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UTILIZING FOREIGN DIRECT INVESTMENT IN THE NIGERIAN INSURANCE SECTOR

INTRODUCTION

The current rapid economic growth in Nigeria is steadily increasing the need for insurance. Of particular reference is the recent privatisation of the power sector, where the financiers insisted on the acquirers providing bankable insurance programs, which to a large extent could not be obtained from Nigerian insurers. To meet this condition, the acquirers had to subject to obtaining express approval of the National Insurance Commission ("NAICOM"), resort to facultative reinsurance with acceptably rated foreign counterparties.

It is apparent that the dearth of capital, skills, infrastructure and know how in the Nigerian insurance sector greatly limits its ability to respond to the growth of the Nigerian economy or to provide the conditions required to transform Nigeria into an insurance/reinsurance hub in sub-Saharan Africa. To develop the required resilience, the Nigerian insurance sector will need all the help it can get through Foreign Direct Investment ("FDI") to maximise its full potential.

FDI is a major stimulus to economic growth in developing countries. Its ability to provide capital for expansion, technology, skills, job opportunities, and infrastructure among many other benefits has made it a main attraction to developing countries looking to grow their economy. The insurance sectors of countries like Singapore, Hong Kong, Malaysia, Vietnam and Taiwan have benefited greatly from the liberalisation of their insurance sectors through FDI.

There is no doubt that Nigeria, like countries in comparable emerging economies would need to take advantage of all the benefits that FDI could offer in order to transform its insurance sector. The Nigerian market may to a large extent be described as an open market, one with little or no

regulatory barriers to entering into, which makes it a very fertile ground for attracting the requisite FDI in the Nigerian Insurance sector.

This article, which will be in two parts, focuses on the current Nigerian regulatory framework on FDI, the sufficiency of the FDI regulations and the structures that can in addition to the current regulation, be put in place to take maximum advantage of capital inflow and skills available for improving the Nigerian insurance sector.

RELEVANT LEGISLATION FOR FDI IN THE INSURANCE SECTOR

The Nigerian insurance laws require express consent from NAICOM before a local risk may be exported to an insurer not licensed by NAICOM. The effect of this requirement is that a foreign insurer will have to conform to the regulations discussed below to have unlimited access to local risks in Nigeria.

Section 3 of the Insurance Act, Cap I17 Laws of the Federal Republic of Nigeria 2004 ("Insurance Act") stipulates that no person shall commence or carry on any class of insurance business in Nigeria, except companies duly incorporated under the Companies and Allied Matters Act Cap C20, Laws of the Federal Republic of Nigeria 2004 ("CAMA") or other bodies duly established by any other enactment to transact insurance or reinsurance business in Nigeria.

The implication of Section 3 of the Insurance Act is that, a company registered under CAMA irrespective of the nationality of its member, is eligible to carry on any class of insurance business in Nigeria in so far as the Company meets the requirements contained in the Insurance Act.

The CAMA

Section 54 of CAMA requires every foreign company intending to carry on business in Nigeria, to register with the Corporate Affairs Commission (CAC) as a separate entity in Nigeria and until so registered, such foreign company cannot have a place of business in Nigeria, save for the receipt of notices and other documents as matters preliminary to incorporation.

CAMA exempts certain foreign companies from the requirement of registration; these exemptions are largely focused on loan projects approved by the Federal Government of Nigeria.

The NIPC Act

The Nigerian Investment Promotion Commission Act ("NIPC Act") and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act Cap F34, Laws of the Federal Republic of Nigeria 2004 ("Forex Act") contain key provisions with respect to FDI in Nigeria. It should be pointed out that there are other investment laws in Nigeria but for the purposes of this article, we shall limit our consideration to the NIPC Act, the Forex Act and CAMA.

According to the provisions of the NIPC Act, a foreign entity may freely invest and participate in the operation of any enterprise in Nigeria, except enterprises contained in the "Negative List", specifically: the businesses for the production of arms and ammunition; the production of, and dealing in narcotic drugs and psychotropic substances; and the production of military and para-military wears and accoutrement, including those of the Police and the Customs, Immigration and Prison Services.

A foreign entity may operate alone or in joint ventures with Nigerians by means of a company, which must first of all be formed and registered in Nigeria under CAMA and thereafter registered with the NIPC.

Section 21 of the NIPC Act, allows a foreign company not wishing to establish a business in Nigeria to buy shares in an already existing Nigerian company in any convertible currency. By necessary implication, in addition to acquiring portfolio investment, a foreign entity enterprise can also merge with or take over a Nigerian enterprise.

The assurance in Section 21 is augmented by the provisions of Section 15 and 16 of the Forex Act, which provide that any person may invest in any enterprise or security, with foreign currency or capital imported into Nigeria through an Authorised Dealer and convert into Naira in the Autonomous Foreign Exchange market.

The Authorised Dealer through which the foreign currency was imported will issue a Certificate of Capital Importation to the investor; thus, facilitating unconditional transferability and repatriation of funds with regards to both earnings and capital. The NIPC Act in addition to the guarantees mentioned in the preceding paragraph, also guarantees the investment of a foreign investor against expropriation and nationalisation, the right to due process of law, delocalised dispute settlement mechanism and incentives.

From the foregoing, it is clear that there are no FDI restrictions or caps on the percentage of shareholding of foreign equity ownership in the Nigerian insurance sector.

It is interesting to note that the FDI regulations in Nigeria correspond with the international trend of minimal or no restriction to FDI. The basic philosophy underpinning the Nigerian FDI regulatory framework is having an open door policy to investments, and its aim is to stimulate local and foreign investment in Nigeria.

The current regulatory framework for FDI in Nigeria and the insurance sector has been structured on this philosophy and is sufficiently structured to attract FDI in the Nigerian Insurance Sector.

UTILIZING THE EXISTING FDI FRAMEWORK

The removal of restrictions on FDI is rarely sufficient to stimulate FDI in an economy or sector. To be successful, a FDI reform would have to be complemented by public awareness, regulatory and trade reforms, incentives schemes, infrastructure and a reliable legal system. Below are a few suggested reforms that can be adopted to stimulate FDI in the Nigerian insurance sector

Unified Insurance Regulator

Although the insurance sector is largely regulated by NAICOM, it is useful to note that specialized insurance business is regulated, in the case of the health insurance sector, by the governing council of the by National Health Insurance Scheme Act ("NHIS"), and in the case of the agricultural insurance sector, by the Nigerian Agricultural Insurance Corporation ("NAIC").[1] .

It is believed, that the lack of a uniform insurance regulator, which essentially does not allow for cohesive regulatory policies (unlike what obtains in Singapore and England where the Monetary Authority of Singapore and the Financial Conduct Authority respectively are the sole regulators), can be regarded as one of the reasons for the low level of insurance penetration in Nigeria, which makes the insurance sector unattractive to foreign investors.

Public Awareness

To attract FDI to the Nigerian Insurance Sector, it will be necessary for the Regulators to embark on aggressive public awareness campaigns to educate the local stakeholders on the benefits of FDI to these stakeholders, so as to encourage the implementation of the needed reforms to attract FDI.

[1] The various regulators of the insurance sectors are herein collectively referred to as the "Regulator".

Engaging local stakeholders is an essential component of reform as it helps to improve both the effectiveness of the reform and the buy-in from local stakeholders.

For example, the insurance / broker associations, may if convinced of the benefits to its members, be galvanized to foster public confidence in, and respect for the insurance industry; establish a sound insurance structure and promote greater efficiency within the industry; and promote education and training in insurance which will in turn make the insurance sector attractive to foreign investors.

In addition to stakeholders' engagements, the Regulators will also need to engage prospective foreign investors and educate them on the enormous opportunity in the insurance market, the progress on reforms, the incentives and others guarantees provided under the NIPC Act and possibly provide assurances and additional comfort that the foreign investors may require.

Regulatory Reforms and Reliable Legal Systems

Leading international insurance hubs like London and Singapore have evolved and flourished, largely due to the reputation of possessing a liberal and effective regulatory environment and reliable legal system. These attributes enable businesses to be transacted in a secure, innovative and commercially attractive environment.

It is without a doubt that the Nigerian market will need to inspire the same confidence to attract foreign investors to the Nigerian market and in particular its insurance sector.

Pending any reforms in the Nigerian judiciary, it is suggested that the Regulators should look to restructuring the grievance redress mechanisms between insurance counterparties, to assure foreign investors that the Nigerian insurance sector is a secure, innovative and attractive environment

to conduct insurance business. Examples of structures that can be developed include insurance ombudsman scheme, consumer forums and alternative dispute resolutions provisions in insurance policies.

It is also suggested that the Regulators should seek to align their policies with current international insurance regulation models, particularly in the areas of corporate governance and market conduct to ensure the development and growth of strong insurance institutions.

Incentives & Waivers

The Regulators should also consider providing incentives and waivers that will encourage FDI in the insurance sector. For example, the Regulators may consider reducing levies imposed on insurance companies with significant foreign equity investments and partnering with the NIPC and other relevant regulatory bodies to provide incentives such as tax exemptions that will lure FDI to the insurance sector. Further, as stated elsewhere in this article, foreign companies wishing to do business in Nigeria must incorporate a local subsidiary in Nigeria to carry out their intended business. This requirement may be a major deterrent to foreign insurers who for practical reasons like taxation, cost of setting up an entity or access to the capital of the parent company, favour branches as a means of carrying out cross-border operations. It is proposed that the Regulators may, in conjunction with the relevant regulatory authorities provide waivers that will subject to appropriate regulations allow insurance cross-border activities to be carried out through the establishment of branches of foreign insurers. Enabling foreign insurers to carry out cross-border operations through branches has attracted FDI to the insurance sectors of countries like Singapore and Malaysia that has in turn resulted in the transformation of their insurance sectors.

CONCLUSION

There is no doubt that the current regulatory framework for FDI in Nigeria and the insurance sector is sufficiently structured to attract FDI in the Nigerian Insurance Sector. What is lacking is the framework required to assure foreign investors that Nigeria provides a secure environment for the investments ploughed into Nigeria.

It is believed that aggressive public awareness campaigns, improved legal systems, and the provision of incentives and waivers, will enable the insurance sector attract the level of FDI required to meeting the growing demands of the Nigerian economy.

Contacts and Links

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