An Appraisal of Foreign Investment Promotion and Protection Measures Operating In Nigeria

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I. INTRODUCTION

Foreign investment involves the sourcing by a State of capital, technology, and other managerial expertise from outside the country. It covers such activity as manufacturing, provision of services and trade. Foreign investment can be either direct or indirect in nature. Foreign direct investment (FDI) refers to direct capital importation in the sense that the foreign business entity is involved in the venture either wholly or in partnership with others; indirect foreign investment pertains to involvement through the stocks and shares option. For many developing nations, FDI is the preferred option because it is adjudged to provide visible development benefits for the State in terms of capital input, know-how, technology, and organizational and trading skills. Foreign direct investment is, however, fraught with problems for the developing State. The major problem is the difficulty for the State to actually utilize foreign capital for development. This difficulty can be traced to poor infrastructural capacity and other problems such as inadequate legal rules, coupled with enforcement problems, which limit the ability of the host State to ensure that the process results in lasting benefits. Additionally, importation of capital and expertise from abroad is sometimes contrary to the original development outlook of the State and therefore requires that new policies and regulations be implemented, as was the case in Nigeria.4

1 The term "foreign" investment (FI) is used in the sense that capital utilized for production is imported from abroad. The reason for importing capital from other nations is tied to two things: firstly, the inability of the State in question to finance production on its own, and secondly, the lack of the requisite technology to carry out the production process. A State could also decide to utilize FI even when it has technology and capital at its disposal.

2 See Section 41 of The Foreign Exchange (Monitoring and Other Miscellaneous) Provisions Act (FEMMP) of 1995, which defines capital for the purposes of the Act. Generally, though, investment is called capital when it is reckoned as a factor of production. Capital could be in the form of finance or machines and can be described as the means by which production of goods is facilitated.

3 This is the basis on which the World Bank and its affiliate organizations recommend FI to their client States.

4 Economic restructuring of the nation involved passing a new investment code with liberal investor-friendly procedures. The financial sector has also been sanitized to a large extent. The required paid up capital of banks has also been increased to two billion naira for new banks. This is to bring them up to par with foreign banks. Foreign financial enterprises are now also welcome into the nation’s financial sector with the result that some foreign banks have set up in the country, either alone or in partnership with local banks. In fact the whole financial services sector has been positioned to play a key role in the deregulated economic environment. In addition, the government-owned insurance companies are in the process of being privatized, while the capital/futures market has also been positioned to play a leading role in the reform of the economy. To this end, the Nigerian Stock Exchange in Lagos has modernized its operations and is now operating an automated system of share administration, the computerized Stock Exchange Management System, which is operated by the Central Securities Clearing System.
In terms of indirect foreign investment—that is, the purchase of shares by the foreign investor in already existing enterprises—the foreign investor does not have as much control in this case, unlike with FDI. Indirect foreign investment is sometimes the preferred option when the host State wishes to retain some control over its economy. In the case of Nigeria, both FDI and the sale of shares are part of the deregulation strategy of government. The sale of government shares in both public and private enterprise is included under the privatization programme. The first attempt at privatization was under the Privatisation Act promulgated in 1988, while the second phase of the programme was initiated under the Public Enterprises (Privatisation and Commercialisation) Act (1999). This ongoing wholesale divestment of government shares has created a large pool of shares from which the foreign investor can purchase.

Nigeria's economic history shows that it has implemented various economic theories which have impacted on its foreign investment policy. The nation's resort to the international financial institutions changed this arbitrary policy implementation. Accordingly, the nation has had to institute a consistent liberalization policy. It is supposed to encourage competition and, consequently, an increase in internal economic capacity. This involves the sale of the government's shares in various sectors such as energy, communications, oil and gas, the financial sector and air transport, among others. Like all developing States, however, the new challenge for the Nigerian nation is how to sufficiently liberalize the economy while at the same time encouraging indigenous industrial capacity so that both local investors and incoming foreign investors can operate in a harmonious economic atmosphere.

The objective of foreign investment, like all other species of investment, is the development of the State. Thus, any successful foreign investment inflow must fulfil this criterion. The task of the government is therefore to institute laws and policies which balance the need for foreign investment with the needs of the State. A major problem with FDI is the fact that it is mostly available through the transnational corporations.

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5 Initially, post-independence economic policies permitted capital importation. Later on there was a shift to the mixed economic mode, where aspects of capital-oriented production and development were alternated with socialist modes of economic development, such as State ownership of means of production and State control of the economy concurrent with the indigenisation policy. These divergent economic orientations were enunciated in the development plans of the nation. The policy varied from year to year and from administration to administration, resulting in difficulty to discern the exact economic development orientation of the nation.

6 The nation had approached the International Monetary Fund in 1983, but was only able to commence economic reform in 1996, due to resistance by the population to the prescribed "adjustment".

7 Third World States with balance of payment difficulties have often resorted to the international financial institutions—the World Bank, including the International Bank for Reconstruction and Development (IBRD), and the International Monetary Fund (IMF). The Structural Adjustment Programme (SAP) is then prescribed as a remedy. The Programme recommends fiscal discipline of the State, deregulation of the economy, devaluation of the national currency and liberalization of trade, coupled with the importation of foreign capital as a means of improving the economy. All these measures are intended to encourage the growth of the economy by making the government less involved in the active economic life of the State and, in addition, increase the country's competitiveness in international trade.

8 It has been asserted that, when internal markets are opened up, the per capita income of the nation increases proportionately. See observations by the EU President G. Verhofstadt, in The Nigerian Guardian, 29 September 2001, at page 57.