

Northwestern Journal of International Law & Business

Volume 5

Issue 4 *Winter*

Winter 1983

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Recommended Citation

Richard J. Faletti, Investing in Nigeria - The law, Good Intentions, Illusion and Substance, 5 Nw. J. Int'l L. & Bus. 743 (1983-1984)

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Investing in Nigeria—The Law, Good Intentions, Illusion and Substance

Richard J. Faletti *

FOREWORD

The *Journal* has expressed concern whether the New Year's Eve coup d'état in Nigeria may not have made obsolete the contents of this article. The mechanical workings of government in Nigeria are handled by a massive civil service bureaucracy. A new government will replace ministers and possibly permanent secretaries, but it will go no further. Many of the procedures, regulations and laws discussed within were put in place by the previous military government prior to 1979, were continued by the elected government, and will not be terminated by the new military government. I am convinced that bureaucratic life will go on as before. My informational sources in Nigeria suggest that under the efficiencies of a military dictatorship, it will now be possible to get things done more expeditiously.

The leaders of the coup have charged that corruption in government was rampant, and there appears to be evidence of corruption at high levels. In my extensive dealings with a number of ministries (at the permanent secretary rather than the ministerial level), I was never asked for a payment, nor was there any hint or subtle suggestion. There were private occasions when something could have been said, but was not. Permits ultimately were forthcoming, but a great deal of patience and persistence was required.

I. INTRODUCTION

Nigeria has been called one of the "last frontiers" for international

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investors.¹ To inform potential investors and to make a statement of government policy, the Nigerian government has issued a pamphlet entitled *Nigerian Industrial Policy and Strategy: Guidelines to Investors*.² Those who are considering investing in Nigeria should read the *Guidelines* carefully. Potential investors should be aware, however, that neither the *Guidelines*, nor any of the extensive other literature prepared by banks, lawyers and accountants mention all the requirements for investors in Nigeria. In addition, some of the requirements which the *Guidelines* mentions do not exist.

This perspective will discuss two points which are essential to an understanding of Nigerian law and government. One is good intentions. Lawyers trained in the English common law know the equity maxim, "[e]quity will regard as done that which ought to be done." Nigerian government officials tend to assume the existence of a similar maxim. Having enunciated a good idea, the matter is apt to be forgotten because of the assumption that the idea was implemented immediately. This perspective will examine some of these good intentions.

The second point which one must understand about Nigeria is the difference between the written law and practice. What the law "says" is not as meaningful as the way in which it is applied. Any government bureaucracy worthy of its existence tends to follow unique interpretations of the law, and the Nigerian ministries are no exception. Accordingly, an attempt will be made to sort out the illusion of written laws and policy from the substantive ways Nigerian officials apply them.

II. THE GUIDELINES AND THEIR APPLICATION

The *Guidelines* advise that once a foreign investor decides to set up a business in Nigeria "he should then apply to the Ministry of Internal Affairs for permit to establish a business."³ This is in accord with existing Nigerian law which provides that, upon entry of an alien into Nigeria for business purposes, written authorization from the Minister charged with immigration matters (Internal Affairs) is required.⁴

When it published the *Guidelines*, the Ministry of Industries recognized that the Ministry of Internal Affairs had jurisdiction to issue busi-

¹ Spivak, *Lagos is Frustrating and Inconvenient but Foreigners Still Find it Irresistible*, Wall St. J., Sept. 27, 1982, at 36.

² MINISTRY OF INDUSTRIES, *NIGERIAN INDUSTRIAL POLICY AND STRATEGY: GUIDELINES TO INVESTORS* (1980) [hereinafter cited as *GUIDELINES*]. This was based on an October 1980 speech by the then Minister of Industries, the Honorable Mallam Adamu Ciroma.

³ *GUIDELINES*, *supra* note 2, at 29.

⁴ Immigration Act of 1963, § 8 (1).

ness permits.⁵ It now appears, however, that the Ministry of Industries intends to amplify the business permit law. Two staff members of the Ministry of Industries have advised this writer that an application for a business permit and for approval of a proposed business facility's location now must be made to the Ministry of Industries as well as the Ministry of Internal Affairs. These staff members were not bothered by the fact that no existing act or decree imposed this requirement. Apparently, they made the assumption that the National Assembly would change the applicable law in due course. In the interim, however, the Ministry of Industries has arrived at an "administrative arrangement" designed to promote its view as to which ministry should issue business permits.

A prospective investor also should be aware that the Ministry of Industries has the power to grant or withhold a number of business incentives.⁶ It has been made abundantly clear that if someone intending to do business does not apply for a permit from the Ministry of Industries, he or she may not receive incentives to which the investor otherwise might be entitled. That this, perhaps, constitutes a form of heavy-handed persuasion was cheerfully admitted to this writer by a knowledgeable person in the Ministry of Industries.

Obviously, a prospective investor will file an application for a business permit with the Ministry of Internal Affairs in order to comply with existing laws and requirements.⁷ Since it is easy to make a few more copies of the pertinent documents, it is not expensive or time consuming to cooperate with the Ministry of Industries and apply for a business permit from that Ministry as well. No form is specified. Application for permission to operate a business in a specific location can be made by letter to the Permanent Secretary, accompanied by the relevant documents.⁸ In this writer's experience, the response time has been prompt, with permits being issued in approximately two weeks.

A reader of the announcement in the *Guidelines* about the new Interministerial Industrial Development Co-ordination Committee might conclude that Nigeria was streamlining its approval process to make it

⁵ GUIDELINES, *supra* note 2, at 29.

⁶ Among these incentives is relief from tax for three to five years for "pioneer industries," under the Industrial Development (Tax Relief) Act of 1958, *as amended by* Decree No. 22 of 1971.

⁷ This application is made on a Form T-1. The Form T-1 is called an Immigration Form, and is used by the Ministry of Internal Affairs as an application form for permission to employ expatriates. The form also contains a Section B dealing with Pioneer Status, and Section C dealing with requests for Approved User License. Sections B and C are now obsolete but continue to be contained in Form T-1.

⁸ The relevant documents should include the Memorandum of Association, the Certificate of Registration, and any agreements with Nigerian persons or entities.

easier to attract foreign investment.⁹ This new Committee is composed of representatives from eleven different ministries and the Economic Department of the Executive Office of the President and was created to coordinate development in the industrial sector. Its secretariat will be based in the Ministry of Industries and will make recommendations to the Minister. It has also been announced that this Committee will be the clearinghouse for all necessary approvals: In effect, it will make "one-stop shopping" a possibility. This Committee also will receive and consider applications for the concessions and incentives which may be granted by the Ministry of Industries.¹⁰

History suggests that the "one-stop shopping" conception of the Committee is a good intention that probably will fail. Several years ago, for example, Form T-1¹¹ was developed with the laudable goal of simplifying the approval process. Section A of the form is basically an application for a business permit and permission to employ expatriates. Section B consists of an application for "Pioneer Status,"¹² and Section C consists of an application for an Approved User License,¹³ if one is required. The "good intention" here was to combine in one form the separate applications which otherwise would have been made to the Ministry of Internal Affairs (Section A) and the Ministry of Industries (Sections B and C). This earlier attempt at "one-stop shopping" by streamlining the application process has not worked, however. One can speculate that a ministry will relinquish any of its jurisdiction only rarely. Further, in the early stages of a project when a T-1 is filed, the detailed information needed for the Approved User License usually is not available. The Permanent Secretary of the Ministry of Internal Affairs has advised this writer that Form T-1 is effectively obsolete and that a prospective investor should not waste time attempting to supply the information requested by Sections B and C. When applying for a business permit and expatriate quota, the applicant need only be concerned with Section A of the Form T-1. Separate applications for Pioneer Status and Approved User License are required by the Ministry of Industries, on forms supplied by that Ministry.¹⁴

⁹ For a discussion of the Interministerial Industrial Development Co-ordination Committee, see *GUIDELINES, supra* note 2, at 18.

¹⁰ *GUIDELINES, supra* note 2, at 19.

¹¹ *See supra*, note 7.

¹² *See supra*, note 6.

¹³ Customs and Excise Management Act No. 55 of 1958, § 41.

¹⁴ Form AP/1 for a company wishing to engage in an industry not yet designated "pioneer" and Form AP/2 for a company seeking a pioneer certificate to engage in business in an industry which has been designated a "pioneer industry." Sale Form 65 is used to apply for the Approved User License which permits qualified users to import raw materials at reduced or zero duty.

The Federal Executive Council of Nigeria, in order to encourage the establishment of those industries considered beneficial to Nigeria, has made relief from corporate taxes possible during the early operating years of companies engaged in a business classified as a "pioneer industry."¹⁵ The Industrial Development (Income Tax Relief) Act¹⁶ permits companies engaged in such industries to apply for a Pioneer Certificate, which entitles them to relief from corporate taxes for a period of three years, with the possible extension of this tax relief for another two years. Yet another investment incentive arises under the Customs Tariff Act of 1958,¹⁷ under which qualified manufacturers may file with the Ministry of Industries for an Approved User License.¹⁸ With this license, a manufacturer may import certain materials into Nigeria either duty free or at a lower rate of duty.

III. REVIEW OF POTENTIAL INVESTMENTS

Neither the *Guidelines* nor other advisory materials on doing business in Nigeria refer to the Business Advisory Committee of the Ministry of Internal Affairs. During review of the T-1 application for business permits, it is the practice to request the applicant (and the Nigerian partner) to appear before the Business Advisory Committee, which meets every Thursday. Representatives from almost a dozen key ministries make up the Committee, and the purpose of the hearing is to provide a forum for submitting any supplemental information desired by any of the representatives. In addition, the Committee considers the nature of the proposed business activity, its economic advantages and employment opportunities, the justification for the expatriate quota requested, the proposed location of the business, possible transfers of technology to the business and compliance with the Enterprises Promotion Act.¹⁹ A member of the Nigerian Enterprises Promotion Board (NEPB) also sits on the Committee.

The NEPB determines which of three schedules covers any proposed business activity. Schedule One enterprises are those not requiring

¹⁵ A schedule of designated pioneer industries and their related pioneer products as announced by the Federal Ministry of Industries appears in FEDERAL REPUBLIC OF NIGERIA, INCENTIVES TO INVEST IN NIGERIA 3 (1982).

¹⁶ Decree No. 22 of 1971.

¹⁷ Decree No. 60 of 1958.

¹⁸ The application is filed on Sale Form 65 with the Ministry of Industries. Sale Form 65 requires information concerning goods to be produced, quantities and values of raw materials to be used and detailed information concerning tariff items and duties.

¹⁹ The Nigerian Enterprises Promotion Act of 1977 is designed to promote indigenization of businesses in Nigeria.

a great deal of technology. They must be wholly owned by Nigerians. Schedule Two enterprises are permitted forty percent alien ownership, and Schedule Three (high technology and agricultural) enterprises are permitted up to sixty percent alien ownership.²⁰

The NEPB has also been innovative in its use of administrative practices. Of interest to the agricultural sector was the shift of rice milling from Schedule One (exclusively reserved for Nigerians) to Schedule Two. Integrated agricultural production and processing was moved from Schedule Two to Three in 1979, but this change was effected by the then-head of state and not the NEPB. An "alteration of lists" amendment promulgated by the Ministry of Industries, with approval of the Federal Executive Council in June 1981, in effect amended the 1977 Act without any action of the National Assembly.²¹

The Enterprises Promotion Act requires that employees own ten percent of the equity of companies doing business in Nigeria.²² The NEPB interprets the law to mean that ten percent of the Nigerian ownership must be by indigenous employees.²³ Accordingly, in an enterprise with a forty percent Nigerian interest, the employees ultimately would have to be offered four percent of the outstanding shares.²⁴

After receipt of the business permit from the Ministry of Internal Affairs, a filing must be made with the NEPB so that it can be satisfied that applicant has complied with the Enterprises Promotion Act.²⁵ Once again, the 1977 Act has to be searched very carefully for any specific authorization of this requirement. In Section 15 of the 1977 Act there is a somewhat vague requirement for filing such forms as may be requested by the NEPB. Also, while the NEPB may make its preliminary finding promptly, it may not issue its final certificate of compliance for several years.

²⁰ Nigerian Enterprises Promotion Act of 1977.

²¹ A number of enterprises were moved from Schedule Two to Schedule Three apparently under authority of Section 16 of the Act permitting the schedules to be modified by action of the Minister of Industries with Executive Council approval. Prior to the June 1981 modification integrated agriculture production and food processing had been treated as a Schedule Three activity pursuant to edict of the Federal Military Government in 1979, and the 1980 Budget Message of the President. For some reason, possibly inadvertance, this category was omitted from the Schedule Three list published by order of the Ministry of Industries on June 15, 1981 in Nigerian Enterprises Promotion Order 1981. That revised list, however, does include as Item 34, agricultural plantations for tree crops, grain and other cash crops.

²² Nigerian Enterprises Promotion Act of 1977, § 11.

²³ Conversation with a member of the NEPB staff (June 13, 1981).

²⁴ Conversation with the Director of NEPB (June 13, 1981). A literal reading of Section 11 of the Act suggests that the reference to ten percent means ten percent of all outstanding shares.

²⁵ Nigerian Enterprises Promotion Act of 1977.

IV. INVESTMENT AND INDUSTRIAL PROPERTY

Presidential Decree 70 of 1979²⁶ created Nigeria's National Office of Industrial Property (NOIP). Any technical assistance or trademark licensing agreement must be registered with the NOIP within sixty days after its execution. The Director of the NOIP, however, may refuse to register the technical assistance or trademark licensing agreement for any of eighteen reasons.²⁷ Registration is essential, because no one may receive payment of fees pursuant to any agreement until they acquire a NOIP registration and present a registration certificate to Nigeria's central bank.²⁸

In June 1981, this writer made numerous inquiries about the NOIP to determine whether it actually existed, and found that most Nigerian officials did not know about the NOIP.²⁹ The NOIP was to work with the Ministry of Science and Technology which can potentially bring to bear sufficient technical and scientific expertise to determine if the technology offered is real, obsolete, non-existent or overpriced. There have been many obvious abuses and frauds in selling technology to Nigeria; therefore, the country needs an organization like the NOIP as a defensive measure. In Nigeria as elsewhere, blue sky promoters and carpetbaggers from all over the world were attracted to the country first and made tremendous profits. Governments like Nigeria's reacted by creating various roadblocks, which hinder as well the honest business executives who attempt to sell real technology.

Previously, technology transfer agreements have required the approval of the Ministry of Finance. The Ministry is interested primarily in questions of exchange control, and has set maximum technical assistance fees of two percent of net profit before taxes, in order to conserve hard currency.³⁰ The Ministry of Finance is reluctant to make judgments about the value of technology, however, and looks forward to the relinquishment of this chore to the NOIP. On the basis of this writer's discussions with officials of the ministries of Finance and of Science and Technology, it appears that it would be wise for investors to file licensing and technical assistance agreements with both the Ministry of Finance

²⁶ Presidential Decree No. 70 of 1979 (National Office of Industrial Property Act).

²⁷ *Id.*

²⁸ *Id.*

²⁹ By early 1982, a director of the NOIP had been named. At the time, he had an office, a secretary, and was advertising for staff. By late 1982, when this writer attempted to interview the director, he was out of the country attending a conference of third world officials responsible for registration of technology transfer agreements.

³⁰ FEDERAL MINISTRY OF FINANCE, GUIDELINES TO APPLICANTS FOR FOREIGN EXCHANGE 4 (1980).

and the NOIP during the period that the Ministry's and the NOIP's jurisdictions overlap.

Investors also should be aware that the Ministry of Finance has distinct views on the subject of technology transfer. The *Guidelines to Applicants for Foreign Exchange*,³¹ which the Ministry issued in December 1980, provide that 1) approved royalty or license fees may not exceed one percent of net sales; 2) approved fees for technical service or management agreements may not exceed two percent of net profits before taxes; and 3) off-shore remittances of consulting fees may not exceed thirty percent of the fees. The government implemented austerity measures on August 20, 1982, which further limited off-shore consulting fee remittances to twenty percent of the total fee.³²

The Ministry of Finance considers its controls on fee remittances to be primarily exchange control measures. To the extent that maximum fees are measured by net sales or net profits, however, the Ministry also considers its controls to be a device to ensure that the technology associated with the sales and profits is worthwhile. Nevertheless, Ministry officials have recognized that such a measure of the value of technology has limits. With respect to agricultural projects, for instance, Ministry officials have conceded that while technology involved in such projects might be superior, elements beyond the technical partner's control, such as weather or other natural phenomena, could have an adverse effect on profits and sales.

Overall, the Ministry is open to considering revisions of its fee remittance ceilings, and as such is interested in having investors present alternatives. In considering revisions, however, the Ministry is aware that while existing ceilings may hinder Nigerian acquisition of valuable technical advice, lifting those ceilings in isolated cases might create unwarranted expectations among investors who offer less valuable technology.³³

³¹ *Id.*

³² The former 30% ceiling on the remittability of consultancy fees was reduced to 20% by the 1982 budget.

³³ The American side of the United States Nigerian Agricultural Consultative Committee (JACC) has, for example, drafted some recommendations which it has proposed to the Nigerian members of the Committee.

The JACC was formed as a result of the fourth round of bilateral discussions between the Vice-Presidents of the United States and Nigeria in 1980. Its membership is composed of United States and multinational companies interested in agriculture and agricultural equipment, and of Nigerian businessmen interested in agriculture. The United States proposals related to the removal of certain perceived constraints on investment, specifically to a means for determining an adequate payment for technical assistance and the development of procedures to assure fairness of payment as well as the quality of technology delivered. The United States members of the JACC also proposed that

V. APPROVAL OF INVESTMENTS

In Nigeria, many things happen only on the basis of prior approvals. An important example of this is the repatriation of dividends. The Exchange Control Act of 1962 requires permission to make any payment to a person outside Nigeria. Unless an alien investment has been given "approved status",³⁴ repatriation of dividends or return of capital is not possible. According to the *Guidelines to Applicants for Foreign Exchange* of the Ministry of Finance, "approved status is a recognition that the original investment came into the country from abroad in the form of equity either by way of cash or plants and equipment."³⁵

The non-resident investor may first apply for "Approved Status in Principal" by filing the appropriate documents,³⁶ including responses to an investment questionnaire. Approved Status in Principal has a twelve month life span. When the investor's Nigerian bank receives the investor's off-shore funds, the bank notifies the Nigerian Central Bank. The Central Bank in turn notifies the Ministry of Finance, which then issues the final Certificate of Approved Status. A different procedure, however, applies if the investment is made in equipment.

The Industrial Inspectorate Division is a separate division of the Ministry of Industries which deals with foreign investors. The Division Director is knowledgeable, quick to get to the point, extremely helpful, and patient with foreigners. Of more importance, the Division operates very efficiently. Without this efficiency, the Nigerian economy could be adversely affected because the Division must clear most equipment and capital assets coming into Nigeria.

Nigeria permit the capitalization of off-shore costs of feasibility studies, engineering and design services, market studies, and costs of obtaining government permits and approvals. The United States members further suggested that Part X of the Nigerian Companies Act be construed in such a manner as to permit a provider of technical services to be present in Nigeria and render services there without being required to have a Nigerian partner. Finally, the United States JACC members recommended that Nigerian import restrictions be relaxed so that market development programs could be implemented pending the completion of local production facilities.

American businessmen are of the view that Nigeria's incentives compare unfavorably with incentives available in other parts of the world. Nigerian officials have the contrary view, and quite naturally, resent American advice. The low level of investment by United States companies suggests, however, either that Nigeria's incentives do not go far enough, or else that its bureaucratic rigidities go too far. See AGRIBUSINESS ASSOCIATES, INC., AGRICULTURAL INVESTMENT IN NIGERIA: THE OPPORTUNITIES AND REALITIES FOR UNITED STATES AGRIBUSINESS COMPANIES (1982) (report prepared for the Office of International Cooperation and Development of the United States Department of Agriculture under a grant from the Trade and Development Program, United States Department of State).

³⁴ See *supra* note 30 and accompanying text.

³⁵ FEDERAL MINISTRY OF FINANCE, *supra* note 30, at 1.

³⁶ Such documents are the Certificate of Registration, copies of Business Permit and Expatriate Quota from Ministry of Internal Affairs, and Memorandum and Articles of Association.

The Industrial Inspectorate Act³⁷ requires that a Notification of Intent to Incur Capital Expenditure be filed on Form I with the Industrial Inspectorate Division, when total capital expenditures in excess of 20,000 Naira are to be made in new or existing businesses in Nigeria. The investor is required to describe in detail the equipment being purchased for a project and specify its cost. Once satisfied that the equipment is as represented and is reasonably priced, this Division recommends to the Finance Ministry the equipment's duty classifications or whether duty-free status is appropriate. The Division also issues Certificates of Value for machinery and equipment sent into Nigeria as part of the capital contribution of a foreign investor. Certificates of Value, issued by the Division after inspection, are necessary in order to obtain "Approved Investment Status" from the Ministry of Finance for the value of the machinery or equipment.

Customs Clearance Certificates, required for industrial capital goods, are also issued by the Inspectorate Division. The equipment is inspected as it arrives and matched up with the descriptions provided in Form I Clearance Certificate. The Division is proud of the fact that it can furnish "same day" service in issuing Custom Clearance Certificates. This assumes that properly prepared papers are lodged with the Division prior to eleven a.m.

Another important function discharged by the Industrial Inspectorate Division is to declare the date that production commences on a new facility, in order to fix the commencement date of any "Pioneer Status" tax holiday.³⁸ In the Division's view, test runs do not constitute the start of production. Instead, the Division recognizes the date of full plant production as the applicable commencement date for Pioneer Status purposes.³⁹

VI. EXCHANGE CONTROLS

The economic policy and austerity measures announced on April 20, 1982 by President Shagari provide assurance that the Nigerian government is not reluctant to take the difficult steps necessary to protect the country's foreign exchange position.⁴⁰ The presidential order dealing with customs duties, for example, dramatically increased duties on a

³⁷ Industrial Inspectorate Act No. 53 of 1970.

³⁸ See *supra* note 6 and accompanying text.

³⁹ Conversation with Director of Inspectorate Division (June 13, 1981).

⁴⁰ The economic policy measures were issued pursuant to the Economic Stabilisation (Temporary Provisions) Act of 1982. The orders deal with customs duties, excise duties, import prohibition and export prohibition. The Act and the Orders are published in the FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZETTE, Apr. 20, 1982, at B1.

great variety of items, but also provided for "approved user reductions" of duties for certain raw materials.⁴¹ Luxury items were specifically targeted for increased duties. For example, a 500% ad valorem duty was imposed on passenger cars exceeding 15,000 Naira in value, and the duty on electric fans was increased from 75% to 150%.⁴² Apparently, a 500% duty did not curtail imports of luxury cars, because in January 1983 the importation of cars with value exceeding 15,000 Naira or with engine capacity exceeding 2,500 cc was absolutely prohibited.⁴³

Twenty-five items were added in 1982 to the list of items which may be imported only if an import license is applied for and granted;⁴⁴ in January 1983, an additional 128 items which require import licenses were added to the list.⁴⁵ Many of the items added to the list are now grown, manufactured, or assembled in Nigeria. It should be noted that the Economic Stabilisation Act of 1982 provides that any presidential order issued pursuant to the Act will expire twelve months after its effective date, unless it has been approved by resolution of both houses of the National Assembly.⁴⁶

Additional and far-reaching measures designed to help stabilize and correct distortions in the economy are found in the stringent Central Bank credit guidelines. Before any bank may open a letter of credit for import purposes, it is required to demand and receive compulsory advance deposits ranging from 25% of the amount of credit for raw materials, to 50% for food (except for rice), to 250% for motor cars. Such deposits must be transferred to the Central Bank to an interest-free account.⁴⁷

As a further measure, interest rates were revised upwards by two percentage points, so that lending rates were increased from a minimum 8½% to a minimum 10½%, and from a maximum 12% to a maximum 14%. The rates charged by specialized institutions such as the Nigerian

⁴¹ The Economic Stabilisation (Temporary Provision) (Customs Duties) Order 1982 amended Part I of Schedule I to the Customs Tariff (Consolidation) Act 1973.

⁴² Customs Tariff (Consolidation) Act 1973, §§ 87.02A, 85.06A, B, C.

⁴³ Economic Stabilisation (Temporary Provisions) (Import Prohibition) (Amendment) Order 1983, *published in* FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZETTE, Jan. 24, 1983, at B31.

⁴⁴ Economic Stabilisation (Temporary Provisions) (Import Prohibition) Order 1982 amended the Finance Act 1981 dealing with the absolute prohibition of the import of certain goods and requires import licenses to be granted in order to import certain other specified goods.

⁴⁵ Economic Stabilisation (Temporary Provisions) (Import Prohibition) (Amendment) Order 1983, *published in* FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZETTE, Jan. 24, 1983, at B33-39.

⁴⁶ Economic Stabilisation (Temporary Provisions) Act 1982, § 2, *published in* FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZETTE, Apr. 20, 1982.

⁴⁷ Central Bank Credit Guidelines, *published in* CENTRAL BANK OF NIGERIA, MONETARY POLICY CIRCULAR NO. 15 (1982).

Agricultural Development Bank were raised from 5% and 6% to 7% and 8%, and the Nigerian Industrial Development Bank from 9½ % and 12% to 11½ % and 14%.⁴⁸

The foregoing guidelines were implemented by additional exchange control regulations concurrently issued by the Exchange Control Department of the Central Bank.⁴⁹ These regulations tightened the conditions for registration of Form M, which is the basis for issuance of letters of credit. The applications must be submitted by the importer's bank directly to the Central Bank instead of a branch. The form can be used only for goods that will actually arrive in Nigeria within six months of the form's registration.

VII. CONCLUSION

Many companies in the United States have begun to perceive that in Nigeria there exists a huge market which merits investigation. These companies' competitors from Germany, England, France, Japan, India, Brazil and elsewhere have been aware of this market for years and have been quick to exploit it, making giant fortunes. The prospective investor should know that, in spite of the layers of bureaucracy, the Nigerian government is committed to attracting foreign investment and technology. In view of the current austerity programs, however, it is doubtful that additional incentives will be made available. To the extent that the remarks in this Perspective give advance warning of some lurking problems, this writer hopes that any prospective investor will be patient with the running of the course of government approvals, and accept with equanimity as yet unknown surprises.⁵⁰

⁴⁸ Economic Stabilisation (Temporary Provisions) (Amendment) Order 1983, published in FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZETTE, Jan. 24, 1983, at B31.

⁴⁹ Exchange Control Regulations Consequent Upon the Economic Policy Measures Announced by Mr. President, issued by Chris O. Nwarache, Director, Exchange Control Department, Tinubu Square, Lagos, Apr. 21, 1982.

⁵⁰ For a discussion of the British colonial background of the massive Nigerian bureaucracy and the role of high government officials who override its rigidities with ease, see *The Most African Country*, THE ECONOMIST, Jan. 23, 1982, at 4.