The Nigeria Investors' Roadmap
And Enabling Environment Strategy

Final Report

Prepared for: **The Government of the Federal Republic of Nigeria**
(Office of the Presidency; Ministry of Finance; and Nigerian Investment Promotion Commission)

Prepared by: **Pricewaterhouse Coopers L.L.P. (Prime Contractors)**
The Services Group (TSG), Inc. (Technical Contractors)
The Foreign Investment Advisory Service (FIAS)

Funded under: **Support for Economic Growth and Institutional Reform**
General Business, Trade and Investment (SEGIR GBTI)
Contract No. PCE-I-00-98-00017-00
Task Order No. 825

December 2002

PRICEWATERHOUSECOOPERS

United States Agency for International Development (USAID)

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Executive Summary

Introduction

H.E. Olusegun Obasanjo, President of the Federal Republic of Nigeria (GFRN), has publicly stated his Government's objective of drawing Foreign Direct Investment (FDI) in order to alleviate poverty levels in the country, currently estimated at 85%. The Office of the Presidency's Investment Policy priorities include: "getting the 'right' processes and incentives in place for a competitive business climate" as well as "removing administrative bottlenecks to encourage investment."[1]

Pursuant to the objectives set forth in the *Cooperation Protocol* and *Strategic Objectives Agreement* signed by the United States of America and Nigeria in September 1999, and specifically in order to facilitate the implementation of the Presidential Investment Policy, USAID commissioned PricewaterhouseCoopers LLP and The Services Group (TSG) Inc. to prepare the present "Nigeria Investor's Roadmap" study. The study discusses and analyses the key areas of the regulatory environment for private sector activity which have been found to create barriers to investment around the world: Business Registration, Locating, Employing, and Operating (e.g., Import/Export; Commercial Dispute Resolution; and Taxation) requirements. It also seeks to guide the GFRN in reengineering its legislative and regulatory frameworks for business, in order to make them more internationally competitive, flexible, efficient, transparent, and user-friendly, and thus help foster a more 'enabling' investment climate.

The study found that, three years into the transition to civilian administration, many of Nigeria's interviewed government agencies still remain wedded to command-and-control structures and reflexes, exhibit outdated protectionist tendencies, and continue to inhibit foreign direct investment. Investment procedures generally remain inefficient, opaque, complex, lengthy, and subject to non-statutory facilitation by public officials. Following is a summary of the study's key findings and recommendations, by regulatory area:

[1] Abuja 'Investor Roadmap' Workshop, USAID (12 July 2002).

Key Findings and Recommendations

Chapter 1. Business Registration

Chapter 1 focuses on the various procedures required of a private firm to register in Nigeria, including: registering as a legal entity; registering with statistical and tax authorities; obtaining local business licenses and permits; and acquiring investment incentives.

Investors must first register with the Corporate Affairs Commission (CAC) to incorporate their business. The process in increasingly transparent, and both Management and staff are fairly committed and well-trained. However, requiring numerous steps and many forms, this process is expensive, cumbersome and fairly time-consuming. The investor must also complete Business Registration/Permitting with the Nigerian Investment Promotion Commission (NIPC). As currently designed, the NIPC registration process is discriminatory and redundant; its operations inefficient, and its procedural guidelines incomplete. Unwittingly, the NIPC essentially adds layers to services being delivered by the MoIA, the MoI (IDD), FIRS, the NCS, and the NEPC. The NIPC should thus refocus its processes in these areas to better reflect its useful investment facilitation services, rather than any regulatory role. Nigeria's incentive acquisition procedures are generally complex and non-transparent, resulting in under-utilization. Finally, investors must also apply for a Business Premises Permit from state-level authorities, which generally includes registration with state tax authorities. Again, there are few if any written guidelines for state-level registration. Moreover, this procedure presents the investor with an additional delay prior to being allowed to commence business operations.

Overall, the study's findings indicate that business registration in Nigeria is inefficient, complex, lengthy, and costly. Taken together, these processes require up to 49 steps for enterprise registration, which is a far cry from international best practice processes of 1-6 steps, and extremely uncompetitive for a country of Common Law tradition, where "declarative" systems are the norm.

<u>Key Recommendations:</u>

CAC Registration:

- Streamline process, through reduction of forms; elimination of stamp-duty procedures and facilitation requirements; and tie-in of name registration with other Intellectual Property Rights (IPR) protection procedures.
- Enhance Staff Capabilities; consolidate staff roles; institute performance-based staff incentives (based on reviews); afford adequate training; and ensure improved investor information.

NIPC Registration:

- Eliminate Foreign Direct Investment (FDI) Registration process.

- Make NIPC Promoter/Facilitator/Advocate, but not a Regulator.

FIRS/MoC Pioneer Status Acquisition:

- Dis-involve NIPC from related regulatory procedures.
- Streamline process, through: form simplification; elimination of site visit; institution of an automatic declarative process, based on positive list; and reduction of the overall number of incentives schemes.
- Set up an information clearinghouse, perhaps in the NIPC.

Chapter 2. Locating

Chapter 2 focuses on the various administrative aspects of corporate location in Nigeria. These processes include: acquiring and registering rights to land; obtaining site development and building permits; arranging utility connections; and complying with site-related environmental impact mitigation legislation.

The locating process is largely the purview of state governments, who are responsible for land allocation and transfer, as well as (in most states), site development approvals. Although the consultants could not locate the legal basis for them, in some states, there are also environmental protection agencies. The federal government has primary responsibility for environmental issues and (for the moment) utilities provision. Local Government Councils have jurisdiction over: Allocation of statutory rights of occupancy; collection of various housing & tenement levies and rates; construction of roads and streets; and sewage. While the consultants did not locate the legislative basis for these powers either, Local Government Councils also appear to have jurisdiction over other locating-related matters, including: the use of land outside townships; ground and industrial rates; and site-related public health and safety matters.

The administrative locating processes are thus truly federal in nature and, as a result, vary in terms of their specifics depending upon the location of one's investment. Nevertheless, it is fair to state that, regardless of one's investment location, the administrative process related to "locating" are generally inefficient, non-transparent, slow, and expensive throughout Nigeria.

Key Recommendations:

Land Access and Transfer:

- Dis-involve or reduce roles of Governor, Permanent Secretaries, and state-level Ministries of Commerce and Industry (MCIs).
- Streamline process, through: reduction of documentation requirements (e.g., Business Plan, Tax Clearance Certificates, etc.); recognition of electronic or faxed signatures; single-step decision-making by committees; clearly-defined processing deadlines; and reduced public announcement requirements.
- Establish checklists and disseminate information.

Environmental Clearance:

- Enforce State-Federal jurisdictions and clarify State-level requirements.

- Streamline process through: reduction of documentation requirements (e.g., detailed Building Plans, Feasibility Studies, etc.); and restriction of pre-building site visits to un-zoned plots.

Site Development:

- Streamline process through: reduced documentary requirements, fees & steps; site visit protocol; processing deadlines and deemed approvals (for both applicants and GFRN); elimination of Stamp Duty, as well as of Fire & Health clearance processes.
- Institute committee-based decisions and joint reports.
- Dis-involvement of Governor and Council Chairman.
- Dissemination of information and gazetted regulations

Chapter 3. Employing

Chapter 3 focuses on the various norms and procedures relating to: securing investor and expatriate entry and work permits; labor registration; employee income tax registration and Pay-as-you-earn (P.A.Y.E.) obligations; compliance with labor norms; and, finally, labor dispute resolution mechanisms.

Employment is an area of concurrent state-federal jurisdiction under Schedule II of the Nigerian Constitution. The study's analysis of the employing-related processes in Nigeria reveal a mixed picture of efficient and inefficient procedures, with complexity and lack of transparency in some areas and flexibility and liberal regulation in others. Nigeria should shed the remnants of military-era 'command-and control' approaches to regulation, as well as protectionist and "closed-nation" attitudes regarding entry of foreign personnel, andembrace its fundamentally liberal and progressive tradition and instincts.

<u>Key Recommendations:</u>

- Consolidation of visas, Expatriate Positions (EP), work permits, and 'Permanent until Revoked' (PUR) status, including through capitalization on the new 'Brown' and 'Green' Card system.
- Elimination of 'Nigerianization' requirements.
- Harmonized employment reporting system.
- Information dissemination.
- Training of Consular officials in immigration matters.

Chapter 4. Import and Export

Chapter 4 focuses on import/export procedures both for companies located in free zones, and for companies located outside of these zones. This chapter also examines Nigeria's export incentive programs: the Manufacture-in-Bond Scheme and the Duty Drawback Scheme.

Overall, Nigerian customs and port procedures appear fairly rational. Many international practices have been, at least partially, adopted in practice, including the World Customs

Organization's Kyoto Convention and UNCTAD's ASYCUDA norms, Single Goods Declaration forms, and selective verification (although 100% inspection is still required by Law). These are positive and useful measures.

However, a number of inefficient practices subsist, including: lack of information and transparency, resulting in extra-legal behavior; 100% inspection; and poor, equipment, facilities, and official pay. As a result, counting wait-time for berths, port and customs clearance timelines exceeding one month remains commonplace, in spite of the fact that any wait-period of more than a few days often results in spoilage of goods shipped. These issues, more administrative and institutional than policy-driven in nature, could be addressed by the Nigerian Customs Service (NCS) and Nigeria Ports Authority (NPA) in much the same manner as the Federal Aviation and Airports Authority of Nigeria (FAAN) has begun addressing in earnest them in airports. The situation in Nigeria's free zones, while somewhat better, is still hampered by dealings with Port Customs and NPA officials, with resulting clearance times of 1-2 weeks on average. This is totally counter to the streamlined import/export procedures concept upon which free zones are based – free zones typically offer clearance in under 24 hours in most countries where they have been established.

Nigeria's export incentives programs are simple and straightforward in theory. Unfortunately, they are generally believed to apply only to the manufacturing sector. In addition, status takes years to acquire due to insufficient implementation, and information on the programs is poorly disseminated. Finally, as currently designed, Nigeria's export incentives do not make economic sense. The programs are thus under-utilized.

Key Recommendations:

Import procedures:

- Rationalize tariff structure.
- Remove SON and NAFDAC from ports.
- Improve Port office facilities and increase NCS pay, through earmarked funding.
- Bring Private participation into port management.
- Institute simultaneous document verification.
- Eliminate Form M and PSI procedures.
- Increase diligence in ASYCUDA program application.
- Release cargo pending valuation dispute resolution.
- Bring regulatory requirements regarding inspection rates in line with practice
- Develop NEPZA capacity and EPZ regulations to effectively regulate EPZs and Free Zones.

Export Incentives:

- **Institute an 'Information clearinghouse' at NIPC, FIRS or NEPC.**
- Centralize MIBS and DDS under NCS.
- Rationalize and simplify the incentives and incentives acquisition schemes.
- Fully open the incentives regime to services exports.

Chapter 5. Resolution of Commercial Disputes

Chapter 5 briefly reviews the state of rule of law in Nigerian commercial and contractual relations, as a fundamental enabling condition for increased foreign investment. While Nigeria's commercial disputes resolution system is composed of indigenous, Sharia, and "received" (Common Law) Courts, there are a few problems in terms of dueling decisions or appeals. Judicial accountability, access to legal services, and Barrister access to case law, are also improving. However, the legal system remains hobbled by extremely slow case processing, a lack of specialization in commercial law topics, and infant alternative dispute resolution mechanisms.

Key Recommendations:

- Training of judges and lawyers in specialized areas.
- Wider dissemination of decisions.
- Replication of Lagos State's initiatives in equipping courthouses.
- Launch of an ADR Public awareness campaign.
- Creation of commercial courts, replicating Lagos State's initiative.
- Creation of a permanent, geographically based, Labor Court system.

Chapter 6. Taxation

Finally, chapter 6 provides an overview of the Nigerian taxation system, at the federal, state, and local levels.

While centrally coordinated to some degree, Nigeria's system is one of fiscal federalism, with shared jurisdiction and transfer payments known as "Federal Allocation Allowances."

The system is reasonable and competitive by design, both in terms of fiscal pressure and tax administration procedures. The monthly payment and annual filing of employee income taxes, for instance, does not appear particularly cumbersome.

However, state auditing and collection practices are less than ideal, while local government taxation and collection practices are, to all intents and purposes, 'predatory'. Furthermore, overall, the system remains relatively opaque. Finally, corruption exists both in terms of transfer payment misappropriation and incentives administration. Clearer and more transparent systems, as well as better information dissemination, will be critical to improving this situation.

Key Recommendations:

- Codification.
- Training of Tax Officials.
- Public information dissemination.
- Dual Taxation Agreements
- Rigorous enforcement of tax jurisdictions and categories by the Joint Tax Board.

Summary of Key 'Investor Roadmap' Findings and Recommendations:

Overarching issue Finding	Proposed Reform
▪ Unnecessary Procedures ▪ Redundant procedures (including at Federal, State, and Local levels)	Utilization of the 'Roadmap' to eliminate redundancies
Improper requirements (particularly at State and Local levels)	More vigilant enforcement of the Law, and better regulation
Lack of transparency in procedures and approval criteria, creating rent-seeking opportunities	▪ Improved transparency ▪ Participative legislative process ▪ Removal of administrative discretion ▪ Lower and uniform fees ▪ Process monitoring ▪ Information dissemination ▪ Increased prosecution

Business Operating Issue Finding	**Concerned Institutions**	Proposed Reform	Nature of Action	**Required Implementation Timeframe**
Delays in Business Registration	NIPC	Elimination of FDI registration procedure	Legislative	Medium Term
	CAC	Streamline CAC and Pioneer status acquisition registration procedures	Legislative	Medium Term
		Enhance staff capabilities	Institutional	Medium Term
	State Governments	Dis-involve State MCIs	Administrative	Short Term
		Reduce administrative discretion	Administrative	Short Term
		Establish State-level Business start-up information Guides	Administrative	Short Term
		Establish State-level Business start-up information Counters	Institutional	Medium Term
Inefficiencies in Site Acquisition and Development	State Governor, PS and MCI	Dis-involve State MCIs and PS	Administrative	Short Term
		Dis-involve Governor	Legislative	Medium Term
	Ministry of Lands	Establish procedural checklists and disseminate information	Administrative	Short- Term
		Circulate "gazetted" regulations	Administrative	Short- Term
		Reduce documentation requirements	Administrative	Short Term
	FEPA/KEPA/LASEPA	Clarify documentation requirements	Administrative	Short Term
		Clarify Federal & State-level roles	Administrative	Short Term
Complexity of Employing Procedures	MoIA and NIPC	Consolidation of visas and EP work permits	Administrative	Short Term
		Harmonized employment reporting system	Institutional	Medium Term
		Improve information dissemination	Administrative	Short Term
	MoIA and MFA	Elimation of Nigerianization requirements	Legislative	Medium-Term

		Training of consular officials in immigration issues	Administrative	Medium Term
Business Operating Issue Finding	**Concerned Institutions**	Proposed Reform	Nature of Action	**Required Implementation Timeframe**
Inefficiencies in Import/Export Procedures	NCS, NPPLC, NIPC, FIRS, and NEPC	Increase procedural transparency & diligence	Administrative	Short Term
		Rationalize tariff structure	Legislative	Medium Term
		Release cargo pending valuation dispute resolution.	Administrative	Short Term
		Increase NCS pay	Legislative	Medium Term
		Increase private participation in port management	Legislative	Medium Term
		Set up information clearinghouse at NIPC	Administrative	Medium Term
		Centralize MIBS and DDS under NCS	Legislative	Medium Term
		Rationalize and simplify the incentives and incentives acquisition schemes	Legislative	Medium Term
		Open incentives to the services sector.	Legislative	Medium Term
Delays in Commercial Dispute Resolution	Federal and State Courts & Chambers of Commerce	Training of lawyers and judges in specialized areas	Administrative	Long Term
		Disseminate information about court decisions; and ADR public awareness campaign	Administrative	Medium Term
		Create commercial courts	Institutional / Legislative	Medium Term
		Equip courthouses	Administrative	Medium Term
		Establish a permanent geographically-based Labor Court system	Institutional / Legislative	Medium Term
Lack of Transparency in Tax Procedures	Federal, State & Local Administrations	Fiscal codification & dual taxation agreements	Legislative	Medium Term
		Tax officials training	Institutional	Medium Term
		Disseminate information	Administrative	Short Term
		Rigorous enforcement of tax jurisdictions & categories by Joint Tax Board	Administrative	Medium Term

Introduction

Project Context

> "Government can only encourage private investors to establish plants or business by providing a conducive economic atmosphere."
>
> - H.E. Chief Olusegun Obasanjo, President of the Federal Republic of Nigeria (GFRN), 16 October 2002"[2]

According to the NESG, "any private sector development is dependent on good governance and how well the appropriate enabling environment has been created for business to thrive."[3] Given the pro-reform posture of the current administration and Nigeria's new democratic dispensation, the overall climate for policy reform in Nigeria should in theory be favorable.

President Obasanjo has publicly stated his Government's objective of drawing Foreign Direct Investment (FDI) in order to alleviate poverty levels in the country, currently estimated at 85%. In inaugurating the 9th Nigerian Economic Summit ("NES9"), he announced that Nigeria has attracted $643 million (N80 billion) in investment since 1999, including 170 enterprises and $575 million in capital goods.[4] However, according to the CBN, FDI into Nigeria has averaged about $1.184 billion per year since 1997, declining every year except for 2001.[5] Furthermore, 80-85% of all investment in Nigeria is in the form of reinvestment.[6]

To increase investment into the country, in March 2001, a Presidential Advisory Council for Foreign Investment was established. The Council is chaired by British Overseas Development Minister Lynda Chalker, and includes eminent members such as former

[2] "Govt will encourage private investors –Obsasanjo," *The Monitor*, 17/10/02, p. B-1
[3] NESG, *NESG Scorecard: Third Quarter Report –2002; A Review of the Economy*, p.5
[4] "Nigeria attracts N80bn foreign investment –OBJ," *The Monitor* Vol. 15, No. 206, 16/10/02, pp. 1-2
[5] Chief Goodie Ibru, Chairman of Ikeja Hotels Group, speaking at the NIPC Investment Dinner at NES9, 17/10/02
[6] "Foreign Investors won't Come if We're Not Comfortable," *This Day* Vol. 8 No. 2732, 15/10/02

World Bank President Robert McNamara. The Presidential Investment Policy Agenda it set out aims to alleviate poverty through the following priority measures:[7]

- Getting the "right" processes and incentives in place for a competitive business climate;
- Removing administrative bottlenecks to encourage investment;
- Strengthening the Nigerian Investment Promotion Commission (NIPC);
- Implementing Investment Promotion (IVP) strategies to attract Foreign Direct Investment (FDI); as well as, more generally,
- Generating the "right" and stable macroeconomic and fiscal environments, including with respect to inflation levels;
- Investing in infrastructure development; and
- Promoting privatization, in order to overcome the "failure of State stewardship of natural resources" on the basis of the profit-maximization principle.

Quite correctly however, Senator Udo-Udoma, at Opening Ceremonies of the 9th Nigerian Economic Summit, held in Abuja on October 16th 2002, however pointed out that such measures can only be based on a solid baseline. In his words: "We need a common focus […] in policy formulation, […] the public sector, the private sector… For that, we need reliable data."

Project Background and Objectives

In an effort to facilitate the implementation of the Presidential Investment policy, as well as provide reliable data on the investment climate, PricewaterhouseCoopers LLP (PwC) and The Services Group were contracted by the United States Agency for International Development (USAID) in the context of the Protocol of Cooperation between the United States of America and the Government of the Federal Republic of Nigeria*, signed on September 15, 1999. The Agreement, signed by the Chief Economic Advisor to the President and the Ambassador of the United States of America,[8] provided a grant to the National Planning Commission, within the Office of the Presidency.*

Pursuant to the *Protocol of Cooperation*, a *Strategic Objective Grant Agreement* (SOAG) between the United States of America acting through USAID and the GFRN (No. 620-007.01 -Mandatory Reference 350) was also signed on the same date.[9] The objective of this SOAG is to structure USAID's collaboration with the GFRN in the promotion of broad-based economic growth and development. A special focus of the Agreement is on the policies, institutions, and personnel of the Executive Branch for which targeted technical assistance and training is dedicated to strengthening economic policy formulation and management capacity, as well as on activities aimed at stimulating private sector trade and investment. The SOAG Oversight Group includes the President's Chief Economic Adviser, the Head of the Multilateral Division within the Ministry of Finance, and the USAID/Nigeria Director. A Government Economic

[7] As presented by a representative of the Office of the Presidency during the 2nd Abuja 'Investor Roadmap' Workshop, conducted by USAID and TSG on 12 July 2002.
[8] At that time, Chief Philip Chiedo Asiodun and Ambassador William H. Twaddel.
[9] By then-USAID Mission Director Thomas D. Hobgood and then-Chief Economic Advisor to the President P.C. Asiodun.

Management (GEM) Working Group, which is co-chaired by a representative of the Planning Commission and the Chief Economist of USAID/Nigeria, and includes the Ministry of Finance (MoF), in turns reports to the SOAG Oversight Group.

The purpose of Nigeria Investor Roadmap Project, which falls within GEM's technical jurisdiction, is to produce an investment climate analysis, including a 'roadmap' of the exact regulatory and administrative requirements of the investor, in a representative sample of Nigerian States. The Investor Roadmap also aims to compare these regulatory and administrative processes with international best practice. The authors believe that this study should prove extremely useful to the GFRN in its priority effort to encourage investment, by assisting in identifying and dismantling critical barriers to FDI in Nigeria. The "customer" of this activity is the Nigerian Investment Promotion Commission (NIPC).

General Project Methodology

Investor roadmaps have proved useful in many countries around the world in identifying barriers to trade and investment and, in general, to increasing the efficiency of the economy. Often, government policies, regulations, and procedures are identified as posing serious problems to accomplishing national economic growth objectives. The Roadmap exercise is a participatory process in which local information is assembled and "benchmarked" against that of other economies. The Roadmap is then utilized by local leaders (such as the Office of the Presidency or the Investment Promotion Commission) to spark a local dialogue on the identified barriers and to begin to prioritize actions to remove the most significant ones. In Nigeria, this exercise aims to identify constraints to investment and recommend policy and procedural changes to be undertaken.

TSG Investor Roadmap projects can be divided into several distinct phases:

- *Phase I* involves conducting a thorough diagnostic in the field and producing a Roadmap of the procedures related to investment, as well as a detailed analysis of the constraints facing the entrepreneur, and an overview of the country's investment climate.
- *Phase II* consists in designing pilot reforms in identified areas and developing a national consensus among public and private stakeholders for the implementation of these reforms.
- *Phase III* is focused on implementing changes to improve the country's investment climate, and as such it can take many forms (e.g., long-term institutional advisory support, short-term technical assistance, multi-agency Process Improvement Workshops, in-depth specific position papers to guide government decision-making, etc.).
- *Phase IV* aims at generalizing and sustaining changes and pilot reforms for purposes of sound business regulation and investment promotion.

The present [Phase I] Nigeria Investor Roadmap Report aims to accomplish the following results:

1. Identify the main constraints that face existing and potential foreign investors in the country;
2. Examine key policy elements that are likely to influence the location decision of foreign investors;

3. Detail, step-by-step, all the requirements that an investor must fulfill to become fully operational;
4. Assess the legal and institutional framework for FDI, including the "customer interface" and the ease of interacting with the process;
5. Offer a review of the legal and administrative barriers that investors face in Nigeria;
6. Compare Nigeria with its regional competitors by benchmarking its practices with best practices;
7. Propose a series of recommendations for improving the investment climate in Nigeria; and
8. Raise awareness in Government, the business community and society at large of the need for regulatory reform and improvement in government services.

The Investor Roadmap is a diagnostic and change management tool that explores the policy at the implementation level. Ultimately, the Investor Roadmap is a means to facilitate positive change in a given country's regulatory regime and help spur the creation of formal sector employment and income growth. The Investor Roadmap's focus on procedural and regulatory barriers to investment and trade illustrates how various government policies and actions affect the international competitiveness of both local and foreign investors.

The Roadmap methodology enables investment promotion agencies such as the NIPC to guide investors through the process of setting up a firm and present an accurate picture of the costs and time required. By publicly disseminating how a given procedure should work, the Investor Roadmap also helps in efforts to curb corruption caused by a lack of transparency. The Roadmap presents an analysis the issues of concern to the private sector, organized by process groups, and offers concrete recommendations for implementing positive change. The Roadmap's detailed analysis of procedures helps expose the root causes of bureaucratic bottlenecks and provides insight into practical solutions guided by principles of international best practice. Conducting an Investor Roadmap builds consensus on the problems that exist in the current regulatory regime and changes the perspective of public officials by presenting the investor as the "customer" of their agency-specific and collective government services. By looking at the provision of government services from an external point of view, civil servants are sensitized to the particular needs of the investor and gain a new appreciation for their role in either helping or hindering investment and why businesspeople and the public want increased transparency, efficiency, responsiveness, and speed from the government.

Typically, Roadmap sponsors and the role of the sponsor will vary across time, in reflection of the particular Phase of the Roadmap and the development of the exercise. While one agency may be the lead agency during the "diagnostic" phase, another agency may be the more appropriate sponsor during the inventing or implementing stages. In Nigeria, such champions of change would at this time appear to include: the Office of the Presidency (NPC); the NIPC; the Ministry of Commerce (MoC); the Ministry of Justice (MoJ); and the Corporate Affairs Commission (CAC). Others institutions may complement their role but are unlikely or unsuited to lead the initiative.

In this connection, the NIPC formally indicated its desire to contribute to and champion the final report, in order that it serve the purposes of: "(i) strengthening the facilitatory

role of government as provider of an enabling environment; and (ii) enhancing the investment climate in Nigeria."[10]

The Report's recommendations propose possible approaches to overcoming the key impediments guided by best practice elsewhere. Indeed, the findings regarding the investment environment are considered in the light of international experience and best practice, and recommendations made on how Nigeria might improve its performance in policy and procedure. The recommendations should serve as an input to the formulation, by the government and private sector of Nigeria, of prioritized action plans and a reform agenda.

Nigerian Field Research Methodology

This Report follows a preliminary Foreign Investor Advisory Service (FIAS)/USAID diagnostic report, entitled *Nigeria: Joining The Race For Non-Oil Foreign Investment*, produced for the NIPC and the MoC and submitted in December 2000, as well as presentations during two Workshop seminars, in Lagos and Abuja, respectively held on the 29th and 31st of January 2001, which gathered approximately 70 public and private sector representatives under the aegis of the National Economic Summit Group (NESG), USAID, and the World Bank Group. By design, this Report represents a second, deeper, cut at ways of improving the investment environment in Nigeria.

The full Investor Roadmap research began in February 2001, during which period a team of three Local Consultants partnered with four Expatriate Consultants to conduct field research. During their time on the ground in Nigeria, the Investor Roadmap Team conducted comprehensive research throughout the country. The team interviewed numerous public and private sector representatives, gathered significant documentation on the investment process, and collected any available data and materials regarding the investment environment in Nigeria.

The TSG/PwC/FIAS consulting team was particularly concerned with conducting research in a geographically representative sample of Nigeria's 36 States and territories. The team was also concerned that the sample enable the consultants to at least sample the issues faced by investors in the Northern, Middle-Belt, Southeastern, South-South, and Southwestern "regions." In the end, research was conducted in the seven (7) following States or territories:

- Abuja, Federal Capital Territory;
- Plateau State;
- Kaduna State;
- Rivers State;
- Cross-Rivers State;
- Abia State; and
- Lagos State.

The three teams were comprised of the following members:

1) Southwest / Middle-Belt Team:
    - Mr. Jean-Paul Gauthier, Barrister & Solictor, Manager (Trade, Investment & Commercial Law Reform)/ Team Leader, TSG (Washington DC)

[10] NIPC, *Comments on Nigeria Investors Roadmap Report,* NIPC/PA-ER/0088 (30 September 2002)

- Mr. Aniekan E. Ukpanah, Partner, Udo-Udoma & Belo-Osagie (Lagos)
- Mr. Gokhan Akinci, Investment Officer, FIAS, International Financial Corporation (IFC), World Bank Group (Washington DC)

2) South-South/Southeastern Team:
   - Ms. Catherine Rand, Staff Consultant, TSG (Washington DC)
   - Ms. Tubosun Falase, Barrister & Solicitor, Akirenle & Co. (Lagos)
3) Northern Team:
   - Dr. Donaldo Hart, Senior Associate Consultant, TSG (Washington DC)
   - Mr. Anire Kanyi, Barrister & Solicitor, Udo-Udoma & Belo-Osagie (Lagos)

The principal added value of the Roadmap in investment policy reform is derived from its methodological focus on public sector interviews in an effort to collect primary source material. The consultants thus interviewed multiple representatives of at least the following forty (40) Government offices:

- Nigerian Export Processing Zones Authority (NEPZA)
- Nigeria Immigration Service
- Ministry of Commerce (MoC)
- Ministry of Industries (MoI)
- Nigeria Customs Service (NCS)
- Corporate Affairs Commission (CAC)
- Nigerian Investment Promotion Commission (NIPC)
- State House, Office of the President (Aso Rock)
- Federal Ministry of Employment and Production
- Office of Trademarks, Patents & Designs, Ministry of Commerce
- Federal Ministry of Justice
- Federal Ministry of Finance, Fiscal Department
- National Planning Commission, The Presidency
- Nigerian Environmental Protection Agency
- Nigerian Copyrights Commission
- National Insurance Commission
- Federal Capital Development Authority (FCDA)
- Rivers State Board of Inland Revenue
- Nigerian Ports Plc
- Abia State Environmental Health Department
- Aba Town Planning Authority
- Aba Town Engineering Office
- Kaduna State Directorate of Commerce
- Kaduna State Directorate of Industry
- Kaduna State Bureau of Lands, Surveys and Planning, Lands Administration Office
- Kaduna State Urban Planning and Development Authority (KASUPDA)
- Kaduna State Ministry of Commerce and Industry
- Kaduna South Local Government, Revenue Commission
- Kaduna South Local Government, Personnel Office
- Kaduna Environmental Protection Agency
- Kaduna Inland Revenue Service (IRS)
- Plateau Investment and Property Development Ltd.
- Plateau State Ministry of Commerce and Industry
- Plateau State Board of Inland Revenue (BIR)

- Plateau State Bureau of Lands, Survey and Town Planning, Surveyor General's Office
- Plateau State Bureau of Lands, Survey and Town Planning, Personnel Management Office
- Plateau State Bureau of Lands, Survey and Town Planning, Town Planning Office
- Plateau State Bureau of Lands, Survey and Town Planning, Lands Office
- Plateau State Bureau of Lands, Survey and Town Planning, Finance Office
- Jos Metropolitan Development Board (JMDB)

The research methodology however also entailed detailed interviews with private investors, civil society representatives, and professional intermediaries such as lawyers, bankers, accountants and freight forwarders. In the course of their research, the consultants thus also collectively met with multiple representatives of the following 152 primary private sector and civil society sources, in a preliminary effort to validate public sector information:

- 62 private sector companies invested in Nigeria (excluding firms in the categories below);
- 27 financial services companies, providers, or institutions;
- 12 academics, members of civil society, and the media;
- 11 consulting and accounting firms;
- 9 chambers of commerce or trade associations;
- 7 law firms;
- 7 foreign or international commercial delegations;
- 4 freight forwarding and clearing agents, Free Zone Operators, or commercial shipping services companies; and
- 3 engineers, quantity surveyors or property attorneys.

This final report also includes changes and updates based on the detailed feedback given by USAID/Nigeria, the NIPC and the CAC, the comments received during two validation workshops conducted by USAID and TSG in July 2002, as well as on additional policy and legislative research. The first validation workshop was held in Abuja, on July 12, and attended by 34 public sector representatives, including for the NIPC, the MoI, the CAC and the Office of the Presidency. The second workshop was held in Lagos, on July 15, and gathered 28 attendees, including from the following sectors: construction; law; consultancy; finance; pharmaceuticals; as well as the German Embassy Commercial Section. Overall, the Investor Roadmap draft report presented at these workshops received positive feedback from the stakeholders. NIPC representatives indicated that "lots of work was done by the consultants, and [the report] is very helpful and useful."

The NIPC further made the following formal remarks to USAID on the Draft Roadmap Report: "The Nigeria Investors' Roadmap draft Report identified the main constraints that face existing and potential foreign investors in Nigeria. […] In doing this, the draft Report described […] objectively, areas that met international best practices and those that require additional efforts for improvement to take place. […] The Commission, after a perusal of the draft Roadmap, acknowledges that USAID has done detailed work in tracing the procedures that a prospective investor has to go through in order to invest in

Nigeria. Undoubtedly, the procedures are, in many cases, cumbersome and not in line with the best practices, which could constitute a disincentive to invest in the country."

In summary, the consultants believe that the Investment Climate information gathered on the basis of the Roadmap methodology is reasonably robust. Indeed, we believe that the report delivers what, in the words of Senator Udo-Udoma, may be considered the "reliable data" necessary for participative and informed policy-making on investment climate issues.

Overarching Report Findings

Three issues loom large over investment in Nigeria, which do not fit neatly into the traditional "Investor Roadmap" methodology: The particularities of the Nigerian Federal System and its impact on the investment framework; the issue of rent-seeking by public officials; security concerns; and the ongoing institutional change related to the transition to civilian rule. Before beginning the Investor Roadmap analysis proper, a brief discussion of these two issues would thus appear to be in order.

The Nigerian Federal System

Investors in Nigeria complain of redundant and overlapping administrative procedures and requirements flowing from the different levels of Government, and consider it one of the primary problems of doing business in Nigeria. The division of federal powers should thus remain at the forefront of the reader's mind at all times in reading the following Roadmap Report.

In addition to the Federal Government, there are, under the *Constitution of the Federal Republic of Nigeria (Promulgation)* 1999, A1054, No. 24A 869[11], 36 States in Nigeria[12] and 738 local government areas.[13] The Nigerian Constitution defines the roles of each of these levels of Government. Although not legal dismemberments, Nigeria's "regions" include: The Southeast; the Southwest; the South-South; the North; and what is sometimes termed as the "Middle Belt" (also considered part of the North).

Federal powers are set forth in the Exclusive Legislative List in the Nigeria Constitution[14]. The Federal Government also has certain concurrent powers with the States, set forth in the Concurrent Legislative List (with Federal Law primacy over State Law), and all residual powers.[15] The National Assembly may issue Acts (formerly Decrees) and regulations in all of these areas. Federal Ministries too may issue Federal Regulations, if so empowered by a Law. In addition, certain Federal officials may *ex officio* issue Circular Letters as clarifications of Acts and Regulations, if so empowered under said Acts and Regulations. In the case of the President, these circulars are referred to as Executive Proclamations.

The areas of exclusive federal jurisdiction include:[16]

- Regulation and control of business enterprises
- Business Names, Competition, Copyrights, Patents, Trademarks, Industrial Designs, Standards, and Weights & Measures
- Federal Government accounts, Excise duties, Export duties, Stamp duties, and Taxes on income, profit and capital gains

[11] Hereinafter "*Nigerian Constitution*"
[12] Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Yobe, and Zamfara (Nigerian Constitution, Art. 3(1))
[13] *Nigerian Constitution*, Art. 3(6), Parts I and II of the First Schedule, and Part I of the Second Schedule
[14] *Nigerian Constitution*, Art. 4(2)
[15] *Nigerian Constitution*, Art. 4(3)-4(5), 5(3)a), and the first column of Part II of the Second Schedule
[16] *Nigerian Constitution*, Second Schedule, Parts I and II

- International and Interstate Commerce and Trade, Import and export, Customs & Excise, Quarantine, Carriage by air, and Export standards and duties
- Banking, bankruptcy & insolvency, securities, exchange control, and insurance
- Citizenship, naturalization, residency, deportation, passports, visas, immigration & emigration
- Court judgments and Treaty implementation
- Labor, pensions, and occupational health, safety and training
- Posts, telephones, telegraphs, wireless, broadcasting, and allocation of wavelengths
- Federal roads
- Water
- Electrical damming, promotion and establishment of a national grid, and regulation of the operation of power supply plants and equipment
- Civil service
- The Federal Capital

States' powers are set forth in the Exclusive Legislative List and Concurrent Legislative List in the Nigerian Constitution.[17] State Houses of Assembly may, in these areas, issue State Laws (formerly Edicts) and State Regulations. State Ministries too may issue State Regulations, if so empowered by a Law. In addition, certain State officials may *ex officio* issue Circular Letters as clarifications of Laws and Regulations, if so empowered under said Laws and Regulations. In the case of the Governor, these circulars are referred to as Executive Proclamations.

The areas of concurrent Federal-State jurisdiction include:[18]

- Collection of capital gains, profit and income tax, and Stamp Duties, subject to a Federal Act
- Electricity, establishment of electric power stations, and generation and transmission of areas outside the national grid
- Industrial, commercial and agricultural development, subject to Federal Acts
- Cadastral and topographical land surveys, subject to Federal Acts
- Technical and vocational training

Local Government is (in theory) sovereign in its constitutionally and legally attributed jurisdictions, which include:[19]

- Various important corporate locating and site related matters[20], and issuing various tax and levy by-laws under the *Taxes and Levies Act*
- Registering businesses with respect to the above taxes
- Control and regulation of local trade and small business (including shops, hawkers, restaurants, liquor distribution, taxis, etc.)

When challenged, many local Government By-Laws are found to be *ultra vires* (i.e., issued by parties without Constitutional jurisdiction to do so), but in practice, they are tolerated by the business community, in order to maintain good government relations.

[17] Nigerian Constitution, Art. 4(7), and Parts I and II of the Second Schedule.
[18] Nigerian Constitution, Second Schedule, Part II
[19] Nigerian Constitution, Fourth Schedule, Section 7, Art. 1(k) and 2(b)
[20] See below, in "Locating" Chapter.

Rent-seeking by Public Officials

By some accounts, government rent-seeking behavior has declined since the transition to civilian rule. One company interviewed explained that it no longer has any problems with rent-seeking in the normal course of doing business. The company says it deals with government issues very differently than other companies. The government knows the company is disciplined and unwilling to pay bribes. "We realize that you can do away with corrupt practices and still get what you need in the shortest time period possible." Nevertheless, by and large, the problem remains a continuing issue in doing business in Nigeria.

President Obasanjo has had this to say about corruption: "As we all know, corruption is a cankerworm that has eaten into the deep fabric of our society at every level. It has caused decay and dereliction within the infrastructure of government and the society… Nigeria's external image took a serious bashing, as our country began to feature on top of every corruption index… With corruption, there can be no sustainable development, nor political stability… We realize that corruption covers a wide spectrum of just the simple act of giving and receiving bribes."[21]

In order to address the issue, the National Assembly enacted an Anti-Corruption Law in 2000. Its aims were described by Obasanjo as follows: "To a large extent, if faithfully implemented, this Act ought to substantially clean our society of the menace and evil of corruption… It is the toughest anti-corruption law in the history of our nation. It thus incorporates the spirit of national reconstruction and re-birth which is the driving principle of our Administration… Let it be known that this anti-corruption law demonstrates our unequivocal commitment to rid our land of corruption… It is a landmark act that all Nigerians should be proud of. I am happy to sign it into law [and] will now proceed with maximum dispatch to establish the Anti-Corruption Commission." [22]

The Act establishes a series of offenses, as well as penalties of up to 7 years of imprisonment for: Giving or accepting gratification, directly or through agent; Concealing offenses relating to corruption; Fraudulent acquisition or receipt of property; Making false or misleading statements to the Commission; Attempt and Conspiracy; Liability for offense committed outside Nigeria; and General application to any other offense.[23] The Act also establishes an "Independent Corrupt Practices and other Related Offenses Commission,"[24] and rules of Interpretation, evidence, conduct, and procedure for the Commission's activities and application of the Act, including with respect to investigation, search, seizure, and arrest. It even establishes a positive duty to report bribery[25] and an Independent Counsel to investigate President.[26] Finally, it provides for the Protection of officers of the Commission.[27]

The Law has been ineffective.

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[21] Presidential address on the occasion of formal signing into law of the corrupt practices and other related offenses Act 2000 (June 13, 2000)

[22] Presidential address on the occasion of formal signing into law of the corrupt practices and other related offenses Act 2000 (June 13, 2000)

[23] *Corrupt practices and other related offenses Act,* Arts. 8-9, 11-13, 18-26, 66-68

[24] *Corrupt practices and other related offenses Act,* Art. 3

[25] *Corrupt practices and other related offenses Act,* Art. 23

[26] *Corrupt practices and other related offenses Act*, Art. 52

[27] *Corrupt practices and other related offenses Act*, Art. 65

There is an overall lack of transparency in Nigerian investment procedures and their application criteria, creating rent-seeking opportunities. According to Transparency International's Corruption Perception Index[28], Nigeria ranks among the most corrupt countries in the world -- as perceived by business people, academics and risk analysts. In the consultants' estimates based on anecdotal evidence, overall, investors in Nigeria devote some 2-3% of their total operating budget to dealing with Government compliance issues, a figure which rises to perhaps 5-6% of start-up costs. Perhaps some 20-30% of these costs are for "non-statutory" compliance expenses. These costs are, however, stationary, and diminish as company turnover increases. Indeed, our indications are that corruption in the specific government services surveyed is pervasive but "petty", and not all that costly to enterprise.[29]

Rent-seeking behavior results two types of business costs related to corruption in the Nigerian investment environment; the costs of:

- Opportunity costs of foregone revenue during the time wasted in dealing (or not dealing) with corrupt officials; and
- "Dashes" and "facilitation" (bribes and graft), and staff time in actually cultivating the proper relationships and in handing out the payments.

There are also other, "non-business", economic costs of corruption:

- Foregone government revenues from companies that do not enter the formal sector, as well as from their employees' revenues;
- "Dynamic" losses from inability of government to provide investor assistance services; and
- Public welfare costs associated with lack of protection of public purposes (public health, environment, etc.) by corrupt officials.

The opportunity cost of lost time will vary for each business, with the larger enterprises bearing greater costs, and therefore, having a greater incentive to simply pay the expected "dashes" and "facilitation" fees. For larger companies, these latter costs must be lesser than the opportunity costs, as no investor would pay them if this were not the case. In fact, larger companies may even be deriving benefits from this corruption (e.g., unpaid taxes, fines, etc.). For some small companies, it might however, in some cases, be worth the wait created by non-payment of "non-statutory fees."[30] In the final analysis though, the fact that the consultants did not meet any firms that would not pay the expected fees, leads them to deduce that *it is cost-competitive for all firms in the formal sector to pay the bribes*. As formal sector firms are the ones which actually utilize the government services mapped in this study, information gathered on the costs of corruption to business represent a fairly robust approximation. According to private sector and professional services interviewees:

[28] The *Corruption Perception Index (2002)* ranks 102 countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, drawing on 15 different polls and surveys from 9 independent institutions carried out among business people and country analysts, including surveys of residents, both local and expatriate.

[29] It should be noted that the Report does not deal with such issues as public procurement, where problems may be more present and opportunity costs to enterprise high.

[30] The incentive to pay or not would depend on their specific operating costs and one could, in all likelihood, develop a bell-curve for this with further research.

- CAC registration takes 2-10 days with "very good facilitation", 4-8 weeks with "average" facilitation, and over 6 months without any facilitation. Furthermore, registration costs N160,000-225,000 in professional and non-statutory facilitation fees, the vast majority for the latter.
- Acquiring "pioneer industry" status and tax incentives takes anywhere between 9 weeks and 2¼ years and costs between N 500,000 and 3 million in non-statutory fees.Acquiring land takes 6-24 months in Lagos, 6-108 months in Abuja, and involves paying 25-60% of the cost of the property again in regulatory, tax, legal and miscellaneous property "facilitation" fees. Removing all other elements, a minimum of 10-25% of the real cost of property is paid for in bribes alone.Environmental Impact Mitigation is regulated through "negotiable" audits.
- Site Development procedures take from 1 week – 6 months, depending on "facilitation", and are subject to excessive "unpublished fees."
- Obtaining Expatriate Visas and Work Permits takes 2-24 months and costs from $1,000-3,000 in facilitation fees.
- Import procedures take up to 2 months to complete; "Associated Port Costs", at $200/container, are 3 times higher in Lagos than other West African ports; and unofficial payments of up to N52,000 are required in order to clear containers, and of up to N60,000 in order to obtain an ASYCUDA number.
- Power costs from N25,000/month and upward in NEPA Duty Manager "facilitation" costs and staff time devoted to developing contacts with these managers, and this to obtain partial service only.
- Telephones cost from N10,000/month per line in terms of NITEL facilitation, again for partial service only

Given that over 60% of enterprises in Nigeria are SMEs, and that 90% of SMEs earn less than N10,000/day[31] (or N3,650,000/year), a quick calculation reveals that the cost of merely "facilitating" the acquisition of CAC registration, Pioneer Status, ASYCUDA registration, NITEL and NEPA service, and access to land, at N3,772,500, already exceeds the total annual revenues of these companies and leaves nothing for operating costs or profit margin.

One of the chief causes of this phenomenon is low civil service pay. Nigerian civil service remuneration packages are improving but low, ranging from N363-N4,000/month for basic salaries and as much as N1,253-7,000/month with benefits.[32] Furthermore, the Federal Government has recently stopped the payment of housing allowance and rent subsidy to civil servants, effectively cutting civil service pay by 53-60%, depending on grade.[33]

Moreover, Nigeria also suffers from a generally chaotic and opaque business and administrative environment, wherein investors and the public sector alike hoard information in order to influence greater power with respect to the administrative environment. There is also clearly a problem with respect to the public availability of

[31] NESG, "A Survey on Micro & Small Enterprises," *The NESG Digest* (September 2002), pp. 4 and 15: "Average Daily Sales of Microo & Small Enterprises"
[32] "Obasanjo's and Chikelu's revolution," *The Guardian*, 02/03/01, p. 7
[33] *Circular regarding "Non compliance with rules about payment of Rent Subsidy to federal civil servants,"* Federal Treasury No. AI&BI/12001 and OAGF No. OAGF/PRS/005/111/158 of 01/15/01, and in "FG Stops Rent Allowance for Civil Servants," *This Day*, Vo. 7, No. 2113, p. 5

legislation, regulations, and circular letters. Both investors and the civil service agreed on this point.

Some investors interviewed by the consultants furthermore expressed the view that laws are deliberately drafted ambiguously, so as to leave scope for loopholes and discretionary interpretation. Others felt the Statutes on the books were good. It should be noted that solicitors supported the latter view, stating that the Civil Service Commission did not have final review prerogatives with respect to legislation issued under military rule and that *deliberately* vague drafting, aimed at increasing civil service prerogatives or facilitating civil service rent-seeking, was thus unlikely under Military Decrees (representing the majority of laws on the books).

The MoI indicated to the consultants that more appropriate anti-corruption enforcement mechanisms than those in place were still necessary in Nigeria. Indeed, Nigeria's pervasive rent-seeking is MoI's primary concern. MoI believes that the situation has resulted from (1) administrative discretion; and (2) a poor *ex-post-facto* framework for supervisory regulatory activities by State agencies. The consultants concur with this view and have attempted to respond to this need throughout this report's recommendations concerning various procedures of interest to the investor. The consultants however also view transparency-creating information dissemination, better civil service compensation, and reduced administrative regulatory discretion as essential elements to the solution. These analyses were viewed "pertinent"[34] by the MoI which has recently tried to increase "participation" in policy formulation through the "National Focal Point", a forum uniting academic, private sector and interest group participants, and regular reporting activities.

Personal safety and security

Personal safety and security are also significant concerns to local and foreign investors. Petty and violent crime is top among the concerns of foreign investors, and most foreign employees must be paid at a premium to take up residence in the country. Some firms also state that their equipment and inventories are at risk from banditry, and some investors allege that vandalism and property crime are used routinely during labor disputes. The country's oil and financial sectors are exposed to some of the most serious crime, and one petroleum services company reports that its security personnel suffer an injury or death on an almost weekly basis. A shipping firm estimated that it must pay a security firm N1 million (US $10,000) a year for protection services, contributing to making the Nigerian branch less profitable than almost all of the company's overseas branches. Nigeria is well known as a source of international business fraud, and this poor image negatively affects the attempts of legitimate firms to form business partnerships with foreign concerns.

Ongoing Institutional Change related to Transition to Civilian Rule

A third issue, which imposes a caveat to the Investor Roadmap report's findings, is also important in the context of this review of overarching issues affecting investment in Nigeria. It is always difficult to prepare an accurate, exhaustive, and timely report, as data gathered is only current at a given point in time. This difficulty is currently accentuated in Nigeria, in the context of ongoing institutional change related to the

[34] 2nd Abuja Investor Roadmap Workshop, 12 July 2002.

transition to civilian rule. A note on the general nature of these changes is therefore in order.

Team Leader Jean-Paul Gauthier, and Team Members Tony Carol and Donaldo Hart, were very impressed by the ongoing process of institutional reform in Government service delivery in Nigeria. Indeed, having had the opportunity to undertake projects in Nigeria in the 1993-1999 period, they were struck by a number of changes in the country's general attitude and openness toward foreign businessmen.

Mr. Gauthier, who had for instance once had an entry visa denied, experienced no problems in obtaining his 3 visas during the course of the project. Mr. Carol, who had conducted a review of Nigeria's dispute resolution framework for the American Bar Association in the past, noted that the various legal and judicial system reforms in Lagos State in 2000-2002 have addressed many of the problems from which the system once suffered. Dr. Hart was singularly impressed by the reforms at Murtala Mohammed International Airport in Lagos. While the airport had been the object of a FAA flight interdiction when he last visited the country in the early 1990s, he was pleased to note that the Federal Aviation and Airports Authority of Nigeria (FAAN) had upgraded and enhanced airport facilities and services, that once flagrantly overt Customs and Immigration bribery had been dramatically curbed, and that the on-site staff from such bodies as the Lagos Tourism Board was extremely helpful to investors and visitors in general.

These examples of stunning institutional turnaround represent important models for other Government institutions to follow in reforming their services to investors. While anecdotal, they give the consultants great hope for the implementation of the reforms recommended in the Report.

Chapter 1: Business Registration

This chapter focuses on the various procedures required of a private firm to register in Nigeria, including registering as a legal entity; registering with the statistics and relevant taxation authorities; obtaining locally issued business licenses and permits; and obtaining investment incentives.

The consulting team interviewed government agencies and investors, and set up practical investor encounters in completing business set-up. The team worked through a number of processes that investors must complete, including applying for a certificate of incorporation; and registering for investment incentives. The team also spoke with the Nigerian Investment Promotion Corporation and state level investment promotion agencies[35]. In addition, the consulting team spoke with chambers of commerce in several states and to one state's investment promotion organization. While neither the chambers nor the investment promotion agencies are mandatory stops in the business start-up process, such organizations can often provide useful advice and contacts for investors.

Overall, the consultants' findings indicate that business registration in Nigeria is inefficient, complex, lengthy, and costly.

Investors must first register with the Corporate Affairs Commission (CAC) to incorporate the business. The process in increasingly transparent, and both Management and staff are fairly committed and well-trained. However, requiring numerous steps and many forms, this process is expensive, cumbersome and fairly time-consuming.

Once registered with the CAC, the investor must also complete Business Registration/Permit with the NIPC. As currently designed, the NIPC registration process is discriminatory and redundant. Furthermore, NIPC operations in this area lack efficiency, and its procedural guidelines are incomplete. Investors may also apply to the NIPC for investment incentives, during the course of the registration process. Nigeria's incentive acquisition regime and process are complicated, cumbersome, and discretionary, resulting in an under utilized tax incentives program. In both cases NIPC essentially adds layers to services being delivered by the MoIA, the MoI (IDD), FIRS, the NCS, and the NEPC. The NIPC should thus refocus its processes in these areas to better reflect its useful investment facilitation services, rather than any regulatory role.

In addition to the three processes noted above, investors must also apply for a Business Premises Permit from state-level authorities. This process includes registration with the state tax authorities. Again, there are few if any written guidelines for state-level registration. Moreover, the process presents the investor with an additional delay in commencing business operations.

Taken together, these processes require up to 58 steps for enterprise registration, which is a far cry from international best practice processes of 1-6 steps, and extremely uncompetitive for a country of Common Law tradition, where "declarative" systems are the norm.

Detailed analysis and recommendations for improvement will be provided throughout this chapter.

[35] At the time of the original report, the team was not aware of the existence of the Presidential Advisory Council on Investment.

1.1 Federal Company Registration

Corporate Affairs Commission (CAC)
Registration Department

While there are CAC offices in 15 States performing name verification, initial pre-payment corporate registration steps, and receiving periodic corporate filings,[36] and eight (8) of these are networked to the CAC Headquarters in Abuja through a Wide Area Network, the Abuja office ultimately processes all requests for company registration. State level offices perform business name registration, sell forms, and receive compliance filings. The Abuja office is open Monday through Friday from 8:00am-3:00pm (although staff remains at work until 5:00pm).

1.1.1 Procedure

Step 1: Investor Holds Pre-incorporation "Founding Meeting" and Chooses Corporate Vehicle

Investors hold a founding meeting to establish the company. The investors must set aside a minimum N10,000 as share capital for compliance purposes.

Investors choose from nine (9) corporate vehicles establishing a presence in Nigeria. CAC subjects most of the corporate vehicles to an incorporation process. These vehicles are as follow:

a) Incorporated Trusteeship (ITS): Not applicable to investors; Subject to incorporation process
b) Limited Liability Company (LLC): Subject to incorporation process
c) Company Limited by Guarantee (LTDGTE): Subject to incorporation process
d) Company Limited by Shares: Subject to incorporation process
e) Private Limited Company (Plc): Subject to incorporation process
f) Private Company (LTD): Subject to incorporation process
g) Unlimited Company (ULTD): Subject to incorporation process
h) Sole Trader: No legal identity distinct from its owner-operator. Subject to business name registration only
i) Partnership: No distinct legal identity or reporting requirements

Step 2: Investor Locates Office Space and Signs Lease

[36] In Lagos, Rivers, Kano, Oyo, Kaduna, Imo, Enugu, Edo, Plateau, Norno, Sokoto, Akwa-Ibom, Delta, Benue, and Adamawa States.

The investor must provide CAC an address for company registration. Therefore, the investor must locate office space and sign a lease. Companies may *legally* use their Solicitors' or auditors' office address; however, this complicates registration. In practice, CAC requires an independent address. Foreign direct investors may not register as foreign-domiciled companies without a presence in Nigeria.

Step 3: Investor Consults an Accredited Facilitator

The investor must consult one of the following professionals prior to commencing name search and incorporation processes. Only these individuals are authorized to perform this function:

- Solicitor
- Chartered Accountant
- Chartered Secretary

As only a solicitor may sign the C-O forms, the choice of Chartered Secretaries or Accountants is not a practical one. To complete incorporation processes, solicitors charge between N10,000-N50,000, depending on the company's share capital.

Step 4: Investor Purchases CAC Forms

The investor purchases the following forms (appended):

- Form CAC 1 "Availability Check and Reservation of Name," pursuant to Section 32(1) and (2) of *Companies and Allied Matters Act (1990)*[37]
- Form CAC 2.2 "Nature of Situation of Registered Address of a Company," pursuant to Section 35(2)h) of the CAMA
- Form CAC 2.3 "Particulars of First Directors of Company," pursuant to Section 35(c) of the CAMA
- Form CAC 2.4 "Statement of Share Capital," pursuant to Section 35(2)d) of the CAMA
- Form CAC 2.5 "Return of Allotment of Shares," pursuant to Section 129 of the CAMA
- Form CO-1 "Declaration of Compliance with the Requirements of the Companies Decree for Registration of a Company," pursuant to Section 35(3) of the CAMA and the *Oaths Decree (1973)*

The investor may purchase these forms from several sources: the CAC Schedule Officer, Principal Registrar, Assistant Registrar, or Customs Service & Public Relations Officer. The government has made some of the CAC forms available at the commercial sections of some Nigerian embassies abroad, at Nigerian trade fair booths, and on the CAC web site at: www.cac.gov.ng

In addition to these forms, the CAC has developed and disseminated several free brochures.[38] Adequate stocks are maintained to hand them out at the CAC Customer

[37] Hereinafter "CAMA"

Service Desk and Public Relations Office, the CAC has distributed them to Nigerian Embassies abroad, to foreign embassies in Nigeria, and at international trade fairs. It also provides them to Chartered Accountants, Solicitors, and Chartered Secretaries, upon receiving their CAC accreditation. Furthermore, the CAC sells certain additional publications.[39] Finally, the CAC has undertaken a business outreach effort through the local media, where it has been placing advertisement features including its contact details.

The investor purchases the complete registration form package for N500. The issuing officer immediately issues a payment receipt: the "Revenue Collector's Receipt."

The government also offers several informational leaflets. For N250, the investor may purchase the following:

- CAC Informational Pamphlet and Schedule of Fees
- Form Filing Instructions Pamphlet

Registration of business name itself costs N2,000, while registration of the company costs N5,000-10,000.

The investor completes the forms and submits them to CAC. According to the CAMA, only accredited professionals -solicitors, chartered accountants, and chartered secretaries- may prepare and submit form CAC 1, thereby registering a company in Nigeria. In addition, only solicitors may sign the original Form CO-1.

Step 5: Investor Conducts Name Search

The investor submits a name search request to the CAC Availability and Name Reservation Section "Cage." "Cage" personnel transfer the request to a clerk, who dispatches it to the "Computer Room." In the "Computer Room," a computer operator processes the name search request and transfers the information to an Assistant Registrar.

Step 6. Registrar Approves Application for Name

The Assistant Registrar considers the request and either approves or rejects the petition. If there is a problem with the name search request, the Assistant Registrar sends the file on to the Principal Registrar.

Step 7: Investor Collects Name Search Results

[38] Including: *Guide into the CAC*; *Corporate Affairs Commission: About Us*; and *Establishing Companies in Nigeria*.
[39] Including: the *CAMA* and the *Directory of Companies Incorporation in Nigeria, Vol. 1*.

Typically within a day of filing his request, the investor may collect the search results from CAC. If the search is successful, CAC issues the investor a "Statement of Availability of Company Name."

Step 8: Investor's Solicitor Prepares Memorandum and Articles of Incorporation

After securing an available company name, the investor's solicitor prepares his Memorandum and Articles of Incorporation. Under Sub-section 27(1) of the CAMA, the investor must note the company name in the Memorandum and Articles of Incorporation. The investor's solicitor may also prepare certain incorporation-related documents, such as Form CO-1.

Step 9: Investor Obtains Bank Draft

The investor obtains a bank draft to cover incorporation stamp duties; the Stamp Duty Office requires the bank draft, but allows a cash payment if the stamp duty does not exceed N2,000.

Step 10: Investor Pays Stamp Duty at the FIRS Stamp Duty Office

Incorporating companies must pay stamp duty on share capital; the Stamp Duty Office charges vary according to the company's share capital amount. The investor can obtain a Stamp Duty Clearance Certificate within two days for a cash payment, and within 5 days for a bank draft payment. The Commissioner of Stamp Duty signs the certificate to finalize the process.

Step 11: Investor Collects Clearance Certificate

Within 2-5 days, the investor collects the Stamp Duty Clearance Certificate from the Stamp Duty Office.

Step 12: Investor Consults Solicitor, Commissioner of Courts or Notary Public Regarding Filing Compliance

The investor must consult a solicitor, commissioner of courts, or notary public to confirm that Form CO-1 and the Memorandum and Articles of Incorporation meet all legal requirements. The investor must swear to the validity of Form CO-1 before one of these judicial officers. Again, for sake of practicality, it is advisable to pursue this matter with a solicitor.

Step 13: Investor Files Incorporation docket at CAC

The investor submits an application for incorporation to the CAC "Cage." The following documents comprise a complete application:

- Statement of Availability of Company Name
- Memorandum and Articles of Incorporation (Memorandum on company objectives and Internal Regulations)
- Letters of Consent concerning the powers of First Directors and Executive Officers
- Statement of Share Capital Form
- C-01 Compliance Form, signed by Solicitors
- CAC 2.2 "Notice of Situation of Registered Office" Form
- CAC 2.3 "Particulars of First Directors of Company" Form
- CAC 2.5 "Subscription Return of Allotment of Shares" Form
- Bank Draft
- Proof of petitioner residency, under Section 8 of the *Immigration Act*

The "Cage" forwards the application to CAC's "Verification Table."

Step 14: CAC Verifies File and Assesses Filing Fees

The CAC Verification and Assessment Officer reviews the incorporation file; he either approves and rejects the application, or requires on-the-spot changes. If he accepts the application, the officer also assesses incorporation fees payable, signs the incorporation docket, and sends the application to the Cashier.

Step 15: Investor Pays Filing Fees at CAC and Collects Receipt

The investor pays the assessed incorporation fees at the CAC cashier, which is located in an adjacent building. The cashier immediately issues a payment receipt, which constitutes valid proof of filing.

Step 16: Investor Presents Payment Receipt to CAC

The investor photocopies the payment receipt and submits a copy to CAC's "Cage."

It is only after the investor has collected the receipt that the CAC considers that the filing of the application for registration is complete and that the process of registration has begun. A number of internal processing steps (8 to be exact) then occur:

1) Transfer of payment from Accounts [the "Cage"] to Audits
2) Audit [confirming Stamp Duty payment]
3) Jacketing and Minuting for Approval
4) Approval
5) Registration [issuing of a "RC Number"]

6) Typing [in the “Computer Room”]
7) Minuting for signature
8) Signature
9) Dispatch [to the “Records Room”]

This internal review process takes approximately 5-7 working days.

Step 17: Investor Collects RC Certificate and Number at the RC “Dispatch Desk”

Approximately ten (10) calendar days after filing an incorporation request, the investor collects the company’s RC Certificate and RC Number.

Step 18. Investor Completes Periodic Reporting and Filing

To update CAC company records and provide audited financial accounts, every company must file an “Annual Return” within 18 months of registration and annually thereafter. Section 636 of the *Companies and Allied Matters Act* requires financial institutions to file semi-annual company returns.

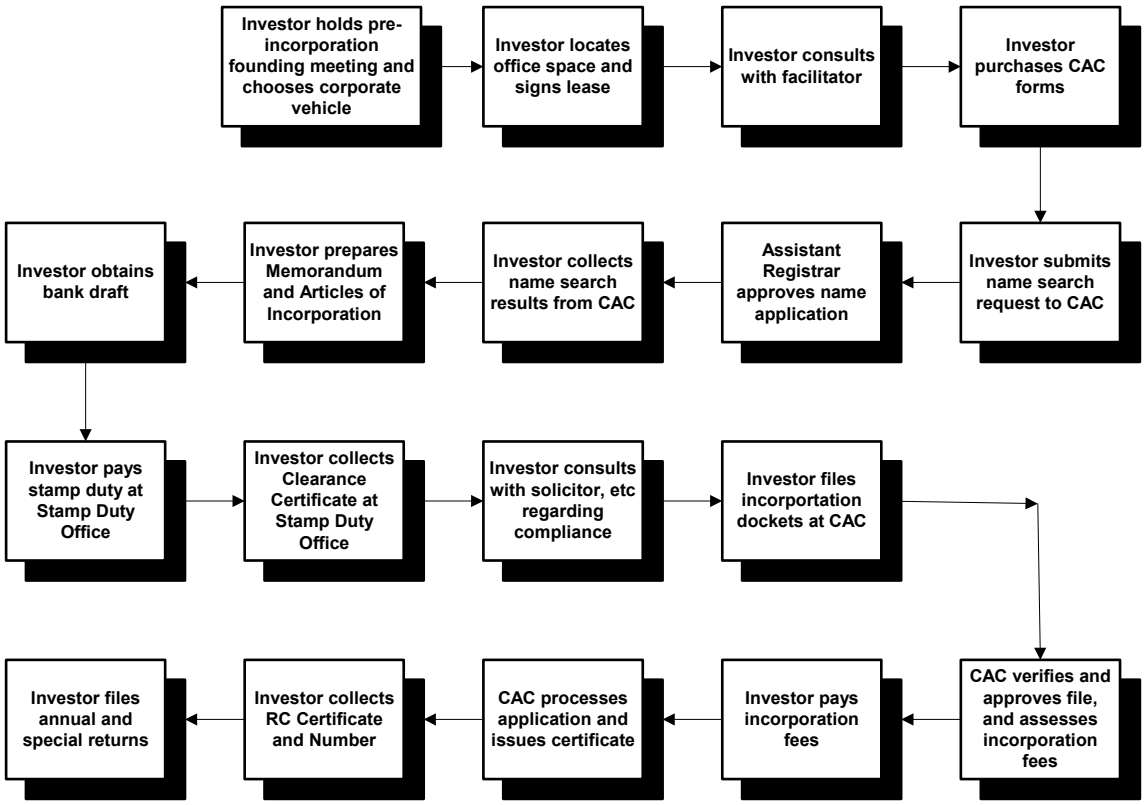
If a company alters corporate information, company name, share capital, or directors, the investor must complete a form detailing these changes.

The CAC maintains the following post-incorporation documents for public consultation:

- Copies of RC Certificates
- Audited Corporate Accounts
- Lists of Corporate Directors and Executive Officers (evidenced through Post-incorporation Board Resolutions and Minutes)
- Letters of Consent concerning the powers of Corporate Directors and Executive Officers

The annual reporting requirements imposed on companies do not suspend status. However, if companies consistently fail to file in a timely manner, they may (after 15 years) be struck from the Registry of Companies. There is no mechanism for remedying this default.

CAC Company Registration Process



1.1.2 Analysis

The legislation underlying the incorporation process is, by all accounts, of good quality and generally in line with international practice. Staff if fairly well disposed and trained.

An exciting new "CAC Online" project, which the Commission expects to have begun by November 2002 and completed by the end of 2003 (a vendor has already been selected), which includes the following elements:

- Upgrading and e-enabling its current Name Reservation Database and Data Retrieval System –which the CAC for the moment itself qualifies as "porous," permitting multiple registrations of the same name under different Registration Numbers;
- Upgrading and augmenting content on the CAC web-site, www.cac.gov.ng, which the CAC itself currently views as "stale" and "static," including by placing the CAC forms on-line for free;
- Installing e-payment infrastructure for fee-based services;
- Installing web-integrated companies registration and filings software, to be utilized for both internal and public applications -It should however be noted that Nigeria does not have an Electronic Signature Recognition Law, and does not at this time recognize faxed or scanned signatures; and
- Training staff in the all of the above.

Furthermore, while the CAC must improve process management and administration, its Information Management Systems Department is aware of the problem and has designed specifications for new, networked, Workflow and Document Management Systems, which will streamline CAC operations and service delivery to end-users. According to CAC Management, the workflow has been inspired by, but is more ambitious than, the UK registration process, and most redundant operations have been eliminated. A team-based processing approach has been espoused in the new workflow. Senior Management retreats organized to lay the groundwork for system implementation have however identified personnel weaknesses, and the new system will not be implemented before new in-house legally trained personnel can be hired. This is slated to occur in March 2003, as adequate provision for this need has been made in the CAC's FY03 budget. Some operations are already relatively efficient. For instance, verification officers process approximately 200 requests per day, including about 150 incorporation requests. Verification officers are, therefore, processing a request every five minutes – an impressive record. Most investor errors are remedied on the spot, with the following exceptions: issues affecting the CO-1 and the Stamp Duty, which are not in CAC's jurisdiction. These same officers also assess filing fees as soon as they have completed verification of the file.

The consulting team is encouraged by CAC's efforts at transparency, noting in particular CAC's publicly available information: for instance, the agency makes all company incorporation and post-incorporation files publicly available. Moreover, the agency is currently computerizing all incorporation forms.

Mid-level and Senior Management are given an in-house induction course, training at the Administrative Staff College of Nigeria (ASCON), training at NACCIMA, training at the National Institute of Management (NIS), and computer training. Clerks receive in-house workshops. Several members of the registration personnel have received training at the UK Companies House.

Though somewhat run-down, CAC's facilities are acceptable. The agency indicates that new facilities are currently being established. In addition, CAC is relatively well computerized.[40] A competent chief engineer heads an IT staff of ten (10). CAC has an impressive, partially fire-proofed records room and physical recording system that contains 1.2 million business names and 400,000 incorporation files. The CAC has a number of scanners and all of the documents for the past 80 years are now electronically archived.[41]

However, problems subsist:

- CAC maintains some "command and control" functions. Indeed, according to interviewed members of Management, the CAC has the following missions:
  a) Ensure companies' legal existence;

[40] The CAC Headquarters have four (4) 393MB servers, one (1) "jukebox" with 20 gigabytes of space, and two (2) printers. Its processors are of 450Mhz speed. The CAC uses Windows NT and "Form Developer" software. The Database for Name availabilities is in Oracle 8, run on a UNYX Platform. Stand-by generators are in place to ensure optimal processing. A Wide Area Network (WAN) links 8 Zonal Offices to the Abuja Headquarters.

[41] 247 4-gigabyte tapes containing LLC registrations have been downloaded.

b) Ensure that companies fulfill their legal obligations (e.g., appointment of Company Secretary; filing of annual returns; display of RC Number; etc.);
c) "Sanitize" the corporate environment;
d) Nurture and assist companies; and
e) Ensure protection of the consumer through the above functions.

Interestingly, CAC senior staff cited "sanitization" of the corporate environment (i.e., ensuring compliance and striking non-compliant companies from the CAC Registry) as their top priority and characterized "compliance" as "making sure companies stay on the right path." These priorities would seem to indicate that certain key CAC staff believe the agency's mission priority is a control function rather than a business and public service. This may however be changing, under the guidance of the CAC's 10-member Board, which includes one representative each from the National Association of Chambers of Commerce, Industry, Mining and Agriculture (NACCIMA) and the Manufacturing Association of Nigeria (MAN), from the private sector. In June 2002, much of the CAC's Senior Management was replaced by a dynamic new team, which has indicated to the consultants that it recognizes the CAC's problems and is "on board" with respect to necessary changes.

- Investors and solicitors indicate that, with a "business approach," the incorporation process takes four to eight (4-8) weeks, "with average facilitation" and two to ten (2-10) days only "with very good facilitation." They indicated that, with a "legal approach," the incorporation process takes six to twelve (6-12) months – and may even prove fruitless. Furthermore, for some of the more uncommon types of corporate vehicles (such as Incorporated Trusteeships and Companies Limited by Guarantee), files move from the CAC to the Attorney General's Office within the Federal Ministry of Justice and to the State Security Services (SSS) within Home Affairs. The special processing which occurs then may take an additional five (5) months or so.

- Registration is, in the end of the day, expensive and open to rent-seeking opportunities. Full Business incorporation costs are the following:
  1) N10, 000-N50,000 in professional fees (including Solicitor fees, forms, etc.), based on a scale of fees determined by the share capital of the company; and
  2) N150, 000-N175,000 for CAC "non-statutory fees," travel & accommodations in Abuja; for
  3) Total costs of N160, 000-225,000.

- It was noted by a solicitor, during the Lagos July 2002 Investor Roadmap workshop, that fake CAC registrations are widely available and widespread.

- In spite of the CAC's information efforts, the information is not easy to access. Agencies and foreign commercial sections do not in fact display the information, nor do they offer it free of charge– often they do not even have it. Though the CAC boasts a web site, few top legal firms know about it. It does not in any event contain the CAMA or the mandatory forms, nor allow for on-line registration. Furthermore, on the occasions the consultants visited it, the online "Guide into the CAC" link was inaccessible. Moreover, CAC only publishes application forms in English.

- According to *Corporate Affairs Commission: About Us,* the initial docket, for foreign nationals, includes the need to produce a Residence Permit and a NIPC Business Certificate, creating a chicken-and-egg requirement.

- The consulting team also notes several institutional inefficiencies in the name availability search process. For instance, the consultants believe there are too few CAC staff to handle all of the country's name search files, particularly in the Names Availability Department and the IT Department. Moreover, CAC does not optimally utilize its limited staff. The consulting team discovered that junior CAC officers do not understand their roles. In fact, the consultants believe that junior staff functions could be completed by any of the three preceding staff members in the process –"Cage" staff, clerks, or computer operators.

- Assistant Registrars control all forms submitted for compliance. Each day, Assistant Registrars demand additional clarification – on behalf of the Principal Registrar – from 8-20% of the investors. In some cases, the clarification request is legitimate, but according to the Principal Registrar, often clarification is unnecessary. The Principal Registrar explains that inadequate training contributes to such mistakes.

- While the agency currently processes name search requests within two (2) business days –the investor collects the name search results at the end of the business day following request submission– the Principal Registrar feels the entire process could be completed within 30 minutes. A quick turn-around would eliminate the investor's need –and therefore cost– to remain overnight in Abuja. Functional, high-speed computers and printers would reduce processing time; in the absence of these resources, however, the government might consider legal time limits.

- ***While the CAC makes additional verifications if it feels there is cause for suspicion, the international intellectual property (e.g., names and trademarks) protection offered is limited, as the Database of names provides Nigeria-only coverage and is not networked with WIPO.[42] The***

[42] Nigeria is a member of the Paris & Berne Conventions. The *Paris Convention (for the Protection of Industrial Property)* is an international treaty that enables residents of member countries to file patent applications in other member countries. The "foreign counterpart" patent application must be filed within one year of the original (home country) patent application, and it must be accompanied by a certified copy of the original application and a translation into the language of the foreign country. The Berne Convention (for the Protection of Literary and Artistic Works) is an international copyright treaty signed by 96 countries. The Convention requires member states to recognize the moral rights of integrity and attribution. There must be protection within the country's own legal system.

The *Copyright Act (1988)* makes provisions for the definition, protection, transfer, penalty for infringement of copyright (including on software, designs and publications) for 70 years.

The *Trademarks Act (1965)* provides that trademarks must be registered in different classes, for particular goods or classes of goods. The applicant must in his application state the goods included in each class separately. In addition, in Nigeria, the legal expectation is to engage the services of a lawyer to act as a "trademark agent" with regard to the registration of a trademark and other dealings or transactions on the same. Revisions are being made to the current Trademarks Act, to include such categories as "service

Names Database is not networked into the Nigerian Trademarks Registry, the Nigerian Copyrights Registry, or Internet Domain Names Databases either. Furthermore, a solicitor who attended the July 2002 Lagos Investor Roadmap Workshop noted that trademark protection in Nigeria is poor, and that trademarks are often infringed upon. His firm cited such companies as Duracell, Gordon's, Colgate, and Rothmans as victims of trademark infringement. Curiously, in the context of these loopholes by the official guardians of IPR, the unlikely National Food and Drug Administration and Control (NAFDAC) is becoming increasingly active in closure of enterprises for intellectual property rights infringements.[43]

- The consultants believe CAC's numerous solicitor consultation requirements add unnecessary time and financial expense to the process, especially for SMEs and the informal sector. In fact, CAC's legal requirements are confusing. For instance, the agency requires an investor to hire a solicitor, chartered accountant, or chartered secretary to complete name registration and Form CO-1 requirements. However, only a solicitor may attest to the filings' accuracy, and this is not indicated in any of the CAC's guidelines. Furthermore, the agency requires the investor to hire a solicitor, commissioner of court, or notary public to complete swearing of Form CO-1; verification of legal compliance; and the Memorandum and Articles of Incorporation. This issue should be made clearer to the end-user of CAC services.

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marks" which are defined as "the shape, form, presentation or packaging of goods or services." Portection is valid for 7 years, renewable once.

The *Patent and Designs Act:* regulates the issuance of "Letters Patent", conferring the right to exclude others from the commercial exploitation of a particular invention. The application procedure is quite simple and straightforward: it requires the completion of statutory forms and their return accompanied by documents relating to the invention. The application is then referred to an examiner who investigates the novelty of the invention and whether or not a claim has been made on it. "Letters Patent" are then granted to the applicant(s) and sealed with the seal of the Registrar of Patents upon payment of the prescribed fees. Like patents and trademarks, the right of registration of an individual design is vested in the statutory creator, that is, the person who is the first to file or validly claim a priority for an application for registration of the design. Registration of an industrial design confers upon the registered owner the right to preclude any other person from reproducing the design in a manufactured product; or else, in importing, selling or utilizing the design for commercial purposes. The protection provided by the Nigerian law is effective in the first instance for 5 years from the date of application for registration, and 2 subsequent periods of 5-year renewals making a total of 15 years.

The *National Office of Industrial Property Act (1979)* was promulgated in 1979 with the stated objective, *inter alia*, of monitoring, on a continuous basis, the transfer of foreign technology to Nigeria. Under the provisions of the Act, the period of 10 years is stipulated as the maximum duration of an agreement, unless it falls under a special category (e.g., complex technology; right to sublicense the technology for longer terms; of national interest of Nigeria). The administration of the Act was entrusted to the National Office of Industrial Property, which was recently renamed National Office of Technology Acquisition and Promotion (NOTAP). The principal concern of NOTAP is to register contracts/agreements that deal with the transfer and acquisition of foreign technology. NOTAP has also defined Implementation Procedures for Technology Transfer compliance.

[43] See: "NAFDAC defends closure of firm," *The Guardian,* 16/10/02, p. 7 –regarding the closure of a firm producing counterfeit Ariel detergent.

- While CAC's Company Registration Application forms are relatively straightforward and minimalist, the agency requires an unnecessary amount of information. Senior CAC staff supported the consultants' suggestion that Form CAC 2.2 be eliminated. Moreover, some supporting documents are either irrelevant or inconsistent with CAC functions: for instance, the proof of residency document. CAC could also easily merge forms 1; 2.2; 2.3; 2.4; 2.5; and CO-1. Finally, while CAC verbally listed nine separate corporate vehicles, only five are available on the registration forms.

- The Stamp-Duty process is inefficient. While post-stamp-duty incorporation processing time has been reduced from three months to approximately ten (10) calendar days, the process remains cumbersome. The process requires, for instance, two (2) additional, unnecessary steps. Sometimes, investors are required to submit proof of legal existence in order to clear stamp duty payment - while the process actually exists to incorporate companies and secure legal identity! Furthermore, only the Commissioner of Stamp Duty in the country's two Stamp Duty Offices (Abuja and Lagos) may sign for every single registered company. Revenue-driven, post-stamp-duty processing is in any event irrelevant to company registration. However, the need for a Bank Draft in order to pay the FIRS Stamp Duty (Step 9) is slated to be eliminated, through the planned acceptance of cash payments from two on-site, networked, banking counters. This *in situ* banking will also eliminate the need for receipt verification, currently a process taking anywhere from two (2) days, for banks in Abuja, to three (3) weeks, for banks up-country. Step 10, under which the investor pays the Stamp Duty at *FIRS* Stamp Duty Office will also be eliminated with the planned introduction of *in situ* banking, under which investors will pay the the Stamp Duty directly into FIRS accounts, and the CAC will have access to account information confirming these deposits. While the network integration is already immediately implementable, the bank counters are located at the CAC's new offices, to which relocation will only occur during 2003 –Phone lines, generators, boreholes, and furniture are yet to be installed at the new offices at this writing.

- CAC's motto is "Your satisfaction is our business," and suggestion boxes and a Customer Service Desk are evidence of customer-satisfaction efforts. CAC also offers a semi-annual time management staff lecture. Moreover, legal staff is available to assist applicants with searches. Yet, these efforts are inadequate. The consulting team, for instance, faced argumentative security gate personnel, and resorted to name-dropping to gain entry to CAC with briefcases. Furthermore, no signs point the investor to any offices, including the Customer Service Desk. Staff does not wear uniforms, few wear a staff ID card, and too few are generous in offering assistance.

- CAC staff benefits may be insufficient to counter the opportunities for rent-seeking that the current procedural loopholes create. According to CAC management, investors frequently pay "dashes" for expedited service. Promotions and raises are too rare: Two senior officers indicated that they had not received a raise or promotion in over nine years. However, there is an attempt to address this issue and the following staff welfare improvements have been made in the organization since June 2002: Annual Staff Appraisals by Department Heads, on the basis of standard forms. Eligibility for promotion is based on annual, biennial and triennial formulae, with senior positions eligible for

promotions less frequently; After a promotions freeze, promotions have been re-introduced, and 12 members of senior staff and 32 members of junior staff are currently slated for promotion (subject to Board confirmation); Staff welfare packages (including with respect to medical, housing & furniture, and educational allowances) have been reviewed and enhanced; Joint Consultative Council on junior staff welfare grievances has been instituted and has held three Quarterly sessions, at this writing; and a Staff Rewards Committee has established an annual rewards scheme framework, including rewards for exceptional performance and length of service. It expects to give out its first rewards at the end of 2002.

- Finally, some IT problems are worth pointing out: As the CAC outsourced record scanning; in-house staff gained no expertise in this area, and the agency has suspended scanning. The agency is unable to provide documents for consultation via diskette. CAC underutilizes the Names Availabilities Database's capabilities. Moreover, modem compatibility and connection problems, analog switching, and the lack of dedicated lines make for poor and unstable WAN links between the Abuja and the regional offices.

1.1.3 Recommendations

- According to CAC Management, its staff requires customer service, time and performance management, MIS and database management, and computer and scanning training. The consulting team recommends "international best practice" training in the form of attachments of senior staff to organizations such as the British Companies House. Training is not only required for improved service delivery but would also partially meet the need for staff incentivization.

- The CAC believes, and the consultants concur, the agency should greatly increase information dissemination and investor education about the registration process. The agency should exploit mass media to get information to the public. In addition, the agency should offer documents in major local languages, including Yoruba, Ibo, Hausa, and Fulani, which would be particularly useful to SMEs.

- In terms of MIS, the consultants recommend that CAC institute a rigorous "morning list" system for records consultation. The agency should also enable file consultation via diskette. Finally, the agency must complete the scanning and the fire-proofing of its records.

- CAC should improve application forms. For instance, the agency should clarify available corporate vehicles. Also, the consultants recommend that CAC merge Forms CAC 1, 2.2, 2.3, 2.4, 2.5 and CO-1; and eliminate Form CAC 2.2. The agency should also eliminate the proof of residency requirement.

- The CAC advocates, and the consultants support, agency restructuring, including a better definition of staff roles, new staffing policies, and job descriptions. The agency should consider doubling the staff size of the Names Availability and IT

departments. Finally, CAC should hire lawyers and typists to complement staff needs.

- CAC's requirement of professional registration facilitation is expensive and inconsistent with international best practice. The requirement is especially burdensome to SMEs. If CAC maintains this requirement, the agency should clarify and harmonize the roles of the various facilitators in the incorporation process.

- The consultants recommend that the agency integrate the registration process. For instance, the agency might consider consolidating the separate roles of "Cage" personnel, Clerk, Assistant Registrar, Verification Officer, Cashier, and Dispatcher into one position.

- CAC needs new, high-speed PCs, printers, and copy machines, or a proper maintenance program.

- CAC understands that the long and heavy registration process requires streamlining but noted in its discussions with the consultants that this would require legislative amendments (both to the CAMA and the *Immigration Act*). Streamlined procedures may include: elimination of Proof of residency; consolidation of forms; elimination of stamp-duty related procedures; elimination of professional facilitation requirements; and greater tie-in of name registration with other intellectual property protection procedures. Specific legislative amendments should be made in Section II of CAMA regarding the "Incorporation of Companies and Incidental Matters", especially the Articles on Registration of Companies: 35(3) on the requirement of a statutory declaration by a legal practitioner; and 31 & 32 on company name registration. During 2001, a CAC Technical Committee on CAMA Reform, chaired by the CAC's Compliance Department Director, was however set up. Its focus is clearly on user-friendliness and the investor (particularly the foreign investor).[44] It expects its recommendations to be taken up at the 1Q03 CAC Board meeting, and for them to then be presented to the Ministry of Commerce (its parent Ministry) and the Ministry of Justice, for presentation to the Federal Executive Council and introduction into the National Assembly during 2003. The consultants were given an opportunity to inform its work through a joint *CAMA-NIPC Decree-Immigration Act* Reform Workshop in October 2002. Although the CAMA reform appears to be a way off, at least a process is under way.

- To improve Intellectually Property Rights (IPR) protection, the consulting team suggests that CAC network, the Business Names Database with the Trademarks and Copyrights Registries, as well as with WIPO and international Internet Domain Name Databases. The CAC agreed with the consultants that a single body should manage Trademarks, Copyrights, and Company Names Verification process, as opposed to the current four: CAC; Trademarks Registry; Copyright Registry; and National Office of Technology Acquisition and Promotion. Furthermore, the Business Name availability function should be removed from the CAC's jurisdiction and handled by a single intellectual property protection

[44] CAC Compliance Department, *Report of the CAMA Reform Committee's Work: The Focus of the Reform* (2002)

unit. Finally, training of CAC officials (and indeed of Trademark and Copyright Registry officials) on effective IPR protection and enforcement is urgently needed.

- The agency should rapidly implement plans to eliminate the entire Stamp Duty sub-process and fees from the incorporation process, as it adds no value to the service delivery and wastes investor time. A fee or duty can easily be collected at the CAC Cage instead. This would simplify the CAC process by 3 steps.

- According to international best practices, other steps could also be eliminated, including: the legal consultations before commencing name search and incorporation processes (step 3) and regarding filing compliance (step 12); and most notably, the redundant business permit from the NIPC (see following section) which adds no value to the process and discriminates against foreign investors.

1.2 Foreign Investment Registration and Business Permit Issuance

Nigerian Investment Promotion Commission (NIPC)
Investor Servicing Department

1.2.1 Procedure

The Investor Relations Department handles investors from initial prospective contacts, through registration, and periodic updates.

Once a foreign investor has a RC Certificate, he must register with the Nigerian Investment Promotion Commission (NIPC) to obtain a Business Permit. NIPC notes the following reasons for its Business Permit Registration Process:

- To fulfill the current legal requirements;
- To provide government statistics on foreign investment;
- To facilitate the process for companies of obtaining the "pioneer company" tax status from the Ministry of Industries, as a sort of "stamp of approval in principal";[45] and
- To enable companies to obtain work permits for foreign personnel from Immigration (Ministry of Internal Affairs –"MoIA").

NIPC has only one fully-opened office, located in Abuja. Foreign investors must, therefore, for the moment, complete this process in Abuja. NIPC is currently in the process of opening five (5) regional ("Zonal") offices, with two (2) more planned in the near future. The five first Zonal offices are located in Jos, Maiduguri, Kano, Ibadan and Enugu. The two one to be opened later are planned for Lagos and Port Harcourt. However, as of this writing, none of these offices is yet operational.

The investor must complete the following steps for NIPC Business Permit Registration:

Step 1: Investor Meets with Director of Investor Relations

Protocol Meeting. The Director refers investor to the appropriate Sector Team, for registration proper and assistance, as well as (upon informed request) to the C.O.O., for the Investors' Guide, and to the Accounting Department, for registration forms.

The Investor's Guide and registration forms are not offered or given out as a simple matter of course.

[45] NIPC notes that this is not compulsory and that, furthermore, only those companies engaged in the production of the 65 approved "qualified products" may do so.

Step 2. Investor Purchases Information and Registration Forms

The investor requests registration forms from the NIPC. The investor can complete this step in person at the Abuja office, or through a written request. The investor purchases the following forms:

- NIPC Form 1: "Application Form and Manufacturing Activities in Nigeria": This is the NIPC's application for Business Permit and "Expatriate Quota Position" ("EP") Allotment. The form costs N10,000; and
- NIPC Form 2: "Application Form for Pioneer Certificate, Technical Fees Agreement, and Other Fiscal Incentives for Business Activities": This is the NIPC's application for "Pioneer Company" Tax Status. The form costs N10,000. However, it is also available on-line for free at www.nipc-nigeria.org.

All foreign investors, including joint venture companies, must complete NIPC Form 1; NIPC Form 2 is not mandatory.

NIPC's Director Investor Relations provides free *Registration Guidelines*. The C.O.O.'s office can make available a copy of the *Investor's Guide* for N2,500, though neither the C.O.O.'s office nor the Investor Relations Office stock the free *Registration Guidelines*.

Step 3: Investor Meets with NIPC Investor Relations Sector Team and Files Application

The investor prepares a Business Permit Registration Application and submits it to the Team Leader of NIPC's sectorally-relevant Investor Relations Team. The Investor Relations Department has a staff of 12, divided into the three (3) following Sector Teams:

- Natural Resources
- Manufacturing
- Infrastructure and Services

The application must contain the following documents:

- NIPC Form 1
- CAC Registration Form CO-2 or CO-7
- Feasibility Study
- Memorandum and Articles of Incorporation (or Partnership or Joint Venture Agreement, if applicable)
- Evidence of Capital (and/or Capital Equipment) Importation
- Bank Draft for N10,000, payable to the NIPC
- 2 photocopies of Payment Receipts for NIPC Form 1
- RC Certificate, where applicable
- List of Directors and their particulars
- Company "Nigerianization" Program
- Tax Clearance Certificate Copy

Theoretically, an investor may file his application either at NIPC headquarters, Zonal Office, or through state ministries or trade and industry. The latter will forward applications to the NIPC headquarters.

The investor may also include the following documents in his application:

- Evidence of Acquisition of Premises (not required by law, but highly recommended in practice)
- Bank Draft for N10,000, made out to the NIPC, for the Application for incentives connected with NIPC Form 2
- A check or cash payment in the amount of N5,000 for each Expatriate Quota Position requested
- Documents related to incentives acquisition (see below section in Chapter 1, on incentives acquisition)

Step 4: NIPC Sector Team Performs Preliminary Analysis and Prepares Project Brief

In theory, the most specialized Desk officer in any given sector analyzes the application –In reality, this function has been assumed by one member of staff. He submits a brief, summarizing the status of the file, to his Team Leader, who himself submits it the Director of the Investor Relations Department. Particular attention is paid to the following points:

- Documents filed
- Status of Applicant with CAC
- Areas of Applicant activity
- Number of persons employed, with break-down of Nigerian nationals versus Expatriates, and number of EPs requested
- Nationality and structure of ownership of Applicant
- Import and export levels, if applicable
- Levels of Capital and Equipment imported

The files are also circulated to the various members of the "Technical [formerly, 'Investment Environment and Business Approvals'] Committee" for review, at least 24 hours before the Committee meeting.

Step 5: "Technical Committee" Evaluates Application

A "Technical Committee," composed of seven (7) members, has been meeting every two (2) weeks since February 2002 in order to register investments. The Committee is composed as follows:

- [Chairman/Chief Executive, *De jure Chair*]
- [Chief Operating Officer, *De jure Representative of the Chief Executive*]
- Director, Investor Relations, *De facto Chair*
- Director, Investment Promotion

- Director, Policy Advocacy
- Team Leader, Information Services, *Recording and Information Management*
- Desk Officer, NIPC Department of Immigration, M.o.I.A

Within a statutory period that may not exceed 14 working days from the submission of the Application, the "Technical Committee" meets and determines whether the a investor is entitled to any of the following:

- Business Permit
- Expatriate Quota Positions
- Pioneer Status, if requested (see below section in Chapter 1, on incentives acquisition)

At the evaluation session, the Chair briefly reads aloud the NIPC brief and recommends a course of action. Committee members ask questions and decisions are taken by consensus.

Step 6: NIPC Issues Letter of Notification

After the Committee grants (or denies) the investor's request for a Business Permit and NIPC Registration, the relevant Investor Relations Sector Team Leader then sends the investor a Letter of Notification, entitled "Grant of Business Permit and Registration of Company" which also informs the investor of the outcome of all other requests contained in the application. Specifically, the letter may also contain following notifications, in connection with specific requests:

- Notification concerning "Pioneer Company Status," copied to the Ministry of Industries and the Federal Internal Revenue Service (see below section in Chapter 1, on incentives acquisition)
- Notification concerning expatriate quota positions, copied to the Ministry of Internal Affairs (see below, Chapter 3: Employing, on expatriate entry).

The ministries copied on these letters are responsible for subsequent determinations of incentives and residency/work permits.

Step 7: Investor Pays Fees and Collects Business and Registration Permits

The investor pays registration issuance fees of N5,000 at the NIPC office. He will also be required to pay N10,000 for Pioneer Status, if granted.

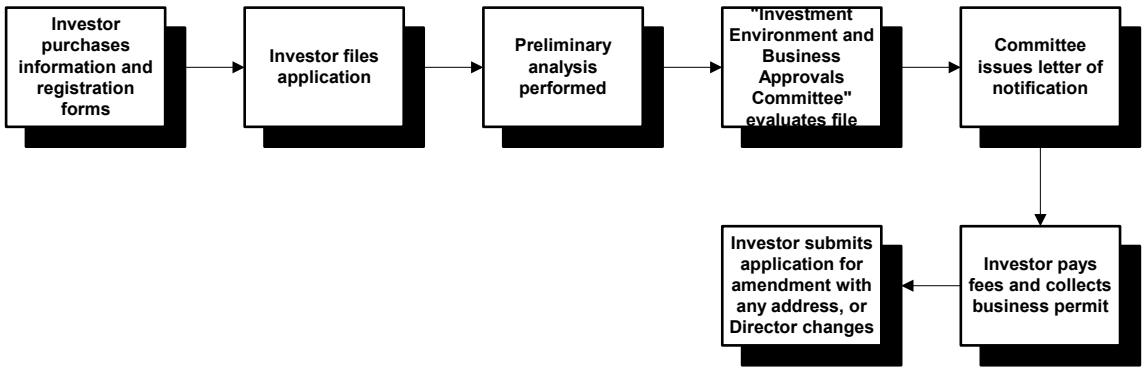
At the end of the process, the relevant Investor Relations Sector Team Leader prepares and issues the investor two (2) documents, each signed by NIPC Secretary or Chief Executive.

- The "NIPC Business Permit Certificate;" and
- The "NIPC Registration Certificate" – Issued in accordance with the *NIPC Decree No. 16 of 1995,* Section 20. As a matter of practice, rarely given, and tacitly considered subsumed in the aforementioned "Business Permit Certificate."

Step 8: Investor Reports Any Changes

The Business Permit is final and is not subject to renewals or periodic reporting requirements. However, when a company changes address or Directors, the investor must file an Application for Amendment. The investor may obtain the application from and file it with the NIPC's Investor Relations Department. The NIPC automatically grants such changes as long as the investor provides proof of a company Board Resolution.

NIPC Foreign Investment Registration and Business Permit Issuance Process



1.2.2 Analysis

Since the work on the Investor Roadmap Report began, the NIPC has made efforts to improve its overall role in the investment process. It has, indeed adopted and/or implemented a series of coordinated recommendations made by Arthur Andersen Consulting (now Accenture), FIAS, and the Multilateral Investment Guarantee Agency (MIGA), including:

1) An Agency Vision, focused on investment facilitation and services;
2) A Long-Term Business Strategy;
3) Work-plans;
4) A new organizational chart;
5) Proper staff job descriptions; and
6) Initial Streamlining.

The NIPC staff appear well suited, willing, and receptive to a mandate to facilitate investment and advise business. Interactive sessions with NACCIMA and the press are in fact already being held as part of the NIPC's governing council's efforts to reposition the Commission as a facilitator.[46] However, NIPC officials recognize that "we are not there yet, that a lot of work can be done, and reforms can continue." In the words of Arthur Anderssen, the "NIPC is basically at infancy."[47] The NIPC is engaged in a

[46] "Foreign Investors won't Come if We're Not Comfortable," *This Day* Vol. 8 No. 2732, 15/10/02
[47] Arthur Andersen, *NIPC Diagnostic Review Report* (October 2000), p. 5.

somewhat confused transition from a regulatory agency to a facilitative one. There are reports of investors, such as British American Tobacco, who have had a very positive experience in terms of facilitation provided by the NIPC. By the NIPC's own admission though, results have not been consistent. The NIPC continues to maintain its registration function for "statistical purposes", not viewing its role as that of an investment regulator. While acknowledging that the NIPC is on the right track, the consultants nevertheless feel that many sources on non-competitiveness do indeed remain in its mandate and operations, and specifically note the following:

In order to become an effective facilitative agency, at least three (3) elements are required:

1. Having the capacity and network to be a facilitator;
2. Having a remit and functions in line with this role; and
3. Having a budget directed towards this goal.

The report proposes to review these issues one by one:

NIPC Capacity and Network:

- The NIPC has generally been laying the groundwork for such a role by meeting with various Ministries, Local Governments, and other GFRN agencies. The Director and Team Leaders of the Investor Relations Department have also written letters to other government agencies on investors' behalf, as specific needs for approvals have arisen.

- However, according to Arthur Andersen, "the existing systems, processes and structures are inappropriate or still largely rudimentary… The existing organizational arrangement is bureaucratic and inefficient… The operating processes need to be redesigned."[48] AA recommends "simple and standardized work processes with single-point responsibility and clearly defined roles, reporting structures and inter-relationships between units."[49] No SOPs have been developed. This was supposed to occur within 3 months or so of the adopting of the new Strategic Plan, i.e., by May 2002.

- According to Arthur Andersen, there is an absence of a "comprehensive document control regime and filing system in some departments"[50] and the "absence of a performance appraisal and management system."[51] As no performance measurement or reliable statistical tracking procedures been introduced within the organization, the NIPC cannot truly serve a 'statistical' function. According to the FIAS Sept. 01 report, 'softer' units of measurement could, amongst others, include: number of meetings with investors/leads; number of regulatory reform proposals; number of enquiries & visits generated by NIPC literature & Website; number of studies produced. However, nothing has been done to collect even such 'soft' forms of data. As the Investor Relations Desk Officers are not subject to any performance indicators, making any results-based appraisal of their capacity is difficult. However, training of staff on investment

[48] Arthur Andersen, *NIPC Diagnostic Review Report* (October 2000), pp. 5-6.
[49] Id., p. 19.
[50] Arthur Andersen, *NIPC Diagnostic Review Report* (October 2000), p. 18.
[51] Id., p. 21.

facilitation and servicing is informal and occurs only through "on-the-job" exposure (e.g., visits to investing companies, occasional *ad hoc* seminars and workshops). The proper tools for a facilitative role, in the form of vehicles and cellular phones, are not available to the Department's Desk Officers. The Department, for instance, has just one utility vehicle. The officers cannot, therefore, accompany investors to meetings, nor become involved in active problem-solving or added-value-servicing to investors in dealing with other agencies.

- What of servicing on-site at the NIPC? Precious little recent market information, apart from newspapers, is available at the NIPC Library –which in any event, has neither a copy machine, nor trained English-speaking librarians on staff. A couple of shelves of more useful reports can be found in the Market Intelligence Team Leader's office. Surprisingly, the Market Intelligence Unit does not view the collection of legislation, regulations, or administrative forms as part of their remit, but rather that of the Investor Relations Department or Legal Unit. The Market Intelligence Team conceded to the consultants that "availability of accurate information has not been the focus of this organization." Furthermore, there is a complete break-down of communications between from the Market Intelligence Team (which is responsible for research), the Information Services Team (which is responsible for channeling requests from and providing information to investors), and the I.T. Team (which is the only reserve of capacity to post information on the NIPC's web-site, even though this is supposed to be a function of the Information Services Team). As a result, the NIPC produces no publications, no comparative studies of FDI flows, and no new information has been posted to the NIPC's Web-Site for several years, and none whatsoever to the organization's Network. Furthermore, in spite of the existence of an NIPC I.T. Team with the necessary Scanning hardware and Desk-Top-Publishing software for their production, in-house informational materials are limited. The market Intelligence Team, by its own admission, is improperly staffed, hampered by a lack of training, and suffers from poor work discipline. In sum, there has been no progress on the implementation of the NIPC's Organizational Strategy on information & communication since it was adopted in February 2002. Arthur Anderssen found that "only 3 telephone lines out of about 30, are allocated to the switchboard as general lines… On average, less than 10% of the calls made to the Commission through the general lines are successful."[52] Arthur Andersen recommended the development and implementation of an IT Plan.[53] According to FIAS' proposed Action Plan, this was supposed to occur within 2 months or so of the adopting of the new Strategic Plan, i.e., by April 2002. To date, no comprehensive I.T. Plan has however been developed for the organization.

- Given the above constraints, the Investor Relations Desk Officers are thus in a poor position to offer the investor much assistance at NIPC's Headquarters either.

NIPC Remit:

The NIPC's remit is also unclear.

[52] Arthur Andersen, *NIPC Diagnostic Review Report* (October 2000), p. 27.
[53] Id., p. 26.

- NIPC's organizational strategy confusingly uses the term " 'one-stop' facilitative approach" –which is self-contradictory. *NIPC Decree* Amendments have been proposed which seek to strengthen Commission responsibilities for one-stop investment screening and approval. FIAS rather recommended that "the overall strategy should be the creation of 'Team Nigeria.'" In this context, links with Government, utilities, professionals, labor, banks, chambers of commerce, and suppliers are viewed as the elements "essential for success."[54] NIPC personnel up to mid-management continue to appear unclear about the agency's role. One senior official noted that company lease and proof of capital filing requirements serve a purely statistical purpose. Yet, according to other sources, the agency uses this information to ascertain the company's physical existence and operations and thereby grant incentives. Although it couches its function in the language of "facilitation," the NIPC is, in effect, at least in part, a business approval shop. They do not "facilitate the procurement" of the Business Registration or Expatriate Quota, they deliver them. And in fact, the NIPC "registration" is in fact a discretionary approval (and not an automatic registration) process. However, if this screening function is really not perceived by the NIPC as necessary, one must ask why it is maintained. The consultants understand that if, at present, the NIPC did not furnish the Business Permit, the Business & Citizenry Department of the Ministry of Internal Affairs would. The consultants are not suggesting this would be better (indeed, all indications are to the effect that it would not be). The true question is why such a permit, or indeed pre-establishment registration above and beyond that required by the CAC, is required at all. This is all the more relevant given that there is no explicit language in the *Immigration Act* calling for a Business Permit and that the now-abrogated *I.D.C.C. Decree (1988)* –which the *NIPC Decree is meant to replace*- had eliminated the requirement altogether.

- Although a "Coordinated Model" One-Stop-Shop could conceivably work in the Nigerian context, the Commission does not view itself as having the necessary human resources or proper training to become a true One-Stop-Shop. Based on the former IDCC's experience, the NIPC also doubts whether an inter-agency committee could ever successfully meet and reach quorum, and whether representatives of different government agencies would be granted sufficient autonomy by their Ministerial Headquarters to make on-site decisions. Nevertheless, a Bill based on the former *I.D.C.C. Decree (1988)*,[55] which has already gone through First Reading at the National Assembly, proposes to invest the NIPC these powers. According to the NIPC's own Legal Department, the *NIPC Decree* grants the Commission no express powers with respect to playing a facilitative role. Indeed, the Decree rather speaks of "registering," coordination," "consultation," and "monitoring" functions,[56] while proposed amendments to the

[54] FIAS' "Nigeria: Strengthening the institutional strategy of the Nigerian Investment Promotion Commission" (September 2001), pp. viii, 71-72.
[55] *Proposed Amendment to the Nigerian Investment Promotion Commission Act No. 16 of 1995,* introduced as a private bill by the Hon. Chief Chidi Duru, then Chair of the House Committee on Privatization and Commercialization, in 2000, Art. 4(2). The Bill has been approved by the Ministry of Justice Legal Drafting Department and underwent a First Reading in the National Assembly on 13 September 2002.
[56] *NIPC Decree,* Arts. 8, 9, 10, and 22.

Decree strengthen the NIPC's role with respect to Business Registration, and give it a role in the negotiation of Bilateral and Regional Investment Treaties.

- Moreover, according to the CAC, Section 7 of the CAMA gives it exclusive responsibility for company registration in Nigeria, whereas nothing in the *NIPC Decree* gives the NIPC any explicit jurisdiction in this area; therefore, NIPC must withdraw from business registration activities.

- Neither does the Commission have any effective authority to negotiate or grant tax incentives on its own, under Arts. 22 and 23(1) of the NIPC Decree (which the MoI's Industrial Incentives Department ultimately grants and the FIRS administers) or expatriate quota positions and work permits (which the Ministry of Internal Affairs grants). The Ministry of Internal Affairs even contests the NIPC's role in the delivery of the Business Permit, which is required under Arts. 8-9 of the *Immigration Act*, No. 721 (1963), Cap. 171, LFN (1990), and falls within the jurisdiction of the MoIA's Business & Citizenry Department. The NIPC admits, in any even, that its business permit granting process is largely automatic: NIPC approved 85% of applications in 2000 and 100% of them in 2002.

- Furthermore, although the consultants understand that this attribution is clearly stated in the *NIPC Decree*, it is unclear to them that the NIPC should have any role in "monitoring" investments –an attribution which generally tends to denote a "command and control" objective, and likely a left-over from the military era.

- In February 2002, a three-year work-plan was adopted by the Governing Council, on the occasion of a retreat facilitated by MIGA, FIAS and Arthur Andersen Consulting (now Accenture). In March, Departmental one-year plans were also developed in some of the NIPC's Departments, including the Investor Relations, and the Policy Advocacy and External Relations Department. Although based on earlier plans, these were somewhat scaled-back to be more "implementable" in the context of the current level of NIPC know-how and capacity. Work with authorities on regulatory changes, including on reform of business registration and incentives acquisition issues, is theoretically set to begin in early 2003.

- In this connection, the 2002 Policy Advocacy and External Relations Departmental Work-plan, has set the following preliminary objectives:
  1. Conduct a mid-year review of investment climate issues;
  2. Meet with government agencies concerned with investment and infrastructure matters,[57] as well as with the organized private sector; convene workshops on investment regulation issues; make proposals to the NIPC Governing Council on regulatory reforms stemming from these workshops; and develop coalitions for advancing reform initiatives;
  3. Work on improving general investment incentives and tax policy, as well as sectoral incentives in agriculture and agro-processing with JETRO assistance; and
  4. Codify investment laws and regulations.

[57] Meetings have been held with the Ministry of Power and Steel, the Ministry of Water Resources, the Ministry of Transport, the BPE, the NCC, NEPA, NEPZA, the MoI, the MoF, the Ministry of Oil and Minerals, the MoIA, the CAC, and the NTDC.

- The consultants were invited to participate in two (2) of the meetings/workshops. Issues such as synergy of vision, availability of information on incentives, development of additional incentives packages, joint information development and promotional activities, inter-agency cooperation on policy, joint training and events, and necessary legislative reforms were addressed.

- While some work has been done on the first and second points, it appears unlikely that the Department will meet its objectives with respect to collecting investment legislation, and advancing tax reform during 2002. To achieve 2002-2003 objectives, the Department will need to accelerate and redouble its efforts.

NIPC Budget:

- Finally, the Commission's budget has not been reprogrammed to support a new "facilitative" role. In spite of FIAS' September 2001 recommendations, the NIPC's budget has not been reapportioned to allow for coverage of computerization, the organization of seminars & workshops, the development of promotional materials, and the purchase of Commission vehicles. According to the Market Intelligence Team, "funding has been very, very inadequate" and that this affected the Team's ability to perform its functions -Indeed, the Team has no funding for subscriptions, information-gathering tools, etc. Facilitation work needs to be financed out of the "Capital Assets" component of the budget, which is appropriated as a fixed amount by the Treasury. Indeed, even if the NIPC's bloated staff of 216 is downsized, cost savings will not be reallocated to capital expenditures by the Treasury. However, there has been no increase in the Commission's "Capital Assets" budget since 2000, nor is one expected in 2003. In any event, it is unclear that there is even any commitment to downsizing staff, as the Finance & Administration Department noted that there is not even an employment freeze in effect.

The above assessment leaves the question of the organization's commitment and ability to transform into a facilitative agency entirely open. One thing, however, is clear; the Commission, while ineffective as a regulatory agency, continues to play this role, and its performance in this capacity must therefore form part of the Investor Roadmap analysis. How then, is the NIPC performing as an investment registrar? Some positive steps have been taken, including the adoption of standardized Forms, NIPC Internal Investment Appraisal Questionnaires & Checklists, and NIPC Investment Brief Formats. Furthermore, The consultants also noted several positive elements during the Technical Committee session which they were invited to attend:

1) Committee members were generally familiar with the discussed files;
2) Committee members exhibited a spirit of investor facilitation and an effort to limit bureaucratic requirements; and
3) Committee members advocated speedy treatment (with each Application being adjudicated within 5-15 minutes).

However, by and large, the procedure remains wholly problematic. For instance:

- Foreign investors in Nigeria complain of having to register with the CAC, the NIPC, and state governments. Furthermore, although the CAC did not corroborate this, solicitors pointed out that the CAC and NIPC dual registration

process presents a chicken and egg issue for investing clients, with both institutions requiring each other's documents. Moreover, NIPC's Business Permit process discriminates between Nigerians and foreigners, requiring only the latter to complete the process. The NIPC Business Registration/Permit process provides no value-added for the foreign investor. In fact, as an "extra hoop" to jump through, the NIPC process represents an investment disincentive: Investors must put the investment process on hold pending NIPC's "statistical recording.
"

- Although the investor's first stop should be the Front Desk, the Front Desk does not have any NIPC forms available for investors, and investors are required to pay for these forms. The Accounting Department, which does have forms, is located in "the back building," where there are neither a Reception Desk nor any names on doors. Accounting personnel is not customer-friendly in providing the forms to potential investors. This creates a poor first contact and impression for the investor.

- The situation is no better for the investor attempting to initiate his registration outside of Abuja. According to the Department of Investor Relations, no registration services are actually planned occur in the Zonal Offices. Even registration forms are unavailable in the Zonal Offices. The Zonal Offices are to focus on aftercare once they are opened –which has not yet occurred at this writing at End-October 2002, at which time the Zonal Offices were still procuring utility hook-ups, furnishings, etc. At this writing, the Investor Relations Department also informs the consultants that, in spite of former plans to make this service available, no State-level MCIs have the forms or conduct initial registration activities either. Indeed, although, at the beginning of the study, the NIPC claimed that investors may submit an application to state level ministries of trade and industry, the consultants found, as of this writing, that all applications are filed in Abuja. In reviewing this matter with the NIPC, the Commission admitted that this was in fact the only admitted practice.

- Training on investment registration is informal and occurs through "on-the-job" exposure.

- An NIPC Memorandum and Organizational Chart provided to the consultants indicated that, at full strength, with seven offices, it will have a staff of 113. The Arthur Andersen October 2000 report indicated a staff of 207 at Headquarters and the FIAS report confirmed this figure in 2001, further indicating that the NIPC Chairman wanted to preserve staff's jobs. Current staff levels of 216 remain almost twice as high as necessary. According to Arthur Andersen, "over 50% of the permanent employees provide the support services" and "the commission is overstaffed, with apparent under-utilization and sub-optimization of human resources in certain areas", "generally low" staff quality, average staff age of 38-40, and "nearly 60% of professional workforce graduated with third class (or lower) degrees."[58] Arthur Andersen also notes that "the compensation structure is not sufficiently competitive to attract and retain high-caliber staff."[59] No revised organizational Human Resources & Compensation Policy / Job Scopes of Work / Re-recruit & deployment plans were ever developed or implemented at the NIPC.

[58] Arthur Andersen, *NIPC Diagnostic Review Report* (October 2000), p. 22.
[59] Id., p. 25.

This was supposed to occur within three months or so of the adopting of the new Strategic Plan, i.e. by May 2002. There is also a "Lack of a unified corporate culture, resulting in differing levels of drive, work attitude and commitment to producing results" as well as "inadequate organizational communication." Furthermore, "over 80% of employees are not computer literate."[60] Staff is not receiving any training in the NIPC organizational vision, functions and culture. This was supposed to occur within a few months of the the new NIPC Strategic Plan, i.e. by Summer 2002.

- Although the NIPC is equipped with 100 workstations, an Intranet and Internet, the investment registration function is in no way supported by M.I.T.S. An Electronic Document Management System proposed by the I.T. Team in February 2002, a V.P.I. proposal, as well as a Proposal for an Oracle-supported Investor Database developed several years ago, have received no follow-up. There are thus no inter-departmental forms, no Investor Tracking System, and no investor servicing performance indicators…

- Furthermore, although the NIPC provides informational guidelines, the consultants find the instructions incomplete, without reference to all the required application attachments. Nigerian law does not detail NIPC filing requirements and fee schedule; nor does the NIPC widely publicize such information. NIPC's Director of Investor Relations concedes that this information is not spontaneously offered.

- The NIPC's web-site (www.nipc-nigeria.org), though originally designed to support such a process, does not enable electronic registration. Furthermore, it does not provide the critical form which investors need even for paper-based registration: NIPC Form 1. Nor does it publish the NIPC Decree or requirements as to the registration docket to be compiled by investors. Indeed, as a receipt of payment for the forms is ultimately required, an NIPC Investor Relations Team Leader has conceded to the consultants that there is a point to downloading the NIPC Form 2 and attempting to file it, as it would not have been paid for and would thus not be accepted.

- NIPC Form 1 is a confusing 8-page document. Despite its name – "Application Form and Manufacturing Activities in Nigeria", Form 1 is largely a business approval form. The form states that it is not a "Pioneer Status Form," yet requires information relevant only to pioneer status and other incentives – questions 6 and 15.4. In addition, questions 9-12 require information NIPC could easily obtain from CAC company files. Through Form 1, the NIPC also requires information concerning target markets, raw material deletion rate, etc; although NIPC indicates this information is purely for statistical documentation, the questions smack of protectionism. Equally troubling to foreign investors, the form requires details about the investors "Nigerianization" program. Finally, the form references corporate vehicles not on offer from CAC: for instance, cooperative society and sole proprietorship subsidiary. If the Incentives Acquisition procedure is to be maintained, it is unclear why it requires an independent form from NIPC Form 1.

[60] Id., p. 26.

- The application support documents required are too onerous and reflect an emphasis on screening out "bad" investment and approving of private sector activity. For instance, the requirement that a firm demonstrate proof of having deposited capital in a local bank is an unnecessary burden on investors and seems to reflect an outmoded style of command and control regulation. Because Nigeria has liberalized its foreign exchange regime, such safeguards are unnecessary today. Further, given that in the modern global economy funds can be almost instantaneously deposited and withdrawn anywhere in the world, international experience suggests that demonstrating that capital is in a bank account on one day does not ensure that it will be there the next day. Furthermore, it is unnecessary for a government agency to approve of an investor's project by reviewing a feasibility study. Investors should be free to risk their own capital without explicit government permission. Similarly, requiring applicants to submit corporate brochure creates an extra step for a company and does not add value to the review process. Experience from other countries suggests that at best this philosophy tends to frustrate foreign and local investors and at worst it will deter them from committing equity. As the agency tasked with facilitating foreign investment in Nigeria, the NIPC should ensure that its own procedures are simple, user friendly and can serve as a model of efficiency for Nigeria's other agencies.

- Additionally, some of the NIPC submission requirements create some inefficient dependencies that delay the simple process of registering. For example, requiring that an investor prove that he or she has already rented land and sourced equipment and machinery, means that a foreign investor can not even register a firm until going through the lengthy processes of acquiring title to land and arranging to import capital goods. Given the hurdles that investors face in land acquisition and import clearance, the NIPC submission requirements only act to deter investors and delay what should be a simple and quick process.

- Although undergoing a reform, NIPC's operations for the moment remain inefficient and disorganized. There are no staff training programs. NIPC's Investor Relations Department, responsible for registration, is divided into three (3) Sector Teams. In 1999, 38 companies were registered, in 2000, 54-66 were registered (conflicting figures were given to the consultants), in 2001, 32 were registered, and in 1H02, 44 were registered. Processing the application merely requires preparing a one-page brief for the "Technical Committee" hearing. If a brief takes no more than one day to draft, the consulting team estimates that one individual could complete all Department's work the year. Under the proposed FIAS Organizational Plan, the Investor Relations Sector Units were each to have 2-3 staff, creating a total Investor Relations team of 10. However, given their limited responsibilities, even 10 people seems excessive to the consultants authoring this report. Although cut down from 30 in 2000 to just 12 in 2002, the Department is still overstaffed. Indeed, the human resources in the various Sector Teams do not have specialized backgrounds. The NIPC itself indicated that just six (6) staff members, two per team, would suffice to perform the work – and in fact currently only utilizes one person to perform all of the work.

- Despite statutory deadlines, the "Technical Committee" does not necessarily meet every 14 days. In 2000 the Committee met every 2-3 months and

considered an average of 13 applications each time. In 2002, in an effort to improve regularity, the Annual Schedule of meetings was prepared in advance, with the objective of semi-monthly meetings, but meetings sometimes only occur just once per month, given organizational and coordination problems.

- Two (2) permits are issued at the end of the registration process; The "NIPC Registration Certificate" and the "NIPC Business Permit Certificate." The NIPC conceded to the consultants that this was unnecessarily duplicative and confusing, and agreed to the necessary legislative and procedural changes to achieve a unified document.

- On the whole, the Investor Relations Department curiously believes the registration process is streamlined and does not see the need to go any further in terms of reengineering the process at this time. The registration procedure is thus not being reviewed by the NIPC for further streamlining or e-enablement, which is to occur within one (1) year of the new organizational strategy [i.e., by February 2003], if FIAS' recommended work timelines are followed.

1.2.3 Recommendations

The NIPC should be leading the charge to improve and streamline bureaucracy. As such, its submission requirements and policies designed to screen out "bad" investment, including reviewing business plans, should be abolished.

The consultants recommend that the government eliminate the entire NIPC Business Permitting process and related regulatory and monitoring functions. The consulting team concurs with earlier FIAS Project recommendations, accepted in principle but yet completely in practice by the Commission, that the NIPC should instead focus exclusively business *registration* (as apposed to permitting), as well as facilitation and advisory services. This will involve changing certain aspects to the *NIPC Decree* and procedures with respect to registration.

Since the interviewed state-level chambers of commerce (OCCIMA in Kaduna State and PLACCIMA in Plateau State) provide poor investor facilitation services, the NIPC is the only likely candidate for a facilitative role.

The CAC could provide the NIPC with all necessary statistical information on foreign investors. In October 2002, the NIPC hosted a working session with the MoI, the CAC, the MoIA, facilitated by the consultants, in order to draft further amendments to the *NIPC Decree* with buy-in from all of those parties, in order to further re-position NIPC as a service provider. As it was highly successful at the technical working level, it is hoped that its recommendations will be endorsed at the Governing Council and Political levels, and implemented at the operational level.

In addition to this recommendation, the consultants offer the following subsidiary recommendations:

- Greater CAC-NIPC coordination is necessary. The CAC took note of this suggestion at a World Bank-organized project workshop and proposed renewed collaboration on resolving these matters. The NIPC indicated to the consultants that it should have more access to other agencies' WANs in general. In addition

to facilitating the NIPC's statistical functions interagency WAN access would reduce redundant information requests from investors. At a minimum, CAC advocates the reinstatement of the NIPC/CAC Commission to improve agency coordination.

- The NIPC's I.T. Team, Market Intelligence Team, and Information Services Team need to be unified into a single team, reporting to a single individual, at the Team Leader (working) level.

- Existing I.T. Strategies need to be seriously studied and reviewed by NIPC Management, and refined on the basis of an information and communication needs assessment.

- I.T. office protocol and training, for instance on the use of e-mail, need to be adopted and implemented.

- Resources should be made available to this new Team to procure the necessary publications, subscriptions, legislative collections, and information-gathering tools (e.g., service car, etc.) to perform its functions.

- Arthur Andersen has recommended that the NIPC "implement standard operating procedures (including performance measures)", "standard filing and document management procedures," "proper organization, computerization and meticulous record-keeping of all relevant information to the investor, including regular maintenance and hard/soft copy of backup and storage," "statistical procedures that enable tracking of a variety of data related to potential and realized investments" and the establishment of a statistical tracking system.[61] The consultants endorse this recommendation, which remains every bit as timely and relevant today as when it was made in 2000.

- The NIPC should implement the recommendations of the 24 October 2002 Meeting of the Inter-Agency Technical Task Force on Business Registration, on reforms to the various Acts and Decrees governing Business Registration.

- To help remedy Human Resource problems, Arthur Andersen has recommended the adoption of a performance appraisal / management / career path.[62] The consultants also endorse this recommendation, which remains every bit as timely and relevant today as when it was made in 2000.

- Staff also need to know the corporate vision and functions. To this end, Arthur Andersen has recommended that the NIPC "develop a corporate culture and a set of core values" and engage in staff communication and training, and develop a "properly structure training plan" and seconding employees to "other well-developed and high performing IPAs to achieve knowledge transfer."[63] The consultants endorse this recommendation, which remains every bit as timely and relevant today as when it was made in 2000.

[61] Arthur Andersen, *NIPC Diagnostic Review Report* (October 2000), pp. 15 and 18.
[62] Id., p. 21.
[63] Arthur Andersen, *NIPC Diagnostic Review Report* (October 2000), pp. 8, 20, and 24.

- The NIPC's Web Site must be updated, to provide all the necessary forms, requirements, and electronic registration.

- The Ministry of Justice recommends that NIPC require a single form from investors. The consultants agree, and note that all required forms should be streamlined, reorganized, and request only pertinent information. The consulting team also recommends a single certificate upon process completion. The NIPC has agreed to work towards the implementation of this recommendation.

- The NIPC should re-engineer its Investor Relations Department further still than it already has. One senior NIPC official suggested that the Commission still requires further staff streamlining, rationalization, and training (particularly with respect to customer service). In accepting the recommendation of the 9th Nigerian Economic Summit, President Obasanjo specifically indicated that he wants the government to appoint technocrats to the NIPC, as "people can only do jobs when they are knowledgeable about them" and commence performance measurement.[64]

- ***In addition, the consultants suggest NIPC bring its practice of utilizing a single officer for initial documentation processing in line with the organizational chart -allowing substantial staff reduction.***

- ***Moreover, NIPC should streamline its Technical Committee. The consultants believe that the NIPC is over-represented. The consultants recommend that NIPC eliminate two (2) of the agency's three (3) representative, and augment the Committee with a representative from the MoI and another from the CAC.***

- ***The consulting team suggests that NIPC formalize and circulate Evaluation Committee Rules of Procedure, including a requirement for on-site written petition approvals, vote waivers for non-attendance, etc.***

- The NIPC should cease charging for its forms and requiring a receipt of payment for the form as part of the registration process. Rather, it should post its form on the Internet, thereby increasing investor's access to the form and shifting the financial burden of reproducing the form to the private sector. The NIPC should initiate free issuance of application forms/investment guidelines and ensure widespread availability/accessibility (e.g., via the website) and the waiver of fees paid for approval or registration. According to FIAS: "The question of whether IPAs should charge investors for the services provided is often raised, particularly where governments are seeking to save money and are looking at other possible revenue streams for the funding of the IPA. The argument generally advanced is that the services provided by the IPA are so valuable that potential investors will be willing to pay for them, but international experience shows that this approach has not generally worked. In El Salvador and in the Slovak Republic for instance, attempts to charge investors for services have not bee successful. […] In many cases, the IPA does not have the skills and capacities to offer a chargeable service that competes with private sector

[64] "We'll Curb Excessive Waste in Govt –Obsanjo," *This Day* Vol. 8 No. 2736, 19/10/02

consultancies and furthermore, the practice of charging potential investors is not consistent with a positive attitude of welcoming investment. Investors have a free choice for the location of their investment and expect the services of a national IPA to be provided free of charge. It is strongly recommended that the NIPC does not consider charging investors for services such as the provision of information, match making or brochures in order to supplement its government funding."[65] The consultants endorse this recommendation, which remains every bit as timely and relevant today as when it was made in 2000.

- ***Finally, the consultants strongly recommend that NIPC create a proper Investor Guide to Business Registration. Unlike this report, the guide would be purely descriptive. It would also be procedural and, in this sense different from the* Nigeria Investor's Guide*, already on offer. NIPC should widely publicize the guide, since existing investor guides and guidelines (including those by the OCCIMA, PLACCIMA, and NIPC) are not practical or detailed enough.***

[65] FIAS' "Nigeria: Strengthening the institutional strategy of the Nigerian Investment Promotion Commission" (September 2001), p. 63.

Draft Minutes of the Meeting of the Inter-Agency Technical Task Force on Business Registration

Held at the Nigerian Investment Promotion Commission (NIPC) Headquarters
Abuja FCT, 24 October 2002

The objective of the Technical Task Force Meeting was to reach an inter-agency working understanding on recommended reforms to streamline the Federal Government business registration process and requirements, in an effort to make them more investor-friendly, including through recommended reforms to the *Companies and Allied Matters Act (CAMA)*, the *NIPC Decree No. 16 (1995)*, the *Immigration Act (1963), Cap. 171, LFN (1990)*, and the *Industrial Development (Tax Relief) Act, Cap. 179, LFN (1990)*.

The Meeting was agreed to in advance by the Director of Compliance of the Corporate Affairs Commission (CAC), as Chair of the CAMA Reform Committee, as a process to inform its own technical recommendations with respect to reform of the said Act.

It was further agreed to in advance by the Chief Operating Officer of the NIPC, as a process to inform the NIPC's pre-Second Reading review of the *Proposed Amendment to the Nigerian Investment Promotion Commission Act No. 16 of 1995,* introduced as a private bill by the Hon. Chief Chidi Duru, then Chair of the House Committee on Privatization and Commercialization, in 2000, as a process to inform its recommendations with respect to reform of the said Act and Bill.[66]

It was finally agreed to by the Comptroller General of Immigration, who expressed a willingness to make amendments to the *Immigration Act,* to resolve any uncompetitive practices, in discussions with USAID representatives.

The following persons were designated by their respective agencies or Ministries to represent them at the NIPC Inter-Agency Technical Task Force on Business Registration Reform:

- Dr. Julius J. Bala, Director of Policy Advocacy and External Relations, NIPC
- Mrs. O. J. Abamgwu, Legal Advisor, NIPC
- Mr. R.I. Kifasi, Team Leader, Market Intelligence, NIPC
- Eng. Akin Sawyerr, Director of Investor Relations, NIPC
- Mr. P.K. Odili, CAO, Industrial Incentives Directorate (IID), Federal Ministry of Industries
- Mr. Inyang C. Ekwo, DM, Compliance, Corporate Affairs Commission (CAC)
- Mr. I.I. Jere, CSI, Immigration Desk, NIPC, Ministry of Internal Affairs
- Mr. Falalu Abba, ASI, Immigration Desk, NIPC, Ministry of Internal Affairs
- Mr. Jean-Paul Gauthier, USAID (Observer/Facilitator/Expert)

[66] The Bill has been approved by the Ministry of Justice Legal Drafting Department and underwent a First Reading in the National Assembly on 13 September 2002.

Opening Remarks by Task Force Members:

The Ministry of Industries noted that Nigeria's children must never be forgotten, and that investment-enabling administrative reforms were critically important in ensuring their welfare and the nation's future.

The Ministry of Industries and Ministry of Internal Affairs further noted that the NIPC and the CAC form the fulcrum of business registration and must have a harmonized procedure to achieve meaningful progress in administrative reform in this area.

The NIPC noted the importance of inter-agency information sharing, committee work, and electronic networking, to achieve true impact in administrative reform.

The Ministry of Industries finally noted that the Task Force was in a favorable position to look at these technical issues and bring Nigerian administrative practices into consonance with international standards.

Bearing all of the above, and its mandate in mind, the Task Force, considering all of the legal and technical issues involved, urges the Government to implement the following 26-point proposal for reform of Business Registration procedures:

Part I: Reforms Relating to CAC Business Registration

The Task Force Recommends:

1. That the CAC's status on the NIPC's Board of Directors be upgraded from "Co-opted Member" to full Board member, and that the *NIPC Decree* be amended in consequence.
2. That the NIPC be invited to comment on the National Assembly's public session on amendments to the *CAMA*
3. That all foreign companies be treated in the same manner with respect to CAC registration requirements, whether or not their principals are physically present in Nigeria, and that the requirement for a Residence Permit be eliminated from the CAC's registration application docket, in those cases where it is currently being requested.
4. That all information collected by the CAC on foreign Directors and shareholders be sent by the CAC to the MoIA, such that the MoIA be in a position to itself send the CAC a note on these individuals' immigration status under Art. 7(1)e) of the *Immigration Act* –bearing in mind that this note should in no case be considered a pre-requisite for registration, and that the CAC should not wait for it before proceeding to register companies.
5. That, at the earliest possible moment, the CAC and the MoIA be electronically networked to share the above-referenced information.
6. That the CAC send the NIPC a Quarterly Report on foreign companies, including details of whether or not their C02, C07, and Memorandum & Articles of Incorporation have been filed, as well as make specific information and document copies available to the NIPC on-site at the CAC Headquarters.
7. That the CAC clarify, in its literature and on its Web-Site, that NIPC registration, under Art. 19 of the *NIPC Decree,* is not a pre-incorporation requirement.

Part II: Reforms Relating to NIPC Business Registration

The Task Force Recommends:

1. That the NIPC not *require* NIPC registration.
2. That NIPC Registration not be in any way conditioned upon Expatriate Quota, Pioneer Status, or Business Permit issuance.
3. That the NIPC no longer issue the Business Permit, as this is an incorrect interpretation of Art. 20(1) of the *NIPC Decree.*
4. That NIPC Registration rather become a necessary pre-condition for obtaining NIPC "added-value" services, such as facilitation, aftercare, investor advocacy, etc.
5. That the NIPC inform the CAC of, and transmit to the CAC a Quarterly Report on, all companies registered by the NIPC.
6. That presentation of Forms C02, C07, or of a company's Memorandum & Articles of Incorporation, no longer be required upon NIPC registration, but simply the RC Certificate, the NIPC Registration Form, and a Certificate of Capital Importation.
7. That the NIPC Form be modified to include form fields relating to the applicant company's Directors, Tax Status, Land Title or Lease, Nigerianization program, and intended activities, rather than requiring that other documents be provided or appended to the Application.
8. That, at the earliest possible moment, the NIPC, the CAC, and the MoIA be electronically networked to share the above-referenced information, such that the NIPC have all of the information it requires for statistical purposes.

Part III: Reforms relating to MoIA Business Registration and Expatriate Quotas

The Task Force Recommends:

1. That clear, objective, and transparent criteria for the determination of Expatriate Quotas be developed, in order to replace the current discretionary formula, which is open to abuse.
2. That Expatriate Quota position issuance not be linked to, either as a pre-condition or a dependency of, NIPC registration.
3. That a regulation be drafted and adopted pursuant to all of the relevant Acts and Decrees, determining the criteria for issuance of Expatriate Quotas.
4. That Arts. 8(1)b) and 9(1)d) of the *Immigration Act,* which require the "consent in writing of the Minister," and which have been interpreted as calling for a Business Permit, be amended to require "registration with the CAC."

Part IV: Reforms Relating to IID Pioneer Status Acquisition and Business Registration

The Task Force Recommends:

1. That the MoI's IID become a full member of the NIPC's "Technical Committee" [formerly, the "Investment Environment and Business Approvals Committee"]
2. That the MoI's IID, the NIPC, and the MoIA form a joint Investment Inspection Committee, with the exclusive jurisdiction to make determinations ascertaining an enterprise's establishment's preparedness to commence business operations, within fourteen (14) days of the filing of an Application for NIPC Registration, which determinations will be considered final and binding upon all Committee members.
3. That the Production Day Inspection be eliminated upon the establishment of the Committee and procedure outlined above.
4. That the Letter of Notification, Provisional Certificate, and Production Certificate be eliminated, and only the Pioneer Certificate be maintained.
5. That the Pioneer Certificate be sent by the MoI's IID to the FIRS, which shall consider it binding proof of a company's eligibility for Pioneer Status.
6. That a regulation be drafted and adopted pursuant to all of the relevant Acts and Decrees, determining the criteria for issuance of Pioneer Status.
7. That determinations regarding Pioneer Status not be considered a condition precedent to NIPC registration.

1.3 Investment Incentives Acquisition

Federal Ministry of Industries
Industrial Inspectorate Department (IID)

The complexity of the tax system and the lack of coordination between government agencies at the federal level, and between federal and state governments, has given rise to many different and overlapping incentive schemes in Nigeria. These include the following:[67]

General non-oil fiscal incentives:

- Pioneer Status: 100% tax free for pioneer industries, under *Industrial Development/Income Tax Relief act No. 22 of 1971 as amended in 1988*
- 30% tax concession for 5 years for industries that attain minimum local raw materials utilization of 60-80%
- 15% tax concession for 5 years for Labor intensive mode of production
- 10 % tax concession for 5 years for Local value added
- 2% tax concession for 5 years on the cost of facilities provided for in-plant training
- Infrastructure [20% of cost of providing basic infrastructure]
- 100% tax holiday for 7 years for Investment in economically disadvantaged areas
- 120% tax deductible expenses for Research and Development, if R&D is carried out in Nigeria, and 140% for R&D on local raw materials
- Re-investment allowance on capital expenditure incurred for expansion of production capacity, modernization of production facilities, and diversification into related products
- Investment Tax Allowance
- Sectoral incentives [e.g., agriculture]

Export incentives for non-oil sector:

- 10% tax concession for 5 years, for industries exporting no less of 60% of their products
- Retention of export proceeds in foreign currency
- Export Development Fund (EDF), providing financial assistance to private sector exporting companies to cover a part of their initial expenses related to export promotion [e.g., export market research, product design & marketing]
- Export Grant Fund Scheme (EEGF): provides cash inducement for exporters that have exported a minimum of N50, 000 worth of semi-manufactured products.
- Duty Drawback/Suspension and Manufacture-in-Bond Scheme
- Export Adjustment Fund Scheme: Supplementary export subsidy to compensate exporters for the high cost of local production arising mainly from infrastructure deficiencies, and other negative factors beyond the control of the exporter
- Nigeria Export/Import Bank foreign exchange facilities

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[67] Source: NIPC, *Investor's Guide to Nigeria* (1998)

- Tax relief on interest income granted by banks: favorable treatment of export activities
- Capital Assets Depreciation Allowance: annual allowance of 5% on plants & machinery to manufacturing exporters who export at least 50% of their annual turnover provided that the product has at least 40% local raw materials content or 35% value added.

While a detailed policy-level analysis of Nigeria's incentive regime is beyond the scope of this study, this section will discuss administrative-level issues in the federal "Pioneer Status" investment incentives scheme.

Companies can obtain Pioneer Status in several ways: if they produce products declared "pioneer products" under the* Industrial Development (Income Tax Relief) Act No. 22 of 1971 as amended in 1988*; if the NIPC has declared it a deserving enterprise; or if the company locates in an "economically disadvantaged" area. Pioneer Status is not automatic and is subject to cancellation where the granting of the concession is based on false declarations. The Pioneer Status provides a five-year tax holiday to qualified investors, with a two-year extension for those located in economically disadvantaged areas. These areas are defined in the NIPC's guide to investment incentives in Nigeria.

Even with Pioneer Status, a company must report taxes. The government will not tax a company on principal operations income. However, income rising from non-core operations is subject to taxation. A Pioneer Status company attaches a copy of the Pioneer Status Certificate when submitting its income tax return to the Federal Inland Revenue Service (FIRS).

To gain Pioneer Status, a company must be a Public or Private Limited Liability Company incorporated and registered in Nigeria under the Companies and Allied Matters Act. Joint Ventures and 100% foreign owned companies must have a minimum qualifying capital expenditure of N5 million; however, 100% Nigerian companies qualify at N150,000, with a minimum Authorized Share Capital of only N500,000.

Although the Investor Relations Department of NIPC's Registration and Monitoring Department is responsible for registering and overseeing the program grants Pioneer Status during the "Business Registration" process (see above), and the Federal Inland Revenue Service (FIRS) administers the program, it is the Federal Ministry of Industries which actually verifies production and* de facto *confirms eligibility.

1.3.1 Procedure

An investor must complete the following steps to acquire Pioneer Status:

1.3.1.1 Application and Appraisal by the NIPC

The NIPC plays a facilitative role, by initiating the processing of requests for incentives acquisition, in cases of clearly defined eligibility. It plays a somewhat more limited facilitative role in the cases of applications for special and/or sectoral incentives acquisition. The NIPC does not conduct "Production" inspections, and does not feel it necessarily has the know-how to do so. On the other hand, there have not been any cases of which the NIPC is aware, where requests they have facilitated have been rejected by the Ministry of Industries.

Step 1. Investor Requests Information and Purchases NIPC Form 2

After registering with the CAC, foreign and domestic investors apply to the NIPC for a Pioneer Status Certificate.[68] The investor visits the NIPC in person in Abuja or sends a written request in order to obtain NIPC Form 2: Application for "Pioneer Company" Tax Status. Investors may purchase Form 2 at several places: the NIPC Headquarters, the Headquarters of the Manufacturers' Association of Nigeria, the NACCIMA, and at NIPC regional offices upon their establishment. Mailed requests should be addressed to the Secretary/Chief Executive, NIPC, Abuja, Nigeria. In a written request, the investor must include a nonrefundable bank draft for N10,000, payable to NIPC Headquarters, Abuja. Investors must submit the same bank draft if purchasing the application in person.

Step 2: Investor Completes and Submits Application

The investor completes NIPC's Pioneer Status application and submits it with the following documents:

- Memorandum and Articles of Association;
- Business Permit – if the company has some foreign equity participation (100% Nigerian companies do not require Business Permit);
- Certificate of Incorporation;
- Tax Clearance Certificate;
- Feasibility Study;
- Completed NIPC Form 2;
- N10,000 with the original purchase receipt;
- Evidence of Machinery and Equipment Purchase; and
- Evidence of physical development of the factory site.

The NIPC forwards NIPC Form 2 to the agency's Secretary/Chief Executive.

[68] Foreign investors are also required to register and obtain a business permit at the NIPC.

An investor must apply for Pioneer Status within one year of commencing production.

Step 3: Investor Relations Department Conducts Preliminary Analysis

A Desk Officer analyzes the investor's application and composes a file summary memo for his Team Leader, who in turn submits it to the Director, Investor Relations.

The Director of Investor Relations circulates copies of the documents and the memo to "Technical Committee" Members.

Step 4: Technical Committee Holds Appraisal Meeting

Within the statutory period of 14 working days (in theory) from the submission of the Application, the "Technical Committee" meets and determines whether it feels the Applicant is entitled to Pioneer Status. At the session, the Chair briefly reads aloud the content of the NIPC brief and makes recommendations as to the course of action to take. Committee members may raise concerns and/or questions. Decisions are taken by consensus.

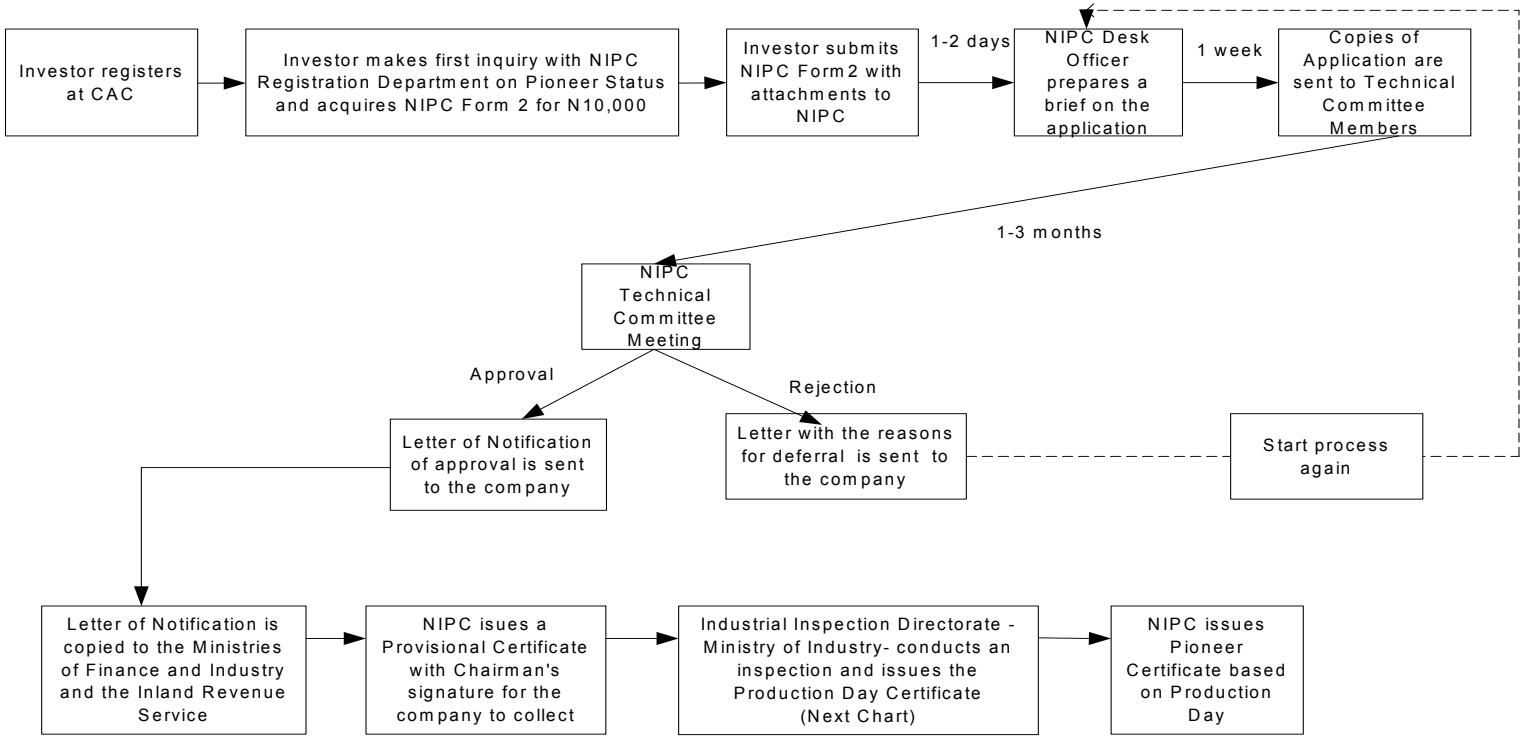
Step 5: NIPC Issues Letter of Notification

The Committee makes a recommendation as to whether the MoI should grant (or deny) the request for Pioneer Status. The Letter of Notification is addressed to the Applicant, and copied to the Ministry of Industries, and Ministry of Finance Federal Inland Revenue Service (FIRS).

Step 6: NIPC Issues Provisional "Pioneer Status:"

With the Letter of Notification, the investor may visit the NIPC and collect the "Provisional Pioneer Status Certificate."

Pioneer Status Application and Approval Process



1.3.1.2 Inspection by the Federal Ministry of Industries, Industrial Inspection Department (IID)

An important and lengthy step in the acquisition of Pioneer Status is the inspection by the IID to issue the "Production Day Certificate."[69] After the NIPC has issued the Letter of Notification indicating that Pioneer Status has been provisionally approved and has copied the Ministry of Industries, the process of acquiring such status moves on to a second stage. Upon request from the investor, a senior NIPC officer will accompany the investor to the IID in order to facilitate the opening of a file with the IID. The steps involved in that subsequent procedure are as follows:

Step 1: IID Invites Investor to File Notification

Upon receipt of the Letter of Notification, the IID initiates preliminary correspondence with the company. The correspondence indicates that the IID has received the information letter from the NIPC and draws attention to the provisions of the Section 6 of the* Industrial Development (Income Tax Relief) Decree No. 22 of 1971*. IID also attaches a long form formatted to provide detailed production and sales figures.

Step 2: Investor Files Notification, Proposing "Production Day"

Once the company is operational and is capable of estimating a "production day," it files a notification with the Director of the IID, proposing the date of production and reasons for selecting that date. The company also provides detailed information on production and sales based on the form provided by the IID. The data to be provided is over a spread of 11 months: from 5 months before the month of the production day to five month after the month of the "production day."

Step 3: IID Zonal Officer Conducts Site Visit

Upon receipt of investor notification, the Director of the IID contacts the IID Zonal Officer responsible for the geographic area where the investor is located and instructs him to schedule a Site Visit and submit a Site Report.[70]

The Site Visit will occur as soon as the Zonal Officer's schedule permits and the investor arranges for the necessary transportation to and from his site. The Zonal Officer inspects the investor's facilities in order to confirm data provided by the investor as well as entry into production. After the Site Visit, the Zonal Officer files a Site Visit Report with the IID Director.

[69] For the purpose of administering the Pioneer Status concession, "Production Day" means the day on which the operations of a Pioneer company commence for the purpose of the *Income Tax (Relief) Act.*

[70] IID has 8 zonal offices: Lagos, Kaduna, Port Harcort, Benin, Kano, Joss, Enugu, and Ibadan.

Step 4: IID Performs Data Analysis

The IID Schedule Department conducts data analysis based on the Site Visit Report, in order to determine the break-even point of the investment and capacity utilization ratios. Based on the analysis, the Department recommends confirmation of "production day" to the Director of IID.

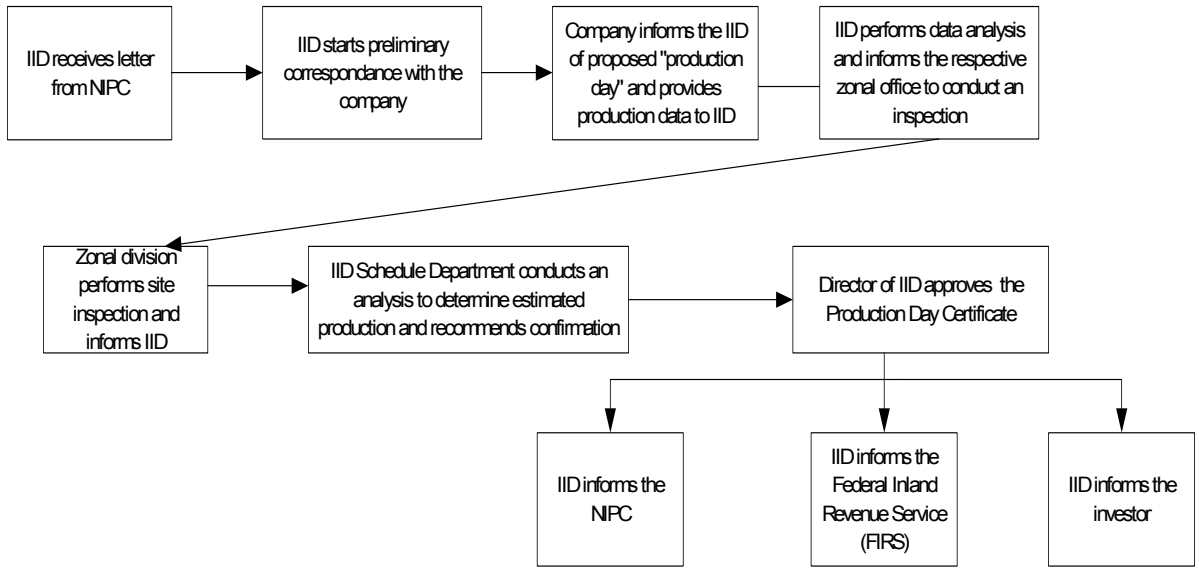
Step 5: IID Issues "Production Day Certificate"

Upon reception of the Site Report and the analysis from the Schedule Department, the IDD Director issues a "Production Day Certificate" to the investor and copies the NIPC and the FIRS.

Step 6: Investor Pays Fees and Collects "Pioneer Status Certificate"

Upon reception of the "Production Day Certificate," and payment of a N10,000 processing fee, the NIPC issues a "Pioneer Status Certificate" to the investor. This Certificate is a mere formality and confers no additional rights beyond the Production Day Certificate.

Inspection Process by the IID (Ministry of Industries)



1.3.2 Analysis

Nigeria's incentives acquisition regime is complicated and cumbersome. As a result, tax incentives remain underutilized. The review of the Pioneer Status Scheme has evidenced key shortcomings in the current system. There are many problems at the administrative level since the procedures appear multiple, duplicative, not always useful and sources of significant delays. Several issues bear noting in this regard:

- ***The confusing array of incentives available in Nigeria is compounded by a number of factors. The description of the administrative procedures that investors have to follow for obtaining the Pioneer Status has evidenced the following characteristics:***

    - ***Multiple Agencies and Steps: The Pioneer status requires at least 6 steps, involving at least 3 agencies or Ministries. Although most incentives seem to be administered by either FIRS, there are several more bodies involved in the awarding of incentives. All in all, there seems to exist vast potential for investors to be confused and frustrated in the face of Nigeria's incentive regime***

    - ***Long: In spite of the statutory deadlines, the Application Evaluation Committee (Pioneer Status) does not necessarily meet every 14 days. Furthermore, the Site Visit required for issuing the production day certificate delay can vary from 1 month to 2 years, depending on the location of the applicant's activities. Several sources agreed that, with a "business approach," the average completion time for this procedure appears to be approximately 1 year.***

    - ***Duplicative/Redundant: The second level of communication between the IID, the NIPC, and the Ministry of Finance is duplicative of the 1st level. The information flows among these organizations just to confirm the production days certificate and the exchange from provisional to "actual" pioneer status certificate.***

    - ***Non-Transparent/Discretionary: No clear criteria used in the approval process. An investor suggested that, in order to get all of the required steps accomplished within one month with a guaranteed approval, one must pay about US$3,000 in non-statutory fees. A second investor stated that these costs were unpredictable, "tricky," and "depend on your negotiating skills". He indicated, however, that that these extra costs can exceed N2-3 million (in staff time, travel costs, use of consultants, and payments to various parties). High non-statutory costs increase investment cost and represent a significant deterrent to SME investment.***

- The paperwork involved in acquiring incentives is confusing. NIPC Form 1 is a confusing 8-page document. Despite its name –"Application Form and Manufacturing Activities in Nigeria"- Form 1 is largely a business approval form. Though the form explicitly states that it is not a "Pioneer Status Form," it requires information only relevant to pioneer status and other incentives: questions 6 and 15.4. In addition, questions 9-12 require information NIPC could easily obtain from CAC's company files. Through Form 1, the NIPC also requires information concerning target markets, raw material deletion rate, etc; although NIPC claims to require such information for purely statistical reasons, the questions smack of protectionism. Equally troubling to foreign investors, the form requires details about the investors "Nigerianization" program. Finally, the form references corporate vehicles not on offer from CAC: for instance, cooperative society and sole proprietorship subsidiary. NIPC Form 2 is likewise confusing. A 9-page document, Form 2 asks a series of unnecessary questions. Sections A, D, and E, for instance, require information the investor has previously submitted to CAC. Numerous other questions require business information that is never

even discussed during the Commission hearing on the application. If the NIPC role is to be maintained in incentives acquisition, why it requires a separate form (NIPC Form 2) from the Business Registration Form (NIPC Form 1) remains unclear.

- The consultants do not understand why the investor receives two separate, yet virtually identical certificates The consultants find the NIPC's "Pioneer Status Certificate" a mere formality that provides no additional rights not already granted by IID's "Production Day Certificate."

- Nigerian incentives are poorly timed. Although in principle the practice of FIRS administering statutory incentives is better than discretionary *ex-ante* assessment, it works only if an investor has a guaranteed entitlement. Without a guarantee, the ex-post nature of the incentives creates greater uncertainty in the investment environment. In addition, the broadly applicable "pioneer status" incentives can only be requested after an investor has made a substantial commitment.

- The incentive system is unclear and complicated. Although the FIRS appears to administer most incentives, several other agencies are involved. Given the uncertainty of the incentive system, the consultants are surprised investors do not offer greater criticism. The consultants believe that most investors do not bother applying for Nigeria's numerous incentives. The system's numerous bottlenecks –while designed to reduce unofficial investor abuse– prevent serious investors from benefiting.

- Although the NIPC has recently published a relatively comprehensive brochure listing incentives (*Investment Incentives in Nigeria*), it still has no central clearing-house to provide clear and complete incentive information, application procedures, etc.

- Screening for eligibility involves a degree of discretion on the part of the authorities. Such discretion opens the possibility of corrupt decision making. The complicated, labor-intensive system favors large companies that can afford facilitation services. The system is disadvantageous to SMEs –the type of companies most likely to provide new products and services and offer employment opportunities. Because the current system is not transparent, it encourages rent-seeking.

- ***Service sector investors note that the Nigerian incentive programs focus almost exclusively on the manufacturing sector, ignoring service sector investment. In addition, the system discriminates between foreign and domestic investors (for instance in terms of the additional documentary and share capital requirements imposed on investors. The necessary capital expenditure for a foreign company to qualify for Pioneer Status is N5 million, while the qualifying amount for a domestic company is only N150,000). This is particularly ironic since the service sector has created dynamic economic growth throughout the developed world and is increasingly responsible for generating large cross-border income inflows from foreign clients. Indeed, according to official guidelines:[71] "In line with the provisions of the 1999 Budget, the various export schemes and funds will be consolidated into the new Manufacture-in-Bond scheme whereby payment of cash incentives to exporters shall be replaced with the introduction of negotiable Duty Credit***

[71] "Procedures & Guidelines for Import and Export in Nigeria" (1st April 1999), Section on "Notice to exporters," Point (5)

Certificate." Furthermore, a review of the forms for pioneer certificate & approval of manufacture-in-bond scheme indicated, a priori, very industry/manufacture-oriented bias (questions on production, type of goods produced, etc.) and no evidence of non-industrial tax incentives.

- ***Nigeria's complicated and discretionary incentives program is operated with inadequate staff and systems support.***

- ***The consulting team wonders if NIPC is the appropriate agency to administer investment incentives. To the extent that some incentives are necessary (particularly if this term is defined to include duty relief on imported inputs for exporters), administration and monitoring are essential. However, there is a strong case for investment promotion agency to focus on promotion and leave investment incentives to other agencies. The Irish case is good example of automatic incentives, with minimal monitoring and administration.***

- The NIPC's description of its role in incentives acquisition is somewhat misleading, and does not clearly indicate that they merely facilitate relations with the actual Ministry in charge, the Ministry of Industries. In "The 'New' NIPC as a facilitator of investment", there are contradictory claims that the NIPC 'facilitates the administration and approval of investment incentives' and/or 'negotiates specific incentives.'

- No NIPC-driven work on reengineering the incentives acquisition procedures, as proposed to be undertaken by the Investor Relations and Policy Advocacy Departments in the organizational strategies developed by Arthur Andersen, FIAS and MIGA, has been undertaken at this writing, at End-October 2002. Indeed, the NIPC has not done any work with the MoF to develop automatic incentives, subject to a negative list, and the elimination of the Pioneer Certificate, and NIPC/MoCI approvals. This is to occur within one (1) year of adoption of the new organizational strategy, e.g., by February 2003.

1.3.3 Recommendations

- ***Principally, the consulting team recommends that the NIPC and the Federal Ministry of Industries be completely removed from the incentives acquisition process, and provide no more than informational services in connection with it. FIRS should administer the entire process. IPCs must indeed provide any and all useful information on business start-up, incentives acquisition, employment and immigration procedures, etc.***

- ***The IID Site Visit and NIPC Committee evaluation requirements should likewise both be eliminated.***

- ***The consultants also suggest Nigeria develop a transparent national investment incentive policy. While tax credits represent an improvement over the current system, FIAS/TSG recommend an overall simplification, focusing, and clarification of the incentive acquisition process.[72] Indeed, the most effective remedy to the current complex incentive regime would be a national investment incentive policy that strictly and clearly regulates what the federal government, individual states, and municipalities can offer. Such a policy must provide uniform and transparent rules and be easily accessible to foreign investors in the major languages of the international business community. The Irish case (above) provides a good model incentives acquisition and administration framework.***

- ***The incentive scheme resulting from this full-scale analysis should be automatic, performance based, and awarded against transparent and consistent criteria. This will minimize case-by-case, discretionary consideration, involving decisions based on multiple, qualitative and sometimes inconsistent criteria, as well as unreliable information, and resulting in biases.***

- ***To the fullest extent possible, the process of qualifying for an incentive, delivering the incentive, and monitoring its operations should be administratively simple. The incentive should be readily comprehensible to those using it, simple to apply for, and to obtain in full and, in relation to the benefits provided, easy and inexpensive to administer and monitor.***

- ***Nigeria should address the timing of Pioneer Status acquisition. NIPC may want to increase the incentive value of the tax holidays that are available to investors in Nigeria by encouraging the award of pioneer status before the investor has decided whether to invest or not, and according to clear criteria.***

- ***The NIPC could, with the cooperation of other government agencies, encourage the development and maintenance of a list of industries and any other clear and relevant criteria for the automatic awarding of pioneer status. Any investor whose activities are in a qualifying industry and who meets any other transparent criteria specified in advance should receive pioneer status. The only procedural step***

[72] In addition, any specific recommendations prior to a full-blown tax incentives study would be premature, on the basis of the analysis conducted. Such a study would analyze the investment incentive scheme in Nigeria, the marginal effective tax rates for different types of investments resulting from existing incentives, and the impact of these incentives on the government budget.

ought to be a determination, by the Minister of Finance, that the investor has indeed met the criteria. The NIPC should seek to work with the Ministry of Finance to assure the automaticity of the Pioneer Certificate, so that an investor will know in advance of his "go ahead" decision what incentives he will receive; only when incentives are thus completely predictable will they influence investment decisions, as they are supposed to do (A "positive list" of industries already exists, where pioneer incentives may be awarded. An investor is not, however, automatically entitled to pioneer status if its activities are on the list. And there seems to be no clear list of other criteria by which a proposal is judged. This "positive list" for incentives should not be confused with a "negative list" of industries where foreign investors may not operate at all).

- ***The consultants also recommend that Nigeria establish a clearinghouse of investment incentive information and a web-based information site. FIRS, the NEPC, or the NIPC could establish the clearinghouse. As a first step, the government could require all current government agency web sites to contain useful investment information. In addition, the Nigerian Government should establish a multi-lingual central web site detailing all regulatory issues relevant to foreign direct investors. The Australian government web site for foreign direct investors provides links to all government departments and agencies that might be involved in the foreign direct investment process. This site details incentive programs and eligibility requirements, and provides direct e-mail links for additional information. Investors can apply on-line for particular programs.[73]***

- ***Furthermore, it seems clear that, even within the parameters imposed by the existing legislation, some improvements could be made to the transparency of the award criteria and the procedures used in the on-going administration:***
  1) ***Eliminate requirements for memorandum and Articles of Association, Feasibility Studies, and Business Permits from Pioneer Status Applications;***
  2) ***Network NIPC to CAC for verification of incorporation status;***
  3) ***Use post and e-mail to notify investors of processing completion;***
  4) ***Eliminate redundant NIPC Pioneer Status Certificate, as it adds nothing to the Production Day Certificate;***
  5) ***Replace NIPC Forms 1 and 2 with a single, simplified, rationalized, and harmonized form;***
  6) Hold mandatory, scheduled Committee hearings and Site Visits; and
  7) Institute deemed approvals for both Committee hearings and Site Visits, contingent upon time limits.

- The NIPC's discourse with respect to its role in incentives acquisition, and related documentation, needs to be brought in line with reality.

- In its strategy for reforming the incentives acquisition process, FIAS made the following observations and recommendations: "Good practice suggests that the investor be quite certain what he will receive before he makes the decision to invest. Otherwise, incentives serve only as rewards to investors for doing what they would have done anyway. Nigeria's entire policy should be reviewed, not just the procedures for awarding them. […] The NIPC will collaborate with the Ministry of Finance to assure the automatic

[7] *See,* <http://www.dist.gov.au/invest>

granting of the Pioneer Certificate, so that an investor will know in advance what incentives he will receive. […] Other approvals, for example from the Ministry of Industry, should be eliminated as they are redundant."[74]

[74] FIAS, *Nigeria: Strengthening the institutional strategy of the Nigerian Investment Promotion Commission* (September 2001), p. 12.

1.4 State-Level Business Registration

Under the Nigerian Constitution, the federal government has exclusive jurisdiction over business incorporation and business registration. Therefore, state governments should play no role in the process. However, certain states have gained some authority over the process through shared federal-state jurisdiction over tax registration or business premises certification. As a result, according to one Kaduna State chamber of commerce representative, the complete state-level business registration process and start-up requirements may take six (6) months to complete.

1.4.1 Procedure

1.4.1.1 Kaduna State

Kaduna's state-level Ministry of Commerce and Industry (MCI) has one investment function: to grant the business premises permit. No investor may operate a business without a business premises permit. In completing the business premises permit process, however, the Ministry plays other investment roles: For instance, the Ministry reviews an investor's business plan on behalf of the Bureau of Lands; and, the Ministry notifies the tax authority of the business' existence.

In order to obtain his business premises permit, the investor must complete the following steps:

Step 1: Investor Visits Ministry of Commerce and Industry and Submits Feasibility Study

The investor —presumably new to Kaduna if not Nigeria— visits the Ministry of Commerce and Industry and meets with the permanent secretary and his staff. The investor presents his credentials, including the company's Memorandum and Articles of Incorporation and Tax Clearance Certificate. This is essentially a non-mandatory but highly recommended protocol visit during which the investor solicits good will; the Ministry provides investment advice and general orientation. Ministry employees explain investment procedures and refer the investor to other Government agencies. The investor may however immediately capitalize on the opportunity to present his feasibility study directly to the Ministry. If he does not, the Ministry will in any event need to obtain it later on from a less certain source –the Bureau of Lands.

Step 2: Investor Purchases Business Premises Permit Application

The investor purchases a "Business Premises Permit Application" (appended) from a clerk on the first floor of the Ministry of Commerce and Industry. The application costs N100 (US$1). The clerk issues a receipt of payment.

Step 3: Investor Submits Business Premises Application

The investor completes and submits his business premises application to the Ministry of Commerce and Industry. The investor attaches a photocopy of receipt of payment for the form and a copy of the Certificate of Incorporation. At the time of submission, the investor pays an

application fee. A small-scale industry business premises permit costs approximately N5,000 (US$45).

Step 4: MCI Considers Feasibility Study

The Ministry of Commerce and Industry reviews the investor's feasibility study and processes his business premises permit application. If the investment requires land, the Ministry sends the feasibility study to the Bureau of Lands, with any comments attached. The Ministry of Commerce and Industry then sends the application to the Board of Internal Revenue.

Step 5: Board of Internal Revenue Registers Company

The Board of Internal Revenue registers the company for taxation purposes. The board creates a computer registration form, registers the business name for its own archives, and returns the printed form to the MCI, accompanied by the business premises permit application. The IRS also issues a *Receipt for Payment of Registration of Business Premises* (appended).

Step 6: Director of Commerce Signs Permit

MCI's Director of Commerce signs the business premises permit application, completing the authorization process.

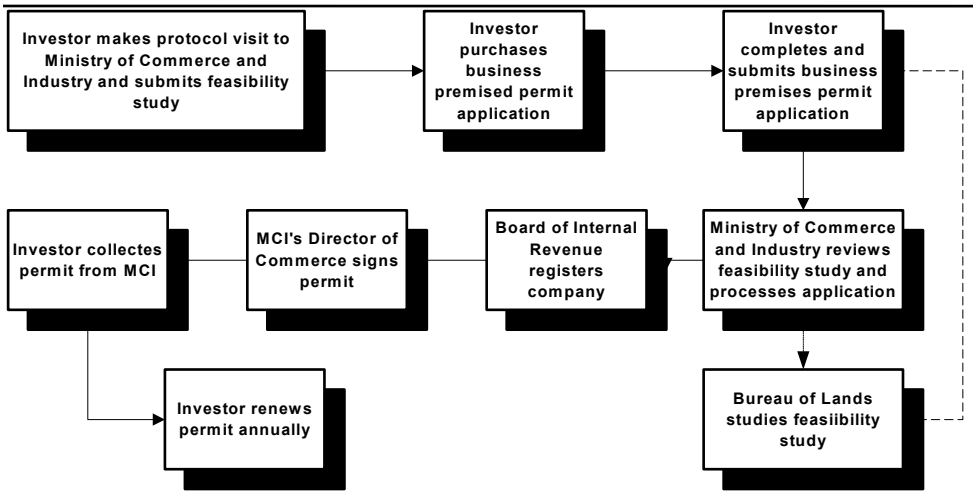
Step 7: MCI Gives Investor Authorized Business Premises Permit

The investor may pick up the signed business premises permit at this point. The Ministry of Commerce and Industry does not notify the investor when the permit is complete. Ministry staff members indicate that the entire process takes one week or less.

Step 8: Investor Renews Permit Annually

The investor must renew the permit annually; the annual renewal costs N3,000 (US$30).

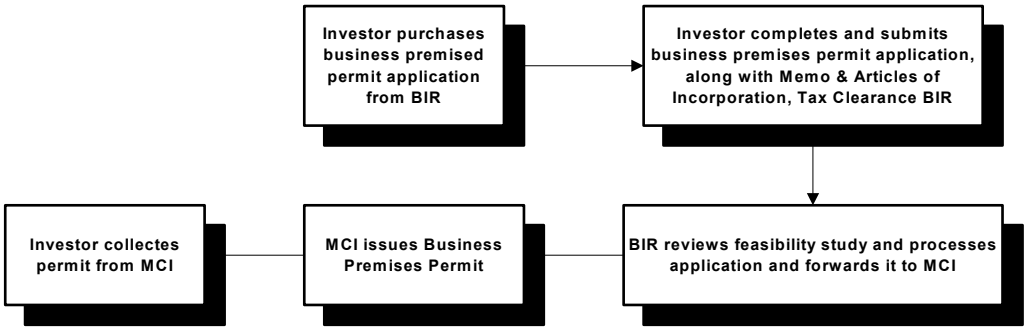
Kaduna State Business Premises Permit Application Process



1.4.1.2 Plateau State

In Plateau State, the Board of Internal Revenue (BIR) requires a business premises permit. The application form costs N100 and the actual registration N10,000, while annual renewal is N5,000. To apply for the BIR permit the investor presents the company's Memorandum and Articles of Incorporation and Tax Clearance Certificate. The BIR prepares the form and sends it to the MCI (unless the applicant physically takes it over), which actually issues the permit.

Plateau State Business Premises Permit Application Process



1.4.2 Analysis

Registering a firm with the fiscal authorities is not complex, but it requires numerous steps. An investor must complete separate federal and state tax registration processes. However, companies will have more than one tax registration number at the federal and the state level – companies have a registration number for each office through which they pay tax. Companies

cannot register electronically, although the government is developing a computerized system, contingent on a modernized telecommunications infrastructure.

While the purpose of the Kaduna State "Business Premises Permit Application" procedure is a bit unclear, its tie-in with tax registration grants it a certain importance. Given its striking similarities, the consultants assume the rationale of the Plateau State process to be the same one. Furthermore, while not universally required, business premises permits are not an unusual requirement of local governments around the world.

The *Kaduna State* Business Premises Permit application process provides ample illustration of interagency communication: the Ministry of Commerce and Industry, for instance, notifies the tax authorities of a new business. Moreover, the Ministry completes the process in one week, which is not unreasonable. The consulting team completed a hypothetical business premises permit application process and found the process straightforward.

The consultants' analysis will thus focus on the finer points of the process and its inefficiencies.

- The investor faces no complex business registration processes. However, the *Kaduna State* BIR failed to mention the MCI when asked how they identified a new businessperson. The BIR explained that an investor is expected to write to the BIR informing them of the business. However, BIR inspectors will identify any new business in due course. Furthermore, officials at both the Kaduna and Plateau State BIRs expressed surprise that some officials at their respective State MCIs told the consultants that they relay information to the BIR, which then issues the business premises permit. This lack of proper information and of transparency should be a matter of the utmost concern.

- The investor must visit the *Kaduna State* Ministry of Commerce and Industry three times to complete the Business Premises Permit process: to obtain an application; to submit the application; and to collect the authorized permit. Forms are only available at the Ministry, and the Ministry does not mail or electronically send authorized permits

- The consulting team is unclear why the *Kaduna State* Ministry of Commerce and Industry reviews the investor's feasibility study. This step lacks clarity and transparency. Is it really a feasibility study or a general business proposal? What precisely is MCI looking for in the study? The consultants did not gain complete answers to these questions. This step lacks transparency and presents a significant potential bottleneck. The Ministry of Commerce and Industry requires up to two months to respond to the Bureau of Lands with comments on the feasibility study. Clearly this is far too long a delay unless the ministry is scrutinizing every detail of the feasibility study.

  This is an area of unsure footing for the investor. Ministries of commerce and industry have neither the competence nor a proper mandate to judge the validity of a broad range of feasibility studies. Only the investing party can make the final decision based on the data presented. Civil servants may misinterpret their roles as surrogates to the investor; moreover, those less well intentioned can seize upon an open opportunity for exploiting a businessperson or a business opportunity. The *Kaduna State* MCI was unable to provide guidelines for business plan analysis -guidelines which would redirect the efforts of the well intentioned and preclude aggressions from the predatory. If MCI wishes to certify for the Bureau of Lands the "seriousness" of a proposal—an action related to but different from analyzing its potential for profit—it must have consistent indicators for

making assessments. The Bureau of Lands, just as well as MCI, could ascertain if a proposal falls within the category of allowable industries. The Ministry, however, can establish effective provisions to curtail speculation with little or no reference to a business plan.

- The lack of written guidelines is a source of concern. The one-week turnaround presumes that the application is complete and flawless, and such submissions may be the exception rather than the rule. For example, the *Kaduna State* clerk who gave the consulting team the application form, and issued a payment receipt, did not mention that company Memorandum and Articles of Incorporation must accompany the application. Information not requested is information not given. Because there is no written guide, and because personnel are not trained to provide all information necessary to complete a procedure unless they are specifically asked, the investor is likely to submit an incomplete application the first time. That the The *Kaduna State* MCI should demand proof that the business has been duly incorporated in Abuja is perfectly reasonable. However, since other agencies demand the Memorandum and Articles of Incorporation, the step is redundant.

- Since the Ministry of Commerce and Industry does not notify the investor when his permit is complete in either Kaduna or Plateau States, the investor must continue to contact or visit the Ministry to check on the permit status. Such inefficiencies have as much to do with infrastructure (post, telephones, electronic communications) as with a mentality that thrusts all responsibility for the successful business start-up upon the investor. Infrastructure notwithstanding, therefore, this mentality must improve, for even minor nuisances raise the cost of doing business.

1.4.3 Recommendations

It is the principal recommendation of the consulting team that the State-level MCIs be removed from this process, which the State-level BIR can perform on its own. Barring the implementation of this recommendation, the following measures will however also serve to ameliorate the process:

- The requirements for a feasibility study or a business plan, as well as for the investor's Memorandum and Articles of Incorporation, should be eliminated.

- All agencies involved in the investment process should work to expedite it. For the business premises permit process, the Ministry of Commerce and Industry should notify the investor when his permit is complete. While the consulting team recognizes the deficiencies of the telecommunications system, the team understands that the postal system functions well.

- Finally, to increase customer service, the consulting team recommends that State-level MCIs establish a business start-up window. The investor would visit the window for investment orientation, including a written guide detailing State-level business start-up procedures. The team recommends that the window have no authority to question, screen, or impose upon an inquirer; the window should serve merely as an information point. An information window could decrease ambiguity over the investor's starting point and clarify the agency's central role in the investment process. The consulting team

suggests that the guide use a question and answer structure to lead the investor through each step. Moreover, the window should provide all relevant forms for the MCI and possibly for State-level sister agencies.

Chapter 2: Locating

This chapter focuses on the various administrative aspects of locating a company in Nigeria. These processes include acquiring and registering rights to land, obtaining site development and building permits, arranging utility connections, and complying with environmental impact mitigation legislation.

The locating process is largely the purview of State Governments, who is responsible for land allocation and transfer, as well as (in most states), site development approvals. Although the consultants could not locate the legal basis for them, in some states, there are also environmental protection agencies.

The Federal Government is responsible for environmental issues and (for the moment) utilities provision.

Local Government Councils have jurisdiction over the following areas:[75]

- Collection of various housing & tenement levies and rates (in practice, including ground and industrial rates)
- Construction of roads and streets
- Sewage
- Issuance of "Customary Right of Occupancy" in rural areas[76]

While the Federal Ministry of the Environment confirmed that there is little legislative basis for these powers, Local Government Councils also appear to exercise jurisdiction over site-related public health and safety matters –a practice tolerated by the GFRN in the context of its own resource constraints.

The administrative locating processes are thus truly federal in nature and, as a result, vary in terms of their specifics depending upon the location of one's investment. Nevertheless, it is fair to state that, regardless of one's investment location, the administrative process related to "locating" are generally inefficient, non-transparent, slow, and expensive throughout Nigeria. A detailed analysis and related recommendations follows.

2.1 Site Acquisition

A 1994 Study showed that Nigeria had 106, mostly semi-developed, industrial estates, in 24 states. The cost of leasing "Category I" State-owned industrial and commercial land in Lagos, Abuja, Port Harcourt and Kano, is of N270,000 in application fees and documentation, and of N50,000 in annual ground rent/Hectare. Those fees are of respectively N110,000 and N10,000/Hectare for "Category II" land in other states.[77]

[75] *Nigerian Constitution*, Fourth Schedule, Section 7, Art. 1
[76] *Land Use Act (No. 6) of 1978,* 29 March 1978, Art. 6 (hereinafter '*Land Use Act'*)
[77] NIPC, *Investing in the Nigerian Economy,* pp. 13-33

The consulting team reviewed site acquisition processes in Kaduna, Plateau, and Lagos States, as well as in Abuja FCT.

In all states, a prospective investor must first locate a potential site. Typically, an investor will enlist real estate agent services to this end. The estate agent confirms land availability from the state-level Ministry of Land. The Ministry of Land is concerned with title to land and right to occupancy. It allocates unencumbered land, ensures proper zoning, and guards against projects that could have an adverse impact on the area, zone, or state.

All land in Nigeria belongs to the federal government. In the states, the governor serves as the trustee for all land in the state's confines. While Land is vested in the State-level Governments in trust, it is nevertheless an area of concurrent federal-State jurisdiction. Land may only be acquired Leasehold in Nigeria and is vested in the State, even when managed by traditional chiefs and private family heads. Although there is no freehold[78] in Nigeria, and therefore no permanent ownership of land that can be bequeathed to one's heirs *ad perpetuam*, land is leased for up to 99 years for residential plots and up to 40 years for industrial plots.

The investor can acquire land in one of two ways – through government allocation of industrial plots or through private acquisition of title. Ministry of Land officials note that the latter occurs in *isolated cases*. Kaduna State authorities, for instance, are likely to grant land to foreign investors if the investor is regarded as serious. Land acquisition from a private party is also more common in Abuja Federal Capital Territory than it is elsewhere.

Under the *Land Use Act*, the State Government grants statutory rights of occupancy and certificates of occupancy, subject to the payment of survey and registration fees. "Statutory rights of Occupancy" ("R of O") constitute an Interim Title of "exclusive" land rights for a definite term –enabling the holder to develop, improve and sell his property– until issuance of the "Certificate of Occupancy" ("C of O") by the Governor.[79] Certificates of Occupancy validate the cadastral delimitations of the title granted and specify ground rent owed. These definitive title documents can only be granted by the Governor himself, and gubernatorial signatures take years to secure. However, interim "Customary Right of Occupancy" can be granted by the Local Government in rural areas.[80]

Under the *Acquisition of Lands by Aliens Law (5 July 1971),* title may only be held by a foreigner in the following cases:[81]

1) *Prior* approval of the transfer by the Governor;
2) Acquisition prior to 5 July 1971;
3) Act of the State or Federal legislature; or
4) Duration of title of less than 3 years.

For the above reasons, most investors prefer a commercial lease; those who do not generally prefer acquiring title from the State because private titles are rarely clean and verifiable. Clean titles belonging, for instance, to such multinational corporations as UAC and Lever Brothers are the exception; in all other cases, investors must exercise extreme caution.

[78] Historically, there has been an attempt to establish a freeholds system in Nigeria but it turned out to be unsuccessful, due to the needs for Eminent Domain; ethnic land squabbles, etc.
[79] *Land Use Act,* Arts. 5, 8-10, and 14-15
[80] *Land Use Act,* Art. 6
[81] Arts. 1, 2, 3, and 6

To rent land from a third party title-holder, the investor must likewise complete the government approval process. If the rental period is greater than five years, approval requires the governor's signature. An investor who is simply renting space within existing premises and intends no exterior or structural modifications does not require Ministry of Land approval.

In all cases, the investor is strongly advised to consult the Town Planning Authority's master plan for urban development prior to land acquisition. The master plan sets out parcels of land for particular use – industrial, commercial, residential, agricultural, etc. Ideally, prior to seeking title acquisition approval, an investor visits the Town Planning office to study the town master development plan. The investor is also advised to verify the title and the encumbrances at the Title Registry. If he decides to proceed, the investor will be required to pay various survey, transfer and registration fees, as well as ground-rent tax.

The approval rate of Certificate of Occupancy assignment is then generally also subject to the approval of such public officers as the Director of Lands and/or the Governor. In all, between 8 and 16 steps are required of the investor to acquire land, depending on the state. According to private sector investors, the government may take anywhere from two (2) months (in less industrialized States) to several years (in the FCT, where land is scarce) to assign the Certificate of Occupancy.

The consulting team investigated the site acquisition process in several states. Although the process is similar across states, there are enough differences to warrant a close look at the steps.

2.1.1 Kaduna State

2.1.1.1 Procedure

Step 1: Investor Meets with Permanent Secretary at Ministry of Lands

The investor, particularly a foreign investor or a Nigerian investor with a substantial project, meets with the Ministry of Land's Permanent Secretary.

The investor purchases a Certificate of Occupancy application. The form costs approximately N3,000 (US$25).

Step 2: Investor Completes and Submits Certificate of Occupancy Application

The investor completes the application, attaching copies of the company's articles of incorporation and tax clearance certificate. When submitting the application to the Ministry of Lands, the investor pays a submission fee based on the project's size and nature. The processing fee for a heavy industry project, for instance, is approximately N10,000 (US$100); for a light industry project, the processing fee is approximately N6,000 (US$60).

Step 3: Ministry of Lands Dispatches Application to the Department of Survey and to the Department of Town Planning

The Ministry of Lands dispatches a copy of the application to the Department of Survey and the Department of Town Planning. Each department studies the application; they consider space, zoning, waste and effluents, and water and power supply issues. The Department of Survey and the Department of Town Planning return the application and its comments to the Ministry of Lands.

Step 4: Ministry of Lands Requests MCI's Feasibility Study Review

The Ministry of Lands forwards the investor's feasibility study or business plan to the Ministry of Commerce and Industry (MCI). MCI reviews the plan, studying in particular the project's land and utility requirements. MCI comments on the plan and returns it to the Ministry of Lands.

Step 5: Ministry of Lands Requests Kaduna Environmental Protection Agency Review

The Ministry of Lands dispatches the application to the Kaduna Environmental Protection Agency for review. This step occurs only if either the Ministry of Lands or the Ministry of Commerce and Industry indicate that the project could be environmentally detrimental. The Environmental Protection Agency reviews the application and project plans; the agency may ask the investor for additional information or action. If this is the case, the investor will follow the steps set out under the Environmental Compliance section below.

Step 6: The Ministry of Lands Issues Right of Occupancy Certificate

Having received all the comments and approvals of all concerned agencies, the Ministry of Lands issues a Right of Occupancy Certificate. The Right of Occupancy Certificate represents a near-final authorization: indicating that the project meets all agency conditions. With the Right of Occupancy Certificate the Ministry of Lands approves investor site acquisition. The Right of Occupancy Certificate also details specific lease terms. The investor appears in person to sign his agreement of the lease terms.

Step 7: Ministry of Lands Requests Governor's Approval

The Ministry of Lands dispatches the Right of Occupancy Certificate to the governor, requesting his authorization.

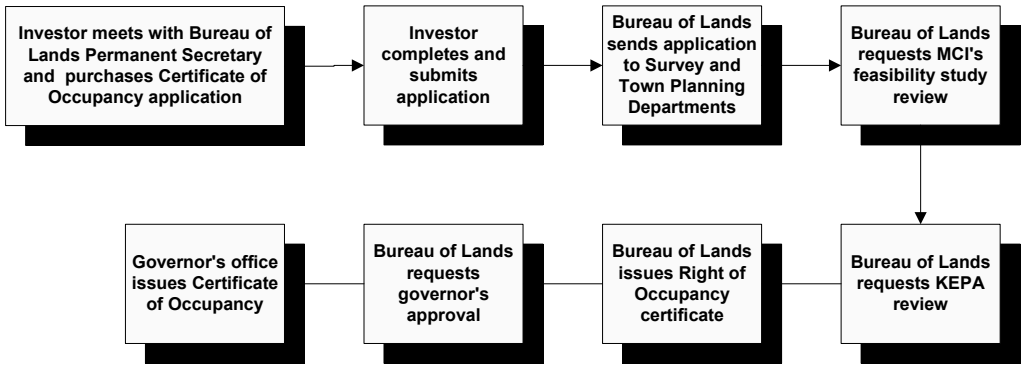
Step 8: Investor pays ground rate to Local Government

Prior to being granted his C of O. The investor who is acquiring ground title must pay local governments ground rates. In Kaduna South, for instance, the residential ground rate is of N500, the commercial ground rate of N10,000, and industrial rates are variable, but typically much higher.

Step 9: The Governor's Office Issues the Certificate of Occupancy

The Governor gives final approval of the site acquisition. Upon receiving proof of ground rate payment, he issues the investor a Certificate of Occupancy, indicating that the investor holds the land title under specified conditions and for a determined time period.

Kaduna State Site Acquisition Process



2.1.1.2 Analysis

The consultants' first analytical comments with respect of land acquisition in Kaduna State, are equally valid for all of the states throughout the country:

- The differential treatment of foreigners -a legacy of de-colonization- does not conform with international best practice. Indeed, it is against the spirit of the principles of "National Treatment" and "Fair and Equitable Treatment" enshrined in various international instruments with respect to the protection of investments.

- Relatedly, investors report that identifying available land is a problem in Nigeria because of poor records keeping, variance in procedures from state to state, and a backlog of unresolved title disputes. Businesspeople report that the surveying and title deeds system inadequately establishes legal title, and land disputes are reportedly common. The problem of accessing accurate information is further exacerbated by the lack of computerization in most individual states' land registries, much less a national digital databank of survey and title records.

- One investor also noted that the eminent domain rules in Nigeria remain somewhat ill defined in regard to articulating what constitutes a "public need" and implementation remains highly discretionary.

- Poor planning is another reason for unavailability of land. According to Akin Akindoyeni, Chairman of the Council of Registered Builders of Nigeria (CORBON): "The more the governments insist on plans being made and followed, the better and more rapidly developed our nation would be…We believe that all human settlement areas ought to be planned for optimal development of all indicative and foreseeable activities… Town planners such concentrate on the orderly, social, and economic utilization of land… Failure to accept this basic doctrine being preached by the NIOB [Nigerian Institute of Building] has continued to result in sub-optimal development of our environment and consequently, our national economy."[82]

[82] "Physical Planning and Economic Development of a Nation (2)," *This Day* Vol. 8 No. 2732, 15/10/02

- Furthermore, according to Dr. Femi Olomola, immediate past president of the Nigerian Institute of Town Planners; "State ownership of land through the 1978 Land Use Decree and large scale public acquisitions keep large quantities of land off the market… Well over 60 percent of developable land in [Lagos] state are under one [public] acquisition or another." Dr. Okomola goes on to state that those 'lucky' enough to own land in areas 'excised' from such acquisitions "can not secure title to their land as government will not issue title unless there is an approved layout plan covering the area. Yet the community cannot afford to pay… Consequently, the buyer is *ab initio* a slum dweller."[83]

Turning more specifically to the problems of Kaduna:

- The consulting team is unclear about the investor's first step in the land acquisition process. In Kaduna, as the flowchart indicates, the investor might visit the Bureau of Lands before any other agency; however, given MCI's authority to scrutinize the project as well, this shortcut might be inadvisable. The land acquisition process involves numerous steps, which are neither written down nor necessarily explained to the investor in a single visit. This means that a seemingly simple step –obtaining and completing an application (which actually requires two steps, not one)- presents the risk of rejection upon first submission. Nowhere on the application form, for example, are there instructions to append certificates or to annex a feasibility study. But the applicant who fails to include these documents is likely to waste a trip, one of his own or of his (often costly) agent.

- In addition, the submission of multiple documents creates repetition either with the site acquisition process or downstream in the investment process. The Ministry of Commerce and Industry, for instance, requires the investor to submit the same documents for the site acquisition and business premises permit. Unfortunately, the agency does not archive the certificates from this step with the Bureau of Lands. These redundancies are both time-consuming and costly.

- The consulting team questions the feasibility study required in step 5. The consultants are not convinced that the Ministry of Commerce and Industry should review the investor's feasibility study for either the business premises permit process[84] or the land acquisition process. The Ministry of Commerce and Industry needs to determine an investor's seriousness; it is unlikely that a detailed feasibility study (containing medium or long-term projections) is necessary for such determination. Each agency will have its own concerns. The Bureau of Lands will not want to allocate valuable property to a speculator. But the agency has other means to curb speculation. It can determine a calendar of events leading towards operations and fine the investor for flagrant failure to meet targets. It can seize back the property under very clear, constitutionally defensible circumstances. It can forbid subletting, and it can begin to collect rent on the property within a relatively short period of time. All such measures are highly dissuasive of speculation, and none require in-depth analysis of project viability.

- The interagency communication evidenced when the Bureau of Lands requests a project review from the Kaduna Environmental Protection Agency is a positive process efficiency indicator. These types of efficiencies generally work in favor of all parties, not

[83] "How policy failures threaten Lagos megacity status, by town planner," *The Guardian,* 14/10/02, p. 33
[84] See chapter 1; Business Registration

least the investor. If the senior and higher mid-level civil servants with whom the consultants met are the ones making the judgment as to whether or not KEPA should be involved, those judgments are likely to be sound. If not, it is always possible that KEPA will become involved when there is no need, or that it will be ignored when there is need. Few businesspersons invite the involvement of environmental agencies, nor do they generally welcome environmental legislation affecting their industry, but early engagement is far preferable to injunctions late in the process.

- Although interagency coordination in this process is admirable, the roles and responsibilities of each agency are unclear – especially to the investor. The consultants question the lack of procedural clarity: an investor, for instance, cannot track the status of his application over time. The only way for him to know where his application is at any given time is through special entreaty during personal visits, or—if he has established excellent rapport with the agency—through telephone calls. Responses are unlikely to be immediately forthcoming, except in the case of investments sufficiently substantial to have captured the interest of senior officials.

- The consulting team questions the step that requires the investor to appear at the Bureau of Lands to obtain the Right of Occupancy Certificate. While making a personal visit hardly seems like an obstacle to investment, neither is it in conformity with best practices. Once again, part of the problem relates to inadequate communications infrastructure, but part of it derives from status quo government business, especially in Nigeria's interior small cities.

- The right of Occupancy Certificate and Certificate of Occupancy are redundant. That the governor must give ultimate approval and issue the Certificate of Occupancy suggests more than a hint of mercantilist practice, as well as of recent military rule. Officials allege that a governor's denial is unusual, but that possibility haunts every transaction. It is not clear that the governor must publicly justify his decision. Practice in modern, democratic states severely curbs arbitrary decisions, even at the gubernatorial level.

2.1.1.3 Recommendations

- First, as a general comment, applicable to the entire national framework (and not just to Kaduna), the consultants recommend the abolition of the *Acquisition of Lands by Aliens Law,* as inconsistent with international best practices and investment guarantees. The leasehold-only system in place is an entirely adequate, and equitable, guarantee that foreigners will not come to control all of Nigeria's land resources. Furthermore, stronger safeguards against arbitrary property seizure or lease abrogation need to be introduced in Nigeria. At present, the system creates risk for investors and allows public officials too much leeway in taking land from private individuals.

- As a second general, nationwide comment, it must be noted that all legal problems inherent in the *Land Use Act* need to me addressed. According to the NESG: "For micro and small class of business enterprises to surmount… problems and challenges while enhancing their productivity, they need… easy access to land… The NESG therefore recommends that government should… Review the Land Use Act to create access to land and minimise the delays in processing land transactions."[85]

[85] NESG, "Survey on Micro & Small Enterprises," *The NESG Digest* (September 2002), p. 23

- The consulting team is unclear on why the MCI should have any role at all in land acquisition and recommends its dis-involvement. At a minimum, however, pending such re-engineering, the team recommends that the Bureau of Lands coordinate with the MCI to reduce redundancy of document requests from the investor. The Bureau of Lands should reconsider its feasibility study request. Reconsidering does not necessarily imply abolishing the measure, but it certainly denotes asking precisely what information is *essential* for the Bureau of Lands to make its decisions, and then restricting its demands of the applicant to those data. It is absolutely necessary for Kaduna and other states to rationalize their requirements in terms of submission of a business plan or a feasibility study, and then to clarify exactly what is meant by this plan, or study. They should demand no more than a basic, summary business description with data on size, product, employment, and various input requirements.

- Any investor in the industrial or manufacturing sectors must prepare an EIA prior to commencing the investment process. However, at the level of the Federal Government, Nigeria should make clear this expectation. Such clarity will help potential investors to prepare.

- The Department of Lands should produce a clear procedural guide on Certificate of Occupancy requirements. The department should also design and maintain a standard checklist of steps and authorizations/ reviews. These checklists function perfectly well on paper copy and need not be computerized to be effective. A good checklist would provide the date on which an office received the dossier and the date on which it dispatched it to the next office. A checklist of this nature is a track record of each office or reviewer. It reveals bottlenecks and highlights good performance. It is a medium for improving the responsiveness of civil servants, and it provides a measure of security to an investor, who may know where his application sits at a given moment.

- In the future, Nigeria will likely have improved electronic communications; therefore, public and private organizations should actively prepare to operate in the telecommunications age. Two overarching phenomena will guide future communications: the relational database and instant communications. At the heart of institutional reengineering, the relational database enables exact, flexible, and efficient data sharing. With a database system, the Ministry of Lands would never have to send a message to the MCI or to the Kaduna Environmental Protection Agency. Instead, all agencies would track an investor's dossier in one electronic file. Instant communications is hardly new; for over a decade most African cities have used the fax machine in everyday office use. However, rational use of modern communications structures has been slow in coming to Nigeria, especially the public sector. The consulting team recommends that Nigerian government agencies recognize — at least for temporary purposes — faxed and electronic signatures. The government may deem these unacceptable for permanent files or definitive authorizations; however, faxed and electronic signatures will expedite authorizations in process. A safe, conservative policy could make all authorizations effective upon receipt of faxed or electronic signatures but provisional attendant upon a final ink signature.

- Nigeria's governors need, with respect to land management, to relinquish their micromanagement of title transfer matters. By virtue of the authority invested in them by the *Nigerian Constitution*, Governors may delegate to the Bureau of Lands the final decisions concerning right of occupancy to accredited investors. One can attach

limitations to such an authorization, and these could be in size of land, value of investment, sector of business, and so forth. The result would be more fully invested Bureaus of Lands and greater expeditiousness to the investment process, and no loss of theoretical authority to the Governors. It should be noted that representatives of the MoC and of the NIPC concur with this assessment and support this recommendation.

2.1.2 Plateau State

2.1.2.1 Procedure

Plateau State Site Acquisition Processes are similar to those of Kaduna State. However, they differ sufficiently on certain details to warrant an independent discussion.

Step 1: Investor Requests Expedited Service

The investor writes to the Governor, describing his project and requesting expedited service. He sends a copy of the communication to the Bureau of Land's permanent secretary.

Step 2: Governor Forwards Request to Bureau of Lands Permanent Secretary

If the Governor is favorably inclined to fast-tracking the site acquisition process, he forwards the request to the Bureau of Lands Permanent Secretary. Bureau of Lands officials stress the importance of this measure, which can cut the approval period from six months (6) or more to just three (3) months. The Permanent Secretary turns the dossier over to the Director of Lands.

Step 3: Investor Purchases Application Form

The investor purchases a Certificate of Occupancy application form [Land Form 1-A] from the Bureau of Lands. The application costs N3,000 (US$30).

Step 4: Investor Completes and Submits Certificate of Occupancy Application

The investor submits a completed application form to the Director of Lands. The application includes the company's articles of incorporation and tax clearance certificate. Upon submission, the investor pays a processing fee. The processing fee for heavy industry is N10,000 (US$100); the processing fee for light industry is N3,000 (US$30).

The Bureau of Lands registers the Certificate of Occupancy application and opens a file for it. The Director of Lands is the coordinating office for the site acquisition process.

Step 5: Director of Lands Reviews Application

The Director of Lands and his staff review the application. After completing the review, the Director of Lands dispatches the application to the Survey Department and the Town Planning Department.

Step 6: Survey Department Reviews Application

The Survey Department reviews the application. After reviewing the application, the department returns the dossier, and any comments, to the Bureau of Lands.

Step 7: Town Planning Department Reviews Application

The Town Planning Department reviews the application, and returns the file with any comments to the Bureau of Lands.

Step 8: Bureau of Lands Dispatches Application to Land Use Allocation Committee

After the Survey and Town Planning Departments make their comments, the Bureau of Lands sends the application to the Land Use Allocation Committee.

The Land Use Allocation Committee reviews the application, making sure it fits within the state's land development plans. If the site acquisition involves a private transaction, the step may be skipped.

Step 9: Land Use Allocation Committee Approves Application

The Land Use Allocation Committee (LUAC) approves or rejects the application and returns it to the Director of Lands. The investor pays the Director of Lands a fee of N5,000 (US$50) upon approval. The investor signs approval of specific allocation conditions.

Step 10: Permanent Secretary Grants Right of Occupancy

The Director of Lands passes the application, the Land Use Allocation Committee recommendation, and the investor's signed acceptance to the Bureau of Land's Permanent Secretary. The Permanent Secretary grants Right of Occupancy to the investor (actually an "Offer and Terms for Grant of Right of Occupancy" -Land Form 7, made valid through signature of the "Acceptance Letter for Right of Occupancy").

The Permanent Secretary then dispatches the application to the Surveyor General.

Step 11: Surveyor General Registers Right of Occupancy

The Surveyor General looks at the approved application and attached Right of Occupancy Certificate. He registers the Right of Occupancy and the allocated plot. The Surveyor General dispatches the certificate and application to the Data Processing Unit.

Step 12: Data Processing Unit Prepares Site Plan

The Data Processing Unit prepares the site plan and attaches it to the application and the Right of Occupancy Certificate. The Data Processing Unit dispatches the application, certificate, and site plan to the Director of Lands.

Step 13: Director of Lands Prepares Certificate of Occupancy

The Director of Lands prepares the Certificate of Occupancy. The Director dispatches the certificate to the Permanent Secretary who will pass it to the Governor for final approval.

Step 14: Governor Approves Certificate of Occupancy

The Governor reviews the application and the Right of Occupancy Certificate. If he chooses to approve the application, he signs the Certificate of Occupancy and dispatches it to the Ministry of Lands Permanent Secretary.

Step 15: Permanent Secretary Delivers Certificate of Occupancy to Director of Lands

The Permanent Secretary gives the signed Certificate of Occupancy to the Director of Lands

Step 16: Director of Lands Delivers Certificate of Occupancy to Investor

The Director of Lands gives the investor the signed Certificate of Occupancy ("Land Form 3").[86] The certificate is the investor's title deed to the allocated or privately negotiated plot. The investor may now proceed with the site development process.

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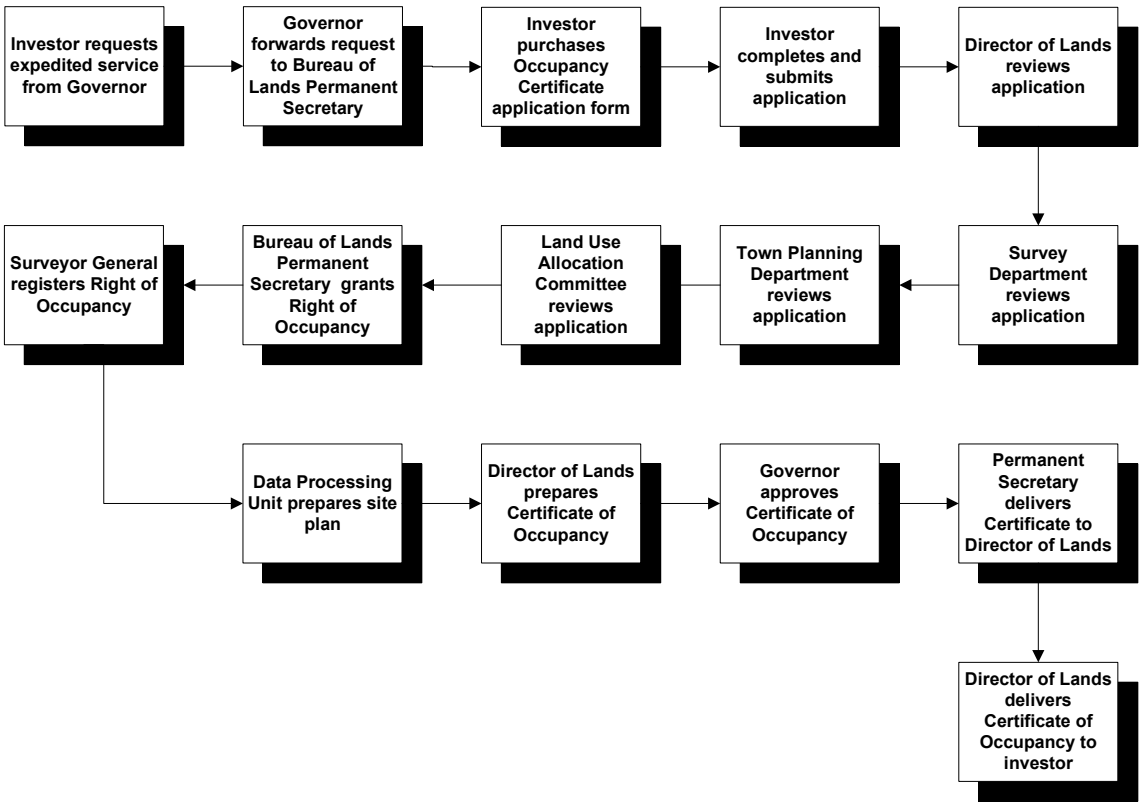
Plateau State Site Acquisition Process



2.1.2.2 Analysis

- Overall, the Bureau of Lands approval process is long and complex, which can retard final approval of a project. It is too easy to forget that delay translates into cost and cost affects price, or competitiveness. The investor must recover all his costs, including those incurred during the approval process. The least of these costs may be fees and payments, and the greatest may be daily loss of income, perhaps coupled with interest due on loans.

- The state governor's role lacks transparency. Like many countries, Nigeria must struggle against a well-earned reputation for placing influence above all things in securing government approvals. While some businesspersons may find solace in knowing that they can succeed by winning favor, others will be weary of this environment. Investors should not, therefore, be required to request expedited service from the Governor.

- Moreover, the entire Certificate of Occupancy process seems unnecessarily cumbersome, adding four (4) steps to the land acquisition process after the Right of Occupancy has already been granted. For instance, all of the agencies that must study the application form in turn -Bureau of Lands, Surveys, Town Planning, and LUAC- unnecessarily lengthen the evaluation process. The importance of the review notwithstanding, given the length of approval from a single state agency, one wonders if the way in which this committee conducts the reviews does not compromise efficiency. Within the Bureau of Lands, the consultants uncovered no indication that departments and committees are held to tight schedules for responses, or that the investor can ever

learn his application's status. Moreover, the consulting team is not sure if LUAC has consistent decision-making criteria –and LUAC makes the formal recommendation for the Right of Occupancy.

- It is unclear whether or not the Surveyor General, conforms to a schedule in completing dossier registration. One should know the time or days allocated to completing this task.

- It is unclear why the Data Processing Unit must become involved to prepare and issue a site plan, rather than the LUAC, Town Planning, the Survey Department or the Surveyor General in some previous step.

- It is, finally, unclear why several steps after a Survey Department review, the Surveyor General becomes involved in registration. Both surveyor tasks could be handled simultaneously.

2.1.2.3 Recommendations

- The consulting team recommends that both the governor's office and the Bureau of Lands communicate directly with the Governor, rather than the investor doing so. In fact, the governor should eliminate the step whereby the investor requests expedited service. Instead, the consultants recommend establishing fast track processing through the Governor's office --a transparent and normal *modus operandi* with predetermined guidelines.

- To decrease the amount of time required for each relevant agency to review the application in turn, the consulting team suggests that all concerned agencies should review the application in a single-step committee decision-making process.

- The site acquisition process involves numerous steps in which the file returns to the Permanent Secretary, creating potential bottlenecks. Given the range of responsibilities a Permanent Secretary has, the consulting team recommends that he see the dossier only upon demand – to increase process efficiency. The Permanent Secretary should also have a compelling reason to overturn an approval already given.

- The Bureau of Lands and other agencies should undertake a performance analysis leading to severe reduction in approval time for investment. That a fast-track application through the Bureau of Lands should take three months is a delay not easily justified by the logical requirements of review. Such steps as Data Processing, Surveyor General registration and gubernatorial approvals should be abolished. In fact, it presumes that the application passes approximately one week in each office through which it transits. Only in a few cases, such as preparation of the site plan, does a full week seem reasonable. In other cases, such as registering in the office of the Surveyor General or going through the Director of Lands en route to the Governor, one or two days would suffice. In fact, some steps should easily be completed in several hours. The consulting team also recommends notification via memorandum or, eventually, a Local Area Network to replace passing of a physical archive. Without loss of appropriate review and even without a computerized process, the Bureau of Lands should reduce its *normal* approval time to one month.

2.1.3 Lagos State

2.1.3.1 Procedure

Step 1: Investor Obtains Land Survey and Master-plan at Survey Department

The investor's surveyor visits the State Survey Department to obtain a master plan. Verification of the site plan, master-plan and land survey are recommended for all new investment to counteract encroachment in built-up areas avoid illegal survey changes and confirm zoning and land use designations of assigned property.

Step 2: Investor Verifies Title at Title Registry

Having verified the site plan and master plan, the investor visits the Title Registry to verify the existence of a legal title for his chosen site. This will ensure avoidance of any unanticipated issues during assignment.

Step 3: Buyer and Sales draw up Deed of Conveyance

After the buyer has satisfied himself that the title and plot are secure and regular, the buyer and seller draw up a Deed of Conveyance, typically with solicitor's assistance.

Step 4: Investor Files Application for Assignment of C of O

Certain of his transactions guarantees, the investor completes an application for the Certificate of Occupancy. He files the application the Lagos State LUAC and the Lagos State Secretariat. The application must include the following documents:

- Survey
- Deed of Conveyance
- Application form
- Tax Clearance Certificate
- Proof of payment of ground rent on other Buyer properties

Step 5: Lagos State Government Publishes Request for C of O

The Lagos State Government publishes the investor's request for a Certificate of Occupancy assignment in a newspaper, ensuring that any parties who may have any rights or liens on the property have a chance to object to the assignment.

Step 6: Governor Signs Certificate of Occupancy Approval

After the statutory period of legal publicity, the LUAC deems the assignment in order. It then transfers the file to the Governor's office. The Governor, the Governor's Permanent Secretary, or the Attorney General of Lagos State sign approval of the Certificate of Occupancy. Signature takes approximately 48 hours.

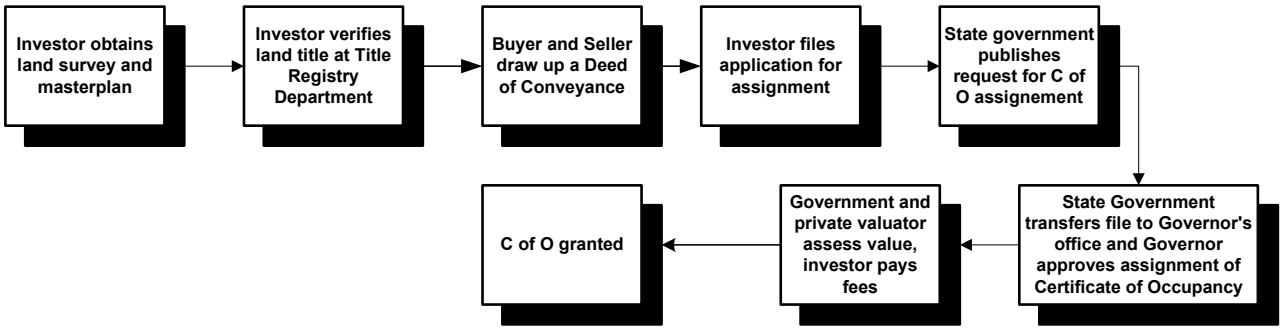
Step 7: Investor Gets Private Property Valuation, Completes Assessment and Payment of Capital Gains

Prior to collecting his C of O the investor must provide an assessment of property value, which the Government may use to determine applicable taxes. Although the Government assesses the value of the property itself, most investors also get a private Valuator to assess the property value.

Step 8: Investor Acquires C of O

After the property value has been assessed and transfer taxes paid, the investor may present himself to the Government offices and collect his C of O

Lagos State Site Acquisition Process



2.1.3.2 Analysis

- In certain respects, the land acquisition process in Lagos State appears more streamlined and rational than in certain other states. Indeed, verification at the Title Registry and Survey Department are optional, at and various other steps required in other states never occur at all (MCI, Surveyor General, Data Processing, Permanent Secretary, Dual Right of Occupancy, Certificate of Occupancy, process, etc.) On the other hand, Lagos state alone appears to require legal publicity and property valuation by government.

- Notwithstanding, the procedural efficiency noted in certain aspects of the Lagos State Site Acquisition model, the procedure remains inexplicably lengthy. The total minimum amount of time required for land access procedures in Lagos State is of at least six (6) months, with facilitation the procedures may however take up to two (2) years. Given this delay and other factors, most companies opt for commercial leases. Commercial leases simply require a Stamp from the Registrar of Stamps if the lease is of over one (1) year in duration. The entire procedure for obtaining this stamp on the lease involves fewer than two (2) steps (drop off and pick up lease), two (2) days, and nominal costs.

- The process of obtaining property value assessment from the Government Valuator must usually (as is the case for miscellaneous other public officials) be facilitated with non-statutory fees in order for him to produce his report. This renders the acquisition process a very expensive proposition. Not counting professional facilitation fees (in practice necessary in order to track one's file), the overall transaction costs of the process are as follows:

    - Capital Gains Tax: 15% of value of property
    - Facilitation costs: 10% of value of property
    - Total costs: 25% of value of property

2.1.3.3 Recommendations

- Upon application, the LUAC should not have to require submission by the investor of such documents as the certificate or proof of ground rent payment, tax clearance, as these are government documents. As such, the onus should be on the government to network amongst its own various agencies and share such information.

- Few Common Law jurisdictions internationally require legal announcement in a newspaper for assignments of property. Indeed, the inscription in the Title Deed Registry exists for this purpose. Lagos State should consider abolishing this requirementfor zoned, urban plots.

- As in other states, Lagos State should move away from high-level approval of Certificate Occupancy. Indeed, if the experience of other Nigerian States is any indication the wait for the file to get into the right hands at this stage is the single longest cause of delay in the site acquisition process.

- The Lagos State Government should, whenever possible, itself communicate the completion of the process or sub-steps within it to the investor, rather than requiring the investor to track the process himself, usually at considerable professional facilitation costs.

- Finally, a proper Investor's Guide to site acquisition in Lagos State should be prepared and widely disseminated.

2.1.4 Abuja Federal Capital Territory

Virtually all of the steps in the site acquisition, registration and development process in the FCT occur at the FCDA. The FCDA has the following functions:

- Land Administration
- Land Registration and Records
- Land Surveys
- Land Planning
- Physical Planning & Design
- Engineering & Infrastructure
- Development Control

For site acquisition, the following steps must be followed:

Because Land administration by the Federal Capital Development Authority (FCDA) means that practically all land in Abuja is acquired from the State, the Federal Capital Territory of Abuja (FCT) is taken as a separate case in terms of site acquisition procedures. However, as land may, in theory, be purchased either from the State or from private parties, both procedures are discussed.

2.1.4.1 Procedure for Site Acquisition from the State

Federal Capital Development Authority (FCDA)

Step 1: Investor Obtains Money Draft

To open a "Land File," the investor must submit a Money Draft covering application and processing fees. The investor completes this step with a bank or "Aso Service" visit.

Step 2: Investor Files Documents to Open Land File

The investor opens a "Land File", by submitting the following documents to the FCDA's Department of Land Planning:

- "Request for a Certificate of Occupancy" Application Form
- Schematic Design of facilities to be constructed
- Tax Clearance Certificate
- Corporate Registration ("RC") Certificate
- N52,500 Money Draft for Application and Processing Fees
- Application Acknowledgement and Reference Number

Step 3: Investor Collects Application Acknowledgement and Reference Number

The investor collects an Application Acknowledgement and Reference Number from the FCDA "Administrator." The government grants FCT land on a quota system based on the applicant's state of origin. The FDCA does not acknowledge requests from applicants from states with filled quotas.

Step 4: Land Use Allocation Committee Reviews Request

The Land Use Allocation Committee (LUAC) considers the investor's application at a monthly meeting. The LUAC makes a recommendation to the Director of Lands, pursuant to its statutory attributions.

Step 5: Director of Lands Approves Application

This is a *pro forma* step, whereby the Director of Lands endorses the LUAC's recommendations and makes his own recommendations to the Minister of the FCT.

Step 6: Minister of the FCT Conveys "Provisional Approval"

The Minister of the FCT reviews the Director of Lands' recommendations. He subsequently endorses the LUAC allotment decision; and provisionally signs a Certificate of Occupancy (C of O), kept on record at his office. The Minister then conveys his "Provisional Approval" regarding the issuance of the C of O to the Applicant; pursuant to his attributions under the *1978 land Use Act*, pending payment of all applicable fees.

Step 7: Investor Visits Surveys Department, Pays Survey Fees

The investor visits the Surveys Department to continue application processing. The Surveys Department will conduct any applicable surveys and the investor will pay survey fees.

Step 8: Investor Registers Land Transfer, Pays Registration Fees

The investor visits the Registration Department to register the land transfer. He pays applicable registration fees.

Step 9: Investor Consults Planning Department, Pays Planning Fees

The investor visits the Planning Department to continue application processing. He pays any applicable planning fees to the department.

Step 10: Investor Records Land Transfer at Data Department, Pays Applicable Fees

The investor visits the Data Department to record the land transfer and pay applicable land transfer recording fees.

Step 11: Investor Pays Other Applicable Fees

The investor visits the Accounting Department to pay any remaining applicable fees. The following fees may apply:

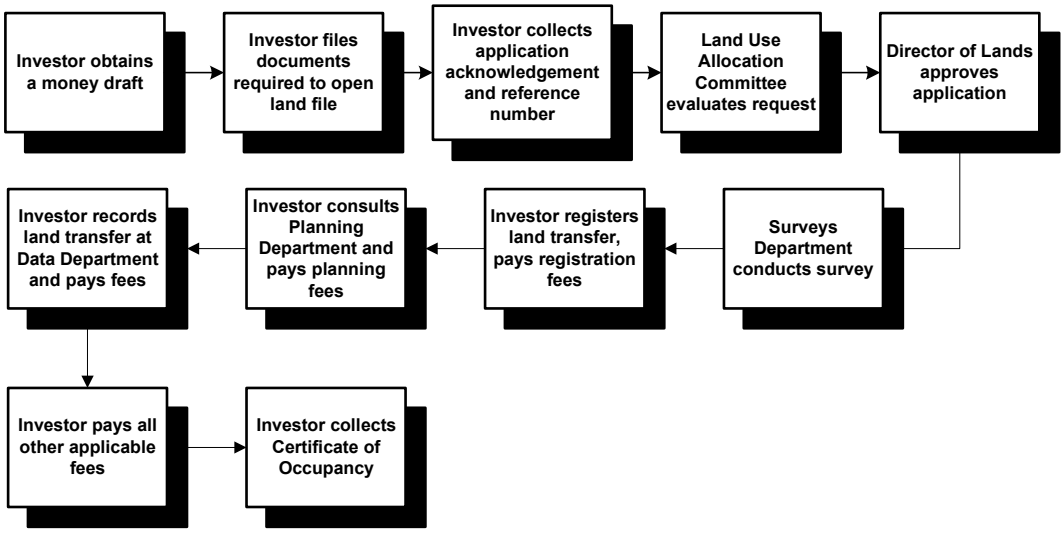
- Lay-out Fee
- Premium
- Annual Ground Rent (Tax)[87]
- Processing Fee

The amount of each fee varies, depending on the size and location of the land parcel. At a minimum, these fees will total 5 %of the land's value.

Step 12: Investor Collects Certificate of Occupancy

Once the FCT Minister of the FCT has signed the investor's Certificate of Occupancy, the investor collects it from his office. The investor must present a passport as a form of identification; he must also present proof of payment of all applicable fees.

Abuja FCT State Site Acquisition Process



2.1.4.2 Procedure for Abuja FCT Private Party Site Acquisition

The investor may also obtain land from a private party; this option is less risky than acquisition from the State. However, as with site acquisition from the State, acquisition from a private party requires a Certificate of Occupancy and therefore, FCDA approval.

Step 1: Investor Submits Title Registry Search

[87] In the FCT, ground rent is currently of approximately N2,000/$m^{2.}$

It is recommended that, prior to beginning assignment of C of O procedures, the investor consult the Title Registry to assure himself of the seller's title and of its unencumbered status. To complete a title search, the investor must submit the following documents to FCDA's Land Planning Department, which will conduct the search:

- Simple written request to the Director of Land Planning
- Fee of N5,000

Step 2: Investor Collects Title Search Results

One day after filing a title search request, the investor may collect the requested information from the Land Planning Department.

Step 3: Investor Requests Survey Search

It is also recommend that the investor consult FCT survey maps and plans to verify boundaries, dimensions, and land use. To do so, the investor submits a written request to the FDCA Surveys Department and pays a fee of N5,000.

Step 4: Investor Collects Survey Search Results

One day after filing the survey search request, the investor may collect the requested information from Survey Department staff.

Step 5: Investor and Seller Draw up Deed of Conveyance and Power of Attorney Agreements

Once the investor is comfortable with the title and land use status of the identified parcel, he draws up a "Deed of Conveyance" Assignment Agreement with the seller.

The investor will have a Power of Attorney (PoA) agreement drawn up at the same time; under this agreement, the seller grants the buyer PoA over the parcel pending completion of full Certificate of Occupancy assignment.

Step 6: Investor Registers PoA with FCDA's Lands Department and Applies for Registration of C of O Assignment

To guarantee his rights, the investor registers his Power of Attorney Agreement with the Lands Department. This is a *pro forma* step, whereby the Director of Lands endorses the transaction and forwards it to the Registration and Data Departments. The investor pays a N50,000 fee for this service.

At this time the investor will file the following documents:

- Letter of Application for Registration of Assignment of C of O, addressed to the Director of Lands;

- Deed of Conveyance; and
- Photocopy of C of O.

The Lands Department forwards these documents to the FCDA's Valuation Department for preliminary processing.

Step 7: Investor Registers PoA with Registration Department and Pays Registration Fees

The investor registers his Power of Attorney Agreement with the Registration Department. The investor pays applicable registration fees.

Step 8: Investor Records PoA at Data Department and Pays Applicable Fees

The investor records his Power of Attorney Agreement with the Data Department. The investor pays applicable recording fees.

Step 9: Valuator Inspects Property

Upon receiving the Assignment Documents from the Lands Department, the Valuation Department assigns a valuator to inspect the property for assessment of applicable transfer fees. The investor must organize a site inspection with the assigned valuator and transport him to the site.

Step 10: Valuator Files Report

The valuator files a report with the Valuation Department. The Director reviews the report.

Step 11: Investor Pays Applicable Fees

The investor schedules a meeting with the Valuation Department Director to discuss valuation report contents and collect a bill for applicable fees. The investor pays the following fees:

Capital Gains Tax:	5.0% of sales price
Registration Fee:	2.5% of sales price
Stamp Duty:	2.5% of sales price
Total Fees:	**10%** of sales price

The department immediately issues a payment receipt and stamps as proof of payment.

Step 12: Investor Registers Land Transfer and Pays Registration Fees

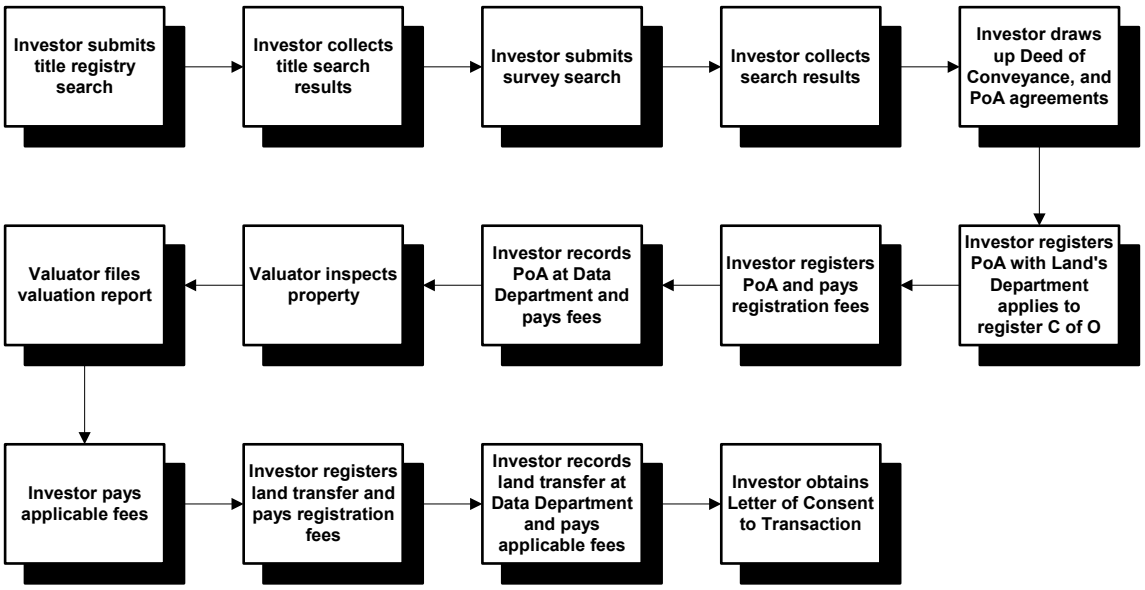
The investor registers the land transfer at the Registration Department and pays applicable fees.

Step 13: Investor Records Land Transfer at Data Department and Pays Applicable Fees

The investor records the land transfer at the Data Department and pays applicable fees.

Step 14: Investor Obtains Letter of Consent to Transaction from Minister of the FCT

The investor collects a Letter of Consent to the Transaction and C of O, signed by the Minister of the FCT, from the Office of the Minister. The investor must present a passport as proof of identification, as well as proof of applicable fee payment.



2.1.4.3 Analysis

Nigeria faces the same problems as other countries regarding title security:

- ***Poorly adapted legislation and legal restrictions on title issuance;***
- ***Absence of technical institutional capacity for the processing resulting in mediocre delineation and multiple deeds for the same plot;***
- ***Lack of procedural transparency;***
- ***Absence of a legal framework capable of resolving boundary conflicts; and***
- ***Arbitrary expropriation.***

Poor title delineations and arbitrary expropriation are however often less problematic than the other issues in Nigeria's case.

- The leasehold-only land tenure system has spared Nigeria problems often associated with traditional developing country land claims. However, demand for FCT land exceeds supply and land control monopoly has created some problems. For instance, FCDA no longer directly allocates land without presidential permission – nearly impossible to obtain. In fact, some indicate that the government allocates 80 % of available plots to FCDA officers through *prête-noms* – further exacerbating land scarcity. The consultants are unable to verify the allegation, but note that FCDA was among the most secretive and user-unfriendly of agencies visited. The consultants attempted to speak with more than 10 FCDA officers; only two –reluctantly- provided any information on site acquisition and development procedures.

- The consultants found other procedural problems with the FCDA site acquisition process. For instance, investors must wait an average of 1-3 years to obtain the Conveyance of Provisional Approval for Assignment of State Lands from the Minister of the FCT (If an investor is well connected or has provided adequate incentives to his facilitators, the wait is shorter). The consultants' findings are largely consistent with the

recent FIAS report findings. Focused on non-oil investment, the FIAS report, found that Ministerial approval for site acquisition takes between 2-6 years. This process precedes the Certificate of Occupancy, which requires another 1-3 years to obtain (If Certificate of Occupancy procedures are expedited, the investor will wait between 3-6 months). In all, site Acquisition in the FCT requires between 6 months and 9 years to complete.

Furthermore, the State land acquisition process is inefficient in many respects:

- First, separating the Application filing from the fees payment steps at the Planning Department rather than allowing simultaneous filing and payment;
- Second, separate, additional fees payment visits to the Data Department and Accounting Department, where only the Planning need be involved in fee collection;
- Third the requirement that the investor return to collect his Application Acknowledgement and Reference Number rather than on-site issuance, or having the information mailed to the investor.
- Fourth, the role(s) of the Minister (and perhaps of the President) in land sales.

The consultants find that acquiring land from a private party is equally difficult, for instance, in the following respects:

- First, the separate PoA and Deed of Assignment registration steps, where a single step would suffice for both.
- Second, the role of the Data Department, which adds no value to the process and should presumably be handled internally, at some later stage.
- Third, the transfer fees, at 10%, would appear to be prohibitive, and induce fraud.
- Fourth, the inefficiency of the valuation process. Private sector sources note that they waited at least 12 months to obtain property valuation from the FCDA's Valuation Department. If the investor hires a facilitator, the process requires less time. Moreover, the private sector indicates that after the valuation site visit is complete, they wait at least 3 months for the bill – again, unless facilitated.
- Finally, sources further noted that the Minister of the FCT requires 6-24 months to complete the Letter of Consent; since the procedure is not time-regulated, the Minister completes the task at his discretion.

The entire site acquisition process from a private party requires between two (2) and four (4) years to complete. The private sector sources indicate that they typically require legal services

to follow-up and apply pressure at each step. Legal service usually cost between 5–15% of the entire transaction fee.

2.1.4.4 Recommendations

While they might function elsewhere in Nigeria, land auctions are not feasible in the FCT, as there is scarcity of land, and the utility of the scarce remaining parcels should be maximized within the context of planning requirements and documents. We therefore recommend the following measures to facilitate access to land:

- A full review of the FCT's Title Deed Registry, to ensure compliance of files with legal requirements, should be conducted.
- The principles of time-bound decisions and of deemed approvals should be introduced throughout all of this process' steps.
- The Minister of the FCT's role (as well as that of the President) in issuing Certificates of Occupancy should be reviewed. In Lagos State, the government has delegated Certificate of Occupancy granting authority to the Commissioner of Lands. The consulting team recommends a similar solution for the FCT. MoC and NIPC representatives endorsed this recommendation.
- The NESG believes that international best practice should be applied to the development of new legislative drafts on land use, applicable across the country.
- Computerization of procedures (including such measures as a public G.I.S. for consultation of Title Deeds and Survey Maps) is also recommended by the NESG.
- All the payment steps should be collapsed and transacted at the Planning or Registration departments, at the same time as filing or registration.
- Application acknowledgement and reference numbers should be issued on the spot or sent later by mail, not result in the necessity for the investor to return to the FCDA's offices.
- All document registration should be permitted to occur simultaneously.
- The Data Department should perform its functions, after the completion of transfers, on the basis of internal information, rather than requiring that the investor perform data-related functions and *pay for them!*
- Transfer fees should be reduced to a level the market will bear.
- FCDA officials and the public should be provided with clear public information guidelines, well disseminated and posted throughout the building.

- FCDA officials should be provided customs service training.

- A strict schedule and time limits for valuation inspections should be set out and bound by "deemed approval" deadlines.

2.2 Environmental Impact Mitigation

Under Schedule II of the *Nigerian Constitution*, the Federal Government has jurisdiction over environmental issues. However, while Constitutionally federal, environmental matters are *in practice* an area of concomitant responsibility, under what the Federal Ministry of the Environment (FMoE) refers to as the constitutional "good governance" convention.

Minimum environmental standards are set at the federal level.

The GFRN is involved in environmental matters through the FMoE, the Ministry of Industry, the Federal Ministry of Agriculture, NAFDAC, and the Office of the Presidential Food Protection Advisor. Furthermore, a Federal Environmental Protection Agency exists on the books, even though it has in reality been merged into the FMoE. The FMoE has a presence in all 36 Nigerian States, in one of two following forms:

- *FMoE Liaison Offices*: These are the most common of the two types of offices the FMoE maintains in each State. These offices are in constant interaction with the State-level environmental authorities, the FMoE Headquarters in Abuja, and regulated parties. They advise State-level authorities, as well as carry out FMoE regulatory responsibilities and activities, seconded by personnel sent on an as-needed basis by the FMoE in Abuja. As the regulatory antennae of the FMoE, they are the counterpart of enterprises in dealing with their EIA compliance requirements, and have the power to sanction enterprises for non-compliance.

- *FMoE Field Operation Offices*: These offices perform the same functions as the Liaison Offices, but are also responsible for implementation of special projects (for instance, supervising contractors performing conservation work, etc.).

The States may also set standards, through State Laws, provided these are more stringent than federal laws, and otherwise consistent with the *FEPA Law*. They may also enact State-level jurisdiction and legislate in the areas of public sanitation, health and safety, under the same principle of "federal subsidiarity" as is applied to other environmental norms, including general consistency with the *Sanitation Law*.

All States also have some sort of environmental regulatory body, which implements and monitors compliance with both federal and State-level legislation, subject to administrative review by the FMoE, when their actions are challenged by regulated parties. These bodies are varyingly called the environmental [protection] "Board", "Agency", "Commission", or "Ministry." In a few states, state-level environmental regulation functions are vested in the State Ministry of Public Works. The establishment of these bodies was encouraged by the FMoE, which has effectively delegated a certain amount of authority to them -albeit without any legal instrumentation- because the State Governments have better presence and a higher number of technicians at their disposal.

The States in fact sometimes have a State-level Environmental Protection Agency, Ministry of the Environment, and Ministry of Agriculture, all involved in environmental matters.

Local Government is involved in environmental regulation through its jurisdiction over Waste Management. For instance, the Abuja Environmental Protection Board exercises jurisdiction over: disposal of refuse; evacuation of liquid and solid waste; control of industrial waste, burrow pits, quarry sites, septic tanks; and sewer maintenance However, they also appear to exercise some delegated environmental policy implementation and monitoring, where they have the capacity and/or wish to do so. They may exercise jurisdiction over public sanitation, health, and safety, if the State has delegated this power to them in State-level sanitation laws –which sometimes occurs with respect to small projects.

While the consulting team interviewed FMoE officials regarding the environmental compliance process, the team also investigated environmental compliance procedures in several states. In most of them, environmental compliance is typically an integral part of the site development process. After an investor has gained right of occupancy, he proceeds with the building permit and general site development process; depending on the project, this process might also require environmental compliance procedures.

Furthermore, according to the consultants' state-level investigations, the FMoE sets nationwide policy and collects data from the states as well as from areas under its surveillance.

While the FMoE noted a specific administrative procedure for environmental compliance, state practice appears to vary somewhat. In Kaduna and Plateau States, for instance, an investor may begin the environmental compliance process prior to commencing the building permit process. Though not required, this may speed the site development process. In Abia State, on the other hand, the environmental compliance process is an integral part of the site development procedures – and will therefore be covered within the site development section. The investor does not, therefore, commence a separate environmental compliance process prior to gaining site development approval; instead, the relevant agencies interact to assure environmental compliance while approving the site development plans.

The procedural steps that FEPA indicates, investors must follow are detailed below. After the FEPA process, several states' processes are mapped.

2.2.1 FMoE

2.2.1.1 Procedure

Federal Ministry of the Environment

The following section will focus on the mandatory Environmental Impact Assessment (EIA) that every business must conduct in order to get a license. The FMoE developed this National EIA framework following the recommendations and requirements cited in the *1992 Decree No.86*. The consultants' analysis is however based on both the FEPA procedural guidelines for EIA and on the aforementioned Decree, as well as on interviews with FMoE officials, whose practice

differs somewhat from the legal theory, especially as regards practice-derived procedural "sub-steps".

A wide range of business activities is subject to EIA approvals, including the following:

- Chemicals and Petrochemicals;
- Cement;
- Limestone, Silica, Marble, and Decorative stones;
- Sand dredging of over 50 hectares;
- Aluminum, Copper, Iron, and Steel;
- Pulp and paper;
- Shipyards and ports, Airports and airstrips longer than 2,500 meters, Railways and Power stations;
- Waste treatment plants;
- Housing developments greater than 50 hectares, Hospitals, Tourism, recreational, and resort projects, Highways and motorways, and Industrial estates;
- Oil and gas fields;
- Agricultural projects using over 500 hectares of land or requiring the displacement of over 100 families;
- Irrigation works serving an area of more than 5,000 hectares;
- "Coastal reclamation" projects exceeding 50 hectares; and
- Projects involving the clearing of forested areas and mangrove swamps greater than 50 hectares.

According to the FEPA Procedural Guidelines, the Investor must undergo a process of 8 steps in order to get an EIA Certificate.

Step 1: Investor Submits Project Proposal

If the Investor decides to embark on any development project that falls into category I or II of EIA Projects List,[88] he needs to notify the FMoE through a Project Proposal[89] and by completing the "EIA Notification Form". The Applications Fee is of N10,000 and all Applications should be addressed to the Director General/ Chief Executive of FEPA, at the Abuja Headquarters. It is also, important to note that the FMoE demands a N250,000 deposit for processing the Application. Upon receipt, the FMoE issues a Registration Number and gives the Investor the necessary information to continue the process.

Step 2: FMoE Starts Screening Process

Once the Project's Category[90] has been assigned, the FMoE makes the Initial Environmental Examination (IEE). The Screening Report will be forwarded to the investor within *10 working days* of the receipt of the Project Proposal.

[88] An extensive list of project types can be found in the FEPA *"Procedural Guidelines"*.
[89] The information and the documents required for the Project Proposal are outlined in *Annex B* of the *"FEPA EIA Procedural Guidelines"*.
[90] Cat. 1 concerns Environmentally Sensitive Areas, Cat. 2 Agricultural Development and Industry and Infrastructure, and Cat. 3 are projects that are expected to have a positive impact on the environment (Institutional, Health, Family Planning, Educational and Environmental Programs)

Step 3: Investor Performs Scoping Exercises

Based on the Screening Report, the Investor performs the Scoping Exercises that are necessary to the EIA. He then needs to submit "Terms of Reference" (TOR), which state the scope of the EIA study to FEPA. However, the FMoE might sometimes demand a preliminary assessment report and/or Public Hearings and specific studies to determine the scope and the TOR of the EIA study.

a) Investor Completes "Scoping" Phase Advisory Consultation

During an investor's "scoping" phase, prior to construction or operations, an investor may consult directly with the FMoE to learn about environmental requirements and to gain advice on mitigating a project's environmental impact.

While the initial consultation is not required, the government strongly recommends that an investor make this his first step in the site development process. The initial consultation, in fact, often enables an investor to expedite the compliance process. During the consultation, for instance, investors will discover that a FMoE-driven "Ministerial approval" fast-track process exists for small projects. The fast-track process curtails certain environmental compliance requirements. Conversely, an investor will learn that most projects that create or emit dust, fumes, and other pollutants require an Environmental Impact Assessment (EIA).

During the consultation, the FMoE advises the investor of various informational guideline booklets for sale at the Ministry of the Environment Store.[91] Investors can purchase the following information sources:

- Decree: N2,500
- Guidelines for 5 different Sectors: N1,500 each

b) Investor Consults with Land Surveyor

A certified private environmental engineer or a specialized scientific consultant must conduct any EIA required by law. The FMoE has a list of agency-accredited firms and individuals, but does not publish the list. In practice, the investor must thus first consult a land surveyor. All land surveyors know which firms are accredited. While not mandatory, consultation with a land surveyor may simplify the process since it indirectly ensures compliance with a FMoE requirement.

Step 4: Investor Drafts First EIA Report

Following the agreement of the FMoE on the TOR, the investor must conduct the EIA study and send 15 copies of the First EIA Report for FMoE review.

[91] The Ministry of the Environment Store has several locations: the old FEPA building in Abuja; the Surelere FEPA Office in Lagos; and the Port Harcourt FEPA Office.

a) Investor Has EIA Completed

The investor hires a firm or individual to complete an environmental impact assessment. Most investment projects require an EIA.

b) Investor Submits EIA, Ministry of Environment Vetts EIA

Once the EIA is complete, the investor submits it to the FMoE. The Ministry has an evaluation committee vett the EIA findings. The Ministry may either find the results satisfactory or unsatisfactory, or the ministry may request additional data from the investor. The investor must cover the cost of collecting any additional data required by the Ministry.

Step 5: FMoE Performs Reviews

Based on the First EIA Report, the FMoE chooses the form of the review and informs the investor within 15 working days: it may be an In-House review, a Panel Review, a Public review that lasts 21 days (which includes the FMoE and members of the public), or a Mediation. The review itself may be performed within 1 month after the review method has been chosen. The FMoE will also visit the site.

Step 6: Investor Writes Final EIA Reports

If the FMoE judges conditions satisfactory during the Review Process, the investor has 6 months to write the Final EIA Report based on the FMoE's comments and recommendations. The FMoE's evaluation of conditions may involve the following:

a) FMoE Conducts Site Inspection

The FMoE may conduct a Site Inspection to clarify any outstanding technical or scientific issues regarding the project and EIA.

b) Local Government Publishes Investor's EIA

The relevant local government publishes the EIA in a local newspaper for 30 days. This step exists to elicit preliminary community response. The newspaper publication also notifies the community of a public hearing on the project.

c) Local Government Holds Public Hearings

The relevant local government holds public hearings to gain Community input regarding the project and any environmental issues it may arise.

d) Local Government Submits Public Hearing Reports to Ministry of Environment

The local government submits the public hearing reports to the Ministry of the Environment's Evaluation Committee within 30 days of the hearings.

e) FMoF Conducts Selective Re-inspections

Following new facts uncovered through the Public Hearing Reports, the FMoE may conduct a Site Re-inspection. Re-inspections seek to clarify outstanding technical or scientific issues.

f) FMoE Grants Authorization to Proceed with Operations

Having fully satisfied itself of all potential project impact ramifications, the FMoE will either clear the project or reject it.

Step 7: FMoE Technical Committee issues Environmental Impact Statement

If the FMoE Technical Committee approves the Final EIA Report, it will issue the Environmental Impact Statement (EIS) within a month of the Final EIA Report acknowledgment.

Step 8: Director-General/Chief Executive of the FMoE issues EIA Certificate

Upon receipt of the EIS, the Minister of the Environment issues the Environmental Impact Certificate, which the Investor will submit to the National Rolling Plan, who will permit Project Implementation. However, a final charge, covering all expenses made in the process, must be paid entirely paid-up before the Certificate is issued.

Step 9: FMoE conducts Commission and Post-Commission Functions

The Project is to be realized during a specific, commissioned period of EIA Certificate validity. If not, the investor needs to seek revalidation of the Environmental Impact Certificate at the FMoE by submitting an up-to-date EIA Report. During implementation, the FMoE will monitor activities to ensure compliance with mitigation measures and report specificities, and also to assess environmental impact in order to improve the EIA process. This may involve the following procedures:

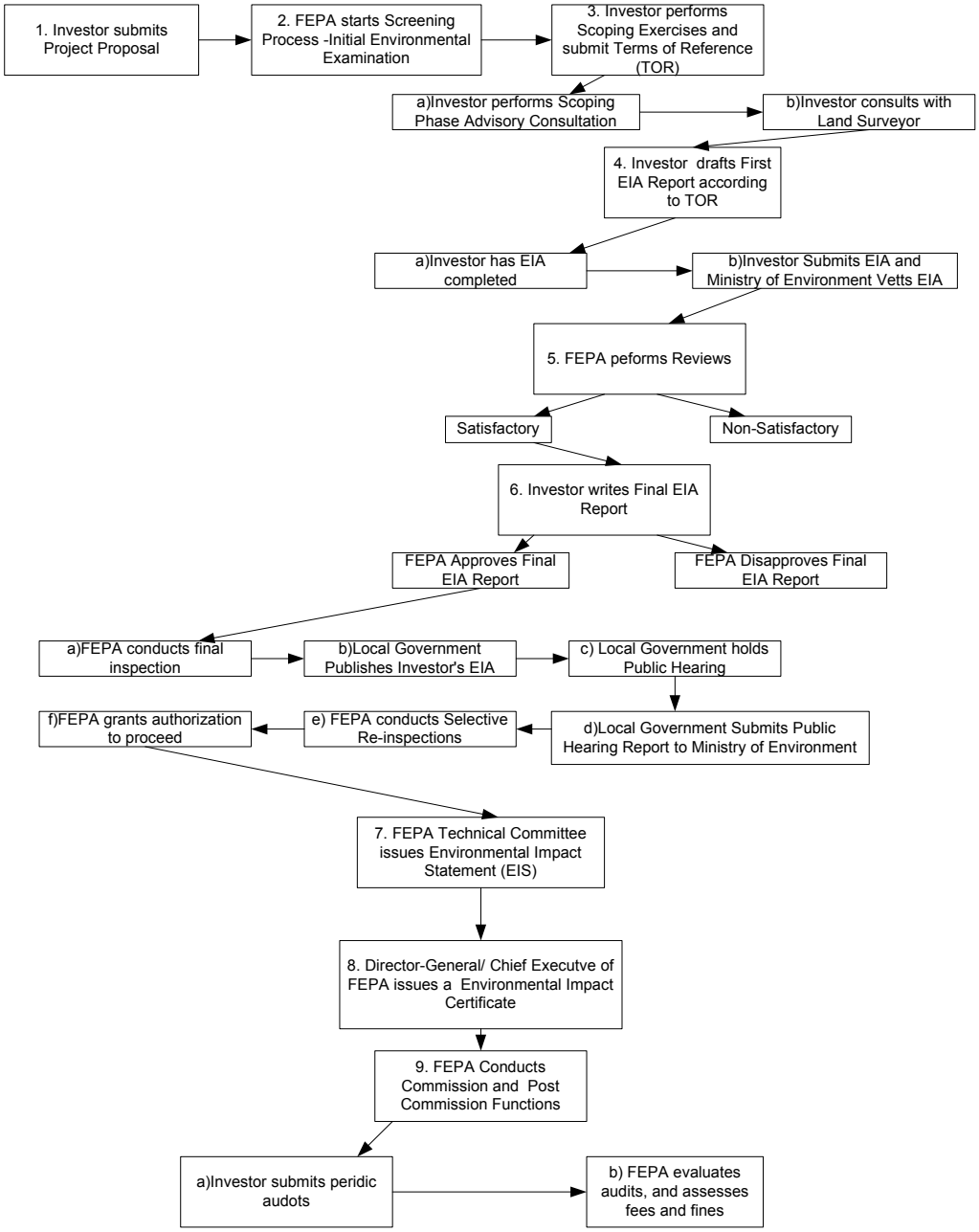
a) Investor Submits Mandatory Audits to the FMoE

Each company that submitted an EIA at start-up must undergo a FMoE audit every 2-3 years. The investor must again engage an accredited firm or individual to complete the EIA audit. The investor must submit the audit report to the FMoE.

b) FMoE Evaluates Audit and Assess Applicable Fees

The FMoE assesses all periodic audits for any applicable environmental compliance fees or fines.

FEPA (FMoE) Environmental Impact Mitigation Process



2.2.1.2 Analysis

- The practices which have emerged in Nigeria in the area of environmental regulation are troublesome to the consultants. The willingness to operate under a system, which by the admission of environmental NGOs and federal officials interviewed alike, has no basis in the constitution or the Nigerian hierarchy of legislation, creates a very shaky legal framework, under which the rule of law cannot be expected to, and indeed does not, actually function.

- At the institutional level, the multiplicity of federal institutions has, according to environmental experts interviewed, resulted in situations of irrational policy-making, requiring Presidential adjudication to resolve. Furthermore, both State and Local Government technicians are said to lack an adequate mandate, capacity, and resources to truly play any effective policy implementation and regulatory monitoring roles. Where Local Governments do act semi-effectively in the area, it is only because the FMoE has funded their environmental units under the GFRN's "Ecological Fund." Tolerating their existence, and their enabling State laws and local by-laws, under such circumstance, is simply tolerating budgetary waste, opportunities for rent-seeking, and exposing the government to unnecessary civil and administrative litigation.

- The GFRN has over the past two years undertaken a review of Nigeria's environmental legislation, which was in fact undergoing a political review in Kaduna on October 15th–16th 2002, prior to final submission to the Ministry of Justice and the National Assembly, as this report was being finalized. The consultants were informed that the FMoE Legal and Technical Departments had recommended a clarification of the issues relating to extra-legal jurisdictional authority, institutional frameworks, and processes. It was however uncertain that the political powers would endorse these proposals.

- **In the meantime, the Environmental Impact Assessment process appears somewhat convoluted, with multiple redundant steps. No doubt designed with the best intentions regarding environmental protection and investment facilitation, the process may fall a little short of the mark. Step 3, 6, and 7, in particular, do not seem well defined.**

- Although compliance is three times greater than it was five years ago, most non-oil investors still evade their environmental obligations, including EIA requirements.

- Part of the problem is information. Although the FMoE has made certain efforts to address the issue (Seminars; Information Leaflets; etc.), information dissemination regarding environmental compliance remains woefully inadequate in Nigeria.

- Complicating matters, the Ministry of Industries has its own independent views on regulating environmental standards of industry in Nigeria, which sometimes go as far as imposing moratoria on certain activities without prior consultations with the Federal Ministry of the Environment.

- Investors, and even the FMoE, find the environmental compliance process convoluted. In fact, the FMoE indicates that the public hearing process is "a potential roadblock

with political overtones." According to the FMoE, administrative processing time for the environmental compliance procedure is of approximately three (3) months.

- The reluctance of the FMoE to publish the list of accredited environmental engineers seems bizarre. Why accredit firms if this accreditation may not be made known? The current process of referral to a Land Surveyor ads unnecessary time and cost to the investor.

- One investor in Lagos State reported that private EIAs were not, in practice, required, merely payment of FMoE for its site visit. If this is true, clearly, the system is again interpreted "liberally" by the FMoE.

- The consulting team is surprised that the FMoE has devised an extra-legal "fast track" compliance procedure for small projects. The fast-track system clearly departs from the EIA procedure set forth in the Law.

- The consultants also note audit process irregularities. One investor indicated that both state and federal authorities annually audit his company for environmental regulation. The Nigerian Constitution however limits environmental regulation to the federal government. Moreover, the FMoE claims that it only actually requires biennial or triennial audits. Finally, the same investor indicated that fines are *negotiable* – suggesting that the agency is less concerned with environmental security than with financial issues.

2.2.1.3 Recommendations

- **Given the scope to redundancy, the scoping exercises should occur before the submission of the project proposal and the FEPA screening process.**

- If the project was properly scoped and screened in the preliminary stages of the process, there is no need for the drafting and evaluation of a "First Report," the team recommends just one EIA Report.

- FEPA and the Ministry of Environment should provide more accurate information regarding investors' environmental obligations. This will result in greater regulatory compliance and protection of the environment. Contradictory statements with regard to Federal/State roles, EIA, Site Inspections, and FMoE audits create a sense of anarchy and extra-legal behavior.

- Coordination with the Ministry of Industry must be improved. The fast-track compliance process should be formalized in the Law. This would provide both a legal basis for current FMoE practices and a formal short cut around the cumbersome public hearings requirements for small projects.

- Unfortunately, given Nigeria's weak enforcement capabilities, a dramatic reduction of up-stream environmental compliance procedures in favour of "best practice" post-establishment audits is not the solution. While the FMoE's personnel may be well trained and equipped, and benefits from cooperation from the Manufacturing Association of

Nigeria, in-depth coverage outside of major urban agglomerations remains a problem, particularly with respect to cottage industry.

2.2.2 Kaduna State

2.2.2.1 Procedure

Kaduna State provides an example of a fairly rigorous state-level compliance process.

The Kaduna Environmental Protection Agency (KEPA) protects the citizenry and the natural environment from disturbance and harm, especially from industrial sources. KEPA is an independent organ of the state with full legal authority in the areas of its jurisdiction. KEPA, like its counterpart bureaus in other states, refers to FEPA on projects involving heavy chemicals, refineries, textile manufacturing, petroleum, and automotive manufacture or assembly. It should be noted that this procedure differs from what the FMoE indicates as the appropriate, legal procedure.

Three agencies can direct prospective investors to KEPA: the Ministry of Commerce and Industry (MCI), the Bureau of Lands, and KASUPDA. An investor could go to KEPA at an early phase of the investment process, and may make this a first stop. In states visited, the urban planning and building authority requires an EIA with original submission. Hence, even though KASUPDA can and does send investors to KEPA, the wise investor will come to KASUPDA with the KEPA procedures at least underway.

Step 1: Investor Requests Environmental Compliance Approval

The investor submits written request to the Kaduna Environmental Protection Agency (KEPA) for environmental compliance approval. The request must include a number of attachments, including an environmental impact assessment and the project building plans. The Kaduna Environmental Protection Agency may also request the following documents:

- Feasibility Study
- Right of Occupancy Certificate
- Corporate Memorandum and Articles of Incorporation

At submission, the investor pays an application fee. The fee varies according to the business size and type.

Step 2: KEPA Assigns Officer in Charge

The agency director assigns the application to a specific officer who will be responsible for approving or rejecting the application. The officer in turn passes the application to a field inspector.

Step 3: Field Inspector Reviews Application

The field inspector reviews the application and schedules a site visit.

Step 4: Inspector Conducts Site Visit

The field inspector visits the site to determine that the project follows site plans and will be environmentally compliant. This site visit is coordinated with the FMoE.

Based on the application review and site inspection, the inspector notes his findings in a formal report. He submits this report to the officer in charge of the application at the Kaduna Environmental Protection Agency.

Step 5: Officer Recommends Approval from General Manager

The officer in charge submits the inspector's report to the Federal Minister of the Environment, recommending either approval or rejection. The Minister studies the inspector's report and either authorizes agency approval or rejects it. In some cases, the General Manager requests additional information from the investor, to support his application.

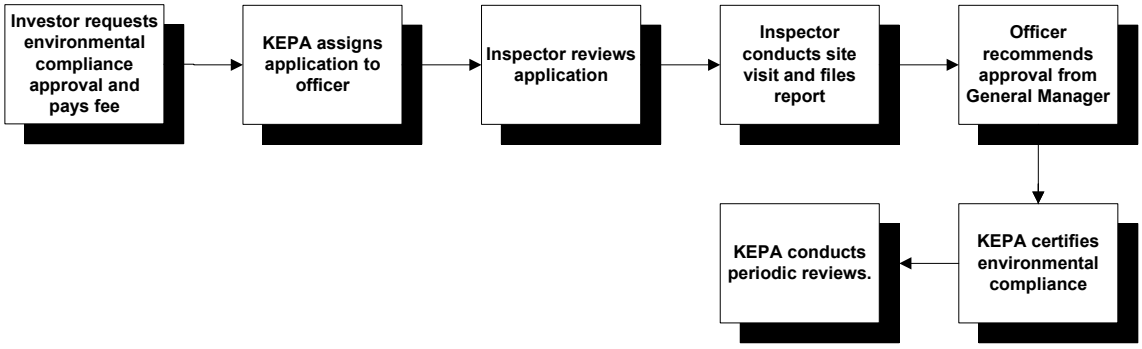
Step 6: Kaduna Environmental Protection Agency Certifies Environmental Compliance

The agency notifies the investor of environmental compliance approval. The notification stipulates any conditions the agency sets out for the project.

Step 7: Kaduna Environmental Protection Agency Conducts Periodic Reviews

According to KEPA, the agency requires an environmental compliance review and certificate of compliance renewal every three years. The renewal process costs N10,000 (US$100). The renewal process requires an environmental audit report. If the investor is not environmentally compliant, he faces fines and operational suspension.

Kaduna State Environmental Impact Mitigation Process



2.2.2.2 Analysis

- The foremost question for the team is why there is a KEPA and how its role differs from the FMoE's. Indeed, were it not tolerated (even encouraged) by the FMoE, such an agency would, *a priori*, appear to represent an unconstitutional State encroachment in an area of exclusive federal jurisdiction. Private sector representatives in Lagos correctly understood that only the FMoE could approve Environmental Impact Assessments

(EIAs) and issue Environmental Clearance Certificates (ECCs), while the State-level Environmental Agencies have an implementation and enforcement role. However, according to a construction contractor in attendance to the Lagos July 2002 Investor Roadmap Workshop, LASEPA (Lagos State Environmental Protection Agency) is mandated to look at flood-path and pollution caused by development projects, but does not do so. It is unclear whether Local Governments should have any role or jurisdiction in these matters.

- The entire KEPA EIA process takes one (1) month minimum, but can take as long as two (2) months. If the investor has not met basic environmental compliance conditions, however, his application can be stalled indefinitely.

- It is not certain whether KEPA requires the Right of Occupancy from the investor in order to start the environmental compliance process. If KEPA does require the Right of Occupancy, then clearly no application should go to KEPA until the procedures with the Bureau of Lands are virtually complete. Since the Bureau of Lands' authorization can easily take as long as six months, it would be an expensive loss of opportunity for the investor.

- There appear to be no guidelines detailing what KEPA expects the EIA to cover. This creates potential bottlenecks if the EIA does not cover issues and concerns that KEPA subsequently wants to see addressed.

- The consulting team questions KEPA's request for a detailed building plan. Why should KEPA ever need more than drawings of those aspects of the industry that show the sources of potential pollution? In most cases it would seem that drawings of buildings are unnecessary. Moreover, KASUPDA is the only agency with the internal competence and mandate to review building plans.

- The consulting team finds KEPA's assignment of the file to one officer commendable. It is usually efficient to have one person responsible for an investor's dossier in any given agency. Only at KEPA, in Kaduna State, did the consultants in fact encounter assignment of a dossier to a desk officer. One would hope that KEPA informs the investor of the assignment and that the officer in charge is available to handle all questions pertaining to KEPA's review.

- It is encouraging that KEPA arranges for a site visit early in the review. KEPA laudably coordinates the site visit with the FMoE to avoid multiple disturbances to the investor. The consulting team questions, however, the site visit requirement for allocated plots. The state government has already selected allocated plots for industrial use; the Bureau of Lands subsequently determines if a prospective business conforms to the plot's intended use. KEPA, if it wants to question Lands' judgment, should make a site visit when the plots are determined, not when they are being allocated.

- In terms of KEPA certification, a one-month delay is not insignificant for an investor, especially when after that month he may be asked to provide additional information. Many firms will be prepared to set up operations in total conformity with environmental legislation, and they should not have to incur the costs of delay because an agency cannot reasonably accelerate its internal procedures.

- Investors and KEPA are at odds in terms of the frequency of audits (specifically, on whether they are conducted every 1, 2, or 3 years). This remains an area of concern to the consulting team, as KEPA must abide strictly to its statutory obligations in this respect, so as to avoid being overly intrusive to normal business operations.

2.2.2.3 Recommendations

- First and foremost, State and Federal (and indeed Local Government) roles in the environmental area in Nigeria must be clearly defined in practice to comply with the Constitution and relevant federal legislation. The investor will then be confident that his operating in a regulatory environment grounded in the Rule of Law. As stated above, the foremost question for the team is why there is a KEPA and how its role differs from the FMoE's. The mandate, and perhaps even existence, of KEPA should be reviewed.

- The consulting team strongly recommends that KEPA prepare a guidebook describing the application process and offering parameters for EIA preparation in Kaduna State, as they differ from federal requirements. This Guide should also clearly detail all state-specific compliance and audit requirements.

- KEPA should review its requirement to study project-engineering drawings. Except in the case of pollutant or emissions control systems, KEPA would do better to let KASUPDA review building plans.

- KEPA must clarify what it means by "feasibility study." KEPA needs a partial description of the business, rather than a feasibility study of its presumed viability. In fact, if KEPA defines clearly the elements that it wishes to constitute the EIA, it should not need to see any feasibility study or business plan at all. KEPA, like other agencies, should require of an investor no more than it needs to help him and to fulfill its mandate.

- The consulting team recommends that site visits be reserved for private, non-allocated plots—unless zoning has already determined that these plots are acceptable for industrial use. Furthermore, KEPA should not require a site visit—at least not at the investor's expense. KEPA might consider a two-step internal process. First a review of the EIA, then correspondence with the Bureau of Lands to ensure proper zoning or allocation of land. If the investor has first come to KEPA, this agency can *prescribe* the kind of zone into which the industry must be located.

- Eliminating the site visit would abridge the process of approval from KEPA. The site visit would in any event be more useful after operations have begun, to ensure that the industry meets the conditions KEPA has clearly specified in its approval.

2.3 Site Development

All investors must apply for approval of building plans from the appropriate Local Authority prior to commencement of construction. Typically, site development procedures include: various inspections and approvals for ensuring compliance with urban planning and zoning rules; building structural safety; the protection of public health and urban sanitation; appropriate and safe utility hook-ups; and environmental compliance. These procedures constitute a pre-requisite for use of commercial and industrial buildings, and thus for start-up of business operations. In Nigeria, the consultants reviewed the site development procedures in Abuja FCT, Kaduna, Lagos, Abia, and Plateau States.

All presented some basic similarities, and were more or less variations on the following model:

- Step 1: Investor draws up and submits plans
- Step 2: Title Registry confirms ownership
- Step 3: Planning Department reviews plans for land use
- Step 4: Engineering Office reviews plans for building structure
- Step 5: Development Control conducts Permit approval-related site visit
- Step 6: Development Control conducts periodic visits during works

Many unnecessary steps are however grafted unto this model in the different states. For instance:

- Abuja FCT: Requires a land survey
- Lagos State: Requires multiple Stamp Duty and fee-related steps
- Plateau State: Requires multiple inspections
- Abia State: Requires an Environmental Health Review

As a result, some states require as many as 16 steps to issue a development permit. The overall process is inefficient and slow, as well as generally non-transparent and expensive.

A detailed review of these processes, including analysis and recommendations for reform, follows:

2.3.1 Kaduna State

2.3.1.1 Procedure

Kaduna State Urban Planning and Development Authority (KASUPDA), like its counterpart bureaus in other states of Nigeria, has oversight of all residential, commercial, and industrial development and building in the State site development process, the KASUPDA approves development and building plans, and awards development and building permits. An investor must follow the steps below in petitioning KASUPDA for site development authorizations:

Step 1: Investor Requests Building Permit from KASUPDA

The investor submits a written request to KASUPDA's General Manager for a building permit for his site ("Planning Form 1"). The request must include the following documents:

- Proof of the Right of Occupancy
- The Certificate of Occupancy
- Tax Clearance Certificate
- Feasibility Study
- Architectural drawings -- three copies
- Engineering drawings -- three copies
- Building Plans
- Site analysis report
- Approval from KEPA

The investor must submit three copies of both the architectural and engineering drawings. The agency will return two copies of each document at the completion of the process. A Nigeria-accredited town planner must prepare the Site Analysis Report. Likewise, a Nigerian Society of Engineers-registered engineer must complete the drawings. Although no similar requirement was made explicit for the architectural drawings, it would be prudent to have them similarly recognized, if not actually prepared.

The investor pays a processing fee, calculated according to residential, commercial, and industrial projects. The agency has standardized the fees and makes them available for public review.

Step 2: Director of Planning Completes Initial Review of Application

The KASUPDA General Manager gives the application to the Director of Planning, who completes an initial review of site development plans. He signs the attached internal processing form and then passes the file to the agency architect.

Step 3: KASUPDA Architect Reviews Application

The KASUPDA agency architect reviews the site development plans, particularly scrutinizing the architectural drawings. If he approves the plans, he signs the internal processing form and passes the file to the agency engineer.

Step 4: KASUPDA Engineer Reviews Application

The agency engineer reviews the application, focusing on the engineering drawings. If he approves the site development engineering plans, the agency engineer signs the internal processing form and returns the application to the Director of Planning.

Step 5: Director of Planning Completes Full Application Review

The Director of Planning, typically a town planner, considers any questions or comments that the agency engineer or architect have made on the application. If all technical departments have approved the project, the Director of Planning returns the file to the General Manager. The internal review process is complete.

Step 6: KASUPDA Confirms Right of Occupancy and Certificate of Occupancy with Ministry of Lands

The agency confirms with the Ministry of Lands that the investor has obtained the Right of Occupancy and the Certificate of Occupancy and has completed the site acquisition process.

Step 7: KASUPDA Completes Site Visit

An agency inspector completes a site visit of the proposed project site. The inspector submits a site visit report to the General Manager.

Step 8: General Manager Reviews Application and Site Visit Report, and Issues Building Permit

The General Manager reviews the application and any accompanying comments from the internal review process. He also reviews the site visit report. The General Manager approves or rejects the building permit application.

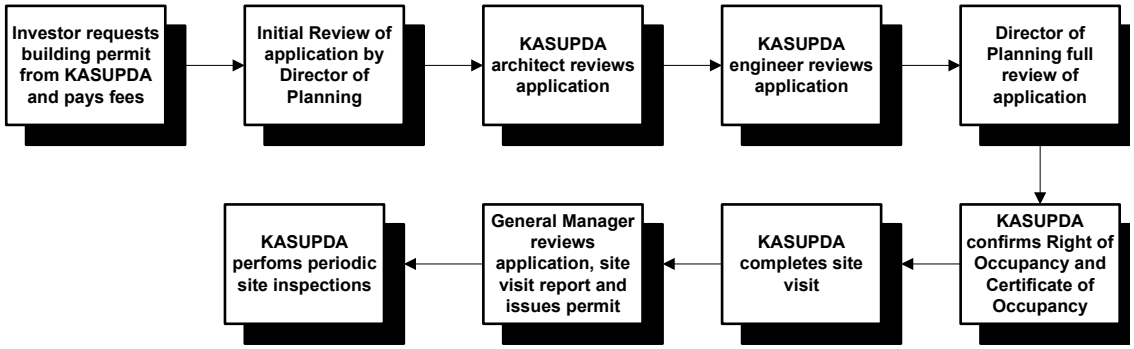
The General Manager may ask the investor to submit additional information, or to modify his plans. If the general manager does not require additional information or modifications, he will simply determine specific conditions to which the investor must adhere in project construction. For instance, the general manager may request that the investor adhere to particular construction timelines, as well as certain construction or utilities requirements.

KASUPDA issues the investor a building permit. The agency keeps one copy in its files, and another is posted at the construction site.

Step 9: KASUPDA Officers Periodically Inspect Site

KASUPDA officers inspect the site periodically during construction to ensure that the investor has posted the permit conspicuously and that all conditions are being met.

Kaduna State Site Development Process



2.3.1.2 Analysis

- It is repetitive that the investor must include registration and tax documents from Abuja in his building permit application. Since the application dossier includes the investor's Right of Occupancy granted by the Bureau of Lands, KASUPDA knows that the investor's articles of incorporation and tax documents have already been reviewed by at least one, if not two, state agencies.

- Moreover, if the investor has arrived at KASUPDA with the referenced documents, the agency should not have to verify these documents with the Bureau of Lands. In fact, the consulting team finds insufficient justification for requiring the Right of Occupancy, let alone both the Right of Occupancy and the Certificate of Occupancy.

- The two (2) distinct reviews of the file by the Director of Planning and Separate review by the General Manager appear to be redundant.

- The consulting team questions the purpose of the site visit for allocated plots, which have already been zoned. For private transactions involving non-allocated land, a site visit is not necessary if the land has already been used for similar purposes. All required site visits should occur only for specific reasons: for instance, when power, water, or waste requirements are significantly greater for the new occupant.

- If the plot is allocated, the site visit should have been made at the time of zoning. Again, there may occasionally be justifications for a visit at the time of the application, especially for heavy industry. Otherwise, KASUPDA should not waste investor time and money to make a visit that will provide no new or useful information.

- KASUPDA noted that the site development process requires between one (1) week and several years to complete. This is an uncomfortable spread of time, and one would suppose that the longer delay would only occur in the case of very heavy industry, where utility requirements are high, where the potential for environmental hazards are great, or

where the drawings are of exceptionally poor quality and rectification is slow. However, the one-week turnaround is probably also all too rare.

2.3.1.3 Recommendations

- The consulting team recommends that KASUPDA eliminate its requirements for submission of the incorporation and tax clearance documents, the Certificate of Occupancy, and proof of KEPA approval.

- In terms of the internal review process, the consultants recommend eliminating the two (2) Director of Planning reviews of the file, as well as the General Manager's and having that final review be performed by the Director of Planning instead. This will overall eliminate two (2) steps and one actor from the approval process altogether.

- The consulting team recommends that the site visit not be an automatic part of the process; it should be made, as KASUPDA experts deem necessary.

- Of all the investment approval processes, site development is most technically complex, and requires the longest amount of time. But durations should not be open-ended: An applicant should be allowed a reasonable, but not indefinite, time to respond to requirements or issues, after which his application must be re-opened from the start. An office, or agency, should also have mandated times for completing its procedures, after which the applicant receives some benefit for his lost time. This compensation could be a waiver of the processing fees, a guarantee of fast-track authorization from that date on, *de facto* approval, or some combination of these assurances.

2.3.2 Lagos State

2.3.2.1 Procedure

Step 1: Architect and/or Chartered Quantity Surveyor Draw up Plans

The investor hires an architect and/or a chartered quantity surveyor to draw up complete project construction plans.

Step 2: Investor Completes EIA Procedures

Once plans are complete but before they are submitted, an EIA must be conducted.[92] Investors often improve their site development chances by hiring FEPA to complete an environmental impact assessment, rather than hiring a private company. If the investor contracts FEPA, he must pay for the official's necessary transportation and other expenses.

Step 3: Investor Completes Stamping Process for all Documents

[92] See above section in chapter 1 on Environment Mitigation

Before submitting the EIA and the building plans to the State Planning Department, the investor must also have all documents stamped at the Stamp Duty Office.

Step 4: Investor Submits Documents to State Planning Department for Approval in Principle

After completing construction plans and an EIA and having the documents stamped, the investor files the following documents with the Planning Department:

- Application form
- C of O
- EIA[93]
- Architectural drawings, signed by an accredited Nigerian architect
- Structural drawings, signed by an accredited Nigerian structural engineer
- Mechanical drawings, signed by an accredited Nigerian mechanical engineers
- Electrical drawings, signed by an accredited Nigerian electrical engineer

It should be noted that all pavement changes and other such issues are dealt with through this same single application.

Step 5: State Planning Department Evaluates Documents

The State Planning Department reviews the submitted drawings for their compliance with environmental, architectural, engineering and legal requirements. If compliant, the file is then ready for further processing by the local government and by the Governor's office.

Step 6: Investor Files Documents with Fire Department for Approval in Principle

In theory, once the state government departments have approved the file, the investor submits his application to the relevant fire department for approval. According to a chartered surveyor, however, this step is rarely completed; investors are typically able to resolve this step with a simple payment.

Step 7: Investor Submits File to Governor's Office for Approval in Principle

The investor submits all pre-approved plans and drawings to the Governor's Office for approval in principle.

Step 8: Governor's Office Publishes Intent to Work, Grants Approval in Principle

[93] Idem.

After receiving a request for approval in principal of works, the Governor's office publishes the intent to work. If no objections are raised, the Governor's office issues an approval in principle.

For an additional fee, the Governor's office will also destroy all illegal construction on the site and evict all squatters preceding commencement of works.

Step 9: Planning Department Assessor Determines Statutory Fees

Once the investor has obtained all necessary approvals, a Planning Department Assessor determines applicable building fees. Building fees are based on project dimensions.

Step 10: Investor Pays Statutory Fees and Obtains Final Approval

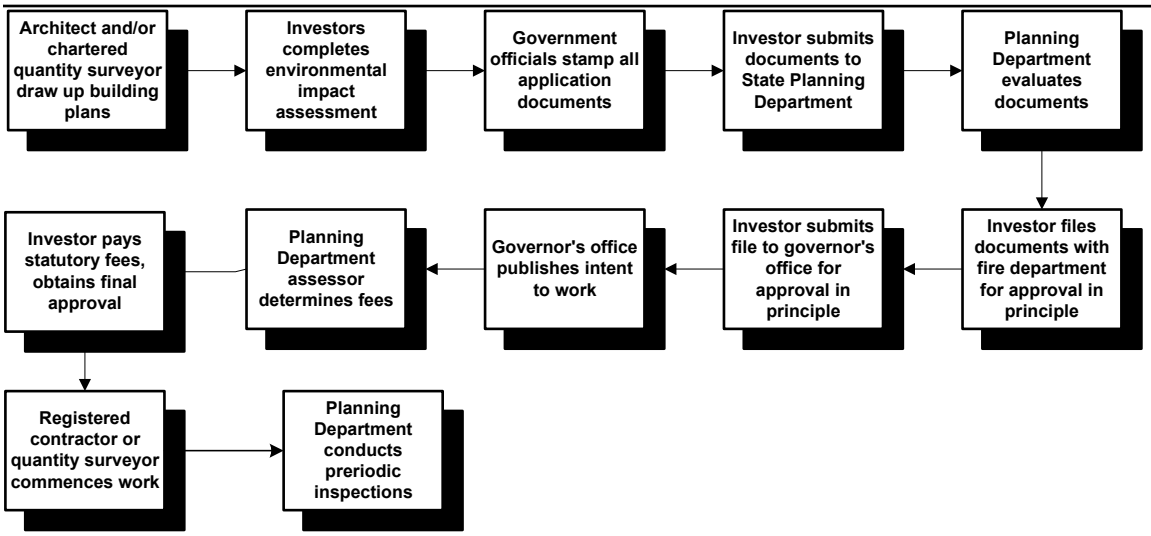
The investor pays all requisite fees to the Planning Department Assessor. The Planning Department then issues an approval, indicating when construction may commence.

Step 11: Planning Department Conducts Periodic Inspections

The investor must employ a registered contractor or quantity surveyor to complete construction. During the construction, phase the investor must display all construction approvals; he must maintain building plans/drawings on-site for Department of Planning inspectors to consult during periodic inspections.

The investor must complete all project construction in accordance with the Lagos State Building Code, which ensures structural, fire, and electrical compliance. When the construction team encounters pipes and wires, the investor typically pays statutory "re-routing charges" and other non-statutory charges to the utility company. In practice, on-site structural inspections rarely occur. Instead, inspectors limit their activities to *pro forma* verification of paperwork, which is usually facilitated by the investor's contractor or quantity surveyor for a nominal fee.

Lagos State Site Development Process


Architect and/or chartered quantity surveyor draw up building plans
Investors completes environmental impact assessment
Government officials stamp all application documents
Investor submits documents to State Planning Department
Planning Department evaluates documents
Investor files documents with fire department for approval in principle
Investor submits file to governor's office for approval in principle
Governor's office publishes intent to work
Planning Department assessor determines fees
Investor pays statutory fees, obtains final approval
Registered contractor or quantity surveyor commences work
Planning Department conducts preriodic inspections

2.3.2.2 Analysis

- In many respects, the Lagos State site development process is better than that in certain other states. Indeed, the light documentary load, the lack of redundant review steps, the absence of a pre-works site visit, and Final Approval by the Director of Planning rather than, say a Permanent Secretary or the Governor, are all commendable. Nevertheless, a number of sources of administrative inefficiency remain.

- The Stamping Procedure adds no value to the permitting process and adds unnecessary steps exclusively in the pursuit of government revenues.

- Certain documentary requirements such as the Certificate of Occupancy, could however be eliminated. It should be incumbent upon government to liaise with its various Departments.

- No other state visited by the consultants (apart from Abuja FCT) requires a visit to the Fire Brigade. It is unclear why the case should be different in Lagos State. Indeed, few jurisdictions internationally require an additional step in construction permit processing for this purpose. The conduct of inspections by State officials in this connection is widely deemed to be problematic. Investors suggest that health, environment, workplace safety, and building inspectors tend to be either incompetent or corrupt. Some businesspeople suggested that unscrupulous builders could easily bribe inspectors to keep quiet about deficiencies in a building. At the same time, it was reported that those who did build to code would not necessarily receive accurate and clean inspection reports.

- Why the Governor is involved in site development permits is unclear to the consultants. Such micromanagement of state affairs seems completely outside of the scope of such a high office's functions.

- Many of the procedural steps could be collapsed through a single, committee-based decision.

- Finally, with a good architect, getting plans approved may take 3-6 months. The process must be "facilitated" and associated costs depend on the size of the project but in no case superior to N500,000. This is both too long and too costly.

2.3.2.3 Recommendations

- By some accounts, the quality of the various health, safety, and environmental inspectors needs to be improved through additional training. Nigerian regulators and the private sector should work together to develop realistic and effective standards and train inspectors and investors to follow them.

- Rent seeking behavior related to inspections, which raises the cost of doing business and also endangers the safety of the public, should be curtailed. Inspection agencies need to make the criteria for inspections clear, unambiguous and publicly available. Senior managers in these agencies need to punish abusive inspectors and set a tone of professionalism.

- The requirement to present Certificate of Occupancy at filing should be eliminated. A mere lot and square number should suffice to reference one's C of O filed at the Title Registry.

- The Stamp Duty procedure, which exists for revenue purposes only, should be eliminated. Payment can be made at some other point in the process, e.g. upon collection of permit from the Director of Planning, etc.

- The Fire Brigade Review should be eliminated. If deemed essential, the Fire Brigade's opinion should be given in a committee hearing.

- The Gubernatorial approval should be eliminated, as no role for the Governor's office should exist in this process.

- True Limits should be placed on the process, providing the investor with "deemed approvals" when no answers are given with specified timeframes.

2.3.3 Abia State

2.3.3.1 Procedure

In Abia State, the Town Planning Authority shepherds the development application through the various state and local bodies that have authority over the approval process. The site development process includes an environmental compliance sub-process, handled by the Environmental Health Office.

Step 1: Investor Has Site Development Plans Drawn Up

The investor commissions site development drawings, which must be completed by a licensed architect or engineer. The government does not require an Environmental Impact Assessment (EIA) for small projects.[94] Instead, investors must have a site analysis project report prepared for small projects. The Town Planning Authority requires a professional town planner to prepare the site analysis project report. The government requires all large-scale residential and commercial projects, and all industrial projects – small or large – to include an EIA.

Step 2: Investor Submits Site Plans to Town Planning

The investor must submit the following documents to the Town Planning Authority:

- Site Development Plans
- EIA or Site Analysis Report
- Certificate of Occupancy
- Tax Clearance Certificate
- Corporate Registration Certificate, for a corporate body

[94] Small projects include all residential and commercial developments with fewer than five floors.

Step 3: Town Planning Determines Fees Owed, Investor Pays Fees

Investors typically pay all fees owed to the Town Planning Authority upon submission of the site development plans. As soon as the investor submits the plans, the office determines the fee amount. The investor can pay fees immediately at the Town Planning Authority's cashier window, located in the same building complex. The cashier immediately issues a payment receipt. The Town Planning Authority retains the original receipt and gives the investor a copy. The investor pays the following fees to complete the Site Development Process:

- Inspection Fee: variable, depending on project size
- Charting Fee: N250
- Registration Fee: N250
- Fencing Fee: based on project size
- Interim Development Rate: N6,000 for residential and commercial projects; variable rate depending on size for industrial projects
- Other Fees, if applicable (including Stages Permit Fee and Physical Fitness Permit Fee)

Step 4: Town Planning Authority Preliminary Approval

After granting a preliminary approval of the site development plans, the Town Planning Authority dispatches the plans to the Town Engineering Office. The Town Planning Authority only sends Town Engineering those plans involving physical structures.

Step 5: Investor Pays Fees to Town Engineering Office

Once the plans arrive at the Town Engineering Office, the investor must go there to pay a number of fees. Fees are based on the building size and type. [95]

The investor must pay these fees to the Town Engineering Office cashier window, which is located in the same building as the engineers' offices. The cashier immediately issues a payment receipt.

Step 6: Investor Photocopies Receipts and Submits Them to Head Engineer

Before the process can continue, the investor must photocopy the receipts and return copies to the Town Engineering Office engineer as proof of payment.

Step 7: Town Engineering Office Studies Plans

The Town Engineering Office has three separate individuals who study the structural plans. The office either approves or rejects the structural aspects of the site development plans.

[95] The following fees, for instance, apply to an office block: N5,000 registration fee; N1,500 staging fee; and N1,000 commencement fee.

Step 8: Town Engineering Returns Plans to Town Planning Authority

After Town Engineering studies the structural plans, the office dispatches them to the Town Planning Authority. This completes Town Engineering's role in the site development process.

Step 9: Town Planning Authority Completes Site Inspection

Town Planning Authority officers travel to the investor's site and complete a site inspection.

Step 10: Town Planning Authority Completes Report

After completing the site inspection, the Town Planning Authority documents its findings in a report. The report conveys the authority's opinions vis-à-vis the planning aspects of the project.

The Town Planning Authority dispatches plans to Environmental Health Office.

Step 11: Environmental Health Office Studies Plans

The Environmental Health Office checks the site development plans for compliance with health laws. The Health Office is primarily concerned with issues relating to health of the employees at the site, and general environmental health. Health officers check the plans for adequate ventilation, room size, drainage, etc.

Step 12: Environmental Health Office Completes Site Visit

Within twenty-four hours of receiving the plans from the Town Planning Authority, the Health Office contacts the investor to arrange a site visit. Health Office staff conduct a site visit, accompanied by the investor and his contractor.

Step 13: Environmental Health Office Approves Plans

If the Environmental Health Office is satisfied with the site development plans and the inspection, a staff member signs and stamps the plans, indicating approval.

If the Health Office is not satisfied with the site development plans, the office drafts a report regarding the plan's defective components. The office dispatches the plans and the report to the Town Planning Authority, which returns them to the investor for amendment. Alternatively, the Health Office notifies the investor directly.

The Environmental Health Office does not charge any fees for processing the site development plans. However, when the investor commences construction, according to the Environmental Health Office, he must pay an excavation permit of N1,000.

The Health Office then returns the site development plans to the Town Planning Authority.

Step 14: Town Planning Authority Gives Final Approval

Based on approval from the Town Engineering Office and the Environmental Health Office, Town Planning gives its final approval to the site development plans.

The Town Planning Authority then dispatches the plans to the Local Government Chairman, recommending he approve the project.

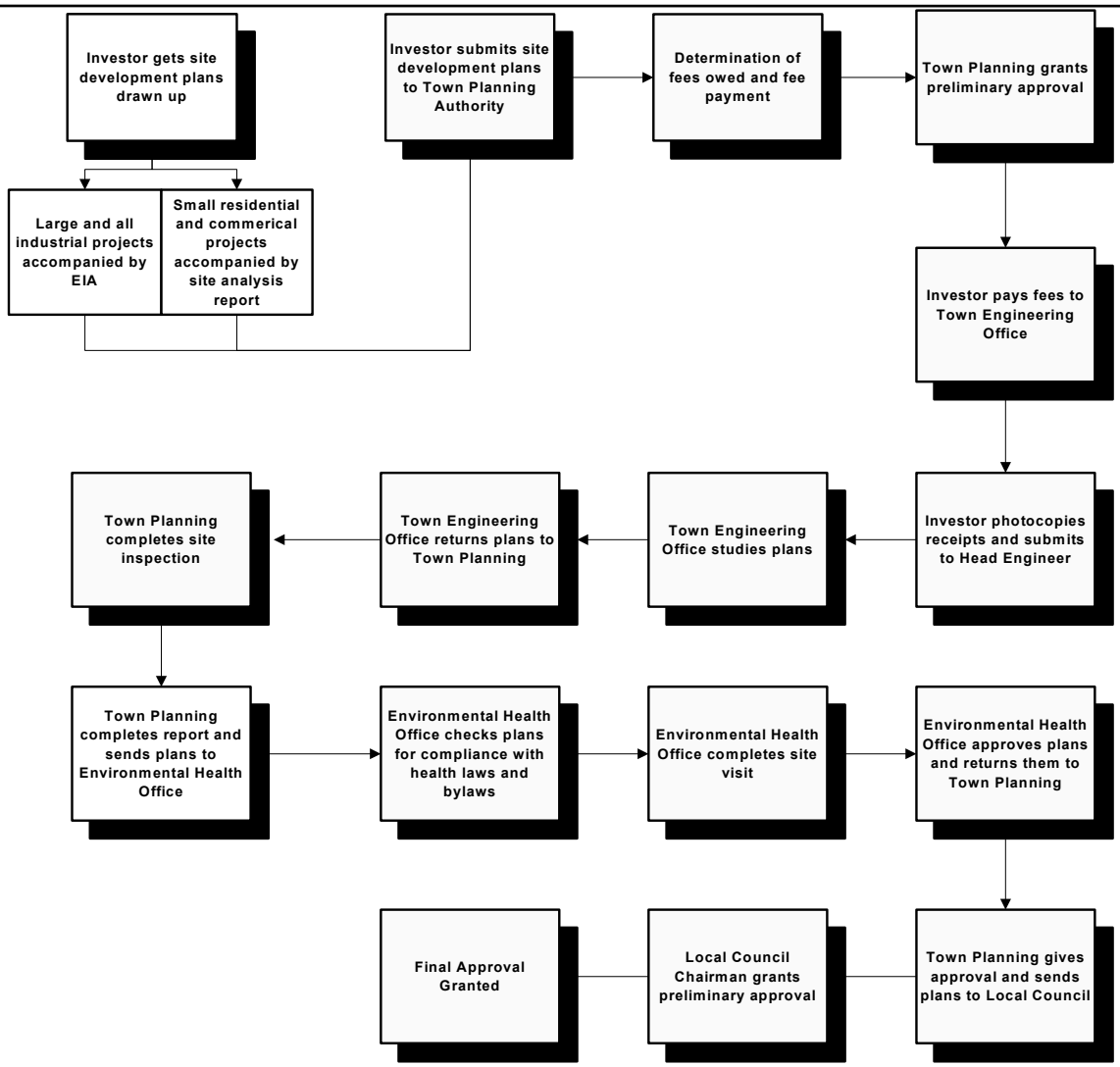
Step 15: Council Chairman Grants Approval

The Council Chairman's approval is usually a mere formality based on the recommendation of the Town Planning Authority.

Step 16: Town Planning Grants Final Approval

The Town Planning Authority grants final approval upon completion of all procedures related to permit acquisition.

Abia State Site Development Process



2.3.3.2 Analysis

There is considerable overlap concerning the various responsibilities of the government parties involved in the site development process. There is also disagreement over which agency has the authority to collect which fees and to demand certain documents.

- The Town Planning Authority indicated that with one exception, an investor pays all necessary fees at the Town Planning Authority. According to the Town Planning Authority, for instance, Town Engineering has jurisdiction over one investor fee: the Local Government Fee.[96]

[96] The investor pays this fee, between N1,000 and N2,000 depending on the project, to the Engineering Office when the site development plans arrive there. According to the Town Planning Authority, the Local Government Fee essentially represents a service fee for using the local government engineers. The Town Planning Authority is supposed to have an internal engineer to study and approve structural site development plans; however, due to funding shortages, the Town Planning Authority uses the services of Town Engineering.

- Both public and private sector representatives confirmed that Town Engineering requires additional fees from investors. In fact, they indicated that Town Engineering collects fees for which the Town Planning Authority is responsible – creating a double payment burden for investors. There is a sense that local governments across the country are finding ways to gain additional revenue, and that collection of fees in connection with site development related aspects of the investment process is an example of this practice. The consulting team learned, in fact, that local governments sometimes attempt to legitimize these revenues through bylaws, usually later determined to be *ultra vires.*

- The private sector points out that the Environmental Health Office's excavation fee is not a registered fee, and therefore, is not legal. There are other examples of agencies creating fees to increase local government revenue; for instance, one company that the consultants interviewed faced a "roofing fee" for its buildings.

- Unfortunately, the investor is the one left with the short end of the stick, paying overlapping fees, and facing a slower process because he has to complete additional procedural steps related to payment and receipt procurement.

In addition to confusion over fee collection, there is considerable variance over the actual steps of the site development approval process:

- Some private sector representatives indicated, for instance, that the site development approval process begins with a letter and plan submission directly to the town council, rather than with a consultation with the Town Planning Authority.

- Moreover, private sector representatives explained that they must also deal directly with the town council prior to commencing construction. The investor sends the Town Council Chairman a letter requesting approval to begin construction. With the letter, the investor attaches the original plan approval granted by the Chairman. The Chairman forwards these documents to Town Engineering, who initiates all subsequent construction inspection visits.

- According to the private sector, the town engineers only enter the process when the investor is ready to construct, not prior to this point, as indicated above.

There is also considerable disagreement over the amount of time it takes each agency to complete its steps in the process of site development. As the flow chart illustrates, the site development approval process depends on a number of agencies, and their activities are highly interdependent.

- According to Town Engineering, the agency can typically approve or reject the plans within three days of receiving them. According to the Town Planning Authority, the law allows Town Engineering a minimum of three weeks to study the site development plans. The Town Planning Authority indicates that this is a typical time frame.

- There is a similar discrepancy regarding the assessment of the amount of time required for plans to move through the Environmental Health Office. According to the office, it completes its processing of site development plans within 48 hours of receiving them. According to the Town Planning Authority, however, Environmental Health typically takes three weeks to complete its study of site development plans.

- According to the Town Planning Authority, the Chairman's approval takes anywhere between 1 week and 2 months. If the Chairman is out of town, no other individual may sign approvals on his behalf. If the site development plans are held up at the Chairman's Office for more than a month, however, the Town Planning Authority asks his office to return the plans. It is unclear what authority the Town Planning Authority has to then move forward with the site development process. A Town Planning Authority officer stated that he could sign if the plans stay for more than a month in the Local Government Chairman's office without signature.

- The private sector notes that the entire site development approval process typically takes four weeks at best – and this involves considerable pressure placed on all agencies. They noted that companies sometimes pay unofficial fees at various steps in the process to gain site development approval within one week. A Local Government officer also intimated that unofficial fees and "help from the inside" would considerably speed up the steps in that office, and also assure a positive outcome.

Finally there are procedural inefficiencies throughout the process, including the following ones:

- Mulitiple fee payment steps (Town Planning and town Engineering);
- Multiple Inspections (Town Planning and Environmental Health);
- Abia State is the only state with an Environmental Health Review;
- Four (4) distinct steps involving some form of clearance from Town Planning (e.g. Plans and Fees, Inspection, and 2 Final Approvals); and
- An unnecessary Final Approval by the Local Council Chairman who is not qualified in these matters.

2.3.3.3 Recommendations

- The consulting team strongly recommends that the Abia State Government publish a site development process guide. A guide will benefit investors and government officials alike, clarifying the precise roles and responsibilities of the various agencies. Moreover, the guide should set out a fee schedule, and indicate which agencies are authorized to collect particular fees. The consultants suggest that the guide also approximate the amount of time each step requires. Both fee and time schedules will help the investor determine the approximate site development expense.

- The consulting team recommends that final Council Chairman approval be eliminated or, at least, not be held up by his absence. While the current process allows the Chairman to delay authorization for up to a month, due to his absence or another reason, the consultants suggest the time limit be reduced. If the application is in order and no outstanding concerns exist, the Town Planning Authority should have full proxy authority to grant final approval within a week of the application arriving at the Council Chairman's office.

- The team recommends eliminating the Environmental Health Office's Excavation Permit, which is clearly outside of the Office's jurisdiction. In fact, in light of FEPA's reviews, the State should consider abolishing the environmental health review altogether.

- The team recommends consolidating fees payment into a single step, managed either by Town Planning or Town Engineering, more probably the latter.

- The team recommends joint Planning-Environmental Health inspections.

- The team finally recommends consolidating Town Planning clearances, by eliminating "Final Approvals" in favor of clearance by the way of a positive Joint Inspection Report.

2.3.4 Plateau State

2.3.4.1 Procedure

The Jos Metropolitan Development Board (JMDB) handles site development only for some areas of Plateau State, including the capital city. However, because virtually all of Plateau State's external investment is reviewed by this Board, the report will focus exclusively on its role in the area.

Like KASUPDA and its counterpart organs in other states, the JMDB is responsible for approving the construction of buildings, and the renovation of existing edifices. Its stated goals are the attainment of harmonious growth, environmental quality, properly-capacitated infrastructure, and acceptable and improving living standards.

When applying for a Site Development Permit in Plateau State, the investor must complete the following steps:

Step 1: Investor Purchases Building Permit Application Form

The investor purchases a building permit application form[97] from the Jos Metropolitan Development Board's Development Control Unit.

Step 2: Investor Completes and Submits Application

The investor submits a completed application to the General Manager. The application includes the following documents:

- Memorandum and Articles of Incorporation
- Feasibility Study or Description of Business
- Tax Clearance Certificate
- Right of Occupancy
- Certificate of Occupancy Certificate
- Site Plan Survey Map from the Bureau of Lands
- Site Development Plan (scaled 1:500)
- Site analysis report prepared by a registered town planner (for small projects)
- Environmental Impact Assessment (for industry)
- Building plans (architectural, engineering) in triplicate

Step 3: Investor Pays Processing Fee to Director of Planning

[97] Application for Building Plans, Processing and Site Inspections; and Building Plan Submission.

The General Manager gives the application to the Director of Planning. At this point, the investor pays a processing fee. The fee may be several hundred US dollars. The agency plans to increase the fee considerably in the near future.

Step 4: Director of Planning Assembles Technical Review Team

The Director of Planning assembles a team of technical reviewers who will study the plans and make comments on them. The group of inspectors varies according to the project: For some projects, for instance, a health inspector is unnecessary; while for others the engineer is not required.

Step 5: Technical Officers Carry Out Site Visits and Write Reports

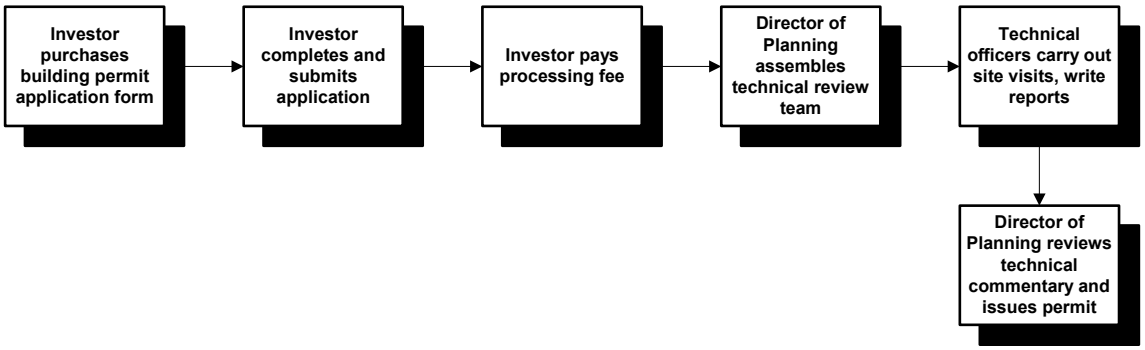
Each technical officer studies the application and performs a site visit. Each technical officer must review the application and visit the site within 48 hours of receiving the file. Each officer prepares a report for the Director of Planning. The reports are normally very brief and are presented on standard forms.

Step 6: Director of Planning Reviews Technical Commentary

The Director of Planning reviews the technical comments. He either approves or rejects the building permit application (issuing an “Approval of Builsing Plan”). If he rejects the application, the Director of Planning must provide the reasons to the investor within three business days.

Otherwise, the Director of Planning issues a building permit to the investor. The entire process typically takes two weeks if the investor has submitted a complete and accurate application.

Plateau State Site Development Process



2.3.4.2 Analysis

- The Plateau State site development process is a model of efficiency and superior to that of other states visited. It is among the most organized agencies the consultants visited.

- JMDB must be strongly commended for having produced *A Handbook of Guidelines* for development control standards and regulations. This useful guidebook presents a schedule of fees, planning, and site requirements; architectural requirements; and description of general procedures and submissions. JMDB claims that it will issue a building permit within ten days if the applicant's submissions are complete and in conformity with standards.

- The consultants reviewed three sources of information concerning the documentary attachments to the Application. The three sources agree on the Right and Certificate of Occupancy (title deed) and all site and building plans. The *Handbook* adds everything else except the Memorandum and Articles of Incorporation. One official stated unequivocally that JMDB does not ask for the feasibility study, another said that it does ask for a description of the project to assist in analysis, and it will ask to see the Memorandum and Articles of Incorporation. The discrepancies do not seem serious, especially in view of the brief turnaround for approval.

- The *Handbook* says that the application should be addressed to the attention of the Chief Town Planning Officer, but JMDB staff said it should be presented to the General Manager. As the *Handbook* was published in 1996, this study follows the more recent advice.

- It is unclear whether various inspections are joint or separate.

- The Application processing fees seem excessive.

2.3.4.3 Recommendations

- The consultants recommend eliminating the requirements of: the feasibility Study; the Right of Occupancy Certificate; and the Site Survey Map (which JMDB can collect itself).

- The *Handbook* should be updated.

- Fees should be reviewed with an eye to reducing them.

- Inspections should be conducted jointly by the various technical agencies concerned.

- JMDB is the only agency that indicates a strict schedule for processing applications. The measure is extremely commendable. Agencies in all states would do well to explore this time-management model.

2.3.5 Abuja, Federal Capital Territory

The FCT is taken as a separate case in terms of site development because of the role of the FCDA to the exclusion of Local Government and Councils. Both the re-zoning and site development procedures are discussed in this section.

2.3.5.1 Procedure for Re-zoning

A change of Land Use is subject to the following process:

Step 1: Investor Submits Application for Change in Land Use

The investor submits an application to the Director of Lands, requesting site rezoning. The investor's application contains the following documents:

- Application Letter for Change in Land Use, stating reasons for requested change
- Photocopy of C. of O.

The Director of Lands dispatches the application to the Land Use Allocation Committee (LUAC).

Step 2: LUAC Evaluates Application

The LUAC considers the investor's application at its monthly meeting. The LUAC makes a recommendation to the Director of Lands, pursuant to its statutory attributions.

Step 3: Director of Lands Approves Application

This is a *pro forma* step, whereby the Director of Lands endorses the LUAC's recommendations and makes his own recommendations to the Minister of the FCT.

Step 4: Minister of the FCT Conveys Approval

Upon reviewing the Director of Lands' recommendations, the Minister of the FCT endorses the LUAC's decision and conveys his conditional approval to the investor; pursuant to his attributions under the *Land Use Act*

Step 5: Surveys Department Conduct Surveys and Collects Survey Fees

The investor submits his file to the Surveys Department, which conducts any necessary surveys and makes all necessary corrections to the FCDA's zoning maps. The investor pays any applicable survey fees.

Step 6: Investor Registers Changes in Land Use and Pays Registration Fees

The investor registers land use changes at the Registration Department and pays applicable registration fees.

Step 7: Investor Consults Planning Department and Pays Planning Fees

The investor consults the Planning Department regarding any applicable planning fees and pays all applicable fees.

Step 8: Investor Records Change in Land Use at Data Department and Pays Applicable Fees

The investor records the change in land use at the Data Department, and pays applicable re-zoning fees.

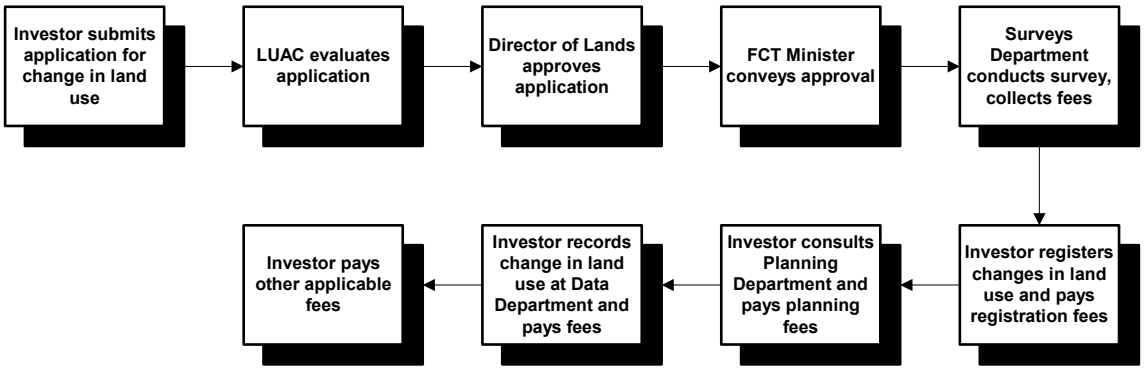
Step 9: Investor Pays Other Applicable Fees

The investor pays any other applicable fees to the Accounting Department the following fees typically apply:

- Lay-out Fee
- Premium
- Annual Ground Rent (Tax)
- Processing Fee

The consultants interviewed an Abuja-based solicitor specializing in property matters, who indicated that an investor would pay approximately N5,000 in fees to rezone his property.

Abuja, FCT Site Development Process: Re-zoning



2.3.5.2 Procedure for Site Development Permit

Step 1: Investor Draws up Design Plans

The investor hires professionals (including a registered architect and/or structural engineer) to complete building plans and an environmental impact assessment.

Step 2: Investor Files Plans with Relevant Authorities

The investor files various documents with FCDA's Lands Department Development Control Unit, the Federal Fire, Service and FEPA (if so required under the *FEPA Act*).[98] The submissions to the FCDA constitute a Site Development/Building Permit Application. As permits for Development, Subdivision, and Building Construction are not distinct in Nigeria, all requests may be processed at once, based on the submission of the following items:

- Simple Letter of Application for Plans Approval
- Plans, signed by a Registered Architect or Surveyor
- Photocopy of C of O

The investor must however obtain distinct approvals for all subsequent building works, additions, or changes to the original plans. The investor must also obtain distinct permits for road works (usually required –and obtained from the FCDA's Engineering Department) and re-zoning.[99]

Before evaluating the plans, Development Control refers them to the Lands and Surveys Department for preliminary processing.

[98] Discussed in chapter 1 section on Environment Mitigation
[99] Obtained from the Director of Lands: see above section, on re-zoning.

Step 3: Land Registry Confirms Property Ownership

Upon receiving a copy of the Applicant's C of O from Development Control, the Lands and Surveys Department first sends the application to the Land Registry for property ownership confirmation. The Land Registry forwards the application to the Surveys Unit to further processing.

Step 4: Surveyor Conducts Site Survey

The Lands Department assigns a surveyor to confirm plot dimensions. The surveyor completes a report, which the Lands Department submits to the Development Control Department. The Lands Department transfers the application file to FCDA's Land Planning Department for further evaluation.

Step 5: Planning Department Evaluates Plans

The Planning Department studies the investor's plans to ascertain their compliance with applicable planning documents regarding land use. Upon approving the plans, the Planning Department returns them to Development Control.

Step 6: Development Control Evaluates Plans and Issues "Letter of Plan Approval"

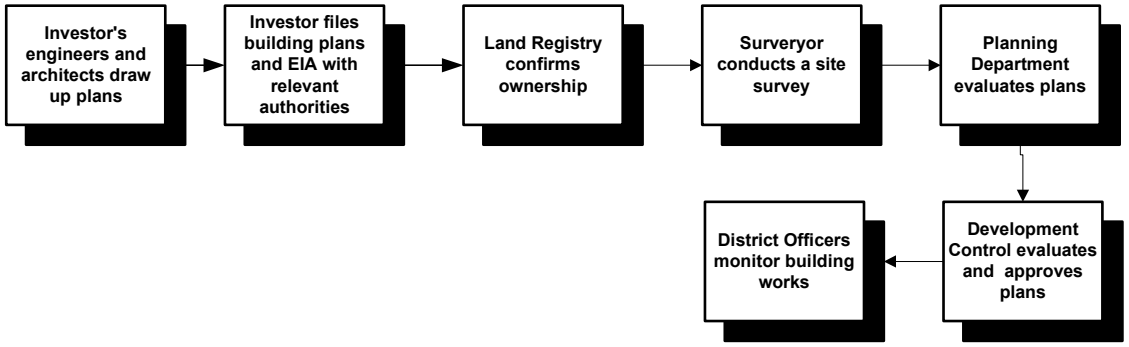
Once it has received clearances from the various other FCDA Departments concerned, Development Control's Engineering Unit studies the plans for structural compliance with building regulations. If the plans comply with building regulations, the Department issues a "Letter of Plan Approval" to the investor. The investor may begin construction.

Step 7: Development Control Unit Monitors Construction

Periodically, Development Control Unit district officers monitor construction progress. The Site Inspectors typically visit the site 1-2 times each week.

The investor does not need final clearance when construction is completed. If the investor has complied with the approved plans and applicable regulations, he has automatic authorization to occupy the premises.

Abuja FCT Site Development Process



2.3.5.3 Analysis

In terms of the re-zoning process in place, the FCT has much of room for improvement, for instance the following respects:

- First, the requirement that the investor return to the Planning Department, after he has filed, for the sole purpose of paying assessed fees.

- Second, the requirement that the investor see the Data Department during the course of his re-zoning petition, presumably to assist the Department in performing its own, internal FCDA data collection and monitoring functions, and that the investor is made to *pay for* this work.

- Third, the multiple payment-related visits required of the investors, successively by the Planning Department, the Data Department, and the Accounting Department, where all payments should be required at the same time.

- Fourth, the Minister's role in re-zoning, a dangerous exercise of power, completely outside of the Minister's true responsibilities, and a tremendous drag on process efficiency.

- Fifth, the absence of a no public Schedule of Fees regarding the re-zoning process. As a result, additional "facilitation" is a *sine qua non* for the process, which nevertheless requires approximately six (6) months.

- Finally, Abuja real estate solicitors' observation that all re-zoning has been suspended in Abuja, pursuant to a discretionary decision by the Minister of the FCT.

- On the other hand, the Abuja building plans approval process is practically a model of procedural design efficiency, with a few minor reservations.

- For instance, according to property law attorneys, the FCT's building regulations are not gazetted (although they are publicly available through the FCDA).

- Moreover, the site survey step appears unnecessary in the context of this process.

- Finally, according to the private sector, the site development process takes at least 4-6 months to complete – with the application of pressure at each step.

2.3.5.4 Recommendations

In terms of potential reforms to the Abuja re-zoning and site development processes, the consulting team makes the following recommendations:

- The FCT's Schedule Building Regulations and its Schedule of Fees for the re-zoning and site development processes should be made public and gazetted.

- The FCT should explicitly allow re-zoning petitions to be made, and review them on their merits on a case-by-case basis.

- Development Control should have no role in considering re-zoning requests.

- The principles of time-bound administrative decisions and resulting "deemed approvals" should be introduced in the context of the Abuja re-zoning and site development processes.

- The Planning Department should allow the investor to pay *all* fees at the time of submission of his plans.

- The Data Department should neither require a visit nor a fee from the investor in the course of executing its functions.

- The Minister's role in granting re-zoning petitions should de delegated to the Director of Planning.

- ***The consulting team recommends that the government should replace the site survey step of then site development approval process with a verification of the FCDA's survey plans, unless the land is not yet surveyed.***

2.4 Utilities Connections

Under the Nigerian Constitution, the federal government has exclusive jurisdiction over telecommunications, and oil and gas.[100] While federal and state governments theoretically share jurisdiction over power supply, currently, all public utilities are monopolistic federal agencies.

Due to a lack of financial resources to fund public works, non profit-driven public utilities, as well as the resource transfers resulting from fiscal federalism, infrastructure is uneven, but generally severely lacking, throughout Nigeria. The Southeast, in particular, continues to complain about marginalization in terms of infrastructure provision. Abuja lies on the other end of the spectrum but is still underserviced. Since the FCDA spearheads all public works, there is good interagency utility coordination. FCDA sources note that the government spends approximately N2 million to fully service each FCT plot sold.

Nevertheless, accessibility of basic infrastructure to entrepreneurs remains poor throughout Nigeria. According to a recent survey, accessibility is broken down as follows:

Accessibility of Basic Infrastructure to Entrepreneurs

Infrastructure	Respondents
Telephone (Land & Mobile)	42%
Electricity	75%
Pipe-borne water	32%

Source: NESG (Sept. 2002)

2.4.1 Electrical Power

According to the Office of the Presidency, although still insufficient, electrical generation capacity in Nigeria had increased from 1,500 MW in 1999 to 4,000 MW by End-2001.[101]

In the World Bank's *Private Sector Assessment Report* on Nigeria, 37% of interviewed firms rated power, along with telecommunications, the "number one investment constraint." The consulting team also experienced frequent, though brief, power failures while traveling throughout Nigeria.

The Investment Workgroup at the Ninth Nigerian National Economic Summit noted that up to $9 billion in investment is needed in electricity to achieve stability in power supply.[102]

Electrical power distribution and commercialization are the exclusive purview of the Nigerian Electrical Power Agency ("NEPA"). Because the agency is poorly operated, the private sector notes that publicly provided electricity is largely "unavailable." NEPA's transformer and distribution networks, for instance, cannot support the investment community's power needs.

[100] This implies that the Federal Government, rather than the State Governments, is responsible for this sector, whether through public provision or regulation of private parties. No constitutional amendment is thus required for utilities privatization.

[101] Magnus Kpakol, Special Economic Advisor to the President, "We are growing faster," *Business Day,* 22/11/02, p. 15

[102] Anthony Osae-Brown, "Nigeria Needs N1.4 Trillion to Develop Infrastructure," *Business Day,* 23/10/02, p. 9

Most investors resort to stand-by generators for guaranteed power supply. According to one investor, every new site requires at least 2-4 generators. One Lagos-based firm pays approximately N300/m^2 per month to NEPA, and another N500/m^2 per month for its generators. Other companies resort to illegal power connections. One investor noted that NEPA usually supplies less than 2 hours of power per day; the company therefore arranged with local NEPA sub-station duty managers to obtain additional power. The company pays the duty managers approximately N25,000/month to supply its two-story office. The company also has one staff member who tracks power supply full time. Despite these efforts, the company claims it achieves only 30-40% power efficiency from NEPA. Another investor revealed that his company pays NEPA duty managers approximately N5/m^2/hour for 75% uninterrupted service.

Free Zone infrastructure is above average by Nigerian standards. Zone investors express only minor complaints about power. In the Calabar Zone, for instance, power supply is much more consistent within the Zone than elsewhere in the country due to direct power supply from a NEPA sub station. Because the Zone has its own transformer, it does not have to share power with other entities. According to Zone Management, power is available virtually 100% of the time. One company reinforced this claim, indicating that the zone is without power for perhaps as little as eight (8) hours each month. The Zone also has several stand-by generators that supply power when needed. Yet one company noted that the zone generator does not provide enough power for full capacity production when the national electrical supply fails. Moreover, generator power supply is adequate only because investors are few in number and loads low. A petrol station is currently under construction within the Zone. Finally, the construction of a dedicated 132Kv line substation improving the power supply to the Calabar Metropolitan Town is underway.

Notwithstanding the conditions in free zones, the Office of the Presidency has recently reiterated its intention to restructure NEPA for greater effectiveness and economy of fiscal resources.

The GFRN has also concluded plans towards revitalization of installations of the National Electric Power Authority (NEPA) to enable it meet its total installed capacity of 6,000MW. Sufficient funds are being injected for the rehabilitation of ageing plants and equipment. In order to allow full private sector participation in power generation, transmission and distribution, the GFRN has accepted to deregulate the sector. This will allow local & foreign investors to build, own and operate and/or transfer independent electricity. All laws that inhibit private sector participation in the power sector are being reviewed with a view to amending them and encouraging investment. This step will complement the de-consolidation of the industry as far as state-owned NEPA is concerned. The hitherto largely over-centralized operations of this agency will be decentralized.

According to President Obasanjo, "we have increased electricity generation by well over 160 percent from about 1,500 megawatts in 1999 to about 4,000 megawatts in December 2001."[103] According to Senator Udo-Udoma, spelling these accomplishments out:[104]

- A Power Sector Reform Bill is before the National Assembly
- 10 times as much is budgeted for power as in 1999.
- IPPs have been developed in Akwa-Ibon, Lagos and Rivers States.

[103] "Nation's economy healthy, by President," *Daily Times,* 17/10/02

[104] Address of Senator Udo-Udoma at the opening ceremonies of the 9th Nigerian Economic Summit, October 16th 2002

Indeed, in May 2001, Rivers' State commissioned the 20MW Eleme IPP, the second phase of which, the 36MW Port Harcourt Trans-Amadi IPP, was commissioned in October 2002. The third phase is the 100MW Omoku IPP, billed for completion in April 2003.[105]

Official guidelines and framework for Independent Power Plants (IPPs) are thus now being put together following the interests and applications already put forward by independent producers from all around the world. As a result, investment opportunities exist for power generation in the following areas:

- development of energy resources and infrastructure;
- management of energy infrastructure; and
- commercialization of energy.

Before NEPA can be privatized, its legal monopoly needs to be undone and a power sector regulator be put in place. The *Electric Power Reform Act* Bill was introduced before the National Assembly to that end in August 2001, where it has been languishing ever since.[106] The bill was submitted in October 2001 by President Obasanjo, to authorize the creation of firms to take over the various functions of NEPA. More specifically, the Bill was based on a plan to break down the energy market into (a) generation; (b) transmission; and (c) supply and distribution segments, as well as geographical regions. The generation and distribution markets are therefore slated for privatization. Passage of the EPRSB would also repeal the *NEPA Act* and *Electricity Act*, and establish the Nigerian Electricity Regulatory Commission (NERC) to regulate private sector providers within these markets. The Office of the Presidency has declared that no action on NEPA privatization will occur until the Bill is passed or voted down.

According to the NESG: "Government efforts at improving power supply in the country may result in the National Electric Power Authority (NEPA) being split into 18 firms –one for transmission; six for power generation, and 11 for distribution. It is expected that this reform will lead to the unbundling of NEPA and the development of commercial infrastructure for the new electricity market."[107] However, according to the NESG, "government's huge investment in NEPA has not created much significant improvement.[…] The delay by the National Assembly to pass the power bill continues to prove a stumbling block." [108] It may be significant that the Government, on 22 October 2002, approved a new, private sector friendly, Board of Directors for NEPA.[109]

2.4.2 Telecommunications

Nigerian telephone infrastructure remains inadequate. NITEL PLc's installed capacity is of just 267 exchanges, with a time speed of 9,600BPS. The transmission network is largely based on patchy, weather-affected, satellite transmission, includes co-axial cable, optical fiber cable, and satellite links (including 19 DOMSAT Earth Stations, 3 leased INTERSAT transponders, 110 INMARSAT terminals, and 14 terminals utilizing leased 36MHz INTELSAT transponders).[110]

[105] "Rivers' Independent Power Project," *This Day* Vol. 8, No. 2733, 16/10/02, p. 11
[106] Mr. Nasir El Rufai, Director General of the BPE, speaking at NES9 NIPC-BPE Investors' Forum, 18/10/02
[107] NESG, *NESG Scorecard: Third Quarter Report –2002; A Review of the Economy*, p.3
[108] NESG, *NESG Scorecard: Third Quarter Report –2002; A Review of the Economy*, p.6
[109] "Government approves new board for NEPA," *The Comet*, 22/11/02, p. 3
[110] NIPC, *Investing in the Nigerian Economy,* ,pp. 10-12

Most importantly, according to the NIPC, there are just 700,000 landlines in Nigeria -for a population of 120 million. 70% of fixed lines in Nigeria are operated by Nigeria Telecommunications Ltd. (NITEL), which is known for its persistent network failures.[111] NIPC notes that low tele-density is Nigeria's "Number 1 investment problem." Investors agree; one having pithily noted, "There are no lines." Indeed, as far as the private sector is concerned, telecommunications infrastructure is largely "unavailable." There are bottlenecks in certain primary centers (NITEL's fiber optic cabling from Port Harcourt to Lagos has been damaged since 1999 and capacity is reduced by 50%, as NITEL has not been able to make any repairs).[112] Furthermore, as a result of frequent construction, telephone lines are often cut, limiting service. Experiencing these issues first hand, the consultants frequently struggled with the telephone lines, particularly when calling another state. The consultants found it almost impossible to call overseas from the states, and the connections were typically very poor.

There is a dearth of telecommunications infrastructure, and this has placed a constraint on the provision of services to existing and potential customers. Local manufacture of switching and transmission equipment is required since no company exists in Nigeria or even neighboring countries for this purpose. Overall, telecoms facilities and services provisioning are still inadequate, despite the Government introduction of competition in the sector and the subsequent licensing of Private Telecommunications Operators (PTOs).

Furthermore, given NITEL's telephone land-line telephone installation fee is of N15,000, illegal telephone connections are prevalent. Needing 100 telephone lines, one company used personal contacts with NITEL field engineers to connect 25. Unfortunately, only 10 work at any given time. The company nonetheless pays a monthly running cost of N10,000/line to ensure 75% operation. Radio links are also deemed a *sine qua non*.

Again, free zone telephone infrastructure is generally above average by Nigerian standards. Zone investors express only minor complaints about telecommunications. The Calabar Zone, for instance, has dedicated telephone lines from NITEL. This makes it much easier for companies to obtain their own dedicated lines. Moreover, NITEL has an office in the Zone, to deal with any problems or complaints. Company representatives indicate that lines are occasionally faulty, but that this can be rectified easily because of NITEL's Zone office. There are also plans for telecommunications infrastructure upgrading. The phone system is fiber optic and the Zone intends to go to satellite. Indeed, a company has already been licensed to provide v-sat uplink and other telecommunications services within the Zone.

The Onne Oil & Gas Free Zone in Port Harcourt however offers a different picture, perhaps because there are over 60 companies using the telephone infrastructure. Dissatisfied with zone telecommunications services, one company in the Onne FZ wanted to install a tower to capacitate its own phone system. Zone Management refused, forcing the company to use the inadequate Zone system. Zone Management charges US$600 per line, in addition to the NITEL per line charges. The company also pays 40% of the amount NITEL charges the zone management. However, the company does not even really have its own line, but merely an extension from a main Zone line. The company indicated that the phones do not work about 35% of the time. When the company had two extensions – one solely for fax and one for phone – the phone only worked 10% of the time. In addition, the company representative said he has never managed to connect to the internet via Zone telecommunications lines. Although DMS

[111] "GSM: A Subscriber's Assessment," *This Day* Vol. 8, No. 2734, 17/10/02, p. 36
[112] "The GSM License was overpriced", *This Day*, Vol. 7, No. 2111, 02/01/01, p. 30

has its own internet service, through Intel, which they allow Zone clients to use, the company does not trust Zone Management not to look through the company's email traffic.

In any event, according to NACCIMA, expensive nation-wide airtime tariffs of telecoms companies is a fundamental investment issue.[113] Complaints from consumers also include the high incidence of dropped calls, difficulty in accessing international lines, operators not observing off-peak rates, expiratory period for SIM cards and recharge call credits, consumers being billed even when calls are not connected.[114]

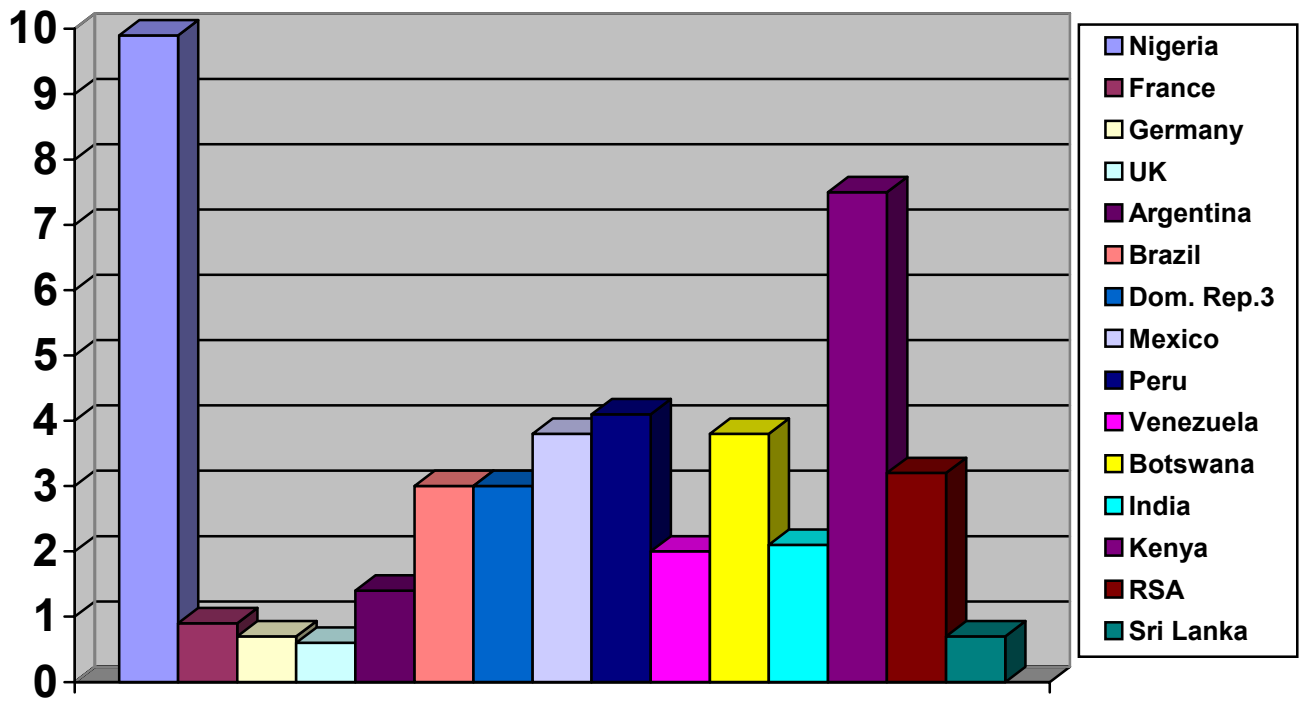
The NCC has developed minimum service grades to be published soon. On October 14th, the Nigeria Communication Commission (NCC) directed NITEL to interconnect its mobile network with those of MTN Nigeria Ltd. And ECONET Wireless Ltd. by October 16th.[115] They had previously directed them to interconnect by October 9th.[116] Neither directive was implemented.[117]

There is an urgent imperative of increasing Nigeria's limited network of landlines, nor of continuing the ongoing conversion from analog to digital switching. Indeed, MTN's Chief Technical Officer has stated that the inadequacy of NITEL's fixed lines has forced virtually everyone in the business community to rely on GSM.[118]

Call rates in Nigeria remain prohibitive.

Average Call Termination Rates (US Cents/minute)

[113] "Foreign Investors won't Come if We're Not Comfortable," *This Day* Vol.8 No. 2732, 15/10/02
[114] "GSM operators parley deadlocked, Govt order NITEL to interconnect," *The Guardian,* 15/10/02
[115] "NCC to NITEL, MTN, Econet: Interconnect Immediately," *This Day* Vol. 8, No. 2732, 15/10/02
[116] "GSM operators parley deadlocked, Govt order NITEL to interconnect," *The Guardian,* 15/10/02
[117] "GSM Operators Flout NCC's Order on Interconnectivity," *Business Day* Vol. 2, No. 114, 17/01/02, p. 1
[118] "MTN Exec Commits to Developmental Plans." *This Day* Vol. 8, No. 2734, 17/10/02, p. 37



Source: MTN (Ovum)

According to Mr. Zachary Wazara, CEO of Econet, problems also subsist with regards to interconnectivity, transmission, and power supply. MTN's CEO, Mr. Adrian Wood, also points to the lack of a level playing field with NITEL.[119] The Investment Workgroup at the Ninth Nigerian National Economic Summit noted that a minimum of $2 billion in investment is needed in telecommunications to meet market needs.[120]

NITEL Mobile has not yet rolled out its own cell phones in commercial quantities.[121] According to a Guardian Opinion poll conducted across 30 states and Abuja, 72.6% of Nigerians do not have a GSM phone, these numbers varying from 60% in Abuja to 81.2% in the North-Central region. For 44.8% of respondents, the reason was "high cost" and 24.9% "non-availability."[122]

Furthermore, NITEL has cut interconnectivity to other GSM networks. According to MTN; "It is not clear… whether NITEL GSM is run as an arm, separate and independent of the fixed network, as is required by law. This is important, because if NITEL is allowed to subsidize its GSM operations with resources from its fixed network, then competition will be stifled and the entire industry and consequently, Nigeria will suffer from lack of communications infrastructure development."[123]
The deregulation of the telecommunications sector through *Decree No. 75 (1992)* was to allow for private sector participation in the sector and expand the nation's communication facilities.

[119] "GSM unaffordable to most Nigerians, says poll" *The Guardian,* 15/10/03, p. 12.
[120] Anthony Osae-Brown, "Nigeria Needs N1.4 Trillion to Develop Infrastructure," *Business Day,* 23/10/02, p. 9
[121] "GSM: A Subscriber's Assessment," *This Day* Vol. 8, No. 2734, 17/10/02, p. 36; "NITEL links up with MTN, Econet," *The Comet*, Vol. 4, No. 1198, 18/10/02, p. 4
[122] "GSM unaffordable to most Nigerians, says poll" *The Guardian,* 15/10/03, p. 12.
[123] "Issues on GSM in Nigeria," *The Guardian,* 21/10/02, p. 36.

The Nigerian Communications Commission (NCC) was established consequently to regulate the performance of the sector. The *NCC Amendment Decree No. 30 of 1998* deleted those provisions in the first decree that inhibited competition in the sector thus enhancing the expected role of private sector enterprises. The functions of the NCC include:

- Regulating the privatized sector of the telecommunications industry;
- Facilitating entry into the telecommunications market by private entrepreneurs;
- Creating a regulatory environment for the supply of telecommunications equipment & facilities;
- Issuing of telecommunications licenses;
- Promoting fair competition and efficient market conduct among all players in the telecommunications industry; and
- Arbitrating disputes between participants in the telecommunications industry and protecting consumers against unfair practices.

However, reform of the sector has been quite tame from a regulatory perspective. According to Ogbonna Iromantu, former CEO of the NCC, *Decree No.75 (1992)* avoided enacting radical provisions which would have alienated the Ministry of Communications or NITEL.[124] Indeed, the *NCC Act of 1992* as amended does not grant it powers to regulate NITEL –NITEL is, in fact, not even licensed by the NCC.[125] The NCC lacks legal autonomy, and a *Telecommunications Act* Bill is still before the National Assembly.[126] This situation has resulted in NCC Directives sometimes being flouted by the telcos.

There are however signs of improvement.

According to Senator Udo-Udoma, speaking at the opening ceremonies of the 9th Nigerian Economic Summit, on October 16th 2002, $1 billion has been invested in the telecommunications sector since the January 2001 GSM licenses auction. The National Communications Commission (NCC) awarded GSM licenses in late January 2001. The License auction process, under which each Licensee paid $285 million for a license, was very transparent. The four (4) GSM operators will have 2,000 cell sites, and their own transmission networks.[127] Nearly 1 million GSM lines were issued and made operational within eight (8) months of becoming available[128]. "While you had to complete all sorts of forms and encounter all sorts of form and encounter untold delays and frustrations before getting a phone line (which may not be working after all the hassle), it is now possible to walk into a GSM operator's office and be on line in a quarter of an hour."[129] This has raised the national network capacity and has enabled Nigeria, for the first time (in June 2002), to attain the International Telecommunications Union (ITU)'s minimum tele-density of one phone per 900 people.

Since GSM was launched in Nigeria on 8 August 2001. NITEL rolled out its GSM services in August 2002.[130] It has an installed capacity of 118,000 lines.[131] According to the Office of the

[124] NCC, *Paper presented to the House of Representatives Committee on Communications,* in *This Day,* Vol. 8, No. 2741, 24/10/02, p. 42
[125] "Interconnectivity logjam threatens GSM operations," *The Guardian,* 22/10/02. p. 43
[126] "Interconnectivity rumbles: Matters arising," *Daily Times,* 17/10/02, p. 19
[127] "The GSM License was overpriced", *This Day*, Vol. 7, No. 2111, 02/01/01, p. 30; "GSM: Can we afford $285m," *This Day*, Vol. 7, No. 2110, 01/31/01, p. 6
[128] "GSM: The Communication Revolution", *Daily Trust*, 06/09/02
[129] *Daily Trust*, "GSM Revolution", 06/10/02
[130] "GSM unaffordable to most Nigerians, says poll" *The Guardian,* 15/10/03, p. 12

Presidency, telephone lines in Nigeria have increased from 400,000 land-line connections in 1999 to 1.2 million total telephone connections in 2002, counting ECONET and MTN GSM subscribers.[132] MTN introduced its services in September 2001, offering services transmitted through 24/24 electrical generator-run radio base stations, while ECONET introduced its services in October 2001. GSM now reaches 25 cities and 40 villages in Nigeria.[133]

On 21 October 2002, NITEL announced plans to role out an additional 1.2 million lines, throughout Nigeria's major cities by August 2003.[134] Furthermore, according to the US EXIM Bank, whose Chairman spoke at the opening ceremonies of the 9th Nigerian Economic Summit, on October 16th 2002, the Bank intends to back a further ECONET services expansion.

After several failed attempts, NITEL and Nigeria's private telecommunications operators (PTOs) eventually reached an Interconnectivity Agreement, which took effect on 21 October 2002.[135]

Although there is still no country-wide transmission backbone, Mobile Telecommunications Network Ltd. (MTN) has embarked upon the construction of a 3,000km long microwave radio transmission backbone, which was to be completed by End-2002, traversing over 120 communities from Kano in the North, towards Lagos and Badagry in the South, and Port Harcourt and Calabar in the East.[136] It has launched services in Lagos, Abuja and Port Harcourt first, temporarily relying on satellite service for additional towns. It is expected to significantly enhance coverage as well as call quality.[137] MTN has planned further investments worth N180 billion in the country in the next few years.[138] It was also announced on 21 October 2002 that the IFC is scheduled to approve a $100 million loan to MTN for the expansion of its GSM network.[139]

MTS First Wireless also recently initiated the construction of a hybrid carrier-class long-distance communications and CDMA fixed wireless telephony network in Nigeria, beginning with the wireless component. The MTS fixed wireless network, made up of a nationwide carrier class, long distance communications and CDMA fixed wireless telephony service, is soon set to be offered in 10 major cities across the 6 major geo-political zones of Nigeria.[140] The network will span the country when completed in June 2003, and offer backbone transmission services to other telecommunication operators and carriers.[141]

Finally, it is worth noting that in 2001, the Bureau of Public Enterprises[142] (BPE)'s privatization program under the *Public Enterprises (Privatization and Commercialization) Act of 1999* was extended to NITEL. A failed privatization of NITEL resulted in 16 initial offers, three of which

[131] "Interconnectivity logjam threatens GSM operations," *The Guardian,* 22/10/02. p. 49
[132] Magnus Kpakol, Special Economic Advisor to the President, "We are growing faster," *Business Day,* 22/11/02, p. 15
[133] Calixthus Okoruwa, Public Relations Manager, MTN Nigeria, in "Still on the MTN Connection," *This Day,* Vol. 8, No. 2743, 26/10/02, p. 24
[134] "Why we interconnected MTN, Econet, by NITEL," *The Comet,* 21/10/02, p. 26
[135] "NITEL, PTOs interconnect agreement begins today," *The Comet,* 21/10/02, pp. 10, 23, and 26.
[136] Calixthus Okoruwa, Public Relations Manager, MTN Nigeria, in "Still on the MTN Connection," *This Day,* Vol. 8, No. 2743, 26/10/02, p. 24
[137] "MTN urges patience over network problems," *Daily Trust,* 16/10/02
[138] "MTN to Invest $35m in Plateau," *Investment Journal,* 28/10/02, p. 4
[139] "N22.8b coming from IFC," *The Comet,* Vol.4, No.1201, 21/10/02
[140] "MTS Begins Fixed Wireless Phone Network Construction," *This Day* Vol. 8, No. 2740, p. 5.
[141] "MTS First Wireless Begins Construction of Phone Network," *This Day,* Vol. 8, No. 2741, 24/10/02, p. 38
[142] The BPE is the official privatization agency in Nigeria.

were short-listed. According to the BPE, the NITEL privatization could not, however, be concluded as the poor financial engineering by the winning bidder collapsed in the context of the global telecoms meltdown. The current plan is to sell 25% of NITEL on the NSE in December 2002 and search for a Management Contractor.[143] In July 2002,[144] BPE's Deputy Director, Mr. Joseph Chibgo Anichebe, said that the BPE was taking a "two-pronged" approach to NITEL's privatization: 1) bringing in a credible and well-qualified Telecoms operating company to manage its operations; and 2) taking approximately 20% of NITEL to the capital markets by way of an Initial Public Offering (IPO). Mr. Anichebe disclosed that the latter was to represent the country's single largest capital market transaction. Eight (8) firms have bid for the NITEL Management Contract at the Bureau for Public Enterprise (BPE).[145]

2.4.3 Water and Waste Water

According to the Office of the Presidency, 900,000 bore-holes had been sunk across Nigeria in the 2000-2002 period.[146] The Obasanjo Administration has also invested N227 billion in the construction of 16 dams, 21 irrigation projects, and nearly 6,000 water schemes nationwide since 1999 according to the National Technical Commiteee on Water Resources (NTCWR). The Obasanjo administration has committed N227 billion to the construction of 16 dams, 21 irrigation projects and 5,866 water schemes since 1999. According to the Federal Ministry of Water Resources, 60% of Nigerians, up from 30% in 1999, now have access to potable water, following the provision of water to 9,472 rural communities. Minister Alhaji Mukhtar Shagari indicated that the present administration's efforts are unrivalled by any previous government's.[147] Furthermore, up to N80.5 billion has been spent by the GFRN on water resources sector in the past three years, according to Minister of Agriculture and Rural Development, Malam Adamu Bello.[148]

Nevertheless, as with other utilities, publicly provided water distribution and wastewater treatment are to all intents and purposes "unavailable" in Nigeria, as far as the private sector is concerned. As one investor bluntly put it to the consultants: "Don't even bother asking."

Although the situation is generally poor nationwide, according to a report released by the Federal Office of Statistics (FOS) in the year 2000, the Southeast region has the worst potable water supply in the country.[149] Investors resort to boreholes, drilled by private companies, and for which (at least in Lagos State) no approvals are required.

It should be noted that Free Zone water and sewerage infrastructure is above average by Nigerian standards. The Calabar Zone has its own borehole and treatment facility. Waste is treated with UV rays and released on site. Investors nevertheless indicate that there is insufficient water supply in the Zone. One company located in the Zone noted that the zone

[143] Mr. Nasir El Rufai, Director General of the BPE, speaking at NES9 NIPC-BPE Investors' Forum, 18/10/02
[144] Quoted in "14 firms bid to manage INTEL", *The Guardian*, 07/10/02.
[145] Africa Access & Lucent Technologies; Keppel Telecommunications Transport Ltd.; China Netcom-ZTE Consortium; Pentascope International; Sasktel International; TCK Bhawan and BNSL; Technologia das Communicadoes; and Telecorn Management Partner AS and Swedtel AB. See, "8 Foreign Firms Ready to Run NITEL," *Investment Journal* Vol.01, No.04, 28/11/02, p. 1
[146] Magnus Kpakol, Special Economic Advisor to the President, "We are growing faster," *Business Day,* 22/11/02, p. 15
[147] "More Nigerians have access to potable water –FG," *Vanguard*, 16/10/02
[148] "FG spends N80.5bn on water supply," *Daily Times,* 17/10/02
[149] FOS, in "Mirage of national conference," *The Comet*, 01/30/01, p. 26.

provides insufficient water supply, but that this is likely due to a problem with the national water supply.

Again, it is recommended that the BPE's privatization program be extended to the water utility.

Chapter 3: Employing

This Chapter focuses on the various norms and procedures relating to securing investor and expatriate entry and work permits, labor registration, employee income tax registration and P.A.Y.E. obligations and finally labor norms, enforcement and dispute resolution mechanisms.

Employment is an area of concurrent State-Federal jurisdiction under Schedule II of the Nigerian Constitution. The consultants' analysis of the employment-related processes in Nigeria reveals a mixed picture of efficient and inefficient procedures, with a certain complexity and lack of transparency in some areas and flexibility and liberal regulation in others.

Overall, Nigeria must still seek to shed the remnants of military-era "command-and control" approaches to labor regulation, as well as protectionist and "closed-nation" attitudes regarding foreign investment, in order to more fully embrace its own fundamentally liberal and progressive instincts with respect to regulation of labor. A series of specific recommendations will be offered throughout this chapter on a procedure-by-procedure basis, in order to achieve this goal.

3.1 Investor and Expatriate Entry

Nigeria Immigration Service
Ministry of Internal Affairs (MoIA)

Immigration is an area of exclusive federal jurisdiction. Although there are Immigration Offices in all of Nigeria's States, with a reasonable delegation of power, and Nigerian consulates abroad also have visa-granting powers, all investor and expatriate entry petitions are ultimately processed in Abuja.

In August 2001, an Immigration Desk was opened at the NIPC as a "fast track" option to proceeding through ordinary MoIA channels. On behalf of the MoIA's Business Department, the MoIA's Desk at the NIPC facilitates the delivery of the three documents necessary to ensure leave for expatriate entry:

- Expatriate Quota Positions; and
- Visas.

3.1.1 Procedure

The investor must accomplish the following administrative procedures in order to ensure entry of expatriate personnel:

Step 1: Investor Requests Visa

The first step to the investor's or expatriate staff's entry in Nigeria is the Visa Application. This can be performed at any Nigerian consulate abroad, as well as (in cases of changes of status), at MoIA offices in Nigeria.

Expatriates generally first enter Nigeria on a different visa then the one which they will stay there under; usually a Business Visa (although a Tourist Visa or Visitor Visa and other options are available). These are valid for 56 days, but do not entitle the bearer to receive payment in Nigeria for any work performed.[150]

Alternatively, expatriates who know in advance that they are entering for a period of under three (3) months, to perform work for a company already registered in Nigeria, may be sponsored or an obtain a "Temporary Work Permit." Obtaining these requires several sub-steps:

a) A Resident within the sponsoring company files a request for Temporary Work Permit, on-site, to the Comptroller General of Immigration;
b) After making a determination on the application, the Comptroller General sends a Cable to the consulate nearest the entering expatriate's place of residence;

[150] With the exception of nationals of ECOWAS countries, all visitors to Nigeria must obtain a valid visa before entry. Application forms are available from any Nigerian Embassy and the Federal Ministry of Internal Affairs in Nigeria. Nigeria issues three types of visas, including an Ordinary, Diplomatic, and Gratis Courtesy Visa. The Ordinary Visa is further subdivided into Transit, Single Entry, and Multiple Entry Visas.

Transit Visa: The Transit Visa is required for persons traveling through Nigeria onto another destination and is valid for a maximum of seven days. To obtain a Transit Visa, an individual must present an invitation or proof of permission to enter the destination country, proof of travel (most often a confirmed ticket) or proof of having sufficient funds to pay for transportation out of Nigeria to the proposed destination. This visa can be issued by a Nigerian embassy or consulate abroad or, with the explicit permission of the Comptroller-General of the Immigration, at the port of entry. The Transit Visa will be stamped into a visitor's passport.

Single Entry Visas: The Single Entry Visa can come in the form of a "short visit visa," "subject to regularization for resident work permit" (STR) visa, or a "temporary work permit" (TWP) visa. The short visit visa is designed for tourists, visiting friends and relatives, and conducting business meetings. Form IMM 22 should be completed to obtain this visa, and a return air ticket must be included with the application. If an applicant does not have a return ticket when he or she arrives in Nigeria, he or she may be required to deposit the amount of a return ticket with the Department of Immigration. The STR visa is for expatriates and their families who have been offered employment within a company's expatriate quota. To obtain this visa, the employer will submit an application to the Nigerian embassy or consulate in the country where the would-be employee resides. The visa is valid for three months, in which time the employer should be able to secure the worker Residence Work Permit approved by the Comptroller-General of the Immigration. The TWP visa is designed for short-term, temporary assignments, including installation and erection work, feasibility studies, machinery and equipment repair, auditing, and research related work. Although a company may obtain this visa through Nigerian embassies and consulates overseas, the Comptroller-General of the Immigration must approve of them directly, and an applicant may incur an extra charge for the cablegrams sent between the overseas mission and the Department of Immigration. The TWP visa is valid for three months and may be extended pending approval of the Comptroller-General of the Immigration.

Multiple Entry Visa: Multiple Entry Visas are designed for businesspeople that need to come to Nigeria periodically over the course of a year to discuss business issues. This visa is valid for a period of 12 months and the number of journeys should be specified in the application, which can be made to Nigerian diplomatic representatives abroad.

Gratis Courtesy Visa: The Gratis Courtesy Visa is issued to foreign government officials coming to Nigeria on official business but who do not qualify for a Diplomatic Visa.

c) The entering expatriate applies for his Temporary Work Permit/Visa at the Nigerian consulate

Finally, expatriates who know they will be in Nigeria for between one (1) and three (3) years may however wait for their employers within Nigeria to obtain a "Subject-To-Regularization" ("STR") Visa instead. Obtaining these also requires several sub-steps:

a) A Resident within the sponsoring company, which must be duly registered in Nigeria with the CAC and/or NIPC and MoIA, files a request for an STR Visa, on-site, to the Comptroller General of Immigration;
b) After making a determination on the application, the Comptroller General sends a Cable to the consulate nearest the entering expatriate's place of residence;
c) The entering expatriate applies for his STR Visa at the Nigerian consulate

Step 2: MoIA Issues Visa

The expatriate collects his initial entry visa at the Nigerian consulate. Nigerian Consulates abroad are authorized to issue business/tourism, investor, and employment class visas. Business/Tourism and Investor visa classes are, according to Immigration, issued within 48 hours pursuant to a Presidential Decree setting clear-cut guidelines. Moreover, according to Immigration, consulates have been instructed to allow entry of expatriate personnel of foreign invested enterprises on the basis of their employer's Expatriate Quota position allotment Approval (EP), even before employment permit requests are completely processed. "Temporary Work Permits Visas" may be issued up to 3 months. If the consulate has received a Cable from the Comptroller General of Immigration, it will stamp it and issue a "Cable Visa."

Step 3: Investor requests "EP"

A representative of an investor on-site in Nigeria may file a request for an Expatriate Quota (EP) on behalf of an expatriate he wishes to employ. While free to start earlier, the investor usually begins the full EP employment permit request process once in country. The process for requesting and obtaining EP "approvals" from NIPC was described above in chapter 1, as an integral part of the Business Registration and Permit Approval process, and will not be fully repeated in this section of the report.

The cost of the EP Application Form and documents is of N5,000 –a receipt will be given when it is paid. The MoIA requires the following documents filed in connection with an application for a EP:

NIPC Form 1;
Original Receipt;
Memorandum and Articles of Association;
Feasibility Report;
Form C02;
Form C07;
Certificate of Incorporation;
Current Tax Clearance;
Lease Agreement;
Joint Venture Agreement [if applicable];
Certificate of Entry into the Mining Industry [if applicable]; and

Evidence of Machinery Acquisition.

Step 4: NIPC Technical Committee Deliberates on EP Request

"Technical Committee" meetings are held twice per month, with the NIPC Chairman requiring reports on their results. They consider, amongst other matters, all EP applications that have been made in the past two weeks and make determinations in their regard. Decisions on whether to grant the EP are discretionary, and made on the basis of the basis of the nature of the investor's activities, the amount of capital it has imported, and how many Nigerians it has hired. In addition to the other criteria, the "Nigerianization" policy requires the employment of at least two (2) Nigerian understudies with University Degrees in the relevant technical area, to be trained to replace the Expatriate by the expiration of three (3) years.[151] Except in EPZs, where all expatriate quotas are waived, the NIPC Technical Committee makes determinations (which should be more accurately referred to as recommendations) with respect to the approval of EPs. It may "approve" (in fact recommend to Immigration Headquarters) a discretionary number of such EPs for each foreign company.

Step 5: Investor Collects Expatriate Quota Position Certificate at NIPC Immigration Desk

Provided all submissions are in order, the EP Certificate is expeditiously delivered within 14 days of application.[152] Thus, 14 days after submitting its application, executives from any duly-registered investor with a Business Permit,[153] may return to collect the EP (providing it has been granted). The cost of collecting the EP is of N3,000. EPs are granted by way of a NIPC Letter of Notification.

Step 6:Investor Requests STR Status:

EPs are not viewed as a "permission" to enter by the MoIA. Once the NIPC has granted its "approval" of EPs, it forwards a copy of its letter of Notification to Immigration which, under the *Immigration Act,* makes decisions with respect to the number of investor expatriates which may be admitted to the country and is thus responsible for the actual implementation of the EP Program. Immigration is also responsible for issuing related Work/Resident Permits. An Immigration-NIPC Agreement on EPs and Work Permits is what allows the NIPC any role at all in the process. At this stage, it is recommended that the investor personally contact Immigration to ensure proper follow-through of the opening of his file with the MoIA.

After obtaining an EP for an individual, the sponsoring foreign company (which must already be registered with the CAC in Nigeria) may request a change in the individual's visa status on-site, from his initial [Business] visa to the STR Visa. This is of course not necessary if the expatriate originally entered under a STR Visa. To apply for the STR Visa, the investor may either deal directly with Immigration Central HQ or may solicit the assistance of the NIPC Immigration Desk. While independent requests by investors may be submitted directly to Immigration Offices in any of Nigeria's States (as well as consulates abroad), all new entrant files are eventually transferred to Headquarters in Abuja for final processing.

[151] As set forth in the *Immigration Act (No. 721) of 1963* and the *Guidelines on the Granting of Business Permits and Expatriate Quota Positions to Companies and Other Organizations*, MoIA Business Department (January 1985).
[152] *NIPC Decree No. 16 of 1995* and its implementing *Presidential Circular.*
[153] As noted in Chapter 1, on Registration, the Business Permit and EP(s) may actually be applied for simultaneously.

Step 7: Investor/Expatriate Worker Collects STR Visa:

After a determination has been made, usually within 24 hours of a EP issuance, the investor/foreign worker may collect his STR Visa –At the NIPC Immigration Desk if he is on-site or at the Consulate if he is abroad.

Step 8: Investor/Expatriate Requests Regularization of Status:

Upon receiving the Letter of Notification of the NIPC's decision with respect to an Application for a Business Permit and EPs, any foreign invested company wishing to avoid subsequent monthly "Quota Return" filing obligations may submit a Request for regularization. This is done in the following manner:

The expatriate worker in Nigeria on a STR Visa must, once on-site and having obtained STR status, apply for a further change of status, in order to "regularize" his status. There are two options open in terms of status regularization:

- The *"Combined Expatriate Residence Permit and Alien Card ("CERPAC")*, open to all expatriate workers with STR Visas and their dependents –The CERPAC is a one-year document similar in nature to the US "Green Card" without the Social Security Registration attribute; and

- The *"Permanent Until Review" ("PUR")* status –Open only to the sole owner and/or Chief Executive/Managing Director of a reputable investor, and subject to the employment of a Nigerian Deputy Chief Executive.

Again, obtaining these documents also requires several sub-steps:

a) Application for Regularization: The Application is subject to proof of STR Visa. In the case of CERPACs, this is done at the CERPAC Office. Several documents must be filed along with this request (employment papers, degrees, etc.). In the case of the PUR, the request must be filed at Immigration Central HQ, and include the following documents:
   - Simple Request for PUR Status
   - Payment of N1 million fee for each PUR Status
   - Payment of the ordinary N 5,000

a) Payment of $350.00 at Afribank in connection with the CERPAC Application; and

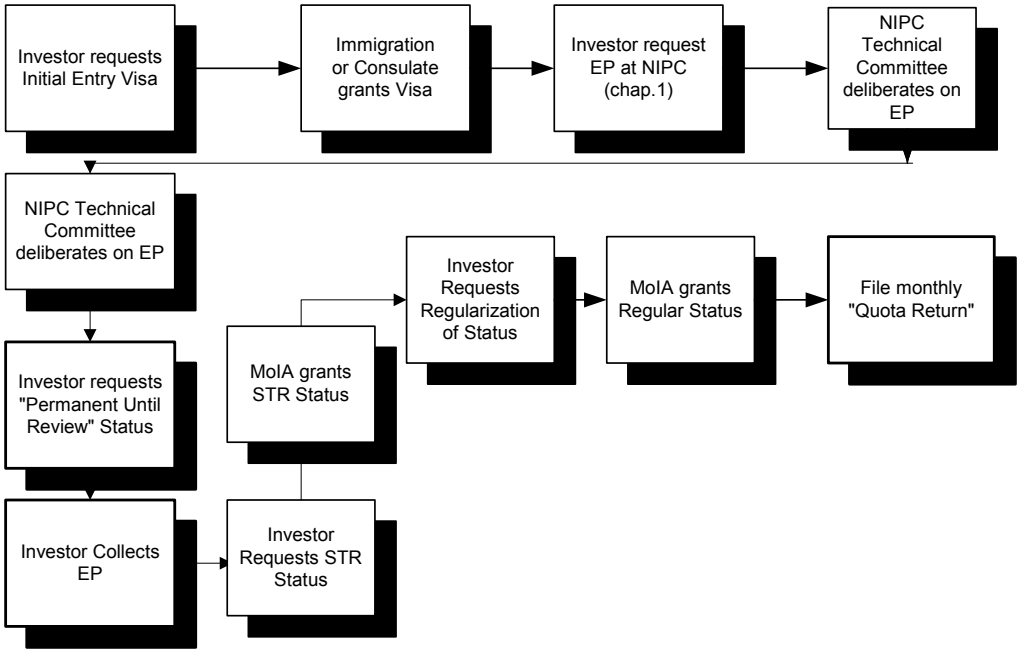
b) Return to CERPAC Office to show evidence of payment, in the case of a CERPAC.

Step 7: MoIA grants Regular Status

If all documents and payments are in order, the MoIA will approve requests for regularization of status. The Expatriate Worker returns to the relevant Immigration office and collected his proof of regular status, generally within three (3) weeks.

Step 8: Investor Files Monthly "Quota Return"

All foreign invested companies must file monthly "Quota Returns" with respect to their expatriate personnel and submit them to the NIPC, unless they have acquired PUR Status.



3.1.2 Analysis

During their field research in early 2001, the Project Team consultants, including Team Leader Jean-Paul Gauthier and Dr. Donaldo Hart, were very impressed by the ongoing process of institutional reform in Government service delivery in Nigeria. Indeed, having had the opportunity to undertake projects in Nigeria in the 1993-1999 period, they were struck by a number of changes in the country's general attitude and openness toward foreign businessmen. Mr. Gauthier, who had for instance once had an entry visa denied, experienced no problems in obtaining his 3 visas during the course of the project. Dr. Hart was singularly impressed by the reforms at Murtala Mohammed Airport in Lagos. While the airport had been the object of a FAA flight interdiction in the early 1990s, he was pleased to report services as having been upgraded and enhanced, Customs & Immigration bribery as having been eliminated, and on-site staff from such bodies as the Lagos Tourism Board extremely helpful. A new Unified Work Permit/Multiple Re-entry/Identity Document scheme is in the works for expatriates residing in Nigeria. Nevertheless, problems subsist requiring the MoIA's attention.

Nigeria's Immigration services and schemes are moving in the direction of international best practice. Nigerian visa requirements are only slightly more cumbersome than most country's on paper. New, plastic Resident and Alien Registration Cards, and relational databases, are being developed. Furthermore, according to the CG of Immigration, Immigration is attempting, since transition to the civilian administration, to relax its requirements, expedite processing, and facilitate investment as "partners in progress." Officers in charge of State Commands have been encouraged to conduct investor workshops to uncover any problems as well as elucidate the actual effects and output of current immigration policies. While the law is viewed by Immigration

as liberal, the CG has expressed a willingness to make changes in the *Immigration Act* if necessary in order to resolve any uncompetitive practices.

Still, the consultants themselves experienced first-hand the difficulty of obtaining business visas at the Nigerian Consulate in Washington DC, where issuance of one team member's visa took a full week. Such stories remain commonplace. Indeed it would seem that practice has not yet caught up with the new schemes. NIPC Immigration Desk officers also reported that there were recently consulates in four (4) countries, including the Ukraine and Indonesia, which were refusing to issue visas to applicants, in spite of the fact the C-G herself had authorized STR cable-visas for these individuals.

According to the CG, one problem may be that "the real professionals" (e.g. staff from Immigration) are not present in foreign consulates, and that the Ministry of Foreign Affairs is not up to the job. However, this concern about "consular professionalism" may be a false problem, since consular staff could be easily trained in the investor-friendly application of immigration procedures.

Furthermore, inadequate information on visa types was also viewed by the CG as an area of potential difficulty for foreign businesspeople and investors. It should however be noted that Immigration has commissioned the development of "Immigration Information Bulletins" and Pamphlets and intends to disseminate them far and wide, as soon as they are finalized.

The degree of complexity associated with acquiring a visa is determined in part by the administration of the regime by embassy and consular officials overseas. A requirement is an invitation letter; it is not clear from this initial assessment what criteria are employed to assess what makes this letter valid or unacceptable. Obtaining a visa to visit Nigeria is not as automatic a transaction as elsewhere and the difficulties that can be associated with the procedure are inconsistent with the GoN's stated aim of opening up the country to foreign investment and encouraging foreign businesspeople to come to Nigeria to explore business opportunities. Further, it is not clear that any real scrutiny of the letters of invitation is conducted, or what criteria are applied.

The multiple distinctions for the single entry visas seem unnecessary. It is not clear why the GoN needs to create all of these sub-categories. Further, because the documents required and issuance procedures vary among them the GoN is creating an additional administrative burden on its own staff.

Some foreign investors reported that it is difficult to obtain a multiple entry visa.

More serious problems may also exist. It is unclear why Nigeria, if it is seeking foreign investment, refuses liberalized non-reciprocal Port-of-entry visa issuance. Indeed, Immigration's response was that "Nigeria is not a tourist destination" and that Nigeria will thus continue to apply port-of-entry visa issuance restrictions to nationals of other countries so long as they are applied to Nigerians in those nationals' own countries. In a competitive world in search of foreign investment, such attitudes appear increasingly anachronistic. As the NESG pointed out in a late January conference in Lagos entitled "Nigeria: Barriers to Attracting No Oil Foreign Direct Investment", free movement of people is critical to the FDI equation.

The Chairman of one investor interviewed by the consultants has been without a residency permit for two years – trying to get it. He said that "Immigration is a business center" –requiring

unofficial payments. Moreover, he indicated that the investment facilitation authority with which he is dealing does not have a good relationship with the state or federal immigration authorities.

The largest problems however relate to the implementation expatriate work permit issuance. Technical Committee Meetings are held regularly, and deadlines appear to be met. The NIPC Immigration Desk appears to play a genuine facilitate role with some measure of success. However, a number of points of weakness are still worth noting:

- Investors complain that the current system lacks transparency and makes short-term planning difficult. It is, for instance, unclear to investors how many EPs a company is entitled to. In 2001, the practice was to require that the company import at least N1 million in capital and/or capital equipment into Nigeria for each EP requested. Furthermore, NIPC Form 1 instructions state that businesses with N10-N20 million in capital receive two (2) automatic EPs for up to five (5) years, in addition to those determined by the NIPC, while businesses with N20 million or above, receive four (4) automatic EPs for up to five (5) years, in addition to those determined by the NIPC. Immigration officials note that these guidelines were not in conformity with the *Immigration Act* and that they are no longer utilized. However, confusion is widespread in the investor community. One investor interviewed believed that large companies might be able to obtain as many as ten (10), while most believed that the maximum was of five (5). The NIPC Immigration Desk on the other hand, *Immigration Act* in hand, informed the consultants that there is no fixed ceiling and that they had recently issued 33 EPs to one company, and 25 to another, even going so far as to provide the consultants with the companies' names. Information dissemination on the EP program and procedures are inadequate, according to the CG of Immigration, and Immigration views this as a failing of the NIPC to fulfill one of its statutory duties.

- When visited in October 2002, the NIPC Immigration Desk did not have the appropriate EP application forms and guidelines to hand out. Explaining the process to the consultants was therefore a somewhat complicated affair, which could not, in any event, have yielded results for an investor without at least two visits for the application step.

- The application docket for EPs is too cumbersome. Subjecting a company to such requirements as the purchase of equipment, a lease, and payment of taxes, before it can bring in Management is often impractical. Requiring Forms C02 and C07, Memorandum and Articles of Incorporation, and a Certificate of Incorporation are redundant requirements –Of these, only the last document is relevant –but it should be obtained directly from the CAC through an inter-agency request or Wide Area Network query, subject to the Certificate Number being indicated on NIPC Form 1 by the applicant. The MoIA, CAC, and NIPC all in fact endorsed this assessment of the facts and recommendation in a joint workshop facilitated by the consultants in October 2002. Furthermore, the MoIA has no business requesting a Feasibility Report in connection with this application. Finally, as the NIPC Form 1 is issued against payment, and should not in any event be charged for, the requirement for an original receipt is redundant and unnecessary.

- The NIPC Immigration Desk does not have final authority to make determinations about expatriate entry, with all applications being forwarded on to Immigration Central HQ for final adjudication. For instance, the Desk cannot grant: Temporary Work Permits, STR status, or Regularization of Status, nor even grant EPs without the involvement of a number of other institutions involved in a joint NIPC "Technical Committee." As such, it is

not truly empowered to make decisions, serving a mere "facilitative" function –albeit effectively.

- "Nigerianization" requirements are wrong-headed and inconsistent with international best practice, as they inhibit a company's discretion in terms of determining the optimal mix of production inputs for maximum profitability. Economically, maximum enterprise profitability is the best guarantor of Nigerian employment creation, not entry barriers such as the Nigerianization requirements. Certain Immigration personnel admitted as much to the consultants, indicating that these requirements were essentially political in nature.

- The discretionary nature of the number of EPs which may be issued is open to abuse and rent-seeking. In February 2001, one investor interviewed by the consultants noted that "using a legal approach", obtaining an EP might take approximately six (6) months, but that "using a business approach," that timeframe could be reduced to just 2-3 months. The "business approach" would require additional "unofficial" payments of approximately N100,000 per EP plus about $2,000 for PUR status (all costs factored in, including staff time, travel and lodging, and facilitation fees). The consultants cannot confirm whether or not the advent of the NIPC Immigration Desk since that time has had a salutary effect in this area.

According to the MoIA, the CERPAC was introduced in July 2002. While a relatively progressive product in principle, the MoIA (which has subcontracted the work to a private contractor) admits that the criteria for its issuance are unclear and that the operation of the program is "faulty", resulting in an overall "cumbersome and lengthy" process.

Involving 10-14 steps (depending on the type of visa and administrative course chosen), over a period of something like six (6) weeks, the Nigerian expatriate entry process is fairly cumbersome, as compared say with the two to three steps required in the United States (File for Green Card/Visa; INS Treatment of Request; Go to Consulate for Interview/Collection of Initial Entry Visa; Subsequent issuance of Green Card by INS). A number of countries –including the US, through certain consulates- complete the expatriate entry process in 2-4 weeks. Nigeria could easily meet these performance standards as well if it collapses the indicated steps.

3.1.3 Recommendations

- "Nigerianization" requirements with respect to employment of foreign personnel should be eliminated altogether. This would, at the same time, eliminate the need for the EP process. There is in theory a Nigerian precedent for this, in the EPZ context (An Onne-located company indicated that only once did Immigration officials come to its office unannounced. The company called the Onne Zone Management, which told Immigration that they are not allowed in the Zone because it is not Nigerian territory). The EP program is based on a false premise: That foreign invested companies will hire expatriates rather than nationals to fill all management positions unless checked by quotas. In fact, there are many reasons why foreign investors would do just the opposite, not the least of which is Nigeria's extremely qualified, English-speaking and affordable human resource base, with country-specific experience and knowledge. The quota system sends out a protectionist message and may leave the door open to even more unsavory protectionist instincts. In one recent case reported to the consultants by an investor, Rivers State adopted a law (later determined to be *ultra vires*), forbidding the hiring of anyone but nationals. Other countries concerned with encouraging foreign firms to increase local hiring have turned to introducing positive

incentives, including linking fiscal incentives to job creation and offering training and research and development grants, rather than punitive and exclusionary policies.

- The policy of requiring an invitation letter should be abolished in order to facilitate increased business ties with the outside world. At this critical juncture in its political and economic evolution, Nigeria should do all that it can to encourage investors to come to the country rather than put up obstacles to foreign visitors. Many countries have either abolished the use of visas altogether for selected nationals or issue visas at the airport. Nigeria should consider waiving visa requirements for citizens of countries that it is seeking greater commercial and cultural links, or at least enable visitors to obtain a visa upon arrival.

- Nigeria should condense its visas into a reduced number of categories and standardize the review procedures and submissions. This change would not only simplify the Immigration Department's processing and records keeping, but also afford potential investors increased flexibility.

- Nigeria's embassies and consulates abroad should demonstrate a more facilitative attitude in processing visas for foreign investors. The reasons why some investors were unable to obtain multiple visas remains unclear, but Nigeria's embassies and consulates should ensure that they have the staff and material resources to process all visa types.

- The multiple steps for obtaining Initial Entry Visas, EPs, STR and CERPAC or PUR status, remain distinct, where they should not be, should Nigeria wish to achieve international best practice. A streamlined process should be put in place for issuance of these various documents, which should in any event be collapsed into a single document. In fact, registration for the NSITF, the National Training Fund (NTF) and Income Tax (see below) – which constitute reasonable fiscal and social protection measures- could also occur through the same process. To this end, the MoIA could capitalize on empty Relational Database fields[154] and the Data Chip in the CERPAC –a.k.a. "Green Card"- for immigration control and other employing-process purposes, by extending them to be utilized as replacements for STR Visas, EPs, and PUR Status documents.

- Information and forms should be available on-line, for free, on both the MoIA's and NIPC's sites, and print-outs be considered legally valid. Furthermore, the NIPC should publish and make available a clear and concise guide to its employment permit policy and the procedures involved in obtaining permits. This guide should include the fees required, criteria used to screen applicants, timeframe within which decisions are to be made, roles and contact information for agencies involved, and a default clause should the agencies involved fail to meet their approval deadlines. This information should also be made available to investors in printed form as well as via a GFRN general website and/or that of NIPC.

- The entire EP and STR sub-processes, involving 7 of the 10-14 steps in expatriate entry, could be collapsed into the Immigration HQ Deliberation and Regularization sub-processes.

- The 11-document application docket for EPs should be streamlined. The proof of purchase of equipment, lease, and tax clearance certificate, Forms C02 and C07, Memorandum and Articles of Incorporation, Certificate of Incorporation, and payment, should be eliminated –

[154] There are 42 form fields in all in the MoIA's Alien and Residency Cards' Management Information System, under their current design. Most of them are unused.

with incorporation information obtained directly from the CAC. The required documents should be limited to NIPC Form1, 10 of the requested 11 documents should be eliminated.

- CERPAC criteria should be clearly defined.

3.2 Labor Registration

Only the civil service has mandatory pension funds, although industry has implemented some private funds for its employees. Nevertheless, labor must be registered with at least three (3) separate entities in Nigeria:

- The Nigerian Social Insurance Trust Fund (NSITF);
- The Nigerian Industrial Training Fund (ITF); and
- The State's Board of Inland Revenue (BIR).

Given the complexity of the latter procedure, the following section of the chapter will deal exclusively with the first two of these processes.

3.2.1 Registration of Labor and Compliance with the NSITF

Each employee, where a company has more than five (5) members of staff, must be registered by the investor with the NSITF. The NSIT offers workers disability and retirement benefits. Doing so requires compliance with the following steps:

Step 1: Application

The investor files a single form with respect to all of his employees. He must also pay nominal registration costs at that time.

Step 2: Collection of Proof of Registration

Several weeks later, the investor must return to the NSITF offices to collect his proof of registration. He will be assigned a Registration Number at that time.

Step 3: File Monthly Returns

To remain in compliance with labor law, the investor must file a monthly return, indicating the number of his employees, as well as their salary.

A contribution matching 5% of an employee's salary is deducted for benefits from the National Social Insurance Trust Fund (NSITF) and the employee pays 2.5% of his or her salary.

3.2.2 Registration of Labor and Compliance with the Industrial Training Fund

The investor must accomplish the following formalities with respect to the Industrial Training Fund:

Step 1: Register with the Local Offices

The investor must register all labor with the local offices of the Industrial Training Fund.

Step 2: Make Periodic Payments

The investor must contribute 1.5% of each employee's paycheck to the Fund.

Labor Registration and Compliance with NSITF and the ITF

3.2.3 Analysis

There are no significant complications with respect to the NSITF registration process. Costs are nominal and no non-statutory costs are required of the investor. However the processing time for the Application, which takes an average 3-4 weeks, seems unnecessarily slow.

If the investor neglects to fulfill any of the ITF's registration obligations, the Fund's staff will come to the company and require registration as well as payments on-site. It is worth noting that this is practically the only example the consultants found in Nigeria of a Government agency making an effort to go out and meet the investor rather than requiring the investor to come to it – even where the requirement results in financial transfers to the agency. Furthermore, the combination of ITF periodic payments, NSITF monthly returns, BIR renewals and NIPC Quota returns come together to create an unnecessarily duplicative employment-related reporting environment.

However, labor law specialists consulted indicated that Nigeria has no effective social security system. It is not clear that registration and payment into the NSITF should therefore be required at all.

3.2.4 Recommendations

- In order to facilitate the overall flow of the process, the requirement of an investor return trip to the NSITF Office for collection of the Proof of Registration should be replaced by its delivery to the investor.

- Of greater importance, however, one must question the relative competitiveness of maintaining such a scheme at all in the context of Global Competition for Investment. The Government should consider abolishing pay-in into the ITF. Furthermore, a single EP/PUR/Employment Permit/Visa/NSITF/ITF petition and registration process should be designed. A Harmonized NSITF/ITF/BIR/NIPC employment reporting system should also be envisaged.

- Finally, it is worth indicating that, if the NSITF is to be collected from employers, its benefits should be made more effectively available to workers upon retirement –which is reportedly not necessarily the case in the private sector today.

3.3 Employee Income Tax Registration

As part of the employing process, companies must register their employees under the income tax system. Each Nigerian state has an Inland Revenue Service, which collects employee income taxes from companies. Companies also pay the monthly income tax deductions to the state Board of Inland Revenue, and file annually with the Board; however, these two tax processes fall under the operating process group and are covered in Chapter 5. The consulting team explored the income tax registration process in Rivers State. The team also interviewed the Board of Inland Revenue in Kaduna and Plateau States.

3.3.1 Procedure

Step 1: Investor Consults with Board of Inland Revenue (BIR) Staff

When a new company locates in Nigeria, it must proactively visit the state Board of Inland Revenue office, usually located in the state capital, to register for employee income tax payments. If the company does not visit the office, BIR staff approach the company to request registration. BIR staff frequently scout out new companies; therefore, the Board is typically aware of new companies within 3 to 6 months of their arrival.

During the consultation with the BIR, the following occurs:

- Company presents letter requesting tax authority registration
- Staff advise company on correct taxation process
- Staff give company correct number of employee income tax forms
- Staff give company letter of appointment and tax reporting serial number

The company first submits a tax registration request. The request is merely a letter, on company letterhead, asking for employee income tax registration. During the consultation with any of the Board staff members, the Board advises the investor about the relevant taxation system for his company. Companies with 10 or more employees register under the P.A.Y.E. (Pay As You Earn) system.[155] The Board refers companies with fewer than 10 employees to Direct Assessment. Under this system, the employer makes advance tax payments on behalf of his employees. He subsequently deducts that amount from employees' monthly salaries.

During the consultation, the Board of Inland Revenue provides the investor with an income tax form for each employee. The Board also gives the company a *letter of appointment* authorizing the company to deduct income tax from each employee's paycheck. The letter of appointment provides the investor with a unique tax reporting serial number.

Step 2: Employees Complete Income Tax Forms

After visiting the BIR, the investor gives each of his employees a tax registration form. Employees return completed forms to the designated company representative, typically the accounting staff.

Step 3: Company returns Employee Registration Forms to Board of Inland Revenue

[155] If the new company is a branch office with headquarters in another state, there is no minimum number of employees required for P.A.Y.E. registration.

The company returns the completed employee tax registration forms to the Director of Assessment at the BIR. The Board will not collect forms from individual company staff members.

Step 4: Board Creates Notice of Free Pay Allowance for each employee

Based on the information that each employee provides concerning the number of dependents and other allowable deductions, the BIR determines individual income tax allowances. With this information, the Board prepares a tax deduction card for each employee. This card is the Notice of Free Pay Allowance. The BIR completes these cards 1-2 weeks after obtaining the employee registration forms from the company representative. Expatriate staff are only entitled to Personal Allowance.

Step 5: Board Dispatches Notice of Free Pay Allowance

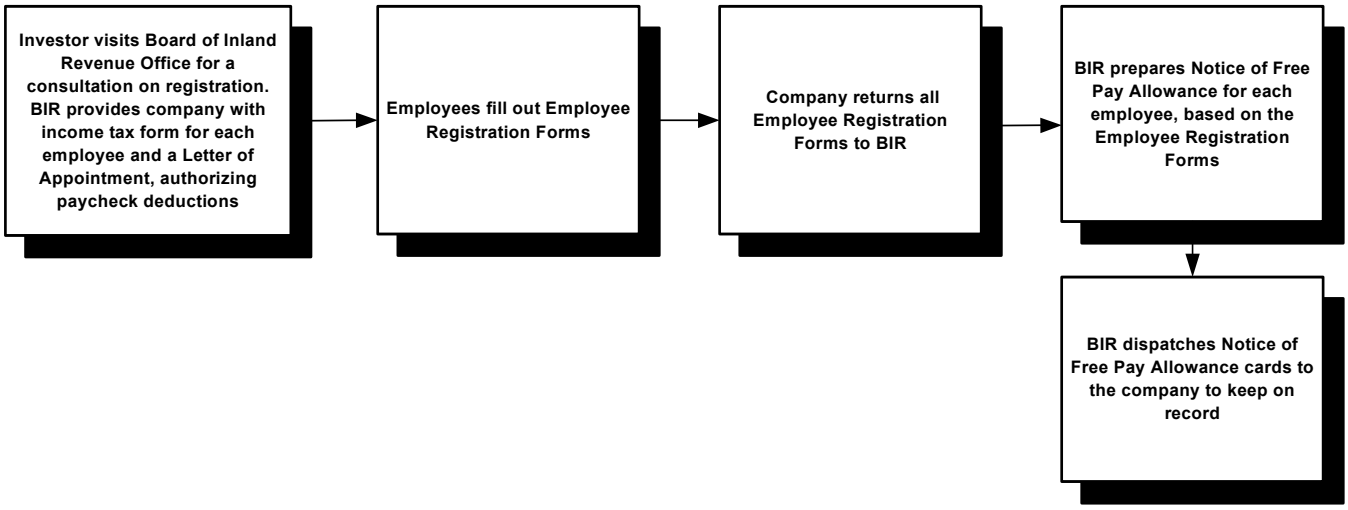
The BIR dispatches Notice of Free Pay Allowance cards to the company. The company files these cards in the accounting department. The company notifies each employee about his specific free pay allowance[156]. This completes the income tax registration process for a company.

Step 6: Investor Registers Renewal and Notifies BIR of Personnel Changes

After completing the annual return process (see chapter 6), the BIR sends each company the necessary employee cards for the next year. If there is a change in the number of employees or employee turnover, the company must notify the BIR, which will respond with the correct number of forms.

[156] Expatriate staff are only entitled to Personal Allowance. An expatriate employee is not entitled to tax allowances on dependants, housing, etc.

Income Tax Registration Process



3.3.2 Analysis

The investor's interaction with the BIR appears relatively sensible and efficient.[157] There are no *hidden* steps before visiting the BIR since the investor is not required to bring any documentation for the initial consultation. Any of the BIR employees are apparently qualified to speak with investors and give them the proper income tax forms for each employee and a letter of appointment; theoretically, this means that there is ample staff to provide assistance if one of the Board members is not available. In the Rivers State, the Board claims a mere 5% registration and filing error rate, indicating that the process is either efficient, and/or that staff assistance is effective.

There are, however, a number of issues that render the process less than perfect. For instance, in some states, it might be more difficult for an investor to get assistance than it appears. The Rivers State Board of Inland Revenue has five (5) phones for 37 staff, and these only operate internally. The agency has no external telephone lines, and therefore no fax machines or Internet connections. Investors cannot call ahead to make appointments; nor can they call in with questions. Investors must visit the staff during operating hours, and wait their turn to speak with an available staff member. This can result in substantial inefficiency for the investor. The Rivers State Board office is poorly equipped in other respects as well. The offices lack many office basics, such as filing cabinets and back-up electrical systems. The team visited the office on two occasions –one visit lasted nearly two hours. On both occasions, the office was without light; this was not a general citywide power outage because other buildings had power during this time.

There also appears to be an inconsistency in the rules for P.A.Y.E. filing in some states. According to a former Chairman of the Board of Inland Revenue for Lagos State, the ten-employee minimum for P.A.Y.E. system registration is an old requirement. He noted that currently there is no current minimum employee number for the system. The consulting team is unsure why this minimum requirement endures in Rivers State.

[157] Income tax registration is covered in this chapter; income tax payment and annual filing are covered in Chapter 5.

Except in Kaduna, there is also no guide to explain the income tax registration process, payment, and filing system to investors. Apparently, the Rivers State Board previously provided a guide; however, budgetary constraints no longer allow it to. Moreover, all requisite forms are available only at the agency office, from a staff member.

Moreover, some companies in the Calabar Export Processing Zone indicated that their Nigerian employees do not pay income tax. The team is not sure whether this means that the company itself does not register and pay on behalf of its employees (leaving the individuals to file themselves in order to be tax compliant) or that the employees truly do not pay income taxes if they work in the Zone. The consulting team is not aware of any law that exempts zone-employed Nigerian citizens from paying income tax. In fact, one of the companies noted that when tax authorities stop its employees outside the zone, the company or the individual pays a small fee and the matter is dropped. Another company did indicate that Zone Management notifies the BIR when a new company comes, and the BIR sends employee tax registration forms directly to that company office in the zone. There is no tax representative in the Calabar Export Processing Zone. There would thus appear to be considerable confusion over this issue.

The Kaduna Board of Inland Revenue was, at first, the only organ of the state government hesitant to speak with visitors —potential investors— without a formal letter of introduction addressed to the BIR Chairman. After the consultants fully explained their mission, and assured the BIR that they only sought routine and publicly available information, BIR personnel were wholly forthcoming. But the attitude of welcoming and encouraging investors was less evident here than at other Kaduna State institutions. It is likely that the BIR sees itself as downstream in the business process and not engaged in the business registration and authorizations. In this it is correct: save for the Tax Clearance Certificate from the Inland Revenue Service in Abuja, the fiscal system is uninvolved in the sundry authorizations for new business activity.

It remains unclear, however, why the Kaduna State Board of Inland Revenue failed to mention the Ministry of Commerce and Industry when asked how they identified a new businessperson: the Ministry indicated that it relays new business information to the Board of Inland Revenue as one step in the business premises permit application process[158]. The Board said that an investor is expected to write to them informing them of its new operations, but that their own inspectors would identify any new business in due course. However, in granting the business permit, the Ministry of Commerce and Industry sends information to the Board of Inland Revenue, which creates a form on computer, registers the business name for its own archives, and returns the printed form to the MCI. Some or duplication as regards the investor's obligation thus subsists.

3.3.3 Recommendations

- While some international jurisdictions place the burden of employee tax registration on the employee, P.A.Y.E. registration by companies is neither uncommon nor necessarily an unduly cumbersome investment requirement. Furthermore, nothing in Nigeria's application of P.A.Y.E. is *a priori* inefficient in its design.

- The Rivers State Board of Inland Revenue offices should however be equipped with a better communications system. The consulting team recognizes the limits of the Nigerian telecommunications system. Nonetheless, it is not unfeasible for the offices to have at

[158]See Chapter 1: Business Premises Permit Process.

least several outside telephone lines. If the office has external telephone lines, investors may be able to call ahead of time to schedule appointments and to ask questions, rather than visiting the office in person. The Rivers State Board of Inland Revenue should also be equipped in other respects. Again, the consulting team recognizes the Nigerian State governments' financial constraints, but urges that government offices be equipped with a consistent electricity source at the very least. For instance, government offices should have generators as a back-up electrical source. The consulting team also recommends that tax authority offices be equipped with filing cabinets so that paper files can be neatly and efficiently organized. Not only does organization improve investor's perception of the process and the agency, organization can also increase agency efficiency.

- Given the inconsistency in the minimum level of employees required for P.A.Y.E. registration, the consulting team recommends a federal policy setting uniform limits nationwide. If, indeed, there are no longer limits, the team suggests that federal tax authorities disseminate information on the changes in the P.A.Y.E. system requirements to all state BIRs.

- The consulting team recommends that each state Board of Inland Revenue publish a tax registration guide for that state. The guide should cover all processes that an investor must complete to comply with state tax registration requirements. Moreover, the guide should serve both investors and tax authority personnel. Since Rivers State Board of Inland Revenue personnel misquoted federal tax policy, the consulting team feels that both staff and investors need clarification on tax policies and regulations. The guide should include all relevant forms, in detachable, usable format.

- The consulting team also recommends that the federal government establish and make known a policy regarding employee income tax requirements for Nigerians working in the country's free zones. Currently, there appears to be considerable confusion over the requirements and exemptions. Finally, customer-service training is recommended for BIR staff nationwide.

3.4 Labor Norms, Enforcement and Dispute Resolution

Federal Ministry of Labor and Productivity
Department of Labor

There are nine major pieces of legislation that govern Nigerian labor law. These include the: *Labour Act of 1974; Trade Disputes Act of 1976; Trade Unions Act of 1978; National Minimum Wages Act of 1981; Workmen's Compensation Act of 1987; Factories Act of 1987; National Directorate of Employment Act of 1989; National Salaries, Incomes, and Wages Decree of 1993; and Trade Unions Decree of 1996*. However. According to Labor Law specialists associated with the research, there are few real labor norms in Nigeria, except for the minimum wage and sector-specific norms in the oil & gas industry. Most labor norms in Nigeria are set out in collective bargaining agreements. Striking and lock-outs are regulated by Agreement rather than by Law. Collective Bargaining in Nigeria is not subject to any particular Government-supervised framework and is left to the Unions and Management to sort out on their own. It also should be noted that professional and managerial staff is in any event excluded from labor norms established through collective bargaining, as well as from the benefits of the *Labour Act,* the *Workman's Compensation Act*, and the *Trade Disputes Act*. Under the Law, all of their rights must be set forth in their individual work contracts, in which freedom of contract is absolute.

Statutory minimum wage is currently of N1,250-5,500/month.[159] Furthermore, section 17 of the *Labour Act* would appear to obligate employers to pay all workers full wages merely for presenting themselves to work. The *National Minimum Wages Act* stipulates that all companies with more than 50 employees must pay a minimum wage. The minimum wage should be adjusted periodically to keep pace with inflation. Employers with more than five workers are required to contribute to national health and housing schemes. Employers must contribute 2.5% of each worker's salary to the National Housing Fund, which lends to homebuyers.

There are no labor and occupational safety inspections for the enforcement of labor norms. Indeed, there is no specialized body dedicated to supervising and enforcing labor and occupational safety norms, although a quasi-functional Factories Inspectorate at the Ministry of Labor and Productivity receives complaints and an *ad hoc* roving regulatory body may be established under the *Workman's Compensation Act* to react to them.

The termination environment is fairly liberal. Contrary to the case of "termination for cause", no particular conditions are required for a "simple termination" except for compliance with certain notification timeframes and severance pay requirements. Termination of employees is governed by whatever provisions are included in a contract with the employer. If a worker is fired without sufficient advance notice, he or she is entitled to severance pay. The severance pay for full-time and skilled workers should equal a month's wages, and unskilled worker and part-time employees are entitled to a severance package equal to one week's wages. Terminations of a large number of workers, including when an enterprise is privatized and the workforce is downsized, is governed by the *Labour Act*. In cases of mass termination, an investor must negotiate with the relevant union and employees with special skills and seniority must be given preference over other workers.

[36] "Obasanjo's and Chikelu's revolution," *The Guardian*, 02/03/01, p. 7

From a procedural standpoint, the principal issue of interest to this report is however the dispute resolution procedure, detailed below.

3.4.1 Dispute Resolution Procedure

According the *Trade Disputes Act*, workers and employers are required to hold talks when a dispute arises and before strikes or suspensions are allowed. If after seven days of negotiations the dispute can not be resolved, the parties are directed to select a mediator within 14 days, lest the Minister of Labour and Productivity appoint someone to resolve the issue within an additional 14 days. If a conflict is not resolved after these initial attempts, the matter goes before an arbitration panel, which has 42 days to come up with a solution. If a disputant disagrees with the panel's recommendations, the conflict can be brought before the National Industrial Court for a final settlement.

Specialized Nigerian Labor dispute resolution mechanisms are mostly used at the behest of the unionized employee, in the context of collective disputes. Under the *Trade Disputes Act*, in the event of a labor dispute involving all issues concerning collective agreement interpretation, conditions of service, redundancy, termination, or terminal benefits, investors are required to resolve the matter before a specialized system. The following procedure must be followed in resolving a labor dispute through this system.

Step 1: Referral of the dispute to the Minister of Labor

Upon failing to amicably resolute a dispute, the employee or employer may refer the matter to the Ministry of Labor.

Step 2: Choice of a Mediator

The parties to mediation of a labor dispute referred to the Ministry of Labor must then choose a mediator or, if they cannot agree on one request the appointment of a Conciliator by the Minister of Labor, within seven (7) days of the dispute arising.

Step 3: Referral of the dispute to an Industrial Arbitration Panel ("IAP")

All industrial, agricultural, mining, and services sectors disputes, in the event of the failure of the Mediator to resolve the dispute within 14 days, may be referred to an IAP.

Step 4: Referral of the dispute to an Industrial Court

In the event of the failure of the IAP to resolve the dispute within 42 days, the matter may be referred to an Industrial Court.

Step 5: Appeal to the Court of Appeal

If either party is unsatisfied with the decision of the Industrial Court, they may refer to the Court of Appeal.

Step 6: Appeal to the Supreme Court

If either party is unsatisfied with the decision of the Court of Appeal, the matter may be referred to the Supreme Court.

3.4.2 Analysis

Nigeria's labor norms framework is generally consistent with international best practice. However, some local state officials made it clear that ethical tradition (in Kaduna, for instance) requires sourcing junior staff from the locale of the company and other staff to as high a degree as possible from the locale. The officials also indicated that they visit companies to make sure the tradition is respected. Little could make foreign investors more ill at ease than strong enforcement of unwritten and shifting rules.

Moreover, there is some disagreement among investors as to the degree to which labor legislation and dispute resolution procedures contained in the *Trade Disputes Act (1976)* and the *Labour Act*, constrain the hiring and firing of local workers.

Labor unrest is, on the other hand, a contingency for which the Nigerian State and legislative framework is well prepared. Organized Unions are a real force in Nigeria, where there are nine (9) registered industry-based unions and a central labor organization called the Nigerian Labor Congress, which is affiliated to the ILO. The majority of formal sector workers are unionized. All Union chapters are organized and funded by workers under the *Trade Union Act*. The Unions' counterpart is the Nigerian Employers' Consultative Association ("NECA"). Judges are thus specialized, industrious, and expeditious. The treatment of management and workers is fair and equitable. Delays are less severe than in the Common Law Courts because there are fewer cases. Moreover, one investor interviewed by the consultants noted that his company favored using the labor conciliation proceedings and initiating them in the case of collective disputes, as they tend to strengthen one's position in a Common Law Court later on.

Still, few matters wind up before the IAP. Employers generally tend to go directly to the Common Law Courts. Indeed, enforcement of Labor Court decisions is not completely adequate, as strikes are often used as a manner of overcoming unpopular and/or contested decisions. Professional and managerial staff may not initiate any suits against their employers under this system, although they may sue under the Courts of Common Law. Furthermore, the IAP and Industrial Court are *ad hoc* rather than permanent, geographically-attached bodies, and are thus somewhat difficult to set into motion.

3.4.3 Recommendations

While it already presents some definite strengths, introduction of the following measures may improve Nigeria's labor relations framework further still:

- First, the Government should consider publishing a detailed Guide to Employing Procedures (including costs, screening criteria, timeframe, contact information, etc.), labor reporting requirements, and labor dispute resolution. This would allow to increase process transparency, reduce time spent in learning procedures as well as time and cost incurred in their fulfillment, limit the scope and cost of corruption and facilitation, and likely increase investment in the long-run.

- Second, a progressive disciplinary system should be made available to employers through the Labor Code, so as to provide for a graduated response to employee discipline- rather than forcing Management to proceed to firings and Unions to strike.

- Third, a proper labor norms inspections mechanism should be instituted, so as to provide a better environment for work safety, health, and legality. Such a mechanism might, if properly utilized, reduce the incidence of labor disputes going to Court quickly resolving problems as they emerge.

- Fourth, a permanent, geographically based Labor Court should be instituted to resolve disputes rapidly when they arise. It should be opened to all forms of dispute, from all categories of employees, so as to alleviate the burden of cases on the Common Law Court system. Its judges should be well versed in both labor and general contracts and torts law.

Chapter 4: Import and Export

This chapter focuses on import/export procedures for companies located in a couple of the country's free zones, and for companies located outside of the zones. In this chapter, the consulting team also discusses Nigeria's export incentive programs: the Manufacture-in-Bond Scheme and the Duty Drawback Scheme.

Overall, Nigerian customs and port procedures appear fairly rational. Many international practices have been at least partially adopted in practice, including Kyoto and ASYCUDA norms, SGDs, and selective verification.

A number of inefficient, uncompetitive, and antiquated practices nevertheless subsist, including:

- A lack of information and transparency, resulting in extra-legal behavior; and
- Poor, equipment, facilities, and official pay.

As a result, counting wait-time for berths, ports and customs clearance timelines of well over a month remain commonplace, in spite of official comments to the contrary.

The situation in Free Zones, while somewhat better, is nevertheless still hampered by dealings with Port Customs and NPA officials, with resulting average clearance times of 1-2 weeks.

Nigeria's export incentives programs, for their part, are simple and straightforward in theory. Unfortunately, and although the Ministry of Industries assured the consultants of the contrary, most would appear to apply only to the manufacturing sector, status takes years to acquire due to poor implementation, and information on the programs is poorly disseminated. They are thus underutilized.[160]

A detailed discussion and analysis of Nigeria's Free Zone and Non-Free Zone procedures, as well as of its export incentives acquisition procedures, follows, accompanied by a discussion of international best practice cases and the consultants' summary process-reengineering recommendations.

[160] Multiple exchange rates and the existence of a currency black market are viewed as an incentive to avoid repatriation of profits, thus accounting for the under-utilization of Nigeria's export incentives schemes according to the Ministry of Industries. According to the *Economist* (08/03/02), the Central Bank of Nigeria (CBN) will have trouble stamping out the black market, unless it relaxes currency controls that are still in effect despite the repeal of the *Exchange Control Act* in 1995. While the consultants understand the role of the CBN as the apex financial body regulating all foreign exchange issues, it is unfortunately not an issue that was specifically investigated in the context of this study. Nor were relevant regulations governing exchange control transactions (such as the *Guidelines of the CBN Monetary Policy Circular*, and the *Foreign Exchange Monitoring Decree No. 17, 1995*) reviewed in-depth.

4.1 Importation and Exportation Procedures

Nigeria Customs Services (NCS)
Abuja

The Nigerian Federal Government, through the Nigeria Customs Services (NCS) and the Nigerian Ports Authority (NPA), has exclusive jurisdiction over customs services and port operations. Nigerian Customs regulations and tariffs are set forth in the *Customs, Excise Tariff (Consolidation) Decree No. 4* of 1995.

Nigerian law provides importers the option to clear goods on their own; however, since the process is so complex, most importers employ registered and licensed clearing and forwarding agents. Clearing agents must obtain a CNCS Customs Agents License Certificate, a NPA License Certificate for each port of entry where they intend to operate (including airports), and an ASYCUDA Registration Certificate, each of which is valid for one (1) year.

The consulting team investigated both free zone and non-free zone importation and exportation procedures. For non-free zone procedures, the team spoke with federal customs officials in Abuja, and customs officials and clearing agents on the ground at several ports –to determine if there are any differences between customs procedures regulations and customs procedures implementation. Federal officials outlined procedural requirements similar to that of actual port customs officials; nonetheless, there are some significant differences. The consultants address these disparities in the analysis section below.

In Rivers State, the consulting team spoke with the Nigeria Ports Plc (NPA), Onne Oil & Gas Free Zone managers, and a private customs service company. In Cross Rivers State, the consultants interviewed Calabar Export Processing Zone (CEPZ) Management and zone companies. All companies operating in Onne Free Zone import and export via the Onne Port, which is actually comprised of several port areas. NPA and customs officials operate in the zone to process these imports and exports. Port Harcourt companies that are not located in the free zone import and export via Port Harcourt. Companies located in Calabar Export Processing Zone (CEPZ) typically import and export via Port Harcourt as well.

4.1.1 Non-Free Zone Importation Procedure According to Federal Officials

Step 1: Investor Applies to Customs Services for ASYCUDA Number and Registration

In order to obtain an ASYCUDA Number, the importer files an application with the NCS. The application includes the following documents:

- Simple application on corporate letterhead (there is no form)
- Lease
- RC Certificate
- Articles & Memorandum of Incorporation
- Tax Clearance Certificates for the previous two (2) years

At the time of submission, the importer pays an N10,000 fee.

The importer may initiate the application at a field command, which will forward it to the NCS' EE&RP Department in Abuja. The importer must travel to Abuja to follow up on the application, or submit it there in the first place.

Step 2: Investor Completes Site Verification

Once the ASYCUDA application has been signed, NCS typically performs an ocular inspection of the intended goods storage facilities, to ensure their actual existence and their appropriateness.

Step 3: Investor Obtains ASYCUDA Registration License and Number

Once the NCS has satisfied itself that the importer's application is in order, it issues a ASYCUDA Registration License and Number. The importer may collect the License at the NCS headquarters in Abuja.

Step 4: Investor Files "Form M" at Commercial Bank

Prior to each transaction, the importer obtains and completes a foreign exchange Form M from a commercial bank. The importer subsequently files the form at the bank.

The Nigerian Central Bank uses the Form M to track shipments entering the country. This form lists the official exchange rate, which enables the clearing agent to determine the currency value in Naira of the goods to be shipped.

Step 5: Investor Opens Letter of Credit

The importer must open a letter of credit to guarantee supplier payment. The importer opens the letter at any "Designated Authorized Dealer" (any one of 64 commercial banks).

Step 6: Investor Purchases Goods and Pays Supplier

Having obtained his Letter of Credit, the importer may proceed to purchase the goods he intends to import. The supplier will provide the importer with an invoice.

Step 7: Investor Submits Invoice and Form M to Pre-inspection Shipping Agents at Port of Loading

The investor submits his transactional documents to his Port of Loading shipping agents.

Step 8: Investor's Shipping Agent Notifies Inspectors

The shipping agent notifies the authorized Pre-Shipment inspectors that the goods are ready for shipment to Nigeria and request a Pre-Shipment Inspection (PSI).

Four (4) companies are authorized to perform this task:

- Bureau Veritas
- Société Générale de Surveillance ("SGS")
- Swede Control Inter
- Cotechna Inspectors

Each of these companies has Nigerian liaison offices in Lagos and in Port Harcourt.

Step 9: Inspector Conducts Pre-Shipment Inspection of Goods

A certified inspector must inspect the goods to verify quantity and quality and thereby assess duty owed. The inspection must be completed prior to cargo's departure from the port of loading.

Step 10: Inspector Issues "Clean Report of Inspection" (CRI)

Following the inspection, the inspector issues a CRI. The CRI shows:

- Origin and Port of Loading of Goods
- CIF Value
- Form M's Number and Date
- Harmonized System (HS) Code
- Name & Address of Importer

Step 11: NPA Block-Stacks Containers for Inspection

After shipment and arrival of the ship at a Nigerian port of entry, the NPA block-stacks the containers with the imported goods in an appropriate area for inspection. This process takes approximately 48 hours.

Step 12: Shipping Company Dispatches Documents

The shipping company dispatches copies of the following documents to the Nigeria Customs Service Area Comptroller ("CAC") and to the relevant commercial bank, to complete goods clearance:

- Manifest (within 24 hours of a ship's arrival in a Nigerian port, an electronic version of the Manifest must be filed with the Nigeria Customs Service.)
- Shipping documents
- Bill of Lading
- Invoice
- Form M
- CRI

Step 13: Investor Collects CRI from Bank

After the shipping company has sent the bank the necessary shipping documents, the importer visits the bank to pay the following:

- The amount indicated on the CRI
- VAT (pursuant to a Self Assessment)
- Applicable Levies (pursuant to a Self Assessment)

Upon receiving the payments, the bank releases the following documents to the importer:

- CRI
- Bank Receipt or "Pay-in Slip"

Step 14: Clearing Agent Prepares "Single Goods Declaration" (SGD)

The importer's clearing agent will obtain and prepare a SGD Form; he will submit it to the NCS, along with any necessary attachments, including (but not limited to):

- Attested Invoice
- Certificate of Origin
- Bill of Landing (or Airway Bill or Way Bill, depending on mode of transportation)
- CRI
- Photocopy of Form M
- Certificate of Insurance for Goods
- Bank Pay-in Slip
- Photocopy of Customs Payment Schedule
- Manufacturer's Certificate of Chemical Analysis (for chemical goods)
- Manufacturer's Standards Certificate (for electrical goods)
- Manufacturer's Certificate with Date of Expiry (for pharmaceuticals)
- Police Department Import Permit (for explosives and fire arms)
- Veterinary Department Import Permit (for animals and insects)

Step 15: Customs Central Processing Center ("CPC") Completes Document Check

A Schedule Officer at the CPC will ensure that the following mandatory aspects of the SGD filing are correct:

- Exchange Rate
- HS Code
- Signature by Declarant
- Attachments
- Conformity of Original and Duplicate Payment Receipt (sent directly by the Bank to the Comptroller–CAC
- Conformity of Bank CRI and Declarant CRI (sent directly by the Bank to the CAC)
- Conformity of SGD with Manifest in NCS log

Concurrently, CPC staff will evaluate information on the computer system to determine the following:

- Whether the value is within the value range

- The applicable rate of duty
- The total duty and charges payable

If the CPC discovers any discrepancies, staff transfer the file to an Error Resubmissions Officer for amendment and resubmission by the importer.

Step 16: Clearing Agent Locates Goods and Informs CAC

After the documents have been checked, the clearing agent and the NPA locate the goods and let CAC know where they are. CAC staff transfer the importation documents to the relevant Area Comptroller responsible for physical goods inspection.

Step 17: CAC Comptroller Conducts Physical Inspection

In addition to document verification, all goods in an import shipment are subject to physical inspection. Under a NCS Directive, the *Port Order*, a computer chooses the inspector. The CAC Schedule of Examinations is posted at the CPC.

Step 18: CAC Conducts Non-Customs Examinations

Decree No. 61 of 1999 limits examinations to the NCS, Immigration, and the Port Police, with other bodies (such as the Nigerian Drugs Law Enforcement Agency –"NDLA"; NAFDAC; and the Standards Organization of Nigeria –"SON") allowed to inspect strictly upon NCS invitation. All bodies jointly inspect goods.

SON requires importers to present the following documents:
- CRI
- Bill of Lading
- Packing List
- Invoice
- Other documents

Step 19: NCS Releases of Goods

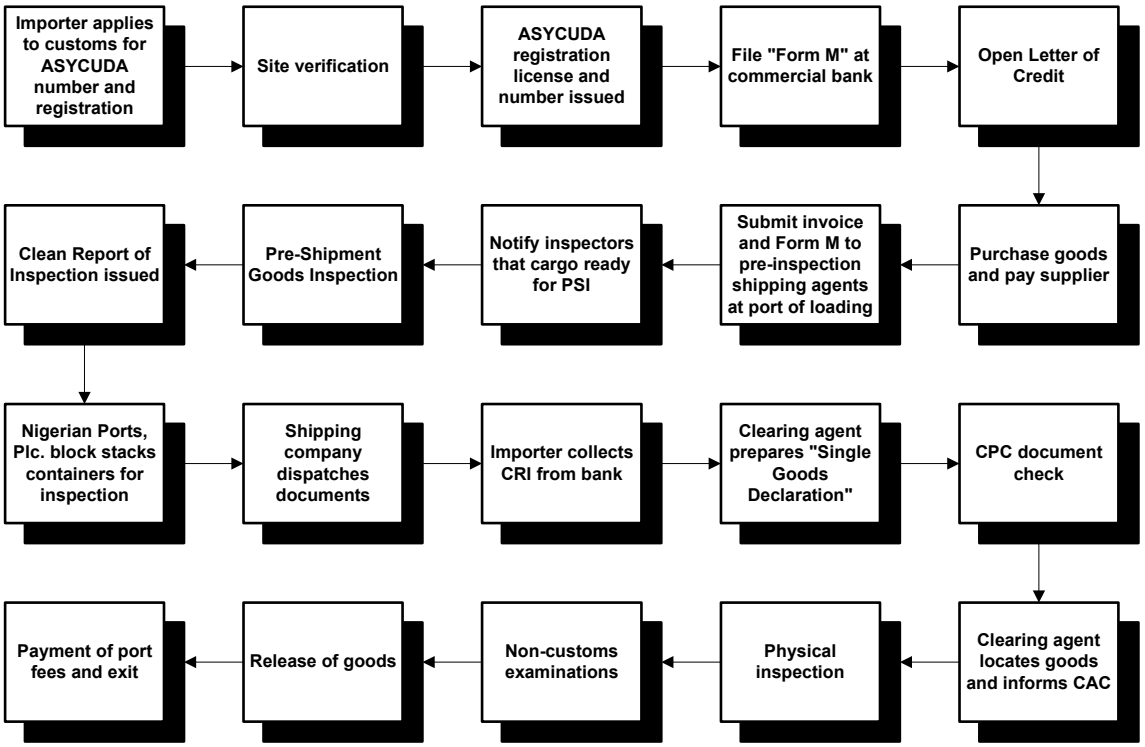
After inspections, the NCS issues a "Release Order."

Step 20: Investor Pays Port Fees and Removes Goods from Port

The investor pays the following port fees:
- Shipping
- Handling
- Demurrage

Upon payment, port officials give the importer a NPA "Release Note" or "Release Order." The investor is now free to exit the port with his cargo.

Non-Free Zone Importation Process, According to Federal Officials



4.1.2 Non-Free Zone Importation Procedure, According to Port Officials and Facilitators

4.1.2.1 *Pre-Shipment Importation Procedures*

A number of customs-related steps must be completed prior to the departure of the consignment from its port of exit. These steps are part of the Pre-Shipment Inspection (PSI) that must be completed on all consignments except those that reach their final destination in a Nigerian free zone. An importer can employ a clearing agent to take care of all processes, including the PSI steps, or the company can organize PSI itself and engage a clearing agent only when the goods arrive at the Nigerian port. The following steps outline the process the company must conclude before shipping the cargo.

Step 1: Pro-forma Invoice Sent to Clearing Agent

The company sends the clearing agent a pro-forma invoice for the consignment.

Step 2: Clearing Agent Obtains Form M

The clearing agent obtains a Form M from a Nigerian bank.

Step 3: Clearing Agent Completes Form M

The clearing agent completes Form M and submits it to the bank.

Step 4: Clearing Agent Purchases Cargo Insurance

The clearing agent purchases insurance for the value of the goods to be shipped. The insurance company immediately issues a receipt to the clearing agent.

Step 5: Clearing Agent Provides Insurance Receipt to Bank

The clearing agent provides the bank with a receipt confirming insurance purchased.

Step 6: Bank Approves Form M

The bank reads and approves Form M.

Step 7: Bank Sends Form M to Other Agencies

The bank send copies of the approved Form M to the Nigerian Central Bank, the Nigerian Customs Authorities, the Nigerian Department of Statistics, and the relevant PSI company.

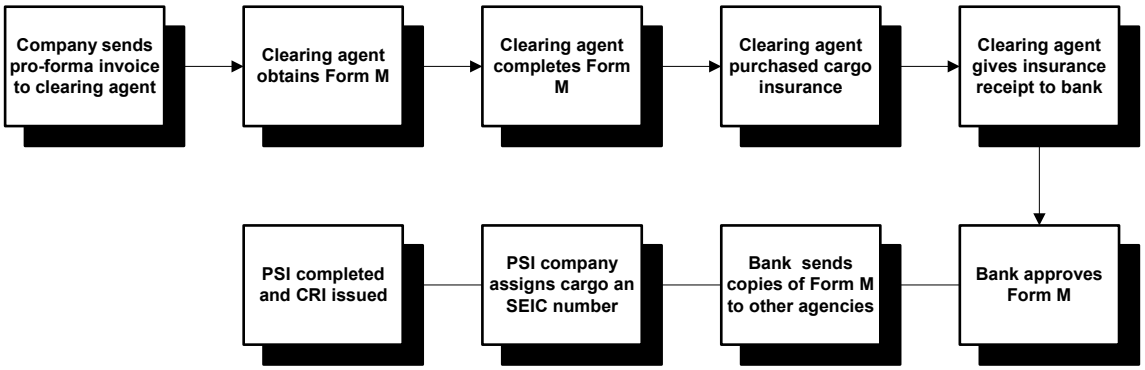
Step 8: Authorized PSI Company Assigns Cargo an SEIC Number

The PSI company assigns an SEIC number to the consignment (the PSI company assigns an SEIC number for each Form M approved).

Step 9: Authorized PSI Company Completes Inspection and Issues CRI

An inspection agent completes the PSI. The inspection agent then furnishes the company with a Clean Report of Inspection (CRI). The CRI includes a determination of the duty the company owes the Nigerian government for the particular consignment.

Non-Free Zone Pre-Shipment Importation Procedures



4.1.2.2 *Post-Shipment Importation Procedures*

Once the consignment has undergone the PSI and a CRI has been filed on it, the port of entry customs process begins. The following steps must be completed once the consignment has been shipped to Nigeria and before it will be released to the importing company via his clearing agent.

Step 1: Clearing Agent Obtains SGD Form C2010

The process starts with the clearing agent purchasing a booklet of Single Goods Declaration (SGD) Forms from the (NPA). The booklet contains 25 separate SGD forms, and costs N7,500. The SGD form is also called Form C2010.

Step 2: Company Provides Clearing Agent with Necessary Documents

The company gives the clearing agent all necessary customs documents for the incoming consignment (see above section on procedure according to Federal Officials), including a copy of the CRI.

Step 3: Clearing Agent Calculates All Duties Owed

Based on the documents provided, the clearing agent calculates the amount of duty the company owes to Nigerian customs. The Clean Report of Inspection (CRI) lists the amount of duty to be paid, but does not account for any of the additional required taxes that are due upon entry and before goods are released to the company:

- Port Surcharge: 7% of the duty amount
- ECOWAS Levy: 0.5% of the duty amount
- CISS Inspection Fee: 1% of the FOB value
- VAT: 5% of the total amount of duty, all above levies, and CIF value (indicated on CRI)

Step 4: Company Pays Duties Owed

The clearing agent notifies the company of the total amount owed to the customs authority. The company pays the amount owed into one of Nigeria's 28 designated customs payment banks. If there is a duty amount dispute with customs, the cargo is supposed to be released if the company has paid any portion of the duty owed. However, this does not always happen.

Step 5: Bank Issues Receipt Confirming Duty Payment

The bank immediately issues the clearing agent a payment receipt, verifying duty payment. With the receipt, the clearing agent can claim the original CRI.

Step 6: Clearing Agent Prepares SGD Form C2010

With the original CRI, the clearing agent prepares the customs entry form (Form C2010 or SGD form) on behalf of the company.

Step 7: Clearing Agent Takes All Documents to CPC at Port

The clearing agent takes the completed customs entry form and all other necessary documentation to the CPC at the port. The clearing agent approaches the deputy comptroller and submits all documents to him. The Deputy Comptroller signs for acceptance of these documents.

Step 8: Deputy Comptroller Reviews Documents

The Deputy Comptroller reviews the customs documents and passes them to a desk officer.

Step 9: Desk Officer Verifies CRI

The desk officer confirms that the company or clearing agent has submitted the CRI. He then passes the documents to the Accounting Office.

Step 10: Accounting Office Confirms Duty Payment

The Accounting Office confirms duty payment. The accounting department looks at the duty payment receipts in the documents and compares them with the Central Processing Center's bank records. This office then passes the documents back to the Deputy Comptroller.

Step 11: Deputy Comptroller Verifies Documents a Final Time

Satisfied that the documents are in order, the Deputy Comptroller passes the documents to the Officer in Charge at the ASYCUDA Office. All of the steps from 7-11 are completed within 24-48 hours according to customs officials.

Step 12: ASYCUDA Assigns Consignment a Serial Number

The Officer in Charge in the ASYCUDA Office enters the details from the documents into the computer and creates a report indicating that he is either satisfied with the documentation or not. At this time, he assigns a specific serial number to the cargo, which is computerized. He gives the clearing agent the specific serial number for his cargo. Since for the most part clearing agents loiter in the ASYCUDA office or continue to return while awaiting the number, it is easy for the ASYCUDA officers to quickly relay this information to the clearing agent. Once the serial number is issued, the ASYCUDA Office sends the documents to the Manifest Department

Step 13: Manifest Department Verifies Bill of Lading

The Manifest Department verifies that the bill of lading number presented corresponds to the ship's manifest that the department has on record. After verification, the Manifest Department sends the documents to the Customs Examination Shed.

Step 14: Customs Examination Shed officers Check Cargo Against Documents

Customs Examination Shed officers check what is on the record with what is actually in the cargo. If customs officials deem it necessary, they invite the drug enforcement agency and any other relevant agencies to inspect the cargo as well.

Step 15: Valuation Unit Inspects Cargo

Also in the Customs Examination Shed, the Valuation Unit inspects the cargo.

Step 16: Customs Officials Release Goods to NPA

Once customs officials in the Customs Examination Shed are satisfied that the bill of entry matches the actual cargo, they sign the release note. This releases the goods to the NPA.

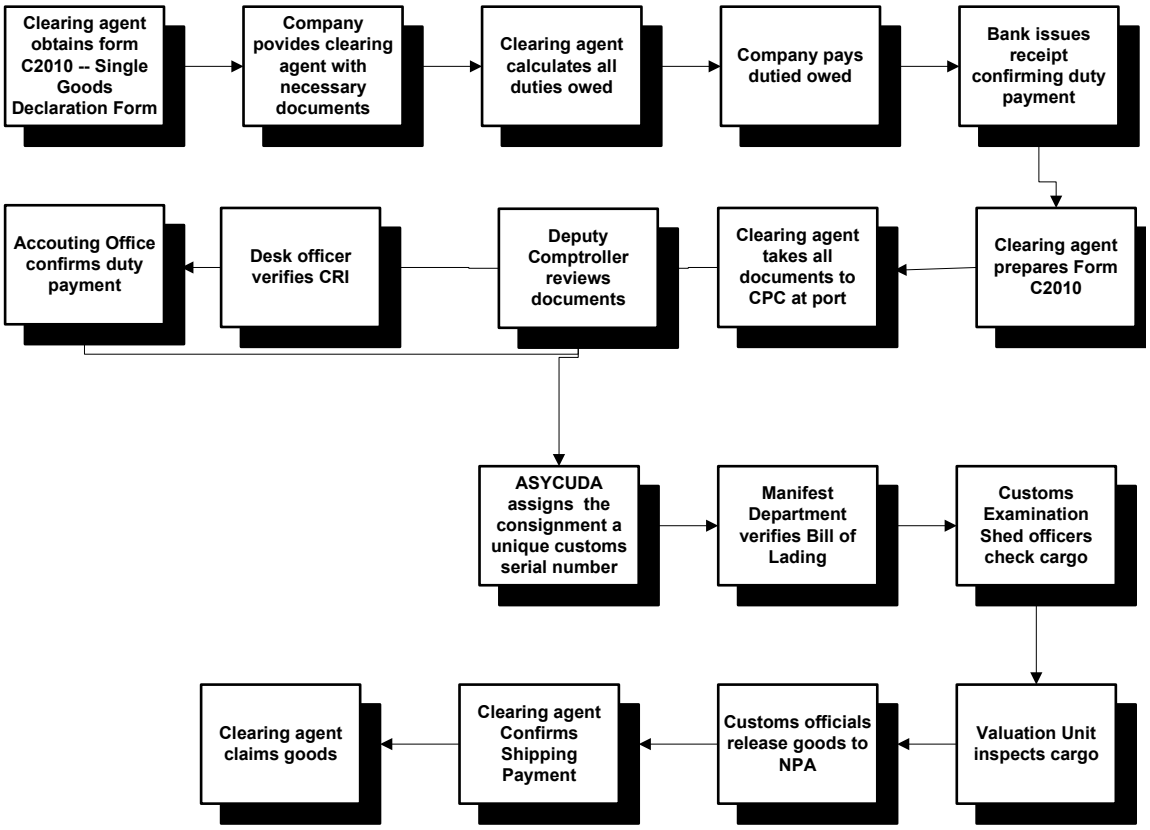
Step 17: Clearing Agent Confirms Payment at Shipping Company

With the release note, the clearing agent visits the shipping company. Here, the clearing agent shows proof of payment to the shipping company for cargo transport. The shipping company gives the clearing agent a release note upon confirmation of the payment.

Step 18: Clearing Agent Claims Goods on Behalf of the Importer

The clearing agent takes delivery of the goods on behalf of the importing company.

Non-Free Zone Post Shipment Importation Procedures



4.1.2 Non-Free Zone Exporting Procedure, According to Port Officials

The government no longer restricts most exported goods. The remaining restricted exports include crude oil, works of art and artifacts, and endangered species such as flora/fauna, plants, and animals.

However, Nigeria requires a pre-shipment inspection of all exported goods, oil and non-oil. The government does not require pre-shipment inspection for goods exported from the country's free zones unless the goods are exported into Nigerian territory.

All exporters must follow the procedure set forth below:

Step 1: Exporter Transports Cargo to Port

Exporter brings cargo to port of departure, where the cargo is stored in the port's stacking area prior to loading.

Step 2: Clearing Agent Organizes and Completes Pre-Shipment Inspection

The exporter's clearing agent organizes the pre-shipment inspection procedures.

Step 3: Clearing Agent Submits a Shipping Note and Customs Bill of Entry

The clearing agent submits a Shipping Note and a Customs Bill of Entry to the NPA's Marketing Department, located at the port. The Shipping Note includes the following information:

- Exporter's name
- The name of the ship that will carry the goods
- Cargo description

The Shipping Note enables the Marketing Department to determine the amount of duty owed. The Customs Bill of Entry enables customs officials to examine and release the goods.

Step 4: Customs Official in Marketing Department Stamps Shipping Note

The Marketing Department customs official stamps the Shipping Note, confirming the cargo's tonnage and export duty. The customs official gives the clearing agent a bill for the export duty owed.

Step 5: Customs Officials Inspect Cargo

Customs officials inspect the cargo to verify that it corresponds to what is marked on the Shipping Note and the Customs Bill of Entry.

Step 6: Clearing Agent Pays Duty

The clearing agent pays the export duty owed at one of the designated customs duty banks. The bank immediately issues a receipt and the clearing agent makes photocopies of it.

Step 7: Clearing Agent Submits Duty Payment Receipt to Traffic Department

The clearing agent submits a copy of the duty payment receipt to the NPA's Traffic Department at the port.

Step 8: Traffic Department Completes Export Tally Sheet.

Traffic Department officials draw up an export tally sheet for the consignment.

Step 9: Cargo Delivered to Loading Area with Export Tally Sheet

The cargo is delivered to the export loading area; the export tally sheet is attached to the consignment.

Step 10: Cargo Loaded onto Ship

In the process of loading, the NPA's and the shipping company jointly record the goods. At the completion of each set of tally sheets, the shipping company endorses them to confirm receipt of cargo.

Step 11: Shipping Company Distributes Original and Copies of Bill of Lading

When the loading process is complete, the shipping company gives the clearing agent a copy of the Bill of Lading. The shipping company also dispatches the original Bill of Lading to the importer at the port of destination.

4.1.3 Analysis

The importing and exporting procedural flow charts illustrate relatively simple and rational processes. Clearing agents pointed out declining form redundancies. Moreover, NPA boasts a 5% error rate in the customs process – indicating that despite being long and cumbersome, the process is manageable for well-versed clearing agents[161]. In spite individual "worst-case" experiences (one two-month delay was noted by an interviewee), Customs officials note that errors and delays result largely from insufficient payment or typographical errors.

The private sector did not indicate that the customs procedures are inordinately troublesome, possibly because clearing agents take care of the actual steps. Clearing agents usually know the customs processes very well, and are also typically familiar with the customs agents.

16 NCS area commands (including all busy border stations, port, and airports) operate under the ASYCUDA system.

Nigeria has acceded to two chapters of the *Kyoto Convention* but has received and is in the process of studying the most recent *Kyoto Convention Amendment Protocol*. The CG of Customs has written to the Ministry of Finance requesting funding for a *Kyoto Convention* seat, in order to harmonize Nigerian customs norms with the worldwide standards. Nigerian Customs believes its regulatory procedures conform to the spirit of Kyoto, although "there may be over-zealousness in the field."

A substantial amount of money has been pumped into rehabilitation of the ports to prepare them for privatization -about N8 billion on one of the port terminals and N600 million on the electrical grid at Lagos Port.[162]

[161] During the course of this Investor Roadmap study, TSG interviewed 152 private sector and civil society representatives in 6 states. The report thus reflects our best efforts to accurately depict the current situation.
[162] "Ports Privatisation: NPA Workers Drag BPE to N/Assembly," *This Day,* Vol. 8, No. 2738, p. 25

Finally, Nigeria Customs Service (NCS) has made an effort to increase its Client Communications and transparency, for instance holding a conference on "Integrity and Optimal Performance in the Nigeria Customs Service" on 28 October 2002 in Ibadan.[163]

However, problems with the overall import/export scheme remain.

For instance, while some tariffs have been reduced in recent years, but many products continue to attract high duty rates, and some rates have increased in recent years. The following table offers some examples of Nigerian tariffs that have recently been raised:

Products on which Duty Rates have been Recently Increased

Product	Previous Rate	Current Rate
Refrigerators, freezers, and parts	35%	45%
Air conditioners	45%	55%
Air conditioner parts	35%	45%
Biscuits	45%	55%
Footwear	40%	50%
Footwear parts	25%	45%
Wheelbarrows	25%	35%

Source: Economist Intelligence Unit, *Investing, Licensing & Trading in Nigeria,* pp. 43-44.

Additional duties on imports include VAT at 5%, import duty surcharge of 7% of the normal duties assessed, 2% "landing charge" on motor vehicles, and a 5% sugar levy on sugar imports.

Furthermore, clearing agents, company representatives, and customs officials noted a number of bottlenecks in the goods clearance system:

- There are some redundancies in the importation process: for instance, as the flowchart indicates, the dossier of customs documents returns to the Deputy Comptroller to be passed elsewhere. Furthermore, the same documents are reviewed, in turn, by: the Deputy Comptroller (twice); and Desk Officer; the Accounting Office, the Manifest Department; and the (sometimes) SON. Finally, inspections are, in turn, conducted by: Customs officials; Valuation officials; and non customs officials (as appropriate).

- A number of private sector representatives noted that customs procedures are frequently corrupt and typically not customer-friendly.

- Customs officials, clearing agents and private companies all indicated that the process and the regulations governing import and export are difficult to understand. For instance, companies pointed to a complicated duty payment tariff structure.

- The Form M process represents a significant bottleneck –requiring additional reconciliations and paperwork (e.g., matching receipts, etc.). Clearing and forwarding agents note that importers typically avoid Form M financial obligations by dealing with port-based syndicates; for a fee of N1,000-N4,500, syndicates provide a From M and forge bank signatures and stamps.

[163] *This Day,* Vol. 8, No. 2741, 24/10/02, p. 12

- Moreover, since NCS has no accounting office at ports of entry, importers must visit commercial banks to complete duty payments. The consultants discovered that these banks often attempt to coerce importers to conduct all financial affairs with them.

- A customs clearance & freight forwarding agent explained that, in practice, NCS does not require importer ASYCUDA numbers. Instead, small importers simply use their clearing agent's ASYCUDA number, and large importers pay NCS officials between N3,000-N5,000 to waive the requirement. In fact, ASYCUDA registration apparently requires non-statutory payments of N20,000-N50,000, in addition to an N10,000 official payment. ASYCUDA registration requires two (2) weeks and is evidently taken so lightly that NCS does not even bother with site inspection.

- NCS provides little information on the importation and exportation processes. For instance, no Customs Tariff Codes are in circulation. The tariff codes are supposed to be offered free of charge; instead, investors indicate that they must purchase the codes from NCS officers. One customs clearance & freight forwarding agent noted that the codes are useless anyway since all import clearance transactions are ultimately a question of non-statutory payments to NCS officers.

- Customs officials and the private sector noted that there are far too many government agencies represented at the port – slowing the importation process in particular. Most agree that all enforcement agencies – such as drug enforcement and arms control -- should not have a permanent presence in the port. Customs officials explained that when these agencies are present, they insist on checking every shipment, resulting in non-authorized, multiple, and separate examinations. In practice, this crowds the customs sheds and increases processing confusion. While the government is decreasing the number of agencies allowed at the port (under Decree No. 61 of 1999), and allowing NPA customs officials to call in the relevant inspection agencies when necessary, this transition is not yet complete. While the Fire Brigade, Department of Forestry, Army, Air Force, Navy, and certain others appear to have vacated port facilities, there is still consternation over the continuing presence and liberty of action of such agencies as NAFDAC and SON. According to a clearance and forwarding agent, an importer must pay each inspecting officer between N500-N1,000 to sign the relevant release documents. The NCS and NIPC hold the NPA accountable for this persistent problem and suggest that greater NPA-NCS coordination to enforce the 1999 decree.

- One company noted that duty disputes are particularly troublesome, because port customs officials do not adhere to policy. In the event of a duty dispute, customs officials are supposed to release the cargo as long as the importer has paid some portion of the duty. Customs will resolve the dispute following cargo release. However, the company noted that port customs frequently retains the cargo pending resolution.

- There is a discrepancy in the processing time for customs procedures. While NPA officials claimed that the importation process is typically completed in 3 to 24 hours, Nigerian Customs Service representatives note that when documents are in order, goods clear the port of entry within 48 hours. While importers can pre-clear the SGD in the NCS system ahead of cargo arrival by telexing the manifest and CRI in advance, private sector representatives indicated that normal processing time is between several days and two weeks. Clearing agents noted that the quickest clearance time is four days, and that is for diplomatic cargo that has been properly "facilitated." They further

indicated that non-diplomatic cargo requires about ten (10) days to clear, assuming correct documentation and non-statutory payments between N25,000–35,000 per container (size dependent). All sources agree that duty disputes and incorrect documentation can delay the process considerably.

- Currently, Nigeria requires 100% physical inspection; however, the NCS also has a goal to clear all imports within 48 hours of arrival. The NCS indicated that it maintains tight physical inspection controls because currently Nigerian ports have no scanners.[164] Some NCS officials also explained that 100% inspections remain necessary due to high smuggling incidence and because the law continues to require it. They noted that all discretion to the rule is in direct contraction to the law.

- Customs procedures are slowed by other factors, including the pre-shipment inspection process, foreign exchange issues, non-customs examinations, and port requirements.

- Even the NCS views the import pre-shipment inspection process as unnecessary and overly bureaucratic. Since NCS opens and inspects the majority of containers upon arrival, the PSI appears to waste valuable time. Customs officials and clearing agents estimate that the PSI process requires 2-3 weeks. Clearing and forwarding agents further indicated that private inspectors are on the take.

- The NPA delays alone take approximately 1-21 days. Given the absence of inland container terminals, those at port are congested, resulting in a potential delay of three (3) weeks for berth assignment. Shipping companies pay NPA officers non-statutory fees for a speedier berth assignment. Off-loading at berth is quick, but infrastructure constraints slow dispersion beyond berths to container terminals. With a payment of N15,000/20 ft. container, clearing and forwarding agents can move their goods to a container terminal within 48 hours.

- On the export front, the Pre-shipment Inspection process seems wholly unnecessary and outdated in today's world of efficient export-oriented regulation.

- Moreover, the continued existence of export stamps and duties would also appear to be out of synch with current international practice.

- Nigerian customs procedures are further slowed by limited operation hours. In this day of 24/7/365 global customs clearance, Nigerian port hours are simply inadequate. In Lagos, the Marketing Hall closes at 5:00pm and the entire port closes at 9:00pm. There is no processing on weekends and the port is entirely closed on Sundays.

- On the ground, implementation of customs and import/export procedures is stymied by poor facilities. The consulting team visited numerous offices, which were uniformly crowded and lacked filing cabinets. Document files sit on shelves, desks, or on the floor. Many offices lacked telephones. Where phones exist, they appear unreliable: One

[37] Currently, NCS has a request for 1-3 scanners for each port exit gate at Lagos Port and Port Harcourt before the Federal Executive Council.

customs official explained that he has a difficult time communicating with Abuja because the telephones are frequently nonfunctional.

- Nigeria's publicly-owned port facilities and equipment are inefficient and outdated. Shippers estimate that "associated port costs" at Lagos Port -- approximately $200/container -- are three (3) times higher than any other West African port.

- Moreover, Customs officials in the ASYCUDA Office indicated that clearing agents come in and out freely, and often verbally "encourage" the ASYCUDA officials to move their cargo along quickly.

- Technological challenges remain daunting. An electronic declaration and clearing system is not yet envisaged at this point. MUB and EPZ operators remain unable to connect to the NCS ASYCUDA system network. The NCS does not yet have e-mail capabilities, either at Headquarters in Abuja or at area commands, making electronic transmission of manifests and other documents difficult.

- The NCS also suffers from human resource problems. The NCS has a staff of 20,000 agents. Customs agents are not provided with government housing and are, it would seem, regularly reduced to squatting in the areas they are assigned to when transferred. Some senior level customs officials noted that junior staff in particular suffer from low morale. NCS officers' salaries range between approximately N3,000–5,000/month. Senior officials further noted that there have been salary payment delays. They also noted the absence of any travel allowance.

The NCS has attempted to address low morale, partly by instituting performance awards and a sports service. According to headquarters, the NCS has well-articulated training programs; however, some officers disagree. Field command staff, who learn their trade on the job, regard existing Customs School training as inadequate.

According to some customs officials, insufficient human resources funding, resulting in low pay and low morale, creates ample temptation for corruption.

- It was unclear to the consultants why the NCS cannot fund Kyoto Participation and scanners from its operating budget, a question bearing clarification.

- According to a senior lecturer at the Lagos State University (LASU), Dr. Dele Badejo, a number of agencies, including the police, NDLEA, SON, Quarantine, the Ministry of Labour, SSS, Customs, and Immigration, are still operating in the ports, requiring documentation, and holding up goods clearance, at this writing.[165]

- Dr. Badejo, Senior Lecturer at LASU, has indicated that port facilities and security, as well as training of Port officials, are limited, inefficient, and under-funded.[166]

- Customs brokers have accused customs officials of using the 100% inspection regime as an opportunity to extort importers.[167] The Association of Nigeria Licensed Customs

[165] "Don X-Rays Problems in Port Operations," *This Day,* Vol. 8, No. 2742, 25/10/02, p. 36
[166] "Don X-Rays Problems in Port Operations," *This Day,* Vol. 8, No. 2742, 25/10/02, p. 36

Agents (ANLCA) has also alleged that the 100% inspection has led to congestion of the ports, delays and pilferage.[168]

- The dual-exchange forex market has given rise to the practice of "round-tripping" arbitrage. As such, it negates savings, the development of an effective fixed income securities market, rational allocation of production resources, and investment. The high liquidity it encourages also causes price instability, inflation, and Naira depreciation.[169]

4.1.4 Recommendations

- The consulting team recommends that the Federal Customs Authorities rationalize the existing tariff structure to consolidate the numerous duties into several main tariffs. The consultants also recommend that the tariff structure be simplified and harmonized into low uniform rates, as best practice. The NIPC recently reported that it is now cooperating with the NESG on investment policy advocacy issues relating to tariffs and duties. [170] The consultants wholeheartedly endorse these efforts.

- The consultants commend current efforts to organize the customs process by removing enforcement agency representation from the ports. The consulting team recommends that the Nigerian government and port authorities continue with such efforts. Port customs officials are trained to recognize types of cargo and surveillance demands; therefore, they are qualified to call in enforcement agency staff when needed.

- Based on investor and clearing agent comments, the consulting team recommends that the government and port authorities clarify and strengthen the duty dispute process. Following international best practice, port customs officials should not hold cargo under a duty dispute throughout the resolution period.

- In order to increase customs efficiency and thereby improve the process, the consulting team recommends that the Nigerian Government improve customs facilities. Though only a sampling of all customs facilities, those that the consultants visited should be outfitted with basic office equipment, such as functioning telephones. Better office and other facilities will increase efficiency and create a more professional environment –both of which will improve investor perception of the import/export process.

- The consulting team suggests that the government take steps to reduce opportunities for customs officials to employ discretionary tactics, such as accepting unofficial payments. All importing and exporting customs procedures should be made clear to investors, clearing agents, and to all level of customs officials. Furthermore, the customs authorities should prioritize continuous training of customs officials on official procedures. The customs authorities must also recognize that employees should have a salary and benefits package that is attractive enough to reduce the incentive for discretionary activities.

[167] "100 Percent Examination Reducing Import Fraud," *This Day* Vol. 8 No. 2733, 16/10/02
[168] "Customs, agents differ on destination inspection," *The Guardian,* 15/10/02
[169] "Liberalization of the foreign exchange market," *The Guardian,* 14/10/02, p. 56
[170] During the 2nd Abuja Investor Roadmap Workshop, held on 12 July 2002.

- The consultants recommend that Nigeria increase opportunities for private participation in ports infrastructure and logistics, including through BOT, BOO, and Management Contract schemes.

- The NCS also stated that if it could keep even 10 % of what it collected, would be funding generators, PCs, scanners, e-mail capability, and other technology as well. However, for transparency purposes, private sector representatives suggested that the Federal Government should earmark Customs funds and reallocate them to the NCS, rather than permitting the NCS to retain a percentage of duties assessed –so as to minimize the risk of "toll booth" regulation.

- On the import procedures side, it is recommended that documentary verification by all concerned officers (including the Desk Officer, Accounting, Manifest Department, Non-customs agencies, and the Deputy Comptroller) be conducted simultaneously.

- Likewise, inspections should be conducted jointly by all concerned agencies and Departments (including Customs, Valuation, and Non-Customs agencies such as SON).

- Import and Export procedure Guidebooks and Customs Tariff Schedules should be widely disseminated.

- The Form M procedure should be eliminated.

- Likewise, the PSI procedures, both at import and export, should be eliminated.

- NCS diligence in the administration of ASYCUDA scheme should be increased.

- Legal inspection requirements, in terms of percentage of containers verified, should be brought in line with NCS practices.

- Export stamps and duties should be eliminated.

- NCS and NPA port administration offices' opening hours should be extended to 24/7/365, and Sunday and Holiday opening hours instituted.

- Cargo should be released to importers pending resolution of duty disputes.

- Finally, all chapters of the Kyoto Convention should be ratified by Nigeria, post haste.

4.1.5 Free Zone Importation and Exportation Procedures

Nigeria has two (2) operational free zones, in Onne and in Calabar, as well as a third in the planning stages, at Kano. Zone incentives include the following:

1) Duty-free export production;
2) Exemption from foreign exchange regulations, free repatriation of capital, and free remittance of profits and dividends;
3) 100% foreign ownership;
4) Liberalized hiring of expatriate personnel;
5) Exemption from all import and export licenses;

6) Right to release up to 25% of production in the Nigerian Customs Territory, subject to proper permits, Customs guarantee forms, and payment of applicable VAT and duties[171];
7) Rent-free land during facilities construction; and
8) Total tax exemption.

4.1.5.1 *Onne Oil & Gas Free Zone Importation*

Under a five-year agreement with the Nigerian Government, DMS International Ltd. has managed the "Onne Oil & Gas Free Zone" outside of Port Harcourt since 1997. The Onne Free Zone has been relatively successful under private management and currently hosts 63 companies.

Companies located in the Zone must comply with the following import procedures:

Step 1: Shipping Company Sends Importer Arrival Information and Manifest to Zone Management

The shipping company notifies the importer of the day the ship will arrive at the relevant port.

Step 2: Importer Notifies Free Zone Management of Cargo Arrival and Requests Release

The importing company notifies free zone management of cargo's arrival. The clearing agent requests release of the consignment.

Step 3: Free Zone Management Issues Release Request Letter

Based on the ship's manifest and the importer's cargo it identifies, Free Zone Management issues a release request letter to the Chief Area Comptroller at Port Customs. The letter requests that customs issue an approval for the shipping company to release the cargo and for the cargo to be transferred to the importer's free zone dedicated area – under the custody of Free Zone Management.

Step 4: Chief Area Comptroller Orders Manifest Closed

The Chief Area Comptroller approves the transfer request. He sends a request letter, stamped with his approval, to the Manifest Office, ordering that the manifest be closed, and confirming that the said cargo will be moved to the free zone.

Step 5: Manifest Office Sends Closed Manifest to Deputy Comptroller

The Manifest Office sends the closed manifest to port customs Deputy Comptroller. The Deputy Comptroller stamps confirmation of its closure and sends it to the Free Zone Area Comptroller in the port.

Step 6: The Free Zone Area Comptroller Sends Transfer Approval Letter to Free Zone Management

[171] Certain companies in the EPZ scheme indicate having been able to obtain a 50% CT release quota, in spite of the provisions of sub-section 18(e) of the Decree.

The Onne Oil & Gas Free Zone Area Comptroller dispatches the letter approving cargo transfer to Free Zone Management personnel.

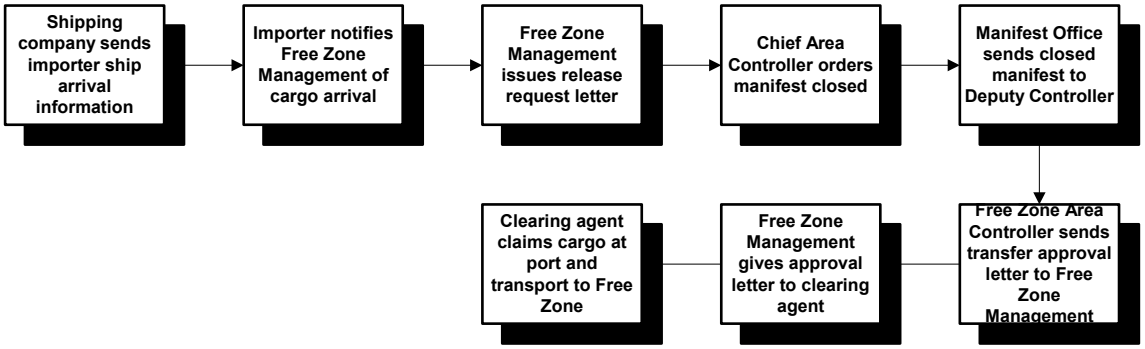
Step 7: Free Zone Management Gives Approval Letter to Clearing Agent

Free Zone management personnel send the cargo transfer approval letter on to the importer's clearing agent. This is the last document the clearing agent needs to claim the cargo at the port of entry.

Step 8: Clearing Agent Claims Cargo at the Port and Transports to Zone

With the cargo transfer approval letter, the clearing agent returns to the port and claims the importer's consignment. The clearing agent oversees the cargo's transfer to the Free Zone.

Onne Oil & Gas Free Zone Importation Process



4.1.5.2 *Analysis*

The customs import and export procedures in the Onne Oil & Gas Free Zone are simpler than the procedures non-free zone companies face. This is due, in large part, to the fact that free zone locating companies do not pay import or export duties on goods that do not enter Nigerian territory. The absence of duty payments for such goods cuts out a considerable number of steps in the process – for examination, verification, duty payment, etc.

Companies favor private zone management. Although they pointed out some problems with zone functioning, they agreed that private management has affected positive change over the past three years.

A few opportunities for procedural fine-tuning nevertheless exist:

- Zone located companies note that the customs process frequently takes longer than Free Zone Management claims. While Zone Management indicated that goods clear customs in 24 hours, companies noted that processing time is closer to three (3) days and often between one and two (2) weeks. Unreliable infrastructure exacerbates customs and port processing delays. Companies noted that poor telephone capacity – and thereby fax and internet– contribute to customs processing delays. One company noted that telephone service in the Zone is only effective approximately 35 % of the time.

- Although Zone Management indicated that the Zone will eventually host representatives from all of the necessary federal agencies, at present Onne Free Zone requires some outside authorizations from federal agencies. This means that documents and applications for some procedures must travel to Abuja for approval. This is typically not the case with customs procedures, however.

4.1.5.3 Recommendations

- The consulting team strongly recommends that the Free Zone Management improve the Zone's telecommunications infrastructure. Investors expect and deserve better services within the Zone, and should not suffer under severely limited Internet, fax, and telephone service. Onne FZ is currently managed under a specific Management Contract. Some of the Zone's infrastructure could even be privatized outright.

- Zone Management, the Nigerian Export Processing Zone Authority (NEPZA), and the Nigerian Government should rapidly ensure that all government agencies are represented within the Zone. If all agencies relevant to the investment process are located in the Zone, the start-up, locating, employing, and operating investment processes will function more efficiently. This should be a priority.

4.1.5.4 *Calabar EPZ Importation*

The Calabar Export Processing Zone (CEPZ), a small-scale 152-hectare industrial estate in Cross River State Nigeria, was officially established under the *Federal Government of Nigeria Decree No. 63* of November 19th, 1992.[172] The Calabar Export Processing Zone Authority (CEPZA) manages CEPZ. CEPZA is a federal government agency accountable to the NEPZA, which is in turn accountable to the Ministry of Commerce. CEPZ is also accredited by the NEPZA, which is set to become an exclusively regulatory body and is in the process of transferring all Nigerian EPZs management to the private sector. State Governor Donald Duke has demonstrated great ambitions and political commitment to the project, as have Customs Comptroller General Minister of Commerce. The Zone has now been designated to become a "Free Trade Zone" ("FTZ") to allow access to non-manufacturing investors. President Obasanjo, who visited the Zone shortly after taking office in 1999, is set to officially commission the new Calabar FTZ ("CFTZ") during 2001.

CEPZ Companies use the Calabar Port almost exclusively for imports; the port is not sufficient to meet their export demands. CEPZ companies export from Port Harcourt.

A "Customs Export Scheme" has been devised to provide a safe corridor for goods from port of entry to point of clearance in the CEPZ. It involves the following import and customs procedures:

Step 1: Company Notifies Zone Management of Import Consignment

Prior to the arrival of goods at a port of entry, the investor notifies Zone Management of the consignment's impending arrival. The investor accomplishes this by emailing, faxing, or dispatching Zone Management the details of the consignment. The following documents must accompany the notification to Zone Management, and they must all be addressed to the consignee with the Zone address.

- Copy of valid Zone operating license
- Copy of final invoice
- Copy of Packing list
- Copy of Verification certificate if required by port of origin
- Copy of Bill of lading (including a statement that PSI is not required)
- Letter of Request for Transportation and Customs Escort

Step 2: Zone Management Approves "Release Document" Processing

[172] *Nigeria Export Processing Zones Authority Decree 1992, Extraordinary Supplementary to the Federal Republic of Nigeria Official Gazette* No. 67, Vol. 79 (21st December 1992), Part A, page A-564, Ministry of Information and Culture, Printing Division, Lagos.

Zone Management notifies the company that it has received the consignment importation letter and will process the importation release document.

Step 3: Zone Management Issues Certificate of Release

After studying the submitted documentation, Zone Management issues a certificate of release in the form of a letter. Zone Management forwards the certificate of release to Zone Customs, who forward it to Customs at Calabar Port. If Calabar Port is not the port of entry, Zone Customs endorses this release and forwards it to customs authorities at the consignment's port of entry. This letter authorizes Port Customs to release the cargo to the Zone, under escort.

Step 4: Clearing Agent Meets Consignment at Port of Entry

When the consignment arrives, the clearing agent delivers a copy of the above documents to the customs officer at the port of entry. Port Customs officials clear the goods without examination.

Step 5: Port Customs Officials Release Consignment

Satisfied that the consignment is destined for CEPZ property, port customs officials release the consignment.

Step 6: Consignment Transferred to CEPZ

The consignment is transferred to the CEPZ under port of entry customs escort. Upon arrival at the Zone, port of entry customs hand the consignment over to Zone Customs in the presence of other Zone staff.

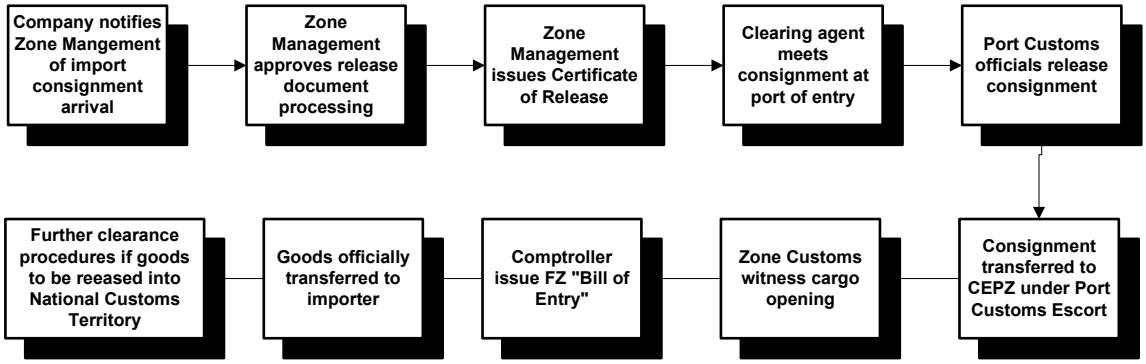
Step 7: Zone Customs Witness Cargo Opening and Issue "Bill of Entry" into FZ

Zone Customs' staff witness the opening of cargo in the importer's warehouse. Tally officers check goods with the packing list.

Step 8: Goods are officially transferred to the importer

Zone Customs transfer the goods to the importing company, completing the importation process. The importer must complete standard declaration and documentary procedures only if he intends to release goods into the National Customs Territory.

Calabar Export Processing Zone Importation Process



4.1.5.5 *Calabar EPZ Exportation*

Companies located in the CEPZ must complete the following procedures on export:

Step 1: Company Prepares Invoice and Packing List

The exporting company, or its clearing agent, prepares a cargo invoice list and a packing list.

Step 2: Company Requests Export Authorization from Zone Management

The clearing agency sends a letter to Zone Management requesting authorization to export of cargo. Zone administrative fees equal to 1% of the export value of the cargo are assessed by CEPZA.

Step 3: Company Informs Zone Customs of Export

The clearing agent also notifies Zone Customs officials, via a letter, of the company's intent to export.

Step 4: National Drugs Law Enforcement Agency (NDLA) Inspects Export Consignment

NDLA officials inspect the export consignment in the Zone. At the same time, any other necessary inspections are completed within the Zone.

Step 5: Container is Closed and Sealed

Zone Customs officials close and seal the container, in the presence of Zone Management representatives and exporting company representatives.

Step 7: Company Obtains Gate Passes from Zone Management

The company requests and obtains a gate pass from Zone Management. This authorizes the clearing agent to remove the export consignment from the Zone and transport it to the port of exit.

Step 8: Zone Customs Escorts Consignment to Port

Zone Customs representatives escort the export consignment to the port. The escort ensures that the consignment is transported directly to the port of exit. The clearing agent accompanies the consignment to the port.

Step 9: Clearing Agent Presents Export Documentation to Port Customs Officials

The clearing agent submits all export documentation for the export consignment to Port Customs officials. Port Customs officials take custody of the consignment from Zone Customs officials. The consignment requires no further inspection and is moved to the wharf for export.

4.1.5.6 *Analysis*

CEPZ Management appears competent and proactive. The Zone's investors appear pleased with Zone Management and have few complaints.

- The Federal Executive Council's Inter-Ministerial Implementation Committee is currently considering a dual expressway on the Calabar-Itu-Ikot-Ekpene-Aba-Port Harcourt–Enugu link. The government is also reviewing plans to provide a cargo warehouse and apron to facilitate movement and cargo storage at the Calabar International Airport. Finally, the government is considering airport expansion to accommodate large aircraft. However, procedural problems remain important, including the following:

- Zone users support private management, both in terms of quantity/quality of services and administrative process efficiency. Several CEPZ investors point to Onne as a positive example of what Calabar might become under private management.

- Zone Management indicates CEPZA has been operating on the basis of self-financing to date and has thus limited revenues for its services. While the Zone's original feasibility study, accepted by the Nigerian Federal Government, recommended that the Federal Government fund the Zone for 10 years, the Government has only recently agreed to release funds to accelerate development. Indeed, while the Government had allocated a N100 million operating budget for the Zone over a four-year period ending December 31, 2000, the money never came under the control of Zone Management. Audits have been carried out to attempt to ascertain what has become of allocated funds. To finance its operations, the Zone assesses fees from interested Zone applicants and occupants.

- Transportation infrastructure within the Zone is not optimal. The closest port, the Port of Calabar, is located four (4) miles from the Zone and port access is sub-optimal. Furthermore, the port's navigational facilities are antiquated. Due to silting, the port is too shallow for all but small vessels under 15,000 tons. A mere 8.5 meters deep, the local river serves as a poor sea transport conduit to the Zone. Freight, port, and traffic structures are prohibitive, resulting in deserted berths and a nearly abandoned port.

- Some of the Zone Management claims are misleading. For instance: "All government functions are accomplished within the Zone, 24 hour one-stop licensing."

CEPZ companies also noted some dissatisfaction with import and export processes because of poor relations between Zone Customs officials and NPA officials (chiefly in Port Harcourt). For instance:

- One company indicated that while customs officials located in the Zone are very good, there are significant problems in the import/export process because companies must interact directly with Port Customs. The company explained that there is little coordination between Zone and Port Customs officials. One company indicated that Port Harcourt customs officials do not uphold free zone customs policies. This has resulted in Port Harcourt Customs officials holding up export shipments from one company at least five times in two years. Contrary to free zone protocol, Port Harcourt Customs officials insist on opening and inspecting CEPZ cargo. Companies explained that they circumvent this bottleneck with "under-the-table" payments to Port Harcourt customs officials.

- Several companies stressed that they must deal directly with the NPA outside of the Zone, where they facilitate cargo importation and exportation through direct communication with NPA and Port Customs officials, as well as through unofficial payments aimed at smoothing out and speeding up the import and export process.

4.1.5.7 *Recommendations*

- The consulting team strongly recommends that the Nigerian government work with both Zone and Port Customs to improve relations between them. There is no reason why investors should suffer slow or ineffective service because of possible jurisdictional disputes between two sets of Nigerian customs officials. The consultants suggest that all parties redefine their roles, and that the government establish training programs to alleviate any jurisdictional conflicts.

- The consultants also suggest the Nigerian Government develop a CEPZ privatization track. The Zone needs efficient private sector management, such as that currently provided by DMS in Onne. Moreover, private management options should be reconsidered in the context of the likely privatization of Calabar Port.

- Currently, the government requires no standard Management Agreement between the Nigerian Export Processing Zones Authority ("NEPZA") and Zone operators. However, NEPZA might consider formalizing its legal relationships in this regard. Under the emerging two-tier zone management scheme, zone operators such as DMS run their zone and pay "ground rent" (leasehold fees). South African developers could for instance be particularly targeted for a management role in Calabar, given their strong regional interest and experience throughout Africa. The role of the Government regulator (NEPZA), in terms of licensing and monitoring private zones, its institutional relationship with the CEPZ, as well as the level of its funding of the CEPZ, should also be clarified.

- A capacity-building strategy is urgently required, after careful review of CEPZA's staffing and HR strategies. "Thinking outside the box" of the CEPZA's current HR and capacity-building programs is therefore necessary at this stage. Most notably, the importance of privatizing the CEPZ shall be stressed. . However, outright Zone privatization is subject

to the same reservations as noted for Onne Free Zone and will only become possible if NEPZA becomes an effective regulator (which, at present, it is not).

4.2 Export Incentives Procedures

Nigeria offers a number of export incentive programs, among them the Manufacture-in-Bond Scheme and the Duty-Drawback Scheme. These programs exist to attract investors to produce for export.

All MIBS and DDS applicants must be NEPC registered exporters. While investors apply for these schemes either through the Nigeria Export Promotion Council or the Ministry of Finance, only the latter administers the schemes.

4.2.1 Manufacture-in-Bond Scheme (MIBS)

The MIBS is based on *Decree No 18 of 1986 as amended by Decree No. 65 of 1992*. An export-promotion program, MIBS allows duty-free raw material; intermediate product; and machinery, equipment, and spare parts imports. Manufacturers must submit a bond ("Form C 180A") for 110% of the value of duties assessed, which is released after evidence of exportation and the repatriation of proceeds.[173] A recognized bank, insurance company, or NEXIM must issue the bond.

Bonded Manufacturing status allows firms to bring imported goods into their warehouses without paying import duty, use the goods in their production, and export the finished product. In most cases, companies can also import machinery, replacement parts, and other supplies duty free, and buy from domestic suppliers free of domestic excise, sales and other taxes. Customs authorities supervise MIBS factories; they check the bonded factory's import and export containers, or complete spot checks of factory inventories.

4.2.1.1 Approval Procedure

Step 1: Investor Submits MIBS Application and Detailed Letter

The investor sends a MIBS status request letter and application form NMIBS 1 (appended) to the Ministry of Finance's Fiscal Department. The letter includes details on the manufacturing activity: product; production levels; input/output coefficients; %age of production exported; plant description and production process; storage and delivery arrangements; and detailed factory layout, indicating the MIBS warehouse.

Step 2: MIBS Committee Conducts Inspection

The MIBS Committee visits the company site to complete a detailed inspection. MIBS Committee members include a NEPC representative, a Standards Organization of Nigeria (SON) representative, and a Nigeria Customs Service (NCS) representative. During the

[173] The Ministry of Finance has moved to a negotiable certificate form of refund rather than cash payments.

site visit, committee members focus on different issues: NCS inspects the MIBS scheme warehouse; NEPC considers value-added; and SON reviews product standards and input/output coefficients.

The committee completes a site visit when it has a minimum of 4 applications to consider. Typically, the committee conducts site visits every 1-2 months.

Step 3: Committee Members Prepare Site Visit Reports

After site inspection, each member prepares a report detailing his findings. He forwards the report to the Ministry of Finance.

Step 4: Committee Meets and Approves or Rejects MIBS Application

In a follow up committee meeting, the four organizations discuss the application and, where applicable, admit the company to MIBS. If committee members differ in opinion, they may request additional information from the investor.

It typically takes one month for Committee members to complete their reports and meet for a decision.

Step 5: Ministry of Finance Issues MIBS Enterprise Certificate

The Ministry of Finance issues an MIBS certificate. The Ministry also informs the Customs Service of the decision.

Manufacture-in-Bond Scheme Application and Approval Process

4.2.1.2 Utilization Procedure

When a company imports goods for the production of exports, it must mark all customs declarations (bill of entry, import duty report, clean report of findings, Form M) as MIBS. Customs officials will thereby transfer these goods directly to the warehouse premises. The importer provides the Customs Service with the required MIBS bond and customs subsequently clears the goods through the normal customs process. Customs Service's Federal Operations Unit then escorts the goods to the company's warehouse. A resident NCS officer monitors each MIBS Enterprise facility's imported input utilization.

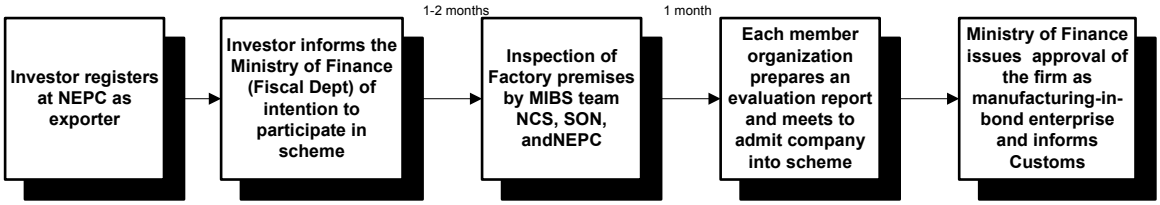
When the company exports goods, it informs the resident customs officer. The resident officer informs the Federal Operations Unit, which escorts the goods to the exit point and delivers them the NCS officers the goods are exported via standard export procedures. Once the company repatriates the proceeds, it informs the Customs Service with a confirmation of repatriation of proceeds from the Central Bank ("Form NXB"). The Customs Service checks confirmation authenticity with the Central Bank and cancels the bond.

4.2.2 Duty Drawback Scheme (DDS)

Nigeria's Duty Drawback Scheme (DDS) also encourages export by refunding duties and surcharges on imports of raw materials inputs, including packing and packaging materials. The Duty Drawback Committee provides automatic 60 % refunds to qualified importers. As in the MIBS scheme, the importer must provide a bond covering 60% of the refund; the committee cancels the bond upon final processing of the exporter's claims

The Scheme provides fixed and individual drawback facilities. Exporters whose products are listed in the committee's "Fixed Drawback Schedule" participate in the fixed drawback scheme: typically when the import content of export products is largely constant, and when import prices – factored for exchange rate, tariff rates, and technology – are fixed. In such cases, the committee can calculate a standard Input-Output Coefficient Schedule (ICS) for certain products, on the basis of which a fixed drawback rate can be computed to be rebated per unit of export product.

Manufacture-in-Bond Scheme Application and Approval Process



4.2.2.1 Approval Procedure

Step 1: Investor Submits Application

The investor submits a Duty Drawback application within two years of the exportation date. To qualify for individual or fixed drawback, the investor must export the product within 18 months of importing the inputs. The investor obtains a Duty Drawback Rate/Refund Application Form NMIBS-2 from the Duty Drawback Secretariat or from NIPC Zonal offices. The investor completes the application and submits it to the NEPC Duty Drawback Committee with the following documents:

1) Three copies of the following import documents:

- Bill of Entry for Home use (Customs and Excise Form C 188) for the respective raw material inputs used for the export production;
- Import Bill of Lading for the raw material inputs used for the export production;
- Contract between the Trading Company and producer, where the Trading Company is applying for the facility; and
- Current Registration Certificate with NEPC.

2) Three copies of the following export documents:

- Export Bill of Entry for Non-Domestic Goods (Customs and Excise Form Sale 98);
- Form NXP;
- Bank certification of repatriation of foreign exchange proceeds; and
- Export summary schedule, providing information on product exported, value of export, and port of loading.

3) A Book Bond for 60% up-front payment, issued by a recognized bank or insurance company. The committee requires the Book Bond to guarantee the refund of any overpayment made to the exporter.

NEPC suggests the investor use a single application for all inputs used to produce a given export good. If an importer subdivides imported inputs included in a single import entry document, and subsequently uses the inputs in the production of more than one export consignment, he must include information on input production and balance remaining on the import entry document.

Step 2: Duty Drawback Committee Meets

The Duty Drawback Committee meets every 2 to 4 months, typically once it has 5-6 applications to consider. The committee evaluates each application and determines a drawback rate. SON establishes the input/output coefficient.

The committee sends its meeting minutes to the Ministry of Finance.

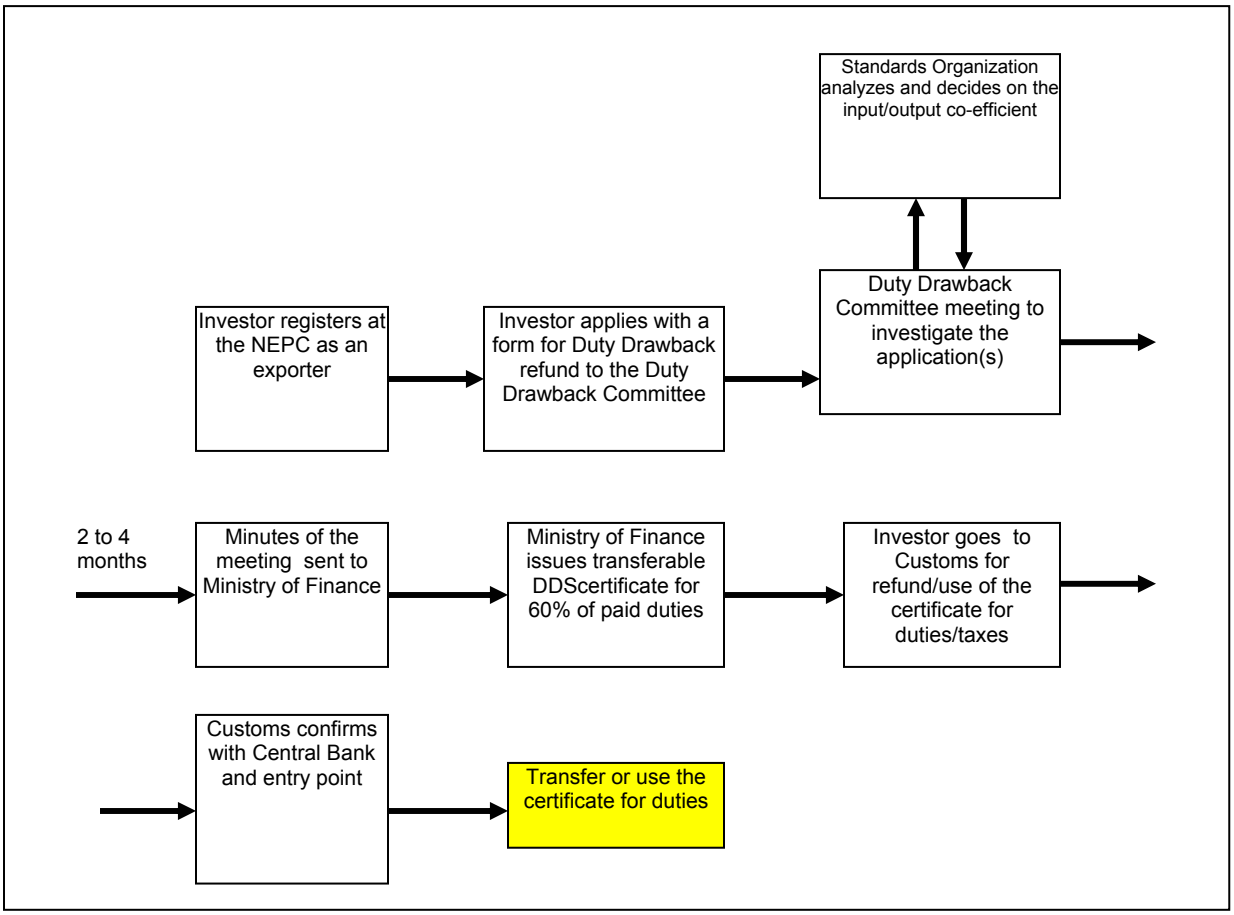
Step 3: Ministry of Finance Issues DDS Certificate

Either the Ministry of Finance Permanent Secretary or the NEPC Executive Director signs the certificate, making it official. The Ministry of Finance issues the investor the DDS Certificate.

4.2.2.2 Utilization Procedure

Once the Ministry of Finance has approved the DDS application and issues the certificate, the investor and other parties may transfer it three times – effectively using the certificate as a check in some cases. To use the certificate, a company must present it to NCS during import clearance. The Customs Service confirms the certificate's validity and verifies the import and export data with the respective entry points. The Customs Service also confirms foreign exchange repatriation with the Central Bank.

Duty Drawback Scheme Process



4.2.3 Analysis

Nigeria's export incentives regime is administratively complex and thereby underutilized. Furthermore, the current MIBS and DDS schemes require the authorities to address policy issues. In spite of Ministry of Industries statements to the contrary,[174] as noted in the analysis for Nigeria's tax incentive Pioneer Status program,[175] the country certainly appears to lack any truly effective clearinghouse to provide clear and complete incentive information, application procedures, etc.

- The consultants also previously indicated that Nigeria's incentive programs focus almost exclusively on the manufacturing sector. Although Ministry of Industries officials interviewed stated otherwise,[176] all service sector investors interviewed noted that this had been their experience with the MIBS and DDS programs. Furthermore, procedural guides reviewed by the consultants, seemed to confirm investors' experiences. Indeed, under Section 5 of the *Procedures and Guidelines for Import and Export Trade in Nigeria* (1999), it is provided that "the various export schemes and funds [would] be consolidated into the new Manufacture-in-Bond scheme (whereby payment of cash incentives to exporters shall be replaced with the introduction of negotiable Duty Credit Certificate)". Throughout the world, the service sector is increasingly responsib

Large Multinational Investor: "We submitted applications for DDS and Export Expansion Grants six months ago. The applications passed through several agencies and we are still waiting for approvals. We want to export more, but our working capital costs our increasing and competitiveness is declining."

Medium-Sized Foreign Investor: "We did not even try applying for any of the incentives. By the time we manage to obtain and facilitate them, it will be too late to benefit from them."

Large Foreign Investor: "We tried the DDS and stopped bothering about it. It took us two years to get refunds and by the time we received them, the value was already 50 % lower."

Domestic Freight Forwarding and Clearing Agent: "I don't know any investors who use the MIBS scheme. I don't think it works at all. I can only speculate as to the process. There must be some structure in place but a lot of us don't know how it works -Your guess is as good as mine- There is no visible structure on the ground for it to work."

Large Foreign Investor: "Getting MIBS status requires a visit to Abuja to file with the NEPC, and even then takes a year. Why bother can you can negotiate tariffs with Port Customs officials anyway?"

- **MIBS and DDS schemes are** **ported material and equipment are** **ere are second-best solutions as the** **oods to reduce the costs of their in** **sed in protected economies to pro** **world prices –increasing profitab** **mestic industries that compete with** **forced by international regulations, export subsidies, but allows the us** **at DDS systems are not without cos** **entives may require a detailed revi** **WTO, negative impact of these inc** **egative effects such as opportuniti** **ources absorbed for its implementa** **arriers against imported inputs.**

- **Investors suggest that, while** **d DDS schemes are cumbersome. I** **es not cooperate and double or trip** **stry of Finance, and Committees ap** **nerally insufficiently computerized,** **refund mechanisms are particularly** **.**

4.2.4 Recommendations

[174] According to the Ministry of Industries, the NIPC has authority to discuss the export incentives regime and actually *agree to* new incentives.

[175] See: Chapter 1: Business Registration.

[176] Ministry of Industries representatives pointed out that there is a 20% "across-the-board" Export Expansion Grant and Export Guarantee Scheme, for all sectors, for instance "cultural exports,"

Based on the above analysis, the consultants offer the following recommendations on improving Nigeria's incentives acquisition schemes:

- The consultants reiterate the recommendation made in the incentives section in Chapter I: the Nigerian Government should consider establishing a clearinghouse of investment incentive information and a web-based information site. This clearinghouse system could be established at the NIPC, the FIRS, or the NEPC. One relatively inexpensive solution would be to require all current government agency web sites to have useful foreign investment information. In addition, the Nigerian Government should establish a user-friendly central web site in multiple languages that provides all the necessary regulatory issues confronting foreign direct investors in the country. Australia offers a good model in this respect.[177] However, in the consultants' opinion, The consulting team recommends that the NIPC house all incentive information, including all material relevant to the Manufacture-in-Bond and the Duty Drawback schemes.

- **The consulting team further recommends that the Nigerian Government centralize MIBS administration under the Customs Service, and establish clear operating rules for both MIBS and DDS, reducing the current number of cross-checks. The MIBS Scheme would benefit from eliminating the involvement of several institutions currently involved in the process. Given that the Customs Service needs to work closely with the Ministry of Finance, the responsibility to approve applications and transactions for the Scheme should be consolidated under the Customs Service. This would eliminate several of the cross-checks that cause long delays in processing applications and actual transactions. However, it should be noted that such a move should be supported by capacity building efforts, to provide Customs with the necessary resources to improve and manage the system. The government should consult the Canadian Duty Deferral Program – outlined below– as an example of an effective, Customs-managed, duty drawback program. The Canadian Duty Deferral Program operates under clear management, qualification, and procedural guidelines. Moreover, one agency handles most of the program's functions.**

- **The Nigerian Government should conduct a review of the current export incentives. Such a review would help to consider prospective problems with the WTO, the negative impact of these incentives on the government budget, and other possible negative effects such as the:**
  - Opportunity for cheating and abuse;
  - Absorption of administrative resources for its implementation; and
  - Ineffectiveness in offsetting non-tariff barriers against imported inputs.
- **The consultants suggest that the government enable MIBS enterprises to connect to the NCS ASYCUDA system network if they so choose.**

- Finally, the consultants would like to echo the advice of the IMF in recommending the abolition of the Nigerian multiple exchange rate system.

[177] See:http://www.dist.gov.au/invest

Chapter 5: Resolution of Commercial Disputes

Establishment of the Rule of Law is a fundamental underpinning condition for a modern market economy and for the attraction of foreign investment. While Nigeria's commercial disputes resolution system is composed of indigenous, Sharia, and "received" (Common Law) Courts, there are few problems in terms of dueling decisions, appeals, and rules of Court. Judicial accountability, access to legal services, and access to case law are likewise all also improving. However, the system remains hobbled by extremely slow case processing, a lack of practitioner specialization in commercial law topics, and infant Alternative Dispute Resolution mechanisms. This chapter will focus on these issues, providing analysis and recommendations for improvement.

5.1 Procedure

Nigeria has two distinct Court systems:

1) The "Indigenous" Court System

2) The "Received" British Court System, which itself breaks down as follows:
    - Magistrates Courts (with jurisdiction over civil and criminal matters), with several geographic managerial divisions per State
    - State High Courts (with jurisdiction over civil, commercial and criminal matters), with several geographic judicial divisions per State
    - Federal High Courts, with 12 judicial divisions (each encompassing 2-3 States)
    - Courts of Appeal, with the same 12 judicial divisions as the Federal High Courts (Court of Appeal Divisions include: Lagos; Enugu; Kaduna; Benin; Ibadan; Jos; Port Harcourt; Ilorin; Abuja; and Calabar)
    - The Supreme Court, located in Abuja

The Courts also include:[178]

- The High Court of the Federal Capital Territory of Abuja
- The Sharia Court of Appeal of the Federal Capital Territory of Abuja
- The Customary Courts of Appeal
- The Code of Conduct Tribunal
- National Assembly and Legislative House Election Tribunals

Under the *1999 Constitution* and the *Federal High Court Act*, the appropriate forum for resolution of a commercial dispute is determined based upon the nature of the case, the amount at issue, and the geographic location of the parties and/or transaction. Review of administrative decisions and application of administrative law occurs in the Common Law Courts system. Jurisdictions are clearly delimited according to a clear track and there is no risk of dueling judgments.

The Courts of Appeal have original jurisdiction for the following appeals of the decisions of High Courts:[179]

- Decisions where they were sitting as the first instance
- Decisions appealed on the basis of questions of Law or of the application of the Constitution
- Decisions involving the liberty of a person
- Decisions involving creditors
- Decisions of admiralty determining ability
- Decisions of the Sharia Court of Appeal on questions of Islamic or personal Law
- Decisions of Customary Courts of Appeal on questions of Customary Law
- Decisions of the Code of Conduct Tribunal
- Decisions of Election Tribunals

The Federal High Court has exclusive original jurisdiction in the following matters:[180]

- Government revenue matters
- Customs & Excise, and claims against the Nigerian Customs Service

[178] *Nigerian Constitution*, Art. 6(4), 245(1), 246(1)
[179] *Nigerian Constitution*, Art. 241(1), 242(2), 244(1), 245 (1), 246(1)
[180] *Nigerian Constitution*, Art. 251

- Banking and Finance, and Bankruptcy and Insolvency
- Matters arising from the Companies and Allied Matters Act
- Intellectual property and competition
- Ports, Admiralty, Carriage by sea, and Aviation
- Citizenship and immigration
- Diplomatic and trade representation
- Arms, munitions, and explosives
- Drugs and poisons
- Weights and Measures
- Matters relating to the Federal Government
- Administrative and Executive Actions

The Supreme Court has original jurisdiction for the following matters:[181]

- Disputes between one State and another or the Federal Government
- Appeals from the Courts of Appeal on questions of Law or on the application of the Constitution
- Questions relating to the offices of the President or Vice-President

The Government may not enact any law which removes any jurisdiction of the Courts under the Law[182]. However, the National Assembly and State-level House Assemblies may establish new Courts[183]. Indeed, Commercial courts were been set up in Lagos in 2001-2002.

The Rules of Court for filing cases are clear, as are the applicable forms. Rules of Practice and Procedure also exist for the Supreme Court and the Federal High Court.[184] The Courts consistently apply these rules. Furthermore, these Rules are fairly uniform throughout the various States in the country, as they are based on the *Uniform Civil Procedure Rules* formulated by the Nigerian Bar Association.

Practitioners have access to recent Case Law through a series of fairly comprehensive Law Reports, published weekly both by the Courts themselves (e.g., the *Ministry of Justice and Federal High Court Report*) and by private organizations. Those produced by private organizations are based on certified copies of judgments and other official Court records, available upon request at the Libraries of Court or at the Court Registrars' Offices, as well as on the records of the Nigerian Law School and Institute of Legal Studies, and are relied upon and accepted in Court.

Alternative Dispute Resolution (ADR) referral systems exist as well. The *Arbitration and Conciliation Act of 1988* (the *Arbitration Act*) was promulgated with the declared intention of providing a unified and straightforward legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation. The Act establishes internationally-competitive arbitration mechanisms, as well as fixed proceeding schedules.[185] For instance, it provides for the application of "arbitration rules set out... or the UNCITRAL Arbitration Rules or

[181] *Nigerian Constitution*, Art. 232(2) and 233(2)
[182] *Nigerian Constitution*, Art. 4(8)
[183] *Nigerian Constitution*, Art. 6(4)
[184] *Nigerian Constitution*, Art. 236, 254
[185] *Arbitration Act*, Art. 9, 17, 28, 29

any other international arbitration rule acceptable to the parties."[186] It also makes the *Convention of the Recognition and Enforcement of Arbitral Awards* (New York Convention) applicable to contracts enforcement, on the basis of reciprocity.[187] It allows the parties to challenge an arbitrator,[188] and provides that "in any arbitral proceedings, the arbitral tribunal shall ensure that the parties are accorded equal treatment and that each party is given full opportunity of presenting his case."[189]

In addition, the launch of the "Lagos Multi-Court Corridor" process has enabled a fast-track review system for dispute resolution, (depending on the nature of the case at Bench), through ADR referrals where appropriate. For international contracts, arbitration under the London Court of the International Chamber of Commerce (ICC) is formally an option. Whilst the parties are at liberty to choose such international arbitration rules as they deem fit, it would be quite reasonable to propose the adoption of the UNCITRAL Arbitration Rules (as set out by the United Nations Commission on International Trade Law on 21 June 1985); especially since UNCITRAL is the arbitration organization specifically incorporated and acknowledged by reference within the *Arbitration Act*. ADR is often conducted under the auspices of the Lagos Chamber of Commerce or the Nigerian Arbitration Institute.

[186] *Arbitration Act*, Art. 53
[187] *Arbitration Act*, Art. 54
[188] *Arbitration Act*, Art. 9
[189] *Arbitration Act*, Art. 14

5.2 Analysis

- Overall, Law and Order is improving. Corruption is fairly contained in the Nigerian Courts since the transition to the civilian administration. The ability to influence Judges is contained by the Court Assignment System. Furthermore, the recusing procedure works well, when applied for (by request to the Chief Judge). Weekend and night-time decisions have been discontinued, and all major decisions are published. In addition, the National Judicial Council supervises all Judges from the High Court level upwards and makes an effort to ensure accountability. It should also be noted that all State High Court Judges are appointed by the State Governor upon recommendation by the State Judicial Services Commission. Judges must be appointed by the Federal and State level Executive on the recommendation of the National Judicial Council, depending on the specific bench.[190] They must be qualified legal practitioners with 10-15 years experience, depending on the specific bench.[191] On some benches, Islamic law qualifications are also required.[192]

  However, Supreme Court Justice Adolphus Godwin Karibi-Whyte, at a valedictory court session in honor of his retirement on 28 January 2002, stated that "as long as decisions are based on the tripod of self interest, ethnic considerations and the suppression of the other group, they will remain essentially subjective. Let the leadership of the judiciary make self-appraisal its primary consideration."[193] Foreign investors also charge that local magistrates are likely to side with a Nigerian against a foreigner, regardless of the relative legal merits of the case.

- The Federal Ministry of Justice organized a national consultative forum on the administration of justice on 26-28 November 2001 in Abuja. Furthermore, in September 2002, President Obasanjo took what most legal analysts consider a bold step by accepting to implement recommendations made by the Justice Eso "Panel on the Reform of the Judiciary," reviewed by the National Judicial Council (NJC)'s Justice Babalakin Committee.[194] The Babalakin Committee's Review was made public on 15 October 2002. Among its conclusions:[195] The report identified inept and incompetent judicial officers. Furthermore, "the panel discovered, during its visits to various state high courts, an unbelievable state of a deplorable, abject, and total neglect of the judiciary by the successive governments, both military and civilian. In most states, the necessary physical structures in the form of court halls [and] judges residences, were not provided for the judiciary."

  The NJC Review of Justice Eso's Report also took note of the following findings:[196]
  - "the panel discovered, during its visits to the various state house courts, an unbelievable state of a deplorable, abject and total neglect of the judiciary… In most states, the necessary physical structures in the form of court halls, judges' residence,

[190] *Nigerian Constitution*, Art. 231(1), 238(1), 250(1), 256(2), 261(3)a), 271(1)-(2)
[191] *Nigerian Constitution*, Art. 231(3), 238(3), 250(3), 261(3)a), 271(3)
[192] *Nigerian Constitution*, Art. 261(3) and 288(1)
[193] Cited in "Babalakin Report and the envisioned revolution for the judiciary," *The Guardian,* 16/10/02, p. 15
[194] "Babalakin Report and the envisioned revolution for the judiciary," *The Guardian,* 16/10/02, p. 15
[195] "Consideration of the remaining recommendations of Justice Kayode Eso Report by NJC," *The Guardian,* 15/10/02; and "Babalakin Report and the envisioned revolution for the judiciary," *The Guardian,* 16/10/02, p. 15
[196] "National Judicial Council on Justice Kayode Eso Report," *The Guardian,* 22/10/02, pp. 76 and 79

libraries, vehicles, stationary, toilets, etc., were not provided for the judiciary… the judiciary, both state and federal, should be regarded as a disaster institution."
    - "the studied and persistent disobedience of court orders by the federal and state executives… had done unimaginable damage to the image of the judiciary"
    - "there is heavy congestion of cases in our courts at all levels owing to a lack of adequate facilities, laziness on the part of some judges, lawyers and the police… These result in the ever rising cost of obtaining justice."
    - "the present mode of disciplinary control over judicial and non-judicial personnel through the State Judicial Service Commission is ineffective."
    - "The Inspectorate divisions of the Area Courts are too corrupt for any meaningful search to separate the good operators from the bad."

- With the increasing legal awareness of the population, the courts have been inundated with litigation. Thus, the process of seeking redress through the normal court system has become too protracted and unsatisfactory to continue to serve as the primary recourse option of businessmen. The litigation process in Nigeria is extremely slow. Unless a case goes to settlement, is undisputed, or is extremely straightforward, most cases take at least 1-2 years to be resolved. According to the private sector, the Courts' backlog of cases means that it takes an average 3-5 years for a case to be heard the Court of first instance. A recent intellectual property case took six (6) years to get resolved. Property matters are notoriously slow, dragging on for periods of up to 30 years in some instances. Just getting a hearing takes six (6) months. All of this is due to several factors:

    1) The human element
    2) The caseload before the Courts system
    3) The absence of judges on the Court's travel circuit
    4) The abuse of the technicalities of the system by the litigants
    5) The Seniority-based pleading system
    6) The absence of Court stenographers and resulting obligation for Judges to write their decisions in long-hand
    7) The traditional Court dress requirements of the wig and gown, in the context of extreme heat
    8) The absence of electricity in the Courtroom
    9) The absence of computerization

According to Barristers consulted, although few cases are settled, perhaps 90% of potential cases never enter the legal system in the first case, due to concerns over delays. There is widespread consensus as to the fact that the issue of delays is the principal problem with resolution of commercial disputes in Nigeria. One investor simply called the system "a mess."

- Lagos State is attempting to redress the situation, by instituting proper electricity, computer, and stenographic infrastructure in its Courthouses. According to the legal community, its results in addressing the time factor in judicial decisions is being carefully, albeit only officiously, observed as a test case by other State Governments.

- Another problem relates to the ignorance of specialized commercial topics by barristers, solicitors, and magistrates alike. Training of the Auxiliaries of Justice, including bailiffs and Court Clerks, is also poor. On the other hand, Nigerian justices are viewed as fairly

capable and competent, and resourceful at dealing with the constraints in their operating environment. All must have at least ten (10) years' practice before the Courts and be recommended for appointment by the State Judicial Services Commission. Furthermore, some continuing education is on offer, such as the Annual Conference of Judges Admiralty Law Seminar. The National Judicial Institute (NJI) is collaboration with the Chartered Institute of bankers of Nigeria (CIBN) has conducted a seminar and banking and allied matters and concluded arrangements to organize a second one before the end of October 2002.[197] The Bar Association is also very strong in this area.

- Legal services in more remote States are improving, with most medium and large law firms in the country having offices in 2-3 States, and relationships and capabilities throughout most of the country.

- Investors however view the Government's Law enforcement capacity as weak and the Rule of Law as still hampered by the "Rule of Persons." One private sector businessperson, formerly in the Government, stated that Nigerian Law enforcement capacity is weak, principally because of the absence of targeted enforcement mechanisms. However, Barristers consulted expressed the belief that enforcement is improving, particularly as regards contracts, even with respect to Administrative Law decisions involving the Government as a litigant. Furthermore, the use of specialists including Private Investigators, Security Firms, and Loss Adjusters is allowed in Nigeria, in order to track down litigants with enforceable obligations under judicial decisions.

- One investor at a NESG-sponsored event stated that the current oath and perjury systems are unrealistic in terms of assuring all litigants' and witnesses' truthfulness, as they are not grounded in Nigerian animistic or Muslim traditions.

- Finally, Alternative Dispute Resolution (ADR) is still in its infancy in Nigeria. One investor stated that arbitration is quick and straightforward, and its decisions devoid of any external factors or influences. That company puts a standard arbitration clause in all of its contracts. According to specialized Barristers consulted, such investors are the exception that confirms the rule. By and large, it would seem, businesspeople are not conscious of ADR's advantages and prefer going to Court, as they feel more secure in their ability to enforce Court decisions. In practice, only the largest companies make use of these arbitration forums.

[197] "NJI, CIBN organize seminar for judges, bankers," *Daily Times,* 17/10/02

5.3 Recommendations

In order to improve the quality of commercial dispute resolution in Nigeria, the consulting team recommends the following measures:

- Judicial, Barrister and Solicitor training through continuous education on specialized legal topics related to commerce, as well as through seminar series, exposure tours to foreign jurisdictions, and exchange programs
- Training of Judges in the use of computers
- Making available all Official Gazette and legal decision collections at each Courthouse
- Creating an electronic/internet Nigerian legal database for accessing laws, Court decisions, procedural models, and professional legal services
- Encouraging the publication of textbooks on Nigerian legal doctrine and jurisprudence
- Creating dedicated training programs, professional orders, and Codes of Ethics for Court Clerks and Bailiffs
- Equipping all Nigerian Courthouses with stand-by generators, telephones, fax machines, typewriters and/or personal computers, and stenographic and filing systems, following Lagos State's lead in this area
- Abolishing the wig, as has been done in such other Common Law jurisdictions as Canada and the United States
- Offering the option of "affirmation," or swearing on the Qur'an, rather than the standard Bible-based oath currently in use
- Organizing a public awareness campaign and training on ADR mechanisms, targeted at the business and professional legal services communities
- Creating Commercial Courts, following Lagos State's lead, in order to alleviate the caseload pressure and delays in resolving commercial disputes. In states where this solution proves inappropriate, due to significant resource constraints, the consultants endorse an NIPC recommendation[198] that there should be Industrial Arbitration Panels rather than specialized court systems.

In terms of reducing general risks to the Rule of Law, the consultants would simply like to endorse recommendations already generated at the Nigerian level. The Justice Eso "Panel on the Reform of the Judiciary" Report Review by the NJC's Justice Babalakin Committee, has made the following recommendations:[199]

- The Nigeria Bar Association's (NBA) intent to set up a Committee to monitor judicial activities was deemed helpful, in order to detect inept and incompetent judicial officers and discipline them.

- There should be Federal and State Marshalls of Courts to execute court processes and judgments. A Draft Legislative Bill in the respect would be submitted to the National Assembly for consideration and enactment

- The Code of Conduct for Judicial Officers adopted in 1997 was deemed adequate, but would be published in the national dailies to bring it to the awareness of the public

[198] Made during the Investor Roadmap workshop held in Abuja, on 12 July 2002.
[199] "Consideration of the remaining recommendations of Justice Kayode Eso Report by NJC," *The Guardian,* 15/10/02; and "Babalakin Report and the envisioned revolution for the judiciary," *The Guardian,* 16/10/02, p. 15

- The panel recommended that all heads of courts show leadership by example in sitting promptly and attending court work.

- The panel recommended that the Criminal Investigations Department of the Police and the Director of Public Prosecutions be strengthened.

Finally, Minister of Justice Kamu Godwin Agabi (SAN) has recently stated that the Independent Corrupt Practices and Other Related Offenses Commission (ICPC)'s anti-graft axe will soon fall on corrupt judges, as well as lawyers who act as the go-between for litigants and judges, stating that "We are doing everything to sanitize the system."[200]

The consultants fully endorse the above laudatory initiatives.

[200] "Corrupt judges may face prosecution, says Agabi," *The Guardian,* Vol. 18, No. 8730, 15/10/02

Chapter 6. Taxation

This chapter provides an overview of fiscal federalism in Nigeria and of the Nigerian taxation system in general, as well as the state-level monthly income tax payment and annual income tax filing processes because investors must typically complete these processes on behalf of their employees. It finally takes a cursory look at local government taxation.

While centrally coordinated to some degree, Nigeria's system is one of fiscal federalism, with federal, State, and Local Government taxes and roles, as well as transfer payments known as "Federal Allocation Allowances."

The system is relatively reasonable and competitive by design, both in terms of fiscal pressures and tax administration procedures. The monthly payment and annual filing of employee income taxes, for instance, appears neither particularly difficult nor cumbersome.

However, State auditing and collection practices are also less than ideal, while Local Government taxation and collection practices are, to all intents and purposes, predatory. Overall, the system remains relatively opaque. Corruption exists both in terms of transfer payment misappropriation and in incentives administration. Clearer and more transparent systems, as well as better information dissemination, will be critical to improving this situation.

Detailed discussion, analysis, and recommendations will be offered on each of these issues throughout the chapter.

6.1 Federal Taxation

6.1.1 Overview

According to the Nigerian Constitution and the *Taxes and Levies (Approved List for Collection) Decree No. 21 (1961, as amended in 1998) A281*,[201] the Federal, State and Local Governments are each responsible for the collection of some taxes. According to specialized tax attorneys consulted, under Article 315 of the Constitution, any amendments to the *Taxes and Levies Act* and of the associated responsibilities of the Joint Tax Board are however areas of exclusive federal jurisdiction.

The Federal Government is also, amongst others, responsible for collecting the following taxes:[202]

[201] Hereinafter the "*Taxes and Levies Act*"
[202] *Taxes and Levies Act*, Schedules, Part I

- Companies income tax
- Companies and non-resident withholding tax
- Capital Gains tax on companies, non-residents and FCT residents
- Company Stamp Duties
- Personal income taxes of civil servants

In the non-petroleum sector, foreign investors are particularly interested in the following taxes: company income, personal income, capital gains, value-added (VAT), and withholding. Investors must also consider education tax and stamp duties in their financial projections.

Nigeria charges a 30% corporate tax. Manufacturing companies, and those engaged in agricultural production, pay a 20% company tax for the first five years of operations. Businesses incorporated in Nigeria pay tax on profits accumulated anywhere in the world; foreign firms pay on profits derived from operations in Nigeria only. Nonresident foreign companies pay a "deemed" tax of 30% on an *estimated* or deemed profit of 20% of annual gross income.

The government levies personal income tax on all persons considered residents for the fiscal year. Treatment of residents and non-residents differs. A resident is anyone domiciled in Nigeria for 180 days in a year. Residents are taxed on all income brought into Nigeria, whatever the source; nonresidents are taxed only on income derived from Nigeria. For personal income derived from employment, employers are required to deduct and remit the relevant taxes. This is known as the P.A.Y.E.—Pay As You Earn—scheme. P.A.Y.E. tax is imposed by the federal government but collected by the states on behalf of the federal authority.

Withholding tax should not be confused with its counterpart in the U.S. U.S. withholding is the equivalent of the Nigerian employee P.A.Y.E. tax. In Nigeria, withholding refers to taxes held and paid by persons who have paid rent, interest, fees, royalties, and dividends. In Nigeria, any person who receives professional services is obligated to withhold a percentage of the value of the services. This ranges from 2.5-10%, according to the classification of the service. Consulting services, for example, are taxed at 5%. If an individual or a firm retains an attorney, the retaining person must withhold, declare, and pay the appropriate tax on the attorney's fees. This withholding is largely limited to services. The government established withholding tax in part to capture tax owed by non-resident foreign firms or individuals who have rendered service in Nigeria.

Capital gains taxes apply to gains realized from the disposal of assets by both resident and nonresident individuals. These assets may be within or outside of Nigeria, but for nonresidents only the amount of gain brought into Nigeria is taxable. Federal authorities tax corporate capital gains. State authorities, on the other hand, tax individual capital gains. Interestingly, the government does not tax capital gains derived from stock sales and company shares.

The government levies a flat 5% VAT on goods and services. Exported goods and services are VAT-exempt. All Nigerian companies providing goods and services must register with the Federal Board of Inland Revenue and pay VAT returns monthly. Nonresident companies must also include the tax in their invoices; these companies cannot recover the VAT paid on their inputs.

The following table provides a list of taxes approved by the Joint Tax Board for collection at the several tiers of government. These taxes and levies are based on the constitution and the tax codes and are prescribed by law. The table is amply representative but not wholly exhaustive.

Systemic Overview

Federal	State	Local
• Corporate income • Withholding for companies • Petroleum profits • VAT • Education tax • Capital gains: Corporate and Abuja residents • Stamp duties for corporations • Personal income with respect to: a) Armed Forces b) Police c) Abuja residents d) External affairs e) Non-residents	• Personal income • Withholding for individuals • Capital gains for individuals • Stamp duties (individuals) • Lotteries, Gaming, Casinos • Road taxes • Business premises registration • Street naming fee in state capitals • Right of occupancy fees: State capitals • Markets involving state finances	• Shops and kiosks • Tenement rates • Liquor licenses • Marriage registration • Birth and obituary certificates • Signboard/Advertisement permits • Right of Occupancy fees • Parking violations charges • Sewage, refuse disposal fees • Market/motor park fees • Cattle tax • Burial ground permits • Bicycle, Cart, Truck fees

Nigerian tax revenues are chiefly collected by the Federal Government and redistributed according to a special allocation formula, under which States and Local Governments receive "Federal Allocation" payments from Abuja. The Federal Board of Inland Revenue administers Nigeria's fiscal system. The Federal Inland Revenue Service is the Board's operational branch. It imposes taxes at three levels: federal, state, and local governments. The Joint Tax Board coordinates state taxes and ensures that taxes do not overlap and are not redundant.[203] Some taxes, such as capital gains, appear to be assessed at multiple levels. A close examination, however, reveals that the government does not collect redundant taxes. A new fiscal force, coordinated by the President and involving the Federal Ministry of Finance, relevant para-statals, Justice and the police, will be established and operational by August 2001 at the latest. It will be governed by a special Act and aim to ensure proper enforcement of fiscal policy.[204]

Finally, it should be noted that the various above-discussed taxes need not necessarily apply to every investor. A number of fiscal incentives are available to investors in Nigeria, including the "Pioneers Status,"[205] the Duty Drawback (DDS) Scheme, and the Manufacturing In Bond (MIBS) Scheme.[206]

6.1.2 Analysis

The tax system of Nigeria is, like many other components of the country's investment framework, in theory, relatively reasonable by design. The consultants believe that the taxation rates are reasonable and competitive by international standards -and lower than in either the U.S. or the UK. Furthermore, Nigeria compares fairly well with international taxation theory and models. It abides by IASC standards, it has a Single Unified Tax form, and through the *Taxes and Levies Act* has attempted to unify and harmonize local taxation. All government levels attempt to ensure high tax collection rates. The federal government uses the Federal Board of Inland Inspection, and the states use their own employees, private consultants, and private

[203] Contrast this system to that of the U.S., where federal, state, and local authorities often tax personal as well as corporate income.
[204] "New fiscal policy proposal promises fresh job opportunities," *The Guardian*, 01/30/01, p. 27
[205] See above, Chapter 1: Business Registration.
[206] See above, Chapter 4: Import and Export Procedures.

firms. Municipal governments also use such means. Furthermore, on October 14th 2002, the Ministry of Finance inaugurated the Body of Appeal Commissions (BAC) in Abuja as "an independent body adjudicating on disputes between government and corporate tax payers."[207]

A number of sources of non-competitiveness nevertheless exist, including the following:

- There is considerable debate, within Nigeria, concerning fiscal federalism and the equitable allocation of federal resources. The Southeast continues to complain about marginalization in terms of participation in Government and budgetary allocations. Lagos State too is seeking what its Finance Commissioner, Mr. Olawale Edun, termed "full legality, full constitutionality in the treatment of federally collected revenue."[208] According to President Obasanjo, most Local Council Chairmen share the Federal Allocation payments between themselves and their local councilors. This has been evidenced by a series of recent events in Lagos, Maidiguri, Enugi, Minna, Ibadan, Jos, Sokoto, Port Harcourt, Oshogbo, and Onitsha. Ineffective local government bosses help themselves to millions of Naira in this fashion. Justice Mustapha Akanbi, Head of the Anti-Corruption Commission has stated that many local government chairmen should be tried and incarcerated for the statutory term of ten (10 years).[209]

- Chartered accountants and auditors consulted expressed the view that tax legislation is generally poorly drafted, vague, and opaque. Tax legislation falls into many different codes. Although these codes are not collected in any single official tome, only the private legal and accounting firms have put them into a consolidated volume.

- Chartered accountants and auditors consulted furthermore felt that information dissemination (both of informational leaflets and of legislation), training of tax collectors, and enforcement were inadequate.

- While Nigeria has a public assistance service and an appeals process for taxpayers, neither functions well.

- Double taxation exists. Thus far, Nigeria has formalized treaties with just ten (10) foreign states: the UK, Canada, France, Romania, the Netherlands, Belgium, Pakistan, he Philippines, Romania, and the Czech Republic. Negotiations are in progress with Turkey, Russia, India and Korea. It has as yet established no tax treaty with the U.S.

- Some investors report intimidation in the collection of taxes. Although this analysis suggests that the phenomenon has declined since 1999, some businesses have reported to local authorities relying on the police, military, and private "tax collection consultants" to assist in collecting levies from private business. Several companies, including Elf, UAC, Paterson Zochonis, Dunlop, First Bank, and Nestle, have reported that the government shut down their facilities during tax disputes.[210]

- Finally, many investors charge that states and local authorities routinely impose new taxes on business, and the types of taxes vary widely from state to state and from

[207] Minister of Finance Malam Adamu Ciroma, cited in "Finance Ministry inaugurates body on tax administration," *Vanguard,* 15/10/02
[208] "Lagos seeks IMF, World Bank assistance in federal allocation," *The Comet*, 01/30/01, p. 32
[209] "Councils of Fraud," *This Day*, Vol. 6, No. 2113, pp. 12-13
[210] Economist Intelligence Unit, *Investing, Trading & Licensing in Nigeria,* pg. 30.

industry to industry. The arbitrary nature in which state and local officials impose taxes is a major source of risk in Nigeria's business environment, and some observers have characterized this as outright "harassment of business."[211] Numerous investors attested to examples of local officials creating new taxes designed to extract money from a specific business. In many occasions investors are told in advance of the state or local government's intention to impose a tax, allowing for payments to be negotiated to avoid formal taxation. Some firms report routine harassment by public officials, and few firms have successfully repealed a local tax through the court system. Clearly, this unrestrained taxing authority creates an unstable business environment and creates considerable suspicion among would-be foreign investors.

- The States' Inland Revenue Services have been described by the Assistant Director of Taxes or the FIRS, Mr. Mac Dike, as ill-equipped, ill-motivated and lacking autonomy to carry out their assigned functions with independence and objectivity." According to the FIRS, too "much emphasis has been placed on tax revenue maximization without a corresponding emphasis on the tax structure and administration."[212]

- At the time of writing, the Lagos High Court has been asked to declare illegal, unconstitutional, null and void, the imposition of property tenement rates and levies by the Lagos State Government on the basis of its *Land Use Charges Law of 2001* and *Land Use Charges Law of 2002,* under Arts. 4(7)b) and 44 of the Constitution and *Decree No. 21 of 1988*.[213] Nigeria Breweries Plc., Sofitel, Toyota Nigeria Ltd., and the Lagos Millenium Group challenged the constitutionality of the Lagos State Government's land use charges, under Articles 36 and 43 of the Constitution.[214]

Furthermore, the following issues affect Nigeria's fiscal incentives schemes:

- The incentive system is unclear and complicated. Although the FIRS appears to administer most incentives, several other agencies are involved. Given the uncertainty of the incentive system, the consultants are surprised investors do not offer greater criticism. The consultants believe that, despite numerous incentives, most investors do not bother applying for them, or pursue a "negotiated" incentive program. The system's numerous bottlenecks – while designed to reduce unofficial investor abuse – prevent serious investors from benefiting.

- Currently, Nigeria has no central clearing-house to provide clear and complete incentive information, application procedures, etc.

- This complicated, labor-intensive system favors large companies that can afford facilitation services. The system is disadvantageous to SMEs –the type of companies most likely to provide new products and services and offer employment opportunities.

- Because the current system is not transparent, it encourages corruption.

- Service sector investors note that the Nigerian incentive programs focus almost exclusively on the manufacturing sector, ignoring service sector investment. In addition, the system

[211] Economist Intelligence Unit, *Investing, Trading & Licensing in Nigeria,* pg. 30.
[212] Bukky Olajide, "Benefits of prompt payment of tax," *The Guardian,* 21/10/02, p. 24
[213] "Firm Drags Govt to Court over Tenement Levy," *This Day* Vol. 8, No. 2731, 14/10/02, p. 12
[214] "Firms challenge Lagos govt over land use charge," *The Guardian,* 21/10/02, p. 19

discriminates between foreign and domestic investors. This is particularly ironic since the service sector has created dynamic economic growth throughout the developed world and is increasingly responsible for generating large cross-border income inflows from foreign clients.

- Finally, just as is true of its taxation system in general, Nigeria's complicated and discretionary incentives program is operated with inadequate staff and systems support.

6.1.3 Recommendations

Based on the above analysis, the consultants offer the following recommendations on improving Nigeria's taxation and fiscal incentives schemes:

- Greater anti-corruption efforts against Local Government Councils by the Joint Tax Board should be exercised.

- Nigeria's tax legislation and regulations should be codified and a proper Tax Code adopted. The NIPC recently reported that it is now cooperating with the NESG on investment policy advocacy issues relating to taxation. [215] The consultants wholeheartedly endorse these efforts.

- NACCIMA recommends the abolition of all miscellaneous taxes such as mobile advertisement taxes, borehole levy, and generator taxes, considered serious nuisances to the business environment.[216]

  - Federal and State BIR tax assessors, auditors, and collectors should be trained in the legislative basis for their work, as well as in customer service.

  - Tax and fiscal incentives information should be made widely available, in both written and electronic format.

  - Nigeria should negotiate more non-dual-taxation agreements with its major trade and investment partners, including the U.S.

- Nigeria should simplify its incentives system in order to improve the attractiveness of the business environment since the investment location decisions of multinational companies are influenced more by simplicity in incentive regimes than by larger incentives based upon opaque criteria. A simplified system would also ease the burden of administration by tax and other authorities. The Nigerian Government may want to consider performing a full-scale analysis of options for reform, including estimates of both the revenue effects and the effective tax burdens of different possibilities. Such a study would analyze the investment incentive scheme in Nigeria, the marginal effective tax rates for different types of investments resulting from existing incentives, and the impact of these incentives on the government budget.

- Nigeria should develop a transparent national investment incentive policy. The most effective remedy to the current complex incentive regime would be a national investment incentive policy that strictly and clearly regulates what the federal government, individual

[215] During the 2nd Abuja Investor Roadmap Workshop, held on 12 July 2002.
[216] "Foreign Investors won't Come if We're Not Comfortable," *This Day* Vol. 8 No. 2732, 15/10/02

states, and municipalities can offer. The incentive scheme should be automatic, performance based, and awarded against transparent and consistent criteria. Such a policy must provide uniform and transparent rules and be easily accessible to foreign investors in the major languages of the international business community.

- The incentive scheme should be focused. The Government should limit the objectives placed on an investment incentive scheme and the choice of instruments utilized to reach those objectives. To do otherwise invariably introduces an unwarranted and unsustainable complexity to the scheme, which in and of itself leads to inequitable delivery and inefficient administration, increases free rides and decreases the value of the incentive to the investor. Further, the more targets assigned to the incentive system, the less likely the system is to achieve any target, in a meaningful sense, let alone all of them; Tax incentives tend to induce diverse and often unpredictable distortions in an economy, a factor often overlooked in their design. The best way of reducing these distortions and inducing the desired response is by selecting instruments that act as directly as possible. Thus a policy maker should target a tax base for an incentive that is most closely related to the desired effect.

6.2 State-Level Taxation

6.2.1 Overview

State BIRs are much less involved with businesses than is the Federal Board. The latter taxes corporate income, capital gains for companies, company withholding, and stamp duties for corporations. States —by law— cannot replicate these levies. They tax personal income, withholding, and capital gains. Withholding comprises professional services, rents, dividends, and directors' fees. Because they tax personal income, the State Boards are concerned with employees and wages. The State Government is however, amongst others, responsible for collecting all of the following taxes:[217]

State Government Taxes

- Personal Income Tax in respect of:
  - Pay-As-You-Earn (PAYE)
  - Direct Taxation (self-assessment)
- Withholding Tax (individuals only)
- Capital Gains Tax (individuals only)
- Stamp duties on instruments executed by individuals
- Pools betting and lotteries, gaming and casino taxes
- Road Taxes
- Business premises registration fee in respect of
  Urban Areas as defined by each state, maximum of:
  - N10,000 for registration
  - N5,000 per annum for renewal of registration

  Rural Areas
  - N2,000 for registration
  - N1,000 per annum for renewal of registration
- Development levy (individuals only): No more than N100 per annum on all taxable individuals
- Naming of street registration fees in the state capital
- Right of occupancy fees on lands owned by the state government in urban areas
- Market taxes and levies where state finance is involved

6.2.2 State Monthly Income Tax Payment Procedure

The consulting team explored the income tax monthly payment and annual filing procedures in Rivers, Plateau, and Kaduna States. The process by which employers register employees fro income tax deductions, which precedes payment and filing, is covered in Chapter 3: Employing (above).

Step 1: Monthly Paycheck Deductions

After a company has registered to pay taxes on behalf of its employees and to file an annual company tax return, it must make monthly deduction payments to the Board of Inland Revenue. The company deducts the allowed amount of money from each employee's paycheck.

[217] Taxes and Levies Act, Schedules, Part II

Step 2: Monthly Income Tax Payments to the Board of Inland Revenue (BIR)

The company submits a payment on behalf of all employees to the P.A.Y.E. window at any of a number of designated banks. BIR personnel staff these windows on behalf of the agency. It should be noted that the monthly deductions should be paid into the bank within a month from when the deduction is made otherwise the company will incur a penalty.

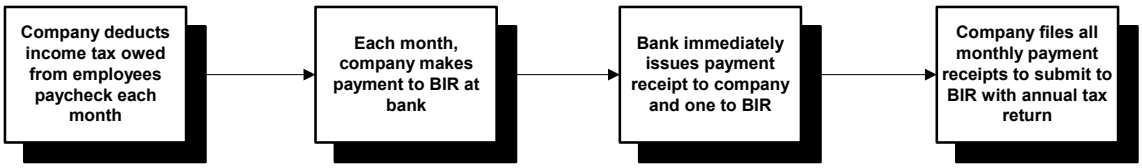
Step 3: Bank Issues Receipt of Payment to Company

The bank issues a receipt of payment to the company. One copy goes directly to the Board of Inland Revenue, and another copy is given to the company.

Step 4: Company Files All Monthly Receipts to Submit with Annual Tax Return

The company files all monthly payment receipts in its accounting office. The company will submit copies of all these payment receipts with its annual tax return.

Monthly Income Tax Payment Procedures



6.2.3 Annual Income Tax Filing Procedure

Step 1: BIR Public Announcement that Filing Forms are Available/Announces Audit Schedule

At the beginning of each calendar year, the BIR invites company representatives to pick up that year's income tax filing forms. The forms are only available at the BIR office. At the same time, BIR announces its auditing schedule for the year.

Step 2: Company Visits BIR to Obtain Annual Filing Forms

A company representative must visit the BIR office to obtain the requisite filing forms (“Kaduna State Personal Income Tax Return”) for the particular year. The forms are only available at the State BIR office.

Step 3: Company Submits Tax Returns for Each Employee

The company submits to BIR a complete deduction card for each employee. The deduction cards show the amount of money deducted from an employee's paycheck each month and paid as income tax to the BIR. The company sends the original of each employee’s completed monthly form to the BIR. At the same time, the company submits a P.A.Y.E. Form (“Rivers State Form H1”). that shows all of a company's employees' deductions.

Tax returns must be filed with the BIR between January 1 and March 31 of every year.

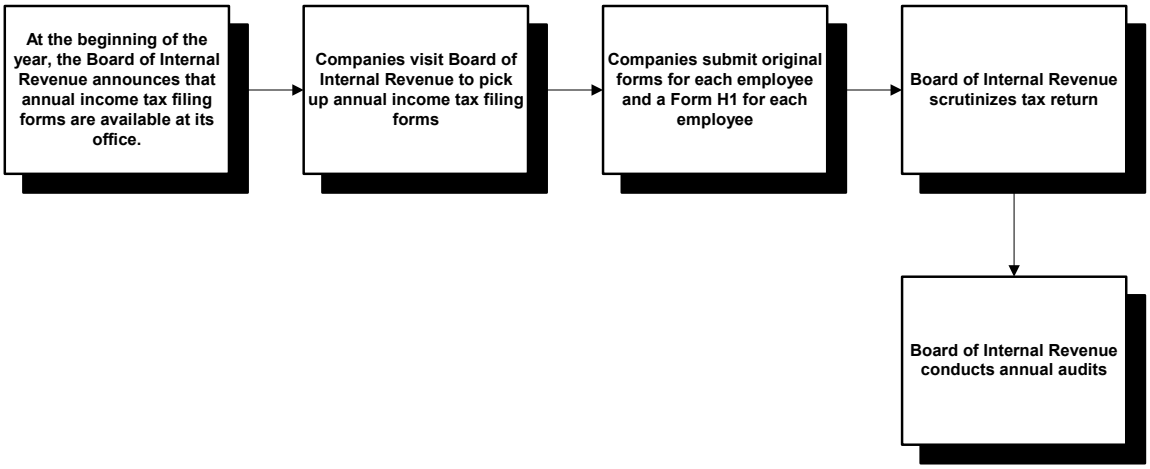
Step 4: BIR scrutinizes the returns

BIR staff go through the company's tax return, and check the monthly payment receipts the company has submitted against the receipt copies the bank has submitted directly to the BIR. If there are no errors or inconsistencies, the process is complete. If there are inconsistencies, BIR contacts the company for verification.

Step 5: BIR Conducts Annual Audits

BIR audits each of Port Harcourt's 4,000 registered companies every year; BIR conducts audits whether or not there is suspicion of a filing error. In addition to these scheduled audits, BIR staff conducts daily routine audits on an unannounced basis. The daily, random audits are much less comprehensive than the annual, scheduled audits.

Annual Income Tax Filing Procedures



6.2.4 Analysis

The monthly payment and annual filing of employee income taxes does not appear difficult or cumbersome. Companies did not note the income tax process as an investment discouragement. Some of the Nigerian system's aspects are even quite competitive by international standards. While each Nigerian State has a unique tax declaration form, thanks to Joint Tax Board Efforts, the state forms are more consistent than those of the US states. Nevertheless, several issues should be pointed out:

- The Joint Tax Board has clarified the limitations and authorities of the three tiers of fiscal services in Nigerian society. The parameters are clear. It becomes the responsibility of Federal authorities to ensure compliance at all levels. Unfortunately, at a time in which social and religious dissension are putting the federation itself under trial, this recommendation is not simple to implement.

- In Rivers State, the Board of Inland Revenue told the consulting team that states gain all income taxes; none accrue to the federal government except those paid by members of the armed forces and residents of the Federal Capital Territory of Abuja. However, all other sources, including the federal tax authorities, explain that the state Boards of

Inland Revenue collect employee income tax on behalf of the federal government. It is somewhat disconcerting that state tax officials are unfamiliar with basic fiscal policy.

- A view of the taxpayer as a "client" or "customer" of the BIR is severely lacking in most states. The Plateau State BIR's physical premises and general observable environment re more appropriate for a police station than a line agency (although the senior official who received the team, was welcoming, knowledgeable, and informative). What gives rise to concerns is that the role of the BIR seems less clear than that of other agencies. Even more disconcerting was a statement made by one civil servant that there remains "a crude way of getting what we want in Nigeria." This expression was meant to characterize fiscal aggressions of both the state and local governments.

- Few jurisdictions internationally require that companies file for their employees. This can be very costly for an investor, both in terms of time and financial resources.

- Companies can only procure annual filing forms directly from the Board of Inland Revenue office. Since this is a state agency, representing enterprises statewide, all companies must travel to the State capital to obtain annual tax filing forms. Since the agency is generally not computerized and neither are many of the small and medium sized enterprises in the State, the Board of Inland Revenue has not considered making forms available electronically.

- In the case of the Plateau State BIR at least, the physical premises and general observable environment reminded the consultants more of a small-town Third-World police station than a line agency (the senior official who received the team, however, was welcoming, knowledgeable, and informative). Likewise, the Kaduna BIR was, at first, the only organ of that State's government hesitant to speak with visitors—potential investors—without a formal letter of introduction addressed to the BIR Chairman. Only after the consultants fully explained their mission, and assured the BIR that they only sought routine and publicly available information, were BIR personnel more forthcoming. The attitude of welcoming and encouraging investors was less evident than at other State institutions. It is likely that the BIR sees itself as downstream in the business process and not engaged in the authorizations for matriculation of firms. Nevertheless, this attitude is troubling.

- Another potential bottleneck in the income tax process comes from the inordinate number of audits the State Boards of Inland Revenue conduct. According to the Rivers State Board, fewer than thirty-seven employees tackle well over 4,000 audits each year, which must leave the office severely understaffed on a daily basis. The Board's declared auditing process seems inefficient at best and well beyond the means of the staff, at worst. There appears to be no correlation between payment/filing errors and audits conducted. The Board does not necessarily investigate those companies that file suspicious or faulty returns; instead, the Board audits all registered companies annually. This is a poor use of agency staff and limited resources. Indeed, the Board has only two vehicles: one which is the sole domain of the Board chairman, and the other which must be shared among numerous auditing teams on any given day. Apparently, staff must frequently rely on public transport, or vehicle or motorbike taxis to arrive at audit sites.

Investors in Abia State indicated that the state tax authority does not perform annual scheduled audits. Instead, bi-yearly audits are more typical. The investors also explained that random

audits are no longer part of the system – they may have occurred during military rule to intimidate or to procure “fines”; however, they no longer occur.

The consulting team finds it disconcerting that one state claims to carry out comprehensive – indeed, unnecessary – audits every year, while another state does not. Moreover, the States’ auditing systems are onerous for investors, who potentially face annual scheduled audits and periodic unscheduled audits, regardless of the company size. Companies must prepare for audits, and spend valuable time making documents and staff available to assist auditors. Annual audits could be a significant investment deterrent, especially since they serve no real purpose.

- The State Boards of Inland Revenue also miss significant income tax collection potential because of security risks, and lack of transport. The Rivers State Board estimates that approximately 100,000 small companies or individual proprietors fall outside of its reach. These investors do not register with the Board, but Board employees cannot visit them to encourage registration and payment – there is no transport and there is no security. Most of these companies would be paying taxes under the direct assessment system. The state tax authorities – and subsequently the federal government – are foregoing a potentially significant amount of revenue if 100,000 small companies or individual proprietors fall through cracks in the collection system.

6.2.5 Recommendations

- Following international best practice, the consultants also recommend that all Boards of Inland Revenue in Nigeria transfer the filing burden from the company to the employee.

- The consulting team recommends that each state Board of Inland Revenue publish a tax registration guide for that state. The guide should cover all processes that an investor must complete to comply with state tax registration requirements. Moreover, the guide should serve both investors and tax authority personnel. Since Rivers State Board of Inland Revenue personnel misquoted federal tax policy, the consulting team feels that both staff and investors need clarification on tax policies and regulations. The guide should include all relevant forms, which can be detached.

- The consulting team recommends that the State taxation agencies make tax forms available at other places throughout the state: for instance, at other state government agencies and local government offices. The agencies should also consider making forms available electronically when their offices are computerized.

- The consulting team recommends that the State Boards of Inland Revenue adjust their auditing policies. There is little need for annual audits of all operating companies. Instead, the Boards should conduct some random audits, but the bulk of audits should be performed when fraud is suspected. The Boards should consult international auditing norms to learn how to detect possible fraud in employee income tax payments.

- As is, the Rivers State Board of Inland Revenue, at least, is incapable of capturing significant employee income tax revenue. The consulting team suspects that this problem is not unique to Rivers State. The team suggests prioritizing collection from the numerous small companies and individual proprietorships that currently operating outside the tax system.

- Investors pay many taxes at different times and in different places. To decrease the time burden investors face, tax authorities should consolidate the myriad taxes. Moreover, taxes should be paid in a central location, and at only a couple of times in a month or a year, depending on the particular tax.

- The consulting team recommends that the federal government establish and make known a policy regarding employee income tax requirements for Nigerians working in free zones. Currently, there appears to be considerable confusion over the requirements and exemptions.

- The consulting team recommends strategic "visioning" and mission statement-crafting exercises, as well as customer service training, for all State BIR personnel.

- Finally, the consultants recommend serious consideration be given to making means of transportation available to BIR auditing staff.

6.3 Local Government Taxation

6.3.1 Overview

Local governments are considered the third tier for taxation. Some of the legitimate areas in which they can impose taxes, duties and levies, in accordance with the decrees of the Joint Tax Board, are: [218]

Local Government Taxes

- Shops and Kiosk rates
- Tenement rates
- On and off liquor license rates
- Slaughter slab rates
- Marriage, birth, and death registration fees
- Naming of street registration fee, excluding any street in the state capital
- Right of occupancy fees on lands in rural areas excluding those collectable by federal and state governments
- Market taxes and levies excluding any market where state finance is involved
- Motor park levies
- Domestic animal license fees
- Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck
- Cattle tax payable by cattle farmers
- Merriment and road closure levy
- Radio and television license fees (other than for radio and television transmitter)
- Vehicle radio license fees (imposed by the local government of the state in which the car is registered)
- Wrong parking charges
- Public inconvenience, sewage, and refuse disposal fees
- Customary burial ground permit fees
- Religious places establishment permit fees
- Signboard and advertisement permit fees

There is also a measure of concurrent State-Local jurisdiction in the collection of taxes, fees and/or rates, subject to State Law.[219]

The consultants interviewed two officials from the Kaduna South Local Government in an effort to better understand issues of local taxation. The official with responsibilities in the area of taxation explained that, in reality, they have three principal categories of revenue from levies and taxes:

- The first is property or tenement rates, which are assessed at 1% the value of the company's gross income, on the basis of standard documents ("Demand Notes for Property Tax and Plot Dues").

[218] *Taxes and Levies Act*, Schedules, Part III
[219] *Nigerian Constitution*, Second Schedule, Part II, Article 9

- The second category is the business permit. The amount of this tax, according to the official, is also assessed at roughly one percent of the gross revenues of the company. After the first year, rates are much lower. Kaduna Local Government (KLG) explained that a local textile company pays approximately N350,000 annually. KLG also claimed that other municipal governments charge a much higher rate: 9% in Abuja, 5% in Kano.

- The third category is ground rates.

6.3.2 Analysis

It is in seeking revenue that local governments are most aggressive. Several issues bear noting in this regard:

- The numerous local taxes that companies are required to pay throughout Nigeria are an extremely serious issue. Investors indicated that the tax payment timing is inefficient and burdensome – all the taxes are assessed and paid at different times throughout the year. Company personnel are constantly traveling to and from the filing stations making tax payments. The local taxes are particularly problematic because local government authorities continue to add new taxes, in an effort to raise revenue as a body, or as individuals. The current trend is a vehicle tax for each municipality.

- The foreign as well as the domestic investor also face municipal taxes and levies. While there appear to be few problems with redundant taxation between the states and the federal government—there are some aberrations in land fees—municipal governments have shown little restraint in following legislated standards and often attempt to tax business in ways proscribed by the Joint Tax Board. They have no constitutional or other legal right to do so, but they have been in many instances refractory about conforming to regulations. Local governments in Nigeria enjoy a degree of autonomy that is proving occasionally intractable to the federal authorities' efforts to curtail. In no area is this quasi or even extra-legal independence more salient than in the fiscal domain.

- Municipal assessment is far from standard and presents a special range of issues. According to sources interviewed by the consultants, there are some 120 levies and taxes relating to roads & transportation, sanitation, and the environment, applied to businesses operating in the East, South-South, and Delta areas. Investors claimed that few of these rules were codified. In one investor's words: "You can't just go to a library or a lawyer and clear things up." According to solicitors, many of these local taxes are *ultra vires.* Investors claim that there is nevertheless much Local Government harassment and intimidation as part of their "revenue drives."

- Local governments enjoy power and proximity. Hungry for revenues, they have a reputation for behaving at times in an almost predatory manner, and they are said not to be above attempting double taxation, that is, duplicating a levy already assessed by the state or federal authorities. In other words, they occasionally behave in ways not legitimized by the Constitution, and it is in this manner that they combine a certain informality with their local power. All investors—local or out-of-state Nigerians and foreigners alike—must learn to deal with these entities, and the art of working with them demands knowledge of the laws and flexibility. The federal and state authorities must find an equilibrium between desirable local autonomy and necessary enforcement of the limits of decentralization. Nigerian authorities are aware of the challenge and working

towards its resolution. Their efforts have been set back in recent times by calls for increased local and regional autonomy by ethnic and religious groups.

6.3.3 Recommendations

The consultants recommend the following measures in order to ameliorate the current situation surrounding Local Government taxation in Nigeria:

- The principal solution on offer for bringing to heel the Local Government Councils in the context of their excessive and *ultra vires* use of powers rests in a more vigilant enforcement, by the Joint Tax Board, of the *Taxes and Levies Act*.

- Furthermore, all Local Governments should be required to publish, and gazette their Local Ordinances and By-laws, and disseminate them adequately (perhaps through such media as the local press). Non-published by-laws should have no legal validity.

Annex 1: International Benchmarks in Business & Tax Registration

Throughout the world, small and medium-sized enterprises (SMEs) represent the majority of new companies. SMEs typically have fewer human and financial resources to tackle the procedural and regulatory business start-up processes. Often they cannot afford to hire facilitators and, therefore, must complete all procedures unassisted.

Yet often these investors face daunting procedural requirements: numerous steps, long delays, and multiple fees. Business registration procedures are too often complicated and cumbersome – representing a substantial expense in time and money.

Many countries are recognizing that business registration procedures represent a significant investment barrier; they are acting to eliminate or reform cumbersome business start-up procedures. Mexico and Australia, for instance, are simplifying or eliminating regulations, steps, and even procedures.

General Efficiency Considerations

A recent European Union study indicates that business start-up in all European countries should require a maximum of six (6) steps. Among OECD countries, the number of company registration steps varies considerably: from one (1) in Ontario, Canada to twenty-nine (29) in Greece. The number of agencies involved in business registration also varies: from one (1) agency in the UK and Canada to six (6) in Ireland. In Europe, a business registration system with fewer than seven steps is considered simple; a system with seven to fifteen steps is considered of medium difficulty; and a system with more than fifteen steps is considered complex.

Time requirements for company registration vary considerably, from less than twenty minutes in Canada to more than three years in Tanzania. In Europe, a registration time period of fewer than five weeks is considered short; between five and twelve weeks average; and more than twelve weeks lengthy.

The combined NIPC, CAC, State and local business registration procedures in Nigeria requires more steps and requirements than the least efficient OECD countries. However, fewer agencies are involved than in many countries. Moreover, business start-up may take less time in Nigeria than in such countries as Belgium, Spain, France, Germany, Italy, Greece, and Portugal.

Business incorporation and registration time and cost

Country	Agencies	Steps	One-stop-shop	Cost	Time
Germany	2 to 10	1 to 2	YES	ECU 10-1,000	1 day to 24 weeks
Australia	1	1	YES		1 day to 4 weeks
Austria	5 to 10	5	NO	ECU 150 -10,000	1 to 8 weeks
Belgium	2 to 7	1 to 15	YES	ECU 250-2,000	4 to 10 weeks
Brazil	6	-	YES	-	4 to 7 weeks
Canada (Ontario)	1	1	YES	C$60-88	< 20 minutes
Denmark	1 to 2	1 to 2	YES	ECU O-300	1 week
Spain	5 to 17	3 to 5	NO	ECU O-150+	1 to 28 weeks
United states	2 to 6	2 to 6	Private agents	US$ 100+	Up to 1 week
Finland	4 to 7	1	YES	ECU 60-250	6 weeks
France	10 to 21	1	YES	ECU 600-2,200	5 to 15 weeks
Great Britain	1 to 5	1	YES	ECU O-300 £50	Up to 1 week
Greece	1 to 29	1 to 4	NO	ECU O-150	3 to 10 weeks
India	-	-		Rs 200 – 4,000,000	1 to 2 months
Ireland	2 to 9	2 to 3	NO	I£130 plus 1% of issued capital (1£300-470)	2 to 4 weeks
Italy	11 to 25	1 to 5	YES	ECU 150-700	2 to 22 weeks
Japan	7 to 13	1	NO	ECU 600- 1,000	2 to 4 weeks
Luxembourg	3 to 4	1 to 3	NO	ECU O-500	1 to 2 weeks
Netherlands	6 to 8	1	YES	ECU O-1,000	3 to 12 weeks
Poland				PLN 200-800	2 weeks
Portugal	4 to 10	1	YES	1.2% of issued capital	4 to 24 weeks
Sweden	2 to 7	1	YES	ECU 90-130	2 to 4 weeks

Note: The costs and time vary by industry -Upper limits generally apply.

In the US, UK, Ireland, Canada, and Australia, the company registration process is based on the Common Law "Declarative System". An investor declares his company, rather than gaining approval from numerous agencies. In these countries, company registration can be completed via the internet or fax – usually within 24 hours. In the United Kingdom and the US, investors may purchase existing companies without completing a new incorporation process. Usually, a declarative business registration system is simpler, faster, and less expensive than non-declarative systems.

Under the declarative business registration system, investors must usually only submit the following documents:

- Company charter and by-laws
- Incorporation certificate application

The declarative system has numerous advantages over command and control company registration models. It is remarkable that, coming from a Common Law tradition, Nigeria's business registration process has evolved into such a command and control model. It should be noted that this evolution has not taken place in such other former British African colonies as Ghana and Kenya. Ideally, Nigeria should return to these Common law roots. But even if it does

not, international experience indicates a variety of solutions for streamlining the business registration process.

One-Stop-Shop Registration

The one-stop-shop idea is often a good solution for cumbersome and complicated business start-up processes. In fact, one-stop-shops can often substantially improve company registration processes. Because one-stop-shop decisions are often accepted by other agencies, the registration process is shortened considerably.

Many countries have established one-stop-shops for business start-up: Australia; Ontario, Canada; France; Germany; Belgium; Denmark; Italy; the Netherlands; Portugal; Sweden; Hong Kong; Singapore; Brazil; Spain; Mauritius; Malaysia; Tunisia, etc. Countries sometimes locate one-stop-shops within an investment promotion or economic development agency. Singapore and Malaysia have organized their one-stop-shops in this manner. Other countries locate the one-stop-shop within a particular ministry: for instance, Tunisia's API in the Ministry of Industry or Sweden's Office of Patents and Registration. Still others establish a one-stop-shop within the prime minister's office or the executive cabinet. Finally, some countries establish one-stop-shops within chambers of commerce: Italy, the Netherlands, France, and Morocco.

Nigeria's One-Stop-Shop attempt – the NIPC– has been unsuccessful. Nonetheless, the one-stop-shop model is less efficient than the declarative Common Law business registration system.

There are different variants on the One-Stop-Shop. Centralized models are typically most effective in reducing the number of steps and documents required of the investor. They are also most effective in decreasing the number of agencies involved in the business start-up process. The French established the CFE system in 1981. CFEs shepherd the investor's file through the various agencies involved in business start-up: The Trade Court; URSSAF; INSEE; ASSEDIC; Revenue Services; etc. While the French system facilitates business start-up, it does not eliminate steps and therefore the process remains cumbersome and bureaucratic. While the CFE system provides a single individual with whom the investor must interact, the investor must still submit 22 distinct documents and forms, requiring considerable preparation and processing time. In fact, business incorporation typically takes fifteen weeks in France.

Increasingly, government efforts to promote foreign and domestic investment are leading to the creation of so-called one-stop-shops. While one-stop-shops take various forms in practice, all theoretically seek to facilitate investment processes. Since investors seek easy, quick, and predictable investment processes, countries attempt to facilitate this expectation through one-stop-shops. As the name implies, one-stop-shop schemes are meant to provide investors with a single point of contact for all investment information and services. One-stop-shops facilitate and coordinate authorizations from multiple government agencies, on behalf of the investor.

Theoretically intended to fulfill all investment processes within one agency –thus entailing only one-stop for the investor, but also just one-stop for the entire dossier– one-stop-shops have in practice represented a marketing tool more often than a fully functioning investment processing center. In fact, while countries increasingly seek the one-stop-shop label for their investment processes in an effort to please would-be foreign investors, they often fall far short of establishing the necessary procedures and decision-making authority required for such a centralized process.

Due to both political and administrative constraints, most countries fail to implement a true one-stop-shop. Sometimes what they end up with is perfectly adequate and a step in the right direction to a real one-stop-shop. Sometimes what they end up with is an additional administrative step that does not actually effectively serve the government or the investor. Since few variations of the one-stop-shop have successfully organized all authorizations and agencies under one umbrella, a strict interpretation does not always provide the best model. Below is a structural definition of the strict one-stop-shop, as well as several other hybrid models.

1) The Elusive "True One-Stop Shop" Model:

The True One-Stop-Shop establishes a central agency fully authorized to issue all necessary approvals, permits, and licences. Sometimes, they even grant or assign land to the investor (most likely when designated as a national development authority as in several South East Asian countries). Several countries have successfully implemented fully functioning and true one-stop-shops. For instance, Malaysia, through its high-powered investment promotion center, the Malaysia Industrial Development Authority, has implemented a successful, fully functional one-stop-shop. While an excellent model, the true one-stop-shop is seldom successful: turf battles are common among the various government agencies ceding power to the central investment agency. The true one-stop-shop also runs into trouble with specialized regulatory functions. For instance, a single agency may be unable to effectively complete all investment-related procedures within one “shop.” Nonetheless, some countries have successfully established one-stop-shops for one or two investment processes -procedures for which the relevant departments and officials already reside within a single government agency. One-stop service windows have worked well, for instance, for export documentation requirements handled within single trade ministries. Unfortunately, investment-related procedures invariably involve a fairly wide range of different government ministries and authorities, one of the reasons why few countries have successfully implemented true one-stop-shops.

2) The One-Stop-Shop with Delegated Powers Model

Responding to the inevitable political obstacles facing the true one-stop-shop, some countries, including Indonesia, have adopted an alternative approach. Short of providing legal powers to the investment centres, governments require various government authorities to delegate approval powers to investment centers. Agencies are thereby not required to transfer legal approval powers; instead, the relevant agency merely delegates approval power and can reclaim the authority as appropriate. To-date, this delegation approach has a small success rate – working only when applied to relatively minor approvals.

3) The Bureaucratic Showcase or “One-More-Stop-Shop” Model:

The “One-More-Stop-Shop” uncoordinated investment model is, in fact, the antithesis of the one-stop-shop. If there is no attempt to coordinate investment processes, investors must visit each relevant agency separately. Under this model, various government agencies act individually to achieve their single task –meaning that the investor must approach each agency to complete numerous steps, but the government also adds an agency called the “One Stop Shop” for investment registration and fees collection. This model exists in countries such as Senegal and Nigeria. Since each effective agency continues to operate in an uncoordinated fashion, this model is marked by repetition and delays, in addition to investor and even agency confusion. Understandably, countries operating under the uncoordinated system tend to have long, cumbersome, and non-transparent investment processes. Countries with uncoordinated

investor facilitation systems often find investors turning away and looking elsewhere for investment opportunities.

4) The Coordinated Model:

The coordinated model represents an effort to coordinate investment processes -- typically through a board or committee -- in the absence of centralization. Under this model, agencies attempt to coordinate their decisions, thereby decreasing the steps the investor must complete. The pilot region's several coordinating structures for site acquisition and development present an example of the coordinated model: This model relflects an effort to coordinate the decision-making process internally, and thereby decrease the number of agencies the investor must visit. However, while committee structures limit the number of steps the investor must complete, they do not decrease the number of steps that dossier must take to complete the process. While the process appears simpler to the investor, therefore, it is not necessarily quicker or more efficient.

5) The Shortened Circuit One-Stop Shop Model:

The Shortened Circuit one-stop-shop model is relatively common. It is used in Tunisia, Egypt, and the Philippines. Using this model, many countries require all relevant authorities to locate in a single office. While the various agencies must then coordinate all permits and approvals "behind the scenes," the investor himself makes a single stop to meet all necessary authorities. When this model works and is properly managed by a coordinating agency with sanctioning powers over the others (as in Tunisia), it offers a "shortened bureaucratic circuit." This model may, however, present a number of weaknesses.

First, many countries do not have enough investment to justify agency representatives seconded to a central investment agency. These representatives frequently have too little work, especially if investment is sporadic – and government agencies are thereby loathe to send senior officials to the one-stop-shop. The junior staff member who represents the agency at the one-stop-shop, however, typically lacks the authority to issue approvals. In this case, all approval requests are dispatched to the original relevant government agency, thereby creating an additional procedural step rather than eliminating one. Of course, under this model, the investor himself does not take the additional step, but his investment application does.

This model often also has a second major weakness: It lacks any system for direct supervision of assigned representatives. As such, those seconded to the one-stop-shop often lose power and influence in their home office. Moreover, without direct supervision, international experience indicates that those seconded often develop poor morale and a weak work ethic: One-Stop-Shop staff are tardy or truant, read newspapers and drink coffee, etc. The ensuing unproductive work environment presents investors with a negative image.

While largely unsuccessful in practice, the Shortened Circuit One-Stop-Shop model often remains attractive to policymakers. Despite the model's inherent weaknesses, governments attempt to force its success, because it often appears the easiest remedy to agency "turf battles." In order to gain agency support for the one-stop-shop, therefore, the government allows each respective agency the majority of its existing authority. Since agency representatives are seconded to a central investment agency without significant power, the government has merely created a showcase of bureaucrats. Many governments that have adopted the shortened circuit model, including several African countries, and have found it a complete failure.

6) The Account Executive One-Stop Investor Facilitation Model:

Many private and public sector organizations, investment authorities, and investment promotion agencies worldwide utilize an account executive approach – with high degrees of success. In terms of investor facilitation, the account executive model enables existing agencies to maintain significant authority, while aggressively simplifying procedures to create rapid turn-around times.

Investment officials assign an "account executive" to each investor. This means that each investor has a single point of contact within the investor services agency. While each Account Executive is responsible for a number of investors, each investor deals directly with a single Account Executive. Under this model, the sales representative who has been responsible for the investor up to the point of sale hands the project off to the One-Stop-Shop Account Executive. The Account Executive works with the investor to complete all necessary start-up procedures. For instance, the Account Executive will organize meetings with all relevant agencies, either visiting on behalf of the investor or accompanying the investor. The Account Executive will collect all relevant forms and assist the investor in completing them. Moreover, the Account Executive will explain all procedural issues to the investor and resolve any problems.

Each account executive works full time and may handle between 5-7 investors concurrently. In some cases, an account executive handles more investors. On the other hand, an account executive will exclusively handle an especially important investor, such as a large, blue chip multinational or strategic anchor investor.

International experience indicates that the account executive model is more investor-friendly than other models: Investors deal with a single individual who understands the project and knows all required approvals. Investor service and investment promotion agencies, moreover, indicate that an account executive system is relatively simple to manage because they can track the services that each account executive provides to each investor.

A number of countries using the account executive model have gained high regard for their investor services: for instance, numerous US state and regional economic development agencies, Great Britain, Costa Rica, Singapore, and the Dominican Republic.

The "account executive" model has the obvious advantage of providing a one-stop center for information and investor support, without generating the high degrees of inter-institutional jealousy or organizational problems common in other models. Nonetheless, the model requires certain conditions based on inter-agency cooperation as approvals still take place in a number of different agencies.

6) Hybrid Models:

Elements of the above models are sometimes combined into hybrid models. For instance, Tunisia and Mauritius have combined the "shortened circuit" and "account executive" models. The Tunisian and Mauritian One-Stop-Shops have a single interlocutor working in a shorted circuit system. It is also possible to combine elements of the coordinated model with some of these. Some hybrid systems combine different elements of these various models.

International Best Practices In One-Stop-Shops

The following represents the approximate order of effectiveness of the various one-stop-shop models:

1) True One-Stop-Shop Model
2) Hybrid of Shortened Circuit, Account Executive, and Coordinated Mechanism Model
3) Shortened Circuit Model
4) Account Executive Model
5) Coordinated Mechanism Model

The following conditions facilitate a successful one-stop-shop system:

1. *High-level political support*. Ideally this should come from high-level officials with substantial influence over the range of relevant cabinet ministries-- in other words, the Prime Minister or the President. The support should be communicated formally through official proclamations, decrees, government plans and policy directives, in addition to being disseminated through popular media whenever possible.

2. *Efforts to improve procedures within each relevant agency*. These may include "re-engineering" exercises such as the Investor Roadmap. In some cases, customer service training can be provided to agencies, benefiting them not only by improving the investor interface, but also by improving the overall efficiency and effectiveness of the organization, including areas other than investment procedures.

3. *Dispute resolution mechanism*. Whenever possible, approvals and procedural problems should be worked out at the working level, with the Account Executive acting as a facilitator between investors and relevant public officials. However, if the problem cannot be resolved at this level, there should be some easy and relatively quick way to bring the problem to the attention of a higher-level body, one that has the power and authority to intervene and, if appropriate, facilitate a fast and favorable solution.

4. *Establishment of a facilitation network.* Coordinated at the local level, a facilitation network should be established. Trained desk officers should staff the facilitation network to provide expedited services within the institutions and agencies providing approvals or services to new investors.

5. *Staff with appropriate authority and capacity to execute functions.* All one-stop-shop staff members should be endowed with the appropriate authority to effectively carry out their functions. When the agency itself does not authorize any investment decisions, representatives of each agency must have a clear mandate to perform the functions of their respective agency. Furthermore, account executives must have the authority to represent the investor in completing process steps on his behalf. In addition, account executives require training to fulfill process steps, and to interact with the investors in a professional and courteous manner. Account executives also require specific scopes of work that detail their responsibilities and spheres of authority.

6. *Management powers for the coordinating agency.* The individual in charge of the coordinating agency must have the authority to manage all agency staff. This includes the power to sanction employees from the represented government agencies/departments who are located within the coordinating agency. The coordinating agency director must have the authority, for instance, to discipline all staff members and to fire them if necessary.

7. *Combined elements of the various models.* The optimal account executive investment facilitation model integrates the best features of the other models. For instance, an investment facilitation agency based on the account executive model could adopt the committee system for investment processes highlighted in the "Coordinated Model." This would further streamline the entire investment process. In addition, the account executive model could be adopted initially for a single investment process, as noted in the "Elusive True One-Stop-Shop Model."

8. *Establishment of processing committees.* While processing committees are not required for an account executive system to function, such committees can further facilitate and speed investment procedures. Each agency should streamline its particular authorization process, as noted above in condition 2. In addition, agencies should coordinate the approval process through committee structures.

9. *Designate Account Executives.* Regardless of the model chosen, Account Executives should be designated and trained according to Standard Operating Procedures.

Computerized Business Registration Models

Under Canada's Ontario Business Registration Access (OBRA) system, investors electronically register their companies. Investors can access OBRA workstations in nearly 100 locations throughout the province. Pre-OBRA, investors waited six to eight weeks for company registration. Under OBRA, company registration is completed in twenty minutes. OBRA represents international best practice for company registration procedures – the process is extremely simple and requires a single step. The Ontario Ministry of Commercial Relations established OBRA in 1996. In effect, OBRA is a one-stop-shop for business registration; the investor completes an electronic form and the ministry completes the following procedures internally:

- Commercial name research and registration
- Issuance of Permit for retail tax
- Health services tax registration
- Workers compensation tax registration
- Single tax identification number issuance

The investor need not complete any further steps at any level of government. However, companies must complete incorporation procedures before commencing the OBRA process.

OBRA's workstations provide user-friendly processes and ministry employees are on hand to assist investors with any questions or concerns. After the investor completes the computerized process, he receives a Master Business License –valid proof of registration.

Likewise, since Malaysia computerized its One-Stop-Shop, investors complete 90-95% of the necessary administrative steps within respectable time limits. Moreover, the computerized system has considerably improved procedural transparency and government accountability.

An increasing number of countries are computerizing business registration processes; in Ontario, Australia, and Spain, investors may even register over the Internet.

Investment Facilitation and Advisory Services

Throughout the world, national investment promotion agencies like the NIPC are rarely afforded complete authority over the investment process. As this table demonstrates, however, many do offer investment facilitation, advisory, and aftercare services:

Best Practices: Investment Promotion Agencies (1998)

	Be.	Fr.	Ind.	Ire.	My.	NL.	Ore., USA	Sing.	Uga.	Wales	Zam.
Proactive (P) or Reactive (R)	P	P	R	P	P	P	P	P	P	P	R
Long or short term strategy	S-T	L-T	S-T	L-T	L-T	L-T	L-T	L-T	S-T	L-T	L-T
Level Targets	Yes	No	No	Yes	Yes	Yes	Yes	yes	Yes	Yes	Yes
Image Building	*Yes*	*Yes*	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Promo. to Investors	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Promo. to Brokers	No	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Involved in administrative re-enginee-ring	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Facilitation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Advisory Services	No	No	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes
Aftercare	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Other agencies Involved in these services	Pro-vin-ces	Re-gion -State agenci es	State	Pri-vate sector	State, Pri-vate sec-tor	Pro-vinces& Priva-te sector	Local autho-rities & Priva-te sector			Local autho-rities & Private sector	-

Source: UNCTAD

Some countries have established free technical assistance programs for young entrepreneurs. Designed to promote business creation and investment, these programs target new and aspiring investors. Practical support through direct consultations has an immediate effect on the creation rate and future success of small and medium-sized businesses.

The United States' Small Business Administration (SBA), for instance, has a 400-center network to assist in the creation and growth of small and medium-sized businesses. Retired businesspeople volunteer through the network to provide free training.

In Ireland, several agencies offer young entrepreneur support programs. The National Employment and Training Authority offers business training; the County Enterprise Boards provide general business assistance, counseling, feasibility studies, markets research, capitalization and recruitment grants. The Irish Productivity Centers provide information on production, quality, and efficiency. The Shannon Development Agency offers investment assistance, while the EU Leader Programs support new enterprises.

Great Britain has a number of investment promotion agencies and business facilitation bodies, including: The Training and Enterprise Councils; Business Links; Enterprise Agencies; Business and Innovation Centers; the Prince's Youth Business Trust; the Prince's Scottish Youth Business Trust; the Enterprise Investment Scheme; UK Science Parks; the Live Wire Export Challenge; the Diagnostic and Consultancy Service; and the Rural Development Commission. All of these programs and agencies offer practical support through a wide range of counseling and advisory services. The agencies and organizations provide a variety of information on

business start-up, marketing, operating plans, finance, export opportunities, recruitment and training.

In France, the National Agency for the Creation of Enterprises (ANCE) facilitates business creation. Moreover, the National Agency for Employment Promotion (ANPE) provides financial support to unemployed entrepreneurs, enabling them to establish industrial, commercial, handicraft or agricultural enterprises.

Denmark has established a system that offers professional training and assistance to young entrepreneurs; the government has also created a "do it yourself package" aimed at enterprise development. Furthermore, the country boasts fifteen Technological Information Centers (TICs) that offer information services, free counseling, and subsidies. Meanwhile, several regional and local authorities, including the municipal governments, provide company start-up and product launch assistance to SMEs.

Finally, Australia provides 24-hour free telephone hotline for investor information.

Overall, countries that offer investors free information and assistance indicate that such direct support is more effective in promoting new business development than indirect financial assistance programs.

Other investment facilitation and civil service motivational techniques

Establishing a physically appealing investor reception area can go a long way to improving investor perception of the business registration process. Moreover, a professional and organized physical environment can often improve civil servants' customer service levels vis-à-vis the business community.

Measures to improve the appeal and ease of the business registration process include the following:

- Employee identification badges
- Publicly displayed good practice charters and service standards
- "Employee of the month" plaques
- Suggestion boxes
- Complaints book
- Informational brochures
- Organizational charts prominently displayed

Government agencies in such countries as the US, Canada, France, Tunisia, Thailand, the Netherlands, Singapore and the UK have all instituted these measures with great success in improved investor service.

Tax Registration

International studies indicate that micro-enterprises are most hindered by a country's regulatory and taxation environment.[220] In some countries, a rigid regulatory environment, particularly the tax system, represses the informal and micro-enterprise sectors. A burdensome regulatory environment, in fact, encourages illegal economic activity. Often, the tax regulation compliance

[220] Turnham, D., *Employment and Development, a new Assessment*, OECD, Paris

costs completely hinder entrepreneurial initiatives – hurting overall economic development. In fact, international experience indicates that, faced with an excessive regulatory environment, micro-enterprises refrain from tax registration.[221]

Countries known for simplified, investor-friendly tax registration processes include Denmark, Ireland, Canada, Australia, and Chile. Many countries have adopted procedures that reduce the number of forms, and procedures, and thereby time, required for complete tax registration. In the simplest tax registration systems, a single form is required, certification and notarization requirements are minimal, registration is free; and approval takes one day. Ireland and Canada shortened the registration process by consolidating multiple tax registration agencies and forms under one system, while Australia streamlined the registration process with a one-stop-shop where investors complete all registration steps in one visit.

Denmark boasts an extraordinarily simple, quick, and efficient tax registration processes. Investors can complete tax registration and begin operations within one week. The tax administration is responsible for all related registrations on behalf of the company.

Irish tax registration is similarly simple – investors complete the process in one step. New investors submit one form to the Irish Income Order, which completes registration for all taxes -- income, social insurance, VAT, etc. The process requires no further documentation, certification, or notarization. Moreover, investors can easily obtain registration forms from local tax offices, via the internet or by telephone. The tax authority processes all new registrations within ten (10) days.

In Canada, investors register at the nearest Canada Income Office; one step and one form suffices for all four different taxes: Corporate Tax, VAT, social contributions and import/export taxes. In fact, investors can even register online, via Revenue Canada workstations, which are located throughout the country. Online registration requires fifteen minutes and no waiting time. Furthermore, investors submit minimal information and no documentation or fees. Registration occurs in real-time.

Australia's federal government offers online tax registration. Investors complete one online form. The interactive website immediately relays the company information to all other relevant tax registration agencies. Investors can complete registration in forty-five to sixty minutes. The government must process the registration within 28 days.

International best practice indicates that electronic tax registration greatly simplifies and speeds the tax registration process. Currently, many countries are using internet or public networks to process tax registration applications. Electronic registration offers numerous advantages:

- Simplified accounting process
- Reduced accounting mistakes
- Prompt registration and tax reimbursements
- Immediate confirmation of receipt
- Advice through "dialogue boxes" programmed in the tax statement software
- Ease of information management by the tax authority
- Reduced management costs
- Reduced tax fraud

[221] De Soto, Hernando, *The other path: the informal revolution in the Third World*, 1990

A number of countries, such as Chile, Ireland, and Canada, have also established Single Tax Identification Number (TIN) systems that facilitate registration.

Incentives Acquisition

Ireland's Industrial Development Agency (IDA) approves and administers all investment incentives. The IDA's incentive package is based on the following principles:

- Simple and practical implementation
- Well-defined legally
- Clear implementation of defined policies

To achieve these objectives, administration procedures are regularly updated and refined.

Irish tax law defines all tax incentives. Domestic and foreign manufacturing (and specific service sub-sector) companies are eligible for these incentives. The amount of tax-reduction is pre-defined and non-negotiable – increasing the program's transparency. Qualifying companies submit tax returns to the revenue authorities. If companies meet the incentive program's legal requirements, the fiscal authorities tax corporate profits at a specified reduced rate.

For the most part, companies self-administer the tax component of IDA incentive packages. Companies submit annual returns, and self-assess corporate tax incentives based on their corporate profits. Subsequently, IDA project staff monitor incentive implementation, particularly to evaluate the financial progress of benefiting companies. Progress evaluation helps IDA fine-tune its incentives program.

IDA uses several monitoring tools to establish investment promotion strategies and incentive policies:

- Annual employment survey
- Annual value-added survey
- Biennial R&D assessment
- Triennial review of national investment performance

Annex 2: International Benchmarks in Locating Procedures

Land Use

Several lessons may be learnt from international practice in land use. A few are detailed below:

1) Guidebook on Land Acquisition and Titling

A key technique for reengineering administrative procedures is the dissemination of information on the land market, as well as on real estate acquisition and development procedures, in order to enhance land market and development procedures transparency. The World Bank notes that insufficient and asymmetrical information on the real estate market discourages investment. In fact, asymmetrical information encourages speculation and thereby reduces land available for investment. The government plays a key role in disseminating accurate and timely information to prospective investors. Many countries, including Canada, Indonesia, and Thailand, have successfully implemented an aggressive land information dissemination strategy.

2) Registering of titles for the purposes of increasing the availability of land on the market

Developing countries tend to suffer from speculative real estate development. When investors face substantial start-up periods, speculators often beat developers to the inexpensive land.[85]

Progress in the area of property rights improves real estate markets. Conversely, if a government cannot readily transfer land titles to new owners, investment productivity declines. Without exclusive land titles, investors have little incentive to risk market entry, and increase land productivity. Under "best practice" private property legislation, land is assigned to specific individuals or enterprises, though national and local governments may impose land use restrictions. Fewer restrictions increase the incentives to investment.

[85] Salazar et al, *op.cit*

Governments must assign underutilized land clear, marketable titles in order to attract the necessary investment for the development of a modern market economy. Secure land titles increase investor comfort and promote lending by credit institutions through development of the mortgage market –to the benefit of investment, productivity and increased revenue.

Titling has the additional advantage of ensuring the investor security vis-à-vis any subsequent boundary, security or other challenges.

In all countries, several factors decrease title security:

- ***Poorly adapted legislation and legal restrictions on title issuance;***
- ***Absence of technical institutional capacity for the processing resulting in mediocre delineation and multiple deeds for the same plot;***
- ***Lack of procedural transparency;***
- ***Absence of a legal framework capable of resolving boundary conflicts; and***
- ***Arbitrary expropriation.***

While initiatives to increase title security are expensive, the benefits are worth the cost. Title security initiatives are indeed expensive because they involve extensive surveying, title "cleansing" procedures to resolve all outstanding claims (including through to the Courts), data management solutions, etc. In Thailand, untitled land has been valued at just 43-83% of the value of titled land, depending on its proximity of a city center. In 1989, in Jakarta, Indonesia, untitled land was estimated as worth just 61-72% of the value of titled land, again depending on the land's proximity to the city center.

International experience indicates that countries which establish a body – a real estate listing organization for instance -to collect and disseminate information on the country's real estate market substantially increase land market efficiency, real estate valuation, and tax revenues.

Building Permit

Several lessons may be learnt from international practice with respect to simplification of the procedures and documentary requirements pertaining to development permit issuance.

International experience indicates that investors worldwide spend between four days and four years securing land development permits. Some countries have eliminated bottlenecks in this area by reengineering administrative procedures. All examples of international best practice include the following elements:

All necessary permits in the key stages of land development (allotment permit, building permit, etc.) are integrated into one step that requires no more than two days.

For site-related health clearances, the experience in countries such as Mexico indicate that the site approval procedure can be substantially simplified by exempting facilities engaged in certain activities, considered to be of "medium to low risk" from pre-opening occupancy permits and increasingly relying on post-establishment inspections.

Countries such as Mexico, Italy and Peru have managed to impose statutory limits on the granting of permits. These countries apply the "deemed approvals" principle: If the investor receives no official response within the statuary time limits, the receipt proving deposit of a request for a permit is considered sufficient legal justification for proceeding with development or construction works.

In Hong Kong, the investor submits building plans, waste-disposal plans and site development plans to the Construction Department. Plans and drawings that have not been rejected in writing within two days (the statutory maximum time limit) are considered approved. To obtain an occupancy permit once the construction works are complete, the developer or contractor must simply certify compliance with all of the regulations of the Building Code as well as with all the provisions of his Title Deed. The Business Permits Information Center acts as a one-stop-shop for permitting, helping companies get permits from the various national departments' and agencies' concerns. Investors can even download applications directly from the Center's web site.

In Singapore, investors must gain Urban Development Authority approval prior to building or expanding a facility. Investors submitting site development and construction plans can expect a decision within two to four (2-4) days. The Council for Economic Development operates as a one-stop-shop, coordinating approvals for the investor.

In Ireland, the investor submits construction blueprints and site development plans to municipal authorities and, under a 1992 local government law, authorities typically grant all necessary zoning authorization and the construction permit, within one to four (4) days.

In Taiwan, the federal government must approve a development project before the local government may authorize plans and confer a construction permit. Investors typically have little trouble gaining approval within a month. Taiwan also has fairly liberal limited zoning rules.

International best practice also suggests implementing the following measures:

- ***Establishing a dedicated "desk" system, with a single individual responsible for every site's development-related administrative procedures (ex.: Ghana and Russia).***
- ***Reducing the number of agencies involved in development approval and control. In fact, a joint commission involving all relevant agencies, conducting joint examination and with authority to confer permits is recommended.***
- ***Reducing the number of required documents, forms, and plans.***
- ***Establishing the calendar of periodic, regular meetings of the joint development planning control commission***

In Nigeria, investors must complete between six (6) and sixteen (16) site development approval steps, depending on the state. In some Latin American countries (such as Brazil, Mexico and Venezuela), on the other hand, investors complete only two or three steps.

Utilities

International Best Practices suggest that the establishment of a forum for the various role players in development (municipalities, urban agencies, public utilities, etc.), endowed with the power to take decisions that are opposable to any of them, is a positive first step in improving utilities provision. Indeed, international experience emphasizes the benefit of a permanent forum for land development coordination. Permanent coordinating structures are especially useful in countries where the local government does not control public utilities and where local government development plans cannot enforce service delivery. Singapore has had much success with a coordinating structure under the National Economic Development Board (NEDB). Thailand has implemented a similar strategy under the National Industrial Development Authority (NIDA). The Philippines and the majority of the Asian tigers also coordinate urban planning in this manner.

Annex 3: International Labor Practices

Immigration

Throughout the world, investor friendly regulatory frameworks encourage work permit transparency. International experience indicates that a government is most transparent regarding this issue when it provide a list of professions for which it grants work permits, and a list for which it does not grant work permits. A list will both reduce investor uncertainty and limit any particular official's discretionary power.

A number of countries, such as Malaysia and Mauritius, have established work permit quota system: Each company has a specified number of work permits for foreign employees, to be used at company discretion. The quota system simplifies government decision-making and reduces investor confusion resulting from complex and discretionary systems.

Furthermore, Trinidad and Tobago consulates provide foreign employees with thirty-day work permits –indicated with a passport stamp. Mexican consulates offer special visas for technical staff, such as researchers and scientists. The Mexican Ministry of Foreign Affairs exempts these applications from processing in Mexico.

For a US work permit, investors visit US consulates abroad or having filed and processed in advance of travel the port of entry Immigration service. The simplified procedure requires only one application and, if approved, results in a passport stamp. This process results in a combined for residence permits, work permits, and multiple entry visa. Where appropriate, the US Social Security Office will later issue a social security card (Green card) via the postal system. The social security card replaces the work visa.

Labor Norms

Experience in all regions of the world shows that long-term economic growth depends in large measure on the availability of qualified and professional labor. In fact, modern capital movements favor regions with abundant qualified labor. But while the principal source of labor in a country is traditionally its youth, young people often lack the requisite professional experience to find gainful employment. Firms often hesitate to employ young people owing to the cost of training them. For this reason, many industrialized countries, as well as certain developing countries, have developed fiscal and other incentives to encourage companies to hire and train young workers.

In Austria national and regional programs offer loans to young entrepreneurs; other programs subsidize the employment of young workers. The Belgian government provides training subsidies, tax deductions, and contributions to social security accounts to promote the hiring of young workers and of the unemployed. Denmark provides counseling and subsidies to young entrepreneurs. In France, people registered as unemployed who succeed in creating a business receive subsidies, exoneration from social benefits contributions, and tax reductions. A special program (*Programme d'Insertion Professionelle des Jeunes et Demandeurs d'Emploi*) allows employers to obtain tax reimbursements and credits, exoneration from certain forms of social security, and also training subsidies for hiring youth and officially unemployed. Greece also provides subsidies and fiscal incentives, while Ireland offers training through a National

Employment and Training Agency. Luxemburg allows deductions on salary taxes. In the U.K. the Training and Enterprise Councils help entrepreneurs by paying expenses for training. Holland, Sweden, Japan, and the U.S. all have similar programs of fiscal and other incentives for employing youth, the chronically or temporarily unemployed, and special categories of people facing difficulties in the marketplace because of race, age, ethnicity, or other factors.

International practice demonstrates that any and all systems of incentives for employment and for training youth must be easily accessible, based on clear, simple procedures, and should even be automatic in the case of tax breaks. Cumbersome and ambiguous rules and procedures leave incentive systems ineffective and even worthless.

Labor Flexibility

Globalization and market forces have exposed businesses to hard competition. These forces erode the protected markets to which companies were accustomed, and they make corporate flexibility a necessary condition for adaptation to rapid market change. At the international level, businesses have undergone profound transformations in the way they organize productivity, acquire skills, perform and compensate labor. Given the concern for flexibility and new forms of productivity, the process of laying off and of firing unproductive employees should be relatively easy and straightforward. In order to encourage businesses to hire workers under long-term contracts with no fixed date of termination. According to the ILO, “labor market flexibilization may have the potential to stimulate economic growth and create more jobs”.

International experience shows that growth of the labor market is related to flexible procedures for hiring and firing employees. In Germany, for example, a worker may be let go for reasonable cause. A firing may be the consequence of incompetence, repetitive disciplinary measures, or even operational business interests. A credible system for resolving employment and labor disputes greatly enhances the capacity of employers to discipline, lay off, or even to fire, unproductive workers. This facility is an important factor in boosting the productivity and international competitiveness of firms.

Workers’ organizations and the traditional methods of collective bargaining are more and more phenomena of the past, recognized as incapable of dealing with a diversity of legitimate causes and of new forms of employee/employer relations. New methods of collaboration with workers are better adapted to contemporary circumstances. The ILO itself has stated that the limitations that globalization imposes on Keynesian interventions have deprived the unions and their allies of a viable macroeconomic program.”

In the era of globalization, investment decisions have become increasingly sensitive to such issues as salaries, employment regulations, and the overall productive capacity of labor in a specific region. According to the ILO, mobility of capital has introduced three broad factors into professional relations: (i) reduction in the ability of governments to intervene in labor relations; (ii) increasing autonomy of corporations; and (iii) growing international competition for investment based in part on the cost of labor. A national objective of attracting foreign direct investment can therefore bring about significant changes in legislation governing unions as well as in the overall climate of labor relations. Today, one can observe a clear trend towards deregulation and individualization in labor relations. It is important that new labor codes be adapted to present realities.

In the industrialized countries, two broad options are emerging: a “voluntarist” model, born in England, and a European model. The voluntarist model is characterized by decentralized negotiation and minimal government intervention. The voluntarist model allows the involved parties to define themselves the nature of their labor relations, while government legislation retains the function of defining the terms of collective bargaining. In this model, bargaining takes place at the level of the individual enterprise and union. Decentralized collective bargaining, long the dominant model in the U.S. and the U.K., has recently become more and more predominant in countries such as Australia, Canada, and New Zealand.

In the European model, collective bargaining is coordinated in a centralized, off-enterprise location, and it attempts to ensure both economic protection of the worker and the promotion of social cohesion. The role of government is considerably greater than in the voluntarist model.

A third model (*shunto* or national coordination), inspired by Japanese labor relations practice, has recently emerged as well. In this model collective bargaining is decentralized but less confrontational than in the voluntarist type, and it is the object of a national coordination program that may include the State, though in a manner less formal than under the European system.

Judging by indicators of unemployment in the U.S. and the U.K, deregulation along “voluntarist” lines appears to have produced strong economic results and the voluntarist model seems best adapted to current conditions. But strong results can also be provided by a well-understood and broadly accepted regulatory environment, based on wide social acceptance of the labor relations framework. In the past, this was the case in Sweden and Japan; it is today the case today in Ireland and Holland, where centralized systems are producing enviable economic indicators. In the end, to choose the best model, a country must determine the capacity of its society to come to agreement within the context of its own particular context of employment and salary discrepancies.

In Western Europe, where unemployment has risen regularly for a number of years, the trend towards decentralization is on the rise, whereas bargaining at the national and sector levels is losing ground. This trend has shifted the power base away from the old centralized professional federations and towards regional and sectoral labor bodies. In Sweden, for example, centralized salary agreements are losing ground, while sector negotiation remains very strong. In Germany, the bastion of the European model, employers in the chemical and metallurgical industries are also increasingly proceeding forth with sector-based negotiations. The changes the German Labor Relations model has undergone in recent years have also opened a large space for bargaining at the company level to resolve issues affecting production.

In developing countries, company-based negotiation is gaining favor, especially in Argentina, Brazil, Chile, and Mexico. The more developed countries of central and Eastern Europe are also trending in this direction, as demonstrated by Hungary in particular. In South Asia, where no strong legalistic tradition of collective negotiation, ever took told, according to the ILO, “the mechanisms for social dialogue are not fully in place” and 40% to 65% urban jobs between 1990 and 1994, were created on the informal sector. Similarly, according to the ILO, “in Latin America over 80% of the 15.7 million jobs created between 1990 and 1994 were in the informal sector.” As far as Africa is concerned, studies suggest that the informal sector employ some 61% of urban labor and generated 93% of new jobs during the 1990s. Although the informal sector does not engage in any meaningful form of labor negotiations, these figures nevertheless intuitively tend to support the thesis that European models of regulation of the labor market in developing countries will prove ineffective, perhaps explaining the rise of the “voluntarist” model

in those developing countries which have had some success in implementing a labor negotiations framework.

ILO Standards

1) Types of flexibility

The ILO defines several types of flexibility: (1) termination flexibility; (2) employment flexibility; (3) pay flexibility; and (4) working schedule and organization flexibility.

- **Termination Flexibility**

ILO encourages termination of employment contracts at the initiative of the employer. Indeed, controls tend to discourage employers from hiring new employees because they impede the adaptation of the volume of labor fluctuations in demand. Many countries have also broadened the scope from unfair dismissal legislation, and eased or abolished administrative controls in this regard, such as trade union consultation requirements or prior government approval. Peru, for instance, has eliminated the heavily prescriptive prior administrative authorization for dismissals.

- **Employment Flexibility**

"Flexible employment" refers to any form of employment that is not full-time employment for a indefinite duration (e.g., part-time, temporary, casual, on-call, fixed price, training, seasonal, contracting out). According to the ILO, the spread of flexible employment is often hampered by legal constraints in many countries. In particular, the traditional labor law precepts in civil law countries.

Between 1985 and 1995, the proportion of part-time workers has increased in 11 countries (Australia, Belgium, Canada, France, Germany, Ireland, Japan, the Netherlands, New Zealand, Spain and the UK), out of 14 for which data was available. In Ireland the share is of 86% and in the Netherlands of 65%. The percentage of temporary workers has increased in 8 countries (Australia, Canada, France, Ireland, the Netherlands, Spain, Sweden, and the US) out of 12 for which data is available. In France, the increase was of 162%, in Spain of 124%. In the Netherlands, 67% of employment growth was in part-time work between 1987 and 1994, while 40% of growth between 1994 and 1996 was in flexible jobs. In France, in 1995, just 35% of jobs were for an indefinite period, while 54% were fixed-term and 12% agency work. In the EU overall, the majority of jobs created between 1991 and 1994 were part-time. In 1995, 71% of new jobs for men and 85% of new jobs for women in the EU were part-time.

Country	**Part-Time Work**		**Temporary Work**		
	1985	**1995**	**1985**	**1990**	**1995**
Australia	17.5%	24.8%	15.6%		23.5%
Belgium	8.6%	13.6%			

Canada	16.8%	18.6%		7.5%	8.8%
France	10.9%	15.6%	4.7%		12.3%
Germany	12.8%	16.3%	10.0%		10.4%
Ireland	6.5%	12.1%	7.3%		10.2%
Japan	15.8%	19.8%			
Netherlands	22.7%	37.4%			
New Zealand	15.3%	21.5%			
Spain	5.8%	7.5%	16.5%		35.0%
Sweden			11.9%		12.5%
UK	21.2%	24.1%			
				0.8%	2.2%

In France, Germany and Spain, non-standard employment contracts, in particular temporary employment contracts, have become the normal mode of entry into the labor market for young workers.

- **Pay Flexibility**

Productivity package deal, where companies agree to provide pay increases in exchange for unions assenting to changes in work practices.

- **Working Time Flexibility**

In recent years, traditional working time… has come to be regarded as increasingly unsatisfactory by many employers and workers. In a growing number of countries, therefore, various experiments have recently been made with new types of working-time arrangements. In France, for example, flexible working time has been made the cornerstone of the successive initiatives for enhancing labor market flexibility taken by the Government since the 1980s. Flexible working hours are also spreading in some Latin American countries, where they have traditionally been rigidly regulated by legislation; including in Brazil, Argentina and Venezuela.

According to the ILO, excessive recourse to overtime, subject to higher-rated compensation, can become a labor cost which is difficult for enterprises to bear. Efforts have therefore been made in many countries to minimize the cost of overtime work. An increasingly widespread measure is to grant compensatory rest time instead of extra overtime payments. This has been done in France and Italy.

Overall, traditional notions of working time, with prescribed daily and weekly working hours, have been replaced by more individualized and flexible working-time arrangements.

- **Legislation**

Legislation is indispensable for setting the minimum rules of the game. In countries in which complex parliamentary procedures defy swift action, legislation is a technique that resists rapid change. Added to this is the unpredictable nature of the political process that produces legislation, in which pressure groups of various types can exert influence well beyond their numerical importance. Legislation sets common rules to address what may be a wide variety of circumstances. While it may be necessary to amend statutes and regulations that stand in the way of certain types of flexibility, legislation is by nature a less satisfactory method for promoting flexibility than a process that is controlled primarily by the parties to the labor relationship.

Framework legislation can fix parameters of permissible action and can set out institutional arrangements for decision-making, such as through collective bargaining. This is the case in France, Peru, Spain, Ireland, Norway and Sweden; while there is relatively little direct legal regulation of employment relations in Great Britain. This is also the same in Ireland and New Zealand.

- **Collective bargaining**

According to the ILO, “the idea of industrial democracy is inherent in collective bargaining, since it automatically involves a shift from unilateral to bilateral decision-making and usually involves procedures requiring a mandate from the membership.”

In Ireland, collective bargaining rather than legislation governs questions such as Sunday work, shift arrangements, minimum hours in the contract, payment for posts of responsibility, access to grievance procedures, and so on. Furthermore, “the interrelationship between law and collective bargaining can even be expressed in constitutional terms, as in Brazil, which provides basic protections in relation to wages and hours of work, as well as escape clauses permitting derogations by means of collective agreements.”

In Spain, the framework for ‘training contracts’ under the law “permits collective agreements at various levels to determine the posts, groups, levels and occupational categories to which they apply, as well as (lower) rates to be paid.” Indeed, as an instrument that can be shaped by the parties to meet their needs, collective bargaining affords a great opportunity to set parameters for flexibility that at once promote efficiency and equity.

- **Contracts of employment as an instrument for introducing flexibility**

According to the ILO, “most individual employment relationships still do translate into contracts of employment […] and they can be a source of flexibility. But the contract of employment cannot be seen as a source or instrument on the same plane as legislation or collective bargaining.”

“The implications of factors such as the ascendancy of free-market ideologies, the adoption of human resource management techniques that stress the role of individual interests over the collective interests of the workforce, and the increase in small businesses which do not lend themselves as easily as larger ones to collective labor relations, all suggest that the role of the individual contract of employment may be growing. To this must be added the growth of

alternative forms of contractual arrangements outside the 'typical' model of full-time employment at the workplace of a single employment."

3) The role of the State and the Bargaining structure

- **Central America**

According to the ILO, "the most drastic changes toward greater flexibility in the labor market have been introduced by several Latin American countries in the past decade."
In Argentina, the *National Employment Act 1991 "*created various types of flexible employment contracts […]. Moreover, both the Employment Act and the Small and Medium Enterprise Law 1995 have authorized collective agreements to establish the methods for calculating working days on the basis of monthly, six-monthly or annual averages." *The Framework Agreement for Employment, competitiveness and Social Equity of 25 July 1994*, between the CGT and central employers' organizations "conceded that collective bargaining is the most appropriate procedure for introducing flexibility" and supports collective bargaining "as a means of dealing with certain flexibility issues, including procedures for the termination of employment".

In Latin American countries, collective bargaining takes place primarily at the enterprise level". Even countries such as Argentina and Brazil, which have held higher-level negotiations in the past, have begun to display a tendency toward decentralization".

- ***Asia***

Enterprise collective bargaining is the norm in Korea. According to a 1990 survey in Korea, 98.1% of unions were either enterprise or plant unions; while 72.2% of all collective bargaining was decentralized. The Korean government is likely to put greater emphasis on a more flexible labor market, as well as support more autonomous industrial relations.

In the Philippines, industry-level agreements exist in a few industries such as garments, but their content is very abstract, with the details fixed at the enterprise level. Enterprise collective bargaining is the norm in Japan. Japan has recently adopted a series of labor market deregulation policies, including legalization of the temporary work business. In India, some state governments have adopted employer-friendly policies, including promising a strike-free environment for five years from the date of investment, simplifying or centralizing inspections, etc. In the Philippines, the Government has enabled labor flexibility by tolerating it for the following reasons: (i) allowing companies to be more globally competitive; (ii) encouraging expansion, and therefore creating new employment opportunities; and (iii) helping develop new entrepreneurs or providing assistance to small entrepreneurs in terms of technology, markets and overall assistance capability.

Overall, the ILO assesses that "collective industrial relations continue to play an important role in addressing both labor market flexibilization and the interests of the working people." However, "the focus of collective bargaining has moved towards the enterprise level".

4) The positions of the social partners on labor market flexibility

According to the ILO, "the role of the State and the structure of collective bargaining have had to adapt themselves to changing labor market conditions." Therefore, in most countries, employers have been the driving force, and advocates for, labor market flexibility.

While trade unions in most countries initially took a defensive and reactive position opposing flexibility, the mounting pressure towards labor market flexibility forced many of them to

reconsider their traditional approaches and to adopt a more sustainable strategy towards labor market flexibility by the first half of the 1990s. Declining union density, ever-increasing unemployment and a growing number of atypical workers have been the primary factors forcing unions to reconsider their strategies and policies. Thus, as evidence from 22 countries shows, the social partners today seem to share the common notion that labor market flexibility should be enhanced to cope with global competition and to create better jobs.

5) Outcomes of negotiations over flexibility

According to the ILO, the collective bargaining process provides the best forum for achieving workable trade-offs in the area of flexibility because, in essence, bargaining is primarily about quid pro quos. The give-and-take of bargaining induces each side to compromise on its starting position in an effort to reach an acceptable outcome. By enabling workers and management to arrive jointly at a workable solution -- collective bargaining can instill in workers a sense of commitment to the change process and build trust, leading to a better working relationship on both sides.

Annex 4: International Customs Practices

In a very competitive global environment, direct investments and other forms of capital movement are attracted to countries that offer efficient and simple administrative procedures. Investors eschew countries with excessively bureaucratic investment regimes because they

typically involve high time and money costs. Fast paced production and delivery systems make efficient and simple customs procedures increasingly important to investors. Countries that are unable to provide predictable and efficient customs clearance processes attract less investment.

Some international standards concerning customs procedures include:

- Single, simple, and comprehensive declarations for goods and merchandise
- ASYCUDA
- ATA and TIR (temporary regime) carnets
- Harmonized System (HS) for goods classification
- Selective verification and use of scanner technology
- Anticipatory declaration filings
- "On-site" and Factory Clearance
- Advance Port and Customs payments and lines of credit
- Duty Free entry for samples
- A "Fast-Track" for clearance of certain types of goods
- Off-Port customs warehousing
- 24 hours/day and seven days/week clearance
- Guaranteed clearance in under 24 hours
- Interactive "EDI" Customs Declaration and clearance systems, allowing optimal use of computers and of the Internet in clearance procedures (including in transmission and processing of the Manifest, the Declaration, valuation, seizures, and so forth).

The following documents and treaties outline international customs norms and standards:

- *WCO international Agreement for the simplification and Harmonization of Customs Regulations (1974 as Revised in 1999)*
- *United Nations Agreement on the transportation of merchandise (1978)*
- *UN agreement on the responsibilities of the users of transport terminals in international commerce, (1991)*

Kyoto Convention Norms

In 1999 the World Customs Organization (WCO) revised the International Agreement for the Simplification and Harmonization of Customs Regulations of 1974. The WCO defined the norms and standards that each member country should establish in order to ensure predictability, efficiency, and security of global transfers. At the present time, the established norms comprise the following elements.

- Simplified, consistent regimes
- Regular application of and improvement to customs control techniques
- Maximum use of information technology
- Establishment of a spirit of cooperation between customs services and enterprises
- Use of risk management techniques (including risk assessment and selective inspection of goods)
- Use of electronic funds transfer
- Coordination with other agencies and organizations
- Easy accessibility to users of information, on legislation, rules, and procedures
- Establishment of a transparent system to settle customs disputes

Harmonized System

The detailed system for the description and coding of goods, commonly referred to as the *Harmonized System*, is a categorized nomenclature of products developed by the WCO. It comprises nearly 5,000 categories organized according to a logical and legal order. Each category is identified by a six-digit code. The definitions of each category are very precise and permit uniform, homogenous classification and treatment of goods.

Today, over 170 countries use this system as a basis for establishing tariffs and statistical collection of data. Over 98% of merchandise internationally traded is classified under the system. Governments, international organizations, and the private sector use the *Harmonized System* to register and verify the flow of goods, taxes, and tariffs; to determine source of origin; to verify and regulate prices; and for GDP/GNP calculations.

Automated System for Customs Data (ASYCUDA)

International best practice indicates that computerized import and export procedures are highly effective in increasing transparency, reducing opportunities for corruption, and speeding the entire process. Many countries, in fact, are currently operating under a computerized customs management system: the Automated System for Customs Data (ASYCUDA). ASYCUDA represents a computerized system for improving customs procedures. ASYCUDA enables the computerization of manifests and customs declarations, as well as customs agency accounting procedures. In addition, the system manages transit and suspense procedures, and generates trade data for statistical economic analysis. More than 70 countries have adopted the ASYCUDA system, and 60 utilize it regularly.

While taking into account the International Organization of Standardization (ISO), World Customs Organization, and UN codes and international standards, ASYCUDA can be configured to specific national customs regimes and tariff legislation. Many countries have found the system's capacity for electronic data interchange between companies and customs officials particularly time and cost efficient.

International experience also suggests that the ASYCUDA system improves customs efficiency and increases company satisfaction with the investment process. The introduction of computerization and the subsequent procedural simplification minimizes administrative costs to the business community, and to the customs agency. In addition, numerous countries have benefited from the system's increased revenue collection: Because the system ensures consistent declaration and customs calculations, revenue collection is improved. Moreover, as a customs process byproduct, the system produces reliable trade and fiscal data -a foundation for better economic planning.

Countries functioning under the ASYCUDA system note that implementing and operating the system requires significant political commitment and constant system evaluation. Project activities are carried out in the following three phases: the preparation phase, the pilot implementation phase, and the roll-out phase.

- In the preparation phase a team of national and international advisors identify areas for reform: for instance, the introduction of international codes, the streamlining and simplification of clearance procedures, the alignment of forms to international standards,

and the modernization of the national customs law. The government may implement some reforms immediately while others will occur over time.

- The pilot implementation phase includes the preparation of the national ASYCUDA configuration: coding tariff and related regulations and legislation, entering customs control data into the system, and preparing valuation and selectivity systems. The government installs computers at pilot offices -- normally headquarters, an airport, a sea port, a land boundary and an inland clearance office. The reform activities initiated in phase one are continued as necessary.

- The national advisors can often implement the roll out phase with little or no assistance from international experts. This third phases involves site preparation –computerization. It also includes substantial training and the technical installation and support of computer systems in the identified sites.

ICC-WCO Standards for Customs System Quality

In 1996 the International Chamber of Commerce, in collaboration with the WCO, established a series Standard Practices Guides for the administration of international trade and transport. The standard practices represent guidelines for customs offices worldwide. Developing countries may find these standard practices useful in reforming customs procedures

The Chamber of Commerce and WCO's standard practices include the following elements:

1. Essential elements of shipment verification should be completed prior to goods arrival. Customs officials can verify administrative information after goods clearance.
2. If the importer has submitted his declaration prior to shipment arrival, port officials should assure immediate or rapid clearance.
3. Importers should be able to file manual or electronic declarations.
4. Customs inspection and discharge systems should allow the importer to receive goods prior to finalization of administrative requirements and duty payment.
5. Customs officials should apply WCO rules requiring immediate clearance irrespective of the weight, value, size, or means of transport.
6. Customs official should apply the free-entry regime for certain products, including documents, gifts, or samples which do not exceed a certain value or weight.
7. Customs authorities should regularly revise the exemption schedule.
8. The customs regime should allow the importer to complete declarations himself or through a licensed agent.
9. The customs system should deliver the importers goods to his transporter at the point of entry into the country. There should be no temporary transfer to a bonded warehouse.
10. The customs authorities should use statistical tables, based on calculated measurements and risk assessment, to target suspect shipments reducing physical inspections.
11. The customs regime should protect firm's cash-flow and profitability: for instance, by deferring taxes. Any such system must not compromise regulatory conformity and speedy clearance and delivery.
12. In the absence of fraud, customs officials should establish a reasonable time limit during which they may request additional or supplemental taxes or duties or the return to shipments to point of origin.
13. Customs officials should use scanners in completing their work.

14. Customs authorities should apply performance standards to verify if customs' procedures of inspection and clearance are completed in satisfactory time and respond to business needs.
15. Customs systems should allow registered importers to complete declarations periodically
16. Customs systems should allow good-faith importers to complete all formalities post-declaration instead of competing all formalities for each transaction.
17. Governments should establish legislation authorizing other official agencies to inspect cargo at the time of importation.
18. Customs systems should be operated on the basis of the commercial needs and the financial operational requirements of their clients. This may entail overtime or other systems and services, all financed on the basis of transparent costs negotiated with companies.

The Singapore Customs Standards

The Singapore Customs and Excise Department (CED) represents a world-class Customs Service. The Singapore Productivity and Standards Board awarded CED the ISO 9002 certification in August 1998. The certification represents excellence in cargo clearance, passenger clearance, and revenue collection. The following Singapore customs standards are the primary reasons for its world-class status:

- 80% of declarations approved within 3 minutes of transmission
- TradeNet permit amendment requests submitted by fax are processed and approved within 4 working hours of receipt
- Duty/VAT refund applications processed within 12 working days of receipt if no further verification required.
- Cargo clearance times, including waiting periods, if no secondary inspection required:
    - Road/Rail Cargo: 90% within 10 minutes
    - Sea Cargo: 90% within 8 minutes
    - Air cargo: 90% within 13 minutes
    - Postal Parcel: 90% within 13 minutes
- Applications for a licensed or bonded warehouse processed within 12 working days of receipt, if investor has furnished required information and supporting documents
- Processing and approval of written requests within 20 minutes of receipt
- 80% of the time, an officer dispatched within 1 hour of request
- 90-% of the time, supervised container unloading completed within 2.5 hours
- 90-% of the time, second issue of bonded stores (liquors and cigarettes) sent to vessel within 45 minutes of request
- Inquiry letter responded to within 7 working days of receipt, 80% of the time
- 80-% of the time, a passenger vehicle at Customs Checkpoints cleared within 4 minutes
- Passenger Clearance
  Arriving by air – 95% within 5 minutes
  Arriving by sea – 90% within 5 minutes

Arriving by road/rail – 90% within 5 minutes

- 95% of the time, customs duty/VAT from air passenger assessed and collected within 10 minutes
- 95% of the time, processing complete within 10 minutes
- 95% of the time, goods bonding with a Warehouse Deposit Receipt issued within 10 minutes
- 95% of the time, detained item released within 10 minutes
- 80% of the time, Customs Service Center officers attend to passengers within 15 minutes of arrival

The Customs & Excise Department has a Quality Service Committee to monitor these service standards.

Duty Drawback[222]

A duty exemption system exempts exporters from paying duties or indirect taxes on imports used in export production. The exemptions are granted at the time of importation. A duty drawback system refunds duties and indirect taxes exporters have paid on imported inputs, after they complete the exports. The two ways of making such refunds is through individual drawbacks and fixed drawbacks.

Overall, duty drawback schemes have not worked well, mainly due to the inability of administrations to repay duties prepaid by exporters a number of African countries have this problem. Several exemption schemes have failed in Sub-Saharan Africa for reasons of trust and capacity, cumbersome procedures, and because the costs from delays and paperwork outweigh the duty reductions. Nevertheless, several good schemes exist internationally:

Korea's Duty Exemption and Drawback Schemes

Korea's export incentive system is based on pragmatic, quick, and flexible policy-making. The government successfully monitors results and adjusts policy in response.

Until the mid-1970s, Korea successfully used a duty and indirect tax exemption system. The system offered investors unrestricted choice between imported and domestically produced inputs. Moreover, it offered indirect and direct exporters equal access to duty- free imports and other export incentives. Under the policy, indirect exporters gained free trade status, resulting in efficient backward linkages. Korea achieved administrative efficiency through two main instruments:

- Pre-tabulated and published physical input-output coefficients; and
- Trade financing procedures and documents for duty-free imports.

When balance of payments problems worsened following the first oil crisis, the government switched to a drawback system, with measures to guarantee tariff-free status. Importers of intermediate inputs used in exports were in most cases allowed to defer paying tariffs for considerable periods.

By 1980, under Korea's then combined fixed/individual drawback system, only about 20 % of Korea's exports were subject to the fixed drawback system. The Korean government thus

[222] Source: World Bank; Rhee (1985).

implemented a new drawback schedule in 1981. Under the new system, exporters rely on individual drawbacks for major imported input items for each export product, based on input-output coefficients listed in a drawback schedule. At the end of 1982, the Administration published six volumes consolidating all the technical input-output information. The government publishes an updated schedule every six months. Fixed drawbacks are applied only to miscellaneous imported items. This new system appears to have a good balance: providing tariff-free status for major imported items and administrative simplicity for miscellaneous imported items.

Korea has continued to streamline its Input Coefficient Administration (ICA). The ICA - embracing banks, provincial governments, and the Office of Industrial Promotion in the Ministry of Commerce and Industry- estimates, updates, publishes, and administers input coefficients for most export commodities.

Taiwan's Duty Rebate Scheme

Since 1955, Taiwan has had an import duty and indirect tax rebate scheme to assist producers of manufactured exports. A firm that is a major manufacturer-exporter is allowed to put its duty liabilities "on account," to be canceled against evidence of subsequent exports. Firms must provide a bank guarantee that the duty plus penalties will be paid if the exports are not produced within eighteen months. The customs administration reimburses or cancels an exporter's duties upon presentation of documentation showing export, and appropriate disposition of foreign exchange proceeds. The customs administration handles more than half a million rebate applications a year with a staff of 200.

Either the direct exporter or one indirect exporter collects the entire rebate. The indirect exporter can collect the rebate only if the direct exporter signs over the necessary documents. Often, a large supplier of inputs dependent on imported raw materials systematically acquires these documents from its small exporter customers and collects the rebates. Typically, it sells to direct exporters (or extends credit to them) at a duty free price, but it also requires a postdated check covering the duty. This check is returned un-cashed once the exporting firm signs over its documents. Rebates on new products are calculated on a case-by-case basis, whereas rebates for established products are determined on the basis of published fixed rates. Both methods involve the systematic application by customs rebate officials of pre-established input-output coefficients.

To export a product not previously exported, an exporter must obtain an export license and a list of the product's physical input-output coefficients. To work out the coefficients, government staff or consultants visit the factory, inspect its records, and examine or test the product. Government staff certify the list and give it to the customs administration within a month of the exporter's application. To obtain a rebate, the exporter must provide evidence on the source and quantity of all imported and dutiable inputs used. To save administrative time, any input valued at less than 1% of the value (FOB) of the exported product is dropped from the calculation of the rebate. Once a product has had a long enough production history for its input and output coefficients to be fairly stable, it is switched over to the fixed-rate method. To work out the fixed rebate, the customs administration calculates the duties rebated on all inputs (direct or indirect) into the product over the previous twelve months compared with the combined value or volume of the corresponding exports for all makers of the product. The result is a standard rate based on value or on a physical unit such as weight. Where technical processes and input coefficients of different firms vary widely, their exports are defined as different products with their own fixed rates. Fixed rates on about 6,000 products are published each July, reflecting annual changes in prices, duties, and sources of inputs.

Once a fixed rate is in effect, exporters receive the stipulated amount of rebate only after providing evidence that they (directly or indirectly) paid duties and indirect taxes equal to that amount. Otherwise, they receive rebates equal only to the amount they actually paid. However, details are no longer examined. If an exporting firm shows that its actual payments were more than 20% higher than the standard rebate, and it can give good reasons why it needs these extra imported inputs, it can apply to an interagency committee for a redefinition of its export as a separate product, eligible for a higher rebate. Taiwan partly dismantled this system, along with protective tariffs, in the mid-1980s.

Canada's Duty Deferral Program

The Canadian Duty Deferral Program is designed to allow importers, producers, and exporters to either relieve or defer the payment of import duties under certain circumstances. The program has two options: Duties Relief Program; or Bonded Warehouse Program. Goods may move freely between the two program options.

Duties Relief Program

Under the Duties Relief Program, importers do not pay duty (whether customs, countervailing, or anti-dumping duties), VAT,[223] or excise taxes on imported goods that will eventually be re-exported – either in the same condition, as an expended input, or as a final product input. The amount of relief becomes payable once the goods are no longer intended for exportation.

[223] Although VAT is not relieved under the Duties Relief Program, it is available through the Exporter of Processing Services (EOPS) program. The EOPS program relieves the VAT at the time of importation when goods are imported to undergo a processing service and to be re-exported. The company must export the goods within four years. To qualify for EOPS, the importer cannot own a property interest in the goods and cannot be closely related to the non-resident on whose behalf the work is done.

Participation in the Duties Relief Program requires the completion of an application. When completed, the application is submitted to the closest Revenue Authority Trade Administration Service Office. The Department will review the application and schedule a visit to the applicant's premises to ensure there are adequate records and mechanisms in place to control the goods while they are in country. Government debtors are not authorized to participate under the program. An application for relief may be made by any importer or exporter of goods, or the processor, owner or producer of those goods between the time of their direct shipment to Canada and their export or deemed export.

Once authorized by the Department, a unique certificate number will be issued. When importing goods under this program, the certificate number has to be given on the Customs Coding Form. The number also identifies eligible participants when purchasing goods domestically from other participants. The goods must be exported within 4-5 years of the date of release of the goods.

On the application for Duties Relief, qualifying firms are required to identify the type of records they maintain. Program participants must be able to track all receipts, activities, and movement of goods included under the program. These records must be sufficient to enable an audit, as periodic audits are conducted to monitor compliance, subject to advance notice. Failure to keep adequate records may result in the a monetary penalty and possible ejection from the program.

An application shall be accompanied by proof of export in the form of:

(a) A customs document presented to an officer of the customs administration of the country where the repair, addition of equipment or work was performed respecting the importation of the goods into that country;
(b) A document of a transportation company respecting the export of the goods;
(c) A written statement made by the exporter in the country where the work was performed stating that the goods exported from Canada are the goods that were imported into that country for repair, the addition of equipment or work; or
(d) Other documentation that establishes that the goods were exported.

The Customs Tariff specifies when goods are deemed to be exported because, while the goods may not have physically left the country, they are intended for export. Some examples are goods placed in a bonded warehouse for export or supplied to a duty-free shop.

When the imported goods no longer qualify for Duties Relief, an adjustment request must be filed and duties paid. Examples of non-qualifying use include a sale in the National Customs Territory and goods that are no longer for export. Related duty payments must be received by the Department within 90 days from the date the goods no longer qualify. If the imported goods qualify for a refund, drawback or some other form of relief or remission, no duties are owed. However, the goods must be reported, specifying how they qualify for the relief, remission, refund or drawback.

Bonded Warehouse Program

Customs Bonded Warehouses are licensed and regulated facilities operated by the private sector. Goods in a bonded warehouse are considered to be imported but not released from customs. Imported and domestic goods destined for export may be placed in a bonded warehouse. These facilities provide for the complete deferral of customs duties, anti-dumping and countervailing duties, excise duties and taxes, including VAT. This deferral continues up to the point the goods are released for domestic consumption or exported. This program benefits persons who import goods into Canada and wish to: defer the payment of duties until the goods are released for domestic consumption; consolidate imported and domestic goods for export; or import goods temporarily for display at conventions, exhibitions or trade shows. The goods in a bonded warehouse may not be manipulated, altered or combined with other goods.

The prospective operator must present a fully completed application form to the customs office closest to the warehouse location. Forms and other related information are available at local customs offices. Officers from the local customs office review the application and request any additional information. A visit to the applicant's premises is scheduled to review the proposed site and record-keeping system to ensure that the goods are secure and readily identifiable through records. When the proposed operator has met the requirements of the program, a Customs Bonded Warehouse license with a unique license number is issued, subject to, payment of the requisite fees and security deposits. The program participant must abide by certain requirements with respect to facilities and equipment, personnel, physical security, records, and operation and maintenance standards.

Participants' record-keeping system must track the movement of all goods in the bonded warehouse. Revenue Canada makes every effort to utilize participants' own record-keeping system to avoid unnecessary duplication of records. Periodic verifications are conducted to monitor compliance. Verifications are be based on risk analysis and are conducted at least once per year. Failure to keep adequate records results in monetary penalties and, in the case of continued non-compliance, possible suspension and/or cancellation of license. Goods must be situated in the area designated on an approved site plan.

The security to be posted is based on risk analysis factors such as type of goods, operators' financial and compliance profile.

Goods for display at conventions and exhibitions and for marking purposes may be stored in a bonded warehouse for no more than 90 days. In general, goods must be removed from the warehouse within four (4) years of the date they entered. Other goods, such as liquor and tobacco products, have a five (5) year time limit. Spare parts for heavy equipment and industrial

machinery may be stored in a bonded warehouse for up to 15 years. There are provisions under the *Customs Act* for extensions of these time limits if it is deemed necessary.

All permits or certificates are required to be presented when the goods enter the warehouse. Prohibited goods or restricted goods without permits are not permitted in a bonded warehouse.

Imported goods with duty paid or imported under the Duties Relief Program may enter into a bonded warehouse. Upon entry, the goods are considered to be exported and eligible for drawback.

Annex 5: International Commercial Dispute Resolution Practices

Rule of Law

Economic development agencies as well as governments of the industrialized nations have emphasized, across the world, the following principle: "Government must provide both the institutional framework and the requisite infrastructure to allow business to operate in an environment of open, competitive markets. Coherent legislative and judiciary systems constitute the essential elements of such a structure." [224] Establishment of the Rule of Law is, for some, the most fundamental condition underpinning a modern market economy.

Numerous studies over the past ten (10) years[225], including by such eminent economists as Dr. Mancur Olson, have demonstrated a powerful causal link between an effective, appropriate judicial system and economic growth. The consulting team subscribes wholeheartedly to this conclusion. Our company stands firmly behind the efforts of USAID, FIAS, and other donors in the developing countries to promote transparent, effective legal systems and institutions that respond to society's needs. Good governance is critical to economic growth.

In its protection of business and contractual rights, the judiciary must be impartial and credible before society and the investment community. The consequence of a system viewed as unfair and lacking in credibility can be seen in Indonesia's relatively failure in the late 1990s to meet the country's financial crisis, since in Indonesia the government was considered a guaranteed victor in any litigation against a third party.[226] From the standpoint of investment promotion, transparency and equity in the judicial system are essential elements. To stimulate economic growth through private investment, commercial justice must be effective and speedy as well as non-discriminatory.

Reform of Law School and University curricula, Law Society admission criteria, legislative drafting and codification efforts' quality, ADR frameworks, and civic education are also critical to economic modernization.

Arbitration

ICC[227]

The ICC International Court of Arbitration is the leading body in international commercial arbitration. Founded to resolve international commercial business disputes, it is recognized for its strict impartiality and effectiveness. The Court is part of the ICC, the world business organization and the ICC Council, composed of members from over 50 countries, appoints its members.

According to the *ICC Rules of Conciliation and Arbitration*:[228]

[224] Dougals Webb, *Legal and Institutional Reform Strategy and Implementation –A World Bank Perspective,* World Bank/USAID (14 September 1999)
[225] USAID, *Plenary Session: Practitioner's Input and Recent LIR Experience* (14 September 1999)
[226] Prof. Gary Goodpaster, *Law and Development in Indonesia*, University of California (1999)
[227] International Chamber of Commerce (ICC), ICC International Court of Arbitration, 38 Cours Albert 1er, 75008 Paris, France, Tel.: (33-1) 49-53-38-38, Fax.: (33-1) 42-25-97-40

- All business disputes of an international character may be submitted to the ICC.[229]
- Cases are guided by the principles of independence, impartiality, equity, and justice.[230]
- The workings of the Court are confidential.[231]
- The Secretariat rapidly acknowledges receipt of the request and forwards copy to the defendant(s).
- The parties may appoint one or more arbitrators of their choice.[232]
- Where the parties have not agreed to the number of arbitrators, the Court shall appoint an arbitrator and, if appropriate, grant each party 30 days' leave to nominate an additional arbitrator. The defendant shall also have the right, within this period, to comment on the proposals concerning the number or arbitrators, their choice, and to set out his defense and any counterclaims.[233]
- The Claimant may reply to the defense within 30 days.[234]
- The arbitrator must render his award within six months.[235]
- The arbitral award shall be final.[236]

Furthermore:

- The arbitrators may be of any nationality. In recent years, they have been from over 40 different nationalities.
- The arbitration proceedings may take place anywhere in the world. Each year, ICC arbitrations take place in dozens of countries, failing agreement between the parties, the ICC Court selects a neutral location, whose national law and treaty commitments facilitate arbitration and enforceability of the arbitral award.
- The arbitration may take place in any language agreed by the parties or, failing agreement, by the arbitrator.
- The ICC is willing to act as an appointing authority and to offer its experience in locating qualified arbitrators for arbitration under UNCITRAL Rules.
- The "Pre-arbitral Referee Procedure," which entered into force on 1 January 1990, enables parties to obtain the appointment of a pre-arbitral referee, empowered to order conservatory or other provisional measures.
- The members of the ICC International Court of Arbitration have extensive legal backgrounds and experience in international business law and dispute resolution.
- The Secretariat of the Court is composed of personnel from some 10 countries, speaking a number of languages, ensuring that it can ably offer objective advice and assistance to parties, counsel, and arbitrators.
- The ICC also offers the Dispute Resolution Services of the International center for Technical Expertise, utilizing the ICC's worldwide business and professional contacts to find the most suitable expert for each case, as recourse to expertise may avoid more costly litigation

[228] *ICC Rules of Conciliation and Arbitration (New Conciliation Rules and amended Arbitration Rules*) of 1 January 1988, 2nd Ed., ICC Publishing SA, Paris (1990)
[229] Article 1, *Rules of Optional Conciliation*
[230] *Id.,* Article 5
[231] Article 2, *Internal Rules of the ICC*
[232] Standard ICC Arbitration Clause
[233] Articles 1-2 and 4-5, *Rules of Arbitration*
[234] *Id.,* Article 5
[235] *Id.,* Article 18
[236] *Id.,* Article 24

ICC arbitration combines the flexibility of *ad hoc* arbitration with the advantages of "supervised" or "administered" arbitration in the following manners:

- Where the parties cannot agree or fail to act, the ICC Court decides.
- The ICC Court performs a systematic review of the developments of each case, so as to ensure that it advances at an appropriate pace.
- The ICC Court requires that in each arbitration the arbitral tribunal establish Terms of Reference,
- The ICC Court scrutinizes each draft arbitral award before it becomes final.

ICSID[237]

According to the ICSID Rules:[238]

- The President of the World Bank is *ex officio* Chairman of the ICSID Administrative Council.[239]
- The ICSID Chairman designates persons to serve on Panels, paying due regard to the importance of representation of the principal legal systems of the world and main forms of economic activity.[240]
- Any Contracting State, or national thereof, wishing to institute conciliation or arbitration proceedings before ICSID may address a request to the Secretary-General.[241]
- Conciliation Commissions shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties agree.[242]
- Conciliation Commissions shall be constituted within 90 days of the registration of a request, or such other period as the parties may agree, failing which the Chairman shall, after consulting the parties, appoint the conciliator(s).[243]
- ICSID Arbitral Tribunals shall be constituted as soon as possible after registration of a request for arbitration.[244]
- The Tribunal shall consist of a sole arbitrator or any uneven number agreed to and appointed by the parties or, failing agreement of the parties within 90 days, the Tribunal.[245]
- ICSID Arbitration Tribunals are the judge of their own competence.[246]
- Conciliation and Arbitration proceedings are held at ICSID's seat in Washington DC or, if so agreed by the parties, at the seat of the Permanent Court of Arbitration at The Hague, or at any other place approved by a Conciliation Commission or Arbitral Tribunal after consultation with the Secretary General.[247]
- Awards shall be binding upon the parties.[248]
- The Contracting States and their Courts recognize ICSID awards as binding and enforceable in their territorial jurisdiction.[249]

[237] 1818 H Street, NW, Washington DC 20433, USA, Tel.: (202) 477-1234
[238] ICSID Basic Documents (Washington DC)
[239] *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States,* Article 5
[240] *Id.,* Article 14(2)
[241] *Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules),* Article 1
[242] *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States,* Article 29(2)a)
[243] *Id.,* Article 28(3) and 30
[244] *Id.,* Article 37(1)
[245] *Id.,* Articles 37(2) and 38
[246] *Id.,* Article 41
[247] *Id.,* Articles 62-63
[248] *Id.,* Article 53

- English, French, and Spanish are the official languages of ICSID, and ICSID texts in each of these languages are considered authentic.[250]

The following are ICSID's key *Conciliation Rules*:

- If the parties have not agreed, at the time of the registration of a request for conciliation, upon the number of conciliators, the requesting party shall, within 10 days of registration, propose a sole conciliator or uneven number of conciliations. Within 20 days of receipt of these proposals, the respondent shall accept them or make a counter-proposal. Within 20 days of receipt of the reply, the petitioner shall notify the respondent whether it accepts or rejects the counter-proposal. If, within 60 days of registration, no agreement has been reached, the Secretary-General may be petitioned.[251]
- Each party may be represented or assisted by agents, counsel or advocates, provided such are notified to the Secretary-General.[252]
- The President of the Conciliation Commission shall seek the views of the parties on the language or languages to be used in the proceedings.[253]
- Within 30 days of the constitution of the Conciliation Commission, its President shall invite each party to file a written Statement of Position.[254]
- The Conciliation Commission is the judge of its own competence.[255]
- The Conciliation Commission's Report shall be drawn up and signed within 30 days of the closure of the proceeding.[256]

The following are ICSID's key *Arbitration Rules*:

- No person who has previously acted as conciliator or arbitrator in any proceeding to resolve the dispute may be appointed as a member of the Arbitral Tribunal.[257]
- Within 60 days of registration of the request, if no agreement has been reached, either party to the arbitration may call upon the Secretary-General to constitute the Arbitral Tribunal.[258]
- The Arbitral Tribunal shall hold its first session within 60 days of its constitution, or such other period as the parties may agree.[259]
- Each party may be represented or assisted by agents, counsel, or advocates.[260]
- The President of the Arbitral Tribunal shall *inter alia* seek the views of the parties regarding the language(s) of the proceeding, whether or not there should be any suspending with written or oral procedures, the manner in which the costs are to be apportioned.[261]
- The award shall be drawn up and signed within 60-90 days of the closure of the proceeding.[262]

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[249] *Id.,* Article 54
[250] *ICSID Administrative Regulation No.34*
[251] Rule 2
[252] Rule 18
[253] Rule 20
[254] Rule 25
[255] Rule 29
[256] Rule 31
[257] Rule 1(4)
[258] Rule 2(3)
[259] Rule 13
[260] Rule 18
[261] Rule 20
[262] Rule 46

- Applications for Revision may be made within 90 days of the discovery of new facts, within 3 years of the award.[263]
- Applications for Annulment may be made within 120 days of the award, for reasons relating to the Tribunal's proper constitution, impartiality, exercise of power, respect of rules, and adequate motivation of an award.[264]

Annex 6: International Tax Practices

Programs Aimed at Improving the Administration-Enterprise Environment

[263] Rule 50(3)a)
[264] Rule 50(3)b)

A number of countries, such as the US, Canada and Ireland, provide tax information via the internet. Ireland's *Order of Income* website provides an important customer service, because it improves efficiency and ease of registration. A number of countries also provide telephone assistance for tax information and forms. The Irish tax authority – the Income Order – has for instance instituted measures to improve customer service and at the same time to increase both time and cost efficiency for the agency and for investors. All agency offices guarantee that investors will be served within ten minutes of arriving at the office. Similary, the authority guarantees that operators will respond to telephone inquiries within thirty seconds.

Simplification and Harmonization of the Local Taxation

Several countries have double taxation systems: That of the national government and of the regional or municipal government. Since municipal taxes tend to be low, those of the central government constitute the most significant direct taxation. Because tax rates may differ by region, an enterprise in one state or province may face substantially different taxation rates than a company located in another state or province. German provinces, for instance, have tax regimes that differ by up to 10 percent.

National authorities must coordinate state or provincial taxation activities and those of the local tax authorities to assure consistent fiscal registration and tax payment processing. Close coordination among municipal, regional and national authorities enables easy entry by new municipalities. Cooperation requires that each government regularly share information, and that each adopt a unique identification tax. Canada, the US, Germany and Denmark are examples of international best practice in tax authority coordination.

Rational Tax Incentives

Based on international experience, tax incentives may be said to have the following benefits:

- Tax holidays provide large up-front benefits for start up companies that can start earning profits immediately.

- Tax holidays are primarily beneficial to firms that are either relatively mobile or short-term in nature. More specifically, tax holiday provisions tend to attract "footloose industries" that can move from one location to another, taking advantage of the most lucrative short-term incentives a country can offer. Such investments are often labor intensive.

- As interest deductions are of no value to firms qualifying for tax holidays, firms are less encouraged to use debt financing and this can act to lower the risk of corporate bankruptcy.

Furthermore, based on international experience, tax incentives may be said to have the following disadvantages:

- The implementation of tax holidays requires careful monitoring by the government and therefore added administrative costs for compliance by the recipient firm.

- As firms deduct depreciation costs during the tax holiday period, long-term investments are discriminated against in favor of short-lived capital. As tax holidays tend to attract footloose

industries, they tend to discourage firms from undertaking substantially long term investments. This tends to bias investment away from high technology and high-value added activities.

- Tax holidays can easily lead to large revenue losses for governments. Revenue losses can occur from profitable firms not paying taxes during the tax holiday term, firms that abuse the system by closing and re-opening under a new name and registration, and also as a result of arbitrage transfer pricing schemes that allow horizontally and vertically integrated firms to minimize total corporate taxes.

- For US and Japanese multinationals qualifying for tax holidays, it is often the case that the value of the firm's tax holiday benefit will be added to their home tax liabilities, requiring an additional tax payment to the US or Japanese tax authorities. In these cases, the taxpayers in the host countries (those offering the tax holidays) would be subsidizing the treasuries of the US and Japan, rather than the investor, and the country in any event fails to attract the US and Japanese firms.

- Tax holidays inevitably create distortions between firms that qualify for incentives and those that do not. Older firms, even those that are making new investments to upgrade or expand operations, are forced to compete with start-ups who will enjoy the benefits of the tax holiday. Firms just below the minimum capital requirement are disadvantaged vis-à-vis firms just over the minimum capital requirement. Such arbitrary criteria create economic distortions that interfere with the normal functioning of the capital market and therefore reduce efficiency and overall competitiveness.

- Screening for eligibility almost inevitably involves a degree of discretion on the part of the authorities. Such discretion opens the possibility of corruption in decision-making, and indeed the track record of tax holidays is that they are often associated with corruption and kickbacks.

International Practice in Tax Incentives

Within the vast array of incentives on offer, many take the form of tax holidays. International experience shows that these, in particular, are often not just ineffective, but also capable of imposing significant costs on a country. Empirical evidence indicates that tax holidays affect the investment decisions of only a small percentage of foreign investors, mainly export-oriented companies.

One convincing demonstration of the ineffectiveness of tax holidays occurred in Indonesia. Before 1984, Indonesia offered the usual array of tax holidays, amounting to as many as six tax-free years. In 1984, Indonesia moved to a corporate tax rate of 35% and abolished all tax incentives. In spite of official fears, foreign investment grew more rapidly than it had under the incentive system. Investors responded to policy reforms that made Indonesia a more attractive investment destination.

Overall, the redundancy rate for tax holidays is high: Governments award incentives to investors who would have come anyway; this imposes real costs on the host country in the form of foregone tax revenues. Rough estimates suggest that typical tax holidays in developing countries represent the equivalent a 100% subsidy. Attempts to reduce tax holiday redundancy rates through discretionary award have generally failed. Local politics often requires these incentives to be extended to domestic firms also (who would actually invest without them), because the awarding agency is rarely in a position to make the necessary analysis, and because discretionary procedures of this kind regularly lead to corruption.

Despite the considerable evidence that the costs of incentives outweigh the benefits, many developing countries justify the continued use of tax holidays on various grounds.

The country's corporate tax rate is too high: Lowering the corporate tax rate would be a preferable solution in this situation.

Frustration at the difficulty of making substantive policy reforms: Tax holidays are relatively easy to introduce, and appear "costless." Meanwhile, reducing red tape, eliminating domestic ownership requirements, and providing adequate infrastructure, for example, require more effort: however, Tax holidays do not offset these negative factors in the investment environment, and do impose costs on the country. Policy improvements, meanwhile, benefit domestic foreign and domestic firms more or less equally.

The need to attract a few high profile investors: the idea is that the attraction of a few "big fish" will indicate that the investment environment has improved, and serve as a magnet for other investors. Such a strategy might work if the investment environment has dramatically improved, and if the holidays are offered for only a short period.

Overall, given the above, tax incentives with the following characteristics have been deemed the most effective and/or least harmful, based on international experience:

- Properly targeted and Well defined
- Transparent
- Simple and Practical to administer
- Non-discretionary/Automatic

Simplified Tax Accounting, Reporting, and Filing Standards

International experience indicates that simplified and transparent accounting considerably impacts business' operations and investment environment. Companies operating under a clear and simple accounting system are better able to evaluate risk and capital costs. In addition, "best practice" accounting systems provide increased transparency and credibility in taxation. According to M. Arthur Levitt, Executive Officer of the US Securities and Exchange Commission (SEC): "Any accounting standards looking for a global acceptability must be established... on the basis of the investor needs... [for] credible information… [and] transparent reporting."[265]

The International Accounting Standards ("IAS") provide a useful guide for developing countries. The IASC has developed a full set of standards, including in the following areas:

- General Income Tax
- Turnover
- Cash flow balance sheets
- Inventory
- Depreciation
- Quarterly losses and profits
- Financial statement disclosure and presentation
- Fixed assets
- Provisions, assets and contingent liabilities
- Profits
- Temporary financial reporting

The IASC seeks to ensure improved international accounting standards. Given market globalization, consistent international accounting standards –rather than a simple harmonization- are increasingly important. IASC has assessed alternative accounting models and established "best practice" standards in the interests of investors. According to M. Michael Sutton, Chief Accountant of the SEC: "I believe it is important to stress that the efforts of IASC and IOSCO have, to date, contributed considerably to upgrading international accounting standards and bringing the standards into line with accounting practices in countries with developed capital markets... We will continue to encourage IASC to develop international standards that encourage transparency, harmonization and the level of disclosure investors expect... "[266]

During its December 1996[267] Ministerial Meeting in Singapore, the WTO also announced its support for IASC. Moreover, Sir Bryan Carlsberg, IASC Secretary General, recently predicted a future global convergence of accounting standards. He noted in *Global Emerging Markets*, that soon "it will become unsustainable to have different national and international standards."[268]

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ACRONYMS and ABBREVIATIONS

ADR	Alternative Dispute Resolution
ANCE	[French] *Agence Nationale pour la Création d'Entreprises*

ANPE	[French] *Agence Nationale pour la Promotion de l'Emploi*
API	[Tunisian] *Agence pour la Promotion Industrielle*
Art.	Article
ASCON	Administrative Staff College of Nigeria
ASYCUDA	Automated System for Customs Data
BIR	Board of Inland Revenue
BPE	Bureau of Public Enterprises
C of O	Certificate of Occupancy
CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act
CED	[Singapore] Customs and Excise Department
CEPZ	Calabar Export Processing Zone
CFE	[French] *Centre de Formalités des Entreprises*
CFTZ	Calabar Free Trade Zone
CPC	Customs Central Processing Center
CRI	Clean Report of Inspection
DC	District of Columbia, USA
DDS	Duty Drawback Scheme
Dr.	Doctor
EOPS	[Canadian] Exporter of Processing Services Program
ECC	Environmental Clearance Certificate
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EP	Expatriate Quota Position
EPRSBEnergy	Power Sector Reform Bill
Etc.	Et cetera
FAA	[US] Federal Aviation Authority
FAAN	Federal Aviation and Airports Authority of Nigeria
FCDA	Federal Capital Development Authority
FCT	Federal Capital Territory
FEPA	Federal Environmental Protection Agency
FDI	Foreign Direct Investment
FIAS	Foreign Investment Advisory Service (World Bank)
FIRS	Federal Inland Revenue Service
FMoE	Federal Ministry of the Environment
FOB	Free On Board
FOS	Federal Office of Statistics
GDP	Gross Domestic Product
GNP	Gross National Product
GEM	Government Economic Management Working Group
GFRN	Government of the Federal Republic of Nigeria
HS	Harmonized System (for goods classification)
IAP	Industrial Arbitration Panel
IAS	International Accounting Standards
IASC	IAS Committee
ICA	Input Coefficient Administration (Customs)
ICC	International Chamber of Commerce
ICSID	International Center for the Settlement of Investment Disputes (World Bank)
IDA	Irish Development Agency
IEE	Initial Environmental Examination
IFC	International Finance Corporation (World Bank)
IIA	[Korean] Input Coefficient Administration
IID	Industrial Inspection Department (Federal Ministry of Industries)

ILO	International Labor Organization
IPR	Intellectual Property Rights
ISO	International Standards Organization
IFC	International Finance Corporation
Inc.	Incorporated
IPP	Independent Power Project
ITF	Industrial Training Fund
IVP	Investment Promotion
JMDB	Jos Metropolitan Development Board
KASUPDA	Kaduna State Urban Planning and Development Authority
KEPA	Kaduna Environmental Protection Agency
KLG	Kaduna Local Government
KV	Kilovolt
LLP	Limited Liability Partnership
LUAC	Land Use Allocation Committee
M	Meter
MCI	[State-level] Ministry of Commerce and Industry
MIBS	Manufacture-in-Bond Scheme
MIGA	Multilateral Investment Guarantee Agency
MIS	Management Information Systems
MoC	Ministry of Commerce
MoF	Ministry of Finance
MoI	Ministry of Industries
MoIA	Ministry of Internal Affairs
Mr.	Mister
MW	Megawatt
NACCIMA	Nigerian Association of Chambers of Commerce, Industry, Mining and Agriculture
N	Naira
NAFDAC	National Food and Drug Administration and Control
NCC	Nigerian Communications Commission
NCS	Nigerian Customs Services
NDLA	Nigerian Drugs Law Enforcement Agency
NEDB	[Singapore] National Economic Development Board
NEPA	Nigerian Electrical Power Agency
NEPZA	Nigerian Export Processing Zones Authority
NERC	National Electricity Regulatory Commission
NESG	Nigerian Economic Summit Group
NIDA	[Thailand] national Industrial Development Agency
NIPC	Nigerian Investment Promotion Commission
NIS	National Institute of Management
NITEL	Nigeria Telecommunications Plc.
NJC	National Judicial Council
NPA	Nigerian Ports Authority
NPC	National Planning Commission (Office of the Presidency)
NSTIF	Nigerian Social Insurance Trust Fund
NTDC	Nigerian Tourism Development Corporation
OBRA	Ontario Business Registration Access Program
OECD	Organization for Economic Cooperation and Development
PAYE	Pay As You Earn
PC	Personal Computer
Plc	Private Limited Corporation
POA	Power of Attorney
PSI	Pre-shipment Inspection

PTO	Private Telecommunications Operator
PUR	Permanent Until Review
PwC	PricewaterhouseCoopers, LLP
R&D	Research & Development
R of O	Right of Occupancy
SBA	[US] Small Business Administration
SEC	[US] Securities Exchange Commission
SME	Small to Medium Sized Enterprise
SOAG	[USAID] Strategic Objectives Agreement
SON	Standards Organization of Nigeria
SGD	Single Goods Declaration
TIN	[US] Tax Identification Number
TSG	The Services Group, Inc.
UK	United Kingdom
UN	United Nations
US	United States
USA	United States of America
USAID	United States Agency for International Development
UV	Ultra Violet
VAT	Value Added Tax
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization