

Foreign Companies Doing Business in Nigeria

Last Newsletter

My last Newsletter on Directors Private Liability elicited some exciting responses. It is important to add that there are many civil and criminal provisions regulating the duties of Directors. Some of the criminal provisions are contained in Chapter 40 of the Criminal Code, which deals with Directors and officers of corporations or companies fraudulently appropriating property or keeping fraudulent accounts, or falsifying books of accounts". There is also the old common Law rule referred to as criminal breach of trust.

Foreign Companies Doing Business In Nigeria

A major concern of international businessmen is subjecting themselves to the Laws of the foreign country where they intend to trade. Their reluctance stems from a variety of reasons most of which are primarily from their incomprehension or ignorance of the rules, ethic and cultures by which their business would be governed by their host country.

A common inquire I receive from foreign companies intending to come to Nigeria to trade is whether they are obliged to be registered under Nigeria Law and the attendant tax liabilities that they may likely incur from such trade.

Nigerian Law requires that any group of people doing business in Nigeria must register their business venture under Nigerian Law.

Section 54 of the Companies & Allied Matters Act (CAMA) expressly prohibits foreign companies not registered under this Act of parliament, from doing business in Nigeria . Thus, these companies must not carry on any business in Nigeria nor exercise any of the powers of a registered company nor have a place of business or an address for service of documents or processes in Nigeria until they are registered as a corporate entity.

Exceptions To The Registration Rule

The above rule is not an absolute one as there are exceptions to it. Some of them are: -

Foreign companies invited by the Nigerian government or by donor countries or the United Nations, European Union etc to execute projects in Nigeria need no registration under CAMA. However, in some instances, an application is required to be made to the Nigerian National Council of Ministers for approval to carry on business without registration. Any company exempted under any treaty to which Nigeria is a signatory. A foreign company could have an address for receiving documents in Nigeria as a preliminary matter to its registration. Foreign companies carrying on business in the Export Free-Trade zones. These companies, in the free trade zones, also enjoy many tax incentives some of which include exemption from payment of corporate tax, export and import duties, no expatriate quota requirements for the expatriates

employed by the companies, etc.

Implication & Penalties for Non-Registration

Section 54 subsection 2 of CAMA provides that any contract, entered into by any foreign company that contravenes the above provision concerning re-registration in Nigeria , shall be void and of no effect.

Also, any foreign company in contravention shall be guilty of an offence and liable on conviction to a fine of not less than N 2,500. Further, every Officer or agent of the foreign company in contravention, who knowingly and willingly authorises or permits the default is also liable to a fine of not less than N 250 and where it is a continuing offence, to a further fine of N 25 for every day during which the default continues.^ Return to top

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