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UNDP-UNIDO

The Federal Ministry of Industry

Small & Medium Enterprises Department

UNDP-Assisted Programme for development of Small & Medium Sized Enterprises
in Nigeria. (Project N° NIR/B1)

Target 1: Improve the Policy and Regulatory Framework for Promotion and
Development of SMIs

A Framework for an Investment Guide to Nigeria Comments and Proposals

Final Report

Dominique de Crombrughe
Consultant for UNIDO

assisted by

Professor Olatunde Odetola
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Lagos-Abuja January-April 1997.

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1. Introduction

1.1. Rationale of the Mission

Within the framework of the UNDP Programme NIR/B1 on the Development of SMEs, Target 1 deals with the design of a Policy Framework on one hand and with the drafting of a framework for an Investment Code on the other.

In July 1996, the FMI has entrusted Professor Olatunde Odetola with a mission to propose a framework for an SME policy and an Investment Code for Nigeria. The Consultant conducted important field and desk work which resulted in two reports, one on SME Policy and a second one on the Investment Code.

Two international consultants were then asked to further build on the work done by the local consultant. Dr. Nugavela was entrusted with SME Policy, while the author dealt with the Investment Code.

Although the demand for assistance in the drafting of an Investment Code was formulated within the broader framework of a programme on SME Development, it promptly appeared that it would not be wise to develop an Investment Code specific to SMEs which is different from a code for large enterprises. A second question arose, whether the code should address both foreign and domestic investment or whether these forms of investment should also be dealt with separately. Here again, the option was to propose a single draft. Keeping differences in incentives for national and foreign investors respectively finds less and less justification in a situation where the final aim is to link the Nigerian economy to the world economy for the benefit of all.

The report takes into account the findings and proposals made by Dr. Patrick Nugavela. It also takes into account the report based on the work of Mrs. V. Corrine McLarty: "Diagnostic Mission to the Newly established Nigerian Investment Promotion Commission"¹

¹ UNIDO Vienna, 1995, Not edited

1.2. Terms of Reference

UNIDO DG/NIR95/034/B/01/11-52/06-4000

The purpose of the project states that

“This project comes within the general programme of the development of SMEs in Nigeria and is especially dealing with the preparation of coherent SME Policy and also of an Investment Code for SMEs. The objectives of the study for the preparation of SME policies is in general to propose and enable an economical framework for SME development in Nigeria and preliminary policy documents. the policies should be more people-oriented, comprehensive and executive as tools for rapid industrialisation, employment generation and export promotion.”

The consultant will work with the National co-ordinator of the programme, national experts and with the staff of the SME Department as well as with representatives of SME associations.

The tasks are:

1. To review the actual investment code.
2. Review the existing legislation related to the investment in industry.
3. Examine the obstacles to linkages and sub-contracting agreements.
4. Review the existing system of incentives
5. Recommend appropriate programmes on investment promotion which can have a real impact on the development of SMEs
6. Provide the inputs for a comprehensive national investment code which will incorporate a detailed SME regulatory framework for the enhancement of both foreign and domestic investment

Eventually, the result should be a draft investment code acceptable to the Ministry.

During a meeting in Abuja with the Deputy-Programme Co-ordinator and his staff at the FMI, SME-Department on 23 January 1997, it was recognised that the ToR contained a postulate concerning the idea of drafting an investment code for SMEs. It was left to the consultant to decide whether his proposal should be specific for SMEs or rather a general code, possibly with provisions specific for SMEs.

It was also agreed that the consultant would deliver a framework for an investment code, rather than a draft code, given the fact that he had not been familiar earlier with the legal tradition in Nigeria.

1.3. Methodology

It was decided to take full advantage of the collaboration between the national consultant and both international experts.

During the mission several joint meetings were held, several joint visits were undertaken in order to collect data and information required for this report.

The mission was in two parts. The first one, in January-February, was a fact finding mission. Through two meetings with the SME Department of the FMI and multiple meetings with entrepreneurs, persons in charge of business associations, banks, business consultants, chambers of commerce,..., the author tried to identify the main hurdles to both domestic and foreign investment in the country and collected the wishes and aspirations of those who contribute to the economic development of the country.

The results of these findings were systematised and confronted with the experience of colleagues in Europe

During the second part of the mission in March, further proposals were designed taking into consideration the policy proposals elaborated by Dr. Nugavela and Prof. Odetola.

These proposals are to be discussed with the FMI and with the private sector and will serve as a basis for the workshop which is to be held in Abuja on March 19, 1997.

The work-method used in this report is based on discussions, meetings, documentation about Nigeria and international literature.

The use of the information has been systematised by adapting the Goal Oriented Programme Method, which implies that the beneficiaries are permanently taken into account.

Starting from the identification of the problems as they are seen by the several parties involved (Government, Public Institutions, Entrepreneurs, Investors, Business Representatives, Chambers of Commerce and Associations, Consultants, International Organisations), objectives are formulated: they are expressed in the Framework for a Draft Investment Code.

To achieve these objectives, a certain number of assumptions have to be fulfilled. We have tried to highlight them in Part 4 which contains a diagnosis of the Investment Climate.

2. Summary

“We live in a highly interactive and inter-dependent world and cannot therefore be an island unto ourselves. We should move away from the mindset that the rest of the world hates us. The Dream Team is a fully indigenous team, born and bred in Nigeria. Yet, the hearts and minds of millions of people around the world warmed to them because they embodied excellence. They are winners and the world loves winners.”²

Investment is a matter of trust, of long-lasting relationship. Like most other choices, the choice to invest somewhere is a human decision with its rationalities and its irrationalities. Behind any investment, there are men and women with a brain and a heart and their partners, whom they expect to make their investment successful. An investment is also a balance between a cost-benefit approach and a risk calculation. This risk calculation has two aspects.

On one hand, there is the risk related to the investment itself: Is my product a good one ? How shall I market it ? Shall I have the necessary means for transportation ? Won't my competitors pass on windward of me ? Will my partners be at the level of my expectations ? Will they be committed, honest ? Will they want to learn from our relationship ? Will they try to improve what we want to do ?

On the other hand, there is another risk which will be decisive in the investors' decision: the investment climate. The climate does not depend on the choice of the product or on the people you work with. It depends on the country itself, on the authorities. Will the authorities of that country at any level try to further my investment or will they put roadblocks at any time ? Will they consider me and my business as a milch-cow ? If the latter appears to be true, I shall pass my way and look for another location.

If in contrary, the reply is favourable, if commitment towards business is obvious, then the investment will be worth the risk, even if the material infrastructure is poor. If there is commitment, I know that material difficulties can be overcome.

² The Nigerian Economic Summit Group, Report on the Third Nigerian Economic Summit, 1996.

There is more of ethics in business than appears from the outside. Investors who are professional entrepreneurs and are interested in building up long term relationships, generally have too much self-esteem to be willing to enter into pokery.

These people bring techniques, know-how, they produce wealth and jobs: they are the target.

At the screening, Nigeria doesn't score well. First, although many initiatives have been taken by the Government to improve the investment climate in the country, several obstacles which discourage potential investors remain. They are dealt with in section 4 of this document. Secondly, notwithstanding the achieved improvements, the image of Nigeria abroad is not positive.

For example, this country is perceived as a place where rent-seeking is endemic.³ With such an assumption, an investor who makes his calculations on cost and benefit, will assume that a part of the benefit will be skimmed away under uncontrollable circumstances, so that it is not clear to him whether he will make profit at all.

In terms of overall risk to investment, Nigeria's reputation is also detrimental to investments.⁴ This means that an investor expects to burden himself with a lot of difficulties and time waste that will keep him away from what he would come for: do business. Indeed, doing business requires all the skills and energy of a manager.

It also means that an investor is not sure whether he or his collaborators will fall into pitfalls. Because of the dedication that is needed for an entrepreneur to do his job well, he should feel totally free of this kind of consideration, for himself and for his staff. In the perception of several investors, it appears that this country does not comply with the principles of habeas corpus.

If this environment is improved, if the perception of the country becomes good, investment could flow into Nigeria.

³ NES, o.c. p. 125, Table 13

⁴ NES, o.c. p. 127, Table 12

For the last few years, foreign investors tend to withdraw from Nigeria. Indeed, the perspectives are poor. The average capacity utilisation in the manufacturing sector has fallen to a level below 30%⁵ and is as low as 5% in some sectors. The available technology is obsolete, vocational training has practically disappeared from the education scene⁶, so that investors are not likely to find skilled manpower. A vast majority of products made in Nigeria is substandard to international market requirements and finds only customers in the vast domestic market and in the surrounding countries which depend heavily on the Nigerian economy.

This report insists on the investment climate. To improve it, certain political choices have to be made in the country. But Nigeria has also a lot of work to do to improve its perceived image. Nigeria has to sell its potential. Remember that 64 million people in this country are under 25, identifying themselves with the Dream Team.

To attract foreign investment will need a well planned and persevering diplomatic offensive towards potential investor countries. Diplomatic and commercial missions will have to go to the outside world, to meet business there, and promote Nigeria as an attractive place, both by its investment climate and its regulations⁷.

In such a context, the investment code is only a tool that sets a favourable regulatory framework for investment, in the sense that it meets the main concerns of potential investors, while it takes into account the legitimate interest of the country to have its share in the created wealth.

The investment code has no effect on the pledge of the Authorities to adhere to it, nor on the commitment of the state administration to deliver swift and streamlined administrative service.

⁵ Table 11

⁶ Table 7

⁷ The limitation of travel visas imposed on Nigerians, can be turned into a strength. With the general election day 1998 as a deadline, Nigeria should prepare the world to its pledge to democracy. Take this highly significant opportunity. Use the positive shock effect. This event should be marked as a celebration of international dimension, not as a victory but as the achievement of a transition during which the country has matured and now can tell the world in confidence: "We are back." Prepare the promoters of Nigerian culture and sports for their come-back. On day One the event can be launched.

Section 4 of this report deals with the Investment Climate and shows why it remains unattractive in Nigeria despite the very positive results achieved in the stabilisation of the economy and the public finances. Some recommendations are included in this section.

Section 5 deals with the present regulations on investment. It is presented with comments and specific recommendations.

Section 6 proposes the framework for an investment code, adapted to the international context and a clear sign towards investors that this country commits itself to investors. in this section,

Chapter 1 explains the procedures to set up a company or to acquire equity in existing companies, and the related administrative registrations.

Chapter 2 establishes the guarantees given to investors:

- Transfer of funds
- Protection against expropriation
- Access to and protection of landed rights
- Dispute settlement

Chapter 3 proposes simplified immigration facilities for foreign business executives.

Chapter 4 develops the principle of an attractive tax regime. The option is to offer a generally competitive tax regime, which the country can afford thanks to oil, gas and mining rents, and to avoid specific case by case tailored tax incentives. This chapter assumes consistent policy bearings over the long term.

Chapter 5 deals with foreign exchange regulations and proposes little changes compared to the present situation. One improvement could be the full convertibility of the naira.

Chapter 6 sets a framework to promote fair subcontracting practices.

Chapter 7 refers to Labour Law provisions.

Chapter 8 proposes a framework for environmental provisions.

Chapter 9 deals with the NIPC.

It is proposed that the NIPC becomes a truly mixed body at the service of business promotion. If implemented properly, it should become an important forum competent in co-ordinating business promotion and in advising the Government on policies for economic development, especially in the manufacturing and service sectors. It should, by its competent staffing, be designed to acquire authority on the Ministries involved in the economic development, such as the Ministries of Finances, Industry, Commerce, Tourism, Labour, Interior, Foreign Affairs, and also on State Ministries and Local Governments.

Being established in its own right, neither the Commission nor the board should be staffed with representatives of all the ministries or agencies concerned. In the same way its directors coming from the private sector cannot represent all the branches of the industry.

A true commitment to delegation of power and obedience to the decisions taken is an assumption for the success of this body.

3. The Environment

3.1. General Remarks

South of the Sahara, one African out of four lives in Nigeria.

With a population of about hundred million people still rising at an annual rate of 2.1%, this country is the largest concentration of Africans and potentially Africa's largest single market.

Vast areas of abundant and untapped natural resources makes it a land blessed by God. Its challenge is to extend that blessing to its people.

From the colonial period up to the present era, Nigeria's position has been one of continuous improvement and build-up in investments, both foreign and domestic. In colonial times, there was a small but steady in-flow of foreign (particularly British) investment which focused on the marketing of basic goods for the home market and consumption for the Nigerian market. These investments had been funnelled into the establishment of such enterprises as the United African Company (UAC), Patterson Zochonis (PZ), Lever Brothers etc. Largely trading companies, these establishments have become important manufacturing enterprises today, producing and manufacturing for domestic and foreign markets.

In post colonial times, the inflow of foreign investments has fluctuated with several factors. These include perception of exploitable potential resources, degree of nationalism, stability of politics and governance, particularly speed in movement away from totalitarian to democratic norms and values, level of available professional skills and various other factors.

3.2. Domestic Investment.

Domestic savings have increased more than four fold in the last decade and a half. The increase has been due largely to the establishment of a capital market, improvements in the economy as well as to a national drive for the mobilisation of domestic savings.

Notwithstanding this increase, domestic savings remain very low compared to a number of other countries that achieve levels of 20%: although there is an increase in

absolute terms, domestic savings as a percentage of GDP still decrease and did not exceed 9% in 1995⁸.

3.3. Foreign Investment

Foreign Investment has declined by about 50% or more between 1993 and 1996 although it has begun to pick up again by the third quarter of 1996. The decline has been due to a perceived instability of the political system, the need for investment in the rising economies of the East European and South East Asian nations, a movement of investment towards Southern African nations in a highly competitive global economy, perceived inefficiencies of the Nigerian economy, particularly with reference to the provision of working infrastructures.

Africa's share in the world total Foreign Direct Investment (FDI) has remained very low. With 3.5 billion USD, Africa benefited only of 1.7% of the world foreign investment. Nigeria's part was almost 1/4 of this amount representing 800 million USD of FDI.

3.4. Nigeria's trading Partners and Investors

The UK is Nigeria's largest investor as well as her largest trading partner. The UK is followed by Germany, France, India, Lebanon and the USA. On the other hand, the economies of the countries around Nigeria, such as Benin and Niger heavily depend on Nigeria.

3.5. Political Governance

Nigeria's governance since independence has alternated between civil-democratic system on the one hand and military on the other hand with military rule being preponderant.

Conventionally, investors have shied away from military rules which is the present system. The heightened disruptions in the political system since 1993 has been in part responsible for a decline in foreign investment in spite of assurances by government of a guarantee of investors' funds.

However, the transition to a democratic civilian rule in 1998 is proceeding apace and it is hoped that investor confidence would speedily return with it.

⁸ Central Bank of Nigeria, Annual Report and Statement of Accounts for 1995

3.6 The Economy

Nigeria has vast but largely unexploited natural⁹, physical and human resources which, if exploited through investments and development of skills, would place its economy above any other African economy.

The economic system is mixed (i.e. public and private); the private sector has however slowly gained increased recognition and growing ascendancy. This change has been due to the Structural Adjustment Programme (SAP) implemented between 1986 and 1992.

The major reforms measures of SAP were:

- the abolition of import licenses,
- review of the tariff regime,
- abolition of export duties,
- privatisation of government investments.
- liberalisation of foreign exchange

Privatisation rapidly increased the number of private establishments resulting in the repatriation of private Nigerian funds from abroad in order to start new companies at home. In addition, several joint ventures between Nigeria and foreign investors were established.

Agriculture had accounted for over 90% of the economy until oil was discovered in the late 1960's.

Oil exploration and exploitation changed the situation in an almost exactly opposite direction where from the early 1970's oil proceeds account for 90% of overall foreign exchange earnings.

3.7. Potential Areas of Investment

The Government of Nigeria wishes to attract investment in the following areas:

- telecommunication
- electricity generation
- exploration of the petroleum sector
- export refineries
- coal and bitumen exploitation
- hotels and tourism

The Strategic Industrial Plan Policy has noted significant areas in which investment opportunities exist. These are light engineering, metallic products, cement manufactures, food processing, ceramics etc.

⁹ In 1994, mining activities contributed only 0.2% to GDP, Nepza, Investors Guide, p.3

However the natural potential and the market perspectives of Nigeria should attract investors in many other fields, provided an enabling climate is restored.

Manufacturing account for a low figure of 7% of total GDP. This highlights considerable gaps in the economy, which require important investment.

4. The Investment Climate: a Diagnosis

World industrial investment has considerably developed since the 80ies, making the world economy a global place. The time for protectionist policies is over: all economies operate on the global market and compete with each other. Technologies are available all around the planet. Quality standards impose strict conditions on potential exporters. At the same time, investors can choose to locate investments all over the world.

Many developing countries offer attractive conditions which may convince investors interested in long term planning: stability, security, long term and consistent policies, secure property laws, enforceable legislation, efficient protection against arbitrary action of the authorities at any level, a well developed infrastructure, good communications, skilled human resources, easy, fast, cheap and transparent procedures for licenses and investments .

Such signals, aiming at long term policies, although they are professed by the Government, suffer daily denial at State or Local level in this country.

4. 1. The First Contact

Marketing experts insist on the importance of the first contact. When the first impression is good, the deal is half done.

Nigerian diplomatic missions are grey, unattractive places. The reception shows at the best indifference. It seems, your presence is bothering the officer.

Reception and service at the airport are reported to have improved considerably. However, it is still a struggle for who arrives there for the first time.

There is a lot to be said about reception in administrations, public services, but even in business associations. Private companies many times score best, showing a clean and attractive reception room, correctly dressed hosts or hostesses, rapid information and a smile.

4.2 .Democratic Rule

Nigeria is going through a transition process towards democracy which should end with the general elections in 1998. Transitions are mostly difficult periods because vested interests established during the previous regime conflict with new paradigms, new practices that have to be put in place even before the democratic rule is formally established. From an economical point of view, a lot has been achieved: the

Government has tackled inflation, achieved stability of the naira, reduced the budget deficit, cleaned up the banking system and considerably opened up the economy⁹.

4.3. Security

4.3.1. Personal security

The insecure environment, especially in some parts of the country, is a deterrent for investors to develop personal commitment towards the country. Robbery or assaults are not attractive for people who are used to live in a rather safe world.

But even worse is the unpredictable attitude of the Authorities against individuals. Cases were reported to us where respect of the habeas corpus rule had not been implemented in situations that could happen to any person, inclusive investors. Except for persons caught on the act or convicted of an offence, individuals should not be deprived of their liberty.

4.3.2. Security of investment

In the budget speech 1997, the Hon. Minister of Finances declared that "the Government is prepared to enter into investment protection agreements with foreign governments or private organisations wishing to invest in Nigeria" and that "the Government is prepared to discuss additional incentives with prospective investors so as to tailor such incentives to meet with each individual investor's needs."¹⁰

This case to case approach should not become the Governments' policy towards investment. On the contrary, investors need clear signals, a coherent policy and wish to be sure that they will play on the same level as their competitors. Individually tailored proposals should remain the exception and be used only in specific cases where the Government desires to attract some very particular type of technology; the rule should be a consistent policy towards investment. This requires decisive action in several fields to create an enabling climate.

⁹ Notable reforms have been achieved in 1995 through the repeal of a number of laws that impeded trade and development:

Exchange Control Act (1962), Nigerian Enterprise Promotion Decree (NEPD 1989), Industrial Development Co-ordination Committee (IDCC 1988), Exchange Control Decree (1984), Foreign Currency Decree (1985), Second Tier Foreign Exchange Decree (1986)
Further improvement has been realised in relation to foreign exchange in the Budget 1997.

¹⁰ 1997 Budget Speech by Chief Antony Ami, Hon Minister of Finances

4.3.2.1. Secure property rights on land ownership or tenure

As a rule, companies cannot buy land in Nigeria; they can only lease it. The Use of Land Act of 1978 vested the ownership of all land in a particular State in the Governor of the State. The Governor's consent has become a condition precedent to the validity of alienation or acquisition of land rights. In a country where real estate is often the only collateral accepted by credit institutions, this provision has adversely affected real securities for lending in terms of cost and time for seeking the documentation. The Act also provides that existing laws on land tenure will continue to apply. This creates a lot of confusion in the interpretation of the law. Inevitably, it has inhibiting effects on investments, especially in rural areas.

Companies report to face claims putting at risk their rights on the land their enterprise is built on. Such proceedings are often settled at high cost.

According to most State laws, foreigners are restricted from acquiring rights on land from a Nigerian, unless the Governor has approved the transaction in writing. This results in delays. In Lagos State, rights can only be acquired for 25 years, and a company with a majority of shares held by foreigners is considered alien. This is not the case in other states where companies can lease land for 99 years.

In the medium term, access to land tenure should be restored on a freehold basis as it was until the early 70ies.

4.3.2.2. Protection against breach of property rights.

In case of breach of property rights, the compensation offered by the courts is reported not to cover the damages. To restore ones rights cost time and money and does not outweigh the benefits provided. Civil suit rights are limited to a period between 3 and 6 years. This can prove to be too short to enforce ones rights, given the considerable delays in the courts. Furthermore, action limitations against the Government or Public Companies are even shorter, putting the enforcement of the rights of the plaintiff into jeopardy.

Another cause of concern is, that when the Government is involved as a party, it may adjudicate certain matters to the administrative tribunals where the common law guarantees of the plaintiff are not ensured.

4.3.2.3. Protection against expropriation

Investors make long term planning. To attract investment, a country should give all the possible guarantee against expropriation. Such a measure should be absolutely exceptional and limited to urgent situations of public interest and should guarantee full damage reparation to the investors on a very timely basis.

As a matter of fact, the terms of Decree 16 do not exclude expropriation though they provide for a compensation mechanism. Concerns of potential investors towards possible coercive action of the Authorities against their assets are raised for at least two reasons:

- Some States, among others Lagos, have set up task forces on Accelerated Revenue Generation (ARGP), which have resulted in police raids and plant shut downs. Not only is this type of action difficult to reconcile with common practice in tax collection: it also contains an inherent risk for arbitrary action.
- Decree 17 section 30 provides that in case of an offence against the provisions of the Decree, the tribunal may wind up the body corporate and without any further assurance decide that its assets shall be forfeited to the Federal Government.

This rule appears to be disproportionate with the character of some of the corresponding offences.

However, in case a dispute should arise, an entrepreneur can rely on the fact that Nigeria is a member of MIGA, the Multilateral Investment Guarantee Authority (a member of the World Bank Group) which is active in dispute settlement between investors and governments and of the Convention on the Settlement of Disputes between States and Nationals of other States.

4.3.3. Industrial property

Formally, industrial property rights are adequately protected in Nigeria. However, the time for registering a trade mark in Nigeria can last for more than a year; this is due to the irregular publication of the Trade Mark Journal, while this publication is essential for the validity of the trade mark. In case of litigation about industrial property, court proceedings can last for years, allowing the infraction to continue and denying efficiency to patents, trade marks and other intellectual rights.

There is a need for reorganising the Trade Mark and Patents and Designs Register and the Copyright Council. Proposals exist to merge them into an Intellectual Property Commission, with responsibility for registration, protection and enforcement of the

criminal aspects of infringement of intellectual property rights in conjunction with the law enforcement agencies.

Royalties agreed with a foreign partner have to be approved by NOTAP (National Office for Technology Acquisition) and nonetheless always face the risk of refusal by the Ministry of Finance which considers it has a right to control the importance of the royalty agreed between private parties. The arms' length rule should be steadily used and only abuses blocked.

4.4. Rule of law

4.4.1. Consistent application of the rules

Investors insist on consistent application of the rules, making it independent of the person in charge of the application. If a fee is charged for administrative procedures, this should be a fixed and reasonable amount for a given procedure.

4.4.2. Enforcement of contracts

In Nigeria contract enforcement is uncertain. It is practically impossible to secure a contract correctly, especially for loans.

- after 6 years, in various states, a debtor can claim limitation in defence against an action in debt recovery;
- a mortgagee cannot validly exercise his power without the governors consent;
- reference to alternative ways of dispute resolution are seldom provided for in contracts;
- bankruptcy proceedings, although vested in law, are not applied.

4.4.3. A reliable Judiciary Power

- the Judiciary is flooded by the number of cases it has to handle, which results in slow proceedings.
- compensations offered in case of litigation are insufficient and hardly cover this cost and time spending;
- the judiciary suffers interventions from the executive (i.a. the ouster clause);
- the government has the power to appoint but also to remove judges from office;
- the infrastructure of the judiciary is poor.

4.5. Support of manufacture activity.

Many of the complaints made by enterprises and expressed above refer to the gap existing between the expectations of business towards the State Administration and the attitude of the Administration towards business.

There is little or no commitment by State or Local governments towards businesses in their area. As an example, it needed a letter of a State Governor to protect the enterprises on an industrial estate against permanent harassment by the Local Government.

Recently, one of the major companies (the highest capitalised company in the country) was closed down by the Lagos State Government with intervention of the ARGP without any form of process on allegation of unpaid taxes. Evidently, the losses incurred by the company due to such commando operations, are not taken into consideration by the Administration.

4.6. Investment Promotion Instruments

Businessmen tend to plan in the long range. Investment promotion instruments are considered to be ineffective. Tax holidays are short term measures which do not necessarily meet long term needs of investors. Various business promotion funds are not implemented by lack of money or political will.

4.7. Infrastructure

Investors complain very bitterly about the poor services from NITEL, NEPA and the WATER BOARD. It has been estimated by a World Bank study, that the unit cost of production increases by 25% due to installation of extra facilities to take care of electricity outages and poor water supply. Many companies have established private postal runs to facilitate speedy communication.

4.7.1 Energy

Nigeria's main energy source is electric power generated from one major hydroelectric and two thermal stations. Total energy supply is less than 50% of demands resulting in outages and rationing. Most major manufacturing enterprises have had to supplement the national supply with generating plants.

4.7.2 Water

Water supply is irregular and of poor hygienic quality. Manufacturing enterprises invariably have to dig bore holes to supplement supplies.

4.7.3. Transportation and Communication

There has been substantial improvement in the build-up of the national road network in recent years. However, considerable development efforts must still be made to open up the country and substantial efforts have to be done to keep the roads in sufficient condition for safe and reliable transportation.

The railway network, which was particularly well developed with 35,000 km of lines, appears to be on a continuous decline due to poor management; It is no longer a factor in business nor can it deliver any reliable service to enterprises. Given the environmental and economical advantages of a good railway network, rehabilitation should be envisaged.

Although NITEL has installed several new telephone exchanges across the country and the level of performance has been raised in these areas, the recent spate of fires in a number of these exchanges has created great difficulties for all subscribers, both individual and businesses.

5. The Present Nigerian Investment Regulations: Summary and Comments

This chapter deals with the investment rules as they are now. The first observation is that a great deal has been achieved in the past two years to further investments in Nigeria, especially by repealing rules that were limiting the freedom of investment and the use of the profits. In particular, we acknowledge the policy of the Government to switch progressively from direct taxation to consumption tax. Nevertheless, hereafter in section 5.2, certain comments and recommendations are made on the existing regulations.

Only in Chapter 6 shall we propose the framework for an Investment Code that will present regulations attractive to potential investors.

5.1 Summary of advantages granted to investors

5.1.1. Rules applicable to the establishment of and participation in a Nigerian company

5.1.1.1. Investments in Nigeria, both domestic and foreign are free. A foreigner or an overseas company can become a majority shareholder in a Nigerian company.

5.1.1.2. To run a business in Nigeria, the company should be incorporated in the country as a PLC or a Limited company.

5.1.1.3. The company has to be registered at the National Investment Promotion Commission .

5.1.1.4. Purchase and sale of shares of an existing company on the secondary market, or to increase the company capital are made through the Nigerian Stock Exchange.

5.1.2. Investment Incentives

5.1.2.1. Specific incentive packages can be negotiated for strategic or major investments

5.1.2.2. Transferability of

- dividends or profits

- payments for loan servicing on foreign loans

- proceeds and other obligations in the event of sale or liquidation

are unconditionally guaranteed

5.1.3. Tax regime

There are three levels of taxation in Nigeria: the Federal, the State and the Local taxes. Tax incentives are granted to companies on federal taxes.

5.1.4. Foreign exchange

5.1.4.1. Transactions in foreign exchange are free.

5.1.4.2. Import and export of foreign currency is free.

5.1.4.3. There is no limitation of personal travelling allowance.

5.1.4.4. Home remittance by foreign nationals after income tax payment is free.

5.1.4.5. Remittance in respect of educational expenses overseas are free.

5.1.5. Immigration and expatriate employment

Companies wanting to employ foreign staff can do so subject to approval of the Ministry of Interior.

5.1.6. Labour law provisions

The Labour act applies to workers (unskilled manpower only) and provide for a national minimum wage. Other employment relationships are negotiated under Common Law rules.

5.1.7. Industrial property

Patents, designs, trade marks, commercial names and copyright are protected in Nigeria.

5.1.8. International agreements

Relevant to investments, Nigeria is a member of the ECOWAS (Economic Community of West African States), the WTO (World Trade Organisation), MIGA (Multilateral Investment Guarantee Authority) and the Convention of Washington on Dispute Settlement.

5.2. Detail of Present Provisions for Investments and Comments

5.2.1. Regulations Applicable to the Establishment of and Participation in a Nigerian Company

5.2.1.1. Investments in Nigeria, both domestic and foreign are free. A foreigner or an overseas company can become a majority shareholder in a Nigerian company.

Both Nigerians and non-Nigerians individuals and corporate bodies may invest and participate in the operation of any enterprise in Nigeria.

(Decree 16, s. 17)

This does not apply to enterprises involved in the production of crude oil or natural gas which require special authorisation, nor to activities listed in the "negative list" such as production of arms, ammunition, narcotic drugs and psychotropic substances,.. in which investment is prohibited.

(decree 16, s. 18 and 32)

Comment

Depending on the sector in which an investor operates, there is a wide range of regulations to be complied with, and permits to be obtained, either prior to investment or during the course of the company's operation. A major concern with these licenses is the long delay involved and the large amount of documentation to be submitted¹¹.

Recommendation

1. Specific authorisations should only be required for enterprises operating in fields affecting

- human and animal health
- the environment

or involving dangerous work conditions.

2. Only activities requiring a concession in the oil, gas and mining sectors and the companies involved in activities listed in the "negative list" should be excluded from the field of application of this decree.

¹¹ From a World Bank Survey, 1996, not published.

5.2.1.2. Before starting to run a business in Nigeria, the company should be incorporated as a Public or a Private Limited Liability Company. (decree 16, s. 19)

The PLC has no limit in the number of its shareholders: this form of incorporation is adapted to companies planning to seek quotation on the stock exchange;

A Private Company may not exceed 50 members and is adequate for small and medium size businesses.

The incorporation will be done in accordance with the provisions of the Companies and allied Matters decree (1990).

Companies have to apply for incorporation at the Corporate Affairs Commission.

The CAC has offices in the main towns.

The applicants have to submit:

- documentation in respect of the company's memorandum and the articles of association;
- address of the head office and registered offices;
- consent of the company's first directors;
- authorised share capital.

25% of the shares-capital of a company in Nigeria have to be paid off at the time of the incorporation.

Foreign investments have to amount to a minimum of 5,000,000 N to be taken into consideration by the CAC¹².

The Commission delivers a Certificate of Incorporation.

Recommendation

We understand that the proceedings for incorporation, although easy on paper, require nevertheless extensive monitoring by the investor. This could be addressed

- by giving the CAC branches in the main cities the authority to incorporate a company and informing the central offices periodically
- by training civil servants in the understanding that speedy administrative proceedings create a business-friendly climate

¹² This is the case law of the CAC. The amount of the initial investment can be tailored on a case by case basis.

5.1.2.3. The Company will apply for registration at the NIPC (IDCC). Supporting documents are the Certificate of incorporation and the articles of association. The Commission also delivers Business Permits, Expatriate Quota in understanding with the Ministry of Interior, as well as the Pioneer Status. The commission meets in principle once a month.

Comment

The time and money costs of establishing a business are much higher than simply having to obtain the proper permits and licenses might suggest. In a survey of SMEs conducted in 1995, it was estimated that it took an excess of six months to establish business in Nigeria. Comparative estimates range from 1.6 months in Brazil, where the framework has been reformed, to 9.6 months in Peru for the establishment of a garment business.

The cost of registration was as high as USD 2,000 against USD 650-750 in Brazil and Peru.¹³

Recommendations

1. Registration of an incorporated company should imply no form of control and should happen as a daily routine.

This should be a quick and cheap regulatory procedure without political intervention, resulting in the delivery of a register number.

2. Section 27 of decree 16, that imposes an application to the NIPC for any person desirous of establishing an enterprise in Nigeria, should be lifted as it is inconsistent with the role devoted to NIPC of delivering an administrative register number. The examination of the documentation by the CAC should be considered necessary and sufficient.

5.2.1.4. The company will ask for a VAT number (at the Ministry of Finances).

¹³ from World Bank Research 1996

5.2.2. Acquisition of Equity

. A foreign enterprise may buy the shares of any Nigerian enterprise in any convertible currency. It may become a majority shareholder.

(decree 16, s. 21(1))

To buy shares of an existing company, or to increase the company capital requires the intervention of the Nigerian Stock exchange.

(decree 16, s. 21 (2))

Comment

Section 21 (2) is likely to be the result of a drafting error. The stock exchange will intervene in transactions of quoted companies only. Investment in all other companies is based on a private transaction between the investor and the company concerned.

The return from the field is that, although investment is said to be free, a permission for a foreigner to acquire more than 50% of the shares of an existing Nigerian company, has still to be obtained from the Federal Ministry of Industry.

Equally, the visa of the Industrial Inspectorate Department of the FMI is still required for the import of foreign exchange over 10.000 USD.

Recommendations

1. The wording of section 21 (2) should be corrected
2. Permissions that are no longer supported by any regulation should be repealed explicitly.

5.2.3. Certification of Capital Importation

In order to certify that imported funds are capital importation, a foreign investor will seek a Fund Transfer Certificate from the CBN that will be delivered upon presentation of a certificate from his bank.

5.2.4. Guarantees

5.2.4.1. Repatriation of Funds and Income

- Home remittances by foreign nationals: The restriction of 75% of net salaries in respect of home remittance for foreign nationals has been removed. These salaries can be repatriated after payment of the personal income tax.
- Foreign Exchange remittances for Educational Expenses: such remittances are now allowed for all study levels

The decree provides for guarantee of unconditional transferability of

- dividends or profits
- payments for loan servicing on foreign loans
- proceeds and other obligations in the event of sale or liquidation.

(decree 16, s. 24)

Comment

There is no provision on free and unconditional remittance of royalties and other fees resulting from private conventions with partners overseas.

As a matter of fact, once a company has agreed on the level of royalties to be paid, it has to negotiate a permission with NOTAP (National Office for Technology Acquisition) to honour this obligation. This procedure is highly time consuming as the negotiation can take several months.

Once an agreement is reached with NOTAP, the Federal Ministry of Finances can still challenge the agreement.

Recommendation

1. Government control on the payment of royalties and equivalent fees should largely be removed and the arms' length principle applied. (A small tax might also be levied).
2. NOTAP is an agency whose first task is to promote technology transfer and "target high value technology and attract it by generous incentives" rather than hampering transfer by outstripped procedures.

5.2.4.2. Protection against expropriation

5.2.4.2.1. No enterprise shall be nationalised or expropriated by any Government of the Federation; and

no person who owns, whether wholly or in part, the capital or any enterprise shall be compelled by law to surrender his interest in the capital to any other person.

5.2.4.2.2. There shall be no acquisition of an enterprise to which this Decree applies by the Federal Government unless the acquisition is in the national interest or for a public purpose and under a law which makes provision for:-

- (a) payment of fair and adequate compensation; and
- (b) a right of access to the courts for the determination of the investor's interest or right and the amount of compensation to which he is entitled.

5.2.4.2.3. Any compensation payable under this section shall be paid without undue delay, and authorisation for its repatriation in convertible currency shall where applicable, be issued.

(decree 16, s. 25)

Comment

This is the kind of "catch flies with vinegar" rule. In a period of adhesion to principles of liberal economy, the Authorities should not insist on expropriation or nationalisation of companies. If Nigeria wants to attract investments, it should commit itself to fully respect these investments. In case disputes arise, the dispute settlement clause should apply fully.

If nevertheless proceedings for expropriation have to be provided for, bilateral agreements signed by Nigeria offer better guarantees for compensation than the above clause:

- the measure should be non discriminatory and taken under due process of law;
- it should give rise to prompt and adequate compensation, calculated on the basis of the real value of the investments immediately before the expropriation, and should include the interest at a normal commercial rate until the date of payment;
- the payment should be made without delay and, in case of a foreign investment, should be effectively realisable and effectively transferable to the country and in the currency designed by the claimants.

E.g., the Investment Guide for Liberia provides that “absolutely no expropriation or requisition of property” (shall be undertaken)

5.2.4.3. Protection of Industrial Property

Patents are protected for 20 years, Trade Marks for a period of 15 years that is renewable. Application for protection is with the Patents, Trade Marks and Designs Register.

Comment

There is a need for reorganising the Trade Mark and Patents and Designs Register and the Copyright Council. Proposals exist to merge them into an Intellectual Property Commission, with responsibility for registration, protection and enforcement of the criminal aspects of infringement of intellectual property rights in conjunction with the law enforcement agencies.

5.2.5. Incentives for Investment

For the promotion of identified strategic or major investments, the NIPC shall, in consultation with appropriate Government agencies, negotiate specific incentive packages.

The NIPC can also define priority areas for investments and define applicable incentives

(decree 16, s. 22 and 23)

Comment

1. There are a number of Investment Promotion Instruments in the country, both tax and non-tax. We checked them on effectiveness and our results corroborated those of a World Bank survey¹⁴ : although there are many tax relief or - concession schemes, only few are effective. The same is true of export incentives.

This is due to various reasons:

- some schemes are simply not applied by lack of finances or of political will;
- there is a lack of information among the entrepreneurs about incentives they are entitled to apply for;
- certain funds are effective but are difficult to mobilise¹⁵ .

¹⁴ not yet published. See also table 1

¹⁵ There were 10 applications for the Duty Drawback Scheme in 1996; 6 were accepted; see Table 15 In 1996, there 93 applications were made for the Export Expansion Grant Fund. NEPC Statistics 1997

From various studies, it appears that tax incentives as such are not very important to an investor, provided the tax-system is transparent and reasonable. Investors are attracted to stay; they make plans over the long term and are interested by predictable tax measures. Short time incentives, such as tax holidays are not especially attractive. What is important is a clear, predictable and reasonable tax-system.

Unlike many other countries and thanks to the oil revenue which accounts for 85% of the Federal Government collectable revenue, the Government has room for flexibility in its overall tax policy and can improve its tax system to make it really competitive.

2. An attractive tax system comprises i.a:

- the guarantee that provisions for losses (during the first few years , companies frequently accumulate losses) can be carried forward without limit in time and whatever their importance. This is an issue for foreign investors.

- an attractive capital allowance mechanism: accelerated capital allowances should provide

 - for immovables, depreciation over 10 years,

 - for equipment, depreciation over 5 years.

- corporate tax should not exceed 20% (Hungary 18%, Hong Kong 18%). Such a provision works at the symbolical level. If the corporate tax is kept low, the country appears to be at pace with strong emerging or vested economies.

- If a business is forced to set up its own infrastructure, such as electricity, and clean water supply, satellite phone,.. because of the poor public services, costly security equipment because of the prevailing insecurity, these investments should be fully deductible.

- businesses should be exempted from taxes on real estate

- income repatriation should be made as easy as possible

- royalties, interests may not be taxed at a prohibitive level: this tax if any, should not exceed 5% on the gross remittance. Applying the arms' length

principle to mother-daughter relations should avoid misunderstandings: the amount of royalties should not exceed what is common among not related companies for similar transactions.

Payment of interest on loans in a daughter-mother relation can also be requalified according to a 50% ratio in dividends and taxed accordingly. (equity-loan ratio for tax purposes).

- import duties¹⁶

-investment goods that are necessary for the businesses activity should be exempted of import duties.

- Imported investment goods should be exempted from VAT.

Recommendation

1. The tax regime applicable to investments should be checked according to the principles listed above.

2. Export promotion schemes should be reviewed on effectiveness, and where necessary, adapted in order to become effective.

5.2.6. Export Processing Zone (EPZ)

See decree 63, 1992

Comment

The Calabar Processing Zone has a planned capacity of about 60 units. The Calabar Processing Zone Authority has examined sixteen applications in the last two years and accepted thirteen of them. Three enterprises have effectively an activity running in the zone.

Although the 1996 budget had apparently reduced the tax holiday in the EPZ to 3 years, (which in many cases is not even the time necessary for a new enterprise to make profit), we were told that this restriction is not applied and that tax-holiday is still unlimited in time.

Asian countries offer tax holidays in Export Processing Zones (or Industrial Free Zones) up to 15 years.

¹⁶ Due to the overwhelming role of informal economic activity both in non-oil export and import, an important part of this trade escapes from the customs. The Government Revenue from customs is expected to represent only 1,6% of GDP in 1996. A study by Goldin and van der Mensbrugghe: An assessment of Economywide and Agricultural Reform (World Bank 1995), suggests that a change in border protection and domestic supports for manufacturing and agriculture could prove to have almost no effect on GDP in Nigeria (0,1% by the year 2000)

The concept of Free Zones was established in a context where regulated markets were the rule, as small islands of deregulated market economy, fully oriented towards export. The attraction of such zones is no longer as strong as it used to be in a context of alleviated fiscal pressure and free foreign exchange.

Furthermore, in a market, the size of Nigeria, access to the local market is an investment incentive as such.

The success of the EPZ will depend on a good infrastructure and services provided. (efficient power and water supply without breakdowns, modern telephone and communications, good connections over land, the proximity of a deep water harbour and international airport, streamlined administrative requirements).

Recommendation

NEPZA has a lot of experience in working with several ministries involved in foreign investment. They have signed memories of understanding with several ministries in order to achieve streamlined investment procedures.

The FMI should take advantage of that experience and establish regular meetings with NEPZA.

5.2.7. Foreign Exchange

5.2.7.1. Foreign exchange is free on the Autonomous Foreign Exchange Market. The Foreign Exchange Market is serviced by authorised dealers.

The exchange rate of the naira is determined by the market forces.

5.2.7.2. All transactions supported by appropriate documentation may be carried out on the market. However, all contracts signed in Nigeria shall be denominated in naira only.

Comment

In order to protect themselves against a possible exchange rate deterioration, the parties will as likely as not insert into the contract the exchange rate for the conversion.

5.2.7.3. Any person resident in Nigeria may hold an account denominated in foreign currency. The holder is protected against disclosure of the sources of the funds.

Comment

Non-residents should be allowed access to banking services in Nigeria

5.2.7.4. Capital importation (Foreign Equity Investments)

Capital importation for investment include machines, spare parts, raw materials, and other business assets.

Capital transfer under the form of funds is finalised through Authorised Dealers.

The credited institution will release a Certificate of Capital Importation and transmit it to the CBN which in turn will deliver a Certificate of Capital Importation.

(Decree 17, S 25 (2))

5.2.7.5. Payment of fees , tariffs and other charges in foreign currency for services rendered in Nigeria is now allowed, at the discretion of the party making the payment¹⁷

5.2.7.6. Payments for Imports can be made through Letters of Credit or Bills for Collection¹⁸

5.2.7.7. Personal Travelling Allowance: the ceiling of 5,000 USD for business travelling has been removed¹⁹

5.2.7.8. Export Promotion:

The Government wants to boost export trade and stimulate repatriation of export-earnings.

A uniform rate of 4% will be adopted in the computation of the Export Expansion Grant²⁰ to beneficiary companies that repatriate foreign exchange earnings in respect of export of manufactured goods. This rate replaces existing rates of 1% for large exporters and 5% to small ones .

5.2.7.9. Cash can be imported without limitation

However currency import in cash in excess of USD 10.000 may only be withdrawn in cash. (Decree 17, 1995.)

¹⁷ Budget Speech 1997, o.c.

¹⁸ idem

¹⁹ idem

²⁰ There were 93 applications in 1996.

5.2.8. Interest rates

Interest rates are determined by the market.

5.2.9. Immigration and Expatriate Employment

Companies may only employ as many foreign staff as is authorised by the expatriate quota, subject to Ministerial approval.

Recommendation

1. In the framework of a policy to attract investment, expatriate quota should be repealed and replaced by a work visa obtainable at the Embassy or High Commission at a cost fair enough to discourage frivolous application.
2. All foreigners holding a valid visa should be free to move in and out of the country without restriction.

5.2.10. Labour Law

An employer has to comply with the provisions of the Labour Act.

Comment

The Labour Act has its scope limited to workers, i.e. unskilled labour. This provides only for a national minimum wage. All other work contracts are governed by common law. There is no protection against unfair dismissal. The obligations of the employer concerning social security are extremely limited: 100 naira per month and per worker. Businesses employing a maximum of 10 people are not subject to these regulations.

Foreign investors have advantage in establishing good working relations, which enters into the framework of their long term planning. A contribution to a social security fund, provided the fund effectively pays benefits to the employees, is not a disincentive for investment.

It is also a matter of fair competition, to enact legislation that protects employees against unfair treatment during service and provides for a decent benefit after retirement.

Provisions referring to the basic Conventions of the ILO, as well as provisions against child labour should appear in the code.²¹

Recommendation

1. Reform the NSITF (Decree 73, 1993) by adapting the contribution to real costs.
2. Set the necessary conditions to allow it to perform its purpose.
3. Ensure the transparency of the accounts of NSITF and set rules for a prompt settlement of claims by retirees.
4. Make the contribution optional for employers who adhere or operate approved private pension funds.
5. Allow flexibility in the investment of pension funds by repealing the Trustee Investment Act
6. Insert provisions conform to the basic human rights conventions of the ILO and refuse child labour.

5.2.11. Environmental Regulations

Companies should respect the national regulations on environment protection. These regulations should be summarised and made available. No country can hope to develop comparative advantages by making itself the world industrial dustbin.

Respect of environmental standards in Nigerian products will become essential for exportations oriented towards the international market

Environment protection will soon become a major non trade barrier. The US norm ISO 9000 designates environmentally clean products. An ISO 14000 standard is under preparation which includes environmentally clean production processes. The European Union applies or prepares similar regulations.

The Calabar Processing Zone Authority has experience with environment regulations. The FMI could seek inspiration from this source. In particular, a procedure should be developed to monitor the establishment and the activities of risk- enterprises, working with toxic products or producing toxic waste. There should be an environment impact assessment done by a certified company before a business permit is granted to such undertakings. Enterprises should prepare an emergency plan with the local authorities.

²¹ Conventions on fundamental human rights cover basic principles on freedom of association, abolition of forced labour and non-discrimination in employment and occupation. These principles also apply to child labour. (Source : ILO)

6. A Framework for an Investment Code in Nigeria

Chapter 1 Establishment and participation in a Nigerian Company

1. General

Both Nigerian and non-Nigerian Companies and individuals may invest and participate in the operation of an enterprise in Nigeria.

2. Restriction to the field of application of the code

The provisions of this code do not apply to oil, gas and mining concessions, nor to activities included in the negative list as defined under section...

3 Incorporation

(1) A company will be established in concordance with the provisions of the Companies and Allied Matters Decree 1990. Under this Decree, before starting its business operations in Nigeria, the company shall be incorporated as a Private or a Public Limited liability Company. The latter form of incorporation is adapted to companies planning to seek quotation on the stock exchange;

A Private Limited Company may not exceed 50 members and is adequate for small and medium size businesses.

(2) Companies have to apply for incorporation at the Corporate Affairs Commission
The CAC has offices in the main towns.

(addresses)

(3) The founders have to submit

- documentation in respect of the company's memorandum and the articles of association;
- address of the head office and registered offices
- consent of the company's first directors
- authorised share capital.

(4) At the time of the incorporation, 25% of the share capital should be paid up.

(5). Foreign investments aiming at establishing a company in Nigeria have to amount to a minimum of

- USD 10,000 for a joint venture
- USD 50,000 for a foreign company.

Other private transactions suffer no lower limit.

(6) The Corporate Affairs Commission delivers a certificate of incorporation within two weeks from the application and informs the applicant in writing.

The fee for incorporation amounts to...

4. Registration

(1) The Register of Companies is kept at the FMI

(2) Upon presentation of the incorporation act, a Company will apply for a register number at the FMI This is a mere routine procedure to keep records of the companies.

The register number is delivered immediately.

The fee for registration amounts to .. (preferably free)

The FMI establishes branches of the register where there is a branch of the CAC.

5. VAT

A company has to ask for a VAT number at the Ministry of Finances - VAT Administration.

(addresses)

The VAT-number is delivered immediately free of charge.

6. Social insurance

A company has to register with the Nigerian Social Insurance Trust Fund unless it establishes that it adheres to or operates an approved private pension scheme producing at least the same advantages, in favour of its employees.

This registration is delivered immediately free of charge.

(addresses)

7. Single Window Service

Upon request by the company and against a fee of... the Single Window Service of the FMI will take charge of all administrative procedures inclusive the incorporation and obtain the required registrations within a month.

8. Acquisition and Sale of Shares

The purchase or the sale of shares of any quoted Nigerian public company shall be completed through the Nigerian Stock Exchange. The purchase and sale of the shares of any other company except these companies mentioned in section 2 can be made by private placement or direct foreign investment.

9. Capital importation (Foreign Equity Investments)

(1) The Authorised dealer through which the foreign currency or capital for the investment referred to in section 1 is imported, shall, within 24 hours of the importation, issue a Certificate of Capital Importation to the investor and shall within 48 hours thereafter, inform the CBN. The CBN will confirm the importation of Capital within 14 days.

(2) Capital importation for investment include machines, spare parts, raw materials, and other business assets.

Chapter 2 Investment guarantees

10. Transferability of Funds

A foreign investor shall be guaranteed unconditional transferability of funds through an authorised dealer in any 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;
- remittance of royalties and other fees resulting from private conventions with partners overseas;
- remittance of proceeds, net of taxes, in the event of a sale or liquidation of the enterprise;
- remittance of personal income (net of taxes) and of educational expenses.

11. Guarantee against expropriation

(1) No enterprise shall be nationalised or expropriated by any Government of the Federation

(2) No person who owns, whether wholly or in part, the capital or any enterprise shall be compelled by law to surrender his interest in the capital to any other person.

12. Access to Land

- (1) Any company, incorporated in the country is allowed to have access to land rights for the purpose of its activity in any State
- (2) Industrial companies shall comply with the regulations on use of land for industrial purposes and with environmental regulations.
- (3) Land lease shall be for a term of 99 years unless the company stipulates a shorter duration

13. Dispute settlement

- (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 Decree 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 Decree 1988 (1988 No. 11);
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, such as the Multilateral Investment Guarantee Authority.
- (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 choice of the investor shall prevail.

Chapter 3 Immigration facilities

14. Work visa for Foreign Executives

Foreign business executives may ask for a permanent work visa in the Nigerian Embassy or High Commission competent for the country of their residence. There is no limit in the number of visas granted for the same enterprise.

The fee charged for such permits is dissuasive enough to avoid abuse.

Chapter 4 Tax regime applicable to companies

15. Categories of Taxes

(1) There are four categories of federal taxes in Nigeria

- Corporate income tax
- Capital Gains Tax
- Value Added Tax (VAT)
- Withholding Tax

(2) - Personal Income Tax is collected by the State Governments.

In addition, State and Local Governments may impose certain taxes related to the registration of motor vehicles, sewerage,...

16 Provision for losses

Provisions for Company losses may be carried forward without limit in time and importance.

17. Accelerated capital allowances

Accelerated capital allowances are permitted

- for immovables, over a period of 10 years,
- for equipment, over a period of 5 years.

18. Infrastructure investments

Expenses for infrastructure investments such as bore holes, power generators, company courier services, are fully deductible from the company taxable income.

19. Corporate Tax

The rate of the Corporate tax is 20%

20. Exemption from real estate tax

Agricultural and manufacturing companies are exempted from real estate taxes on estates affected to their activities.

21. Repatriation of income

Both personnel and company income, may be repatriated in any currency without permission and without limitation after payment of income taxes.

22. Withholding Tax

Dividends, royalties and interests on foreign loans are subject to a tax of 5% before repatriation.

23. Exemption from Import Duties

Imported machines and investment goods, raw materials and semi-finished products used for manufacturing in Nigeria are exempted from import duties.

24. Exemption from VAT

Imported machines, investment goods, raw materials and semi-finished products used for manufacturing in Nigeria are exempted from VAT.

25. Tax relief on export oriented enterprises

New enterprises operating in any Export Processing Zone in Nigeria, which do not sell more than 25% of their production on the domestic market and 100% export oriented enterprises, established outside an export free zone, enjoy a full corporate tax exemption for a duration of 12 years.

26. Pioneer Status

Companies operating in designated pioneer industries or manufacturing pioneer products are eligible for an income tax holiday of 5 years, brought to 7 years for industries located in economically disadvantaged areas.

27. Additional advantages

Companies operating in the following areas

- local raw material development
- local value-added processes
- Labour intensive processes
- export oriented activities
- In-plant training

are eligible for a tax holiday of 5 years

28. Investment in Research and Development

Investment in Research and Development on improvement of processes and products is deductible from the income in the year that the money for such investment has been spent. Such investments give a right for a tax-deduction of 120%.

Chapter 5. Foreign Exchange

29. Foreign Exchange

- (1) Foreign exchange is free on the Autonomous Foreign Exchange Market.
- (2) Transactions in the Market shall be conducted in any convertible foreign currency.
- (3) All transactions supported by appropriate documentation may be carried out on the market. Contracts signed in Nigeria may be denominated in the currency of the choice of the parties.

30. Right to hold an account

- (1) Any person, resident or non-resident, may hold an account in Nigeria. Such account may be denominated in naira or in foreign currency
- (2) The holder is protected against disclosure of the sources of the funds.

31. Cash import

Cash can be imported without limitation

However currency import in cash in excess of USD 10,000 may only be withdrawn in cash and re-exported in cash.

32. Operations prohibited in cash

- Landed properties,
 - securities, including stocks, shares, debentures and all forms of negotiable instruments
 - motor cars
- may not be purchased or sold in cash.

33. A person may export goods or services from Nigeria if

- (a) the goods or services are not prohibited by law in Nigeria;
- (b) payment for the goods or services is made by means of Letter of Credit or any other internationally acceptable mode for payments; and
- (c) the amount of the payment made or to be made is such as to represent a fair return for the goods and services.

Chapter 6. Subcontracting

34. Any company can enter into a subcontracting agreement with a subcontractee. The subcontractor shall enjoy a tax rebate equal to 10% of the annual value of the invoices paid to subcontractee under the subcontracting agreement provided

- (1). the subcontracting parties have used the model subcontracting agreement delivered by the Nigerian Association for Subcontracting Promotion, which provides i.a. for the swift payment of subcontracting charges;
- (2). there has been an effective transfer of technology by the subcontractor to the subcontractee;
- (3). the subcontractor can prove at least 5 man/days of training of the subcontractee to the use of the technology;
- (4). the subcontracting relationship has lasted for at least 1 year;
- (5). the subcontractee is a Nigerian enterprise with less than 300 employees.

35. Raw materials or semi-finished products imported by a subcontractee in execution of the subcontracting agreement in view of re-exportation by the subcontractor as an end product are exempted from import duties.

36. The Nigerian Association for Subcontracting Promotion is a non governmental organisation financed at arms length by the FMI with the aim to promote subcontracting among the Nigerian enterprises.

- (1) The NASP keeps a database of supply and demand of manufacturing services and acts as a broker between suppliers and demanders.
- (2) It provides interested parties with the model subcontracting agreement and provides the adequate information for the proper implementation of such agreement;
- (3) It acts as a conciliator in all disputes between a subcontractor and a subcontractee; its decision shall bind the parties
- (4) The Ministry of Finances pledges itself to submit disputes arising from a subcontracting agreement to the arbitration of the NAPS and be bound by its arbitration decisions in such matters.

Chapter 7. Labour law provisions

Any employer has to comply with the provisions of the Labour Act.

Employees shall be registered under the NSITF unless the employer establishes that his company adheres to or operates an approved private pension scheme producing at least the same advantages, in favour of its employees.

Employers shall respect the provisions on minimum wage where they apply and establish good working relations in all cases. Employees are protected against unfair dismissal.

Nigeria adheres to and enforces the basic Human Rights Conventions of the ILO, as well as provisions against child labour.²²

Chapter 8. Environmental Regulations

Companies established in Nigeria are subject to the national regulations on environment protection. These regulations are made available to any investor.

Investors in the manufacturing sector are encouraged to design products matching the ISO 9000 standard or equivalent.

Investors planning to establish a risk-enterprise (working with toxic products or producing toxic waste) will previously ask for an environment impact assessment done by an independent certified company and join the conclusions to their application for a business authorisation.

Said enterprises should prepare an emergency plan with the local authorities.

²² Conventions on fundamental human rights cover basic principles on freedom of association, abolition of forced labour and non-discrimination in employment and occupation. These principles also apply to child labour. (Source : ILO)

Chapter 9. The National Investment Promotion Commission

It is not part of the scope of this mission to draft full proposals for the implementation of the NIPC. However, we wish to take advantage of the fact that Decree 16 (1995) has not yet been implemented to formulate some suggestions.

1. Two years have passed since the formal establishment of the NIPC, during which the Government has committed itself to improving the economic situation of the country by entrusting the private sector as the leading factor in the Nigerian economy.

This should be reflected in an updated version of the status of the NIPC. This means that the NIPC should become a body that responds to the needs of the business sector, directed and staffed with persons who have expertise, knowledge and experience in matters relating to investments in Nigeria.

Properly directed and staffed, the Commission can become a powerful instrument at the service of the economy, creating opportunities for Nigerian businesses.

The body should be governed by a small board, preferably not exceeding seven members, half of them coming from outside the public services. The Chairman of the board would preferably be an experienced entrepreneur.

The members would be appointed by the Head of State having regard to their capacity in the field of investments in understanding with business representatives. At least two members should be women.

The Commission should dedicate itself to the tasks described in section 4 of decree 16. (add applied research co-ordination)

In addition, it should pay special attention to the needs of Small and Medium sized Enterprises for which access to capital is a crucial problem.

The Commission should be managed by an efficient executive council, staffed with technicians, preferably attracted from the private sector.

It should be funded essentially by two sources:

- Direct Government funding

The Commission should establish a yearly budget and present it for approval by the Head of State. This budget should cover all expenses required for the discharge of its functions. Upon approval, it should be identified as a specific line in the State budget.

- Fees levied for services rendered by the Commission.

The amount of these fees should not exceed the market price of comparable services however.

The Commission should not be authorised to receive any gifts except from foreign or international donor agencies especially mandated to do so.

The Commission should keep proper accounts and present at the end of each year together with its budget for the next year, a statement approved by a chartered accountant.

It should also present an annual report on activities during the preceding year not later than 4 months after the end of the year.

8. Abbreviations

ARGP	Accelerated Revenue Generation Programme
CAC	Corporate Affairs Commission
CBN	Central Bank of Nigeria
ECOWAS	Economic Community of West African States
EPZ	Export Processing Zones
FDI	Foreign Direct Investment
FMI	Federal Ministry of Industries
FOS	Federal Office of Statistics
GDP	Gross Domestic Product
LCCI	Lagos Chamber of Commerce & Industry
MAN	Manufacturers Association of Nigeria
MIGA	Multilateral Investment Guarantee Fund
NACCIMA	Nigerian Association of Chambers of Commerce, Industry and Manufacture
NASSI	Nigerian Association of Small Scale Industrialists
NEPA	Nigerian Electricity power Authority
NES	The Nigerian Economic Summit
NEPC	Nigerian Export Promotion Council
NIPC	Nigerian Investment Promotion Commission
NITEL	Nigerian Telecommunication PLC
NOTAP	National Office for Technology Acquisition
PLC	Public Limited Company
SAP	Structural Adjustment Programme
SME	Small and Medium Size Enterprise
SMEP	Small and Medium Enterprise Promotion
SMI	Small and Medium Size Industry
SMID	Small & Medium Industries Department
UNDP	United Nations Development Programme
UNIDO	United Nations Industrial Development Organisation
USD	United States Dollar
VAT	Value Added Tax
WTO	World Trade Organisation

9. List of Interviewees

Federal Ministry of Industry

Chief Akajiobi, Director, FMI, Garki, Abuja

Mr. Kwaplong, Deputy Programme Director, FMI, SMID, Garki, Abuja

Prof. M. Kwanashie, Programme Management Adviser, FMI, Garki, Abuja

Mr. Nnamdi Ekweogwu, Programme Finance Officer, FMI, SMID, Garki, Abuja

Mr. O.O. Olayinka, Assistant National Programme Co-ordinator, FMI, SMID, Garki, Abuja

Mr. A.I. Zago, Assistant Legal Adviser, FMI, Garki, Abuja

Mr. Sonnie Aruya, Programme Secretary, FMI, SMID, Garki, Abuja

Federal Inland Revenue Service

Mr. Kalu Awa, Personal Assistant to the Chairman, Abuja

Nigerian Export Promotion Council

Mr. B. Itegebe, Director Planning, Monitoring & International Co-operation Department, Abuja

NEPZA

Mr. R.T. Famodile, Manager Investor Services, Abuja

Mr. Aremu Opeijinmi, Assistant General Manager Planning, Abuja

Banks

Mr. S.E. Eigbe, Deputy Director SME APEX Office, Central Bank of Nigeria, Abuja

Mr Thomas Hutcheson, Resident Economist World Bank Office in Nigeria, Abuja

Mr. Timothy Efi, Assistant General Manager, NEXIM BANK, Garki, Abuja

Mr. Aduba, Director Research Division, NEXIM BANK, Garki, Abuja

Mr. M.B. May-Bornu, Senior Manager, Commerce and Trade Division, NEXIM BANK, Garki, Abuja

Mr. T.F. Oluwagbemi, Senior Manager, NEXIM BANK, Garki, Abuja

Mr. Ubadigbo Okonkwo, General Manager, NIDB, Broad Street, Lagos

Mr. R.O. Fasasi, General Manager, NIDB, Broad Street, Lagos

Mr. B.O. Okusanya, Company Secretary and Legal Adviser, NIDB, Broad Street, Lagos

Mr. E.C. Ekpemogu, Assistant Controller, NIDB, Broad Street, Lagos

Private Sector

Chief O. Osunkeye, Managing Director and Chief Executive, Nestlé Foods Nigeria, Ikeja

Dr. M.C. Okonkwo, National President of NASSI, Lagos State Industrial Estate, Matori

Durotomi Oguntesi, Director, IMIT Nigeria Limited, Lagos State Industrial Estate, Matori, Lagos

Francis Chikelu, Crestwood Interiors Ltd., Ikeja, Lagos

Mr. Ibironke Giwa, Managing Director, Ideas Investment Ltd., VI, Lagos

Mr. L.A. Kotey, Produce Extract Ltd., Lagos Industrial Estate, Matori, Lagos

Consultants, Lawyers

Mr. David Harper, Managing Director, Scanproduct Ltd, Ikoyi, Lagos

Mr. Wole Obayomi, Arthur Andersen, Lagos

Mr. Odewole Olalekan, Arthur Andersen, Lagos

Mr. Babatunde St. Matthew-Daniel, Solicitor, Lagos

Mr. Richard Kramer, Strategic research and Investments (Nigeria) Ltd, Lagos

Mr. Frank Scott, West Africa Committee, Lagos

Dr. Matthew Eshalomi, Lagos

Prof. Frans Vanistendael, University of Leuven, Belgium

Mr. Karel Vanhoestenbergh, Synergy, Antwerp, Belgium

Associations and Chambers

Dr; Mike Okonkwo, National President, NASSI, Enugu

Mr. Akinola Ogunyode, General Secretary, NASSI, Lagos

Mr. Kayode OkanRende, Chairman, NASSI, Lagos

Mr. John Adeyemi Adeleke, Barrister at Law, World Trade Centre of Nigeria, Lagos

Mr. Isaac Taiye Lopez, Trade Research Department, WTC, Lagos

Mr. Jeshua Alabi Oke, Administration Manager, WTC, Lagos

Mr. Adekunle Olumide, Director-General, Lagos Chamber of Commerce

Mr. A Bola Pariola, Deputy Director-General, Lagos Chamber of Commerce

Mr. Gerhard-Walter Pristinger, SMEP, GTZ, Lagos

Mr. Francis Fashanu, SMEP, GTZ, Lagos

Mrs. Ute Schröder, Nigerian-German Chamber of Commerce, Lagos

NGO and Media

Mr. Stewart Parkinson, Population Services International, Lagos

Mrs. Hillary Anderson, BBC Representative, Lagos

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10. Tables

Table 1

Evaluation of Investment Promotion Instruments in Nigeria

Type		Evaluation
Tax Incentives		
Pioneer Status		effective
Tax concession		
	Local raw material development	effective
	Local value added	not effective
	Labour-intensive processes	not effective
	Export-oriented activities	effective
	In-plant training	not effective
Tax relief		
	Research and Development	not effective
	Infrastructure development	not effective
	Investment in disadvantaged areas	not effective
Company income tax		
	Tax-free dividends	effective
	Double taxation elimination	effective
Import-Export		
	Import duty drawback	partially effective
	Export Processing Zone	partially effective
	Export License Waiver	effective
	Export credit guarantee and insurance	partially effective
	Export Development Fund	partially affective
	Export Expansion Fund	partially effective
	Export Adjustment Scheme Fund	partially effective
	Rediscounting of short term bills for export	not effective
	Capital allowance	partially effective
	Tax relief on interest income	effective
Guarantees		
	Repatriation of imported capital	partially effective
	Payment of technology fees	partially effective
	Foreign currency domiciliary account	effective

Source: FMI and World Bank

Table 2

Composition of the GDP per sectors (at 1980 constant prices)

Sector	Year (in %)			
	1970	1980	1990	1992-1995
Agriculture	39.5	20.9	22.7	22.5
Total Industry	24.2	36.6	25.9	26.3
Manufacturing	02.3	04.9	04.5	04.0
Construction	04.6	07.6	03.3	03.2
Trade	21.3	20.1	20.7	20.4
Transport	02.4	03.7	02.2	02.2
Other Services	04.3	08.6	16.2	16.1
Statistical discrepancy	03.7	02.5	08.9	09.3
Total GDP (\$ Mn)	56,837.5	88,221.6	110,230	123,913.3

Source: UNIDO

Table 3

Foreign Direct Investment (FDI) in Nigeria (all sectors)

Value (\$Mns)			Percentage of GDP		
1981-1985	1986-1990	1991-1993	1981-1985	1986-1990	1991-1993
400.30	723.30	780.40	0.50	2.16	2.35

Source: UNCTAD

Table 4

Share of FDI in Gross Domestic Investment in % (all sectors)

1981-1985	1986-1990	1991-1993
3.64	23.73	19.89

Source: UNCTAD

Table 5

External Financial Flows related to FDI

	1981-1985	1986-1990	1991-1992
FDI Inflows	400.3	723.3	804.5
Profit Remittances	-542.4	-308.0	-151.0
Net Transfer	-142.1	415.3	653.5

Source : UNCTAD

Table 6
Determinants of FDI 1991-1993 (in \$)

Total GDP (annual average \$ Mn)	GDP per Capita	GDP growth rate annual average in %	Share of commodities in total export	FDI per \$ 1,000 GDP annual average
33,2	331,8	4.1	95.7	23,5

Source: UNCTAD

Table 7
Number of Students in Technical and Vocational Schools

1984-1985	1985-1986	1987	1989	1990
72,136	76,434	89,536	1,179	1,425

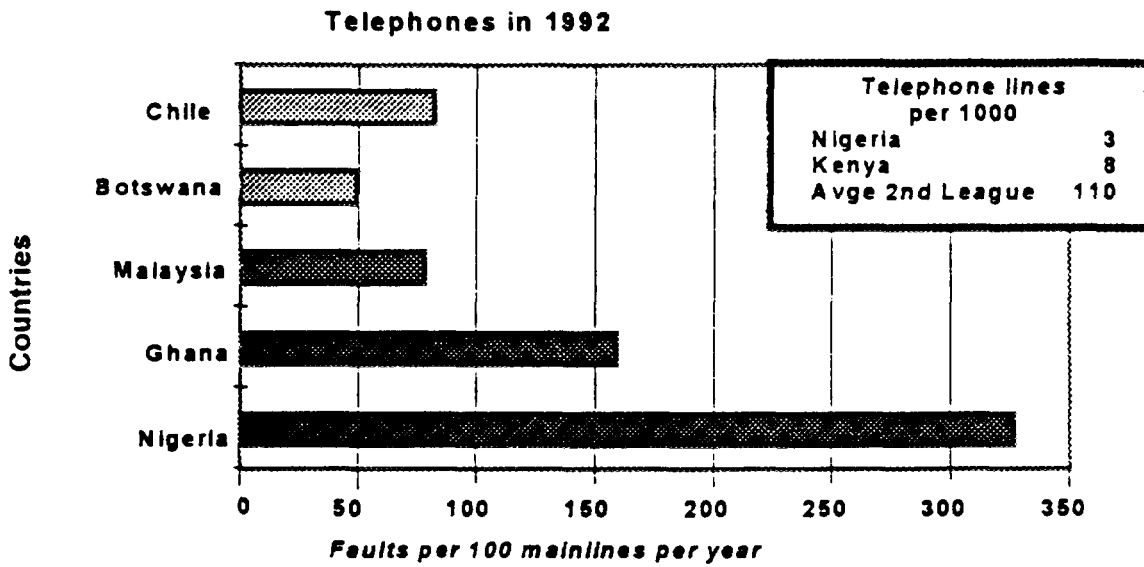
Source: FOS

Table 8
Persons employed in Manufacturing Industry (x 100)

Industry	1988	1989	1991
Food	2,999	2,863	2,960
Animal Feed	171	162	171
Beverages	6,225	6,694	6,575
Textiles	2,437	2,385	2,478
Leather and Leather Products	850	490	641
Wood and Woodproducts	1,322	1,369	1,409
Sawmilling	1,913	1,871	1,766
Paper and Paperproducts	948	930	989
Drugs and Medecine	312	296	377
Soap, Detergent and Cosmetics	136	115	132
Chemical Products	308	317	346
Printing and Publishing	1,113	1,153	1,133
Rubber and Plastic Products	2,867	2,924	3,057
Glass and Glass Products	909	959	1,133
Metal, Metal Products, Machinery	1,171	2,396	2,381
Electrical Products	169	171	227
Others	2,751	2,034	1,355
Total	26,601	27,102	27,130

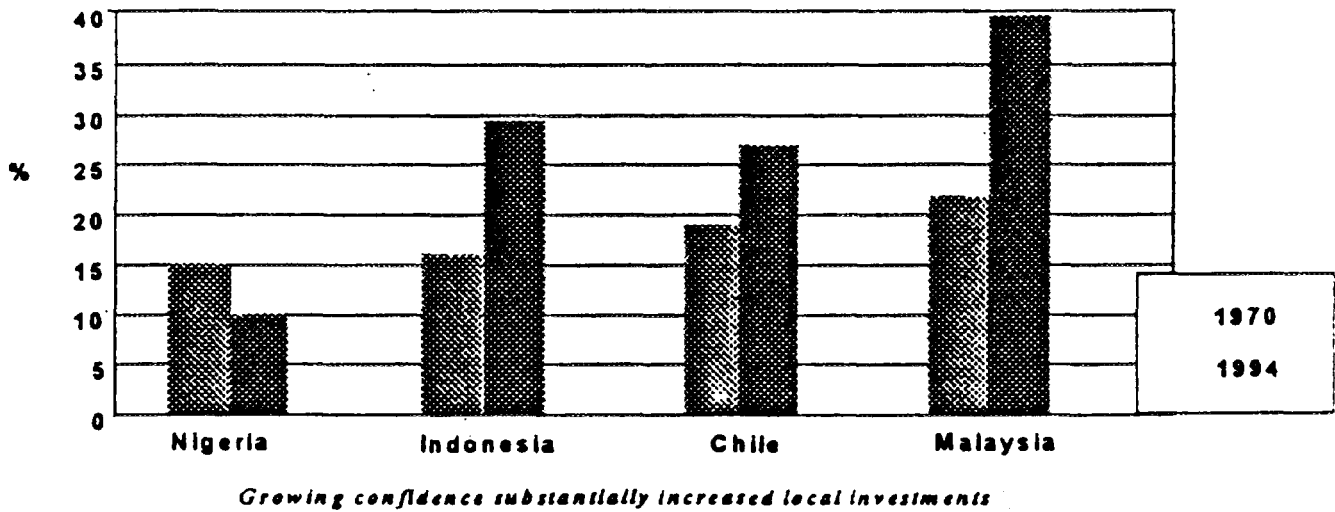
Source: FOS 1996, with reservations

Table 9
Effectiveness of Infrastructure



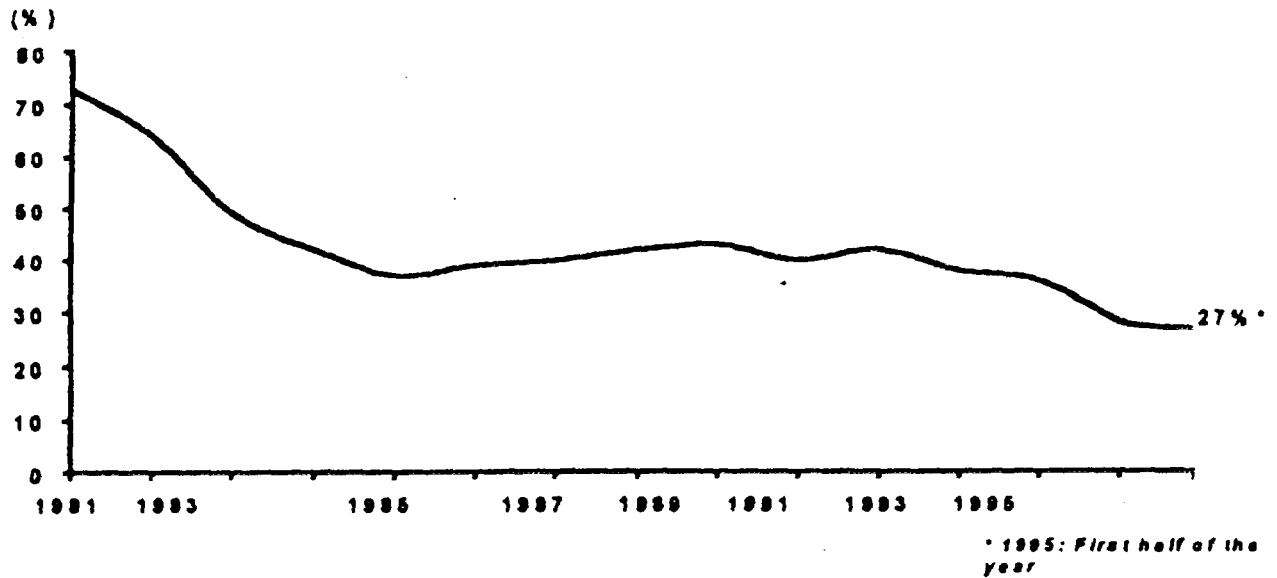
Source: World Bank

Table 10
Compared Gross Domestic Investment in % of GDP



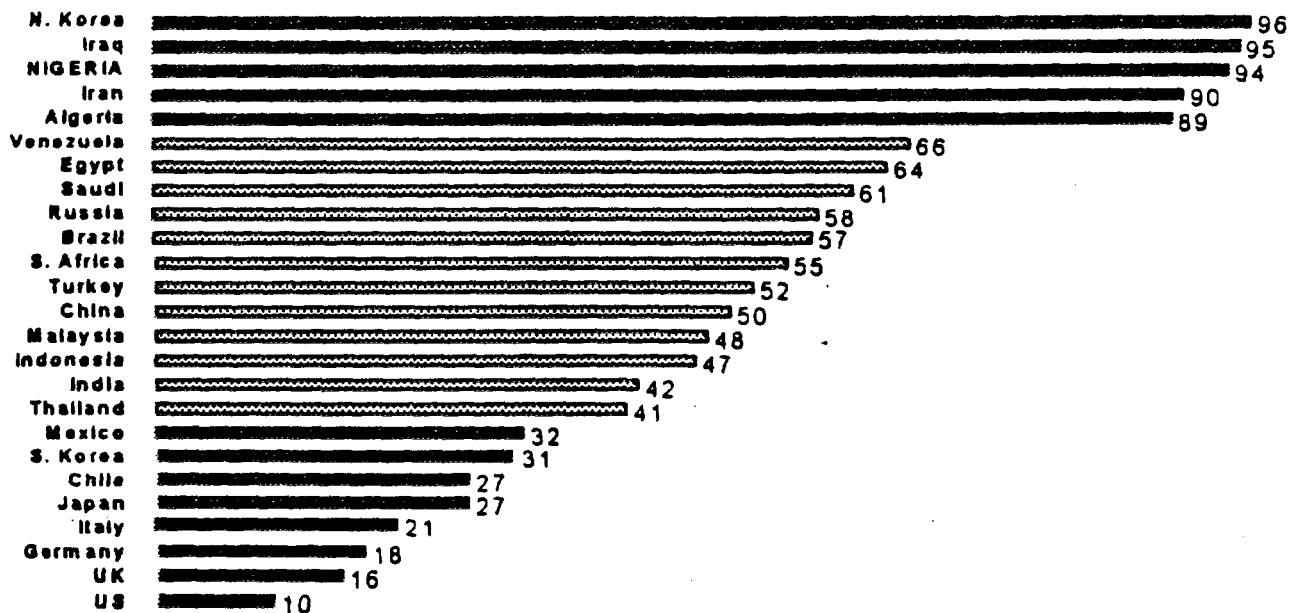
Source: World Bank and NES

Table 11
Industrial Capacity Utilisation



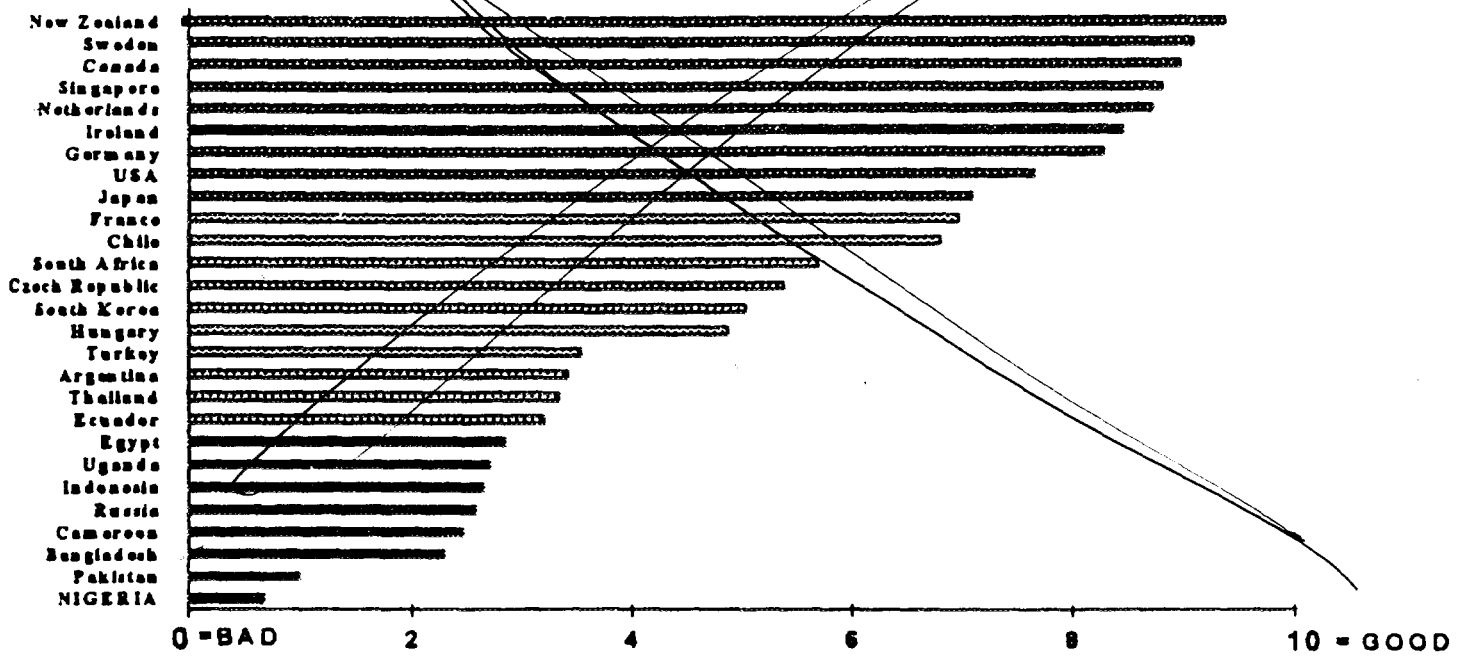
Source: MAN and NES

Table 12
Overall Relative Investment Risk



Source: Mc Graw Hill and NES

Table 13
Perception of International Corruption



Source: Financial Times

Table 14
Duty Drawback Refunds 1988-1996

Year	N° of Applications	N° of Companies	Amount of Refund
1988	5	5	645,000
1989	3	3	1,422,000
1990	15	8	2,799,000
1991	37	18	22,200,500
1992	41	17	36,441,000
1993	18	13	31,128,000
1994	5	5	7,311,725
1995	24	19	38,077,000
1996	10	6	51,399,000
Total	158	94	191,423,225

Source NEPC

Table 15

Yearly Disbursements of Export Expansion Grant Fund 1989-1996 (in naira)

Year	N° of Companies	Total Grant
1989	8	1,742,790
1990	27	4,363,577
1991	33	3,659,984
1992	122	35,009,655
1993	97	67,469,629
1994	62	27,627,582
1995	24	18,813,238
1996	93	79,782,775
Total	466	238,469,230