

CHAPTER TWO



Legal Regime And Regulatory Framework For Business Incorporation



2 GENERAL RELEVANT AND APPLICABLE LAWS

⁷ Note the following subsidiary legislations to CAMA; Companies Proceedings Rules, Companies Winding-Up Rules, Companies Regulations.

Corporate law practice in Nigeria is heavily regulated. There are general applicable laws and sector-specific applicable laws.

2.1 GENERAL APPLICABLE LAWS

a. Arbitration and Conciliation Act (CAP A18 LFN 2004) –The importance of this Act lies in the fact that it provides the legal framework for the settlement of commercial disputes through Arbitration and Conciliation.

b. The Companies and Allied Matters Act 2020⁷ - CAMA for short. CAMA is the Act that establishes the Corporate Affairs Commission (CAC) in Nigeria. The CAC is charged with the responsibility of overseeing the affairs of every business and non-business organization in Nigeria. Again, CAMA provides the legal framework for the incorporation of companies, registration of business names, and the incorporation of trustees.

c. Capital Gains Tax Act (CAP C1 LFN 2004) – This is the Act that regulates profit made from sale of capital assets. The Act also regulates avoidance of tax and other incidental matters.

d. Companies Income Tax Act (CAP. C21 LFN 2004) - This Act consolidates all the provisions of law as they relate to chargeable company taxes which are required to be remitted to the Federal Government of Nigeria periodically.

e. Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) - The CFRN is the enabling statute and the grundnorm of all laws in Nigeria. All laws and regulatory bodies find their validity in the CFRN 1999.

f. Economic and Financial Crimes Commission (Establishment) Act 2004 AND Independent Corrupt Practices Commission Act 2000 - The EFCC Act and the ICPC Act established the two major bodies for controlling financial crimes i.e. the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) respectively. These bodies are charged with the responsibility of monitoring corruption, money laundering and other financial crime-related offences;

g. Export (Incentives and Miscellaneous Provision) Act 1986 – This Act provides the available incentives for companies that are manufacturing and exporting their products in Nigeria.

h. Federal High Court Act (CAP F12 LFN 2004) ⁸ – According to Section 7 of the Federal High Court Act and Section 251 (a-e) of the Constitution of the Federal Republic of Nigeria 1994 (As Amended), the Federal High Court is the only court conferred with the original jurisdiction to handle matters that relate to the regulation and the operation of companies in Nigeria, as well as matters arising from CAMA, except simple contract cases.

i. Federal Inland Revenue Service (Establishment) Act 2007 – The FIRS Act for short establishes the Federal Inland Revenue Service which is charged with the responsibility of collecting, assessing, regulating, and accounting for taxes and revenue payable to the Federal Government of Nigeria.

j. Immigration Act (CAP I1 LFN 2004) – The Immigration Act regulates foreign participation of business in Nigeria. Any foreigner who intends to work in Nigeria is expected to obtain residence and work permit. Again, before any company in Nigeria can employ a foreigner, such company is expected to obtain an expatriate quota.

k. Industrial Development (Income Tax Relief) Act (CAP I7 LFN 2004) ⁹ – Industries that are issued pioneer status certificates are entitled to the tax reliefs provided by this Act.

l. Investment and Securities Act (ISA) 2007 ¹⁰ - The ISA establishes the Securities and Exchange Commission of Nigeria which monitors and regulates the Nigerian Capital Market. The Act also regulates offers for securities by public companies in Nigeria and the registration of securities.

m. Money Laundering (Prohibition) Act 2011 - This Act prohibits any act of money laundering in Nigeria.

n. National Industrial Court Act 2006 - This Act establishes the National Industrial Court, which by virtue of Section 254 (A-F), is conferred with the exclusive jurisdiction of handling labour matters.

o. National Office for Technology Acquisition and Promotion Act (CAP N62 LFN 2004) - The Act was enacted to monitor the transfer of Technology in Nigeria. Any agreement that involves transfer of technology to Nigeria from a foreign country is expected to be registered within 60 days of executing such agreement.

⁸ The Federal High Court Civil Procedure Rules which regulate the practices and the procedures of the Federal High Court is a subsidiary legislation to the Federal High Court Act.

⁹ Pioneer Status Incentive Regulations is a subsidiary legislation

¹⁰ SEC Rules and listing Rules of the Nigerian Stock Exchange are subsidiaries

p. Nigerian Investment Promotion Commission Act (CAP N17 LFN 2004)- This is an Act enacted to promote investment in Nigeria by both foreigners and nationals.

q. Partnership Act 1890- All matters related to any form of business partnership are regulated under this Act.

r. Stamp Duties Act (Cap S8 LFN 2004) – This Act provides for the charging of stamp duties on certain matters like ad valorem duties on the nominal share capital of any limited liability company in Nigeria, or any increase made on the share capital. Memorandum and Articles of Association of companies are also expected to be stamped.

2.2 SECTOR-SPECIFIC LAWS

2.2.1 Banking and Finance Sector

- Asset Management Corporation of Nigeria (Amendment) Act 2019
- Banks and Other Financial Institutions Act 1991 (As amended in 1997, 1998, 1999, 2002)
- Central Bank of Nigeria Act 2007
- Economic and Financial Crimes Commission (Establishment) Act 2004
- Foreign Exchange (Monitoring and Miscellaneous Provision) Act CAP F34 LFN 2004
- Independent Corrupt Practices and Other Related Offences Commission Act 2000
- Investment and Securities Act 2007
- Money Laundering (Prohibition) Act 2011
- Mortgage Institution (Amendment) Act 2016
- Nigerian Deposit Insurance Corporation Act 2006

2.2.2 Oil and Gas Sector

- Nigerian Mineral and Mining Act 2007
- Petroleum Profits Tax Act CAP. 354 LFN 1990
- Petroleum Act CAP 350 LFN 1990
- Petroleum Products Pricing Regulatory Agency Act 2003

2.2.3 Manufacturing

- Factories Act Cap F1 LFN 2004
- Free Trade Zone Regulations
- Local Content Act 2010
- National Environmental Standards Regulations Enforcement Agency (Establishment) Act 2007
- Nigerian Investment Promotion Act CAP N117 LFN 2004
- Standards Organisation of Nigeria (SON) Act 2015

2.2.4 Telecommunications Sector

- Nigerian Communications Commission Act 2003
- National Information Technology Development Agency Act (NITDA Act) 2017

2.2.5 Insurance Sector

- National Insurance Commission (NAICOM Act) 1997
- Nigerian Deposit Insurance Corporation Act 2006
- Insurance Act 2004
- Insurance Regulations

2.2.6 Pension Sector

- Pension Reforms Act 2014

2.2.7 Agricultural Sector

- Land Use Act 1978
- National Environmental Standards and Regulations Enforcement Agency (NESREA) Act. 2007
- National Agricultural Seeds Council Act 2019
- Standards Organisation of Nigeria Act 2015

2.2.8 Power and Electricity Sector

- Hydro-Electric Power Producing Areas Act Development Commission (Establishment, etc) Act 2018
- Electric Power Sector Reforms Act 2005 (which established Nigeria Electricity Regulatory Commission NERC)

2.2.9 Fast-Moving Consumer Goods (FMCG) Sector

- Consumer Protection Act 2019
- National Agency for Food and Drug Administration and Control (NAFDAC) Act CAP N1 LFN 2004
- Standard Organization of Nigeria (SON) Act 2015
- Trade Marks Act CAP T13 LFN 2004
- Food, Drug and other related Products (Registration, etc) Act CAP F33 LFN 2004

2.2.10 Aviation and Transportation Sector

- Civil Aviation Act 2004.
- Customs and Excise Management Act 1979
- Federal Airport Authority Act CAP F5 LFN 2004
- Nigeria Air Space Management Authority Act 1999
- Nigeria Immigration Act 2015

2.3 REGULATORY AUTHORITIES

- Asset Management Corporation of Nigeria (AMCON)
- Bureau of Public Enterprise (BPE)
- Debt Management Office (DMO)
- Department of Petroleum Resources (DPR)
- Federal High Court of Nigeria
- Financial Reporting Council of Nigeria. (FRCN)
- Ministry of Petroleum
- National Agency for Food, Drug Administration and Control (NAFDAC)
- National Industrial Court (NIC)
- National Insurance Commission (NAICOM)
- National Office for Technology Acquisition and Promotion (NOTAP)
- Nigerian Communications Commission (NCC)
- Nigerian Custom Service (NCS)
- Nigerian Electricity Regulatory Commission (NERC)
- Nigerian Immigration Service (NIS)
- Nigerian Investment Promotion Commission (NIPC)
- Nigerian Stock Exchange (NSE)
- Standards Organisation of Nigeria (SON)
- The Corporate Affairs Commission (CAC)
- The Securities and Exchange Commission (SEC)

SECTOR	LICENCE
Air Transportation	Permit for Non-commercial flight (PNCF), Air Transport License (ATL), Air Travel organisers' License (ATOL), Air Line Operating Permit (AOP), Permit for Ariel Aviation Services (PAAS)
Banking And Finance	Banking and Finance (Commercial, Merchant, Specialised) License, Money Lending License, Foreign Exchange Authorised Dealership License, Certificate of Registration as a Capital Market Operator.
Electricity, Power (Distribution, Transmission, Marketing)	Electricity (Generation, Transmission, Distribution, Marketing) Permit, Permit for Captive Generation (to generate power for personal use)
Oil and Gas	Oil Prospecting License (OPL) Oil Mining Leases (OML) Oil Lifting and Petroleum Product Marketing
Insurance	Insurance License
Telecommunication	Wire/ wireless and Global System of Mobile communications License (Class and Individual)
Pension	Pension Fund Administrator License, Pension Fund Custodian License