



REMITTANCES:

LEGAL REGULATORY AND COMMERCIAL ISSUES IN DIASPORA TRANSACTIONS

THOUGHT LEADERSHIP BY:

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“NIGERIA'S BIGGEST EXPORT
GOES UNNOTICED AS OIL STEALS
SHINE OF EMIGRANTS.”

-FRONT PAGE HEADLINE, BUSINESSDAY, 10.10.2019

“FOREIGN INVESTORS PULL OUT
₦1.77 TR OVER INSECURITY”

-FRONT PAGE HEADLINE, THE GUARDIAN, 10.10.2019

The two recent headlines quoted above are *res ipsa loquitur*: very self-explanatory about Nigerian foreign investment vs diaspora remittances trends and impact,² and will set the tone for this article.

It is now widely acknowledged that there is hardly any country in the world where there are no Nigerians. Many authoritative sources estimate that between 15 and 17 million Nigerians are in the diaspora.³ The Obasanjo administration in the early 2000s recognised 'Nigerian diasporans' as a potent force that could be institutionally galvanised to contribute to national development. The successor administrations of Presidents Y'aradua and Jonathan did not pursue the diaspora agenda with as much passion, but the Buhari administration (especially in the 2nd term), apparently wants to up the ante.

¹ We gratefully acknowledge the contributions of our former colleague, Ms. Ayo Fadeyi to the earlier draft of this article. We however take responsibility for all the view expressed therein

² Some eye-catching statements in an Afrinvest presentation (referenced in further detail below), is to the effect that “Nigeria is NOT an oil producing country! Nigeria is a human capital producing country because diaspora flows far exceed gross oil revenue receipts!”

³ See for example, 'Federal Republic of Nigeria Draft National Policy on Diaspora Matters', November 2016, p. ii: <http://diaspora.gov.ng/final-draft-national-policy-on-diaspora-matters.pdf> (accessed 25.05.2019); Dalberg, 'Event Report: Nigeria Diaspora Study Dissemination Dialogue', (Dalberg Report) November 2018, p. 4: [file:///C:/Users/USER/Downloads/181218-Nigeria-Diaspora-Study-Final%20\(1\).pdf](file:///C:/Users/USER/Downloads/181218-Nigeria-Diaspora-Study-Final%20(1).pdf) (accessed 01.02.2019); Victor Asije, '15 Million Nigerians in Diaspora - Dabiri-Erewa', NAN, 2017: (accessed 04.05.2019). According to Afrinvest (citing National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI)), “about 17 million Nigerians live in various countries of the world.” “See Ike Chioke, ... Envisioning New Paradigms for Investment in Nigeria nAla Igbo: https://www.afrinvest.com/wp-content/uploads/2019/04/Envisioning-New-Paradigms-for-Investment-nAla-Igbo_FINAL.pdf (accessed 01.02.2020).

The Senate confirmation of Hon. Abike Dabiri-Erewa, as the Executive Chairman of the newly created Nigerians in Diaspora Commission (NIDCom) in May 2019 is reflective of such intent.⁴ In our view, institutionalising strategies to involve diasporans as partners in progress for Nigeria's development is a no-brainer, given: the need to continually stimulate the economy by attracting foreign and local investment; government's budgetary pressures *vis a vis* huge infrastructural and social financing needs; strategic diversification of the economy etc. A government-driven diaspora strategy could be 'a secret weapon', just like as in the recent past when pension reforms unlocked massive economic value in mobilising pension funds for national development.⁵

This article discusses the historic and current trends (policy, financial flows, transactions, etc) and attempts to periscope the future, whilst offering thoughts on the possibilities of an optimised diaspora strategy.

Nigerians in Diaspora: Immigration Rationales

Due to a host of factors, Nigerian emigrant numbers have been trending upwards, especially since the late 1980s; and the figures are not likely to wane, anytime soon. Apart from professionals leaving in droves for better career and compensation prospects abroad, there are also significant numbers of low/unskilled 'undocumented' emigrants - all driven by the potential 'benefits', including ability to help improve the lot of family members back home.

The grim picture of the 'harsh' Nigerian environment symbolised by rising levels of poverty, unemployment, inflation etc, (exacerbated by historic corruption and mismanagement), continues to make Nigerians ready to take the most extreme risks to escape from the 'hell' that Nigeria represents. The upsurge in the dangerous trans-Saharan/Mediterranean road/boat trips to Libya and Europe respectively, better illustrates this point.⁶ Increasing number of fatalities has not discouraged in the least, the higher number of potential Nigerian emigrants. This is not helped by the (wrong) perception that almost everywhere else

presents better prospects to break out of the cycle of poverty.⁷

The resilient, never-say-die, entrepreneurial ethos and positive ('happy') spirit of Nigerians also stand them in good stead to overcome adversity, help them settle in well, and mostly become successful in their host countries. For example, the US Bureau of Statistics and Census reported that Nigerians are the most educated immigrants in the United States, and they have the highest education attainment rates.⁸ The result is that Nigerian diasporans (irrespective of status or professional standing), with their earnings constitute a potent economic force through home remittances and as skilled 'repatriates'.

Diaspora Remittances: Dimensioning the Size of the Opportunities

According to a commentator, "...Nigeria's remittances in 2017 alone were larger than the combined foreign direct investment (FDI) brought into the country in the last ten years, as recorded by the National Bureau

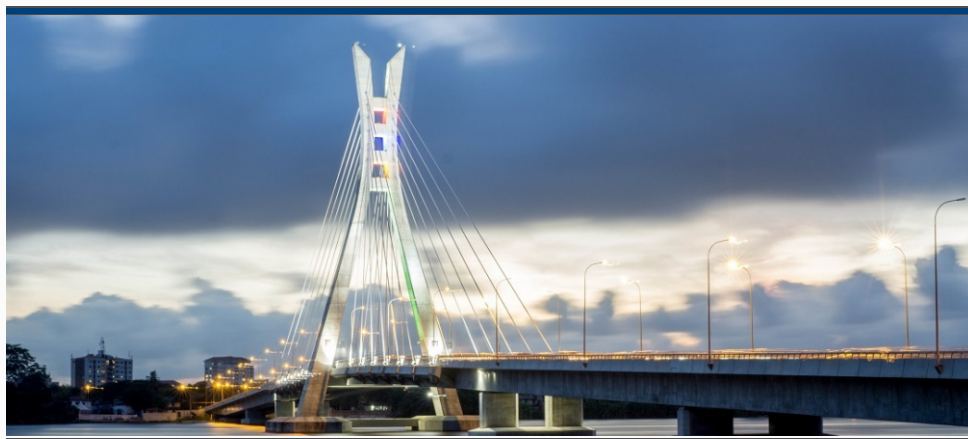
4 'Senate Confirms Abike Dabiri-Erewa as Chairman/CEO of Nigerian Diaspora Commission', *The Punch*, 09.05.2019: <https://punchng.com/senate-confirms-abike-dabiri-ere-wa-as-chairman-ceo-of-nigerian-diaspora-commission/> (accessed 25.05.2019). The establishment of the NDC vide the NDC Act 2017, was a build-up of past administrations' efforts. Femi Awoniyi, 'Nigeria: Dabiri-Erewa Appointed First Head of National Diaspora Commission', *The African Courier*, 06.11.2018: [https://www.theafricancourier.de/africa/dabiri-ere-wa-appointed-first-head-of-national-diaspora-commission/\(accessed 17.10.2019\)](https://www.theafricancourier.de/africa/dabiri-ere-wa-appointed-first-head-of-national-diaspora-commission/(accessed%2017.10.2019)). In 2000, under President Obasanjo, Nigeria In Diaspora Organization (NIDO) was set up to serve as an umbrella organization of all Nigerians abroad and a vehicle through which they could be mobilized to participate in national development process. In 2016, the Buhari administration created the SSAFAD office to directly coordinate Diaspora matters/ facilitate their involvement/ engagement See 'Federal Republic of Nigeria Draft National Policy on Diaspora Matters', (November 2016), pp.11-12.

5 It was recently reported that the Nigerian Diaspora Policy has been finalised and is now awaiting approval by the Federal Executive Council. See 'Nigeria Diaspora Policy Underway – Dabiri-Erewa', *The Guardian*, 31.12.2019: <https://guardian.ng/news/nigeria-diaspora-policy-underway-dabiri-ere-wa/> (accessed 01.02.2020). According to a news report, pursuant to a motion, "...the House mandated 'the Committees on Diaspora, Banking and Currency, National Planning and Economic Development to interface with the Nigerians in the Diaspora Commission, the Central Bank of Nigeria, Money Transfer Operators and other stakeholders to investigate the actual amount of remittances in the last three years and report back within four weeks for further legislative action.'" See Adedayo Akinwale, 'House Investigates Discrepancies in Diaspora Remittances', *ThisDay*, 27.11.2019: <https://www.thisdaylive.com/index.php/2019/11/27/house-investigates-discrepancies-in-diaspora-remittances/> (accessed 01.02.2020).

6 'At least a Million Sub-Saharan Africans Moved to Europe Since 2010', *Pew Research Centre*, 22.03.2018: <https://www.pewresearch.org/global/2018/03/22/at-least-a-million-sub-saharan-africans-moved-to-europe-since-2010/> (accessed 18.11.2019).

7 See Yomi Kazeem, 'The Trump Administration Just Made Its First Move in a Clampdown on US Visas for Nigerians', *Quartz*, 14.05.2019: <https://qz.com/africa/1618935/us-cancels-dropbox-visa-interview-waiver-in-nigeria/> (accessed 21.10.2019); See also data from the US Department of State's Bureau of Consular Affairs: https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY18NIV_DetailTable.pdf (accessed 21.10.2019). See Dayo Oketola et al, 'Economic Hardship: Nigerians Seek Greener Pastures Abroad', *The Punch*, 04.06.2016: (accessed 09.09.2019).

8 Leslie Casimir, 'Data Show Nigerians the Most Educated in the U.S.', *Chron*, 12.01.2018: <https://www.chron.com/news/article/Data-show-Nigerians-the-most-educated-in-the-U-S-1600808.php> (accessed 13.05.2019).



of Statistics [NBS]. This is due to a combination of factors including more Nigerians exiting the country to well-paying jobs abroad and a poor investment climate unwelcoming to foreign investors.”⁹ Also by the World Bank (WB)'s **Annual Remittance Data Update** (April 2019), Nigerian Diaspora's remittance increased from US\$22 billion in 2017 to US\$25.1 billion in 2018.¹⁰ The WB also ranked Nigeria, with US\$24.5 billion, as the 6th highest recipient of remittances globally in 2019, after India, China, Mexico, Philippines and Egypt.¹¹

Contrasting remittances data against other sources of revenue gives a most humbling view of how

important these remittances are to the Nigerian economy. For instance, whilst NBS published data reflects ₦1.17 trillion as the 2018 internally generated revenue (IGR) by Nigeria's 36 States and the Federal Capital Territory (FCT), Nigerian diasporans remitted over ₦9 trillion (or US\$25.1 billion) in 2018, an amount higher than Nigeria's 2018 gross oil revenue (US\$18.2 billion). The data also reveals that the 2018 Nigerian diaspora remittances from the USA alone (US\$7.2 billion) outstripped the FG's 2019 capital expenditure budget of US\$6.7 billion.¹²

Another analysis shows that diaspora remittance of US\$25.1

billion in 2018, was 84% of the FG's 2018 total budget (of US\$29.9 billion), and 1,100% more than the US\$2.2 billion FDI into Nigeria in 2018. Further analysis reveals that in the same 2018, diaspora remittances contributed US\$17.6 billion and US\$7.6 billion respectively, to local consumption and investment. According to Afrinvest Research, the per capital diaspora remittance for 2018 stood at US\$1,475.¹³ This figure almost squares up with Nigeria's GDP per capita at US\$1,951.271 in December 2017.¹⁴

In a sense, diaspora remittances also provides some consolation (even if it is cold comfort), for the skills gaps and other “inconveniences” the country suffers as a result of her human capital loss to other countries.¹⁵ Hopefully if optimally deployed, diaspora remittances will contribute in addressing many of the macro-economic and socio-political inhibitions that constrains many resident

9 See Olanrewaju Rufai, 'Nigeria Can Make More Money from its Diaspora Citizens', *Stears Business*, 15.03.2019: <https://www.stearnsng.com/article/nigeria-can-make-more-money-from-its-diaspora-citizens> (accessed 20.04.2019).

10 The WB, 'Migration and Remittances Data', April 2019: <http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data> (accessed 26.05.2019). “In 2012, Nigerians in the Diaspora contributed more to Nigeria's economy than 34 of the 36 States. US\$12 billion was remitted by the Nigerian Diaspora in 2012 and only Lagos and Rivers had higher GDPs”: 'The Nigerian Diaspora', www.nigeriandiaspora.com (accessed 25.05.2019).

11 See WB, 'Data Release: Remittances to Low- and Middle-Income Countries on Track to Reach \$551 Billion in 2019 and \$597 Billion by 2021', 16.10.2019: <https://blogs.worldbank.org/peoplemove/data-release-remittances-low-and-middle-income-countries-track-reach-551-billion-2019> (accessed 01.02.2020). According to the WB: “Remittance flows to low- and middle-income countries (LMICs) are expected to reach \$551 billion in 2019, up by 4.7 percent compared to 2018 ... Remittances have exceeded official aid – by a factor of three – since the mid-1990s. This year, they are on track to overtake foreign direct investment (FDI) flows to LMICs...”

12 Femi Odere, 'Furthering the Diaspora Remittance Debate', *The Cable*, 04.05.2019: <https://www.thecable.ng/furthering-the-diaspora-remittance-debate> (accessed 26.05.2019).

13 Arrived by dividing US\$25.1 billion (2018 Diaspora Inflow) by 11.7m (estimated Nigerians in Diaspora). See Ike Chioke, 'Anyi Aga Aton na Mmhie? Envisioning New Paradigms for Investment n'Ala Igbo', Afrinvest, Slide 50: https://www.afrinvest.com/wp-content/uploads/2019/04/Envisioning-New-Paradigms-for-Investment-nAla-Igbo_FINAL.pdf (accessed 28.05.2019). See also Babs Olugbemi, 'The Diaspora Resource Control', *BusinessDay*, 16.05.2019, p.11.

14 CEIC, 'Nigeria GDP Per Capita' <https://www.ceicdata.com/en/indicator/nigeria/gdp-per-capita> (accessed 30.10.2019).

15 Tope Alake, 'New Wave of Middle-Class Emigration Deepens Nigeria's Skill Shortage', *Bloomberg*, 30.05.2019: <https://www.bloomberg.com/news/articles/2019-05-30/new-wave-of-middle-class-flight-deepens-nigeria-s-skill-shortage> (accessed 31.05.2019). According to the article, “An anemic economy that contracted for the first time in two decades in 2016, poor health facilities and schools, a worsening insecurity marked by a decade-old Islamist insurgency in the northeast, kidnapping and herdsmen attacks in other parts of the country are driving the exodus. It comes at a time when Nigeria has become the nation with the largest number of poor people.” “Canada's liberal immigration policy is a strong pull for Nigeria's top talent that faces rising living costs and stagnant incomes. Inflation has been at double digits since 2015, while the unemployment rate has hit its highest level since 2010. Applications for permanent residency in Canada have risen threefold since 2015, data from Immigration, Refugees and Citizenship Canada show, while those for temporary residency has almost doubled over the same period.” “The number of Nigerians suspected overstaying in the U.S. with visitor visas has more than quadrupled from 2015 to last year, according to data from the U.S. department of Homeland Security. The overstay rate of Nigerian students studying in the U.S. soared to 22% last year from 4% in 2015. Of about 155 countries that have citizens overstaying in the U.S. as non-immigrants with business and pleasure visas, Nigeria ranks among the top 10...” “Almost 30,000 Nigerians admitted with business and tourist visas are overstaying in the U.S as of 2018.” “The health-care industry is one of the most affected by the exit of professionals. About 9 out of 10 medical doctors in practice are exploring work opportunities abroad, a 2017 survey by polling company NOI Polls shows. In Britain there are currently 6,312 medical doctors of Nigerian origin, according to data on the U.K. General Medical Council website, a 44% increase on 2015 figures. That's worsened health care in a country that has one doctor to serve 5,000 people, according to the Nigeria Medical Association.”

Nigerians from achieving their potentials.¹⁶

Legal Regulatory Commercial Issues

Channels of Diaspora Remittance: Formal vs. Informal & Tax Impact

Channels of diaspora remittance can be either formal or informal; the regulatory system of a country determines the formality or otherwise of a channel. Formal channels entails the use of legally recognised and documented means to transfer funds to the home country such as banks/other recognised non-financial institutions, use of internet, mobile phone payment systems, money transfer operation, Automated Teller Machine (ATM) card, and postal network.¹⁷ The informal mode entails the use of non-regulated banking and other financial channels; most transactions carried out through informal channels are not recorded and do not form part of the Gross National Income of the home country.¹⁸

Remittances received in Nigeria through the formal channels are tax exempt, for example when non-resident Nigerians transfer foreign currency (forex) into their forex domiciliary accounts with Nigerian banks.¹⁹ The tax exempt status is achieved by the

combined operation of **sections 19, 75 and Third Schedule, Personal Income Tax Act (PITA)**.²⁰

Generally, non-resident Nigerians are not liable to Nigerian PIT to the extent that they are not “individuals deemed to be resident for that year in the relevant State under the provisions of this Act” (**section 2(1)(a)**); and they do not “derive income or profit from Nigeria” (**section 2(1)(b)(iv)**). Nigerian tax system does not tax non-resident citizens (individuals) on their worldwide income.²¹ From the foregoing, diasporans would be liable to Nigerian tax **only in respect of their Nigerian sourced income** – which has not been also specifically exempted - for example, investment returns on government securities.²²

It is arguable whether the 183 day rule will apply to diaspora Nigerians – if like expatriates, they were to spend more than 183 days in Nigeria in any twelve month period or calendar year.²³ Our view is whether such Nigerian diaspora is a dual citizen or not, the 183 day rule will not apply, he will be liable to Nigerian tax once he earns Nigerian income (for example in employment or through

consultancy services) whilst in Nigeria, so length of stay would be irrelevant. In that sense, a Nigerian even with dual nationality is not an expatriate for the purposes of the 183 days rule.

Whilst arguably non-resident Nigerians are not generally liable to Nigerian tax as explained above, use of formal channels could make assurances doubly sure, as opposed to informal channels. The reality though is that depending on the size of particular (individual) remittances, informal channel may be the more pragmatic and convenient. A friend or relative is travelling to Nigeria, and brings cash: (a) for his own use including gifts to family and friends and/or (b) cash he is asked to give to named recipients by his fellow diasporans, who also returns the favour when they too are visiting Nigeria. Often the recipients may be illiterates or rural dwellers and both the diaspora visitor and recipients may patronise informal bureau de change to convert the forex into Naira.

The fact that such 'courier' services will usually not attract any charges (unlike formal remittance where a percentage

¹⁶ According to the Bloomberg report: “‘Those who emigrate can time-travel’, said Charles Robertson, Chief Economist at Renaissance Capital. ‘They jump forward decades of economic development to work in countries which are usually more stable, wealthier, with better education for their children and better health care.’” “‘All professional firms and major corporations in Nigeria are affected by the brain drain,’ said Andrew S. Nevin, advisory partner and chief economist at PwC Nigeria. ‘The Nigerian government needs to create an economic and social environment sufficiently attractive to keep our educated young people.’”

¹⁷ See Chijioke Nelson, ‘Emerging Trends and Innovations in Diaspora Remittance’, *The Guardian*, 07.05.2019: <https://guardian.ng/technology/emerging-trends-innovations-in-diaspora-remittances/> (accessed 30.10.2019). Illustrative of regulation of formal channels is the Central Bank of Nigeria (CBN)’s **2015 Guidelines on International Mobile Money Remittance Service (CBN 2015 Guidelines)** provided for the operation of and issuance of licences for International Mobile Money Remittances Services (IMMRS) which allows remittances via mobile applications.

¹⁸ Adebayo Akinwale, ‘Nigeria: House Investigates Discrepancies in Diaspora Remittances’, *All Africa*, 27.11.2019: <https://allafrica.com/stories/201911270681.html> (accessed 07.02.2020).

¹⁹ See Tochukwu Chikwendu and Chuks Okoriekwe, ‘Anti-Dollarization Policy: Managing Reality- Issues and Discontents’, *BDLegal BusinessDay*, 08.12.2016, p.34; also available as *LeLaw Thought Leadership Insights*: <http://lelawlegal.com/pdf/LeLaw%20-%20Anti%20Dollarisation%20Article.pdf> (accessed 05.02.2020).

²⁰ **Cap. P8, Laws of the Federation of Nigeria (LFN), 2004. Section 19(1) PITA and Paragraph 6 Third Schedule PITA** lists as tax exempt: interest to non-residents on government loans and bonds. Whilst **section 75 PITA** provides that investment proceeds derived from outside Nigeria and brought into the country through approved channels are also tax exempt.

²¹ Nigerian companies are however liable to Nigerian tax on their global income, subject to tax credits they will enjoy in respect of taxes paid in countries with which Nigeria has DTTs or the tax exempt status of offshore investment income if brought into Nigeria through approved channels, pursuant to **section 23(1)(k) Companies Income Tax Act, Cap. C21, LFN 2004 (CITA)**. For some related discussion, see Chuks Okoriekwe, ‘Options: Plugging Nigeria’s Perennial Revenue Gap through Diaspora Taxation’, *LeLaw Thought Leadership Insights*, August 2019: <http://lelawlegal.com/2019/12/10/options-plugging-nigerias-perennial-revenue-gap-through-diaspora-taxation/> (accessed 05.02.2020).

²² See **Para. 6(1)(a)-(c), Third Schedule PITA**.

²³ **Para. 6(2) Third Schedule, PITA**.

of the sum would be paid as commission), makes it very popular. The third party recipients may not report it as income in their tax returns (if they file returns at all), especially if the money was meant to execute some assignments on behalf of the sender. It is also possible that the cash may never interact with the banking system from the time it is received till all of it is spent: cash handed over to recipient, who changes into Naira at parallel market, pays for purchases or artisans in cash or makes deposit into their account (source of money as foreign remittance not necessarily disclosed, etc).

Although likely to escape capturing by formal data, the impact of such spending on the economy is still poignant.²⁴ Note however that Nigerian law requires that forex in cash and equivalent beyond certain limits must be declared at the point of entry into Nigeria, otherwise the diasporan could be exposed to charges of money laundering or potential confiscation of the cash.²⁵



Similarly, formal channels of remittance encourage credible and measurable investment in Nigeria's economy, which aligns with **Strategy No.9 Economic Recovery Growth Plan (ERGP) 2017-2020**²⁶ and **section 8(c) Nigerians in Diaspora Commission (Establishment) Act (NDCA) 2017**.²⁷

Apart from safety, one major benefit of formal channel is the 24/7 availability or access to such channels unlike when remittances have to sometimes wait till a diasporan is traveling to Nigeria. To some, the favourable security and convenience considerations of formal channels may make them consider the related

transaction costs as worthwhile. The WB estimates that Africans pay on average about 9.5% of the total transfer sum in fees, and up to 20% in some corridors. However, these charges cannot be compared to the loss and agony suffered in circumstances when the entire remittance does not get to the intended recipient, especially as a result of conversion or fraud.

An illustrative fraud case was **Sonoma v. IGP**,²⁹ where the accused fraudulently collected some money from Ambassador Sam Edem with the intent to conceal it.³⁰ Often times, because

²⁴ The other issue is that formal remittances is more helpful for statistical purposes, and thereby provide helpful input for policymakers in monitoring remittance flows and measuring their impact on the economy in addition to other policy actions. At best, informal remittances can only be subject of guesstimates.

²⁵ **Section 12 Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, LFN 2004 (FEMMPA)** requires declaration of forex in excess of US\$5,000 or its equivalent at the port of entry into Nigeria, for statistical purposes only. The CBN has since 2018 (per its **Revised Forex Manual**), increased the threshold for non-declaration to US\$10,000; only amounts in excess thereof must be declared. **Section 2 MLA** imposes a duty to report international transfer of funds or securities of a sum greater than US\$10,000 or its equivalent shall be reported to the CBN and indicating the nature and amount of the transfer, and the names and addresses of the sender and receiver of the funds or securities"; In case of breach, **section 15(2)(b)(i) MLA** imposes a fine of between N250,000 and N1 million or a term of imprisonment between 15 and 25 years or both such fine and imprisonment upon conviction. **Section 21 Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCCA)** provides for forfeiture of property of a person convicted of an offence under the EFCCA.

²⁶ Incentivize the inflow of FDI (increase from US\$3.1 billion to around US\$10 billion by 2020), portfolio investments and remittances. The aim of **Strategy No.9 ERGP** is to reduce the external balance gap. This Strategy is led by the CBN.

²⁷ "One of the powers of the NDCA is to formulate policies as the Commission may, from time to time determine. Also, the Preamble, NDCA reiterates that: "An Act to establish the Nigerians in Diaspora Commission, provide for the engagement of Nigerians in diaspora in the policies, projects and participation in the development of Nigeria and for the purpose of utilising the human capital and material resources of Nigerians in diaspora towards the overall socio-economic, cultural and political development of Nigeria; and for related matters."

²⁸ Alix Murphy, **'Three Steps to Reduce the Cost of Remittances to Africa'**, TechCabal, 15.08.2016: <https://techcabal.com/2016/08/15/three-steps-to-reduce-the-cost-of-remittances-to-africa/> (accessed 15.08.2016). The **World Bank Migration and Development Brief 29** noted that global average cost of sending remittances has remained nearly stagnant, standing at 7.1% Q1 2018, more than twice the Sustainable Development Goal target of 3%. See WB Group and KNOMAD, **'Migration and Development Brief 29'**, 29.04.2018, p.v: (accessed 27.09.2019).

²⁹ (2013) LPELR-20833(CA).

³⁰ See per Akomolafe-Wilson JCA at pp. 34-37: "The wordings of the law are replete of indices of fraud. All these show that there is no escape route from tying count 15 to the issue of fraud. Without any equivocation whatsoever, it is clear that fraud is the most essential ingredient of the offence in count 15. The prosecution, being mindful of this necessary requirement of the law rightly inserted in Count 15, the phrase 'with intent to conceal the money you fraudulently collected from Ambassador Sam Edem...'; Similarly, the Commercial Banks restricts certain bank transaction which complements **Para 14.0 Guidelines (Anti-Money Laundering and Countering the Financing of Terrorism)** provisions: "The IMMRS providers shall have measures in place to prevent money laundering and terrorist financing. The mobile money IT system shall have inbuilt mechanisms to identify suspicious transactions. The following measures shall be in place: (a) Adhere to international Know Your Customer (KYC) standards at account opening by carrying out Customer Due Diligence (CDD). The entity conducting customer verification should require at least one of the following documents to verify the identity if the customer: a valid international passport, National Identity Card, permanent voter's card, driver's license. (b) Allowable maximum limit of the outbound mobile money remittance per week shall be US\$100 or its equivalent, subject to periodic review by the CBN (c) Suspicious transactions should be reported in line with the AML/CFT Act."

the courier is either family or friend, the matter may not be reported to the Police or prosecuted. However, the use of digital money transfer services and mobile money reduces formal remittances charges, and should make them more attractive relative to risks of informal remittances. Dishonesty around informal remittances could cumulatively result in many diasporans losing interest in investing in Nigeria.³¹

Formal vs. Informal Remittance Channels: Risk Management Issues

Factors contributing to the higher costs of informal include: de-risking measures taken by commercial banks and exclusive partnerships between national post office systems and a single money transfer operator. These factors are constraining the introduction of cheaper and more efficient technologies - such as internet and smartphone apps, and blockchain - in remittance services. In two recent reports submitted during the G20 Summit 2018, the Financial Stability Board (FSB), an international body that

monitors and makes recommendations about the global financial system, found that banks still perceive the remittance sector as high risk, and that the closing of bank accounts in countries or sectors deemed to pose a high risk of money laundering or terrorist financing continued into the first half of 2017.³²

Through the FSB, a four point action plan were earmarked on correspondent banking in response to increasing international concern regarding the effects of de-risking on remittance flows.³³ Recent high profile arrests of Nigerians involved in scams especially in the USA and who sent substantial sums to Nigeria has not helped matters in this regard. In fact many money transfer services like Western Union suspended services to Nigeria as part of their risk management strategy.³⁴

Moreso, the CBN's Guidelines aimed at regulating the International Money Transfer Operators (IMTO), making sure that only authorized bodies participate in remittance is quite

commendable.³⁵ This provision ensures that remittance from diaspora is handled by only legally authorised persons, thereby reducing the insecurity associated with remittance from diaspora. CBN provision for the approved IMTOs is good but not the best way of resolving illegal money transfer. Apparently, only 36 IMTOs are registered,³⁶ raising the question whether the limited number will not further stifle remittances?³⁷

Remittance and Investment Transactions Structuring: Optimality Considerations

Nigerians in diaspora can structure their direct investment transactions for optimal tax impact.³⁸ One way is to look at sectors that enjoys tax incentives such as tax holidays (pioneer status) or other preferential tax treatment such as accelerated capital allowances.³⁹ Previously, dividends by pioneer status companies were also tax free during the tax holiday period but the **Finance Act 2019** has removed that benefit.⁴⁰ On the flip side,

³¹ The Nigerian Diaspora Housing Programme (NIDHOP), was promoted by the Federal Housing Authority in March 2017 aimed at meeting the housing needs of Nigerians in diaspora, as well reduce the loss of diaspora funds to fraudsters, who often times are relations of the victims, in the name of building houses for them in Nigeria. See Victor Gbonegun, 'Delay in Land Acquisition Hinders FG's Diaspora City Project Take Off in States', *The Guardian*, 19.08.2019: <https://guardian.ng/property/delay-in-land-acquisition-hinders-fgs-diaspora-city-project-take-off-in-states/> (accessed 09.02.2020).

³² See WB Group and KNOMAD, 'Migration and Development Brief 29', 29.04.2018, *Ibid*, p.v. (accessed 27.09.2019).

³³ The FSB presented two reports at the March 2018 G-20 Finance Ministers and Central Bank Governors meeting (FSB 2018a, 2018b), and outlined the following points - (i) better dialogue between stakeholders and better practices in the remittance sector; (ii) improved implementation of international standards and (iii) use of innovation to facilitate remittance firms' access to banking services; and (iv) technical assistance related to remittances.

³⁴ *The Guardian* (Editorial), 'US Massive Fraud: Backlash, as Western Union Denies Transfers to Nigeria', *The Guardian* 25.08.2019: <https://guardian.ng/news/u-s-massive-fraud-backlash-as-western-union-denies-transfers-to-nigeria/> (accessed 24.02.2020).

³⁵ See for example **Paragraph 2 CBN 2014 Guidelines** which provides that "No person or institution shall operate International Money Transfer Services unless such person/institution is licensed by the CBN".

³⁶ CBN Press Release, 'Activities of Illegal International Money Transfer Operators', <https://www.cbn.gov.ng/out/2016/ccd/press%20release%20on%20illegal%20imtos.pdf> (accessed 26.05.2019).

³⁷ The authoritative **Dalberg Report** admitted that its "study did not focus on the channels of remittance - cash, digital transfers, cryptocurrency. Perhaps digging into the channels could help address concerns about the reliability of remittance data. It would be nice to see recent data on remittances ... in order to validate if there is a correlation to the macroeconomic performance of Nigeria." It also stated that "on the potential negative impact of remittances, this is where the Central Bank plays a role in ensuring that capital inflows from the diaspora do not disrupt macroeconomic and currency stability." *Ibid*, at p. 7. "The focus of the study was primarily on two models of diaspora engagement: remittances to Nigeria and direct investments in Nigeria (whilst also looking at the diaspora's promotion of investment in Nigeria)." See **Dalberg Report**, p.5.

³⁸ Portfolio investments through the capital market does not require major structuring considerations and is therefore not the focus of this aspect of our discussions.

³⁹ See Chuku Okoriekwe, 'Pioneer Status' Tax Incentive In Nigeria: A Commentary on Recent Developments and Implications for Businesses', *ThisDay Lawyer* 12.09.2017, p. 7; also available as *LeLaw Thought Leadership Insights*: <http://lelawlegal.com/pdf/LeLaw-Regulatory-Alert-September-2017-Pioneer-Status-Commentary-on-Recent-Developments.pdf> (accessed 07.02.2020); and Ayo Fadeyi, 'Tax Planning: Walking the Thin Line Between Tax Avoidance and Tax Evasion', *BDLegal BusinessDay* 29.03.2018, p.26; and at *LeLaw Thought Leadership page*: http://lelawlegal.com/pdf/Tax%20Planning_Payment_Ayo.pdf (accessed 25.02.2020).

⁴⁰ Section 15 FA.

CITA's excess dividends tax (EDT) provisions have now been made more investor-friendly, so the disadvantageous tax treatment of investment holding companies will no longer be the case.⁴¹ The **FA 2019** amendments in muting the harshness of the erstwhile EDT regime, apparently aims at improving Nigeria's investment attractiveness.

Nonetheless, the tax free status of such companies means there would be more distributable profits during the tax free period, thereby enhancing diasporans returns on investment. Another

preferential tax status example is Nigerian companies that focuses on exporting goods from Nigeria provided that proceeds of such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts.⁴²

Modes of Diaspora Direct Investment Remittances

Diaspora remittance can be for equity or loan investment and also either in cash or kind. The latter (in kind or non-cash), can also be in varied forms. This is in consonance with Nigeria's liberalised investment environment and

forex regime which permits inflow and outflow of foreign investment, subject to documentation requirements prescribed by, or pursuant to, the **FEMMPA** and the **Nigerian Investment Promotion Commission Act (NIPCA)**.⁴³ All investors (irrespective of nationality), can invest in all sectors of the economy except the sectors on "the negative list" in the **NIPCA**.

Equity Inflow: Cash

Nigerians in diaspora can have equity contribution vide inflow of foreign currency in cash to the target company. This will require obtaining electronic certificate of capital importation (eCCI), evidencing capital inflow into Nigeria.⁴⁴ Notably, the application for eCCI, would be done on the foreign investor's behalf by the Nigerian bank that received the inflow, through the eCCI platform, which is run by various banks and overseen by the Financial Market Dealers Association (FMDA). The application is completed within twenty-four (24) hours from when the inflow is received.⁴⁵ e-CCI is a documentation requirement for the repatriation of dividends or capital upon divestment. It is required that capital covered by e-CCI will be converted into Naira for purposes of the investee company's business.⁴⁶

Non-Cash Equity Contribution

Nigerians in diaspora can purchase and import equipment in consideration for equity (shares) in the target company; same would qualify for issuance of e-CCI.⁴⁷ Also, their technical know-how could be valued as a consideration in lieu of cash, which can serve as a basis for



⁴¹ **CITA's** erstwhile EDT provisions (**section 19**) require that if a company had nil or lower taxable profits than its declared dividends, the dividends would be treated as taxable profits and taxed accordingly. The new exceptions to EDT include if the dividends are paid out of retained earnings that had been previously taxed under relevant legislation (as income or capital gains tax); paid out of tax exempt income or if they are paid out of profits or income regarded as franked investment income (that is, not subject to further tax). For detailed historic discussion, see the following 'Taxpectives by Afolabi Elebiju' articles: '**Oando Plc v FIRS: Excess Dividends Tax Revisited**', *ThisDay Lawyer*, 07.10.2014, p. 12; '**Excess Dividends Tax: The Unfinished Business**', *ThisDay Lawyer*, 26.11.2013, p. 7; and '**Rethinking Nigeria's Excess Dividends Tax**', *ThisDay Lawyer*, 20.11.2011, p. vii. All the articles are also available at LeLaw's Thought Leadership page: www.lawlegal.com. One positive outcome of the EDT amendments is that the risk posed by **section 21 CITA** (on deemed dividends distribution as an anti-avoidance measure) is now drastically reduced.

⁴² **Section 23(1)(q) CITA**.

⁴³ **Cap. N17, LFN 2004**.

⁴⁴ The eCCI was introduced by the CBN vide its Circular dated September 7 2017 with Ref. No. TED/FEM/FPC/GEN/01/012 titled 'Implementation of Electronic Certificate of Capital Importation (eCCI)'. The eCCI will alleviate the challenges with handling physical CCIs issued in respect of all capital inflows either in form of cash or machinery/equipment. See CBN, <https://www.cbn.gov.ng/out/2017/ccd/re%20implementation%20of%20ecci.pdf> (accessed 17.11.2019); The documentation requirements for e-CCI include: (a) letter from the investor requesting for CCI; (b) Board resolution from the Nigerian company (registered local beneficiary company) authorizing the equity investment; (c) A copy of the Nigerian company's certificate of incorporation; (d) Tested SWIFT telex copy stating the amount and purpose of inflow; (e) Name and address of foreign investor; (f) Registration number and date of registration of investors; (g) Investor's nature of business; (h) Beneficiary's sector of operation. Upon successful application, a password will be provided to the foreign investor and this password can be entered on the e-CCI platform to view and print the eCCI.

⁴⁵ **Section 14(2) FEMMPA**. See also FMDA, '**FAQS on Electronic Certificate of Capital Importation**': https://fmda.com.ng/eccis_faq/ (accessed 11.02.2020).

⁴⁶ **Section 14(1) FEMMPA**.

⁴⁷ Documents required to issue e-CCI for the importation of machine and equipment as an equity investment are similar to cash for equity but for these additional ones: (a) Selection of Beneficiary's operation; (b) Risk assessment report/combine certificate of origin and value for destination inspection; (c) Certified copy of the bill of lading (original to be sighted); (d) Certified copy of the bill of entry/single goods declaration form (original to be sighted); (e) The original import duty payment receipt bearing a single goods declaration (SGD) Form Number; and (f) Copy of Form M 11. Goods exit note.



sweat equity.⁴⁸ It would be apposite to have well defined agreements on scope of services and the related compensation (milestone basis and quantum especially for phased vesting of equity), in this regard to obviate future disputes.

To the extent that diasporans provide any consultancy, technical or management services directly and not through their non-resident corporate vehicle to the investee/beneficiary company, there would be no need to register the service agreement with the National Office for Technology Acquisition and Promotion (NOTAP), pursuant to the **NOTAP Act**.⁴⁹ That is moreso that there would be no offshore remittance of the service fees, as same would be the in-kind consideration for shares to be vested in the diasporan and credited as fully paid in line with the relevant agreement. Sometimes in addition to his investment, the diasporan may also become a director in order to help provide oversight for the business, especially where his knowledge and experience will make a significant difference. This may implicate commuting to Nigeria for meetings.

Foreign Loans

Nigerian diasporans investment by way of debt will qualify as foreign loans which could enjoy up to 70% withholding tax (WHT) exemptions on the interest income, depending on the tenor. Such loan transactions must meet requisite documentation requirements for offshore repatriation of interest and principal. In order to discourage thin capitalisation, the **Finance Act 2019** has now introduced “excess interest thresholds” restricting quantum/terms of related party foreign loans.

Legal Regulatory Advisory Aspects: Transaction Dynamics

It goes without saying that advisory services leveraging indepth knowledge of Nigerian legal regulatory landscape would be required. Transaction counsel will need to be briefed and thereafter can work with the client/other advisers as necessary to draw an outline

transaction roadmap which can then be shared with the proposed counterparties. Part of the preliminary documentation would be signing of non-disclosure (and non-circumvention) agreement, term sheet, etc.

Due diligence (DD) would also be conducted because the crying rule is *caveat emptor* (buyer beware). A bespoke DD programme specifying coverage/scope, information and document requirements, timelines and responsible persons, etc will be drawn up and of course outcomes will impact valuation of the business or stake, and transaction negotiations.⁵⁰ DD (covering legal regulatory, financial and technical aspects of the business) is not only important to enable informed decisions, a significant focus is also on the reputation and integrity of the potential co-investors that the diasporan is getting into the same boat with. If questions about their ethics cannot be answered in the positive, then such is a red flag that ordinarily should impel the diasporan to call of further activities in proceeding with the proposed investment.

Part of the deliverables from professional advisory support would be fit for purpose transaction documents such as subscription agreement, shareholders/joint venture agreement (SHA/JVA), loan agreement, technical/consulting services agreement, (employee) equity ownership scheme plan, etc. It is foolhardy for Nigerians in diaspora to enter into business

⁴⁸ Section 137(1) CAMA provides that: “Where a company agrees payments for its shares otherwise than wholly in cash, it shall appoint an independent valuer who shall determine the value of the consideration other than cash and prepare and submit to the company a report on the value of the consideration.”

⁴⁹ Cap. N62 LFN 2004.

⁵⁰ For further details, see Daniel Odupe, ‘Lessons: Issues and Practical Consideration in Equity Financing in Nigeria’, LeLaw Thought Leadership Insights, August 2018: <http://lelawlegal.com/2019/04/12/lessons-issues-and-practical-considerations-in-equity-financing-in-nigeria/> (accessed 11.02.2020).

capacity of the postal service to conduct remittance business need to be enhanced by the FG by leveraging its vast number of over 5,000 post offices across the country to further deepen financial inclusion drive. For instance, the Nigerian Postal Service (NIPOST) introduced an Electronic Money Order (eMO) product that enables customers in both rural and urban communities initiate money order electronically. NIPOST further

partnered with Eurogiro, to broaden its postal financial service operations globally.

Given the benefits of diaspora remittance to the Nigerian economy, it is expedient that the Government make available policies that will encourage diaspora remittance. Many of diaspora concerns about investments in Nigeria impels the FG needs to work harder at entrenching governance

improvements in the country. For example, the public service needs to work with transactional mindset to ensure bureaucracy does not continue to be a log in the wheel of progress: diasporans will often compare efficiency of Nigerian public service with those of their resident country. Commitment to facilitating an enabling environment for business must be seen in actions to significantly reduce public sector corruption and waste, be subservient to the rule of law, avoiding regulatory policy flip flops and continuing pro-business reforms. The cumulative effect of these will improve Nigeria's positive perception index in the committee of nations, and help to cast an optimistic outlook that all (including diasporans) can identify with.



Diaspora Bonds

Diaspora bonds, an avenue created by the Government for non-resident citizens to invest in their home country, is a safe means of investing. The bond proceeds could be used to finance projects that interest diasporans, such as: public services and infrastructure projects that would benefit their families or communities back home.⁶² Some diaspora bonds could be raised for strategic infrastructural projects; the potential socio-economic impact and the underlying investment incentives should enhance the attractiveness and success of such bonds.⁶³

58 NIPOST, 'Electronic Money Order (eMO)': http://www.nipost.gov.ng/Electronic_Money_Order (accessed 11.02.2020).

59 NIPOST signed a Memorandum of Understanding with Eurogiro to cooperate in connecting NIPOST to post and postbanks in fifty (50) countries around the globe through the international payment network of Eurogiro. See MobileMoney Africa, 'Nigeria: NIPOST and Eurogiro Join Forces to Advance in Bringing Migrant's Money Sent Home', 08.10.2019: <https://mobilemoneyafrica.com/blog/nigeria-nipost-and-eurogiro-join-forces-to-advance-in-bringing-migrant-s-money-sent-home> (accessed 11.02.2020).

60 According to Transparency International's Corruption Perception Index (TICPI) 2019, Nigeria fell from its prior ranking from 144 in 2018 to 146 out of 180 countries. The nation scored 26 out of 100 points, falling by one point compared to 2018. See TICPI, <https://www.transparency.org/country/NGA> (accessed 10.02.2020); This reinforces the fact that there is little or no improvement in the fight against corruption in Nigeria. Although the FG had come up with several measures such as the whistle blowing policy, treasury single account etc., yet these has not translated to improved economy.

61 Comparison can be made with how positive Nigerian outlook during President Obasanjo's second term (2003-2007) witnessed the massive return of skilled Nigerian diasporans (repatriates). Such repatriates for example helped to fill significant skill gaps at the onset of Nigeria's telecommunications (GSM) revolution and helped make it the runaway success that it became.

62 See also feedback from the *Dalberg Report* (at p.7): "The big issue is that we have about 80% of our population living on less than USD 2 a day. What will be interesting is to identify areas that link closely to diaspora personas that care about social good and channelling their investments to specific opportunities that help to address poverty. The second important factor is to see how to expand investments from the diaspora to geographical regions that are doing very badly in the poverty index. Interestingly, the study indicates a marked interest by the diaspora to invest in these regions in the future."

63 Borrowing from the recent FG model of encouraging road infrastructural development by the private sector through the *Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme*. For a detailed discussion, see Afolabi Elebiju, Gabriel Fatokunbo and Ayo Fadeyi, 'Progressions: From Road Trust Fund To Road Infrastructure Development And Refurbishment Tax Credit', *LeLaw Thought Leadership Insights*, April 2018: <http://lelawlegal.com/blog-details.php?title=progressions-from-road-trust-fund-to-road-infrastructure-development-and-refurbishment-tax-credit> (accessed 27.05.2019).

relationships even with families and friends without documentation, but based only on 'trust'. Experience has shown that if there are no control/governance mechanisms regulating the relationship, such would more often than not be abused, especially as the diasporan may not always be available to monitor the business.

Diaspora Nigerian as Foreign Investor

Sometimes especially for diasporans with dual citizenships, it may be better to invest in Nigeria in the capacity of a foreign investor whether directly or through an offshore vehicle – and obtaining relevant documentation, particularly the e-CCI/e-CLCI. One reason could be in order to access investment protection benefits of applicable Bilateral Investment Treaty (BIT) if his adopted country or residence of his investment vehicle has a BIT with Nigeria.

This will be in addition to the investment protection guarantees in the *NIPCA*⁵¹ and *FEMMPA*,⁵² and could come in handy in case of investment disputes with Nigerian government. Such additional cover cannot be overemphasized,

given the FG's poor track record with regard for the rule of law, and the generally slow pace of the otherwise robust Nigerian judicial system that are sources of concern to foreign investors.

If a diaspora Nigerian were to invest in Nigerian entities as a Nigerian, he would suffer WHT on dividends at the standard rate of 10%, whereas if he were to be regarded as a foreign investor, he could enjoy the lower 7.5% rate for treaty residents if there is an applicable double taxation treaty (DTT) with Nigeria.⁵³ However, whilst enjoying the lower Nigerian WHT rate, he may still need to pay tax on the dividends received from Nigeria (although he would get credit for the Nigerian WHT).⁵⁴

Would he have been better placed if he invested as a Nigerian because dividends is franked investment income that is not subject to any further tax in Nigeria apart from the WHT deduction? This question may turn on how the other country treats returns on offshore investment (in Nigeria) that is

not repatriated to the resident country of the diasporan or whether it is required to. As a general rule, a diasporan choosing to invest as a foreigner should presumably have sufficient connection to his resident country as not be accused of treaty shopping.⁵⁵

The Nigerian diasporan may actually be able to play beautiful bride: *he can undertake a comparative analysis of pros and cons of investing as a Nigerian or foreigner. For example in the Oil and Gas and Cabotage sectors, it may be better to invest as a Nigerian for preferential positioning on Nigerian content rankings.*⁵⁶

Increasing Diaspora Remittances and Optimising Impact on the Economy

The FG could step in by prohibiting exclusive contracts between banks and individual Money Transfer Operators (MTOs), licensing bureaux de change to conduct money transfers, and engaging the telecommunications sector in the industry.⁵⁷ Also, the

51 Section 24 NIPCA.

52 Section 14(4) FEMMPA.

53 Nigeria has a double taxation treaty (DTT) with the UK and 13 countries: Nigeria has DTTs with the UK, The Netherlands, Canada, South Africa, China, Philippines, Pakistan, Romania, Belgium, France, Czech, Slovakia, Singapore, and Italy. All the DTTs are comprehensive except the treaty with Italy which covers Air and Shipping agreement only. See FIRS, 'Tax Treaties': [https://www.firs.gov.ng/TaxResources/TaxTreatiesNew\(accessed 09.02.2020\)](https://www.firs.gov.ng/TaxResources/TaxTreatiesNew(accessed 09.02.2020)); See also FIRS Circular No.2019/03 (Circular), 'Information Circular on the Claim of Tax Treaties Benefits In Nigeria', 04.12.2019: <https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/circular-on-the-claim-of-tax-treaties-benefits-in-nigeria.pdf> (accessed 09.02.2020); Specifically para.3.3 of the Circular states that "A taxpayer, resident or non-resident may be denied treaty benefits if, based on facts or circumstances, it is discovered that its residency of one of the treaty countries was principally for the purpose of accessing that treaty benefit (treaty shopping) or if it is discovered after careful review of the case that one of the principal purposes of the arrangement of a transaction or business is to take advantage of the treaty or abuse its provisions (Principal Purpose Test 'PPT')"; Also note that according to the Circular, residents of countries like South Africa and Mauritius whose DTTs with Nigeria are not yet ratified will not be able to claim treaty benefits until respective ratification process (vide local legislation) is complete..

54 Other DTT benefits include prevention of double taxation; combating tax evasion and double non-taxation; assignment of primary taxing right to one country; and creation of reciprocal assistance in administering and enforcing tax laws between countries. See Alexander Tripelkov et al, 'United Nations Handbook on Selected Issues in Administration of Double Taxation Treaties in Developing Countries', June 2013: un.org/esa/ffd/wp-content/uploads/2014/08/UN_Handbook_DTT_Admin.pdf (accessed 11.02.2020).

55 The incidence of dual residency may arise if a Nigerian resides in a country where no tax treaty exist between the country and Nigeria. In this circumstance, such an expatriate will be taxed in Nigeria and the country where he is a citizen. In *Cadwalader v. Cooper, CE 1904, STC 101* it was held that a taxpayer could be held to reside simultaneously in more than one country if he maintained an establishment like abode in each. Thus, proper tax planning is required to ensure that the good intentions of Nigerians in diaspora does not expose them to more tax exposures.

56 Section 3(1) Nigerian Oil and Gas Industry Content Development Act No.2 2010 gives first consideration to Nigerian operators, "Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licences, oil lifting licences and in all projects for which contracts is to be awarded in the Nigerian oil and gas industry subject to the fulfilment of such conditions as may be specified by the Minister."

57 Raul Hernandez-Coss & Chinyere Egwuagu Bun, 'The U.K- Nigeria Remittance Corridor', DFID, Second International Conference on Migrant Remittances, London 13.11.2006: [http://siteresources.worldbank.org/INTAFRsumaftps/Resources/NigeriaRemittanceCorridor\(background\).pdf](http://siteresources.worldbank.org/INTAFRsumaftps/Resources/NigeriaRemittanceCorridor(background).pdf) (accessed 26.05.2019).

In June 2017, the FG issued its debut diaspora bond at 5.625%; the five year bond raised US\$300 million, representing 130% subscription.⁶⁴ Managed by the Debt Management Office (DMO), and structured as a retail instrument to appeal to a wide range of investors but targeted principally at Nigerians abroad - to provide them with the opportunity to contribute to national development - the bond was “*offered through private banks and wealth managers, rather than institutional investors, which normally deal in large volume transactions.*”⁶⁵

With the successful first outing, we daresay that Nigeria could do more in that space. Countries like Israel and India, the pioneers of Diaspora Bonds leveraged them over time to raise over US\$35 billion and US\$11 billion respectively.⁶⁶ It is thus curious

that given the success of its debut offering, the FG has not gone to the market with another diaspora bond.

Reform Suggestions and Conclusion

The WB and other experts have projected that Nigerian diaspora remittances will be on the upward swing. Nigerians abroad could even send more money home than projected if all the touch points of diaspora and investors' concerns are addressed. It was

good that the recent call for diaspora taxation was not heeded in the recently enacted **Finance Act 2019**: overturning the friendly tax regime for diaspora remittances would have meant Nigeria shooting herself in the foot.⁶⁷

Efforts should be intensified by private sector investment institutions to amongst others, design products through which diaspora investment funds could be channelled into Nigeria, to provide additional tracks for investment flows.⁶⁸



64 Soni Daniel, 'Nigeria's Diaspora Bond Oversubscribed By 130%', Vanguard, 30.06.2017: <https://www.vanguardngr.com/2017/06/nigerias-diaspora-bond-oversubscribed-130/> (accessed 27.05.2019); See also, Yomi Kazeem, 'Nigeria's First Ever Diaspora Bond Has Raised \$300 Million', Quartz Africa, 26.06.2017: <https://qz.com/africa/1014533/nigeria-has-raised-300-million-from-its-first-ever-diaspora-bond/> (accessed 27.05.2019). In our view, if corruption and transparency issues are well addressed, Diaspora Bonds could be good because they are likely to have less onerous conditions (compared to say Chinese loans that requires utilising Chinese contractors, labour and equipment), whilst investors have a good feeling – that they are contributing to Nigeria's growth and development (i.e. as a form of giving back), through their investment. Whilst obviating being tied to apron strings of lender countries/institutions, Diaspora funds can be an avenue to regain national pride.

65 See Obinna Chima, 'Debt Issue Subscribed by 130%, says Nwankwo', ThisDay, 20.06.2017: <https://www.thisdaylive.com/index.php/2017/06/20/in-a-first-diaspora-bond-fg-successfully-raises-300m/> (accessed 01.02.2020). According to the news report, quoting then Director-General of the DMO and Minister of Finance respectively: “... there was considerable interest from investors from all over the world, with the issue attracting initial orders of about 190 per cent of the offered amount. Final subscriptions were about 130 per cent of offer at the final price for the transaction. The diaspora bond has opened a new source of financing for the [FGN] for funding projects for the development of the country. This new window further enhances funding liquidity and flexibility of the Nigerian economy, which are necessary characteristics as the country gathers momentum towards the attainment of advanced economy status, Nigeria is the first African country to issue a bond targeted at retail investors in the United States, a market highly regulated by the United States Securities and Exchange Commission (U.S. SEC). ... The issuance of a bond registered by the U.S. SEC provides an opportunity to access a wide range of investors, Nwankwo explained.” “To have received the approval of the U.S. SEC was indicative that the highest level of transparency and accountability in the economic process has been attained. She explained that the bond should positively impact the country's credit rating, transparency rating and financial market development index rating. The Diaspora Bond is the first bond issued by an African sovereign registered with both the U.S. SEC and the United Kingdom Listing Authority (UKLA) and targeted at retail investors.”

66 See generally, Suhas Ketkar and Dilip Ratha, 'Diaspora Bonds for Education', The World Bank: <http://web.worldbank.org/archive/website01363/WEB/IMAGES/DIASPORA.PDF> (accessed 27.05.2019). “Israel has issued diaspora bonds by the Development Corporation for Israel (DCI) since 1951 raising a total of \$32.4 billion as at 2015. The bond was set up to finance development projects in various industries including energy and transport. On the other hand, India set up its bond to support their balance of payments and it has done this three times Indian Development Bonds in 1991 (\$1.6 billion), Resurgent Indian Bonds in 1998 (\$4.2 billion) and Indian Millennium Deposits in 2000 (\$5.5) raising a total of \$11.3 billion. The bond issued by the DCI was listed with the Securities and Exchange Commission (SEC) and thus, it was open to foreign nationals as well as the Diaspora of Israeli origin. Whereas India's bonds were issued strictly to the Diaspora of Indian origin and were not listed in the SEC.” See Nairametrics, 'How Diaspora Bonds Work and Benefits', 09.20.2019: <https://nairametrics.com/2019/09/20/how-diaspora-bonds-work/> (accessed 01.02.2020). For another view of India's success with diaspora bonds, see 'Remittances: A Smoothing Agent', Proshare, 17.05.2018: <https://www.proshareng.com/news/Forex/Remittances-A-Smoothing-Agent/40057/> (accessed 27.05.2019).

67 See Chuks Okoriekwe, 'Options: Plugging Nigeria's Perennial Revenue Gap through Diaspora Taxation', LeLaw Thought Leadership Insights, August 2019: <http://lelawlegal.com/2019/12/10/options-plugging-nigerias-perennial-revenue-gap-through-diaspora-taxation/> (accessed 05.02.2020).

68 Responding to questions about what their experience has been in exploring fundraising from the diaspora, a participant at the Nigeria Diaspora Study Dissemination Dialogue (in November 2018) said: “Both on the private equity and asset management side, CardinalStone has supported Nigerians in the diaspora in making principal investments in Nigeria and Ghana. From an institutional perspective, there are two main challenges: absence of information symmetry and restrictive investment regulations on offshore markets that prevent capital providers from Nigeria from soliciting investments from the diaspora. The biggest barrier to investing on the private equity side is that the minimum funds investing firms accept often run into millions of dollars, inhibiting participation from interested diasporans who lack that scale of capital. One of the ways to address this is through pooled investment vehicles and clubs that can vet their members, pull the funds, and then aggregate funds for private equity investments. Early-stage businesses whose financing needs are smaller ticket sizes present another great opportunity for diasporans to invest through angel networks. On the diasporan end, there's also the question of lack of understanding of the varying dynamics of different investment options (i.e., safer options such as fixed income versus and riskier options like private equity). Capital providers need to step back and profile diasporan investors, taking into account their risk appetite in offering investment products. Nigeria has a robust regulatory framework; the challenge is with figuring out where to find information on regulation.” See Dalberg Report, p.9; One of the products that can be introduced is the diaspora visits, which Ghana successfully implemented in 2019 thus attracting investment opportunities into their country. See Natacha Larnaud, 'This is your home - come here and make it yours: Ghana encourages African Americans to visit as part of the 'Year of Return' campaign', CBS News, 17.01.2020: <https://www.cbsnews.com/news/this-is-your-home-come-here-and-make-it-yours-heres-how-ghanas-year-of-return-has-impacted-african-americans/> (accessed 12.02.2020); The Nigeria Diaspora Investment Summit (NDIS) scheduled to hold on 2-3 November 2020 at the Presidential Villa, Abuja is strategic in integrating diasporans in national development. See NDIS, 'Nigeria Diaspora Investment Summit 2020': <https://ndis.gov.ng/> (accessed 12.02.2020).

Hopefully, the ease of doing business initiatives will vigorously continue, via legislative, policy and regulatory reform improvements.⁶⁹ Diasporans also have an array of skilled Nigerian professional advisers (lawyers, accountants, investment bankers, financial advisers, asset managers, etc) at their disposal, many of which are astute at helping foreign investors actualise their Nigerian entry, operating and exit strategies.⁷⁰ Nigeria can borrow successful diaspora policies of leading recipient countries like India, Mexico and Philippines. The diaspora bank for instance can be established in Nigeria.⁷¹

Enshrining diaspora voting rights and implementing proposals such as *“ongoing plans to bring in representatives of Nigeria's diaspora as honorary members of the Nigeria Economic Advisory*

Council” would go a long way in further raising the attractiveness of diaspora institutional economic interventions in Nigeria.⁷² The FG can collaborate with other countries where larger population of Nigerians in diaspora exists to establish a remittance country partnership or a remittance treaty to encourage formal remittance and reduce the cost of remittance transfer just the way double taxation treaties operate globally. For example, the US and Mexico's *“Partnership for Prosperity”*, provided an action plan of lowering the cost of remittance transfers originated in the US to Mexico. Same applies in Southeast Asia, where Japan concluded respective bilateral agreements in 2004 with the Philippines and Malaysia to facilitate workers' remittance and improved access to financial institutions.⁷³

The wisdom of Africa's richest man, Aliko Dangote is apt: Nigerians (Africans) have to take the lead in investing in the country/continent. In a sense that is a more credible campaign for foreign investment than the moral burden of mere platitudes. Diasporans' wealth of knowledge in addition to their remittances can help to reinvigorate the economy and boost Nigeria's competitiveness.⁷⁴ The concerted efforts of Nigerian citizens (including diasporans) and credible, investment-friendly government policies would enhance and accelerate Nigeria's prospects of actualising her potentials.⁷⁵

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69 Part of the feedback from the *Dalberg Report* (at p.7) was that: “Investors lack clarity on where to go to for investment advice and whom to trust to provide quality advice. ... There are different layers to the diaspora's concerns regarding corruption. First, people have or know someone who lost their funds either through an individual scam or fraud in government. Second, perception is based on corruption stories reported in the media. Intervention is required both at checking corruption and addressing the messaging that goes out about corruption in Nigeria.” Yet another feedback (at p.7) is: “Regarding the comment on regulation, perhaps there is a robust framework, but more important is how the regulatory framework is implemented. One thing that was expressed strongly in the survey is distrust in the system stemming from past experiences of diaspora investors with cumbersome litigation processes and lengthy duration. In addition, there are perception issues about our legal system that need to be addressed.”

70 See for example, excerpt of comments attributable to Onyekachi Wambu (Executive Director, Afford UK) in the *Dalberg Report* (at p.8): “Attempts have been made in the past to set up a diaspora trust fund but have failed due to concerns among the diaspora community that the funds would be misappropriated. It is logical that diasporans are interested in investing in offshore markets that offer better accountability and transparency. Afford has deployed three key interventions that could help address these constraints and encourage investments from the diaspora community: providing financial, technical, and strategic support to diasporans investing in small and medium-sized enterprises (SMEs) through the Afford business club; creating diaspora investment and policy forums as a platform for sharing pain points with regulators; and working towards launching a diaspora bond to fund impactful projects in Africa.”

71 According to Obinali Egele, Founder, Diasfunds: “A good way to go about attracting diaspora investments is to create emotional connections with the African continent to stimulate interest in investing. A key issue faced in designing investment products is limited information on what is and is not acceptable by regulation. Given that the crowdfunding model is new in this part of the world, there is not yet a framework guiding its operation. Attempts to launch a crowdfunding platform stalled with the realisation that the Security and Exchange Commission (SEC) had banned it. Recent developments including the establishment of an innovation sandbox give hope that these types of bottlenecks will be addressed soon. Investment promotion should be led by the private sector, while government's role should remain that of creating an enabling environment.” See *Dalberg Report*, p.9; The First Bank of Nigeria (FBN) introduced 'FirstDiaspora Suite' a product offered to diasporans enabling them to have diaspora accounts making their banking transactions seamless. See FBN, 'Diaspora Banking': <https://www.firstbanknigeria.com/personal-banking/diaspora-banking/> (accessed 12.02.2020); See also Paytech, 'CBN Licenses Insterswitch, Flutterwave, Venture Garden, Pagatech, e-Tranzact, VTN as International Money Transfer Operators', 04.02.2019: <https://www.financialtechnologyafrica.com/2019/02/04/cbn-licenses-interswitch-flutterwave-venture-garden-pagatech-e-tranzact-vtn-as-international-money-transfer-operators/> (accessed 24.02.2020).

72 See Section 9(b) NDCA which provides that as part of the NIDCom's functions, it shall: “advise the Federal Government on measures that would create a conducive environment for the Nigerians in Diaspora to effectively participate in the economic and social development of the nation.” Declaring July 25th as Diaspora Day by the FG is an important move to endear diasporans to FG's extended hands of fellowship and readiness to actively involve them in national development. See Adelaní Adepeba, 'FG Declares July 25 National Diaspora Day', *The Punch*, 24.07.2018, <https://www.punchng.com/2018/07/24/diaspora-nigerians-launch-forum-tackle-nigerias-challenges/> (accessed 05.09.2019); However, the INEC and Senate remark that Nigeria is not ripe for diaspora electronic voting in 2023 election is rather unfortunate. See Olalekan Adetayo et al, 'Nigeria not Ripe for Diaspora, Electronic Voting - INEC, Senate', *The Punch Newspaper*, 16.02.2020 <https://punchng.com/nigeria-not-ripe-for-diaspora-electronic-voting-inec-senate/> (24.02.2020).

73 Notably, the Department for International Development (DFID) initiated Remittance Country Partnership with select countries including Nigeria, which all receive large volume of remittance transfers from the UK. See Raul Hernandez-Coss, 'The Impact of Remittances: Observations in Remitting and Receiving Countries', Discussion paper prepared for the G24 XXIII Technical Group Meeting, Singapore, 13-14.09.2006: <https://www.g24.org/wp-content/uploads/2016/01/The-Impact-of-Remittances-Observations-in-Remitting.pdf> (accessed 11.02.2020).

74 Cf. findings from the *Dalberg Report* (p.5): “The study revealed that real estate is the most popular category for both current and future investments. Members of the diaspora also indicated the potential for a significant increase in investment in franchises, export-oriented businesses, and social enterprises. The top three sectors of interest - both now and in the future - are technology, services, and agriculture.”

75 Of note is the NIDCom's survey to elicit information on how to serve diasporans (especially prospective investors), better and the upcoming 2nd Nigerian Diaspora Investment Summit in November 2020, whilst NIDCOM's website (especially the news page, <https://nidcom.gov.ng/nidcom-news/>) (accessed 28.02.2020), provides updates of NIDCOM's activities. One improvement that would be appreciated though is for the NDCA (hard copies of which is difficult to come by), to be uploaded for easy access on the website.