

## HOW SUSTAINABLE LAWS CAN AID ECONOMIC & PRIVATE SECTOR GROWTH

“Nigeria is open for business”. This has been the mantra of several governments – at the federal level, sub-national level and even at the local government level. Closely linked to this mantra is the government’s verve to finding the very best ways to alleviate poverty, improve economic outcomes, build stability and prosperity. In other words, there is a strong nexus between Nigeria’s ability to encourage business activities and Nigeria’s economic stability/growth. The more proficient we are in encouraging business and commerce, the more likely we are to succeed as a nation economically and financially.

It is crystal clear that when the private sector expands, the economy grows. The Nigerian Government (at all tiers) recognises the importance of private sector-led economic growth. This is the reason why we have had several partnerships and initiatives between the private sector and the government with a view to achieving optimal economic growth. For example, Nigeria has robust policies/laws/regulations governing PPPs, privatization & commercialization of entities, infrastructure development etc. All these are geared towards promoting private sector-led growth. The private sector is the engine of growth. Successful businesses drive growth, create jobs and pay the taxes that finance services and investments, and provides more than 80 percent of government revenues. Private companies are providing an ever-increasing share of essential services in developing countries, such as banking, telecommunications, health and education.

Sustainable and inclusive private sector-led growth does not happen of its own accord. To make this happen, the private sector needs to be encouraged and supported so it can produce high and inclusive growth while still generating returns. The Government needs to provide *good policies, strong institutions and efficient public goods and services* to ensure the private sector can thrive and the benefits of growth reach all citizens. Thus, the quality of the laws in a country determines to a considerable extent the quality of life, the quality of business activities and the quality of economic growth.

### What Kind of Laws do we Need to Promote Economic Growth?

1. The laws must be modern – the laws must be in tandem with modern realities. The law should be used as a catalyst for economic development. The laws that promote economic development do not atrophy. They respond to social conditions, international developments and emerging trends. They are organic and forward-looking. They tend not to lag behind the activities of entrepreneur, merchants and businessmen but rather chart new courses for them in realisation of much needed economic growth and human development.

There are significant challenges with our legal regime – archaic or multiple laws and regulations, overlaps in administrative and institutional structures, absence of laws in critical areas, and a general state of confusion that is a disincentive to investment by local and international investors and entrepreneurs e.g. the laws on take-overs in Nigeria provides that once a 30% shareholding threshold is attained in a business by a shareholder, the shareholder must undertake a take-over bid.

The questions that ensue from this rule are – what if the investment ideology of the shareholder in question is not to own more than 30% of the entity in questions? interested in owning more shares in the target company? what if the shareholder cannot afford to undertake the take-over bid or buy more shares in the target company? will the regulators provide the funding or provide access

to the funding? Also, a critical look at the laws on take-overs in Nigeria, leads to a conclusion that some of these rules do not support hostile take-over deals. E.g. one of the requirements of obtaining approval for a take-over bid under the SEC rules is that a Directors' circular must be forwarded to the Shareholders of the target company. The problem with this rule is this – in some take-over situations, the shareholder attempting to execute the take-over process might not be in sync/on good terms with the Directors of the target company. In other words, it would be practically impossible to have this Directors' circular circulated to shareholders of the target company. Thus, if a shareholder is attempting to undertake a take-over deal in Nigeria, it is beneficial for the shareholder to have a good relationship with the Directors of the target company otherwise, the deal is almost dead at inception as the shareholder would be unable to meet all the criteria needed to getting the take-over deal approved by the SEC.

In view of the above, it is essential to have our laws in tandem with modern realities and transaction dynamics.

2. The laws must be certain (no lacunae) and the institution implementing these laws must be certain in their enforcement of the laws. We must ensure that there are no multiplicities of laws governing the same issue (recipe for confusion). Furthermore, we must ensure that multiple institutions do not have enforcement powers over the same issue (recipe for confusion and waste).

For example, till date, there is still confusion in the Gaming/Lottery Sector as to the extent of the regulatory powers of the State and Federal Government. Government agencies must be clear on policies (e.g. fiscal and monetary policies should be coordinated – we must elucidate the same story as a nation). When laws and implementation mechanisms are unclear, investors flee (Nigeria experiences this recently in relation to the floating of the Naira/devaluation of the Naira).

3. The laws must create incentives for investments – tax incentives, easy access to infrastructure (e.g. land) to do business etc – and provide for the requisite needs of the investors (the Government policies must provide “dollar” for businesses, security, power, infrastructure for its citizens etc). The laws must make it easy to do business in Nigeria. Very recently, following the latest World Bank's Ease of Doing Business Report, Nigeria was ranked as one of the worst places to do business in the world in 2016. The report says Nigeria remains one of the poorest business destinations in the world, improving marginally by just one step from its ranking last year. Out of 189 countries surveyed, Nigeria moved from 170<sup>th</sup> position with 43.56 percent points in 2015 to 169 with 44.69 percent points. Some of our laws require an overhaul e.g. the Companies and Allied Matters Act (CAMA), the Investment and Securities Act etc.

Furthermore, the country would need to expand its scope of infrastructure – an important part of ensuring ease of doing business. By infrastructure, we mean not only the hardware infrastructure like transport networks and reliable power supply, but also, transparent regulation, policy consistency, rule of law and culture of efficient collaboration and synergy among various government agencies. The laws must provide for adequate implementation mechanisms. There must be quality institutions that can implement, oversee and regulate the laws.

When our laws have all the above characteristic/features, we would have succeeded in creating an enabling environment that encourages the private sector to invest. The vast majority of constraints to growth identified by the private sector are directly linked to government decisions and actions. Government's policies and legislative decisions determine to a large degree the scale and quality of economic growth and the private sector's role in it.

A sound economy is the surest engine of growth. However, to achieve this, the legal regime must be equally sound and provide an assuring platform for entrepreneurs and businesses. The role of law in promoting economic development cannot be over-emphasized because most of our lives and interaction with each other are regulated by law. Law serves an economic function because it recognises the freedom to do business within defined parameters. E.g. competition law prevents monopolies etc.

In conclusion, we must note that the proper role of the Government is not to provide employment for everyone but to create, sustain and secure an enabling environment for its citizens to independently create their own future.