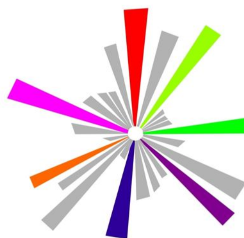


THE 21ST NIGERIAN ECONOMIC SUMMIT – NESG

THEME:

"Tough Choices: Achieving Competitiveness, Inclusive Growth and Sustainability"

PLENARY V:

Roundtable with the National Assembly – Setting A Legislative Framework For High-Performance Economy

FOCUS:

1. To create an understanding of the implications of legal incoherence or inconsistencies on the Nigerian Economy.

2. To help articulate a framework that ensures the NASS commits to sponsoring bills that support Nigeria's development.

3. To help draw up a plan of priority legislation/areas that can be examined by the NASS within the next one year

4. To get the NASS leaders to commit to a regular interface with private sector representatives

PANELIST:

Mr. Asue Ighodalo, Banwo & Ighodalo, Lagos.

Areas of the Economy where Legislative Overhaul is recommended:

A. Conflicting legal and regulatory regimes
B. Laws hampering commercial transactions and the growth of enterprises
C. Laws which are disincentives to investments

A. CONFLICTING LEGAL AND REGULATORY REGIMES

1. Registering Businesses and obtaining Permits in FDI: NIPC Act v Immigration Act

- **Section 27 of the NIPC Act** is undermined by provisions of **Sections 8, 9, 10 and 11 of the Immigration Act** in the absence of any coordination between the Nigerian Investment Promotion Commission and the Ministry of Interior.

- The NIPC Act 1995 was enacted "to encourage and promote investment in the Nigerian economy" and S. 27 makes the Commission a ONE STOP SHOP/ONE STOP INVESTMENT CENTER; which is to provide enterprises with assistance and guidance through liaison

between the enterprises and the relevant government departments, agencies and such other public authorities.

- Today, the Ministry still insists on registration under the Immigration Act before relevant permits can be granted to foreign investors/expatriates, even when they have been duly registered at the NIPC.

2. CBN Currency Policies v International Trade

- The CBN's May 2015 updated Circular titled "Currency Substitution and Dollarisation of the Nigerian Economy", **(Dollarisation Policy Ref. No: BSD/DIR/GEN/LAB/08/024)** limits the right of payment for goods and services in any currency other than the Naira.

- The circular further states that anyone who refuses to accept the Naira as the only legal tender in Nigeria commits a criminal offence under Section 20(5) of the CBN Act 2007.

- This is in conflict with regulations validly made pursuant to extant legislation in the shipping and international trade sector such as; the **Nigerian Port Authority Act** and the **Coastal and Inland Shipping (Cabotage) Act of 2003**; which enable the NPA and NIMASA to charge fees and dues in foreign currencies. It also makes negotiations in international contractual agreements cumbersome, especially those denominated in foreign currencies.

3. Overlapping and conflicting laws & regulations made there-under: FRCN's NCCG 2015

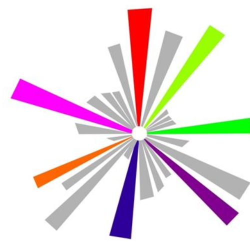
- A very recent conflicting regulatory regime was prompted by the April 2015 Exposure Draft of the National Code of Corporate Governance (NCCG) issued by the Financial Reporting Council of Nigeria (the FRCN) to regulate all sectors of the Nigerian economy to wit: Public Sector, Private Sector, and the Not-for-Profit Sector.

- The FRCN's enabling law empowers it only to issue regulations for the purpose of implementing accounting and auditing standards while only monitoring and harmonizing existing regulations made by professional and regulatory bodies –**Sections 7(2) (a), 11(c) & (e), 8(2) 23 and 51 of the FRCN Act.**

- The FRCN can only regulate public interest entities and professional accountants, not private companies – **Section 77, FRCN Act**; **Justice O. E. Abang of the Federal High Court in *Eko Hotels Ltd v FRCN*** (delivered March 2014).

- The NCCG is an overlapping and conflicting regulation on other specific-sector regulators' statute-backed codes and guidelines

- The CBN is empowered to make Codes of Corporate Governance for Banks and Discount Houses – **Section 57(1)&(2) of the BOFIA**



- The SEC is empowered to make Codes of Corporate Governance for capital market operators and related entities (Regulated Persons) – **Section 313 of the ISA 2007.**

- The NAICOM is empowered to make Codes of Corporate Governance for operators in the Insurance industry – **Section 64 of NAICOM Act 1997 and Section 79 of Insurance Act 2003.**

- The PENCOM is empowered to make Codes of Corporate Governance for Pension Operators – **Section 115 of the Pension Reform Act 2014**

- The NCC is empowered to make Codes of Corporate Governance for Telecoms Operators – **Sections 70 – 72 of the NCC Act 2003.**

- The NCCG is in conflict with many provisions of the **CAMA 1990.**

4. Banking Supervision: NDIC v CBN

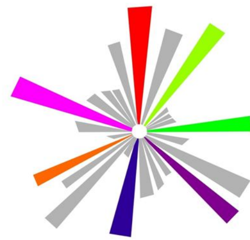
There has been recent clash of interests between the CBN and the NDIC in areas of banking licensing, regulation, supervision, and liquidation. In the proposed amendments to the NDIC Act 2006 – **NDIC Repeal and Re-enactment Bill 2015** – the Corporation is seeking certain powers which may bring it on a collision course with the Central Bank. The effect of this is that banking institutions will be faced with overlapping, confusing and tedious regulatory regimes which will be inimical to doing business.

5. Incentives in Free Trade Zones v Tax Authorities

- The Nigerian Export Processing Zones Act No. 63 of 1992 **(NEPZA Act)** and the regulation issued pursuant to it – **Investment Procedures, Regulations and Operational Guidelines for Free Zones in Nigeria 2004** – were enacted to promote companies which locate their businesses in the Free Trade Zones (FTZ) through exemptions from taxes, levies, duties and certainty of repatriation of dividends and profits etc.

- **Non-resolution of conflict between NEPZA and Federal Inland Revenue Service** on taxable and non-taxable goods makes it difficult to claim tax exemptions by affected companies operating within the zones.

- Policy Instability which leads to incessant amendment in the list of goods banned from importation into Nigeria affects investment and restricts the number of goods that can be manufactured and imported into Nigeria from the Free Trade Zones.



B. LAWS HAMPERING COMMERCIAL TRANSACTIONS AND THE GROWTH OF ENTERPRISES

1. Transfer of Interest in Mortgaged Landed Properties v Land Use Act

- The combined effects of **Sections 22 and 26 of the Land Use Act 1978** make any transfer of interest in land/landed properties invalid unless the consent of the Governor of a State or of the Minister (in case of land within the FCT) is first sought and obtained.

- The bureaucracy surrounding the process of the Consent is frustrating and time-consuming, and in most cases kill time-bound mortgage transactions and banking loans; thereby impeding the doing business rate in Nigeria.

C. LAWS WHICH ARE DISINCENTIVES TO INVESTMENTS

1. Multiple Taxation

- Paying similar taxes on the same or similar tax base.

- Examples include Companies Income Tax, Information Technology Tax (NITDA Levy), Education Tax, Nigerian Content Development Levy all of which are based on income or profits and Value Added Tax, Sales Tax and Hotel Consumption Tax all based on sales (See PWC's 50 Tax Issues)

2. Excess Dividend Tax

- This is levied by the tax authorities against companies whose dividend exceeds taxable profit

- It is levied regardless of whether the profit being distributed has already suffered taxation (i.e. the case of dividend income received by a holding company or taxed retained earnings)

- It is also levied regardless of whether the profit is tax exempt (as in the case of pioneer profit and capital gains on stocks).

3. Issues in Company Income Tax Act (CITA)

- **CITA imposes minimum tax on companies** where they have no taxable profits or taxable profits resulting in lower than minimum tax. In effect, these companies would have to pay taxes out of their capital in most cases.

- **Ministerial and FIRS approval for tax deduction** is a discouragement to investment. CITA requires the approval of the Minister (of Finance) for expenses incurred within or outside Nigeria as management fees or for the purpose of earning management fees to be allowed as tax deductible

- **FIRS** has the **discretion to determine** the amount allowable for tax purposes in respect of any expenses incurred outside Nigeria for and on behalf of any company. These are restrictions that only create bottlenecks without any benefits

- **Tax Clearance Certificate (TCC)**: The process of obtaining TCC is often marred by undue delay and harassment of tax payers by tax officials. TCC is required to be issued automatically within 2 weeks to a tax payer – Section 100(1) of CITA; and it is a requirement in transacting many businesses in Nigeria – Section 101(2)(4)(5) of CITA. The inefficient system of TCC issuance is therefore an impediment to commercial transactions and the growth of enterprises in Nigeria.