



# Foreign direct investment in Nigeria

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Return to Africa Connected: Issue 1

## Introduction

Nigeria has enormous resources, most of which are yet to be fully exploited. It has been reported that apart from oil, Nigeria's other natural resources include natural gas, tin, iron ore, coal, limestone, niobium, lead, zinc and arable land and are worth billions of dollars. There is no denying the fact that tremendous opportunities for foreign direct investment (FDI) exist in industries such as agriculture, natural resources, tourism, consumer goods, textiles and entertainment.

## Foreign investment in Nigeria

There are two options for foreign investors looking to invest in Nigeria:

- Foreign portfolio investment, which involves investing in stocks and securities of an existing Nigerian company.
- Foreign direct investment, which involves establishing a business enterprise and acquisition of business assets in Nigeria.

Any foreign company intending to do business in Nigeria (except for companies exempted by the President) must be incorporated as a separate entity in Nigeria. Until incorporation, such foreign company cannot have a place of business in Nigeria, save for the receipt of notices and other documents as matters preliminary to incorporation.<sup>1</sup>

Nigeria, having recently experienced a recession marked by lower oil revenues, has made policy decisions which have rekindled the country's economic prospects. As reported by the Nigeria Bureau of Statistics, capital inflows (FDI, portfolio and other investment) reached US\$12 billion in 2017 – mainly due to policy changes and the recovery in the oil sector.<sup>2</sup>

## Reasons for foreign investment in Nigeria

There are many factors that influence the level of foreign direct investment in Nigeria, one of which is the large consumer market. The Nigerian government has also provided a number of incentives related to taxes, exports and other sectors to encourage more investment from within and outside the country.

An improvement in the ease of doing business offers further encouragement; the business registration process has been simplified, which has eased the constraints of registering a business. The free flow of investment capital and freedom from expropriation of investment (besides acquisition for public purposes) have also boosted the country's draw as an investment destination.<sup>3</sup>

Investors are allowed to freely repatriate their capital and net profit after tax without any restrictions provided they

have a certificate of capital importation (CCI), which is evidence that their investment was brought into Nigeria. CCIs are issued by Authorized Dealers (banks licensed by the Central Bank of Nigeria to deal in foreign exchange) within 24 to 48 hours after the investor has brought its foreign investment into Nigeria.<sup>4</sup>

## The role and impact of foreign investment in Nigeria's economic development

The increase in the influx of direct investment in Nigeria has been a crucial factor in the economic growth of the country. It has facilitated the development of the working population through the transfer of knowledge and technical skills and also aided in the standardization of processes and products. Foreign investment has helped in infrastructure development and generated revenue for the country through taxation. More importantly, it has encouraged exports of local products, which has brought about further investment in the country.

## FDI restrictions and constraints in Nigeria

Generally, foreign investors are allowed under the law to wholly own businesses or in partnership with others in Nigeria, except for businesses operating in the areas of:

- Manufacturing of military/paramilitary uniforms and accoutrements.
- Production of arms and ammunitions.
- Production and dealing in narcotic drugs and psychotropic substances.
- Other items as the Federal Executive Council may from time to time determine.<sup>5</sup>

In addition, there are sector-specific restrictions that investors must be aware of:

- **Oil and Gas:** The Nigerian Oil and Gas Industry Content Development Act defines a Nigerian Company as a Company registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51 percent equity shares owned by Nigerians. It further provides that Nigerian operators and indigenous service companies shall be given first consideration in the award of oil blocks, licenses and works in the sector. Thus, to be competitive in the award of contracts, at least 51 percent equity should be owned by Nigerian investors.<sup>6</sup>
- **Private Security:** A foreign investor is prohibited from having an equity stake in a private security company in Nigeria.<sup>7</sup>
- **Engineering:** A company and its employees who are engineers 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 percent of the company's shares. Also, expatriate engineers who are granted provisional registration cannot register a 100 percent-owned engineering consulting firm in Nigeria.<sup>8</sup>
- **Broadcasting:** For a foreign investor to acquire a broadcasting license in Nigeria, the majority of its equity stake must be owned and operated by Nigerians and must not represent foreign interests.<sup>9</sup>
- **Management Restriction:** Private limited companies must have at least two shareholders, two directors and a company secretary.<sup>10</sup> A public company is required by the SEC to have at least five directors (at least one of whom must be an independent director).<sup>11</sup> Also, a Nigerian company looking to employ foreign nationals must obtain expatriate quota approvals before employing them, and are required to file monthly immigration returns stating the utilization of expatriate quotas.<sup>12</sup>

## Regulatory framework of foreign investment in Nigeria

There are myriad laws, rules and regulations a foreign investor must be aware of before deciding to invest in Nigeria. This is in addition to sector specific laws. The following are the primary legislation governing investment in Nigeria:

- **The Companies and Allied Matters Act:**<sup>13</sup> This regulates the establishment and operations of business entities in Nigeria. A foreign company cannot operate a business in Nigeria unless it is registered under this Law.<sup>14</sup>
- **Nigerian Investment Promotion Commission (NIPC) Act:**<sup>15</sup> The NIPC is the agency responsible for overseeing the participation of foreigners in business enterprises in Nigeria. Foreign investors are required to register with the NIPC immediately after incorporation.

The Companies Income Tax Act, Personal Income Tax Act, Value Added Tax Act, Stamp duties Act, Capital Gains Tax Act, Petroleum Profit Tax Act and other rules, regulations notices issued by the relevant tax authority. These laws provide for the tax obligations of companies and individuals operating in Nigeria.

- **Investment and Securities Act (ISA):**<sup>16</sup> The ISA empowers the Securities and Exchange Commission with the responsibility of regulating the investment and securities business in Nigeria.
- **Immigration Act:** The Immigration Act regulates and controls the entry, exit and employment of foreigners in Nigeria.<sup>17</sup>
- **National Office for Technology Acquisition and Promotion (NOTAP) Act:** The Act established the NOTAP, which is responsible for registering contracts/agreements that relate to the transfer and acquisition of foreign technology.<sup>18</sup>
- **Foreign Exchange (Monitoring and Miscellaneous Provisions) (FEMMA) Act:** This is the primary legislation for foreign exchange transactions in Nigeria. The Act establishes an Autonomous Foreign Exchange Market where transactions in foreign exchange are conducted, monitored and supervised.<sup>19</sup>

Some sector-specific laws include; the Nigerian Communications Commission Act and regulations, Nigerian Broadcasting Commission Act, the Pensions Reform Act and regulations and guidelines issued by the relevant regulator.

## Government policies on ease of doing business in Nigeria

In early 2017, the government launched the Economic Recovery and Growth Plan (ERGP),<sup>20</sup> which led the drive to review previous policy decisions. New policies included an investor and exporter foreign exchange window (IEFX) and a tightening of monetary policy. The priorities of the ERGP include stabilizing the macroeconomic environment, achieving agriculture and food security, improving transportation infrastructure and driving industrialization focusing on SMEs. One of the achievements of the ERGP is the introduction of the Voluntary Asset and Income Declaration Scheme (VAIDS), which is gradually restoring the efficiency of the country's tax system. It was reported that a total of NGN 20 billion (of a target of NGN 305 billion) has so far been collected from the 262 corporate taxpayers who have declared their assets under the scheme.<sup>21</sup>

Also, the government's efforts to promote transparency and efficiency have led to its policy to digitize CCIs, hence the transition to e-CCIs.<sup>22</sup>

The bill to repeal the Companies and Allied Matters Act (CAMA) – which is awaiting the assent of the President of Nigeria – when enacted will ease the rigors of doing business in Nigeria, thereby making investment in the country more attractive. The bill, amongst other things, provides for sole directorship and sole shareholding for small companies. This provision is consistent with several other progressive economies such as the UK and Hungary. Private companies will now also be permitted to provide financial assistance to their shareholders, increasing the chances of attracting much needed investment, as shareholders or potential shareholders have access to funds, security, and so on, which in turn enables them invest in such companies. This will also encourage viable acquisitions, further promoting economic growth.

## Conclusion

There should be cohesion between the government and private organizations, the objective being to implement world-class corporate guidelines and standards into the nation's governance. FDI would best benefit Africa when accompanied with a transfer of skills, investment in innovative research and development, and increased local manufacturing of pharmaceuticals and other intermediary products. This, reinforced with the implementation of trade agreements, will drive greater trade exports from Africa.

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<sup>1</sup> Section 54 - 56 of the Companies and Allied Matters Act (CAMA) Cap C20 Laws of the Federation

of Nigeria (LFN) 2004

<sup>2</sup> <https://www2.deloitte.com/ng/en/pages/strategy-operations/articles/invest-in-nigeria.html>

<sup>3</sup> Section 25 of the Nigeria Investment Promotion Commission (NIPC) Act Laws of the federation of Nigeria Cap N117 LFN 2004 (NIPC Act)

<sup>4</sup> <https://www.cbn.gov.ng/OUT/2012/CIRCULARS/TED/TED.FEM.FPC.GEN.01.014.2012.PDF>

<sup>5</sup> Section 17 and 18 of the NIPC Act

<sup>6</sup> Section 106 of the Nigerian Oil And Gas Industry Content Development Act 2010 <http://ncdmb.gov.ng/images/GUIDELINES/NCACT.pdf>

<sup>7</sup> Section 13(1)(e) of the Private Guards Companies Act Cap P30 LFN 2004

<sup>8</sup> <https://www.coren.gov.ng/portal/become-a-coren-personnel>

<sup>9</sup> Section 9(1)(b) of the National Broadcasting Commission Act Cap N11 LFN 2004

<sup>10</sup> Section 18 and 246 of CAMA

<sup>11</sup> Article 4.2 of the code of corporate governance for public companies 2014

<sup>12</sup> <https://portal.immigration.gov.ng/pages/about>

<sup>13</sup> Cap C20 LFN 2004

<sup>14</sup> Section 27 of CAMA

<sup>15</sup> Cap N11 LFN 2004

<sup>16</sup> The Investment and Securities Act Cap 124 LFN 2004

<sup>17</sup> The Immigration Act Cap 11 LFN 2004

<sup>18</sup> Section 1 and 4 of the NOTAP Act Cap N62 LFN 2004

<sup>19</sup> Section 1 of the FEMMA Act Cap F34 LFN 2004

<sup>20</sup> [https://www.cbn.gov.ng/Out/2017/CCD/Financial%20Inclusion%20Newsletter\\_%20MAY%202017\\_Volume%20%20Issue%20-final%20-%20Review%20%20%20.pdf](https://www.cbn.gov.ng/Out/2017/CCD/Financial%20Inclusion%20Newsletter_%20MAY%202017_Volume%20%20Issue%20-final%20-%20Review%20%20%20.pdf)

<https://yourbudget.com/wp-content/uploads/2017/03/Economic-Recovery-Growth-Plan-2017-2020.pdf>

<sup>21</sup> <https://blog.deloitte.com/ng/economic-recovery-and-growth-plan-ergp-an-assessment-of-the-journey-so-far/>

<sup>22</sup> <https://www.cbn.gov.ng/Out/2017/CCD/Re%20Implementation%20of%20eCCI.pdf>

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