

FOREIGN DIRECT INVESTMENT IN CAMEROON:

ESTABLISHING EFFECTIVE INVESTMENT

REGULATIONS

**RESEARCH PAPER SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE LLM**

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MAY 2012

PLAGIARISM DECLARATION

I Onorine Fombason Mujih affirm that I am the author of the work presented in this dissertation. It has never been presented in any other University or institution of learning. Where other people's works have been used, they have been duly acknowledged as recommended by the faculty of law. Based on this, I declare this work original. It is hereby submitted in partial fulfilment of the requirements for the award of the LLM degree in Mercantile and Labour Law in Africa.

Signed at.....This.....Day of May 2012



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DEDICATION

Dedicated to the 'I AM THAT I AM' who spared my dad's life from a grievous illness shortly before my journey to Journey to South Africa, thus making it possible for him to give me all the moral and financial support I needed to make this journey come true.



ACKNOWLEDGEMENTS

First and foremost I offer my sincerest gratitude to my supervisor Prof Riekie Wandrag whose input made this work possible. Her patience and friendly disposition went a long way to make this work a reality. Working with you has been a great inspiration. Prof, I am grateful. I equally appreciate the entire Mercantile and Labour law department, particularly Prof Leeman, who in the midst of his busy schedule made time for this work, providing very insightful and critical comments. I sincerely appreciate the Law librarian Mr. Sulaiman Tarkey for his encouragement and help all through the way.

I most sincerely appreciate my Dad Mr Rapheal F. Mujih who is the brain behind this work, spiritually, financially and morally. Many fathers do noble things but you Dad surpass them all. You are one in a million. I Love you 'Papa'.

To my Mum Theresia Mujih, your frequent calls of encouragement have fuelled me to look ahead and stay focused on this work through to the end. I love you 'Grande Soeur' and deeply appreciate all that you have been and still going through for me. Great would be your reward in heaven.

To my sisters Loveline and Elizabeth 'doobs' and brothers, leaning on you for spiritual, financial and moral support has added value to my life. You are the best. I'm indeed blessed to have you. No word can say thank you enough.

The entire family of CFMI Cape town have been a tremendous blessing. You are all indeed a family. Thank you all. And to you Gaelle thank you for hanging around, a natural sister would have done no better than you did. You proved yourself to be one. I consider you thus.

To God be the glory for using my brother and mother in laws and husband as stepping stones to bring me to the deep knowledge of Christ, and this level of academic excellence, making me an independent wife/woman, thirsty for the Lord and desirous to forge ahead for more knowledge.

To my Kids, Junior, Marie, Jareal and Jieroy, daily prayers and thoughts of you gave me the strength and determination to push through to the end of this work. You are my inspiration and the force behind this achievement.

KEY WORDS

Foreign Direct Investment

Investment Codes

Cameroon

Multi-National Corporation

Sub-Saharan Africa

World Trade Organisation

Organisation for Economic Corporation and Development

Central African Economic and Monetary Community

Organisation for the Harmonisation of Business Law in Africa



ACRONYMS

FDI	Foreign Direct Investment
DV	Developing Countries
MNCs	Multi-National Corporations
SSA	Sub-Saharan Africa
WTO	World Trade Organisation
CEMAC	Central African Economic and Monetary Community
OHADA	Organisation for the Harmonisation of Business Law
UN	United Nation
NEPAD	New Partnership for Africa's Development



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CHAPTER ONE

BACKGROUND TO THE STUDY

1.1 INTRODUCTION

Foreign Direct Investment (FDI) began as a worldwide phenomenon in the 19th and early 20th centuries. Even then, it formed only a small portion of foreign investments for decades, as a greater percentage took the form of portfolio investments.¹ This was the case for example in 1914, when 90% of all foreign investment flows took the form of portfolio investment.² Over time, however, there was a steady shift in the composition of foreign investments. In fact, about a quarter of foreign investment flows took the form of FDI in the 1920s. The drop in portfolio investments came about as a result of the collapse of the world monetary system in the 1930s, provoked by World War 1 and the Great Depression. There was, however, a general drop in the two types of investment during the interwar years. Unlike portfolio investment, FDI proved amazingly resilient and gradually recovered in the late 1930s. FDI again improved with the end of the Second World War, and became even more prominent after the 1960s in developing countries.³ This was not the case, however, which was yet to have its share of FDI flows.

At the end of colonialism, Cameroon like other former colonies of France and Britain depended on the legislation received from their colonial masters as a means of attracting foreign investments into the country. Taking advantage of some provisions of the Treaty of Rome, which favoured overseas colonies, it engaged in trade relations with its former colonial masters, Britain and France.⁴

When Cameroon attained independence in 1960, it enacted its first investment code with the aim of attracting investment needed for economic growth. Two decades later, the said investment

¹Hooshang A and Weiping W 'FDI in Developing Countries' (1994) 28 *The Journal of Developing Areas* 167 190.

²Sornarajah M *The International Law on Foreign Investment* (2004) 8-9 describes portfolio investments as being characterised by the movement of money for the purpose of buying shares in a company formed or functioning in another country

³Hooshang A and Weiping W 'FDI in Developing Countries' (1994) 28 *The Journal of Developing Areas* 167 190.

⁴Hallstein W 'Treaty establishing the European Community as Amended by Subsequent Treaties Rome' 25 March 1957 available at www.hri.org/MFA/foreign/treaties/Rome.57.BH343.txt (accessed 20 October 2011).

code had to be revised because it had become obsolete as a result of the changing global economy. The code no longer responded to the needs of the state, thus compelling the drafting of a second investment code on 4 July 1984.⁵ Both investment codes were unfortunately flawed, with irregularities that needed amendment.⁶

Generally, investment flows from one country to another take place through Multi-National Corporations (MNCs), which have been acclaimed over the years as the primary channel for transmitting FDI to developing countries. As stated by Kenneth Mwenda, there have been deep searches for a better understanding of both the causes and consequences of the rapid growth of FDI for the home countries, host countries, the international economy and the political order.⁷

The flow of FDI between countries and regions is assisted by bilateral, regional and multilateral agreements. Desiring to ensure the peaceful growth and development of its economy, Cameroon became an active member of several regional and economic organisations, amongst which are the Organisation for the Harmonisation of Business Law in Africa (OHADA), and the Central African and Economic Community (CEMAC). Attracting investment is the main objective of many regional agreements. Thus the reason for Cameroon's membership of regional and economic organisations, and especially those mentioned above, is to seek larger markets, greater competition and improved policy credibility, all of which will boost incentives for investment.

The main focus of this study is to investigate why Cameroon lags behind other developing countries in Sub-Saharan Africa (SSA) in terms of attracting FDI in spite of its membership of, and participation in, bilateral, regional and multilateral trade and investment treaties, and its attractive investment policies. The above argument applies explicitly to FDI because Regional Integration Agreements (RIAs) are said to boost FDI inflows from non-member countries.⁸

⁵Ngwasiri C 'The effect of Legislation on Foreign Investment-The Case of Cameroon' (1989) 33 *Journal of African Law* 192 204.

⁶Ndiva K 'Investment Codes as Instruments of Economic Policy: Cameroon Case Study' (1991) 25 *International Lawyer* 821 852.

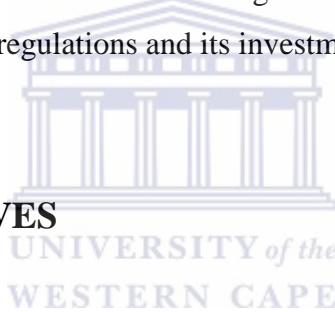
⁷Mwenda K 'Legal Aspects of FDI in Zambia' (1999) 6 *Murdoch University Electronic Journal of Law* 4

⁸Wolf M 'Regional Integration Agreements' *Financial Times* 28 October 1996 available at http://www.unige.ch/ses/ecopo/demelo/Cdrom/RIA/Readings/sw_ch1pdf (accessed 19 October 20 2011)

It is universally acknowledged that a well-designed policy framework for investment, capable of attracting FDI, would be productive and successful.⁹ Thus, for Cameroon to be competitive in attracting FDI, it is obliged to review its investment policies which continue to face the challenges of a changing global economy.

FDI is indispensable for both developed and developing countries, since a country cannot grow without engaging in domestic and foreign trade.¹⁰ Noting that FDI is primarily for developmental purposes, the latter¹¹ are more in need of FDI than the former. It is on this premise that Cameroon is constantly amending its investment codes to woo foreign investors. However, despite the enactment of several investment laws, it is yet to attract FDI significantly. Various reasons have been advanced as possible causes of low FDI inflows; one of these is based on the legal regulatory framework of the legal system. It is necessary to ensure the regulation of FDI in a manner that is protective of home-based or home-grown industries. In this regard the paper analysis the Cameroon investment regulations and its investment climate in attracting FDI.

1.2 RESEARCH OBJECTIVES



The research seeks to examine the concept of FDI as applicable to Cameroon with the following objectives in view:

- To assess the impact of FDI on the Cameroonian economy.
- To examine the role of regional and international organisations in promoting FDI policies in Cameroon.
- To examine the current Cameroon investment code with regard to attracting investors and to make recommendations as to how to improve the code to attract more FDI.

⁹Organisation for Economic Cooperation and Development's (OECD) Publications 'Policy Framework for Investment' OECD Council 2006 available at www.oecd.org/dataoecd/1/31/36671400.pdf (accessed 21 October 2011).

¹⁰ MoranT, Graham E and Blömstrom M eds Does FDI Promote Development? (2005) 375.

¹¹ Developing countries

1.3 RESEARCH QUESTIONS

The main question this research paper seeks to answer is: why has there been a continuous decline in FDI inflows into Cameroon despite its very attractive investment laws? What are the factors affecting Cameroon's FDI regulatory mechanism? What lessons can Cameroon draw from other developing countries with similar status, but unlike Cameroon doing fairly well in terms of attracting FDI?

1.4 RESEARCH HYPOTHESIS

The Cameroon government needs to understand that there is a problem with its corporate governance system and legal framework vis-à-vis its investment policies. In this regard, decisions taken concerning investors programme of investment should be diligent and in line within the legal frame work of the governing investment policies. Until this is effectively addressed, investors will be put off rather than attracted and Cameroon will continue to struggle in its efforts to attract foreign investment. If that were so, the inflow of FDI would be hampered, which would automatically hinder improvements in economic policies needed to enhance macro-economic performance and attain the minimum growth rate required to meet the Millennium Development Goals (MDG) set for 2015 by the UN for developing countries.¹²

1.5 SCOPE OF THE STUDY

FDI is a very broad topic that continues to cause debate on issues of macro and micro economics, international law, the regulatory system, as well political issues, just to name a few. This study

¹²Organisation for Economic Cooperation and Development's (OECD) Publications 'Policy Framework for Investment' OECD Council 2006 available at www.oecd.org/dataoecd/1/31/36671400.pdf (accessed 21 October 2011).

¹² MoranT, Graham E and Blömstrom M eds Does FDI Promote Development? (2005) 375.

does not engage all the issues associated with FDI, but is limited to those related to how developing countries can attract FDI, through law and policy. In this respect, its main focus is on Cameroon's investment law since 1960, and the changes that have taken place to improve the system for greater results. In order to highlight the challenges faced by Cameroon in terms of attracting FDI, and to show how these can be addressed, a brief comparison is made between Cameroon and Gabon with regards to policy framework and policy implementation. This will help to identify a best practice that Cameroon can learn from Gabon in dealing with FDI issues.

1.6 SIGNIFICANCE OF THE RESEARCH

Cameroon's underperformance in attracting FDI displays a lack of confidence in it by foreign investors. That Africa is popularly believed to be a risky zone for FDI¹³ conceals the complex diversity of economic performance, and the investment opportunities that individual countries, like Cameroon, are capable of offering. This research is significant in that it will attempt to reveal how Cameroon still has something to offer to foreign investors with its numerous natural resources. As regards policy making, note has been taken of the fact that there is a consistent desire on the part of Cameroon policy makers to attract FDI.¹⁴ The research result will be a tool for the government of Cameroon and other countries to apply to attract FDI.

1.7 RESEARCH METHODOLOGY

The research adopts a literature review approach. Emphasis will be placed on available literature on the subject, especially that related to Cameroon. Thus the research makes use of books, journal articles, news reports, etc. These are explored and critically analysed in order to ascertain the concept of FDI as applicable to Cameroon.

¹³ Tawia S 'Invest in Africa: A framework for rational Investment in Sub-Saharan Africa' London Business School;European Investment Fund June 16 2009 Working Paper available at <http://ssrn.com/abstract=1896024> (accessed 2011)

¹⁴ Ndiva K 'Investment Codes as Instruments of Economic Policy: A Cameroon Case Study' (1991)*Law Journal Library* ; 25

In addition, an analysis of factors other than investment regulations, affecting Cameroon's inability to attract FDI, is also undertaken by studying two MNCs presently established in Cameroon, DHL¹⁵ and MTN¹⁶. The rationale is that investment regulation may not be entirely responsible for Cameroon's under-performance in attracting FDI.

1.8 RESEARCH STRUCTURE

The organisation of the work is as follows: the opening chapter introduces the back ground to the study, in which a brief description of the origin of FDI is given, followed by an equally brief case study of Cameroon. The study is limited to Cameroon and developing countries. This shall be carried out through a literature review approach with particular focus on literature on Cameroon relating to the subject.

Chapter Two examines FDI in relation to its application in Cameroon followed by a discussion of how it is regulated in Cameroon. The various investment codes are briefly examined and the current 2002 investment charter analysed. The importance of FDI for the growth of the economy is also examined.

Chapter Three looks at the role of international and regional organisations in the promotion of FDI in Cameroon in particular and Africa in general. This is done by critically looking at two regional organisations, CEMAC and OHADA with which Cameroon has earnestly involved itself since becoming a member of these organisations. Comparism between Cameroon and Gabon is undertaken, and Gabon's good record of FDI inflows is compared to that of Cameroon, though both countries belong to the same sub-region and regional economic organisations. The chapter concludes with a brief discussion of regionalism and investment.

¹⁵ DHL is a courier service company and stands for the abbreviation of the surname of its three founders. D for Adrian Dalsey, H for Larry Hillblom and L for Robert Lynn

¹⁶ Mobile Telephone Network

In Chapter Four, an assessment of the activities of MNCs in Cameroon is carried out, with respect to both their successes and failures. This is done by means of a case study of two MNCs operating in Cameroon, DHL and MTN. These two MNCs are compared and reasons why one succeeds while the other does not explored. Finally some of the legal deterrents to foreign investors in Africa and possible solutions to these restraints are examined.

Chapter Five gives general recommendations that Cameroon policy makers and other African countries faced with the same problem could consider, on methods and means by which a favourable investment climate can be created to attract investors. Furthermore, attention is drawn to the lessons which Cameroon can learn from countries like Gabon who succeed in attracting investors. There is also a final conclusion.



CHAPTER TWO

THE CONCEPT OF FDI AS APPLICABLE IN CAMEROON

2.1 INTRODUCTION

FDI has long existed and is being utilised by most developing countries as a means to foster economic growth and development. Related issues involve investor/host-country relationships established through agreements on particular investment projects for economic development. In most developing countries FDI is regulated by law and policy to ensure sustainability of investment as well as to protect investors' interests. This chapter focuses on the legal development of FDI in Cameroon since independence. It analyses the advantages and the draw - backs of the Cameroon legal system in promoting FDI and sustainability of investment as well as attracting FDI in Cameroon.

To begin with, it is necessary to provide a working definition of FDI. Many scholars and international bodies have come up with varied definitions of FDI. According to Graham and Spaulding, FDI occurs when a company from one country makes a physical investment in another country.¹⁷ The direct investment in infrastructure, machinery and equipment is different from making a portfolio investment, which is considered as indirect investment.¹⁸ Moosa Imad defines FDI as a process by which residents of one country, (source country) acquire ownership of assets for the purpose of controlling the production, distribution or other activities of a firm in another country (the host country).¹⁹ In addition, other scholars have added that FDI involves the purchase of the physical assets or a significant portion of the ownership (stock/shares) of a company in another country to gain control and management of that firm.²⁰ The latter definitions

¹⁷ Graham P and Spaulding R 'Understanding Foreign Direct Investment'. Going Global 18 June 2005 available at http://www.going-global.com/articles/understanding_foreign_direct_investment.htm (accessed 21 November 2011)

¹⁸ Graham P and Spaulding R 'Understanding Foreign Direct Investment'. Going Global 18 June 2005 available at http://www.going-global.com/articles/understanding_foreign_direct_investment.htm (accessed 21 November 2011)

¹⁹ Moosa I *Foreign Direct Investment; Theory, Evidence and Practice* (2002)

²⁰ Richard J, Hunter J and Robert E ET AL 'Legal Considerations in FDI' (2003) 28 *Oklahoma City University Law Review* 851-874

suggest that not all investors begin as starters or initiators of new projects in another country. Thus, it can be deduced from the definition of Graham and Spaulding that an FDI investment is one that establishes a new project for economic benefits, rather than purchasing an already existing interest. This is further articulated by Ngowi P, citing Bjorvatn, that FDI is an investment made to acquire a long term interest in a foreign enterprise with the purpose of having an effective voice in the management.²¹

From an international perspective, different organisations have given varied definitions of FDI. The World Bank, for example, defines FDI as the net inflows of investment to acquire a lasting management interest (10 percent or more of voting stock) in an enterprise operating in an economy other than that of the investor.²² The Organisation of Economic Corporation and Development (OECD) definition of FDI reflects on the objective of establishing a lasting interest by a resident enterprise (direct investor) in an enterprise (direct investment enterprise) that is resident in a country other than the investor's. A lasting interest envisages the existence of a long term relationship between the direct investor and the direct investment enterprise and a significant degree of influence on the management of the enterprise.²³

United Nations Conference on Trade and Development (UNCTAD) defines FDI as an investment made to acquire a lasting interest in enterprises operating outside of the economy of the investor. The purpose of such acquisition is to gain an effective voice in the management of the enterprise.²⁴ The International Monetary Fund's (IMF) Balance of Payments Manual defines FDI as an investment that is made to acquire a lasting interest in an enterprise operating in an economy other than that of the investor, the investor's purpose being to have an effective voice in the management of the enterprise. The definitions of the last two organisations are similar and characteristic of having substantial control in the investment enterprise.

From the above definitions, a recurrence of terms like, "control" and "controlling interest" emerges, which denotes that in FDI investors are concerned more with the nature of the interest

²¹ Ngowi P 'Investment entry modes in Tanzania: Types, Driving Forces and Implications, (2002) 3(1) Tanzanet Journal 1- 12

²² World Bank 'FDI Net inflows (BoP Current US\$) available at <http://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD> (accessed 25 November)

²³ OECD Benchmark definition of FDI: Fourth Edition available at <http://www.oecd.org/dataoecd/26/50/40193734.pdf> (accessed 25 November 2011)

²⁴ <http://www.unctad.org/templates/Page.asp?> (accessed 23 November 2011)

and the duration of their interest. Thus where these desired interests are not available in a country, investors are not likely to invest there.

What is peculiar to FDI, as can be seen in the definitions above, is that the investor's intention is to own a lasting control of assets and management in another country. This interest differs from portfolio investment which represents a movement of money for the purpose of buying shares in a company formed or functioning²⁵ in another country and which does not require the physical presence of the investor.

For the purpose of this study, the definition of FDI by Imad Moosa is considered the reference definition because it deals with the most relevant issues of FDI. It regards FDI as a process by which residents of one country (source country) acquire ownership of assets for the purpose of controlling the production, distribution and other activities of a firm in another country (the host country).²⁶ This definition should be read together with an appreciation that such FDI could involve the starting of a new project as well as purchasing an interest in an already existing company or enterprise.

It is important to note, however, that there is a slight limitation included in the World Bank's definition. The limitation stems from the fact that it regards FDI from a percentage perspective. It considers an investment to be FDI if it involves the purchase of at least 10percent of the shares. Thus, where several investors purchase less than 10percent of the shares of a in foreign company (ies), they are not considered as FDI inflows into the foreign country.

2.1.1 Definition of Foreign Investor

Cameroon's definition of an investor in its investment charter proves the government's commitment to encourage and support investors irrespective of whether they are locals or foreign, as long as investments are made within the territory. According to section 3 of Law n° 2002/004 of 19 April 2002 instituting the Cameroon Investment Charter, "investor' shall mean

²⁵ Sornarajah M *The International Law on Foreign Investment* (2004) Cambridge University Press 7

²⁶ Moosa I *Foreign Direct Investment; Theory, Evidence and Practice* (2002) Palgrave Macmillan 1 London

any individual or corporate body of Cameroonian or foreign nationality, resident or non-resident, whose activity involves acquiring assets with a view to earning interest.²⁷ The definition adopted by the OECD is broader. It includes a group of related individuals, an incorporated or unincorporated enterprise, a public or private enterprise, a group of related enterprises, a government body, an estate, trust or other societal organization, or any combination of the above.²⁸

2.2 The Concept of FDI from a Universal Perspective

FDI is a universal phenomenon which has been widely debated from international, regional, and national perspective by scholars and policy makers as to its context and applicability. There is much controversy surrounding this area of international law. With the emergence of globalisation theories and concepts, developing countries have been challenged to develop their economic conditions either through the process of demand and supply or by law. In this regard they will ensure the maintenance, improvement and perfection of their economic, political and social conditions, in a bid to attract FDI which is relevant for developing countries. The UNCTAD suggests that FDI is the largest source of finance for developing countries.²⁹ Considering the truth of the above statement, Africa is still to derive the benefits of FDI despite numerous efforts to attract it. It is important to note that many African countries are still lagging behind in developing a favourable business climate that is attractive to investors.

Regional integration has remained one of the main goals for Africa and its people. It is against this background that the Organization of Africa Unity (OAU) was established in 1964. African governments have always seen regional integration as a conduit for achieving sustainable economic growth and development through larger markets which according to them would open the doors to FDI.³⁰ Policy makers in SSA are becoming more and more convinced that FDI can be achieved and improved upon through regional integration which they now use as an

²⁷Cameroon, Law n° 2002/004 of 19th April 2002 instituting the investment charter

²⁸OECD Benchmark definition of Foreign Direct Investment Fourth edition 2008 available at <http://www.oecd.org/dataoecd/26/50/40193734.pdf> (accessed 30 November 2011)

²⁹Asiedu E 'On the Determinants of FDI to Developing Countries: Is Africa different' (2003) 30 *World Development* 107-19.

³⁰United Nations Economic Commission for Africa 'Assessing Regional Integration in Africa' available at www.uneca.org/aria3/ARIA3_ENG.pdf (accesses 2 December 2011)

instrument in achieving this goal. This is premised on the fact that despite the poor economic performance in some countries of the region, the strengthening of trust, regional policy harmonisation, and joint infrastructure projects, can provide greater access to world markets. The idea behind all of these is that, good governance, security, the rule of law and trust will go a long way to enhance investor interest in a region.³¹

An analysis of FDI inflows in SSA shows that Cameroon is below the Sub-Saharan average and also lower than all low income countries. In the CEMAC region for example, Cameroon is one of many developing countries lagging behind in attracting FDI, whereas other countries, such as Gabon, have recently emerged in the region with great FDI inflows.³² “In Cameroon, FDI’s [contribute] ‘between 25 and 28% of GDP, against 90% of GDP for countries like Gabon...’”³³

From a national perspective, any country seeking to encourage economic development through FDI is expected to acknowledge the principle that the laws of the host nation should not discriminate against foreign investors.³⁴ This is the case with the current investment law in Cameroon, where no discrimination is made between national and foreign investors, the purpose being not only to encourage foreign investment, but national investment as well. This is also called the National Treatment Principle under the WTO trade rules.

To this effect, section 3 of the Investment Charter in Cameroon does not discriminate between a local investor and an investor of foreign nationality. They are all regarded equally and given the same status and privileges, even if the foreign investor is not resident in Cameroon. The National Treatment Principle is well respected in Cameroon vis à vis foreign investors.

In the Cameroonian context, the legal system, although comprehensive and slow³⁵, remains, on the whole, workable, reliable and favourable to a greater extent towards foreign investors.

³¹Dupasquier C and Osakwe P ‘FDI in Africa: Performance, Challenges, and Responsibilities’ (2006) 17 *Journal of Asian Economics* 241-60

³²Ajayi S ‘FDI in Sub-Saharan Africa: Origins, Targets, Impact and Potential’ 2006 *African Economic Research Consortium*.

³³African Bulletin, 2010, CEMAC Countries: FDI’s Are Not Eternal. Available at <http://www.african-bulletin.com/news/605-cemac-countries-fdis-are-not-eternal.html> [Accessed on 28th January 2012]

³⁴Xiaolun S ‘How to promote FDI? The Regulatory and Institutional Environment for Attracting FDI’ available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan006349.pdf> (accessed 2 December 2011)

³⁵ It is well defined though takes long to be implemented when it is passed as was the case with the 2002 investment charter which was only implemented in 2009 and not completely till date since certain aspects of the code would only become fully operational in 2014 as stated in chapter Four of this work. There are lots of incentives incorporated in this charter, which makes it business friendly despite its short comings

Cameroon, while not without problems, remains one of the most economically and politically stable countries in Africa with the rule of law generally respected.³⁶ This peaceful atmosphere which is supposed to attract FDI but does not do so will be examined in the latter part of this work.

Section 15 of the Investment Charter states that the State shall adhere to the multilateral trade system, in particular, the agreements of the WTO and the other mechanisms for the development of international trade, as well as the agreements of the International Customs Organisation (ICO). According to section 16 of the Investment Charter, the State re-asserts the option of regional integration, in particular within the framework of CEMAC and the Economic Community for Central African States (ECCAS).

The inter-relationship between multi-lateral and regional rule tends to affect investment rules within a state as the effectiveness of the investment policies of the state is often made subject to international rules or laws. This has often to deal with investors' security. It is in this light that the WTO Dispute Settlement Body has often been instrumental in cases of dispute between member states, whether from regional groupings or from a multi-lateral perspective. This means that, if there is an overlap between the WTO, regional rules and State rules, the multi-lateral and regional rules will take precedence over national laws in settling disputes related to FDI.³⁷ The Preamble to the Constitution of Cameroon guarantees respect for international treaties and conventions.

Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement³⁸

This acts as a security measure for FDI investors since the country has undertaken the initiative to uphold international law.³⁹

³⁶ Duane E 'Legal Aspects of Doing Business in Cameroon' (1983) 17 *International Lawyer* 489 506

³⁷ Magda S 'Multi-lateral Investment and Competition Rules in the WTO: an assessment' available at www.unctad.org/en/docs/iteit4v6n2a8_en.pdf (accessed 5 December 2011)

³⁸ Article 45 of the 1996 Constitution of the Republic of Cameroon

2.3 The Regulation of FDI in Cameroon

The regulation of FDI in Cameroon is done through the executive, legislative and judiciary. The 1996 Constitution provides for a powerful President who is elected for seven years. The judiciary and the legislature are controlled by the executive. The judiciary lacks independence and adequate resources. This makes the credibility of the government within its multi-lateral and regional circles not only limited but questionable as regards its capacity to maintain its trade and investment policies vis-à-vis private investors or prospective private investors.⁴⁰

While Cameroonian business laws on paper are clear, few foreign investors have come forward because implementation of those laws is problematic. Under the current judicial system, local and foreign investors have found it complicated and costly to enforce contract rights, protect property rights, obtain a fair and expeditious hearing before the courts or defend themselves against frivolous lawsuits. However, the recently implemented [OHADA] Treaty may foster improvements in the judiciary.⁴¹

In the context of Cameroon investment law, an Investment Code is a policy document for the government targeting the regulation and promotion of investment in the country. The first of these was in 1960, followed by 1984, 1990 and lastly the 2002 Investment Charter. It does not have enforcement power but as stated below⁴², in the case of a dispute, the applicable laws will apply.⁴³

Investment codes are legal documents as well as guides for companies and individuals interested in investing in Cameroon. As would be expected of any road map, the code helps the prospective investor to navigate through complex rules and regulations governing what is frequently referred to as “doing business” in that particular country. The code provides useful information on eligibility requirements for doing business in Cameroon.⁴⁴

³⁹ UNCTAD/ITE/11A/2003/4 ‘The Development Dimension of FDI: Policy and Rule-Making Perspectives’ United Nations: New York and Geneva, 2003 available at www.unctad.org/en/docs/iteiia20034_en.pdf (accessed 6 December 2012)

⁴⁰Stiftung B ‘Cameroon Country Report’ available at <http://www.bertelsmann-transformation-index.de/87> (accessed 6 December 2011)

⁴¹ Central Intelligence Agency. Cameroon Investment Guide. Available at http://www.aabf.org/cameroon_inv_guide.htm [Accessed on 6 February 2012]

⁴²Chapter Two, Section 2.4.3

⁴³Sunday K and Bamou L ‘An Analysis of Foreign Direct Investment Flows to Cameroon’ (2006) *African Economic Research Consortium*

⁴⁴ Ndiva K ‘Investment Codes as instruments of Economic Policy: A Cameroon case study’ (1991) 25 *Law Journal Library* 821-858

The most important component of an investment regime is the regulatory framework. In Cameroon, the regulatory and institutional framework for investment, from when it attained independence in 1960 to 2002, has been provided by the various investment codes.⁴⁵

2.4 The Regulatory Framework for FDI in Cameroon

More specifically, the idea of the charter was to provide an appropriate institutional and regulatory framework to guarantee the security of investments, provide support to investors, and ensure fair and prompt settlement of investment-related as well as commercial and industrial disputes. It is worth noting here that the charter is not a substitute for the investment code.⁴⁶

Though the regulatory and institutional framework for investment in Cameroon had been patterned by the previous investment codes that had existed in the country since 1960 till date, the applicable investment climate is dictated by the 2002 Investment Charter as it lays down the regulatory and institutional framework within which investment activities operate. The law establishing the Investment Charter of 2002 was defined in section 2. The government enacted Law No 2002/004 instituting the Cameroon Investment Charter and its scope after it became evident that the 1990 investment code could not obtain its desired objective. The state of Cameroon is the custodian of the legal system in Cameroon and therefore it will ensure the enactment, regulation and enforcement of laws. Section 8 of the 2002 Investment Charter clearly emphasises the role of the state in protecting investors' interests in Cameroon. The regulation of FDI under the 2002 Charter is controlled by three regulatory institutions created by the Charter. These institutions are the Regulatory Competitiveness Board (RCB), the Investment Promotion Agency (IPA) and the Export Promotion Agency (EPA). According to section 24, "any petition for redress from an investor of noncompliance with the provisions of this law and its implementation instruments shall first be forwarded to the regulation and competitiveness board." The

⁴⁵ Sunday A and Bamou T 'An Analysis of FDI flows to Cameroon' 2006 *African Economic Research Consortium*

⁴⁶ Sunday A and Bamou T 'An Analysis of FDI flows to Cameroon' 2006 *African Economic Research Consortium*

implementation of the Charter is enforced by the RCB which is charged with the responsibility of drafting the implementation strategy.⁴⁷

2.4.1 The court structure

The court structure in Cameroon is of a highly decentralised nature. The motivation for this decentralisation is the desire of policy makers to bring justice within the reach of the population. This explains the fact that, apart from the Supreme Court which has jurisdiction over the entire country, all other courts are located at various sub-divisional, divisional, and provincial levels in the country.⁴⁸ There are two courts which deal with investment disputes: the Court of Appeal and the Court of First Instance. In the case where an investment dispute arises and one of the parties is not satisfied, he may, where necessary make use of the OHADA court of arbitration located in Abidjan, Ivory Coast. This however has its advantages and disadvantages. A disadvantage is the question of the costs is involved; while an advantage is that of a fair trial. This advantage springs from the fact that the issue of bias may be mitigated or reduced to a greater measure than in national courts. This is so because legal proceedings would be carried out in a neutral arena when either of the parties involved in the dispute would have the possibility of influencing the judgment.

The current governing investment code will be examined in detail so as to determine if Cameroon's underperformance is the result of non-compliance by investors or non-enforcement by the state.

2.4.2 Enforcement Strategies

When all avenues for negotiating dispute settlements peacefully have been exhausted enforcement strategies are then employed. The present would be looking at how these

⁴⁷ Section 23(2) of 2002 Cameroon Investment Charter

⁴⁸ Samuelson H 'The Force of the Cameroon Legal System' available at <http://www.hg.org/article.asp?id=7156> (accessed 9 February 2012)

mechanisms are put into play. A foreign investor in this case is subject to the laws and regulations of the host country which in most cases is vastly different from that of the home country. In Cameroon however, the enforcement of investment laws are difficult to come by as the execution of judgement is slow and flawed with administrative bottle necks such as bribery, corruption and red tape measures. In such cases where rulings are difficult to enforce by local courts due to corruption, the foreign investor may choose 'arbitration by the international courts of justice and international arbitration centers according to Cameroonian law and the arbitration regimes of which Cameroon is a member.'⁴⁹ These arbitration regimes include the International Centre for the Settlement of Investment Disputes'⁵⁰

The Cameroon Investment Law therefore lacking in direct enforcement powers has given foreign investors rights of appeal to judgements against them on grounds that these were obtained against a back ground of frivolous lawsuits. This is backed by its membership in the International Court of Justice and International arbitration centre from which it obtain its enforcement powers (indirect enforcement powers). Conscious of this limitation, the Cameroon government allied with the UN to come up with a governance reform programme in which are proposed measures to improve upon the status of the Cameroonian courts. This programme was approved in June 2000. This was duly applauded by the US Department of State in 2011 in its report stating that the Cameroonian law guarantees both foreign and local investors with property rights protection that comply with international standards and accords equal treatment between foreign and local firms.⁵¹

⁴⁹ Dickerson CM 'The Cameroonian Experience under OHADA: Business Organisations in a Developing economy' (2007) 112 *Business and Society Review* 191 213

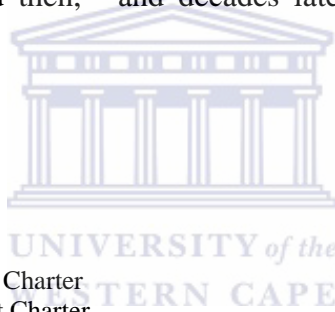
⁵⁰The ICSID is one of the five international organisations that make up the World Bank Group. Like the other organisations in the group, ICSID is established by a multilateral treaty. In ICSID's case, this is the 1965 convention on the settlement of investment disputes between states and nationals of other states, commonly called the ICSID convention. To date, 143 countries have signed and ratified the convention to become contracting states. The Convention offers them procedures for the conciliation arbitration of investment disputes they may have with individuals or companies that qualify as nationals of other contracting states.

⁵¹Thomson Reuters Foundation 'Anti-Corruption Profile Cameroon' available at <http://www.trust.org/trustlaw/country-profiles/good-governance> (accessed 14 January 2012)

2.5. The Law Governing the 2002 Investment Charter

The current law governing investment policies in Cameroon is law no 2002/004 of 19th April 2002. The scope of the above law is defined in its section 2, where, “in its determination to build a competitive and prosperous economy by boosting investment and savings, and attaining its economic and social objectives,”⁵² the pace is set for FDI by the Cameroon government. In anticipation of achieving these goals, a lot of attention is given to entrepreneurs, investors and private enterprises as important means to develop the economy and create wealth and employment.⁵³

Cameroon like most African states has been and is still in the process of creating an environment conducive to FDI since the early 1960s. Since then, legislations have been enacted with the aim of attracting FDI. It was believed then,⁵⁴ and decades later,⁵⁵ that these foreign investments



⁵²Section 2 of 2002 Cameroon Investment Charter

⁴⁴ Section 2 of 2002 Cameroon Investment Charter

⁵⁴ This position was strongly endorsed by the United Nations General Assembly when it recommended, in 1954, “continuous efforts by both capital-exporting and capital importing countries ...to stimulate the flow of private capital to the underdeveloped countries.” This resolution came out of the recognition that the “international flow of private investment for productive activities contributes to the raising of living standards by assisting in the development of natural resources, the expansion of and diversification of agricultural production and the growth of technical skills.” G. A. Res. 824, 9 U.N. GAOR Supp. (No 21) at 12, U.N. Doc.A/2890 (1954). A few years later the United Nations General Assembly reaffirmed its belief that private foreign investment was crucial to third world development when it designated the 1960s as the United Nations Development Decade and issued a plea to member-states to “pursue policies which will lead to an increase in the flow of development resources, [both] public and private, to developing countries on mutually acceptable terms.” G.A Res 1710, 16 U. N. GAOR Supp. (No. 17) at 17, U.N. Doc A/5100 (1961).

⁵⁵ In his 1989 New Year address, President Biya of Cameroon reiterated his government’s commitment to enlist the help of foreign investors in the economic development of the country: “In order to increase our sphere of activity, we must continue to inspire confidence in foreign investors. To achieve this end, we have precious assets ... We need a more attractive investment code; we are working at it.” *Better days are ahead for us*, Cameroon Tribune, Jan 2 1990, at 2, col. 3.

would greatly contribute to economic growth and the advancement in technology required by the country to be competitive in the global economy.⁵⁶

The extent to which these investment laws and regulations have impacted on the flow of FDI into the host country is debatable. However, literature on the subject suggests that prospective “foreign investors see investment laws as an important barometer to measure the investment climate in a given country”.⁵⁷ It is, therefore, not surprising that lawyers who counsel private foreign enterprises conclude that investment laws and policy influence investors in varying degrees in making the decision to invest in a particular country. Recognition of the importance of the investment codes has led to a spate of laws, reviews and analyses of this ever changing area of the law, as well as the publication of primers on the legal “dos” and “don’ts” of doing business in one developing country or another.⁵⁸

‘Investment codes are policy guide lines set by government to determine conditions for local and foreign investments in the country. These conditions are aimed at encouraging the participation of private investment in the Cameroon economy.’⁵⁹

If foreign investors view investment codes as a condition for setting up their businesses in another country,⁶⁰ then Cameroon’s FDI regulatory and legal mechanism ultimately needs to be regularly amended to improve upon its inability to attract foreign investors. Policy makers in Cameroon are now aware of this short coming in the legal system and have had to amend the investment code thrice, expanding on the benefits available under the previous codes and discarding what is considered negative.⁶¹ The above suggests that a foreign investor will decide to establish his business outside of his home country only if he is attracted by very appealing investment conditions of that country, sufficiently favourable to him in terms of protecting his

⁵⁶ Ndiva K in his ‘Host-Nation Regulation and Incentives for Private Foreign Investment: A Comparative Analysis and Commentary’ (1990) 15 *International Law Journal* 361-400

⁵⁷ Ndiva K ‘Host-Nation Regulation and Incentives for Private Foreign Investment: A Comparative Analysis and Commentary’ (1990) 15 *International Law Journal* 361-400

⁵⁸ Ndiva K ‘Host-Nation Regulation and Incentives for Private Foreign Investment: A Comparative Analysis and Commentary’ (1990) 15 *International Law Journal* 361-400

⁵⁹ M Delancey, R Mbu and W Delancey ‘*Historical Dictionary of the Republic of Cameroon*’ (2010)

⁶¹ Section 19 to 22 the charter deals with various incentives.

legal interest and most certainly the percentage of profit he would be legally permitted to take home.

This however is not a problem in Cameroon, as section 10 of the 2002 Investment Charter gives the foreign investor complete freedom to repatriate foreign capital invested, operating profits, as well as staff savings from salaries.

Amongst others, these are the most pertinent aspects that would lure foreign investors to invest in Cameroon. To examine the current investment code with regards to its effectiveness, it would be pertinent to revisit the country's previous codes, and identify those legal aspects on which foreign investors lay emphasis on, and find out if those concerns have been addressed in the Cameroon investment code.

2.6 The Historical Development of Investment Codes in Cameroon

After Cameroon attained independence in 1960, the country was in dire need of market and technology for its abundant supply of raw materials. For fear of economic colonialism, having just merged from a period of colonialism, it came up with its first investment code in 1960.

2.6.1 The 1960 Investment code (Incentives)

The driving force behind the promulgation of the 1960 investment code was the invitation and expansion of FDI in the country. To this effect, a number of incentives were provided by the government to promote investment by both local entrepreneurs and foreign investors.

The 1960 Investment Code was designed to achieve a dual purpose; attract investment and assist in achieving the development objectives of the state. It offered four categories of incentives to business enterprises. (Schedules A, B, C and D) corresponding to the activities of sectors where the government wanted to attract investment. These incentives consisted in exemption from taxes and custom duties for periods between 5- 10years. Schedule 'A' enterprises were allowed to import raw materials and capital goods duty free for up to 10years, and their indirect taxes on

finished goods for the first 3 years of production were⁶² either reduced or simply cancelled.⁶³

The 1960 investment code offered lots of incentives to investors, as seen in the offer of exemption from paying royalties given to industries in the mining and timber industries under schedule A and B enterprises from tax on profits for up to 15 years. This was however, not enough to guarantee the success of the 1960 code as foreign investors, though attracted by these incentives and benefits, emphasised a coherent and trust-worthy trade policy and framework which were visibly absent in the 1960 code. The code was entangled in too many administrative red tape and bottle-necks.⁶⁴ An investment code hampered by such inadequacies was bound to fail, giving way to the 1984 investment code.

2.6.2 The 1984 Investment Code

This code was ratified by Law No 84-03 of 04 July 1984.

The main thrust of this code was the recognition of the importance of private investment and the opening up of the economy, to the achievement of the objectives of the Sixth Five-Year Economic, Social and Cultural Development Plan. The incentives were centered on important tariff exonerations for some imports and more fiscal inducements. The aim now was to encourage not only private domestic investment, but also foreign investment in productive activities. Much emphasis was given to the promotion of small and medium-sized enterprises.⁶⁵

According to Ndiva K, the main incentives and guarantees of the 1960 code were directed at foreign investors rather than domestic investors. The 1984 code had the same focus

⁶² In order to attract foreign investors to invest in the country, various incentives were offered them, like exempting them from paying royalties in the mining and timber industry under schedule A and B enterprises from tax on all profits made for up to a period of 15 years

⁶³ Nkwi P and Nyamnjoh F 'Regional Balance and National Integration in Cameroon, Lessons Learned' in Ngwasiri C *The Effectiveness of Legal Instruments in Achieving Regional Balance and National Integration in Cameroon* ed (2011) 59-68

⁶⁴ 81 percent of the industries were clustered only in 2 of the 10 regions of the country (the Littoral and the Central South regions of the country). This gross regional imbalance proved a lack of commitment on the part of policy makers to foreign investors.

⁶⁵ Sunday A and Bamou T 'An Analysis of FDI flows to Cameroon' 2006 *African Economic Research Consortium*

according to Sunday and Bamou⁶⁶ who were also of the same opinion as Ndiva K. Thus the basis of the 1984 code which was intended to correct the short-comings of the 1960 was found to be the same as that of the latter. One of the major incentives of the 1984 code was the country's adoption of the Structural Adjustment Programme (SAP) of the Bretton's Wood Institution. The procedure to establish an industry under the 1984 code was as long and bureaucratic as that of the 1960 code. Foreign investors, at whom the code was primarily directed, found the entire investment climate in the country ineffective. The lack of trust and loss of confidence by foreign investors led policy makers to adopt the 1990 code.

2.6.3 The 1990 Investment Code

Ordinance No. 90/007 of 08 November 1990 promulgated the 1990 Investment Code into law.

This code replaced Law No 84/3 of July 4, 1984 (1984 Code) and is intended to plug some of the gaping holes in the 1984 Code and to play a catalytic role in the government's strategy to contain the economic crisis by attracting badly needed domestic and FDI to the country. The Code's overarching objective is the encouragement and promotion of productive investments in the country through liberalisation of the economy.⁶⁷

Incentives were available to open to both domestic and private investors in the application of the 1990 Code.

2.7 The Importance of FDI on the Growth of the Economy

The importance attached to foreign direct investment in the growth and development process has led a number of African countries to put in place various measures

⁶⁶ Sunday A and Bamou T 'An Analysis of FDI flows to Cameroon' 2006 *African Economic Research Consortium*

⁶⁷Ndiva K 'Investment Codes as instruments of Economic Policy: A Cameroon case study' (1991) 25 *Law Journal Library* 821-858

Apart from improving their investment environment - which they hope will attract foreign direct investment to their economies, many countries have put in place different incentives (sometimes called “sweeteners”) to ensure that resources are directed to areas and sectors where they are badly needed to deal with the issues of employment generation and poverty elimination.⁶⁸

A major benefit of FDI is its contribution to technological development, job creation, infrastructural development, and human capital development etc. These are critical elements for economic development in a country. Thus, countries with great FDI inflows benefit from the positive spillover effects of FDI, such as, technological advancement on the development of the economy. Technological advancement comes with economic growth due to the benefits these work opportunities bring to the host country. The host country, therefore, has the advantage of an increased employment rate and a greater cash flow into the economy, while, on the other hand, the investors experience an increase in growth rate from the investment and diversification of their business in another country (host country).⁶⁹

The importance of FDI on the growth of an economy varies from country to country. Traditionally, FDI was a phenomenon greatly associated with developed countries. Though developed countries attracted more FDI in the past than developing countries, the recent trend of FDI flows shows an increase in the FDI flow to developing countries, resulting to a paradigm shift. Average annual flows to developing countries soared eight fold, if compared with 1982-1987 and 1994-1999 records. Consequently, developing countries attracted almost one third of worldwide FDI flows recently. The explanation for this is simply that, unlike before, the importance of FDI is more pre-dominant in developing countries than in developed countries today.⁷⁰

The need for marketing and manufacturing Cameroon’s raw material also led its policy makers to draft the 1960 code, but after realising that its objectives were not being met, they kept on

⁶⁸ Ajayi S ‘FDI and Economic Development in Africa’ available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Knowledge/09484246-EN-FDI-AND-ECONOMIC-GROWTH.PDF> (accessed 1 February 2012)

⁶⁹ Chowdhury A and Mavrotas G ‘FDI and Growth: What Causes What?’ (2006) 29 *Blackwell Publishing* 9-19

⁷⁰ Nunnenkamp P ‘FDI in Developing Countries: What Economists (Don’t) Know and What Policy Makers Should (Not) Do!’ available at www.cuts-international.org/FDI_in_Developing_Countries-NP.pdf (accessed 12 December 2011)

modifying the investment codes, which has brought the country to the current 2002 Investment Charter.

FDI inflows over the years have contributed to higher supply capacities for Cameroon's raw and primary products for industrialised finished goods, as the output has been able to meet the standard expectations, thereby satisfying the foreign markets. Secondly, Cameroon's export performance has been enhanced by local firms through the spill over effects, from for example, the transfer of expert technology, information and skills acquired from foreign investors through MNCs located in the country. Finally, a positive effect of FDI on the Cameroonian economy has been the effect of competition between MNEs and local firms, which has motivated local manufacturers to improve and increase their exports in order to protect their market shares and earnings. This implies FDI's significant contribution to higher exports, through improvements in the supply capacity and the facilitation of economic growth.⁷¹

2.8 Conclusion



This chapter has explored the different definitions of FDI as put forward by different authors and a few international organisations. From there, the chapter moved on to define 'foreign investor' from a Cameroon and universal perspectives. It examines the regulation of FDI as per the Investment Charter.

The concept of FDI from universal, regional and national perspectives was also been explored. This was followed by an examination of the regulation of FDI in Cameroon. Prescriptions are to the effect that there should be less reliance on the benevolence of the executive; since if these rights can be implemented simply by writing a decree, it would also be possible to suspend them by the stroke of a pen. This explains the fact that investors do not have any certainty that the law is going to be enforced, given the fact that the law has been issued by a powerful executive. Credibility cannot be created by decree; investors need a credible commitment to be able to invest in another country. The primary cause of these institutional uncertainties in Cameroon is

⁷¹Njong A 'Investigating the Effects of FDI on export Growth in Cameroon' Paper Submitted to UNECA for the 24-25 November Ad-hoc Expert Group Meeting in Addis Ababa, Ethiopia 21 October 2008 available at www.uneca.org/tfed/documents/Macro_24nov08/FDI_and_Export_Njong_1.Pdf (accessed 9 December 2011)

the absence of checks and balances. Instead of the three equal powers⁷², Cameroon has a very powerful executive that changes laws and their enforcement at will. Nor can the legislature, which is practically an extension of the authoritative executive, present contrary claims against the executive or the electorate. In Cameroon, the executive does virtually what it likes, and the only reaction of investors is to get involved in the informal sector or preferably as has been the case over decades, to leave the country.⁷³ In the face of these dilemmas and others that would be identified in subsequent chapters, Cameroon would have to seek a solution from multi-lateral and regional organisations and not only adopt them but put them effectively into action.

The chapter further more examines the provisions governing investment law in Cameroon from the first investment law when the country gained independence in 1960 up to the current 2002 Investment Charter. The chapter ended with the importance of FDI in the economy of the country



⁷³ Awa G 'Investment Legislation in Cameroon' available pdf.usaid.gov/pdf_docs/PNABR910.pdf (accessed 9 December 2011)

CHAPTER THREE

The ROLE OF INTERNATIONAL AND REGIONAL ORGANISATIONS IN THE PROMOTION OF FDI IN CAMEROON

3.1 INTRODUCTION

The Government of Cameroon has signed several international, regional and bilateral treaties and is a member of several international organisations aimed at developing its economy.⁷⁴ Cameroon is one of those developing countries that have benefited from the WTO rules in many respects. Cameroon became a member of the WTO in 1995, and since then, it has signed various bilateral, regional and multilateral trade agreements guided by WTO rules on trade. Cameroon is also a member of UNCTAD, an international organisation aimed at improving the ability of developing countries in attracting investors and investment capital.⁷⁵ This chapter aims to show that international treaties and rules of international organisations have contributed to policy formation in Cameroon to enhance investor interest.

As a member of the WTO, Cameroon has benefited from trade policies, such as, the Most Favoured Nation (MFN) principle, which encompasses non-discrimination and national treatment principles. MFN principles have over the years been used by governments trying to protect their investors and investment in another country. These policies have acted as incentives and security for foreign investors moving into Cameroon. It is against this backdrop Cameroon and the United States of America signed a bilateral investment treaty to protect investors under the principle of non-discrimination.⁷⁶

⁷⁴ Central Intelligence agency, World Factbook 2012, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/cm.html> [Accessed on 1 February 2012]

⁷⁵ UNCTAD, <http://www.unctad.org/templates/Page.asp?intItemID=2920&lang=1>

⁷⁶ Cameroon and US Bilateral Investment Treaty. U.S. GOVERNMENT PRINTING OFFICE WASHINGTON: 1986. "A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and non-discriminatory treatment. Under this treaty, the parties also

This chapter shows that despite the advantages of belonging to multilateral, regional and bilateral relationships with developed and developing countries, Cameroon is yet to see a significant growth in her investment inflows.

Cameroon's membership with the WTO has granted it the privilege of receiving the most-favoured nation treatment principle (MFN) from all its trading partners, and gives it the observer status in the committee on the Agreement on Government Procurement. Gaining recognition from the WTO as a developing nation, the country further benefited from a transitional period after its implementation of a number of provisions in various WTO agreements such as the customs valuation agreement and the agreement on import licensing procedures.⁷⁷ Cameroon's membership in the WTO has given it an added preferential and unique treatment based on the advantage of its rich agricultural diversity.⁷⁸ This has facilitated the economic development of the country.

By acceding to the WTO on 13 December 1995, Cameroon has, as seen above been a beneficiary of this World Trade Organisation in various ways, and has been bound by numerous bi-lateral, regional and multi-lateral trading systems (MTS) in which the country has been enabled to participate effectively and to benefit from its rules, promoting the development of its trade, both internally and externally. Some of these bilateral investment treaties were signed with Germany-1963, Switzerland-1964, the Netherlands-1966, Belgium-Luxembourg Economic Union-1981, Romania-1981, the United Kingdom-1985, the United States of America-1989, Egypt-2000, Mauritius-2001, Mauritania-2001, Mali-2001, and Italy-2004.⁷⁹

The Doha Development Round working under the WTO met at the fourth ministerial conference at Qatar in November 2001 and came up with a strategic plan under which recognition was given to the economic developmental needs of developing countries such as Cameroon.⁸⁰ These included the imposition of standard manufacturing requirements on foreign investors, protection

agree to international law standards for expropriation and compensation; free financial transfers; and procedures, including international arbitration, for the settlement of investment disputes." Available at <http://www.state.gov/documents/organization/43543.pdf> (accessed on 1 February 2012)

⁷⁷ www.wto.org/english/tratop_e/tpr_e/s187-02_e.doc (accessed 10 December 2011)

⁷⁸ www.wto.org/english/tratop_e/tpr_e/s187-02_e.doc (accessed 10 December 2011)

⁷⁹ www.wto.org/english/tratop_e/tpr_e/s187-02_e.doc (accessed 10 December 2011)

⁸⁰ Ferendinos M 'The Development Dimension of the Doha Development Round and its Impact

of domestic producers, use of binding obligations on technology transfer, and avoiding the dominance of local firms. On the one hand, the host country governments, the majority of which are developing countries, have established well-structured principles to enable them to maximise FDI benefits in the technological development of their economies.⁸¹ On the other hand, foreign investors seek to obtain maximum benefit from their investments, if this is not achieved, they move out of the host country.

In addition, Cameroon profited from the principle of non-reciprocity given to developing countries under the Lome Convention. This principle which provisionally ended after the signing of the Cotonou Agreement in the 2000 and was effected by the signing of the Economic Partnership Agreement (EPA) in 2008, enabled investors to export to European countries duty free. Despite criticism that it retarded trade in developing countries, it played a significant role in boosting trade and investment in Cameroon.

One of the main reasons why private investors engage in international trade is to make profits. For example in Cameroon foreign investors during the 1960s, could not make profits; as a result investment projects were discontinued of investment projects, while others left the country.

The role of the law is to preserve the interests of the source country and the host country. Paragraph 37 of the Doha Declaration, recognises the need for technology to be transferred to developing countries within the mandate of the WTO.⁸² Cameroon being a developing country is one of the recipient countries recognised by the WTO as a country in need of a transfer of technology from developed countries.

The low levels of FDI flows to Africa is symbolic of the region's failure to integrate into the global economy and a principal reason why it's growth performance labours under a narrow export base and low productivity levels. High production costs and distorted investment incentives, which discourage the entry of foreign firms (even where profitable opportunities are available) and a bias against those that come with less productive activities, have been attributed to a history of misguided policies and listless reforms. Consequently, African policy makers over the years have been encouraged to maximize efforts to establish a competitive investment

⁸¹ Moran Graham and Bloomström. *Does FDI Promote Development?* Institute for International Economics Washington

⁸² www.wto.org (accessed on 17 November 2011)

climate by integrating more closely into the global economy, and to become more transparent and inclusive in their own reform efforts. These reforms promise to attract foreign firms to countries whose investment policies are marketable as a result of the fact that competition is at its height amongst developing countries seeking the presence of foreign firms.⁸³ Some countries in the region have had resounding success, while others have not, due to the availability of natural resources and the intensity of the competition in the face of globalization.

The main developmental challenge facing African leaders today is how to attract FDI to the region. In this regard, numerous efforts have been made in the past to accelerate FDI inflows in the region but without yielding much fruit. Some of these failures can be attributed to ill-conceived strategies, which did not lift underlying constraints on FDI into the region. Failure to confront the economic challenges in the region posed by the globalization process, has also affected the continent. The fact that foreign investors regard Africa as a high risk investment region is a major challenge as this brings doubts and uncertainty, and is one of the major explanations of the region's poor FDI record. Political instability, the high incidence of wars, frequent military interventions in politics, and poor infrastructural development, to name a few, has all contributed to the low FDI inflows.⁸⁴

Regional integration is a worldwide phenomenon experienced in almost every part of the world. In the period 1948 to 1994, the General Agreement on Trade and Tariff (GATT) had received almost 124 notifications of regional trade agreements, and 90 more notifications have been received by the GATT since 1995. Of these 134 are presently active. Today, almost every member of the WTO is a member of one of these regional trade agreements. Cameroon, like other African states is a member of numerous regional as well as international organisation: it is a member of the African Union (AU), Economic Community of Central African States (ECCAS), CEMAC, the International Centre for Settlement of Investment Disputes (ICSID), and the Multilateral Investment Guarantee Agency (MIGA). It also signed the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention. It is equally a party to the ACP-EU Partnership Agreement of 23 June 2000, which

⁸³ UNCTAD 'Economic Development in Africa: Rethinking the Role of FDI' available at http://www.unctad.org/en/docs/gdsafrica20051_en.pdf (accessed 8 December 2011)

⁸⁴ Dupasquier C and Osakwe P 'FDI in Africa: Performance, Challenges and Responsibilities' (2006) 17 *Journal of Asian Economics* 241 260

provides for an arbitration mechanism to settle disputes between ACP states and entrepreneurs, suppliers or providers of services in connection with European Development Fund Financing.⁸⁵

Regional integration answers the question why and how states cease to be wholly sovereign, and how and why they willingly come together, most often from the same region, and lose their sovereignty for a common goal, to ensure regional security, mitigate the circumstances that cause conflict, and expand the market of each member state, with the ultimate purpose of integrating in the global market so as to accelerate growth on the economy.⁸⁶

3.2 Impact of the CEMAC Investment Code on Cameroon

CEMAC has a long history dating as far back as 1964. Then called the Central African Customs and Economic Union (UDEAC), a group of Central African countries committed themselves after independence to bring about regional integration for political and economic objectives. The underlying purpose was that each member state achieves economic strength and together acquires the benefits that ensue from countries teaming up together. Created in Brazzaville (Congo), it was aimed at promoting intra-regional trade among Central African countries. UDEAC was revived in 1994 to give rise to CEMAC.⁸⁷

CEMAC, a sub-regional organisation, is comprised of six member states: Cameroon, the Central African Republic, Chad, Congo Brazzaville, Equatorial Guinea and Gabon. The main purpose of this organisation is the promotion of trade and a common market among its members through economic integration among countries sharing the same currency the CFA. The advantage that comes along with this integration is the solidarity among members who all have the advantage of receiving quota restrictions and tariff reduction. The ultimate aim was however to create a common central African market. Thus a sub-regional market functions within the frame work of

⁸⁵ www.wto.org/english/tratop_e/tpr_e/s187-02_e.doc (accessed 10 December 2011)

⁸⁶ Haas B 'The study of regional organization: Reflections on the Joy and Anguish of Pretheorizing' (1970) 24 *MIT Press* 607 646

⁸⁷ Gankou J-M and Ndong N 'Is the Regional Integration in Central Africa in Question' (2008) 2 *African Review of integration* 1-33

economic and monetary union by merging into a common political, financial, legal and economic structures and policies.⁸⁸

Cameroon is the largest member of the CEMAC region in terms of population. Among the six member states it makes up 50% of the population and benefits most from this organisation as it poses the regional market power with an enormous amount of gain on its economy. Cameroon though small on the world market constitutes about 50% of the CEMAC market, thus making it a regional market giant under the CEMAC umbrella.⁸⁹ It is proven that CEMAC grew with more than 97% in the period 2000 to 2006⁹⁰ CEMAC's Investment Charter was adopted in 1999.

Cameroon's adherence to CEMAC is embedded in various sections of its current investment charter. For example section 16 of Cameroon's Investment Charter, reasserts the state's option of regional integration in particular within the framework of the Central African Economic and Monetary Community (CEMAC) and the Economic Community for Central African States (CEEAC).

Cameroon's commitment to the CEMAC investment code is defined in Section 33 of the Cameroon's investment charter, stating in (1) the state's guarantee on the application of moderate customs duties and adherence to the principles of their reduction within the framework of the policy defined by CEMAC and in conformity with the provisions of the World Trade Organisation.

(2) The State reaffirming its willingness to implement the economic and deferred payment regimes provided for in the CEMAC customs code.⁹¹

According to article 1 of the CEMAC investment code, Cameroon benefits from this Treaty as a result of it strengthening competition of its economic and financial activity, Cameroon also benefits from the common market through its membership to this organisation: the free mobility of goods, capital, persons and services within this common economy is guaranteed. The governing body, according to the CEMAC investment code, met and agreed on the creation of

⁸⁸Bongyu G 'The Economic Monetary Community of Central Africa (CEMAC) and the Decline of Sovereignty' (2009) 44 *Journal of Asian and Africa Studies* 389 406

⁸⁹Bakouop F and Tarr D 'The economic Effects of Integration in the Central African Economic and Monetary Community: Some General Equilibrium Estimates for Cameroon' (2000) 12 *Blackwell Publishing* 169-90

⁹⁰Nico, Tamas and Breitenbach et al 'Bilateral and Regional Trade Agreements and Technical Barriers to Trade: An African Perspective *OECD Trade Policy Working Papers, No. 96 OECD Publishing* 2010

⁹¹Law n° 2002/004 of 19th April 2000 of the Cameroon Investment Charter

the Bank of Central African States (BEAC) for the purpose of strengthening monetary policy within the common market. This is an added advantage for the Cameroonian economy as the circulation of cash flow and the credibility of its currency are stabilised. This creates an assurance for foreign investors to invest in Cameroon as it both creates access to market in Cameroon and there is a possibility of market choice within the CEMAC region in terms of the harmonised currency, the Franc CFA in (Communaute Financiere Africaine).⁹² This encourages foreign investors to invest in Cameroon knowing that, with the CFA in Cameroon alone⁹³, it would be exchanged with and circulated around member countries in the region. Important to note is the fact that the BEAC that governs the monetary affairs of the CEMAC region are situated in Yaoundé, the capital of Cameroon.

The target of a majority of the foreign investors in Cameroon is the sub-region and not Cameroon alone. This can be explained by the fact that foreign investors are attracted into Cameroon due to its affiliation to the CEMAC region. The current Cameroon Investment Charter conforms to the Investment Charter of the CEMAC region.⁹⁴ The CEMAC investment code has, therefore, played a major role in directing the interest of private investors in investing in Cameroon. Consequently, efforts targeted at FDI are stronger due to the CEMAC investment code. Cameroon is keen to uphold the image of the country, regarding the location of the BEAC in Cameroon as a privilege.

Since the CEMAC region shares a common monetary and exchange rate framework, Cameroon, like other CEMAC members, does not face any monetary issues individual; on the contrary, any issues of this nature are addressed to the entire region.⁹⁵ This is of great advantage to Cameroon as the country it is saved from inflation or deflation, which is an eminent concern as the CEMAC economy is heavily dependent on oil exports causing the region's economic stability to rise or fall with the price of oil. This regional balance has a positive effect on Cameroon's FDI statistics.

Cameroon's membership of the CEMAC region is increasingly becoming a tool in the promotion of its FDI strategies and a means for the legitimisation of its policies. Peace and harmony are maintained within the region. This is an indication of the fact that effective

⁹²Nde V *The International Law on Foreign Investments and Host Economies in SSA* (2011) 102

⁹³All CEMAC members share the CFA as a common regional currency

⁹⁴Sunday A and Bamou T 'An Analysis of FDI flows to Cameroon' 2006 *African Economic Research Consortium*

⁹⁵Gathii J *African Regional Trade Agreements as Legal Regimes* (2011) 348

implementation of the region's strategies and priorities, combined with Cameroon's domestic policy reforms, would attract increased regional and FDI given the country's rich endowment with natural resources and primary products.⁹⁶

3.3 THE OHADA Frame-work Policy on Investment Regulation

There had to be a harmonisation of African investment laws due to the lack of harmonisation not only at the sub-regional level, but also at regional levels, which consequently hindered the prospects of meaningful sub-regional economic co-operation and development. This is carried out by doing away with the disadvantageous effects of the individual national differences.⁹⁷

OHADA, like CEMAC, is an idea from Africa,s policy makers to create a secure legal framework for all businesses in a bid to promote economic integration. It is an international organisation created by the signature of a treaty signed in Port-Louis (Mauritius) on 17 October 1993 by 14 African states. OHADA is known in French as 'Organization pour l'Harmonisation du Droit des Affaires en Afrique'.⁹⁸ The idea behind the creation of OHADA was that each of the member states agreed to give up their national sovereignty in favour of a single but stronger cross-border regime of uniform business laws for the development of West Africa. This was going to be targeted through the promotion of investment in general and FDI in particular.⁹⁹

Its principal aim, however, is the establishment of a modern and accessible system of unified business law in Africa, uniformly applicable in all the member states. Though influenced greatly by French civil law, the purpose of OHADA is to create a real African system without having French law infiltrating the organisation.¹⁰⁰

Many scholars are of the opinion that the principal objectives of OHADA are to harmonise business laws throughout member states and provide a secure judicial environment for foreign

⁹⁶Ngongang E 'New Regionalism in SSA: A means to Attract FDI and to Legitimate Democratic Governments' (2009) 3(1) *African Journal of Political Science and International Relations* 015 026

⁹⁷Akiwum M 'A Plea for the Harmonisation of African Investment Laws' (1975) 19 *Journal of African Law* 135 53

⁹⁸Martor B, Nanette P, and Sellers D et AL *Business Law in Africa: OHADA and the Harmonisation process* (2002)

⁹⁹Dickerson M 'Harmonising Business Laws in Africa: OHADA calls the Tune' (2005) 618 *Columbian Journal of Translation Law* 1 65

¹⁰⁰Adesegun A and Olugbade A 'Investment Law, Dispute Resolution, and the Development Promise: Back to the future' (2007) 101 *American Society of International Law Proceedings* 451 68

investment.¹⁰¹ Other writers find no problem with the harmonisation process as they consider OHADA laws the second national laws which apply to the operation of foreign business interest. Article 13 of OHADA is cited as being applicable to foreign investments as to its content and application within the nation concerned. Cameroon is amongst the countries that have ratified the OHADA treaty rendering its application acceptable to business operating within the national territory. In Cameroon, Article 97 of the 1984 investment code deals directly with the registration of private businesses hosted in the country under the authority of the Registrar of Commerce at the Ministry of Commerce in the nation's capital, Yaoundé. Directly of interest to Cameroon is equally Article 103 which deals with the domiciliation of private companies' representatives within the territory of one of the member governments of OHADA.¹⁰² Other writers see it as common law unfriendly¹⁰³

Others see Article 42 of the OHADA treaty as discriminatory against English speaking nations.¹⁰⁴

The OHADA frame-work policy, even though much has been said about it, has not been favourable to English speaking community. What is of interest now is: whether the laws are supple and favourable for investment which will go a long way to assist development in member countries.

It is not surprising that out of the 53 members of the African Union (AU), only two have joined the original 14 members of OHADA since its creation in 1993. Mauritius is not a member even though it hosted the meeting that led to the OHADA treaty. Ghana, which who hosted the Ghana National Committee, is still contemplating the possibility of joining the OHADA. Cameroon became a member of OHADA in 1994.

The bulk of African investment law is still young. It is therefore rather difficult to assess the adequacy of their provisions in the light of declared objectives. It is however, demonstrable that the existing legal provisions for the grant of economic benefits are too diverse to allow for generalisation, and the investor who would prefer

¹⁰¹Fagbayibo B 'Towards the harmonisation of laws in Africa: Is OHADA the way to go?' (2009) 42 *Comparative and International Law Journal of Southern Africa* 309 22

¹⁰²Nde V *The International law on Foreign Investments and host Economies in Sub Saharan Africa: Cameroon, Nigeria and Kenya* 2011

¹⁰³Akere M 'Is OHADA common Law Friendly?' (2001) 3 *International Law Forum Du Droit International* 172 9

¹⁰⁴Enonchong N 'The Harmonisation of Business Law in Africa: Is Article 42 of the OHADA Treaty a Problem' (2007) 51 *Journal of African Law*

to invest under uniform conditions in a group of African countries instead of in one small one is faced with a confused state of affairs. On a number of major issues, however, the investment laws of Africa are almost parallel. All this indicates that serious thought must now be given to the evaluation, clarification and harmonisation of African investment laws.¹⁰⁵

3.4 Dispute Settlement

Section 11 of Law No 2002/004 of 19 April 2002 instituting the Cameroon Investment Charter makes provision for the settlement of investment disputes. It states that:

(1) The State shall be party to bilateral and multilateral agreements which guarantee investments. It is thus signatory to:

- The New York Convention on the Recognition and Enforcement of International Arbitral Awards, concluded under the auspices of the United Nations ;
- The Washington Convention to set up the International Centre for Settlement of Investment Disputes (ICSID).

(2) The State is signatory to:

- The Seoul Convention of 11 October 1985 to set up the Multilateral Investment Guarantee Agency (MIGA) aimed at safeguarding non-commercial risks ;
- The OHADA treaty in pursuance of which modern and simple legal provisions based on international practice, have been drafted to constitute business law.

(3) As member of the OHADA zone, the State has both an ad hoc and an institutional arbitration mechanism based on the most effective international instruments, such as the standard law of the United Nations Commission for International Business Law (UNCITRAL) on international arbitration of 1985 and the Arbitration Settlement of the International Chamber of Commerce of 1998.

¹⁰⁵Akiwum M 'A Plea for the Harmonisation of African Investment Laws' (1975) 19 *Journal of African Law* 135 53

(4) The State is signatory to the Lome Convention as revised in Mauritius on 4 November 1995, which set up an arbitration mechanism for settling disputes between Africa-Caribbean and Pacific States (ACP) and contractors, suppliers and service providers, relating to financing by the European Development Fund (EDF).

Cameroon is considered a safe haven in SSA, regulates alternative dispute resolution and hosts eight neutrals, (four arbitrators and four conciliators) on the International Centre for Settlement of Investment Disputes (ICSID) Panel of Arbitrators and Conciliators.¹⁰⁶ National laws have designated the competent courts mentioned in the OHADA Uniform Act on Arbitration, having established the conditions for referring matters to them.¹⁰⁷

The Cameroon investment code makes provision for trade and investment dispute settlement. At the time of incorporation or application for investment code benefits, a firm may opt for one of the various procedures to settle future conflicts. A limited number of investment disputes have come to the attention of the U.S. embassy. These often involve taxation questions, and in one instance, local business partners stole an American investor's equipment.¹⁰⁸ This is not, however, evident in Cameroon, as the Cameroon judicial system is incompetent to handle the procedures leading to the settlement of investment disputes.

Individuals and private companies are to have *locus standi* before the court. The proposed court should be empowered to issue, in appropriate cases, provisional measures taken by the other party during the currency of the proceedings. The proposed tribunal shall apply the general principles of international law to questions of international law. In case of disputes connected with investment contracts, the tribunal is to base its decision on the law of the contract and *pacta sunt servanda*. The awards of the court shall be recognised and enforceable in all contracting states by the application of the principles of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.¹⁰⁹

¹⁰⁶Klockner v Cameroon 3 May 1985 2 ICSID Reports 162

¹⁰⁷Mia T 'Business and Society Exploring Solutions: A Dispute Resolution Community' available at <http://baseswiki.org/en/Cameroon> (accessed 6 December 2011)

¹⁰⁸Cameroon Investment Guide available at http://www.aabf.org/cameroon_inv_guide.htm (accessed 18 January 2012)

¹⁰⁹Nwogugu E *The Legal Problems of Foreign Investment in Developing countries* Manchester University Press

The difficulties inherent in the settlement of disputes by the Cameroonian judicial system¹¹⁰ have been salvaged by an agreement between the United Nations (UN) and the Cameroonian government through the U N development programme for the promotion of governance reform that includes proposed measures to improve the performance of Cameroon's courts. Government authorisation and approval of this program was received in June 2000.¹¹¹

In spite of this intervention by the UN, private investors still exhibit a lack of confidence towards the Cameroonian judicial system, which has a negative impact on the flow of FDI into the country.

The case of the theft of an American investor's equipment by local business partners is a case of an investor who has been deprived of investment property abroad by a foreign partner. This case gave also proved the worth of the New York Convention's on the recognition and Enforcement of Arbitral Awards in settling dispute. In this circumstance the American investor would ordinarily seek justice from the Cameroonian courts of First Instance, charged with handling investment disputes, which would be expected to base its decision on the law of the contract. It is only then that the awards of the courts shall be recognised and enforceable in accordance with the principles of the New York Convention on the recognition and Enforcement of Arbitral Awards.

3.5 A Comparative Study on FDI Policies in Cameroon and Gabon

In an attempt to attract FDI which has put it far ahead when compared to Cameroon, and other developing countries, Gabon has targeted various investment incentives with positive results. Competition among developing countries has led to a proliferation of various incentives presented to foreign investors in West and Central Africa, but those provided by Gabon have appealed to MNCs and has led to their investing in Gabon more than in Cameroon and most other African states. The preceding chapter indicated how the attractiveness of Gabon's investment policies has influenced and determined MNC's preference to invest in that

¹¹⁰ Shall be examined in the latter part of this work

¹¹¹Cameroon Investment Guide available at http://www.aabf.org/cameroon_inv_guide.htm (accessed 19 January 2012)

country.¹¹² What made Gabon attract FDI were not its less restrictive policies alone; if that has been the case, Cameroon would have been as successful as Gabon in attracting FDI. Accompanying its less restrictive policies, Gabon created sound business reasons for such foreign investment, and investors in recent times have responded positively to them. New criteria for assessing the soundness of proposed ventures in developed countries may not have had anything to do with investment legislation.¹¹³ It is only when such business reasoning coincides with the vision of investors that the decision to invest in the host country follows.

Gabon gained independence in 1960. In Gabon FDI inflows are largely derived from oil and mineral resources. Gabon has international trade relations with several countries in Africa, Europe and the Middle East. Policies favourable to FDI in Gabon include the practice which unofficially allows prices to be set by the oil industry, rendering labour costs expensive. The business reason behind this being that though the practice is unofficial, but the fact of it being consistent renders it advantageous in the business circle. This obviously has an advantage over Cameroon's investment climate flawed by inconsistency. What has equally boosted Gabon's FDI policies is the retention of the hundreds of French service companies that have been in Gabon since before independence, and which are still actively functional to date. Some of them are: banking, insurance, transportation and health care. These serve as a channel for building up new industries. Gabon's policy-makers effectively step up efforts to improve the business climate and increase its attractiveness by creating updated market vision and strategy.¹¹⁴ This is evidently absent in Cameroon's FDI policies which are less dynamic.

Gabon's investment code was promulgated in 1989, and contains incentives similar to those other francophone countries. Gabon has a liberal FDI policy, in the sense that there are no restrictions on the introduction of foreign capital into Gabon. This is a liberal policy as well as an incentive that has for long attracted many French investors. Gabon remains the only French speaking African country with such a liberal economic policy. With neither bureaucracy nor restriction, Gabon's investment policies are favourable to FDI and the introduction of foreign

¹¹²Rolfe, Ricks and Pointer et al 'Determinants of FDI Incentive Preferences of MNEs' (1993) 24 *Journal of International Business Studies* 335 55

¹¹³Weiss P 'Private Investment I French -Speaking Africa' (1962-1963) 17 *Rutgers Law Review* 335

¹¹⁴ Oxford Business Group *The Report: Gabon 2010* (2010)

capital into the country without restriction.¹¹⁵ Policies that favour FDI in Gabon such as the new investment code liberalise and streamline investment procedures and provide for equal treatment. Large foreign firms established in Gabon operate on an equal basis with local firms. No cases of discrimination against or expropriation of foreign firms have been heard in court.¹¹⁶ In Gabon a commission has been set up to cater exclusively for issues related to investments. In addition to all of this Gabon has a strong economy¹¹⁷

Gabon's policy-makers have carefully planned strategies to encourage foreign investment so as to achieve the country's industrial development strategies targets. Privatisation amongst others, is one way of achieving these goals. In this respect, a number of firms have been privatised, including some in the following areas: which include; water and electricity (1997), sugar (1997), timber (1998), importation and distribution of sundry products (1998), cement (2000), and railways (2004). Gabon's position as the SSA's third largest oil exporter gives the country a positive image in respect of its FDI policies.¹¹⁸

3.6 REGIONALISM AND INVESTMENT

“Regionalism is the process of building multilateral institutions to enhance political, security, and economic interaction among states.”¹¹⁹ In this process governments usually cede some of their sovereignty to a regional institution so as to reap the benefits of integration. Regionalism ensures political and economic reforms that are binding to member states. Such reforms are more sustainable and enforceable than national reforms.¹²⁰

¹¹⁵ International Business Publications, USA ‘*Gabon; Foreign Policy and Government Guide Volume 1 Strategic Information and Developments*’ (2003) Washington DC

¹¹⁶ International Business Publication USA ‘*Gabon Country Study Guide; small Volume 1 Strategic Information and Development*’ (2011) Washington DC

¹¹⁷ Krieger L ‘New Departures in Equatorial Africa Integration’ (1968) 15 *Public Indiana University Press* 16 20

¹¹⁸ International Business Publications, USA ‘*Gabon; Foreign Policy and Government Guide Volume 1 Strategic Information and Developments*’ (2003) Washington DC

¹¹⁹ Gilbert M. Khdigala, 2008. *Governing Regionalism in Africa: themes and debates*. Policy Brief 51, Centre for political Studies.

¹²⁰ Schiff M and Alan W *Regional Integration and Development* (2002) Washington DC

Regionalism is strategic in investment because, trade and investment relationships are strongest amongst countries in the same regional organisation.¹²¹ In this part of the work, investigations are going to be carried out on whether regionalism increases or lowers investment. Unlike Wilfred J who asserts that regionalism involves a big country linking up with one or more small ones making significant reforms, This view is contrary to that of the writer of this paper in that from an African perspective, regionalisms should be considered as meaning, small countries linking up together to acquire those advantages available to bigger countries.

It is submitted that developing countries through regionalism see the ability to attract FDI as a step into private investment. To attract FDI Africa, competition amongst different regional groups in Africa should be encouraged. Natural endowments of one country over another would give the regional organisation to which that country belongs an added advantage in attracting FDI over other regional organisations in the continent.¹²²

3.7 CONCLUSION

It is thanks to international and regional organisations that the few MNCs left in Cameroon are still in operation. Cameroon's strategic position in the CEMAC region has given it added advantages, which result in it being known as the bread-winner of the region, and have opened doors for private investors in the country. Added to these advantages is Cameroon's bilingual nature which gives it additional advantages in terms of attracting FDI.¹²³

¹²¹ Eaton J 'Bilateralism and Regionalism in Japanese and US Trade and Direct Foreign Investment Patterns' (1994) 8 *Journal of the Japanese and International Economies* 478 510

¹²² Ethier W 'The new Regionalism' (1998) 108 *The Economic Journal* 1149 61

¹²³ Sunday A and Bamou T 'An Analysis of FDI flows to Cameroon' 2006 *African Economic Research Consortium*

CHAPTER FOUR

Appraisal of MNCs in Cameroon and Prospects for Positive FI inflows

4.1 Introduction

The aim of this chapter is to expound on the discussion in the previous chapter and explore on mechanisms that might oblige Cameroon policy makers enable foreign investors operate their business in a way that would be beneficial to both ends, that is to the foreign investors on one hand and the Cameroon public on the other hand (the host country and home country). Incidentally, in Cameroon, MNCs were considered the only channel for economic development before the wave of privatisation swept through Africa in the 1980s and 90s.¹²⁴

Cameroon is an underdeveloped country with very poor infrastructure as would be seen in the latter part of this chapter. This gives it limited knowledge on how to deal with MNCs, especially considering the fact that the first investment regulation was implemented in the 1960s when the country had no expertise in dealing with MNCs. The second and third investment regulations of 1984, 1990, including the current 2002 Investment Charter were based on this first investment code of 1960 implemented at a time when the country had very little knowledge of evaluating foreign investment and technology. Due to this lack of expertise in evaluating foreign investment and technology, it was difficult to evaluate the proportion of technological transformation from the natural products available in the country.¹²⁵

Cameroon is limited in its determination to bring about a positive FDI inflow in the country through MNCs operating there, because of its weak regulatory frame-work. In the subsequent study of this chapter, it would be seen that poor infrastructure is one of the main problems facing

¹²⁴Lauzon N 'Privatisation in West Africa: What for and how?' *West Africa Day 15 November 2005* available at <http://www.oecd.org/dataoecd/30/58/38416863.pdf> (accessed 10 May 2012)

¹²⁵Kumara S 'Are multinational corporations problem-solvers or problem-makers in developing countries? Focus on technology gap and arbitrage' *International Journal of Business* 2011 available at <http://www.thefreelibrary.com/Are+multinational+corporations+problem-solvers+or+problem-makers+in...-a0247157661> (accessed 10 May 2012)

investors in the country. The veracity of this statement is however debatable with regard to the regulatory frame work of the country vis a vis these usually huge entities operating in a small and developing country as Cameroon.¹²⁶

There is evidence however from the previous chapter that FDI through the establishment of MNCs are not a means to an end in the development of the Cameroon economy. Factors like privatisation and economic integration have been shown to have a positive influence on the economy of Cameroon. For example, taking advantage of its strategic position in the CEMAC region, Cameroon has seen its economy flourish, especially considering its numerous natural endowments and the advantage it has over population in the CEMAC region.¹²⁷

This chapter contains the main theme of the study, which includes the strength of FDI in Cameroon. The chapter continues by focusing on the critique of the factors that affects FDI in Cameroon such as weak institutions, corruption, poor infrastructure economic and tax policies and poor governance policies. This analysis will be further carried out on the platform of a case-study of DHL and MTN, by highlighting difficulties on which MNCs operate in Cameroon and providing suggested solutions to these. To achieve the objective of the chapter, a comparism of DHL and MTN will be necessary. The former succeeding in Cameroon due to the fact that location is irrelevant for the services provided by this company, while the latter does not succeed because there must be a commercial presence for it to operate successfully.

MNCs also known as Multinational enterprise can therefore be defined as a firm that owns or controls income generating assets in more than one country. Thus a MNC establishes international trade transactions through engagement in FDI. These are business enterprises with ownership, management, production and sales activities located in two or more countries.¹²⁸ An example is the case of DHL operating in Cameroon with headquarters in Germany, and the MTN operating in Cameroon with headquarters in South Africa.

¹²⁶ Cook and Uchida 'Privatisation and Economic Growth in Developing Countries' (2003) 39 *Journal of Development Studies* 121-54

¹²⁷ Bakoup F and Tarr D 'The Economic Effects of Integration in the CEMAC: Some General Equilibrium Estimate for Cameroon' (2000) 12 *African Development Review* 161-90

¹²⁸ Conway H *Understanding International Law* (2010) Oxford UK

4.2 Problems faced by Multi-national Corporations (MNCs) Operating in Cameroon and Proposed Solutions

Cameroon underperforms in terms of attracting FDI due to the numerous limitations facing MNCs operating in the country, which puts off prospective private investors from the country to neighboring countries like Gabon who have more favorable working conditions, and limits the full potentials of those already operating there. The challenge facing Cameroon is therefore how to transform it into a more desirable destination for FDI and make conditions for those MNCs already operating there workable and more appealing.

MNCs often find themselves operating in countries with difficult production capacity, where conditions liable to ease production are inadequate, scarce or lacking. In the case of Cameroon, this is usually made more difficult with other social upheavals like the problem of bilingualism, political instability, currency, ethnic disputes,¹²⁹ (arising from the 250 ethnic languages present)¹³⁰ and epidemic diseases inherent in the country. This doubles the task of managers as they find themselves mediating for peace and promoting the interests of their companies alongside. As previously mentioned, this makes business more cumbersome as the business expert would on several occasions find himself playing the double role of a peace mediator and business professional at the same time. This increases the task of the investor and makes it more difficult also in terms of finance. Working in a country with social unrest will inevitably lead to a failed company.¹³¹

For Cameroon to derive the estimated benefit from the presence of MNCs in its territory, the government must make sure certain conditions are put in place for a smooth take off of the production and investment process.¹³² This would ultimately attract FDI in the country rather discourage them because funds that would have been used for infrastructure like the transport network, water or electricity, being the responsibility of the government, would rightly be invested into the business.

¹²⁹ Mufor A 'The Anglophone Cameroon Predicament' (2011)

¹³⁰ Yenshu E 'State of a Union. the Half Century of Cameroon's Bicultural Experience' (2012)

¹³¹ Bennet J 'MNCs, Social Responsibility and conflict' (2002) 55 *Journal of International Affairs* 393 411

¹³² These required conditions which are necessary for a smooth functioning of the companies evidently absent in Cameroon would be listed below.

The international presence of MNCs in Cameroon through its engagement in FDI can positively be reflected in its economy only if some of the problems inherent in the country listed below are dealt with by the government.

4.2.1 Infrastructure

The infrastructure development of a region is also important, since it indicates how difficult and costly it may be to do business in the country. The more developed the road system in a country, for example, the easier the access to markets and the lower the transportation costs, and, thus, the greater the incentive to invest in that country. The multi-dimensional nature of infrastructure makes it difficult to measure, however it comprises roads, telecommunications, and railways and so on. It is difficult to capture the many aspects of infrastructure development, and the data available are limited.¹³³

Developing the transport sector is one of the most acute problems facing policy makers in Cameroon.¹³⁴ In Cameroon, the roads and railway transport linking production centers and market are in deplorable conditions. Conditions as poor as this in basic infrastructure facilities hinders industrial development in general and steady flow of FDI in particular.¹³⁵

Nearly 80% of paved roads, 73% of gravel roads and 70% of rural tracks are in mediocre or bad condition. Traffic counts for the year 2001 show that paved and gravel roads together carried about 90% of traffic. More than 75% of the road network is in poor condition. Funding is required to prevent further degradation and loss of priority networks.¹³⁶

The popular saying that roads lead to development justifies one of Cameroon's inability to attract investment due to its deplorable road network as seen from the statistic above. This means that without proper infrastructure the economy would be stagnant and FDI flow retarded. Apart from the inconveniences it may cause to foreign investors, it acts as a major barrier to investment due to the fact that there is a tremendous increase in cost due to the country's poor road network. It is

¹³³ Khan S and Bamou L

¹³⁴ Njoh A 'Colonial Spatial Development Policies, Economic Instability, and Urban Public Transportation in Cameroon' (1997) 14 *College of Arts and Sciences University of South Florida* 133 143

¹³⁵ Economic Commission for Africa 'Enhancing the Competitiveness of small and Medium Enterprises in Africa' Economic Commission for Africa February 2001 available at www.uneca.org/gpad/SME_Strategic_Framework.pdf (accessed 6 January 2012)

¹³⁶ Charlier F and N'cho-Oguie C 'Sustaining Reforms for Inclusive Growth in Cameroon: A Development Policy Review (2009) Washington DC

acclaimed that, the more developed the road system is, the easier the markets and the lower the transportation cost, thus the more attractive the country would be to investors.¹³⁷ This is not the case in Cameroon as the road network is relatively poor and so investors for fear of an increase in cost of production are reluctant to invest in the country. It is objective to come to an indisputable conclusion that private investors most often would prefer to invest in countries with higher degrees of infrastructural development. Consequently, in order to attract FDI, the country needs to provide infrastructure of an improved quality than the existing infrastructure.¹³⁸

Hence for Cameroon to be able to attract foreign investors, its policy makers should prioritise infrastructure projects.¹³⁹ If this is not done, Cameroon would continue to underperform in attracting FDI as poor roads would automatically lead to underperformance, due to the fact that Capital would be diverted to the reconstruction and repair of road rather than in investing and expanding on the business if the private investors decide to come and invest in the country. The foreign investor would in this case be condemned to exhaustion as a result of these or exposed to work under risky and difficult conditions which hampers the investment climate. The importance of infrastructure in stimulating FDI have been attested to by writers like Wheeler and Moody (1992), Loree and Guisinger (1995), Richaud et al. (1999), Asiedu (2002), Morrisset (2000), Sekkat and Veganzones-Varoudakis (2004) and Quazi (2005). The argument put forward by these writers is that proper infrastructure is a pre-requisite for private investors to operate smoothly.¹⁴⁰

As long as the road network in Cameroon remains in the state in which it is, there are little or no prospects of an increase in FDI, if attention is not given to the road construction maintenance and repairs. Foreign investors would not invest in Cameroon, as doing so would mean delayed, disrupted services which would end in unreliable and unsatisfactory services. Foreign investors in the region have often opted to invest in countries like Gabon which has more favorable conditions for investment.

¹³⁷ Sunday A and Bamou T 'An Analysis of FDI flows to Cameroon' 2006 *African Economic Research Consortium*

¹³⁸ A. Khadaroo and B. Seetanah 'Transport Infrastructure and FDI' (2010) 22 *Journal of International Development* 103 123

¹³⁹ Ferris S, Rodney G and Valsan C 'FDI in Emerging Market Economy; The Case of Romania' (1994) 32 *Eastern European Economics* 81 95

¹⁴⁰ Khadaroo J and Seetanah B 'Transport Infrastructure and FDI: Lessons from Sub Saharan African Economies' available at http://www.uneca.org/aec/documents/Jameel%20Khadaroo_Boopen%20Seetanah.pdf (accessed 30 March 2012)

4.2.2 Currency

Foreign investors in Cameroon have problems converting the CFA into their home currencies, since the CFA is used only in a few French speaking countries. Another aspect linked to this currency issue which deters foreign investors, is the recurrent devaluation of the CFA francs. This causes a problem because convertibility is not guaranteed.

Cameroon is a member of the French franc zone. Its currency, the franc de la Communauté Financière en Afrique Centrale (the CFA franc), is issued by the Banques des Etats de l'Afrique Centrale (BEAC), and is pegged to the French franc. The exchange rate of the CFA franc in terms of the French franc, which had been fixed since 1948, was devalued by 50percent in foreign currency terms in January 1994, thus changing the parity from CFAF 1 = 0.02 to CFAF = F 0.01.¹⁴¹

The fact that there is no guarantee of the CFA already keeps foreign investors from investing in Cameroon as was the case of a 50percent devaluation in 1994 and rumors of another devaluation in 2012.¹⁴² 'The instability of the CFA francs was also presented as one of the contributing factors to private disinvestment in the country. But financial factors are not sufficient to explain this disinvestment. There were also causes of a political nature which help to understand the otherwise seemingly incomprehensible behaviors.'¹⁴³ These political reasons for disinvestment would be discussed below.

The benefits of having a stable common currency rather than having 14 separate national currencies¹⁴⁴ desired to strengthen monetary cooperation and deepen regional economic integration did not succeed in terms of prompting FDI in the franc zone to which Cameroon is a member.¹⁴⁵

In addition to the problems associated with currency is the problem of exchange rate. An investor would not be easily attracted to invest in Cameroon when the local currency (the CFA) does not have a stable exchange value. The fact that the currency is weak, and having an exchange rate

¹⁴¹Dhaneshwar G *Private Investment and Endogenous Growth: Evidence from Cameroon* (1997) Washington DC (IMF African department)

¹⁴²Tybout, Gauthier and Navaretti 'Firm-Level Responses to the CFA Devaluation in Cameroon' (1997) 6 *Journal of African Economies* 3-34

¹⁴³ Atangana M 'French Investment in Colonial Cameroon: The FIDES Era (1946-57)' (2009) New York

¹⁴⁴ African member countries pegged to the CFA Franc Zone attached to France

¹⁴⁵ Clément, Mueller and Cossé et al *Aftermath of the CFA Devaluation* (1996) Washington DC

that is liable to fluctuate constantly, puts off investors away from the country as they are stripped of any feeling of confidence and security investing in the country.¹⁴⁶

4.2.3 Language

Another factor that could discourage investors from investing in Cameroon is the deep rooted antagonism between the French majority and the Anglophone minority. The origin of this division was the handing over of the Republic of Kamerun the then part of the German protectorate since 14 July 1884 to Britain and France after World War 1 under the Versailles treaty. The reason why the French population makes up 8 of the 10 regions while the English population makes up only the remaining two is because during this partition between France and Britain, the greater share of the country went to France while Britain took the minor share.¹⁴⁷ This great disparity has led to a long struggle which is still ongoing till date, as the government has not been able to find ways to harmonise these differences which has spilled over to the legal sector and other factions of the government, with the English speaking community feeling suppressed and cheated by the French population.

The fact that these two groups have unequal status in the country, with the French population occupying 8 of the 10 regions of the country, while the English minorities occupy the two remaining regions in the country confirms the seclusion of the English speaking population from the country's economy. Often considered less patriotic, Anglophones have never been trusted to hold key cabinet portfolios, such as Territorial Administration, Economy and Finance, Foreign Affairs, National Security, and National Defense, since reunification more than 50years ago. In addition, the most powerful state-owned corporations, such as the CRTV, SNI, SNH, and SNEC have remained completely out of bounds for English speaking Cameroonians. Hence there is a feeling of frustration among Anglophones regarding their second class status.¹⁴⁸

¹⁴⁶ Mwenda K *Contemporary Issues in Corporate Finance and Investment Law* (2000) Pennsylvania

¹⁴⁷ Fombad C ' The Scope for Uniform National Laws in Cameroon' (1991) 29 *The Journal of Modern African Studies* 443 56

¹⁴⁸ Mbanaso U and Chima J *Minorities and the State in Africa* (2010) New York

This deep rooted division between the French and English speaking population originating as far back as when the country was partitioned between France and Britain after Germany was chased out of the country following its defeat after the Second World War, have discouraged prospective investors from the country, if they take into account issues such as the need for team spirit and collective efforts within the work force.¹⁴⁹

Surprisingly, there equally exists a marked uneasy cohabitation amongst the minority English population from the North West and South West region of the country. These socio-cultural antagonisms depict a structural approach to corporate management that may be totally different from the corporate culture of the MNC.

Within that broad pragmatic way of doing things, there will be sub-cultures of various sub-units in the organisations. All these cultures have different characteristics. There could be some common elements between these cultures and there could be some entirely different elements. It is these different elements in different cultures that provide a source of conflict. In particular the corporate culture of MNC may not be in conformity with the culture of the local people from whom the majority of the work force is drawn. When this happens, cultural conflict could prove to be a deterrent factor in attracting foreign investment to a country such as Cameroon.¹⁵⁰

In the face of language differences, the first president Ahmadou Ahidjo has since independence in 1960 appointed prime ministers from the North West region of the country which is one of the two speaking provinces of Cameroon, out of the ten.

4.2.4 Political Instability

For the purpose of this work, political instability would be, defined as the instability of governments, regimes, and communities within a nation, likely to affect economic growth adversely.¹⁵¹ This definition is reflective of the situation in Cameroon, where the political atmosphere is tense due to the marginalisation of the Anglophone Community who make up only two of the ten regions in the country, by the francophone majority who make up the eight remaining regions of the country. This huge disparity in terms of the English and French

¹⁴⁹ Mwenda K *Contemporary Issues in Corporate Finance and Investment Law* (2000) Pennsylvania

¹⁵⁰ Mwenda K *Contemporary Issues in Corporate Finance and Investment Law* (2000) Pennsylvania

¹⁵¹ Kwasi A 'Political instability and Economic Growth: Evidence from SSA' (1992) 40 *Economic Development and Cultural Change* 829 41

population in the country creates an atmosphere of political instability as the Anglophones always feel dominated and cheated by the Francophones. Political instability has therefore been identified as one of the problems hindering private investors from investing in Cameroon. The early 1990s saw Cameroon experiencing a remarkable form of political instability in the history of the country, which led to the death of six youths and many injured with the intervention of the police. This has led to groups like Amnesty International questioning Cameroon's record on political detention and torture.¹⁵² It would be important to note here that this negative reputation by the country obviously has an equal negative impact on its FDI policies as viewed by private investors and potential private investors. This position has been acclaimed by the writers below asserting that

The importance of political stability in creating a climate of confidence for investors must not be underestimated. Whether perceived or real, political instability constitutes a serious deterrent to FDI as it creates uncertainties and increases risks and hence costs of doing business in the country. We use a combination of the two indexes of political freedom (political rights and civil liberties) as compiled by Freedom House to assess the effect of political risk on FDI. Freedom House combines these two indexes to classify countries into three categories: free, partially free and not free. Higher values for this index imply less political freedom. We add the two indexes to obtain a composite index of political risk in Cameroon. We expect that a higher political risk will deter foreign investors.¹⁵³

The conclusion of the above statement points to the fact that the political atmosphere in Cameroon has not reached a high index, but is at a level where political instability is eminent and sufficient to influence investment decisions. To understand the fact of this statement, a definition of political instability would be necessary.

Political instability is characterised by uncertainty and this has the effect of restricting the development potential of developing countries, as investment opportunities and thus economic growth become distorted, both contemporaneous and over longer horizon. A politically unstable country will potentially destroy its intellectual capital by making it more rewarding to engage in corruption and other activities that generate distortions. Seen through this lens, political instability distorts incentives for development, but it's also possible that some dosage of political instability might be necessary to move a country to a good equilibrium by removing a corrupt regime from political office so as to restore confidence in governance. We call this "productive instability", purging of distortions and inefficiencies in governance through the forces of political instability, whether by constitutional means or otherwise. Political

¹⁵²West B 'Cameroon' (2011)

¹⁵³ Sunday A and Bamou T 'An Analysis of FDI flows to Cameroon' 2006 *African Economic Research Consortium*

instability not only affects the home country, but can also adversely affect neighboring countries.¹⁵⁴

Having been in power for thirty years running, a good dosage of political instability would have been welcomed to remove the Biya regime so as to restore confidence in the Cameroon government since private investors are reluctant to invest capital in a country where its nationals are disgruntled and the probability of an outbreak of war eminent.

Cameroon unlike other SSA has not experienced much of political instability,¹⁵⁵ but in instances where this has been registered, the outcome has not reflected positively on investment decisions in the country.

A Politically stable country would attract foreign investors because its policies are certain and so are its economic policies which would reflect positively on its investment decisions and outcome. A country characterised by political instability on the other hand would have a stagnant or slow growth rate because of its uncertain policies. Probability of a change of government as was the case in Cameroon during the 2011 presidential election implies uncertain future policies as potential foreign investors would have to tarry to take strategic economic decisions or even welcome investment policies and decisions other nations with favorable investment opportunities have to offer. The probability of war alone in a country plays negatively on a country's investment record as this could scare potential investors away while those present would cease investing and instead look for ways to withdraw and reinvest abroad.

4.3 A framework within which MNCs like the DHL and MTN operate in Cameroon

This chapter will continue to examine the difficulties encountered by foreign investors operating in Cameroon. This will be done by looking at two specific MNCs currently operating in Cameroon; the DHL and the MTN. A brief resume of the conditions under which these MNCs

¹⁵⁴Alesina A, Sule ö, Nouriel R, and Phillip S et Al 'Political Instability and Economic Growth' (1996) *1 Journal of Economic Growth* 189-211

¹⁵⁵Kwasi A 'Political Instability and Economic Growth: Evidence from SSA' (1992) *40 Economic Development and Cultural Change* 829 41

operate in the country will be uncovered. Both are surviving, but one is registering a lot of success than the other. The reason for these differences in results by two MNCS operating in the same country and under the same condition will be examined below.

DHL is a courier service company and stands for the abbreviation of the surname of its three founders. D for Adrian Dalsey, H for Larry Hillblom and L for Robert Lynn.¹⁵⁶ DHL is a well-known company that offers courier services in about 227 countries today. DHL operates successfully in Cameroon because the company performs quality services everywhere no matter how deplorable infrastructure like the transport system, electricity services communication and portable water may be in the country. Consumers of DHL services know for certain that location is irrelevant.

DHL is a global business: the company creates value for the customer by making location irrelevant. The customer is willing to pay the company in order to consistently obtain its service anywhere, anytime. The value the customer pays for arises from the irrelevance of location: the fact that he or she can get service from Bangkok to Paris as easily as from San Francisco to Buenos Aires is what gives the company's service value.¹⁵⁷

The opening paragraph of article one of the GATS defines the four modes of supply in the Trade Sector Service. These four modes of supply are defined in line with the location of the provider and recipient of the service in question. The liberalisation process of each of the modes is said to open a variety of opportunities and challenges irrespective of the fact that the modes are not mutually exclusive.¹⁵⁸

From the above case study, the DHL Company is categorised under mode three of the GATS schedule, which in a way would provide satisfactory service to the recipient, once there is a commercial presence in the country entailing market access and presence as in the case of Cameroon irrespective of natural persons. Broadly speaking, the service provided by DHL in Cameroon is efficient despite the lack of roads and other infrastructures eminent in the country because the production capacity of this company is not attached to the developmental condition

¹⁵⁶ Watson R *Much ado about English: up and down the bizarre byways of a fascinating language* (2006) London

¹⁵⁷ Korine H and Pierre-Yves G *The Leap to Globalisation: Creating new Values from Business Without Borders* (2002) New York

¹⁵⁸ Rohini S and Sumita K 'GATS and Higher Education: Some Reflections' (2004) 39 *Economic and Political Weekly* 2174 80

of the country hosting it. This justifies the high cost paid for the service rendered especially in Cameroon.

4.3.1 An Analysis of MTNs Presence in Cameroon

On the other hand the MTN service in Cameroon would be categorised under mode four of the GATS schedule. Mode four signifies the presence of natural persons independent of commercial presence.¹⁵⁹

The justification of the above classification is the satisfaction and dissatisfaction of the recipients of the services provided by the above companies with regard to the mode of supply and the company in question. According to the mode three which defines commercial presence only, the DHL Company in Cameroon is doing well because the physical presence of the company is not necessary for the company to supply its services. The commercial presence alone suffices for this company to provide its services as long as market access is involved.

Mode 3 of the GATS is effectively applicable in the case of DHL operating in Cameroon in the sense that this is a German company which has established commercial presence in Cameroon. It is jointly owned by these three founding members of German origin who are co-directors. However, management is sub-contracted in the hands of local experts in the field who manage the day to day running of the business.¹⁶⁰

The latter involves dissatisfaction as to the poor performance of services rendered by the MTN Company in Cameroon due to the fact that, the presence of natural persons is involved. These cross border supply of service is received with dissatisfaction by the receiver because of the poor infrastructure and poor implementation of good governance policies of the country which gives an unbalanced blend as the Company directors would not come for telephonic service and take on infrastructural services in order to make provision for the intended communication services.

¹⁵⁹ Sornarajah M and Jiangyu W *China, India and the International Economic Order* (2010) Cambridge UK

¹⁶⁰ Abdul-Aziz A 'Construction and Engineering Services' WTO: Council for Trade in Services 18 September 2009 available at www.sadc.int/index.php/download_file/view/522/782/ (accessed 12 April 2012)

Determined to stretch to other parts of Africa, however and maintain its position as the number one provider of telecommunication services, MTN started improving on infrastructural facilities in all other countries of Africa in which they operate in 1997.¹⁶¹ According to one of the most recent statistics carried out, MTN currently operates in 21 African countries¹⁶² totaling a subscriber's base of 14.3million in SA and 2.9million in the rest of Africa.¹⁶³ The MTN arrived Cameroon however in February 2000.¹⁶⁴

The challenges faced by MTN operators in Cameroon are quite enormous taking into consideration the very poor state of infrastructure evident in the country. Operating in a country such as this would kill the Corporations vision of being the leader in telecommunications in emerging markets.¹⁶⁵ Rather than work towards the achievement of this goal funds would have to be re-directed towards building infrastructures if this vision has to be maintained. The fact that MTN has survived in Cameroon as far back as 2000 means that they have accepted the risk of doing business in this country and accepted the effects that goes along with it. This obviously is the extra cost and settling with the fact that the services offered cannot be as effective as those offered in other African countries like Gabon with average infrastructure.¹⁶⁶

One major problem facing MTN in Cameroon like all other MNCs operating in the country is bureaucracy and red tape.

Before establishing its branch in Cameroon the MTN directors took 365 days to obtain the phone connection which is the normal time for this to be done because of its poor infrastructure. The cost of this is obviously more expensive than would be the case if the same installments had to

¹⁶¹ Fick D 'Entrepreneurship in Africa: A study of successes' (2002)

¹⁶² Alemibola J 'Talent Management in the Developing World: Adopting a Global Perspective' (2010)

¹⁶³ Geoff B, Luiz J, and Townsend S, 'MTN South Africa: one group, one vision, one brand' Emerald Group Publishing Limited 2011 available at

http://www.emeraldinsight.com/case_studies.htm?articleid=1917175&show=html (accessed 15 April 2012)

¹⁶⁴ Sullivan N 'You can hear me now: How microloans and cellphones are connecting the world's poor to the global economy' (2007)

¹⁶⁵ Phuthuma N 'MTN's vision is to be the leader in telecommunications in emerging markets. Our strategy is built on three pillars – consolidation and diversification; leveraging our footprint and intellectual capacity; and convergence and operational evolution' available at http://www.mtn-investor.com/mtn_ar08/book1/pdf/hwp_ceo_report.pdf (accessed 16 April 2012)

¹⁶⁶ Games D 'Doing Business in Post Conflicts and Fragile States: Challenges and Risk' Development Bank of Southern Africa. Development Planning Division: Working paper Series No 23 2011 available at <http://www.dbsa.org/Research/DPD%20Working%20papers%20documents/DPD%20No23.pdf> (accessed 16 April 2012)

be done in a country with fairly good infrastructure.¹⁶⁷ In Cameroon the MTN operators would incur more cost to get a telephone landline coupled with the very low and inconsistent electrical situation of the country which takes up to 90 working days to get it installed and connected. After these there are frequent blackouts and brown outs registered even in urban areas including the two major cities; Yaoundé and Douala.¹⁶⁸ MTN Cameroon therefore operate under acute shortage of power even after taking such a long time as seen above to get located in the country. This is evidently frustrating and limits prospects of expanding the business. This is coupled with the fact that MTN Cameroon further faces the problem of negative growth as the population because of the high rate of unemployment and poverty in turn make very slow and timid purchases. The possibility of expansion is further limited by slow turn over even if the desire to expand is there.

Foreign firms wishing to open a branch in Cameroon may apply for authorization to the Ministry of Economy and Plan. The firm must submit certified copies of its articles of incorporation, a description of the firm's past and present activities, and its business objectives in Cameroon. If the Ministry of Economy and Plan approves the firm's request, it will issue a decree authorizing the establishment of a branch. This procedure is time consuming, complicated, rarely used, and not encouraged by the government.¹⁶⁹

These are legal procedures for establishing a business in the country, but as can be inferred from above the government does not encourage it. Private investors in this case are made to believe that the government is far from being committed to its laws and therefore acts in bad faith. This consequently brings the foreign investor to be less committed to its engagements. In this instance, MNCs are faced with the problem of institutional uncertainty. The effect of this is that they run the risk of losing their investments with no backing of accountability.¹⁷⁰

This chapter continues to look at the frame work under which MNCs like the DHL and MTN operate in Cameroon. The regulatory frame work is equally juxtaposed and uncertain. The weak

¹⁶⁷ Emilie C, Kinack D and Oludele A 'Regulation, SME Performance and Growth in Cameroon's manufacturing and retail sectors' Investment Climate and Business Environment Research Fund. Trust Africa. Dakar November 2011. Available at <http://www.trustafrica.org/documents/Case%20Studies%202012/Kinack-edited.pdf> (accessed 17 April 2012)

¹⁶⁸ Nchelatebe D, Mervyn S, and Thong V, 'et AL' 'Electricity supply, irregularities, and the prospect for solar energy and energy sustainability in Sub-Saharan Africa' (2010) 2 Journal of Renewable and Sustainable Energy 023102 16

¹⁶⁹ Duane S 'The Legal Aspects of Doing Business in Cameroon' (1983) 17 *International Lawyer* 489 506

¹⁷⁰ Godfred A, Sikod F 'Investment Legislation in Cameroon' *Decentralisation: Finance and Management Project* March 1994 available at http://pdf.usaid.gov/pdf_docs/PNABR907.pdf (accessed 20 April 2012)

judicial system and numerous regulators can be accountable for this. Foreign investors are hereby faced with the problem of choice as to which regulatory procedure is credible to choose from due to the presence of numerous regulators which at the final analysis become confusing. Amongst the other problems encountered by MNCs operating in Cameroon in general and MTN in particular, the problem of a poor judicial system also plays greatly on the output of their services. Writers like Nchelatebe D, Mervyn S, and Thong V, 'et AL' infer that, institutional and administrative loop holes of the legal system and of the judiciary will hamper the proper and swift execution of commercial and financial contracts. The judicial system in Cameroon generally known to be weak gives lack of confidence in the judicial system for this institution to uphold property rights which creates a huge impediment for the foreign investor's investment plans and strategy. This makes the investors security questionable. This brings to light the problem of insecurity faced by MNCs in Cameroon.

4.3.2 Evaluating the Measure of DHL's Presence in Cameroon

The South African Firm, MTN based in Cameroon for almost 2decades today is yet to gain national recognition. Unlike the DHL which provides services in all the parts of the country, MTN concentrates on billboards advertising mainly in the economic capital of the country,¹⁷¹ and do not provide services that meet up with the customer's expectation like DHL does.¹⁷² The MTN's network is under pressure due to the problem of infrastructure, tis gives the reason why it is based mostly in Douala and Yaoundé, that is 2 of the ten regions of the country which gives a difficult interconnection problem to the 8 remaining regions of the country where accessibility is rather difficult, and even then another huge obstacle is the problem of electricity as seen above. Thus its supply chain is greatly limited as it is absent in most parts of the country or its efficiency greatly handicapped.

¹⁷¹ Douala

¹⁷² Eribo F and Tanjong E *Journalism and Mass Communication in Africa: Cameroon* (2002) England

4.4 Aspects of Legal Deterrent to foreign investors

The Foreign Investment Advisory Service (FIAS) has described the paradox: countries fight for investment, but “when someone has finally made the decision to invest, he then is subjected to some of the worst treatment imaginable. “Such barriers to entry condemn millions of entrepreneurs to the informal or gray economies, reduce investment and trade across borders, and diminish competition that would increase consumer welfare and household income in poor countries.¹⁷³

The above paradox can be seen from two angles. In the first instance, a country like Cameroon for example in quest of attracting FDI, promulgated laws that are appealing to foreign investors to invest in the country, while at the same time rendering this same laws meant to attract these investors difficult to practically implement. The second paradox can be seen from the point that these barriers are most often legalized, as traces of these deterrents to be examined below can be traced from the first investment code in 1960 up to the current 2002 investment charter governing investment decisions in the country. It is important not to lose sight of the fact that these investment laws are meant to attract foreign investors and not to repeal them. Policy makers must therefore be conscious of these negative spill overs of FDI and make room for them when designing policies to attract and regulate foreign investments.¹⁷⁴ As in the case of Cameroon, policy makers should be balanced, so as not to over tax foreign investors or let the rules be too liberal on foreign investors in such a way as to sap the law of its very purpose. Tax policies for example should be fair and balanced. These possible deterrent factors present in Cameroon’s investment policies are cited by Ndiva K, who says under Cameroon’s General Tax Code, foreign enterprises are unduly exempted from corporate taxes for two years. The author further certifies that the investment codes of Cameroon further impose fewer restrictions on access to foreign exchange when compared to that of other countries in Africa like Kenya.¹⁷⁵

The ground work for this liberal legal framework for FDI in the Cameroon investment code was laid after the creation of an Industrial Free Zone (IFZ or free trade zone) and later promulgated

¹⁷³ Scott J and Coolidge J ‘Reducing Barriers to Investment: Lessons Learned’ The International Bank for Reconstruction and Development / World Bank 2006 available at https://www.wbginvestmentclimate.org/uploads/FIAS_OccPaper17.pdf (accessed 22 April 2012)

¹⁷⁴ Turner T, Aginam O and Vesselin P ‘Post Conflict Countries and Foreign Investment’ Policy Brief 8 November 2008 available at http://www.relooney.info/SI_Expeditionary/Post-Conflict-Economic-Development_93.pdf (accessed on 8 January 2012)

¹⁷⁵ Ndiva K in his ‘Host-Nation Regulation and Incentives for Private Foreign Investment: A Comparative Analysis and Commentary’ (1990) 15 *International Law Journal* 361-400

into law in 1990, followed by the promulgation of a new investment code in November 1990. This code's overriding objective was the encouragement and promotion of productive investments in the country through liberalisation of the economy.¹⁷⁶ These encouragements came in the form of incentives as explained in the paragraph below.

These incentives which were meant to attract private investors ended up having them repealed from the country for reason of being attractive only on paper. In reality corruption and mismanagement robs the authentic application of these laws. Inclusive in this code are 14 basic guarantees to both domestic and foreign investors. These include ownership and the right to foreign investors to repatriate capital and income. The said code¹⁷⁷ also includes the Investment Code Management Unit (ICMU), which is a 'one-stop-shop' policy for investment approval and dispute resolution. This one-stop shop meant to be an incentive for investment in Cameroon gradually took the place of barrier against investment in Cameroon like in other African countries. In spite of these attractive incentives incorporated in the investment code few foreign investors have been attracted to invest in the country because of the corruptive nature of the country's investment policies underneath this code.¹⁷⁸ The paradox here is that these "one stop shops" established by many other countries in Africa apart from Cameroon to ease the bureaucracies involved in investment have fallen short of obtaining the intended results. Not only have policy makers in Africa as a whole and Cameroon in particular been unable to attract private investors through the one stop shop facility, they are not effective as they do not help to simplify regulation procedures in investment. In the absence of regulating investment, private investors are thus deterred from investing and thus investment is deregulated rather than being regulated. In other parts of the African continent apart from Cameroon, the concept of the one-stop shop facility meant to be regulating investment has become a channel through which deregulation has become a reality.

Many developing countries have established or endeavoured to establish one-stop shop for investors as part of their enhanced investment policy and have been disillusioned by the results. In Uganda for example, the World Bank's Operations Evaluation Department concluded in 2001 that 'the Bank's concept that the Uganda Investment Authority would be a one-stop shop to meet all of a new investor's

¹⁷⁶Ndiva K 'Investment Codes as Instruments of Economic Policy: A Cameroon Case Study' (1991) 25 *Law Journal Library* 821-58

¹⁷⁷ The 1990 Investment Code

¹⁷⁸ US Trade and Investment with SSA (2000) Washington DC

needs for permits, licenses, and service connections was flawed.’¹⁷⁹

Above is a glimpse of the contradictory results obtained from the one-stop workshop in Uganda as evaluated by the World Bank’s representative in this country.

Mali has also experienced failure in the one stop shop policy as per the findings of UNCTAD following reports in 2007. Many African countries coming up with the one-stop shop facility have failed to improve on regulations by swiftly patronising demands from investors, and implementing what is incorporated in the code.¹⁸⁰

According to Touna Mama and Schouame aspects of deregulation policy started propping up in Cameroon’s Economic policy from the mid- 1980s. This means that from the 1960s when Cameroon enacted its first investment code up to the 1980s investment regulation policies in Cameroon’s political history were stable. The writers note that the origin of deregulation in the economic crisis of the second half of the 1980s manifested in two spectacular ways; first the external shocks on the one hand and secondly the inefficient implementation of domestic economic policies on the other hand. The writers explicitly consider devaluation as a deregulation policy or implicitly as a point of departure for new deregulatory measures.¹⁸¹ Devaluation is implicitly considered a point of departure for new regulatory measures because the devaluation process for instance in Cameroon led to the privatization of many corporations like the SONEL (Societe Nationale D’electricite) to the American AES who had come Cameroon at the President’s agreement to privatization in the late 1980s has led Cameroon with far more frequent black outs than used to be the case when it was under the state.¹⁸²

Another major legal deterrent against foreign investors investing in Cameroon is the centralization of power by the executive headed by the president of the Republic who is answerable to nobody.¹⁸³ This acts as a deterrent to investors as there is no accountability and transparency which leads to investment decisions individually taken regardless of the interest of

¹⁷⁹ Biz-News ‘Towards Single Windows for Trade and Investment’ *Information Bulletin of the ACP Business Climate Facility Biz Clim* January –March 2009/N8 (accessed 24 April 2012)

¹⁸⁰ Biz-News ‘Towards Single Windows for Trade and Investment’ *Information Bulletin of the ACP Business Climate Facility Biz Clim* January –March 2009/N8 (accessed 24 April 2012)

¹⁸¹ Touna M and Schouame ‘Deregulation Policy in Cameroon’ *Private and Public Sectors Towards a Balance*

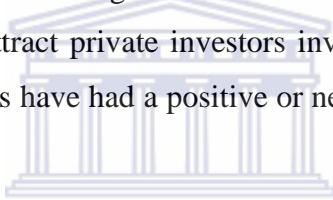
¹⁸² Ayuk A ‘Privatisation in Cameroon and Costa Rica: A Comparative Analysis’ *Georgia Political Science Association Conference Proceedings* 2008 available at <http://a-s.clayton.edu/trachtenberg/GPSA%20Proceedings%202005-2010/2008%20Proceedings%20Ayuk%20PDF.pdf>

¹⁸³ Paul Biya

the investor as long as it is to the interest of a few top officials.¹⁸⁴ The judiciary and legislature is dependent on the executive headed by the head of state from whom all decisions originate.

This is where the main aspect of legal deterrent to foreign investors in Cameroon originates. The fact that there are no checks and balances is a main cause for concern to the potential private investor who in the case of an investment dispute arising from his engagements in the country would have to face a powerful executive who can change laws and enforcement at will without giving account to either the legislature or the judiciary. This being the case the investor would have no option but to leave the country or refer to courts of higher authority. This would definitely entail extra expenditure in the face of an already pending loss.¹⁸⁵

Deregulation of the legal framework that controls FDI have been known to legally deter foreign investors from investing in Cameroon as seen below. Policy makers realising the effect this holds on the flow of FDI have attempted to salvage the situation by instituting tax deductions and tax holidays and other incentives to attract private investors invest in the country. The proceeding chapter would unveil if these efforts have had a positive or negative impact in terms of attracting foreign investors in the country



Deregulating the legal frame work that governs investment in Cameroon legally deters investors from investing in Cameroon. In order to make up for this deregulation policies, as seen in the case of the one-stop shops, policy makers came up with incentives in the form of tax reduction and others to re-attract investors in the country.

Private investors invest to make profits and not for reasons of benevolence. Thus, if they make profits they expect, albeit not unnaturally, to keep them, subject to payment of appropriate taxes to the local authorities; if they acquire property, they expect to be entitled to keep it. The feeling of insecurity in these respects is, perhaps, the major deterrent to the flow of direct foreign investment in less-developed countries (LDC).¹⁸⁶

The Cameroonian government in this regard has proved itself unworthy of trust. Though the Cameroon investment code provides for repatriation of profit to the investor's home country,

¹⁸⁴ Njungwe E 'Promoting Good Governance and Public Accountability In Cameroon' *Cameroon Centre for Democracy and Human Right* 14 January 2011 available at <http://picam.org/press-releases/2011/01-14-PresidentforLifeTunisiaandCameroon.htm> (accessed 25 April 2012)

¹⁸⁵ Godfred A, Sikod F 'Investment Legislation in Cameroon' *Decentralisation: Finance and Management Project* March 1994 available at http://pdf.usaid.gov/pdf_docs/PNABR907.pdf (accessed 30 April 2012)

¹⁸⁶ Akinsanya A 'International Protection of Direct Foreign Investments in the Third World' (1987) 36 *International and Comparative Law Quarterly* 58 75

there are doubts surrounding the veracity of this policy due to the fact that the guarantees to the execution of this policy and others depends on the benevolence of the executive. Private investors deem that if an authoritarian executive executes a law there is no certainty that the law would be enforced. Investors need a credible and trustworthy commitment through unforeseen strategies to resolve impromptu matters which is absent¹⁸⁷

Cameroon has gone through many strategic and constitutional changes since 1960 when it attained independence, which have been depicted in the different steps provided for ensuring the constitutionality of laws.¹⁸⁸

One other significant deterrent to the flow of FDI to Cameroon is the bilingual nature of the country, which means a conflict of the common law and civil law rules, depicting disagreement within the constitutional system. Private investors would in this case doubt the neutrality and independence of the prevailing rule upheld by the constitution. With such a tense atmosphere prevalent in the country, private investors cannot be encouraged to invest in the country as it exhibits a weak and inconsistent rule of law dangerous to investment in the face of FDI disputes.¹⁸⁹

Corruption has been widely acknowledged to be a deterrent force to FDI. Corruption described as the abuse of public power for private gain is argued to have a positive and negative effect.¹⁹⁰ For the purpose of this research I strongly argue that there should be no positive side to corruption particularly for a small and underdeveloped country like Cameroon. This means that those involved in the practice of corruption should be held accountable as is the case in Cameroon where government officials are being tried and imprisoned.

With low salaries and high cost of living, private enrichment at public cost has become a routine in Cameroon; Corruption is embedded at all levels of government.¹⁹¹ The top officials who should promote transparency and accountability are the ones more involved in the act of

¹⁸⁷ Godfred A, Sikod F 'Investment Legislation in Cameroon' *Decentralisation: Finance and Management Project* March 1994 available at http://pdf.usaid.gov/pdf_docs/PNABR907.pdf (accessed 30 April 2012)

¹⁸⁸ Fombad C 'The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?' (1998) 42 *Journal of African Law* 172 86

¹⁸⁹ Kamanga B *The Role of Governance in using Project Finance as a Contract for the Delivery of Infrastructure in Africa* (LLM thesis, University of Stellenbosch, 2008) 40

¹⁹⁰ Alvaro C 'Who Cares About Corruption' (2006) 37 *Journal of International Business Studies* 807 22

¹⁹¹ Jurg M 'Cameroon's Neopatrimonial Dilemma' (1999) 17 *Journal of Contemporary African Studies* 173-97

corruption thus the act cannot be brought to question. This deters private investors from investing in the country.

From the 2008 Transparency International records, Cameroon was identified as one of the most corrupt countries in Africa, rated the 141st out of the 180 countries on which statistics were carried out in the corruption transparency index. This would naturally bring the private investors looking for more assuring and convincing reasons to invest in the country. In the case where they decide despite all odds because of the country's rich and natural vegetation they encounter the problem of bureaucracy which only goes further to discourage investors. In this regard, an average business takes 426 days complying with license and permits requirement almost twice the average for an African nation. Cameroon ranks 160 out of 178 countries on the World Banks starting a business index¹⁹²

Road construction was given the highest priority in the country's five years development plan.¹⁹³



4.5 Possible solutions to the problems deterring foreign investment

Solutions to the problems affecting investment in Cameroon can be brought about only by the country itself as Private investors can only intervene. This phase of the research concerns solutions to the problems deterring foreign investors from investing in Cameroon. These problems will ultimately be dealt with by Cameroon policy makers vis à vis the problems encountered by foreign investors, and the determination of these foreign investors to carry on investment projects amidst that which they cannot change. Cameroon's share of FDI flows has not only deteriorated remarkably in recent years, but compared to other countries from the SSA region has always been below average level. This underperformance in attracting FD can be resolved with an attempt of the solutions suggested below. Primarily Cameroon must diversify its commercial products so as to attract a variety of investors in the country and work at improving its infrastructure. Another main solution to problems deterring investors from investing

¹⁹² Werhane P 'Alleviating Poverty through Profitable Partnerships: Globalization, Markets and Economic wellbeing 2010 New York

¹⁹³ Atemkeng J 'The Peace Corps in Cameroon' (1992)

in Cameroon would be restrained from breaching contracts. In Cameroon foreign investors have included investing in risk in their investment programme in Cameroon. Reduction in taxation and good governance policies and accountability are all solutions put forward by the Cameroon government to include the flow of FDI in the country.¹⁹⁴

To solve the institutional problem inherent in the investment code, the government has come up with an investment programme in the infrastructure sector. This is especially to meet the country's growing energy needs which is one of the reasons MNCs cannot function properly and so discourage potential investors from building industries in the country. In this regard an energy strategy has been devised and is being progressively monitored. Plans for construction work on Kribi's¹⁹⁵ deep-water port are underway. Investors from Europe, Chinese and Canada met together in this regard in May of 2008 to raise the US\$ 6.55 million in regards to the project. Highlights of the project are exploitation of cobalt, diamond, nickel and uranium reserves.¹⁹⁶

A further solution to the unnecessary bureaucracy involved in setting up businesses is the streamlining of procedures for starting business. As concerns the percentage of taxes to be paid by investors, the situation has been addressed and requires that tax procedures entail carrying out an in-depth review of the relevant statutory and regulating instruments on the one hand, and instituting in conjunction with centralised local authorities. The review of legal instruments was expected to start in 2009 by reducing by half the number of tax return slips and end latest in 2012 with the harmonisation of various instruments and ensuring their compliance with International Labor standard¹⁹⁷

The last practical solution to the problem of the underperformance of FDI in Cameroon is that foreign investors who are faced with the enormous challenge of investing in a country with poor infrastructure than the local investors formulate imaginative strategies to counter infrastructural, political and institutional handicaps that they would encounter before engaging fully into

¹⁹⁴ Collier P 'The Marginalisation of Africa' (1995) 134 *International Law Review* 541 58

¹⁹⁵ The largest sea port region situated in Central Cameroon

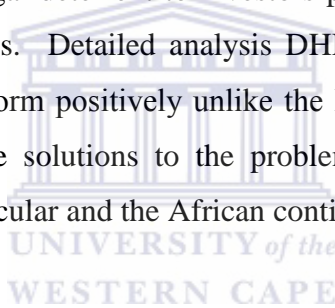
¹⁹⁶ 'Cameroon: A Choice Destination for Investors' 2005 available at www.cometocameroon.com/cameroon-a-choice-destination-for-investors.html (accessed 11/1/2012)

¹⁹⁷ IMF 'Cameroon: Poverty Reduction Strategy Paper' (2010) Washington DC

investing. When this is done the problems they eventual face would be met with a handy solution.¹⁹⁸

4.6 Conclusion

The Chapter has been a review of how MNCs survive in Cameroon and out of Cameroon. From there an investigation was made on problems typical of the Cameroonian society that affects MNCs established in the country. A minor comparism has further been carried out in this chapter, exposing the reason why one MNC operates successfully in Cameroon while the other does not, though operating in the same country and under the same institutional conditions. This is followed by some aspects of legal deterrent to investors predominant not only in Cameroon, but also in other African countries. Detailed analysis DHL has a positive impact because it doesn't need to be present to perform positively unlike the MTN which needs to be present to survive. I have proposed possible solutions to the problem of the very timid flow of FDI experienced by the country in particular and the African continent at large.



¹⁹⁸Werhane P ‘Alleviating Poverty through Profitable Partnerships: Globalization, Markets and Economic wellbeing 2010 New York

Chapter Five

Recommendations and Conclusion

5.1 Recommendations

The investment climate of every country is regulated by that country's investment code, if the investment flow in the country does not correspond to the abundance of natural resources evident especially for a country like Cameroon popularly called 'Africa in miniature' because of its rich geological and natural diversity, then further amendments of the current investment code has to be made if that has been done already as is the case in Cameroon.¹⁹⁹ Blessed with a rich variety of natural resources including petroleum minerals and other cash crops like rubber coffee cocoa cotton and palm oil and many others, Cameroon still live in misery²⁰⁰ because potential investors shy away from investing in Cameroon because of the poor institutionalization of its investment policies.

The findings from this work proves however that, the investment climate in Cameroon as well as other African countries is influenced to a great extent by other factors as well as the government establishing rigorous and credible investment regulations, unlike has been the case from 1960 when it established the first investment code right through to the current 2002 investment charter. A new and firm commitment has to absolutely to spring forth from the current 2002 investment charter. The reason for this being that regardless of the number of times investment codes have been revised and implemented, the country is yet to record a remarkable FDI flow unlike the case with other countries in the same sub-region with lesser advantage in terms of population and political stability and possession of rich natural resources and food crops like Cameroon.²⁰¹

As recommendation therefore, in view of the problems hindering foreign investment in the country as seen in previous chapters of this work, the purpose of the present is to highlights key areas that Cameroon policy makers should put in place to not only attract FDI flow in the

¹⁹⁹ Asongu J, Marvee M and Clami M 'Doing Business Abroad: A Handbook for Expatriates' (2007)

²⁰⁰ Lotsmart F 'The Challenges of non-governmental organisations in Anglophone Cameroon' (2007)

²⁰¹ Saskia K and Morgan S 'Foreign Direct Investment and its Determinant in Emerging Economies' *African Economic Policy Paper* July 1998 available at http://pdf.usaid.gov/pdf_docs/Pnacf325.pdf (accessed 6 May 2012)

country, but be competitive in today's globalised world to attract and preserve FDI in the country. These comprises

- making provision for, and respecting relevant incentives
- Adopting and enforcing a zero tolerance approach towards corruption
- Investing in the much needed infrastructure
- Creating a conducive investment friendly environment
- Opening workshops and synthesising the population on the need to open the country through trade
- Revision of tax policies
- Constant review of its investment policies

Worthy of attention is the need to swiftly implement the investment codes immediately after its promulgation. For the sake of credibility, investors would seriously consider investing in the country only after this has been dealt with. The message sent out is 'we can only take you serious if you take yourselves seriously'. The Cameroon Investment charter for example was passed in 2002 but implementation delayed. Not only is the charter yet to be completely implemented but the president signed a decree in May 2009 postponing the deadline implementation of some provisions to this charter to 2014.²⁰² It is but logical not to expect investors to stake their investments in a country with such bureaucracy and laxity looming in the 'supposed' legal sector prone to govern issues of investment. I would in this case recommend necessary arrangements for implementation of investment laws before it is passed so as to enable its swift implementation once it is passed. This would cancel the negative impression foreign investors have in regards to enforcement of laws in Cameroon and thereby re-attract them into the country.

As concerns the prevalent authoritative and corrupt situation facing the country, investors would be encouraged to invest in the country if, the judiciary and legislative is not subdued by the executive. This means that the judiciary and legislative need to be strong and independent and reserve the right to be consulted and given account of decisions taken by the executive. This together with red tape measures are crucial problems facing Cameroon which if the government

²⁰²Food and Agricultural Organisation (FAO) 'Foreign Agricultural Investment Country Profile' *Food and Agricultural Investment Policy Support* 2012 available at http://www.fao.org/fileadmin/user_upload/tcsp/docs/Cameroon_Country_Profile_FINAL.pdf (accessed 5 May 2012)

takes measures to deal with would give foreign investors more confidence and assurance to invest in the country. It would therefore be imperative for the government to amend this loop hole and faithfully commit itself to redress the situation so as to re-install the lost confidence on the part foreign investors towards the Cameroonian population.

The Cameroon government further needs to understand that a systematic war has to be launched against corruption and misappropriation of fund in order for the business climate to be transparent and trust worthy.

5.2 Conclusion

This study observed that the Cameroon investment code is riddled with many flaws, primarily the code completely ignores the fact that, objectively, some investments would only benefit from its incentives only after several years of their establishment. Looking at the 1960 code for example which was based primarily on the primary industry, enough time was not given to wait for the outcome of its realisation. Added to this, was the fact that there was no real anticipation to welcome foreign investors, as this was a period marked by nationalism. In anticipation for a peaceful growth and technical development of its economy, Cameroon became a member of World organisations and several other regional and economic organisations.

Furthermore, this study observed, the concept of FDI from a universal, regional and Cameroonian perspective. This was closely followed by the regulation of the concept by Cameroon policy makers. From the Cameroonian perspective, this was carefully analysed by detailing looking at the regulation of the various codes the country has adopted from when it gained independence in 1960 right through to the current investment code dubbed the 2002 investment charter. After this the importance of FDI on the growth of the economy was examined.

In line with the objective of this work, Cameroon as an individual nation qualifies for MFN treatment on all its investment and economic transactions from other member countries due to its

membership in the WTO.²⁰³ In the same light the study reveals that its membership in regional organisations like the CEMAC and OHADA gave its much benefit and unlimited access to markets for goods and services from its rich supply of food crops especially to CEMAC members like Gabon where it remains the main supplier.²⁰⁴

The study posits an appraisal of MNCs in Cameroon carried out on a platform of two foreign MNCs resident in Cameroon by comparing their performance, and exploring the reason for one succeeding and the other not succeeding. It was realised that Gabon has more favorable investment policies than Cameroon, hence the reason for its high performance in attracting foreign investors than Cameroon.

The series of modifications in Cameroon's investment codes have been carried out without an institutional plan to support application and enforcement of the code, which has been repugnant to the investor. The codes have been marked by too much uncertainty as it is seen to have been updated three times and irregularities suppressed, while incentives provided as in the 1984 code under the IFZ regime and the 1990 and 2002 did not bring about the expected positive FDI flows in the country. Thus it has been observed that signing a piece of paper has not solved the problem of under investment in Cameroon. Investors have a negative picture of policy makers in Cameroon as it is believed the government is not committed to what is signed on paper.²⁰⁵

Apart from this, is the poor governance system prevalent in the country, with a very strong unchallengeable executive, instead of the three balancing powers; executive, judiciary and legislative. The executive is accountable to no one, and can change decrees and laws as it suits its interest. This is the main cause of institutional uncertainty as there are no checks and balances. This leaves the investors and potential investors with a negative impact as their only

²⁰³Sudip R 'Does WTO accession affect domestic economic policies and institutions?' *Graduate Institute of International Studies* March 2008 available at http://graduateinstitute.ch/webdav/site/international_economics/shared/international_economics/publications/worki ng%20papers/2008/HEIWP03-2008.pdf (accessed 6 May 2012)

²⁰⁴African Development Bank 'African Economic Outlook' (2008)

²⁰⁵Godfred A, Sikod F 'Investment Legislation in Cameroon' *Decentralisation: Finance and Management Project* March 1994 available at http://pdf.usaid.gov/pdf_docs/PNABR907.pdf (accessed 30 April 2012)

reaction would be to try to join the private sector or leave the country as has been the case with some companies.



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