

LEGAL ALERT JANUARY 2006 ? STARTING A NEW BUSINESS IN A NEW YEAR IN NIGERIA.

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Happy New Year.

We wish you a very Happy New Year. We also wish you well always and would continue to partner with you in your enterprise.

Legal Alert on Basis Legal Requirements for New & Existing Businesses in Nigeria.

Introduction.

In consulting for new and existing Clients in the last quarter of last year, 2005 it was disturbing to discover that Corporations, both local and International, did not have the basic rudimentary information on what is required in Law to start a business venture or sustain an existing one in Nigeria. Also, existing Corporations, registered with the Corporate Affairs Commission in Nigeria, are not complying with minimum regulatory compliance requirements thereby exposing their businesses to risk of incurring penalties.

To assist you in appraising your current situation and appreciating the elementary requirements of starting a new business in Nigeria and taking immediate action necessary for success, we share with you, this Month's Legal Alert in celebration of the New Year, 2006.

Types of Business Enterprises In Nigeria.

Sole Proprietorships.

This is usually an enterprise owned and run by one or two people. The primary advantage of a Sole Proprietorship when compared with other kinds of business entities is that it is very simple to register and sometimes, where the Proprietor or Proprietors intend to use their surnames or forenames in carrying on the business, formal registration may not be necessary.

The primary disadvantages of a Sole Proprietorship include the fact that the business liabilities of the Proprietor or Proprietors are unlimited. Also, the rate of tax to be paid on earned income is higher than that required to be paid by a limited liability company.

Partnerships.

A Partnership usually consist of more than two people but not more than twenty (20) persons. The key advantages of Partnerships are that partnerships are more private with the Partners being people of complimentary skills and assets, joining their resources together for their collective economic benefit. Registration with the Corporate Affairs Commission is required especially

when the name(s) under which the Partners trade or intend to trade is different from their personal names.

The off-side of a Partnership is that the liabilities of the Partners are unlimited. Also, their tax liability is higher than that paid by the Shareholders of a limited liability company.

Companies.

Companies are the more common vehicle of modern enterprise. However, more time is spent on their formation and more legal compliances are required from their operations by the Companies Law.

There are two main types of companies and they are the Public and Private Companies. A public company must consist of more than fifty (50) persons whilst a private company must not be more than fifty (50) persons.

There are also different modes of public and private companies and they are (1) company limited by shares; (2) company limited by guarantee and (3) unlimited company. As companies limited by shares are more popular, more space would be dedicated to them.

Bullet points you must be aware of when forming a company or if you have already formed one, when operating the company, include: -

- ? The proposed name of a new company must not conflict with that of another company that is already registered and in existence.
- ? Every company must have a minimum of two Directors and two Shareholders at every time. The maximum number of Shareholders for a private company is 50 members.
- ? Every company in Nigeria must have a registered office, an address where its register of members and debenture(s) are kept and a company secretary.
- ? The minimum authorised share capital of a private company is N10,000 (Ten Thousand Naira). In the case of a public company, the minimum share capital is N500,000 (Five Hundred Thousand Naira).
- ? Every company in Nigeria is mandatorily required to hold its first Annual General Meeting eighteen (18) months after it is registered save where the Corporate Affairs Commission grants such a company an exemption for special reason.
- ? At the Annual General Meeting of a company, the company is required to submit its Financial Statements and Audited Accounts for approval of the Shareholders. After the Statements and Accounts are approved, the company must file these documents with its Annual Returns at the Corporate Affairs Commission. This requirement is applicable whether the company has or is carrying on any business for the period in question.
- ? Every company in Nigeria must pay Companies Income Tax which is assessed at 30% of the

company's earned income/profits. To assist you in managing your tax responsibilities, it is strongly recommended that you engage the services of an Accountant or Accounts Clerk or keep the Accounts of the company yourself.

Foreign Investors.

Every foreign company must be registered in Nigeria before it can carry on business in Nigeria. The only exemption to this rule is where such a foreign company is granted exemption from registration by the Federal Government of Nigeria for the particular project that the foreign company is engaged to carry out in Nigeria for the benefit of the people of the Federation of Nigeria.

Except for businesses in the petroleum sector in which the Nigerian Government already has joint venture partners, and also in businesses relating to military and para-military equipment or attire, and also in narcotic drugs, foreign companies can now wholly own the shares of any enterprise in Nigeria; i.e. 100%. It is however usually recommended that in some cases, a local Shareholder with relevant knowledge and skill in the kind of business of such a company may be invited and registered as Shareholder.

There is free repatriation of profits by a foreign owned company in its venture in Nigeria. It is however strongly recommended that when the foreign capital is brought into Nigeria, it should be imported through an Authorised Dealer, e.g. a Nigerian licensed Bank, who should obtain from the Central Bank of Nigeria a certificate of capital importation for the investment.

The assets, investments or profits of foreign companies from a Nigerian owned enterprise are also now protected by Law from government nationalisation or expropriation or seizures and where it is absolutely necessary in the public interest, the Federal Government of Nigeria must pay adequate and sufficient compensation. Nigeria has also signed some treaties with some countries like France and Belgium barring seizure of investments by nationals of such countries in Nigeria. Registration of foreign investments in Nigeria with the Nigeria Investment Promotion Commission and the Nigeria Export Promotion Commission are essential as only such registration would guarantee the foreign investor entitlement to various incentives and capital allowances. For example, interest on foreign loans granted with repayment periods of more than 2 years to more than 7 years are allowed graduated tax exemptions under Nigerian Law.

Investment Incentives.

More investment incentives are available to companies registered in Nigeria - whether wholly owned by a foreign company or by local Shareholders - who are engaged in oil and gas business, agriculture and manufacturing businesses, especially for exports. Manufacturing and agricultural businesses can claim 100% of their assessable profits as capital allowances.

Also, tax holidays are granted to pioneering industries for periods of up to five (5) years. An application must however be made and granted.

CONCLUSION.

In concluding, we remind you that globally, the need for regulatory compliance is now mandatory and more essential to economic success and survival. You must therefore ensure that you draw up a comprehensive Checklist, with assistance from your professional Advisers ? Accountants, Solicitors, Tax Advisor ? on all mandatory reporting activities for your company in this New Year. Interestingly, in complying with these reporting requirements, you would discover things that you have or have not done and areas in which you can improve your business.

Need for Reforms of Companies Laws.

A member of the Editorial Board to these Legal Alerts had some key comments on the need to amend our Companies & Allied Matters Act to suit modern demands. We share some of his suggestions with you.

1. The requirement restricting the number of members of a private company to 50 should be removed. The requirement that a private company should not be allowed to publicly invite members of the public to subscribe for its shares should be maintained.
2. The requirement that a company is separate and distinct from its Shareholders has caused a lot of injustice to other parties and should be amended.
3. What is the liability of other stakeholders in the administration of a company?

Fortunately, the Nigerian government some months ago established a Panel to review these Laws. Their recommendations and passage of the amendments into Law are awaited.

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Recipients are advised to seek professional legal counselling to their specific situations when they arise. Comments, criticisms, suggestions, ideas, contributions, etc are always welcomed.

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