

Doing business in Nigeria

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OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

The change of government in May 2015 brought new aspirations for investment in Nigeria. Investors and other stakeholders are, therefore, keenly awaiting the new policies and directions from President Muhammadu Buhari.

Some recent sector developments include:

- **Oil and gas.** In late 2014, the large number of International Oil Company divestments prompted the Department of Petroleum Resources (DPR) to issue guidelines and procedures for obtaining the Petroleum Minister's consent in the event of a proposed assignment of oil and gas interests.
- **Foreign exchange regulation.** To mitigate the negative impact of falling crude oil prices on the Naira and the country's foreign reserves, the Central Bank of Nigeria (CBN) introduced stringent foreign exchange (forex) control policies, which included closing two forex windows in February 2015. In July 2015, the CBN prohibited the funding of certain items and services with forex derived from the inter-bank market and bureaux de change. The CBN also banned the pricing of goods and services consumed in Nigeria in any currency other than the Naira. See also *Question 5*.
- **Capital market.** The new rules of the Nigerian Stock Exchange (NSE) are intended to protect minority rights and entrench global best practice. All stock market transaction fees are now exempt from value-added tax (VAT).
- **Banking.** The CBN launched a centralised biometric identification system for the banking industry (Bank Verification Number) in late 2015.
- **National Agency for Food and Drug Administration Control (NAFDAC).** In January 2015, the NAFDAC increased its registration fees by 30%. Registration is compulsory for the importation and sale of drugs, food, pharmaceutical products and chemicals.
- **Real property.** The cost of land transactions within Lagos State was reduced from around 13% to 3%.
- **Immigration.** A new Immigration Act came into effect on 25 May 2015, repealing the former Act. The 2015 Act prescribes more stringent penalties for immigration offences. The Nigerian Immigration Service (NIS) has abolished the requirement for expatriates with valid Combined Expatriate Residence Permit and Aliens Card (CERPAC) to obtain re-entry visas in order to return to Nigeria whenever they travel out of the country.

LEGAL SYSTEM

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Nigeria's legal system is based on English common law. Nigeria operates a federal system of government.

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Under the Nigerian Investment Promotion Commission Act 2004 (NIPC Act) foreign ownership is permitted in all industries. However, restrictions apply to the following sectors:

- **Oil and gas.** To be competitive in the award of contracts, at least 51% of the shares of the company must be owned by Nigerians.
- **Shipping.** The Coastal and Inland Shipping (Cabotage) Act restricts the use of foreign-owned or manned vessels for coastal trade in Nigeria.
- **Broadcasting.** A company applying for a broadcasting licence must demonstrate that it is not representing any foreign interests and that it is substantially owned and operated by Nigerians.
- **Advertising.** Only a national agency (that is, an agency in which Nigerians own not less than 74.9% of the equity) can advertise to the Nigerian market.
- **Private security.** A foreign investor cannot acquire an equity interest in, or sit on the board of, a Nigerian private security guard company.
- **Engineering.** A company engaged in engineering services must be registered with the Council for the Regulation of Engineering in Nigeria (COREN). One requirement for registration is that the company must have Nigerian directors registered with the COREN holding at least 55% of the company's shares.
- **Aviation.** To qualify for the grant of an aviation licence or permits, the Nigerian Civil Aviation Authority must be satisfied that an applicant is a Nigerian company or citizen.
- **Pharmacy.** The Pharmacist Council of Nigeria Act 2004 provides for the registration of non-Nigerian citizens only:
 - if the applicant's home country grants reciprocal registration to Nigerians; and
 - where the applicant has been resident in Nigeria for at least 12 months prior to the application.

- **Negative list.** According to the negative list both Nigerians and foreign nationals cannot invest in the production of:
 - arms and ammunition;
 - narcotic drugs and psychotropic substances; or
 - military and paramilitary wears and accoutrement (including those of the police and the customs, immigration and prison services).

4. Are there any restrictions on doing business with certain countries or jurisdictions?

There are currently no restrictions on doing with business with certain countries or jurisdictions.

5. Are there any exchange control or currency regulations?

According to Nigeria's foreign exchange regulations, if foreign investors intend to access the official foreign exchange market for the purpose of remitting their dividends, interest or capital, they must obtain a Certificate of Capital Importation (CCI) as evidence that their investment was brought into Nigeria. CCI's are issued by Authorised Dealers (that is, banks licensed by the Central Bank of Nigeria to deal in foreign exchange) within 24 to 48 hours after the investor has brought its foreign investment into Nigeria.

See also *Question 11* in relation to foreign exchange regulation.

6. What grants or incentives are available to investors?

There are several investment incentives available to investors. These include the following:

- The Pioneer Status scheme grants companies operating in certain industries a non-renewable income tax holiday for a period of three years, which can be extended for two additional years.
- Interest earned by a foreign company on its deposits in domiciliary accounts in Nigeria is exempt from tax.
- Nigerian companies with up to 25% imported foreign equity are exempt from paying minimum tax.
- Purchasers of local plant and equipment are entitled to an investment allowance of 10%.
- Capital gains tax (CGT) is not levied on gains from the sale of shares, stocks and treasury bills.
- Companies engaging in the use of Nigeria's natural gas resources are entitled to:
 - a tax free holiday for an initial period of three years (renewable after two years); or
 - an additional investment allowance of 35%.
- Machinery and equipment purchased for the use of gas in downstream operations are exempt from value-added tax (VAT).
- Interest on securities issued by the Federal Government of Nigeria, and on state, corporate and supranational bonds, are exempt from tax until 1 January 2022.
- In certain circumstances, interest on loans granted to Nigerian companies by foreign companies are entitled to tax exemption (see *Question 17, Interest paid*).

BUSINESS VEHICLES

7. What are the most common forms of business vehicle used in your jurisdiction?

The Companies and Allied Matters Act Cap C20, LFN recognises the following business vehicles:

- Limited liability company (public or private).
- Company with unlimited liability.
- Company limited by guarantee.
- Incorporated trustee.
- Registered business name.

The most common structure for a profit-making enterprise is the private limited liability company. Advantages include:

- It is straightforward to incorporate (the process can be completed in two weeks).
- Profits can be paid out to shareholders.
- The shareholders have limited liability.
- It is not as regulated as the other available structures.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

The registration formalities are as follows:

- The proposed name must be registered with the Corporate Affairs Commission (CAC), Nigeria's companies' registry for 60 days.
- The company's memorandum and articles of association (articles) must be prepared and submitted to the CAC alongside the necessary CAC incorporation forms after stamping at the Stamp Duties Office.

Incorporation usually takes between ten to 15 working days.

The cost of incorporation at the CAC depends on the authorised share capital of the company. Where the authorised share capital of the company is NGN10 million (the minimum amount required for foreign participation), the cost is about NGN170,500 (about US\$868).

Reporting requirements

Private limited liability companies must file audited financial statements with the CAC within 42 days following an annual general meeting. The cost of filing is about NGN3,000 (about US\$15).

Share capital

The share capital requirements are NGN10,000 for private companies and NGN500,000 for public companies. Companies with foreign shareholders must have a minimum share capital of NGN10 million.

Non-cash consideration

Shares can be issued for non-cash consideration provided that the company's articles permit this.

Rights attaching to shares

Restrictions on rights attaching to shares. In their articles, private companies must restrict the transfer of the company's shares.

Automatic rights attaching to shares. Automatic rights include the right to:

- Receive notices of proposed meetings of the company.
- Attend general meetings of the company to speak and vote at the meeting.
- Receive dividends when declared by the company.
- A copy of the memorandum and company's articles.
- Participate in the distribution of the company's assets upon the winding-up of the company.

See box, *Main business organisations*.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

Private limited companies must have at least two shareholders, two directors and a company secretary. A public company is required by the Securities and Exchange Commission (SEC) to have at least five directors (at least one of whom must be an independent director).

See box, *Main business organisations*.

Management restrictions

A Nigerian company can have foreign directors. If the company wishes to employ foreign employees, it must obtain expatriate quota approvals.

Directors' and officers' liability

Depending on the breach, civil and/or criminal penalties can be imposed on a director for a breach of duty.

The liability of directors is limited except where the articles expressly state otherwise (*Companies and Allied Matters Act*). In certain circumstances, officers and directors will be personally liable for the acts of the company, such as where:

- A company, with intent to defraud, fails to apply the money or other property for the purpose for which it was received.
- The number of members or directors of a company falls below the legal minimum.

In addition, directors and officers of banks and financial institutions can incur civil and criminal liability in certain situations.

Parent company liability

In relation to Nigerian limited liability companies, the liability of a parent company is limited to the amount that is unpaid on its shares (if any). Where there has been fraud, the law can lift the corporate veil and hold shareholders responsible for the acts of the company.

EMPLOYMENT

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

The main laws regulating employment relationships are the:

- 1999 Constitution of the Federal Republic of Nigeria as amended (Constitution).
- Labour Act.
- The PRA.
- Employees' Compensation Act (ECA).
- Personal Income Tax Act (as amended) (PIT).
- The National Health Insurance Scheme Act.
- Industrial Training Fund Act (as amended) (ITF).
- Trade Unions Act (as amended).
- National Minimum Wage Act.
- National Industrial Court Act.

The ECA, ITF, PIT and the Constitution apply to both Nigerian employees and foreign employees. The other laws apply to only Nigerian employees. However, none of the above laws apply to Nigerians working abroad.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

A written contract of employment is required in respect of "workers" to whom the Labour Act applies (that is, employees who perform manual labour or clerical work).

The contract must state (among other things):

- The nature of employment.
- The rates and method of calculation of wages.
- The manner and period of payment.
- The hours of work.
- Entitlement to holidays.
- The notice period for termination of the contract.

Some of the implied terms in contracts of employment include the employer's duty to:

- Pay wages.
- Provide a safe place of work.
- Care for the safety of employees.

Collective agreements only apply to employment relationships where the:

- Employees of the company are members of a trade union.
- Company has entered into a collective agreement with a trade union.
- Company belongs to an employer's trade association that is a member of a trade union.

In addition to the choice of law in an employment contract, the National Industrial Court has exclusive jurisdiction in civil cases and matters relating to or connected with labour and employment, trade unions, industrial relations and matters arising from the workplace and, the conditions of service (including health, safety, welfare of labour, employee, worker and any matters incidental or connected to these matters).

12. Do foreign employees require work permits and/or residency permits?

Foreign employees require a work permit to work in Nigeria. This permit can be either a:

- **Temporary Work Permit (TWP).** This is valid for three months and can be renewed for a further three-month period, subject to the discretion of the Nigeria Immigration Service (NIS). To obtain a TWP, an application must be made to the NIS in Nigeria; the NIS then issues a cable visa to the Nigerian High Commission in the home country of the foreign employee. On the basis of the cable visa, the foreign employee can make an application in their home country for a TWP. There is no official cost for obtaining a TWP and the process takes about two weeks.
- **Combined Expatriate Resident Permit and Aliens Card (CERPAC).** The CERPAC is a permit that enables a foreign employee to work and live in Nigeria. To obtain a CERPAC the following are required:
 - the Nigerian company must have obtained expatriate quota approval; and
 - the foreign national must have obtained a subject-to-regularisation (STR) visa in his country of residence.

The official cost of a CERPAC is about US\$1,187 and the process usually takes three to six days. The CERPAC is valid for one year and can be renewed when it expires.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

If the employees are workers or members of a trade union, and the proposed re-organisations will lead to either redundancies or a transfer of employees, the employer must consult and negotiate with the workers' representatives or the trade union officials. For non-workers that are not members of a trade union, although there is no obligation to consult or negotiate, employers generally tend to do so.

Apart from the above, there is no obligation to consult employees in relation to corporate transactions such as disposals. Employees are not generally entitled to management representation.

14. How is the termination of individual employment contracts regulated?

Nigerian employers are entitled to terminate a contract of employment at any time and without citing any reasons for doing so, provided either:

- Appropriate notice of the termination is given to the employee.
- The employee is paid salary in lieu of such notice.

Under the Labour Act, workers must be given appropriate notice of termination of employment, or salary in lieu of such notice. The relevant notice periods are as follows (*Labour Act*):

- Where the length of service is up to three months: the notice period is one day.
- Where the length of service is up to two years: the notice period is one week.

- Where the length of service is up to five years: the notice period is two weeks.
- Where the length of service is five years or more: the notice period is one month.

In relation to dismissals, an employer can only dismiss an employee for cause. Grounds that constitute cause for dismissals include:

- Criminal acts.
- Gross misconduct.
- Fundamental lack of confidence.

Where an employee is dismissed for cause, the employer is not required to give notice of termination or to pay salary in lieu of notice. An employee dismissed for cause can challenge such dismissal, and the employer will be required to prove the reason(s) for the dismissal and satisfy the court that the reason(s) are valid and reasonable.

Recent decisions of the National Industrial Court (NIC) in which it has ordered the reinstatement of employees whose employment were terminated, is changing the landscape of Nigerian employment law in relation to firing employees.

15. Are redundancies and mass layoffs regulated?

Where the employees to be made redundant are workers under the Labour Act, the employer must:

- Inform the trade union or workers' representative concerned of the reasons for and the extent of the anticipated redundancy.
- Adopt the principle of "last in, first out", subject to a consideration of the factors of relative merit, skill, ability and reliability.
- Use its best endeavours to negotiate redundancy payments.

Employees not covered by the Labour Act are, in a redundancy, only entitled to the benefits set out in their contracts, or as agreed with the employer (and trade union, if applicable).

TAX

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

All resident employees are taxed in Nigeria. For resident employees, personal income tax is imposed on the employee's total assessable income from all sources in the year of assessment (see *Question 17, Tax resident employees: Personal income tax*). An employee will be regarded as resident in Nigeria if the employee:

- Is domiciled in Nigeria.
- Resides in Nigeria for up to 183 days in a 12-month period or serves as a diplomat or diplomatic agent of Nigeria in another country.

A foreign employee of a Nigerian company is subject to tax in Nigeria if he performs his duties partly or wholly in Nigeria and is paid in Nigeria, unless he is able to show at least one of the following:

- His remuneration is not paid by the Nigerian company.
- He was not in Nigeria for an aggregate of up to 183 days (inclusive of annual leave or temporary period of absence) during the year of assessment.

- His remuneration is subject to tax in another jurisdiction with which Nigeria has a double taxation treaty (DTT).

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

Personal income tax. This is levied on the income of the employee under the Pay-As-You-Earn (PAYE) system which requires that the employer deduct tax from the employee's monthly remuneration according to the following rates:

- Up to NGN300,000: the rate is 7%
- Additional income of NGN300,000; making total income more than NGN300,000 but less than NGN600,000: the rate is 11%.
- Additional income of NGN500,000; making total income more than NGN600,000 but less than NGN1.1 million: the rate is 15%.
- Additional income of N500,000; making total income more than NGN1.1 million but less than NGN1.6 million: the rate is 19%.
- Additional income of NGN1.6 million; making total income more than NGN1.6 million but less than NGN3.2 million: the rate is 21%.
- Any additional making total income more than NGN3.2 million: the rate is 24%.

There is a consolidated relief allowance of 20% of gross income and, in addition to this, a further allowance of NGN200,000 or 1% of gross income (whichever is higher).

National housing fund deductions. On a monthly basis, Nigerian employers must deduct 2.5% of their employee's basic salary and remit this to the National Housing Fund.

Pension contributions. Every employee in an organisation that employs up to three persons is required to contribute up to 8% of his monthly salary into his retirement savings account which is managed by a pension fund administrator (PFA) of his choice. The employer has a statutory obligation to deduct this contribution at source and remit it to the PFA on behalf of the employee.

Non-tax resident employees. Not applicable.

Employers

Industrial training fund (ITF) deductions. Every Nigerian company employing five or more persons or with a turnover of up to NGN50 million must contribute 1% of its annual payroll to the ITF.

Pension contributions. Every employer of three or more persons has an obligation, in addition to deducting each employee's pension contributions (see above, *Tax resident employees: Pension contributions*), to contribute at least 10% of each employee's monthly salary into the employee's retirement savings account.

Life insurance for employees. The employer has a statutory obligation to maintain at all times, for the benefit of its employees, a life insurance policy, the benefits of which must be at least three times each employee's annual salary.

Employees compensation fund. Employers must contribute 1% of total monthly payroll into the Employees Compensation Fund.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

A Nigerian company will be tax resident in Nigeria when it has been incorporated in Nigeria.

Non-tax resident business

Profits from a non-tax resident business vehicle (that is, a company not incorporated in Nigeria) will be deemed to have been derived in Nigeria and subject to tax if any of the following applies:

- The company has a fixed base of business in Nigeria.
- The company habitually operates a trade through an authorised person in Nigeria, or carries out contracts in Nigeria.
- Where the Federal Board of Inland Revenue considers the company's foreign transactions between it and a related company to be artificial or fictitious despite its reporting of the transaction as an "arm's length transaction".

Where the vehicle is incorporated in a jurisdiction that has a double tax treaty (DTT) with Nigeria, the provisions of the treaty will be relevant in determining the tax liability of the vehicle.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Companies income tax

Companies income tax is assessed at 30% of the total assessable profits from all sources accruing in, derived from, brought into or received in Nigeria in any year of assessment. A company must make this payment within six months from the end of its accounting year.

Capital gains tax (CGT)

CGT is imposed on gains arising from the disposal of capital assets, at a rate of 10%. Exemptions from CGT include (among others):

- Gains on a disposal of stock, shares, and other government securities such as treasury bonds, premium bonds and savings certificates.
- Gains arising from acquisitions, mergers, or takeovers provided that no cash payment is made in respect of the shares acquired.
- Gains made on any asset used for the purpose of a trade or business that are used for replacing old assets sold.

Tertiary education tax

Tertiary education tax is imposed at a rate of 2%.

Stamp duties

Stamp duty is imposed on documents at varying rates which could either be *ad valorem* or nominal. The nominal rate is currently:

- NGN500 for the original document.
- NGN50 for counterparts.

Ad valorem rates range from 0.15% to 3%.

Information technology development levy

The following types of companies with an annual turnover of at least NGN100 million must pay 1% of their profits before tax to the Federal Inland Revenue Service:

- Cyber companies and internet providers.
- Pension managers and pension related companies.
- Banks and other financial institutions.
- Insurance companies.
- Telecommunication companies.

Withholding tax

Withholding tax on rents, dividends, royalties and interest is 10% (reduced to 7.5% where the recipient is registered in a country with which Nigeria has a double taxation treaty (DTT)). Fees for management or technical services are taxed at 10% for companies and 5% for individuals. Contracts of supplies are taxed at 5%.

Value-added tax (VAT)

VAT is charged at 5% on goods and services other than those exempted by law.

Exempted goods include:

- Medical and pharmaceutical products.
- Basic food items.
- Books.
- Exports.

Exempted services include:

- Medical services.
- Services provided by community banks.
- Mortgage institutions.
- All exported services.

National cyber security levy

Under the Cybercrimes Act, the following companies are required to pay a levy of 0.005% on all electronic transactions into a fund held with the Central Bank of Nigeria:

- Telecommunications companies.
- Internet service providers.
- Banks and other financial institutions.
- Insurance companies.
- The Nigerian Stock Exchange (NSE).

Dividends, interest and IP royalties

20. How are the following taxed:

- **Dividends paid to foreign corporate shareholders?**
- **Dividends received from foreign companies?**
- **Interest paid to foreign corporate shareholders?**
- **Intellectual property (IP) royalties paid to foreign corporate shareholders?**

Dividends paid

Tax is deducted at the rate of 10% on dividends paid to all shareholders. This is reduced to 7.5% if a foreign shareholder is resident in a country with which Nigeria has a double tax treaty (DTT).

Dividends received

Dividends derived from foreign companies by Nigerian residents (corporate and individuals) and brought into Nigeria through government-approved channels are exempt from tax.

Interest paid

Tax must be withheld at the rate of 10% on interest payments on all loans, except where the interest payments are specifically exempted from tax. This rate is reduced to 7.5% if the lender is resident in a country that has DTT with Nigeria. Where the lender is foreign and the loan is in a foreign currency, tax on the interest can be further reduced as follows:

- Where the repayment period is for less than two years: there will be no exemption from tax.
- Where the repayment period is for two to four years (including a moratorium of at least one year): the tax exempted will be 40%.
- Where the repayment period is for five to seven years (including a moratorium of at least 18 months): the tax exempted will be 70%.
- Where the repayment period is for more than seven years (including the moratorium of at least two years): the tax exempted will be 100%.

IP royalties paid

Royalty payments on IP rights are taxed at the rate of 10%. This is reduced to 7.5% where the recipient is resident in a country with which Nigeria has a DTT.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Nigeria does not presently have thin capitalisation rules specifying required debt-to-equity ratios for a company. There are presently no laws requiring that any excess debt above a specified ratio will not be deductible for tax purposes or restricting a company from procuring loans from foreign lenders.

However, the Companies and Allied Matters Act Cap C20, LFN 2004 requires public companies to have net assets amounting to at least 50% of the company's issued and paid-up share capital.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

A parent company that is tax resident in Nigeria (that is, incorporated in Nigeria) must file consolidated returns in respect of its foreign subsidiaries and pay tax on its worldwide income. Dividends received from foreign subsidiaries and brought into Nigeria through a Nigerian bank are exempt from tax.

23. Are there any transfer pricing rules?

The Income Tax (Transfer Pricing) Regulations No. 1 2012 govern transactions between (or among) related parties (that is, connected taxable persons) and apply to transactions between persons carrying on in a manner inconsistent with the "arm's length principle".

A company must comply with the regulations in relation to any related-party transactions such as:

- The sale or purchase of goods and services.
- The sale, purchase or lease of assets.
- Lending or borrowing of money.
- Manufacturing arrangements.

- Any transaction that can affect profit and loss.

Customs duties

24. How are imports and exports taxed?

Customs tariffs on imports range from 0% to 65%. This is in addition to VAT, port handling charges, customs entry processing fees, bonded terminal charges and fees levied by the Standards Organisation of Nigeria or the National Agency for Food and Drug Administration and Control for the inspection of the imported goods.

There are no export duties. However, exporters must pay a Nigerian export supervision scheme administrative charge, which ranges from 0.5% to 0.15% of the free-on-board (FOB) value.

Double tax treaties

25. Is there a wide network of double tax treaties?

Nigeria currently has entered into double taxation treaties (DTTs) with:

- Belgium.
- Canada.
- China.
- Czech Republic.
- France.
- The Netherlands.
- Pakistan.
- The Philippines.
- Romania.
- Slovakia.
- South Africa.
- The UK.

COMPETITION

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

There is no single legislation dealing exclusively with competition issues. The Securities and Exchange Commission (SEC) is empowered to determine whether any merger, acquisition or business combination is likely to substantially prevent or lessen competition. The relevant legislation, rules and regulations are available on the SEC's website (www.sec.gov.ng).

There are also sector-specific guidelines on competition-related issues. For example, the Nigerian Communications Commission (NCC) regulates competition in relation to the telecommunications sector and has issued the Competition Practices Regulations 2007 (CPR 2007), which is available on its website (www.ncc.gov.ng).

The existing competition rules apply to Nigerian entities. Therefore, foreign entities carrying on business in Nigeria are only subject to these rules in relation to their Nigerian subsidiaries.

See box, *Main business organisations*.

Restrictive agreements and practices

The SEC can order for the breakup of companies whose business practices are capable of restraining competition and creating a monopoly (for example, companies or business undertakings entering into agreements which have as their object or effect the prevention, restriction or distortion of competition in any part of the Nigerian market). The SEC may also impose civil penalties for breaches of its rules.

The CPR 2007 empowers the NCC to review agreements and practices which attempt to lessen competition such as:

- Price-fixing agreements.
- Market allocation agreements.
- Exclusive dealing agreements.
- Bid-rigging.
- Resale price maintenance.

Contravention can lead to a fine or other civil sanctions.

Unilateral conduct

The SEC can break up companies or business enterprises who abuse a dominant position in any part of the Nigerian market. If the NCC regards a licensee as abusing its dominant position in the market, it can direct it to cease the offending conduct.

27. Are mergers and acquisitions subject to merger control?

Mergers, acquisitions or business combinations between or among companies are subject to the prior review and approval of the Securities and Exchange Commission (SEC). Merger thresholds are calculated based on the combined annual turnover or assets of the merging companies in Nigeria, as follows:

- **Small mergers.** These have a combined annual turnover or assets of less than NGN1 billion.
- **Intermediate mergers.** These have a combined annual turnover or assets of between NGN1 billion and NGN5 billion.
- **Large mergers.** These have a combined annual turnover or assets of NGN5 billion or more.

Intermediate and large mergers are subject to prior review and approval by the SEC. For small mergers, the SEC only needs to be notified that the merger has been concluded and the merging entities do not need to make a pre-merger filing to the SEC.

The SEC Rules distinguish between mergers and acquisitions. An acquisition of a majority interest in a private or an unlisted public company is subject to the prior review and approval of the SEC, except where either:

- The assets or turnover of the target is below NGN500 million.
- The acquisition is as a result of a holding company acquiring shares solely for the purpose of investment.

Mergers or acquisitions between two foreign companies are not regulated by the SEC.

See box, *Main business organisations*.

INTELLECTUAL PROPERTY

28. Outline the main IP rights in your jurisdiction.

Patent

Definition and legal requirements. A patent is regarded as an exclusive right conferred upon a patentee over an invention. An invention is patentable if:

- It is new or constitutes an improvement upon a patented invention and is also new.
- It results from an inventive activity.
- It is capable of industrial application.

A patentee (that is, the person to whom a patent has been granted) can preclude any other person from carrying out any of the following acts for commercial industrial or commercial purposes:

- For patented products: the making, importing, selling or using the product or stocking it for the purpose of sale or use.
- For a patented process: applying the process or where a product is obtained directly by means of a process, making, selling or using the product or stocking it for the purpose of sale or use.

Registration. Applications are made to the Registrar of Patents and Designs and must contain the following:

- Full name and address (or if outside Nigeria, an address for service in Nigeria) of the applicant.
- A description of the invention and any appropriate plans and drawings.
- Claim(s).
- Any other matter as may be prescribed.

Enforcement and remedies. A patentee, licensee, assignee of a patent, a joint owner of a patent or a transferee by succession can enforce a patent. An action for infringement of a patent must be brought before the court. Remedies for infringement include:

- Damages.
- Injunctions.
- An account of profits.

Length of protection. A patent is valid for 20 years from the date of filing the application, subject to the payment of the prescribed annual fees.

Trade mark

Definition and legal requirements. Registered trade marks are governed by the Trade Marks Act, Chapter T13 LFN 2004. Unregistered trade marks are governed by the common law. A trade mark is a mark used or proposed to be used in relation to goods or services for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods/services and some person having the right (either as proprietor or as registered user) to use the mark.

A trade mark is registrable if it contains one of the following:

- The name of a company, individual or firm, represented in a special or particular manner.
- The signature of the applicant for registration or some predecessor in his business.
- An invented word or invented words.
- A word or words which have no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name.

- Any other distinctive mark.

Protection. Trade marks are registered by the Trademarks, Patents and Designs Registry (www.iponigeria.com). The Registry's website provides guidance on the application procedure. The proprietor of a registered trade mark can bring an action for infringement of trade mark, while the proprietor of an unregistered trademark can only bring an action for passing-off under common law.

Enforcement and remedies. The proprietor of a registered trade mark can bring an action in the Federal High Court for infringement of trade mark, while the proprietor of an unregistered trademark can only bring an action for passing off in tort. The remedies for trade mark infringement/passing off are:

- Injunction.
- Damages.
- Delivery up.
- Destruction of infringing goods.

Length of protection and renewability. Registered trade marks are valid for an initial period of seven years, and are renewable in perpetuity thereafter for 14 years at a time.

Registered designs

Definition and legal requirements. A design is a combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours, if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result.

A design is registrable if it is new and it is not contrary to public order or morality.

Registration confers upon the registered owner the right to preclude any other person from doing any of the following:

- Reproducing the design in the manufacture of a product.
- Importing, selling or using a product reproducing the design for commercial purposes.
- Holding the product for the purpose of selling it or of using it for commercial purposes.

Registration. An application to register a design is made to the Registrar of Patents and Designs and must contain:

- Full name and address (or if outside Nigeria, an address for service in Nigeria) of the applicant.
- A specimen of the design or a photographic or graphic representation of the design with any printing block or other means of reproduction from which the representation was derived.
- An indication of the kind of product (or, where a classification has been prescribed, the class of product) for which the design will be used.
- Any other matter as may be prescribed.

The Registry's website (www.iponigeria.com) provides guidance on the application procedure.

Enforcement and remedies. A design owner (or joint-owner) or its licensee, assignee or transferee by succession can enforce a design.

An action for infringement of the rights of a design owner must be brought before the Court. Remedies include the following in relation to the infringement:

- Damages.
- Injunctions.
- An account of profits.

Length of protection and renewability. Registered designs are valid for an initial period of five years and are renewable thereafter for two further consecutive periods of five years on payment of the prescribed fees.

Unregistered design

Unregistered designs are not recognised under Nigerian law.

Copyright

Definition and legal requirements. Copyright in Nigeria is regulated by the Copyright Act, Chapter C 28, LFN, 2004. Copyright vests automatically in relation to every work eligible for copyright, namely:

- Literary works.
- Musical works.
- Artistic works.
- Cinematograph works.
- Sound recordings.
- Broadcasts.

This list is conclusive.

Copyright vests initially in the author, who at the time the work is being created, must be either:

- An individual who is a citizen of, or is domiciled in Nigeria.
- A body corporate incorporated by or under the laws of Nigeria.

Where an eligible work is made by the author in the course of his employment by a newspaper, magazine or similar periodical (publisher) under a contract of service or apprenticeship and for the purpose of publication in the publisher's publication, the publisher is, in the absence of any agreement to the contrary, the first owner of copyright in the publication of the work or the reproduction of the work for the purpose of its being published.

Protection. Copyright is not registrable. However, the Nigerian Copyright Commission is the regulatory agency charged with protecting works covered by the Copyright Act.

Enforcement and remedies. The author, assignee or an exclusive licensee of a copyright can bring an action for infringement in the division of the court exercising jurisdiction in the place where the infringement occurred. Remedies for copyright infringement include:

- Damages.
- Injunctions.
- An account of profits.

Length of protection and renewability. This depends on the type of work:

- **Literary, musical or artistic work other than photography.** The length of protection is 70 years after the end of the year in which the author dies. In the case of government or a body corporate, protection is for 70 years after the end of the year in which the work was first published.
- **Cinematograph films and photography.** The length of protection is 50 years after the end of the year in which the work was first published.
- **Sound recordings.** The length of protection is 50 years after the end of the year in which the recording was first made.
- **Broadcasts.** The length of protection is 50 years after the end of the year in which the broadcasting first took place.

Copyright cannot be renewed once it has expired.

MARKETING AGREEMENTS

29. Are marketing agreements regulated?

Marketing, agency and distribution

Marketing agreements, agency and distribution relationships are not regulated by statute in Nigeria. Instead, they are governed generally by common law and case law.

Franchising

Franchising is not regulated under Nigerian law. However, technology transfer agreements involving the use of intellectual property between a local company and a foreign enterprise (for example, a local franchisee and a foreign franchisor) must be registered with the National Office for Technology Acquisition and Promotion.

E-COMMERCE

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

There is currently no specific law regulating e-commerce in Nigeria but certain related activities are regulated or implemented under other laws and regulations. These include the:

- Cybercrimes Act.
- Evidence Act 2011.

These laws provide for the electronic execution of documents, as well as the Central Bank of Nigeria's regulations on electronic payments in Nigeria.

ADVERTISING

31. Outline the regulation of advertising in your jurisdiction.

The Advertising Practitioners Council of Nigeria (APCON) was established to regulate the practice of advertising in Nigeria. APCON issued the Nigerian Code of Advertising Practice, Sales Promotion and Other Rights/Restrictions on Practice (Fifth Edition), which all advertising practitioners in the Nigerian market must comply with.

In addition, APCON issued the Proclamation on Registration and Licensing Regime in the Advertising Industry. This specifies two categories of advertising organisations:

- National agencies, in which not less than 74.9% of the equity is held by Nigerians.
- Foreign agencies, in which foreigners own not less than 25.2%. A foreign agency cannot practice advertising that is targeted at the Nigerian market.

DATA PROTECTION

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

There are no overarching data protection laws in Nigeria but a number of laws aim to ensure the privacy of individuals in Nigeria, for example:

- The Constitution provides for the right to privacy.
- The Cybercrimes Act requires certain service providers to safeguard the confidentiality of data retained, processed or retrieved for the purpose of law enforcement.

The Data Protection Guidelines issued by the National Information Technology Development Agency (NITDA) prescribe minimum data protection requirements for the dealing with the personal information of Nigerian citizens. However, the Guidelines are not presently being implemented by the NITDA.

In the telecommunications industry, the Competition Practices Regulations 2007 requires all licensees to take reasonable steps to protect customer information and ensure that such information is securely stored.

PRODUCT LIABILITY

33. How is product liability and product safety regulated?

Product safety is regulated by the:

- **Consumer Protection Council Act.** The Consumer Protection Council is responsible for removing hazardous products from the market.
- **Sale of Goods Act 1893.** This Act provides remedies where defective products are purchased.

Consumers also have remedies in tort, on the basis of which they can challenge a manufacturer or supplier of defective products. Generally, retailers, importers and distributors only bear responsibility to a certain degree, as they are not expected to test products which the manufacturer delivers in sealed containers and would normally remain sealed until they reach the ultimate consumer.

The National Agency for Food and Drug Administration and Control is responsible for regulating and controlling the safety of food, drugs, cosmetics, medical devices, chemicals and so on that are sold, used, manufactured, imported, exported, advertised and distributed in Nigeria.

MAIN BUSINESS ORGANISATIONS

Nigerian Investment and Promotion Commission (NIPC)

W www.nipc.gov.ng

Main activities. The NIPC is a government agency that is established to promote, co-ordinate and monitor all investments in Nigeria.

Corporate Affairs Commission (CAC)

W www.cac.gov.ng

Main activities. The CAC is the Nigerian companies' registry.

Federal Inland Revenue Service (FIRS)

W www.firs.gov.ng

Main activities. The FIRS is the federal tax authority.

Nigerian Immigration Service (NIS)

W www.immigration.gov.ng

Main activities. The NIS is the body responsible for implementing all laws relating to immigration, residency of foreigners and related issues.

Securities and Exchange Commission (SEC)

W www.sec.gov.ng

Main activities. The SEC is the regulator of the Nigerian capital market.

ONLINE RESOURCES

National Assembly of the Federal Republic of Nigeria

W www.nassnig.org

Description. The Nigerian National Assembly website contains legislation made by the legislative arm of the Nigerian government. The website is maintained by the National Assembly and the available information is up-to-date.

Practical Law Contributor profiles



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Areas of practice. Corporate and commercial practice with a focus on mergers and acquisitions, private equity, financing, foreign investments, real property, and employment law. Heads the pro bono initiative.

Recent transactions

- Co-led the team that advised The Kellogg company in connection with the acquisition of 50% of Multipro Consumer Products.
- Advised EchoVC Pan-Africa Fund I in connection with its investment in Netplusdotcom Nigeria.
- Advising Atlantic Coast Regional Fund in connection with its investment of up to US\$14 million in Nigerian-German Chemicals.
- Advised Carlyle in connection with the acquisition of a significant minority interest in Diamond Bank.
- Advised Synergy Private Equity Fund in connection with a US\$10 million equity investment in Riggs Ventures West Africa.
- Advised IFC and Investec on US\$50 million debt facilities to Persianas Properties.
- Advised Verod Capital Management in connection with the acquisition of Union Trustees.
- Advised the International Finance Corporation in connection with its equity investment in Eagle Eye Echo-Scan.

Languages. English

Professional associations/memberships. Nigerian Bar Association.

Publications

- World Bank's annual Doing Business Report since 2010.
- World Bank's Women, Business and the Law report since 2013.
- Co-authored the Nigerian chapter of the IFLR Mergers and Acquisitions Report 2015.
- Nigerian Employment Law Handbook published by the Employment Law Alliance. Contributed several articles on a wide range of topics to the Practical Law International Acquisition Transactions Guide.



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Professional qualifications. LLB, Lagos, BL Nigeria; PG Cert, Middlesex

Areas of practice. Corporate and commercial practice with a focus on tax, insolvency, banking and finance and banking regulatory compliance.

Recent transactions

- Advised Citigroup Global Markets and Goldman Sachs International (together, the joint lead managers) on a US\$1 billion Zenith Bank global medium term note programme and offering of US\$500 million notes.
- Advised Deutsche Bank AG (London Branch), Standard Chartered Bank, African Export-Import Bank, Ecobank Development Corporation and Nedbank (the managers) on an EBN Finance Company BV US\$250 million subordinated note offering.
- Advised Carlyle in connection with the acquisition of a significant minority interest in Diamond Bank.

Languages. English

Professional associations/memberships. Nigerian Bar Association; Chartered Institute of Taxation of Nigeria.

Publications. Regular contributor to the Law in Context's annual Banking and Securities RM Checklists as well as the Lex Mundi Annual Doing Business Guide.



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Professional qualifications. LLB, Warwick; MSc; Warwick; BL, Nigeria

Areas of practice. Corporate and commercial practice with a focus on financing, business establishment, immigration, employment and regulatory matters.

Recent transactions

- Advised on the restructuring of existing facilities and provided Nigerian legal advice in respect of the US\$2 billion medium term facilities provided to MTN Nigeria Communications by a group of local and international financial institutions.
- Advised the lenders (led by Guaranty Trust Bank) in connection with a US\$685 million financing package to be provided to the United Cement Company of Nigeria.
- Advised Tasc Towers in connection with its proposed equity investment of between US\$75 million and US\$100 million in Swap Telecommunications.
- Supports the firm's foreign clients in setting up Nigerian subsidiaries, and with obtaining the required immigration permits.

Languages. English

Professional associations/memberships. Nigerian Bar Association.

Publications. Regular contributor to the Lex Mundi Annual Doing Business Guide.