

FOREIGN PARTICIPATION IN BUSINESS IN NIGERIA

Nigeria is a country blessed with abundant human and natural resources. However, Nigeria has been unable to fully harness its economic potential. With an estimated population of over 185 million people as at 2016, Nigeria has a large untapped consumer market for sundry goods and services. The potentials are huge for foreign companies intending to do business in Nigeria.

There are several laws regulating foreign participation in Nigeria. By virtue of S 20 (4) of the Companies and Allied Matters Act (CAMA), Cap C20, LFN 2004, a foreigner can undertake and participate in trade or business within Nigeria.

Some of the relevant laws are as follows:

1. Companies and Allied Matters Act
2. Nigerian Investment Promotion Commission Act
3. Immigration act
4. Investment and Securities act
5. Foreign Exchange (monitoring and miscellaneous provisions) Act
6. Industrial Inspectorate Act
7. National Office for Technology Acquisition and Promotion Act.

A foreign company that intends to carry on business in Nigeria shall first register (incorporate) a company in Nigeria. Until such a company is incorporated, a foreign company in Nigeria shall not have a place of business in Nigeria for any other purpose than for matters which are preliminary to incorporation.

REQUIREMENT FOR THE REGISTRATION OF A FOREIGN COMPANY

The Incorporation of Company in Nigeria is done by accredited professionals which must be Lawyers, Chartered Secretaries and Chartered Accountants.

The procedure for incorporating a company in Nigeria is as follows:

1. Online name search for availability and reservation;
2. Incorporation forms are filled online and e-stamped. Hard copies are prepared by the accredited professional and signed by the promoters;
3. Hard copies of the incorporation documents shall be verified at the Corporate Affairs Commission before collection of certificate;
4. The Certificate of Incorporation which is evidence of incorporation shall be issued by the commission where the incorporation documents have not been queried.

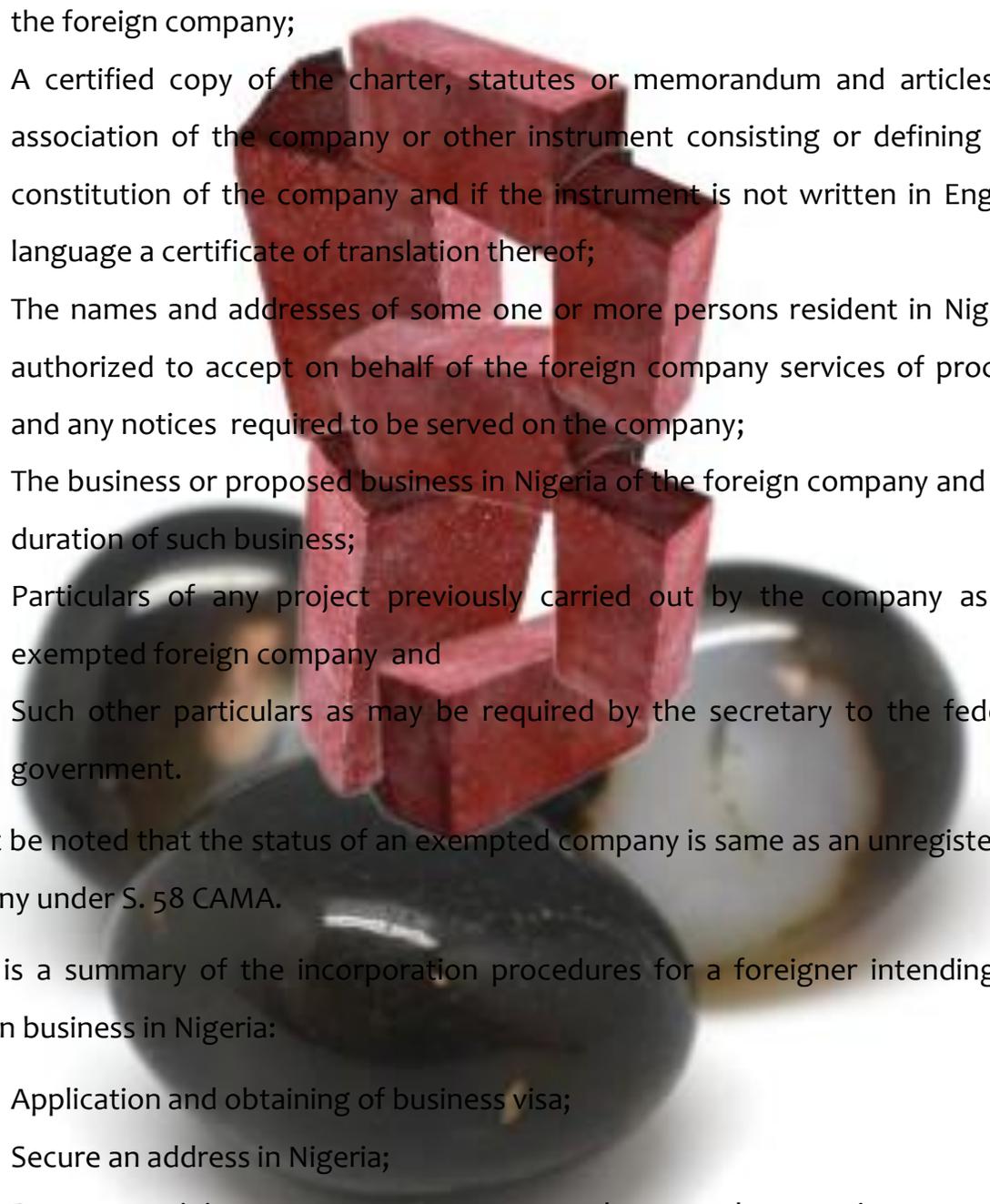
However, some foreign companies are exempted from the requirement to register a Nigerian company. This is provided for in s 56(1) CAMA and includes:

1. Those invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project;
2. Those in Nigeria for the execution of specific individual loan project on behalf of a donor country or international organization.
3. Those owned by foreign governments and engaged solely in export promotion activities and;
4. Engineering consultants and technical experts on any individual specialist project under contract with any of the governments in the federation or their agencies, where such contract has been approved by the federal government.

HOW TO OBTAIN EXEMPTION FROM INCORPORATION S. 56 (2) CAMA

An application for exemption shall be in writing addressed to the secretary to the government of the federation and shall set out;

1. The name and place of business of the foreign company outside Nigeria;
2. The name and place of business or the proposed name and place of business of the foreign company in Nigeria;

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3. The name and address of each director, partner or other principal officer of the foreign company;
 4. A certified copy of the charter, statutes or memorandum and articles of association of the company or other instrument consisting or defining the constitution of the company and if the instrument is not written in English language a certificate of translation thereof;
 5. The names and addresses of some one or more persons resident in Nigeria authorized to accept on behalf of the foreign company services of process and any notices required to be served on the company;
 6. The business or proposed business in Nigeria of the foreign company and the duration of such business;
 7. Particulars of any project previously carried out by the company as an exempted foreign company and
 8. Such other particulars as may be required by the secretary to the federal government.

It must be noted that the status of an exempted company is same as an unregistered company under S. 58 CAMA.

Below is a summary of the incorporation procedures for a foreigner intending to carry on business in Nigeria:

1. Application and obtaining of business visa;
2. Secure an address in Nigeria;
3. Prepare a joint venture agreement and any other pre-incorporation agreement that may be necessary if it involves a Nigerian partner;
4. Incorporation of a company;
5. Apply to register the company with the Nigerian Investment Promotion Commission;

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6. Register the investment with the Securities and Exchange Commission;
 7. Importation of capital through an authorized dealer and obtain certificate of importation (S. 15 forex act);
 8. Make applications for other necessary permits and available relief for that kind of investment
 9. Make applications for all reliefs and incentives available for that type of investment

Basic permits necessary for foreign participation in business in Nigeria;

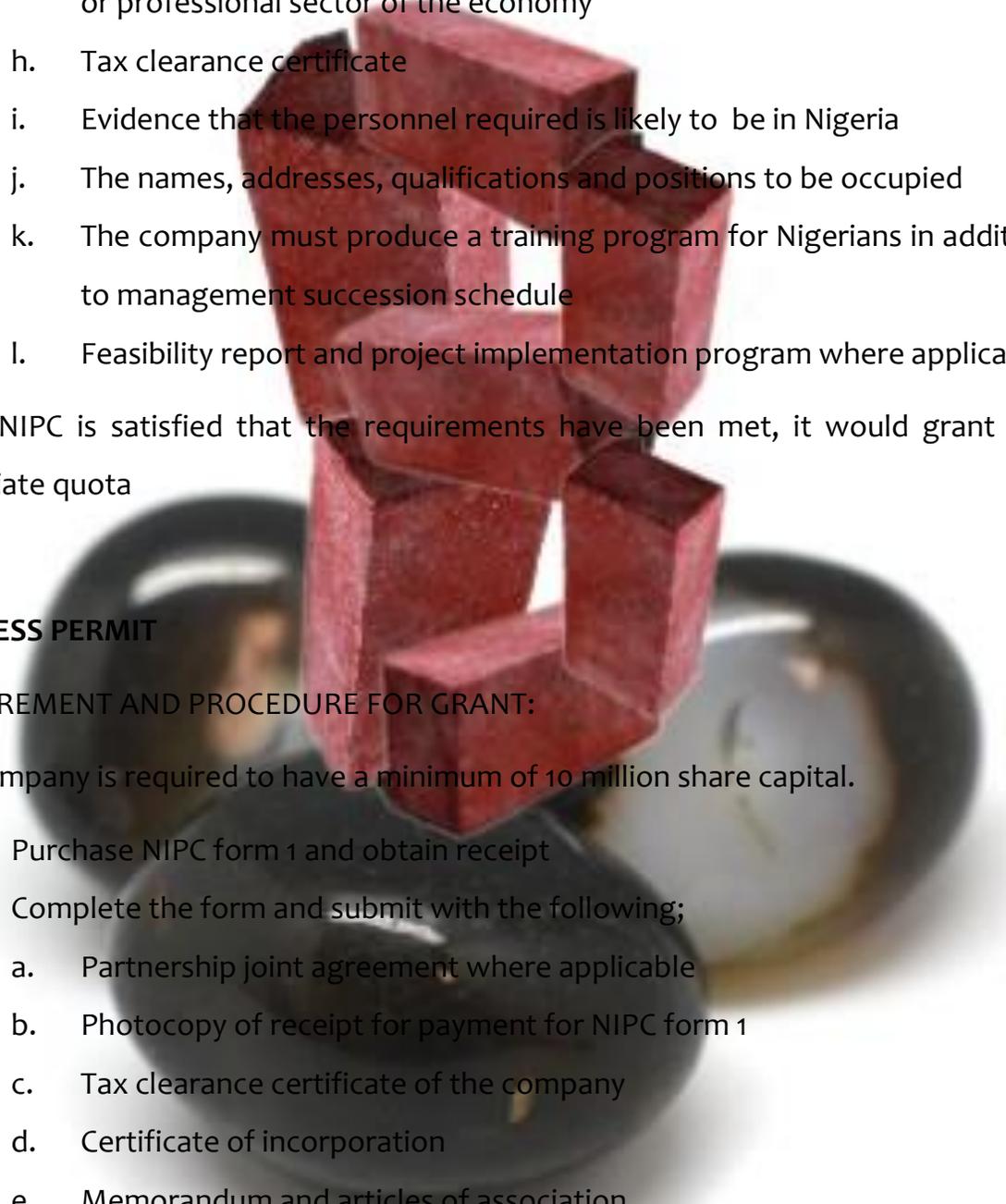
1. Entry permit/visa
2. Expatriate quota
3. Business permit
4. Resident permit

Expatriate quota;

Expatriate quota is a consent granted to a company to employ foreigners to specific job positions.

REQUIREMENT AND PROCEDURE FOR EXPARTRIAE QUOTA

1. The Company is required to have a minimum of 10 million share capital.
2. Purchase form from the Nigerian investment promotion commission (NIPC)
3. Complete the form and submit it with the following:
 - a. Photocopy of receipt for payment for the form
 - b. The certificate of incorporation for sighting
 - c. Joint venture or partnership agreement where applicable
 - d. Details of shareholding of a foreigner in the company
 - e. Certified true copy of statement of share capital (form CAC2) and particulars of directors (form CAC 7)
 - f. The memorandum and articles of association of the company

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- g. Approval of professional body if the quota is to be used in a specialized or professional sector of the economy
 - h. Tax clearance certificate
 - i. Evidence that the personnel required is likely to be in Nigeria
 - j. The names, addresses, qualifications and positions to be occupied
 - k. The company must produce a training program for Nigerians in addition to management succession schedule
 - l. Feasibility report and project implementation program where applicable

If the NIPC is satisfied that the requirements have been met, it would grant the expatriate quota

BUSINESS PERMIT

REQUIREMENT AND PROCEDURE FOR GRANT:

The Company is required to have a minimum of 10 million share capital.

1. Purchase NIPC form 1 and obtain receipt
2. Complete the form and submit with the following;
 - a. Partnership joint agreement where applicable
 - b. Photocopy of receipt for payment for NIPC form 1
 - c. Tax clearance certificate of the company
 - d. Certificate of incorporation
 - e. Memorandum and articles of association
 - f. Details of shareholding of a foreigner in the company
 - g. Certified true copy of statement of share capital (FORM CAC 2) and receipt for payment of stamp duty
 - h. Certified true copy of particulars of directors (form CAC 7)
 - i. Evidence of capital importation for wholly foreign companies

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- j. Title deed of land evincing firm commitment to acquire business premises for the business
 - k. Feasibility report and project implementation program of the company
 - l. Approval from relevant professional body if the business is to operate in a specialized or professional sector of the economy
 - m. Information brochure on foreign partner if any

TAX REGISTRATION

After incorporation, companies are required to apply to the nearest Federal Inland Revenue Service office requesting the issuance of a Tax Identification Number (TIN) and VAT registration.

Taxes payable by companies:

1. **Company Income Tax:** 30% on the profits of the company (this tax is not payable by tax exempt companies and companies engaged in the exploration for production of petroleum).
2. **Stamp duties:** imposed at different rates on most legal documents
3. **Value added tax :**5% on the supply of a wide range of goods and services
4. **Withholding tax:** 5% for construction and agency arrangements and 10% for dividend, interest and rent
5. **Education tax:** 2% of corporate profits as assessed under the companies income tax act.
6. **Capital gains tax:** 10% on any gains from the disposal of assets. This is not payable where the money is used to acquire replacement assets within 12months before or after disposal. It should be noted that capital gains tax does not apply to the disposal of shares in Nigeria.

A company with staff is required to:

1. Make a monthly deduction of 2.5% of each employees basic salary payable to the national housing fund
2. Make monthly contributions to a mandatory pension scheme (contributions are made by both employer and employee), where there are more than five employees
3. Register with the Nigeria social insurance trust fund and contribute a minimum of 1% of its total monthly payroll into the employee's compensation fund.
4. Make a contribution of 1% of payrolls cost to industrial training fund if it has 25 or more employees.

There are certain sectors which require special licenses to carry on business. These sectors include the telecommunications, banking, capital market, insurance and the oil and gas sector.

It should also be noted that agreements that provide for the transfer of foreign technology to Nigerian companies are required to be registered with the National Office for Technology Acquisition and Promotion (NOTAP) within 60 days of the execution of the agreement.

RELIEFS AND INCENTIVES

A wide range of reliefs and incentives have been introduced in order to attract and retain foreign investment in Nigeria. There are general incentives which apply to all companies in diverse areas of business whereas there are some which are specific and apply only to companies in specific sectors in order to encourage investments in those areas.

These incentives are well provided for in the following laws;

1. Industrial development (income tax relief) Act 2004
2. Mineral and Mining Act 2007
3. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995
4. Investment Promotion and Protection Agreements.

CONCLUSION

The following represents the basic information needed for foreign investment in Nigeria.

We are available to provide clarification(s) or specific information upon request.

