

FOREIGN DIRECT INVESTMENT IN NIGERIA: EXAMINING THE STATUTORY REACH

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ABSTRACT: *A fundamental shift in economic policy in Nigeria is the focus on a market driven economy and the diversification of the revenue source expressed in the quest and solicitation for foreign direct investment (FDI) and entails a private sector-led growth strategy with foreign investors as its focal target. In order to attract the necessary foreign investments, Nigeria has increased efforts at liberalizing foreign investment entry through policies and statutes to reinvigorate the investment architecture. This paper examines the statutory framework for FDI to ascertain if the depth and pith inures for a sustained and profitable foreign investment inflow. The paper finds that inflow of foreign investment into Nigeria is impacted negatively by uncompetitive investment legislations. It recommends that the laws governing foreign direct investor be reviewed to provide for a wider platform for dispute resolution and investor confidence in the areas of implementation, compliance and supervision to assure their competitiveness.*

KEYWORDS: Foreign direct investment, capital inflow, globalization, investor confidence

INTRODUCTION

Nigeria has been a top recipient of Foreign Direct Investment (FDI) in Africa. It has attracted a cumulative \$75.4 billion FDI since 1999, and generated \$22.4 billion in about three decades earlier.¹ FDI makes a return of 36%.² In spite of government's deliberate attempt to liberalize the business environment to accommodate the private sector as the engine of growth and diversifying the economy to accommodate critical non-oil sectors with FDI as the major focus, FDI inflow to Nigeria has been on the decline³. In the 2018 UNCTAD World Investment Report it was shown that FDI in Nigeria declined by 21% while capital flight increased by 8%⁴. Given the current constraints in revenue generation from the traditional revenue sources, FDI remains the most viable option for Nigeria to stimulate the economy and increase the revenue of base of the country.

¹ "Great opportunities, Great Returns, Invest in Nigeria" A publication by Nigerian Investment Promotion Commission, September 2015 p.3

² *Ibid*

³ Recent UNCTAD data (2016 – 2017), global foreign direct investment indicated a declining trend.

⁴ UNCTAD World Investment Report, 2018

This paper interrogates this specter from the perspective of the laws governing foreign investment and argues that Nigeria needs to streamline its policy and statutes to align them with best practices the world over in order to remain competitive in the attraction of FDI.

LITERATURE/ THEORETICAL ISSUES

There is no universally accepted definition of what constitutes foreign direct investment. Foreign Direct Investment usually consists of external resources including technological, managerial, and marketing expertise, in addition to capital.⁵ It usually adds new resources, technology, management and marketing among others to host economies in a way that improves efficiency and stimulate change in a positive direction. Sullivan and Sheffrin⁶ define foreign direct investment as a situation where “one company from one country making physical investment into building a factory in another country. It is the establishment of an enterprise.” The foreign investor is involved in the management and control of the physical enterprises in a foreign direct investment. Foreign Direct Investments may take the form of opening of a subsidiary or associate company in a foreign country, acquiring a controlling interest in an existing foreign company, or a merger or joint venture with a foreign company. According to Oloyede and Obamuyi⁷ foreign investment is an investment in a foreign country where the investing party (corporation, firm) retains control over the investment and generally takes the form of branch, affiliates or subsidiary operation. In other words, control is exercised by foreign investors.

Shiro⁸ stated that foreign investment consist of external resources, including technology, managerial and marketing expertise and capital. Okon⁹ on his part defines foreign investment as the acquisition of physical assets and/or securities of companies by either the nationals or the government of one country in another. It is a cross-border acquisition of financial or physical assets. It is the use of funds in the conduct of an enterprise that distinguishes ‘foreign investment’ from foreign trade. Odiase-Alegimenlen described foreign investment as “a means whereby capital, technology and other managerial expertise are sourced outside the country by a state”.¹⁰ The threshold for a foreign direct investment that establishes a controlling interest, based on the guidelines established by the Organization of Economic Cooperation and Development (OECD), is a minimum 10%

⁵Ajayi, L. B, et al, (2008), ‘*Impact of Direct Foreign Investment on Nigerian Economy*’ Lagos Journal of Banking, Finance & Economic Issues. Vol 2. No.1

⁶ Sullivan, A. & Sheffrin, M.S., (2003), *Economic Principles in Action* (Prentice Hall, p.551

⁷ Oloyede, J. A. and Obamuyi, T. M, (2000),. ‘*The Impact of Direct Foreign Investment on the Nigerian Economy*’, Nigerian Journal of banking and Financial Issues, Vol. 3, No. 1

⁸ Shiro, A.A, (2007), *The Impact of Foreign Direct Investment on the Nigerian Economy*, Lagos Journal of Banking, Finance and Economic Issues, Vol. 1, No. 2, at p.117 p.119

⁹ Okon, E.E., (2006), ‘*Foreign Investment and National Security in Developing Countries under the Globalised Environment: The Nigerian Perspective*’ in *Foreign Investment in a Globalised World*, in Guobadia, A. and Akper, P (eds), NAILS, Lagos p.121

¹⁰ Odiase-Alegimenlen, O.A., ‘*An appraisal of the Legal and Institutional Regime for Foreign Investment Promotion and Protection in Nigeria*’ in Guobadia, A. and Akper, P., Ibid. 35

ownership stake in a foreign-based company, typically represented for the investor acquiring 10% or more of the ordinary shares or voting shares of a foreign company.¹¹

METHODOLOGY

This work is doctrinal and interpretive based on the analysis of Nigerian legislations on or relating to FDI with the aim of finding the consistency and certainty of the law at promoting the objective of FDI as a strategic economic policy of Nigeria. Any reference to legislations or policies of other jurisdiction is for the purpose of determining the efficacy of the Nigerian legislations only.

Nigerian Legislations on Foreign Investment

There are several laws governing the framework for foreign investment in Nigeria. However, only the major ones in the estimation of this writer have formed the fulcrum of this work.

The Constitution of the Federal Republic of Nigeria 1999

Section 16 of the Constitution of the Federal Republic of Nigeria sets the objectives of government's economic policy. Though this section is contained in the chapter dealing with the Fundamental Objectives and Directive Principle of State Policy,¹² largely non-justiceable, it is however, provided within "the context of ideals and objectives for which provisions are made in the Constitution"¹³. The section provides that the State of Nigeria shall harness the resources of the nation and promote national prosperity and shall protect the right of every citizen to engage in any economic activity outside the major sectors of the economy.

Deriving from this objective and the general ideals inherent in the Constitution, section 37 provides, undoubtedly in our opinion, the enduring guarantee of investment protection in Nigeria. This section secures the fundamental right of every citizen to privacy. In the American case of *Doe v Bolton*¹⁴, the court held that "the right to privacy equates fundamental right to personal autonomy and includes control over the development and expression of one's intellect, interests and personality". Autonomy, it is submitted, suggests the freedom to engage in interests or ventures that produce wealth or would lead to the production of wealth, without let or hindrance whatsoever. It is further submitted that the combined provisions in sections 16 and 37 of the Constitution assures the investor of a fundamental legal cover to freely put his money to secure income or profit from its employment¹⁵ in any business enterprise of his choice within the ambit of enabling law(s).

¹¹OECD Report on World Investment, 2018

¹² Chapter 2 of the Constitution of the Federal Republic of Nigeria (FRN)

¹³ Section 16(1) (a & e) the Constitution of the FRN

¹⁴ (1974) 22 Michigan Law Review 1616

¹⁵ *Securities and Exchange Commission v Wickman* D.C. Minn. 12F.supp. 245 at 247.

Section 44¹⁶ also safeguards the interest of the investor and prescribes certain conditions which must be fulfilled where expropriation may be necessary. Paragraph (b) of the section 44 provides for the right to compensation provided the interest in the property is determined. The Nigerian constitution accords foreign investors the same rights guaranteed to a local investor under Section 6 (6).¹⁷ From the foregoing a foreign business may invoke the provisions of the law and approach the court to protect its civil rights and investments whether against Nigerians, a Nigerian company or the Nigerian government and is entitled to compensation where the courts grants it. In the case of *Anderson v. Federal Ministry of Internal affairs & A-G of the Federation*¹⁸, the Court interpreted the right to compensation for expropriation to include anybody or enterprise within Nigeria's territorial sovereignty. This goes a long way to boost investor confidence.

The Nigerian Investment Promotion Commission (NIPC) Act 1995

The NIPC Act is the main legislation to encourage, promote and co-ordinate investment in the Nigerian economy, facilitate the inflow and promote foreign investments into the country. It prescribes that a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria. Part II of the Act provides for the functions and powers of the Commission which is to encourage, promote and co-ordinate investment in the Nigerian economy.¹⁹

For the purpose of promoting identified strategic or major investments, the NIPC shall in consultation with appropriate government agencies, negotiate specific incentives packages for the promotion of investment, as the NIPC may specify²⁰. A foreign investor in an enterprise to which this Act applies, shall be guaranteed unconditional transferability of funds through an authorised dealer, in freely convertible currency, of dividends or profits (net of taxes) attributable to the investment, payments in respect of loan servicing where a foreign loan has been obtained; and the remittance of proceeds (net of all taxes), and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment.

In section 25, the Act guarantees against expropriation unless it was necessary for public purpose and on the grounds of national interest. However, it also made room for compensation. The NIPC Act also provides in section 26 for a procedure for the settlement

¹⁶1999 CFRN

¹⁷ Nigerian Constitution provides that judicial powers shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law; and shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. Nigerian Constitution provides that judicial powers shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law; and shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

¹⁸ 1984 Federal High Court Report 29

¹⁹Section 4

²⁰ Section 22

of dispute arising between any Government in Nigeria and a foreign investor through mutual discussion to reach an amicable settlement. Where in respect of any dispute, there is disagreement between the investor and the Federal Government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Disputes Rules shall apply. By this provision, disputes will be settled within the framework of the agreement where there exists a bilateral or multilateral agreement on the protection of investment between the Nigerian Government and the Home government of the foreign investor. Disputes may also be settled under any other national or international machinery for dispute settlement which the parties may have agreed upon.

The Companies and Allied Matters (CAMA) Act 1990

The Companies and Allied Matters Act is the principal law regulating the registration of business organization in Nigeria. It also deals with the regulation and supervision of the formation, incorporation, registration, management, and winding up of companies.²¹ All business enterprises must first be registered with the Corporate Affairs Commission (CAC) which is the government agency that is entrusted with the administration of the Act and this must be done regardless of the ownership origin. Business enterprises must comply with a myriad of internal regulations applicable to the particular business. A foreign investor is therefore obliged to take all necessary steps to obtain local incorporation.

The Companies and Allied Matters Act provides that every foreign company having the intention of carrying on business in Nigeria shall take all necessary steps to obtain incorporation as a separate entity in Nigeria, but until so incorporated, the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company.²² If any foreign company fails to comply with this requirement, they shall be guilty of an offence and liable on conviction of a fine; and every officer or agent of the company who knowingly and willfully authorizes or permit the default or failure to comply with those requirements is, whether or not the company is convicted of any offence, be liable to a conviction of a fine and where the offence is a continuing one to a further fine for every day during which the default continues.²³ Any act of the foreign company that contravenes the incorporation requirement of the Act is null and void *ab initio*.

The Act provides in section 56 that a foreign company may apply to the National Council of Ministers for exemption of incorporation where the foreign company is invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project among other categories. Granting an exemption to a foreign company does not affect the rights, obligations and liability of the company.²⁴ It must also be noted that the law also considers it an offence for any person who for the purpose of obtaining exemption makes

²¹ Section 7 (1)(a) CAMA

²²Section 54 (1) CAMA

²³Section 55 CAMA

²⁴Section 60(b) CAMA

statements or present any instrument which is false²⁵ and there are also penalties in the Act for this breach.²⁶

Foreign Exchange (Monitoring and Miscellaneous) Provisions Act (FEMMPA), 1995

This Act was established to liberalize transactions, ease convertibility, free importation or repatriation of foreign exchange from Nigeria and commends a freer inflow of foreign direct investments. The Act established the Autonomous Foreign Exchange Market (AFEM), referred to as “the Market”²⁷. The Act also permits the operation of domiciliary accounts in any convertible foreign currency²⁸ and it further guaranteed that no money imported for the purpose of the Act will be liable to seizure or expropriation.²⁹

The Investment and Securities Act (ISA), 2007

This Act established the Securities and Exchange Commission (SEC) with enlarged powers and functions over the capital market. It provides a set of new market infrastructures and wide-ranging system of regulation of investment and securities business in Nigeria. The SEC is to ensure the protection of investors, maintain fair, efficient and transparent market and reduce systemic risk. It equally established the Investments & Securities Tribunal (IST) as a dedicated, specialized and fast-track civil court for the resolution of disputes arising from investments and securities transactions. Such disputes were expected to be resolved in an accessible, flexible and cost-effective as well as efficient and transparent manner. The ISA stipulates that all matters before the Tribunal are to be disposed off within 90 days from date of hearing.³⁰ The problem has to do with the provision of Section 295 in the ISA, which says that appeals lie directly from the IST to the Court of Appeal.

DISCUSSION

For most of the developing countries, policy strategies and statutes governing FDI are dictated by two main objectives. These are the need for national economic independence and the need for rapid economic development. It is common knowledge that in Nigeria, like most other developing countries, foreign direct investments have primarily been focused towards the exploitation of natural resources, particularly oil and gas resources³¹. Given the exploitative records of investors in the oil sector, it is quite difficult to identify other investing areas in public utilities. This is where competitive laws are required. The imperative is premised on the need to balance the interest of foreign investors against national interest. These needs between the country and investors can be better managed by instituting appropriate legislation and implementing the necessary legal regime and policies

²⁵Section 59(1) CAMA

²⁶Section 59(2) CAMA

²⁷Section 1(10) FEMMPA

²⁸Section 17(2) FEMMPA

²⁹Section 17(5) FEMMPA

³⁰<<http://sec.gov.ng/>> accessed on 29/10/18 at 2:17 pm

³¹ UNCTAD Report, *fn11*

with the concomitant balance the need of foreign investment with the developmental needs of the country.

Capital importation into Nigeria stood at \$ 5,513.55 million in the second quarter of 2018. This was a decrease of 12.53% compared to Q1 2018³². The decline recorded in the second quarter was as a result of a decline in Portfolio and Other Investments, which declined by 9.76% and 24.07% respectively³³. The largest amount of capital importation by type was received through Portfolio investment, which accounted for 74.7% (\$4,119.5m) of total capital importation, followed by Other Investment, which accounted for 20.5% (\$1,132.8m) of total capital, and then Foreign Direct Investment FDI, which accounted for 4.7% (\$261.4m) of total capital imported in the second quarter³⁴..

It is this steady decline over the years that has formed the basis of this critique; how have the laws in force affected the Nigeria's competitiveness in attracting foreign direct investment and can the trend of decline be reversed by law?

Nigeria Investment Promotion Commission Act

The NIPC Act which is considered the frontline document for foreign investment lacks some basic concepts in International Economic Law which act as the basic requirements against which national investor protection laws are judged. Some of these concepts include the following:

Limitation of Dispute Resolution Options

A key aspect of the Act is the dispute resolution mechanism. Section 26 provides thus:

- (1) Where a dispute arises between an investor and any Government of the Federation in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement.
- (2) Any dispute between an investor and any Government of the Federation in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions, may be submitted at the option of the aggrieved party to arbitration as follows—
 - (a) in the case of a Nigerian investor, in accordance with the rules of procedure for arbitration as specified in the Arbitration and Conciliation Act; or
 - (b) in the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Federal Government and the country of which the investor is a national are parties; or
 - (c) in accordance with any other national or international machinery for the settlement of investment disputes agreed on by the parties.

³² Nigerian Capital Importation (Q2, 2018) A report by the National Bureau of Statistics. Available on <<http://www.nigerianstat.gov.ng/>> Accessed August 28, 2018 at 3:50am

³³ ib id

³⁴ Ib id

- (3) Where in respect of any dispute, there is disagreement between the investor and the Federal Government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Disputes Rules shall apply.

A perusal of this provision reveals that it generally limits an investor to selecting only one out of a number of agreed dispute resolution forums. An investor should not be limited in its option to seek redress rather it should be at liberty to institute arbitration proceedings against a government in Nigeria even after bringing a claim or counterclaim against the government in a court or domestic arbitration. Another critical enabler is the rule of law and the recourse to a robust system for resolving disputes and providing compensation for investors where appropriate. Efficient and reliable dispute resolution mechanisms are central to securing investor confidence.

Fair and Equitable Treatment Principle in Investment

Fair and equitable treatment principle is a standard incorporated into investment treaties and contracts. It was introduced as a standard of treatment for transnational corporations in Article 48 of the Draft United Nations Code of Conduct on Transnational Corporations³⁵ which provided thus:

“Transnational corporations should receive [fair and] equitable [and non-discriminatory] treatment [under] [in accordance with] the laws, regulations and administrative practices of the countries in which they operate [as well as intergovernmental obligations to which the Governments of these countries have freely subscribed] [consistent with their international obligations] [consistent with international law].”

This standard has also been adopted by the World Bank and the IMF in the Guidelines on Treatment of Foreign Direct Investment. The standard is broad, and what is considered fair and equitable will be determined by the facts and circumstances of each case. Fair and equitable treatment which is a key principle in international investment law and vast majority of international investment agreements has not been specifically provided in any Nigerian in the The Nigerian Investment Promotion Commission Act which in the main is the primary foreign investment legislation. To ensure an effective foreign direct investment inflow to Nigeria, it is necessary that an appropriate and effective legal, regulatory and institutional foundation is established upon which foreign investors can rely in establishing their private contractual relations.

The Umbrella Clause

An umbrella clause is a provision in investment treaties whereby the contracting states provide specific undertakings to foreign investors by guaranteeing compliance with investment contracts within the framework of the treaty, a violation of which becomes a

³⁵ 1983 version

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violation of the treaty itself. The effect of an umbrella clause is to bring obligations or commitments that the host state entered into in connection with a foreign investment under the protective “umbrella” of the BIT, which are then enforceable through international arbitration. It functions as a catch-all provision to pursue claims even when a host state’s actions do not otherwise breach the investment treaty. Umbrella clauses are usually broadly written to cover every conceivable obligation of the host state.³⁶ By providing that a violation of an investment contract is a violation of an investment treaty, umbrella clauses elevate a contract claim to a treaty claim and gives foreign investors the opportunity to avoid the dispute resolution provisions in the contract which give may exclusive jurisdiction to domestic courts or domestic arbitration, and bring a claim before an international arbitral body, such as the ICSID.³⁷

The Nigerian laws do not specifically provide for an umbrella clause. Section 26 of the Nigerian Investment Promotion Commission Act provides as follows:

- (1) Where a dispute arises between an investor and any Government of the Federation in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement.

This provision falls short of international expectation and is responsible for lack of competitiveness of the statute. The stability and prosperity of any economy is gauged by the integrity of its business and markets. There is no other way of assuring business integrity than to make laws which *prima facie* demonstrate commitment to an integrity led business environment.

The Companies And Allied Matters (CAMA) Act 1990

CAMA is a critical legislation which impacts the business climate and Micro, Small and Medium Scale Enterprises (MSMEs). It directly affects the influx of Foreign Direct Investment (FDI) into Nigeria because of its relevance to ease of doing business and ease of investing in Nigeria. The 28 year-old Companies and Allied Matters Act is long overdue for an amendment to in line with current realities and global best practices. Some areas that the law needs to be amended to encourage foreign investment include but are not limited to the following:

Single Owned Company

Section 18 of the Companies and Allied Matters provides thus:

“As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of such company.”

³⁶Ayanwale, A. B. (2007). ‘*FDI and Economic Growth: Evidence From Nigeria*’ AERC Research Paper 165 African Economic Research Consortium, <[www.aercafrica.org/ documents/rp_165.pdf](http://www.aercafrica.org/documents/rp_165.pdf)> retrieved from Journal of Economics and Sustainable Development Vol.3, No.10, 2012

p.4

³⁷*Ibid*

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This provision is quite restrictive, more so, where a sole investor may not necessarily want a partner. In comparison with the United Kingdom, a private limited company can be formed by one person. Section 7 of the Companies Act 2006 provides as follows: “(1) A company is formed under this Act by one or more persons—(a) subscribing their names to a memorandum of association; and (b) complying with the requirements of this Act as to registration.”

This is very beneficial for business owners who prefer to work alone or don't need a business partner. The provision of section 18 of CAMA impacts negatively of foreign investment in Nigeria as sole foreign business owners are ousted thereby.

Limited Liability Partnerships

Globally, the current trend is to permit by legislation partnerships to enjoy limited liability statue similar to that of companies. This form of partnership is a Limited Liability Partnership (LLP). An effect of this is that investors that register their businesses under this law enjoy reduced responsibility in the event the partnership breaks up or the venture fails. This suits most private foreign investors. The Companies and Allied Matters Act does not make provision for a Limited Liability Partnership which is one of the variance of business structures in global economies. Limited Liability Partnership will boost investors' confidence but this is unfortunately not provided for in the CAMA.

Reduction in Minimum Share Capital

The provision of CAMA in this regard is stringent and does not easily allow for a reduction in share capital of a company without resorting to the Court. Sections 105 and 106 of CAMA specifically provides thus:

- 105.**(1) Except as authorized by this Decree, a company having a share capital shall not reduce its issued share capital.
- (2) For the purposes of this and other sections relating to reduction of share capital, any issued of share capital shall include the share premium account and any capital redemption reserve account of a company, and "issued share capital" shall be construed accordingly.
- 106.**(1) Subject to confirmation by the court, a company having share capital may, if so authorized by its articles, by special resolution reduce its share capital in any way.

The existing court based procedure is a formal, slow and cumbersome process and may discourage many companies from undertaking a reduction of share capital if they deem it necessary. In order to ease the process of doing business and to attract investors, it is necessary that this section of law be considered and amended with a new framework that will enable private companies to reduce their share capital where the company passes a special resolution without resorting to court. .The burden or disadvantage of applying to court may discourage investments in the economy. Hence, there is a need to review this area of the law.

Foreign Exchange (Monitoring and Miscellaneous) Provisions Act (FEMMPA), 1995

The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (“FEMMPA”) 1995 is the legislation dealing with foreign exchange transactions in Nigeria. This legislation is obsolete, outmoded and not in tune with current money instruments and transaction channels. The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act is limited in scope and seems to favour only foreign currencies in the Nigerian economy. It does not make provision for reciprocity and scope for the use of the naira for foreign transactions as well and this does not spell well for investments and the growth of the economy. It is contended that this weakens Nigeria’s position in foreign investment transactions. The present policy of the Naira – Yuan swap with China is a window in trade relations but does not answer the global question of foreign investment and is limited in scope.

The nebulous roles of the Minister of Finance and the Central Bank in the implementation of the Act are overlapping and limit the reach of the law in achieving its objective. While it is the Central Bank that regulates foreign currency and investment transaction dominated in foreign currency under the Act, it is to the Minister of Finance that the aggrieved party must go for remedy.³⁸

The Investment And Securities Act (ISA), 2007

In spite of its vintage status as the prime statute for the attraction of foreign investment into Nigeria the Act apart from being badly drafted has worrisome provisions which impede the inflow of foreign investments in the country. Such provisions include but not limited to the following:

Power of Minister to Issue directives and power to supersede Commission

Section 298 of the Investment and Securities Act, 2007 provides thus “Without prejudice to the foregoing provisions of this Act, the Minister may give to the Commission such directives as appear to him to be just and proper for the effective discharge of the functions of the Commission under this Act and it shall be the duty of the Commission to comply.” This provision is far-reaching and questions of independence of the SEC as a regulatory institution.

Arbitration

This standard of investor protection is rated relative to the judicial process. Two bodies are empowered under the Act to resolve disputes – the Administrative Proceedings Committee³⁹.and the Investment and Securities Tribunal.⁴⁰ The arbitration provisions of the ISA hardly measure to this. The SEC under the ACT determines the arbitration process because it has to decode *ab initio* if a dispute has arisen. In all actions arising from a

³⁸ See sections 1, 6, 8, 39 and 40 of the Act

³⁹ Section 301(1)

⁴⁰ Section 284(1)

disputation the SEC is either a Complainant or a Respondent and no appeal can lay from the a decision of the APC except with a prior notice to the SEC.⁴¹ Above all the appellate Tribunal is not one listed in the Constitution as a court of superior record.⁴² An investor has a right to an appropriate judicial process. In other words, the host state shall not, either by omission or commission, prevent, restrict or hamper the rights of foreign investor to fully partake in a judicial proceeding for the settlement or determination of a claim arising out of the investment. a right to an appropriate judicial decision. The host state is under an obligation to establish a legal system that allows foreign investors to freely exercise their rights to seek judicial redress.⁴³ With this lack of judicial clarity there is need for legislative amendment of the Constitution and ISA. Forum shopping by investors for the resolution of their disputes causes delay and results in injustice.⁴⁴ It is submitted that this no doubt affects foreign direct investment inflow to Nigeria.

CONCLUSION

Frameworks or Codes do not, on their own, assure the appropriate results envisaged by their makers except the operators comply with them and the regulators are efficient in the exercise of their statutory over sight functions. Investments require profitable opportunities and a regulatory framework that facilitates investment transactions. Nations, especially developing ones are in constant competition for investments; therefore Nigeria should adopt best practices through legislation and policy that would be attractive to foreign investors. This paper finds that uncompetitive investment legislation impede the influx of foreign investments into the country. Nigerian laws for governing foreign direct investment are outdated and do not meet modern day realities of investment economy. Observance of statutes, regulations, codes and policies by regulatory agencies in Nigeria are inconsistent with global best practices. This, coupled with a weak supervisory/regulatory regime, is the bane of foreign direct investment in Nigeria today.

It recommends as follows:

1. A new foreign direct investment framework should be developed with a view to impact on overall economic performance, business integrity and efficiency.
2. To strengthen the legal mechanism and framework to attract foreign investors the investment laws should be reviewed to provide for a wider platform for dispute resolution and investor confidence in the areas of implementation, compliance and supervision to assure their competitiveness and enhance their institutional capacity to deliver on their statutory mandate.
3. Nigerian government needs to address wider socio-economic, political and infrastructural issues plaguing the economy as a whole as foreign direct investment cannot thrive in a country with infrastructural challenges, insecurity and political instability.

⁴¹ Section 289 of ISA

⁴² Section 251 CFRN 1999 (as amended)

⁴³ Ayanwale, A. B. *Op Cit.* p.4

⁴⁴ Lamido Sanusi, S. (2010). Global Financial Melt-down and the Reforms in the Nigerian Banking Sector. Retrieved from <http://www.cenbank.org/OUT/SPEECHES/2010/GOV_ATBU%20CONVOCATION%20LECTURE> accessed on the 21/07/2018

Implication to Research

This research has established new frontiers in legal knowledge by comprehensively appraising the pith and efficacy of all legislations relating or governing FDI in Nigeria. It will be of immense value to students, practitioners, the legislature and government.

Future Research

For future research is suggested in the area of developing a comprehensive legal and institutional framework for foreign direct investment in Nigeria.

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