Vanderbilt Journal of Transnational Law

Volume 10
Issue 4 *Fall 1977*

Article 4

1977

Nigeria: Still Safe for U.S. Investors?

Jerome F. Donovan

NIGERIA: STILL SAFE FOR U.S. INVESTORS?

*Jerome F. Donovan**

TABLE OF CONTENTS

I. RECENT HISTORY

In the years immediately following the Nigerian civil war (1967-70), the political instability of Black and South Africa did not affect Nigeria. The head of the Federal Military Government (FMG), General Yakubu Gowon, succeeded both in pacifying his own countrymen and in making significant strides toward reconstructing Nigeria. He also exercised prudent, steady leadership in conciliating the disputes of his African neighbors.[1] There was consequently little reason for American businessmen and other foreign investors to avoid Nigeria.[2] Indeed, there were very persuasive reasons for foreigners to investigate—and aggressively pursue—the opportunities there:

> At least one African in four is a Nigerian; there are more Nigerians than Germans or Frenchmen or Britishers. Nigeria is now America's second-largest supplier of crude oil. Yet most Americans know nothing of this vast country . . . . Oil alone would seem a sufficient reason for knowing more. Nigeria is the world's sixth-largest producer of crude oil . . . . Only Canada exports more crude oil to the United States. Nigeria's oil revenues may reach ten billion dollars for 1974. Before last year's energy crisis, American imports of Nige-

* Member, District of Columbia and Arizona Bars. A.B., 1958, Yale University; J.D., 1961, Columbia University.

1. Herskovits, *Nigeria: Africa's New Power,* 52 FOR. AFF. 314, 326 (1975); SATURDAY REVIEW-WORLD, Feb. 9, 1974, at 14.

2. *See, generally,* Donovan, *Nigeria After "Indigenization": Is There Any Room Left for the American Businessman?,* 8 INT'L LAW. 600 (1974).

rian oil had already risen 84 percent from 1972. U.S. economic stakes in Nigeria are now as great as in South Africa and growing faster.[3]

The lull ended in 1975-76, however, as political and commercial tremors struck swiftly. First, while he was away from Nigeria at a meeting of the Organization of African Unity in July 1975, General Gowon was ousted in a bloodless coup by General Murtala Mohammed, who charged him with widespread mismanagement of the country and toleration of high-level government corruption. Seven months later General Mohammed was assassinated in a coup engineered by dissident army officers. After the plotters were summarily apprehended, tried, convicted, and executed, Lieutenant General Olusegun Obasanjo, the former head of public works, assumed leadership of the country. He promised to continue Mohammed's "dynamic leadership."[4]

Leadership was certainly required. Almost 500 ships laden with cement were waiting to unload at Lagos' port, completely swamping its facilities.[5] The ships began arriving during the Gowon regime, pursuant to government contracts calling for delivery of twenty million tons of cement within twelve months.[6] Many freighters were delayed a year or more at agreed demurrage charges of $4,100 a day.[7] General Obasanjo appointed commissions to investigate alleged official corruption and to negotiate settlements with foreign suppliers.[8] In seeking to stanch the scandal, however, he committed a serious blunder that sent shudders of apprehension throughout the foreign investing and trading community. He unilaterally ordered Nigeria's Central Bank to cease payments on irrevocable letters of credit previously issued in favor of foreign cement suppliers.

Outraged protests from shippers and bankers forced the government to back down,[9] but until quite recently, confusion over the exact status of current—and future—letters of credit has persisted. First, the Central Bank adopted strict foreign exchange controls and issued a regulation requiring all letters of credit issued by Nigerian banks to be fully prepaid by the importer in

3. Herskovits, *supra* note 1, at 326.
4. FACTS ON FILE, Feb. 21, 1976, at 141-42.
5. N.Y. Times, June 28, 1976, at 6, col. 1.
6. *Id.*
7. *Id.*
8. Washington Post, June 6, 1976, at K1, col. 1.
9. *Id.*

the local currency (*naira*).[10] This caused a temporary cessation of all letters of credit. Matters were made worse by the lack of an exact definition of the shipping documents required under the terms of the letters of credit and the unavailability of a new mandatory port cargo clearance certificate.[11] The Central Bank rescinded the payment-in-advance regulation and clarified document requirements,[12] but the whole exercise heightened foreign businessmen's wariness.

Other, less important but, nevertheless, annoying actions by the new regime have helped create a sense of uneasiness among some foreign investors and traders. For example, on April 1, 1976, Nigeria prohibited the importation of 56 categories of goods. This action was taken to curb a raging inflation rate and to ease port congestion. Also, shipments consigned to Nigerian banks for delivery to third parties were prohibited. Further, invoices on consumer goods must now be in metric terms only, and invoices on transport and heavy equipment must be in metric terms as of December 1, 1976.[13]

II. Tradition and Incentives

Nigeria's tradition of hospitality toward foreign investment, and the laws that have been enacted to encourage and protect such investment, offer persuasive evidence that investments in Nigeria will be safe—but only if foreign investors respect and, wherever possible, support Nigeria's efforts at nation-building and abide by her rules.[14]

---

10. U.S. Dept. of Commerce, Commerce America 45 (Aug. 2, 1976) [hereinafter cited as Commerce America].

11. *Id.*

12. *Id.*

13. *Id.*

14. It is frequently difficult to determine exactly what the rules are. For example, a recent ruling requires companies that use foreign technology or expertise to be at least 60% Nigerian-owned by December 31, 1978. The ruling clearly covers several United States banks that were encouraged in 1974 to come to Nigeria to help finance the country's $50 billion Third Development Plan, 1975-80. Whether the United States banks can now obtain exemptions from the Ruling because they were asked to come into the country is still an open question. It is clear, however, that if they fail to get exemptions, they have mainly themselves to blame. Many of them have studiously ignored clear government policy requiring them to finance long-term, high-risk projects and earmark fixed percentages of their loans for specific sectors of the economy. They have acted like the commercial bankers they prefer to be and not like the merchant bankers the govern-

A. *Tradition of Hospitality*[15]

Since its independence in 1960, Nigeria has sought to reassure foreigners that their investments are safe.[16] The Republican Constitution of 1963 emphasized this theme:

> 31.-(1) No property . . . 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 therefor; 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 . . . and the compulsory acquisition of rights over and interest in such property by or on behalf of the state.* (Emphasis added.)

Section 31.-(1) requires a separate law authorizing the taking of property; the constitutional provision alone does not permit specific takings. This provision is an important indication of the Nigerian sense of due process, because the state[17] is also subject to the provisions of section 31.-(1). It must provide adequate compensation and grant aggrieved owners local judicial review of such compensation. An important separate law that permits the taking of private property for public purposes is the Public Lands Acquisition Act.[18] The Act applies only to land, not businesses, plants, fixtures, or other private personalty. Compensation is based on what a seller would accept from a willing buyer.[19]

Shortly after achieving independence, Nigeria supplemented its laudable constitutional and legal safeguards for foreign investment by helping to strengthen international safeguards. She joined 87

---

ment required them to be. Now they may have to pay a stiff price for their mistake. BUS. WEEK, July 26, 1976, at 50.

15. Much of this section draws heavily on Ezediaro, *Guarantees and Incentives to Foreign Investment in Nigeria*, 5 INT'L LAW. 770 (1971), an excellent, if now somewhat dated, survey.

16. INDEPENDENCE CONSTITUTION § 30 (Nigeria 1960).

17. This term encompasses both federal and state governments.

18. LAWS OF THE FEDERATION OF NIGERIA AND LAGOS, ch. 167 (Nigeria 1958).

19. *Id.* § 15(6).

other nations in 1962 and approved a U.N. General Assembly resolution[20] that contained the following provision:

> 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.[21]

The resolution is less advantageous to foreign investors than Nigeria's own constitutional provision since the resolution urges only "appropriate" compensation; the constitution requires "adequate" compensation. The important point, however, is that Nigeria clearly sought to further reassure investors by signing the resolution.

One final example of Nigeria's traditional sympathy toward foreign investment is seen in her ratification of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.[22] The Convention provides a forum (called the Centre) and procedural rules for the settlement of investment disputes between countries and individual private foreign investors. The latter can gain access to the Centre without the approval or sponsorship of their own governments. Nigeria was the first nation to ratify this Convention and was instrumental in making it a reality.

B. *National Policy and Its Effect on Foreign Investors*

United States private investment in Nigeria is now almost $1 billion.[23] Ninety percent of the total investment is related to the production of oil and gas in conjunction with the FMG.[24] Nigeria's 80 million people had a gross domestic output of $18 billion in

---

20. G.A. Res. 1803, 17 U.N. GAOR Supp. 17, at 15, U.N. Doc. A/5217 (1962).

21. *Id.* art. 1(4).

22. 17 U.S.T. 1270, Convention on the Settlement of Investment Disputes between States and Nationals of Other States, *opened for signature,* March 18, 1965, 575 U.N.T.S. 159, 160. *See also,* Broches, *The Convention on the Settlement of Investment Disputes: Some Observations on Jurisdiction,* 5 COLUM. J. TRANSNAT'L L. 263 (1966). This convention was largely the brainchild of Aaron Broches, the World Bank's General Counsel.

23. U.S. DEP'T OF STATE, BACKGROUND NOTES—NIGERIA 6 (May 1975) [hereinafter cited as BACKGROUND NOTES].

24. U.S. DEP'T OF COMMERCE, OVERSEAS BUSINESS REPORTS: MARKETING IN NIGERIA 22 (Dec. 1974) [hereinafter cited as 1974 OVERSEAS BUSINESS REPORTS].

1974, and foreign exchange earnings exceeded $8 billion in the same year.[25] American investment comprises almost half of all foreign investment in Nigeria.[26] It has been supported by a variety of legal incentives, the most important of which are discussed below. These incentives exist against a backdrop of important national policies with which potential investors should be familiar.

1. *Third National Development Plan 1975-80.*—Foreign investment will always be fundamentally guided by the development priorities of the FMG, as reflected in its periodic five-year plans. The 1975-80 plan[27] is Nigeria's most ambitious and presupposes massive oil revenues (over 45 percent of gross output for 1975-76 is attributable to oil production[28]) to finance public and private projects totaling $50 billion.[29] When it was released, the plan envisaged real annual growth of gross domestic product (GDP) at 9.5-10 percent, despite an inflation rate as high as 60 percent in 1975.[30] It called for public expenditure of $32 billion on projects including two liquified natural gas processing plants, at least two oil refineries, radical improvement of transportation systems, agricultural development, and universal primary education.[31] Soon after taking over the government in early 1976, however, General Obasanjo announced a reordering of priorities under the plan. Massive prestige projects were downgraded, but housing, health, and agriculture were stressed.[32] This reordering, however, does not contemplate a reduction of expenditures or a diminution of the role of private foreign investors.[33]

2. *The "Indigenization" Decree of 1972.*—On March 31, 1974, the FMG's "Indigenization" Decree of 1972[34] became effective.

25. BACKGROUND NOTES, *supra* note 23.

26. 1974 OVERSEAS BUSINESS REPORTS, *supra* note 24.

27. FED. MINISTRY OF ECON. DEVEL. AND RECONSTRUCTION (CENTRAL PLANNING OFFICE), THIRD NATIONAL DEVELOPMENT PLAN 1975-80 (Nigeria 1975).

28. U.S. DEP'T OF STATE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: NIGERIA 6 (Jan. 1976) [hereinafter cited as FOREIGN ECONOMIC TRENDS].

29. BACKGROUND NOTES, *supra* note 23, at 5.

30. U.S. DEP'T OF COMMERCE, OVERSEAS BUSINESS REPORTS: WORLD TRADE OUTLOOK FOR AFRICA, 3 (Mar. 1976).

31. *See generally*, FED. MINISTRY OF ECON. DEVEL. AND RECONSTRUCTION (CENTRAL PLANNING OFFICE), THIRD NATIONAL DEVELOPMENT PLAN 1975-80 (Nigeria 1975).

32. COMMERCE AMERICA, *supra* note 10.

33. FOREIGN ECONOMIC TRENDS, *supra* note 28, at 7.

34. Decree No. 4 of Feb. 23, 1972, Enterprises Promotion Decree 1972, [1972] Fed. Rep. of Nigeria Official Gazette (Supp.) (Nigeria) [hereinafter cited as Decree]. For a full discussion of the Decree, see Donovan, *supra* note 2.

Schedule 1[35] listed 22 relatively unsophisticated occupations (*e.g.*, hairdressing[36] and trucking[37]) in which no foreign ownership was permitted.[38] Schedule 2[39] comprised 33 more sophisticated businesses (*e.g.*, furniture manufacturing[40] and book printing[41]) in which foreign ownership of up to 60 percent was permitted if the business had either a paid-up capital of $600,000, or an annual turnover exceeding $1.5 million.[42] The government chose which test to apply. The Decree was to be enforced by the Nigerian Enterprises Promotion Board (NEPB),[43] which worked through Enterprise Promotion Committees[44] in each of the twelve states. On June 29, 1976, the FMG added eighteen businesses to Schedule 1 and twenty-four to Schedule 2 and added Schedule 3, a catch-all provision requiring 40 percent Nigerian ownership of all enterprises not included in Schedules 1 or 2.[45] This new provision was incorporated to accelerate "Nigerianization,"[46] but it does not require indigenous majority control, nor does it impose total government ownership on existing enterprises.

3. *Government Control of the Economy's "Commanding Heights."*—In 1973 the President of the Lagos Chamber of Commerce and Industry denied that the "Indigenization Decree" was intended to exclude foreigners. He observed that:

> the cardinal aim of the Decree is to progressively divert foreign investment into projects requiring large capitals [sic] or specialized skill or both . . . to ensure that foreign investments are complementary to, rather than competitive with indigenous enterprise [and] *ultimately to ensure that the commanding heights of the economy are indigenously controlled.*[47] (Emphasis added.)

---

35. Decree § 16, at A18.
36. *Id.* Schedule 1, Item 11, at A19.
37. *Id.* Schedule 1, Item 12, at A19.
38. *Id.* § 4, at A13.
39. *Id.* § 16, at A18.
40. *Id.* Schedule 2, Item 13, at A20.
41. *Id.* Schedule 2, Item 27, at A20.
42. *Id.* § 5, at A13-14.
43. *Id.* § 1, at A11.
44. *Id.* § 2, at A12-13.
45. Enterprises Promotion Decree, 1977, [1977] FED. REPUBLIC NIGERIA OFF. GAZ. (retroactive to June 29, 1976). *See also* U.S. DEP'T OF COMMERCE, OVERSEAS BUSINESS REPORTS: MARKETING IN NIGERIA 29 (July 1976) [hereinafter cited as 1976 OVERSEAS BUSINESS REPORTS]. *See also* note 14 *supra*.
46. BUS. WEEK, *supra* note 14, at 50.
47. 3 NIGERIAN BUS. DIGEST 8 (Nov. 1973).

As noted above, oil is the economy's most "commanding height"; it accounts for 45 percent of GDP, 91 percent of exports, and 87 percent of FMG revenues.[48] Since its establishment in 1971, the Nigerian National Oil Corporation has negotiated majority ownership (generally 55 percent) of all foreign oil companies and has retained exclusive rights to develop all unreserved oil concessions.[49] The government's public policy also mandates exclusive ownership in and operation of railroads, telephone companies, and electricity companies, and at least a 55 percent interest in companies involved in the production of iron and steel, petrochemicals, and fertilizer.[50]

C. *Incentives for Foreign Investors*

Three months prior to his accession to leadership, General Obasanjo acknowledged that Nigeria needed new foreign investment in order to fully develop her economy and guarantee its safety.[51] One year before Obasanjo took office as head of the FMG, the United States Government announced that the Overseas Private Investment Corporation (OPIC) would reinstate its Nigerian programs.[52] These programs provide qualified United States investors with insurance against political risks such as the inconvertibility of local currency earnings, expropriation, war, revolution, and insurrection. OPIC also offers pre-investment assistance to United States investors, direct loans, and investment guarantees.[53]

Nigeria and the United States are still encouraging American investment in Nigeria. Although Nigeria has enacted a number of specific incentives to this end, a basic ground rule for all foreigners is contained in the Nigerian Companies Law, reenacted by the Companies Decree of 1968.[54] This Decree requires most foreign-based companies intending to do business in Nigeria to give prior written notice to the Registrar of Commerce and to incorporate separately in Nigeria.[55] The incorporation filing must include the

48. FOREIGN ECONOMIC TRENDS, *supra* note 28, at 5.

49. 1976 OVERSEAS BUSINESS REPORTS, *supra* note 45, at 5.

50. BUSINESS INT'L CORP., INVESTING, LICENSING & TRADING CONDITIONS ABROAD: NIGERIA 4 (June 1, 1975).

51. FOREIGN ECONOMIC TRENDS, *supra* note 28, at 10.

52. U.S. Overseas Private Investment Corp., Press Release TS/319 (Feb. 19, 1975).

53. 22 U.S.C. § 2191 (1970).

54. 17 COMMERCIAL LAWS OF THE WORLD, NIGERIA (1974).

55. *Id.* part 10. Excepted from mandatory Nigerian incorporation are: (a) foreign companies (other than those specified in (d), *infra)* invited to Nigeria by

proposed location of the business, its nominal share capital, the number and allocation of shares, and certain information about the company's directors, bylaws, and articles of incorporation.[56] Permission must also be obtained from the Ministry of Internal Affairs to establish a business in Nigeria and employ expatriates.[57]

1. *"Approved Status."*—After separate incorporation in Nigeria, a company should apply to the Ministry of Finance for "approved status." This is necessary for prompt repatriation or remission abroad of dividends, royalties, fees, capital, and loan principal and interest.[58] Although there are no definitive guidelines on what the Ministry of Finance means by "approved status," companies should align their plans as closely as possible with the latest official investment priorities, as indicated by the current five-year plan.

The granting of "approved status" does not guarantee, but strongly implies, easy repatriation of funds. The Nigerian Central Bank's exchange regulations state that "Nigeria values its past record of fair treatment of applications for repatriations and would not lightly damage [its] reputation . . . ."[59]

2. *"Pioneer Industries."*—The major incentive to foreign investment contained in Nigerian law is found in the Industrial Development (Income Tax Relief) Decree of 1971,[60] which grants a tax exemption for the first three years of profitable operations to publicly held, limited liability companies engaged in "pioneer industries"[61] (industries which the government seeks to strengthen) that

---

or with the approval of the government for specific projects; (b) foreign companies that are in Nigeria for the execution of specific loan projects on behalf of donor countries or international organizations; (c) foreign government-owned companies engaged solely in export promotion activities; and (d) engineering consultants and technical experts engaged in specific projects under contracts with any state governments, their agencies, or any other body or person where such contracts have been approved by the FMG. U.S. DEP'T OF STATE, GUIDELINES TO FOREIGN INVESTMENT IN NIGERIA 6 (Oct. 31, 1975) [hereinafter cited as GUIDELINES].

56. GUIDELINES, *supra* note 55, at 6.

57. *Id.*

58. 1976 OVERSEAS BUSINESS REPORTS, *supra* note 45, at 29. The FMG has stated that fees sought to be remitted abroad should be confined to "a fixed fee only . . . in the first five years of the establishment of a new company and thereafter a percentage of gross profits not exceeding 5% may be considered in deserving cases."

59. U.S. DEP'T OF STATE, DOC. ON DOING BUS. ABROAD 111 (Aug. 9, 1973).

60. Decree No. 22, L. FED. REPUBLIC NIGERIA (1971).

61. Thirty-eight industries have been declared to be "pioneer industries." They are listed in 1976 OVERSEAS BUSINESS REPORTS, *supra* note 45, at 31.

spend at least $228,000 on fixed assets before production begins. The tax exemption can be extended for two years if the Federal Executive Council is satisfied with the company's rate of expansion, standards of efficiency, level of development, plans to use Nigerian employees and materials, and the importance of the company's product to Nigeria's economy.[62]

Certification of tax-exempt status to a company intending to engage in a "pioneer industry" is not automatic, however. The Ministry of Finance will consider, *inter alia,* a company's proposed location, size, ratio of expatriate employees to Nigerian employees, financial status, and management.[63] A certified company must begin operations within a year after the estimated date contained in its application and cannot engage in any other industry during its tax-exempt period.[64]

3. *"Approved User Scheme."*—To qualify for exemption from duty or concessionary rates of duty on imported material, a company must convince the government that the relief is necessary to effectively compete. This is known as the "approved user scheme."[65] Similar relief can be obtained by proving that the duty on an imported finished article is less than the individual duties on the imported materials necessary to manufacture the same article in Nigeria. Import relief is usually limited to three years.[66]

4. *Customs Provisions.*—The Drawback (Customs) Regulations of 1959,[67] as amended, allow for a full rebate of any duties paid on imported materials used in the manufacture of goods subsequently exported. The Industrial Development (Import Duties Relief) Act of 1957[68] allows the rebate of import duties paid on materials used in domestic manufacture. The Customs Duties (Dumped and Subsidized Goods) Act of 1958[69] permits the FMG to impose special duties on imported goods that it determines have been subsidized by the exporting country or dumped in Nigeria (*i.e.,* sold at less than the fair market value) and threaten injury to potential or established Nigerian industries.

5. *Tax Provisions.*—Nigeria has entered into a treaty with the

62. GUIDELINES, *supra* note 55, at 5.
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.*
67. Customs and Excise Management Ordinance, 1958, 46 FED. REPUBLIC NIGERIA OFF. GAZ. part B, no. 2, at B145 (Supp. Jan. 1, 1959).
68. LAWS OF THE FEDERATION OF NIGERIA AND LAGOS, ch. 86 (Nigeria 1968).
69. *Id.* ch. 47.

United States prohibiting double taxation of corporate income.[70] Nigeria is not completely prohibited, however, from withholding taxes on dividends, interest, and royalties. American companies pay withholding tax on interest earned in Nigeria only if they own more than 50 percent of the Nigerian company making the payment.[71] United States companies not doing business in Nigeria are not subject to withholding taxes on royalty payments due them.[72]

The basic corporate income tax rate is 45 percent on income exceeding 6,000 *naira* (approximately $9,000), with the first 6,000 *naira* of income being tax exempt.[73] Corporate income is basically defined as "the total . . . profits from all sources for that year . . . less any deductions."[74] Allowable corporate deductions include expenses "wholly and exclusively" incurred in the production of profits.[75] Specifically allowed are interest, rent, repairs, bad debt and stock losses, and payments into pension funds.[76] Expressly disallowed are capital expenditures, income tax, reserves, and depreciation.[77]

In lieu of depreciation, Nigerian tax law permits "capital allowances," which provide for a much speedier write-off of new plants and equipment.[78] A new business, for example, can write off 25 percent of the value of buildings in the first year: a 10 percent standard annual allowance, plus a 15 percent bonus for new businesses.[79] The write-off of other goods (*e.g.*, vehicles, equipment, furniture) is an even more generous 32.5 percent: a 12.5 percent standard allowance, and an additional 20 percent allowance for new businesses.[80] There is an unlimited carry-forward of unused

---

70. Convention on Double Taxation, April 16, 1945, United States-United Kingdom, 60 Stat. 1377, T.I.A.S. No. 1546; Supp. Protocol, May 25, 1954, 6 U.S.T. 37, T.I.A.S. No. 3165; Supp. Protocol, Aug. 19, 1957, 9 U.S.T. 1329, T.I.A.S. No. 4124.

71. *Id.*

72. *Id.*

73. Companies Income Tax Act, 1961, L. FED. REPUBLIC NIGERIA, Act No. 22, part VII, § 32 *et seq.*, as amended [hereinafter cited as 1961 Companies Tax Act].

74. *Id.* § 31(1). For individual tax purposes, "income" is defined as all income "accruing in, derived from, brought into, or received in, Nigeria." Income Tax Management Act, 1961, L. FED. REPUBLIC NIGERIA, Act. No. 21, part II, § 4(1).

75. 1961 Companies Tax Act, *supra* note 73, at § 27.

76. *Id.* § 27(a)-(e).

77. *Id.* § 28(a), (c), (e)-(f).

78. *Id.* § 6, sched. 3.

79. *Id.* §§ 6-7, sched. 3, tables 1-2, as amended.

80. *Id.*

capital allowances[81] and a four-year carry-forward of other business losses. No carry-back of losses is permitted.[82]

A 40 percent withholding tax exists for interest, royalties, and management fees[83] (subject to the provisions discussed above). There is no comparable tax for dividends paid from (a) profits subject to Nigerian income tax,[84] (b) the tax-exempt profits of a "pioneer industry" (see discussion above),[85] or (c) profits from petroleum operations.[86] Nor are taxes withheld on dividends paid to resident shareholders.[87] Taxes are withheld, however, on dividends paid to nonresident corporations.[88] There is a capital gains tax of 20 percent on any disposal of capital assets[89] and a petroleum profits tax of 55 percent on companies involved in the extraction and transport of petroleum and natural gas.[90]

III. Conclusion

Doing business in Nigeria has never been easy. Delays and frustrations are commonplace. Coupled with recent political changes, these formidable considerations may dissuade many potential investors from entering Nigeria. Nigeria, however, has an important role in international economics, which is sure to increase in significance. Thus, American businessmen may find that they cannot afford to ignore Nigeria, despite their inclination to do so. Nigeria's government has taken positive and far-reaching steps to encourage and protect foreign investment in order to better meet the country's economic, social, and political needs. Innovative American businessmen sensitive to local needs can certainly find their own profitable role.

---

81. *Id.* § 24(4), sched. 3.
82. Business International Corp., Investing, Licensing & Conditions Abroad: Nigeria 12 (1976).
83. 1976 Overseas Business Reports, *supra* note 45, at 32.
84. *Id.*
85. Decree No. 22, L. Fed. Republic Nigeria § 17 (1971).
86. Business International Corp., *supra* note 82, at 12.
87. *Id.*
88. *Id.*
89. 1974 Overseas Business Reports, *supra* note 24, at 26.
90. *Id.*