Foreign Direct Investment (FDI) and Company Regulation in Nigeria: Legal Incentives and Barriers

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1.0 Introduction

Foreign Direct Investment (FDI) refers to an investment made by an individual or company based in one country into business interests located in another country, typically through the acquisition of a lasting interest in a foreign enterprise and active control of the business operation. The International Monetary Fund (IMF) defines FDI as "a category of cross-border investment made by a resident in one economy with the objective of obtaining a lasting interest in an enterprise resident in another economy"[1].

Nigeria, Africa's largest economy by GDP and most populous country, has long been positioned as a key destination for FDI on the continent due to its vast natural resources, large consumer market, and strategic location. Despite these advantages, Nigeria continues to underperform in terms of attracting and retaining foreign capital when compared to other African nations like Egypt, South Africa, and Kenya. The United Nations Conference on Trade and Development (UNCTAD) reported that Nigeria attracted $3.3 billion in FDI in 2022, a modest increase from previous years but still significantly below its potential.[2]

This paradox of high potential but low performance raises important legal and policy questions. Nigeria has made considerable efforts to reform its business laws, most notably with the enactment of the Companies and Allied Matters Act (CAMA) 2020 and several tax and regulatory incentives. However, various legal and structural challenges persist that hinder the full realization of FDI-driven growth.

The aim of this article is to critically examine the legal environment for FDI in Nigeria—highlighting both the incentives available to foreign investors and the key barriers that still deter investment. The article also makes targeted reform suggestions aimed at improving Nigeria's attractiveness to foreign investors, within the framework of corporate and commercial law.

[1] International Monetary Fund, *Balance of Payments Manual*, 6th ed., 2009

[2] UNCTAD, *World Investment Report 2023*, https://unctad.org/publication/world-investment-report-2023

2.0 Legal Framework Governing Foreign Direct Investment in Nigeria

The legal and institutional framework for Foreign Direct Investment (FDI) in Nigeria is composed of several statutes and regulatory agencies working to facilitate and monitor investment flows. These laws are designed to create a hospitable environment for foreign capital while ensuring alignment with national economic interests.

a. Nigerian Investment Promotion Commission (NIPC) Act, 2004

The primary legislation regulating FDI in Nigeria is the Nigerian Investment Promotion Commission Act, 2004. The Act establishes the Nigerian Investment Promotion Commission (NIPC), which is mandated to coordinate, promote, and monitor all investment in Nigeria. Section 17 of the NIPC Act guarantees that a foreign investor may invest and participate in the operation of any enterprise in Nigeria, with 100% ownership permissible in most sectors, except those on the negative list such as arms and ammunition, narcotics, and military and paramilitary wear .[3]

The Act also provides investment guarantees, including protection against nationalisation or expropriation, the right to repatriate profits, and access to international arbitration for dispute resolution.[4]

b. Companies and Allied Matters Act (CAMA) 2020

To legally operate in Nigeria, foreign investors must incorporate a company under the Companies and Allied Matters Act (CAMA) 2020. The Act, as revised, introduced reforms aimed at improving the ease of doing business, such as allowing single-shareholder companies, removing mandatory share capital thresholds in certain cases, and simplifying company registration procedures.[5]

Additionally, CAMA mandates that foreign companies wishing to carry on business in Nigeria must register with the Corporate Affairs Commission (CAC) as incorporated entities, unless exempted under Section 80 of the Act.[6]

c. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995

[3] NIPC Act 2004, Section 17, https://nipc.gov.ng/acts-and-regulations
[4] NIPC Act 2004, Sections 24–27
[5] CAMA 2020, Sections 18 and 27
[6] CAMA 2020, Section 78

The Foreign Exchange Act provides the legal basis for the inflow and outflow of foreign currency into Nigeria. Foreign investors are required to bring in capital through authorised dealers (usually banks) and obtain a Certificate of Capital Importation (CCI) within 24 hours of receipt of funds. The CCI entitles the investor to unconditional repatriation of dividends and capital in freely convertible currency.[7]

d. **Finance Act (2020–2023 updates)**

Recent updates to Nigeria's tax laws via the Finance Acts have had significant implications for foreign investors. The Acts have amended various statutes such as the Companies Income Tax Act (CITA), the Value Added Tax Act (VAT Act), and the Personal Income Tax Act (PITA), often with the goal of broadening the tax base and improving revenue collection.

For instance, the Finance Act 2020 introduced the concept of "Significant Economic Presence" (SEP) for taxing non-resident digital service providers, effectively targeting foreign businesses that earn revenue from Nigeria without a physical presence.[8]

e. Bilateral Investment Treaties and Trade Agreements

Nigeria is a party to several Bilateral Investment Treaties (BITs) and multilateral trade agreements, which provide additional guarantees and legal remedies to foreign investors. As of 2023, Nigeria had signed over 30 BITs, of which about 15 are currently in force. [9]

These treaties typically include clauses on fair and equitable treatment, protection against expropriation, and investor–state dispute settlement mechanisms.

3.0 Incentives for Foreign Investors in Nigeria

To attract and retain Foreign Direct Investment (FDI), the Nigerian government has implemented a range of fiscal, tax, and non-tax incentives across various sectors. These incentives are designed to reduce entry barriers, lower operational costs, and ensure investor confidence in the Nigerian business environment.

a. Pioneer Status Incentive (PSI)

[7] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995, Section 15

[8] Finance Act 2020, Section 4, amending Section 13 of the Companies Income Tax Act

[9] UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org

One of the most significant incentives available to foreign investors is the Pioneer Status Incentive administered by the Nigerian Investment Promotion Commission (NIPC). Under this scheme, eligible companies are granted a tax holiday of up to five years—an initial three-year exemption from corporate income tax, renewable for one or two additional years.[10]

This incentive is available to companies operating in sectors deemed critical to Nigeria's economic development, including manufacturing, agriculture, power, solid minerals, and information technology.

b. Free Trade Zones (FTZs)

Nigeria has established multiple Free Trade Zones (FTZs), including the Lagos Free Trade Zone and Calabar Free Trade Zone, to encourage foreign investment. Companies operating within these zones enjoy exemption from all federal, state, and local government taxes, levies, and rates. They are also allowed to import capital goods, consumer goods, raw materials, and components duty-free.[11]

Additionally, FTZs offer streamlined regulatory processes and one-stop-shop services to facilitate business setup.

c. Export Expansion Grant (EEG)

The Export Expansion Grant, administered by the Nigerian Export Promotion Council (NEPC), provides cash incentives to exporters of non-oil products to make their goods more competitive in international markets. The incentive is granted as a post-shipment rebate based on the FOB value of qualifying exports.[12]

This incentive is relevant for foreign investors involved in manufacturing for export, particularly in the agro-processing and textile sectors.

d. Tax Relief for Research and Development (R&D)

Foreign and local companies that engage in research and development activities for innovation and improvement of their products and processes are allowed to deduct 20% of

[10] NIPC Act 2004, Section 22; Industrial Development (Income Tax Relief) Act, Cap I7, LFN 2004, Section 1, https://nipc.gov.ng/investment-incentives/

[12] NEPC Act, Cap N108, LFN 2004; NEPC Guidelines on EEG, https://nepc.gov.ng

their R&D expenses from their taxable profits, provided the R&D activities are carried out in Nigeria.[13]

This is particularly attractive to technology and pharmaceutical investors.

e. Investment Promotion and Protection Agreements (IPPAs)

To enhance investor confidence, Nigeria has signed several Investment Promotion and Protection Agreements (IPPAs) with other countries. These treaties provide foreign investors with guarantees against expropriation, full protection and security, and access to international arbitration in the event of disputes.[14]

Such agreements provide a legal safety net that encourages investment by mitigating country risk.

4.0 Key Challenges Facing Foreign Direct Investors in Nigeria

Despite the incentives and potential returns, foreign direct investors in Nigeria face several critical challenges that can affect their profitability, sustainability, and willingness to remain in the Nigerian market.

a. Infrastructural Deficiencies

Nigeria's infrastructure—particularly power supply, road networks, and port facilities—remains underdeveloped. Poor electricity supply has led many businesses to rely on costly alternatives such as diesel generators, significantly increasing operational costs.[15] The congested nature of Nigerian ports, especially in Lagos, also delays cargo clearance, impacting the supply chain and increasing demurrage fees.

b. Regulatory and Policy Uncertainty

Frequent changes in government policies, tax regimes, and regulatory frameworks have created an unpredictable business environment. For instance, the sudden ban on Twitter in 2021 and the Central Bank of Nigeria's foreign exchange policies often catch businesses off guard.[16] This regulatory volatility undermines investor confidence and long-term planning.

c. Foreign Exchange Instability

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[13] Companies Income Tax Act, Cap C21, LFN 2004, Section 26
[14] UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org
[15] World Bank, *Doing Business Report 2020*, https://www.doingbusiness.org
[16] BBC News, *"Nigeria Suspends Twitter Operations,"* June 2021, https://www.bbc.com/news/world-africa-57374211

Nigeria has faced persistent issues with foreign exchange (forex) availability and policy inconsistency. Investors often struggle to access foreign currency to repatriate profits or import machinery and raw materials. Multiple exchange rates and fluctuating naira values create arbitrage opportunities and operational inefficiencies.[17]

d. Insecurity and Political Instability

Security threats, including insurgency in the North-East, banditry, kidnapping, and intercommunal violence, create a high-risk investment climate. These issues particularly affect sectors such as agriculture and mining in rural areas. The Global Peace Index 2023 ranks Nigeria among the least peaceful countries globally.[18]

Political transitions often lead to policy reversals or implementation delays, discouraging long-term investment.

e. Corruption and Bureaucratic Bottlenecks

Nigeria ranked 145 out of 180 countries in Transparency International's 2023 Corruption Perceptions Index, signaling persistent governance and administrative inefficiencies.[19] Foreign investors frequently report demands for unofficial payments, slow processing of business permits, and complex registration procedures as major obstacles.

f. Legal and Judicial Delays

Although Nigeria has robust legal provisions for contract enforcement and dispute resolution, judicial delays, inconsistent rulings, and perceived bias remain a concern for investors. Cases can take years to resolve, and enforcement of foreign arbitral awards is often slow, despite Nigeria being a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).[20]

5.0 Reforming Nigeria's Legal and Institutional Framework to Boost FDI

To attract and retain meaningful Foreign Direct Investment (FDI), Nigeria must undertake targeted legal and institutional reforms aimed at improving transparency, reducing risk, and simplifying engagement with the Nigerian market.

a. Strengthening the Legal Infrastructure for Investment Protection

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[17] Central Bank of Nigeria, *Annual Report 2022*, https://www.cbn.gov.ng/Out/2022/RSD/CBN%20ANNUAL%20REPORT%202022.pdf
[18] Institute for Economics and Peace, *Global Peace Index 2023*, https://www.visionofhumanity.org
[19] Transparency International, *CPI 2023 Report*, https://www.transparency.org/en/cpi/2023/index/nga)
[20] Arbitration and Conciliation Act, Cap A18, LFN 2004

Although Nigeria has laws like the **Nigerian Investment Promotion Commission Act** which guarantees protection against expropriation,[21] enforcement remains weak. It is essential to reinforce judicial independence and expedite dispute resolution processes, especially in commercial courts, to assure investors of legal redress in the event of breaches. Fast-tracking the establishment and functioning of **specialized commercial courts**, as recommended by the Nigerian Economic Summit Group,[22] would help restore investor confidence in Nigeria's rule of law.

b. Reinstating Investor Confidence Through Predictable Policies

A major concern for investors is Nigeria's frequent shifts in monetary, tax, and investment policies. The country must prioritize **policy coherence and transparency**, particularly in the oil, gas, and tech sectors where sudden bans or policy reversals have occurred. Introducing a **National Investment Policy Framework** with cross-sectoral consultation and stakeholder engagement can reduce uncertainties. A 2022 UNCTAD report on global investment noted that countries with predictable investment frameworks consistently attracted higher FDI flows.[23]

c. Foreign Exchange Market Reforms

Reforming the foreign exchange market to ensure easier repatriation of profits and access to forex at a single, market-reflective rate is critical. Investors have repeatedly cited forex scarcity as a deterrent to long-term capital deployment in Nigeria.[24] Harmonizing exchange rates and improving forex transparency under the supervision of the Central Bank will greatly enhance investor trust.

d. Enhancing Ease of Doing Business

Although Nigeria made progress in the World Bank's **Ease of Doing Business rankings**, further reforms are needed to cut red tape. Simplifying procedures for business registration, licensing, and land acquisition—particularly at the state level—will support small and medium-sized foreign investors. The **Companies and Allied Matters Act 2020 (CAMA 2020)** was a significant step forward, introducing single shareholder companies and electronic filings (Sections 18 and 861, CAMA 2020). Full digital implementation of these reforms across all regulatory agencies should be prioritized.

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[21] Section 25, NIPC Act, Cap. N117, LFN 2004
[22] NESG, *Policy Brief 2022*, https://nesgroup.org
[23] UNCTAD, *World Investment Report 2022*, https://unctad.org
[24] PwC Nigeria, *FDI Trends and Challenges in Nigeria 2023*, https://www.pwc.com/ng/en/assets/pdf/fdi-trends-in-nigeria-2023.pdf

e. Institutional Independence and Anti-Corruption Efforts

Establishing the independence of key regulatory institutions such as the **Nigerian Investment Promotion Commission (NIPC)**, **Corporate Affairs Commission (CAC)**, and **Securities and Exchange Commission (SEC)** is fundamental. These bodies must operate free of political interference and bureaucratic delay. Furthermore, strengthening anti-corruption institutions like the **Independent Corrupt Practices and Other Related Offences Commission (ICPC)** and **EFCC**, and improving inter-agency collaboration, will reduce transactional friction for foreign investors.[25]

f. Leveraging Bilateral Investment Treaties (BITs) and International Arbitration

Nigeria is party to over 30 Bilateral Investment Treaties, but implementation is inconsistent. Revisiting and updating these BITs in line with global best practices can help protect foreign investors' rights. Also, creating fast-track enforcement mechanisms for arbitral awards—especially under the **Arbitration and Mediation Act, 2023**—can reduce legal uncertainties.[26]

6. Conclusion and Strategic Outlook

Foreign Direct Investment (FDI) remains a pivotal engine for economic development, job creation, and technological advancement in emerging economies like Nigeria. However, the country's current trajectory reveals a mismatch between its potential and actual FDI performance, largely due to persistent legal uncertainties, policy inconsistencies, bureaucratic red tape, and institutional inefficiencies.

While Nigeria boasts a youthful population, vast natural resources, and a strategic location in Africa, these advantages can only be translated into real economic value through deliberate and sustained reforms. Strengthening the legal and institutional framework—particularly by improving investor protection, streamlining regulatory processes, and ensuring transparency—must be treated as a national priority.

The path forward must also include a concerted effort to implement existing laws effectively, curb corruption, and reinforce the independence of investment-related institutions. As the global investment climate becomes increasingly competitive, Nigeria cannot afford to lag behind. Countries that succeed in attracting and retaining FDI are those that offer clarity, predictability, and fairness—qualities that investors seek when evaluating new markets.

If Nigeria embraces the reforms outlined in this article, not only will it improve its attractiveness to foreign investors, but it will also unlock inclusive and sustainable economic growth for its citizens. In this way, law and policy can work hand-in-hand to reposition Nigeria as a top destination for global capital in Africa and beyond.

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[25] Transparency International, *CPI 2023*, https://www.transparency.org/en/cpi/2023/index/nga

[26] Part IV, Arbitration and Mediation Act 2023