

Legal Alert **Foreign Investments Benefits & Guarantees**

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Introduction & Regulatory Authority

The Nigerian Investment Promotion Commission ("NIPC") is the primary regulatory agency established by the Nigerian Investment Promotion Commission Act, 1995 (as amended) to serve as a one-stop government approval agency to promote, encourage, co-ordinate, monitor and provide necessary assistance and guidance for the establishment of enterprises in Nigeria.

NIPC is further obligated by the NIPC Law to do away with all previously recognised delays associated with the granting of necessary approvals for the establishment of new businesses by foreign entrepreneurial entities in Nigeria.

Other regulatory agencies that a foreign investor would have to liaise with when making an investment in Nigeria include the Corporate Affairs Commission ("CAC"), the National Office for Technology Acquisition & Transfer ("NOTAP"), the Ministry of Internal Affairs with the Nigerian Immigration Service, the Central Bank of Nigeria and an appointed local Bank for importation of the investment capital and the repatriation of profits, capital, etc; the Securities & Exchange Commission ("SEC") and the Nigerian Stock Exchange ("NSE") for investments in public quoted companies.

A further important function of NIPC is the legal duty to register and keep the records of all enterprises to which the NIPC Law is applicable.

Incentives, Benefits & Guarantees

The Nigerian Government, like other governments in the world, have put in place a number of incentives and guarantees to encourage foreign investments in Nigeria. Some of these incentives include the following: -

1. Liberation of ownership. Foreign investors in Nigeria can now own 100% of the shares of any Nigerian company provided such a company is not engaged in any of the restricted business of producing arms and ammunitions, narcotic and psychotropic substances, military and para-military wears and accoutrement.

2. Free repatriation of profits. All foreign investors are allowed the free repatriation of their profits or dividend income provided that the repatriation is effected through a licenced Nigerian authorised dealer in freely convertible currency.

3. Legal Guarantees against expropriation or nationalisation. The NIPC Law itself guarantees that no enterprise shall be nationalised or expropriated by any government in Nigeria nor shall a business owner be compelled by law or by government to surrender his equity or company to any person. Where however an enterprise is required to be nationalised for overriding public interest, fair and adequate compensation must be paid in respect of such acquisition. This is in marked contrast to the nationalisation exercises of the late 1970s.

4. Investment Promotion & Protection Agreements. In addition to the investment guarantees in the NIPC Law, the Nigerian government continues, as a further guarantee against expropriation or nationalisation or in the event of a war or a revolution, to execute bilateral investment promotion and protection agreements ("IPPAs") with countries whose nationals do business in Nigeria. Some of the countries that have executed IPPAs with the Nigerian government include France, the United Kingdom ("UK"), Netherlands, Romania, Switzerland, Spain and South Africa. Negotiations with the United States of America, Belgium, Sweden and the Russian Federation are at various stages of conclusion.

5. Double Taxation Treaties. Nigeria has signed double taxation agreements, which function in the form of "tax credits", with the UK, France, Netherlands, Belgium, Pakistan, Canada, Czech Republic, Philippines, Romania and South Africa. Negotiations on similar agreements with countries like Turkey, Russia, India and South Korea are at various stages of finalisation. Tax concession by the Nigeria government to her treaty partners is the rate of 7.5% on dividends, interest, rent and royalties earned by foreign companies in Nigeria against their ultimate tax obligation in their country of registration.

6. R & D Tax Relief. There are tax reliefs for research and development activities carried out in Nigeria in connection with the business of every foreign registered entity in Nigeria. 120% of all expenses on research and development ("R & D") are tax deductible. Where the R & D is on local raw materials, 140% of the expenses on R & D are tax deductible. Long term expenses on R & D which are of a capital nature are written off against the profits of the enterprise undertaking the R & D. The results of all R & D in Nigeria are patentable and protected under Nigerian intellectual property law.

7. Pioneer status and tax holiday. Companies with pioneer Status are granted tax holidays of between five to seven years for new, innovative or specialised enterprises, or sometime for locating their industries in economically disadvantaged local areas.

8. Tax concession of 2% for five years for industrial establishments that have in-plant training facilities. There are also tax concessions for industries that have high labour and capital ratio. Industries that encourage local fabrication could be granted 10% tax concession for a period of five years.

9. A 100% tax holiday for seven years for industries that are situated in economically disadvantaged local areas and provide majority of the infrastructure required in such local areas.

10. Industries that attain minimum levels of local raw materials sourcing and utilisation are entitled to a 20% tax credit.

NIPC Registration Checklist

To ensure the utilisation of some or all of the benefits and guarantees mentioned above, it is recommended that a foreign company registers its business activities in Nigeria with NIPC. We are providing you with a working checklist of some of the documentation that should accompany such an application for registration with NIPC: -

- i. Formal application letter to the Executive Secretary, NIPC.
- ii. Duly completed NIPC registration form.
- iii. Copy of Applicant company certificate of incorporation. Applicants are required to have a minimum share capital of N10Million before they can apply for registration.
- iv. Certified true copies of the particulars of directors (form CAC 7) and shareholders (form CAC 2).
- v. Certified true copies of Memorandum and Articles of Association of the Applicant company.
- vi. Copy of the treasury receipt for stamp duties paid on the authorised share capital of the company.
- vii. Copy of Applicant's tax clearance certificate.
- viii. Copy of Applicant's capital importation certificate.
- ix. Copy of joint venture agreement where the company is not owned 100% by the foreign shareholder.
- x. Copy of feasibility report and project implementation program of the company for the proposed business.
- xi. Copy of Lease of Sub-Lease Agreement evidencing the Applicant's commitment to acquire business premises for the expatriate company's operations in Nigeria.

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