

FINAL REPORT

COMPREHENSIVE REVIEW OF THE INSTITUTIONAL, REGULATORY, LEGISLATIVE & ASSOCIATED INSTRUMENTS AFFECTING BUSINESSES IN NIGERIA



COMPREHENSIVE REVIEW OF THE INSTITUTIONAL, REGULATORY, LEGISLATIVE & ASSOCIATED INSTRUMENTS AFFECTING BUSINESSES IN NIGERIA:

FINAL REPORT

February 2016



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Background

The World Bank estimates that 90% of jobs in developing economies are provided by the private sector.¹ Where government policies support a dynamic business environment - with firms making investments, creating jobs and increasing productivity – there is a greater opportunity for inclusive growth. Experience from advanced and rapidly advancing economies suggests that policy makers seeking to strengthen the private sector need to pay attention not only to macroeconomic factors but also to the quality of laws, regulations and institutional arrangements that shape daily economic life.

This assignment was triggered by the desire and necessity to improve the ease of doing business in Nigeria. The underlying objective is to provide a framework for the review and improvements of legislation and policy affecting businesses in Nigeria. In turn, it is hoped that this will create a better business enabling environment, leading to increased and sustained private sector development and investment in the country.

The assignment is made up of the following elements:

1. A diagnostic review of current and proposed laws relevant to the business environment in Nigeria and the key institutions involved, including but not limited to procurement laws, competition laws, company laws, investment laws, finance and contract laws.
2. Identification of significant legislative gaps or deficiencies in the existing framework.
3. Recommendations on priority legislative areas to be addressed by the Roundtable and the National Assembly, in consultation with the private sector.

The following were appointed by Adam Smith International as Consultants (Advisers) for the assignment:

1. Prof. Paul Idornigie, SAN – Team Leader
2. Leonard Ugbajah
3. Eberechi May Okoh
4. Isaiah Bozimo

¹ World Bank. 2012. *World Development Report 2013: Jobs*. Washington, DC: World Bank. DOI: 10.1596/978-0-8213-9575-2.

This Final Report comprises the following sections:

1. Executive Summary
 2. Scope of Work
 3. The Importance of Micro, Small and Medium Enterprises
 4. The Doing Business 2016 Report
 5. Constitutional Provisions
 6. Legislative Review
 7. Recommendations
 8. Conclusions
 9. Apendices
-
- A. Appendix A - Review of Acts of the National Assembly
 - B. Appendix B - Reform Bills
 - C. Appendix C - Review of Pending Senate Bills as at 07:01:2016
 - D. Appendix D - Review of House of Representatives Bills as at 07:01:2016
 - E. Appendix E - Full List of the reviewed Acts/Bills with their priority Rating.

The methodology adopted in this review is essentially doctrinal – review of legislative enactments/bills as well as *Doing Business Report 2016*. In selecting the laws/bills reviewed for this assignment, we were guided by the indicators used by the World Bank for determining Distance to Frontier (DTF) and *Ease of Doing Business 2016*, the impact of other laws on these indicators and laws impacting on private sector participation in infrastructure delivery. We also took into account the 2013 SMEDAN/NBS collaborative survey of MSMEs in Nigeria, Scope of Work and Objectives of the assignment.

We have reviewed Laws/Bills, identified the significant legislative gaps, deficiencies therein and made recommendations.

Executive Summary

This is the Final Report of the Team of Consultants appointed by the ENABLE-DFID and GEMS3 programmes, following the comprehensive review of the institutional, regulatory, legislative and associated instruments affecting businesses in Nigeria. The views expressed in this report are those of the Consultants engaged to conduct this Assignment and will be considered as submissions to the President of the Senate of the Federal Republic of Nigeria.

The report identifies the significance of Micro, Small and Medium Enterprises (MSMEs) to Nigeria's economy and the need to amend, repeal or create legislation that would significantly improve the business environment in Nigeria. Utilising the *Doing Business Report 2016* and a collaborative survey conducted by the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) and the National Bureau of Statistics (NBS) in 2013, the Consultants have set out a menu of proposals to address the legal and regulatory problems facing micro, small and medium sized businesses in Nigeria. It outlines necessary reforms for how government operates to support these businesses and to increase growth and prosperity. There is a single objective behind all the proposals: to create an environment where hardworking firms, and not just a select few individuals, can flourish.

The Importance of MSMEs

MSMEs are the engine of job creation in Nigeria. With so much emphasis on Government as panacea to our economic and other difficulties, small businesses are often underestimated because, they are in fact, small. The truth is there is nothing small about the impact they have on the Nigerian economy. According to the 2013 SMEDAN and NBS collaborative survey, there are over 37 million MSMEs in Nigeria that contribute almost 50% of Gross Domestic Product in nominal terms and account for 84.02% of all Nigerian jobs.²

With the decline in oil prices triggering an economic downturn in Nigeria, these are challenging times for small businesses. Many excellent, profitable firms are unable to get the finance they need to continue and to prosper. Now, more than ever, Nigeria needs its small businesses to succeed. This starts with government providing the right environment for small businesses today, and positioning itself for the global economy of the future.

² Small and Medium Enterprises Development Agency of Nigeria and National Bureau of Statistics Collaborative Survey: Selected Findings (2013).

An active government approach must go beyond economy wide policies to improve the conditions for growth, as important as they are. Government must offer clear direction to businesses in individual sectors and across the economy. It must shift from being passive and reactive, to proactive and strategic – and must be wholly supportive of small firms. The Legislature has a critical role to play in this regard. It can exercise its powers to make, amend or repeal the necessary laws that would facilitate the development of small and medium enterprises. It can also use its oversight powers to monitor compliance to extant laws and attitudinal change on the part of government agencies.

Approach of the Consultants

To assist the Government in implementing the suggested reforms, we have rated the Acts/Bills into “High”, “Medium” and “Low” categories. A summary of the legislative ratings is shown at the end of this Executive Summary.

Our ratings of the legislation have, in the main, been informed by the 2013 SMEDAN/NBS collaborative survey of MSMEs in Nigeria, Doing Business Report 2016 and the impact of such laws on businesses. Respondents to the survey identified the main challenges and constraints confronting the operations of MSMEs in Nigeria as lack of access to finance, weak infrastructure, inconsistent government policies, lack of support (business development services), lack of work space, and multiple taxation. From experience, the Consultants are also aware that challenges faced by MSMEs include the increasing costs of doing business (e.g. energy), acquiring, retaining and boosting competitiveness and innovation, accessing international markets, economic volatility and compliance issues.

In terms of private sector participation in infrastructure delivery, the Consultants identified the legislative gaps/deficiencies in existing laws and proposed bills and made recommendations.

These factors determined the rating of existing and proposed legislation in two ways. The initial inquiry was to ascertain whether, if at all, the Law or Bill fell into any of the categories identified above as being problematic for MSMEs. The second stage was to determine deficiencies in the legislation that have an adverse impact on either setting up, running, or closing down an MSME. For instance, where the Law or Bill is found to discourage investment on account of onerous tax provisions, or impedes MSMEs by ambiguous or conflicting requirements, it will be designated a ‘High’ rating.

Conversely, where legislation falls into any of the identified categories but does not impede the setting up, running, or closing down an MSME, it will be designated a 'Low' rating.

The Consultants have endeavoured to be objective but recognise that there is some degree of subjectivity in this approach, especially in relation to legal analysis. Law, unlike science, is not exact. Unless where field research is carried out to test certain hypothesis, law is not exact. The methodology adopted is therefore, doctrinal. This approach has been occasioned, to a large extent, by the limited time prescribed for this Assignment.

Key Findings & Recommendations

This Final Report contains a broad range of legislative and policy interventions as progress is required on a broad range of fronts. They are not an exhaustive list, but each would make a contribution to improving the Business Environment for MSMEs.

With the reform of key sectors of the economy, there is a critical need to facilitate an enabling environment for private sector participation. There are Bills pending before the National Assembly that are of priority importance to doing business and overall private sector development in Nigeria, especially in infrastructure delivery.

1. Passage of the Reform Bills

Findings:

With the reform of key sectors of the economy, there is a critical need to facilitate an enabling environment for private sector participation. There are Bills pending before the National Assembly that are of priority importance to doing business and overall private sector development in Nigeria, especially in infrastructure delivery.

Recommendation:

If no other recommendation in this Report is implemented, the enactment of the following Bills would be a major achievement of the 8th National Assembly:

1. Federal Competition and Consumer Protection Bill, 2015.
2. Federal Roads Authority Bill, 2015.
3. National Inland Waterways Authority Bill, 2015.
4. National Roads Funds Bill, 2015.
5. National Transport Commission Bill, 2015.
6. Nigerian Ports & Harbours Authority Bill, 2015.

7. Nigerian Postal Commission Bill, 2015.
8. Nigerian Railway Authority Bill, 2015.

In addition to the Reform Bills, review and re-enactment of the following Acts should be given priority:

Companies and Allied Matters Act (CAMA)
Investment and Securities Act (ISA)

2. Access to Finance & Property

Findings (Access to Finance):

Access to finance and land are major challenges to MSMEs. Data from the SMEDAN and NBS Collaborative survey revealed that of a total of 80,312 Small and Medium Enterprises, only 13,031 (representing 17%) listed their source of capital as a loan. As is concerned Micro Enterprises, only 3% of the surveyed Enterprises listed their source of capital as a loan. Early-state start-ups often do not have the collateral or assets requested by banks before they will administer a loan, making it difficult to obtain the said loan.

Recommendation:

The underlisted Bills also merit priority attention as their passage would ensure that businesses, especially MSMEs, have access to different avenues of finances at reasonable interest rates:

Independent Warehouse Regulatory Agency Bill
Secured Transactions in Movable Assets Bill
National Development Bank of Nigeria Bill

The Independent Warehouse Regulatory holds the potential of solving the challenge to collateral by allowing businesses to securitise their commercial warehouse receipts. Likewise, the Secured Transactions in Movable Assets Bill proposes to establish a National Collateral Agency. This Bill will give creditors an effective way to discover whether the potential borrower has already granted a security interest in the collateral and, if so, what priority those rights have.

If properly implemented, (with all the identified deficiencies addressed), these Bills could improve access to finance for MSMEs.

The National Development Bank of Nigeria Bill, which seeks to consolidate the operations of development finance institutions (Bank of Industry, Bank of Commerce and Industry and National Economic Reconstruction Fund) is equally important to the Business Environment in Nigeria.

Findings (Access to Property):

The Majority of MSMEs surveyed in the SMEDAN/NBS Collaborative study also identified lack of workspace as a significant problem. The requirement to obtain Governor's consent to transfer property remains the largest bottleneck in Niigeria.

Recommendation:

Eliminating the requirement for Governor's consent would significantly speed up the total time required to register property accross the country. Alternatively, delegating the power to grant consent would significantly decrease the waiting time.

We have also recommended the 'liberisation' of land holding and allocation as well as the review of planning laws, environmental laws, among others.

3. Improving Commercial Dispute Resolution

Findings:

On average, it takes 509 days to enforce a contract in Nigeria. High Courts do not have minimum thresholds and litigants commonly choose to file in the High Court small claims that fall within the competence of the Magistrates' Courts. This results in an inconsistent judicial map, with civil and commercial litigation being obsolete in certain Magistrates' Court.

The Constitution vests in the Chief Judge of eact State, the power to regulate practice and procedure in their respective High Courts. Reform in this sector must, therefore, be State driven. However, because the National Assembly legislates for the Federal Capital Territory, a benchmark could be set for the respective States to follow.

Recommendation:

The draft Federal Arbitration and Conciliation Bill, 2007 should be updated to repeal and re-

enact the Arbitration and Conciliation Act, while other States should emulate Lagos State and pass the Arbitration and Conciliation Bill, 2007 into Law.

Some States already have Multi-Door Courthouses. This should be replicated in all States to proliferate the availability of Alternative Dispute Resolution (ADR) resources.

The Federal Capital Territory and other States should emulate Lagos State by introducing specialised Commercial Courts, with judges assigned solely for hearing commercial matters.

4. Simplifying the Payment of Taxes

Findings:

Under the current system, businesses pay similar taxes on the same or substantially similar tax base. For instance, Companies Income Tax, Information Technology Tax (NITDA Levy), Education Tax and Nigerian Content Development Levy are all based on income or profits. Multiple taxation increases the number of payments businesses must make, the frequency of the said payments and the compliance time.

Recommendation:

The legislature should consider enacting legislation to streamline tax payments by introducing one tax for each tax base (e.g. a single tax based on income or profits).

5. Establishment of a Federal Legislative Clearinghouse

Findings:

A number of legislative instruments from the National Assembly lack cohesion and consistency. This has resulted in a lack of clearly defined mandates for government agencies. For instance:

- The relationship between the Bureau of Public Procurement (BPP) established under the Public Procurement Act 2007 and the Infrastructure Concession Regulatory Commission (ICRC) established ICRC Act 2005 is unclear. Essentially the mandate of the BPP is an overview of procurement of works, goods and services. There is also uncertainty as to whether Public Private Partnership (PPP) transactions, including concession agreements, are governed by the Public Procurement Act or the ICRC Act. Similarly, some of the public enterprises listed for either privatization or commercialization in the Public

Enterprises (Privatization and Commercialization) Act, 2004 are also listed in the ICRC Act for PPP transactions, including concessions. Thus it is unclear whether it is the Bureau of Public Enterprises (BPE) established under the Public Enterprises (Privatization and Commercialization) Act or the ICRC that handles PPP transactions.

- There is a conflict between the powers conferred on the Nigerian Ports Authority by virtue of the provisions in sections 7, 8 and 30 of the Nigerian Ports Authority Act 2004 and sections 8, 9 and 11 of the Nigerian Inland Waterways Authority Act, 2004.
- The relationship between the Consumer Protection Act (and the Council established under it) and other laws with consumer protection provisions is not defined. Such other laws include the Nigerian Communications Commission Act, 2003; the Electric Power Sector Reform Act, 2005; the Standards Organisation of Nigeria Act; Nigerian Civil Aviation Authority Act, etc.
- The Supreme Court has declared that the National Tourism Development Corporation Act violates the Constitutional powers of the States in some respects. Unfortunately, the proposed Bill to amend this Act seems not to have taken the Supreme Court judgement into account.
- The jurisdiction of the Tax Appeal Tribunal (TAT) established under the Federal Inland Revenue Service Act, 2007 has been declared unconstitutional as it conflicts with section 251 of the 1999 Constitution (as amended) dealing with the jurisdiction of the Federal High Court. The importance of the TAT in revenue generation and disputes arising therefrom cannot be over-emphasised.

The problem emanates from replicative Bills before the Senate and House of Representatives. A good example of this is the Federal Competition Bill and the Federal Competition and Consumer Bill. Likewise, there is the Commercial Agriculture Credit Scheme Bill, 2015 and the Agricultural Credit Guarantee Scheme Fund Act (Amendment) Bill, 2015. There is currently no mechanism in place to harmonise these Bills. It is inefficient to wait till public hearing before the fact that similar or conflicting Bills are pending in the National Assembly is known.

Recommendation:

We recommend the establishment of a Federal Legislative Clearing house to scrutinise and review Bills before presentation to the respective Chambers for first reading. The Clearing

house could be established within the National Assembly Legal Services Directorate, or within the National Institute of Legislative Studies. Consequential amendments to the Senate and House Standing Rules will be required to establish the Clearing house and set out the review procedure.

One principle we believe should guide the National Assembly in considering the Bills before it is the need to avoid the setting up of multiple agencies with overlapping or conflicting mandates. Consequently, there is need to follow a cost-benefit approach in deciding when and where a new agency is required.

6. Establishment of a National Legislative Forum

Findings:

Generally, Nigerian Federal Laws are fairly consistent with international best practices. However, we need to improve on our regulatory framework, procedures and practices at Federal and State levels.

Indeed, in 2016, Nigeria is ranked 169 out of 189 economies in the World Bank Doing Business (DB) Report. The Consultants reviewed the Report extensively and identified the deficiencies in the Nigerian system that led to the low ranking and made specific recommendations. Be that as it may, Nigeria's DB 2016 ranking is based on regulatory processes, procedures and practices at State level, in this case, Lagos and Kano States. Collaboration between the Federal and State Governments is imperative to improve the Business Environment in Nigeria and also Nigeria's ranking in DB Report.

Recommendation:

The National Assembly should facilitate dialogue between the Federal and State Governments, and between the State Governments *inter se*, with a view to modernising and harmonising laws, regulations and practices affecting the Business Environment. This dialogue could be implemented through the establishment of a National Legislative Forum (modelled upon the Nigerian Governors Forum). The Forum will set out minimum standards in the law making process and in the oversight functions to ensure that the relevant government agencies at the Federal and State levels improve on their practices and procedures.

The specific recommendations made by the Consultants in respect of DB Report can be discussed at such Forum.

Summary of Legislation by Priority Ranking

| NAME OF ACT | REVIEW | RATING |
|---|----------------------|--------|
| Arbitration and Conciliation Act, Cap A18, LFN 2004 | Page 85, Appendix A | High |
| Coastal and Inland Shipping (Cabotage) Act | Page 86, Appendix A | High |
| Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004. | Page 88, Appendix A | High |
| Companies Income Tax Act, Cap. C21, Revised Edition, LFN, 2004 | Page 93, Appendix A | High |
| Copyright Act, Cap. C. 28, LFN, 2004 | Page 94, Appendix A | High |
| Federal Highways Act, Cap. F13, LFN 2004. | Page 99, Appendix A | High |
| Federal Inland Revenue Service Act, 2007, Cap F36. LFN, 2004 | Page 100, Appendix A | High |
| Fiscal Responsibility Act, Cap. F4, LFN, 2004 | Page 101, Appendix A | High |
| Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005 | Page 103, Appendix A | High |
| Investment and Securities Act, 2007 | Page 105, Appendix A | High |
| Mortgage Institutions Act, Cap. M19, LFN, 2004 | Page 107, Appendix A | High |
| National Housing Fund Act, Cap. N45, LFN, 2004 | Page 109, Appendix A | High |
| National Information Technology Development Agency Act, Cap. N156, Revised Edition, LFN, 2004 | Page 110, Appendix A | High |
| Nigerian Civil Aviation Act, Cap. N94, LFN 2004 | Page 112, Appendix A | High |
| Nigerian Inland Waterways Authority Act, Cap. N47, LFN 2004 | Page 113, Appendix A | High |
| Nigerian Investment Promotion Commission Act, Cap N117, LFN, 2004 | Page 114, Appendix A | High |
| Nigerian Minerals and Mining Act, Cap. N162, LFN 2004 | Page 115, Appendix A | High |
| Nigerian National Petroleum Corporation Act, Cap N123, LFN, 2004 | Page 116, Appendix A | High |
| Nigerian Ports Authority Act, Cap. N126, LFN 2004 | Page 117, Appendix A | High |

| NAME OF ACT | REVIEW | RATING |
|--|----------------------|--------|
| Nigerian Postal Service Act, Cap. N127, LFN 2004 | Page 118, Appendix A | High |
| Nigerian Railway Corporation Act, Cap. N129, LFN, 2004. | Page 119, Appendix A | High |
| Patents and Designs Act, Cap. P2 Revised Edition, LFN 2004. | Page 120, Appendix A | High |
| Petroleum Act, Cap. P10, Revised Edition, LFN, 2004 | Page 123, Appendix A | High |
| Petroleum Profits Tax Act, Cap. P13, Revised Edition, LFN, 2004 | Page 124, Appendix A | High |
| Public Enterprises (Privatization and Commercialization) Act, Cap. P38, LFN, 2004 | Page 126, Appendix A | High |
| Public Procurement Act, Cap, P44, LFN, 2004 | Page 127, Appendix A | High |
| Taxes and Levies (Approved List for Collection) Act, Cap. T2, Revised Edition, LFN, 2004 | Page 129, Appendix A | High |
| Trade Marks Act Cap. T. 13 LFN 2004 | Page 130, Appendix A | High |
| Animal Diseases (Control) Act, Cap. A17 Revised Edition, LFN, 2004 | Page 85, Appendix A | Medium |
| Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap. D3, Revised Edition, LFN, 2004 | Page 97, Appendix A | Medium |
| Federal Housing Authority Act, Cap. F14, LFN 2004 | Page 100, Appendix A | Medium |
| Price Control Act, Cap. P28, Revised Edition, LFN, 2004 | Page 125, Appendix A | Medium |
| Standards Organisation of Nigeria Act, 2015 | Page 128, Appendix A | Medium |
| Consumer Protection Council Act; Cap. C25 Revised Edition, LFN 2004. | Page 94, Appendix A | Low |
| Customs and Excise Management Act, Cap. C45, Revised Edition, LFN, 2004 | Page 97, Appendix A | Low |
| Environmental Impact Assessment Act, Cap. E12, Revised Edition, LFN, 2004 | Page 98, Appendix A | Low |
| Food and Drugs Act, Cap. N32, Revised Edition, LFN, 2004 | Page 102, Appendix A | Low |

| NAME OF ACT | REVIEW | RATING |
|--|----------------------|--------|
| Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, Revised Edition, LFN, 2004 | Page 102, Appendix A | Low |
| Immigration Act, 2015. | Page 103, Appendix A | Low |
| Labour Act, Cap. L1, Revised Edition, LFN, 2004 | Page 107, Appendix A | Low |
| National Agency for Food and Drug Administration and Control Act, Cap. N1, Revised Edition, LFN 2004. | Page 108, Appendix A | Low |
| National Environmental Standards and Regulations Enforcement Agency Act, Cap. N164, Revised Edition, LFN 2004. | Page 108, Appendix A | Low |
| National Office for Technology Acquisition and Promotion Act, Cap. N62, Revised Edition, LFN, 2004 | Page 111, Appendix A | Low |
| Nigeria Export Processing Zones Act, Cap. N107, Revised Edition, LFN 2004 | Page 111, Appendix A | Low |
| Nigeria Export Promotion Council Act, Cap. N108, Revised Edition, LFN 2004. | Page 112, Appendix A | Low |
| Nigerian Oil and Gas Industry Content Development Act, 2010 | Page 117, Appendix A | Low |
| Nigerian Urban and Regional Planning Act, Cap. N138, Revised Edition, LFN, 2004 | Page 120, Appendix A | Low |
| Pension Reform Act, 2014 | Page 122, Appendix A | Low |
| Petroleum (Special) Trust Fund Act, Cap. P14, Revised Edition, LFN, 2004 | Page 123, Appendix A | Low |
| Petroleum Equalisation Fund (Management Board, etc.) Act, Cap. P11, Revised Edition, LFN, 2004 | Page 123, Appendix A | Low |
| Petroleum Products Pricing Regulatory Agency (Establishment, etc.) Act, Cap. P43, Revised Edition, LFN, 2004 | Page 124, Appendix A | Low |
| Petroleum Technology Development Fund Act, Cap. P15, Revised Edition, LFN, 2004 | Page 125, Appendix A | Low |

| NAME OF ACT | REVIEW | RATING |
|---|----------------------|--------|
| Public Enterprises Regulatory Commission Act, Cap. P39, Revised Edition, LFN, 2004 | Page 126, Appendix A | Low |
| Small and Medium Scale Enterprises Development Agency of Nigeria Act; Cap. S19 Revised Edition, LFN 2004. | Page 128, Appendix A | Low |

| NAME OF BILL | REVIEW | RATING |
|---|--|--------|
| Federal Competition and Consumer Protection Commission Bill 2015 | Page 75 of the Final Report | High |
| Federal Roads Authority Bill, 2015 | Page 76 of the Final Report | High |
| National Inland Waterways Authority Bill 2015 | See review of the Nigerian Inland Waterways Authority Act. Page 113, Appendix A of the Final Report. | High |
| National Roads Fund Bill 2015 | Page 77 of the Final Report | High |
| National Transport Commission Bill 2015 | Page 74 of the Final Report | High |
| Nigeria Postal Commission Bill 2015 | Page 77 of the Final Report | High |
| Nigerian Ports and Harbours Authority Bill 2015 | See review of the Nigerian Ports Authority Act. Page 117, Appendix A of the Final Report. | High |
| Nigerian Railway Authority Bill 2015 | See review of the Nigerian Railway Authority Act. Page 119, Appendix A of the Final Report. | High |
| A Bill for the Bio-fuels Energy Policy Act | Page 158, Appendix D | High |
| Commercial Agriculture Credit Scheme Bill, 2015. | Page 140, Appendix C | High |
| Commodities Exchange Bill, 2015. | Page 160, Appendix D | High |
| Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) (Amendment) Bill, 2015. | Page 141, Appendix C | High |
| Franchise Bill, 2015. | Page 162, Appendix D | High |
| International Trade Commission of Nigeria Bill, 2015. | Page 162, Appendix D | High |

| NAME OF BILL | REVIEW | RATING |
|---|----------------------|--------|
| Micro Finance Bill, 2015. | Page 147, Appendix C | High |
| National Development Bank of Nigeria (establishment, etc.) Bill 2015. | Page 148, Appendix C | High |
| National Payment System Bill, 2015. | Page 148, Appendix C | High |
| National Security Tax Fund Bill | Page 149, Appendix C | High |
| Nigeria Agricultural Quarantine Service (Establishment) Bill, 2015. | Page 153, Appendix C | High |
| Nigerian Independent Warehouse Regulatory Agency (Est, etc.) Bill, 2015 | Page 165, Appendix D | High |
| Oil and Gas Export Free Zone Act CAP 05 LFN 2011 (Amendment) Bill, 2015. | Page 156, Appendix C | High |
| Petroleum Refineries (Incentives, Regulation And Miscellaneous Provision) Bill, 2015 | Page 167, Appendix D | High |
| Secured Transactions in Movable Assets Bill | Page 168, Appendix D | High |
| Abuja Metropolitan Management Council Bill, 2015 | Page 137, Appendix C | Medium |
| Central Bank of Nigeria Act (Amendment) Bill 2015. | Page 138, Appendix C | Medium |
| Chartered Institute of Facilities Management of Nigeria Bill, 2015 | Page 139, Appendix C | Medium |
| Environmental Health Control Bill 2015. | Page 161, Appendix D | Medium |
| Hydroelectric Power Producing Area Development Commission Act (Amendment) Bill, 2015. | Page 145, Appendix C | Medium |
| National Fertilizer Bill, 2014 | Page 164, Appendix D | Medium |
| National Planning Process Bill, 2015. | Page 149, Appendix C | Medium |
| Nigeria Industrial Revolution Plan Bill, 2015 | Page 153, Appendix C | Medium |
| Nigerian Tourism Development Corporation (Amendment) Bill 2015. | Page 155, Appendix C | Medium |
| Palm Oil Development Bill. | Page 167, Appendix D | Medium |
| Agricultural Credit Guarantee Scheme Fund Act [Amendment] Bill, 2015. | Page 137, Appendix C | Low |

| NAME OF BILL | REVIEW | RATING |
|---|----------------------|--------|
| Agricultural Produce Hoarding (Prohibition) Bill, 2015 | Page 159, Appendix D | Low |
| Chartered Institute of Capital Market Registrars (Establishment) Bill, 2015. | Page 131, Appendix C | Low |
| Chartered Institute of Management Information Technology Bill, 2015. | Page 152, Appendix D | Low |
| Deep Offshore and Inland Basin PSC Bill | Page 134, Appendix C | Low |
| Deep Offshore and Inland Basing Production Sharing Contract Act CAP D3 LFN 2004 (Amendment) Bill, 2005. | Page 135, Appendix C | Low |
| Energy Commission Act (Amendment) Bill, 2015. | Page 135, Appendix C | Low |
| Food Security Bill, 2015. | Page 136, Appendix C | Low |
| Integrated Infrastructure Development Bill, 2015. | Page 137, Appendix C | Low |
| National Agency for Food and Drug Administration and Control Act (Amendment) Bill, 2015. | Page 157, Appendix D | Low |
| National Agricultural Land Development Authority Act (Amendment) Bill 2015. | Page 139, Appendix C | Low |
| National Biotechnology Development Agency Bill, 2015. | Page 156, Appendix D | Low |
| Nigeria Agricultural Processing Zones Bill, 2015. | Page 143, Appendix C | Low |
| Nigerian Metallurgical Industry Bill | Page 158, Appendix D | Low |
| Nigerian Solid Minerals Development Bank Bill, (Establishment) 2015. | Page 146, Appendix C | Low |
| Trade Malpractice (Miscellaneous Offences) Act (Amendment) Bill, 2015. | Page 140, Appendix C | Low |

Scope of Work

Purpose

The purpose of this assignment is to provide recommendations to the Senate President, based on the review of existing and proposed legislation, to remove barriers and make it easier to do business in Nigeria. It is expected that an improved business enabling environment will lead to increased and sustained private sector development and investment in the country.

The assignment has the following components:

1. Review the laws of the Federal Republic of Nigeria which relate to the business enabling environment to determine:
 - Whether they are consistent with international good practice.
 - The extent to which they provide a conducive environment for the creation and operation of private sector enterprises, especially MSMEs.
 - Specific aspects in which they act as barriers or impediments to MSME development.
 - The degree of transparency in their operation and whether they prevent arbitrary or perverse enforcement by public agencies.
2. Review current proposed legislation in the National Assembly that may impact on the Nigerian Business Environment.
3. Note specific deficiencies in the legislative framework for business.
4. Prepare draft recommendations for consideration by the Roundtable on priority areas to be addressed in the national legislative agenda, covering:

- Existing Acts which should be repealed or significantly amended.
 - Existing Bills which should take priority at the National Assembly.
 - New legislation which should be brought to the National Assembly by the Federal Government.
5. Prepare and submit on conclusion, a report of findings and proposals on each law or bill reviewed.
 6. Any other activity deemed necessary to fulfil the objectives of the assignment, including being available to perform edits until the work meets with the client's and the end user's satisfaction.

Objectives

Since the inception of World Bank's Doing Business report series in 2005, Nigeria has not fared well when compared to other countries for ease of doing business. For instance, in 2008, out of 183 countries, Nigeria ranked 114. In 2009, 2010, 2011, 2012, 2013, and 2014, Nigeria ranked 118, 125, 133, 133, 131, and 170 respectively.³

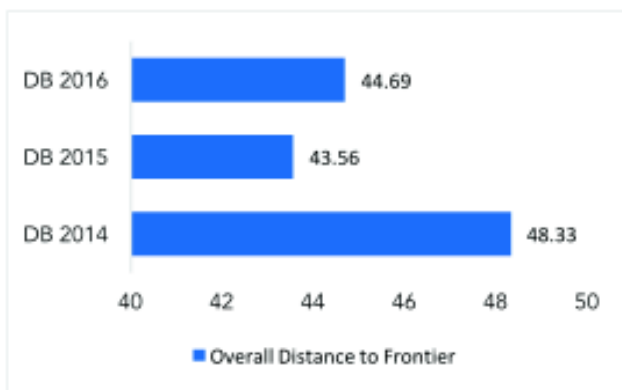
Nigeria is ranked 169th out of 189 Countries in the Doing Business 2016 Report published by the World Bank Group on October 27, 2015. The Report gauges the relative ease or difficulty of opening and running a small to medium-size business when complying with relevant regulations. It, therefore, offers a useful and candid assessment of economies' relative standings in the world as it concerns bureaucratic barriers to business.

In arriving at an assessment, eleven (11) areas in the lifecycle of a business are tracked and measured as indicators: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, resolving insolvency and labour market regulation. The labour market regulation indicators are not included in this year's aggregate ease of doing business ranking.

³ See *Doing Business* 2008, 2009, 2010, 2011, 2012, 2013, 2014 and 2015: The International Bank for Reconstruction and Development/The World Bank, Washington DC.

According to the Doing Business 2016 Report, the methodology adopted in the ranking has limitations. Other areas important to business – such as an economy’s proximity to large markets, the quality of its infrastructure services (other than related to trading across borders and getting electricity), the security of property from theft and looting, the transparency of government procurement, macroeconomic conditions or the underlying strength of institutions – are not directly studied by Doing Business.

The indicators refer to a specific type of business, generally a local limited liability company operating in the largest business city. In Nigeria, Lagos State and Kano State have been identified as the largest business cities.⁴ The consequence of this is that the Report on Nigeria is based on the laws, practices, processes, regulations and procedures in Lagos and Kano States. Most of these practices, processes, regulations and procedures are based on state laws such as urban planning laws, land registry laws, environmental laws, state taxes,⁵ and local government taxes. Conversely, there are very few Federal Laws like the Land Use Act, Companies and Allied Matters Act, Value Added Tax, and Stamp Duties Act. Apart from the Land Use Act that provides for Governor’s consent, the procedures for obtaining the said consent varies from state to state. Comparator economies and economies with good business practices are also used to compare business practices. In the case of Nigeria, United Kingdom, South Africa, Kenya and India are used in the analysis as well a Regional Average. It is interesting to note that between Lagos and Kano, there are different rankings in the 11 indicators.



Nigeria’s DTF measure in *Doing Business 2016* is 44.69, up from 43.56 in *Doing Business 2015*. This represents a small improvement by 1.13 percentage points.

However, compared with the measure of 48.33 in *Doing Business 2014*, the 2016 measure represents a decline of 3.64 percentage points.

Source: World Bank

4 The following countries also have two cities: Bangladesh - Dhaka and Chittagong; Brazil – Sao Paulo and Rio de Janeiro; China – Shanghai and Beijing; India – Mumbai and Delhi; Indonesia – Jakarta and Surabaya; Japan – Tokyo and Osaka; Mexico – Mexico City and Monterrey; Pakistan – Karachi and Lahore; Russian Federation – Moscow and St. Petersburg; and United States – New York and Los Angeles.

5 In Lagos State, this is a summary of taxes or mandatory contributions: Corporate Income Tax, Social Security Contributions, Tertiary Education Trust Fund Contribution, Training Tax, Employee Compensation Contribution, Capital Gains Tax, Tax on money market interest, Land Use Charge, Stamp Duty on Cheques, State Business Levy, Entertainment Tax, Infrastructure Development Tax, Value Added Tax, Fuel Tax, Employee Labour Tax, National Housing Fund, Advertising Tax and Stamp Duty on Contracts. Kano State has similar taxes.

Nigeria's ease of doing business rank of 169 is based on its distance to frontier (DTF) score, assessed to be 44.69. According to the World Bank Group, the distance to frontier score illustrates the distance of an economy to the "frontier", which represents the best performance observed on each Doing Business topic across all economies and years included since 2005. An economy's distance to frontier is indicated on a scale from 0 to 100, where 0 represents the lowest performance and 100 the frontier. For example, a score of 75 in 2012 means an economy was 25 percentage points away from the frontier constructed from the best performances across all economies and across time. A score of 80 in 2013 would indicate the economy is improving.

The Consultants submitted an Interim Report. In this Final Report, we build on the recommendations made in the Interim Report.

Given that the World Bank Report on Doing Business provided the impetus for our work, we start with a short summary of Nigeria's performance. The 'Doing Business' report is a survey conducted by the World Bank. It measures the burden imposed by regulation across 189 different countries. It looks at ten sub-indicators which represent administrative processes that a typical business will face over its life cycle. Nigeria has performed poorly in this regard. It ranked a disappointing 169 out of 189 Countries in the Doing Business 2016 Report published by the World Bank Group on October 27, 2015

We analyse each of the indicators separately, in each case highlighting the deficiencies in the system and making recommendations for reform in accordance with international best practice.

This Final Report Reviews 54 Acts of the National Assembly, 50 Bills pending in the National Assembly as at January 7, 2016.



The importance of Micro, Small & Medium Enterprises (MSMEs) to Nigeria's economy

“Keeping
Nigeria's
entrepreneurial
wheels
turning,”

With their capacity to
adapt in an ever-changing
business environment,
MSMEs are vital for the
growth of Nigeria's
economy. Here's what the
landscape looks like.

An estimated
96%
of Nigerian Businesses are SMEs

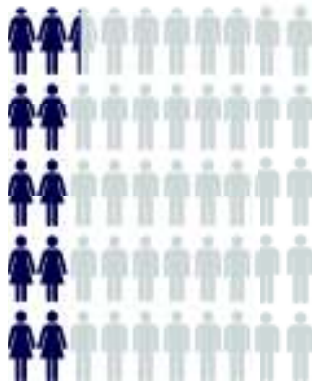


MSMEs contribute
48.47%
to Nigeria's Gross Domestic
Product in Nominal terms

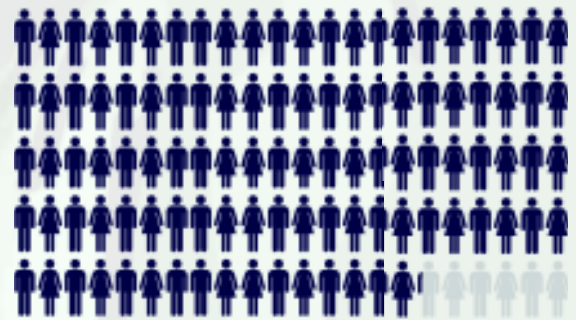
43.32%
of all Micro Businesses
in Nigeria are female-led



22.75%
of all Small/Medium Businesses
in Nigeria are female-led



Nigerian MSMEs employ
57.74m



This represents
84.02%
of the Nigerian workforce

Source:

Small & Medium Enterprises
Development Agency of Nigeria
(SMEDAN) and National Bureau of
Statistics Collaborative Survey:
Selected Findings.

The importance of Micro, Small & Medium Enterprises

Micro, Small and Medium sized Enterprises (MSMEs) are at the heart of our communities and form the backbone of the Nigerian economy. Together, they make up approximately 96% of all businesses in Nigeria. They employ 57.74 million individuals, representing 84.02% of the Nigerian workforce, and contribute almost 50% to Nigeria's Nominal Gross Domestic Product (GDP). Now, more than ever, with the downturn in the International Oil market, there is a need for MSMEs to succeed.

These are, however, challenging times for MSMEs. Nigeria is ranked 169th out of 189 Countries in the Doing Business 2016 Report published by the World Bank Group on October 27, 2015. The Report gauges the relative ease or difficulty of opening and running a small to medium-size business when complying with relevant regulations.

The National Assembly considers Nigeria's ranking to be unsatisfactory. It is in this context, that the Office of the President of the Senate has initiated the Senate President's Roundtables and Nigerian Business Competitiveness Project. The aim of this initiative is to improve the regulatory environment for doing business in the country by engaging with the private sector and the business community to craft a legislative agenda for economic reform that will improve private sector growth in the country.

To this end the Senate President's vision is to create a platform that bridges the gap between the legislature, the executive and the business community. These roundtables will provide an opportunity to private sector to work closely with government in developing the right legal tools and instruments to accelerate business and investment across the various segments of the economy and give confidence back to the business community.

It is in view of the above, that the Office of the Senate President (through its Coordinating Office) under the Office of the Senior Special Assistant to the Senate President on Legislative Matters & Strategy is partnering with the Department for International Development (DFID), through its programs Enhancing Nigeria Advocacy for a Better Business Environment (ENABLE2) and Growth & Employment in States (GEMS3) to undertake a detailed review of existing Nigerian Federal Legislation which affects, either positively or negatively, the activities



What are MSMEs?

Micro Enterprises:

Enterprises whose total assets (excluding land and buildings) are less than Five Million Naira, with a workforce not exceeding ten employees.

Small Enterprises:

Enterprises whose total assets (excluding land and building) are above Five Million Naira but not exceeding Fifty Million Naira, with a total workforce of above ten, but not exceeding forty-nine employees.

Medium Enterprises:

Enterprises with total assets (excluding land and building) are above Fifty Million Naira, but not exceeding Five Hundred Million Naira, with a total workforce of between 50 and 199 employees.

Source: Small & Medium Enterprises Development Agency of Nigeria (SMEDAN) and National Bureau of Statistics Collaborative Survey: Selected Findings.

The 'Doing Business 2016' Report

The 'Doing Business' Report is a survey conducted by the World Bank. It measures the burden imposed by regulation across 189 different countries. It looks at ten sub-indicators which represent regulatory processes that a typical business will face over its life cycle. Nigeria has performed poorly in this regard. In the In 2009, 2010, 2011, 2012, 2013, and 2014 reports, Nigeria ranked 118, 125, 133, 133, 131, and 170 respectively. The figure below summarises Nigeria's Distance to Frontier (DTF) scores as it concerns the respective indicators. An economy's distance to frontier is indicated on a scale from 0 to 100, where 0 represents the lowest performance and 100 the frontier. For example, a score of 68.33 in the 'protecting minority investors' indicator means Nigeria 31.67 percentage points away from the frontier constructed from the best performances across all economies and across time. Conversely, a score of 18.05 indicates that Nigeria's performance in the 'trading across borders' indicator is extremely poor and in need of urgent reform.



Starting a Business

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|----------------------------------|-----------------|-----------------|------------------------|--------------------------------|
| Starting a Business (rank) | 139 | 131 | 17 | New Zealand (1) |
| Distance to Frontier (DTF Score) | 77.11 | 76.85 | 94.57 | New Zealand (99.96) |
| Procedures (number) | 8.7 | 8.7 | 4 | New Zealand (1.00) |
| Time (days) | 30.8 | 30.8 | 4.5 | New Zealand (0.50) |
| Cost (% of income per capita) | 31.7 | 33.9 | 0.1 | Slovenia (0.00) |

Data from the “Doing Business 2016” Report suggests that the generic requirements to set up a business represent an impediment to starting a business. The main bottlenecks are the time and cost requirements. On average, it takes 30.8 days to start a business in Nigeria, and costs 31.7%

of income per capita. When compared with the best global performers, the data shows that it takes half a day to start a business in New Zealand, and costs 0.00% of income per capita in Slovenia.

Deficiencies in the System

The Companies and Allied Matters Act 1990 (CAMA) and the Companies Regulations 2012 govern business start-up in Nigeria. Despite the unified legal framework, there are profound differences across the States (including the Federal Capital Territory). For instance, in the F.C.T. it takes 6 procedures, 18 days and 46.3% of income per capita to open a business. By contrast, in Ondo, it takes 12 procedures, 40 days and 57.0% of income per capita.⁶

The ‘Doing Business in Nigeria 2014’ report found that in almost every State, more than half of the total time is spent on name reservation and company registration with the Corporate Affairs Commission (CAC). To register the company, entrepreneurs can download standard incorporation forms from the CAC’s website, but they must submit the filled-out forms and make the necessary payments in person. Although entrepreneurs can apply for business incorporation at the CAC Offices in their state of residence, applications are processed at the

⁶ World Bank. 2014. *Doing Business in Nigeria 2014. Understanding Regulations for Small and Medium-Size Enterprises*. Subnational series. World Bank Group.

headquarters in Abuja, FCT, where the certificate of incorporation is issued by the Registrar General.

The 'Doing Business in Nigeria 2014' report also found that there are significant cost variations across States. It is least expensive to start a business in Edo and Kebbi - around 45% of income per capita - while Oyo stands out as the costliest, at more than 70% of income per capita. The largest cost component is the professional fee charged by lawyers, which amounts to almost half of total cost in all states. Further still, cost variations among States are driven by the differences in fees charged by State authorities for the registration of business premises. These fees are governed by State Law and are charged in addition to registration fees, which are regulated by Federal Law. Some States charge a fixed fee, while others impose a fee that depends upon the business activity, size of the premises, location and number of employees.

Recommendations for Reform

Corporate Affairs Commission

Implement a fully electronic system for name reservation and business registration.

The CAC online name checking and reservation system is not operating optimally and has not eliminated the requirement of physical presence at the Commission. Around the world, e-government initiatives range from data centres and shared networks to government-wide information infrastructure and unified service centres for the public. When Mauritius introduced a computerized system for all types of business registrations in 2006, total registration time fell by 80%.⁷ In Liberia, company name reservation and business incorporation can be completed online in only 1.5 days and entrepreneurs can also track their application status online.⁸ To encourage use, some economies set lower fees for online registration. In Belgium, online registration costs EUR140 and paper registration EUR2,004. In Estonia, documents filed electronically no longer need to be notarized.

⁷ World Bank. 2014. *Doing Business in Nigeria 2014. Understanding Regulations for Small and Medium-Size Enterprises*. World Bank Group.

⁸ *Ibid*

Companies and Allied Matters Act (CAMA)

Remove outdated or duplicate requirements, such as the need for a Company Seal or a Statutory Declaration of Compliance.

Section 74 of CAMA requires every company to have a company seal. As business activities become fluid with technology entering the digital age, corporate seals have become increasingly unnecessary and are easy to forge. According to the *Doing Business database*, obtaining a company seal adds 4.2% to the cost of starting a business in Nigeria. Likewise, the database shows that about 60% of economies measured by Doing Business do not require a seal. Since 2007, numerous economies, including Ghana and Tanzania, have eliminated or made optional the requirement for companies to have seals. CAMA also requires the signing of a declaration of compliance before a Commissioner for Oaths to certify that the documents being submitted meet the requirements of the Act. However, the filing and acceptance of the registration documents is ample evidence that the provisions of the Act have been complied with.

Remove minimum share capital requirement.

Out of the 189 countries studied by the World Bank in *Doing Business 2016*, 103 countries no longer have provision on minimum share capital to incorporate a company. Indeed, Nigeria is ranked 139 out of 189 economies. International best practice requires that we eliminate or reduce minimum share capital. This issue of minimum share capital should be revisited by reviewing the provisions of the Companies & Allied Matters Act (CAMA)

Remove minimum of two directors & shareholders for private companies.

One director and one shareholder should be adequate for private companies, as this affects MSMEs.

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Business Premises Permits

Simplify the process for obtaining a business residence permit from the State authorities.

According to the 'Doing Business in Nigeria 2014' report, obtaining a business premises permit can take up to 4 steps, depending on which state the business operates in. For example, in Ondo and Niger, an inspection is needed to confirm the location of the business, while in Lagos and Ogun entrepreneurs can present utility bills or lease contracts as evidence instead. In most states, entrepreneurs have to first pay the fee at a designated bank and then obtain the business premises permit from the state authorities. In Anambra, Delta, Lagos and Ogun a separate visit to the state authorities to obtain the permit is no longer needed. The receipt issued by the designated bank showing that the business premises fee has been paid serves as proof of registration. Others states can follow suit, eliminate unnecessary steps and simplify the process. In several states, complex fee schedules with many business categories and overlapping definitions can be subject to interpretation and create opportunities for negotiation. For example, more than a 100 business categories and associated fees are included in the business premises fee schedules in states such as Akwa Ibom, Anambra, Edo or Osun. By contrast, authorities in Bauchi and Bayelsa have chosen to group businesses into a limited number of categories (between 5 and 6) making schedule of fees easier to understand and less prone to interpretation. Other states could replicate the example of Bauchi and Bayelsa and streamline the different fee categories a company can be placed under.

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Payment of Fees

Consider flat fee structure for incorporation fee and stamp duty.

After legal fees, incorporation fees and stamp duty (put together) constitute the second largest cost of starting a business in Nigeria.

Many countries introduced flat fees because the administrative process to register a company is the same regardless of capital or size of the firms registered. The registration fee only varies in cases such as business inspections (safety, health or environment), where the size of the firm or the risk associated to the economic activity of the firm can affect the cost of the service. In 2009, Luxembourg replaced a 0.5% capital duty with a fixed registration fee of EUR75. The same year, Madagascar went even further and abolished stamp duty of any kind. Funds to pay for government services are raised through taxes paid by thriving businesses. Oftentimes, due to an increased volume in company registrations following such regulatory reforms, government revenues increase in spite of lower registration fees. When Malaysia reduced registration fees in 2008, new business registrations increased by 15.8% the following year.⁹

The Senate could carry out a feasibility study to see if Nigeria should follow suit.

⁹ World Bank. 2011. Doing Business 2012: Doing Business in a More Transparent World. Washington, DC: The World Bank Group.

4. Dealing with Construction Permits

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|--|-----------------|-----------------|------------------------|--------------------------------|
| Dealing with Construction Permits (rank) | 175 | 175 | 23 | Singapore (1) |
| Distance to Frontier (DTF Score) | 49.61 | 49.57 | 78.92 | Singapore (92.97) |
| Procedures (number) | 16.1 | 16.1 | 9 | 5 Economies (7.00) |
| Time (days) | 106.3 | 106.3 | 105.0 | Singapore (26.00) |
| Cost (% of warehouse value) | 24.4 | 26.6 | 1.1 | Qatar (0.00) |

The construction permit procedure is inconsistent across the various States of the Federation. The common denominator, however, is inefficiency. The system is characterised by lengthy, unpredictable and complicated procedures with numerous steps.

According to data collected by World Bank in the 'Doing Business 2016' Report, dealing with building permits in Nigeria requires 16.1 procedures, takes 106.3 days and costs 24.4% of the warehouse value, which puts Nigeria at 175 in the ranking of 189 economies on the ease of dealing with building permits.

Deficiencies in the System

Each State of the Federation has enacted an Urban and Regional Planning Law. Deficiencies do not exist in these Laws *per se*, but in the implementation of the said Laws.

A well-functioning building-control regulatory system is an important component of a modern society. Where building permit and inspections work well, they enhance public safety, strengthen property rights, and contribute to the process of capital formation. Where they do not work well, and society fails to meet these objectives, costs and predatory rent-seeking will increase.

Multiple financial and social costs are associated with poor practices and faulty oversight mechanisms, the most extreme being the cost in human lives and injuries. Regrettably, Nigeria

is a prime example of this. The 'Doing Business in Nigeria 2010' subnational study by the World Bank found that the country's urbanites now account for 48.2% of the population, compared to 23.4% in 1975. Cities have struggled to absorb this large rural exodus and the resultant housing shortages, traffic congestion, and environmental degradation. In addition, many of the buildings erected to accommodate newcomers have used substandard construction materials and fallen short of construction regulations. As a result, building-related incidents have multiplied. According to the Nigerian Institute of Building, 84 structures have collapsed in the last 20 years in Nigeria, claiming more than 400 lives.

The Federal Government of Nigeria drafted a new National Building Code in 2006, which sets out minimum construction standards. The Code establishes a strict schedule of inspections to be conducted at specific stages during construction (setting out, foundation, floor level, and so on), and requires every project to obtain a certificate of completion after construction. Although ratified by the Federal Executive Council, the Building Code has yet to be adopted and implemented across the various States through the amendment of the respective Urban and Regional Planning Laws.

Recommendations for Reform¹⁰

Building Codes

Incorporate building codes into the framework of construction law.

In good-practice countries, building codes are at the core of the construction permitting system. They establish common points of reference between regulators and industry practitioners for public health and safety, energy efficiency, fire protection, structural efficiency, and conservation and environmental integrity. Good-practice codes are important for creating a transparent environment for investors and developers and for avoiding delays and disputes. For these purposes, existing or international model codes, such as the International Building Code (IBC), can be used and adjusted to the constraints of the Nigerian industry.

¹⁰ Recommendations taken from - World Bank. 2013. *Good Practices for Construction Regulation and Enforcement Reform: Guidelines for Reformers*. World Bank Group. The Consultants consider these recommendations to be relevant and helpful to Nigeria.

Building Codes

Introduce risk-management instruments into building codes, including a country-relevant classification of buildings.

Good-practice building codes typically include a comprehensive classification of risks that defines different groups of building categories by size, construction method, and final use. The classification determines the level and intensity of checks required for each group of buildings and hence creates a transparent framework for enforcement agencies and building practitioners.

Update the building code every 5 to 10 years.

Building codes should be updated in light of research, improving building techniques, and the availability of new products and technology. Other factors that create the need for regular code updates include the construction industry's evolving skill level and maturity and the pressure to enforce new policies, i.e., to reduce buildings' levels of energy consumption and CO2 emissions. To ensure sustainability and depth, the updating process should be as inclusive as possible, involving a mix of professional regulators and private building professionals, preferably through a permanent working group or specialized committee.

Process & Transparency

Publish on a dedicated website all procedural requirements, including guidelines, and provide advisory services targeted to the needs of end users.

Good practice usually combines an exhaustive publication of administrative requirements for construction-permit applications with the possibility of interacting with one building-permit official for a preliminary project screening. This initial advisory interaction can be informal, but it is decisive to determine what specific laws and regulations are applicable to the project.

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Process & Transparency

Automate processes and develop electronic tools common among all permitting agencies and industry practitioners.

The world's leading examples of successful automation of construction permit procedures, such as Singapore and Hong Kong, consistently point to the importance of preliminary efforts to simplify procedures. New tools such as building information modelling (BIM) add automated compliance checks that can play a powerful role in improving future industry compliance with building code requirements.

Create and implement a dispute resolution mechanism for compliance issues relating to building-code requirements.

Reforming countries have established specialized bodies with building code officials and private building practitioners to resolve the disputes that typically arise from rejection of construction permits or stop-orders issued by inspectors. This is important to preserve the rights of applicants, and it provides a tool for dealing with conflicts and ensuring that the backlog of requests pending at the municipality level remains as small as possible. The role Urban and Regional Planning Tribunals should be enhanced in this regard.

Payment of Fees

Establish fee levels based on cost recovery for building control services.

Fees should normally include the costs associated with the review of plans and any inspections (whenever such reviews and plans are conducted by the enforcement agency), along with overhead costs. New Zealand adopted this practice: its construction-permit fees cover all service costs, including fees for issuing a building-code compliance certificate when the building is completed.

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Payment of Fees

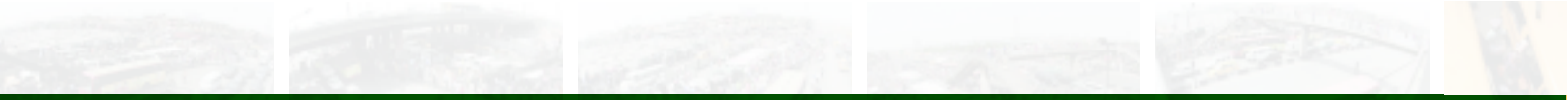
Ensure that fees are collected once and by one entity only.

In the United Kingdom, the full permit fee is usually paid, at the time of application, to the planning department. In the large urban centres of other good-practice countries, applicants may be uncertain about zoning or other clearances required. In this case, countries make provision for a pre-applicable law review. In Canada, as an example, the cost of this review is 25 percent of the full construction permit fee. This amount typically counts toward the full permit fee if the application passes the clearance review and proceeds to a technical review. The remaining amount is payable during construction before the technical review and inspections. In many good practice countries site inspections do not incur a separate fee; this cost is included in the building-permit fee.

Charge small, fixed fees for small projects presenting no risk for public health and safety.

For small buildings, setting a small, fixed fee is good practice. In Toronto, *Commercial Xpress*, a construction permit one-stop shop, charges a fixed fee of CAN \$16 per square meter for office buildings. The starting point for this reform is the introduction of a risk-based management system with defined thresholds for fast-track procedures with a simplified fixed-fee payment procedure. Minimum fees are necessary because the cost of providing services is not directly proportional to the area or cost of the building; a minimum charge is therefore necessary to cover enforcement costs for small projects. Large projects with substantial permit fees will typically cross-subsidize smaller projects.

(continued on next page)



Payment of Fees

Allow several options and instruments for fee payment.

Modern one-stop shops for construction permits allow several payments mechanisms, including online payments. This is the case of the CORENET system used in Singapore to allow both electronic submission of plans to the building authority and e-payment of fees. Local building authorities should be encouraged to allow different forms of payments, such as POS and bank transfers.

Online Construction Permit Administration in Nairobi, Kenya

With support from IFC's Kenya Investment Climate Program (KICP), the City Council of Nairobi (CCN) decided in 2009 to improve construction-permit administration as part of a larger government-to-business reform agenda designed to improve substantially the delivery of government services. Prior to the reform, all construction permit processing was done manually. The paper documents, including maps and plans, followed a convoluted process across multiple departments and external organizations. Approval times averaged around six months. The process was considered so complex and opaque that a corps of private expeditors had evolved offering services to speed up the permitting process at a cost equivalent to 60 percent of the permit fee. The reform project developed and implemented a web-based software application to automate plan review procedures and delivery of construction and occupancy certificates. A key innovation was a web- and SMS-based tracking and notification system, which keeps business people informed at all times of the status of their applications and any further information required from them. Prior to the enforcement of the automated solutions, CCN reengineered the issuance of construction permits, modernizing the workflow systems and physically reorganizing the office floor to mirror the steps of a simplified process. The new automated process was launched in September 2011. As a result of the improvements and automation, approval times dropped from 6 months to the current performance standard of 30 days for approval of provisional building permit. Middlemen and expeditors have had to find other sources of income. Construction permit applications have increased by 300 percent in 2009/2010 due to Nairobi's rapid growth, but the system allows CCN to keep pace with these rising volumes. These far-reaching reforms are expected to increase the level of formalization in building construction and to improve compliance with safety requirements mandated in city bylaws and national building codes.



*The Development Control Department
before the reform*



The same department after the reform

Source: World Bank. 2013. *Good Practices for Construction Regulation and Enforcement Reform: Guidelines for Reformers*. World Bank Group

5. Getting Electricity

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|----------------------------------|-----------------|-----------------|------------------------|--------------------------------|
| Getting Electricity (rank) | 182 | 181 | 15 | Korea, Rep. (1) |
| Distance to Frontier (DTF Score) | 30.91 | 30.78 | 89.12 | Korea, Rep. (99.88) |
| Procedures (number) | 9.0 | 9.0 | 4.0 | 14 Economies (3.00) |
| Time (days) | 181.2 | 181.2 | 79.0 | Korea, Rep. (18.00) |
| Cost (% of income per capita) | 437.7 | 478.0 | 26.7 | Japan (0.00) |

This indicator tracks the procedures, time and cost required for a business to obtain permanent electricity for a newly constructed warehouse.

The Nigerian power sector has been in crisis for many years. Much of the generation, transmission and distribution capacity

has become worn out or damaged. The average annual per capita power consumption, only 155 kWh, is among the lowest in the world. Nigeria's per capita electricity consumption is 7% of Brazil's and 3% of South Africa's.¹¹ From the 'Doing Business' data, there are significant impediments in getting electricity.

Deficiencies in the System

The number of interactions customers have with the utility and other agencies is the biggest determinant of connection delays. On average, getting electricity takes a business, 9 procedures, 181.2 days and costs 437.7% of income per capita. This places Nigeria in a dismal 182 out of 189 economies. According to the World Bank, in economies where businesses have to go through 6–10 procedures to get connected, the process takes 144 days on average. In economies with 3–5 procedures, it takes 104 days on average. In the 10 economies with the fewest procedures, the average is only 56 days. In the 10 economies with the most, it is 215.¹²

¹¹ World Bank, 'Electric power consumption (kWh per capita)' <<http://data.worldbank.org/indicator/EG.USE.ELEC.KH.PC>> accessed 12 January 2016.

¹² World Bank. 2010. *Getting Electricity - A Pilot Study by the Doing Business Project*.

New indicators measured by the World Bank have compounded Nigeria's poor performance in this field. In addition to the number of procedures, time and cost, the reliability of power supply and transparency of tariffs and the price of electricity are also measured.

Recommendations for Reform¹³

Enhancing Efficiency

Streamlining approval processes.

Streamlining approvals by utilities and other public agencies is among the most effective ways to reduce connection delays and the duplication of formalities. In Taiwan, China, the customer has few interactions with agencies. Procedures are limited to submitting the application, completing the connection works, and obtaining the final inspection. The process takes only 22 days on average.

Ensure availability of materials and equipment.

Connecting a new customer to an electricity network requires material and equipment. If the new connection is through an overhead line, wires have to be extended; the utility will also have to install new electricity poles, meters and such heavy equipment as distribution transformers. Where the responsibility for sourcing materials is shifted to customers, the authorities should aim to avoid burdening them with additional procedures. In Nigeria, customers not only have to deal with the hassle of buying materials; they also have to meet additional requirements imposed by the utility to ensure that the materials comply with its standards.

(continued on next page)

¹³ Recommendations taken from - World Bank. Getting Electricity: Good Practices. <<http://www.doingbusiness.org/data/exploretopics/getting-electricity/good-practices>> Accessed 19 January 2016. The Consultants consider these recommendations to be relevant and helpful to Nigeria.

Enhancing Efficiency

Increasing transparency and accessibility of existent and new tariffs.

Tariffs, as well as any changes to those, have to be transparently communicated to the end-user. They can be communicated to the consumers online, through printed media, brochures in the utility's office, public hearings, etc. This is important in order for consumers to be able to plan their expenses, better understand the utility billing system, as well as to be able to contest the charges when needed. Businesses want to know in advance of any change in expenditure so that they can adjust their allocation of financial resources accordingly. In some economies, the law requires utilities to announce changes several billing cycles ahead. In others, the regulator helps ensure that tariffs are published through different media outlets and that adequate information and details are provided so customers can calculate their prices. In Pakistan, for example, customers are informed if the regulator and the utility even have a consultation on potential tariff changes.

Notifying customers in advance of planned outages.

Customers can plan around power outages and possibly reduce their losses if they are notified in advance of the occurrence of an outage. Utilities can notify their customers of the time and duration of a planned power outage through television, in newspapers and on social media. Some utilities even notify customers personally through mailed notifications, as in Switzerland, or even over the phone for customers with larger subscribed capacity as in Saudi Arabia. Moreover, in Botswana and Lebanon where outages are frequent due to load shedding, utilities publish on their websites a load shedding schedule that is regularly updated.

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Enhancing Efficiency

Setting financial deterrents to limit outages.

Many economies have established a robust independent regulatory framework with the right oversight and incentives to improve the reliability of supply. Regulators, in some economies adopt a strategy to reduce outages by setting a limit on the frequency and duration of outages and then requiring utilities to pay compensation to customers if they exceed that limit. In Bolivia, the regulator imposes tariff discounts to customers if the quality of supply does not meet the standards set by the regulator. Alternatively, regulators may impose a fine on utilities. For instance, in Turkey the regulator may fine the utility if outages occur without prior notification to affected customers. In 65 of the economies where there is an independent regulatory oversight, distribution utilities compensate customers or are required to pay fines if outages exceed the limits set by the regulator. The size of such penalties varies across economies. But those using such compensation mechanisms had 14 power cuts on average in 2014, lasting for approximately 30 hours, while economies having no financial deterrents to limit outages, had five times more outages for a total duration that was ten times longer.

6. Registering Property

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|----------------------------------|-----------------|-----------------|------------------------|--------------------------------|
| Registering Property (rank) | 181 | 185 | 45 | New Zealand (1) |
| Distance to Frontier (DTF Score) | 31.43 | 25.18 | 74.5 | New Zealand (94.46) |
| Procedures (number) | 12.1 | 12.1 | 6.0 | 4 Economies (1.00) |
| Time (days) | 69.6 | 69.6 | 21.5 | 3 Economies (1.00) |
| Cost (% of the property value) | 10.5 | 18.6 | 4.6 | Saudi Arabia (0.00) |

The dysfunctional land registration system across the various States in Nigeria has a profoundly negative impact at a number of different levels. This is reflected in Nigeria's rank of 181 out of 189 economies for ease of registering property.

The lack of clearly titled land creates additional risk to potential investors, lending credibility to the notion that investment in Nigeria is simply too difficult.

Without official documents to prove that one has the right to own, or even occupy, a piece of land, banks and microfinance institutions are very unlikely to provide loan facilities, as no viable collateral is available.

Deficiencies in the System

Registering property falls within the same legal framework across Nigeria, but the practice varies significantly across the respective States. Whilst States have introduced their own requirements in the registration process, all of the said States share certain inefficiencies.

The Land Use Act vests in the Governor of a State all land within the territory of the said State. The Governor's consent is, therefore, mandatory to legitimise the transfer of any landed property. The World Bank's 'Doing Business in Nigeria 2010' subnational study found that, on average, waiting for the Governor's consent accounts for 70% of the total time needed to register property.

There are also a number of procedural and administrative deficiencies that augment the difficulty of registering property in Nigeria. The various agencies responsible for registering property are perceived to be inefficient. Adding to the complication is the requirement to pay multiple fees at various points at commercial banks, then wait each time for the respective agency to receive payment confirmation before the process is allowed to proceed.

The average cost of registering property is 10.5% of its value. This cost is the aggregate of several fees: the consent fee, stamp duty, registration fee and legal fees. The said fees vary from State to State.

Likewise, Federal taxes have been applied inconsistently across the States. According to the Capital Gains Tax Act, the capital gains tax is 10% of the gain (profit), defined as the difference between the selling price and the purchasing price paid by the seller, minus the cost of improvements to the property. Some States do not charge capital gains tax, whilst others levy it as a percentage of the property value rather than the gain.¹⁴

The Stamp Duties Act is also applied inconsistently across the States. Whilst the Act prescribes that stamp duty should be 2% of the property value for property transfers between businesses, many states charge 3% or even 4%.¹⁵

Recommendations for Reform

Property registration

Eliminate or simplify the requirement of obtaining Governor's consent.

The requirement to obtain Governor consent to property transfer remains the largest bottleneck in Nigeria. Eliminating Governor's consent would significantly speed up the total time required to register property across the country. Alternatively, delegating the power to grant consent will significantly decrease the waiting time.

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¹⁴ World Bank, International Finance Corporation. 2009. *Doing Business in Nigeria 2010*, Subnational Series. World Bank Group.

¹⁵ *Ibid.*

Payment of Fees

Introduce flat fees.

The introduction of flat rates instead of fees expressed as a percentage of property value has proven beneficial for both entrepreneurs and the government in many countries, as it reduces the incentive for property owners to either undervalue their plots or not register their property altogether. Flat fees can translate into more revenue for the government. In 2007, the Arab Republic of Egypt introduced a low fixed stamp duty fee, replacing the 3% registration fee. This led to a boom of property registrations that increased government revenues by 39% six months after the reform.¹⁶

Allow several options and instruments for fee payment.

Revenue collection is carried out either through cash payments to the relevant agencies (which can be susceptible to corruption) or payments made via commercial banks (which is time-consuming). A convenient, fast, and secure alternative would be to establish electronic payment points within the revenue-generating agencies, where applicants could pay using ATM cards.¹⁷

Remove the requirement of lawyers for standard property registrations.

Legal fees account for approximately 10% of the property value. Government could make procedures simpler and more transparent, so that entrepreneurs could go through the process on their own. They could also introduce a standardized deed of assignment that would be validated by a notary. These measures would decrease the cost of registering property by 10% across the board.¹⁸

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¹⁶ World Bank. 2007. *Doing Business in Egypt 2008*. Washington, DC. World Bank Group.

¹⁷ World Bank, International Finance Corporation. 2009. *Doing Business in Nigeria 2010*, Subnational Series. World Bank Group.

¹⁸ *Ibid.*

Enhancing efficiency

Consolidate procedures.

Some states have merged procedures by integrating government services or establishing commercial banking payment points within the agencies themselves. With the creation of the Commissioner of Stamp Duties at the Lands Bureau in Lagos, five fee payments were merged into one. Gombe has merged three procedures—assessing the deed at the Federal Inland Revenue Service (FIRS), paying the stamp duty, and stamping the deed—into one by allowing applicants to pay the stamp duty at FIRS rather than at a commercial bank. Moreover, these three procedures could be merged with another three procedures performed at the Ministry of Lands: assessing the property value, paying consent and registration fees at a bank, and submitting payment receipts to the Ministry of Lands. By establishing a FIRS counter at the Ministry of Lands, these six procedures can be merged into three or even one, if a payment point is established within the Ministry as well.¹⁹

Digitise the Land Registry.

In many states, property title searches and deed registration are still done manually. Making the registry electronic would shorten processing times, increase title security, and allow for more efficient use of staff time. Abuja, FCT; Lagos; Kano; Kaduna; and Kwara are using Geographic Information System (GIS) to capture and store land information in a digital format.²⁰ However, this information is not accessible to the public online.

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¹⁹ World Bank, International Finance Corporation. 2009. *Doing Business in Nigeria 2010*, Subnational Series. World Bank Group.

²⁰ *Ibid.*

Enhancing efficiency

Publish on a dedicated website all procedural requirements, including guidelines, and provide advisory services targeted to the needs of end users.

Information on legal requirements should be easily available to the public. This would eliminate many of the frustrations of entrepreneurs, who often have to figure out the system through trial and error.

Implement the Systematic Land Titling and Registration system.

The Presidential Technical Committee on Land Reform, supported by DFID's GEMS3 programme - in close partnership with eight State Governments - has been piloting Systematic Land Titling & Registration (SLTR); a new, low cost approach to land registration. Adopting SLTR will increase the Nigerian government's capacity to issue large numbers of new land titles quickly and at low cost, with communities involved in every step of the process to ensure that ownership disputes are kept to a minimum and resolved amicably.²¹

Dispute resolution

Introduction of a Property Dispute Resolution Board

A Property Dispute Board should be established to resolve conflicting claims to land. Disputes would be solved by arbitration and would help MSMEs avoid years of litigation.

²¹ Adam Smith International, 'Reform land, transform Nigeria!' (*The Guardian*) <<http://www.theguardian.com/global-development-professionals-network/adam-smith-international-partner-zone/reform-land-transform-nigeria>> accessed 16 January 2016.

Enhancing efficiency

Improve Property Valuation.

On-site inspections for assessing the value of lands and buildings to be sold are common across Nigeria. Entrepreneurs who rely on government valuers often facilitate the process by providing private transportation and maintaining good personal relationship to avoid overvaluation. It is important to enforce a common methodology to ensure uniformity and consistency in the valuation process. Ethiopia reformed property valuation in 2009. Previously, buyers used private valuers to estimate property value. After the reform, property values are estimated using a master table of set property values according to zonal classification. This reform also eliminated the need to physically inspect property sites for valuation. Only one-fifth of OECD high-income economies require a physical valuation when transferring property. Nigerian states may consider introducing standardized values for properties, based on the location, size, and/or level of development. Lagos is already considering mass valuations to ascribe values to properties.²²

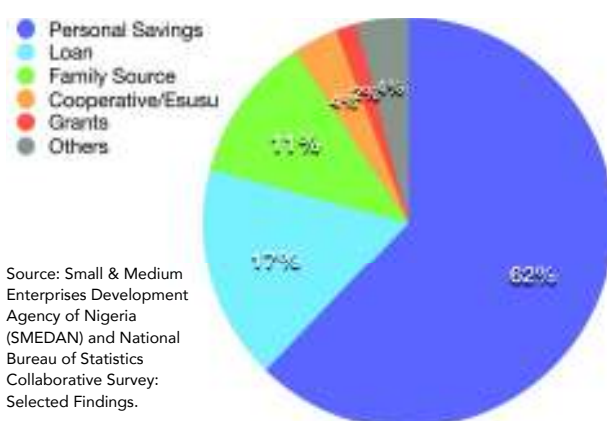
²² World Bank. 2014. *Doing Business in Nigeria 2014. Understanding Regulations for Small and Medium-Size Enterprises*. World Bank Group.

7. Getting Credit

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|---|-----------------|-----------------|------------------------|--------------------------------|
| Getting Credit (rank) | 59 | 52 | 19 | New Zealand (1) |
| Distance to Frontier (DTF Score) | 60 | 60 | 75 | New Zealand (100) |
| Strength of legal rights index (0-12) | 6.0 | 6.0 | 7.0 | 3 Economies (12.00) |
| Depth of credit information index (0-8) | 6.0 | 6.0 | 8.0 | 26 Economies (8.00) |

Micro, small and medium-sized enterprises (MSMEs) represent 96% of Nigerian businesses, so it is crucial to support their growth and innovation. However, one of the most important issues facing MSMEs is their difficulty accessing finance.

Distribution of Small and Medium Enterprises by source of capital



In a collaborative survey conducted by SMEDAN and the National Bureau of Statistics in 2013, data revealed that of a total of 80,312 Small and Medium Enterprises, only 13,031 (representing 17%) listed their source of capital as a loan. As it concerned Micro Enterprises, only 3% of the surveyed Enterprises listed their source of capital as a loan.

According to the International Financial Corporation (IFC), lack of access to finance is a key constraint on the growth of small and medium enterprises in Sub-Saharan Africa, and thus also an important limitation on employment, economic growth and shared prosperity. African financial systems have improved in the past two decades but still lag behind other developing economies, hampering the positive effects of current record financial inflows.²³

Deficiencies in the System

The data here is quite interesting. Whilst the 'Doing Business 2016' report indicates that Nigeria is performing well under this sector, a joint survey conducted by SMEDAN and

²³ International Finance Corporation, *Access to Finance: Sub-Saharan Africa*. Fiscal Year 2013.

the National Bureau of Statistics suggests that the majority of small business owners are not accessing credit facilities offered by banks and other financial institutions. This supports the idea that traditional credit markets have historically been difficult for startups to access.

Recommendations for Reform

Lending Barriers

Examine alternatives to collateral-based lending criteria.

Early-stage start-ups often do not have the collateral or assets requested by banks before they will administer a loan, making it difficult to obtain a loan. Banks could examine alternatives such as cash flow-based or working capital-based lending criteria. The Independence Warehouse Regulatory Agency Bill holds the potential of solving the challenge of collateral by allowing businesses to securitise their commercial warehouse receipts. This Bill should be prioritised, with all noted deficiencies considered.

Transparency

Maintaining a Collateral Registry.

Before accepting collateral, creditors need an effective way to find out whether the potential borrower has already granted a security interest in the collateral and, if so, what priority those rights have. This can best be done where there is a centralised collateral registry. The Secured Transactions in Movable Assets Bill proposes to establish a National Collateral Registry. The Bill should be passed once the identified deficiencies have been addressed.

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Transparency

Strengthen Credit reporting system.

Specific practices help increase credit information coverage and encourage the use of credit reporting systems. Among the most common are expanding the range and type of information shared, collecting and distributing data from sources other than banks and regulated financial institutions.

Credit reporting and credit scores can fuel economic growth, increase consumer access to essential resources and enable more efficient allocation of risk, costs and financial reserves.

8. Protection of Minority Investors

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|--|-----------------|-----------------|------------------------|--------------------------------|
| Protection of Minority Investors (rank) | 20 | 33 | 4 | Singapore (1) |
| Distance to Frontier (DTF Score) | 68.33 | 63.33 | 78.33 | Singapore (83.33) |
| Strength of minority investor protection (0-10) | 6.8 | 6.3 | 7.8 | 3 Economies (8.30) |
| Extent of conflict of interest regulation index (0-10) | 7.0 | 6.0 | 8.3 | Singapore (9.30) |
| Extent of shareholder governance index (0-10) | 6.7 | 6.7 | 7.3 | 4 Economies (8.00) |

When a dominant shareholder controls a company's Board and holds most of the voting rights, it is important to ensure that the interests of minority shareholders are protected.

Transparency is important for investors to be able to analyze the company's risks and opportunities. The role of the law and the legal system, in this regard, is to ensure parity of information

through disclosures so that investors pay the right price to acquire securities, whether in the primary market or the secondary market.²⁴

Deficiencies in the System

Nigeria performs very well under this indicator - there are no significant deficiencies to speak of. The legislative framework and reforms in the regulatory space have enhanced the protection offered to minority investors. For this reason, Nigeria ranks an admirable 20th out of 189 economies in the 'Doing Business 2016' report, with a Distance to Frontier (DTF) score of 68.33.

According to the World Bank Group, economies with the strongest protections of minority investors from self-dealing require detailed disclosure, define clear duties for directors, offer wide access to corporate information. They also have well-functioning courts and up-to-date procedural rules that give minority investors the means to prove their case and obtain a judgment within a reasonable time. Litigation is a slow process in Nigeria. Recommendations to improve the judicial infrastructure are made in this Report.

²⁴ Bernard Black, *The Core Institutions that Support Strong Securities Markets*, 55 *BUS. LAW.* 1565, 1567-68 (2000).

9. Paying Taxes

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|----------------------------------|-----------------|-----------------|------------------------|--------------------------------|
| Paying Taxes (rank) | 181 | 181 | 15 | United Arab Emirates (1) |
| Distance to Frontier (DTF Score) | 32.17 | 32.63 | 91.34 | United Arab Emirates (99.44) |
| Payments (number per year) | 59.0 | 59.0 | 8.0 | Hong Kong SAR, China (3.00) |
| Time (hours per year) | 907.9 | 907.9 | 110.0 | Luxembourg (55.00) |
| Total tax rate (% of profit) | 33.3 | 32.4 | 32.0 | Ireland (25.90) |

Nigeria has a prohibitive tax system. Most aspects compare unfavourably with our competitors and this results in a deplorable 181 place in the World Bank's 'Paying Taxes' survey.

The 908 hours per year estimated for a business to comply with taxation requirements in Nigeria is 19 hours longer than the compliance time in Libya

(where it takes 889 hours), 516 hours longer than Egypt (392 hours), 683 hours longer than Ghana (224 hours) and 826 hours longer than Djibouti (82) hours.²⁵ Reform of the Nigerian tax system should have a high priority in the legislative agenda of the National Assembly.

Deficiencies in the System

Despite having the largest economy in Africa, Nigeria has one of the lowest tax revenue to GDP ratios in the world. According to the Heritage Foundation 2015 data, France had a tax to GDP ratio of 45.3%, Sweden 44.3%, UK 35.2%, US 24.3%, Burkina Faso 15.8%, Tanzania 14.4%, Nigeria 3.0%.²⁶

The Federal Government has initiated steps to raise tax revenue, such as the introduction of luxury taxes and the ongoing process to review incentives, such as the much abused pioneer status system. However, the Federal Government needs to focus more on reviewing tax disincentives, which hinder growth, prevent productive diversification of the economy and

²⁵ Data taken from PwC, World Bank Group, *Paying Taxes 2016*, 10th edition.

²⁶ Heritage Foundation, '2015 Index of Economic Freedom' (heritage.org, 2015) <<http://www.heritage.org/index/explore?view=by-variables>> accessed 18 January 2016

make it difficult to earn sustainable non-oil tax revenue.

Recommendations for Reform

Multiplicity of Taxes

Have one tax for each tax base.

Under the current system, businesses pay similar taxes on the same or substantially similar tax base. For instance, Companies Income Tax, Information Technology Tax (NITDA Levy), Education Tax, Nigerian Content Development Levy are all based on income or profits. Likewise, Value Added Tax, Sales Tax and Hotel Consumption Tax are all based on sales. Multiple taxation increases the cost of doing business. It increases the number of payments businesses must make, the frequency of the said payments and the compliance time.

According to the World Bank Group, 43 economies eliminated and merged some taxes to simplify tax compliance and reduce costs for firms in the past 11 years. Another way to make compliance easier when firms are subject to numerous taxes is to allow joint filing and payment of taxes levied on the same base. Firms in Colombia face 4 different taxes on salaries—but can meet these tax obligations by filing every month 1 form and making 1 payment for all 4 different taxes. In most OECD high-income economies, taxes levied on the same base are paid and filed jointly. As a result, the average number of payments across all economies in this group is only 11. The average across all 189 economies covered by Doing Business is 26 payments. Joint filing and payment of taxes is not widespread in Sub-Saharan Africa, where the average is 39 payments.²⁷

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²⁷ World Bank Group, 'Paying Taxes' (doingbusiness.org, 2015) <<http://www.doingbusiness.org/data/exploretopics/paying-taxes/good-practices>> accessed 18 January 2016

Legislation

Repeal the requirement of Minimum Taxation.

Section 33 of Companies Income Tax Act (CITA) imposes minimum tax on companies where they have no taxable profits or taxable profits resulting in lower than minimum tax. The effect of this is that the said companies are compelled to pay taxes out of their capital. The provision is discriminatory as it does not apply to entities with significant imported equity capital. More importantly, it discourages investment and increases the risk of failure for companies in periods of little or no profitability.

Clarify the payment of 'Excess Dividend Tax'

Section 19 of CITA is interpreted by tax authorities as a means to levy a 30% tax on the dividend distribution of a company, where the said distribution exceeds total profits. The authorities apply the provision regardless of whether the profit being distributed has already being the subject of taxation (for instance, in the case of dividend income received by a holding company or taxed retained earnings) or whether the profit is tax exempt (as in the case of pioneer profit and capital gains on stocks). The section should be amended to expressly exclude taxed profits and profits exempt from tax.

Abolish rules on commencement of business, change of accounting date and cessation.

CITA sets out the rules for the taxation of a company during commencement of business, change of accounting date and cessation. These rules create unnecessary complications, particularly where a company changes its accounting date or ceases operation within the first 3 years of commencing business. In addition, the commencement rule often leads to double taxation on a company at its early stage thereby increasing the risk of failure. Commencement, change of accounting date and cessation rules should be abolished. Tax should be assessed on an accounting period using preceding year basis.

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Legislation

Tax Deductibility.

A direct conflict exists between Sections 10 and 13 of the Petroleum Profits Tax Act with respect to the deductibility of interests on inter-company loans. While Section 10(1g) directly allows the deduction, Section 13(2) disallows the deduction. Section 13(2) should be deleted to clear the uncertainty and the misunderstandings between petroleum companies and the Federal Inland Revenue Service. This will in turn reduce the tax problems faced by businesses regulated by the Act.

10. Trading Across Borders

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|--|-----------------|-----------------|------------------------|--------------------------------|
| Trading Across Borders (rank) | 182 | 182 | 38 | Denmark (1) |
| Distance to Frontier (DTF Score) | 18.05 | 18.05 | 91.4 | Denmark (100) |
| Time to export: Border compliance (hours) | 159 | 159 | 24 | 15 Economies (0.00) |
| Cost to export: Border compliance (USD) | 786 | 786 | 280 | 18 Economies (0.00) |
| Time to export: Documentary compliance (hours) | 131 | 131 | 4 | Jordan (0.00) |
| Cost to export: Documentary compliance (USD) | 250 | 250 | 25 | 20 Economies (0.00) |
| Time to import: Border compliance (hours) | 298 | 298 | 8 | 19 Economies (0.00) |
| Cost to import: Border compliance (USD) | 1,077 | 1,077 | 205 | 28 Economies (0.00) |
| Time to import: Documentary compliance (hours) | 173 | 173 | 2 | 21 Economies (1.00) |
| Cost to import: Documentary compliance (USD) | 564 | 564 | 0 | 30 Economies (0.00) |

The 'Trading Across Borders' indicator of the 'Doing Business 2016' report ranks Nigeria 182 out of 189 economies. The ranking is, broadly speaking based on 2 parameters centered on documentary and border compliance, namely (i) Time taken in the process of Export/Import and (ii) Cost of exporting/importing.

Deficiencies in the System

On average, it takes 159 hours and costs USD 786 to comply with border requirements when exporting a consignment from Nigeria. As it

concerns imports, border compliance takes an average of 289 hours and costs USD 1,077. The World Bank has arrived at its findings on the basis of export/import being conducted by a business operating in Lagos and Kano respectively.

The Nigerian Ports Authority Act is incompatible with Public Private Partnership (PPP) in ports operations and regulation thereby limiting efficiency. The major deficiency in this Act is that the Nigerian Ports Authority is the landlord of the ports, the manager of the ports, the operator

and regulator of the ports (though economic regulation has been given to the Shippers Council which is least qualified to carry out this assignment). This is inconsistent with international best practice. The passage of the Ports & Harbours Bill, 2015 is therefore imperative.

The powers vested in the Authority by Sections 7, 8 and 30 of the Act are also covered by Sections 9, 9 and 11 of the Nigerian Inland Waters Authority Act, without qualification or a proviso.

The unbundling of the Nigerian Ports Authority into its functional areas is imperative. When the Bureau of Public Enterprises (BPE) reformed the ports and concessioned the port terminals in Lagos, Calabar, Warri and Port Harcourt in March 2005, it was expected that the Ports and Harbours Bill then in the National Assembly would be passed into law. The Bill has not been passed. The consequence is that the ports have been reformed without an Economic and Technical Regulator. Instead the Shippers Council has been made a Regulator when the core mandate of the Shippers Council does not include regulation.

Nigeria needs to ratify and/or better implement cross border trade enhancing instruments agreed on at the regional and international levels. For example, the ECOWAS Trade Liberalisation Scheme (ETLS), the ECOWAS Common External Tariff (CET) and the recent WTO Trade Facilitation Agreement. While the challenge with the first two is in implementation, Nigeria has not ratified/domesticated the first one. This is a challenge for the National Assembly whose mandate it is to ratify international agreements under Section 12 of the Constitution.

Recommendations for Reform

Legislation

Ports and Harbours Bill.

The Ports and Harbours Bill, 2015 before the National Assembly should be passed into law. The Bill has unbundled the ports into management, operation and regulation. The Bill provides an appropriate institutional framework for the ownership, management, operation, development and control of ports and harbours to ensure the integrity, efficiency and safety of the ports based on the principles of accountability, competition, fairness and transparency.

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Enhancing Efficiency

Allow electronic submission and processing.

Electronic systems for filing, transferring, processing and exchanging customs information have become an important tool for managing flows of information, now widely used in complex trading systems. The most advanced web-based systems allow traders to submit relevant documents and to pay duties online from anywhere in the world. The key to success is the ability of an economy to adapt its regulatory framework to the new information technologies. If implemented effectively, such a system saves precious time and money. It can also limit direct interactions with officials, which reduces opportunities for corruption. However, introducing an electronic system often requires governments to enact legislations on electronic signatures and transactions; without appropriate legislations in place, the implementation of a new system can lead to redundancy and delays, requiring paper submission of signed documents after they have already been filed electronically. Furthermore, for small and low-income economies, the infrastructure and training costs of implementing such systems can be onerous, and meaningful effects for local traders may take time to materialise.

Linking agencies through a single electronic window.

More and more, economies are taking a step further to virtually link not only traders and customs but all agencies involved in trade and transport through an electronic single-window system. In the best case scenario, the system allows traders to file standard information and documents through a single entry point to fulfil all import, export and transit-related regulatory requirements, then shares relevant information with all parties involved in trade, including private participants such as banks and insurance companies, as well as public agencies such as immigration and vehicle registration authorities.

11. Enforcing Contracts

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|--|-----------------|-----------------|------------------------|--------------------------------|
| Enforcing Contracts (rank) | 143 | 143 | 33 | Singapore (1) |
| Distance to Frontier (DTF Score) | 48.59 | 48.59 | 69.36 | Singapore (84.91) |
| Time (days) | 509.8 | 509.8 | 437.0 | Singapore (150.00) |
| Cost (% of claim) | 57.7 | 57.7 | 43.9 | Iceland (9.00) |
| Quality of judicial processes index (0-18) | 7.7 | 7.7 | 15.0 | 3 Economies (15.50) |

The ability of a legal system to efficiently handle complex (and indeed all) disputes is crucial for investor confidence. In the various States across the Federation, Judges are confronted with dockets containing thousands of cases and motions - and the caseload continues to increase. This expanding,

increasingly complex workload limits the time available for judges to prepare for cases in advance of hearings, affects the atmosphere in courtrooms and delays the resolution of disputes. For courts to resolve commercial cases with the efficiency and quality that Nigerian businesses deserve, it is vital that the Federal and State Legislatures introduce reforms to their respective judicial systems.

Deficiencies in the System

The Constitution vests in the Chief Judge of each State, the power to regulate practice and procedure in their respective High Courts. Reform in this sector must, therefore, be State driven. However, because the National Assembly legislates for the Federal Capital Territory, a benchmark could be set for the respective States to follow.

Inevitably, caseload may vary substantially from location to location due to population size and economic activity. States must, therefore, develop systems, based on their requirements, to efficiently manage their caseloads.

Jurisdiction is key in this regard. It is determined on the basis of the claim amount, with the Magistrates' Court (the lower court) dealing with smaller claims and the High Court dealing with

higher claims. The jurisdiction threshold of the Magistrate Courts varies widely, from N10 Million in Lagos State to N 250,000 in Delta State. However, High Courts do not have minimum thresholds and litigants commonly choose to file in the High Court even small claims falling within the competence of the Magistrates' Courts. This results in an inconsistent judicial map, with civil and commercial litigation being obsolete in certain Magistrates' Courts.²⁸ Best-practice economies, like that of the United Kingdom, continuously ensure that competence thresholds are up to date; in the United Kingdom (UK), the High Court of Justice only hears complex disputes and claims above a financial threshold of GB£100,000 (GB£50,000 for personal injury).²⁹

Distribution of time to enforce a contract in Nigeria:



The 'Doing Business 2016' data shows that most of the delays occur at the trial and judgment stage. Trial and judgment accounts for 92% of the time to enforce a contract in Kano State (661 days) and 59% of the time to enforce a contract in Lagos State (265 days). A major cause is the number of adjournments. Even the more dynamic state judiciaries find it hard to curb this practice.

The World Bank has also recognised that administrative efficiency and budget also explain variations in the time needed to enforce a contract across states. State courts are administered by the state judiciary on a budget allocated by the state. Therefore, both Magistrates' and High Courts have different resources, including infrastructure (building, computers, and other

²⁸ World Bank, International Finance Corporation. 2009. *Doing Business in Nigeria 2010*, Subnational Series. World Bank Group.

²⁹ UK Civil Procedure Rules (CPR) Part 7. Practice Direction 7A. 2.1

equipment) and staffing.

Recommendations for Reform

Court Structure & Procedure

Introduce Specialised Commercial Courts, or Commercial Divisions.

Doing Business in Nigeria 2008 recommended that other states follow the Lagos State example by introducing specialised commercial divisions or courts, with judges assigned solely to hearing commercial matters. This remains a valid recommendation for states with an important commercial caseload. Each state judiciary should therefore analyse its caseload to determine whether the cost of setting up a specialised court is justified. Specialised commercial courts allow for resources, both in terms of personnel and infrastructure, to be allocated in a targeted way and for specific backlog reduction programs. Setting up specialised courts may also result in improved efficiency in general courts, as they find themselves relieved of a substantial caseload. Finally, allowing judges to focus their expertise on commercial matters may speed up commercial contract enforcement - as they grow accustomed to the specific issues and terminology of commercial cases, case management, and decision making become swifter. Rwanda proved successful in its 2008 implementation of specialised commercial courts. These benefit from a separate infrastructure and resources, and judges assigned solely to this jurisdiction. The result: a 16% reduction in the time needed to enforce a contract.³⁰

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³⁰ World Bank. 2008. *Doing Business 2009*. Washington, DC: World Bank Group.

Court Structure & Procedure

Promote Commercial Dispute Resolution system for Small and Medium Enterprises.

Disputes involving small and medium enterprises are typically to secure payment for relatively small claims. The Civil Procedure Rules of the various High Courts to distinguish between small simple claims, and larger complex claims. The time and costs involved in resolving a simple commercial dispute, therefore, remain disproportionately high. Many economies are now setting up small claims tracks or courts. These courts deal with claims falling below a certain monetary threshold and litigation proceeds on the basis of substantially simplified procedural rules. Litigation is also made simpler by the use of standard forms for filing claims. In the Republic of Korea, more than 70% of civil cases are solved through small claims proceedings. It costs only 10.3% of claim value and takes 230 days to resolve a commercial dispute in Korea. Another mechanism to increase access to justice is to promote Alternative Dispute Resolution (ADR) mechanisms—in particular, mediation. This is the solution implemented by Abuja, FCT; Lagos; Kano; Delta and a number of other Nigerian states, which have established “Multidoor Courthouses.” They are considered successful in bringing parties to the table and resolving cases amicably. Other states could follow suit and consider implementing similar ADR frameworks and institutions.³¹ Lagos State has passed a modern Arbitration Law, 2009. Other States are still using that of 1914 while the Federal Government is using that of 1988. The draft Federal Arbitration and Conciliation Bill, 2007 should be updated and passed into law while other states should emulate Lagos State and pass the Arbitration and Conciliation Bill, 2007 into law.

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31 World Bank Group, 'Enforcing Contracts in Korea, Rep' (doingbusiness.org, 2015) <<http://www.doingbusiness.org/data/exploreeconomies/korea/enforcing-contracts/>> accessed 16 January 2016

Enhancing Efficiency

Provide Annual Reports and Statistics.

Research finds that “monitoring and evaluation systems are not only powerful tools to ensure accountability but also to introduce changes.”³² Monitoring guides the allocation of resources, such as the number of judges. Ethiopian courts now possess a state-of-the-art computerised case management system that allows them not only to measure delays in proceedings but also to compare performances between judges, chambers, and courts. Reports are available in real time and oversight by the court administration ensures continuous performance evaluations. These reports, together with a backlog reduction program providing additional court sessions during vacation, have been successful in reducing the time needed to enforce a contract by 10%.³³ All 36 States and the FCT have a system for collecting vital statistics from the courts, such as the number of cases filed, pending, and disposed of. However, across the various States, the uses and methods of data collection vary. In most states, regular reports on the number of new cases and cases disposed of, known as “returns,” are submitted by the Magistrates or Judges to the Chief Magistrate or Chief Judge for internal purposes. In the FCT, computerised registers allow for easy generation of returns. Vast steps remain, however, including consolidating the statistics in order to use them as performance indicators. Making statistics available to the litigants, lawyers, and other stakeholders also strengthens accountability of the courts toward its users. The state judiciary could start by publishing the statistics they already collect in a systematic way.³⁴

(continued on next page)

32 “Monitoring and Evaluation of Court System: A Comparative Study,” CEPEJ Studies 6, p. 12 (http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes6-Suivi_en.pdf).

33 World Bank. 2009. *Doing Business 2010: Reforming through Difficult Times*. Washington, DC: World Bank Group.

34 World Bank, International Finance Corporation. 2009. *Doing Business in Nigeria 2010*, Subnational Series. World Bank Group.

Enhancing Efficiency

Automate court processes by using electronic technology.

Automating court processes and introducing the use of electronic technology has been a common practice among economies improving contract enforcement.³⁵ If the courts are computerized, support functions—like electronic filing, case tracking, document management, deadline reminders and scheduling for hearings—are performed automatically. Periodic electronic reports, coupled with reparative measures to cure backlogs, would significantly reduce the average time to enforce a contract across Nigerian states.³⁶

Make court fees, court practice directions and procedural rules readily available in the public domain.

States have the discretion to set their own judgment enforcement fees. Nevertheless, fee schedules are rarely accessible in print or online. Because of a creditor's inability to access fees, bailiffs can charge unspecified fees to levy execution. Publishing court and enforcement fees in the appendices of the civil procedure rules or online would ensure that lawyers and claimants can anticipate costs. Posting fees in each court building, where payments are collected, would promote transparency. Publicly available fee schedules allow judgment creditors to hold the enforcement officer accountable to legally prescribed fees, thus doing away with arbitrary fee assessments.³⁷

(continued on next page)

35 World Bank Group. 2011. *Doing Business 2012: Doing Business in a More Transparent World*. Washington, D.C.: World Bank Group

36 World Bank. 2014. *Doing Business in Nigeria 2014. Understanding Regulations for Small and Medium-Size Enterprises*. World Bank Group.

37 *Ibid.*



Legislation

Enact a modern Arbitration Act.

The Draft Federal Arbitration and Conciliation Bill 2007 should be updated to repeal and re-enact the Arbitration and Conciliation Act. Foreign investors prefer arbitration to litigation. Moreover, an effective and modern arbitral system can help to ease the burden on the Courts.

12. Resolving Insolvency

| Indicator | Nigeria DB 2016 | Nigeria DB 2015 | United Kingdom DB 2016 | Best performer globally DB2016 |
|--|-----------------|-----------------|------------------------|--------------------------------|
| Resolving Insolvency (rank) | 143 | 143 | 13 | Finland (1) |
| Distance to Frontier (DTF Score) | 30.68 | 30.64 | 82.04 | Finland (93.81) |
| Recovery rate (cents on the dollar) | 28.0 | 27.9 | 88.6 | Japan (92.90) |
| Time (years) | 2.0 | 2.0 | 1.0 | Iceland (0.40) |
| Cost (% of estate) | 22.0 | 22.0 | 6.0 | Norway (1.00) |
| Outcome (0 as piecemeal sale and 1 as going concern) | 0 | 0 | 1 | |
| Strength of insolvency framework index (0-16) | 5.0 | 5.0 | 11.0 | 4 Economies (15.00) |

The absence of orderly and effective insolvency procedures can exacerbate economic and financial crises. Without effective procedures that are applied in a predictable manner, creditors may be unable to collect on their claims, which will adversely affect the future availability of credit. Without orderly procedures, the rights of debtors (and their employees) may not be adequately protected and

different creditors may not be treated equitably. In contrast, the consistent application of orderly and effective insolvency procedures plays a critical role in fostering growth and competitiveness and may also assist in the prevention and resolution of financial crises: such procedures induce greater caution in the incurrence of liabilities by debtors and greater confidence in creditors when extending credit or rescheduling their claims.³⁸

Deficiencies in the System

There is an imbalance between reform under the general insolvency law in Nigeria and the sector specific bank insolvency regime. The Nigerian legal framework for corporate insolvency is laid out in the Companies and Allied Matters Act (CAMA), which was enacted in 1990. CAMA has not witnessed any reform of its pro-creditor and liquidation oriented insolvency regime for over 25 years.

³⁸ Legal Department, International Monetary Fund, Orderly & Effective Insolvency Procedures. Key Issues.

By contrast, bank specific insolvency reform has been evolving in Nigeria. From amendments to Nigeria Deposit Insurance Corporation and Central Bank of Nigeria Acts that allowed those institutions to consider restructuring rather than liquidation, to the Asset Management Corporation of Nigeria Act (AMCON), established AMCON to remove toxic assets from banks without necessarily interfering with management.

Recommendations for Reform

Judicial Framework

Streamline insolvency proceedings.

A cue can be taken from election petition proceedings in establishing time limits for proceedings can enhance the efficiency of the insolvency process. Long proceedings reduce creditors' chances of recovering outstanding debt and can create unnecessary uncertainty for all parties involved. Efficient insolvency proceedings increase debt recovery by creditors by making it more difficult for the shareholders of a company to sell its assets at an unreasonably low price to a second company they own.

Legislation

Follow up on the draft General Insolvency Bill.

The Business Recovery & Insolvency Practitioners Association of Nigeria (BRIPAN,) in line with its legislative reform agenda, produced a draft General Insolvency Bill aimed at modernisation of Nigerian insolvency and bankruptcy legal framework. The Bill seeks the promotion of business restructuring, formal and less formal workout procedures, regulation of Insolvency profession, Cross-border Insolvency, etc. The Federal Ministry of Industry championed the draft as an Executive Bill, but it has not been transmitted to the National Assembly.

Constitutional Provisions

In a review of this nature, it is impossible to review statutes without reviewing the Constitution, which is the *grundnorm* of the Nigerian Legal System. In the Constitution, legislative powers are shared between the Federal Government and the State Governments. This is so because Nigeria operates a Federal system of government.³⁹

The legislative powers of the Federal Government are vested in the National Assembly, made up of the Senate and the House of Representatives.⁴⁰ As it concerns the Federating States, legislative power is vested in the respective Houses of the Assembly of each State.⁴¹

The National Assembly makes laws on matters on the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution. This is to the exclusion of the State Houses of Assembly.⁴² The National Assembly also has legislative powers over matters in the Concurrent Legislative List set out in Part II of the Second Schedule to the Constitution.⁴³

Similarly, the House of Assembly of a State can make laws on matters not in the Exclusive Legislative List but in the Concurrent Legislative List set out in Part II of the Second Schedule to the Constitution and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.⁴⁴

However, there is a *proviso*. If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly on matters in the Concurrent Legislative List, the law made by the National Assembly shall prevail, and that other law shall, to the extent of inconsistency, be void.⁴⁵

The Constitution has certain provisions that impede businesses in Nigeria. Furthermore, because some of the said provisions are in the Exclusive Legislative List (ELL), the States have no legislative competence over them. The relevant provisions are set out in Table 1 below.

39 See section 2(2) of the Constitution.

40 See section 4(1) *ibid.*

41 See section 4(6) *ibid.*

42 See section 4(2) and (3) *ibid.*

43 See section 4(4) *ibid.*

44 See section 4(7) *ibid.*

45 See section 4(5) *ibid.*

Table 1

PROVISIONS OF THE 1999 CONSTITUTION IMPEDING BUSINESSES IN NIGERIA

| | |
|-----------------|--|
| Section 44(3): | provides that “the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria is vested in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.” In other words, the Houses of Assembly of States have no title to nor control over such minerals even though they are located in such States. |
| Section 315(5): | made the Land Use Act, 1978 ⁴⁶ part of the Constitution and shall not be altered or amended except in accordance with the provisions of section 9(2) of the Constitution. Section 9(2) deals with the provisions for amending the Constitution. The procedure is cumbersome. |
| Section 251(1) | provides for the jurisdiction of the Federal High Court over tax matters. This is affecting the jurisdiction conferred on the Tax Appeal Tribunal (TAT) established under the Federal Inland Revenue Services Act. This subsection should be amended to exclude the jurisdiction conferred on the TAT from that of the Federal High Court. |

The following matters are included in the Exclusive Legislative List as Items:

| | |
|-------------|---|
| Item 7: | Borrowing of moneys within or outside Nigeria for the purposes of the Federation or of any State. |
| Item 33: | Insurance |
| Item 34: | Labour ⁴⁷ |
| Item 39: | Mines and Minerals including oil fields, oil mining, geological surveys and natural gas ⁴⁸ |
| Item 44: | Pension, gratuities ⁴⁹ |
| Item 48: | Prisons ⁵⁰ |
| Item 55: | Railways ⁵¹ |
| Item 62(f): | Registration of Business Names ⁵² |
| Item 64: | Water from sources as may be declared by the National Assembly to be sources affecting more than one State. ⁵³ |

⁴⁶ Now Cap L5 Laws of the Federation of Nigeria (LFN), 2004.

⁴⁷ See also Labour Act, Cap L1, LFN, 2004

⁴⁸ See also section 1 of the Petroleum Act, Cap P10 LFN, 2004 and section 1 of the Minerals and Mining Act, 2004, Cap N142 LFN 2004.

⁴⁹ See also Pension Reform Act, 2014

⁵⁰ See also Prisons Act, Cap P29, LFN, 2004

⁵¹ See also Nigerian Railway Corporation Act, Cap N129, LFN, 2004

⁵² See also Part B of Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004.

⁵³ See also Nigerian Inland Waterways Act, Cap N47, LFN 2004.

Constitutionality of certain Federal Acts affecting the Business Environment:

Nigerian Co-Operative Societies Act Cap. N98 LFN 2004

This Act is outside the legislative competence of the National Assembly as it purports to make provisions with respect to co-operative societies, contrary to Section 4 of the 1999 Constitution, as amended. Item 32 of the Exclusive Legislative List provides that the regulation and winding up of bodies corporate other than **co-operative societies**, local government councils and bodies corporate established directly by any Law enacted by a House of Assembly of a State. It is recommended, therefore, that this Act should be repealed. In any case, various State Laws provide for Cooperative Societies.

Taxes and Levies (Approved List for Collection) Act Cap T2 LFN 2004

This is an Existing Law as provided in Section 315 of the Constitution. The power of the National Assembly with respect to tax laws under Item D of the Concurrent Legislative List does not extend to prescribing taxes that Local Governments may collect. Therefore, the prescriptions in the Act on taxes to be collected by Local Governments are unconstitutional. Similarly, the provisions in Sections 1 and 2 of the Act excluding the provisions of the 1979 Constitution that are contrary to the provisions of the Act should be expunged, as an Act cannot exclude any provision of a Constitution. Similarly any stipulations as to taxes that Local Governments can collect contrary to the provisions of the 4th Schedule to the 1999 Constitution are unconstitutional.

National Inland Waterways Authority Act

The concern over the constitutionality of this Act in relation to waterways within a state should be revisited. The Lagos State Government, since 1998, has argued that State Governments have legislative competence to regulate the waterways within their states having regard to the provisions of Items 36(b) and 64 on the Exclusive Legislative List. The consequence is that the Federal Government should have legislative competence in respect of inter-state waterways or international waterways.

Federal & State Legislation concerning Lotteries & other Entertainment/Gaming Practices

There is an ongoing issue between the Federal Government and State Governments, specifically Lagos State, on whether lottery activities are concurrent matters, which both the Federal and State governments can regulate, or residual matters reserved for regulation by the State Governments only under the Nigerian Constitution 1999 (as amended). This issue is pending before the Supreme Court. We recommend that the Federal and State Governments amicably resolve this issue. This is in view of the revenue generating potential of gaming and entertainment.

Legislative Review

This Final Report contains a broad range of proposed legislative interventions as progress is required on a broad range of fronts. There are over one hundred specific recommendations which should be thought of as a menu of options. They are not an exhaustive list, but each would make a contribution to small business growth and the ease of doing business in Nigeria. Furthermore, the proposed laws and amendments will attract private sector participation in economic activities in Nigeria.

The review of Acts of the National Assembly will be found in Appendix A to this Report. The Reform Bills will be found in Appendix B. Bills pending before the Senate will be found in Appendix C, and Bills pending before the House of Representatives will be found in Appendix D.

The Review is in the following format:

- i. Name of Act.
- ii. Long Title.
- iii. Explanatory Memorandum.
- iv. Institutions created by the Act.
- v. Identification of Legislative Gaps or specific deficiencies.
- vi. Recommendation on Priority Legislative Areas to be Considered for a Roundtable.
- vii. Rating.

As mentioned above in the Methodology, each Act/Bill will be rated as follows:



High



Medium



Low

A 'High' rating indicates that reform of the law is required as a matter of great importance. A 'Medium' rating indicates that reform of the law is required as a matter of moderate importance. A 'Low' rating indicates that a Law does not significantly impede the ease of doing business in Nigeria.

A full list of the reviewed legislation with their priority rating can be found in Appendix E to this report.

REFORM BILLS

In 2000/2001, the National Council on Privatization (NCP) set up various Committee to reform sectors of the economy to allow private sector participation. It should be stressed that members of the NCP are key economic ministers and other stakeholders. The Committees produced National Policies and Report. These led to the passage of the Nigerian Communication Commission Act, 2003 and the Electric Power Sector Reform Act, 2005. However, nine Reform Bills have been under consideration since then but not passed into law. They are:

- a. National Transport Commission Bill 2015
- b. Nigerian Railway Authority Bill 2015
- c. Nigerian Ports and Harbours Authority Bill 2015
- d. National Inland Waterways Authority Bill 2015
- e. National Roads Fund Bill 2015
- f. Federal Roads Authority Bill, 2015
- g. Nigeria Postal Commission Bill 2015
- h. Federal Competition and Consumer Protection Commission Bill 2015
- i. Petroleum Industry Bill – this Bill was not available for review by the Consultants.

In Appendix A, we reviewed the Nigerian Railway Corporation Act, the Nigerian Ports Authority Act and the National Inland Waterways Authority Act since they are existing laws. The other Reform Bills are new and are reviewed hereunder.

In addition to the Reform Bills, we strongly recommend that the process of review and re-enactment of the Companies and Allied Matters Act (CAMA) and the Investment and Securities Act (ISA) be given utmost priority.

1. The National Transport Commission Bill

This Bill seeks to establish the National Transport Commission (NTC) designed to be a multi-modal/sector regulator covering the transport sub-sectors of roads, rail, and marine. The NTC will introduce synergy and inter-modalism in the transport sector that has in the past operated

in a haphazard and un-coordinated manner. It will perform roles akin to those of the Nigerian Communications Commission (NCC) for the telecommunication sector and the Nigerian Electricity Regulatory Commission (NERC) for the electric power sector.

In addition to the establishment of the NTC to be an effective, impartial and independent economic regulator of the regulated transport industry; the other objectives of the Bill include:

- a. to promote the implementation of the national transport policy;
- b. to provide for an economic regulatory framework for the provision of services and supply of goods in the transport sector or regulated transport industry;
- c. to provide a mechanism for monitoring compliance of government agencies and transport operators in the regulated transport industry and provide advice to the Federal Government on matters relating to economic regulation of the regulated transport industry;
- d. to provide for an efficient operation and regulation of the transport sector through the consolidation and the removal of multiple and duplicate regulatory functions by the Federal Government and its Agencies;
- e. to protect the rights and interests of service operators and users within Nigeria; and
- f. to create an enabling environment for private sector participation in the provision of services in the transport sector.

2. Federal Competition and Consumer Protection Commission Bill

Since the enactment of Privatization and Commercialization Act in 1998, public enterprises have been transferred to the private investor in the absence of any legal framework for promoting and regulating competition. The Government's policy shift from public sector provision of infrastructure and other services to the private sector has increased the need to ensure that there is no abuse of dominant positions in the market.

The new regime will also prohibit other anti-competitive practices, such as activities that substantially lessen competition; control of mergers, acquisition and business combinations and protect consumers. Of additional importance is the emerging reality that if a legal framework is not instituted urgently to regulate competition, the hitherto public monopolies will be replaced by private monopolies with dire consequences for the socio- economic development of the nation.

The objectives of the Federal Competition and Consumer Protection Commission Bill therefore are:

1. To promote competition in the Nigerian economy;
2. To ensure fair trading practices, efficiency, equal opportunities for all players in production, trade and commerce;
3. To guarantee adaptability and balanced development of the Nigerian economy; and
4. To protect consumers and end users of products and services from exploitation, unfair trade practices, price collusion etc.

To achieve these, the Bill seeks, amongst other thing, to:

- Repeal the Consumer Protection Council Act and harmonize its provisions into the new bill;
- Repeal certain aspects of the Investment and Securities Act that conflicts with the intendment of the Act and its institutional arrangements;
- Promote the welfare and interests of consumers and provide them with competitive prices and product choices;
- Expand the space for domestic and foreign competition in a globalised market in Nigeria;
- Regulate monopolies, mergers/acquisition and all forms of business combinations; and
- Prohibit restrictive business practices which prevent, restrict or distort competition or constitute the abuse of a dominant position of market power in Nigeria.

3. Federal Roads Authority Bill, 2015:

The objectives of this Act are to-

- a. manage the Federal Roads Network so that it is safe and efficient, with a view to meeting the socio-economic demands of the country;
- b. establish the Federal Roads Authority to perform the functions set out in accordance with the provisions of this Act;
- c. promote the sustainable development and operation of the road sector; and
- d. facilitate the development of competitive markets and the promotion of enabling

environment for private sector participation in the financing, maintenance and improvement of roads in Nigeria.

When passed into law, the Federal Roads Maintenance Agency Act will be repealed.

4. National Roads Fund Bill, 2015


The objectives of this Act are to –

- a. establish the Road Fund which shall be a repository for revenues accruing from road user charging systems and any other sources for the purpose of financing the maintenance and other activities related to the provision and upkeep of national roads;
- b. establish the National Roads Fund Board which shall be responsible for the management of the Roads Fund in accordance with the provisions of this Act; and
- c. promote the sustainable development and operation of the road sector.

5. Nigerian Postal Commission Bill, 2015

The objectives of this Act are to:

- a. implement the National Postal Policy as may, from time to time, be modified and amended;
- b. establish a regulatory framework for the Nigerian postal industry and for this purpose to create an effective, impartial and independent regulatory authority;
- c. promote the provision of a modern universal, efficient, reliable, affordable and easily accessible postal services with the widest range and coverage throughout Nigeria;
- d. encourage local and foreign investments in the Nigerian postal industry and the introduction of innovative services and practices in the industry in accordance with international best practices and trends;
- e. ensure fair competition in all sectors of the Nigerian postal industry and encourage participation of Nigerians in the ownership, control and management of postal organizations;
- f. encourage the development of postal-manufacturing and supply sector within the Nigerian economy and promote effective research and development effort by all postal industry practitioners;

- 
- g. protect the right and interest of service providers and consumers within Nigeria;
 - h. ensure that the needs of the disabled and elderly persons are taken into consideration in the provision of postal services;
 - i. ensure an efficient management including planning, coordination, allocation, assignment, registration, monitoring and use of national resources in the postal sub-sector and also promote and safeguard national interests, safety and security; and
 - j. do such other things that are incidental to the attainment of the above stated objectives.

Recommendations

Having reviewed the Doing Business Report 2016 (especially the Economy Profile for Nigeria, 2016), the various Federal Acts and Bills in the National Assembly affecting micro, small to medium-size enterprises and participation of the private sector in business activities and taking into account other publications including the Nigerian Law Reform Commission Reports on the Companies & Allied Matters Act and the Nigerian Investment Promotion Commission Act, amongst others, we recommend as follows:

1. Doing Business Report, 2016⁵⁴

- a) The Federal and State Governments must collaborate if the ranking of Nigeria in Doing Business is to be improved upon. This is so because the ranking of economies in the Doing Business Report is determined by regulatory processes, procedures and practices in states and not necessarily Federal Laws. In Nigeria, commercial cities of Lagos and Kano were used to determine the ranking of Nigeria and not Abuja. In other words, the regulatory environment in Lagos and Kano States determined the ranking of Nigeria. We believe that similar results will be found in other States. For instance, in Lagos and Kano States, there are about 18 taxes or mandatory contributions that business entities pay. While we believe that there is the need to widen the revenue base, the Government should also bear in mind the effect of such revenue drive on MSMEs. International best practice requires the implementation of self-assessment system and an e-system for filing and paying taxes.
- b) Several state practices that adversely affect MSMEs should be stopped immediately. These include absence of access to finance and land by such entities.
- c) Out of 189 countries studied in Doing Business, 103 countries no longer require a minimum paid up capital to start a business. International best practice is to reduce or eliminate such requirement and simplify the company registration process. The Corporate Affairs Commission (CAC) and the Nigerian Investment

⁵⁴ We have already reviewed the Doing Business Report, 2016 and made specific recommendations on the 10 indicators. This set of recommendations should be read along with those recommendations.

Promotion Commission (NIPC) should collaborate in this regard in ensuring that the One-Stop Shop is improved upon. 'Same Day' registration initiated by the CAC should be sustained. Similarly we should take advantage of using electronic processes in company registration. From Doing Report 2016, it takes 5 days to reserve a corporate name at CAC, 7 days to prepare incorporation documents and pay stamp duties and 11 days to register a company.

- d) The procedural requirements for obtaining construction permits to build a house or warehouse or factory should be published in a dedicated website and applicants should be given various options of paying the required fees. Furthermore, fees should be collected once and by one entity on behalf of the others. At the moment, obtaining soil investigation report in Lagos takes 14 days, obtaining environmental technical analysis report takes 7 days and obtaining development permit from the Lagos State Physical Planning Permit Authority takes 42 days. In Lagos State, there are other requirements specified by the Lagos State Material Testing Laboratory, Building Control and Zonal Agency and Fire Department.
- e) While the challenges of regular supply of electricity are well known, there is the need to streamline application and approval processes, increase transparency of connection costs and implement automated system for outage warning and restoration. In Doing Business Report, this is one area that Nigeria did very badly. Nigeria is ranked 182 out of 189 economies not on the basis of regular supply of electricity but on regulatory processes.
- f) The procedure for legally transferring title on immovable property is cumbersome. Apart from the constraints imposed by the Land Use Act (takes about 61 days to obtain Governor's consent in Lagos State), time limits should be set in obtaining other approvals from the Ministry of Lands and Physical Planning, Land Registry, Lands Bureau, Land Services Department, Surveyor General's Office and Stamp Duties Office. This is also one area where Nigeria did badly as it is ranked 181 out of 189 economies.
- g) Trading across borders is one area that Nigeria has done badly as she is ranked 182 out of 189. International best practice requires electronic submission and processing of documentation in trading across borders.

- h) Small claims courts, specialized commercial courts, case management systems and automation of court processes should be introduced in the dispute resolution process. Furthermore, alternative means to resolve disputes should be encouraged by the judiciary by referring pure commercial disputes to the commercial courts and urging parties to adopt Alternative Dispute Resolution (ADR) processes. Where counsel unreasonably fail to adopt these processes, costs should be personally paid by the counsel.
- i) The rights of creditors should be strengthened by streamlining insolvency proceedings. The option of liquidation or winding up of a company should only be pursued if it is clear that the company cannot be saved.

2. Passage of Reform Bills

With the reform of key sectors of the economy, need to provide a proper regulatory environment and create enabling environment for private sector participation in the economy, we recommend that the following eight (8) bills sponsored by the National Council on Privatization (NCP)/Bureau of Public Enterprises (BPE):

- i. Federal Competition and Consumer Protection Bill, 2015.
- ii. National Transport Commission Bill, 2015.
- iii. National Roads Funds Bill, 2015.
- iv. Federal Roads Authority Bill, 2015.
- v. Nigerian Postal Commission Bill, 2015.
- vi. Nigerian Ports & Harbours Authority Bill, 2015.
- vii. Nigerian Railway Authority Bill, 2015.
- viii. National Inland Waterways Authority Bill, 2015.

We would like to add that there are various versions of these Bills that have been in circulation since 2003. The ones that we reviewed and recommend are those of 2015 that were submitted to the National Assembly in May 2015.

3. Passage of other Bills

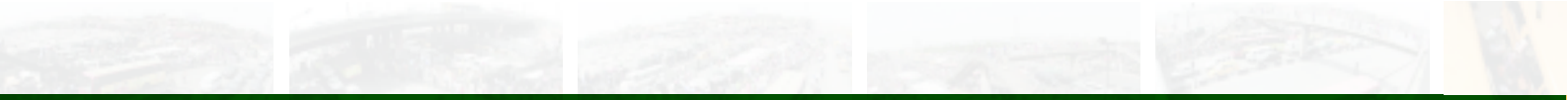
Highly rated Bills should be accorded priority for consideration and passage.

4. General Recommendations

- i. We found that there are similar bills in the National Assembly sponsored by different members. We recommend that the National Assembly should establish a central clearing house for all bills to ensure that they are streamlined and duplication avoided before presentation to the National Assembly.
- ii. We also found some bills that are not bills properly so-called. We found proposed amendments that are badly drafted. The establishment of a central clearing house will ensure that before a bill is listed for first reading, a proper evaluation has been carried to determine its desirability or otherwise. It is inefficient to wait till public hearing before the fact that similar bills are pending in the National Assembly is known.
- iii. There are conflicts between the provisions of the Public Enterprises (Privatization and Commercialization) Act and the Infrastructure Concession Regulatory Commission Act on the one hand, and the Public Procurement Act and the Infrastructure Concession Regulatory Commission Act on the other. Consequential repeal or amendments to these Acts is imperative.
- iv. In terms of consumer protection, there are conflicts between the provisions of the Consumer Protection Commission Act and the Civil Aviation Authority Act and the Electric Power Sector Reform Act, among others. It is hoped that when the Federal Competition and Consumer Protection Commission Act is passed into law, the conflict will be eliminated.
- v. In considering this Report, we recommend that the leadership of the Senate and the House of Representatives should collaborate to ensure proper coordination and implementation.

5. Constitutional Provisions

We note that a Constitutional Review Committee has been set up. We recommend that the constitutional challenges highlighted in this Report are taken into account especially that of the Land Use Act, vesting the entire property in and control of all minerals, mineral oils and natural gas in the Federal Government, the jurisdiction of the Federal



High Court and that of the Tax Appeal Tribunal and other matters that are in the Exclusive Legislative List - for example, railways. This will lead to the consequential repeal of the Petroleum Act, the Mines and Minerals Act, amongst others.

Conclusion

We would like to thank the Office of the Senate President that partnered with the Department for International Development (DFID) through its programs: Enhancing Nigeria Advocacy for a Better Business Environment (ENABLE 2) and Growth & Employment in States (GEMS 3) in order to undertake this detailed review of existing and proposed Federal legislation that affect, either positively or negative, the activities of businesses in Nigeria.

We look forward to serving all of you in other capacities in the future.

Professor Paul Obo Idornigie, SAN
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Leonard Ugbajah, Member of the Team



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Appendix A - Acts of the National Assembly

| | | | | |
|----|--------------------------------|---|----------------|---------------|
| 1. | Name of Act: | Animal Diseases (Control) Act, Cap. A17 Revised Edition, LFN, 2004 | Rating: | Medium |
| | Long Title: | An Act to provide for the control and prevention of animal diseases, with the object of preventing the introduction and spread of infectious and contagious diseases among animals, hatcheries and poultries in Nigeria. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | Nil. | | |
| | Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. By section 1 of the Act, poultry may be imported into Nigeria under a license. Following the ban on importation of frozen poultry in 2003 a question arises as to the full import of this section. The section as contained in our laws creates a qualification on the ban (due regard being had to the fact that the ban was later in time). 2. Section 19 imposes a maximum fine of N100 or the closure of hatchery and poultry farms for failure to obtain registration licenses. This fine is out of tune with the present day economic realities considering the fact that poultry is a small to medium size enterprise. | | |
| | Recommendations: | <ol style="list-style-type: none"> 1. Due consideration should be had to the import prohibition list vis-à-vis the World Trade Organisation treaty signed by Nigeria. Consideration must also be given to the effect of the ban on demand and supply, the health implications of continued importation and the opportunity cost of upholding the ban. Consequently, the Act should be amended to provide clarity on whether the importation of poultry is absolutely prohibited or may be imported under a licence. 2. The punishment section should be amended to provide for stiffer penalties. | | |
| 2. | Name of Act: | Arbitration and Conciliation Act, Cap A18, LFN 2004 | Rating: | High |
| | Long Title: | An Act to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation; and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting State arising out of international commercial arbitration. | | |

| | | | | |
|----|-------------------------|--|---------|------|
| 2. | Name of Act: | Arbitration and Conciliation Act, Cap A18, LFN 2004 | Rating: | High |
| | Explanatory Memorandum: | The Act provides a unified legal frame work for the fair and efficient settlement of commercial disputes by arbitration and conciliation. The Act also makes applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting state arising out of international commercial arbitration. | | |
| | Institution(s) created: | Nil. | | |
| | Gaps/Deficiencies: | The Act is outdated and obsolete. | | |
| | Recommendations: | The Draft Federal Arbitration and Conciliation Bill 2007 should be updated to repeal and re-enact the Arbitration and Conciliation Act. ⁵⁵ | | |

| | | | | |
|----|-------------------------|---|---------|------|
| 3. | Name of Act: | Coastal and Inland Shipping (Cabotage) Act | Rating: | High |
| | Long Title: | An Act to restrict the use of Foreign Vessels in Domestic Coastal Trade to Promote the Development of Indigenous Tonnage and to establish a Cabotage Vessel Financing Fund; and for Related Matters. | | |
| | Explanatory Memorandum: | This Act restricts the use of foreign vessels in Domestic Coastal Trade, promotes the development of indigenous tonnage and establishes a Cabotage Vessel Financing Fund. | | |
| | Institution(s) created: | Nil. | | |
| | Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Section 3 of the Act restricts domestic coastal trade to vessels that "wholly owned and manned by a Nigerian citizen, built and registered in Nigeria". This provision constitutes a bottleneck as hardly any ships are built in Nigeria. 2. Likewise, under Section 11 of the Act, the Minister may grant a waiver to a vessel on the requirement for a vessel to be built in Nigeria where he is satisfied that no Nigerian shipbuilding company has the capacity to construct the particular type and size of vessel specified in the application. <p>Waivers will invariably be granted as the "built in Nigeria" requirement is one that can hardly be met in the prevailing circumstances.</p> | | |

⁵⁵ This Bill was drafted in 2006 by a Committee set up by Chief Bayo Ojo, SAN when he was Attorney General of the Federation and Minister of Justice.

| 3. | Name of Act: Coastal and Inland Shipping (Cabotage) Act | Rating: | High |
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| | <p>3. The grant of waivers under Sections 9 to 11 of the Act is at the Minister's discretion. It may be open to abuse where the Minister is not cognisant of the technicalities involved with the grant of a waiver.</p> <p>4. Section 22 of the Act requires every vessel intended for use under the Act to be duly registered by the Registrar of Ships in the Special Register for Vessels and Ship Owning Companies engaged in Cabotage. This amounts to double registration as the same Vessels are registered under the Nigerian Flag State regime.</p> | | |
| Recommendations: | <p>1. The current waiver system under the Act has not worked to the benefit of Nigerian operators. Seeking other policy/legal measures to realize the objectives of the Act should, therefore, be considered.</p> <p>For instance, under a proposed single license system, a License will be granted to the owner of (or person who has day to day responsibility for) a vessel to access the Nigerian coastal trade for a period for 12 months. Application for a License would not be restricted to Nigerian vessels.</p> <p>The Act should be amended, especially the application process; the considerations relevant to the Minister's decision; and the conditions applicable to Permits and the transfer and cancellation of Permits.</p> <p>2. Furthermore, the Act should be amended to include minimum Nigerian crew requirements for foreign vessels. The owner of (or person who has day to day responsibility for) a foreign vessel should also be required to train a minimum number of Nigerian personnel for the duration of their License. This condition should be relevant in determining whether a new License should be granted.</p> <p>Should a foreign registered vessel breach the applicable Nigerian crew requirements, it will be subject to a monetary penalty as well as the possibility of the cancellation of the License.</p> <p>A foreign registered vessel's compliance with the Nigerian crew requirements can be verified and enforced via the Minister, who</p> | | |

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| 3. | Name of Act: | Coastal and Inland Shipping (Cabotage) Act | Rating: | High |
| | | may ask a License applicant to provide further information on this point in considering an application. | | |
| | | 3. Section 22 of the Act should be repealed. Resignation under the Nigerian Flag State regime should be a condition precedent for the grant of a Licence under the Act. A record of Licence holders should be publicised in a website to ensure compliance. | | |
| 4. | Name of Act: | Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004. | Rating: | High |
| | Long Title: | An Act to establish the Corporate Affairs Commission, provide for the incorporation of companies and incidental matters, registration of business names and the incorporation of trustees of certain communities, bodies and associations. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | Corporate Affairs Commission. | | |
| | Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Out of the 189 countries studied by the World Bank in <i>Dong Business 2016</i>, 103 countries no longer have provision on minimum share capital to incorporate a company. Indeed, Nigeria is ranked 139 out of 189 economies. International best practice requires that we eliminate or reduce minimum share capital. This issue of minimum share capital should be revisited by reviewing the provisions of the Companies & Allied Matters Act (CAMA).⁵⁶ The Law Reform Commission in its Report of 2009 has proposed an upward review of this provision – N50,000.00 for private companies and N2m for public companies.⁵⁷ 2. Section 281 of CAMA provides for multiple directorship. During the trial of bank directors in the era of failed banks in Nigeria, it became obvious that this provision has adverse | | |

⁵⁶In the 1968 Companies Act, there was no requirement for a minimum share capital. However, at page 50 of the Report on the Reform of Nigerian Company Law, Nigerian Law Reform Commission, 1988, the Commission recommended the introduction of minimum share capital of N10,000 for a private company and N500,000 for a public company. This can now be found in section 27(2)(a) of CAMA. The reason given then for the introduction is the prevention of irresponsible and indiscriminate incorporation. We are not sure whether this has worked. The CAC will need to drastically review its Regulations/Guides to ease incorporation of companies and registering of business names.

⁵⁷See the Report of the Nigerian Law Reform Commission on the Review of CAMA, 2009, para 107-109.

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| 4. | Name of Act: | Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004. | Rating: | High |
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effect: on the Nigerian economy.⁵⁸ We believe that the number should be pegged at a maximum of 5.

3. Section 351 of CAMA defines 'a small company' to exclude aliens. We believe that that is inconsistent with the provisions of the NIPC Act that provides for 100% equity participation even by aliens except in the "negative list".⁵⁹
4. There is no provision on corporate social responsibility. At the moment, it is a matter of moral suasion or requirements of Code of Corporate Governance. Other than the duty owed to shareholders and workers by directors, there is no such duty to suppliers, customers nor is there any provision on the impact of the company's operations on the community and environment.⁶⁰
5. House Bill No. 1511151 has proposed amendments to Sections 16, 585 and 609 of CAMA dealing with the powers to make Regulations. Regulations are in the category of 'delegated legislation'. When a statutory body is established, the body usually has powers to make Regulations with the approval of the supervising Minister. Whereas the Minister is empowered to make such Regulations under CAMA with the approval of either the President or the National Council of Ministers, the proposed amendment is to the effect that the Commission should make the Regulations with the approval of the President. We do not support the amendment. What we are recommending is that the Commission should make the regulations with the approval of the Minister.

⁵⁸See also paras 117-121 of the Nigerian Law Reform Commission's Report on the Reform of Nigerian Company Law, 1988 where the number was pegged at 4 but this was not reflected in CAMA and paras 34-38 of the Nigerian Law Reform Commission's Report on the Review of CAMA, 2009. It is noteworthy that section 19(3) of the Banks and Other Financial Institutions Act, Cap B3, LFN, 2004 prohibits multiple directorship.

⁵⁹See sections 17 and 18 of the NIPC Act.

⁶⁰See section 172 of the UK's Companies Act 2006 that provides that a director must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard, amongst other matters, to (a) the likely consequences of any decision in the long term, (b) the interests of the company's employees, (c) the need to foster the company's business relationships with suppliers, customers and others, and (d) the impact of the company's operations on the community and the environment.

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| 4. | Name of Act: | Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004. | Rating: | High |
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6. As to Section 54 of CAMA (Foreign Businesses doing business in Nigeria, there is a lack of clarity (and little judicial guidance) on what amounts to doing business, and whether there are any activities that are exempt from this requirement. In view of the technological developments that have occurred since CAMA was enacted, it is not clear whether internet-based businesses that do not require a physical presence in Nigeria, but provide services that can be accessed by Nigerians, will be considered to be doing business in Nigeria.
7. CAMA is outdated and does not relate to the circumstances of current times. The penalties it prescribed in the Act are, in certain instances, as little as ₦=25.00 and, as such, can hardly serve as deterrents.
8. The requirement for at least 2 (two) directors and shareholders as provided in the CAMA discourages business incorporation.
9. The current provisions on reduction of share capital are cumbersome.
10. As to Sections 156 and 160 of CAMA, the inability to provide for some measure of financial assistance sometimes prohibits small businesses from raising the much-needed capital.
11. There is lack of clarity on whether charges over shares are registrable, as this is not specifically listed in Section 197 of CAMA. See also Section 198. Most lenders take a cautious approach and insist that share charges should be registered. The MSME borrower has to bear the cost of stamping and thereafter registering such security at the CAC.
12. The Financial Reporting and Audit requirements under Sections 357, 370-375 of CAMA are too onerous for MSMEs and, therefore, discourages compliance.
13. Certain provisions of the Companies Regulations 2012 deviate from CAMA. An example is the provision of Section 102 of CAMA and CR 29(4) of the Regulation dealing with increase in share capital. Whereas section 102 of CAMA provides that such increase can be done by the company in a general

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| 4. | Name of Act: Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004. | Rating: | High |
| | <p>meeting (i.e. by ordinary resolution), the Regulation provides for special resolution. A Regulation cannot be inconsistent with the principal enactment.</p> <p>14. Although Section 338 of CAMA deals with 'holding company' and 'subsidiary company', guidance is needed on the definition of small company (Section 351), with specific regulations on its governance and development especially in relation to financial statements, audits and filings at the CAC.</p> | | |
| Recommendations: | <ol style="list-style-type: none"> 1. The issues of minimum share capital, multiple directorship, definition of small companies as provided in CAMA should be revisited. This is a matter that should be discussed at the Roundtable. 2. There should be provision on corporate social responsibility as obtains in section 172 of the UK's Companies Act, 2006. 3. The proposed amendment in House Bill No. 15.06.09 should be considered. 4. The proposed amendment in House Bill No. 1511151 should be discontinued. In its place, Sections 16, 585 and 609 of CAMA should be amended to the effect that the Commission may make regulations with the approval of the Minister. 5. Clear guidance should be provided as to what amounts to doing business for the purpose of Section 54 of CAMA. 6. Generally, the penalties under the CAMA need to be reviewed if they are to serve as a deterrent. 7. A private company should be allowed to have 1 (one) shareholder and 1 (one) director if its promoter deems it fit. 8. The requirement of a minimum share capital should be abolished, as should authorised share capital. The government should reduce significantly, or eliminate completely, the payment stamp duty on share capital. Alternatively, a minimal flat fee should be introduced for the payment of stamp duty and incorporation/filing fees together regardless of the share | | |

4. Name of Act: Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004. Rating: High

capital of the company, in order to encourage the establishment of more companies/MSMEs.

9. Introduce an alternative capital reduction process which does not require court sanction under Section 107 of CAMA.
10. The provisions in Sections 156 and 160 dealing with financial assistance should be reviewed and limited to public limited companies, since the shares of private companies are closely held and shareholders have greater control over the decisions of the company/board on whether or not to provide financial assistance.
11. Charges on shares should be clearly specified as not be subject to registration.
12. MSMEs should be exempt from the requirement to appoint auditors whilst their annual turnover remains below a pre-determined threshold; exempt MSMEs from the requirement to file audited financial statements along with their annual returns; and the format of the financial statements for MSMEs should be simpler than for larger companies (Sections 357, 370-375).
13. The CAC needs to review certain provisions of the Companies Regulation 2012 where they depart from the provisions of CAMA.
14. We recommend the implementation of different sets of rules in relation to matters such as audits and filing of accounts for MSMEs in Nigeria, as the provision of 'one law for all' tends to impose a disproportionate burden on MSMEs.
15. In the review of CAMA, consideration should be given to what amounts to 'micro', 'small', and 'medium' enterprises instead of the broad categorization of 'small companies' or 'subsidiaries'.
16. Other procedural challenges at CAC in terms of incorporation and statutory filings should be addressed in the Regulations especially by taking advantage of IT, reviewing the cost of

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| 4. | Name of Act: | Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004. | Rating: | High |
| | | registering security, filing of notices when a director or shareholder has left a company or there are changes of directors and shareholders. | | |

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| 5. | Name of Act: | Companies Income Tax Act, Cap. C21, Revised Edition, LFN, 2004 | Rating: | High |
| | Long Title: | An Act to consolidate the provisions of the Companies Income Tax Act 1961 and to make other provisions relating thereto. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Nil | | |
| | Gaps/Deficiencies: | <p>1. Section 19 of the Act is to the effect that where a dividend is paid out as profit on which no tax is payable due to no total profits or total profits which are less than the amount of dividend which is paid; by a Nigerian company, the company paying the dividend shall be charged to tax on the dividends declared as though the dividends reflect the company's profits. This provision which originally seeks to dissuade tax evasion on certain profits is very wide and inadvertently brings within its purview income that has already suffered tax, thus amounting to double taxation.</p> <p>2. Section 33 provides for the payment of minimum tax. Thus a company which has no profits is mandated to pay taxes albeit the minimum. This provision may act as a disincentive to doing business in Nigeria.</p> <p>3. There is a lacuna in the law on the treatment of e-commerce in Nigeria. Prospective foreign investors are at a loss as to what tax regime regulates their e-commerce transactions in Nigeria.</p> <p>4. With the efforts of the Nigerian tax system to embrace the use of technology, there remains a lacuna in the Withholding Tax Regulations on the automated credit of remittances.</p> | | |
| | Recommendations: | Taxation is central to doing business. There is need to make amendments on the excess dividend provisions, minimum tax provisions, reduce the incidences of double taxation and to generally make amendments to make provisions for e-commerce | | |

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| 5. | Name of Act: | Companies Income Tax Act, Cap. C21, Revised Edition, LFN, 2004 | Rating: | High |
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and other ways to utilize information technology for better efficiency in tax collections.

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| 6. | Name of Act: | Consumer Protection Council Act; Cap. C25 Revised Edition, LFN 2004. | Rating: | Low |
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Long Title: An Act to provide for the establishment of the Consumer Protection Council and for matters connected therewith

Explanatory Memorandum: Nil.

Institution(s) created: Consumer Protection Council.

Gaps/Deficiencies: On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. However, there are several laws dealing with consumer protection in Nigeria. Other than this law, there is the Nigerian Communications Commission Act, the Civil Aviation Authority Act and the Electric Power Sector Reform Act. This has led to constant turf fighting between the CPC and some of these other agencies.

Recommendations: We recommend the repeal of this Act and re-enactment as part of the Federal Competition & Consumer Protection Commission Bill.

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| 7. | Name of Act: | Copyright Act, Cap. C. 28, LFN, 2004 | Rating: | High |
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Long Title: An Act to make provisions for the definition, protection, transfer, infringement of and remedy and penalty thereof of the copyright in literary works, musical works, artistic works, cinematograph films, sound recordings, broadcast and other ancillary matters.

Explanatory Memorandum: Nil

Institution(s) created: Nigerian Copyright Commission.

Gaps/Deficiencies: 1. The Act includes "computer programmes" in the definition of "literary works". Whilst a "computer programme" is defined in Section 51 as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result", the Act fails to define what a computer is.

| 7. | Name of Act: Copyright Act, Cap. C. 28, LFN, 2004 | Rating: | High |
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| <p>There could be ambiguity in defining whether mobile devices, televisions, tablets and other similar devices would be classified as "computers" for the purposes of the Act.</p> <ol style="list-style-type: none"> 2. The "fair dealing" exception in the Second Schedule to the Act does not give any guidance as to what should be considered in assessing whether use of copyright material is fair. 3. The "fair dealing" exception is confined to a set of prescribed purposes. With a confined fair dealing exception, many uses that may well be fair will continue to infringe copyright, because the use does not fall into one of the listed categories of use. For such uses, the question of fairness is never asked. 4. The Act does not make provision for copyright material that is neglected and wasted because the owners of the relevant rights cannot be found, and therefore permission to use the material cannot be given. | | | |
| <p>Recommendations:</p> <ol style="list-style-type: none"> 1. The Act should include a definition of "computer". The Mauritian Copyright Act 2014 provides useful guidance. It defines a computer as "an electronic or similar device having information processing capabilities". In section 258 of the Evidence Act, 2011, a "computer" is defined as any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process. 2. The Act should be amended to provide that a fair dealing with copyright material for one of the following purposes does not infringe copyright: <ol style="list-style-type: none"> a. research or study; b. criticism or review; c. parody or satire; d. reporting news; e. professional advice; f. quotation; g. non-commercial private use; h. incidental or technical use; i. library or archive use; j. education; and | | | |

7. Name of Act: Copyright Act, Cap. C. 28, LFN, 2004

Rating: High

k. access for people with disability.

The Act should also include non-exhaustive list of the factors to be considered in determining whether the dealing is a fair. The non-exhaustive list of fairness factors should be:

- a. the purpose and character of the use;
- b. the nature of the copyright material;
- c. the amount and substantiality of the part used; and
- d. the effect of the use upon the potential market for, or value of, the copyright material.

3. Alternatively, the Act should be amended to repeal the current "fair dealing exception" and include a non-restrictive and technology-neutral exception for fair use.

A technology-neutral open standard such as fair use has the ability to respond to future and unanticipated technologies and business and consumer practices.

The fair use exception should contain:

- a. an express statement that a fair use of copyright material does not infringe copyright;
- b. a non-exhaustive list of the factors to be considered in determining whether the use is a fair use (the fairness factors); and
- c. a non-exhaustive list of illustrative uses or purposes that may qualify as fair use (the illustrative purposes).

4. The Act should be amended to limit the remedies available in an action for infringement of copyright, where it is established that, at the time of the infringement:

- a. a reasonably diligent search for the rights holder had been conducted and the rights holder had not been found; and
- b. as far as reasonably possible, the user of the work has clearly attributed it to the author.

The Copyright Act should provide that, in determining whether a reasonably diligent search was conducted, regard may be had to, among other things:

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| 7. | Name of Act: | Copyright Act, Cap. C. 28, LFN, 2004 | Rating: | High |
| | | <ul style="list-style-type: none"> a. the nature of the copyright material; b. how and by whom the search was conducted; c. the search technologies, databases and registers available at the time; and d. any guidelines, protocols or industry practices about conducting diligent searches available at the time. | | |

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| 8. | Name of Act: | Customs and Excise Management Act, Cap. C45, Revised Edition, LFN, 2004 | Rating: | Low |
| | Long Title: | An Act to regulate the management and collection of duties of customs and excise, and for purposes ancillary thereto. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Refers to the Customs, Immigration and Prisons Services Board established under section 1 of the Customs, Immigration and Prisons Services Board Act. | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | The Act should be amended to provide for electronic submission and transmission of custom documentations as well as automate its processes. | | |

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| 9. | Name of Act: | Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap. D3, Revised Edition, LFN, 2004 | Rating: | Medium |
| | Long Title: | An Act to, among other things, give effect to certain fiscal incentives given to the oil and gas companies operating in the Deep Offshore and Inland Basin areas under production sharing contracts between the Nigerian National Petroleum Corporation or other companies holding oil prospecting license or oil mining leases and various petroleum exploration and production companies. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Nil | | |

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| 9. | Name of Act: | Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap. D3, Revised Edition, LFN, 2004 | Rating: | Medium |
| | Gaps/Deficiencies: | There is no specific deficiency that negatively impacts on doing business in Nigeria. However, there is provision for a periodic review which is presently due and would have an effect on businesses regulated by the Act. | | |
| | Recommendations: | <ol style="list-style-type: none"> 1. Section 16 of the Act provides for periodic review; firstly, if the price of crude oil exceeds twenty dollars per barrel and secondly after a period of fifteen years from the date of commencement. This provision was created in 1999, which covers the fifteenth year review mark. In accordance with the Act, there is need to review the Act to ensure it remains beneficial to the national economy which should in turn, positively impact the Nigerian business environment. 2. There are two separate bills before the house. The first seeks to increase royalties and the latter which seeks to repeal the Act appears to be targeted at oil pollution. The second bill is however very vague. It is desirable that these bills are merged. Further and in line with the first Bill, royalties should be increased but in less percentages than advised on the face of the bill to take into consideration the current fall in oil prices and to also reduce any foreseen resistance to the increments. | | |

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| 10. | Name of Act: | Environmental Impact Assessment Act, Cap. E12, Revised Edition, LFN, 2004 | Rating: | Low |
| | Long Title: | An Act to set out the general principles, procedure, and methods to enable the prior consideration of environmental impact assessment on certain public or private projects. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | Nil. | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | Nil. | | |

| 11. Name of Act: | Federal Highways Act, Cap. F13, LFN 2004. | Rating: | High |
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| Long Title: | An Act to vest the powers of management, direction and control of Federal highways throughout Nigeria in the Minister of Works and Housing, in respect of planning (including research and designing of Federal highways), the construction and maintenance, the supervision of users of such highways and the regulation of traffic thereon. | | |
| Explanatory Memorandum: | | | |
| Institution(s) created: | Nil. | | |
| Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Under Section 2 of the Act, the Minister has powers to erect, equip and maintain toll gates on the any Federal Highway. This power can be delegated to any officer, agent or person. 2. Under Sections 5-18, various offences are created but no provision is made to specify what court has jurisdiction. 3. Clearly, the government alone cannot fund the regular maintenance and re-construction of Federal Highways. However, there is no provision on the establishment of a 'Highway Fund' for the maintenance and re-construction of Federal Highways. | | |
| Recommendations: | <ol style="list-style-type: none"> 1. The Federal Highways Act should be amended to provide for the court that has jurisdiction over offences created under the Act. 2. The National Roads Fund and the Federal Roads Authority Bills before the National Assembly should be passed into law. 3. The National Roads Fund Bill shall be a repository for revenues from road user and will be a source for financing the development, rehabilitation, maintenance and other activities related to the provision of national roads. The Federal Roads Authority Bill seeks to provide the legal framework that will, among others: repeal the Federal Roads Maintenance Agency (Establishment, etc.) Act No 7 of 2002 and subsequent amendments; create improved institutional structures; separate policy functions from operations and management; ensure improved funding of the sector; involve the private sector in the financing and management of the sector; encourage road users to use roads more responsibly and contribute to the cost of maintaining the road assets, promote the sustainable development and operation of the road sector; and facilitate the development of competitive markets and the promotion of enabling | | |

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| 11. | Name of Act: | Federal Highways Act, Cap. F13, LFN 2004. | Rating: | High |
| | | environment for the private sector participation in the financing, maintenance and improvement of roads in Nigeria. | | |
| | | 4. The Federal Roads Authority Bill will be established under the Federal Roads Authority Bill while the National Roads Fund will be established under the National Roads Fund Bill. | | |

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| 12. | Name of Act: | Federal Housing Authority Act, Cap. F14, LFN 2004 | Rating: | Medium |
| | Long Title: | An Act to establish the Federal Housing Authority as a Statutory Corporation and to vest the Authority with responsibility for preparation of a National housing programme and to execute such of the programme as may be approved from time to time by the Federal Government. | | |
| | Explanatory Memorandum: | | | |
| | Institution(s) created: | Federal Housing Authority (FHA) | | |
| | Gaps/Deficiencies: | 1. The functions of the FHA include the making of recommendations to the Government on such aspects of urban and regional planning, transportation, communications, electric power, sewerage, and water supply development as may be relevant to the successful execution of housing programmes approved by the Government; and the execution of such housing programmes as may be approved by the Government. 2. Both Federal and State Governments have regional and urban planning laws. The powers and functions of the FHA may conflict with that of state governments in this regard. | | |
| | Recommendations: | Need for a clear demarcation of the role of the FHA and that of state governments. | | |

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| 13. | Name of Act: | Federal Inland Revenue Service Act, 2007, Cap F36. LFN, 2004 | Rating: | High |
| | Long Title: | An Act to provide for the establishment of the Federal Inland Revenue Service charged with powers of assessment, collection of, and accounting for revenues accruable to the Government of the Federation, and for related matters. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Federal Inland Revenue Service and Tax Appeal Tribunal | | |

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| 13. | Name of Act: | Federal Inland Revenue Service Act, 2007, Cap F36, LFN, 2004 | Rating: | High |
| Gaps/Deficiencies: | | <ol style="list-style-type: none"> 1. Section 59(2) of the Act provides that the Tax Appeal Tribunal (TAT) shall have power to settle disputes arising from the operations of the Act and under the 1st Schedule to the Act. 2. The 1st Schedule to the Act provides for the legislations over which the TAT shall have jurisdiction. They include the Companies Income Tax Act, the Petroleum Profit Tax Act, the Personal Income Tax Act, the Capital Gains Tax Act, the Value Added Tax Act, the Stamp Duties Act, etc. 3. The 5th Schedule to the Act provides for the establishment, jurisdiction, authority and procedure of the Tax Appeal Tribunal (TAT). There are various conflicting decisions of the Courts on the Constitutionality or otherwise of the jurisdiction of the TAT in view of the powers vested in the Federal High Court in section 251 of the 1999 Constitution. Furthermore, there are several arbitral proceedings challenging the jurisdiction of the TAT.⁶¹ 4. Tax issues are pivotal in the operation of MSME and the economy as a whole. Indeed in Doing Business Report, 2016, Nigeria is ranked 181 out of 189 economies. | | |
| Recommendations: | | The jurisdiction of the TAT should be revisited and reviewed in view of the Constitutional provisions and the controversy it has generated. This can be achieved by amending section 251(1) of the Constitution by adding a proviso exempting the matters covered by section 59 of the FIRS Act from the jurisdiction of the Federal High Court. | | |

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| 14. | Name of Act: | Fiscal Responsibility Act, Cap. F4, LFN, 2004 | Rating: | High |
| Long Title: | | An act to provide for prudent management of the nation's resources, ensure long-term macro-economic stability of the national economy, secure greater accountability and transparency in fiscal | | |

⁶¹NPA v Eyamba (2005) 12 NWLR (Pt 939) 409 at 441 and in *Federal Inland Revenue Service v Nigerian National Petroleum Corporation & 4 Others* (FHC/ABJ/CS/774/11), Dello A, Judge. Judgment delivered on 29 February, 2012. *Ajeek Global Investment & Anor v FIRS & Anor* (2011) 5 TLRN 24. *Construces Internacionals & Anor v FIRS*, Suit No FHC/ABJ/TA/11/12-TSKT II, (Unreported). *Nigerian National Petroleum Corporation v TAT & Ors*, Suit No. FHC/L/CS/630/2013 (Unreported).

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| 14. | Name of Act: | Fiscal Responsibility Act, Cap. F4, LFN, 2004 | Rating: | High |
| | | operations within a medium term fiscal policy framework, and the establishment of the Fiscal Responsibility Commission to ensure the promotion and enforcement of the nation's economic objectives; and for related matters. | | |
| | Explanatory Memorandum: | | | |
| | Institution(s) created: | Fiscal Responsibility Commission | | |
| | Gaps/Deficiencies: | <p>1. This is also a major enactment on greater accountability and transparency in fiscal operations at the federal level in Nigeria.</p> <p>2. The Act has created several offences but there is no provision for punishment. This is inconsistent with the provisions of section 36(12) of the Nigerian 1999 Constitution that provides that a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law.</p> | | |
| | Recommendations: | The Act should be amended to provide for punitive measures. | | |
| 15. | Name of Act: | Food and Drugs Act, Cap. N32, Revised Edition, LFN, 2004 | Rating: | Low |
| | Long Title: | An Act to make provision for the regulation of the manufacture, sale and advertisement of food, drugs, cosmetics and devices and repeal the existing State laws on those matters. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | Nil. | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | Nil. | | |
| 16. | Name of Act: | Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, Revised Edition, LFN, 2004 | Rating: | Low |
| | Long Title: | An Act to establish an Autonomous Foreign Exchange Market and to provide for the monitoring and supervision of the transactions conducted in the market, and for matters connected therewith. | | |
| | Explanatory Memorandum: | Nil | | |

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| 16. Name of Act: | Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, Revised Edition, LFN, 2004 | Rating: | Low |
| Institution(s) created: | Nil | | |
| Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| Recommendations: | Nil | | |
| 17. Name of Act: | Immigration Act, 2015. | Rating: | Low |
| Long Title: | An Act to repeal the Immigration Act Cap 11, LFN 2004 and to enact the Immigration Act 2015 and for related matters. | | |
| Explanatory Memorandum: | This Act sets out the provisions for matters relating to immigration, passports, visas, residence permits, work permits and the prohibition of smuggling of migrants into and from Nigeria, and for the protection of, and provision of remedies and assistance to, objects of smuggling of migrant offences in Nigeria. This Act also gives effect in the Federal Republic of Nigeria to the provisions of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime. | | |
| Institution(s) created: | Nigeria Immigration Service; Directorate of Migration. | | |
| Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| Recommendations: | Nil. | | |
| 18. Name of Act: | Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005 | Rating: | High |
| Long Title: | An Act to provide for the establishment of the Infrastructure Concession Regulatory Commission and for related matters. | | |
| Explanatory Memorandum: | This Act provides for the participation of private sector in financing the construction, development, operation, or maintenance of infrastructure of development projects of the Federal Government through concession or contractual arrangements and the establishment of the Infrastructure Concession Regulatory | | |

| 18. Name of Act: | Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005 | Rating: High |
|-------------------------|---|--------------|
| | Commission to regulate, monitor and supervise the contracts on infrastructure or development projects. | |
| Institution(s) created: | Infrastructure Concession Regulatory Commission | |
| Gaps/Deficiencies: | <p>1. In terms of the provision and regulation of infrastructure delivery, this is a major enactment as Section 1 of the Act provides thus: As from the commencement of this Act, any Federal Government Ministry, Agency, Corporation or body involved in the financing, construction, operation or maintenance of infrastructure, by whatever name called, may enter into a contract with or grant concession to any duly pre-qualified project proponent in the private sector for the financing, construction, operation or maintenance of any infrastructure that is financially viable or any development facility of the Federal Government in accordance with the provisions of this Act.</p> <p>2. Apart from the Electric Power Sector Reform Act passed in 2005 all other laws regulating the provision of infrastructure or public utilities like the Nigeria Ports Act, Nigerian Railways Corporation Act, Nigerian Inland Waters Authority Act, amongst others did not envisage public private partnership. The ICRC Act has filled this gap.</p> <p>3. However, the drafting of this ICRC Act, passed in 2005, did not take into account the provisions of the Public Enterprises (Privatization and Commercialization) Act which was passed in 1999 as public enterprises listed for either privatization or commercialization are also listed for public private participation or concession under the ICRC Act,</p> <p>4. The relationship between the functions of the Commission established under this Act and the statutory functions assigned to the National Council on Public Procurement and the Bureau of Public Procurement established under the Public Procurement Act, passed in 2007, is not clear. For example, are public private partnership transactions subject to the prior review of the Bureau of Public Procurement? Secondly is the grant of a concession a procurement of works, goods and services that are within the statutory purview of the Bureau of Public Procurement?</p> | |

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| 18. | Name of Act: | Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005 | Rating: | High |
| | Recommendations: | There is the need to harmonise the provisions of the Public Enterprises (Privatization and Commercialization) Act and the Public Procurement Act with the provisions of the ICRC Act. An investor in infrastructure deserves to know the proper institution and relevant law. | | |

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|-----|--------------------------------|--|----------------|------|
| 19. | Name of Act: | Investment and Securities Act, 2007 | Rating: | High |
| | Long Title: | An Act to repeal the Investments and Securities Act 1999 and to establish the Securities and Exchange Commission as the apex regulatory authority for the Nigerian capital market as well as regulator of the market to ensure the protection of investors, maintain fair, efficient and transparent market and reduction of system risk; and related matters. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | Securities and Exchange Commission; Investment and Securities Tribunal. | | |
| | Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Sections 54(1) and (5) of the Investment and Securities Act (ISA) places an unfair obligation on public limited companies (PLCs) to register all their new shares with the Securities and Exchange Commission (SEC), even where there is no immediate intention to issue all those new shares to investors. This amounts to 'frontloading' of costs, which the company could have allocated to other needs. 2. It is unclear whether, under Section 69 of the ISA, an offer through contemporary means such as websites will amount to an offer to the public. 3. Sections 111-116 of the ISA do not adequately address the risk of Insider Trading in the Nigerian Capital Market. This serves as a deterrent to potential foreign investors. 4. As to Section 118(2) of the ISA there is lack of clarity as to the exemption to the general requirement to obtain the prior approval of the SEC to an acquisition. 5. The ISA provides a detailed process for implementing a small merger, but does not expressly state that this | | |

| 19. | Name of Act: | Investment and Securities Act, 2007 | Rating: High |
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| | | <p>process will apply to intermediate and large mergers under Sections 122 and 123 of the Act.</p> <p>6. When the Federal Competition & Consumer Protection Commission Bill is passed into law, there will be an overlap with Part XII of the ISA, which regulates competition in the context of mergers and acquisitions.</p> | |
| Recommendations: | | <ol style="list-style-type: none"> 1. Section 54(1) and (5) should be amended to make it clear that whilst PLCs are required to register their shares and other securities with the SEC before the said securities are to be issued, they do not need to do so immediately the securities are created if there is no immediate intention to issue those securities. The amendment can be implemented through the SEC Rules. 2. There is the need to update Section 69 of the ISA in defining what amounts to offering securities to the public. The provision must take into account use of modern Information Technology. 3. Sections 111-116, which address Insider Trading, should be revisited and updated to reflect international standards. This recommendation can also be implemented through the SEC Rules without amending the principal Act. 4. More clarity is required in relation to the types of transactions that will qualify for exemption from the requirement to obtain prior approval of SEC under Section 118(2). 5. Sections 122 and 123 should be amended to set out the process for implementing intermediate and large mergers. 6. When the Federal Competition & Consumer Protection Commission Bill is passed into law, Part XII dealing with competition should be consequentially amended.⁶² | |

⁶²This applies to the Nigerian Communications Commission Act, 2003 and the Electric Power Sector Reform Act, 2005. These two Acts have provisions on competition.

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| 20. Name of Act: | Labour Act, Cap. L1, Revised Edition, LFN, 2004 | Rating: | Low |
| Long Title: | An Act to repeal and replace the Labour Code Act and consolidated the law relating to labour. | | |
| Explanatory Memorandum: | Nil | | |
| Institution(s) created: | Nil | | |
| Gaps/Deficiencies: | The deficiencies in the Labour Act are not such as to have a direct impact on doing business in Nigeria for the purposes of this review. Assuch, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| Recommendations: | Nil | | |

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| 21. Name of Act: | Mortgage Institutions Act, Cap. M19, LFN, 2004 | Rating: | High |
| Long Title: | An Act to make provisions for establishment and licensing of mortgage institutions to grant loans and advance to individuals for the purchase or construction of a dwelling house; improvement or extension of an existing dwelling house; and to accept savings and deposits from members of the public and to pay interest thereon. | | |
| Explanatory Memorandum: | Nil | | |
| Institution(s) created: | Nil | | |
| Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Three key areas that are used by the World Bank as indicators are 'dealing with construction permits'; 'registering property' and 'getting credit'. 2. Section 1 of the Mortgage Institutions Act provide that no mortgage business shall be transacted in Nigeria except by a company which is duly incorporated in Nigeria for that purpose and in possession of a valid licence granted by the Minister authorising it to do so. There is a proviso that the Federal Mortgage Bank or any bank licensed under the Banks and other Financial Institutions Act and carrying on mortgage business as part of its normal operations are exempted from this provision. 3. Similarly, Section 7 of this Act provides that a mortgage institution shall not grant a loan or advance for the building, improvement or extension of a dwelling house unless adequate security has been taken on an existing property or the property in respect of which the loan or advance is being granted; grant to any person any loan, advance or credit facility or give any | | |

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| 21. | Name of Act: | Mortgage Institutions Act, Cap. M19, LFN, 2004 | Rating: | High |
| | | financial guarantee or incur any other liability on behalf of such person so that the total of the loan, advance, credit facility or guarantee is at any time more than twenty per centum of the sum of the paid-up capital and statutory reserves of the mortgage institution; grant any loan, advance or credit facility on the security of its own shares; and engage in any commercial, agricultural, industrial or any other undertaking except as permitted under this Act or as the mortgage institution may in any way acquire in the course of the satisfaction of debts due to it so however that any interest in such undertaking shall be disposed of within a reasonable time. | | |
| | | 4. In all these, the security usually provided is title to land or lease of land. | | |
| | Recommendations: | Apart from the harmonizing of the laws in the housing sector, the Land Use Act should be reformed. | | |

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| 22. | Name of Act: | National Agency for Food and Drug Administration and Control Act, Cap. N1, Revised Edition, LFN 2004. | Rating: | Low |
| | Long Title: | An Act to establish the National Agency for Food and Drug Administration and Control with the functions, among others, to regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | National Agency for Food and Drug Administration and Control. | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | Nil. | | |

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| 23. | Name of Act: | National Environmental Standards and Regulations Enforcement Agency Act, Cap. N164, Revised Edition, LFN 2004. | Rating: | Low |
| | Long Title: | An act to provide for the establishment of the National Environmental Standards and Regulations Enforcement Agency | | |

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| 23. | Name of Act: | National Environmental Standards and Regulations Enforcement Agency Act, Cap. N164, Revised Edition, LFN 2004. | Rating: | Low |
| | | charged with responsibility for the protection and development of the environment in Nigeria; and for related matters. | | |
| | Explanatory Memorandum: | This Act establishes the National Environmental Standards and Regulations Enforcement Agency for the effective enforcement of standards, Regulations and all national and international agreements, treaties, conventions and protocols on environment to which Nigeria is a signatory. | | |
| | Institution(s) created: | National Environmental Standards and Regulations Enforcement Agency. | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | Nil. | | |

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| 24. | Name of Act: | National Housing Fund Act, Cap. N45, LFN, 2004 | Rating: | High |
| | Long Title: | An Act to provide for the establishment of the National Housing Fund and for matters connected therewith. | | |
| | Explanatory Memorandum: | | | |
| | Institution(s) created: | Nil | | |
| | Gaps/Deficiencies: | <p>1. The aims and objectives of the Fund include the facilitation of the mobilisation of the Fund for the provision of houses for Nigerians at affordable prices; ensuring the constant supply of loans to Nigerians for the purpose of building, purchasing and improvement of residential houses; provision of incentives for the capital market to invest in property development; encouragement of the development of specific programmes that would ensure effective financing of housing development, in particular low cost housing for low income workers; provision of proper policy control over the allocation of resources and funds between the housing sector and other sectors of the Nigerian economy; and provision of long-term loans to mortgage institutions for on-lending to contributions to the Fund</p> <p>2. However, one major problem for the housing sector is the proliferation of laws and the passage of laws by both the Federal</p> | | |

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| 24. | Name of Act: | National Housing Fund Act, Cap. N45, LFN, 2004 | Rating: | High |
| | | and State Governments on a matter in the Concurrent Legislative List. There are also several institutions. | | |
| | Recommendations: | <p>1. The reform of the Land Use Act to make access to land and use of land as collateral for the housing sector easy.</p> <p>2. The harmonization of all the laws in the housing sector. It is noteworthy that the Bureau of Public Enterprises (BPE) is already working on the reform of the housing sector as well as the mortgage institutions. There is the need for a regulator for the housing sector that will collaborate with the states and local governments in this regard.</p> | | |

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| 25. | Name of Act: | National Information Technology Development Agency Act, Cap. N156, Revised Edition, LFN, 2004 | Rating: | High |
| | Long Title: | An Act to provide for the establishment of the National Information Technology Development Agency, and for related matters. | | |
| | Explanatory Memorandum: | Information Technology Development Agency to plan, develop and promote the use of information technology in Nigeria. | | |
| | Institution(s) created: | National information Technology Development Agency. | | |
| | Gaps/Deficiencies: | <p>1. The thirteenth function of the Agency to "accelerate Internet and Intranet penetration" is too wide and does not provide practical guidance and regulations on how to tackle the internet problems faced by businesses in Nigeria.</p> <p>2. The Agency issued guidelines pursuant to their functions/powers enumerated above. The guidelines came into effect on the 3rd of December 2013. The guidelines have provisions which impede doing business in Nigeria. One such provision relates to the creation of local content in the ICT sector. Section 12.1 of the guidelines provides that ICT companies shall register Nigerian entities with predominant Nigerian representation. This provision goes against the spirit of the NIPC Act and could serve as a disincentive to doing business in Nigeria. Further, the guidelines in section 8.0 construes a breach of the Guidelines as a breach of the NITDA Act. Clearly, guidelines</p> | | |

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| 25. | Name of Act: | National Information Technology Development Agency Act, Cap. N156, Revised Edition, LFN, 2004 | Rating: | High |
| | | cannot have the force of statute and derogations from the principal legislation should be nullified. | | |
| | Recommendations: | <p>1. The function to accelerate internet penetration should be broken down to practical realizable steps to improve the internet service in the country.</p> <p>2. A holistic review of the guidelines reveals that the Agency may have exceeded its functions as provided under the Act. In addition to putting a hold to the enforcement of the guidelines against businesses in Nigeria, there might be need to amend the functions of the Agency thus providing guardrails in the execution of its powers.</p> | | |
| 26. | Name of Act: | National Office for Technology Acquisition and Promotion Act, Cap. N62, Revised Edition, LFN, 2004 | Rating: | Low |
| | Long Title: | An Act to establish the National Office for Technology Acquisition and Promotion to monitor, on a continuing basis, the transfer of foreign technology to Nigeria and to provide for other related matters. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | National Office for Technology Acquisition and Promotion. | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | Nil | | |
| 27. | Name of Act: | Nigeria Export Processing Zones Act, Cap. N107, Revised Edition, LFN 2004 | Rating: | Low |
| | Long Title: | An Act to provide for the establishment of the Nigeria Export Processing Zones, and for matters connected therewith. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Nigeria Export Processing Zones Authority | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no | | |

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| 27. Name of Act: | Nigeria Export Processing Zones Act, Cap. N107, Revised Edition, LFN 2004 | Rating: | Low |
| | identified legislative gaps crucial to the Business Environment Legislation review. | | |
| Recommendations: | Nil | | |
| 28. Name of Act: | Nigeria Export Promotion Council Act, Cap. N108, Revised Edition, LFN 2004. | Rating: | Low |
| Long Title: | An Act to establish the Nigerian Export Promotion Council to promote the development and diversification of Nigeria's export trade, assist in promoting the development of export oriented industries in Nigeria and other related matters. | | |
| Explanatory Memorandum: | Nil. | | |
| Institution(s) created: | Nigerian Export Promotion Council. | | |
| Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| Recommendations: | Nil. | | |
| 29. Name of Act: | Nigerian Civil Aviation Act, Cap. N94, LFN 2004 | Rating: | High |
| Long Title: | An Act to repeal the Civil Aviation Act Cap. 51 Laws of the Federation of Nigeria, 1990 as amended and to re-enact the, Civil Aviation Act to provide for the regulation of Civil Aviation, establishment of the Nigerian Civil Aviation Authority; and for related matters. | | |
| Explanatory Memorandum: | Nil. | | |
| Institution(s) created: | Nigerian Civil Aviation Authority. | | |
| Gaps/Deficiencies: | There is no express provision enabling the Authority to enter into a public-private-partnership transaction or grant any form of concession to the private sector. | | |
| Recommendations: | The Act should be amended to allow private sector participation consistent with global best practice. | | |

| 30. Name of Act: | Nigerian Inland Waterways Authority Act, Cap. N47, LFN 2004 | Rating: High |
|-------------------------|---|--------------|
| Long Title: | An Act to establish the National Inland Waterways Authority with responsibility, among other things, to improve and develop inland waterways for Navigation. | |
| Explanatory Memorandum: | | |
| Institution(s) created: | Nigerian Inland Waterways Authority | |
| Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. The focus of the Act is on the government regulating, managing, financing and operating the sub-sector. 2. Under section 13 of the Act, persons are prohibited from taking sand, gravel or stone from the waterways, without the consent of the Authority. 3. Under S 23(i) of the Act, it is an offence for any person to carry out the activities and functions of the Authority without limitation even when it is clear that such activities are minor economic activities of the locals in the affected areas. 4. The Authority is not well equipped to perform the functions listed in the Act. 5. The powers vested in the Authority by sections 8, 9 and 11 of the Act are also covered by sections 7, 8 and 30 of the Nigerian Ports Authority Act without qualification or a proviso. 6. There is the need to open up the sector to private sector participation. 7. 'Waterways' are not expressly defined in the Act. | |
| Recommendations: | The Nigerian Inland Waterway Authority Bill, 2015 before the National Assembly should be passed into law. With the emerging need to open up the transport sector to private sector participation, limit the roles of supervising ministries to policy formulation and thirdly, separate regulatory functions from operational functions, a new legal and regulatory framework is desirable. | |

| 31. | Name of Act: | Nigerian Investment Promotion Commission Act, Cap N117, LFN, 2004 | Rating: | High |
|-----|-------------------------|---|---------|------|
| | Long Title: | An Act to establish the Nigerian Investment Promotion Commission, to encourage and promote investment in the economy; and for matters connected therewith. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | Nigerian Investment Promotion Commission. | | |
| | Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Section 2(2) of the Act provides for composition of the Commission. Given the pivotal position of the Ministry of Justice; role of the Corporate Affairs Commission in company regulation and management; and the attention being given to agriculture in the presence dispensation especially in relation to MSMEs, the absence of these organs in the Commission is a major deficiency. 2. Section 20(1) of the Act provides that an enterprise in which foreign participation is permitted under section 17 of the Act shall, before commencing business, apply to the Commission for registration. The interpretation of this section is creating problems. Does it mean that the enterprise is merely to apply for registration without waiting to be registered?⁶³ 3. There is no penalty if an enterprise fails to register under section 20 of the NIPC Act.⁶⁴ 4. The NIPC regulates investment in Nigeria but section 24(3) would seem to limit the right to resort to ICSID arbitration to the Federal Government only. | | |

⁶³In *Interocean Oil Development Company and Interocean Oil Exploration Company [Claimants] v Federal Republic of Nigeria [Respondent]*, ICSID Case No. ARB/13/20, filed on 31 July, 2013, one of the issues for determination in the Preliminary Objection to the Jurisdiction of the International Centre for the Settlement of Investment Disputes (ICSID) Arbitral Tribunal was the import of section 20 of the NIPC Act. The Respondent contended that the Claimants could not invoke section 26 of the NIPC Act dealing with the revocation of ICSID jurisdiction because the Claimants were not registered with the NIPC as required by the provisions of section 20 of the NIPC Act. Once it is ascertained that an enterprise is not registered under the NIPC Act, then such an enterprise cannot enjoy the protection provided in the NIPC Act including referring to arbitration under ICSID. The main issue before the Arbitral Tribunal was as between the Claimants and the Respondent, who bore the responsibility for ensuring that an enterprise is registered. While the Respondent contended that it was the responsibility of the Claimants, the Claimants contended otherwise. On 29 October, 2014, the Arbitral Tribunal gave its decision on the Preliminary Objection and ruled that the matter would be decided on its merits at the end of the hearing. See also the Report of the Review of the NIPC Act by the Nigerian Law Report Commission, 2009.

⁶⁴Section 54(1) and (2) of CAMA prohibits foreign companies from carrying on business in Nigeria without first being incorporated under CAMA and in default such a company is penalized under section 55 of CAMA. A similar provision in the NIPC Act is imperative

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| 31. Name of Act: | Nigerian Investment Promotion Commission Act, Cap N117, LFN, 2004 | Rating: | High |
| | <p>5. In House Bill No. 1511180, there is a proposed amendment to the NIPC Act, especially Sections 17 and 19 of the Act. In essence it is proposed in Section 17 that some enterprises⁶⁵ should be reserved for Nigerians while in Section 19, the equity of a foreign investor should not be less than US\$500,000.00. Secondly at least 15 Nigerians shall be employed and occupy at least 30% of the senior and management positions in the enterprise.</p> | | |
| Recommendations: | <ol style="list-style-type: none"> 1. Amend section 2(2) to include the Ministries of Justice and Agriculture and Registrar General of the Corporate Affairs Commission as members of the Commission. 2. Amend section 20 of the NIPC Act to the effect that the enterprise should apply and obtain approval to register. In addition, the registered company shall submit to the NIPC annual report in a form prescribed by the NIPC. 3. Provide for penalty for non-registration of an enterprise. 4. The words "the Federal Government" in section 26(3) of the Act should be amended to read "any Government of the Federation". 5. We do not support the passage of House Bill No. 1511180 in its present form as the proposed amendments to Sections 17 and 19 be contrary to the provisions relating to freedom of establishment in the ECOWAS sub-region. | | |

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| 32. Name of Act: | Nigerian Minerals and Mining Act, Cap. N162, LFN 2004 | Rating: | High |
| Long Title: | <p>An act to repeal the Minerals and Mining Act, No. 34 of 1999 and re-enact the Nigerian Minerals and Mining Act, 2007 for the purposes of regulating all aspects of the exploration and exploitation of solid Minerals in Nigeria; and for related purposes.</p> | | |
| Explanatory Memorandum: | <p>This Act creates a distinct role for the private sector as operator and owner of mineral resources won in accordance with the provisions of this Act and a role for the Government as the regulator of all</p> | | |

⁶⁴ For example, petty trading, selling from a kiosk, taxi services, car hire service; services of artisan, mason, bricklayer, iron benders, welders and bakers should be reserved for Nigerians.

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| 32. Name of Act: | Nigerian Minerals and Mining Act, Cap. N162, LFN 2004 | Rating: | High |
| | matters relating to the reconnaissance, exploration, exploitation, beneficiation, possession, retention, transportation, transformation, sale, marketing and other related purposes of mineral resources in Nigeria. | | |
| Institution(s) created: | Mining Cadastre Office | | |
| Gaps/Deficiencies: | Consistent with the Constitutional provisions, section 1(1) of the Act provides thus: <i>"The entire property in and control of all Mineral Resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and water courses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zone is and shall be vested in the Government of the Federation For and on behalf of the people of Nigeria."</i> | | |
| Recommendations: | The Constitution and this Act should be reformed to allow for private sector, states and local governments participation. Similarly, the subject should be removed from the Exclusive Legislative List to the Concurrent Legislative List. | | |

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| 33. Name of Act: | Nigerian National Petroleum Corporation Act, Cap N123, LFN, 2004 | Rating: | High |
| Long Title: | An Act to dissolve the Nigerian National Oil Corporation and to establish the Nigerian National Petroleum Corporation empowered to engage in all commercial activities relating to the petroleum industry and to enforce all regulatory measures relating to the general control of the petroleum sector through its Petroleum Inspectorate department. | | |
| Explanatory Memorandum: | | | |
| Institution(s) created: | Nigerian National Petroleum Corporation | | |
| Gaps/Deficiencies: | <p>1. There are several laws in the energy sector that are not investor-friendly especially with the constitutional provision vesting minerals, gas, and oil rights in the Government of the Federation.</p> <p>2. Sections 7(4), 11(2) and 12 of the Act are inconsistent with the provisions of section 162 of the Constitution, which requires that revenues collected by the government be paid into the Federation Account.</p> | | |
| Recommendations: | The Petroleum Industry Bill should be passed into law. | | |

| 34. Name of Act: | Nigerian Oil and Gas Industry Content Development Act, 2010 | Rating: | Low |
|-------------------------|--|---------|-----|
| Long Title: | An Act to provide for the development of Nigerian content in the Nigerian oil and gas industry, Nigeria content plan, supervision, coordination, monitoring and implementation of Nigerian content; and for related matters. | | |
| Explanatory Memorandum: | This Act provides for the development of Nigerian content in the Nigerian Oil and gas industry, Nigeria content plan, supervision, coordination, monitoring and implementation of Nigerian content. | | |
| Institution(s) created: | Nigerian Content Monitoring Board. | | |
| Gaps/Deficiencies: | None. However, the proposed amendments in House Bills Nos. 151099 and 1511118 should be re-drafted. The Principal Act has 107 sections and the proposed amendments have 107 sections. It is not clear from the proposal amendments whether they are mere amendments or repeal and re-enactment. If they are amendments, the bills, which are essentially the same, should indicate which sections in the Principal Act that they are amending. | | |
| Recommendations: | None, but the proposed Bills should be re-drafted. | | |

| 35. Name of Act: | Nigerian Ports Authority Act, Cap. N126, LFN 2004 | Rating: | High |
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| Long Title: | An Act to establish the Nigerian Ports Authority with the functions of providing and operating necessary facilities in ports and maintaining, improving and regulating the use of the ports; and to provide for matters connected therewith. | | |
| Explanatory Memorandum: | | | |
| Institution(s) created: | Nigerian Ports Authority | | |
| Gaps/Deficiencies: | <p>1. The present Act is incompatible with Public Private Partnership (PPP) in ports operations and regulation thereby limiting efficiency.</p> <p>2. The major deficiency in this Act is that the Nigerian Ports Authority is the landlord of the ports, the manager of the ports, the operator and regulator of the ports. This is inconsistent with international best practice.</p> <p>3. The powers vested in the Authority by sections 7, 8 and 30 of the Act are also covered by sections 9, 9 and 11 of the Nigerian Inland Waters Authority Act without qualification or a proviso.</p> <p>4. The unbundling of the Nigerian Ports Authority into its functional areas is imperative.</p> | | |

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| 35. Name of Act: | Nigerian Ports Authority Act, Cap. N126, LFN 2004 | Rating: | High |
| | <p>5. When the Bureau of Public Enterprises (BPE) reformed the ports and concessioned the port terminals in Lagos, Calabar, Warri and Port Harcourt in March 2005, it was expected that the Ports and Harbours Bill then in the National Assembly would be passed into law. The Bill has not been passed. The consequence is that the ports have been reformed without an Economic and Technical Regulator. Instead the Shippers Council has been made a Regulator when the core mandate of the Shippers Council does not include regulation.</p> | | |
| Recommendations: | <ol style="list-style-type: none"> 1. The Ports and Harbours Bill, 2015 before the National Assembly should be passed into law. 2. The Bill has unbundled the ports into management, operation and regulation. 3. The Bill provides an appropriate institutional framework for the ownership, management, operation, development and control of ports and harbour to ensure the integrity, efficiency and safety of the ports based on the principles of accountability, competition, fairness and transparency. | | |

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| 36. Name of Act: | Nigerian Postal Service Act, Cap. N127, LFN 2004 | Rating: | High |
| Long Title: | An Act to provide for the Nigerian Postal Service and for matters connected therewith. | | |
| Explanatory Memorandum: | | | |
| Institution(s) created: | Nigerian Postal Service (NIPOST) | | |
| Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. NIPOST enjoys monopoly status in the provision of postal services. 2. NIPOST lacks autonomy in its operations. 3. NIPOST ought to be a regulator of the sector while the Universal Postal Service is separated from the NIPOST. | | |
| Recommendations: | The Nigerian Postal Commission Bill, 2015 before the National Assembly should be passed into law. When passed into law, the Act will promote the implementation of the National Postal Policy; establish a regulatory framework for the postal industry; promote the provision of modern universal, efficient and easily accessible | | |

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| 36. Name of Act: | Nigerian Postal Service Act, Cap. N127, LFN 2004 | Rating: | High |
| | postal services; encourage private investments; and ensure fair competition in the postal industry. | | |
| 37. Name of Act: | Nigerian Railway Corporation Act, Cap. N129, LFN, 2004. | Rating: | High |
| Long Title: | An Act to provide for the establishment of a corporation to be known as the Nigerian Railway Corporation, for the transfer to the Corporation of the railway undertaking of the Government of the Federation, for the functions of the Corporation, and for purposes connected therewith. | | |
| Explanatory Memorandum: | | | |
| Institution(s) created: | Nigerian Railway Corporation | | |
| Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Section 25 of the Act prohibits litigation against the Corporation for recovery of compensation. 2. Section 29 of the Act prohibits the construction or extension of rail lines without the prior permission of the Minister of Transport. This provision prohibits state governments from establishing any railway business. Similarly, the provision does not allow private sector participation in the provision of this vital infrastructure. 3. Section 69 provides that the scale of damages to be awarded for acts caused by the Corporation is N200.00 4. More fundamentally, this Act was first passed in 1955 and has remained substantially the same. This was when the provision of infrastructure (or public utilities) was the sole responsibility of government. 5. The Act does not give express powers for private sector participation nor any form of public-private-partnership transaction. | | |
| Recommendations: | <ol style="list-style-type: none"> 1. This Act should be repealed and re-named in accordance with the Nigeria Railway Authority Bill, 2015, now before the National Assembly. 2. The Bill provides for appropriate market design and legal framework for the implementation of Government's reform programme; clearly separates the roles of policy making, | | |

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| 37. Name of Act: | Nigerian Railway Corporation Act, Cap. N129, LFN, 2004. | Rating: | High |
| | regulation and operation; provides a platform for the introduction of private sector concessionaires; makes Provision for economic and safety regulation by the National Transport Commission; promotes competition in the provision of railway services nationwide; and provides for the compulsory acquisition of land and Greenfield developments. | | |
| 38. Name of Act: | Nigerian Urban and Regional Planning Act, Cap. N138, Revised Edition, LFN, 2004 | Rating: | Low |
| Long Title: | Nil. | | |
| Explanatory Memorandum: | Nil. | | |
| Institution(s) created: | National Urban and Regional Planning Commission; State Urban and Regional Planning Board and Local Planning Authority. | | |
| Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| Recommendations: | Nil. | | |
| 39. Name of Act: | Patents and Designs Act, Cap. P2 Revised Edition, LFN 2004. | Rating: | High |
| Long Title: | An Act to make comprehensive provisions for the registration and proprietorship of Patents and Designs in Nigeria and other matter ancillary thereto. | | |
| Explanatory Memorandum: | Nil | | |
| Institution(s) created: | Office of the Registrar of Patents and Designs. | | |
| Gaps/Deficiencies: | <p>1. Section 1(a) of the Act prescribes that an invention is patentable if it is new, results from inventive activity and is capable of industrial application.</p> <p>The fact that an invention capable of being used in a particular industry does not necessarily mean it will be useful in the said industry. The current wording of the Act creates too low a threshold and allows for speculative applications, with no 'real world' benefit.</p> | | |

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| 39. Name of Act: | Patents and Designs Act, Cap. P2 Revised Edition, LFN 2004. | Rating: | High |
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Low thresholds and resulting broad patents allow earlier patentees to carve out too broad a monopoly, suppressing competition and deterring follow-on innovation and improvements to existing technology.

2. The Act does not specifically provide for a "research and experimental use" exception.

Innovation is a primary driver for economic growth. However, the grant of patents may have the ancillary effect of stifling research and development as a consequence of uncertainty among researchers and businesses as to where they have freedom to operate. This may not only inhibit Nigerian research, it may also encourage business and researchers to move their research and development offshore to jurisdictions with more favourable experimental use exemptions. This could potentially result in a loss of research investment and employment opportunities in Nigeria.

An experimental use exemption is one means of providing researchers and businesses with greater certainty as to where they have freedom to operate.

3. The Act fails to give adequate protection to the holders of Patents and/or Design Rights. For instance, Patent/Design disputes are very expensive. The Act does not create an ADR procedures for the resolution of disputes or criminal liability for the infringement of a patent or design. A registered design protects original 3 dimensional (3D) designs, which are not covered by copyright, trademarks or patents. They are particularly useful for SMEs in creative industries, in sectors such as furniture, home wares, packaging, footwear, architectural features and other 3D objects.
4. Sections 2(4) and 11(4) of the Act 'entrap' small business that are commissioned for an invention and a design respectively. The said provisions vest ownership in the invention or design in the person that commissioned the work, without rewarding the innovation of the inventor or designer.

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| 39. | Name of Act: | Patents and Designs Act, Cap. P2 Revised Edition, LFN 2004. | Rating: | High |
| | Recommendations: | <ol style="list-style-type: none"> 1. Amend Section 1(a) of the Act by requiring a "specific, substantial and credible" use for the invention. 2. Amend Section 3(1)(a)(ii) of the Act by requiring that the description disclose a "specific, substantial and credible use". 3. Amend the Act to provide for a "research and experimental use" exception. 4. Amend the Act to provide for ADR procedures for the resolution of Patent/Design Disputes. 5. Consolidate and streamline IP legislation and enforcement in Nigeria. This would involve consolidating the various legislations (Copyright Act, Trade Marks Act, Patent Act, etc.) into a single law with a single enforcement authority. 6. Amend the Act so that when a business commissions an invention or design from a third party, the inventor/designer will own the patent/design right intellectual property (IP) rather than the business that has commissioned the work. A business that pays an inventor/designer (who is not an employee) to develop a product will not actually own the patent/design unless this is specifically agreed. | | |
| 40. | Name of Act: | Pension Reform Act, 2014 | Rating: | Low |
| | Long Title: | An Act to repeal the Pension Reform Act No.2, 2004 and enact the Pension Reform Act, 2014 to make provision for the uniform contributory pension scheme for public and private sectors in Nigeria, and for related matters. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Pension Commission. | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | Nil | | |

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| 41. | Name of Act: | Petroleum (Special) Trust Fund Act, Cap. P14, Revised Edition, LFN, 2004 | Rating: | Low |
| | Long Title: | An Act to establish a Special Petroleum Trust Fund into which shall be paid all monies accruing from the sale price of petroleum products, to provide for the identification, funding and execution of projects in various sectors and for matters connected therein. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Petroleum (Special) Trust Fund Management Board. | | |
| | Gaps/Deficiencies: | Any deficiencies in the Act have not been impactful following a redundancy of the Act. | | |
| | Recommendations: | This Act should be repealed, having outlived its usefulness. | | |
| 42. | Name of Act: | Petroleum Act, Cap. P10, Revised Edition, LFN, 2004 | Rating: | High |
| | Long Title: | An Act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and offshore revenue from petroleum resources derivable therefrom in the Federal Government, and for all other matters incidental thereto. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Nil | | |
| | Gaps/Deficiencies: | There is uncertainty surrounding the time required to obtain Ministerial consent over an assignment. The silence of this Act on the time to obtain the said Ministerial consent creates extreme variations in practice. These variations may be a disincentive to foreign direct incentive. | | |
| | Recommendations: | <ol style="list-style-type: none"> 1. The Petroleum Industry Bill should be passed into Law. 2. Subject to the passage of the Petroleum Industry Bill, it is desirable that a time frame is fixed by an amendment to statute to reduce the uncertainties surrounding receiving ministerial consent over assignments of licenses and leases. | | |
| 43. | Name of Act: | Petroleum Equalisation Fund (Management Board, etc.) Act, Cap. P11, Revised Edition, LFN, 2004 | Rating: | Low |
| | Long Title: | An Act to establish the Petroleum Equalisation Fund which is to be applied for the reimbursement of petroleum marketing companies for any losses suffered by them arising from the sale of petroleum | | |

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| 43. Name of Act: | Petroleum Equalisation Fund (Management Board, etc.) Act, Cap. P11, Revised Edition, LFN, 2004 | Rating: | Low |
| | products at uniform prices throughout Nigeria and a Management Board to manage the affairs of the Fund. | | |
| Explanatory Memorandum: | Nil | | |
| Institution(s) created: | Petroleum Equalisation Fund Management Board. | | |
| Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| Recommendations: | The Petroleum Industry Bill should be passed into Law. | | |
| 44. Name of Act: | Petroleum Products Pricing Regulatory Agency (Establishment, etc.) Act, Cap. P43, Revised Edition, LFN, 2004 | Rating: | Low |
| Long Title: | An Act to establish the Petroleum Products Pricing Regulatory Agency, and for related matters. | | |
| Explanatory Memorandum: | Nil | | |
| Institution(s) created: | Petroleum Products Pricing Regulatory Agency . | | |
| Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| Recommendations: | The Petroleum Industry Bill should be passed into Law. | | |
| 45. Name of Act: | Petroleum Profits Tax Act, Cap. P13, Revised Edition, LFN, 2004 | Rating: | High |
| Long Title: | An Act to impose a tax upon profits from the winning of Petroleum in Nigeria, to provide for the assessment and collection thereof, and for purposes connected therewith. | | |
| Explanatory Memorandum: | Nil | | |
| Institution(s) created: | Nil | | |
| Gaps/Deficiencies: | Section 10 of the Act provides for allowable deductions. Section 13 provides for disallowable deductions. A direct conflict exists between both sections with respect to the deductibility of interests on inter-company loans. While s10(1a) directly allows the deduction, s13(2) disallows the deduction. Though chronologically s13 appears later in time than s10, s10 (1g) is the more recent | | |

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| 45. | Name of Act: | Petroleum Profits Tax Act, Cap. P13, Revised Edition, LFN, 2004 | Rating: | High |
| | | provision in the Act. This contradiction on the face of the Act provides uncertainties to prospective investors on the position of the law. | | |
| | Recommendations: | For clarity, the older provision in time which in this case is Section 13(2) should be deleted to clear the uncertainty and the misunderstandings between petroleum companies and the Federal Inland Revenue Service. This will in turn reduce the tax problems faced by businesses regulated by the Act. | | |
| 46. | Name of Act: | Petroleum Technology Development Fund Act, Cap. P15, Revised Edition, LFN, 2004 | Rating: | Low |
| | Long Title: | An Act to repeal the Gulf Oil Company Training Fund (Administration) Act, 1964, and to establish the Petroleum Technology Development Fund for the purposes of training and education of Nigerians in the petroleum industry. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Petroleum Technology Development Fund (PTDF). | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | The Petroleum Industry Bill should be passed into Law. | | |
| 47. | Name of Act: | Price Control Act, Cap. P28, Revised Edition, LFN, 2004 | Rating: | Medium |
| | Long Title: | An Act to re-enact the Price Control Act, prescribe stiffer penalties and to make better provisions for the implementation of the scheme. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Price Control Board. | | |
| | Gaps/Deficiencies: | This Act, which should ordinarily have direct impact on businesses, has fallen into disuse. In practice, a petroleum product is the only listed product under the Act that the Government exercises control over. | | |
| | Recommendations: | The presence of these provisions in the laws create a level of uncertainty to any investor (local or foreign) who conducts a legal due diligence with a view to doing business in Nigeria. The | | |

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| 47. | Name of Act: | Price Control Act, Cap. P28, Revised Edition, LFN, 2004 | Rating: | Medium |
| | | Petroleum Products Pricing Regulatory Agency Act provides for the pricing policy of petroleum products. The Price Control Act does not add anything to the national economy or the Nigerian business market and should be repealed. | | |
| 48. | Name of Act: | Public Enterprises (Privatization and Commercialization) Act, Cap. P38, LFN, 2004 | Rating: | High |
| | Long Title: | An Act to provide for privatisation and commercialisation of certain public enterprises and to establish the National Council on Privatisation and the Bureau of Public Enterprises; and for matters relating thereto. | | |
| | Explanatory Memorandum: | | | |
| | Institution(s) created: | 1. National Council on Privatization. 2. Bureau of Public Enterprises. | | |
| | Gaps/Deficiencies: | In the reform agenda of Government, the two institutions created under this Act play a major role in the sale of shares and assets in public enterprises; commercialisation of public enterprises and concession of public enterprises or entering into public private partnership (PPP) transactions. However, some public enterprises listed for privatisation or commercialisation are also listed in the Infrastructure Concession Regulatory Commission Act for either public private partnership or concession. | | |
| | Recommendations: | There is a conflict between the provisions of this Act and that of the Infrastructure Concession Regulatory Commission Act in terms of which of the institutions created in the two enactments should handle concession of public enterprises. An amendment to the two Acts is imperative. | | |
| 49. | Name of Act: | Public Enterprises Regulatory Commission Act, Cap. P39, Revised Edition, LFN, 2004 | Rating: | Low |
| | Long Title: | An Act to establish the Public Enterprises Regulatory Commission to regulate the activities of public enterprises, and for matters connected therewith. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | Public Enterprises Regulatory Commission. | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no | | |

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| 49. | Name of Act: | Public Enterprises Regulatory Commission Act, Cap. P39, Revised Edition, LFN, 2004 | Rating: | Low |
| | | identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | Nil. | | |

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| 50. | Name of Act: | Public Procurement Act, Cap, P44, LFN, 2004 | Rating: | High |
| | Long Title: | An act to establish the National Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Nigeria; and for related matters. | | |
| | Explanatory Memorandum: | | | |
| | Institution(s) created: | 1. National Council on Public Procurement. 2. Bureau of Public Procurement | | |
| | Gaps/Deficiencies: | <p>1. Although this Act was passed on 9 July, 2007 and the Long Title shows that it was passed to establish the National Council on Public Procurement, among others, this Council has not been established. Instead it is the Federal Executive Council, a total stranger to the Act, that does the work of the Council.</p> <p>2. According to Section 15 of the Act, the provisions of the Act apply to all procurement of goods, works, and services carried out by the Federal Government of Nigeria and all procurement entities; all entities outside the foregoing description which derive at least thirty-five per cent of the funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation share of Consolidated Revenue Fund.</p> <p>3. Similarly the provisions of the Act shall not apply to the procurement of special goods, works and services involving national defence or national security unless the President's express approval has been first sought and obtained.</p> <p>4. However, it is unclear whether a public private partnership transaction is the same thing as the procurement of works, goods and services. It is conceded that the procurement of Transaction</p> | | |

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| 50. | Name of Act: | Public Procurement Act, Cap, P44, LFN, 2004 | Rating: | High |
| | | Advisers is the procurement of service but is entering into a concession agreement or grant of concession. | | |
| | Recommendations: | Harmonisation of this Act with the provisions of the ICRC Act. | | |
| 51. | Name of Act: | Small and Medium Scale Enterprises Development Agency of Nigeria Act; Cap. S19 Revised Edition, LFN 2004. | Rating: | Low |
| | Long Title: | An Act to establish the Small and Medium Scale Enterprises Development Agency to be charged with the responsibility for promoting and facilitating the Development Programmes in the Small and Medium Scale Industries sub-sectors and for connected purposes. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | Small and Medium Scale Enterprises Development Agency of Nigeria. | | |
| | Gaps/Deficiencies: | On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. As such, there are no identified legislative gaps crucial to the Business Environment Legislation review. | | |
| | Recommendations: | Nil. | | |
| 52. | Name of Act: | Standards Organisation of Nigeria Act, 2015 | Rating: | Medium |
| | Long Title: | An Act to consolidate and amend the law as to immigration, to control in Nigeria certain persons, and for matters connected therewith. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) created: | Nil. | | |
| | Gaps/Deficiencies: | There is a lacuna in the Act concerning penalties for offences committed by bodies corporate. While Section 33 recognises that bodies corporate may commit an offence under the Act, all the stipulated penalties are directed at "persons". Owing to the absence of the definition of "person" and the nature of the penalties prescribed, it cannot be assumed that the penalties created against persons will be extended to bodies corporate. | | |
| | Recommendations: | To create certainty, penalties should be introduced specific to body corporates. | | |

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| 53. | Name of Act: | Taxes and Levies (Approved List for Collection) Act, Cap. T2, Revised Edition, LFN, 2004 | Rating: | High |
| | Long Title: | Nil | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Nil | | |
| | Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Part III of the Act lists taxes and levies to be collected by the Local Government Areas ("LGA"). <ol style="list-style-type: none"> a. No. 11 on the list reads as follows: "bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck". b. No. 14 on the list reads as follows: "Radio and television licence fees (other than radio and television transmitter". c. No. 15 on the list reads as follows: "vehicle radio license fees (to be imposed by the local government of the State in which the car is parked)". 2. These levies are out of tune with the present economy. In view of the extent of private broadcasting, its attendant cost to the consumers and the reality that televisions are no longer luxury goods, television licenses should not feature in our laws. Even if not currently practiced, the presence of these provisions in the laws are a disincentive to any investor (local or foreign) who conducts a legal due diligence with a view to doing business in Nigeria. 3. The power of the National Assembly with respect to tax laws in Item D of the Concurrent Legislative List does not extend to prescribing taxes that the Local Government may collect. Therefore the prescriptions in the Act on taxes that Local Governments may collect are unconstitutional. | | |
| | Recommendations: | <ol style="list-style-type: none"> 1. The entire list of collection by the local governments should be reviewed. Where State governments, at their cost, provide services or utilities which should be the exclusive preserve of the LGA, for instance environmental sanitation, it might be | | |

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| 53. | Name of Act: | Taxes and Levies (Approved List for Collection) Act, Cap. T2, Revised Edition, LFN, 2004 | Rating: | High |
| | | <p>prudent to readdress the powers of the LGA to collect fees for such services.</p> <ol style="list-style-type: none"> 2. Deleting some levies such as television and radio licenses will reduce avenues for touts to go around business premises making unofficial demands and creating uncondusive business environments. 3. Unconstitutional provisions of the Act (where the National Assembly prescribes the taxes to be collected by Local Government) should be repealed. | | |

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| 54. | Name of Act: | Trade Marks Act Cap. T. 13 LFN 2004 | Rating: | High |
| | Long Title: | An Act to repeal the Trade Marks Act and make new provisions with respect to trade marks in place thereof and for connected purposes. | | |
| | Explanatory Memorandum: | Nil | | |
| | Institution(s) created: | Office of the Registrar of Trade Marks. | | |
| | Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Section 67 of the Trade Marks Act defines a trademark (except in relation to a certification trade mark) as, "a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person". <p>The Act omits "services" as capable of being the subject of a trademark. The omission implies that protection under the Act does not extent to service providers.</p> <p>In April 2007, the Honourable Minister of Trade and Commerce introduced a regulation (ostensibly pursuant to powers under Sections 42 and 45 of the Act) expanding the classification under the Fourth Schedule of the Trade Marks Regulations covering 34 classes of goods to include service marks "according to the manner and structure" of the Nice Classification. Commentators, however argue, that the Minister acted <i>ultra vires</i>, in that the powers of the Minister to make a</p> | | |

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| 54. | Name of Act: | Trade Marks Act Cap. T. 13 LFN 2004 | Rating: | High |
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regulation regarding classification is limited to "goods" as provided in the Fourth Schedule to the Trade Marks Regulation.

2. There is no clear difference between the registration of a trademark under Parts A and B of the Register of Trademarks. Whilst the determinative factor for registration under Part A is that the mark is "distinctive" (Section 9, Trade Marks Act), the determinative factor for registration under Part B is that the mark must be "distinguishable".

Presumably, a mark that is "distinguishable" is inherently "distinctive".

3. Section 44(5) of the Act, which implies that before a country can be regarded as a Convention country, the President must first make a declaration in that regard, is inconsistent with the provisions of the Paris Convention for the Protection of Industrial Property.

Under section 44 of the Act, any person who has applied for protection for any trademark in a Convention country, or his legal representative or assignee, shall be entitled to registration of his trademark under the Act in priority to other applicants; and the registration shall have the same date as the date of the application in the Convention country.

In order for the trademark filed in a Convention country to enjoy the priority claim, the following conditions must be fulfilled:

- a. The application must be made within six months from the application in the Convention country; and
- b. The proprietor of the Convention trademark shall not recover damages for infringements happening prior to the actual date on which his trademark is registered in Nigeria.

Section 44(4) provides the criteria or circumstances for deeming an application as having been made in accordance with a Convention country:

Where a person has applied for protection for any trade mark by an application which –

- a. *In accordance with the terms of a treaty subsisting between any two or more Convention countries, is equivalent to an application duly made in any one of those Convention countries; or*
- b. *In accordance with the law of any Convention country, is equivalent to an application duly made in that Convention country; he shall be deemed for the purposes of this section to have applied in that Convention country.*

The definition of Convention country in section 45(5) implies that before a country can be regarded as a Convention country, the President must first make a declaration in that regard. There is however no known Presidential declaration in this regard.

4. Under Section 45(1)(g) of the Act, the Minister charged with the responsibility for trademarks may make regulations for extending the time limited by the Act, whether generally or in particular cases and whether at the discretion of the Registrar or otherwise.

However, the wording of Regulation 104 of the Trade Marks Regulation is restrictive. At the relevant part, it confers on the Registrar of Trademarks the power to extend time "for doing any act or proceeding under these regulations not being a time expressly provided for in the act."

The wording of Regulation 104 restricts the power to extend time to acts prescribed in the regulations. Extension of time for acts prescribed by the Trade Marks Act appears to be excluded. In theory, failure to file an opposition to a prospective mark that is confusingly similar with say a well-known mark within the prescribed period of two months (provided by Section 20(1) of the Act) means that the right of opposition would be lost. A confusingly similar mark may, as a consequence, be registered.

5. Nigeria is a signatory to the Paris Convention for the Protection of Industrial Designs. However, the Convention has not been ratified.

The Act in its present iteration does not constitute a significant deterrent to trademark infringements.

| 54. Name of Act: | Trade Marks Act Cap. T. 13 LFN 2004 | Rating: High |
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| Recommendations: | <ol style="list-style-type: none"> 1. The Act should be amended to include services in the definition of a trademark. 2. Sections 9 and 10 of the Act (and other associated Sections) should be repealed and replaced with a provision that is more flexible and enables marks to be represented in any appropriate form using generally available technology. <p>For instance, the proposed revisions to the European Union Trade Mark Regulation, the requirement for trademark applicants to file a graphic representation of the mark has been abolished and replaced with a requirement that the sign applied for "be represented on the register in a manner which enables the competent authorities and the public to determine the precise subject matter afforded to its proprietor".</p> <p>The provision should include a non-exclusive list of signs of which a trademark may consist, including colours and sounds. The mark must, nevertheless, be represented in a manner that is clear, precise, self-contained, easily accessible, intelligible, durable and objective.</p> <p>In theory this should make it easier to file so-called non-traditional trade marks (sound, motion etc.).</p> 3. The Paris Convention for the Protection of Industrial Designs should be ratified so as to enhance the protection enjoyed in Nigeria of nationals or persons domiciled in other signatory States. 4. The Minister should make regulations for extending the time limited by the Act for taking certain steps. 5. As it concerns relief in civil proceedings, the Act should be amended to introduce a provision allowing for the award of additional damages. The provision could be worded similarly to Section 122(1)A of the Australian Patents Act, which provides: <p><i>A court may include an additional amount in an assessment of damages for an infringement of a [trademark] if the court considers it appropriate to do so having regard to:</i></p> <ol style="list-style-type: none"> a. <i>the flagrancy of the infringement; and</i> | |

- b. the need to deter similar infringements of [trademarks]; and*
- c. the conduct of the party that infringed the [trademark] that occurred:*
 - i. after the act constituting the infringement; or*
 - ii. after that party was informed that it had allegedly infringed the [trademark]; and*
- d. any benefit shown to have accrued to that party because of the infringement; and*
- e. all other relevant matters.*

The inclusion of this provision would create a powerful deterrent effect on “would be” counterfeiters due to the increased likelihood of legal action being taken against infringements as well as the greater financial penalties for infringements. Courts can use the additional damages provision in appropriate circumstances to send a clear signal to the market on the financial consequences of infringements.

Further, trademark owners with limited resources, such as small businesses, would be particularly assisted as the increased likelihood of obtaining an award of damages would justify bringing an infringement action and act as a deterrent to infringements against the most vulnerable targets.

Further still, an account of profits is rarely a satisfactory remedy for trade mark owners because of the difficulty associated with proving the profits an infringer has made as a result of his or her infringement. Obtaining a substantial award of compensatory damages can also be problematic in trade mark cases because most counterfeiters do not maintain business records of their counterfeiting activities.

6. The Act should be amended to permit trademark owners to also bring infringement actions in relation to preparatory acts where there is a risk that packaging, labels, tags, security or authenticity features will be used in relation to infringing goods or services. This is to enable proprietors to fight counterfeiting more effectively.
7. The Act should be amended to include border enforcement measures in preventing counterfeit goods/products from

54. Name of Act: Trade Marks Act Cap. T. 13 LFN 2004

Rating: High

entering the channels of commerce in Nigeria. Right holders should have the ability to apply to the Nigerian Customs Services to prevent the importation of the said counterfeit products. This recognises that counterfeit goods/products produced elsewhere are increasingly imported into Nigeria.

If the seized goods are subsequently found not to infringe, the trade mark proprietor may be liable in damages.

8. Consolidate and streamline IP legislation and enforcement in Nigeria. This would involve consolidating the various legislations (Copyright Act, Trade Marks Act, Patent Act, etc.) into a single law with a single enforcement authority.

Appendix B - Reform Bills

| Name of Bill | Review | Rating |
|---|--|--------|
| 1. Federal Competition and Consumer Protection Commission Bill 2015 | Page 75 of the Final Report | High |
| 2. Federal Roads Authority Bill, 2015 | Page 76 of the Final Report | High |
| 3. National Inland Waterways Authority Bill 2015 | See review of the Nigerian Inland Waterways Authority Act. Page 113, Appendix A of the Final Report. | High |
| 4. National Roads Fund Bill 2015 | Page 77 of the Final Report | High |
| 5. National Transport Commission Bill 2015 | Page 74 of the Final Report | High |
| 6. Nigeria Postal Commission Bill 2015 | Page 77 of the Final Report | High |
| 7. Nigerian Ports and Harbours Authority Bill 2015 | See review of the Nigerian Ports Authority Act. Page 117, Appendix A of the Final Report. | High |
| 8. Nigerian Railway Authority Bill 2015 | See review of the Nigerian Railway Authority Act. Page 119, Appendix A of the Final Report. | High |

Appendix C - Bills pending before the Senate

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| 1. | Name of Bill: | Abuja Metropolitan Management Council Bill, 2015 | Rating: | Medium |
| | Long Title: | A Bill for an Act to Provide for the Establishment of the Abuja Metropolitan Management Council and other matters connected therewith. | | |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) Proposed: | The Abuja Metropolitan Management Council | | |
| | Gaps/Deficiencies: | Section 3(1) lists the operational departments while subsection (2) states that the functions of each is as contained in the First Schedule. However, there is no Schedule attached. | | |
| | Recommendations: | <p>The importance of this Bill lies in the fact that it transfers to the proposed institution, certain functions being carried out by some departments of the Federal Capital Development Authority (FCDA). These functions include building permits and approvals, control of adverts, management of markets, etc.</p> <p>As it relates to building permits and approvals, the problem is seldom with the laws but with the bureaucracy. What is needed therefore is a more efficient way of processing approvals, licenses and permits.</p> | | |
| 2. | Name of Bill: | Agricultural Credit Guarantee Scheme Fund Act [Amendment] Bill, 2015. | Rating: | Low |
| | Long Title: | A bill for an Act to amend the Agricultural Credit Guarantee Scheme Fund Act to promote commercial agriculture in Nigeria; ensure credit support for production, storage, processing of target commodities; market and enterprise development; provide concessionary funding for agriculture and for other related matters. | | |
| | Explanatory Memorandum: | This Bill seeks to amend the Agricultural Credit Guarantee Scheme Fund Act to promote commercial agricultural enterprises in Nigeria; ensure credit support 1 production, storage, processing of target commodities; provide market a enterprise development; among other things provide concessionary funding 1 agriculture and for other related matters. | | |
| | Institution(s) Proposed: | Project Management Team. | | |
| | Gaps/Deficiencies: | Two major deficiencies are observable from this Bill: one, the Bill need not specify the name of the Banks to administer the Scheme as it has done section 10 (2). The provision in section 10(1) empowering the CBN to designate according to fixed criteria is good enough. Two, | | |

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|----|---------------------------------|--|----------------|---------------|
| 2. | Name of Bill: | Agricultural Credit Guarantee Scheme Fund Act [Amendment] Bill, 2015. | Rating: | Low |
| | | the number and substance of proposed amendments contained in the Bill warrants a repeal and re-enactment of the Principal Act. | | |
| | Recommendations: | <p>This Bill is important for the development of large scale commercial agriculture in Nigeria as it addresses the issue of access to concessionary funding for agriculture. However, it should be subject to further stakeholder dialogue.</p> <p>Also to be considered is the desirability or otherwise of a legislation in this regard, given that there is already an administrative arrangement on this within the CDN.</p> | | |
| 3. | Name of Bill: | Central Bank of Nigeria Act (Amendment) Bill 2015. | Rating: | Medium |
| | Long Title: | A Bill for an act to amend the Central Bank of Nigeria Act, Cap. C4 LFN, 2007 to enhance the powers of the bank to prohibit transactions with foreign currencies in Nigeria; ensure transparency and accountability in the operations of the bank, and subject the bank's budget and intervention advances to the approval of the National Assembly and for other matters connected therewith. | | |
| | Explanatory Memorandum: | This Bill seeks to amend the Central Bank of Nigeria Act, Cap. C4 LFN, 2007 to prohibit transactions in Nigerian markets and other places of business with any foreign currency to consolidate the Naira, and raise its status as dominant currency authorized for transactions in Nigeria, and means of exchange in international currency exchange bureau; while ensuring transparency and accountability in the operations of the Bank. The Bill also seeks to ensure that the Bank's Budget and Intervention Advances are approved by the National Assembly. | | |
| | Institution(s) Proposed: | Central Bank of Nigeria – Already exists under the Principal Act. . | | |
| | Gaps/Deficiencies: | There is no gap or deficiency observed in this Bill. | | |
| | Recommendations: | There is no foreseen negative impact of this Bill on business environment other than requiring them to trade or carry on business in the local currency. This, in our opinion is a reasonable regulation. | | |

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| 4. | Name of Bill: | Chartered Institute of Capital Market Registrars (Establishment) Bill, 2015. | Rating: | Low |
| | Long Title: | A Bill for an Act to establish the Chartered Institute Of Capital Market Registrars: To regulate and control the practice of share registration; and for related matters. | | |
| | Explanatory Memorandum: | This Bill seeks to establish the Chartered Institute of Capital Market Registrars charged with the responsibility of advancing share registration. | | |
| | Institution(s) Proposed: | Chartered Institute of Capital Market Registrars. | | |
| | Gaps/Deficiencies: | No observable deficiency. | | |
| | Recommendations: | This Bill is concerned with the creation of a professional body and the regulation of professional practice relating to the capital market. The Bill, if enacted, could help to promote professionalism in share registration and therefore, overall capital market efficiency. However, this Bill in our opinion, is not priority Bill for the purpose of this review. | | |

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| 5. | Name of Bill: | Chartered Institute of Facilities Management of Nigeria Bill, 2015 | Rating: | Medium |
| | Long Title: | A Bill for an act to establish Chartered Institute of Facilities Management charged with the responsibilities to among other things register persons seeking to be Facilities Managers, set regulations and standards, inspect facilities, discipline erring members, sanction facilities, advance professionalism in the study and practice of Facilities Management, organizes exposition, publish books, journals, magazines and other periodicals as well as regulate and control the practice of Facilities Profession and related matters. | | |
| | Explanatory Memorandum: | This Bill seeks to establish Chartered Institute of Facilities Management charged with the responsibilities to among other things register persons seeking to be Facilities Managers, set regulations and standards, inspect facilities, discipline erring members, sanction facilities, advance professionalism in the study and practice of Facilities Management, organizes exposition, publish books, journals, magazines and other periodicals as well as regulate and control the practice of Facilities Profession | | |
| | Institution(s) Proposed: | The Chartered Institute of Facilities and Management of Nigeria. | | |
| | Gaps/Deficiencies: | Nil. | | |
| | Recommendations: | Even though this Bill has the primary aim of setting up a professional body for the regulation of facility management in Nigeria, it has included as one of its functions the certification of "private and public | | |

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| 5. | Name of Bill: | Chartered Institute of Facilities Management of Nigeria Bill, 2015 | Rating: | Medium |
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facilities to ensure their standard and compliance with relevant laws in the development and management of such properties” (S. 4(b)). It further proposes to charge a fee for this service. This implies some form of cost to property owners and developers. The Bill should be subject to wider stakeholders’ consultation to determine the added value vis-à-vis the additional cost it imposes on business.

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| 6. | Name of Bill: | Commercial Agriculture Credit Scheme Bill, 2015. | Rating: | High |
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Long Title: A Bill for an act to provide a regulatory framework for the Agriculture Credit Fund which shall promote commercial agriculture in Nigeria; ensure credit support for production, storage and processing of target commodities, develop market and agricultural enterprise and for other related matters.

Explanatory Memorandum: This bill seeks to provide a regulatory framework for the agricultural credit fund which shall promote commercial agriculture in Nigeria, ensure credit support for production, storage and processing of target commodities, develop market and agricultural enterprise and for other related matters.

Institution(s) Proposed: The Project Management Team of the Commercial Agriculture Credit Scheme.

Gaps/Deficiencies: Nil

Recommendations: This Bill has similar provisions as SB 17 (S/N 6 above). But it has dispensed with naming the Banks to administer the Scheme but rather provided for four Banks to be determined by the CBN through a competitive process.

This Bill should be considered in place of SB 17 as it seeks to achieve the same objectives but it proposes a fresh enactment, thereby dispensing with the clumsiness occasioned by the “overbearing” amendment proposed in the former.

Also to be considered is the desirability or otherwise of a legislation in this regard, given that there is already an administrative arrangement on this within the CBN.

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| 7. | Name of Bill: | Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) (Amendment) Bill, 2015. | Rating: | High |
| | Long Title: | A Bill for an act to amend the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act Cap C34 Laws of the Federation and for other matters connected therewith. | | |
| | Explanatory Memorandum: | The Bill seeks to amend the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act Cap C34 Laws of the Federation 2004 to increase the penalties for offences under the act and make provisions for forfeiture of assets from proceeds of crime as well as compensation to victims. | | |
| | Institution(s) Proposed: | Nil. | | |
| | Gaps/Deficiencies: | There is no gap or deficiency observed in this Bill. | | |
| | Recommendations: | This Bill is important in that it seeks to address the malignant issue of fake and counterfeit drugs which is not only bad for consumers but also bad for genuine businesses. This Bill merits attentions and support. | | |

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|-----------|--------------------------|---|----------------|---------------|
| 8. | Name of Bill: | The Counterfeit Goods Bill, 2015. | Rating: | Medium |
| | Long Title: | A Bill for an Act to introduce measures aimed against the trade in counterfeit goods so as to further protect owners of trademarks and copyright under against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature (called "counterfeit goods") into the channels of commerce and for other matters connected therewith. | | |
| | Explanatory Memorandum: | This Bill seeks to introduce measures aimed against the trade in counterfeit goods so as to further protect owners of trademarks, copyright and certain marks under the Patent Act against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature (called "counterfeit goods") into the channels of commerce for that purpose to prohibit certain acts in relation to counterfeit goods as well as the possession of counterfeit goods in certain circumstances to create offences in that regard and prescribe penalties in relation thereto to. | | |
| | Institution(s) Proposed: | Nil. | | |

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| 8. | Name of Bill: | The Counterfeit Goods Bill, 2015. | Rating: | Medium |
| | Gaps/Deficiencies: | No deficiency observed. | | |
| | Recommendations: | <p>This Bill addresses the issue of counterfeiting which is a major threat to intellectual property protection in Nigeria. The Bill focuses on criminal liability for intellectual property enforcement. It is worthy to note that this Bill is a replica of the Counterfeit Goods Act of South Africa hence it may not have taken into consideration the existence of criminal liability under the different Nigerian laws on Intellectual Property (IP). For example, the Copyright Act, Merchandise Marks Act, Trade Malpractice Act, etc. have provisions criminal liability.</p> <p>However, a fundamental issue that needs to be considered with respect to IP laws in Nigeria is the need to consolidate and streamline IP legislation and enforcement in Nigeria. This would involve consolidating the various legislations (Copyright Act, Trade Marks Act, Patent Act, etc.) into a single law with a single enforcement authority.</p> <p>This would allow for modernization, coherence and internal synergy in IP law and enforcement in Nigeria. It should be noted that most IP laws date more than 50 years (Trade Mark Act is 1965; Patents and Designs Act is 1971, Merchandise Marks Act is 1956).</p> <p>In fact, this proposal for consolidation and modernisation was once put forward by the Federal Ministry of Commerce and Industry (as it then was) to create the Intellectual Property Commission to absorb the Nigeria Copyrights Commission, The Patent and Trade Marks Registry of the Commercial Law Department of the Ministry of Trade and Investment. In our opinion, this course of action is preferred to the passing of further piece meal legislation on intellectual property enforcement in Nigeria.</p> | | |
| 9. | Name of Bill: | Deep Offshore and Inland Basin PSC Bill | Rating: | Low |
| | Long Title: | <p>A Bill for an Act to repeal the Deep Offshore And Inland Basin Production Sharing Contract Decree N&9 1999 Act Cap D3 LFN 2004 on environmental pollution & protection and enact stringent environmental protection legislation for proper enforcement of environmental degradation, abandonment & decommissioning and for other related matters.</p> | | |

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| 9. | Name of Bill: | Deep Offshore and Inland Basin PSC Bill | Rating: | Low |
| | Explanatory Memorandum: | Nil. | | |
| | Institution(s) Proposed: | Nil. | | |
| | Gaps/Deficiencies: | This 'Bill' is so inelegant in structure and language (it actually has no short title) that it is difficult to understand what it proposes aside from the long title. | | |
| | Recommendations: | It is suspected that the proposal contained in the "Bill" would be of importance to the oil and gas sector, hence the need to consult with the Sponsor with the view to finding out the intention and redrafting this Bill accordingly. | | |

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| 10. | Name of Bill: | Deep Offshore and Inland Basing Production Sharing Contract Act CAP D3 LFN 2004 (Amendment) Bill, 2005. | Rating: | Low |
| | Long Title: | A Bill for an Act To Amend The Deep Offshore And Inland Basin Sharing Contract Cap D3 LFN 2004 and for other matters connected thereto. | | |
| | Explanatory Memorandum: | None on the Bill. However, the content of the Bill reveals that it seeks to increase the royalty payable in respect of Deep Offshore Production Sharing Contracts. | | |
| | Institution(s) Proposed: | Nil. | | |
| | Gaps/Deficiencies: | There is no observable gap or deficiency on the face of the Bill. | | |
| | Recommendations: | This Bill is important for operators in the oil and gas sector. Increase in royalty would definitely affect their operations, especially in this era of dwindling investment in the sector caused by the slump in global oil prices. It is doubtful whether the proposed rates of increase is the right strategic course for Nigeria at this time. | | |
| | | The two Bills should be harmonized. | | |

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| 11. | Name of Bill: | Energy Commission Act (Amendment) Bill, 2015. | Rating: | Low |
| | Long Title: | A Bill for an act to amend the Energy Commission of Nigeria Act to grant priority to the development and promotion of new and renewable energy, energy efficiency and conservation, and provide for other matters relating thereto. | | |

| 11. Name of Bill: | Energy Commission Act (Amendment) Bill, 2015. | Rating: | Low |
|--------------------------|---|---------|-----|
| Explanatory Memorandum: | <p>This Bill seeks to amend the Energy Commission of Nigeria Act to confer power on the Commission to accord priority to promote, regulate and standardize development and utilization of Renewable Energy (RE), energy efficiency and conservation for sustainable energy development and their attendant effects on the environment and climate.</p> <p>This Bill is also to make the Commission the National Focal Point for renewable energy, energy efficiency and conservation.</p> | | |
| Institution(s) Proposed: | Energy Commission of Nigeria – Already in existence. | | |
| Gaps/Deficiencies: | <p>The observable deficiency in this Bill is that it creates a potential for conflict between the Energy Commission and the Nigerian Electricity Regulatory Commission in that it seeks to vest powers of licensing and regulating of renewable energy (hitherto vested in the NERC) on the Energy Commission. It is doubtful whether such statutory reassignment of powers is justified in the absence of any strong evidence of failure on the part of the NERC. Also, its requirement for “registered energy companies” to contribute 0.25% of their turnover to the Renewable Energy Fund (S. 17(1) e) translates to a tax on business.</p> | | |
| Recommendations: | <p>It is recommended that the Energy Commission of Nigeria be scrapped and the functions vested on the NERC (which already performs similar functions), the Rural Electrification Agency, and other MDAs performing similar functions at the moment.</p> | | |

| 12. Name of Bill: | Food Security Bill, 2015. | Rating: | Low |
|--------------------------|--|---------|-----|
| Long Title: | A Bill for an act to make provision from freedom from hunger and the right to adequate food of acceptable quality; the right of every child to basic nutrition and for connected purposes. | | |
| Explanatory Memorandum: | This Bills seeks to Make Provision from Freedom from Hunger and the Right to Adequate Food of Acceptable Quality; the Right of Every Child to Basic Nutrition and for Connected Purposes. | | |
| Institution(s) Proposed: | The Food Security Agency. | | |
| Gaps/Deficiencies: | A major deficiency of this Bill is that it has not stipulated how the food to be distributed by under this scheme would be sourced by the government. | | |

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| 12. | Name of Bill: | Food Security Bill, 2015. | Rating: | Low |
| | | In comparison, the National Food Security Act of India, 2013 mandates the government to buy food from farmers at a guaranteed price and distribute same to eligible individuals/households at a subsidized price. | | |
| | | While there are arguments for and against the subsidy programme, it is important to note that it has an immediate impact on the income of small holder farmers as they get a guaranteed price for their produce. | | |
| | Recommendations: | This Bill has not mentioned anything that is of interest to business and private sector development in Nigeria. However, it may be useful to consider fashioning it after the Indian version, which while providing food for the poorest of the citizens also puts money in the pocket of the local farmers. | | |

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|-----|--------------------------|---|---------|--------|
| 13. | Name of Bill: | Hydroelectric Power Producing Area Development Commission Act (Amendment) Bill, 2015. | Rating: | Medium |
| | Long Title: | A Bill for an act to amend the hydro power producing area development commission (HYPPADEC) act and other matters related thereto. | | |
| | Explanatory Memorandum: | This Bill seeks to reduce the percentage of total profit margin accruing from revenue generated by Electricity Generation Companies (GENCO'S) and any other company or authority from the operation of any hydro electric dams in any member state of the Commission. | | |
| | Institution(s) Proposed: | The Hydroelectric Power Producing Area Development Commission established under the Principal Act. | | |
| | Gaps/Deficiencies: | Nil. | | |
| | Recommendations: | This Bill deserves attention from the business community, especially the Electricity Generating Companies (GENCOS) as it seeks to reduce their contribution to the Fund set up under the Principal Act, from 30% to 10%. | | |
| | | It is obviously a welcome development from the perspective of business. | | |

| 14. | Name of Bill: | Integrated Infrastructure Development Bill, 2015. | Rating: | Low |
|--------------------------|--|---|---------|-----|
| Long Title: | A Bill for an Act to provide for the facilitation and co-ordination of public infrastructure development. | | | |
| Explanatory Memorandum: | This Bill seeks to provide for the facilitation and co-ordination of public infrastructure development to ensure that infrastructure development in the Country is given priority in planning, approval and implementation; to ensure that the development goals of the Country are promoted through infrastructure development to broaden the scope of funding for infrastructural development and to improve the management of such infrastructure during all life-cycle phases, including planning, approval, implementation and operations; and to provide for matters incidental thereto. | | | |
| Institution(s) Proposed: | National Integrated Infrastructure Coordinating Commission. | | | |
| Gaps/Deficiencies: | <p>This Bill is a replication of the South Africa Integrated Infrastructure Bill.</p> <p>A major deficiency is that it has not taken into account the existing laws and governance structure in Nigeria. For example, the provisions of the Infrastructure Concession and Regulatory Commission Act, Public Procurement Act, etc.</p> | | | |
| Recommendations: | <p>This Bill is important to the extent that it seeks to improve the delivery of infrastructure which is necessary for business to thrive.</p> <p>It is doubtful whether this proposal is needful in the Nigerian context. A more preferred path would be an administrative arrangement under the leadership of the line ministry for the coordination of infrastructure delivery.</p> | | | |

| 15. | Name of Bill: | Micro Finance Bill, 2015. | Rating: | High |
|-------------------------|---|---------------------------|---------|------|
| Long Title: | A Bill for an Act of Parliament to make provision for the licensing, regulation and supervision of micro finance business in Nigeria and for connected purposes. | | | |
| Explanatory Memorandum: | This Bill is to provide a legal framework for the licensing, regulation and supervision of microfinance institutions. The proposed framework is particularly crucial in relation to deposit-taking microfinance institutions, which take deposits from members of the public on a day-to-day basis. The purpose of this Bill is to ensure that these institutions are financially safe, sound and stable in the interest of the public. | | | |

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|-----|--------------------------|--|---------|------|
| 15. | Name of Bill: | Micro Finance Bill, 2015. | Rating: | High |
| | Institution(s) Proposed: | Nil. | | |
| | Gaps/Deficiencies: | No observable deficiency. | | |
| | Recommendations: | <p>The regulatory framework proposed by this Bill is already within the mandate of the Central Bank of Nigeria. The Central Bank acting under Section 33 subsection (1)(b) of the CBN Act 7 of 2007 and in pursuance of the provisions of Sections 61-63 of the Banks and Other Financial Institutions Act (BOFIA) 25 of 1991 (as amended) has developed and implements a Regulatory and Supervisory Guideine for Micro Finance Banks in Nigeria. In our opinion, there are no issues with the regulation of MFBs in Nigeria requiring separate regulatory intervention. It is noteworthy that this Bill is fashioned after a similar Bill from Kerya where the existing mandate of the Central Bank and the regulatory needs may not be the same as in Nigeria.</p> | | |
| 16. | Name of Bill: | National Agricultural Land Development Authority Act (Amendment) Bill 2015. | Rating: | Low |
| | Long Title: | A Bill for an act to amend the National Agricultural Land Development Authority Act Cap N4 Laws of the Federation of Nigeria 2004 by increasing its membership and functions for strategic operation and interest and to vest in the authority powers to establish farm settlements across the country for the purpose of attaining food sufficiency and for other matters connected therewith. | | |
| | Explanatory Memorandum: | This Bill seeks to amend the National Agricultural Land Development Authority Act Cap N4 Laws of the Federation 2004 to increase its membership and functions for strategic operation and to vest the Authority powers to establish Farm settlements across the Country. | | |
| | Institution(s) Proposed: | Existing National Agricultural Land Development Authority sought to be restructured by the Bill. | | |
| | Gaps/Deficiencies: | No observable gap or deficiency. | | |
| | Recommendations: | <p>The proposal contained in this Bill should form part of a larger dialogue on agricultural development in Nigeria. The objectives of establishing farm settlements in Nigeria, certification and quality assurance on farm inputs and produce are important to the development of the sector in Nigeria.</p> <p><i>However, there are extant laws and administrative arrangements that address most of the proposals contained in this Bill.</i></p> | | |

| 17. Name of Bill: | National Development Bank of Nigeria (establishment, etc.) Bill 2015. | Rating: | High |
|--------------------------|---|---------|------|
| Long Title: | A Bill for an act to repeal the Bank Of Industry Act, The Bank for Commerce and Industry Act and The National Economic Reconstruction Fund Act and established the National Development Bank Of Nigeria and for other Connected Purposes, Bill 2015. | | |
| Explanatory Memorandum: | This Bill seeks to repeal the Bank of Industry Act, the Bank of Commerce and Industry Act and the Economic Reconstruction Fund and establish the National Development Bank of Nigeria to provide for the development and growth of Nigeria Economy and to take over the duties hitherto performed by the Nigeria Bank for Commerce and Industry, the Bank of Industry and the National Economic Reconstruction Fund among other things. | | |
| Institution(s) Proposed: | The National Development Bank of Nigeria. | | |
| Gaps/Deficiencies: | There is no gap or deficiency observed in the Bill. | | |
| Recommendations: | This Bill is important to the business environment in Nigeria because it seeks to streamline the operation of development finance institutions. This Bill merits priority attention as its passage would ensure that businesses, especially SMEs, have access to financing at reasonable interest rate. | | |

| 18. Name of Bill: | National Payment System Bill, 2015. | Rating: | High |
|--------------------------|---|---------|------|
| Long Title: | A Bill for an Act to provide for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in the Federal Republic of Nigeria and to provide for connected matters. | | |
| Explanatory Memorandum: | Nil. | | |
| Institution(s) Proposed: | Nil. | | |
| Gaps/Deficiencies: | This Bill seeks to create a legal framework where none is in existence at the moment. The present system runs on CBN regulations and guidelines. | | |
| Recommendations: | This Bill deserves attention as it has been indicated by CBN that such a legal framework is necessary for the smooth functioning of the cashless policy. | | |

| 19. | Name of Bill: | National Planning Process Bill, 2015. | Rating: | Medium |
|--------------------------|---|---------------------------------------|---------|--------|
| Long Title: | A Bill for an Act to provide for National Planning Process; and for other matters connected therewith. | | | |
| Explanatory Memorandum: | This Bill seeks to provide for a process of National Planning and for the compliance with the provisions of a National Development Plan for the overall objective of achieving rapid national development. | | | |
| Institution(s) Proposed: | Vests powers on the already existing National Planning Commission. | | | |
| Gaps/Deficiencies: | No deficiency observed. | | | |
| Recommendations: | This Bill does not relate directly to the business environment in Nigeria but it is important to the extent that lack of long term national plan backed by law is a major cause of policy inconsistency. The major benefit of this Bill lies in creating a predictable policy environment for businesses to thrive. | | | |

| 20. | Name of Bill: | National Security Tax Fund Bill | Rating: | High |
|--------------------------|--|---------------------------------|---------|------|
| Long Title: | A Bill for an act to establish the National Security Tax Fund. | | | |
| Explanatory Memorandum: | This Bill seeks to establish a National Security Tax Fund to provide adequate funding for the Security Agencies for crime detection and prevention. This Bill also seeks to devise new means by which the Security agencies can receive extra funds in addition to the existing Federation Allocation in order to make these agencies more efficient in ensuring the safety of lives and property throughout the Federation. | | | |
| Institution(s) Proposed: | National Security Tax Fund Board of Trustees. | | | |
| Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Section 1 of the Bill is headed "Imposition of Police Tax" but goes further to create the National Security Tax Fund. This creates uncertainty. This uncertainty is projected in Section 7 which in providing for the disbursement of the Fund lists the Nigerian Civil Defence Service, State Security Service, Nigerian Prisons and Nigeria Fire Service alongside the Nigerian Police Fund as beneficiaries of the tax. Consequently, although the definition section defines the Bill as the Police Tax Act, the Bill cannot be said to be so. Still in the first section, there is no actual creation of the tax sought to be collected. The Bill provides that there shall be a National Security Tax Fund which shall be collected, assessed and administered in accordance with the Bill. A clearer presentation would be to create a tax and not a fund. Subsection 2 however impliedly creates the tax by stating the tax base. | | | |

| 20. | Name of Bill: | National Security Tax Fund Bill | Rating: | High |
|-----|---------------|---------------------------------|---------|------|
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2. Section 1(2) provides that the tax shall be at the rate of 5% on all goods and services provided by any Company in Nigeria. It is not clear if the intention is to reproduce the Value Added Tax already in operation in Nigeria. However, unlike the Value Added Tax Act, there are no exempt or zero rated goods and services listed under the Act. Further, the tax is borne by the provider of the goods and service and not the consumer. In addition to compounding the problem of multiple taxes, this will naturally increase the cost of goods and services and add to the already heavy burden borne by the Nigerian tax payer, thus encouraging more incidences of tax avoidance and evasion.
3. Section 1(3) provides that the assessable profit of a Company shall be ascertained under the Companies Income Tax and the Petroleum Profits Tax Act as the case may be. The tax shall be charged on the assessable profits of companies registered in Nigeria. This provision is very blur, it is not clear if the intention of the Bill is to exempt companies which have no assessable profits from the tax. It is also not clear what relationship the Bill seeks to draw out between goods and services offered by a company and its assessable profits.
4. Section 4 (2) provides that the members of the Board of Trustees shall be appointed by the President on the recommendation of the Minister of Interior subject to the confirmation of the Senate. However, by Section 11, the Executive Secretary shall be appointed by the President on the recommendation of the Minister of Police Affairs. While this is not a gap, it is not clear if the Bill intentionally assigns different Ministers to make recommendations on appointment.
5. Section 8(4) a-c brings firms, partnerships and associations within the purview of companies registered in Nigeria, thus contradicting the reference to Companies Income Tax Act and Petroleum Profits Tax Act in Section 1 of the Bill which implies Companies registered under Part I of the Companies and Allied Matters Act.
6. Section 8 defines offences as failure to comply with the Act. Section 9 creates penalties of N500, 000 (Five Hundred Thousand) or imprisonment for a term of three years in the first instance and

| 20. Name of Bill: | National Security Tax Fund Bill | Rating: High |
|-------------------------|--|--------------|
| | <p>N100, 000, 000 (One Hundred Million) and or imprisonment for a term of five years in subsequent instances. The Bill however scarcely defines an offence. This creates an absurdity as the failure to register for the tax may bear the same penalty as a failure to remit the tax or do any other act incidental to complying with the Bill. Further, there appears to be no justification for a penalty of N100, 000, 000.</p> | |
| <p>Recommendations:</p> | <ol style="list-style-type: none"> 1. This Bill provides that in event of inconsistency it shall prevail over the Companies Income Tax Act and the Petroleum Profit Tax Act; as such much attention should be paid to it. 2. The Bill should be withdrawn for the following reasons. <ol style="list-style-type: none"> a. The Bill is out of tune with the realities of Nigeria's economy and is unjustified. The Budget already makes provision for Security and Defence and the Bill thus not further the national effort on the point. b. This Bill if passed into law would be counter-productive as it would not create the much needed accountability as far as security revenue is concerned. It would also encourage more incidences of tax avoidance and evasion and add to the burden of the companies currently within the tax bracket. c. From the explanatory memorandum, the Bill appears aimed at improving crime detection and safety of lives and property. As far as taxation is concerned, it digresses from the Nation's need to aim at identifying more taxable individuals and companies which if identified would generate more revenue for the Nation. <p>The Bill is fraught with uncertainty and would discourage foreign investment to the Nation.</p> | |

| 21. Name of Bill: | Nigeria Agricultural Processing Zones Bill, 2015. | Rating: | Low |
|--------------------------|--|---------|-----|
| Long Title: | A Bill for an Act provide for the establishment, development operation maintenance, management and administration of the Nigerian Agricultural Processing Zones and for matters connected therewith. | | |
| Explanatory Memorandum: | This Bill seeks to provide for the establishment of the Nigerian Agricultural Processing Zones that will coordinate the establishment of Processing Zones in the geo political zones of the federation and facilitate a conducive environment and incentives for Agricultural development in Nigeria. The Bill also seeks to revive the neglected Agriculture sector institute value addition, diversify the economy through processing of Agriculture products and ensuring a minimum price guarantee. | | |
| Institution(s) Proposed: | The Nigerian Agricultural Processing Zones. | | |
| Gaps/Deficiencies: | The only deficiency in this Bill is found in S.14, where subsection 1 prohibits any person to "enter, remain in or reside in a Zone without the prior permission of the Authority" and subsection 2 states the penalty as revocation of his permit by the authority. If the offence is entering without permission, then there is no "permit" to be revoked. Another punishment should be prescribed for the offence. | | |
| Recommendations: | <ol style="list-style-type: none"> 1. This Bill is similar in some respect with the National Agricultural Land Development Authority (Amendment Bill). While the latter is concerned with agricultural settlements generally, the former is concerned with "settlements" in form of EPZs. 2. The Nigeria Export Processing Zones Authority Act, Cap N107, LFN, 2004 already provides for the establishment and regulation of all categories of Export Processing Zones, and in fact the Nigerian Export Processing Zones Authority created under the Act has already licensed few processing zones focused on farm/agricultural production. 3. In as much as the establishment of EPZs is an export promotion strategy used by many nations, including Nigeria, there is need to streamline the institutional arrangements for agricultural development in Nigeria. The focus should include avoiding multiplicity of agencies with overlapping mandates. | | |

| 22. | Name of Bill: | Nigeria Agricultural Quarantine Service (Establishment) Bill, 2015. | Rating: | High |
|--------------------------|--|---|---------|------|
| Long Title: | A Bill for an Act to establish Nigeria Agricultural Quarantine Service and Matters Connected therewith. | | | |
| Explanatory Memorandum: | None on the Bill. However, the Bill seeks to provide a statutory backing to the operations of the National Agricultural Quarantine Services set up by the Ministry of Agriculture and Rural Development whose main function is the enforcement of regulations relating to plant and animal health, especially in the context of import and export of live animals and plants. | | | |
| Institution(s) Proposed: | The Nigeria Agricultural Quarantine Service. | | | |
| Gaps/Deficiencies: | There is no gap or deficiency observed in this Bill. | | | |
| Recommendations: | This Bill is of importance to businesses engaged in the business of import and export of live animals, fisheries and plants. It provides for the enforcement of sanitary (animal health) and phytosanitary (plant health) regulations in national and international instruments, like the WTO rules. The Bill is very important for the business environment in Nigeria. | | | |

| 23. | Name of Bill: | Nigeria Industrial Revolution Plan Bill, 2015 | Rating: | Medium |
|-------------------------|--|---|---------|--------|
| Long Title: | A Bill for an Act to provide for the rapid build-up of industrial capacity in Nigeria and to promote competitiveness of Nigeria's manufactured goods and products and for other related matters. | | | |
| Explanatory Memorandum: | This Act seeks to establish a legal and institutional framework for the implementation of the Industrial Revolution Plan and the National Enterprise Development Programme of the Federal Government to provide for their implementation, continuity and sustainability. It seeks to ensure ownership of the processes, plans activities of the Industrial Plan and the Programme by relevant Ministries, Department and agencies of Government for the overall realization and delivery of the Industrial Plan and the Programmes. The Act involves participation by States of the Federation in the Industrial Plan and the Programme and has taken due cognizance of the concurrent nature of the responsibility for industrialization between the Federal and State Governments under the 1999 Constitution (as altered). The Act also offers assistance to States of the Federation to encourage them adopt | | | |

| 23. | Name of Bill: | Nigeria Industrial Revolution Plan Bill, 2015 | Rating: | Medium |
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| | | similar legislation in carrying out the Industrial Plan and the Programme in States of the Federation. | | |
| | Institution(s) Proposed: | The Presidential Advisory Committee; the Steering Committee, etc. | | |
| | Gaps/Deficiencies: | There is no gap or deficiency on the face of the Bill. | | |
| | Recommendations: | This Bill is an attempt to provide statutory backing to the National Industrial Revolution Plan (NIRP) of the last administration in Nigeria. If passed it would lock in the policy initiatives contained in the NIRP and ensure the continued implementation. However, the industrial policy goals of the present administration is unknown, hence leaving everyone in doubt as to whether the NIRP would still be implemented or not. | | |

| 24. | Name of Bill: | Nigeria Railway Authority Bill, 2015. | Rating: | High |
|-----|--------------------------|---|---------|------|
| | Long Title: | A Bill for an act to repeal the Nigerian Railway Corporation Act, Cap N129, Laws of The Federation Of Nigeria, 2004, and enact the Nigerian Railway Act, to provide for the Regulation of the Railway Sector, and for related matters. | | |
| | Explanatory Memorandum: | This Bill seeks to repeal the Nigerian Railway Corporation Act Cap N129 LFN 2004 and enact the Nigeria Railway Authority Act to provide for the establishment of the Nigerian Railway Authority, the introduction of private sector participation in the provision of rail services, the regulation of the railway sector and for matters connected therewith. | | |
| | Institution(s) Proposed: | Nigerian Railway Authority. | | |
| | Gaps/Deficiencies: | There is no gap or deficiency observed in this Bill. | | |
| | Recommendations: | This is one of the critical Reform Bills that need to be fast-tracked through the legislative process. This Bill holds the key to the accelerated development of the rail transport system in Nigeria by opening up the system to private sector participation and providing a sound regulatory framework. An efficient rail transport system is necessary for the movement of persons and goods within the country in a cost effective manner, thereby enhancing the profitability of MSMEs. | | |

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| 25. | Name of Bill: | Nigerian Solid Minerals Development Bank Bill, (Establishment) 2015. | Rating: | Low |
| | Long Title: | A Bill for an act to establish the Nigerian Solid Minerals Development Bank charged with the responsibility for providing facilities and development for the solid mineral sector and other related matters. | | |
| | Explanatory Memorandum: | The Bill seeks to provide palliative measures that will seek to provide facilities that will ease the hardship faced by the entrepreneurs in the mining sector, it will also seek to create an enabling environment that will diversify the Nigerian Economy and reduce the over reliance on the oil sector. | | |
| | Institution(s) Proposed: | The Nigerian Solid Mineral Resources Bank. | | |
| | Gaps/Deficiencies: | No observable deficiency. | | |
| | Recommendations: | <p>Access to finance, especially of a concessionary nature, is critical to private sector development and doing business in Nigeria. To that extent, this is an important Bill.</p> <p>However, the proposal contained in this Bill is already within the mandate of the Bank of Industry (BOI). The question, therefore, would be on the desirability or otherwise of creating multiple agencies/institutions with similar mandates when a single institution can be made to handle those mandates. This should be the basis of the debate on this Bill.</p> <p>Moreover, the proposal on the National Development Bank of Nigeria Bill seeks to consolidate the operations of the BOI with other development finance institutions. It is our opinion that robust development finance institutions as proposed under the National Development Bank of Nigeria Bill would better serve the purposes of this Bill.</p> | | |

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| 26. | Name of Bill: | The Nigerian Tourism Development Corporation (Amendment) Bill 2015. | Rating: | Medium |
| | Long Title: | A Bill for an Act to amend the Nigerian Tourism Development Corporation Act to reposition the Corporation, to make it more effective and for other connected purposes. | | |
| | Explanatory Memorandum: | The bill seeks to amend the Nigerian Tourism Development Corporation Act to reform the tourism sub sector and to also further strengthen and empower the Corporation to be able to effectively | | |

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| 26. | Name of Bill: | The Nigerian Tourism Development Corporation (Amendment) Bill 2015. | Rating: | Medium |
| | | carry out its statutory responsibilities of promoting tourism and regulating the sector. | | |
| | Institution(s) Proposed: | The Nigerian Tourism Development Corporation - Already in existence. | | |
| | Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. The major problem with this Bill is that it seems not to have taken into the account the decision of the Supreme Court to the effect that the licensing and regulation of tourism is within the powers of the state governments. (AG Federation Vs AG Lagos, Judgment delivered on 19/07/2003). 2. The proposed amendment to S.4(3) of the NTDC Act as contained in Section 3 of this Bill raises the problem of encroaching into the mandate of other government agencies. The wording "assist in the development of" (subsection 3b) is where the problem resides because it doesn't define how the NTDC is to assist the government agencies with primary mandates for those functions. | | |
| | Recommendations: | <p>A well-regulated tourism sector is important for the fact that tourism is not just a business on its own but also a business support service. Tourism is one sector where SMEs can thrive with the potential for employment generation.</p> <p>In view of the Supreme Court decision, the amendment needed for the NTDC Act is to bring it in line with the decision and particularly, to set out regulations regarding "tourism traffic" which is in the Exclusive List and which the Supreme Court has defined as the movement of tourists especially foreign ones into and around Nigeria.</p> <p>There is also a need for a coordinating mechanism for the harmonization of standards across the states since the NTDC has lost the power to classify or regulate operators in the sector.</p> | | |

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| 27. | Name of Bill: | The Oil and Gas Export Free Zone Act CAP 05 LFN 2011 (Amendment) Bill, 2015. | Rating: | High |
| | Long Title: | A Bill for an act to amend the Oil and Gas Export Free Zone Authority Act Cap 05 Laws Of The Federation Of Nigeria 2011 with a view to provide for the designation and establishment of Oil and Gas Free Zones and Sub-Zones in Nigeria and for related matters. | | |

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| 27. | Name of Bill: | The Oil and Gas Export Free Zone Act CAP 05 LFN 2011 (Amendment) Bill, 2015. | Rating: | High |
| | Explanatory Memorandum: | This Bill seeks to amend the oil and gas free zones and sub-zones Act Cap 05 LFN to provide for the designation and establishment of oil and gas free zones and sub-zones among others. | | |
| | Institution(s) Proposed: | Oil and Gas Free Zone and Sub-Zones Authority. | | |
| | Gaps/Deficiencies: | This Bill ostensibly seeks to strengthen the operation of oil and gas export free zones in Nigeria. A major concern however, is the amendment to section 12 of the Principal Act, which seeks to restrict the handling of oil and gas cargoes to the designated free zone terminals in Onne, Warri and Calabar Ports. This effectively excludes other seaports and creates some form of monopoly for the operators of those designated terminals. | | |
| | Recommendations: | This Bill should be subject to more intense stakeholders' consultation. Particular consideration should be given to the views of the Seaport Terminal Operators Association of Nigeria who are the concessionaires operating other seaports currently handling oil and gas related cargoes, especially in the Lagos axis. | | |

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| 28. | Name of Bill: | The Trade Malpractice (Miscellaneous Offences) Act (Amendment) Bill, 2015. | Rating: | Low |
| | Long Title: | A Bill for an Act to amend the Trade Malpractices Act CAP T12 Laws of the Federation of Nigeria 2011 and for other matters connected thereto. | | |
| | Explanatory Memorandum: | This bill seeks to amend Amendment of the Trade Malpractices Act CAP T12 LFN 2011 to provides for proper regulation of Trade malpractices and protect consumers in relation to the supply of goods and services in Nigeria. | | |
| | Institution(s) Proposed: | Nil. | | |
| | Gaps/Deficiencies: | This major deficiency of this Bill is that it is redundant. The issues addressed in the Principal Act have been addressed in the Consumer Protection Act, Cap C25, which is also up for repeal and re-enactment as the Federal Competition and Consumer Protection Bill, 2015. Other issues are addressed by the Weight and Measures Act and other laws relating to contractual and professional transactions. | | |
| | Recommendations: | The Principal Act needs to be repealed and provisions of the Act and this Amendment Bill should be incorporated into the existing ongoing re-enactment of the Consumer Protection Act. Duplicity of legislations is a disincentive to investment. | | |

Appendix D - Bills pending before the House of Representatives

| 1. | Name of Bill: | A Bill for the Bio-fuels Energy Policy Act | Rating: | High |
|--------------------------|--|--|---------|------|
| Long Title: | A Bill For An Act To Provide A Policy Framework For The Development Of Bio-Fuels Energy Industry In Nigeria; Establish The Bio-Fuels Energy Regulatory Commission; Establish The Bio-Fuels Research Agency; And For Matters Connected Therewith. | | | |
| Explanatory Memorandum: | This Bill seeks to provide for the bio-fuels energy development policy, the establishment of the Bio-fuels Energy Regulatory Commission and as well the Bio-fuel Research and Development Agency for the purpose of developing and utilizing bio-fuels for automotive and other uses in Nigeria. It also seeks to amend the Petroleum Technology Development Fund Act to ensure that certain percentage of monies in the Petroleum Technology Development Fund is transferred to the Bio-fuels Research and Development Fund. | | | |
| Institution(s) Proposed: | Bio-fuels Energy Regulatory Commission; Bio-fuels Research Agency. | | | |
| Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. Section 25 of the Bill provides that Bio-fuels companies shall be levied 0.25 of their revenues for the Bio-fuels Research and Development Fund. It is not clear if revenues refer to profits or total income. Further, as a registered company, bio-fuel companies would already be subject to various taxes and levies and any additional levy may act as a disincentive to an industry that is being encouraged to take off. 2. Section 26 amends the Petroleum Technology Development Fund Act. Such an amendment should be made directly to the Principal Act. 3. Section 34 exempts Bio-fuel companies from taxation, withholding tax and capital gains tax as imposed under sections 78-81 of the Companies Income Tax Act with respect to foreign loans, dividends; and services rendered from outside Nigeria. This section is not clear on whether the Bio-fuel companies are exempted from withholding other companies' taxes or having taxes withheld from their income. Furthermore, in listing out some sections of the Companies Income Tax Act, it is not clear if the intention is to exempt the bio-fuel companies from company income taxes generally over and above withholding taxes which is an advance payment of tax. Where the intention is to exempt the bio-fuel companies from tax, there is need to state that this section is subject to section 33 which states that pioneer status relief granted shall be for a period of ten years. There is also need to | | | |

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| 1. | Name of Bill: | A Bill for the Bio-fuels Energy Policy Act | Rating: | High |
| | | clearly provide on the applicability of the Capital Gains Tax Act to bio-fuel companies. | | |
| | Recommendations: | 1. This Bill makes references to the Nigerian National Petroleum Corporation and the Petroleum Technology Development Trust Fund. As such and by virtue of its nature, it should be considered very closely with the Petroleum Industry Bill to avoid conflicts. | | |
| | Recommendations (continued): | 2. Considerations must be had to the fact that the President doubles as the Minister of Petroleum, consequently functions such as issuing licences which may add to the weight of the office of the President may be explicitly delegated under this Bill to an appropriate authority. | | |
| | | 3. The provisions on tax incentives should be redrafted to provide better clarity. | | |

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| 2. | Name of Bill: | Agricultural Produce Hoarding (Prohibition) Bill, 2015 | Rating: | Low |
| | Long Title: | A Bill for an Act to prohibit hoarding of certain non-perishable Agricultural Produce and regulating their supply and distribution in order to control the market price of those produce for the benefits of Nigerians and for related matters. | | |
| | Explanatory Memorandum: | This Bill seeks to prohibit hoarding of certain non-perishable agricultural produce and regulating their supply and distribution in order to control the market price of those produce for the benefits of Nigerians. | | |
| | Institution(s) Proposed: | Nil. | | |
| | Gaps/Deficiencies: | <p>This Bill poses more problems than it could solve. For example, it prohibits the "hoarding of agricultural non-perishable product for the purpose of hiking the price". This provision is problematic in that it is usually difficult to prove intent. People may reserve large quantities to secure their future supply for consumption.</p> <p>A farmer may also wish to store his/her produce or an investor may want to store up produce for sale at a higher profit in the future, without necessarily intending to hike price.</p> <p>Since agricultural produce are subject to seasonal variation in prices, it becomes more difficult to prove intent to hike price.</p> | | |

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| 2. | Name of Bill: | Agricultural Produce Hoarding (Prohibition) Bill, 2015 | Rating: | Low |
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Equally problematic is the power conferred on the Minister to determine what quantity would be regarded as hoarding. Theory and practice shows that government interference in the market in this manner breeds more evil than good and should not be encouraged in any modern society.

Governments often use strategic reserves to cushion the effect of unduly high prices or scarcity of commodities rather than compel farmers to sell at certain prices.

Recommendations: The proposal in this Bill would be detrimental to the business environment in Nigeria as it detracts from the spirit of freedom of enterprise. This Bill should be discarded.

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| 3. | Name of Bill: | Chartered Institute of Management Information Technology Bill, 2015. | Rating: | Low |
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Long Title: A Bill for an Act to establish the Chartered Institute of Management Information Technology of Nigeria to provide for the control of its membership and to promote and foster the practice of the Management Information Technology on the Federation and for other purposes connected therewith.

Explanatory Memorandum: Nil.

Institution(s) Proposed: Chartered Institute of Management Information Technology.

Gaps/Deficiencies: No observable gap or deficiency.

Recommendations: This Bill has no bearing on doing business in Nigeria. It merely proposes a statutory status to an existing profession association.

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| 4. | Name of Bill: | Commodities Exchange Bill, 2015. | Rating: | High |
|----|---------------|----------------------------------|---------|------|

Long Title: A Bill for an Act to regulate commodities future trading in Nigeria; Provide for the establishment of the commodities future trading commission and for other matters.

Explanatory Memorandum: This Bill Seeks to provide for the regulation of commodities futures business in Nigeria and for the establishment of the Commodities Future Trading Commission.

Institution(s) Proposed: The Commodities Future Trading Commission.

Gaps/Deficiencies: No deficiency or gap observed.

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|----|---------------|----------------------------------|---------|------|
| 4. | Name of Bill: | Commodities Exchange Bill, 2015. | Rating: | High |
|----|---------------|----------------------------------|---------|------|

Recommendations: This Bill is important to the doing business in Nigeria. It seeks to create a regulatory framework for commodities feature trading in Nigeria.

Commodity features trading is established practice in many parts of the world, focusing on agriculture and natural resources. The major benefits to doing business in Nigeria would include opening up new avenue of investment, ensuring guaranteed price for farmers and manufactures who use the commodities for production process; serving as a source of financing for agriculture through the trading of contracts for immediate value; etc. The Abuja Commodities Exchange is already pioneering this area of business in Nigeria. However, to further deepen and spread this practice nationally, there is need for a regulatory framework as proposed in this Bill.

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| 5. | Name of Bill: | Environmental Health Control Bill 2015. | Rating: | Medium |
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Long Title: A Bill for an Act to provide for the protection, promotion and maintenance of health, for proper sanitation in matters relating to housing, food and generally, for the protection of the environment and for the control of services, activities and other matters connected therewith or incidental thereto.

Explanatory Memorandum: This Act seeks to provide for the protection, promotion and maintenance of health, for proper sanitation in matters relating to housing, food and generally, for the protection of the environment and for the control of services, activities and other matters connected therewith or incidental thereto.

Institution(s) Proposed: Nil.

Gaps/Deficiencies: The Bill proposes an Environmental Health Tax based on profits. Creating yet another Tax will have a negative impact on Nigeria's 'Doing Business' rating.

Recommendations: Some of the aspects of this Bill relating to doing business in Nigeria include: the Environment Health Tax Fund, under which it is proposed that companies would contribute 1% of profit after tax; Environmental Health Approval for building construction, environmental health impact assessment for projects, licensing of waste management companies, pest control companies, etc. The Bill contains reasonable regulations on environment health and safety for residential and business premises. However, the tax provision should be reconsidered.

| 6. | Name of Bill: | Franchise Bill, 2015. | Rating: | High |
|--------------------------|---|-----------------------|---------|------|
| Long Title: | A Bill for an Act to provide for the regulation of Franchising in Nigeria; and for other related matters. | | | |
| Explanatory Memorandum: | This Bill seeks to provide a framework for the regulation of Franchising in Nigeria. | | | |
| Institution(s) Proposed: | Nil – Enforcement by an existing Agency, the National Office for technology Acquisition and Transfer (NOTAP). | | | |
| Gaps/Deficiencies: | No deficiency or gap observed. | | | |
| Recommendations: | <p>Given the increasing importance of the franchise model of business in Nigeria, a regulatory framework for the industry is long overdue.</p> <p>Currently, the practice is to use franchise contracts. But this Bill advantage of this Bill is in the statutory protection it could afford parties beyond the law of contract.</p> <p>The Bill has stipulated the procedures, mandatory terms and remedies for breach of franchise agreement which cannot be waived by parties. This may afford some protection to local SMEs as well as assure foreign businesses of the predictability of the domestic legal framework.</p> <p>Similarly, the requirement of at least 20% (S.14) local content would ensure the participation of local SMEs in the value chain of franchised businesses. This Bill is very important to the business environment in Nigeria, hence should be accorded priority.</p> | | | |

| 7. | Name of Bill: | International Trade Commission of Nigeria Bill, 2015. | Rating: | High |
|--------------------------|--|---|---------|------|
| Long Title: | A Bill for an Act To Provide for the Establishment of the International Trade Commission Of Nigeria; and for other matters. | | | |
| Explanatory Memorandum: | The Bill Seeks to provide for the establishment of the International Trade Commission of Nigeria for the purposes of coordinating policies, interests and issues related to international trade for the Federal Republic of Nigeria. | | | |
| Institution(s) Proposed: | The International Trade Commission of Nigeria. | | | |
| Gaps/Deficiencies: | The major deficiency/gap in this Bill is that the trade defence instruments proposed to be implemented by the Commission proposed under the Bill are not yet enacted into Nigerian law. | | | |

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| 7. | Name of Bill: | International Trade Commission of Nigeria Bill, 2015. | Rating: | High |
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The WTO has agreements relating to safeguards, anti-dumping, etc., which ought to be domesticated and applied by Member Countries to safeguard their economies from the adverse effects of international trade. Unfortunately, Nigeria has not domesticated these instruments, thereby leaving the country to the sometimes negative effects of international trade. As a solution, Nigeria has resorted to the use of "illegal" instruments such as import prohibition for trade defence purposes.

Recommendations:

The importance of this Bill lies in its proposal to create an administrative and regulatory framework for international trade, which is separate from the Ministry of Industry, Trade and Investment (FMITI).

Presently, the different aspects of Nigeria's trade policy formulation and administration is scattered among different MDAs such as the FMITI, Federal Ministry of Finance, Ministry of Foreign Affairs, Nigeria Customs Service, etc.

International best practices in countries like the USA and South Africa is to separate trade policy formulation from international trade administration, hence the office of the US Trade Representative (USTR), the South African International Trade Administration Commission (ITAC) and similar bodies in other countries.

Some of the challenges faced by the current arrangement is the prevalence of inconsistent policy statements, conflicting roles in policy implementation, and general lack of coordination in Nigeria's trade policy process. This in turn affect the doing business across borders.

One of the major issues that would be addressed by this proposed Commission is the use of trade defence or remedy instruments such as anti-dumping and counter-veiling measures, safeguard measures, etc. if these instruments are in place and properly implemented, Nigeria would not have to use the outdated policy tools such as import prohibition as is currently the case.

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| 8. | Name of Bill: | National Biotechnology Development Agency Bill, 2015. | Rating: | Low |
| | Long Title: | A Bill for an Act to establish the National Biotechnology Development Agency and other related matters. | | |
| | Explanatory Memorandum: | This Act provides for the establishment of the National Biotechnology Development Agency, for Research and Development, Promotion, Coordination and Management of Biotechnology in Nigeria. | | |
| | Institution(s) Proposed: | The National Biotechnology Development Agency. | | |
| | Gaps/Deficiencies: | No observable gap or deficiency. | | |
| | Recommendations: | This Bill merely sets up an administrative framework for the promotion of biotechnology in Nigeria. It has neither denied, defined nor placed any responsibilities or benefits on businesses. | | |

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| 9. | Name of Bill: | National Fertilizer Bill, 2014 | Rating: | Medium |
| | Long Title: | A Bill for an Act to regulate the manufacture, importation, distribution and quality control of fertilizer in Nigeria and for other related matters, 2015. | | |
| | Explanatory Memorandum: | This Act repeals the National Fertilizer Board Act Cap N39 LFN 2004, The Fertilizer (Control) Act Cap F25 LFN 2004, and enacts The National Fertilizer Quality Control and Other Related Matters Act, 2014, to provide an improved regulatory framework for the manufacture, importation, sale and distribution of fertilizer in Nigeria. | | |
| | Institution(s) Proposed: | Nil. | | |
| | Gaps/Deficiencies: | None. | | |
| | Recommendations: | An updated framework for regulating the quality of fertilizer is a welcome idea for the agricultural sector. This Bill prescribes the conditions for obtaining the necessary licenses for the manufacture, importation or distribution of fertilizer in Nigeria. It would go a long way in curbing the menace of adulterated fertilizer. It would afford some protection to farmers against the adulteration of fertilizer. | | |

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| 10. | Name of Bill: | National Agency for Food and Drug Administration and Control Act (Amendment) Bill, 2015. | Rating: | Low |
| | Long Title: | A Bill for an Act to amend the National Agency for Food and Drug Administration and Control Act Cap N1 Laws of The Federation Nigeria 2004 and for other matters connected therewith. | | |

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| 10. | Name of Bill: | National Agency for Food and Drug Administration and Control Act (Amendment) Bill, 2015. | Rating: | Low |
| | Explanatory Memorandum: | The Bill seeks to amend the National Agency for Food and Drug Administration and Control Act Cap N1 Laws of the Federation 2004 to further empower the Agency to carry out its functions and to bring it in line with present realities. | | |
| | Institution(s) Proposed: | Nil - National Agency for Food and Drug Administration and Control already in existence. | | |
| | Gaps/Deficiencies: | No observable gap or deficiency. | | |
| | Recommendations: | None. This Bill enhances the punitive provisions in the original Act. | | |
| 11. | Name of Bill: | Nigerian Independent Warehouse Regulatory Agency (Est, etc.) Bill, 2015 | Rating: | High |
| | Long Title: | Nigerian Independent Warehouse Regulatory Agency and Other Related Matters, 2015. | | |
| | Explanatory Memorandum: | This Bill Seeks To: (A) Establish the Nigerian Independent Warehouse Regulatory Agency to regulate the operations of Licensed Warehouses and to provide a Regulatory Framework for trading in Warehouse Receipts and for other related matters; (B) Enable depositors store Agricultural or Other commodities In commercial warehouses and upon issue of negotiable warehouse receipt by the warehouse, be able to use it as collateral to obtain finance from a financial institution; and (C) Make warehouse receipt valid negotiable instruments. | | |
| | Institution(s) Proposed: | The Nigerian Independent Warehouse Regulatory Agency. | | |
| | Gaps/Deficiencies: | There is no deficiency in the Bill. However, there is need to align this Bill with the Commodities Exchange Bill (HB 31). The framework set up in the Independent Warehouse Regulatory Agency Bill is important for the smooth operation of the Bill. Areas that need harmonization include responsibility for licensing of certain operators like custodians of commodity, whose business may fall under remit of the two agencies. Also the Commodities Exchange Bill needs to make direct reference to instrument the instrument, i.e. warehouse receipt created under this Bill. | | |
| | Recommendations: | <i>This Bill is very important for the purpose of providing alternative access to fund for businesses by the use of their warehouse receipts as negotiable instruments or as collateral for loans. Having a well-</i> | | |

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|-----|---------------|---|---------|------|
| 11. | Name of Bill: | Nigerian Independent Warehouse Regulatory Agency (Est, etc.) Bill, 2015 | Rating: | High |
|-----|---------------|---|---------|------|

regulated Commercial Warehouse System would not just open up new business opportunities for investors but also provide valuable business support service to other business operators.

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|-----|---------------|--------------------------------------|---------|-----|
| 12. | Name of Bill: | Nigerian Metallurgical Industry Bill | Rating: | Low |
|-----|---------------|--------------------------------------|---------|-----|

Long Title: A Bill For An Act To Provide For The Regulation And Effective Monitoring Of Metallurgical Activities In The Mines And Steel Sector, Metallurgical Inspection And Raw Materials Development In Nigeria And For Other Related Matters.

Explanatory Memorandum: This Bill seeks to provide the legal framework for the regulation and coordination of activities in the metal industry in Nigeria, promote the growth of indigenous metal industry and ensure that workers in metallurgical plants are protected against any form of accident arising from metallurgical plant operations.

Institution(s) Proposed: Nil.

Gaps/Deficiencies: On the basis of statutory provisions, there are no provisions that directly impede doing business in Nigeria. However, the Bill is not arranged as the offences and penalties created are strewn under the various Parts of the Bill.

Further, the Bill provides in Section 28 that the Minister may protect domestic metal industries from undue competition from foreign companies. This is vague as it gives no pointers to how the Minister may carry out this function such as the promotion of local content policy in the industry. Importantly, the Bill provides that the Nigeria Investment Promotion Commission Act will apply to foreign investments. In view of the fact that the said Act allows one hundred percent foreign participation in companies, it is important the Bill clarifies how local industries are to be protected from competition from the foreign counterparts.

Recommendations:

1. The provisions of the Bill should be better arranged.
2. There should be certainty on the Act proposes to grow the local companies in the Industry.

| 13. | Name of Bill: | Palm Oil Development Bill. | Rating: | Medium |
|--------------------------|--|----------------------------|---------|--------|
| Long Title: | A Bill for an Act to provide for the Establishment Of A Palm Oil Development Fund, which shall be responsible for the development, coordinating and encouraging the exportation and utilization of Palm Oil In Nigeria; and for connected purposes, 2015. | | | |
| Explanatory Memorandum: | This Bill seeks to make a special provision for development of Palm Oil. It seeks to set aside a special fund that will be used to develop and encourage the production of palm oil and other ancillary products both for export and internal consumption. This Bill also seeks to develop all products associated with palm oil for the purpose of consumption and revenue earning for Nigeria. | | | |
| Institution(s) Proposed: | Creation Of A Fund - Palm Oil Development Fund to be domiciled in the Nigerian Institute for Palm Oil Research (NIFOR), Benin, Edo State. | | | |
| Gaps/Deficiencies: | None. | | | |
| Recommendations: | This Bill is not directly relevant to the business environment or private sector development in Nigeria. However, it can contribute to the development of palm oil production in Nigeria. | | | |

| 14. | Name of Bill: | Petroleum Refineries (Incentives, Regulation And Miscellaneous Provision) Bill, 2015 | Rating: | High |
|--------------------------|---|--|---------|------|
| Long Title: | A Bill for an Act to provide for the licensing, regulation and incentives petroleum refineries in Nigeria and for other matters. | | | |
| Explanatory Memorandum: | Nil. | | | |
| Institution(s) Proposed: | Department of Petroleum Resources - Already in existence. | | | |
| Gaps/Deficiencies: | <ol style="list-style-type: none"> 1. One area that needs to be considered is the grant of exclusive jurisdiction over competition regulation in the sector to the DPR (S.17). In view of the heightened move to enact an economy wide competition regime with mechanism for collaboration between the proposed Commission and sector regulators, the word "exclusive" should be deleted to allow for the best practice where sector regulators exercise concurrent jurisdiction with competition authorities. 2. The Bill seeks to achieve two seemingly contradictory objectives, viz: promote competition and regulate price. It is arguable if there would need to maintain a controlled price regime for domestically refined petroleum products where competition regulations aimed | | | |

| 14. | Name of Bill: | Petroleum Refineries (Incentives, Regulation And Miscellaneous Provision) Bill, 2015 | Rating: | High |
|--------------------------------|---------------|--|---------|------|
| Gaps/Deficiencies (continued): | | at addressing market abuses are applied to the sub-sector. Price regulation is often a result of failure of competition (market failure). | | |
| | | 3. Blanket exemption from taxes and levies (S.25 subsection 1a) cannot be justified. So also is the procurement of crude at 50% value (subsection 1b). Incentives should rather follow the general pioneer status model and the EPZ model, where applicable. | | |
| Recommendations: | | This Bill is very important for the accelerated development of domestic refining capacity in Nigeria. However, it should be considered in the context of the ongoing and proposed legal and administrative reforms in the sector. | | |

| 15. | Name of Bill: | Secured Transactions in Movable Assets Bill | Rating: | High |
|--------------------------|---------------|---|---------|------|
| Long Title: | | A Bill for an Act To Provide For Secured Transactions, Registration And Regulation Of Security Interest In Movable Assets And For Related Matters, 2015. | | |
| Explanatory Memorandum: | | This Bill seeks to provide for the registration of financing statements and use of movable assets as acceptable security for accessing credit by individuals and micro, small and medium enterprises in Nigeria. | | |
| Institution(s) Proposed: | | National Collateral Registry | | |
| Gaps/Deficiencies: | | <ol style="list-style-type: none"> 1. By section 12 of the Bill, a security is deemed registered when it is assigned a unique number. This provision assumes that the Registry will offer seamless services and unique numbers will be assigned as and when due. Judging from the challenges faced by existing registries such as the Corporate Affairs Commission, an unreasonable time might lapse between an application and the assigning of a unique number. 2. Section 13 provides that an amendment to a Financial Statement should be assented to by the Grantor in writing. It is not clear if an amended copy of the original Agreement signed by both parties will suffice. 3. Section 21 provides that the Registrars decision on cancellation of a financial statement shall be final. It is not clear if the intention of the Bill is to foreclose the courts on this point. <p>The Bill seeks to accord secured interests priority over unsecured judgment debtors whose judgments pre-date the Bill.</p> | | |

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| 15. | Name of Bill: | Secured Transactions in Movable Assets Bill | Rating: | High |
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Recommendations:

1. Owing to the importance of the time of registering a security, an application should not be deemed unregistered where a unique number is not assigned following a lapse in the Registry's system.
2. The Bill if passed should accommodate judgment creditors for a reasonable period of time before effecting the priority of secured interests under the Bill.

Appendix E - List of Reviewed Legislation with Priority Rating

RATING



ACTS OF THE NATIONAL ASSEMBLY

1. Arbitration and Conciliation Act, Cap A18, LFN 2004
2. Coastal and Inland Shipping (Cabotage) Act
3. Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004.
4. Companies Income Tax Act, Cap. C21, Revised Edition, LFN, 2004
5. Copyright Act, Cap. C. 28, LFN, 2004
6. Federal Highways Act, Cap. F13, LFN 2004.
7. Federal Inland Revenue Service Act, 2007, Cap F36. LFN, 2004
8. Fiscal Responsibility Act, Cap. F4, LFN, 2004
9. Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005
10. Investment and Securities Act, 2007
11. Mortgage Institutions Act, Cap. M19, LFN, 2004
12. National Housing Fund Act, Cap. N45, LFN, 2004
13. National Information Technology Development Agency Act, Cap. NI56, Revised Edition. LFN. 2004
14. Nigerian Civil Aviation Act, Cap. N94, LFN 2004
15. Nigerian Inland Waterways Authority Act, Cap. N47, LFN 2004

ACTS OF THE NATIONAL ASSEMBLY

16. Nigerian Investment Promotion Commission Act, Cap N117, LFN, 2004
17. Nigerian Minerals and Mining Act, Cap. N162, LFN 2004
18. Nigerian National Petroleum Corporation Act, Cap N123, LFN, 2004
19. Nigerian Ports Authority Act, Cap. N126, LFN 2004
20. Nigerian Postal Service Act, Cap. N127, LFN 2004
21. Nigerian Railway Corporation Act, Cap. N129, LFN, 2004.
22. Patents and Designs Act, Cap. P2 Revised Edition, LFN 2004.
23. Petroleum Act, Cap. P10, Revised Edition, LFN, 2004
24. Petroleum Profits Tax Act, Cap. P13, Revised Edition, LFN, 2004
25. Public Enterprises (Privatization and Commercialization) Act, Cap. P38, LFN, 2004
26. Public Procurement Act, Cap, P44, LFN, 2004
27. Taxes and Levies (Approved List for Collection) Act, Cap. T2, Revised Edition, LFN, 2004
28. Trade Marks Act Cap. T. 13 LFN 2004
29. Animal Diseases (Control) Act, Cap. A17 Revised Edition, LFN, 2004
30. Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap. D3, Revised Edition, LFN, 2004
31. Federal Housing Authority Act, Cap. F14, LFN 2004
32. Price Control Act, Cap. P28, Revised Edition, LFN, 2004
33. Standards Organisation of Nigeria Act, 2015
34. Consumer Protection Council Act; Cap. C25 Revised Edition, LFN 2004.
35. Customs and Excise Management Act, Cap. C45, Revised Edition, LFN, 2004

ACTS OF THE NATIONAL ASSEMBLY

36. Environmental Impact Assessment Act, Cap. E12, Revised Edition, LFN, 2004
37. Food and Drugs Act, Cap. N32, Revised Edition, LFN, 2004
38. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, Revised Edition, LFN, 2004
39. Immigration Act, 2015.
40. Labour Act, Cap. L1, Revised Edition, LFN, 2004
41. National Agency for Food and Drug Administration and Control Act, Cap. N1, Revised Edition, LFN 2004.
42. National Environmental Standards and Regulations Enforcement Agency Act, Cap. N164, Revised Edition, LFN 2004.
43. National Office for Technology Acquisition and Promotion Act, Cap. N62, Revised Edition, LFN, 2004
44. Nigeria Export Processing Zones Act, Cap. N107, Revised Edition, LFN 2004
45. Nigeria Export Promotion Council Act, Cap. N108, Revised Edition, LFN 2004.
46. Nigerian Oil and Gas Industry Content Development Act, 2010
47. Nigerian Urban and Regional Planning Act, Cap. N138, Revised Edition, LFN, 2004
48. Pension Reform Act, 2014
49. Petroleum (Special) Trust Fund Act, Cap. P14, Revised Edition, LFN, 2004
50. Petroleum Equalisation Fund (Management Board, etc.) Act, Cap. P11, Revised Edition, LFN, 2004
51. Petroleum Products Pricing Regulatory Agency (Establishment, etc.) Act, Cap. P43, Revised Edition, LFN, 2004
52. Petroleum Technology Development Fund Act, Cap. P15, Revised Edition, LFN, 2004

ACTS OF THE NATIONAL ASSEMBLY

53. Public Enterprises Regulatory Commission Act, Cap. P39, Revised Edition, LFN, 2004
54. Small and Medium Scale Enterprises Development Agency of Nigeria Act; Cap. S19 Revised Edition, LFN 2004.

BILLS

1. Federal Competition and Consumer Protection Commission Bill 2015
2. Federal Roads Authority Bill, 2015
3. National Inland Waterways Authority Bill 2015
4. National Roads Fund Bill 2015
5. National Transport Commission Bill 2015
6. Nigeria Postal Commission Bill 2015
7. Nigerian Ports and Harbours Authority Bill 2015
8. Nigerian Railway Authority Bill 2015
9. A Bill for the Bio-fuels Energy Policy Act
10. Commercial Agriculture Credit Scheme Bill, 2015.
11. Commodities Exchange Bill, 2015.
12. Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) (Amendment) Bill, 2015.
13. Franchise Bill, 2015.
14. International Trade Commission of Nigeria Bill, 2015.
15. Micro Finance Bill, 2015.

BILLS

16. National Development Bank of Nigeria (establishment, etc.) Bill 2015.
17. National Payment System Bill, 2015.
18. National Security Tax Fund Bill
19. Nigeria Agricultural Quarantine Service (Establishment) Bill, 2015.
20. Nigerian Independent Warehouse Regulatory Agency (Est, etc.) Bill, 2015
21. Oil and Gas Export Free Zone Act CAP 05 LFN 2011 (Amendment) Bill, 2015.
22. Petroleum Refineries (Incentives, Regulation And Miscellaneous Provision) Bill, 2015
23. Secured Transactions in Movable Assets Bill
24. Abuja Metropolitan Management Council Bill, 2015
25. Central Bank of Nigeria Act (Amendment) Bill 2015.
26. Chartered Institute of Facilities Management of Nigeria Bill, 2015
27. Environmental Health Control Bill 2015.
28. Hydroelectric Power Producing Area Development Commission Act (Amendment) Bill, 2015.
29. National Fertilizer Bill, 2014
30. National Planning Process Bill, 2015.
31. Nigeria Industrial Revolution Plan Bill, 2015
32. Nigerian Tourism Development Corporation (Amendment) Bill 2015.
33. Palm Oil Development Bill.
34. Agricultural Credit Guarantee Scheme Fund Act [Amendment] Bill, 2015.
35. Agricultural Produce Hoarding (Prohibition) Bill. 2015
36. Agricultural Produce Hoarding (Prohibition) Bill, 2015

BILLS

37. Chartered Institute of Capital Market Registrars (Establishment) Bill, 2015.
38. Chartered Institute of Management Information Technology Bill, 2015.
39. Deep Offshore and Inland Basin PSC Bill
40. Deep Offshore and Inland Basing Production Sharing Contract Act CAP D3 LFN 2004 (Amendment) Bill, 2005.
41. Energy Commission Act (Amendment) Bill, 2015.
42. Food Security Bill, 2015.
43. Integrated Infrastructure Development Bill, 2015.
44. National Agency for Food and Drug Administration and Control Act (Amendment) Bill, 2015.
45. National Agricultural Land Development Authority Act (Amendment) Bill 2015.
46. National Biotechnology Development Agency Bill, 2015.
47. Nigeria Agricultural Processing Zones Bill, 2015.
48. Nigerian Metallurgical Industry Bill
49. Nigerian Solid Minerals Development Bank Bill, (Establishment) 2015.
50. Trade Malpractice (Miscellaneous Offences) Act (Amendment) Bill, 2015.

