



# Founders Guide on **PropTech** in Nigeria

## **About Tech Hive™**

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Tech Hive Advisory Limited is a technology advisory firm which provides advisory and support services to private and public organisations with regards to the intersection between technology, business, and law. We focus on how emerging and disruptive technologies are altering and influencing the traditional way of doing things while acting as an innovation partner to our clients. These new technologies often birth new challenges requiring regulations to balance the benefit of innovation and the rights and freedoms of users. Our experience and capability extends across startup advisory, privacy and data protection, data ethics, cybersecurity, intellectual property management and emerging technologies. We ensure our advice serves our clients well by having an excellent understanding not only of their business, but of the markets in which they operate.

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### **Usage of the Guide**

The Guide is general and educational in nature and is not intended to provide, and should not be relied on, as a source of legal or business advice. This information and material provided in the Guide may not be applicable in all (or any) situations and should not be acted upon without specific legal advice based on particular circumstances.

# Introduction

In recent times, PropTech has continuously caused disruptions to the conventional traditional methods being utilized in the Property and Real estate industry value chain. Property technology (or PropTech) is a collective term that describes startups using technology to deliver innovative products or solutions to the real estate industry.<sup>1</sup> PropTech solutions may utilize block chain technology to bypass the costly and rigorous processes that originally existed. An example is smart contracts which also have the ability to cut out intermediation by lawyers in proprietary transactions.

Thus, with these delicate developments in the proptech industry, there is a need to analyze the laws that apply to ensure that parties are protected as well as evaluate the legal readiness for this global and digital trend. Nigeria currently has no law that speaks directly to the unique issues and developments of proptech, however, the regular laws and regulations that ordinarily apply to real estate and property will apply.



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1. Lecamus, V. (2017, July) PropTech: "What is it and how to address the new wave of real estate startups?" Retrieved from < <https://medium.com/@vincentlecamus/protech-what-is-it-and-how-to-address-the-new-wave-of-real-estate-startups->

## Legislations

### *1. The Constitution of the Federal Republic of Nigeria, 1999 (as amended)*

Section 43 of the Constitution empowers every citizen to acquire and own immovable property anywhere in Nigeria. Pursuant to this provision, the right of every Nigerian, either individual or corporation is guaranteed. However, like other rights, it is not an absolute right as it is subject to the power of the government to compulsorily take possession of land in line with conditions specified by law.

### *2. Land Use Act, 1978*

According to the law, all land in each state in Nigeria is vested in the Governor of the State to hold in trust.<sup>2</sup> As a trustee to all the land, the Governor thereby becomes the overlord while the original owners automatically become tenants holding a right of occupancy as opposed to the freehold system (exclusive ownership of land). The right of occupancy may also be revoked by the Governor for overriding public interest.<sup>3</sup> The law further places an obligation on land owners who want to sell, lease, assign or transfer land to first seek consent from the governor or otherwise such transactions are voidable.

The Nigerian Constitution and the Land Use Act, 1978 guarantees the right of every Nigerian, including registered Nigerian companies, to unrestricted access to possess and enjoy land in all parts of Nigeria whether for agricultural or other purposes. This can be done through obtaining a certificate of occupancy from the State Governor or local government to undertake agricultural business.

As is the case for non-Nigerians, they cannot acquire an absolute interest in land under the applicable Native Land Acquisition Laws of each state in Nigeria, but may acquire a leasehold interest. However, if a foreign agricultural company is registered either as a Nigerian company (private or public) under the Companies and Allied Matters Act 1990 CAMA, the foreign company automatically gains the rights and privileges of natural persons, with a right to acquire an interest in land from government or private entities.<sup>4</sup>

### *3. Land Registration Law, Lagos State 2015*

The law establishes the Land Information Management System (LIMS) for archival of documents, online searches, online payments, certification of documents and license for users. The law mandates all land documents to pass through LIMS so that searches for accreditation and due diligence may be carried out through the platform. Such mandatorily registrable documents include: a sub-lease for a term of 5 years and above which requires Governor's consent, mortgage transactions, long possession of land through uninterrupted adverse possession (12 years against individuals & 20 years against the state), and power of attorney dealing with land and judgment of court.

### *4. Nigerian Urban and Regional Planning Act, 1992*

This law provides for the administration of physical planning, urban development, urban regeneration and building control. This aims to improve the physical look of the environment at the same time ensuring the environment is devoid of environmental hazards.

### *5. Rent Control and Recovery of Premises Act*

This Act is enacted in each state of the Federation to regulate the Landlord-Tenant relationship. The Act provides a step by step procedure for landlords to follow if they are to evict tenants. The law is strictly against self-help in the eviction of tenants and the landlord must follow the required procedure set down by the law in achieving this.

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2. S. 1 Land Use Act 1978 Cap. L5 Laws of the Federation of Nigeria 2004    3. S. 22 Land Use Act  
4. Section 38 of the Companies and Allied Matters Act

### *6. Property and Conveyancing Law (PCL)*

The PCL essentially governs the transfer of property and general property transactions in the western part of Nigeria. The law requires sale of land to be evidenced in a note or memorandum in writing, containing the terms of the sale and signed by parties. The law also requires all conveyances of land or interest in land for the purpose of creating any legal estate to be made by deed.<sup>5</sup> This law is currently domesticated in all western states of Nigeria and it governs the acquisition of properties and mortgage transactions in the following states - Delta, Edo, Ogun, Oyo, Ondo, Osun, Ekiti. The Mortgage and Property Law, 2010 is applicable to Lagos State mortgage transactions.

### *7. Conveyancing Act, 1881*

This Act governs conveyancing, property and mortgage transactions in both the Northern and Southern parts of Nigeria save for states like Edo and Delta. The Act applies to all other states that the Property and Conveyancing Law does not apply to.

### *8. Model Mortgage and Foreclosure Model Law*

The Central Bank of Nigeria in furtherance of its powers under the Central Bank of Nigeria Act, 2007 to make rules, regulations, and guidelines to check the activities of key stakeholders in the Nigerian Mortgage market, came up with the Model Mortgage and Foreclosure Law. The Law seeks to expand capital flow to the state government coffers by increasing the database of registered property-owners.

The law also sets out to facilitate access to affordable mortgages to citizens, increase investment in real estate as well as establish a strong foundation and framework for the secondary mortgage market in Nigeria.

### *9. Capital Gains Tax Act*

The Act provides for tax that should be charged on gains accruing to any person (company inclusive) on disposal or sale of assets. Under the law, what is defined as 'assets' is broad. Assets include real property, incorporeal properties (such as shares, stocks and debentures), currency (other than Nigerian currency) and all other forms of property. Gains made from disposal of sale, lease, transfer, an assignment, a compulsory acquisition or disposition of any form of property are chargeable under the law at the rate of 10%.

A chargeable gain is arrived at by deducting the allowable deductions from the consideration received for the disposal of the assets. Allowable deductions consist of the money or money's worth given by a person (or on a person's behalf) wholly, exclusively and necessarily to acquire an asset, together with the incidental costs of disposing the asset.

### *10. Company Income Tax Act*

According to Section 23 (1) of the Company Income Tax Act (CITA) as amended in the Finance Act 2020, the dividend and rental income received by a real estate investment company (REICs) on behalf of its shareholders shall be exempted from Company Income Tax (CIT) provided that a minimum of 75 percent of the dividend and rental income is distributed within 12 months of the end of the financial year in which the income was earned.<sup>6</sup> This provides an incentive for both private and public investments in Real Estate Companies and Proptechs.

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5. Section 67(1) of the Act

6. Okafor, E. Business Day( 2020, February 11th) Benefits of the new Finance Act holds for real estate investors, potential homeowners. Retrieved From <<https://businessday.ng/real-estate/article/benefits-new-finance-act-holds-for-real-estate-investors-potential-homeowners/am>>



### *11. Companies and Allied Matters Act, 2020*

The CAMA 2020 is the legislation that gives life to the Incorporation, registration, organization, reorganization, structure and winding up of businesses and companies in Nigeria.

The new Act as opposed to the former legislation allows for a single member or shareholder to form or incorporate a private company provided that such a company is not formed for illegal purposes<sup>7</sup> and such an individual is not less than 18 years.<sup>8</sup> This encourages young entrepreneurs and startups to act as founding partners or nominal shareholders.

Proptechs may also operate as Sole proprietorships, Partnerships or a limited liability company. This type of legal structure has the capacity to directly affect its taxes, liability and ability to raise funds. For a technology startup, the limited liability company is the most suitable structure to enable the founders to create some legal structure around their business.

### *12. Tenement Rate Laws of Nigeria.*

Under the Tenement Rate Laws of Nigeria, tenement or property rating is tax levied on landed properties by the local government to raise additional revenue needed for specific developmental projects. This tax is imposed on occupiers of developed properties within a locality by the Local Government Authority. It cannot be charged on undeveloped land or unoccupied properties anywhere in Nigeria. The premise for this law is to levy property owners to contribute to the raising of additional funds for infrastructural development projects being embarked upon in a local government area. Every state in Nigeria has its own tenement rate laws at the local government level.

### *13. Nigerian Data Protection Regulation, 2019 (NDPR)*

An unavoidable aspect of the digitization of any sector or industry is the requirement of disclosure of personal data by parties. Such could include: credit card details, bank account details, names, addresses, employment status, age, marital status, family and ethnic background of an individual. As a result of the continuous processing of data, there is a need to actively ensure the safety and security of data.

The Nigeria Data Protection Regulation, 2019 and the Nigerian CyberCrimes Act, 2015 contain certain provisions that aim to ensure that Proptechs comply with the relevant data protection principles.

Proptechs largely classify as data controllers under the NDPR and are obligated under the NDPR to put in place adequate security systems to protect data they are privy to. One of the ways they are expected to do this is by publishing their privacy notices, which must be in line with the NDPR standards, on all platforms through which data is collected or processed. Data controllers must also obtain consent, or have a lawful basis or a legitimate interest for using data.

In addition to these laws, states also have the power to enact laws regulating their real estate. Lagos, for instance, has enacted Tenancy Law of Lagos State, 2011, The Lagos State Property Protection Law, the Land Instrument Registration Law of Lagos State, the Registration of Titles Law, the Land Use Charge Law of Lagos State, etc.

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7. Section 18(2) and 18(3) of CAMA 2020

8. Section 20(1)a of CAMA 2020



## Other Considerations

Starting a PropTech business in Nigeria is similar to starting any other business. After registering your business with the Corporate Affairs Commission as well as registering your distinct domain name,<sup>9</sup> you must then decide on the proptech sector you want to get into. This is because proptech is very wide. It has many branches that make up the whole, such as land ownership, lease, sub lease, real estate development, real estate sales and marketing, real estate brokerage and property management as well as what type of properties you intend to deal with.

It is also important to decide what type of property is being dealt with, whether residential, commercial, industrial or agricultural. Knowing this creates a guide as to the rules, regulations and policies that will affect the proptech. It further gives insight as to the proper body or organization to register under. A few real estate professional and institutional bodies in Nigeria include Association of Estate Agents in Nigeria (AEAN), Real Estate Developers Association of Nigeria (REDAN), The Nigerian Institute of Building (NIOB), Estate, Rent and Commission Agents Association of Nigeria (ERCAAN) and Nigerian Institution of Estate Surveyors and Valuers (NIESV) etc.

## Raising Capital for PropTech

It is not news that for every business, raising adequate capital is a necessity especially in a capital intensive sector like real estate. Thus, if you are not financially capable to venture into the area of PropTech, you must be capable and knowledgeable in the area of sourcing for alternate funding. Strategic Partnerships are also a very common and efficient way of doing PropTech. What one investor lacks, the other partner makes up for and vice versa.

We have highlighted the following items below for special consideration when raising equity to afford you enough leverage for growth acceleration or dealing with investors:

- **Traction;**
- Pitch Deck;
- Investor Network;
- Financial Statements;
- Information Memorandum;
- Term Sheet;
- Memorandum of Understanding;
- Convertible Notes
- Simple Agreement for Future Equity;
- Investment Agreements;
- Joint Venture Agreements
- Loan Agreements;
- Shareholders Agreement;

We have written extensively on [Fundraising mistakes](#) to avoid and on choosing [equity or debt](#) for raising capital for businesses.



## Professional Services in Proptech

There are a variety of real estate professionals who work in the industry to ensure transactions run efficiently and smoothly. The role agents play in real estate and, by extension, Proptech is pertinent. With different mobile apps, websites and digital platforms that offer a wide range of properties, it falls on Agents to represent a Proptech to carrying out inspections and navigating a buyer to settle for the best deals that guarantee high return on Investments as well as reduce risks associated with Proptech transactions.

Thus, all Proptechs which must deal with agents must ensure that they are first registered and licensed under the Estate Rent and Commission Agent Association of Nigeria as the law will input the acts of the agent on the legal entity that the agent represents i.e a Proptech is legally bound and responsible for acts of its agents.<sup>10</sup>

Other professionals who may work in the industry include accountants, lawyers, interior designers, stagers, general contractors, construction workers, and tradespeople.

## The Use of Digital Platforms in Marketing.

The law governing advertising in Nigeria is the Advertising Practitioner's (Registration, Etc.) Act .<sup>11</sup> The Act establishes the Advertising Practitioners Council of Nigeria (APCON) as the apex regulatory body for advertising in Nigeria with powers to monitor and ensure ethical advertising practices in the country. Article 84 of the Advertising Code provides that the product advertised must conform to the descriptions as provided in the advertisement. Thus, there must be no form of misrepresentation of the properties listed. Similarly, Section 123(1) of the Federal Competition and Consumer Protection Act provides that a producer, importer, distributor, retailer, trader or service provider shall not make any false representation to a consumer in a manner that is likely to imply any false or incorrect representation concerning goods.

Other considerations include registration with the relevant tax authorities within the state of business operations, registration for statutory contributions for employees with the Nigerian Pension Commission, National Housing Fund Scheme, and National Social Investment Trust Fund.

In the event of some technology transfer into Nigeria for the purposes of operations, the company would require registration with the National Office for Technology Acquisition and Promotion (NOTAP).

Finally, it is important to pay attention to relevant documentation and agreements including but not limited to;

- Privacy Notice
- Contracts of Sale, lease, Sub lease,
- Terms of Use Non-Disclosure Agreements;
- Liability Disclaimers;
- License Agreements; and
- Memorandum of Understanding.

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9. Section 25 of the Cyber Crimes Act 2015

10. Freeman And Lockyer V Burkhurst Park Properties Ltd (1964)1 All E.R. 630

11. No. 55 of 1988, CAP A7, Laws of the Federation of Nigeria, 2004

## Conclusion

In more recent times, digital transformation has continued to impact every nook and cranny of society and Real Estate is no exception. Proptech has continued to utilize technology such as software programs, apps and codes in order to carry out real estate transactions like valuing property, finding and screening specific data, accounting, raising capital, property management and so much more.

However, technology rarely emerges without having its fair share of challenges and Proptech is not left out in this mix. With this inevitable change and improvements in laws and regulations, a robust legal system must be deployed as a means to an end in ensuring that parties are protected in real estate transactions.



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