

## Nigeria<sup>1</sup>

### **I. Overview of Country**<sup>2</sup>

Nigeria is a federal republic with a common law system based on the English common law. It has a bicameral legislature, its president is elected by popular vote, and the recent, peaceful election of Muhammadu Buhari is being hailed as a hopeful sign for Nigerian democracy.<sup>3</sup> The country's 1999 Constitution is the supreme law of the land, and it binds all authorities and persons.<sup>4</sup> Nigeria's Supreme Court is the highest court in the country and possesses original jurisdiction in any dispute between the federation and a state, or between states, and also has original jurisdiction to hear and determine appeals from Nigeria's Court of Appeal.<sup>5</sup> The primary sources of Nigerian law are the Constitution, legislation, English law (including common law, doctrines of equity and various statutes), customary law (including ethnic/non-Muslim and Muslim law/Sharia), Islamic law, and judicial precedents.<sup>6</sup>

The rights to peaceful assembly and association are constitutionally guaranteed under Article 40 of the Nigerian Constitution and generally respected.<sup>7</sup> That said, federal and state governments frequently ban public events perceived to imperil national security, including those that could incite political, ethnic, or religious tension,<sup>8</sup> and aspects of the government's response to the terrorist activities of militant Islamist group Boko Haram have prompted cries that citizens' right to freedom of assembly is being violated.<sup>9</sup> The government's response has, additionally, resulted in difficulties for NGOs operating in areas affected by the terrorist insurgency.<sup>10</sup> Finally, in the lead-up to the February 2015 general elections, some political parties encountered obstacles and

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<sup>1</sup> The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup> Disclaimer: The author of this section is a U.S.-trained associate, is not qualified to practice Nigerian law, and relied on publicly available information, including Nigeria legislation, government websites, and other online resources.

<sup>3</sup> *Three Cheers for democracy*, The Economist, April 4, 2015, available at <http://www.economist.com/news/leaders/21647616-muhammadu-buhari-was-least-bad-presidential-candidate-nigeria-may-he-rise-his>.

<sup>4</sup> The Constitution of the Federal Republic of Nigeria (1999).

<sup>5</sup> See The Supreme Court of Nigeria homepage, <http://supremecourt.gov.ng/> (last visited Jun. 1, 2015).

<sup>6</sup> Guide to Nigerian Legal Information, <http://www.nyulawglobal.org/globalex/Nigeria1.htm> (last visited Jun. 1, 2015).

<sup>7</sup> Chapter IV of the Nigerian Constitution enshrines fundamental rights, including the freedoms of association and assembly. Section 39 guarantees the right to receive and impart information. Section 40 guarantees the right to peaceful assembly and association. Section 45 permits these rights to be restricted in the interests of defense, public safety, public order, public morality or public health, or to protect the rights or freedoms of others.

<sup>8</sup> U.S. Dep't of State, Country Reports on Human Rights Practices (2013): Nigeria, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

<sup>9</sup> Freedom House, Freedom in the World (2015): Nigeria, available at <https://freedomhouse.org/report/freedom-world/2015/nigeria#.VWjFAvnF-E4>.

<sup>10</sup> *Id.*

other incidents occurred that indicated possible restrictions were being placed on citizens' freedom of assembly.<sup>11</sup>

## **II. Registration**

### **A. For-Profit Organizations**

#### **a. Laws**

Nigeria recognizes various types of for-profit associations. The principle types are: companies limited by shares (private and public), unlimited liability companies, foreign companies, partnership/firms, sole proprietorships, and representative offices. The Companies and Allied Matters Act (CAMA) is the principal law governing the formation, registration, and operational requirements of companies in Nigeria.<sup>12</sup> Under CAMA, any two or more persons may form and incorporate a company by complying with the requirements of the Act in respect of registration. And, no company, association, or partnership consisting of more than 20 persons may be formed to carry on a for-profit business unless it is registered under CAMA or formed in pursuance of some other enactment in force in Nigeria.

The administration of CAMA is undertaken by the Corporate Affairs Commission (CAC), which was established pursuant to CAMA<sup>13</sup> as an autonomous body charged with regulating the formation and management of companies, and it carries out its functions through various associations and is headed by a Registrar-General. CAC's website lays out the general requirements for registering a company, which depends on the entity's form.

#### **b. Business name**

In order to register a business name, a name availability search must first be conducted. Completed statutory forms must then be submitted along with two passport sized photographs of each applicant and requisite fees paid to CAC. CAC's website notes that individuals and proprietors may register business names without the services of a legal practitioner, chartered accountant, or chartered secretary, which suggests that other business entities are required to hire the latter in pursuit of said aims.<sup>14</sup>

#### **c. Registration**

##### **1. Private or public company**

Registering a private or public company involves four steps: (1) ascertaining the availability of and reserving a name, (2) paying an appropriate stamp duty to Nigeria's Federal Board of Inland

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<sup>11</sup> The International Center for Not-for-Profit Law, NGO Law Monitor: Nigeria, *available at* <http://www.icnl.org/research/monitor/nigeria.html>.

<sup>12</sup> The Companies and Allied Matters Act, Cap. 20 of The Laws of the Federation of Nigeria (2004).

<sup>13</sup> *Id.* at Part I.

<sup>14</sup> CAC, Part B: Registration of Business Names, *available at* <http://new.cac.gov.ng/home/registration-of-business-names/> (last visited Jun. 1, 2015).

Revenue, (3) submitting a Memorandum and Articles of Association together with statutory forms for verification and Assessment to CAC, and (4) paying filing fees.<sup>15</sup>

## 2. Company limited by guarantee

Registering a company limited by guarantee involves five steps: (1) ascertaining the availability of and reserving a name, (2) paying an appropriate stamp duty to Nigeria's Federal Board of Inland Revenue, (3) submitting a Memorandum and Articles of Association together with statutory forms for verification and assessment to CAC, (4) paying filing fees, and (5) securing the consent of the Attorney-General of the Federation.<sup>16</sup>

### d. Constituent documents

#### 1. Memorandum of Association

Under CAMA, the memorandum of every company must be signed, stamped as a deed, and state: (a) the name of the company, (b) that the registered office of the company will be in Nigeria, (c) the nature of the business/businesses or object/objects for which it is established, (d) the restriction (if any) on the company's powers, (e) whether the company is public or private, and (f) whether the liability of members is limited by shares or by guarantee or is unlimited.<sup>17</sup>

As for public/private companies with share capital, the company's memorandum must also state the amount of share capital, not being less than N10,000 (ten thousand Naira) in the case of a private company, and N500,000 (five hundred thousand Naira) in the case of a public company, with which the company proposes to be registered, and the division thereof into shares of a fixed amount. The memorandum subscribers are mandated to take among them a total number of shares of a value of not less than twenty-five percent of the authorized share capital, and each subscriber must write opposite his name the number of shares that he or takes. A subscriber who holds the whole or any part of the shares subscribed by him in trust for any other person shall disclose in the memorandum that fact and the name of the beneficiary.<sup>18</sup>

As for companies limited by guarantee, the company's memorandum must state that the income and property of the company will be applied solely towards the promotion of its objects, and that no portion shall be paid or transferred directly or indirectly to the members of the company except as permitted by or under CAMA. The memorandum must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, and of the cost of winding up, such amount as may be required not exceeding a specified amount and the total of which shall not be less than N10,000 (ten thousands Naira).<sup>19</sup>

#### 2. Article of Association

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<sup>15</sup> CAC, Part A: Registry, available at <http://new.cac.gov.ng/home/part-a-registry/>.

<sup>16</sup> *Id.*

<sup>17</sup> CAMA at §27(1).

<sup>18</sup> *Id.* at §27(2-3).

<sup>19</sup> *Id.* at §27(4).

Articles of Association signed by the subscribers to the Memorandum of Association and prescribing regulations for the company must also be submitted, signed by each subscriber in the presence of at least one witness, and bear a stamp duty. CAMA lays out the requisite form and contents of the articles, which depends on the company's form.<sup>20</sup>

#### e. Winding up

CAMA provides that a company may be wound up by the court, voluntarily, or subject to the court's supervision.<sup>21</sup> The provisions of the law set out in CAMA must be strictly complied with in form and substance. A company may be wound up voluntarily (a) when the period, if any, fixed for the duration of the company by the article expires, or the event occurs on occurrence of which the articles provided that the company is to be dissolved and the company in general meeting has passed a resolution requiring voluntarily winding up, or (b) if the company resolves by special resolution that the company be wound up voluntarily.<sup>22</sup> A company may be wound up by the court if: (a) the company has by a special resolution resolved that the company be wound up by the court, (b) default is made in delivering the statutory report to the Commission or in holding the statutory meeting, (c) the number of members is reduced below two, (d) the company is unable to pay its debt, or (e) the court is of the opinion that it is just and equitable that the company be wound up.<sup>23</sup>

### B. Not-For-Profit Organizations

#### a. Laws

Nigeria recognizes various civil society organizations (CSOs) and non-governmental organizations (NGOs). They include: associations with incorporated trustees, unincorporated associations, charitable trusts, cooperatives, friendly societies, political parties, trade unions, and companies limited by guarantee (the latter formed for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects). The main laws governing CSOs are found in federal legislation, and under the Nigerian Constitution, there are no restrictions on those who want to join together for any kind of purpose so long as the purposes for which the group is formed or the methods it uses are lawful.<sup>24</sup> That said, both Nigerian and foreign CSOs seeking to register/incorporate so as to possess a legal personality and to benefit from limited tax advantages can face obstacles related to barriers of entry (in the form of various requirements), activities (in the form of various government Ministry, Department or Agency criteria it must meet), speech and/or advocacy, and assembly (related to failure to provide protection for and excessive use of force on protests opposing government policies, as well as significant government control over the route and time of protests.)<sup>25</sup> The two most frequently

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<sup>20</sup> *Id.* at §33-4.

<sup>21</sup> *Id.* at Part XV.

<sup>22</sup> *Id.* at §457.

<sup>23</sup> *Id.* at §408.

<sup>24</sup> The International Center for Not-for-Profit Law, NGO Law Monitor: Nigeria, *available at* <http://www.icnl.org/research/monitor/nigeria.html> (last visited Jun. 1, 2015).

<sup>25</sup> *Id.*

sought forms of CSOs for registration purposes are companies limited by guarantee and associations with incorporated trustees.<sup>26</sup>

#### b. Registration

Under CAMA, where a company is to be formed for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar purposes, and the income and property of the company is applied solely towards the promotion of its purposes, the company may be registered as a company limited by guarantee.<sup>27</sup> Registration steps are as listed above, although depending on the nature of the company, various other criteria must be complied with. Not-for-profit entities are not excused from registration fees or stamp duties.

Conversely, an association of persons that pursues registration under CAMA is called an association with incorporated trustees.<sup>28</sup> Upon registration, the trustee or trustees become a body corporate and has/have perpetual succession as well as the power to sue and be sued on behalf of the association.<sup>29</sup> There are two types of associations of incorporated trustees: (a) first, where trustees are appointed by a community of persons bound together by customs, religion, kinship or nationality; and (b) second, where trustees are appointed by a body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purpose.<sup>30</sup>

Registering either of the above entities involves completing an application for trustees and must state the name of the proposed corporate body, which must contain the words “Incorporated Trustees of”; the aims and objects of the association which must be for the advancement of any religious, educational, literary, scientific, social development, cultural, sporting or charitable purpose, and must be lawful; and the name, address and occupation of the secretary of the association. An applicant must attach two printed copies of the constitution of the association; duly signed copies of the minutes of the meeting appointing the trustees and authorizing the application, showing the people present and the votes scored; and the impression or drawing of the proposed common seal. The application must be signed by the person making it. CAC may require a supplementary declaration or other evidence in verification of the statements and particulars in the application, and other information and evidence as it may think.

#### c. Barriers to entry

The President of Nigeria is empowered to issue an order to prohibit any CSO that is “dangerous to the good government of Nigeria or any part thereof.”<sup>31</sup> While this power is seldom used, orders have been issued in the context of unregistered organizations.<sup>32</sup> There is, additionally, a

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<sup>26</sup> The Council on Foundations, Nigeria, available at <http://www.cof.org/content/nigeria> (last visited Jun. 1, 2015).

<sup>27</sup> CAMA at §26(1).

<sup>28</sup> *Id.* at Part C.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at §673.

<sup>31</sup> The Nigeria Criminal Code Act, Cap. 77, Laws of the Federation of Nigeria (1990) at §62.

<sup>32</sup> The International Center for Not-for-Profit Law, NGO Law Monitor: Nigeria, available at <http://www.icnl.org/research/monitor/nigeria.html> (last visited Jun 1, 2015).

ban on the registration of any gay clubs, societies, or organizations.<sup>33</sup> Nigeria's Same Sex Marriage (Prohibition) Act of 2014 illegalizes same sex marriage and also provides that: "Any person or group of persons that ... supports the registration, operation, and sustenance of gay clubs, societies, organizations, processions or meetings in Nigeria commits an offense..."

#### d. Dissolution

Under CAMA, upon dissolution, a company limited by guarantee must transfer any remaining property (after debts and liabilities are satisfied) to another company limited by guarantee with similar objects, or apply the remaining property to some charitable object, the recipient to be determined by members before dissolution, and none of the property remaining may be distributed among its members.<sup>34</sup> Similarly, upon dissolution, an association with incorporated trustees must transfer any remaining property (after debts and liabilities are satisfied) to other institutions with similar objects, institutions to be determined by the members of the association at or before dissolution, and no property may be paid to or distributed among association members.<sup>35</sup> Otherwise, remaining property will be transferred to "some charitable object."

### III. Tax Laws

#### A. Laws

##### a. Generally

In Nigeria, all employed persons, individuals in business, non-residents who derive income from Nigeria, and companies that operate in Nigeria must pay tax. Some taxes are payable to the federal government and administered by Federal Inland Revenue Service, some to state governments, and some to local governments.<sup>36</sup> All companies (other than those engaged in the petroleum and related service industries – see below) are subject to company income tax on their taxable profits. Companies resident in Nigeria are assessed on their worldwide income, while nonresident companies are subject to tax on profits accrued in or derived in Nigeria, so long as profits are not attributable to operations outside the country.<sup>37</sup>

The most common taxes levied in Nigeria are the companies income tax under the Nigeria Companies Income Tax ("CITA") (30 percent),<sup>38</sup> the value added tax on goods and services (5 percent),<sup>39</sup> the capital gains tax (10 percent),<sup>40</sup> the education tax (2 percent),<sup>41</sup> the personal

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 26(10).

<sup>35</sup> *Id.* at 691(4).

<sup>36</sup> Subject to Nigeria's Constitution, the Taxes and Levies (Approved List for Collection) Act 1998 represents the most comprehensive legislation on taxes that may be collected by each level of government.

<sup>37</sup> KPMG, Nigeria Fiscal Guide 2013/14, available at <https://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/2014%20Fiscal%20Guides/Fiscal%20Guide%20Nigeria.pdf> (last visited Jun. 1, 2015).

<sup>38</sup> The Nigeria Companies Income Tax (2007).

<sup>39</sup> The Value Added Tax Act (1993); the VAT Amendment Act (2007).

<sup>40</sup> The Capital Gains Tax Act (1990).

<sup>41</sup> The Education Tax Act (1993).

income tax,<sup>42</sup> the withholding tax (5 to 10 percent), and stamp duties (assessed and payable on a nominal or an ad valorem basis). Companies in the oil and gas sector together with construction and consulting companies that provide services to them are regulated by separate tax laws, and tax rates differ for resident companies in the upstream sector of the oil and gas industry. The rates range from 50 percent for some of the new production sharing contracts to 65.75 percent for others in the first five years, during which all pre-operation expenses are expected to be fully amortized, and 85 percent of their chargeable profits thereafter. The tax rate in the downstream sector is 30 percent.

Finally, partnerships are assessed under the Personal Income Tax Act (PITA), 2011 in the same manner as individuals/enterprise. In Nigeria, partners are assessed in their individual names, based on the share of partnership profits allocated to them.

#### b. Income tax treatment of donations and grants in general

Incorporated Nigerian companies donating to Nigerian CSOs engaged in ecclesiastical, charitable, or educational activities of a public character, or to any of the bodies listed in the Fifth Schedule to CITA, may claim tax relief for donations of up to 10 percent of their profits. Donations made by individuals, on the other hand, are not tax deductible.

#### c. Free Trade Zones

At least twenty zones have been declared free trade zones (FTZs) in Nigeria and offer investors incentives including tax exemption, waiver of import and export licenses, rent-free land during the first six-months of construction, 100 percent repatriation of capital, profits and dividends, duty and tax free imports, and streamlined approval for permits and operating licenses.<sup>43</sup>

#### d. Not-For-Profit Taxation

CITA exempts from tax the profits of companies engaged in certain public benefit activities that are ecclesiastical, charitable, educational or promote sports, so long as the profits are not derived from trade or a business undertaking.<sup>44</sup> Non-profit companies engaged in other activities may apply to the President of Nigeria for an order to exempt them from taxation on their income or profits, no matter what the source.<sup>45</sup> Nigerian CSOs and NGOs are, with certain exceptions, subject to VAT.

### IV. Audits

Under CAMA, every company is obligated to keep accounting records, to prepare financial statements, to prepare directors' reports, to appoint an auditor(s) to audit the company's financial

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<sup>42</sup> The Personal Income Tax Act (2004).

<sup>43</sup> *Nigeria: An Evaluation of the Legal Framework and Advantages of Doing Business in Nigeria's Licensed Free Zones*, Mondaq, Jan. 28, 2015, available at <http://www.mondaq.com/x/369522/Inward+Foreign+Investment/An+Evaluation+Of+The+Legal+Framework+And+Advantages+Of+Doing+Business+In+Nigerias+Licensed+Free+Zones>.

<sup>44</sup> The Council on Foundations, Nigeria, available at <http://www.cof.org/content/nigeria> (last visited Jun. 1, 2015).

<sup>45</sup> *Id.*

statements, and to make and deliver to CAC an annual form in accordance with the Act.<sup>46</sup> Certain modified requirements are available to some small companies. Interestingly, as one of his last orders of business, an audit ordered by Nigeria's outgoing president Goodluck Jonathan was published attempting to answer why \$19 billion in oil revenue had never reached the government's bank accounts.<sup>47</sup>

## **V. Financial Transaction Laws**

### **A. For-Profit Organizations**

In the past, foreign direct investment in Nigeria was obstructed by minimum capital and indigenous ownership restrictions. The Nigerian Investment Promotion Commission (NIPC) Act and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act replaced previous acts on foreign investment and, except in limited circumstances, removed restrictions on foreign ownership of business in Nigeria.<sup>48</sup> An entity established with foreign participation must, in order to conduct business in Nigeria, first register with the NIPC and then obtain various operational permits, licenses, and other approvals.<sup>49</sup> Companies that are part of Nigeria's EPZs are not required to register with the NIPC, since investment approvals are governed by the Nigerian Export Processing Zones Authority (NEPZA), which governs the country's various free trade zones.<sup>50</sup>

### **B. Not-For-Profit Organizations**

Currently, there is no restriction barring civil societies from receiving foreign funding. That said, if enacted, the Bill to Regulate the Acceptance and Utilization of Financial/Material Contributions of Donor Agencies to Voluntary Organizations (2013) will impose a number of restrictions on the ability of organizations to receive contributions from foreign sources.<sup>51</sup> It appears that CSOs received the draft bill in June 2014.<sup>52</sup> Concerns as to how the bill might fall afoul of the constitutional right to freedom of association have been voiced.<sup>53</sup>

## **VI. Penalties for non-compliance**

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<sup>46</sup> CAMA, Parts XI-XII.

<sup>47</sup> Drew Hinshaw, *Nigerian Oil-Revenue Audit Report Published*, The Wall Street Journal, Apr. 27, 2015 available at <http://www.wsj.com/articles/nigerian-oil-revenue-audit-report-published-1430164157>.

<sup>48</sup> The Nigeria Investment Promotion Commission (NIPC) Act, No. 16 of 1995; the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act No. 17 of 1995.

<sup>49</sup> See The Nigerian Investment Promotion Commission webpage, available at <http://nipc.gov.ng/> (last visited Jun. 1, 2015).

<sup>50</sup> See The Nigeria Export Processing Zones Authority webpage, available at <http://www.nepza.gov.ng/> (last visited Jun. 1, 2015).

<sup>51</sup> The Bill to Regulate the Acceptance and Utilization of Financial/Material Contributions of Donor Agencies to Voluntary Organizations (2013).

<sup>52</sup> The International Center for Not-for-Profit Law, NGO Law Monitor: Nigeria, available at <http://www.icnl.org/research/monitor/nigeria.html> (last visited Jun. 1, 2015).

<sup>53</sup> See Report from UN Special Rapporteur on Freedom of Peaceful Assembly and Association (July 18, 2014).



Nigeria's Companies and Allied Matters Act delineates penalties for non-compliance with key obligations. Monetary fines, some accompanied by a possible term of imprisonment, are associated with, inter alia, failure to comply with registration requirements and deadlines, failure to keep a register of members, failure to register a foreign company, failure to register a new company name, failure to report changes in share capital or ownership, failing to notify changes in ownership, and filing false statements. Failure to comply with tax laws can result in imposition of penalties, interest and imprisonment.

## **VII. Political Contribution Laws**

### **A. For-Profit Organizations**

Under CAMA, there is no restriction on the powers of a company to donate to charities aside from Section 38(2), which expressly bars making a direct or indirect donation, gift, gift of property or funds to a political party or association or for any political purpose. The practical upshot is that any donation made by a corporate entity to a political party is null and void, and should a breach occur, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, the company and every such officer or member shall be guilty of an offense and liable to a fine equal to the amount or value of the donation.

### **B. Not-For-Profit Organizations**

No statutory provision bars NPOs from engaging in advocacy or from endorsing candidates for public office. Companies limited by guarantee may not directly or indirectly make a donation of property or funds to a political party or association for any political purposes.<sup>54</sup>

## **OVERVIEW CHART**

<b>Issue</b>	<b>For-Profit Organizations</b>	<b>Not-For-Profit Organizations</b>	<b>Similarities</b>
Registration Procedures	Requirements delineated by CAMA and processed by CAC.	Requirements delineated by CAMA and processed by CAC with additional registration/certification requirements for some CSOs/NGOs.	Heightened requirements for some CSOs/NGOs.
Tax Laws	Tax on income, profits, VAT, etc.	Profits of some entities exempt from tax on income/profits.	Limited exemptions for not-for-profit organizations.
Financial Transaction Laws	Relatively new act removed previous barriers.	Bill expected to introduce new requirements on foreign	N/A

<sup>54</sup> CAMA at §38(2).

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