

PROCEDURE FOR INCORPORATING A BUSINESS ENTERPRISE BY A FOREIGN INVESTOR IN NIGERIA

THE LEGAL FRAMEWORK FOR BUSINESS ACTIVITIES

METHODS OF CONDUCTING BUSINESS

All business enterprises must be registered with the Corporate Affairs Commission. Business activities may be undertaken in Nigeria as a:

- (i) Private Limited Liability Company;
- (ii) Public Limited Liability Company (Plc);
- (ii) Unlimited Liability Company;
- (iii) Company Limited by Guarantee;
- (iv) Foreign Company (branch or subsidiary of foreign company);
- (v) Partnership/Firm;
- (vi) Sole Proprietorship;
- (vii) Incorporated trustees (*religious, charitable, philanthropic or cultural*);
- (viii) Representative office *in special cases*.

THE COMPANIES AND ALLIED MATTERS ACT AND INCORPORATION PROCEDURES

The Companies and Allied Matters Act, 1990 (the Companies Act) is the principal law regulating the incorporation of businesses. The administration of the Companies Act is undertaken by the CORPORATE AFFAIRS COMMISSION (CAC), which undertakes the administration of the Companies Act.

Minimum Share Capital

The minimum authorised share capital is N10, 000 (Ten Thousand Naira) in the case of private companies or N500,000 (Five Hundred Thousand Naira) in the case of

public companies with a minimum subscription of 25% of the authorised share capital respectively.

OPERATIONS OF FOREIGN COMPANIES IN NIGERIA

A non-Nigerian may invest and participate in the operation of any enterprise in Nigeria. However, a foreign company wishing to set up business operations in Nigeria should take all steps necessary to obtain local incorporation of the Nigerian branch or subsidiary as a separate entity in Nigeria for that purpose. Until so incorporated, the foreign company may not carry on business in Nigeria or exercise any of the powers of a registered company.

The foreign investor may incorporate a Nigerian branch or subsidiary by giving a power of attorney to a qualified solicitor in Nigeria for this purpose. The incorporation documents in this instance would disclose that the solicitor is merely acting as an "agent" of a "principal" whose name(s) should also appear in the document. The power of attorney should be designed to lapse and the appointed solicitor ceases to function upon the conclusion of all registration formalities.

The locally incorporated branch or subsidiary company must then register with the Nigerian Investment Promotion Commission (NIPC) before commencing formal operations. The new company may also apply to NIPC for other investment approvals (e.g. expatriate quota) and other incentives.

Exemption to the General Rule

Where exemption from local incorporation is desired, a foreign company may apply in accordance with Section 56 of the Companies Act, to the National Council of Ministers for exemption from incorporating a local subsidiary if such foreign company belongs to one of the following categories:

- (a) "foreign companies invited to Nigeria by or with the approval of the Federal Government of Nigeria to execute any specified individual project;
- (b) foreign companies which are in Nigeria for the execution of a specific individual loan project on behalf of a donor country or international organisation;
- (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 body or person, where such contract has been approved by the Federal Government."

The application for exemption from disclosing certain details about the applicant is to be made to the Secretary to the Government of the Federation (SGF). If successful, the request of the applicant is granted upon such terms and conditions, as the National Council of Ministers may think fit.

Representative Offices

Foreign companies may set up representative offices in Nigeria. A representative office however, cannot engage in business or conclude contracts or open or negotiate any letters of credit. It can only serve as a promotional and liaison office, and its local operational expenses have to be floated by the foreign company. A representative office has to be registered with the CAC.