

5. CHECKLIST OF STEPS FOR ESTABLISHING NEW COMPANIES IN NIGERIA WITH FOREIGN SHAREHOLDING

5.1 STAGE A

1. Establish partners/shareholders and their respective percentage shareholdings in the proposed company.
2. Establish name, initial authorised share capital and main objects of proposed company.
3. [EXCEPT in instances where the proposed company will be 100% owned by non-resident shareholders] – Prepare Joint-Venture Agreement between prospective shareholders. The Joint-Venture may specify; inter-alia, mode of subscription by parties, manner of Board Composition, mutually protective quorum for meetings, specific actions which would necessitate share-holders approval by special resolution, etc.
4. Prepare Memorandum and Articles of Association, incorporating the spirit and intents of the Joint-Venture Agreement.
5. Foreign shareholder may grant a Power of Attorney to its Solicitors in Nigeria, enabling them to act as its Agents in executing incorporation and other statutory documents pending the grant of Business Permit (i.e.formal legal status for foreign branch/subsidiary operations) to the Foreign shareholder.
6. Conduct a search as to the availability of the proposed company name and, if available, reserve the name with the CAC.
7. Effect payment of stamp duties, CAC filling fees and process and conclude registration of the company as a legal entity.

STAGE B

1. Obtain “Tax Clearance Certificate” for the newly registered company.
2. Prepare Deeds of Sub-Lease/ Assignment, as may be appropriate, to reflect firm comm. on the part of the newly registered company, to acquire business premises for its proposed operations.

STAGE C

1. Prepare and submit simultaneous applications to the NIPC (On the prescribed NIPC Application Form) for the following approvals:-
 - Business Permit and Expatriate Quota;
 - Pioneer Status and other incentives (where applicable)
2. The application to the NIPC should be accompanied with the following document:-
 - Copies of the duly completed NIPC Form;
 - Copies of the treasury receipt for the purchase of NIPC Form;

- Copies of the Certificate of Incorporation of the applicant company;
- Copies of the Tax Clearance Certificate of the applicant company;
- Copies of the Memorandum and Articles of Association;
- Copies of treasury receipt evidencing payments of stamp duties on the authorised share capital of the Company as date of application
- Copies of the Joint-Venture Agreement-UNLESS 100% foreign ownership is envisaged;
- Copies of feasibility Report and Project Implementation Programme of a company for its proposed business. It is advisable that quotations, letters of intent etc, relating to industrial plant and machinery to be acquired by the company, be forwarded either as annexes or separately. In order to discourage the dissipation of administrative energy on speculative applications, the NIPC favours the applicant who has demonstrated positive intention to commence business as and when approvals are granted. Hence, the requests for evidence of acquisition of business premises, evidence of having sourced the plant and machinery to be utilized in the company's business, etc.
- Copies of Deed(s) of Sub-Lease/Agreement evidencing firm commitment to acquire requisite business premises for the company's operation. By implication, the ultimate NIPC approvals do incorporate approvals of the Industrial site locations indicated in the application.
- Copies of training Programme or Personal Policy of the company, incorporating Management succession schedule for qualified Nigerians.
- Particulars of names, addresses, nationalities and occupations of the proposed Directors of the Company.
- Job title designations of expatriate quota positions required, and the academic and working experience required for the occupants of such positions. It is pertinent to note that expatriate quota on a "Permanent Until Reviewed" (PUR) status is only accorded to a Managing Director, where the non-resident Shareholders own a majority of the company's shares, and the authorized capital of the Company is N5 million and above.
- Copies of information brochure on foreign shareholder (If available) as testimony of international expertise and credibility of the foreign partner in the proposed line of business.

STAGE D

1. Having obtained the requisite NIPC approvals and Business Permit Certificate, the non-resident shareholder must act with despatch to import its foreign equity holding in the company. To ensure prompt importation of the foreign equity components, the NIPC may grant Business Permit but defer approvals for Expatriate Quota and Pioneer Status and other applicable investment incentives, until evidence of capital importation is produced.
2. After obtaining Certificate of Capital Importation from the bank, the NIPC is to be notified of this fact with the supporting documentation, in order for it to resume processing of pending approvals that might have been deferred on such grounds.

3. As soon as expatriate Quota position are granted and the respective individuals to fill the quota positions are recruited, the company must embark on steps to obtain work permit and residency status for the expatriate employees and their accompanying spouses and children (if any).

CRITERIA GUIDING THE GRANT OF BUSINESS PERMIT AND EXPATRIATE QUOTA

I. BUSINESS PERMIT:

- (i) NIPC Form 1 with Original receipt for the purchase of the Form;
- (ii) Certificate of Incorporation;
- (iii) A minimum share capital of N5 million;
- (iv) Details of shareholding in the Joint Venture;
- (v) Joint Venture/Partnership Agreement where applicable
- (vi) Memorandum and Articles of Association;
- (vii) CAC's Forms CO7 duly certified;
- (viii) Evidence of capital importation for wholly foreign companies.

II. EXPATRIATE QUOTA:

In addition to the requirements listed under Business Permit, the following additional requirements have to be met for Expatriate Quota Positions:-

- (i) A company applying for Expatriate Quota should show evidence of acquisition of operational premises and operational machinery/equipment in the case of an industrial establishment;
- (ii) Evidence of foreign capital importation;
- (iii) A company applying for Expatriate Quota Positions in the case of provision of services should produce Management and Technical Services Agreement;
- (iv) Companies seeking Expatriate Quota are expected to have a minimum authorized share capital of N5 million;
- (v) Companies applying for Expatriate Quota should produce Tax Clearance Certificate;

- (vi) Companies applying for permanent Until Reviewed (PUR) quota slots must show evidence of payment of tax for minimum of One million Naira (N1,000,000);
- (vii)
 - a) To enjoy two automatic Expatriate Quota Positions, the share capital of the company should not be below N15,000,000;
 - b) A company will be entitled to four automatic Expatriate Quota Positions, if its share capital is N30,000,000 and above;
- (viii) A company would be considered for Expatriate Quota only where the type of personnel required is not likely to be available in Nigeria or where available not in sufficient number.
- (ix) The Company must in all cases supply the names, addresses, qualifications and positions to be occupied by the expatriate (i.e Details of quota positions desired).
- (x) The Company must also produce its project implementation programme;
- (xi) The company must produce a Training Programme for Nigerians in addition to Management Succession Schedule;
- (xii) The Company will furnish its Feasibility Report where applicable especially for new and pioneer industries.