



PrimeGlobal

*An Association of
Independent Accounting Firms*



EUROPE, MIDDLE EAST & AFRICA
**DOING BUSINESS
IN NIGERIA**





COMPANY FORMATION IN NIGERIA

MAIN FORMS OF COMPANY/BUSINESS IN NIGERIA

Sole Proprietorship: This is a form of business owned and run by an individual whereby there is no legal distinction between the owner and the business.

Partnership: This is a form of business arrangement in which two or more individuals own a business and are personally responsible for the debts and other obligations of the business up to a maximum of 20 partners (a few exceptions apply).

Private Limited Liability Companies: A private limited company is a legal entity in its own right, separate from those who own it, the shareholders. The limited liability and simplicity of running the private limited company makes it the most common of registered business in Nigeria. As a shareholder of a private limited company, the shareholders' personal possessions remain separate (unless they are secured against the business for borrowing), and the shareholders' risk is reduced to only the money they have invested in the company and any shares the shareholder holds which have not been paid for. The very minimum requirements are:

- The company must have a registered office in Nigeria
- The company name must not be exactly identical to any other company name currently held in the registry of the Corporate Affairs Commission
- At least twenty five percent of the authorized shares must be allotted at incorporation
- At least two people above the age of 18 must subscribe to the memorandum and articles of association.

Public Limited Liability Companies: A public limited company differs from the private version in that it is able to sell its shares to the public and may be quoted in the stock exchange. A public company must have at least 500,000 authorized share capital and the subscribers must take up at least twenty five percent of the authorized share capital. The cost of running a public limited company is reasonably higher than that of a private limited liability company. It is therefore better suited for large organizations.

Guarantee Company (not for profit): In simple terms a guarantee company is not for profit and is the type mostly formed by charitable organizations. A guarantee company does not have share capital, and the members do not own the company. They do not receive any profits and have no claim to the company's assets. All income generated is used to cover operating costs and to achieve the objectives of the company.

Non Resident Companies: Technically, all companies operating in Nigeria are required to register in Nigeria to be able to function under Nigerian law, however, some companies are engaged by Nigerian companies due to unique expertise though these companies are not registered in Nigeria. Failure to recognize this set of companies will lead to loss of revenue in terms of taxes, hence recognition of these kind of companies.

Companies in Free Trade Zones (FTZ): The FTZs are designed to attract foreign direct investment (FDI). There are at present 31 FTZs with 14 operational and 17 under construction as of April 2015. Foreign investors can set up businesses directly in FTZs without necessarily incorporating a company in the customs territory. Registered companies are also eligible to register separately and operate in an FTZ. An FTZ entity enjoys the benefits of 100% capital and profit repatriation, exemption from all federal, state, and local government taxes, levies and rates, and waivers on customs and import duties.



SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

- Company Income Tax 30% (Corporation Tax)
- Personal Income Tax is computed on a graduated basis. Minimum is 1% while maximum is 24%
- Value Added Tax 5%
- Petroleum Profit Tax varies between 50% to 85%
- Withholding Tax varies from 5% to 15%
- Capital Gains Tax 10%
- Education Tax 2%
- Capital Allowances are granted in place of depreciation for qualifying assets

There are tax holidays for specific companies/products. Also, there are various tax reliefs and allowances (Research & Development, Investment Allowance, etc.)

There are other minimal levies and permits imposed by states and local government. Nigeria is a federating Unit with three tiers of Government: Federal, State and Local.

Double Taxation Agreements/Treaties: Nigeria has a number of tax treaties referred to as "Double Taxation" Agreements with about 14 countries. Efforts are ongoing to sign agreement/treaties with more countries.

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

Companies must be incorporated by the Corporate Affairs Commission with a minimum of two directors for private companies and seven for public companies. Companies can be 100% foreign owned. With regards to foreign investment, additional documentation with regards to capital inflow is required.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

Nigerians like to be addressed by Mr. / Mrs. / Ms. and their last name. Titles are often used, as the person having a title sees this as a privilege. Establishing a personal relationship with your Nigerian counterpart is a common practice before starting to do business. Be prepared to spend the first couple of minutes of your meetings for that purpose. Asking about the well being of your Nigerian partner's family is a good start.

You should turn up on time for meetings, but be prepared for others to be late. Also try to greet those attending in order of seniority; this can often be noted by observing who people are deferring to.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

There are some form of restrictions on movement of foreign currency. This is one of the reasons why appropriate documentation needs to be in place from inception. You need acceptable proof of inflow of capital to enable you access foreign currency for outflow (capital, dividend, importation etc). Also, companies with needs for foreign technical management/expertise are expected to register and have such agreement approved by the relevant agency.



PERMANENT ESTABLISHMENT IN NIGERIA: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

A **permanent establishment** is defined as a fixed place of business through which the business of an enterprise is wholly or partly carried on. A permanent establishment includes a sales outlet and the operation of a dependent agent.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A **subsidiary** of a company is one whose board of directors is controlled by another company (holding company) which owns more than half in the nominal value of its (subsidiary) equity share capital.

A **branch** of a company is a fixed base or the physical location where a non-resident company operates and derives business profit from Nigeria.

TAX AND ACCOUNTING OBLIGATIONS

A subsidiary or branch of a foreign company in Nigeria is expected to prepare their Financial Statements in accordance to International Financial Reporting Standards for filing of returns in Nigeria.

Under the Nigerian tax provision, a subsidiary as well as a branch of a foreign company in Nigeria is treated as a full taxpayer in Nigeria and the income derived by it in Nigeria will be fully charged to tax. Any business through related parties (holding and subsidiary company), the profit chargeable to tax is determined on arm's length principle by the tax authority. Thus the subsidiary will be required to file annual transfer pricing returns. The exceptions to branch rule or the conditions under which a branch will not be subjected to tax are:

- If the branch is used solely for storage or display of goods or merchandise
- If the branch is used solely for the collection of information

Entities are expected to file annual company income tax returns, monthly VAT, monthly WHT, and monthly PIT returns.

REGISTRATION FORMALITIES

1. Application is first made to the Corporate Affairs Commission for the approval of the proposed name for the Company.
2. Memorandum and Articles of Association are prepared and signed by the subscribers.
3. Where the majority interest in the company will be owned by foreigners, the share capital of the company must not be less than ten (10) million Naira. This has to be registered as imported capital with the Nigeria Investment Promotion Council.
4. An application must be made to the Nigerian Immigration Service for a Business Permit, Expatriate Quota and Alien Registration Card.
5. The company must be registered with the Financial Reporting Council of Nigeria.



6. The company must be registered with the Federal Inland Revenue Service for Corporate, Education, VAT and other taxes payable to the Federal Government.
7. The company must be registered with the State Internal Revenue Service for employees' Payroll (PAYE) and state withholding taxes.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

Where a Branch is used solely for storage or display of goods or merchandise or for collection of information, it is only required to register with the Federal Inland Revenue Service who will monitor Branch activities to ensure that it does not operate beyond this framework. Where it operates outside this framework, the tax authorities will deem it as a non-resident trading entity and tax it accordingly.

All registered company obligations apply except incorporation with the Corporate Affairs Commission.



HOW TO HIRE MY FIRST EMPLOYEE IN NIGERIA

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

Vacant positions are published in the national newspaper or sourced through recruitment agencies or any other desired source.

A contract letter detailing conditions and terms of employment is issued to employee whose acceptance must be communicated in writing.

Employees must be registered for National Securities such as Pension, National Social Insurance Trust Fund and Industrial Training Fund.

An employer will be required to insure its staff.

Monthly tax returns will be made to the state of residence's Internal Revenue Service on PAYE and withholding taxes (individual taxpayers).

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

No special design or content is stipulated by law. However, terms must be accepted by both employer and employee and it must be within the confines of the Nigerian labour laws.

CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

Yes. Someone can act as an agent without necessarily being your employee.



HOW TO READ FINANCIAL STATEMENTS IN NIGERIA

PREPARATION OF STATEMENT OF FINIANCIAL POSITION IN NIGERIA IN ACCORDANCE WITH IFRS

	Note	AS AT 31ST DECEMBER, 2014	
		2014 N	2013 N
Assets			
Property, plant and equipment			
Intangible assets and goodwill			
Biological assets			
Trade and other receivables			
Investment property			
Equity-accounted investees			
Other investments, including derivatives			
Deferred tax assets			
Employee benefits			
Non-current assets			
Inventories			
Biological assets			
Other investments, including derivatives			
Current tax assets			
Trade and other receivables			
Prepayments			
Cash and cash equivalents			
Assets held for sale			
Current assets			
Total assets			

Documentation issued in September 2015 by Adenusi & Company, an independent member of PrimeGlobal. The information provided is general information. Your company should check with a professional accountant to ensure that your issue is in line with the general information provided.



PREPARATION OF STATEMENT OF COMPREHENSIVE INCOME IN NIGERIA IN
ACCORDANCE WITH IFRS
FOR THE YEAR ENDED 31ST DECEMBER, 2014

	Note	2014 N	2013 N
Continuing operations			
Revenue			
Cost of sales			
Gross profit			
Other income			
Selling and distribution expenses			
Administrative expenses			
Research and development expenses			
Other expenses			
Results from operating activities			
Finance income			
Finance costs			
Net finance costs			
Share of profit of equity-accounted investees, net of tax			
Profit before tax			
Tax expense			
Profit from continuing operations			

Profit(loss) from discontinued operation, net of tax

Other comprehensive income

Foreign currency translation differences-equity-accounted investees

Reclassification of foreign currency differences on loss of significant influence

Net loss on hedge of net investment in foreign operation

Revaluation of property, plant and equipment

Effective portion of changes in fair value of cash flow hedges

Net change in fair value of cash flow hedges reclassified to profit or loss

Net change in fair value of available-for-sale financial assets

Net change in fair value of available-for-sale financial assets reclassified to profit or loss

Defined benefit plan actuarial gains (losses)

Tax on other comprehensive income

Other comprehensive income for the year, net of tax

Total comprehensive income for the year

[illegible]