BANWO & IGHODALO

ECONOMIES GROW WHEN REGULATORS AND INVESTORS ARE PROSPERITY PARTNERS

Africa is said to be the world's last economic frontier and massive potential for economic growth abounds on the continent. Sub-Saharan Africa is predicted to have the fastest economic growth of any region at a rate of 4.5% in 2015, surpassing Asia. But there seems generally to be a caveat: The rapid growth must create jobs and benefit everyone in society, rather than exacerbate inequality, and must be sustained. In other words, an enabling environment that will help transform Africa's rising Gross Domestic Product (GDP) into inclusive growth and sustainable development must be put in place.

Notably, of all the factors that engender economic growth in any nation, the legal and regulatory framework which govern and oversee the business sector are most critical. They determine, from the onset, the limits placed on the innovative ingenuity of local entrepreneurs and indicate to foreign investors that the country is ready to receive investment and skills transfer. Stated national goals, objectives and policy directives, though strongly persuasive, do not have the force of law and will not bind our Regulators. The provisions of economic regulations and the attitude of regulators who implement these regulations impact on the ease of getting business done in any economy, and ultimately determine the pace of economic growth

Recognizing these concepts, the Nigerian Bar Association, Section on Business Law's (NBA-SBL) 9th Annual Business Law Conference which held in Lagos between 7-9 June 2015 settled on the theme: ***"Regulators as Catalysts for Economic Growth."***

The Global Competitiveness Index (GCI) published yearly by the World Economic Forum (WEF) identifies in its 2015 edition that the majority of African countries are among the least competitive in the world and Africa's overall competitiveness has remained stagnant in spite of 15 years of strong growth. Corroborative statistics from the World Trade Organisation (WTO) measure Africa's share of global trade at 3.5%, whereas according to the United Nations, the continent's share of global population is currently estimated at 15%. The WTO further states that Africa's tiny share of global trade is substantially done only within the continent itself. Intra-African trade currently accounts for only about 12% of the African continent's total trade compared to Latin America, Asia and Europe with 22%, 55% and 70%, respectively. Accordingly, business regulations on the continent need to become more investor-friendly, so that the continent can compete favourably with the rest of the world.

Nigeria, which has the largest economy and the largest population in Africa, only ranks 127th out of 144 countries on the GCI 2014-2015. According to the Africa Competitiveness Report 2015 – a joint initiative by the African Development Bank (AfDB), the World Bank Group, Organisation for Economic Cooperation and Development (OECD) and the World Economic Forum (WEF) – released within the framework of the GCI on 4 June 2015, it is recommended that for Africa to achieve a quantum economic leap, barriers to trade must be reduced and regulatory framework must be strengthened. We must have policies in place which assure easy access to finance; simplify the process of land acquisition and obtaining property rights; create efficient and timely dispute resolution mechanisms; and enshrine transparent and stable government policies.

Nigeria's poor showing on the GCI is a reflection of its poor rating on the World Bank's Ease of Doing Business Index (EODBI). The EODBI "measures regulations affecting 11 areas of the life of a business," according to the Doing Business Report (DBR). These areas include; starting a business;

98 Awolowo Road, South-West Ikoyi, Lagos, Nigeria
Afri-Investment House, Plot 2669, Aguiyi-Ironsi Street, Maitama, Abuja, Nigeria
T +234(0) 700LAWYERS F +234(1) 4615205 E banwigho@banwo-ighodalo.com W www.banwo-ighodalo.com

dealing with construction permits; getting electricity; registering property; obtaining credit; protecting minority investors; paying taxes; trading across borders; enforcing contracts; resolving insolvency and labour market regulation.

Nigeria is rated 170th out of the 189 countries covered in the DBR 2015. It is instructive to note, as pointed out by the World Bank, that *"the economies performing best in the Doing Business rankings are not those with no regulation but those whose governments have managed to create rules that facilitate interactions in the market place without needlessly hindering the development of the private sector."*

For Regulators in Nigeria: A Food-for-Thought

The DBR 2015 in its Overview poses a crucial question and then goes ahead to provide answers to it. Nigeria's business and economic regulators must ponder on this question:

“What do entrepreneurs need to pursue a great idea?”

And the Report answers thus:

"First of all, they need the ability to give legal form to the idea – that is, to start a business –simply, quickly and inexpensively and with the certainty of limited liability. They also need the certainty of a well-designed insolvency system, in case the idea fails to work out. In addition, they will need to hire people to help realize the idea, will probably need to obtain financing (both equity and credit) and, in today's increasingly interdependent global economy, may in many cases need a simple way to import and export. And they will need a straightforward way to pay their taxes."

"Sound business regulations are fundamental to all of this. The right business regulations enable good ideas to take root, leading to the creation of jobs and to better lives. But where business regulations make it difficult to start and operate a business, good ideas may never see the light of day and important opportunities may be missed. Budding entrepreneurs, daunted by burdensome regulations, may opt out of doing business altogether or, if they have the resources, take their ideas elsewhere."

What can Nigeria learn from Ghana?

It is important to know that Ghana, a smaller country when compared to Nigeria in terms of population (Ghana's population is 26 million), economic size (Ghana's GDP is $117b) and natural resource endowment, is rated 111th on the GCI and 70th – one of the top 5 in Africa – on the EODBI for 2015. How did Ghana achieve these with its minimal resources?

While speaking at a session on *"Improving Nigeria's Ease of Doing Business"* at the 9th NBA-SBL Conference on Business Law, Mawuena Trebarh, CEO of the Ghana Investment Promotion Centre (GIPC) declared that legislation that hamper businesses mar economic growth. She further stated that the GIPC, which is a true first port of call for any foreign investor in Ghana, is constantly at the forefront of the reform of laws which hamper strategic investment.

The location of the GIPC in the Presidency confirms that the Presidency has taken ownership of and will drive this important regulatory process. Bureaucratic bottlenecks and administrative tensions are eliminated creating a business registration and approval process that is seamless and quick. Their watchword, Mrs. Trebarh stated, is *"we want to be a prosperity partner with investors, and this is how Ghana drives its Ease of Doing Business."*

Nigeria can take a cue from this. The Nigerian Investment Promotion Commission (NIPC), the counterpart of the GIPC, together with our other regulators, must begin to contextualise its regulatory roles within the Nigeria's national goal of becoming Africa's number one investment hub; and therefore become a facilitator and supporter of foreign investors, domestic entrepreneurs, promoters of start-ups and SMEs.

The Role of Lawyers

The various stages of the life of a business concern, from its establishment to full operational sustainability are all regulated by law. Lawyers therefore have a pivotal role to play in the formulation, execution and reformation of codes and laws regulating business and investment practices. Lawyers are usually the first advisers contacted whenever an investor/entrepreneur seeks to invest. Lawyers must therefore determine to play a more decisive role in creating a more enabling business environment and persuading our regulators to function as facilitators and supporters.

The various administrative bottlenecks and bureaucratic red-tape which hinder our ease of doing business and gravely affect economic growth are experienced, frustratingly, by lawyers as they represent their clients in the formation/establishment, registration and operational processes at numerous registration and regulatory desks.

In-house counsel who serve as legal advisers to our various regulatory agencies have a duty to liaise with external counsel to improve our filing, registration and approving processes. Our registrars, court officials, judges and adjudicators at the various regular and special courts/tribunals adjudicating on matters relating to business and investment, must work hard to speed up the hearing of matters. Our process and pace of dispute resolution must improve.

The many days and weeks spent in clearing goods at the ports, the bureaucracy working against the smooth processing and obtaining of investment permits and approvals must be resolved.

Our tax system needs to be streamlined to avoid multiple taxation which serve as a major investment disincentive and the overlapping regulatory functions, and usurpation of powers by regulators, discourage serious investors.

Lawyers and law firms must constantly either individually or corporately (e.g. through the NBA and other professional bodies like the Capital Market Solicitors Association) engage the executive, legislators, regulators and policy makers on needed legal reform with a view to making our business climate more attractive to investors.

Relevant laws which require amendment and uplift in line with contemporary international best practice, include: Companies and Allied Matters Act, 1990 (CAMA); Investment and Securities Act, 2007 (ISA); Nigerian Investment Promotion Commission Act, 1995 (NIPC Act); Immigration Act, 1990; National Office for Technology Acquisition and Promotion Act, 1992 (NOTAP Act); Foreign Exchange and Monitoring Act, 1995 (FEMA); Companies Income Tax Act, 1990 (CITA); Industrial Development Act, 1990 (IDA); Personal Income Tax Act, 1993 (PITA); Capital Gains Tax Act, 1990 (CGTA); Power Sector

Reform Act, 2005 (PSRA); Nigerian Oil and Gas Industry Content Development Act, 2010; Freedom of Information Act, 2011 (FOIA); and the Petroleum Act (which has been under legislative consideration for re-enactment as the Petroleum Industry Bill (PIB) for nearly eight years).