

1971

Guarantees and Incentives to Foreign Investment in Nigeria

Samuel Oduh Ezediaro

Recommended Citation

Samuel Oduh Ezediaro, *Guarantees and Incentives to Foreign Investment in Nigeria*, 5 INT'L L. 770 (1971)
<https://scholar.smu.edu/til/vol5/iss4/12>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

Guarantees and Incentives to Foreign Investment in Nigeria[†]

Introduction

The Government of the Republic of Nigeria recognizes the need to increase foreign private investment in order to accelerate the development of the economy. It therefore accords to the foreign investor all the incentives, policies and facilities available to the indigenous Nigerian investor.¹ The Government realizes that overseas investors will be reluctant to commit their capital unless they can be assured that such investment will be guaranteed against non-commercial risks, and that the skilled overseas personnel who may be necessary to make it successful, will be welcome.

In their starkest forms, these non-commercial risks of concern to an alien investor include nationalization, expropriation, sequestration, or confiscation by the foreign government without adequate compensation, violation by the foreign government of a concession or other agreement, imposition of foreign exchange restrictions which prevent remittance of profits abroad and import restrictions which prevent importation of necessary equipment or raw materials.

Recognizing that non-commercial risks pose an important deterrent to foreign investment, Nigeria has taken steps to grant special assurances to foreign investors against many of the more serious of these risks in an effort to encourage the desperately needed inflow of overseas private capital. Such assurances, stressing the primary role of private capital and entrepreneurship in the country's economic development, have emanated from the very highest levels.² Consequently, the Government's policies,

*B.B.A., Pace College, 1964; M.A., City College of New York, 1966; J.D., Rutgers Law School, 1971.

†The author is indebted to Professor Ruth B. Ginsburg of Rutgers Law School for her review of the draft of this paper and her valuable comments, which contributed to the final composition of the paper. Needless to say, if shortcomings are property, whatever might appear in this paper vests exclusively in the author.

¹National Development Plan, 1962-68, § 29 (Federal Ministry of Economic Development, Lagos, 1962).

²E.g., Abubakar Tafawa Balewa, *Nigeria Looks Ahead*, 41 FOREIGN AFFAIRS 131 (1962); *Opportunities for Overseas Investment*, a joint statement first issued by the federal

attitudes, laws and regulations are generally favorable to private overseas investors.

In terms of content, the benefits granted under the Nigeria investment encouragement program go well beyond assurances against non-commercial risks. They include positive incentives such as tax holiday, import duty relief, accelerated write-off of capital assets, tariff barriers to protect the investment from foreign competition, industrial estates and freedom of transfer of profits and capital.

This paper examines briefly the individual laws applicable to foreign investment in Nigeria; taken together they indicate a legal climate highly conducive to such investment.

Legal Protection of Property and Business Interests under Nigerian Law

The legal and constitutional system of Nigeria affords protection against impairment by the federal and state governments of property or contractual rights enjoyed by the foreign firm. In particular, Section 31³ of the Republican Constitution of 1963 provides as follows:

31.-(1) No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that —

(a) requires the payment of adequate compensation therefore; and
(b) gives to any person claiming compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria.

(4) The provisions of this section shall apply in relation to the compulsory taking of possession of property, movable or immovable, and the compulsory acquisition of rights over and interest in such property by or on behalf of the state.⁴

Thus sub-division (4) of Section 31 makes it clear that the state is subject to the requirements of adequate compensation and judicial scrutiny: it makes no exception for nationalization or other forms of confiscation. The final clause of the provision, covering comprehensively "rights" and "interest" in property, is plainly sufficient to encompass the

and regional governments in 1956, reissued in 1959, and republished by the Federal Ministry of Commerce and Industry in *HANDBOOK OF COMMERCE AND INDUSTRY IN NIGERIA* (4th ed., 1960), p. 230, and (5th ed., 1962), p. 316: "Our Governments have no plans for nationalizing industry beyond the extent to which public utilities are already nationalized, nor do they foresee any such proposals arising." Quoted from PAUL O. PROEHL, *FOREIGN ENTERPRISE IN NIGERIA*, p. 230, note 14; The University of North Carolina Press, Chapel Hill, 1965.

³See also § 30 of the Independence Constitution (1960).

⁴The word "state" as used here refers both to federal and state governments.

nationalization of stock of a company in lieu of its assets. This statutory language should also cover the compulsory sale of stock to the State.⁵

Significantly, Section 31(1)(a) provides for "adequate compensation" in cases of compulsory acquisition; "adequate," while capable of wide interpretation, is a stronger word than "appropriate."⁶ The determination of what constitutes "adequate" compensation is not subject to unreviewable executive discretion for, if the parties cannot agree, the party claiming compensation may invoke the right accorded by Section 31(1)(b) to resolution by the High Court in the area in which the property is situated. An anterior safeguard is the Section 31(1) requirement that before property can be compulsorily acquired, there first must be a law authorizing the acquisition.

Expropriation Compensation

The Public Lands Acquisition Act⁷ is the only existing law of significance that permits the compulsory taking of private property. The Act requires that the taking must be for a "public purpose"⁸ and that the measure of compensation, in all cases, must be the fair market value on the open market assuming a willing buyer and seller.⁹ By reason of the constitutional provision just discussed, when the parties do not agree on the amount, court resolution may be obtained upon petition of the private party.

The provision for the exercise of eminent domain is couched in terms identical or similar to the formula used in many other nations.¹⁰ Furthermore, the Act deals only with the taking of land and not [with] the taking of a plant, business or any other kind of property or interest in property. As stated in the Section 31(1) of the Constitution, such other takings would require passage of additional legislation.

Compensation for Damage Caused by Riots

A unique type of law authorizes compensation for damage caused by riots. While the provision for the payment of compensation in cases of compulsory taking of land is a constitutional requirement, there is no

⁵See DR. SAMUEL SUCKOW, *NIGERIAN LAW AND FOREIGN INVESTMENT*, p. 17; Mouton Institut Africain de Geneve, Paris (1966).

⁶See p. 6, *infra*.

⁷Public Lands Acquisition Act, Laws of the Federation of Nigeria and Lagos, 1958, Ch. 167.

⁸*Id.*, § 3.

⁹*Id.*, § 15(6).

¹⁰See, for example, *Berman v. Parker*, 348 U.S. 26 (1954).

constitutional obligation to provide compensation for damage caused by riots. Yet, by 1963, the federal territory of Lagos and all the Regions had adopted laws¹¹ providing for compensation for damage caused by riots.

The method provided in each of these laws for obtaining the funds to provide compensation is basically the same. In case of an unlawful assembly or a riot which causes damage to property, if it is ascertained that the rioters are persons living in a certain neighborhood, all persons in that neighborhood can be held collectively responsible, and can be required to pay a special tax to be used to compensate the property owner(s).

This method of special tax assessment is questionable. While the payment of compensation to innocent people whose property is damaged in a riot is commendable, the idea of assessing persons collectively, the innocent along with the guilty, is repugnant to basic concepts of individual liberty and individual responsibility. The government should either determine the wrongdoers and place the compensation burden on them or pay the bill itself, for it has a moral obligation to protect the persons and the property of persons under its jurisdiction.

International Treaties

Although ample protection is given to a foreign investor under Nigerian law against various types of interference with his rights, he may still have serious doubts about the effective enforcement of these rights before appropriate local tribunals or agencies. For this reason, the Nigerian Government has participated in multilateral and bilateral accords with a view toward maximizing the legal protection available to the foreign investor under international law.

Nigeria was one of eighty-eight nations that approved the United Nations General Assembly resolution in 1962 on "Permanent Sovereignty Over Natural Resources."¹² The main clause of the resolution is as follows:

Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or national interest which are recognized as overriding purely individual or private interests; both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the state taking such measures in the exercise of its sovereignty and in accordance with international law.¹³

¹¹The Riot (Damages) Act, 1963, No. IV of 1963. The Riot Damage Law, 1958, N.N. No. 25 of 1958 as amended by: The Riot Damage (Amendment) Law, 1961, N.N. No. 14 of 1961. The Riot Damages Law, Laws of the Western Region of Nigeria, 1959, Ch. 112, as amended by Riot Damages (Amendment) Law, 1959, W.N. No. 37 of 1959. The Riot Damages Law, 1958, E.N. No. 9 of 1958.

¹²U.N.G.A. Res. No. 1803 (XVII) (1962).

¹³*Id.*, art. 1(4).

Notwithstanding that the resolution is not legally binding on U.N. member states, including those which voted for it, it may, in fact, be creative of a new rule of international law.¹⁴ Certainly the resolution is an important step forward, when such a large number of nations, resolve as they did on "appropriate compensation" for property taken, to respect government-to-government investment agreement,¹⁵ to comply to agreements to arbitrate,¹⁶ and to stick to the principles of international law.¹⁷

A most recent indication of official Nigerian Government policy towards foreign investment was the decision of the Nigerian Government to sign and ratify the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States,"¹⁸ sponsored by the International Bank for Reconstruction and Development — the World Bank. The Convention came into force on 14 October 1966, the thirtieth day following the date of deposit of the twentieth instrument of ratification.¹⁹ The Convention provides procedures on the international level for adjudicating disputes between States and private parties to which the latter may have recourse without the intervention of their governments.²⁰

Although the mere signing and ratification of this convention will not obligate any state to submit any particular dispute to arbitration, yet, it is an indication of official sympathy for such solutions. The obligations of such an international convention would apply where Nigeria and a foreign investor had voluntarily agreed to use the facilities established by the convention for conciliation or arbitration, as the case may be. Such an agreement might be made at the threshold, before the investor commits his capital, as well as at a later time.

¹⁴See Oscar Schachter, *The Quasi-Judicial Role of the Security Council and the General Assembly*, 58 AM. J. INT'L L. 960 (1964). France and South Africa voted against Res. No. 1803. The twelve abstainers were the Soviet Bloc (including Cuba) and, of the less-developed countries, only Ghana and Burma. Quoting from PROEHL. *op. cit.*, *supra* note 2, at 229, note 4.

¹⁵Res. No. 1803 (*see* note 10) Art. 1(8) PROEHL *op. cit.*, *supra* note 2, at 161.

¹⁶*Id.*, art. 1(4).

¹⁷*Id.*

¹⁸The text of the Convention and of the accompanying Report of the Executive Directors has been published in 60 AM. J. INT'L L. 892 (1966), 4 INT'L L. MAT. 524, 532 (1965). For a description of the Convention and its history, *see* A. Broches, *The Convention of the Settlement of Investment Disputes: Some Observations on Jurisdiction*, COLUM. J. TRANSNATIONAL L. (Vol. 5, 1966); Boskey and Sella, *Settling Investment Disputes* (2 Finance and Development), THE FUND AND BANK REVIEW 129 (1965); Sassoon, *Convention on the Settlement of Investment Disputes*, 1965 J. BUS. L. 334, and *The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States*, 1 ISRAEL L. REV. 27 (1966); Hynning, *The World Bank's Plan for the Settlement of International Investment Disputes*, 51 A.B.A.J. 558 (1965).

¹⁹575 U.N.T.S. 159 at p. 160 (1966).

²⁰*See* Broches, note 16 *supra*, at p. 265. Capacity of individuals to appear with States on a footing of equality before international conciliation commissions and arbitral tribunals is a significant indicia of recognition of the status of the individual as a subject of international law.

The adoption of this convention constituted a significant step forward toward the establishment of the Rule of Law in international investment. The contribution of Nigeria in bringing this about should be hailed for in this field, Nigeria is a pioneer, since she was the first nation to deposit her instrument of ratification.²¹

Furthermore, it should be noted that Nigeria is a party to two multilateral conventions pertaining to the protection of intangible property: the International Convention for the Protection of Industrial Property²² and the Universal Copyright Convention.²³

Apart from the multilateral treaties to which Nigeria is a party, she has also entered into a number of bilateral agreements with other countries. One such accord is the investment guarantee agreement between Nigeria and the United States of America, under which Nigeria recognizes the subrogation of United States to claims of its nationals, if payment is made by the United States for "assets expropriated or assets made useless by reason of expropriation."²⁴

Commercial Arbitration in Nigeria

The growing interest in arbitration as a necessary element in private business operations and investment projects requires a resume of Nigeria's law on the subject.

Arbitration as a method of settling disputes is a tradition of long standing in Nigeria. Referral of a dispute to one or more laymen for decision has deep roots in the customary law of many Nigerian communities. Indeed, in many of the isolated village communities, such a method of dispute resolution was the only reasonable one, for the wise men or chiefs were the only accessible judicial authorities. This tradition still persists in certain village communities, despite the centralized legal system and the attendant efforts at modernization and reform of the legal system.

The modern Nigerian leaders did not seek to do away with this tradition. Moreover, for more general use, they adopted an Arbitration Act.²⁵ This Act provides that an agreement to arbitrate can apply either to existing

²¹575 U.N.T.S. 159 at p. 160 (1966).

²²Convention of Union of Paris of March 20, 1883, as revised, for the Protection of Industrial Property, done at Lisbon, Oct. 31, 1958. 1 U.S.T. I; T.I.A.S. No. 4931. The 1925 revision was previously applicable to Nigeria. See U.S. Department of State, *Treaties in Force* (1964), pp. 250-51.

²³Done at Geneva, Sept. 6, 1952. 6 U.S.T. 2731. Effective with respect to Nigeria, Feb. 14, 1962. U.S. Department of State, *Treaties in Force* (1964), p. 304.

²⁴Investment Guarantees Agreement between the United States of America and Nigeria, Dec. 24, 1962, T.I.A.S. 5237.

²⁵Arbitration Act, Laws of the Federation of Nigeria and Lagos, 1958, Ch. 13. This was a re-enactment of an earlier ordinance. Suckow, *op. cit.*, *supra* note 5, at 193.

disputes or to contemplated future disputes, as stipulated explicitly by the parties.²⁶ An agreement to arbitrate, unless the opposite is stated, is deemed to be irrevocable.²⁷

If there is an agreement to arbitrate which requires a party to appoint an arbitrator, and he either fails or refuses to comply, that duty can be assumed by the High Court.²⁸ The High Court, either of Lagos or the Region, deals with judicial enforcement of arbitration agreements and awards. An arbitral award can be enforced in the same way as a court judgment, by leave of the High Court or of a Judge of that Court.²⁹

Enforcement of Foreign Arbitration Awards and Judicial Judgments

The provisions for the enforcement of arbitration agreements and awards thus far described relate to arbitration proceedings held in Nigeria. The Arbitration Act does not apply to enforcement of agreements or awards where the private agreement calls for arbitration abroad. Recently, Nigeria ratified and acceded to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.³⁰ The convention, which has been in force since June 1959, was prepared and opened for signature in June 1958 by the United Nations Conference on International Commercial Arbitration.

By the end of December 1969 forty-four countries, including major trading nations, had become parties to the convention.³¹ The convention has many advantages. Its provisions permit wide latitude for party autonomy in choosing the governing law, and in determining the composition and procedures of the arbitration tribunal. In addition, the convention offers greater flexibility in selecting the place of arbitration. Since many nations have become parties to the convention, the forum decision could be made to depend less upon the presence of assets subject to execution, and more upon convenience for arbitration; the parties' choice of law would be effective whether or not it corresponded to their choice of forum.³²

Each contracting state is required to recognize and enforce arbitral awards rendered in other contracting states. In carrying out this obligation, the recognition forum applies its own rules of procedure.³³ The mandatory

²⁶*Id.*, § 2.

²⁷*Id.*, § 3.

²⁸*Id.*, § 6.

²⁹*Id.*, § 13.

³⁰U.N. MONTHLY CHRONICLE, Vol. VII, No. 4, p. 77, April 1970.

³¹ST/LEG/SER. D/3, pp. 365-6, December 1969.

³²See Ginsburg, *Recognition and Enforcement of Foreign Civil Judgments: A Summary View of the Situation in the United States*, INT'L LAWYER, Vol. 4, No. 4, p. 738, July 1970.

³³Art. III.

provision for confirmation of awards is subject to certain conditions specified in the convention.

Among the conditions for refusal of recognition and enforcement of the award are: (1) the party against whom it is invoked was not given notice or was otherwise unable to present his case;³⁴ and (2) recognition or enforcement would be contrary to the public policy of that country.³⁵ The provision containing the due process guarantees of notice and opportunity to be heard are entirely appropriate, indeed essential, since these are basic prerequisites to recognition of any juridical process.

But the provision relating to public policy as a ground for non-recognition is troublesome since public policy may be an "unruly horse" which may carry its rider he knows not where. However, another provision of the convention indirectly discourages abuse of the public-policy ground for non-recognition, by stating that a contracting state shall not be entitled to avail itself of the convention against other contracting parties except to the extent that it is itself bound by the convention.³⁶

In view of the high incidence of arbitration in commercial matters, and because arbitration is frequently the most fair, speedy and economical method of settling international commercial disputes, it is likely that members of business community engaged in foreign trade will consider the convention as significant. Therefore, Nigeria stands to gain by its accession to the convention.

Nigeria's Foreign Judgments Act became effective in 1961.³⁷ Before a foreign judgment can be enforced in Nigeria, the President must by order announce that this Act should be applicable to that foreign country. To do so, he must be satisfied that if he extends the benefits to that foreign country, that country will assure reciprocity insofar as Nigerian High Courts judgments are concerned.³⁸ Reciprocity of treatment thus remains the cornerstone of the system of the enforcement of foreign judgments in Nigeria.

The method of enforcement specified in the Act involves the registration of the judgment in a superior court in Nigeria within six years of its issue.

³⁴Art. V(1)(b) (mandatory ground).

³⁵Art. V(2)(b) (discretionary ground).

³⁶Art. XIV.

³⁷Foreign Judgments (Reciprocal Enforcement) Act, 1960, Appointed Day Notice, L.N. 56 of 1961.

³⁸Foreign Judgments (Reciprocal Enforcement) Act, § 3, No. 31 of 1960. So far, no country has been designated under the present Foreign Judgments Act. However, a special statute, the Reciprocal Enforcement Act, renders enforceable in Nigeria judgments obtained in a superior court in Great Britain. *See* Laws of the Federation of Nigeria and Lagos, 1958, Ch. 175.

Once registered, the foreign judgment becomes enforceable in the same way as a judgment of that Nigerian court.³⁹

Investment Incentives

High taxes on foreign investment constitute a tempting source of revenue. Yet Nigeria does not wish to kill the goose that is laying golden eggs. Moreover, it has to keep the goose happy. Therefore, tax exemptions and relaxations for foreign investments, particularly in the earlier stages of an enterprise, are very frequent. As a general rule in Nigeria, enterprises contributing to the industrialization of the country are most apt to be encouraged with tax incentives. Extractive enterprises are less likely to be favored, and, understandably, importing operations are not likely to qualify for tax incentives.

The Nigerian Federal Government, which has exclusive powers in the fields of company taxation⁴⁰ and tariff policy,⁴¹ offers special incentives to industrial enterprises where it finds such assistance to be in the overall economic interest of Nigeria. Under the Industrial Development (Income Tax Relief) Act, 1958,⁴² complete income tax relief for varying periods is available to qualifying companies in industries that have been determined by the Government to be of special benefit to Nigeria.

More specifically, the Act provides a method for designating an industry as a "pioneer industry" and its products as "pioneer products." Subsequently, those companies within that industry that have been accepted for the designation of "pioneer company" are given tax relief for varying periods. Thus, there are technically two distinct steps: the designation of an industry as a "pioneer industry," and the certification of a company within that industry as a "pioneer company."

For an industry to be designated as a "pioneer industry," a representation must be made to the Federal Minister of Commerce and Industry on Form API/1. The Minister transmits this form to the President for consideration. If the representation is successful, it is open to any public limited liability company registered in Nigeria, which desires to engage in the

³⁹Foreign Judgments (Reciprocal Enforcement) Act, § 4, No. 31 of 1960.

⁴⁰Constitution of the Federation of Nigeria Act, No. 20 of 1963. § 76(1).

⁴¹*Id.*, Schedule, Part 1, Item 10.

⁴²Industrial Development (Income Tax Relief) Act, 3 Laws of the Federation of Nigeria and Lagos c. 87 (1958), which was derived from its predecessor, the Aid to Pioneer Industries Ordinance of 1952, and was continued in effect by the Companies Income Tax Act, Laws of the Federation of Nigeria and Lagos Act, 157 (1961). Taxes on oil companies are regulated by the Petroleum Profits Tax Act, 1959, which established the 50-50 sharing of profits with the Federal Government on oil production.

pioneer industry to apply to the Minister on Form API/2 for the issue of a pioneer certificate.⁴³

The certification of a company as a "pioneer company" entitles the company to certain income tax reliefs, if the company observes certain stipulated conditions contained in the certificate. Of these conditions, the most important are that:

- (a) the company shall not engage, during the tax relief period, in any enterprise except the pioneer industry in respect of which the pioneer certificate is granted; and
- (b) the company shall start to operate the factory — or, where a mining company is concerned, begin mining operations — within one year of the date estimated by the company in its application.⁴⁴

The essential conditions for an industry to be eligible for designation as a pioneer industry are either that the industry is not being carried on in Nigeria, or not on a scale adequate to the country's economic needs, or that the prognosis for further growth of the industry is favorable.⁴⁵ A list of industries and products declared 'pioneer' is reproduced in the "Handbook of Commerce and Industry in Nigeria."⁴⁶ Examples include manufacture of footwear, textiles, canned foodstuffs, plastics, tires and tubes, glassware, ceramics, pharmaceuticals, agricultural fertilizers, bone crushing, dairying and hotel-keeping. By 1966, about one hundred and fifteen companies had benefited from tax exemptions for varying periods.⁴⁷

Tax Holiday

It is possible for a pioneer company to enjoy complete income tax relief for a period of five years. An initial two-year period of relief is granted, if the company has incurred on fixed assets a minimum investment of \$14,000 before production day. The failure to have at least \$14,000 of expenditure qualified will result in the cancellation of the pioneer certificate.⁴⁸ The Government will grant a third year of income tax relief if after two years the company has an investment of at least \$42,000,⁴⁹ a fourth

⁴³HANDBOOK OF COMMERCE AND INDUSTRY IN NIGERIA; compiled and published for the Federal Ministry of Commerce and Industry by the Federal Ministry of Information; Lagos, Nigeria. 5th ed., p. 53, (September 1962).

⁴⁴*Id.*

⁴⁵Industrial Development (Income Tax Relief) Act, *Id.*, § 3(1)(a).

⁴⁶HANDBOOK OF COMMERCE AND INDUSTRY IN NIGERIA (5th ed., 1962), pp. 320-24, compiled and published for the Federal Ministry of Commerce and Industry by the Federal Ministry of Information, Lagos. This list contained only industries and products that were declared pioneer up to June 30, 1962.

⁴⁷SUCKOW, note 5, at pp. 214-219.

⁴⁸Industrial Development (Income Tax Relief), *op. cit.*, § 8(1). The conversion rate is \$2.80 to £1 (sterling).

⁴⁹*Id.*, § 11(2)(a).

year if after three years an investment of at least \$140,000,⁵⁰ and a fifth and final year if after four years an investment of at least \$280,000.⁵¹ Apparently, this schedule is designed to encourage reinvestment of profits.

Apart from extensions of time based on the sum of recognized capital expenditures, if the company incurs losses during one or more accounting periods of the tax holiday, the time of exemption is extended by an equal number of periods.⁵² The tax holiday benefits extend not only to the pioneer company but also to the shareholders of the company for the shareholders are exempt from tax on dividends up to the amount of the profits.⁵³

Accelerated Depreciation

After the expiration of the tax holiday period, the pioneer company may still keep its tax low by utilizing the accelerated depreciation provisions contained in the Income Tax (Amendment) Act of 1958,⁵⁴ which were held in abeyance during the tax exemption period. All companies that operate in Nigeria are eligible to write-down capital assets against profits at an accelerated rate. The accelerated depreciation provisions enable companies to amortize capital assets in the formative years and rapidly build up liquid reserves.

The special initial deduction of 40 percent for machinery and 20 percent for industrial buildings is allowed, on top of a normal permissible annual depreciation of 5 percent to 15 percent for machinery (based on expected life) and 10 percent for industrial buildings. Consequently, a company can write off against profits as much as 50 percent of the cost of machinery during its first taxable year.⁵⁵ If taxable income fails to absorb an annual write-off, the balance may be carried forward to be written off against future profits for as long as ten years.⁵⁶

Relief from Import Duties

Under the Industrial Development (Import Duties Relief) Act, 1957,⁵⁷

⁵⁰*Id.*, § 11(2)(b).

⁵¹*Id.*, § 11(2)(c).

⁵²*Id.*, § 11(7).

⁵³*Id.*, § 18(3).

⁵⁴Official Gazette, Supplement (1958), p. A42.

⁵⁵The declining balance method (original expenditure less previous allowances) is the official system for calculating annual deductions.

⁵⁶Companies Income Tax Act, § 27(g)(ii); Laws of the Federation of Nigeria and Lagos. A 157 (1961).

⁵⁷Industrial Development (Import Duties Relief) Act, Laws of the Federation of Nigeria and Lagos, 1958, Ch. 86.

Nigeria offers protection to local industries by erecting tariff walls and by granting relief from import duties to companies where it is economically necessary.

In order to obtain an import duty rebate, the applicant must satisfy the federal Minister of Commerce and Industry: (1) that, without the rebate, the finished goods could not be produced at prices competitive with comparable imported equivalent, or at prices leading to the establishment of an adequate Nigerian market; or (2), that the imported finished products bear a lower proportion of import duty than the materials imported to manufacture the same products in Nigeria; or (3), that the imports consist of fixed plant or materials needed for production in Nigeria. Additional criteria are based upon the general cost of the requested relief to Nigeria, the importance of the industry to the country, and the need for relief to prevent adverse financial results.⁵⁸

Nigeria's tariff schedule provides protection for local manufacturing of many products. Normally, finished imported products attract a duty of 20 percent but many items are taxed at substantially higher rates, reaching 75 percent to 100 percent in some instances where protection has been granted to infant industries.⁵⁹ The duty on raw materials and semi-finished products is generally below the normal rate, encouraging the local processing of imports. Any firm may make representations to the Government for changes in the tariff that are believed to be helpful in promoting the growth of efficient domestic industry. Moreover, the Government offers all industry in Nigeria protection from material injury by dumped goods in the country or goods sold locally that have been the object of government subsidies.⁶⁰

Other incentives include the establishment of industrial estates⁶¹ in vari-

⁵⁸Between 1960 and 1963, twenty-seven companies were granted import-duties relief, costing the government an estimated \$1,405,600 in revenue. For a list of the companies, see WEST AFRICA, May 21, 1963, Quoted from PROEHL, *op. cit.*, *supra* note 2, at 223, note 38.

⁵⁹In 1963, for example, import duties on tinned meats and poultry were increased from 25 percent to 50 percent *ad valorem*, on biscuits from 33 $\frac{1}{3}$ percent to 50 percent, on shoes from $\frac{3}{8}$ to 4 shillings per pair, and on suitcases a new duty of 4 shillings each, "all . . . intended solely to provide increased needed protection to Nigerian industry." MODERNIZATION BUDGET (1963), p. 29, Ministry of Information.

⁶⁰Customs Duties (Dumped and Subsidized Goods) Ordinance, 1958, 2 Laws of the Federation of Nigeria and Lagos c. 47 (1958), gives the president in council power "to impose and vary duties of customs in such manner as he thinks necessary to meet the dumping or giving of the subsidy." The legislation is based on United Kingdom Act, Customs Duties (Dumping and Subsidies) Act, 1957, 5 & 6 Eliz. 2, c. 18 (1957).

⁶¹"About 930 acres of industrial estates have been developed at Apapa, Ijora and Iganmu in Capital Territory. Over 2,100 acres have been developed in the North at Kaduna, Kano, Zaria, Jos, Ilorin, Gusau and Maiduguri. In Eastern Nigeria, the Government has under development over 4,100 acres of land for industrial purposes and about 1,970 acres are

ous parts of the country with necessary services and facilities. Land is easily leased to industrialists, at reasonable terms.⁶² Unskilled labor is plentiful and there is an increasing supply of graduates of technical institutes, colleges and universities who are easily trained to acquire the necessary skill for a variety of modern industries. Furthermore, institutions like the Nigerian Industrial Development Bank, the Federal Institute of Industrial Research and the Investment Information Centre, give information and assistance to the investor in various ways.

Repatriation of Profits and Capital

Repatriating capital and profits must be authorized specifically by the Federal Ministry of Finance. In practice, profits and dividends arising from approved investments may be freely transferred abroad without difficulty after payment of income tax. The terms for repatriation of capital are normally agreed upon between the government and the alien investor at the time of investment, when the latter should seek "approved status."⁶³ The Government generally grants "approved status" on the basis of the desirability of foreign investment in the field involved and the reasonableness of the foreign exchange costs that will probably arise.

Financial Participation

Nigerian Companies may be wholly owned by foreigners, although companies motivated by a spirit of partnership are preferred.⁶⁴

The Government is often itself an investor. Besides investing in such things as ports, railways, roads, power supply and transmission, telecommunications — things in which the returns on investment are very low and unattractive to private business — the Government often invests in agriculture and industry either alone or together with private entrepreneurs in joint ventures. The Government, therefore, has a deep interest in creating and maintaining the best conditions for rapid development, which insures good opportunities for profitable investment.

being developed in Western Nigeria at Ikeja, Mushin, Ilupeju — all outside Lagos — for the same purpose. A similar development of 700 acres is being undertaken in Mid-Western Nigeria to open up the area for new industries. The Government has indisputable title to the lands comprising these estates." The above information is contained in a booklet *INVESTMENT OPPORTUNITIES IN NIGERIA*, pp. 14-15; published by the Ministry of Information, Lagos, in September 1956, and reissued in August 1959.

⁶²See Public Lands Acquisition Act, *op. cit.*, *supra* note 7, at § 2(i).

⁶³See *INVESTMENT OPPORTUNITIES IN NIGERIA*, note 61, at 15.

⁶⁴*INVESTMENT OPPORTUNITIES IN NIGERIA*, note 61, at p. 14.

Conclusion

Nigeria has the largest population of any country in Africa. With its population of over 55 million people, Nigeria is one of the fastest growing markets in the world.

Furthermore, the country is richly blessed with natural resources such as coal, tin, columbite, gold, natural gas, petroleum, limestone, lignite, lead and zinc. Agricultural products include a wide variety of crops such as cocoa, palm produce, groundnuts, cotton, soy beans, benniseed, rubber, yams, maize, cassava and various spices notably ginger, chillies and pepper. Growth in industrial production has been impressive. Compared with other developing countries, Nigeria has a well diversified economy.

Moreover, because of the central geographical position of Nigeria in West Africa, the small populations and limited economies of bordering nations, and the growing desire among West African countries for the establishment of free trade among them, Nigeria should be considered as a manufacturing or distributing center.

Apart from these natural endowments, Nigeria has assured foreign investors against non-commercial risks to a much higher degree than in most of the developing countries. For these reasons, Nigeria merits serious consideration from investors contemplating participation in a developing economy.