A CRITIQUE OF THE LEGAL REGIME GOVERNING FOREIGN INVESTMENTS IN NIGERIA

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JULY 2026

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LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY

OKOYE UNIVERSITY, ENUGU STATE, IN PARTIAL FULFILMENT OF THE

REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS

(LL.B) OF GODFREY OKOYE UNIVERSITY, ENUGU STATE.

JULY, 2026

CERTIFICATION

This is to certify that this work is a product of the research conducted by Miracle Chimdindu Nwakanze with registration number GOU/U21/LAW/347, under the supervision of Dr. Geoffrey Okey Omeh, the Acting Dean and Senior Lecturer of the Faculty of Law, Godfrey Okoye University Enugu, in partial fulfillment of the requirements for the award of Bachelors of Laws (LL.B) Degree.

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APPROVAL

We, the undersigned, approve that this project was completed by Miracle Chimdindu Nwakanze with registration number GOU/U21/LAW/347 in partial fulfillment of the requirements for the award of Bachelor of Laws Degree (LL.B) of Godfrey Okoye University.

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External Supervisor **Date**

DEDICATION

This work is first dedicated to God Almighty who has blessed me with divine wisdom, understanding and knowledge. This research is also dedicated to the managers of the Nigerian economy.

ACKNOWLEDGEMENTS

All glory and honour belong to God Almighty, whose wisdom, strength and grace sustained me throughout this research from its beginning to its completion. Without His provision and direction, this work would not have been possible.

I sincerely appreciate Dr. Geoffrey Okey Omeh, the Acting Dean and Senior Lecturer of the Faculty of Law, Godfrey Okoye University, who served as supervisor for this project. His guidance, intellectual direction and commitment shaped this work in every meaningful way.

I also acknowledge the contributions of all lecturers in the Faculty of Law whose teaching and mentorship provided the foundation upon which this study was built.

I am most grateful to my family for their prayers, patience and sacrificial support throughout this long essay and the entirety of my academic journey. This work is offered in gratitude to all who contributed to it.

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LIST OF ABBREVIATIONS

AfCFTA	-	African Continental Free Trade Area
ADR	-	Alternative Dispute Resolution
AMA	-	Arbitration and Mediation Act 2023
ART	-	Award Review Tribunal
BIT	-	Bilateral Investment Treaty
CAC.	-	Corporate Affairs Commission
CAMA	-	Companies and Allied Matters Act 2020
CBN	-	Central Bank of Nigeria
CERPAC	-	Combined Expatriate Residence Permit and Alien'sCard
CFRN	-	Constitution of the Federal Republic of Nigeria
DAF	-	Decommissioning and Abandonment Fund
DFS	-	Digital Financial Services
DGDO	-	Domestic Gas Delivery Obligation
EAS	-	Expatriate Administration System
eCCI	-	Electronic Certificate of Capital Importation
EDI	-	Economic Development Incentive
ECOWAS	-	Economic Community of West African States
FDI	-	Foreign Direct Investment
FEMMPA	-	Foreign Exchange (Monitoring and Miscellaneous Provisions) Act
FET	-	Fair and Equitable Treatment
FIPA	-	Foreign Investment Protection Act (Kenya)
FIRS	-	Federal Inland Revenue Service
FPI	-	Foreign Portfolio Investment
FPS	-	Full Protection and Security
GIPC	-	Ghana Investment Promotion Centre
GIPA	-	Ghana Investment Promotion Authority
HCDT	-	Host Community Development Trust
ICC	-	International Chamber of Commerce
ICSID	-	International Centre for Settlement of Investment Disputes
IMF	-	International Monetary Fund
IMTO	-	International Money Transfer Operators
ISA	-	Investment and Securities Act 2025
ISDS	-	Investor-State Dispute Settlement
KenInvest	-	Kenya Investment Authority
LCIA	-	London Court of International Arbitration
LUA	-	Land Use Act 1978
NBC	-	National Broadcasting Commission
NCA	-	Nigerian Communications Act 2003
NCC	-	Nigerian Communications Commission
NDEPS	-	National Digital Economy Policy and Strategy
NDPA	-	Nigeria Data Protection Act 2023
NEPD	-	Nigerian Enterprise Promotion Decrees

NGX	-	Nigeria Exchange Group
NIPC	-	Nigerian Investment Promotion Commission
NIS	-	Nigeria Immigration Service
NITDA	-	National Information Technology Development Agency
NMDPRA	-	Nigerian Midstream and Downstream Petroleum Regulatory Authority
NASENI	-	National Agency for Science and Engineering Infrastructure
NOGICD	-	Nigerian Oil and Gas Industry Content Development Act 2010
NNPC	-	Nigerian National Petroleum Corporation
NOTAP	-	National Office for Technology Acquisition and Promotion
NRS	-	Nigeria Revenue Service
NTA	-	Nigeria Tax Act 2025
NUPRC	-	Nigeria Upstream Petroleum Regulatory Commission
NVP	-	Nigeria Visa Policy
OECD	-	Organisation for Economic Co-operation and Development
OSIC	-	One Stop Investment Centre
PCIJ	-	Permanent Court of International Justice
PIA	-	Petroleum Industry Act 2021
PSB	-	Payment Service Bank
SEC	-	Securities and Exchange Commission
TWP	-	Temporary Work Permit
UNCITRAL	-	United Nations Commission on International Trade Law
UNCTAD	-	United Nations Conference on Trade and Development
UNCREFAA	-	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards
UNGAR	-	United Nations General Assembly Resolution
USD	-	United States Dollar
VASPs	-	Virtual Asset Service Providers

ABSTRACT

Foreign investment is a vital factor in Nigeria's economic development, industrial development, transfer of technology, job creation and capital inflow. Although a comprehensive legal framework has been put in place to promote and safeguard foreign investment, problems of implementation and enforcement persist, impacting investor confidence. The study looks at the legal framework of foreign investment in Nigeria and its evaluation to determine the effectiveness of such legal regime, its major legal and institutional challenges, and its proposed remedies. The study uses the doctrinal approach in researching the laws and employs primary and secondary sources of law. Sources of information are mainly statutes, subsidiary legislation, judicial precedents, bilateral investment treaties and law-related administrative documents, and secondly textbooks, articles from journals and information from known legal databases. The study reveals that Nigeria has taken several steps to improve the investment climate through laws and new regulations, but has not addressed all of the necessary components. These include the lack of a statutory minimum share capital which is being enforced as ₦100 million, the foreign exchange restrictions which reduce the statutory assurances of repatriation of capital under the Nigerian Investment Promotion Commission Act, the sectoral regulatory fragmentation, the compliance challenges and the fiscal uncertainties arising from the Petroleum Industry Act 2021, the bureaucratic delays arising from the Land Use Act 1978, and the continued delays in commercial dispute resolution with corruption in the process. The study suggests that the investment frameworks of Ghana and Kenya can be used as a template for the reforms that need to be put in place to improve the effectiveness of the framework of investment law and policy in Nigeria. The study recommends harmonisation of investment requirements through primary law, statutory coordination of investment regulatory agencies, improved legal protection for foreign investors, strengthening of the land tenure system and upgrading of commercial dispute resolution to further enhance the legal certainty and investor confidence in the investment framework.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The legal regime regulating foreign investment in Nigeria is the basis on which the country regulates and promotes foreign investment.[1] Nigeria is Africa's most populous country and one of the largest economies by gross domestic product (GDP) and is heavily reliant on foreign direct investment (FDI) for economic growth, infrastructure development, technology transfer and job creation.[2] Foreign investment inflow and the protection provided for foreign investors represent the result of the legal regime, whereas laws, regulations and institutions are the instruments that constitute the legal regime. The interdependence of these elements indicates that Nigeria's investment system brings together the laws of the post-colonial era, economic liberalisation policies and sector specific laws. While the law offers a range of protections for foreign investors, some protections may be limited by the inconsistent administration of the law.

Nigeria's world of foreign investment has evolved over time. The Nigerian Enterprises Promotion Decree of 1972 and 1977 also limited foreign involvement in several industries during the Indigenisation period to boost participation by Nigerians.[3] "This was later replaced by a more liberal investment policy under the Nigerian Investment Promotion Commission Act, which opened up other sectors of the economy for foreign investment.[4] Some other critical laws such as the Companies and Allied Matters Act 2020, the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act No. 17 of 1995, the Business Facilitation Act 2023 and the Petroleum Industry Act 2021,[5] have also contributed to the

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[1] Nigeria Investment Promotion Commission Act, Cap N117, Laws of the Federal Republic of Nigeria 2004, ss 17, 24 - 26

[2] United Nations Conference on Trade and Development, 'Investment Policy Review: Nigeria' 2009 <https://unctad.org/system/files/official-document/diaepcb20081_en.pdf> accessed 20 June 2026

[3] Nigeria Enterprises Promotion Decree No.4 of 1972; Nigeria Enterprises Promotion Decree No.3 of 1977

[4] NIPC Act (n 1), ss 17 - 18.

[5] Companies and Allied Matters Act (CAMA) 2020; Foreign Exchange (Monitoring and Miscellaneous Provisions) Act Cap F34 LFN 2004; Business Facilitation (Miscellaneous Provisions) Act 2022; Petroleum Industry Act (PIA) 2021.

evolution of the legal framework. These reforms are designed to attract foreign capital but to maintain the government's power in regulating activities for the national interest.

However, the regulatory changes in Nigeria's foreign investment regime are not enough to put the minds of investors at ease. While the law provides some protection for foreign investors, foreign participation in the economy, registration of business and foreign exchange transactions have been impacted by some administrative agencies that have introduced regulations, guidelines and circulars. This can sometimes seem to be in contradiction to the intent of the enabling laws, which leaves investors in doubt.[6] This difference between the legal protections provided by legislation and the way they are implemented in practice forms the basis of this study. The study therefore investigates whether the current legal framework is sufficient to ensure the protection of foreign investment and the possibility of improving the law to ensure greater certainty for investors and the ability of the government to pursue its regulatory powers for the public good.

1.2 Statement of the Problem

To attract foreign investment, the government of Nigeria has passed several laws to ensure that the investments of the foreign investors will be protected. Such laws put Nigeria in a positive light as having an open and investor friendly business climate. But many foreign investors' experience with the law does not always match up with these guarantees. The initial legislation, the Nigerian Investment Promotion Commission Act 1995, has improved the investment policy and further legislation has improved the legal framework, there is still a lack of legal clarity as expected.[7] In some instances, administrative rules and orders have

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[6] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap F34, LFN 2004; Central Bank of Nigeria, 'Publications and Documents' (foreign exchange circulars) <https://www.cbn.gov.ng/Documents/> accessed 20 June 2026

[7] NIPC Act, ss 19 & 26; O Amao, 'Foreign Direct Investment and the Law in Nigeria: A Legal Assessment' (2008) 50(1) *International Journal of Law and Management* 126.

created obligations that are not directly in the law. This often means that the gap between the law and practice exists.[8]

This issue is apparent in respect of registration of companies with foreign participation. It is important to note that the amount of minimum issued share capital for a private company is prescribed by Section 27(2)(a) and 124(1) of the Companies and Allied Matters Act 2020.[9] The presence of this provision does not, however, mean that companies with foreign participation are required to have a minimum share capital of N100 Million by the Corporate Affairs Commission. This is not a requirement of the CAMA, but based on the Revised Handbook on Expatriate Quota Administration of the Federal Ministry of Interior. This leads to questions of law about the scope of power of administrative agencies and if they are able to impose obligations that exceed the requirements of an Act of National Assembly.[10] Where an administrative directive imposes conditions which are inconsistent with a statute, questions about compliance with the rule of law and certainty for Nigeria's investment framework arise.

Another challenge relates to the repatriation of capital and investment returns. The Nigerian Investment Promotion Commission (NIPC) Act ensures repatriation of capital in sections 24 and 25, and protects foreign investors from expropriation without compensation.[11] In reality, the Central Bank of Nigeria, through circulars issued on a frequent basis under the Central Bank of Nigeria Act 2007, has the ability to have an impact on foreign exchange transactions conducted in accordance with the provisions of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.[12] This then makes it difficult for foreign investors to convert

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[8] World Bank, 'Nigeria: 2022 Investment Policy and Regulatory Review' 2022 <https://documents1.worldbank.org/curated/en/099250201122328790/pdf/P17393802c4b840e50a637038b09da3478e.pdf> accessed 20 June 2026

[9] CAMA 2020 (n 5), s 124(1)

[10] Federal Ministry of Interior, 'Handbook on Expatriate Quota Administration' Part 3, Revised 2022 <https://candb.interior.gov.ng/wp-content/uploads/2025/05/CB-Business-HANDBOOK.pdf > accessed 20 June 2026

[11] O. I Smith, 'Administrative Power and Statutory Infractions under the Nigerian Corporate Regime' (2021) 12(2) *Gravitas Review of Property and Specialised Law* 45.

[12] NIPC, ss 24 -25.

and repatriate dividends through the authorised dealers who are supposed to process the electronic Certificate of Capital Importation.[13] The practical problems diminish the level of certainty that is meant to be afforded by the law and can deter potential investors.[14]

It also has a negative impact on the investment environment due to overlapping jurisdictions of regulatory bodies. Certain sectors including telecommunications, oil and gas and financial technology, require foreign investors to interact with multiple government bodies such as the Nigerian Investment Promotion Commission, the Corporate Affairs Commission, and the Securities and Exchange Commission, The Nigerian Communications Commission, the National Information Technology Development Agency, the Nigeria Revenue Service, Commission, and the Securities and Exchange Commission.[15] There is no one coordinating centre for these agencies, so investors can find conflicting regulations and several compliance tasks. This situation can make business more expensive, more uncertain and lead to investment conflict.[16]

The persistence of these practical difficulties and the paucity of literature on these issues in the existing Nigerian law, have motivated this research. Though the various individual parts of foreign investment law have been addressed by various scholars, studies on the effectiveness of the foreign investment regime in Nigeria as a whole, in the face of the recent legislative reforms and Nigeria's commitment to the regional investment instruments have been relatively few.[17] The study also looks at the link between the legal system and the

[13] Central Bank of Nigeria Act 2007, Act No 7

[14] NIPC, s 24; FEMMPA, s 15.

[15] PIA 2021; Nigerian Communications Act 2003, Act No 19 of 2003; National Information Technology Development Agency Act 2007; E Azinge, 'Fintech and Regulatory Labyrinths in Nigeria: A Paradigm of Inter-Agency Overlap' (2024) 8(1) *Nigerian Journal of Contemporary Law* 92

[16] UNCTAD, 'Nigeria: International Investment Agreements Navigator' 2026 <https://investmentpolicy.unctad.org> accessed 20 June 2026

[17] A A Adewuyi, 'Regional Integration and Foreign Direct Investment in Nigeria: An Appraisal of Legal and Institutional Frameworks' (2024) 15(2) *Journal of Sustainable Development Law and Policy* 114

practice with a view to identifying problems, so as to recommend improvements in the legal system, which will enhance investor confidence and legal certainty in Nigeria.[18]

1.3. Research Questions

The study seeks to answer the following questions:

I. What legal and institutional framework governs foreign investment in Nigeria, and to what extent is it consistent with contemporary standards of international investment law?

II. To what extent do the administrative practices of key regulatory agencies, particularly the Corporate Affairs Commission and the Central Bank of Nigeria, affect the statutory protections available to foreign investors under Nigerian law?

III. What legal and institutional challenges do regulatory overlap, foreign exchange restrictions and policy inconsistency present to foreign investment in Nigeria's oil and gas, telecommunications and financial technology sectors?

IV. How can the investment law frameworks of Ghana and Kenya inform reforms to Nigeria's foreign investment regime?

1.4. Aim and Objectives of the Study

The aim of this study is to examine the legal regime governing foreign investment in Nigeria in order to assess its adequacy, identify the challenges affecting its operation, and suggest reforms that will improve its effectiveness.

The objectives of the study are:

I. To examine the legal and institutional framework governing foreign investment in Nigeria.

II. To evaluate the impact of the administrative practices of regulatory agencies on the statutory protections available to foreign investors.

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[18] NIPC, ss 24–26; African Continental Free Trade Area Agreement 2018; ECOWAS Supplementary Act A/SA.3/12/08 on Investment 2008.

III. To analyse the legal and institutional challenges affecting foreign investment in Nigeria's oil and gas, telecommunications and financial technology sectors.

IV. To recommend reforms, drawing from the investment law frameworks of Ghana and Kenya, to improve Nigeria's foreign investment regime.

1.5 Scope and Limitation of the Study

Scope of the Study

The scope of this study is considered under three broad areas, namely geographical coverage, content coverage, and subject-matter coverage. This is important to keep the research feasible and focused.

In terms of area of study, the research covers the Federal Republic of Nigeria alone. The laws, policies and institutions involving foreign investment in Nigeria constitute the central theme of the study. But for comparative analysis, the study also examines the legal environment of Ghana and Kenya in Chapter Four to pick lessons learnt that can be adopted in Nigeria to enhance its foreign investment regime.

Content-wise, the study will be focusing on the main laws that govern foreign investment in Nigeria. They include the NIPC Act[19], CAMA 2020[20] and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act[21]. The study also takes into account relevant administrative policies and directives of the CAC and CBN. It also reviews some of the sector-specific laws, such as the Petroleum Industry Act 2021[22] and Nigerian Communications Act 2003.[23]

In terms of subject matter, the study concentrates on the link between legal safeguards for foreign investment and the real challenges of their operation. Remarks are made on specific aspects of statutory safeguards against expropriation without compensation, the right to

[19] Nigerian Investment Promotion Commission Act, Cap N117 LFN 2004
[20] Companies and Allied Matters Act 2020 (Act No 3 of 2020)
[21] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap F34 LFN 2004
[22] Petroleum Industry Act 2021 (Act No 6 of 2021)
[23] Nigerian Communications Act 2003 (Act No 19 of 2003)

repatriate capital, and problems of regulatory overlap, administrative procedures and policy inconsistencies.

It is pertinent to mention in this regard that this study cannot delve into all aspects of foreign investment law in Nigeria. This research excludes the issues of Nigeria's local content and employment requirements stipulated by the Nigerian Oil and Gas Industry Content Development Act 2010, and cabotage and maritime laws. The reasons for excluding these areas from a detailed discussion in an undergraduate long essay are given below. If the study is restricted to the basic legal and institutional issues concerning foreign investment, a more detailed and focused analysis of the research problem is possible.

1.6 Limitation of the Study

This study was conducted under certain limitations, which influenced the research.

The first restriction is the changes in foreign exchange control that occur on a regular basis. The CBN has issued various guidelines and circulars on foreign exchange issues in response to the ever-changing economic landscape. This meant that it was hard to have a set position among the various regulations during the research time. In order to tackle this issue, only the latest and most relevant legal instruments available in the year of the study have been used.

One restriction was the lack of access to certain official documents. Administrative procedures and lack of public access to certain administrative handbooks, internal operation manuals and historical policy circulars, such as that of the Federal Ministry of Interior, restricted access to the documents. The sources used for this study were primarily the laws published by the authorities, gazetted instruments, public notices, and other legal documents that have been verified.

Time and budget limitations also impacted the study. There were not enough resources or time for an empirical study, including interviews with foreign companies, and regulators officials as an undergraduate research project. Hence, the doctrinal approach was used in the study, which involved scrutiny of the legal information that included statutes, case law, textbooks, journal articles, and other legal materials that are recognised. Notwithstanding such restraints, care was taken to balance the research, to ensure its reliability, and to make it relevant to the topic being examined.

1.7 Significance of the Study

This study is important because it looks at the legal framework for foreign investment in Nigeria and the challenges involved in the implementation of foreign investment in Nigeria. It helps in the understanding of the working of laws concerning foreign investment and identifies the gaps that need to be addressed. The results of this research will be beneficial to the legal scholars, legislators, law enforcement authorities, law practitioners, investors and students of the law.

Academically, this study is a contribution to the existing literature on the regulation of foreign investment in Nigeria. While there have been some works that have treated the Nigerian Investment Promotion Commission Act and the Companies and Allied Matters Act 2020, very little has been done on the relationship between the statutory provisions and administrative directives of regulatory agencies where there is conflict. The present study thus explores the degree to which administrative measures conform to the provisions of the enabling statutes and assesses the impact that these measures have on the legal safeguards provided to foreign investors. The study will be of benefit to legal academics, researchers, law students and other corporate law, administrative law and investment law writers.

A policy perspective is also of significance for the study. It can help identify the gaps between the law and administration, and thus help provide information that can be used to enhance Nigeria's foreign investment environment. The findings and recommendations may be relevant to the National Assembly, the Nigerian Investment Promotion Commission, the Corporate Affairs Commission, the Central Bank of Nigeria and any other regulatory bodies in the government. The recommendations of this study are expected to help to foster more uniformity in the application of investment laws and enhance the investor confidence. The study, in the sense of practicality, gives a better understanding of the legal and administrative problems that are confronting foreign investment in Nigeria. The study discusses some of the limitations foreign investors faced in complying with the regulatory requirements, using the relationship between the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act and the guidelines given by the Central Bank of Nigeria. The results will prove useful to legal professionals, investment advisories, foreign investors, commercial arbitration practitioners and business organisations to better understand the investment laws and regulations of Nigeria. It is also hoped that the study would help future researchers who may want to conduct further research in the area of foreign investment law.

1.8 Research Methodology

This study adopts the doctrinal method of legal research. It is a qualitative and library-based study that examines existing legal materials relating to the regulation of foreign investment in Nigeria. The study does not involve empirical methods such as questionnaires, interviews, or field surveys. Instead, it relies on the analysis of relevant legal authorities and other documentary sources.

The research makes use of both primary and secondary sources of data. The primary sources include statutes, subsidiary legislation, administrative directives, judicial decisions of Nigerian superior courts, bilateral investment treaties, and regional investment instruments, including the African Continental Free Trade Area Agreement. The secondary sources consist of textbooks on corporate and investment law, articles published in reputable academic journals, and relevant materials obtained from recognised legal databases, including the United Nations Conference on Trade and Development Investment Policy Hub.

For the purpose of comparative analysis, the study also examines selected aspects of the legal frameworks governing foreign investment in Ghana and Kenya. This comparison is intended to identify approaches that may provide useful guidance for improving Nigeria's legal regime governing foreign investment.

The materials gathered for this study were analysed through content analysis and statutory interpretation. Relevant statutes, judicial decisions, and other legal materials were carefully examined in order to evaluate the effectiveness of the existing legal framework governing foreign investment in Nigeria and to identify areas where legal or institutional reforms may be required.

1.9 Literature Review

The legal framework governing foreign investment in Nigeria has received considerable attention from legal scholars. Most of the existing literature focuses on three major areas, namely the development of investment laws in Nigeria, the protection available to foreign investors under Nigerian law, and the powers exercised by regulatory agencies in the administration of investment laws. This review examines the views expressed by different authors in these areas and identifies the gaps which this study intends to address.

With respect to the development of Nigeria's investment laws, Olufemi Amao examined the country's transition from a protectionist investment policy to a more liberal legal framework. According to Amao, the Nigerian Enterprises Promotion Decrees of 1972 and 1977 reflected a period when government policies were designed to reduce foreign control of businesses and promote indigenous participation in the economy.[24] He observed that although the policy was intended to protect Nigeria's economic interests, it did not achieve the desired result because it failed to attract the level of foreign investment needed for economic growth. Amao therefore regarded the liberalisation introduced through the Nigerian Investment Promotion

[24] O Amao, 'Foreign Direct Investment and the Law in Nigeria: A Legal Assessment' (2008) 50(1) *International Journal of Law and Management* 126, 128.

Commission Act as an important shift in Nigeria's investment policy. Akpotaire reached a similar conclusion by explaining that the enactment of the Nigerian Investment Promotion Commission Act 1995 marked a significant change from the earlier protectionist approach.[25] According to the author, section 17 of the Act removed many of the restrictions previously placed on foreign investors and introduced the principle of national treatment.[26] While these authors provide a useful account of the historical development of Nigeria's investment laws, they pay little attention to the practical challenges that arise from the implementation of those laws. This study therefore goes beyond the history of legislative reforms by examining how administrative directives affect the operation of statutory protections available to foreign investors.

Another area that has attracted scholarly attention is the effectiveness of the statutory safeguards provided for foreign investors. Eze examined the legal framework for promoting foreign direct investment in Nigeria and concluded that sections 24 and 25 of the Nigerian Investment Promotion Commission Act provide important safeguards against expropriation and guarantee the repatriation of investment capital and profits.[27] The author argued that these provisions compare favourably with those found in other African investment regimes. However, Olayinka considered the practical operation of these statutory protections alongside the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.[28] The study found that the foreign exchange policies administered by the Central Bank of Nigeria may affect the practical enjoyment of the rights guaranteed under the Nigerian Investment Promotion Commission Act, particularly in relation to the transfer of capital and dividends through the

[25] E Akpotaire, 'The Transition of Nigerian Economic Policy: From Indigenisation to Neoliberalism' (2014) 5 *Journal of Sustainable Development Law and Policy* 42, 45.
[26] NIPC, s 17.
[27] S O Eze, *An Analysis of the Legal Framework for the Promotion of Foreign Direct Investment in Nigeria* (LLM thesis, Ahmadu Bello University 2015) 72.
[28] FEMMPA, s 15.

electronic Certificate of Capital Importation.[29] Although these studies provide valuable contributions, they generally examine the relevant statutes separately. Consequently, they do not fully address the legal issues that arise where statutory guarantees appear to conflict with administrative directives. This study fills that gap by examining the relationship between these legal instruments and assessing their effect on foreign investment in Nigeria.

Scholars have also examined the extent of the powers exercised by regulatory agencies. Alade argued that administrative agencies must exercise only those powers granted to them by their enabling statutes and that any directive which imposes obligations beyond the authority conferred by law may be declared ultra vires.[30] This has been upheld in *Attorney-General of Lagos State v. Attorney-General of the Federation*[31] and the Supreme Court of Nigeria analysis on executive and administrative overreach in *A.G. Abia State & Ors v. A.G. of the Federation*.[32] This argument has become particularly relevant following the CAC's Public Notice of December 2023, which requires companies with foreign participation to maintain a minimum issued share capital of one hundred million naira.[33] Aluko and Oyebode observed that this administrative requirement is based on the Federal Ministry of Interior's Revised Handbook on Expatriate Quota Administration rather than on any express provision of an Act of the National Assembly.[34] While some commentators consider the requirement necessary to ensure that foreign companies are adequately capitalised before commencing business in Nigeria, others maintain that it is inconsistent with section 124 of

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[29] O D Falana, 'Foreign Exchange Liberalisation and Investor Confidence in Nigeria: A Legal Assessment of the FEMMP Act' (2022) 10(1) *Journal of Commercial and Property Law* 84.

[30] A I Alade, 'Regulatory Overreach or Corporate Sanity? An Evaluation of the Enforcement Powers of the Corporate Affairs Commission under CAMA 2020' (2022) 13(1) *The Gravitas Review of Business & Property Law* 64; B.O. Nwabueze, *Federalism in Nigeria under the Presidential Constitution* (Sweet & Maxwell 1983)

[31] (2004) 18 NWLR (Pt. 904) 1

[32] (2022) SC/4988.

[33] Federal Ministry of Interior (n 10)

[34] Aluko and Oyebode, 'Implementation of N100 Million Minimum Share Capital Requirement for Companies with Foreign Participation' 2024 <https://www.aluko-oyebode.com/insights/implementation-of-n100-million-minimum-capital-requirement-with-foreig/> accessed 20 June 2026

the CAMA 2020, which prescribes a minimum issued share capital of one hundred thousand naira for private companies.[35] This disagreement raises important legal questions concerning the limits of administrative powers and the relationship between statutes and administrative directives. These issues form part of the central focus of this study.

Omeh broadens the discussion by arguing that one of the recurring obstacles to foreign investment in Nigeria is the inconsistency of regulatory policies and the absence of a stable investment environment. The author contends that frequent policy changes and weak coordination among regulatory institutions create uncertainty for investors and recommends greater coherence in Nigeria's investment regulatory framework.[36] While this analysis identifies regulatory inconsistency as a significant challenge, it does not specifically examine the legal relationship between administrative directives and the statutory protections available to foreign investors. That question remains central to the present study.

From the literature reviewed, it is evident that important contributions have been made to the study of foreign investment law in Nigeria. Nevertheless, certain gaps remain. Most of the available studies examine corporate law, investment law, or foreign exchange regulation separately instead of considering how these areas interact in practice. In addition, recent developments, including the CAC's capital requirement and the amendments introduced by the Investments and Securities Act, have not received sufficient legal analysis in many of the existing works. Furthermore, few studies have undertaken a comparative assessment of Nigeria's legal framework alongside those of Ghana and Kenya with the aim of identifying practical reforms. This study seeks to address these gaps by examining the legal regime governing foreign investment in Nigeria in a comprehensive manner, while drawing relevant lessons from the investment law frameworks of Ghana and Kenya to suggest reforms that may improve the effectiveness of Nigeria's legal framework.

[35] CAMA, s 27(2), 124(1)

[36] N O Omeh 'Thematic Examination of the Regulatory Framework Governing Foreign Investments in Nigeria' (2022) 6(2) *African Journal of Law and Human Rights* 95.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

For a proper understanding of the legal regime governing foreign investment in Nigeria, it is necessary to explain the key concepts used in this study. Defining these concepts helps to clarify their meaning and ensures that they are applied consistently throughout the research. The major concepts discussed in this chapter are "legal regime", "foreign investment", and the Nigerian regulatory framework. Other related concepts, including the classification of aliens, the negative list, expropriation, nationalisation, and capital repatriation, are also examined because they are closely connected with the regulation of foreign investment in Nigeria. This section therefore explains these concepts within the context of Nigerian law and international investment law.

2.1.1 Meaning of Foreign Investment

In both law and economics, investment generally refers to the commitment of money, assets, or other valuable resources into a business or commercial activity with the expectation of earning profit or obtaining future economic benefits. Where such investment involves the movement of capital or assets from one country into another, it is regarded as foreign investment.

From a legal perspective, Sornarajah defines international investment as the transfer of tangible or intangible assets from one country to another for use in the receiving country for the purpose of generating wealth under the total or partial control of the owner of those assets.[37] This definition emphasises two important features of foreign investment, namely its

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[37] M Sornarajah, *The International Law on Foreign Investment* (5th edn, Cambridge University Press 2021) 8.

cross-border nature and the continuing ownership or control exercised by the investor over the investment.

In Nigeria, the NIPC Act provides the legal framework that regulates the participation of foreign investors in the Nigerian economy. Within this framework, foreign investment involves the introduction of capital, technology, equipment, or managerial expertise by a foreign individual or corporate body into Nigeria for the purpose of establishing, acquiring, or expanding a business enterprise within the country.

2.1.2 Types of Foreign Investment

Foreign investment is generally divided into two main categories based on the level of control exercised by the investor and the nature of the investment. These are Foreign Direct Investment (FDI) and Foreign Portfolio Investment (FPI). Although both involve the movement of capital across national borders, they differ in their purpose, duration, and legal regulation under Nigerian law.

2.1.2.1 Foreign Direct Investment (FDI)

Foreign Direct Investment (FDI) refers to an investment made by a person or business from one country into an enterprise located in another country with the intention of establishing a lasting business relationship and exercising a significant degree of management or control over that enterprise. The International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD) regard an investment of at least ten percent of the voting shares in an enterprise as evidence of such a lasting interest.[38]

In Nigeria, Foreign Direct Investment occurs where a foreign investor establishes a subsidiary company, enters into a joint venture with a Nigerian business, or sets up manufacturing plants, service centres, retail outlets, or other business operations within the country. FDI is generally a long-term investment and usually involves more than the transfer

[38] International Monetary Fund, *Balance of Payments and International Investment Position Manual* (6th edn, IMF 2009) para 6.8; OECD, *Benchmark Definition of Foreign Direct Investment* (4th edn, OECD Publishing 2008) 17.

of financial resources. It often includes the transfer of technology, technical skills, management experience, and business expertise. Unlike portfolio investment, FDI creates a continuing business relationship between the investor and the host country and can contribute to employment, industrial development, and economic growth.

2.1.2.2 Foreign Portfolio Investment (FPI)

Foreign Portfolio Investment (FPI) refers to investment in the financial assets of another country without the intention of taking part in the management or control of the business. It commonly involves the purchase of shares, treasury bills, bonds, and other securities by foreign individuals or institutional investors.

In Nigeria, Foreign Portfolio Investment is principally regulated by the ISA 2025[39] and is supervised by the Securities and Exchange Commission (SEC). Unlike Foreign Direct Investment, portfolio investment is generally short-term in nature and can easily be withdrawn from the economy. For this reason, it is often described in financial literature as "hot money" because investors may quickly sell their investments and transfer their funds in response to changes in economic conditions, government policies, political developments, or market performance. Although portfolio investment provides an important source of foreign capital, its ease of movement makes it less stable than Foreign Direct Investment.

2.1.3 Meaning of Alien

In law, an alien is a person who is not a citizen of a particular country. The term applies to both natural persons and, in certain circumstances, corporate bodies. Under Nigerian law, the status of an alien is determined by reference to the constitutional provisions on citizenship. Section 25 - 27 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)[40] identifies those who are citizens of Nigeria by birth, registration, or naturalisation. Any

[39] Investment and Securities Act 2025
[40] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 25-27

person who does not fall within these constitutional categories is regarded as an alien for the purposes of Nigerian law.

In relation to companies, section 868 of the CAMA 2020 defines a foreign company as a company incorporated outside Nigeria.[41] In addition, section 78 of the Act requires such foreign companies to comply with the prescribed registration requirements of the CAC before carrying on business in Nigeria. Compliance with this requirement is one of the basic legal conditions that enables foreign corporate entities to lawfully establish and operate businesses within the country.[42]

2.1.4 Meaning of Negative List

The Negative List is an important concept in investment law. It refers to the list of business sectors or economic activities in which foreign investors are either prohibited from investing or are allowed to participate only under specific conditions. Governments usually adopt a Negative List to protect national security, public health, public safety, and other areas considered important to the national interest.

In Nigeria, the legal basis for the Negative List is found in section 31 of the NIPC Act. This provision prohibits both Nigerian and foreign private investors from engaging in the production of arms, ammunition, and related military equipment, the manufacture of narcotic drugs and psychotropic substances, and such other items as may be specified by the Federal Executive Council from time to time.[43] Apart from these statutory restrictions, certain sector-specific laws also place limitations on foreign participation. For example, the Nigerian Oil and Gas Industry Content Development Act 2010[44] encourages greater indigenous participation by prescribing local content requirements in the oil and gas industry. The

[41] Companies and Allied Matters Act 2020, s 868.
[42] ibid, s 78 (1)
[43] Nigerian Investment Promotion Commission Act, s 31
[44] Nigerian Oil and Gas Industry Content Development Act 2010, s 3

Negative List therefore serves as one of the legal means through which the Nigerian Government regulates the extent of foreign participation in particular sectors of the economy.

2.1.5 Meaning of Legal Regime

A legal regime refers to the body of laws, regulations, institutions, judicial decisions, and international agreements that govern a particular subject or area of activity. It is more than a collection of separate legal rules. Rather, it is a system through which rights, duties, and obligations are created, regulated, and enforced within a particular field.

In relation to this study, the legal regime governing foreign investment in Nigeria consists of the various laws, institutions, and international instruments that regulate the establishment, operation, protection, and settlement of disputes relating to foreign investment. These include important statutes such as the Nigerian Investment Promotion Commission Act, the Companies and Allied Matters Act 2020, the Investment and Securities Act 2025, and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (Cap F34, Laws of the Federation of Nigeria 2004).[45] The legal regime also includes regulatory institutions such as the Nigerian Investment Promotion Commission (NIPC), the Central Bank of Nigeria (CBN), and the Nigeria Revenue Service (NRS). In addition, Nigeria's Bilateral Investment Treaties (BITs) and international agreements, including the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), form part of the legal framework governing foreign investment. Together, these laws, institutions, and international instruments regulate the entry of foreign investors into Nigeria, their business operations, their legal rights and obligations, and the procedures available for resolving investment disputes.

2.1.6 Expropriation and Nationalisation

[45] Nigerian Investment Promotion Commission Act, the Companies and Allied Matters Act 2020, the Investment and Securities Act 2025, and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (Cap F34, Laws of the Federation of Nigeria 2004).

Expropriation and nationalisation are legal concepts that describe situations in which a government takes control of private property or investments for public purposes. Although the two concepts are closely related, they are not identical.

Expropriation usually refers to the compulsory acquisition of the property or investment of a particular individual or company by the state. It may be direct, where ownership of the property is formally transferred to the government, or indirect, also known as creeping expropriation, where a series of government actions, such as excessive taxation, arbitrary withdrawal of licences, or restrictive regulations, gradually deprive the investor of the economic value of the investment without any formal transfer of ownership.[46] Nationalisation, on the other hand, occurs where the government assumes ownership or control of an entire industry or sector of the economy. Unlike expropriation, nationalisation generally affects all businesses operating within the affected sector, whether they are owned by local or foreign investors.

Under customary international law, as recognised by the Permanent Court of International Justice in the *Factory at Chorzów case*,[47] a state may lawfully expropriate or nationalise private property only where the action is taken for a genuine public purpose, is non-discriminatory, follows due process of law, and is accompanied by the payment of prompt, adequate, and effective compensation. This principle is commonly referred to as the Hull Formula. In Nigeria, the right to own property is protected by section 44 of the CFRN 1999 (as amended),[48] which prohibits the compulsory acquisition of property except in accordance with the law and upon the payment of fair and prompt compensation. In addition, section 25 of the NIPC Act protects foreign enterprises against nationalisation or

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[46] Sornarajah (n 37) 363–370; R Dolzer and C Schreuer, *Principles of International Investment Law* (2nd edn, Oxford University Press 2012) 99–118.

[47] *Factory at Chorzów (Germany v Poland)* [1928] PCIJ (Ser A) No 17.

[48] CFRN 1999, s 44

expropriation except in circumstances permitted by Nigerian law and applicable international legal principles.[49]

2.1.7 Capital Repatriation

Capital repatriation refers to the right of a foreign investor to transfer investment funds or returns from the host country to another country. Such transfers may include profits, dividends, interest on foreign loans, proceeds realised from the sale or liquidation of an investment, or the original capital invested. The ability to repatriate capital is an important factor considered by foreign investors when deciding whether to invest in a particular country because it determines whether they can freely enjoy the returns on their investment.

In Nigeria, the legal basis for capital repatriation is found in section 15 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act. This provision guarantees foreign investors the right to transfer their funds in freely convertible foreign currency through authorised dealers, namely licensed commercial banks, provided that the investment entered Nigeria through an approved channel and is supported by an electronic Certificate of Capital Importation (eCCI).[50] The eCCI, which is now issued electronically through the CBN platform, serves as evidence that the foreign capital was lawfully brought into Nigeria and entitles the investor to repatriate the investment and any lawful returns. Despite these statutory protections, difficulties within Nigeria's foreign exchange market have continued to affect the practical exercise of these rights. This issue is examined in greater detail in Chapter Four of this study.

2.2 Theoretical Framework

Following the clarification of the key concepts used in this study, it is necessary to examine the theories that explain foreign investment and the legal principles that govern it. A theoretical framework provides the foundation upon which a study is built by explaining the

[49] NIPC Act, s 25
[50] FEMMPA, s 15.

ideas and principles relevant to the subject under consideration. In this study, the theoretical framework explains the factors that encourage the movement of foreign investment across national borders and the legal considerations that influence how host countries, including Nigeria, regulate and protect such investments.” The theories discussed in this section provide a basis for understanding the development of Nigeria's foreign investment legal regime and the challenges associated with its implementation.

2.2.1 Theories of Foreign Investment

2.2.1.1 Classical Foreign Investment Theory

The Classical Theory of foreign investment is based on the economic ideas of Adam Smith and David Ricardo. It is founded on the principles of laissez-faire economics and comparative advantage.[51] According to this theory, capital naturally moves from countries where investment returns are relatively low to countries where higher returns are available. As a result, developed countries with surplus capital invest in developing countries where investment opportunities are more profitable.

The theory further suggests that the free movement of foreign capital benefits both the investing country and the host country. For the host country, foreign direct investment provides additional capital, promotes industrial development, creates employment opportunities, encourages the transfer of technology, and contributes to economic growth. Consequently, supporters of the Classical Theory argue that governments should minimise unnecessary restrictions on foreign investment and allow market forces to operate with limited interference.

Despite its influence on investment liberalisation policies in many developing countries, the Classical Theory has been criticised by several scholars. Critics argue that it assumes all countries benefit equally from foreign investment without adequately recognising the

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[51] A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776); D Ricardo, *On the Principles of Political Economy and Taxation* (John Murray 1817).

economic inequalities that exist between developed and developing countries. The theory also places considerable reliance on market forces while giving limited attention to the role of government in protecting national economic interests.

2.2.1.2 Modern Foreign Investment Theory: The Eclectic Paradigm (OLI Framework)

One of the most widely accepted modern theories explaining foreign direct investment is the Eclectic Paradigm, commonly known as the OLI Framework, developed by John Dunning.[52] According to Dunning, a business will decide to invest directly in another country only where three important conditions exist simultaneously.

The first condition is the Ownership Advantage (O). This refers to the unique assets or strengths possessed by a business, such as advanced technology, patents, established trademarks, technical expertise, or superior management skills, which give it an advantage over businesses operating in the host country.

The second condition is the Location Advantage (L). This exists where the host country offers favourable conditions that encourage investment. Such conditions may include the availability of natural resources, a large consumer market, favourable tax policies, an affordable labour force, or a strategic geographical location that makes investment more profitable than producing goods in the investor's home country.

The third condition is the Internalisation Advantage (I). This arises where a business considers it more beneficial to retain control of its investment by establishing or operating its own subsidiary rather than transferring its technology or business operations through licensing agreements, franchises, or other contractual arrangements with independent parties.

The OLI Framework is particularly relevant to the study of foreign investment in Nigeria.

Nigeria possesses several location advantages that continue to attract foreign investors, including its abundant oil and gas resources, large population, expanding consumer market,

[52] J H Dunning, *Explaining International Production* (HarperCollins Academic 1988) 25–29.

and growing digital economy. At the same time, the country faces regulatory and institutional challenges that influence investors' decisions and affect the operation of foreign investment. These factors make the OLI Framework a useful theory for examining the strengths and weaknesses of Nigeria's legal regime governing foreign investment.

2.2.1.3 The Dependency Theory

The Dependency Theory developed during the mid-twentieth century as a response to the traditional view that foreign investment and free trade automatically promote economic development. The theory is closely associated with the work of Raúl Prebisch, whose studies at the United Nations Economic Commission for Latin America questioned the belief that developing countries benefit equally from international trade and foreign investment.[53] His ideas were later expanded by scholars such as André Gunder Frank and Fernando Henrique Cardoso, who explained the unequal economic relationship between developed and developing countries.[54]

According to the Dependency Theory, the world economy is divided into two groups. The first consists of the developed industrialised countries, often described as the "Core", while the second comprises the developing countries, referred to as the "Periphery". The theory argues that foreign investment often benefits the developed countries more than the developing countries. Rather than promoting balanced economic growth, it may encourage the continuous transfer of wealth and resources from developing countries to developed countries. It also suggests that multinational corporations can weaken local industries, influence domestic markets, and increase the economic dependence of host countries. For these reasons, proponents of the Dependency Theory support greater government control over foreign investment. They advocate stronger regulation of foreign investors, increased local

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[53] R Prebisch, *The Economic Development of Latin America and its Principal Problems* (United Nations Department of Economic Affairs 1950).

[54] A G Frank, *Capitalism and Underdevelopment in Latin America* (Monthly Review Press 1967); F H Cardoso and E Faletto, *Dependency and Development in Latin America* (University of California Press 1979).

participation in key sectors of the economy, and, where necessary, state ownership of strategic industries in order to protect national economic interests. Walter Rodney's analysis of the effects of external economic exploitation on Africa also supports this perspective by arguing that prolonged foreign economic domination contributed significantly to the continent's underdevelopment.[55]

2.2.1.4 The Sovereignty Theory

The Sovereignty Theory is founded on the principle of permanent sovereignty over natural resources, which was recognised by the United Nations General Assembly Resolution 1803 (XVII) of 1962.[56] The theory maintains that every independent state has the legal authority to regulate the use of its natural resources and to determine the conditions under which foreign investors may operate within its territory.

Under this theory, a host state has the power to regulate the entry, operation, taxation, and, where permitted by law, the expropriation of foreign investments. Foreign investment is therefore regarded as a privilege granted by the host state rather than an unrestricted right enjoyed by foreign investors. In exercising this authority, the state is expected to act in accordance with its laws and in the public interest.

The Sovereignty Theory is particularly relevant to Nigeria because it supports the country's authority to regulate foreign investment through legislation and public policy. It also provides the legal basis for measures such as local content requirements and government regulation of strategic sectors, especially the oil and gas industry.

2.2.1.5 The Obsolescing Bargain Theory

The Obsolescing Bargain Theory was developed by the economist Raymond Vernon to explain how the relationship between a foreign investor and a host state changes over the life

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[55] W Rodney, *How Europe Underdeveloped Africa* (Bogle-L'Ouverture Publications 1972).

[56] United Nations General Assembly Resolution 1803 (XVII), 'Permanent Sovereignty over Natural Resources' (14 December 1962).

of an investment project.[57] According to the theory, the bargaining power of both parties is not fixed but changes as the investment progresses.

At the beginning of an investment, the foreign investor usually has greater bargaining power because the host country is interested in attracting foreign capital, technology, employment opportunities, and technical expertise. As a result, the government may offer incentives such as tax holidays, import duty concessions, and other favourable conditions to encourage the investor to establish operations within the country.

The situation often changes after the investment has been established. Once the investor has committed substantial resources in the form of buildings, equipment, infrastructure, and long-term business operations, withdrawing from the host country becomes more difficult and costly. At this stage, the host government may acquire stronger bargaining power and seek to renegotiate the original investment terms by introducing higher taxes, stricter local content requirements, new regulatory obligations, or other policy changes. In some situations, the government may even resort to expropriation where permitted by law.

The Obsolescing Bargain Theory is relevant to this study because it explains how the legal relationship between foreign investors and host states may change over time. It also provides a useful framework for examining developments in Nigeria's petroleum and telecommunications sectors, where foreign investors have had to adjust to changing regulatory and policy requirements.

2.2.2 The Legal and Economic Theories of Investment Regulation

The regulation of foreign investment has long been influenced by two competing legal principles. On the one hand is the right of a sovereign state to regulate economic activities within its territory. On the other hand is the need to protect foreign investors against unfair or arbitrary treatment. These competing interests have given rise to two major theories that

[57] R Vernon, *Sovereignty at Bay: The Multinational Spread of U.S. Enterprises* (Basic Books 1971) 46–59.

continue to influence international investment law and the negotiation of Bilateral Investment Treaties (BITs).

The first is the Calvo Doctrine, developed by the Argentine jurist Carlos Calvo during the nineteenth century. The doctrine maintains that foreign investors should not enjoy greater legal protection than that available to citizens of the host state. This principle is commonly described as the national treatment standard. Under the Calvo Doctrine, disputes involving foreign investors should be resolved through the domestic courts of the host state, without diplomatic intervention or international claims by the investor's home country.[58] The doctrine is based on the principle of state sovereignty and has traditionally been supported by many developing countries, particularly in Latin America and Africa, which sought to prevent external interference in their domestic affairs.

The second approach is the International Minimum Standard, which has been widely supported by capital-exporting countries and recognised in the decisions of international investment tribunals. According to this theory, a host state owes foreign investors a minimum standard of protection under customary international law, regardless of the treatment given to its own citizens. This standard requires, among other things, fair and equitable treatment (FET), full protection and security (FPS), protection against arbitrary or discriminatory measures, and access to independent international arbitration where disputes arise.[59] Over the years, these principles have been incorporated into many Bilateral Investment Treaties and other international investment agreements, making the International Minimum Standard one of the most influential principles in modern investment law.

The relationship between these two methods is illustrated by Bilateral Investment Treaties, arbitration under the International Centre for Settlement of Investment Disputes (ICSID) and

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[58] C Calvo, *Le droit international théorique et pratique* (5th edn, Pedone-Lauriel 1896); Sornarajah (n 37) 87–92.

[59] Dolzer and Schreuer (n 46) 130 -136.

the national investment laws of several countries including Nigeria. Therefore, both theories offer a helpful framework to analyse the regime on foreign investment in Nigeria and ascertain if it strikes an appropriate balance between state regulation and foreign investor protection.

2.2.3 Relevance of the Theories to Nigeria's Investment Environment

The theories mentioned above are applicable to the understanding of Nigeria's legal regime on foreign investment development and functioning. They serve as a good starting point for analyzing the development of Nigeria's investment policies over the years and its efforts to reconcile the potential gains from attracting foreign capital with national interests.

After Nigeria gained independence in 1960, the Nigeria investment policy was influenced by the concepts of the Dependency Theory and the Sovereignty Theory. This was clearly illustrated in the Nigerian Enterprises Promotion Decree of 1972 and 1977 also called the Indigenisation Decree. The laws excluded and/or limited participation of foreigners in various areas of the economy to foster indigenous ownership and bolster national control over key economic activities. It was a conscious effort by the government to safeguard local interests and assert itself over the economic resources of the country.

The poor doing of the 1980's prompted a change in Nigeria's investment policy during that period, especially as it was noted that revenue from oil production had dropped and Nigeria's financial situation was difficult. The government became more liberal towards foreign investment and expansion of economic activities in response to the demand for foreign capital and more economic growth. Furthermore, Nigeria had significant location advantages under the OLI Framework, such as an abundance of petroleum resources, a large domestic market and a developing commercial economy. These factors gave the impetus for repealing the indigenisation laws which gave rise to the Nigerian Investment Promotion Commission Act and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act in 1995.

These laws lifted a number of the foreign investment restrictions and insured the return of capital and investment profits. The reforms were a response to Nigeria's embrace of the tenets of Classical Theory and the Modern Theory of Foreign Investment.

Nigeria currently has a regulatory regime for foreign investment, which incorporates aspects of some of the theories discussed in this chapter. For instance, the Nigerian Investment Promotion Commission Act provides for the protection of investors, such as by guaranteeing foreign investors protection from expropriation and access to international arbitration based on provisions of the ICSID Convention. Meanwhile, the government remains sovereignly in charge of regulating by enacting legislation in the interests of the nation. The Nigerian Oil and Gas Industry Content Development Act 2010 mandates increased involvement of Nigerian businesses in the oil and gas industry is a good example. Restrictions are also imposed in some regulated industries in which foreign ownership is being regulated by law.

The Obsolescing Bargain Theory is also reflected in Nigeria's investment environment. The government reserves the right to adjust or overhaul the legal and regulatory regime for foreign investment if a large sum of foreign investment is made in the country and a long-term business relationship is created. For instance, the Petroleum Industry Act 2021 brought in substantial amendments to the legal and fiscal regimes of petroleum operations and existing foreign investors must meet new statutory obligations. Similarly, the conditions of the telecommunications licence and location of spectrum use are examples of regulatory policy shifts after significant investment. The developments reflect the evolving relationship between foreign investors and the Nigerian government and will be discussed in detail in Chapter Four of this study.

To summarise, none of the theories can fully account for Nigeria's attitude to foreign investment regulation. The nation's laws, however, manifest a blend of several theories. Nigeria will provide legal protection and investment incentives to the luring foreign investment it seeks whilst at the same time it will have the powers to regulate economic activities in public interest. In the following chapters of this study this interplay of these competing goals provides the foundation for the analysis carried out.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING FOREIGN INVESTMENT IN NIGERIA

3.1 Overview of the Legal Regime for Foreign Investment

The legal framework for foreign investment in Nigeria is made up of constitutional provisions, domestic legislations, sector-specific legislations and international investment agreements. The structure has evolved and changed over the years. Nigeria used to have a protectionist attitude to foreign investment. This then reversed in 1995, after the liberalisation of the economy. This policy change initiated the repeal of the restrictive Exchange Control Act of 1962 and the Nigerian Enterprises Promotion Decree of 1989, which both restricted foreign equity participation and had strict indigenisation requirements to be met for foreign-owned companies.[60]

The prevailing legal regime is based on the concepts of liberalisation, nondiscrimination and market-oriented investment policies. It aims to balance the sovereignty dimension of the Nigerian state in the exercise of its regulatory power over its economy with the legitimate rights of foreign investors. These protections encompass legal security, protection from uncompensated expropriation and the right to return capital.[61] These statutory measures do not necessarily translate to on the ground protection by regulators. One of the most significant problems investigated in this study is that this is not consistent and will be discussed more in detail in the following chapters.

This chapter looks at the existing legal and institutional framework governing foreign direct investment in Nigeria. It explores the key laws and legislation on foreign investment, the

[60] Nigerian Investment Promotion Commission Act, Cap N117, LFN 2004

[61] United Nations Conference on Trade and Development (UNCTAD), *Investment Policy Review: Nigeria* (United Nations 2009) 1.

institutions that enforce them, the legal safeguards that can be relied on by investors, and the avenues for investors to seek redress. The chapter also compares the effectiveness of the current law, which is based on the structural weaknesses that are identified and discussed in the later chapter.

3.2 Principal Statutes Governing Foreign Investment

Foreign investment in Nigeria is regulated by a number of statutes that collectively govern the various stages of the investment process, including entry into the Nigerian market, capital investment, operation, repatriation of profits, and eventual exit. Together, these statutes provide the legal framework within which foreign investors carry on business in Nigeria. The principal legislative instruments governing foreign investment are discussed below.

3.2.1 Nigerian Investment Promotion Commission Act

The NIPC Act is the principal legislation regulating foreign investment in Nigeria.[62] It establishes the legal framework for investment liberalisation and serves as the foundation upon which other laws regulating foreign investment operate. Under section 17 of the Act, any non-Nigerian is entitled to invest in and participate in the operation of any enterprise in Nigeria.[63] In addition, section 18 requires every enterprise with foreign participation to register with the Nigerian Investment Promotion Commission before commencing business operations.[64] Section 27 further permits a foreign investor to acquire shares in any Nigerian enterprise using any freely convertible foreign currency.[65]

Apart from facilitating foreign investment, the Act contains important provisions aimed at protecting investors. Section 24 guarantees every registered enterprise the unrestricted transfer of funds through an Authorised Dealer in freely convertible currency. This protection extends to dividends or profits arising from the investment, payments relating to the servicing

[62] NIPC Act (Cap N117, LFN 2004)
[63] Ibid, s 17
[64] Ibid, s 18
[65] Ibid, s 27

of foreign loans, and the remittance of net proceeds realised from the sale or liquidation of the enterprise.[66]

The Act also provides safeguards against arbitrary government interference. Section 25(1) expressly prohibits the nationalisation or expropriation of any enterprise by any government within the Federation. It further provides that no investor shall be compelled to surrender his or her interest in the capital of an enterprise.[67] However, this protection is not absolute. Section 25(2) permits compulsory acquisition where it is carried out in the national interest or for a public purpose, pursuant to a valid law. Such acquisition must be accompanied by the payment of fair and adequate compensation without undue delay. The investor must also have access to a court of law to determine both the nature of the interest acquired and the amount of compensation payable.[68]

Furthermore, section 31 of the Act contains a limited Negative List of business activities that are closed to both Nigerian and foreign private investors.[69] These include the production of arms and ammunition, the manufacture or dealing in narcotic and psychotropic substances, as well as the manufacture of military and paramilitary clothing.

3.2.2 Investments and Securities Act 2025

The ISA 2025, which received Presidential assent on 25 March 2025, repealed the Investments and Securities Act 2007 (ISA 2007) and now serves as the principal legislation regulating portfolio foreign investment, capital market activities, and public securities in Nigeria.[70] The enactment of the Act was intended to modernise the country's capital market regulatory framework in response to developments in the global financial system, particularly the growth of digital assets and other financial innovations. It also reflects Nigeria's

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[66] Ibid, s 24
[67] Ibid, s 25(1)
[68] Ibid, s 25(2)
[69] Ibid, s 31
[70] Investments and Securities Act 2025, No 2 of 2025

commitment to aligning its capital market with the standards of the International Organisation of Securities Commissions (IOSCO).[71]

Section 3 of ISA 2025 establishes the Securities and Exchange Commission (SEC) as the principal regulatory authority responsible for overseeing the Nigerian capital market. The Commission is vested with broad powers to regulate market activities, protect investors, and promote a fair, efficient, and transparent capital market.[72]

A notable feature of the Act is found in section 140, which requires every public company to obtain the prior approval of the SEC before carrying out any major corporate action. These actions include mergers, takeovers, corporate restructurings, share reconstructions, and substantial disposals of assets that may affect the company's business direction or involve the issuance of securities.[73] In addition, section 141 sets out the procedure for mergers involving public companies by requiring an approval-in-principle from the SEC as the first stage of the process. Section 144 further provides that no takeover bid shall be initiated without the prior written approval of the Commission.[74]

Another important development introduced by ISA 2025 is the formal recognition of virtual assets and digital financial instruments as securities. By bringing these assets within the regulatory authority of the SEC, the Act addresses a significant regulatory gap that existed under the repealed ISA 2007.

For the purpose of this study, references to the provisions of ISA 2007 are made only where they are relevant for historical or comparative discussion. Unless otherwise indicated, all references to the current legal framework governing Nigeria's capital market relate to ISA 2025.

3.2.3. Companies and Allied Matters Act 2020

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[71] Ibid
[72] Ibid, s 3.
[73] Ibid, s 140.
[74] Ibid, ss 141 and 144.

The CAMA 2020 regulates the incorporation, administration, and winding up of companies through which foreign investors carry on business in Nigeria. It is the most comprehensive reform of Nigeria's company law in over three decades and contains 870 sections arranged in seven parts.[75]

Section 78(1) of CAMA 2020 requires every foreign company intending to carry on business in Nigeria to first incorporate a separate legal entity under the Act before establishing a place of business or providing services within the country.[76] This provision reinforces the principle that foreign companies cannot lawfully operate in Nigeria without first acquiring corporate status under Nigerian law.

Although incorporation is the general rule, the Act recognises limited exceptions. Under section 80, a foreign company may be exempted from the incorporation requirement where it has been specifically invited by the Federal Government to execute a designated project or where its activities are financed by a bilateral or multilateral donor.[77] Unlike the repealed Companies and Allied Matters Act 2004, which required applications for exemption to be made to the Council of Ministers, CAMA 2020 now requires such applications to be submitted to the supervising Minister.[78]

CAMA 2020 also strengthens corporate transparency through its beneficial ownership disclosure requirements. Section 119 requires every person with significant control over a company, whether acting as a direct shareholder or through a nominee, to notify the company in writing of the particulars of that control within seven days of acquiring such status.[79] This provision brings Nigeria's company law into closer conformity with international standards on anti-money laundering and anti-corruption. It is particularly important to foreign investors who operate through holding companies or other intermediate corporate structures.

[75] Companies and Allied Matters Act 2020
[76] Ibid, s 78(1).
[77] Ibid, s 80
[78] Companies and Allied Matters Act, Cap C20, LFN 2004, s 56.
[79] CAMA 2020, s 119

The Act also simplified the incorporation process by removing the requirement for a memorandum of association as a compulsory constitutional document and introducing other measures designed to make company registration more efficient.[80]

Furthermore, section 27(2)(a) of CAMA 2020 prescribes a minimum issued share capital of ₦100,000 for private companies and ₦2,000,000 for public companies.[81] However, as discussed in Chapter Four of this study, the Corporate Affairs Commission has, in practice, required companies with foreign participation to meet a substantially higher administrative capital threshold. This requirement is not expressly provided for in the Act. Its application therefore raises important legal questions regarding the limits of administrative authority, the powers of regulatory agencies, and the supremacy of primary legislation within Nigeria's corporate regulatory framework.

3.2.4 The Business Facilitation (Miscellaneous Provisions) Act 2023

The Business Facilitation (Miscellaneous Provisions) Act 2023 (BFA) was enacted to improve the ease of doing business in Nigeria by reducing bureaucratic obstacles and amending twenty-one business-related statutes, including the CAMA 2020. The Act is particularly relevant to foreign investment because it introduces reforms aimed at simplifying regulatory procedures, improving administrative efficiency, and removing legal barriers that discourage investment. Through amendments to several existing statutes, the BFA has strengthened Nigeria's investment framework in a number of important respects.

Among its key innovations are the creation of single-window service desks across federal ministries, departments and agencies, as well as the introduction of statutory timelines for processing specified regulatory approvals.[82]

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[80] Ibid, s 18(2)

[81] ibid, s 27(2)(a).

[82] Business Facilitation (Miscellaneous Provisions) Act 2023 (Schedule Consequential Amendments Part III) s 25-26; Customs and Excise Management Act (Cap. C45, LFN 2004), s 18A(1)

One of the major reforms introduced by the Act relates to the registration of companies that subsequently acquire foreign ownership. Before the enactment of the BFA, the NIPC Act primarily applied to companies with foreign participation at the point of incorporation. The BFA inserted section 20(3) into the NIPC Act, requiring any Nigerian company that later acquires foreign equity or participation to register with the Nigerian Investment Promotion Commission within three months of the acquisition.[83] This amendment closes an important regulatory gap while enabling growing Nigerian businesses that later receive foreign investment to qualify for incentives administered by the NIPC, including Pioneer Status.

The BFA also introduced significant changes to Nigeria's immigration framework. By amending section 20(8) of the Immigration Act, the Act requires applications for entry visas to be approved or rejected, with reasons for any refusal, within forty-eight hours of submission.[84] In addition, section 20(9) requires the Nigeria Immigration Service to publish comprehensive information on the requirements, procedures, and timelines applicable to the Visa on Arrival process on its official website and on Nigerian embassy websites.[85] These reforms improve transparency and predictability for foreign investors, company executives, and technical personnel seeking to enter Nigeria for business purposes.

Another important amendment concerns foreign companies operating under CAMA 2020. Section 78(2)(c), as amended by the BFA, recognises foreign companies that are exempt from the requirement of local incorporation under other applicable Nigerian laws. This amendment provides greater legal certainty for foreign entities that qualify for statutory exemptions.[86]

The Act further amended section 127 of CAMA 2020 by permitting a company's Board of Directors to increase its issued share capital through a board resolution, provided such authority is granted by the company's articles of association or by a resolution of the general

[83] BFA (Part XV) s 54; NIPC, s 20(3)
[84] BFA (Part VII) s 36; Immigration Act 2015, s 20(8)
[85] BFA (Part VII) s 36; Immigration Act 2015, s 20(9)
[86] BFA (Part I) s 2; CAMA, s 78(2)(c)

meeting. This reform reduces delays associated with convening shareholders' meetings where additional capital is required urgently, particularly in transactions involving foreign investment.[87]

The BFA also amended section 5(2) of the National Office for Technology Acquisition and Promotion (NOTAP) Act. Under the amendment, companies entering into technology transfer agreements, such as software licensing, trademark licensing, technical assistance, or similar arrangements, during their first two years of operation are given more time to register those agreements. They are also exempt from penalties for late registration where the agreements are registered before the end of the second year of business.[88] This amendment eases regulatory compliance for foreign technology companies and franchise businesses entering the Nigerian market.

A further innovation introduced by section 4 of the BFA is the "Silent Approval" or "Default Approval" mechanism. The Act requires Ministries, Departments, and Agencies (MDAs) to publish the requirements and timelines applicable to licences, permits, and other regulatory approvals. Where an MDA fails to approve or reject an application within the published timeframe, the application is deemed to have been approved by operation of law.[89] This mechanism is intended to protect foreign investors from regulatory extortion and administrative bottlenecks when trying to secure licenses.

3.2.5 Industrial Inspectorate Act

The Industrial Inspectorate Act plays an important role in Nigeria's foreign investment framework, although its relevance is often overlooked. The Act regulates the monitoring and verification of capital invested in enterprises with foreign participation.

[87] BFA (Part I) s 2; CAMA, s 127
[88] BFA (Part XII) s 48; National Office for Technology Acquisition and Promotion Act, s 5(2)
[89] BFA, s 4

Under section 3 of the Act, both foreign and Nigerian businesses are required to notify the Industrial Inspectorate Division of the Federal Ministry of Industry, Trade, and Investment whenever they incur capital expenditure above the prescribed statutory threshold.[90]

Upon receiving the required notification, section 10 of the Act requires the issuance of a Certificate of Acceptance to confirm the actual value of the capital assets brought into Nigeria. This certificate serves an important practical purpose because it forms the basis for calculating tax depreciation allowances. It is also used for the capitalisation of assets for accounting and regulatory purposes.[91]

3.2.6 Foreign Exchange (Monitoring and Miscellaneous Provisions) Act

The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act liberalised Nigeria's foreign exchange market and provides the legal framework governing the importation of foreign capital and the repatriation of investment proceeds by foreign investors.[92] Under section 12 of the Act, foreign currency may be brought into Nigeria through Authorised Dealers, namely licensed commercial banks, without obtaining prior approval from the government.[93]

The Act also provides important safeguards for foreign investors after the importation of capital. Section 15(1) requires an electronic Certificate of Capital Importation (eCCI) to be issued within twenty-four hours after the foreign funds are brought into Nigeria. This certificate serves as the statutory evidence of the investment and forms the legal basis for the investor's right to repatriate capital and investment returns.[94] Furthermore, section 15(4) guarantees the unrestricted transfer and repatriation of profits, dividends, and the net proceeds

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[90] Industrial Inspectorate Act, Cap I8, LFN 2004, s 3.
[91] Ibid, s 10.
[92] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap F34, LFN 2004
[93] Ibid, s 12.
[94] ibid, s 15(1); Lexology, 'Central Bank of Nigeria Introduces Electronic Certificates of Capital Importation (e-CCI)' 2016 <https://share.google/KKCOT1axceN6PjlSM> accessed 20 June 2026

realised from the sale or liquidation of an investment in freely convertible currency through an Authorised Dealer.[95]

Although section 15(4) provides these statutory guarantees, their implementation has not always been consistent in practice. As discussed in Chapter Four of this study, successive foreign exchange circulars issued by the Central Bank of Nigeria have affected the practical exercise of these rights. Consequently, statutory guarantees contained in the Act have, in some instances, become subject to administrative directives, thereby raising concerns about the certainty and effective enforcement of Nigeria's legal commitments to foreign investors.

3.2.7 Corporate Taxation and Investment Incentives under the Nigeria Tax Act 2025

The enactment of the Nigeria Tax Act 2025, which came into operation on 1 January 2026, brought about a major reform of Nigeria's corporate tax and investment incentive regime. The Act is one of the four tax reform statutes[96] signed into law by President Bola Ahmed Tinubu on 26 June 2025. It repealed the Companies Income Tax Act, the Industrial Development (Income Tax Relief) Act, the Capital Gains Tax Act, the Personal Income Tax Act, the Stamp Duties Act, and the Value Added Tax Act. These laws were consolidated into a single statutory framework with the aim of reducing the conflicting, overlapping, and ambiguous provisions that had previously made tax compliance difficult for both local and foreign companies.[97]

The NTA 2025 introduces a two-tier corporate income tax system. Under the Act, small companies with an annual gross turnover not exceeding ₦100 million and total fixed assets not exceeding ₦250 million are exempt from the payment of corporate income tax, capital gains tax, and the Development Levy. This exemption removes the tax burden on smaller businesses, including eligible foreign-owned companies operating within the prescribed

[95] FEMMP Act, s 15(4).
[96] Nigeria Tax Act 2025, the Nigeria Tax Administration Act 2025, the Nigeria Revenue Service (Establishment) Act 2025, and the Joint Board (Establishment) Act 2025.
[97] Nigeria Tax Act 2025

threshold.[98] Companies that do not qualify as small companies are required to pay corporate income tax at the standard rate of thirty percent.

Another important reform introduced by the Act is the consolidation of several statutory levies into a single Development Levy. The Tertiary Education Tax, the National Information Technology Development Agency levy, the National Agency for Science and Engineering Infrastructure levy, the Student Loan levy, and the Cybercrime levy have been merged into a unified Development Levy of four percent, payable on the assessable profits of all companies other than small companies.[99] This reform is intended to reduce the multiple tax charges that previously increased the overall tax burden on businesses, including foreign investors.

The Act also reforms the system of investment incentives. It replaces the Pioneer Status incentive previously granted under the repealed Industrial Development (Income Tax Relief) Act with the Economic Development Incentive (EDI). Under this new scheme, both local and foreign investors who undertake investments in government-designated priority sectors, such as large-scale infrastructure, agriculture, and high-technology manufacturing, are entitled to a five percent annual tax credit on qualifying capital expenditure for a period of up to five years. Any unused tax credit may also be carried forward in accordance with the provisions of the Act.[100]

Furthermore, the NTA 2025 incorporates international tax rules that are particularly relevant to foreign investors. Large multinational enterprises with global revenues exceeding €750 million or domestic turnover above ₦50 billion are now subject to a minimum effective tax rate framework. This framework includes a top-up tax to ensure compliance with the applicable global minimum tax standard. The Act also provides that indirect offshore transfers of shares in companies whose principal value is derived from assets located in

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[98] K C Adeoye and M Oyelami, 'Nigeria's 2025 Tax Reform Acts Explained: Key Changes, Business Impacts, and Compliance Strategies' 2025 <https://www.bakertilly.ng/insights/nigerias-2025-tax-reform-acts-explained> accessed 20 June 2026

[99] NTA 2025, s 59

[100] K C Adeoye and M Oyelami (n 98)

Nigeria are subject to Nigerian capital gains tax. This provision closes a long-standing gap that previously allowed tax-efficient offshore exit arrangements.[101]

3.2.8 National Office for Technology Acquisition and Promotion Act

The NOTAP Act regulates the acquisition and transfer of foreign technology into Nigeria. The Act seeks to prevent capital flight through payments presented as technology transfer fees, management fees, or excessive service charges.[102]

Section 4(b) of the Act requires every agreement involving the transfer of foreign technology to be registered with the National Office for Technology Acquisition and Promotion (NOTAP) before it is implemented. This requirement applies to agreements relating to the use of trademarks, patents, technical know-how, engineering services, and other forms of technology transfer.[103]

The Act also provides an enforcement mechanism to ensure compliance with its registration requirements. Under section 7, where a technology transfer agreement is not registered with NOTAP, payments due under the agreement cannot be remitted in foreign currency through the Central Bank of Nigeria. As a result, an unregistered agreement becomes ineffective for the purpose of obtaining foreign exchange approval for such payments.[104]

3.2.9 Sector-Specific Regulations

In addition to the general laws regulating foreign investment, several sector-specific statutes and regulatory instruments govern foreign investment in key sectors of the Nigerian economy. These sectors are particularly important because of their economic contribution and the regulatory issues examined in this study.

[101] Ibid
[102] National Office for Technology Acquisition and Promotion Act, Cap N62, LFN 2004
[103] Ibid, ss 4(b) and 5(2).
[104] Ibid, s 7

Oil and Gas: The Petroleum Industry Act 2021 (PIA 2021) introduced comprehensive reforms to Nigeria's petroleum industry. One of its major innovations was the restructuring of the Nigerian National Petroleum Corporation into a commercially driven entity known as NNPC Limited. The Act also established the Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority as separate regulatory bodies responsible for upstream operations and midstream and downstream activities respectively.[105] In addition, the PIA 2021 introduced a revised royalty system, reformed the legal framework for host community development, and restructured the fiscal regime applicable to foreign equity participation in upstream petroleum operations.[106]

Telecommunications: The Nigerian Communications Act 2003 regulates investment in the telecommunications sector. Under the Act, every foreign telecommunications operator is required to obtain an operating licence from the Nigerian Communications Commission before carrying on business in Nigeria. Operators must also comply with the applicable consumer protection requirements and local content obligations prescribed by law.[107]

Real Estate and Land: Foreign investment in land and real estate is regulated principally by the Land Use Act 1978. The Act vests all urban land in each state in the Governor, who holds it in trust for the benefit of the people.[108] As a result of section 1 of the Act, neither Nigerian nor foreign investors can acquire absolute ownership of land. The highest proprietary interest available is a Right of Occupancy, which is a statutory lease that may be granted for a maximum period of ninety-nine years, subject to renewal. This legal restriction is an important factor for foreign investors whose projects involve substantial investment in land or other real property.

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[105] Petroleum Industry Act 2021, ss 4 and 29

[106] N Akunne, 'From Fragmentation to Reform: A Robust Analysis and Understanding of the PIA 2021's Impact on Upstream Petroleum Operations in Nigeria (Part 2)' 2025 <https://share.google/Mpy9fRn34ia8jabgb> accessed 17 July 2026.

[107] Nigerian Communications Act 2003, s 4.

[108] Land Use Act 1978, s 1.

Financial Technology: Nigeria's financial technology sector is regulated through various guidelines issued by the Central Bank of Nigeria on Payment Service Banks and Digital Financial Services, together with the Securities and Exchange Commission's rules on digital assets made under ISA 2025. These regulatory instruments prescribe capitalisation requirements, licensing conditions, and data residency obligations that foreign operators in the fintech sector are required to satisfy before commencing or continuing business operations in Nigeria.

3.3 Institutional Framework

The administration of Nigeria's legal framework on foreign investment is shared among several federal regulatory agencies, each of which performs specific statutory functions relating to different aspects of the investment process. The major institutions and their respective responsibilities are discussed below.

3.3.1 Nigerian Investment Promotion Commission (NIPC)

The NIPC was established under the NIPC Act as the principal government agency responsible for promoting, coordinating, and monitoring investment activities in Nigeria.[109] As part of its investment promotion mandate, the Commission operates the One-Stop Investment Centre (OSIC), which brings together representatives of seventeen government agencies, including the Corporate Affairs Commission and the Nigeria Immigration Service, under one roof. The objective is to simplify administrative procedures relating to business registration, permits, licences, and other investment approvals.[110]

In addition to its regulatory functions, the NIPC is empowered to negotiate special investment incentives for strategic investors. It also coordinates investment promotion activities in

[109] NIPC Act, s 4.

[110] Nigerian Investment Promotion Commission, 'One Stop Investment Centre' <https://nipc.gov.ng/about-us/organisation-entities/osic> accessed 20 June 2026

collaboration with relevant Federal Government ministries and agencies to encourage both domestic and foreign investment.

3.3.2 Central Bank of Nigeria (CBN)

The CBN, established under the Central Bank of Nigeria Act 2007, is Nigeria's apex monetary authority. In relation to foreign investment, the Bank performs three key functions. It supervises Authorised Dealers responsible for issuing electronic Certificates of Capital Importation under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, manages Nigeria's foreign exchange policy, and issues circulars and guidelines regulating the movement of foreign capital into and out of the country.[111]

The CBN's power to issue regulatory circulars under the FEMMP Act has, however, raised important legal and practical concerns. As discussed in Chapter Four of this study, a number of CBN directives have affected the practical exercise of investors' statutory rights to repatriate capital and investment returns. This has created tension between the Bank's exercise of its monetary policy powers and the guarantee of unrestricted repatriation contained in section 15(4) of the FEMMP Act. This conflict represents one of the major implementation challenges within Nigeria's foreign investment regime.[112]

3.3.3 Securities and Exchange Commission (SEC)

The SEC is the principal regulator of Nigeria's capital market under ISA 2025. It supervises the activities of the Nigerian Exchange Group (NGX), registers foreign institutional investors, approves public offers and rights issues, enforces corporate governance standards, and protects the integrity of the capital market by preventing insider trading, market manipulation, and unlawful investment schemes.[113]

ISA 2025 has also expanded the regulatory powers of the SEC to include oversight of virtual asset service providers, digital asset operators, and online foreign exchange trading platforms.

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[111] Central Bank of Nigeria Act 2007, s 2.
[112] FEMMP Act, s 15(4).
[113] ISA 2025, s 3.

This development reflects the increasing importance of digital financial services within Nigeria's capital market.

3.3.4 National Office for Technology Acquisition and Promotion (NOTAP)

The NOTAP regulates technology transfer agreements entered into between foreign parent companies and their Nigerian subsidiaries or licensees. Its role is to examine the terms of such agreements to ensure that they are fair and that they do not facilitate capital flight through excessive management fees, inflated service charges, or other payments that are disproportionate to the services rendered.[114]

Although NOTAP performs functions that complement those of the Nigerian Investment Promotion Commission, both institutions operate independently of one another. NOTAP carries out its statutory responsibilities under the supervision of the Federal Ministry of Industry, Trade, and Investment.

3.3.5 Other Regulatory Agencies

3.3.5.1 Nigeria Revenue Service (NRS)

The NRS was established under section 3 of the Nigeria Revenue Service (Establishment) Act 2025, one of the four Tax Reform Acts signed into law on 26 June 2025 and which came into force on 1 January 2026. The Act repealed the Federal Inland Revenue Service (Establishment) Act No. 13 of 2007, dissolved the Federal Inland Revenue Service (FIRS), and replaced it with the NRS. Under section 3(2) of the Act, the NRS is established as a body corporate with perpetual succession, a common seal, and the legal capacity to sue and be sued, as well as to acquire and hold property.[115]

The establishment of the NRS goes beyond a mere change of name. Section 1 of the Act expands the functions of the Service from the collection of federal taxes to the administration of all revenue accruing to the Government of Nigeria, thereby giving it a broader statutory

[114] NOTAP Act, s 4.
[115] Nigeria Revenue Service (Establishment) Act 2025, ss 1 and 3

mandate. Under section 4, the NRS is responsible for the assessment, collection, and accounting of all revenue due to the Federation. Its responsibilities also extend to cross-border corporate taxation, taxation of non-resident companies, Value Added Tax, and the administration of upstream and midstream petroleum taxes under the Petroleum Industry Act 2021. The Act further authorises the NRS to operate a fully automated tax administration system, issue Taxpayer Identification Numbers to companies with foreign participation, and cooperate with foreign tax authorities in enforcing international tax obligations, including the Global Minimum Top-Up Tax framework established under the Nigeria Tax Act 2025.[116]

The Act also introduces an important enforcement measure. Section 39 empowers the Accountant-General of the Federation to deduct unremitted tax revenue directly from the statutory allocations of defaulting Ministries, Departments, and Agencies. Although this provision is intended to strengthen tax compliance, it has generated academic debate concerning its compatibility with the constitutional principles of due process and separation of powers. From the perspective of foreign investors, however, the establishment of the NRS is intended to provide a more transparent, predictable, and technology-driven tax administration system than the one operated under the former FIRS.[117]

3.3.5.2 Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)

The NMDPRA was established under section 29(1) of the Petroleum Industry Act 2021 as one of the two specialised regulatory agencies created following the restructuring of the former Department of Petroleum Resources. The Act introduced a dual regulatory framework for Nigeria's petroleum industry. While the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) regulates exploration and production activities, the NMDPRA is

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[116] ibid, s 4

[117] NRS (Establishment) Act 2025, s 39; C L Oriaifoh and O Obaretin, 'Nigeria Tax Reform Acts: Implications, Challenges and Prospects' (2025) 9 (9) *International Journal of Research and Innovation in Social Science* 873

responsible for regulating investment in petroleum processing, refining, transportation, storage, and marketing within the midstream and downstream sectors.[118]

The powers of the NMDPRA are set out in section 32 of the Petroleum Industry Act 2021 and cover both technical and commercial regulation of the sector. Under section 111, no person may construct or operate a hydrocarbon refinery, petrochemical plant, bulk storage terminal, or cross-country pipeline without first obtaining a licence from the Authority. The Act also requires the NMDPRA to determine licence applications within ninety days.[119] Sections 113 and 114 further empower the Authority to implement a Third-Party Access framework for major midstream infrastructure and to establish independent and non-discriminatory tariff systems. As a result, foreign investors must take these regulatory pricing arrangements into account when planning the financial viability of long-term projects.[120]

In addition, the NMDPRA administers the Domestic Gas Delivery Obligations, which require certain midstream operators to reserve a prescribed proportion of natural gas production for domestic use before liquefied natural gas exports may be approved. The Authority also oversees compliance with the Midstream and Downstream Petroleum Environmental Regulations. These regulations require foreign operators to establish a funded Decommissioning and Abandonment Fund to cover future environmental liabilities arising at the end of a project's operational life. Furthermore, section 47 of the Petroleum Industry Act 2021 establishes a dedicated fund for the NMDPRA, financed through statutory fees and a prescribed wholesale levy on petroleum products and natural gas. This funding arrangement

[118] Petroleum Industry Act 2021, ss 29(1) and 4.
[119] Ibid, s 111
[120] Ibid, s 113 and 114

enhances the financial independence of the Authority and supports the consistent regulation of large-scale petroleum investments.[121]

3.3.5.3 Nigerian Communications Commission (NCC)

The NCC was established as an independent corporate regulatory body under section 3(1) of the Nigerian Communications Act (NCA) 2003. The Act vests the Commission with the exclusive statutory responsibility to regulate the telecommunications sector, allocate and manage the national radio frequency spectrum, promote fair competition, and issue operating licences to all telecommunications service providers, whether local or foreign.[122]

With respect to foreign investment, Nigeria's telecommunications sector permits one hundred percent foreign ownership of a telecommunications company under section 17 of the NIPC Act, subject to the regulatory supervision of the NCC. The Commission monitors ownership structures through its Competition Practices Regulations to ensure that foreign investors do not acquire controlling interests in multiple dominant licensees where such ownership is likely to reduce competition within the market. The NCC also enforces the National Policy for the Promotion of Indigenous Content in the Nigerian Telecommunications Sector. Under this policy, foreign-owned operators are expected to provide clear plans for transferring technical and managerial positions to qualified Nigerians and must comply with local data hosting requirements.[123]

Sections 31 and 32 of the NCA 2003 establish two categories of licences administered by the NCC. The first is the Individual Licence, which applies to large-scale telecommunications services such as Unified Access Service Licences for mobile network operators, International Gateway Licences, and Submarine Cable Landing Licences. Applicants for these licences

[121] PIA 2021, s 47; Midstream and Downstream Petroleum Operations Regulations 2022 <https://pia.gov.ng/wp-content/uploads/2022/07/Midstream-and-Downstream-Petroleum-Operations-Regulations-2022.pdf> accessed 20 June 2026

[122] Nigerian Communications Act 2003, s 3(1).

[123] NIPC Act, s 17; O A Odiase, 'Telecommunications Regulation and Market Competition in Nigeria: A Legal Appraisal' (2022) 8 (2) *Journal of Commercial and Digital Economy Law* 145.

must satisfy strict financial and technical requirements. The second is the Class Licence, which covers less capital-intensive services, including Value-Added Services and internet service provision. These licences are issued upon registration and payment of the prescribed statutory fee. In addition, section 121 of the Act authorises the NCC to allocate scarce radio spectrum through competitive public auctions. Successful bidders are required to provide substantial bank guarantees and comply with the network deployment timelines prescribed by the Commission.[124]

3.3.5.4 National Information Technology Development Agency (NITDA)

The NITDA was established under section 1 of the NITDA Act. Although the Agency was originally created to promote information technology development and provide advisory support, its regulatory responsibilities have expanded considerably in recent years. Foreign technology companies, contractors, and consulting firms seeking to execute digital projects in Nigeria are now subject to NITDA's regulatory oversight. Through its IT Project Clearance function, supported by Federal Government circulars and section 6 of the NITDA Act, public institutions are required to obtain NITDA's approval before implementing information technology infrastructure projects. In addition, foreign service providers bidding for Federal Government digital contracts must register in accordance with the NITDA Guidelines for Registration of ICT Service Providers and Contractors.[125]

An important change affecting NITDA was introduced by the Nigeria Tax Act 2025. Before the enactment of that Act, section 12 of the NITDA Act imposed a separate one percent levy on the pre-tax profits of telecommunications, cyber, and technology companies with an annual turnover of at least ₦100 million. The proceeds of this levy were paid into the National Information Technology Development Fund. The Nigeria Tax Act 2025 abolished this separate levy and incorporated it into the unified four percent Development Levy

[124] NCA 2003, ss 31, 32 and 121.
[125] NITDA Act, Cap N156, LFN 2004, ss 1 and 6

administered by the Nigeria Revenue Service.[126] The Act also provides for a gradual reduction of NITDA's allocation from the Development Fund until the Agency is funded entirely through normal government budgetary allocations.[127]

For foreign technology companies, this reform simplifies tax administration by removing the need for separate fiscal compliance with NITDA and centralising tax collection under the Nigeria Revenue Service.[128] NITDA now concentrates on technical standards, the enforcement of the Nigeria Data Protection Act 2023, and the regulation of emerging technologies, including artificial intelligence.[129] Nevertheless, some overlap still exists between the regulatory responsibilities of NITDA and the Nigerian Communications Commission, particularly in relation to data residency requirements and cloud sovereignty. This regulatory overlap is examined further in the critical evaluation in section 3.6 of this study.

3.3.5.5 Nigeria Immigration Service (NIS)

The NIS derives its statutory authority from the Immigration Act 2015, which repealed the Immigration Act 1963. Under section 2 of the Act, the NIS is responsible for regulating the entry, residence, and employment of foreign nationals in Nigeria. Its role in the administration of foreign investment has been strengthened by the Nigeria Visa Policy 2025 (NVP 2025) and the related immigration reforms introduced by the Federal Ministry of Interior, which came into effect on 1 May 2025.[130]

One of the major changes introduced by the Nigeria Visa Policy 2025 relates to the entry of foreign nationals into Nigeria. The former manual Visa on Arrival system was replaced with

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126 NTA, s 59

127 The Cable, 'Education, NITDA, NASENI Taxes to be Scrapped as Bill Proposes a Flat 4% Development Levy' 2024 <https://www.thecable.ng/exclusive-education-nitda-naseni-taxes-to-be-scrapped-as-bill-proposes-a-flat-4-development-levy/> accessed 20 June 2026

128 Nigeria Tax Administration Act, s 3 (1)(a)(v)

129 Nigeria Data Protection Act 2023, s 4 & 5; NITDA Act, s 6

130 Immigration Act 2015, s 2

a fully electronic visa (e-Visa) platform. Under this system, foreign investors can submit visa applications online and receive a decision within forty-eight hours. The e-Visa platform is integrated with international security databases, covers 177 eligible nationalities, and removes the need for physical visa stickers or paper approvals issued through Nigerian embassies. Temporary Work Permits for foreign technical personnel engaged in short-term corporate assignments are now processed exclusively through the NIS Citizenship and Business Management Portal. The prescribed fees are US$600 for a three-month permit and US$1,100 for a six-month permit, while all approvals are issued centrally from the NIS headquarters in Abuja.[131]

The immigration framework also regulates the long-term employment of expatriates by foreign companies operating in Nigeria. A foreign-incorporated company cannot employ non-Nigerian workers without first obtaining an Expatriate Quota through the Expatriate Administration System (EAS). Under the 2025 reforms, all applications for Expatriate Quota approvals must be submitted through the EAS. Companies are required to upload relevant documents, including certificates of incorporation, tax clearance certificates, and organisational charts, as part of the application process. The NIS also strictly enforces the Understudy Mandate, which requires every expatriate quota holder to nominate and train at least two qualified Nigerian understudies who possess a minimum of a Bachelor's degree or Higher National Diploma in a relevant discipline. The training programme must also include measurable targets for the transfer of knowledge and skills to Nigerian employees.[132]

The 2025 immigration reforms further strengthened the enforcement powers of the NIS.

Following a three-month amnesty period, visa overstay penalties became effective from 1 August 2025. These penalties range from fines of US$15 per day for shorter periods of

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[131] Bloomfield Law, 'Federal Government of Nigeria Proposes Updated Visa Policy: NVP 2025' 2025 <https://www.bloomfield-law.com/gaze/thought-leadership/federal-government-nigeria-proposes-updated-visa-policy-nvp-2025> accessed 20 June 2026

[132] Ministry of Interior, 'Ministry of Interior Clarifies Expatriate Quota Policy' 2025 <https://interior.gov.ng/ministry-of-interior-clarifies-expatriate-quota-policy/> accessed 20 June 2026

overstay to five-year or permanent travel bans for prolonged or repeated violations. In addition, section 47 of the Immigration Act places responsibility on corporate employers for ensuring that their foreign employees comply with Nigerian immigration laws. Companies that fail to submit the required expatriate utilisation returns through the EAS may face substantial financial penalties. In appropriate cases, responsible company directors may also be prosecuted, while defaulting expatriate employees may be deported. Furthermore, long-term foreign investors are required to maintain a valid Combined Expatriate Residence Permit and Aliens Card (CERPAC), the renewal of which is now processed electronically through the Expatriate Administration System.[133]

3.4 Investor Rights and Protections under Nigerian Law

Nigerian law provides a range of legal safeguards intended to protect foreign investments from major regulatory and political risks. These protections are found in both the Constitution and various statutes regulating investment. Together, they establish the legal standards against which the actions of regulatory agencies are assessed throughout this study.

3.4.1 Constitutional Guarantee Against Arbitrary Acquisition

The major constitutional protection against arbitrary appropriation of property in Nigeria is provided by Section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The provision states that the right to take property or interest in immovable property, shall not be restricted except by law. Any such law should include provisions for the speedy payment of fair and adequate compensation. Furthermore, under section 44(1)(b) any aggrieved investor is entitled to go to the High Court and seek determination of his or her interest in the property and compensation for that.[134]

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[133] Immigration Act 2015, s 47; Cross Border Advisory Solutions, 'Immigration Regulatory Updates April 2025' 2025 <https://crossborderadvisorysolutions.com/immigration-regulatory-updates-april-2025/> accessed 20 June 2026

[134] CFRN, s 44

This constitutional protection extends to foreign investors who are lawfully investing in Nigeria's investments and property. It is therefore the supreme law for all the legislative and administrative measures that impact on investment rights in the country.

3.4.2 Statutory Protections under the NIPC Act

The Nigerian Investment Promotion Commission (NIPC) Act enhances constitutional protection by offering more specific statutory protection. Section 25(1) clearly forbids any government in the Federation to nationalise or expropriate any enterprise. It also stipulates that an investor should not be forced to sell his or her investment of the capital of an enterprise.[135]

But the protection granted by section 25(1) comes with certain exceptions. The compulsory acquisition envisaged by section 25(2) may occur only for a "public purpose" or in the "national interest", pursuant to a "valid law". The law also needs to guarantee that compensation is paid in a timely and equitable manner and that the investor has the right to go to court to find out what interest they hold and how much compensation they are entitled to receive.[136] All these provisions together provide an important statutory framework to safeguard foreign investments against arbitrary action by the State.

The Supreme Court has given recognition to these statutory safeguards. The court in *Asset Management Corporation of Nigeria v Suru Worldwide Ventures Nigeria Limited & Ors* further held that the government is not allowed to confiscate or keep without following the constitutional and statutory requirements of due process, lawful authority and payment of fair compensation of the corporate entity whose property or investment is to be confiscated without the consent of the corporate entity.[137] The decision serves as a reminder of the

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[135] NIPC Act, s 25(1).
[136] Ibid, s 25(2).
[137] (2024) LPELR-61601 (SC); *Goldmark Nigeria Limited & Ors v. Ibafon Company Limited & Ors* (2012) 10 NWLR (Pt. 1308) 291

statutory safeguards in the NIPC Act, and offers judicial support in regard to the constitutional debate on administrative overreach discussed in Chapter Four.

There is another protection in the NIPC Act in relation to compensation. Section 25(3) states that compensation to be paid following compulsory acquisition shall be freely transferable in any freely convertible foreign currency without having to go through the normal administrative procedures applicable to foreign exchange transactions. This measure will safeguard investors by ensuring that compensation payment is not compromised by foreign exchange transfer restrictions. The protection is especially relevant in the context of the foreign exchange control policies of the Central Bank of Nigeria (CBN) which are mentioned elsewhere in this study.[138]

The right to judicial protection against any arbitrary acquisition has also been affirmed in *Attorney-General of Bendel State v Aideyan*. If so, this is unconstitutional, null, and void, the Supreme Court held, because the government has purchased the property while claiming to be doing it for a public purpose, but then it uses it for a private or collateral purpose. This is especially significant for foreign investors since it establishes that the exception relating to national interests or public purposes mentioned in section 25(2) of the NIPC Act is not to be interpreted to permit arbitrary acquisition of private investments. Wherever there is compulsory acquisition it must have a real public function for which the power is being exercised.[139]

3.4.3 Equality of treatment and freedom from discrimination.

The National Treatment principle is one of the accepted principles of international investment law, which establishes a minimum standard of treatment that must be accorded to foreign investors by the host state under similar conditions as those applicable to domestic investors. This is echoed in the provisions of section 17 of the NIPC Act that gives non-Nigerians the

[138] NIPC Act, s 25(3)

[139] *Attorney-General of Bendel State v Aideyan* (1989) 4 NWLR (Pt 118) 646 (SC).

power to invest and participate in running any enterprise in Nigeria. This right can only be exercised after it has been registered with the Nigerian Investment Promotion Commission and the limitations provided in the Negative List under section 31 of the Act.[140]

This is reinforced by Nigeria's bilateral investment treaties (BITs), which include most favoured nation clauses. Such provisions will demand that Nigeria does not discriminate, arbitrarily or unfairly, against foreign investors. However, administrative practices in this study show how the position in practice does not always match up with the legal framework. In the above, measures like the non-statutory principle of non-discrimination in respect of administrative capital threshold by Corporate Affairs Commission and foreign exchange restrictions by Central Bank of Nigeria circulars are some of the practical realities of the statutory principle of non-discrimination.[141]

3.4.4 Capital Repatriation Guarantees

One of the major statutory protections enjoyed by foreign investors in Nigeria is the right to repatriate their investments and the profits realised from such investments. Under Section 24 of NIPC Act, all registered enterprises have been given absolute right to transfer funds through an Authorised Dealer using freely convertible foreign currency. This means that the dividends and profit are guaranteed along with the net proceeds from the repayment of foreign loans, sale or liquidation of the investment.[142]

This statutory protection is supplemented by section 15(4) of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act which stipulates that repatriation of funds can only be allowed after the investor has fulfilled the requirements under the electronic Certificate of Capital Importation (eCCI).[143] As explained in chapter Four, at various times the operational circulars from the Central Bank of Nigeria have impacted on the practical use

[140] NIPC Act, ss 17 and 31

[141] Mondaq, 'Most-Favoured Nation Clauses in Bilateral Investment Treaties' 2022 <https://share.google/n1etS8QGuaQiF6cu5> accessed 20 June 2026

[142] ibid, s 25(4)

[143] FEMMPA, s 24.

of these statutory rights. This has resulted in an apparent disparity between the legal assurances provided in the law and the experience of foreign investors looking to return their investments.

3.5 Dispute Resolution Mechanisms

Nigerian law provides both domestic and international mechanisms through which foreign investors may seek redress where disputes arise from government actions or breaches of contractual obligations. These mechanisms differ in terms of procedure, cost, and enforceability. As a result, the availability of an effective dispute resolution system is an important consideration for foreign investors when deciding whether to invest in Nigeria.

3.5.1 Domestic Judicial and Arbitral Processes

Foreign investors may resolve disputes through the Nigerian courts or by arbitration. Section 251(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) grants the Federal High Court exclusive original jurisdiction over civil matters relating to the revenue of the Federation, banking, foreign exchange, companies, and other matters within federal legislative competence. Consequently, the Federal High Court serves as the principal judicial forum for most investment-related disputes.[144] Despite this constitutional position, court proceedings in Nigeria have frequently been criticised for delays and procedural inefficiencies, which often reduce their effectiveness as a prompt means of resolving commercial disputes involving foreign investors.

Domestic arbitration is regulated by the Arbitration and Mediation Act 2023 (AMA 2023), which repealed the Arbitration and Conciliation Act 1988 and introduced significant reforms to Nigeria's arbitration framework. One of the major innovations is the emergency arbitrator procedure under section 16, which allows parties to obtain urgent interim relief before the arbitral tribunal is fully constituted.[145] Sections 28 and 29 further empower the Federal High

[144] CFRN 1999, s 251(1).
[145] Arbitration and Mediation Act 2023, s 16

Court to recognise and enforce interim measures granted by an arbitral tribunal, regardless of the country in which the order was made.[146]

The Act also limits the circumstances in which Nigerian courts may set aside arbitral awards. Under section 55, the former broad grounds of "misconduct" and "error on the face of the record" have been removed.[147] An award may now be challenged only on the recognised international grounds, such as the incapacity of a party, the invalidity of the arbitration agreement, or where enforcement would be contrary to public policy. In addition, section 56 introduces the Award Review Tribunal, which allows parties, where they have agreed to do so, to refer challenges to a second-tier review mechanism before approaching the courts. This innovation is intended to reduce prolonged post-award litigation and strengthen the finality of arbitral awards. Collectively, these reforms have made domestic arbitration a more efficient and attractive option for resolving commercial investment disputes than ordinary court litigation.

3.5.2 International Arbitration

3.5.2.1 The ICSID Framework

Nigeria is a contracting state to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (the ICSID Convention), which came into force on 14 October 1966.[148] The Convention provides a recognised international framework for resolving investment disputes between foreign investors and host states.

Section 26 of the NIPC Act provides that where a dispute arises between a foreign investor and any government of the Federation in relation to a foreign enterprise, and the parties fail to resolve the dispute through mutual discussions within six months, the investor may, where there is an arbitration agreement, submit the dispute to international arbitration. This includes

[146] Ibid, ss 28 & 29
[147] Ibid, s 55
[148] Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965, 575 UNTS 159, in force 14 October 1966.

arbitration under the ICSID framework, and the investor is not required to exhaust local remedies before commencing the proceedings.[149]

Nigeria has also incorporated the ICSID Convention into its domestic legal system through the ICSID (Enforcement of Awards) Act (Cap I10, LFN 2004).[150] An important consequence of this legislation is that an ICSID arbitral award against the Federal Government of Nigeria is treated in the same manner as a final judgment of the Supreme Court of Nigeria. Such an award may therefore be registered and enforced by Nigerian courts without any review of its substantive merits.

Apart from the ICSID Convention, Nigeria is also a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, commonly known as the New York Convention. Under this Convention, Nigerian courts are required to recognise and enforce valid arbitral awards made in other contracting states, subject to the limited exceptions recognised under the Convention.

3.5.2.2 The Bilateral Investment Treaty Framework

Nigeria has entered into Bilateral Investment Treaties (BITs) with thirty-one countries, although only fifteen have completed the ratification process and are presently in force.[151] Among the treaties currently in force are those concluded with the United Kingdom (1990), France (1991), the Netherlands (1994), the Republic of Korea (1999), Italy (2005), South Africa (2005), Germany (2007), China (2010), and Singapore, which entered into force on 22 August 2025 after both countries completed their domestic ratification procedures.[152]

These treaties provide important legal protections for investors from the contracting states.

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[149] NIPC, s 26

[150] ICSID (Enforcement of Awards) Act (Cap I10, LFN 2004).

[151] International Comparative Legal Guides, 'Nigeria - Investor-State Arbitration Laws and Regulations 2025' 2025 <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/nigeria/> accessed 20 June 2026

[152] ibid

They commonly guarantee Fair and Equitable Treatment (FET), Most-Favoured-Nation (MFN) treatment, full protection and security, protection against expropriation without prompt and adequate compensation, and access to investor-state dispute settlement (ISDS). Nigerian BITs generally contain the host state's advance consent to submit investment disputes to international arbitration under the UNCITRAL Rules or before recognised arbitral institutions such as the ICSID, the London Court of International Arbitration (LCIA), or the International Chamber of Commerce (ICC). These provisions prevent the host state from relying on sovereign immunity to avoid responsibility for contractual breaches or unlawful expropriation.[153]

Nigeria is also a party to the ECOWAS Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment. The Act requires ECOWAS member states to extend national treatment, Most-Favoured-Nation treatment, and protection against unlawful expropriation to investors from other member states within the sub-region.[154]

It is important to distinguish between BITs that have merely been signed and those that have entered into force through ratification. Only treaties that have completed the ratification process in both contracting states create enforceable rights and obligations, including access to investor-state dispute settlement. Accordingly, the remaining sixteen BITs signed by Nigeria but not yet brought into force do not presently confer enforceable ISDS rights on investors until the required ratification process has been completed.

3.6 Evaluation of the Effectiveness of the Legal and Institutional Regime

A proper evaluation of Nigeria's legal system for foreign investment reveals that Nigeria has a thorough legal system that has been evolving remarkably in recent years. In spite of the

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[153] K U Kalu, 'Legal Framework for International Investment Arbitration in Nigeria: A Critical Review' (2019) *Social Science Research Network (SSRN)* Abstract No. 3440618; Templars, 'GAR Investment Treaty Arbitration' 2021 <https://www.templars-law.com/app/uploads/2021/10/Nigeria_v2.pdf> accessed 20 June 2026

[154] ECOWAS Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for their Implementation within ECOWAS 2008.

legislative progress, however, implementation of the framework remains a difficult task in the administrative and institutional realms. Therefore, the gap between the legal protection offered by law and investor experience is still visible. This evaluation answers the first and third research question posed in Chapter One and is used to compare and make recommendations in the following chapters.

However, on the positive side, Nigeria has recently passed laws that are geared towards improving the investment environment, ease of doing business and bringing the country's regulatory framework closer to international standards, such as the CAMA 2020, PIA 2021, ISA 2025 and (AMA 2023. The investor protection provisions of the NIPC Act together with the guarantees given by the FEMMP Act and section 44 of the Federal Republic of Nigeria Constitution 1999 (as amended) forms a solid legal structure for protection of foreign investment. The Nigerian Arbitration and Mediation Act 2023, the limited scope of the Negative List and the One-Stop Investment Centre (OSIC) have improved some of the administrative procedures, thus enhancing the domestic arbitration system in Nigeria.

However, the legal and institutional framework is limited in effectiveness due to a number of structural issues. These limitations are limitations in the implementation of the Statement of the Problem and are discussed in the subsequent chapters.

The first one is administrative overreach. When authorities provide directions or impose conditions that exceed, or conflict with, the ones specified in their enabling legislation. While section 124(1) of CAMA 2020 sets minimum issued share capital of only ₦100,000 for private companies, a prominent instance discussed in detail in Chapter Four, is the Corporate Affairs Commission's enforcement of the requirement for ₦100 million minimum capital on companies with foreign participation.[155] Administrative directives that supplant or supplant in

[155] CAMA 2020, s 27(2)(a); see Chapter Four, section 4.2 of this study.

part statutory provisions or provisions without a statute, thus weaken certainty and predictability expected under the rule of law.

The second challenge is the clash between monetary policy powers of the Central Bank of Nigeria and the provisions of the capital repatriation guarantees in the NIPC Act sections 24 and 25 as well as the FEMMP Act section 15(4).[156] In reality, the CBN has issued successive circulars of foreign exchange that have dampened investors' confidence in the freedom of repatriation guaranteed by law. In practice, successive foreign exchange circulars issued by the CBN have restricted investors' confidence in free repatriation rights guaranteed by the law. This has led to anxiety for investors because the right has been in the past subjected to various administrative decisions, which have been announced expressly by an Act of the National Assembly.

Another significant area of concern is the lack of coordination between the agencies. Foreign investors have to interact with a number of institutions in Nigeria such as NIPC, CAC, SEC, NRS, NITDA, and NCC. There is no overall mechanism of coordination in place to coordinate the activities of all agencies and address overlapping jurisdictions, although each has statutory responsibilities.[157] In the digital sector, for example, both NCC and NITDA have regulatory powers over digital services, but their powers are not clearly defined by statute. This has generated uncertainty on the regulatory front and extra costs for foreign investors.

Delay in the National Office for Technology Acquisition and Promotion (NOTAP) further complicates the situation. Section 7 of the NOTAP Act states that the CBN will not approve foreign currency remittance for technology transfer agreements unless such agreements are registered by NOTAP.[158] The process of registration typically takes several months and in

[156] NIPC Act, ss 24 and 25; FEMMP Act, s 15(4).

[157] UNCTAD 47, identifying regulatory fragmentation as a principal constraint on Nigeria's investment attractiveness

[158] NOTAP, s 7

practice, this has slowed the process of technology transfer arrangements and introduction of new technologies on the Nigerian market. These are not in line with the government's goal of attracting foreign investment and advancements in technology.

The Nigeria Tax Act 2025 has sparked a fourth challenge. Despite the aim of the Act to make Nigeria's tax system more simple by harmonising several taxes into one Development Levy, which is to be paid to the Nigeria Revenue Service, it is reported that some State Boards of Internal Revenue still impose taxes and/or administrative charges on the same activities that are already taxable by the NRS. This costless approach to compliance causes foreign investors to be burdened with duplication of effort while also undermining the integrated tax system established by the Nigeria Tax Act 2025. It also reveals the importance of establishing more clearly in the Constitution and regulations the limits of the taxing power of the NRS and the state revenue authorities.[159]

Taking a broad view, Nigeria's legislation on foreign investment is well structured and has made significant legislative strides forward. However, its effectiveness is diminished by administrative overreach, inconsistencies between statute and administration, overlapping institutional functions and ongoing conflicts over tax administration. These weaknesses open a gap between the legal protections available to foreign investors and what can be practically implemented. This problem is the focus of the analysis and recommendations in the rest of this study.

[159] K C Adeoye and M Oyelami (n 98); NTA 2025

CHAPTER FOUR

CONTEMPORARY CHALLENGES IN FOREIGN INVESTMENT IN NIGERIA AND COMPARATIVE ANALYSIS

4.1 Challenges in Major Sectors Attracting Foreign Investments

Nigeria has put in place a legal framework aimed at attracting foreign direct investment (FDI), yet there are a number of problems when these laws are enforced in key sectors of the economy. The Nigerian Investment Promotion Commission Act (NIPC Act), the main legislation on investment promotion, emphasizes the commitment to an open-market economy and assures investors the right to equal treatment as well as profiting from their investments. "However, in practice, foreign investors still do not seem to have access to these guarantees in an equitable and equal manner. This disconnection goes beyond the simple administrative back-ups.[160] It is a reflection of the structural problems that stem from the relationship between legislation and the directions that regulatory agencies give to the public in order to implement regulatory powers.

The type of challenges varies by sector as each is regulated in their own way and has their own institutional structure. Foreign investors face not only overlapping authorities but also administrative inconsistencies and frequent fiscal policy shifts which impact investment decisions and operations. The chapter thus explores in practical terms the obstacles foreign investors face in four key sectors where foreign investment is still significant: oil and gas; telecommunications; manufacturing and real estate; and financial technology. It also takes into account the common regulatory challenges for investment in these sectors. The chapter ends by examining how the investment environment in Nigeria is similar to that of Ghana and Kenya after the legal changes and analyzing the extent to which Nigeria's new legislation has been able to tackle the problems identified.

[160] Nigerian Investment Promotion Commission Act, Cap N117, LFN 2004; E Duruigbo, 'Reforming Foreign Investment Law: Perspectives from Nigeria' (2006) 11 *UCLA Journal of International Law and Foreign Affairs* 43, 47.

4.2 Oil and Gas Sector: Regulatory Dynamics under the Petroleum Industry Act 2021

The Petroleum Industry Act 2021 (PIA) introduced the most significant reform of Nigeria's petroleum legal framework in recent years. The Act reorganised the Nigerian National Petroleum Corporation (NNPC) through the process of making it a commercial entity called NNPC Limited. It also established two distinct, and clearly delineated, regulatory agencies. The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) was set up to regulate the upstream petroleum industry, and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) was established to regulate the midstream and downstream sectors.[161] The Act's aim was to streamline the regulatory regime and offer a more stable fiscal regime that would help attract foreign investment, but it has created some practical problems which remain a concern for investors.

A key compliance requirement in the PIA for foreign joint venture partners is the requirement for them to set up a Host Community Development Trust (HCDT) in each petroleum licence. The condition is that each settlor must make an annual payment of three percent of its actual operating expenses for the previous year.[162] This responsibility, combined with the local content norms as contained in the Nigerian Oil and Gas Industry Content Development (NOGICD) Act 2010, adds to the regulatory and funding burden of foreign investors. The NOGICD Act encourages foreign operators to increasingly favour Nigerian goods, services and personnel and provides different compliance thresholds for various operational activities.[163] All these statutory requirements increase the initial capital investment required for any Petroleum operation in Nigeria, and the ongoing cost to sustain any Petroleum operation in Nigeria. Another concern relating to foreign investment is the tax treatment of decommissioning and abandonment funds under section 103 of the PIA. The Act

[161] Petroleum Industry Act 2021, s 235(1).

[162] Ibid

[163] Nigerian Oil and Gas Industry Content Development Act 2010 (NOGICD Act), s 3(1); E Ogbonda, 'Legal Challenges in the Enforcement of Local Content Requirements in Nigeria's Oil and Gas Industry' (2024) 8 *International Journal of Research and Innovation in Social Science* 1442.

acknowledges the need for operators to make contributions to the decommissioning fund at the end of the productive life of their petroleum facilities, but the issue of deductibility for the purposes of the hydrocarbon tax and corporate income tax remains uncertain.[164] This unsettled situation adds a layer of complexity for foreign investors to estimate the long-term profitability and make informed investment decisions. If it is not clear from the provisions of the Act what fiscal treatment is afforded to a large operating expense, then the certainty that a project operator can expect to get when considering an investment framework is also reduced. It is recognised that legal security is a crucial element in determining the investment decision and this uncertainty could prevent long term foreign investment in the sector.

4.3 Telecommunications Sector: Foreign Participation & Licensing Framework

In Nigeria, the telecommunications sector is also regulated primarily by the Nigerian Communications Commission (NCC) as per the Nigerian Communications Act (NCA) 2003. In contrast to some sectors of the economy, the law permits 100 percent foreign ownership, and does not place any de jure cap on the amount of foreign equity that can be held in licensed telecommunications companies.[165] Despite this liberal investment policy, foreign investors looking to do business in the sector are subjected to a complicated licensing procedure. Foreign operators have to deal with numerous regulatory obligations, which drive up the cost of operating a business and legal uncertainty.

One of the challenges that comes with implementing the licensing framework under NCA is the relationship between its licensing powers and those of the National Broadcasting Commission (NBC) under the National Broadcasting Commission Act. Many foreign companies currently offer services that are subject to regulation by both regulators as telecommunications services continue to converge with digital media and online content services. Under these conditions, a foreign investor may need to seek approval from the NCC

[164] Petroleum Industry Act 2021, s 103.
[165] Nigerian Communications Act 2003, s 4(1).

and NBC. There is no statutory coordination of the roles of these regulators and there are likely to be overlapping licensing requirements and regulatory conflicts.[166]

A second concern is the National Digital Economy Policy and Strategy (NDEPS) which aims to promote more participation from the domestic market in the sector. The policy does not seek to mandate local equity participation through legislation,[167] but rather uses primarily administrative measures to encourage it. This is problematic for foreign investors as the legal basis, the nature, and the enforceability of these expectations are not adequately established. Foreign investors may be unable to ascertain the legal obligations towards the sector before long-term investment in the sector is made when investment obligations are formulated in policy documents rather than primary legislation.

Foreign telecom service providers also face issues due to the different RoW charges levied by state and local government officials. The lack of a consistent national framework with a binding effect across all states has led to different charges and even several charging of telecommunications infrastructure in some cases.[168] These conflicting requirements lead to higher operational costs, planned potential unwelcome disputes and litigation, and disincentive for investment in telecommunications infrastructure on a grand scale.[169]

4.4 Manufacturing and Real Estate: Regulatory Incentives and Barriers

Over the years, Nigeria has provided a number of fiscal incentives for foreign investment in manufacturing. One of the larger incentive schemes was created under the Industrial Development (Income Tax Relief) Act, which was designed to attract Pioneer or 'new'

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[166] ibid, s 32; National Broadcasting Commission Act, Cap N11, LFN 2004

[167] Federal Ministry of Communications and Digital Economy, 'National Digital Economy Policy and Strategy 2020-2030' <https://nitda.gov.ng/wp-content/uploads/2020/06/National-Digital-Economy-Policy-and-Strategy.pdf> accessed 20 June 2026

[168] Mondaq, 'Powering Connectivity: Legal Issues in 5G Rollouts and Fibre Expansion in Nigeria' 2026 <https://www.mondaq.com/nigeria/telecoms-mobile-cable-communications/1774398/powering-connectivity-legal-issues-in-5g-rollouts-and-fibre-expansion-in-nigeria> accessed 12 June 2026.

[169] Aluko & Oyebode, 'Reduction of Right of Way Charges' 2020 <https://www.aluko-oyebode.com/insights/reduction-of-right-of-way-charges/> accessed 25 June 2026.

companies to the industry and to offer tax holidays in respect of capital intensive initiatives.[170] This framework has since undergone significant changes introduced by the Nigeria Tax Act 2025 (NTA) which took effect on 1st January 2026. The Act is the core of the tax reforms in Nigeria for the year 2025, and is one of the most comprehensive reforms of the Nigerian tax system in decades.[171]

The NTA exempts companies with an annual turnover of not more than ₦100 million from paying capital gains tax, development levy and corporate income tax.[172] This is a change from the previous system in which tax incentives were primarily given for pioneer status, and is more in line with the size and level of business activity. This reform, however, does not change the fact that there are significant administrative hurdles for large foreign manufacturing firms. They must go through two approval procedures, one through the Nigerian Investment Promotion Commission (NIPC) and the other Federal Ministry of Industry, Trade and Investment. The NIPC is the main body for registering foreign investments, but the NTA does not have a legally binding directive or coordination arrangement between the registration procedures carried out by the NIPC and the tax authorities.[173] For this reason, the coordination between investment registration and access to tax incentives is still not well-coordinated.

Foreign investors have to deal with other issues in the real estate market, including the Land Use Act 1978, which is the key legal hurdle. Part 1 of the Act puts all lands in a state under the control of the Governor who holds it in trust for the use and benefit of all Nigerians. The Governor must give his consent to the transfer or assignment of any land interest conferred by the Act.[174] This legal structure in reality poses a number of challenges for foreign

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[170] Industrial Development (Income Tax Relief) Act, Cap I7, LFN 2004.
[171] The Nigeria Tax Act 2025 (NTA), s 1; The Nigeria Revenue Service (Establishment) Act 2025, s 1
[172] The Nigeria Tax Act 2025, Sch II, Item 1; PwC, 'Nigeria: Overview - Worldwide Tax Summaries' 2026 <https://taxsummaries.pwc.com/nigeria> accessed 20 June 2026
[173] Nigerian Investment Promotion Commission (NIPC) Act, Cap N117, LFN 2004, s 31 (Negative List).
[174] Land Use Act 1978, s 1

investors. The required approvals from the Governor can be a long process. State land registries also often use alternative methods to calculate valuation and perfection fees, which can lead to variations in fees. The obstacles, in addition to the uncertainty surrounding land ownership, make long-term planning for commercial real estate projects more difficult. While there have been several changes in the law in Nigeria to enhance the investment climate, these structural challenges in the land tenure system persist and continue to make foreign investment in the real estate sector less attractive.

4.5 Emerging Sector: Fintech as a Growing Destination for Foreign Investment

Financial technology (fintech) has emerged as one of the fastest-growing segments that is seeing foreign venture capital and institutional investor investments in Nigeria. Foreign participation in the sector is generally regulated in a favourable manner. The NIPC Act allows foreign investors to fully own fintech businesses because the industry is not on the list of businesses reserved for Nigerian citizens. Foreign investment, however, has to be imported through an Authorised Dealer Bank and the bank will issue an electronic Certificate of Capital Importation (eCCI) after verifying receipt and documentation of the foreign investment. The eCCI is a certificate that will validate the investor's entitlement to repatriate the capital and investment returns, and will be the main document that will be needed in subsequent foreign exchange transactions linked to the investment.[175] The regulatory environment for fintech operations is more complex, despite the ease with which fintech products and services may enter the market. Fintech firms must adhere to the guidelines of multiple regulatory agencies with different laws in which they operate. The Payment Service Banks, Switching Companies and Mobile Money Operators are regulated and licensed by the Central Bank of Nigeria (CBN). There are different capital requirements, corporate

[175] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995, s 15

governance and operating procedures for each category.[176] The Securities and Exchange Commission (SEC) regulates the platforms and digital sub-brokers. When a fintech firm carries out both payment services and capital-raising operations, it could be necessary to adhere to the mandates of both the CBN and the SEC.

The Nigeria Revenue Service (NRS), established under the Nigeria Revenue Service (Establishment) Act 2025 to replace the Federal Inland Revenue Service (FIRS), administers fintech tax obligations under the Nigeria Tax Administration Act 2025. This includes also the requirement for all taxable entities to get a standardised Tax Identification Number and keep required electronic records.[177] Furthermore, the National Information Technology Development Agency (NITDA) has the powers to enforce data protection and data localisation requirements in Nigeria pursuant to the Nigeria Data Protection Act 2023.[178]

This is because multiple regulators can apply licensing, capital, reporting, tax and data governance requirements independently in separate regulatory frameworks to a single fintech company. Lack of a formal system to coordinate these regulatory functions raises compliance costs and uncertainty for foreign investors. This is further complicated by the often-changing regulations. For instance, CBN has several times amended its stance on virtual asset service providers (VASPs) and raised minimum capital requirements for International Money Transfer Operators (IMTOs). When these regulatory changes are made without the certainty and stability that is normally provided by primary legislation, they can have a significant impact on business operations and investment planning.

4.6 Cross-Sectoral Challenges Affecting Foreign Investment

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[176] CBN Act 2007, s 47; CBN, 'Guidelines for Licensing and Regulation of Payment Service Banks in Nigeria' 2018 <https://usercontent.one/wp/www.acaebin.org/wp-content/uploads/2023/07/Guidelines20for20the20Licensing20and20regulation20of20Payment20Services.pdf?media=1711622973> accessed 20 June 2026

[177] Nigeria Tax Administration Act 2025 (NTAA), s 12 (uniform Tax Identification Number); Nigeria Revenue Service (Establishment) Act 2025, s 3 (NRS takes over functions of FIRS).

[178] National Information Technology Development Agency Act 2007, s 6(c); Nigeria Data Protection Act 2023, s 24 (data localisation obligations).

4.6.1 Regulatory Overlap and Policy Inconsistency

In addition to the problems of each sector already mentioned, foreign investors in Nigeria face other more generalised regulatory issues that span across various sectors of the economy. A major one is the overlapping regulation and varying policy enforcement. This challenge is especially apparent in the incorporation of a company, where clear differences in interpretation between the wording of the law and the administrative instructions issued by the regulatory bodies in practice are observed.

According to Section 124(1) of the Companies and Allied Matters Act 2020 (CAMA 2020), the minimum capital requirement for private companies limited by shares is ₦100,000 and for public companies limited by shares is ₦2,000,000.[179] In spite of this clear statutory provision, the Corporate Affairs Commission (CAC) still demands that companies with foreign participation have a minimum share capital of ₦100 million, before registration. This is not included in CAMA 2020 nor in the NIPC Act. Rather, it comes from the Revised Handbook on Expatriate Quota Administration by the Federal Ministry of Interior which is an executive policy document and not an Act of the National Assembly.[180]

This is a practice that involves the administration and which involves important legal questions. The Supreme Court in *Attorney-General of Ondo State v Attorney-General of the Federation* reiterated the constitutional rule of legislative supremacy, which will mean that a subsidiary instrument or an administrative directive cannot override or make changes to the provisions of an Act of the National Assembly.[181] If the regulatory agency interprets such a requirement as compulsory to carry out in order to register a company, it acts out of its powers as such. This challenges the accepted supremacy of legal norms, key for the rule of law, and a crucial element in building investor confidence. If a foreign investor has to invest

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[179] Companies and Allied Matters Act 2020, s 124(1); s 27(2)

[180] Federal Ministry of Interior (n 10)

[181] CFRN 1999 (as amended), s 1(3); *Attorney-General of Ondo State v Attorney-General of the Federation* [2002] 9 NWLR (Pt 772) 222 (SC)

1000 times higher than what is prescribed by the statute, without a legislative basis, then he/she is likely to encounter uncertainties as to what are the actual requirements for investing in the Nigerian market.

4.6.2 Foreign Exchange Constraints and Capital Repatriation Issues

The legal regime for capital repatriation is robust and protective of foreign investors. Under section 24 and 25 of the NIPC Act, the foreign investors have the right to repatriate their capital, investment profits and liquidation proceeds to their own countries through the authorised dealer banks provided they comply with the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.[182] The electronic Certificate of Capital Importation (eCCI) is issued by an authorised dealer bank when foreign capital is imported to Nigeria for this purpose.[183]

Although foreign investors have several statutory rights of repatriation, it is a reality that there are practical challenges in asserting these rights. The Central Bank of Nigeria (CBN) regularly issues circulars which impose restrictions on access to the official foreign exchange market or require naira-foreign currency conversion delays under a waiting period, all under the Central Bank of Nigeria Act 2007.[184] While these measures do not abrogate the right to repatriation as granted by law, they nevertheless have a substantial impact on the exercise of this right. This means that investors might not be able to move their investments internationally despite complying with the legal requirements. This results in a condition where the legal right is in place but due to administrative barriers, it is not easily exercised.[185]

These administrative measures also raise the question of hierarchy of legal norms, which is discussed in section 4.6.1. The CBN's monetary regulatory action by means of a circular

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[182] NIPC Act, ss 24-25.

[183] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (n 14), s 15; CBN Act 2007, s 2(d).

[184] Central Bank of Nigeria (n 6)

[185] ibid 94; United Nations Conference on Trade and Development, 'World Investment Report 2023: Investing in Sustainable Energy for All' 2023 <https://unctad.org/publication/world-investment-report-2023> accessed 20 June 2026

cannot abrogate or impair rights specifically provided by an Act of the National Assembly. However, the fact that successive administrations of the CBN continue to employ such administrative measures to stem the tide of massive foreign capital outflows from Nigeria suggests that such actions are not a short-term solution to the economic crisis, but rather a regular occurrence in the country's investment climate. This ongoing uncertainty undermines confidence in the certainty and enforceability of statutory protection.

4.6.3 Corruption, Bureaucracy, and Contract Enforcement Gaps

The success of any foreign investment system relies not just on the strength of its laws, but also on the ability to have effective, efficient and independent dispute resolution procedures. Regardless of the extent to which the law is developed, investors will not trust it if contractual and regulatory disputes take too long to settle or are resolved in an unfair manner. In Nigeria, this goal has not been achieved yet. Enactment of the Arbitration and Mediation Act 2023, which replaced the Arbitration and Conciliation Act and streamlined the arbitration landscape in the country, is a significant act of legislation. The Act gives investors a better forum than court litigation for resolving commercial disputes.[186]

Even with the passage of this legislation, there are still a number of delays in the judiciary. In the case of commercial disputes of not too great complexity, it takes many years for the dispute to reach the appellate court before reaching the final verdict.[187] The resulting delays make it more costly for foreign investors who wish to enforce contractual rights or to contest illegal regulatory measures. They also disadvantage investors because there may be a long and costly litigation process, and they might be forced to take an unfavorable settlement or a loss that might have been recovered in the litigation.

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[186] Arbitration and Mediation Act 2023, s 1

[187] O B Akinola and F M Akinola, ' Court Congestion and Access in Nigeria: Cancerous or Curable?' (2026) 1(1) <https://gilawjournal.com/article/court-congestion-and-access-to-justice-in-nigeria-cancerous-or-curable > accessed 20 June 2026

Ongoing worries about corruption and bureaucratic delays in regulators' review procedures further tarnish the problem's picture. Where the time to get official approvals is not simply a function of the legalities, but rather of informal or extra-legal matters, the price and risk to do business goes up significantly. This undermines the rule of law, a key component of an operating investment regime.[188] Even with the legal protections within the Nigerian investment framework, the slow enforcement regime, along with the lack of transparency in the administration of regulations are still working to deter long-term foreign investment.

4.7 Comparative Insight: Lessons from Ghana and Kenya

Nigeria, Ghana and Kenya have very similar foreign investment regimes, with a few key differences, as shown by comparing the two. The Nigerian Investment Promotion Commission (NIPC) serves as the main body in Nigeria to promote and facilitate foreign investment. The Ghana Investment Promotion Centre (GIPC) currently holds this position in Ghana but would be taken over by the Ghana Investment Promotion Authority (GIPA) with the enactment of the GIPA Bill by the President of Ghana. In Kenya, the Kenya Investment Authority (KenInvest) is responsible for the investment promotion efforts.

Each of the three countries has official bodies in charge of tax administration. This task is given to the Nigeria Revenue Service (NRS) in Nigeria. In Ghana, this is done by the Ghana Revenue Authority (GRA) and in Kenya by the Kenya Revenue Authority (KRA). In relation to foreign ownership, in most facets of their economy, the three jurisdictions generally allow 100 percent foreign ownership. Foreign investors have the right to own businesses in Nigeria, with the exception of businesses listed in the statutory Negative List. In addition, Ghana allows 100% foreign ownership in most industries, but limited foreign ownership of petty

188 World Bank, 'Doing Business 2020: Comparing Business Regulation in 190 Economies' 2020 <https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf> accessed 20 June 2026 (Nigeria ranked 131st overall on the ease of doing business index).

trading activities is allowed. Also, Kenya provides a 100% foreign shareholding in general, but there are statutory restrictions in specific industries such as telecoms and insurance.

The amount of capital needed for foreign investment also varies among the three countries. The Companies and Allied Matters Act 2020 (as amended) provides for a minimum paid up share capital of N100,000 for private companies and N2million for public companies in Nigeria. But in practice, companies with foreign participation must meet an administrative minimum capital requirement of ₦100 million. Under the Ghana Investment Promotion Centre (GIPCA) Act 865, the minimum foreign capital investment for joint venture enterprises is at USD 200,000, while for wholly foreign-owned enterprises is at USD 500,000 for the case of Ghana. The Ghana Investment Promotion Authority (GIPA) Bill, however, proposes to do away with these requirements. Under the investment codes in Kenya, there is a minimum capital investment threshold of USD 100,000 for qualifying investments from foreign investors.

Protection of the repatriation of foreign investment is also different. Nigeria gives strong statutory guarantees for the repatriation of capital and investment returns but the actual enjoyment of these rights has been hampered by the practical constraint of access to foreign exchange. Ghana also has an institutional guarantee, similar to that offered in Nigeria, but administered by the Ghana Revenue Authority. The Foreign Investments Protection Act (Cap. 518) guarantees the right to repatriate investment capital in Kenya.

The comparison shows that while Nigeria, Ghana and Kenya all have laws that seek to attract foreign investment, they are not the same in their treatment of minimum capital requirements, institutional coordination and implementation of investor protections. These disparities offer valuable insights when assessing the merits and shortcomings of Nigeria's Foreign Investment Policy.

4.7.1 Lessons from Ghana

Ghana's legal framework for foreign investment has always been based on the Ghanaian Investment Authority (GIA).The Ghanaian Investment Authority (GIA) has always been the backbone of Ghana's legal framework for foreign investment.

The Ghana Investment Promotion Centre Act, 2013 (Act 865) Act created the Ghana Investment Promotion Centre (GIPC) and minimum capital requirements that the foreign investor must meet to register his/her investment. The minimum capital to be invested in a joint venture was required to be 200,000 USD, with a Ghanaian partner and a minimum of 500,000 USD in a wholly foreign-owned enterprise under Act 865.[189] While these guidelines were put in place to make sure that the foreign investor was putting down a serious amount of money, they gained some criticism for the extra hurdles they provided, especially for small-scale investors and technology investments.

Ghana's Parliament passed the Ghana Investment Promotion Authority Bill, 2026, on 2 April 2026, while working towards making the country a more preferred environment for foreign direct investment and as a strong nation under the African Continental Free Trade Area (AfCFTA).[190] The Bill has not yet entered into force as, on 20 June 2026, it has not yet been signed by the President. It will amend the Ghana Investment Promotion Centre Act, 2013 (Act 865) if it is passed. It has one notable change, it has cancelled most of the general minimum capital requirements for non-trading sectors.[191] It's a conscious decision on their part to go towards technology-driven foreign investors and other investors who could be deterred by hard, fixed statutory capital requirements.

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[189] Ghana Investment Promotion Centre Act 2013 (Act 865), s 28 (minimum capital requirements for joint ventures and wholly foreign-owned enterprises under the repealed regime).

[190] Ghana Investment Promotion Authority Bill 2026, cl 18 (removal of general minimum capital requirements); cl 32 (enhanced expatriate quotas ranging from 2 to 12 persons); passed by Parliament of Ghana, 31st Sitting, 1st Meeting, 2nd Session, 9th Parliament, 2 April 2026 (awaiting presidential assent as at June 2026); Ghana Investment Promotion Centre, 'Parliament Passes Ghana Investment Promotion Authority (GIPA) Bill' 2026 https://gipc.gov.gh/wp-content/uploads/2026/04/2026-FINAL-PRESS-RELEASE-FOR-GIPA-BILL.pdf> accessed 25 June 2026

[191] Ibid

There are also major amendments to the system of expatriate quotas in the Bill. It offers automatic expatriate quotas ranging from two persons for businesses with paid-up capital of USD 50,000 to USD 500,000 and 12 persons for enterprises with paid-up capital above USD 10 million.[192] This is significantly higher than the four automatic expatriate quota positions which were originally available under the GIPC Act. Further, the Bill changes the name of the institution to the Ghana Investment Promotion Authority (GIPA) and recognises it as the national focal point for investment promotion under the AfCFTA Protocol on Investment.[193] This further reflects Ghana's desire for harmonisation of the country's investment policy with that of the region.

Particularly, Nigeria can learn from the reforms being proposed in Ghana. Administrative agencies should not be able to enact entry requirements by policy ruling, but should instead be spelled out in the primary legislation. The Corporate Affairs Commission (CAC) at present imposes an administrative minimum capital requirement of ₦100 million which is not stipulated in the CAMA 2020. This practice poses constitutional and legal issues. Ghana, on the other hand, offers a framework where investment requirements are enshrined in law, set commercially and are open to judicial review as needed. Such a law would create legal certainty and enhance Nigeria's investment climate.

4.7.2 Lessons from Kenya

Kenya's foreign investment laws are based on two main pieces of legislation. The Investment Promotion Act (Cap 517B) establishes the Kenya Investment Authority (KenInvest) as the country's main investment promotion and facilitation agency. The Foreign Investments

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[192] Ghana Investment Promotion Authority Bill 2026, cl 32; Mondaq, 'Ghana's New Investment Promotion Authority Law: Key Changes for Businesses' 2026 <https://www.mondaq.com/corporate-and-company-law/1780272/ghanas-new-investment-promotion-authority-law-key-changes-for-businesses> accessed 25 June 2026; Afriwise, 'Ghana's New Investment Promotion Authority Bill & AfCFTA: What EAC Investors Need to Know' 2026 <https://www.afriwise.com/blog/ghanas-new-investment-promotion-authority-bill-afcfta-what-eac-investors-need-to-know> accessed 25 June 2026.

[193] Investment Promotion Act 2004 (Kenya), Cap 485B, s 14 (establishment of KenInvest); Foreign Investments Protection Act (Kenya), Cap 518, s 3 (Certificate of Approved Enterprise).

Protection Act (Cap 518) on the other hand, offers legal protection for approved foreign investments by the issuance of a Certificate of Approved Enterprise.

The Certificate of Approved Enterprise plays a crucial role in the investment protection mechanism in Kenya. Issued, it provides the investor with statutory protection from sudden and unilateral changes to the regulatory or foreign exchange requirements which apply to the approved investment. This offers greater security as it is tied to an individual investment as opposed to being a blanket statutory guarantee. The certificate, unlike the NIPC Act section 24 and 25 for all qualifying investments, can be directly referred to the investment for which it was issued. This means that there is less scope for administrative measures to undermine the statutory investor protections available, including issues highlighted in section 4.6.2 of this chapter.

The KenInvest has also been granted a statutory mandate to coordinate the activities of relevant regulatory bodies which is also an important aspect of Kenya's investment framework. The Authority is obliged to promote cooperation between government institutions in accordance with the Investment Promotion Act, which aims to ease regulatory burden for investors. Unlike the Nigerian situation, where the NIPC, CAC, CBN, SEC, NITDA and NRS operate independently of each other, without any coordinating framework between them that has a legal binding effect. As such, foreign investors in Nigeria often find themselves with the "double burden" of regulatory requirements. Kenya's legislation process shows that inter-agency coordination can be achieved at a legislative level, not just informally. A similar coordination mechanism could be established within the framework of the NIPC Act or as a standalone investment facilitation law to enhance Nigeria's investment framework.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1. Summary of Findings

The principal aim of this study was to examine the legal and institutional framework governing foreign investment in Nigeria in order to determine its adequacy, identify the major weaknesses within the existing regime, and propose reforms capable of improving its effectiveness and consistency. Through a doctrinal examination of relevant statutes, subsidiary legislation, administrative instruments and sector-specific regulatory frameworks, the study found a significant gap between the legal protections available to foreign investors under Nigerian law and the realities encountered during implementation. The major findings arising from the study are summarised below.

The study first found a major inconsistency in the legal framework regulating corporate entry by foreign investors. Section 124(1) of the Companies and Allied Matters Act, 2020 prescribes a minimum issued share capital of ₦100,000 for private companies limited by shares and ₦2 million for public companies limited by shares.[194] In practice, however, the Corporate Affairs Commission enforces a minimum share capital requirement of ₦100 million for companies with foreign participation. This requirement is derived solely from the Federal Ministry of Interior's Revised Handbook on Expatriate Quota Administration and has no basis in the substantive provisions of corporate legislation.[195] This administrative practice is inconsistent with the constitutional principle of legislative supremacy affirmed by the Supreme Court in *Attorney-General of Ondo State v Attorney-General of the Federation*,

[194] Companies and Allied Matters Act, 2020, s 124(1)
[195] Federal Ministry of Interior (n 10)

which establishes that an administrative directive or subsidiary instrument cannot override or alter the provisions of an Act of the National Assembly.[196] The result is that foreign investors are compelled to satisfy a capital requirement that is 1000 times higher than the statutory minimum, despite the absence of any legislative authority for such a condition.

Secondly, the study found that although sections 24 and 25 of the Nigerian Investment Promotion Commission Act guarantee foreign investors the unrestricted right to repatriate capital and profits through an electronic Certificate of Capital Importation (eCCI), the practical operation of this guarantee differs considerably from the statutory position.[197] Operational circulars issued by the Central Bank of Nigeria have introduced foreign exchange restrictions and queuing arrangements that frequently delay access to foreign currency. Consequently, a statutory right intended to operate without conditions has become dependent on changing administrative policies.[198] This practice raises the same issue concerning the hierarchy of legal norms identified in relation to corporate entry requirements. It also weakens investor confidence in the certainty and enforceability of statutory guarantees provided under Nigerian law.

Thirdly, the study observed that the financial technology sector offers relatively open conditions for foreign investment under the Nigerian Investment Promotion Commission Act. Fintech activities are not excluded from the statutory negative list, while foreign capital may be introduced through an Authorised Dealer Bank.[199] Despite these favourable entry conditions, the regulatory environment remains fragmented. Foreign fintech companies are required to comply simultaneously with licensing requirements, capital adequacy standards, taxation obligations and data governance rules administered by the CBN, the Securities and

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[196] CFRN 1999 (as amended), s 1(3); *Attorney-General of Ondo State v Attorney-General of the Federation* [2002] 9 NWLR (Pt 772) 222 (SC).

[197] Nigerian Investment Promotion Commission Act, Cap N117, LFN 2004, ss 24–25.

[198] Central Bank of Nigeria (n 6); United Nations Conference on Trade and Development, *World Investment Report 2023: Investing in Sustainable Energy for All* (United Nations 2023) p 117

[199] NIPC Act, s 31 (Negative List); FEMMP Act, s 15

Exchange Commission (SEC), the Nigeria Revenue Service (NRS) established under the Nigeria Revenue Service (Establishment) Act, 2025, and the National Information Technology Development Agency (NITDA), without any legally binding framework coordinating the activities of these agencies.[200] A similar problem exists within the telecommunications industry, where technological convergence exposes operators to regulation by both the Nigerian Communications Commission and the National Broadcasting Commission, even though no statutory mechanism exists to coordinate their respective regulatory functions.[201]

Fourthly, the study found that although the Petroleum Industry Act, 2021 introduced significant institutional and fiscal reforms, the legislation has also increased the cost of regulatory compliance for foreign investors operating within the oil and gas industry. The compulsory contribution of three percent of operating expenditure to Host Community Development Trusts under section 235 of the Petroleum Industry Act, together with the obligations imposed by the Nigerian Oil and Gas Industry Content Development Act, 2010, substantially increases the financial burden placed on investors.[202] In addition, uncertainties surrounding the tax deductibility of decommissioning fund contributions under section 103 of the Petroleum Industry Act make long-term financial planning more difficult for foreign investors and reduce the level of legal certainty expected within a modern investment regime.[203] The study further found that investment in the real estate sector continues to be affected by the land tenure system established under section 1 of the Land Use Act, 1978. Since all land is vested in the governors of the respective states and every transfer requires

[200] Nigeria Revenue Service (Establishment) Act 2025, s 3; Nigeria Tax Administration Act 2025, s 12; Nigeria Data Protection Act 2023, s 24.

[201] Nigerian Communications Act, 2003, s 4(1); National Broadcasting Commission Act, Cap N11, LFN 2004, s 32

[202] Petroleum Industry Act 2021, s 235(1); Nigerian Oil and Gas Industry Content Development Act 2010, s 3(1).

[203] Petroleum Industry Act, 2021, s 103; Templars, 'Understanding the New Nigerian Tax Regime: Key Changes and Impact' 2025 <https://www.templars-law.com/app/uploads/2025/07/Client-Alert_Understanding-the-New-Nigerian-Tax-Regime.pdf> accessed 20 June 2026

the Governor's consent, foreign investors frequently experience bureaucratic delays and uncertainty regarding security of title.[204]

Fifthly, the study found that although recent legislative reforms demonstrate Nigeria's commitment to improving its investment environment, the effectiveness of those reforms continues to be limited by weak implementation. The Business Facilitation (Miscellaneous Provisions) Act, 2022 introduced single-window service centres and statutory timelines for processing applications, but compliance across ministries, departments and agencies has remained inconsistent.[205] Similarly, the Tax Reform Acts of 2025, which came into force on 1 January 2026, provide corporate income tax exemptions for businesses with an annual turnover not exceeding ₦100 million and significantly restructure Nigeria's tax system.[206] Nevertheless, institutional cooperation between the NRS and the NIPC remains largely informal, while the Corporate Affairs Commission continues to enforce the extra-statutory ₦100 million minimum share capital requirement despite the provisions of the Companies and Allied Matters Act, 2020.[207]

Finally, the study found that the effectiveness of Nigeria's investment framework is further weakened by deficiencies in dispute resolution and the enforcement of contractual rights. Although the Arbitration and Mediation Act, 2023 represents a significant legislative improvement, commercial litigation before the courts continues to experience prolonged delays, with cases of moderate complexity often remaining unresolved for several years.[208] Such delays increase the financial burden on foreign investors seeking to enforce contractual rights and, in many cases, encourage the acceptance of unfavourable settlements rather than

[204] Land Use Act, 1978, s 1

[205] Business Facilitation (Miscellaneous Provisions) Act, 2022, s 3

[206] Nigeria Tax Act, 2025, Schedule II, Item 1; Nigeria Revenue Service (Establishment) Act, 2025, s 1; EY, "Nigeria Tax Act 2025 Has Been Signed: Highlights" 2025 <https://www.ey.com/en_gl/technical/tax-alerts/nigeria-tax-act-2025-has-been-signed-highlights> accessed 20 June 2026

[207] Companies and Allied Matters Act, 2020, ss 27(2), 124, 394

[208] Arbitration and Mediation Act, 2023, s 1; O Akinola and F Akinola (n 187)

prolonged litigation. The study also found that persistent concerns regarding corruption in administrative approval processes further discourage foreign investment and weaken the rule of law upon which an effective investment regime should be founded.

5.2. Recommendations

In view of the findings of this study, the following recommendations are made in order of their significance and expected impact on the legal and institutional framework governing foreign investment in Nigeria.

1. Statutory Codification of Inter-Agency Coordination Mandates

Nigeria should draw useful lessons from Kenya, where the Investment Promotion Act gives KenInvest a clear statutory mandate to coordinate and facilitate cooperation among relevant government agencies.[209] The National Assembly should therefore amend the Nigerian Investment Promotion Commission Act to impose a legal duty on all major investment-related institutions, particularly the NIPC, CAC, CBN, SEC, NITDA and NRS, to operate within a unified regulatory framework. Such an amendment would reduce the overlapping compliance obligations presently affecting sectors such as fintech and telecommunications and replace the existing informal administrative arrangement with a legally enforceable coordination mechanism.

2. Harmonisation of Market Entry Conditions in Primary Legislation

Nigeria should adopt an approach similar to that proposed in the Ghana Investment Promotion Authority Bill, 2026, which was passed by Ghana's Parliament on 2 April 2026 and, at the time of this study, was awaiting presidential assent. The Bill seeks to incorporate market entry requirements and automatic expatriate quotas directly into primary legislation rather than leaving them to policy documents.[210] To resolve the constitutional inconsistency

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[209] Investment Promotion Act, 2004 (Cap 485B), s 15

[210] Ghana Investment Promotion Authority Bill, 2026, cl 18; GIPC, 'Parliament Passes Ghana Investment Promotion Authority (GIPA) Bill' 2026 <https://gipc.gov.gh/wp-content/uploads/2026/04/2026-FINAL-PRESS-RELEASE-FOR-GIPA-BILL.pdf> accessed 20 June 2026

identified in A.G. Ondo State v A.G. Federation, the National Assembly should either amend CAMA 2020 to expressly provide for the relevant capital thresholds or withdraw the legal basis upon which the CAC currently enforces the extra-statutory ₦100 million minimum share capital requirement.[211]

3. Creation of Investment-Specific Protection Instruments

To address the implementation gap created by CBN operational circulars that weaken the guarantees contained in sections 24 and 25 of the NIPC Act, Nigeria should adopt a system similar to Kenya's Certificate of Approved Enterprise issued under the Foreign Investments Protection Act, Cap 518.[212] Once granted, such a certificate provides approved foreign investors with statutory protection against sudden unilateral changes to the regulatory or foreign exchange conditions governing their investments. This would convert the existing statutory guarantee into an investment-specific right capable of judicial enforcement.[213]

4. Clarification of Fiscal Ambiguities Through NRS Administrative Guidelines

The Nigeria Revenue Service should issue binding regulatory guidelines clarifying the tax treatment of contributions made to decommissioning and abandonment funds under section 103 of the Petroleum Industry Act, 2021. Clear confirmation that such contributions are deductible for both hydrocarbon tax and corporate income tax purposes would improve legal certainty for foreign investors making long-term investment decisions in the energy sector.
This would also support the fiscal reform objectives underlying the Petroleum Industry Act.[214]

5. Reform of Land Tenure to Promote Real Estate Investment

The National Assembly should commence the process of amending the Constitution or enact separate legislation to reform the consent requirements contained in the Land Use Act, 1978.

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[211] *A.G. Ondo State v A.G. Federation*; CAMA 2020, s 124(1).
[212] Foreign Investments Protection Act (Kenya), Cap 518, s 3.
[213] ibid s 4.
[214] Petroleum Industry Act, 2021, s 103; Nigeria Revenue Service (Establishment) Act, 2025, s 3.

At the very least, the law should prescribe mandatory timelines for granting Governor's consent, establish uniform fee schedules and provide a statutory right of administrative appeal where consent is refused or unreasonably delayed." These measures would reduce the uncertainty and bureaucratic delays that continue to discourage foreign investment in Nigeria's real estate sector.[215]

6. Strengthening Contract Enforcement and Anti-Corruption Mechanisms

The Federal Government should strengthen Nigeria's contract enforcement system by ensuring the effective operation of specialised commercial divisions within the High Courts and the Court of Appeal. These courts should be supported with dedicated case management systems and clear timelines for the disposal of commercial disputes. While the Arbitration and Mediation Act, 2023 represents an important legislative development, its objectives cannot be fully realised without corresponding investment in arbitral institutions and judicial capacity. Unless these institutional improvements are made, delays in the enforcement of contractual rights will continue to discourage foreign investment.[216]

5.3. Conclusion

In conclusion, this study has shown that the major challenge confronting foreign investment in Nigeria is not the absence of modern investment laws, but the persistent gap between the protections provided by legislation and their practical implementation.[217] The enactment of the Companies and Allied Matters Act, 2020, the Petroleum Industry Act, 2021, the Arbitration and Mediation Act, 2023, and the 2025 Tax Reform Acts reflects the commitment of the legislature to creating an investment environment that is competitive, stable and legally certain. Despite these legislative developments, the expected benefits have not been fully realised because regulatory agencies continue to rely on administrative directives that have no

[215] Land Use Act, 1978, s 1; CFRN 1999, s. 315(5), 315(6), 9
[216] Arbitration and Mediation Act, 2023, s 1.
[217] E Duruigbo (n 160)

clear statutory foundation. This practice weakens the established hierarchy of legal norms. At the same time, deficiencies within the judicial system and other key institutions continue to undermine the effective enforcement of investors' legal rights.

For Nigeria to convert these legislative reforms into sustained foreign investment, greater attention must be given to effective implementation. Administrative authorities should ensure that all regulatory actions remain consistent with the provisions of primary legislation, while regulatory agencies must operate within the limits of the powers granted to them by law. There is also a need to strengthen cooperation among investment-related institutions and improve the capacity of the courts and other dispute resolution bodies responsible for enforcing contractual rights. The implementation gap identified throughout this study goes beyond a regulatory weakness. It remains the principal obstacle preventing Nigeria's legislative reforms from producing the level of investor confidence required to attract and retain long-term foreign investment. Addressing this gap is therefore essential if Nigeria is to strengthen its position as a preferred destination for foreign investment in Africa.

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