

KEYNOTES FOR SOLICITORS SERVICING POTENTIAL FOREIGN INVESTORS (3) - IMMIGRATION

Another hurdle for the potential foreign investor looking for possibilities of investing in Nigeria and probably subsequently working or carrying out business in Nigeria is the Immigration hurdle. The major legislation is the Immigration Act 1963 (and subsequent regulations). It is worthy of note, however that in practice, Immigration regulations are fast paced in changes without requisite notice and/or advertisement. Solicitors may therefore be advised to work closely with other persons who deal in Immigration matters as their primary business.

For the purpose of this discourse we will be looking at three categories of Foreign Investors and what the Solicitor should take cognisance of in each of these categories.

1. The Exploratory Visitor:

This would be a potential foreign investor visiting or intending to visit Nigeria for the purpose of tourism, exploring investment opportunities or even for potential foreign investors visiting Nigeria for meetings with Companies, Government, or other organisations. For this purpose the potential foreign investor could apply for a single, multiple entry visa or business visa (which could allow single or multiple entries) from the Nigerian Mission in his country of origin depending on the purpose for which he wishes to visit Nigeria. The Immigration Regulations 1963 S.5 (2) & (3) makes provision for a visa extension which currently can only be made once on a subsisting visa. It should be noted that employment or conducting of business in this category is strictly prohibited See S.8 Immigration Act.

2. The Short Term Contractor

For Companies and organisations that require expatriates for temporary assignments like Erection/Installation Work, Feasibility Studies, Repairs of Machinery and equipment, Auditing accounts, Research work and such other assignments. The Company could apply on the expatriate's behalf for a Temporary Work Permit. Temporary Work Permits are usually issued exclusive of the expatriate quota allocation of the Company/Organisation. The applications are required to be made directly by the Company or Organisation to the Comptroller General Immigration in Nigeria whether from within Nigeria or from the Nigerian Missions abroad. When an approval is made it is then sent to the Nigerian Mission where the applicant originates. The applicant is expected to make an appearance at the Nigerian Mission.

3. The Resident

This would apply to a potential foreign investor who intends to live, work or carry on business in Nigeria on a more permanent basis. In the instance of a foreign subsidiary already incorporated, the Company would need to apply for the following;

- i. **Business Permit** (S.3 Immigration Regulations) as the name connotes permits the foreign subsidiary, to carry out business in Nigeria permanently with imported funds.
- ii. **Expatriate Quota** permits a Company to employ individual expatriates to specifically approved job designations within the permissible duration of such job designations. The individual expatriates are also required to fulfil the criteria established for each particular quota position. Expatriate Quota positions are usually granted for two to three years subject to renewal. However some Companies qualify for one Permanent until Reviewed (PUR) quota position which is usually granted only to Managing Directors.

Currently applications for both the Business Permit and Expatriate Quota are made simultaneously. Where the foreign subsidiary is making its first expatriate quota application, in practice it is called an “establishment quota” and the documents required include copies of the following;

- Certificate of Incorporation of the applicant Company.
- Tax Clearance Certificate of the applicant Company.
- Memorandum and Articles of Association.
- Certificate of Capital Importation from the Importing Bank. The Capital imported is required to be at least 60% of the Nominal Share Capital. It is important to note that the Swift Code from the Importing Bank is required to specify the purpose for which the money is being transferred which may be “deposit for shares”
- Particulars of the Directors of the Company (addresses, nationalities and occupations) - Form CAC 7
- Treasury Receipts evidencing payment of Stamp Duty on the authorised Share Capital of the Company as at the date of the application.
- Statement of Share Capital and Return of Allotment of Shares - Form CAC 2
- Joint Venture Agreement (if necessary)
- Feasibility Report and Programme Implementation Programme of the Company
- Quotations, letters of intent relating to Industrial Plants and Machinery or proof that the machinery has been sourced as well as a Deed of Assignment or Sublease of property to show the Company’s commitment to the business may also be required where applicable.

iii. Subject to Regularisation visa (STR visa)

After the foreign subsidiary obtains its business permit and Expatriate Quota space(s), it would then apply to the Comptroller General confirming the availability of a vacancy(s), expatriate quota position(s) and confirming acceptance of Immigration responsibility for the prospective employee(s). Then an application for an STR visa is made to the Nigerian Mission in the prospective employee's country of origin. An STR Visa only allows the employee (including spouse & children) into Nigeria for a validity period of 90 days pending the time an application is made to the Comptroller General (at any State Immigration Office) for a resident permit which as the name connotes allows the employee live and work in Nigeria. After the permit is granted a Combined Expatriate Residence and Alien's Card (CERPAC) is issued. The CERPAC is made up of two cards; the Aliens Registration Card and the Resident Permit While the Resident Permit allows the employee live and work in Nigeria, the Alien's Registration Card is a record of the expatriate's movements. The CERPAC is valid for one year and renewable thereafter.

For the solicitor servicing foreign investors in this category, it is important to note the following:

1. A holder of a resident permit is required by law to register with the Senior Immigration Officer or Alien Officer in the state where he resides and also report his movements and any change to his circumstances to a same. Ss 8 and 9 Immigration (Control of Aliens) Regulations.
2. The holder of a resident permit is also required to report any intended movements outside his state of residence exceeding twenty four hours or a distance exceeding thirty miles (depending on what is specified in his permit) to a senior Immigration Officer or an Aliens Officer or a police man. S11 Immigration (Control of Aliens) Regulations.
3. A holder of a resident permit is also required by law to apply for a single or multiple re-entry visa (whichever suits his purposes) when he wishes to travel out of Nigeria See s.9 (2)(c) Immigration Act

The Solicitor needs to remind his clients of the above (better in writing) to avoid any embarrassment by the police or Immigration this is because usually when the client finds himself/herself in such situations, the solicitor is usually the client's first resort.

Dolapo Kukoyi practices with Detail Solicitors.