

Delaware Flip for a Nigerian Entity-Step by Step Guide

Scenario A: For a Fresh Registration: This is easier with less clean-ups involved

Step 1: Assuming the Nigerian entity has not been set-up(See details on how to <set up> your delaware entity)

Register the proposed entity at the Nigerian Corporate Affairs Commission (CAC) with a minimum share capital of ₦10,000,000 (since the entity will be solely or majorly owned by the foreign entity (that is the US entity). You will require a minimum of 1 shareholder and 2 directors (The law does not preclude a foreigner from being a director in a Nigerian company. However, a foreign director may not be appointed as a Managing Director of a company or be a signatory to a bank account unless such a person has obtained a requisite work permit, specifically the Combined Expatriate Residence Permit and Aliens Card (CERPAC). The process of incorporation usually takes between **2-6 weeks** of providing the requisite information and documents.

Step 2

Following the successful incorporation of the new entity with the CAC, the Company needs to obtain a Tax Identification Number (TIN) and register for a Value Added Tax at the Federal Inland Revenue Service. This TIN is required for the payment and remitting of the company's corporate and all other taxes. The process for tax registration takes between **1-2 weeks**.

Step 3

Once you have the TIN, open a domiciliary bank account with any commercial bank in Nigeria and obtain a Certificate of Capital Importation (CCI). The corporate bank account is where the founders will pay the minimum paid up capital. The CCI serves as evidence of importation of capital which could be equity, debt, cash or goods into the country. The CCI also guarantees the unconditional repatriation of capital and profits out of the country.

As part of the requirements for the account opening, the signatories will also require a Bank Verification Number (there are various BVN enrolment centers within the country). The account opening timeline is dependent on the bank and the provision of the requisite documents and information to the bank.

Step 4

There is a mandatory requirement for the entity to be registered with the Nigerian Investment Promotion Council (NIPC) before the company could legally commence any business in Nigeria. By virtue of the Nigerian Investment Promotion Commission Act Cap N117 LFN 2004 (NIPC Act), a Nigerian company with foreign equity participation must register with the NIPC and obtain a Certificate of Business Registration before carrying on business. Until such a company is registered with the NIPC, it is not entitled to commence business in Nigeria. In addition to this, the company must also obtain a business permit. In practice, this is typically obtained after incorporation from the Federal Ministry of Interior/Internal Affairs. This permit is also a precondition for the company to obtain an expatriate quota and commence work permit applications if it intends to hire foreign workers.

Scenario B: Delaware flip for a Nigerian Company (This involves more documentation and clean-ups).

Step 1: Assuming the Nigerian entity and US entity have both been set up

The first step for every flip with a Nigerian entity is to ensure all [annual returns](#) are filed up to date for the company whose shares are to be acquired (subsidiary). The modalities for filing annual returns can be found under Section 417 of CAMA 2020.

Step 2:

You are required to increase the Nigerian entity's share capital to a minimum of ₦10,000,000. This is to accommodate for the allotment of shares to the Holding Company in Delaware. The minimum share capital required by the Corporate Affairs Commission for this sort of corporate restructuring is ₦10,000,000 (refer to step 1 for fresh registration). You require the shareholders resolution for the Nigerian entity approving the increase in the Company's share capital.

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Step 3

If existing shareholders in the Nigerian entity will be transferring their shares to the U.S. entity to complete the flip, the shareholders need to sign a resolution, share transfer form and other relevant documents .(here is where your lawyers can help as well). This process is also largely similar if the local entity is registered in another African country. You will have to check with local lawyers in the particular jurisdiction for the specifics. Additionally, multiple local entities can be flipped to one Delaware C. Corp, and your lawyers will best advise how this can be done.

Documents required

1. Resolution approving the <[flip](#)> by the Nigerian and Delaware entities.
2. Completed CAC [return of allotment](#) (Form CAC 5).
3. Deed of surrender of shares from all previous shareholders of the new subsidiary.
4. Certificate of share increase (where applicable).
5. Formation documents of the Delaware entity

Step 4: Refer to step 4 of fresh registration.

Note: Transfer of shares (in itself) is generally not liable to taxation so it is only the increase that will be subject to ad valorem tax usually around \$90 paid to the Federal Inland Revenue Service at the point of the transfer (This is the case if you are increasing from NGN1m to NGN10m for instance. See further