



Nigeria

Nigeria is rich in opportunity, but a challenging environment to operate in. Bayo Odubeko offers some survival tips

By the year 2025, Nigeria is expected to have grown to be the largest economy on the African continent, which itself is expanding rapidly. The number of organisations seeking a strategy to operate successfully in Nigeria rises daily. Many companies have already invested considerable resource to establish themselves in Nigeria, notably Standard Bank Group whose chairman, Fred Phaswana, praised the country's "economic vibrancy".

While rich in opportunity, Nigeria is perceived as a challenging place in which to operate because of its reputation for corruption. Nevertheless, the sheer potential of Nigeria's oil, trading and agricultural-based economy and its large population of more than 170 million inhabitants mean that many companies see the country as a critical growth opportunity.

Nigeria is a relatively sophisticated jurisdiction in which to do business. The same business structures and organisations that exist in developed Western economies are available in

Nigeria. For example, businesses may be formed as sole proprietorships, general partnerships, limited partnerships/limited liability partnerships and limited liability companies.

The Corporate Affairs Commission is responsible for the regulation and supervision of the formation, registration, management and winding-up of companies, and is the Nigerian equivalent of the UK Companies House. Subject to certain exceptions, the Companies and Allied Matters Act (CAMA) provides that no foreign company shall carry on business in Nigeria unless it is incorporated there. Accordingly, foreign companies need to incorporate a Nigerian subsidiary in order to operate in the country.

Nigerian companies may issue shares of different classes and most forms of securities. A notable exception under the CAMA is that Nigerian companies may not issue warrants, as this is prohibited, but options may be issued.

Nigerian companies may grant security over their assets in the same way as

companies in the UK and other developed economies. The usual forms of security – mortgages, fixed and floating charges, pledges, guarantees and indemnities – can all be created under Nigerian law. Security needs to be registered under the CAMA and such registration must be preceded by the payment of stamp duty at an *ad valorem* rate. Due to this requirement, it is not unusual to find that many securities in Nigeria are not stamped or registered, and would sometimes only be so stamped and registered if enforcement was required. In addition, where security is created over immovable property, the consent of the governor of the state is also required for the security to be valid and enforceable.

Foreign involvement

Foreign nationals may own 100% equity in a Nigerian company and may undertake any type of business in Nigeria save for those in the excluded list, such as arms dealing and narcotics (which are excluded to both foreign and Nigerian nationals). Unrestricted foreign ownership is permitted except in specific industries, such as the domestic coastal marine industry. In other industries, such as the oil and gas industry, the participation of indigenous companies is promoted, although there is no express prohibition on the participation of non-indigenous companies.

Any Nigerian company with foreign participation is required to register as a foreign enterprise with the Nigerian Investment Promotion Commission (NIPC). The NIPC issues a business permit certificate upon registration. In practice, a company may commence business immediately after incorporation while application for a business permit is pending with the NIPC. Employment of expatriates is subject to the approval of the Federal



COUNTRY FILE

Population size: 170,123,740

Area: 923,768km²

% growth in 2011: 7.69

Type of govt: Republic

Official language: English

Capital city: Abuja

Largest state: Lagos

GDP (PPP): \$418.7bn*

Central govt debt as a proportion of GDP: 17.9%**

Currency: Nigerian naira (NGN)

Currency rate against the pound: 251



Traditional Nigerian folk dancing



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TOP TIPS FOR DOING BUSINESS IN NIGERIA

- 1 Do your due diligence – thorough legal, commercial and financial diligence is key. But the documents will only tell you so much. What is the reputation of your sponsor, the company you are proposing to invest in and/or partner?
- 2 Identify and partner with a reputable local entity that is able to assist with navigating the regulatory and business environment.
- 3 Ensure there is an alignment of interests with any local partner and genuine risk-sharing.
- 4 Ensure that your Nigerian business has operational processes from the outset that promote appropriate business ethics, risk assessment and corporate governance.
- 5 Engage the right advisers – legal, accounting and financial.

Ministry of Interior, though the Nigerian Immigration Service may issue temporary work permits for expatriates intending to work in Nigeria for a maximum of six months to enable such expatriates to undertake work of a temporary nature.

There are no restrictions on bringing capital into Nigeria. Accordingly, there are no mandatory requirements that a foreign lender needs to comply with in order to advance a loan to a Nigerian borrower, and likewise, a foreign investor need comply with no additional requirement to subscribe for shares in a Nigerian company. But in order to remit interest or principal (in the case of a loan) to an overseas lender or dividends or proceeds of a share sale (in the case of an equity subscription) to an overseas shareholder, Nigeria's FX regulations require that a certificate of capital importation (CCI) issued by a Nigerian bank is obtained at the time the loan or equity investment is made. Without a CCI, a borrower or company will be unable to access the FX market to obtain the necessary FX to make interest, principal or dividend payments.

Enforcement of judgments

A judgment obtained in the courts of a country that accords reciprocal treatment to the judgments of Nigerian courts may be enforced pursuant to the Reciprocal

Enforcement of Judgments Act (in respect of an English judgment) or the Foreign Judgments (Reciprocal Enforcement) Act. A foreign judgment will not, however, be enforced if, among other factors, it is contrary to Nigeria's public policy, or it is made by the court of a country that has no jurisdiction over the matter.

With respect to foreign arbitral awards, Nigeria is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Bilateral investment treaties

Nigeria is party to bilateral investment treaties with many countries, including the UK, Canada, South Africa, France and China. A bilateral investment treaty is an agreement that establishes the terms and conditions for private investment by nationals and companies of one state in another state. Bilateral investment treaties generally grant investments made by an investor of one contracting state in the territory of another contracting state; a number of assurances, including fair and equitable treatment; protection from expropriation; and a method of dispute resolution against the host state.

Anti-bribery and corruption

Corruption and bureaucracy are well documented in Nigeria and in the past

this has often led investors to overlook the country's wealth of opportunity, rather than recognise the existence or sophistication of its legal or regulatory framework.

Given the existence of the UK Bribery Act 2010, US Foreign Corrupt Practices Act and OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, among other laws, how does a foreign investor operate in a country such as Nigeria without falling foul of such laws? Nigeria does not have a monopoly on bribery and corruption and is affected by these issues in much the same way as many other emerging markets where the allure of substantial risk-adjusted rewards continues to attract entrepreneurs. Continuous anti-bribery risk assessment and adoption of internal compliance policies and processes are imperative to operating in Nigeria – or any other emerged or emerging market. ♡



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