



Inclement Business Regime in Nigeria: Removing Persistent Legal and Bureaucratic Bottlenecks

Bolarinwa Levi Pius

PHD Student

Faculty of Law

Obafemi Awolowo University

Ile-Ife, Osun state, Nigeria

E-mail: levibolarinwa@gmail.com

Abstract

The Nigerian Federal Government, towards improving its poor performance in easing the process of doing business and attracting Foreign Direct Investment, set up a committee known as Presidential Enabling Business Environment Council (PEBEC) to promote the World Bank's Ease of Doing Business index and grow the nation's economy. The objective of this article is to assess the mediating roles of PEBEC in order to expose persistent legal and bureaucratic bottlenecks buffeting the clemency of business transactions in Nigeria. The exigency of this journal recommends legal and administrative actions in removing the investment bottlenecks and placing Nigeria among the advanced economies in the world.

Keywords: Inclement, Business, Regime, Bureaucratic, Bottleneck

Introduction

The word 'inclement' is defined as a state of being severe, stormy or harsh¹ while the word 'business' means the buying and selling of goods and services². The word Regime depicts a system of administration; bureaucratic means a system of administration in which matters are complicated by complex procedure and trivial rules while bottleneck is defined as something which causes obstacle to a process³. The ease of doing business index is a World Bank's instrument used in assessing the economic viability of countries to help investors decide economically viable climate before committing their portfolios and commonwealth for profitability. It is an empirical, academic research funded by the World Bank to justify the economic growth impact of countries of the world. It is an index created to show that the economic growth impact of regulations for businesses and stronger protections of property rights are optimally guaranteed to protect the portfolios and other properties of investors⁴. The index is needed to establish the optimal level of business regulation-for example, what the duration of

court procedures should be and what optimal degree of social protection is⁵.

It is a truism that the wealth of a nation is the fountain of its strength and its appreciation is measured by the enabling environment created to harness the wealth to enhance economic growth and record its status among the advanced economies in the world. Nigeria is a multi cultural and multi religious; hence it is buffeted with a lot crises ranging from security to economic crises. However, the country has improved itself recently, looking at the latest World Bank's Ease of Doing Business index. For many years, Nigeria has fared poorly in the global rankings for both ease of doing business and economic competitiveness. The World Bank in its **Doing Business 2017** Report ranked Nigeria 169th out of 190 countries⁶ while the country was similarly, poorly placed in the 127th position among 138 economies covered in **The Global Competitiveness Report 2016–2017** by the World Economic Forum⁷.

⁵[https://en.wikipedia.org/.../Ease of doing business](https://en.wikipedia.org/.../Ease_of_doing_business).

⁶See the "Doing Business 2017" Report, International Bank for Reconstruction and Development / The World Bank, at page 7 – <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>

⁷See "The Global Competitiveness Report 2016–2017", World Economic Forum, September 2016, at pages 44-45 http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf

¹ Chambers 21st Century Dictionary, 2nd Ed, pg 684

² ibid

³ ibid

⁴[https://en.wikipedia.org/.../Ease of doing business](https://en.wikipedia.org/.../Ease_of_doing_business)



These unfavorable business and economic indices have greatly affected the country's capacity to attract sufficient investments from both domestic and foreign investors and consequently retarded national productivity and economic development. In light of the fall in crude oil prices and the Nigerian government's current drive to diversify the economy through development of non-oil related sectors such as agriculture and mining, it has become imperative for Nigeria to create an enabling environment for doing business.

As part of efforts to reform the business climate in Nigeria and pull the country out of the current economic recession, the Federal Government ("FG") established in July 2016 the **Presidential Enabling Business Environment Council ("PEBEC")**, chaired by the Vice President, His Excellency, Mr. Yemi Osinbajo, SAN, with the Minister of Industry, Trade and Investment, Dr. Okechukwu Enelamah as Vice Chairman. PEBEC is composed of nine (9) other Ministers, the Head of Civil Service of the Federation, the Governor of the Central Bank of Nigeria ("CBN") and representatives from the National Assembly and the private sector. Further to the establishment of the PEBEC, the **Enabling Business Environment Secretariat ("EBES")** was set up in October 2016 with the mandate to implement the reform agenda of PEBEC, which centers on the removal of critical bottlenecks and bureaucratic constraints to doing business in Nigeria and by so doing; "move Nigeria 20 steps upwards in the World Bank Ease of Doing Business Index" which would be published by the World Bank later this year. This newsletter highlights the reforms being driven by the various stakeholders with the support of PEBEC and EBES; as well as some of the successes that have so far been recorded during the 60 days implementation timeframe.

Epistemology and Prospects of Presidential Enabling Business Environment Council (PEBEC)

On February 21, 2017, PEBEC approved a **60-Day National Action Plan on Ease of Doing Business in Nigeria ("National Action Plan")**. The National

Action Plan, which is an inter-ministerial, inter-governmental plan, is being driven by EBES for implementation by various Ministries, Departments and Agencies of government ("MDAs"). The key stakeholders who are collaborating on this initiative and have clear deliverables include the National Assembly, the Governments of Lagos and Kano States, and the private sector. The National Action Plan has now entered into its 30th day of implementation and focuses on the following **eight (8) areas**⁸ as the "Strategy" for achieving results: (i) Starting a Business; (ii) Construction Permits; (iii) Getting Electricity; (iv) Registering Property; (v) Getting Credit; (vi) Paying Taxes; (vii) Trading Across Borders; and (viii) Entry and Exit of People.

The EBES identified six (6) broad challenges affecting ease of doing business in Nigeria, all of which are to be frontally dealt with, within the 60 days implementation timeframe. The challenges were stated to include the following: i. Starting a business in Nigeria can be difficult, requiring two (2) times as many procedures and three (3) times the amount of time as in developed economies; ii. Obtaining construction permits in Nigeria involves manual submission of several documentations, higher fees and longer procedures than most countries; iii. Registering property in Nigeria requires two (2) times the cost and number of procedures, and three (3) times the amount of time as in leading countries; iv. whilst the strength of legal rights to credit in Nigeria is admirable, the country's Collateral Registry is under-utilized and Credit Bureau coverage is below average; v. Exporting from Nigeria can require almost ten (10) times the amount of time and five (5) times the cost as leading nations, with similar gaps for importing; vi. Visiting and working in Nigeria - from getting travel documentation to using Nigeria's international airports-are not up to par with similar economies and leading countries.

Prospects

To address the challenges stated above, different arms of government particularly the Legislature and specific MDAs formed alliances and formulated initiatives which are targeted towards streamlining processes as well as cost (in terms of fees and time) of

⁸The eight (8) areas form part of the indicators included in the World Bank's measurement of the Ease of Doing Business Index. See pages 1 & 2 of the "Doing Business 2017" Report, *ibid* at footnote 1.



doing business in Nigeria. These stakeholders include the Corporate Affairs Commission (“CAC”); Lagos State Government (“LASG”), the Kano State Government, the National Assembly (“NASS”); CBN; Federal Inland Revenue Service (“FIRS”); Nigeria Customs Service (“NCS”); Nigerian Ports Authority (“NPA”); Nigeria Immigration Service (“NIS”); Federal Airports Authority of Nigeria (“FAAN”) and; the Federal Ministry of Finance (“FMF”). The Council has been able to show that where there is a will there is always a way and that if Government decides to work as a collective a lot can be achieved. With the above 60-day Action Plan coupled with frenetic pace to grow the nation’s economies, the result is positively and gradually coasting in thus:

(a). On Starting a Business

The following reforms are being implemented by the CAC with the cooperation of the FIRS: (i) twelve (12) hour timeline for name reservations which would be included in the updated Companies Regulations scheduled to be published by the CAC within the next thirty (30) days; (ii) Introduction of twenty-four (24) hour timeline for determination of applications for consent to use restricted names; (iii) Consolidation of incorporation forms into one (1) single form which consequentially reduce statutory fees and processing time; (iv) Integration of FIRS e-payment solution into CAC online portal which quickens e-payment and e-stamping solutions have been integrated into CAC online portal.

(b). On Obtaining Construction Permits

The following reforms are being implemented by the LASG to ease doing business in Lagos State, the nation’s commercial capital: (i) Operationalisation of e-planning platform for Lagos State that enhances submission and tracking of applications online and reduction of time to secure permits; (ii) success in limiting soil tests and Environmental Impact Assessment (EIA) only to specialized cases and by consequence soil tests for constructions below four (4) storey’s which are not in marshy areas have been eliminated and the EIA test requirement for low scale construction has been eliminated.

(c). On Registering Property

The following initiatives are also being implemented by the LASG to ease the process of getting title to properties in the nation’s commercial capital: (i)

elimination of sworn affidavit for property search at the Land Registry and is therefore streamlining and seamless process for conducting search on properties; (ii) merged requirement for stamping of Deeds of Assignment with final registration process for lands owned by Lagos State Government.

(d). On Getting Credit

The following reforms are being driven by both the NASS and the CBN to enhance credit transactions secured by movable property in Nigeria: (i) successful passage by the National Assembly and assent by the Executive of both Secured Transactions in Movable Assets (Collateral Registry) Act and the Credit Bureau Services Act which now enhance and enable Credit Bureaus and Collateral Registry to operate seamlessly; (ii) interested parties can now conduct online searches of secured interests on movable assets and online registrations, amendments and cancellations can be done by lenders on the National Collateral Registry seamlessly; (iii) increased sensitization and utilization of Credit Reports and Credit Scoring by banks and other financial institutions.

(e). On Trading Across Borders

The following initiatives are being implemented through the collaboration among various agencies such as the NCS, NPA, CBN, and the FMF: (i) imports into Nigeria now required to be placed in pallet to enable quicker physical examination; (ii) Vessels importing goods into Nigeria now required to transmit cargo manifest in advance to ensure improved risk assessment and optimal cargo placement; (iii) Nigeria Custom Service now required to schedule and coordinate joint physical examination to ensure only one point of contact between officials and importers and; (iv) CBN, NCS and banks now required to process Net Export Proceed (NXP) forms within 72 hours; and Pre-shipment Inspection Agencies PIAs required to issue Certificate of Clean Inspection (CCI) within 3 days

(e) On Entry and Exit of People

The following initiatives are being implemented through synergetic relationships among federal government agencies, such as the NIS and FAAN, which are involved in the administration of inward and outward movement of people in Nigeria: (i) Submission of applications and



receipt of approval letters can now be done electronically via a dedicated email address which enhances 48-hour timeline for pre-approval and website improvement for increased transparency around application process; (ii) Honorable Minister of Interior has approved and released a new immigration Regulation to cushion administrative implementation of Immigration Act of 2015; (iii) consolidated arrival and departure forms now available and in use at the airports.

Impact of the Executive Orders on Business in Nigeria

The Nigerian Government issued three instruments assented to by the Vice President, Yemi Osinbajo on 18 May 2017 to improve the budget process of the country, support the implementation of the Local Content policy in the public procurement and promote transparency and efficiency in the business environment. The three instruments are imminent in speeding up ease of doing business in Nigeria, but more importantly, impacts of the Executive Order on Promotion of Transparency and Efficiency in the Business Environment remains focused of this paper and discourse. The Ministries, Departments, and Agencies of Government are now required to display the full requirements for obtaining permits, licenses, and approvals on their premises and websites with seamless updates. If updates occur but are not published, then the published version is upheld. Furthermore, “default approval” process ensures that failure to communicate approval or rejection within stipulated timelines will automatically grant the applicant the right to request for the relevant approval. Similarly, MDAs that require input documentation from other MDAs are now mandated to certify and verify the submitted information themselves under clearly defined Service Level Agreements (SLAs). Port-based agencies must be synchronized into a single customer interface without prejudice to their back-end procedures. The single interface stations at ports will capture and track the movement of goods and remit information to the National Bureau of Statistics weekly.

Federal Government agencies are now expected to allocate at least 40% of their procurement expenditure to locally manufactured goods for the following: uniforms/footwear, food/beverages, and furniture/fittings, stationary, motor vehicles, pharmaceuticals, construction materials, and information and communication

technology. In spite of the above seemingly administrative cleanup instruments, the instruments are still very young for assessment.

Inclement Bureaucratic and Legal Climes

Efficient and reliable investment architecture in any clime is replete with a dynamic, high octane investment judicial forum and organic admin is prudence that ventilates investor confidence. Nigeria remains a prime investment destination radicalizing framework to promote ease of entry of foreign direct investment and local investors, with the added advantage of having English as its official language and a legal system based on common law. However, there is the litany of bottlenecks buffeting ease of doing business in Nigeria divided into a two-fold. These bottlenecks are both legal and administrative; hence this paper focuses on addressing same respectively.

Bureaucratic Bottlenecks

In spite of the frenetic Nigerian Government effort to promote ease of doing business in there are still bureaucratic challenges that need to be urgently addressed to win investor confidence. Bureaucracy is an instrument put in place by the government to effectively actualize government policy framework. This paper considers these bureaucratic challenges and premises its discourse around the current reforms on the ease of doing business in Nigeria:

(i). *The dysfunctionality of Corporate Affairs Commission e-portal system*

Following the introduction of modern technology worldwide, there is practically no sector or segment of the society where the influence of Information Communication Technology (ICT). Today in Nigeria, there is no public sector organization that has not undergone one form of reform or the other. Hence, it is a global norm that business transaction is e-transaction and Nigerian business climate cannot be different.

As part of the Nigerian EBES National Action Plan, PEBC has been successful in synchronizing registration process between the Federal Inland Revenue Service and Corporate Affairs Commission such that taxpayers can obtain their Tax Identification Number upon registration. The EBES National Action Plan put in place a lot of structure to enhance e-registration of business such as: twelve (12) hour timeline for name reservations which would be included in the updated Companies Regulations scheduled to be published by the



CAC within thirty (30) days, introduction of twenty-four (24) hour timeline for determination of applications for consent to use restricted names, introduction of a single form for incorporation, simplified application process. However, the central challenge being faced by promoters of business incorporation is malfunctioned e-portal system of the CAC. Practically speaking, even though all the information and documents needed to enhance e-registration of business have been dematerialized into the CAC portal, uploading of documents, e-search, e-filing etc are still hard to access. The implication of this is that all the good structure of the government put in place in the National Action Plan are yet to materialize. This calls for urgent procurement of highly sophisticated server been manned by e-experts to simplify the e-registration by investors.

(ii). Lack of Rules and Regulations to Coordinate Procedures for Issuance of Construction Permits

Construction Permit is one of the ease of doing business indices recognized by the World Bank Index. Hence, the Lagos State particularly Lagos State Physical Planning and Permit Authority Lagos and Kano, being the commercial nerve centre and highest population states respectively, were chosen as pilot states for carrying out the ease of doing business National Action Plan. It is commendable that six reforms have been completed which include obtaining Clarity on Environmental Impact Assessment and Soil Test, E-Planning platform activated with clear timelines as well as Qualification laws and procedures published online. However, there are no rules and regulations to efficiently coordinate procedures for issuance of construction permit.

It is trite that government usually comes up with policies and programmes to advance the comfort of the citizenry and economy as the case of ease of doing business in Nigeria, but the policies and programmes can only be attained when properly coordinated by rules and regulations defining the policies and programmes direction. Part of the agenda of the current administration is to combat corruption, touting and dereliction of civil servants to duty; and this can only be attained when there are clearly defined rules and regulations. Lack of clarity on applicable rules, fees, and procedures, and in what situations same applied; also lack of clarity on

qualifications of architects and engineers who are empowered to supervise construction activities are a major setback to this sectoral reform. It is worrisome that upon default of approval or demand for inducement before approving or processing documents, there is no complaint mechanism for the affected applicant; whom to complaint to and neither is there penalties structure for the defaulter bureaucrats. All the lacunae can only be cured when clearly defined rules and regulations are in place to checkmate and coordinate the bureaucrats who carry out the functions of issuance of the construction permit to qualified builders and constructors.

It is equally worrisome that construction permits' procedures currently require manual submission of a large set of documents. The EBES National Action Plan cannot yield any fruitful voyage where manual submission of documents remains a routine. The global transaction and communication are electronic-driven in compliance with the UN Convention. Manual submission and processing of documents promote bottlenecks, and any climate accustomed to such drives away investors who are tired of bureaucratic hurdles. Investors either foreign or domestic look for e-dematerialized climate to speed up their investments. Nigerian government needs urgent reform in this lagging area by dematerializing all the paper documents and uploading same in the computer to simplify construction permit processing.

Another worry is criteria for waiver of the requirement for soil tests and environmental tests were unclear, and this appeared to be the time-consuming portion of the process for getting permits. The waiver is like nectar that accelerates pollination; hence it must be well-defined in attracting investors to commit their portfolio into the nation's investment pool. Investors need to be incentivized either as a duty/tax waivers or procedural waivers. This is not enough because such waivers must be clear, elegantly and categorically couched and interpreted in a simplified form to ease investor business. The implication of the federal government to ease the issuance of construction permit may be far from realization unless a clearly defined and favorable waiver is put in place to attract investors.

(iii). Non consolidation of Registration Fees; Lack of Complaint (Feedback Mechanism) and Delay in Governor's Assent on Registration of Property

Presently, different fees are required to be paid at different stages of title registration. The applicant would,



therefore, be required to undertake several visits to the land registry before the registration is completed. This promotes a long queue, favouritism, nepotism, cronyism, inducement and above all the purpose of the applicant coming to the land registry might have been defeated. It is currently difficult to provide constructive feedback on the title registration process and advocate for changes. This is because there is no Land Registration (Ombudsman)/Registration Complaint Mechanism where the frustrated applicant can ventilate his grievances. Consequently, this worries investors from committing their asset for registration in Nigeria. Also, the processing time for issuance of Governor's Consent in Lagos State exceeds those of other countries with similar laws, and the governor is regularly presented with a large number of applications. Similarly, cumbersome legal process/ requirement for conducting due diligence on properties at the Land Registry remains a burden.

(iv). Underdevelopment of Movable Asset to Secure Credit Transactions, Lack of Credit History/ Profile and Underutilization of Collateral Registry

The use of movable assets to secure credit transactions is presently undeveloped and underutilized. Many Nigerians do not have their credit history/profiles captured; hence lenders do not have enough data to make informed decisions. The Nigerian government has failed severally to support credit bureaus to expand coverage and provide credit scoring. It is a truism and practical fact obtainable in advanced credit profile capturing economies that expanded coverage of adult population regarding credit data/history to enable credit decision making.

The consequence of this is poor credit information sharing between Credit Bureaus and lenders. Credit access, being the driving force of investment, Nigeria needs to commence fully the regime of profiling credit information of people. Hence, there is a need for increased sensitization and utilization of Credit Bureau Services; including credit scoring, to enable credit decision making. The National Collateral Registry is under-utilized by financial institutions despite the fact that it has been operational since May 2016. It is sad that online searches of movable assets are not made available to the public and the digital collateral registry made fully operational. There is urgency for online searches of movable assets to be made available to the public and the digital collateral registry made fully operational online

registrations, amendments and where cancellations can be done by lenders seamlessly.

(v). Poor Infrastructural Architecture and Laxity of Officials Affect Cross-Border Trading

Unlike advanced economies goods coming into the country are stacked haphazardly, without pallets, making physical examination impractical. Cargo imports into Nigeria are not placed in pallets. This affects quicker physical examinations of goods and drags radical utilization of modern equipment for effective and efficient examination of cargo. Similarly, manifests are not always available prior to the arrival of ships, leading to sub-optimal offloading of cargo. Terminal Operators do not equip the operation with Cargo Manifests in advance. Hence, there is no optimized placement of containers and operational risk becomes rampant; and that current export process is manual, with inconsistent timelines for processing pre-shipment documentation.

It is also saddening that the current practice for examination of imports forces importers to seek out and schedule by themselves dates for examination of cargo by the NCS and other relevant agencies such as the Standards Organization of Nigeria, National Agency for Food and Drug Administration and Control. The Nigerian Customs Service (NCS) has not been taking a lead role in the scheduling of examination of cargo and the pre-shipment process for exports is not optimized. Finally, the number of documents required for import and export in Nigeria is higher than other African countries. This escalates bureaucratic delay and leaves the investors with comparative options to choose countries with less or no bureaucratic delay to commit their investments.

(vi). No Sufficient Clarity on the Process of Entry and Exit of Investors into the Country

As it is today in Nigeria, travelers had to fill multiple forms on arrival in or departure from Nigeria without sufficient clarity on the process. Unlike the United States and other advanced economies, Nigeria is not efficiently practical on consolidation of arrival and departure form. In the United States, UK, China, single form of departure and arrival (for non-indigenes only) is also incorporated into their policies. Similarly, Visa on Arrival application process was unclear and also had to be submitted in person. There is no simplification of application and submission processes for Visa on Arrival requests. It is pathetic to note that passengers undergo



manual searches of baggage at departure points at the airports, which is intrusive and time-consuming. Further, there are major infrastructure deficits at Lagos and Abuja airports such as decrepit elevators, escalators, and chillers. This falls short of massive high-tech infrastructure facilities provided at various advanced economies of the world. Nigerian airports need complete overhauling of the manual and scanty facilities to massive e-infrastructure to upgrade the airports. Also as it is today, no timeline for issuance of visas at Nigerian missions abroad resulting in huge delays with the processing of such applications? These problems need urgent reforms.

(vii). Administrative Lacunae in the Executive Orders Assented to by the Nigerian Government

The momentum of business reforms initiated by the PEBEC is commendable. Further, the step towards enforcing compliance with these reforms through the issuance of Executive Orders is a step in the right direction. Nonetheless, it is instructive to note the attendant challenges in the implementation of the Orders. For instance, while there is set the deadline within which the Orders are expected to be implemented, there are no provisions for penalties for the Ministries, Departments, and Agencies who fail to meet the deadlines.

Enforcement and implementation of the Orders is, therefore, the critical issue. How do these Orders differ from the extant laws which MDAs flagrantly disregard at the moment? Who will be directly responsible for the actualization of the objectives of the Orders? What are the channels available for applicants to report instances of non-compliance with the Orders by officials of the various MDAs? These questions require critical analysis if the country is to achieve effective implementation of the Orders.

Legal Bottlenecks

Nigeria is ranked 143rd out of the countries rated globally with respect to the “Ease of Enforcing Contracts” on the World Bank Ease of Doing Business Index. The existence of an efficient contract enforcement structure and a strong judiciary are key indicators associated with jurisdictions that have experienced economic development and sustained growth. The judicial process in Nigeria is replete of uncertainty by investors that their contractual rights will be upheld promptly by the Nigerian Court. The following legal bottlenecks captured inclement Business regime in

Nigeria (i) conflict of jurisdiction for hearing contractual disputes, (ii) legislative lacunae, (iii) implementation of contract enforcement laws and (iv) implementation of contract enforcement laws. These identified legal bottlenecks are responsible for inclement business prospects in Nigeria.

(i). Conflict of Jurisdiction between the Investments and Securities Tribunal and Federal High Court

This paper focuses on jurisdictional conflicts in the enforcement of regulatory obligations of Nigerian public companies and how this affect ease of doing business in Nigeria.¹ Essentially it examines perceived forum questions in relation to the jurisdiction of the Nigerian Federal High Court (FHC), the Nigerian Investment and Securities Tribunal (IST) and the Administrative Proceedings of the Nigerian Securities and Exchange Commission (SEC). The forum questions relate to trial jurisdictional relations between the FHC and the IST. Three decisions of the Nigerian Court of Appeal (*Ajayi v SEC*; *Nospecto Oil & Gas Ltd v Olorunnimbe & 15 Ors*; and *Okeke v SEC & 2 Ors*.) exemplify the jurisdictional conflict and the concomitant forum questions.

Epistemology of the Federal High Court of Nigeria

The word “epistemology” simply connotes theory of knowledge about a particular field or taxonomy of idea on interpretations, analyses or logical schema about a study. As Courts of original jurisdiction, disputes are litigated at the State High Court and the Federal High Court (FHC). Section 251(1) of the Constitution gives the Federal High Court exclusive jurisdiction over matters of revenue, company taxation, customs and excise, banking, aviation, shipping, operation of companies, etc.⁹ The section also confers exclusive jurisdiction on the FHC in respect of matters involving the federal government or any of its agencies. In *NEPA v. BOT*¹⁰ the Court held that in an action against an agency of the federal government, the proper Court with jurisdiction is the FHC. Moreover, The FHC as a premiere Court of first instance has recorded impressive growth since its inception in 1973 and has become,

⁹ Oba Ekiran, (1999). “Basic Understanding of Capital Market operations.” CIBN Press.

¹⁰ [2008] 1 N.W.L.R. Pt 1068 at 240. See also *NDIC v. FMBN* [1997] 2 NWLR (Part 490) at 755.



arguably an important pillar among the Courts in the Federal Judiciary of Nigeria¹¹. However, there seems to be conflicting decisions suggesting that in matters of simple contract even where a federal government agency is involved, the FHC will not have jurisdiction.¹² Another bludgeoning controversy, and one that is very relevant to this paper, is the extent, if any, to which the jurisdiction of the IST is consistent with that of the FHC. I will turn to this issue anon.

Epistemology of the Investments and Securities Tribunal

Section 274 of the ISA 2007 established the IST to exercise the jurisdiction, powers and authority conferred on it by the Act. Section 280 ISA provides that the salaries and allowances of the Chairman, members and Chief Registrars of the tribunal shall be equivalent to that of the Chief Judge, judges and Chief Registrar of the Federal High Court respectively. It is provided that the IST is hinged on the technical and specialized nature of the capital market as well as the nature of the transactions and participants.¹³ The Tribunal consists of ten persons appointed by the Minister, headed by a Chairman who shall be a legal practitioner with not less than 15 years experience in capital market matters. The Tribunal has original jurisdiction, to the exclusion of any other court of law or body in Nigeria. To reproduce:

S.284. (1) The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving:

- (a) a decision or determination of the Commission in the operation and application of this Act, and in particular, relating to any dispute:

- (i) between capital market operators;
- (ii) between capital market operators and their clients;
- (iii) between an investor and a securities exchange or capital trade clearing and settlement agency;
- (iv) between capital market operators and self regulatory organization

Status of the Investments and Securities Tribunal

The status of the IST chairman is that of a full time presiding officer of the IST¹⁴ and, as provided in the ISA 1999 must be a legal practitioner not less than fifteen years standing, and with cognate experience in capital market matters. He is the Chief Executive and Accounting Officer of the IST and is responsible for the overall control, supervision and administration of the IST.¹⁵ Four out of the members are also full time, three of which must be legal practitioners of not less than ten years' experience and the fourth full time member must be knowledgeable in capital market matters. The yardstick for measuring "knowledge in capital market matters" is, however, still ambiguous. These four full time members must devote themselves to adjudicative functions only.¹⁶

The ISA has provided for a right of appeal to the Court of Appeal by persons aggrieved by its decisions¹⁷. It has earlier been explained that all the Courts listed in section 6(5)(a)(i) are all superior Courts and other than the Supreme Court and the Court of Appeal they are all on the same pedestal because appeals arising from their decisions lie at the Court of Appeal. It was also earlier said that the list of superior Courts in Nigeria are foreclosed to those listed in section 6(5) (a)(i). Therefore, a provision of the ISA providing for a right of appeal to the Court of appeal is worrisome. Could it be implying that the tribunal is a superior Court? Could this be one of

¹¹About Federal High Court, as posted on the Court's website: available at <http://www.fhc-ng.com/aboutus.htm>. Last accessed on 25 March 2017 at 5:54 PM

¹² See, e.g., *Onuora v. Kaduna Refining and Petrochemical Co. Ltd.* (2005) 6 NWLR (Part 921) 393; *Grace Jack v. Unam* (2004)5 NWLR (Part 865) 208

¹³Joseph Abugu, "Special Jurisdiction: Relevance in the Nigerian Capital Market." Discussion paper at 2009 Work Relationship Day (WRD) IST, Lagos Zonal Office.

¹⁴Section 275 (1) (a), *ibid*

¹⁵ Section 275 (2), *ibid*

¹⁶Section 275 (1) (b), *ibid*

¹⁷ Section 295 ISA



those incidents where Section 1(3) of the Constitution¹⁸ should be invoked?

Clearly, the Investment and Securities Tribunal is not contained in the list of the Courts of superior record, and as has been noted earlier, the law has not provided for it to be a department of the Federal High Court. Hence the registration of its decision at the Federal High Court does not confer it with the status of a decision of the Federal High Court. Although the registration is useful for the purpose of execution of the judgment same does not graduate to a decision of the Federal High Court. The decision of the IST is reached by its panel constituted by members who are appointed by the Minister of Finance. The decision is not given by the Federal High Court. The only implication is that it must be subordinate to the High Court, hence an inferior Court whose right of appeal shall first lie at the High Court as provided for in Section 6(4) of the Constitution¹⁹. (That is supposing the IST even has jurisdiction to entertain capital market disputes considering the foregoing arguments).

Conflict of Jurisdiction between the IST and FHC of Nigeria

Jurisdiction

Jurisdiction is an aspect of our procedural law which forms or accounts for a large percentage of defenses in both civil and criminal cases that comes before the courts. Jurisdiction or lack of it is therefore, the bedrock of every adjudication. According to Black's law Dictionary²⁰, jurisdiction is **“a court's power to decide a case or issue”**. According to judicial definition, the Supreme Court, per Karibi-Whyte JSC (as he then was) held in *National Bank of Nigeria Ltd Vs Soroye*²¹ that:

The word jurisdiction means the authority the court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision.

Conflict of Jurisdiction

¹⁸The inconsistency clause

¹⁹The Constitution did not specify which High Court it meant and it is submitted that “High Court” ought to be construed liberal Makurdi (2004) 5NWLR pt 865, p208

²⁰8th Edition (West, Thomson) 2004 page 855.

²¹(1977) 5 SC 181. See also *A. G. of the Federation vs A. G. of Abia State and 35 Ors* (2001) 7 SC (Pt.1) 100.

The combined effect of the provisions of sections 274, 280 and 295(1) ISA is tantamount to equating the IST with the status of the Federal High Court. This runs contrary to the provision of section 6 (3) of the Constitution which states:

The courts to which this section relates, established by this constitution for the federation and for the states, specified in subsection 5 (a) to (j) of this section shall be the only superior courts of records in Nigeria...²²

Among the genre of courts listed in the quoted section, the Investments and Securities Tribunal is not mentioned; but among the other Courts that the National Assembly and State Houses of Assembly may create (by virtue of the power conferred on them by section 6(4) are excluded from the said section 5(a)(i). It simply means that all such Courts including the Investments and Securities Tribunal are inferior Courts and will have subordinate jurisdiction to the High Court²³ except otherwise provided by the ground norm the Constitution²⁴. It is what it is- a tribunal or Court that is inferior to the High Court and whose appeal should not jump the procedure of every other tribunal established by an act of the National Assembly.

The case of *Nospetco Oil & Gas ltd v Olorunnimbe*²⁵ is instructive in this regard. The Court was to determine the Court with requisite jurisdiction to entertain claims against Federal Government agencies wherein the validity of their executive decision to freeze the account of the appellant was being challenged. In considering the provisions of Section 251(1)(p)(q) and (r) vis a vis Section 284(1) & (2) of the ISA 2007, the Court came to the conclusion that the Federal High Court was the Court with requisite jurisdiction to entertain the matter. In the words of the Court,

²² See 1999 Constitution of Federal Republic of Nigeria (as amended)

²³ Section 6(4) CFRN 1999 (as amended)

²⁴ See for instance the provision of Section 246(1)(b) and Section 246(1)(c)(ii) of the Constitution as amended by Section 8 of the Amendment Act which deals with appeals from the National Assembly/ House of Assembly Election Tribunal and Governorship Election Tribunal respectively. Decisions of these tribunals are appealable at the Court of Appeal and not the High Court even though these tribunals are not listed in Section 6(5)(a)(i) of the Constitution

²⁵(2012) 10NWLR pt 1307 p 115



“... no matter how laudable and practical the intendment of the Investments and Securities Act, its provision cannot override the provisions of the Constitution donating exclusive jurisdiction to the Federal High Court when the Federal Government or any of its agencies is being challenged over any executive or administrative action it took”²⁶.

On whether the jurisdiction conferred on the Federal High Court can be whittled down or taken away by an ordinary Act of the National Assembly (the Investment and Securities Act) the Court of Appeal per Saulawa, J.C.A in the case of *Okeke v SEC & ors*²⁷ had this to say:

“... the exclusive jurisdiction conferred upon the Federal High Court, under Section 251 (1)(e) & (r) of the 1999 Constitution as amended (supra) cannot be whittled down or taken away by an ordinary Act of the National Assembly, in the absence of any amendment to the provision in question. Undoubtedly, the 1st Respondent (and by extension the 2nd Respondent) is an agency of the Federal Government within the purview of Section 251 (1) (r) of the 1999 Constitution (supra). And by the well set out, and rather unequivocal provisions, of Section 251 (1) (r) (supra), the Federal High Courts shall have and exercise jurisdiction, to the exclusion of any other Court, in civil cause sand any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of the agencies thereof”

Therefore, concerning the matters in section 254(1)(b)(e), they cannot be rightly instituted at the IST because of section 251(1)(r) as has just been elucidated and 251(1)(e) as had been explained. Again, section 7(7) of the Federal High Court Act has provided that any jurisdiction conferred by the Act on any other Court shall

be subject to the provisions of the Constitution. The Section provides as follows:

(7) Any delegation to hear and determine any Federal causes or matters conferred by any Federal enactment shall be read with such modification to conform with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and the provisions of this Act.

Although this is an unnecessary provision because it is a cardinal precept in Nigerian legal jurisprudence that every legislation must be read subject to the Constitution of the Federal Republic of Nigeria which is the ground norms²⁸. Considering the foregoing, one can only begin to marvel at the provision of the ISA on the exclusivity of the jurisdiction of the IST. This uncertainty in jurisdiction has promoted forum shopping among capital market litigants and has hindered the achievement of the goals of establishing the tribunal. It has become detrimental to the growth and development of the securities industry.

Hence, it is suggested that looking at the peculiarity and specialty of the securities adjudication, there is a need to establish the Investments and Securities Tribunal (IST) by an enabling Act passed by the National Assembly like an Act establishing the Federal High Court and the National Industrial Court; in order to resolve once and for all the conflict of jurisdiction between the Federal High Court and the Investments and Securities Tribunal by conferring all the powers, rights, privileges and authority of the Federal High Court on the Tribunal and giving the Tribunal an exclusive jurisdiction on securities matters.

Upon this legislative action, investors confidence are better realigned and the cardinal investment clime vision of the government through ease of doing business in Nigeria in consonance with the World Bank Ease of Doing Business is maximally guaranteed.

(ii). No Legislation to Control Business Competition

²⁶Per Ogunwumiju J.C.A at page 160161

²⁷supra

²⁸See section 1(3) of the Nigerian Constitution which provides that any other legislation that conflicts with any provision of the constitution shall be null and void to the extent of such inconsistency.



American economy is pontificated on epistemology of antitrust policy scheme²⁹ where businesses operate freely and enjoy government protection from monopolistic rings of few oligarchs. America octane economic growth is ordered by antitrust economic doctrine. This corporate lexicon defines³⁰ competition as an epistemology of market freedom which guarantees essential elements in the efficient workings of markets. However, Nigeria is yet to develop its competition law³¹. In buttressing the above statement, Dimgba, a foremost competition expert argues that for Nigeria to have engaged in liberalization for a very long time and be without competition law might create new dangers³². On transition to civil rule in 1999, Nigeria has been developing legal framework to support an enduring and more efficient free market structure which enhances trade liberalization, prohibits monolithic parasitism of oligarchs and regulates anti competitive behaviors; such as the abuse of dominant equitable trading. In a free market economy, inclusive development and economic growth cannot operate in a clement and orderly environment if there are no effective competition and antitrust laws.

At a time when Nigeria yearns for increased economic diversification and competitiveness to boost national productivity, relate the economy and bring us out of recession, many believe that the passing of Competition Bill into law at that time is not only necessary but also urgently needed. It is therefore the aim of this paper to look into why a Competition Law is due for the country and the implications of the continuing absence of a valid and competent antitrust legal regime, for an economy like Nigeria seeking to attract foreign investments and striving to become the African economic hub and enhance investors' confidence in Nigeria.

The World Economic Forum's Global Competitiveness Index ("GCI") for 2016-2017, which shows no fundamental different from the latest release for 2017-2018, shows that Nigeria dropped three places from its previous 124th to the 127th position out of 138 countries

surveyed. Factors responsible for this poor status are, low productivity, low commodity prices, financial market high risks, uncertainty, lack of market competitiveness, inadequate education and training, administrative and regulatory bottlenecks have all critically affected ease of doing business in Nigeria³³. Nigerian successive governments since return to democracy in 1999 have continued to build national business around few patrimonial ring of oligarchs whose rapacious leeching to kill competition. This progeny of swindleness which kills young, vibrant and visionary businesses is hard to break without competition law because business oligarchs actively participate in couching fiscal estimates (budget) for the nation thereby making the document suspicious as representing interest of business freedom/democracy. Until the competition law which has been on the docket of the Nigerian National Assembly since 2015 is swiftly passed, the current reforms to may continue without substance and investor stimuli continue to be negative.

(iii) Non Availability of Investment Research Institute/Commission to Deepen Versatility of Investment Knowledge in Nigeria

Advanced economies have structured their business growth around research and development in areas of technological, medicals and commerce innovations. Indeed, the impetus for research in these octane economies is majorly floated by foundations having received a conducive environment from governments with the prime objective of increasing investment in breakthrough research and innovation. However, Nigeria currently does not have any investment think-tank by way of statutory investment research institute to increase investment breakthroughs not only on sectional financial aspect currently saddled by the Nigerian Chartered Institute of Stockbrokers. The current Buhari's Administration is frantic in reforming ease of doing business in Nigeria³⁴; and this paper opines that it is high time to sponsor a bill to the Legislature to create Institute of Investment Research with the primary objective of researching for the government on the area of investment climate conditions as a feedback mechanism to the Presidential Enabling Business Environment Council.

²⁹ See United States Antitrust Policy-Wikipedi, https://en.wikipedia.org/wiki/United-States_Antitrust_Policy

³⁰ <https://www.nzte.govt.nz/.../competition-act-2008>

³¹ <https://guardian.ng/.../a-competition-act-a-2008>

³² 15 N. Dimgba 'The Need and the Challenges to the Establishment of a Competition Law Regime in Nigeria'

³³ See the Global Competitiveness Report 2017-2018/ World Economic Forum, <https://www.weforum.org/reports/the-global-competitiveness-report-2017-2018>

³⁴ https://en.wikipedia.org/.../Ease_of_doing_business



The PEBEC needs a statutory body to research for it in the following areas to fulfill its mandate of making Nigeria one of the most secured business climates in the world. The areas are: increase in investment research breakthroughs and innovations, enhancing research for sustainable solutions in society and business circle, increasing international corporation and participation in Nigeria's ease of doing business innovations and serve as strategically research-oriented think-tank to various investment agencies of government to facilitate coherence and renewal in the research system to ventilate new investment infrastructural ideas in the nation's budget. This bottleneck can be urgently removed through sponsorship of a bill called Institute of Investment Research Bill to clean up shortage of investment ideas and innovations

(iv). Lack of Investments Complaint (Ombudsman) Commission

Nigeria currently does not have investment complaint mechanism whereby aggrieved investors can channel their complaints for urgent administrative redress. Investment (Ombudsman) Complaint Agency is an official body designated by any government, assigned with the functions of protecting investors' rights and legal interests. It is sad that Nigerian government is frontally combating the menace of inclement business environment without a corresponding complaint platform for investors.

United Kingdom's Financial Services and Market Act which received royal assent in year 2000 establishes a new, single ombudsman scheme to resolve disputes between consumers and financial services firms quickly and with a minimum formality. Similarly, the Securities and Exchange Board of India (SEBI) set up a new institution called the "Ombudsman" for regulating the capital markets. However, Nigeria does not have any Investment Complaints Commission platform to lodge investor's grievances.

In May 2017, the then Acting President, Yemi Osinbajo assented to three Executive Orders to remove bottlenecks affecting ease of doing business in Nigeria. As laudable as the Orders to remove bureaucratic delays often caused by laxity and levity of government agencies, critical questions from investors have trailed the Orders that: while there are set deadline within which the Orders

are expected to be implemented, there are no provisions for penalties for the Ministries, Departments and Agencies who fail to meet the deadlines; enforcement and implementation of the Orders is the critical issue. How do these Orders differ from the extant laws which MDAs flagrantly disregard at the moment? Who will be directly responsible for the actualization of the objectives of the Orders? What are the channels available for applicants to report instances of non-compliance with the Orders by officials of the various MDAs? These questions require critical analysis if the country is to achieve effective implementation of the Orders. The questions are very germane in the heart of investors and can only be solved where there is Investment (Ombudsman) Complain platform to ventilate their grievances. Nigeria is lacking in this, urgent legislative action is needed to remedy the situation.

(v). Obstacles in the Land Use Act Provisions as Bottlenecks to Ease of Doing Business in Nigeria

The complaints against the Nigeria's existing land tenure regime crescendo around 1975 when the Government national development plan initiative all but ceased. The Government therefore sought to simplify the Nigerian land tenure regime by enacting the Land Use Act 1978 ("the Act"). In practice, however, there is no parity of rights between a holder of a Certificate of Occupancy and a deemed grantee. Like the Certificate holder a deemed grantee cannot alienate his rights without the Governor's consent and his right is also subject to revocation in accordance with section 28 of the Act. But, unlike a Certificate holder who holds same under certain terms and conditions contained in the Certificate i.e. payment of rent, charges and duration of tenure (usually 99 years), a deemed grantee has no such conditions imposed on him. In reality a deemed grantee's holding is akin to a freehold and he suffers no burden of rent or other conditions.

The current administration of Buhari has put a lot of reforms on ground in reducing bureaucracy in registering property for doing business in Nigeria as explained before³⁵. However, the current institutional structure is fraught with incessant delays, most especially with respect to obtaining Governor's consent³⁶ which can

³⁵ Supra

³⁶ See Section 2 of the Land Use Act 2004.



sometimes take years. Land transactions in Nigeria require the consent of the Governor of the concerned State by virtue of the Land Use Act which vests all land within each State, with the exception of land vested in the Federal Government, to be granted solely by the Governor of the State. These transactions have to be registered at the Land Registry.

The Land Registries in Nigeria do not have records that cover all lands, and there is also a lacuna in required verification especially in areas that lack institutionalized information on land. Investors seeking property-backed investments and transactions are more inclined to invest in climes where all property transactions can be publicly verified and authenticated at the Land Registry. This is a fundamental statutory clog that needs urgent amendments.

(vi). Obstacles in the CAMA Provisions as Bottlenecks to Ease of Doing Business in Nigeria

The Nigerian PEBC National Action Plan is considering some administrative reforms in the Corporate Affairs Commission (CAC) to enhance ease of doing business without any corresponding amendments of bottlenecks inherent in the provisions of the Companies and Allied Matters Act (CAMA). There is pocket of bottlenecks in the statute retrogressing registration of companies and businesses in Nigeria as captured. Various advanced economies of the world have adopted electronic processing and issuance of shares and certificates, but manual processing of company documents is what is recognized in CAMA. The CAMA was enacted in 1990 before the age of widespread digital technology. Section 17 gives companies the general powers to issue shares. Section 125 makes provisions relating to allotment of shares and issuance of share certificates. However, there is no provision for companies to issue shares through CSCS accounts. The law does not allow electronic application for shares, electronic allotment and transfers of shares.

Similarly, as the Nigerian Stock Exchange considers demutualization, which means transiting from a member-owned to a shareholder-owned entity, the CAMA is one of the obstacles on the way. The provisions on converting from a company limited by guarantee to one limited by shares are sparse; and there is currently no provision in CAMA to allow for electronic Register of Members.

Recommendations

In redressing the dual pronged bureaucratic bottlenecks of legality and bureaucracy, the exigency of this paper recommends legal and administrative actions in removing the investment bottlenecks and placing Nigeria among the advanced economies in the world.

On Bureaucratic Reforms

Registration of business is the first point of call and consideration by investors and in order to improve reliability of CAC online portal through relocation of servers to gain investors confidence more high octane equipment to be manned by servers experts is needed. Regarding liberalization of construction permits rules and regulations ordering ease of getting should as a matter of exigency be simplified in electronic form at the Lagos State Physical Planning Permit Authority (LASPPPA) website being the pilot state for PEBC 60 day National Action Plan and Nigerian commercial nerve centre and same gesture be replicated in all the Nigerian state. On property registration in Nigeria, there is urgent need by the PEBC to consolidate all registration fees, and makes order to do away with the Governor's consent through delegation of authority or upon satisfactory of all necessary procedure, Governor's consent is made academic. This will lessen investor's bureaucratic delays in getting property to advance their businesses in Nigeria.

Consolidation of a streamlined and seamless process of conducting property search will equally boost investors' confidence and legal compliance with historical profiling of people and their property to ease lenders' quest in accessing information about the credit/historical profiles of borrowers in Nigeria. On Entry and Exit of People for businesses in Nigeria, consolidation of arrival and departure form will reduce bureaucracy at the Nigerian airports; simplification of application and submission processes for Visa on Arrival requests electronically via a dedicated e-mail address at the Nigerian Immigration. Improved infrastructural architecture at all the Nigerian airports such as decrepit elevators, escalators and chillers continues to ease businesses for investors; and Improved and efficient process for issuance of visas at Nigerian missions abroad within a 48-hour timeline will keep fast racking investors' confidence.



On Legal Reforms

Appropriate dispute resolution architecture is *sine qua non* to ease of enforcing business and creating clement business conditions for investors in Nigeria. Therefore, in resolving the conflict of adjudicatory forum between the Investments and Securities Tribunal and Federal High Court, the first reform is Section 6 of the Nigeria 1999 Constitution. A constitutional imprimatur should be urgently considered to include the Investments and Securities Tribunal among the superior court in Nigeria with exclusive jurisdiction on securities/capital market matters and conferring the IST with all the rights, functions, privileges and powers enjoyed by the Federal High Court. Similarly, a Bill, called Investments and Securities Court Bill should be quickly sponsored to elaborately reflect the securities court as a court under the regulatory control of the Nigerian Judicial Council with exclusive judicial forum on securities matters. This will serve as a revolution in Nigerian judiciary and in commercial climes; it will serve as the first court though on securities matters. This will ultimately increase investors' confidence in enforcement of securities contract vide a reliable judiciary.

In considering strategies for deepening ease of doing business in Nigeria, speedy attention needs to be given to Competition Bill passage into law that will ensure a level playing field for all businesses and also ensures the promotion and maintenance of fair competition in the markets. There will be influx of investors' assets where the market climate is fairly competitive within a statutory control. It is keenly noted that the provision of the Investments and Securities Act³⁷ empowers the SEC to determine whether any merger, acquisition or business combination is likely to substantially prevent or lessen competition. However, the ISA does not go as far as to provide a comprehensive set of rules or structure designed to curb the abuse of dominant position, prohibit agreements or practices that restrict free trade and competition between businesses, ban abuse behavior by a firm in a dominant position as well as supervising the mergers and acquisitions and other transactions that may threaten the competitive process. This lacuna is extended to multi-related issues in telecoms, aviation, power sectors to

mention a few. The challenges will be taken care of upon the passage of the Competition Law

Urgent passage of Investment (Ombudsman) Complaint Commission will further boost investors' confidence in the Nigerian market. Like the advanced economies where there are investments complaint boards, Nigeria needs to urgently sponsor for passage the Investment Complaints Bill that will establish Investment Complaints Commission. The mission of the Commission shall be to receive and treat with urgency the various complaints of investors. This will also cure the lacunae in the Executive Orders issued by the Executive in May 2017 on removal of administrative bottlenecks without correspondent investment complaints centre where the aggrieved investors can remit their grievances for quick resolution and as means of feedbacks to the Executive National Action Plan to ease doing business in Nigeria.

Legislation of Investment Research Institute is also *sine qua non* to exodus investment repatriation to Nigeria. In agreement with the current democratized investment market in Nigeria, independent investment research institute is paramount to revolutionizing various investment products and markets. Investment research institute studies the various investment jurisdictions and their market trends to identify their peculiarity for new opportunities to investors; researches into the investment climates of jurisdictions, comparative investment advantages, bureaucratic clogs, investment security and investment laws. Upon the statutory inauguration of Investment Institute in Nigeria, the Presidential Enabling Business Environment Council inaugurated by the Federal Government to clean up ease of doing business in Nigeria will form alignment with the Institute as its major research think tank and repository of investment knowledge to effectively clean up the Nigerian climate. Also, the Institute will help the Nigerian government a lot in the areas of comparative business advantages Nigeria has over her sister countries.

The Nigerian Land Use Act is a product of military and has exhausted its usefulness hence its amendments are sacrosanct. There is a need to democratized property accessibility to the investors through removals of statutory bottlenecks. There is a need to remove the Land Use Act from the Exclusive

³⁷ Investments and Securities Act 2007



Legislative List and place it in the Concurrent List thereby empowering each state of the federation to control its land and resources buried therein so as to give free accessibility to the investors. This will remove the conflict between the state and the Federal Government which has been having negative effects on investors' confidence in Nigeria. Similarly, there is urgency in removing the provision of mandatory assent of Governor before valid Certificate of Occupancy can be procured. It should be contained in the amended Act that upon meeting all the statutory procedure, Governor's assent/consent is academic. This will settle legal delays often encountered while processing property for acquisition or procuring loans.

On amending CAMA, there is urgent need to provide for electronic issuance of shares and certificates.

This is better interpreted a dematerialization of paper share certificates by generally reviewing sections 114 to 165 of CAMA. Also, there is need to amend the provision of CAMA to provide for demutualization.

Conclusion

It is a trite that the wealth of a nation is the fountain of its strength. Currently, Nigeria is reforming her bureaucracy and investment statutes to enhance ease of doing business in Nigeria. However, there are statutory and bureaucratic gaps that must be swiftly addressed; and part of which are addressed in this paper. The value of this paper will aid the government to incorporate the suggested recommendations into her reforms and improve in it.