

# Nigeria Business Legal Frameworks and Entrepreneurship: Prospects and Challenges for Economic Development

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**Abstract:** - Variability of business legal environment across the globe but with significant effect on entrepreneurship and economic development motivate the conduct of this research. The path of qualitative research method was followed as secondary data sources were exploited and theory of entrepreneur employed to underpin the study. The analysis of data reveals that the influence of British colonial business legal framework largely condition Nigeria environment and effort to reshape it after independent crowded out foreign entrepreneurs resulting into investment policy revision and left domestic counterparts ill-prepared for optimum performance, and as well to function as substitute at the same time. Therefore, ensuring a predictable business environment that is averse to policy summersault, collaboration among the three tiers of government, that is the federal, state and local government on entrepreneurship policy formulation and implementation and effective implementation of spirit and letter of the business laws are recommendations offer to position entrepreneurship for economic development in Nigeria.

## I. INTRODUCTION

Business environment varies across the globe. But one common factor is the regulation of commercial activities by enabling laws in every state. As such, firms are subjected to supervision of one or more regulating entity as enacted and encapsulated in an act or constitution of the state. Inherent in such legal documents, most time, is a dual nature of blessing or curse, good or bad or what can better be coined as, prospects or challenges to existing or potential business ventures. This could either bestir or vitiate entrepreneurial spirit latent in national entrepreneurs, or serve as one of the crowding in baits to Multinational Entrepreneurs (MEs). As posit by Quamrul, Mohammad and Robert (2005), regulatory provisions is an integral components of domestic factors influencing investment in a polity. It suggests that both domestic and foreign investors are sensitive to a nation's legal framework generally, and more importantly, their sectoral interest.

Nigeria as a country is not immune from this common trend. Hence, government at all levels continues to intensify efforts towards attracting entrepreneurial investors, both local and foreign. This is a significant indicator of needs for entrepreneurs and believes that they are capable of providing solutions to the scourge of unemployment, underemployment,

and underutilization of both human and material resources, under-exploitation of business opportunities among others confronting the country. Implicitly, entrepreneurship is capable of stimulating economic development. Nagy, Pete, Gyorfy, Petru and Benyovszki (2010) maintain that consensus exist among scholars that entrepreneurs are important to economic development. However, can one argue that Nigeria business and legal environment is empowered to actualize these expectations? Put differently, does the extant laws, regulations and regulators of business enterprises capable of prospering existing and alluring prospective investors with imprint of positive socio-economic impact on national life? This question is pertinent because what determines, to a large extent, the extent of availability, thriving, survival and death of entrepreneurs in a country is the prevailing business legal framework.

Premised on this background, this work aims to examine the inter-dependency and relationship between the existing business legal framework and entrepreneurship in Nigeria with a view to assessing the two sides of a coin of its prospects and challenges alongside its implications for economic prospect. The work adopts a qualitative research method anchored on secondary data sources. The paper is divided into six sections and following this introductory section is the concept of entrepreneurship followed by theories of entrepreneurship while the fourth section discusses Nigeria business legal framework. Nigeria business law prospect and challenges occupy the fifth section on entrepreneurship and the last section presents the conclusion and recommendations.

## II. THE CONCEPT OF ENTREPRENEURSHIP

Entrepreneurship as a concept has witnessed varied and time-change perceptive views. Though entrepreneur is a term that has its origin from the French common language in the 12<sup>th</sup> century meaning someone who undertakes a task (Landstrom, 2005, cited in Magnus, 2016:95), the multidimensional definitions of entrepreneurship complicates its activities measurement and its consequent on the economic performance (Sergiu, Florin, Radu and Luiela, 2012). This seems to show a correlate between entrepreneurial activities and economic buoyancy irrespective of its definitional

perspective. Also, it is discernible that entrepreneurship depicts an act of starting a business or floating a business organization. Therefore, it appears to picture a practical demonstration of business initiatives conceived by individual(s), and suggest that what it takes to actually begin a business is best captured in the nature of what it entails, (financial and human capitals), and the person(s) endowment, (entrepreneurial and management skills). Nonetheless, there appear not to be a universally acceptable definition of entrepreneur and entrepreneurship, but those offered by scholars tend to reveal more features of an entrepreneur.

Garner (2004) defines an entrepreneur as one who initiates and assumes the financial risks of a new enterprise and who usually undertakes its management while Cuervo, Ribeiro and Roig (2007) conceives it as someone characterized with discovering, exploiting opportunities and behaviour of employing intuition and alert to realize opportunities. It thus reveals pragmatic nature expected of an entrepreneur with capacity to not just conceive a business idea but muster courage to develop its feasibility, takes practically realistic steps toward ensuring economic returns flows out of it while bearing the risk at the same time. On the other hand, Drucker (1985) maintains that entrepreneurship denotes an innovative act that presupposes existence of resources endowment and capacity to produce wealth and Reynolds (2005) sees entrepreneurship as discovery of opportunities that is followed by creation of new economic activities through establishment, often, of a new firm. This definition underscores foreseeing and seizing of untapped opportunities in an economy as the art that reveals who an entrepreneur is in the real sense. Furthermore, it presupposes that an entrepreneur has endeavored to acquire necessary skills, requisite technical know-how and resources fundamental to taking advantage of potent opportunity with the operationalisation of the venture or business idea with sole intent of profiteering.

Hence, being an entrepreneur, precedes the start up point of the business but from the notch of discovery of a human needs or business vacuum with potential economic benefits to the society and investor, and promptly and passionately pursuing the course of translating it to worthwhile entity without losing focus. Moreover, there are various units of business organizations open to an entrepreneur according to Orojo (2008: 4). These are:

1. Individuals
2. Partnership
3. Co-operative societies
4. Statutory corporations
5. Quasi-corporations
6. Incorporation of trustees
7. Registered companies.

Individuals, partnership, co-operative societies and registered companies are more of private sector driven enterprises where maximization of profit and minimization of cost (minimax) principle is applicable and requires or permits exhibition of business prowess while statutory corporations, quasi

corporations and incorporation of trustees are not singularly profit oriented entities but also seems to serve other purposes that may compromise profit. For example, statutory corporations are basically set up to service general needs of the populace such as defunct Nigeria Telecommunications Company (NITEL) before it was privatized. Often, as well, statutory and quasi-corporations consider national interest aside profit while incorporation trustees take the interest of business owners they represent more seriously than any others. The differing categories of entrepreneurs above somewhat presents it as organizational-ubiquitous and almost affirmed Kruger's (2004) assertion that first, entrepreneurs exist inside big organizations, and, all industries compete effectively in the global domain and collaborate with domestic competitors.

It is worthy of note that each type of business enterprises has its strength and weakness, and should be appropriately considered by entrepreneurs before opting for any one considered appropriate. For instance, individuals or sole trader, as popularly referred to, is the oldest and most common unit of business undertakings but lacks continuity cannot attract capital easily like companies for business developmental plans, that is, access loans from commercial financial institutions for example, and there is no limit to the liability of the individual arising from this business. Similarly, opting for a limited liability company has one-off disadvantage of bureaucratic management system not characterized with one man business.

### III. THEORY OF ENTREPRENEURSHIP

Having explicated conceptual issues on entrepreneurs and entrepreneurship, its theoretical discourse is essential to widen the horizon of understanding and its application. To start with, entrepreneur theory focus is on heterogeneity nature of its beliefs about the resources values (Alvarez and Busenitz, 2001). This supposedly accounted for the existence of many theories employed by researchers to underpin its relevance and as an indication that singular theory is insufficient for a robust and explicit explication of the real world experience. This limitation, perhaps, largely accounted for Kruger (2014) employment of trait, behavior and process perspectives to expound entrepreneurship key features and manifest suitable for content analysis.

However, Bula (2012) discusses thirteen theories of entrepreneurship in attempt to offer insight on the varied perspectives of scholars, and its multi-dimensional applicability capacity. This includes Cantillon's (1755) theory that sees entrepreneurship as risk taker agent that equilibrate supply and demands; Marshall's approach (1949) presenting entrepreneurs as equilibrium creator; Social Enterprise School which views entrepreneurship as social venture that serves community with the earned income; Schultz (1975) that avers that entrepreneurship ensure equilibrium of existing disequilibrium in the society; Kirzner's "alert" entrepreneur submission that

entrepreneurship competition and ‘alert’ made disequilibrium in the market equilibrate; Knight’s Approach (1971) maintains that entrepreneurship main function is to assume uncertainty and thereby shielding other stakeholders from risk and Schumpeter (1999) argument that entrepreneurship is about innovation and not imitation amongst others. While others are almost variants of the highlighted, they all portray significant features very close to Kruger’s three perspectives of entrepreneurs.

Arising from the above, it is obvious that entrepreneurial study appears archaic or as old as human engagement in commerce, and therefore is partly responsible for the continuous evolvement of its theories, and probably the broadening of its functions as reflected in the conceptual development as well making differentiation between conceptual meanings and theoretical postulations of entrepreneurship cumbersome. Similarly, the thrust of its meaning seems incremental as the functions and expected behaviors from entrepreneurs stretches forward to meet up with the community’s business environment dynamics, especially in western countries that most scholars hinged their research and analysis upon. Nigeria populace as a developing country with varied corporate environment seems not to share many of the entrepreneurs’ traits in the same degree with developed pairs, and how could one posit that the country’s business legal frame work had positive effect on both local and foreign investors. Therefore, interfacing submissions on entrepreneurship with developing countries like Nigeria’s business legal framework context with a view to ferret its prospects and challenges to economic development appears expedient.

#### IV. NIGERIA BUSINESS LEGAL FRAMEWORK

Nigeria is a state given birth to by Britain that colonized her when the south and the northern protectorate were amalgamated in 1914 and Lagos was administered directly as colony and protectorates.

In consequent, old British legal system, which is the body of their and common laws, rules, acts of parliaments are transplanted automatically to govern and regulate business activities. Orojo (2008) noted that in regard to commercial regulations, the first five statutes called “Ordinances” were applicable to colony and were:

1. Custom duties ordinance, No 1 of 1862
2. Harbor regulations ordinance, No 2 of 1862
3. Harbor sanitary regulations ordinance, No 3 of 1862.
4. Currency ordinance, No 4 of 1862
5. Use of official seal ordinance, No 5 of 1862

This unveils economic exploitative nature and motive of imported British commercial legal framework which was equally applicable to the entire state in the post-amalgamation era till independent. It is worthy of note that Gberieve and Oni (2014) contend that the colonial history still moulds an abiding, compelling influence on every aspect of Nigeria socio-political and economic institution till date.

Post-independent epoch (1960) is another phase that is equally significant in the life of Nigeria business regulations and regulators. Nigeria government discovered needs to repeal the companies’ ordinance (1922) with the company decree No 51 of 1968 during military regime and went further to modified it, and restructure the business regulating bodies to meet up with modern economic and business realities by promulgating the companies and allied matters act 1990 Orojo (2008). He States further that the 1990 companies’ acts makes provision for not only companies but also for the registration of business names and for the incorporation of trustees and divided business names into three parts:

1. Part A: Section 1 to 562-companies
2. Part B: Section 569 to 589- Business names
3. Part C: Section 590 to 612- incorporated trustee

Additionally, Corporate Affairs Commission (CAC) was also established to effectively manage this business registration and other duties out of ministry of trade. This act, to some extent, shed part of British business legal legacy load off Nigeria business environment as it reflected model of other developed economy in order to facilitate business growth. Moreover, it suggests that duties and functions of the commission were well spelled out, and with present reality, it appears to have been modified with some amendment aimed at easing its operation across the country with electronic technology system of transaction.

In a bid to ensure equal right of citizens to participate in economic development of the state, the constitution has expressly guaranteed this right as stated below. “without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy” Federal Republic of Nigeria (1999:28)

Similarly, section 18 of companies and Allied matters Acts 1990, grant the right to two or group of persons to form a company except in those described as ‘negative list’. This state thus:”Any two or more persons may form and incorporate a company by complying with the requirement of the act “(Orojo, 2008:18).

While this act implies that every citizen of Nigeria is free to engage in any business as an individual or as a member of a group, the foreign entrepreneurs or investment are restricted, as averred by Anochie, Uzoma and Mgbemeiya (2015), from pre and post Structural Adjustment Programme (SAP) that disfavoured incursion of foreign entrepreneurs or investors. This according to UNCTAD (2008) is caused by the enactment of Nigerian Enterprises Promotion Decree of 1972, modified in 1997 and relaxed in 1989 but subsist till 1995.

However, United Nations Center for Trade and Development (UNCTAD, 2008) argues that the restrictions placed on aliens or foreign investors before 1995 have been relieved through the enactment of Nigeria investment promotion Decree 1995 and the exchange control acts 1989 are not applicable again

while investment and security act, 1999, equally terminate the approval of the Securities and Exchange Commission for transactions as well. Therefore, in the light of the above enabling laws, it is apparent that the forces of global economic liberalism has push Nigeria legal frameworks towards accommodating business environment for both indigenous and foreign entrepreneurs. Indeed, the new law is enacted to counteract or reverse the two and half decades' old restrictive, unfriendly corporate business milieu and legal framework especially, against non-indigenous entrepreneur.

#### V. NIGERIA BUSINESS LAW AND ENTREPRENEURSHIP: PROSPECT AND CHALLENGES

The background of Nigeria's business law provisions from the pre-colonial days till present presents the picture of the country's business law environment phases. Therefore, dissecting the impact of this and other incentives on the fortune of business community and its implications for economic development is imperative.

On a general note, it must be noted that business environmental challenge is not peculiar to Nigeria but common to all countries, albeit, varies from one clime to another. However, the unique nature of Nigeria seems to contribute to her current status. In this sense, discussing the difference state in this regard add more value addition to earlier discourse.

Historically, Nigeria is a state colonized by British, has suffered over bearing influence of English legal framework on not just her business regulating laws but almost every area of her legal system. It is noteworthy that the pre-colonial business environment of domestic trade in a peasant economy was abolished and substituted with English customary, custom duties, currency ordinance which was summarily described by Akanni (2014:37) as "The British government's instrument of manipulating Nigerian... in the interest of colonial rule" One might posit that this, to some extent, transmogrify the entire business climate and environment in similitude to traditional English society. By implication, domestic business setting was altered and make more favorable to British investors and perhaps, not too disposable to other western countries like Germany and United States.

Consequently as well, business orientation of Nigerians alongside with guiding principles and laws, which took time to understand and adapt to as a predominantly illiterate community, provided avenue for somewhat unfair and exploitative legitimate trade between Nigeria and Britain, even after abolishing slave trade. This continues till independent, and provides a platform for post-independent business environment impacting socio-economic structure.

The post-independent drive by government to reverse some of the identified disadvantages to favor indigenous entrepreneur in order to facilitate home driven, and possibly, indigenous dominated business environment, appears comprehensive, but seems poorly implemented. Chief among other laws is

achieving this objective is Nigerian Enterprise Promotion Decree popularly known as indigenization decree of 1973 (Adelegan, 2013). The decree appears to discouraged foreign investors, both existing and potential, but did not give enough room for indigenous capacity building prior and after it was promulgated. In other word, it does not incorporate the process of succession for indigenes in terms of acquisition of skills required to manage the nationalized foreign organizations. While, according to Orojo (2008), it is a statutory restriction imposed on aliens to give Nigerian citizens' greater opportunity of participating in economic activities and was applauded, but, in the light of post-policy assessment, one could submit that it was default in content because it failed to prepare local entrepreneurs for productive tasks meant for them before the time resulting to crowding out of the foreign investors. Hence it is wrongly timed. And, in addition to failure to equip domestic investors, foreign technology seems indispensable in the face of almost non-existing domestic substitute.

In consequent, the aftermath of the above discourse could not eventually promote citizens participatory benefits as intended. Also, the privatization decree of public enterprise of 1989 is believe to witnessed politicization which robbed it of fair and equal distribution of state owned shares. This was occasioned by the high level of corruption prevalent then, though subsists till present with its negative effects on the country's business climate perception by entrepreneurs.

Furthermore, as enshrined in Nigeria's constitution, citizens posses equal right to engage in business in order to foster economic development. This seems to afford a common platform for active business engagement, promotion of an egalitarian society, and provision for formidable legal foundation capable of activating venturesome citizens' instinct for entrepreneurship.

However, the condition of business environment, which according to Quamrul, Mohammad and Robert (2005), are macroeconomic, governance and infrastructure, is a key motivation for entrepreneurship, and largely determine the extent of their flourishing. In other word, the strength of macroeconomic indicators such as level of inflation, Gross Domestic Product (GDP), quality of governance institutions including sectoral regulators and availability of infrastructure are *sine qua non* to a viable business environment. Meanwhile, Aremu (1997) cited in Anochie, Ude and Mgbemena (2015) observed that Nigeria is characterized with serious corporate environment deficiency and institutional uncertainty. Thus, with the prevalence of this situation, it is implausible to argue that constitutional provisions as articulated are capable of stimulating existing and potential citizens to entrepreneurship. As such, envisage derivable of entrepreneurial community, more importantly, the economic benefits, is bleak and might not be realizable. In this sense, provision of employment, innovative productivity capable of increasing the nation's Gross Domestic Product (GDP) with its ancillary advantages become almost unattainable.

Furthermore, part of provisions of company and allied matters acts for Joint Stock Company floating offers opportunity for citizens, resources, intellectual and techniques synergy. It can be said that it is an affront to break dividing features of ethnicity religion and linguistic barriers associated with Nigeria as a multi-ethnic and multi-religion nation with a view to promoting national cohesion via business entity. Additively, as observed by UNCTAD (2008), the strengthening of the regulating bodies, such as, Corporate Affairs Commission (CAC), with its presence in all the federating units states' capital and electronic transaction system; establishment of one-shop-stop to ease business procedures for foreign entrepreneurs; and enactment of Nigerian Investment Promotion Decree (1995) are incentives for investors, more importantly, attraction of Multinational Enterprises (MNEs). Expectedly, large scale of entrepreneurship would be engendered in the country through Foreign Direct Investment (FDI) through these policies initiatives.

But it seems the country business climate, as earlier stated, impinge the appropriation of the accompanying benefits. For example, FDI usually brought financial capital, advanced technology and know-how, better management transfer, develop new intermediate products, enhance research and development and improve human capital development (Ogbueze and Orji, 2015, Shuaib, Dania, Imoagene and Pogoso, 2015). This suggests a very good reason for Nigeria government aspiring to develop her economy to institutionalize predictable business environment. However, prevailing poor corporate milieu hampered its attainment.

As a corollary, incentives like duty draw back and relieve packages for investors are another dimension targeted to attract investment or ensure business thriving in Nigeria. For instance, the income and Tax Relief Act (1982) grants pioneer status that permit tax holiday to new or infant companies for the first three years of existence, which may be extended for another period of two years, granted to a public company that is pioneering an industry or project, such as, agro-allied or export goods with estimated capital of not less than #50,000 and #150,000 for indigenous and foreign investors respectively as stipulated under industrial development (Orojo, 2008:567). Ordinarily, it seems potent enough to incentivize both domestic and external entrepreneurs. Nevertheless, this may not be too strong to merit entrepreneurs conviction going by other factors, such as political stability and quality of regulatory institution, that could not be discounted before arriving at the decision on where and when to invest their capital. Be that as it may, it is suffice to aver that government efforts in this regard could not be posited to yield desirable fruits.

## VI. CONCLUSION AND RECOMMENDATIONS

It cannot be over emphasized that Nigeria business legal frame work is replenished and garnished with bountiful investment incentives and opportunity that are highly

tempting for insightful and willing entrepreneurs. However, the colonial business legal frameworks distort the traditional settings and imbibe British legal framework on which post-colonial climates operate. Hence, government response to reshape the business environment crowded out foreign entrepreneurs, and as well ill-prepared domestic counterparts. This makes incentives and measures launched to stimulate the economy and attract investors' derivable yielded marginal results.

Therefore this research recommends that the federal government should be consistent with policy to prevent policy summersault and entrenched collaboration with lower levels of government (state and local government) in both entrepreneurial policy design and implementation. Also, there is need for government to rid-off human error associated with policy implementations by bureaucrats and vested political interest. Lastly, there should be a sincere implementation of the spirit and letter of the business legal frame work because irrespective of how good and robust it may appear, it would remain only a verdant to prance but stand as chimera.

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