



Doing Business in Nigeria

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DOING BUSINESS IN NIGERIA

This is a guide to doing business in Nigeria. It is a general overview of the Nigerian political, economic and legal environment. It is by no means an exhaustive work on investment in Nigeria. It simply sets out the basic information on business in Nigeria and recourse to other research materials is encouraged. We disclaim any responsibility for any loss or damage suffered by any person on account of reliance on this work.

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Introduction

1. A General Overview of Nigeria.

Nigeria is located in Western Africa bordering on the Gulf of Guinea between Cameroon and Benin. The country is bordered on the west by the Republic of Benin 773km, and, Cameroon 1,690km, on the north by Niger 1,497km and Chad Republic 80km, and south by the Atlantic Ocean. Nigeria became an independent state in 1960, having being under Britain since 1861. The overall area of the Federal Republic of Nigeria is 923, 768 sq km.

Nigeria is divided into 4 main political regions, with a further division into 36 states and 1 territory. The latest national population census taken in July, 2006 puts the total population of Nigeria at 140 million. The largest population concentration is in Lagos which is also where most of the economic and industrial activity takes place in. Other

major cities and industrial centres include Port-Harcourt, Onitsha, Kano, Aba e.t.c

The country's legal system is based on English Common law, Islamic law, customary law, Case law, and Statutory law

Nigeria has three major ethnic groups: Hausa, Yoruba and Ibo. The official language is English. The main religions are Christianity, Islam, and indigenous beliefs.

Nigeria is rich in wide range of natural mineral resources which includes petroleum, iron ore, lead, zinc, hydropower, coal, arable land, natural gas, limestone, and has her major industries in Oil & Gas, Tin, Columbite, Palm Oil, Peanut, Cotton, Rubber, Wood, Hides & Skin, Textile, Cement, Food products, Footwear, Chemicals, Ceramics and Steel, e.t.c. Agriculture is an important component of the economy and the cultivation of cash crops like Cocoa, peanut, Palm Oil, Rubber, is extensively exploited.

The Climate in Nigeria differs depending on the geographical region. The climate in the north and centre is tropical while that of the south is equatorial. There are basically only two seasons in the country: the dry season and the rainy season.

Nigerian time is one hour ahead of the GMT and her currency is measured in Naira (N).

Nigeria is a member or affiliated to several international organisations. The list includes but is not limited to: African Union, ECOWAS, OPEC, UNESCO, UN, UNHCR, WHO, amongst others.

STATUTORY HOLIDAYS

New Year's Day	1 January
May Day	1 May
Democracy day	29 May
Independence Day	1 October
Christmas Day	25 December
Boxing Day	26 December
Democracy Day	29 May
Id-el-Malud*	
Id-el-Fitri*	
Id-el-Kabir*	

These are movable holidays and are therefore subject to ratification by the Federal Government.

NOTABLE DATES

Armed Forces Remembrance Day	15 January
Saint Valentine's Day	14 February
Children's Day	27 May
Mother's Day	18 March
Father's Day	17 June

2. Political System

The Nigerian political system is constituted three tiers of government which are distinctive and inter-related. They are the executive, the legislature and the judiciary. Each level exists separately and is

political independent of the others. The country is further divided into the national, the state and the local government.

1.1 The Presidency

The president is the head of state and Commander-in-Chief of the Armed Forces. The president is elected into office for a term of four years and is subject to a maximum of 2 terms. The president's powers are derived from the Constitution of the Federal Republic of Nigeria and Legislations passed by the legislative arm of government.

1.2 The Legislature

The legislative arm of the Federal government of Nigeria is the National Assembly. The National Assembly is composed of the Senate, which is the Upper House, and the House of Representatives, the Lower House. The senate is made up of 3 members each from the 36 states of Nigeria in addition to 1 member representing the Federal Capital Territory. The Senate is headed by a president elected from among the senators. The House of Representatives consists of members elected from the Federal Constituencies in each state of the Federation. The House is headed by a Speaker elected from among the members. Deliberations in the different Houses are conducted in accordance with the legislative process specified in the Constitution.

The National Assembly is constituted to ensure the adequate representation of the people in the various constituencies and to ensure effective participation by the people in government policies.

The legislative functions of the National Assembly includes conducting a national forum for public consideration of issues, deliberation people oriented bills, scrutinizing and overseeing executive action and ensuring the continuous growth and evolution

of Nigerian laws. The National Assembly, specifically the Senate, is empowered by law to approve certain political appointments proposed by the Executive.

The members of the National Assembly are elected for a term of 4 years.

1.3 The Judiciary

The Nigerian judiciary is founded on the English Common law, a result of British colonization. However, Nigerian legislations and judicial pronouncements have filled the deficiencies of the Common law as it applies to the specific socio-cultural environment in the country.

As previously noted, the sources of Nigerian law today are the constitution, common law and customary law, case law and statutory law. While the National Assembly is the sovereign legislative body, government ministers and other public office holders have limited powers to promulgate regulations, and each level of government (the state government and the local government) can legislate on matters of local interest, in so far as such laws, regulations, rules or policies are promulgated in the manner as set out by the Constitution and do not derogate from or contravene the provisions of the Constitution.

The hierarchy of courts in Nigeria include the Supreme Court, which is the apex court of the country, the Court has original and appellate jurisdiction in certain constitutional, civil and criminal matters as stated in the Constitution. The Court of Appeal hears appeal from the Federal High Court, the High Court of a State, the Sharia Court of Appeal of a State, the Customary Court of Appeal of a State. At the state level, there also exists, native courts, Magistrate courts.

Nigeria has an independent High Court judiciary which has jurisdiction to hear and determine both civil and criminal

proceedings. There exists a distinction in the Constitution as to the jurisdiction of the State High Court as against that of the Federal High Court.

The practice of law in Nigeria is fused, that is, there is no distinction between a solicitor and an advocate. Upon being called to the bar, a legal practitioner is entitled to a right of appearance in any court in Nigeria and to represent his/her client in the capacity of either a solicitor or as an advocate.

There also exists specialist courts to deal with certain specific issues; however, some of these courts have been abolished by legislation. An example of these courts is the Failed Bank Tribunal.

3. Economic Overview

The Nigerian economy is primarily based on free market principles, with some areas of state control. Foreign investment is being actively encouraged by both the private and public sectors in all facets of the economy. This is evident from the government's foreign investment policies and the various regulatory frameworks.

With the exception of banking, insurance and broadcasting industries, the various regulatory laws impose no restrictions on foreign ownership of local companies and businesses. The Nigerian Government is however committed to the economic empowerment of its citizenry, thus, varied categories of incentives are incorporated in the various regulatory laws geared at increasing the number of companies owned by its populace.

The Nigerian economy is dependent mainly on oil exploitation. The oil and gas sector of the country accounts for over 90% of her foreign exchange earnings. However, effort is being made to energize the manufacturing and agricultural sectors of the country. Mining and industry operate mainly in accordance with free market principles. There exists state control with regards to the use of the country's

harbours and airports. There are national suppliers of electric power, radio and television broadcasting and telecommunication services. Recently, there has been a substantial degree of deregulation and some privatisation and restructuring of state-owned enterprises. In light of this, the government has opened up the telecommunications market by awarding licenses for the Global System for Mobile Telecommunications (GSM). This action has successfully improved the country's domestic and international telecommunication services. The government plans to invest more in the improvement and maintenance of social and economic infrastructure. In this vein, priority is being given to the total overhaul of the country's power company, the road networks and health care systems.

The Country's airways are also being expanded with more international and internal carriers being given licenses to operate in Nigeria. The country has established international air links with most major foreign cities and a number of foreign airlines.

The Nigerian manufacturing industry is capable of producing most of the requirements of Nigeria and many licenses to manufacture are held by local businesses from overseas principals. Exports from and imports into South Africa are comparatively unrestricted, although a ban exists on the importation of certain products in order to ensure the growth of the country's manufacturing industry.

The country's financial infrastructure is well developed with advanced money markets and capital markets. The money market is predicated on the issuance of short term securities by the Central Bank of Nigeria. These securities once issued, are taken up by banks and other financial institutions for placement with individuals and businesses. The market comprises of, on one hand, the regulators; the Central Bank of Nigeria (CBN), the Nigeria Deposit Insurance

Corporation (NDIC) and the National Insurance Commission (NAICOM), and on the other hand, Banks, and Non-bank Financial Institutions (NBFI). The CBN is charged with the maintenance of a sound and stable financial system. The NDIC is responsible of insuring the deposit liabilities of licensed banks and providing depositors with assistance in the event of any financial difficulties involving the banks. Finally, the NAICOM is responsible for the regulation of insurance practice in Nigeria.

The capital market is made up of a regulator, stock exchange and stock brokers. The Securities and Exchange Commission regulates the activities in the capital market in accordance with the Investment Securities Act, LFN 2004. The country boast of a wide array of financially sound and established commercial, merchant, and investment banks, both domestic and international, listed shares and debentures, stocks and bonds and options on those shares and debentures are traded on the Nigerian Stock Exchange (NSE). The NSE is the only exchange operating in Nigeria with trading floors in the major cities of the country. The Exchange has undergone major changes in the last few years with the commissioning of the Central Securities Clearing System (CSCS), by which transactions are completed in T+1 day. The Federal Government in 1995 liberalised the Nigerian capital market to ensure the participation of foreigners in the Nigerian Market both as operators and investors. This was facilitated by the abrogation of laws like Exchange Control Act 1962, Nigerian Enterprise Promotion Act, 1989.

The labour market in Nigeria consist of readily available skilled professional in many technical fields required for the effective operation of a business, however, there is a gross over-supply labour and accordingly, a very high level of unemployment. The government is tackling the issue of unemployment by creating more jobs and

promoting programmes aimed at self employment. Incentives are given to men and women who are engaged in small time business and are themselves employers of labour. There are several governmental and non-governmental organisations involved in assisting the establishment of new businesses, and in the funding of projects and schemes among disadvantaged communities and individuals.

Trade unions are active and ensure the fair treatment of employees both by the government and other employers of labour.

4. International Relations

Nigeria's foreign policy objectives are closely aligned to its domestic objectives as a developing nation – and her focus is on the promotion of human rights, the alleviation of poverty, the advancement of its citizenry, the prevention of conflict and most particularly on the advancement of sustainable development and corporate social responsibility. Nigerian has to a large extent positioned itself as the Big Brother of the African continent with its prominent role in international relations and has been involved in a series of initiatives at both a political and economic level to promote and advance African interests and peace in Africa, including brokering peace in African nations torn apart by religious, social and cultural conflicts. Nigeria is a prominent member of several international organisations such as the United Nations, the Commonwealth and African Union, World Health Organization ECOWAS, G-15, G-77, OPEC, IMF, and has diplomatic relations with over 150 nations.

NIGERIA AND THE AFRICAN UNION

Nigeria is one of the founding members of the African Union (AU), which replaced the Organisation of African Unity (OAU) in 2001 as the main multilateral body in Africa. The objectives of the AU are essentially the reality of a common African currency, foreign policy, defence structure and economic empowerment. Its objectives also include the political and economic advancement of African countries and the strengthening of relations between the nations of Africa.

NIGERIA AND THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

Nigeria is also one of the founding members of the ECOWAS, an organization comprising of 16 West African States, established in May 1975. The organization was established to ensure trade between States in the Western region and to facilitate the development of the region.

II. INVESTMENT IN NIGERIA: REGULATIONS AND REGULATORY AGENCIES AND OTHER RELATED MATTERS

Developments in Nigeria's investment policy have been significantly influenced by foreign investment, both in cash and in kind, which plays a key role in the development of Nigeria.

There are several laws which regulate investment in the Nigeria economy. The following are the most important:

1. THE LAWS

Investment and Securities Act (ISA), 1999

The ISA as a law embodies comprehensive provisions on issues relating to securities and investments in Nigeria. The major provisions of the ISA are as follows:

- i. The ISA provides for the establishment of an Investment and Securities Tribunal to settle any dispute arising from the operators of capital market and exchanges in Nigeria.
- ii. The ISA includes a provision for the electronic transfer of registered shares.
- iii. Transfer of shares by private companies with alien participation no longer requires the approval of SEC with respect to merger, acquisition or other forms of business combination.
- iv. The ISA further provides for the establishment of an Investor Protection Fund (IPF), which is used to compensate investors who suffer any pecuniary loss from the misuse of assets by a member of a stock exchange and any directors/employees of the capital market operators.

The ISA further provides for the obligatory maintenance of accounts for clients' funds by market operators, dealers, amongst others, separate from their business accounts. The ISA also covers the public offer and sale of securities and investments to the public, mergers, takeovers and acquisition, investment schemes, registration of securities and registration of interests in securities and capital market operators, amongst others.

Nigerian Investment Promotion Commission (NIPC) Act, 1995

The NIPC Act established the NIPC as an investment promotion agency of the Federal Government. The NIPC is charged with the responsibility of registering foreign investments in Nigeria. It is also part of its responsibility to maintain close cooperation between investors and ministers, the relevant government departments, institutional lenders and other bodies concerned with investments.

With the abrogation of the Nigerian Enterprises Promotion Act, 1989, the ceiling on foreign investment in Nigeria has been removed with the exception of restrictions relating to items on the “negative list”. Items listed under the negative list are within the exclusive preserve of the government of Nigeria.

Items contained in the negative list are:

- The production of arms and ammunition,
- Narcotics and psychotropic substances, and
- The production of military, para-military, police, customs, immigration and prison service uniforms and accessories.

Important improvements made by the NIPC Act include:

- i. The procurement and repayment of foreign loans and interest by Nigeria companies without first obtaining ministerial approval.
- ii. Foreign portfolio investment in Nigerian-quoted companies through the Nigerian Stock Exchange.
- iii. The remittance of dividends, and interests by guaranteeing to foreigners the unrestricted transferability of dividends or profits attributed to foreign investments in Nigeria and the repatriation of capital in the event of liquidation without the requirement of approval by the minister.

Companies and Allied Matters Act, LFN 2004

By the provisions of the act, an alien or foreign company may join in forming a company subject to the provisions of any law regulating the right and capacity of aliens to engage in trade or business in Nigeria. Any foreign company intending to trade in Nigeria must ensure that all the necessary requirements for incorporation as a separate entity in Nigeria is complied with. Without such compliance, the foreign company shall not have a place of business in Nigeria for any purpose other than the receipts of notice and other documents. There is, however, a provision for exemption of a foreign company from the requirement of registration. The Federal Executive Council is empowered by Section 56 of the Act to exempt a foreign company eligible for exemption under the conditions listed within the section. They are as follows:

(a) Foreign companies (other than those specified in paragraph (d) (below) invited to Nigeria by or with the approval of the Federal Government to execute any specified loan project;

(b) Foreign companies, which are in Nigeria for the execution of specified individual loan project on behalf of a donor country or international organization;

(c) Foreign government-owned companies engaged solely in export promotion activities; and

(d) Engineering consultants and technical experts engaged on any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other or person, where such contract has been approved by the Federal government

Exemption from the local incorporation requirement may confer tax-free status on the beneficiary for the duration of the exemption.

2. THE AGENCIES

Several regulatory agencies exist under the relevant laws. Only a few will be highlighted herein.

The Corporate Affairs Commission (CAC)

The Companies and Allied Matters Act established the CAC and charges it with the responsibility of administering the Act, supervision and formation, incorporation and registration, management and winding-up of companies. The CAC is also empowered to conduct inquiries and investigation into the affairs of any company in Nigeria in order to ensure the protection of the interests of shareholders and investors.

The Central Bank of Nigeria (CBN)

The CBN was established by the CBN Act of 1959, which Act was repealed and replaced by the Act of 1991.

The major responsibilities of the CBN are stated by the Act and the Banks and Other Financial Institutions Act, 1991. Its functions include:

- i. The issuance of legal tender currency in Nigeria
- ii. Maintenance of the country's external reserve at levels considered appropriate for the Nigerian monetary system.
- iii. Safeguarding the international value of the Naira.
- iv. Granting of licenses, supervision and regulation of the activities of banking and non-banking financial institutions.

- v. Financial adviser and banker to the Federal Government of Nigeria.

Securities and Exchange Commission (SEC)

The functions of the Commission as stated under the Investment and Securities Act, 1999 includes the regulation of investments and securities business in Nigeria, registration of Securities Exchanges, Capital Trade Points and any other recognized Investment Exchanges, registration of securities to be offered for subscription or sale to the public. The Commission is also charged with ensuring the registration and regulation of central depository companies and clearing and settlement companies, custodians of securities and such other agencies and intermediaries; acting as a regulatory apex organization for the Nigerian capital market; registration and regulation of corporate and individual capital market operators, amongst others.

Nigerian Stock Exchange (NSE)

The NSE is the recognized market for trading in stocks, bonds, share and debentures of companies and government. The NSE is regulated by the rules formulated by the Council members for the operation of the Exchange.

Nigerian Investment Promotion Commission (NIPC)

The NIPC serves as the investment promotion agency of the Federal Government and its functions include: the coordination and monitoring of investment promotion activities in Nigeria; registration and maintenance of an accurate record of foreign investments in Nigeria; provision of assistance and aid to incoming and existing investors; acting as liaison between investors, government

departments, agencies and other institutions connected with investments in Nigeria.

Every Nigerian company with foreign shareholding is obliged by law to register with the NIPC before commencing business.

3. THE INCENTIVES

There are several incentives designed by the Federal Government to boost investment in Nigeria.

Pioneer Status

Under the Industrial Development (Income Tax Relief) Act, LFN 2004, pioneer status is granted to a company upon the fulfilment of the following conditions:

- i. The company must be incorporated as a public company
- ii. Investment must be related to industry or products designated as pioneer, e.g., agro-allied, solid minerals, and
- iii. The estimated cost of qualifying capital expenditure on or before production date is not less than N50, 000 for an indigenous company and N150, 000 in any other case.

Pioneer status is granted only to a company upon specific application to the NIPC. A pioneer status exempts the company from taxes for an initial period of three years but may be extended for addition period of two years

Relief in respect of Commonwealth Income Tax

By Section 44 of the Companies Income Tax Act, LFN 2004, a Nigerian company that is liable to pay commonwealth income tax will be entitled to relief from tax payable in Nigeria as follows:

- i. If the commonwealth rate does not exceed one half of the rate of tax under this Act, the rate at which relief is to be given shall be the commonwealth rate of tax;
- ii. In any other case, the rate at which relief is to be given shall be half the rate of tax under the Act.

Relief in respect of Interest on any foreign loan

Under the Companies Income Tax Act, LFN 2004, where any foreign loan of an amount not less than N150, 000 is granted by a foreign company to any person carrying on trade or business in Nigeria and is repayable within a period of not less than ten years, the interest derived by the foreign company from the loan shall be exempted from tax, but the loan is repayable within a period of not less than five years, the interest accruing on the loan will be charged half the rate of tax due.

Export Development Fund (EDF)

The EDF is a special fund set up by the government to provide financial assistance to private sector exporting companies to cover part of their initial expenses in respect of export promotion activities, participation in training course, symposia, seminar and workshops on all aspects of export promotion, etc. The EDF is administered by the Nigerian Export Promotion Council (NEPC).

Duty Drawback/Suspension Scheme

This scheme is administered by the NEPC. Under this scheme, exporters/producers can import raw materials and intermediate products for use in the manufacture of export products free of import duty and other indirect taxes and charges. The exporter can also claim a refund of duties already paid on imported inputs and

apply for exemption from or suspension of, import duty prior to actual importation.

Currency Retention Scheme

Under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, LFN 2004, exporters may open and maintain a foreign currency domiciliary account into which export proceeds can be paid and retained. Funds in the account can be sold in the Inter-bank foreign exchange market (IFEM).

Investment & Repatriation Mechanisms

The Nigerian Investment Promotion Commission Decree 1995 and the Foreign Exchange Monitoring & Miscellaneous Provisions Decree 1995 guarantees foreign investors unrestricted remittance of dividends or profits (net of applicable tax 10%) derivable from foreign investment in Nigeria. This is upon production of proper evidence of Capital Importation usually issued by the banks as agents of the Central bank of Nigeria. The law further guarantees the repatriation of the capital at the end of the project (in this case on liquidation).

Returns on investment, interest payments, dividends, etc can be repatriated using a combination of the mechanisms allowed under the existing foreign exchange guidelines through banks as agents of the Central Bank of Nigeria.

4. Export & Import Policy

Nigeria actively encourages exports and provides assistance and information to that end, although within the limits required by the relevant laws. Few restrictions on exports are imposed. However, certain products are strictly controlled normally by means of an

export ban. Generally, all goods (raw materials or finished products) are exportable from Nigeria except the following:

- Maize and yam
- Timber (rough or sawn), excluding furniture components, railway slippers, floor and ceiling tiles, doors, windows, and pallet.
- Raw hides and skin (including wet blue and all unfinished leather)
- Scrap metals
- Unprocessed rubber latex and rubber lumps
- Artefacts and Antiquities
- Wild life animals classified as Endangered species and their products e.g. crocodile, Elephant, Lizard, Eagle, Monkey, Zebra, Lion etc.
- Raw palm kernel
- Unprocessed rubber and rubber lumps
- Beans
- Rice
- Cassava

Any individual or company doing business in Nigeria may export goods from Nigeria if duly registered with the NEPC. The NEPC is responsible for the development of exports, promotion of export markets, and assistance in securing prompt payment for exports amongst other things.

In view of the incessant violations of the importation guidelines into Nigeria, the Foreign Exchange and Trade Relations Department of the Federal Ministry of Finance in 2007 published the following guidelines:

The formalities to be observed by importers and other parties in Nigeria wishing to import and/or pay for goods into the country are:

(1) All persons intending to import goods into Nigeria are required in the first instance to process their Form M through any bank irrespective of the value and whether payment is involved or not.

(2) Consignments shall bear name of products, country of origin, specifications, date of manufacture, batch or lot number, standard(s) to which they were produced (e.g. BS, DIN, ISO/IEC, NIS etc.)

(3) Foodstuff (including drinks), pharmaceuticals and chemicals should carry expiry dates and/or shelf life and specify active ingredients where applicable on their packaging. The expiry date should be at least half the shelf life as at time of inspection.

(4) All electronic equipment/items and instruments MUST carry INSTRUCTIONAL MANUAL and diagrams and notations on the containers.

(5) All electronic equipment/items and other instruments MUST carry SAFETY information and /or safety signs

(6) All electronic equipment/items and other items where applicable MUST carry a GUARANTY/WARRANTY of at least six months.

(7) Computer hardware and software must be year 2000 compliant.

(8) Plant materials, whether for planting consumption or industry shall be covered with phytosanitary certificate of the country of export, certifying that the plant material was inspected and found

free from pest and that some treatment has been made where applicable in line with the International Plants Protection Convention of FAO.

(9) Every manufactured item including components and spare parts shall be branded and bear manufacture names.

(10) Electrical appliances (Fluorescent lamps, electric bulbs, electric irons, kettles etc) are required to carry information about their life performance whilst cables must carry information on their rating.

(11) Misrepresentation of product specification will result in delays and/or seizure.

(12) Supply of wrong information with an intention to cheat will also result in delays and/or impoundment/seizure with attendant consequences.

(13) Blank products will be automatically seized and destroyed.

(14) All goods imported into the country shall be labelled in English in addition to any other language or render themselves liable to confiscation.

(15) Manufactured goods and materials are subject to Standard Organisation of Nigeria (SON) certification in accordance with the provision of its enabling law.

II. FORM M AND CLEARANCE REPORT OF INSPECTION PROCEDURE

(1) From September 1, 1999 all goods except personal effects, used motor vehicles and perishables i.e., day-old-chicks, human eyes, human remains, vaccines, yeast, periodicals/magazines imported from pre-shipment inspection shall require the completion of Form M.

(2) Any person importing goods into Nigeria shall process Form M through any authorised commercial/Merchant banks. The authorised banks shall be responsible for delivering all Forms M (including those for imports excluded from inspection) to the appointed inspection agents' liaison office in Nigeria.

(3) The Form M and supporting documents submitted to the inspection companies through the authorised dealers shall be clearly marked Valid for Forex or Not Valid for Forex depending upon whether or not foreign exchange remittance would be involved.

(4) The Form M and relevant Performa invoice must contain a proper description of the goods to be imported, including relevant specification etc.

(5) Form M shall be in sextuplicate of which three copies shall be sent to the Pre-Shipment Inspection Agents and one each to the importer's bank, the Nigerian customs Services and NMA.

(6) Form M is obtainable from all the offices of the Pre-shipment Inspection Agents, Nigerian Embassies, Local Banks, branches of Nigerian banks overseas and their correspondent banks.

(7) The completed Form M (Not Valid for Foreign Exchange) original from abroad will be returned through the appropriate Pre-Shipment

Inspection agents abroad to any of the designated banks or nay bank of importer's choice in Nigeria.

(8) Issuance of the CRI or a Discrepancy Report shall be mandatory for all imports except those exempted from inspection and those expressly exempted by the honourable Minister of Finance, provided approval would have been obtained before shipment of goods.

III. SELLERS RESPONSIBLE

(1) The seller of the goods (i.e. the party with whom the Nigerian importer has a contractual relationship) shall be required to arrange for the physical inspection of goods with the appointed inspection company in the country of supply. The preshipment inspection agent shall be given at least three working days notice prior to the expected date of inspection.

(2) The seller shall make the necessary arrangements for handling and presentation, of the goods for the purpose of inspection and any expense incurred therefore shall be for his account. In the event that the seller has called in the company without having prepared the goods for the inspection, or in the event that the goods have been inspected and are found not to be up to requirements or specifications, the expense of any additional intervention by the company shall be borne by the seller.

(3) The seller shall provide the appointed inspection agent with a copy of the packing list, final invoice and any other document as would be requested by the inspection agent.

IV. IMPORTERS RESPONSIBILITIES.

1. The importer shall advise his supplier on the need to submit after the completion of inspection, the final or commercial invoice within 12 hours to the Inspection Agent to facilitate the issuance of the Clean Report of Inspection (CRI).

2. Importers of cargoes in excess of the declaration on the manifest will continue to be penalised according to the provision of the law.

V. IMPORT DUTY PAYMENT AND CLEARANCE OF GOODS.

1. It shall be the duty of the importer's bank or the bank which processed the Form M to issue bank draft in respect of the amount stated on the CRI to the customer who shall pay same to any of the designated banks.

2. All commercial imports into Nigeria shall be accompanied by a final invoice bearing the CRI number with adequate description of the goods, packing list, transportation document (B/L AWB/Way Bill), and manufacturers' certificate of the analysis (where applicable).

3. The CRI number shall be stated on the bill of Lading and also written against each item on the cargo manifest.

4. The relevant inspection agent shall affix a security label on the final invoice submitted by the seller attesting the fact that pre-shipment inspection as been successfully performed. The final invoice will confirm, in L/C transactions to the negotiating bank overseas, that the goods have been inspected in accordance with the import requirement of the Federal Republic of Nigeria. The final Invoice shall bear the CRI number and the certified value.

5. Goods imported through neighbouring countries must be accompanied by relevant CRIs.

6. Importers shall pay a CISS Administrative charge of 1% of free on Board (F.O.B) value of all imports assessed based on the average rate of exchange prevailing at the time of inspection of the goods as submitted by the Central Bank of Nigeria.

7. All imports shall be assessed for duty at the average rate of exchange prevailing at the time of issuance of CRI of the goods as submitted to the agents by the Central Bank of Nigeria.

8. The Nigerian Customs Service shall inform the appointed pre-shipment Inspection agents through the issuance of Form C 101 A in the event of a discrepancy on duty assessed on the CRI and duty assessed by the NCS.

9. Payments for Customs Duties and CISS Administrative charge shall be based on the Clean Report of Inspection (CRI) without any amendments. However, the Nigeria Customs Services (NCS) may with the prior permission of the Minister of Finance assess additional duties if it is found that the duty on the CRI is not correct. In such a case, the goods will be cleared on the assessment of the CRI upon a guarantee for the value of the differences issued by a designated bank. Additional duty may be imposed, therefore only after clearance with the Honourable Minister of Finance.

10. The Issuance of bank draft by the customer's bank and the payment thereof into the designated bank shall be done and cleared and receipt issued by the designated bank before the counterpart

original CRI for customs purpose is released to the import for clearance of goods.

11. The bank draft for import duties must be paid to the designated banks and receipt issued with the number of the SGD Form stated thereon before goods are cleared.

12. All designated banks are to open branch offices at the ports where customs duties shall be paid.

13. Where the guidelines are satisfactorily implemented by importers, the Nigeria Customs Service shall release the goods within 48 hours.

III BUSINESS ORGANIZATION AND REGULATION

Presently, there are a number of ways in which investments may be made by a foreigner or foreign-owned company in Nigeria. The investor can form a partnership with another investor or with a Nigerian. He/she/it can also establish a business on his/her/its own as a sole proprietor. Partnerships and sole proprietors do not enjoy limited liability in Nigeria. The most common procedure, however, is to form a company in Nigeria.

Companies and Allied Matters Act (CAMA) regulates the affairs companies and requires the registration of many of their acts and transaction. There are three primary types of incorporated companies; an unlimited liability company, a company limited by guarantee and a company limited by shares. The most common of the three is a company limited by shares.

A limited liability company may be either private or public. A private company must have a minimum of two, and a maximum of 50

members. Private companies limited by shares are the most common form of business organization registered by foreign investors in Nigeria. A public company must also have a minimum of two members but there is no restriction on the maximum number. The public company can also invite members of the public to subscribe to its capital and the shares may be traded on the Stock Exchange.

1. Incorporation

An alien may operate alone or in joint venture with Nigerians by means of a company which must first be formed and registered by the CAC and thereafter be registered with the NIPC before commencing business. The following is the summary of the procedure for establishment of business in Nigeria:

1. Securing an address in Nigeria for service of documents and other matters preliminary to the formation of the Nigerian company.
2. Prepare a joint venture agreement and any other necessary pre-incorporation agreement.
3. Take steps to form a company to be registered by the CAC.
4. Apply to the NIPC
5. Apply to the SEC for registration of the foreign security/investment
6. Application for permits e.g. expatriate quota
7. Importation of capital through an authorised dealer and obtaining certificate of importation
8. Application to National Office for Technology Acquisition and Promotion (NOTAP) for registration of agreement for transfer of technology
9. Application to the Director of the Industrial Inspectorate Division of the Federal Ministry of Industry notifying him of

intention to incur additional expenditure of not less than N500,000.

e. Registration with the CAC and obtaining Certificate of Incorporation

Registration of a company is effected by delivering to the Commission the following documents and paying the appropriate registration fees as set out in the Companies and Allied Matters (Fees) Regulations 1995, as amended:

- The Memorandum and Articles duly stamped.
- Notice of Situation/Change of the Registered Address (FORM CAC 3)
- Particulars of Directors of the company together with the consent of the directors or any change therein (FORM CAC 7)
- A statement of the share capital and Return of allotment of shares (CAC 2) signed by at least one director (to be stamped).
- A statutory declaration by a Legal Practitioner of compliance with the requirements of the Act (to serve as sufficient evidence of compliance) (FORM CAC 4)
- Availability check and Reservation of Name form (FORM CAC 1)
- Any other document required by the Commission to satisfy the requirement of any law relating to the formation of a company

Having complied with the above requirements, the Commission has no discretion but to register the Memorandum and Articles. However, there exist within the CAMA grounds for refusal to register. Thus, if the Commission is of the opinion that the:

- (a) Memorandum and Articles do not comply with the Act;
- (b) Business or object of the company is illegal;

(c) If there is an incompetent or disqualified subscriber, i.e. an individual below 18 years except two other qualified persons are 18 and above; an individual found to be of unsound mind by a court in Nigeria or elsewhere; an individual who is an undischarged bankrupt; an individual disqualified from being a director under section 254 i.e. a fraudulent person; a corporate body in liquidation.

(d) There is non-compliance with requirements of any other law as to registration and incorporation of a company.

(e) The name conflicts with or is likely to conflict with an existing trade mark or business name registered in Nigeria.

A company aggrieved by refusal to register should give notice to the Commission to apply to court for directions.

If the Commission registers the Memorandum and Articles, it will under its seal certify that the company is incorporated, the type of limited liability and whether it is private or public. The Certificate of Incorporation shall be prima facie evidence of compliance with the Act, that the association is a company authorized to be registered and is duly registered.

f. Effect of Registration

By virtue of the provisions of section 37 of the CAMA, from date of incorporation, the subscribers and anyone who later on becomes a member shall -

(a) Be a body corporate to be known by the name contained in the Memorandum

(b) Be capable of exercising all the powers and functions of an incorporated company including power to hold land

(c) Have perpetual succession

(d) Have a common seal

g. The Company Name

A registered company is required to display its name and country of incorporation outside of places of business or offices in which its business is carried on, in a conspicuous manner and in letters easily legible. Furthermore, a company must have its name, registration number and country of incorporation in all letterheads, notices, advertisements, official publications and in all bills of exchange, promissory notes, endorsements, cheques etc. In addition, a company after incorporation must have its name engraved in legible characters on its seal usually with its logo.

h. Statutory Books

A company upon registration in Nigeria is required by law to keep the certain statutory books. A company in default is guilty of an offence and may be liable to pay a fine. The books are as follows:

1. Register of members.
2. Index of members.
3. Register of substantial interest in shares.
4. Register of director's share holdings.
5. Register of directors and secretaries.
6. Register of charges.
7. Register of debenture holders.
8. Minute book.
9. Accounting records.

A public company is required by the CAMA to keep all nine books, unlike a private company which is required to keep all the books with the exception of the index of members and the register of substantial interest in shares.

2. Share Acquisitions

An alternative investment route is to acquire the whole or part of the shares in the company which conducts the business. The acquisition of shares in private companies is usually achieved by agreement with the shareholders. An alien, who does not want to invest directly in Nigeria by the formation of a company, can invest indirectly by purchasing shares of an existing company in Nigeria. A summary of the procedure for the acquisition of shares is as follows:

1. Application for shares by the alien.
2. Passing of directors' resolution allotting shares to the alien subject to requisite approvals being obtained.
3. Application to the SEC for registration of the security.
4. Importation of capital through an authorised dealer and obtaining certificate of capital importation.

3. Business registration by foreigners

Where a foreigner incorporates a company, certain permits have to be obtained before the foreigner can do business in Nigeria. They are:

h. Business Permit

A business permit is an operational and permanent permit for the local operation of a business with expatriate investments 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 practise a profession or establish, takeover or register a company or business without the written consent of the Minister of Internal Affairs.

i. Expatriate Quota

Expatriate Quota is the permission granted to a foreigner to accept employment in Nigeria. It is the official permit to a company conveying permission to a company to employ individual expatriates to specifically approved job designations and also specifying the permissible duration of such employment. The initial expatriate quota is sought and obtained usually along with Business Permit. There are two types of expatriate quota:

- a) Permanent Until Reviewed Quota (PUR), usually granted to the post of 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.

The maximum number of years granted in the first instance is five years renewable for a further period of two years.

j. Resident Permit

Only aliens with tourist visa may enter Nigeria and stay for a period of three months without a residence permit. Any person, other than a citizen of Nigeria, desiring to stay in Nigeria beyond three months must obtain a resident permit.

Application is by letter accompanied by a valid passport of the alien from the company requesting permission to employ the alien, to the Immigration Department.

k. Combined Expatriate Residence Permit and Alien Card (CERPAC)

Registration permits an expatriate to live and work in Nigeria on a long-term basis. For an expatriate to obtain Resident permit, he must obtain employment with a company that has expatriate quota position. Such a person will be expected to come into the country

with a special type of entry visa known as STR (Subject To Regularization) visa after which his residence permit will be processed. The combined CERPAC scheme was introduced in 2002, providing for foreigners (except ECOWAS citizens, accredited diplomats and children below the age of 15 years) working or living in Nigeria to carry CERPAC card, the scheme is expected to simplify the process of acquiring residence permit and alien registration certificate. It provides a computerized unit at various points of entries, like airports, that is linked to a central database centre containing information on every foreigner residing in Nigeria. The residence permit allows a foreigner and his dependants or family to reside in Nigeria. Unlike the residence permit, the alien registration certificate is essentially a movement chart. Under the CERPAC scheme, registration is valid for one year, after which application for revalidation must be made. Foreigners relocating to a different part of Nigeria must inform the nearest Aliens Office of the move. Also if a foreigner holding an Aliens Card leaves Nigeria permanently then the Card has to be handed to the Aliens Office.

Other approvals, that may be required, are:

I. Registration of securities

A foreigner who owns shares in any Nigerian company must apply to the Security and Exchange Commission (SEC) for the registration of those shares. The Investment and Securities Act provides that the SEC must keep a register of foreign direct investment and foreign portfolio investments.

m. Registration with the Department of Petroleum Services

Registration with the Department of Petroleum Resources may be necessary where you seek to provide services, equipment supplies

and maintenance services to companies in the oil industry. This registration can be done in two categories, i.e.

- a) General Purpose Category: These are those companies that do not render highly specialized or technical services. The registration process here is basically routine and there is no requirement to show expertise in any field.
- b) Specialized Categories: This is for companies rendering specialized services such as Equipment Supply services; Consultancy services; laboratory services; Calibration services; Applicants in this category will amongst other things be required to show evidence of expertise and technical Know-how in the specialized area of activity where their services will be required.

n. Registration with National Office of Technology Acquisition and Promotion (NOTAP)

Every contract or 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.

An agreement involves transfer of technology if, in the opinion of NOTAP, it is wholly or partially connected with any of the following matters:

- i. The use of trade marks
- ii. The right to use patented inventions,
- iii. The supply of technical expertise in the form of the preparation of plan, diagrams, operating manuals or any other form of technical assistance of any description whatsoever,
- iv. The supply of basic or detailed engineering,
- v. The supply of plants and machinery, and

vi. The provision of operating staff or managerial assistance and the training of personnel.

Registration with NOTAP is necessary, as non-registration will frustrate transfer of any fees or payment due under the contract to the account of the aliens outside Nigeria.

4. Winding Up

Winding up of companies is regulated by several laws including the CAMA, the Companies Winding Up Rules 2001, Cap C20 LFN 2004, Federal High Court Act, Cap F12 LFN 2004. Winding up may be effected -

- (a) By the court (compulsory); or
- (b) Voluntarily; or
- (c) Subject to supervision of court.

Certain grounds for winding up a company are specified in the CAMA. A company may be wound up by the court if -

- (a) The company has by special resolution resolved that the company be wound up by the court
- (b) Default is made in delivering the Statutory Report to the Commission or in holding the statutory meeting.
- (c) The number of members is reduced below two.
- (d) The company is unable to pay its debts.
- (e) The court is of opinion that it is just and equitable that the company be wound up.

It is possible for the shareholders of a company or the creditors of the company to wind up a company.

IV Taxation

A. Tax System

In Nigeria, taxation is enforced by the 3 tiers of Government, i.e. Federal, State, and Local Government with each having its sphere clearly spelt out in the Taxes and Levies (approved list for Collection) Decree, 1998. The Federal Government has jurisdiction on Corporate Income Taxes, Petroleum Profits Tax, Capital Gains Tax, Value Added Tax and Personal Income Tax. With respect to Personal Income Tax, the jurisdiction of the Federal Government is limited to the following:

- i. Persons employed in the Nigeria Army, Air Force, Navy, Police
- ii. Officers of the Nigerian foreign service
- iii. Residents of the federal capital authority, Abuja; and
- iv. Any other non-resident who derives income or profit from Nigeria.

The States' jurisdiction covers the assessment and collection of Personal Income Tax payable on the income of persons resident within the respective states; Capital Gains Tax on the profits derived by individuals from the sale of assets located within the State jurisdiction; miscellaneous taxes, e.g., tenement rates.

Tax in Nigeria consists of direct taxes as well as indirect taxes.

Direct taxes-

- ❖ Corporate income tax
- ❖ Personal income tax
- ❖ Capital gains tax
- ❖ Petroleum profits tax; and
- ❖ Miscellaneous taxes

Indirect taxes-

- ❖ Value added tax
- ❖ Custom duties on imports
- ❖ Excise duties; and
- ❖ Stamp duty

The following are some of the relevant tax regulations in the country:

1. Value Added Tax (VAT)

This was introduced by the VAT Act 102 of 1993 but it came into effect from 1st January, 1994, to replace the old sales tax. It is a consumption tax levied at each stage of the consumption chain, and is borne by the final consumer. The VAT Directorate of the Federal Inland Revenue Services (FIRS) periodically issues circulars and guidelines on issues in the ACT. VAT paid by a business on purchases is known as input tax, which is recovered from VAT charged on company's sales, known as output tax. If output exceeds input in any particular month the excess is remitted to the Federal Board of Inland Revenue (FBIR) but a taxpayer is entitled to a refund of the excess from FBIR where input exceeds output though in practice this is not always possible.

A Taxpayer however has the option of recovering excess input from excess output of a subsequent period. It should be stated at this point that recoverable input is limited to VAT on goods imported directly for resale and goods that form the stock-in-trade used for the direct production of any new product on which the output VAT is charged.

Taxable persons are manufacturers, wholesalers, importers or suppliers of VATable goods or services for a charge. A taxable person is required to register with the Federal Board of Inland Revenue and upon registration, to charge and collect VAT at a flat rate of 5% of all invoiced amounts of taxable goods and services. All goods and services with the exception of those listed in the Schedule to the Act are subject to the VAT Act. The following are some examples of exempted goods and services:

- ❖ All medical and pharmaceutical products

- ❖ Baby products
- ❖ Books and educational materials
- ❖ Services rendered by mortgage institutions, community banks; and
- ❖ Medical services.

2. Capital Gains Tax (CGT)

The Capital Gains Act of 1967 introduced the CGT into the Nigerian tax law. This form of taxation applies to all companies, individuals and non-corporate bodies. The CGT accrues on an actual year basis and it pertains to all gains accruing to a taxpayer from the sale or lease or other transfer of proprietary rights in a chargeable interest which are subject to a capital gains tax of 10%, such chargeable assets may be corporeal or incorporeal and it is irrespective of whether such asset is not situated in Nigeria or not. It is however different where the taxpayer is a non-resident company or individual. In such cases, CGT will only be levied on the amount received or brought into Nigeria. Computation of capital gains tax is done by deducting from the sum received or receivable from the cost of acquisition to the person realizing the chargeable gain plus expenditure incurred on the improvement or expenses incidental to the realization of the asset.

Certain charitable organizations are exempted from CGT to the extent to which any gain is not derived from the disposal of an asset used for trade or business and the gain is used for the sole purpose of such organization

3. Education Tax

An education tax of 2% of assessable profits is imposed on all companies incorporated in Nigeria. This is in line with the provisions of the Education Tax Act No 7 of 1993, which requires every company

registered in Nigeria to pay an education tax of 2%. It should be noted that non-Nigerian companies are not subject to education tax.

4. Personal Income Tax

The legal basis for this tax is found in the provisions of the Personal Income Tax Act No 104 of 1993. Every taxpayer in Nigeria is liable to pay tax on the aggregate amount of his income whether derived from within or outside Nigeria, the salaries, wages, fees, allowances, and other gains or benefits, given or granted to an employee are chargeable to tax. The residency of a taxpayer determines the extent of a taxpayer's liability in Nigeria. A person's place of residence as defined by the Act is a place available for his domestic use in Nigeria on a relevant day, excluding hotels and rest houses. A person is deemed resident in Nigeria if he resides in Nigeria for 183 days in any 12-month period, thus, expatriates holding residence permits are liable to tax in Nigeria even if they reside in the country for less than 183 days in any 12-month period. Once residence can be established, the relevant tax authority of the territory is the tax authority in which the taxpayer has his place of residence or principal place of business.

Not all income is liable to taxation under the Act, the following are some examples of income exempted from tax: -

- Medical or Dental expenses incurred by the employee;
- Retirement gratuities and compensation loss of office;
- The cost of passage to or from Nigeria incurred by the employee;
- Interest on loans for developing an owner-occupied residential house;
- Contribution to any pension, provident or other retirement benefits fund;

- Leave allowance, which is computed as 10% of annual basic salary.

Several other reliefs exist under the Personal income tax. They include;

Personal Allowance: This relief is computed as N5000 plus 20% of earned income.

Child Allowance: A relief of N2, 500 is granted for a child up to a maximum of four children, provided that:

- i. None is above 16 yrs or married.
- ii. If a child is more than 16 years of age, the child must be receiving full time education in a recognised educational institution or under articles in a trade or profession.

Dependent relative: A relief of N2000 is granted for each dependent relative up to a maximum of two relatives who are widowed or infirm. However, where such dependent relative is earning income more than N2000, the allowance is not claimable.

Penalties for Non-Compliance

Failure by the employer to deduct tax from the employee attracts penalty of 10% and Interest at commercial rate (currently 21%) along with the principal amount payable. Rendering of incorrect/false returns attracts, on conviction, a fine of N200 and double the amount of tax undercharged.

5. Companies Income Tax

The Companies Income Tax Act is the legal basis for the imposition of taxes on the profits of any company in Nigeria, with the exception of exploration and production companies. Every company registered in

Nigeria is liable to companies' income tax. However, a foreign company may be liability to pay tax is dependent on the interpretation of its residency. A foreign company is deemed to be resident in Nigeria for the purpose of taxation where any of the following conditions is present:

- a. If the company has a fixed place of business in Nigeria, to the extent that profit is attributable to that place
- b. If it does not have a fixed place of business in Nigeria, but habitually operates a trade or business through a dependent agent
- c. If that trade or business involves a single contract for surveys, deliveries, installation or construction; or
- d. Where the trade or business is between the company and another person controlled by it or which has controlling interest in it such that the transactions between them are deemed to be artificial or fictitious.

Tax is payable for each year of assessment of the profits of any company at a rate of 30%. These include profits accruing in, derived from brought into or received from a trade, business or investment; dividends, interests, royalties, discounts, annuities; fees, dues and allowance for service rendered.

The current tax rate is 30% but for companies whose annual turnover is not more than N500, 000 and engaged in agricultural production or mining of solid minerals, that applicable tax rate is 29%.

As previously noted, companies, which apply for and are granted pioneer status are eligible for tax holiday under the Industrial Development (Income Tax Relief) Act, LFN 2004.

Companies engaged in business activities in Nigeria and assessable to tax under the CITA, irrespective of whether it is a resident or non-

resident company, is obliged to prepare and file with the Federal Board of Inland Revenue, audited accounts and income tax computations within 6 months after the end of the accounting period. With respect to new companies, the returns must be filed within 18 months from the date of incorporation or 6 months after its first accounting period, whichever occurs first.

Incomes of companies engaged in certain activities are entitled to exemption from taxation under the CITA. Such companies include but not limited to the following:

- Statutory or registered friendly societies
- Ecclesiastical, charitable or educational establishments of public character
- Companies formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purposes
- Companies engaged in petroleum operations, so far as these profits are derived from operation liable to tax under the Petroleum Profits Tax Act, 1990
- Co-operative societies registered under any enactment or law relating to co-operative societies.

However, profits that are derived from a trade or business carried out by the above mentioned companies are not entitled to exemptions.

Companies paying dividends to its shareholders are first obliged to pay tax on its profits at the companies' tax rate. Generally in Nigeria company dividends or other company distribution whether or not of a capital nature made by a Nigerian company is liable to tax at source of 10%, however dividends paid in the form of bonus share or scrip shares to individual share holders are not subject to tax. Furthermore, where a company is a shareholder in another company

then such dividends are excluded from the profits of the company for the purposes of computation of the tax.

A company, under the Nigerian law of taxation, may push forward its losses for offset against the taxable income of the following 4 years. This does not, however, include offsetting the loss from one trade/business against the income from another trade/business. Losses incurred by an agricultural company or a company engaged in agricultural activities can be carried forward indefinitely.

6. Nigerian Social Investment Trust Fund (NSITF)

This is governed by the NSITF Decree, and requires everybody employed in a Nigerian incorporated company to contribute a certain percentage of their salary to the fund. Foreigners are excluded from this requirement where they can show proof of a similar contribution in their home country. The rate of contributions is defined as follows, where the contributor is an employee, 2.5% of his salary subject to a maximum of N 1,200 per annum; where the contributor is an employer, 5% of basic salary subject.

7. Withholding Tax

Nigerian law subjects certain activities and services to Withholding Tax. What the Withholding Tax means in essence is that where during transactions in any of the specified activities or services, a payment is due from one person to another, the person making the payment is expected to deduct tax at the applicable rate and remit it to the relevant tax authority. This should be done not later than 30 days after the deduction. This is provided for in sections 68 to 72 of the Personal Income Tax Decree No. 104 of 1993; Sections 60 to 64 of the Company Income Tax Act (as amended), and Section 51(a) of the Petroleum Profits Tax Act (as amended).

Some of these activities and Services and their current applicable rates include:-

Payment	Corporate %	Individual/Partnership%
Rent	10	10
Construction	5	5
Management Fees	10	5
Royalties	10	5
Commission	10	5
Professional Fees	10	5
Technical Fees	10	5
Consultancy Fees	10	5

It is an offence liable to sanctions not to withhold tax or to fail to remit the tax deducted to the relevant tax authority.

B. Tax Treaties

Nigeria has a number tax treaties referred to as “double taxation” agreements with a number of countries, these are designed to ensure that the tax payable in Nigeria on the profits of a Nigerian company being remitted into the country are reduced by the amount of “foreign Tax” paid abroad and vice versa where an overseas company receives profits from Nigeria that have already been taxed in Nigeria. Some of these countries include the UK, France, the Netherlands, Belgium, Canada and Pakistan.

The importance of tax regulations cannot be over-emphasized, as most transactions with any Ministry, department, or government agency cannot be concluded without evidence of tax clearance, i.e. a Tax Clearance Certificate certifying that all taxes due for the three

immediately preceding years of assessment have been settled in full. Such transactions include where tax clearance certificates will be required are:

- Where an applicant seeks to buy state land
- Candidates for appointment as chairmen or members of public corporations and other institutions.
- From applicants for export licenses
- On application for approval of building plans
- Applicants for permission to remit foreign exchange
- Application for a certificate of occupancy, etc.

V LABOUR

In 1999, Nigeria was estimated to have a labour force of 42.844 million with women comprising 36 percent of that force. In 2000 the estimated unemployment rate increased to 32 percent. Secondary school graduates and women make up the largest proportion of the unemployed. Many college graduates have remained without full employment since the late 1980s. The government, including federal, state, and local units, is the largest employer outside the agricultural sector.

Employment in Nigeria is regulated by the law of contract and by statute. There is a myriad of legislation providing minimum protection for employees out of which employers and employees cannot contract. This legislation is found in a number of Acts that regulate, inter alia, maximum hours of work, overtime rates, minimum periods of annual leave, notice of termination, trade unions, strike law, rights and responsibilities of employers and

workers in the event of retrenchments, protection from unfair dismissal and the prohibition of unfair discrimination. The following legislations regulate labour activities in Nigeria; the Labour Act, Trade Unions Act, Trade Disputes Act, Trade Disputes (Essential Services) Act, Trade Disputes (Amendment) Act, The Factories Act, The Workmen's Compensation Act, National Minimum Wage (Amendment) Act.

1. Labour Law in Nigeria

With the exception of employees classified as essential—members of the armed services, the police force, fire fighters, Central Bank employees, and customs and excise staff—Nigerian workers may form or join trade or labour unions. They may strike to obtain improved working conditions and benefits and bargain collectively for higher wages; strikes or industrial actions by workers tend to be frequent in Nigeria. The Trade Unions Act requires that a trade union be registered prior to its functioning as such in Nigeria. The Act prohibits staff recognised as a projection of management within the management structure of any organisation from being a member of, or holding office in trade union.

The Nigerian Labour Congress is the central labour organisation in Nigeria. It is an umbrella for other trade unions and is funded through government contributions and contributions from unions affiliated to it. It ensures and protects the collective bargaining rights between employees and employers; organises strikes and lockouts; and facilitates dispute resolution. Although plagued by leadership struggles, ideological differences, and regional ethnic conflicts, the Nigerian Labour Congress has been able to organize or threaten nationwide workers' strikes, demanding the retention of government subsidies on petroleum products, minimum wages, and improved working conditions

The Nigerian Employers' Consultative Association (NECA) protects the interest of employers of labour who are its members in matters concerned with labour and industrial issues. It represents members in dealings with government agencies.

In Nigeria, trade disputes are required by the Trade Disputes Act to be settled first at the company level, then by the Ministry and then to the National Industrial Court whose decision is final. The Trade Disputes (Essential Services) Act makes it an offence to engage in acts calculated to disrupt the economy or obstruct the smooth running of any essential services or for any one to wilfully fail to comply with the laid down procedure in the Trade Disputes Act. This Act in effect, prohibits strike actions or lock outs while disputes are being resolved.

Employees' contracts can be terminated by the giving of notice of termination or payment of salary in lieu of such notice. Employment may be terminated if the parties to the contract jointly agree to such termination. An employer may also terminate the employment of his/her employee where the employee has committed an act of misconduct.

Employers are to ensure that every workman is insured against injury or death arising out of, or in the course of employment. This is entrenched in the Workmen's Compensation Act. Where a worker sustains injury arising out of, or in the course of employment, he is entitled to compensation from his employer. The compensation is based on the monthly earnings of the worker. The employer and the employee can negotiate the amount of compensation payable but the negotiated amount must not be less than the statutory provision. Compensation is payable to the worker but where death results from the injuries it is payable to his dependants. The Act requires employers to give free treatment to employees where the employee notifies them of the injuries. Employers are also required to notify a

labour officer of the death of a workman within seven day of obtaining notice of such death.

The Immigration Act prohibits the employment of any person not being a Nigerian without the consent in writing of the Minister of Internal Affairs, except where such employment is by the Federal or State Governments. The approval is in form of an expatriate quota approval which must be obtained by a foreigner before he is employed in Nigeria.

Scope of legislation

All labour law statutes in Nigeria, including the Labour Act and the Trade Disputes Act, apply only to those persons considered “employees” at common law (i.e. those employed under a “contract of service” and not a “contract for services”). Furthermore, both Acts apply only to those employees who are defined as “workers”. The Labour Act defines a worker as any person who has entered into a contract (of service) with an employer, whether the contract is for manual or clerical work, or is express or implied, or oral or written. This definition can be found in Section 90 of the Act. The courts have on several occasions interpreted this definition to apply only to manual or clerical workers. The definition in the Act excludes:

- any person not employed for the purposes of the employer’s business (such as domestic staff);
- persons exercising administrative, executive, technical or professional functions;
- members of the employer’s family (also excluded by sec. 21 of the LA);
- representatives, agents and commercial travellers, to the extent their work is carried out outside the employer’s permanent workplace; home workers; and

- any persons employed at sea or on an aeroplane, who are governed by specific legislation.

Additionally, members of the armed forces and police are excluded from the scope of the Labour Act. It should be noted that the definition ascribed to a worker in the Trade Disputes Act reflects the LA definition, except where it is expressly extended to workers other than manual or clerical workers and to apprentices; in addition, the exceptions listed above do not apply. However, again, members of the armed forces and police are excluded from the TDA.

What is a Contract of employment?

Contracts of employment may be either contracts for an indefinite period or for a fixed term or fixed amount of work. The common law position that contracts for a fixed term or fixed amount of work expire according to their terms is entrenched in the LA and this rule has not been modified by statute, nor is there any further statutory regulation of fixed-term contracts.

It should be noted that the term “casual worker” has no legal significance in Nigeria.

Termination of employment

In Nigeria the termination of employment other than at the employer’s initiative is largely governed by common law. Contracts of employment may be terminated, other than at the employer’s initiative, by:

- mutual agreement, either by an agreement as to the term of the contract or an agreement that employment should end;
- frustration by a supervening event;
- the employee resigning by giving the requisite notice; and
- the death of the employee.

The Labour Act codifies the common law position that an employee's contract of employment may not be transferred from one employer to another without the employee's consent, and, in addition, requires authorization of any transfer of employment by a government labour officer, who may also require a medical examination.

Dismissal

In Nigeria there is no general statutory principle against unfair dismissal and the law of dismissal is largely governed by the common law, as modified by the LA. However, a dismissal may constitute a "trade dispute" under the TDA, in which case the worker concerned may bring a claim to the National Industrial Court (NIC) under that Act.

There are specific statutory prohibitions against dismissal on the grounds of union membership and activity, pregnancy and taking maternity leave. In addition, the common law has developed the concept of a "constructive dismissal" (i.e. behaviour by the employer which is intolerable, and which forces the employee to resign, and which is deemed to be a dismissal) and, as part of the common law, this concept is part of Nigerian law.

The Labour Act specifically retains the common law right of an employer to summarily dismiss an employee for serious misconduct. The LA also expressly ensures the employer's ability to dismiss on the grounds of redundancy. "Redundancy" is defined by Section 20(2) of the Labour Act to be "an involuntary and permanent loss of employment caused by an excess of manpower".

Notice and prior procedural safeguards

The Labour Act sets out statutory minimum notice periods as follows:

- for less than three months of service, one day;
- for three months to two years of service, one week;
- for two to five years of service, two weeks; and
- for more than five years of service, one month.

The above periods are minimum statutory requirements which can be improved upon by collective agreements or contracts of employment. The Act permits the payment of consideration in lieu of notice, and either party is entitled to waive the right to notice.

Where the dismissal is the result of misconduct, the common law rule is that employers, who, with full knowledge of the employee's conduct, condone such conduct, cannot thereafter rely on the conduct to justify a summary dismissal. However, the common law rule that misconduct discovered after dismissal may justify the dismissal also applies. There are no statutory requirements as to procedure for dismissals for misconduct, although a breach of any contractual procedure may constitute a breach of contract leading to an award of damages. Similarly, there are no statutory procedural requirements for dismissals on the grounds of unsatisfactory performance.

The procedures for dismissal of an employee on grounds of redundancy are set out in the Act as follows:

- the employer is to inform the trade union or worker's representative of the reasons for and anticipated extent of the redundancies;
- the principle of last in, first out is to be applied, subject to factors of merit, including skill, ability and reliability; and

- the employer is to use his or her best endeavours to negotiate redundancy payments.

Severance pay

The relevant legislations do not provide for a general statutory severance pay, although there is provision in the Labour Act for the Minister of Labour to enact regulations providing for severance pay to redundant workers. The National Industrial Court has, on occasion, awarded severance pay, as additional compensation, to unfairly dismissed workers.

Compulsory Labour

Nigerian labour laws prohibit forced or compulsory labour. They also prohibit the employment of children below the age of 15 years in commerce and industry and restrict other child labour to domestic or agricultural work. In reality however, many children, hawk goods in markets, streets and junctions of major roads in the cities and assist their parents in trade and commerce.

Maternity Leave

In Nigeria, a pregnant woman is entitled to maternity Leave of at least six (6) weeks before the delivery of her child and six (6) weeks after the delivery of the child. A pregnant woman is also entitled to 50% of the wage she would have earned if she had not been absent from her employment by reason of her carrying and delivering a child. Where the woman, for medical reasons exceeds the period allowed, she must not be served with a dismissal notice if she produces a Medical Certificate from a registered Medical Practitioner informing the employer of her medical condition. The employee may provide details of the medical condition if requested by the employer. The law also stipulates that nursing mothers in

employment are entitled under to half an hour, twice daily, to nurse and feed their infant.

VI INTELLECTUAL PROPERTY

1. Patent

A patent is the grant by the government to an inventor or his assignee, for a short time, of a right of monopoly to preclude any other person from exploiting his invention without his consent. The law of patents is that branch of intellectual individual property law, which protects an article of manufacture or process that is newly invented or is an improvement upon a patented invention. The patents system is administered by the Patents Registry, which is under the control of the Registrar of Patents and Designs. The Patents Registry is located at Abuja. The Patents and Designs Act, Cap P2 LFN 2004 and Patents Rules are the relevant laws governing patents and designs in Nigeria.

Section 1 (b) Patents and Designs Act, Cap P2 LFN 2004 states that an invention is patentable if (a) it is new, results from inventive activity and is capable of industrial applications. 1 (a), or (b) it constitutes an improvement upon a patented invention and also is new, results from inventive activity and is capable of industrial application. Furthermore, an invention is new if it does not form part of the state of the art, i.e. if it does not form part of the field of knowledge already made available to the public anywhere and at any time (except at an official or officially recognized international exhibition within the period of six month preceding the filing of the application.

An invention results from inventive activity if it does not obviously follow the state of the art either;

- I. As to method
- II. The application, or
- III. The combination of methods, or
- IV. The product which it concerns; or
- V. As to the individual results it produces

There is an inventive step if the invention is not obvious to a person skilled in the art. The Patents and Designs Act stipulates that principles and discoveries of a scientific nature are not inventions for the purposes of the Act.

Invention and Discovery

Discovery is no more than adding to human knowledge by disclosing something which before had been hidden, invention goes a step further to indicate how to put that knowledge to practical use to produce either a new and useful product, or new result or a new combination for producing an old product or result

"Capable of Industrial application":

The Act defines this phrase to mean that the invention can be manufactured in any kind of industry, including agriculture.

Certain inventions are regarded as unpatentable Inventions. Thus, patents cannot be validly obtained in respect of –

- (a) Plant or animal varieties or essentially biological processes for the production of plants and animals (other than micro-biological processes and their products) or
- (b) Inventions, the publication or exploitation of which would be contrary to public order or morality

The right to a patent in respect of an invention is vested in the statutory inventor i.e. the person who, whether or not he is the true inventor, is the first to file or validly claim a foreign priority for a patent application in respect of an invention. The Act, however, makes provision for the true inventor to be named as such in the patent application. It should be noted that where an invention is made in course of the employment or in execution of a contract for the performance of specified work, the right to a patent in the invention is vested in the employer or the person who commissioned the work.

A patent application is made to the Registrar and consists of the following:

- I. A petition or request for a patent with the applicant's full name and address A 'specification' including a 'claim' or 'claims', in duplicate
- II. Plans and drawings, if any, in duplicate
- III. A declaration by the true inventor (requisition that he be mentioned as such is made in the patent)
- IV. A signed power of attorney or authorization of agent if the application is made by an agent; An address for service in Nigeria if the applicant's address is outside Nigeria
- V. The prescribed fee, and
- VI. Any other matter prescribed by the Registrar from time to time.

A patent application must relate to only one invention but may cover claims for any number of products or processes

Convention Application

This is an application claiming foreign priority in respect of an earlier application to register the same invention in another country which

has been declared to be a convention country under the Patent and Designs (Convention Countries), Order, 1971. In so far as the application in Nigeria is made within 12 months of the making of the earlier application in the foreign country, it will be treated as having been made on the same date on which the corresponding foreign application was made.

The applicant seeking foreign priority should include in his application a written declaration showing:

- i. The date and number of the earlier application;
- ii. The country in which the earlier application was made, and
- iii. The name of the person who made the earlier application.

The Act further provides that not more than three months after the filing of the application, the applicant must furnish the Registrar with a copy of the earlier application certified by the Industrial Property Office or its equivalent in the foreign country where the earlier application was made. The following documents will be delivered to the Registrar:

- a) Form IB - Application form (for each convention priority claimed)
- b) Form 2 - Authorisation of agent (Fee: Nil)
- c) Form 3 - Complete specification (in duplicate).
- d) A certified copy of the earlier application in the convention country - to be filed not more than 3 months after filing the Nigerian application.

Applications will be made to the registrar of the Patents and Design, Federal Ministry of Commerce, Commercial Law Division, Federal

Capital Territory, Abuja. The forms (and documents) will be signed in the case of:

- (a) Joint owners: by all of them or by any other person duly authorized to sign the document.
- (b) A body corporate: by a director or the secretary or other principal officer of the body corporate or by any other person duly authorized to sign the document.

Duration, Renewal and Lapse of patent

The period of monopoly granted by a patent is 20 years from the date of the filing of the patent application. During the 20 years duration of the patent, it must be renewed annually by lodging the relevant application together with the prescribed fees not later than the due date otherwise the patent will lapse. Where the application for renewal is not made within time, a period of grace of 6 months is allowed within an application for extension of time to pay renewal fee may be made together with the extension fee and the prescribed surcharge.

Cancellation and Surrender of Patent

A patentee may surrender a patent in respect of all or any of the claims made by the patent. The application is in the form of a written declaration, which must be accompanied by the patent if the application relates to all the claims. The surrender, to be effective, must be registered by the Registrar who must also notify the same.

Nullity of Patent

Considering that patents are granted at the risk of the patentee and without guarantee of their validity, they are liable to be attacked and set aside for invalidity at any time on the application of any person

including a public officer acting in the exercise of his functions. A patent may be declared null and void on any of the following grounds:

- (a) That the subject matter is not patentable; or
- (b) That the description (specification) of the claim does not conform with the statutory requirement; or
- (c) That a patent has been granted already in respect of the same invention

Infringement of a Patentee's Right

A patent is infringed if a person does or causes to be done any acts which are reserved to the patentee under sections 6 and 9 of the Act without the authority or licence of the patentee. An infringement is actionable at the suit of the patentee or his assignee. However, a licensee cannot sue in the first instance but must first of all by registered letter require the licensor to sue to remedy the signified infringement. Where the licensor (i.e. patentee) unreasonably refuses or neglects to institute proceedings, the licensee may do so in his own name without prejudice to the right of the licensor to intervene in the proceedings.

In an action for infringement, all such relief by way of damages, injunction accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings for infringement of other proprietary rights.

The Federal High Court is vested with jurisdiction over legal proceeding arising under the Patents and Designs Act is vested in. Furthermore, provisions of the Trade Marks Act in respect of legal proceedings apply with necessary modifications to legal proceedings under the Patents and Designs Act.

Note that a patent has the same effect against the State as it has against an individual subject to the right of the state to use the patents for the service of government agencies

2. Industrial Designs

The applicable statute regulating industrial design is the Patents and Designs Act. The Act defines industrial designs as any combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours, if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is intended solely to obtain a technical result. It should be noted that not all designs are registrable. The Act specifies industrial designs which are registrable and designates those that are not registrable under the Act. An industrial design is registrable if:

- (a) it is new, and
- (b) it is not contrary to public order or morality.

According to the Act, a design is presumed to be new at the time of application except in the following cases:

- i. Where the design has been made available to the public anywhere and at any time by means of description, use or in any other way, unless the creator can show that he could not have known that it was made so available. A design is not made available to the public by reason that within a period of six months preceding filing of the application 'for registration, the creator exhibited it at an official or officially recognised exhibition.
- ii. Where the design merely differs in minor or inessential ways from an earlier design or concerns a type of product other than the type with which an earlier design is concerned

Designs to be applied to any of the following articles are excluded from registration:

- a) Works of sculpture other than casts or models used or intended to be used as mode or patterns to be multiplied by any industrial process
- b) Wall plaques or medals;
- c) Printed matter primarily of a literary or artistic character, including book jackets, calendars, certificate, coupons, dress-making patterns, greeting cards, leaflets plans maps, post-cards, stamps, trade advertisement, trade forms, etc.

The right to registration of an industrial design is vested in the statutory creator, i.e., the person, whether or not the true creator, is the first to file, or validly claim a foreign prior for an application for registration of the designs. Registration is by the issue to the applicant of a registration certificate.

Duration and Renewal

Registration of an Industrial design is effective in the first instance for 5 years from the date of the application for registration but is renewable on payment of the prescribed fees, for two consecutive periods of 5 years. A period of grace of 6 months after the beginning of the renewal period is allowed for the payment of the renewal fee. The fact of renewal or lapse of a registered design must be registered and notified.

Nullification of Registration

The court is vested with the authority to declare the registration of industrial design void under section 22.

3. Copyright

This is regulated by the Copyright Act, Cap. C28 LFN 2004. Literary, musical and artistic works, cinematograph films, sound recordings, broadcasts, programme-carrying signals, computer programs and published editions are all eligible for copyright protection as long as they are original.

Copyright in a work is the exclusive right to control the doing of certain specified acts in respect of the whole or substantial part of the work either in its original form or in any form recognizably derived from the original, subject to certain statutory exceptions. Copyright is the right given to artists, literary men, musicians and performers to exclude others from substantial copying of the material form of their works. What is protected by the Act is not the ideas in the works but the form in which the ideas are expressed.

Section 1 (1) of the Copyright Act lists works that are eligible for Copyright:

A. (i) Literary Works:

Literary works includes, irrespective of literary quality, such works as novels, poetical works, Computer programmes, textbooks, lectures and law reports.

(ii) Musical Works:

Any musical composition, irrespective of musical quality and includes works composed for musical accompaniment.

(iii) Artistic Works:

These includes, irrespective of artistic quality, works such as; Paintings, drawings, lithographs, etc, maps, plans and diagrams, works of sculptures, photographs not compromised in cinematography films, works of architecture, works of artistic craftsmanship.

(iv) Cinematography Films:

Cinematography Films includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and 'includes the recording of a sound track associated with the cinematography film.

(v) Sound Recordings:

Means the first fixation of sequence of sound capable of being aurally and of being reproduced but does not include a sound track associated with the cinematography film.

(vi) Broadcast

Means sound or television broadcasts by wireless telegraphy or wire or both or by satellite or cable programmes and includes re-broadcast.

B. Neighboring Rights

The Act provides protection to performers in respect of live performances (and expressions of folklore. These rights are called "Neighboring Rights;"

The following are the grounds for granting protection under the Copyright laws of Nigeria.

(a) Originality

A literary, musical or artistic work will not be eligible for copyright unless sufficient effort has been expended on making the work to give it an original character.

(b) Fixation of work

A literary, musical or artistic work shall not be eligible for copyright unless it has been fixed in any definite medium of expression now

known or later to be developed from which it can be perceived, reproduced or other wise communicated either directly or with the aid of any machine or device. This requirement of fixation applies equally to cinematographic films and sound recordings and even broadcasts.

It should be noted that in the case of literary work, publication does not appear to be essential.

(c) Qualification of Author

The author or one of joint authors must be:

- i. A citizen of Nigeria, or a non-Nigerian who is domiciled in Nigeria or
- ii. A body corporate incorporated by or under the laws of Nigeria

(d) First Publication in Nigeria

Copyright is conferred on every work, other than a broadcast, which is eligible for copyright and which:

- i. Being a literary, musical or artistic work or cinematography film, is first published in Nigeria.
- ii. Being a sound recording, is made in Nigeria

(e) Works of Governments.

Copyright is conferred on every work which is eligible for copyright and is made by or under the direction or control of the Government, a state authority and prescribed international body

Unlike other types of intellectual property, there is no registration requirement for copyright. Copy right is invested automatically by the Copyright Act on all eligible work which qualify for protection. The ownership of copyright vests initially in the author and if the work is commissioned by an independent person, or is made in the

course of employment, copyright belongs in the first instance to the author, unless otherwise stipulated in writing under the contract.

Transfer of Rights

Rights under the Copyright law may be transferred in the following ways; by operation of law - e.g. by transmission on death or bankruptcy; by will; by assignment; by grant of license which may be exclusive. An assignment or an exclusive license to do an act in relation to a copyright which is not in writing is invalid. A non-exclusive license may be written, oral or may be inferred from conduct

Infringement of Copyright

Copyright is infringed by any person who without the license or authorization of the owner of the copyright:

- (a) Does or causes any other person to do an act, the doing of which is controlled by copyright;
- (b) Imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy.
- (c) Exhibits in public any article in respect of which copyright is infringed.
- (d) Distributes by way of trade, offers for sales, hire or otherwise for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed.
- (e) Makes or has in his possession, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the works;
- (f) Permits a place of public entertainment or business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in

the work, unless the person permitting the place to be used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;

- (g) Performs or cause to be performed for the purpose of trade or business or as supporting facility to trade or business, any work in which copyright subsists.

Action for Infringement

Infringement of copyright is actionable at the suit of; the owner; an assignee, or; an exclusive licensee of the copyright, in the Federal High Court having jurisdiction in the place where the infringement occurred. Where the owner and an exclusive licensee have concurrent rights of action, none of them may, without leave of court, proceed with the action unless the other is joined as plaintiff or added as defendant.

Civil and criminal actions may be taken simultaneously in respect of the same infringement. The law allows for both civil and criminal redress in cases of copyright infringement, differences however exist in the mode and manner of institution either of these actions. The copyright owner may enforce his rights directly through civil proceedings; however criminal proceedings can only be initiated by the Nigerian Copyright Commission

Relief Claimable

In an action for infringement, all such relief by way of damages, injunction, accounts of profits or otherwise is available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

Exemplary Damages

Where in an action, infringement of copyright is proved or admitted, the court may award additional damages if it satisfied that effective relief would not otherwise be available to the plaintiff, having regard (apart from all other factors) to:

- (a) The flagrancy of the infringement, and
- (b) Any benefit shown to have accrued to the defendant by reason of the infringement.

Conversion Rights

All infringing copies of a copyright work or part of it and all plates, master tapes, machines, equipment or contrivance used, or intended to be used for the production of such infringing copies are deemed to be the property of the owner, assignee or exclusive licensee, as the case may be, of the copyright who accordingly may take proceedings for the recovery of possession of those articles or in respect of conversion of them. Thus the Act provides for three causes of action:

- (a) Action for infringement of the copyright;
- (b) Action for conversion of the offending articles; and
- (c) Recovery of the offending articles.

Defence of Innocent Infringement

Where in an action for infringement of copyright it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work, the plaintiff will not be entitled to any damages, but to an account of the profits made through the infringement.

Inspection and Seizure

In any action for infringement of any right, where any ex parte application is made to the court, supported by affidavit, that there is reasonable cause for suspecting that there is in any house, or premises any infringing copy or any plates, film or contrivance used or intended to be used for making infringing copies or capable of being used for the purpose of making copies of any infringing article, book or document, the court (FHC) may issue an order authorizing the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer not below the rank of an Assistant Superintendent of Police, and

(a) Seize, detain and preserve any such infringing copy or contrivance,

(b) Inspect all or any relevant documents in the custody or under the control of the defendant.

Duration of Copyright Production

1. Literary, Musical or Artistic Works other than photographs - Seventy years after the end of the year in which the author dies; in the case of government or body corporate, seventy years after the end of the year in which the work was first published.

2. Cinematography Films and Photographs - Fifty years after the end of the year in which the work was first published.

3. Sound Recording - Fifty years after the end of the year in which the recording was first made.

4. Broadcasts - Fifty years after the end of the year in which the broadcast first took place.

In the case of anonymous or pseudonymous literary, musical or artistic works, the copyright will subsist until the end of the expiration of seventy years from the end of the year in which the work was first published. Provided that, where the author becomes known, the term of copyright given above will apply

Reciprocal Extension of Protection

Copyright law generally operates within the borders of the country making it and benefits only works made by its citizens or aliens domiciled therein. In order to remedy this gap, provision is made for reciprocal extension of protection to persons in other countries. Where any country is a party to a treaty or other international agreement to which Nigeria is also a party, and the Minister responsible for culture is satisfied that the country provides for protection of copyright in works which are protected under the Act, the Minister may be order in the Gazette extend the application of the Act in respect of any or al of the works referred to in s. (1) of the Act:

- a) To individuals who are citizens of or domiciled in that country;
- b) To bodies corporate established by or under the law of that country;
- c) To work, other than sound recording and broadcasts first published in that country; and
- d) To broadcasts and sound recording made in that country.

Nigeria is a party to the Universal Copyright Convention 1952 (UCC), the Berne Convention 1886 and 1971 for the protection of literary and artistic works, and the Rome Convention 1961 for the protection of performers, producers of phonogram and broadcasting organizations.

The Berne Convention (1886 and 1971) and The Universal Copyright Convention (1952).

Both the Berne Convention and the Universal Copyright Conventions apply only to literary, dramatic, musical and artistic works and films, but do not apply to sound recording, broadcasts and neighboring rights.

The Universal Copyright convention provides that the copyright notice symbol of C inside a circle, the name of copyright owner, and year of manufacture, is sufficient formality conferring copyright. This may be contrasted with the Berne Convention position that copyright is property flowing "naturally" and without formality from the act of creation (article 5 (2)) so that neither registration nor formal notification is required to confer copyright or the right to sue for infringement.

The main difference, however, between the two Conventions is to be found in the duration of protection; the Berne convention the duration of protection is the life of the author plus 50 years, while for the Universal Copyright Convention, it is the life of the author plus 25 years.

Other international treaties and international agreements to which Nigeria is a party or signatory includes; Rome Convention; Trade Related Aspects of Intellectual Property Rights (TRIPS); and World Intellectual Property Organisation (WIPO).

Administration

The Nigerian Copyright Commission is vested with the responsibility for all matters affecting copyright in Nigeria as provided by the Act.

Jurisdiction

The Federal High Court is conferred with exclusive jurisdiction for the trial of offence or disputes under the Copyright Act.

4. Trade Marks

Trade Marks Act Cap T13 LFN 2004 and Trade Marks Regulation are the governing regulations on trade mark law and protection in Nigeria.

Registration

Registration of a trade mark is effected with the Registrar of Trade Marks with Office in the Federal Capital Territory – Abuja. The Registrar of Trade mark keeps records of all registered trade marks and related matters (names and addresses of proprietors and registered users, notification of assignment. transmissions etc). The register kept by the Registrar is divided into two parts; Parts A and B. A Trade Mark must be registered in respect of particular goods or classes of goods. It is the duty of the Registrar to determine class within which any goods falls. For a mark to be registrable in Part A of the register - it must contain at least one of the following essential particulars:

- a) The name of the company, individual, firm represented in a special or particular manner.
- b) The signature of the applicant for registration or some predecessor in his business.
- c) An invented word or invented words.

- d) A word or words having no direct references to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname.
- e) Any other distinctive mark.

For a trade mark to be registrable under Part B of the register, it must be capable of distinguishing the goods in respect of which it is registered from the goods that have no connections with the Proprietors of the mark. It should be noted that a trade mark may be registered in Part B notwithstanding any registration in.

Procedure for Application for Registration

1. Fill in a Search Form (entering the name of the mark and the class you want to search and the specimen of the mark). Pay search fees and form will be endorsed - then the search on the register conducted; if there is nothing similar, the mark may be available.
2. Then fill in and present the required documents, i.e.
 - (a) Form 2 - This is the application for registration of Trade Mark. A space is provided on top of the form for pasting one Bromide of the Mark.
 - (b) Form 1 - which is the Authorisation of Agent, - i.e. owner of trademark appointing his agent in respect of the application.
 - (c) Form 3 - This is for additional representation of Trade Mark to accompany application for Registration. It is, except for the heading, a blank sheet of paper - for pasting the Bromide.
 - (d) Filing fees.
3. An acknowledgment fom1 will be given to you (of your application)

4. The Registrar will examine the application for registrability under section 9 or section 10 of the Act and also cause a search (official) to be conducted for similarity of existing registered trade mark or similarity with any pending application.

The Registrar is to also ensure that the mark is not deceptive or scandalous, or is not in any way disallowed under the Act. The Registrar may then accept or refuse.

5. Refusal or conditional acceptance should be in writing and within 2 months of receiving notification of the refusal or conditional acceptance, the applicant should apply for a hearing or reply to objection in writing otherwise the application is considered withdrawn. Where the Registrar still refuses, the applicant can appeal to the court (Federal High Court).

6. Where the Registrar accepts the application, a letter of acceptance will be issued. The trademark will be deposited in the advertising Room for eventual publication in the Trade Mark Journal.

Within 2 months of publication in the Journal, any person can give notice to the Registrar of opposition to the registration. The Registrar is obliged to send a copy of notice of opposition to applicant who must within one month send a counter-statement, otherwise the application is deemed abandoned. If counter-statement is sent, the Registrar is empowered to make a final decision on which applicant can appeal against to the court.

Where there is no opposition to the application or the decision of the Registrar is in favour of applicant, the Registrar shall enter the trade mark on the register in Part A or Part B.

Duration and Renewal

The duration for a trademark is a period of 7 years. Renewal may be made for a period of 14 years from the expiration of the last registration. Where a renewal is granted, a renewal certificate will be issued.

If after 5 years a registered mark is not used, it can be removed from the register.

Rights Conferred by Registration and Enforcement

Registration confers on the registered owner the exclusive right to the use of the trade mark in relation to the goods mentioned in the register.

Convention Country

A person who applied for protection for a trade mark in a convention country can (within 6 months of such application in his country) apply personally or through legal representative or assignee for registration of his trade mark in Nigeria and he shall have priority to other applicants and his registration in Nigeria shall have the same date of application as in the convention country.

The registration of a trademark is prima facie evidence of validity of that trademark.

Infringement

If a person who is not a registered user, uses a mark identical with or so nearly resembling the mark as to be likely to deceive or cause confusion in the course of trade in relation to the goods in respect of which the mark was registered, he is guilty of infringement.

The Federal High Court is the court vested with exclusive jurisdiction in matters relating to action for infringement of trademark. The

several actions that may be instituted in the court are injunction-perpetual/interim; delivery up of the mark and articles and damages for loss of profit, and where the trade mark is not registered, resort is had to the common law action of passing off.

VII DISPUTE RESOLUTION

1. The Courts

Nigerian courts are divided into courts of superior courts which are the courts of record (e.g. the Supreme Court, the High Court, the Court of Appeal) and the inferior courts (e.g. the Magistrate Courts). The Supreme Court of Appeal which sits in the Federal Capital Territory, Abuja is the highest court in the hierarchy of courts in Nigeria. The Supreme Court is vested with both original and appellate jurisdiction. The original jurisdiction is exclusive and covers any dispute between the Federation and a State or between States involving any question on which the existence or extent of a legal right depends. The original jurisdiction of the court has been extended by the National Assembly to include disputes between the National Assembly and the President or between the National Assembly and a State House of Assembly or between the National Assembly and a State Government. The Supreme Court also has exclusive jurisdiction to hear and determine appeals from the Court of Appeal. The Court of Appeal is the next court in the hierarchy and has both original and appellate jurisdiction. There are two High Courts in Nigeria; the Federal High Court with jurisdiction conferred on it by Section 251 of the Constitution of the Federal Republic of Nigeria, 1999, and the various High Courts of the States. The High Court of the State has the widest civil jurisdiction under the

Constitution subject to the jurisdiction conferred on the Federal High Court by Section 251.

The Magistrates Courts jurisdiction varies according to the Magistrate Courts law of the various States establishing them. Magistrate Courts exercising civil jurisdiction in Northern States of Nigeria are known as District Courts.

The National Industrial Court is not one of the courts established directly by the Constitution. It is a specialized court created by an Act of the National Assembly; the National Industrial Court Act, 2006. The Court is vested with exclusive jurisdiction in civil cases and matters relating to the following:

- a. Labour, including trade unions and industrial relations, environment and conditions of work, health, safety and welfare of labour, and matters related thereto;
- b. grant of any order to restrain any person or body from taking part in any strike, lock-out or any industrial action, or conduct in contemplation or in furtherance of a strike or lock-out or any industrial action;
- c. determination of any question as to the interpretation of; any collective agreement ; any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute; the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement; any trade union constitution; and any award or judgment of the Court.

The Court is also empowered to transfer cases from the court to the Federal or State High Court where it lacks jurisdiction.

2. Alternate Dispute Resolution

Alternative forms of dispute resolution are on the rise in Nigeria because the regular courts are usually beleaguered with delays for diverse reasons. An attempt to combat these delays and ensure swifter dispensation of justice has seen the emergence of Alternative Dispute Resolution and the multi-door court house. Multi-door courthouse is a court-connected Alternative Dispute Resolution centre which offers a variety of alternative dispute resolution processes. It is a multi-faceted dispute resolution centre established to supplement available resources for access to justice. The methods of alternative dispute resolution in Nigeria are Negotiation, Mediation, Conciliation, and Arbitration. Arbitration and Conciliation in Nigeria is governed by the Arbitration and Conciliation Act, LFN, 2004.

Generally, contracts contain clauses providing for recourse to mediation or arbitration where a dispute arises. Parties are free to agree on a governing law and to the jurisdiction of international arbitration forums.

3. Enforcement of Foreign Judgments

A foreign judgment may be enforced in Nigeria. Specific procedures laid down in the Foreign Judgment (Reciprocal Enforcement) Act must be followed to ensure the enforcement of foreign judgments in Nigeria. Such enforcement is subject to compliance with the requirements of Nigerian law for the enforcement of foreign judgments.

VII GENERAL INFORMATION ON NIGERIA

1. Real Estate

The real estate service in Nigeria is comprised of fully serviced houses and apartments and lands for sale or rental in Nigeria, ranging in size and value to suit individual needs. Availability and cost is dependent on which area and also the state within which the land is situated, with properties in Abuja, Lagos and Port Harcourt being the most costly. The property market in Nigeria is booming, particularly in the Federal Capital Territory, due in part to the scarcity of accommodation and on the other part to its status as the seat of power in Nigeria.

2. Health Care Delivery

The Nigerian public health care system is currently undergoing massive overhauling and some state hospitals which are underfunded and under-staffed are gradually being rehabilitated. The Ministry of Health is in the process of improving primary health care in Nigeria particularly in the rural areas and free immunisation is available to children for tuberculosis, hepatitis B, measles, tetanus and other illnesses. On the other hand, excellent private medical care is available throughout the country.

3. Education

Nigeria has many excellent private and state schools, providing kindergarten to matriculation-level education. There are coeducational and single-sex institutions, boarding and day schools, and those that provide tuition in foreign languages. All schools offer

sporting activities varying from tennis, swimming and athletics to lawn tennis, soccer. Schools also offer and participate in debates, literary competitions and mathematics competitions. There exist a wide range of tertiary education options available, including a number of excellent universities teaching to international standards, as well as technical training courses offered by colleges and technical institutions. Tertiary institutions in Nigeria range from federal universities, state universities as well as several accredited private universities offering a wide range of courses.

4. Transport System

The transportation system in Nigeria is reliable and extensive with varying modes of transportation; motorcycles popularly called Okada; cabs and buses. However, most corporate employees rely on their own vehicles to get around in Nigeria.

Nigeria's has a well developed and extensive and excellent road network available which links all major cities although the roads are poorly maintained resulting in several potholes and gullies which in turn causes traffic problems. Nigerians drive on the left hand side of the road and wearing of seatbelts is compulsory and strictly enforced in some states with sanctions for contravention. Driving while holding, making or receiving a call on a mobile phone is also an offence and one can be subject to a fine. The Country also has several well developed and maintained airports for both international and local flights.

5. Social Activities and Entertainment

Many Nigerians take an interest in outdoor activities, well suited to the country's attractive climate. Membership of a recreation clubs

and gyms are popular and these offer a wide range of facilities from indoor swimming pools and squash courts to weight training equipment and aerobic, world-class golf courses and other classes. Nigeria is jewel of diverse restaurants and eating establishments, theatres and cinemas and a popular relaxation activity is a “weekend getaway” to an area of the beautiful serene environment. Nigeria is also a whirlpool of dancing clubs where the music is fast paced or slow depending on the tastes of the patrons. There are also live band performances and shows organized by major breweries and other events organizers both in and out of the country.

Generally, Nigeria is characterized by marked inequality and uneven distribution of the country’s wealth, which has, and will, continue to have an influence on standards of living. These include unemployment, inadequate state health care and inadequacy of low-cost housing, civil unrest in some parts of the country and a severe shortage of schools and teachers in disadvantaged communities. These problems notwithstanding, the beauty of the landscape, the climate and the diversity and hospitality of the people make the good far outweigh the bad. A visit and stay in Nigeria is always a pleasurable, adventure filled and wonderful experience