Doing Business in Nigeria

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Doing business in guide: Nigeria

MSI's guide on Doing Business in Nigeria provides current information about the financial, regulatory and legal considerations that could affect business dealings within Nigeria. For further assistance please contact our MSI member firms in Nigeria.

Country overview

Population
Nigeria has a total population of 218.5 million inhabitants (December 2022).

Government
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.

Leveraging on its demographic advantage as the most populous country and largest economy in Africa, Nigeria sets its path as the most preferred investment destination for investors looking to onboard into Africa's largest emerging market.

There are 12 states making up the Federal Republic of Nigeria.

Languages
The national official language in Nigeria is the English Language. However, there are about 371 indigenous tribes in Nigeria that speak and understand various languages.

Currency
The national currency is the Naira (₦).

Economic summary
GDP: US$477.39 Billion (as of 2022)
GDP per capita: $2449.59
Inflation: 21.34% (as of 2022)

Main sectors of the economy
The economy of Nigeria is a middle-income, mixed economy and emerging market with expanding manufacturing, financial, service, communications, technology, and entertainment sectors. It is ranked as the 31st-largest economy in the world in terms of nominal GDP, the largest in Africa and the 27th-largest in terms of purchasing power parity.

Nigeria has the largest economy in Africa. The country's re-emergent manufacturing sector became the largest on the continent in 2013, and it produces a large proportion of goods and services for the region of West Africa.

International trade relations and its impact on businesses and investors
Nigeria is a member of several international organizations, including the United Nations, the African Union, International Monetary Fund, Economic Community of West African States, World Bank, World Trade Organization amongst many others. Nigeria has signed or rectified several international treaties and agreements including the African Continental Free Trade Area Agreement (AfCFTA), WTO Trade Facilitation Agreement, Trade and Investment Framework Agreement (TIFA) etc. which are all aimed at easing trade barriers.

Nigeria has bilateral investment agreements with 31 countries, 15 of which are in force. The country also has double tax treaties with 13 countries and is a signatory to 21 investment-related instruments

Setting up a business

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 Corporate Affairs Commission (CAC) and the payment of official filing fees. It involves the following steps:

- Name Availability Search for the Company
- Filing Memorandum and Articles of Association (MEMART) and other Incorporation Documents at the CAC
- Payment of filing fees

Legal types of business entities
1. Sole proprietorship
2. Partnership
3. Limited partnership
4. Limited liability partnership
5. Limited liability company (public or private)
6. Unlimited liability company
7. Cooperative
8. Foundation, Incorporated trustees and company limited by guarantee.

In international business, the limited liability company is most commonly used. The company is incorporated by one or more incorporators pursuant to the execution of MEMART which is thereafter filed with the CAC as highlighted above.

The main legal reason to set up a subsidiary is the limitation of liability. As a shareholder of a subsidiary, the foreign company's liability is basically limited to the extent of its capital contribution.

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.

Financial year of taxes and financial accounts

The financial year is equal to the calendar year. However, legal entities may choose a different financial year if they wish. A company is subject to companies' income tax. Non-resident companies operating in Nigeria through a fixed base/permanent establishment or dependent agents are subjected to tax on income attributable or derived from their activities in Nigeria subject to certain criteria. Non-resident entities may also be taxed in Nigeria based on the "Significant Economic Presence Rule" recently introduces in Nigeria.

Accounting and auditing

Companies are required to register for tax and file their audited accounts and tax computations with the FIRS within six months of their financial year-end on a self-assessment basis or 18 months after incorporation (whichever comes first). A company may file an application for an extension of filing tax returns for up to two months at the discretion of the FIRS.

Economic and fiscal incentives

Some available economic and fiscal incentives are briefly discussed below:

Pioneer Status

The Pioneer Status 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.

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 among 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[1].

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.

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 from 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 utilisation 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.

Incentives for Innovative Startups

Under the Nigeria Startup Act 2022 establishment of innovative startups business in Nigeria attracts certain incentives subject to some conditions specified under the Act.

Incentives foreign investors/ local investors

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 Companies Income Tax Act (as amended) (CITA). This is typically a function of the loan repayment period and the moratorium period.

- 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.

Taxation

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.

VAT

Individuals and businesses (including non-resident 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%

Some items are vatable at zero rate. Zero-rated items as stipulated in the VAT Act include 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.

Corporate 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.

Registration procedures

Private persons and companies are registered with the tax authorities and are given a fiscal registration numbers. Communication with the tax authorities by way of tax returns and tax assessments is largely done in an electronic way.

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.

Personal Income tax

The principal basis of liability to tax under the Personal Income Tax Act (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 taxes

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

HR/ Labour Law

Employment law

The principal legislation governing employment issues in Nigeria is the Labour Act Cap L1 LFN 2004 (the "Labour Act"). Other sources of law are the received common law and case-law. Under the Labour Act, a 'worker' is defined in Section 91 as: "any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour ....".

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. These categories of persons are not covered by the Labour Act, and thus have their relationships with their employers governed by the terms and conditions of their individual contracts of employment.

Social security

The Employees Compensation Act 2010 ("ECA") provides the framework for compensation for injuries sustained in the workplace or occupational diseases picked up in the course of employment whether at the usual place of employment or outside it.

The ECA establishes an Employees' Compensation Fund to be administered by the Nigerian Social Insurance Trust Fund Management Board which is the authority responsible for implementing the provisions of the ECA. Employers are obligated to make a minimum contribution to the fund for the compensation of injured employees. Every employer is required to pay a minimum of 1% of its annual payroll to the Fund in the first two (2) years of the enactment of the ECA. Subsequently, the applicable rate is determined by the Nigerian Social Insurance Trust Fund Management Board.

National Housing Fund (NHF) contributions are applicable to Nigerian employees earning a minimum of N 3,000 per annum. The employer is required to deduct 2.5% of basic salary from employees earning more than NGN 3,000 per annum and remit it to the Federal Mortgage Bank of Nigeria within one month of deduction.

Every employer that is liable under the ITF Act must contribute one (1) percent of the amount of its annual payroll to the Fund. Employers that are liable to make contributions under the Fund are:

- Employers having five (5) or more employees in their establishment;
- Employers who have less than five (5) employees but having a turnover of fifty N50 million and above per annum

Pension

The Pension Act provides that employers with at least 15 employees are required to participate in a contributory pension scheme for their employees. The minimum contribution under the Act is 18% of monthly emolument (with a minimum contribution of 10% by the employer and 8% by the employee). If the employer decides to bear all the contribution, the minimum contribution is 20% of monthly emolument. Mandatory and/or voluntary contributions by the employers and employees to schemes approved by the Pension Act are deductible for tax purposes.

The Act also requires every employer to take out life insurance coverage for its employees

Payroll

Advance payment of personal income tax is imposed on payroll of companies under the Pay-as-you-earn (PAYE) scheme.

Visa and work permits

Non-resident individuals may obtain any of the following permits to work in Nigeria:

- *Business visa:* This is issued mainly to enable foreign nationals to attend business meetings in Nigeria.
- *Temporary Work Permit (TWP):* This is issued to enable foreign nationals to gain entry into Nigeria for the purpose of executing short-term assignments. It is a single entry visa which is usually given for a period of 3 months. It can be extended once for another 3 months upon application.
- *Combined Expatriate Residence Permit and Aliens Card (CERPAC):* Every non-Nigerian who enters Nigeria legally and who wishes to reside and/or work in Nigeria must make an application for a CERPAC which when issued is valid for an initial period of 3 years and is renewable upon expiration.

Expatriate Quota (EQ)

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. This permission is usually granted in the form of Expatriate Quota Approvals. Companies seeking to employ expatriates must first apply for an EQ. The EQ scheme is designed to prevent the indiscriminate employment of expatriates where there are qualified and suitable Nigerians to fill such positions. Foreign nationals working in Nigeria by virtue of an EQ will be considered residents in Nigeria for tax purposes. A company that has been issued an EQ may apply for its renewal when it expires.

There are two types of expatriate quota approvals namely:

- ✓ Permanent Until Reviewed(“PUR”) quotas, which are usually reserved for Chief Executive Officers; and
- ✓ Ordinary quotas, which are issued to expatriate employees of the company.

A three-year quota is usually allocated with option for renewal. After a successful application for expatriate Quota, the company can proceed to process a Subject to Regularization (STR) Visa for its expatriates. This will give the foreigner the opportunity to process and obtain the Combined Expatriate Residence Permit and Aliens Card (CERPAC) that allows them to live and work in Nigeria.

Contact us

The information provided in this guide cannot be exhaustive and we recommend anyone considering doing business in Nigeria should seek professional advice from our member firms before making any business or investment decision.

Contact our member firms in Nigeria to discuss your requirements:

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