

EXECUTIVE COMPENSATION & EMPLOYEE BENEFITS

Nigeria



Executive Compensation & Employee Benefits

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Quick reference guide enabling side-by-side comparison of local insights, including local law, regulation, practice, and enforcement agencies; governance; disclosure; common provisions of employment agreements; incentive compensation; equity-based compensation; employee benefits; termination of employment; post-employment restrictive covenants; pensions and other retirement benefits; indemnification; change in control issues; multi-jurisdictional considerations; and recent trends.

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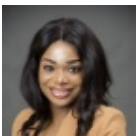
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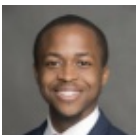
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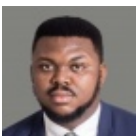
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SOURCES OF RULES AND PRACTICE

Overview

Provide an overview of the primary sources of law, regulation and practice that govern or affect executive compensation arrangements or employee benefits.

The primary source of law that governs executive compensation arrangements in Nigeria is the Companies and Allied Matters Act 2020 (as amended) (CAMA 2020), which applies to all companies incorporated in Nigeria. The Nigerian Code of Corporate Governance (the NCCG) issued by the Financial Reporting Council (FRC) which applies to public companies and regulated private companies, also provides directives on the remuneration of directors.

In addition to CAMA 2020 and the NCCG, there are other industry-specific regulations, that contain provisions on directors and senior management compensation arrangements and remuneration, including:

- the Central Bank of Nigeria (CBN) Code of Corporate Governance for Banks and Discount Houses , 2014 (the CBN Code), which applies to banks and discount houses in Nigeria;
- the Securities and Exchange Commission (SEC) Code of Corporate Governance for Public Companies in Nigeria, 2011 (the SEC Code), which applies to public companies and companies seeking to raise funds on the capital market through the issuance of securities or seeking listing by introduction;
- the National Insurance Commission (NAICOM) Code of Corporate Governance for the Insurance Industry in Nigeria, 2021 (the NAICOM Code), which applies to all insurance and reinsurance companies;
- the National Pension Commission (PENCOM) Code of Corporate Governance for licensed pension operators, 2008 (the PENCOM Code), which applies to pension fund administrators and pension fund custodians; and
- the Nigerian Communications Commission (NCC)
 - have a spread of operations covering a minimum of three geopolitical zones;
 - have a turnover in excess of one billion naira;
 - have over 200 employees; or
 - have a subscriber base of 500,000 or more.

CAMA 2020 confers the power of determining the remuneration of directors on the shareholders and that of a managing director (MD) on the directors of the company. CAMA 2020 also provides guidance on the nature of expenses, in respect of which a director can seek to be reimbursed and the basis for paying directors' fees, where the company has not entered into a contract with the director.

The NCCG requires each company to disclose its remuneration policy in the company's annual report and prohibits MDs and executive directors (EDs) from being involved in the determination of their remuneration and that of any director of the company. In structuring the remuneration of MDs and EDs, the NCCG provides that the remuneration should link rewards to corporate and individual performances and prohibits the payment of directors' fees or sitting allowances to MDs and EDs.

The CBN and SEC Codes, like the NCCG, provide detailed guidance for the structuring of the remuneration of directors and senior management personnel for employers. Both the CBN and SEC Codes prohibit EDs from determining their remuneration and require companies to which the codes apply to have a remuneration policy. Companies are also obliged to make certain disclosures with regard to their directors' remuneration. In addition, the CBN and SEC Codes contain restrictions on the remuneration of non-executive directors (NEDs) and restrictions on the pricing of stock options. EDs are prohibited under both codes from receiving sitting allowances or directors' fees.

Under the CBN Code, banks are required to align their executive and board remuneration with the long-term interests of the bank and its shareholders. The banks are also required to establish a board governance and nominations or

remuneration committee comprised only of NEDs to determine the remuneration of EDs. Similar to the NCCG and the CBN Code, the SEC Code requires companies to develop a comprehensive policy on remuneration for directors and senior management personnel, and also provides that the remuneration of EDs should comprise of a component that is related to long-term performance and may include stock options and bonuses. The NCC Code provides that executive remuneration and rewards should be linked to individual as well as corporate performance beyond the short term and should give executives incentives to perform at the highest levels.

Unlike the NCCG, the CBN and SEC Codes, the NAICOM and PENCOD Codes do not contain comprehensive provisions on the remuneration of directors. The NAICOM Code merely states that shareholders have the right to make their views known on the remuneration policy of board members and key executives of the company while the PENCOD Code requires the board of directors to provide a report on the remuneration of directors to shareholders annually.

With respect to employees who perform manual labour and clerical work, the Labour Act, Chapter L1 of the Laws of the Federation of Nigeria 2004 sets out the minimum standards of employment benefits to be provided to this category of employees. The benefits include annual leave, maternity leave, sick leave and transport allowance. In relation to employees who exercise administrative, executive, technical or professional functions other than directors and senior management employees, their employment benefits are determined by their respective contracts of employment.

Law stated - 18 August 2022

Enforcers

What are the primary government agencies or other entities responsible for enforcing these rules?

The Financial Reporting Council of Nigeria in conjunction with the sectoral regulators are responsible for enforcing the provisions of the NCCG. In relation to the sectoral codes, the CBN enforces the CBN Code, the SEC enforces the SEC Code, the NCC enforces the provisions of the NCC Code, PENCOD, the PENCOD Code and NAICOM, the provisions of the NAICOM Code.

Law stated - 18 August 2022

GOVERNANCE

Governance requirements and shareholder approval

Are any types of compensation or benefits generally subject to specific corporate governance requirements or approval by shareholders or government agencies? What is the general process for obtaining approval?

Yes. The Companies and Allied Matters Act 2020 (CAMA 2020) provides that the remuneration of directors shall be determined by the shareholders of a company (section 293(1) of CAMA 2020). Companies are also prohibited from making payments to directors for loss of office, or as consideration for, or in connection with the director's retirement from office, unless the particulars of the proposed payment and the amount have been approved by the company (section 297 of CAMA 2020).

Where the remuneration of directors comprises share options, the Central Bank of Nigeria (the CBN) Code of Corporate Governance for Banks and Discount Houses, 2014 (the CBN Code) and the Securities and Exchange Commission (SEC) Code of Corporate Governance for Public Companies in Nigeria, 2011 (the SEC Code) prohibit the company from issuing the shares to the directors at a discount, except with the authorisation of the relevant regulatory authorities including the SEC. In addition, such options must be subject to the approval of the shareholders.

Law stated - 18 August 2022

Consultation

Under what circumstances does the establishment or change of an executive compensation or benefit arrangement generally require consultation with a union, works council or similar body?

The Trade Unions Act , Chapter T14 of the Laws of the Federation of Nigeria 2004 as amended by the Trade Union (Amendment) Act 2005 (the Trade Unions Act), prohibits the management personnel of a company from being members of, or from holding offices in, a trade union if such membership or holding of such office in the trade union will lead to a conflict between such officer's loyalty to the union and the management of the company. In practice, directors and senior management officers of a company are not members of a trade union. Consequently, other than the approval of the affected employee, and in relation to executive directors, the approval of the shareholders, the establishment or change of an executive's compensation or benefit arrangement does not require any consultation with or consent of a trade union. Where, however, the remuneration of directors is prescribed in the articles of association of a company, any amendments to the director's remuneration must be approved by a special resolution of the shareholders (section 293(3) of CAMA 2020). A special resolution is a resolution approved by not less than three-quarters of the votes cast at a shareholders' meeting.

Law stated - 18 August 2022

Prohibited arrangements

Are any types of compensation or benefit arrangements prohibited either generally or with respect to senior management?

Companies are prohibited from providing loans to any director or a director of a holding company or giving guarantees or providing security in connection with a loan given to a director or a director of a holding company. This restriction, however, does not apply to companies who provide such loan or guarantee in the ordinary course of business, provided that such company's ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons (section 296 of CAMA 2020).

Where a company proposes, in connection with the transfer of the whole or any part of the undertaking or property of the company, to pay a director compensation for loss of office, or as consideration for, or in connection with his or her retirement from office, such payment may only be made with the prior approval of the shareholders of the company.

Law stated - 18 August 2022

Rules for non-executives

What rules apply to compensation and benefits of non-executive directors?

Non-executive directors (NEDs) are entitled to be reimbursed for travelling, accommodation and other expenses properly incurred by them in attending and returning from meetings of the directors or shareholders of the company, or in connection with the business of the company (section 293(2) of CAMA 2020). Their remuneration is fixed by the board of directors and approved by the shareholders. The Nigerian Code of Corporate Governance, 2018 , however, prohibits the payment of performance-based compensation to NEDs. In relation to banks and discount houses, NEDs can only receive directors' fees and sitting allowances for board and board committee meetings and reimbursements for travel and hotel expenses. NEDs are prohibited from receiving any benefits or salaries, in cash or in kind. With respect to public companies, the Securities and Exchange Commission Code of Corporate Governance for Public Companies in Nigeria, 2011 prescribes that the compensation for NEDs should be fixed by the board and approved by

the shareholders. The Nigerian Communications Commission Code of Corporate Governance for the Telecommunications Industry, 2016 provides that the remuneration of NEDs should be structured to reflect the expectations of time, commitment and responsibilities required of the role.

Law stated - 18 August 2022

DISCLOSURE

Mandatory disclosure of executive compensation

Must any aspects of an executive's compensation be publicly disclosed or disclosed to the government? How?

Public companies, pension fund administrators, pension fund custodians, regulated private companies, banks and discount houses are obliged to disclose their respective remuneration policies in their annual reports and accounts. In addition, public companies, banks and discount houses are required to disclose details of the shareholding of their directors in the annual reports. The reporting requirements for public companies also include the requirement to publish all material benefits and compensation paid to directors in the annual report and accounts. Every company is also obliged to maintain a register (which can be inspected at the company's registered office) that sets out directors' interest in the shares or debentures of the company.

Law stated - 18 August 2022

EMPLOYMENT AGREEMENTS

Common provisions

Are employment agreements required or prevalent? If so, what provisions are common? Are any terms prohibited or unenforceable?

Employment agreements are the principal documents that regulate employment relationships in Nigeria and are a requirement of the law in relation to workers. The usual provisions include the following:

- the term of the agreement (if fixed);
- the employee's position, duties and responsibilities;
- the place of work and work hours;
- the remuneration and other employment benefits such as medicals, life insurance, annual leave, maternity or paternity leave and sick leave;
- restrictive covenants and confidentiality obligations;
- provisions on the right to process personal information;
- termination requirements; and
- governing law.

The Nigerian Code of Corporate Governance, 2018 also requires that the employment contracts of directors must contain certain terms and conditions, including:

- the term of the appointment;
- details of the remuneration;
- a summary of the rights, fiduciary duties and other responsibilities of the director;
- specific requirements, such as board or board committee meeting attendance;

- formal induction programme or trainings to be attended by the directors; and
- board performance evaluation process adopted by the company.

In addition to the terms agreed between the employer and employee, the Securities and Exchange Commission Code of Corporate Governance for Public Companies in Nigeria, 2011 and Nigerian Communications Commission (NCC) Code of Corporate Governance for the Telecommunications Industry ,2016 require employment contracts of executive directors to include the following:

- an explanation of the duties of care, skill and diligence and other responsibilities of the director;
- the requirement to disclose any material interests in the company and other entities related to the company;
- the requirement to disclose, periodically, material interests in contracts in which the company is interested or involved; and
- specific requirements such as attendance at board meetings.

Law stated - 18 August 2022

INCENTIVE COMPENSATION

Typical structures

What are the prevalent types and structures of incentive compensation? Do they vary by level or type of organisation?

The compensation structure varies depending on the industry, policies, size, profitability and type of organisation, as well as the level of seniority of the employee. This notwithstanding, the more common compensation structures include salaries and merit-based increases to salaries, performance bonuses, allowances, such as housing and transport and, in corporate organisations, share options schemes and profit sharing.

Law stated - 18 August 2022

Restrictions

Are there limits generally on the amount or structure of incentive compensation? Are there limits that adversely affect the tax treatment of the compensation relative to the employer or the executive?

There are no generally prescribed share options or bonus limits that apply to all companies in Nigeria. The Nigerian Code of Corporate Governance, 2018 (the NCCG) and the Securities and Exchange Commission Code of Corporate Governance for Public Companies in Nigeria, 2011 provide that the remuneration of executive directors should comprise a component that is long-term performance related and may include share options and bonuses that should, however, be disclosed in the company's annual reports.

According to section 295(1) of the Companies and Allied Matters Act 2020:

'It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or at or with the rate or standard rate of income tax.'

Any incentive compensations to employees that are above the employment incentives permitted by law will be taxed in accordance with the Personal Income Tax Act , Chapter P8 of the Laws of the Federation of Nigeria 2004 (as amended by the Personal Income Tax (Amendment) Act 2011) subject to a maximum of 24 per cent of each employee's remuneration.

Law stated - 18 August 2022

Deferral

Is deferral and vesting of incentive awards permissible? Are there limits on the length or type of vesting and deferral provisions?

The deferral and vesting of incentive awards is permissible, subject to the provisions of the employment contract and any applicable laws and regulations. The SEC Code requires that any deferred compensation, such as stock options, should not be exercisable until one year after the expiry of the minimum tenure of directorship. The Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses, 2014 also provides that share option rights cannot be exercised by directors until one year after the expiry of their tenure.

Law stated - 18 August 2022

Are there limitations on the individuals or groups eligible to receive the compensation? Are there aspects of the arrangement that can only be extended to certain groups of employees?

Yes. With respect to the board of directors, incentive compensation can only be made to managing directors and executive directors because the NCCG prohibits the paying of performance-based remuneration to non-executive directors.

Law stated - 18 August 2022

Recurrent discretionary incentives

Can it be held that recurrent discretionary incentive compensation has become a mandatory contractual entitlement? Is this rebuttable?

Yes. Where an employer provides discretionary incentive compensation on a recurring basis, the employer could create an entitlement to such compensation. To prevent such contractual entitlement, the employer should clearly state in writing that the incentive compensation is discretionary, namely that the benefit is not a contractual one, and have justifiable reasons for either granting or failing to grant this incentive compensation. These reasons must be documented and verifiable in the event of a challenge.

Law stated - 18 August 2022

Effect on other employees

Does the type or amount of incentive compensation awarded to an executive potentially affect the compensation that must be awarded to other executives or employees?

The type or amount of incentive compensation awarded to executives or employees is determined by the company's remuneration policy and structure.

Law stated - 18 August 2022

Mandatory payment

Is it permissible to require repayment of incentive compensation under certain circumstances?
Are there circumstances under which such repayment is mandatory?

An employer may, subject to the terms of the employment agreement, agree on the circumstances under which an employee may be required to repay sums that have been paid to the employee. In relation to directors, they are required to return any compensation for loss of office paid to them if such compensation was not approved by the shareholders. In addition, the NCCG requires companies to implement a clawback policy to recover excess or undeserved reward, such as bonuses, incentives, share of profits, stock options, or any performance-based reward, from directors and senior employees for misstatement of accounts, misdemeanour, fraud, material violation of company policy or material regulatory infractions.

Law stated - 18 August 2022

Can an arrangement provide that payment is conditioned on continuing employment until the payment date? Are there exceptions?

Subject to the terms of the employment agreement, an arrangement may provide that payment is conditioned on continuing employment until the payment date.

Law stated - 18 August 2022

EQUITY-BASED COMPENSATION

Typical forms

What are the prevalent forms of equity compensation awards in your jurisdiction? What is a typical vesting period? Must the arrangements be offered to a broad group of employees, or can the employer select the participants?

The prevalent forms of equity compensation awards in Nigeria include bonuses, share options and employee share schemes. The vesting period varies depending on the relevant organisation's policies and the applicable codes of corporate governance, but a vesting period of between two and five years is not unusual.

In relation to public companies, the Securities and Exchange Commission Code of Corporate Governance for Public Companies in Nigeria, 2011 (the SEC Code) provides that where share options are granted as part of the remuneration to directors, the limits of such share options should be as determined in any given financial year and must be subject to the approval of the shareholders of the company in a general meeting. In addition, both the SEC Code and Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses, 2014 (in relation to banks and discount houses) provide that share options cannot be exercisable until one year after the expiry of the tenure of the director.

The employer can select the participants of the arrangement and does not need to offer this to a broad group of employees, provided that the benefit is:

- not a contractual benefit;
- not classified as a term of the employees' contracts; and
- designated as one that pertains only to selected participants and not to a broad group of employees.

Law stated - 18 August 2022

Must equity-based compensation be granted by the company's board of directors (or its committee) or can the authority be delegated to officers or employees of the company? Are there limitations or requirements that apply to delegation?

The authority to issue or allot shares is vested in the company, namely, the shareholders of the company. If the company is a private company, the shareholders may delegate this power to the board of directors.

Law stated - 18 August 2022

Tax treatment

Are there forms of equity compensation that are tax-advantageous or disadvantageous to employees or employers?

The shares granted to employees as part of their employment compensation, which are not paid for, will be deemed to comprise part of the salary of the employee and will, therefore, be taxed as a benefit-in-kind. A fair market value will be attributed to the shares and these will also be subject to personal income tax at the prescribed rate. If the employee pays for the shares, the shares will not be regarded as a benefit-in-kind and, as such, will not be subject to personal income tax. Tax-advantaged equity compensation programmes are not available under Nigerian law.

Law stated - 18 August 2022

Registration

Does equity-based compensation require registration or notice? Are exemptions, or simplified or expedited procedures available?

Public listed companies are required to provide the Nigerian Stock Exchange with details of any share scheme including the persons to whom the shares may be issued or sold, the total amount of the shares subject to the scheme and the maximum entitlement for any one participant in the scheme.

Law stated - 18 August 2022

Withholding tax

Are there tax withholding requirements for equity-based awards?

There is no withholding tax requirement for equity-based awards. If the award comprises part of the remuneration of the employee, such award will be subject to personal income tax. The employer will have an obligation to deduct the appropriate tax and remit to the relevant tax authority. Any dividends paid by the company on the shares will be liable to a withholding of tax at the applicable rate and such withholding tax is the final tax payable on the dividends. Where the employee does not own legal title to the shares (eg, in the case of phantom shares or unvested shares), whereby a dividend equivalent is payable, the payment will be liable to personal income tax because the payments are not actual dividends. The employer is required to deduct Pay As You Earn (PAYE) tax and not withholding tax.

Law stated - 18 August 2022

Inter-company chargeback

Are inter-company chargeback agreements between a non-local parent company and local affiliate common? What issues arise?

Inter-company chargeback agreements between foreign parent companies and local affiliate companies are common. In order, however, for the local company to be able to access foreign exchange at the official rates to make any payments to the parent company under any such agreement, the agreement must be registered with the National Office for Technology Acquisition and Promotion. The agreement must also be structured to comply with the requirements of the Income Tax (Transfer Pricing) Regulations 2018 (the TP Regulations). The TP Regulations regulate transactions and dealings between or among related parties and cover all transactions between 'connected taxable persons' carried on in a manner not consistent with the arm's-length principle. For payments made in respect of such agreements to be allowed as tax-deductible expenses, the parties must demonstrate that such agreements meet the requirements of the TP Regulations and the fees and expenses are wholly, reasonably, exclusively and necessarily incurred in the production of the Nigerian entity's profit. The TP Regulations impose a restriction on payment of licence fees for intangible assets to a non-local related company of 5 per cent of earnings before interest, tax, depreciation, amortisation and cost. The National Office for Technology Acquisition and Promotion Act, chapter N62, Laws of the Federation of Nigeria 2004 does not, however, apply to agreements or contracts between a non-local parent company and a local affiliate where the contract is for the exportation or transfer of indigenous technology from Nigeria to a foreign country outside Nigeria.

Law stated - 18 August 2022

Stock purchase plans

Are employee stock purchase plans prevalent or available? If so, are there any frequently encountered issues with such arrangements?

Employee share purchase plans are permitted under Nigerian law. Some of the concerns that the employer is required to address include the price at which the shares are purchased, the number of shares to be allotted to the plan – so as to minimise the dilution of the majority shareholders – and the category of employees that will be entitled to purchase the shares so as to ensure that the employer is not regarded as being unfair or discriminatory to other employees. Another concern that could arise is the treatment of the shares purchased under the stock option upon the exit of the employee from the company – if the shares are forfeited, the issue of valuation arises and if the employee retains the shares, how to extricate them from the option pool could also pose a challenge. With respect to public listed companies, under the Rules of the Nigerian Stock Exchange 2015, such companies may only reserve a maximum of 10 per cent of its issued share capital for its employees. The Companies and Allied Matters Act 2020 has, however, introduced a fundamental change to the concept of the share capital of Nigerian businesses and now requires that all the share capital of a company must be fully issued. Paragraph 13 of the Companies Regulation 2021 mandated all existing companies to issue all unissued shares in their capital before 30 June 2021; however, the Corporate Affairs Commission has extended this deadline to 31 December 2022.

Law stated - 18 August 2022

EMPLOYEE BENEFITS

Mandatory and voluntary employee benefits

Are there any mandatory benefits? Are there limits on changing or discontinuing voluntary benefits that have been provided?

Under the Labour Act, workers are entitled to annual leave of not less than six working days, annual leave allowance, sick leave up to 12 working days in any one calendar year and 12 weeks' maternity leave. The Labour Act does not prescribe the minimum amount payable as annual leave allowance but provides that, in computing the annual leave allowance, the employer shall not include overtime or other allowances. The National Health Insurance Authority Act 2021, which repeals the National Health Insurance Scheme Act 2004, requires all employers to register themselves and their employees under the state health insurance and contributory scheme (the Scheme) and make their contributions and the contributions of their employees to the account of the state social health scheme funds at the rates to be determined by the councils of the various Schemes. Employers are also obliged to provide group life insurance for employees with a minimum value of three times their total annual emoluments and to contribute a sum equivalent to 10 per cent of the employee's monthly emoluments into an employee's retirement savings account, with a pension fund administrator of the employee's choice. Nigeria does not currently have an unemployment benefit scheme but employees are entitled to receive compensation for work-related disability from the Employees Compensation Fund, to which employers are obliged to remit 1 per cent of their total monthly payroll every month.

Voluntary benefits that are incorporated in an employment agreement cannot be discontinued without the consent of the employee. Employers may, however, discontinue or vary discretionary benefits provided that any accrued benefit is paid to the employees prior to the discontinuance.

Law stated - 18 August 2022

Typical employee benefits and incentives

What types of employee benefits are prevalent for executives? Are there tax or other financial incentives or disincentives for such employee benefit arrangements?

In addition to the mandatory benefits mentioned above, usual forms of benefits provided to executives in Nigeria include air ticket allowance, company car, bonus, entertainment allowance and equity-based compensation, such as share options. Any employee benefits that form part of the employee's remuneration will be subject to personal income tax. The Companies and Allied Matters Act 2020 prohibits a company from paying a director remuneration (whether as director or otherwise) free of income tax.

Law stated - 18 August 2022

TERMINATION OF EMPLOYMENT

Rules for termination

Are there prohibitions on terminating executives? Are there required notice periods? May executives be dismissed without cause?

A company that wishes to terminate the appointment of an executive must give such executive notice as set out in the employment agreement between the executive and the company. At the expiry of the notice period, the employment relationship would be determined. Where no notice is given, the executive will be entitled to payment in lieu of notice.

Where the executive is also a director of the company, unless the company procures his or her resignation from the board of directors or he or she is removed by an ordinary resolution of the shareholders (minimum of 50 per cent +1

vote of the shareholders present and voting) at a general meeting of the shareholders, the executive will continue to function as a non-executive director. Special notice (ie, 28 days) of the resolution must be given to the shareholders. The company must provide a copy of the notice to the director and allow the director, if he or she so elects, to be heard on the resolution at the meeting (section 288 under Companies and Allied Matters Act 2020). This procedure also applies to the removal of non-executive directors. In addition, the director may be retired from office by rotation at the subsequent annual general meeting of the company.

Also, an employer who holds an oil mining lease, licence or permit (or an interest therein) issued under the Petroleum Act (now the Petroleum Industry Act 2021) or under regulations made pursuant to the Petroleum Act, and seeks to terminate the employment of an executive, is required under the Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry 2019 (the Staff Release Guidelines) to obtain approval from the former Department of Petroleum Resources (DPR) (now the Nigerian Upstream Petroleum Regulatory Commission (NUPRC)) for the release of any of such executive. The Staff Release Guidelines defines 'staff release' as the removal of a worker in a manner that permanently separates the said employee from the employer. Instances of staff release includes dismissal, retirement, termination, redundancy, release on medical grounds, resignation, death and abandonment of the duty post. The DPR (now the NUPRC) will conduct an inquiry into the circumstances of the proposed staff release and make a decision on whether to convey the Minister's approval or otherwise. The Staff Release Guidelines stipulates a penalty, not exceeding the sum of US\$250,000 for failure to comply with the Staff Release Guidelines.

Law stated - 18 August 2022

Mandatory severance pay

Are there statutory or mandatory minimum severance requirements? Are there any other mandatory, post-employment benefits?

No, there are none, except for those enumerated in the relevant employment agreement and any other applicable employment-related document such as the employee handbook, and in relation to employees who are members of a trade union, the applicable collective bargaining agreement. These terms will be based on what the parties agreed between themselves and will, therefore, vary.

Law stated - 18 August 2022

Typical severance pay

What executive severance payment level is typical?

This is subject to the provisions of the executive's employment agreement. It is, however, not unusual for the severance payment to be calculated as a multiple of the employee's salary. It is unusual to pay a pro-rata incentive where an employee's contract is terminated, save for instances where the employment agreement reserves this right.

Law stated - 18 August 2022

Reasons for dismissal

Are there limits on dismissal for 'cause'? Are there any statutory limits on 'constructive dismissal' or 'good reason'? How are 'cause' or 'constructive dismissal' defined? Are there legal or customary rules relating to effecting a termination for 'cause' or 'constructive dismissal'?

Although the terms 'dismissal' and 'termination for cause' are not defined in any statute, Nigerian courts have held that

an employer may terminate an employee's appointment for cause where the employee's action or conduct is of such a grave and weighty nature as to undermine the relationship of confidence that should ordinarily exist between an employer and an employee. Typically, employers reserve the right to terminate an employee's contract for cause on specific grounds, which would usually be listed in the employment agreement or employee's handbook. In order, however, for the employer to terminate the employee's contract for cause, the employer must afford the employee the opportunity to defend him or herself.

There is also no statutory definition of the term 'constructive dismissal' under Nigerian law but the National Industrial Court of Nigeria has held that the term could be applied to a situation where an employer has introduced significant unilateral changes to the terms and conditions of employment, or where an employer's actions have a material adverse effect on the conditions of work, which has resulted in an employee resigning from his or her appointment.

Law stated - 18 August 2022

Gardening leave

Are 'gardening leave' provisions typically used in employment terminations? Do they have any special effect on benefits?

The use of gardening leave provisions is not uncommon in Nigeria. The extent of their use is determined, not by law, but by the terms of the agreement negotiated between the employer and the employee.

Law stated - 18 August 2022

Waiver of claims

Is a general waiver or release of claims on termination of an executive's employment normally permitted? Are there any restrictions or requirements for the waiver or release to be enforceable?

The use of a general waiver or release of claims on termination of an executive's employment is permitted and is commonly used in Nigeria. In order, however, for the waiver to be enforceable, the employer must have paid all accrued contractual entitlements or benefits to the executive and the executive given an opportunity to review the waiver. The executive must also not have signed the waiver under duress.

Law stated - 18 August 2022

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Typical covenants

What post-employment restrictive covenants are prevalent? What are the typical restricted periods?

Non-competition, non-solicitation of customers and non-solicitation of employees are the more common forms of restrictive covenants in Nigeria. By virtue of the provisions of section 68(1)(e) of the Federal Competition and Consumer Protection Act 2018 (the FCCPA), post-employment restrictive covenants of up to two years are legal.

Law stated - 18 August 2022

Enforceability

Are there limits on, or requirements for, post-employment restrictive covenants to be enforceable? Will a court typically modify a covenant to make it enforceable?

Section 68(1)(e) of the FCCPA provides for the maximum duration of such restrictive covenants and states that 'nothing in this Act prohibits a contract of service or a contract for the provision of services in so far as it contains provisions by which a person, not being a body corporate, agrees to accept restrictions as to the work, whether as an employee or otherwise, in which that person may engage during or after the termination of the contract and this period shall not be more than two years'. Given that the FCCPA has provided for the maximum duration of a restrictive covenant, if the restraint is challenged, in determining whether to enforce the covenant, the National Industrial Court of Nigeria (the NICN) considers the reasonableness of the scope and the terms of the restraint and whether the employer has a proprietary interest that it seeks to protect. Where the NICN finds the length of such restrictive covenants to be excessive or the geographic scope to be too wide, it will hold such clauses to be void and unenforceable. This is because the courts are reluctant to modify the terms of a contract of employment entered into between parties.

Law stated - 18 August 2022

Remedies for breach

What remedies can the employer seek for breach of post-employment restrictive covenants?

Remedies available to employers for breach of post-employment restrictive covenants include an action for damages for breach of contract and a court injunction to restrain the employee from continuing the restricted activities.

Law stated - 18 August 2022

PENSION AND OTHER RETIREMENT BENEFITS

Required retirement benefits and incentives

Are there any required pension or other retirement benefits? Are there limits on discontinuing or modifying voluntary benefits that have been provided?

The Pension Reform Act 2014 requires an employer to make a minimum contribution equivalent to 10 per cent of the employee's monthly emoluments, to deduct 8 per cent of the employee's monthly emoluments and remit the total sum to the pension fund administrator of the employee's choice. In addition, employers are also required to obtain life insurance for each employee of a value that is at least three times the total annual emoluments of each employee.

Voluntary benefits that are incorporated in an employment agreement cannot be discontinued without the consent of the employee. Employers may, however, discontinue or vary discretionary benefits provided that any accrued benefit is paid to the employees prior to the discontinuance.

Law stated - 18 August 2022

Typical retirement benefits and incentives

What types of pension or other retirement benefits are prevalent for executives? Are there tax or other financial incentives or disincentives for such employee benefit arrangements?

Save for the mandatory pension contributions under the Pension Reform Act 2014, which is the most common retirement benefit, other forms of retirement benefits will be as agreed in the contract between the executive and the employer. It is, however, not unusual for executives to be entitled to receive share options. Other than pension contributions, which are exempt from tax for the employee and are allowable deductions for tax purposes for the employer, all other benefits provided to an employee that exceed the permitted allowances are subject to personal income tax.

Law stated - 18 August 2022

Supplemental retirement benefits

May executives receive supplemental retirement benefits?

Executives may receive supplemental retirement benefits. Such benefits are not standard and will be as agreed between the executive and the employer and stipulated in the respective employment contract.

Law stated - 18 August 2022

INDEMNIFICATION

Directors and officers

May an executive be indemnified or insured for claims related to actions taken as an executive, officer or director?

Nigerian companies law prohibits a company from indemnifying an executive against any liability that would otherwise, by virtue of any rule of law, attach to such executive in respect of any negligence, default or breach of trust. Where a company enters into any such arrangement with any of its executives, such an arrangement will be void. A company may, under the terms of any agreement between the company and an executive or pursuant to the terms of its articles of association, indemnify an executive in respect of anything done or omitted to be done by the executive provided such act or omission does not fall within the activities listed above in respect of which a strict liability is imposed. A company may also indemnify an executive against any liability incurred by such executive in defending any civil or criminal proceedings arising out of the actions or omissions of the executive in the course of his or her employment with the company, in which judgment is given in the executive's favour (section 91 of the Companies and Allied Matters Act 2020).

Law stated - 18 August 2022

CHANGE IN CONTROL

Transfer of benefits

Under what circumstances will an asset sale in your jurisdiction result in an automatic transfer of benefit obligations to the acquirer?

Employment agreements are contracts of personal service and can only be transferred with the consent of an employee. An asset sale may only result in an automatic transfer of employees to the acquirer if the asset sale is effected via a scheme of arrangement and the court, in sanctioning the scheme, orders the transfer of employees.

Law stated - 18 August 2022

Executive retention

Is it customary to provide for executive retention or related arrangements in connection with a change in control?

Arrangements of this nature are not unusual in Nigeria and are common in acquisitions involving private equity firms. The incoming majority shareholder would usually require the seller to undertake that it would procure that the key executives would not resign.

Law stated - 18 August 2022

Expedited vesting of compensation

Are there limits or prohibitions on the acceleration of vesting or exercisability of compensation in a change in control? Are there restrictions on 'cashing-out' equity awards?

Under the Securities and Exchange Commission Code of Corporate Governance for Public Companies in Nigeria, 2011 and the Central Bank of Nigeria (CBN) Code of Corporate Governance for Banks and Discount Houses, 2014, share options cannot be exercised until one year after the expiry of the tenure of the director.

Law stated - 18 August 2022

Are there adverse tax consequences for the employer or the executive relating to benefits or payments provided pursuant to a change in control?

No, there are no adverse tax consequences.

Law stated - 18 August 2022

MULTI-JURISDICTIONAL MATTERS

Exchange controls

Do foreign exchange controls rules apply to the remittance of funds, or the transfer of employer equity or equity-based awards to executives?

A Nigerian company that proposes to pay its executives compensation in foreign currency may do so only if the payments are made from its domiciliary account, or from its offshore earnings in accordance with extant exchange control regulations. The employer would, however, have to confirm the modalities for making the payments from its bankers.

Law stated - 18 August 2022

Local language requirement

Must employment agreements, employee compensation or benefit plans, or award agreements be translated into the local language?

English is Nigeria's lingua franca. There is no requirement for employment agreements to be translated into any local

language.

Law stated - 18 August 2022

Net salary arrangements

Are there prohibitions on tax gross-up, tax indemnity or tax equalisation payments?

No, there are no prohibitions on tax gross-up, tax indemnity or tax equalisation payments. These provisions are, however, not typical.

Law stated - 18 August 2022

Choice of law

Are choice-of-law provisions in executive employment contracts generally respected?

Yes, these provisions are generally respected.

Law stated - 18 August 2022

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

Key developments in Nigerian case law include the cases *Petroleum and Natural Gas Senior Staff Association of Nigeria and Ors v Chevron Nigeria Limited* (Unreported Suit No: NICN/LA/411/2020 and *Shell Petroleum Development Company of Nigeria Limited v Minister of Petroleum Resources and Ors* (Unreported Suit No: NICN/ABJ/178/2022).

In *Petroleum and Natural Gas Senior Staff Association of Nigeria and Ors v Chevron Nigeria Limited* (judgment delivered on 26 February 2021), the National Industrial Court of Nigeria (the NICN) in determining 'whether by virtue of the Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry 2019 dated 17th October 2019 (the Staff Release Guidelines), the Defendant ought not to obtain the written approval of the Minister of Petroleum Resources before embarking on any staff reduction and or redundancy exercise', held that the Minister of Petroleum Resources (the Minister) did not have the power under the old Petroleum Act to regulate private contracts of employment, and by extension, nor to make the provisions contained in the Staff Release Guidelines. The rationale for the court's decision was that such requirement would amount to an impediment to the freedom of parties to contract where the terms of the Guidelines have not been incorporated by reference into the contract of employment. The NICN, therefore, held that the Staff Release Guidelines cannot impose an obligation on an employer to obtain the written approval of the Minister before embarking on the release of an employee. This position has, however, been overturned in *Shell Petroleum Development Company of Nigeria Limited v Minister of Petroleum Resources and Ors* (judgment delivered on 28 July 2022), where the NICN held that an employer to whom the Staff Release Guidelines applies, is required to obtain the approval of the Minister for the release of any of its employees further to the enactment of the Petroleum Industry Act 2021, which gives the Minister powers to make guidelines such as the Staff Release Guidelines. The Staff Release Guidelines issued by the erstwhile Department of Petroleum Resources, requires an employer to apply in writing to the Nigerian Upstream Petroleum Regulatory Commission (pursuant to section 10 of the Petroleum Industry Act 2021) for the Minister's approval for the release of any of its employees. An employer as defined under the Staff Release Guidelines includes 'any organisation, company, partnership, or registered business name which holds an oil mining

lease, licence or permit (or an interest therein) issued under the Petroleum Act or under Regulations made thereunder or any person registered to provide any services in relation thereto.' This is the current position under Nigerian law based on judicial precedent, unless overturned on appeal.

Key policies and legislative developments in the past year include the passing into law of the Finance Act 2021 .

Law stated - 18 August 2022

Jurisdictions

	Australia	People + Culture Strategies
	Brazil	Mattos Filho Veiga Filho Marrey Jr e Quiroga Advogados
	Chile	Porzio Ríos García
	China	Fangda Partners
	Denmark	Norrbom Vinding
	Germany	Bird & Bird LLP
	Hong Kong	Vivien Chan & Co
	Japan	Nishimura & Asahi
	Nigeria	Udo Udoma & Belo-Osagie
	Switzerland	Pestalozzi Attorneys at Law
	USA	Mayer Brown