UUBO BREAKFAST SESSION

Employment of Expatriates: Compliance Requirements for Employers in the Nigerian Oil and Gas Sector

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OUTLINE

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- Introduction
- Legal and Regulatory Overview
- Expatriate Quota
- NCDMB Pre-Approval
- Application to FMI
- Other Immigration Approvals
- Challenges with hiring expatriates in the O&G sector
- Q&A

INTRODUCTION

- **Objectives**
  - ✓ provide a comprehensive overview of the legal and regulatory framework governing expatriate employment in the Nigerian oil and gas sector
  - ✓ offer practical advice and best practices for managing expatriate employees
  - ✓ discuss common challenges and practical solutions in managing expatriate employment in the oil and gas sector

- **Relevance**
  - ✓ Legal Compliance
  - ✓ Reputation Management
  - ✓ Operational Efficiency
  - ✓ Risk Management

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LEGAL AND REGULATORY OVERVIEW

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▪ Governing Laws and Regulations

- ✓ Immigration Act 2015
- ✓ Immigration Regulations 2017
- ✓ The Migrant e-Registration Guidelines 2019
- ✓ Nigeria Visa Policy 2020
- ✓ The Revised Handbook on Expatriate Quota Administration 2022
- ✓ Nigerian Oil and Gas Industry Content Development Act 2010 (NOGICDA)
- ✓ Guidelines on Application for Expatriate Quota, Succession Plan and Deployment of Expatriates in the Nigerian Oil and Gas Industry

LEGAL AND REGULATORY OVERVIEW

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- **Regulatory Agencies**
  - ✓ Federal Ministry of Interior ("FMI")
  - ✓ Nigeria Immigration Service ("NIS")
  - ✓ Nigerian Content Development and Monitoring Board ("NCDMB")
  - ✓ The Nigerian Consulates in various countries

EXPATRIATE QUOTA

- A Nigerian company that intends to employ expatriates must apply for expatriate quota positions for the relevant number of expatriate personnel it intends to employ.
- Issued by the FMI in its sole discretion.
- Issued in respect of positions that cannot be filled by Nigerians.
- Valid for 2 - 3 years and renewable biennially for two consecutive times.

NCDMB PRE-APPROVAL

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- Section 32 of the NOGICDA - a maximum of 5% (five percent) of management positions for expatriates.
- Section 33 of the NOGICDA – prior approval of the NCDMB **before** making any application for expatriate quota to the Ministry of Internal Affairs or any other agency or Ministry of the Federal Government.
- Who is an Operator?
- Section 35 of the NOGICDA – employment of **only** Nigerians in junior and intermediate positions.
- Schedule to the NOGICDA – provides for specific services that can only be carried out by Nigerians.

NIGERIAN CONTENT DEVELOPMENT & MONITORING BOARD
NCDMB

NCDMB PRE-APPROVAL

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- An application to NCDMB to employ expatriates can only be made after the applicant has:
  - ✓ registered with the Nigeria Oil and Gas Industry Content Joint Qualification System (“NOGIC JQS”)
  - ✓ obtained an NCDMB registration certificate, and
  - ✓ obtained a valid permit issued by the Nigerian Upstream Petroleum Resources Commission (“NUPRC”) to operate as a service company in the Nigerian O&G industry.
- Registration on the NOGIC JQS and obtaining the NCDMB registration certificates are done on the NCDMB website

NIGERIAN CONTENT DEVELOPMENT & MONITORING BOARD
NCDMB

CHECKLIST OF DOCUMENTS AND INFORMATION REQUIRED FOR NCDMB PRE-APPROVAL

- ✓ Advertisement of the positions in at least two major Nigerian newspapers, the NOGIC JQS, and the company's social media handles and websites.
- ✓ Evidence of registration on the NOGIC JQS
- ✓ Succession Plan
- ✓ Organisational Chart
- ✓ Advert Report
- ✓ Physical Interviews to be conducted for shortlisted applicants
- ✓ Expatriate Quota Forms
- ✓ Application letter for consent to the NCDMB
- ✓ Job Descriptions/Qualifications/Persons Specification for each Job role
- ✓ Training schedule for understudies and other Nigerian staff
- ✓ Employment Commitment for Nigerians within the two-year quota grant period
- ✓ Current NUPRC service permit
- ✓ Cross Posting/Exchange Program (if applicable)

NCDMB PRE-APPROVAL – EFFECT OF NON-COMPLIANCE

- The NCDMB would require immediate removal of such expatriate(s) and penalize the company in line with the provisions of the Local Content Act.

EXPATRIATE QUOTA – APPLICATION TO FMI

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3 copies of the following documents have to be submitted with respect to an Expatriate Quota Position application:

(a) Business/Quota Form T.2;

(b) Banker's reference;

(c) Evidence of acquisition of office premises, machinery and equipment (a lease agreement will suffice for this purpose);

(d) Maintenance and Technical Service Agreement between the company and its technical partners, where applicable;

(e) The Company's current Tax Clearance Certificate;

(f) The qualifications and positions to be occupied by the expatriates, including the proposed salaries of the expatriates [The salaries only need to be indicative, not actual];

(g) The Company's project implementation programme;

EXPATRIATE QUOTA – APPLICATION TO FMI

(h) The Company's training programme for its Nigerian employees;

(i) The Company's management succession schedule; and

(j) The Company's feasibility report for the first five years of its operations.

Please note that the FMI usually requires to sight the originals of items c, d and e.

2 Understudies – the intention is for Nigerians to eventually take up the role.

Professions not eligible for grant of EQ – Teaching and Artisan Positions (with exceptions), Legal Profession (no exception) and Human Resources.

EXPATRIATE QUOTA – COMPLIANCE OBLIGATIONS

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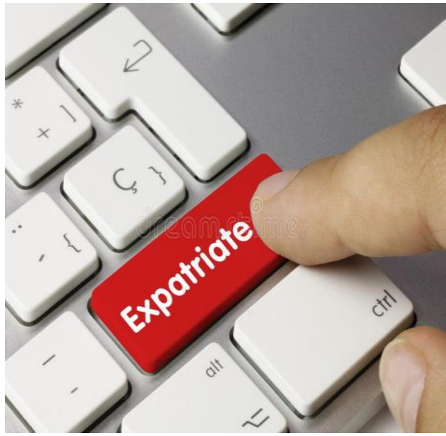
- Monthly returns to the NIS.
- Renew upon expiration up to the permitted period (2-3 years).
- File Quota Deletion when expatriate exits.
- Change of employment – Letter of No-Objection from the Comptroller of Immigration.
- Non-transferable.



SUBJECT-TO-REGULARISATION VISA

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- Following the grant of expatriate quota positions, the expatriate must obtain an STR visa.
- An application must be submitted by the expatriate at the Nigerian Embassy/High Commission in their country of origin/ residence.
- After obtaining the STR visa, the expatriate can travel to Nigeria and must regularise his/her immigration status by obtaining a CERPAC within 3 months.

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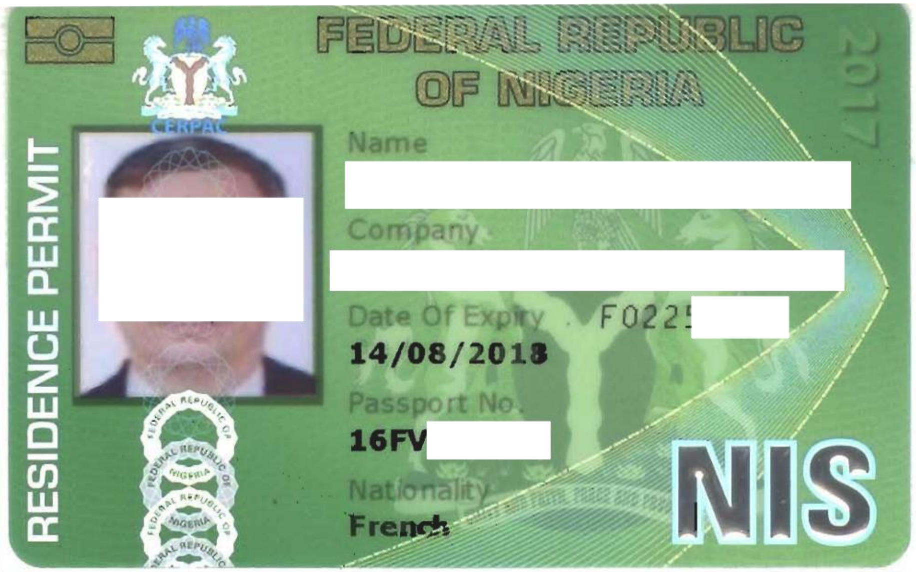
CERPAC

- A CERPAC is the authorisation that shows that an expatriate can reside and take up employment in Nigeria.
- Expatriates can be accompanied by their families and dependants.
- The CERPAC is granted for a term of 12 months and is renewable for as long as the relevant quota position is valid.



TEMPORARY WORK PERMIT

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- This work permit is used for expatriates who are to be employed in Nigeria for a short period of time to provide specialised skilled services.

- Valid for 2 to 3 months and renewable for a further period of 2 to 3 months.

- Renewal is at NIS’ discretion.

- Single Entry Visa

BUSINESS VISA

- For visitors coming to Nigeria to carry out the following activities based on business visa restrictions – **attending meetings; negotiating contracts; attending conferences and seminars; and marketing** they can apply for a Business visa (single or multiple entry). Upon arrival in Nigeria, he/she would be permitted to stay in the country for a maximum period of 90 days.

VISA ON ARRIVAL ("VOA")

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- The Nigeria Business eVisa on Arrival is for all Business Travelers.
- The VOA allows business investors to apply online for a Visa on Arrival Approval Letter before traveling to Nigeria. With this document, travellers can proceed to get the entry Visa issued at the port of arrival. Upon arrival at the port of entry, proceed to the desk marked 'VOA' for biometric enrolment and issuance of entry Visa.
- The Business VOA is a **Single Entry** visa for a maximum stay of **90 days Per Entry and** is not for employment or residence.

ECOWAS RESIDENCE CARD

- Citizens of ECOWAS member states can live and work freely in any ECOWAS member country.
- The ECOWAS Treaty aims to promote freedom of movement and residence within the ECOWAS Community.
- ECOWAS citizens exempt from STR visas and CERPACs.
- ECOWAS citizens must, however, procure residence cards.

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CEDEAO
ECOWAS

POP QUIZ

- Pino Oil & Gas Ltd is looking to bring in a Ugandan national to assist in a new study on its pipelines. The project will last for exactly 12 weeks. What type of immigration approval is appropriate for this expatriate?

EXPATRIATE QUOTA TRAFFICKING

The Immigration Regulations prohibit the unauthorised utilisation of a company’s approved expatriate quota positions by another organisation.

<u>Examples</u>

- An expatriate is employed by a particular Nigerian company but occupies a quota position of another company; or
- An expatriate occupies a position that does not correlate with his/her skills.

The Immigration Regulations prescribe a fine of NGN3,000,000 for any company that engages in Quota Trafficking.

IMMIGRATION SPOT CHECKS

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- Regulation 35 of the Immigration Regulations – authority to inspect a company’s immigration records at any time

- Employers must make available for inspection all current documentation in relation to their expatriate employees.

E-REGISTRATION

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The Migrant e-Registration Guidelines 2019 require the NIS to maintain a registry of immigrants in Nigeria.

Eligibility and Obligation: any non-Nigerian who is 18 years or older, who is not exempted from registration and intends to or has stayed for longer than 90 days is required to report to the closest Migrant Registration Centre for registration.

Exemption: any person being a non-Nigerian who is under 18 years old or enjoys diplomatic immunity or does not intend to stay in Nigeria up to 90 days.

5 Categories of Migrants: a) Employed Migrants; b) Students;
c) Self-Employed Migrants; d) Spouse of a Nigerian; and
e) Dependents.

The registration requirement varies depending on the category.

NCDMB EBS

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- The Expatriate Biometrics System (EBS) Data Capture process.
- NCDMB must capture the biometric data of all expatriate staff within a month of their entry into the country for new quota positions.
- For renewals and re-designations, biometric data of expatriate staff must have been captured prior to the applications being made by the company to the NCDMB
- After registration, an expatriate is issued a NOGIC EBS Identification Card

CHALLENGES WITH HIRING EXPATRIATES IN THE O&G SECTOR

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- Bureaucracy/Delays
- Strict regulatory scrutiny: NCDMB pre-approval
- Local content restrictions
- Expensive
- Nigerian understudies
- Renewal not guaranteed – Discretionary - may impact ongoing projects

CHALLENGES WITH HIRING EXPATRIATES IN THE O&G SECTOR

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- Strategy for navigating the challenges with hiring expatriates in the O&G sector:

✓ **Outsourcing**: An outsourcing company can be engaged to provide a service, which will include the approved personnel with the capacity to carry out the service.

CASE STUDY

XYZ Oil & Gas Ltd (“XYZ”) is a multinational company operating in the Nigerian oil and gas sector. It is currently expanding its operations and has started a process to employ 34 Chinese engineers for a new project in Bayelsa State. Due to the urgency of the project, the Company is considering temporarily engaging another company, BCA Ltd, to make use of its existing employee quota positions to employ 5 of the engineers to kickstart the project while it applies for its own expatriate quota. Three of the engineers will work remotely from Australia.

Three officials of the NIS have repeatedly visited XYZ’s offices to request the company’s immigration records, but the company’s legal counsel has refused to grant the officials entry on the grounds that they do not have a warrant to enter into its premises. XYZ Oil & Gas Ltd also has a subsidiary, TN Oil and Gas Services Limited, which provides related party services to XYZ Oil & Gas Ltd. TN Oil and Gas Services Limited also requires expatriates for some of its operations but is unable to demonstrate that the roles cannot be filled by Nigerians.

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THANK YOU

Q&A