

EXECUTIVE SUMMARY

This is the Final Report of the Team of Consultants appointed by Adam Smith International, following the comprehensive review of the institutional, regulatory, legislative and associated instruments affecting businesses in Nigeria. The views expressed in this report are those of the Consultants engaged to conduct this Assignment and will be considered as submissions to the President of the Senate of the Federal Republic of Nigeria.

The report identifies the significance of Micro, Small and Medium Enterprises (MSMEs) to Nigeria's economy and the need to amend, repeal or create legislation that would significantly improve the Business environment in Nigeria. Utilising the *Doing Business Report 2016* and a collaborative survey conducted by the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) and the National Bureau of Statistics (NBS) in 2013, the Consultants have sets out a menu of proposals to address the legal and regulatory problems facing micro, small and medium sized businesses in Nigeria. It outlines necessary reforms for how government operates to support these businesses and to increase growth and prosperity. There is a single objective behind all the proposals: to create an environment where hardworking firms, and not just a select few individuals, can flourish.

The Importance of MSMEs

MSMEs are the engine of job creation in Nigeria. With so much emphasis on Government as panacea to our economic and other difficulties, small businesses are often underestimated because, they are in fact, small. The truth is, there is nothing small about the impact they have on the Nigerian economy. According to the 2013 SMEDAN and NBS collaborative survey, there are over 37 million MSMEs in Nigeria that contribute almost 50% of Gross Domestic Product in nominal terms and account for 84.02% of all Nigerian jobs.¹

With the decline in oil prices triggering an economic downturn in Nigeria, these are challenging times for small businesses. Many excellent, profitable firms are unable to get the finance they need to continue and to prosper. Now, more than ever, Nigeria needs its

¹ Small and Medium Enterprises Development Agency of Nigeria and National Bureau of Statistics Collaborative Survey: Selected Findings (2013).

small businesses to succeed. This starts with government providing the right environment for small businesses today, and positioning itself for the global economy of the future.

An active government approach must go beyond economy wide policies to improve the conditions for growth, as important as they are. Government must offer clear direction to businesses in individual sectors and across the economy. It must shift from being passive and reactive, to proactive and strategic – and must be wholly supportive of small firms. The Legislature has a critical role to play in this regard. It can exercise its powers to make, amend or repeal the necessary laws that would facilitate the development of small and medium enterprises. It can also use its oversight powers to monitor compliance to extant laws and attitudinal change on the part of government agencies.

Approach of the Consultants

To assist the Government in implementing the suggested reforms, we have rated the Acts/Bills into “High”, “Medium” and “Low” categories. A summary of the legislative ratings is shown at the end of this Executive Summary.

Our ratings of the MSMEs have, in the main, been informed by the 2013 SMEDAN/NBS collaborative survey of MSMEs in Nigeria. Respondents to the investigation identified the main challenges and constraints confronting the operations of MSMEs in Nigeria as lack of access to finance, weak infrastructure, inconsistent government policies, lack of support (business development services), lack of workspace, and multiple taxation.

From experience, the Consultants are also aware that challenges faced by MSMEs include the increasing costs of doing business (e.g. energy), acquiring, retaining and boosting competitiveness and innovation, accessing international markets, economic volatility and compliance issues.

These factors determined the rating of existing and proposed legislation in two ways. The initial inquiry was to ascertain whether, if at all, the Law or Bill fell into any of the categories identified above as being problematic for MSMEs. The second stage was to determine deficiencies in the legislation that have an adverse impact on either setting up, running, or closing down an MSME. For instance, where the Law or Bill is found to discourage investment on account of onerous tax provisions, or impedes MSMEs by ambiguous or conflicting requirements, it will be designated a ‘High’ rating.

Conversely, where legislation falls into any of the identified categories but does not impede the setting up, running, or closing down an MSME, it will be designated a 'Low' rating.

The Consultants have endeavoured to be objective but recognise that there is some degree of subjectivity in this approach especially in relation to legal analysis. Law, unlike science, is not exact. Unless where field research is carried out to test certain hypothesis, law is not exact and hence the methodology adopted in doctrinal. This approach has been occasioned, to a large extent, by the limited time prescribed for this Assignment.

Key Findings & Recommendations

This Final Report contains a broad range of legislative and policy interventions, as progress is required on a broad range of fronts. They are not an exhaustive list, but each would make a contribution to improving the Business Environment for MSMEs.

A. Passage of the Reform Bills:

Findings: With the reform of key sectors of the economy, there is a critical need to facilitate an enabling environment for private sector participation. There are Bills pending before the National Assembly that are of priority importance to doing business and overall private sector development in Nigeria especially in infrastructure delivery.

Recommendation: If no other recommendation in this Report is implemented, the enactment of the following Bills would be a major achievement of the 8th

1. Federal Competition and Consumer Protection Bill, 2015.
2. Federal Roads Authority Bill, 2015.
3. National Inland Waterways Authority Bill, 2015.
4. National Roads Funds Bill, 2015.
5. National Transport Commission Bill, 2015.
6. Nigerian Ports & Harbours Authority Bill, 2015.
7. Nigerian Postal Commission Bill, 2015.
8. Nigerian Railway Authority Bill, 2015.

B. Establishment of a Federal Legislative Clearinghouse:

Recommendation: We recommend the establishment of a Federal Legislative Clearinghouse to scrutinise and review Bills before presentation to the respective Chambers for first reading. The Clearinghouse could be established within the National Assembly's Directorate of Legal Services. Consequential amendments to the Senate and House Standing Rules will be required to establish the Clearinghouse and set out the review procedure.

One principle we believe should guide the National Assembly in considering the Bills before it is the need to avoid the setting up of multiple agencies with overlapping or conflicting mandates. Consequently, there is need to follow a cost-benefit approach in deciding when and where a new agency is required.

C. Access to Finance & Property:

Access to Finance

Findings: Access to finance and land are major challenges to MSMEs. Data from the SMEDAN and NBS collaborative survey revealed that of a total of 80,312 Small and Medium Enterprises, only 13,031 (representing 17%) listed their source of capital as a loan. As it concerned Micro Enterprises, only 3% of the surveyed Enterprises listed their source of capital as a loan. Early-stage start-ups often do not have the collateral or assets requested by banks before they will administer a loan, making it difficult to obtain a loan.

Recommendation: The Independent Warehouse Regulatory Agency Bill holds the potential of solving the challenge of collateral by allowing businesses to securitise their commercial warehouse receipts. Likewise, the Secured Transactions in Movable Assets Bill proposes to establish a National Collateral Registry. This Bill will give creditors need an effective way to discover whether the potential borrower has already granted a security interest in the collateral and, if so, what priority those rights have.

If properly implemented (with all identified deficiencies addressed), both of these Bills could improve access to finance for MSMEs.

The National Development Bank of Nigeria Bill which seeks to consolidate the operations of development finance institutions (Bank of Industry, Bank of Commerce & Industry and National Economic Reconstruction Fund) is important to the business environment in Nigeria.

These Bills merit priority attention, as their passage would ensure that businesses, especially SMEs, have access to different avenues of financing at reasonable interest rate.

Access to Property

Findings: The majority of MSMEs also identified lack of work space as being a significant problem. The requirement to obtain Governor consent to property transfer remains the largest bottleneck in Nigeria.

There are several laws in the housing sector including the Federal Housing Authority Act, the National Housing Fund Act, the Federal Government Housing Act, the Federal Mortgage Bank Act, the Urban and Regional Planning Act and Mortgage Institutions Act. All these enactments constitute regulatory challenges.

Recommendation: Eliminating Governor's consent would significantly speed up the total time required to register property across the country. Alternatively, delegating the power to grant consent will significantly decrease the waiting time.

We have also recommended the 'liberalization' of land holding and allocation as well as the review of planning laws, environmental laws, among others.

D. Establishment of a National Legislative Forum:

Findings: Generally, Nigerian Federal Laws are fairly consistent with international best practices. However, we need to improve on our regulatory framework, procedures and practices at Federal and State levels.

Indeed, in 2016, Nigeria is ranked 169 out of 189 economies in the World Bank Doing Business (DB) Report. The Consultants reviewed the Report extensively and identified the deficiencies in the Nigerian system that led to the low ranking and made specific recommendations. Be that as it may, Nigeria's DB 2016 ranking is based on regulatory processes, procedures and practices at State level, in this case, Lagos and Kano. Collaboration between the Federal and State Governments is imperative to improve the Business Environment in Nigeria and also Nigeria's ranking in DB Report.

Recommendation: The National Assembly should facilitate dialogue between the Federal and State Governments, and between the State Governments *inter se*, with a view to modernising and harmonising laws, regulations and practices affecting the Business Environment. This dialogue could be implemented through the establishment of a National Legislative Forum (modelled upon the Nigerian Governors Forum). The Forum will set out minimum standards in the law making process, and in the oversight functions to ensure that the relevant government agencies at the Federal and State levels improve on their practices and procedures.

The specific recommendations made by the Consultants in respect of DB Report can be discussed at such Forum.

E. Improving Commercial Dispute Resolution:

Recommendation: The Federal Capital Territory and other States of the Federation should follow the example set by Lagos State by introducing specialised Commercial Courts, with judges assigned solely for hearing commercial matters.

The draft Federal Arbitration and Conciliation Bill, 2007 should be updated to repeal and re-enact the Arbitration and Conciliation Act, while other states should emulate Lagos State and pass the Arbitration and Conciliation Bill, 2007 into law.

Some states already have the Multi-door Courthouses. This should be replicated in all states so that all Alternative Dispute Resolution (ADR) processes are available in all states.

F. Simplifying the Payment of Taxes:

Findings: Under the current system, businesses pay similar taxes on the same or substantially similar tax base. For instance, Companies Income Tax, Information Technology Tax (NITDA Levy), Education Tax, Nigerian Content Development Levy are all based on income or profits. Multiple taxation increases the number of payments businesses must make, the frequency of the said payments and the compliance time.

Recommendation: The Legislature should consider enacting legislation to streamline tax payments by introducing one tax for each tax base (e.g. a single tax based on income of profits).

Summary of Legislation by Priority Ranking

S/N	NAME OF ACT	RATING
	Arbitration and Conciliation Act, Cap A18, LFN 2004	High
	Coastal and Inland Shipping (Cabotage) Act	High
	Companies & Allied Matters Act (CAMA), Cap C20, LFN 2004.	High

S/N	NAME OF ACT	RATING
	Companies Income Tax Act, Cap. C21, Revised Edition, LFN, 2004	High
	Copyright Act, Cap. C. 28, LFN, 2004	High
	Federal Highways Act, Cap. F13, LFN 2004.	High
	Federal Inland Revenue Service Act, 2007, Cap F36. LFN, 2004	High
	Fiscal Responsibility Act, Cap. F4, LFN, 2004	High
	Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005	High
	Investment and Securities Act, 2007	High
	Mortgage Institutions Act, Cap. M19, LFN, 2004	High
	National Housing Fund Act, Cap. N45, LFN, 2004	High
	National Information Technology Development Agency Act, Cap. N156, Revised Edition, LFN, 2004	High
	Nigerian Civil Aviation Act, Cap. N94, LFN 2004	High
	Nigerian Inland Waterways Authority Act, Cap. N47, LFN 2004	High
	Nigerian Investment Promotion Commission Act, Cap N117, LFN, 2004	High
	Nigerian Minerals and Mining Act, Cap. N162, LFN 2004	High
	Nigerian National Petroleum Corporation Act, Cap N123, LFN, 2004	High
	Nigerian Ports Authority Act, Cap. N126, LFN 2004	High
	Nigerian Postal Service Act, Cap. N127, LFN 2004	High
	Nigerian Railway Corporation Act, Cap. N129, LFN, 2004.	High
	Patents and Designs Act, Cap. P2 Revised Edition, LFN 2004.	High
	Petroleum Act, Cap. P10, Revised Edition, LFN, 2004	High
	Petroleum Profits Tax Act, Cap. P13, Revised Edition, LFN, 2004	High
	Public Enterprises (Privatization and Commercialization) Act, Cap. P38, LFN, 2004	High

S/N	NAME OF ACT	RATING
	Public Procurement Act, Cap, P44, LFN, 2004	High
	Taxes and Levies (Approved List for Collection) Act, Cap. T2, Revised Edition, LFN, 2004	High
	Trade Marks Act Cap. T. 13 LFN 2004	High
	Animal Diseases (Control) Act, Cap. A17 Revised Edition, LFN, 2004	Medium
	Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap. D3, Revised Edition, LFN, 2004	Medium
	Federal Housing Authority Act, Cap. F14, LFN 2004	Medium
	Price Control Act, Cap. P28, Revised Edition, LFN, 2004	Medium
	Standards Organisation of Nigeria Act, 2015	Medium
	Consumer Protection Council Act; Cap. C25 Revised Edition, LFN 2004.	Low
	Customs and Excise Management Act, Cap. C45, Revised Edition, LFN, 2004	Low
	Environmental Impact Assessment Act, Cap. E12, Revised Edition, LFN, 2004	Low
	Food and Drugs Act, Cap. N32, Revised Edition, LFN, 2004	Low
	Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, Revised Edition, LFN, 2004	Low
	Immigration Act, 2015.	Low
	Labour Act, Cap. L1, Revised Edition, LFN, 2004	Low
	National Agency for Food and Drug Administration and Control Act, Cap. N1, Revised Edition, LFN 2004.	Low
	National Environmental Standards and Regulations Enforcement Agency Act, Cap. N164, Revised Edition, LFN 2004.	Low
	National Office for Technology Acquisition and Promotion Act, Cap. N62, Revised Edition, LFN, 2004	Low

S/N	NAME OF ACT	RATING
	Nigeria Export Processing Zones Act, Cap. N107, Revised Edition, LFN 2004	Low
	Nigeria Export Promotion Council Act, Cap. N108, Revised Edition, LFN 2004.	Low
	Nigerian Oil and Gas Industry Content Development Act, 2010	Low
	Nigerian Urban and Regional Planning Act, Cap. N138, Revised Edition, LFN, 2004	Low
	Pension Reform Act, 2014	Low
	Petroleum (Special) Trust Fund Act, Cap. P14, Revised Edition, LFN, 2004	Low
	Petroleum Equalisation Fund (Management Board, etc.) Act, Cap. P11, Revised Edition, LFN, 2004	Low
	Petroleum Products Pricing Regulatory Agency (Establishment, etc.) Act, Cap. P43, Revised Edition, LFN, 2004	Low
	Petroleum Technology Development Fund Act, Cap. P15, Revised Edition, LFN, 2004	Low
	Public Enterprises Regulatory Commission Act, Cap. P39, Revised Edition, LFN, 2004	Low
	Small and Medium Scale Enterprises Development Agency of Nigeria Act; Cap. S19 Revised Edition, LFN 2004.	Low

S/N	NAME OF BILL	RATING
	Federal Competition and Consumer Protection Commission Bill 2015	High
	Federal Roads Authority Bill, 2015	High
	National Inland Waterways Authority Bill 2015	High
	National Roads Fund Bill 2015	High
	National Transport Commission Bill 2015	High
	Nigeria Postal Commission Bill 2015	High
	Nigerian Ports and Harbours Authority Bill 2015	High

S/N	NAME OF BILL	RATING
	Nigerian Railway Authority Bill 2015	High
	A Bill for the Bio-fuels Energy Policy Act	High
	Commercial Agriculture Credit Scheme Bill, 2015.	High
	Commodities Exchange Bill, 2015.	High
	Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) (Amendment) Bill, 2015.	High
	Franchise Bill, 2015.	High
	International Trade Commission of Nigeria Bill, 2015.	High
	Micro Finance Bill, 2015.	High
	National Development Bank of Nigeria (establishment, etc.) Bill 2015.	High
	National Payment System Bill, 2015.	High
	National Security Tax Fund Bill	High
	Nigeria Agricultural Quarantine Service (Establishment) Bill, 2015.	High
	Nigerian Independent Warehouse Regulatory Agency (Est, etc.) Bill, 2015	High
	Oil and Gas Export Free Zone Act CAP 05 LFN 2011 (Amendment) Bill, 2015.	High
	Petroleum Refineries (Incentives, Regulation And Miscellaneous Provision) Bill, 2015	High
	Secured Transactions in Movable Assets Bill	High
	Abuja Metropolitan Management Council Bill, 2015	Medium
	Central Bank of Nigeria Act (Amendment) Bill 2015.	Medium
	Chartered Institute of Facilities Management of Nigeria Bill, 2015	Medium
	Environmental Health Control Bill 2015.	Medium
	Hydroelectric Power Producing Area Development Commission Act (Amendment) Bill, 2015.	Medium
	National Fertilizer Bill, 2014	Medium
	National Planning Process Bill, 2015.	Medium
	Nigeria Industrial Revolution Plan Bill, 2015	Medium
	Nigerian Tourism Development Corporation (Amendment) Bill 2015.	Medium

S/N	NAME OF BILL	RATING
	Palm Oil Development Bill.	Medium
	Agricultural Credit Guarantee Scheme Fund Act [Amendment] Bill, 2015.	Low
	Agricultural Produce Hoarding (Prohibition) Bill, 2015	Low
	Agricultural Produce Hoarding (Prohibition) Bill, 2015	Low
	Chartered Institute of Capital Market Registrars (Establishment) Bill, 2015.	Low
	Chartered Institute of Management Information Technology Bill, 2015.	Low
	Deep Offshore and Inland Basin PSC Bill	Low
	Deep Offshore and Inland Basing Production Sharing Contract Act CAP D3 LFN 2004 (Amendment) Bill, 2005.	Low
	Energy Commission Act (Amendment) Bill, 2015.	Low
	Food Security Bill, 2015.	Low
	Integrated Infrastructure Development Bill, 2015.	Low
	National Agency for Food and Drug Administration and Control Act (Amendment) Bill, 2015.	Low
	National Agricultural Land Development Authority Act (Amendment) Bill 2015.	Low
	National Biotechnology Development Agency Bill, 2015.	Low
	Nigeria Agricultural Processing Zones Bill, 2015.	Low
	Nigerian Metallurgical Industry Bill	Low
	Nigerian Solid Minerals Development Bank Bill, (Establishment) 2015.	Low
	Trade Malpractice (Miscellaneous Offences) Act (Amendment) Bill, 2015.	Low