



**NIGERIAN
INVESTMENT
PROMOTION
COMMISSION**

THE EVOLUTION OF BILATERAL INVESTMENT TREATIES IN NIGERIA

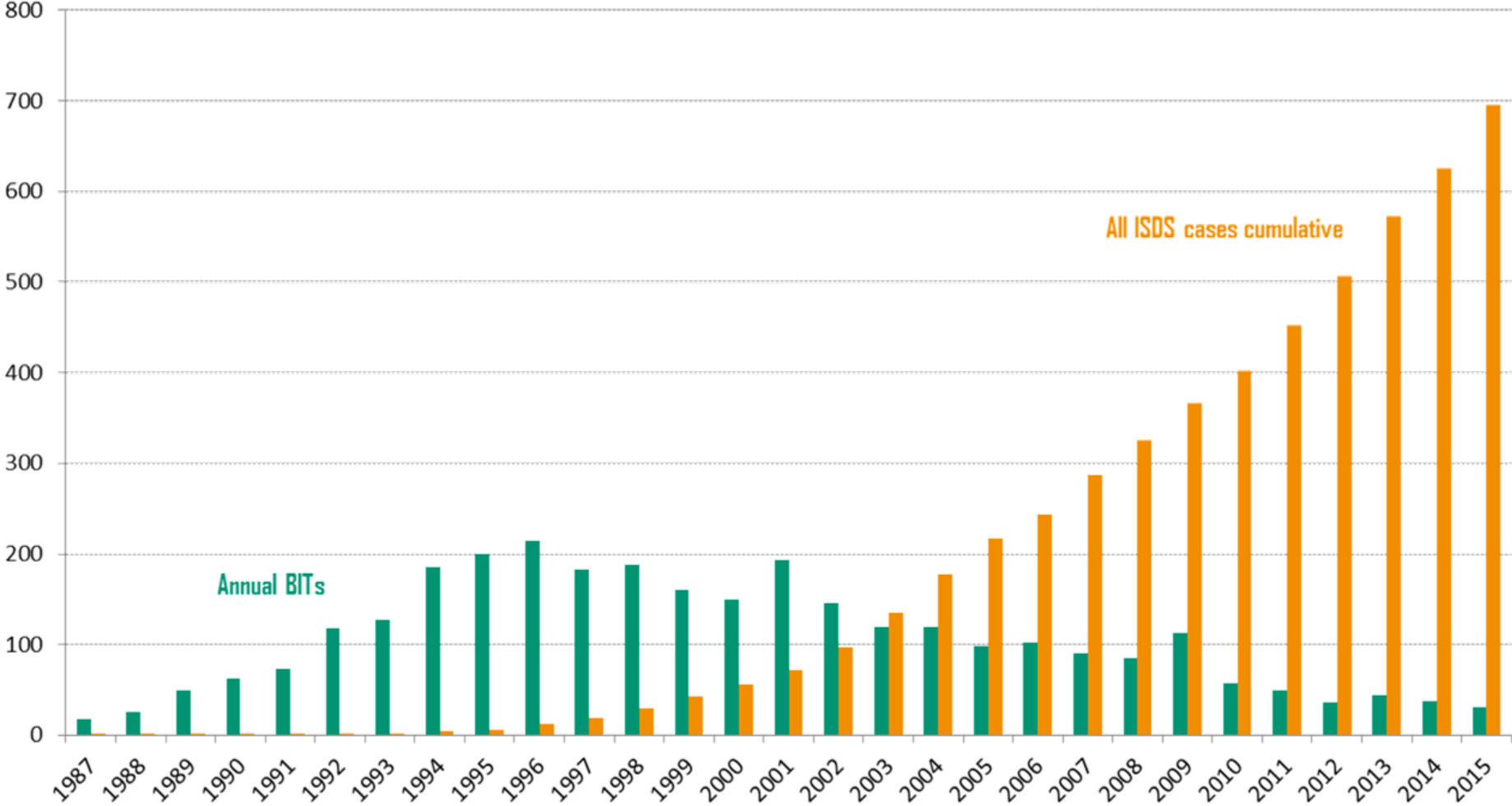
Webinar on Arbitration of International Trade and Investment Disputes: Rethink vs. Reform?

Ms Yewande Sadiku
Executive Secretary/CEO

Virtual | 24 February 2021

- In principle, no BIT is unbalanced, since the advantages conferred allow investors from each country to invest in the other
- However, investments largely flow from capital exporters to capital importers
- When provisions in BITs bite, they generally bite capital importers

Global trend: decline in BITs, rise in ISDS

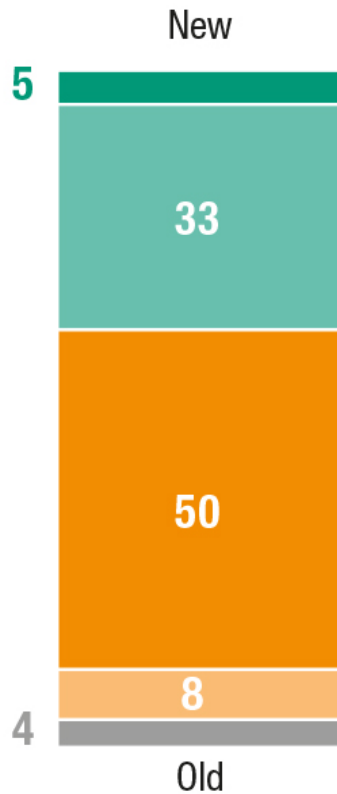


Source: UNCTAD, IIA and ISDS

Almost all ISDS cases are based on old treaties



Age of IIAs: share of IIAs in force, by year of signature (%)



IIAs invoked in known treaty-based ISDS cases, by year of signature (%)



90% of cases based on pre-2000 treaties

- 2010–2016
- 2000–2009
- 1990–1999
- 1980–1989
- Before 1979

Recent arbitral awards against developing countries



Case	Date of Award	Amount awarded (\$'m)
1 Union Fenosa Gas v. Egypt	31-Aug-18	10
2 Process & Industrial Development Ltd v. Nigeria	05-Jun-18	6,590
3 Koch Minerals v. Venezuela	30-Oct-17	325
4 Valores Mundiales v. Venezuela	25-Jul-17	430.4
5 Teinver v. Argentina	21-Jul-17	324
6 Gold Reserve v. Venezuela	07-Feb-17	713
7 Rusoro Mining v. Venezuela	22-Aug-16	967
8 Crystallex v. Venezuela	20-Jul-16	1,200
9 Stans Energy v. Kyrgyzstan	11-Jul-16	117
10 Occidental v. Ecuador	02-Nov-15	1,760
11 Von Pezold & Ors v. Zimbabwe	23-Jul-15	64.9
12 Al-Kharafi v. Libya	28-Oct-14	935
13 France Telecom v. Lebanon	22-Feb-05	266

Recent BIT reforms in Nigeria

5 pillars of Nigeria's IIA reform objectives



Promote sustainable development objectives



Balance investors' rights and obligations



Preserve policy space and right to regulate

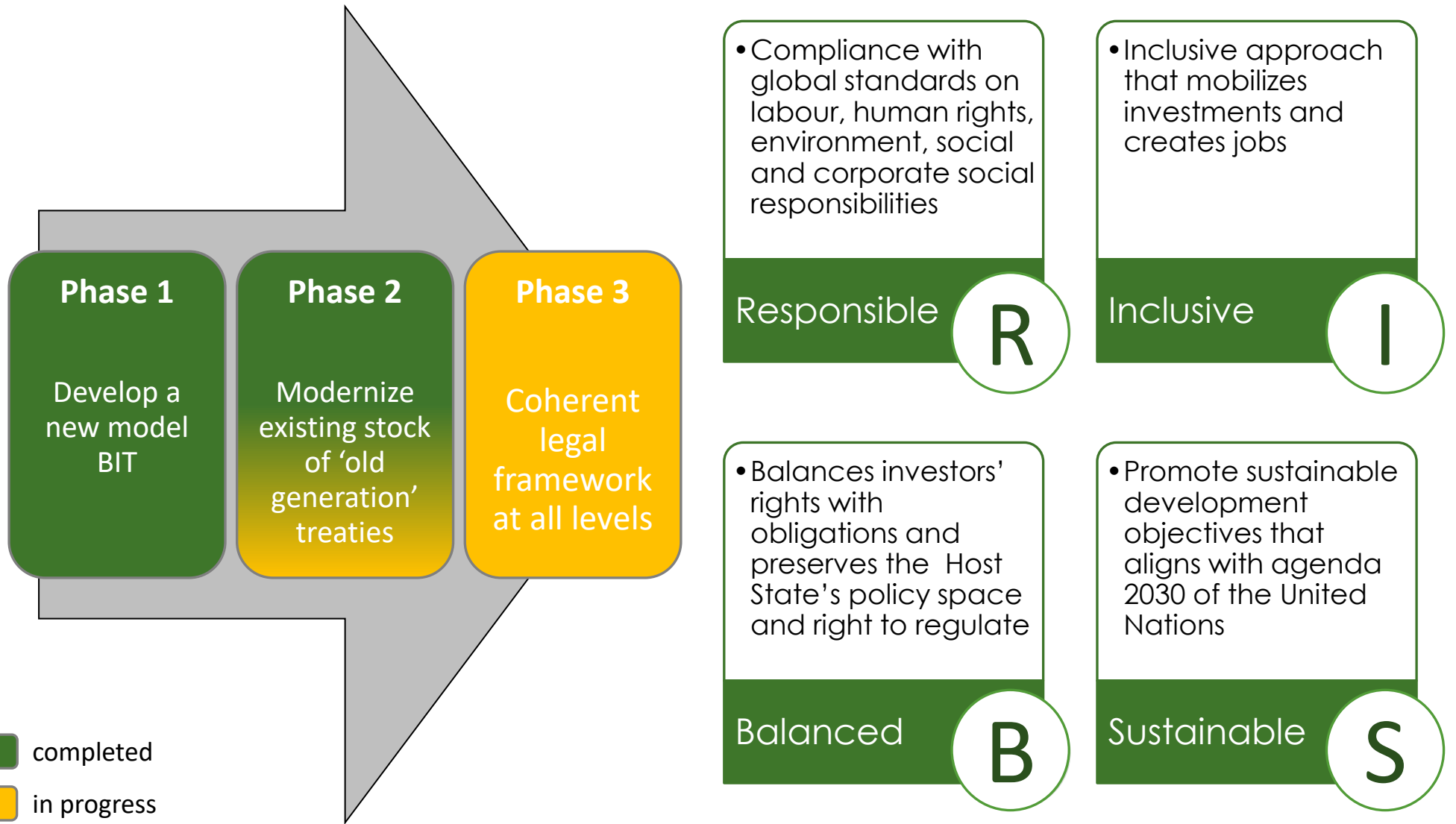


Develop safeguards to limit exposure to ISDS



Improve investment facilitation mechanism

Reform of Nigeria's BITs to attract "RIBS" investments



■ completed
■ in progress

Nigeria's IIA Team



Federal Ministry of Industry, Trade and Investment	Chair
NIPC	Technical Lead/Lead Negotiator
Federal Ministry of Justice	Member
Ministry of Foreign Affairs	Member
Federal Ministry of Finance	Member
Ministry of Budget and National Planning	Member
Central Bank of Nigeria	Member
Federal Inland Revenue Service	Member
Practicing Arbitrator	Member

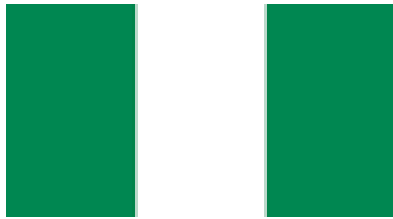
Phase 1 - New model BIT approved in February 2016



Highlights of Nigeria's new model BIT

- Referenced sustainable development objectives
- Refined asset-based definition of investment
- Balance the asymmetry between rights and obligations of investors
- Preserve Policy Space and Right to Regulate
- Circumscribed Fair and Equitable Treatment
- Circumscribed National Treatment and Most Favoured Nation provisions
- Deletion of Prohibition of Performance Requirements
- Deletion of pre-Establishment
- Improve Investment Facilitation provision
- Promotion of CSR, anti-corruption and other global standards
- Insertion of Temporary Safeguard measures for transfer of funds
- Introduce mediation and dispute resolution mechanisms
- Insertion of safeguards to ISDS provisions

1. December 2016: Federal Government of Nigeria and the Kingdom of Morocco



- The Nigeria-Morocco BIT featured prominently in UNCTAD's 2017 World Investment Report
- Often cited internationally as an example of a balanced “new generation” investment treaty that developing countries and emerging economies should emulate



2. October 2016: Federal Government of Nigeria and the Republic of Singapore

- The Nigeria-Singapore BIT also featured as one with reform-oriented provisions to be emulated by developing countries

Phase 2 - Reform old treaties



Review old treaties

Align with
new policy
direction

Amend, re-
negotiate or
terminate
accordingly

Phase 2 - Validated assessment of Nigeria's BITs



SN		Signed	Date in force	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20			
1	A	1990	1990				Y		Y		Y	Y									Y	Y		✗	6	
2	B	1990	1991				Y	Y	Y		Y	Y		Y								Y	Y		✗	8
3	C	1992	1994				Y		Y			Y										Y	Y		✗	5
4	D	1998	1999				Y		Y		Y	Y								Y		Y	Y		✗	7
5	E	2000	2003				Y		Y			Y										Y	Y		✗	5
6	F	1998	2005				Y		Y	Y	Y		Y									Y	Y		✗	7
7	G	2000	2005				Y		Y		Y	Y										Y	Y		✗	6
8	H	2000	2005				Y		Y			Y					Y			Y		Y	Y		✗	7
9	I	2002	2006				Y	Y	Y		Y	Y			Y							Y	Y		✗	8
10	J	2005	2007						Y		Y	Y		Y								Y	Y		✗	6
11	K	2000	2007				Y		Y		Y	Y			Y							Y	Y		✗	7
12	L	2001	2010				Y	Y	Y													Y	Y		✗	5
13	M	2000					Y		Y			Y										Y	Y		✗	5
14	N	2002					Y		Y		Y	Y										Y	Y		✗	6
15	O	2009					Y		Y			Y										Y	Y		✗	5
16	P	2011			Y		Y	Y	Y			Y	Y		Y							Y	Y		✗	9
17	Q	2013		Y			Y		Y		Y	Y		Y		Y				Y		Y	Y		!	10
18	R	2014		Y	Y	Y	Y		Y	Y	Y	Y		Y	Y	Y	Y					Y	Y		✓	14
19	s	2016					Y		Y			Y		Y								Y	Y		✗	6
20	T	2016		Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y			Y	Y		✓	15
21	U	2016		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	✓	20

Result of mapping existing stock of old generation treaties, using 20 critical and reform-oriented parameters

✓	3	14%
!	1	5%
✗	17	81%
	<u>21</u>	

Phase 2 - Mapping old generation BITs for next steps



Table 1: BITs in force

Partner	Date in force	CROP Score	Initial duration (years)	Expiration date	Date of notice to terminate	Current status	Survival clause (years)	Next date of unilateral termination	Notice required (months)	Recommendation
1 A	dd/mm/yy	5/20	10	dd/mm/yy	dd/mm/yy	WTT	10	Before dd/mm/yy	12	Terminate for renegotiation
2 B	dd/mm/yy	6/20	15	dd/mm/yy	dd/mm/yy	WET	15	Anytime	12	Terminate for renegotiation

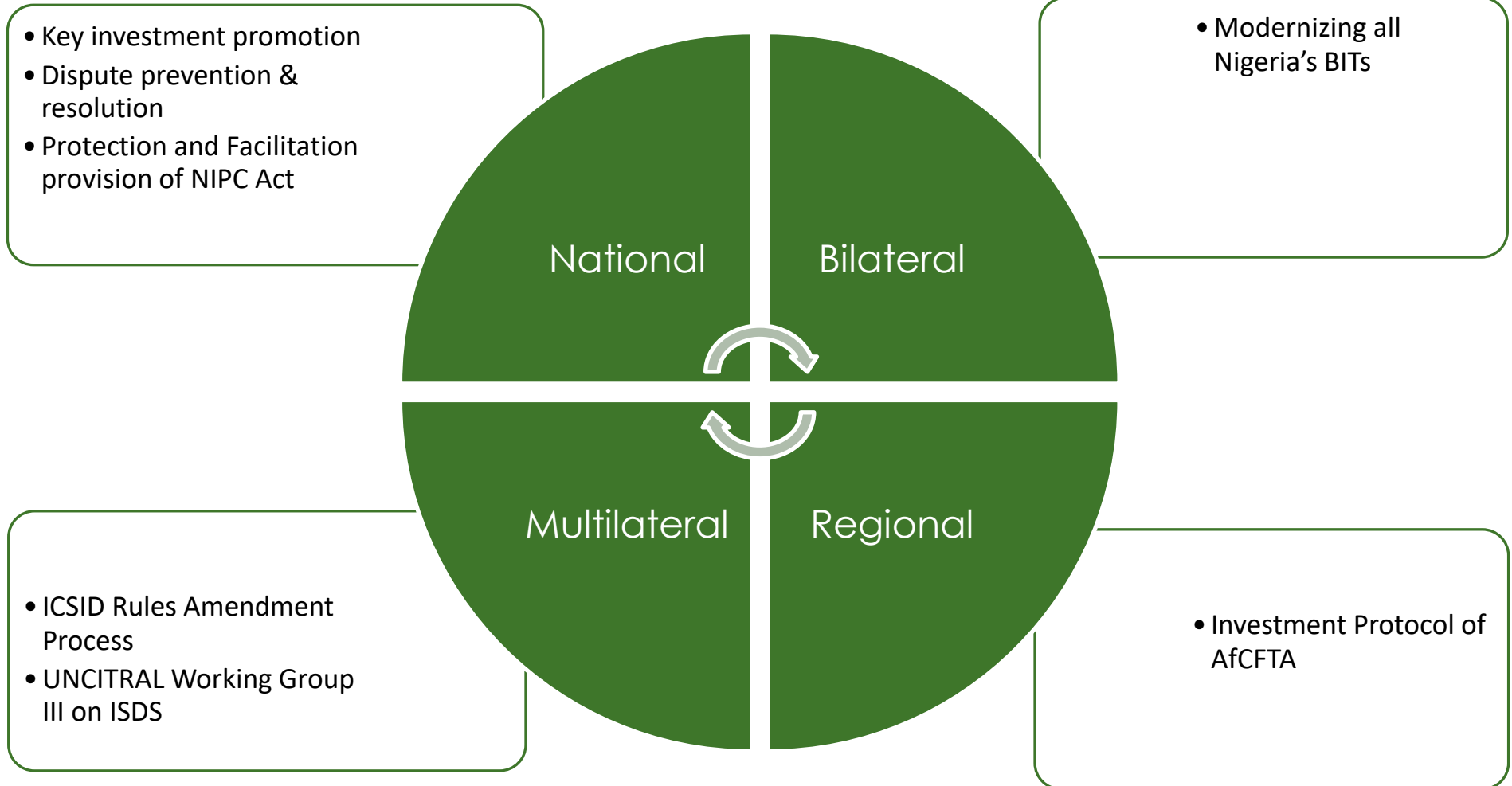
Table 2: BITs concluded, but not yet ratified

Partner	Date signed	CROP Score	Any pre-establishment provisions	Quality safeguards to ISDS	Recommendations
1 C	dd/mm/yy	6/20	Yes	No	Renegotiate
2 D	dd/mm/yy	20/20	No	Yes	Ratify

Phase 3 - Ensure coherent legal framework at all levels



Align key investment provisions of the National Investment Law with international obligations



Phase 3 - Current status of modernization



Modern BITs ratified, now in force	2
Ongoing renegotiation of a BIT in force	1
Ongoing renegotiation of concluded BITs	2
Modernization of an outdated BIT	1

Working on protecting Nigeria from potential ISDS risk arising from measures taken by government to combat COVID-19

For further details, please
contact us



**NIGERIAN
INVESTMENT
PROMOTION
COMMISSION**

Yewande Sadiku
Executive Secretary/CEO

Plot 1181 Aguiyi Ironsi Street
Maitama District
Abuja

Subscribe to the NIPC Newsletter

<http://eepurl.com/dkvoU1>

Investment information

www.theiguides.org/nigeria

infodesk@nipc.gov.ng
osicinfodesk@nipc.gov.ng

www.nipc.gov.ng