Enhancing Nigeria's Economic Development: A Case for Institutional and Regulatory Reforms in Nigeria's Banking Sector*
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Introduction

It has been posited that without high levels of domestic savings, broadly based human capital, good macro-economic management and limited price distortions, there would be no basis for economic growth.[1] Further, economists traditionally have viewed investment as one of the driving forces of economic growth. It is widely believed that savings and investment must go hand in hand for sustained economic growth.[2] Thus policies to assist the financial sector, especially banks whose traditional business is financial intermediation[3] capture non-financial savings and to increase household and corporate savings are considered central.

Apparently guided by these well - known economic principles and theories, successive administrations in Nigeria have initiated various economic reform measures that have nevertheless failed to achieve the desired rise in savings and investments. Not until very recently did research show that economic policy dependent on classic theories of economic development are no longer enough unless accompanied by legal, institutional and regulatory reforms which have been missing in Nigeria's reform agendas.

It is now well established that the quality of a country's legal regimes, its business regulations and its institutions have a direct bearing on its economic performance. Indeed it has been posited that institutions are key (*Dani Rodick*) and where legal regimes are weak transactions costs of business increases (*Richard Posner*). As Nigeria grapples with another round of banking and financial sector reforms championed by the new Governor of the Central Bank of Nigeria, Prof Charles Soludo, it is imperative that a case be made for legal, regulatory and institutional reforms in the sector which has so glaringly been omitted in past reform efforts.

The aim of this paper is to identify institutional and regulatory factors (bottlenecks) evident in Nigeria's banking and financial sector that hinder access by businesses to capital with a view to proposing legal, institutional and regulatory reforms that will, among other things, introduce easier ways to obtain credit; remove bottlenecks in lands and companies Registries; establish an efficient credit information bureau. These innovations will no doubt engender competitiveness and ultimately support economic development.

Institutional and Regulatory Environment and Economic Growth and Competitiveness: *The Intricate Link*

Economic scholars now accept that formulating economic policy on the basis of classic theories of economic development are no longer enough in framing reform policies. Institutional and regulatory reforms must be integrated into the reform process. The groundbreaking studies by Late Professor Mancur Olson, founder of Institutional Reform and the Informal Sector (IRIS) identified a strong relationship between institutions and economic development.

The conventional wisdom was that economic development was a result of savings and capital. Olson's research changed this theory. Olson held the view that neither the conventional aggregate factors of production nor the opportunity for technological borrowing are able to fully explain economic performance. Olson noted that economically successful countries have systematically different institutions – different legal and organizational arrangements than the economies that have failed. Thus, the working hypothesis of IRIS is that "*the quality of a country's institutions is a principal determinant of its economic performance*."

Satu Kahkonen and Anthony Lanyi, in a paper titled "Institutions, Incentives and Economic Reforms in India" lent credence to Olson's propositions in their statement that "*without the appropriate institutional and political underpinnings, economic reforms will be only partially successful. Not only could they, but may even lead to outcomes that are worse than the original situation*."

The research findings of the 2004 Doing Business Report[4] also indicate that with a view to create a vibrant private sector in which firms are making investments, creating jobs and improving productivity, governments around the world have implemented wide ranging reforms, including macro-stabilization programs, price liberalization, privatisation, and trade – barrier reductions but for many entrepreneurial activity remained limited, poverty high and growth stagnant in spite of these initiatives. The reason being that although macro policies are unquestionably important, the quality of business regulation and the institutions that enforce it are a major determinant of prosperity.

The link between institutional and regulatory environment and economic growth and competitiveness was demonstrated in the Report of the Regulatory Best Practice Program (MoFPED) in Uganda, May 2004. According to the report the more time and money caused to be diverted from productive business activities to regulatory activity, the harder it is for businesses to compete, grow and create jobs, and the harder it is for Government to achieve its growth and job creation targets. The study shows further that small firms are hurt the most by regulatory burdens because time and money spent on regulatory activity would have been better spent doing business. The report further reveals that the consequences of regulatory burden weigh most heavily on the poor and unemployed because firms shift the costs burden elsewhere – to the consumer and the workforce by adopting some or all of the following measures to cushion the effect of regulation: lower wage; down – staffing; lower quality; higher prices. Others in order to avoid detection go underground to operate in the informal sector.

In his book, *The Mystery of Capital,* Hernando De Soto and his team of researchers demonstrated persuasively that the major stumbling block that keeps the rest of the world from benefiting from capitalism is its inability to produce capital. In De Soto's views, citizens of poor countries have enormous assets and resources but they hold these in defective forms: houses built on land whose ownership rights are not adequately recorded, unincorporated businesses with undefined liability, industries located where financiers and investors cannot see them. Because the rights to these possessions are not adequately documented, these assets cannot readily be turned into capital, cannot be traded outside informal circles and cannot be used as collateral for a loan.

De Soto noted that in the West by contrast, every parcel of land, every building, every piece of equipment or store of inventories is represented in a property document that is the visible sign of a vast hidden process that connects all these assets to the rest of the economy. This process within the formal property system that breaks down assets into capital is hidden in thousands of pieces of legislation, statutes, regulations, and institutions that govern the system.

The research findings set out above can be reduced into the following specific principles summed up in the Doing Business in 2004 report:

- ***Deregulate in Competitive Markets –*** There is too much regulation in countries, particularly developing countries, where other means would suffice and where its complexity and volume cannot be enforced. Rather than inducing good conduct, such regulation puts businesses at the discretion of government inspectors and officials, who sometimes abuse their powers to extract bribes.
- ***Focus on Enhancing Property Rights –*** Governments do too little to protect property rights. Best practice countries have efficient courts, laws and institutions that define the property rights of citizens and businesses. High regulatory intervention is associated with less protection of property rights, not more. And the institutions that define and enforce property rights in developing countries – the court, ministries and law enforcement agencies – are less modern and least funded of all public institutions.
- ***Expand the Use of Technology –*** The use of technology has the effect of improving efficiency in business information, reducing opportunities for undemocratic discretion and thereby minimizes the regulatory effect on businesses. With internet based business information systems in Canada and Australia, application processing time is the fastest in the world. As entrepreneurs never have to face a bureaucrat there are no opportunities to extract bribes.
- In credit markets, technology enables best practice countries to establish a comprehensive credit registry with access to credit information in real time. Such a credit bureau would have the capability to validate records and detect fraud. Also, lenders are able to identify multiple charges of the same collateral for different loans.
- ***Reduce Court Involvement in Business Matters –*** Permitting private enforcement of collateral with recourse to the courts only for disputes substantially reduces enforcement time and encourages lending. Alternatively, litigation time can be cut down by introduction of summary procedures for commercial disputes.
- ***Make Reform a Continuous Process –*** Countries that consistently perform well do so because of continuous reform. On average, laws in wealthy countries have been enacted or amended much more recently than those in developing countries, whose laws often date to colonial times.
- ***Introduce Regulatory Impact Assessment*** – Over the last decade, several countries have introduced regulatory impact assessments, which are carried out when new regulation is proposed. Requiring government agencies and ministries to engage in cost – benefit analyses has proven to be an effective tool in winnowing out burdensome, poorly designed and socially costly regulations and in improving those that are necessary. Regulatory impact assessments are a standard feature of new business regulation in the European Union.

The Missing Fundamentals in Nigeria's Transition from Control – Type to Liberal Economy

Until a decade ago or thereabout, Nigeria largely operated a controlled economy through state-owned enterprises operating as monopolies. Government regulation, control and influence in the banking sector was dominant and pervasive to the extent that the government, through the Central Bank of Nigeria (CBN) decided which bank should be licensed, appointed directors (executive and non-executive), the location of banks, the rate of interest payable to depositors, the ancillary charges the banks levy their customers, the rate of interest chargeable to borrowers and the proportion of bank's loans and advances that should be allocated to particular sectors of the economy.[5]

As of 1980, the Federal and State Governments still owned banks and almost every state in the Federation had an investment corporation and/or housing corporation charged generally with the functions of a development bank.[6]
The economy performed far below potential[8] in this milieu. Economic growth was stunted, inefficient systems and corruption thrived. Unemployment and poverty resulted with grave consequences for economic expansion. Economic reform policies such as IMF-styled program of adjustment (the Structural Adjustment Program (SAP) introduced in 1986 under President Ibrahim Babangida and General Sanni Abacha's Vision 2010 remained largely unsuccessful as key elements of reform were insufficiently developed to deal with competition and growth.

The introduction of SAP in 1986 and the subsequent de-regulation and liberalisation of the Nigerian economy to meet with globalisation brought about tremendous changes in the financial services sector of the Nigerian economy. New money market instruments were introduced frequently just as new financial engineering methods were being adopted for which adequate provisions were not made in the exiting laws.

The phenomenal growth in the number of banking institutions overstretched the regulatory capacity of the CBN while the growing sophistication in the design and use of financial instruments heightened the risks of malpractices and fraud in the industry. In particular, mismanagement such as insider abuse and poor credit appraisal systems, resulted in the accumulation of unpaid loans and advances, which eventually contributed to the distress situation experienced in the banking system in the early 1980's and mid 1990's and the revocation of the licenses of 26 banks in 1997.[8]

Furthermore, new developments brought about by advancement in technology and communication (a.k.a. the third industrial revolution), increase in cross border transactions, internationalisation of financial and money markets, the convergence of regulatory standards, global regulatory harmony and cooperation in banking and financial services,[9] etc., brought to the fore the need for a well institutionalised regulatory system with powers for surveillance, supervision, information gathering and enforcement.[10]

It was against this background that the CBN introduced a number of regulatory measures designed to strengthen the capital base of banks and promote more professional approach to banking business.[11]

The government also introduced a number of legislative initiatives to address operational problems in the sector and the economy at large. The following laws were promulgated in this regard: The Nigerian Deposit Insurance Act of 1988; The Central Bank of Nigeria Act of 1991; The Banks and Other Financial Institutions Act[12] of 1991 (BOFIA); The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act of 1994 (Failed Banks Act); The Money Laundering Act of 1995; and The Advanced Fee Fraud and Other Fraud – Related Offences Act of 1995.

These laws placed regulatory and enforcement functions over banks and other financial institutions on the CBN, the NDIC and the judiciary. The lodestar of BOFIA has been ascribed to be the need to have a safe and sound banking and financial market in which public confidence will inhere.[13] A further rationale for the Act was to ensure that banks and other financial institutions played their primary role of financial intermediation effectively.[14]

Ostensibly, the series of reforms in the banking and financial sector were geared towards positioning banks and other financial institutions to play their primary and very crucial role of financial intermediation in the economy as the driving force for generating high savings and investments but in reality this has not been the case as the reforms have not yielded the desired objective.

Indeed *Ibi Ajayi*[15] has argued that while the reforms have been a catalyst for growth in the banking industry in Nigeria they have not actually engendered development to the extent that there is *"inflexibility inherent in the banking system, loans and advances are not easily given even when the strict collateral condition is met ... While banks in developed countries encourage people to take advantage of their lending facilities, our banks specialise in scaring away potential customers by requiring them to meet impossible conditions .... In Nigeria, in most cases, withdrawing money or carrying out simple operations like foreign exchange transaction can take half of the day."*

This state of affairs exist because the economic and banking reform measures adopted by successive administrations in Nigeria did not incorporate institutional and regulatory reforms, a key reason that minimal success has been achieved in engineering the growth of the banking sector and the national economy by extension.

Apparently aware of the need to introduce institutional and regulatory reforms together with other traditional economic measures, the present government of Chief Olusegun Obansanjo has built its economic reform agenda[16] on the following planks among others:

- reduction of bureaucratic bottlenecks;
- democratisation of economic decision-making to involve individual economic units in decision making;
- provision of legal and regulatory frameworks to ensure the efficient operation of markets;
- ensuring the independence, integrity and sanctity of contracts;
- institutional re-establishment and re-orientation of the bureaucracy to make it a friendly, welcoming facilitator of investment and business, etc.

Notwithstanding the foregoing laudable policies, so far, they have turned out to be mere aspirations without specific action as exemplified in the execution of the Federal Government's privatisation program[17] leading to the privatisation of many public enterprises[18] without first carrying out institutional and regulatory reforms or establishing a competition regime. It is trite that privatisation is not simply a scheme of divesture of government interest in state owned enterprises it is also about legal and regulatory framework reforms and competition policy.[19] Institutional constraints have, therefore, not been removed as will be shown shortly.

Regulatory & Institutional Bottlenecks in the Banking & Financial Sector Inhibiting Economic Development and Competitiveness

In highlighting the regulatory and institutional problems in the banking and financial sector one must bear in mind that within the context of raising credits for business a borrower must deal with a bank (to open an account and secure the loan, among other things), the Corporate Affairs Commission (to among other things register a company or enterprise which banks deal with regarding granting credits in preference to individuals), the Lands Registry and the Governors Office (to verify the borrowers title land used as security and to perfect the security for the loan, among other things), the tax office (to obtain tax clearance certificate needed to open account and secure the loan), and perhaps the Central Securities Clearing System Ltd (CSCS) an affiliate of the Nigerian Stock Exchange (to perfect shares used as collateral). Against this background, the regulatory and institutional bottlenecks which are responsible for the failure of the banking and financial sector in Nigeria to engender development would be considered holistically from the prism of these institutions and the laws that regulate them.

Why Law Fails to Promote Development: *Regulatory Inadequacies*

Restriction on the Transfer of Land under the Land Use Act **–** The Land Use Act[20] having vested radical title in the Governor of a state,[21] with Nigerians left only with a right of occupancy (*customary* or *statutory*), there cannot be "a conveyance of land" in mortgage transactions. The Land Use Act has made land security, which incidentally is the most widely used, non-viable either by making land transfer too restrictive or by making it too expensive or unnecessarily time consuming. [22]

Consent Provisions Under the Land Use Act are Burdensome - One of the major problems confronting land security in Nigeria is the requirement of consent by the appropriate authority for any dealing in land.[23] The procedure for obtaining this consent is cumbersome and very expensive with adverse effects on commerce. As Obaseki, JSC., observed in ***Savannah Bank (Nig) Ltd. v. Ajilo***[24] "*the Land Use Act is bound to have a suffocating effect on the commercial life of the land and house owning class of society who use their properties to raise loans and advances from the banks. I have no doubt that it will take the whole working hours of a Governor to sign consent papers (without going half way) if these clauses are to be implemented*." Apart from the prohibitive consent fee and other fees payable by the mortgagor, precious time is wasted in processing the application for consent which may take months to go through.

Prohibition of Use of Agricultural Land under the Land Use Act as Security - Granting of agricultural loans have been frustrated as agricultural land is not available for use as security under the Land Use Act. Section 36(5) of the Land Use

Act has made agricultural land in rural areas inalienable while the provisions of Section 36(7) and (8) have made any alienation of such land an offence with penal consequences.[25]

Insecurity of Lenders' Tenure Due to Governor's Power of Revocation under the Land Use Act – As a result of the radical title to land being vested in the governor[26] with the power to revoke a right of occupancy for overriding public interest,[27] the security in the hands of a lender may vanish overnight as a result of revocation of the interest in it. What is more, compensation is payable to the borrower or the holder of the right revoked and not to the lender.[28]

Why Law Fails to Promote Development: *Legal Inadequacies*

Inadequacy of Bills of Sale Laws to Regulate Mortgage/Pledge of Personal Chattels **-** In many parts of the developed world, security in personal chattels is being encouraged for creation of such security is cheaper and easily realizable.[29] However, the laws governing creation, protection and enforcement of security in personal chattels in Nigeria are antiquated, retrogressive and non-functional. Mortgage/pledge of personal chattels remain subject to the inefficient and unnecessarily formal provisions of the Bills of Sale Law[30] which constitutes a trap for the unwary. [31]

The whole operation of the Bills of Sale Law remains barely on paper and the transaction under it remains rather dangerous and harmful to the interest of the creditor.[32] The global trend in the area of security over personal chattels is to lean toward registration of interest in personal security at all times. Unlike the situation in Nigeria whereby security interests over personal chattels can not be registered, there being no pledge registry, it is interesting to note that in the Ukraine, [33]United States and Canada, all security interests in personal chattels are registered in a Pledge Registry and lenders can easily conduct a search to ensure that no outstanding security interest is unidentified. The Registry is accessible to everybody and it would notify searchers of the existence of pledges. Priority among pledge holders is based on the date of registration. Security interests that are not registered have no legal standing.

S. 147 of CAMA Hinders Transition to Automated System of Share Collateralisation **-** In view of the fraudulent practices, [34] undue delay in concluding transactions, and strictures[35] associated with the manual share collateralization system which relied heavily on share certificate as security for advances the Nigerian Stock Exchange through its subsidiary, the Central Securities Clearing System Ltd (CSCS) overhauled the system by de-emphasising the use of share certificates. Under the new system, stocks may be processed in an electronic book entry form. The old system of delivering share certificates to settlement loan obligations has now been replaced with the Electronic Credits and Debits of shareholders stocks.

The Nigerian Stock Exchange had in May 1998 issued fresh guidelines on how shareholders could use their shares as collateral for loan.[36] Under these Guidelines, a joint memorandum stating the terms and conditions of the loan contract is now to be executed by the parties and delivered to the CSCS duly stamped. Upon receipt of the memorandum, the CSCS moves the shareholding into a CSCS Reserved Lien Account with the interest of the lender noted.

One fundamental question that has arisen is whether the CSCS has legal power to effect transfer of shares without a certificate in view of section 147 of the Companies and Allied Matters Act (CAMA) 1990, which provides that "a certificate under the common seal of the company specifying any shares held by any member shall be prima facie evidence of title of the member to the shares". Notwithstanding the recognition of the new system under the Investment and Securities Act No 45 of 1999, the utility of share certificates as evidence of title to shareholdings has not been diminished in any way under CAMA.

Bankruptcy Act, CAMA Inadequate for Effective Insolvency Practice - Nigeria does not have a developed insolvency practice rather the Bankruptcy Act covers bankruptcy proceedings against individual debtors while the Companies and Allied Matters Act (CAMA) deals with winding up of companies. Although there are provisions in CAMA for arrangements and compromises this is hardly used in practice. The thrust of CAMA is to liquidate and terminate the life of companies without the debtor company being given an opportunity to reorganise and pay its debt over time. While liquidation is the last resort in developed jurisdictions, in Nigeria it is used as a first option resulting in the untimely death of many companies who could have been salvaged if given the chance to properly manage their debts.
In addition to the foregoing, the following legal failures exist in the system:

- No Legal Framework for Leasing
- No Legal Framework for Effective Credit Information System;
- Inadequate Legal Regime for Financing of Stocks and Receivables;
- Inadequate legal framework for factors and securities;

Why Law Fails to Promote Development: *Institutional Inadequacies*
Inefficient and Corrupt Government Ministries

Corrupt Government Officials, bureaucratic bottlenecks, lack of technology and Inefficient procedures at the Ministry of Lands & Justice has made obtaining Governor's Consent costly and time consuming. The Procedures at the Lands Registries are Antiquated and Cumbersome, Officials are Corrupt and Unprofessional and no there is no link between a land registry in one state and another.

CBN Overburdened
The Central Bank of Nigeria is overburdened being solely responsible for policy formulation, banking supervision and at the same time acting as bankers bank etc. The result is inadequate supervision of banks that exhibit some of the following tendencies:

- ***Abuse of Interest and Other Charges*** – Customers complain about unduly high borrowing rates, imposition of interest rates that were neither negotiated nor previously advised, debiting of unacceptable charges to their accounts, etc. While it may be conceded that interest rates and charges to some extent reflect the high cost profile in the industry, some banks are nevertheless either not sufficiently diligent or transparent in their dealings with customers. Thus they sometimes charge customers more than what was agreed or impose charges which were never negotiated, agreed or advised. [37]

- ***Inadequate Support for the Real Sector*** – There is undue preference by banks for financing general merchandise rather than manufacturing and agriculture and the importation of finished goods rather than raw materials, plants and equipment.

- ***Neglecting the Small Savers*** – It is further observed that banks tend to seek large deposits and those that are relatively inexpensive to service; they therefore compete for the deposits of the government and its agencies, corporations and affluent urban dwellers and make little or no effort to attract the savings of workers, poor people and residents of small towns and the countryside. In addition, banks may refuse such marginally profitable deposits by setting minimum deposit levels. These practices raise the transactions costs for small savers and discourage them from making financial savings.[38]

- ***Inefficient Services*** – This is manifested in undue delays in completing transactions, numerous errors of omission and commission, etc.;

- ***Fraudulent and Unethical Practices*** – The charges against banks include round tripping, aiding and abetting of capital flight, diversion of customers' funds, etc. There is ample evidence showing that some banks engage in various forms of malpractices either as a survival strategy or in order to enhance profits. The regulatory authorities have indeed confirmed this and the proceedings of the defunct Failed Banks Tribunal are replete with testimonies of gross insider abuse and malpractices.

Inefficient Judicial Processes –
A major complaint by banks is that the judicial process involved in debt recovery or fraud cases is exceedingly slow and time consuming as such they shy away from lending as the chances of recovery is slim.

Cumbersome Process and Cost of Starting a Business –
Banks have shown preference for granting credits to a company or business name which in turn must obligatorily be registered under the extant companies Act. The findings of the Doing Business 2004 report on Nigeria reveals that there are at least 10 procedures to go through and an average of 44 days[39] to register a business formally in Nigeria whereas in Australia it takes an average of 2 days, 3 days in Canada and New Zealand and 4 days in Denmark and USA. The minimum capital requirement to register a limited liability company is put at US$268.[40]
The main regulatory agency for business registration is the Corporate Affairs Commission (CAC) with its head office in Abuja. Although the CAC has made efforts in procedural reforms, including computerization of the registry, and decentralization of its operations more work still needs to be done especially in the area of business registration. Save for registration of business names, all other registrations and returns still take place in Abuja. According to the CAC, it takes 10 business days to

get a business registered, but could take up to 180 days if documentation is incomplete.[41]

Poor Credit Information System–

The Doing Business 2004 report on Nigeria shows that only 1 (one) public credit registry exists in Nigeria while there is no private credit bureau in existence. The registry is situate at the CBN and for self protectionist reasons some banks do not consider it safe to disclose their true debt portfolio as a result the registry has been rendered ineffective. A comparative study of developed economies shows that most of these countries do not have any public credit registry but credit information is controlled by a large number of private credit bureaus with Japan having as much as 777 private credit bureaus, Denmark 58, Norway 945, United Kingdom 652, Hong Kong, China 200, Ireland 730, Australia 722, and USA 810. None of the aforementioned countries have pubic credit information registry.

Recommendations for Removal of the Bottlenecks in the Banking & Financial Sector

While conventional economic policy is important to Nigeria's economic recovery and transition into a competitive market economy, it is obvious the country need to strengthen her institutional and regulatory platforms and backbones to sustain the reform agenda. This is the missing fundamental in several economic reform policies in Nigeria. Also from the results of various studies cited in this paper, it is largely apparent what bottlenecks constrain businesses and just what government authorities (at Federal, State and Local levels) need to do to improve business. On the whole, the following are clear:

Regulatory Best Practice

It is imperative to adopt into our law and policy-making processes *Regulatory Best Practice (RBP)* to analyse potential costs/economic/social implications of new laws; to consider alternatives to regulation (such as education and better enforcement of existing laws); to identify specific outcomes to be achieved as a result of the new law; to spell out methods, manpower and budgets for ensuring compliance and monitoring.

Fiscal Policy

There is need to change current fiscal policy that engender available of only short - term funds in the money market. As a result borrowers, especially small businesses are under pressure to repay loans even before the funds have been turned around.

Interest Rates Regime

Interest rates for loans are unduly high and rarely come down and this has the effect of discouraging borrowing.

Bank Charges

There are too many bank charges associated with borrowings and the rates are too high. This discourages borrowings, increase the costs of doing business and reduce profit margin.

Support for the Real Sector

There is need for policy redirection so that banks will channel its lending towards manufacturing, agriculture and the real sector in general.

Attracting Small Savers and the Informal Sector

Setting high minimum deposit levels have tended to keep away lower class workers, poor people, residents of small towns and the countryside from saving. Ditto for the large array of businesses operating in the informal sector. This category of people who lack access to credit due to banks' preference for high net-worth customers must be drawn into the financial service sector.

Efficient Services in Banks

Banks needs to offer more efficient services by introducing more flexibility in their system, customers should be encouraged to take advantage of their lending facilities, withdrawing money or carrying out simple operations should be completed without undue delays.

Fraudulent and Unethical Practices in Banks

Some banks and their officials engage in various forms of malpractices either as a survival strategy or in order to enhance profits. The regulatory authorities have not been able to effectively curb this trend due to weak laws and regulations as well as inefficient judicial process. An independent Financial Services Authority is needed to relieve the CBN of its bank oversight functions.

Making Assets Fungible

Banks should de-emphasize on the use of land and property as collateral for loans and advances. Banks should adopt the practices in developed economies whereby representations or rights in assets are easily combined, divided, mobilized and used to stimulate business deals.

Reform in the Corporate Affairs Commission

The operations of the Corporate Affairs Commission (CAC) need to be fully computerized and all its branches linked up or networked real time. CAC should as much as it is practicable introduce the use of e-mails and faxes in filing documents. Registration of companies and other filings should be decentralized. These measures will no doubt reduce the process and costs of starting a business in Nigeria.

Credit Information System

More credit registries need to be established in Nigeria. Banks, through their various regulatory bodies e.g. CIBN should be encouraged to set up private credit bureaus.

Reform of Lands Registry

The various Lands Registries in all the States of the Federation need to be fully computerised and linked up or networked real time to provide property information that is standardized and universally available. Compulsory registration of all lands should also be introduced.

Priority Areas for Legislative Action/Introduction

The following existing legislation needs to be reviewed/amended promptly:

- the Bankruptcy Act/CAMA/NDIC Act to harmonize and modernize insolvency practice into a comprehensive modern corporate rehabilitation vehicle;
- Sections 21, 22, 28, 36(5)(7)(8), 51, of the Land Use Act to make lands fungible, reduce costs and protect private property rights;
- the Bills of Sale Laws to enhance the creation, protection, registration and enforcement of security in personal chattels;

- Section 147 of CAMA to recognise and protect the interest of a lender who have a lien or charge on the shares of the borrower;
- the Rules of Civil Procedure to reduce delays & fast track commercial cases;
- the Dishonoured Cheques (Offences) Act to deter offenders;
- the Evidence Act to recognize as evidence e-commerce and other electronic signatures;
- the BOFIA to reduce cumbersome regulatory requirements, strengthen surveillance, encourage long term borrowing and increase financial market share for other financial institutions other than banks;
- the CBN and NDIC Act to mandate resolution of financial and other commercial dispute through mediatory mechanism at the first instance;
- CAMA to create a new legal framework for corporate governance and enhance business registration;

The following new legislations are proposed:

- the Credit Reporting Act (CRA) to provide credit history to aid credit decision making;
- the Consumer Credit Act (CCA)/The Fair Billing Act (FBA) to protect customers from wrong billing;
- the Factors Act or Special Purpose Vehicle Act (FA/SPV)/Debt Securitisation Act (DSA)/Equipment/Consumer Leasing Act (E/CLA) to create a debt security market, up lease practice and investment;
- the Electronic Signature Act (ESA) to reduce cash base transactions and enhance security;
- the Financial Services Authority Act (FSAA) to create a financial services authority to take over the oversight functions of the CBN over banks;
- the Equal Credit Opportunity Act (ECOA) to enhance credit availability to all stakeholders in the economy;
- the Special Commercial Court Act (SCCA) to enhance credit recovery;
- the Financial Market Services Act (FMSA) to create greater public awareness and protection of the market;
- the Financial Institutions Regulatory Improvement Act (FIRA) to enhance regulatory development of the financial sector.

General Benefits of Legislative Review / Introductions to Businesses

The laws to be reviewed or introduced will deal with;

- the bad debt over-hang;
- the ineffective insolvency/bankruptcy structure;
- the poor property titling process;
- the inadequate credit reporting and information sharing framework;
- the inadequate consumer protection law;
- the slow dispute resolution and contract enforcement mechanism;
- the absence of equipment leasing legal framework;
- the inadequate framework to incorporate e-signatures, information technology integration and best practices in automated credit;
- the inadequate Laws Regulating Automated System of Share Collateralisation;
- the acceleration of business through availability of long term credit;
- the reduction of incidences of bad and non performing debt;
- the encouragement of leasing as a means of reducing cost of business;
- the enhancement of e-payment systems and contracts;

- the fast tracking of debt recovery cases;
- the encouragement of long term lending;
- the creation of debt as a marketable security; and
- the increased automation, fungibility and collateralization of property and securities.

Footnotes

* Excerpts from this paper was presented by the author at the *BBI 2nd National Stakeholders Forum on Removing Bottlenecks to Business in Nigeria*, held at Nicon Hilton, Abuja, Nigeria on 19th and 20th April 2005.

1. See *The East Asian Miracle: Economic Growth and Public Policy,* A World Bank policy research report (Oxford University Press, 1993) pages 23 – 24.

2. *Ibid* at pages 40 – 41.

3. The role of banks is to mobilize funds from the surplus spending units for allocation to the deficit units. In essence, banks act as conduits for converting savings into investment – an activity that is very critical for promoting economic growth and development. See J.U. Ebhodaghe, The Impact of Failed Banks on the Nigerian Economy, being the text of a paper presented at the Nigerian Institute of Policy and Strategic Studies (NIPSS), Kuru, Jos, 1996 and published in NDIC Quarterly, Vol. 6, March/June 1996 page 24

4. The report is a co-publication of the World Bank, the International Finance Corporation and Oxford University Press. The 2004 Doing Business Report is the first product of an ambitious study of the determinants of private sector development carried out in 133 countries around the world including Nigeria.

5. P.A. Ogwuma, *The Growth of the Banking Industry in Nigeria,* published in *Domestic and International Banking Services* (Macmillan Nigeria Publishing Limited, 1981), a compendium of papers presented at the Nigerian Institute of Bankers Annual Seminar, 1980 at page 124.

6. Ogwuma, *ibid* pages 126-127.

7. The April 2002 report of the country study of Nigeria (RPED PAPER No.118) carried out by the Regional Program on Enterprise Development (RPED) showed that the economy of Nigeria remained in a precarious position by 2001. Social and Economic conditions for most Nigerians continued to dramatically decline in spite of the country's abundant natural resources.

8. Kolapo Omidire, *Regulation of Investment in Banking Business and Operation in Nigeria,* an article published in *Current Developments in Nigerian Commercial Law: Essays in Honour of Chief Samuel Igbayisola Adegbite,* (Edited by Prof. I.E. Sagay, SAN & Olusesan Oluyide)

9. For instance the Prudential Guidelines issued by the CBN in the last quarter of 1990 were pursuant to the *International Convergence of Capital Measurement and Capital Standards (The Basle Convergence Agreement)* published in July 1988 by the Basle Committee on Banking Regulations and Supervisory Practice of the Bank of International Settlements. See G. Shoroye, *Prudential Guidelines, Policy Considerations & Enforcement,* a paper delivered at the Greyhouse Seminar on the Prudential Guidelines, 6-7 May 1991 at Sheraton Hotel Ikeja, Lagos.

10. Olukonyinsola Ajayi, *Regulation of Banks and Financial Institutions* (1991) at page 2.

11. Specifically, the CBN adopted the risk-weighted measurement of capital adequacy ratio recommended by the Basle Committee of the Bank of International Settlements (BIS), while prudential guidelines and mandatory accounting standards for all licensed banks were introduced.

12. Amended by Decree No. 4 of 1997. The thrust of the amendment was to make the CBN directly responsible to the Minister of Finance with regard to the supervision of banks and other financial institutions, to extend the supervisory role of the CBN to specialised banks and to impose stiffer penalties for breach of statutory provisions

13. Konyinsola Ajayi, *op.cit.,* page 5.

14. See Omidire, *op.cit.*

15. S. Ibi Ajayi, *Growth in the Banking Industry of Nigeria,* an article published in *Domestic and International Banking Services, Op. cit., at pages 184, 187-188*

16. This is captured in a handbook titled "*Obasanjo's Economic Direction 1999 – 2003*" published in April, 2000 containing a blueprint of economic policy direction. The administration's overall economic strategy is set out in pages 9 and 10, paragraph 2.3.

17. The privatization program is executed under the auspices of the National Council on Privatization, (NCP) the successor to the TCPC, under the Public Enterprises (Privatization and Commercialization) Act, 1999.

18. Under the program, certain commercial and merchant banks, *to wit,* Afribank Nigeria Plc, Assurance Bank Plc, FSB International Bank Plc, International Merchant Bank Plc, NAL Merchant Bank Plc were billed for full privatization while others like Federal Mortgage Bank of Nigeria, Nigerian Industrial Development Bank Limited, Nigerian Bank for Commerce and Industry Limited and Federal

Mortgage Finance Co. Limited were scheduled for full commercialization. See the Public Enterprises (Privatization and Commercialization) Act No. 28, 1999

19. The Government of Nigeria, through the Bureau of Public Enterprise (BPE) in 2001, set up a steering committee on Competition and Anti-trust Reform in Nigeria. The broad mandate and terms of reference of the committee included preparation of draft legislation to completely eliminate monopolies, remove restrictive conduct and foster competition in all economic sectors and also establish a regulatory agency for each sector to ensure that rules of corporate conduct are enforced. The government required the committee to carry out and complete its assignment to enable the National Assembly pass laws before 2003 but this was not achieved and to date no competition policy or legislation have been made.

20. Cap 2O2 LFN I99O

21. See s. 1 of the Act

22. See paper titled "*Secured Credit Transaction: Current Trends and Challenges*" by Professor I. O. Smith then an Associate Professor, Faculty of Law, University of Lagos, published in The Proceedings of the 2002 National Seminar on Banking and Allied Matters for Judges (CIBN Press 2003) at page 35.

23. See e. g. Land Use Act 1978 Cap 202 LFN 1990, Sections 21 and 22.

24. (1989) NWLR (Pt. 97) 305 at 329.

25. Any instrument purporting to transfer any land in non-urban area is not only void, every party to such instrument shall be guilty of an offence and shall on conviction be liable to a fine of N5,000 or imprisonment for one year.

26. See s. 1 of the Act.

27. See s. 28 of the Act.

28. The definition of holder under s. 51of the Act (as amended by cap 203 LFN (1990) excludes a mortgagee.

29. Security over chattels is generally not subject to too many statutory restrictions unlike the case with security over real property. Formalities for creation and enforcement are not complex and the possibility of having dominion of chattels makes the control over same easier.

30. In Nigeria, the Federal Law is the Bills of Sale Act of 1923cap 27 Laws of Nigeria 1958 ed. This Law is omitted in the Laws of the Federation of Nigeria 1990. That Law re-enacted the English Bills of Sale Acts of 1878 and 1882 as amended by the English Bills of Sale Acts of 1890 and 1891. Various states of the Federation of Nigeria have adopted the provisions of the Bills of Sale Act of 1578 and 1882 and re-enacted same as state Laws. Even in the old Western Region of Nigeria (now Oyo, Ogun, Ondo, Osun, Ekiti, Edo and Delta States) Where the English Acts were repealed, the previsions of the state Laws remain substantially the same. See cap 12 Laws of Lagos State, 1994: cap 13 Laws of Northern Nigeria, 1963; cap 12 Laws of Oyo State, 1978 (applicable in Oyo and Ogun States); cap 1 Laws of Ondo State, 1978 (applicable in Ondo and Ekiti States); cap 1 Laws of Ogun State, 1976: cap 27 Laws of Bendel State, 1976 (applicable in Edo and Delta States).

31. See ***Hilton v. Turker*** (1888) 9 ch. D. 669. See also ***Sewell v. Burdick*** (1884) 10 AC 74 at 78.

32. The procedure for documentation is cumbersome and priority upon registration is partial. See generally, I. 0. Smith, op cit at pp. 173-174.

33. Heywood Fleisig - Secured Transaction The power of collateral www.worIdbank.org/fandd/EngIish/0696/articles/015696.htm.

34. See e.g. ***Rainford v. James Keith & Blackman Co. Ltd*** (1905) 2 ch. 147 where a borrower fraudulently sold the mortgaged shares without the lenders' consent.

35. Irregular signature by the borrower may render the security unrealizable upon default since the Registrar would reject same. See A. Osondu, "Share Certificate as collateral-Legal implications and transfer procedure". Paper presented at a seminar, by the Nigerian stock Exchange, Port Harcourt Branch, on 29th April 1992, at p.6.

36. See "New Rules on use of share certificate as collateral" Business Times, Monday, May 11, 1998 at p. 29.

37. This is an excerpt from a paper titled "*Ethical Banking and Banker – Customer Relationship*" by Mr. Victor Ake Odozi, FCIB, former Deputy Governor of the Central Bank of Nigeria, published in The Proceedings of the 2002 National Seminar on Banking and Allied Matters for Judges (CIBN Press 2003) at page 38.

38. The Asian Miracle, *op. cit,* page 211.

39. The time captures the median duration that incorporation lawyers say is necessary to complete a procedure.

40. The cost represents the.

41. The Skoup Report. The report was titled "Cluster Development Program in Eastern Nigeria: Administrative and Infrastructure Costs' Survey of the Manufacturing Sector (Abia and Anambra States). The report is based on a survey of 181 enterprises operating in the garments, leather, spare parts, and manufacturing sectors within the research areas.