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# *A Guide to Doing Business in Nigeria 2015*

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# Welcome

## PwC

***Welcome*** to Nigeria, one of the potential power economies of the world; Africa's giant and West Africa's choice destination for growth and investment. With increasing globalisation, the world has become a small village where cross border investments and sustainability are the focal points of economies. Nigeria is a country that cannot be ignored by any investor looking for long term growth.

This publication has been written to give insights to doing business in Nigeria. It covers key aspects regarding the business climate, applicable business vehicles, taxes, foreign exchange controls and immigration requirements. This guide will give investors a high level overview of Nigeria which should hopefully lead to a more detailed and tailor-made analysis required in making informed decisions about doing business and investing in Nigeria.

Certainly, like every country, there are challenges many of which are being addressed as the Nigerian government seeks to simplify regulatory frameworks, market-friendly policies, improve the overall ease of doing business.

This guide only provides a general overview of the existing opportunities. Credible advice is at the heart of decision making. It is vital to make informed decisions that are practicable and tested in the local markets based on sound knowledge of the economic environment, political climate and legislative processes.

If you need more information, my team and I will be very delighted to assist you on an individual basis and walk with you on this journey to explore the opportunities for investments.

I hope you find this publication useful.

On behalf of PwC Nigeria, I wish you successful outcomes in your investments in Nigeria.

Uyi Akpata
*Regional and Country Senior Partner of PwC Nigeria.*

# 1. An overview

## *1.1 History*

Nigeria is a democratic country which operates the presidential system of government. Gaining independence on 1 October 1960, the country had both military and civilian presidents with power handed over from the military rule to a civilian government for the last time in 1999. The presidential term of office spans 4 years. The last presidential election was held on 28 March 2015. There are 774 local governments, 36 states and the Federal Capital Territory.

Nigerian government depends largely on revenue from oil and gas. Changes have been proposed to drive economic growth, attract investment and diversify the economy (with more focus on the non-oil sector including Agriculture, Mining, Manufacturing and promotion of capital projects and infrastructure).

| Items | Description |
|---|---|
| Area | 923,768 sq.km |
| Population | 174 million (2013, NBS) |
| Population growth | 3.0% (2013 estimate, NBS) |
| Income level | Lower middle income (World Bank) |
| Gross national income per capita (Atlas method) | US$2,710 (2013, World Bank) |
| Life expectancy at birth | 52 years (2012, World Bank) |
| Form of government | Bicameral Federal made up of 36 states and the Federal Capital Territory |
| Language | Official language is English, other major languages include Hausa, Igbo and Yoruba |
| Legal system | Mixed legal system of English common law, Islamic law and Traditional law |
| Currency | Naira (NGN or ₦) |
| USD Exchange rate | ₦200:US$1 (first half of 2015) |
| Federal Capital Territory | Abuja |
| Economic Hub | Lagos |
| Major Ethnic groups | Yoruba, Igbo and Hausa |
| Religion | Christianity (mostly in the South); Islam (mostly in the North); and Traditional beliefs |
| GDP (Expenditure approach) | ₦81 Trillion (2013, NBS) |
| GDP growth | 5.4% (2013, World Bank) |
| Inflation | 8.5% 1st Quarter (2015,CBN) |

## *1.2. The economy*

The Nigerian economy became the largest African economy following the 2013 GDP rebasing exercise. The petroleum sector alone accounts for over 90% of the country's total export earnings. According to the US Energy Information Administration, Nigeria is the thirteenth largest producer of crude oil with 2.4million bbl/ day in 2013 and has the 2nd largest crude oil reserves in Africa with 37.2 billion barrels and natural gas reserves of 5.12 billion cubic metres contributing 2.98% of the world total according to OPEC statistics.

Nigeria has large deposits of iron ore, tin, columbite, coal, niobium, lead, zinc, bauxite, etc. There is also a huge service sector supporting the oil and gas value chain and a significant market and population for goods and services.

Industries showing significant growth opportunities include:
- Consumer goods and the retail industry (including online shopping).
- Real estate due to high population, urban migration, and a rising middle class.
- Information and Communication Technology.
- Food and Agriculture.
- Infrastructure (especially Power and Transportation).

**Inflation and Interest Rates**
Inflation rate was 8.5% as at first quarter of 2015; below the Central Bank of Nigeria(CBN) yearly estimate of 8.7% and well within the federal government's target of maintaining a single digit figure. The CBN sets the benchmark interest rate in the form of a Monetary Policy Rate (MPR) which was 13% as at the end of June 2015.

## *1.3. Select macroeconomic indicators*

| Description | **April 2015** |
|---|---|
| Broad money supply (M2) | ₦19,267,592.95m |
| Credit to the private sector | ₦18,595,236.88m |
| Year on year all item inflation rate | 8.7% |
| Average inter-bank call rate | 24.24 |
| Monetary policy rate | 13% |
| Treasury bill rate 91 day tenor | 10.23% |
| 3 months tenor deposit rate of Banks | 8.65% |
| Prime lending rate | 15.95% |
| Bonny light crude | US$61.28 |
| Nigeria's gross external reserves | US$29,528,024,399 |

Source: (CBN) website as at 1 June 2015

### *Foreign Direct Investment (FDI)*

There is significant foreign direct investment flow into all major sectors of the economy. New sources of FDI are usually from the United States, the United Kingdom, the Republic of South Africa, India, China, Canada and France. There has been an increase in trade between India and Nigeria netting US$19.5 billion in 2013 with a Double Tax Treaty arrangement being considered to promote bilateral trade. For capital investments, United States, Canada, France and China are the principal sources with China contributing actively to infrastructure and capital projects.

### *Power*

The entire value chain of the Nigerian electricity industry from power generation to distribution is almost fully privatised. Presently, 23 grid-connected generating plants are in operation in the country with a total installed capacity of 10,396 megawatts and an available capacity of 6,056MW. Two agreements have been signed involving the CBN, key players in the sector, Deposit Money Banks (DMBs) and the National Electricity Regulatory Commission (NERC) in December 2014 to offer financial support to power generation companies (GENCOs) and distribution companies (DISCOs) through the Nigerian Electricity Market Stabilisation Facility (NEMSF).

### *Telecommunication*

There are four main GSM networks in Nigeria: Airtel, MTN, Globacom and Etisalat. Other operators providing code division multiple access (CDMA) include Visafone, Starcomms, Multilinks and Zoom Mobile. There were 196 million "non unique" subscribers for active lines of GSM and CDMA in April 2015. The Nigerian Communications Commission (NCC) sets standards on the minimum quality of service expected of each operator monitored through quarterly reporting by the operators. Due to increasing internet penetration, there is huge potential for expansion of data services.

### *Employment*

The Nigerian Bureau of Statistics (NBS) and National Population Commission (NPC) published an unemployment rate of 24% in 2013. With the recent labour force reclassification in 2014, the Nigerian Labor force numbered 73 million with unemployment rate at 6.4% and labour underutilisation rate 17.9% (NBS).

The National minimum wage was set at ₦18,000/month in 2010 (US$90/month) but yet to be fully implemented at all levels of government.

## *1.4. The Legal System*

There are 4 distinct systems of law in Nigeria:

- English law, which is derived from Nigeria's colonial past with Britain;
- Common law, (case law development since independence);
- Customary law, which is derived from indigenous traditional norms and practices; and
- Sharia law (some parts of Northern Nigeria).

# 2. Business and investment climate

The economic objectives of the government are to, among other things, curb inflation, stabilise the exchange rate, improve balance of trade, and drive economic growth through the private sector.

Full or partial ownership of businesses by foreign investors is permitted. Investors can import capital and freely repatriate both the capital and the returns on investment upon satisfaction of exchange control requirements.

There are specific ownership restrictions and/or licenses which will be required in regulated sectors such as: Banking, Broadcasting, Insurance, Mining, Telecommunications, Aviation, Oil and Gas, etc.

## *2.1 Business vehicles*

Nigerian businesses are carried out on different platforms. The common forms of vehicles used for investments are:

### *2.1.1. 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. A foreigner would not be able to engage in a lawful business activity as a sole proprietorship except he is able to obtain citizenship or residency status for immigration purposes.

### *2.1.2. 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 except for certain professions such as law and accountancy. Foreign participation is possible where investors are able to obtain residency status for immigration purposes and a work permit.

### *2.1.3. Company*

A company with foreign shareholding must have minimum share capital of ₦10 million (circa US$50,000) in order to obtain a business permit from the Nigerian Investment Promotion Council (NIPC).

In some regulated sectors such as insurance, banking, and aviation; the minimum share

capital may be higher (e.g. ₦25 billion [circa US$125million] for banks).

#### *2.1.4. Free Trade Zones (FTZs)*

The FTZs are designed to attract foreign direct investment. There are presently 31 FTZs with 14 operational and 17 under construction as at April 2015.

Notable amongst the operational FTZs are: Calabar Free Zone, Kano Free Zone, Lekki Free Zone, Tinapa Free Zone and Tourism Resort, Onne Oil and Gas Export Free Zone, Olokola Free Zone.

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. Such registered FTZ entity would have a suffix FZE at the end of its name.

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.

### *2.2. Financial services*

The CBN regulates and licenses banks and financial institutions. It is an autonomous agency of the government charged with the responsibility of formulating and implementing trade, exchange, monetary and credit policies, regulating the foreign exchange market and formulating banking and currency policies.The commercial banks carry on foreign transactions and may be restricted by the CBN based on exchange control currency.

### *2.3. Labour/management relations*

Labour unions are organised on industrial basis. Labour issues are generally limited to industries that have employees with registered trade unions who are members of the Nigerian Labour Congress (NLC) for protection against unfair labour practices or unfair dismissal.The government plays an active role in labour relations through labour laws and the activities of the Industrial Arbitration Panels (IAPs).

### *2.4. Fiscal incentives and exchange control*

Fiscal incentives in form of duty waivers, tax exemptions, tax holidays, rebate, accelerated capital allowances and many more are provided for companies that undertake manufacturing, agriculture, technology, innovation and export related activities. The Naira (₦) is used for day to day transactions with exchange transactions regulated by the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995. Cross border transactions are allowed but with some level of restriction to protect the local currency, prevent funding of terrorism and to curb money laundering.

### *2.5. Importation of Capital*

Investments in form of share capital contribution or loans may be made in foreign currency but information on such transactions must be submitted to the CBN by the dealer within 24 hours in order to obtain a Certificate of Capital Importation (CCI). The following can be repatriated without hindrance provided the foreign investor has a CCI:

- Dividends, Rent, Royalties, Profits (net of taxes) attributable to the investment.
- Payment of interest and capital on foreign loans.
- The remittance of proceeds (net of taxes) and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment.

Authorised dealers of foreign currencies need to notify the CBN of any cash transfer to or from a foreign country of any sum in excess of US$10,000. A tax clearance certificate is required to remit dividend and interest out of the country.

### *2.6. National Office for Technology Acquisition and Promotion (NOTAP)*

NOTAP regulates the transfer of foreign technology to Nigerian companies. Agreements covering services provided by a non-resident company must be registered with NOTAP as a pre-condition for obtaining foreign currency. Fees payable under the agreement (such as royalties, management fees, software licenses, etc.) must not exceed limits prescribed by the NOTAP and the CBN. The agreement must clearly specify the services to be provided or the features of the process or product being licensed.

### *2.7. Membership of trade blocs*

Nigeria is a member of the Economic Community of West African States (ECOWAS) and adopts the ECOWAS Trade Liberalisation Scheme (ELTS) which provides exemption from custom duties and taxes on goods that meet the "Rules of Origin" from any of the ECOWAS countries.

ECOWAS seeks to establish harmony among the member states for free movement of goods and people.

The ETLS ensures that goods can be circulated freely without payment of taxes or customs duties with similar effects on imports as well as putting measures in place aimed at facilitating trade and reducing paperwork at borders.

Recently, Nigeria adopted the Common External Tariff (CET) applicable to all member states of the ECOWAS. The harmonised rates would apply to all imported goods into member states.

**Bands of the ECOWAS Common External Tariff (CET)**

| % of Duties | Description of goods |
|---|---|
| 0% | Essential Social goods |
| 5% | Goods of primary necessity, raw materials and specific inputs |
| 10% | Intermediate goods |
| 20% | Final consumption goods |
| 35% | Specific goods for economic development |

To protect significant sectors of the economy and to prevent dumping of goods, supplementary protection measures were introduced including an import prohibition trade list which applies to certain goods in all the member states; an Import adjustment tax list to provide for additional taxes to the tariff lines and a national list promoting sectorial development through tariff reviews.

# 3. Sectorial Analysis

The GDP of the country was rebased to ₦81 trillion in 2013. The rebasing exercise captured both new and previously unreported sectors of the economy. A number of reforms and projects are being undertaken to develop the country's critical infrastructure (including power, transportation, aviation and gas development), human capital (education and training), health and agriculture.

## *3.1. Energy Sector*

### *3.1.1. Oil*

There continues to be a lot of interest by investors in the oil and gas sector of the economy in key areas such as offshore, onshore and inland basins, infield developments and development of critical downstream facilities such as pipelines, depots and refineries. However, the sector has been plagued with security problems relating to oil theft, pipeline vandalism, and piracy in the Gulf of Guinea. Some International Oil Companies have divested from onshore oil blocks and reduced commitment to onshore activities to focus on more challenging and profitable frontiers in the deep offshore, where there is less unrest and crude theft.

### *3.1.2. Natural gas*

Natural gas and related hydrocarbon productions present a huge opportunity as the sub sector is yet to attract sufficient capital investment and infrastructure in gas facilities. Major challenges are security and regulations and poor implementation of a Gas Master plan). For many years, natural gas associated with oil production was mostly flared. Now, a number of gas infrastructure projects have come on stream or are in progress (e.g. West African Gas Pipeline Company, Escravos Gas to Liquid Project, Nigerian Liquefied Natural Gas) and a few others have been proposed.

### *3.1.3. Power*

The Power sector has witnessed challenges as a result of poor infrastructure. The country embarked on an ambitious power sector reform supported by a road map in August 2013. The goal is to increase power generation from fossil sources to 20,000MW by 2020 in a phased approach with private sector participation.

Since the official handover of the power distribution assets to successful bidders, the new owners are working to improve the quantity and quality of services within their networks resulting in several investment opportunities for the provision of ancillary services to these companies such as provision of meters, insulators and transformers.

### *3.1.4. Hydropower*

The Government plans to increase hydroelectricity generation capacity to 5,690 MW by 2020 according to the (NERC)- Nigerian Electricity Regulatory Commission. Plans are underway to upgrade current hydroelectricity plants and construct new plants; such as Gurara II (360 MW), Zungeru (700 MW) and Mambilla (3,050 MW). The increase is expected to be achieved in phases within the period. The project, a US$8bn World Bank assisted initiative, is expected to attract private sector participation in the execution of the rehabilitation exercise.

### *3.1.5. Other Sources of Renewable Energy in Nigeria*

Other sources of renewable energy are hydro, solar, wind, biomass etc. The NERC aims to generate uninterrupted electricity and stimulate investments in the renewable power segment, through these sources. Memorandum of Understanding (MOUs) have been executed with some private sector participants to drive power generation by renewable energy sources.

### 3.2. Petroleum Industry Bill (PIB)

The PIB has been undergoing legislative process for over 10 years. It seeks to harmonise the 16 different Nigeria petroleum laws into a single document, create a transparent and productive oil and gas industry that attracts investments and set out a new legal framework for the organisation and operation of the entire oil industry as well as update the existing laws to reflect the changing dynamics of the oil and gas industry worldwide.

#### Investment Opportunities in the Energy Sector

- The divestment from onshore oil blocks presents an opportunity for investment by smaller indigenous oil companies as well as foreign participation and technical expertise.
- The Federal government gas-to-power agenda is another major opportunity for developing and commercialising Nigeria's natural gas sector.
- Untapped opportunities exists across the power sector value chain. Some of these include: the development of renewable energy supply, rehabilitation of the national transmission grid operation and maintenance of power and infrastructure in the economy, development of support industries for the power distribution sub-sector.

### 3.3. Entertainment and Media

The Nigerian music industry, comedy shows, cinema or movie theaters have been on the increase giving rise to demand for more cinemas, restaurants and leisure malls. 2% of Nigeria's GDP is from Entertainment and Media.

#### 3.3.1. Media Advertising

Television represents 45% of Nigeria's total advertising market as the preferred platform for reaching consumers particularly the wealthy and middle class with the remaining 55% shared amongst radio 15%, the print media 18% and outdoor adverts 22%. The Government is taking steps in preparation for the migration from analogue to digital television creating huge investment opportunities in related services, training, financing, expertise and technical assistance.

#### 3.3.2. The Nigerian Film industry

The Nigerian film industry ranked the second biggest film industry in 2009 according to the United Nations Educational Scientific and Cultural Organisation (UNESCO). With a growing market, there are great opportunities for the use of state-of-the-art equipments for imagery production, video recording, digital audio and mixing.

#### 3.3.3. Gambling, Lottery and Sports betting

Nigeria attracts many business travelers, some of whom visit casinos. Gross gambling revenues have grown at double digit rate in four out of past five years including a 19.2% increase in 2012 to US$31million according to a PwC report. There are currently 3 licensed operating casinos in the country. Gross gambling revenues are expected to expand at a projected 16.3% compound annual rate to US$66 million in 2017. These are administered and regulated by different bodies and may require investors to register and obtain licenses and meet certain obligations.

#### Investment Opportunities

- Construction of additional cinemas, theatres and auditoriums for movies, plays, dramas, and entertainment tours.
- Investment in infrastructure and state-of-the-art equipment required for film making such as film studios, equipment required for computer generated imagery production, digital audio, video recording and mixing.

### *3.4. Tourism*

Tourism attractions in Nigeria include festivals and cultural celebrations, the national parks and centers largely on events.

**Investment opportunities**

- Beach and Coastal Resort development protection of national parks and game reserves.
- Development of hotels, restaurants, amusement parks and conference centres.
- Water recreation and Ecotourism opportunities.
- Package tour services, scenic and mountain holiday resorts.
- Development of caves, tunnels, waterfalls and spring waters, camps and sport fishing.
- Development of heritage, cultural and archaeological sites.

### *3.5. Real Estate*

#### *3.5.1. Residential properties*

Investment in private residential estates and luxury residential apartments is growing by the day. The gap in residential homes is estimated to be in a deficit of about 17 million housing units as at 2013. This presents a huge opportunity for private investments in the sector as well as public private partnerships to drive low income residential properties.

#### *3.5.2. Commercial office properties*

Real estate developers and well funded conglomerates dominate the supply of commercial properties. Investments in grade-A commercial properties is growing in Nigeria's major cities of Lagos, Abuja and Port Harcourt. There are also opportunities in the mixed-use space.

#### *3.5.3. Industrial properties*

Industrial estates are established by the government. Activities in most of the industrial estates will increase with investment in power which is expected to trigger more activity.

#### *3.5.4. Commercial retail and hospitality properties*

Retail mall development has picked up in the last 5 years largely driven by the demographics and urbanisation rate. There are multiple shopping malls and hotels being developed across the country dominated by a mix of local sponsors, private equity firms and supported by local and foreign banks.

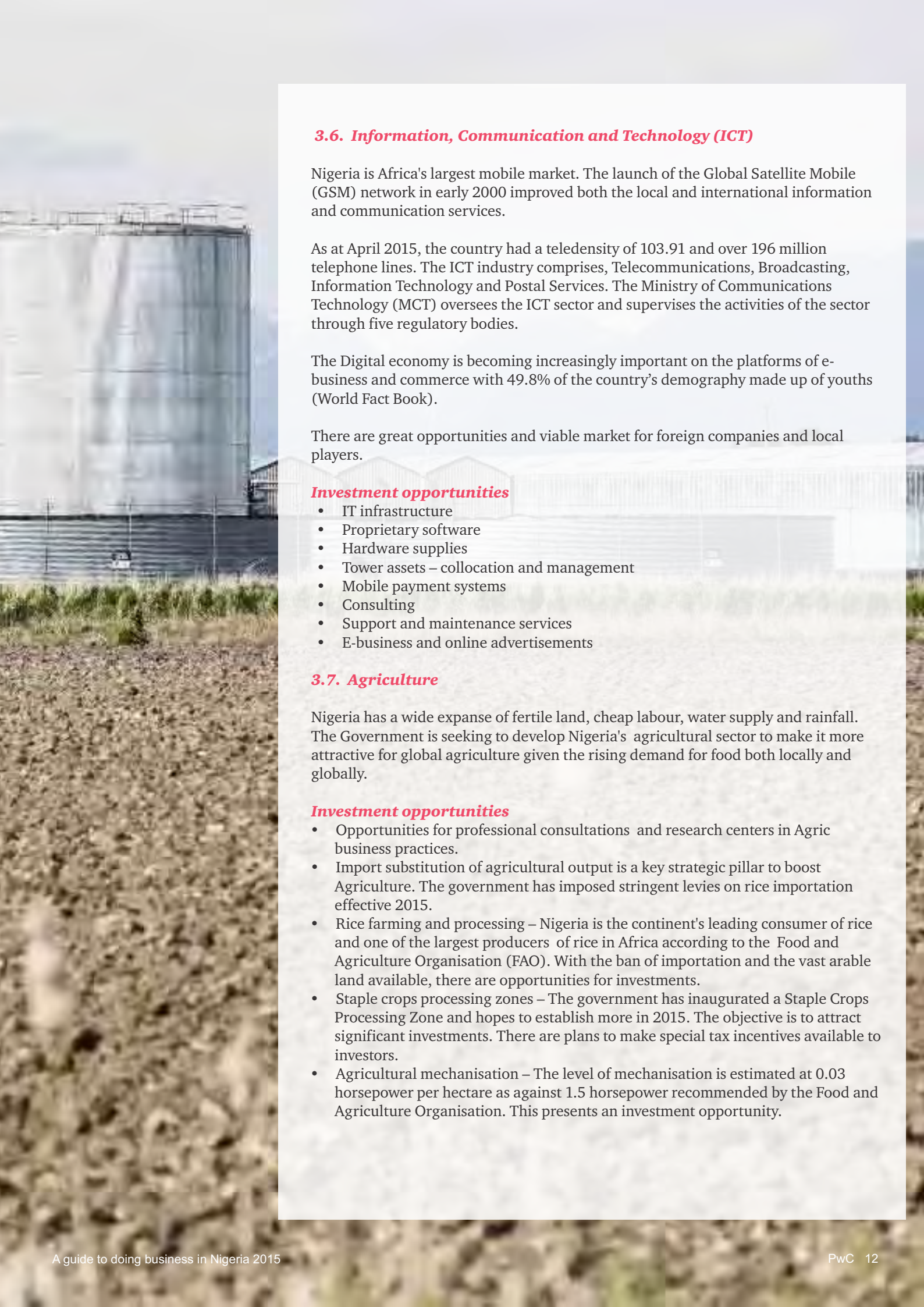
#### *3.5.5. Mortgage finance*

The Nigeria Mortgage Refinance Company (NMRC) was established (with ownership by mortgage and commercial banks, Development Finance Institutions and Government Sponsored Institutions) to bridge the costs of funding residential mortgages and to promote availability and affordability.

The National Housing Fund (NHF) creates access to mortgage finance. Employers are mandated to deduct 2.5% of employees' basic salary and remit to the Federal Mortgage Bank of Nigeria (FMBN). An individual needs to have contributed to the NHF for a minimum of six months to access a housing loan from the FMBN.

***Investment opportunities in Real Estate***

- Real estate development across all sub sectors.
- Providing risk capital and bank financing for real estate.
- Affordable low income residential property development.
- Providing related construction services.



## 3.6. Information, Communication and Technology (ICT)

Nigeria is Africa's largest mobile market. The launch of the Global Satellite Mobile (GSM) network in early 2000 improved both the local and international information and communication services.

As at April 2015, the country had a teledensity of 103.91 and over 196 million telephone lines. The ICT industry comprises, Telecommunications, Broadcasting, Information Technology and Postal Services. The Ministry of Communications Technology (MCT) oversees the ICT sector and supervises the activities of the sector through five regulatory bodies.

The Digital economy is becoming increasingly important on the platforms of e-business and commerce with 49.8% of the country's demography made up of youths (World Fact Book).

There are great opportunities and viable market for foreign companies and local players.

### Investment opportunities

- IT infrastructure
- Proprietary software
- Hardware supplies
- Tower assets – collocation and management
- Mobile payment systems
- Consulting
- Support and maintenance services
- E-business and online advertisements

## 3.7. Agriculture

Nigeria has a wide expanse of fertile land, cheap labour, water supply and rainfall. The Government is seeking to develop Nigeria's agricultural sector to make it more attractive for global agriculture given the rising demand for food both locally and globally.

### Investment opportunities

- Opportunities for professional consultations and research centers in Agric business practices.
- Import substitution of agricultural output is a key strategic pillar to boost Agriculture. The government has imposed stringent levies on rice importation effective 2015.
- Rice farming and processing – Nigeria is the continent's leading consumer of rice and one of the largest producers of rice in Africa according to the Food and Agriculture Organisation (FAO). With the ban of importation and the vast arable land available, there are opportunities for investments.
- Staple crops processing zones – The government has inaugurated a Staple Crops Processing Zone and hopes to establish more in 2015. The objective is to attract significant investments. There are plans to make special tax incentives available to investors.
- Agricultural mechanisation – The level of mechanisation is estimated at 0.03 horsepower per hectare as against 1.5 horsepower recommended by the Food and Agriculture Organisation. This presents an investment opportunity.

# 4. Labour requirements

## *4.1. Labour law requirements*

The 1999 Constitution of the Federal Republic of Nigeria provides for "equal pay for equal work without discrimination on account of sex, or any other grounds whatsoever".

The Law provides that every employer must give to each of its employee; a written contract within 3 months of engagement sufficiently stating the particulars of the employer and the employee, the position and job description/functions, terms and conditions of the contract, confidentiality clauses, intellectual property rights, hours of work, remuneration, holiday and holiday pay, etc.

### *4.1.1. Wages and salaries*

Wages become due and payable daily, weekly, monthly or at such other period as may be agreed upon. There is a mandated minimum wage of ₦18,000 (US$90) per month and no worker in Nigeria should be paid less than this mandatory minimum.

### *4.1.2. Average hours*

A workday is a standard eight-hour shift and forty-hour a week. Some banks open on Saturdays between 9:00am and 2:00pm. In the northern states, business transactions are best concluded before 1.00pm on Fridays as a result of the Jumat service observed by Muslims even though work resumes thereafter. Most supermarkets, restaurants and bars open on weekends depending on their location.

### *4.1.3. Holidays and vacations*

The Act requires employees for a continuous period of 12 months, to undertake holidays with full pay of at least 6 working days. This can be deferred by mutual consent of both parties but not beyond 24 months where the employee must take the holiday with full pay.

Other paid holidays and vacations include public holidays and maternity leave (which is normally fully-paid). Maternity leave is typically agreed by contract with employees as 3 months paid leave while paternity leave (though not common) is typically 2 to 5 days of paid leave.

### *4.1.4. Equal opportunities*

Every citizen is guaranteed by the Constitution; the right to freedom from discrimination on grounds of community, ethnic group, place of origin, sex, religion or political opinion. Similar protection is afforded to non-citizens.

Public policy also prohibits discrimination on the basis of HIV status with some states passing legislation to this effect.

### *4.1.5. Health and pension funds*

The 2004 Pension Reform Act was repealed and re-enacted with a new Reform Act effective 1 July 2014. Expatriates are not required to but may voluntarily join the pension scheme. Employers and employees are required to make a minimum contribution of 10% and 8% respectively of the employee's monthly emoluments. In addition, a Group Life Insurance Policy must be maintained in favour of the employee for a minimum of 3 times the employee's annual total emoluments.

There is also a mandatory employee compensation scheme whereby 1% of payroll cost is contributed as premium to the National Social Insurance Trust Fund (NSITF) to cover employees from work related accidents and death.

### *4.1.6. Dismissal*

An employer may dismiss an employee where there is a fundamental breach of employment contract. Employers are encouraged to itemise examples of cases that

could lead to dismissal and inform the employees through their employment contract. No compensation is usually payable upon a valid dismissal.

### *4.2. Employment of expatriates*

The Immigration Act precludes any person other than a Nigerian citizen from accepting employment (not being employed by the Federal or State Government) without the consent in writing of the Minister of Interior. For a non-resident individual coming into Nigeria to work, there are three main entry permits available:-

#### *4.2.1. Business visa*
This is issued mainly to enable foreign nationals to attend business meetings in Nigeria.

#### *4.2.2. Temporary Work Permit (TWP)*
This is issued to enable foreign nationals to gain entry into Nigeria for the purpose of executing short-term assignments. It is a single entry visa which is usually given for a period of 3 months. It can be extended once for another 3 months upon application.

#### *4.2.3. Expatriate Quota (EQ)*
Companies seeking to employ expatriates must first apply for and be granted an (EQ). The EQ scheme is designed to prevent the indiscriminate employment of expatriates where there are qualified and suitable Nigerians to fill such positions.

The validity of the employer's EQ position determines the EQ awarded. Employees will be considered residents for tax purposes from the first day of the employment assignment. A company that has been issued an EQ may apply for its renewal when it expires at the discretion of the Ministry.

#### *4.2.4. Combined Expatriate Residence Permit and Aliens Card (CERPAC)*
Every non-Nigerian who enters Nigeria legally and who wishes to reside and/or work in Nigeria must make an application for a CERPAC which when issued is valid for 3 years and becomes renewable.

#### *4.2.5. New Immigration Law*
The Immigration Act 2015 has been enacted to bridge the gap and address issues on migration to meet globally acceptable standards such as composition and employment, administration, deportation and crew control.

# 5. Tax system

## *Nigerian Tax System*

There are several taxes and levies imposed on people, goods and services in Nigeria which are collected by the 3 tiers of government. The major taxes are listed below:-

### *5.1. Companies Income Tax Act (CITA)*

CITA forms the legal basis for the taxation of the profits of companies other than companies engaged in oil exploration and production in Nigeria. CITA imposes tax upon the profits of any company accruing in, derived from, brought into, or received in Nigeria in respect of a trade or business. Companies are taxed at a rate of 30% of taxable profits.

Nigerian companies are liable to tax on their global or worldwide income while non-resident companies are liable to tax only on the profit or income deemed to be derived from Nigeria.

#### *5.1.1. Certificate of Acceptance*

Companies are required to obtain a Certificate of Acceptance from the Inspectorate Division of the Federal Ministry of Industries for individual assets purchased within any accounting period with a value of ₦500,000 and above. The presentation of the Certificate of Acceptance is required in the event that the Tax authorities challenge the capital allowances.

Capital allowances are claimable on qualifying capital expenditure in lieu of depreciation. Initial allowance is granted only in the first year of acquisition, the annual allowance is claimable yearly (at defined rates) over a specified period as stated by the Law. Investment allowance of 10% is granted in respect of capital expenditure on plant and equipment in the year of acquisition.

Agro companies and manufacturing companies are allowed to claim 100% capital allowances whereas other companies are restricted to claim a maximum of 2/3rd of assessable profits (accounting profits after adjustment for tax purposes).

Different rates apply for qualifying expenditures for both initial and annual capital allowances.

#### *5.1.2. Excess dividend tax*

When a company pays out dividend, this would be compared to its taxable profit for the period. Where the dividend is more than the taxable profit, the excess will be charged to tax at 30% as if the dividend is the taxable profits of the company.

#### *5.1.3. Double Tax Agreement (DTA)*

Nigeria has ratified tax treaties with Belgium, Canada, China, Czech Republic, France, Netherlands, Pakistan, Philippines, Romania, Slovakia, South Africa and United Kingdom. Nigeria also has tax treaties with Kenya, Mauritius, Poland, South Korea, Spain and Sweden. However, these treaties have not been ratified by the Nigerian National Assembly.

Nigeria's DTAs offer tax advantages to companies/individuals resident in a treaty country which include higher threshold to trigger a taxable presence in Nigeria and a lower withholding tax rate of 7.5% on dividends, royalties and interest payable to a

### *5.1.4. Pioneer tax incentive*

Upon satisfaction of certain conditions, pioneer status is granted to companies in an industry that is categorized as a pioneer industry and these companies qualify for a tax holiday for 5 years (3 years initially and renewable for a further 1 or 2 years upon application). There are special rules on computing the profits of the company that will be exempt from tax (as well as the amount of dividends that will be exempt from withholding tax).

The updated list of industries /products which qualify for pioneer status can be obtained from the NIPC website (http://www.nipc-nigeria.org).

### *5.1.5. Taxation of non-resident companies*

There are two broad categories of income of a non-resident company liable to tax. The first includes dividends, interest and royalty, generally referred to as passive income and it is liable to withholding tax at the rate of 10%. The second category consists of business income liable to tax in Nigeria to the extent that it is derived from Nigeria through a Permanent Establishment (PE) or fixed base. The income of a non-resident company is deemed to be derived from Nigeria in any of the following situations:

- If the company habitually operates a trade or business through a person in Nigeria who is authorised to conclude contracts on its behalf or companies controlled by it.
- If the transactions between the foreign company and its Nigerian affiliate are not at arm's length.
- If the company carries on a trade or business which involves a single contract for deliveries, surveys, installations or construction.
- If the company has a fixed base of business in Nigeria to the extent that profit is attributable to the fixed base.

Tax liabilities for such companies will be based on audited accounts similar to Nigerian companies.

## *5.2. Personal Income Tax Act*

The Personal Income Tax Act (PITA) 2011 (as amended) is the legal basis for the imposition of personal income tax in Nigeria. The Act requires an employer to deduct and remit its employees' income tax under the Pay-As-You-Earn (PAYE) scheme and grants certain allowances and reliefs to individuals to reduce their tax payable.

### *5.2.1. Basis of liability*

In the case of employment income, an individual is liable to tax in Nigeria if the employer is in Nigeria unless the employment duties are wholly performed and the remuneration paid outside Nigeria. Tax is due if the duties of the employment are wholly or partly performed in Nigeria unless certain conditions are met.

### *5.2.2. Tax rate*

Personal income tax rate is applied on a graduated scale on taxable annual income as set out below. There is a non taxable personal relief of 20% of income applicable to every individual in addition to some other non-taxable allowances. As a result of reliefs and tax free allowances, the marginal rate of tax is 19.2%.

| Income to be taxed | Rates |
|---|---|
| First ₦300,000 | 7% |
| Next ₦300,000 | 11% |
| Next ₦500,000 | 15% |
| Next ₦500,000 | 19% |
| Next ₦1,600,000 | 21% |
| Above ₦3,200,000 | 24% |

### *5.3. Petroleum Profits Tax*

The Petroleum Profits Tax Act (PPTA) is the principal Act for the imposition of tax on the profits of companies engaged in upstream petroleum operations for their own account. It does not apply to risk service contractors and other oil and gas contractors. The taxable income of a petroleum company is subject to tax at 85% which is lowered to 65.75% during the first 5 years of operation. Oil companies that operate under a production sharing contract (PSC) are liable to tax at a rate of 50%.

### *5.4. Withholding Tax (WHT)*

WHT is an advance payment of income taxes deductible from payments made on qualifying transactions. The remittance is made in the currency of transaction to the Federal Inland Revenue Service [FIRS] or the relevant State Internal Revenue Service [SIRS] within 21 days and 30 days respectively. Different WHT rates apply for qualifying transactions and in certain instances, it can be applied as a tax credit against the corporate income tax liability of the company that suffered the WHT.

### *5.5. Value Added Tax (VAT)*

VAT is charged at a flat rate of 5% on the supply of goods and services except those expressly exempted or zero rated under the Act. Oil and gas companies and government agencies are required to remit VAT on their purchases directly to the FIRS rather than pay it over to their vendors. A non-resident company carrying on business in Nigeria only need to register for VAT using the address of its local counter party and include the tax on its invoice. The local company is required to remit the VAT directly to the FIRS rather than pay it over to the non-resident company.

### *5.6. Other Taxes*

#### *5.6.1. Luxury Taxes*

Special levies are introduced on luxury items. These surcharges include:

| | |
|---|---|
| Private jets | Purchase of new private jets will be subject to a 10% import surcharge. |
| Yachts | Purchase of luxury yachts will be subject to a 39% import surcharge. |
| Luxury cars | Purchase of luxury cars will be subject to a 5% import surcharge. |
| Champagnes, wines and | Purchase of champagnes, wines and spirits will be subject to a 3% luxury surcharge. |
| Mansions | 1% Mansion Tax on residential properties within the Federal Capital Territory, Abuja. The tax is applicable to a property with a value of ₦300 million and above. |

### *5.6.2. Cabotage levy*

To encourage the development of indigenous players in domestic shipping, the Coastal and Inland Shipping (Cabotage) Act ("Cabotage Act") was passed into law in 2003. Vessels are rated based on specific local content criteria which enhances their chances to execute contracts in Nigeria. Each vessel upon registration with the Nigerian Maritime Administration and Safety Agency (NIMASA) will be required to pay a surcharge of 2% of the contract sum on any contract performed by the vessels. This surcharge is payable by the vessel owner.

### *5.6.3. Nigerian Content Development (NCD) levy*

The Nigerian Oil and Gas Content Development and Monitoring Board (NCDMB) was established and vested with the responsibility to implement the provisions of the Nigerian Oil and Gas Industry Content Development Act 2010 (Local Content Act), make procedural guidelines and monitor compliance of operators within the oil industry. Companies increase their chances of obtaining contracts through high local content ratings.

The Act imposes a levy of 1% of contract sum to be deducted at source from any contract awarded to any operator, contract, subcontractor, alliance partner or any other entity in any project, operation, activity or transaction in the upstream sector of the industry.

### *5.6.4. Nigerian Communications Commission (NCC) levy*

The Annual Operating Levy (AOL) Regulations issued by the Nigerian Communications Commission provides that all network providers in the telecommunication industry must pay 2.5% of their annual income as operating levy and a 2% levy on electronic gadgets.

## *5.7. Transfer Pricing (TP)*

### *5.7.1. Overview*

The Income Tax (Transfer Pricing) Regulations No 1, 2012 was introduced to provide rules for taxation of intercompany transactions. The regulation covers transactions between connected persons, compliance obligations of the taxpayers and the need to prepare transfer pricing documentation.

Provisions are made for connected taxpayers to enter into Advance Pricing Agreements (APAs) either with the FIRS alone or jointly with the competent Authority of the taxpayer's country of residence if there is an applicable treaty providing for Mutual Agreement Procedure (MAP) with a minimum annual transaction value of NGN250 million (about US$1,250 million). However, negotiation of an APA process with the FIRS has been put on hold for at least three years from the commencement of the rules to enable the FIRS build sufficient capacity.

### *5.7.2. Documentation*

Nigeria TP regulations specifically require taxpayers to maintain relevant documentation which will allow the FIRS to verify that the pricing of controlled transactions is consistent with the arm's length principle. Such compliance documentation must be prepared taking into account the complexity and volume of transactions involved. Generally, under the Nigeria TP legislation, connected taxpayers are required to include in their documentation; a TP declaration form, Disclosure form and a Documentation report based on principles that are consistent with the OECD or UN guidelines.

In principle, a connected taxpayer must have a TP Documentation Report in place prior to the due date of filing the income tax return for the year in which the documented transactions occurred. This documentation must be provided to the FIRS upon request within 21 days.

# 6. Tax Incentives

The government gives tax incentives and reliefs to encourage both local and foreign participation in most sectors, alleviate the burden of taxes, reduce the costs of doing business and to promote investment and economic development. Tax incentives are available to companies and individuals based on their form, nature and size of business. Some of the incentives and relief available include:

### *Incentives available to the Agricultural sector*

- Companies engaged in Agricultural trade or businesses are not liable to minimum tax.
- Tax exemption of the interest earned from agricultural loans, provided the moratorium is not less than 18 months and the rate of interest is not more than the base lending rate at the time of the loan.
- No restriction of capital allowance claimable for companies in the agro-allied business.
- VAT exemption on tractors, ploughs and agricultural implements purchased for agricultural purposes.

### *Incentives available to the Energy sector*

Gas Utilization Incentive: In the utilisation of gas, such companies would enjoy:

- A tax free period of 3 years which may be renewed for further 2 years or 35% investment allowance.
- Additional investment allowance of 25% on plant and machinery.
- Accelerated capital allowance after the tax free period.
- Tax free dividend during the tax free period.

Petroleum upstream operations: the incentives available to companies are determined by the nature of business which could be joint ventures or sharing contracts. These will include:

- Lower tax rates and graduated royalty rates to encourage offshore production.
- Dividends distributed are not subject to withholding tax.
- Petroleum investment allowance and investment tax credits also apply.

### *Incentives available to the Power sector*

Investors in power generating companies may enjoy a pioneer status incentive as well as gas utilization incentives include.

- Exemption from VAT on plant and equipment acquired to generate electricity.
- through the utilisation of Nigerian gas.
- Exemption from import duties on plant and equipment imported to generate electricity through the utilisation of Nigerian gas.

### *Incentives available to Export Processing Zones*

Export oriented companies carrying on businesses in these zones especially manufacturing companies are granted tax incentives. Approvals must be sought to operate in these zones and the incentives available include:

- Tax holiday from all federal, state and local government taxes, custom duties, rates and levies arising from operations within the zones.
- Waiver for import and export lincenses.
- Tax and duty free on raw materials and components goods imported for export.

### *Incentives available for Foreign Capital Contribution*

The form and source of capital employed by a business will affect its tax liability. While debt capital attracts interest cost, the cost of equity capital is dividend.

- If there is an element of foreign participation in the company amounting to at least 25% of its equity capital, the company will be exempted from the minimum tax provision.
- Interest on foreign loans received for business is exempt from taxes at different

periods and graduated rates.

- Such loans must be brought in through Government Approved Channels (i.e. a Nigerian Bank) and a Certificate of Capital Importation must be processed in respect of the loan capital.

### *Minimum Tax Exemptions*

Where a company has made no taxable profits or has made a profit which is less than the minimum tax, such company will pay minimum taxes.

Tax exemptions will be available where such company:

- has at least 25% foreign equity contribution,
- is engaged in agricultural trade or business manufacture,
- is within the first four calendar years of commencement of business.

### *Pioneer Status Incentives*

Companies in certain industries are granted corporate income tax exemptions to encourage further development of the economy and promote business activities. The incentives are:

- Exemption of profits from company income taxes during the tax holiday.
- Dividends distributed from profits made in the pioneer regime are exempted from withholding tax.
- Tax losses and capital allowances incurred during pioneer period can be utilized against taxable profits after the pioneer period.

# 7. Other issues for attention

## *7.1. Accounting, audit requirements and practices*

### *7.1.1. General considerations*

There is no requirement to use a specific chart of accounts for reporting purposes in Nigeria. There is also no requirement for the use of specific accounting systems or to host the server of accounting records in Nigeria. However, all companies must maintain books of accounts in Nigeria and produce their financial statements under the International Financial Reporting Standards (IFRS).

Investors should consider the following provisions of the Companies and Allied Matters Act (CAMA):

- All companies shall keep sufficient accounting records.
- The accounting records shall contain a record of the assets and liabilities of the company.
- The accounting records, kept in the registered office of the company or other places as the director may deem fit, must be open to inspection by the officers of the company.
- The accounting records shall be kept for a minimum period of 6 years from the date on which they were made.
- All companies must file audited financial statements annually with the tax authorities and the Corporate Affairs Commission (CAC).
- Group accounts are required of a company with at least one subsidiary.

The directors of a company shall at their first meeting after incorporation of the company, determine to what date in each year that the financial statements shall be made up, and they shall give notice of the date to the CAC within 14 days of the determination.

### *7.1.2. Directors' report*

A report by the director shall be prepared containing a fair view of the development of the business of the company and its subsidiaries during the year and of their position at the end of it, stating the amount (if any) which they recommend should be paid as dividend and the amount which they propose to carry to reserves. The report shall state the names of the persons who, at any time during the year, were directors of the company and the financial activities of the company and its subsidiaries in the course of the year and any significant change in those activities in that year.

The directors shall at a date not later than 18 months after incorporation of the company and subsequently at least once every year, lay before the company in general meetings copies of the financial statements made up to a date not exceeding nine months before the date of the meeting. This suggests that companies cannot have more than an 18-month account in their first accounting year.

Additionally, in respect of each year, the directors shall submit with the annual return to the CAC; a copy of the balance sheet, the profit or loss account and the notes on the statements which were laid before the general meeting.

### *7.1.3. Auditors' requirement*

The CAMA requires the shareholders to appoint auditors during the annual general meeting. Such auditor must possess a practicing certificate and be a member of the Institute of Chartered Accountants of Nigeria (ICAN) or the Association of National Accountants of Nigeria (ANAN). Nigerian auditors generally adopt International Standards on Auditing (ISA) as issued by the International Auditing and Assurance Standards Board complemented by local rules.

The auditors must report to the shareholders of the company on the accounts and are required to express their opinion as to whether the accounts provide a true and fair view of the financial status of the company.

### *7.2. Price control and unfair competition*

Nigeria has a Price Control Act which imposes price control on goods and services to maintain affordability of staple foods and goods, to prevent price extortion during shortages and to manage inflation. Historically, price controls have often been imposed as part of a larger income policy package also employing wage controls and other regulatory elements. Price control may be imposed on bicycles and spare parts, flour, matches, milk, motorcycles and spare parts, motor vehicles and spare parts, petroleum products, salt and sugar.

### *7.3. Intellectual property protection*

In Nigeria, these rights are broadly classified as:

- Industrial Property: This includes patents, trademarks, industrial designs and geographical indications.
- Copyright: This includes literary works (such as novels, poems and plays), films, music, artistic works (e.g. drawings, paintings, photographs and sculptures) and architectural design.

The law of patents protects inventions, products and processes that contribute in some practical and functional way to existing knowledge. The law of industrial designs protects shapes, patterns, ornaments or other features, which enhance the outward or aesthetic appearance of a product.

A trademark provides protection to the owner of the mark by preserving the exclusive right to use it to identify goods or services, or to authorise another to use it in return for payment. The period of protection varies, but a trademark can be renewed indefinitely beyond the time limit on payment of additional fees. Trademark protection is enforced by the courts, which in most systems have the authority to block trademark infringement.

Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating trade.

### *7.4. Regulation of Non-governmental agencies*

Non-governmental agencies (NGOs) are typically non-profit organisations and they play an increasingly important role in development cooperation on issues of public interest. There are no restrictions in NGOs provided that the purposes for which the group is formed, or the methods that it uses are not in themselves illegal. While it is not necessary that every group or association be registered, if an NGO considers it important to have a legal personality, it must be registered as either a company limited by guarantee or as incorporated trustees under the Companies and Allied Matters Act.

# 8. Reference information

## Key regulators and website

| | |
|---|---|
| Bureau of Public Enterprise | http://www.bpeng.org |
| Department of Petroleum Resources (DPR) | http://www.dprnigeria.com |
| Federal Inland Revenue Services (FIRS) | http://firs.gov.ng |
| National Agency for food and drugs administration and control (NAFDAC) | http://www.nafdac.gov.ng |
| Financial Reporting Council of Nigeria (FRCN) | http://www.financialreportingcouncil.gov.ng |
| National Assembly | http://www.nassnig.org |
| National Insurance Corporation (NAICOM) | http://naicomonline.org |
| National Petroleum Investment Management Services (NAPIMS) | http://napims.com |
| Nigerian Communications Commision (NCC) | http://www.ncc.gov.ng |
| Nigerian Corporate Affairs Commission | http://www.cac.gov.ng |
| Nigerian Deposit Insurance Corporation (NDIC) | http://www.ndic-ng.com |
| Nigerian Investment Promotion Commission (NPIC) | http://www.nipc-nigeria.org |
| Nigerian National Petroleum Corporation (NNPC) | http://nnpcgroup.com |
| Security and Exchange Commission (SEC) | http://www.sec.gov.ng |
| Central Bank of Nigeria (CBN) | http://www.cenbank.org |
| Nigerian Content Development and Monitoring Board (NCDMB) | http://www.ncdmb.gov..ng |
| Pension Commission (PenCom) | http://www.pencom.gov.ng |
| Joint Tax Board | http://www.jtb.gov.ng |
| Budget Office of the Federation | http://www.budgetoffice.gov.ng |

# 9. About Us

PwC Nigeria is one of the leading professional services firms in Nigeria with offices in Lagos, Abuja and Port Harcourt; over 1000 staff and 27 resident partners. We are committed to serving as a force for integrity, good sense and wise solutions to the problems facing businesses and the capital markets. We are guided by one promise – to do what is right, be it with our people, clients, community or environment. Our clients rely on us to help them explore opportunities and deal with difficult business challenges. We work closely with our clients to deliver sustainable solutions, tapping into the breadth of our global network and skills. Our services meet the needs and requirements of each client, irrespective of size and location.

***Our services***

***Tax***

We are the global market leader in tax services. We can support you both locally and globally. Our Tax services include:

- Transfer pricing
- Compliance and tax audit support
- International assignments
- Mergers and acquisitions
- Tax reporting and strategy implementation
- Tax structuring Tax training

Our Regulatory Services include:

- Regulatory compliance and Assistance with the registration of companies in Nigeria
- Company secretariat services
- Immigration services
- Tax Dispute resolution and litigation
- Intellectual property advisory services
- International investment advisory services

***Audit and assurance***

We are the world's leading global network of audit and assurance firms. We assist companies improve their corporate reporting and provide assurance that their systems are operating effectively within a well-controlled environment. Our audit and assurance services include:

- Assistance on capital market transactions
- Corporate reporting improvement
- Financial accounting and statement audit
- IFRS reporting and Regulatory compliance and reporting
- Independent controls & systems process assurance
- Internal audit
- Sarbanes-Oxley compliance
- Sustainability

***Advisory-Consulting***

We provide comprehensive advice and assistance to companies and governments. We bring together a full range of functional and industry skills and expertise to help businesses work smarter and grow faster. Our services include:

- Business recovery services (insolvency, receiverships, business reviews)
- Dispute Analysis & Investigation (including forensic audits)
- Governance, risk and compliance
- Finance
- Technology
- Strategy and operations
- People and change

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PwC is well-known in the marketplace for our knowledge and experience in all types of financial transactions. We focus ion long-term returns from strategy development and evaluation to post acquisition integration. Our services include:

- Corporate finance, including mergers & acquisitions
- Infrastructure, Government and utilities
- Transactions services
- Valuation and strategy

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