FOREIGN INVESTMENT REQUIREMENTS AND PROTECTIONS

Principal Laws on Foreign Investments

The principal laws regulating foreign investments in Nigerian are:

a. the Nigerian Investment Promotion Commission Act No.16 of 1995; and
b. the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act No.17 of 1995.

Basic Functions and Powers of NIPC As Prescribed by Act 16 of 1995

The Nigerian Investment Promotion Commission (NIPC) is an Agency of the Federal Government with perpetual succession and a common seal, which is specially established, among other things, to:

(a) co-ordinate, monitor, encourage and provide necessary assistance and guidance for the establishment and operation of enterprises in Nigeria ;
(b) initiate and support measures which shall enhance the investment climate in Nigeria for both Nigerian and non-Nigerian investors;
(c) promote investments in and outside Nigeria through effective promotional means;
(d) collect, collate, analyse and disseminate information about investment opportunities and sources of investment capital and advise on request, the availability, chance or suitability of partners in joint-venture projects;
(e) register and keep records of all enterprises to which the NIPC Act legislation applies;
(f) identify specific projects and invite interested investors for participation in those projects;
(g) initiate, organise and participate in promotional activities such as exhibitions, conferences and seminars for the stimulation of investments;

(h) maintain liaison between investors and Ministries, government departments and agencies, institutional lenders and other authorities concerned with investments;

(i) provide and disseminate up-to-date information on incentives available to investors;

(j) assist incoming and existing investors by providing support services;

(k) evaluate the impact of the Commission on investment in Nigeria and recommend appropriate remedies and additional incentives;

(1) advise the Federal Government on policy matters, including fiscal measures designed to promote the industrialisation of Nigeria or the general development of the economy; and

(m) perform such other functions as are supplementary or incidental to the attainment of the objectives of NIPC Act.

Investment Features of the Acts 16 & 17 of 1995

Deregulation of Equity Structure in Nigeria Enterprises

Effectively, the Nigerian Investment Promotion Commission (NIPC) Act No. 16 of 1995 has abolished any restrictions, in respect of the limits of foreign shareholding, in Nigeria registered/domiciled enterprises. However, certain business/enterprises are exempted from free and unrestrained participation by any person or group of persons irrespective of their nationality. These are:

- Production of arms and ammunition;
- Production of and dealing in narcotic drugs and psychotropic substances;
- Manufacture of military/paramilitary wears and accoutrements;
- Participation in coastal and inland shipping.

Provisions Relating to Investments

Notable amongst the provisions relating to investments are the following:

- A non-Nigerian may invest and participate in the operation of any enterprise in Nigeria;
- An enterprise, in which foreign participation is permitted, shall after its incorporation or registration, be registered with the NIPC;
- A foreign enterprise may buy the shares of any Nigerian enterprise in any convertible foreign currency.
- A foreign investor in an approved enterprise is guaranteed unconditional transferability of funds through an authorised dealer, in freely convertible currency, be it:
    (a) dividends or profit (net of taxes) attributable to the investment;
    (b) payments in respect of loan servicing where a foreign loan has been obtained.
- The remittance of proceeds (net of all taxes) and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment;
- Total repatriation of capital should the investor choose to relocate elsewhere.

Investment Protection Assurance
- No enterprise shall be nationalised or expropriated by any Government of the Federation, and
- No person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other persons.
- There will be no acquisition of an enterprise by the Federal Government unless the acquisition is in the national interest or for a public purpose under a law which makes provision for:
    (a) payment of fair and adequate compensation, and
    (b) a right of access to the courts for the determination of the investor's interest of right and the amount of compensation to which he is entitled.
- Compensation shall be paid without undue delay, and authorisation given for its repatriation in convertible currency where applicable.

Investment Promotion and Protection Agreements (IPPA)

Apart from the investment guarantee assurances of the NIPC Act countries are welcome to execute and enter into bilateral Investment Promotion and Protection Agreements (IPPA) with the Nigerian government.

CHECKLIST OF STEPS FOR ESTABLISHING NEW COMPANIES IN NIGERIA WITH FOREIGN SHAREHOLDING

Stage A

i. Establish partners/shareholders and their respective percentage shareholdings in the proposed company;
ii. Establish name, initial authorised share capital and main objects of proposed company;
iii. EXCEPT in instances where the proposed company will be 100% owned by non-resident shareholders - Prepare Joint-Venture Agreement between prospective shareholders. The Joint Venture may specify; inter-alia, mode of subscription by parties, manner of Board Composition, mutually protective quorum for meetings, specific actions, which would necessitate shareholders approval by special or other resolutions;
iv. Prepare Memorandum and Articles of Association, incorporating the spirit and intents of the Joint-Venture Agreement;
v. Foreign Shareholder may grant a Power of Attorney to its Solicitors in Nigeria, enabling them to act as its Agents in executing incorporation and other statutory documents pending the registration with NIPC (i.e. formal legal status for foreign branch/subsidiary operations);
vi. Conduct a search as to the availability of the proposed company name and, if available, reserve the name with the CAC and obtain registration forms;
vii. Submission of stamped Memorandum and Article of Association together with registration forms for verification and assessment;

viii. Effect payment of stamp duties, CAC filing fees and process and conclude registration of the company as a legal entity.

Stage B

Prepare Deeds of Sub-Lease/Assignment, as may be appropriate, to reflect firm commitment on the part of the newly registered company, to acquire business premises for its proposed operations.

Stage C

Prepare and submit simultaneous applications to the NIPC (on prescribed NIPC Application Forms) for the following: -

- Registration (Business Permit Certificate);
- Expatriate Quota (NIPC facilitates with Federal Ministry of Internal Affairs).

The application to the NIPC should be accompanied with the following documents: -

- Original copy of the duly completed NIPC Form;
- Original copy of the treasury receipt for the purchase of NIPC Form;
- A copy of the Certificate of Incorporation of the applicant company (minimum share capital acceptable is 10million Naira);
- A copy of the Tax Clearance Certificate of the applicant company;
- A copy of Certificate of Capital Importation;
- Certified True Copies of CAC Form 02 & 07;
- A copy of the Memorandum and Articles of Association;
- A copy of treasury receipt as evidence of payment of stamp duties on the authorised share capital of the company as at date of application;
- A copy of the Joint-Venture Agreement - UNLESS 100% foreign ownership is applicable;
- A Copy of Feasibility Report and Project Implementation Programme of a company for its proposed business;

- A copy of Deed(s) of Sub-Lease/Agreement evidencing firm commitment to acquire requisite business premises for the company's operation;
- Copies of information brochure on foreign shareholder (if available) as testimony of international expertise and credibility of the foreign partner in the proposed line of business;

In case of application for Expatriate Quota Position, and in addition to the above

- Evidence of non-availability of expertise in the country;
- A copy of training programme or personnel policy of the company, incorporating management succession schedule for qualified Nigerians;
- Particulars of names, addresses, nationalities and occupations of the proposed directors of the company;
- Job title designations of expatriate quota positions required, and the academic and working experience required for the occupants of such positions;

Stage D

Application for Incentives: Aside from approving statutory incentives under its purview, the Commission negotiates additional specific incentives on behalf of companies.

i. Pioneer Status: under the Industrial Development (Income Tax Relief) Act 22 of 1971 certain manufacturing and service activities/products were prescribed Pioneers Activities. This list has, however, been expanded in 1988 and 2004. This status ascribes 5 years tax holiday period on such approvals.

Basic Requirements

a. the company’s activity/product must be listed among the prescribed activities;
b. a minimum of 10million share capital for foreign or joint venture company and one million for local company
c. apply within the first year of commencement of operation

The application form should be accompanied with

- Original copy of the duly completed NIPC Form;
- Original copy of the treasury receipt for the purchase of NIPC Form;
- A copy of the Tax Clearance Certificate of the applicant company;
- A copy of the Memorandum and Articles of Association;
- Evidence of acquisition and installation of plant and machinery;
- Operational Licenses for applicable activity;
- A copy of the Joint-Venture Agreement - UNLESS 100% foreign ownership is applicable.

ii. Application for Technical Agreement

This is a form of technical co-operation agreement in which a party will agree to offer technical services to a company for the payment of a fee. Details and terms of such agreements are normally worked out between the parties involved but such agreements should be registered with the National Office for Technological Acquisition and Promotion (NOTAP).

PRESCRIBED FEES BY NIPC

S/N	SERVICES	FEES
i.	Procurement of Form	₦25,000.00
ii.	Process fees	₦25,000.00
iii.	Grant of Establishment Quota (per slot)	₦10,000.00
iv.	Renewal of Quota position (per slot)	₦1,000.00
v.	Additional Quota (per slot)	₦2,000.00
vi.	Stay of Action	₦5,000.00
vii.	Grant of Business Permit	₦25,000.00
viii.	Amendment of Business Permit	₦25,000.00
ix.	Re-grading of Quota (per slot)	₦10,000.00
x.	Appeal Processing fee	₦50,000.00
xi.	Restoration of Lapsed quota	₦1,000.00
xii.	Upgrading of Quota to P.U.R (per slot)	$10,000.00
xiii.	Re-designation of P.U.R. (per slot)	$10,000.00
xiv.	De-tagging/Extension of Quota (per slot)	₦10,000.00
xv.	Re-validation of lapsed Quota (per slot)	₦10,000.00
xvi.	Penalty for late submission of renewal of private license	₦150,000.00
xvii.	Application for Pioneer Status	₦20,000.00
xviii.	Collection of Approval letter and Certificate	₦30,000.00
xix.	Application for extension of Pioneer Status	-
xx.	On Approval of Pioneer Status Extension	₦50,000.00
xxi.	Processing Fees (Verification visits)	₦50,000.00

SOME PRESCRIBED FEES BY CORPORATE AFFAIRS COMMISSION (CAC)

S/	SERVICES	FEES

N		
i.	Registration of public companies whose share capital does not exceed ₦1m Exceeds ₦1m	N20,000.00 N30,000.00 for the first N1m and thereafter, N20,000.00 for every N1m of part thereof
ii.	Registration of private company whose share capital does not exceed N1m Exceeds N1m	N10,000.00 N10,000.00 for the first N1m and N10,000.00 for every N1m of part thereof
iii.	Registration of company not having a share capital	N20,000.00
iv.	Filing of notice of exemption by foreign companies	N30,000.00
v.	Certified True Copy of: i. Memorandum and Articles of Association ii. Certificate of incorporation iii. CO2, CO6 and CO7	 N3,000.00 N6,000.00 N2,000.00 (each)
vi.	A set of Company Incorporation Form	N500.00
vii.	Same Day Incorporation (excluding filling fees)	N50,000.00
viii.	Filling of Annual Returns	N1,000.00