

A REVIEW OF THE REGULATORY REQUIREMENTS FOR FOREIGN PARTICIPATION IN THE NIGERIAN BUSINESS ECOSYSTEM

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ABSTRACT

As one of Africa's largest economies, Nigeria offers a wide range of opportunities for foreigners to participate in its business sector. With the increasing growth in commercial activities in Nigeria, coupled with its population growth which currently stands at over 237 million, Nigeria offers a wide range of opportunities for both foreign direct and foreign portfolio investments. Foreign participation in business in Nigeria is regulated by various statutory and regulatory frameworks, which are all geared towards providing equal opportunities for both local players and foreign investors alike, to do business and thrive. This article aims to provide an in-depth exposure to the various legislative and regulatory requirements for foreign participation in business in Nigeria, dissecting the relevant legislations, regulatory bodies, relevant business structures and the procedural requirements for foreigners participating in the Nigerian business environment. Furthermore, this work appraises the potential challenges foreign investors might encounter and offers strategic recommendations towards a successful and seamless market entry for foreign investors. This work was initially prepared as a presentation, in partial fulfilment of the requirements for a successful completion of My Internship experience at The Law Crest LLP.

KEYWORDS: S M Nazmuz Sakib, Multidisciplinary Research, Climate Feedback, Geometry, Blockchain, International Relations, Polymath.

1. INTRODUCTION

The role of foreign investment in the economic development of any nation (Nigeria inclusive) can not be downplayed, this is because foreign investment contributes to the overall productivity of the economy, providing employment opportunities for citizens, contributing to the revenue generation of the government while also significantly improving the standard of living of the citizens. According to a 2020 United Nations report, Foreign Direct Investment (FDI) inflow into Nigeria increased by 4.3 percent despite the COVID-19 pandemic outbreak.¹

Foreign participation means a cross-border kind of investment in which a resident of a particular economy acquires control or a significant degree of influence in the management of a resident of another economy.²

Nigeria has a robust legal landscape carefully and meticulously put in place with the aim of stimulating foreign participation in our business, while also protecting our own domestic industries. The Nigerian government is not oblivious of the enormous role foreign direct investment (FDI) plays in stimulating economic growth and job creation in any nation, and this has informed the enactment of various legislations to regulate the operations of foreign companies in Nigeria. These laws regulate the business landscape and deal with matters such as registration requirements, ownership structures, licensing requirements and tax obligations. Foreigners can register a business in Nigeria either alone, or in partnership with Nigerians.³ There are two ways through which foreigners can participate in business in Nigeria, this may be through foreign direct investment, which involves a foreigner or foreigners directly establishing a business in Nigeria or acquiring a significant amount of shares in an existing company thereby gaining control over the running and management of the business, or partnering with a Nigerian to create a joint Venture business in Nigeria; it may also be through a foreign portfolio investment, wherein the foreigner acquires shares of an already existing company, without actively participating in the control and management of the business.⁴

The objective of this work is to dissect the statutory and regulatory landscape for foreign businesses intending to operate in Nigeria. It encompasses the provisions of the relevant legal frameworks that govern foreign participation in Nigeria, including the Companies and Allied Matters Act (CAMA) 2020, the Nigerian Investment Promotion Commission (NIPC) Act, and other sector-specific regulations that may apply.

2. STATUTORY FRAMEWORKS GOVERNING FOREIGN PARTICIPATION IN NIGERIA

The following are the Statutory frameworks that govern foreign participation in Nigerian business:

1. COMPANIES AND ALLIED MATTERS ACT (CAMA) 2020:

This is the principal legislation that regulate the formation, registration, and administration of Companies in Nigeria. Under, foreigners desirous of carrying on business in Nigeria are required to register a company in Nigeria before they can be able to legitimately carry on their business activities in Nigeria. It is registration that would give the company an independent legal personality, distinct from its owners.⁵ The Corporate Affairs Commission (CAC) is the regulatory body empowered under the Companies and Allied Matters Act, to register companies that have satisfied the conditions for registration under the Act.⁶ A foreign company has the right to open a branch in Nigeria or as an agency, subsidiary or a representative office, subject to meeting the relevant requirements as contained in the law for the purpose of obtaining local incorporation for the said branch office, subsidiary, agency or representative office, and give it a separate legal personality.⁷ For the purpose of registration of foreign businesses in Nigeria, the authorized minimum share capital requirement in N100,000,000 (One Hundred Million Naira), this means that the company must have at least 100 million shares divided into N1 per share.⁸ This is by virtue of the Handbook on Expatriate Quota Administration (Revised 2022). The said handbook was published by the ministry of Interior on the 31st August 2022, pursuant to its responsibility to administer and technically enforce the Nigeria Immigration Act, 2015 and the 2017 Immigration Regulations relating to the establishment of businesses in Nigeria by foreigners and the employment of expatriates.⁹ Previously, it used to be N10 million, but this handbook has increased it to N100 million.¹⁰ To eliminate ambiguities that may arise, the Corporate Affairs Commission (CAC), on the 8th of December, 2023 clarified through its social media handles that the above notice by the Ministry of Interior relates to the minimum issued share capital and not Paid-up capital and that an amended notice would be released accordingly.¹¹ Foreigners are also allowed to own 100% equity in the company without local participation, except for sectors contained in the negative list,¹² which include production of arms, ammunition, producing or dealing in narcotic drugs, and psychotropic substances, production of military and paramilitary wears and accoutrement, and other items that the Federal Executive Council may from time to time determine.¹³ Under the CAMA 2020, a single individual can now set up a private company in Nigeria.¹⁴ Foreigners can register either a company limited by shares (Ltd),¹⁵ public limited company (PLC),¹⁶ Partnerships,¹⁷ Incorporated Trustees or Company Limited by Guarantee (Ltd/GTE) for nonprofits.¹⁸ Foreigners can also register an Unlimited Company.¹⁹ By virtue of Section 271(1) of CAMA 2020, such foreign companies must appoint at least, 2 directors with the exception of a small company.

Sections 78 and 80 of CAMA 2020, provides exemptions for certain foreign companies,

by exempting them from registration. These companies are as follows:

- a. Foreign Companies Invited into Nigeria by or with the approval of the Federal government, to execute any specified individual project;
- b. Foreign Companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organization;
- c. Foreign government-owned companies engaged solely in export promotion activities;

- d. Engineering consultants and technical experts engaged in any individual specialist project, under contract with any of the governments in the federation or any of their agencies or with any other body, where such contract has been approved by the federal government.²⁰ Also exempted from requirements of registration are:
- e. Companies that had been granted exemption under the provisions of the preceding companies Act, before the coming into force of CAMA, 2020
- f. Companies that have been granted exemption under any treaty whether bilateral or multilateral, to which Nigeria is a signatory party.²¹
- g. Pursuant to the Business Facilitation Act of 2022, a foreign company that has been granted exemption under any Act of the National Assembly.²²

2. NIGERIA INVESTMENT PROMOTION COMMISSION (NIPC) ACT OF 1995:

This Act facilitates foreign investments in the Nigerian business sector, and seeks to guarantee a greater degree of protection to foreign investments. Section 17 of the Act provides as follows: ‘Except as provided in section 18 of this Act and subject to this Act, a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria.’ Section 20 of the Act further provides: ‘An enterprise in which foreign participation is permitted under section 17 of this Act shall, before commencing business, apply to the Commission for registration.’ One of the benefits of registration is that it protects the entity from expropriation by any government. The Act establishes the Nigeria Investment Promotion Commission (NIPC)²³ and charged it with the responsibility of registering all foreign investments, monitoring foreign investments, coordinating foreign investments, providing incentives to foreign investors and promoting Investment opportunities for the purpose of attracting foreign investments.²⁴

3. FOREIGN EXCHANGE ACT:25

This Act governs the inflow of foreign currency into and out of Nigeria. The Act established the Autonomous Foreign exchange Market,²⁶ allowing for uninhibited repatriation of dividends or profits, payment in respect of loan servicing where foreign loan has been obtained and remittance of all proceeds in the event of sale or liquidation of the enterprise, net of taxes, all in freely convertible currencies.²⁷ It also allows foreign investors to open and operate domiciliary accounts in foreign currencies, for the purpose of the smooth and seamless conduct of their business.²⁸ The Act also allows foreign investors to repatriate profits and dividends, provided they have obtained a Certificate of Capital Importation (CCI) from the Central Bank of Nigeria through a licensed dealer, usually a commercial Bank.²⁹ An authorized dealer means a bank licensed under the Banks and Other Institutions Act (BOFIA), and such other specialized bank and issued with license to deal in foreign exchange.³⁰

4. NIGERIA IMMIGRATION ACT OF 2015:

Foreigners who wish to operate their business in Nigeria and to employ foreign nationals for positions where suitably qualified Nigerians are unavailable to fill up, must comply with the provisions of the Nigerian Immigrations Act³¹ and the 2017 Immigration Regulations³² by obtaining the requisite expatriate quota. The foreign investor must obtain a business permit from the Ministry of Interior to legally carryout their business, pursuant to section 36(1) of the Nigerian Immigration Act, 2015, this

will enable them to work in Nigeria and also remit their income abroad. They must also obtain the Combined Expatriate Resident Permit and Alien Card (CERPAC), where they wish to live and work in Nigeria, and they are issued by the Nigeria Immigration Service.³³

5. NIGERIA STARTUP ACT.

Under the Nigerian startup Act, for a foreign company to be eligible to be granted the Startup Label in Nigeria, it must among other requirements, be a registered limited liability company under CAMA 2020, not be older than ten years, be engaged in innovation and technology, and must have at least one-third of its ownership held by Nigerian citizens.³⁴

SECTOR-SPECIFIC REGULATIONS.

For foreigners who intend to participate in certain sectors of the Nigerian economy, they are required to comply with certain requirements as stipulated in the legal frameworks regulating those sectors. The following are some of the specialized sectors and relevant laws regulating them:

1. **Oil and Gas Sector:** The Nigerian oil and gas sector is an industry that is heavily regulated, and the relevant legal framework regulating the Nigerian oil and gas sector is the Petroleum Industry Act (PIA) of 2021. Foreigners wishing to participate in this sector must comply with certain regulatory and licensing requirements, these requirements include obtaining the Oil and Gas Industry Service Permits (OGISP) from the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), submission of Tax Clearance Certificate to the FIRS, Submission of the Nigeria Insurance Trust Fund (NSITF) payment receipt or certificate,³⁵ as well as meeting certain local content requirements stipulated in the Nigerian Oil and Gas Industry Content Development Act (NOGICDA) 2010. You also need Department of Petroleum Resources (DPR) Permit, Nigerian Content Development and Monitoring Board (NCDMB) License, Industrial Training Fund (ITF) Certificate, etc.
2. **Banking and Financial Services Sector:** Foreigners participation in the Nigerian banking and financial services sector is governed by the Banks and Other Financial Institutions Act (BOFIA) 2020. ³⁶The Act established the Central Bank of Nigeria (CBN) as the Apex regulatory body of the financial services sector in Nigeria.³⁷ A foreign entity which intends to establish a bank or operate a financial institution must incorporate a company,³⁸ meet the minimum capital requirement stipulated by the CBN³⁹ and obtain the necessary banking licenses from the Central Bank of Nigeria.⁴⁰
3. **Telecommunications Sector:** foreign participation in the Nigerian telecommunications Sector is governed by the Nigerian Communications Act.⁴¹ The Act established the Nigerian Communications Commission (NCC) as the regulatory body for the telecommunications sector in Nigeria. Foreigners wishing to participate in the Nigerian telecommunications sector must obtain operating licenses and must also comply with the various regulations⁴² and guidelines⁴³ issued by the NCC and the minister of communications, such as Type Approval Regulations, 2024; Type Approval Business Rules, 2024; Quality of Service Regulations, 2024; Consumer Code of Practice Regulations, 2024; Numbering Regulations, 2008; Universal Access and Universal Service Regulations, 2007; Licensing Regulations, 2019; Competition Practices Regulations, 2007; Registration of Communications Subscribers Regulations; Draft Data Protection Regulations, 2023 and other Regulations issued by the NCC, as well as Guidelines on Short Code Operations in Nigeria, 2023; Guidelines on Technical Specifications for the Deployment of Infrastructure in the Communications Sector, 2023; Guidelines on Promotional Advertisement, 2023; Legal Guidelines on Technical Standards on Interconnectivity and other Guidelines issued by the Minister of Communications.⁴⁴ Additionally, there are local content requirements that require foreign telecom companies wishing to venture into the Nigerian telecommunications market, to partner with Nigerian firms under certain special instances.
4. **Real Estate Sector:** Foreigners are allowed to invest in the Nigerian real estate sector, but subject to compliance with the Land Use Act of 1978,⁴⁵ and the various states' land instruments legislations.⁴⁶ Interpreting Section 1 of the LUA which vests ownership of all lands comprised in the territory of a state in the governor to manage for the benefit of all Nigerians. The Supreme court have held that foreigners are not entitled to land in Nigeria as of right, see *Gerhard Huebner v Aeronautical Industrial Engineering and Project Management Company Limited*.⁴⁷

5. RELEVANT REGULATORY BODIES.

A. CORPORATE AFFAIRS COMMISSION (CAC):

This agency was established by the CAMA as the Apex regulatory body for all companies in Nigeria.⁴⁸ The CAC is the government agency that is charged with registering businesses in Nigeria, the functions of the Commission according to CAMA 2020 include: “(i) the formation, incorporation, management, striking off and winding up of companies, (ii) business names, management and removal of names from the register, and (iii) the formation, incorporation, management and dissolution of incorporated trustees; (b) establish and maintain a company’s registry and office in each State of the Federation suitably and adequately equipped to perform its functions under this Act or any other law; © arrange or conduct an investigation into the affairs of any company, incorporated trustees or business names where the interest of shareholders, members, partners or public so demands; (d) ensure compliance by companies, business names and incorporated trustees with the provisions of this Act and such other regulations as may be made by the Commission; (e) perform such other functions as may be specified in this Act or any other law; and (f) undertake such other activities as are necessary or expedient to give full effect to the provisions of this Act.”⁴⁹. The following are the details that must be submitted to the CAC by anyone seeking to incorporate a company in Nigeria:

- a. The Proposed Name of the Company.⁵⁰
- b. Nature of the Principal business the company intends to engage in
- c. The Registered Office Address of the Company and head office if different from the registered office address.⁵¹
- d. Whether the liabilities of members is limited, and if so, whether by shares or by guarantee.⁵²
- e. Type of Company proposed to be incorporated (whether Private or Public Company).⁵³
- f. Particulars of the company’s proposed Director(s): (including their Names, Date of Birth, Gender, Phone Number, Email Address, Forms of Identification- International Passport and signature).⁵⁴
- g. Particulars of Shareholder(s): (including their Names, Date of Birth, Gender, Phone Number, Email Address, Means of Identification, International Passport and signature on a plain paper).⁵⁵
- h. Statement of initial share capital and amount of shares to be held by each of its shareholders in case the company will have more than one shareholder.⁵⁶
- i. Particulars of the Company Secretary (but Company Secretary is no longer compulsory for a small company under CAMA, 2020).
- j. Copy of the Memorandum and Articles of Association.⁵⁷

At the post Incorporation stage, every company is obligated by law to file its annual returns with the CAC. This requirement is provided under the Companies and Allied Matters Act (CAMA), 2020.

- a. **Nigeria Investment Promotion Commission (NIPC):** All foreign investors must register with the NIPC so as to be eligible for tax relief and other investment incentives. NIPC is the Federal Government Agency in Nigeria established by the NIPC Act to promote, coordinate, and monitor all investments in Nigeria. The basic functions and powers of the NIPC are as prescribed by the Act. The Commission among other things, coordinates, monitors, encourages, and provides necessary assistance and guidance for the establishment and operation of enterprises in Nigeria.
- b. **Ministry of Interior:** The foreign investor must obtain a business permit from the Ministry of Interior, pursuant to the Nigerian Immigration Act,⁵⁸ as well as the Combined Expatriate Resident Permit and Alien Card (CERPAC).
- c. **Federal Inland Revenue Service (FIRS):** every company incorporated in Nigeria is obligated to obtain its tax identification number (TIN) and always pay its taxes to the FIRS pursuant to the Companies Income Tax act. Other taxes include Withholding tax, VAT, Stamp Duties, Education Tax, personal income tax for its employees which must be paid to State Inland Revenue Service, etc.
- d. **Securities and exchange commission (SEC):** where the company intends to raise capital through the public for expansion or for other purposes, it may trade its shares in the Nigerian stock exchange and raise capital. Provided it is registered as a public company.⁵⁹

3. CHOOSING THE RIGHT BUSINESS STRUCTURE.

The importance of choosing an appropriate business structure for your business goes without saying, this is because every choice of business structure comes with its own peculiar advantages and disadvantages. For instance, choosing the right business structure has the following advantages:

- a) it ensures you are in compliance with guidelines for registration issued by the CAC;
- b) it provides your business with a very solid foundation; and
- c) it saves you time and monies by ensuring that you are in compliance with the requirements of the law.

And in choosing the most suitable business structure, the following must be considered:

- a. Liability protection: for instance, the need to limit the business' exposure to risks arising from potential lawsuits or claims against the business;
- b. Ownership and Control: for instance in a limited liability company, ownership is represented by the number of shares each member holds, while control is often exercised through shareholders and boards of directors;
- c. Tax implications of the business structure, for instance, companies limited by guarantee and incorporated trustees are exempt from paying taxes;
- d. Access to funding and investment opportunities, for instance, only public companies are allowed to raise capital through the capital markets;
- e. Alignment with the business', exit strategy and growth objectives.
- f. The requisite licenses and permits the business would require to kick off, for instance, to register a company limited by guarantee, the consent of the attorney general must be obtained;⁶⁰
- g. The amount of paper work associated with the business. All of these should guide a foreigner in determining the type of business structure that would be most suitable for the business they intend to engage in.

5.1. PARTNERSHIP

The Partnership Act,⁶¹ defines a Partnership as the relation that subsists between persons who are carrying on a business in common with a view to making profit. Partnership is a type of business structure wherein two or more persons (not more than 20 partners) or entities agree to come together to form a business with the goal of making profit. It is usually based on the mutual agreement of the parties in the form of a joint Venture and is usually regulated by a partnership agreement or partnership deed.

TYPES OF PARTNERSHIP

There are majorly 3 types of partnership, the include: i. General Partnership (GP), which is similar in nature to a business name; ii. Limited partnership (LP),⁶² which comprises of both general partners and limited partners. Under a limited partnership structure, there must always be at least, one general partner who is responsible for the day to day running of the business and bears liability for most of the risks and one limited partner who does not take active part in the day to day running of the business and whose liability is limited;⁶³ Iii. Limited liability partnership (LLP),⁶⁴ which has a similar structure to a limited liability company, in the sense that it gives the business a distinct legal personality separate from its owners and the liability of its owners are only limited to the amount of shares they hold in the partnership.⁶⁵ In a limited liability partnership, partners do not swim and sink together in the sense that unlike general partnership, partners in LLP are not agents of each other but agents of the partnership as an entity and whatever liabilities they incur in the course of running the business of the partnership, will be borne by the partnership.⁶⁶ The minimum number of partners in an LLP is 2, but there is no maximum to it.⁶⁷

ADVANTAGES OF PARTNERSHIP

Partnership has the following advantages:

- a. It allows for the coming together of individuals with complementary expertise, knowledge, resources and skills. This can bring about a more informed decision making process, leading to a more effective
- b. management of the business for their mutual benefits. The Supreme Court confirmed this in *Okin & Anor v. Okin*.⁶⁸
- c. Partners can apportion the responsibilities of running the business among themselves, minimizing the workload it would have placed on a single individual, and this will equally promote specialization.
- d. Capital required for expansion, diversification, investments and operations can easily be raised through contributions from the partners.
- e. Since partners share the profits and losses of the business among themselves, risks associated with the business is equally shared amongst them.
- f. Partnership is to a very large extent, easy to form and offers a flexible decision making process as well as management. The partnership agreement can always be structured to meet the peculiar needs and preferences of the partners comprised in the partnership.
- g. Lastly, for limited liability partnerships (LLP) which is a new innovation Introduced by the , the partnership business once incorporated, becomes distinct from its partners, to the extent that the liability of each partner is only limited to the amount of money he invested in the partnership, only agents who have acted outside the prescient of their functions as agents of the partnership, will have their liabilities unlimited.⁶⁹

DISADVANTAGES OF A PARTNERSHIP

- a. In a partnership, the personal liability of partners is unlimited in respect of the debts and obligations of the business. Hence, where the assets of the business cannot meet its liabilities, the personal assets of the partners can be attached to satisfy the debt liabilities of the business. The only exception to this is in the case of a limited liability partnership (LLP).
- b. Disagreements among the partners may pose a stumbling block to decision making, thereby disrupting the smooth operation of the business.
- c. In the event of exit or death of one partner, the partnership may dissolve or encounter serious challenges. Thus, making the continuity of the business dependent on the willingness of the remaining partners to continue or find new partners. The only exception to this is a limited liability partnership (LLP).
- d. The success of a partnership is majorly dependent on the skills, financial stability and dedication of all the partners to the extent that in the event one partner faces personal or financial challenges, it may affect the entire business.
- e. Because a partnership as a general rule, does not have a separate legal personality from the partners themselves, it may sometimes be very difficult to raise capital, enter into contracts or acquire assets in the name of the partnership.

5.2. PRIVATE COMPANY LIMITED BY SHARES (LTD)⁷⁰

This type of business structure often offers limited liability protection to its owners or shareholders. The company for instance, has a separate and independent existence from its owners, and is responsible for its actions.

It's advantages include:

- h. Its form as a limited liability company provides a certain degree of financial security to its shareholders or owners, in the sense that their liabilities is only limited to the amount of shares they hold in the company.
- i. It has a distinct legal personality, separate from its shareholders and can enter into contracts, own properties and also conduct business in its own name.

- j. It enjoys perpetual existence irrespective of changes in ownership of the company or death of the shareholders of the company, save where the shareholders decide to go into mergers or there is an acquisition.
- k. Shares can be transferred to other parties, which allows for a change in ownership of the company without disrupting the business operations.
- l. Registering a business as an Ltd makes the business attractive to potential investors and opens the business up to funding opportunities such as loans, grants from the government, individuals and other organizations.
- m. It allows the company to limit or restrict the transfer of its share through either a limiting clause or a preemptive clause.
- n. An Ltd can be registered with a minimum issued share capital of N100, 000.
- o. An Ltd is usually not subject to some very strict and complex regulatory requirements that apply to public limited companies.

However, when compared to public limited companies (PLC), Ltds might face challenges in raising capital from the public through the Nigerian stock exchange. This is because Ltds by their very nature, cannot raise funds from the public, vide section 22(5) of CAMA 2020.

5.3 PUBLIC LIMITED COMPANY (PLC)⁷¹

This is similar to a company limited by shares in the sense that the liabilities of their members are limited to the amount of shares unpaid held by them, but it differs from Ltds in the sense that it can offer its shares to the public and can be listed in the Nigerian Stock Exchange upon meeting the requirements of the Investments and Securities Act (ISA). A public company is one stated in its Memorandum of Association to be a Public Company.⁷² As a public company, certain things are required of public limited companies, which include having a company secretary,⁷³ holding annual general meeting (AGM)⁷⁴ and full compliance with certain other stringent requirements of the law.

ADVANTAGES OF PLC

- p. The nature of PLCs allow them to be able to raise capital by issuing shares or debentures to the public, through initial public offering (IPO) in the primary market and subsequent offerings in the secondary market section of the Nigerian Capital Markets. These capital can be used to support business growth, expansion as well as investments in new projects.
- q. Being listed in the Nigerian stock exchange will enhance the company's reputation and credibility and this will in return, attract investors to invest in the company.
- r. The ability of the company to raise capital through the public will go a very long way to open up the company to possibility of mergers, acquisitions, joint ventures and other strategic partnerships that would boost the company's expansion objectives.

5.4. COMPANY LIMITED BY GUARANTEE (LTD/GTE)

Where the foreigner intends to form an entity dedicated solely for charitable purposes or for the advancement of certain objects, such as an NGO that does not have as its object the goal of making profits for the purpose of distributing such profits to its members, then it will be appropriate to register it as a Company Limited by Guarantee.⁷⁵ The relevant section of CAMA provides:

“(1) Where a company is to be formed for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by shares, but may be registered as a company limited by guarantee.”

A company limited by guarantee is the most suitable entity for a non-profit organization whose objective is to promote public welfare, educational advancement, sports, commerce, religious affairs, promotion of culture or other charitable goals. The benefits of this structure include tax exemptions, as it is not a profit-making entity. Moreover, a company limited by guarantee possesses a distinct legal personality separate from its founders, allowing it to sue and be sued in its name, acquire property, and enjoy perpetual succession. A notable example of an organization registered as a company limited by guarantee is the Tony Elumelu Foundation, which operates for charitable purposes.

Due to the peculiar nature of companies limited by guarantee, the CAMA provides their Memorandum of Association shall not be registered except with the express written authority of the Attorney general of the federation.⁷⁶

6. INCENTIVES FOR FOREIGN INVESTORS

Nigerian law offers various incentives to Foreigners wishing to invest in Nigeria, with the objective of attracting foreign direct investments. These incentives include:

1. **Pioneer Status Incentives:** foreign owned entities operating in some specified industries may enjoy a tax holiday for up to a period of five years under the Industrial Development (Income Tax Relief) Act.
2. **Free Trade Zones:** Businesses operating in Free Trade Zones (FTZs) enjoy several benefits, such as tax exemptions, duty-free importation of goods, and the ability to repatriate profits without restrictions.
3. **Investment Promotion and Protection Agreements (IPPAs):** Nigeria is signatory to some IPPAs with several countries, including bilateral and multilateral investment treaties, and the aim is to ensure fair treatment and protection for foreign investments in the signatory countries.
4. **Guarantees Under the NIPC Act:** under sections 24, 25 and 26 of NIPC Act 1995: foreigners investing in Nigeria are entitled to certain assurances and guarantees, such as uninhibited repatriation of capital, profits or dividends and even foreign loans servicing interests in freely convertible currencies through authorized dealers. They also have assurances against expropriation or nationalization, and to just and fair compensation in the event of nationalization by the government where necessary for overriding public interest. they have right of access to Mediation and Arbitration for resolution of investment disputes under the rules provided in bilateral or multilateral investment treaties which Nigeria and their countries of origin are parties to.

7. CHALLENGES FACING FOREIGN INVESTORS

1. **Bureaucratic Bottlenecks:** The procedures involved in obtaining business permits, CERPAC, licenses, and expatriate quotas can be quite tedious, this is majorly as a result of several bureaucratic red-tapism and inefficiencies.
2. **Inadequacy of Basic Infrastructure:** Nigeria's lack of adequate infrastructure, ranging from epileptic electricity supply, lack of adequate transport networks, and poor internet connectivity, poses a humongous challenge to the smooth and seamless establishment and by extension, operation of foreign businesses in Nigeria.
3. **Rising Spate of Insecurity:** Security threats, especially in the northern part of Nigeria, and just recently too, in the southeastern part of the country, poses a great concern for foreign investments into Nigeria.
4. **Regulatory Complexity and Duplicity of Regulatory Roles:** The competing and overlapping roles of the various regulatory agencies in Nigeria, can sometimes occasion confusions, leading to great difficulties for foreigners to navigate the conflicting regulatory roles and regimes. This can sometimes seem very frustrating and unbearable for foreigners intending to do business in Nigeria. A situation where you have duplicity of various regulatory agencies all playing roles that are quite conflicting is bound to get a foreigner intending to invest in Nigeria wearied out.

8. CONCLUSION

Foreign participation in the Nigerian business ecosystem is regulated by a combination of statutory and regulatory frameworks that are all aimed towards ensuring that foreign investors establish and carry on their businesses in compliance with Nigeria's

domestic laws. While the Nigerian business landscape offers myriads of opportunities for foreigners to participate in our business ecosystem, foreign investors intending to do business in Nigeria must be well equipped with the requisite knowledge to navigate Nigeria's complex legal requirements, sector-specific regulations, guidelines, and the challenges that come along with it. With proper legal counsel, foreigners can always establish and run their businesses in Nigeria successfully, taking full advantage of the numerous incentives the government through various laws offers to foreign investors, while as well contributing to Nigeria's overall economic growth and development.

9. RECOMMENDATIONS

The following recommendations are hereby made for foreigners intending to invest in Nigeria:

1. Engage The Services of an Expert Business/Startup Advisory Lawyer Based in Nigeria: Foreign investors who intend to do business in Nigeria are advised to engage the services of a domestic business advisory lawyer, who is versatile in the laws relating to the area of business the foreigner intends to venture into, to help their business navigate Nigeria's complex legal regimes, by ensuring that their business operations are in compliance with Nigerian domestic laws and regulations.
2. Maintain Continuous Engagement With the Relevant Nigerian Government Agencies: Foreign owned businesses operating in Nigeria should ensure that they maintain constant communication with relevant government agencies such as the NIPC, FIRS and CAC to stay abreast of changes in government policy relating to their business.
3. Explore the Possibility of Partnering With Indigenous Firms: going into a partnership with Nigerian domestic companies operating either horizontally or at the vertical side of the foreign company's line of business can ease and expedite the market entry process for the foreign company, fostering seamless compliance with the relevant local content legislations.

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