Introduction

On March 20, 2017, the Honourable Minister of Interior (the “Minister”) Lt. Gen Abdulrahman Dambazau (retired), issued the Immigration Regulations 2017 (the “Regulations”). The key objective for issuing the Regulations is to create a legal framework for the implementation of the Immigration Act 2015 (“Act”) (Please refer to our article on the review of the Act) and a repeal of the Immigration Regulations 1963.

The Regulations which have come into effect raise a myriad of compliance issues, which corporate entities that have foreign nationals, as employees, need to be abreast of and strictly comply with.

This briefing seeks to highlight the provisions of the Regulations and in particular, the various compliance matters and red flags that both the body corporate and foreign national employees must be aware of.

Highlights of the Regulations

1. BUSINESS PERMIT

The Regulations codify the need for a foreign national to obtain a business permit, prior to establishing a profession, business or trade in Nigeria. Thus, a business permit is issued to local Nigerian registered entities that have foreign interest or investment and the permit is issued in the name of the local Nigerian registered entity.

It is pertinent to note that the business permit in itself does not grant the holder resident status. The holder must, in addition to obtaining a business permit for the requisite business, also apply for and procure the requisite visa or permit to reside in Nigeria.

The Regulations also provide a penalty for failure to renew business permit failing which same may be revoked. It is germane to note that the practice, post issuance of the Regulation, didn’t require the renewal of a business permit. We therefore look forward to receiving further guidance from the Ministry in relation to the business permit renewal.

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1 See this link for our review of the Act - http://www.bloomfield-law.com/Publications/BLP_BRIEFING_COMPLIANCE_GALORE.pdf
2 Regulation 4(1) of the Regulations.
3 Regulation 47(b) of the Regulations.
4 Regulation 4(3) of the Regulations.
2. **RESIDENCE PERMIT**

The Regulations make rules regarding the grant of residence permits. Specifically, the Regulations stipulate that the Comptroller General of the Nigerian Immigration Service ("CGI"), is responsible for the issuance of residence permits to immigrants that intend to reside in Nigeria.

The Regulations also provide that residence permits may be granted for a period not exceeding two (2) years.\(^5\) *This therefore confirms that an expatriate can obtain a residence permit valid for more than one (1) year.*

It is, however, paramount to note that the validity of the residence permit is subject to the validity of the expatriate quota.\(^6\)

Valid residence permit are also used for the purposes of re-entry into Nigeria, while foreign nationals awaiting regularization are allowed re-entry within ninety (90) days from the date of endorsement in their passports.\(^7\)

It is important to keep in mind that the date endorsed in the passport is the effective date for re-entry purposes and not the date on the Combined Expatriate Resident Permit and Alien Card ("CERPAC") temporary receipt.

3. **INVESTMENT VISA**

The Regulations seek to introduce an investment visa.\(^8\) In this regard, the Regulations provide that a foreign national that imports a minimum 'threshold of capital' over a period of time may be issued with a permanent residence permit ("PR").

The Regulations do not, however, provide the minimum threshold of capital required. The Act provides that the threshold capital would be determined from time to time in the national visa policy or any other policy. Furthermore, the Regulations also provide that the investment PR may be revoked if the foreign national withdraws the investment from Nigeria.\(^9\)

4. **ECOWAS NATIONALS**

The Regulations make provisions in connection with the residence permits for nationals of Economic Communities of West African States ("ECOWAS").\(^10\) The Regulations state that the nationals of ECOWAS must register with the Nigerian

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\(^5\) Regulation 5(2) of the Regulations.

\(^6\) An expatriate quota is sought where a company is desirous of employing expatriate personnel to fill certain key positions and those expatriates then obtain residence permit to reside in Nigeria.

\(^7\) Regulation 12(5) of the Regulations.

\(^8\) Regulation 5(7) of the Regulations.

\(^9\) Regulation 37(11) of the Regulations.

\(^10\) Regulation 5(9) of the Regulations.
Immigration Service ("NIS") before they take up employment. It is important to keep in mind that ECOWAS nationals have a right of entry valid for ninety (90) days.

5. **TEMPORARY WORK PERMIT**

The Regulations provide for the implementation of the issuance of the Temporary Work Permit ("TWP") outside the expatriate quota provision.\(^ {11}\) The TWP is a single-entry work visa authorization valid for two (2) to three (3) months subject to the discretion of the CGI.

It is important to note that the TWP may be extended in –country for another thirty (30) days.

Additionally, the Regulations stipulate a penalty after conviction of a three (3) year imprisonment term or a fine of Five Hundred Thousand Naira\(^ {12}\) (circa US$1,500.00) for failure to renew the TWP, whilst enjoying the benefits only persons with valid TWP should enjoy.

6. **VISA OR ARRIVAL**

The Regulations provide that the CGI may approve the issuance of a visa on arrival ("VoA") in respect of any person.\(^ {13}\) It must be noted that the Act had specifically provided for foreign nationals that can be issued with the VoA who are generally, frequent travel business persons of international repute, executive directors of multinational companies and members of government delegations.\(^ {14}\)

However, the Federal Government of Nigeria recently announced that the VoA has been extended to business travellers who may not be able to obtain a consular business visa because Nigeria does not have a consulate in their home country, or due to the exigencies of urgent business travel.

**Based on the foregoing, the VoA is now available to all foreign nationals. It must be noted that the foreign national must have obtained a pre-approval in-country before boarding the aircraft.**

7. **EXPATRIATE QUOTA**

The Regulations mandate the prior authorization of the Minister in writing, before a foreign national establishes a business, trade or profession, in Nigeria. The authorization would be given in the form of the business permit or expatriate quota or both. **In addition, the Regulations also provides for the stay of action letter which acts as a bar to deportation during the pendency of an application for renewal of the expatriate quota.** This means that if the expatriate quota expires during the renewal process, the company may apply for a stay of action letter which

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\(^ {11}\) Please refer to Regulation 8(1) of the Regulations.

\(^ {12}\) Regulation 47 of the Regulations.

\(^ {13}\) Regulation 9 of the Regulations.

\(^ {14}\) Regulation 20(7) of the Regulations.
would allow the foreign nationals in the company remain in Nigeria till the quota is renewed and work permits extended.

8. **SPOUSUAL RESIDENT PERMITS**

   The Regulations introduce a spousal residence permit for foreign nationals married to Nigeria nationals. The permit is issued irrespective of the entry visa and serves as a multiple entry visa.

   *It is important to note that the Regulations is silent on the sex of the spouse (this means that the spousal permit is available to both a husband and a wife that is a foreign national).*

   Nigeria does not recognize civil partnerships and same sex marriages; consequently, the spousal resident permit would not apply to this class of marriages.

9. **CONTROL OF MOVEMENT**

   The Regulations introduce a register to monitor the movement of foreign nationals. The register is to be maintained in the state where the foreign national resides.\(^{15}\) The essence of the register is to identify, register and monitor the movement of foreign nationals.

   Upon completion of the registration, the foreign national will be issued a certificate of registration. In addition, foreign nationals who intend to change their residence status or have changes in their circumstances, must notify the NIS office in the state where they are registered, within seven (7) days. Regarding changes in circumstances, the requirement to notify the NIS office is only where the changes are such that they affect the information provided during registration.

   Apart from the foregoing, the Regulations state that a foreign national must have a copy of the certificate of registration in his possession at all times in the event that an immigration officer demands for same.\(^{16}\) Also, the Regulations also place a responsibility on house holders that lease or rent their property to foreign nationals to ensure that the foreign nationals comply with the provisions of same.\(^{17}\)

   **Our understanding is that the householders need to confirm the resident status of foreign nationals before the lease or similar transactions of arrangements come into effect.**

   Although, the Regulations do not provide a specific penalty for failure on the part of the house holder to report a foreign national that fails to comply, the Act has a wide reaching penalty section which, we argue, would cover this infraction.\(^{18}\)

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\(^{15}\) Regulations 22 and 23 of the Regulations.  
\(^{16}\) Regulation 33(1) of the Regulations.  
\(^{17}\) Regulation 29(1) of the Regulations.  
\(^{18}\) See Regulation 60 of the Regulations.
The Regulations also mandate owners or managers of hotels, boarding houses or any premises where lodging or sleeping accommodation is provided for pay, to keep a register of foreign nationals. The register is required to contain the following information:

a) full name of the foreign national,
b) last address of the foreign national,
c) occupation or profession of the foreign national,
d) nationality and passport number of the foreign national,
e) date of arrival and departure of the foreign national,
f) destination of the foreign national, and
g) signature of the foreign national

It is critical for such establishments referred to above, to keep a record of foreign nationals going forward, because the Regulations also authorize immigration officers to, at all times, carry out an examination and may also by notice in writing request information contained in the register.

10. OFFENCES AND PENALTIES

Individual penalties

The Regulations provide that foreign nationals who fail to:

a) regularize their stay within the prescribed three (3) months,
b) renew their business permit, visitor’s visa, transit visa, TWP after expiration, or
c) renew their resident permit within thirty (30) days from expiration,

shall be liable on conviction to a term of three (3) years imprisonment or fine of Five Hundred Thousand Naira (circa US$1,500.00) or both.

Corporate penalties

Additionally, the Regulations further recognize infractions committed by the relevant corporate entities. Specifically, the Regulations provide that a body corporate that fails to renew the expatriate quota or render its expatriate monthly returns commits an offence and is liable to a fine of Three Million Naira (circa US$9,000.00).20

It is important to note that the Regulations do not state whether the penalty is per infraction, for example, if the body corporate fails to file expatriate monthly returns for a few months and renew the expatriate quota, would the penalty be per infraction?

19 Generally Regulation 30 and 31 of the Regulations.
20 Regulation 52(6).
The Regulations also provide penalty for failure to employ a Nigerian to understudy the foreign national. It is important to note that one of the conditions for the expatriate quota grant is the employment of at least two (2) local employees to understudy the foreign national that fills the role. Accordingly, the penalty for failure to employ local employees to understudy foreign nationals, is **Three Million Naira (circa US$9,000.00)** for each month the expatriate quota position has been occupied without understudies.

It is also an offence to allow another company utilize the expatriate quota position. This is referred to as ‘quota trafficking’ and the penalty is Three Million Naira (circa US$9,000.00).

**Conclusion**

With the advent of the Regulations, we foresee that there will be an increase in immigration audits from the NIS to ensure compliance and it is paramount, that companies in Nigeria ensure that their foreign national employees and human resources personnel are aware of the various changes in immigration regulations, as highlighted herein, and go a step further to carry out robust internal compliance audits in order not to fall foul of the Regulations.

We commend the swift response of the Minister and the NIS in the preparation and issuance of the Regulations. The proactive and innovative disposition of the NIS is further witnessed in its recent launch, **on March 23, 2017**, of the online business visa on arrival application system which allows issuance of VoA pre-approval within forty-eight (48) hours of receiving an application.

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