

DOING BUSINESS AND INVESTING IN NIGERIA: LEGAL AND REGULATORY CONSIDERATIONS

Introduction

Nigeria is ranked as the largest economy in Africa.¹ Regardless of the negative growth indices recorded in recent years, which were occasioned by activities of insurgents and political unrest, Nigeria has maintained a stealthily increasing economic growth rate. In past times, South Africa took over from Nigeria as Africa's largest economy, however, with expedited economic reforms, Nigeria's economy regained prominence, retaking its position as Africa's largest economy.² This feat was actualized by continuous investment in the Nigerian economy. Nigeria, as a mixed economy, encourages investments from both the private sector and public sector.³ Currently, a bulk of Nigeria's revenue is derived from the Oil and Gas sector. However, there are other sectors/industries into which investment can be channeled, such as Manufacturing, Agriculture, Telecommunications, Media, Energy, etc. It is noteworthy that the increasing level of economic growth, privatization of public entities, guarantees and incentives for doing business,⁴ and empowerment of Micro, Small and Medium Enterprises (MSMEs) by the Nigerian government, amongst other factors, have encouraged the proliferation of startups in Nigeria. Consequently, in recent years, especially with the hike in unemployment rate, there has been an increasing focus on "doing business." The Nigerian government, responding to the country's economic situation as well as to the country's growing international economic prominence, has focused on improving the conditions for doing business in Nigeria. Some of the government efforts are discussed below. It is important to note that there are certain considerations to be observed before investing in Nigeria. Where an investor fails to consider these factors with due diligence, the likelihood of the business surviving is minimal.

¹ S. Olawale, 'Top Twenty Largest Economies in Africa 2018 | African Biggest Economy' (NaijaQuest.com, 4 January, 2018) <<https://naijaquest.com/largest-economies-in-africa/>> accessed 30 May, 2018.

² S. Olawale, 'Top Twenty Largest Economies in Africa 2018 | African Biggest Economy' (NaijaQuest.com, 4 January, 2018) <<https://naijaquest.com/largest-economies-in-africa/>> accessed 30 May, 2018.

³ Tushar Seth, 'Mixed Economy: Meaning, Features and Types of Mixed Economy' (Economics Discussion) <<http://www.economicsdiscussion.net/economy/mixed-economy-meaning-features-and-types-of-mixed-economy/2064>> accessed 30 May, 2018.

⁴Section 22 Nigerian Investment Promotion Commission Act, CAP N117, Laws of the Federation of Nigeria (LFN), 2010 (NIPC Act).

Legal and Regulatory Considerations

The conduct of business in Nigeria is governed by a number of legislations, the principal being the Companies and Allied Matters Act, CAP C20, Laws of the Federation of Nigeria, 2010. These laws provide the legal basis for the creation of business entities and regulate the operation and conduct of businesses and investments in Nigeria.

These laws, some of which are identified below, establish government bodies or agencies charged with the responsibility to regulate the general conduct of business and investments. Also, some of the laws are sector-specific, and they constitute requirements for the registration and conduct of particular businesses in Nigeria.

	Sector/Industry	Applicable Laws	Regulatory Bodies	Permits/Licenses / Approvals
1.	Telecommunications	Nigerian Communications Act, Licensing Regulations, National Office of Technology Acquisition and Promotion (NOTAP) Act	Nigerian Communications Commission, National Office of Technology Acquisition and Promotion	Communication License, Certificate of Approval
2.	Manufacturing	Standards Organisation of Nigeria (SON) Act, National Agency for Food and Drug Administration and Control (NAFDAC) Act	Standards Organisation of Nigeria, National Agency for Food and Drug Administration Control	Standards Organisation of Nigeria Conformity Assessment Programme (SON CAP) Certification, National Agency for Food and Drug Administration

				and Control (NAFDAC) Certificate
3.	Oil and Gas	Petroleum Act, Oil Pipelines Act, Nigerian National Petroleum Corporation (NNPC) Act	Nigerian National Petroleum Corporation, Ministry of Petroleum Resources, Department of Petroleum Resources	Oil Mining Lease, Oil Prospecting License, Marginal Field or Oil and Gas Pipelines License
4.	Health Care	National Health Act	National Council on Health, Medical and Dental Council of Nigeria	Annual License, Certificate of Good Standing
5.	Commercial Banking	Central Bank of Nigeria (CBN) Act, Bank and other Financial Institutions Act, Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Nigerian Deposit Insurance Commission (NDIC) Act	Central Bank of Nigeria, Nigerian Deposit Insurance Commission	Commercial Banking license, Foreign Exchange Authorized Dealership License

6.	Hotels & Tourism	Nigerian Tourism Development Corporation (NTDC) Act, Lagos State Hotel Licensing Authority (LSHLA) Law, ⁵ Lagos State Hotel Proprietors Law ⁶	Nigerian Tourism Development Corporation, Lagos State Hotel Licensing Authority	Certificate of Registration, Lagos State Hotel Licensing Authority License
7.	Insurance	Insurance Act National Insurance Commission (NAICOM) Act	National Insurance Commission	Insurance License
8.	Energy	Electric Power Sector Reform Act	Nigerian Electricity Regulatory Commission	Generation License, Transmission License, Distribution License, Trading License
9.	Media	Nigerian Press Council Act, National Broadcasting Commission Act	Nigerian Press Council, National Broadcasting Commission, Broadcasting Organisation of	Radio Broadcasting License, Television Broadcasting License, Satellite Broadcasting

⁵ This is a Law of Lagos State and it is only applicable in Lagos State.

⁶ Ibid.

			Nigeria	License
9.	Law ⁷	Legal Practitioners Act, Legal Education Act	Body of Benchers, Nigerian Bar Association, Council of Legal Education, Legal Practitioners Disciplinary Committee (LPDC)	Call to Bar Certificate, Qualifying Certificate
10.	Advertising ⁸	Advertising Practitioners Registration Act	Advertising Practitioners Council of Nigeria	Advertising Business License
11.	Education	Education (National Minimum Standards and Establishment of Institutions) Act, Educational Correspondence Colleges Accreditation Act ⁹	National Council on Education, Federal and State Ministries of Education, National Primary Education Commission, National Secondary	Approval of the Minister of Education, ¹⁰

⁷ Investment in the Nigerian Legal Industry requires qualification as a Barrister and Solicitor of the Supreme Court of Nigeria. A precondition to such qualification is undertaking the mandatory Nigerian Law School Programme. An applicant to the Nigerian Law School must possess a law degree from the faculty of law of a recognised university whether foreign or indigenous. See Sections 2, 4, 7 and 22 of the Legal Practitioners Act, 1975.

⁸ Note: for a company to be registered as an advertising company, the Chief Executive Officer of such company must be a registered advertising practitioner with a minimum of three years agency experience. This information was culled from the Advertising Practitioners Council of Nigeria website <<http://www.apcon.gov.ng/services.php?servTab=2>> accessed 10 August, 2018.

⁹ This applies to individuals who intend to establish correspondence colleges in Nigeria.

¹⁰Note: approval of the Minister of Education can be obtained through the requisite regulatory bodies for universities, polytechnics, colleges of agriculture and colleges of education; and for other institutions, through the Permanent Secretary of the various Ministries of Education. See section 21 of the Education (National Minimum Standards and Establishment of Institutions) Act, CAP E3, Laws of the Federation of Nigeria, 2010.

			Education Commission, National Commission for Colleges of Education, National Board for Technical Education, National Universities Commission	
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Other factors to be considered include:

- i. **Incorporation/Registration with Regulators:** Apart from initial registration with the Corporate Affairs Commission under the Companies and Allied Matters Act, a company or business entity is further required to register its business activities with other agencies responsible for regulation of business entities in Nigeria. These include the Nigerian Investment Promotion Commission, which coordinates and regulates investment activities in Nigeria;¹¹ Securities and Exchange Commission, for registration of securities acquired from Public Companies whether quoted on the stock market or not;¹² National Office for Technological Acquisition and Promotion, for registration of imported technology (both intellectual and physical) and acquisition of Certificate of Approval;¹³ Central Bank of Nigeria, to obtain Certificate of Capital Importation, which is done through authorized dealers (usually commercial banks);¹⁴ and Industrial Inspectorate Division of the Federal Ministry of Industry, for registration of

¹¹ Section 4 NIPC Act.

¹² Section 13 Investment and Securities Act.

¹³ Section 4 & 7 NOTAP Act.

¹⁴ Sections 1, 8, 14 & 16 Foreign Exchange (Monitoring & Miscellaneous) Act.

intention to incur capital expenditure and acquisition of Certificate of Acceptance,¹⁵ amongst others.

- ii. **Permits, Licenses and Approvals:** Companies are sometimes required to obtain certain licenses prior to commencement of business. This is dependent on the industry/sector of investment, some of which include health care, telecommunications, oil and gas, media, banking, etc. For instance, conduct of business in the telecommunication service industry requires a business entity to obtain license from the National Communications Commission (NCC) under the Licensing Regulations, 2013, made pursuant to the Nigerian Communications Act. Also, acquisition of a license from the National Agency for Food and Drug Administration and Control (NAFDAC) is a prerequisite for a company involved in the food and pharmaceuticals industries, while Standards Organisation of Nigeria Conformity Assessment Programme (SONCAP) Certification will be obtained from the Standards Organisation of Nigeria (SON) for a company involved in manufacturing. A foreign-owned company is further required to obtain additional licenses and permits and is entitled to certain tax reliefs. Some of these permits and licenses include; business permit, work permit, residence permit, visa, expatriate quota, etc.¹⁶In order to streamline some of these requirements, the introduction of the Combined Expatriate Residence Permit and Alien Card (CERPAC) has dispensed with the need to obtain residence permit and work permit separately.¹⁷

EFFORTS OF THE PRESIDENTIAL ENABLING BUSINESS ENVIRONMENT COUNCIL (PEBEC)

The Federal Government established the Presidential Enabling Business Environment Council (PEBEC) in July 2016, to reduce critical bottlenecks and constraints to doing business in the country. PEBEC was established with the primary mandate to improve the nation's ranking on the World Bank Ease of Doing Business Report (Nigeria ranked 169 out of 190 economies as at July 2016). Since the establishment of PEBEC, there have been reforms in relation to business activities in Nigeria, which cut across various aspects of the World Bank Ease of Doing Business Indicators, such as:

¹⁵ Section 2 Industrial Inspectorate Act.

¹⁶ Sections 8, 9 &10 Immigration Act.

¹⁷ <<http://www.nigeriaimmigration.gov.ng/index.php/facilities/cerpac&num=1&strip=0&vwsr=0>> accessed on 21 June, 2018

- **Starting a Business:** Through the efforts of the PEBEC, the number of days required to register a company at the Corporate Affairs Commission has been reduced with the collaborative effort of the Federal Inland Revenue Service (FIRS), through the integration of the FIRS e-payment solution to the CAC registration portal for payment of stamp duties, which previously was done physically at the FIRS offices. Business owners can now proceed to incorporate a company without a physical presence at the CAC or FIRS offices, as was formerly required, until collection of certificate of incorporation from the CAC.
- **Dealing with Construction Permits:** The focus of PEBEC under this head is in Lagos, being the commercial nerve center of the country. Through collaboration with the Lagos State Physical Planning and Permit Authority (LASPPA), the requirement of Environmental Impact Assessment (EIA) has been limited to structures with heavy impact on the environment. There have been efforts towards reduction of the timeline for obtaining permits for business premises.
- **Registering Property:** Efforts in this regard are also centered on Lagos State. The Lagos Lands Registry no longer requires deposition to an affidavit by an applicant to conduct a search in respect of title to a landed property. Also, improvements have been made to the payments system at the Land Registry to reduce the bottlenecks in conducting title search. The requirement for stamping of deeds of assignment has also been merged with final registration process for acquisition of lands owned by the Lagos State Government.
- **Access to Credit/Loans:** The reforms under this heading have been geared towards enabling Micro, Small and Medium Enterprises (MSMEs) to have more access to credit through the establishment of the web-based National Collateral Registry by the Central Bank of Nigeria, to facilitate the use of movable/personal assets as collateral that remain in the possession or control of the borrowers.
- **Cross-Border Trade:** Through collaboration with the Federal Ministry of Finance, there has been clarity in import and export guidelines to drive efficiency at the Ports. Efforts have also been geared towards simplifying examination/ inspection process at the airports and seaports by a joint physical examination to ensure only one contact between officials and importers and exporters.
- **Entry and Exit of Noncitizens:** Reforms in this area include the 2017 Immigration Regulation issued by the Ministry of Interior as a result of the Executive Orders

on Ease of Doing Business. The regulation seeks to inform members of the public of the requirements, fees, and timelines for the various immigration services. Also, efforts have been made to reduce the timeline for processing of visas at Nigerian missions abroad to 48 hours.

It is important to note that most of these reforms have been made achievable through several executive orders, regulations, and directives, with the principal laws which regulate the activities still under review or amendment. Examples are the Companies and Allied Matters Act, Federal Competition and Consumer Protection Bill, the Petroleum Industry Governance Bill, etc. It is expected that the amended laws will incorporate these reforms in order to conform to the present economic reality of the Nigerian business environment. Currently, Nigeria ranks 145th in the Doing Business rankings as opposed to its ranking as 169th in 2016. It is therefore safe to assume that the rankings are indicative of the fact that the suitability of the Nigerian economy for investment is increasing.

Investment Incentives and Guarantees

There are several incentives designed by the Federal Government of Nigeria to encourage inflow of investments to the country. They include, Pioneer Status under the Industrial Development (Income Tax Relief) Act, Relief on Double Taxation Treaties under Companies Income Tax Act (CITA) (Section 44), Investment Tax credit on expenditure of the companies involved in research and development activities (Section 26, CITA). In addition to these, the NIPC Act provides certain guarantees for investors, including:

- i. Unconditional transferability of funds through an authorized dealer in freely convertible currency.¹⁸ Such funds include:
 - Dividends or profit (net of taxes) attributable to the investment;
 - Payments in respect of loan servicing when foreign loan has been obtained;
 - Remittances of proceeds (net of all taxes) and other obligations in the case of sale or liquidation of an enterprise or any interest attributable to the investment.

¹⁸ Section 24 NIPC Act.

- ii. Protection against nationalization and expropriation¹⁹. Where an enterprise is acquired for public purpose or in the national interest, the following prerogatives are made available:
- Payment of fair and adequate compensation;
 - Right of access to court for the determination of the investor's interest or amount of compensation to which the investor is entitled;
 - Prompt payment of compensation and authorization of its repatriation in freely convertible currency.
- iii. Flexible Dispute Settlement Provisions²⁰ – A foreign investor has a right of recourse to international arbitration for settlement of disputes. Where a dispute arises in respect of an enterprise in which a foreign investor is involved, there is a provision for amicable settlement of such dispute. However, where amicable settlement is not achieved, such dispute can be settled under the provisions of any bilateral or multilateral agreement entered into between the Nigerian government and the government of any country of which the foreign investor is a citizen or in accordance with any other national or international machinery for the settlement of investment disputes. Where the disputing parties are not ad idem as to the mode of dispute resolution to be adopted, the International Centre for Settlement of Investment Dispute (ICSID) Rules would apply.

CONCLUSION

The economic reforms being carried out by the Nigerian government are quite commendable. However, there is need for commitment to economic growth and consistency in carrying out these economic reforms. Thus, the government and its agencies have a duty to ensure due enforcement of and compliance with the orders, guidelines, directives and laws made or enacted pursuant to the PEBC's objectives. Strategic economic reforms will ultimately increase the nation's propensity for investment and result in a considerable improvement in Nigeria's ranking on the World Bank's Ease of Doing Business Index.

¹⁹ Section 25 NIPC Act.

²⁰ Section 26 NIPC Act.