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Private Wealth

Second Edition

Nigeria
Jackson, Etti & Edu

[chambers.com](https://www.chambers.com)

2019

Law and Practice

Contributed by Jackson, Etti & Edu

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Jackson, Etti & Edu is a leading commercial law firm rendering comprehensive services to Nigerian, pan-African and international clients. The firm, which was established in 1996, has 11 partners and over 60 associates spread across three key offices in Nigeria, as well as affiliate offices in Ghana, Cameroon and Zimbabwe. The practice renders a wide range of specialist and general legal services spanning areas such as private wealth, high net worth clients advisory, tax,

real estate, succession, intellectual property, commercial intellectual property, general commercial, estate litigation, banking and finance, immigration, corporate mergers and acquisitions, business and regulatory advisory, commercial litigation and regulatory compliance. It also has extensive expertise in tax, trust and estate planning, succession, citizenship and immigration.

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1. Tax

1.1 Tax Regimes

In Nigeria, liability is dependent on residence and not domicile or nationality. Where an individual is resident in Nigeria and receives profit from a trade, business, profession or vocation, or from any source inside or outside Nigeria, such individual is liable for tax in Nigeria.

With respect to the gain or profit from employment, such gain or profit would be deemed to be derived from Nigeria if the duties of employment are wholly or partly performed in Nigeria. However, gain or profit from employment would not be deemed to be derived from Nigeria where:

- duties are performed by the employee on behalf of an employer who is in a country other than Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria; and
- the employee is not in Nigeria for a period or periods amounting to an aggregate of 183 days (inclusive of annual leave or temporary period of absence) or more in any 12-month period commencing in a calendar year and ending either within the same year or the following year; and
- the remuneration of the employee is liable for tax in that other country under the provisions of the avoidance of double taxation treaty with that other country.

For the above exemption to apply, all the above provisions must be present.

Individuals

Personal Income Tax (PIT) is imposed on the income of individuals resident in Nigeria. However, where a person resident outside Nigeria derives income or profit from Nigeria, such income would also be liable for PIT.

Residents are, however, entitled to tax credit against the tax payable for income brought into Nigeria, provided the income is brought into Nigeria through approved government channels. The tax credit allowable cannot exceed the proportion of the income derived from outside and brought into Nigeria.

The salaries, wages, fees, allowances and all other gain or profit from employment, including compensations, bonuses, premiums etc earned by an employee, whether temporary or permanent, are taxable. Only reimbursable expenses which do not amount to gain or profit are not taxable. The minimum tax payable is 1% where, after allowable deductions, there is no chargeable income or tax payable on the chargeable income is less than 1% of the total income. The PIT tax rate is about 20%.

An individual is entitled to a Consolidated Relief Allowance of NGN200,000 (approximately USD550), subject to a minimum of 1% of gross income (whichever is higher) plus 20% of earned income as Personal Relief.

Exemptions from Personal Income Tax (employment)

Contributions to the following are exempt from tax:

- national housing fund;
- national health insurance scheme;
- life assurance premium;
- national pension scheme; and
- gratuities.

Trusts

PIT is imposed on the income arising or due to a trustee of any settlements or trusts, or estates, or to an executor of any estate of a deceased person in Nigeria. Taxable income comprises income derived from a source in Nigeria and income brought into or received in Nigeria. The tax is collected by the relevant tax authority of the state in which such settlement, trust or estate lies.

In computing assessable income for tax purposes in relation to a trust, amounts apportioned to beneficiaries are deductible and treated as income to the beneficiaries. Any income not apportioned to the beneficiaries shall be apportioned to the trustee or executor for assessment in their name as trustee of the settlement or trust. However, in the case of an inter vivos trust, where income is paid to an infant child of the settlor, who is also unmarried, the income will be deemed to be that of the settlor and not the beneficiary. The settlor is entitled to recover any income tax charged by reason of this provision from the trustee.

Exemption from Personal Income Tax (trusts and individuals)

Income/interest earned from government bonds and other approved bonds, by both individuals and a trust, are tax exempt.

Foundations

Foundations in Nigeria are usually established as charitable organisations and are typically exempt from taxation, except where the income of the charitable organisation is derived from a trade or business carried out by the organisation.

Capital Gains Tax (CGT)

CGT is charged on disposal of assets and the tax is 10% of the profits realised on the assets disposed of. Assets include all forms of property, such as options, debts, intellectual property and forex.

Exemptions from CGT

The following are exempt:

- gains on stocks, shares and government securities such as treasury bonds, premium bonds and savings certificates;
- gains on policies of assurance or deferred annuity, unless the beneficiary is not the original owner as in an estate;
- compensation for loss of office in a personal or professional capacity;
- gains from the main or only private residence of the individual, provided that the area does not exceed one acre;
- gains on private vehicles;
- gains on any asset used for the purpose of a trade or business, provided that the gain is used for replacing the old asset sold;
- gains from a provident or retirement benefit scheme; and
- gains from units of a unit trust, provided the proceeds are not reinvested.

The disposal on the death of an individual of any assets which such individual was competent to dispose of is not liable for CGT.

Estate Duties

Estate duties of 10% are charged on the deceased estate whenever the administrators or executors process the approval/authority to administer or execute the estate.

Income Tax Planning

There are some income tax planning opportunities available under the prevalent tax regime. For instance, persons have taken advantage of the tax exemption provisions under the PIT to increase contributions to their pension scheme, since such contributions are exempt from tax. However, to reduce tax avoidance in this manner, the National Pension Commission (PENCOM) issued new Guidelines on Voluntary Contribution under the Contributory Pension Scheme. The guidelines effectively limit the number of withdrawals from voluntary contributions to once every two years and impose tax on interest on the principal amount if the amount is withdrawn before the end of five years from the date when the contribution was made.

1.2 Stability of the Estate and Transfer Tax Laws

Estate and transfer tax laws in Nigeria have not been amended since the 1990s. The tax authorities have, however, focused on increased enforcement of the extant provisions of the prevailing laws in order to increase government revenue. The invigorated focus on collection by the government has impacted on previously acceptable tax planning arrangements.

1.3 Transparency and Increased Global Reporting

Although there have been no recent amendments to the tax laws, the tax authority has commenced aggressive steps towards collection by using the powers vested under its Ena-

bling Act to freeze taxpayers' accounts to ensure taxes are paid.

In addition, to encourage payment of taxes, the Voluntary Assets and Income Declaration Scheme (VAIDS) was launched by Executive Order No 4 of 29 June 2017 to provide taxpayers with the opportunity to pay outstanding tax obligations from 2011–2016 in return for a waiver of penalty, interest and criminal prosecution. The VAIDS programme was concluded on 30 June 2018.

The Federal Inland Revenue Service (FIRS) has also recently launched a new Joint Tax Board for Tax Identification Number (TIN) registration system with the intention of capturing an accurate database of taxpayers in Nigeria. Nigeria is a signatory to the Common Reporting Standard (CRS) Multilateral Competent Authority Agreement.

2. Succession

2.1 Cultural Considerations in Succession Planning

In Nigeria, succession is dependent on several cultural factors, some of which include type of marriage, religion, nature of assets, tribe/culture, birth, domicile, chieftaincy etc.

The distribution of assets of an intestate deceased will be subject to succession under customary law, English common law and the Administration of Estates laws of the various states, as applicable. The applicable law will be determined by the nature of the marriage contracted by the deceased and the deceased's religion in the following manner:

- where the deceased contracted a Christian marriage outside of Nigeria, English common law would govern the distribution of the estate;
- where a statutory marriage was contracted under the Marriage Act, and the deceased was domiciled in a state in Nigeria which has enacted an Administration of Estates law, the law will govern the distribution of assets;
- where the deceased contracted a statutory marriage and dies in any state of the federation where there is yet to be enacted an Administration of Estates law or its equivalent, English common law would apply;
- if the deceased was an indigenous Nigerian and did not contract a Christian marriage or a statutory marriage, and had no issue or spouse upon death, the deceased's estate would be distributed in accordance with the relevant customary law; or
- where the deceased was a Muslim, Islamic law would govern the distribution of assets.

In respect of religion, where the deceased was a Muslim, Islamic law prohibits Muslims from making wills disposing of more than one third of property owned, except with the

consent of their legal heirs. However, the court has held to be valid a will made by a Muslim under English law disposing of more than one third of the deceased's property. In view of the position taken by the court, in some states, the Wills Law has been amended to reflect the restriction on disposition of property by Muslims. Also under the Wills Law, the real and personal property of the deceased which cannot be disposed of under customary law, cannot be disposed of through a will.

Under customary law, for Ishan and Benin chieftaincy families, the eldest son who inherits the chieftaincy exclusively inherits all the property of the deceased. Similarly, in Ibo, Ivbiosakan (Owan) areas of Nigeria, only the sons inherit. However, under Yoruba custom, inheritance is determined per stirpes, as *idi-igi*, or per person, as *ori-ojori*. The *idi-igi* system provides that the deceased's property is shared into equal portions according to the number of wives who had borne children for the deceased. On the other hand, *ori-ojori* provides that the deceased's property should be shared equally among the children of the deceased. *Idi-igi* is the basic mode of distribution, but when a dispute arises among the children, the family head is entitled to decide to use the *ori-ojori* method of distribution.

In addition, although the distribution of the immovable property of intestate persons is governed by the *lex situs* (the law of the place where the land is situated), for succession under customary law, on issues of inheritance relating to immovable property, the customary law of the deceased would apply.

In Nigeria, most families are not eager to transfer wealth to the younger generation and this usually results in intestate death and succession under either customary law, English common law or the Administration of Estates laws of the various states.

2.2 International Planning

Succession planning for founder-managed businesses in Nigeria is in its early stages. Most founders/families are just becoming aware of the need to make adequate plans for succession to ensure the longevity of businesses. A couple of founders have set up family offices in foreign jurisdictions.

In respect of testate succession, where a will has been read and probate granted in a foreign country or in a state in Nigeria, the probate is required to be resealed for it to be effective in Nigeria. Resealing is also required to administer real properties of the deceased in other states of the federation.

2.3 Forced Heirship Laws

Forced heirship laws are prevalent in Nigeria.

Under customary law, the principles of forced heirship are dependent on the ethnic group of the deceased. In the western area of Nigeria (Yoruba people), children (both male and female) are the exclusive beneficiaries. However, in certain areas in western Nigeria, such as in Abeokuta and Ilesha, custom provides that upon the death of a man, two thirds of his property is bequeathed to his children and one third to his brothers and sisters. In eastern Nigeria, the patrilineal system, where only the males in the family inherit, is predominant. This practice has, however, been declared by the court in *Mojekwu v Mojekwu* as contrary to natural justice, equity and good conscience.

Forced heirship is also applicable under Benin customary law. In this instance, ownership of the property after the death of the testator is vested in the eldest surviving male child, to hold as trustee on behalf of other members of the family, ie, primogeniture rule.

Under English common law, the relevant English statutes are the Statutes of Distribution 1670 and 1685 and the Intestates' Estates Act of 1890. The Intestates' Estates Act of 1890 modified the Statutes of Distribution of 1670 and 1685. The Statutes of Distribution provide that where a man dies intestate leaving a widow and children, one third of his personal estate will be distributed to his wife and the remaining two thirds is to be shared in equal proportion among his children. If, however, the man dies without a child, his widow is entitled to one half of his personal property, while the other half goes to the father of the deceased. If there are children but no widow, the personal property of the man is divided equally between the children. For the real property of the man, the eldest male child inherits the property exclusively. In the event that there is no male child and only female children, they inherit equally as co-parceners. The 1890 Intestates' Estates Act has amended the Statutes of Distribution by providing that on the death of a man who leaves a widow without any child, the whole of his real and personal estate, if not exceeding GBP500 in net value at the date of his death, belongs to his wife exclusively; and where his estate exceeds GBP500, the widow is entitled to GBP500 in addition to her share under the Statutes of Distribution.

Where a deceased woman's estate is governed by the principles of English common law, the whole of her estate, both real and personal property, is bequeathed to her husband, whether or not she has children. In the event that her husband is deceased, her estate is divided equally between her children. In addition, where the Administration of Estates law is applicable, the estate of a deceased will be distributed in accordance with the Administration of Estate laws of the various states.

In order to prevent the principles of forced heirship, persons are advised to prepare a will prior to death.

2.4 Marital Property

Marital property is not automatically regarded as joint property except where such property is bought with the contribution of both parties. A spouse can transfer a property solely owned by them without the consent of the other spouse, especially in cases where the other spouse did not contribute any proceeds to the purchase of the property.

Nigerian law also recognises two kinds of survivorship – joint tenancy and tenancy-in-common. Joint tenancy operates where two or more people jointly own a property. In the event of any of the owners predeceasing the others, the deceased owner's share passes to the surviving beneficiaries of the property to the exclusion of the estate of the deceased co-owner. For a tenancy-in-common, the deceased co-owner's share of the property forms part of the deceased estate and will be distributed according to the terms of the deceased.

There is no prohibition under Nigerian law preventing enforcement of prenuptial agreements. However, the court is vested with the power under the Matrimonial Causes Act to make orders that are just and equitable for the benefit of all or any of the parties to, and the children of, the marriage of the whole or part of the property dealt with by antenuptial or postnuptial settlements.

2.5 Transfer of Property

Where there has been a transfer of property by succession, the estate of the deceased will be subject to estate duties. The transfer of an asset for gain during a person's lifetime would be subject to CGT on the gains on the property at 10%. CGT is not charged where an asset is transferred as a gift, however the donee will be deemed to have acquired the asset for the consideration for which the asset was last disposed of, if same was done by way of a bargain made at arm's length and such consideration is ascertainable. If the consideration is not ascertainable, the property will be deemed to have been acquired for a consideration equal to the market value of the asset on the date of the donation.

2.7 Transfer of Assets: Digital Assets

There are no specific provisions on the inheritance of digital assets for the purposes of succession. However, the applicable principles of succession would apply to digital assets due to the wide definition of assets under the succession laws.

Under Section 26 of the Wills Law of Lagos State, property is defined to include right of occupancy, sublease, sub underlease and funds, securities for moneys, shares, debts, chose in action, rights, credits, goods and all other property whatsoever, which by law devolves upon the executor or administrator and any share or interest therein. Section 2 of the Wills Act also provides that 'personal estate' shall extend to leasehold estates and other chattels real, and also to moneys, shares of government and other funds, securities

for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein. Meanwhile, Section 2 of the Administration of Estates law of Lagos State interprets 'property' to include a thing in action and any interest in real or personal property.

From the provisions of the laws stated above, digital assets – to the extent that they can be owned or enforced as a right – would be regarded as 'other property' and would devolve as provided for under the succession laws.

3. Trusts, Foundations and Similar Entities

3.1 Types of Trusts, Foundations or Similar Entities

Tax and estate planning are areas at the development stage in Nigeria. A lot of people do not plan for tax or estate purposes. Testamentary trusts are common and are usually created through a will. The use of trusts, both living and testamentary, is increasing.

3.2 Recognition of Trusts

Trusts are recognised and respected in Nigeria – wealthy and high net worth individuals are constantly desirous of safeguarding their properties using trusts for estate planning. The concept of corporate trustees is on the increase and this has also brought about an increase in the level of awareness of trusts by individuals.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

The income arising to a trust is taxable in the hands of the trustees and the beneficiaries. A fiduciary of a foreign trust in Nigeria would be liable to pay personal income tax on the global income of the trust. The beneficiaries of a foreign trust are also liable for personal income tax on income brought into Nigeria. However, the trustees and beneficiaries are entitled to tax credit against the tax payable for income brought into Nigeria, provided the income is brought into Nigeria through approved government channels. The tax credit allowable cannot exceed the proportion of the income derived from outside and brought into Nigeria.

The trustees of a trust will not be liable for tax where all the income of the trust is apportioned to the beneficiaries. However, any income not apportioned to the beneficiaries is apportioned to the trustee or executor for assessment as trustee of the settlement or trust.

In addition, the income of a settlement or trust is deemed to be the income of the settlor or person creating the trust and

the settlor would be liable for personal income tax where any of the following circumstances exist:

- the settlor retains or acquires an immediately exercisable general power of appointment over the capital assets of the settlement or trust, or over the income derived therefrom; or
- the settlor makes use, directly or indirectly, by borrowing or otherwise, of any part of the income arising under the settlement or trust; or
- the settlement or trust is revocable in circumstances where the settlor, or their spouse, resumes control over any part of the income or assets comprised therein. However, a settlement or trust will not be regarded as revocable solely by reason of the fact that an income or asset comprised therein may revert to the settlor or their spouse, in the event of a beneficiary predeceasing the settlor, or of the occurrence of an uncertain event upon which the settlement or trust is limited.

4. Family Business Planning

4.1 Asset Protection

Landed property remains the most crucial asset that people wish to protect in Nigeria. The most prevalent method of protecting landed assets is by setting up a company to hold the land.

The efforts of trust companies in creating awareness in relation to living trusts for family estate planning has also begun to yield results.

4.2 Succession Planning

In Nigeria, the most common form of family business succession planning is by incorporation of a limited liability company. In this instance, the family business is incorporated as a company, and individual members are groomed and raised to take over from the outgoing generation. The limited liability company acquires a separate personality from those of its members and this ensures that there is better management and less conflict, as issues that arise are settled according to the provisions of the memorandum and articles of association of the company and the Companies and Allied Matters Act. In addition, some families have established trusts to hold the family's estate, inclusive of the family business, on behalf of the beneficiaries. Also, the trust may appoint administrators to manage the family business.

4.3 Transfer of Partial Interest

Capital Gains Tax is not applicable to the transfer of shares in Nigeria.

5. Wealth Disputes

5.1 Trends Driving Disputes

Wealth disputes typically involve disputes regarding the estate, family property, grant of probate/letters of administration, mode of distribution of property under customary law, and validity of wills. Most wealth disputes are triggered by the exclusion of certain family members from a will by a testator or the application of customary law that is not favourable to the individual challenging the disposition of property. Cases involving wealth disputes are usually litigated at the High Court.

5.2 Mechanism for Compensation

For disputes relating to trusts, beneficiaries can request an injunction restraining the trustee from continuing to perform acts in breach of the trust. Personal remedies can also be granted by the courts against a trustee, requiring the trustee to restore trust property. The law also allows a beneficiary to trace trust property in the hands of a third party, where the trustee has mismanaged trust property.

For disputes involving wills, aggrieved parties can request that the court sets aside the will and distributes the property in accordance with the rules of intestacy.

6. Roles and Responsibilities of Fiduciaries

6.1 Prevalence of Corporate Fiduciaries

The use of corporate fiduciaries is on the rise in Nigeria, in response to the increasing complexities of the investment and fund/asset management space which has created a need for more informed and knowledgeable investment decisions, best made with professional judgement. Today, there are several corporate trustees in Nigeria, operating in different sectors, such as investment banking, real estate, capital markets, pension funds, etc, helping people make these investment decisions and managing the outcomes on their behalf.

Generally, all trustees are subject to the directions and standard of conduct imposed by the:

- English Trustees Act of 1893;
- Trustee Investment Act 1957;
- trust laws of state governments in Nigeria; and
- English common law rules relating to trusts.

The abovementioned laws create certain duties and standards with which a trustee must comply.

In addition, corporate and professional fiduciaries are required to comply with a higher standard of conduct under the Investments and Securities Act (ISA), Securities and

Exchange Commission (SEC) Rules, SEC Code of Conduct for Trustees, Pension Reform Act 2004, etc.

The SEC Code of Conduct for Trustees provides that trustees shall act in line with the trust deed or other constituent documents, adhere to the Trustee Investment Act, the Investments and Securities Act, the SEC Rules, and any other documents, law, rules and regulations which govern the trustees and the trust fund.

6.2 Fiduciary Liabilities

Under Nigerian law, there is no veil of trust on fiduciaries, and fiduciaries will be held liable for misconduct in respect of trust property.

Generally, the most impactful mechanism for protecting fiduciaries from liability is the insertion of relevant protection clauses in contract documents. If a fiduciary abides by their duties, and also operates strictly within the scope of the powers and limitation of powers binding upon them, they are generally not held liable for any loss that does not flow from their default. Common law also provides protection in situations where an action was reasonable in the circumstances or it was taken with the concurrence of the beneficiaries. However, for trustees/fiduciaries governed under the Investments and Securities Act, any provision in the trust deed which would have the effect of exempting the trustee or custodian under the scheme from liability for breach of trust, where the trustee or custodian fails to exercise the degree of care and diligence required of them as trustee, is void.

Fiduciaries in Nigeria can also escape liability in instances where they are not solely managing the investments of the trust. Some laws, such as the Pension Reform Act and the Investments and Securities Act, provide for the creation of custodians to assist the trustees in keeping and regulating the funds of the trust. Liability in this instance may be shared or passed to the third-party custodian if the loss is as a result of their default.

6.3 Fiduciary Regulation

Fiduciaries – corporate, professional or otherwise – are required by law to invest the assets of a trust prudently. The Trustee Investment Act (the Act) requires trustees to invest the trust fund according to the rules of the Act.

The trustee is limited by the Act to invest only in government securities and fully paid-up shares and debentures of a public company. The Act also provides for certain restrictions and limitations on authorised investments in order to decrease the overall portfolio risk and enable the trust to withstand any investment failure or downturn.

Sector-specific laws such as the Pension Reform Act, Investments and Securities Act etc, and generally, the Administration of Estate laws, all provide different regulatory require-

ments and restrictions on the investment of assets in order to encourage fiduciaries to make more prudent investment decisions. The SEC Code of Conduct for Trustees states, among other duties, that a trustee should act with reasonable care and skill, and exercise prudent judgment, when acting on behalf of the beneficiaries to a trust.

6.4 Fiduciary Investment

Fiduciaries are generally expected by law to invest in low-risk securities such as government bonds, securities of government-owned corporations and securities of public-quoted companies. The SEC Code of Conduct for Trustees provides that trustees regulated by the Code are required to ensure maximum risk-diversification in the management of funds. Also, pension fund administrators are required to invest pension funds in varying investment limits in different asset classes. These requirements are elements of the modern portfolio theory.

There are no restrictions on trusts holding active businesses in Nigeria, however the Companies and Allied Matters Act prohibits the entry of notice of any trust, express, implied or constructive, in the register of members of a company. This ensures that the company is not bound to recognise the beneficial interest in the shares.

Also, foundations, which can be registered as a limited company by guarantee and incorporated trustees, are not restricted from carrying on business in Nigeria, but will be subject to tax when they engage in business.

7. Citizenship

7.1 Requirements for Domicile, Residency and Citizenship

Citizenship in Nigeria can be acquired:

- by birth;
- by registration; or
- by naturalisation.

Birth

Unlike some countries, where citizenship is automatically acquired by birth, the constitution of the Federal Republic of Nigeria prescribes that citizenship can be acquired by birth in the following circumstances:

- by every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria;
- by every person born in Nigeria after the date of independence, either of whose parents or any of whose grandparents is a citizen of Nigeria; or

- by every person born outside Nigeria either of whose parents is a citizen of Nigeria.

Registration

The constitution also allows people who are not citizens of Nigeria by birth to acquire citizenship by registration. For a person to acquire Nigerian citizenship by registration, they need to:

- be of good character;
- show clear intention of their desire to be domiciled in Nigeria; and
- take the Oath of Allegiance.

The category of people who can apply for citizenship by registration is, however, limited. They are:

- any woman who is or has been married to a citizen of Nigeria; and
- every person of full age and capacity born outside Nigeria, any of whose grandparents is a citizen of Nigeria.

Naturalisation

Any person who is not qualified to be a citizen of Nigeria by birth or registration can still apply to be naturalised as a Nigerian citizen. However, no person shall be qualified to apply for a certificate of naturalisation, unless they satisfy the president that:

- they are a person of full age and capacity;
- they are a person of good character;
- they have shown a clear intention of their desire to be domiciled in Nigeria;
- they are, in the opinion of the governor of the state where they are or they propose to be resident, acceptable to the local community in which they are to live permanently, and have been assimilated into the way of life of Nigerians in that part of the federation;
- they are a person who has made or is capable of making useful contribution to the advancement, progress and well-being of Nigeria;
- they have taken the Oath of Allegiance prescribed in the Seventh Schedule to this constitution; and
- they have, immediately preceding the date of their application, either:
 - (a) resided in Nigeria for a continuous period of 15 years; or
 - (b) resided in Nigeria continuously for a period of 12 months, and during the period of 20 years immediately preceding that period of 12 months, has resided in Nigeria for periods amounting in the aggregate to not less than 15 years.

Residency

Residency through work authorisation

One way of obtaining temporary residency in Nigeria is through employment. That is, taking up employment from private or public entities or the government. A foreign national who has been offered and has accepted an offer of employment is entitled, under the law, to be issued with a combined work and residence permit upon entry to Nigeria to commence work.

Prior to offering employment to a foreign national in Nigeria, an employer must be in possession of a valid expatriate quota approval (EQA) as prescribed by law. The EQA forms the basis of employment offers to foreign nationals and it is issued by the Minister of Interior on merit and where the minister is satisfied that there is a shortfall of skills in Nigeria.

With a valid EQA in place and acceptance of employment, a foreign national is required to apply for an entry visa at the Nigerian mission in the country of their residence to be able to work in Nigeria. This visa is known as the 'Subject to Regularisation' (STR) visa. Once in Nigeria, the STR visa is regularised to a work/residence permit issued as a Combined Expatriate Residence Permit and Alien Card (CERPAC). The CERPAC provides temporary residency for the holder in Nigeria for a period of one to two years in the first instance and is subject to renewals up to a maximum period of ten years (which is the lifespan of the EQA).

Another way to obtain residency is by obtaining a temporary work permit (TWP) to undertake skilled assignments in Nigeria for an initial period of 90 days. The TWP may be extended in Nigeria for another 90 days. The TWP is a specialised visa issued on the authorisation of the Comptroller General of Immigration in Nigeria.

The striking difference between a TWP and an STR is that the TWP applies to foreign nationals deployed to Nigeria to carry out short and specialised assignments (without the right of full-time employment) and is not required to be supported by an EQA. The STR visa once regularised is a confirmation of the foreign national's employment status and empowers this person to take up paid employment in Nigeria on a long-term basis.

Residency through marriage or investment

There is also the possibility of obtaining permanent residency based on investment, going by the provisions of Immigration Act 2015. The Comptroller General of Immigration (CGI) may authorise the issuance of permanent residence visas to foreign nationals who are investors and have imported an annual minimum threshold of capital over a period as specified from time to time in the National Visa Policy, or those who are married to Nigerians.

An investor who imports a certain threshold of capital will be entitled to receive permanent residency status as well as an automatic expatriate quota award depending on the amount of capital imported to Nigeria.

Similarly, where a legally verifiable marriage can be proved to exist between a foreign national and a Nigerian citizen, permanent residence may be granted by the CGI.

Residency by a former citizen following renunciation

A citizen of Nigeria by birth, who has earlier renounced their nationality may be issued with a permanent residence permit, subject to the conditions stipulated by the Minister of Interior.

7.2 Expeditious Citizenship

There are no expeditious means for an individual to obtain Nigerian citizenship.

8. Planning for Minors, Adults with Disabilities and Elders

8.1 Special Planning Mechanisms

There are no special planning mechanisms for minors and adults with disabilities. However, under the Administration of Estates law of Lagos State, where assets have been bequeathed to a minor, the law provides for the vesting of such assets in trustees who will hold the assets in trust for the minor. Also, the Administration of Estates laws create statutory trusts for the issue of an intestacy, reserving two thirds of the residuary estate to be held in the said statutory trust for the issue of the intestacy.

Although there is no specific planning mechanism for disabled persons in Nigeria, the Discrimination Against Persons with Disabilities (Prohibition) Act 2018 was recently passed into law. The Act prohibits discrimination on the basis of disability and imposes sanctions which include fines and prison terms for contraventions.

8.2 Appointment of Guardian

A guardian may be appointed by Deed by the parent of a child or by the guardian of a child further to court proceedings, or in instances where the child's parent is deceased.

In circumstances where the parent or guardian of a child is failing in their responsibility to take adequate care of the child, the court may also appoint a guardian for a child on application by a family member or an interested party. A court can also appoint a guardian in cases where nobody has parental responsibility, either temporarily or permanently. This can happen where the parent is ill or where the court removes responsibility from the parents.

The court can also request a welfare report in respect of the child. Under the Family Court of Lagos State (Civil Procedure) Rules 2012, it is the duty of the social development officer in the Department of Youth and Social Development of the Ministry of Youth, Sports and Social Development to comply with any court order requesting a welfare report in respect of a child, and provide the court with any assistance that it might require.

8.3 Elder Law

The Pension Reform Act 2014 provides for compulsory deductions into a Retirement Savings Account from the salary paid to employees. The pension plan is, however, mainly focused on persons in formal employment. To capture the informal sector, the Micro Pension Scheme was introduced in 2018. Other products such as annuity plans and life insurance policies are also used to plan for families and individuals.

9. Planning for Non-Traditional Families

9.1 Children

Children Born out of Wedlock

The constitution of the Federal Republic of Nigeria has provided, since 1979, that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of their birth. There is therefore no legal distinction in Nigeria between children born in lawful wedlock and children born out of wedlock. The previous distinction between legitimate and illegitimate children, with the concomitant effect particularly regarding inheritance, has been obviated.

Under a will, a testator can freely dispose of their properties in any manner, including to a child born out of wedlock. The law is also settled on the intestate inheritance right of children born out of wedlock whose paternity has been acknowledged by their father – such children are entitled to equal shares in the properties of the deceased and can be among those who apply for letters of administration.

Adopted Children

The Child Right Act (CRA) vests on the adopter of a child all the rights, duties, obligations and liabilities applicable to the genetic parents of the child, including custody, maintenance, supervision, education etc. All the rights previously applicable to the genetic parents are removed.

The CRA specifically provides that an adopted child must be treated as a child born to the adopter for the purposes of devolution of property on the intestacy of the adopter. An adopted child is automatically entitled to inheritance, in the same manner as a child born by the intestate.

Surrogate Children

There are no laws, policies or guidelines in relation to surrogacy in Nigeria although it is widely acknowledged that the practice is becoming increasingly common. Circumstances of birth cannot, however, be used to deprive or discriminate against any citizen of the country.

Posthumous Children

There are no legal provisions in relation to posthumous children in Nigeria. Legal decisions relating to customs which permit arrangements to procreate posthumously on behalf of a dead man, by way of substitute parentage, have been declared invalid.

9.2 Same-Sex Marriage

Same-sex marriages are prohibited in Nigeria and same-sex couples are prevented from enjoying the benefits of a legally recognised marriage, such as the right to be succeeded in intestacy, among others.

Testamentary dispositions are, however, available to an individual who is part of a same-sex couple.

10. Charitable Planning

10.1 Charitable Giving

Nigerian law encourages charitable giving by incorporated companies by way of tax deductions. Donations made to charitable organisations listed in the Companies Income Tax Act (CITA) (as amended) are exempt from tax. The donation by each company must be from its profits and must not exceed 10% of total profits in the given year. However, donations made by individuals to charitable organisations are not tax deductible.

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10.2 Common Charitable Structures

In Nigeria, the commonly-used structures for charitable planning are company limited by guarantee, incorporated trustees and charitable trusts. What ultimately determines the choice of structure is the preferred corporate form. However, a large number of people still opt for unincorporated associations for charitable purposes.

The Companies and Allied Matters Act provides for the incorporation of two corporate forms suitable for charitable planning – company limited by guarantee and incorporated trustees. A company limited by guarantee is a company incorporated for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar matters, the income and property of which is applied solely towards the promotion of these matters, with no portion of its income or property being transferred to its members.

An incorporated trustee consists of one or more trustees who are appointed by any community of persons bound together by customs, religion, kinship or nationality, or by any person or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose.

Some of the advantages/disadvantages of the above structures include:

- tax considerations: it is possible for a company limited by guarantee to arrange its affairs in such a way that it would not be liable for tax, either by not making a profit or by not carrying out a trade or business;
- companies limited by guarantee and incorporated trustees offer a separate legal identity that enables entry into contracts in their own right (for example, hiring staff and leasing or owning property), which unincorporated associations and charitable trusts do not provide;
- unincorporated associations and charitable trusts are fairly simple and flexible to set up and do not require incorporation under the Companies and Allied Matters Act; and
- unincorporated associations and charitable trusts are not regulated by the Corporate Affairs Commission, whereas corporate forms like company limited by guarantee and incorporated trustees are regulated by the Corporate Affairs Commission.