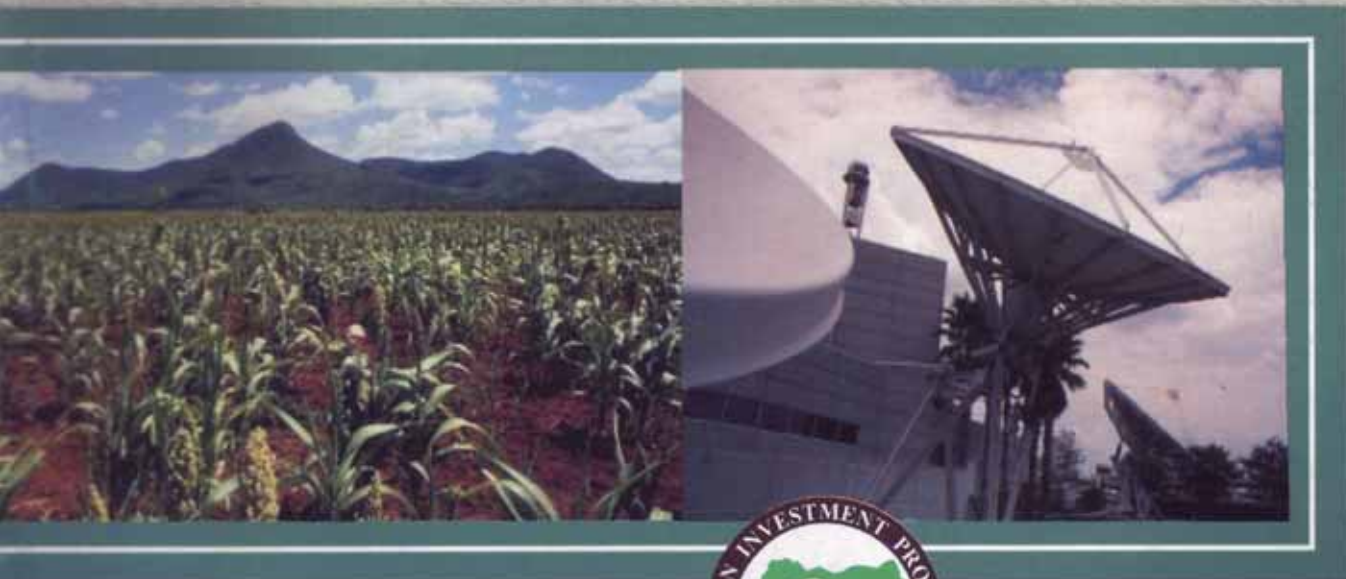




INVESTORS' GUIDE TO NIGERIA



NIGERIAN INVESTMENT PROMOTION COMMISSION

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INVESTORS'
GUIDE TO NIGERIA



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Federal Republic of Nigeria.



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FOREWORD

In the last six years since the return to civilian democracy, Nigeria has stepped up efforts at improving the investment environment in order to attract investment, both foreign and indigenous. Some of the problems identified by this government, on assumption of office, as hindrances to the flow of investment include unsteady power supply, inconsistent and unfriendly investment policies and legislatures, poor infrastructure, ports congestion, corruption and financial crimes, among others.

The government has taken bold steps to address these problems, and it gives me pleasure to declare that appreciable progress has been made in this direction. For instance, the on-going reforms in the power sector have led to increase in power generated from 1500mw in 1999 to a little over 3000 mw in 2005. We are optimistic that the target of 10,000 mw by 2007 would be met. This would be more than sufficient to meet the energy needs of both business and the household.

The deregulation of the telecommunications industry, where private operators have been licensed to operate side by side with the publicly owned corporation, (NITEL, which is also slated for privatization) has led to an unprecedented increase in teledensity from a paltry 0.04 in 1999 to over 9.0 in 2004. In fact, the Nigerian telecommunications industry has been described as the fastest growing telecommunication industry in the world.

Other measures that have contributed significantly to the improvement in the investment environment include:

- The repeal of all laws that impede investment into Nigeria. These include the Nigerian Enterprises Promotion Act (NEPA) (Otherwise known as the Indigenisation Act) of 1972 as amended in 1977 and 1989, the Industrial Development Coordination Committee (IDCC) Act 36 of 1988, and the state controlled Foreign Exchange Market regime. All these have been replaced with the Nigerian Investment Promotion Act No.16 of 1995 as amended and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act No.17 of 1995. Enactment of the Economic and Financial Crimes Commission Act and the Independent Corrupt Practices Act, both of which aimed at combating financial crimes and corrupt practices respectively.
- Reforms in the Public Sector, which are aimed at ensuring an improved service delivery.
- Privatization of public enterprises, thereby making the private sector the engine of growth while government concentrates on the creation of an investment friendly environment.

These reforms are anchored on the National Economic Empowerment and Development Strategy (NEEDS) whose objectives are:

- **Reforming Government and Institutions:** The goal is to restructure, right-size, re-professionalize and strengthen government and public institutions to deliver effective services to the people.
- **Growing the private sector:** NEEDS is a development strategy anchored on the private sector as the engine of growth for wealth creation, employment generation and poverty reduction. The government is the enabler, the facilitator,

and the regulator. The private sector is the executor, the direct investor and manager of businesses.

- **Implementing a social charter:** NEEDS is about people: it is about their welfare, their health, education, employment, poverty-reduction, empowerment, security and participation.
- **Diversification of the economic base:** this is aimed at reducing the relative dominance of the oil sector and enhancing the capacity of other sectors where the country has comparative advantage.
- **Infrastructure development** especially electricity and transportation.

In order to consolidate on the gains of NEEDS and other reforms, government has embarked on the repositioning of critical government agencies among which is the Nigerian Investment Promotion Commission (NIPC), the Federal agency established for promoting investment in Nigeria.

Complimenting the efforts of NIPC in this direction, is the **Presidential Committee on Problems of Investors in Nigeria**. The Committee is made up of key stakeholder agencies of government involved in investment facilitation and management of investment incentives. It is expected that with the setting up of the Committee, all administrative bottlenecks and barriers to investment would soon become things of the past.

The NIPC, in anticipation of the increased interest by investors to invest in Nigeria and the need to provide such investors with up to date information has therefore spared no effort in updating this publication titled "**Investors' Guide to Nigeria**". The publication provides guide on the country, its infrastructure and all that an investor who wish to invest in Nigeria would need to know.

While looking forward to receiving your investment, you are assured my warmest regards.

Alhaji Atiku Abubakar GCON
Vice President
Federal Republic of Nigeria

PREFACE

The increasing efforts of developing economies to attract and stimulate investment have led, over the years, to the establishment of investment promotion agencies (IPAs) or similar government institutions with the prime function of stimulating domestic investment and attracting foreign investment. The Nigerian Investment Promotion Commission (NIPC) was created specifically for this purpose. Furthermore, NIPC also has the responsibility to ensure the realisation of the maximum benefits of the policies of liberalisation and deregulation of the national economy. Our vision at the NIPC is to be the foremost investment agency and the largest single contributor to Nigerian economic transformation. We intend to achieve this by proactively positioning and promoting Nigeria as the preferred investment destination.

I need not belabour the point that Nigeria is Africa's most dynamic economy and has a vast array of investment opportunities. Local and foreign investors are encouraged to take advantage of these opportunities for mutual benefit of both stakeholders in the economy, the investors and the country. The Federal Government has been working hard to make the environment even more investment friendly through enacting of business facilitatory legislation and reform of existing structures and institutions for investment.

The NIPC was established as an agency for investors. It remains committed to this mandate to execute investor-friendly programmes and offer facilities for investment promotion and facilitation in Nigeria. It is being repositioned to make its vision and mission relevant to the nation's investment needs.

The major objective of the publication of this brochure "**Investors' Guide To Nigeria**" is, therefore, to bring together for the investing public, information on investment opportunities, relevant investment policies, legislation, incentives and other beneficial information. The Guide discusses, under fourteen chapters, various aspects of government efforts at promoting investment. Appendix I contains the list of Pioneer Industries/Products. Appendix II provides information on items prohibited for importation while Appendix III is a catalogue of some useful web addresses that will facilitate communication between investors and relevant agencies of government in Nigeria.

The need to consistently showcase and beam to local and foreign investors alike the vast investment opportunities that abound in the country remains a cardinal pursuit of the NIPC. The publication of the maiden issue of this Guide in June 1999 was targeted at addressing this need at a time when Nigeria was returning to democratic rule. This fourth edition of the Investors' Guide, therefore, is aimed at highlighting new aspects of the Nigerian economy, which have emerged since the dawn of democracy. It is hoped that the information contained in this brochure would continue to provide useful guide and encourage the inflow of investment into the country.

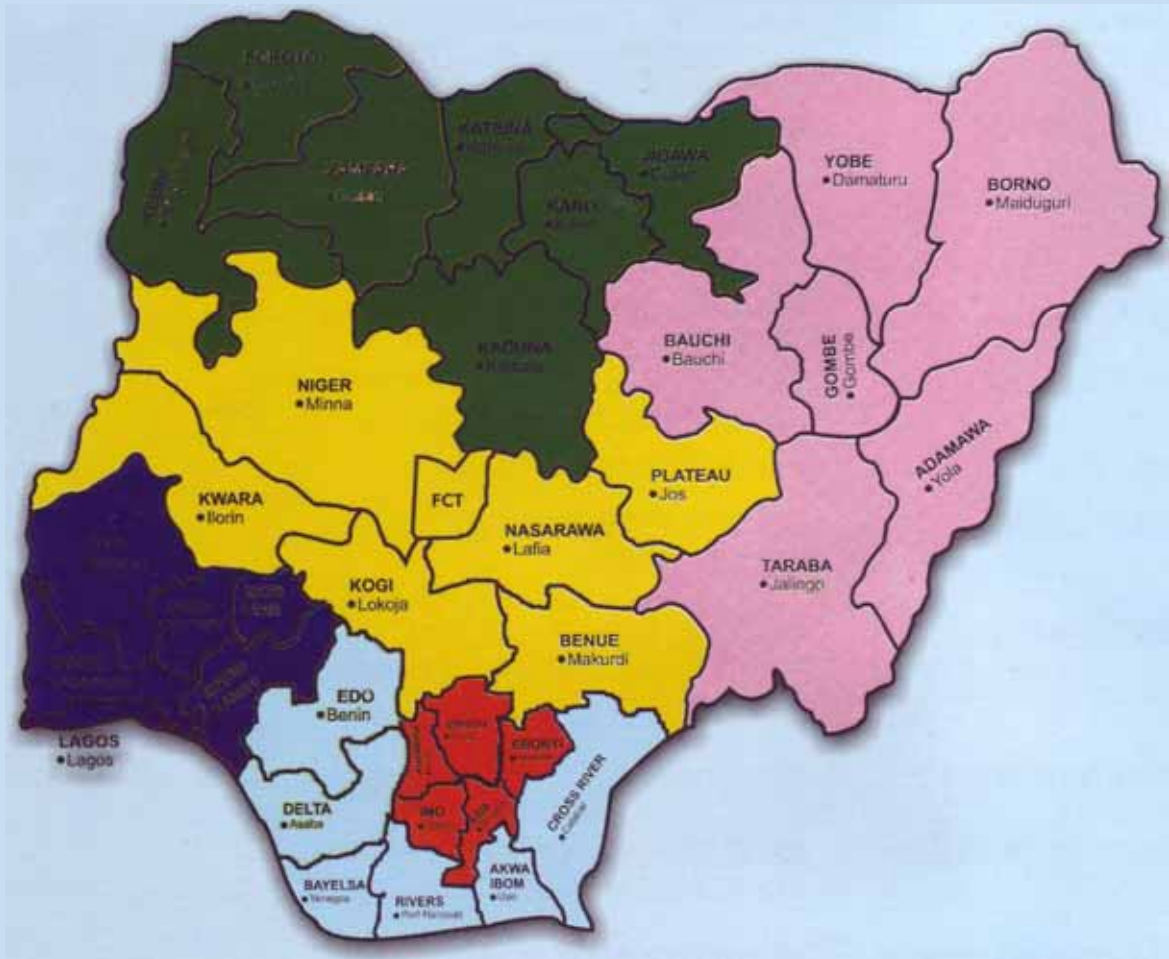
The content of this Guide from the onset is a collective effort in the true sense of the word. We have greatly benefited from the materials received from various Ministries,

Parastatals and other Agencies of government. These are fully acknowledged, but the responsibility for the information contained therein is entirely ours.

Felix Ohiwerie
Chairman, NIPC
Abuja, Nigeria

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CHAPTER ONE :

COUNTRY PROFILE

GEOGRAPHY

Location:

Western Africa, bordering the Gulf of Guinea, between Benin and Cameroon

Geographic coordinates:

10° N, 8° E

Area:

Total: 923,768 sq km

Land: 910,768 sq km

Water: 13,000 sq km

Coastline: 853 km

Maritime claims:

 Territorial sea: 12 nm

 Exclusive economic zone: 200 nm

 Continental shelf: 200-m depth or to the depth of exploitation

Climate:

Equatorial in the south, Tropical in the center, & Arid in the north

Elevation Extremes:

Lowest point: Atlantic Ocean 0 m Highest
point: Chappal Waddi 2,419 m

Natural Resources:

Natural gas, petroleum, tin, iron ore, coal, limestone, niobium, lead, zinc, bitumen, bauxite, arable land, etc.

Land use:

Arable land: 31.29%

Permanent crops: 2.96%

Others: 65.75% (2001)

Irrigated land: 2,330 sq km

Natural Hazards:

Periodic droughts; flooding

Environment - current issues:

Soil Degradation; rapid deforestation; urban air and water pollution; desertification; oil pollution - water, air, and soil; has suffered serious damage from oil spills; loss of arable land; rapid urbanization

PEOPLE

Population: 128,771,988 (**July 2005 est.**)

Age Structure:

0-14 years: 42.3% (male 27,466,766/female 27,045,092)

15-64 years: 54.6% (male 35,770,593/female 34,559,414)

65 years and over: 3.1% (male 1,874,157/female 2,055,966) (2005 est.)

Median age:

Total: 18.63 years

Male: 18.71 years

Female: 18.55 years (2005 est.)

Population Growth Rate: 2.37% (2005 est.)

Birth Rate: 40.65 births/1,000 population (2005 est.)

Death Rate: 17.18 deaths/1,000 population (2005 est.)

Net migration Rate: 0.27 migrant(s)/1,000 population (2005 est.)

Infant Mortality Rate:

Total: 98.8 deaths/1,000 live births

Male: 105.69 deaths/1,000 live births

Female: 91.7 deaths/1,000 live births (2005 est.)

Life Expectancy at Birth:

Total population: 46.74 years

Male: 46.21 years

Female: 47.29 years (2005 est.)

Total Fertility Rate: 5.53 children born/woman (2005 est.)

HIV/AIDS - adult prevalence rate: 5.4% (2003 est.)

HIV/AIDS - people living with HIV/AIDS: 3.6 million (2003 est.)

HIV/AIDS - deaths: 310,000 (2003 est.)

Major Infectious Diseases:

Degree of risk: very high

Food or waterborne diseases: bacterial and protozoal diarrhea, hepatitis A, and typhoid fever

Vectorborne disease: malaria

Respiratory disease: meningococcal meningitis

Aerosolized dust or soil contact disease: one of the most highly endemic areas for Lassa fever (2004)

Ethnic Groups:

Nigeria, Africa's most populous country, is composed of more than 250 ethnic groups; the following are the most populous and politically influential: Hausa and Fulani, Yoruba Igbo (Ibo), Ijaw, Kanuri, Ibibio, Tiv.

Religions: Muslim, Christian, indigenous beliefs

Languages: English (official), Hausa, Yoruba, Igbo (Ibo), Fulani

Literacy:

Definition: age 15 and over can read and write

Total population: 68%

Male: 75.7%

Female: 60.6% (2003 est.)

GOVERNMENT**Country name:**

Conventional long form: Federal Republic of Nigeria

Conventional short form: Nigeria

Government Type: Federal Republic

Capital: Abuja

Administrative Divisions:

36 states and 1 territory;

North West Zone: Jigawa, Kano, Katsina, Kebbi, Sokoto, Zamfara

North East Zone: Adamawa, Bauchi, Borno, Gombe, Taraba, Yobe,

North Central Zone: Benue, Kaduna, Kogi, Kwara, Nassarawa, Niger, Plateau

South East Zone: Abia, Anambra, Ebonyi, Enugu, Imo,

South West Zone: Ekiti, Lagos, Ogun, Ondo, Osun, Oyo,

South South Zone: Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Rivers,

Territory: Federal Capital Territory

Independence: 1 October 1960

National Holiday: Independence Day (National Day), 1 October (1960)

Constitution: Federal Constitution of May 1999

Legal System:

Based on English common law, Islamic Shariah law (in 12 northern states), and traditional law

Suffrage: 18 years of age; universal

Executive Branch

Head of Government: President Olusegun OBASANJO (since 29 May 1999)

Cabinet: Federal Executive Council

Elections: President is elected by popular vote for no more than two four-year terms; election last held 19 April 2003 (next to be held in 2007)

Legislative Branch:

Bicameral National Assembly consists of Senate (107 seats, members elected by popular vote to serve four-year terms) and House of Representatives (346 seats, members elected by popular vote to serve four-year terms)

Judicial Branch:

Supreme Court (judges appointed by the President); Federal Court of Appeal (judges are appointed by the Federal Government on the advice of the Judicial Advisory Committee)

Political Parties:

Alliance for Democracy (AD); All Nigeria Peoples' Party (ANPP); All Progressives Grand Alliance (APGA); National Democratic Party (NDP); Peoples Democratic Party (PDP); Peoples Redemption Party (PRP); Peoples Salvation Party (PSP); United Nigeria Peoples Party (UNPP), JUSTICE Party (JP), Action Alliance Party (AAP)

International Organisation Participation:

ACP, AfDB, AU, C, ECO WAS, FAO, G-15, G-24, G-77, IAEA, IBRD, ICAO, ICC, ICCt, ICFTU, ICRM, IDA, IFAD, IFC, IFRC, IHO, ILO, IMF, IMO, Interpol, 10C, IOM, ISO, ITU, MIGA, MINURSO, MONUC, NAM, OIC, ONUB, OPCW, OPEC, PCA, UN, UNAMSIL, UNCTAD, UNESCO, UNHCR, UNIDO, UNITAR, UNMEE, UNMIK, UNMIL, UNMOVIC, UNOCI, UPU, WCO, WFTU, WHO, WIPO, WMO, WTO

ECONOMY

Economy - overview:

Nigeria, endowed with natural resources – huge deposit of oil & gas, bitumen and other mineral resources, has had unpleasant experience of political instability, corruption, and poor macroeconomic management. Basic socio-economic infrastructure is also inadequate. The present administration, on assumption of office in May 1999, was convinced of the need for a drastic departure from the 'business as usual' syndrome in the polity of the nation. Major steps had therefore been taken to reform both the investment environment and the act of doing business in the economy. Government is also implementing a strategic shift of the economy from overdependence on the capital-intensive oil sector, which provides 20% of GDP, 95% of foreign exchange earnings, and about 65% of budgetary revenues. The largely subsistence agricultural

sector is being rapidly empowered to engineer a swift shift to mechanised farming capable of sustaining export and local consumption. Government has shown great commitment to the implementation of a market-oriented economy. The private sector is being empowered to lead in the running of the economy. All erstwhile monopoly sectors have been totally deregulated to allow for private investment. The Banking sector is also being re-capitalised to create modern and big institutions capable of sustaining long time investment. In the power and energy sector, government began deregulating fuel prices, announced the privatisation of the country's four oil refineries, unbundled the power generating authority and institutionalised Independent Power Projects (IPPs). All these reforms are based on the National Economic Empowerment and Development Strategy (NEEDS), a domestically designed and run program that aims at poverty reduction, and facilitate growth for fiscal and monetary management.

As a confirmation of the confidence in the management of the economy by the administration, Nigeria's external creditors recently agreed to write-off 60% of Nigeria's external debt while the balance would be bought back at discount.

GDP

Purchasing power parity - \$125.7 billion
(2004 est.)

GDP - real growth rate: 6.1% (2004 est.)

GDP - composition by sector:

Agriculture: 36.3%

Industry: 30.5%

Services: 33.3%

Investment (gross fixed): 18% of GDP
(2004 est.)

Population below poverty line: 54.4%
(2004)

Inflation rate (Dec-over-Dec): 10%
(2004)

Labour force:
55.67 million (2004 est.)

Labour force - by occupation

Agriculture 70%

Industry 10%

Services 20% (1999 est.)

Agriculture - products:

Cocoa, Peanuts, Palm oil, Corn, Rice, Sorghum, Millet, Cassava (tapioca), Yams, Rubber; Cattle, Sheep, Goats, Pigs; Timber; Fish





Industries:

Crude oil, Coal, Tin, Columbite, Palm oil, Peanuts, Cotton, Rubber, Wood, Hides and Skins, Textiles, Cement and other construction materials, Food Products, Footwear, Chemicals, Fertilizer, Printing, Ceramics, Steel, Small commercial ship construction and repair.

Main Industrial Complexes

Refineries and petrochemicals: Kaduna, Warri, Port-Harcourt, Eleme,
 Iron & Steel: Ajaokuta, Aladja, Oshogbo, Katshina, Jos,
 Fertilizer: Onne- Port Harcourt, Kaduna, Minna, Kano,
 Liquefied Natural Gas: Bonny
 Aluminum Smelter: Ikot Abasi, Port Harcourt
 Machine Tool: Oshogbo



Manufacturing capacity Utilisation:
 45% (2004)

Energy

Electricity

Installed Generating Capacity:

PHCH Plc Plants:
 5,610MW (2004)

IPP Plants:
 896MW (2004)

Actual Generation:
 4000MW (2004) Estimated

Daily Demand:

5000MW (2004)

Actual Average Daily Demand Met:
 3000MW (2004)

Exports: 30 million kWh (2002)

Imports: 0 kWh (2002)

Oil

Production: 2.356 million bbl/day (2004 est.)



Consumption: 275,000 bbl/day (2001 est.)

Exports: NA

Imports: NA

Proven reserves: 34 billion bbl (2004 est.)

Natural Gas

Production: 15.68 billion cu m (2001 est.)

Consumption: 7.85 billion cu m (2001 est.)

Exports: 7.83 billion cu m (2001 est.)

Imports: 0 cu m (2001 est.)

Proven reserves: 4.007 trillion cu m (2004)

Balance of Payment

Current account balance: \$5.228 billion (2004)

Export: \$33.99 billion f.o.b. (2004) Export commodities: petroleum and petroleum products 95%, cocoa, rubber, etc.

Export - Partners:

US 48.2%, India 8.1%, Spain 7.4%, Brazil 5.5%, Japan 4.1% (2004) Imports: \$17.14 billion f.o.b. (2004)

Import commodities: machinery, chemicals, transport equipment, manufactured goods, food and live animals

Import - Partners:

US 9.1%, China 8.8%, UK 8.7%, Netherlands 6.3%, France 6.1 %, Germany 5.7%,

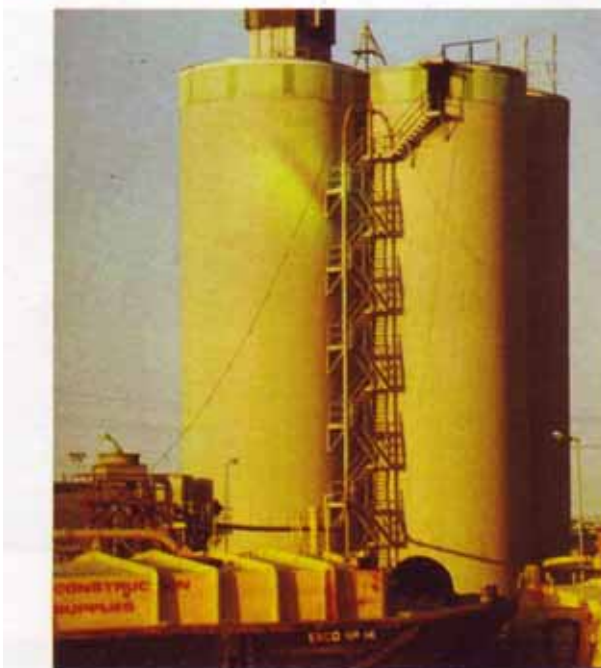
Italy 4.7% (2004)

Reserves of foreign exchange & gold: \$14.71 billion (2004 est.)

Debt - external: \$30.55 billion (2004 est.)

Economic aid - recipient: IMF \$250 million (1998)

External Reserves – US\$16,955million





Currency: Naira (NGN)

Currency code: NGN

Exchange rates: Naira per US dollar – 140.8 (2004), 141.4 (2003), 137.8 (2002), 133.0 (2001), 111.1 (2000)

Fiscal year: Calendar year

COMMUNICATIONS

Telecommunications

Telephones – Fixed lines in use: 1,093,925 (Jan 2005)

Telephones - mobile cellular: 9,950,000 (Jan 2005)

International: country code - 234; satellite earth stations - 3 Intelsat (2 Atlantic Ocean and 1 Indian Ocean); fiber optic submarine cable (SAT-3/WASC) provides connectivity to Europe and Asia

Internet Connectivity

Internet country code: .ng Internet hosts: 1,142 (2004) Internet users: 750,000 (2003)



TRANSPORTATION

Railways

Total: 3,798km

Narrow gauge: 3,505 km 1.067-m gauge

Standard gauge: 293 km 1.435-m gauge (2004)

Road

Highways

Total: 194,394 km

Paved: 80,197km (including 2,234km of expressways)

Unpaved: 90,456km (2004 est.)



Coastal, Inland Waterways and Marine Services

Waterways:

8,600 km (Niger and Benue rivers and smaller rivers and creeks) (2004)

Ports and Harbors:

Calabar, Lagos, Onne, Port Harcourt, Sapele, Warri

Merchant Marine:

Total: 46 ships (1,000 GRT or over)
327,808 GRT/608,076 DWT

By type: cargo 5, chemical tanker 6, combination ore/oil 1, liquefied gas 1, passenger/cargo 1, petroleum tanker 31, refrigerated cargo 1

Foreign-owned: 3 (Norway 2, Pakistan 1)
Registered in other countries: 25 (2005)

Pipelines:

Condensate 105 km; gas 1,896 km; oil 3,638 km; refined products 3,626 km (2004)

Aviation Services

Total Number of Airports: 70 (2004)

International Airports: Lagos, Abuja, Kano, Port Harcourt, & Enugu Airports - with paved runways:

Total: 36

Over 3,047m: 7

2,438 to 3,047m: 11

1,524 to 2,437m: 9

914 to 1,523m: 6 Under

914m: 3 (2004)

Airports - with unpaved runways:

Total: 34

1,524 to 2,437m: 3

914 to 1,523m: 13 Under

914m: 18 (2004)

Heliports: 1 (2004)



TRANSNATIONAL ISSUES

Fight Against Corruption: Enacted legislation – Independent Corrupt Practices Commission Act 2001.

Fight Against Financial and Economic Crimes: Enacted legislation – Economic and Financial Crimes Commission Act 2004.

Alternate Dispute Resolution: The country has institutionalised Alternative Dispute Resolution Mechanism for settlement of business and investment disputes. •

INTERNATIONAL IMAGE

The end of military rule in the country in May 1999 marked a big leap into a new dawn for the largest congregation of the black race within a political entity. The country had since been readmitted into the Commonwealth of Nations and had infact chaired the organisation. The country had also had the honour and privilege of being the chairman of the African Union, and Chairman, Economic Community of West African States (ECOWAS). All these are clear indication of the acceptability of the nation in the international community.

MAIN THRUST OF NIGERIA 'S TRADE AND INDUSTRIAL POLICY

Nigeria's current industrial policy thrust is anchored on de-regulation of the economy and Government's dis-engagement from activities which are private-sector oriented, leaving Government to play the role of facilitator, concentrating on the provision of incentives, policy and infrastructure that are necessary to enhance the private sector's role as the engine of growth. The industrial policy is intended to: -

- generate productive employment and raise productivity;
- increase export of locally manufactured goods;
- create a wider geographical dispersal of industries
- improve the technological skills and capability available in the country; increase the local content of industrial output by looking inward for the supply of basic and intermediate inputs;
- attract direct foreign investment; increase private sector participation.

The Banking and Finance sectors have been stabilised and continue to experience phenomenal growth. With the current reforms going on in the banking sector, Nigerian banks are expected to become competitive and competent players in the global financial system. The Investment and Securities Act (ISA) in operation, consolidates capital market laws and regulations into a single code.

All existing laws that inhibit competition in certain sectors of the Nigeria economy have been repealed. Consequently, with the promulgation of the Public Enterprises Promotion and Commercialisation Act, private sector investors (including non-Nigerians) are now free to participate in the areas of telecommunications, electricity generation, exploration of petroleum, export refineries, coal and bitumen exploration, hotel and tourism, among others.

CHAPTER TWO:

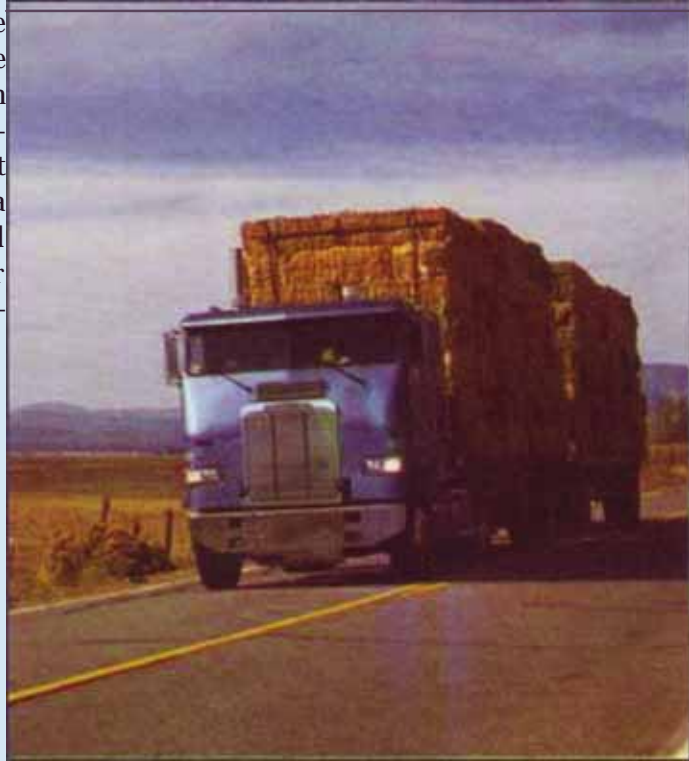
INFRASTRUCTURE

2.1. TRANSPORT

Government realises that safe and efficient transportation systems are vital to the nation's continued economic development. It

does not only play a key role in the nation's capacity to participate in the global economy, but also crucial in ensuring the well being of its communities and people. Government Policy Thrust is therefore directed at a revitalised, modernised, dynamic and sustainable transport sector through Public-Private Sector partnership.

Economic factors and national political considerations over the years, has led to the dominance of the public sector in providing invertible resources for development of the sector. Thus, Government assumed responsibilities for the provision of infrastructural facilities, allocation of financial resources, institution of regulatory framework and operation and provision of transport services.



Government intends to privatise the transportation sector in line with the Transportation Master Plan without abdicating its responsibility of retaining the core values of social goals, which are not amenable to market forces. Government will seek greater involvement of the private sector in management and financing of transportation infrastructure- air, railway, roads, ports, inland waterways.

The National Transport Policy, which gave rise to the Transport Master Plan, adopts an inter-modal, integrated, holistic, reinforcing and organic system of approach for the development of the sector. The approach took into consideration the needs of the people- considering that about 85% of Nigerians live in the rural areas, the relevant response to their needs would be a Mass Transit System for example rail- and government is not shying away from this. Opportunities therefore abound for investors who wish to engage in mass transportation business in any of the modes of transportation.

Nigeria's transportation network was potentially one of the best in Africa, featuring an extensive system of paved highways, railroads, airports, and ports

2.1.1. COASTAL, INLAND WATERWAYS & MARITIME TRANSPORT

Maritime Services

- i. Self-run Terminal
- ii. Ultra-modern Multipurpose Bulk terminal
- iii. Specialised Trans-shipment
- iv. Management and Maintenance of cargo handling plants equipment terminal on purely commercial basis
 1. Ship acquisition/Procurement
 2. Joint Venture with Nigerian indigenous shipping lines
 3. Ship building and repairs.

Inland Water Ways Transport

- i. Investment in the rehabilitation and modernisation of the National Inland Waterways Authority (NIWA) dockyards in Warri and Lokoja.
- ii. Operation of ferries along the NIWA networks connecting creeks and rivers
- iii. Provision of navigational aids and communicational equipment
- iv. Purchase/Ownership of various categories of operational vessels

Coastal and Inland Shipping

Nigeria is blessed with a coastline of about 870km and about 3,000 km of inland waterways. The country is equally blessed with enormous natural resources which economic value in terms of foreign earnings is directly related to the maritime component. Oil & Gas sector is presently the predominant sector in Nigeria short sea trade and is estimated to constitute about 95% of coastal and inland shipping while fishing trawlers and break bulk carriers make up the remaining 5%. This presents enormous coastal trade opportunities for shipping companies in Nigeria.

In order to develop this viable operation, the Coastal and Inland Shipping (Cabotage) Act 2003 was enacted. The Act is part of the deliberate drive by government to create opportunities for increased Nigerian participation in all sectors of the economy.

Port Services

The Nigerian Ports Authority (NPA) was established in 1984 to provide an integrated approach to national port administration. The major ports in Nigeria are: Apapa & Tin Can Island (Lagos State), Port Harcourt (Rivers State), Onne (specialised port for oil & gas, Rivers State), Warri (Delta State), Calabar (Cross River State), Roro (Rivers State).

The establishment of the rightful ownership of goods received at the ports brings into focus a number of procedures, documentation and the duty to safeguard the consignments until they are delivered to the owners. In consonance with its objectives, government has put in place, the following reforms to achieve high productivity and user-friendly environment to attract traffic to the seaports:

- Replacement and modernisation of obsolete port handling equipment: new

CHAPTER FOUR:

FOREIGN INVESTMENT REQUIREMENTS AND PROTECTIONS

4.1. Principal Laws on Foreign Investments

The principal laws regulating foreign investments in Nigerian are:

- a. the Nigerian Investment Promotion Commission Act No.16 of 1995; and
- b. the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act No.17 of 1995.

4.2. Basic Functions and Powers of NIPC As Prescribed by Act 16 of 1995

The Nigerian Investment Promotion Commission (NIPC) is an Agency of the Federal Government with perpetual succession and a common seal, which is specially established, among other things, to:

- (a) co-ordinate, monitor, encourage and provide necessary assistance and guidance for the establishment and operation of enterprises in Nigeria ;
- (b) initiate and support measures which shall enhance the investment climate in Nigeria for both Nigerian and non-Nigerian investors;
- (c) promote investments in and outside Nigeria through effective promotional means;
- (d) collect, collate, analyse and disseminate information about investment opportunities and sources of investment capital and advise on request, the availability, chance or suitability of partners in joint-venture projects;
- (e) register and keep records of all enterprises to which the NIPC Act legislation applies;
- (f) identify specific projects and invite interested investors for participation in those projects;
- (g) initiate, organise and participate in promotional activities such as exhibitions, conferences and seminars for the stimulation of investments;
- (h) maintain liaison between investors and Ministries, government departments and agencies, institutional lenders and other authorities concerned with investments; provide and disseminate up-to-date information on incentives available to investors;
- (j) assist incoming and existing investors by providing support services;
- (k) evaluate the impact of the Commission on investment in Nigeria and recommend appropriate remedies and additional incentives;
- (l) advise the Federal Government on policy matters, including fiscal measures designed to promote the industrialisation of Nigeria or the general development of the economy; and
- (m) perform such other functions as are supplementary or incidental to the attainment of the objectives of NIPC Act.

4.3. Investment Features of the Acts 16 & 17 of 1995

4.3.1 Deregulation of Equity Structure in Nigeria Enterprises

Effectively, the Nigerian Investment Promotion Commission (NIPC) Act No. 16 of 1995 has abolished any restrictions, in respect of the limits of foreign shareholding, in Nigeria registered/domiciled enterprises. However, certain business/enterprises are exempted from free and unrestrained participation by any person or group of persons irrespective of their nationality. These are:

Production of arms and ammunition;
Production of and dealing in narcotic drugs and psychotropic substances;
Manufacture of military/paramilitary wears and accoutrements; Participation in coastal and inland shipping.

4.3.2. Provisions Relating to Investments

Notable amongst the provisions relating to investments are the following:

- A non-Nigerian may invest and participate in the operation of any enterprise in Nigeria;
- An enterprise, in which foreign participation is permitted, shall after its incorporation or registration, be registered with the NIPC;
- A foreign enterprise may buy the shares of any Nigerian enterprise in any convertible foreign currency.
- A foreign investor in an approved enterprise is guaranteed unconditional transferability of funds through an authorised dealer, in freely convertible currency, be it
 - (a) dividends or profit (net of taxes) attributable to the investment;
 - (b) payments in respect of loan servicing where a foreign loan has been obtained.
- The remittance of proceeds (net of all taxes) and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment;
- Total repatriation of capital should the investor choose to relocate elsewhere.

4.3.3. Investment Protection Assurance

- No enterprise shall be nationalised or expropriated by any Government of the Federation, and
- No person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other persons.
- There will be no acquisition of an enterprise by the Federal Government unless the acquisition is in the national interest or for a public purpose under a law which makes provision for:
 - (a) payment of fair and adequate compensation, and
 - (b) a right of access to the courts for the determination of the investor's interest of right and the amount of compensation to which he is entitled.Compensation shall be paid without undue delay, and authorisation given for its repatriation in convertible currency where applicable.

4.4. Investment Promotion and Protection Agreements (IPPA)

Apart from the investment guarantee assurances of the NIPC Act countries are welcome to execute and enter into bilateral Investment Promotion and Protection Agreements (IPPA) with the Nigerian government.

4.5. CHECKLIST OF STEPS FOR ESTABLISHING NEW COMPANIES IN NIGERIA WITH FOREIGN SHAREHOLDING

Stage A

- i. Establish partners/shareholders and their respective percentage shareholdings in the proposed company;
- ii. Establish name, initial authorised share capital and main objects of proposed company;
- iii. EXCEPT in instances where the proposed company will be 100% owned by non-resident shareholders - Prepare Joint-Venture Agreement between prospective shareholders. The Joint Venture may specify; inter-alia, mode of subscription by parties, manner of Board Composition, mutually protective quorum for meetings, specific actions, which would necessitate shareholders approval by special or other resolutions;
- iv. Prepare Memorandum and Articles of Association, incorporating the spirit and intents of the Joint-Venture Agreement;
- v. Foreign Shareholder may grant a Power of Attorney to its Solicitors in Nigeria, enabling them to act as its Agents in executing incorporation and other statutory documents pending the registration with NIPC (i.e. formal legal status for foreign branch/subsidiary operations);
- vi. Conduct a search as to the availability of the proposed company name and, if available, reserve the name with the CAC and obtain registration forms;
- vii. Submission of stamped Memorandum and Article of Association together with registration forms for verification and assessment;
- viii. Effect payment of stamp duties, CAC filing fees and process and conclude registration of the company as a legal entity.

Stage B

Prepare Deeds of Sub-Lease/Assignment, as may be appropriate, to reflect fine commitment on the part of the newly registered company, to acquire business premises for its proposed operations.

Stage C

Prepare and submit simultaneous applications to the NIPC (on prescribed NIPC Application Forms) for the following: -

- Registration (Business Permit Certificate);
- Expatriate Quota (NIPC facilitates with Federal Ministry of Internal Affairs).

The application to the NIPC should be accompanied with the following documents: -

- Original copy of the duly completed NIPC Form;
- Original copy of the treasury receipt for the purchase of NIPC Form;
- A copy of the Certificate of Incorporation of the applicant company (minimum share capital acceptable is 10million Naira);
- A copy of the Tax Clearance Certificate of the applicant company;
- A copy of Certificate of Capital Importation;
- Certified True Copies of CAC Form 02 & 07;
- A copy of the Memorandum and Articles of Association;
- A copy of treasury receipt as evidence of payment of stamp duties on the authorised share capital of the company as at date of application;
- A copy of the Joint-Venture Agreement - UNLESS 100% foreign ownership is applicable;
- A Copy of Feasibility Report and Project Implementation Programme of a company for its proposed business;
- A copy of Deed(s) of Sub-Lease/Agreement evidencing firm commitment to acquire requisite business premises for the company's operation;
- Copies of information brochure on foreign shareholder (if available) as testimony of international expertise and credibility of the foreign partner in the proposed line of business;

In case of application for Expatriate Quota Position, and in addition to the above

- Evidence of non-availability of expertise in the country;
- A copy of training programme or personnel policy of the company, incorporating management succession schedule for qualified Nigerians;
- Particulars of names, addresses, nationalities and occupations of the proposed directors of the company;
- Job title designations of expatriate quota positions required, and the academic and working experience required for the occupants of such positions;

Stage D

Application for Incentives: Aside from approving statutory incentives under its purview, the Commission negotiates additional specific incentives on behalf of companies.

- i. Pioneer Status: under the Industrial Development (Income Tax Relief) Act 22 of 1971 certain manufacturing and service activities/products were prescribed Pioneer Activities. This list has, however, been expanded in 1988 and 2004. This status ascribes 5 years tax holiday period on such approvals.

Basic Requirements

- a. the company's activity/product must be listed among the prescribed activities;
- b. a minimum of 10million share capital for foreign or joint venture company and one million for local company
- c. apply within the first year of commencement of operation

The application form should be accompanied with

- Original copy of the duly completed NIPC Form;
- Original copy of the treasury receipt for the purchase of NIPC Form; A copy of the Tax Clearance Certificate of the applicant company; A copy of the Memorandum and Articles of Association;
- Evidence of acquisition and installation of plant and machinery;
- Operational Licenses for applicable activity;
- A copy of the Joint-Venture Agreement - UNLESS 100% foreign ownership is applicable.

ii. Application for Technical Agreement

This is a form of technical co-operation agreement in which a party will agree to offer technical services to a company for the payment of a fee. Details and terms of such agreements are normally worked out between the parties involved but such agreements should be registered with the National Office for Technological Acquisition and Promotion (NOTAP).

4.6. PRESCRIBED FEES BY NIPC

S/N	SERVICES	FEES
i.	Procurement of Form	N25,000.00
ii.	Process fees	N25,000.00
iii.	Grant of Establishment Quota (per slot)	N10,000.00
iv.	Renewal of Quota position (per slot)	N1,000.00
v.	Additional Quota (per slot)	N2,000.00
vi.	Stay of Action	N5,000.00
vii.	Grant of Business Permit	N25,000.00
viii.	Amendment of Business Permit	N25,000.00
ix.	Re-grading of Quota (per slot)	N10,000.00
x.	Appeal Processing fee	N50,000.00
xi.	Restoration of Lapsed quota	N1,000.00
xii.	Upgrading of Quota to P.U.R (per slot)	\$10,000.00
xiii.	Re-designation of P.U.R. (per slot)	\$10,000.00
xiv.	De-tagging/Extension of Quota (per slot)	N10,000.00
xv.	Re-validation of lapsed Quota (per slot)	N10,000.00
xvi.	Penalty for late submission of renewal of private license	N150,000.00
xvii.	Application for Pioneer Status	N20,000.00
xviii.	Collection of Approval letter and Certificate	N30,000.00
xix.	Application for extension of Pioneer Status	-
xx.	On Approval of Pioneer Status Extension	N50,000.00
xxi.	Processing Fees (Verification visits)	N50,000.00

7. **SOME PRESCRIBED FEES BY CORPORATE AFFAIRS COMMISSION (CAC)**

S/N	SERVICES	FEES
i.	Registration of public companies whose share capital does not exceed N1m Exceeds N1m	N20,000.00 N30,000.00 for the first N1m and thereafter, N20,000.00 for every N1m of part thereof
ii.	Registration of private company whose share capital does not exceed N1m Exceeds N1m	N10,000.00 N 10,000.00 for the first N1m and N10,000.00 for every N1m of part thereof
iii.	Registration of company not having a share capital	N20,000.00
iv.	Filing of notice of exemption by foreign companies	N30,000.00
v.	Certified True Copy of: i. Memorandum and Articles of Association ii. Certificate of incorporation iii. CO2, C06 and C07	N3,000.00 N6,000.00 N2,000.00 (each)
vi.	A set of Company Incorporation Form	N500.00
vii.	Same Day Incorporation (excluding filling fees)	N50,000.00
viii.	Filling of Annual Returns	N1,000.00

CHAPTER FIVE :

BANKING AND FINANCE

5.0. THE STRUCTURE OF THE NIGERIAN FINANCIAL SYSTEM

INTRODUCTION

The Nigerian financial system comprises of bank and non-bank financial institutions which are regulated by the Federal Ministry of Finance (FMF), Central Bank of Nigeria (CBN), Nigeria Deposit Insurance Corporation (NDIC), Securities and Exchange Commission (SEC), National Insurance Commission (NAICOM), Federal Mortgage Bank of Nigeria (FMBN), and the National Board for Community Banks.



5.1. Regulatory Authorities

5.1.1. The Federal Ministry of Finance (FMF)

The Federal Ministry of Finance advises the Federal Government on its fiscal operation and co-operates with CBN on monetary matters.

5.1.2. The Central Bank of Nigeria (CBN)

The CBN is the apex regulatory authority of the financial system. It was established by the Central Bank of Nigeria Act of 1958 and commenced operations on 1st July 1959. Among its primary functions, the Bank promotes monetary stability and a sound financial system, and acts as banker and financial adviser to the Federal Government, as well as banker of last resort to the banks. The Bank also encourages the growth and development of financial institutions. Enabling laws made in 1991 gave the Bank more flexibility in regulating and overseeing the banking sector and licensing finance companies, which hitherto operated outside any regulatory framework.

5.1.3. The Nigerian Deposit Insurance Corporation (NDIC)

The NDIC complements the regulatory and supervisory role of the CBN. It is however autonomous of the CBN and reports to Federal Ministry of Finance. NDIC effectively took off in 1989 and was set up to provide deposit insurance and related services for banks in order to promote confidence in the banking industry. The NDIC is empowered to examine the books and affairs of insured banks and other deposit taking financial institutions. Licensed banks are mandated to pay 15/16 of 1 per cent of their total deposit liabilities as insurance premium to the NDIC. A depositor's claim is limited to a maximum of N50, 000.00 in the event of a bank failure.

The Nigerian Deposit Insurance Corporation (NDIC) has concluded plans to hike the insured deposit of banks to N200, 000.

5.1.4. The Securities and Exchange Commissions (SEC)

This is formerly called the Capital Issues Commission, the SEC was established by the SEC Act of 27th September 1979, which was further strengthened by the SEC Decree of 1988. It is the apex regulatory organ of the capital market. The Commission approves and regulates mergers and acquisitions and authorises the establishment of unit trusts. In the course of deregulation of the capital market, the function of price determination has been transferred to the issuing houses. The SEC maintains surveillance over the market to enhance efficiency. It issues guidelines on the establishment of Stock Exchanges in furtherance of the deregulation of the capital market. Following the enactment of the Nigerian Investment Promotion Commission Decree and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree in 1995, SEC released guidelines on foreign investment in the Nigerian capital market.

5.1.5. Debt Management Office (DMO)

The Federal Government of Nigeria took a major step in addressing the debt problems recently by establishing an autonomous Debt Management Office (DMO). The creation of the DMO consolidates debt management functions in a single agency, thereby ensuring proper coordination. The DMO centralizes and coordinates the country's debt recording and management activities, including debt service forecasts; debt service payments; and advising on debt negotiations as well as new borrowings.

5.1.6. National Insurance Commission (NAICOM)

The National Insurance Commission (NAICOM) replaced the Nigerian Insurance Supervisory Board (NISB). The NAICOM is charged with effective administration, supervision, regulation

and control of the business of insurance in Nigeria. Its specific functions include the establishment of standards for the conduct of insurance business, protection of insurance policy holders and establishment of a bureau to which complaints may be submitted against insurance companies and their intermediaries by members of the public. NAICOM ensures adequate capitalization and reserve, good management, high technical expertise and judicious fund placement in the insurance industry.

5.1.7. The Federal Mortgage Bank of Nigeria (FMBN)

The FMBN took over the assets and liabilities of the Nigerian Building Society. The FMBN provides banking and advisory services, and undertakes research activities pertaining to housing. Following the adoption of the National Housing Policy in 1990, FMBN is empowered to licence and regulate primary mortgage institutions in Nigeria and act as the apex regulatory body for the Mortgage Finance Industry. The financing function of the Federal Mortgage Bank of Nigeria was carved out and transferred to the Federal Mortgage Finance, while the FMBN retains its regulatory role. FMBN is under the control of the Central Bank of Nigeria.

5.1.8. Financial Services Co-ordinating Committee (FSCC)

The Committee was established in 1998 and charged with the primary responsibility to promote safe, sound and efficient financial sector in the country. Its membership is drawn from the key regulatory and supervisory institutions in the nation's financial system, namely, Central bank of Nigeria (CBN), Security and Exchange Commission (SEC), National Insurance Commission (NAICOM), Corporate Affairs Commission (CAC) and the Federal Ministry of Finance. This committee chaired by the Ministry of Finance co-ordinates the activities of all regulatory institutions in the financial system.

5.2. THE MONEY MARKET AND ITS INSTITUTIONS

This is a market for short-term debt instruments. The major function of the money market is to facilitate the raising of short-term funds from the surplus sectors to the deficit sectors of the economy. The deficit units, which could be public or private, obtain funds from the market to bridge budgetary gaps by either engaging in inter-bank taking or trading in short-term securities such as Treasury Bills, Treasury Certificates, Call Money, Certificates of Deposit (CD), and Commercial Papers (CP). With the commencement of Open Market Operations (OMO) by the CBN, the scope of the money market has been expanded. The number of participants in the market also increased with the establishment of five discount houses. Money market institutions constitute the hub of the financial system. These institutions include discount houses, commercial and merchant banks, and special purpose banks, like the Nigerian Agricultural Co-operative and Rural Development and Community banks.

5.2.1 Discount Houses

A discount house is a special, non-bank financial institution intervenes in mobilizing funds for investments in securities in response to the liquidity of the system. It does this by providing discount/rediscounging facilities in government short-term securities. In the process of shifting the financial system from direct market-based monetary control, discount houses were established to serve as financial intermediaries between the CBN, licensed banks and other financial institutions. Some of the discount houses currently in operation in Nigeria include First Securi-

ties Discount House Limited, Express Discount House Limited, Associated Discount House Limited, Kakawa Discount House Limited and Consolidated Discount House Limited.

5.2.2. Universal Banking

CBN has approved the introduction of Universal Banking in Nigeria. Since the release of the guidelines, more than ten banks have converted to universal banking status. Thus, such banks operate Commercial and Merchant functions.

5.2.3. Commercial and Merchant Banks

Commercial and Merchant Banks operate under the legal framework of the Banks and other Financial Institutions (BOFI) Act 25 of 1991 (as amended).

Commercial banks perform three major functions, namely, acceptance of deposits, granting of loans and the operation of the payment and settlement mechanism. Since the Government commenced active deregulation of the economy in September 1986, the commercial banking sector has continued to witness rapid growth, especially in terms of the number of institutions and product innovations in the market.

Merchant banks take deposit and cater for the needs of corporate and institutional customers by way of providing medium and long-term loan financing and engaging in activities such as equipment leasing, loan syndication, debt factoring and project advisers to clients sourcing funds in the market. The first merchant bank in Nigeria, Nigerian Acceptance Limited (NAL), started operations in 1960.

Currently, there is a general banking operation. With this banks performs multiple operations whether commercial or merchant operation

5.2.4. Community Banks

A community bank in Nigeria is a self-sustaining financial institution owned and managed within a community to provide financial services to that community. The National Board for Community Banks (NBCB) processes applications for the establishment of community banks. The first community bank commenced operation in December 1990. Since then, NBCB has issued provisional licences to 1,366 community banks and are expected to be issued final licences by the CBN after operating for two years.

5.3. PROCEDURES FOR ESTABLISHING A BANK IN NIGERIA

1. Any person desiring to undertake banking business in Nigeria shall apply in writing to the Governor for the grant of a licence and shall accompany the application with the following:

A feasibility report of the proposed bank;

A draft copy of the memorandum and articles of association of the proposed bank;

A list of the shareholders, directors and principal officers of the proposed bank and their particulars;

The prescribed application fee and
Other information, documents and reports as the bank may, from time to time,
specify

2. After the applicant has provided all such information, documents and reports as the bank may require the shareholders of the proposed bank to deposit with the bank a sum equal to the minimum paid-up capital that may be applicable.
3. Upon the payment of the 25billion Naira paid-up capital, the Governor may issue a license with or without conditions or refuse to issue a licence and the Governor need not give any reason for the refusal.
4. Where an application for a licence is granted, the bank shall give written notice of that fact to the applicant and the licence fee shall be paid.

Please for more information, visit Central Bank of Nigeria Website: www.cenbank.org

5.4. THE CAPITAL MARKET

The Nigerian Capital Market is a channel for mobilising long-term funds. The main institutions in the market include the Securities and Exchange Commission (SEC), which is at the apex and serves as the regulatory authority of the market, the Nigerian Stock Exchange (NSE), the issuing houses and the stock-broking firms. To encourage small as well as large-scale enterprises gain access to public listing, the NSF operates the main exchange for relatively large enterprises and the Second-Securities Market (SSM), where listing requirements are less stringent, for small and medium scale enterprises.

Given its operations both in the primary and secondary markets, the **Nigerian Capital Market** has recorded phenomenal growth in the first twenty years of its formal existence. The equity market capitalisation of N1.70 billion and listed equities of 92 in 1980, have risen to N472.9 billion and 196 listed equities at the end of 2000. 21 new issues valued at N16.71 billion were raised from the market to fund various expansion and developmental projects in the country in the year 2000.

Unit Trusts Scheme also operates on the market for the purpose of mobilising the financial resources of small and big savers and managing such funds to achieve maximum returns with minimum risk. Currently, there are 14 Unit Trust operations in the market.

5.4.1. Major Participant in the Nigerian Capital Market

The Securities and Exchange Commission (SEC), which is responsible for the overall regulation of the entire market.

The Nigerian Stock Exchange (NSE), a self-regulatory organization in NCM that supervises the operations of the formal quoted market.

Market Operators, this consists of the Issuing Houses (Merchant Banks and Stock broking firms), Stockbrokers, Trustees, Registrars, etc.

Investors, Insurance Companies, Pension Fund, Unit Trusts (Institutional Investors) and Individuals.

The Central Bank of Nigeria (CBN).

The Federal Ministry of Finance

5.4.2. How to Access the Nigerian Capital Market

When a company or government wants to use the Capital Market to raise long-term funds, it must consult an issuing house or stockbroker. These specialists provide the company/government with financial advisory services. It is their duty to study the company's performance over the years in order to determine its financial needs. More so, they do not only advise on the best option, they undertake total financial restructuring of the company before introducing the facility to the company.

The issuing house and the stockbroker liaise with the other parties= Registrars, Trustees, Auditors, Reporting Accountant, and Solicitors etc. to produce a marketing document known as the **PROSPECTUS**. The Prospectus is the document the public relies on for making investment decision. Necessary approvals from SEC and other bodies are obtained. If the financial option involves listing on the Stock Exchange, the brokers to the issues ensures that all necessary approval with the Exchange are also obtained since only stockbrokers can introduce issues to the Exchange.

On the completion of the offer, the proceeds of the issue are handed over to the company for executing the proposed business programme on long-term investment and the securities is listed on the Daily Official list of the Exchange.

For individuals wishing to invest in the Capital Market in form of buying shares, what they need do is to consult a Stock broking firm and register with the broking firm. For more information on investing in the Nigerian Capital Market contact: www.nigerianstockexchange.com

5.5. DEVELOPMENT FINANCE INSTITUTIONS (DFIs)

Specialised banks or development finance institutions (DFIs) were established to contribute to the development of specific sectors of the economy. In order to enhance their operations and make their efforts felt in the economy, most of the former DFIs in the country have been merged and restructured. The DFIs from the merger and restructuring are the Bank of Industry (BOI) and the Nigerian Agricultural Co-operative and Rural Development Bank (NACRDB). The two banks provide soft loans to industrialists and those engaged in agro-allied ventures. Other existing DFI's are Federal Mortgage Bank (FMB), Urban Development Bank (UDB) and Education Bank (EB) to cater for the sectors reflected in their names.

5.6. OTHER FINANCIAL INSTITUTIONS AND FUNDS

There are other institutions and funds within the financial system that play important intermediating roles. The institutions include:

5.6.1. Insurance Companies

There are many insurance companies, consisting of life and non-life as well as those, which engage in both activities, and reinsurance firms. They mobilize relatively long-term funds and act as financial intermediaries. Their investments are mainly in government securities and mortgage industry. The Nigerian insurance industry has grown tremendously over the years. The funds were sourced mainly through reduction in outgoing and other assets which together account for 80.8 per cent of total funds. The National Insurance Commission was established to

provide insurance cover for insurance companies. In addition, the Commission is expected to assist the government in achieving its economic and social objectives in the field of insurance and re-insurance. All registered insurance companies in Nigeria are required to reinsure 20% of premium collected with the National Insurance Commission.

The potential investors in insurance business should contact Nigerian Insurance Commission (NAICOM) for the licensing procedures.

5.6.2. Finance Companies

Finance companies are institutions that specialise in short-term, non-bank financial intermediation. They mobilise funds from the investing public in form of borrowing and provide, among others, facilities for Local Purchase Order (LPO) and project financing, equipment leasing and debt factoring. The BOFI Act brought finance companies under the direct control and supervision of the CBN.

5.6.3. Bureaux de Change

In order to broaden the foreign exchange market and improve access to foreign exchange, especially for small users, bureaux de change have been authorised since 1989. A total of 240-bureau de changes have been licensed and they are supervised by CBN.

5.6.4. Exchange Control Regulations

Unconditional repatriation of Capital, profit and dividends is allowed, while technical fees and royalties on imported technical services and technologies are payable. Repatriation of proceeds from disposal of assets is allowed. Foreign Exchange transactions are carried out at the Autonomous Foreign Exchange Market.

5.6.5. Primary Mortgage Institutions (PMIs)

Primary mortgage institutions operate within the framework of Act No. 53 of 1989. PMIs mobilize savings for the development of the housing sector. Their total assets/liabilities rose to N7248.2 million in 1999. In reaction to distress in the sector, the Federal Mortgage Bank of Nigeria tightened its surveillance of the institutions by issuing "clean bill of health" to 116 mortgage institutions. The share capital requirement for new primary mortgage institutions has been raised to N20 million.

5.6.6. Nigerian Social Insurance Trust Fund (NSITF)

The main objective of the Fund is to adopt a more comprehensive social security scheme for Nigerian private sector employees. The scheme was established to replace the defunct National Provident Fund (NPF) as a compulsory pension scheme for non-pensionable public servants and employees in the organised private sector. Nigerian private sector employees are required to contribute 2.5 percent, while their employers are to contribute 5 per cent of the gross monthly emolument to NSTIF. Workers in enterprises employing more than 25 persons are to be automatically registered by their employers.

The Nigerian financial System has undergone some remarkable changes in recent times. Some of these developments include the promulgation of the Failed Banks (Recovery of Debt) and Financial Malpractice in Banks Decree No. 18 of 1994. This is to facilitate the prosecution of those who contributed to the failure of banks and to recover the debt owed to the failed banks.

Another major development was the inauguration of a Financial Services Regulatory Coordinating Committee (FSRCC) by the CBN in 1994. The aim is to coordinate and standardize the regulatory policies of all financial institutions in the system with a view to evolving coherence and comprehensiveness. The CBN also granted forbearance to finance companies operating in Nigeria whereby they were given a maximum of four years to amortize their classified assets portfolio against their current profits.

CHAPTER SIX:

PRIORITY AREAS OF INDUSTRIAL INVESTMENT

6.1 AGRICULTURE

The main policy here is sufficiency in food production and surplus for use as industrial raw materials for export. The priority areas include: -

- i) all aspects of direct agricultural production, but in particular, rehabilitation of ground-nut, cotton, , cocoa and oil palm production, fish production and forestry;
- ii) investment in processing of agricultural produce and storage facilities;
- iii) investment in processing of agricultural input supply and distribution;
- iv) agricultural mechanization e.g. adoption and use of farm equipment (such as bulldozers, tractors, etc) including the provision of land clearing and land preparation services;
- (v) agricultural support activities including research and funding of research activities;
- vi) water resources development, especially for irrigation and flood control infrastructures along river basins;
- vii) development of earth dams and construction of wash bores and tube wells;
- viii) development and fabrication of appropriate small-scale and mechanised technologies for both on-farm processing (e.g. threshing) and secondary processing of agricultural produce for consumption or storage.

6.2. MANUFACTURING INDUSTRIES

The priority areas of industrial investment which are favoured in the administration of government industrial incentives are those described here-below:

- (i) Industries which can either immediately or in a few years time source their raw materials locally e.g. in the agro and agro-allied sub-sectors for which there are abundant natural resources in Nigeria, including food preparations, e.g. fruit drinks, cereal milling, feed mills and vegetable oil processing;
- (ii) Industries which support food production programmes through local manufacture of chemicals, equipment and light commercial vehicles in particular, and chemical as well as petrochemical based manufacturing industries in general;
- (iii) Industries with multiplier effect such as flat sheet mills and machine tools industry including foundries and engineering industries for spare parts production;
- (iv) Basic industries and petrochemical and liquidified natural gas projects in which the government welcomes foreign partners;
- (v) Processing of local agricultural produce and minerals into industrial raw materials as manufactured intermediate goods required by existing industries in Nigeria;
- (vi) Investment in research institutes particularly in the area of adaptive research and commercialization of local inventions;
- (vii) There are nine (9) priority sub-systems that possess the ability to stimulate the laying of a favourable industrial base and provide a catalyst to industrialization in Nigeria. These pilot sub-systems are:-

foundry and forges;
metal fabrication;
pharmaceutical;
food processing;
leather and leather products;
textiles and wearing apparels
non-metallic building materials - bricks, ceramics and glass.

The Government of Nigeria welcomes investors' participation not only in these but also in the following project areas: -

- gemstone cutting and polishing;
- gold processing;
- mineral beneficiation plants for gypsum talc, kaolin, marble, dolomite, baryte;
mini-sugar production plants;
- cement production;
- lead and zinc;
- refractory bricks;
- processing of salt from sea water;
- sodium tripolphosphate production;
- small/ medium scale plant for sheet metal production;
- long fibre pulp/kraft paper production;
- bottled mineral water;
- mining of industrial minerals;
- telecommunications.

6.2.1. EXPORT MANUFACTURING

In recent studies by the Federal Ministry of Industry, activities identified in respect of export market potential include:

- (a) Agricultural produce processing, food and beverages;
- (b) Textiles: yarn /textiles, apparel, leather and products of leather (including footwear of rubber and plastics);
- (c) Wood: furniture;
- (d) Paper, paper products;
- (e) Iron and steel, non-ferrous metals;
- (f) Fabricated metal products, and
- (g) Consumer durables.

It is recommended that industries in Nigeria should specialize in these sectors in which it is found that Nigeria has comparative advantage relative to the operation of such industries in other countries.

6.3. MINING AND MINERAL EXTRACTION (NON-OIL)

There are tremendous opportunities in this sector also, and government has invested heavily in the generation of vital information on minerals? Outstanding among these are coal, gypsum, barytes, kaolin and talc. Nigeria has one of the best quality coal deposits in the world with the

lowest sulphur content. The names, location, quantity and possible industrial exploitation of some solid minerals are as follows:-

- (i) **Barytes** : 41,000 and 70,000 tonnes of which are found in Benue and Plateau State respectively, are used as inert volume and weight filler in drilling mud, rubber, glass, paper, etc. or as extender in the plant industry, and as chemicals in the manufacture of glass, heavy printing paper and plastics;
- (ii) **Coal** : 82.2 million tonnes, 189 million tonnes and 32 million tonnes of which are found in Enugu, Benue and Plateau States, respectively. It is used as fuel and in industrial production of tar, gas and non edible oils;
- (iii) **Diatomite**: 200,000 tonnes of which are found in Borno State; is used in making insect control powder, bond for furnace brick walls and mineral fillers and filters;
- (iv) **Lignite**: 71million tonnes of which are found in Delta State; is used in industrial production of tar, gas, oils and (nitrate) fertilizer;
- (v) **Columbite**: 14,223 tonnes of which are found in Plateau State; is used in forming alloys that are useful in nuclear, aerospace and gas turbine engineering;
- (vi) **Iron Ore**: 30.48 million tonnes, 182.5 million tonnes and 45.72 million tonnes of which are found in Agbaja in Plateau State, Okene in Kogi State and Enugu State, respectively, is used for making steel, transformer and motor cars, ferrous sulphate from waster li-queur of the steel picking process or by the direct reaction, metals for electrical shield- ing, electro-magnetic devices, electric bells, electric fan cage, equipment rack, instru- ment body, engineering works, hydrated salt, iron oxide pigments, various salts of iron and ferrites and chemicals;
- (vii) **Tin**: 10,546 tonnes of which are found in Plateau State; is employed in plating, produc- tion of tin oxide used in paint, paper and ink industries, production of tin oxide resistors, electric lead wires.

6.4. NIGERIA EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE

The Extractive Industry Transparency Initiative (EITI) in Nigeria is the Nigerian subset of a global initiative aimed at following due process and achieving transparency in payments by Extractive Industry (EI) companies to governments and government linked entities.

President Olusegun Obasanjo launched the EITI in Nigeria in February 2004. The National Stakeholders Working Group (NSWG) comprising of 27 individuals from civil society, media, government, indigenous, national and multinational companies, steers the implementation. The EITI Nigeria Secretariat in the Presidency has day to day responsibility for implementation.

EITI Nigeria consists of an Independent Audit of Revenues and Payments in Nigeria's Extrac- tive Industry; and the publication of all information and data on the extractive industries through a grass-root based communication strategy and through the engagement of rural communities and regional civil society groups.

EITI Nigeria is laying the foundations for an open and transparent extractives sector that will make the needed changes irreversible. In line with the reform efforts embarked upon by the present administration, EITI Nigeria has quickly moved from rhetoric to implementation.

6.4.1. Audit of the Oil Sector

Already a consultant with EITI experience had been appointed through open international tender to prepare the terms of reference for a full audit of the oil sector. It will also advise on developing a communications strategy and a bill to give EITI legal backing.

6.4.2. EITI Bill

With the passage of the EITI bill, it is now mandatory for annual revenue/tax audits to be undertaken in the extractive industries sector. Oil companies are now legally required to disclose all payments. The recently established Oil Revenue Monitoring Unit has also been made independent of the Federal Ministry of Finance.

6.4.3. Engaging Civil Society

The process of preparation and consensus building is important. The Government of Nigeria has been clear that EITI in Nigeria is for the benefit of the Nigerian people not the international community. They are consequently seeking to build a wide consensus behind EITI and have co-opted a range of organisations, including the media, labour and NGOs, on to the EITI steering group. The dialogue is being extended to other civil society organisations, including some from the Publish What You Pay campaign.

6.5. ELECTRIC POWER PRODUCTION

Nigeria has 6,000MW of installed generating capacity, however, the country is presently generating about 3,000 MW because most facilities are inadequate. The country has proven gas reserves and around 8,000MW of hydro development has been planned. Nigeria has plans to increase access to electricity throughout the country to 85% by 2010. This would call for 16 new power plants, approximately 15,000km of transmission lines, as well as distribution facilities. At present only 10% of rural households and 40 % of the country's total population have access to electricity.



The Nigerian government is in the process of privatising existing facilities. The Nigerian Electricity Power sector is being reformed to attract investment, improve efficiency, and encourage private sector participation. The National Electric Power Authority (NEPA) the national Power Holding Company has been unbundled into 18 firms. The 18 offshoots include six generation companies, one Transmission Company and 11 distribution companies to be privatized or concessioned as the case may be. Two generation companies and three distribution companies will be privatized between February and December 2006.

A regulatory body which will among other things provide a conducive environment for long term development of the sector and supervise the sector as well as private sector participation in Transysco is scheduled to commence in December 2005.

Although there is already an element of private participation in the operations of the electricity sector, such as the independent power projects (IPP), Revenue Cycle Management (RCM), the involvement of private sector will now be driven faster with the incorporation of the holding company.

Investors are therefore invited to invest in the following areas of the power sector:

- Generation
- Solar Energy Development
- Cables and Wires Manufacturing
- Electrical Meters
- Transformers
- Electrical Construction, etc.

6.6. FINANCIAL SECTOR

The Nigerian financial system has undergone some remarkable changes in recent times. Some of these developments include the promulgation of the Failed Banks (Recovery of Debt) and Financial Malpractice in Banks Decree No. 18 of 1994. This is to facilitate the prosecution of those who contributed to the failure of banks and to recover the debt owed to the failed banks. Another major development was the inauguration of a Financial Services Regulatory Coordinating Committee (FSRCC) by the CBN in 1994. The aim is to coordinate and standardize the regulatory policies of all financial institutions in the system with a view to evolving coherence and comprehensiveness. The CBN also granted forbearance to finance companies operating in Nigeria whereby they were given a maximum of four years to amortize their classified assets portfolio against their current profits.

The Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree established an autonomous foreign exchange market. The Decree empowers the Central Bank of Nigeria, with the approval of the Finance Minister, to issue guidelines to regulate the procedures for transactions in the market as well as other matters, which may enhance the effective operation of the market. The decree provides for any convertible foreign currency to be traded in the market. It also allows an individual, resident in or outside Nigeria, to invest in any security in Nigeria.

Investment Opportunities in the Financial Sector exist in the following areas:

- Commercial banking
- Merchant Banking

- Discount House
- Development Banking
- Finance House
- Insurance
- Bureau de Change
- Primary Mortgage Institutions
- Micro-Finance Institutions, etc

6 7. PRIVATISATION & PRIVATISATION POLICY

The Federal and State governments had in the past endeavoured to play an active catalytic role in the economy by initiating and acting as sizeable stakeholders in a number of core industries.

The 1997 Budget announced that all laws that inhibit competition in certain sectors of the Nigerian economy would be repealed. Accordingly, with effect from 1998, private sector investors are now free to join or compete with government-owned utility corporations.

The Public Enterprises Promotion and Commercialisation Act, authorises the partial privatisation of government enterprises in the following sectors:

- telecommunications;
- electricity (generation and distribution);
- petroleum refining;
- coal and bitumen production (mining, processing and export);
- tourism generation (tour and travels and hospitality).

Within the context of the liberalization policy, both foreigners and nationals are free to participate and invest in the privatization of the public enterprises. In this regard, the Federal Government constituted the National Council on Privatisation under the chairmanship of the Vice President of the Federal Republic of Nigeria to oversee the privatization programme being implemented by the Bureau of Public Enterprises (BPE). The exercise is expected to accomplish in three phases as follows:

Phase I: This phase, which has already been concluded, had on its bill, Commercial and Merchant Banks and Cement plants that are already quoted on the Nigerian Stock Exchange.

Phase II: Enterprises billed on this stage are Hotels and Motor Vehicle plants.

Phase III: Included in phase three are NEPA, NITEL, NAFCON, Nigerian Airways, Petroleum Refineries.

The privatization of the Public Enterprises is one of the important elements of Nigeria's economic reforms through which the hitherto commanding heights of the economy are being transferred to the private sector. The key strategies of the privatization programme include:

- Market the right public enterprises to the right strategic investors with the appropriate financial resources and technical-cum-managerial competence at the right prices

- Utilize the best global practices
- Apply a wide range of sales methods e.g. core investor, public offer, concession etc as considered relevant to each enterprise
- Assure transparency in the application of the established procedures for privatising each enterprise

In this respect, the government of Nigeria has continued to improve the enabling environment for the success of the Privatization programme to the delight of the investors. Some of these efforts include:

- Crimes Commission Act
- Economic and Financial Crimes Commission Act
- Money Laundering (prohibition) Act
- Competition and Anti-Trust Bill
- Energy/Electricity Reform Bill
- Labour Reform Bill
- Extractive Industries Transparency Initiative
- Independent regulatory commission for each sector
- Port reforms
- Generous tax holidays
- Highly skilled local manpower
- Improved capacity building in the Bureau of Public Enterprises (BPE) for the effective management of the privatization processes
- Open, fair and just engagement of all relevant stakeholders for all enterprises, including labour and environmental issues, with the support of the World Bank and other agencies
- Guarantees from the World Bank, Multi-lateral Investment Guarantee Agency and Overseas Private Investment Corporation, and
- Political will and commitment at the highest level of government

In the past five years, over 25 public enterprises have been privatized in Banks, Insurance, Cement and Sugar manufacturing, Oil & Gas, Hospitality, Shipping, Vehicle assembly and media sectors of the economy.

CHAPTER SEVEN :

GENERAL INCENTIVES

The Nigerian Government has put in place a number of investment incentives for the stimulation of private sector investment from within and outside the country. While some of these incentives cover all sectors, others are limited to some specific sectors. The nature and application of these incentives have been considerably simplified. The incentives include:

(i) COMPANIES INCOME TAX

The Companies Income Tax Act has been amended in order to encourage potential and existing investors and entrepreneurs. The current rate in all sectors, except for petroleum, is 30 percent.

(ii) PIONEER STATUS

The grant of Pioneer Status to an industry is aimed at enabling the industry concerned to make a reasonable level of profit within its formative years. The profit so made is expected to be ploughed back into the business.

Pioneer status takes the form of five-years tax holiday to qualified or (eligible) industries anywhere in the Federation and seven-year tax holiday in respect of industries located in economically disadvantaged local government area of the Federation. At the moment, there is a list of 69 approved industries declared pioneer industries, which can benefit from tax holiday.

To qualify, a joint venture company or a wholly foreign-owned company must have incurred a capital expenditure of not less than five million Naira whilst that of qualified indigenous company should not be less than N150,000.00. In addition, an application in respect of Pioneer Status must be submitted within one year the applicant company starts commercial production otherwise the application will be time-barred.

SEE ANNEX I (APPENDICES FOR DETAILED LIST OF QUALIFIED INDUSTRIES)

(iii) TAX RELIEF FOR RESEARCH AND DEVELOPMENT

Industrial establishments are expected to engage in Research and Development (R&D) for the improvement of their processes and products. Up to 120 per-cent of expenses on (R&D) are tax deductible, provided that such R&D activities are carried out in Nigeria and are connected with the business from which income or profits is derived. Also, for the purpose of R&D on Local raw materials, 140 per-cent of expenses are allowed. Where the research is long-term, it will be regarded as a capital expenditure and will be written off against profit. The result of such research could be patented and protected in accordance with internationally accepted Industrial Property Rights.

(iv) CAPITAL ALLOWANCES

The current rates applicable in respect of capital allowances are:

S/N	Qualifying Expenditure in Respect of:-	Initial Allowance (%)	Annual Allowance (%)
i)	Building Expenditure		10 per Annum
ii)	Industrial Building Expenditure	15	10
iii)	Mining	20	0
iv)	Plant excluding furniture and fittings	20	10
v)	Furniture and Fittings	15	10
vi)	Motor Vehicle Expenditure	25	20
vii)	Plantation equipment expenditure	20	33
viii)	Housing Estate Expenditure	20	10
ix)	Ranching and Plantation Expenditure	25	15
x)	Research and Development Expenditure	25	12
xi)	Public Transportation Motor Vehicle	30	

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

(v) IN-PLANT TRAINING

This is applicable to industrial establishments that have set up inplant training facilities. Such industries enjoy a two percent tax concession for a period of five years.

(vi) INVESTMENT IN INFRASTRUCTURE

This is a form of incentive granted to industries that provide facilities that ordinarily, should have been provided by government. Such facilities include access roads, pipe borne water and electricity. Twenty percent (20%) of the cost of providing these infrastructural facilities, where they do not exist, is tax deductible.

(vii) INVESTMENT IN ECONOMICALLY DISADVANTAGED AREAS

Without prejudice to the provision of the pioneer status enabling law, a pioneer industry sited in economically disadvantaged Local Government Area is entitled to 100% tax holiday for seven years and an additional 5% capital depreciation allowance over and above the initial capital depreciation allowance.

(viii) LABOUR INTENSIVE MODE OF PRODUCTION

Industries with high labour/capital ratio are entitled to tax concessions. These are industries with plants, equipment and machinery, which essentially are operated with minimal automation. Where there is automation, such automation should not be more than one process in the course of production. The rate is graduated in such a way that an industry employing 1,000 persons or more will enjoy 15 percent tax concession, while an industry employing 200 will enjoy 7 percent and those employing 100 will enjoy 6 percent and so on.

(ix) LOCAL VALUE ADDED

10% tax concession for five (5) years. This applies essentially to engineering industries, where some finished imported products serves as inputs. The concession is aimed at encouraging local fabrication rather than the mere assembly of completely knocked down parts.

(x) RE-INVESTMENT ALLOWANCE

This incentive is granted to companies engaged in manufacturing which incur qualifying capital expenditure for the purposes of approved expansion, etc. the incentive is in the form of a generalized allowance of capital expenditure incurred by companies for the following:-

- Expansion of production capacity
- Modernization of production facilities
- Diversification into related products

(xi) MINIMUM LOCAL RAW MATERIALS UTILIZATION

A tax credit of 20% is granted for five years to industries that attain the minimum level of local raw material sourcing and utilization. The minimum levels of local raw materials sourcing and utilization by sectors are: -

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

CHAPTER EIGHT:

PROTECTION OF INTELLECTUAL AND INDUSTRIAL PROPERTY

8.1. NATIONAL OFFICE OF TECHNOLOGY ACQUISITION AND PROMOTION (NOTAP)

The National Office of Industrial Property Act was promulgated in 1979 with the stated objective inter alia of monitoring, on a continuous basis, the transfer of foreign technology to Nigeria. The administration of the Act was entrusted to the National Office of Industrial Property, which was recently re-named as the National Office of Technology Acquisition and Promotion ("NOTAP"). NOTAP concerns itself with examining the quality of imported technology with a view to determining its price and to check fairly obvious abuses. In other words, the principal concern of NOTAP is to register contracts/agreements, which deal with the transfer and acquisition of foreign technology. The obligation to ensure that proper registration is effected, is both on the licensor and licensee of such technology.

The categories of contracts/agreements which qualify for registration and/or are registrable as involving the "transfer of foreign technology" are described as those contracts/agreements whose "purpose or intent is, in the opinion of the National Office, wholly or partially for or in connection with any of the following purposes, that is to say

- (i) the use of trademarks;
- (ii) the right to use patented inventions.
- (iii) the supply of technical expertise in the form of technical assistance of any description whatsoever;
- (iv) the supply of detailed engineering drawings;
- (v) the supply of machinery and plant; and
- (vi) the provision of operating staff, managerial assistance and the training of personnel."

In order to prevent abuse and to discourage patent monopolies and transfer of obsolete technology, the Director of NOTAP may refuse to register any contract/agreement in which in his opinion:

"the price or other valuable consideration therein is not commensurate with the technology acquired or to be acquired".

"where provisions are included therein which permit the supplier to regulate or intervene directly or indirectly in the administration of any understanding belonging to the transferee of the technology and are, in his opinion, unnecessary for the due implementation or execution of such contract or agreement".

OR

"where the transferee is obliged to submit to foreign jurisdiction in any controversy arising for decision concerning the interpretation or enforcement in Nigeria of any such contract or agreement or any provisions thereof".

n order to avoid the payment for worthless technology in hard earned foreign currency, it is specifically provided in the Act that- "no payment shall be made in Nigeria to the credit of any person outside Nigeria by or on the authority of the Central Bank of Nigeria or any licensed Bank in Nigeria in respect of any payments due under a contract or agreement mentioned in this Act unless a Certificate of Registration issued under the Act is presented by the party or parties concerned together with a copy of the contract or agreement certified by the National Office in that behalf'.

No obligation to register with NOTAP may arise if the fees related to the contracts are denominated in local currency, without any intention to remit the same. Similarly, there is no obligation to register technical or managerial agreements with NOTAP where these agreements relate to projects funded in the country by international finance institutions who usually provide their foreign exchange components.

8.1.1 General Rules Applicable to All Technology Transfer Contracts

To satisfy the evaluation criteria of NOTAP all technology contracts/agreements must exhibit the following features:

- (i) They should include a provision whereby the recipient enterprise in Nigeria acquires explicit rights for the use and exploitation of the technology in question, and the period covering these rights should be clearly specified in the contract.
- (ii) The process or products to be licensed should be clearly defined.
- (iii) In cases where the Nigerian enterprise is acquiring the right to utilise a process, the concept of know-how should be clearly expressed and defined in the contract. In this connection, concepts such as "technical information" or "technical services" should only be treated as complimentary to the know-how.
- (iv) When a technology contract involves various components, each would be evaluated separately and the corresponding remuneration determined, not only in order to ascertain the relative cost of each, but also to provide the basis for determining the licensor's responsibility concerning the performance of any of the elements of the technology package.
- (v) In projects of special importance, the concept of a "net present value" would be introduced as a tool for evaluating the overall remuneration.
- (vi) Where the main element of a contract relates to a technological process, the licensor is obliged to provide process performance guarantees, in order to enable all parties concerned to critically determine its adequacy. Whilst the process guarantees are to be covered by licensor's financial terms (i.e. bonds, etc.) the contract document itself must explicitly cover the rights for the use and exploitation of the technology in question, and the duration of these rights.
- (vii) If the option to pay liquidation damages is available, there should be a provision for the Nigerian enterprise to exercise this right in an independent and unfettered manner.
- (viii) To ensure a continuous flow of information between the licensor and licensee during the life of the contract, such a contract should provide for access to the licensor's plants and related research and development facilities.

8.1.2. Development of National Technology Capability (Manpower and Training)

Clauses should therefore be provided in Technology Agreement to ensure the employment, exposure and training of the appropriate and right caliber of Nigerian staff.

In all technology transfer agreements, NOTAP insists that due attention should be placed on the employment of Nigerians with relevant scientific and technological background to understudy the foreign experts with a view to taking over such responsibilities within the shortest possible time. It is therefore mandatory for overseas investors to submit a comprehensive Training Programme Management Succession Programme for Nigerians whilst processing their technology transfer agreements.

8.1.3. Consultancy Services

As a matter of deliberate policy, Government is of the view that consultancy services required to execute local projects should be obtained from Nigeria Consultancy firms. However, where the necessary expertise is not available, foreign consultancy firm may be invited to work together with a Nigerian consultancy firm in a subordinate capacity. Under current regulations, Consultancy Agreements should spell out the following details:

- Definite objectives of the contract;
- Detailed description of the scope of the work programme to be accomplished;
- The time table and targets;
- Time estimates for each task in the programme including training;
- A description of the project teams;
- A description of the management team;
- The fee estimates, usually based on man/hours;
- The billing procedure.

8.1.4. Technical Assistance

Payments for technical assistance would normally be covered through "know-how fees" which are themselves broadly determined as follows:

In situations when the subject matter of a contract covers technical know-how that can be assimilated by the recipient company over a short period of time; e.g. use of formulae, drawings, specifications, etc; payments on a continuous basis would not be accepted. Also not acceptable are limitations that may be imposed pertaining to their use except those pertaining to confidentiality.

As regards the use of non-patented know-how, NOTAP does not accept any restriction on the use of the said know-how after termination of the technology transfer contract:

For practical purposes, the evaluation of the amounts to be paid for technical assistance is the aggregate of the various sums of money that may be determined as adequate compensation for the following components of such assistance.

(a) Pre-Operational Phase

- - Pre-investment studies.
 - Technical assistance for the purchase of equipment.
 - Design, fabrication, and supply of equipment and machinery.
 - Technical assistance in the erection and installation of plant.
 - Plant start up.
 - Training of technical personnel in the above areas.

- (b) **Operational Phase**
- Assistance in the purchase of equipment, spares, raw materials, etc.
Quality control.
Assistance in the operation of the plant including repair and maintenance, efficient production, etc.
Technical improvements of processes and products.
Technical services to clients.
Training of technicians in licensor's or licensee's plants

8.1.5. Managerial Assistance

The kind and scope of these services would depend largely on the sophistication and size of the local enterprise. The expectation is that these services would be obtained over a specific period of time, covering the following matters amongst others:

- Planning and programming;
- Research and development activities;
- Inventory control and accounting;
- Financing and purchase;
- Promotion and marketing.

Managerial assistance services are evaluated having regard to the following:

- a) A definition of the different kinds of services to be provided.
- b) The provision of a training programme in the contract in order to ensure that the various functions of the enterprise can gradually be taken over by the licensee's staff.
- c) Payments for these services are usually examined in relation to the economic benefits to the recipient company and the nation in general.
- d) The responsibility and functions of the licensor must be well articulated in the contract.

8.1.6. Access to Improvements in Technology

As part of its requirements, NOTAP expects that provision would be made to give the local recipient access to improvements on the technology acquired during the period of the agreement.

8.1.7. Territorial Considerations

Under this heading, two issues deserve special attention. The first is the territory of manufacture, which is normally restricted to one country. In this connection, the degree of exclusivity (that is, the exclusive use within a territory) to be obtained should be clearly specified in the contract. The second relates to the territory of sales. As a general rule, the licensee should be allowed the right to export to other countries. A contract may not be accepted by NOTAP if it contains a total prohibition of the export of the products manufactured under licence.

8.1.8. Arbitration

In the case of commercial disputes, which are not taken to the regular courts, NOTAP expects that the manner of selection of the arbitrators and the procedure for arbitration must be clearly expressed in accordance with the procedures of the Arbitration and Conciliation Act of Nigeria.

8.1.9. Governing Law

Technology transfer agreement must state categorically that the governing law of such agreement shall be that of Nigeria . NOTAP is very insistent on this clause in order to minimise the

difficulties that had been experienced in the past when some technology transfer agreements relating to business transactions in Nigeria were governed by foreign laws.

8.1.10. Duration

Under the provisions of the Act, the period of 10 years is stipulated as the maximum duration of an agreement. NOTAP will, however, register agreements with longer terms where:

- (i) the technology proposed to be transferred is complex and it is proven to its satisfaction that the technology requires a longer duration for proper absorption, such as in Petro-Chemical Plants, Iron and Steel processing, Space and Computer Technologies;
- (ii) it is internationally recognised that the technology involved is a rapidly changing one and that the transferee requires to be kept abreast of the frequent changes/developments to remain competitive; for example in electronics, computers and telecommunications businesses;
- (iii) the licensee is granted the right to sub-license the technology over a period of 10 years;
- (iv) it is considered to be in the national interest of Nigeria .

In practice, NOTAP usually approves a 3-year tenure for contracts, which may subsequently be renewed upon the expiry of the initial term.

8.1.11. Royalties and Other Technology Payments

The currently applicable rates of fees that may be approved by NOTAP are as follows:

- a) Royalty - Royalty in respect of know-how, patents and other industrial property rights, ranges from 1% - 5% value.
- b) Trade Marks – As a matter of policy, royalty payments for the use of foreign trade marks will not be allowed except where the trade mark is an internationally recognised one accompanied with licensed know-how, and the product is allowed by the licensor for the export market. In effect, a "Trade Mark Agreement" simpliciter would not be approved for royalty payments, whilst a "Trade Marks and Know-How Agreement" which does not preclude exports would probably be approved.
- (c) Technical Services - Fees in respect of technical assistance/services range from 1% - 5% of net sales.
- (d) Management Services - A management fee ranging between 2% - 5% of profit before tax is the norm. However, management services for projects where profit is not anticipated during the early years may attract a fee ranging between 1% -2% of net sales during the first 3 to 5 years only. For the management of a hotel within an international chain of hotels - a basic or lump sum not exceeding 5% of turnover plus an incentive fee not exceeding 12% of Gross Operating Profit ("GOP") is currently applicable. Other payments, which are internationally accepted within the hotel industry, may also be allowed. Our experience, however indicate that only hotels located in the economically disadvantaged areas of the country will attract the upper limits of the basic and incentive fees herein stated.
- (e) Consultancy Services-lump sum payments are allowed in line with the international technology market prices, which are in themselves based on man/day or month rates taking into account the nature of services to be performed. However, all such payments may not exceed 5% of the total project cost.

- The applicable man/day-month rates will, of course, take account of the complexity and the sophistication of the technological services to be rendered.
- (f) Agricultural and Agro-Allied Projects - Payments for services in this sector is based on a lump sum amount in the initial years (i.e. gestation period) when no sales or profit are anticipated. However, after the gestation period, payments are often based on net sales value as in other sectors.
 - (g) Incentive Remuneration-Incentive remuneration is allowed in deserving cases where:-
 - the local value added is not lower than 70%;
 - the products are intended for the export market;
 - the benefit to be derived by the enterprise is considered desirable in the national interest.
 - (h) Renewals-Generally, payments in respect of Renewal Agreements attract lower remuneration. Such renewals, which are not automatic, are considered on merit by NOTAP based on its own monitoring processes and assessments.
 - (i) Definition of Net Sales-Net Sales shall generally be defined as "Net ex-factory sales price of the product exclusive of excise duties, and other taxes minus the cost of the standard bought out components and the landed cost of imported components irrespective of the source of procurement including customs duties, insurance and freight".

8.1.12. Implementation Procedures of NOTAP

Having established the a foregoing, a summary of the various legal and administrative steps which are necessary for obtaining NOTAP registration is as follows:

- (i) A duly completed NOTAP Application Form (viz. Revised Form NOIP 1 - 84) must be lodged with NOTAP by the recipient or transferee of the technology.
- (ii) The said Application Form must be accompanied with the following annexure:
 - an application fee made out in a bank draft payable to the "Director, National Office of Technology acquisition and Promotion";
 - the Memorandum and Articles of Association of the Company;
 - two certified true copies of the Agreement to be registered;
 - two copies of duly completed Questionnaire (viz. Revised Form NOIP 2-84);
 - a copy of the relevant feasibility study;
 - annual audited accounts (if not a new company), and if it is a new company, a copy of the Certificate of Incorporation should be submitted as evidence thereof.
- (iii) NOTAP then vets the Agreement in order to determine its conformity with its own evaluation criteria. In so doing, NOTAP is at liberty to request for additional and/ or more precise information about the nature, age and extent of relevance of the technology and services being transferred. This exercise may, at times, result in the amendment or re-drafting of some clauses in the Agreement.
- (iv) Based on the complexity and desirability of the form of technology being transferred, NOTAP computes and advises the applicant of the fees payable for the use of the technology and the duration approved for the Agreement.
- (v) When the Agreement is finally accepted by NOTAP (either in its original form or in an amended form) a "registration fee" as distinct from user fees becomes payable to NOTAP. For this purpose, Agreements are classified into two catego-

ries. For Category "A" (i.e. contracts involving a total payment below N500,000 for the duration of the Agreement) the approval fee presently payable is one thousand naira (N1,000). For Category "B" (i.e. contracts involving a total payment above N500,000 for the duration of the Agreement) the approval fee at present payable is two thousand naira (N2,000).

- (vi) Finally, NOTAP then issues a "Certificate of Registration" to the applicant accompanied with a copy of the Agreement certified by it.

8.2. LAWS RELATING TO THE PROTECTION OF INTELLECTUAL PROPERTY

8.2.1. General Principles

Nigeria is still a major importer of technology and finished goods. In this circumstance, its citizens have of necessity become familiar with several international brand names, trademarks and industrial designs, etc. which sometimes are unfortunately being imitated by unscrupulous businessmen. For example, the authors have not only observed the false labelling of goods as regards "country of origin" but also the infringement and "passing-off" of internationally well-known trademarks and designs and the illegal reproduction of cinematograph films, phonographic recordings and books. In some instances, third parties have even succeeded in proprietary rights and a priority claim over international trademarks and designs, which did not belong to them.

Following the market practice in most other countries, the Nigerian laws permit a prospective foreign investor to protect his propriety interest in any trademarks, patents, design or copyright even before completing the other formalities for establishing a business in Nigeria. Thus it is in fact possible and often advisable for a manufacturer and exporter of goods into Nigeria to have his trademarks, designs or copyright registered in the country without any intention of establishing a formal business vehicle in Nigeria as this is not a legal requirement or pre-condition for registration. Nigeria is a member of the Paris and Berne Convention.

The various categories of intellectual property law are now examined and the procedures for registration outlined.

8.2.2. Trademarks Act: General Principles

The essence of a "trademark" (i.e., a label, name, numeral, signs, etc.) is to establish a connection "in the course of trade between certain goods and a person having the right, either as a proprietor or registered user, to use the mark with or without indication of his identity" on the product to which the mark is affixed. The product labels, which must indicate the origin of the goods, also represent acknowledged quality of some given products and the goodwill of their manufacturers or producers.

Trademarks may be registered or unregistered. Right in an unregistered trademark may be acquired by use and may exist independently of registration in which case there can only be a "passing-off" action for its infringement.

However, the proprietor of an unregistered trademark may oppose the registration of a similar trademark. The basis of this action is a proprietary right not so much in the name itself, but in the goodwill established through usage of the name in connection with the complainant's goods. The party objecting, therefore, must show that the name or mark in question has become associated with his goods, that a reputation or goodwill has attached to them under that name or mark and that use by the person seeking registration of a similar name or mark is likely to cause

confusion resulting in damage to the reputation or goodwill of the complainant.

In Nigeria, the Trademark Act indicates what marks are registrable, and provides that a registrable trademark must contain or consist of at least one of the following essential characteristics:

- the name of the company, individual or firm represented in a special or particular manner;
- the signature of the applicant for registration, or some predecessor in his business;
- an invented word or words;
- a word or words having no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or surname;
- any other distinctive mark but a name, signature, word or words other than such as fall within the description in the above paragraphs (i), (ii), (iv) shall, not except by order of a court, be deemed a distinctive mark.

In addition to the above, it should be noted that trademarks are registrable in Nigeria in different classes. The law, for example, provides that, a trademark must be registered for particular goods or classes of goods. The applicant must in his application, state the goods included in each class separately. If the applicant desires to register the same mark for goods falling within the ambits of more than one class, he must make different applications in respect of each class. Each such application is treated for all purposes as separate and distinct.

Whilst, in theory, speculative trademark registrations reflecting no direct relationship for use on specific goods are discouraged, the current universal practice of granting franchise and licensing rights for the use of well known trademarks on diverse goods recommends that proprietors of such trademarks should endeavour, as a protective and anticipatory measure, to effect registration in the country of their proprietary trademarks in diverse classes of registration.

8.2.2.1. Qualification of Act as a Trade Mark Agent

In several jurisdictions, the capacity to act as a trademark agent is unqualified. However, in Nigeria, the legal expectation is to engage the services of a lawyer to act as "trademark agent" with regard to the registration of a trade mark and other dealings or transactions on the same. In order to ensure probity and that only persons with good character are appointed as trademark agents, it should be noted that:

"The Registrar shall not be bound to recognise as such agent any person who has been proved to him to have been guilty of conduct discreditable to a trade mark agent or who has been convicted criminally or whose name has been struck off the Roll of Legal Practitioners or (during the term of his suspension) any person who has been suspended from acting as a legal practitioner".

In practice, proprietors of trademarks have had little or no difficulty in finding competent lawyers to appoint as trademark agent.

8.2.2.2. Future Trends of Trade Marks Registration

At the time of going to print, certain revisions to the current Trade Marks Act are being contemplated. A significant revision is the possible introduction for registration of "service marks". In

effect, signs which may constitute a trade mark may, upon the effective commencement of the proposed law, include "service marks" which are defined as "the shape, form, presentation or packaging of goods or services".

8.2.3. Patent and Designs Act

8.2.3.1. Patents

The word "patent" denotes a grant of letters acknowledging a right or monopoly in respect of an invention. When a patent is granted, the "Letters Patent" are delivered to the patentee, who is the person entered on the Register of Patents as the proprietor or grantee. A patentee is thereby granted a right in law to prevent others from making, using or dealing in his invention whether by sale, importation or hire. A patent for an invention does not confer upon a patentee any right to manufacture, which he does not already hold. What the "Letters Patent" confer is the right to exclude others from the commercial exploitation of a particular invention.

The actual procedure for application for "Letters Patent" is quite simple and straightforward. The applicant (assisted by his/its agent - usually a solicitor in Nigeria) is obliged to complete some Statutory Forms, which may be obtained from the Patents and Trademarks Registry, and to return the same accompanied by documents relating to the invention. The Application Form and relevant supporting documents are thereafter referred to an "examiner" who investigates the novelty of the invention claimed and establishes whether or not an earlier claim had been made on it. The examiner's report is not binding on the Registrar but only assists him in arriving at a decision. If the request for a patent is accepted, "Letters Patent" are granted to the applicant or joint-applicants and sealed with the seal of the Registrar of Patents upon payment of the prescribed fees.

8.2.3.2. Industrial Designs

The word "design" as used in this context means or refers to features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appear to and are judged solely by the eye, but does not include a method or principle of construction or features of shape or configuration which the article made in that shape or configuration has to perform.

The law in Nigeria as regards designs now goes further to provide that any combination of lines or colours or both and any three dimensional form, whether or not associated with colour, is an industrial design if it is intended by the creator to be utilised as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result. Like patents and trade marks, the right of registration of an individual design is vested in the statutory creator, that is, the person who, whether or not he is the true creator, is the first to file or validly claim a priority for an application for registration of the design, unless the creator was acting on behalf of another person for good consideration in which case that other person is treated as the proprietor.

The generally accepted view is that a mere importer of a foreign design is not its creator for this purpose, though it is not clear whether a mere importer may not be a proprietor by acquisition. 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 utilising the design for commercial purposes. Reproducing the design in any mini-

ature way is also prohibited by law. The protection provided by the Nigerian law is effective in the first instance for 5 years from the date of application for registration and two subsequent periods of 5-year renewals making a total of 15 years.

8.2.4. Copyright Act

The Copyright Act promulgated in 1988 makes provisions for the definition, protection, transfer, penalty for infringement of the copyright in literary works, musical works, artistic works, cinematograph films, sound recordings, broadcast and other ancillary matters. In theory, a copyright registration prevents the copying or reproduction of physical material existing in the fields of literature and the arts. Its objective is to protect the writer or artist from the unlawful exploitation of their creation but does not give a monopoly to the reproduction of ideas or to any particular form of words or design.

8.3. NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY (NITDA)

8.3.1 NATIONAL INFORMATION TECHNOLOGY POLICY.

The Federal Executive Council approved a National IT Policy in March 2001 and the implementation started in April with the establishment of NITDA, charged with the implementation responsibility. The Policy recognised the Private Sector as the driving engine of the IT Sector. NITDA is to enter into strategic alliance, collaboration and joint venture with the Private Sector for the actualisation of the IT vision, which is to make Nigeria an IT capable country as well as using IT as an engine for sustainable development and global competitiveness. It is also to be used for education, job creation, wealth creation, poverty eradication and global competitiveness.

Emphasis is to be laid on development of National Information Infrastructure backbone (NIIB) as well as the Human Resources Development. In addition, Information Technology Parks are to be developed in Abuja and in each of the six geo-political zones.

8.3.1.1 SOME STRATEGIES

- Establishing a coordinated programme for the development of a National Information Infrastructure (NII), State Information Infrastructure (SID), Local Information Infrastructure (LII) backbone by using emerging technologies such as satellite including VSAT, fibre optic networks, high-speed gateways and broad band/multimedia technologies.
- Utilising IT opportunities to restructure Government, citizens and Business interfaces for better governance, improved trade and commerce and administrative effectiveness.
- Empowering the labour force with IT skills and improving Small to Medium Enterprises (SMEs) productivity.

CHAPTER NINE :

IMPORT FORMALITIES

9.1. GUIDELINES FOR IMPORTERS AND EXPORTERS OF GOODS TO NIGERIA

This section outlines the formalities to be observed by importers and other parties in Nigeria wishing to import and/or pay for goods into the country.

1. All persons intending to import physical goods into Nigeria are required in the first instance to process their Form "M" through any bank irrespective of the value and whether payment is involved or not.
2. Consignments shall bear name of products, country of origin, specifications, date of manufacture, batch or lot number, standard(s) to which they were produced (e.g. BS, DIN, ISO/IEC, MS etc.) Foodstuffs (including drinks), pharmaceuticals and chemicals should carry expiry dates and/or shelf life and specify active ingredients where applicable on their packaging. The expiry date should be at least half the shelf life as at the time of inspection.
3. All electronic equipment/items and instruments **MUST** carry **INSTRUCTIONAL MANUAL** and not diagrams and notation on the containers. All electronic equipment/items and instruments **MUST** carry **SAFETY**-information and/or safety signs. All electronic equipment/items and other items where applicable **MUST** carry a **GUARANTY/WARRANTY** of at least six months.
4. Computer hardware and software must be year 2000 compliant.
5. Plant materials, whether for planting, consumption of industry shall be covered with phytosanitary certificate of the country of export, certifying that the plant material was inspected and found free from pests and that some treatment has been made where applicable in line with the International Plant Protection Convention of FAO.
6. Every manufactured item including components and spare parts shall be branded and bear manufacturers' names. Electrical appliances (fluorescent lamps, electric bulbs, electric irons, kettles etc) are required to carry information about their life performance whilst cables must carry information on their rating.
7. Misrepresentation of product specifications will result in delays and/or seizure. Supply of wrong information with an intention to cheat will also result in delays and/or impoundment/seizure with attendant consequences. Blank products will be automatically seized and destroyed.
8. All goods imported into the country shall be labelled in English in addition to any other language or render themselves liable to confiscation.
9. Manufactured goods and materials are subject to Standard Organization of Nigeria's (SON) certification in accordance with the provision of its enabling law.

9.1.1 Form "M" and Clean Report of Inspection Procedure

Since September 1, 1999 all goods except personal effects, used motor vehicles and perishables i.e. day-old-chicks, human eyes, human remains, vaccines, yeast, periodicals/magazines imported into the Federal Republic of Nigeria shall be subject to Pre-shipment Inspection in the country of supply. However, used motor vehicles and perishables though exempted from pre-shipment inspection shall require the completion of Form "M".

Any person importing goods into Nigeria shall process Form "M" through any authorized commercial/merchant bank. The authorized banks shall be responsible for delivering all Forms "M" (including those for imports excluded from inspection) to the appointed inspection agents liaison offices in Nigeria.

The Form "M" and supporting documents submitted to the inspection companies through the authorized dealers shall be clearly marked "Valid for Forex" or "Not Valid for Forex" depending upon whether or not foreign exchange remittance would be involved.

The Form "M" and relevant proforma invoice must contain a proper description of the goods to be imported, including relevant specifications, etc. Form "M" shall be in sextuplicate of which three copies shall be sent to the Pre-shipment Inspection Agents and one each to the Importer's bank, the Nigeria Customs Service and NMA.

Form "M" is obtainable from all the offices of the Pre-shipment Inspection Agents, Nigerian Embassies, Local Banks, branches of Nigerian Banks overseas and their correspondent banks

The completed Form "M" (Not Valid for Foreign Exchange) originating, from abroad will be returned through the appropriate Pre-shipment Inspection agents abroad to any of the designated banks or any bank of importer's choice in Nigeria. The introduction of 100 percent destination inspection is aimed at checking a growing incidence of under-valuation of imports and smuggling, most specifically of arms and ammunitions.

To reduce delays in the import clearing process, a Central Clearing System (CCS) has been introduced as a one-stop shop to replace the "long-room" method, which most importers associate with corrupt practices.

Issuance of the CRI or a Discrepancy Report shall be mandatory for all imports except those exempted from inspection and those expressly exempted by the Honourable Minister of Finance, provided approval would have been obtained before shipment of goods.

9.1.2. Seller's Responsibilities

The seller of the goods (i.e. the party with whom the Nigerian importer has a contractual relationship) shall be required to arrange for the physical inspection of goods with the appointed inspection company in the country of supply. The pre-shipment inspection agent shall be given at least three working days notice prior to the expected date of inspection.

The seller shall make the necessary arrangements for handling and presentation, of the goods for the purpose of inspection and any expenses incurred therefore shall be for his account. In the event that the seller has called in the Company without having prepared the goods for inspec-

tion, or in the event that the goods have been inspected and are found not to be up to requirements or specifications, the expenses of any additional intervention by the Company shall be borne by the seller.

The seller shall provide the appointed inspection agent with a copy of the packing list, final invoice and any other document as would be requested by the inspection agent.

9.1.3. Importer's Responsibilities

The importer shall advise his supplier on the need to submit after the completion of inspection, the final or commercial invoice within 72 hours to the Inspection Agent to facilitate the issuance of the Clean Report of Inspection (CRI). Importers of cargoes in excess of the declaration on the manifest will continue to be penalized according to the provisions of the law.

9.1.3. Import Duty Payment and Clearance of Goods

It shall be the duty of the importer's bank or the bank, which processed the Form "M" to issue a bank draft in respect of the amount stated on the CRI to the customer who shall pay same to any of the designated banks.

All commercial imports into Nigeria shall be accompanied by a final invoice bearing the CRI number with adequate description of the goods, packing list, transportation document (B/L, AWB/Way Bill), and manufacturers' certificate of analysis (where applicable).

The CRI number shall be stated on the Bill of Lading and also written against each item on the cargo manifest. The relevant inspection agent shall affix a security label on the final invoice submitted by the seller attesting the fact that pre-shipment inspection as been successfully performed. The final invoice will confirm, in L/C transactions to the negotiating bank overseas, that the goods have been inspected in accordance with the import requirement of the Federal Republic of Nigeria. The Final Invoice shall bear the CRI Number and the certified value. Relevant CRIs must accompany goods imported through neighboring countries.

Importers shall pay a CISS Administrative charge of 1% of Free On Board (F.O.B) value of all imports assessed based on the average rate of exchange prevailing at the time of inspection of the goods as submitted by the Central Bank of Nigeria. All imports shall be assessed for duty at the average rate of exchange prevailing at the time of issuance of CRI of the goods as submitted to the agents by the Central Bank of Nigeria.

The Nigeria Customs Service shall inform the appointed pre-shipment Inspection agents through the issuance of Form C 101 A in the event of a discrepancy on duty assessed on the CRI and duty assessed by the NCS.

Payments for Customs Duties and CISS Administrative charge shall be based on the Clean Report of Inspection (CRI) without any amendment. However, the Nigeria Customs Service (NCS) may with the prior permission of the Minister of Finance assess additional duties if it is found that the duty on the CRI is not correct. In such a case, the goods will be cleared on the assessment on the CRI upon a guarantee for the value of the difference issued by a designated bank. Additional duty may be imposed, therefore only after clearance with the Honourable Minister of Finance.

The issuance of bank draft by the customer's bank and the payment thereof into the designated bank shall be done and cleared and receipt issued by the designated bank before the counterpart original CRI for customs purpose is released to the importer for clearance of goods.

The bank draft for import duties must be paid to the designated banks and receipt issued with the number of the SGD Form stated thereon before goods are cleared.

All designated banks are to open branch offices at the ports where customs duties shall be paid.

Where the guidelines are satisfactorily implemented by importers, the Nigeria Customs Service shall release the foods within 48 hours

C H A P T E R T E N :

IMMIGRATION PROCEDURE AND REQUIREMENTS

10.1. TYPES OF VISA/ENTRY PERMIT

The knowledge of the various types of visa/entry permit is of crucial importance both to the applicant and to the company or organisation sponsoring him/her. This is because in the Nigerian visa system, the type that is given is tied to the purpose for which the journey is intended and any variation of the visa with the purpose of journey will render such a visa inappropriate for entry, leading to either a refusal of landing or deportation, in the case of a foreigner already in the country.

There are three main types of visa, viz.

- (1) Ordinary Visa
- (2) Diplomatic Visa
- (3) Gratis Courtesy Visa

The **Ordinary Visa** is further divided as follows:

- (a) Transit
- (b) Single journey
- (c) Multiple journeys

10.1.2. ORDINARY VISA

10.1.2.1. Transit

This type of visa is issued to applicants who wish to pass through Nigeria to a further destination. It may be obtained at a Nigerian mission and is given for a period not exceeding seven (7) days without reference to the Comptroller-General of Immigration.

An applicant seeking this type of visa must be in possession of an express approval (visa or any form of permission) to enter a specified third country, as well as a confirmed ticket or sufficient funds to pay for any means of transportation appropriate to reach that country. A transit visa may also be given at the port of entry on the specific approval of the Comptroller-General of Immigration. A transit pass is normally issued whether in the former or latter case, and it takes the form of an endorsement by rubber stamp on the passport of the applicant, which shall contain particulars of the port of entry, the date of entry and the period the person is permitted to remain in Nigeria in transit.

10.1.2.2. Single Journey Visa

This is valid for a single entry into Nigeria and may be issued as:

- Short Visit Visa;
- **STR** Visa (Subject To Regularisation for Residence Work Permit);
T.W.P (Temporary Work Permit)

10.1.2.2.1. The Short Visit Visa

This type of single journey visa is issued to applicants who require a single entry to Nigeria for the purpose of tourism, to see places of interest, or visit friends and/or relations resident in Nigeria. It is also issued to applicants who wish to visit Nigeria for business or meeting. This visa is also issued at a Nigerian mission abroad without reference to the Comptroller-General of Immigration provided that, the applicant who fills Form (1MM 22), is in possession of a return air ticket to and from Nigeria or an onward ticket for a further destination, together with a visa or any other acceptable form of permission to enter that country. In case a passenger arrives at the port of entry without a return ticket or onward ticket to a further destination but is otherwise found to be admissible, he/she may be required to deposit the appropriate amount for the purchase of such ticket as may be necessary to enable him/her return to his/her country of domicile, or proceed to a further destination.

10.1.2.2.2. STR Visa (Subject to Regularisation)

This is the type of visa required by foreigners seeking to take up employment in Nigeria. Section 8, sub-section 1, of the Immigration Act provides that "no person, not being a citizen of Nigeria, may take up employment in Nigeria other than employment with the federal or state government without the consent of the Comptroller-General of Immigration". Section 33 of the Act further provides that an application must be made to the Comptroller-General by the prospective employer, in writing, confirming that he/she has a vacancy on the expatriate quota and at the same time stating the position in which prospective employee is to be employed and confirming acceptance of immigration responsibility".

The employer company applies to the Nigerian embassy or consular office in the country where such intending employee/applicant resides, requesting that he (and his accompanying spouse/fiancee/children, if applicable) be granted STR Visa (subject to regularisation for residence work permit) when he arrives in Nigeria. In such application, the employer company undertakes to assume immigration and other responsibilities for the employee (and his accompanying spouse/fiancee/children, if applicable) in Nigeria.

The STR Visa is issued at Nigerian mission without reference to the Comptroller-General of Immigration provided that the applicant presents specified documents. STR visa is normally given for 90 days without reference, during which an application must be made to the Comptroller-General of Immigration, to regularise the stay of the prospective employee, and the person may assume his employment only when such application is approved and a **RESIDENCE WORK PERMIT** granted.

10.1.2.2.3. Registration of Aliens

Having undergone the various legal formalities for residency status, all foreigners are expected to register their presence at the immigration offices closest to their places of residence or occupation. It should be noted that for this purpose, all the state immigration offices are representatives of the Comptroller-General of Immigration and application for regulation should be made to them, which they would refer accordingly, for approval to issue the residence permit.

10.1.2.2.4. Temporary Work Permit (T.W.P)

Companies and organisations wishing to engage the services of expatriates for short period assignments are required to apply direct to the Comptroller-General in Abuja for visa/entry permits for such expatriates. This is the temporary work permit visa and it is not issued without

reference to the Comptroller-General of Immigration. If such applications are submitted at the Nigerian missions abroad, they must be referred to the Comptroller-General of Immigration for approval. The temporary assignments, which are eligible for such approval, include:

- erection/installation work;
- feasibility studies;
- repairs of machinery/equipment;
- auditing of accounts;
- research work, and such other assignments as may fall into this category.

The visa is normally approved by cablegram sent through NITEL offices in Nigeria to the Mission from where it would be issued. The cost of the transmission is borne by the company/organisation applying for the facility. The T.W.P Visa is given for a period not exceeding 3 months and may be extended for a further period, upon application to the Comptroller-General of Immigration who will determine the desirability of such an extension.

10.1.2.3. Multiple Journey Visa

This type of visa is normally issued without reference to the Comptroller-General of Immigration by the Nigerian missions abroad for a period not exceeding 12 months, and may be for a specified number of journeys within the period granted.

It is normally given mostly to non-resident directors of Nigerian based companies and other foreign businessmen and women for the purpose of attending meetings and for other frequent visits to pursue business arrangements, or make consultations regarding investment projects.

Both the single and multiple journey visas are also given in Nigeria to employees of companies/organisations whose stay have been duly regularised, in order to enable them return to their employment whenever they travel out either for business or holidays. This is called return or re-entry visa. Applications for this must be made personally by the employee in Nigeria and not from outside the country. The application must be supported by the employer confirming that the employee is returning to his job, and reaffirming acceptance of Immigration responsibility on behalf of the applicant, as well as showing proof of the continued availability of the expatriate quota position to be occupied.

10.2. GRATIS COURTESY VISA

This type of visa is normally issued to persons who do not qualify for diplomatic visa, but who are foreign government officials travelling on official business. It may be granted in cases where it is considered undesirable to accede to an application for a diplomatic visa, but where it is desirable on grounds of international courtesy to facilitate a journey.

CHAPTER ELEVEN:

LABOUR, HEALTH, TRADE AND ENVIRONMENTAL STANDARD

11.1 NATIONAL MINIMUM WAGE

Due to inflationary factors, the Federal Government increased the, minimum wage to N7,500 per month. An employer, defined as someone employing 50 or more persons, is required to pay the minimum wage, defined as the total emolument payable to worker. All employees and trade unions on both the public and private sectors of the economy are permitted to make adjustment to total remuneration packages through the process of collective bargaining. The remuneration agreed requires the approval of the Federal Minister of Employment, Labour and Productivity. Approval will be given where the increases are moderate, non-inflationary and affordable. The agreed and approved remuneration will apply from the first day of the calendar month that follows such agreement. Backdating of such agreement is not permitted.

11.2. TRADE MALPRACTICES DECREE 1992

This law creates certain offences relating to trade malpractice and set up a special trade malpractice investigation panel to investigate such offences. The law provides against any person who:

1. Falsely labels, packages, sells, offer for sale or advertises any product so as to mislead as to its quality, character, brand name, value, composition, merit or safe; or
2. For the purpose of sale, contract or other dealing, uses or intends to use any weight, measure or number which is false or unjust;
3. Sells any product by weight, measure or number and delivers to the purchaser a less weight, measure or number that is purported to be sold;
4. Advertises or invites subscription for any product or project which does not exist.



11.3. REGULATORY BODIES

11.3.1. Standards Organisation of Nigeria (SON)

Import Inspection: as part of the standardisation and quality control activities, SON is actively involved in import inspection of goods and quality assessment at the ports. With the Federal Government trade liberalisation and privatisation process, the organisation is vigorously pursu-

ing the import quality inspection programme in order to ensure that only goods that meet the prescribed National Standards parameters are allowed into the country.

WEBSITE: <http://www.sononline-ng.org>

113.2. National Agency for Food Drugs Administration and Control (NAFDAC)

113.2.1 Procedural Requirement For Registering Food Processing, Cosmetics Either For Manufacturing, Importing, Exporting, Advertising, Selling Or Distribution In Nigeria

(a) Food

1. An application for the registration of processed food shall be made by the manufacturers
2. In case of manufacturers outside Nigeria, such shall be represented in Nigeria by a duly registered company-or individual with facilities to effect a recall of the product when necessary
3. An applicant for manufacturing in Nigeria must file an evidence of Power of Attorney from the manufacturer which authorise him to speak for him principally on all matters relating to the latter's specialities. The original Power of Attorney is to be notarised and submitted to NAFDAC.
4. The Manufacturer, in the case of imported processed foods or cosmetics must show evidence that he/she is licensed to manufacture the products for sale in the country of origin (Manufactures certificate). Such evidence must be by the competent health authority of the country of manufacture, and shall be authenticated by the Nigerian Mission in that country.

(b) Registration Procedure

The applicant must submit to the Registration Division, of NAFDAC, a written application stating the name of the manufacturer, name (brand name where applicable) of the product and obtain the prescribed application form, which must be properly filled with all information required. This form labelled "FormD0REG/001" is available online for download. A separate application form shall be submitted for regulated product.



(c) Guidelines for Registration of Drugs in Nigeria

1. An application for the registration of drug product shall be made by the manufacturer.

Registration Procedure

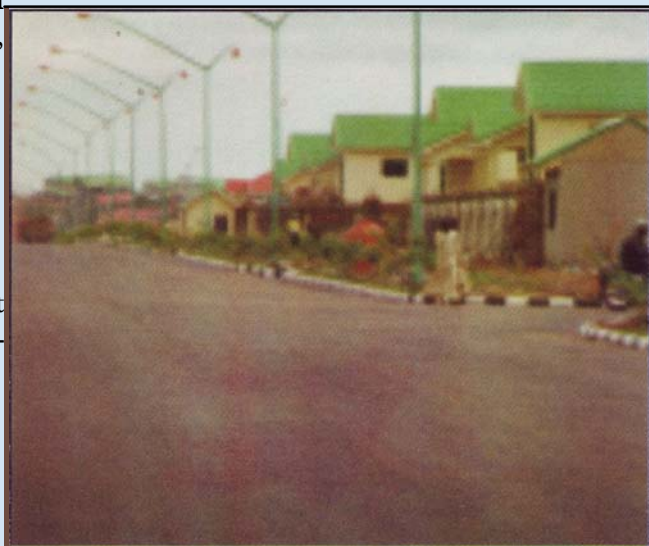
The applicant must submit to the registration division of NAFDAC, a written application stating the name of the manufacturer, generics name (brand name where applicable) strength, indication and obtain the prescribed application form, which must be properly filled, with all information required. This form labelled "Form D-REG/001", shall be obtained on payment of N5000 per product in Bank draft issued in favour of NAFDAC, Lagos.

Completed registration form for each product should be returned with the following items:

1. Five (5) copies of the dossier;
2. Three packs of drugs samples
3. Superintendent and production pharmacist current annual licence to practise as pharmaceutical chemist.
4. Premises registration license from Pharmaceutical Council of Nigeria (PCN)

A separate application form shall be submitted for each drug products. In this context, a drug product means a separate drug formulation. It should however be noted that the application for registration of one dosage form with different strength cannot be made on the application form.

WEBSITE: <http://www.nafdacnigeria.org>



CHAPTER TWELVE:

TAXATION AND FISCAL REGULATIONS IN NIGERIA

12. 0. INTRODUCTION

The Nigerian Tax System has undergone significant changes in recent times. The Tax Laws are being reviewed with the aim of repelling obsolete provisions and simplifying the main ones. Under current Nigerian law, taxation is enforced by the 3 tiers of Government, i.e. Federal, State, and Local Government with each having its sphere clearly spelt out in the Taxes and Levies (approved list for Collection) Decree, 1998. Of importance at this juncture however are tax regulations pertaining to investors both foreign and local.

The importance of tax regulations cannot be over-emphasized, as most transactions with any Ministry, department, or government agency cannot be concluded without evidence of tax clearance. i.e. a Tax Clearance Certificate certifying that all taxes due for the three immediately preceding years of assessment have been settled in full.

12.1 LIST OF APPROVED TAXES AND LEVIES FOR THE THREE TIERS OF GOVERNMENT

A list of taxes and levies for collection by the three tiers of government has been approved by government and published by the Joint Tax Board (J.T.B.) as follows:

(A) Taxes collectible by the Federal Government

- (1) Companies income tax;
- (2) Withholding tax on companies;
- (3) Petroleum Profit Tax;
- (4) Value-added tax (VAT);
- (5) Education tax;
- (6) Capital gains tax - Abuja residents and corporate bodies;
- (7) Stamp duties involving a corporate entity;
- (8) Personal income tax in respect of:
 - Armed forces personnel;
 - Police personnel;
 - Residents of Abuja FCT;
 - External Affairs officers; and
 - Non-residents.

(B) Taxes/Levies Collectible by State Governments

- (1) Personal income tax:
 - Pay-As-You-Earn (PAYE);
 - Direct (self and government) assessment;
 - Withholding tax (individuals only);
- (2) Capital gains tax;
- (3) Stamp duties (instruments executed by individuals);

- (4) Pools betting, lotteries, gaming and casino taxes;
- (5) Road taxes;
- (6) Business premises registration and renewal levy;
 - urban areas (as defined by each state):
 - maximum of N 10,000 for registration and N5 ,000 for the renewal per annum
 - rural areas
 - registration N2,000 per annum
 - renewal N 1,000 per annum
- (7) Development levy (individuals only) not more than N100 per annum on all taxable individuals;
- (8) Naming of street registration fee in state capitals Right of occupancy fees in state capitals;
- (9) Rates in markets where state finances are involved.

(C) Taxes/Levies Collectible by Local Governments

- (1) Shops and kiosks rates;
- (2) Tenement rates;
- (3) On and off liquor licence;
- (4) Slaughter slab fees;
- (5) Marriage, birth and death registration fees;
- (6) Naming of street registration fee (excluding state capitals):
- (7) Right of occupancy fees (excluding state capitals);
- (8) Market/motor park fees (excluding market where state finance are involved);
- (9) Domestic animal licence;
- (10) Bicycle, truck, canoe, wheelbarrow and cart fees;
- (11) Cattle tax;
- (12) Merriment and road closure fees;
- (13) Radio/television (other than radio/tv transmitter) licences and vehicle radio licence (to be imposed by the local government in which the car is registered);
- (14) Wrong parking charges;
- (15) Public convenience, sewage and refuse disposal fees;
- (16) Customary, burial ground and religious places permits; and
- (17) Signboard/advertisement permit.

12.2 SOME OF THE RELEVANT TAX REGULATIONS AND FISCAL ISSUES IN NIGERIA

These are categorised as Follows:

12.2.1. TRANSACTION TAXES

a. Capital Gains Tax

This accrues on an actual year basis and it pertains to all gains accruing to a taxpayer from the sale or lease or other transfer of proprietary rights in a chargeable interest which are subject to a capital gains tax of 10%, such chargeable assets may be corporeal or incorporeal and it does not

matter that such asset is not situated in Nigeria. Where however the taxpayer is a non-resident company or individual the tax will only be levied on the amount received or brought into Nigeria.

Computation of capital gains tax is done by deducting from the sum received or receivable from the cost of acquisition to the person realizing the chargeable gain plus expenditure incurred on the improvement or expenses incidental to the realization of the asset.

b. Value Added Tax (VAT)

This was introduced by the VAT decree No. 2 of 1993, to replace the old sales tax. It is a consumption tax levied at each stage of the consumption chain, and is borne by the final consumer. It requires a taxable person upon registering with the Federal Board of Inland Revenue to charge and collect VAT at a flat rate of 5% of all invoiced amounts of taxable goods and services.

VAT paid by a business on purchases is known as input tax, which is recovered from VAT charged on company's sales, known as output tax. If output exceeds input in any particular month the excess is remitted to the Federal Board Of Inland Revenue (FBIR) but where input exceeds output the taxpayer is entitled to a refund of the excess from FBIR though in practice this is not always possible.

A Taxpayer however has the option of recovering excess input from excess output of a subsequent period. It should be stated at this point that recoverable input is limited to VAT on goods imported directly for resale and goods that form the stock-in-trade used for the direct production of any new product on which the output VAT is charged.

c. Education Tax

An education tax of 2% of assessable profits is imposed on all companies incorporated in Nigeria. This tax is viewed as a social obligation placed on all companies in ensuring that they contribute their own quota in developing educational facilities in the country.

d. Petroleum Profits Tax

Nigerian law by virtue of the Petroleum Profits Tax Act requires all companies engaged in the extraction and transportation of petroleum to pay tax. The taxable income of a petroleum company comprises proceeds from the sale of oil and related substances used by the company in its own refineries plus any other income of the company incidental to and arising from its petroleum operations.

The taxable income of a petroleum company is subject to tax at 85%, but this percentage is lowered to 65.75% during the first 5 years of operation. Where oil companies operate under production sharing contracts they will be liable to tax at a rate of 50%.

There are however some concessions granted petroleum companies known as, Capital Allowance and Petroleum Investment Allowance; the former is deducted in arriving at the taxable income and entails expenditure on equipment, pipelines, and storage facilities, buildings and drilling costs, these are referred to as qualifying assets. The applicable rate of Capital Allowance for any year is of 20% of the cost of the qualifying assets applied on a straight-line basis for the first 4 years and 19% for the 5th year. The latter is regarded as an addition to capital allowance and covers allowance in respect of new investments in assets for petroleum exploration; it is available in the accounting period in which the assets are first used.

It must be stated that the deduction of Capital Allowance is restricted, so that for any accounting period, the tax on the company should not be less than 15% of the tax which would have been assessable had no capital allowances been granted the company.

e. Nigerian Social Investment Trust Fund (NSITF)

This is governed by the NSITF Act, and requires everybody employed in a Nigerian incorporated company to contribute a certain percentage of their salary to the fund. This contribution is based on the assumption that the maximum basic salary in Nigeria is N48, 000 per annum; Expatriates are excluded from this requirement where they can show proof of a similar contribution in their home country. The rate of contributions is defined as follows, where the contributor is an employee, 2.5% of his salary subject to a maximum of N 1,200 per annum; Where the contributor is an employer, 5% of basic salary subject.

f. Stamp Duties

The administrations of stamp a duty, which is jointly carried out by the state and Federal authorities, depending on the type and nature of the document. Stamp duties are regarded as transaction taxes, and the rates chargeable would depend on the classification of the document. Some documents attract stamp duties on flat rate basis while others are assessed individually.

h. Withholding Tax

Nigerian law subjects certain activities and services to Withholding Tax. This basically means that where during transactions in any of the specified activities or services, a payment is due from one person to another, the person making the payment is expected to deduct tax at the applicable rate and remit it to the relevant tax authority. This should be done not later than 30 days after the deduction. This provision can be found in sections 68 to 72 of the Personal Income Tax Decree No. 104 of 1993; Sections 60 to 64 of the Company Income Tax Act (as amended), and Section 51(a) of the Petroleum Profits Tax Act (as amended).

Some of these activities and Services and their current applicable rates include:

Payment	% Corporation	%Individual/Partnership
Rent	10	10
Construction	5	5
Dividend	10	10
Royalties	10	5
Commission	10	5
Professional Fees	10	5
Technical Fees	10	5
Consultancy Fees	10	5

i. Double Taxation Agreements/Treaties

Nigeria has a number of tax treaties referred to as "Double Taxation" Agreements with a number of countries. This is to ensure that the tax payable in Nigeria on the profits of a Nigerian company being remitted into the country are reduced by the amount of "foreign Tax" paid abroad and vice versa. In the last few years, Nigeria has entered into double taxation agreements with a number of countries.

These agreements are entered into with a view to affording relief from double taxation in rela-

tion to taxes imposed on profit taxable in Nigeria and any taxes of similar character imposed by the laws of the country concerned. Where an overseas company receives profits from Nigeria that have already been taxed in Nigeria. Some of these countries include the UK, France, The Netherlands, Belgium, Canada and Pakistan.

j. Personal Income Tax

The legal basis for this tax is found in the provisions of the Personal Income Tax Decree [now Act]. 104 of 1993. Every taxpayer in Nigeria is liable to pay tax on the aggregate amount of his income whether derived from within or outside Nigeria, the salaries, wages, fees, allowances, and other gains or benefits, given or granted to an employee are chargeable to tax. The Employers of labour are deemed to be agents of the tax authority for the purposes of remitting taxes deducted from salaries due to employees. However residency of the Taxpayer determines the extent of a taxpayer's liability in Nigeria. A person's place of residence for this purpose is defined as a place available for his domestic use in Nigeria on a relevant day, excluding hotels and rest houses. A person is deemed resident in Nigeria if he resides in Nigeria for 183 days in any 12-month period, expatriates holding residence permits are liable to tax in Nigeria even if they reside in the country for less than 183 days in any 12-month period. Once residence can be established, the relevant tax authority of the territory is the tax Authority in which the taxpayer has his place of residence or principal place of business. The following are however exempted from tax: -

- Medical or Dental expenses incurred by the employee;
- Retirement gratuities and compensation loss of office;
The cost of passage to or from Nigeria incurred by the employee;
- Interest on loans for developing an owner-occupied residential house;
- Leave allowance, which is computed as 10% of annual basic salary subject to a maximum of N7, 500 per annum.

k. Companies Income Tax

This Tax is payable for each year of assessment of the profits of any company at a rate of 30%. These include profits accruing in, derived from brought into or received from a trade, business or investment. Also companies paying dividends to its shareholders are first obliged to pay tax on its profits at the companies tax rate. Generally, in Nigeria Company dividends or other company distribution whether or not of a capital nature made by a Nigerian is liable to tax at source of 10%. However dividends paid in the form of bonus share or scrip shares to individual shareholders are not subject to tax. Also where a company is a shareholder in another company then such dividends are excluded from the profits of the company for the purposes of computation of the tax.

12.3. Conclusion

With the present policy of liberalization of the Nigerian Economy being vigorously pursued by the Federal Government, Nigeria is fast becoming an investors haven albeit with a few teething problems. What is required for the foreign investor however is a careful approach to the following areas:

- Proper enterprise set-up.
- Procurement of necessary permits and approvals.
- Access to the best professional advice.

CHAPTER THIRTEEN:

FREE TRADE/EXPORT PROCESSING ZONE SCHEME

13.0 INTRODUCTION

Export Processing or Free Trade Zones are clearly delineated and fenced industrial estates within a nation's customs and trade regime. They are normally set up for manufacturing concerns producing mainly for the export market. The Nigerian concept is no difference. Since 1989 when the foundations for the first Free Trade Zone (Calabar Free Trade Zone) was established, there have been the addition of five more with two been fully completed and operational.

In Nigeria, there are two types of free trade concept – the specialised and the general-purpose trade/export zone. For effective management of these zones, at the federal level, two bodies are in place – Nigerian Export Processing Zone Authority (NEPZA) for the general-purpose zones and Oil & Gas Free Zone Authority (OGFZA) for oil & gas zone.

13.1 INVESTMENT PROCEDURES WITHIN THE ZONES

The following are the entry procedures into the zones:

- i. Obtain and complete prescribed forms from either NEPZA or OGFZA, as applicable
- ii. Submit completed form with the following attachments:
 - Project description
 - Market survey
 - Funding proposal
 - Financial projection
 - Environmental impact statement and control
- iii. Upon approval of request, the following steps are thereafter taken:
company's registration with CAC;
- iv. If outright purchase of factory building is desired
 - 10% deposit of the selling price of the standard building is made within 3months of approval
 - payment of the balance 90%, 5months after
- v. Renting of factory building
down payment of one year rent required not exceeding 3months after signing the rental contract. Thereafter, rental charges shall be paid within the first quarter of every year.
- vi. Leasing the standard factory
 - Payment of 40%lease value on approval
 - Payment of 30% at the end of the 5th year
 - Payment of 30% balance at the end of the 10th year

- vi. With condition(s) in (iii) fulfilled, the investor may proceed to carry out the following:
 - Remittance of investment capital
 - Importation and installation of machinery
 - Commencement of production

13.2. TYPES OF INDUSTRIES PERMISSIBLE IN NIGERIA EXPORT PROCESSING ZONES

- Electrical and electronic products
- Textile products
- Wood products
- Leather products
- Plastics products
- Petroleum products
- Rubber products
- Cosmetics
- Garments
- Chemicals products
- Metal products
- Educational materials and equipment
- Communication equipment and materials
- Sports equipment and materials
- Machinery
- Handicraft
- Optical instruments and appliances
- Medical kits and instruments
- Biscuits and confectioneries
- Printed materials, office equipment and appliances
- Paper materials
- Food processing
- Pharmaceutical products
- Oil & gas activities

13.3. INCENTIVES

- i. Exemption from payment of all federal, state and local taxes, levies, rates, and customs duties;
- ii. Repatriation of foreign capital investment in EPZs at any time with capital appreciation on the investment;
- iii. No import or export licence;
- iv. Rent free land during construction of factory space;
- v. Services such as warehousing, standard pre-built factories, transportation, sanitation, canteen, etc, are available within the zones;
- vi. Unrestricted remittance of profits and dividend earned by investor in the zone;
- vii. 100 percent foreign ownership of enterprises in the EPZ allowable;
- viii. Sale of up to 25% of production permitted in the domestic market.

13.4. **EXISTING ZONES AND STATUS**

Name	Location	Status	Mode	Management
Calabar Free Trade Zone	Calabar, Cross River State	Completed over (80% occupied)	General purpose	NEPZA
Onne Oil & Gas Free Zone	Onne, Rivers State	Completed (Over 80% occupied)	Specialised	OGFZA
Kano Free Trade Zone	Kano, Kano State	Under construction	Non-oil export	NEPZA
Maigatari Free Trade	Maigatari, Jigawa State	Under construction	Non-oil export	Jigawa State Govt.
Banki Free Trade Zone	Banki, Borno State	Under construction	Non-oil export	Bomo State Govt.
Lekki Export Processing Zone	Lekki, Lagos State	Under construction	Non-oil export	Private initiative

CHAPTER FOURTEEN:

RESOLUTION OF COMMERCIAL DISPUTES

14.0. THE OPTIONS

It is inevitable that occasional disputes would occur in the course of doing business. In Nigeria, the most common recourse adopted by aggrieved parties who cannot resolve disputes amicably amongst themselves is to seek redress in the law courts. The jurisdiction and hierarchy of these courts (i.e. magistrate Courts, State High Courts, the Federal High Court, the Court of Appeal and the Supreme Court) are spelt out in the constitution of the Federal Republic of Nigeria. With the increasing legal awareness of the populace, the courts have become inundated with litigation. In a country which had in the past resolved disputes conclusively through the traditional mediation of "community elders", it is perhaps not surprising that inadequate arrangements were made to establish enough courts and appoint sufficient judges to deal with an ever increasing volume of litigation. The resultant effect is that 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 prospective investor in Nigeria would be well advised to consider other options for settlement of commercial disputes of a general nature particularly under the provisions of the Arbitration and Conciliation Act, which was enacted in 1998.

14.1. THE ARBITRATION AND CONCILIATION ACT

The Arbitration and Conciliation Act (the arbitration Act) of 1998 was enacted with the declared intention of providing a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation. The Act also makes the Convention of the Recognition and Enforcement of Arbitral Awards (New York Convention) applicable to any award in Nigeria or indeed in any contracting State arising out of international commercial arbitration.

14.1.1. SOME PRACTICAL IMPLICATIONS OF THE ARBITRATION ACT ON COMMERCIAL TRANSACTIONS

An extensive discussion on the merits and demerits of arbitration per-se are beyond the scope of this book. However, it will endeavour to address some of the more common type of enquiries that could guide investors in their commercial transactions.

14.1.2. Are there any Opportunities Available for the Conciliation and Amicable Settlement of Disputes?

Many jurisdictions do not recognise "conciliation" as a formal institution, in the context of private arbitration. However, it is becoming more apparent that contractual parties often consider it expedient to explore opportunities for amicable settlement of some contractual aspects of a dispute, even pending any formal arbitration proceedings. In this regard, the conciliation rules of the Nigerian Arbitration Act are quite unique in providing that:

"Notwithstanding the other provisions of the Act, the parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation under the provision of this part of the Act".

Whilst the Arbitration Act may be a local statutory enactment in its application, it seems to have certain favourable features in respect of international contracts, where either one of the parties is based in Nigeria or the contract between the parties is to be executed in Nigeria. For example:

There is a clearly stipulated opportunity for an interim conciliation procedure towards amicable settlement of disputes:

- the location of conciliation and/or arbitration proceedings could be such jurisdictions as have been mutually agreed by the parties, i.e. in Nigeria or elsewhere
- adoption of the provisions of the Arbitration Act as the applicable arbitration rules of any international contract puts to rest any doubts as to applicable law to the contract and issue of enforcement
- the sequence and modes of the dispute resolution opportunities offered by the Act may be less protected and more cost effective than some of the conventionally assimilated rules and other arbitration bodies.

14.1.3 Under the Nigerian Law, IS A "Choice of Laws" Provision In Contract Enforceable?

There are certain categories of contracts which must expressly designate Nigerian laws as the applicable law, e.g. contracts/agreements relating to the transfer of technology to any Nigerian entity which attract royalties and fees in connection with the use of trade marks, patented inventions, supply of technical expertise etc, or the case of contracts/agreements for the supply of goods and/or services to federal and state governments of Nigeria. As regards to other international commercial contracts, and depending on the manner in which the agreement is couched, the parties are free under Nigerian law to choose the applicable law to the transaction.

Section 47(1) of the Arbitration Act clearly states that:

"The arbitral tribunal shall decide the dispute in accordance with the rules in force in the country parties have chosen as applicable substance of the dispute".

14.1.4. Can there be a Mandatory Arbitration Agreement Whereby the Parties, Rather than Resorting to the Court System, Utilize formal Arbitration Proceedings?

Yes, there can be a mandatory Arbitration Agreement between the parties. However such an Agreement must be clearly incorporated in the contract between the parties with specific clauses prescribing the following:

- the applicable law;
- the language of construction agreed by the parties;
- the arbitration procedures applicable, and the parties shall regard the arbitral awards as final;
- the place where the parties have agreed to hold arbitral proceedings.

14.1.5. What arbitration organization would be most suitable or recognized in Nigeria?

1. According to the Act, the parties to an international commercial agreement may agree in writing that the disputes in relation to the agreement shall be referred to arbitration in accordance with the Arbitration Rules set out in the Arbitration and Conciliation Act of Nigeria, or the UNCITRAL Arbitration Rules or any international arbitration rules acceptable to the parties. Whilst the parties are at liberty to choose such international arbitration as they deem fit, it would be reasonable to propose the adoption of the UNCITRAL Arbitration Rules (as set out by the United Nations Commission on International Trade Law on 21st June, 1985).
2. Reciprocal enforcement of arbitral awards is also assured since Nigeria has ratified and is party to the 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards' concluded at New York on 10th June, 1958.

14.2. THE REGIONAL CENTER FOR INTERNATIONAL COMMERCIAL ARBITRATION.

Dovetailed to the UNCITRAL arbitration Rules is the Regional Centre for International Commercial Arbitration Lagos (the Centre). This is an institution carrying-out Arbitration and other alternative dispute resolution work in sub-Saharan Africa.

The Centre's Arbitration Rules are the same as the UNCITRAL arbitration Rules with modifications meant to facilitate institutional Arbitration as the UNCITRAL Arbitration Rules are for ad hoc arbitration and therefore possess no institutional features.

The arbitration Rules of the Centre allow a great deal of flexibility in the conduct of proceedings of the Arbitration and leave a wide discretion to the parties with regard to the choice of arbitrators, the place of arbitration and indeed in administering the rules to the essential processes of the arbitration proceedings.

The facilities for arbitration under the auspices of the Centre can be availed of by parties who may request for it, whether government, individuals or corporate bodies. Similarly, the Centre r offers other Alternative Dispute Resolution (ADR) services such as conciliation and mediation.

The Asian-African Legal Consultative Organization (AALCO) an organization consisting of forty-five Asian and African Countries, with the assistance of the Federal Republic of Nigeria, established the Centre. The Centre is independent, neutral and has an autonomous international character and its seat is in Lagos-Nigeria. It enjoys diplomatic immunities and privileges accorded to international organizations in accordance with International law.

The Centre has arrangements with certain institutions such as World Bank's International Centre for Settlement of Disputes under which arbitration proceedings under the auspices of such institutions can be held at the seat of the Centre.

Government recognising that the Centre maintains an International Panel of Arbitrators and acts as appointing authority and administrators has approved in view of its economic policy of at-

tracting foreign investors to buoy up Nigeria's economy and the conservation and prudent expenditure of its foreign exchange earnings, the incorporation of the Centre's Model Arbitration Clause in international contracts executed by its ministries, parastatals and extra-ministerial agencies, so that any dispute arising from such contracts may be resolved in accordance with the Arbitration Rules of the Regional Centre for International Commercial Arbitration, Lagos; which are the same as the United Nations Commission on International Trade Law (UNCITRAL Arbitration rules with slight modifications.

To wit:

MODEL ARBITRATION CLAUSE

"Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Rules for Arbitration of the Regional centre for International Commercial Arbitration, Lagos.

Parties may wish to add the following:

- (a) The appointing authority shall be the Regional Centre for International Commercial Arbitration, Lagos
- (b) The number of arbitrators shall be _____
- (c) The place of arbitration shall be _____
- (d) The language(s) to be used in the arbitral proceeding shall be _____
- (e) The law applicable to this contract shall be that of _____

14.3. DOMESTIC CONTRACT AND ARBITRATION

In relation to domestic contracts, government has approved that all disputes arising from such contracts shall be referred to arbitration which shall be administered by the Centre under the applicable Arbitration Rules in the schedule to the Arbitration and Conciliation Act chapter 19-Laws of the Federation of Nigeria (LFN) 1990.

All ministries, parastatals and extra-ministerial agencies shall accordingly incorporate into all government contracts the above stated model clause in international contracts which shall be administered by the Centre and refer all domestic arbitration arising from domestic contracts to the Regional Centre for International Commercial Arbitration, Lagos.

14.4. OTHER INSTITUTIONS INVOLVED IN ALTERNATIVE DISPUTE RESOLUTION.

Some institutions in Nigeria carry out aspects of disputes resolution. They include the Institute of Construction Industry Arbitrators, which carry out arbitration in the specialized area of construction; the chartered Institute of Arbitrators (London) Nigeria Branch, the Negotiation and Conflict Management Group (NCMG) and the Centre for peace in Africa, which are involved in mediation of commercial disputes.

ANNEX I: LIST OF PIONEER INDUSTRIES/ PRODUCTS

S/N	INDUSTRIES	PRODUCTS
1.	Cultivation, Processing and Preservation of food crops and fruits.	Preserved canned foodstuff and fruits, tea, coffee, refined sugar, tomato puree/juice etc.
2.	Integrated dairy production	Butter, cheese, fluid milk and powder, ice cream (by products, livestock, minor edible products).
3.	a) Deep sea trawling and processing b) Coastal fishing and shrimping	Preserved sea foods, fish and shrimps, fishmeal
4.	Mining lead, zinc, and iron and steel from iron ore	Iron and steel products
5.	Manufacture of iron and steel from Iron ore	Iron and steel products
6.	The smelting and refining of non-ferrous base metal and the manufacture of their alloys	Refined non-ferrous base metal and their alloys
7.	Mining and processing of barytes, bentonites and associated minerals	Barytes, bentonites and associated minerals
8.	Manufacture of oil well drilling materials containing a predominant proportion of Nigerian raw materials	Barytes, bentonites and associated minerals
9.	The manufacture of cement	Cement, clinker
10.	Manufacture of glass and glassware laboratory glasswares	Sheet glass, pharmaceuticals and
11.	Manufacture of lime from local limestone	Lime
12.	Quarrying and processing of marbles	Marbles and processed marbles
13.	Manufacture of ceramic products	Refractory and heat insulating constructional products, laboratory ware
14.	Manufacture of basic and intermediate Industrial chemicals from predominantly Nigerian raw materials	<ul style="list-style-type: none"> i) Basic and intermediate organic chemical; ii) Basic and intermediate in-organic chemicals; iii) Fertilizers;

		iv) Petro-chemical; v) Caustic soda and chlorine vi) Pesticide and insecticide Pharmaceuticals, health vitamins
15.	Formulation and manufacture of pharmaceuticals	
16.	Manufacture of yeast, alcohol and related products	Yeast, industrial alcohol and related products
17.	Manufacture of paper pulp	Paper pulp
18.	Manufacture of yarn and man-made fibres	Yarn and synthetic fibres
19.	Manufacture of machinery involving the local manufacture of substantial proportion of components thereof	Office and industrial machinery, equipment and apparatus (whether or not electrical)
20	Manufacture of products made wholly or mainly of metal	Pipes and tubes structure metal products
21.	Manufacture of nets from local raw materials	Fishing nets, mosquito nets and related products
22.	Manufacture of gas cylinders	Gas cylinders
23.	The processing of local wheat flour materials	Flour and Offal
24.	Rubber plantation and processing	Rubber
25.	Gum/Arabic plantation and processing	Gum Arabic
26.	Manufacture of fertilizers Ammonia, Urea	Superphosphate and nitrogenous fertilizers
27.	Vehicle Manufacture	Motor Vehicles and Motor-cycles, Tri-cycles and Automotive components
28.	Oil palm plantation and processing	Palm Oil, palm kernel and Offals
29.	Manufacture of automotive and other components	Automotive and other components.
30.	Book printing	Books
31	Large Scale Mechanized Farming	Wheat, Maize, Rice and Sorghum
32.	Cattle ranching and piggery of not less than 500 herds	Cattle and pigs of not less than 500 herds
33.	Manufacture of Gypsum	Gypsum

34.	Re-refining or re-cycling of waste oil	Low power oil
35.	Manufacture of electrical appliances/ equipment/components and parts	Generators, transformers, meter, control, pressing irons, switchgears, test equipment, ballets/ starters/ lighters, discreet components, resistor/capacitors/coils/semi- conductors/ conductors.
36.	Ship building, repairs and maintenance of ocean going vessels	Ships, boats and barges.
37.	Manufacture of computer and computer chips	Computer hard and soft ware chips
38.	Manufacture of cameras, photographic equipment and other materials	Cameras, photographic equipment or any component thereof
39.	Diving and underwater engineers	Underwater engineering services.
40.	Local fabrications of machinery, equipment	Machinery
41.	Manufacture of tools	Machines and hand tools
42.	Installation of facilities for aircraft manufacture and maintenance of aircraft	Aircraft maintenance and manufacture
43.	Installation of scientific instruments and communication equipment	Scientific instruments, radio, audio play-back/recorders, loudspeaker units, amplifying systems, microphones, video playbacks/ recorders, PBX, telephone handset, tele-printers, trans-receivers, autophones/aerials.
44.	Manufacture of gas and distribution	Gas and gas distribution
45.	Manufacture of Solar energy powered equipment and gadgets	Solar panels, refrigerators, water pumps, calculators, etc
46.	Large-scale inland fishing farms	Fish and shrimps
47.	Bitumen mining and processing	Bitumen
48.	Salt production	Salt
49.	Manufacture of fire fighting equipment and detection systems	Fire fighting equipment and detection systems
50.	Manufacture of cables	Electrical, telephone and other cables
51.	Manufacture of medical equipment	X-ray, oxygen equipment, etc

52.	Mineral oil prospecting and production	Petroleum
53.	Manufacture of lubricants etc	Grease, hydraulic/engine oil, gear oil,
54.	Manufacture of flat sheets	Flat sheets
55.	Manufacture of oven, cookers, cold rooms, refrigerators, fridges, freezers, air conditioner	Oven, cookers, cold rooms, refrigerators, fridges, freezers, air conditioner
56.	Manufacture of agricultural machinery and equipment	Ploughs, harvesters, threshers, planters etc
57.	Manufacture of materials handling and equipment	Cranes, forklifts etc
58.	Establishment of foundries	Moulds, casting, etc
59.	Manufacture of alum	Alum
60.	Manufacture of enzymes	Enzymes
61.	Manufacture of concentrates	Food/fruits concentrates
62.	Manufacture of welding electrodes	Welding electrodes
63.	Manufacture of nails	Nails, related items
64.	Manufacture of iron rods	Rods from billets
65.	Manufacture of hops	Brewing hops
66.	Information and communication technology (ICT)	Manufacture/production of ICT equipment, hardware and software
67.	Tourism	Development of holiday resorts, hotels, sporting and recreational facilities
69.	Real Estate Development	<ul style="list-style-type: none"> – Rental income from residential and commercial premises; – Capital gains from any real estate disposed of within a specified period
71.	Utility services	<ul style="list-style-type: none"> – Independent power generation utilizing gas, coal and renewable energy sources. – All aspects of transportation such as rail, road and waterways. Indigenous telecommunications companies <u>other than GSM operations.</u>

ANNEX II:

IMPORT PROHIBITION ORDER

Government has placed ban on importation of the following under listed items:

1. Textile fabrics of all types and articles thereof, chapter's 50 - 60, but excluding:-
 - Nylon tyre core- H.S. Code 5902.1000-5902.9000
 - Multifilament Nylon Chafer fabrics and tracing cloth H.S. Code 5112.2000 and 5901.9000
 - Mattress Tickings - H.S. Code 5903.1000-5903.9000
 - Narrow Fabrics - H.S. Code 5806.1000 - 5806.4000
 - Trimmings and Linings - H.S. Codes 5909.0000; 6117.9000; 5808.9000; 6003.0000; 6307.9000.
 - Made-up Fishing nets - H.S. Code 5608.1100
 - Mosquito Netting Materials - H.S. Code 5608.1900 and 5608.9000
 - Gloves for Industrial use - H.S. Code 6116.1000 - 6116.9900
 - Canvas Fabrics for Manufacture of Fan Belts - H.S. Code 5907.0000, 5908.0000
 - Moulding cups Lacra - H.S. Code 6212.9000
 - Elastic Bands - H.S. Code 5604.9000
 - Motifs - H.S. Code 5810.1000 - 5810.9000
 - Textile Fabrics and articles for Technical use - H.S. Code 5911.1000 - 5911.9000
 - Transmission or Conveyor belt or belting of textile materials - H.S. Code 5910.900
 - Poly propylene primary backing material - H.S. Code 5512.1100 - 5512.9900
 - Fibre rope - H.S. Code 5607.1000 - 5607.9000
 - Multilated rags - H.S. Code 6310.1100
 - Sacks and bags - H.S. Code 6305.1000 and 6305.2000
2. Men's Foot wear and Bags of leather and plastic's (excluding ladies) - H.S. Code 3926.2000, 6401.1000 - 6405.9000, 4202.1100 - 4202.9000
3. Soap and Detergents - H.S. Code 3401.1100 - 3402.9000
4. Furniture - H.S. Codes 9401.1000 - 9401.9000; 9403.1000 - 9406.0000
5. Assembled Bicycles (excluding CKD) - H.S. Code 8712.0000
6. Flowers (plastics Fresh) - H.S. Codes 0603.1000 - 0603.9000, 6702.1000 - 6702.9000
7. Fresh Fruits - H. S. Code 0801.1100- 0814.0000
8. Cutlasses,Axes,Pick axes, spades, shovels, - H.S. Code 8201.1000 - 8201.9000
9. Wheel barrows - H.S. Code 8716.8000.8100
10. Pork and Pork products, mutton, lamb and Goat Meat - H.S. Codes 0210.1900; 1602.4900; 0202.2000; 1602.5000; 0204.4200; 0204.4300; 1602.9000; 0204.1000; 0204.2200; 0304.3000; 0210.7900; 0204.5000; 0208.9000; 0210.9900 and 1602.9000.
11. Tooth pastes - H.S. Code 3306.1000
12. Pencils - H.S. Code 9609.1000 - 9609.9000
13. Ball point pens - H.S. Code 9608.1000
14. Plastic Plates, Knives, Spoons, Forks, Cups, Buckets, Bowls, Bins Containers and Hangers - H.S. Code 3924.1000 - 3924.9000.

15. Barytes and Bentonites – H.S. Code 2508.1000.1100,2508.1000.1900
16. Vegetable Oils – H.S. Code 1507.1100 – 1516.2000
17. Corrugated Boards and Cartons – H.S. Codes 4808.1000; 4819.1000 – 4819.6000
18. Live or Dead Birds – H.S. Code 0106.3100 – 0106.9000; 0208.9000, 0210.9900.

A grace period of 90 days is allowed to enable all importers who must have entered into Irrevocable trade agreement before the release of this ban order to allow them process and clear the goods at the prevailing duty rates. The grace period of 90 days takes effect from 7th January 2004.

ANNEX III:

SOME FEDERAL AGENCIES/MINISTRIES AND THEIR WEB ADDRESSES

S/N	Name	Web Address
1.	Nigerian Investment Promotion Commission (NIPC)	www.nipc-nigeria.org or www.nipc-nigeria.ng
2.	Bureau of Public Enterprise (BPE)	www.bpeng.org
3.	Central Bank of Nigeria (CBN)	www.cenbank.org
4.	Corporate Affairs Commission (CAC)	www.cac.gov.ng
5.	Debt Management Office (DMO)	www.dmonigeria.com
6.	Economic & Financial Crimes Commission (EFCC)	www.efccnigeria.org
7.	Federal Ministry of Finance (FMF)	www.fmf.gov.ng
8.	Federal Ministry of Commerce (FMC)	www.commerce.gov.ng
9.	Federal Inland Revenue Service (FIRS)	www.firs-nigeria.org
10.	Raw Materials Research & Development Council (RMRDC)	www.rmrdc.org
11.	Nigeria Export & Import Bank (NEXIM-Bank)	www.neximbank.com.ng
12.	Nigerian Export Promotion Council (NEPC)	www.nigexport.org
13.	National Communications Commission (NCC)	www.ncc.gov.ng
14.	National Broadcasting Commission (NBC)	www.nbc-nig.org
15.	Nigerian Deposit Insurance Corporation	www.ndic-ng.com
16.	Nigerian Insurance Commission (NAICOM)	www.naicomonline.org
17.	Nigerian Ports Authority (NPA)	www.nigeria-ports.com
18.	Nigerian Stock Exchange (NSE)	www.nigerianstockexchange.com
19.	National Information Technology Development Agency [NITDA]	www.nitda.gov.ng
20.	Nigeria Government Official Website	www.nigeria.gov.ng
21.	National Agency for Food & Drug Administration & Control (NAFDAC)	www.nafdacnigeria.org
22.	Securities & Exchange Commission (SEC)	www.secng.org
23.	Standards Organisation of Nigeria (SON)	www.sononline-ng.org
24.	New Partnership of African Development (NEPAD)	www.nepad.org