DOING BUSINESS IN Nigeria

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**Business Structures:**

What types of business structures are permitted?

Business structures permitted in Nigeria are classified into the following categories:

A. Registered Business Names: These are grouped into Sole Proprietorships and Partnerships.

B. Companies:
   i. Private Limited Liability Companies
   ii. Public Limited Liability Companies
   iii. Companies Limited by Guarantee (Non-Profits)
   iv. Unlimited Liability Companies

**Taxation:**

Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

**Companies Income Tax**
This is a tax chargeable on all companies (other than Companies engaged in petroleum operations) registered in Nigeria at the rate of 30% of all the profits of registered companies, which accrue in, are derived from, brought into, or received in Nigeria, annually.

**Capital Gains Tax (CGT)**
This is a 10% tax imposed on Capital Gains arising from a sale, exchange or other disposition of properties known as chargeable assets. Subject to statutory exceptions, chargeable assets refer to all forms of properties whether situated in Nigeria or not.

**Value Added Tax**
This is a tax imposed on the supply of goods and services, payable by the consumer at 5%. Although companies do not pay VAT, they are mandated by the government to collect the VAT from consumers and then remit to the relevant tax body.

**Personal Income Tax**
This is a tax charged on the income of non-juristic persons. It is payable by all individuals, employees and partnerships. This tax is relevant to registered businesses as they have an obligation to collect what is known as Pay as You Earn (PAYE) from their employees’ salaries and then remit to the state tax body. This tax rate is progressive.

**Stamp Duties**
These are taxes imposed on and raised from stamps charged on instruments, parchments and other legal documents, such as conveyances, leases, mortgage deeds, power of attorney, etc specified in the Stamp Duties Act Cap S8, LFN, 2004. Stamp Duties are payable at a flat rate or ad valorem as the case may be.

**Petroleum Profit Tax (PPT)**
The Petroleum Profit Tax is a tax imposed upon profits accruing from mining of petroleum in Nigeria. The rate is 85% on chargeable profits of companies operating under the Joint Venture arrangement or 66.75% within the first five years of operation where it is yet to recover its capitalised pre-production expenditure, while the rate of 50% of profit on the contract area applies to companies under the Production Sharing Contracts in respect of deep offshore and inland basins.

**Immigration:**

Summarize immigration laws, including visas available for foreign employees.

The Immigration Act 2015 and the Immigration Regulations 2017 are the major legislation regulating immigration in Nigeria. These legislations govern entry and exit from Nigeria, control of immigrants, issuance of Nigerian passports and other travel documents, offences and penalties, etc. Pursuant to Section 1 of the Immigration Act 2015, the regulatory body given the powers to regulate immigration in Nigeria, is the National Immigration Service (NIS).
The following visas are available to foreigners:

**Business Visa:** is available to Foreign Travelers who wish to visit Nigeria for the purpose of Meeting, Conference, Seminar, Contract Negotiation, Marketing, Sales, Purchase distribution of Nigerian Goods, Trade Fairs, Job Interviews, Training of Nigerians (Humanitarian Services), Emergency/Relief work, Crew members, Staff of NGOs, Staff of INGOs, Researchers, Musical Concerts.

**CERPAC:** this refers to the Combined Expatriate Residence Permit and Aliens Card which allows a non-Nigerian to reside in Nigeria and carry out an approved activity as specified in the permit, or to accompany a resident or citizen of Nigeria as a resident or citizen of Nigeria as a dependant. This card is valid for 2 years, and does not exempt the holder from obtaining a valid re-entry visa/permit during the validity of CERPAC.

**Temporary Work Permit (TWP):** is available to foreign nationals who are experts invited by Corporate Bodies to provide specialized skilled services, such as after sales Installation/Commissioning/Upgrading/Maintenance/Repairs of equipment and machinery, Training/capacity building for Nigerian staff, Audit of machinery.

**Subject to Regularisation Visa (STR):** is available to expatriate employees of Companies and their dependents, expatriate technical officials of missions, Foreign Students, missionaries, etc.

**Transit Visa:** is available to citizens of all countries except ECOWAS Nationals and other countries which Nigeria has visa abolition agreements with and Foreign travellers transiting through Nigeria.

**Tourist Visa:** is available to citizens of all countries except ECOWAS Nationals who do not require visa to visit Nigeria and other countries which Nigeria has entered into visa abolition agreements with.

**Diplomatic Visa:** Applicable to visiting Head of States and their families, top officials of government and their families, accredited diplomats and their families, holders of united nations/international agencies’ diplomatic passports and laisser passez.

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<th>Foreign Investment Review and Issues:</th>
<th>Does the government review and approve foreign investments? What factors are considered?</th>
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<td>The government reviews and approves foreign investment primarily through the Securities and Exchange Commission, Nigerian Investment Promotion Commission (NIPC); and National Office for Technological Acquisition and Promotion (NOTAP), the Central Bank of Nigeria (via Certificates of Capital Importation issued by banks which legitimises and facilitates the repatriation of dividends and capital to a foreign investor),</td>
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<td>Every company with foreign participation must also be registered with the NIPC, the primary body responsible for encouraging, facilitating and monitoring foreign investment activity in Nigeria, and a business license and an expatriate quota must be obtained from the Ministry of Interior. Portfolio investment in securities listed on the Nigerian Stock Exchange (NSE) must be registered with the Securities and Exchange Commission (SEC).</td>
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<td>Factors to be considered in connection with foreign investment include the following:</td>
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<td>Provisions of CAMA: a foreign investor intending to do business in Nigeria may join in the formation of a Nigerian company and is mandated to take all necessary steps to obtain local incorporation of a Nigerian company or branch or subsidiary of an existing company, which would be a separate and distinct entity from its parent company.</td>
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However, there are exceptions to this requirement, which include companies engaged by the Federal Government to execute specific projects, companies undertaking approved loan projects on behalf of donor countries or international organisations, and foreign government owned companies engaged wholly in export promotion activities.

The NIPC Act: Subject to local content policies applicable in certain industries, the NIPC Act allows foreigners to invest and participate in the operation of any Nigerian enterprise 100 percent without any restriction.

Location: Investment in rural areas or economically disadvantaged areas which attracts incentives and tax reliefs

Pioneer Status: This is a tax holiday granted to eligible industries for a period of 3 years and may be extended for one or two years.

Technology Transfer: One of the requirement for allowing transfer of technology into the country is the need to prove that such technology is not readily available in the country, otherwise, NOTAP may not allow such technology to be transferred into the country.

CBN Certificates of Capital Importation: these are certificates issued by banks under the guidance of the CBN, confirming an inflow of foreign currency in cash or goods by a foreign investor. It provides the foreign investor with statutory evidence of capital inflow into Nigeria. In the absence of a CCI, the foreign investor cannot repatriate return on his investments.

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<th>Dealing with the Government: Identify major issues when dealing with local and federal governments.</th>
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<td>Bureaucracy; ii. Corruption; iii. Administrative inefficiency in government ministries, departments and agencies; iv. Local Content issues; v. Transparency shortcomings in government procurement process.</td>
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<th>Dispute Resolution and Court Systems: Summarize the court system, including the use of juries and arbitration.</th>
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| The constitution of the Federal Republic of Nigeria 1999 as amended has established the following courts of superior and inferior records for the resolution of disputes: 
  **Supreme Court:** It is the highest Court in Nigeria as its decisions are final and are not appealable. The Supreme Court exercises original jurisdiction in certain matters and also hear appeals from the Court of appeal.
  **The Court of Appeal:** It hears appeals on decisions from the Federal High Court, State High Courts, National Industrial Court, Sharia Court of Appeal, High Court of the Federal Capital Territory, and the Customary Court of Appeal. They have original jurisdiction on matters involving disputes as to whether a person was validly elected to the office of the president or Vice President or whether their tenure of office has ceased.
  **High Courts:** Such as the Federal High Courts and the State High Courts
  **Specialist Courts:** Specialist Courts include the National Industrial Court established by the National Industrial Court Act, 2006 which deals with labour and employment matters; the Investment and Securities Tribunal established by the Investment and Securities Act, 2007 which deals with securities and capital market issues.
  **Other Courts include the Sharia Court (with the Sharia Court of Appeal), the Customary Court (with the Customary Court of Appeal); The Magistrate Court; District Courts; Juvenile Courts; Court Martial; Area Courts; and Sharia Courts. |

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In Nigeria, the key laws regulating anti-corruption, anti-bribery are as follows:

**Money Laundering (Prohibition) (Amendment) Act 2012:** Makes comprehensive provisions to prohibit the laundering of the proceeds of a crime or an illegal act and provides appropriate penalties.

**Advance Fee Fraud and Other Related Offences Act 2006:** Prohibits and punishes certain offences pertaining to Advance Fee Fraud and other fraud related offences.

**The Economic and Financial Crimes Commission (Establishment) Act 2004:** Establishes the Economic and Financial Crimes Commission which is charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.

**Independent Corrupt Practices & Other Related Offences Act 2000:** Establishes the Independent Corrupt Practices and Other Related Offences Commission which is charged with curbing bribery and corruption arising from interactions and transactions involving public/government officers and the general public or private individuals.

In addition, both the Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010 are laws which have extra-territorial jurisdiction and as such apply and have an impact on relevant businesses in Nigeria.

Arbitration as an alternative form of dispute resolution in Nigeria is governed by the Arbitration and Conciliation Act, Laws of the Federation of Nigeria (LFN) 2004. The Lagos Court of Arbitration, the Lagos Multi-Door Court, the Nigerian International Chamber of Commerce, the Lagos Maritime Arbitration Association, and the Regional Centre for International Commercial Arbitration provide a neutral seat in Nigeria for the resolution of disputes through arbitration. The Jury System is not applicable in Nigeria as it is not recognised under Nigerian laws.

Businesses may combine in the following manner:


Though there is no one multi-sectoral legislation that is solely dedicated to competition law in Nigeria, there are industry-specific laws with provisions which regulate fair competition within various markets. These multi-sectoral laws include:

- **Nigerian Communication Act 2003** which regulates the telecommunication sector and provides that, subject to applicable exemptions, a licensee shall not engage in any conduct which has the purpose or effect of substantially lessening competition in any aspect of the communication industry (Ss. 90 & 91). The Nigerian Communications Commission may direct a licensee in a dominant position in the industry to cease from a conduct which may substantially lessen competition (S.92)

- **The Electric Power Sector Reform Act, 2005 (EPSRA),** under the oversight of the Nigerian Electricity Regulatory Commission (NERC) regulates the electricity sector which ensures that services are offered competitively and may issue a cease order or levy fines not exceeding 50 Million Naira (approximately 139, 000 USD) where it determines that there is an abuse of market power.

- **The Civil Aviation Act, 2006 (CAA)** regulating the aviation sector authorises the Nigerian Civil Aviation Authority to investigate incidences of unfair methods of completion and order an operator in the aviation market to desist from such practices [S.30(4)(i)].

**Types of transaction: How may businesses combine?**

- Businesses may combine in the following manner:
  - i. Mergers / Amalgamation
  - ii. Acquisition
  - iii. Takeover
  - iv. Divestiture
  - v. Demerger
  - vi. Joint Ventures
  - vii. Buy back of Securities
  - viii. Arrangement and Compromise
  - ix. Partnerships (between non-juristic business ventures)

**Foreign Corrupt Practices: What are the anti-corruption, anti-bribery and economic sanction laws which impact doing business in the country?**

- **Money Laundering (Prohibition) (Amendment) Act 2012**
- **Advance Fee Fraud and Other Related Offences Act 2006**
- **The Economic and Financial Crimes Commission (Establishment) Act 2004**
- **Independent Corrupt Practices & Other Related Offences Act 2000**

**Competition Law: How do laws impact competition?**

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- The Civil Aviation Act, 2006 (CAA) regulating the aviation sector authorises the Nigerian Civil Aviation Authority to investigate incidences of unfair methods of completion and order an operator in the aviation market to desist from such practices [S.30(4)(i)].
The National Broadcasting Commission Act (NBCA) makes it illegal for any person to have controlling shares in more than two television stations and allows the National Broadcasting Commission to consider the shareholding structure of a prospective licensee and the number of its shareholding in other media establishment in determining the grant of a licence (S. 9(5)).

The Federal Competition and Consumer Protection Bill, a harmonised and more robust legislation, is awaiting the President's assent for passage into law. If the SEC considers that a transaction raises competition concerns, it can block the transaction or allow it to proceed, subject to conditions.

**Employment Relations:**

Briefly summarize major laws impacting employment and employee relations.

- **The Contract of Employment:** this is the major document that governs a contract of employment and stipulates the terms and conditions of employment. The terms of the contract of employment are enforceable by the courts
- **Labour Act Cap L1 LFN 2004:** The Labour Act is the key Legislation regulating labour and employment in Nigeria and is applicable to workers employed for manual labour and clerical work in private and public sector. The Act does not cover employees exercising administrative, executive, technical or professional functions as public officers or otherwise.
- **Trade Dispute Act Cap T.8 LFN 2004:** governs the settlement of trade dispute in Nigeria.
- **Employees Compensation Act 2010:** provides for compensations for any death, injury, disease or disability arising out of or in the course of employment; and for other matters relating to them. It also provides for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability arising out of or in the course of employment as well as rehabilitation of employees with work-related disabilities.
- **Nigerian Social Insurance Trust Fund (NSITF)** is the Fund established for the management of the Social Insurance Scheme under the Employees Compensation Act, 2010.
- **Personal Income Tax Act Cap P8 LFN 2004.** See question 2.
- **National Industrial Court Act 2006:** establishes the National Industrial Court of Nigeria as the court with exclusive Jurisdiction to hear matters relating to labour and employment matters.
- **Pension Reform Act 2014:** establishes a Contributory Pension Scheme for employees in the Public Service of the Federation, Federal Capital Territory and Private Sectors in the Federal Republic of Nigeria.

**Statutes and regulations:**

What are the main laws and regulations governing business combinations?

Business combinations in Nigeria are principally regulated under the following:
- Companies and Allied Matters Act 2004
- Investment and Securities Act 2007

In addition, there are other sector-specific laws that regulate business combinations:
- **The Banks and other Financial Institutions Act**, BOFIA Cap B3, Laws of the Federation of Nigeria 2004, which regulates the financial sector and requires the approval of the CBN to carry out restructuring, re-organisation, mergers and disposal of banks (S. 7);
- **The Nigerian Communications Act** 2003, which regulates the telecommunications industry and mandates a licensee to obtain the prior written approval of the Nigerian Communications Commission (NCC) to assign, sub-licenced or transfer its licence to a third party – (S. 38).
**The Insurance Act** 2003, which regulates the insurance industry and requires the approval of the National Insurance Commission (NAICOM) before an insurer can amalgamate with, transfer to or acquire from any other insurer any insurance business or part thereof (S. 30);

**The Electric Power Sector Reform Act** 2005 which regulates the electricity sector and requires the approval of the Nigerian Electricity Regulatory Commission (NERC) before a licensee can assign, cede his licence or transfer his undertaking or acquire by purchase or otherwise the licence or undertaking of any other person in electricity business (S. 69).

**The Civil Aviation Act**, 2006 regulates business in the aviation sector and requires the approval of the Nigerian Civil Aviation Authority (NCAA) for the issuance of a new licence to the person carrying on the business for the time being in the event of death, incapacity, bankruptcy, sequestration or liquidation of the holder of a licence or permit, or appointment of a receiver or manager or trustee [S. 18 of the Civil Aviation (Licencing) Regulations];

**The National Broadcasting Commission Act**, regulates the Broadcasting Sector and requires the prior approval of the Nigerian Broadcasting Commission (NBC) for any transaction or agreement that may directly or indirectly affect its shareholding or would result in new ownership structures involving new persons (S. 1.1.1.1 & 1.1.1.3 of the NBC Code).

**The Department of Petroleum Resources Guidelines** for obtaining Ministerial Consent (2014) which is applicable to the oil and gas sector and requires Ministerial Consent for assignment, transfer and acquisition of assets.

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**Governing Law: What law typically governs the transaction agreements?**

Nigerian law governs transaction agreements through the principal laws governing business combination such as ISA, SEC Rules and Regulations 2013, and CAMA. The NOTAP Act specifically mandates that Nigerian law shall govern the agreement where such involves intellectual; property and transfer of technology, management and consultancy services agreement etc. Where parties elect to use foreign law to govern transaction documents, it is advised that parties seek guidance from Nigerian counsel on possible treatment and recognition of such law by Nigerian courts.

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**Filings & Fees: Which government or stock exchange filings are necessary in connection with a business combination?**

**Filing and fees at SEC for Mergers**
- Pre-Scheme notice to SEC
- Joint letter of intent from merging entities
- Executed scheme documents
- Audited Accounts for up to five years
- Letter of No Objection from sector regulator
- 50,000 Naira filing fees per merging entities
- Payment of relevant fees of the total value of shares being acquired – 0.3% of first 500 million shares; 0.22% of next 500 million shares; 0.15% of any sum thereafter
- Consent of Directors

**Filing and fees at SEC for Take-Overs**
- Authority to proceed with take-over bid
- Two Copies of information memorandum
- Letter of No Objection from sector regulator
- Consent of Directors
- Payment of relevant fees of the total value of shares being acquired – 0.3% of first 500 million shares; 0.22% of next 500 million shares; 0.15% of any sum thereafter

**Filing and Fees at SEC for External Restructuring**
- Shareholders resolution approving external restructuring
- Scheme of external restructuring
- Financial Statements of entities of up to 2 years
- Board resolution of entities involved
- Consent of parties to the transaction

**Filing and fees at CAC**
- Audited Accounts of the Offeror for up to five years
- Letter from offeror appointing financial adviser
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The CAMA defines a substantial shareholder as a person who (either directly or through a nominee or trustee) holds enough shares in the company to entitle such person to exercise at least 10% of the unrestricted voting rights at any general meeting of the shareholders of a public company. A substantial shareholder is required to give a written notice to the company of substantial shareholding or change of substantial shareholding within 14 days of becoming, or ceasing to be, a substantial shareholder. The NSE Rule Book also requires a disclosure of any person who holds 5 per cent or more of the issued shares in listed companies. Similarly, the insider dealing rules of the SEC require a shareholder that holds 5 per cent or more of the shares of a company to notify the SEC upon the purchase or sale of shares in that company.

Applicable sector-specific shareholding restrictions and disclosures are as follows:

The CBN Code of Corporate Governance for Banks and Discount Houses in Nigeria which requires the disclosure of any equity holding of at least 5 per cent by an investor in Nigerian banks and discount houses.

For the acquisition of 5 per cent or more of the shares of a licensee in the power sector, a notification is to be sent to the Nigerian Electricity Regulatory Commission (NERC) in this regard. Further, the prior approval of the NERC is required in the event of any acquisition or divestment that will materially change the ownership status of a licensee in the power sector.

In the telecommunications industry, the Nigerian Communications Commission must consent to any transaction that involves the acquisition of 10 per cent or more of the share capital of a company licensed to operate in this industry. The above requirements are not affected if the company is a party to a business combination.

The CAMA imposes wider fiduciary duties on the directors and managers to the shareholders. These include a duty to exercise good business judgement and act in the best interest of the company. In carrying out these duties, regard must be had to the interests of the company’s employees and the shareholders. With regard to takeovers, the target board is required by law to send a circular to every shareholder of the target entity and to the SEC. This circular will state the opinion and recommendation of the directors in relation to the takeover bid. The directors need not recommend that the shareholders accept the takeover bid. While the CAMA does not impose any duties on directors or managers in relation to the company’s creditors, a director’s duty could extend to consider the interests of the company’s creditors in times of financial distress of a company. The CAMA does not impose similar duties on shareholders.
<p>| Approval and appraisal rights: | With respect to mergers, the approval of shareholders holding at least 75 per cent in value of the shares of members present and voting at the separate court-ordered meetings of each of the merging entities is required. Under the provisions of the SEC Rules relating to acquisitions, the approvals of the separate boards and shareholders of the acquiring and the target companies are required. Where a take-over bid is to be made by a company, the CAMA requires the approval of the board of directors of the company. However, shareholders may have certain approval rights under the articles of the company or shareholders’ agreement. It should be noted that in any business combination implemented by way of a scheme of arrangement, the approval of a majority in number representing at least 75 per cent of the value of shares of members (or of the relevant class) present and voting at the court-ordered meeting will be required in order to approve the scheme. By virtue of the NSE Rules relating to board meetings and general meetings of issuers, if a meeting of the members is convened to approve a transaction, including a scheme, any related party and any interested party would be precluded from voting unless specific instructions as to voting are given. Shareholders have appraisal rights in business combinations. However, this right is only exercisable by dissenting shareholders who did not tender their shares in response to a takeover bid. Such dissenting shareholders may apply to the Court for an assessment and valuation of their shares, following which the offeror or transferee company, as applicable, will be bound to purchase those shares at the price and terms stipulated by the Court. |
| Hostile transactions: | There are no special consideration for unsolicited transactions. In practice, hostile transactions may end up being negotiated ones as the need for the board to issue director's circular in a take-over bid make it difficult for hostile transaction bid to succeed without the Board's approval. The approval of the majority of the number representing not less than 75 percent of the value of shares of members present and voting at the court-ordered meeting (where applicable) may also be required for a business combination to be implemented. |
| Break-up fees – frustration of additional bidders: | Under the Nigerian legal framework there are no express provision allowing or prohibiting break-up or reverse break-up fees. Thus, a company can use break-up fees or reverse break-up fees to protect their deals from third-parties. Parties can also enter into exclusivity agreement in order to restrict the target company from speaking with other potential buyers for an agreed duration while negotiations regarding a business combination are ongoing. However, care should be taken not to violate the intendment of Section 159 of the Companies and Allied Matters Act which prohibits financial assistance in respect to business combinations. Financial assistance in this context involves provision of financial assistance by the target company to the buyer or third parties in order to aid the acquisition of the target company's shares. The Nigerian Stock Exchange (NSE) Rule Book further provides that no offer may be conditional upon the payment of compensation for loss of offer, and, if any such payment is proposed, full particulars must be disclosed. |
| Government influence: | There are no express provisions allowing government agencies influence or restrict the completion of business combinations for reasons of national security. However, where national security is threatened, the rights of persons, both juristic and non-juristic, may be restricted by the government. |</p>
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<th><strong>Conditional offers:</strong> What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?</th>
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<td>An offer may be made subject to certain conditions such as absence of material adverse changes or truth of representation, or the acquirer receiving a specified minimum level of acceptance. The typical conditions allowed include industry specific approvals, required third-party consents and notifications, relevant corporate authorisations, consent of the SEC, regularization of corporate documents at the CAC and other relevant regulatory agencies. With respect to financing, the buyer is required by law to make adequate arrangements to ensure that funds are available to pay for any shares that are tendered under a take-over bid. The SEC expects to see clear evidence of financing in the form of bank statements or audited financials of the acquirer, or letters of commitment from lenders before proceeding with the transaction.</td>
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<th><strong>Financing:</strong> If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?</th>
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<td>Considering Section 159 of the CAC which restricts a target company from providing financial assistance to a buyer, financial assistance are not common in Nigeria. As stated earlier, the buyer is required by law to make adequate arrangements to ensure that funds are available before proceeding with the transaction. In the event that funds are not available before proceeding with the transaction, parties may agree that financing conditions and representations be reflected in the transaction documents.</td>
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<th><strong>Minority squeeze-out:</strong> May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?</th>
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<tr>
<td>Minority shareholders may be squeezed out. Regulatory provisions provide that an acquirer is entitled to squeeze out minority shareholders under a take-over bid where 90 percent of the shares that were the subject of the bid, excluding the shares held by the acquirer, have been tendered. Minority shareholders become bound by the scheme and can be squeezed out once the scheme is approved by the aforementioned 90 percent. A typical restructuring process under a merger takes a period of about 6-12 months.</td>
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<th><strong>Cross-border transactions:</strong> How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?</th>
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<tr>
<td>The structure for cross-border transaction is not particularly different from in-country transaction. There are no specific structures or mandatory regulations applicable to cross-border transaction in Nigeria. Business combinations are principally regulated by the ISA 2007, the SEC Rules, The CAMA, and the Listing Rules of the NSE where the company is listed on the Nigerian Stock Exchange. The SEC Rules and ISA require a foreign investor in a public company to register his investments with the SEC. Other applicable laws include the National Office for Technology Acquisition and Promotion Act Cap N62 LFN 2004 for transaction that require repatriation of fees for transfer of technology or intellectual property rights, and the Foreign Exchange (Monitoring and Miscellaneous) Act Cap F34 LFN 2004, with regard to importation and remittance of foreign capital. Industry specific legislation regulating sectors such as maritime and aviation, oil and gas, telecommunication, electricity require a certain threshold of participation by Nigerians, and these legislations inevitably influence cross-border transactions.</td>
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### Waiting or notification periods: Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

Outside of the waiting periods for regulatory clearance/approvals, other relevant waiting or notification periods include:

1. (i) Court order convening the relevant meetings and for sanctioning the scheme (if applicable) takes about one month (where uncontested),
2. (ii) stamping and tax treatment of the transaction documentation by the FIRS – [two weeks]
3. (iii) CAC approvals and registrations – [Two weeks];
4. (iv) Notice of Court-Ordered Meeting to shareholders (21 days’ notice).

Further, where mergers involve companies in the aviation industry, parties shall not give effect to a merger until the expiry of a 60-day waiting period from the date of issuance of receipt of notification unless Nigerian Civil Aviation Authority (the sector regulator) shortens the said period, or extends it by an additional 30 days with the approval of the merging entities. The Nigerian Communications Commission has a waiting period of 30 days from the date of submission of the application in the telecommunication industry.

### Sector-specific rules: Are companies in specific industries subject to additional regulations and statutes?

Some companies in specific industries are subject to additional regulations and statutes. These include:

- Companies in or providing services to the Oil and Gas sector are required to comply with Nigerian content requirements pursuant to the Nigerian Oil and Gas Industry Content Development Act, 2010 [S. 3. The Act prescribes that priority be given to Nigerian companies and indigenous service companies in respect of award of oil blocks, licenses and works. A Nigerian Company in this context refers to a company with not less than 51% equity shares held by Nigerians.

### Tax issues: What basic tax issues are involved in business combinations?

The applicable and relevant tax issues that may arise will depend on the nature of business combination i.e whether it is a merger, an acquisition a business sale, an arrangement or compromise or whether it is an asset or a share deal. In an asset deal, ad valorem stamp duties at the rate of 1.5% and VAT at the rate of 5% are payable by the Purchaser while the seller is required to pay CGT at the rate of 10% of his gains on the sale. Instruments for transfer of shares are exempted from Stamp duties and gains realised from disposal of shares do not attract CGT. However, in practice, share purchase agreements attract stamp duties. Note that all forms of business combinations in Nigeria are required to first obtain direction and tax clearance from the Federal Inland Revenue Service (FIRS).

### Labor and employee benefits: What is the basic regulatory framework governing labour and employee benefits in a business combination?

The Securities and Exchange Commission (SEC) as a regulator makes certain inspections in mergers and businesses combinations. For instance, SEC ensures that severance benefits of employees of the dissolved companies are paid. This is provided for in Rule 431 of SEC Rules and Regulations, 2013. Failure to present documentary evidence of payment of these severance fees may prevent the affected entity from proceeding with the restructuring process. See section 127 (1) (c) and 2 of the ISA.

The general provisions of the Employee Compensation Act 2010, Labour Act Cap L1 LFN 2004, the Personal Income Tax Act Cap P8 LFN 2004 and the Pension Reform Act 2014 further stipulate that all compensations due to an employee in a business combination should be subject to the contract terms governing their employment relations.

Also, in the case of acquisitions, the NSE Rulebook requires a listed company to provide and circulate circulars detailing the impact of the proposed acquisition on the employees and continuity of the business.
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<th><strong>Information to be Disclosed:</strong> What information must be made public in a business combination? Does this depend on the structure used?</th>
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<td>The nature of the business combination will determine the information that is to be disclosed to the SEC, shareholders or the public. In the case of a merger, the order of the Court sanctioning the scheme must be published in the Official Gazette and in at least one national daily newspaper. A detailed information memorandum on the scope and features of the transaction or scheme is required to be filed with the SEC as part of the approval process for mergers, acquisitions and external restructurings. The SEC may also request additional information. Other specific requirements are as follows:</td>
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<td>Publication of the bid by the offeror (with certain required particulars) in at least two national daily newspapers at the time of dispatching the bid to the shareholders of the target company, applicable in takeovers;</td>
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<tr>
<td>Publication of the court order sanctioning the scheme in a newspaper, applicable to external restructuring; and</td>
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<tr>
<td>Publication of the transaction in at least two national dailies after completion of acquisition, in the case of an acquisition.</td>
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<tr>
<th><strong>Restructuring, bankruptcy or receivership:</strong> What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?</th>
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<td>The consent of the Minister of Petroleum Resources will be required where the target is the holder of an oil prospecting lease or an oil mining lease.</td>
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<td>In the case of a creditors’ voluntary winding up, a third party may only acquire shares from the company if the transfer is sanctioned by the liquidator otherwise any alteration in the status of the members of the company shall be void.</td>
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<td>Where the company is being wound-up by an order of court, any disposition of the property of the company, including things in action and any transfer of shares, or alteration in the status of the members of the company that is made after the commencement of the winding-up proceedings shall be void, unless sanctioned by the Court.</td>
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<th><strong>Anti-corruption and sanctions:</strong> What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?</th>
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<td>The applicable sanctions under Nigerian are fines, imprisonment or both for the officers of the company (or the company as applicable) for giving a financial or other advantage to a government official or a third party to influence their action or inaction. Relevant Nigerian legislation in that regard are the Independent Corrupt Practices &amp; Other Related Offences Act 2000 which provides imprisonment terms for offences relating to “Giving and Receiving” of bribes to influence public duty including bribery to influence “Contract Awards”, the Economic and Financial Crimes Commission (Establishment) Act 2004, the Money Laundering (Prohibition) Act 2011 (as amended); the Criminal Code Act Cap C38 LFN 2004; and the Miscellaneous Offences Act Cap M17 LFN 2004.</td>
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<td>Nigerian law also prescribes economic sanctions. The ISA gives the SEC the power to impose a general penalty of not less than =N=100,000 (approximately US$ 277.00) for violation of its provisions and a further sum of =N=5,000 (approximately US$ 14.00) per day that the violation continues.</td>
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<td>The SEC Rules and Regulation 2015 prescribes penalties for violation of its rules on mergers (1,500,000 to 2,000,000 Naira, approximately 4,170 to 5,560 USD, depending on turnover), acquisition (1,000,000 Naira, approximately 2780 USD), and external restructuring (500,000 Naira, approximately 1,390 USD). The sum of N5,000 will be levied for everyday that the violation continues.</td>
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<td>If the SEC considers that a transaction raises competition concerns, it can block the transaction or allow it to proceed, subject to conditions.</td>
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