

## Requirements for Foreign Company Incorporation

We consider it necessary to include a commentary which explains the registration process and requirements, after which we have provided a handy checklist for deliverables.

### 1.0 EXPLANATORY NOTES

- 1.1 The Regulatory body in charge of the regulation and supervision of the formation, incorporation, registration, management and winding up of companies in Nigeria is the Corporate Affairs Commission (CAC) and the relevant Law is the Companies and Allied Matters Act Cap C 20 LFN 2004.(CAMA)
- 1.2 Section 54(1) of CAMA, provides for Foreign Companies intending to carry on Business in Nigeria provides  
*"..., every foreign company which before or after the commencement of this Act was incorporated outside Nigeria, and having the intention to carrying on business in Nigeria, shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated, the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for services of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents, as matters preliminary to incorporation under this Act."*
- 1.3 The Nigerian Government is in great support of Foreign investments and via its agency - The Nigerian Investment and Promotions Commission, it encourages, promotes and coordinates investment in the Nigerian economy and accordingly shall, among other duties, assist incoming and existing investors by providing support services. – Section 4 of the NIPC Act<sup>1</sup>.

### 2.0 PROCEDURE

- 2.1 **Reservation of Name:** The promoters of the proposed company shall file a request for "Availability of Name" and if the proposed name is certified available for use, such a name would be reserved for a period of 60 days. You may also need to send an alternate name, just in case the first (preferred) one is not acceptable.
- 2.2 **Share capital and Shareholding of the Proposed Company:** CAMA requires that the subscribers to the Memorandum and Articles of Association to take amongst them a total number of shares of a value not less than 25% of the authorised share capital. We recommend a minimum share capital of N10,000,000.00 (Ten million Naira) This may vary depending on the nature of the business of the company and the regulatory requirements, for example for the incorporation of a bank, the Central Bank of

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<sup>1</sup> Nigerian Investment Promotion Commission Act N117 LFN 2004

Nigeria(the regulator) mandates every registered bank to have a minimum share capital of N25,000,000,000 (Twenty Five Billion Naira only).

The proposed company is required to have at least 2 shareholders, and we shall need the Name, Address and Shareholding of each subscriber.

- 2.3 **Directors:** CAMA requests that every registered company must have a minimum of two directors. We shall need the names, address, and nationality of each director and they shall be required to sign the requisite incorporation forms.
- 2.4 **Registered Office.** - Where this is not yet available, any residential or office address in Nigeria can be used in the interim for the incorporation process, pending when the company acquires a permanent address. Please note that at that time the incorporation documents shall be amended to reflect the change.
- 2.5 **Objects of the Company** - The business objects of the proposed company in general terms are required for the memorandum and articles of association. Please note however that if it is a specialist field for example in Engineering, Mass Communication, Medicine etc, the CAC mandates that one of the directors possesses the relevant certification a copy of which shall be attached to the incorporation documents.
- 3.0 **OUR QUESTIONS:**
- 3.1 *The shareholders and the directors are required to sign the incorporation documents. Are they in Nigeria?* If the directors are not in or from Nigeria, we shall need their foreign contact addresses and copies of their work permit where a director uses a Nigerian address.
- 3.2 *We shall need to know the nature of the business of the company to confirm whether there are any regulatory and compliance requirements, with respect to the application and acquisition of a regulatory licence for the Company.*

## INCORPORATION CHECK LIST



		Duration	
<b>PRE-INCORPORATION</b>			
<b>a.</b>	<b>Reservation/Availability of name</b>	5 days	1. [option 1] 2. [option 2]
<b>b.</b>	<b>Filing of Incorporation Documents</b>	1 day	This would be subject to your remittance advice and the provision of the details requested below.
<b>i.</b>	<b>Proposed Share Capital<sup>2</sup></b>	-	
	<b>Divided in ..... ordinary shares</b>		
	<b>Shareholding Structure</b>		
	<i>* Minimum of 2 shareholders who take up a minimum of 25% of the share capital</i>		
			<b>Shareholder 1</b>
			Name
			Address
			No. of Shares
			<b>Shareholder 2</b>
			Name
			Address
			No. of Shares
			<b>Shareholder 3</b>
			Name
			Address
			No. of Shares
<b>ii.</b>	<b>Directors</b>		<b>Director 1</b>
	<i>*A minimum of 2 directors</i>		Name
			Address
			Nationality
			<b>Director 2</b>
			Name
			Address
			Nationality
			<b>Director 3</b>
			Name
			Address
			Nationality
<b>iii.</b>	<b>Registered Address</b>		Street Name/Number
			City
			State
<b>iv.</b>	<b>Memorandum and Articles of</b>		<b>Objects</b>
			<b>1.</b>

<sup>2</sup> We recommend a minimum of N10,000,000

	<b>Association<sup>3</sup></b>		2. 3. 4. 5.
	<i>* where a specialist field is an object a director's certificate would be attached as a prerequisite to registration at CAC</i>		
* The incorporation process should take about 5 weeks. This is subject to the directions of the CAC. Upon Completion a certificate of incorporation shall be issued.			
<b>COST IMPLICATIONS</b>			
<b>1.</b>	CAC Filing Fees (1% of share capital)	₦ 100,000	
<b>2.</b>	Stamp Duties (0.75% of share capital)	₦ 75,000	
<b>3.</b>	Stamping of Memorandum and Articles of Association (N500 a copy)	₦ 1,500	
<b>4.</b>	Certified True Copies of CAC forms – CAC 2,CAC3, CAC 7	₦ 9,500	
<b>5.</b>	Same day Incorporation	₦ 50,000	
<b>6.</b>	Professional fees	TBD	

#### **4.0 POST INCORPORATION REQUIREMENTS**

- 4.1 It is only upon the incorporation of the proposed company that applications can be made to the Inland Revenue Services for Tax Registration for the Company and to the Nigerian Ministry of Interior for the Expatriate Quota permits and Extension of Business Visas, this would enable expatriates for the proposed company to work in Nigeria.
- 4.2 Business visas shall be initially required to enable the promoters of the proposed company into the country to attend meetings and work towards setting up business, they are disallowed from working with this visa. The Company staff would be issued Business visas from the Nigerian Embassies in the applicant's countries, and this can only be renewed for a maximum period of 6 months after the date of issue. When expired that expatriates would have to travel to their countries to have the business visa re-issued.
- 4.3 The permanent option is to get EQ slots for the expatriate staff of the proposed company staff. It is worthy of note that with the Ministry there are no guarantees such that if a company applies for five slots they may only be issued three slots, this is due to our country's local content directive. The expatriate staff can only work when they have EQ slots, the Company shall be required to provide the below listed documents:
- Completed Immigration Form T/1<sup>4</sup>.
  - Company's **Certificate of Incorporation.**

<sup>3</sup> The shareholders shall sign as subscribers to the memorandum and articles of association and three copies of this document shall be filed.

<sup>4</sup> We shall provide this and apply on your behalf.

- Company's **Memorandum and Articles of Association**.
- **Feasibility report** of Company (certified or registered with CAC).
- **CAC 2** (statement of share capital and return on allotment of shares).
- **CAC 7** (particulars of Directors).
- Joint Venture Agreement\* (original to be presented for sighting).
- Company's **tax clearance certificate** of the Company (original to be presented for sighting).
- **Lease agreement** for C of O for operating premises of registered office or operating premises (original to be presented for sighting).
- **Bank Reference** to show that the Company has an account
- Evidence of imported machinery e.g. Form M, Proforma Invoice, Shipping documents and Clean Certificate of Inspection (CCI) issued by Government appointed Pre-shipment Inspection Agents.
- Permit from relevant Government agency, department or Ministry for the operation or execution of project if the Company is engaged in oil services, health care services, fishing, mining, construction etc (original to be presented for sighting).
- Evidence of work at hand (duration and value attached to the contract) if the Company is engaged in building, civil engineering, construction etc.
- Proposed annual salaries to be paid to the expatriates recruited indicating designation, names, job description and qualifications (CV and copies of credentials of expatriates to be attached).

4.3 The Federal Inland Revenue Services issues the Tax Clearance Certificate, the key requirements are the incorporation documents and payment of the processing fees.

4.4 Other matters arise at the CAC, but this would be after a year or a maximum of 18 months after the commencement of business namely the filing of annual returns along side the financial statement, within this time the first AGM (at most after 18 months) and board meetings (after 6 months) should have also taken place. You would be please to note, that any changes with respect to the directorship, shareholding and registered office of the company can be changed at anytime.

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\* Not necessary for Indigenous Companies (i.e. companies fully owned by Nigerians) and Wholly-owned Foreign Companies.

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## CHECKLIST OF DOCUMENTS REQUIRED FOR OBTAINING

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### A. EXPATRIATE QUOTA

1. Completed Immigration Form T/1.
2. Company's **Certificate of Incorporation**.
3. Company's **Memorandum and Articles of Association**.
4. **Feasibility report** of Company (certified or registered with CAC).
5. **CAC 2** (statement of share capital and return on allotment of shares).
6. **CAC 7** (particulars of Directors).
7. Joint Venture Agreement\* (original to be presented for sighting).
8. Company's **tax clearance certificate** of the Company (original to be presented for sighting).
9. **Lease agreement** for C of O for operating premises of registered office or operating premises (original to be presented for sighting).
10. **Bank Reference** to show that the Company has an account

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11. Evidence of imported machinery e.g. Form M, Proforma Invoice, Shipping documents and Clean Certificate of Inspection (CCI) issued by Government appointed Pre-shipment Inspection Agents.
  12. Permit from relevant Government agency, department or Ministry for the operation or execution of project if the Company is engaged in oil services, health care services, fishing, mining, construction etc (original to be presented for sighting).
  13. Evidence of work at hand (duration and value attached to the contract) if the Company is engaged in building, civil engineering, construction etc.
  14. Proposed annual salaries to be paid to the expatriates recruited indicating designation, names, job description and qualifications (CV and copies of credentials of expatriates to be attached).

#### CHECKLIST OF DOCUMENTS REQUIRED FOR OBTAINING BUSINESS PERMIT

1. Application to Federal Ministry of Internal Affairs on Form T/1.
2. Company's Certificate of Incorporation.
3. Company's Memorandum and Articles of Association.
4. Feasibility report of the Company (certified or registered with CAC).
5. CAC 2 (statement of share capital and return on allotment of shares).
6. CAC 7 (particulars of Directors).
7. Joint Venture Agreement\* (original to be presented for sighting).
8. Current tax clearance certificate of the Company (original to be presented for sighting).
9. Lease agreement of registered office or operating premises (original to be presented for sighting).

We were informed by Mr. Dirk Louw of your intention to register a business in Nigeria. We further understand that you require guidelines for such as well as proposed fee estimates. Find hereunder the requirements for registering a company and our fee estimates.

The Foreign Direct Investment climate in Nigeria permits 100% foreign ownership of Nigerian Companies. It is however advised to have a Nigerian director for several logistic reasons. These proposed companies must go through a registration process with the Corporate Affairs Commission (CAC) which is the body responsible for registration of all business entities in Nigeria.

For the purpose of registering a company at the CAC, the following information is required.

1. The proposed name of the company,

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2. The proposed share capital of the company,
  3. The proposed names of shareholders of the company (The foreign company may be a shareholder),
  4. The proposed names of the directors of the company,
  5. A special resolution passed by the Board of directors stating the company's intention to incorporate a company in Nigeria,
  6. A statement on the specific objectives of the company,
  7. A special resolution passed by the Board of Directors stating the names of the proposed shareholders and the amount of shares to be held by each shareholder.
  8. A copy of the certificate of incorporation of the foreign company,

### **Fees**

1. Filing fees-----1% of share Capital
2. Stamp duties-----0.75% of share capital
3. Registration fees-----~~N~~ 61, 000

Upon registration of the company with the CAC, the company may apply for an initial Tax Clearance Certificate (TCC) with the Federal Inland Revenue Service.

When the company has been registered with the CAC and has acquired its TCC, it may apply to the Minister of Interior for a Business Permit (BP) and Expatriate Quota (EQ) positions. A business permit is a permit given to foreign companies that intend to do business in Nigeria and employ expatriates. These expatriates shall be placed on expatriate quota slots.

For the purpose of business permit and expatriate quota application, the following information is required.

15. Completed Immigration Form T/1.
16. Company's Certificate of Incorporation.
17. Company's Memorandum and Articles of Association.
18. Feasibility report of Company (certified or registered with CAC).
19. CAC 2 (statement of share capital and return on allotment of shares).
20. CAC 7 (particulars of Directors).
21. Joint Venture Agreement (if any, original to be presented for sighting).
22. Company's tax clearance certificate of the Company (original to be presented for sighting).
23. Lease agreement or the Certificate of Occupancy for the operating premises of the registered office (original to be presented for sighting).
24. Bank Reference to show that the Company has an account

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25. Evidence of imported machinery e.g. Form M, Proforma Invoice, Shipping documents and Clean Certificate of Inspection (CCI) issued by Government appointed Pre-shipment Inspection Agents.
  26. Evidence of work at hand (duration and value attached to the contract).
  27. Proposed annual salaries to be paid to the expatriates recruited indicating designation, names, job description and qualifications (CV and copies of credentials of expatriates to be attached).

Upon approval of the business permit and expatriate quota slots, the foreign employees would be issued a Combined Expatriate Resident Permit and Alien Card (CERPAC). The card enables the holder live and work in Nigeria as well as travel in and out of the country and is valid for 1 year.

The fees for the business permit and expatriate quota slots are as follows:

1. EQ application and Processing fee -----\$500
2. EQ fee per slot-----\$1, 000
3. BP application and processing fee-----\$1, 000
4. CERPAC per car-----\$1, 000