGN 10,000,000.00 (Ten Million Naira). Also, the qualifying share capital must not be less than NGN10,000,000.00 (Ten Million Naira).

### **Baseline Protections under Investment Promotion and Protection Agreement (“IPPA”)**

Investments by individuals and companies of countries that are parties to IPPA are protected in Nigeria in the event of riot, unrest, or expropriation. This, among other baseline minimum protections are offered to such individuals and companies. Countries that have existing IPPA with Nigeria are: United Kingdom, Germany, Italy, Korea Republic, Sweden, Switzerland, China, Finland, France, Spain, Netherlands, Romania, Singapore, South Africa, Taiwan Province of China.



**ECOWAS Trade Liberalization Scheme**

This scheme offers reliefs for companies and individuals operating within the territories of member-states. Thus, no customs duties will be levied on imports and exports of goods produced and distributed amongst member -states.

The scheme offers unhindered market access to the fifteen member Countries and promotes economic relations within the sub-region. Countries covered by the Scheme are; Nigeria, Ghana, Benin, Côte d'Ivoire, Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Senegal, Sierra Leone, Togo, Burkina Faso, Cape Verde .

**Export processing zones (EPZs) & Free Trade Zones**

Export processing zones (EPZs) and free trade zones (FTZs) are locations within Nigeria designated by the government as free areas where export trade activities can be carried on free of tax and foreign exchange restrictions. A company registered as a free trade zone entity is entitled to 100% capital and profit repatriation, exemption from all federal, state, and local government taxes, levies and rates, and waivers on customs and import duties.

There are presently 31 FTZs with 14 operational and 17 under construction as at April 2015. Notable amongst the operational FTZs are: Calabar Free Zone, Kano Free Zone, Lekki Free Zone, Tinapa Free Zone and Tourism Resort, Onne Oil and Gas Export Free Zone, Olokola Free Zone. Foreign investors can incorporate business entities directly in FTZs without necessarily incorporating a company in the customs territory. Registered companies are also eligible to register separately and operate in an FTZ.

A company that is engaged in an approved manufacturing activity in an EPZ and incurs expenditures in its qualifying building and plant equipment is entitled to 100% capital allowance in that year of assessment.

FTZ companies are obligated by law to file corporate income tax and transfer pricing returns (where applicable) with the tax authority.

**Incentives for Export of Locally Manufactured Products**

Based on applicable laws, the available export incentives in Nigeria are highlighted as follows:

- A company that is 100% export oriented will enjoy a three-year tax holiday, provided the company is not formed by splitting up or reconstruction of an already existing business and the export proceeds form at least 75% of its turnover.
- Profits of companies whose supplies are exclusively inputs to the manufacture of products for export are exempt from tax. Such companies are expected to obtain a certificate of purchase of the input from the exporter in order to claim tax exemption. Where plant and machinery are transferred to a new company, the tax written down value of the asset transferred must not exceed 25% of the total value of plant and machinery in the new company. The company should also repatriate at least 75% of the export earnings to Nigeria and place it in a Nigerian domiciliary account in order to qualify for a tax holiday.
- Profits of any Nigerian company in respect of goods exported from Nigeria are exempt from tax, provided that the proceeds from such exports are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment, and spare parts. This exemption does not apply to companies in the oil and gas industry (upstream, midstream, and downstream).

**Export Expansion Grant (EEG) Scheme**

The main purpose of the EEG Scheme is to encourage export of value added items, processed and manufactured products. The EEG Scheme grants the Export Credit Certificate (ECC) as an incentive that can be used to settle all federal government taxes aside from taxes payable to the state or local government. It can also be used to purchase government bonds and repay government credit facilities and debts due to statutory corporations.



**Gas Utilisation Incentives**

Gas utilization involves the processing, marketing, distribution and sale of natural gas for commercial purposes, and it includes power plants, fertilizer plants, gas transmission, and distribution pipelines. Nigeria's proven natural gas reserves according to the Department of Petroleum Resources (DPR) have risen to 209.5 trillion cubic feet (TCF) as of January 1, 2022. This underscores the need to fully incentivize gas utilization projects/activities. Companies engaged in gas utilisation are entitled to:

- initial tax-free period of 3 years which may, subject to satisfactory performance, be renewed for an additional period of two years.
- Accelerated capital allowance after the tax-free period.
- Tax-free dividends during the tax-free period.

Investors in gas pipelines can obtain an additional tax-free period of five years. As noted above, the Industrial Development (Income Tax Relief) Act also contains similar provisions which grant companies engaged in pioneer industries a 3-year tax holiday which may be extended for another 2 years. Since gas utilization can also be regarded under applicable law as a pioneer project, there was a lingering controversy as to whether both incentive may be enjoyed by the same the same qualifying capital expenditure. The amendments introduced by Finance Act 2019 and Finance Act 2020, seemingly addressing this controversy, now provides that eligible companies could enjoy pioneer status incentive and gas utilization incentives only if the incentive claimed are not on the same qualifying capital expenditure and they fulfill the conditions under the relevant enabling Acts. Furthermore, under the Finance Act 2020, a company cannot claim the tax holiday more than once. A new company formed from reorganization, restructuring, buy-back, or other similar schemes out of a company that has already enjoyed the tax-free incentive is not entitled to such relief. A company that has previously claimed an incentives associated with gas utilization under any law in Nigeria will not be eligible for any further gas utilization incentive.

**Incentives in Hospitality Business**

25% of the income derived from tourism by hotels in convertible currencies is exempt from tax provided such income is utilised within five years for expansion or construction of new hotels and other facilities for tourism development.

**Incentives on Loans and Deposits**

Generally, company paying Interest on a loan is required to deduct WHT, at the rate of 10%, and remit the same to the relevant tax authority. Below are some of the incentives available under applicable laws in relation to interest payments:

- Interest on foreign loans may enjoy up to 70% tax exemption, where such loans meet the conditions stipulated in the CITA. This is typically a function of the loan repayment period and the moratorium period. The table below shows the tenors and grace period with the applicable percentage(%) of tax exemption:

<b>Repayment Period</b>	<b>Grace Period (Including Moratorium)</b>	<b>Tax Exemption Allowed</b>
Above 7 Years	Not less than 2 Years	70%
5 - 7 Years	Not less than 18 Months	40%
2 - 4 Years	Not less than 12 Months	10%
Below 2 Years	Nil	Nil

- A non-resident company may open and operate a deposit account in Nigeria. Interest accruing on such deposit account is tax-exempt, provided the deposits into the account are transfers wholly of foreign currencies to Nigeria through Government approved channels. Government-approved channels in Nigeria include the Central Bank of Nigeria, duly licensed Commercial banks operating in Nigeria and any bank or corporate body appointed by the Minister as an authorized dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or other applicable laws.

- Interest accruing on a foreign-currency domiciliary account is also tax-exempt.
- Interest on any loan granted by a bank to a company engaged in primary agricultural trade, fabrication of local plant and machinery, or as working capital to any cottage industry is 100% tax free if the loan has a moratorium of not less than 12 months and the rate of interest is not more than the base lending rate at the time the loan was granted, refinanced, or restructured.

### **Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme**

Participants in the Road Infrastructure Development and Refurbishment Investment Tax Scheme are entitled to recover the cost incurred by them in the construction or refurbishment of eligible roads as credit against CIT payable. Tax credit granted under this scheme can be carried forward to subsequent years until it is fully utilized or transferred to other companies for valuable consideration.

### **African Continental Free Trade Agreement (AfCFTA)**

The African Continental Free Trade Area is a free trade area encompassing most of Africa region. It was established in 2018 by the African Continental Free Trade Agreement, which has 43 parties and another 11 signatories, making it the largest free-trade area by number of member states, after the World Trade Organization. The agreement founding AfCFTA was brokered by the African Union. Under the agreement, AfCFTA members are committed to eliminating tariffs on most goods and services over a period of 5, 10, or 13 years, depending on the country's level of development or the nature of the products. General long-term objectives include creating a single, liberalised market; reducing barriers to capital and labor to facilitate investment; developing regional infrastructure; and establishing a continental customs union. The overall aims of AfCFTA are to increase socioeconomic development, reduce poverty, and make Africa more competitive in the global economy. On July 2019, Nigeria signed the African Continental Free Trade Area ("AfCFTA") agreement. In 2022, Nigeria, with the support of the United Nations Economic Commission for Africa (UNECA) validated its National AfCFTA Implementation Strategy. Thus making Nigeria the 25th country to validate its national AfCFTA Im-

plementation Strategy with the support of the Economic Commission for Africa.

### **Minimum Tax Exemptions**

Minimum tax is payable by companies having no taxable profits for the year or where the tax on profits is below the minimum tax payable under the CITA. Minimum tax payable is calculated as 0.5% of gross turnover (after deducting franked investment income where applicable). To encourage investment, the following categories of companies are exempted from paying minimum tax:

- companies in the first four years of business
- companies engaged in the agriculture business,
- companies with gross turnover of NGN25 million or less.

### **Graduated Corporate Income Tax Rate**

To encourage the growth of startups, small and medium-scale enterprises, corporate income tax rate is charged on a graduated scale as follows:

- The applicable income tax rate is 30% for companies with gross turnover that is more than N100 million.
- The income tax rate is 20% for companies with gross turnover that is more than NGN 25 million but less than NGN 100 million.
- The income tax rate is 0% for companies with gross turnover of N25 million or less.

### **Incentives for Companies Situated in Rural Areas**

Companies situated in rural areas are entitled to certain incentives in form of tax reductions at graduated rates depending on its proximity or distance from social amenities such as electricity, water, and tarred roads.

## F. CONCLUSION

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



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