

THE CUMBERSOME NATURE OF THE REQUIREMENTS AND RIGHTS OF ALIENS TO REGISTER A COMPANY IN NIGERIA, A CLOG IN THE WHEEL OF PROGRESS OR A PROTECTION OF BUSINESSES IN THE COUNTRY?

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Abstract

Nigeria is undoubtedly Africa's hub and largest economy. Sequel to this, many people and investors, including foreigners desire to carry on business in the West African country which has a population of more than 200 million people. The population of a country and such country's rule of law adherence are some measures to be considered in doing business in any nation. This article examined the requirements of registering a foreign company and the effect or penalties for neglecting to register such company; exemptions from registering a foreign company; incentives available to a foreign company and factors that deters foreign companies' participation in Nigeria. It was concluded that a foreign company that refused or neglected to register in Nigeria cannot carry on business in the country except exempted from registration as required by the Companies and Allied Matters Act 2020. Again, the paper is of the view that despite the challenges inherent in the registration process of a foreign company in Nigeria, it is aimed at protecting and strengthening such companies from fraud, total failure and other unforeseen circumstances. It is recommended amongst other things that the Companies and Allied Matters Act 2020 (as amended) should be further amended to allow the ministry of interior grant such permits; or that various states of the federation should be allowed to incorporate or register companies in their domain; that obnoxious tax laws that perpetrates double taxation should

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be abrogated; that the transportation sub-sector should be overhauled; other infrastructures such as good roads, electricity, internet services should be improved to enhance service delivery and ease of doing business in Nigeria.

Keywords: Aliens, Business, Registration, Requirements, Challenges, Nigeria.

Introduction

Nigeria is referred to as the “giant of Africa”, with a population of more than 200 million people, ranking about 7th in the world population wise, and a land mass of about 923,768km² (356,669mi²)¹. Nigeria is a heterogeneous nation with her over 250 distinct nationalities with their respective cultures, practices, values, etc. Consequently, going by the population of Nigeria, many people and corporations across the globe indicate interest in doing businesses in the West African country. Nigeria is the 32nd biggest country in the world.² She is blessed with natural and mineral resources. Her sources of income are majorly oil and agriculture. There are so many areas to do business by both local and foreign companies in Nigeria. Foreigners have right to carry on business in Nigeria subject to some restrictions. In order to carry on business in Nigeria, a foreign company has to be registered or incorporated by the Corporate Affairs Commission (CAC). Failure to register with the Corporate Affairs Commission in Nigeria amounts to nullity and any acts or business carried on by such an unregistered company is void. Therefore, registration or incorporation of a foreign company is mandatory for such a foreign company to be able to carry on business in Nigeria. However, the provision for registration of a foreign company can be waived in some circumstances subject to the requirements of the law that must be met before the waiver can be achieved. Refusal to meet such requirements bars a foreign company from carrying on business in Nigeria. An unregistered company doing business in Nigeria, commits an offence and is in addition to being liable to prosecution, also liable to penalty as the Commission shall specify by regulation, and every officer or agent of the company who authorizes or permits the default or failure to comply is, whether or not the company is

¹ <https://www.worlddata.info/Africa> , accessed 19 August, 2023.

² Ibid.

also convicted of any offence, liable on conviction to such penalty as the Commission shall specify by regulation.

For a foreign company to be registered in Nigeria, the requirements of the Companies and Allied Matters Act (CAMA) 2020, Nigeria Investment Promotion Commission(NIPC) Act, Investment and Securities Act (ISA), Companies Income Tax Act, Immigration Registration, Business permit, expatriate quota, and other requirements must be met by the intending alien or foreign company. These requirements has made the process so cumbersome and this has adversely affected the socio-political sphere of the country as foreigners or aliens finds it so difficult to meet the requirements of doing businesses in the country. Doing business in Nigeria is not without challenges but the challenges are however, surmountable as there is hardly a country the world over without her peculiar challenges as a result of their various local circumstances. The merits of carrying on business in Nigeria seem to outweigh its challenges as there are some incentives available to the foreign companies. The challenges abound but a company, when fully registered is strengthened consequent upon such registration and avoids the vulnerability to fraud and other unforeseen circumstances. Going by this analysis, it follows that the stringent measures put in place for an alien to do business in Nigeria is not to frustrate foreigners but to strengthen their businesses when finally incorporated or registered.

Meaning of an Alien or Foreign Company

An alien is a person who resides within the borders of a country but is not a citizen or subject of that country; a person not owing allegiance to a particular nation.³ The Companies and Allied Matters Act defines an ‘alien’ as “a person or association, whether corporate or unincorporated, other than a Nigerian citizen or association, a company, business name or association incorporated or registered in Nigeria”.⁴ Foreign, on the other hand connotes unfamiliar, strange or characteristic of a country or language other than one’s own. From the definitions above, an alien or a foreigner includes persons or corporations that can do or carry on business in Nigeria even if they are not Nigerians. It does not matter whether such aliens or foreigners are citizens of Nigeria or not. However, a foreigner is allowed to do business subject to some restrictions. For example, an alien or foreigner

³ B.A. Garner, Blacks Law Dictionary, 7th edn. (U.S.A. West Group 1999) 73.

⁴ S. 868 (1) Companies and Allied Matters Act 2020 (as Amended).

cannot carry on the business of arms dealings except with the approval or permit of the Federal government of Nigeria.

Meanwhile, there are different types of companies, and such companies are incorporated sequel to their objects. Each company has a purpose for which it is established. A company may be a company limited by shares; a company limited by guarantee; an unlimited company.⁵ A private company is one which is stated in its memorandum of association to be a private company. A private company may restrict the transfer of its shares subject to the articles. Assets of a private company cannot be sold without the consent of its members; shares of a member cannot be sold to a non-member of the company; more than 50% of the shares cannot be sold to a non-member except such non-member agrees to buy all the existing members' interests.⁶

Again, any company other than a private company shall be a public company and its memorandum of association shall state that it is a public company.⁷ And unlimited company shall be registered with share capital not below the minimum issued share capital permitted under the Companies and Allied Matters Act.⁸ A company limited by guarantee is formed for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects and income and property of the company are to be applied solely towards the promotion of its objects.⁹

Requirements of Foreign Companies in Business Participation in Nigeria

The Companies and Allied Matters Act (CAMA) (as amended) is the law governing incorporation and registration of companies in Nigeria. And the Corporate Affairs Commission (CAC) is the body saddled with the responsibility of administering the Act, including the registration; regulation and supervision of; the formation, incorporation, management, striking off and winding up of companies; business names, management and removal of names from the register, and the formation, incorporation, management and dissolution of incorporated trustees; establish and maintain company

⁵ Ibid, s.21(1).

⁶ Ibid, s.22(2) (a) – (c).

⁷ Ibid, s.24.

⁸ Ibid, s.25.

⁹ Ibid, s.26.

registry; arrange or conduct investigation into the affairs of companies, incorporated trustees and business names etc.; ensure compliance by companies with the provisions of the Act, etc.¹⁰

The CAMA provides that every foreign company which before or after the commencement of the Act was incorporated outside Nigeria, and having the intention of 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 or registered, 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 service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents, as matters preliminary to incorporation under the Act.¹¹ From the foregoing, incorporation or registration of a foreign company is a *sine qua non* to carrying on business by any foreign company in Nigeria. It must be noted that any act of the company in contravention of the law above is void.¹² Thus, in *Citec International Estates Ltd V International Inc & Associates*,¹³ the Supreme Court of Nigeria held thus:

Where a foreign company, not registered in Nigeria, purports to carry on business in Nigeria in defiance of section 54(1) (now section 78(1)) of the Companies and Allied Matters Act, such a business is not only void, it is illegal and a crime to do so. That is the legislative intent or purpose of section 54(2) (now section 78(2)) and 55 (now 79) of the Companies and Allied Matters Act. The legislature enacted sections 54 and 55 (now 78 and 79) not to allow a foreign company without being first duly registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act. That is why the conduct is expressly criminalized by section 55 (now 79) of the Act.

The CAMA also made provisions for penalties when it provided that if any foreign company fails to comply with the requirements of the Act in so far as they may apply to the company, the company commits an offence and is,

¹⁰ Ibid, s.8(1)(a) – (f).

¹¹ S. 78(1) CAMA.

¹² Ibid, s.78(2).

¹³ (2008) 3 NWLR (Pt. 1606) 332, 341.

in addition to being liable to prosecution, also liable to such penalty as the Commission shall specify by regulation. It provided further that every officer or agent of the company who authorizes or permits the default or failure to comply is, whether or not the company is also convicted of any offence, liable on conviction to such penalty, as the Commission shall specify by regulation, and where the offence is a continuing one, the company and every officer or agent of the company are liable to further penalty as the Commission shall specify by regulation for every day during which the default continues.¹⁴ It follows from the foregoing that any transaction or act by an unregistered foreign company in Nigeria is not only void but attracts a penalty, and both the company and its agents are liable upon conviction.

Exemptions of Foreign Companies

A foreign company may be allowed to carry on business in Nigeria where the company, before the commencement of Companies and Allied Matters Act (CAMA) referred to as the 'Act', was granted exemption from compliance under the provisions of any preceding companies Acts that had been applicable in Nigeria before the commencement of the Act; and exempted under any treaty to which Nigeria is a party or signatory.¹⁵ Again, a foreign company may apply to the Minister for exemption from the provisions relating to registration¹⁶ if that foreign company belongs to one of the followings:

- a. Foreign companies other than those specified in paragraph (d) of the Act, invited to Nigeria by or with approval of the Federal Government to execute any specified individual project;
- b. Foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organizations;
- c. Foreign government-owned companies engaged solely in export promotion activities.
- d. Engineering consultants and technical experts engaged on any individual specialist project under contract with any of the

¹⁴ S. 79 CAMA 2020.

¹⁵ Ibid, s.3.

¹⁶ Ibid, s.78.

governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.¹⁷

The *Court of Appeal in Caroline Vese v. West African Institute for Financial & Economic Management (WAIFEM)*¹⁸ while deciding on whether or not a foreign government owned business can be sued in Nigeria stated:

The practice of granting diplomatic immunity to States has been extended to government naval-ships, properties and government servants acting in their official capacities. But such immunity is no longer granted to a foreign State in respect of acts which are not governmental, which means in most cases, the acts of the foreign State as a trader.

For an application to the minister to be granted, it shall be in writing and the names and place of business of such foreign company applying from outside Nigeria and in Nigeria must be stated. The name and address of Director(s), partner or other principal officer(s) of the foreign company must be indicated. The proposed business, name of a person resident in Nigeria, particulars of project previously done by the company, a certified copy of the charter, statutes, or memorandum and articles of association of the company, or other instrument, the constitution of the company are required by the minister.¹⁹ The exemption, if granted shall specify the period for which it is granted. It shall lapse after that period as exemption granted cannot last or be in perpetuity.²⁰ Such exemption may be revoked by the minister if the minister is of the opinion that the exemption granted has indeed contravened any provision of the Act. And the name of such company shall be published in a Gazette if revoked.²¹ An exempted company shall deliver to the Commission a notice of its exemption within a period of 30 days of the grant of such exemption.²² Non-compliance with the above provision attracts a penalty.²³ Moreso, every exempted foreign company is required to deliver to the Commission, a report in every

¹⁷ Ibid, s.80(1).

¹⁸ [2018] 2 NWLR (Pt. 1603) 341.

¹⁹ Ibid, s.80(2).

²⁰ Ibid, s.80(5).

²¹ Ibid, s.80(6).

²² Ibid, s.80(7).

²³ Ibid, s.80(8).

calendar year. Where such foreign company exempted fails or neglects to deliver such report, it is liable to a penalty.²⁴ It must be noted however, that a foreign company exempted from registration shall have the status of an unregistered company, and the provisions of the CAMA to an unregistered company shall apply to such exempted company.²⁵ A person who presents false information in the course of obtaining an exemption, be it any instruments, commits an offence unless such person proves that he has taken all reasonable steps to ascertain the truth of the statement so presented.²⁶ An exempted company shall equally comply with the provisions of other enactments as it affects such companies, and such company can be sued or sue in its name or agents.²⁷

It is submitted that the CAMA has made the registration of a foreign company mandatory in order to be able to carry on business in Nigeria. But this provision of CAMA is however, not sacrosanct as foreign companies can as well carry on business if their applications for exemption from registration is approved or granted by the minister in charge. It is further submitted by this paper that a foreign company desirous of carrying on business in Nigeria, should as a matter of law register or incorporate such company before carrying on business. Non-compliance with this obligation renders the activities of such company null and void, and it also attracts a penalty to the company or its agents or any one that directs or approves the act of such company. Again, a foreign company applying for exemption of registration must ensure that it meets the requirements of such exemption as embedded in CAMA.²⁸

Incorporation or Registration of Companies in Nigeria

A corporation is an abstraction, and has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person or somebody who is really the directing mind and will of the corporation, the very ego and centre of the perpetuity of the corporation.²⁹ A corporation is equally referred to as “an indivisible, intangible being, existing only in the contemplation of law, a legal

²⁴ S. 81(1) and (2).

²⁵ Ibid, s. 82.

²⁶ Ibid, s. 83.

²⁷ Ibid, s. 84.

²⁸ See s. 80 CAMA.

²⁹ See *Lennard’s Carrying Co Ltd v Asiatic Petroleum Co Ltd* (1915) AC 705.

concept.”³⁰ Generally, an entity, different and distinct from its owners is a corporation or company. Corporations or companies are created in Nigeria by filing the requisite documents at the Corporate Affairs Commission (CAC), an agency of the Federal Government of Nigeria saddled with such responsibilities.³¹

As stated earlier, there are requirements for company registration in Nigeria. The procedure is that the memorandum of association shall be delivered to the Commission together with an application for registration of the company, the documents as required by CAMA and a statement of compliance.³² The application for registration shall state the followings:³³

- a. The company’s proposed name;
- b. The registered office address and head office address if different from the registered office address;
- c. Whether the liability of the members of the company is to be limited and, if so, whether it is to be limited by shares or guarantee; and
- d. Whether the company is to be a private or a public company.

Again, the application shall contain:³⁴

- a. In the case of a company that has a share capital, a statement of initial issued share capital and initial shareholdings;
- b. In the case of a company that is limited by guarantee, a statement of guarantee;
- c. A statement of the company’s proposed directors;
- d. A statement of the proposal registered office of the company; and
- e. A copy of the proposed articles of association to the extent that these are not supplied by the default application of model articles.

Also, the statement of capital and initial issued share capital and initial shareholdings are required to be delivered in the case of a company that has

³⁰ *Gani Fawehinmi v NBA* (No2) (1989)2 NWLR (Pt. 108) 558 – 633.

³¹ See S. 8 (1) (9) (iii) CAMA 2020.

³² S. 36(1) CAMA.

³³ S. 36(2)

³⁴ *Ibid* S. 36(4).

a share capital which shall state the total number of shares of the company to be taken on formation by the subscribers to the memorandum; aggregate nominal value of the shares, etc.³⁵ There is also the requirement for statement of guarantee in the case of a company limited by guarantee.³⁶ The statement of proposed directors is also necessary in the registration of a company and it has to be delivered to the CAC. It contains the name(s) of the first directors; first secretary or joint secretaries of the company.³⁷ There is the provision for a statement of compliance to be delivered to the Commission. This refers to the statement by the applicant or his agent that the requirements of the Act as to registration have been complied with.³⁸ The memorandum and articles shall be registered unless in the opinion of the Commission, they do not comply with the provisions of the CAMA, illegal business which the applicant company tends to carry out; conflict of proposed name; non-compliance; incompetent or disqualified subscribers,³⁹ etc. The Act provides that any aggrieved person by the decision of the commission may notify the commission to apply to court.⁴⁰ Where the Commission registers the memorandum and articles, the commission shall certify under its seal, that the company is incorporated. The effect of registration is that:

As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all powers and performing all functions of an incorporated company including the power to hold land, and having perpetual succession, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.⁴¹

³⁵ S. 37(1).

³⁶ S. 38(1).

³⁷ Ibid, S. 39(1) (a) – (b) CAMA.

³⁸ S. 40(1).

³⁹ S. 41(1).

⁴⁰ S. 41(2).

⁴¹ S. 42.

Thus, *Lord MacNaughten* stated in *Salomon v Salomon*⁴² that:

When the memorandum is duly signed and registered, though there are only seven shares taken, the subscribers are a body corporate “capable forthwith” to use the words of the enactment, “of exercising all function of an incorporated company”. Those are strong words. The company attains maturity at its birth. There is no period of minority; no interval of incapacity. I cannot understand a body corporate thus made “capable” by statute can lose individuality by issuing the bulk of its capital to one person, whether he be subscriber to the memorandum or not. The company is at law a different person all together from the subscriber to the memorandum; and although it may be that after incorporation, the business is precisely the same as it was before and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them nor are subscribers as members liable in any shape or form, except to the extent and in the manner provided by the Act.⁴³

However, the Companies and Allied Matters Act makes provision to the effect that a foreign company not registered in Nigeria can sue and be sued in its name or in the name of its agents.⁴⁴ Thus, in *Campanhia Brasileira De Infrastructutira (INFAZ) v Companhia Brasileira De Entrepors E Commercio (COBEC) (Nig.) Ltd*,⁴⁵ the Court of Appeal held that by the provisions of the CAMA, 1990⁴⁶ (now 2020), even if a company is not registered in Nigeria for the purpose of carrying on business, it could sue and be sued in Nigeria.

Regulation of Foreigners’ Participation in Businesses in Nigeria

Series of legislations have been enacted by the legislature in Nigeria to regulate foreign participation or investments in the country. There is no gainsaying the fact that Nigeria being a ‘big’ and fast growing economy in

⁴² (1897) A.C. 22

⁴³ Ibid.

⁴⁴ S. 84 (b) CAMA.

⁴⁵ (2004) 13 NWLR 367.

⁴⁶ S. 60(b) (now, s. 78 CAMA 2020).

Africa has no doubt attracted a very large number of foreign companies and investors.⁴⁷ Nigeria is a sovereign state but no nation succeeds in isolation so foreign investors are part of the economic growth of the entity known as Nigeria. Thus, the 1999 Constitution of Nigeria (as amended) encourages foreign investors when it provided for foreign policy objectives which shall promote and protect national interest; promote African integration and support for African Unity; promotion of international co-operation for the consolidation of universal peace and mutual respect among all nations and elimination of discrimination in all its manifestations; respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication; and promotion of a just world economic order.⁴⁸ The constitution further stipulates that a body shall be set up by an Act of the National Assembly which shall have power to review, from time to time, the ownership and control of business enterprises operating in Nigeria and make recommendations to the president on same; and to administer any law for the regulation of the ownership and control of such enterprises.⁴⁹ Again, “participate” is defined to “include the rendering of services and supplying of goods.” Development and growth in any country’s economy cannot be wholly sustained internally without imputes of aliens especially in terms of investments. Nlerum stated that:

Literature reveals that foreign business participation in any country is crucial for economic growth facilitating the development of the working population through the transfer of knowledge and technical skills etc. Traditionally, foreign business is conducted through routes such as Foreign Direct Investment (FDI), Foreign Portfolio Investment (FPI), International Commercial Loans and Official Flows,

⁴⁷ O.M. Atoyebi, ‘Foreign Participation Regulations in Nigerian Business’ <<https://omaplex.com.ng/foreign-participation-regulations-in-nigerian-businesses/#:~:text=by%20virtue%20of%20the%20provisions,commencement%20of%20business%20in%20nigeria>> accessed 22 August 2023.

⁴⁸ S. 19 CFRN 1999 (as Amended).

⁴⁹ Ibid s.16(3) (a) and (b)

however, FDI is the most popular mode of foreign company participation.⁵⁰

Consequent upon the provisions of the Constitution of Nigeria stated above, so many bodies and laws have been put in place by the National Assembly to review, control and regulate the ownership of business enterprises operating in Nigeria. It follows that any foreign company intending to participate or carry on business in Nigeria is required in addition to the requirements of the provisions of CAMA earlier discussed,⁵¹ need to meet the requirements of some of the following laws or bodies depending on the type of business such a foreigner wishes to carry on. They include but not limited to: Nigeria Investment and Promotion Commission (NIPC), Tax Identification Number (TIN) and Value Added Tax (VAT) Registration; Nigeria Immigration Law; Sector Specific Licenses and Permits; Investments and Securities Act, Trustee Investment Act, Incentives to Foreign Investors; Companies Income Tax; other bodies, such as National Drug Law Enforcement Agency (NDLEA), National Agency for Food and Drug Administration and Control (NAFDAC), Nigerian Communications Commission (NCC), Nigerian Electricity Regulatory Commission (NERC), Economic and Financial Crimes Commission (EFCC), Petroleum Industry Act etc. All these laws and bodies are subject however, to the type and nature of business the company intends to carry on in the country. Some of them include but not limited to:

a) Nigerian Investment and Promotion Commission Act (NIPC)

The Nigerian Investment Promotion Commission is an Act to encourage and promote investment in the Nigerian economy, and for matters connected therewith. The functions of the commission include:

- i. To coordinate and monitor all investment promotion activities;
- ii. Initiate and support measures which shall enhance the investment climate in Nigeria for both Nigerian and non-Nigerian investors;
- iii. Promote investments in and outside Nigeria through effective promotional means;

⁵⁰ F.N. Nlerum, 'Case for Review of Laws on Foreign Business Participation in Nigeria' <https://kluwerlawonline.com/journalarticle/Businesses+Law+Review/42.3/BULA2021018> accessed 22 August, 2023.

⁵¹ See ss. 78, 79 and 80 CAMA.

- iv. Collect, collate, analyze and disseminate information about investment opportunities and sources of investment capital, and advise on request, the availability, choice or sustainability of partners in joint venture projects;
- v. Register and keep records of all enterprises to which the Act applies;
- vi. Identify specific projects and invite interested investors for participation in those projects;
- vii. Initiate, organize and participate in promotional activities, such as exhibitions, conferences and seminars for the stimulation of investments;
- viii. Maintain liaison between investors and ministers, Government departments and agencies, institutional lenders and other authorities concerned with investments;
- ix. Provide and disseminate up-to-date information on incentives available to investors;
- x. Assist incoming and existing investors by providing support services;
- xi. Evaluate the impact of the commission in investments in Nigeria and make appropriate recommendations;
- xii. Advise the Federal Government on policy matters, including fiscal measures designed to promote the industrialization of Nigeria or the general development of the economy; and to,
- xiii. Perform such other functions as are supplementary or incidental to the attainment of the objectives of the Act.

It further provided that “a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria”.⁵² But it shall not apply to negative list.⁵³ And negative list is defined as “the list of those sectors of investment prohibited to both foreign and Nigerian investors, and includes production of arms, ammunitions, etc; production of and dealing in narcotic drugs and psychotropic substances, production of military and Para-military wears and accoutrement, including those of the police and the customs, Immigration

⁵² S. 17 NIPC Act CAP. N117 LFN 2004.

⁵³ Ibid, s. 18.

and prison services; and such other items as the Federal Executive Council may, from time to time, determine.⁵⁴ It must be noted that the Nigeria Investment and Promotion Commission does not in any way preclude any enterprise from obtaining such license, lease, permit or any other approval as may be required for the establishment or operation of the enterprise.⁵⁵ And such an enterprise must have been incorporated by the Companies and Allied Matters Act.⁵⁶

In view of the foregoing, this paper submits that the Nigerian Investment and Promotion Commission is necessary and a condition precedent to carrying on business in Nigeria by foreign companies not only for the incentives available to the investors but to be availed with some guidelines and procedures, which specify priority areas of investment as prescribed by the commission, and to be acquainted with the ‘dos’ and ‘don’ts’ of investment in Nigeria.

b) Federal Inland Revenue Service (FIRS)

The Federal Inland Revenue Services Act creates the Federal Inland Revenue Service, which is charged with the powers of assessment, collection of, and accounting for revenues accruable to the Government of the Federation, and for related matters.⁵⁷ The service is also assigned the responsibility to:

- a. Assess persons including companies, enterprises, chargeable with tax;
- b. Assess, collect, account and enforce payment of tax as may be due to the Government any of its agencies;
- c. Collect, recover and pay to the designated account any tax under any provision of the Act or any other enactment or law;
- d. In collaboration with the relevant ministries and agencies, review the tax regimes and promote the application with a view to enforcing compliance with the provisions of the Act;

⁵⁴ See generally, S. 31 bordering on Interpretation.

⁵⁵ Ibid, S. 19(2).

⁵⁶ S. 78 CAMA 2022 (as Amended).

⁵⁷ FIRS (Establishment) Act, 2007.

- e. Make, from time-to-time, a determination of the extent to financial loss and such other losses by government arising from tax fund or evasion and such other losses (or revenue forgone) arising from tax waivers and other related matters;
- f. Adopt measures to identify, trace, freeze, confiscate, or seize proceeds derived from tax fraud or evasion;
- g. Adopt measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on the detection and prevention of non-compliance.
- h. Collaborate and facilitate rapid exchange of information with relevant national or international agencies or bodies on tax matters;
- i. Undertake exchange of personal or other experts with complementary agencies for purposes of comparative experiences and capacity building;
- j. Establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions and the perpetrators and other persons involved;
- k. Provide and maintain access to up to date and adequate data and information on all taxable persons, individuals, corporate bodies or all agencies of government involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud;
- l. Maintain database, statistics, records and reports on persons, organizations, proceeds, properties, documents or other items or assets relating to waivers, fraud or evasion;
- m. Undertake and support research on similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effects of tax fraud, evasion and other matters that affect effective tax administration and make recommendation to the government on appropriate intervention and preventive measures;
- n. Collate and continually review all policies of the Federal Government relating to taxation and revenue generation and

- undertake a systematic and progressive implementation of such policies;
- o. Liaise with the office of the Attorney-General of the Federation, all government security and law enforcement agencies and such other financial supervisory institutions in the enforcement and eradication of tax related offences;
 - p. Issue tax payer identification number to every taxable person in Nigeria in collaboration with States Boards of Internal Revenue and Local Government Councils;
 - q. Carry out and sustain vigorous public awareness and enlightenment campaign on the benefits of tax compliance within and outside Nigeria;
 - r. Carry out oversight functions over all taxes and levies accruable to the Government of the Federation and as it may be required, query, subpoena, sanction and reward any activities pertaining to the assessment, collection of and accounting for revenues accruable to the Federation; and
 - s. Carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under the Act.⁵⁸

It is provided that the Board may with the approval of the Minister, make rules and regulations as in its opinions are necessary or expedient for giving full effect to the provisions of the Act and for the due administration of its provisions.⁵⁹ Every company already registered, must obtain the Tax Identification Number (TIN) and Valued Added Tax (VAT) Registration. It is very important to obtain the necessary permits in order to avoid Nationalization of the companies.

c) **Nigerian Immigration**

As foreigners or foreign companies intending to carry on business in Nigeria, it is necessary that such companies obtain some vital permits from the Nigerian Immigration Service in collaboration with the Ministry of Interior. Such permits include; residency permit, business permit, trademark registration or protection, operating a bank account, sector specific

⁵⁸ See generally, s. 8(1) (a) – (t) FIRS (Establishment) Act, 2007.

⁵⁹ Ibid, s. 61.

licensing, advertisement. All these permits are subject however, to the nature of business a company may decide to embark upon. Incentives available to the foreign companies include; pioneer status incentive, double taxation agreement, duty drawback scheme, capital importation and repatriation etc.⁶⁰

Again, expatriate quota is granted to a company whether foreign or domestic, to enable the company recruit foreigners or expatriates to legally work in Nigeria. The Economic and Financial Crimes Commission (EFCC), the Nigerian Financial Intelligence Unit (NFIU), the Nigeria Navy, Police, National Drug Law Enforcement Agency (NDLEA), National Agency for Food and Drug Administration and Control (NAFDAC), Nigerian Communications Commission (NCC), Nigerian Electricity Regulatory Commission (NERC), Petroleum Industry Commission and other agencies may carry out any act in regards to financial crime and other security issues pertaining to any indigenous or foreign company in Nigeria depending on the businesses the companies intend to carry on in the country.

The procedure for registration of a foreign company may appear cumbersome, however, it must be noted that it is better to legitimately incorporate or register a company in accordance with the laws and be free to legally and legitimately carry on business in Nigeria. Nigeria no doubt has one of the biggest economies if not the biggest in Africa, and foreigners need to do business in Nigeria sequel to her population and economic gains that such foreign companies could maximize in doing business in the country. Many scholars have argued that the process of registering foreign companies in Nigeria is very cumbersome and challenging. This article agrees with the scholars on such postulation but submits that despite the challenges inherent in the registration, that it is good and healthy as it is geared towards a secured business environment especially now that internet fraud is on the prowl everywhere. The challenges in company registration should not be a hindrance to the 'would be' foreign investors from carrying on business in Nigeria rather it should be seen as a means of strengthening their business in the country. Nigeria is no doubt a country that foreigners need to carry on business sequel to her population and economic gains that

⁶⁰ See generally, Chaman Law firm, 'Requirement For Foreign Participation in Nigeria Business' <https://www.chamanlawfirm.com/requirements-for-foreign-participation-in-nigeria-business>> accessed 23 August, 2023.

such foreign companies could maximize in doing business in the country. Despite the challenges inherent in the registration which is geared towards security of businesses, it has some merits too. The hassles and challenges involved in the registration or incorporation of a foreign company should not deter or become a stumbling block to foreign investors from carrying on business in the country.

Some of the challenges confronting Nigeria towards nation-building, include insecurity, corruption, political turmoil, absence of the rule of law and constitutionalism, obnoxious tax laws, such as double taxation and levies, poor transportation system, disobedience to court orders, overbearing power of the executive arm of government, impunity, poor infrastructure, poor electricity (power) and other factors. However, despite all these negative factors, it is submitted that Nigeria is one of the best countries the world over to carry on businesses. Nigeria is safe in terms of carrying on business by both local and foreign investors, notwithstanding its challenges. Encouraging foreign participation in business in Nigeria is a necessity, in order to boost and improve the Gross Domestic Product (GDP), create employment for the teeming youths, and tremendously improve and accelerate growth in the country's economy in order to ensure nation-building. No nation can succeed in isolation; therefore, foreign participation in a country's economy must be encouraged and sustained.

In Singapore, all companies are mandatorily required to be registered with Accounting and Corporate Regulatory Authority as provided by the Companies Act. An adult who has attained the age of 18 years and is not a convict or bankrupt can incorporate a company and own a company. A person who intends to incorporate a business in Singapore will need to provide the followings:

- a. Company name;
- b. Brief description of business activities;
- c. Shareholders' names and particulars;
- d. Directors' names and particulars;
- e. Registered address of the business;
- f. Company secretary particulars;
- g. Constitution of the company.

The above requirements are similar to what is obtainable in Nigeria. In addition to the above, a foreigner who intends to do business in Singapore is required to have at least one Singaporean based director and at least a shareholder; at least one Singaporean dollar paid-up capital, in any currency; a registered office address situated in Singapore; and a company secretary from Singapore. Singapore is regarded as a place of business hub in Asia. In fact, so many foreign investors have chosen Singapore sequel to the ease of doing business in that country; attractive tax system; competitive workforce and talent pool; political stability and anti-corruption approach; and even 100% foreign ownership of businesses in that country.⁶¹

Other requirements for the registration or incorporation of companies in Singapore include: particulars of company's shareholders and directors, details of share capital particulars, registered address of business situated in Singapore, company's constitution and the Singapore Standard Industrial Code (SSIC) which is normally assigned to every company by the government of Singapore.⁶² A foreigner can register a private limited company; partnership which could be ordinary, limited and limited liability; sole proprietorship. At the conclusion of incorporation, the company is deemed incorporated or registered. And certificate of incorporation will be issued to the company for a free business profile. Again, the company will appoint a company secretary and auditor, and the company will open a business bank account.⁶³ A person who does business in Singapore without incorporating or registering such business is deemed a sole proprietorship but not an illegal entity.⁶⁴

In the United States of America (USA), foreigners are welcomed to do businesses despite the political changes in the country but it is not without some hassles. Non-residents or foreigners are allowed to engage or incorporate Limited Liability Companies (LLC) and corporation (C-Corp). An intending investor must have the followings:

⁶¹ In Corp, 'Company Registration in Singapore: Ultimate Guide for Foreigners' <https://www.incorp.asia/blogs/company-registration-singapore-ultimate-guide-foreigners/> accessed 1 March, 2024.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ <https://www.sbsgroup.com.sg.blog>

- a. Investor visa EB-5;
- b. An intending foreigner must be someone who is a citizen of a country that have a treaty with the US in business;
- c. The person(s) must have a very detailed business plan;
- d. Must invest or be in the process of investing in the US;
- e. Must have a supervisor or executive capacity.

Incorporation in the US is carried in each and every states of the country and the procedure varies from one state to another. The requirements for incorporation are as follows:

- a. To choose a name;
- b. Register with state agencies;
- c. Employ a registration agent;
- d. Foreign qualification should be filed;
- e. State documents and various fees such as: Name of business, location of business, ownership, control and management structure and directors; registered agent information; number and value of shares.
- f. Registration with local agencies.

After registration or incorporation, a certificate of registration is issued to the company and a business bank account is opened by the company.⁶⁵

Conclusion and Recommendations

There is no gainsaying the fact that the registration or incorporation of a foreign company in Nigeria may be very tasking, rigorous and challenging. This notwithstanding, this article has actually attempted to examine the cumbersome procedure governing the registration of a foreign company in Nigeria and other countries and observed that it is aimed at strengthening, forestalling and protecting such foreign companies and even local companies from abrupt collapse and protection from fraud. Again, it is

⁶⁵ See generally, P.F. Oliveira, 'How to Start a Business in the USA as a Non-Resident (From UK)' <https://wise.com/gb/blog/start-a-business-in-usa-non-resident> accessed 1 March 2024.

observed that carrying on business in Nigeria is bedevilled with a lot of imbroglia ranging from the absence of infrastructure such as electricity, good road network and poor transportation system that frustrates movement of company products, non-adherence to the rule of law, and other factors. It is submitted that despite the challenges as stated above, carrying on business in Nigeria is very demanding and flourishes because of the large population of Nigeria and the good nature of Nigerians. Apart from Nigerians, business men and women from neighbouring countries such as Ghana, Benin Republic, Cameroun, Niger Republic, Togo, Guinea, Gabon, etc., normally do businesses in Nigeria. It is necessary and mandatory to register a foreign company in Nigeria in order to preclude a company from falling prey to the penalties and adverse effects of non-compliance with the various laws governing incorporation and registration of foreign companies in Nigeria. Again, this work has stated the requirements for the incorporation and registration of foreign companies in Nigeria; the necessity to register a foreign company in Nigeria; the challenges of registering a company in Nigeria; the various laws guiding such registration; and the penalties for non-registration, incorporation of businesses in the US and Singapore. It is noted that the processes of incorporation in these countries are similar although with some variations and subject to every country's local circumstances. In view of the above, the following recommendations are made. First, it is recommended that there should be further amendment to the Companies and Allied Matters Act (2020) (as Amended) by the National Assembly to bestow power to the Ministry of Interior to grant all the permits involved in foreign company registration before incorporation by Corporate Affairs Commission rather than moving from agency to the other. Again, obnoxious tax laws and levy collections by the federal, state and local governments should be modified and fused to avoid double taxation of companies. The transportation sub-sector should be improved by the government especially the railway corporation, the road networks should be tremendously rehabilitated and improved to enhance movement of goods and services of the companies across the country. Other infrastructures, such as roads, electricity, internet services, should be improved by the government to reduce cost of production and encourage foreign participation. Democratic tenets, such as the rule of law and constitutionalism, such as obedience to court orders should be institutionalized and be upheld in Nigeria. Incorporation of companies

The cumbersome nature of the requirements and rights of aliens to register a company in Nigeria, a clog in the wheel of progress or a protection of businesses in the country?

should be done by various states of the federation; it should be removed from the Exclusive Legislative List in the Constitution to the Concurrent Legislative List in the alternative.

It is hoped that if the above recommendations are adhered, Nigeria would witness the influx of foreigners doing business in the country, and this would enhance and improve the Gross Domestic Product (GDP), reduce unemployment and the general well-being of the economy in the country would be guaranteed.