

AGUGUA & AKINOLA: *Incorporation of Foreign Companies in Nigeria: Challenges and Prospects*
INCORPORATION OF FOREIGN COMPANIES IN NIGERIA: CHALLENGES AND PROSPECTS

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Abstract

One of the many ways that economies of nations grow is by attracting foreign Investment to increase their revenue. Foreign Investors who want to do business in Nigeria and also invest, needs to incorporate their business legally to be able to operate fully and comply with the various regulations on board. The topic extensively looked at how foreign companies can be incorporated in Nigeria, the prospects, challenges and more so incentives that are available to foreign Investors. The paper utilized the doctrinal research methodology to examine the challenges foreign companies face while going through incorporation, the prospects for Nigeria and the incentives that is available to boost and attract more foreign investment. One of the findings of this work is that there is need to de-cluster the complexities and bottlenecks surrounding foreign company incorporation and regulatory compliances especially in securing permits and licenses in various sectors. More so, there is need to put in place infrastructures to aid ease of doing business in Nigeria as what we are lacking has the capacity to scare our foreign investors away. A comparative analysis of how foreign companies are incorporated in United Kingdom, South Africa and Canada was also looked at, so as to see how they attract foreign investors, their incorporation processes and the various incentives they have put in place to retain their foreign investors. Several recommendations were made, which the writers believe if utilized will boost our business sector and attract more foreign investment.

Keywords: Incorporation, Foreign Companies, Challenges, Prospects.

1.0 Introduction

Foreign Companies even though incorporated outside Nigeria must be incorporated as a separate entity before it can carry on business in Nigeria. A Foreign Company has been defined under the First Schedule to the Companies and Allied Matters Act (CAMA) as a Company Incorporated elsewhere than in Nigeria.³ It is important to note, that such a Foreign Company may for the purposes of taking preliminary steps for incorporation, receive notices and documents at an address in Nigeria.⁴ The process for the registration of foreign companies within the Nigerian Corporate space is the same as that of companies incorporated in Nigeria. The only exception is that it shall not invite subscriptions for shares without prior approval of the Securities and Exchange Commission and also certain obligations provided by the relevant statutes must also be complied with. It is imperative to note further, that a foreign company desirous of doing business in Nigeria may apply to the Federal Executive Council through the office of the Minister of Trade and Investment for an exemption from the requirements that its operations be registered in Nigeria as a separate entity.⁵ The Federal Executive Council will grant such exemption in the case of;

- a. Foreign Companies other than those in (d) below or with the approval of the Federal Government to execute any specified individual project.
- b. Foreign Companies which are in Nigeria for the execution of specific individual loan project on behalf of a donor country or International Organization.

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³ CAMA 2020 (as amended) s. 78(1)

⁴ J. O Abugu (SAN), *Principles of Corporate Law in Nigeria* (Revised Edition, AFKAR Printing & Publishing Company Limited, 2023). 200-201

⁵ CAMA 2020 (as amended). s 80(1)

- c. Foreign government owned companies engaged solely in export promotion activities; and
- d. Engineering Consultants and Technical Experts on any individual specialist projects under a contract with any of the governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the federal government.⁶

Furthermore, every exemption granted must specify the period or as the case may be the, the projects for which it is granted and the executive council shall cause same to be published in the Federal Gazette.

When a Foreign Company is exempted from registration under Section 78 of the Act⁷, it shall have the status of an Unregistered Company. Where a Foreign Company is exempted from registration it shall not be construed as authorizing the company to disregard any enactment or rule of law nor be construed as affecting the rights and liabilities of a foreign company to sue and be sued in its name or in the name of its agents.⁸

Incorporating a Foreign company in Nigeria involves many requirements and steps. More so, the minimum share capital required is One hundred Million Naira (₦ 100,000,000) unlike in Nigeria where the minimum share capital is One Million Naira. Also, several permits and licenses are required to be obtained and registration with Nigerian Investment Promotion Commission is also mandatory.

2.0 Conceptual Clarification

This work looks at how Foreign Companies can be incorporated in Nigeria, the prospects involved and the various challenges that comes along with the Incorporation are discussed in details for clarity and understanding. Foreign companies interested in carrying on business in Nigeria must navigate the regulatory landscape carefully. While Incorporation is a legal necessity, exemptions are also available for a specific project. There is need to comply with tax and regulations of various sectors, to ensure smooth operations and avoid penalties. There are generally accepted steps that must be taken when Incorporating a Foreign company in Nigeria.⁹

1. Company registration with the Corporate Affairs Commission (CAC) in accordance with the Companies and Allied Matters Act (CAMA). The name of the company will be searched to see if there are similar names and if it is available.
2. Registration with Nigerian Investment Promotion Commission (NIPC).
3. Obtaining of Nigerian Expatriate quotas.
4. Residence and Immigration requirements permit (Combined Expatriate Residence Permit and Aliens Card) issued by the Nigerian Immigration Service (NIS).
5. Obtaining of requisite license in which the company intends to participate in a specific area, which usually requires government permit or approval.
6. Where a loan is to be brought into Nigeria, there is need to obtain certificate of Capital Importation for equity.

It is important to note, that a business permit is also a necessary document for foreign companies and it can be obtained from the Ministry of Interior. Also, the foreign company needs Expatriate quotas which describes the allowable number of foreigners to be used by business organizations, wishing or operating to run in Nigeria. Every foreign employee of the company, either as a company director or owner requires expatriate quota to work in Nigeria.¹⁰

⁶ *ibid.*

⁷ CAMA 2020 (as amended)

⁸ CAMA 2020 (as amended). s. 84

⁹ Tabitha Uwakeme (2025); Step by Step Guide to Setting up a Foreign Company in Nigeria: Published by Tcorporate Legal Advisory Online

¹⁰ C E, Thank God, A Review of the Regulatory Requirement for Foreign Participation in Nigeria's Business Ecosystem. 2025 Published by SSRN online Platform. Accessed on 15th September, 2025

3.0 Theoretical Framework

In understanding this topic very well, it is important that we look at some theories associated with company incorporation for broader understanding.

A) Legal Personality Theory

This theory is a universal concept, which postulates that an incorporated company is as a matter of law a separate legal entity distinct from the individual(s), who are its shareholders and directors and are in control of its operations.¹¹ This theory was laid down under the common law in the well-known case of *Salomon v Salomon & Co Ltd*.¹² This case established the doctrine of corporate personality which asserts “*personae juris*” toga on a company. Great authors like Gower have gone further to canvass that the concept of corporate personality was introduced to cater for circumstances which tends to accumulate all the debts and liabilities upon an individual. The doctrine act as a shield and helmet to such individual(s) who owns all or a substantial number of shares of a company.¹³ The legal personality concept under the company, therefore affects its structure, existence, capacity, powers, rights and liabilities. The English Court in the case of *Lennards Carring Co. v Aslatic Petroleum Ltd*¹⁴ gave credence to the above reason when Viscount Haldane L.C said; “*A corporation is an abstraction, it has no mind of its own any more than it has its own; its active and directive will must consequently be sought in the person of somebody who for some purposes may be called an agent but who is really the directing mind and will of the corporation, the very ego and center of personality of the corporation*”

The Nigerian courts had at various times upheld the doctrine of corporate personality as it applies corporate administration governance and control. The principle was also re-affirmed in the case of *Marina Nominees Ltd v Federal Board of Inland Revenue*¹⁵, wherein the Court held thus;

“The truth however is that it is a company registered under the Companies and Allied Matters Act having its full legal status on the principles enunciated in Salomon v Salomon & Co Ltd and must be subject to all incidents of incorporation”.

The separate legal personality of the company commences from the date of incorporation as once a company is incorporated, there are effects which are;

- a. The company is liable for its debts and obligations, not the members.¹⁶
- b. The company has the right to institute an action and be sued in its own name.¹⁷
- c. Capacity to enter contract.¹⁸
- d. The property of the company belongs to the company itself; members have no proprietary interest in the assets of the company.¹⁹
- e. It has perpetual succession (death of members would not result to the death of the company).

B. Corporate Sovereignty

The principle of corporate sovereignty is such that Courts will not interfere in the internal affairs of a company because it should be within the competence of the shareholders to determine their company’s course and direction. This concept or rule is known as the majority rule, which is in line with the rule in *Foss v Harbottle*.²⁰ The rule is that in an action to remedy any wrong done to the company or where irregularity has been committed in the course of a company affairs, the proper plaintiff is prima facie the company itself.

¹¹ O B Akinola; A Critical Appraisal of the Doctrine of Corporate Personality under the Nigerian Company Law. 2022 *NLII Working Paper Series* 002.

¹² (1897) AC, 22

¹³ Gower; Principles of Modern Company Law, 11th Edition (UK: Sweet & Maxwell Publication Ltd, 2021).

¹⁴ (1915) AC.705 at 713-714

¹⁵ (1986) 2 NWLR (Pt. 20) at 61

¹⁶ CAMA, 2020. (as amended) s.42

¹⁷ *Foss v Harbottle* (1843) 2 Hare 461

¹⁸ Aduma and Ibekwe: Protection of Minority Shareholders under Nigerian Company Law (2017) 2 *NAUJILJ* 8

¹⁹ *Ferguson v Wilson* (1866) L.R 2CH.77

²⁰ (1843) 2 Hare 461.

More so, where the alleged wrong is an irregularity, which might be made binding on the company by a simple majority of members, no individual member can bring an action in respect of the irregularity.²¹ The rule is otherwise known as the majority rule because in deciding whether or not to sue for an alleged wrong done to the company, it is the majority that decides and not the minority and the decision of the majority represents that of the company.²² The rule is sequel to the Corporate Personality principle that the company is separate and distinct from the company by the directors, members or even outsiders can bring an action to remedy the alleged wrong. It is worthy of note, that a lot of justifications have been put forward for the use of the rule;

1. Any irregularity ought to be corrected by the majority of members of the company especially where such irregularity relates to the internal affairs of the company.
2. The rule avoids multiplicity of suits. Any suit at the instance of the minority, no matter how meritorious is wasteful as long as the majority members do not support it.
3. Since the company is separate from the members, any wrong committed against the company should be remedied by the company acting through the majority.
4. The rule is justified on the ground of judicial policy, which emphasizes that the courts will normally not judge Intra-Corporate disputes, if the majority of the shareholders decide that the matter will not be made a subject of litigation.

The Nigerian Courts have also applied this rule to a number of cases in Nigeria as can be seen in *Nigerian Stores Workers Union v Uzor (1971) 2 ALR (Comm) R.412*; *Omisade v Akande (1987) 2 NWLR (Pt. 55)158*; *Amaye v Associated Registered Engineering Contractors Ltd (1990) 4 NWLR (PT.145) 422*.

4.0 Legal and Institutional Frameworks for Incorporation of Foreign Companies

The incorporation of foreign companies brings about foreign investment, which is crucial to the achievement of business objectives and economic viability of any nation. We will look at the legal frameworks surrounding the incorporation of foreign companies in Nigeria;

1. Constitution of the Federal Republic of Nigeria 1999 (as Amended)

The Nigerian Constitution guarantees that the foreign investor enjoys fair and equitable treatment like nationals and enjoy the same rights granted by the law to Nigerians under similar conditions.²³

2. Companies and Allied Matters Act (CAMA) 2020

This is the major legislation regulating the incorporation of the companies in Nigeria including foreign companies. Chapter 3 of CAMA deals extensively on the legal requirements for a foreign company to exercise the power of a corporation and operate in Nigeria. Section 78 of CAMA specifically mandates every foreign company intending to conduct business in Nigeria to obtain incorporation as a separate entity within the country. Until such incorporation is completed, the foreign company is prohibited from engaging in business activities or exercising registered company powers.

However, a foreign company can be exempted from these requirements by the minister charged with the responsibility of trade under Section 80 of CAMA. Any act of a foreign company in violation of these provisions is deemed void and non-compliance can result in penalties specified by the Corporate Affairs Commission. Section 79 of CAMA imposes penalties on foreign companies failing to comply with the

²¹ *Edwards v Hallwell (1950) 2 ALL ER 1064 Per Jenkins L.J*

²² Obinuchi Chimezule; *Legal and Institutional Framework for Corporate Sovereignty in Nigeria- Issues, Prospects and Challenges*. 202. Researchgate Publishers. Accessed on 16th September, 2025.

²³ Constitution of the Federal Republic of Nigeria 1999 (as amended). Chapter IV

requirements of Section 80. Section 81 of the Act provides for the filing of annual report by foreign companies in a manner prescribed by CAC in every calendar year. Section 82, 83 and 84 of the Act provides for exempted foreign companies to have status of an Unregistered Company.

3. Nigerian Investment Promotion Commission Act (NIPC)

Foreign companies have an option to buy shares of any Nigerian enterprise in any convertible currency²⁴. Section 24 of the Act provides for free transferability of capital and returns. It also provides that every foreign investor is guaranteed unconditional transferability of funds through an authorized dealer in a free convertible currency. More so, foreign investors are protected against nationalization and expropriation²⁵. The Act provides that no enterprise shall be nationalized or expropriated by any government of the Federation. Where there is any dispute, foreign companies are granted the option of recourse to International Arbitration for the settlement of disputes²⁶. Furthermore, as a way to encourage more foreign companies to be incorporated in Nigeria, the NIPC in conjunction with Federal Inland Revenue Service (FIRS) came up with a compendium of investment incentives in Nigeria published according to Section 4(1) of the NIPC Act which requires NIPC to provide and disseminate up to date information available to investors in Nigerian tax laws and sector wide fiscal concessions that have been duly approved by the Federal Government.

4. Immigration Act, 2015

The exit and entry of foreigners, who are employed in Nigeria is regulated by the immigration Act. Section 5(7) of the Immigration Regulation of 2017 provides for the issuance of a special type of visa called the Investor Visa for a foreign national, who has imported an annual minimum threshold of capital into the country. The visa has five years validity with multiple entries and can be renewed.

5. Foreign Exchange (Monitoring and Miscellaneous) Provisions Act (FEMMPA) 2004

The FEMMPA provides that foreign companies who imports capital through an unauthorized dealer either by transfer, cheques or other negotiable instrument will be issued a certificate of capital importation.²⁷ Also, by virtue of Section 15(4) of the Act, Foreign currency imported into Nigeria and invested is guaranteed unconditional transfer of funds is a freely convertible currency of any such monies arising from an investment made in Nigeria, relating dividends and profits, payments in respect of loan servicing and remittances of the proceeds of sale or liquidation of the enterprise or any interest accruing to the investment made. This goes to show that a foreign investor can bring in capital into the country to finance investment through capital importation and can repatriate back 100% of profits to his or her home country without hindrance. Although the repatriation is communicated by an Authorized dealer to the Central Bank, which is to furnish same to the Minister of Finance.

6. Arbitration and Mediation Act 2023

Foreign Companies incorporated in Nigeria have the opportunity to determine the mode of settling disputes that may arise out of their investments without resorting to litigation in domestic courts. The Act which replaced the Arbitration and Conciliation Act provided a unified legal framework for a fair and efficient settlement of commercial disputes by arbitration and conciliation. The Act recognizes the enforcement of foreign awards to any award made in Nigeria in any contracting state arising out of international commercial arbitration provided that such contracting state has reciprocal legislation recognizing the enforcement of arbitral awards made in Nigeria.²⁸

²⁴ NIPC Act, s 26

²⁵ NIPC Act, s 25

²⁶ NIPC Act, s 26

²⁷ FEMMPA ACT, Cap F34 LFN 2004, s 15

²⁸ Cap A1 8 LFN 2004

7. Income Tax Relief Act

Under industrial development income relief Act, Foreign companies on the basis of pioneer status for the first period of 3-5 years or exemption from tax to encourage their foreign investment. This pioneer status incentive (PSI) was formulated to promote Foreign Direct Investments for a Foreign company to be eligible for PSI, the business, which the company is involved in, must be part of the industries approved as a pioneer industry by the Federal Executive Council e.g Agriculture, Mining, Quarrying, Construction, Gas supply etc. Also, upon incorporation, the company must also obtain a Tax Identification Number (TIN) from the Federal Inland Revenue Services (FIRS), for its tax obligations, including corporate tax and Value Added Tax (VAT) registration.

8. Nigerian Startup Act, 2022

Under the Nigerian Startup Act, for a foreign company to be eligible to be granted the startup label in Nigeria, it must among other requirements be registered as a limited liability company under CAMA 2020, not be older than ten years, be engaged in innovation and technology and must have at least one-third of its ownership held by Nigerian citizens.²⁹ There are also sector-specific regulations as foreign companies are required to comply with certain requirements in various specialized sectors;

- a. For Foreign companies in the oil and gas sector, which is heavily regulated, they must comply with the requirements specified by the Petroleum Industry Act of 2021. There is also the Nigerian Oil & Gas Industry Content Development Act (NOGICDA) 2010. There are several permits required that must be obtained before these companies can operate fully.
- b. Banking and Financial Services Sector: The central Bank of Nigeria is the apex regulations body for financial services and Bank and Other Financial Institutions Act (BOFIA), 2020 is the statute governing the banking and financial services sector. There are also various banking licenses a foreign company must obtain from the Central Bank.
- c. Telecommunication Sector: The Nigerian Communications Act which established the Nigerian Communications Commission (NCC) regulates the telecommunications sector. Foreign companies must obtain operating licenses and comply with the various regulations and guidelines issued by the NCC and the Minister of communications. There are also local content requirements that require foreign telecom companies to partner with Nigerian firms under special instances.
- d. Real Estate Sector: Foreign Companies interested in investing in the Nigeria real estate sector must comply with the Land Use Act 1978 and the various state Land instruments legislations. Even though Foreigners are not entitled to land in Nigeria as of right.³⁰

5.0 Institutional Frameworks for Incorporation of Foreign Companies

In the course of incorporating foreign companies in Nigeria, there are institutions or agencies saddled with one responsibility or the other and which foreign companies must pass through before launching their business operations in Nigeria. They include;

1. Corporate Affairs Commission (CAC)

The incorporation of a company is done at the Corporate Affairs Commission, which serves as the regulatory body and it is established by the Companies and Allied Matters Act, 2020. Upon incorporating the foreign company, the company will be issued with a certificate of incorporation and for the first eighteen months of post-incorporation, companies are exempted from filing annual returns with CAC.

²⁹ Nigerian Startup Act 2022 s.13

³⁰ *Gerhard Heuber v Aeronautical Industrial Engineering and Project Management Company Limited (2017)14 NWLR (Pt 158) 396*

2. Federal Inland Revenue Service

This body is the regulatory body for tax compliance. Upon the incorporation of the foreign company, it is expected to update its Tax Identification Number and obtain its value added tax certificate. The certificate grants the company a right to receive VAT fees at the rate of 7.5% from its customers. The company is also expected to pay Company Income Tax (CIT) where it makes twenty-five million Naira and above annually.

3. Nigerian Investment Promotion Commission (NIPC)

This commission promotes and coordinates investments in Nigeria. Foreign companies are required to register with NIPC to enjoy the benefits and incentives provided to foreign investors.

4. Economic and Financial Crimes Commission (EFCC)

Under the EFCC, there is the Special Control Unit against money laundering (SCUML), which is responsible for ensuring compliance with anti-money laundering and counter-terrorism financing regulations. Every foreign company is expected to have a SCUML certificate.

5. National Office for Technology Acquisition and Promotion (NOTAP)

Where the foreign company is into technology of any sort. It is expected to register an agreement with NOTAP for the transfer of the technology or use of intellectual property rights or for the provisions of managerial/supervisory assistance.

6. National Agency for Food and Drug Administration and Control (NAFDAC)

Where the foreign company is into manufacturing of food, drinks, drugs, etc., it must apply to NAFDAC, as it is the body that regulates the quality of food and drugs and other regulated products consumed in Nigeria.

7. Standard Organization of Nigeria (SON)

This is the body in charge of the standardization of products in Nigeria. They are in charge of all the products, processes and scientific study of measurement standards. They ensure that products that are locally manufactured in Nigeria have the required level of satisfaction desired by customers.

8. Nigeria Custom Service

The custom is charged with the responsibility of ensuring that the products that come in or go out of the country meets the required standards for foreign companies who may want to be importing their raw materials, undergoing through the custom regulation is paramount, so that fake products are checkmated at our sea/land ports. There are also industry specific institutions depending on the sector, the foreign company is to venture into. Agencies like Central Bank of Nigeria, Nigeria Civil Aviation Authority (NCAA), Nigeria Communication Commission (NCC), Nigeria Copyright Commission etc. All specific guidelines and regulations that foreign companies involved in their sector must comply with. These Institutional frameworks have been put in place for the purposes of regulation and monitoring, so that foreign companies can align with our rules and regulations for unity within the Corporate/Business sectors.

6.0 Challenges of Incorporating Foreign Companies

It is not in doubt that foreign companies incorporated in Nigeria face a lot of challenges and hurdles. Some of these challenges includes;

A. Regulatory Multiplicity of Role/Complexity;

It is sad to note, that there are a lot of competing and overlapping of roles by regulatory bodies and agencies. This complexity leads to confusion and great difficulty for foreign companies to navigate. They constitute frustrating and unbearable hitches for foreign investors as many agencies seek to duplicate their roles which makes a lot of foreign investors to be weary and reluctant. Things are not straight forward as it ought to be.

B. Rise in Insecurity / Kidnapping;

This has caused a lot of fears and uncertainties in the hearts of many foreign investors. The rise in insecurity has continued to be a bane for economic growth and has reduced a high number of foreign companies from coming into the country. Foreigners are scared of their lives and wants to do business in a safe and secured environment.

C. Bureaucratic Bottlenecks;

It is sad that there are several business procedures involved in obtaining business permits, CERPAC licenses, expatriate quotas. The processes are so tedious, as there are bottlenecks in the process, which has created a lot of inefficiencies and red-tapism. This has caused a lot of setbacks for foreign companies to fully launch out in their businesses.

D. Lack of Understanding of Business Structures;

Many Foreign companies come in to do business without first understanding the various ways businesses can be structured in line with the Companies and Allied Matters Act. Many of these foreigners do not work with seasoned business lawyers and it becomes a big challenge by the time they are finally incorporated, they now recognize that they may not be able to fully operate with the kind of business structure, under which their company was registered.³¹ When the right business structure is chosen, it helps to ensure that there is compliance with the guidelines for registration as issued by CAC. It also provides the business with a solid foundation and saves time and money with respect to compliance with the requirements of the law.

E. High Operating Cost;

Nigeria lacks key infrastructure especially in electricity, transportation, which results in high expenses for companies. There is erratic and unreliable power supplies which leads many foreign companies to rely on alternative energy sources, poor transportation, road networks, including rail, also raises the cost for logistics of these companies.

F. Instability and Exchange Rate Volatility

The rate at which Naira depreciates is a major concern, as the frequent value changes causes uncertainties for foreign investors and it is difficult for foreign companies to make long term planning and financial decisions. More so, liquidity restrictions and high inflation all significantly impacts the foreign exchange market and the foreign companies in Nigeria.

7.0 Prospects for Incorporation of Foreign Companies

Nigeria offers a mixed significant market opportunity in diverse sectors, coupled with its seemingly growing population. There is a large consumer market because of the population and it creates a substantial consumer base for business, which is a big attraction to foreign companies. More so, considering the country's rich natural resources, foreign companies can leverage on it to invest as there exists big opportunities in expanding sectors like technology, fin-tech, manufacturing, agriculture etc. A combined consideration of various investor friendly reforms put in place by the government as incentives are good enough to attract foreign investment, which will help our economy and boost our revenues. It is very key that government pitches our country to investors, as the influx of foreign companies in our economy will in turn bring positive turn around and help improve the various sectors that we have and the business environment as well.³²

³¹ Francisca Nlerum, 'Case for Review of Laws on Foreign Business Participation in Nigeria'. (2021) *Business Law Review*, Vol 42 (3) 128-135.

³² Salumi Toluwani (2024); A Comprehensive Guide to Establishing a Foreign Company in Nigeria. Published by Charis Legal Practice via online Law Blog.

8.0 Incentives for Incorporation of Foreign Companies

The Nigerian government wants to improve its economy; hence they welcome foreign investors who wish to incorporate their companies in line with the laid down rules and regulations. In order to attract huge Foreign Direct Investments, the government has put up certain incentives, which stands out as the prospects that the foreign companies will gain when they are incorporated. They include;³³

1. Guarantees Under the Nigerian Investment and Promotion Act:

By the combined reading of Section 24, 25 and 26 of the NIPC Act, 1995, the foreign companies incorporated in Nigeria are entitle to certain assurances and guarantees, such as ;

- a. Uninhibited repatriation of capital, profits or dividends.
- b. Foreign loan servicing interests in freely convertible currencies through authorized dealers.
- c. They have assurances against expropriation or nationalization.
- d. Just and fair compensation in event of nationalization by the government where necessary for overriding public interest.
- e. Right of access to mediation and arbitration for resolution of investment disputes. Under the rules provided in bilateral or multilateral investment treaties which Nigeria and other countries are parties to.

2. Pioneer Status Incentives (PSI):

It is pertinent to note, that foreign companies operating in some specified industries or sectors may enjoy a tax holiday for up to a period of five (5) years under the Industrial Development (Income Tax Relief) Act.³⁴

3. Investment Promotion and Protection Agreements (IPPAs):

Nigeria is a signatory to some IPPAs with several countries, including bilateral and multilateral investment treaties, and the aim is to ensure fair treatment and protection for foreign investments in the signatory countries.

4. Free Trade Zone:

Foreign companies that are operating in Free Trade Zones (FTZs) enjoy several benefits, such as tax exemptions, duty-free importation of goods, and the ability to repatriate profits without restrictions.

5. Companies Income Tax:

The Companies Income Tax Act has been amended in order to encourage potential and existing investors and entrepreneurs. The current rate is dependent on the company's annual turn-over.

6. Double Taxation Agreements:

The Nigerian government has over the years entered into double taxation agreements with a number of countries. The major reason for this agreement is to give relief from double taxation in relation to taxes imposed on profit taxable in Nigeria and any taxes of similar character imposed by the law of the other country concerned. This is by way of a "Tax Credit".³⁵

³³ Hannatu Adamu (2013); Towards Easing the Incorporation Process for Economic Transformation in Nigeria published by researchable online publication. Accessed on 10th September 2025

³⁴ Olawunmi Ojo, 'Doing Business in Nigeria: What Foreign Investors must know about Nigeria's FDI Environment'. (2025) Published by the Trusted Advisors online blog.

³⁵ A A, Adedipe and O F Isiorho, "A Foreigner's Guide to Establishing a business in Nigeria, (2021) Published by Pavestone Legal Blog. Accessed on 15th September, 2025.

9.0 Comparative Approach to the Incorporation of Foreign Companies in the United Kingdom, Canada And South Africa

9.1 United Kingdom

Incorporating a Foreign company in the United Kingdom creates a new legal entity with tax obligations to HM Revenue and Customs. Any profit that the incorporated foreign company declares will be subject to the corporate tax rate which is currently 19%. Upon incorporation, a foreign company attains legitimacy and can open a bank account in the company. Upon incorporating a foreign business in the United Kingdom, you will create a new legal entity independent of the foreign business. It will be a subsidiary of the foreign business (parent company). A lot of people consider incorporating their businesses in the United Kingdom as it is the world's 6th largest economy, the economy is extremely stable, there is a transparent legal system and a favorable tax environment. More so, they have well-established physical and digital infrastructure, strong stock market, skilled workforce and fair competition rules.³⁶

To incorporate a foreign company in the United Kingdom, you must register it with the official registrar, company house by submitting the required constitutional documents, a registered UK address, details of the directors, shareholders, the memorandum of association and articles of association. The incorporation process can be done online after which the company can then proceed to open an account and acquire the necessary license or permits required for the sector, the foreign company is interested in.³⁷ In incorporating a foreign company, there has to be a choice for the company structure to choose, whether limited company (LTD), public limited company (PLC), limited liability partnership (LLP) and Scottish liability partnership (SLP).³⁸ Upon presenting a name to be used, which can be in any language (a translation must be provided), other details like the registered office address, director, and shareholder information, memorandum of association, articles of association, capital statement are submitted to the companies' house. Upon one month of opening for business in the United Kingdom Form OS IN01 will be completed and submitted to the companies' house. It is worthy to note, that there is no minimum capital requirement for incorporation of a company and this is a huge plus and incentive.

9.2 South Africa

Foreign companies are incorporated as external companies with the Companies and Intellectual Property Commission (CIPC) within 20 business days of beginning to conduct business in South Africa. Upon reserving a company name, the foreign company is expected to submit a Memorandum of Incorporation (MOI) and at least appoint one director who may be a foreigner but the means of identification needs to be notarized. The foreign company may also need to register for Value Added Tax (VAT) and with other relevant government bodies. Also, part of the document to be submitted to CIPC is the Certified copy of the passport of the directors, their physical address, work or business visa, proof of the business operating address. The foreign company is also subject to tax in respect of its taxable income.³⁹ In South Africa, foreign companies can also adopt the private company structure, public company, personal liability company, partnership, external company and non-profit. Also, the foreign company is also expected to lodge its annual returns within 30 days from the anniversary of the incorporation of the company, the company is also at liberty to open a bank account upon incorporation. Also, in the event that the shareholder of the company is a non-resident, the share certificate that will be issued needs to be stamped by the company's bankers as

³⁶ Available at <https://www.gov.uk/government/publications/overseas-companies-in-theuk-registration-filing-and-disclosure-obligations/overseas-companies-registered-in-the-uk>. Accessed on 17th September, 2025.

³⁷ *ibid*

³⁸ Starting a Business in the United Kingdom as a Foreigner by Start-up AZ 2023 published by Suaz.co.uk. Accessed on 16th September, 2025

³⁹ E.J Brooks: Foreign Business Corporations and South African Private International Law Published by *Sabinet African Journals*.

“non-resident” this may also require approval by the South African Reserve Banking line with the terms of South African Exchange Control regulations.⁴⁰

9.3 Canada

In Canada, foreign companies can be incorporated by either setting up a new Canadian Corporation (a subsidiary) or by registering an existing foreign corporation as a Canadian branch. Also, there is Federal Incorporation which offers broader operational scope across Canada and can provide greater visibility and flexibility for future growth e.g public offerings or mergers. There is also provincial Incorporation, which permits operations within a specific Canadian Province.⁴¹ There are key steps for incorporation and it includes; Selecting a name that meets Canadian naming regulations, directors are appointed based on incorporation requirements, directors are appointed based on incorporation requirements, the necessary documents are filed with the appropriate Federal or Provincial authority. The foreign company will have to also register with the relevant tax authorities to obtain a business number and comply with tax laws. A minute book needs to be maintained as it is where important company decisions are maintained, which is also a legal requirement. Upon incorporation, foreign corporations will file certain information with the Canada Revenue Agency (CRA), so that its Canadian shareholders can elect under Section 86.1 of the Federal Income Tax for spin off dividend.⁴² The Canada Business Corporations Act (CBCA) is an Act of the Parliament of Canadian Business corporations. Corporations may be incorporated under the CBCA or provincially under a similar provincial law. The CBCA is the federal legislation that governs the formation, operation and dissolution of corporations in Canada. It sets out the rules for federally incorporated companies, covering aspects like directors’ duties, management responsibilities, shareholder rights and corporate structure.⁴³ In Canada, the federal government typically offers interest free loans through one of the Regional Economic Development Agencies, the repayment of these federal interest free loan starts 12 months following the project completion and it can take 5 to 7 years. Each province has its own incentive programs and tax credits.

10.0 Summary of Findings

1. Foreign investors must prioritize regulatory adherences, risk management through corporate governance and local engagement to thrive in Nigeria’s evolving business landscape.
2. Foreign companies must engage professionals in handling incorporation, procurement of permits and licenses, so that they easily assimilate into the business environment without any hitch.
3. A thorough look into our regulatory agencies is important to avoid complexity or multiplicity of roles and to remove the unnecessary bottlenecks.
4. Most foreign companies are not aware of the incentives available, how to access them and hence there is need to publicize these incentives, so that it becomes common knowledge within the business environment.
5. Foreign companies and investors must understand the business structures we have in Nigeria and align their interest within their choice structure. They must be knowledgeable on how businesses are managed and handled, that way, it is easy for them to flow in the terrain.
6. The foreign company must also know how to bring in foreign employees to work in the company in the right way and must stick to the laid down immigration rules and guidelines.

⁴⁰ Emma Forbes: 10 things to Know about Foreign Companies as External Companies in South Africa. Published by Norton Rose Fulbright Financial Institutions Legal Snapshot June 2015.

⁴¹ Available at <https://www.rippling.com/blog/foreign-entity-setup-in-canada> Accessed on 17th September, 2025.

⁴² Available at <https://www.canada.ca/en/revenue-agency/service/tx/businesses/topics/information-foreign-corporations.html>. Accessed on 18th September, 2025

⁴³ R.S.C 1985, c. C-44

7. Depending on the sector, the foreign company is involved, there is need to ensure that all the licenses, permits required by that sector is obtained appropriately.
8. The foreign company must understand the roles and liabilities of directors, shareholders, the import of the One Hundred Million Share capital and what it means and represents.
9. The use of alternative dispute mechanisms in handling commercial disputes is worthy of note, as this will make foreign companies assured that even in disputes, their interest is also secured even though they are not nationals.
10. The One Stop Investment Centre (OSIC) which was established by the Nigerian Investment Promotion Commission is also commendable even though its effectiveness is sometimes questioned as delays are still being experienced.

11.0 Conclusion

Every country wants investors to come in and the incorporation of foreign companies in Nigeria is one of the ways, foreign investors can invest in the country. The incorporation of foreign company in Nigeria is one of that is not without challenges, even though there are also prospects in it. It is imperative that measures are put in place to ensure foreign investors are made to understand the incentives that can accrue to them when their companies are incorporated in Nigeria and more so, they must know how to utilize the incentives. Amongst these incentives which are quite commendable, the government needs to set up to address the highlighted challenges, create a safe and secure business environment, where key infrastructures are in place for ease of doing business. All regulatory bottlenecks need to be removed for a seamless and efficient procedure without complexities.⁴⁴ Once these challenges are curbed, there will be a boost in the economy, as foreign investors will feel the ease and will do their businesses which drives the economy. The government needs to do more to get it right and ensure the astronomical growth of our economy and revenue.

12.0 Recommendations

1. Every foreign company must carry out due diligence before investing and incorporating their companies in Nigeria.
2. There is need to engage a versatile, knowledgeable lawyer, so as to ensure there is due compliance to regulatory frameworks that are needed.
3. Foreign companies must have the knowledge of the kind of business structure that they want to fit in with their nature of business, so as not to make mistakes at the point of incorporation.
4. There is need to remove bureaucratic bottlenecks that causes hurdles when getting the requisite permits, licenses etc. This will help the ease of doing business for foreigners.
5. More incentives should be put in place to attract foreign investors and also to build the economy in every dimension, as foreign direct investment is need for our economic growth and stability.
6. Government must speed up plans to put in place adequate security as when people are scared of their lives, they will not be comfortable to put in their money in an unsafe environment.

⁴⁴ O M Atoyebi SAN and R Osoghororume Esq; Foreign participation Regulations in Nigerian Businesses, (2024). Published online by Omaplex Law Firm.