

## Comprehensive Review of Nigeria's BIT

### Introduction

Nigeria has entered into twenty nine (29) Bilateral Investment Treaties (BITs) with the following countries.

- a) Algeria
- b) Austria
- c) Bulgaria
- d) Canada
- e) China
- f) Egypt
- g) Ethiopia
- h) Finland
- i) France
- j) Germany
- k) Italy
- l) Jamaica
- m) Korea, Republic of
- n) Kuwait
- o) Morocco
- p) Netherlands
- q) Romania
- r) Russian Federation
- s) Serbia
- t) Singapore
- u) South Africa
- v) Spain
- w) Sweden
- x) Switzerland
- y) Taiwan Province of China
- z) Turkey
- aa) Uganda
- bb) United Arab Emirates
- cc) United Kingdom

Out of this number only fifteen (15) are in force. They are:

- a) United Kingdom
- b) France
- c) Netherlands
- d) Republic of Korea
- e) Switzerland
- f) Romania
- g) South Africa
- h) Italy

- i) Spain
- j) Finland
- k) Germany
- l) China
- m) Serbia
- n) Sweden
- o) Taiwan

All the BITs can be categorized into two generations – first generation are those concluded between 1990 and 2012 and second generation are those concluded between 2013 and 2016. The first generation BITs are traditional BITs without provisions on powers of the host state to regulate, provide for health, environment, labour, human rights and other reform-oriented provisions. The second generation BITs are improvements on the first generation with provisions which are consisted with the reform agenda of the United Nations Conference on Trade and Development (UNCTAD). The overarching objective of the reform agenda is the right of the host state to regulate investment for public policy objectives and safeguard the environment.

It is noteworthy that in 2015, Nigeria developed a Model BIT that contains a number of sustainable development provisions aimed at greater clarity of terms and safeguarding Nigeria's right to regulate. This Model BIT was used in the negotiation of the Nigeria-Morocco BIT of 2016 and partially influenced the Nigeria-Singapore BIT of 2016.

#### NIPC's Initial Assessment of BITs

The Nigerian Investment Promotion Commission (NIPC) did an initial assessment of the 29 BITs using the following parameters:

- a) Reference to Sustainable Development
- b) Restricted and Enterprise-based definition of Investment
- c) Balanced National Treatment Clause with Relevant Exceptions
- d) Balanced Most Favoured Nation Clause with Relevant Exceptions
- e) Circumscribed Fair and Equitable Clause
- f) Guarantees against Direct Expropriation
- g) Guarantees against Indirect Expropriation
- h) Compensation for Losses
- i) Transfer of funds
- j) Temporary Safeguard measures
- k) Transparency Clause
- l) Health and Environment
- m) Labour Standards
- n) Right to Regulate
- o) Corporate Social Responsibility
- p) Anti-Corruption Clause
- q) Standard Investment Promotion Clauses

- r) State-State Dispute Settlement
- s) Investors to State Dispute Settlement
- t) Institutional Issues

Out of the 29 BITs signed by Nigeria, only 21 are available for assessment as copies of the others are not found in English Language. Those available in English Language are: United Kingdom, France, Netherlands, Republic of Korea, Switzerland, Romania, South Africa, Italy, Spain, Finland, Germany, China, Egypt, Algeria, Russian Federation, Turkey, Austria, Canada, U.A.E., Singapore and Morocco. Those not available in English Language are Serbia, Sweden, Taiwan, Bulgaria, Ethiopia, Jamaica, Kuwait and Uganda. Similarly, out of the 21 available, only fifteen (15) are in force.

At the end of the assessment, it became clear that only three BITs, namely, Nigeria-Canada, Nigeria-Singapore and Nigeria-Morocco are reform oriented. The initial assessment was validated by UNCTAD though more work is still to be done on the Nigeria-Canada and Nigeria-Singapore BIT to bring them to modern BITs.

#### Review of the BITs in Force in Nigeria

UNCTAD had examined all the 29 BITs signed by Nigeria and mapped against the contents of the BITs. This review is based on the work of UNCTAD. UNCTAD considered the topical structure of a BIT and used the following parameters in evaluating the BITs concluded by Nigeria:

- a) Preamble
- b) Scope and Definitions
- c) Standards of Treatment
- d) Other Clauses
- e) Exceptions
- f) State-State Dispute Settlement (SSDS)
- g) Investor-State Dispute Settlement (ISDS)
- h) Institutional Issues
- i) Treaty Duration, Amendment and Termination

These broad themes were further broken down to sub-themes as follows. Where the response is 'Yes', it means that the BIT covers the subject matter and where it is 'No', it means that the BIT does not cover the subject matter.

The intention is to pay particular attention to the BITs in force by highlighting their deficiencies and recommending their immediate reform. On the other hand, those not in force can be terminated, amended or re-negotiated.

## Nigeria - United Kingdom BIT (1990)

Date of Signature: 11/12/1990

Date in Force: 11/12/1990

Status: In Force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

No

---

Reference to sustainable development

No

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

No

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

No

---

### Scope and Definitions

Definition of investment

Type of definition

**Asset-based definition**

Limitations to the definition of investment

Excludes portfolio investment

No

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

No

Lists required characteristics of investment

No

Contains "in accordance with host State laws" requirement

**No**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**No**

---

Denial of Benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade

Restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---

Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Not stipulated**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

---

**Yes**

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

---

**No**

Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**Yes**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**Yes**

---

Entry and sojourn of personnel (subject to local laws)

---



**No**

---

Senior management (nationality)

**No**

---

**Other Clauses**

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**No**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

**Not applicable**

Exception self-judging

**Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

### Voluntary ADR (conciliation / mediation)

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

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Forums

ISDS forum options

Domestic courts of the host State

**No**

ICSID

**Yes**

---

UNCITRAL

**No**

Other forums

**No**

Relationship between forums

**No reference**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

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## **Institutional Issues**

Mechanism for consultations between State parties

**No**

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Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

## **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**No**

"Survival"/"sunset" clause length - **15 years**

## France - Nigeria BIT (1990)

Date of Signature: 27/02/1990

Date in Force: 19/08/1991

Status: In Force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

No

---

Reference to sustainable development

No

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

No

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

No

---

### Scope and Definitions

Definition of investment

Type of definition

**Asset-based definition**

Limitations to the definition of investment

Excludes portfolio investment

No

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

No

Lists required characteristics of investment

No

Contains "in accordance with host State laws" requirement

**Yes**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**Yes**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---

Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation

**No**

---

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty  
Investments covered

**Not stipulated**

Disputes covered

**Not stipulated**

---

### **Standards of Treatment**

National treatment (NT)  
Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment  
Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation  
Economic integration agreements

**Yes**

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)  
Type of FET clause

**FET qualified**

---



FET qualified  
By reference to international law

**International law / principles of international law**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security  
**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**No**

---

Expropriation  
Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause  
Indirect expropriation defined

**No**

Carve-out for general regulatory measures

**No**

Carve-out for compulsory licenses in conformity with WTO

**No**

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Protection from strife  
Specifications  
Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**Yes**

---

Transfer of funds  
Includes transfer of funds

**Yes**

---

Exceptions to the transfer of funds obligation  
Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)  
Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**Yes**

---

Entry and sojourn of personnel (subject to local laws)

**Yes**

---

Senior management (nationality)

**No**

---

### **Other Clauses**

Transparency  
Directed at States (obligation to publish laws and regulations)

**Yes**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

---

Investment promotion  
Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception  
Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

**Not applicable**

Exception self-judging

**Not applicable**

---

General public policy exceptions

---

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

### **State-State Dispute Settlement (SSDS)**

SSDS included

**Yes**

---

### **Investor-State Dispute Settlement (ISDS)**

ISDS included

**Yes**

---

Alternatives to arbitration

**None**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

#### **Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

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## Provides express or implied consent

---

Forums

ISDS forum options  
Domestic courts of the host State

**No**

ICSID

**Yes**

UNCITRAL

**No**

Other forums

**No**

Relationship between forums

**No reference**

---

Other specific ISDS features  
Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation  
Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings  
Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

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### **Institutional Issues**

Mechanism for consultations between State parties

**Yes**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**Yes**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**No**

"Survival"/"sunset" clause length

**15 years**

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## Netherlands - Nigeria BIT (1992)

Date of Signature: 02/11/1992

Date in Force: 01/02/1994

Status: In force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

No

---

Reference to sustainable development

No

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

No

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

No

---

### Scope and Definitions

Definition of investment

Type of definition

#### Asset-based definition

Limitations to the definition of investment

Excludes portfolio investment

No

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

No

Lists required characteristics of investment

No

---

Contains "in accordance with host State laws" requirement

**No**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**No**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**No**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**No**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not stipulated**

---



Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Not stipulated**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**None**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**Yes**

---

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

**No**

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Carve-out for compulsory licenses in conformity with WTO

**No**

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Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**No**

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Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**No**

---

Entry and sojourn of personnel (subject to local laws)

**No**

---

---

Senior management (nationality)

**No**

---

### Other Clauses

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

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Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

### **Not applicable**

Exception self-judging

### **Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

### **Positive-list commitments**

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## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**Voluntary ADR (conciliation / mediation)**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**No**

ICSID

**Yes**

---

UNCITRAL

**No**

Other forums

**No**

Relationship between forums

**No reference**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

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### **Institutional Issues**

Mechanism for consultations between State parties

**No**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**Yes**

"Survival"/"sunset" clause length

**15 years**



## Korea, Republic of - Nigeria BIT (1998)

Date of Signature: 27/03/1998

Date in Force:01/02/1999

Status: In Force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

No

---

Reference to sustainable development

No

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

No

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

No

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### Scope and Definitions

Definition of investment

Type of definition

#### Asset-based definition

Limitations to the definition of investment

Excludes portfolio investment

No

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

No

Lists required characteristics of investment

No

---

Contains "in accordance with host State laws" requirement

**Yes**

Sets out closed (exhaustive) list of covered assets

**No**

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Definition of investor

Definition included

**Yes**

Specifying natural persons covered

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Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**No**

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Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

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Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Carves out pre-existing disputes**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Pre- and post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Pre- and post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**Yes**

---

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

**No**

---

Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**Yes**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**Yes**

---

Entry and sojourn of personnel (subject to local laws)

**Yes**

---

---

Senior management (nationality)

**No**

---

### Other Clauses

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**No**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**Yes**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

### **Not applicable**

Exception self-judging

### **Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

### **Negative-list reservations**

---

## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**Voluntary ADR (conciliation / mediation)**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**Yes**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**Yes**

ICSID

**No**

---



UNCITRAL

**No**

Other forums

**Yes**

Relationship between forums

**"Fork in the road"**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---

### **Institutional Issues**

Mechanism for consultations between State parties

**Yes**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**No**

"Survival"/"sunset" clause length

**15 years**

## Nigeria - Switzerland BIT (2000)

Date of Signature: 30/11/2000

Date in Force: 01/04/2003

Status: In Force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

No

---

Reference to sustainable development

No

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

No

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

No

---

### Scope and Definitions

Definition of investment

Type of definition

#### Asset-based definition

Limitations to the definition of investment

Excludes portfolio investment

No

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

No

Lists required characteristics of investment

No

---

Contains "in accordance with host State laws" requirement

**No**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**Yes**

Defines ownership and control of legal entities

**Yes**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---

Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Not stipulated**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**Yes**

---

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**FET combined with NT or MFN**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**No**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

**No**

---

Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**Not applicable**

Absolute right to compensation in certain circumstances

**Not applicable**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**No**

---

Entry and sojourn of personnel (subject to local laws)

**No**

---

---

Senior management (nationality)

**No**

---

### Other Clauses

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause



**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

### **Not applicable**

Exception self-judging

### **Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**None**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Requires case-by-case consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**Yes**

ICSID

**Yes**

---

UNCITRAL

**Yes**

Other forums

**No**

Relationship between forums

**No reference**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**Yes**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---

### **Institutional Issues**

Mechanism for consultations between State parties

**No**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**Other period**

Includes modalities for amendment or renegotiation

**Yes**

"Survival"/"sunset" clause length

**10 years**

---

## **Nigeria - Romania BIT (1998)**

**Date of Signature: 18/12/98**

**Date in Force: 03/06/2005**

**Status: In Force**

### **Preamble**

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

**No**

---

Reference to sustainable development

**No**

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

**No**

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

**No**

---

### **Scope and Definitions**

Definition of investment

Type of definition

#### **Asset-based definition**

Limitations to the definition of investment

Excludes portfolio investment

**No**

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

**No**

Lists required characteristics of investment

**No**

---

Contains "in accordance with host State laws" requirement

**Yes**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**Yes**

Defines ownership and control of legal entities

**No**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---

Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Carves out pre-existing disputes**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**Yes**

---

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**FET combined with NT or MFN**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**Yes**

Carve-out for general regulatory measures

**No**

---



Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**No**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**Yes**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**Yes**

---

Entry and sojourn of personnel (subject to local laws)

**Yes**

---

---

Senior management (nationality)

**No**

---

### **Other Clauses**

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

### **Not applicable**

Exception self-judging

**Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**Voluntary ADR (conciliation / mediation)**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**Yes**

ICSID

**Yes**

---

UNCITRAL

**Yes**

Other forums

**No**

Relationship between forums

**No reference**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---

### **Institutional Issues**

Mechanism for consultations between State parties

**No**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**15 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**Yes**

"Survival"/"sunset" clause length

**10 years**

## **Nigeria-South Africa BIT (2000)**

**Date of Signature: 29/04/2000**

**Date in Force: 27/04/2005**

**Status: In Force**

### **Preamble**

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

**No**

---

Reference to sustainable development

**No**

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

**No**

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

**No**

---

### **Scope and Definitions**

Definition of investment

Type of definition

#### **Asset-based definition**

Limitations to the definition of investment

Excludes portfolio investment

**No**

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

**No**

Lists required characteristics of investment

**No**

---

Contains "in accordance with host State laws" requirement

**No**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**No**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---



Substantive scope of the treaty  
Limiting substantive scope of the treaty  
Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Carves out pre-existing disputes**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**Yes**

---

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

**No**

---

Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**Yes**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**Yes**

---

Entry and sojourn of personnel (subject to local laws)

**No**

---

---

Senior management (nationality)

**No**

---

### Other Clauses

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

### **Not applicable**

Exception self-judging

### **Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**Yes**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**None**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**No**

ICSID

**Yes**

---

UNCITRAL

**No**

Other forums

**Yes**

Relationship between forums

**No reference**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---

### **Institutional Issues**

Mechanism for consultations between State parties

**No**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**Yes**

"Survival"/"sunset" clause length

**10 years**



## Italy - Nigeria BIT (2000)

Date of Signature: 27/09/2000

Date in Force: 22/08/2005

Status: In Force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

No

---

Reference to sustainable development

No

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

No

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

No

---

### Scope and Definitions

Definition of investment

Type of definition

#### Asset-based definition

Limitations to the definition of investment

Excludes portfolio investment

No

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

No

Lists required characteristics of investment

No

---

Contains "in accordance with host State laws" requirement

**Yes**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**No**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---

Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Not stipulated**

Disputes covered

**Not stipulated**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**Yes**

---

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security

**No clause**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

**No**

---

Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**No**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**No**

---

Entry and sojourn of personnel (subject to local laws)

**No**

---

---

Senior management (nationality)

**No**

---

### Other Clauses

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**Yes**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**Yes**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

### **Not applicable**

Exception self-judging

### **Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**None**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**Yes**

ICSID

**Yes**

---



UNCITRAL

**Yes**

Other forums

**No**

Relationship between forums

**No reference**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---

### **Institutional Issues**

Mechanism for consultations between State parties

**No**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**5 years**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**Yes**

"Survival"/"sunset" clause length

**5 years**

## **Nigeria - Spain BIT (2002)**

**Date of Signature: 09/07/2002**

**Date in Force: 19/01/2006**

**Status: In Force**

### **Preamble**

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

**No**

---

Reference to sustainable development

**No**

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

**No**

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

**No**

---

### **Scope and Definitions**

Definition of investment

Type of definition

#### **Asset-based definition**

Limitations to the definition of investment

Excludes portfolio investment

**No**

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

**No**

Lists required characteristics of investment

**No**

---

Contains "in accordance with host State laws" requirement

**Yes**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**No**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---

Substantive scope of the treaty  
Limiting substantive scope of the treaty  
Excludes taxation

**Yes**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Not stipulated**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**Yes**

---

Taxation treaties

**No**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET qualified**

FET qualified

By reference to international law

**International law / principles of international law**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

**No**

---

Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**Yes**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**No**

---

Entry and sojourn of personnel (subject to local laws)

**No**

---

---

Senior management (nationality)

**No**

---

**Other Clauses**

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**Yes**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause



**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

### **Not applicable**

Exception self-judging

### **Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**None**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**Yes**

ICSID

**Yes**

---

UNCITRAL

**Yes**

Other forums

**No**

Relationship between forums

**No reference**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---

### **Institutional Issues**

Mechanism for consultations between State parties

**No**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**Six months prior notice**

Includes modalities for amendment or renegotiation

**No**

"Survival"/"sunset" clause length

**10 years**

---

## Finland - Nigeria BIT (2005)

Date of Signature: 22/06/2005

Date in Force: 20/03/2007

Status: In Force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

No

---

Reference to sustainable development

No

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

Yes

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

Yes

---

### Scope and Definitions

Definition of investment

Type of definition

#### Asset-based definition

Limitations to the definition of investment

Excludes portfolio investment

No

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

No

Lists required characteristics of investment

No

Contains "in accordance with host State laws" requirement

**Yes**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**No**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---

Substantive scope of the treaty  
Limiting substantive scope of the treaty  
Excludes taxation

**Yes**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Carves out pre-existing disputes**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Pre- and post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Pre- and post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**No**

---

Taxation treaties

**No**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

**No**

---



Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**Yes**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**Yes**

---

Entry and sojourn of personnel (subject to local laws)

**Yes**

---

---

Senior management (nationality)

**Yes**

---

### **Other Clauses**

Transparency

Directed at States (obligation to publish laws and regulations)

**Yes**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception

Exception included

**Yes**

Exception defined (exceptional circumstances described in more detail)

**Yes**

Exception self-judging

**No**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**Yes**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**None**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**Yes**

ICSID

**Yes**

---

UNCITRAL

**Yes**

Other forums

**No**

Relationship between forums

**Preserving right to arbitration after domestic court proceedings**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---

### **Institutional Issues**

Mechanism for consultations between State parties

**Yes**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**15 years**

---

Automatic renewal

**15 years**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**No**

"Survival"/"sunset" clause length

**15 years**

---

## Germany - Nigeria BIT (2000)

Date of Signature: 28/03/2000

Date in Force: 20/09/2007

Status: In Force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

No

---

Reference to sustainable development

No

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

No

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

No

---

### Scope and Definitions

Definition of investment

Type of definition

#### Asset-based definition

Limitations to the definition of investment

Excludes portfolio investment

No

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

No

Lists required characteristics of investment

No

---

Contains "in accordance with host State laws" requirement

**No**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**No**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---



Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Not stipulated**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**Yes**

---

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

**No**

---

Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**Yes**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**Yes**

---

Entry and sojourn of personnel (subject to local laws)

**Yes**

---

---

Senior management (nationality)

**No**

---

### **Other Clauses**

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**Yes**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

---

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

### **Not applicable**

Exception self-judging

### **Not applicable**

---

General public policy exceptions

Public health and environment

**Yes**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**Yes**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

## State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

## Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**None**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**No**

ICSID

**Yes**

---

UNCITRAL

**No**

Other forums

**No**

Relationship between forums

**No reference**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---

### **Institutional Issues**

Mechanism for consultations between State parties

**No**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**Yes**

"Survival"/"sunset" clause length

**15 years**



## China - Nigeria BIT (2001)

Date of Signature: 27/08/2001

Date in Force: 18/02/2010

Status: In Force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

No

---

Reference to sustainable development

No

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

No

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

No

---

### Scope and Definitions

Definition of investment

Type of definition

#### Asset-based definition

Limitations to the definition of investment

Excludes portfolio investment

No

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

No

Lists required characteristics of investment

---

**No**

Contains "in accordance with host State laws" requirement

**Yes**

Sets out closed (exhaustive) list of covered assets

**No**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**No**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**No**

Defines ownership and control of legal entities

**No**

---

Denial of benefits (DoB)

DoB clause included

**No**

Content of the DoB clause

"Substantive business operations" criterion

**Not applicable**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Not applicable**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Not applicable**

---

---

Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Not stipulated**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**No**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

---

**Yes**

Taxation treaties

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET unqualified**

FET qualified

By reference to international law

**None**

By listing FET elements (exhaustive or indicative list)

**No**

FET modifiers

**None**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**Yes**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**No**

Carve-out for general regulatory measures

---

**No**

Carve-out for compulsory licenses in conformity with WTO

**No**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**No**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**No**

Other specific exceptions (e.g. to protect creditors, etc.)

**No**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**Yes**

---

Entry and sojourn of personnel (subject to local laws)

---

**Yes**

---

Senior management (nationality)

**No**

---

**Other Clauses**

Transparency

Directed at States (obligation to publish laws and regulations)

**No**

Directed at investors

**No**

---

Health and environment (any mentioning in the text, except preamble)

**No**

---

Labour standards (any mentioning in the text, except preamble)

**No**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**No**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**No**

---

Corruption (any mentioning in the text, except preamble)

**No**

---

Not lowering of standards (typically environment and/or labour standards)

**No**

---

Subrogation clause

**Yes**

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**Yes**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**No**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

**Not applicable**

Exception self-judging

**Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**Negative-list reservations**

---

---

### State-State Dispute Settlement (SSDS)

SSDS included

**Yes**

---

### Investor-State Dispute Settlement (ISDS)

ISDS included

**Yes**

---

Alternatives to arbitration

**None**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**Yes**

ICSID

---



**Yes**

UNCITRAL

**No**

Other forums

**Yes**

Relationship between forums

**"Fork in the road"**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**No**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**No**

Requires hearings to be open to the public

**No**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---

### **Institutional Issues**

Mechanism for consultations between State parties

**Yes**

---

Institutional framework (committee)

**No**

---

Technical cooperation/capacity building

**No**

---

### **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**Indefinite term**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**One year prior notice**

Includes modalities for amendment or renegotiation

**Yes**

"Survival"/"sunset" clause length

**10 years**

---

### Comments on BITs in Force

From the mapping carried by UNCTAD, it is clear that all the 15 BITs are force are not reform oriented. Fortunately, there are clauses on either unilateral or mutual termination and re-negotiation. Consequently, if the partners are not willing to re-negotiate these traditional BITs, they should be terminated. While terminating, we should bear in mind that there are survival clauses. Thus the termination will not affect investments made prior to termination.

However, the point must be made that these BITs are out-dated and should be re-negotiated.

### BITs Not In Force

The following BITs are not in force, namely,

#### Nigeria-Egypt,

Date of Signature: 20/6/2000

Duration 10 years with automatic renewal,

Survival clause – 10 years

Termination Notice – 1 year

Includes modalities for unilateral termination

Includes modalities for amendment and renegotiation

#### Nigeria-Algeria

Date of Signature: 14/1/2002

Duration 10 years with automatic renewal,

Survival clause – 10 years

Termination Notice – 1 year

Includes modalities for unilateral termination

Includes modalities for amendment and renegotiation

#### Nigeria-Russian Federation

Date of Signature: 24/06/2009

Duration 15 years with automatic renewal,

Survival clause – 15 years

Termination Notice – 1 year

Includes modalities for unilateral termination

Includes modalities for amendment and renegotiation

#### Nigeria-Turkey,

Date of Signature: 02/02/2011

Duration 10 years with automatic renewal,

Survival clause – 10 years

Termination Notice – 1 year

Includes modalities for unilateral termination

Includes modalities for amendment and renegotiation

### Nigeria-Austria,

Date of Signature: 18/04/2013

Duration 10 years with automatic renewal,

Survival clause – 10 years

Termination Notice – 1 year

Includes modalities for unilateral termination

Includes modalities for amendment and renegotiation

### Nigeria-Canada

Date of Signature: 06/05/2014

Duration – Indefinite term,

Survival clause – 10 years

Termination Notice – 1 year

Includes modalities for unilateral termination

Includes modalities for amendment and renegotiation

### Nigeria-UAE,

Date of Signature: 18/01/2016

Duration 10 years with automatic renewal,

Survival clause – 10 years

Termination Notice – 1 year

Includes modalities for unilateral termination

Includes modalities for amendment and renegotiation

### Nigeria-Morocco,

Date of Signature: 13/12/2016

Ratified by Moroccan Parliament: 30 August, 2017

Duration 10 years, no automatic renewal,

Survival clause – none

Termination Notice – six months

Includes modalities for unilateral termination

Includes modalities for amendment and renegotiation

### Nigeria-Bulgaria,

Date of Signature: 21/12/1998

Note: No other information

### Nigeria-Ethiopia,

Date of Signature: 19/01/2004

Note: No other information

### Nigeria-Jamaica,

Date of Signature: 15/08/2002

Note: No other information

### Nigeria-Kuwait,

Date of Signature: 23/03/2011

Note: No other information

### Nigeria-Uganda,

Date of Signature: 15/01/2003

Note: No other information

### Comments on BITs not in Force

The position of UNCTAD is that unratified BITs should either be abandoned or replaced or amended or terminated.

Some BITs not in force (unratified BITs) have exceeded their initial term. BITs in this category are: Egypt (2000), Algeria (2002), Bulgaria (1998), Ethiopia (2004), Jamaica (2002) and Uganda (2003). Although the BITs in this category have provision for unilateral termination, depending on the economic thrust of the Federal Government, such BITs should either be terminated or we invite the countries for re-negotiation for the purpose of amendment. Similarly the BITs that are within their initial term should be re-negotiated. The BITs in this category are: Russian Federation (2009), Turkey (2011), Austria (2013), Canada (2014), UAE (2016) and Kuwait (2011).

The purpose of the re-negotiation is to ensure that they are reform-compliant in terms of sustainable development provisions and safeguarding rights to regulate. Where there is an unwillingness to re-negotiate, we should terminate.

For completeness, it is instructive to map the Nigeria-Morocco BIT with the mapping in connection with the BITs in force. The innovations in the Nigeria-Morocco BIT will be apparent. It is hoped that since Moroccan Parliament has ratified this BIT, the Federal Government of Nigeria should also ratify. There are some imperfections or inelegant draft associated with this BIT. However, the BIT is due for review within five (5) years. All these deficiencies will be addressed during this review.

## Morocco - Nigeria BIT (2016)

Date of Signature: 03/12/2016

Status: Not Yet in Force

### Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

Yes

---

Reference to sustainable development

Yes

---

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

Yes

---

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

Yes

---

### Scope and Definitions

Definition of investment

Type of definition

#### Enterprise-based definition

Limitations to the definition of investment

Excludes portfolio investment

Yes

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)

Yes

Lists required characteristics of investment

Yes

Contains "in accordance with host State laws" requirement



**Yes**

Sets out closed (exhaustive) list of covered assets

**Yes**

---

Definition of investor

Definition included

**Yes**

Specifying natural persons covered

Includes permanent residents

**Yes**

Excludes dual nationals

**No**

Specifying legal entities covered

Includes requirement of substantial business activity

**Yes**

Defines ownership and control of legal entities

**Yes**

---

Denial of benefits (DoB)

DoB clause included

**Yes**

Content of the DoB clause

"Substantive business operations" criterion

**Yes**

Applies to investors from States with no diplomatic relations or under economic/trade restrictions

**Yes**

Discretionary ("Party may deny") or mandatory ("benefits shall be denied")

**Unilaterally discretionary**

---

Substantive scope of the treaty

---

Limiting substantive scope of the treaty

Excludes taxation

**No**

Excludes subsidies, grants

**No**

Excludes government procurement

**No**

Excludes other subject matter

**No**

---

Temporal scope of the treaty

Investments covered

**Applies to both pre-existing and post-BIT investments**

Disputes covered

**Carves out pre-existing disputes**

---

### **Standards of Treatment**

National treatment (NT)

Type of NT clause

**Post-establishment**

Reference to "like circumstances" (or similar)

**Yes**

---

Most-favoured-nation (MFN) treatment

Type of MFN clause

**Post-establishment**

Exceptions from MFN obligation

Economic integration agreements

**Yes**

Taxation treaties

---

**Yes**

Procedural issues (ISDS)

**No**

---

Fair and equitable treatment (FET)

Type of FET clause

**FET qualified**

FET qualified

By reference to international law

**Customary International Law/minimum standard of treatment**

By listing FET elements (exhaustive or indicative list)

**Yes**

FET modifiers

**None**

---

Full protection and security

**Standard**

---

Prohibition on unreasonable, arbitrary or discriminatory measures

**No**

---

Expropriation

Scope of measures covered

**Indirect expropriation mentioned**

Refining expropriation clause

Indirect expropriation defined

**Yes**

Carve-out for general regulatory measures

**No**

Carve-out for compulsory licenses in conformity with WTO

---

**Yes**

---

Protection from strife

Specifications

Relative right to compensation (comparator)

**MFN and NT**

Absolute right to compensation in certain circumstances

**Yes**

---

Transfer of funds

Includes transfer of funds

**Yes**

Exceptions to the transfer of funds obligation

Balance-of-payments exception

**Yes**

Other specific exceptions (e.g. to protect creditors, etc.)

**Yes**

---

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

**No explicit PR clause**

Type of PR clause

**Not applicable**

---

Umbrella clause

**No**

---

Entry and sojourn of personnel (subject to local laws)

**No**

---

Senior management (nationality)

**No**

---

### **Other Clauses**

Transparency

Directed at States (obligation to publish laws and regulations)

**Yes**

Directed at investors

**Yes**

---

Health and environment (any mentioning in the text, except preamble)

**Yes**

---

Labour standards (any mentioning in the text, except preamble)

**Yes**

---

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

**Yes**

---

Corporate social responsibility (any mentioning in the text, except preamble)

**Yes**

---

Corruption (any mentioning in the text, except preamble)

**Yes**

---

Not lowering of standards (typically environment and/or labour standards)

**Yes**

---

Subrogation clause

**Yes**

---

---

Non-derogation clause (in case of IIA's conflict with other norms, more favourable rules apply to investors)

**No**

---

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

**Yes**

---

### **Exceptions**

Essential security exception

Exception included

**No**

Exception defined (exceptional circumstances described in more detail)

**Not applicable**

Exception self-judging

**Not applicable**

---

General public policy exceptions

Public health and environment

**No**

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

**No**

---

Prudential carve-out (concerns financial measures)

**No**

---

Scheduling and reservations (in treaty texts and annexes)

**None**

---

### **State-State Dispute Settlement (SSDS)**

---

SSDS included

**Yes**

---

### **Investor-State Dispute Settlement (ISDS)**

ISDS included

**Yes**

---

Alternatives to arbitration

**Voluntary ADR (conciliation / mediation)**

---

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

**Covers any dispute relating to investment**

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS

**No**

Exclusion of policy areas from ISDS

**No**

Special mechanism for taxation or prudential measures

**No**

Type of consent to arbitration

**Provides express or implied consent**

---

Forums

ISDS forum options

Domestic courts of the host State

**Yes**

ICSID

**Yes**

UNCITRAL

---

**Yes**

Other forums

**Yes**

Relationship between forums

**Local remedies first**

---

Other specific ISDS features

Limitation period for submission of claims

**No**

Provisional measures

**No**

Consolidation of claims

**Yes**

Limited remedies (specifying available types of remedies)

**No**

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

**No**

Requires certain questions to be submitted to contracting parties (renvoi)

**No**

Regulates submissions by non-disputing State party

**No**

Transparency in arbitral proceedings

Requires documents to be made publicly available

**Yes**

Requires hearings to be open to the public

**Yes**

Regulates amicus curiae submissions by third (non-disputing) parties

**No**

---



## **Institutional Issues**

Mechanism for consultations between State parties

**No**

---

Institutional framework (committee)

**Yes**

---

Technical cooperation/capacity building

**Yes**

---

## **Treaty Duration, Amendment and Termination**

Treaty duration

Years of initial treaty term

**10 years**

---

Automatic renewal

**None**

---

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination

**Yes**

Length of notice period

**Six months prior notice**

Includes modalities for amendment or renegotiation

**Yes**

"Survival"/"sunset" clause length

**None**

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## General Comments

According to UNCTAD, sustainable development-oriented IIA reform has entered the mainstream of international investment policymaking<sup>1</sup>. During the first phase of reform, countries have built consensus on the need for reform, identified reform areas and approaches, reviewed their IIA networks, developed new model treaties and started to negotiate new, more modern IIAs.

In World Investment Report (WIR) 2016<sup>2</sup>, UNCTAD published a Road Map for International Investment Agreement (IIA). The Road Map sets out five action areas, namely

- ✓ Safeguarding the right to regulate while providing protection
- ✓ Reforming Investment Dispute Settlement
- ✓ Promoting and Facilitating Investment
- ✓ Ensuring Responsible Investment
- ✓ Enhancing Systemic Consistency

This was Phase 1 of the reform. UNCTAD has since then moved to Phase 2 of the reform. The thrust of Phase 2 is modernising the existing stock of old generation BITs. By end of 2016, there over 2,500 BITs that were in force and virtually all known ISDS cases were based on these BITs. UNCTAD has presented and analysed 10 policy options<sup>3</sup> for Phase 2 reform, namely,

- **Jointly interpreting treaty provisions** – this clarifies the content of a treaty provision and narrows the scope of interpretative discretion of tribunals
- **Amending treating provisions** – modifies an existing treaty's content by introducing new provisions or altering or removing existing ones
- **Replacing outdated treaties** – substitutes an old treaty with a new one
- **Consolidating the IIA work** – abrogates two or more old IIAs between parties and replaces them with a new, plurilateral IIA
- **Managing relationships between coexisting treaties** – establishes rules that determine which of the 3 coexisting IIAs applies in a given situation
- **Referencing global standards** – fosters coherence and improves the interaction between IIAs and other areas of international law and policy
- **Engaging multilaterally** – establishes a common understanding or new rules among a multitude of countries, coupled with a mechanism that brings about change in one go.
- **Abandoning unratified old treaties** – conveys a country's intent to not become a party to a concluded but as yet unratified treaty
- **Terminating existing old treaties** – releases the parties from their obligations under a treaty

---

<sup>1</sup> World Investment Report 2015, Chapter IV and World Investment Report, 2016, Chapter III. See also World Investment Reports, 2012, 2013 and 2014.

<sup>2</sup> World Investment Report, 2016, page 109

<sup>3</sup> World Investment Report, 2017, page 126

- **Withdrawing from multilateral treaties** – similar in effect to termination, but leaves the treaty in force among the remaining parties who have not withdrawn.

UNCTAD urged countries to adapt and adopt these options to pursue the reforms set out in the Road Map in line with their policies priorities. Furthermore adapting or adopting any policy option requires a careful and facts-based cost-benefit analysis that considers broader challenges.

## Recommendations

A cursory review of the BITs show that they generally have an initial term of ten (10) years. Only Romania and Bulgaria have fifteen (15) years. Some BITs also provide for automatic renewal for another fixed term. BITs with an indefinite term duration, for example, that of France, Germany, Korea, Netherlands, South Africa, Spain, Switzerland and United Kingdom can be terminated with a notice of termination given at any time. In the case of Serbia and Italy with a fixed term duration, they can be terminated under the notice date indicated in each BIT. In any case if the intention is to terminate them, we can irrespective of the provisions in the BIT by relying on section 54(b) of the Vienna Convention on the Law of Treaties otherwise we can give prior notice as provided in the BIT.

All the BITs have 'survival clauses' apart from the Nigeria-Morocco BIT. Such clauses are activated after the termination of a treaty becomes effective. Their effect is to extend, for a time, the application of the treaty to investments made prior to the date of termination.

To appreciate the differences between the first generation and second generation BITs, we should examine the mapping of the Nigeria-Netherlands BIT (1992) and Nigeria-Morocco BIT (2016). It is clear that the way to go is in the direction of the Nigeria-Morocco BIT subject to the review being done on Nigeria's Model BIT at the moment.

This review gives us an opportunity to reform our BITs and address any inconsistency and overlap. All the BITs in force are in the first generation – there is no right to regulate and provide for the environment. Very urgent attention should be paid to BITs in force before the provisions are invoked by an investor. Thus reform is imperative.

## Concluding Remarks

The review should be an on-going exercise. Where it is found that the economic thrust of the Federal Government cannot be achieved by a BIT or BITs such BITs should be terminated immediately.

Globally it has been established that there is no correlation between BITs and Foreign Direct Investment (FDI). The consequence is that one of the aims of developing BITs, that is, attraction of FDI has not been achieved. This has been established by South Africa. Most countries are now reforming their BITs with particular reference to the Investor-State Dispute Settlement (ISDS) provisions. What we have in the Nigeria-Morocco BITs needs some refinements especially in relation to the role of the investors and Joint Committee.

It is hoped that his review is done simultaneously with that of the Model BIT so that the Model BIT can be used for future negotiations.