

# Not so Easy: Doing Business in Nigeria

While President Muhammadu Buhari's ministers settle down to the task of getting to grips with their respective ministries the National Assembly still appears to be in a tango with far too many unresolved issues which will not be settled anytime soon, making one but wish 'if only they will stop and think of the rest of the country for once.' Anyhow, slowly but surely the government is taking shape and Nigerians are hopeful that presently we will see positive direction and light at the end of the tunnel. It was a rather re-assuring start last Friday to see on NTA Mr. Abubakar Malami, SAN Minister of Justice and Attorney-General of the Federation say in his presentation to his ministry's staff that his major focus will be to remove all the legal impediments to doing business in Nigeria. He could not have started on a better footing. In October President Buhari attended the India-Africa Summit in New Delhi, a transcontinental collaborative forum attended by the Heads of State and Governments of Africa's 54 nations and India, designed to be a platform for economic and political cooperation. His objective at the forum, as well as representing Africa's most populous nation, necessarily included encouraging more collaborative efforts between Nigeria and India, and promoting Nigeria as an attractive environment for foreign business investments.

It is the factual realisation that Nigeria is experiencing harsh economic conditions that currently make the upturn of business and growth difficult, such that a new approach is imperative in the public sector regarding both revenue generation and government spending.

Secondly, Mr President's candour requires us to examine Nigeria's attractiveness to business investments from outside the country garnered generally from forums such as the India-Africa Summit.

A cursory look at the World Bank Group's Ease of Doing Business Index rates countries by a set of factors that together measure how conducive a nation's economic and political environment is to foreign business investors and new entrants into the national market. It is an important measure of the attractiveness of any nation for foreign investors and given Nigeria's current economic predicament and President Buhari's economic agenda, it is a very important assessment of Nigeria's competitive outlook or the lack of it, against other developing economies in Africa.

In the Ease of Doing Business Index, countries are rated from 1st to 189th, and Nigeria is currently ranked 169th, with only a handful of other African nations with harsher economic climates for investors, most of which are nowhere near the size and producing power of the Nigerian economy and some of which have experienced decades of prolonged national conflict. A look at Nigeria's performance in the Index will show the factors that are measured and why exactly Nigeria is perceived as being a difficult place to do business in.

The ease of doing business in Ni-

geria has been a bone of contention for years and maybe finally we will see the end to the desperately poor rating we get year in year out. In June the Nigerian Bar Association Section on Business Law 2015 Conference had the theme 'Regulators As Catalysts For Economic Growth' and was declared open by the Vice President Professor Yemi Osinbajo, SAN, with the keynote address delivered by Dr. Ekwow Spio-Garbrah, Ghana's Minister for Trade and Industry. It was a brilliant conference I must add, highlighting regulations as key components to unlocking sustainable economic growth in the nation. Tangible key recommendations and action points were made and among the many were: a) that Government should take heed of the "Ease of Doing Business Report" of the World Bank by ascertaining the specific indicators underpinning each aspect of the rankings, identifying the global leaders in relation to each indicator and devising the means to properly and effectively replicate those success factors here. b) Government should develop and implement key performance indices and the processes for tracking same and their economic impact, especially with respect to foreign and local direct investment in key sectors of the economy, such as public infrastructure, agriculture, oil and gas, renewable energy, telecommunications, education and healthcare. c) It was resolved that to foster an enabling environment for appreciable economic growth and human capacity development, the Government should ensure that its affairs are performed objectively and transparently and there was a need for law reform particularly in the business law area to enhance competitiveness, accountability and reduction of red-tape with respect to the ease of conducting business in Nigeria. d) Nigeria should ensure that its laws and regulations align with current economic realities in order to have a conducive predicate to engage the business community. e) Facilitating regular interactions between the domestic business community and policy and business decision makers is vital to economic development. What investors seek are favourable policies and incentives. With the recent Central Bank clamp down on foreign exchange transactions and its other changes of policy, how then can foreign investors look favourable in this direction with domestic businesses groaning even as no one appears to be listening? f) Eradicating the role of intermediaries at the Corporate Affairs Commission (CAC) which increases costs and jeopardises the ease of doing business. Automating the process of conducting transactions at the CAC with specialised training of CAC officers who manage portals is of the utmost importance. For example the Index succinctly and specifically itemises the time period it takes to incorporate a Company with the Corporate Affairs Commission from two cities-Lagos and Kano. It costs an average of N30, 000 and takes some 28 days to incorporate in Lagos and an average of about N94, 000 and 40 days from Kano (for a share capital of N1m). This is in spite of efforts to streamline processes at the C A C, and even

an ostensible intent to digitise the incorporation process. Whereas by comparison New Zealand ranked as the best place to incorporate a company does this in half a day and at a cost equivalent to N20,774. Mauritius, Africa's most conducive place for business on the other hand takes an average of just 6 days and a cost equivalent of under N34, 000. g) The E-transaction Bill, that would permit the use and acceptance of E-signatures, should be passed into law. h) There is a need for the Executive arm of government to review and harmonize Nigeria's investment and business laws and in particular amongst others, the Nigerian Investment Promotion Commission (NIPC) Act and the Immigration Act. i) Investment laws and regulations should be reviewed and harnessed to support the development of an appropriate enabling environment which in turn will create a strong and stable platform for an effective diversification of our economy.

Effective dispute resolution is yet another important index of the ease of doing business as the court interprets the rules of the market and protects economic rights, which makes the development of new relationships easier. When investors are confident of the laws and procedures which exist to resolve disputes, there will be a significant improvement in international trade and foreign direct investment in Nigeria.

It is a well-known fact that the legal system in a country affects the perceptions of investors, which in turn affects its economic development and performance. The slow pace of justice delivery in Nigeria is a major cause for concern among foreign investors. The consequences of the delay in the Justice System in Nigeria has led investors to consider other viable dispute resolution mechanisms such as Arbitration with emphasis on International Arbitration.

The NIPC Act in itself provides that disputes between a foreign investor and any government in Nigeria arising out of an investment shall be submitted to arbitration within the framework of any investment treaty entered into between the government of Nigeria and any state of which the foreign investor is a national, or in accordance with any other international machinery for the settlement of investment disputes as agreed upon. It further provides that where there is a disagreement between the Nigerian government and the foreign investor on the mode of dispute settlement, the dispute shall be submitted to International Centre for Settlement of Investment Disputes (ICSID) for arbitration.

The Arbitration and Conciliation Act is the governing law for Arbitration in Nigeria and it covers both domestic and international arbitration. Remarkably, the Lagos state government enacted its Arbitration Law in 2009 and established the Lagos Court of Arbitration to promote the state as an arbitration hub. Nigeria is also signatory to some international conventions such as the Settlement of Investment Disputes between States and Nationals of Other States' (ICSID Convention), which as the title implies deals mainly with the



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settlement of investment disputes between investors and sovereign host states; and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the 'New York Convention.' The New York Convention was adopted by the United Nations in June 1958 and it enjoins domestic courts in signatory countries to give effect to arbitration agreements and also to recognise and enforce valid arbitral awards given in other signatory states. Nigeria ratified the New York Convention in 1970. The Convention has been domesticated by its incorporation in Section 54(1) and Schedule 2 of the Arbitration and Conciliation Act 2004.

To improve our dispute resolution mechanisms and increase our ease of doing business, there must be a concerted effort to improve on our justice delivery system, case management procedures in the various courts, modern court infrastructure in the courts and arbitration centres and furthermore there should be a limit to the challenge of arbitral awards in the courts which can be achieved by conducting an enlightenment campaign for judges on international arbitration and finally, there should be a focus on training in arbitration at the University and Law School.

At the Chartered Institute of Arbitrators, London Centenary Conference in Zambia, the principles necessary for the effective, efficient and 'safe seat' conduct of International Commercial Arbitration was discussed and they include law, judiciary, legal expertise, education, right of representation, accessibility and safety, facilities, ethics, enforceability and immunity.

More often than not the roles of regulators overlap imposing unnecessary burdens on businesses. All in all the government of the day must strive to avoid over-regulation and registration bottlenecks to facilitate business enterprise. I strongly believe that the time has come for sincere collaboration between government agencies and the private sector to achieve the type of government policies we so desire to effectively drive reforms.

With all sincerity Nigeria is not at present a favourable place to do business. Looking at the world as a global market, what this says is that Nigeria is placed in that corner of the market you don't feel comfortable going to because it is just tougher and harsher than other places. With the new dawn it is hoped that the Attorney-General will take the opportunity to turn around the ease of doing business in Nigeria.