

## CHAPTER FOUR



### **Legal Regime Of Foreign Participation And Investment**



The position of the law with regards to foreign participation in Nigeria is that, subject to the provisions of any enactment regulating the rights and capacity of aliens to participate or undertake any trade or business, an alien or a foreign company join in the formation of a company<sup>17</sup> and a non-Nigerian whether company or individual may invest and participate in the operations of any enterprise in Nigeria as long as such business participation is not in the negative list.<sup>18</sup>

Besides this, foreign investments in Nigeria are protected from expropriation or nationalization and in any event where a foreign business is nationalized, such foreign investor is guaranteed adequate compensation.

#### 4.1 MODES OF FOREIGN PARTICIPATION

There are majorly three modes of foreign participation and investment for aliens who want to invest in Nigeria. These are;

- **Foreign Direct Investment (FDI):** This is the most common mode of foreign participation in Nigeria. Under this mode, foreign investors usually take part in business in Nigeria through direct investment by taking over an existing Nigerian company or by mergers. The foreigners can also decide to incorporate a Nigerian company for themselves under any categories of the business and non-business organisations mentioned in Chapter Three above.
- **Portfolio Investment (PI):** The second mode of foreign participation in the Nigerian business sector is by purchasing shares of publicly quoted companies by the Nigerian Stock Exchange through the Nigerian Capital Market. Again, PI can also be done by way of private placement of shares of Nigerian private companies or through direct application for allotment of shares as shareholders.<sup>19</sup>
- **Exempted Foreign Companies;** Generally, the position of the law in Nigeria is that any foreign incorporated company that has the intention of doing business in Nigeria, must be registered and obtain a certificate of incorporation as a separate entity for that purpose. However, based on certain criteria set out by the law, foreign companies may carry on their businesses as unregistered companies because of their exemption from registration. The criteria are as follows;
  - i. Foreign companies that are invited by the Federal Government of Nigeria or with approval by the FG to

<sup>17</sup> Section 20(4) CAMA

<sup>18</sup> Sections 17, 18 and 31 of the NIPC Act

<sup>19</sup> Note, SEC must be notified.

execute any specified individual project.

- ii. Foreign companies which are in Nigeria to execute loan-projects on behalf of the donor country or International Organisation such as IMF, UNICEF, World Bank etc.
- iii. Foreign government-owned companies that are engaged solely in export promotion activities.
- iv. Engineering consultants and technical experts engaged in any individual specialist project under contract with any of the Governments in the federation, or their agencies, with any other body or person where the FG has approved such contract.

Note that, before a company can apply for exemption, an application must be made to the President of Nigeria through the Secretary to the Federation, and an exemption order cannot be transferred and used for any other business except for the purpose for which it was applied for and granted.

## **4.2 IMMIGRATION REQUIREMENTS AND RESIDENCY**

Any foreigner who wishes to form a business or non-business organisation is required by law to lawfully enter into the country and obtain the necessary residency permits and approval from the Nigerian Immigration Service, or else, such a foreigner will be declared an illegal immigrant and may be deported and banned from re-entry.

Again, for a foreigner to lawfully reside in Nigeria, the requirement of the law is that such foreigner must obtain a residence permit, which will allow the foreigner stay for the period or number of years granted.

## **4.3 CHECKLIST OF PERMITS AND IMMIGRATION REQUIREMENTS**

### **4.3.1 VISAS**

A major requirement for foreigners before they can enter into Nigeria is a 'visa', except for foreigners who are members of the ECOWAS and protocol countries. Like what is obtainable in other jurisdictions, there are various types of visas and the type of visa to be issued will be dependent on the purpose of the visit. There are three types of visas in Nigeria, but for the purpose of foreign participation,



we shall discuss just the relevant one which is “Ordinary Visa”.

Relevant visas for foreign participation;

A foreigner who wishes to invest in the Nigerian business sector must obtain the Single-Journey Visa under the Ordinary Visa. This Single-Journey Visa can be issued as;

- i. Short-Visit Visa: This type of visa is needed for a foreigner who wishes to come into Nigeria for the purpose of contract negotiation, meetings, seminars, or conferences etc.
- ii. STR Visa (Subject to Regularisation) for Residence Work Permit: The position of the law in Nigeria is that any person who is not a Nigerian citizen cannot take up employment other than employment with the federal or state government without the consent of the Comptroller-General (CG) of Immigration. Hence, before a foreigner can be employed in a Nigerian company, the Nigerian company must first apply to the CG of Immigration stating that there is a confirmed vacancy on the expatriate quota of the company and that the company is ready to employ the foreigner and accepts to carry out the necessary immigration responsibilities. If approved, a 90 day STR Visa is normally granted, during which another application will be made to the CG Immigration to regularise the stay of the prospective alien. Until a “Residence Work Permit” is granted, such foreigner/alien cannot take up employment in Nigeria.

#### **Procedure for obtaining STR VISA**

- I. Visit <http://www.immigration.gov.ng> to obtain STR Visa form
- ii. Complete and download application form IMM 22
- iii. Attach the following documents to the completed and downloaded form IMM 22
  - Four recent passport photographs
  - A passport with at least 6 months validity
  - Four copies of letter of expatriate quota approval from Ministry of Interior
  - Board Resolution (for CEOs)
  - Four copies each of offer letter of employment and acceptance
  - Four copies of credentials, certificates and curriculum vitae, all vetted by an official of the Nigerian High Commission
  - Copies of birth certificate and marriage certificates where applicable

- Air ticket
- Nigeria Immigration Service visa payment receipt and visa acknowledgement receipt
- Any other required documents.

NOTE: after the inspection of all the documents, an attaché will be appointed by the Immigration Service to invite the applicant for an interview before the STR Visa can be granted.

iii. Cable Visa for Temporary Work Permit (TWP): This kind of visa is granted to foreigners who want to come to Nigeria for short period assignments e.g. installation of machinery, repairs and maintenance, auditing of accounts etc. An application must also be made to the CG of Immigration. Initially, the TWP is only granted for three months, until an application is made for an extension. The CG Immigration however reserves the right to determine whether or not such extension should be granted.

#### **4.3.2 COMBINED EXPATRIATE RESIDENCE PERMIT AND ALIEN CARD (CERPAC)**

With the exception of ECOWAS citizens and diplomats, an alien who is granted a STR Visa must regularise his/her stay by applying to change status from a visitor to a resident. This resident permit allows a foreigner to stay in Nigeria for more than 3 months.

##### **Procedure for Obtaining CERPAC**

i. An Application letter from the employer will be made to the Comptroller General of Immigration Service requesting to regularise the stay of a foreign employee, stating also that the employer is ready to accept all immigration responsibilities and to pay all necessary fees for or on behalf of the expatriate.

ii. The letter will be accompanied by the following documents

- Letter of employment
- Acceptance letter of offer of employment
- Completed Form IMM 22 with three (3) passport photographs
- Expatriate quota approval
- Copies of CV and other relevant credentials
- A valid passport with STR Visa and photocopies of all relevant pages
- Any other required documents

#### **4.3.3 BUSINESS PERMIT**

Any foreigner who wishes to enter Nigeria to form a company, take over a company, or practice as a professional must do so with the

consent of the Minister of Internal Affairs, who will issue such foreigner a Business Permit. Failure to obtain Business Permit before starting any business is an offence, and the foreigner is liable to deportation.

#### **Procedure for Obtaining Business Permit**

- i. An Application for Business Permit will be made to the Comptroller-General of the Nigerian Immigration
- ii. The letter will be accompanied by the following documents:
  - Completed Immigration Form T/1
  - Certificate of Incorporation
  - Memorandum and Articles of Association
  - Feasibility Report (should be certified or registered with Corporate Affairs commission (CAC)
  - Form CAC 7A- Particulars Of First Directors Or Changes Thereof
  - Any other relevant documents required.

#### **4.3.4 EXPATRIATE QUOTA AND WORK PERMIT**

This is a permission given to a Nigerian company to employ foreigners according to the number and capacity of the quota available to the class of business. Businesses with Fifteen Million Naira (N15, 000, 000) and above have a maximum of two (2) quotas, while businesses with Thirty Million Naira (N30, 000, 000) and above have four (4) automatic quota positions. Work Permit will then be granted to such foreign-employee to fill the expatriate quota obtained by the company.

A “Permanent until Reviewed” (PUR) quota is usually granted to any company who intends to have an alien as Chairman or Managing Director of a company. On the other hand, a temporary quota which is granted for a minimum period of 5 years (renewable for 2 years) is usually granted to mid-level or technical staff.

#### **Requirements for Successful Grant of Expatriate Quota in Nigeria**

- Completed Immigration Form T/1
- Certificate of Incorporation of the Applicant Company
- Corporate Affairs Commission Form CAC 1.1
- Memorandum and Articles of Association
- Current Tax Clearance Certificate
- Joint Venture Agreement (where applicable)
- Lease Agreement, C of O or Rent Receipt
- Feasibility report and Project Implementation Programme of the Company, incorporating management succession schedule for qualified Nigerians.
- Evidence of imported machinery (Form M, Proforma



Invoice, Shipping documents and Clean Certificate of Inspection issued by Govt. Appointed Pre-shipment Inspection Agents).

- License / Permits / Certificate from relevant Government Agencies Department of Ministries for the operation or execution of project, if the company is engaged in oil services, health care services, fishing, mining, construction.
- Proposed annual salaries to be paid to be paid to the expatriates to be recruited indicating designation, names, job description and qualifications (C.V and copies of credentials to be attached).
- Evidence of work at hand, its duration and value attached to the contract if the company is involved in building, civil engineering etc.

Official Website of Nigerian Immigration –  
<http://www.immigration.gov.ng>