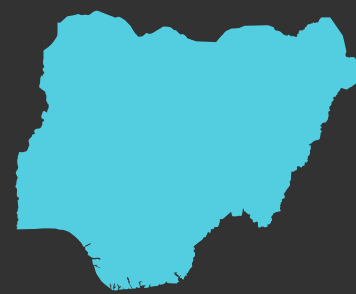
Country Guide
Nigeria



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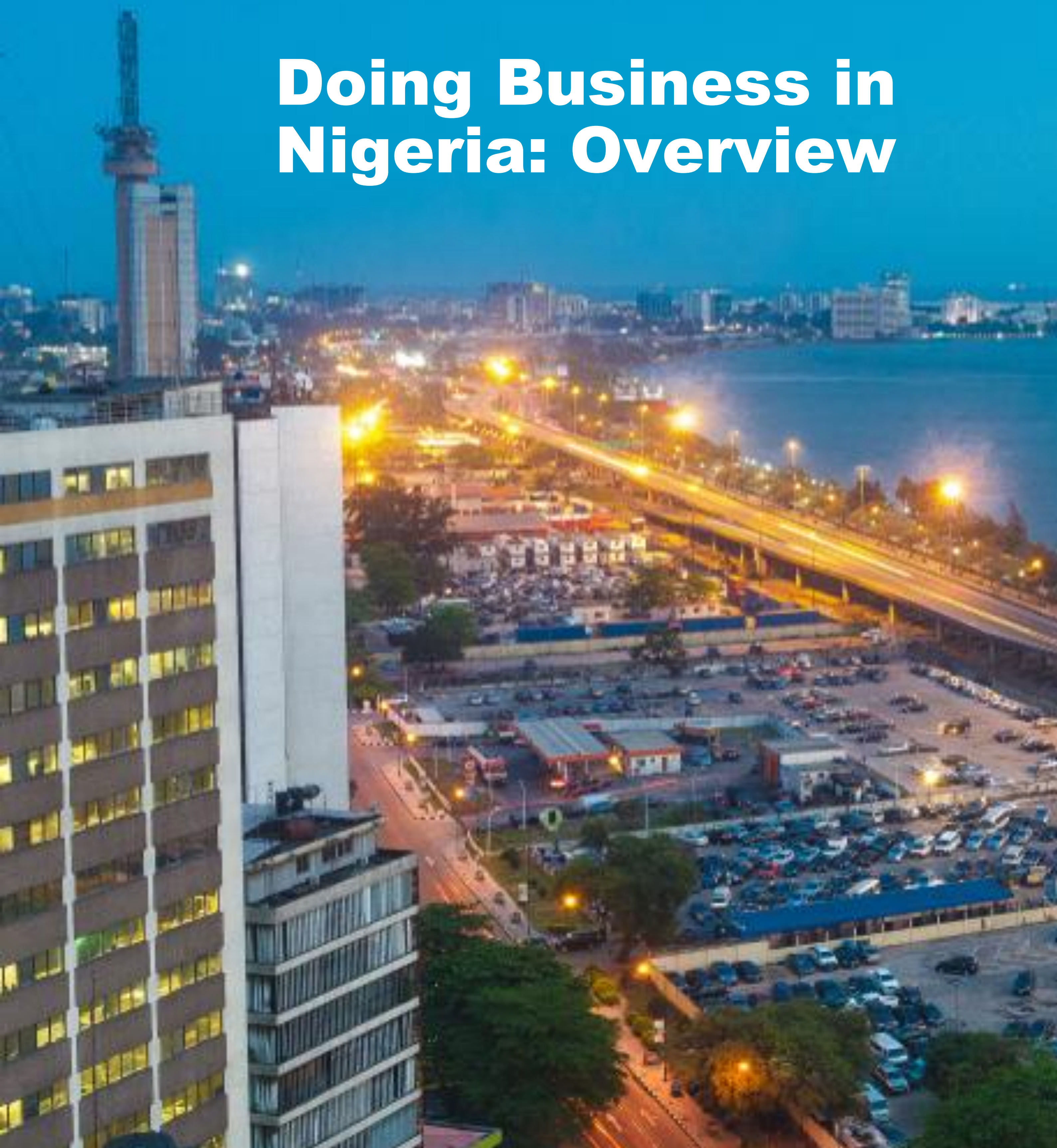
Doing Business in Nigeria: Overview



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Overview

1. What is the general business, economic and cultural climate in your jurisdiction?

Economy

The Nigerian economy is currently ranked by the International Monetary Fund (IMF) as the largest economy in Africa.

Dominant Industries

The petroleum industry remains the dominant industry in Nigeria. Oil accounts for approximately 10% of Nigeria's GDP, 70% of the country's revenue, and more than 83% of the country's export earnings. Other key sectors in the Nigerian economy include:

- Agriculture.
- Manufacturing.
- Service-related industries, such as financial services and telecommunications.

Population and Language

According to the World Bank, Nigeria's current population is estimated to be 202 million people. Nigeria's official language is English.

Business Culture

Nigeria has a business culture that exudes the resilience of its people. Business hours are usually between 8am to 5pm, Mondays to Fridays. Nigeria also observes various public holidays comprising the significant religious holidays of the dominant religions in the country and other government earmarked holidays.

2. What are the key recent developments affecting doing business in your jurisdiction?

Key Business and Economic Events

The 2019 novel coronavirus disease (COVID-19) pandemic has continued to place a strain on the Nigerian economy and has disrupted financial planning for many businesses. A prolonged disruption is likely to lead to renegotiation of deal terms, defaults, termination of contracts, layoffs, inflation, currency devaluation, a further downgrading of the country's sovereign credit rating, all culminating in a decline in foreign direct investments generally and, consequently, in private equity activity in Nigeria. To mitigate these challenges, the federal government has:

- Passed the 2021 national budget which is expected to accelerate the pace of Nigeria's economic recovery, promote economic diversification, enhance competitiveness, and ensure social inclusion.
- Technically devalued the Naira (NGN) from NGN380.2 to NGN410.24.
- Made other economic interventions.

New Legislation

Company Law and Administration**.** The Companies and Allied Matters Act, 2020 (CAMA 2020) was signed into law on 7 August 2020. The CAMA 2020 contains several innovative provisions relating to Nigerian company law. Some of the highlights of the CAMA 2020 include the following:

- Use of electronic instruments for the transfer of shares.
- Limited partnerships and limited liability partnerships as alternative corporate structures.
- Single member and single director companies.
- Reduction of filing fees for the registration of charges.
- Expanded exceptions in relation to financial assistance. These additional exceptions, especially those applicable to private companies, will have a positive impact on companies seeking to raise capital.
- Introduction of company voluntary arrangements and administration into Nigerian company law to create a framework for company rescue and an efficient exit for non-viable businesses.
- More incentives for small and medium-sized enterprises, such as exemption from audits and from the requirements to appoint a company secretary and hold annual general meetings.
- The use of company seals by Nigerian companies is no longer mandatory.
- Removal of the concept of "authorised share capital," which is replaced by that of minimum issued share capital. The minimum issued share capital is NGN100,000 for private companies and NGN2 million for public companies.
- Electronic innovations that reflect the realities of conducting business in a digital era. For example:

    - a private company can hold its general meetings electronically, if the meetings are conducted in accordance with the company's articles;
    - share transfers can be executed via electronic share transfer forms; and
    - company records can now be maintained in electronic format.

- The test for insolvency (that is, inability to pay debts as they fall due) has been increased from NGN2,000 to NGN200,000, to reflect present day realities.

Taxation. On 31 December 2020, President Muhammed Buhari signed the Finance Act, 2020 into law. This Act amends several tax and fiscal-related legislation, including the CAMA 2020, Capital Gains Act, and Companies Income Tax Act. The Finance Act introduces certain provisions that may have influenced the structuring of deals in the past 12 months. Key amendments include the following:

- Donations made by corporate entities to funds established by the government in the event of a health crisis or pandemic are now regarded as allowable deductions for tax purposes.
- Minimum tax rate for companies in respect of returns for the period between 1 January 2020 and 31 December 2021 has been reduced from 0.5% to 0.25% of gross turnover less franked investment income.
- The obligation of non-resident companies liable to pay tax to file tax returns with the Federal Inland Revenue Service (FIRS) does not apply to non-resident companies whose final tax liability in Nigeria is withholding tax.
- Dividends in a public company listed on the Nigerian Stock Exchange that remain unclaimed for a period of six years or more must now be transferred to a new fund called the Unclaimed Funds Trust. However, these dividends can still be claimed by the relevant shareholder at any time.
- Amounts in a dormant bank account that have remained unutilised for a period of six years or more must also be transferred to the Unclaimed Funds Trust.

Banking**.** On 12 November 2020, the President signed into law the Banks and Other Financial Institutions Act, 2020 (BOFIA 2020). BOFIA 2020 repeals the Bank and Other Financial Institutions Act, 2004, and now regulates the businesses of banks and other financial institutions in Nigeria. Key amendments introduced by the BOFIA 2020 include the following:

- Establishment of a banking sector resolution fund. The resolution fund will be floated by the Central Bank of Nigeria (CBN), the Nigeria Deposit Insurance Corporation (NDIC) and other financial institutions, and will be applied towards supporting resolution measures for distressed banks.
- Banks, specialised banks and other financial institutions will not incur any liability to their customers if they do not open for business during a strike, an epidemic, or a pandemic.
- The shareholding of a bank in any medium scale industry, agricultural enterprise, private equity/venture capital company or any other business approved by the CBN must not exceed:
  - 10% of the bank's shareholders' funds unimpaired by losses; and
  - 20% of the paid-up share capital of the company, or such other percentage as the CBN may prescribe.
- The definition of "other financial institution" was expanded to include:
  - international money transfer services;
  - payment service providers, regardless of whether their businesses are solely conducted electronically; and
  - any other business designated by the CBN, regardless of whether theses businesses are solely conducted electronically
- The CBN now has the sole authority to review mergers involving banks and other financial institutions. The Federal Competition and Consumer Protection Commission no longer has oversight over these matters.

The CBN issued the following guidelines and directives in 2020:

- New License Categorisation for the Nigerian Payment System dated 9 December 2020. Under the new classification, payment systems licences are categorised as follows:
  - switching and processing;
  - mobile money operators;
  - payment solution services (payment system companies in this category can hold a licence to function as a payment solution service provider, payment terminal service provider, or super agent); and
  - regulatory sandbox.
- Guidelines on Operations of Electronic Payment Channels in Nigeria issued in June 2020, for the operation of ATMs, point of sale (POS)/mobile-POS card acceptance services, and web acceptance services.
- Expansion to the Scope of Regional Banks in Nigeria dated 26 June 2020, which requires all banks with regional authorisation to operate from one additional geopolitical zone as may be directed by the CBN, to promote the spread and balance of regional banks in Nigeria.

Legal System

3. What is the general legal system in your jurisdiction?

Nigeria's legal system is based on English common law. Nigeria operates a federal system of government.

Foreign Investment

4. Are there any restrictions on foreign investment, ownership or control?

Government Authorisations

Under the Nigerian Investment Promotion Commission (NIPC) Act and the Immigration Act, companies with foreign shareholding must be registered with the NIPC and obtain a Business Permit from the Federal Ministry of Interior before commencing operations in Nigeria.

Restrictions on Foreign Shareholders

A Nigerian company can have foreign shareholders, except in certain sectors on the negative list. The negative list prohibits investment by both Nigerian and foreign investors in the production of arms and ammunition, and the production of and dealing in narcotic drugs and psychotropic substances. Restrictions also apply to specific industries.

Restrictions on Acquisition of Shares

Specific Industries

Under the NIPC Act, foreign ownership is permitted in all industries. However, restrictions apply in the following specific industries in relation to acquisitions of shares by foreigners that exceed prescribed thresholds:

- **Oil and gas.** To be competitive in the award of contracts, at least 51% of the shares of the company must be owned by Nigerians.
- **Shipping.** The Coastal and Inland Shipping (Cabotage) Act restricts the use of foreign-owned or manned vessels for coastal trade in Nigeria.
- **Broadcasting.** A company applying for a broadcasting licence must demonstrate that it is not representing any foreign interests and that it is substantially owned and operated by Nigerians.
- **Advertising.** Only a national agency (that is, an agency in which Nigerians own not less than 74.9% of the equity) can advertise to the Nigerian market.
- **Private security.** A foreign investor cannot acquire an equity interest in or sit on the board of a Nigerian private security guard company.
- **Engineering.** A company engaged in engineering services must be registered with the Council for the Regulation of Engineering in Nigeria (COREN). One requirement for registration is that the company must have Nigerian directors registered with the COREN holding at least 55% of the company's shares.
- **Aviation.** To qualify for the grant of an aviation licence or permit, the Nigerian Civil Aviation Authority must be satisfied that an applicant is a Nigerian company or citizen.
- **Pharmacy.** The Pharmacist Council of Nigeria Act, 2004 provides for the registration of non-Nigerian citizens only if:
  - the applicant's home country grants reciprocal registration to Nigerians; and
  - the applicant has been resident in Nigeria for at least 12 months before the application.

5. Are there any restrictions or prohibitions on doing business with certain countries, jurisdictions, entities, organisations or individuals?

There are currently no restrictions on doing business with certain countries or jurisdictions.

6. Are there any exchange control or currency regulations or any registration requirements under anti-money laundering laws?

Under Nigeria's foreign exchange regulations, foreign investors who intend to access the official foreign exchange market for the purpose of remitting their dividends, interest or capital must obtain a Certificate of Capital Importation (CCI) as evidence that their investment was brought into Nigeria. CCIs are issued by authorised dealers (that is, banks licensed by the CBN to deal in foreign exchange) within 24 to 48 hours after the foreign investment has been brought into Nigeria and converted into Naira.

7. What grants or incentives are available to investors?

There are several incentives available to investors. These include the following:

- The Pioneer Status scheme grants companies operating in certain industries a non-renewable income tax holiday for a period of three years, which can be extended for one or two additional years.
- Interest earned by a foreign company on its deposits in domiciliary accounts in Nigeria is exempt from tax.
- Buyers of local plant and equipment are entitled to an investment allowance of 10%.
- Capital gains tax (CGT) is not levied on gains from the sale of shares, stock, and treasury bills.
- Companies engaging in the use of Nigeria's natural gas resources are entitled to:
  - a tax-free holiday for an initial period of three years (renewable for an additional two years); or
  - an additional investment allowance of 35%.
- Machinery and equipment purchased for the use of gas in downstream operations are exempt from VAT.
- Interest on securities issued by the Federal Government of Nigeria, and on state, corporate and supranational bonds, are exempt from income tax until 1 January 2022.
- In certain circumstances, interest on loans granted to Nigerian companies by foreign companies are entitled to tax exemptions.

Business Vehicles

8. What are the most common forms of business vehicle used in your jurisdiction?

Main Business Vehicles

The CAMA 2020 recognises the following business vehicles:

- Limited liability company (public or private).
- Company with unlimited liability.
- Company limited by guarantee.
- Limited liability partnership.
- Limited partnership.
- Incorporated trustee.
- Registered business name.

Foreign Companies

The most common structure used by foreign companies seeking to do business locally is the private limited liability company. Advantages include the following:

- It is straightforward to incorporate (the process can be completed in two weeks).
- Profits can be paid out to shareholders.

- The shareholders have limited liability.
- It is not as regulated as the other available structures.

9. What are the main formation, registration and reporting requirements for the most common corporate business vehicle used by foreign companies in your jurisdiction?

Registration and Formation

The registration formalities are as follows:

- The proposed name must be registered with the Corporate Affairs Commission (CAC), Nigeria's companies' registry for 60 days.
- The company's memorandum and articles of association (articles) must be prepared, or the model articles provided by the CAC Regulation, 2021 adopted, and submitted to the CAC alongside the necessary CAC incorporation forms after being stamped electronically by the Stamp Duties Office.

Incorporation usually takes between five to seven working days of the application being submitted to the CAC. However, due to the impact of the COVID-19 pandemic on the operations of the CAC, the timeline for registration is now between two to three weeks.

The cost of incorporation with the CAC depends on the authorised share capital of the company. When the authorised share capital of the company is NGN10 million (the minimum amount required for foreign participation), the cost is about NGN166,000.

Reporting Requirements

Private limited liability companies must file audited financial statements with the CAC within 42 days of an annual general meeting. The cost of filing is about NGN3,000.

Share Capital

The minimum share capital requirements are NGN100,000 for private companies and NGN2 million for public companies. Companies with foreign shareholders must have a minimum share capital of NGN10 million. There is no prescribed maximum share capital.

Non-Cash Consideration

Shares can be issued for non-cash consideration if the company's articles permit this.

Rights Attaching to Shares

Restrictions on Rights Attaching to Shares. Under the CAMA 2020, a private company's articles of association can restrict the transfer of its shares. Any procedures set out in the articles of association in relation to share transfers must be complied with before the shares can be validly transferred to, or acquired by, a buyer.

All Nigerian companies must first offer any new shares they wish to issue to their existing shareholders in proportion to their respective holdings, before those shares are allotted to a third party (*section 142, CAMA 2020*).

Automatic Rights Attaching to Shares. Automatic rights include the right to:

- Receive notices of proposed meetings of the company.
- Attend general meetings of the company, speak and vote at the meeting.
- Receive dividends when declared by the company.
- A copy of the memorandum and company's articles.
- Participate in the distribution of the company's assets on the winding-up of the company.

10. What is the standard management structure and key liability issues for the most common form of corporate business vehicle used by foreign companies in your jurisdiction?

Management Structure

Private limited companies must have at least one shareholder and two directors (small companies can have one director). The Securities and Exchange Commission requires public companies to have at least five directors (at least one of whom must be an independent director).

Management Restrictions

A Nigerian company can have foreign directors. A company that wishes to employ foreign national must obtain expatriate quota approvals.

Directors' and Officers' Liability

Depending on the breach, civil and/or criminal penalties can be imposed on a director for a breach of duty.

The liability of directors is limited, except where the articles expressly state otherwise (*CAMA*). In certain circumstances, officers and directors are personally liable for the acts of the company, such as when:

- A company, with intent to defraud, fails to apply the money or other property for the purpose for which it was received.
- The number of members or directors of a company falls below the legal minimum.

In addition, directors and officers of banks and financial institutions can incur civil and criminal liability in certain situations.

Parent Company Liability

In relation to Nigerian limited liability companies, the liability of a parent company is limited to the amount that is unpaid on its shares (if any). When there has been fraud, the law can lift the corporate veil and hold shareholders responsible for the acts of the company.

Environment

11. What are the main environmental regulations and considerations that a business must take into account when setting up and doing business in your jurisdiction?

Under the Environmental Impact Assessment Act, an environmental impact assessment (EIA) study must be carried out when the extent, nature or location of a proposed project or activity is likely to have a significant effect on the environment. A company whose operations would have an impact on the environment must obtain both an:

- Environmental audit certificate from the National Environmental Standards and Regulations Enforcement Agency (NESREA).
- EIA certificate from the Federal Ministry of Environment.

The NESREA can issue the following permits:

- Air quality permit relating to atmospheric emissions, vehicular emissions, open burning by regulatory agencies, refrigeration and air conditioning equipment.
- Waste and toxic substances permit relating to waste generation, restricted chemicals, sludge disposal, and effluent discharge.
- Used electrical and electronic equipment permit relating to the handling, import, and export of used electrical and electronic equipment.
- Eco-guard certification, which certifies that facilities are environment-friendly in their operations and comply effectively with the relevant environmental standards and regulations, especially in relation to air quality, waste, and toxic substances.

Employment

Laws, Contracts and Permits

12. What are the main laws regulating employment relationships?

The main laws regulating employment relationships are the:

- 1999 Constitution of the Federal Republic of Nigeria as amended (Constitution).
- Labour Act, 2004.

- Pension Reform Act, 2014.
- Employees' Compensation Act, 2010 (ECA).
- Personal Income Tax Act, 2011 (as amended) (PITA).
- National Health Insurance Scheme Act, 2004.
- Industrial Training Fund Act, 2011 (as amended) (ITF).
- National Housing Fund Act, 2004.
- Immigration Act, 2015.
- Trade Unions Act, 2005 (as amended).
- National Minimum Wage Act, 2019.
- National Industrial Court Act, 2006.
- HIV and AIDS (Anti-Discrimination) Act, 2014.

Foreign Employees

Other than the Immigration Act (which regulates the employment of foreign employees) and the National Housing Fund Act (which, in practice, is not applied in relation to foreign employees), all the other laws listed above apply to both Nigerian and foreign employees.

Employees Working Abroad

None of the laws listed above apply to Nigerians working abroad for foreign employers.

Mandatory Rules of Law

Nigerian courts will generally uphold the parties' choice of law and jurisdiction. However, in certain limited circumstances, the courts will assume jurisdiction regardless of an express choice of foreign jurisdiction. The factors that the Nigerian courts consider in determining whether to assume jurisdiction include:

- The location of the evidence, and convenience in terms of accessibility and expenses between the domestic and foreign courts.
- The applicability of the law of the foreign court and its difference in material respect from domestic law.
- The countries with which the parties are connected.
- Whether the party seeking to stay the proceedings genuinely desires trial in the foreign country or is only seeking procedural advantages.
- Whether the claimants would be prejudiced by having to sue in the foreign court because they would:

    - be deprived of security for that claim;
    - be unable to enforce any judgment obtained;
    - be faced with a time-bar not applicable to the domestic court; or
    - for political, racial, religious or other reasons, be unlikely to get a fair trial.

The court has discretion in applying these factors.

In addition, the National Industrial Court (NIC) has original exclusive jurisdiction in civil cases and matters relating to or connected with labour and employment, trade unions, industrial relations, and matters arising from the workplace and conditions of service (including health, safety, welfare of labour, employee, worker, and any matters incidental or connected to these matters).

13. Is a written contract of employment required?

Main Terms

A written contract of employment is required for workers to whom the Labour Act applies (that is, employees who perform manual labour or clerical work). The contract must state (among other things):

- The nature of employment.
- The rates and method of calculation of wages.
- The manner and period of payment.
- The hours of work.
- Entitlement to holidays.
- The notice period for termination of the contract.

Implied Terms

Some of the implied terms in contracts of employment include the employer's duty to:

- Pay wages.
- Provide a safe place of work.
- Care for the safety of employees.

Collective Agreements

Collective agreements only apply to employment relationships where the:

- Employees of the company are members of a trade union.
- Company has entered into a collective agreement with a trade union.
- Company belongs to an employer's trade association that is a member of a trade union.

14. Do foreign employees require work permits and/or residency permits?

Foreign employees require a work permit to work in Nigeria. This permit can be either a:

- **Temporary Work Permit (TWP).** This is valid for three months and can be renewed for a further three-month period, subject to the discretion of the Nigeria Immigration Service (NIS). To obtain a TWP, an application must be made to the NIS in Nigeria. The NIS then issues a cable visa to the Nigerian High

Commission in the home country of the foreign employee. On the basis of the cable visa, the foreign employee can make an application in their home country for a TWP. There is no official cost for obtaining a TWP and the process takes about two weeks.

- **Combined Expatriate Resident Permit and Aliens Card (CERPAC).** The CERPAC is a permit that enables a foreign employee to work and live in Nigeria. To obtain a CERPAC, the following are required:

  - the Nigerian company must have obtained expatriate quota approval; and
  - the foreign national must have obtained a subject-to-regularisation (STR) visa in their country of residence.

  The official cost of a CERPAC is about USD1,000 and the process usually takes three to six days. The CERPAC is valid for one year and can be renewed when it expires.

Termination and Redundancy

15. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as changes in control, redundancies and disposals)?

Employees are not generally entitled to management representation.
If the employees are workers or members of a trade union, and the proposed reorganisation will lead to either redundancies or a transfer of employees, the employer must consult and negotiate with the workers' representatives or trade union officials. Although there is no obligation to consult or negotiate with non-workers that are not members of a trade union, employers generally tend to do so.

Apart from the above, there is no obligation to consult employees in relation to corporate transactions such as disposals.

16. How is the termination of an individual's employment regulated?

Termination

Nigerian employers are entitled to terminate a contract of employment at any time and without citing any reasons for doing so, if either:

- Appropriate notice of the termination is given to the employee.
- The employee is paid salary in lieu of such notice.

However, the NIC has indicated that best practice, in accordance with international standards, is that an employer must state the reason(s) for terminating an employee's contract.
The relevant notice periods are as follows:

- Length of service of up to three months: one day.
- Length of service of up to two years: one week.
- Length of service of up to five years: two weeks.
- Length of service of five years or more: one month.

Fair Dismissal

Whether a dismissal is fair/justified or unfair/unjustified is a question of fact to be conclusively determined by the court.

An employer can only dismiss an employee for cause. Grounds that constitute cause for dismissals include:

- Criminal acts for which the employee has been convicted by a court.
- Gross misconduct.
- Fundamental lack of confidence.

When an employee is dismissed for cause, the employer is not required to give notice of termination or to pay salary in lieu of notice. An employee dismissed for cause can challenge the dismissal, and the employer will be required to prove the reason(s) for the dismissal and satisfy the court that the reason(s) are valid and reasonable.

Recent decisions of the NIC, in which it has ordered the reinstatement of employees whose employment was terminated, are changing the landscape of Nigerian employment law in relation to dismissing employees.

Unfair Dismissal

Grounds for Unfair Dismissal. See above, *Fair Dismissal*.

Remedies. An aggrieved employee alleging unfair dismissal can bring an action in the NIC for wrongful termination. If the employee is successful, the NIC may award significant damages. In some limited cases, the NIC has ordered the employer to reinstate affected employees.

Class of Individuals

Employers are prohibited from terminating the contract of any female worker who:

- Is absent due to maternity leave.
- Remains absent from work for a longer period as a result of illness that arose out of pregnancy or confinement, and which renders her unfit for work.

(*Labour Act*)

The termination of employment is also regulated in the oil and gas industry. In March 2015, the Department of Petroleum Resources (DPR) issued the Guidelines and Procedures for the Release of Staff in the Oil and Gas Industry. Under these Guidelines, an employer must apply for consent from the Minister of Petroleum Resources before the release of any employee from its employment. On such application, the DPR conducts an investigative inquiry into the proposed staff release and makes a decision on whether to grant consent. A "release" is defined in the Guidelines to include (among other things):

- Dismissal.
- Compulsory retirement.
- Termination.
- Redundancy.
- Release on medical grounds.

An "employer" under the Guidelines is defined to mean a person who holds an oil mining lease, licence or permit (or an interest therein), or a person registered to provide services to such persons.

17. Are redundancies and mass termination regulated?

Redundancies and Mass Termination

The Labour Act defines the term "redundancy" as an involuntary and permanent loss of employment caused by an excess of manpower. In the event of redundancy, a worker is entitled to the following payments on termination of employment:

- Agreed redundancy or severance payment.
- Salary in lieu of contractual notice (if the company elects not to give the contractual notice).
- Accrued salary up until the effective termination date.
- Monetary value of any accrued but unused annual leave entitlement as at the effective termination date.
- Any accrued but unpaid incentives, awards, or bonuses (if applicable).
- Any other payments due to any of the employees, under any of the company's employment and operational policies, such as redundancy or gratuity payments.
- Reimbursement of any out-of-pocket expense incurred by any employee in connection with the performance of their duties before the effective termination date.

There is no corresponding statutory obligation for non-workers. The right of non-workers to receive any redundancy payments is subject to the terms of their respective contracts of employment.

Procedural Requirements

If the employees to be made redundant are workers under the Labour Act, the employer must:

- Inform the trade union or workers' representative concerned of the reasons for and the extent of the anticipated redundancy.
- Adopt the principle of "last in, first out," subject to consideration of the factors of relative merit, skill, ability, and reliability.
- Use its best endeavours to negotiate redundancy payments.

In a redundancy, employees not covered by the Labour Act (non-workers) are only entitled to the benefits set out in their contracts, or as are agreed with the employer (and trade union, if applicable). In relation to the payment of termination benefits, the NIC recently held that employers must treat all their employees fairly. The NIC has indicated that even if a non-worker is not contractually entitled to receive termination benefits, if (under the terms of the conditions of service) workers in the same organisation are entitled to termination benefits (including redundancy payments), the NIC will give consideration to the termination benefits to which the workers in that organisation are entitled, and can order that similar payments should be made to non-workers.

Tax

Taxes on employment

18. In what circumstances is an employee taxed in your jurisdiction?

All resident employees are taxed in Nigeria. For resident employees, personal income tax is imposed on the employee's total assessable income from all sources in the year of assessment (*see Question 19, Tax Resident Employees: Personal Income Tax*). An employee will be regarded as resident in Nigeria if the employee:

- Is domiciled in Nigeria.
- Resides in Nigeria for up to 183 days in a 12-month period.
- Serves as a diplomat or diplomatic agent of Nigeria in another country.

A foreign employee of a Nigerian company is subject to tax in Nigeria if they perform their duties partly or wholly in Nigeria and are paid in Nigeria, unless they can show at least one of the following:

- Their remuneration is not paid by the Nigerian company.
- They were not in Nigeria for an aggregate of up to 183 days (inclusive of annual leave or temporary period of absence) during the year of assessment.

- Their remuneration is subject to tax in another jurisdiction with which Nigeria has a double taxation treaty (DTT).

19. What income tax, social security and other tax or contributions must be paid by the employee and the employer during the employment relationship?

Tax Resident Employees

Personal Income Tax. This is levied on the income of the employee under the Pay-As-You-Earn (PAYE) system, which requires the employer to deduct tax from the employee's monthly remuneration at the following rates:

- Up to NGN300,000: 7%.
- Additional income of NGN300,000 (making total income more than NGN300,000 but less than NGN600,000): 11%.
- Additional income of NGN500,000 (making total income more than NGN600,000 but less than NGN1.1 million): 15%.
- Additional income of NGN500,000 (making total income more than NGN1.1 million but less than NGN1.6 million): 19%.
- Additional income of NGN1.6 million (making total income more than NGN1.6 million but less than NGN3.2 million): 21%.
- Any additional making total income more than NGN3.2 million: 24%.

There is a consolidated relief allowance of 20% of gross income and, in addition to this, a further allowance of NGN200,000 or 1% of gross income (whichever is higher).

National Housing Fund Deductions. On a monthly basis, Nigerian employers must deduct 2.5% of each employee's basic salary and remit this to the National Housing Fund.

Pension Contributions. Every employee in an organisation that employs up to three persons is required to contribute up to 8% of their monthly salary into their retirement savings account, which is managed by a pension fund administrator (PFA) of their choice. The employer has a statutory obligation to deduct this contribution at source and remit it to the PFA on behalf of the employee.

Non-Tax Resident Employees

Not applicable.

Employers

Industrial Training Fund (ITF) Deductions. Every Nigerian company employing four or more persons or with a turnover of up to NGN50 million must contribute 1% of its annual payroll to the ITF.

Pension Contributions. Every employer of three or more persons has an obligation, in addition to deducting each employee's pension contributions (*see above, Tax Resident Employees: Pension Contributions*), to contribute at least 10% of each employee's monthly salary into the employee's retirement savings account.

Life Insurance for Employees. The employer has a statutory obligation to maintain at all times, for the benefit of its employees, a life insurance policy, the benefits of which must be at least three times each employee's annual salary.

Employees Compensation Fund. Employers must contribute 1% of total monthly payroll into the Employees Compensation Fund.

Business Vehicles

20. When is a business vehicle subject to tax in your jurisdiction?

Tax Resident Business

A Nigerian company is tax resident in Nigeria when it has been incorporated in Nigeria.

Non-Tax Resident Business

Profits from a non-tax resident business vehicle (that is, a company not incorporated in Nigeria) are deemed to have been derived in Nigeria and subject to tax if any of the following applies:

- The company has a fixed base of business in Nigeria.
- The company habitually operates a trade through an authorised person in Nigeria or carries out contracts in Nigeria.
- Where the Federal Board of Inland Revenue considers the company's foreign transactions with a related company to be artificial or fictitious despite its reporting of the transaction as an "arm's length transaction."

Where the vehicle is incorporated in a jurisdiction that has a DTT with Nigeria, the provisions of the treaty will be relevant in determining the tax liability of the vehicle.

The Finance Act has expanded the basis for taxing non-resident companies (NRCs) with a significant economic presence (SEP) in Nigeria to include digital services and services rendered outside Nigeria to a Nigerian beneficiary (*see Question 2*). NRCs that transmit, emit or receive signals, sounds, messages, images or data of any kind to Nigeria in respect of any activity, including electronic commerce, online adverts, online payments and so on, and have a SEP in Nigeria, will be taxed on the profit attributable to such activity in Nigeria.

21. **What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction?**

Companies Income Tax

The Finance Act introduces a new tax regime for the assessment of companies income tax (CIT), as the rate of CIT payable by a company on its total assessable profits will be determined by the following thresholds:

- Small companies with an annual turnover of below NGN25 million are completely exempt from CIT. Such a company is, however, required to register for CIT and file the necessary returns required under the CITA.
- Companies with an annual turnover of over NGN25 million but less than NGN100 million (medium companies) are subject to CIT at the rate of 20%.
- Companies with an annual turnover of over NGN100 million are taxed at the rate of 30%.

The Finance Act also expands the basis for taxing NRCs that have a SEP in Nigeria to include digital services and services rendered outside Nigeria to a Nigerian beneficiary. This means that income earned by NRCs from digital services and services provided remotely to Nigerian residents shall be subject to tax. Although the Finance Act does not state what would constitute SEP, the Minister of Finance is empowered under the Act to determine this by an executive order, but this is yet to be done.

Capital Gains Tax

CGT is imposed on gains arising from the disposal of capital assets, at a rate of 10%. Exemptions from CGT include:

- Gains on a disposal of stocks, shares, and other government securities such as treasury bonds, premium bonds, and savings certificates.
- Gains arising from acquisitions, mergers, or takeovers, provided that no cash payment is made in respect of the shares acquired. In a related-party transaction, the Finance Act provides that the CGT exemption only applies where the related parties have been so related for at least 365 days before the acquisition, merger or takeover, and the assets are not disposed of within 365 days of the merger.
- Gains made on any asset used for the purpose of a trade or business that are used for replacing old assets sold.

Tertiary Education Tax

Tertiary education tax is imposed at a rate of 2% under the Tertiary Education Trust Fund (Establishment etc.) Act, 2011.

Stamp Duty

Stamp duty is imposed on documents at varying rates, which can be either *ad valorem* or nominal. The nominal rate is currently:

- NGN500 for the original document.
- NGN50 for counterparts.

Ad valorem rates range from 0.15% to 6%.

Electronic transactions are now liable to stamp duty under the Finance Act. Transfers of shares, stock, or securities by a lender to its approved agent or a borrower in furtherance of a regulated securities lending transaction are exempt from stamp duty.

Information Technology Development Levy

The following types of companies with an annual turnover of at least NGN100 million must pay 1% of their profits before tax to the FIRS:

- Cyber companies and internet providers.
- Pension managers and pension-related companies.
- Banks and other financial institutions.
- Insurance companies.
- Telecommunication companies.

Withholding Tax

Withholding tax on rents, dividends, royalties and interest is 10% (reduced to 7.5% where the recipient is registered in a country with which Nigeria has a DTT). Fees for management or technical services are taxed at 10% for companies and 5% for individuals. Contracts of supplies are taxed at 5%.

Value Added Tax (VAT)

VAT is charged at 7.5% on goods and services other than those exempted by law. The definition of goods and services that are subject to VAT has been expanded by the Finance Act to include intangibles such as intellectual property rights, shares and royalties.

Exempted goods include:

- Medical and pharmaceutical products.
- Basic food items.
- Books.
- Exports.
- Brown and white bread.
- Cereals including maize, rice, wheat, millet, barley, and sorghum.
- Fish of all kinds.
- Flour and starch meals.

- Fruits, nuts, pulses, and vegetables of various kinds.
- Roots such as yam, cocoyam, sweet, and Irish potatoes.
- Meat and poultry products including eggs.
- Milk.
- Salt and herbs of various kinds.
- Natural water and table water.
- Locally manufactured sanitary towels.
- Tuition.
- Services rendered by microfinance banks.

Exempted services include:

- Medical services.
- Services provided by community banks.
- Mortgage institutions.
- All exported services.

National Cyber Security Levy

Under the Cybercrimes Act, 2015, the following companies must pay a levy of 0.005% on all electronic transactions into a fund held with the CBN:

- Telecommunications companies.
- Internet service providers.
- Banks and other financial institutions.
- Insurance companies.
- The Nigerian Stock Exchange (NSE).

Dividends, Interest and IP Royalties

22. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends Paid

Tax is deducted at the rate of 10% on dividends paid to all shareholders. This is reduced to 7.5% if a foreign shareholder is resident in a country with which Nigeria has a DTT.

Dividends Received

Dividends derived from foreign companies by Nigerian residents (corporate and individuals) and brought into Nigeria through government-approved channels are exempt from tax.

Interest Paid

Tax must be withheld at the rate of 10% on interest payments on all loans, except where the interest payments are specifically exempted from tax. This rate is reduced to 7.5% if the lender is resident in a country that has DTT with Nigeria. When the lender is foreign and the loan is in a foreign currency, tax on the interest can be further reduced as follows:

- When the repayment period is less than two years: there is no exemption from tax.
- When the repayment period is two to four years (including a moratorium of at least one year): the tax exempted is 40%.
- When the repayment period is five to seven years (including a moratorium of at least 18 months): the tax exempted is 70%.
- When the repayment period is more than seven years (including a moratorium of at least two years): the tax exempted is 100%.

IP Royalties Paid

Royalty payments on IP rights are taxed at the rate of 10%. This is reduced to 7.5% where the recipient is resident in a country with which Nigeria has a DTT.

Groups, Affiliates and Related Parties

23. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Nigeria does not presently have thin capitalisation rules specifying required debt-to-equity ratio requirements for companies. There are presently no laws providing that any excess debt above a specified ratio will not be deductible for tax purposes or restricting a company from procuring loans from foreign lenders. However, the Finance Act, 2019 introduced a new deductibility rule limiting the deductible interest expense incurred by a Nigerian company in any tax year on debts issued by a foreign connected person to 30% of earnings before interest, tax, depreciation and amortisation (EBITDA).

The CAMA 2020 requires public companies to have net assets amounting to at least 50% of the company's issued and paid-up share capital.

24. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

A parent company that is tax resident in Nigeria (that is, incorporated in Nigeria) must file consolidated returns in respect of its foreign subsidiaries and pay tax on its worldwide income. Dividends received from foreign subsidiaries and brought into Nigeria through a Nigerian bank are exempt from tax.

25. Are there any transfer pricing rules?

The Transfer Pricing Regulations (TP Regulations), 2018 apply to controlled transactions (that is, related-party transactions). A company must comply with the TP Regulations in relation to any related-party transactions such as:

- The sale or purchase of goods and services.
- The sale, purchase or lease of assets.
- Lending or borrowing of money.
- Manufacturing arrangements.
- Any transaction that can affect profit and loss.

Customs Duties

26. How are imports and exports taxed?

Customs tariffs on imports range from 0% to 65%. This is in addition to VAT, port handling charges, customs entry processing fees, bonded terminal charges, and fees levied by the Standards Organisation of Nigeria or the National Agency for Food and Drug Administration and Control for the inspection of imported goods.

There are no export duties. However, exporters must pay a Nigerian export supervision scheme administrative charge, which ranges from 0.5% to 0.15% of the free on board (FOB) value.

Double Tax Treaties

27. Is there a wide network of double tax treaties?

Nigeria currently has DTTs with:

- Belgium.
- Canada.
- China.
- Czech Republic.
- France.
- Italy (Air and Shipping Agreement only).
- The Netherlands.
- Pakistan.
- The Philippines.
- Romania.
- Singapore.
- Slovakia.
- South Africa.
- Spain.
- The UK.

Nigeria has negotiated DTTs with the following countries and is currently awaiting the ratification of these DTTs into local law:

- Sweden.
- South Korea.
- Mauritius.
- Qatar
- United Arab Emirates.

Competition

28. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition Authority

The Federal Competition and Consumer Protection Act (FCCPA) was enacted on 30 January 2019 and repealed the Consumer Protection Act and the provisions of the Investment and Securities Act relating to merger control. The FCCPA was enacted to promote fair, efficient and competitive markets in Nigeria, and applies to all undertakings and all commercial activities in, or having effect in, Nigeria. The FCCPA also established the Federal Competition and Consumer Protection Commission (FCCPC). The FCCPC is vested with the powers to approve and regulate mergers, including amalgamations, business combinations and joint ventures, as well as all competition-related issues as prescribed under the FCCPA. However, under the BOFIA 2020, the CBN now has sole authority to review mergers involving banks and other financial institutions, and the FCCPC no longer has oversight over these matters.

There are also sector-specific guidelines on competition-related issues. For example, the Nigerian Communications Commission (NCC) regulates competition in the telecommunications sector and has issued the Competition Practices Regulations 2007 (CPR 2007), which are available on its website (*www.ncc.gov.ng*).

Restrictive Agreements and Practices

Any agreement or decision among undertakings that is entered into with the aim to, or that is likely to, restrict, prevent or distort competition in any market is void unless the prior approval of the FCCPC is obtained. Prohibited acts include:

- Directly or indirectly fixing the purchase or selling price of goods or services.
- Dividing markets by allocating customers, suppliers, territories, or specific types of goods or services
- Limiting or controlling production or distribution of any goods or services, markets, technical development, or investment.

- Engaging in collusive tendering.
- Exclusionary agreements and practices.
- Making the conclusion of an agreement subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of that agreement.

The CPR 2007 empower the NCC to review agreements and practices that attempt to lessen competition, such as:

- Price-fixing agreements.
- Market allocation agreements.
- Exclusive dealing agreements.
- Bid-rigging.
- Resale price maintenance.
-

Contravention can lead to a fine or other civil sanctions.

Unilateral Conduct

The FCCPA has the power can impose sanctions on companies or business enterprises who abuse a dominant position in any part of the Nigerian market. If the NCC considers that a licensee is abusing its dominant position in the market, it can direct it to cease the offending conduct.

29. Are mergers and acquisitions subject to merger control?

Transactions Subject to Merger Control

Mergers between or among companies are subject to the prior review and approval of the FCCPC. The FCCPA distinguished between small and large mergers. Large mergers are subject to prior review and approval by the FCCPC. For small mergers, the FCCPC only needs to be notified where the merger is likely to substantially prevent or lessen competition.

Approval of the FCCPC is required if both:

- The transaction will result in a direct or indirect change of control of the whole or part of a business or any asset of a business in Nigeria.
- The thresholds for a large merger are met, that is:
  - the parties' combined annual turnover in Nigeria equals or exceeds NGN1 billion; or
  - the annual turnover of the target undertaking in Nigeria equals or exceeds NGN500 million.

An undertaking has control of another undertaking where the first undertaking:

- Beneficially owns more than one half of the issued share capital or assets of the undertaking.

- Is entitled to cast a majority of the votes that can be cast at a general meeting of the undertaking, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that undertaking.
- Can appoint or veto the appointment of a majority of the directors of the undertaking.
- Is a holding company, and the undertaking is a subsidiary of that company as defined in the CAMA 2020.
- For an undertaking that is a trust, has the ability to control the majority of the votes of the trustees, appoint the majority of the trustees, or appoint or change the majority of the beneficiaries of the trust.
- Has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in the bullets above.

(*FCCPA*.)

On 23 November 2020, the FCCPC published Merger Review Regulations and Merger Review Guidelines. These provide some guidance on the implementation of the FCCPA, including the types of transactions subject to merger notification. The Regulations also indicate that, in certain circumstances, an acquisition of a minority equity stake may still be deemed to result in a change of control where, for example, the buyer of a proposed minority stake can be deemed to materially influence the policy of another undertaking in a manner comparable to a person who can exercise an element of control.

The Regulations state that the acquisition of a shareholding or voting rights above 25% confer on a buyer a rebuttable presumption of the ability to materially influence policy. By contrast, the acquisition of a shareholding or voting rights below 15% will not, in general, be subject to the FCCPC's review. In assessing material influence, the Regulations state that the FCCPC will consider situations where the acquiring party has the material ability to exercise indirect control or exert influence on policy, key decisions, and direction of the business. The FCCPC will also consider other relevant factors, including:

- The distribution of the remaining shareholding (including ordinary and preference shares, and any special classes of shares), in particular whether the buyer's shareholding makes it the largest shareholder.
- The extent of the buyer's information rights.
- Whether there are any special or preferential voting or veto rights associated with the shareholding, any restrictive covenants or special benefits attaching to the acquired shares, or any pre-emption rights in relation to the sale of shares or assets.

Foreign-to-Foreign Acquisitions

Mergers between two foreign entities are not regulated by the FCCPA unless the relevant transaction will result in a change of control, whether directly or indirectly, of the whole or part of a business or any asset of a business in Nigeria.

Specific Industries

Electricity. The Nigerian Electricity Regulatory Commission can review any merger or acquisition in the Nigerian power sector (*Electric Power Sector Reform Act, 2005*).

Insurance. Any merger involving an insurance company requires approval of the National Insurance Commission.

Telecommunications Sector. Prior notification and approval of the NCC is required for:

- Proposed mergers involving licensed companies in the communications industry.
- The acquisition of more than 10% of the shares of a licensed company.

Oil and Gas. A change of control of the holder of an oil licence or asset requires approval of the Minister of Petroleum and Natural Resources.

Banking. Any merger, acquisition, or other business combination involving financial institutions and specialised banks is subject to approval of the CBN. Additionally, any agreement or arrangement for the transfer of a significant shareholding in a bank, specialised bank, or other financial institution requires prior approval of the CBN (*BOFIA 2020*). A person or entity has a "significant shareholding" when they:

- Beneficially own 5% or more of the paid-up share capital of a bank, specialised bank, or other financial institution.
- Are entitled to cast a majority of the votes that can be cast at a general meeting, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity.
- Can appoint or veto the appointment of a majority of the directors of the bank, specialised bank, or other financial institution.

Anti-Bribery and Corruption

30. Are there any anti-bribery or corruption regulations affecting business in your jurisdiction?

The main laws relating to bribery and corruption in Nigeria are the:

- Corrupt Practices and Other Related Offences Act, 2000.

- Economic and Financial Crimes Commission (Establishment) Act, 2004.
- Criminal Code Act, 1990.
- Penal Code Act., 2010.

Intellectual Property

31. What are the main IP rights that are recognised in your jurisdiction?

Patents

Definition and Legal Requirements. A patent is an exclusive right conferred on a patentee over an invention. An invention is patentable if:

- It is new or constitutes a new improvement on a patented invention.
- It results from an inventive activity.
- It is capable of industrial application.

A patentee (that is, the person to whom a patent has been granted) can preclude any other person from carrying out any of the following acts for industrial or commercial purposes:

- For a patented product: making, importing, selling or using the product or stocking it for the purpose of sale or use.
- For a patented process: applying the process or, where a product is obtained directly by means of a process, making, selling or using the product or stocking it for the purpose of sale or use.

Registration. Applications are made to the Registrar of Patents and Designs and must contain the following:

- Full name and address (or if outside Nigeria, an address for service in Nigeria) of the applicant.
- A description of the invention and any appropriate plans and drawings.
- Claim(s).
- Any other matter as may be prescribed.

Enforcement and Remedies. A patentee, licensee, assignee, joint owner or transferee by succession can enforce a patent. An action for patent infringement must be brought before the court. Remedies for infringement include:

- Damages.
- Injunctions.
- An account of profits.

Length of Protection. A patent is valid for 20 years from the date of filing the application, subject to payment of the prescribed annual fees.

Trade Marks

Definition and Legal Requirements. Registered trade marks are governed by the Trademarks Act, 2004. Unregistered trade marks are governed by the common law. A trade mark is a mark used or proposed to be used in relation to goods or services for the purpose of indicating a connection in the course of trade between the goods/services and some person having the right (either as proprietor or as registered user) to use the mark.

A trade mark is registrable if it contains one of the following:

- The name of a company, individual or firm, represented in a special or particular manner.
- The signature of the applicant for registration or some predecessor in their business.
- An invented word or invented words.
- A word or words that have no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name.
- Any other distinctive mark.

Protection. Trade marks are registered by the *Trademarks, Patents and Designs Registry*. The Registry's website provides guidance on the application procedure.

Enforcement and Remedies. The proprietor of a registered trade mark can bring an action in the Federal High Court for infringement of trade mark, while the proprietor of an unregistered trade mark can only bring an action for passing off in tort. The remedies for trade mark infringement/passing off are:

- Injunction.
- Damages.
- Delivery up.
- Destruction of infringing goods.

Length of Protection and Renewability. Registered trade marks are valid for an initial period of seven years and are renewable indefinitely for 14 year-periods.

Registered Designs

Definition and Legal Requirements. A design is a combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours, which is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result.

A design is registrable if it is new and not contrary to public order or morality.

Registration confers on the registered owner the right to preclude any other person from doing any of the following:

- Reproducing the design in the manufacture of a product.
- Importing, selling, or using a product reproducing the design for commercial purposes.
- Holding the product for the purpose of selling it or of using it for commercial purposes.

Registration. An application to register a design is made to the Registrar of Patents and Designs and must contain:

- Full name and address (or if outside Nigeria, an address for service in Nigeria) of the applicant.
- A specimen of the design or a photographic or graphic representation of the design with any printing block or other means of reproduction from which the representation was derived.
- An indication of the kind of product (or, where a classification has been prescribed, the class of product) for which the design will be used.
- Any other matter as may be prescribed.

The *Registry's website* provides guidance on the application procedure.

Enforcement and Remedies. A design owner (or joint owner) or its licensee, assignee or transferee by succession can enforce a design.

An action for infringement of design rights must be brought before the court. Remedies include the following:

- Damages.
- Injunctions.
- An account of profits.

Length of Protection and Renewability. Registered designs are valid for an initial period of five years and are renewable thereafter for two further consecutive periods of five years on payment of the prescribed fees.

Unregistered Designs

Unregistered designs are not recognised under Nigerian law.

Copyright

Definition and Legal Requirements. Copyright in Nigeria is regulated by the Copyright Act, 2004. Copyright vests automatically in relation to every work eligible for copyright, namely:

- Literary works.
- Musical works.
- Artistic works.
- Cinematograph works.
- Sound recordings.
- Broadcasts.

This list is exhaustive.

Copyright vests initially in the author, who at the time the work is being created, must be either:

- An individual who is a citizen of, or is domiciled in, Nigeria.
- A body corporate incorporated under the laws of Nigeria.

When an eligible work is made by the author in the course of their employment by a newspaper, magazine or similar periodical (publisher) under a contract of service or apprenticeship and for the purpose of publication in the publisher's publication, the publisher is, in the absence of any agreement to the contrary, the first owner of copyright in the publication of the work or the reproduction of the work for the purpose of its being published.

Protection. The Copyright Act does not require registration of copyright as a condition to validity or ownership of the copyright. The Nigerian Copyright Commission has a notification scheme that only serves as public notification of the existence of the work. The fact that a certificate of registration has been issued by the Commission to a purported author (or a purported assignee) does not invalidate the title of the true owner.

Enforcement and Remedies. The author, assignee or an exclusive licensee can bring an action for infringement in the division of the court exercising jurisdiction in the place where the infringement occurred. Remedies for copyright infringement include:

- Damages.
- Injunctions.
- An account of profits.
- A court order requiring that the infringing goods be removed from the market by delivering them to the court or owner, that the goods be destroyed.
- Anton pillar order.

Length of Protection and Renewability. This depends on the type of work, as follows:

- **Literary, musical or artistic work other than photography**. The length of protection is 70 years after the end of the year in which the author dies. In the case of government or a body corporate, protection lasts 70 years after the end of the year in which the work was first published.

- **Cinematograph films and photography.** The length of protection is 50 years after the end of the year in which the work was first published.
- **Sound recordings.** The length of protection is 50 years after the end of the year in which the recording was first made.
- **Broadcasts.** The length of protection is 50 years after the end of the year in which the broadcasting first took place.

Copyright cannot be renewed once it has expired.

Marketing Agreements

32. Are marketing agreements regulated?

Marketing, Agency and Distribution

Marketing agreements, agency and distribution relationships are not regulated by statute in Nigeria. Instead, they are governed generally by common law and case law.

Franchising

Franchising is not regulated under Nigerian law. However, technology transfer agreements involving the use of intellectual property between a local company and a foreign enterprise (for example, a local franchisee and a foreign franchisor) must be registered with the National Office for Technology Acquisition and Promotion.

E-Commerce

33. Are there any laws regulating e-commerce?

There is currently no specific law regulating e-commerce in Nigeria, but certain related activities are regulated d under other laws and regulations. These include the:

- Cybercrimes Act, 2015.
- Evidence Act, 2011.
- CAMA 2020.

These laws provide for the electronic execution of documents, as well as the CBN's regulation of electronic payments in Nigeria.

34. Are online platforms regulated in relation to their use for marketing/sales purposes?

The following guidelines apply to all licensed telecommunications entities:

- NCC's Guidelines for the Provision of Internet Services.

- NCC's Guidelines on Advertisements and Promotions.
- NCC's Value-Added Services and Aggregator Framework.

The Nigerian Communications Act, 2003 and the NCC's Guidelines for the Provision of Internet Services prohibit internet service providers from disseminating, causing to be disseminated, or allowing to be accessed through their network:

- Information that directly or indirectly casts aspersions on a religious, political, or ethnic group or race.
- Pornographic materials.
- Obscene articles.
- Seditious materials.

The FCCPA also restricts misleading, unfair, deceptive or unconscionable marketing, trading, or business practices and all anti-competitive activities, including on the internet.

Advertising

35. How is advertising regulated in your jurisdiction?

The Advertising Practitioners Council of Nigeria (APCON) was established to regulate the practice of advertising in Nigeria. APCON issued the Nigerian Code of Advertising Practice (fifth edition) (APCON Guidelines), which is binding on all advertising practitioners in the Nigerian market.

Article 80 of the APCON Guidelines sets out general guidelines on internet and electronic media marketing. Digital advertising is subject to the general laws regulating advertising in Nigeria.

In addition, APCON issued the Proclamation on Registration and Licensing Regime in the Advertising Industry. This specifies two categories of advertising organisations:

- National agencies, in which not less than 74.9% of the equity is held by Nigerians.
- Foreign agencies, in which foreign nationals own not less than 25.2%. A foreign agency cannot conduct advertising activities targeted at the Nigerian market.

36. How are sales promotions regulated in your jurisdiction?

Sales promotions are regulated by the APCON Guidelines and the National Lottery Commission under the National Lottery Act, 2005.

Data Protection

37. Are there specific data protection laws? If not, are there laws providing equivalent protection?

On 25 January 2019, the National Information Technology and Development Agency (NITDA) issued the Nigeria Data Protection Regulation, 2019 (NDPR), which regulates the exchange of personal data and safeguards the data privacy rights of Nigerians and non-Nigerian residents. The objective of the NDPR is to safeguard personal data rights, enhance security of transactions involving personal data, and improve the access of Nigerian companies to cross-border data. It is also aimed at ensuring that Nigerian businesses remain competitive in international trade through the safeguards afforded by a just and equitable legal regulatory framework on data protection that is in tune with global best practices.

All private and public organisations in Nigeria that collect, process, store, archive and destroy data of natural persons in Nigeria or of Nigerian residents abroad must comply with the NDPR.
In November 2020, the NITDA released the NDPR: Implementation Framework (Implementation Framework), which is intended to serve as a guide to assist data controllers and data administrators/processors understand the controls and measures required to comply with the NDPR. The Implementation Framework must be read and applied in conjunction with the NDPR.

Other laws that aim to ensure the privacy of individuals in Nigeria include the:

- Constitution, which provides for the right to privacy.
- Cybercrimes Act, which requires certain service providers to safeguard the confidentiality of data retained, processed, or retrieved for the purpose of law enforcement.
- Guidelines for the Management of Personal Data by Public Institutions in Nigeria, issued by the NITDA in May 2020, which provide detailed guidance to public officers on the lawful processing and management of personal data collected by public institutions.
- Child Rights Act, 2004,which protects the privacy of children and seeks to limit access to information relating to children in certain circumstances. The Child Rights Act:

    - prohibits the publication of any information that will lead to the identification of a child offender;
    - requires the records of child offenders to be kept strictly confidential and closed to third parties;
    - requires the records of child offenders to be accessible only to persons directly concerned with the disposition of the case at hand, or any other authorised persons; and
    - prohibits the use of records of child offenders in adult proceedings in subsequent cases involving the same child offender.

Unauthorised disclosure of information relating to the HIV status of an individual is an offence under the HIV and AIDS (Anti-Discrimination) Act, 2014.

In the telecommunications industry, the CPR 2007 and the Consumer Code of Practice Regulations, 2007 require all licensees to take reasonable steps to protect customer information and ensure that such information is securely stored.

A Nigerian entity that stores and processes the data of EU citizens must comply with the General Data Protection Regulation (*(EU) 2016/679*) (GDPR).

Product Liability

38. How is product liability and product safety regulated?

Product safety is regulated by the:

- FCCPA, which governs the removal of hazardous products from the market.
- Sale of Goods Act, 1893, which provides remedies for defective products.
- Sale of Goods Laws of various states (where applicable).

Consumers also have remedies in tort, on the basis of which they can challenge a manufacturer or supplier of defective products. Generally, retailers, importers and distributors only bear limited responsibility, as they are not expected to test products that the manufacturer delivers in sealed containers and would normally remain sealed until they reach the ultimate consumer.

The National Agency for Food and Drug Administration and Control is responsible for regulating and controlling the safety of food, drugs, cosmetics, medical devices, chemicals (among others) that are sold, used, manufactured, imported, exported, advertised, and distributed in Nigeria.

Regulatory Authorities

39. What are some of the key regulatory authorities relevant to doing business in your jurisdiction?

Competition

Main Activities. The FCCPC is responsible for, among other things, merger control, enforcing the prohibitions of the FCCPA against anti-competitive business practices, and consumer protection.

W www.fccpc.gov.ng

Environment

Main Activities. The NESREA is responsible for the protection and development of the environment, biodiversity, and sustainable development of Nigeria's natural resources.

W *www.nesrea.gov.ng*

Financial Services

Main Activities. The CBN regulates banks and other financial institutions in Nigeria.

W *www.cbn.gov.ng*

Other

Main Activities. The CAC regulates the formation and management of companies in Nigeria.

W *www.cac.gov.ng*

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Areas of Practice. Corporate and commercial practice with a focus on mergers and acquisitions; private equity; financing; foreign investments; real property; agri-business; employment law. Co-head of the firm's pro bono initiative.
Recent Transactions

- Led the team that advised on the merger between Tangerine Life Insurance and ARM Life Plc (total acquisition value of NGN4.66 billion)
- Led the team that advised CardinalStone on its investment in the USD10 million Series A round raised by Appzone Group.
- Led the team that advised the Kellogg company in connection with the acquisition of 50% of Multipro Consumer Products and on its investment in Tolaram Africa Foods.
- Advised Growthpoint Investec African Properties Limited on its acquisition of an indirect controlling interest in Osapa-Lekki SPV Limited.

Languages. English
Professional Associations/Memberships. Nigerian Bar Association.
Publications

- *Contributor, World Bank's Annual Doing Business Report* (since 2010).
- *Contributor, World Bank's Women, Business and the Law report* (since 2013).
- *Co-author, Nigerian chapter, IFLR Mergers and Acquisitions Report 2015.*
- *Contributor, Practical Law International Acquisition Transactions Guide.*
- *Regular contributor, Taylor Vinters Employment Law Newsletter.*

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Professional Qualifications. LLB (Jos); BL (Nigeria); LLM, University of London; PG. Dip., Switzerland
Areas of Practice. Corporate advisory; compliance and investigations; taxation; oil and gas.
Recent Transactions

- Advised on PCL Capital's acquisition of a discount house in Nigeria.
- Advised a group of Australian investors on the setting-up of a cast steel plant on the Agbaja Plateau in Kogi State, Nigeria.
- Advised on the tax implications of a cross-border joint venture restructuring in the Nigerian petroleum industry.

Languages. English, Yoruba

Professional Associations/Memberships. Nigerian Bar Association; Nigerian Bar Association Institute of Continuing Legal Education; International Bar Association; International Fiscal Association; Chartered Institute of Taxation of Nigeria; Taxation Committee of the Section on Business Law of the Nigerian Bar Association.

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Professional Qualifications. LLB, Uyo; BL, Nigeria
Areas of Practice. Corporate advisory, including private equity and mergers and acquisition, tax, and real property.
Recent Transactions

- Advised a local entity engaged in the development and deployment of educational technology tools on its capital raise transaction involving a private equity fund.
- Advising a multinational logistics company on the set-up and operation of a joint venture with a leading international operator in the logistics industry, to carry out large-scale logistics business in Nigeria.
- Advising an international manufacturer on the set-up of a production plant in Nigeria under a joint venture arrangement with a federal government agency.
- Advising two multinationals on the requirement to notify their merger to the FCCPC.

Languages. English
Professional Associations/Memberships. Nigerian Bar Association; Nigerian Bar Association, Section on Business Law.

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Professional Qualifications. LLB, Lagos; BL, Nigeria
Areas of Practice. Corporate advisory including private equity, and mergers and acquisitions.
Recent Transactions

- Advised Leapfrog Investments on its acquisition of AIICO Insurance PLC.
- Advised Tangerine Life Insurance Limited and ARM Life PLC on the merger between the two companies.
- Advised Verod Capital Management Limited on its acquisition of majority equity stakes in two leading pension fund administrators in Nigeria.
- Member of the team that acted as transaction counsel in connection with the investment by AfricInvest Financial Inclusion Vehicle LLC in Royal Exchange General Insurance Company Limited.

Languages. English
Professional Associations/Memberships. Nigerian Bar Association; Nigerian Bar Association, Section on Business Law.