



COMPANY FORMATION IN NIGERIA

MAIN FORMS OF COMPANY/BUSINESS IN NIGERIA

Sole Proprietorship: This is a form of business owned and run by an individual whereby there is no legal distinction between the owner and the business.

Partnership: This is a form of business arrangement in which two or more individuals own a business and are personally responsible for the debts and other obligations of the business up to a maximum of 20 partners (a few exceptions apply).

Private Limited Liability Companies: A private limited company is a legal entity in its own right, separate from those who own it, the shareholders. The limited liability and simplicity of running the private limited company makes it the most common of registered business in Nigeria. As a shareholder of a private limited company, the shareholders' personal possessions remain separate (unless they are secured against the business for borrowing), and the shareholders' risk is reduced to only the money they have invested in the company and any shares the shareholder holds which have not been paid for. The very minimum requirements are:

- a. The company must have a registered office in Nigeria
- b. The company name must not be exactly identical to any other company name currently held in the registry of the Corporate Affairs Commission
- c. At least twenty five percent of the authorized shares must be allotted at incorporation
- d. At least two people above the age of 18 must subscribe to the memorandum and articles of association.

Public Limited Liability Companies: A public limited company differs from the private version in that it is able to sell its shares to the public and may be quoted in the stock exchange. A public company must have at least 500,000 authorized share capital and the subscribers must take up at least twenty five percent of the authorized share capital. The cost of running a public limited company is reasonably higher than that of a private limited liability company. It is therefore better suited for large organizations.

Guarantee Company (not for profit): In simple terms a guarantee company is not for profit and is the type mostly formed by charitable organizations. A guarantee company does not have share capital, and the members do not own the company. They do not receive any profits and have no claim to the company's assets. All income generated is used to cover operating costs and to achieve the objectives of the company.

Non Resident Companies: Technically, all companies operating in Nigeria are required to register in Nigeria to be able to function under Nigerian law, however, some companies are engaged by Nigerian companies due to unique expertise though these companies are not registered in Nigeria. Failure to recognize this set of companies will lead to loss of revenue in terms of taxes, hence recognition of these kind of companies.

Companies in Free Trade Zones (FTZ): The FTZs are designed to attract foreign direct investment (FDI). There are at present 31 FTZs with 14 operational and 17 under construction as of April 2015. Foreign investors can set up businesses directly in FTZs without necessarily incorporating a company in the customs territory. Registered companies are also eligible to register separately and operate in an FTZ. An FTZ entity enjoys the benefits of 100% capital and profit repatriation, exemption from all federal, state, and local government taxes, levies and rates, and waivers on customs and import duties.



SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

- Company Income Tax 30% (Corporation Tax)
- Personal Income Tax is computed on a graduated basis. Minimum is 1% while maximum is 24%
- Value Added Tax 5%
- Petroleum Profit Tax varies between 50% to 85%
- Withholding Tax varies from 5% to 15%
- Capital Gains Tax 10%
- Education Tax 2%
- Capital Allowances are granted in place of depreciation for qualifying assets

There are tax holidays for specific companies/products. Also, there are various tax reliefs and allowances (Research & Development, Investment Allowance, etc.)

There are other minimal levies and permits imposed by states and local government. Nigeria is a federating Unit with three tiers of Government: Federal, State and Local.

Double Taxation Agreements/Treaties: Nigeria has a number of tax treaties referred to as "Double Taxation" Agreements with about 14 countries. Efforts are ongoing to sign agreement/treaties with more countries.

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

Companies must be incorporated by the Corporate Affairs Commission with a minimum of two directors for private companies and seven for public companies. Companies can be 100% foreign owned. With regards to foreign investment, additional documentation with regards to capital inflow is required.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

Nigerians like to be addressed by Mr. / Mrs. / Ms. and their last name. Titles are often used, as the person having a title sees this as a privilege. Establishing a personal relationship with your Nigerian counterpart is a common practice before starting to do business. Be prepared to spend the first couple of minutes of your meetings for that purpose. Asking about the well being of your Nigerian partner's family is a good start.

You should turn up on time for meetings, but be prepared for others to be late. Also try to greet those attending in order of seniority; this can often be noted by observing who people are deferring to.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

There are some form of restrictions on movement of foreign currency. This is one of the reasons why appropriate documentation needs to be in place from inception. You need acceptable proof of inflow of capital to enable you access foreign currency for outflow (capital, dividend, importation etc). Also, companies with needs for foreign technical management/expertise are expected to register and have such agreement approved by the relevant agency.