

Chapter 14

An Evaluation of Legal Framework on the Growth and Development of SMEs in Nigeria

Abdulfatai O. Sambo
Abdulkadir O. Abdulrazak
Abdulkadir B. Abdulkadir

Introduction

Small and Medium Enterprises (SMEs) are important cornerstones for economic growth and development of a nation (González-Loureiro & Pita-Castelo, 2012; Dixit & Pandey, 2011). Yet, SMEs cannot thrive in a nation which does not provide for them a suitable legal framework to operate in. A suitable legal and policy framework will pave the way for the implementation of financial inclusion strategies and a lending programme which is also needed to be put in place. In fact, the Central Bank Governor (CBN), Sanusi Lamido Sanusi, recently said that banks cannot continue to lend to unprofitable SMEs because of continuous use of the electrical generators which requires buying of diesel, and due to the bad roads and poor state of national insecurity (Sanusi, 2013). Also, it is important to have firm guidelines/policies on interest rates to be charged to SMEs across the nation. Yet, banks in the country, an important sector in the growth and development of SMEs, seem not to agree to peg the interest rates on SMEs lending (Vanguard, April 15, 2013). Vanguard noted this despite the appeals by the CBN Governor that this will be a great contribution of bankers for societal development through empowerment of SMEs. It was contended that such a policy would last for a long time citing examples like the Small and Medium

Industries Equity Investment Scheme, introduced in 1999, by the then CBN Governor, Chief Joseph Sanusi (Vanguard, April 15, 2013). This shows that there are no firm policy guidelines relating to the SMEs/bankers relationship which serve the interests of both parties.

It is pertinent to mention that SMEs are defined as a business whose total cost is not more than ₦ 200, 000,000 (two hundred million) Naira (Basil, 2005) or an enterprise that has asset base (excluding land) of between ₦ 5 million (five million) Naira to ₦ 500 million (five hundred million) Naira. This category of business has a labour force of between 11 and 300 as one of its characteristics (Paragraph 6.0 of the 2010 CBN Small and Medium Enterprises Credit Guarantee Scheme (SMECGS)). The definition of SMEs is not straight-jacketed, as the rule guiding its nature varies from different jurisdictions (Aigboduwa & Oisamoje, 2013; Ayaggari & Demirguc-Kunt, 2003; Fatai, 2013). There seems to be a correlation between the level of poverty, hunger, economic stability and unemployment of the citizens of countries when taken in contradistinction with the level of efficacy of the respective countries' SMEs. Thus, if Nigeria is to achieve significant success towards attaining Vision 2020 and the Millennium Declaration Goals for 2015, one of the possible ways is to vigorously pursue the development of its SMEs. There is an urgent need to do something surgical and realistic to the situation of her SMEs given the aggravating level of poverty in Nigeria, and the need to fulfil various commitments. SMEs also offer the opportunity for employment generation and technological development in Nigeria. Yet, the sector has had its own fair share of neglect with its related impacts on the national economy. Over the years, there have been governmental policies which have been aimed at facilitating and empowering the growth and development and performance of the SMEs. Nevertheless, more still needs to be done with respect to the legal/policy and institutional frameworks.

Based on the above premise, this chapter examines the legal/policy framework for the operation of SMEs in Nigeria with the view to assessing whether these frameworks have assisted the growth and development of SMEs in Nigeria. To achieve this, the chapter examines the laws regarding the establishment of SMEs in Nigeria. It discusses the institutional/policy and regulatory measures put in place for the

growth of SMEs, and the legal problems/challenges facing the operation of SMEs in Nigeria.

Establishment of SMEs in Nigeria

One important requirement in establishing SMEs in Nigeria is a registration with the Corporate Affairs Commission (CAC). It is imperative to comply with the relevant rules and regulations provided for under the Companies and Allied Matters Act, Laws of the Federation of Nigeria, 2004 (CAMA). The SMEs may take the form of: partnership/firm; sole proprietorship; private company limited by shares; unlimited liability company; company limited by guarantee. CAMA is a principal legislation which governs matters relating to registration of SMEs. Its provisions are administered by the CAC. Its general functions are to: regulate and supervise the process of forming, incorporating and managing companies; establish and maintain good company registry; and investigate into the affairs of companies where public interest so demands.

Most SMEs in Nigeria are operated on the basis of sole proprietorships or partnerships/firms. A business name is registered with the CAC. In registering with the CAC, certain requirements need to be met. That is, a duly completed application form must be submitted by authorized persons before the CAC providing certain particulars such as: form for reservation of name which shows the name proposed business; the nature of the business; the address of the main place of business, and all other subsidiary places of business if any; the present forenames and surnames, age, nationality, occupation, sex and normal residential address of each of the individuals who are the intending partners, and the corporate name and registered office of such corporation which is an intending partner as the case might be; the proposed date of commencement of the business or activities; passport photographs of the owners; and certificates of professional qualification if the business will be of a professional nature. If one of the partners is a non-Nigerian and intends to work in Nigeria, evidence of his immigration status must also be provided.

A foreigner can also operate SMEs in Nigeria. However, he is required to register with the CAC. Business cannot be carried out in Nigeria until the SME is registered with the CAC. However, section 56 of CAMA provides for certain exceptions to registration in Nigeria. The exceptions relate to when:

“foreign companies invited to Nigeria by or with the approval of the Federal Government of Nigeria to execute any specified individual project; foreign companies which are in Nigeria for the execution of a specific individual loan project on behalf of a donor country or international organization; foreign government-owned companies engaged solely in export promotion activities, and; engineering consultants and technical experts engaged on any individual specialist project under contract with any of the Governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.”

Institutional, Policy and Regulatory Mechanisms for the Growth of SMEs

The SMEDAN Act of 2003 established an institution called the “Small and Medium Enterprises Development Agency of Nigeria” (SMEDAN). This institution has a duty of promoting the development of the micro, small and medium enterprises (MSME) sector, thereby developing the Nigerian economy (the long title of the Act & sections 8 and 9 of the Act for the Functions and Powers of the Institution). Based on this, SMEDAN created its vision as “to establish a structured and efficient micro, small and medium enterprises sector that will enhance sustainable economic development of Nigeria” (SMEDAN). The mission is also

“to facilitate the access of micro, small and medium entrepreneurs and investors to all resources required for their development... Poverty, due to lack of access to income earning opportunities and lack of capacity to take advantage of the opportunities, is a social malaise that is threatening global prosperity in general and national economic growth and development in particular. A well-developed

MSMEs sector has proven to be one of the most veritable channels to combat poverty. The establishment of SMEDAN is therefore justified by the need to trigger the development of Nigeria's MSMEs in a structured and efficient manner" (SMEDAN).

Although SMEDAN is the principal institution in matters relating to SMEs, some institutions had already been put in place before the establishment SMEDAN. These institutions are: Industrial Development Centres (IDCs) in the 1960s; National Directorate of Employment (NDE) in 1989; the Bank of Industry (BOI) in 2001 created from the defunct Nigerian Industrial Development Bank (NIDB) and the Nigeria Bank for Commerce and Industry (NBCI).

Apart from the above institutions, the Government also put in place a number of policies which aim at developing the SMEs sector. Aganga (2013) pointed out a number of these policies include: the introduction of the Micro Finance Policy, Regulatory and Supervisory Framework for Nigeria in 2005 which led to the creation of many Microfinance Banks; (Aganga, 2013) the setting up of intervention fund in the sum of ₦200 Billion for re-financing and restructuring of Banks' loans to the manufacturing sector; the Agricultural Credit Guarantee Scheme Fund (ACGSF) launched in 1977; the setting up of the National Economic Reconstruction Fund (NERFUND) was in 1989 to promote the SME sector's growth through medium & long-term funding; the Central Bank of Nigeria (CBN)'s creation of the N200 Billion Small and Medium Enterprise Credit Guarantee Scheme (SMECGS) in the year 2010; the introduction of Nigerian Incentive Based Risk Sharing System (NIRSAL) for agricultural lending in the 2011; the N100 Billion bond-funded Cotton, Textiles and Garment Industry Revival Scheme; and the emergence of the Bank of Agriculture (BOA) from the Nigerian Agricultural, Cooperative and Rural Development Bank (NACRDB). Also, the Government has facilitated and guaranteed external finance through the African Development Bank (AFDB), World Bank, International Finance Corporation (IFC) and other international institutions that are eager and capable of helping MSMEs.

It is pertinent to mention that the practice in banking system in Nigeria is gradually changing to pay attention to microfinance seekers. This position was evidenced by the Bankers' committee meeting which

has decided that 10 percent of the funds accruing to the Small and Medium Industries Equity Investment (SMIEIS) should be channelled to micro enterprises through registered microfinance institutions (Bankers Committee, 2005). The commutative effect of the SMIEIS arrangement is that, banks in Nigeria have agreed to set aside 10 percent of their pre-tax profit annually for equity investment in small and medium industries (Isa & Terungwa, 2011). Thus, as at the end of June 2004, over N24 billion (twenty four billion) Naira had been realised, while less than N 10 billion had been invested (Onaolapo & Oladejo, 2011). It is mandatory for banks to set aside 10% of their annual profit before tax in support of SMEs. The Bank of Industry (BOI) for example is expected to provide credits to SMEs, but not on soft lending rates.

Therefore, achieving sustainable entrepreneurship progress and development requires alliances with the certain regulations and standards (Ekpenyong & Nyong, 1992; (Onaolapo & Oladejo, 2011). Small and medium scale enterprises (SMEs) have been recognised as indispensable components of national development in both developed and developing economies (Aigboduwa & Oisamoje, 2013; Abrie, & Doussy, 2006). It has been stated that many small businesses in Nigeria are not registered to avoid the keen supervision and regulation by the relevant agencies (Onaolapo & Oladejo, 2011). Only the Nigerian Export Import Bank (NEXIM) provides soft loans to export oriented SMEs. NERFUND is also in this category with the aim of providing medium to long-term loans to participating commercial and merchant banks for on-lending to small and medium-scale enterprises for the promotion and acceleration of productive activities in such enterprises. More importantly and currently, the regulatory agency of SMEs in Nigeria is SMEDAN established through SMEDAN Act 2003. SMEDAN was established to give some measure of confidence that will portray the Government's serious engagement and promotion of small and medium scale enterprises. It has been stated that SMEDAN has completed a nation-wide survey on SMEs as a basis of articulating strategies and ideas for micro, small and medium enterprises policy thrust. These would enhance facilitation, improvement and capacity building programmes and intervention for the small and medium scale enterprises in Nigeria. All these agencies are established to ensure sustainability of SMEs in Nigeria (Fatai, 2013). SMEDAN

has the power to transform the Small and Medium Scale Industries in Nigeria into a productive and effective entity (Section 8 and 9 SMEDAN Act). Other laws that are regulating SMEs in Nigeria include Customs and Excise Management Act, Industrial Promotions Act, Patent Right and Design Act, Industrial development Tax Act, and all contained in the Laws of the Nigeria, 2004. It could be conveniently concluded from the various laws that growths of SMEs are adequately provided for.

Consequent upon the above, issues of corrupt practices, frustrations, and delays, are a few of the banes in the wheel of progress of the scheme. The idea of withholding funds from entrepreneur after a successful award of it by the government agency is equivalent to fraud and dishonesty. However, concerted efforts by anti-corruption agencies like EFCC and ICPC could be a synergy in this perspective.

The above encapsulation was the situation in the case of *Oceanic Bank International Plc (Formerly Oceanic Bank International (Nig) Limited) v Broken Agro Allied Industries Limited* (2008 LPELR). The case of the Respondent in this matter was that after it had received the loan for the purpose of SMEs from NERFUND. The Appellant, who was the obligor bank, was said to have retained the sum of money for more than six months (notwithstanding the repeated demands for the release made to it by the Respondent). The above action of the Respondent was contrary to the provisions of section 5 of the NERFUND Act. The Appellant was later said to have eventually released only part of the sum, i.e. \$995,741.22 to the Respondent, thereby withholding the balance of \$2,848.78. The Appellant was also alleged to have failed in its responsibility to provide any working capital for the Respondent as required by the Act. But rather relied on a "purported private agreement" between itself and the Respondent. Consequent upon the above, there was a delay by the Appellant in releasing the funds. For this reason of delay, the costs of the plants and machinery, as well as, customs duties were said to have increased. Also, the exchange rate of dollars at the period under consideration to the Naira increased against the Naira from N 22-N 80 to \$1.00. The Respondent contended that up to the date the court delivered its judgment in this suit, the plants and machinery were yet to be installed and the project for whose purpose the loan was provided by NERFUND was yet to take off. The judgment of the court

was delivered on the 5th April, 2006 against the Appellant. It was clear from the parties' pleadings vis-à-vis the evidence before the court that the Appellant was directly responsible for the Respondent's failure or needless delay in the execution of the project for which it was granted loan by the National Economic Reconstruction Fund (NERFUND). It is a settled principle of law that a party claiming special damage is duty bound to prove same strictly by way of documentary evidence and in this case the respondent was able to discharge that burden. The needless and undue withholding of the loan granted to the Respondent by the relevant agency of the government (NERFUND in the instant case) for more than six months, by the Appellant had actually crippled the project for which the loan was granted, and caused avoidable and untold hardship, frustration, delay and loss of income to the Respondent. Therefore, the court was right to have awarded special damages to the later.

There are various interventions which have been made in different countries of the world to cater for the peculiar needs of SMEs. These interventions include, but are not limited to institutional support, tax concessions, training in the relevant skills, technological acquisition and easy access to credit and innovation schemes (Obadan & Agba, 2006). Attempts which have been made to address the problem of SMEs in Nigeria include direct lending by various financial institutions, the establishment of rural banking programmes, specification of credit guidelines by the Central Bank of Nigeria to banks lending to SMEs (the 2010 CBN guidelines), indirect lending to SMEs at concessionary rates through participating banks (Inang & Ukpung, 1992; Inegbenebor, 2006). There are other schemes that were established in this category, and they include the establishment of the Second-tier Securities market, the Nigerian Industrial Development Banks and the National Economic Reconstruction Fund into the Bank of Industry for providing cheap financial and business support services to SMEs, etc. Surprisingly, all these attempts have not been as successful as anticipated. Based on the research conducted it was established that the lending experience of five major banks in Nigeria from 1990-2006 indicated that non-performing loans and advances range from 40-50% among commercial banks. Similarly, due to the poor approach of some Nigerians to loan settlement/repayment, some banks are reluctant to grant loan to genuine entrepreneurs

(Fesse, 1994). The Central Bank of Nigeria and the Banker's Committee have recently attempted to tackle the financial problems of SMEs which culminated in the establishment of Small and Medium Enterprises Equity Investment Scheme (SMEEIS). So, there is the need for a more realistic redemption paradigm in the legal regime of SMEs.

Generally, an applicant for the SMEs funds is expected to provide: a registered business name (an enterprise for a micro credit loan or a limited liability company for an SME loan facility); a simple feasibility report showing viability of business or project is required for a medium scale enterprise and a simple business plan for a small business operator; a *pro forma* invoice stating the price and source of proposed plant and machinery intended machinery for the business; 10 percent equity of loan requested, intended project shall not be into merchandising or primary agriculture; A site plan for the location of the project; sources and quotation of raw materials expressed in units; and satisfy all requirements specified by a participating bank (the 2010 CBN (SMECGS)).

A cursory look at the conditions for the eligibility of an applicant of SMEs fund indicates that the only major requirement vis-à-vis collateral security (which is the fulcrum of this chapter) is 10 percent deposit of the amount/loan requested. This is not sufficient as a form or way of compelling beneficiaries to fulfil their obligations under this scheme. Nigerians are not deterred by taking out a loan which requires the mere presentation of 10 percent of the secured amount, rather this is in fact a tempting incentive to raise the 10 percent requirement in order to secure the loan, and plan not to repay the bank, thus swindling them out of the money. The relevant Acts should go further to ensure compliance with the rules of the game. Where this is not taken into consideration, the majority of the beneficiaries may refuse or neglect to repay the loan.

Legal Problems/Challenges with SMEs in Nigeria

One legal problem retarding the growth and development of SMEs seems to be the law relating to access to credit facilities. Although huge mechanisms have been put in place to minimise bank's credit risks, the

banks appear unwilling, due to the high credit risks involved, to lend moneys to SMEs (Olaide, 2012). This is despite the fact that the major sources for SMEs' access to funds are loans and equity. As a result, many conditions are in place for the SMEs for them to be able to access funds. With respect to loans, the common ones are high interest rates to compensate for risk; collateral or guarantee; business plans, which most may not prepare or may not know about; and track record, which most do not have since records are not usually kept (Umar, 2013). All these make SMEs' access to credit facilities a difficult task. With regards to equity, the usual conditions are good corporate governance, a sound business plan, a clear distinction between management and ownership and a track record (Umar, 2013).

Another legal problem with the operation of SMEs in Nigeria relate to registration or incorporation. As earlier stated, registration is required for SMEs in order to run business smoothly. However, the procedure has been alleged to be onerous and cumbersome. This is mainly because of the centralisation of the Corporate Affairs Commission in the Capital of Abuja. Although the CAC has branches in many states of the Federation, experiences show that main activities of the commission are conducted in Abuja. So for it to be faster, many legal practitioners come to the Abuja main office to conduct their activities, instead of their own state branches. Also, it has been alleged that the officers of the CAC are involved in corruption, and have taken bribes in order to expedite action on the registration processes. These make the registration process expensive and cumbersome. So, the process needs to be decentralised, especially where it relates to SMEs. Also, the cost of registration needs to be reduced for SMEs.

There are also problems relating to tax-payment. The three tiers of government, i.e. Federal, States and Local Government, have the powers to levy tax (the Constitution of the Federal Republic of Nigeria, 1999 as altered). The Taxes and levies (approved list for collection) Act, 1998 sets out the sphere of operation of each level. The tax mainly payable by SMEs is the Companies Income Tax. This sum payable annually as tax here is 30% of the company's profit. Consequently, many SMEs are subjected to multiple taxations especially in the urban areas. This is because SMEs need to pay the Federal, States and Local Government

levies. These are sometimes imposed with impunity. There is, therefore, the need to reduce the amount of tax payable by SMEs at various levels. So, the taxes need to further take into consideration, the nature and size of the business in levying taxes. Multiple taxations also need to be scrapped for SMEs. There should be tax holidays for SMEs. There are also problems with respect to information on tax regulations, intricacy of the system, and 'inadequate support by tax authorities.'

Another problem facing SMEs' is the dispute resolution system. As it is, most disputes between SMEs and their clients are resolved in the courts. Court processes are often encumbered by many delays. A lot of cases take many years before they are finally resolved at the High Court. Yet, many SMEs do not have enough funds to engage the services of legal practitioners to handle this process for them. As such, they end up being liquidated. This is further compounded by civil actions being taken against SMEs in courts by banks and other financial institutions. Although alternative dispute resolution is sometimes referred to for dispute settlements, this does not remove the courts' jurisdiction as many parties end up going to courts for proper and final settlement of their disputes. There is, therefore, the need to set-up effective and efficient dispute resolution mechanisms for the SMEs to settle their disputes with ease, and without delays and unnecessary expenses.

The above legal challenges relate to those cases which mainly serve the interest of the SMEs. However, to maintain a justly-balanced situation, the legal challenge of financing institution or banks need to be stated in a study of this nature. The problem related to loan redemption by banks/ financing institutions from the SMEs. Study has shown that out of the sum of ₦ 88,798,000.00 loaned to SMEs between the years 2004-2006, only ₦ 26,317,024.90 were recovered from the borrowers (Adeniji & Joshua, 2008). This indicates that the sum of ₦ 73,865,108.74, in addition to interest, were still outstanding in the hand of defaulters. That is, only less than 30% of the total amounts lent out were eventually recovered. Therefore, the methods used for loan redemption were inefficient due to low recovery rate as gathered from the above scenario. Except there is effective legal framework guiding loan redemption on SMEs fund, there will be a serious erosion of capital.

For the purpose of clarity and better appreciation of the loan redemption paradigm, relevant examples are apt in a study of this nature. Thus, with respect to agricultural investments, the government established specialized credit institutions for agriculture. These institutions include the Rural Banking Programme, which of course compelled commercial banks to establish branches in rural areas with the aims of providing credit facilities to rural farmers. The table below shows the total number of beneficiaries who failed to repay agricultural soft loan granted to them based on SMEs in certain part of Kaduna State, Nigeria.

A careful look at Table 14.1 above indicates that a substantial number of the beneficiaries of the loan in the years under consideration failed to repay the sum granted to them either in part or whole. This suggests that where the loan is considered as a revolving loan, those who are on the waiting list to benefit from the loan may never enjoy it because earlier beneficiaries have failed to settle their obligation. There is no doubt that this failure to fulfil obligations will have a great impact on the aims and objectives for the establishment of the Small Medium Enterprises in Nigeria. For this reason, there is a need to have a more effective legal regime for loan redemption. Experiences were bound where those people who were not genuinely undertaken any agricultural production participated in the SMEs scheme. All they do is to present fictitious proposals and even reports of non-existence farms, or provide claims of farms that are not theirs. Hence, there is a need for the Government to overhaul the project in order to meet the aims and objectives of the project.

Table 14.1: Defaulters among SMEs in Nigeria Based on Age

Ages	2004	2005	2006
10-45	54	50	56
46-80	32	38	30
81 above	6	6	4
No Response	8	6	10
Total	100	100	100

Source: Adeniji O.B and Joshua A.O.

Also, with regards to business groups, Government agencies make grants/funds for SMEs to make long and short term micro-credit loans available to individuals. The fund benefits skilled men and women, retirees, young graduates, business groups involved mainly in manufacturing, mining, quarrying, industrial support services, equipment leasing and others. However, such SMEs must be wholly Nigerian owned. The main objectives are to increase the range of goods and services available for local consumption and export, to provide needed employment, and to expand local production base and value to the economy. For instance, as earlier stated, the Bank and Other Financial Institution Act (BOFIA) in its attempt to promote SMEs in Nigeria provides that a bank may hold 10 percent of its share capital for the purpose of acquiring medium scale industry, agricultural enterprise or Venture Capital Company or any other business approved by the Bank (BOFIA section 21(1)). The manner by which the bank that has invested or attempt to invest up to 10 percent will recover its investment in the event of failure of the SME' business is never mentioned in the Act. On the same token, the Central Bank of Nigeria (CBN) as part of its developmental role established the Small and Medium Enterprises Credit Guarantee Scheme (SMECGS), for promoting access to credit by SMEs in Nigeria with a sum of N 200 billion to be wholly financed by the Bank (paragraph 1.0 and 2.0 of the 2010 CBN (SMECGS) guidelines). These guidelines also set out one of the objectives of the CBN gesture which is to increase the access to credit by promoters of SMEs and manufacturers in paragraph 3.0 (iii). The guidelines also left the issue of collateral to the discretion of the participating banks in paragraph 9.0.

It is important to stress that a compromise in form of granting soft loan in the nature of SMEs requires certain considerations such as adequate monitoring of beneficiaries and viable legal framework that would ensure effective loan transactions. It needs to be emphasised that government policies (i.e. SMECGS guidelines) do not actually define SMEs in the nature of enterprises, rather on the basis of industrial enterprise. However, all the legislation regulating SMEs in Nigeria as presently constituted appear to have left a huge gap between the Government intentions on one hand, and SMEs and the practice of loan redemption mechanism on the other hand. Some beneficiaries may fail to fulfil their obligations since

the legal framework is silent on this area, and merely leaves collection to the discretion of banks. Thus, legislations like the Customs and Excise Management Act, Nigerian Export Promotion Act, SMEDAN Act, must accommodate a practical paradigm in this perspective.

Again, it has been stated that reasons for loan default by farmers in the case of agricultural investment were as a result of many factors including, recurrent displacement of people as a result of conflict being witnesses in the Northern part of Nigeria (Adeniji & Joshua, 2008). It was reported that some of the beneficiaries of fund lost most of their agricultural investment during riots in Kaduna town, and that majority of those who were victims of the riot have yet to repay their loans. It is however submitted that mere allegation of displacement because of conflict should not be accepted dogmatically without further verification by officers of the relevant government agencies as some of the claims may be spurious to escape financial commitments already undertaken. Other reasons which have been put forward in this perspective include, lack of proper supervision of staff members who have made dishonest deals and have failed to verify documents of inputs purchased with the loan by beneficiaries. It is worrisome that proper procedures for obtaining loans are often floated because of collusion of the government agency. Adeniji & Joshua (2008) also mentioned in their study that there are certain groups of borrowers who will approach banks with false information to obtain loan under the scheme. Diversion of loan to other private business is no longer a rare occurrence; rather it has become the norm. Granting of loan to borrowers under the SMEs scheme should extend beyond banks and borrowers syndrome that has pervaded the polity. Otherwise, nothing would be achieved to benefit genuine SMEs practitioners. This is why an effective legal framework that would discourage none-genuine beneficiaries is necessary.

A careful perusal of NERFUND Act No. 2 of 1989, Laws of the Federation, 2004 shows that NERFUND is an intervention scheme established to ensure the speedy rise of microenterprises in the country through the provision of medium and long-term loans. The real intention of the Government is to harness the large number of Nigerian businessmen and women who merchandise imported consumer goods and re-orientate them to embark on local manufacture of these goods.

The BOFIA could not even help the matter as the Act is silent on the paradigm for recovering the value of share capital of the bank already injected into the SMEs. The Central Bank of Nigeria (CBN) guidelines of 2010 is also in the same line as the BOFIA. Yet, one of the unique objectives of the CBN is to increase the access to credit by promoters of SMEs and manufacturers. The guidelines only maintain that the collateral should be realisable and acceptable to the participating banks (CBN guidelines, paragraph 9), in spite of regarding itself as a managing partner (paragraph 4.0 of the CBN guidelines 2010). It is against this backdrop that this chapter recommends the amendment of all these laws whereby SMEs beneficiaries are subjected to production of redeemable loan. Accordingly, beneficiaries will not consider the opportunities offered by SMEs scheme as a means to unlawful enrichment.

Conclusion

The growth and development of SMEs, which is necessary for the country's economic development, requires suitable legal, policy and institutional framework for its effective and efficient operation. Yet, the legal framework seems to be inadequate in providing for the needed economic growth and development. Although a lot of efforts have been taken to improve the SMEs sector over the years, sound implementation of the available framework still remains a major challenge. Institutions, like SMEDAN, have been set-up to develop the SMEs sector, the vision and mission of the body is not yet achieved as many problems still retard the growth and development of the SMEs.

One major legal challenge is the fact that the law has not eased access to credit facilities for SMEs. Consequently, SMEs are being subjected to series of conditions to access credit facilities. At the moment, the interest rate which is alarming is not yet pegged across banks of the nation. Each bank charges its own interest rates. Also, the process of registration/incorporation appears cumbersome and onerous, as it is filled with series of alleged corrupt practices by the stake-holders. So too, the process is over-centralised and expensive. Moreover, SMEs, especially in urban centres, face multiple taxations as they are required to pay levies to the Federal, State and Local Governments. Taxes are also exorbitant,

and do not adequately take into consideration the nature and size of the business. The system of dispute resolution needs to be strengthened. Courts' actions, by and against SMEs, retard the growth of the sector as losing of cases sometimes lead to the end of the enterprise. It is also expensive and time consuming for SMEs. An efficient alternative dispute resolution (ADR) process should really be encouraged in this regard. In all, there is a dire need for suitable legal, policy and institutional frameworks that would rescue the gradual collapse being witnessed in the Nigerian SMEs sector. This will, at least, reduce some of the current economic, political and security challenges the country is facing.

In view of the above, the Government should enact new enabling and effective legislation for effective and efficient operation of SMEs keeping in mind the overall interest of the economy. The SMEDAN Act, as amended, should contain concrete provisions for an enforcement paradigm of loan redemption rather than leaving it to the discretion of banks as contained in the agreement between banks and beneficiaries. This legislation should include special provisions to facilitate empowerment of indigenous entrepreneurs, women businesses and the youth, and the preservation of the environment. Empowerment policies reinforce the chances for market forces to succeed by extending opportunities to compete to previously disadvantaged categories of entrepreneurs. Similarly, the poor approach of Nigerians to loan settlement/repayment has led to the reluctance of some banks in granting loans to genuine entrepreneurs and real sector in preference for the trade sector (Feese, 2004). Also, issues of corrupt practices, frustration by government institutions, which are banes in the wheel of progress of the scheme, need adequate attention. The idea of withholding funds to entrepreneur after a successful award of same by Government agencies is an element of fraud and dishonesty. Concerted efforts by anti-corruption agencies like EFCC and ICPC could be a catalyst in this respect. There is the need for an effective legal framework that would facilitate the much needed growth and development of SMEs for better economic development.

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