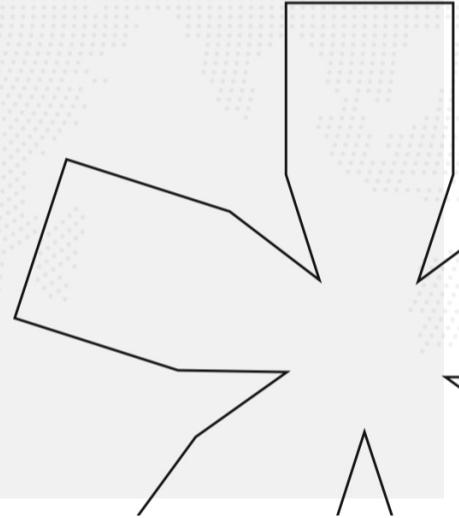




Business legal guide.

Legal guide for small and medium scale businesses.

Victor Momodu



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About the author.

Hi,

I am Victor Momodu, Founder of Gad Legal Consult (GLC), an online business law firm that uses the instrumentation of the law to provide practical solutions for businesses and individuals.

At GLC we are solution oriented, and we turn the pain points of business owners and individuals into relief so they can run their business with peace of mind.

At GLC we help sustain your business. We take away the strain of having to worry about legal issues and their technicalities.

We provide:

Business registration and Incorporation services,

Legal advisory,

Business advisory,

Trademark filings and registrations,

Business legal retainership (our premium package that offers our clients majority of our services),

Legal correspondence,

Business Negotiations and Representations.

Do you want to start a business or you already have one, and want to protect your business from uncertainties, for more productivity? You have just found the right partners at Gad Legal Consult. Ultimately, we employ our services to solve our clients' business problems.

Explore more at www.glc.ng

Introduction

The climate for business activities and transactions must always be understood in an ever-changing world as ours. Not only earth is experiencing climate change, the business world has in recent times also experienced climate change. Hence, knowing and understanding what is needed to make the right adjustments and progress is essential. Laws are also relevant tools for regulating the business environment. The National Assembly has passed into law two vital Acts that affect the conduct of businesses in Nigeria. These are the Company and Allied Matters Act (CAMA) 2020 and the Finance Act 2021. The CAMA which regulates the formation and affairs of companies, business names and incorporated trustees introduced a number of changes. The Finance Act also made several notable amendments to other enactments including the Company Income Tax (CITA) and Value Added Tax (VAT).

The goal of this book is to communicate in a simple way, relevant information helpful to you as a business owner (or would-be business owner), so that you can have practical knowledge that can help you as you run your business.

This book gives an exposition into necessary checklists for start-ups. This book also discusses the business structures provided for in the Company and Allied Matters Act, Company Income Tax (CITA) and Value Added Tax (VAT) in a non-technical manner and their implications on the Nigerian business climate. This book is however not about the complex and technical components of these laws.

By the end of this book, you would have gotten adequate guide for starting a business in Nigeria. You would have also understood obtainable business structures and relevant taxes in Nigeria, and as they affect individuals and businesses in Nigeria.

This book is beneficial especially for micro, small and medium scale businesses.

Part A: Startup checklist for businesses

What is a checklist and why is it important?

A check list is an itemised number of subjects tailored for a particular activity as a fail proof system for ensuring that the itemised subjects are executed in preparation of a goal or as part of the achievement of that goal. A checklist functions as a quick-help method for making sure the needed tasks are executed. And that is why it is necessary.

The following are what make up the start-up checklist for every successful business before commencement and going forward running a profitable and successful business.

Decide on your business identity and structure

Book keeping and documentation

Staff administration and employment

Forestall legal issues

Obtain necessary licenses

Obtain a business account

Trademarks/Patents

Leverage technology

Create an avenue for growth

Decide on Your Business Identity and Structure

After developing a great business idea (and perhaps preparing a business plan too), the very next thing to do is to decide on a suitable business structure and identity.

Your business identity is how your business is projected to the world. Another way to put this is a business name. No matter how great a business idea is, it has to be named in a business context. As a matter of fact, this is a major step giving the business a legal identity. This is solved by simply doing a business name registration. No matter what beautiful name you want your business to be identified with, the way to secure it is to get it registered and protected. There are so many advantages to this which are discussed in the Part B of this book.

The next thing to do once you have registered your business name is to decide what kind of legal structure your business will be built on. As a matter of fact, determining the legal structure of your business and the business identity are two things on the checklist that are symbiotic in execution. You will find more about business legal structures in Part B of this book.

2. Book Keeping and Documentation A life-line activity for every business is record keeping or book keeping, whether manually in traditional books or digitally using a digital device (such as phones, apps, tabs, laptops or desktops), which for many reasons is a lot easier and has many advantages.

Every business needs to have record books. Books such as financial statements, income statement, ledgers, profit and loss account books, inventory books and so much more as may be peculiar to individual businesses. Technology has made things a lot easier. There are software and applications that are designed to help with these record books. Some have an integrated interface where all you need to do is put in the data (or figures) and you can get them converted to different record books, print them and even save them.

Advantages of maintaining good business records and documentation:

(It helps to keep the business organized

It helps for accountability

It helps for transparency

It helps for business sustainability

It paints a good picture of the business and further makes it attractive to investors.

Proper book keeping helps a business to be properly assessed by tax authorities and prevents cases of over taxation.

A good business record, especially when done correctly, will always speak for itself (and in essence for the business).

Maintaining good book keeping helps with annual filings and returns to relevant regulatory authorities.

The other side to book keeping is legal documentation. Legal documents are fundamental for every successful business, both at the commencement of the business and as the business progresses. Absence of necessary documents have been the undoing of many businesses. There are different types of documents for different purposes and for different types of businesses. The legal documents required for a business running as a company are not the same for a business running as a partnership or sole proprietorship.

Examples of documents needed for businesses include (but not limited to):

Agreements

Contracts of all types depending on the business need

Memorandum of Understanding (MOU)

Lease and Tenancy agreements

Investment agreements

Employment contracts

Power of Attorney

Nondisclosure agreements

Terms and conditions

Disclaimers

Articles and Memorandum of Association

Founders' agreement

At Gad Legal Consult, one of the productised service packages we offer includes a bunch of legal documents which every business necessarily needs. This service package helps to have these documents handy and saves a lot of stress for any business owner.

3. Staff Administration/Structure

Once the business has been structured for takeoff, another checklist item to sort out is staff employment and engagement. Successful businesses are run on the engine of sufficient and proficient human capacity. Amazingly, even sole proprietorship businesses also need more than just the sole proprietor (owner) to run efficiently. Once ready to take in employees, the next thing becomes how to employ the right staff for the business. There are a couple of ways to go about this. It can be done by the business owner by conducting an interview. It could be by recommendation and referral or by outsourcing this task to an employment agency. Whichever method is adopted, it is important for the employer and employee to have a crystal understanding of what the employment entails. Subjects such as engagement pattern, whether full time or part time, or contract employment, target-based employment, salary structure and how much, off days, bonuses, health insurance, overtime bonus, penalties for infractions, job description, key performance index (KPIs), promotion terms and at what intervals, terms and conditions of the employment. The list is inexhaustible. One important thing to note however, is that, the conclusions of these subjects by the employer and employee should be documented, both for record keeping, reference purpose and in case disputes arise.

4. Forestall Legal Issues

Many business owners take the impact legal issues can have on their business with levity. The strain that comes with legal issues many times can tell a lot on the business. However, this can be avoided, prevented and forestalled by hiring a business lawyer. The services of a business lawyer are not only needed in times of trouble. The services of a business lawyer are needed to prevent the trouble from coming especially when it avoidable and to be on the lookout for

the business. A good business lawyer helps to secure and protect the interest of your business allowing you to run your business profitably in peace without legal strain and stress. This is our priority at Gad Legal Consult. You can find more details about this at www.glc.ng

5. Obtain Necessary Licenses

Licenses are necessary requirements for operating certain businesses. Depending on the industry, you may be required to be certified by a regulatory agency for operation. Examples include businesses that have to do with manufacturing, drug production, food production and processing, health related businesses, aviation, maritime and the likes of them. A good way to be on the safe side is to do a diligent search for the licenses peculiar to your business, or you can hire an expert or a lawyer to procure these licenses for you. It is safe and preferable not to be caught up being without the required licenses. It usually costs more in the long run and it would be undertaken at or before the commencement of business.

6. Business Account

As a matter of standard practice, it is advisable to have a business account separate from your personal account. This is advisable even if you run your business as a sole proprietor. This helps with accountability and transparency. It also helps you to keep your business finance tidy, so that you do not muddle up your personal money with your business money.

As a good practice, it also helps you look professional to your clients and customers. It also curtails you the temptation of tampering with your business money unnecessarily.

7. Intellectual Property

Intellectual property are creations of the mind that have attached to them intangible rights which seek to prevent others from exploiting those creation, especially without permission. Intellectual property is broadly categorized into industrial property (trademarks, service marks, product marks, industrial designs, trade secrets, utility models, geographical indications, patents etc.) and copyright. Trademarks are signs, symbols, or expressions which are identifiable to a

particular product or service. These signs, symbols, or expressions are protected by law by registering them. Trademarks are intellectual property that have intrinsic value which can be exploited if not protected. Once registered, they become exclusive to the person who registers them and when infringed by another person not licensed or permitted by the owner, the agency of law can be used for enforcement. Many small businesses may not opt for this at startup stage but as the business grows and expands you will need to do this. But where it does apply to you, especially as a big business where your logo, sign or symbol is more than just a sign but goodwill to your client/customers. It is very advisable to register it. It saves the business a lot more in the long run. Patents apply in the same way too, but patents are applied for when seeking an exclusive right to an invention. Patents are granted when certain conditions have been fulfilled such as novelty and non-similarity with an already existing invention. Many other conditions apply depending on the type of invention and the law in force. Where a patent is granted, it is usually granted with a duration after which it may be open to the public.

Copyright protects artistic and literary works, printed works, broadcasts, communication, computer programs, computerized systems, films, stage performances, cinematographs, music etc.

As a business owner, you need adequate counsel on the intellectual property associated with your business, so you can know how to protect and exploit them Intellectual property rights can be applied for through an accredited agent. At Gad Legal Consult we offer trademark services and other intellectual property services to business owners as part of the ways we protect their business.

8. Leverage Technology

Once the business has taken off and is running, you will need to increase profit and one major way to do this is to increase sales. A major way to increase sales is to leverage technology for marketing. There many ways to leverage technology to create a client/customer attraction system. You can leverage the internet and social media strategically for generating leads for your business which and increasing customer conversion rates.

9. Create an Avenue for Growth

No business ought to stay the same level for too long. A business is like a living organism. Every living organism grows. With the right implementation of timeless business principles and proper management, coupled with the right vision, your business is bound to grow. Part of that principle is to always have a proactive business upgrade plan from time to time, efficient management and consulting business experts when needed.

Part B: Business structures and applicability

There are 5 major business structures in Nigeria. They are: Companies, Sole Proprietorship (Business Names), Limited Liability Partnerships, Limited Partnerships, and Incorporated Trustees. These are the business structures the Company and Allied Matters Act makes provision for.

COMPANIES

Companies may be formed to be either Private or Public. Such companies may be limited by shares, by guarantee or may be unlimited.

A company is the highest cadre of the business and corporate structure. By the provisions of the new Company and Allied Matters Act (CAMA), a single person can now form a private company. Such a person must however be at least 18 years of age, must not be a bankrupt and must definitely be a person of a sound mind.

TYPES OF COMPANIES

Companies are categorised into different types by their:

Size: Small and Big companies

Listings: Private and Public companies

Share structure: Companies limited by shares, Companies limited by guarantee and unlimited companies

Types of Company by Size

Small Companies

The qualifying conditions of a small company are:

- i. It is a private company

- ii. Its turnover is not more than N120,000,000
- iii. Its net assets in value is not more than N60,000,000
- iv. None of its members is a government, government corporation or government agency or its nominee
- v. Where the company has share capital (i.e., where it is not a single shareholder company), the directors hold at least 51% of its equity share capital. Every company otherwise not having these characteristics is a Public Company.

There are certain benefits available to small companies:

A small company can have its annual general meeting (AGM) virtually.

A small company is not mandated to have a company secretary.

A small company is exempted from the provisions as relating to audit of accounts and appointment of auditors yearly at its AGM.

Types of companies by listings

Private company

Features of Private Company:

- 1. A private company's shares are not publicly listed. Their shares are not offered to members of the public. So, their shares are not listed in the stock exchange markets.
- 2. A private company has a restriction on the transfer of its shares.
- 3. The statutory membership limit for a private company is 50.
- 4. The minimum issued share capital for a private company is N100,000.
- 5. A private company has attached to its name Limited or Ltd.

Public company.

Features of public company:

- 1. A public company offers its shares to the public to be members and shareholders of the company. So, their shares are listed in the stock

exchange markets.

2. A public company has no restriction on the transfer of its shares.
3. The minimum issued share capital for a public company is N2,000,000.
4. A public company has attached to its name Public Limited Company o Plc.

Types of companies by share structure

Limited Liability Company

Features of a Limited Liability Company:

- 1.The shareholders or members have limited risks. Their risks are limited to their stake in shares.
2. The personal assets of the shareholders are protected from litigation, risks and liabilities.

Company Limited by Guarantee

Features of a Company Limited by Guarantee:

1. In a company limited by guarantee, the liability of the shareholders is limited to what they subscribe to contribute in the event that the company is wound up.
2. It is not incorporated for to carry on business for profit.
3. Its income is employed solely for the promotion of its objects.
4. It is usually formed to promote specific subjects such as commerce, art, science, research, charity, sports, culture or other similar subjects

Unlimited Company

Unlike a company limited by shares, there is no limit to the liability of the members of an unlimited company. They can either be private or public.

Benefits and characteristics of incorporating a company

- (i) A major benefit of incorporating a company is that it becomes a corporate sole and has a legal identity of its own different from that of the people who own and run it. Upon incorpora-

tion, a company becomes a legal entity in the face of the law.

(ii) A company can sue and be sued in its name

(iii) A company is successive in nature. This means that, even where the owner(s) or member(s) is diseased, a company has ability to continue its existence.

(iv) Having a company protects the owner(s) and their personal property from vexatious suit. In law the assets of the company are differentiated from that of the founder since the company is an entity on its own.

The only exception to this is when the corporate veil is lifted by law for necessary reasons.

2. BUSINESS NAMES/SOLE PROPRIETORSHIP

Sole proprietorship is a business owned and run by a single person. The most basic step taken by a sole proprietor in putting legal structures to their business is registering a business name. So we will be discussing them together here.

In a sole proprietorship, the owner and the business are barely inseparable. The business can hardly run on its own without the direct input or physical presence of the sole proprietor.

Where the sole proprietor is diseased, the business ends with him. While a business may start as a sole proprietorship, sustainable and generational businesses are not built as a sole proprietorship. It must necessarily be scaled and upgraded.

Registering a business name is the very first step to giving any business venture or enterprise a legally recognised identity. Registering a business name though a first step to scaling a business comes with certain benefits apart from protecting the name of the business such:

- i. It brands your business and improves the value attached to your business and your products
- ii. It adds a more professional outlook to your business
- iii. It gives a degree of edge over many other businesses that are not in the "market place"
- iv. It helps people including your customers/clientele attach some level of seriousness in dealing with you, especially where it has to do with pricing your product
- v. It's an indication (together with other factors) to potential investors of your willingness to take the necessary steps to move your business forward

3. PARTNERSHIPS

Limited Liability Partnership

A limited liability partnership is a hybridised business structure that combines the features of a limited liability company/corporation and a partnership. It is formed by at least two people (which could be both individual and/or corporate) and one of whom must be resident in Nigeria. In a limited liability partnership, the partners' liabilities are limited to the extent of their contribution or investment. It is mostly employed by professionals, such as lawyers, accountants, doctors or architects, who want to combine their resources to float a business structure to pursue their professional practice.

However, other business owners can employ it to pursue their trade; especially in Nigeria, where the CAMA gives room for foreigners to form a limited partnership business structure with Nigerians. In this case, where there are two partners, one of them must be based in Nigeria.

Qualities and Benefits of a Limited Liability Partnership:

- i. The liabilities of the partners are limited to their investment in the business.
- ii. It enables the partners to spread the risk, while they leverage on their resources, skills and experience.
- iii. The personal assets and income of the partners are protected from suits and creditors.
- iv. It has a separate and distinct legal personality from its partners, hence, it can sue and be sued in its registered name
- v. It has perpetual succession and continuity, such that the demise or the discontinuance of one partner does not halt its operations
- vi. There is no statutory limit to the number of persons who make a limited liability partnership.

Any group of persons more than 20 in number who come together for the purpose of business being a partnership or association must be registered.

Limited Partnership

A limited partnership is a business structure that is formed by at least 2 people to establish a going concern with the aim of making profit. Of the 2 people who form a limited partnership, one is a general partner and the other a limited partner. The limited partner at the time of entry into the partnership, contributes to the partnership in sums as capital or property valued at an amount. And he is not liable for the debts and obligation of the firm beyond the amount he contributes. The general partner on the other hand has an unlimited liability to the partnership beyond what he contributes in sums. The general partner is also directly involved in the management of the limited partnership.

At any given time, the number of partners in a limited partnership must not be more than 20. The general provisions for persons forming a business organisation to be of sound mind and not bankrupt applies also in a limited partnership. A corporation may also be a partner in a limited partnership.

A limited partnership must be registered as such, otherwise it would be taken to be a general partnership where all the partners have unlimited liability to the partnership. And as such will be obligated to the partnership in debt or other risks beyond their investment in the partnership.

Qualities and Benefits of a Limited Partnership:

- i. It makes provision for partners to be liable in cases of risks and debt only to the extent of their investment in the partnership.
- ii. The limited partners are not burdened with the daily management of the partnership. This is left to the general partners.
- iii. It is suitable for passive investment schemes.
- iv. It is suitable for short term businesses and investments.

4. INCORPORATED TRUSTEES

Incorporated trustees is an organisational structure where a group of people who are bound by a common nationality, custom, religion or interest, appoint two or more persons called the trustees to apply to the CAC to be established and incorporated as an organisation, for charitable, religious, educational, humanitarian, social, sporting, literary or scientific purpose. Where they are registered as such by the CAC, they become a legal entity with a corporate image having perpetual succession. They can sue and be sued through their trustees (e.g Incorporated Trustees of Kings and Boys School).

Unlike a company which has an article and memorandum of association, incorporated trustees have a constitution that serve as their rules of engagement in consonance with the purpose, aim and objective for which it is formed. This constitution forms part of the documents precedent to its incorporation. Since it is not a profit-oriented organisation, the constitution also provides how the organisation's funds are to be disbursed and utilised.

An infant, a person of unsound mind, an undischarged bankrupt and a person convicted of an offence of fraud within 5 years of such is disqualified from appointment as a trustee.

The CAC can direct that a proposed association be treated as forming part of an already association. The CAC can also direct that two or more associations having the same trustees be treated as a single association. However, it is in our opinion that this would most likely be the case where such associations have similar aims and objectives. Where they have varying objectives and purposes, merging such associations may not be the best line of action.

Part C: Finance act(Its modifications to the company income tax act(CITA) and Value Added Tax (VAT) Act)

Companies Income Tax

The Companies Income Tax is the tax charged by the Federal Government on companies in Nigeria. Provisions of the Companies Income Tax are contained in the Companies Income Tax Act and the recent modifications made by the Finance Act 2020. The Finance Act introduces a 20% tax rate for medium companies (companies with more than N25,000,000 but less than N100,000,000 in gross turn over) and 30% for large companies (companies with more than N100,000,000 in gross turn over).

1.1 The Requirement for a TIN

The Finance Act 2020 provides that every company must have a Tax Identification Number (TIN). The TIN is to be displayed by the company on all transactions with other companies and individuals and on every document, statements, returns, audited account and correspondence with revenue authorities, including the Federal Inland Revenue Service, Ministries and all Government Agencies. Persons engaged with banking or other financial services in Nigeria are expected to request for a company's TIN as a condition for opening a bank account. This is a codification of what the banks have already been doing. That is to say that other financial institutions such as insurance companies, mortgage banks and development banks will now require TIN from companies to transact with them. Where the company already has an account and has not provided its TIN, it has to provide a TIN to continue the operation of its bank account. This process has in fact been simplified such that when a company is being registered, there is a TIN generated for it by the FIRS upon its incorporation.

1.2 Tax Exemptions

Interest payable on any foreign loan granted are exempt from tax. Where the loan is above 7

years but not less than 2 years, the company enjoys 70% tax exemption. Where the loan is 5-7 years but not less than 18 months, the company enjoys 40% tax exemption. Where the loan is 2-4 years but not less than 12 months the company enjoys 10%. The company enjoys no tax exemption for foreign loans below 2 years. Interest on any loan granted by a bank to a company engaged in agricultural business, or the fabrication of any local plant and machinery, or as working capital for any cottage industry established by the company under the Family Economic Advancement Program, is exempted from tax, if the moratorium is not less than eighteen months and the rate of interest on the loan is not more than the average cost of the fund to the bank at the time the loan was granted. Such agricultural business, must be connected with plantations for the production of rubber, oil palm, cocoa, coffee, tea and similar crops; the production of cereal crops, tubers, fruits of all kinds, cotton, beans, ground-nuts, sheanuts, beniseed, vegetables, pineapples, bananas and plantains and animal husbandry. Where a company manufactures goods for export and sells more than one half of its goods on export and such company has obtained a bank loan, interest payable on that loan will be exempted from tax.

The Nigerian Export Promotion Council must certify this fact for the company to enjoy this exemption. Small companies (companies with N25,000,000 or less in gross turn over) are exempted from tax in their relevant year of assessment so also are small companies in the manufacturing sector in the first five years of their operations. A company's profits are also exempted from tax in respect of goods exported from Nigeria, if the proceeds of the exports are used for the purchase of raw materials, plants equipment and spare parts. Such profits will, however be taxed if it is not used for this purpose. A real estate company which receives dividend and rental income for its shareholders will not be taxed on such dividend and income if a minimum of 75% of it is distributed to its shareholders in the financial year the dividend or income was earned. Companies that are engaged in agricultural productions are granted an initial tax-free period of five years which can be renewed for additional three years maximum. The profits of a company registered as a friendly society, a co-operative society, or engaged in ecclesiastical, charitable or educational activities are exempted from tax, if such profits are not derived from trade or business. The profits of a company that promotes

sporting activities will also be exempted from tax if such profits are wholly utilised for the purpose of promoting sporting activities the same exemption applies to trade unions if their profits are not derived from trade or business.

1.3 Allowable Deductions

Deductions allowable from a company's profit include interest of money borrowed by the company, rent, salary and other staff remuneration, staff benefits and allowance, repair expenses, bad debts incurred by the company in the course of trading and staff retirement benefits.

1.4 Allowable Donations

Companies are allowed to make donations from their profit to tertiary institutions and research institutions for research purposes in amount not exceeding an amount which is equal to 15% of the total profits or 25% of the tax payable in the year of the donation whichever is higher.

Companies are also allowed to make donation for research and development in amounts not exceeding 10% of the company's total profit. And companies and other organizations engaged in research and development activities for commercialization are allowed 20% investment tax credit on their qualifying expenditure for that purpose.

1.5 Deductions Not Allowable

The following are the deductions not allowable by the CITA and the Finance Act 2020:

- i. capital repaid or withdrawn and any expenditure of a capital nature
- ii. any sum recoverable under an insurance or contract of indemnity
- iii. taxes on income or profits levied in Nigeria or elsewhere, which are not taxes levied outside Nigeria on profits that are also taxable in Nigeria where relief for the double taxation of those profits are not given under any other provision
- iv. any payment to a savings, widows and orphans, pension, provident or other retirement benefit fund, society or scheme

- v. the depreciation of any asset
- vi. any sum reserved out of profits
- vii. any expense incurred within or outside or outside Nigeria involving related parties except as is provided under the Transfer Pricing Regulations
- viii. any expense involved in deriving tax exempt income or losses of a capital nature
- ix. any compensating payment made by a borrower that qualifies as a dividend
- x. any compensating payment made by an approved agent which qualifies as interest or dividends
- xi. any penalty prescribed by the national assembly, and
- xii. any tax or penalty borne by a company on behalf of another person

1.6 Provision for Allowance

Where a company incurs expenditure in acquiring a plant or equipment, the company will be allowed investment allowance at 10% of the actual expenditure acquiring such plant or equipment.

Companies are also allowed investment allowance where they incur expenses to provide facilities like electricity, water, tarred road and telecommunication for business purpose in a place located 20 kilometers away from where these facilities are provided by the government.

The investment allowance is at the following rates:

No facilities at all – 100%

No electricity – 50% No water – 30%

No tarred road – 15%

No telecommunication – 5%

A company that undertakes expenses in having a plant equipment in a certain approved manufacturing activity in an export processing zone will be granted 100% capital allowance in any year of assessment. This company will however, not be granted any other investment allowance. Where the company is 100% export oriented, and is established in or outside and export free zone, it will be exempted from tax for the first 3 years of assessment consecu-

tively. This exemption will be applicable if the company's undertaking for this purpose

- (i) Is 100% export oriented
- (ii) Is not formed by splitting or breaking up or reconstructing a business already in existence;
- (iii) Is to export articles during the relevant year and the export proceeds forms 75% of its turnover;
- (iv) the undertaking is not formed by transferring machinery or plants, previously used for any purpose to the new undertaking or where machinery or plant previously used for any purpose is transferred does not exceed 25% of the total value of the machinery or the undertaking;
- (v) the undertaking repatriates at least 75% of the export earnings to Nigeria and places it in a domiciliary account in any registered and licensed bank in Nigeria. What the undertaking here means is the particular business activity.

1.7 Minimum Tax

If in any year of assessment a company's ascertainable profits from all sources results in a loss, or where the company's ascertained total profits results in no payable tax or where the payable tax is less than the minimum tax, the tax to be levied will be 0.5% of the gross turnover. This does not apply to a company carrying on agricultural trade, a company in the first 4 years calendar of its commencement of business, and a company whose gross turnover is less than N25,000,000 in the relevant year of assessment.

1.8 Mining/Hotels/Spare Parts Companies

A new company into mining and solid minerals enjoys tax exemption for the first three years of its operation. For hotels, the 25% of their incomes in convertible currencies derived from tourists is exempted from tax provided that such income is put in a reserved fund to be utilized within five years for the building expansion of new hotels, conference centers and new facilities for the development tourism. Where a company deals wholly in the fabrication of spare parts, tools and equipment for local consumption and export, it will be allowed 25% investment tax credit on its capital expenditure.

A company which buys a locally manufactured plant, machinery or equipment for use in its

business, will be allowed 15% investment tax credit on such fixed asset.

1.9 Gas Utilisation Companies

A company that deals in the marketing and distribution of natural gas for commercial purpose in downstream operations will be granted an initial tax free period of 3 years which can be renewed for additional 2 years subject to how the business has performed in the first 3 years free period. Alternatively, the company may enjoy 35% investment allowance. After the tax free period, the company still enjoys an annual allowance of 90% with 10% retention for investment in plant and machinery and an additional 15% investment allowance which does not reduce the value of the asset.

The company will also enjoy a tax free dividend during the tax free period if the investment for the business was in foreign currency or it imported plant and machinery during the period which is not less 30% of the equity share capital of the company. Where the company obtained an approval from the Minister of Finance for any loan, it will able to deduct the interest payable on such loan.

1.10 Tax Rates

The tax rate levied and payable for each year of assessment on the profits of medium-sized companies is 20 Kobo for every naira, and for large companies is 30 Kobo for every naira.

1.11 Commonwealth Income Tax Relief

Where a Nigerian company proves satisfactorily that it has paid, by anyway, or that it is liable to pay Commonwealth income tax for that year regarding any tax that it is also liable to pay under the Company Income Tax Act (CITA), it will be entitled to relief from tax paid or payable by it under CITA. The relief such company will enjoy will depend on whether the Commonwealth rate does not exceed one-half of the rate of tax under the CITA. In that case the relief to be given will be the Commonwealth rate of tax. In any other case the rate at which the relief will be given will be half the rate for tax under the CITA.

For any other company, not being a Nigerian company, where the Commonwealth rate of tax

does not exceed the rate of tax under the CITA, the rate at which relief will be given will be one-half of the Commonwealth rate of tax. Where the Commonwealth rate of tax exceeds the rate of tax under the CITA, the rate at which the relief will be given will be equal to the amount by which the rate of tax under the CITA exceeds one-half of the Commonwealth rate of tax.

1.12 Double Taxation Arrangements

The Minister of Finance may by an order or directive make provisions to reflect bilateral arrangement made by the Federal Government of Nigeria with another country to effect the relief of double taxation in trans-national transactions, in importation and exportation of goods between Nigeria and such other country. Such a directive may encapsulate periods commencing or ending before the making of such directive and may also cover profits from trades which otherwise would not be subject to double taxation.

1.13 Tax Returns Under the CITA

Every company, including a company granted exemption from incorporation, shall, at least once a year file a return with the Federal Inland Revenue Service (FIRS) containing a true and correct statement in writing the amounts of its profits from each and every source computed. The time for filling returns for a company in business for more than 18 months, must not be more than 6 months after the end of its accounting year. For a company newly incorporated, the time for filling its returns must be within 18 months of its incorporation or not more than 6 months after the end of its accounting period. A company can apply to the Federal Inland Revenue Service (FIRS) for an extension of time for filling its returns. Such application must elicit a tenable reason and must be before the expiration of the stipulated time for filling its returns.

The Finance Act 2020 provides that a medium-sized company that pays its tax before 90 days before the due date will be entitled to a 2% bonus. A large company that does likewise will be entitled to a 1% bonus.

Value Added Tax

The Value Added Tax (VAT) is the charge imposed by the Federal Government of Nigeria on certain goods and services supplied in Nigeria. The provisions for the Value Added Tax (VAT) are contained in the Value Added Tax Act and the amendments made by the Finance Act 2020.

For the purpose of clarity goods and services are supplied in Nigeria if:

- (i) The goods are physically present in Nigeria at the time of supply
- (ii) The goods are imported into Nigeria for use by a person in Nigeria
- (iii) The goods are assembled or installed in Nigeria
- (iv) The beneficial owner of the rights in the goods or over the goods is a taxable person in Nigeria and the goods or right is situated, registered or exercisable in Nigeria.

Also services are supplied in Nigeria if:

- (i) They are services rendered in Nigeria by a person who is physically present in Nigeria at the time of providing the service
- (ii) The services are provided to a person in Nigeria, whether or not the services are rendered within or outside Nigeria.

In calculating the value added tax of goods and services, the tax rate is added to the quoted value of the goods or services. Where the payment in exchange for the goods is monetary, then the VAT is added to the stated price of the goods. In essence the buyer of the goods pays the tax not the seller. Where however, the payment is not monetary but in kind, the VAT will be the market value of such goods and service.

2.1 Tax Rate and Exemptions

Value Added Tax is charged at the rate of 7.5% of the value of taxable goods and services.

Certain goods and services are however exempted from the payment of VAT by the Act. The goods exempted are:

1. All medical and pharmaceutical products
2. Basic food items
3. Books and educational materials

4. Baby products
5. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment
6. All exports
7. Plant and machinery imported for use in the Export Processing Zone
8. Plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations
9. Tractors, plough and agricultural equipment and implements purchased for agricultural purposes
10. Locally manufactured sanitary towels, pads and tampons Services exempted from the payment of VAT are:
 1. Medical services
 2. Services rendered by Microfinance Banks, People's Bank and Mortgage Institutions
 3. Plays and performances conducted by educational institutions as part of learning
 4. Tuition related to nursery, primary, secondary and tertiary institutions
 5. All exported services

2.2 Zero Rate Goods and Services

There are certain goods which are charged at zero tax rate. These goods are:

1. Non-oil exports.
2. Goods and services purchased by diplomats.
3. Goods purchased for use in humanitarian donor funded projects. These are projects undertaken by Non-Governmental, Religious and Social Organizations

2.3 Taxable Persons, Registrations and Deregistration

A taxable person in the context of the Value Added Tax Act is a person who, in the course of business, has made taxable supplies or expects to make taxable supplies, which amounts to N25,000,000 or more in value in a single transaction or cumulatively in a series of transactions in a calendar year. Invariably a business which earns at least N25,000,000 is

to be registered with the FIRS for VAT. Taxable persons are expected to register with the Federal Inland Revenue Service (FIRS) when they commence business for the purpose of the VAT. And when they cease to carry on business, they are also expected to notify the FIRS within 90 days of ceasing to do business so as to deregister.

Conclusion.

So far we have examined the subjects that make up the start-up checklist for businesses. We have also examined legal structures as provided by the Company and Allied Matters Act 2019. Finally we examined certain provisions of the Finance Company Income Tax Act (CITA), Value Added Tax Act (VAT) and Finance Act 2020 and their applicability to businesses in Nigeria.

This book as so far provided digestible information for general purpose. However, it should not be construed as legal advice. For further expert advice and consultation, contact us at www.glc.ng

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