

**International  
Comparative  
Legal Guides**



# **Foreign Direct Investment Regimes**

# **2024**

**Fifth Edition**

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## 1 Foreign Investment Policy

### 1.1 What is the national policy with regard to the review of foreign investments (including transactions) on national security and public order grounds?

Nigeria's national policy on foreign investment permits foreign investment in all sectors of the economy except specified industries or enterprises designated as being on the "negative list" in the Nigeria Investment Promotion Commission ("NIPC") Act ("NIPC Act"), in which both local and foreign investments are prohibited. Section 17 of the NIPC Act provides that a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria subject to the provisions of section 18, which provides that the provisions of section 17 shall not apply to the negative list.

The prohibited sectors of investment under the negative list as provided in section 31 of the NIPC Act are: (a) production of arms, ammunition, etc.; (b) production of and dealing in narcotic drugs and psychotropic substances; (c) production of military and para-military wears and accoutrement, including those of the Police and the Customs, Immigration and Prison Services; and (d) such other items as the Federal Executive Council ("FEC") may from time to time determine. The list is not exhaustive because of the grant of discretionary power to the FEC to determine other enterprises that may be added to the investment prohibition list. However, the nature of business activities in the sectors which are listed under the investment prohibition list are enterprises involved in products or services that touch on national security.

Cyberspace, and particularly the use of national cyberinfrastructure, are subjects of regulation on account of national security; and foreign investment in this sector may be reviewed on grounds of national security. A combined reading of the provisions of the Cybercrimes (Prohibition, Prevention, etc.) Act ("Cybercrimes Act"), the National Cybersecurity Policy, and the National Cloud Computing Policy ("NCCP") provides the basis for the review of foreign investments in the cyberspace industry in Nigeria on grounds of national security and public order. Whilst the Cybercrimes Act and the National Cybersecurity Policy, which governs the designation of critical national information infrastructure, generally encourage public-private partnerships to continue to develop Nigeria's capacity in cyberspace, there is, however, the caveat that critical national infrastructure must be within Nigerian territory. This means that foreign investment in any enterprise that will be involved in controlling or processing classified national security information must maintain its cyber infrastructure within Nigeria.

Additionally, under the NCCP, the National Information Technology Development Agency ("NITDA") and the Security Services are mandated to control classified or national security information which must be on-premises of the relevant Ministries, Departments and Agencies ("MDAs") or collocated or in a cloud within the Nigerian territorial boundary.

### 1.2 Are there any particular strategic considerations that the State will apply during foreign investment reviews? Is there any law or guidance in place that explains the concept of national security and public order?

There is no general strategic consideration in foreign investment reviews in Nigeria. However, section 78 of the Companies and Allied Matters Act 2020 ("CAMA") provides a general precondition for foreign direct investment to the effect that a foreign company intending to carry on business in Nigeria is obligated to incorporate a separate entity in the form of a company in Nigeria, except foreign companies that have been exempted from incorporation by the Minister of Trade. This requirement does not, however, extend to foreign investment in an existing Nigerian company.

In addition to this, there are (a) industry-specific preconditions for engaging in business that will apply to foreign investments, and (b) laws and policies that provide for the prioritisation of national businesses for public procurement by the MDAs of the Government. For instance, the Council for Regulation of Engineering (Engineers Registration, etc.) (Amendment) Act regulates the practice and offering of engineering services in Nigeria and requires the registration of engineering practitioners. The Public Procurement Act provides that procuring entities should give priority to Nigerian firms in the award of contracts. A similar provision is found in the Presidential Executive Order for Planning and Execution of Projects, Promotion of Nigerian Content in Contracts, Science, Engineering and Technology issued in February 2018 ("Executive Order 5"). Where the nature of the foreign investment involves a merger, the approval of the Federal Competition and Consumer Protection Commission ("FCCPC"), depending on whether it is a small or a large merger as defined under the Federal Competition and Consumer Protection Act ("FCCPA"), will be required to complete the transaction.

The concepts of "national security" or "public order" are not defined in any legislation in Nigeria. However, both concepts are generally recognised under the Nigerian legal jurisprudence, especially as they relate to the public interest in having a stable socio-economic landscape, and a peaceful and safe environment.

In the National Security Strategy 2019, issued by the Office of the National Security Adviser (“NSA”), the guiding principles of national security in Nigeria and the different areas of interest which form the national security concerns in Nigeria were conceptualised. Although no formal definition of “national security” is provided by the NSA, it takes cognisance of “the strong connections between the economy and national security”, and articulates the policies and strategies that the Government proposes to deal with national security issues in Nigeria.

### 1.3 Are there any current proposals to change the foreign investment review policy or the current laws?

No, there is no proposal or regulatory framework to the best of our knowledge, by the Federal Government or its agencies, to change the foreign investment review policy or the current laws relating to foreign investment in Nigeria.

## 2 Law and Scope of Application

### 2.1 What laws apply to the control of foreign investments (including transactions) on grounds of national security and public order? Does the law also extend to domestic-to-domestic transactions? Are there any notable developments in the last year?

The law that generally applies to the control of foreign investments (including transactions) on grounds of national security and public order is the NIPC Act, as discussed in our response to questions 1.1 and 1.2 above.

The NIPC Act also applies to domestic-to-domestic transactions, although only companies with foreign investments are required by law, in addition to incorporation at the Corporate Affairs Commission, to register with the NIPC as provided in section 20 of the NIPC Act. However, the NIPC will typically, in practice, require NIPC registration for a Nigerian company without foreign investment, which seeks to obtain any incentive that is available through the NIPC such as a pioneer status tax incentive.

The Business Facilitation (Miscellaneous Provision) Act, 2022 (“BFA”) came into effect on 8 February 2023 to remove administrative bottlenecks and enhance the ease of doing business in Nigeria for Nigerian companies and foreign companies registered in Nigeria. The BFA introduced certain mandatory requirements for MDAs and amended 21 corporate legislations to foster flexibility, transparency and collaboration in Nigeria’s business environment. The BFA requires all MDAs to publish (a) a complete list of the requirements to obtain their products and services, and (b) the associated timelines and fees. Some of the laws amended include: (a) the CAMA, by providing for virtual meetings, electronic share certificates and increases in the share capital of a company by a resolution of the board of directors of the company as against a resolution of the members of the company in a general meeting; (b) the Customs and Excise Management Act (“CEMA”), by providing for a technology-based single-window platform to lodge all required documents regarding importation, exportation and transit in order to fulfil all import, export, transit-related and other regulatory requirements; (c) the Investment and Securities Act, 2007, by permitting private companies to allot shares to the public as regulated by the Securities and Exchange Commission; (d) the Immigration Act, by providing that entry visas to Nigeria should be issued or rejected within 48 hours of the application; and (e) the National Office for the Technology Acquisition and Promotion Act, by exempting companies in their first two years of operation from liability to penalties for late registration

of foreign technology acquisition contracts, provided that the contracts are registered before the end of the second year of their business operation as opposed to the previous provision for registration within 60 days of the execution of the contract.

There are other laws that apply to foreign investments generally, although they do not necessarily control foreign investments on grounds of national security and public order. These include the Foreign Exchange Monitoring and Miscellaneous Provision Act (“FEMMP Act”), Investment and Securities Act, National Office for Technology Acquisition and Promotion (“NOTAP”) Act, Nigerian Oil and Gas Industry Content Development Act and FCCPA, among other sector-specific laws with transaction-specific provisions.

### 2.2 What kinds of foreign investments, foreign investors and transactions are caught? Is the acquisition of minority interests caught? Is internal re-organisation within a corporate group covered? Does the law extend to asset purchases?

All forms of foreign investments, foreign investors and transactions are captured under the relevant laws for the regulation of foreign investments, whether the interest sought to be acquired is minority or majority interest. Under the NIPC Act, a foreign investor may own a 100% share of the equity of the company provided it is registered with the NIPC.

Regarding internal re-organisation, the FCCPA will govern the transaction if it has an implication for competition. This will also be the case with asset purchases.

However, a foreign company cannot purchase an immovable asset or an asset sought to be operated in Nigeria directly by a foreign company. This is because only a Nigerian company can carry on business in Nigeria (see question 1.2 above).

### 2.3 What are the sectors and activities that are particularly under scrutiny? Are there any sector-specific review mechanisms in place?

Only the sectors enumerated in the negative list, as discussed in our response in question 1.1, are under scrutiny given the total restriction against participation in those sectors of the economy.

### 2.4 Are terms such as ‘foreign investor’ and ‘foreign investment’ defined in the law?

No. Although the term “foreign investor” is used in the NIPC Act, which is the specific and principal statute on foreign investment in Nigeria, no definition is provided for the terms “foreign investor” and “foreign investment” in the NIPC Act or in any other statute.

### 2.5 Are there specific rules for certain foreign investors (e.g. non-EU/non-WTO), including state-owned enterprises (SOEs)?

There are no specific rules or legislation that govern specific foreign investors.

There are also no specific rules for foreign investment in state-owned enterprises. However, the State may enter into bilateral agreement to facilitate such investment which is primarily for the purpose of the specific transaction. In such instance, the bilateral agreement may provide additional rules (especially protection and incentives) for the foreign investment.

**2.6 Is there a local nexus requirement for an acquisition or investment? If so, what is the nature of such requirement (sales, existence of subsidiaries, assets, etc.)?**

As indicated above, only a company registered in Nigeria (which may be a subsidiary) can carry on business in Nigeria or hold any immovable asset or asset sought to be operated in Nigeria by the owner. However, a foreign company may hold shares directly in a Nigerian company without the necessity of having a local presence in Nigeria.

**2.7 In cases where local presence is required to trigger the review, are indirect acquisitions of local subsidiaries and/or other assets also caught (e.g. where a parent company is acquired which has a local subsidiary in the jurisdiction)?**

Yes, both direct and indirect acquisitions of the whole or part of the business of an undertaking are recognised, provided that, such acquisition enables the acquiring foreign entity to gain control of the target local subsidiaries.

### 3 Jurisdiction and Procedure

**3.1 What conditions must be met for the law to apply? Are there any financial or market share-based thresholds?**

Our responses to questions 2.1, 2.2 and 2.3 contain the notable conditions that apply to foreign investments generally. Regulation of foreign investment is determined by territorial connection. Accordingly, Nigerian laws on foreign investment (as opposed to trade and taxation) apply to foreign companies that carry on business in Nigeria.

There are no fixed financial or market share-based thresholds for regulation of foreign investors or foreign investment in Nigeria. However, a company with foreign participation (interpreted as equity participation) is required to have a minimum issued share capital of ₦10 million.

There are sectors with higher thresholds of share capital as prescribed by sector-specific regulations irrespective of whether the business is wholly owned by Nigerians or has foreign participation.

**3.2 Do the relevant authorities have discretion to review transactions that do not meet the prescribed thresholds?**

Yes, relevant authorities have the discretion to review transactions that are below the prescribed thresholds. For example, the CAC will not register a company if the authorised share capital is below the threshold. And in cases in which certain capitalisation thresholds have been set by a regulator, the regulator may review transactions in which the capitalisation requirement is not met.

With specific regard to mergers, although generally only large mergers come within the notification requirement regime of the FCCPA (see section 96 of the FCCPA), the FCCPC has the discretion to request the parties to a small merger to notify the Commission of a merger; this power may be exercised within six months after the implementation of the merger (section 95(1) of the FCCPA and regulation 11(1) of the Merger Review Regulation).

**3.3 Is there a mandatory notification requirement? Is it possible to make a notification voluntarily? Are there specific notification forms? Are there any filing fees?**

With regard to mergers or acquisitions, for large mergers (being mergers in which the combined turnover of the acquiring and target entities equals or exceeds ₦1 billion or the turnover of the target entity equals or exceeds ₦500 million) there is a mandatory notification requirement (regulation 1 of the Merger Threshold Regulations). Voluntary notification can only be achieved through the amendment of the FCCPA.

The mandatory notification must be done through the prescribed “Form 1” or “Form 2” which are the prescribed forms in the Merger Review Regulations for filing a merger notification to the FCCPC under the usual merger review regime or the simplified merger review regime, respectively.

Schedule 1 of the Merger Review Regulation sets out all applicable fees for filing notice of a merger to the FCCPC. The application fee payable by all merging undertakings is ₦50,000. In addition to the application fee, the applicable fee for all merger notification depending on the total turnover of the merging entities is either a sum of (i) the percentages of the consideration sum payable for the transaction (0.3% for the first ₦500 million, 0.225% for the next ₦500 million and 0.15% for any sum thereafter), or (ii) the percentages of the last annual turnover (0.3% for the first ₦500 million, 0.225% for the next ₦500 million and 0.75% for any sum thereafter), whichever is higher. However, under the simplified merger review regime, an applicant is required to pay an expedition fee of ₦5 million.

**3.4 Is there a ‘standstill’ provision, prohibiting implementation pending clearance by the authorities? What are the sanctions for breach of the standstill provision? Has this provision been enforced to date?**

Yes, the law provides that the parties to a merger transaction shall not implement the merger prior to or after notification unless approval is obtained from the FCCPC (regulation 13 of the Merger Review Regulation). The FCCPC can impose sanctions on violating parties by (a) invalidating any steps or actions taken in the merging process before the approval is issued, (b) imposing interim orders, and (c) imposing administrative measures under the Administrative Penalties Regulations 2020 (regulation 13(4)(5) and (6) of the Merger Review Regulation).

There are also sector-specific legislations, which prohibit the transfer of licences or shares in licensed entities without the approval of the relevant regulator.

**3.5 In the case of transactions, who is responsible for obtaining the necessary approval?**

In the absence of specific express statutory provision or limitation, either of the parties to a transaction may apply for the relevant approval. In all cases, either party to a transaction may apply to the regulator for formal or informal guidance as to whether the authorities would object to the transaction.

**3.6 Can the parties to the transaction engage in advance consultations with the authorities and ask for formal or informal guidance (e.g. whether a mandatory notification is required, or whether the authority would object to the transaction)?**

Yes, please see question 3.5 above.

### 3.7 What type of information do parties to a transaction have to provide as part of their notification?

The information required by parties to a transaction as part of their notification to the FCCPC are (a) Form 1 (which is the notice of merger), and (b) Form 2 (which is the merger-simplified procedure). Representatives of the parties, who could be legal practitioners acting pursuant to a power of attorney, must create an account on the FCCPC portal and obtain login details after the creation of the account. The login details obtained will grant the representatives access to the site to commence the notification process and upload the requisite documents on the FCCPC portal. The forms allow parties to provide all required information to notify the FCCPC of the merger. This includes the name of parties, the nature of the business, a non-confidential executive summary of the merger, ownership and control and any supporting documentation, among others. Such information and documentation would enable the relevant regulator to confirm (a) the identities of the parties and that they are in good corporate standing, and (b) that the parties have met all relevant requirements for approval or licensing.

### 3.8 What are the risks of not notifying? Are there any sanctions for not notifying (fines, criminal liability, invalidity or unwinding of the transaction, etc.) and what is the current practice of the authorities?

Yes. For example, it is a crime for a foreign company to carry on business in Nigeria directly other than through a company registered in Nigeria for that purpose (section 78 of the CAMA). We are, however, unaware of any company that has been sanctioned for this breach, although we are aware of case law in which the court decided that any act of a foreign company in Nigeria in breach of this requirement of the CAMA is null and void. Under the FCCPA, the company incurs the risk of its transaction being void and the FCCPC can also invalidate or void a merger. Generally, the FCCPC has the power to impose fines on parties for breach of the provisions of the FCCPA.

Under the NIPC Act, the only sanction for failure of a company to register with the NIPC is that such a company will not be eligible to obtain any incentive, which is processed through the NIPC.

### 3.9 Is there a filing deadline, and what is the timeframe of review in order to obtain approval? Is there a two-stage investigation process for clearance? On what basis will the authorities open a second-stage investigation?

There is no approval requirement for foreign investment in Nigeria.

### 3.10 Can expedition of review be requested and on what basis? How often has expedition been granted?

There is no such regime since there is no approval requirement for foreign investment in Nigeria.

### 3.11 Can third parties be involved in the review process? If so, what are the requirements, and do they have any particular rights during the procedure?

There is no such regime since there is no approval requirement for foreign investment in Nigeria.

### 3.12 What publicity is given to the process and how is commercial information, including business secrets, protected from disclosure?

There is no such regime since there is no approval requirement for foreign investment in Nigeria.

### 3.13 Are there any other administrative approvals required (cross-sector or sector-specific) for foreign investments?

No. Foreign investors do not require any form of cross-sector or sector-specific approvals different from the approvals required by domestic companies.

## 4 Substantive Assessment

### 4.1 Which authorities are responsible for conducting the review?

There is no such regime since there is no approval requirement for foreign investment in Nigeria.

### 4.2 What is the applicable test and what is the burden of proof and who bears it?

There is no such regime since there is no approval requirement for foreign investment in Nigeria.

### 4.3 What are the main evaluation criteria and are there any guidelines available? Do the authorities publish decisions of approval or prohibition?

There is no such regime since there is no approval requirement for foreign investment in Nigeria.

### 4.4 In their assessment, do the authorities also take into account activities of foreign (non-local) subsidiaries in their jurisdiction?

There is no such regime since there is no approval requirement for foreign investment in Nigeria.

### 4.5 How much discretion and what powers do the authorities have to approve or reject transactions on national security and public order grounds? Can the authorities impose conditions on approval?

There is no such regime since there is no approval requirement for foreign investment in Nigeria.

### 4.6 Is it possible to address the authorities' objections to a transaction by the parties providing remedies, such as by way of a mitigation agreement, other undertakings or arrangements? Are such settlement arrangements made public?

There is no such regime since there is no approval requirement for foreign investment in Nigeria.

**4.7 Can a decision be challenged or appealed, including by third parties? On what basis can it be challenged? Is the relevant procedure administrative or judicial in character?**

There is no such regime since there is no approval requirement for foreign investment in Nigeria. However, in a general sense, decisions of administrative bodies in Nigeria may be challenged both by administrative procedure and by the judicial process.

**4.8 Are there any other relevant considerations? What is the recent enforcement practice of the authorities and have there been any significant cases? Are there any notable trends emerging in the enforcement of the FDI screening regime?**

There is no such regime since there is no approval requirement for foreign investment in Nigeria. However, in a general sense, decisions of administrative bodies in Nigeria may be challenged both by administrative procedure and by the judicial process.



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- Law and Scope of Application
- Jurisdiction and Procedure
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