



**NASSBER Inaugural Roundtable
March 21st, 2016**



**LEGAL REVIEW OF THE INSTITUTIONAL,
REGULATORY, LEGISLATIVE & ASSOCIATED
INSTRUMENTS AFFECTING BUSINESSES IN NIGERIA
PRESENTATION OF THE FINAL REPORT
BY
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TEAM LEADER**



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The Sponsors and Partners

Partners:

- 8th National Assembly – Office of the Senate President & Speaker of the House of Representatives.

Sponsors:

- Department for International Development (DfID) through its programs:
 - Enhancing Nigeria Advocacy for a Better Business Environment (**ENABLE 2**)
 - Growth & Employment in States (**GEMS 3**)

Legal Review Team

- Prof Paul Obo Idornigie, SAN, PhD – Team Leader
- Leonard Ugbajah, Team Member
- Eberechi May Okoh, Team Member
- Isaiah Bozimo, Team Member

MSME's: *At the Heart of the Nigerian Economy*

90% of Jobs in developing economic provided by private sector [World Bank].

96% of Nigerian businesses are SMEs.

48.47% contribution to Nigeria's GDP in nominal terms.

43% are Female Led

57.74m Nigerians employed by MSME's which represents **84.02%** of the Nigerian workforce.

INFRASTRUCTURE: NIGERIA NEEDS PRIVATE SECTOR INVESTMENT

1. The National Integrated Infrastructure Master Plan 2015 envisages that over **USD 3.0 trillion** will be required over the next 30 years to build and maintain infrastructure in Nigeria = **USD 33.3bn Annually!!!**
2. Present Laws that will attract private sector participation are **archaic** - Reform is imperative!!!
3. Absence of a proper legal regime on competition.

Public- Private Sector Collaboration



■ Public Sector

■ Private Sector

Scope of the Assignment

This assignment was triggered by these concerns and the necessity to improve the ease of doing business in Nigeria and encouragement of private sector participation in infrastructure delivery.

Essentially, the assignment has the following components:

- ✓ A Comprehensive review of current and proposed laws relevant to the business environment in Nigeria
- ✓ Identification of Significant legislative gaps or deficiencies in the existing framework
- ✓ Recommendations on priority legislative areas to be addressed by the Roundtable and National Assembly, in consultation with the private sector.

Methodology

- The methodology adopted was essentially doctrinal. The following resources informed the selection of laws/bills reviewed:
 - **World Bank Indicators** used for determining Distance to Frontier (DTF) and Ease of Doing Business 2016 ,
 - **Impact of other laws** on these indicators and laws impacting private sector participation in infrastructure delivery.
 - **2013 SMEDAN/NBS** collaborative survey of MSMEs in Nigeria.
 - **National Integrated Infrastructure Master Plan (NIIMP),**
 - **Vision 20:2020,**
 - **Scope of Work and Objectives** of the assignment as stated in our Terms of Reference

Legislative Review

- 54 Acts out of the 407 Acts (14 Volumes) in the Laws of the Federation 2004.
- 50 Bills pending before the National Assembly as at January 7, 2016.

Name of the of the Act
Long Title
Explanatory Memorandum
Institutions Created by the Act
Identification of Legislative Gaps or Specific Deficiencies
Recommendation on Priority Legislative Areas
Rating – High, Medium and Low

Doing Business Report 2016

According to the 2016 World Bank Doing Business Report

“For policy makers trying to improve their economy’s regulatory environment for business, a good place to start is to find out how it compares with the regulatory environment in other economies. ... Also useful is to know how it ranks relative to comparator economies and relative to the regional average”

We have shown how Nigeria stands in relation Kenya, India, South Africa, United Kingdom and Regional Average (Sub-Saharan Africa).

Several practices in Lagos and Kano States (and other States in Nigeria) adversely affect Small to Medium-Size Enterprises (SMEs) when complying with relevant regulations

It's getting harder to do business in Nigeria!!

- Doing Business Report is a survey 189 countries conducted by the World Bank
- It uses 10 indicators which represent regulatory processes that a typical business face in its life cycle
- Nigeria has performed badly, even in relation to other African states

Doing
Business
Ranking

Nigeria

Year

Rank

2008

114

2012

131

2014

170

2015

170

33 African countries
are ahead of Nigeria
including Mauritius
(32), Rwanda (62),
Ghana (114)



Doing Business Report 2016

- The 10 indicators (including the individual rankings) are:

☐ Starting a Business	(139/189)
☐ Dealing with Construction Permits	(175/189)
☐ Getting Electricity	(182/189)
☐ Registering Property	(181/189)
☐ Getting Credit	(59/189)
☐ Protection of Minority Investors	(20/189)
☐ Paying Taxes	(181/189)
☐ Trading Across Borders	(182/189)
☐ Enforcing Contracts	(143/189)
☐ Resolving Insolvency	(143/189)

Key Findings - I

- We had submitted an Interim Report where we stated clearly that the ranking of economies in the *Doing Business* (DB) Report is determined essentially by **regulatory processes, procedures and practices and not enactments.**
- We conceded that enactments have a bearing on all these but in the case of Nigeria, being a Federation, there are few Federal enactments like the **Land Use Act, the Companies and Allied Matters Act (CAMA) and Tax Laws that tangentially affected the ranking.** Even in applying Federal Laws, like the Land Use Act, practice varies in the respective States.
- Deficiencies in the system leading to the unacceptable rankings were identified and specific recommendations were made.
- To improve Nigeria's ranking, the **collaboration of the states is imperative** as the studies were carried out in **Lagos** and **Kano** States and not Abuja thus using more of state laws, practices, procedures and regulations than Federal. Inevitably, the Laws, Regulations, processes and procedures of these States affect Nigeria's ranking.

Key Findings - II

Indicator	Nigerian/International Comparisons	Critical Considerations
Starting a Business	<p>Federal 5 days - Name reservation at CAC 7 days - Incorporating documents & Stamp Duty Payments <u>11 days</u> - Register a company at the CAC. 23 days</p> <p>United Kingdom, 24 hours to register a private limited company online 8-10 days postal application</p>	<p>In the 189 countries surveyed, <u>103 no longer have minimum share capital</u></p> <p>No law on corporate social responsibilities</p>
Getting Electricity	<p>Lagos State, 44 days - Submit an application EDC 31 days - Tentative approval letter, submit payment and request and receive site visit; 18 days - Purchase and install external connection equipment; 14 days to obtain right-of-way permit; 14 days to request and receive inspection 30 days to submit inspection certificate to utility, 30 days to obtain wiring inspection and test of complete installation by utility 30 days to obtain meter installation by utility and</p>	

Key Findings - III

Trading across borders

In Nigeria, border compliance takes and average of 289 hours and costs USD 1,077

Procedures for shipment of goods by sea, land and air are cumbersome; adopt electronic systems

Enforcing contracts

Contract enforcement takes **509.80 days** and costs **57.70%** of the claim;

Lagos State has a modern Arbitration Law while Kano State (like other States) is still using the 1914 Arbitration Law.

There are no commercial courts, small claims court and no pre-trial conference procedures in most states.

The Arbitration and Conciliation Act of 1988 is an Existing Law but has issues with modification – who is the appropriate authority as it is not in the Exclusive or Concurrent List? If Residual, what of inter-state and international arbitration??

Payment of Taxes

Lagos and Kano States there are a minimum of 18 taxes or mandatory contributions),

Multiple taxation increases the number of payments business must make, the frequency of the said payments and compliance time

Key Recommendations – Legislative Priorities

The Final Report contains a broad range of legislative and policy interventions, High Priority Bills & Amendments to Acts are depicted below:

1. Federal Competition and Consumer Protection Bill, 2015.
2. National Transport Commission Bill, 2015.
3. National Roads Funds Bill, 2015.
4. Federal Roads Authority Bill, 2015.
5. Nigerian Postal Commission Bill, 2015.
6. Nigerian Ports & Harbors Authority Bill, 2015.
7. Nigerian Railway Authority Bill, 2015.
8. National Inland Waterways Authority Bill, 2015
9. Petroleum Industry Bill
10. Independent Warehouse Regulatory Agency Bill
11. Secured Transactions in Movable Assets Bill
12. National Development Bank of Nigeria Bill
13. Franchising Bill
14. Companies & Allied Matters Act, CAMA 2004 (Amendments)
15. Investments & Securities Acts (Amendments)

Key Recommendations – NASS Processes & Other Critical Reform Areas

- **Establishment of a Federal Legislative Clearing House** – overlapping and conflicting mandates - ICRC, BPP, BPE; CPC and Others, FHC and TAT; various versions of the same bill eg Federal Competition and Consumer Protection, Nigerian Railway Authority, PIB; bills not properly drafted, etc.
- **Establishment of a National Legislative Forum** (harmonizing and modernizing laws affecting businesses)
- **Improving Commercial Disputes Resolution** – CJs to regulate practice and procedure, Small Claims Court, ACA, Multi-door Courthouses, TAT, specialized courts
- **Simplifying the Payment of Taxes** (18 taxes and mandatory contributions) – enact laws to streamline tax payments
- **Doing Business Report 2016** (169 out 189 economies) – Impetus for Change.
- **Constitutional Provisions** – ss 44(3), 251, 315(5) [LUA and ACA], NIWA Act, Cooperative Societies Act, Lotteries, etc.

Concluding Remarks

Finally, we would like to, once again, thank the National Assembly that partnered with the Department for International Development (DFID) through its programs: ENABLE 2 & GEMS 3 in order to undertake this detailed review.

We also acknowledge the contributions made by the **Nigerian Economic Summit Group (NESG)** and the **Section of Business Law (SBL) of the Nigerian Bar Association (NBA)** in reviewing our Final Report.

We look forward to serving all of you in other capacities in the future.

We thank you all for your attention.

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