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LEGAL AND REGULATORY FRAMEWORK FOR RESOURCE DIVERSIFICATION IN NIGERIA: GLOBALIZATION AND THE PROSPECTS OF RESOURCE DIVERSIFICATION

Solomon O AFOLABI, Ph.D & Halimat Tope AKAJE***

ABSTRACT

For some time now, the mainstay of Nigeria's economy has been foreign exchange earnings from oil sector. The country is reputed to have large quantities of unexploited natural gas and oil reserves. As the largest exporter of oil with the biggest natural gas reserves in Africa, most of the Foreign Direct Investment into Nigeria has gone into the oil and gas sectors, although more recently into telecommunications and manufacturing as well. Oil and gas currently represent 95% of foreign exchange earnings and 80% of budgetary revenues. Consequently, Nigeria faces the task of diversifying and reforming its petroleum based economy. Through the National Economic Empowerment and Development Strategy (NEEDS) adopted in 2003, the government is currently seeking foreign direct investment in the non-oil sectors with particular focus on manufacturing and agro-allied industries. This paper highlighted the legal and regulatory framework for resource diversification in Nigeria.

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The paper established that no regulatory framework no matter how robust it has been packaged could solve the economic problem of any nation including Nigeria, except such regulation is coupled with the existence of a disciplined environment and responsible leadership. Consequently, the paper recommended [1]that all administrative bottlenecks that constitute clog towards the effective implementation of the legal framework should be eradicated. The paper further recommended the enthronement of corrupt free business environment and responsible leadership that will usher in the much needed resource diversification in Nigeria.

1.1 INTRODUCTION

Diversification according to Black's Law Dictionary[2] is the act of investing in a wide range of companies to reduce the risk if one sector of the market loses E.g Company's movement into a broader range of products.

Resources have been defined to include wealth, income, property, assets, funds or wherewithal. For Nigeria, her natural resources include oil, minerals, cocoa, gas, hydropower, arable land, etc. Unfortunately, there has been undue reliance on the oil sector, while the non oil sector resources are been neglected.

For example, the agricultural sector employs about two-thirds of the workforce, providing livelihood for about 90 percent of the rural population[2] and was the leading contributor to GDP in 2009 at 37.2 percent[3]. Once the mainstay of the economy (accounting for over 60 percent of GDP and 90 percent of exports at the time of independence), agriculture has been neglected in favour of the oil

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[2]Bryan A.G. Black's Law Dictionary, 9th ed. West Publishing Co. @ West, Thompson Business (2004), p. 479

[2]http://www.ruralpoverty.org/web/guest/country/home/tags/nigeria accessed on 20th April, 2015

[3] http://www.africaneconomicoutlook/org/en/countries/west-africa/Nigeria accessed on 20th April, 2015

sector[4]. However, oil wealth and a rich natural-resources base have been converted into improved living standards and over 54 percent (2004) of the population continues to live below the national poverty line[5]. Nigeria has a total land area of 91077km2. Only about 30 percent of the land is currently cultivated, despite an estimated 80 percent considered suitable for crop and livestock production[6]. Nigeria's agricultural production principally serves domestic consumption needs[7]. The country has good agricultural land covering a wide range of agro-ecological zones and allowing for diverse crop and livestock production[8].

Despite its considerable agricultural resources, Nigeria is a net importer of food and agricultural products in general.[9] Agricultural value added in 2007 was US$53.7 billion, an increase from the 2004 value of US$29.4 billion. The average growth rate for 2004-2007 was 7 percent[10]. Main agricultural commodities in terms of value are yam, cassava, citrus fruits, groundnuts with shell and taro[11].

The value of agricultural exports decreased each year from US$654 million in 2005 t0 USS$591 million in 2007, but increased close to 45 percent in 2008 to US$ 856 million. The main agricultural

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[4] http://www.unctad.org/en/docs/diaepcb20081_en.pdf accessed on 20th April, 2015

[5] http://data.worldbank.org/country/Nigeria accessed on 20th April, 2015

[6] http://www.fao.org/countryprofiles/index.asp?lang=en&ISO3=NGA accessed on 20th April, 2015

[7] http://www.ruralpovertyportal. nigeriacountryprofile accessed on 20th April, 2015

[8] ibid

[9] http://usaidandtenure.net/usaidproducts/country-profile/nigeria accessed on 22nd April, 2015

[10] http://www.fao.org/countries/55528/en/nga/ accessed on 22nd April, 2015

[11] http://www.bizclir.com/cs/countries/africa/nigeria accessed on 20th April, 2015

exports in terms of value are cocoa, beans, sesame seed, natural dried rubber, cocoa butter and cigarettes.

The value of agricultural imports in 2008 was US$3 400 million, an increase from the 2005 value of US$ 2 619 million, but a decline from the previous year of US$6072 million. The average growth rate of imports from 2005 to 2008 was 27.2 percent. The main agricultural imports in terms of value are wheat, palm oil, raw centrifugal sugar, whole dried milk and refined sugar[12].

The agricultural sector has been one of the least attractive sectors for Foreign Direct Investment in Nigeria. Through 1970 to 2001 the sector comprised only 1.7 percent of the total Foreign Investment[13]. There is therefore no doubt that the country's overreliance on oil is risky and dangerous. Not only the prices of crude oil collapse at the world market, the oil industry in Nigeria is equally subjected to internal threats making oil as the only source of foreign earning unreliable. For example, illiteracy or gross misconception on the part of some local inhabitants especially the youths of the areas whose oil and gas operation takes place are major factors affecting investment in a negative way. The misconception lies in the fact that most of the said inhabitants perceive of the oil and gas companies in their localities as government agencies which must be attacked and whose properties must be vandalized. Also their facilities must be forcefully shut down and their staff kidnapped or killed any time there is a real or imaginary score to settle with government.

Having considered the risk in over-relying on oil as the main source of foreign exchange earnings in Nigeria, and the need for diversification of resources, this paper also examines the legal and regulatory framework for Resource Diversification. In this regard,

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12 http://faostat.fao.org/site/339/default.aspx accessed on 20th April, 2015

13 http://www.aerxafrica.or/documentsRP_165.pdf accessed on 23rd April. 2015

the paper discusses some basic laws that are in place to boost the needed resource diversification. It also highlights the incentives put in place by Government to attract Foreign Direct Investment in all sectors of the economy. The paper also highlights the impact of globalization on resource diversification. Appropriate recommendations are also made for resource diversification for sustainable development.

1.2 LEGAL AND REGULATORY FRAMEWORK FOR RESOURCE DIVERSIFICATION

There are myriads of laws, regulations and directives governing what to do and how to do them in the business environment in Nigeria. A learned writer, Omidire[14] opined that:

> While regulations are necessary, they should not be negative or inhibitory. They should be fashioned with the purpose of facilitating the realization of natural economic objectives rather than clouding the vision of...institutions.

The expression above is the telescope through which we intend to examine a couple of basic laws regulating business activities and resource diversification in Nigeria.

The Constitution of the Federal Republic of Nigeria 1999 (as amended)[15] is the grund norm from which all other laws in Nigeria derive their validity. It provides[16] that the nation's resources shall be harnessed in ways that national prosperity is promoted with a view to having a dynamic and self reliant economy. It also realizes the existence of people's rights to participate in areas of the

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14 Omidire, K., Regulation Investment in banking and operations in Nigeria, Sagang I.E. and Olayide O. (ed.) Current Development in Nigeria Commercial Law p.54

15 Hereinafter referred to simply as "FRN 1999"

16 See, section 16 (1)(a) of the 1999 Constitution of Nigeria (as amended)

economy within the major sector of the economy. The right of citizens to engage any economic activities outside the major sectors of the economy is also protected[17].

Nigeria has a complex, three-tiered legal system composed of English common law, Islamic law, and Nigerian customary law. Most business transactions are governed by "common law" as modified by statutes to meet local demands and conditions[18]. The principal laws regulating foreign investment are the Nigerian Promotion Commission Decree No. 16, (Cap, N. 117 LFN 2004) and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree No. 17, (Cap. F 34 LFN 2004), both from 1995, supplemented bye-laws on company formation, labour, tax and other relevant legislation.

1.3.1 MAJOR LAWS AND REGULATIONS AFFECTING FOREIGN INVESTMENT

1.3.1 Nigerian Investment Promotion Commission (NIPC) Act[19]

The NIPC Act was enacted to encourage, coordinate and monitor enterprise establishment and operations. The Act lays out Nigeria's current investment framework: 100 percent foreign ownership is allowed in almost all industries, and investors can repatriate all profits and dividends. The Act also established the Nigerian Investment Promotion Commission[20] as the one-stop government agency to promote, facilitate and monitor all investments in Nigeria. The NIPC provides numerous services, including the grant of business entry permits, licenses,

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17 Section 16 (1) (d) of the 1999 Constitution of Nigeria (as amended)

18 US Dept of State, Investment Climate Statements 2011, Nigeria. http//www.stategovt/e/

19 Cap N 117 LFN 2004

20 Section 1 of NIPC Act

authorizations and incentives.[21] The Commission also collects, collates analyses and disseminate information about investment opportunities and sources of investment capital, and advice on requests, the availability of partners in joint venture projects.[22]

1.3.2 The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act[23]

The Act establishes the Autonomous Foreign Exchange Market[24] and provides for the monitoring and supervision of transactions conducted in the Nigeria Market.[25] Under its provisions, foreign investors are guaranteed repatriation of their profits and dividends, net of taxes, through an authorized dealer in freely convertible currency.[26] All restrictions on importation of foreign capital are thus abolished.

1.3.3. Companies and Allied Matters Act 1990[27]

It is important that the provisions of the companies and Allied Matters Act regulating the incorporation of companies or business names must be complied with as a preliminary step towards investment. The Act governs business incorporation and charges the Corporate Affairs Commission (CAC) with its enforcement. Part II Chapter 3 deals specifically with foreign companies that are required to register and be incorporated locally as a company. Every foreign company having the intention of carrying on business in Nigeria shall take all steps necessary to obtain

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21 NIPC, Homepage: http://www.npic.gov.ng/index.html accessed on 20th April, 2015

22 Section 4(d) of the NIPC Act

23 Cap F 34 LFN 2004

24 Section 1 of the Foreign Exchange Act

25 Section 8(1) and 8 (2) of the Foreign Exchange Act

26 Section 15 (4) (a) of the Foreign Exchange Act

27 Cap.C.20 LFN2004

incorporation as a separate entity in Nigeria for that purpose.[28] The CAC has statutory responsibility for registration of companies, business names and incorporated trustees.

1.3.4 Nigeria Export Processing Zones Act[29]

The Act establishes the Nigeria Export Processing Zones Authority (NEPZA)[30], delineating its role and power to grant licenses for activities in the export processing zones. The Authority is also charged with the responsibility of the supervision and co-ordination of the functions of various public sector and private sector organizations operating within the zones and resolving and dispute that may arise amongst them.[31]

1.3.5 Investment and Securities Act 2007[32]

The Decree establishes the security and Exchange Commission (SEC), its powers and functions.[33] It provides regulations on registration for security exchange, capital trade points, capital market operators, mergers, takeovers and acquisitions.[34]

1.3.6 Industrial Promotion Act[35]

This Act promotes the local production of goods in Nigeria by prohibiting their importation for 8 years and ensures that the goods produced are of high quality so as to allow for competitive pricing.[36]

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28 Section 54 of the Companies and Allied Matters Act
29 No 63 of 1992 Cap. N.107 LFN 2004
30 Section 2(1) of the Nigeria Export Processing Zones Act
31 Section 4 (d) of the Nigeria Export Processing Zones Act
32 Cap.124 LFN 2004
33 Section 1 of the Investment and Securities Act
34 See generally part VI of the Investment and Securities Act
35 CAP. 181 LFN 1990, Cap. 17 LFN 2004
36 See the commencement of the Industrial Promotion Act

1.3.7 Labour Act[37]

This delineates general for the protection of wages, employment contracts, terms and conditions of employment, and those governing employer-employee relationships.

1.3.8 National Agricultural Land Development Authority Act[38]

This Decree established a National Agricultural Land Development Authority (NALDA).[39] The objectives of the Authority shall be to: provide strategic public support for land development; promote and support economic-sized farm holdings and promote consolidation of scattered fragment holdings; encourage the evolution of economic-sized rural settlement; provide gainful employment opportunities for rural people, raise rural incomes and improve on the general living standards in rural areas; expand productive capacity in agriculture and regain export capability in traditional and non-traditional crops; etc.[40]

1.3.9 Pesticide Registration Regulations, 2005

These regulations prohibit the manufacture, formulation, importation, exportation, advertisement, sale or distribution of pesticides in Nigeria unless the pesticides have been registered in accordance with the provisions of these regulations.[41] They also set out procedures and requirements for the application for registration and specify documents that shall accompany the application.[42] These documents are principally related to safety of the products and its potential impact on the environment. The National Agency for Food and Drug Administration and Control

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[37] Cap. L1 LFN 2004
[38] Cap. N 4 LFN 2004
[39] Section 1 of the National Agricultural Land Development Authority Act
[40] Section 3 of the National Agricultural Land Development Authority Act
[41] Section 1(1) of the Pesticide Registration Regulations
[42] Section 3 of the Pesticide Registration Regulations

(NAFDAC) shall decide on an application and, upon registration, issue a registration certificate.[43]

1.3.10. The National Agency for Food and Drug Administration and Control Act [44]

This act establishes the National Agency for Food and Drug Administration and Control (NAFDAC),[45] with the mandate to regulate and control quality standards for foods, drugs, cosmetics, medical devices, chemicals, detergents and packaged water that are imported, manufactured locally and distributed in Nigeria.[46]

1.4 REGISTRATION AND APPROVAL PROCEDURES

The Companies and Allied Matters Act (CAMA) require foreign companies to be incorporated locally with the Corporate Affairs Commission[47] and register with the Nigerian Investment Promotion Commission.[48] Certain exemptions apply when the foreign companies are invited for specific projects by the Federal Government or a donor country or international organization. In these cases the company must apply for exemption to the National Council of Ministers.[49] Another exemption is for enterprises operating in a free zone, where company is through the Nigeria Export Processing Zone Authority (NEPZA).[50]

The One Stop Investment Centre (OSIC), a unit within the Nigeria Investment Promotion Commission and operational since 2006, is an investment facilitation mechanism that brings relevant

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43 Section 4(1) of Pesticide Registration Regulations

44 Cap. N1 LFN 2004

45 Section 1 of the National Agency for Food and Drug Administration and Control Act

46 Section 5 of the National Agency for Food and Drug Administration and Control Act

47 Section 54 of the Companies and Allied Matters Act

48 Section 20(1) of the Nigerian Investment Promotion Commission Act

49 Section 56 (a) of the Companies and Allied Matters Act

50 Section 9(1) of the Nigeria Export Processing Zone Act

government agencies together in one location, coordinated and streamlined to provide efficient and transparent services to investors.[51] Currently, 26 agencies have a presence within OSIC, including the CAC, Immigration and Customs Departments, and several ministries.

1.4.1 Business Incorporation

Business Incorporation is carried out by and at the Corporate Affairs Commission with head office in Abuja and additional offices in all the 36 states of Nigeria. The Corporate Affairs Commission is responsible for administering the Companies and Allied Matters Act, thus for the incorporation, registration, management and termination of companies. Since 2003, companies can use an online system for incorporation as well as an e-payment regime (an electronic payment via internet). This has decreased the average duration of the incorporation process to 3 days. Once registration is complete, the Corporate Affairs Commission issues a Certificate of Incorporation.

The requirements for the business incorporation in Nigeria are: search for availability of name; payment of appropriate stamp duty fee at the federal Inland Revenue Service (FIRS); submission of the Memorandum and Articles of Association together with the statutory forms for verification and assessment;[52] and payment of the fees.

1.4.2 Business Registration / Permit

Once incorporated, foreign companies may register as a foreign enterprise with the Nigerian Investment Promotion Commission for other investment approvals and incentives. Through the One Stop Investment Centre, new investors can process all necessary

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[51] http://www.nipc.gov.ng/osicabout.html accessed on 22nd April, 2015

[52] Section 35 of the Companies and Allied Matters Act

investment approvals and registration, including company certification, tax registration and fiscal incentives for which they qualify.[53] Simultaneous application must be prepared and submitted to the NIPC (on prescribed NIPC Application Forms) for the following:

i. Registration (Business Permit Certificate issued upon registration):
ii. Expatriate Quota (NIPC facilitates with Federal Ministry of Internal Affairs).

Final approvals/ Licenses required by an investor to set an enterprise are given by the respective agencies/ ministries depending on the sector to be invested. Companies located in Nigeria's Export Processing Zones do not need to register with Nigerian Investment Promotion Commission. For them, Investment approval and licensing is governed by the Nigeria Export Processing Zones Act, which grant all the requisite permits and approvals for operators within the zones. Application is also through prescribed forms and supporting document and information.[54] The Nigeria Export Processing Zones Authority notifies applicant in writing of approval or otherwise, within five working days of receiving applications.

1.5 TAX SCHEMES REGIME

Under current Nigerian Law, taxation is enforced by the three tiers of government: Federal, State and Local governments.[55] Each has its sphere delineated in the Taxes and Levies (Approved List for

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[53] http://www.nipc.gov.ng/osicabout.html accessed on 22nd April, 2015

[54] Section 9(1) of the Nigeria Export Processing Zone Act

[55] Section 1(1) of the Taxes and Levies Act Cap. T 2 LFN 2004. In a related case, Justice Latham of the United States Supreme Court in the case of *Nichols v Ames*, stated that "taxation is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as the air he breathes to the natural man. It is not only the power to destroy, it is also the power to keep alive."

Collection) Act.[56] The Taxes and levies for collection by the federal government, approved and published by the Joint Tax Board (JTB) are: Companies Income Tax; withholding tax on companies; Petroleum profit tax; Value Added Tax (VAT); Education Tax; Capital Gains Tax; and Stamp Duties involving a corporate entity.

1.5.1 Joint Tax Board Taxpayer Identification Number (JTB TIN)

The FIRS is charged with issuing a Joint Tax Board Taxpayer Identification Number (JTB TIN) to every company, enterprise and individual in collaboration with the State Boards of Internal Revenue and Local Government Councils. The Joint Tax Board Taxpayer Identification Number is unique for every registered tax payer in Nigeria and not limited to FIRS taxpayer alone.[57]

1.5.2 Major Taxes Relevant to Foreign Direct Investment (FDI)

i. Personal Income Tax

The current law guiding the taxation of personal incomes is the Personal Income Tax Act.[58] Under the law, federal and states' tax boards are empowered to identify persons living in or earning income from their incomes using specified guidelines and rules. This law also guides the tax official in identifying the residence of potential taxpayers, as well as the source and origins of their incomes for the purpose of taxing the income.[59] There are two forms of taxes that are administered under the Act namely (a) Pay -As –You-Earn (PAYE)[60] i.e. taxes from employment, and (b) taxes from self- employed persons.

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[56] Cap. T 2 LFN 2004

[57] http://www.firs.gov.ng.obtaining%20and%20updating%20your%20TIN.pdf accessed on 25th April, 2015

[58] Cap P 8 LFN 2004

[59] Section 56(1)&(2) of the Personal Income Tax Act

[60] Section 8(1) of the Personal Income Tax Act

ii. Companies Income Tax

The current Company income tax rate in all sectors is thirty kobo for every naira.[61] The tax is payable on profits accruing in, derived from, brought into or received from a trade business or investment. In addition, a special levy of fifteen percent will be levied on the excess profits of every company including banks.

iii. Value Added Tax (VAT)

Value added tax is charged at a flat rate of five percent of net value added based on eligible transactions once consumed.[62] No individual, business, organization or government agency is exempted from the tax. Only goods and services and specifically specified activities are exempted.[63]

iv. Capital Gains Tax

This Tax is chargeable at the rate of ten percent on capital gains arising from the disposal of capital assets.[64]

v. Withholding Tax

Nigerian law subjects certain activities and services to withholding tax. During transactions, when a payment is due from one person to another, the person making the payment is expected to deduct tax at the applicable rate and remit it to the relevant tax authority.[65]This should be done not later than 30 days after the deduction. It is an advance payment of tax at five percent to which individuals and organizations are entitled to demand a withholding tax credit note.

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[61] Section 40(1) of the Companies Income Tax Act
[62] Section 4 of the Value Added Tax Act
[63] Section 3 of the Value Added Tax Act
[64] Section 2(1) of the Capital Gains Tax Act
[65] Paragraph 4(1) of the Personal Income Tax(rates, etc of tax deducted at source(withholding tax) Regulations.

vi. Stamp Duties[66]

The primary essence of duty stamping agreements and/ or instrument is that such documents become valid, legal and admissible in any tribunal or court of record in Nigeria. Therefore, the duty stamping of instruments is actually in the best interest of the contractor or consultant in case of trouble. The federal government shall be the only competent authority to impose, charge and collect duties on instruments executed between a company and an individual, group or body of individuals, while the states' government shall collect duties on instrument executed between persons or individuals.[67] Stamp duties are a form of taxation paid to the federal or state Governments on documents such as Conveyances on Sale, Agreements, Contracts, Bills of Exchange, Promissory note and instruments.[68] Stamp duties require that the above listed instruments must be stamped. Consequently, any unstamped instrument will not be admissible in evidence in court in Nigeria.[69]

vii. Education Tax[70]

Set through Decree No. 7 of 1993 and commenced implementation in 1995, the education tax is imposed on companies registered in Nigeria that are liable to pay tax on their assessable profits as defined in companies income tax act as the case may be. The rate of the tax is 2 percent of the assessable profit.[71] The assessment of

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66 Cap. 58 LFN 2004

67 Section 4(1) &(2) of the Stamp Duties Act

68 Dadem Y. Y, *Property Law Practice in Nigeria*, Jos University Press Limited , Jos Nigeria, 2009 pp.22-23

69 See sections 19 & 22 of the Stamp Duties Act, Cap 58 LFN 2004, see also section 126 of the Evidence Act 112, LFN 2004(as amended) by the Evidence Act of 2011

70 Cap. E. 4 LFN 2004

71 Section 1(1) of the Education Tax Act

the education tax and that of the companies' income tax are done concurrently.

viii. Nigerian Social Investment Trust Fund (NSITF) Tax

Governed by the Nigerian Social Investment Trust Fund Act, this tax requires everybody employed in a Nigerian incorporated company to contribute a certain percentage of their salary to the fund.[72] The contribution is based on the assumption that the maximum basics salary in Nigeria is 48,000 Naira per annum. Expatriates are excluded from this requirement where the contributor is an employee, 2.5 percent of his salary is subject to a maximum of 1200 Naira per annum; where the contributor is an employer, 5 percent of basic salary.

1.6 LAND PROCEDURES: LAND USE ACT 1978 [73]

Investors who are interested in the acquisition of landed properties are expected to comply with provisions of Land Use Act. In 1978, Nigeria's military government issued the Land Use Act in an effort to impose land reform and establish a uniform land tenure system for the country The Act guarantees all Nigerians the right to land but confers all proprietary right in the state. Under the Land Use act, land in each state excluding federal land, is vested in the state governors who are charged with land administration and allocation.[74] Governors have principal authority over all urban land within their state[75], while local governments have authority over all non-urban land.[76]

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[72] Section 10(1) the Nigerian Social Investment Trust Fund Act
[73] Cap, L5 LFN 2004
[74] Section 1 of the Land Use Act
[75] Section 2(1) of the Land Use Act
[76] Section 2(2) of the Land Use Act

The Land Use Act recognizes two types of occupancy rights: statutory occupancy rights and customary occupancy rights.

1.6.1 Statutory Right of Occupancy

Individuals and entities can obtain a statutory right of occupancy for urban and non-urban land. Statutory occupancy rights are granted by governors, with the assistance of a Land Use and Allocation Committee, for a definite term under leasehold. Conditions are set in the Certificate of occupancy. Recipients of the certificate are obligated to pay the state for any un-exhausted improvements on the land (i.e. improvements with continuing value such as a building or irrigation system) at the time the recipient takes possession and must pay rent fixed by the state. Rights are transferable only with the authorization of the state Governor.

At present, most of the land in Nigeria is for leasehold and rates are fixed at the governor's discretion. Land may be leased for as long as 99 years, though the length of leases in industrial estates varies from state to state. Foreign companies and individuals may acquire land buildings; however, there are varying local constraints on the type of lease they may hold.

1.6.2 Customary Right of Occupancy

Local governments may grant customary rights of occupancy to land in any non-urban area to any person or organization for agricultural, residential, and other purposes, including grazing and other customary purposes ancillary to agricultural use. Recipients of customary rights of occupancy must pay annual tax on the land and cannot transfer any portion of the rights without the approval of the governor (for sales of rights) or the local government (other transfers).

Individual and entities can apply for statutory or customary rights of occupancy consistent with ceilings on urban and rural landholdings. However, Nigeria's informal land market is extensive in urban and many rural areas of the country, and most indigenous areas are still governed by customary land tenure.

Obtaining and registering occupancy certificates require 14 steps and the process takes an average of 6 to 9 months. The landholder must also pay a series of fees, including an annual rental fee or tax for the use of the land, paid to the local government. Furthermore, a state governor and local government can revoke a right of occupancy for a public purpose or in the event of breach or any provision set in the certificate.[77] Tenure security is thus low in Nigeria and land rights are transferred mostly in informal markets. Moreover, the Land Use Act of 1978 is incorporated into the 1999 constitution of Nigeria (as amended), making it difficult to revise or replace.

1.7 INCENTIVES FOR INVESTMENT

1.7.1 Pioneer Status

The grant of pioneer status to an industry concerned is to make a reasonable level of profit within its formative years. The profit made is expected to be invested back into the business. Pioneer Status is a tax holiday granted to qualified industries anywhere in

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[77] See the case of *Osho vs Foreign Finance Corporation* (1991) 4 NWLR (pt 184) P. 157, where it was held that by virtue of the provision of section 28(1) 0f the Land Use Act, the Governor of a state has power to revoke a right of occupancy for overriding public interest. The power of the Governor to revoke a right of occupancy must be for overriding public interest and for requirement by the Federal Government for public purposes. Therefore, any revocation for purposes outside the ones prescribed by Section 28 of the Land Use Act is against the policy and intention of the Act and can be declared invalid, null and void by a competent court. See further, *Dabup vs Kolo* (1993) 9 NWLR (pt 317); *Dantumbu vs Adene* (1987) 4 NWLR p. 314

the federation and seven year tax holiday in respect of industries located economically disadvantaged local government area of the federation. A five year tax holiday which is in relation to companies income tax is granted in respect of companies operating in eligible industries while a seven year holiday is given in respect of industries located in economically disadvantaged local government areas of the federation.[78] Currently, there are seventy one approved industries that can benefit from pioneer tax holiday. Some of the industries on the pioneer status list are: rubber plantation and processing, real estate development and utilities, manufacture of cement, pharmaceutical, iron and steel from iron ore, gas cylinders, solar energy powered equipment and gadgets and maintenance of aircrafts.[79] However, the list is not exhaustive as the acts provided that an application may also be made under for any industry to be included in the list of pioneer industries and pioneer products.[80]

To qualify, a joint venture company or a wholly foreign-owned company or qualified local or indigenous company must have incurred a capital expenditure of not less than ten million. This is by virtue of the provisions of the recent Pioneer Status Incentive Regulation of 2014[81]. The Pioneer Status Incentive Regulation provides additional conditions to those contained in the Industrial Development (Income Tax Relief) Act for processing an application for pioneer status incentive.

1.7.2 Tax relief for Research & Development (R&D)

Industrial establishments are expected to engage in research and development for the improvement of their processes and products.

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[78] http://www.nipc.gov.ng/investment.html acessed on 25th April, 2015
[79] Section 1 (1) of the Industrial Development (Income Tax Relief) Act
[80] Section 1(2) of the Industrial Development (Income Tax Relief) Act
[81] Section 3(b) of the Pioneer Status Incentive Regulation of 2014

Up to 120 percent of expenses on research and development are tax capable of being subtracted, provided that such research and development activities are carried out in Nigeria and are connected with the business from which income or profits are derived. For the purpose of research and development on local raw materials, 140 percent of expenses are allowed. Where the research is long term, it will be regarded as a capital expenditure and will be written off against profit.[82]

1.7.3 Capital Allowances

Different rates apply to different expenditures. The amount of Capital Allowances to be enjoyed in any year of assessment is restricted to 75 percent of assessable profit in case of manufacturing companies and 66 percent in case of others, except for companies in agro-allied industries that are not affected by this restriction. If leased assets are used agro-allied ventures, the full (100 percent) capital allowance claimed will be granted. Moreover, where the leased assets are agricultural plants and equipment, there will be an additional investment allowance of 10 percent on such expenditure.[83]

1.7.4 In-Plant Training

This is a form of incentive granted to industrial establishments that have set up in-plant training facilities. Such industries enjoy a 2 percent tax concession for a period of 5 years.[84]

1.7.5 Investment in Infrastructure

This is a form of incentive granted to industries that provide facilities that ordinarily should be provided by government (including access roads, pipe borne water and electricity). Twenty

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[82] http://www.nipc.gov/investment.html accessed on 25th April 2015.

[83] ibid

[84] http://www.fmti.gov.ng/about-nigeria/investment-incentives.html accessed on 25th April, 2015

percent of the cost of providing these infrastructure facilities, where they do not exist, is tax deductible.[85]

1.7.6 Investment in Economically Disadvantaged Areas

A pioneer industry located in economically disadvantaged Local Government Area is entitled to 100 percent tax holiday for 7 years and an additional 5 percent capital depreciation allowance over and above the initial capital depreciation allowance.[86]

1.7.7 Labour Investment Mode of Production

Industries with high labour/capital ratio are entitled to tax concessions. These are industries with plants, equipment and machinery that essentially are operated with minimal automation. Where there is automation, such automation should not be more than one process in the course of production. The rate is graduated in such a way that an industry employing 1000 persons or more will enjoy 15 percent tax concession, while an industry employing 200 will enjoy 7 percent and those employing 100 will enjoy 6 percent, and so on[87].

1.7.8 Local Value Added

This is a 10 percent tax concession for 5 years. It applies essentially to engineering industries, where some finished imported products serve as inputs. The concession is aimed at encouraging local fabrication rather than the mere assembly knocked down parts.[88]

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[85]http:// www.zeberced.com/en/haber/investment-incentives-in-nigeria accessed on 25th April, 2015

[86] http://www.investor.ng/resource/?s=investment+incentives+in+nigeria accessed on 25th April, 2015

[87] ibid

[88] ibid

1.7.9 Re-Investment Allowance

This is granted to companies engaged in manufacturing that incur qualifying capital expenditure for the purposes of approved expansion, etc. the incentive is in the form of a generalized allowance of capital expenditure incurred by companies for the following: expansion of production capacity; modernization of production facilities; and diversification into related products.[89]

1.7.10 Minimum Local Raw Material Utilization

A tax credit of 20 percent is granted for 5 years to industries that attain the minimum level of local raw materials sourcing and utilization.[90] The minimum levels by sectors are:

- Agro-allied – 70%
- Engineering – 60%
- Chemicals – 60%
- Petrochemicals – 70%

1.8 GLOBALIZATION AND RESOURCES DIVERSIFICATION

The phenomenon of globalization began in a primitive form when humans first settled into different area of the world; however, it has shown a rather steady and rapid progress in the recent times and speed and scale, so that countries in all five continents have been affected and engaged.

1.8.1 What is Globalization?

Globalization is defined as a process which, based on international strategies, aims to expand business operations on a worldwide level and was precipitated by the facilitation of global

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[89]http:// www.nipc.gov.ng/investment.html accessed on 25th April, 2015

[90] ibid

communications due to technical advancements, and socioeconomic, political organization a superior competitive position with lower operating costs, to gain greater numbers of products, services and consumers. This approach to completion is gained via additional markets, and accessing new raw materials and resources[23]. Diversification of resources is a business strategy that increases the variety of business products and services within various organization risk factors, spreading interests in different areas, taking advantage of market opportunities and acquiring companies both horizontal and vertical in nature[24].

1.8.2 Components of Globalization

The components of globalization include Gross Domestic Product (GDP), industrialization and the Human Development Index (HDI). The GDP is the market value of all finished goods and services produced within a country's borders in a year and serves as a measure of a country's overall output. Industrialization is a process which, driven by technological innovation, effectuates social change and economic development by transforming a country into a modernized industrial, or developed, nation. The human Development Index comprises three components. Specifically, a country's (a) population's life expectancy (b) knowledge and education measured by the literacy and (c) income.

The degree to which an organization is diversified has bearing on the strategies that it uses to pursue greater development and investment opportunities.

1.8.3 Globalization and Prospect of Resource Diversification-

Globalization compels business to adapt to different strategies based on new ideological trends that try to balance rights and interests of both the individual and the community as a whole.

This change enables business to compete worldwide and also signifies a dramatic change for business leaders, labor and management by legitimately accepting the participation of workers and government in developing and implementing company policies and strategies. Risk reduction via diversification can be accomplished through company involvement with international financial institutions and partnering with both local and multinational businesses. (Investing overseas begins with a determination of the risk of the country's investment climate).

Globalization brings re-organization at the international, national and sub-national levels. Specifically, it brings the re-organization, international trade and the integration of financial markets, phenomena, such as business competitiveness, at the global level, the transformation of the production structure and organization of capital. Globalization is now seen as marginalizing the less educated and low-skilled workers. Business expansion will no longer automatically imply increased employment. Additionally, it can cause high remuneration of capital due to its higher mobility compared to labor.

The phenomenon seems to be driven by three major forces: globalization of all products and financial markets, technology and deregulation. Globalization of product and financial markets refers to an increased economic integration in specialization and economies of scale, which result in greater trade in financial services through both capital flows and cross-border entry activity. The technology factor, specifically telecommunication and information availability, have facilitated remote delivery and provide new access and distribution channels while revamping industrial structures for financial services by allowing entry of non-banking entities such as telecoms and utilities.

Deregulation pertains to liberation of capital account and financial services in products, markets and geographic locations. It

integrated banks by offering abroad array of services, allowed entry of new providers and increased multinational presence in many markets and more cross-border activities.

In a global economy, power is the ability of a company to command both tangible assets that create customer loyalty, regardless of location. Independent of size or geographical location, a company can meet global standards and tap into global networks, thrive and act as a world class thinker, maker and trader, by using its greatest assets: its concepts, competence and connections.

1.8.4 Beneficial Effects

Some economists have a positive outlook regarding the net effects of globalization on economic growth. These effects have been analyzed over the years by several studies attempting to measure the impact of globalization on various nations' economies using variables such as trade, capital flows and their openness, GDP per capita, foreign direct investment (FDI) and more. These studies examined the effects of several components of globalization on growth using time series cross sectional data on trade, FDI and port folio investment. Although they provide an analysis of individual components of globalization on economic growth, some of the results are inconclusive or even contradictory. However, overall findings of those studies seem to be supportive of the economists' position instead of the one held by the public and non-economist view.

Trade among nations via the use of comparative advantage promotes growth, which is attributed to a strong correlation between the openness to trade flows and the effect on economic growth and economic performance. Additionally there is strong positive relation between capital flows and their impact on economic growth.

Foreign Directory Investment's impact on economic growth has had a positive growth effect in wealthy countries and an increase in trade and Foreign Directory Investment (FDI) resulted in higher growth rates. Empirical research examining the effects of several components of globalization on growth using time series and cross sectional data on trade, FDI and portfolio investment found that a country tends to have a lower degree of globalization if it generates higher revenue taxes. Further evidence indicates that there is a positive growth effect in countries which are sufficiently rich as are most of the developed nations.

The World Bank reports that integration with global capital markets can lead to disastrous effects without sound domestic systems in place. Furthermore globalized countries have lower increases in government outlays, as well as taxes, and lower levels of corruption in their governments.

1.8.5 Harmful Effects

Non- economist and the wide public expect the costs associated with globalization to outweigh the benefits, especially in the short-run. Less wealthy countries among Nigeria from those among the industrialized nations may not have the same highly-accentuated beneficial effect from globalization as more wealthy countries measured by GDP per capita etc. Free trade, although increases opportunities for international trade, it also increases the risk of failure for smaller companies that cannot compete globally.

Additionally it may drive up production and labor costs including higher wages for more skilled work force. Domestic industries in some countries may be endangered due to comparative or absolute advantage of other countries in specific industries. Another possible danger and harmful effect is the overuse and abuse of natural resources to meet the new higher demand in the production of goods.