2020 – ECONOMIC AND LEGAL OUTLOOK

INTRODUCTION

The quest to achieve the much anticipated Vision 2020 goals[1] has led to significant advancements in Nigerian legislation and policy framework. To this end, it has become imperative to examine the implications of these laws and related economic factors on the Nigerian business clime. This article is not aimed at predicting the future; rather, it seeks to draw inferences from existing socio-economic indicators and factors that generally affect any economy. In this regard, there will be an identification of significant economic events and statistics. Also, the implication of recent legislations and the impact of the judiciary on Nigeria's economy will be discussed.

Brief Economic Facts

Nigeria, a key regional player in West Africa, accounts for about half of West Africa's population having approximately 204,000,000 people[2] and one of the largest populations of youth in the world. The economy of Nigeria is a middle-income, mixed economy and emerging market, with expanding manufacturing, financial, service, communications, technology and entertainment sectors. It is ranked as the 27th largest economy in the world in terms of nominal GDP, and the largest economy in Africa. With an abundance of natural resources, it is Africa's biggest oil exporter, and has the largest natural gas reserves on the continent.

Oil price volatility is a prominent factor that continues to influence Nigeria's growth performance. Between 2000 and 2014, Nigeria's Gross Domestic Product (GDP) grew at an average rate of 7% per year. Following the oil price collapse in 2014-2016, combined with negative production shocks, the GDP growth rate dropped to 2.7% in 2015. In 2016 during its first recession in 25 years, the

[1]Vision 2020 is Nigeria's vision to be one of the 20 largest economies in the world, able to consolidate its leadership role in Africa and establish itself as a significant player in the global economic and political arena. See: 'Nigeria Vision 20: 2020 Abridged Version' (10 December 2010) <https://www.nigerianstat.gov.ng/pdfuploads/Abridged_Version_of_Nigeria%20Vision%202020.pdf> accessed 20 January 2020

[2]'Nigerian Population (Live)' (*Worldometer,* 2020) <https://www.worldometers.info/world-population/nigeria-population/> accessed 20 January 2020

economy contracted by 1.6%. Since 2015, economic growth remains muted. Growth averaged 1.9% in 2018 and remained stable at 2% in the first half of 2019.[3]

The World Bank Group (WBG) and the International Monetary Fund (IMF) have both forecasted minimal growth for the Nigerian economy for the year 2020. While the WBG predicted a growth rate of 2.1%[4], the IMF disclosed that Nigeria's economy will continue its sluggish trend with a 2.5% growth rate in 2020, a slight improvement from the 1.9% and 2.3% recorded in 2018 and 2019 respectively.[5] The bearish economic outlook is attributable to Nigeria's weak macroeconomic framework, characterised by multiple exchange rates, foreign exchange restrictions, high persistent inflation, and a Central Bank targeting manifold objectives. In spite of these gloomy predictions, priority must be given to achieving economic milestones. With an understanding of this responsibility, the Executive and Legislative arms of government have taken significant steps, including the drawing up of new fiscal and monetary policies by the Central Bank of Nigeria (CBN), signing of the African Continental Free Trade Area (AfCFTA) Agreement and the passage of notable legislations. In determining whether the afore-mentioned steps will positively impact the economy, the following subheads will be considered:

1. Legislative Framework: Collaborative efforts of the Executive and Legislature
2. The pertinent role of the Judiciary
3. Relevant Socio-Economic Factors

LEGISLATIVE FRAMEWORK: COLLABORATIVE EFFORTS OF THE EXECUTIVE AND LEGISLATURE

In a bid to improve the country's competitiveness, the current dispensation has been characterised by increased cooperation between the Executive and

[3] World Bank Group, 'World Bank Overview' (*World Bank Official Website,* 13 October 2019) <https://www.worldbank.org/en/country/nigeria/overview> accessed 21 January 2020

[4] World Bank Group, 'Global Economic Prospect' (*World Bank Publication*) <http://pubdocs.worldbank.org/en/235291574888055794/Global-Economic-Prospects-January-2020-Highlights-Chapter-1.pdf> accessed 20 January 2020.

[5] Gita Gopinath, 'Tentative Stabilization, Sluggish Recovery?' (*IMFBlog*, January 2020) <https://blogs.imf.org/2020/01/20/tentative-stabilization-sluggish-recovery/> accessed 21 February 2020

Legislature in the area of legislation. This cooperation has led to the signing of beneficial treaties, laws as well as drawing up of relevant policies. An appraisal of some of these legislations is provided in subsequent paragraphs.

African Continental Free Trade Area Agreement (AfCFTA Agreement)

In July 2019, Nigeria became a signatory state to the AfCFTA Agreement. The AfCFTA seeks to accelerate the political and socio-economic integration of Africa by creating a single continental market for goods and services, with free movement of capital, entrepreneurs and investments across borders.[6]The benefits of the Free Trade Area (FTA) include increase in Foreign Direct Investments (FDIs) and expertise, reduction in government spending and transfer of technology, all culminating in increased economic growth.

By signing the AfCFTA Agreement, Nigeria alongside the other signatory states have committed in principle to a progressive elimination of import duties and other non-tariff barriers on imports within Africa. This is beneficial to Nigeria's economic diversification aspirations as it provides an immediate market for export of locally manufactured products. It is important to note however that in a bid to tackle smuggling and improve internal security, Nigeria closed its borders in October 2019. This move by the Nigerian government raises questions as to Nigeria's commitment to the AfCFTA Agreement. On one hand, it is opined that the border closure would lead to increased sustainability and self-sufficiency in agricultural production. On the other hand, the closure has been described as inconsistent with Nigeria's multilateral commitments, especially regarding ECOWAS and the AfCFTA.[7]

Howbeit, it is expected that negotiations with respect to the tariff and other customs concessions will continue in 2020 in order for Nigeria to fully experience the benefit of the agreement.

[6]African Union Commission, 'CFTA- Continental Free Trade Area' (*African Union Official Website*) <https://au.int/en/ti/cfta/about> accessed 20 January 2020

[7]Linus Unah, 'Nigeria Border Closure Causes Economic shock' (*African Business Magazine,* 2 December 2019) <https://africanbusinessmagazine.com/region/west-africa/nigeria-border-closure-causes-economic-shock/> accessed 22 January 2020

Finance Act 2020

The Finance Act 2020 amends various tax laws in Nigeria and seeks to promote fiscal equity in line with global best practice. It introduces tax incentives for investments and supports Micro, Small and Medium-sized enterprises (MSMEs) in consonance with the Ease of Doing Business Reforms. Notable provisions of the Act are[8]:

i. Companies Income Tax exemption for small businesses with a turnover of less than ₦25, 000,000.00.
ii. Companies Income Tax rate of 20% for medium-sized companies with a turnover between ₦25, 000,000.00 and ₦100, 000,000.00.
iii. Introduction of early tax payment bonus – Companies that pay their tax liability early (at least 90 days before its due date) will be entitled to a bonus of 2% (medium-sized companies) and 1% (large companies) of the tax payable.
iv. Increase in Value Added Tax rate from 5% to 7.5%.
v. The creation of tax liabilities for Non Resident Companies carrying on digital activities, consultancy, technical, management or professional services in Nigeria, provided that they have “significant economic presence” in Nigeria; and profit is attributable to such activity.
vi. Withholding Tax rate of 10% is imposed on dividend distributed from petroleum operations profits.

This legislation is capable of boosting the Nigerian economy by encouraging the growth of businesses, with minimal tax interference. However, it is important to note that the amendment is not without its negative implications. For example, the increase in VAT rates would inevitably lead to a surge in the price of consumables, a burden which will inevitably be borne by consumers of such goods and services.

[8] PricewaterhouseCoopers Limited, ‘Nigeria’s Finance Bill Insights Series’ (*PwC Publication,* November, 2019) <pwc.com/ng/en/assets/pdf/finance-bill-insights.pdf> accessed 20 January 2020.

The Asset Management Corporation of Nigeria (AMCON) ACT 2019

It is envisioned that the AMCON Act 2019 will have positive and negative economic effects. On one hand, the Act is likely to facilitate effective and efficient loan recovery and save the banking sector from collapse resulting from bad loans. The advantages of the Act notwithstanding, it has been described as draconian.[9] By some provisions of the Act, AMCON is granted unfettered access to bank accounts, computer system components, and other electronic or mechanical devices of debtors for the purpose of establishing the location of funds belonging to such debtors.[10] AMCON is also empowered to impose an obligation on Federal Government Ministries, Departments and Agencies (MDAs) to seek clearance from the Corporation whenever recalcitrant debtors propose to contract with them, or before payments are made to the debtors.[11] The Act also prohibits courts of competent jurisdiction from granting any interim, interlocutory or preservative orders of attachment against funds sought to be recovered. Further, the Act provides that upon the dissolution of AMCON, unresolved eligible bank assets held by the Corporation are to be transferred by a liquidator to a government agency, or to a third party Asset Management Company for valuable consideration, or any other entity specified by the CBN.

It is arguable that the innovations of the new Act, particularly, those eliminating confidentiality and banking secrecy in order to access a debtor's records, are not likely to stand the test of time as they are in breach of a debtor's right to privacy guaranteed by the 1999 Constitution of the Federal Republic of Nigeria. This is however not the focus of this article. As far as this article is concerned, we believe that this measure taken by the government through the instrumentality of the law, to recover debts owed to AMCON, currently set at over ₦5, 000,000,000,000.00 (five trillion naira)[12] making up about 50% of Nigeria's current national budget[13] is in the right direction. It will enable effective acquisition of

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[9] Victoria Onehi, 'AMCON (Amendment No. 2) Act 2019 and its Weighty Flaws (1)' (*Pressreader*, 15 October 2019) <https://www.pressreader.com/nigeria/thisday/20191015/281887300072887> accessed 20 January 2020.
[10]AMCON (Amendment) Act 2019, s 50 A
[11]AMCON (Amendment) Act 2019, s 6(6) and 50 B 2019.
[12]'Highlights/Breakdown Of the 2020 Approved Budget' A public presentation by Mrs. Zainab Shamsuna Ahmed Honourable Minister of Finance, Budget & National Planning, Federal Government of Nigeria on 19 December, 2019.
[13] 'AMCON, ICPC Pact on Debt Collection' (*Punch Newspaper,* 22 July 2019) <https://punchng.com/amcon-icpc-pact-on-debt-collection/> accessed 21 February 2020

non-performing loans from banks and other financial institutions thereby strengthening the economy in 2020.

Federal Competition and Consumer Protection Act

Prior to the enactment of the Federal Competition and Consumer Protection Act (FCCPA) in 2019, the Investments and Securities Act (ISA) regulated competition as it related to publicly quoted companies. This was in addition to sector-specific regulations on the subject, such as the Nigerian Communications Act 2003. The FCCPA now provides a comprehensive legal framework for competition and anti-trust issues. This is an economic milestone for Nigeria as this legislation is fashioned to ensure stable market competition. Further, the Act repealed the merger provisions in the ISA 2007 which hitherto was regulated by the Securities and Exchange Commission (SEC) and placed such regulatory function on the FCCPC. Therefore, merging companies are required to obtain all necessary approvals from the FCCPC. However, based on the overlap in function in some regard, the SEC and FCCPC have signed a Memorandum of Understanding (MoU) to foster a mutually beneficial engagement and seamless operation of the mandates of both organisations.[14] This is to ensure a level playing field for the supervision of merging companies and prevent unfair market practices as pertaining to mergers. It is envisaged that a full implementation of the Act will allow for self-driven mergers of indigenous Nigerian businesses, as against mandatory mergers, with the attendant effect of improving innovation and ultimately diversifying the Nigerian economy. It is pertinent to note however, that the necessary guidelines to give effect to the Act have not been released. It is anticipated that these guidelines will be made in the year 2020.

CBN Policies and Guidelines

Given its supervisory function of controlling and administering monetary and financial sector policies of the Federal Government, the CBN has played a great role in ensuring the stability of the economy through its monetary, credit, foreign

[14] Anthony Otaru, 'FCCPC, SEC Sign MoU for Regulatory Collaboration' (*The Guardian,* 10 September 2019) <https://guardian.ng/business-services/fccpc-sec-sign-mou-for-regulatory-collaboration/> accessed 21 January 2020

trade and exchange policies. Particularly, CBN has ensured strict adherence to its list of items banned from the foreign exchange (fx) window. This CBN fx ban list creates incentives and opportunities for local import substituents, strengthening indigenous SMEs, diversifying the federation's revenue base and boosting the naira. These efforts at supporting domestic productivity in agriculture, manufacturing and oil production would ultimately lead to foreign exchange inflow.

Further, the CBN has directed Deposit Money Banks (DMBs) to have a minimum loan-to-deposit ratio (LDR) of 65%.[15] This CBN directive on LDR would significantly increase credit to the private sector, thereby creating employment and increasing tax revenues.

Ease of Doing Business Reforms

The Ease of Doing Business (EoDB) Index is a ranking system established by the WBG that objectively assesses prevailing business climate conditions across 190 countries based on a comparative analysis of prescribed indicators[16] such as starting a business, dealing with construction permits, getting electricity, registering property, getting credit, trading across borders, protecting minority investors, enforcement of contract and payment of taxes.

A high ranking on the EoDB Index means the regulatory environment in that country is more conducive to the establishment and operation of local businesses in comparison to other countries. In 2020, Nigeria ranked 131 out of 190 countries.[17] This is an improvement from 2017[18], 2018[19] and 2019[20] wherein

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[15]'CBN Mandates DMBs To Maintain Loan to Deposit Ratio of 60% Effective Sept 30, 2019' (*Proshare Website,* 4 July, 2019) <https://www.proshareng.com/news/Regulators/CBN-Mandates-DMBs-To-Maintain-Loan-To-De/45966> accessed 20 January 2020.

[16]World Bank Group, 'Ease of Doing Business Ranking' (*World Bank Official Website)* <https://www.doingbusiness.org/en/rankings> accessed 20 January 2020.

[17] World Bank Group, 'Doing Business 2020' (*World Bank Official Website*, 2019) <https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf> accessed 20 January 2020.

[18] World Bank Group, 'Doing Business 2017' (*World Bank Official Website,* 2016) <https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB17-Full-Report.pdf> accessed 20 January 2020.

[19]World Bank Group, 'Doing Business 2018' (*World Bank Official Website,* 2017) <https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2018-Full-Report.pdf> accessed 20 January 2020.

Nigeria ranked 169, 145 and 146 respectively.[21] The EoDB index cannot be overlooked because it provides an indication of how favourable an economy is for business operations and FDIs. The improvements in Nigeria's ranking in recent years and the earlier mentioned advancements in legislative and policy frameworks provide a basis for forecasting a higher ranking in 2020.

THE PERTINENT ROLE OF THE JUDICIARY

The role of the judiciary in the economic growth of a nation cannot be over-emphasized. To ensure progress, it is required that there be a well-functioning Judiciary characterised by efficient and effective adjudication of disputes. A very important role of the judiciary as it pertains to existing and prospective businesses and the economy in general is with respect to the enforcement of contracts. Investors are keen on investing in countries where legally binding contracts are efficiently enforced and respected. The fact that one of the EoDB indicators is enforcing contracts buttresses this.[22]

In line with the above, existing business owners and investors prefer express provisions in commercial contracts subjecting any future disputes that may arise to Arbitration and other forms of Alternative Dispute Resolution (ADR). Arbitration is proven to be faster, less technical and certainly convenient for parties desiring to preserve the commercial relationship between them. It is believed that the reason business partners enter into arbitration agreement is to achieve a binding and enforceable award. This is because without enforcement, the award will be valueless.[23] However, the assistance of the national courts is necessary for the enforcement of arbitral awards therefore leading us in a full cycle of delay.

Also, it is observed that many commercial contracts provide for dispute resolution or arbitration to be conducted outside Nigeria. This trend has greatly hampered

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[20]World Bank Group, 'Doing Business 2019' (*World Bank Official Website,* 2018) <https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf> accessed 20 January 2020.

[21] World Bank Group, 'Ease of Doing Business Ranking' (n 16).

[22] World Bank Group, 'Doing Business: Measuring Business Regulations' (*World Bank Official Website*) <https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts/why-matters> accessed 21 January 2020.

[23]A. A Asouzu, 'The Adoption of the UNICITRAL Model Law in Nigeria, Implication of the Recognition and Enforcement of Arbitral Awards' (1999) *Journal of Business Law* 185.

the growth of Nigeria as a foremost arbitration centre in Africa[24] as well as robbed the Nigerian judicial system of the opportunity to develop its legal jurisprudence by resolving disputes in technical and novel businesses.[25] The uncertainty in Nigerian law also poses a challenge to both lawyers and litigants seeking resolution of disputes. In particular, lawyers seeking to offer business advisory services to international clients unfamiliar with the Nigerian business environment are faced with this uncertainty. Although the development of law is pertinent to solving current societal issues, however, the Nigerian law and the various possible interpretations given by the court can be unpredictable.

It is therefore imperative that the judiciary as a major stakeholder in national development, places emphasis on an effective mode for the resolution of commercial disputes and enforcement of binding contracts. We are optimistic that the adoption of good practices that promote quality and efficiency in the court system will make Nigeria an attractive investment hub.

SOCIO-ECONOMIC FACTORS

Consumer Credit

Consumer credit is described as an unsecured personal debt for the purchase of goods and services.[26] The Nigerian economy is largely cash based, characterized by a weak credit culture, which has contributed to the slow pace of economic development over the years.[27] In a bid to improve consumer lending, the CBN introduced a clause that compels borrowers to repay their loans within the stipulated term.[28] Nigeria's current Monetary Policy Rate (MPR) is 13.5%,[29] with banks giving loans at much higher interest rates. This high interest rate is discouraging for consumer lending, particularly, small and medium businesses. It

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[24]P.O Idornigie, *Challenges to Arbitration Practice in Nigeria* (Nigeria Institute of Advanced Legal Studies Nigeria).

[25]A Olawoyin, 'Enforcement of Foreign Judgments in Nigeria, Statutory Dualism and Disharmony of Laws' (2014) 10 (1) *Journal of Private International Law*.

[26]Julia Kagan, 'Consumer Credit' (*Investopedia,* 20 August 2019) <https://www.investopedia.com/terms/c/consumercredit.asp> accessed 21 January 2020.

[27]Euromonitor International, 'Consumer Lending In Nigeria'<https://www.euromonitor.com/consumer-lending-in-nigeria/report> accessed 21 January 2020.

[28]Obinna Chima, 'Nigeria: A Lever for Consumer Lending' (*This Day Live,* 28 August 2019) <https://www.thisdaylive.com/index.php/2019/08/28/a-lever-for-consumer-lending/#respond> accessed 21 February 2020.

[29]'Nigeria Interest Rate' (*Trade Economics, 2020)* <https://tradingeconomics.com/nigeria/interest-rate> accessed 21 January 2020.

is projected that with Nigerian financial institutions taking greater interest in SME financing, it is expected that there will be increased investment rounds by banks, private equity investors and venture capitalists, both local and international in the year 2020.

Climate Change

In line with global efforts to find practical and cost-efficient solutions to the negative effects of climate change, the Nigerian Stock Exchange (NSE) introduced Green Bonds to the Nigerian Stock Market.[30] Green Bonds are bonds specifically earmarked for environmental project, such that finance is raised from fixed income investors to support innovations that seek to mitigate climate change, particularly those aimed at energy efficiency, pollution prevention, sustainable agriculture, fishery and forestry, clean transportation, sustainable water management and the cultivation of environmentally friendly technologies. Therefore, in a bid to pursue a green economy, it is believed that Nigeria will formulate and implement more policies in consonance with global best practices such as the Climate Change Bill before the National assembly.

Break out of Epidemics

Infectious diseases and epidemics constitute a significant threat to economic growth and stability. The break out of epidemics such as Ebola, Lassa fever and the most recent Corona virus can result in decreased trade, deterrence of FDIs and decline in travel and tourism to regions affected by such outbreaks and an overall decline in Nigeria's economic growth. It is important to note that there has been no recorded case of the Corona Virus in Nigeria but Investors may have cause to worry about the exposure of many Nigerians to China, the source of the deadly viral outbreak as well as countries like the United Kingdom, The United States, Australia, Canada, France, Germany, India and a host of other countries who have recorded cases of the infection. It is indeed important for the Nigerian Government to be deliberate in the prevention of such epidemic outbreak in

[30]'Federal Government of Nigeria: Green Bonds- Frequently Asked Questions' <https://www.chapelhilldenham.com/public/assets/campaign/Green%20Bonds%20FAQ%2006022019.pdf> accessed 20 January 2020.

Nigeria by formulating policies and investing in reliable public health surveillance in human and animal populations, improved sanitation as well as equipped healthcare infrastructure to effectively handle an outbreak, if any. This is because the negative impact of such epidemic on the Nigerian economy is enormous.

Global Factors

Global factors such as the exit of Britain from the European Union (Brexit), China Trade wars and unrest in the Middle East hold important consequences for the Nigerian economy. Following the escalation of the U.S.-Iran conflict triggered by the assassination of Iranian General, Qasem Soleimani by an American airstrike, oil prices rose above $70 on Monday, 6 January, 2020.[31] The tension between these giant oil exporters could, therefore, enable the achievement of the estimated 2.18 billion barrels per day (bpd) at a price of $57 per barrel projected by the Nigerian 2020 Budget.[32] On the other hand, Brexit and the US-China trade war create a downside for the Nigerian economy. For instance if Brexit remains unresolved and the British economy experiences a slowdown, the value and volume of Nigeria's exports to Britain will decline and foreign exchange earnings to the non-oil sector is likely to reduce, further impacting the naira exchange rate and negatively impacting the inflation rate.[33]

Terrorism and Insecurity

Ethnic and religious violence, as well as communal clashes in different parts of Nigeria have disrupted economic activities and discouraged foreign investments. Undoubtedly, an insecure environment is unattractive to investors.[34] Also, agricultural growth remains below potential due to continued insurgency in the

[31]Ajifowoke Micheal, 'Ethiopia Offers a Lucrative but Tough Market for PAGA' (*Ventures,* 23 January 2020) <http://venturesafrica.com/ethiopia-offers-a-lucrative-but-tough-market-for-paga/> accessed 21 February 2020.
[32]'Highlights/Breakdown Of the 2020 Approved Budget' A public presentation by Mrs. Zainab Shamsuna Ahmed Honourable Minister of Finance, Budget & National Planning, Federal Government of Nigeria on 19 December, 2019 <https://www.budgetoffice.gov.ng/index.php/highlights-breakdown-of-the-2020-approved-budget?task=document.viewdoc&id=736> accessed 20 January 2020.
[33]Pricewaterhousecoopers Limited, 'The Global Trinity Threats' (*Pwc Publications - Nigeria Economic Alert,* July 2019) <https://www.pwc.com/ng/en/assets/pdf/economic-alert-july-2019.pdf> accessed 20 January 2020.
[34]O. Ewetan and E. Urhie, 'Insecurity and Socio-Economic Development in Nigeria' (2014) 5 (1) *Journal for Sustainable Development Studies* 53.

North-East and ongoing farmer-herdsmen conflicts. The frequent Fulani herdsmen and farmers crisis has had a negative impact on the nation's socio-economic development. It is expected that concerted efforts will be made towards improving the nation's internal security in the year 2020.

CONCLUSION

While the efforts made by the Nigerian government towards achieving sustainable economic development are laudable, there are glaring challenges facing business owners daily. We implore existing and prospective entrepreneurs and investors to take maximum advantage of incentives available under the legislations and policies discussed. It is anticipated that in the year 2020, the CBN would release regulations for FINTECH in Nigeria thereby significantly reducing associated risks and increasing financial inclusion. In addition, it is hoped that the long overdue Companies and Allied Matters Act (Amendment) and Petroleum Industry Bills will be passed.