

# **OPERATING IN NIGERIA: THE ESSENTIAL GUIDE FOR EVERY FOREIGN INVESTOR**

## **1 COUNTRY PROFILE**

- 1.1 General Overview
- 1.2 Strengths and Opportunities
- 1.3 Political System and Institutions
  - 1.3.1 The Executive
  - 1.3.2 The Judiciary
  - 1.3.3 The Legislature
  - 1.3.4 Legislative Lists
- 1.4 Financial and Economic Overview
- 1.5 Socio-Cultural Review
  - 1.5.1 People and Language
  - 1.5.2 Religion and Culture
  - 1.5.3 Currency
  - 1.5.4 Transportation
  - 1.5.5 Business Habits
- 1.6 International Relations

## **2 BUSINESS STRUCTURES & PROCESSES**

- 2.1 Types of Businesses
  - 2.1.1 Sole Proprietorship
  - 2.1.2 Partnership
  - 2.1.3 Incorporated Company
  - 2.1.4 Incorporated Trust
  - 2.1.5 Representative Office
- 2.2 Intellectual Property
  - 2.2.1 Trademarks
  - 2.2.2 Patents and Designs
  - 2.2.3 Copyright
- 2.3 Trade and Investment Framework
  - 2.3.1 Repatriation of Capital
  - 2.3.2 Importation and Use of Foreign Exchange
  - 2.3.3 Registration with National Office for Industrial Property
  - 2.3.4 Registration with the Nigerian Investment Promotion Commission
  - 2.3.5 Registration with the Securities and Exchange Commission

## **3 FOREIGN PARTICIPATION IN BUSINESS**

- 3.1 Background

## Country Briefing on Nigeria

- 3.2 Immigration
- 3.3 Business Permit
- 3.4 Expatriate Quota
- 3.5 Visas
- 3.6 Combined Expatriate Residence Permit and Alien Card (CERPAC)
- 3.7 Specialized Sector: Oil & Gas
- 3.8 Specialized Sector: Maritime

## 4 TAXATION

- 4.1 Regulatory Authorities and Collection of Taxes
- 4.2 Tax Laws
  - 4.2.1 Capital Gains Tax Act
  - 4.2.2 Companies Income Tax Act
  - 4.2.3 Education Tax Act
  - 4.2.4 Industrial Training Fund Act
  - 4.2.5 Personal Income Tax Act
  - 4.2.6 Stamp Duties Act
  - 4.2.7 Value Added Tax Act
- 4.3 Tax Incentives
  - 4.3.1 Pioneer Status
  - 4.3.2 Other Tax Incentives

## 5 FREE TRADE ZONES

- 5.1 Examples of Free Trade Zones
- 5.2 Incentives from Free Trade Zones
- 5.3 Employment of Foreigners within the Free Trade Zones

## 6 LEGAL FRAMEWORK

- 6.1 Legal System
- 6.2 Dispute Resolution
- 6.3 Hierarchy of Courts

## 7 LABOUR & INDUSTRIAL RELATIONS

- 7.1 Pension Reform Act
- 7.2 Employee Housing Scheme (Special Provisions) Act
- 7.3 Immigration Act
- 7.4 Labour Act
- 7.5 National Minimum Wage Act
- 7.6 National Youth Service Corps Act

## Country Briefing on Nigeria

- 7.7 Trade Disputes Act
- 7.8 Trade Unions Act
- 7.9 Employee's Compensation Act
- 7.10 Factories Act
- 7.11 Industrial Training Fund Act

## **8 INDUSTRY REGULATORS**

### 8.1 Statutory Regulators

- 8.1.1 Central Bank of Nigeria (CBN)
- 8.1.2 Corporate Affairs Commission (CAC)
- 8.1.3 Customs and Excise
- 8.1.4 Department of Petroleum Resources (DPR)
- 8.1.5 Federal Inland Revenue Service (FIRS)
- 8.1.6 National Insurance Commission (NAICOM)
- 8.1.7 Nigerian Stock Exchange (NSE)
- 8.1.8 Pension Commission (PENCOM)
- 8.1.9 Securities and Exchange Commission (SEC)
- 8.1.10 Special Control Unit Against Money Laundering (SCUML)
- 8.1.11 National Office for Technology Acquisition and Promotion
- 8.1.12 Nigerian Investment Promotion Commission

### 8.2 Professional Associations

- 8.2.1 Advertising Practitioners Council of Nigeria (APCON)
- 8.2.2 Chartered Institute of Bankers in Nigeria
- 8.2.3 Chartered Institute of Stock Brokers of Nigeria (CISB)
- 8.2.4 Chartered Institute of Taxation in Nigeria
- 8.2.5 Chartered Insurance Institute of Nigeria
- 8.2.6 Council for Regulation of Engineering in Nigeria
- 8.2.7 Council of the Regulation of Engineering in Nigeria
- 8.2.8 Institute of Chartered Accountants of Nigeria
- 8.2.9 Institute of Chartered Secretaries and Administrators
- 8.2.10 Institute of Personnel Management of Nigeria
- 8.2.11 Medical and Dental Council of Nigeria
- 8.2.12 Nigerian Bar Association
- 8.2.13 Pharmaceutical Council of Nigeria

## **9 APPENDIX - LIST OF LAWS CITED**

- 9.1 Advertising Practitioners Registration Act
- 9.2 Arbitration and Conciliation Act

## Country Briefing on Nigeria

- 9.3 Capital Gains Tax Act
- 9.4 Central Bank of Nigeria Act
- 9.5 Chartered Institute of Taxation of Nigeria Act
- 9.6 Chartered Institute of Bankers of Nigeria Act
- 9.7 Coastal and Inland Shipping Act (Cabotage Act)
- 9.8 Companies and Allied Matters Act
- 9.9 Companies Income Tax Act
- 9.10 Copyright Act.
- 9.11 Education Tax Act
- 9.12 Employee Housing Scheme (Special Provisions) Act
- 9.13 Employee's Compensation Act
- 9.14 Engineers (Registration Etc.) Act
- 9.15 English Partnership Act
- 9.16 Exchange Control (Anti-Sabotage) Act
- 9.17 Factories Act
- 9.18 Foreign Exchange (Monitoring and Miscellaneous Provisions) Act
- 9.19 Immigration Act
- 9.20 Industrial Development (Income Tax Relief) Act
- 9.21 Industrial Training Fund Act
- 9.22 Investments and Securities Act
- 9.23 Labour Act
- 9.24 Legal Education Act
- 9.25 Legal Practitioners Act
- 9.26 National Minimum Wage Act
- 9.27 National Office for Technology Acquisition and Promotion Act
- 9.28 National Youth Service Corps Act
- 9.29 Nigerian Customs, Excise, Tariff etc. (Consolidation) Act
- 9.30 Nigerian Enterprises Promotion Act
- 9.31 Nigerian Free Trade Zone Decree
- 9.32 Nigerian Investment Promotion Commission Act
- 9.33 Nigerian Oil and Gas Industry Content Development Act
- 9.34 Patents and Designs Act
- 9.35 Pension Reform Act
- 9.36 Personal Income Tax Act
- 9.37 Stamp Duties Act
- 9.38 Trade Disputes Act
- 9.39 Trade Marks Act
- 9.40 Trade Unions Act
- 9.41 Value Added Tax Act

# **DOING BUSINESS IN NIGERIA:** **THE ESSENTIAL GUIDE FOR EVERY FOREIGN INVESTOR**

## **CHAPTER ONE**

### **1.1 General Overview**

Nigeria is a Federal Republic with thirty six (36) States and a Federal Capital Territory with the seat of government in Abuja. The former capital (Lagos State) however remains the commercial center of activities. Nigeria shares borders with the Republic of Niger in the North, Benin Republic in the West, Chad and Cameroon in the East while its coast lies along the Gulf of Guinea on the Atlantic Ocean.

It is the third largest country by size in the West African sub region, and the most populous country in Africa. The climate is tropical with two distinct seasons – the wet season which is characterized by heavy rainfall in the southern parts of the country and the dry season (*aka* “Harmattan”) during which very low temperatures may be experienced in the northern parts of the country. Generally, the temperature in the country ranges between 27<sup>o</sup>c and 32<sup>o</sup>c.

### **1.2 Strengths and Opportunities**

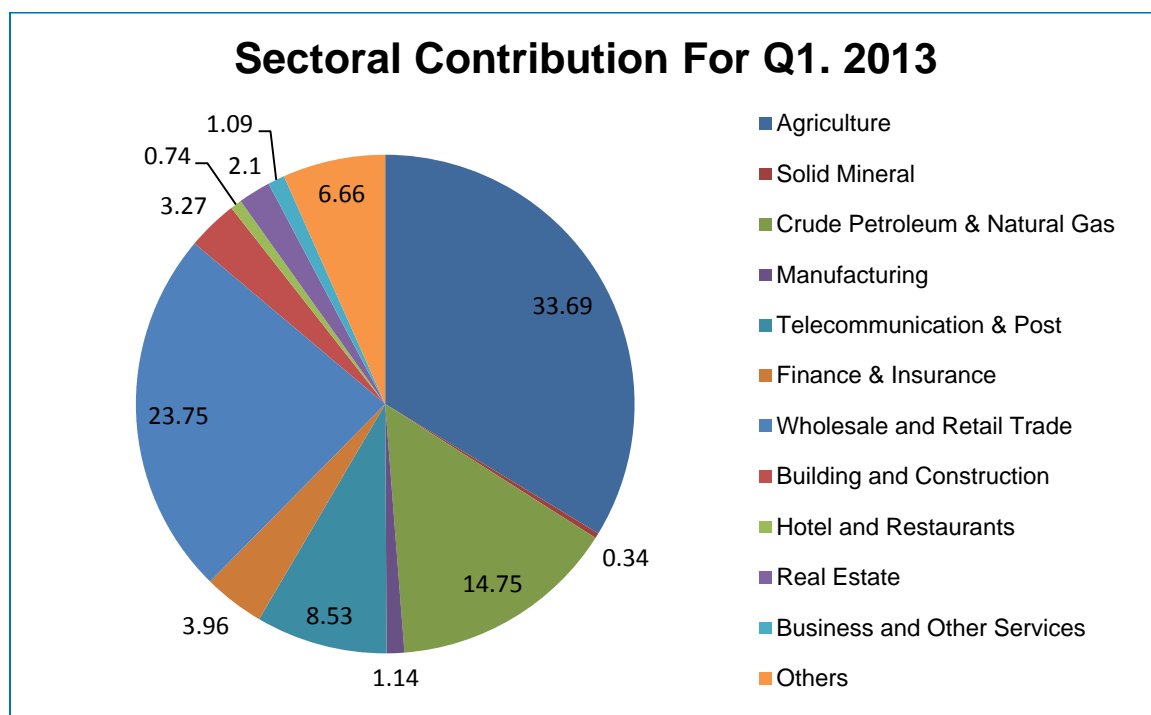
Nigeria is commonly referred to as “the Giant of Africa.” With over 162 million people,<sup>1</sup> coastal boundaries and a large land mass, Nigeria offers the largest market in sub-Saharan Africa. The Nigerian market potential also stretches into the growing West African sub-region. In addition Nigeria is blessed with several agricultural products, which present opportunities for a viable export sector. These include cocoa, peanuts, cotton, palm oil, corn, rice, sorghum, millet, cassava, yams, rubber, cattle, fish and timber. The Country is also blessed with rich mineral resources including crude oil, gas, and other minerals.

Nigeria is witnessing the emergence of several viable ventures which include mining of coal, tin and columbine, rubber products, wood, hides and skins, textiles, cement and other construction materials, food products, footwear, chemicals, fertilizer, printing, ceramics and steel. Recently, focus has been directed at non-oil exports and

---

<sup>1</sup> See <http://data.worldbank.org/country/nigeria>

agriculture,<sup>2</sup>. The diagram below shows the estimated percentage share in the GDP for the first quarter of 2103.<sup>3</sup>



There are four industrial sectors which are considered priority areas of development because of their linkage effects on the other sectors and potential catalytic role in the overall growth of the industrial sectors. These are metallurgical/engineering, agriculture (forest-based and agro-allied activities), chemical/petrochemical and construction.<sup>4</sup>

Nigeria is the twelfth largest oil producer in the world with total oil production of about 2.44 million barrels per day, and the 8<sup>th</sup> largest exporter of oil in the world with a daily export of about 2.14 million barrels. Nigeria also has the tenth largest proven oil reserve in the world<sup>5</sup> and an estimated 158 trillion cubic feet<sup>6</sup> (Tcf) of natural gas reserve which

<sup>2</sup> Rosemary Okoh (Dr). Nigeria's Non-Oil Product Mix and the Competitive Global Market Place. Department of Agricultural Economics and Extension. Delta State University, Asaba. (2002)

<sup>3</sup> National Bureau for Statistics - GDP Report Q1 2013 Estimate. See "www.nigerianstat.gov.ng"

<sup>4</sup> Investment opportunities as described by various Nigerian embassies. Also see <http://www.nepza.gov.ng/>

<sup>5</sup> "Nigeria and China sign \$23bn deal for three refineries." See <http://www.bbc.co.uk/news/10116945>.

<sup>6</sup> Nigerian National Petroleum Corporation – April 2013

makes Nigeria the seventh largest natural gas reserve holder in the world and the largest in Africa.

### 1.3 Political System and Institutions

Nigeria operates a democratic system of Government with elected office holders holding office for a four year term and a maximum of two terms. The current President, Dr. Goodluck Ebele Jonathan, assumed office on the 29<sup>th</sup> of May 2011 following the presidential elections of April 2011. The Federation has a three-tier structure: a Federal Government with a Federal Capital Territory, 36 state governments and 774 Local Governments. The Constitution is modeled after the Presidential system of Government, which consists of the Executive arm, a bicameral Legislature, and the Judiciary at the Federal and State levels of Government.

1.3.1 **The Executive** - The Executive arm of Government is comprised of the President, Vice-President and Ministers who together comprise the Federal Executive Council. The Executive is charged with the responsibility for the execution and maintenance of the Constitution, all laws made by the National Assembly and the general administration of the country. The Executive also originates and sponsors bills sent to the Legislature for deliberation and consideration. The Bills originated by the Executive could cover any number of subjects as pertaining to governance and the continued development of the country.

1.3.2 **The Judiciary** - The Judiciary is the arm of government responsible for the administration of justice. At the apex of the Nigerian judicial system is the Supreme Court consisting of 15 Justices, including the Chief Justice. The Supreme Court of Nigeria has original and appellate jurisdiction in respect of certain constitutional, civil and criminal matters set out in the Constitution. There is also a Court of Appeal which hears appeals from the Federal High Court, State High Courts, State Sharia Courts of Appeal and State Customary Courts of Appeal.

Under the Constitution, the Federal High Court has jurisdiction in matters relating to the revenue of the Government of the Federation, admiralty, banking, foreign exchange and other currency and monetary or fiscal matters. At the State level, there is the High Court that has jurisdiction to hear and determine both civil and criminal matters. A Customary Court of Appeal of a State exercises jurisdiction in civil proceedings in respect of customary law. A Sharia Court of Appeal has jurisdiction in respect of Islamic law. In addition to the above courts, there are other courts created by both Federal and State laws. These include Magistrate Courts, Area Courts, Sharia Courts and Customary



Courts with jurisdiction over civil and criminal matters conferred on them by their respective enabling laws.

- 1.3.3 **The Legislature** - The highest law-making body of the Federation is the National Assembly. The National Assembly is made up of an Upper House known as the Senate and a Lower House known as the House of Representatives. The Senate is headed by a Senate President, who is supported by a Deputy Senate President. It consists of three members from each State of the Federation and one member from the Federal Capital Territory. Thus, the Senate has a total of 109 members. The House of Representatives is presided over by the Speaker of the House supported by a Deputy Speaker, and it is made up of members elected from the 360 Federal Constituencies in the country.

The National Assembly has responsibility for making laws for the governance of the Federation. The power of the National Assembly to make laws is exercised through Bills passed by both the Senate and the House of Representatives. A Bill may originate from either House of the Assembly, but cannot become law until it has been passed by both Houses and has received the President's assent.

When a Bill from the Assembly is presented to the President for his assent, the Constitution stipulates that the President shall, within 30 days thereafter, signify that he assents or withholds his assent. If the President withholds his assent and the Bill is again passed by two-thirds majority in each House, such a bill becomes law, requiring no further Presidential assent.

- 1.3.4 **Legislative Lists** – The National Assembly also has the power to make laws with respect to any matter included in the Exclusive and Concurrent Legislative lists. The Exclusive list as contained in Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria deals with specific items which only the National Assembly has the sole prerogative to legislate upon, to the exclusion of the States and Local Governments. The items which are sixty eight (68) in number include Defence, Aviation, Currency, Customs and Excise Duties, Citizenship, Drugs and Poison, Copyright, Insurance, External Affairs, Meteorology etc.

The Concurrent List on the other hand is provided for under Part 2 of the Second Schedule to the Constitution of the Federal Republic of Nigeria. It is called the Concurrent List because the items thereon can be legislated upon by both the National Assembly and the State Houses of Assembly. The Concurrent Legislative List includes matters such as public funds at State and Local government levels, antiquities and

monuments, collection of taxes, stamp duties, voters' registration in the local government councils, agriculture, education etc.

### 1.4 Financial and Economic Overview

Nigeria's economy according to the World Bank has a middle income status.<sup>7</sup> The country has the second largest economy in Africa, the 37th largest in the World in terms of GDP and is listed as one of the "Next Eleven economies of the World" and the "Eleven Global Growth Generators countries".<sup>8</sup> The GDP at market prices in 2012 is estimated at over ₦41 million.<sup>9</sup> Nigeria is considered the biggest trading partner of the United States of America in sub-Saharan Africa. Following the execution of an IMF stand-by agreement in August 2000, Nigeria received a debt-restructuring deal from the Paris Club and a \$1 billion credit from the IMF.

The country pulled out of the IMF program in April 2002, after failing to meet spending and exchange rate targets. Nigeria was however able to pay back its debt<sup>10</sup> by April 2006 and exited the IMF that same year. Since 2008 the government has made efforts to implement market-oriented reforms urged by the IMF, such as modernizing the banking system, curbing inflation by blocking excessive wage demands, and resolving regional disputes over the distribution of earnings from the oil industry.

In August 2010 the President unveiled a power sector blueprint that includes privatization of the state-run electricity generation and distribution facilities. The government is also working towards developing stronger public-private partnerships for the development of infrastructure. The National Council on Privatisation (NCP) inaugurated the Electric Power Sector Implementation Committee (EPIC) with the purpose of carrying out a study of the electricity power industry and preparing a power policy blueprint that will define government's new direction for the electric power sector.

EPIC produced the National Policy on Electric Power and a draft Electric Power Sector Reform Bill. These instruments were approved by the NCP in 2002 and a draft bill was forwarded to the National Assembly where it was passed in 2005. Membership of EPIC included representatives of the then Federal Ministry of Power and Steel, National

---

<sup>7</sup> The World Bank's main criterion for classifying economies is gross national income (GNI) per capita. Every economy is classified as low income, middle income, or high income. How we classify countries. See <http://data.worldbank.org/about/country-classifications>.

<sup>8</sup> See [http://en.wikipedia.org/wiki/Next\\_Eleven](http://en.wikipedia.org/wiki/Next_Eleven) and [http://en.wikipedia.org/wiki/3G\\_\(countries\)](http://en.wikipedia.org/wiki/3G_(countries))

<sup>9</sup> Website of the National Bureau of Statistics - <http://www.nigerianstat.gov.ng>

<sup>10</sup> Debt Management Office - Nigeria's Debt Relief Deal with the Paris Club (2008)

Electric Power Authority (NEPA), Bureau of Public Enterprises (BPE), Ministry of Petroleum Resources, Ministry of Finance, the Energy Commission of Nigeria, the private sector and relevant professional bodies.

The government is also working towards developing stronger public-private partnerships for the development of infrastructure. Under the EPSR, the newly-incorporated Power Holding Company of Nigeria Plc (PHCN) assumed the assets, liabilities and employees of the state owned and operated National Electric Power Authority. The PHCN provided a temporary umbrella under which the power sector assets were unbundled into 18 separate successor companies, each responsible for the generation, transmission or distribution of electric power. Meanwhile, PHCN's liabilities were transferred to an SPV called the Nigerian Electricity Liability Management Company, to give confidence to investors that they would not be responsible for unforeseen liabilities following PHCN's dissolution.

The unbundling process resulted in the creation of the following successor companies:

Generation Companies also known as GENCO;

- Kanji Power Plc.
- Shiroro Power Plc.
- Ugheli Power Plc.
- Sapele Power Plc.
- Afam Power Plc.
- Geregu Power Plc.

Distribution Company known as the DISCO;

- Abuja Electricity Distribution Plc
- Benin Electricity Distribution Plc.
- Eko Electricity Distribution Plc.
- Enugu Electricity Distribution Plc.
- Ibadan Electricity Distribution Plc.
- Ikeja Electricity Distribution Plc.
- Jos Electricity Distribution Plc.
- Kaduna Electricity Distribution Plc.
- Kano Electricity Distribution Plc.
- Portharcourt Electricity Distribution Plc.
- Yola Electricity Distribution Plc.

The above Companies went through a full competitive tender process which culminated in the submission of technical and financial proposals in July 2012. However, following the rigorous technical evaluation that all bids received were subjected to, none of the bids received for Afam Power Plc and Kaduna Electricity Distribution Plc scored the minimum 75 percent required to progress to the financial bid stage. This development compelled the National Council on Privatization (NCP) to order a re-run of the entire transaction as it was not prepared to settle for a second best.

So far, a total of 48 different companies have expressed interests in acquiring the two remaining successor companies in a renewed bid to fast track their sales in line with the ongoing privatisation exercise.

### 1.5 Socio-Cultural Review

- 1.5.1 **People and Language** - Nigeria has an estimated 356 ethno-linguistic groups of diverse cultures and traditions. English is the official Language of Nigeria. Unofficially, Nigerians have adopted *Pidgin English* (a localized version of Standard English) which is usually spoken in the markets and on the streets.
- 1.5.2 **Religion and Culture** - The two major religions in Nigeria are Christianity and Islam with a minority practicing African Traditional Religions (ATR). In terms of culture, Nigeria has a diverse and rich culture with each region and community having its own peculiar cultural heritage, customs and local tradition.
- 1.5.3 **Currency** - The national currency of Nigeria is the Naira (₦) denominated into ₦1, 000 (one thousand naira), ₦500 (five hundred Naira), ₦200 (two hundred Naira), ₦100 (one hundred naira), ₦50 (fifty naira), ₦20 (Twenty naira), ₦10 (ten naira) and ₦5 (five naira) notes. Even though the Two Naira, One Naira and fifty kobo coins remain legal tender, they have all but gone out of circulation.
- 1.5.4 **Transportation** - The major cities are well connected by a network of transport services that include road, air, rail and water transportation, with road and air being the most functional modes. The country has four international airports which are located in Lagos, Abuja, Port-Harcourt and Kano and three seaports located in Lagos, Port-Harcourt and Calabar.
- 1.5.5 **Business Habits** - The work environment in Nigeria is generally formal, although some offices could be less formal. The type of work usually determines the mode of dressing. In some work environments, employees are allowed to dress casually while in others, staff must be formally dressed. As in most countries, Monday to Friday are standard

working days; the standard work hours are 8 am to 5 pm, although most banks close to the public at 4 pm.

### 1.6 International Relations

Nigeria is a member of several regional and international organizations and it has maintained good relations with other countries across the world. This in turn has enhanced multiple bilateral trade and cultural agreements with many countries around the globe. Nigeria's membership of International and Regional organizations includes:

- 1.6.1 **African Union (AU):** Formerly known as the Organization of African Unity (OAU), the objectives of the AU include the acceleration of the political and socio-economic integration of the continent; promotion and defence of Africa's common position on issues of interest to the continent and its peoples; achievement of peace and security in Africa; promotion of democratic institutions, good governance and human rights. The Union is made up of political and administrative bodies with the Assembly of the Union as the highest body, comprising of all heads of state of respective member states.
- 1.6.2 **United Nations (UN):** The UN is an international organization comprising of 193 member states with the objectives of facilitating cooperation in international law, international security, economic development, social progress, human rights and achievement of world peace.
- 1.6.3 **Organization of Petroleum Exporting Countries (OPEC):** OPEC comprises of 12 member countries (as at 2012) of which Nigeria is the most populous. The main objectives of OPEC are to co-ordinate and unify petroleum policies among member countries in-order to secure fair and stable prices for petroleum producers, an efficient, economic and regular supply of petroleum to consuming nations along with a fair return on capital to investors.
- 1.6.4 **Economic Community of West African States (ECOWAS):** ECOWAS comprises of 15 countries as at May 2012, with the objective of promoting economic integration across the sub-region.
- 1.6.5 **International Labour Organization (ILO):** Nigeria is a member of this agency of the UN which deals with Labour issues such as creation of decent jobs and a conducive working and living environment, human and labour rights, promoting social justice amongst several others. In an effort to realize its objectives the ILO created the International Labour Standards aimed at promoting opportunities to obtain productive work in dignified and secure conditions.

- 1.6.6 **Organization of Islamic Cooperation (OIC):** Although Nigeria is a multi-religious country, it is a member of the OIC, which is the collective voice of the Muslim world and seeks to enhance and safeguard the interests, wellbeing and progress of Muslims worldwide.
- 1.6.7 **World Trade Organization (WTO):** The organization was established in 1995 and (as at August 2012) has a total of 154 members, including Nigeria. The organization is saddled with the responsibility of administering world trade agreements. It also serves as a forum for trade organizations, handling trade disputes and monitoring national trade policies.
- 1.6.8 **World Bank:** Nigeria has been a member country of the World Bank since 30<sup>th</sup> of March, 1961. The World Bank is an international financial institution that provides loans to developing countries for capital programs. The main objectives of the World Bank are the reduction of poverty and eradication of hunger amongst several others.
- 1.6.9 **Other International/Regional Organizations:** Other organizations to which Nigeria belongs include the New Partnership for Africa's Development (NEPAD), International Monetary Fund (IMF), Organization of African Trade Union (OATU) and Non-Aligned Movements amongst several others. Nigeria has contributed to liberation movements in countries like Liberia, Zambia, Tanzania, Mozambique, Zimbabwe, and was one of the major contributors of troops to the ECOWAS Cease Fire Monitoring Group (ECOMOG) in the 1990s. It has also provided assistance to several African states usually through the African Development Bank.

## CHAPTER TWO

### 2 BUSINESSES STRUCTURES & PROCESSES

#### 2.1 Types of Businesses

Under the Companies and Allied Matters Act 1990 (“CAMA” a legislation that regulates the formation and operation of companies and businesses in Nigeria), a legal entity may be an incorporated company, incorporated trust or a business name (i.e. sole proprietorship). An incorporated company may either be a private company or a public company and may have limited or unlimited liability status. CAMA permits companies to re-register from one type of company to another. Business can be carried on in Nigeria through any of the following vehicles:

**2.1.1 Sole Proprietorship:** This form of enterprise is for use by an individual who earns all the profits and is also liable for all the losses and other obligations borne out of the business. In general, this form of business is open to anyone in Nigeria wishing to engage in any kind of lawful business activity. A foreigner, by the interpretation of Nigerian law would be permitted to operate a sole proprietorship provided that he has obtained the relevant permits which allows him to work and reside in Nigeria.<sup>11</sup> The statutory requirement for this form of business is very limited, the major one being the requirement of registration of a business name, where a name other than the true name of the sole proprietor is used as the trade name.

**2.1.2 Partnership:** This form of enterprise is usually established between joint owners of a business who are personally and jointly liable for the obligations and debts of the enterprise. Under the Companies and Allied Matters Act 1990 (CAMA), a maximum of 20 people are allowed in a partnership, save for partnerships formed by lawyers and accountants. In many parts of Nigeria, the laws governing partnerships are based on the English Partnership Act, 1890, which defines a partnership as “the relationship which subsists between persons carrying on a business in common with a view to profit.”<sup>12</sup>

Partnerships can either be general or limited. Limited Partnerships currently exist only in Lagos State and must be registered at the State’s Limited Partnership Registry.

---

<sup>11</sup> See sections 17 and 19 of the Nigerian Investment Promotion Act and section 657 of CAMA

<sup>12</sup> See section 1 of the English Partnership Act 1890

Foreigners may use a partnership as a vehicle for running a business in Nigeria, provided that they comply with company and immigration laws. The liabilities of partners/owners of partnerships and sole-proprietorships are unlimited.

**2.1.3 Incorporated Company:** A foreign entity intending to do business in Nigeria must be incorporated as a local entity in Nigeria.

The advantages of registering a limited liability company include the limitation of the personal liability of its owners and perpetual succession of the company. A company may also be incorporated with unlimited liabilities, or with its liabilities limited by guarantee. A company limited by shares limits the liability of its members to the amount which is unpaid on the respective shares held by them, while a company limited by guarantee limits its members' liability to such amount as the members may undertake to contribute to the assets of the company in the event of its being wound up.

A company limited by guarantee is generally not for commercial purposes. Examples of entities that may register as companies limited by guarantee are voluntary organizations, charities, social enterprises and community groups, companies promoting commerce, art, religion, sport culture education etc. A company with unlimited liability has no limit on the liability of members and is therefore not attractive to investors. An incorporated company may either be a private company or a public company.

A private company must have a minimum of 2 and a maximum of 50 members, excluding present and former employees of the company. Furthermore, the right to transfer its shares is restricted and it is prohibited from inviting the public to subscribe to any of its shares or debentures. A public company must also have a minimum of two members but there is no restriction on the maximum number of members or their right to transfer shares freely. The public may be invited to subscribe to its capital and its shares may be traded on the Stock Exchange.

CAMA also provides for certain categories of entities which may be exempted from incorporation. They include:

- a. Foreign companies invited to Nigeria with the approval of the Federal Government to execute a project.
- b. Foreign companies which are in Nigeria for the execution of a loan project on behalf of a donor country or international organization.
- c. Foreign government owned companies engaged solely in export promotion activities.



## Country Briefing on Nigeria

- d. Engineering consultants or technical experts engaged in any project under contract with a government, any of its agencies or any person where such a contract has been approved by the Federal Government.
- 2.1.4 **Incorporated Trust:** Where one or more trustees are appointed by any community of persons bound together by custom, religion, kingship or nationality or by any association of persons established for any religious, educational literary, scientific, social, development, cultural, sporting or charitable purpose, such person/persons may apply for registration with the Corporate Affairs Commission (CAC) as an Incorporated Trustee/Trust.
- 2.1.5 **Representative Office:** Foreign companies are allowed to set up representative offices in Nigeria but these may not engage in business, conclude contracts, or open or negotiate any letters of credit. They can only serve as promotional and liaison offices and their operational expenses are met by the Parent companies. Even then, a Representative Office has to be registered with the Corporate Affairs Commission and have the words “Representative Office” included in the company’s name. Representative offices are also required to file periodic returns with the CAC.

## 2.2 Intellectual Property

The Nigerian legal system strives to protect intellectual property as in other parts of the world. The applicable laws in relation to intellectual property in Nigeria are the Patents and Designs Act, the Trade Marks Act and the Copyright Act.

- 2.2.1 **Trademarks:** A trademark is a sign, or a combination of signs, which distinguishes the goods or services of one enterprise from those of another. Trademarks are registrable at the Trade Marks Registry, Abuja. Registration of a trademark confers on the person registering it, a right to the exclusive use of that trademark for a period of seven (7) years, which may be renewed upon expiration. The common remedies for trademark infringement include injunction, award of damages, delivery up or destruction of the infringing goods.
- 2.2.2 **Patents and Designs:** These relate to inventions. An invention is patentable if it is new, results from inventive activity and is capable of industrial application, or if it constitutes an improvement upon a patented invention. The invention must also be registered in order to gain the right to be protected.

Nigerian law notes the possibility of a difference between the “statutory inventor”<sup>13</sup> and the “true inventor”.<sup>14</sup> The right to a patent is vested in the statutory inventor, although the true inventor is entitled to be named as such in the patent, whether or not he is also the statutory inventor.<sup>15</sup> A patent expires after twenty (20) years from the date of registration while a design is effective in the first instance for five (5) years but renewable for two (2) consecutive periods of five (5) years each.

**2.2.3 Copyright:** Copyright does not require registration since it automatically applies to creative works as soon as they are created. The works eligible for copyright protection include literary, musical and artistic works, cinematograph films, sound recordings and broadcasts. To be eligible, however, such work must have original character. A copyright is valid for fifty (50) years in the case of broadcasts, sound recordings and cinematograph, and seventy (70) years for literary and musical works. The Nigerian Copyright Council, under the supervision of the Ministry of Justice, is responsible for the administration of all copyright matters in Nigeria. The remedies available for the breach or an infringement of copyright are damages, injunction, accounting for profits, delivery up or destruction as well as conversion of rights.

## 2.3 Trade and Investment Framework

While the foreign exchange market has been liberalized and foreign investment encouraged, there are nevertheless laws which foreign investors must comply with in order to operate in Nigeria.

**2.3.1 Registration as a Separate Legal Entity –** Every foreign company wishing to participate in business in Nigeria must take steps to register with the Corporate Affairs Commission unless where an exemption from incorporation has been granted by the Federal Executive Council. Registration is done by delivery of relevant documents to the Corporate Affairs Commission and the issuance of a certificate of incorporation and a distinct registration number to the applicant

**2.3.2 Repatriation of Capital:** The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act makes eligible for the purchase of foreign exchange, any transaction which is not prohibited by law and is supported by appropriate documentation. Investors are guaranteed unconditional transferability of proceeds of their investment out of

---

<sup>13</sup> This is the person who, (whether or not he is the true inventor) is the first to file, or validly to claim a foreign priority for, a patent application in respect of the invention.

<sup>14</sup> This is the person who actually created the invention that has been registered.

<sup>15</sup> See section 2 of the Patents and Designs Act 1971

Nigeria. Capital must be imported through an Authorised Dealer i.e. Nigerian Bank, who would then issue a Certificate of Capital Importation (“CCI”) within 24 hours of importation. The imported funds, which must be in foreign currency remain the money of the Company to utilize as it deems fit. The instructions to the bank should state the purpose for which the funds are in flowed (which may be as a loan or for equity), as this would be indicated on the CCI.

- 2.3.3 **Registration with National Office for Technology Acquisition and Promotion (NOTAP):** According to the National Office for Technology Acquisition and Promotion Act every agreement involving the transfer of foreign technology to a Nigerian company must be registered with the NOTAP within sixty (60) days of execution or conclusion of the agreement. Non-registration will frustrate transfer of any payments to be made outside Nigeria under the respective Agreement. An agreement involves transfer of technology if it is connected with the use of trademarks or patented inventions, supply of technical expertise, engineering or plants & machinery or the provision of operating staff or managerial assistance.
- 2.3.4 **Registration with the Nigerian Investment Promotion Commission:** The Nigerian Investment Promotion Commission (NIPC) was established to promote and monitor foreign investment in Nigeria. It is also responsible for the facilitation of business entry approvals and authorizations through its One Stop Investment Center (OSIC). The NIPC provides a range of investment related services that span investment promotion, investor relations, investment-friendly policy advocacy and post investment after-care services. The Act mandates the Nigerian Investment Promotion Commission to maintain a register of all foreign companies and foreign investments in Nigeria.

## CHAPTER THREE

### 3 FOREIGN PARTICIPATION IN BUSINESS

#### 3.1 Background

Under Companies and Allied Matters Act as earlier mentioned, a foreign company wishing to set up business operations in Nigeria is legally obliged to incorporate a separate entity in Nigeria for that purpose. Until so incorporated, a foreign company is prohibited from carrying on business in Nigeria, exercising any of the powers of a registered company or having a place of business or an address for service of documents for any purpose, other than the receipt of documents as matters preliminary to incorporation.

In 1995, the Federal Government abrogated the Exchange Control Act 1962 and Nigerian Enterprises Promotion Act 1989, which inhibited free inflow of foreign direct investment. Subsequently, the government promulgated the Nigerian Investment Promotion Commission Act 1995 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) 1995.

The effect of the abrogation and promulgation is that foreign investors are guaranteed unconditional transfer of capital, profits and dividend attributable to their investments in any convertible currency through Authorized Dealers, (i.e. any Bank licensed in Nigeria to deal in foreign exchange) upon submission of relevant documents.

In addition, foreign companies are permitted to own 100% of a Nigerian business and are free to participate in any enterprise in Nigeria except those stated in the Negative List viz – the production of arms, ammunition, military and para-military wears and accoutrement, the production of and dealing in narcotic drugs and psychotropic substances and other items as determined by the Federal Executive Council. However, additional restrictions may apply, depending on the sector in which the foreign company intends to operate. For example, restrictions are currently in place in the oil & gas and maritime sectors.

#### 3.2 Immigration

Nigerian immigration law prohibits foreigners from practicing any profession or operating any trade or business without the requisite consent from the Minister of Interior, which take the form of a Business Permit and/or Expatriate Quotas. One of the requirements

for a Business Permit/Expatriate Quota is evidence of importation of capital, which is in the form of a Certificate of Capital Importation<sup>16</sup> (“CCI”).

The **Nigeria Export Processing Zones Act 1992** allows expatriates to reside in or out of the free trade zone provided their details have been included in the register of expatriates which is usually maintained by the respective free trade zones.

### 3.3 Business Permit

A Business Permit is an operational and permanent permit for the local operation of a business with expatriate investment either as a branch or subsidiary of a foreign company or otherwise. By the provisions of the Immigration Act, no person other than a Nigerian citizen shall on his own or in partnership with another practice a profession or establish, takeover or register a company or business without the written consent of the Minister of Interior. This permit is issued by the Federal Ministry of Interior. For a company with foreign participation or ownership to be eligible for grant of business permit it must show evidence that its share capital is not less than ₦10,000,000 (Ten Million Naira) and must provide evidence of imported capital.

### 3.4 Expatriate Quota

An Expatriate Quota authorizes a Nigerian company to employ expatriates to specifically approved job designations. This permit is issued in line with the Immigration Act,<sup>17</sup> which precludes any person other than a Nigerian citizen from accepting employment (not being employed by the Federal or State Government) without the consent in writing of the Minister of Interior. This consent is given in the form of an expatriate quota.

The quota is issued to the company and not the expatriate; thus when the expatriate leaves the company, the position reverts to the company and the company may place another expatriate on the same position. The initial expatriate quota is sought and obtained usually along with a Business Permit. The maximum number of years granted in the first instance is three years renewable for a further period of two years. There are two types of expatriate quota:

- a) Permanent Until Reviewed Quota (PUR), usually granted to the Chairman of the company’s board of directors or the Managing Director; and
- b) Temporary Quota, which is usually granted to the directors and other employees of the company.

---

<sup>16</sup> See 2.3.1 supra

<sup>17</sup> Cap I1 LFN 2004

### 3.5 Visas

Nigerian Immigration Laws require that all foreigners except ECOWAS nationals must possess the requisite entry permits or visas prior to entering the country. In June 2012, the Federal Government announced the introduction of a New Visa Policy (“2012 Policy”), which seeks to transform the visa issuing process and provide easy access to immigration facilities.

Those visiting from countries where Nigeria does not have an embassy can now obtain visas at the port of entry. Under this new visa regime, the categories of visas are Visa at Points of Entry, Short Visit Visa, Temporary Resident Visa, Employment Based Visa and Scarce Skills Transfer Visa.

The following are the features of the 2012 Policy:

- A 30 day non-extendable visitor’s tourist issued at the port of arrival. This will apply mostly to visitors from countries where Nigeria does not have Foreign Missions.
- Nigerian Foreign Missions will henceforth issue one year multiple entry permits/visas and are required to honour expatriate quota approvals and ensure that only expatriates with the pre-requisite qualifications as stated in the quota approval letters are issued entry visas.
- Visitors who are in Nigeria for investment purposes are eligible to be issued 10 year visas where they meet laid down criteria.
- Foreign investors with a minimum investment of ten million US dollars may be given up to a 25% employment quota without sacrificing employment opportunities for Nigerians.
- An investment or skill transfer visa will be available to foreigners who possess skills deemed valuable and not available locally.

### 3.6 Combined Expatriate Residence Permit and Alien Card (CERPAC)

Any person, other than a citizen of Nigeria, desiring to take up paid employment in Nigeria or work under any arrangement must obtain a work and resident permit. These permits are now issued by the Nigerian Immigration Service in the form of a Combined Expatriate Residence Permit and Alien Card (CERPAC).

CERPAC is issued by the Nigerian Immigration Authority upon successful approval and issuance of a Subject to Regularization (STR) visa by the relevant Nigerian Embassy or High Commission in the applicant’s home or country of residence. An STR is issued under the provision of Section 8(1) of the Immigration Act and is available to an expatriate employed under a contract of employment with a Nigerian Company or Government Agency. This class of visa enables an expatriate to take up paid

employment upon being placed under the expatriate quota of the employing company. The STR visa is issued abroad, at the relevant Nigerian Embassy or High Commission in the expatriates home or country of residence and in accordance with the date as specified on the expatriate's letter of employment and is a single entry visa. An STR visa is valid for 90 days within which the expatriate is expected to apply to the Nigerian Immigration Service for the regularization of the STR and issuance of a CERPAC card. Upon regularization of the STR visa, a CERPAC card would be issued which entitles the expatriate to live and work in Nigeria for an initial period of between 1-2 years subject to renewals.

Possession of a valid CERPAC does not exempt the holder from having a valid entry or re-entry visa as the STR. Thus an expatriate to whom a CERPAC has been issued is expected to obtain re-entry visas to enable him/her travel out of Nigerian and back as may be expedient.

### 3.7 Specialized Sector: Oil & Gas

The Nigerian Oil & Gas Industry Content Development Act 2010 seeks to enhance the level of participation of Nigerians in the oil and gas industry. The Act provides that exclusive consideration shall be given to Nigerian indigenous companies<sup>18</sup> which demonstrate ownership of equipment, Nigerian personnel and capacity to execute such work to bid on land and swamp operating areas of the Nigerian oil and gas industry. Compliance with the provisions of the Act and promotion of Nigerian content development are major criteria for award of licenses, permits and any other interest or other operation in the Nigerian oil and gas industry. Some of the salient statutory obligations include:

- Retention of the services of only Nigerian financial institutions or legal practitioners by those requiring their services.
- Retention of ten percent of the total revenue accruing from Nigerian operations in a bank account in Nigeria.
- Approval of offshore placement of insurance risks by the National Insurance Commission which would ensure that Nigerian local capacity has been fully exhausted.
- Employment of only Nigerians in junior and intermediate cadres.
- Retention of a maximum of five percent (5%) of management positions as expatriate positions.

---

<sup>18</sup> The Act defines a Nigerian company as “a company formed and registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51% equity shares by Nigerians”.

### 3.8 Specialized Sector: Maritime

The Coastal and Inland Shipping Act 2003, (the Cabotage Act) seeks primarily to stimulate the development of indigenous capacity in the Nigerian Maritime Industry. The Act therefore seeks to reserve domestic coastal trade (“Cabotage trade”) within Nigerian coastal and inland waters to vessels built and registered in Nigeria, wholly owned and wholly manned by Nigerian citizens. Foreign owned vessels and companies are however allowed to participate in Cabotage trade within Nigerian waters, subject to obtaining a waiver and/or a licence from the Federal Ministry of Transport.

All vessels intended for use in Cabotage trade are required to be registered by the Registrar of Ships in the Special Register for Vessels and Ship Owning Companies engaged in Cabotage (“Cabotage Register”) at the Nigerian Maritime Authority (“NMA”). The guidelines issued by the Minister of Transport under the Cabotage Act provide for five categories of registration i.e. wholly owned Nigerian vessels, joint-venture owned vessels, bareboat chartered vessels, foreign-owned vessels and temporary registration.



## CHAPTER FOUR

### 4 TAXATION

#### 4.1 Overview

Companies undertaking business activities in Nigeria are liable to taxes except where specific exemptions have been granted by the relevant government agency. Even non-resident companies and those to whom exemptions have been granted by the Federal Government are subject to taxes on income generated from Nigeria. Taxes and duties are levied in Nigeria by the three government layers i.e. Federal State and Local Governments.

##### 4.1.1. Double Taxation

Nigeria has signed double taxation treaties with several countries including the United Kingdom, Pakistan, Canada, Romania and the Netherlands. While income derived from Nigeria by foreign companies are liable to Nigerian tax, where such companies are based in a country which has a double taxation agreement with Nigeria, those companies will benefit from the provisions of the relevant Treaty.

##### 4.1.2 Assessment of Income Taxes

Income taxes are usually assessed on a preceding year basis except in respect of commencement and cessation of business. Minimum tax is chargeable on all companies with no taxable profits with the exception of companies which are in the agricultural business. Agricultural and agro-allied companies with at least 25% foreign equity ownership are not required to pay the minimum income tax within their first four years of operation.<sup>19</sup>

Those companies that do not fall within this category and have turnover of ₦500,000 or below, are required to pay; 0.5 per cent of gross profit; 0.5 per cent of net profits; 0.25 per cent of paid up capital; or 0.25 per cent of turn-over of the company for the year, whichever is higher. Companies with a turnover of over ₦500, 000 must pay an additional tax on the amount by which the turnover is in excess of ₦500, 000 at a rate which shall be 50 per cent of 0.25 per cent of the turnover of the company for the year.

---

<sup>19</sup> See the Companies Income Tax Act Cap C21 LFN 2004

## 4.2 Regulatory Authorities and Collection of Taxes

The Federal Inland Revenue Service and its counterparts in each State (i.e. State Inland Revenue Service), have the duty to assess, control and administer the various taxes collected by them. In accordance with the law, taxes are collected at the three tiers of government, depending on the nature of the tax and the tax payer involved.

As a general guide, taxes involving a corporate body, residents of the Federal Capital Territory, Abuja or non-resident individuals will be payable to the Federal Government. Such taxes include Companies Income Tax (CIT), Petroleum Profits Tax (PPT), Value Added Tax (VAT), Education Tax, Withholding Tax (corporate bodies only), Capital Gains Tax (corporate bodies only), Stamp Duties (corporate bodies only), as well as Personal Income Tax (PAYE – Pay-As-You-Earn) in respect of staff/members of the Armed Forces, Police Force and the Ministry of Foreign Affairs.

State Governments are generally responsible for taxes relating to individuals and lotteries, which include personal income tax, withholding tax (individuals only), capital gains tax (individuals only), stamp duties on instruments (individuals only), lotteries, gaming and casino taxes, road taxes, business premises registration fees, right of occupancy fees on lands owned by state governments in urban areas as well as market taxes and levies where state finance is involved.

Taxes collected by local governments include shops and kiosks rates, tenement rates, liquor licence fees, marriage, birth and death registration fees, right of occupancy fees on land in rural areas, domestic animal licence fees, merriment and road closure levies, radio and television licence fees, vehicle radio licence fees, wrong parking charges, signboard and advertisement permit fees<sup>20</sup>.

## 4.3 Tax Laws

Taxes are governed by laws which provide for their establishment, assessment and collection. Different rates and exemptions apply depending on the nature of the tax.

- 4.3.1 **Capital Gains Tax Act:** Capital gains tax is levied at the rate of 10% on gains accruing from the disposal of chargeable assets. Chargeable assets include all forms of property for the purposes of the Act whether situated in Nigeria or not, including options, debts and incorporeal property generally; any currency other than Nigerian currency; and any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired.

---

<sup>20</sup> See Lagos State Local Government Approved Levies for Collection Law.

- 4.3.2 **Companies Income Tax Act:** Income tax is levied at the rate of 30% on companies' profits which accrue in, are derived from, brought into or are received in Nigeria for each year of assessment. There is a Federal Board of Inland Revenue whose operational arm is the Federal Inland Revenue Service (FIRS). In addition, there is a Technical Committee of the Board which comprises of the Executive Chairman, Directors and Heads of Department of the Service; the Legal Adviser of the Service; and the Secretary to the Board.
- 4.3.3 **Education Tax Act:** The Act imposes an education tax on companies registered in Nigeria and establishes an Education Fund and a Board of Trustees to manage and administer the Fund. The tax is levied at the rate of 2% on the profits of companies. It is charged on the assessable profit of a registered company and is due and payable within 60 days after the Board has served notice of the assessment on a company.
- 4.3.4 **Industrial Training Fund Act:** The Industrial Training Fund ("ITF") is a fund into which employers with a minimum of 5 employees or less than 5 employees but with a minimum turnover of ₦50,000,000 per annum are required to contribute 1% of their total annual payroll by April 1 of each year. The purpose of the ITF is to encourage the acquisition of skills in industry or commerce with a view to generating a pool of indigenously trained manpower sufficient to meet the needs of the economy. The ITF is administered by the Industrial Training Fund Governing Council, which is empowered to make a refund of up to 50% of the amount paid by an employer , if the Council is satisfied that the training programme of the employer is in accordance with the ITF's re-imbusement schemes.

All employers who pay their contributions shall provide adequate training for their indigenous staff with a view to improving on the skills related to their job and evidence of such training shall be forwarded to the Council. In addition, all bids for government contracts must be supported with evidence of such contributions. Proof of contributions must also be shown as a condition for obtaining expatriate quota or utilising customs services in matters of import/export.<sup>21</sup>

- 4.3.5 **Contribution to the Employee Compensation Fund:** According to the provisions of the Employees Compensation Act 2010, every employer is required to make a minimum monthly contribution of 1% of its total monthly payroll into the Fund within the first two years of the commencement of the Act.

---

<sup>21</sup> Section 6 of the Industrial Training Fund Act

- 4.3.6 **Personal Income Tax Act:** Pay-As-You-Earn (PAYE) is payable at a graduated rate of between 5% and 25%. All employers are required to deduct this tax from employees' emoluments and remit to the tax authority in the State in which the employee is resident.
- 4.3.7 **Stamp Duties Act:** Stamp Duty is chargeable at a fixed rate or ad valorem on written agreements and other relevant documents to which a company is party. Where a document has been duly stamped it will be admissible as evidence in civil proceedings. However, where a document has not been duly stamped or is insufficiently stamped, it may be admitted in evidence after the unpaid duty as well as any penalty, is paid.
- 4.3.8 **Value Added Tax Act:** Value Added Tax (similar to sales tax) is levied at the rate of 5% on the supply of taxable goods and services. The purpose of the Act is to impose and charge Value Added Tax on certain goods and services and to provide for the administration of the tax and matters related thereto.

The determination of the value of taxable goods and services is contingent upon whether the good or service is rendered for monetary consideration. If a good or service is rendered for monetary consideration, its value is deemed to be an amount which with the addition of the tax chargeable is equal to the consideration. If a good or service is not rendered for money, the current market value will be attributed to the good or service.

Goods exempted from VAT include medical and pharmaceutical products, basic food items, educational materials, agricultural equipment, fertilizer, equipment purchased for gas utilisation in petroleum operations, exports and baby products. Services exempted include medical services, services rendered by community banks and mortgage institutions, plays and performances conducted by educational institutions and exported services. This tax is borne by the final consumer because it is included in the price of the good/service.

- 4.3.9 **Petroleum Profit Tax Act:** The Petroleum Profit Tax Act imposes a tax of 85% on the chargeable profits of companies engaged in petroleum operations. Any income which is taxed under the Companies' Income Act is exempted under the Petroleum Profit Tax Act.

## 4.4 Tax Incentives

- 4.4.1 **Pioneer Status:** Under the Industrial Development (Income Tax Relief) Act, tax relief is available to companies operating in pioneer industries. The objective is to provide a boost to the particular industry to enable it become viable. Companies operating in these industries can apply for Pioneer Status, which is a tax holiday for up to seven years.

Prospective companies wishing to achieve this status must apply within one year of the commencement of commercial operations. Reasons for granting tax relief include:

- Where the President believes that the industry is not being carried on, on a scale suitable to the economic requirements of Nigeria;
- The industry is to be located in an economically disadvantaged area of Nigeria;
- Where there are favourable prospects of further development of that industry;
- Where it is in the public interest to encourage the development of that industry.

### 4.4.2 Other Tax Incentives include:

- Loans granted to a Nigerian company may be exempted from tax where they meet laid down criteria
- Dividend received from Nigeria are exempt from tax other than withholding tax
- Dividend, interest, rent or royalty earned by companies outside Nigeria and brought in through specified channels are exempted from tax
- Interest earned by a foreign company on its bank deposits in Nigeria are exempted from tax.
- Nigerian companies with a minimum of 25% foreign equity and within their first four years of operation are exempted from payment of minimum tax
- Non-Nigerian employees of foreign companies may be exempted from income tax where they spend a cumulative period of less than 183 days in Nigeria during a 12 months period
- Other incentives as may be granted by the President or the Minister of Commerce from time to time

## CHAPTER FIVE

### 5 FREE TRADE ZONES

A free trade zone is a designated area that eliminates traditional trade barriers, such as tariffs, and minimizes bureaucratic regulations. The goal of a free trade zone is to enhance global market presence by attracting new business and foreign investments. It also seeks to limit trade restrictions, promote employment and also stimulate export by giving the exporter a hedge against duties on the raw materials used in production. In these zones, trade is not limited by customs, trade tariffs or other barriers that can impede the exchange of goods.

The Nigeria Free Trade Zone Act 1992 established the Nigerian Export Processing Zone Authority (NEPZA) which is mandated to grant all approvals for operators within the free trade zones to the exclusion of other government bodies and agencies. The purpose behind free trade zones in Nigeria is to help facilitate an environment conducive to organizations becoming profitable.

Some of the business opportunities available in the free trade zones across Nigeria include supply of raw materials, provision of cleaning services, freight forwarding services, cold storage facilities, warehousing facilities, security services, manufacture of electrical and electronic products, leather products, plastic products, petroleum products, rubber products, cosmetics, garments, chemical products, metal products, educational materials and equipment, sports equipment and material amongst others.

The term *free trade zone* is often used interchangeably with *export processing zones*. The former refers to specially designated geographical areas within a nation that are exempted from the regulations and taxation normally imposed on business while the latter refers to a designated area in a country in which production for export is encouraged, usually by special tax treatment and by permitting firms to import duty-free so long as the imports are used as inputs in production of export.

#### 5.1 Examples of Free Trade Zones

There are several free trade zones in Nigeria. Some of these are in operation while some are under construction. As at July 1 2013, these include:<sup>22</sup>

---

<sup>22</sup> See <http://www.nepza.gov.ng/>

S/N	Name	Location	Status	Ownership
1	Calabar Free Trade Zone	CRS	Operational	Fed. Govt.
2	Kano Free Trade Zone	Kano State	Operational	Fed. Govt.
3	Onne oil & Gas Free Zone	River State	Operational	Parallel Authority
4	Tinapa Free Zone & Tourism Resort	CRS	Operational	Private/Public
5	Snake Island Integrated	Lagos	Operational	Private
6	Maigatari Border Free Zone	Jigawa State	Operational	State
7	LADOL Free Zone	Lagos	Operational	Private
8	Airline Services Export Proc. Zone	Lagos State	Operational	Private
9	ALSCON Export Processing Zone	Akwa Ibon	Operational	Private
10	Ogun Guangdong Free Trade Zone	Ogun State	Operational	Public/ Private
11	Sebore Farms Export Processing Zones	Adamawa State	Operational	Private
12	Ibom Science & Tech. Park Free Zone	Akwa Ibom	Under Construction	Public/Private
13	Living Spring Free Zone	Osun State	Under Construction	State
14	Lekki Free Zone	Lagos State	Under Construction	State/ Private
15	Brass LNG Free Zone	Bayelsa	Under Construction	Public/Private
16	Abuja Technological Village Free Zone	Abuja	Under Construction	Public/Private
17	Specialized Railway Industrial FTZ - Kajola	Ogun State	Under Construction	Public/Private
18	Imo Guangdong FTZ	Imo State	Under Construction	Public/Private
19	OK Free Trade Zone	Ondo & Ogun	Under Construction	States/ Private
20	Lagos Free Zone	Lagos State	Under Construction	Private
21	Kwara Free Zone	Kwara State	Declaration	State Govt.
22	Oluoyole Free Trade Zone	Oyo State	Declaration	State Govt.
23	Koko Free Trade Zone	Delta State	Declaration	State Govt.
24	OILSS Logistics Free Zone	Lagos	Declaration	Private
25	Banki Border Free Zone	Borno State	Declaration	State

## 5.2 Incentives from Free Trade Zones

Several incentives have been put in place to encourage investors to invest in Nigeria via the Free Trade Zones. Some of the incentives include:

- Exemption from all federal, state and local government taxes, levies, duties and foreign exchange regulations.
- Unrestricted remittance of profits earned by investors.
- Unrestricted remittance of profits and repatriation of foreign capital by investors.
- The investor is permitted to sell all goods produced in the domestic or local market.
- The investor does not need additional licenses in order to import or export goods into and out of the territory.
- The investor is also allowed to bring in foreign personnel or managers into the Zone provided the necessary entry permit had been obtained from the Nigerian Immigration Service.
- Prohibition of strikes or lockouts for a period of 10 years following the commencement of operations.

## 5.3 Employment of Foreigners within the Free Trade Zones

The Decree provides that where a person who is a non-Nigerian citizen is employed by the Authority or by an approved enterprise established in a Zone, upon application by

## Country Briefing on Nigeria

the enterprise for a licence to establish itself within a Zone or at any time thereafter, the enterprise shall apply on behalf of the non-Nigerian citizen, direct to the Authority for the purpose of immigration and employment permits, in such manner as may be prescribed by the Authority.



## CHAPTER FIVE

### 6 LEGAL FRAMEWORK

#### 6.1 Legal System

Being a former British colony, the Nigerian legal system is very similar to the British legal system. As is the practice in common law jurisdictions, Nigeria practices the adversarial system of justice, although the jury system is no longer in use. Nigerian law is derived mainly from English Common law, Nigerian Customary law, Islamic Sharia law, English Acts of Parliament, Statutes of General Application and judicial precedents. The Constitution is the supreme law in Nigeria, and any law which conflicts with the provisions of the Constitution is null and void.

#### 6.2 Dispute Resolution

The primary method of dispute resolution in Nigeria is litigation. When disputes are not litigated, arbitration serves as the main alternative resolution mechanism. The Arbitration and Conciliation Act<sup>23</sup> provides the legal frame work for the settlement of commercial disputes by arbitration and conciliation. It also makes applicable the Convention on the Recognition and Enforcement of Arbitral Awards (i.e. the New York Convention) to any award made in Nigeria arising out of international commercial arbitration. Lagos State operates the Lagos State Multi-Door Courthouse (“the LMDC”), which is the first court-connected Alternative Dispute Resolution Centre in Africa. While the main focus of the LMDC is Commercial ADR, it handles non-commercial matters.

Generally, Nigerian courts usually respect choice of law clauses in contracts under the principle of *pacta sunt servanda*.<sup>24</sup> There are however occasions where such clauses will be disregarded. For example, the clause would not be upheld where the transaction is illegal and seeks to circumvent the law. In addition, the choice of a particular jurisdiction must be made in good faith. In the determination of civil rights and obligations, court proceedings must be held in public and where a court sits in camera, the entire proceedings could be nullified on the application of an aggrieved party. With respect to criminal proceedings, the court can exclude persons other than parties to the proceedings in the interest of national security, public safety, public order, public

---

<sup>23</sup> Cap 19 LFN 1990

<sup>24</sup> This is a Latin term which means “agreements must be kept”. It is a principle of civil and of international law to the effect that where contracts and other legal agreements are signed, they create obligations which have to be fulfilled.

morality, welfare of minors, protection of the private lives of the parties or where publicity would be contrary to the interest of justice.

### 6.3 Hierarchy of Courts

The Supreme Court is the highest Court in Nigeria. Its decisions are binding on all other Courts. The Court of Appeal hears appeals from the National Industrial Court, Federal High Court, State High Courts, Sharia Courts of Appeal, Customary Courts of Appeal and court-martials. Sharia and Customary Courts of Appeal have jurisdiction in civil proceedings involving Islamic and customary law respectively. Civil or criminal proceedings may be commenced in either the Federal or the State High Court, depending on the nature of the matter. The National Industrial Court has jurisdiction over matters relating to labour and industrial relations. The Magistrate Courts, District Courts, Area Courts and Customary Courts all hear civil and criminal cases.

## CHAPTER SEVEN

### 7 LABOUR & INDUSTRIAL RELATIONS

Employers in Nigeria have statutory duties towards their employees and the authorities. Certain laws are not universally applicable, as application is dependent on the operations or size of the particular employer.

- 7.1 **The Pension Reform Act** was enacted to streamline the administration of Pensions in Nigeria and to ensure sustainability, safety and security of benefits due to employees working for federal, state governments and private establishments. The Act obligates all organisations with at least 5 employees to set up a contributory pension scheme for employees and maintain life insurance policies for them. Employees are required to open Retirement Savings Accounts (RSA) with licensed Pension Fund Administrators of their choice.

Both the employer and the employee are obliged to contribute a minimum of 7.5% each of the employee's monthly emoluments into the Scheme. An employer may choose to bear the full burden of the Scheme, provided that in such a case the employer's contribution shall not be less than 15% of the monthly emoluments of the employee. Furthermore, the Act mandates every company to maintain a Life Insurance Policy for its employees. The sum assured shall be a minimum of three times the annual total emolument of the employee.

- 7.2 **The Employee Housing Scheme (Special Provisions) Act** obligates every employer with over 500 employees to establish and maintain a housing scheme for its employees. Such employers are to submit to the Minister, proposals for the establishment of a housing scheme for their employees.

- 7.3 **The Labour Act** makes provisions for the protection of wages, contracts of employment and terms and conditions of employment. Wages shall become due and payable at the end of each period for which the contract is expressed to subsist, provided that, where the period is more than one month, the wages shall become due and payable at intervals not exceeding one month. Wages must be paid in legal tender and any terms as to the place or manner in which the wages are to be spent shall be void. In addition, every worker is to undergo a medical examination at the expense of the employer. The Act also prescribes the notice period to be given in the event of termination.

- 7.4 **The National Minimum Wage Act** obligates all employers to pay a minimum wage of ₦18,000 per month to every employee under his establishment. Any agreement aside from statutory exemptions for the payment of wages less than the national minimum wage shall be void.
- 7.5 **The National Youth Service Corps Act** was enacted with the aim of developing common ties among Nigerian youth and the general promotion of national unity. Under the Act, every Nigerian is obligated to spend the first year after graduation from a university or polytechnic, in the service of the country. Exceptions to this requirement include those who at the date of graduation, have been conferred with any National Honour, are over the age of thirty, have served in the Nigerian Armed Forces for more than nine months or are members of the Nigerian Security Organisation, State Security Service, National Intelligence Agency or Defence Intelligence Agency. In addition, all prospective employers are obligated to demand a copy of the Certificate of National Service or exemption certificate from a prospective employee prior to employment.
- 7.6 **The Trade Unions Act** provides for the registration and supervision of trade unions. Unregistered Trade Unions are prohibited and applications for registration must be signed by at least fifty (50) members in the case of a trade union of workers, and two (2) members in the case of a trade union of employees. Members of the Nigerian Army, Navy, Air Force, Police Force, Customs Services, the Immigration Services, Prison Services, Nigerian Security Printing and Minting Company Limited, Central Bank of Nigeria and government establishments who are authorised to bear arms are prohibited from forming or joining trade unions. Some major trade unions include:
- Academic Staff Union of Universities (ASUU)
  - Nigeria Labour Congress (NLC)
  - Nigeria Union of Teachers (NUT)
  - Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN)
  - Nigeria Union of Petroleum and Natural Gas Workers (NUPENG)
  - Trade Union Congress of Nigeria (TUC)
  - Nigeria Labour Congress (NLC)
- 7.7 **The Trade Disputes Act** provides the procedure for the settlement of trade disputes and prohibits employers from granting wage increases without Ministerial approval. Where a collective agreement has been executed, the parties are obliged to deposit copies of the agreement with the Minister. Under the Trade Disputes (Essential Services) Act, the President may proscribe a trade union whose members are employed in any essential service if he believes that such a union is engaging in acts which may disrupt the

economy or any essential service or has failed to comply with the statutory procedure for the settlement of trade disputes.

- 7.8 **The Employee's Compensation Act** which replaces the Workmen's Compensation Act provides for compensation for injuries, death, and mental illness arising during the employee's course of employment. Employees are required to inform the employer within 14 days of the occurrence or receipt of the information of the occurrence in every case of an injury or disabling occupational disease to an employee. The Employer is to report to the Nigeria Social Insurance Trust Fund Management Board as well as the state office of the National Council for Occupational Safety and Health within 7 days of its occurrence every injury to an employee that is or is claimed to be one arising out of and in the course of employment.

The Act also creates an "Employees' Compensation Fund" (ECF) which will be managed in the interest of the employees and their employers. It is mandatory for every employer to make a minimum monthly contribution of 1% of its total monthly payroll into the Fund within the first two years of the commencement of the Act. The Employees Compensation Fund is administered by Nigerian Social Insurance Trust Fund - NSITF

- 7.9 **The Factories Act** provides for the registration of premises with the Director of Factories at least six months before the commencement of actual construction of a structure intended to be used as a factory. Failure to register the premises constitutes an offence. In addition, the factory must be kept clean and must not be overcrowded and machinery must be securely fenced.<sup>25</sup> There are also provisions to ensure the maintenance of the health and safety of workers.

---

<sup>25</sup> The Factories Act deems a factory as overcrowded if the number of persons employed at a time in any workroom is such that the amount of cubic space allowed for every person employed is less than 400 cubic feet.

## CHAPTER EIGHT

### 8 INDUSTRY REGULATORS

Regulatory bodies are government agencies established pursuant to respective statutes. They exercise autonomous authority in a regulatory or supervisory capacity.

#### 8.1 Regulatory Authorities

8.1.1 **Central Bank of Nigeria (CBN)** - The CBN is the apex regulatory authority of the banking system. It was established by the Central Bank of Nigeria Act of 1958 and commenced operations on 1st July 1959. Among its primary functions, the Bank promotes monetary stability and a sound financial system. It is banker and financial advisor to the Federal Government, as well as banker of last resort to the banks. The CBN regulates and supervises financial institutions, promoting the development of money and capital markets in Nigeria, with the aim of stimulating financial and economic development.

8.1.2 **Corporate Affairs Commission (CAC)** – The CAC was established by the Companies and Allied Matters Act (CAMA) to regulate the formation, operations and winding up of companies in Nigeria. It is a body corporate with perpetual succession and a common seal which is capable of suing and being sued in its corporate name. In addition, in order to ensure transparency and openness of companies, the CAC has the power to conduct investigations into the affairs of companies where the interests of shareholders and public require it. It is also pertinent to note that only accredited professionals (legal practitioners, chartered accountants and chartered secretaries) are allowed to transact business with the CAC. All companies registered in Nigeria are required to make the following statutory returns at the CAC:

- Allotment or transfer of shares
- Alteration of Memorandum and Articles of Association
- Changes in the composition of the Board of Directors
- Change of the registered address or name
- Change of the Company Secretary
- Charges and their satisfaction
- Annual Returns
- Increase or decrease in share capital
- Re-registration and conversion of the company

**8.1.3 Customs and Excise** – The Nigerian Customs Service is responsible for revenue collection and accounting as well as anti-smuggling activities. The Nigerian Customs Services is also the primary body concerned with monitoring the importation and exportation of goods in and out of Nigeria. Import duties in Nigeria usually fluctuate in the direction of the policy thrust of government at any given period. For instance, duty on raw materials required in the manufacture of cement, pharmaceutical as well as printing are prohibited, in order to encourage local manufacturing and provision of such goods and services which would improve the economy of Nigeria.

The Nigerian Customs, Excise, Tariff etc. (Consolidation) Act provides a list of items that are prohibited from importation into Nigeria, which include birds, bird eggs, pork, beef, cassava, spaghetti, noodles, refined vegetables, juices, drinking water, bagged cement, pharmaceutical waste products, detergent products, textiles, used air conditioners, freezers and refrigerators, cars that are over ten years old, ballpoint pens, cowries, air pistols, counterfeit and printed materials, white phosphorus matches, second hand clothing, nuclear and toxic waste and indecent publications.

**8.1.4 Standards Organization of Nigeria (SON)** - The Standards Organization of Nigeria is a body responsible for the standardization and quality control of products in Nigeria. The body ensures compliance with government policies on standardization and quality of products both locally manufactured and imported. The SON cooperates with corresponding national and international organizations with a view to securing uniformity in standards specifications. It has the power to confiscate and destroy substandard products and seal factories which are found to produce substandard or defective goods and products. The certification of products is carried out through conformity assessment (i.e. the procedure for determining whether a process, product or service fulfills the relevant requirements). Conformity assessments in SON involve factory inspection, testing, certification, auditing and surveillance, among others.

**8.1.5 National Agency for Food and Drug Administration and Control (NAFDAC)** - The NAFDAC was established to regulate and control the manufacturing, importation, exportation, advertisement, distribution, sale and use of food, drugs cosmetics, medical devices and chemicals in Nigeria. The agency established a quality assurance system and the certification of product sites to ensure compliance with standard specifications as approved by the NAFDAC Governing Council. NAFDAC's primary responsibility is to checkmate the production, sale and distribution of illicit and counterfeit products in combating the threats posed by counterfeit pharmaceuticals.

8.1.6 **National Insurance Commission (NAICOM)** - NAICOM is charged with regulating the insurance sector. It regulates transactions between insurers and reinsurers in Nigeria and those outside Nigeria and acts as adviser to the Federal Government on all insurance related matters. It protects insurance policy-holders and beneficiaries and third parties to insurance contracts and advises Government agencies on matters relating to insurance in any agreements to which Nigeria is a signatory. It is also the responsibility of NAICOM to establish a bureau to which complaints, against any insurer, reinsurer, insurance broker or loss adjuster can be lodged.

8.1.7 **Nigerian Stock Exchange (NSE)** - The NSE is regulated by the Securities and Exchange Commission which has the mandate of surveillance over the NSE to forestall breaches of market rules and to deter and detect unfair manipulations and trading practices. Foreign brokers are permitted to list as dealers on the NSE and investors of any nationality are free to invest in quoted entities. Nigerian companies are also permitted multiple and cross border listings on foreign stock exchanges.

The NSE is made up of Equities market (which comprises of the Main Board and the Alternative Securities Market) and the Bond market (which comprises of Corporate Bonds and Debentures, Federal Governments Bonds, State and Local Government Bonds). As at July 2013, the NSE's total market capitalization was estimated at approximately ₦11.56 trillion.

The Main Board primarily features shares of large companies. Issuers admitted to this Board can access an unlimited amount in funds from the public. The major criteria for the admission on the Main Board are as follows:

- The company must be registered as a Public Limited Liability Company as required under the Companies and Allied Matters Act.
- At least 20% of share capital must be offered to the Nigerian public
- The number of shareholders of the company must not be less than 300
- The issuer is required to pay an annual listing fee based on market capitalization.

The Main Board features companies operating in twelve (12) or sectors which includes, Agriculture, Construction/Real Estate, Consumer Goods, Financial Services, Health care, Industrial goods, Information and Communications technology, Oil and GAS, Natural Resources and Utilities and Conglomerates.

The Alternative Securities Market (ASEM) on the other hand features small to medium size enterprises (SMEs). The ASEM features companies operating in the same sector as the Main board and provides smaller companies the opportunity to access the capital



market through more flexible listing rules and requirements. Issuers, especially indigenous companies who cannot meet the listing requirements of the Main Board may consider this alternative for accessing the many benefits provided by the capital market. The important criteria for admission on the ASEM board are as follows:

- The company must be registered as a Public Limited Liability Company under the provisions of the Companies & Allied Matters Act 2004
- At least 15% of the company's share capital must be offered to the Company
- The shareholders must not be less than 51
- The issuer must pay a flat rate as annual listing fee.

**8.1.8 Securities and Exchange Commission (SEC)** - The Securities and Exchange Commission (SEC) is established by the Investments and Securities Act. It is the regulatory institution of the Nigerian Capital Market. It regulates operators in the Nigerian Capital Market and oversees the investment and securities business in Nigeria. It also undertakes audits of any participant in the market whenever necessary and investigates alleged breaches of Capital Market regulations and sanctions errant parties where appropriate.

**8.1.9 Department of Petroleum Resources (DPR)** - The DPR was established to supervise petroleum industry operations being carried out under licenses and leases in Nigeria in order to ensure compliance with applicable laws and regulations. The DPR enforces safety and environmental regulations ensuring that oil operations conform to national and international industry practices and standards.

It has the power to sanction companies that operate in the Oil and Gas industry without prior registration and permission. The DPR also conducts inspections and assessments of the facilities of all new applicants, prior to the consideration of the issuance of permits or licenses. The following are some of the licenses/permits granted by the DPR for operators in the Oil and Gas Industry:

- License to operate a drilling rig or operate petrol stations and product storage depot
- Industrial consumer license
- License for surface tank
- Storage and sale of kerosene
- Bunkering operations and coastal vessel licenses.
- Off shore safety permit

**8.1.20 National Office for Technology Acquisition and Promotion – NOTAP** is the government agency charged with the responsibility of overseeing the registration of agreements related to the transfer of technology, skills and know-how. Specifically, the

NOTAP Act provides that any agreement between a Nigerian company and a foreign entity that involves the rendition of technical or managerial assistance or the transfer or use of technology, trademarks or patented inventions or the supply of technical expertise, engineering, machinery or plant; or the provision of operating staff and the training of personnel , must be approved by NOTAP. The requirement for registration is particularly necessary where such agreement involves the payment of fees to the foreign entity. Non-registration of any relevant agreement will frustrate the transfer of funds from the Nigerian company abroad.

8.1.21 **Special Control Unit against Money Laundering (SCUML)** – The SCUML was established in 2005 as a special unit to fight money laundering as spelt out in the Money Laundering (Prohibition) ML(P) Act of 2004, now 2011. It has the mandate to monitor, supervise and regulate the activities of all Designated Non-Financial Institutions (DNFIs) in Nigeria in consonance with the Country's Anti Money Laundering and Combating of the Financing of Terrorism (AML/CFT) regime. The DNFI is sector largely informal and transactions are mainly cash-based, thus requiring the effective monitoring by the relevant government agency. SCUML has offices in Abuja, Port Harcourt, Lagos and Kano.

## CHAPTER NINE

### 9 Professional Associations

Almost all professions regulate themselves to ensure that they maintain their good reputation, providing mechanisms to sanction errant members. Lawyers, accountants, tax specialists, engineers and architects to name a few, all have regulatory bodies usually established by statute. The following are examples of professional associations:

- 9.1 Advertising Practitioners Council of Nigeria (APCON).
- 9.2 Advertising Practitioners Council of Nigeria.
- 9.3 Association of General & Private Medical Practitioners of Nigeria.
- 9.4 Association of National Accountants of Nigeria (ANAN).
- 9.5 Chartered Institute of Bankers in Nigeria (CIBN).
- 9.6 Chartered Institute of Marketing of Nigeria.
- 9.7 Chartered Institute of Stockbrokers.
- 9.8 Chartered Institute of Taxation in Nigeria (CITN).
- 9.9 Council of the Regulation of Engineering in Nigeria (COREN).
- 9.10 Institute of Chartered Accounts of Nigeria (ICAN).
- 9.11 Institute of Chartered Economists of Nigeria.
- 9.12 Institute of Directors.
- 9.13 Institute of Finance & Control of Nigeria.
- 9.14 Insurance Institute of Nigeria.
- 9.15 Manufacturers Association of Nigeria.
- 9.16 Nigeria Institute of Estate Surveyors & Valuers (NIESV).
- 9.17 Nigerian Bar Association.
- 9.18 Nigerian Institute of Management.
- 9.19 Nigerian Medical Association.
- 9.20 Nigerian Society of Engineers.
- 9.21 Pharmacist's Council of Nigeria.
- 9.22 West African Institute for Financial & Economic Management.

