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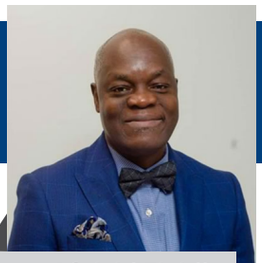

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Musings II: Is Business Permit Under the Immigration Act Still Tenable in Nigeria?

Sometime ago, I published '***Musings: Nigerian Businesss Landscape Improvement issues***' (***Musings I***). Originally published in my ***'Taxspectives'*** column in *THISDAY Lawyer, 29.05.2012, p.7* (as *'Why Government Must Acquire a Business Mindset…'*), it is also available as a *LeLaw Thought Leadership Insights* piece amongst others at: www.lelawlegal.com. Subsequently, the ***Nigerian Immigration Act, No. 8 of 2015 (IA)***, was enacted, repealing its predecessor, ***IA, Cap. I-1, LFN 2004*** (originally enacted in 1963). ***The Immigration Regulations 2017*** issued pursuant to the ***IA*** followed; and most recently, the Ministry of Interior (MoI)'s *Citizenship and Business Department* issued the '***Handbook on Expatriate Quota Administration (Revised 2020)' (the Handbook)***.

This sequel takes up my argument in ***Musings I*** that the requirement of Business Permit (BP) approval by the MoI is now a regulatory anachronism in Nigeria's statute books, and contributes to bureaucracy that slows down the wheels of business.[1] My respectful view is that the MoI's BP is an impediment that weighs down on Nigeria's ranking on the global ***Ease of Doing Business***, and ought to have attracted the reform-minded attention of the hard working *Presidential Enabling Business Environment Council (PEBEC)* to recommend that the Federal Government dispenses with it.[2]

This is moreso that the Nigerian Investment Promotion Commission (NIPC), established by the ***NIPC Act, Cap. N16, LFN 2004*** (a 1995 enactment), in practice issues companies with foreign participation with '*Business Permit*' upon their registration with the NIPC, pursuant to ***section 20 NIPC Act***. Arguably, that provision probably envisaged (albeit not expressly), that MoI's BP was no longer to apply, especially pre-***IA***.[3] Increasing liberalisation has made MoI's BP requirement less tenable; thus one would have thought that the ***IA***'s BP provision would have fallen away, in 2015 when the ***IA*** was being re-enacted, but alas! In the ***Doing Business 2020 Report (DB 2020)***, http://documents1.worldbank.org/curated/en/688761571934946384/ pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf, Nigeria ranked 131st out of 190 countries (20th In Africa). Part of how the Federal Government (FG) can put action behind its intent to keep improving Nigeria's *Ease of Doing Business'* rankings, is to remove MoI's BP.

Clearly, Nigeria (like other sovereigns) reserves the right to control the entry and exit of foreigners into her territory; being the apparent rationale for issuing different kinds of visas, etc.[4] Such right is exemplified for example by ***sections 37-39 IA***[5] and no one can reasonably challenge that. This article examines in greater detail why the MoI's BP requirement - as a prerequisite to foreign companies doing business in in Nigeria – has outlived its usefulness in Nigeria's regulatory landscape. We will set the context/preface our discussion with the extant BP framework.

BP: Regulatory Basis

Per ***Section 36(1)(b) IA*** (***Entry for business purposes***):

> *"**No person other than a citizen of Nigeria shall on his own account or in partnership with any other person** practice a profession or establish or take over any trade or business whatsoever or register or take over any company with limited liability for any such purpose, without the consent in writing of the Minister given on such [conditions] by or on behalf of such persons, as the Minister may prescribe."*[6]
>
> ***Section 112 IA*** empowers the Minister to make regulations that are in his opinion necessary or expedient to give effect to the ***IA***.[7]

On its own part, ***Para 2.0, the Handbook (Available Services)*** states *inter alia*:

> *"The services currently available are:*
> *2.1 Grant of [BP]: This is a certificate issued on the authority of the Minister of Interior to wholly foreign owned **or joint venture companies** intending to do business in Nigeria to enable them operate legally. The certificate remains valid as long as the company's operations does not infringe upon the law of the land which may lead to its revocation.*

[1] Whilst the total statutory fee of ₦181,000 (for BP approval (at ***pp 21-22, the Handbook***), may arguably be considered not a significant amount; however, this writer is more concerned about the delay that the unnecessary BP requirement would implicate.

[2] Per the display on its website, https://easeofdoingbusinessnigeria.com/ (accessed on 02.12.2020), "*Making Business Work*" is a core *raison d'etre* or mantra of PEBEC.

[3] On the ground that the NIPC was later in time to the earlier version of the ***IA*** (***Immigration Act 1963 as amended*** before enactment of the ***IA***). Although it is conceded that ***section 19(2) NIPC Act*** provides that: "*Subject to this Act, nothing in this Act shall be construed as precluding an enterprise to which this Act applies, from obtaining such licence, lease, permit or any other approval as may be required for the establishment or operation of the enterprise.*" So absence of express repeal provision meant unfortunately that even pre-***IA***, BP continued to apply.

[4] See ***Awolowo v. Sarki [1966] 1 All NLR 178*** – where it was held that it within the discretionary powers of the Minister of Internal Affairs to refuse entry to the Appellant's expatriate counsel of choice, who therefore could not defend him at criminal proceedings for treasonable felony. It was further held that such refusal was not a breach of the Appellant's fundamental human right to fair hearing under the ***1963 Constitution***, as the Appellant could engage other counsel and the said expatriate is not entitled to entry into Nigeria as of right.

[5] ***Sections 37-39 IA*** comprise ***Part III (Entry into and Departure from Nigeria)***.

[6] ***Section 8(1)(b), Immigration Act, Cap.171 LFN 1990*** (itself a rehash of the provisions of Immigration ***Act No. 6 of 1963***), was reproduced *verbatim* as ***Section 8(1)(b), Immigration Act, Cap.I-1, LFN 2004*** and provides in similar terms as ***section 36(1)(b) IA*** above, but includes "*the locality of operation and the persons to be employed by or on behalf of such person*" amongst the conditions that the Minister may prescribe in granting BP approval.

[7] See also ***Para 4 Immigration Regulations 2017***: "*(1) The authorisation of the Minister **for the establishment of a profession, business or trade in Nigeria** shall, subject to such conditions as the Minister may impose, take the form of a [BP] prescribed in the First Schedule to these Regulations. (2) Nothing, however, in any [BP] shall entitle the holder of such permit to enter or remain in Nigeria unless such person is in possession of a valid residence permit or in the case of an alien, a valid visa for residential purposes, as the case may be. (3) **A [BP] may, at any time, be revoked, varied, or cancelled by the Minister**, and every person to whom such permit has been issued shall notify the Minister or the Director of Immigration of any change whatsoever in the name or address of the business or trade.*" (Emphasis supplied). That the above referenced ***Regulations'*** provisions has remained essentially the same as enacted in August 1963 (over 57 years ago), reflects how we are not cognisant of change.

2.2 Amendment of [BP]: This is a facility in which a certificate is issued to reflect changes in a Company's details/information."

Its ***Para 3.0 (General Rules)*** stipulates that *"[BP] is granted to* ***only wholly foreign or joint venture companies*** *with a minimum share capital of N10 million* ***to enable them commence business in the country"***[8], whilst ***Para 4.0 (Specific Requirements)*** sets out that *"All applications by companies for [BP] and Expatriate Quota Position should be accompanied by the"* therein listed documents.

What is the Continuing Rationale for BP in Nigeria?

This question cannot but agitate one's mind; it is respectfully submitted that BP has outlived its usefulness and the ***IA*** should be urgently amended to remove the requirement, for the following reasons:

- *Nigeria has liberalised her business environment since the late 1980s and continues to promise even more reforms for the purposes of improving the ease of doing business (EDB) and Nigeria's investment competitiveness.* As noted in ***Musings I***, in substance Nigerian law no longer discriminates between foreign owned and local businesses for entry into sectors: all can participate except for sectors captioned *"negative list"* by the ***NIPC Act***.[9] If foreign investors are not meant to be subject to any disability before they can invest in any permissible sector, why does the MoI need to *"pre-approve"* entry into such sectors? Registration with NIPC which is *underpinned more by foreign investment data monitoring purposes (and particularly necessary where the foreign investor is applying for incentives administered by the NIPC)*, is evidenced by Business Permit. *Why would the law empower both the NIPC and MoI to grant 'Business Permit'? One is clearly unnecessary, and in my view it is the BP administered by the MoI (even if coordinated by the NIPC through its One Stop Investment Centre (OSIC) arrangement), that is unnecessary.*

  Failure to streamline BP typifies unimpressive commentary on Nigeria's business reform journey, that we seem not ready to go beyond the *"pain barrier"*.

- *MoI's documentation requirements for BP reinforces that it is an unnecessary requirement.* An example is certified true copies (CTCs) of incorporation documents. The incidence of incorporation alone shows that the promoters have satisfied the Corporate Affairs Commission (CAC) - the agency with exclusive oversight on incorporation, administration and liquidation of Nigerian companies – that the proposed business can be legally undertaken, as CAC will not permit illegal or prohibited objects. This thus begs the following questions: *After the CAC has approved the objects and incorporated a foreign owned Nigerian company, can the MoI under the guise of BP refuse same?*[10] Definitely, the answer is in the negative. *Why can the MoI not rely on the CAC's judgment such that at best documents are just sent to it for the more relevant purpose of approving expatriate quota (EQ)? Is the MoI more qualified to screen legality of business objects than the CAC?*[11] *Why should we have duplicative processes?* Some of these snags were what ***Executive Order No. 1 of 2007***[12] sought to remove for seamless service delivery.[13] *Why are we not following through?*[14] Ultimately, BP becomes an exercise of going through the motions just to fulfill all righteousness, with nil or at best little value added.[15]

- *Nigerian law mostly require regulators to treat businesses equally, irrespective of related foreign or local ownership stakes.* By way of illustration, the ***Financial Reporting Council of Nigeria Act*** and ***Nigerian Code of Corporate Governance 2018*** do not distinguish between Nigerian *wholly, majority or minority owned businesses* in terms of meeting corporate governance compliance requirements. The CAC and the ***Companies and Allied Matters Act***

[8] It may be argued that MoI also acts to check companies with foreign participation from seeking to do business in Nigeria with less than N10 million capital, especially as the ***NIPC Act*** also has a N10 million minimum investment threshold. In my view, MoI could use the EQ application process to verify that the applicant company has met the minimum capital requirements. However, if the applicant does not require EQ, but seeks registration with the NIPC (for example in order to access investment incentives), they would still need to show compliance before NIPC will register them. It must be noted though that the ***NIPC Act*** omitted to provide any sanction for failure to register with the NIPC – it thus effectively lacks enforcement teeth. This writer believes there could also be an argument that the minimum capital needs significant upward review, in light of current realities.

[9] By the combined effect of ***sections 17, 18, 21 and 31 NIPC Act***. See also, ***section 15(1) Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, LFN 2004*** ((***FEMMPA***), also a 1995 legislation) that permitted foreigners to invest in Nigerian companies. Nigerian business reforms have sought to cover all sectors of the economy. For an example of a discussion on foreign exchange reform trajectory, see the analysis in Afolabi Elebiju, ***'Nigeria: Settling the Foreign Currency Claims Issue'*** *[2001] JIFM 155-162*, particularly the three phases: *'strict regulatory period'*, *'deregulatory/onset of liberalisation'* and *'full liberalisation'* at *pp. 155 -157*.

[10] In this context, this 'interloper' stance of the MoI on its own also raises questions, such as: What does MoI wants to do with applicant's Feasibility Study and Business Plan? Does it intend to be a "judge" of the business acumen of the promoters? Is that level of detail potentially comprising commercially sensitive information in Feasibility Study and Business Plan really necessary for valid business objects, and also not likely to be at risk via unauthorised access to third parties who could leverage same to become competitors?

[11] ***Section 19(1) NIPC Act, Cap. N-17, LFN 2004*** provision that *"An enterprise in which foreign participation is permitted under section 17 of this Act, shall not commence business, except it is incorporated or registered under the Companies and Allied Matters Act"* is consistent with ***section 54 CAMA, Cap. C20, LFN 2004*** (now ***section 78 CAMA 2020***) that required foreign companies to establish Nigerian subsidiaries in order to do business in Nigeria.

[12] See ***'Executive Order No. 001 of 2017 by the Acting President of the Federal Republic of Nigeria on the Promotion of Transparency and Efficiency in the Business Environment'*** which mandated *inter- Ministries, Departments and Agencies (MDAs) cooperation* in order to lighten regulatory burden on applicants. See for example, ***'One Government Directive'*** provisions of ***EO No.001 of 2017 (Paras 10 – 13)***. See also Chuks Okoriekwe, ***'Executive Order on Ease of Doing Business in Nigeria: Knuckling Down to Get Business Done'***, *LeLaw Regulatory Alert, June 2017*.

[13] See ***Para 7.0, the Handbook:*** *"… In line with Executive Order I (EOI) on the promotion of "One Government", partner MDAs are to carryout online verification/confirmation of documents 'issued' by the under listed in the course of processing or utilizing 'approved' Expatriate Quota Positions:… "* These online elements of the process may arguably be regarded as making the BP requirement less objectionable.

[14] It would be interesting to see actual performance benchmarks of (MDAs), pursuant to ***EO No. 001 of 2017*** and other ***EOs*** referred to in this article, so government can make necessary post evaluation adjustments in furtherance of our reform journey.

[15] See ***Para 4.1, the Handbook*** listing BP requirements *"for only Joint Venture and Wholly Foreign Owned Companies"* to include: *i. Application letter; ii. Certificate of Incorporation duly issued by [CAC]; iii. Memorandum and Article of Association; iv. Feasibility Report/Business Plan; v. Forms CAC 2.3& 2.5 or CAC C02 & C07 or CAC 1.1; vi. JV (or shareholders) Agreement between Nigerian and their foreigner partner/shareholders; vii. Company's Current Tax Clearance Certificate; and viii. Evidence of acquisition of operating premises ie lease/ tenancy agreement, C of O or R of O; ix. Certificate of Capital Importation (specifying minimum requirements per sector).*

- ***(CAMA) 2020*** also adopt the same approach; thus, *sanctions for breach of corporate requirements are nationality neutral*. The Federal Inland Revenue Service (FIRS) will apply tax laws irrespective of the nationality of shareholders of corporate taxpayers. In fact, any special treatment, for example enjoyment of tax treaty benefits will only be pursuant to extant provisions.[16] By the same token, NIPC will not grant incentives that foreign owned companies are ineligible for; in fact recent history (under President Jonathan) showed that Nigerian companies were the greatest beneficiaries of such. Will the Federal Competition and Consumer Protection Commission (FCCPC) enforce the ***FCCP Act No. 1 of 2019*** more vigorously against foreign *vis a vis* Nigerian owned companies? We do not think so – the FCCP would be more concerned about furthering the ***FCCPA's*** objectives as enshrined in ***section 1 FCCPA*** without fear or favour, as to the nationality of market participants.

- *Local content development or expatriate quota (EQ) are not co-terminous with BP.* Government's unimpeachably valid objective of fostering local content development and capacity utilisation, for example by discouraging, nay actively sanctioning the long term employment of expatriates at the expense of suitably qualified Nigerians,[17] are totally different issues from, and not co-terminous with, MoI's BP. Those objectives can be effectively championed, and monitored without BP; there are sufficiently robust provisions vide the ***Nigerian Oil and Gas Industry Content Development Act 2010***[18] and the ***Local Content Executive Orders*** in this regard.[19] Also, the perception that foreign owned businesses tend to employ less Nigerians lacks conclusive supporting scientific data, even if there may be instances of such. MoI's engagement with other agencies such as the Nigerian Content Development Monitoring Board (NCDMB) and the Department of Petroleum Resources (DPR) is more in respect of EQ than BP.[20] This is moreso that as at the time of applying for BP, the company would have already obtained applicable sectoral approvals, such as DPR license to operate in the oil and gas industry.

- *Light but effective regulation is the preferred and optimal business regulatory model*. That Nigeria's EDB rating is outside the top global 130 is not without reasons. *Since the times have changed and the obvious need for improving Nigeria's competitiveness for global investment capital remains undiminished, why are we still imposing unnecessary burdens?* Like the sons of Issachar in ***1Chronicles 12:32***, we must *"understand the times"* and know what Nigeria ought to do. As Jesus chastised the Pharisees in ***Matthew 23:4*** and ***Luke 11: 46***, there is no point in overlaying people with burdens too heavy to bear. *"That is the way things have been"* does not mean they should remain so, especially given the rapidity of change in the wider context. It is interesting that the only improvement that ***section 36(1)(b) IA*** made over equivalent ***1963 IA***, codified as ***IA, Cap. 350, LFN 1990*** and ***section 8(1) IA, Cap. I-1, LFN 2004*** provisions is merely the removal of location(s) of the proposed business and potential employees from conditions that the Minister may prescribe in granting BP approval. So there is really no significantly substantive change;[21] albeit between 1963 and 2015 is 52 years! Since regulators are not exclusive repositories of all knowledge, they can undertake periodic regulatory burden specific surveys to which the business community would make input and suggestions for consideration. Ultimately, it cannot be overemphasized that *more efficient regulation contributes to profitability cum capacity to pay more taxes to government, and make other sustainable economic contributions such being employers of labour, with all its spill over benefits.*

[16]The tax regime has anti-avoidance provisions, particularly the ***Transfer Pricing Regulations 2018*** and the new ***Seventh Schedule CITA*** excess/deductible interest threshold introduced by ***section 23 Finance Act 2020*** to regulate related party transactions, especially involving foreign affiliates. Regulatory oversight by the National Office for Technology Acquisition and Promotion (NOTAP) on commercial and other terms involving non-resident service providers on technology quotient agreements - the focus being is to regulate capital flight by making sure payments are commensurate to services delivered - is also not as objectionable in principle as MoI's BP. However, NOTAP's process efficiency can definitely be improved to drastically reduce approval timelines. Incidentally, NOTAP's current ***Revised Guidelines for Registration and Monitoring of Technology Transfer Agreements in Nigeria (NOTAP Guidelines)***, was issued in 2011 – almost a decade ago.

[17]See for example, ***Para 3(iii),*** and ***(xii), the Handbook***: *"For each [EQ] Position granted and on which an expatriate is placed, two (2) Nigerian understudies with minimum qualifications of B.Sc/HND in the relevant profession/discipline should be attached"* and *"Only jobs on the critical skills list at Annex I would be considered for Expatriate Quota Positions upon sufficient proof by the individual employer"*. ***Para 3(xi)*** actually precludes issuance of EQ for some professions, with narrow exceptions to the prohibition in applicable cases. ***Para 6.0*** specify in part for example, that *"refusal to employ Nigerians to understudy expatriate employees as required"* renders the defaulting company *"liable to a fine of [N3 million] for each month that a position is occupied by an expatriate without an understudy"*.

[18]See Afolabi Elebiju, ***'Tax Implications of the Nigerian Oil and Gas Industry Content Development Act 2010',*** (originally published as ***'Tax Implications of the Local Content Act'***, *Taxspectives, ThisDay Lawyer, 01.11.2011, p. vii*): *"Understandably, the enactment of the LCA was popularly regarded as a welcome development in the nation's quest to optimize value from its oil and gas industry and a (singular) high watermark of the 2011 class of the National Assembly. LC status checks on the energy sector of countries like Brazil, Indonesia, Malaysia, Norway shows that Nigeria is lagging behind in this value optimization objective. However, it is better late than never."* See ***Para 5.0, the Handbook, (Collaboration with MDAs for Processing of Business Permit and Expatriate Quota Positions)*** which, for example, details the procedural requirements of the collaboration with the NCDMB for employment of expatriates in Nigerian oil and gas industry. See also Chuks Okoriekwe, ***'Multi-sectoral Local Content Development in Nigeria: Sailing through Stormy Waters? (Part I – Oil & Gas and Cabotage)'***, *LeLaw Thought Leadership, September 2017.*

[19]See directives to MDAs to *"engage indigenous professionals"* and *"maximise in-country capacity"* *vide* the ***Presidential Executive Order for Planning and Execution of Projects, Promotion of Nigerian Content in Contracts and Science, Engineering and Technology No. 5 of 2nd February 2018 (EO5)***. See also, Yewande Obayomi and Chuks Okoriekwe, ***Discourse: Executive Order on 'Support for Local Contents in Public Procurement by the Federal Government'***, *LeLaw Regulatory Alert, August 2017.* This ***Local Content EO (LCEO)*** was one of three ***EOs*** signed by then Acting President Osinbajo on 18th May 2017.

[20]See also ***Para 3(x) the Handbook***: *"Companies in the aviation sector are to obtain recommendations from Ministry of Aviation (Nigerian Civil Aviation Authority - NCAA) … before approaching the [MoI] for [EQ] positions"*. Further, ***Para 7.0, the Handbook (Ministry's Online Linkages with Other MDAs)*** state in part: *"To promote transparency, efficiency and enhance the integrity of the process, Ministry of Interior maintains online linkages with some MDAs…"* and goes on to list the websites of the CAC, FIRS, Nigerian Immigration Service and NCDMB.

[21]Documentation requirements for BP amendment stipulated in ***Para 4.9, the Handbook*** also perpetuate the error: how can the MoI be interested in amongst others, *"Board Resolution on the changes in either the composition of the Board of directors, location of business or line of activities duly registered with [CAC]"; "Extract of Minutes of Board of Directors Meeting showing decision taken and attendance; and iv. Evidence of resignation / appointment of Directors (old & new) … Board Resolution should indicate names of Directors present at the meeting and must be duly signed by the Chairman and Company Secretary."*

- *BP is actually a form of 'blackmail'*. Undoubtedly, a pro-business/enabling regulatory mindset should underpin Nigerian regulatory framework, exemplified by 'light' but effective and high impact oversight. Against this preferred context, BP is arguably a form of blackmail; this result is achieved by MoI tying BP to EQ – thus no EQ (which is mandatory authorisation to employ expatriates in Nigeria), can be granted if the foreign owned Nigerian company applicant does not also apply for BP. Rather than making some other regulatory applications subject to BP;[22] MoI should focus on those ones only, not BP. As suggested elsewhere in this article, there is arguably a cause of action against overly 'heavy' and excessive regulation, and MoI's BP could be a notorious example? Thus, businesses must be willing to bite the bullet, once they can cross the relevant *locus standi* threshold. Unfortunately, the NIPC is by current provisions forced to participate in 'the blackmail', as its own Business Permit cannot in practice, be issued without the BP.

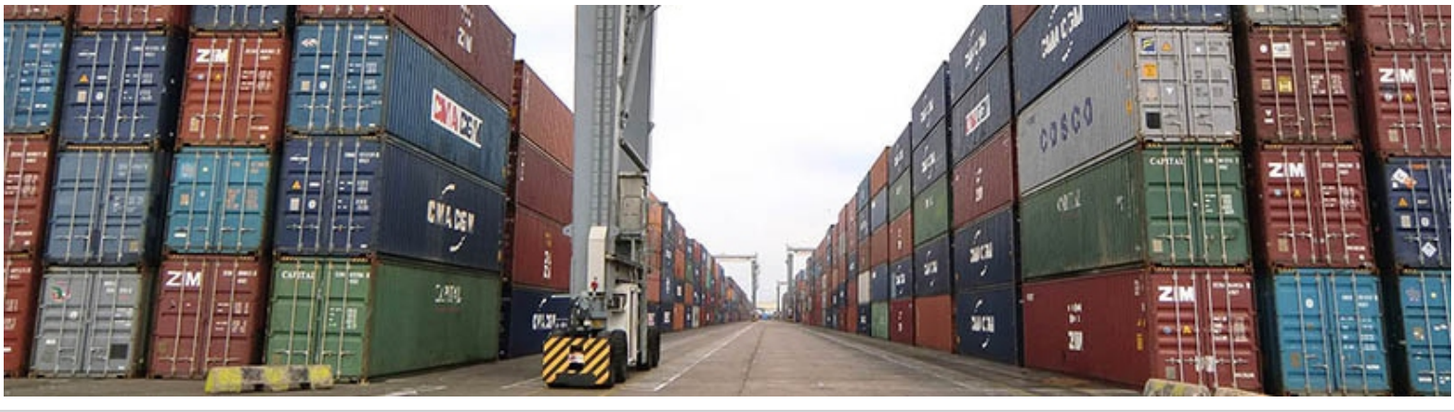
- *Professional standards and requirements are also in the mix*. The MoI's intervention is not necessary to ensure that Nigerian companies with foreign participation have requisite professional/technical capacity to undertake jobs. At the very least, public sector bidding requirements obligate them to show such capacity. Even in private sector scenarios, no serious client will engage firms without capacity to execute jobs. So in this sense, the market can take care of itself. Another point is that it is possible for companies to show profiles just for the purpose of ticking MoI's boxes to get the BP, so the real test should come from prospective clients, whether in the public or private sector.[23]

Some Reform Proposals

According to a popular adage, *"if the mountain will not come to Mohammed, Mohammed should go to the mountain."* Maybe it is time for affected stakeholders to influence reform in this area, as an example of how the private sector can actively influence government reform efforts, through the following approaches:

- *Suing for declaratory relief*: Upon incorporation, a Nigerian company with foreign participation can approach the Federal High Court for declaratory reliefs that ***section 36(1)(b) IA*** is superfluous, *ultra vires*, obsolete and therefore should not apply. Or better still, Nigerian co-shareholders with foreigners in such companies can be joint plaintiffs with the company. *If the era of* ***section 7 Securities and Exchange Commission (SEC) Act*** *prescription for regulatory (SEC) approval of share transfers in companies with foreign participation has long gone,*[24] *why do we still have a BP equivalent for start-up companies with both Nigerian and foreign participation?* We need to 'scrub' the statute books and get rid of spider webs!

- *Advocacy for PEBEC to champion repeal*: If we want to improve our EDB ratings, MoI's BP regulation should go, *vide* amendment of the ***IA***. Such would make for more efficient start up timelines for Nigerian companies with foreign participation. *In these days of urgency to take business viable technology enabled ideas quickly to market, BP can be a reason why someone may decide to locate the business in Rwanda, Botswana or Mauritius, rather than Nigeria*. The ***African Continental Free Trade Area Agreement (AfCFTA)*** to which Nigeria was a belated signatory, has made issues of Nigeria's competitiveness even more compelling than ever.



[22] For example, temporary work permit (pursuant to ***section 37(8) IA*** and ***Para 8 Immigration Regulations 2017***), etc. See also ***Part V (Residence and Employment of Foreign Nationals in Nigeria)*** comprising ***sections 36-39 IA***. Per ***Para 2, the Handbook (Available Services)*** only two (2) are related to BP, the fourteen (14) others are in respect of EQ.

[23] *Cf*. with the less objectionable requirement of ***Para 3 (v)*** and ***(vi) the Handbook***, for EQ compliance respectively: *"Upon arrival in Nigeria, expatriates engaged to fill approved quota positions are required to register with the relevant regulatory professional bodies as a proof of their qualification"* and *"Evidence of [expatriates'] registration with the professional bodies should be forwarded to the Ministry along with the monthly quota returns."*

[24] ***Section 7(1) SEC Act, Cap.406, LFN 1990*** provided as follows: *"No securities of any enterprise in which aliens participate whether constituted as a public or private limited or unlimited liability company or partnership… shall be issued, sold, or transferred without the prior approval of the Commission with respect to: (a) the price at which the securities are to be sold; (b) the timing and amount of sale… "*. See the Abstract to Afolabi Elebiju, ***'The Investment & Securities Act of 1999: An Overview of Anti-Trust Considerations in the Regulation of Mergers in Nigeria'***, *[2001] 6 JIFM 272; [2001] 9 ICCLR 230; (2001) 22 BLR 116: "… Nigeria, which recently consolidated her capital market laws into a comprehensive legislation, the Investment and Securities Act (ISA) 1999, provides an apposite context for illustrating the above statement. The ISA repealed or amended provisions of several acts of legislation: the Securities and Exchange Commission (SEC) Decree No. 29 of 1988, Part XVII of the Companies and Allied Matters Act (CAMA) 1990, the Lagos Stock Exchange Act, the Nigerian Enterprises Promotion (Issue of Non-voting Equity Shares) Act and the Nigerian Investment Promotion Commission (NIPC) Act, No. 16 1995."*

Nigeria has done similar reforms (enactment of liberalisation legislation/amendment/repeal of backward looking laws, etc), before and we can definitely do it again, or more going forward. Indeed, the pragmatic approach is that we must not settle, since ease of doing business is actually a journey and not a destination. If we do not keep the reform engine running, we will be left behind.[25]

- *MoI's BP approval process re-engineering*: Alternatively, even if we must continue to have MoI's BP at all, the process (already automated),[26] should seek to improve its operation on a fast track basis, such that once applicants fill an online form, tick all the boxes, upload documents and make payment, the BP application is automatically approved.[27] Experience has shown that the more automated and less involving of physical interaction with civil servants a process is, generally the better the delivery and performance outcomes of such a process. In the present MoI BP scenario, despite the automation (online filling of forms etc), there is still a lot of manual processing of downloaded completed forms. Such should be minimized – once defined criteria are met, the system should automatically approve applications. One major advantage of this is that applications will not suffer delays owing to personnel and team reshuffles.

- *Security check issues:* In my view, pre-approval security checks on foreigners intending to set up businesses that will contribute to the Nigerian economy, which they would not have been subject to otherwise, is uncalled for. Intending investors should not be subject to extra security checks than their non-investing counterparts; in any event security checks during their visa approval process, at the point of entry or any such ones which other foreigners are subject to, such suffice. The Police and other security agencies can deal with sanctionable behaviour as they do for all citizens/residents.

Conclusion:

To borrow the title of the '*Overview*' of ***DB 2020***: "*Tackling Burdensome Regulation*" must be a constant focus of government and all stakeholders. It is a journey and not a destination. Nothing exemplifies this more than the finding in ***DB 2020*** that Nigeria was 10th most improved economy but was not amongst the two African economies in the top 50 rankings (Mauritius 13th and Rwanda 38th).

Because it is "*not yet uhuru*", it is imperative that government's reformist agenda be underpinned by a great sense of urgency, which makes following through inescapable. The consistent advocacy of organisations like the Nigerian Economic Summit Group (NESG) and Nigerian Association of Chambers of Commerce Industry Mines and Agriculture (NACCIMA) amongst several others have helped thus far in the reform journey. They and the business citizenry must not lower their tempo in reform advocacy.

[25] See generally, sentiments along these lines (albeit in the context of ***National Tax Policy***), expressed in Afolabi Elebiju, ***'Country Competitiveness: Reform or Stagnate!'***, *Taxspectives, THISDAY Lawyer, 02. 03.2010, p.vii*; also available on *LeLaw Thought Leadership* page: www.lelawlegal.com

[26] See ***Paras 8, the Handbook*** on the application process through MoI's online portal at: www.ecitibiz.interior.gov.ng (accessed on 02.12.2020).

[27] Such is consistent with the intent of ***EO No.001 of 2017*** which sought faster turnaround times on regulatory applications. Instructively, part of the underpinnings of the EO (as expressed in ***Recital 2***) was because "*… the FGN is committed to the promotion of domestic and foreign investments, creation of employment and stimulation of the national economy*". Incidentally, ***the Handbook*** does not specify timelines within which BP applications would be approved. Whilst the online process may justify a presumption of prompt action, despite it in practice, BP approval takes an average of four (4) weeks, and sometimes even longer. Fresh applications must be okayed ('minuted' on or endorsed) by the Minister to the Permanent Secretary for them to be processed, and it travels down the chain pursuant to endorsements thereon by the Director and Deputy Director respectively before the 'Briefing Officer' will do detailed work on the application for it to then travel back up the chain before the approval document would be eventually signed.

[28] On PEBEC website, a banner display contains the following admonition: "*Don't accept bad service from PUBLIC SERVANTS. Break the silence! Visit pebec.report NOW.*" The same banner also has the following text: "*IMPACT: The PEBEC App makes it easy for you to resolve issues you encounter when dealing with the following Government Agencies*". Unfortunately, the two links in the banner are currently not working (they generated error reports when clicked upon, on 02.12.2020). However, the representations encouragingly exemplify government intent, but these must be scrupulously followed through.