FOREIGN DIRECT INVESTMENT AND SMALL AND MEDIUM-SIZED ENTERPRISES IN THE REALMS OF INVESTMENT LAWS IN CAMEROON : A STRICT APPRAISAL OF THE INCENTIVE-BASED APPROACH

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ABSTRACT

The incessant proliferation of diverse defies plaguing investments in general and foreign direct investments (FDIs) in particular in the world over have led to deteriorating and devastating effects to human kind and the business environment in such a way that if nothing is done to obviate it, it will only lead to egregious anomalies, wanton incongruities and why not the complete obliteration of some investments albeit in the sector of Small and medium-sized enterprises. In the contemporary world today especially the less developed and developing world, Foreign direct investments stand out to be the most common tool of development, but when they are not properly harnessed and managed due to some ills and economic nightmares like embezzlement, corruption, looting of funds and wide spread incompetence, it becomes pedantic and arcane to the very development it so intended. These nightmares and challenges are multi-facetted and spring from different directions to wit; the investor, the investing state and the local population. The issue is worsened when the investor gangs with some few stakeholders of the state as against the state and the entire population leaving us in a state of literal ecstasy to ponder whether or not, it still falls under the very objectives of foreign direct investments. It must be emphasized that, although incentives are generally good measures for the boosting of investments, it does not give any impetus on the parties or stakeholders to the investments to relinquish their efforts given that there can never be a successful investment without challenges, FDIs business inclusive. FDIs are generally enforced by a number regulation and supervisory bodies both in Cameroon and abroad as the investing partner must

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also ensure that his investments are save. From this stance however, several national laws and international legal instruments as well as national and international institutions aimed at arriving at a solution have been envisaged. But it is rather with regrets that, the so many institutions and legal instruments not leaving out incentives arrived at are not apt enough to curb and curtail the challenges to the effectiveness of FDIs on SMEs in Cameroon. If nothing is done to this present status quo, impending doom awaits Cameroons SMEs. This paper therefore focuses on an in-depth analysis of the incentive-based approach with particular emphasis on the specialized institutions charged with the implementation and the executing of incentives for development in the sector of SMEs. To attain this objective, the secondary method of data collection and the qualitative method of data analysis were employed.

INTRODUCTION

Investments have been and are still the hub in the upliftment and boosting of economic growth and development of many economies in the world in general and that of Cameroon in particular. This economic situation is amplified by the advent of foreign direct investments (FDIs) in the world at large. The coming of modern foreign direct investments in Cameroon albeit in the sector of small and medium sized enterprises (SMEs) was not an option of poverty alleviation and economic growth until the period of the late 20th century wherein Cameroon was beleaguered with economic crisis[i]. Before, FDIs knocked the doors of Cameroon in the sector of SMEs; Cameroon was placed under the rudimentary policies[ii] of the International monetary fund and the World Bank. In Cameroon, until the introduction and imposition of some of the conditionalities[iii] of the Heavily Indebted Poor Countries initiative (HIPCI),[iv] Cameroonian economy was not yet liberalized to boost private sector investments wherefrom stems the investments on SMEs thereby implying that FDIs in the sector of SMEs was an illusion and still far-fetched. The Cameroonian government has from thence adumbrated and adopted several laws such as the investment charter, organized and still organizing several national and international seminars to sensitize the public on the importance of FDIs in SMEs as well as adopting several laws on incentives and creating specialized and particular agencies like the Investment Promotion Agency-IPA[v], the ministry of small and Medium-Sized Enterprises, Social Economy and of the Handicraft-MINPMEESA and the Small and medium-sized enterprise regulatory Agency-APME in order to boost and uplift FDIs in the SMEs in the

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country.[vi] It is clear from the foregoing that, there has been FDIs existing in Cameroon in other sectors like the large public enterprises especially with public-private partnerships between the state and other multinational corporations but its arrival in the sector of SMEs is very much of recent thereby warranting scrupulous follow-up.[vii]

Several attempts have been made by authors to define FDIs and SMEs on a general basis and some other definitions have been contextual. On the general Plata, Foreign direct investment (FDI) is an investment made by a company or individual in one country with business interests in another country, in the form of either establishing business operations or acquiring business assets in the other country, such as ownership or controlling interest in a foreign company.[viii] The key feature of foreign direct investment is that it is an investment made that establishes either effective control of, or at least substantial influence over, the decision making of a foreign business.[ix] Foreign direct investments can be made in a variety of ways, including the opening of a subsidiary[x] or associate company[xi] in a foreign country, acquiring a controlling interest in an existing foreign company, or by means of a merger[xii] or joint venture with a foreign company.

The threshold for a foreign direct investment that establishes a controlling interest, per guidelines established by the Organization of Economic Cooperation and Development (OECD), is a minimum 10% ownership stake in a foreign-based company, typically represented for the investor acquiring 10% or more of the ordinary shares or voting shares of a foreign company. However, that definition is flexible, as there are instances where effective controlling interest in a firm can be established with less than 10% of the company's voting shares.

Foreign direct investments are commonly categorized as being horizontal, vertical or conglomerate in nature.[xiii] Since this type of investment involves entering an industry the investor has no previous experience in, it often takes the form of a joint venture[xiv] with a foreign company already operating in the industry.[xv]An increase in FDIs may be associated with improved economic growth due to the influx of capital and increased tax revenues for the host country. Host countries often try to channel FDI investment into new infrastructure and other projects to boost development. Greater competition from new companies can lead to productivity gains and greater efficiency in the host country and it has been suggested that the application of a foreign entity's policies to a domestic subsidiary may improve corporate

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governance standards.[xvi] Furthermore, foreign investment can result in the transfer of soft skills through training and job creation, the availability of more advanced technology for the domestic market and access to research and development resources.[xvii] The local population may benefit from the employment opportunities created by new businesses. In many instances, the investing company is simply transferring its older production capacity and machines, which might still be appealing to the host country because of technological lags or under-development, in order to avoid competition against its own products by the host country/company.[xviii]

As concerns SMEs, the criteria for defining the size of a business differs from country to country, with many countries having programs of business rate reduction and financial subsidy for SMEs. In July 2011, the European Commission said it would open a consultation on the definition of SMEs in 2012.The European definition of SME follows: "The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro.[xix] In the UK a company is defined as being an SME if it meets two out of three criteria: it has a turnover of less than £25m, it has fewer than 250 employees, and it has gross assets of less than £12.5m.[xx] These are businesses in Britain that are not only small or medium but also have a much broader set of values and more elastic definition.[xxi]

In Cameroon, the official definition of SMEs is derived from Law2010/001 of April 13, 2010 on the promotion of Small and Medium-sized Enterprises. The law includes a set of criteria for classifying enterprises in the following categories: "Very Small Enterprises"(VSEs), "Small Enterprises" (SEs), and "Medium-sized Enterprises"(MEs).[xxii] In keeping with these criteria, the SME category encompasses enterprises with a permanent staff of between 21 and 100 employees and whose annual turnover net of taxes is between100 million and one billion CFA francs. According to statistics provided by the National Statistics Institute (INS), today, this category of enterprises accounts for over 90 percent of Cameroon's national economic fabric, with a share in the Gross Domestic Product estimated at34 percent.[xxiii]

In Cameroon, there is a total of 93,969 enterprises (including VSEs, SEs, MEs, and LEs), according to the Ministry of Small and Medium-sized Enterprises, Social Economy, and the handicraft (MINPMEESA). Of the enterprises surveyed:[xxiv]

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- 65,986 (74.9%) are considered to be enterprises of very small size (VSEs)
- 16,937 (19%) are enterprises of small size (SEs)
- 4,499 (5.1%) are enterprises of medium size (MEs)

These categories account for 95 percent of the total number of enterprises established in the national territory.

- 722 (0.8%) are counted as enterprises of large size.

In keeping with these estimates, it maybe concluded that there are a total of 87,422 SMEs and that over 95 percent of Cameroonian enterprises fall within the definition of SMEs. Thus, SMEs make up most of the economic fabric and are, therefore, an essential source for development of the economy. SMEs account for over 70 percent of job creation in Cameroon and the contribution of SMEs in the economy is over CFAF 3,000 billion[xxv].[xxvi]

Despite these over whopping statistics in terms of job creation, in terms of the number of Cameroonian enterprises that fall within SMEs and in terms of its financial contribution to the economy, the impact of FDIs on SMEs remains demeaning and does not marry with Cameroon's desire and wish to attain emergence by 2035.[xxvii]

The query of immense practical importance that runs immediately in the minds of many is that of understanding and knowing why the so many laws adopted and promulgated and the so many promotion agencies created to entice FDIs in SMEs is not yielding any fruit or does so only to a laser extent and also why the FDIs are effective albeit in other sectors of the economy in general and not in SMEs.[xxviii] If this is the case, why is it that the effectiveness of the laws on FDIs is not yielding the same impact on SMEs as it does on other areas of investments? If this is not the case, what should be done in order to reconcile the laws on FDIs so as to guarantee that FDIs yield the same impact on SMEs and other sectors in the economy?[xxix]

It must be noted without any mincing of words that for good incentives, and incentive schemes to be established as well as properly implemented, incentive bases laws and incentive focused institutions must be put in place in order to ensure a purposed realisation of objectives which is certainly to boost the growth of small and medium-sized enterprises albeit through foreign direct investments.[xxx]

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However, it is in response to the foregoing worries that we shall be envisaging critically the incentive-based laws (I) and the incentive-based institutions (II).

1. INCENTIVE-BASED LAWS ON FDIs AND SMEs in CAMEROON

The increased regulation on investments by the state is to be applauded.[xxxi] The problems posed by FDIs are well-known, nonetheless, they represent the vast majority of investments in the developing world today; they give rise to many of the most egregious atrocities plaguing SMEs by home entrepreneur; and yet, historically and till date, they suffer from lack of regulation and/or the available regulations are improperly implemented.[xxxii] Thus, incentives and incentive-based-laws are indispensible to curb and curtail such anathema in the field of FDIs and SMEs in Cameroon.

These are laws enacted towards how incentives are formulated, coined and directed to meet targeted objectives intended by investors in their FDIs. These laws in this case therefore, do not just grant an enabling environment for FDIs in general but redirects and channels FDIs towards SMEs.[xxxiii]The legal framework here shall encompass laws at the national and the international hemisphere on the promotion and protection of FDIs in SMEs sector in Cameroon.

1.1 The International Legal Frame Work for the Promotion of FDIs in SMEs

There are several corpuses of international legal instruments on FDIs as seen in bilateral and multi-lateral agreements[xxxiv]between states in the world over. A few of these legal instruments that are sacrosanct and of pointed importance to FDIs in SMEs shall be visited in a manner to squeeze out the liaison it has with the FDIs in Cameroon.

1.1.1 Economic Partnership Agreement (EPA)

The interim economic partnership agreement provides for duty- and quota-free access to the EU market for exports from Cameroon. Cameroon, on its part, will gradually open its market to European exports over a transitional period set to run until 2023.[xxxv] A number of products will be excluded from the process in order to ensure the protection of Cameroon's agricultural markets and industries, which it regards as sensitive. Furthermore, the agreement includes provisions on the trade defense instruments, dispute settlement and development cooperation. This agreement constitutes a negotiated and sustainable framework for trade relations between

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the EU and Cameroon and provides greater security for Cameroon's exporters than the unilaterally set Generalized System of Preferences. This new relations must be developed as part of a negotiated partnership governed by predictable and stable rules and be accompanied by development cooperation actions. These actions aim in particular to strengthen the country's institutional and production capabilities and support the necessary adjustment processes. The EPAs also strive to contribute to regional integration by promoting regional markets.[xxxvi]

In Central Africa, Cameroon is the EU's leading trade partner. The EU is Cameroon's leading partner for both the country's imports (35%) and exports (46%).[xxxvii] The EU's main exports to Cameroon are industrial goods, vehicles, chemical products and medicines. Cameroon's main exports to the EU are petroleum products, aluminium, wood and agricultural products. Agricultural exports are varied and include raw products (cocoa, coffee, banana, rubber) and processed products (cocoa-based products, processed fruit and vegetable products).

According to the EU Commissioner for Trade, Karel De Gucht: 'The economic partnership agreement with Cameroon is ushering a new era in relations between the EU and Central Africa. The EPA is one of the main cooperation tools to provide assistance to developing countries such as Cameroon in expanding their economies in order to build a partnership suited to Cameroon's development goals'.[xxxviii]

1.1.2 The North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) came into effect on January 1, 1994, creating the largest free trade region in the world at that time, generating economic growth and helping to raise the standard of living for the people of all three-member countries. By strengthening the rules and procedures governing trade and investment, the NAFTA has proven to be a solid foundation for building Canada's prosperity and has set a valuable example of the benefits of trade liberalization for the rest of the world.

In 2015, total trilateral merchandise trade, as measured by the total of each country's imports from its other two NAFTA partners, amounted to over USD $1.0 trillion – more than a threefold increase since 1993. In 2015, NAFTA partners represented 28% of the world's gross domestic product (GDP) with less than 7% of the world's population. Since the implementation of NAFTA, the North American economy has expanded, with the combined GDP for Canada, the

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U.S. and Mexico reaching USD $20.7 trillion in 2015. Canadian merchandise exports to the United States grew at an annualized rate of almost 4.6 percent between 1993 and 2015. Canada's bilateral merchandise trade with Mexico nearly reached CA$37.8 billion in 2015. Some 78 percent of Canada's total merchandise exports were destined to our NAFTA partners in 2015. Total merchandise trade between Canada and the United States more than doubled between 1993 and 2015.[xxxix] Trade between Canada and Mexico has increased over 8-fold over the same period.[xl]

The enhanced economic activity and production in the region have contributed to the creation of jobs for Canadians with one in six jobs in Canada related to exports. With the addition of nearly 5.2 million net new jobs during the period from 1993-2015, Canada's unemployment rate has decreased from 11.4 percent (1993) to 6.9 percent (2015).

The liaison between Cameroon and the NAFTA is found in the quest of some members of the NAFTA like Canada and the US to expand their FDIs in to Central Africa and particularly Cameroon. This in itself will be a booster to the Cameroonian economy given the outstanding statistics in terms of the economic growth and employment increase in the member states of the NAFTA.

1.2 The National Legal Frame Work for the Promotion of FDIs in SMEs

The Cameroonian government in its constant and unceasing quest to improve and boost economic growth and development has passed several laws as well as amended some in order to consolidate and maintain its dreams and its policies to wit, the emergence of the country in 2035-with which the development and the sky-rocketing growth of SMEs is a priority.

1.2.1 The Investment Charter

The investment charter is governed under **law No 2002/004 of 19 April 2004 instituting the investment charter. Article 2** of the charter is to the effect that in its determination to build a competitive and prosperous economy by boosting investment and savings, and attain its economic and social objectives, the Republic of Cameroon has opted for:

- The reassertion of the market economy as the ideal economic system;
- The reassertion of the State's essential role in promoting economic and social development;

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- The recognition of the key role played by entrepreneurs, investors and private enterprise as crucial factors in generating wealth and employment, to which the State and society at large should pay special attention;
- The commitment to safeguard free enterprise and freedom to invest;
- The commitment to maintain a sound macro-economic context;
- The commitment to ensure the flexibility and reversibility of decision-making processes in a bid to consolidate the competitiveness of the economy;
- The clarification of the economic and social role of the state and institutions as collective actors striving for the full employment of national resources through appropriate actions and taking into account the strengths and weaknesses of the market, the private sector and civil society in order to usher in the rule of law and good governance;
- The redefinition and consolidation of the role of the university and the national scientific of the university and the national scientific and technical research system as, a crucial factor in the transformation and mastery of the economic and social structures;
- The promotion of entrepreneurship as the prime mover of Cameroon's creative potential, which is a pre-condition for setting up viable and competitive enterprises, and a decisive factor in providing lasting solution to unemployment and poverty;
- The safeguard of the ecological environment and the rational exploitation of natural resources of the soil and sub-soil, for sound and sustainable development;
- The promotion and active boosting of investments and exports so as to develop entrepreneurial potential;
- The consideration of particular or special sectors requiring specific measures, taking into account the constraints relating to the development and trapping of local natural resources;
- The quest for 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 ;
- An appropriate financial system that ensures efficient financial intermediation and in particular, proper mobilization of savings and the channeling thereof to the most productive activities and to high-yield investments;

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- A reliable and efficient information system based on new information and communication technologies ;
- The commitment to implement all necessary measures proposed by coordinating and supervisory bodies set up under this law to institute the Investment Charter of the Republic of Cameroon ;
- The commitment to promote real partnership between the State and the private sector and civil society as a condition for greater overall economic efficiency;
- The institution of an attractive tax system with incentives for investors, that includes specific taxes on production equipment, and addresses the need for export competitiveness requirements.

Further more, **article 9 (1-2)** brings out the general role of the private sector which shall be to generate and produce wealth. The private sector shall be bound to:

- Observe the rules of competition by avoiding fraud and discouraging corrupt behaviour within the sector;
- Conduct business with due concern for the interests and health of consumers and users;
- Organize its various subsectors with a view to promoting, amongst its members, good morality in business and the judicious application of the rules of ethics inherent in every trade ;
- Maintain loyal co-operation with the State and its bodies in order to guarantee the success of the national economic policy

1.2.2 The Law on Incentives for Private Investment

The passing of **law No 2013/004 of 18 April 2013 fixing the Incentives for Private Investments in the Republic of Cameroon** was so timely since the lapse for the realization of the millennium development goals was coming to an end without Cameroon attaining the said goals.[xli] These incentives apply to both national and international physical and juristic persons as well as to non-resident companies whose activities are principally held in Cameroon, so as to boost investment and to increase national production.[xlii] The present law has as objectives to promote, favour and attract productive investment in view to developing activities oriented towards the promotion of a strong and durable economic growth and employment.[xliii]

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The provisions of this law apply to investment operations of creation, extension or renewal or transformation of activities. This law does not apply in sectors of the economy governed by other laws for example the mining and the petroleum sectors as well as the rules governing the general partnership contracts.[xliv]

The incentives as stated in the law are divided in to two main types: the common and the specific incentives. The common incentives comprises of custom and tax incentives,[xlv] financial and administrative incentives.[xlvi]

2. THE INSTITUTIONAL FRAME WORK FOR THE PROMOTION OF FDIs AND SMEs

The problems posed by FDIs are well-known, nonetheless, they represent the vast majority of investments in the developing world today; they give rise to many of the most egregious atrocities plaguing SMEs by home entrepreneur; and yet, historically and till date, they suffer from lack of regulation and/or the available regulations are improperly implemented.[xlvii] To remedy the plagues, there has been increased regulation on investments by the state of Cameroon and it is to be applauded.[xlviii] But increased regulations without competent institutions and organs to implement and/or ensure implementation are pedantic to its very development. It is therefore in this regard that we shall be looking the various promotion agencies and their tactics used in implementing and ensuring implementation.

The institutional framework here shall encompass institutions at the national and the international hemisphere on the promotion and protection of FDIs in SMEs sector in Cameroon.

2.1 The National Institutions For Promotion Of FDIs

The Cameroonian government in its persistent and unceasing quest to improve and boost economic growth and development has created several institutions in order to consolidate and maintain its dreams and its policies to wit, the emergence of the country in 2035.

2.1.1 ARPM (Procurement Regulation Agency for Public Tenders/contracts)[xlix]

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The recently created Ministry of Public Contracts and the public procurement regulation agency (ARMP) oversee the public tender process. The Presidency is involved in the decision for major projects. The individual ministries' public contracts award committees, government institutions and municipal councils have the power to award contracts for smaller amounts, approximately less than $10,000. The public tender process is rife with fraud at every step of the process, but Cameroon has started to take small steps to streamline the process. Much more reform is needed to make the system more transparent and accountable so as to eliminate corruption.[l]

The Agency shall be responsible for ensuring the regulation of the public contracts system and agreements for concession of public services.

In that capacity the Agency shall be responsible for[li]:

- The regulation of public contracts activities through either decisions sanctioning procedures or through didactic actions;
- Carrying out periodic evaluation of the performance of actors of the system;
- Issuing technical opinions, as need be, at the request of the Minister in charge of Public Contracts or structures concerned;
- Proposing reforms within the framework of public contracts and concession of public services;
- Participating in the drafting of instruments in issues of regulation of public contracts and concession of public services;
- Formulating a reference system of insuring quality for public contracts execution organs;
- Ensuring the monitoring of application of decisions relating to the settlement of public contracts disputes;
- Recruiting Independent Observers by call to tender, ensuring the proper execution of their observation mission and exploiting their reports;
- Contributing to the training of actors of the public contracts system at the request of the structures concerned;
- Making known the rules and procedures relating to public contracts through handbooks and manuals;

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- Drafting and disseminating model documents and manuals of procedures;
- Providing, as need be, technical support to actors of the public contracts award system;
- Editing and publishing a public contracts analysis magazine at the end of each semester;

2.1.2 CIPA (Cameroon Investment Promotion Agency)

The Cameroon Investment Promotion Agency (CIPA) is a parastatal institution with legal personality and financial autonomy with headquarters in Douala. CIPA fall under the technical supervisory authority of the Ministry in charge of the Promotion of Private Investments and the financial supervisory authority of the Ministry of Finance.

CIPA'S mission, in collaboration with other authorities, as well as other public and private bodies, is to contribute to the development and implementation of government policy in the field of investments promotion in Cameroon. As such, its responsibilities include:

- Promoting the image of Cameroon abroad;
- Participating in the improvement of an enabling environment for investments in Cameroon;
- Proposing measures to attract investors in Cameroon as well as improving the implementation of sectoral codes;
- Establishing a database of projects for potential investors;

CIPA equally offers the following services to investors:

- Reception, assistance and guidance of foreign and domestic investors at all stages involved in setting up their investment projects;
- Receiving and examining application files for approval under one of the schedules of the Investment Charter and the structuring projects schedule established by the General Tax Code;
- Obtaining the necessary visas for expatriate staff related to the• execution of their investment programs and for the stay of their foreign personnel in Cameroon;
- Assisting approved companies at all the necessary stages related to carrying out of their investment programs;
- Establishing, in collaboration with the relevant technical services, simplified administrative procedures for activities approved under the investment code;

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- Ensuring the follow-up, monitoring and implementation of commitments made by approved companies.

2.1.3 Bank for Small and Medium-Sized Enterprises (BC-PME)

The Cameroonian Bank for Small and Medium-size Enterprises SME-Bank known in French as the Banque Camerounaise de Petites et Moyennes Entreprises-PME, went operational on July 20th, 2015. It is understood that the bank took-off with an initial capital of FCFA 10 billion provided by its sole proprietor, the state of Cameroon. With this money the Bank was able to hire and pay for both the head office and the Douala office, equip these offices, recruit and pay workers and also keep the bank running. But sources say after doing all of these the bank's coffers are almost in red, as no extra funding has come again from government. This explains why the bank cannot give out loans to any of the over 250 businesses that have indicated their readiness to do transactions with it, it was reported. Though close to FCFA 3 billions are presently lying fallow at the bank, this amount cannot finance even a quarter of the many loan requests that have been tendered at its cash counters. The situation is because almost all the loan requests are to the tune of hundreds of millions or over a billion FCFA. That is why in recognition of these objective shortcomings the government is already contemplating alternative ways of financing for the bank. Following a series of meetings held at the Prime minister's Office, it emerged that at least FCFA 50 billion would be pumped in to salvage the bank from an imminent still-birth.[lii]

2.2 The International Institutions For The Promotion Of FDIs in SMEs

There are several international institutions, which have played a very significant role on FDIs as seen in bilateral and multi-lateral agreements[liii]between states in the world over[liv]. We shall pinpoint a few of these institutions that have a direct and clear nexus in a manner to squeeze out the liaison they have with the FDIs and SMEs in Cameroon.

2.2.1 IFC (International Financial Corporation)-a World Bank group

IFC is a member of the World Bank Group and is the largest global development institution focused exclusively on the private sector in developing countries which utilize and leverage its products and services—as well as products and services of other institutions in the World Bank Group—to provide development solutions customized to meet clients' needs. The IFC applies

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its financial resources, technical expertise, global experience, and innovative thinking to help our partners overcome financial, operational, and political challenges.

Clients view IFC as a provider and mobilizer of scarce capital, knowledge, and long-term partnerships that can help address critical constraints in areas such as finance, infrastructure, employee skills, and the regulatory environment.

IFC is also a leading mobilizer of third-party resources for its projects. The willingness to engage in difficult environments and the leadership in crowding-in private finance enable IFC to extend its footprint and have a development impact well beyond its direct resources.[lv]

2.2.2 OECD (Organization of Economic Cooperation and Development)

Founded in 1960, the intergovernmental organization aims at stimulating economic progress and world trade. It is a forum of countries describing themselves as committed to democracy and the market economy, providing a platform to compare policy experiences, seeking answers to common problems, identify good practices and coordinate domestic and international policies of its members.[lvi]

2.2.3 CCJA (Common Court of Justice and Arbitration)

The CCJA is the court of the OHADA, one of the most successful regional legal harmonization efforts on the Continent. Unlike the other continental regional integration groups, OHADA does not seek to conform national law to an overarching treaty and successive regulations and directives, which allow national legislature some leeway. Instead, OHADA uses the integration method of issuing binding uniform acts that automatically supersede all prior and future inconsistent national laws. With the goal of creating a secure, simple and modern legal framework for the conduct of business in Africa, OHADA has issued eight uniform acts on general commercial law, commercial companies and economic interest groups, securities, arbitration, simplified recovery procedures and measures of execution, collective insolvency and accounting.

The Common Court of Justice and Arbitration ensures the consistent interpretation of the Uniform Acts, the OHADA treaty and any regulations applying the latter. To control the interpretation of the OHADA laws, the CCJA has two roles: that of a supranational appellate-

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level court and that of a court of arbitration. The Court is composed of seven judges elected by the Council of Ministers from among a list made of up to two candidates nominated by each Member State. The candidates are limited to persons of at least fifteen years judicial, academic or legal practice experience.

Instead of leaving enforcement to the political arm of the Organization and limiting individual access to the Court, the OHADA system relies heavily on persons (legal or natural) to challenge national court interpretation or application of Uniform Acts.[lvii]

2.2.4 MIGA (Multilateral investment guarantee Agency)

The **Multilateral Investment Guarantee Agency** (**MIGA**) is an International Financial Institution which offers political risk insurance and credit enhancement guarantees. Such guarantees help investors protect FDI against political non-commercial risk in developing countries. MIGA is a member of the World Bank Group and is headquartered in Washington DC United States. It was established in 1988 as an investment insurance facility to encourage confident investment in developing countries. MIGA's stated mission is "to promote foreign direct investment into developing countries to support economic growth, reduce poverty, and improve people's lives". It targets projects that endeavor to create new jobs, develop infrastructure, generate new tax revenues, and take advantage of natural resources through sustainable policies and programs.[lviii]

MIGA is owned and governed by its member states, but has its own executive leadership and staff which carry out its daily operations. Its shareholders are member governments that provide capital and have the right to vote on its matters. It insures long-term debt and equity investments as well as other assets and contracts with long-term periods. The World Bank's Independent Evaluation Group assesses the agency.[lix]

CONCLUSION

FDI is no doubt the highest form of investment in Cameroon especially in the sector of SMEs. The growing and expanding population couple with the advent of numeric modernization has given rise to an increase in demand for goods and services-goods and services of which Cameroon cannot provide. FDI is therefore seen as an interesting panacea of exchanging the know-how between states, regions and even the world at large. The increasing need of FDI in

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the country can be explained by economic crisis and poverty constraints. This clearly depicts the reason why FDIs are as of the moment the most important form of investment albeit in the sector of SMEs in Cameroon. Thus, the so many laws, promotion agencies and institutions for the improvements of FDIs in the SMEs would have been so great if these laws and the resolutions of the promotion agencies and institutions were properly implemented.

LIST OF STATUTES AND REGULATIONS

1. law No 2002/004 of 19 April 2004 instituting the investment charter
2. law No 2013/004 of 18 April 2013 fixing the Incentives for Private Investments in the Republic of Cameroon
3. Economic Partnership Agreement OF 17TH December 2007
4. The North American Free Trade Agreement
5. decree No 2013/006 of February 28, 2013 to organize the ministry of finance;
6. decree No 2013/296 of September 9, 2013 amending and supplementing certain provisions of decree No 2005/310 of September 1, 2005 laying down the organization and functioning of the Investment Promotion Agency;
7. decree No 2013/297 of September 9, 2013 amending and supplementing certain provisions of decree No 2005/092 of April 3, 2013 laying down the organization and functioning of the Agency for the Promotion of Small and Medium-Sized Enterprises;
8. Decree No 2013/298 of September 9, 2013 on the organization and functioning of the committee for the monitoring of the effectiveness of investment.

LIST OF BOOKS AND ARTICLES

1. **Theodore H. Moran**, ***Foreign Direct Investment and Development***, institute of international economics, 1998**.**
2. **Chaudhuri, Sarbajit, Mukhopadhyay, Ujjain**, ***Foreign Direct Investment in Developing Countries; A Theoretical Evaluation*,** Springerlink Publishing, 2014
3. **Dale R. Weigel**, ***Foreign Direct Investment***, World Bank Publications, 1 January. 1997
4. **Joseph T. Tahsoh, "*Financing Of Small And Medium-Size Enterprises In Cameroon*"** *African Journal of Finance and Management* Vol.9(2) 2001:

ISSN 2581 3382

5. **Daniel G.**, "Corruption and Small and Medium-Sized Enterprises in Cameroon" (2012). A Dissertation in Partial Fulfilment of a Master's Degree in Business Administration, University of Yaoundé II.
6. **Kenneth A. Froot**, foreign Direct Investment, National Bureau of Economic Research Project Report, 1994
7. **Nkam Cho Elvis**, *The Challenges Of Applying The Laws Governing Investments In Cameroon: An Appraisal Of The Hurdles Of Foreign Direct Investments On Small And Medium-Sized Enterprises*, Volume 8 Issue 3, JOURNAL OF LEGAL STUDIES & RESEARCH, 34-65, doi.org/10.55662/JLSR.2022.8303 Available at https://jlsr.thelawbrigade.com/article/the-challenges-of-applying-the-laws-governing-investments-in-cameroon-an-appraisal-of-the-hurdles-of-foreign-direct-investments-on-small-and-medium-sized-enterprises/

OTHER SOURCES

1. http://www.investopedia.com/terms/i/investment.asp, last accessed on 05/06/2021 at 11 am.
2. http://www.investopedia.com/terms/s/subsidiary.asp, last accessed on 05/06/2021 at 11:30 am
3. http://www.investopedia.com/terms/a/associate-company.asp; last accessed on 05/06/2017 at 1pm.
4. http://www.investopedia.com/terms/m/merger.asp; last accessed on 05/06/2021 at 11:30 am

REFERENCES

[i] Economic crisis hit Cameroon in the late 1980s and the government of the country started seeking for measures of eradicating the situation; this pushed the government to open doors for Foreign Direct Investments to a sector which was mostly handled by nationals i.e. small and medium sized enterprises.

[ii] The Structural Adjustment Programme was imposed on Cameroon by the IMF and the World Bank as a measure of fighting Economic crisis that fraught the country in 1987 and in 1996 the Heavily Indebted poor countries Initiative (HIPCI).

[iii] Conditionalities as imposed by the International Monetary Fund-IMF and the World Bank are not conditions per se but are policies raised by the Bretton woods institutions to eradicate poverty and economic crises in plagued areas around the world even though we consider as technical or veiled conditions; these conditionalities are

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expressed in policies such as the Structural Adjustment Programme-SAP and the Heavily Indebted Poor Countries Initiative-HIPCI.

[iv] Some of these conditionalities include devaluation of Cameroonian currency, dropping off civil servants and privatizing state-owned Corporations and enterprises so as to liberalize the economy and thereby giving way to private sector investments to wit FDIs and SMEs, cutting down all state expenditures in social amenities and in many other aspects and as such encouraging private sector to embark.

[v] The IPA was created under law No 2013/004 of 18 April 2013 laying the incentives for private investments in the Republic of Cameroon.

[vi] See article 1(1) of law No 2013/004 of 18 April 2013 laying the incentives for private investments in the Republic of Cameroon.

[vii] See Nkam C. Elvis, (2022) "the challenges of applying the laws governing investments in Cameroon: an appraisal of the hurdles of foreign direct investments on small and medium-sized enterprises" journal of legal studies and research volume 8, issue 3, p.35 Available at www.lawbrigade.com

[viii] ibid, p.36

[ix] http://www.investopedia.com/terms/i/investment.asp, last accessed on 05/02/2022at 11 am.

[x] http://www.investopedia.com/terms/s/subsidiary.asp, last accessed on 05/02/2022 at 11:30 am

[xi] http://www.investopedia.com/terms/a/associate-company.asp; last accessed on 05/06/2022 at 1pm.

[xii] http://www.investopedia.com/terms/m/merger.asp; last accessed on 05/02/2022 at 11:30 am

[xiii] A horizontal direct investment refers to the investor establishing the same type of business operation in a foreign country as it operates in its home country, for example, a cell phone provider based in the China opening up stores in Cameroon. A vertical investment is one in which different but related business activities from the investor's main business are established or acquired in a foreign country, such as when a manufacturing company acquires an interest in a foreign company that supplies parts or raw materials required for the manufacturing company to make its products. A conglomerate type of foreign direct investment is one where a company or individual makes a foreign investment in a business that is unrelated to its existing business in its home country.

[xiv] http://www.investopedia.com/terms/j/jointventure.asp; last accessed on 05/06/2021 at 7 pm

[xv] FDIs in Cameroon takes all the forms but it is very much unclear which type actually applies in cases of SMEs

[xvi] See Nkam C. Elvis, (2022) "the challenges of applying the laws governing investments in Cameroon: an appraisal of the hurdles of foreign direct investments on small and medium-sized enterprises" journal of legal studies and research volume 8 issue 3, p.37 Available at www.lawbrigade.com

[xvii] https://en.wikipedia.org/wiki/Foreign_direct_investment#cite_note-10; last accessed on 05/06/2021 at 8 pm

[xviii] https://en.wikipedia.org/wiki/Foreign_direct_investment#cite_note-11; last accessed on 05/06/2021 at 8 pm

[xix] https://en.wikipedia.org/wiki/European_Commission; last accessed on 06/06/2021 at 1 am

[xx] op.cit. note 16

[xxi] See Theodore H. Moran, ***Foreign Direct Investment and Development*, institute of international economics**, 1998 at p12.

[xxii] VSE: Enterprise that employs five persons at most and whose annual turnover net of taxes is below 15 million CFA francs. SE: Enterprise with a permanent staff complement of between six and 20 persons and with an annual turnover net of taxes of between15 and 100 million CFA francs. ME: Enterprise that employs at least 21 and no more than 100 persons and whose annual turnover net of taxes is between 100 million and 1 billion CFA francs

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[xxiii] The Challenges of Financing SMEs; Finance for All: Promoting Financial Inclusion in Central Africa March 23, 2015, p 2-3.

[xxiv] The Challenges of Financing SMEs; Finance for All: Promoting Financial Inclusion in Central Africa March 23, 2015, p 3-5.

[xxv] This whopping 3000 billion CFA accounts for mother half the Cameroonian annual state budget for over 3 decades now.

[xxvi] The Challenges of Financing SMEs; Finance for All: Promoting Financial Inclusion in Central Africa March 23, 2015, p 6

[xxvii] Nkam Cho Elvis, *The Challenges Of Applying The Laws Governing Investments In Cameroon: An Appraisal Of The Hurdles Of Foreign Direct Investments On Small And Medium-Sized Enterprises*, Volume 8 Issue 3, JOURNAL OF LEGAL STUDIES & RESEARCH, 34-65, doi.org/10.55662/JLSR.2022.8303 Available at https://jlsr.thelawbrigade.com/article/the-challenges-of-applying-the-laws-governing-investments-in-cameroon-an-appraisal-of-the-hurdles-of-foreign-direct-investments-on-small-and-medium-sized-enterprises/

[xxviii] ibid.

[xxix] ibid. p.40

[xxx] That is to say old laws and institutions as well as new ones must adapted and oriented towards the incentive based approach in order to guarantee the growth and development of the SMEs.

[xxxi]The Cameroonian government has targeted certain sectors as priority sectors for investment: transport, food industry, tourism and rural development. In order to attract more investors, significant programs are being implemented by the public authorities, with the support of financial backers, in order to improve judicial decisions, increase energy supplies, reinforce economic information, simplify procedures, support companies, and ensure the protection of the economic area against illegal threats. Cameroon also has free trade zones in which all export companies can set themselves up, that is to say, companies that produce goods and provide services meant exclusively for export. There are a many advantages for companies: exemption from all licenses, authorization or quota limitation for export and import, possibility of being able to open a foreign currency account, no restrictions on sales operations, purchase of foreign currency, right to transfer profits abroad

[xxxii]Non-implementation and improper implementation of laws in general and of investment laws in particular is the order of the day in Cameroon. This is as a result of the several challenges cited hereafter in the subsequent chapters.

[xxxiii] This is something worth applauding in slippery ground-countries like Cameroon and other African countries.

[xxxiv]See the "C2D" bilateral agreement between Cameroon and France, "the NAFTA" trilateral agreement between the USA, Canada and Mexico and even the European union agreement between the member states of the EU.

[xxxv]The interim EU-Central Africa EPA was concluded on 17 December 2007. It was signed by the EU and Cameroon on 15 January 2009. Cameroon ratified the EPA and notified its decision to the EU on 25 July. The agreement will enter into application on 4th August 2014. This application will be confirmed when all the EU Member States have completed their ratification process. Parliament approved the agreement back in June 2013. The agreement is open to the other countries in the region (Gabon, Equatorial Guinea, Central African Republic, Republic of Congo, Democratic Republic of Congo, São Tome é Principe and Chad) that wish to accede to it.

[xxxvi]The agreement is open to the other countries in the region (Gabon, Equatorial Guinea, Central African Republic, Republic of Congo, Democratic Republic of Congo, São Tome é Principe and Chad) that wish to accede to it.

[xxxvii]http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L:2009:057:TOC, last accessed on 10/08/2021 at 10am.

[xxxviii]Ibid, This 'interim' agreement will provide a sustainable guarantee of free access to the European market for any product originating in Cameroon and will foster an increase in trade and the diversification of Cameroon's economic activities.

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[xxxix]Canada-U.S. trade in goods and services in 2015 reached close to CA$881 billion. Canada is the second-largest market for U.S. services exports with Canada-U.S. services trade nearly reaching over CA$122.8 billion in 2015, a 205.1 percent increase since 1993. The United States was the number one destination for Canadian merchandise exports in 2015, and was Canada's largest supplier of merchandise imports. Canada is the main foreign supplier of energy to United States (Mexico is 4th), and was the largest cumulative source of foreign direct investment (FDI) into the United States.

[xl]Between 1993 and 2015, Mexico-Canada merchandise trade grew 8-fold to almost CA$37.8 billion in 2015, showing an average annual growth rate of 10.1 percent. Services trade between Canada and Mexico has increased six-fold during the NAFTA period, to nearly $3.9 billion in 2015. In 2015, Mexico was Canada's 3rd largest trade partner and was Canada's 3rd largest supplier and 5th largest export market for merchandise trade.

[xli]Unfortunately the country did not still attain the objectives of the millennium development goals despite these laws on incentives. We are using the word "laws" because there so many other decrees and ministerial orders passed to this effect.

[xlii]Article 1 (1) of law No 2013/004 of 18 April 2013 fixing the Incentives for Private Investments in the Republic of Cameroon.

[xliii] Article 1 (2) of law No 2013/004 of 18 April 2013 fixing the Incentives for Private Investments in the Republic of Cameroon.

[xliv]Article 1(3) ibid.

[xlv]These incentives are accorded to the investor at the installation and exploitation phases as per article 5 of the2013 law fixing the Incentives for Private Investments in the Republic of Cameroon.

[xlvi]These incentives are applied when the investor is submitted to the regime of change of Cameroon as per article 12 (1) of the 2013 law on incentives.

[xlvii]Unimplementation and improper implementation of laws in general and of investment laws in particular is the order of the day in Cameroon. This is as a result the several challenges cited hereafter in the subsequent chapters.

[xlviii]The Cameroonian government has targeted certain sectors as priority sectors for investment: transport, food industry, tourism and rural development. In order to attract more investors, significant programs are being implemented by the public authorities, with the support of financial backers, in order to improve judicial decisions, increase energy supplies, reinforce economic information, simplify procedures, support companies, and ensure the protection of the economic area against illegal threats. Cameroon also has free trade zones in which all export companies can set themselves up, that is to say, companies that produce goods and provide services meant exclusively for export. There are a many advantages for companies: exemption from all licenses, authorization or quota limitation for export and import, possibility of being able to open a foreign currency account, no restrictions on sales operations, purchase of foreign currency, right to transfer profits abroad

[xlix]Popularly referred to as public contracts regulatory board.

[l]Some these laws are the following: decree No 2013/006 of February 28, 2013 to organize the ministry of finance; decree No 2013/296 of September 9, 2013 amending and supplementing certain provisions of decree No 2005/310 of September 1, 2005 laying down the organization and functioning of the Investment Promotion Agency; decree No 2013/297 of September 9, 2013 amending and supplementing certain provisions of decree No 2005/092 of April 3, 2013 laying down the organization and functioning of the Agency for the Promotion of Small and Medium-Sized Enterprises.

[li]**Article 1 of Decree No 2013/298 of September 9, 2013** on the organization and functioning of the committee for the monitoring of the effectiveness of investment.

[lii]Worthy to mention that since its creation by presidential decree several years ago and following its effective take-off in July 2015, observers have continued questioning whether the SME bank has come to stay this time around given that similar projects in the past crashed. It should be noted that most state-owned banks have almost always been considered as public milking cows that are open for who ever has a good container and can position themselves well as to collect enough milk and vamoose.The collapse of Credit Agricole, FONADER, FOGAPE, NPMB and many others are still fresh in the minds of Cameroonians.

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[liii]See the "C2D" bilateral agreement between Cameroon and France, "the NAFTA" trilateral agreement between the USA, Canada and Mexico and even the European union agreement between the member states of the EU.

[liv]For example the United Nations and its agencies like the UNDP(United Nations Development Programmme), UNCTAD (United Nations Conference on Trade and Development) etc.

[lv]http://www.worldbank.org/ last accessed on 24 September 2017 at 10 am.

[lvi]https://en.wikipedia.org/wiki/OECD#cite_note-1, last accessed on 24 September 2017 at 10 am.

[lvii]http://www.ohada.com/ last accessed on 21 September 2021 at 11 am.

[lviii]https://en.wikipedia.org/wiki/Multilateral_Investment_Guarantee_Agency#cite_note-MIGA_History_2012-2

[lix]http://ieg.worldbank.org/ last accessed on 21 September 2021 at 11 am.

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